

THE  
HAURAKI REPORT



THE  
HAURAKI REPORT

---

VOLUME III

WAI 686

WAITANGI TRIBUNAL REPORT 2006



The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Māori and Pākehā history in New Zealand as it continuously unfolds in a pattern not yet completely known

National Library of New Zealand Cataloguing-in-Publication Data

New Zealand. Waitangi Tribunal.  
The Hauraki report / Waitangi Tribunal.  
(Waitangi Tribunal report)  
Includes bibliographical references.

ISBN 1-86956-285-2

1. Treaty of Waitangi (1840) 2. Maori (New Zealand people)—New Zealand—Hauraki District—Claims. 3. Maori (New Zealand people)—Land tenure—New Zealand—Hauraki District—History. 4. Hauraki District (N.Z.)—History. I. Title.

II. Series

333.33099327—dc 22

[www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

Typeset by the Waitangi Tribunal

Published 2006 by Legislation Direct, Wellington, New Zealand

Printed by SecuraCopy, Wellington, New Zealand

10 09 08 07 06 5 4 3 2 1

Set in Adobe Minion Pro and Cronos Pro typefaces



## CONTENTS

### VOLUME I

<b>EXECUTIVE SUMMARY</b> .....	xxi
ES.1 The district, the people, and their claims. ....	xxi
ES.2 Pre-1840 transactions and pre-emption waiver purchases .....	xxii
ES.3 Crown purchases, pre-1865 .....	xxiii
ES.4 War and raupatu .....	xxiii
ES.5 Gold. ....	xxvi
ES.6 Timber .....	xxxv
ES.7 Land law and land purchase .....	xxxvi
ES.8 Te Aroha mountain, the hot springs, and the township. ....	xxxviii
ES.9 Taonga and wahi tapu. ....	xxxix
ES.10 Rating of Maori land. ....	xl
ES.11 The foreshore and seabed .....	xl
ES.12 Public works takings. ....	xli
ES.13 Impacts on Maori uses of lands and waterways .....	xlii
ES.14 Socio-economic impacts .....	xliii
ES.15 Overall finding. ....	xlvi

### PART I: THE DISTRICT, THE PEOPLE, AND THEIR CLAIMS

<b>CHAPTER 1: PARE HAURAKI CLAIMS: THE BACKGROUND TO THE INQUIRY</b> .....	3
1.1 The history of the inquiry. ....	3
1.2 The claimants .....	4
1.3 Our report .....	30
<b>CHAPTER 2: THE DISTRICT AND ITS PEOPLES</b> .....	33
2.1 The Hauraki district .....	33
2.2 Pare Hauraki: the people .....	34
2.3 Population numbers .....	67
2.4 Hapu, whanau, and iwi interrelationships .....	70

## CONTENTS

### PART II: LAND ISSUES FROM TREATY TO WAR

Prologue. ....	73
<b>CHAPTER 3: PRE-1840 TRANSACTIONS AND PRE-EMPTION WAIVER PURCHASES . . . .</b>	<b>79</b>
3.1 Events in Hauraki and the Crown's intervention . . . . .	79
3.2 The nature of pre-Treaty transactions . . . . .	86
3.3 The Land Claims Commissions. . . . .	92
3.4 Evolving Maori understandings after 1840 . . . . .	104
3.5 The end of the Godfrey–Richmond commission . . . . .	106
3.6 FitzRoy's policies . . . . .	107
3.7 The waiver of Crown pre-emption . . . . .	109
3.8 Inquiries after pre-emption waiving . . . . .	122
3.9 The Bell commission, 1856–62. . . . .	126
3.10 Specific cases . . . . .	133
3.11 Overview assessment . . . . .	153
<b>CHAPTER 4: CROWN PURCHASES TO 1865. . . . .</b>	<b>165</b>
4.1 Evolving Crown policy, 1846–53 . . . . .	165
4.2 The extent of pre-1865 Crown purchases in Hauraki . . . . .	169
4.3 Actual prejudice. . . . .	183
4.4 Conclusion and findings. . . . .	188
<b>CHAPTER 5: WAR AND RAUPATU . . . . .</b>	<b>191</b>
5.1 Introduction. . . . .	191
5.2 The origins of the war (and the adequacy of evidence presented) . . . . .	191
5.3 The Hauraki connection. . . . .	198
5.4 Hauraki involvement in the war . . . . .	206
5.5 Raupatu. . . . .	207
5.6 Compensation and the failure to return land . . . . .	213
5.7 Waikato and Hauraki claims to Maramarua lands . . . . .	232
5.8 Treaty issues. . . . .	243

### PART III: GOLD AND TIMBER

Prologue. ....	251
<b>CHAPTER 6: THE BACKGROUND TO GOLDMINING IN HAURAKI . . . . .</b>	<b>255</b>
6.1 Introduction. . . . .	255
6.2 Maori perspectives on rights over gold . . . . .	255
6.3 The royal prerogative . . . . .	257
6.4 Common law native title . . . . .	261

## CONTENTS

### **CHAPTER 6: THE BACKGROUND TO GOLDMINING IN HAURAKI—*continued***

6.5	The greater importance of access .....	268
6.6	The geology of the region and its gold deposits .....	268
6.7	Characteristics of hard-rock gold mining .....	272
6.8	Gold and the economy .....	279
6.9	Maori and the management of gold strikes .....	283
6.10	Gold and legislative developments .....	283

### **CHAPTER 7: COROMANDEL: THE FIRST GOLDFIELD..... 287**

7.1	Introduction.....	287
7.2	The discovery of gold and first reactions .....	287
7.3	The Patapata hui .....	297
7.4	The 1852 agreement.....	301
7.5	Further goldfield negotiations.....	304
7.6	Treaty issues arising .....	307

### **CHAPTER 8: COROMANDEL AFTER 1854..... 319**

8.1	Crown efforts to purchase the freehold .....	319
8.2	Revival of gold mining in the Coromandel, 1861–63 .....	321
8.3	The administration of the Coromandel goldfield .....	331
8.4	The extinguishment of Maori rights.....	334
8.5	The development of the Coromandel goldfield.....	338
8.6	Treaty claims arising .....	339

### **CHAPTER 9: THE THAMES GOLDFIELD .....** 355

9.1	The 1857 Kauaeranga meeting .....	355
9.2	The opening of the Kauaeranga goldfield .....	356
9.3	The extension of the Thames goldfield: Mackay's 1867–69 negotiations.....	362
9.4	The development of the Thames goldfield.....	371
9.5	The Kauaeranga foreshore .....	383
9.6	The purchase of the freehold .....	387
9.7	Treaty issues arising .....	389

## VOLUME II

### **CHAPTER 10: THE OHINEMURI GOLDFIELD.....**409

10.1	Ohinemuri closed to mining.....	409
10.2	The leasing of Ohinemuri.....	425
10.3	Crown purchasing of Ohinemuri .....	431
10.4	Ohinemuri mining and further purchases.....	437
10.5	Treaty issues arising .....	449

## CONTENTS

<b>CHAPTER 11: TE AROHA AND THE GOLDFIELD</b>	465
11.1 First negotiations and Crown purchase	465
11.2 The genesis of Te Aroha township	469
11.3 The opening of the goldfield	471
11.4 Te Aroha township	480
11.5 Revenues actually paid	481
11.6 Tribunal comment and findings	481
<b>CHAPTER 12: EAST COROMANDEL GOLDFIELDS</b>	485
12.1 Introduction	485
12.2 Harataunga	485
12.3 Pakirarahi (and adjacent blocks)	491
12.4 Whangapoua and Kuaotunu	506
12.5 Other east Coromandel blocks purchased for mining	514
12.6 Tribunal comment	521
<b>CHAPTER 13: GOLD: GENERAL ISSUES</b>	523
13.1 Introduction	523
13.2 The ownership of gold and the indirect assertion of the royal prerogative	523
13.3 The basis of payment: the question of royalties	550
13.4 Erosion of the agreed levels of revenue	561
13.5 The collection and distribution of gold revenues	570
13.6 The connection between gold and land loss	583
13.7 The twentieth century	584
<b>CHAPTER 14: TIMBER</b>	605
14.1 Introduction	605
14.2 The Hauraki timber industry, 1840–70	608
14.3 Crown land purchases and timber leases	616
14.4 Transactions in particular localities	633
14.5 Summary, conclusion, and findings	646

## PART IV : LAND ALIENATION

Prologue	655
<b>CHAPTER 15: THE NATIVE LANDS ACTS TO 1872</b>	659
15.1 Introduction	659
15.2 Origins and purposes of the Native Lands Act	663
15.3 The 1862 and 1865 Native Lands Acts	672
15.4 The Native Lands Acts applied and amended	693

## CONTENTS

<b>CHAPTER 16: THE NATIVE LAND ACTS, 1873 TO 1899</b>	713
16.1 The Native Land Act 1873	713
16.2 Developing criticism of the 1873 Act	744
16.3 Shifting sands: law amendments and policy changes	746
16.4 The Native Land Acts 1873–99: Tribunal comment and findings	777
 <b>CHAPTER 17: LAND ALIENATION IN HAURAKI, 1865–99</b>	789
17.1 Introduction	789
17.2 Private purchasing	793
17.3 Crown purchasing resumed in Hauraki	795
17.4 Crown purchases: a chronological summary	805
17.5 Closing submissions and responses	833
17.6 Tribunal comment	841
 <b>CHAPTER 18: TWENTIETH-CENTURY LAND LAW AND LAND ALIENATION</b>	851
18.1 Early twentieth-century legislation	851
18.2 The Stout–Ngata commission, 1906–09	854
18.3 Rapid decline in Hauraki Maori lands to 1912	858
18.4 Further legal and administrative changes and further land alienation	859
18.5 Succession in the twentieth century	881
18.6 Hauraki land in Maori ownership today	890
18.7 Claimant and Crown submissions on twentieth-century land law and alienation	891
18.8 Tribunal comment and findings	894

## VOLUME III

### PART V : OTHER ISSUES

<b>CHAPTER 19: TE AROHA MOUNTAIN, THE HOT SPRINGS, AND THE TOWNSHIP</b>	901
19.1 Introduction	901
19.2 Te Aroha mountain	901
19.3 The Te Aroha hot springs	905
19.4 Ngati Rahiri Tumutumu concerns	914
19.5 Mokena's 'gifts' and the sale of Te Aroha township land	916
19.6 The 'agreement' on access to the hot springs	924
19.7 Crown and claimant submissions	927
19.8 Tribunal comment on Te Aroha mountain, the hot springs, and the township	928

## CONTENTS

<b>CHAPTER 20: TAONGA AND WAHI TAPU</b>	933
20.1 Introduction	933
20.2 Legislation affecting specific taonga and wahi tapu	936
20.3 Specific taonga claims	956
20.4 Specific wahi tapu claims	958
20.5 Overall Tribunal comment on taonga and wahi tapu	964
 <b>CHAPTER 21: RATES AND HAURAKI MAORI LANDS</b>	 967
21.1 Introduction	967
21.2 Maori and rating law: a brief background	968
21.3 The rating of Hauraki Maori land	976
21.4 Tribunal comment on rating of Hauraki Maori land	1016
 <b>CHAPTER 22: FORESHORE AND SEABED ISSUES IN HAURAKI</b>	 1021
22.1 Introduction	1021
22.2 Customary rights and British settlement	1022
22.3 The Thames foreshore and the <i>Kauaeranga</i> decision	1027
22.4 Crown purchase of rights in the foreshore	1037
22.5 Foreshore legislation and administration	1045
22.6 Maori protest and Crown redress	1050
22.7 Tribunal comment on foreshore and seabed issues in Hauraki	1051
 <b>CHAPTER 23: PUBLIC WORKS: THE COMPULSORY TAKING OF HAURAKI MAORI LANDS</b>	 1053
23.1 Introduction	1053
23.2 The legislative background: the availability of Maori land under public works legislation	1053
23.3 Various public works takings involving Hauraki Maori land	1061
23.4 Specific examples: lands gifted or taken for public purposes	1081
23.5 Overall commentaries on public works takings	1094
 <b>CHAPTER 24: IMPACTS OF COLONISATION ON MAORI USES OF LANDS AND WATERWAYS</b>	 1099
24.1 Introduction	1099
24.2 Exploitation of the forests	1109
24.3 Impacts of gold mining	1120
24.4 The Hauraki Plains drainage scheme	1142
24.5 Crown and claimant submissions	1152
24.6 Tribunal comment and findings	1158

## CONTENTS

### PART VI : SOCIO-ECONOMIC IMPACTS OF COLONISATION ON HAURAKI MAORI

Prologue.....	899
<b>CHAPTER 25: OUTCOMES OF COLONISATION.....</b>	<b>1165</b>
25.1 Hauraki demography: decline and resurgence .....	1165
25.2 Maori health and official responses .....	1170
25.3 Pensions and unemployment relief.....	1183
25.4 Housing.....	1185
25.5 Employment.....	1189
25.6 Education .....	1190
25.7 Claimant submissions on socio-economic issues.....	1195
25.8 Tribunal comment.....	1196
<b>CHAPTER 26: MAORI LANDLESSNESS AND POVERTY</b>	
<b>AND THE CROWN'S RESPONSIBILITY .....</b>	<b>1199</b>
26.1 Introduction: the fundamental question .....	1199
26.2 Crown interventions since the 1830s .....	1208
26.3 Land loss and poverty.....	1213
26.4 The limited economic potential of Hauraki?.....	1224
26.5 Tribunal findings.....	1226

### PART VII : COVERAGE OF NON-HMTB CLAIMS

PTVII.1 Introduction.....	1233
PTVII.2 Non-HMTB claims and findings, and their location in this report.....	1233
PTVII.3 Other claims (Wai 30, Wai 236, Wai 326, Wai 330, Wai 364, Wai 369, Wai 508, and Wai 826) .....	1250
<b>APPENDIX: RECORD OF INQUIRY .....</b>	<b>1253</b>
Record of hearings .....	1253
Record of proceedings.....	1255
Record of documents.....	1280
Glossary.....	1309





## LIST OF FIGURES

<i>Fig 1: The Hauraki inquiry area</i> . . . . .	2
<i>Fig 2: Geological structure of Hauraki lands</i> . . . . .	32
<i>Fig 3: Hauraki tribes, circa 1840</i> . . . . .	36
<i>Fig 4: Tribal movements, 1820–40</i> . . . . .	45
<i>Fig 5: Maori settlements recorded by European visitors pre-1840.</i> . . . .	68
<i>Fig 6: Alienation of Maori lands by 1845.</i> . . . .	82
<i>Fig 7: McCaskill claims at Hikutaia</i> . . . . .	135
<i>Fig 8: James Mackay’s sketch plan of McCaskill awards, 1866 (redrawn).</i> . . . .	142
<i>Fig 9: Webster’s Piako claim</i> . . . . .	150
<i>Fig 10: The alienation of Hauraki lands by 1865</i> . . . . .	170
<i>Fig 11: The alienation of land on Waiheke Island</i> . . . . .	186
<i>Fig 12: Waikato campaign, 1863–64</i> . . . . .	192
<i>Fig 13: South Auckland, 1863.</i> . . . .	201
<i>Fig 14: Waikato confiscated lands.</i> . . . .	208
<i>Fig 15: Boundary variations, East Wairoa and East Waikato blocks</i> . . . . .	210
<i>Fig 16: East Wairoa and East Waikato confiscated lands returned to Maori</i> . . . . .	214
<i>Fig 17: Mackay’s sketch map of East Wairoa, 1865</i> . . . . .	216
<i>Fig 18: Mackay’s sketch map of East Waikato, 1871</i> . . . . .	219
<i>Fig 19: Maori maps of Hauraki claims in Maramarua and Whangamarino, 1864.</i> . . . .	222
<i>Fig 20: East Waikato confiscation block</i> . . . . .	224
<i>Fig 21: Alienation of land west of Tikapa moana before 1900</i> . . . . .	229
<i>Fig 22: Coromandel Peninsula, Alexander Mackay’s geological sketch map, 1897</i> . . . . .	269
<i>Fig 23: The formation of gold-bearing quartz reefs</i> . . . . .	271
<i>Fig 24: Methods of processing gold-bearing quartz.</i> . . . .	273
<i>Fig 25: Interior of a gold quartz crushing battery, Thames goldfield.</i> . . . .	274
<i>Fig 26: Coromandel Peninsula mining claims registered by 1897</i> . . . . .	278
<i>Fig 27: Bullion production from Coromandel Peninsula</i> . . . . .	281
<i>Fig 28: Gold discoveries in the Coromandel Peninsula</i> . . . . .	288
<i>Fig 29: Discovery of gold near the source of the Kapanga Stream.</i> . . . .	290
<i>Fig 30: Conference of Lieutenant-Governor and Maori chiefs in Coromandel Harbour</i> . . . .	296
<i>Fig 31: The harbour and gold district of Coromandel, 1864</i> . . . . .	302
<i>Fig 32: The Kapanga flat.</i> . . . .	305
<i>Fig 33: A digger’s hut</i> . . . . .	308
<i>Fig 34: Coromandel goldfield, 1862</i> . . . . .	329
<i>Fig 35: The Coromandel goldfield, 1869.</i> . . . .	333
<i>Fig 36: Coromandel gold mines, 1900</i> . . . . .	335
<i>Fig 37: The Manaia goldfield, 15 October 1868</i> . . . . .	337

## FIGURES

<i>Fig 38: The Thames goldfield.</i>	363
<i>Fig 39: The Thames goldfield, 1869.</i>	370
<i>Fig 40: The Shotover mine, Kuranui Creek, Thames, circa 1868–70.</i>	372
<i>Fig 41: The geology of the Thames goldfield.</i>	374
<i>Fig 42: Thames goldfields, Grahamstown.</i>	376
<i>Fig 43: Grahamstown, circa 1870.</i>	377
<i>Fig 44: The Thames goldfield, 1872.</i>	378
<i>Fig 45: Sketch map of Ohinemuri.</i>	410
<i>Fig 46: Native Land Court awards in the Ohinemuri block, 1882.</i>	438
<i>Fig 47: Reserves in the Ohinemuri block.</i>	439
<i>Fig 48: Ohinemuri gold mines.</i>	440
<i>Fig 49: Karangahake, circa 1900.</i>	442
<i>Fig 50: Crown purchases in the Ohinemuri and Owharoa blocks.</i>	443
<i>Fig 51: Karangahake geology.</i>	444
<i>Fig 52: Waihi mines, 1924.</i>	446
<i>Fig 53: Waihi mining, 1980.</i>	448
<i>Fig 54: Te Aroha lands.</i>	468
<i>Fig 55: The geology of the Te Aroha goldfield.</i>	477
<i>Fig 56: Waiorongomai mining area, Te Aroha goldfield.</i>	478
<i>Fig 57: Gold-mining areas of eastern Coromandel.</i>	484
<i>Fig 58: Tokatea–Harataunga gold-mining area.</i>	486
<i>Fig 59: Harataunga block (goldfield), 13 May 1868.</i>	487
<i>Fig 60: The Harataunga block.</i>	488
<i>Fig 61: Crown purchases in the Harataunga block.</i>	490
<i>Fig 62: The Pakirarahi block.</i>	493
<i>Fig 63: The Kuaotunu gold-mining area.</i>	508
<i>Fig 64: The Kuaotunu block.</i>	510
<i>Fig 65: The lower Tairua mining area.</i>	515
<i>Fig 66: Whitianga, Mercury Bay, Coromandel Peninsula, circa 1911.</i>	607
<i>Fig 67: Exploitation of Coromandel forests.</i>	609
<i>Fig 68: Crown land subject to timber leases at time of purchase, 1870–89.</i>	620
<i>Fig 69: Logs being hauled on a skidded road to the beach at Kennedy Bay.</i>	642
<i>Fig 70: Maori land in Hauraki in 1875 and 1890.</i>	790
<i>Fig 71: The Pakeha population in the Coromandel Peninsula, 1874.</i>	792
<i>Fig 72: Hauraki lands proclaimed under the Immigration and Public Works Amendment Act 1871.</i>	802
<i>Fig 73: Crown purchases, 1872–1905.</i>	804
<i>Fig 74: Alienation of land west of Tikapa Moana, 1900–2000.</i>	866
<i>Fig 75: Maori land in Hauraki in 1906 and 1939.</i>	868
<i>Fig 76: Harataunga blocks development scheme.</i>	872
<i>Fig 77: Maori land and marae in Hauraki, 1997.</i>	889
<i>Fig 78: The Te Aroha district, 1880.</i>	902
<i>Fig 79: The flow paths of groundwater at Te Aroha.</i>	906

## FIGURES

<i>Fig 80: The Hot Springs Hotel, Te Aroha</i> . . . . .	909
<i>Fig 81: Advertisement for the Te Aroha hot springs.</i> . . . . .	911
<i>Fig 82: The Cadman thermal bathhouse, Te Aroha Domain, circa 1920s.</i> . . . . .	912
<i>Fig 83: The Te Aroha Domain mineral springs, circa 1910</i> . . . . .	913
<i>Fig 84: Te Aroha township lands</i> . . . . .	917
<i>Fig 85: Te Aroha, circa 1920.</i> . . . . .	922
<i>Fig 86: Bath house 7 and tea kiosk.</i> . . . . .	925
<i>Fig 87: Harataunga blocks affected by the Maori Trustee's purchase of interests</i> . . . . .	999
<i>Fig 88: Thames foreshore blocks</i> . . . . .	1040
<i>Fig 89: Kapanga Parumoana blocks, Coromandel Harbour.</i> . . . . .	1044
<i>Fig 90: The Thames foreshore.</i> . . . . .	1047
<i>Fig 91: Maori land taken for the Kopu to Hikuai road, 1968–73</i> . . . . .	1065
<i>Fig 92: Hauraki Plains land tenure, 1908.</i> . . . . .	1068
<i>Fig 93: Drainage and settlement of the Hauraki Plains, 1908–32.</i> . . . . .	1072
<i>Fig 94: The Manaia block</i> . . . . .	1082
<i>Fig 95: Land taken for Kaiaua School</i> . . . . .	1087
<i>Fig 96: Maori land acquired by the Auckland Regional Authority, 1968–73</i> . . . . .	1092
<i>Fig 97: Maori settlement sites from Tapu to Waikawau</i> . . . . .	1101
<i>Fig 98: Maori settlement sites on the lower Waihou River.</i> . . . . .	1103
<i>Fig 99: Riverworks and archaeological sites on the Hikutaia River</i> . . . . .	1107
<i>Fig 100: The boom, Mercury Bay, circa 1910.</i> . . . . .	1110
<i>Fig 101: Hauraki Plains wetlands</i> . . . . .	1113
<i>Fig 102: Kauri logs being loaded on a scow at Kennedy Bay</i> . . . . .	1115
<i>Fig 104: Gold and timber workings on the Tairua River, 1912</i> . . . . .	1116
<i>Fig 105: Gold and timber workings in part of the Waiwawa catchment area, 1912</i> . . . . .	1118
<i>Fig 106: Silting by the Ohinemuri and Waihou Rivers in 1910 flood.</i> . . . . .	1129
<i>Fig 107: The Ohinemuri River, near Paeroa, with a goldmining dredge, circa 1916</i> . . . . .	1133
<i>Fig 108: The junction of the Waihou and Ohinemuri Rivers, 1990</i> . . . . .	1135
<i>Fig 109: Ohinemuri Junction: river works and archaeological sites</i> . . . . .	1140
<i>Fig 110: Men labouring on the Maukoro Canal, Hauraki Plains, circa 1904–10</i> . . . . .	1143
<i>Fig 111: Hauraki Plains drainage scheme.</i> . . . . .	1144
<i>Fig 112: The hospital at Coromandel, circa 1900–30</i> . . . . .	1173

## LIST OF TABLES

<i>Table 1:</i> Compensation Court awards relating to the East Wairoa block, 1865 . . . . .	217
<i>Table 2:</i> Out-of-court awards relating to the East Wairoa block, 1865 . . . . .	217
<i>Table 3:</i> Crown grants in the upper Mangatawhiri Valley, 1871 . . . . .	218
<i>Table 4:</i> Payments to Hauraki tribes in the Eastern Waikato block. . . . .	218
<i>Table 5:</i> Out-of-court awards made to Hauraki claimants, 1866 . . . . .	220
<i>Table 6:</i> Ngati Paoa individuals who received land near Pukorokoro, 1879. . . . .	221
<i>Table 7:</i> Ngati Whanaunga who received land near the Te Rau o te Huia Stream, 1879 . . . . .	221
<i>Table 8:</i> Agreements and payment plans. . . . .	556–557
<i>Table 9:</i> Financial returns of Hauraki sawmills, 1875. . . . .	625
<i>Table 10:</i> Blocks acquired by the Crown subject to timber leases . . . . .	626–627
<i>Table 11:</i> Maori blocks taken under the Public Works Act by 1919. . . . .	1070
<i>Table 12:</i> Takings of Maori blocks from 1920 to 1923. . . . .	1070
<i>Table 13:</i> Stamper batteries in the Thames goldfield in the early 1870s. . . . .	1121
<i>Table 14:</i> Principal companies' years of operation and ore tonnages crushed up to 1909 . . . .	1126

## ABBREVIATIONS

a, ac	acre
AJHR	<i>Appendix to the Journals of the House of Representatives</i>
ALR	<i>Australian Law Reports</i>
app	appendix
App Cas	<i>Law Reports, Appeal Cases</i>
ARA	Auckland Regional Authority
Atk	<i>Atkyn's Reports</i>
ATL	Alexander Turnbull Library
BPP	<i>British Parliamentary Papers</i>
CA	Court of Appeal
CD	compact disc
ch	chapter
CJ	chief justice (when used after a surname)
cl	clause
cmmd	command
CMS	Church Missionary Society
DNZB	<i>The Dictionary of New Zealand Biography</i> (5 vols, Wellington: Department of Internal Affairs, 1990–2000)
doc	document
ed	edition, editor
ER	<i>English Reports</i>
GBPP	<i>Great Britain Parliamentary Papers</i>
ha	hectare
HCA	High Court of Australia
J	justice (when used after a surname)
KTC	Kauri Timber Company
LINZ	Land Information New Zealand
ltd	limited
LR Eq	<i>Law Reports, Equity Cases</i>
MA	master of arts and Maori Affairs file series
MD	Mines Department file
MA-MLP	Maori Affairs head office file
MS	manuscript
n	note
NMO	native medical officer
no	number
NO	Maori Affairs head office file
NT	Northern Territory
NZ Jur (NS)	<i>New Zealand Jurist, New Series</i>
NZJH	<i>New Zealand Journal of History</i>
NZLR	<i>New Zealand Law Reports</i>
P	perch

## ABBREVIATIONS

p, pp	page, pages
para	paragraph
PC	Privy Council
Plowd	<i>Plowden's Reports</i>
r	rood
RDB	<i>Raupatu Document Bank</i> (139 vols, Wellington: Waitangi Tribunal, 1990)
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
SC	Supreme Court
sec	section (of this report, a book, etc)
sess	session
US	<i>Reports of Cases in the Supreme Court of the United States of America</i>
USSC	Union Steam Saw Moulding Sash and Door Company
v	and
vers	version
Ves	<i>Vesey Jun's Reports</i>
vol	volume
VUWLR	<i>Victoria University of Wellington Law Review</i>
WA	Western Australia

'Wai' is a prefix used with Waitangi Tribunal claim numbers

Unless otherwise stated, footnote references to claims, statements, papers, and documents are to the record of inquiry, the index to which is reproduced in the appendix.

Unless otherwise stated, footnote references to Archives NZ are to the Wellington branch.

PART V

OTHER ISSUES





## CHAPTER 19

### TE AROHA MOUNTAIN, THE HOT SPRINGS, AND THE TOWNSHIP

#### 19.1 INTRODUCTION

The Wai 663 claim was lodged by Tanengapuia Mokena and Mapuna Turner on behalf of Ngati Rahiri Tumutumu of the Te Aroha district.<sup>1</sup> These claimants support the broader issues of the Wai 100 claim of the HMTB but have specific grievances concerning Te Aroha. The Crown purchase of the Te Aroha block in 1878, the proclamation of the Te Aroha goldfield in 1880, and the choice of Te Aroha as a township serving the goldfield have already been reviewed in chapter 11. This chapter focuses on concerns about Te Aroha mountain and the hot springs, and land losses in the township of Te Aroha, which was part of the Omaha native reserve (see fig 78).

#### 19.2 TE AROHA MOUNTAIN

Taimoana Turoa described Te Aroha mountain as ‘greatly revered by the Marutuahu people who refer to it as “Te Tatau ki Hauraki whanui”’. He translated this as the ‘portal or doorway to Hauraki widespread’. Te Aroha embodies the prow of a canoe with its stern at Moehau, at the northern end of Coromandel Peninsula. (Others have reversed this image, placing the stern at Te Aroha.) The name ‘Te Aroha’, meaning love, yearning, or compassion, is a shortened version of a name which appears in Tainui, Te Arawa, and Mataatua traditions as ‘Te Aroha-ki-tai, Te Aroha-a-uta’. The Mataatua version relates that the ancestor, Rahiri, took this canoe from Whakatane to its resting place at Takou in the far north. In old age, he returned south with some of his people, naming features of the land on his way. He ascended Te Aroha mountain, where he viewed the Bay of Plenty and the volcanic island Whakaari (White Island) offshore. He exclaimed, ‘Te Aroha ki tai, Te Aroha a uta’, an expression of his yearning for his coastal homeland (tai) and its inland territories (uta). Rahiri returned to Whakatane but some of his people remained at Te Aroha and became the ancestors of Ngati Rahiri.<sup>2</sup> Other versions of this story have different ancestors naming Te Aroha but the meaning is the same, an expression of yearning for home.

---

1. Claim 1.26(b)

2. Taimoana Turoa, *Te Takoto o te Whenua o Hauraki: Hauraki Landmarks* (Auckland: Reed, 2000), pp 152–153

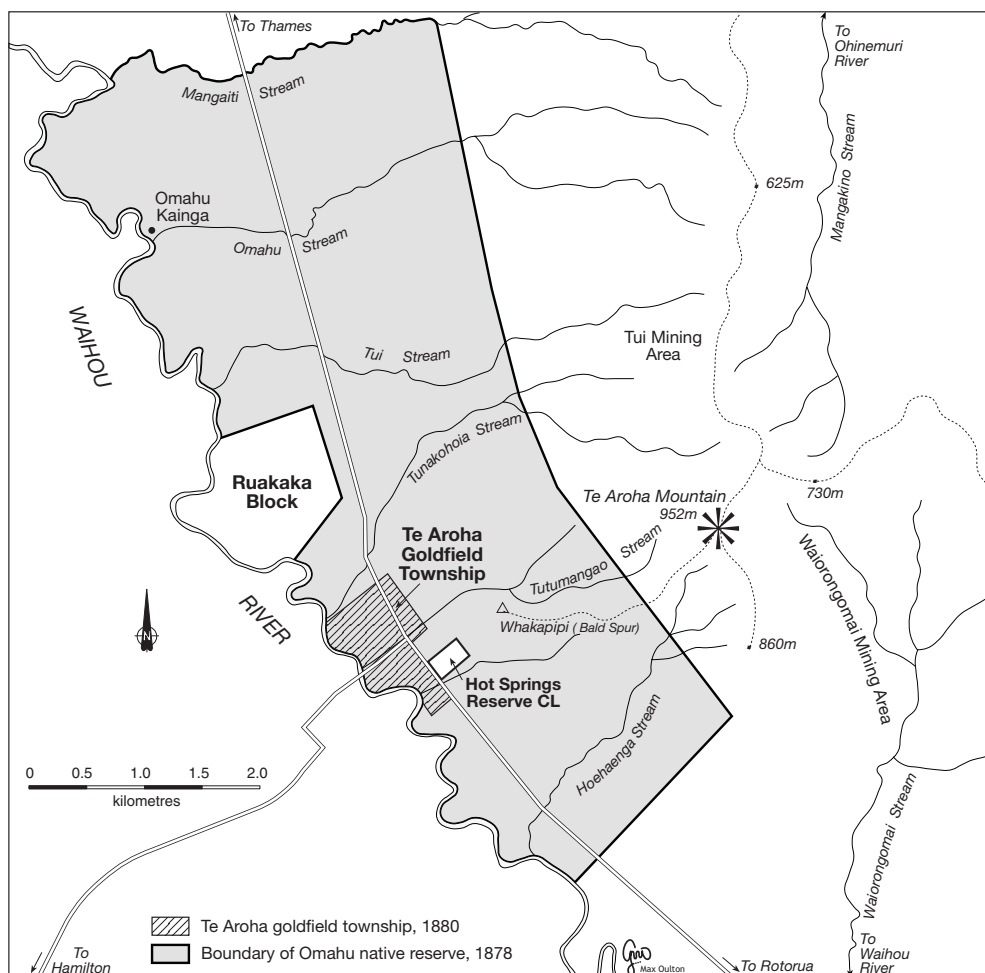


Figure 78: The Te Aroha district, 1880

An older name for Te Aroha mountain is 'Puke-kakariki-kaitahi', which Turoa suggests is 'probably of early Ngati Hako origin'. Although 'Te Aroha' is used for the whole mountain, strictly the name refers to 'two very prominent spurs to the east and west of the lower crater rim', Te Aroha-ki-tai and Te Aroha-a-uta. Another name for the inland portion of the mountain, Te Aroha-a-uta, was Keteriki, a source of 'the spring-fed waters of the mountain'.<sup>3</sup>

In their evidence to us, Ngati Rahiri Tumutumu claimants emphasised the significance to them of their maunga tapu, Te Aroha mountain, and the hot springs at its base. Mapuna Turner described the mountain:

Ngati Rahiri Tumutumu and the rest of Hauraki consider Mount Te Aroha to be wahi tapu. We have defined Mt Te Aroha to mean from the summit to the river [Waihou]. This includes Te Aroha Town. Te Aroha is the kei [stern] of the waka. The bow is at Moehau . . .

3. Turoa, p 138

The earliest known name for Te Aroha maunga is Puke Kakariki Kaitahi the place where the Kaka parrots flocked to feed. It is symbolic that the mountain supplies an abundance of food and resources.<sup>4</sup>

Tane Mokena, a descendant of Te Mokena Hou, a rangatira of Te Aroha<sup>5</sup>, spoke of the ancestral connections of Ngati Rahiri Tumutumu with the mountain and springs:

The hot springs lie at the base of Te Aroha Mountain, right beneath Whakapipi or Bald Spur. The springs flow out of the heart of the mountain, so I cannot talk about the significance of the springs without first talking about Te Aroha Mountain.

Te Aroha mountain and the Kaimai Ranges are closely associated with our ancestors. Te Aroha mountain itself is traditionally associated with the ancestor Te Ruinga. On one side, Te Ruinga descended from Raukawa, on another side he came from this area. Twin peaks stand atop Te Aroha mountain. The higher one bears the name Te Aroha-a-uta, and the lower one Te Aroha-a-tai.<sup>6</sup>

Tane Mokena described burial caves of ancestors on the mountain and the tapu associated with them:

Associated, as they were, with the ancestors and the tapu state of death, mountains were perceived as eerie, tapu places – spiritual halfway stations between this world and the next. Mountains were places where earth – the realm of mortals – met the sky – the realm of the supernatural. Te Aroha mountain was such a tapu mountain. In a number of traditional stories Patupaiarehe inhabit its misty peaks. Patupaiarehe seemed to slide in and out of this world and the next. They both embodied, and intensified, the tapu nature of the mountain.

Our ancestor Te Ruinga came from the mountain; he descended from the spirits who inhabit its misty peaks. The Hot Springs at Te Aroha, because they flow out of the heart of the mountain, are also part of the mountain, and also partake of the tapu associations of the mountain. The Hot Springs symbolise the giving, caring nature of the mountain and the ancestors.

The hot springs which lie at the foot of Mount Te Aroha were a very special place to our ancestors. They rise out of the base of the tapu mountain, and right underneath Te Ruinga's pa site at Whakapipi, were considered to be very tapu, and had to be approached with respect and caution.<sup>7</sup>

It is not in dispute that Ngati Rahiri Tumutumu have occupied the Te Aroha district for many generations. When the title to the Te Aroha block was investigated by the Native Land Court in 1869, Ngati Haua's application was vigorously opposed by Hauraki leaders,

---

4. Document J20, p 7

5. Tane Mokena's role in aspects of early Te Aroha township history is described in sections 11.2 to 11.4 below.

6. Document G22, p 3

7. Ibid, pp 7–9

and Ngati Rahiri in particular. (This hearing has been discussed in sections 2.2.6 and 11.1.2.) Te Mokena Hou stated his hapu were Ngati Tumutumu, Ngati Hue, and Ngati Kopirimau, all associated with Ngati Rahiri. He also listed 20 other Hauraki hapu with interests in the block and stated: 'These tribes held this land from ancient days down to the invasion of Ngapuhi – they afterwards used to come backwards and forwards from Hauraki to Te Aroha'.<sup>8</sup> He listed 16 names 'and others' who are now living at the base of Te Aroha, and refuted Ngati Haua claims to any pa on the mountain. 'We were driven away by Ngapuhi and took shelter amongst Waikato tribes and then returned to Te Aroha until the time of the war with the Pakeha, we then straggled away and have now returned and are cultivating on the land'. He then suggested, 'The reason that Ngatihaua lay claim to the land is to take it because their own land is gone'.<sup>9</sup>

In the 1820s, following raids by northern tribes around the Hauraki Gulf, Marutuahu tribes retreated inland to the Waikato district, but after the Taumatawiwi battle about 1830, fought near Maungatautari, Marutuahu moved back to Hauraki (see sec 2.2.3). Ngati Haua claimed they had won this battle and asserted their title to Maungatautari; they also claimed the Te Aroha block, on the grounds of conquest and occupation. This was refuted by Marutuahu witnesses, who conceded that, while their main settlements were near the coast, they periodically came up the Waihou River to get eels, and snare birds in the forests of Te Aroha mountain or the wild fowl of the swamps nearby. Te Mokena Hou stated that when not at Te Aroha he lived at Hikutaia and Puriri. 'I was there [Puriri] when the Missionaries came there and at the time of the first Governor's coming I went backwards & forwards to the Aroha'. He returned on 18 August 1868 and 'took permanent possession of Te Aroha'.<sup>10</sup> Te Mokena Hou and others cultivated crops in clearings at Mataura and Omahu and ran pigs at Manawaru, and although Ngati Haua may have used 'Rauwiri's eel pa' it did not belong to them: 'It is not right according to Native custom to take Te Aroha for Taumatawiwi. Maoris claim land from their ancestors'.<sup>11</sup>

In support of Ngati Rahiri's claims, Rina Mokena stated, 'Te Mokena is my husband. I was born at the Aroha, at Pakamako – at the base of the mountain'. She claimed Ngati Tumutumu and Ngati Maru had made the eel weirs there. Although she was related to Ngati Haua, and had lived for a time at Matamata and Waitoa, Ngati Haua were not owners. Ngati Tumutumu lived at Te Aroha, and even at the time of Taumatawiwi, there were a few who remained as kaitiaki or guardians.<sup>12</sup> Erana Ketu corroborated this statement: 'During times of war there were always kaitiaki at the Aroha'.<sup>13</sup> There were other witnesses too, who

---

8. Waikato minute book 2, fols 216–217

9. Ibid, fols 217–218

10. Ibid, fol 219

11. Ibid, fols 220–221

12. Ibid, fols 244–245

13. Ibid, fol 248

described cultivations, and eel weirs, and expeditions from the coast inland up the Waihou River. Uses of the hot springs were not discussed in the court hearing.

In 1869, the Te Aroha block was awarded to Ngati Haua, although it was acknowledged by all parties that, until Taumatawiwi, the block was within the rohe of Marutuahu tribes. The Native Land Court concluded:

The evidence given on both sides is, as usual in cases of tribal disputes, very contradictory, but the Court will follow the rule which it has laid down in similar cases, that those who are found in undisputed possession of land in this country at the time the English Government took formal possession of the Island shall be considered as the real owners of the soil.<sup>14</sup>

Marutuahu tribes protested Judge Rogan's decision and a rehearing was granted. In April 1871, Judges Maning and Rogan concluded that at no time had Marutuahu tribes relinquished their claim to Te Aroha, that any Waikato or Ngati Haua people living there 'unmolested on the Aroha lands, were there by permission of the Marutuahu people, but who did not concede to them any right of ownership'. Since Taumatawiwi, Marutuahu tribes 'made use of the land at will . . . and as fully and frequently, it would appear, as they chose to do'. The Court awarded the block to 'the Marutuahu tribes'.<sup>15</sup>

Mapuna Turner, in her evidence to Waitangi Tribunal, quoted oral tradition among Ngati Rahiri Tumutumu: 'It is said that when Marutuahu left Hauraki to go and live in Maunga-tautari, we refused and chose not to go with the rest. We sought protection from the mountain, the ngahere (bush) and in the swamps. I say protection because we knew the area well.'<sup>16</sup>

All Ngati Rahiri Tumutumu witnesses were adamant that they had not relinquished their kaitiaki role over the mountain and the hot springs at its base.

### 19.3 THE TE AROHA HOT SPRINGS

The geothermal area at Te Aroha consisted originally of more than 20 hot springs, but now fewer than 10 are active. The total flow of hot water has changed little, but the excavation of a tunnel in 1889 to tap water for the baths, and several holes drilled from 1936 for the same purpose, have affected flows in the smaller springs.<sup>17</sup> In the first detailed geological survey

14. Ibid, fol 303

15. Hauraki minute book 4, fols 257–258; Native Land Court, *Important Judgements Delivered in the Compensation Court and Native Land Court, 1866–1879* (Auckland: General Steam Printer, 1879), pp 132–133

16. Document J20, p 7

17. MA Mongillo and L Clelland, *Concise Listing of Information on the Thermal Areas and Thermal Springs of New Zealand*, Department of Scientific and Industrial Research Geothermal Report 9 (Wellington: Department of Scientific and Industrial Research, 1984), pp 78–79; Evelyn Stokes, *The Legacy of Ngatoroirangi: Maori Customary Use of Geothermal Resources* (Hamilton: Department of Geography, University of Waikato, 2000), p 230

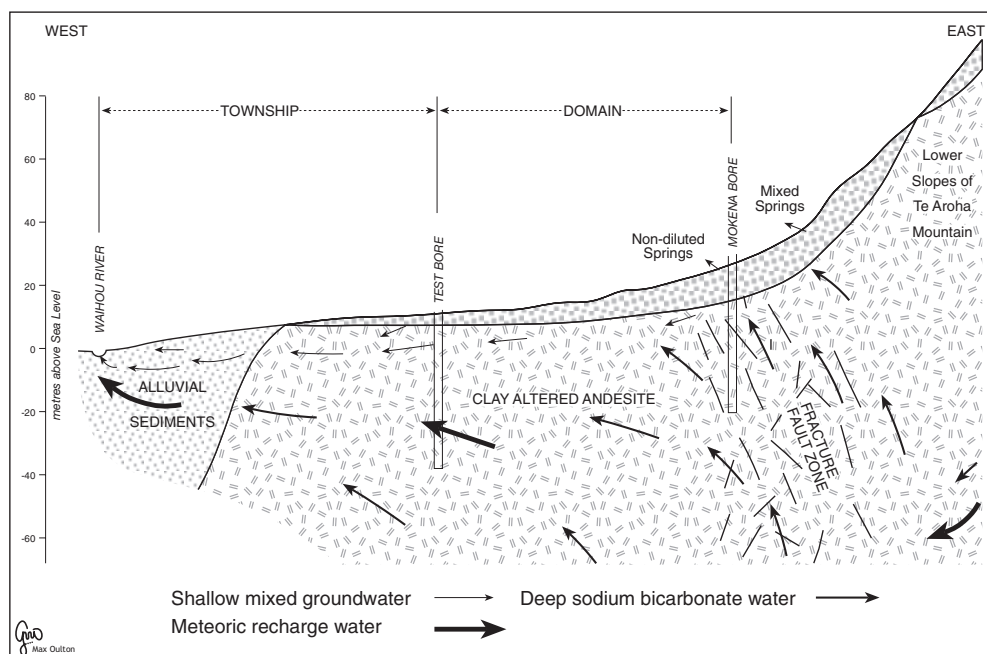


Figure 79: The flow paths of groundwater at Te Aroha

of Te Aroha the hot springs were recognised as associated with the old volcanic structures and fault lines of Te Aroha mountain:

The Te Aroha group of mineral springs is situated at the base of Te Aroha Mountain the steep wooded face of which, rising abruptly immediately beside the springs is . . . a great fault scarp. Through the crushed rock due to this fault-zone arise the springs which occur over an area about 25 chains [580 m] in length, in the northern portion of which the springs are warm, in the southern cold.<sup>18</sup>

Figure 79, which is derived from a 1993 study by Woodward Clyde Limited, confirms this interpretation.

Maori tradition ascribes the hot springs to the taniwha, Ureia who left the O-koroire hot springs to gouge out the channel of the Waihou River. He is said to have taken several gourds of hot water from O-koroire to leave at various places, including O-kauia springs and Te Aroha, which lie along the Hauraki fault line.<sup>19</sup>

There is little documentation about these springs before 1850, although the Waihou River nearby was the principal travel route in the region. However, few people then lived in this contentious boundary zone between Ngati Haua to the south and Hauraki tribes to the

18. John Henderson and John Bartrum, *The Geology of the Aroha Subdivision, Hauraki, Auckland*, Geological Survey Branch Bulletin 16 (Wellington: Department of Mines, 1913), p 30

19. Turoa, p 196

north. On 12 December 1849, George Cooper, travelling with Governor Grey, was taken to one of the springs:

a spring called Te Korokoro o Hura [the throat of Hura], which the natives declared to be boiling and of a salt taste, and that it came from the sea on the East Coast [Bay of Plenty] by a subterraneous passage. It is situated at the foot of Mount Te Aroha, on the Eastern bank of the river. On approaching it, Whakareho who was our guide, instructed me in a Native ceremony for strangers approaching a boiling spring, and my repeating which afterwards afforded much amusement during our stay at Rotomahana. It consists in pulling up some fern or any other weed which may be at hand, and throwing it into the spring, at the same time repeating the words of a karakia of which the following is the translation—

*I arrive where an unknown earth is under my feet,  
I arrive where a new sky is above me,  
I arrive at this land  
A resting place for me,  
Oh spirit of the earth the stranger humbly offers his heart as food for thee.*

The above ceremony which is called ‘Tupuna Whenua’ is used by persons on their first arrival at a strange place, for the purpose of appeasing the spirit of the earth, who would otherwise be angry at this intrusion.<sup>20</sup>

Cooper also recorded the Maori version of this karakia with notes:

*Ka u te Matanuku\**

*Ka u te Matarangi†*

*Ka u ki tenei whenua*

*Hei whenua,*

*Hei kai mau‡ te ate o te tauhou<sup>21</sup>*

\* Matanuku (synonymous with Nuku, Papa and Papatuanuku) signifies the Earth. It is here used for a place where one arrives for the first time.

† Matarangi signifies the Sky, and is used here for the part of the sky which is over the place at which a stranger arrives, who is therefore said to have a new sky above him.

‡ This is a curse according to the old custom, and is applied by the stranger to himself in evidence of his extreme humiliation and perfect submission to the spirit of the place, who could not otherwise be appeased.

Following the karakia, Cooper was able to investigate the spring:

On examining the spring we found that the water was not hot and could hardly be called tepid although it was not quite cold. Neither is it salt at all, but has a strong chalybeate taste, and is highly odiferous of rotten eggs. We found a small quantity of sulphurous deposit in the mud through which the water wells up. The quantity of water emitted is very small, and the place on the whole hardly repays one for the trouble of visiting it, to do which it is necessary to traverse about a quarter of a mile of very broken ground, the greater part of which is a deep quagmire.<sup>22</sup>

20. George S Cooper, *Journal of an Expedition Overland from Auckland to Taranaki, by way of Rotorua, Taupo, and the West Coast: Undertaken in the Summer of 1849–50 by His Excellency the Governor-in-Chief of New Zealand* (Auckland: Williamson and Wilson, 1851), pp 40, 42

21. Ibid, p 41

22. Ibid, p 42

It seems that Cooper was shown only one of the smaller springs, and the 'quagmire' discouraged him from exploring further. The area did not appear to be occupied by Maori at this time.

In 1873, Albert Allom described the geothermal area at Te Aroha which he called 'Waipuia Hot Springs':

The springs are to be found close under the precipitous ferny spurs which form this part of the mountain base. Numerous irregular bald patches of exposed clay and gravel look down upon you, indicative of water action during winter. Under these the bottom of several little gullies is incrustated with calcareous tufa, over which trickles a warm stream . . . But we found three springs only where the water was fairly hot. One, the most utilized, and apparently the best, rises up into a basin 15 to 20 feet long, whose clay walls have been built by Maories. A cold stream also trickles into this and may be dammed back with the greatest ease if the bather wishes to increase the heat of the bath.<sup>23</sup>

Allom did not record any Maori settlement in the vicinity of the springs and his small tour party of four, guided by James Nicholls, enjoyed a bath in this pool on their own. Allom did record the Omahu kainga, on the east bank of the Waihou River several kilometres downstream from Te Aroha, where he and his party stayed on their return journey.

Although gold brought Pakeha settlers to Te Aroha in the 1880s, the township evolved as a spa resort in the late nineteenth century. The focus of development was the group of springs in the 20 acres of Crown land named the hot springs reserve (section 16), later known as the Te Aroha Hot Springs Domain. Occasional parties of Pakeha visitors visited in the early 1870s and were received hospitably by the local people, most of whom lived in the kainga at Omahu. As related in section 11.2, in 1874 George Lipsey arrived, and married Ema, daughter of Te Mokena Hou. At this stage, local Maori remained in control of access to the springs, but by the mid-1870s negotiations were under way to sell the large Te Aroha block to the Crown. In August 1878, the Te Aroha block (53,908 acres) was purchased by the Crown (see sec 11.1.2). Certain reserves to be retained for Maori, including the Omahu Reserve (4268 acres) which extended from south of Te Aroha hot springs to the north of the block. It included Omahu kainga, on the eastern bank of the Waihou River. Within this reserve the Crown retained the 20-acre 'hot springs reserve'. In 1881, subdivisions of Omahu Reserve were defined, when the Mokena whanau were awarded lands around the hot springs reserve. This issue is taken up again later in this chapter.

In 1878, Lipsey had built the first Hot Springs Hotel for his father-in-law. The *Thames Advertiser* commented, 'The hotel if well conducted will be a great boon for persons seeking these springs for their health-giving properties'. By 1879, the *Thames Advertiser* recorded three hotels at Te Aroha, 'the Hot Springs Hotel kept by Mokena, the Waitoa Hotel at the

---

23. Albert J Allom, *A Holiday Trip to Maungatautari* (Grahamstown: Wilkinson and Horton Printers, 1873), p 9





Figure 80: The Hot Springs Hotel, Te Aroha

landing place kept by George S O'Halloran and the Te Aroha Hotel kept by Mr Missen.<sup>24</sup> By 1880, regular river boat services plied between Thames and Paeroa, with a coach service from Hamilton to connect with the train from Auckland. In 1880, gold was discovered on the slopes of Te Aroha mountain and the Te Aroha goldfield was proclaimed in November 1880 (see sec 11.3).<sup>25</sup> The township of Te Aroha was surveyed on part of the Mokena whanau's land and the population increased rapidly in the boom conditions of a new mining town.

As Te Aroha township was established by the Crown on Maori land ceded for gold mining, the development of the town proceeded on the basis of leasehold tenures of business and residence sites, provided for in mining legislation. Even when the Crown had purchased all of the Maori land in sections 15 and 17 of the Omahu native reserve, the mining tenures remained in place, but rentals were no longer paid to the Maori owners. Te Aroha residents long chafed against leasehold tenure, whether their landlord was Maori or the Crown, and gold mining in the district faded by the 1890s. In 1914, a royal commission investigated mining tenures in Hauraki mining district and Te Aroha township. In its report on Te Aroha, the commission noted that the Crown had acquired the freehold, but only streets in the original Morgantown and Lipseytown had been proclaimed, that other streets

24. B Goode and A Matthews, *Te Aroha Domain Management Plan* (Matamata Piako District Council, 1993), p 18 (Stokes, p 239); see also Kevin W Wells, *A Postcard from Te Aroha* (Auckland: Polygraphia, 2003), pp 21–23

25. 'Proclamation of Aroha Gold-Mining Districts Act 1873', 20 November 1880, *New Zealand Gazette* 1880, no 110, p 1669

in the town outside this area had not and no freehold titles could therefore be granted until they were proclaimed as public roads:

When the township was originally laid out it was anticipated that extensive gold-mining operations would be carried on in the vicinity, but these anticipations have not been realised. The progress of the township was undoubtedly due mainly to the tourist traffic resultant from the proximity of the hot springs, in the development of which a sum of approximately £12,000 has been expended by the Crown. The settlement of the surrounding country, has, however, latterly contributed largely towards enhancing the value of the town property. The whole of Te Aroha town sections are at present held on residential-site and business-site licenses under the Mining Act, for various terms and at rentals ranging from 5s. per annum to £3 per annum.<sup>26</sup>

The commission recommended that no further mining tenures be issued in Te Aroha, as these were not suitable for the development of a town where there was no likely prospect of gold mining in payable amounts, and strongly recommended allowing leaseholders to purchase the freehold of their properties. The Te Aroha Crown Leases Act 1920 set out provisions for any holder of a residence or business site license in the town to acquire the freehold and the basis for assessing a valuation of such properties, while reserving all mineral rights to the Crown.

In 1881, the hot springs reserve of 20 acres had been gazetted as a recreation ground under section 44 of the Land Act, and the following year gazetted under the Public Domains Act 1881.<sup>27</sup> Some of the pressure on Government to develop the amenities of the hot springs reserve had come from George O'Halloran, the former storekeeper at Omahu, who by 1880 had acquired Mokena's Hot Springs Hotel, put in a road to the springs and a ferry across the Waihou River. A domain board of five members, including George Lipsey, was appointed. In 1886, negotiations began to purchase from the Mokena family another 46 acres to be added to Te Aroha Domain. George Lipsey was directly involved in achieving this purchase, completed in 1894. We examine this transaction in more detail later. The domain was administered by the Hot Springs Domain Board through the 1880s and George Lipsey remained a member until 1892. In 1893, Te Aroha Town Board took over the role of the domain board.<sup>28</sup> In 1903, the recently created Department of Tourist and Health Resorts took over the administration of the Te Aroha spa facilities in the domain, which was now a

---

26. Albert Bruce, 'Report', 31 August 1914, AJHR, 1914, C-3, p 6

27. 'Lands Temporarily Reserved in the Land Districts of Auckland, Hawke's Bay, Canterbury, Otago, and Southland', 5 April 1881, *New Zealand Gazette* 1881, no 25, p 393; 'Te Aroha Hot Springs Recreation-ground Brought under "The Public Domains Act 1881"', 12 December 1882, *New Zealand Gazette*, 1882, no 107, p 1860

28. 'Power Delegated to the Te Aroha Domain Board under "The Public Domains Act, 1881"', 31 August 1881, *New Zealand Gazette* 1893, no 66, pp 1297-1298

*Advertisements.*

## TE AROHA HOT SPRINGS.

THE GREAT SANATORIUM OF AUCKLAND.

**T**HIS charming place is recommended to those desiring pretty country, pleasant climate, and agreeable society, with the advantages of really comfortable and well managed.

### NATURAL HOT BATHS.

The Te Aroha Domain, in which the Hot Springs are situate, is a picturesque tract of country on the slopes of Te Aroha. A large portion of the Domain is laid out as a Garden, with Asphalt Tennis Courts, well kept lawns and ample recreation grounds.

Among groups of lovely ferns and beds of beautiful flowers the Bath Pavilions are erected. Of these there are seven, including the

Grand New Swimming Bath, 66ft. x 33ft.

with ample dressing room accommodation, and numerous Private Baths

Te Aroha is accessible by train from Auckland *without change of carriage*, and may also be reached by way of the Thames and Paeroa by those who prefer travelling by Water.

THERE ARE NUMEROUS

FIRST CLASS HOTELS, BOARDING HOUSES, AND  
COTTAGES FOR HIRE AS PRIVATE LODGINGS.

The Domain and the Streets are well lighted at night, and the Baths are open from 6 a.m. to 10 p.m. except from 1 till 2, and 6 till 7 p.m.

THERE ARE A LIBRARY AND FREE READING ROOM  
IN THE DOMAIN GARDENS.

Beautiful walks, rides, and drives abound in the neighbourhood, and the view from the Mountain, Te Aroha, 3,176 ft above the sea is magnificent.

Ladies and gentlemen desiring further particulars may obtain the Pamphlet published by the Domain Board on application to

Mr. SNEWIN, Clerk to the Te Aroha Domain Board.

Figure 81: Advertisement for the Te Aroha hot springs.

Source: George Allen, *Willis's Guide Book of New Route for Tourists: Auckland-Wellington, via the Hot Springs, Taupo, the Volcanoes and the Wanganui River* (Wanganui: AD Willis, 1894).



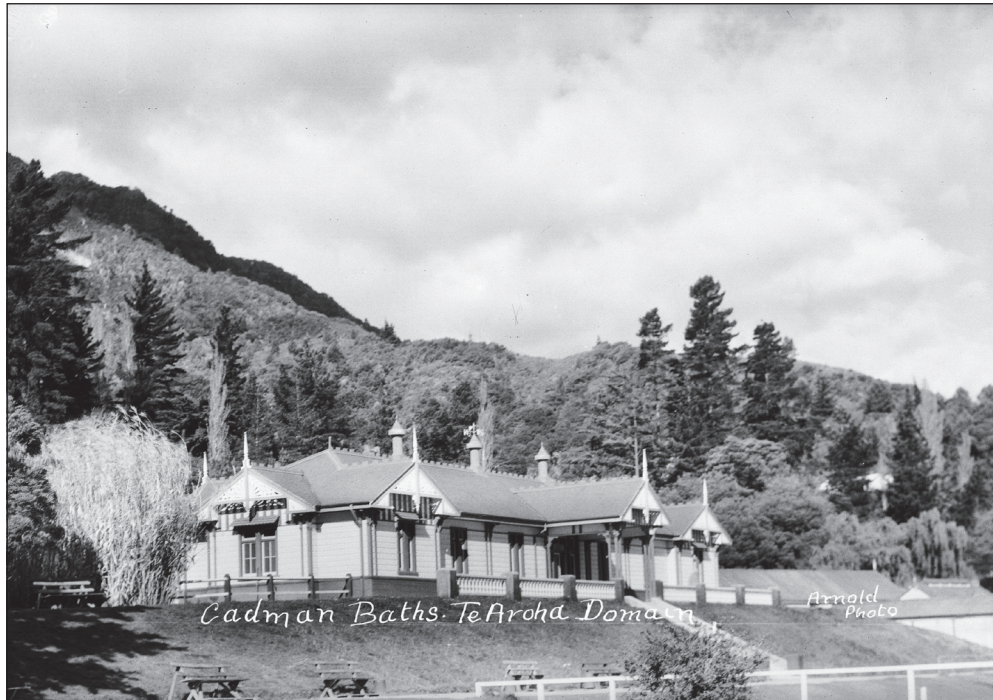


Figure 82: The Cadman thermal bathhouse, Te Aroha Domain, circa 1920s. Photograph by Arnold.  
Reproduced courtesy of the Alexander Turnbull Library, Wellington (F-003354-½).

rival to Rotorua for tourists and health seekers.<sup>29</sup> In 1978, departmental control was handed over to a joint Piako County Council–Te Aroha Borough Council administration. Since 1989, the Te Aroha Domain has been administered by the Matamata Piako District Council.

The growth of Te Aroha through the 1880s and 1890s, after the gold rush faded, was directly related to the ‘medicinal and therapeutic properties’ of the mineral springs and in particular ‘the efficacy of the waters in skin diseases and in rheumatic ailments’. In 1887, the domain board published a booklet by a Dr Wright, ‘physician to the Thermal Springs Domain’, which predicted a future for Te Aroha as ‘the sanatorium of the Southern Hemisphere’ (see fig 81).<sup>30</sup> Wright’s analysis of the mineral content of Te Aroha springs suggested similarities with the waters from several French, German, and Austrian spas. The completion of a railway connection to Te Aroha in 1886 meant visitors could travel directly by rail from Auckland. Various contemporary travel guides extolled the virtues of the spa, including Ingram’s 1892 *Guide for Invalids* which stated that ‘Te Aroha Hot Springs have, within a remarkably short period, gained for themselves, by their wonderful curative powers, a deservedly high reputation among the *sanatoria* of New Zealand, and their fame is

29. ‘Powers Delegated under “The Public Domains Act, 1881” to the Minister in Charge of the Department of Tourist and Health Resorts’, 7 January 1903, *New Zealand Gazette*, 1903, no 4, p 97

30. Alfred Wright, *Te Aroha, New Zealand, A Guide for Invalids and Visitors to the Thermal Springs and Baths* (Te Aroha: Hot Springs Domain Board, 1887); see also Wells, pp 28–40

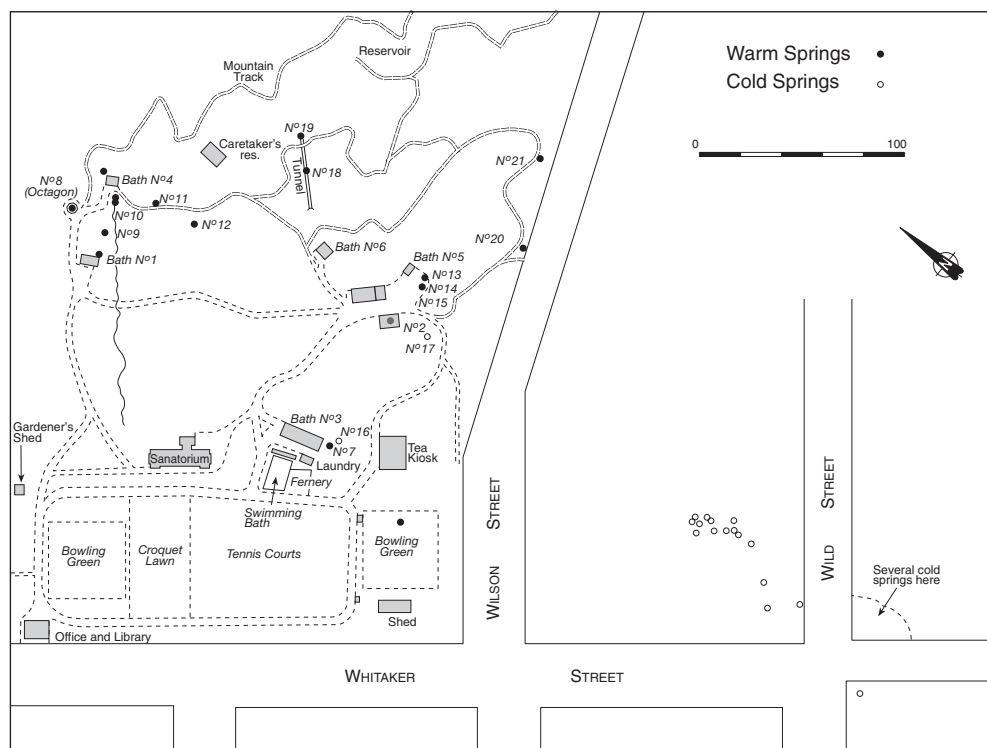


Figure 83: The Te Aroha Domain mineral springs, circa 1910. Source: John Henderson and John Bartrum, *The Geology of the Aroha Subdivision, Hauraki, Auckland Geological Survey Branch Bulletin 16* (Wellington: Department of Mines, 1913).

every day extending to the sister colonies.<sup>31</sup> Treatment consisted of both drinking the waters and various forms of bathing. In 1907, the Government Balneologist remarked on the therapeutic qualities of Te Aroha mineral waters which, ‘in many respects surpass, the most celebrated alkaline waters of Europe’.<sup>32</sup>

By the early 1900s, Te Aroha had become well established as a health resort, an Edwardian spa that has retained much of its character today. In addition to bath houses in the domain, there were tennis courts and other recreational facilities. Several hotels facing on to the domain accommodated visitors, who could enjoy fishing and boating on the Waihou River nearby. Geologists John Henderson and John Bartrum suggested that these features ‘combined to make Te Aroha the most beautiful spa in the North Island, where the invalid may find health, and the general visitor spend a delightful holiday’. The mineral waters were ‘justly famous for their therapeutic properties’ and one of the cold springs provided a

31. J S Ingram, *Guide for Invalids to the Thermal Springs and Baths of Te Aroha, New Zealand* (Te Aroha: J S Ingram, 1892), p 3

32. Herbert A Stanley and A S Wohlmann, *The Mineral Waters and Health Resorts of New Zealand* (Wellington: Department of Tourist and Health Resorts, 1907), p 60; see also Ian Rockel, *Taking the Waters: Early Spas in New Zealand* (Wellington: Government Printing Office, 1986)

product marketed as 'Waiaroha Mineral Water'.<sup>33</sup> However, by the 1940s the popularity of Te Aroha as a health resort declined. Although the medical field of balneology or hydropathy has been superseded by other medical procedures, the baths remained popular, both for recreation and relief of muscular pain and joints stiffened by arthritis or rheumatism. Many of the old bath houses survive and have been restored. The Cadman Building, formerly the sanatorium, now houses a museum, and there are modern spa baths and a swimming pool complex, and two springs supply water to two drinking fountains.<sup>34</sup> But in more than a century of development there has been little direct Maori involvement in the management of the Te Aroha Domain and its hot springs.

#### 19.4 NGATI RAHIRI TUMUTUMU CONCERNS

Tane Mokena gave evidence to us expressing his family's view of Crown acquisition and control of the hot springs:

My ancestor was Te Mokena Hou. After the fights in the land court and the troubles among the various iwi of Hauraki he turned to further affirm his right to live on his lands at Te Aroha. In 1877 he built a hotel right next to the springs as a place for the Pakeha tourists to stay in and those who visited to swim in the health giving springs. The cost for Pakeha was one shilling but for Maori it was free because the springs were a taonga.

This was the means by which our ancestors held the land. They knew that most of their lands had been lost to the government and only a residue remained. That was the reason that this hotel was built, so that the government could not say that these people lacked the initiative to utilise their lands.

Of the lands reserved to Mokena Hou, half was transferred to his daughter Ema Mokena Lipsey . . . The springs are in the middle of the land which was reserved for Mokena.

But in 1880 at the time in which the goldfields commenced at Te Aroha, the hungry gaze of the government turned to the most sacred of the ancestral treasures, to the springs themselves. The ancestors wanted nothing other than to retain the springs in their ownership but the Crown was stronger and the people agreed that the Crown should administer the springs. In return for the transfer, it was promised that the springs would be administered in such a way as to ensure free access by Maori to them. The Crown agreed and the Pakeha moved in to administer the springs.

The springs are a great treasure. It was a beautiful place to our ancestors, but to the Pakeha they saw only a wild, rough and untamed scene. As so they turned to renovate the springs

---

33. Henderson and Bartrum, p 30

34. Rockel, pp 55–61; Stokes, p 250

and there by to raise the price. They then said to the (Maori) people, if you wish to swim you will have to pay a price to enter!<sup>35</sup>

Kaumatua Hutana McCaskill, who had lived most of his life at Tui Pa, Te Aroha, told the Tribunal how he felt about the springs:

In the past our people used the springs for a number of reasons. The cold spring was used for drinking water and the hot springs for bathing and healing. The healing properties of the springs was known throughout Aotearoa.

I believe the springs were gifted to the Crown. However, there were conditions attached to its use as continuing to allow Maori people free access to the springs. I understand, the springs were transferred to the control of the local body and the conditions of the gifting were forgotten.

It saddens me how the spiritual beauty and power of the springs has been destroyed. For example, I believe the tapping of the Mokena Hou geyser has diminished its wairua.

We had many springs, but today lots of them are described as 'diminished' or 'toxic'.

Hutana McCaskill also suggested that the use of Pakeha names, such as Wyborn Swimming Pools, is an 'erosion of our identity'. He concluded, 'I believe that the Domain was gifted to the Crown by Mokena Hou for the benefit of the people.'<sup>36</sup>

Mapuna Turner told the Waitangi Tribunal:

The contributions that have been made to the Te Aroha Township by Maori are many. You [the Tribunal] visited the Domain yesterday, everyone remains under the impression that this was a gift by Mokena Hou to the Crown.

Te Aroha Domain was not gifted according to Uncle Keepa. He reiterated always that it was taken. The information was handed down from his father and grandfather.

I will never forget Uncle Keepa talking about the 'confiscation' of the Te Aroha Domain.<sup>37</sup>

Mapuna Turner contrasted oral tradition of the taking of the hot springs with the statement in the Te Aroha Domain management plan:

The Government of the day wisely determined that the land in which the hot springs were situated should be made a public reserve, and an area of 20 acres was set apart and brought within the provisions of the Public Domains Act on December 1882.<sup>38</sup>

---

35. Document J18, pp 4–5

36. Document J19, p 3

37. Document J20, pp 8–9

38. *New Zealand Mines Record*, 16 March 1900 (Stokes, p 247)

These statements raise two issues: the nature of Mokena's 'gift' and the 'agreement' about Maori use of the hot springs. In the claimants' view, both have implications for current management of the domain and the hot springs.

#### 19.5 MOKENA'S 'GIFTS' AND THE SALE OF TE AROHA TOWNSHIP LAND

Section 16, which is the hot springs reserve (20 acres or eight hectares), is within the area of section 15 (334 acres) which was the reserve granted to nine members of the Mokena whanau. Section 17 (400 acres) was granted to Ema Lipsey, daughter of Te Mokena Hou and wife of George Lipsey, and their two children, Ani and Akuhata (fig 84). David Alexander, researcher for the Hauraki claimants, stated:

Within the Omahu Reserve, an area of 20 acres around the hot springs seems not to have been granted back to Ngati Rahiri owners as part of the Omahu Reserve. Instead, it seems to have been retained by the Crown, and treated as part of the Te Aroha purchase, with the boundaries of Omahu Reserve adjusted to ensure that Ngati Rahiri received the areas they had been promised. References to the negotiations leading up to this decision have not been located.<sup>39</sup>

Robyn Anderson, in her report for the Hauraki claimants, also felt that the circumstances of the transaction were 'not entirely clear':

Certainly local politicians were concerned that the springs be obtained, the Mayor of Thames requesting Sheehan [Native Minister] to instruct Mackay to reserve the area as public property . . . The details of the actual negotiation are unknown but the tradition is that Te Mokena Hou, the head of the whanau, 'gifted' the springs to form a 'recreation reserve'. It was arranged at the same time, that Maori should retain a right of free access to the springs while George Lipsey, son-in-law to Te Mokena Hou, was appointed to the Te Aroha Hot Springs Domain Board.<sup>40</sup>

In Maori terms, Te Mokena Hou's 'gift' consisted in his allowing the Crown to include the hot springs area in their initial purchase. It is probable that this Maori perception of the transaction is the origin of the later belief in a free gift. There is no written record of any discussion of the springs or oral agreement about their use with Mackay in purchase negotiations, but the Crown has conceded that the weight of evidence supports the idea that the 20 acres were the gift of Te Mokena Hou.<sup>41</sup>

---

39. Document A10, pt 3, p 211

40. Document A9, pp 31–32

41. Paper 2.550, pp 42–43



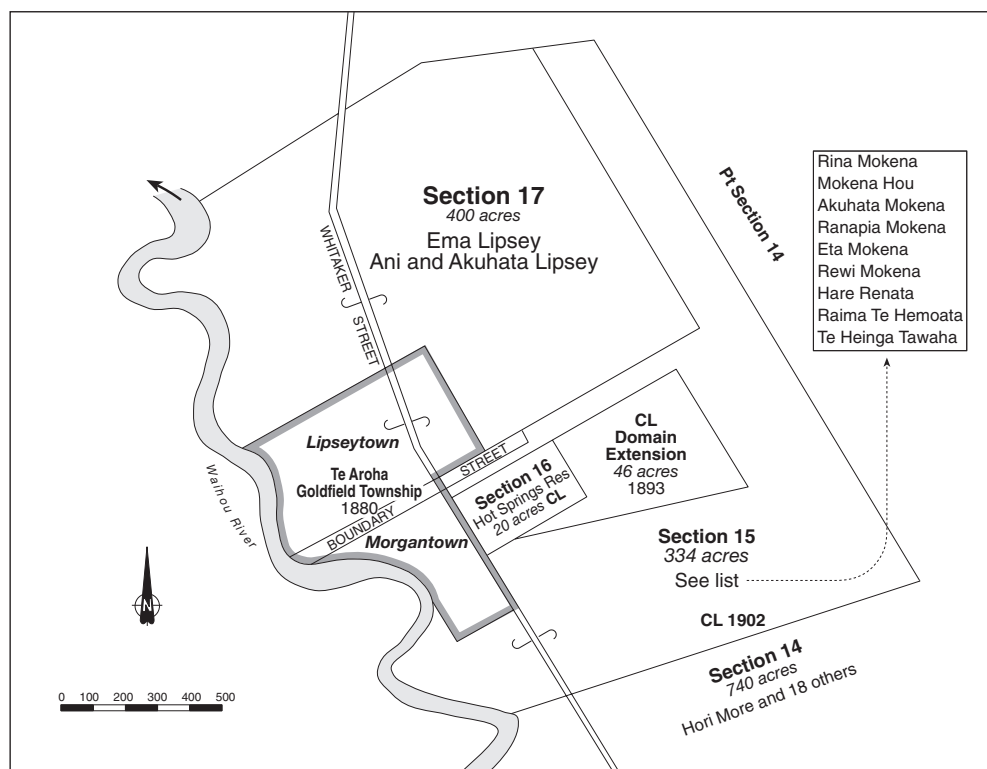


Figure 84: Te Aroha township lands

In January 1886, the domain board was anxious to extend the reserve area. Land purchase officer Wilkinson was asked to conduct negotiations and began by getting George Lipsey to use his influence with his in-laws, the Mokena whanau who owned section 15. By April, four of the owners (Ranapia Mokena, Raima Te Hemoata, Rewi Mokena, and Hare Renata) had agreed to sell approximately 46 acres at £5 per acre. In July 1886, a notice of intention was published to remove restrictions on alienation which had been imposed on the block by the Native Land Court in 1878.<sup>42</sup> By the end of the year, the remaining living owners had agreed to sell.

By this time, both Te Mokena Hou and Rina Mokena, his wife, had died. In October 1886, the Native Land Court determined the successors of Te Mokena Hou to be Rewi Mokena and Ema Ripihia (Lipsey), but could not make a determination for Rina Mokena because she had made a will setting up George Lipsey and his wife Ema as trustees for their daughter, Ani Ripihia (Annie Lipsey), until she could inherit her interests at the age of 21 years. If she did not survive then the property reverted to her siblings and the trust endured until all reached 21 years. The legal complications of this trust prevented the Crown completing the purchase although all other interests had been acquired. This was resolved by statute

42. 'Notice under the Native Land Laws Amendment Act 1883', *New Zealand Gazette*, 1886, no 44, p1021

in section 8 of the 1893 amendment to the Maori Real Estate Management Act 1888 which allowed the trustees of Ani Ripihia's interests to transfer these to the Crown.<sup>43</sup> In February 1894, an additional 46 acres in section 15 were declared Crown land and added to Te Aroha hot springs domain in August 1898.<sup>44</sup>

Through the 1890s, Government land purchase officers sought to acquire the interests in the balance of section 15, Morgantown. In 1889, on the Mokena whanau's application, the restrictions on alienation of the remaining Maori land in section 15 were removed. By 1902, the last of a series of transactions was completed.<sup>45</sup> Section 15, which carried a number of goldfield leases in Te Aroha township, was declared Crown land in August 1902.<sup>46</sup>

When section 16 was set aside as a hot springs reserve, it was already Crown land, having been part of the Te Aroha block purchased by James Mackay for the Crown. The deed of transfer specified that reserves be set aside for Maori but these had not been surveyed or the boundaries decided when the deed was signed. Because the hot springs reserve was already Crown land, there was legally no need for Te Mokena Hou to 'give' the land to the Crown. He had already 'given' it in allowing the initial purchase to include the hot springs. But the additional 46 acres were clearly purchased by the Crown, not given by the Mokena whanau. Another alleged 'gift', the land in Herries Memorial Park, was also purchased as part of the balance of section 15 acquired by the Crown in 1902. Nevertheless, the idea of a gift of the hot springs has continued in Te Aroha local history, demonstrating again the different values Maori placed on such transactions and the payment for them:

Certain areas had been made over by the native owners as free gifts: the Domain, with the hot springs, and the area now forming the Herries Memorial Park, by Mokena to the State: by him also was given the original site of the Roman Catholic Church: the site of the Anglican Church and that of the Methodist Church, also the school site, were the gifts of Mrs Lipsey.<sup>47</sup>

In a 'diamond jubilee' publication of the Piako County Council, Harris remarked on the purchase of the Te Aroha block and the establishment of the Te Aroha township:

The Native Land Court hearing in the purchase of certain portions of the Aroha Block, with Mr James Mackay representing the Crown, took place at Thames during the latter part of 1877 and the earlier part of the following year. Certain reservations were made for the natives; but it proved a difficult fight to get the Hot Springs reserve. It may be added that

---

43. Document G1, pp 26–27; doc A10, pt 3, pp 218–224

44. 'Native Lands Acquired by Her Majesty Declared to be Crown Lands', 30 January 1894, *New Zealand Gazette* 1894, no 10, p 209; 'Addition to Te Aroha Hot Springs Domain Brought under "The Public Domains Act 1881"', 8 August 1898, *New Zealand Gazette*, 1898, no 61, p 1308

45. Document G1, pp 22–35

46. 'Native Lands Acquired by His Majesty Declared to be Crown Lands', 25 August 1902, *New Zealand Gazette*, 1902, no 68, p 1778

47. Te Aroha News, *Te Aroha and the Fortunate Valley* (Te Aroha: Te Aroha News, 1930), p 283

Messrs Strange and O'Halloran made strong representations to the Government on this matter; and they, supported by the united efforts of others – particularly Mr Mackay – were successful.<sup>48</sup>

(Frederick Strange arrived in the district in 1876 and purchased land west of the Waihou River, near Te Aroha. Captain G S O'Halloran had arrived earlier at Omahu and had settled in Te Aroha by 1880.) Harris noted that the Crown had purchased the title to Morgantown (section 15) and that Lipseytown (section 17) was gradually acquired in a series of purchases, but he still regarded parts of these purchases as 'gifts':

The native owners were generous, however. Morgan [Mokena] gave the domain, the hot springs and the area now known as the Herries Memorial Park, as well as the site for the Roman Catholic Church; whilst Mrs Lipsey gave the sites for the Anglican and Methodist churches and that for the school.<sup>49</sup>

In an obituary for George Lipsey, published in *Te Aroha News* in May 1913, credit for the gift of the domain and other sites is attributed to George and Ema Lipsey:

Mr George Lipsey was the son of Thomas Lipsey Esq, Lipsey Park, Newtown Gore, County Leitrim, Ireland. Born in 1846, he came to this colony when he was 21, and joined the police force in Auckland. On the opening of the Thames Goldfields he made his way there, and for some years he and his brother Frank conducted the Bendigo Hotel. After coming to Te Aroha he married Miss Ema Mokena, and became possessed of a very considerable tract of native land, including what is now the borough of Te Aroha. In true generosity of spirit Mr and Mrs Lipsey made a gift to the New Zealand Government of the present beautiful and picturesque Domain grounds. This gift should ever stand as a monument to the generosity of the givers, and it would at least be an appropriate act on the part of the Government to erect a tablet in the Domain setting forth the fact herein noted.

Among other gifts well worthy of mention are the sites on which St Mark's Church and the State School now stand. An action by Mr Lipsey that again went to prove his generous spirit was that of his successful effort in getting the extension of 21 years' lease of town sections to 99 years.<sup>50</sup>

Similar local perceptions, probably from the same local history sources, are repeated in the 'centennial history' of Piako county:

Mr George Lipsey, who came from Thames and owned the building later to become the first Hot Springs Hotel, is claimed to be the first European to settle permanently in Te Aroha.

---

48. C Harris, *Diamond Jubilee of the Piako County Council: Settlement and Development of the Upper Thames Valley* (Te Aroha: Te Aroha News Printing and Publishing Company, 1937), p 41

49. Ibid, pp 41–42

50. Document J18, app 2

He married the daughter of a Maori named Morgan, or, in Maori, Mokena. The land on which old Te Aroha was built belonged to Mokena, his daughter Ema Lipsey and her children. Morgantown and Lipseytown are named respectively after Morgan and Ema.

‘Mokena’s generosity’ was then described:

He made many valuable gifts to Te Aroha, among them the Domain, the hot springs, the area that became the Herries Memorial Park, the original site of the Catholic Church and the sites of the Anglican and Methodist churches and the school.<sup>51</sup>

To commemorate the centenary of Te Aroha Borough, David More wrote:

Now the memory of Mokena is to be perpetuated during the centenary by unveiling a bronze plaque in his honour on a concrete-based cairn in the Domain. And a new set of baths, to be called the Mokena complex, is being built in the Domain. It will replace the old No 1 baths. Nearby boiling water from the Mokena Geyser will be used.<sup>52</sup>

The ‘Mokena complex’ is the group of spa pools at the site of spring 1.

The local perceptions concerning ‘gifts’ had some basis in fact. The actual gifts George Lipsey made were two blocks given to the Crown for Government buildings, a school, and some church sites on his wife’s land known as Lipseytown. A goldfield had been proclaimed at Te Aroha in November 1880. Lipsey’s motivation seems to have been, at least in part, to ensure that the proposed goldfields township would be on land he controlled. In December 1880, the *Waikato Times* reported:

During the last two days, says the Aroha *Miner* of Saturday members of the various religious denominations have been engaged selecting sites for the erection of places of worship on the land kindly granted for church purposes by Messrs Lipsey and Mokena Hou and family. The Anglican Church site is at Lipsey’s paddock; the Wesleyan on the western boundary of the High School Reserve; the Baptist near the creek running past O’Hallorans’ and the Presbyterian and Congregationalist near Stafford’s slaughterhouse. We have not yet heard if our Roman Catholic friends have yet picked out a section, though one is open for them, and we have no doubt that they will not be behind hand.<sup>53</sup>

The Lipsey family certainly donated to the Crown sites in section 17 for a school (1a 3r 32p) and Government buildings (two acres). Because there was some doubt about the powers of Ema Lipsey to convey land in which interests were held by her two children, Ani and Akuhata, who were still minors, the transfer of these two blocks to the Crown was

51. CW Vennell and David More, *Land of the Three Rivers* (Auckland: Wilson and Horton Ltd, 1976), p 256

52. *New Zealand Herald*, 8 November 1880

53. *Waikato Times*, 25 December 1880 (doc j18, app B)

authorised by section 3 of the Te Aroha Township Act 1882. The school reserve was held by the Auckland District Board of Education until 1954, when it was transferred to the South Auckland Board. During the 1950s, a school for younger children operated there, but in 1960 the classrooms were moved to the school site three blocks to the north where a school for older children had been established in the 1920s. In 1964, about half an acre of the old Church Street site was re-gazetted for pre-school education and is still in use as a kindergarten. The balance of the area was vested in Te Aroha Borough for municipal purposes. This vesting was revoked in 1970 and the area is now in use as a retirement home.<sup>54</sup> The Government buildings reserve presumably remained Crown land, but we have no information on its subsequent use.

The Lipsey family also provided sites of half an acre each for the Anglican and Methodist churches, but we have no information on whether land later occupied by other denominations were gifts or sales. These were private transactions and did not involve the Crown. In 1886, in a statement supporting the issue of a title to the Anglican Church, the Lipseys set out their reasons for donating reserves. Ema Mokena Lipsey said that, in consultation with warden of the goldfields Kenrick, they had 'set apart certain sections for church purposes, for a school and for Government public buildings'. She also stated that it was for 'the benefit of my children that I should give these reserves for these purposes'. George Lipsey stated, 'All these reserves I consider have fixed the township where it now is upon the property of my children and my wife and have made it certain that the property will always be a valuable one.'<sup>55</sup>

Exactly how the decision was made on where to locate the Te Aroha goldfield township has not been recorded. In 1872, Mackay had recommended the Crown purchase of the Ruakaka block (415 acres), a separate block within the Te Aroha block, as a likely site for a township for the goldfields. This block had been awarded by the Native Land Court in 1869 to four Ngati Haua owners but had been omitted from the rehearing of Te Aroha block in 1871. Mackay noted that it was 'occupied and cultivated by some of the Ngatimaru of Shortland [Thames], who hold it antagonistically to the Grantees'. In 1877, it was still occupied by Ngati Rahiri 'and it would be impossible to put the certificated native owners in possession without resort to force'.<sup>56</sup> This effectively prevented development of a township at Ruakaka.

In February 1880, the Crown purchase of Manawaru reserve (161 acres), south of Te Aroha, from the four owners – Keepa Te Wharau, Piniha Marutuahu, Te Karauna Hou, and Aihe Pepene – was completed, for a payment of £1000. The same month, Reha Aperahama

54. L Priest, *Te Aroha Primary and District High School, 1881–1981* (Te Aroha: Te Aroha Primary and District High School Centenary Committee, 1981) (doc G1, p 41)

55. Statements of Ema Mokena Lipsey and George Lipsey, 5 August 1886, MA-MLP13/27 (doc G1, pp 43–44)

56. Document A10, pt 3, pp 249–251

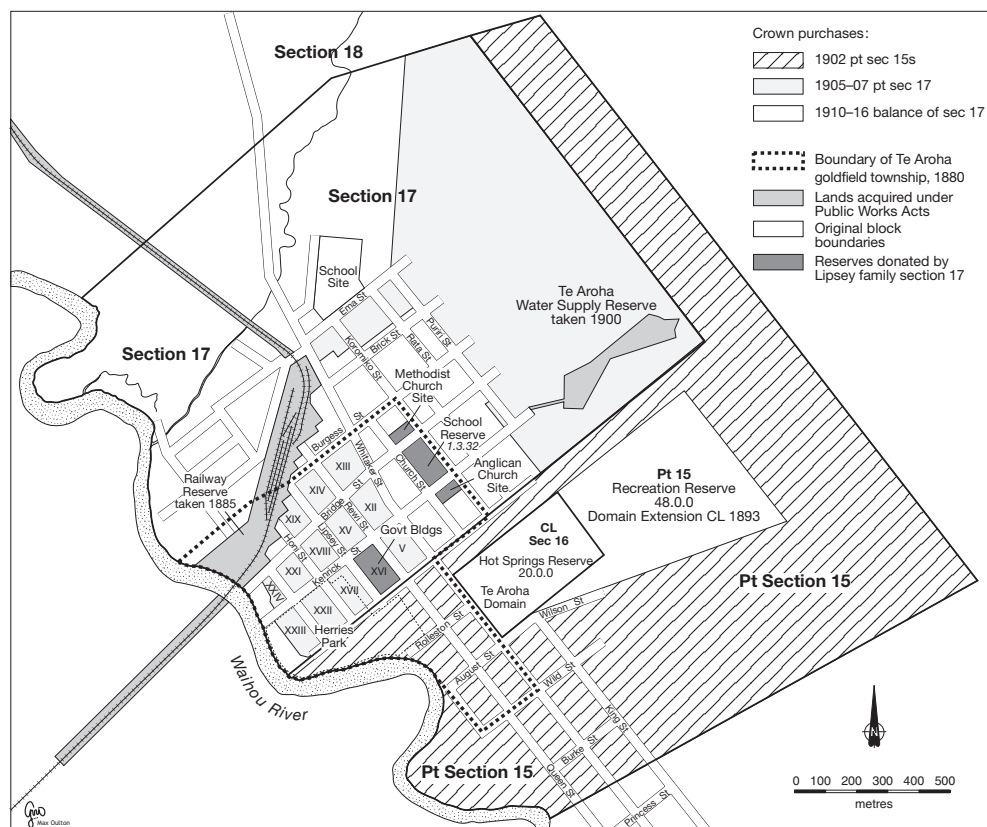


Figure 85: Te Aroha, circa 1920

had offered for sale to the Crown Te Kawana reserve (250 acres), which had been awarded to him solely. Aperahama was told that his land was not required by the Government, and in April 1880 he agreed to sell to some Pakeha purchasers for £1200 but had to apply to have the restrictions on sale removed. This was declined, as were further applications in 1881 and 1885, although he was told that the Native Land Disposition Bill, then before Parliament, would enable restrictions to be removed to complete the sale. In 1881, Aperahama was heavily in debt and needed the money. The purchasers had paid £900 but the balance would not be paid until the sale was completed.<sup>57</sup>

In November 1880, Wilkinson opposed the removal of restrictions on alienation of the Te Aroha block reserves because they were intended for Maori use and occupation and he wanted to prevent Pakeha speculators moving in:

the flat land suitable for cultivation owned by the natives is not of large extent, and that as the Goldfield at Te Aroha is but newly opened, it is not possible to tell at present upon which portion of the Block the permanent Township is likely to be, and should this proposed

57. Document A10, pt 3, pp 200–201

leasing of large areas be allowed at once, it is not at all unlikely that one or two people would now lease in one Block what in three months hence would be the chosen site for a Township were it available, in which case the Europeans would then be reaping the benefit instead of the natives.<sup>58</sup>

Wilkinson was also concerned about protecting 'land which the Natives are now cultivating and residing upon, including also their pah'. He also made the remark quoted above in section 16.3.1(3) that he thought them 'reckless and improvident' with 'no thought for the future', and recommended that removal of restrictions not be allowed unless there was some obvious real benefit. At that stage, survey of the subdivisions of Omahu reserve had not been completed.

We have already noted that in 1902 the balance of section 15 owned by the Mokena whanau was sold to the Crown. George Lipsey seems to have intended that a continuing income for his family would be received from the rents from business and residence site licences in Lipseytown, the western part of Te Aroha goldfield township on section 17. However, by the early 1900s pressures were mounting to sell. In section 2 of the Te Aroha Township Act 1882, the streets within Lipseytown and Morgantown were 'declared to have been duly dedicated to the public, and shall hereafter be public highways or streets'. No compensation appears to have been paid, but under the mining legislation proclaiming a goldfield and township the Crown effectively took over control of Maori land ceded for a goldfield. Maori owners received the rents from business and residence site licences in the township and a portion of miner's rights fees (see ch 11).

Beginning with the Crown acquisition of the railway reserve in 1885,<sup>59</sup> which seems to have been negotiated by agreement with the Lipseys, there was a piecemeal purchase by the Crown of the freehold of the whole of section 17 (fig 85). In 1893, about six acres of hilly land were leased to the Crown for water supply. In 1900, this area was taken under the Public Works Act 1894 for the construction of waterworks for Te Aroha water supply and compensation of £30 was paid by Te Aroha Borough.<sup>60</sup> In 1905, Ani and Akuhata Lipsey, who were now of age, sold to the Crown their interests in a number of town blocks in Lipseytown. The restrictions on alienation had already been lifted under section 14 of the Native Land Purchase Act 1892, at the Lipseys' request. Akuhata received £2500 for his town sections, about £330 per acre, a very high price for that time. Ani's sections brought her £2000 and she also received £266 for 32 acres of hill country surrounding the water supply reserve.

58. Ibid, p 210

59. 'Native Land Taken for a Portion of Waikato-Thames Railway (Morrinsville-Te Aroha Section)', 13 October 1885, *New Zealand Gazette*, 1885, pp 1218-1219. An additional area was taken for water service and for a reservoir for locomotives in the 1890s: *New Zealand Gazette*, 1896, no 32, pp 715-717; 'Additional Land to be Taken in Te Aroha Township for the Purposes of the Waikato-Thames Railway', 25 January 1897, *New Zealand Gazette*, 1897, no 12, p 336. Compensation was paid for all these takings: see doc G1, pp 85-99.

60. 'Land Taken for Waterworks in Block IX, Aroha Survey District', 23 October 1900, *New Zealand Gazette*, 1900, no 92, p 1985



In 1906, Ema Lipsey died and George Lipsey and Ani Edwards (née Lipsey) became executors and trustees of her estate. In another four transactions, a total of about 98 acres was sold in 1907, some to meet Ema's debts and some sold by Akuhata to cover his debts. By the end of 1907, of the total 400 acres in section 17, over 167 acres had been purchased by the Crown. From 1910 to 1916, in several separate transactions, the rest of section 17 was sold to the Crown (with the exception of George Lipsey's homestead and about two acres on which the Edwards homestead was built and was later declared general land). Ema Lipsey had left a will which protected the interests of her younger children and grandchildren. Some doubt arose over whether George Lipsey and Ani Edwards had power to sell when further sales to the Crown were negotiated in 1910. This problem was resolved in section 13 of the Native Land Claims Adjustment Act 1911 which over rode the provisions of Ema's will and empowered the two trustees, with the consent of other beneficiaries of the will, to transfer the title of the land to the Crown, validated previous transactions and permitted subsequent transfers to the Crown in 1915 and 1916.<sup>61</sup>

#### 19.6 THE 'AGREEMENT' ON ACCESS TO THE HOT SPRINGS

No documentation for a specific agreement between Maori and the Crown, nor any Government official's promise about continuing Maori use of the hot springs after the sale of the Te Aroha block, has been found. However, an early local history suggests that both Maori and Pakeha in Te Aroha believed there was one:

Old settlers say that the springs were highly valued by the Maoris. From every part of the [Thames] Valley, and even from far-away Coromandel they came to bathe, and in the comforting pools old warriors, stiffened with age or rheumatism, might be seen soaking themselves all day long. When at length the Springs were handed over to the State, it was especially provided that a certain valued bath should be reserved for the use of the Maoris.<sup>62</sup>

There is documentation, however, that Maori were complaining about loss of free access to the springs soon after the establishment of the Te Aroha Hot Springs Domain. On 12 February 1885, Pepene raised the issue of the Te Aroha hot springs with the Native Minister, John Ballance, at a meeting with 'Hauraki Natives' at Parawai, Thames. The minutes recorded:

He complains that they are charged when they go to bathe there. If this regulation is allowed to exist it is really overriding the original agreement that they had with the

---

61. Details of all these transactions are set out in document G1, pp 48–84.

62. Te Aroha News, p 273





Figure 86: Bath house 7 and tea kiosk

Government. This statement about admitting them free was only a verbal one. Messrs. Wilkinson and Mackay conducted the arrangement.<sup>63</sup>

Ballance responded to Pepene's complaint:

he referred to the hot springs at Te Aroha, and thinks that the agreement has been broken, on the ground that a small charge is made to the Natives for admission to the springs, but the charge only applies to some of the springs; the others are free to all. Then, in the case where the charge is made, no distinction is made between the Europeans and the Natives. The charge is a very trifling one, and has been put on simply to pay the cost of the improvements which have been made. The springs have been enclosed and made private for those who use and enjoy them. Why should the Natives therefore refuse to pay a small sum when the Europeans are willing? I hope they will look at this matter in a reasonable light, and see that what has been made is only to recoup the cost which has been incurred in improving the springs which attract people to the district and really enhance the value of the land which belongs to the Natives.<sup>64</sup>

Spring 7 had been allocated to Maori use and was described in Dr Wright's guide as 'a bath-house a distance from the rest which is set apart for the sole use of natives'.<sup>65</sup> Most of the tourist guides did not mention spring 7 at all, but Ingram stated 'No 7 is a sulphur bath,

63. Pepene, 'Notes of a Meeting Held at Parawai, Thames', 12 February 1885, AJHR, 1885, G-1, p 37

64. Ballance, 'Notes of a Meeting Held at Parawai, Thames', 12 February 1885, AJHR, 1885, G-1, p 39

65. Wright, p 15

and is solely used for persons suffering from cutaneous [skin] complaints'. There was no mention of Maori use. In the detailed analysis of each spring it was noted that 'Spring No 7 is tepid and not much used'.<sup>66</sup> In the early 1900s, the Government Balneologist recorded:

Bath No 7 is a small wooden building containing somewhat primitive baths, one reserved for the free use of the Maoris, and one for skin cases. The latter is partly supplied by Spring No 16, a cold saline water containing a certain amount of sulphuretted hydrogen in solution.<sup>67</sup>

Water to fill the baths in bath-house 7 must have all been piped in, since Wohlmann had already noted that spring 7 no longer existed. Henderson and Bartrum commented, 'Spring No 7 was at one time connected with a bath which was never popular, and no longer exists'.<sup>68</sup>

A bath house had been constructed over spring 7 in 1886 for Maori use, but the building known as bath-house 7 presently on site was erected in 1892. It 'contained two bathrooms with timber baths' – the 'sulphur bath' and the 'Maori bath'. In 1905, the timber sulphur bath was replaced with a large iron enamel bath. In the 1920s, a porcelain bath was installed in the Maori bath. By this time, spring 7 was no longer in existence and water was piped in from spring 16. By 1992, when a conservation report was done, the building was described as being 'in poor condition, although a number of original damaged and decaying elements exist'. The sulphur bath was being used as workshop and storage and the Maori bath had not been used for many years. The recommendations made in 1992 were as follows:

This building's use historically was exclusively for both Maori people and those suffering from skin disease and is considered offensive amongst local Maori. The proposal to refurbish this building for their continued exclusive use is not now popular.

It is recommended that the building be conserved and refurbished for use as a two roomed bathhouse with baths to accommodate two people. These could be run as part of the thermal pool complex available for ½ or 1 hour periods. Reinstating a supply from the No 16 sulphur spring should be included.<sup>69</sup>

In 1999, the building was restored and a new bath installed (the old bath is now in the museum in the Cadman building). The whole area of Te Aroha Domain is protected under the Historic Places Act 1993. However, the issue of Maori use of bath-house 7 and other management issues have not been fully resolved.

---

66. Ingram, pp 6, 9

67. Wohlmann, p 65

68. Henderson and Bartrum, p 32

69. Goode and Matthews, app 7, register item 7 (Stokes, p 250)

**19.7 CROWN AND CLAIMANT SUBMISSIONS**

In a statement in response to factual issues identified by claimants in Wai 100 and Wai 663 concerning the Te Aroha hot springs, Crown counsel acknowledged the following:

- ▶ The circumstances of the first transaction by which the Te Aroha block and hot springs was transferred, are not entirely clear.
- ▶ The Crown accepts that the weight of evidence supports the claim that 20 acres of the Te Aroha Domain, being the land containing the hot springs, was gifted to the nation by Mokena.
- ▶ The available evidence also supports the view that the gift was made on condition that local Maori would have ongoing free access to the hot springs.
- ▶ The Crown also accepts that Maori were discriminated against in the administration by the Crown of the hot springs and baths.<sup>70</sup>

Having made these concessions, Crown counsel made no specific comment on Te Aroha township or hot springs in closing submissions, although there was a brief discussion of the Native Land Court investigation of the Te Aroha block.<sup>71</sup>

In closing submissions for Wai 100, counsel outlined Crown dealings with Te Aroha hot springs, noting that the closing submissions for Wai 663 would deal with these matters in more detail. Counsel for Wai 100 concluded this section on Te Aroha:

The Crown has rightly accepted the allegations of the claimants that land including the hot springs was gifted to the nation by Te Mokena Hau [*sic*]. It also accepts that the gift was made on condition that tangata whenua were to continue to have free access to the hot springs, that this was not upheld and that Maori were discriminated against in the administration of the hot springs and domain.

Counsel commented that the perception by Te Mokena Hou of ‘a partnership in the joint-management of the Te Aroha hot springs was ignored by the Crown as it progressively sought to remove Hauraki from management and access to their taonga’. This was, therefore, a breach of the principle of good faith by the Crown.<sup>72</sup>

Counsel for Wai 663 elaborated the main issues in the Ngati Rahiri Tumutumu claims: the Aroha block purchase, including the loss of Te Aroha mountain and the hot springs, and the loss of lands in Te Aroha township. Counsel noted that the Native Land Court had ‘rejected Ngati Rahiri Tumutumu’s repudiation of the overall transaction and awarded them reserves totalling 7500 acres at the Omahu end of the [Te Aroha] block’.<sup>73</sup> Counsel also noted that ‘the actual means by which title to the hot springs was transferred to local authorities is unknown’, whether Te Mokena Hou gave the title to them or whether the

---

70. Paper 2.550, pp 42–43

71. Document AA1, pp 133–134

72. Document Y1, p 158

73. Document Y5, p 3

springs were ‘simply taken by the Crown’. Furthermore, Ngati Rahiri Tumutumu’s understanding that they would maintain free access to the springs had not been acknowledged by the Crown, they had ‘suffered ongoing discrimination in the management of the hot springs from 1878 to the present day’, and the Crown had thereby breached the Treaty principle of good faith and the duty to remedy past breaches.<sup>74</sup>

In respect of Te Aroha township, counsel submitted that ‘the Mokena whanau tried to encourage settlement on their Te Aroha lands’ and thus assured development on sections 15 and 17:

The growing need for land by settlers and the perception by settlers that the growth of the town was incompatible with the existing Maori ownership led the Crown to progressively erode Maori interests in sections 15 and 17 so that by 1917 the Mokena whanau no longer owned the land on which Te Aroha township stood.<sup>75</sup>

Counsel then outlined the various transactions on these two sections and suggested that the claims ‘illustrate the way in which the individualisation separated iwi from their lands and made those put on the title vulnerable . . . and not accountable to the rest of the iwi’. Counsel also submitted that ‘the Crown took advantage of debts incurred by the individual whanau members and acquired their interests’. The Crown also passed legislation which overrode ‘the wills of Rina Mokena and Ema Lipsey which sought to protect the ownership of the whanau lands’. Counsel concluded that the Crown had failed ‘to meet its duty of active protection towards the Mokena whanau in its attempt to undermine what was a working partnership’ and thereby breached its Treaty obligation to ‘act with utmost good faith’.<sup>76</sup>

#### **19.8 TRIBUNAL COMMENT ON TE AROHA MOUNTAIN, THE HOT SPRINGS, AND THE TOWNSHIP**

Although the land was sold to the Crown in 1878, it is clear that Te Aroha mountain has remained a maunga tapu, a sacred mountain, in the minds of Ngati Rahiri Tumutumu and Hauraki people generally. The Crown acquired the Te Aroha block in 1878, including both the western side of the mountain and the hot springs at its base. The eastern portion of the mountain, inside the Tauranga confiscation line, had already been acquired by the Crown in 1864.<sup>77</sup> However, in the subsequent management of both the mountain and the hot springs

---

74. Document v5, pp 4–5

75. Ibid, pp 5–6

76. Ibid, pp 13–14

77. Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), pp 177–192

in the Te Aroha Domain, there has been little participation by Ngati Rahiri Tumutumu or recognition of their values and traditions.

The continuity of tikanga Maori has been lost at Te Aroha. The old names of the springs have gone. Only the name of Te Mokena Hou remains, and that because he and his whanau were awarded the particular piece of land surrounding the Te Aroha hot springs reserve. Other Ngati Rahiri Tumutumu whanau were allocated other pieces of land, most of which were later alienated as they lost collective control of their traditional resource. This occurred through the process of individualisation of title in the Omahu reserve, and because the Crown chose to retain section 16, the hot springs reserve, as a public reserve. Because the Mokena whanau were able to acquire title to the surrounding sections 15 and 17, no doubt aided and abetted by George Lipsey, son-in-law of Te Mokena Hou, this one whanau stood to benefit most from the location of Te Aroha township on their lands. There is no documentation of any discussion about how sections in the Omahu Reserve were allocated.

In legal terms, Te Mokena Hou did not 'give' the hot springs reserve to the Crown, because this area in section 16 had already been transferred to the Crown in the Te Aroha block purchase. Crown policy on geothermal areas in the 1870s indicates a firm intention to acquire and retain Crown control of Te Aroha hot springs, as well as all springs used for medicinal and therapeutic purposes. In 1865, the Government established the New Zealand Geological Survey, directed by James Hector, who included the analysis of mineral waters in the work of his scientists which appeared in various published reports.<sup>78</sup> In 1867, the Government funded the New Zealand Institute, which also published reports in its annual *Transactions*. There was through the 1870s a strong public interest in mineral springs, hot and cold, and an equally strong demand that where these still remained in Maori hands they should be made accessible to the public. In 1880, an agreement was reached with Ngati Whakaue leaders at Rotorua to ensure public access and Government control of the geothermal areas. In the same year, the Te Aroha goldfield was proclaimed, which resulted in Crown control over Maori lands on Te Aroha mountain, Te Aroha township, and the hot springs. In 1881, the Thermal Springs Districts Act was passed, which empowered Government to exert control over geothermal areas. Te Aroha was never proclaimed a district under this Act because it was already Crown land, gazetted as public recreation ground, and was gazetted again in 1882 under the Public Domains Act 1881 to preserve it for public use. We accept, therefore, that Mapuna Turner's account of Ngati Rahiri Tumutumu oral tradition that the hot springs land was 'taken' by the Crown has some force.

Many Ngati Rahiri Tumutumu would have wanted to retain their traditional association with the hot springs. There is no documentation of any agreement between local Maori and the Crown specifying conditions for free and continuing Maori use of the hot springs, but there is good evidence that they had expected to do so as early as 1885. It is quite possible

---

78. See W Fox, 'Hot Springs District of the North Island', 1 August 1874, AJHR, 1874, H-26

that either Mackay or Wilkinson did make some general comment while negotiating for the area about local Maori being able to continue using the hot springs because they would be in public ownership, but neither thought such a comment significant enough to record. The provision of such a limited facility as a single small bath at spring 7, a tepid spring which was no longer flowing by the early 1900s, is a minimal acknowledgement of traditional Maori possession of a valued geothermal resource. In conclusion, it seems to us that the Crown has failed to ensure that the traditional role of Ngati Rahiri Tumutumu as kaitiaki of Te Aroha mountain and the hot springs is recognised and protected in the management of these resources.

We accept Dion Tuuta's comment that it is 'a reasonable assertion that Te Mokena Hou offered his family's land for occupation in order that he might have Pakeha settlement on his land.'<sup>79</sup> We also note the significant role of his Pakeha son-in-law, George Lipsey, in securing the Te Aroha goldfield township on Mokena whanau land (Morgantown) and the land awarded to his wife, Ema Lipsey, and their two children, Ani and Akuhata. However, we also note that younger children of this marriage were not awarded any interests in land, except in the wills of Rina Mokena and Ema Lipsey, but these were overridden by special legislation, which we consider below. In the 1880s, however, as Tuuta commented, 'Giving permission for the miners to settle on his family's land also proved to be a very sound investment for Mokena's family, for at least the first 20 years after the discovery of gold in Te Aroha.' Crown officials did 'treat very fairly' with the Maori owners of sections 15 and 17 who received all the rents from business and residence site licenses under mining legislation. 'This would have placed the Lipsey and Mokena families in a very enviable position by the late nineteenth century' which 'did come to be envied, and perhaps resented by the citizens of Te Aroha.'<sup>80</sup>

The claimants were critical of the Crown role in the alienation of Mokena whanau lands. The principal complaint is that all the Maori land in sections 15 and 17 was sold to the Crown by 1917. The pressures to sell were complex, and one factor was agitation by Te Aroha residents to freehold their properties. While they may have resented a Maori landlord, they also resisted Crown leaseholds too, and mining tenures only ended in 1920. The Crown also wanted to prevent private speculation on goldfield lands. George Lipsey's purchase of some interests in section 15 may have been a factor pushing the Crown purchase in 1902 of the balance area not already acquired as an addition to the hot springs reserve. From 1907 on, the Crown acquired the whole of section 17 in a series of separate transactions. The Crown also acquired two town blocks in section 17 as gifts, the school reserve in Church Road (1a 3r 32p) and the Government buildings reserve (two acres) adjacent to Boundary Street. Other sites were donated to churches, but these were private transactions that did not involve

---

79. Document G1, p 116; Albert Bruce, 'Report', 31 August 1914, AJHR, 1914, C-3, p 6

80. Document G1, pp 116–117



the Crown. The Crown also acquired land by negotiation under the Public Works Act for waterworks and railway, and compensation was paid for both. The Crown also acquired the streets of Te Aroha for public use under the Te Aroha Township Act 1882. We have noted the garbled local mythology about 'gifts' by the Mokena and Lipsey families, but also note that some did take place. We note that, on George Lipsey's own statement, he was securing the growth of Te Aroha township on family land, indeed an astute investment.

In the 1900s, control of the Mokena and Lipsey family estate slipped out of their hands and the primary factor appears to be debt. We do not have information about the reasons the owners of the balance area of section 15 sold their interests to the Crown in 1902. We do know that as early as 1901 both Ani and Akuhata Lipsey were trying to raise loans with the Native Land Purchase Office against their land interests. Ani, now Mrs Edwards, said it was for investment in her husband's drapery business and she was loaned £750. We were told that Akuhata's debts arose from his gambling problem, and he was twice bankrupted, first in 1903 and again in later years. In early 1902 Ema Lipsey was seeking a loan to support her son after his application was first declined, but in late 1903 he did receive a loan of £750. In 1901, Patrick Sheridan of the Native Land Purchase Department in a file note had recorded that George Lipsey was 'dead-against' his family alienating land, but they were 'getting beyond his control'.<sup>81</sup> Because they were both now of age, he could not prevent them contracting for loans and selling their land interests. The first sales of part of section 17 in 1905 by Ani and Akuhata were to pay off these loans and other debts. In 1906, Ema Lipsey died leaving debts, but we have no information about these. The next group of transactions in 1907 were to settle her debts, and there were more sales too. George Lipsey died in 1913 and the remaining lands in section 17 were sold by 1917.

The claimants have suggested that the Crown failed to protect their interests by purchasing all these lands. Certainly, the Crown was in an ambivalent position as the administrator of Te Aroha township mining tenures and as purchaser of the land. Crown officials were anxious to prevent private speculators acquiring interests and were protective to that extent. Sections 15 and 17 were subject to restrictions on alienation by sale or by lease longer than 21 years. There is evidence that Crown officials did attempt to retain the land for Maori, opposed the removal of restrictions, and debated their role. The early attempts by the Lipseys to seek loans were turned down by the Native Land Purchase Department and only granted in much reduced amounts when it was suggested private lenders, possibly speculators, would step in. Some officials were of the opinion that the Crown should acquire all of Te Aroha township land to keep out private investors, and put this option ahead of protecting the ownership of Maori land for future generations. However, if people get themselves into financial difficulties for whatever reason, and sale of their land is their only option, then we must ask what is the responsibility of the Crown toward Maori, given

---

81. Ibid, pp 50–53

the provisions of article 3 of the Treaty which extends the rights and privileges of British subjects to Maori. This means that laws on liability for personal debt also apply to Maori. It should be noted that no power existed for a share of undivided tribal land to be taken for personal debt. We need to question to what extent can or should the Crown protect individuals from themselves.

A further grievance of the claimants is that the Crown used special legislation to override the provisions of the wills of Rina Mokena and Ema Lipsey in order to complete certain purchases. In section 8 of the 1893 amendment to the Maori Real Estate Management Act 1888 the interests in section 15 of Ani Lipsey, then a minor, were sold to the Crown. In section 13 of the Native Land Claims Adjustment Act 1911, sales of the interests of minors who were beneficiaries of Ema Lipsey's will were validated. We note that in both cases the special legislation was used to validate transactions that, but for these interests of minors, had been completed, and which had been consented to by all interested family members. We have no evidence of undue pressure being exerted by the Crown in any of these transactions.

The loss of land and the disinheritance of future generations by sale of ancestral lands is a generic issue which we have reviewed elsewhere in this report. The Te Aroha claim is mainly about Mokena whanau lands but many other Ngati Rahiri Tumutumu families, in other parts of Omahu, and in other reserves in Te Aroha block, also sold their lands. The restrictions on alienation imposed by the Native Land Court had no effect if the owners applied for removal for the purpose of selling to the Crown, although Crown officials did try to prevent such sales by delaying permission and warning of the danger of landlessness.

The Mokena whanau were fortunate in that a township was built on their land and that the income from rents and sales was substantial. Other whanau also lost their land with far less payment. The issue really goes back to the creation, by legislation governing the operation of the Native Land Court, of a system of allocating individual interests in tribal land, a property right which the individual owner could dispose of as he or she pleased, without consultation with anyone else. Even George Lipsey, Pakeha father and businessman, could not prevent his son and daughter, Akuhata and Ani, from selling their inheritance to pay their debts.

In summary, we conclude that the Crown had failed to protect the traditional values and kaitiakitanga of Ngati Rahiri Tumutumu in Te Aroha mountain and the hot springs, and had failed to ensure their participation in the management of these places. We note that in the last 20 years Maori have been given a greater opportunity to participate in discussion and consultation. As for the Te Aroha town sections, the Mokena family, like many other whanau in Hauraki, sold their lands, and their descendants join with other Hauraki claimants in suffering the impacts of land loss.



## CHAPTER 20

### TAONGA AND WAHI TAPU

#### 20.1 INTRODUCTION

Many Hauraki claimants have asserted that the Crown breached article 2 of the Treaty in failing to protect various Hauraki taonga and wahi tapu. We discuss these claims together in this chapter because the same legislation is designed to protect both taonga and wahi tapu; they are intrinsically linked. We set out the relevant laws, followed by Crown and claimant submissions on them. We then give our comments and findings on the legislative framework before investigating several specific claims alleging Treaty breach in the care of taonga and wahi tapu.

We use the definition of taonga set out by claimant counsel and adopted by the Crown. Claimant counsel for Wai 100 gave notice that, though the term ‘taonga’ can refer to a wide range of material, cultural, and spiritual phenomena important to Maori, for the purpose of this inquiry they would be focusing on a distinct category of taonga:

the material treasures of the peoples of Hauraki. These include such objects as mauri (special or tapu objects possessing great powers), toki (adzes of pounamu and other materials), matau (fishhooks of various material) patu and mere (prized weapons), taiaha (a type of wooden weapon), and hei tiki (a type of pounamu pendant) for example . . . Taonga may also include large material things such as pare (door lintels) and even wharenui (such as Hotunui). Hauraki have in the past and continue to assert their ownership over such taonga wherever such are now located. This ownership arises out of the relationship between Hauraki people and their tupuna who fashioned, used, and possessed such taonga. Further, taonga are not just material objects. To Hauraki they hold their own mauri (commonly translated as life force). There is accordingly an important and distinctive difference to the Maori spiritual perception of taonga compared with non-Maori views.<sup>1</sup>

The claimants allege that the Crown breached the Treaty in failing to prevent fossicking for taonga, in allowing the export of taonga overseas, and in not regulating the custody and ownership of taonga within museums and other institutions within New Zealand.

---

1. Document Y1, p 192; doc AA1, p 295

The Crown also allegedly failed to protect wahi tapu in a number of ways. The claimants say the Crown failed to reserve wahi tapu as promised when purchasing Maori land, allowed them to be desecrated by fossickers, or modified and even destroyed by developers. The Crown failed to put in place a protective legislative regime enabling Maori to exercise mana over their wahi tapu.

Claimant counsel said wahi tapu can be literally translated as ‘sacred or tapu place[s]’, which might also be taonga. Types of wahi tapu include urupa, places where whenua (placenta) is buried, battle grounds, pa, kainga, and marae: ‘In summary waahi tapu are those sites and places of significance which are sacred to the tribe for cultural, spiritual and historical reasons.’<sup>2</sup> This definition was also adopted by the Crown, who noted in submission that the Historic Places Trust has registered many diverse sites as wahi tapu, including pa, springs, trees, swamps, hills, reefs, urupa, and marae.<sup>3</sup>

Claimants explained to us that in their view, taonga and wahi tapu cannot be separated from the environment in which they were created. Their view of taonga is holistic, incorporating concepts of tapu and the wider environment. For example, Liane Ngamane told us of the importance of Tikapa Moana, ‘our most treasured taonga’, the Hauraki Gulf.<sup>4</sup> David Nikorima Robson explained that ‘The health and well-being of a people, whanau or hapu is reflected by the health of their ancestral lands, water, sites, wahi tapu and other taonga.’<sup>5</sup> Tane Mokena explained how the ‘aristocratic dead’ of old were buried in mountain caves, and because of this, the mountains have powerful associations for Hauraki iwi. They become literally ‘wahi tapu’ or sacred places (see sec 19.2). As explained by claimant Liane Ngamane: ‘The continued relationships of iwi with their natural resources, knowledge, traditions and cultural heritage forms the very core of our identity’.<sup>6</sup>

Many claimants stressed to us that, though their claims concerning wahi tapu and taonga might appear less substantial in terms of time devoted to them in preparation for hearings, they were in fact central to their claims and sense of grievance. Counsel for 418 said that the issue of protection of wahi tapu is a core grievance, while counsel for Wai 475 said that ‘Maori have a right to have wahi tapu protected. One of the most outstanding features of tikanga is the high value placed on ancient pa sites and urupa. They are tapu places. They represent the record of history and are of the very existential fibre of Maori culture.’<sup>7</sup> Claimant Shane Ashby told us of his ‘hurt and disgust at the actions of our Treaty partner’, and that the treatment of their urupa ‘is foremost in all our claims’.<sup>8</sup> Counsel for the Wai 801

---

2. Document Y1, p 193

3. Document AA1, pp 301, 304–305; doc R19, p 6

4. Document G24, p 11

5. Document X33, p 13

6. Document G24, p 15

7. Document Y3, p 14; doc L13, pp 31–32

8. Document Y4, p 6

claimants explained that, 'Of all the concerns that Maori have in Treaty terms, wahi tapu rank at the forefront. Every significant claim has, one way or another, a claim against the Crown about wahi tapu.'<sup>9</sup> We note that the Tribunal has had the importance of wahi tapu and taonga explained to it in previous inquiries.<sup>10</sup> As counsel for the claimants explained to the Te Roroa Tribunal, wahi tapu are key to the identity of iwi:

The physical presence recalls the name. The name recalls the event. The event recalls the whakapapa. The whakapapa recalls the connection between things past and things present. The connection between things past and things present is the element which gives Te Roroa its pride and identity.<sup>11</sup>

We are asked to consider how the intertwining worlds of people and their cultural and spiritual environment can be effectively translated into legislation, and how, if ownership of the land has been lost, links with the past and future can be preserved and acknowledged. We are also asked to consider whether the loss of much land containing wahi tapu and taonga puts a greater onus on the Crown to ensure the preservation of those remaining. We believe these broader questions must be acknowledged, together with an acknowledgement of the difficulties that contemporary legal systems face in giving recognition to spiritual concepts. We also must acknowledge that much Hauraki land now in private ownership falls beyond the scope of our ability to make recommendations, though we can still discuss the history of a claim where appropriate.

Bearing these limitations in mind, we focus the following discussion on a definition of taonga as articles appropriately governed by the Antiquities Act 1975. For wahi tapu, we follow the Tribunal's *Manukau Report*, which advised that the then New Zealand Forest Service 'should not accept the whole of the former Maori blocks as wahi tapu, simply on the grounds that they were once so described, but should strive to identify those sites that are strictly wahi tapu through burials or through having a particular sacred significance for the tribe'. However, that Tribunal also considered that neither should the Forest Service be restricted by the Historic Places Trust Act 1980 (since replaced by the Historic Places Act 1993).<sup>12</sup> But, while we limit ourselves to a consideration of the legislation and specific claims, we believe it necessary to bear in mind at all times the wider meanings of taonga and wahi tapu.

---

9. Document v9, p 42

10. The Waitangi Tribunal is also currently inquiring into general claims of breaches of Maori intellectual property rights, including taonga and wahi tapu, in the Wai 262 (flora and fauna) inquiry. As this inquiry is still under way, the report is not expected for some time. The Wai 262 Tribunal will be inquiring much more comprehensively into the nature of taonga and wahi tapu, as well as legislative protections for such concepts, than we can hope to in this chapter.

11. Waitangi Tribunal, *The Te Roroa Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 211

12. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed (Wellington: Waitangi Tribunal, 1989), p 93

**20.2 LEGISLATION AFFECTING SPECIFIC TAONGA AND WAHI TAPU**

Many Hauraki claimants allege that legislation enacted by the Crown fails to offer adequate protection even to specific taonga and wahi tapu. The Crown has responded with substantial submissions on the intent and comprehensiveness of the relevant legislation, including the Antiquities Act 1975, the Historic Places Act 1993, and the Resource Management Act 1991.

We turn first to the legislation directly affecting taonga. We discuss the passing of the Maori Antiquities Act 1901 and the Antiquities Act 1975, also setting out what we know of the draft Antiquities Amendment Bill (formerly the Protection of Movable Cultural Property Bill). The Crown hopes this new legislation will address many of the acknowledged inadequacies of the 1975 Act. We then discuss the legislation protecting wahi tapu – the Historic Places Act 1993 and the Resource Management Act 1991 – followed by an outline of Crown and claimant submissions. Finally, we offer some comments on the effectiveness of the legislation in relation to the Treaty.

**20.2.1 Antiquities legislation from 1901 to 1975**

The Maori Antiquities Act 1901, sponsored by James Carroll, was supported in Parliament by both sides of the House including Maori members. The two major aims of the Act were to prevent tourists and overseas collectors from removing valuable antiquities from New Zealand, and to further a national Maori museum, where antiquities could be displayed and preserved.<sup>13</sup> The Government would actively acquire Maori antiquities for the benefit of all New Zealanders and provide for their safe custody. Carroll believed that Maori would support such a museum, and would donate taonga to it, regarding it as an appropriate storehouse. The Act was ground-breaking: the only British precedent was legislation preventing the export of antiquities from Egypt.<sup>14</sup> Speaking in support of the Act, Tame Parata (the member for Southern Maori) said:

no doubt the House will understand my feelings when I say that nothing would ever induce me to part with them [taonga tuku iho] to any stranger, and that it would hurt me more than I can say to think that under any circumstances such heirlooms should pass out of the possession of my immediate family, much less leave the colony.<sup>15</sup>

---

13. In the current legislation (section 2 of the Antiquities Act 1975), ‘antiquities’ are defined as objects older than 60 years of national, historic, scientific, or artistic importance relating to the discovery, settlement, or development of New Zealand: see Nancy Swarbrick, “Conserving to this Land What Properly Belongs to It’: The Cultural Significance of the Maori Antiquities Act 1901, master of public history research essay, Victoria University of Wellington, February 2003, p 8.

14. Ibid, pp 12–13; see also doc R6, app 1; Waitangi Tribunal, *The Te Roroa Report* 1992, p 212

15. Parata, NZPD, 1901, vol 119, p 233 (Swarbrick, pp 14–15)

Some leading Maori seemed to support the concept of a national Maori museum. In October 1901, Ngati Kahungunu leader Tamahau Mahupuku wrote to Carroll offering the meeting house, Takitimu to the Government, and endorsing the aim of preserving taonga and preventing their export.<sup>16</sup> The Maori newspaper *Te Puke Ki Hikurangi* gave its support to the Act on 15 November 1901, and at the February 1902 conference of Te Aute College Students' Association, Apirana Ngata put a motion favouring the museum. In her thesis on the 1901 Act, Nancy Swarbrick comments that a 'different cultural concept of ownership may have been behind this Maori support for a national museum . . . By granting the state guardianship of some taonga, Maori would not have seen themselves as relinquishing ownership'.<sup>17</sup>

The 1901 Act's effectiveness was limited. The new Maori museum did not eventuate (the existing colonial museum was re-designated as a national museum from December 1903), and no penalties were provided for any breaches of the Act. Revision of the Act was urged from an early date. Revised regulations were gazetted in April 1904, an amendment Act was passed the same year, followed by consolidating legislation in 1908.<sup>18</sup> But despite the amendments, the export of 'antiquities' was not significantly halted, and surviving records indicate that between 1904 and 1913, practically no permits for export of antiquities were refused.<sup>19</sup> Swarbrick comments that 'the technical inadequacies of the Act became clear'. But though the Act was 'fundamentally flawed', the Government did not address the inadequacies until 1962.<sup>20</sup>

By the 1920s, the illegal export of antiquities was viewed as a growing problem. The Board of Maori Ethnological Research (established mainly through the initiative of Apirana Ngata) gave some Maori input into policy on these matters. It supported a resolution to register Maori artefacts held privately, and also recommended that newly found artefacts should become the property of the Crown. Swarbrick surmises that this suggestion arose from Maori dismay at fossicking on tapu sites: Pakeha collectors often would not recognise

---

16. See Janet Davidson, 'Wahi Tapu and Portable Taonga of Ngati Hinewaka: Desecration and Loss; Protection and Management', report commissioned by Ngati Hinewaka Claims Committee, February 2003 (Wai 863 RO1, doc A67), esp p 5

17. Swarbrick, pp 29–30

18. Maori Antiquities Amendment Act 1904; Maori Antiquities Act 1908; doc R6, pp 24–25, app 1

19. Swarbrick, pp 34–36. Swarbrick gives a couple of high-profile examples of the limits of the Act. In February 1902, Mr CE Nelson of Rotorua offered a carved house to the Government for £1200, which the Government refused on the advice of Stephenson Percy Smith. Nelson then applied for permission to export under the Act, having found a buyer overseas, but though permission was refused, the house had left New Zealand by May 1904. The Crown Law Office opined that the Act required the house to be offered to the Government, but the offer having been refused by the Government, the Act did not then require the owner to get permission before exporting. Then, in 1909, the Government's own Tourist Department exported a carved house for display at an exhibition without first applying for permission. Without amending the Act, little could be done under the regulations to tighten up the requirements for notification of intent to export: Swarbrick, pp 34, 36.

20. Ibid, pp 37, 39

the concept of tapu, or even Maori ownership of artefacts. Not until the 1975 Act was *prima facie* ownership of newly found artefacts vested in the Crown.

From the 1920s, growing awareness of the need to preserve cultural artefacts and antiquities relating to Pakeha culture and the settlement of the colony increased with the centennials of settlement in the 1930s and 1940s. By the 1950s, this interest led to the Historic Places Act 1954 which also established the Historic Places Trust, the establishment of the New Zealand Archaeological Association in 1955, and the move to bring the National Library Service, the Alexander Turnbull Library and the General Assembly Library together into one collection. A review of the Maori Antiquities Act, and particularly what protection it offered for less clearly defined antiquities (such as manuscripts), was begun in 1961, leading to the repeal of the Maori Antiquities Act and the passing of the Historic Articles Act 1962. Swarbrick comments that this sequence represented ‘an expression of the increased value placed on national heritage’, though some legislative ideas first proposed in the 1920s did not achieve recognition until the 1975 Act.

Many of the fundamental issues behind the 1901 Act and recent legislation remain the same, according to Swarbrick, although changing attitudes will demand different responses in new legislation.<sup>21</sup> Swarbrick concludes that, although the 1901 Act indirectly supported the Maori aspiration of retaining taonga in the country, it nevertheless:

stopped far short of recognising the desire and right of Maori to have full control over their taonga. Some prominent Maori continued to believe that government intervention was the best way to protect antiquities. The state’s role as ‘guardian’ of the taonga was not apparently challenged seriously until the 1980s, when the Te Maori exhibition exposed clashing cultural understandings of ownership.<sup>22</sup>

Louise Furey, an expert archaeologist and witness for several Hauraki claimant groups, says that, though the legislation to 1962 was designed to slow down or prevent the export of treasures from New Zealand, nothing in it prevented the digging up of artefacts. While the Maori Councils Amendment Act 1903 did provide for prosecuting for digging in gazetted burial sites, no heritage legislation before 1962 offered protection against fossicking. We note, however, that the Te Roroa Tribunal considered that section 147(2) of the Criminal Code Act 1893 might have covered the desecration of urupa. It provided that anyone who ‘Improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not’, was liable to two years’ imprisonment with hard labour.<sup>23</sup>

---

21. Swarbrick, pp 45–46

22. *Ibid*, p 50

23. Waitangi Tribunal, *The Te Roroa Report* 1992, p 215

### 20.2.2 The Antiquities Act 1975 and proposed amending legislation

The single most significant impact of the Antiquities Act 1975 remains the vesting of all newly found artefacts (from 1 April 1976) in the *prima facie* ownership of the Crown. This is subject to various provisos, including actual or traditional ownership being established by the Maori Land Court. The new Ministry for Culture and Heritage (established in 1999) has responsibility for the administration of the Antiquities Act, previously administered by the Department of Internal Affairs. In practice, the finder of an object notifies the Ministry of the find, and the Ministry has responsibility for deciding who should have custody.

With the vesting of *prima facie* ownership in the Crown, only *custody* of objects found since 1 April 1976 can be granted to registered collectors, with the exception of Maori Land Court ratification of Maori ownership of specific taonga. Otherwise, ownership remains with the Crown. Such objects can not be sold. Objects found since April 1976 are assigned a 'z' number by the Museum of New Zealand Te Papa Tongarewa. If Maori wish to have either custody or ownership of artefacts, they must be registered collectors. Items found prior to 1 April 1976 remain in the ownership of those in possession prior to 1 April 1976 and can still be sold by licensed dealers to registered collectors, with the permission of the Ministry. Such 'saleable' items must have a 'y' number from Te Papa. The Act also establishes strict criteria for the export of antiquities from New Zealand.<sup>24</sup>

Archaeological sites cannot be deliberately disturbed in order to find artefacts, without the prior approval of the Historic Places Trust. The trust has its own policy on consultation with iwi about custody and the final repository of taonga, if found during archaeological investigation of a site.<sup>25</sup>

While Crown counsel submitted that the 1975 Act is consistent with article 2 of the Treaty and the guarantee to Maori that they can possess their taonga for as long as they wish, counsel stressed that the 1975 Act is undergoing extensive review and will be amended. Along with the establishment of the Ministry for Culture and Heritage, the amendment Act will continue the process of strengthening the Government's 'commitment to and effective protection of New Zealand's culture and heritage'.<sup>26</sup>

Crown counsel summarised what fields the new antiquities legislation may cover:

improving cultural heritage export regulation, complying with the requirements of international agreements that provide reciprocal arrangements for the seizure and return of cultural objects that have been illegally exported, providing protection against the wilful

24. The Ministry of Culture and Heritage's website contains a description of the existing Antiquities Act 1975 and the proposed changes to it (as of 2003): <http://www.mch.govt.nz>.

25. Historic Places Act 1993, s18; doc G8, p 8

26. Document AA1, p 299



damage of nationally significant cultural heritage objects, and ensuring that penalties provide better protection for cultural heritage objects.<sup>27</sup>

The Bill was introduced into the House in February 2005. Submissions on changes to the 1975 Act were first called for in 2003, and are set out in a paper entitled 'Proposed Amendments to the Antiquities Act 1975', available from the Ministry's website. The new policy has apparently had input from heritage and arts sector working groups, a Maori reference group, Government departments, and Crown agencies with heritage responsibilities.<sup>28</sup>

The Ministry's website summary suggests that the Act be amended to address 'a number of long-standing problems' by addressing four main areas of improvement: 'enhanced export regulation'; New Zealand participation in international conventions; 'enhanced Crown protection for Maori cultural heritage objects'; and 'increased penalties'. Most importantly from this inquiry's point of view, 'the Act does not require the Crown to take active steps to establish the actual or traditional ownership of newly found Maori artifacts through the Maori Land Court'.<sup>29</sup>

It is unnecessary for us to examine every area of improvement in this report, but we do discuss the proposals directly relating to enhanced protection for Maori. Changes here include a new definition of 'Maori cultural heritage objects [or] Nga Taonga Pumau a te Maori': taonga will no longer be a subset of 'antiquities'. 'Maori will determine which objects are of significance or value to them', within the criteria that articles to be protected must be at least 60 years old, and have been handed down a descent line of not less than two generations.

It is planned that the chief executive of the Ministry will be *required* to consult with Maori when taonga are found, giving:

statutory recognition to current operational practice whereby Maori in the area of a find, and others as appropriate, are consulted as to custody and ownership of that find. This requirement will ensure that all the relevant provisions of the Act are made known to Maori when such an object is found and that Maori are fully informed of their statutory right to apply for the object's ownership through the Maori Land Court.<sup>30</sup>

We understand this to mean that the Crown will require procedures to be in place, through legislation, that automatically establish a consultation process with tangata whenua when taonga are newly found. Such a process will necessarily include publication of the process so that Maori are fully informed of their rights to claim either custody or ownership (or both) of taonga, and of the choices available to them.

---

27. Document R19, p 5; doc R6, p 20; doc AA1, p 300

28. Ministry of Culture and Heritage, 'Proposed Amendments to the Antiquities Act 1975', May 2003

29. Ibid, pp 4–6

30. Ibid, p 11



The chief executive of the Ministry will have the responsibility of caring for newly found taonga. Prima facie ownership will remain with the Crown, as a protection until actual ownership has been determined by the Maori Land Court, though it seems that there will be no absolute requirement for determination of ownership to be submitted to that court.<sup>31</sup> Crown prima facie ownership is not meant as an assertion of actual ownership, rather as a protection for Maori ownership ‘by preventing finders or landowners gaining ownership through common law’. The processes available to the Maori Land Court in respect of ownership of taonga will be enhanced through links to sections 30 and 33 of Te Ture Whenua Maori Act 1993, giving the court the power to mediate disputes relating to the representation of Maori in court issues, and providing for the chief judge to appoint additional members with relevant knowledge and experience of the issues.<sup>32</sup>

Aside from the publicly available summary discussed in this section, we have not seen any other material on the revision of the Antiquities Act 1975 since the Crown presented evidence to the Hauraki inquiry in 2001.

### 20.2.3 The Historic Places Act 1993 and the Resource Management Act 1991

The legislation protecting wahi tapu was explained by Mark Lindsay and Rick McGovern-Wilson, witnesses for the Crown, as well as set out in some detail by the Crown both in relation to wahi tapu and environmental matters (see ch 24). The Crown submits that adequate procedures exist under the Historic Places Act 1993, combined with the Resource Management Act 1991 to protect wahi tapu and wahi tapu sites. The Historic Places Act provides for the protection of archaeological sites, as well as offering a system for regulating investigations and modifications to archaeological sites monitored by the Historic Places Trust. The Act also establishes the historic places register, ‘an important protection mechanism’, and contains provisions for registering wahi tapu and wahi tapu areas. The Historic Places and Resource Management Acts are designed to work together to provide for the protection of archaeological sites and wahi tapu by way of heritage protection orders in district plans.<sup>33</sup>

The legislation is necessarily complex, detailed, and technical in some aspects. In the following paragraphs, we outline some of the more important provisions relating to wahi tapu in order to give some idea of the protections offered under the legislation. According to

31. We note that claimant witness Louise Furey was under the impression that the significant change proposed in the new Bill would be the vesting of ownership in iwi. While we do not in fact understand this to be so on the information we have seen, we note that, at any rate, Ms Furey considered that such a step would not be a simple issue, because she was aware of examples already existing outside of Hauraki ‘where disputes between hapu or iwi have resulted in the Maori Land Court being the adjudicator, and objects placed in a neutral museum for safekeeping’: doc G8, pp 7–8.

32. ‘Proposed Amendments to the Antiquities Act 1975’, p 11

33. Paper 2.227, pp 23–25; paper 2.550, p 45; doc R19, p 3; doc AA1, p 295; see also doc R6, pp 4–15

the Crown's detailed appendix on the relevant legislation, the Resource Management Act requires territorial authorities to prepare district plans, in which provision is made for matters set out in the second schedule to the Act. This includes 'Natural physical, or cultural heritage sites and values, including landscape, land forms, historic places, and wahi tapu'. In preparing district plans, territorial authorities must have regard to relevant planning documents from affected iwi authorities as well as to relevant entries in the historic places register. Any individual can have input to the creation or amendment of a district plan. A breach of the district plan is punishable by imprisonment of not more than two years, or a maximum fine of \$200,000. If the offence continues, a fine of \$10,000 for every day of the continuing offence is allowed. For the most effective protection, wahi tapu should be recorded in district plans under section 73(2) of the Resource Management Act. This will alert the consent authority of the existence of the wahi tapu should it have to consider a resource consent application for that area.<sup>34</sup> Applications to the Historic Places Trust for authority to modify, damage, or destroy an archaeological site are made on detailed forms to elicit as much information as possible, and include a requirement for all applicants to consult with tangata whenua, even when the site is of European and not Maori origin. The trust does not usually consult directly with tangata whenua, as the onus is on the applicant to do so.<sup>35</sup>

The historic places register is established under section 2 of the Historic Places Act 1993. Anyone can apply to have registered a wahi tapu ('a place sacred to Maori in the traditional, spiritual, religious, ritual, or mythological sense') or wahi tapu areas ('an area of land that contains one or more wahi tapu'). To date, the trust has registered a wide range of wahi tapu, such as pa, springs, marae, trees, swamps, hills, urupa, and reefs. In order that a level of confidentiality can be maintained if desired, the register only requires the general location and nature of the wahi tapu.<sup>36</sup>

Under the Resource Management Act, district plans must have regard to the historic places register. When wahi tapu are registered, notice is given to the owner of the land on which they are located, as well as to the holder of any interest in them, and to the relevant territorial authorities. The Maori Heritage Council of the Historic Places Trust must give written notice of a registered wahi tapu to the territorial authority in whose area the wahi tapu is located. The Maori Heritage Council can make recommendations as to the appropriate steps a territorial authority should take to assist the conservation and protection of the site. Territorial authorities must have 'particular regard' to such recommendations.<sup>37</sup>

Provision also exists for emergency 'interim registration' of wahi tapu under sections 26 to 28 of the Historic Places Act. While under such interim registration, the consent of the

---

34. Document R19, app; doc AA1, pp 302–303

35. Document R6, pp 9–10

36. Document R19, app; doc AA1, pp 304–305

37. Document R19, app; doc AA1, pp 302–305. We note that, when Taimoana Turoa wrote his invaluable evidence for the Hauraki inquiry *Nga Iwi o Hauraki: The Iwi of Hauraki* (doc A6), Mr Turoa was a member of the Maori Heritage Council, Pou Here Taonga. This was a position he had held since 1994.

Historic Places Trust is required for, among other things, any modification or damage to the site, subdivision of the land, or any change to the character or use of the land. An interim registration lapses six months after notice is given or on the site becoming fully registered. It is an offence to destroy, damage, or modify any site or thing vested in the trust without its authority (s97) or to destroy, damage, or modify any land subject to a heritage covenant (s98), any archaeological site (s99), or any historic place or wahi tapu that has interim registration (s103). Under section 2, the term 'archaeological site' is given a wide definition, including any place in New Zealand that was associated with human activity that occurred before 1900. 'Archaeological sites' can therefore include wahi tapu.<sup>38</sup>

Crown counsel submits that sections 62 and 67 of the Resource Management Act, providing for regional policies and plans, are of some importance in the protection of wahi tapu:

The significance of these statements are [*sic*] that they seek to achieve the promotion of sustainable management of natural and physical resources (the purpose of the Act as set out in s5) by providing an overview of resource management issues in a region, and policies and methods to achieve integrated management (see s59 of the [Resource Management Act]).<sup>39</sup>

In addition to the above procedures, both the Resource Management Act and the Historic Places Act provide for heritage orders. These orders relate to specific pieces of land and are marked on district plans. Under section 193 of the Resource Management Act, if a heritage order is in a district plan:

then, regardless of provisions of any plan or resource consent, no person may, without the prior written consent of the relevant heritage protection authority named in the plan in respect of the order, do anything [including subdivide or change the character of the site] that would wholly or partly nullify the effect of the heritage order.<sup>40</sup>

There are various ways to obtain a heritage order. A heritage protection authority can require a territorial authority to notify a heritage order on a district plan.<sup>41</sup> If a heritage order is breached, then section 9(2) of the Resource Management Act is necessarily breached. Penalties under that Act may result, and a separate penalty under section 105 of the Historic Places Act also applies. In addition to any penalty, a court may make an order suspending for up to five years the exercise of any rights under a resource consent or under the district plan.<sup>42</sup>

---

38. Document R6, pp 5–6; doc R19, app; doc AA1, pp 304–305; doc R33, p 27

39. Document AA1, p 302

40. Ibid, p 306

41. There are four kinds of heritage protection authorities: Ministers of the Crown and local authorities acting either on their own motion or on the recommendation of an iwi authority; the Historic Places Trust; and body corporates approved as heritage protection authorities under section 188 of the Resource Management Act 1991.

42. Document AA1, pp 306–307

**20.2.4 The claimant case on the legislation protecting taonga and wahi tapu**

The importance of taonga and wahi tapu to Hauraki Maori was discussed in the introduction to this chapter. We consider that the Crown is obliged to protect the concepts, objects, and special places which encapsulate the interrelationship between Maori and their environment, and constitute the core of their identity, as described in section 20.1. Claimant submissions suggest that the legislation has not managed to achieve the balance required.

**(1) Taonga**

Claimant witness Louise Furey argued that in practical terms the Antiquities Act 1975 has not worked well in preventing either the fossicking of sites or the illegal export of taonga from New Zealand. She said that inadequate staff and resources were provided by the Department of Internal Affairs, and from 1999 by the Ministry for Culture and Heritage; neither Ministry has much ability to police the Act. Furey cited the example of the Opito carved canoe prow, which was illegally exported from New Zealand between 1988 and 1994. While Interpol were alerted, it is unlikely the piece will be found and returned to New Zealand, and no attempt has been made within New Zealand to charge the parties involved.<sup>43</sup>

Furey also discussed the role of museums in caring for taonga, and the developing sense of Maori as partners. Auckland Museum, which has an Iwi Values Manager and a Taumata-a-Iwi group to oversee issues related to taonga, holds the greatest collection of Hauraki taonga. The museum has a process of consultation with tangata whenua, and encourages the Ministry of Culture and Heritage to trace the appropriate iwi if taonga subject to the 1975 Act are brought to the museum. There are specific examples of cooperation between the museum and Hauraki Maori. For example, a 1997 protocol was agreed between the Taipari whanau and the museum over the care of the meeting house, Hotunui, held by the museum (discussed briefly in section 20.3). Similarly, the museum sought the permission of the trustees of Oruarangi Pa (see sec 20.3(1)) before the museum's collection from that site was researched and published.<sup>44</sup> However, there has not always been consistency in how the museum has approached collections, with the archaeology and anthropology departments demonstrating different standards. Sometimes the integrity of collections has not been maintained, with different categories being held by different departments.<sup>45</sup> Of the Hauraki items held at Auckland museum, only a small number of objects are identified as taonga, rather than 'everyday' items. Only two taonga are held subject to the Antiquities Act 1975, the majority being deposited with the museum under earlier legislation.

---

43. Document G8, pp 7–8; doc A7(a); doc R6(c); doc R33, pp 8–11; doc Y9, p 59

44. The museum holds 2303 out of the known 3264 artefacts found on the site, which was the subject of fossicking by several individuals, as set out above. Artefacts from Oruarangi are widely distributed in museums around the globe.

45. Document G8, pp 9–15

Both overseas and smaller provincial museums also hold Hauraki artifacts. Furey expressed concern that regardless of intent, provincial museums are often unable to take proper care of such artefacts, and do not have consistent standards or collection of information relating to artefacts. An unknown number of Hauraki artefacts also remain in the hands of private collectors.<sup>46</sup>

Furey argues that Maori taonga are really taonga for all New Zealanders, in the sense that they can help us all reach a greater understanding about Maori settlement of Aotearoa. Also, taonga from the past can be used to teach traditional methods of manufacture today, in the absence of the ancestors who made them. This will encourage interest in the arts, and help to keep Maori culture dynamic and changing. 'Thus, the artefacts become true treasures, speaking across the generations'.<sup>47</sup> We agree, but also note that specific taonga can have strong local associations and carry important aspects of the identity of particular Maori groups.

Counsel for Wai 100 gave comprehensive submissions on the legislation for taonga and wahi tapu, in addition to submissions on the particular claims they represented. Other claimant counsel gave submissions on behalf of the particular claims they were prosecuting, but relied on the Wai 100 argument for general submissions on the legislation. We set out here the relevant claimant submissions on the legislation for taonga and wahi tapu.

Counsel observed that the Crown did not deny some past Treaty breaches in respect of wahi tapu and taonga, and agreed that the situation had improved since the introduction of the 1975 legislation. But counsel said the Crown was silent as to how past breaches could be rectified. While the legislation could offer some protection today, this 'is reliant upon adequate resourcing which to date has not been forthcoming'.<sup>48</sup>

With respect to taonga in particular, claimant counsel described some of the different cultural approaches to the protection of precious artefacts. Maori buried taonga in the ground, thereby placing taonga into the care of Papatuanuku. Here, 'under tikanga Maori, the taonga were safe'.<sup>49</sup> We understand this to imply that when taonga were fossicked from wahi tapu, they were not being discovered so much as taken from the care of Papatuanuku.

Claimant counsel acknowledged that a minority of taonga were traded in the past by those entitled to do so, and 'it is accepted that in such circumstances there can be no claim against the Crown'. But the majority of traded taonga were acquired from the wrong people, through desecration and pillaging of wahi tapu, or were treated as absolutely sold when they had in fact been intended as a symbolic part of a customary exchange, to be returned later. 'There is simply no evidence that the Crown ever established any form or mechanism

---

46. For example, the carved Miranda pataka front, purchased in 1891 from a private dealer in Auckland by Sarah Bernhardt. The panels of the pataka were separated at some point, are now in at least three separate museums in New Zealand and Switzerland, and have been altered: doc G8, pp 15–16.

47. Document G8, pp 16–17

48. Document Y1, p 191

49. Ibid, p 193

to distinguish between fair acquisition of taonga and taonga acquired through other means nor was there any mechanism until 1901 by which the export of taonga could be restricted.' Instead, the common law of 'trover' applied (finding and keeping personal property, subject to any later assertion of rights by the 'true' owner.) This created two problems for Maori: the first was that, even if Maori were aware that a find had been made, it was hard to prove ownership of an artefact; the second was that Maori were in the position of having to contest every discovery. 'The law rewarded those engaged in "fossicking" wahi tapu site for taonga,' regardless of the tapu of the sites. The 1975 Act had not much improved matters, because there was no express obligation on the Crown to consult with iwi. In addition, Hauraki kaumatua have to become registered collectors to take custody of their own possessions.<sup>50</sup>

Claimant counsel did not consider the Crown's prima facie ownership of taonga to be a protection. Counsel stated that 'it is hard to see how the deeming of a property right can fulfil a protective function . . . it is incumbent on the honour of the Crown to develop a better model following full consultation with Maori.' Counsel suggested reversing the presumption by automatically deeming that newly found taonga belong to the tangata whenua of the area in which it is discovered unless it can be proven otherwise, referring the Tribunal to the model for the protection of artefacts agreed upon by the Nisga'a nation of northern British Columbia with the Canadian and provincial British Columbian Governments.<sup>51</sup> Counsel submitted that this would be a more appropriate exercise of the Crown's protective function.<sup>52</sup>

In addition, counsel said that the Crown does not adequately police the illegal export of taonga (referring for confirmation to the example of the Opito prow, discussed by Furey above, and in the specific taonga claims below), and only low levels of fines are applicable in any case. Moreover, because the 1975 Act only applies to objects found since that date, the general trade in taonga unearthed before 1976 continues. In addition, the Act does not comply with international conventions. The Crown should work with Hauraki Maori to encourage or negotiate the return of taonga held in overseas museums.<sup>53</sup>

In summing up their position in regard to taonga, counsel stated: 'the evidence shows clearly that at no time since the signing of the Treaty has the Crown taken all appropriate measures to actively protect taonga Maori, a failure that has had a particular adverse effect on Hauraki.' As a consequence of this failure, many Hauraki taonga are now scattered in collections throughout the world: 'While it is accepted that the Crown has little ability to compel the return of such, it is nonetheless submitted that the Crown has not done enough to obtain the return of least some of these taonga.'<sup>54</sup>

---

50. Document Y1, pp 193–195

51. Ibid, pp 195–197; doc H9, pp 9–10

52. Document Y1, pp 195–196

53. Ibid, pp 195, 197–198

54. Ibid, p 198

**(2) Wahi tapu**

Archaeologist Louise Furey provided evidence on wahi tapu, both for several specific Hauraki claimant groups and for the broad Wai 100 claim. She described intense settlement of the coastline and fertile valleys of Hauraki over many generations, evidenced by many pa, urupa, and other wahi tapu. Sand dunes on the eastern side of the Coromandel Peninsula were used as burial areas and many koiwi had been found there. Many sites have been destroyed or modified by farming, exotic forestry and housing development.<sup>55</sup>

The New Zealand Forest Service undertook archaeological surveys in the 1980s before planting in Hauraki, in line with the Historic Places legislation.<sup>56</sup> Furey comments that such surveys were bound to detect a high number of sites, as burning off vegetation gives good visibility of underlying land uses. As a result of these surveys, the Forest Service excavated and preserved some sites, and over 6000 others were listed with the New Zealand Archaeological Association.<sup>57</sup> A total of 336 archaeological sites were found in the Whangapoua Peninsula alone. Furey found that these included few specific settlement sites mentioned in nineteenth century Native Land Court records. She assumes that the lack of local knowledge about sites was due to the dislocation of Ngati Huarere from their lands early in the nineteenth century (presumably in reference to pre-Treaty attacks by Nga Puhi), as well as high death rates due to introduced diseases.<sup>58</sup>

Furey acknowledged that the legislation can be effective in protecting wahi tapu sites, though she repeatedly stressed:

the inability of the Historic Places Trust to protect and preserve evidence of past uses of the landscape. This can be attributed directly to a lack of adequate funding from the Crown to the organisation to administer the provisions of the Historic Places Act, and to ensure compliance by landowners and local authorities.<sup>59</sup>

Another expert archaeologist witness for the claimants, Dr Caroline Phillips, gave evidence that 238 sites – perhaps two-thirds of the sites in that area – along the Waihou River have been destroyed or damaged. Claimant counsel stated in reference to this that:

the Crown has not sought to deny its failure to protect waahi tapu in the past, a breach which must be taken to be well founded, but has held up present legislation [ie, the Historic

---

55. See docs G8, K3, K13

56. In fact, Ms Furey worked as an archaeologist for the New Zealand Forest Service in the early 1980s herself, when the service was mapping sites: doc K13, p 2. In addition to the requirements of the historic places legislation, the *Te Roroa Report 1991* noted that the Forests Act 1949 and the 1973 and 1976 amendment Acts, 'provided for protection of areas of scientific, historical, cultural, educational, recreational, scenic and aesthetic interest in state forests': Waitangi Tribunal, *The Te Roroa Report 1991*, p 231.

57. Document B1, p 2; doc M25, p 41; doc R33, pp 14, 17, 26

58. Document K3, pp 3–8

59. Ibid, pp 11–12; doc K3(a)



Places and Resource Management Acts] as protecting those waahi tapu that still remain. . . .

It is submitted that neither Act provides the type of protection sought.<sup>60</sup>

Claimant counsel argued that the Crown has failed to protect waahi tapu in two significant ways. First, the Crown has failed to protect Hauraki ownership of their waahi tapu or of the land surrounding waahi tapu. Examples of where Hauraki have little control over the desecration of their urupa or are unable to protect their waahi tapu because ‘the ownership of the land is in the hands of others’ is given in the evidence relating to specific claims (see below). Secondly, the Crown has failed to provide appropriate mechanisms to protect waahi tapu from damage and desecration.<sup>61</sup> Counsel noted the salient features of the relevant legislation outlined by the Crown, as above, but argued that the legislation is inconsistent with the Treaty because the statutory bodies are ‘insufficiently funded’ to fulfil their functions and because ‘The Act fails to provide Maori with any power of management or control over their waahi tapu.’<sup>62</sup>

According to claimant counsel, funding for heritage protection was and is inadequate, remaining at the same level since 1997. The inadequacy of the funding ‘can be seen from the poor recording of the Trust’s register of sites’, with only 79 sites, including nine waahi tapu, registered by the Historic Places Trust out of the 6000 known archaeological sites. Even the registered sites are inadequately protected, as registration does not provide protection per se, rather merely notifies landowners of the existence of the site. These 79 sites are the only ones in Hauraki to which territorial authorities must have regard. Due to the inadequate funding of the trust, counsel claimed that the trust is not able ‘to carry out its functions under the Act’, noting comment by Ms Furey that the trust was no longer able to conduct archaeological surveys. ‘The result is that waahi tapu continue to be destroyed and damaged by building and other activities without either the knowledge of the Trust or the Councils administering resource consents under the Resource Management Act.’

The lack of adequate funding also impacts on the trust’s ability to use heritage orders under section 5 of the Resource Management Act. Heritage orders are strong protection mechanisms, but require considerable financial outlays. ‘Thus, funding may be a determining factor for protection rather than the importance of the waahi tapu or site itself.’ Adequate funds to compensate private landowners of waahi tapu are also lacking.<sup>63</sup> Counsel for Wai 475 also stressed the lack of funding, while acknowledging that ‘the [Historic Places Act] attempts to assist Maori in the protection of these places. But this is not enough.’ Counsel referred to the evidence of Ms Furey that sites are being lost due to inadequate funding

---

60. Document Y1, p 200

61. Ibid, pp 198–199

62. Ibid, pp 200–202

63. Ibid, pp 202–204



to the Historic Places Trust and observed that, ‘once these sites disappear, they are gone forever.’<sup>64</sup>

Claimant counsel noted that only 91 applications to modify Hauraki sites had been processed by the trust from 1993 to December 2001, and only 27 authorities had been issued to modify archaeological sites in eastern Coromandel, mostly with regard to forestry from 1990 to 2000. Only two authorities had been issued for the Whangamata region since 1986, though the region had experienced significant growth. This ‘suggests that numerous sites would have been damaged or destroyed but would have been unreported or undetected in the system.’ Moreover, ‘The very fact that the Historic Places Trust has full power to grant authorities for modification of sites or waahi tapu, notwithstanding the objections of local iwi, is also a matter of real concern to Hauraki. Under section 12 of the Act iwi are merely consulted where applicants seek to modify sites. Iwi consent is required only for applications to carry out scientific investigations of sites.’<sup>65</sup>

In sum, counsel argued that the legislation cannot address the concerns of Hauraki Maori comprehensively. ‘It is accordingly submitted that neither the Historic Places Act nor the Resource Management Act are appropriate mechanisms for the protection of waahi tapu that comply with the Crown’s duty to actively protect Hauraki and their taonga including waahi tapu.’<sup>66</sup>

## 20.2.5 The Crown case on the legislation protecting taonga and wahi tapu

### (1) *Taonga*

The Crown submits it is acting in accordance with Treaty principles by putting in place statutory systems through the Antiquities Act 1975 and the Historic Places Act 1993 for the protection of taonga. The Antiquities Act is consistent with the Treaty ‘by enabling the Crown to act in a “fiduciary” capacity . . . and by providing a mechanism for Maori to have their interest in an artefact recognised and enforced’.

Crown counsel argues that the vesting of prima facie ownership of newly found artefacts in the Crown (providing they are not recovered from the grave of a known person) ensures that no individual can claim an interest in an artefact merely because of ownership of the land on which it was found. However, any person, including the Minister for Arts, Culture and Heritage may apply to the Maori Land Court for determination of actual or traditional ownership, or rightful possession and custody. Counsel notes that use of the term ‘may’ in section 11(2) of the Act suggests that the Minister has a discretion about whether to apply to the Maori Land Court. ‘Exercise of this discretion is contingent on the existence of a prior claim to ownership, possession or custody.’ The ‘prior claim’ does not have to be formally

64. Document L13, pp 31–32

65. Document Y1, p 204

66. Ibid, pp 204–205

notified, rather the Minister must be aware of the claim. Custody is in 'most cases' granted to tangata whenua.<sup>67</sup>

Section 12(1)(e) of the 1975 Act confers jurisdiction on the Maori Land Court to vest an artefact in a person as a trustee for its safekeeping and protection. 'Thus, a distinction is made between custody and ownership.' The Crown rejects claims that the vesting of *prima facie* ownership in the Crown is a breach of the Treaty: 'The concept of *prima facie* Crown ownership can in fact facilitate the return of taonga to Maori.'<sup>68</sup>

With regard to the export of artefacts, permission to export must be obtained from the chief executive officer of the Ministry. The chief executive is likely to seek expert advice, and 'where possible' would consult with relevant tangata whenua. Exportation will only be allowed in exceptional circumstances. Provision exists for the seizure of artefacts that might be illegally exported. The Crown acknowledges that there are limitations to the effectiveness of the Act in preventing export because of the low level of fines and the high cost of prosecuting. 'In practical terms it is difficult to prevent people from seeking to illegally export artefacts when there might be a huge monetary return, despite the deterrent of large fines.' The Opito canoe prow provides an example. But the Crown does also use other resources in addition to those on offer by the Ministry, such as the New Zealand Customs Service, shipping agents, and freight forwarders.<sup>69</sup>

Crown counsel also acknowledged that 'an issue arises in the Antiquities Act as to whether there are sufficient resources for ensuring there has been adherence to the requirements of the legislation and implementation of its provisions'. But Crown witnesses Mark Lindsay and Rick McGovern-Wilson explained that, though extra funding for the Ministry and the Historic Places Trust would be of great assistance, 'the Ministry and the Trust adequately perform their statutory functions with the current funding provision'. While the Ministry has no authority over museums, it can assist at a general level with Hauraki Maori discussions with museums over return of artefacts. Mr Lindsay noted that protocols agreed though Office of Treaty Settlements have the potential to 'formalise the policies the Ministry already has in place for consultation and involvement of Maori in the Antiquities Act processes.'<sup>70</sup>

## (2) *Wahi tapu*

The Crown submits that it 'does provide a framework for the protection of significant sites to Maori. In sum, the primary means of protecting sites is through their identification on district plans, and their registration on the Historic Places Register.' However, the Crown does not claim that the system is perfect, and acknowledges that adequate funding is an

---

67. Document AA1, p 297; doc R6, p 16

68. Document AA1, p 297

69. Ibid, pp 298–299; doc R6, pp 17–18

70. Document AA1, p 299; doc R6, pp 21–22; doc R33, pp 2–3, 5–7, 15, 23, 27

issue.<sup>71</sup> Counsel stressed that community participation is required in identifying sites of significance to Maori.<sup>72</sup>

The Crown reviewed the Historic Places Act 1993 as a result of the Ngai Tahu deed of settlement, resulting in a report on historic heritage that ‘acknowledged that as a whole the system for protection has been performing poorly’. The review also recommended that heritage planning documents recognised by tangata whenua should be given greater weight in law. As a result, the Crown introduced the Resource Management Amendment Bill 2001, aiming to strengthen provisions for local authorities in the exercise of their responsibilities under the Resource Management Act 1991 to ‘take into account’ planning documents recognised by iwi authorities.<sup>73</sup> The Crown submits that ‘It is notable that the government in the context of the Resource Management Amendment Bill 2001 has decided to retain the Historic Places Act provisions in separate legislation because they see the independent role of the Historic Places Trust as important.’<sup>74</sup> We note that the 2001 Bill became the Resource Management Amendment Act 2003. Also in 2003, the Historic Places Act again came under review, with the stated intention of complementing the Resource Management Act to ‘elevate historic heritage protection to a matter of national importance’.<sup>75</sup>

The Crown established the Ministry for Culture and Heritage in 1999, and announced a ‘cultural recovery package’ in 2000, allocating \$1.25 million (GST inclusive) to the Historic Places Trust for the development of Maori heritage services. ‘This funding has been devoted by the Trust to developing programmes to enhance the capacity of iwi to protect their land-based heritage.’<sup>76</sup> In their lengthy submissions on environmental matters and the Resource Management Act, the Crown also noted the role of the Ministry for the Environment in attempting to improve the practice of local authorities and increasing the capacity of iwi and hapu to participate in processes under the Act.<sup>77</sup> In an appendix, the Crown detailed initiatives taken by the Ministry to improve Maori participation under the Act. Provision is made for funding, on application, from the sustainable management fund for projects ‘for maintaining and enhancing the capacity of tangata whenua to fulfil their responsibilities as kaitiaki’, and under the environmental legal assistance fund for increased participation in cases before the Environment and High Courts. The Ministry publishes guidelines for best practice under the Act, including guidance for iwi and local authorities as to how the key heritage legislation (the Resource Management Act 1991, the Historic Places Act 1993, and

---

71. Paper 2.227, p 24; paper 2.550, p 46; doc R19, pp 5–6; doc AA1, p 302

72. Document R19, p 6; doc AA1, pp 302, 307

73. Paper 2.227, p 24; paper 2.550, p 46. Note also Crown concessions in the foreshore and seabed report that the Resource Management Act has not functioned as intended to give effect to Maori concerns: Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), pp 104–105.

74. Document AA1, pp 306–307

75. Ministry of Culture and Heritage, ‘Proposed Amendments to the Historic Places Act 1993’, June 2003, p 1. We presume this review reflects the Crown's decision to retain provisions of the Act in separate legislation.

76. Paper 2.550, pp 46–47

77. Document AA1, p 230

the Te Ture Whenua Maori Act 1993) work together to protect Maori historic heritage. The Ministry monitors Maori participation in Resource Management Act processes through biennial surveys of local authorities, it tracks local authorities' budgetary commitments to Maori participation in the Act, and it aims to hold regional hui with Maori to receive feedback on the implementation of the Act and identify issues and opportunities for improvements and further discussion. In addition to the work of the Ministry for the Environment, Crown counsel stressed that Treaty settlements offer another opportunity for improving, on a case-by-case basis, Maori participation in Resource Management Act processes, 'and thereby influence the management of resources of particular value to them.'<sup>78</sup>

Crown witnesses Mark Lindsay of the Ministry for Culture and Heritage and Dr Rick McGovern-Wilson of the New Zealand Historic Places Trust gave evidence for the Crown acknowledging that, while the trust had not prosecuted violations of wahi tapu on a single occasion between 1993 and 1999, since 1999 there has been a change in operational focus. This change has heralded a rise in advocacy and education, and increases in the number of authorities declined and prosecutions initiated where warranted, as well as the regionalisation of Maori heritage and archaeological services. The trust also works to facilitate solutions between developers and iwi where possible. The Maori Heritage Division of the trust was restructured and regionalised as a result of review, and Maori heritage adviser positions were created in regional offices. The Coromandel area is serviced by a Tauranga-based archaeologist and Maori heritage adviser. After the review, a Kaihautu Maori position was also created in the national office, with responsibility for overseeing the delivery of Maori heritage services across the organisation.<sup>79</sup>

Dr McGovern-Wilson explained that not all 6000 Hauraki sites identified by the New Zealand Archaeological Association 'would necessarily be registered on the trusts' register as some were simply small shell/midden sites'. In cross-examination, Dr McGovern-Wilson agreed that it was 'somewhat incongruous' that only 79 sites were recorded, and stressed it was up to interested parties to nominate sites for registration, although he acknowledged that the trust could also nominate sites.<sup>80</sup> Dr McGovern-Wilson also noted that 89 authorities to modify, damage or destroy archaeological sites (presumably, not all registered) had been granted in the Hauraki area by the Historic Places Trust, 71 since 1993, and 18 before 1993. Collectively, this amounted to some 5 per cent of all authorities issued throughout the country.<sup>81</sup>

Evidence was also given by Gregory Martin, Waikato conservator, to explain the role of the Department of Conservation in the protection of heritage sites. Until the creation of the Ministry of Culture and Heritage, the department was responsible for heritage protection

---

78. Document AA1, pp 232–241, app A

79. Document R6, pp 12–13; doc R33, pp 22–23, 25

80. Document R20, p 2; doc R20(a); doc R33, pp 13–15, 21–22; doc AA1, p 307

81. Document R20(a), p 3

under the Conservation Act 1987. However, while it no longer has primary responsibility for cultural heritage, the department continues to manage some key cultural heritage features on departmental lands. The department manages 60 per cent of land on the Coromandel Peninsula, and in addition to the standard conservation work it is known for, the department also undertakes a ‘great deal’ of technical advocacy on issues such as marine farming. Mr Martin observed that the department has limited resources, and therefore tries to advance cases where there is evidence that ‘suggests the environmental effects of development will be significant, and where we consider our prospects of upholding the conservation values at stake are good.’<sup>82</sup> Mr Martin believed that, in general, relations between Hauraki iwi and the department were sound. Quarterly meetings are held to review ‘business of mutual interest’, and the department has regular consultation and meetings with many Hauraki iwi groups: ‘The Department has received very positive feedback from its workings with these groups to the extent that important conservation initiatives on the Peninsula are making substantial progress.’ Representatives from all major iwi groups, including one Hauraki representative, sit on the Waikato Conservation Board.<sup>83</sup> Mr Martin provided some examples of where the department and Hauraki iwi have worked together positively.<sup>84</sup>

#### 20.2.6 Tribunal comment on the legislation

We offer some comment here on whether the legislation achieves the appropriate balance for protecting taonga and wahi tapu, as well as private property rights. First, if Maori had been able to retain the ownership of much more land, then the Crown would not have needed to provide robust protection for many of the remaining wahi tapu and taonga; Maori would have been able to protect them themselves. But since that is not the case and many wahi tapu and taonga are located on either Crown or private land, the legislation must attempt a balance in protecting the varying claims.

Rather than dwelling further on the already-acknowledged weaknesses in the existing Antiquities Act 1975, we begin this section by offering some brief comment on the proposed new legislation strengthening the protection of taonga. We share the Crown’s hope that new legislation will provide solutions to those acknowledged problems, and offer these comments as a guide only.

We note that, on presenting the Bill to Parliament in February 2005, Associate Minister for Arts, Culture, and Heritage Judith Tizard said that it would improve administrative processes ‘to ensure that ownership can be established for taonga tuturu.’ This would accordingly ‘increase the instances of traditional ownership being established for found Maori objects.’<sup>85</sup>

---

82. Document Q2, pp 3–7

83. Ibid, pp 7–8

84. Ibid, pp 8–10

85. See Judith Tizard, ‘More Protection for Cultural Objects in the New Bill’, speech introducing Antiquities Bill to Parliament, 3 February 2005 (<http://www.beehive.govt.nz>)

We understand the Crown's position to be that ownership of newly found taonga will, *prima facie*, remain vested in the Crown through the Ministry of Culture and Heritage. But the Ministry will be increasingly proactive in seeking the determination of traditional ownership of taonga through consultation with tangata whenua, and where necessary, through the Maori Land Court. We consider that in Hauraki, where there are layers of tangata whenua rights through ahi ka, conquest, and then reassertion of ahi ka by earlier groups, there is heightened potential for dispute as to ownership of taonga. The Maori Land Court would be the appropriate place to determine traditional ownership in such situations.

Following on from this, we believe it is proper for the Crown to continue to assert *prima facie* ownership of newly found taonga. It is important for all to understand that *prima facie* ownership means ownership limited by the proven claims of the true owner and that, as long as a process is automatically in place to determine the true owners, then *prima facie* ownership in the Crown is an important protection. While some tangata whenua may be wary of Crown ownership in any sense, we consider it vital to acknowledge the Crown's fiduciary relationship with Maori, which brings with it many responsibilities such as those highlighted in this chapter. This is an example where the Crown can operate to assist Maori actively, and Maori should make use of this assistance.

We agree with the provision in the summary of the proposed Antiquities legislation that Maori should determine which objects are in fact taonga. We consider that this is the only equitable way forward. Similarly, Maori must choose which specific sites are wahi tapu and most in need of protection, and then avail themselves of the provisions that exist under the Resource Management Act 1991 and the Historic Places Act 1993 for the protection of wahi tapu.

We accept the Crown's position that the current regime under the Resource Management and Historic Places Acts have, at least since restructuring in 1999, offered avenues for full protection of sites, as long as the processes set out by legislation are well publicised and adequately funded. We expect the Government to continue its work in publicising the protective provisions available in the legislation, and acknowledge the initiatives of the Ministry for the Environment in this direction. We were not called upon to make a determination as to what constitutes full and adequate funding. But it is clear to us, and we think to the Government as well, that if cultural heritage is to be prioritised, then appropriate resources must be forthcoming. It hardly needs reiterating that once sites are gone, they are gone forever.

Obviously, legislative protections require the participation of Maori to be truly effective, and we think this is appropriate in a Treaty relationship where both sides have duties and privileges. It is vital, for example, that Maori determine which specific sites they wish to be identified as wahi tapu, and which require full protection, and then make full use of available legislative provisions. Where wahi tapu are not on Maori owned land, some ranking of the importance of specific sites will be required. For example, in the Hauraki inquiry,

archaeologists have listed over 6000 sites of interest. These are sites where some physical evidence of previous use exists. But, as explained before the Te Roroa Tribunal in 1992 by Sir Tipene O'Regan (associated with the Historic Places Trust since February 1977), not all such sites would necessarily be of spiritual significance to Maori, as many would be of 'every day' use such as middens. Moreover, Maori and archaeologists might have conflicting interests as to what constitutes a special site:

The Maori membership of the Trust's committees have . . . been concerned, and, at times, distressed by the difficulty of securing protection for a huge range of sites of great importance to Maori on grounds of historic, traditional or spiritual association. We have felt that there was well entrenched legislative protection for sites on a grounds of essentially Pakeha academic interest but a gross lack of ability to protect sites on Maori grounds. Put simply it has been easier to protect an ancestral rubbish dump than a tuahu or a waka landing site or a maunga whakatauaki. In the 1970's and early 1980's we also experienced considerable resistance from professional archaeologists, including those on the staff of the [Historic Places] Trust at the time, to our attempts to secure a similar standard of protection for sites of Maori value to that enjoyed by sites deemed to have archaeological value.<sup>86</sup>

We note also the observation by archaeologist Louise Furey that 'archaeology is limited as a tool to interpret the past. Specific events are rarely identifiable and the people who live in a particular place or their tribal affiliations cannot be determined by archaeological methods.'<sup>87</sup> Therefore, it is Maori who must select which specific sites are the sites they value most highly. As claimant Pauline Clarkin observed in relation to resource management, 'The value attached to such a taonga is an essential matter for Maori to determine.'<sup>88</sup> The concomitant is that Maori must nominate these sites if they wish them to enjoy the protection offered by legislation. We strongly encourage Hauraki Maori to be proactive in the use of the legislative provisions already in place to protect wahi tapu. We note that targeted Government funds – through the Ministry for the Environment's sustainable management fund, as well as the environmental legal assistance fund – are available on application to assist tangata whenua in working with local authorities to understand and use the Resource Management Act in particular, and to assist with appeals to the Environment Court.

We acknowledge that neither central nor local government has the resources to protect thousands of sites in any one area, especially if on private land, and particularly because many more sites undoubtedly remain to be discovered. We repeat the words of the *Report on the Manakau Claim* that, if specific protection is to be provided, wahi tapu need to be defined as specific sites and not general areas. If the land on which a wahi tapu is located is in Maori ownership, the need to limit the definition of wahi tapu does not apply: ownership

86. Tipene O'Regan (Wai 38 RO1, doc G2), p 2 (Waitangi Tribunal, *The Te Roroa Report 1991*, p 233)

87. Document A7, p 4; doc B1, pp 2–3; doc J9, p 3

88. Document G21, p 29



of the land is the key in determining how specific wahi tapu should be. We must also acknowledge that some private landowners may have concerns over how much power the Historic Places Trust can wield over their private property, and will want reassurance of the procedures that the trust uses to come to decisions as to what sites require protection. In short, there must be an element of realism and pragmatism to the protection of wahi tapu. Most particularly, we believe that wahi tapu sites that are known to Maori without the need for academic research, are the sites most in need of protection. Such sites provide that vital link with the past and the future that keeps Maori culture vibrant and thriving.

### 20.3 SPECIFIC TAONGA CLAIMS

We see no need for any findings in relation to claimant concerns regarding Hotunui whare or the Marutuahu mauri, both held at Auckland Museum, or Te Korowai o Watana held at the University of Waikato. No particular claim against the Crown was made out in relation to any of these three taonga.

We can offer only brief comment with regard to the illegal export of the Opito canoe prow. Claimant counsel for Wai 110 argued that the prow (of the rare tuere form) was sold overseas 'at a time when the Crown was on notice of the prow's existence', to which the Crown responds that there was not enough evidence to attempt a prosecution.<sup>89</sup> Claimant counsel further submits that 'The case against the Crown is that it has failed to improve the impotent provisions of the Antiquities Act 1975 to ensure sufficient statutory protection of Maori taonga.'<sup>90</sup> Amending this failure is the intention of the Protected Objects Amendment Bill, introduced to Parliament in February 2005. The Amendment Bill replaces the limited fines able to be imposed under the Antiquities Act (ranging from \$500 to \$2000 only), with maximum fines of up to \$100,000 for individuals and \$200,000 for bodies corporate. Serious offences can also be penalised by up to five years in prison. We trust, therefore, that the amended legislation will make the reoccurrence of such an event as the theft of the Opito prow unlikely.

#### 20.3.1 Oruarangi Pa

We are greatly concerned at the desecration of the Oruarangi pa site and the lack of protection offered to prevent the desecration once the Crown was aware it was taking place. When the ancient pa (visited by Captain Cook in 1769)<sup>91</sup> and used as an urupa in the nineteenth century, was desecrated by fossickers (namely Sonny Hovell, among others) in the early

89. Document Y9, p 59; doc AA1, pp 298–299; doc G8, pp 7–8; doc N1, p 26

90. Document Y9, p 59

91. See Geoff Park, *Nga Uruora: The Groves of Life* (Wellington: Victoria University Press, 1995), p 51



1930s, little could be done to stop it, and the Auckland Museum purchased many of Hovell's finds. The Maori trustees of the urupa (gazetted in 1914) were particularly upset by Hovell's entering the urupa at night, and an injunction was served on him under the Maori Councils Amendment Act 1903 to stay out.<sup>92</sup> Hovell's actions were widely condemned. The following letter to the editor reveals some of the concern expressed:

Sir – From time to time we read of the curio hunters having found valuable Maori relics at Matatoki [Oruarangi]. Do we realise that these finds are being systematically probed for amongst the graves (ancient, perhaps, but nevertheless 'tapu') of a people still living in the district? . . . If the police cannot prevent further spoliation of this sacred ground they may at least arrange to relieve the old lady who is guarding the grave of her husband alone day and night.<sup>93</sup>

### 20.3.2 Other sites fossicked for taonga

Other claimants mentioned wahi tapu that were 'fossicked' for taonga. For example, Pani Ru Pahata Hori Keeti told us that 'our old sites' in the Thornton Bay area were desecrated when a local, Toss Hammond, acquired a number of taonga from the wahi tapu and started his own museum. 'When he died we asked his daughter where the artefacts were and she said she took them to the Auckland Museum and that they were all labelled. We always saw them as taputapu and wouldn't dare touch them. But it would still be good for our people to get control over them again.'<sup>94</sup> Furey also noted that, in addition to the 'grand scale' of collecting from Oruarangi, other places were 'being turned over' by fossickers. She lists Waihi Beach, Thornton's Bay, Kennedy Bay, Whiritoa, and Te Kare. Many claimants also told us of the desecration or loss of their wahi tapu.<sup>95</sup> Furey adds that:

Little is known of fossicking activities in the 1940s although there were a few energetic locals at work and their enthusiasm continued through until the mid-1950s when the first archaeologist arrived at Auckland University and attempted to channel that enthusiasm into proper recording-based archaeology rather than destructive digging.

While fossicking does still occur, 'it is usually opportunistic and small scale and it is of course now illegal'.<sup>96</sup>

92. Injunction served on Sonny Hovell, 1933, Maori Land Court file 1638/H (doc U16, doc bank, p 26)

93. Louise Furey, 'Oruarangi: The Archaeology and Material Culture of a Hauraki Pa', *Bulletin of the Auckland Institute and Museum*, 1996, pp 25, 212 (doc G8, pp 13–14; doc U16, doc bank, p 21)

94. Document G16, p 7

95. References to the loss or desecration of wahi tapu are scattered throughout claimant evidence. There are too many examples to give an exhaustive list here, but claimant submissions give some lists of relevant claimant briefs. Also, photocopies of unreferenced material in relation to fossicking by Hovell and Hammond are included in pages 22 to 25 of the supporting documents to document U16.

96. Document G8, pp 11–15

**20.3.3 Tribunal comment on Oruarangi and other fossicked sites**

It is clear to us that the fossicking of wahi tapu in the search of taonga was and is highly offensive to Maori, as well as to other New Zealanders. In her thesis on the Antiquities legislation, Nancy Swarbrick noted that in discussion of the 1901 Act, both Pakeha and Maori members of Parliament deplored the looting of burial caves.<sup>97</sup> The Crown has acknowledged that there was no specific legislation preventing fossicking until the Antiquities Act 1975.<sup>98</sup> We consider that it hardly needs stating that full protection should have always been available to prevent the desecration of wahi tapu and in particular, of burial sites. While we acknowledge that the Crown was not omnipotent and did not always have the means to prevent desecration, we consider that when the Crown was aware that desecration had or was taking place, then full measures should have been taken to prevent it continuing, to prosecute the desecrators, and to track and return any stolen items. Needless to say, we also consider that Maori burial grounds should have always had equal protection from desecration as that enjoyed by cemeteries in general.<sup>99</sup> We say this with the proviso that for Maori burial grounds to be protected by the Crown, they had to be made known to the Crown, which may not have always been a course Maori wished to pursue.

We consider that the fact that the only practical option available to attempt the prevention of further desecration of Oruarangi was under the Maori Councils Amendment Act 1903, clearly shows that the legislation in regard to the protection of urupa was woefully inadequate. While European members of Parliament may have joined in decrying the desecration of burial grounds, as noted by Swarbrick in relation to the Antiquities Act 1901, we note this decrying did not lead to an acceptable level of protection. Amending legislation after the Maori Antiquities Act 1901 should have explicitly made illegal the fossicking of wahi tapu for taonga.

Fossicking has meant that an unknown number of Hauraki taonga are lost to Hauraki. While we do not hold the Crown directly responsible for the desecration of wahi tapu and the removal of taonga, inadequate legislative protections have led to a sorry state of cultural loss, amounting to a failure of the Crown's duty of active protection.

**20.4 SPECIFIC WAHI TAPU CLAIMS**

Three key dominant themes emerge from the claimants' evidence about the fate of specific wahi tapu. The first theme is that the Crown allegedly failed to set aside specific wahi tapu as

---

97. Swarbrick, p 17 fn 62; doc G8, p 6. The looting of burial caves was an issue which the Te Roroa Tribunal considered in some depth: see Waitangi Tribunal, *The Te Roroa Report 1991*, ch 6.

98. Document AA1, p 300

99. Maori burial grounds and public cemeteries have always been administered separately. Maori burial grounds are excluded under the Burial and Cremation Act 1964 and are instead reserved and regulated by section 338 of the Te Ture Whenua Maori Act 1993 and section 439 of the Maori Affairs Act 1953.

reserves when asked to do so. The second theme is the removal, under the Native Land Act 1909, of alienation restrictions originally imposed by the court, and the associated failure by Maori land boards to investigate intended trusts over reserves. The third theme relates to claims that the Crown failed to protect wahi tapu once the general land on which wahi tapu were located was alienated. We discuss examples for each theme, but do not investigate every alleged failure to protect named wahi tapu. We take this approach in part with an eye to a tightly focused discussion, and in part because we were not presented with enough information to enable findings for each of the specific wahi tapu claims.

#### **20.4.1 The failure of the Crown to set aside specific wahi tapu**

For this first theme, we use as an example the failure of the Crown to reserve from sale the wahi tapu at Te Karaka. We acknowledge that other significant examples were offered by claimants.<sup>100</sup>

##### **(1) *Te Karaka and Tairua***

We have, in sections 14.3.6, 17.4.1(3), and 17.4.1(4), already referred to the Crown purchase of the Tairua block, and the subsequent Parliamentary committee into Mackay's purchasing activities. In finalising the purchase of Tairua in December 1872, Mackay had agreed, at the last minute, to a reserve of 1000 acres, though the reserve was not set aside for some time. Mackay, writing in 1875, explained subsequent events:

I then [after purchase negotiations] agreed to pay two thousand nine hundred pounds and allow a reserve of one thousand acres which was to be selected within three months, and in not more than two blocks. The site of the larger portion of the reserve was fixed at Pukioire, at the head of the navigation of the Tairua river, and the position of the remainder was not determined, some of the natives being in favour of taking it at Te Karaka burial ground, and others near the mouth of the river.

Mackay then endorsed the arrangement on the back of the deed. However, although the owners applied for the reserves within the three months stipulated, Mackay was busy elsewhere for the next 12 months. Peneamene Tanui wrote to Mackay on 11 May 1875 requesting survey of the reserves, and again on 26 May. Tanui was particularly concerned about the urupa at Te Karaka, which he wished to be included as part of the 1000-acre reserve:

---

100. Other claims that we were made aware of under the general theme of the Crown failing to reserve wahi tapu when specifically requested to do so include Wai 705, regarding Hukehuke; Wai 705 and Wai 110, regarding Toumuia; Wai 694, regarding Green Point; Wai 466 and Wai 661, regarding two urupa in the Wharekawa East block and urupa and wahi tapu on Manaia lands. This is not an exhaustive list of such claims, rather it represents the claims highlighted in claimant submissions. There are other such claims mentioned in research reports, though not followed up in claimant submissions.

## 20.4.1(2)

Friend, greetings to you. Friend, we are very much vexed. We do not wish the burial place, known as Te Karaka, at Tairua, to be included within the Government land. We wish twenty acres to be taken there; let it be deducted from the 990 acres at Te Pukioire, leaving there 970 acres. Let there be twenty acres set apart for that burial ground, outside Te Pukioire. All.<sup>101</sup>

Mackay instructed a surveyor to 'lay off the reserve'. Mackay continued:

This was done. Nine hundred and ninety acres were surveyed at Pukioire and ten acres at Te Kutakuta, near the mouth of the river. They applied to me on the 29th May to allow them to take twenty acres at Te Karaka burial ground, and reduce the Pukioire reserve to nine hundred and seventy acres . . . The latter question has not been arranged.<sup>102</sup>

Claimant counsel for Wai 694 argued that Crown's failure to reserve Te Karaka as specifically requested was 'galling'. The Crown, they state, has failed to protect the claimants to the fullest extent practicable in respect of their wahi tapu.

In response to these claims, 'The Crown accepts, particularly in the context of the large size of the Tairua block that it failed to protect the waahi tapu at Te Karaka – and that it ought to have done so'.<sup>103</sup>

**(2) Tribunal comment on Te Karaka and Tairua**

We note the Crown concession that the urupa at Te Karaka should have been reserved as requested, and consider this an appropriate acknowledgement. Clearly, the failure to reserve this wahi tapu, and indeed any wahi tapu when specifically requested to do so, was a serious breach of the Treaty, and the claimants have a resulting right of redress. In addition to negotiated redress, we consider surveying and fencing off urupa that should have been reserved from sale and which are still located on Crown or council land a priority, as well as providing for their ongoing maintenance.

**20.4.2 Removal of alienation restrictions under the Native Land Act 1909 and the alleged failure to investigate intended trusts**

We have discussed the Native Land Act 1909, including the removal of alienation restrictions under section 207 of that Act, in section 18.2.2. Here, we discuss the removal of alienation restrictions from wahi tapu that *had* been expressly excluded from the sale of the land.

---

101. Document G11(a), doc 33

102. Mackay to Colonial Secretary, 17 July 1875, AJHR, 1875, G-5B, pp 2–4 (doc A10, pt 2, p 92)

103. Document AA1, p 310

**(1) Wairotoroto wahi tapu**

As an example of the effect of the removal of alienation restrictions over wahi tapu under the 1909 Act the case of Wairotoroto is outlined.<sup>104</sup> Wairotoroto, a wahi tapu, had been reserved from the sale of the Waikawau block to the Crown in August of 1878. That month, the Native Land Court had confirmed an out of court agreement between Preece (for the Crown) and the owners, that Meha Te Moananui, Hata Paka and Takarei Te Putu would be trustees for the land ‘as a burial Reserve for the people of Ngatitamatera’. The court explicitly stated that ‘the persons so named . . . [are] the *cestuis que trust* in respect of the land immediately preceding their several names.’<sup>105</sup> But the passing of the Native Promises and Contracts Act 1888 changed the status of the three named individuals to absolute owners possessing a freehold interest, although a restriction on the alienation of the land remained except by lease for 21 years or with the assent of the Governor. Then, in August 1916, the Native Land Court approved succession orders for the interests of two of the three owners. The third owner was still living, and had already sold his or her interest. The succession orders were being sought in order that a private sale of the block could be completed. By January 1917, all but an eighteenth share of Wairotoroto tapu had been alienated; this share remained only because its owner was a minor and was therefore represented by a court-appointed trustee.<sup>106</sup>

With the exception of the eighteenth share, the sale was soon complete, and confirmed by the Waikato–Maniapoto Maori Land Board as required under section 217 of the 1909 Act. But the land board had been required by legislation to satisfy itself ‘after due inquiry’ that any sale was in accordance with the law. Under section 220 of the Act, legislative provisions included the restriction that ‘the alienation is not in breach of any trust to which the land is subject’. This should have at least required the board to consult the court minutes, as researcher Mathew Russell suggests, which would have shown that a trust had been intended by the court.<sup>107</sup> But, whatever the extent of the land board’s ‘due inquiry’, it did not establish this fact and, contrary to the legislation, the land was sold as the absolute property of the three original trustees.

**(2) Tribunal comment on Wairotoroto**

Clearly, this example shows a failing by the Waikato–Maniapoto Maori Land Board to fulfil even the most basic requirement that it check for evidence of a trust. While we cannot make a finding on the actions of the Board itself, we do consider that the legislation should have

104. Other examples argued in claimant submissions and evidence include Wai 174, regarding Horahia Opou 5A; Wai 418, regarding Waipatukahu and other wahi tapu; and Wai 177, regarding Te Rereapahau wahi tapu.

105. Order of the Native Land Court, 5 August 1878, BOF C320W-M, MLC (doc A13, pp 11–12). A *cestius que trust* is a life tenancy in which the life tenant has the same powers as a legal trustee.

106. Document A13, pp 13–14, 18–19

107. Ibid, pp 19–20

made it an absolute requirement that boards make thorough investigations of the history of a block before confirming sale. Otherwise, the approval of such sales becomes perfunctory rubber-stamping. This wahi tapu had been intended both to be inalienable and to be held in trust for the wider group. Neither intention survived legislative changes made by the Crown. This was a serious failure of the Crown's duty of active protection under the Treaty.

#### **20.4.3 The Crown's failure to protect specific wahi tapu on the alienation of general blocks of land**

##### **(1) Discussion**

A shared allegation from many claimant groups can be categorised as a failure by the Crown to reserve wahi tapu from sale automatically, resulting in a general loss of wahi tapu without the claimants intending that such sites would be sold along with the surrounding land. For example we note: Wai 714 claims that various wahi tapu are no longer in Ngati Koi ownership; Wai 694 claims regarding the loss of an urupa on Te Kauanga Whenuakite 1; Wai 475 claims in respect of the loss of many wahi tapu around the Whangapoua Harbour; Wai 110 and 177 claims regarding the loss of control over the many wahi tapu on the eastern seaboard of Hauraki; and Wai 355 claims in respect of the loss of many wahi tapu at Hikutaia and Whangamata. Our discussion of this third theme is necessarily general, as few particulars are made out in the claims; rather the core of this issue seems to us to concern the differing cultural presumptions about what would properly follow a sale, in the context of loss of control of land in general.

We note that Tribunal researcher Dougal Ellis in his report on Whitianga suggests that in some instances Maori sold land containing wahi tapu, apparently without specifying their reservation from sale. We agree with Mr Ellis that, aside from the possibility that oral agreements had been made about those wahi tapu, it is unlikely that Maori vendors anticipated that sales of land meant the loss of control of the wahi tapu on the land. Ellis comments that, after sales, Maori tried to protect their wahi tapu on alienated land and 'felt that they were . . . justified in doing so'. Ellis feels that this may explain why Maori often excluded references to wahi tapu from deeds of transfer: 'They would have assumed they would continue the role of policing and enforcing their tapu nature.'<sup>108</sup>

Researcher Phillip Cleaver discusses a wahi tapu in his research report on Kaiaua township. The Ngati Paoa grantees requested that the Opita wahi tapu be reserved from the sale of Opita block (on which Kaiaua township grew) to private Pakeha purchasers in the mid-1870s. Cleaver suggests that the wahi tapu was excluded from the sale by way of an informal agreement which never became formally recognised on title documents. An 1885 survey, prepared for the purchasers, shows that a small area was excluded from the purchased

---

<sup>108</sup>. Document R5, pp 86–88

block, and marked ‘Tapu bush’ on the survey plan. However, there is no mention of this exclusion on an 1886 survey, or in the 1878 award of the court. In 1932 and 1936, petitioners claiming direct descent from tupuna buried in the wahi tapu failed to have the matter reopened through the land court. The wahi tapu has been private land since 1878, despite the informal agreement.<sup>109</sup>

**(2) Tribunal comment**

We are not in a position to make findings on claims included in this section, as the evidence is incomplete in respect of many of the examples cited by claimants, the purchases in the above examples were made by private individuals, not the Crown, and the arguments in submission are of a general nature. However, it is clear to us that not all practical requirements for the protection of taonga and wahi tapu were observed by the Crown. We think it a reasonable assumption by Maori that their sacred sites would be protected, regardless of the actual ownership of the land. Having said that, we also think that, for the Crown to be in a position to offer real protection, it had to be made aware of the sites requiring that protection. The fullest protection that the Crown could have offered would have been the careful vetting of every deed of sale, to ensure that it was always clear what exactly was being sold, and what was being reserved. Important parts of Hauraki heritage were lost through the Crown’s omissions to offer active protection.

Counsel for Ngati Koi argued that, ‘In allowing the greater part of Ngati Koi’s tribal estate to be alienated, the claimants say that the Crown breached the principles of the Treaty of Waitangi in a number of ways . . . Because of this, the claimants have also lost ownership and control of their wahi tapu.’<sup>110</sup> We agree that the key to the loss of control of wahi tapu, where not expressly reserved by Maori, was the loss of control of the land on which they were situated. Whatever the Maori view of their relationship with wahi tapu once the land was sold, the nature of private property rights under the nineteenth century legal system meant that rights in wahi tapu were lost where the land was sold, unless they were expressly reserved. (We trust that under the Resource Management Act 1991 this would no longer be the case.) Once again, these losses reflect the loss of the great bulk of land in Hauraki. We believe redress is properly provided in concert with redress for the loss of land through the various Native Land Court processes, as these losses were part of the same process. For this third theme, we therefore refer back to our findings in the Native Land Court section.

We stress the difference between ‘archaeological sites’ and specific wahi tapu. Archaeological sites are offered protection by legislation, although the onus is on interested parties to register them. In contrast, wahi tapu are ‘living sites’, known to and valued by claimants today. We see one possible way forward to be the establishment of working groups

---

<sup>109</sup>. Document H6, p 10

<sup>110</sup>. Document Y20, pp 40–41



(for which provision already seems to exist under the Resource Management Act), through which tangata whenua in negotiation with the Crown and local authorities could locate and select those 'living' wahi tapu most in need of protection.

#### **20.5 OVERALL TRIBUNAL COMMENT ON TAONGA AND WAHI TAPU**

We have a final general point to make with regard to taonga and wahi tapu. While acknowledging that the legislative protection on offer today might adequately protect both taonga and wahi tapu, protection was not adequate for much of the nineteenth and twentieth centuries. This resulted in real prejudice to Hauraki Maori. Taonga were lost, modified, or exported illegally. Even if new legislation prevents this happening again, nothing can be done under the law to rectify these past losses. The only hope of return would be purchase on an open market should any of the taonga come up for sale, but most Hauraki Maori will, we fear, find such purchases unaffordable. We would urge Claimants and Crown to pursue closer liaison for the purpose of identification and long-term preservation of taonga.

Similarly, real prejudice has resulted from the desecration, modification, and even destruction of wahi tapu sites. While the Crown may not have been directly responsible for all the loss and destruction, much of which resulted from the loss of control of land and the rise of private, non-Maori landholding, the Crown has itself acknowledged that it was responsible for failings in the legislation. We say these failings allowed the destruction of a cultural legacy to continue without prosecution. Moreover, due to the loss of so much land (mainly through Native Land Court processes and Crown purchasing), protection was especially required from the dominant Treaty partner for the remaining sites. As the Crown has acknowledged, where Maori requested reserves to be set aside for urupa or wahi tapu, its fiduciary obligations required the Crown do so. But often it did not happen.

These failings were in breach of both articles 2 and 3 of the Treaty. Article 2 explicitly promised, in the Maori version, 'te tino rangatiratanga o o ratou whenua o ratou kainga me o ratou taonga katoa', that is, in the English version 'the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties'. Clearly, wahi tapu and taonga are covered by article 2. Article 3 promises to Maori the rights and privileges of all British citizens. A basic tenet of citizenship is the right to protect property and chattels, including items of great personal or cultural significance. But Maori spiritual sites and objects were usually treated as less important than the rights of private property owners. We consider that compensation is due for these breaches and the resulting prejudice, to enable Maori to reclaim lost taonga where possible, to foster the skills to assist the creation of new taonga through a vibrant arts culture, and to assist Maori with consultation procedures on taonga and wahi tapu, both within tangata whenua groups and with local government and Government agencies.



We acknowledge the role of the Resource Management Act in the protection of wahi tapu and taonga, and appreciate that this Act is an attempt by Government to provide a holistic approach to the management of resources and taonga. But we also consider that it should be noted that the legislation is complex, and specialist legal advice is currently required for access to the full range of legislative protections on offer. The various protective options provided by the Act are not used consistently by territorial authorities nationwide. We suggest that, for the Resource Management Act to be a more consistently effective tool for Maori (which the Crown has conceded is not always the case),<sup>111</sup> the Government, local authorities, and Maori should work together to ensure an understanding of the processes on offer, as well as a consistent approach to their application. We acknowledge that the Resource Management Act already makes provision for these parties to work together, and we encourage the use of these available provisions for protection of wahi tapu to the fullest extent possible. Use of the existing provisions under the Resource Management Act should be carefully monitored, so that the Crown can put in place effective mechanisms should the existing provisions be less than fully adequate. In the *Report on the Manukau Claim* of almost 20 years ago, the Tribunal observed, and we agree, that wahi tapu protection procedures must be publicised.<sup>112</sup> We note that such a step appropriately involves the full participation of both Crown and Maori as Treaty partners.

---

111. See, for example, the acknowledgement by the Crown of some of the impediments facing Maori in the use of the Resource Management Act 1991 in Crown counsel, 'Foreshore and Seabed: A Framework', December 2003 (Wai 1071 RO1, doc A21), pp 43–44. See also Waitangi Tribunal, *The Report on the Crown's Foreshore and Seabed Policy*, p 86, where the Tribunal notes the Crown's argument from that report that:

Existing legislation (eg the Resource Management Act, the Fisheries legislation and the Local Government Act) already provides mechanisms and processes for the recognition and protection of whanau, hapu and iwi customary rights. *As the implementation of these mechanisms and processes has not always been satisfactory*, they will be considered to identify and remedy impediments to their effective implementation. [Emphasis added.]

112. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, p 93



## CHAPTER 21

### RATES AND HAURAKI MAORI LANDS

#### 21.1 INTRODUCTION

Various Hauraki claimants allege that they lost land due to the pressure of accumulating rates on non-revenue producing lands. From 1893 until 1988, the sale of Maori freehold land to meet rates arrears was allowed for in the rating legislation; some other categories of Maori-owned land, under various legislative amendments, could also be sold to meet rates arrears. The rating of Maori land has long proved vexatious. Historically, local authorities have pushed for more categories of Maori land to be liable for rates. Conversely, Maori have argued that until and unless their land is revenue producing and services are actually provided, it should be exempt.

The debate over rates before this Tribunal does not focus particularly on whether Maori land should be rated at all, but rather what categories of Maori land should be exempt from rating. Historically, many Maori leaders have recognised that Maori land should be rated if it is revenue producing and receiving services. In his report on rates prepared for this inquiry on behalf of the Crown, Robert Hayes comments that the Maori members of Parliament, 'by and large, agreed in principle to Maori being liable for rates, though usually at some future date. They differed at times, however, as to which categories of land ought to be liable and when that liability should commence.'<sup>1</sup> The current legislation allows for exemptions for small areas (two hectares) of Maori land that is in use for a marae, meeting house, urupa, crematorium, Maori reservation, or is made exempt by Order in Council. While customary land has always been exempt from rating, and since very little customary land now remains, the vast bulk of Maori land is liable for rates.

Under the 1988 Rating Powers Act, the power to sell Maori freehold land for rating debt, which had existed since 1893, was removed. Accepting, therefore, that Maori land can now no longer be sold to cover rates arrears (although Maori land compulsorily converted to general land can still be sold), the five rating-specific claims in the Hauraki inquiry that we address below raise some general questions. These are, whether Hauraki Maori land should, historically, have been liable for rates; whether any land in Hauraki was liable for rates that should not have been; what the fate of those lands was; and whether the current rating

---

1. Document R15, p 6

legislation adequately considers the special difficulties facing Maori owners of multiply owned land.

Before turning to investigate five specific claims with regard to the rating of Hauraki Maori land, and then attempting to answer the above questions, we give a brief survey of the relevant legislation and the debates surrounding it. The discussion is drawn mainly from Tom Bennion's Rangahaua Whanui report, *Maori and Rating Law*, as well as the evidence that Robert Hayes prepared for this inquiry.<sup>2</sup> Also helpful was the historical summary on Maori rating in the *Turanga Tangata* report.<sup>3</sup>

### 21.2 MAORI AND RATING LAW : A BRIEF BACKGROUND

Except where occupied by non-Maori, unimproved customary Maori land has remained exempt from rates, but most other categories of Maori land have been liable for rates since the late nineteenth century. A high proportion of Maori land has been classed as 'unimproved' whether customary or freehold; had rating been based on the improved value, even more of this land would not have been rated. But increasing the rates revenue from Maori land has often motivated the drive to improve Maori land, either within Maori ownership or by removing it from that ownership. With the exception of customary land, Maori have been liable for rates assessed on the value of their unimproved landholdings, without consideration of whether these landholdings were capable of paying the rates assessed on them. If the rates were not paid, then they accrued and became a debt against the land.

Early rating legislation was concerned with raising revenue for the construction of roads. In 1871, the Highways Boards Empowering Bill was introduced, and much of the debate on it focused on whether or not Maori should be rated. Some members of Parliament suggested that, because Maori had Crown grants and used roads, they should pay rates, while others noted that some Maori already paid steep customs and excise duties for which they got little in return. Some speakers urged that Maori land not be rated until it was held individually. One suggestion was that Maori contribute through the provision of labour for the building of the roads; another was that Maori contribute land instead. The Maori members objected to rating Maori for roads, saying Maori landowners had not asked for the roads, were too poor to pay and would lose land for rates, contrary to the protections of the Treaty of Waitangi. The final form of the 1871 Act allowed only that Maori land under a Native Land Court certificate of title, or any Maori land occupied by a non-Maori, would be liable for rates.<sup>4</sup>

2. Tom Bennion, *Maori and Rating Law*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997); doc R15

3. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims* (Wellington: Legislation Direct, 2004), pp 649–651

4. Bennion, pp 7–8; doc R15, pp 6–7

Also in 1871, Donald McLean's Native Districts Road Boards Act was introduced. Under this Act, half the members of road boards in native districts were to be Maori. But the Act could only operate in an area where a majority of the inhabitants were Maori, and who petitioned for the Act to come into force over their area. Bennion comments that 'because it was entirely voluntary, Maori groups seem to have been resistant to it, and it did not satisfy the[ir] broader calls for local self-government'. McLean subsequently relied on urging local European road boards to include Maori, and for the time being, regarded the contribution of Maori land and labour as sufficient.<sup>5</sup>

Maori, although using roads to move produce to market, were wary of the rates demands that attached to roads. This became apparent within the Hauraki inquiry district in 1875, over the matter of the survey of the road between Hamilton and Thames. James Mackay wrote to the Native Minister:

The reason the line has not been surveyed over the lands granted to the Natives . . . is that they fear if a road is made through their property that they will render themselves liable to highway rates.

I may mention that this is not a solitary instance of this class of objection; it is not confined to one district, and is constantly urged, as a reason for refusing rights-of-way, that conceding a right of road gives the Government power to rate the owner of the land over which the road passes.<sup>6</sup>

Mackay suggested that it was preferable not to rate Maori than to have the construction of roads continuously interrupted, as this was a greater cost to the economy. He urged, therefore, that all Maori land outside of towns, regardless of its status, should be exempt. Native Department under-secretary H T Clarke supported the call for an exemption, noting that Maori concern over rates was affecting Native Land Court progress. Clarke observed that he did not believe many Maori understood the 'burdens' implicit in a Crown grant.<sup>7</sup>

With the Crown and Native Land Rating Act 1882 and the Rating Act 1882, the fear that roading would increase the amount of Maori land liable for rates became a reality. Under section 6(15) of the first of these Acts, Maori land within a proclaimed native rating district and within five miles of any public road became liable for rates. Maori land within a borough was also made liable for rates under the 1882 Act. Bennion says that by 1883, this affected 3.5 million acres of Maori land nationally.<sup>8</sup> But Major Te Wheoro (the member for Western Maori) argued that Maori land 'should only be rated when the Maori apply to have roads made through their land', noting that Maori already contributed to settlement by the

---

5. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1974), p 269 (Bennion, pp 9–10)

6. Mackay to Native Minister, AJHR, 1875, G-10, p 1 (Bennion, p 10)

7. Clarke to Native Minister, 'Highways and Road Board Acts in Native Districts', 21 June 1875, AJHR, 1875, G-10, p 2 (Bennion, p 11)

8. Bennion, p 20

payment of 10 per cent duty on all dealings in land.<sup>9</sup> This duty was in fact how the Crown recouped rates on Maori land: under the 1882 Act, rates notices were addressed to the Colonial Treasurer and not to the Maori owners. If the rates remained unpaid after three months, the Colonial Treasurer paid them, recovering the expenditure with a stamp duty whenever the land was leased, sold or exchanged for the first time.

Under the Rating Act 1882, all Maori land occupied by a non-Maori was liable for rates. (Under the 1876 Rating Act, there had been an exemption for customary land in the occupation of non-Maori.<sup>10</sup>) Some members of Parliament argued that the 1882 Acts did not go far enough with the rating of Maori land.<sup>11</sup> Others acknowledged that Maori did not necessarily receive benefits from rates and often did not want roads across their land. For example, John Stevens, the member for Rangitikei, said:

There could be nothing more unfair than this: that the Native children, who are supposed to inherit the estates of their fathers, should come into possession of them to find that they had been taxed for about ten years . . . I cannot see the fairness of insisting upon a section of the community being taxed for that which we may consider to be a benefit to them, but which they look upon as a great injury . . . Do they look upon these [building roads, clearing trees, draining swamps] as benefits? By no means; they look upon them as great injuries: and yet we compel them to pay taxation for inflicting that hardship upon them without them having any voice in the matter.<sup>12</sup>

In 1885, in response to Maori concerns over rating, Native Minister Ballance told Maori that he agreed it was unfair to rate land that was 'not in the condition of being used . . . when the land has been leased or sold, then the time will have come for putting on rates; and I infer that no Native will object to pay rates when the land has been leased and is being cultivated'.<sup>13</sup> In meeting with Hauraki Maori (see sec 21.3.1), he commented that he thought that the Government should be very cautious about rating Maori land that had not yet been through the Native Land Court and that was communally owned.<sup>14</sup>

Apart from roading, other rating issues also caused tension. Local authorities were increasingly charged with funding their own local public works, which meant that they were anxious for Maori to contribute rates revenue, especially in areas with significant Maori populations.<sup>15</sup> Local authorities regularly complained to central Government that even when Maori were liable for rates, it was very difficult to get them to pay, especially on

---

9. Bennion, pp 18–19; doc R15, pp 11, 13. In the Legislative Council, Ngatata expressed similar views: 'It is perfectly right that those who live in towns or close to them should pay rates; but I do not see those who live in the remote parts of the Island should be called upon to do so': Ngatata, 8 September 1882, NZPD, vol 43, p 868 (doc R15, p 13).

10. Bennion, pp 12, 15–17; doc R15, pp 10–11

11. Henry Fish, 30 August 1882, NZPD, 1882, vol 43, p 709 (Bennion, p 17)

12. John Stevens, NZPD, 1882, vol 43, p 717 (Bennion, p 18); doc R15, p 13

13. Ballance, 'Notes of Native Meetings', 7 January 1885, AJHR, 1885, G-1, p 17 (Bennion, p 21)

14. Ibid, pp 17, 37 (pp 21–22)

15. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, p 649

multiply owned land (ie, land owned by many owners as tenants in common, often with undefined shares).<sup>16</sup>

Local authorities pressured Government to spread the burden of rates equally on Maori and non-Maori. Conversely, Maori (and some Pakeha) members of Parliament argued that increasing the categories of Maori land liable for rates from those liable at 1882 was unfair: since they had sold land cheaply to the Crown, Maori had already more than fully contributed to local and national infrastructure. Maori continued to stress, as in 1882, that they had not requested many of the roads and railways said to have increased the value of their land for which they were paying rates.<sup>17</sup>

By the Rating Acts Amendment Act 1893, all Maori land was declared subject to rates, except for a number of significant exemptions: Maori land situated more than five miles from a public road; customary land in the occupation of Maori, and land owned by indigenous Maori within a borough, if exempted by the Governor in Council. Non-customary Maori land in the occupation of Maori and outside the boundaries of towns or boroughs was liable for half rates only, and was exempt from special rates. All other Maori land was liable for full and special rates.<sup>18</sup>

Under the 1893 Act, sales of Crown-granted Maori land for rates arrears were permitted, but required the consent of the Native Minister. Alternatively, land for which rates were in arrears could be placed in receivership and leased to pay the debt. Various amendments to the rating legislation followed the 1893 Act (eg, the Rating Act Amendment Act 1896, which introduced the system of a nominated owner who would be responsible for receiving rates demands on Maori land with more than four owners).

The Native Land Rating Act 1904 was a major initiative undertaken by Native Minister Carroll to increase the rates responsibility borne by Maori, by increasing the categories of Maori land that could be rated. (This policy was a *quid pro quo* for his Maori land councils scheme set up under his Maori Lands Administration Act 1900.) In addition to the land liable under the 1893 Act, under the 1904 Act all Maori land within 10 miles of a borough was liable, as was any Maori land that had previously paid rates (ie, Maori land that had previously been leased to a European). Half rates were due on all other Maori land where title had been ascertained (ie, land under Native Land Court titles). Customary land remained exempt. The Native Minister could apply to the Native Land Court for a determination of title on land if the Minister suspected the Maori owners were retaining its customary status for the purpose of avoiding rates.<sup>19</sup> Speaking in the Legislative Council, Mahuta Te Wherowhero (the third Maori King) said:

---

16. Document R15, p 19; see also Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, p 650

17. See, for example, the speeches of Henare Tomoana, Hone Mohe Tawhai, and Major Te Wheoro, NZPD, 1882, vol 43, pp 703–720, 868; Hone Heke and Mahuta Te Wherowhero, NZPD, 1904, vol 128, pp 610–11, 810; Maui Pomare, NZPD, 1924, vol 204, pp 1057–1059 (doc R15, pp 11, 13, 18, 23)

18. Bennion, pp 25–26; doc R15, pp 16–17

19. Bennion, pp 34–35; doc R15, pp 17–18

Speaking directly for myself and my people, I may say that we do not object to being rated, but if you are going to rate us we demand that you should give us the power to deal with our lands, in order that we may be able to get some return out of the land with which we pay rates.<sup>20</sup>

Some Pakeha members of Parliament agreed. For example, ALD Fraser (the member for Napier) said, 'To place the further incubus of rating . . . on the Native race, with their hands and feet tied as they are in dealing with their lands, is ungenerous.'<sup>21</sup>

The trend to increase the Maori rate burden continued. The Native Land Settlement Act 1907, for example, provided that freehold Maori land not currently under a Maori land board and 'not required' by the owners would be vested in the local Maori land board which could lease half and sell half to pay all outstanding debts, including rates.<sup>22</sup> Under the Rating Amendment Act 1910, all half rates on Maori land were abolished. While customary Maori land remained exempt all other Maori land was liable for full rates, although land vested in the Public Trustee or a Maori land board was liable only to the extent that it was revenue producing. The system of using nominated owners for multiply owned land was continued, but the power of the Native Minister to apply for title to be heard on a customary block was dropped. The power of the Native Minister to veto sales of land for rates arrears was also dropped, with the Public Trustee or land boards now taking over this role. Bennion comments that with this Act, 'The bulk of Maori land had finally been brought within the general rating regime.'<sup>23</sup>

Local authorities continued to press for Maori to pay rates owing on their land. The Rating Amendment Act 1913 provided that no alienations of title could be registered against Maori land in rates arrears, but this proved of limited use, as much Maori land did not have a registered title, only a Native Land Court title.<sup>24</sup> Hayes notes that this Act did not help local authorities to collect rates from communally owned land, as 'It seems that the local authorities had practical difficulties in naming an owner as the occupier where that land was not occupied by any of the owners.'<sup>25</sup>

The ability of Maori to pay rates was limited by title difficulties. Mr Hayes comments for the Crown that Maori faced practical difficulties 'in the effective utilization of rural land rendered by earlier partitioning of that land into uneconomic units and/or by the fragmentation (ie the fractionation) of interests.'<sup>26</sup> For these reasons, Maori could utilise their land and make it productive and rates-producing only with great difficulty. Ngata frequently

---

20. Mahuta Te Wherowhero, NZPD, 1904, vol 128, p 810 (doc R15, p 18; Bennion, p 31)

21. ALD Fraser, 21 October 1904, NZPD, 1904, vol 131, p 352 (Bennion, p 32)

22. Bennion, p 35

23. Ibid, p 37; doc R15, pp 18–19

24. Bennion, p 38; doc R15, p 19

25. Document R15, p 19

26. Ibid, pp 25, 27



commented that when conditions were the same for Maori and Pakeha, then both should be rated in the same way, but not until then. The Stout–Ngata commission had noted in 1908 that ‘only successful farmers could bear rates demands.’<sup>27</sup>

In 1918, Native Minister Herries summed up the Government’s past approach to the rating of Maori land:

Native land being held in common by the owners, who in many cases not residing on the land in some cases not residing in the district, has always been treated by the Legislature in a different way to land held in severalty. The owners have no individual rights in the land until their interests are defined and separated. Hence when they cannot individually make use of their land, it has always been considered unfair to treat them as if they were able to get as much enjoyment out of the land as they could if it were held in severalty. It would be unfair by accumulating rates in the shapes of liens on land held in common to deprive innocent holders of interests residing in outside places, perhaps remote from the block and entirely ignorant of any such charges, of their interests in such land. It would be contrary to the universal policy of all New Zealand Governments to allow Native land to be sold for non-payment of rates or to be so charged with liens so as to destroy the equity of redemption, and thus render a Native landless without giving him a chance of occupying the land and getting enough out of it to pay the rates. An owner holding in common is in that position. The remedy for this is individualization and that process is, I am glad to say, proceeding rapidly throughout the North Island.<sup>28</sup>

Demands from local authorities for more rating of Maori land continued, leading to various Government inquiries after the end of the First World War. Maori at these inquiries stressed that they did not think it fair that unimproved Maori land should be rated. Finally, in 1924, the Government established a committee to consider ‘this most difficult and thorny question’, the ultimate outcome of which was the Native Land Rating Act 1924.<sup>29</sup> Under the 1924 Act, aside from customary land, all Maori land was liable for rates, with the specific exceptions of land on which an urupa, a meeting house, or a church was situated (all exceptions not exceeding five acres).<sup>30</sup>

Rating legislation in the second half of the twentieth century was concerned with bringing Maori land into production, and therefore making it able to bear rates.<sup>31</sup> The Maori Purposes Act 1950 was intended to promote this purpose. Under section 34, the Maori Land Court could appoint the Maori Trustee to act as agent for the owners of Maori freehold land

---

27. Bennion, pp 36, 67–68

28. Herries to Minister of Internal Affairs, 24 May 1918, MA20/1/1, vol 1, pt 2, Archives NZ (Bennion, pp 40–41); doc R15, p 20

29. Prime Minister Coates, NZPD, vol 205, p 1050

30. Bennion, pp 46–47; doc R15, pp 21–22

31. See, for example, the recommendations of the Pritchard–Waetford committee and the debate that ensued in Parliament and in the consequent Maori Affairs Amendment Act 1967: Bennion, pp 71–72.

if it met one or more of the following conditions: it was unoccupied; not cleared of noxious weeds; charging orders for unpaid rates had been made; the owners were not farming and managing the land diligently and the land was not being used in the owners' or the public's best interest; or if no beneficial owner could be found. These provisions had to be proved before the court and then ratified by the Minister of Maori Affairs. The Maori Trustee could sell the land 'as a last resort' if it were incapable of being profitably used.<sup>32</sup> Otherwise, alienation was only by lease, the aim being that the beneficial owners would retain title, but not the immediate use of their land. In their book on the Maori Trustee, G and S Butterworth comment that the appointment of the Maori Trustee as a receiver for blocks that had not paid their rates was an 'unpopular policy considerably pursued during this period'. The authority to use the Native (later, Maori) Trustee had actually existed since 1925, but was not used much until after the 1950 Act. Unpaid rates were becoming an increasing concern 'as Maori simply left uneconomic land and moved to the towns for work'. By 1961, the Maori Trustee was receiver for 341 blocks totalling 46,000 acres.<sup>33</sup> Bennion comments that evidence he has seen suggests that section 34 of the 1950 Act, and its 1953 successor, was not often used on the basis of rates alone.<sup>34</sup>

The 1950 Act was followed up with the Maori Affairs Act 1953, under which the Maori Trustee was *required* to purchase 'uneconomic' interests, valued at £25 or below, and resell them to other Maori individuals or incorporations. This was called the 'conversion programme', aimed at halting the fragmentation of title caused by a century of native land legislation.<sup>35</sup> A significant impact of the conversion programme was that all 'converted' land became general land subject to general law, and liable for full rates. The programme was extended to Maori reserved land in 1955, and then ceased with the passing of the Maori Affairs Amendment Act 1974.<sup>36</sup> However, any such land that remains as general land in Maori ownership today is still vulnerable to sale for rates arrears.

Under the Rating Act 1967, the Maori Land Court could consider alienation of a block of freehold Maori land in order to promote its 'effective and profitable use'. This provision was repealed by the Maori Purposes Act 1970. Also in 1967, the Maori Affairs Amendment Act was passed, based on some of the recommendations of the Pritchard–Waetford report. Waetford and Pritchard noted that there were 3,906,565 acres of Maori land left, of which more than a quarter (1,186,096) remained unoccupied and undeveloped. Of that land, 515,026 acres were identified as 'suitable for development', 399,844 acres were deemed suitable only for forestry, and 271,226 acres were deemed 'unsuitable for development' – that is, 671,070 acres or over half of the remaining unoccupied land were of marginal or no

---

32. Part III of the Maori Purposes Act, as discussed in G V and S M Butterworth, *The Maori Trustee* (Wellington: Maori Trustee, 1991), p 82

33. Butterworth and Butterworth, p 83; Bennion, p 70

34. Bennion, p 70

35. Butterworth and Butterworth, p 84

36. *Ibid*, p 85

potential use except, in the case of some, forestry.<sup>37</sup> Waetford and Pritchard were acknowledging that, while the thrust of the legislation of the mid to late twentieth centuries was the development and use of Maori land, a significant portion of that remaining land was marginal or unusable; the best lands had gone. But the remaining land, unless customary, continued to accrue rates debts.<sup>38</sup>

The Rating Powers Act 1988 was intended to consolidate the rating power of different types of local authorities. The exemptions of up to five acres (2.03 ha) for meeting houses, marae, and urupa were retained. The exemption of customary land from rating also remained, and the power to sell Maori land for rating debt was removed.<sup>39</sup>

An important new piece of rating legislation was the Local Government (Rating) Act 2002. Because the Act only came into force on 1 July 2003, it is too early to test the effectiveness of any relief provided by the Act, but the Crown made submissions on the Act in its closing submissions for these proceedings, and we set out some points from those submissions. In brief, the Crown submits that the 2002 Act increases the categories of non-rateable Maori land to include burial grounds, crematoria, Maori reservations, and Maori freehold land made non-rateable by Order in Council. All non-rateable categories of Maori land can, however, be charged targeted rates but only in respect of water supply, sewage disposal, or waste collection, while the Act 'expressly provides that such targeted rates can only be levied if the service in question is actually provided to the land'.<sup>40</sup>

If the land in question is not exempted, rates 'must be made'. That is, local authorities 'have no discretion as to whether or not to levy rates and charges on that land'.<sup>41</sup> The Crown notes that rates are not just in return for the provision of services, but are in fact 'both a general tax on property and a payment for services'.<sup>42</sup>

The Crown further submits that the effect of the legislation can be softened by the use of differential rating, so that properties which are not exempt from rating, but which are, for example, uneconomic, undeveloped or landlocked – which the Crown acknowledges 'may be manifestations of the multiple ownership of Maori land' – can be provided with some relief. However, 'it is unlikely that such a category could be defined so as to apply only to land in Maori ownership'.<sup>43</sup> We understand this to mean that the new legislation offers the possibility of relief for multiply owned Maori land because it tends to be uneconomic or undeveloped, and not because it is Maori land. We note these potential softening provisions have not yet been tested in any submissions or evidence currently before the Tribunal.

---

37. 'Report of the Committee of Inquiry into Laws Affecting Maori Land and Powers of the Maori Land Court'. 1965, apps C, D (Bennion, pp 70–71)

38. Bennion, p 72

39. Ibid, p 73

40. Document AA1, p 275, app A

41. Ibid

42. Ibid, p 279

43. Ibid, p 275

**21.3 THE RATING OF HAURAKI MAORI LAND**

Rating was raised as an issue in almost every statement of claim in the Hauraki inquiry. However, only the five cases discussed below were substantially argued before us, and we can only make findings or give comments on them. Because the specifics of each case are unique, we set out the submissions on each one in turn; our findings or comments follow each case. At the end of the chapter, we give general comments.

**21.3.1 The Thames to Hikutaia Road: the 1877 rates exemption agreement****(1) Background**

The construction of the Thames to Hikutaia Highway across Maori land was a contentious political issue in the early 1870s. Aside from Maori disquiet over being rated for roads for which the land had been taken without compensation, new roads inevitably crossed Maori lands and opened them to the pressures of the new economy and polity. But Thames Maori held up construction of the Thames–Hikutaia road because they were anxious over its rating implications.<sup>44</sup> To assuage the anxiety over any rating implications from the construction of the Thames to Hikutaia road, on 19 May 1877 the Thames County Council signed an agreement with Hotereni Taipari, W H Taipari, Hoani Nahe, and Hone Ropiha. The agreement exempted Maori from paying rates ‘now or at any future time’:

This is an agreement entered into by us the Chairman and Members of the County Council in consideration of the conditions upon which the Maoris allow a road to be made over their lands extending from Te Totara to the Matatohi [Makatohi?] Creek or to Hikutaia. That is the lands of all the Natives who are willing to give up the same for a road or shall at any future time do so. The conditions we hereby agree are as follow:

1. All sacred ground or burial places adjoining or adjacent to the said road we agree to fence with a good substantial fence . . .
2. All cultivations by the sides of the said road we agree to fence in . . .
3. We agree to purchase and pay for in money the portions of Maori land that are taken up in forming the road . . .
4. *The Natives are not now or at any future time to pay rates or the generations succeeding them.*
5. We who at this time from the Thames County Council hereby make valid the above conditions and enter into them on behalf of ourselves and all who shall succeed us as members of the said Thames County Council and the same shall continue to be in force should the County or the boundaries thereof be altered by this Act of Parliament or by any Government in power in this District.

---

44. There was also a problem with the Thames to Tauranga county road over public works issues, discussed in chapter 23.

6. In the event of any of the above conditions being broken by us the present Council or by any subsequent Council or any District Government or should any Act be passed by the Assembly which the Maoris are made liable to pay Rates similar to those payable to Road and Highway Boards or should any notice be printed in the New Zealand Gazette by authority of the Legislative Assembly or by an Order in Council whereby the Natives are made liable to pay road rates. Then it shall be lawful for the said Natives or any one of them to close up and fence across the said road to the extent that all traffic on the same shall cease until such time as the Act power or Authority causing the Natives to pay rates shall be rescinded and then and not until then shall the said fence or obstruction erected on the said land be removed. [Emphasis added.]<sup>45</sup>

Mr Bennion comments that this 1877 Agreement between Maori and local authorities appears to be unique.<sup>46</sup> He observes that its reverberations continued to the 1960s. Anderson notes that for Maori, 'the agreement had been signed in goodwill, had allowed for the opening of the upper valley and had set a pattern of relations for the future wherein Maori would be consulted'. Claimant John McEnteer also emphasises the importance of the agreement: 'The agreement was seen by Maori as forming a framework for a relationship which could exist between Maori and local government. It was treated with utmost importance by those Maori who entered into it'.<sup>47</sup>

However, the rates exemption was soon challenged. In 1885, the council sought rates of £421 11d. In response to the levying of rates, the agreement was brought to the attention of Native Minister Ballance when he visited Hauraki the same year. Taipari told Ballance that Maori should not be rated 'for the country road for the 40 or 50 miles from Tararu into the interior'. Tamati Paetai told Ballance that:

He was the one who threw open his land for the country road. The reason was that a law was made then that the Maoris should not be charged rates. That arrangement extended wherever the road went, up to the end of the Hauraki boundary.<sup>48</sup>

Ballance, however, refused to recognise that any 'private' agreement could bind the Crown, and argued that roading improved the value of Maori land and therefore Maori should contribute to roading. But Thames Maori took it that Ballance did ultimately accept the agreement when the 1885 demand for rates was withdrawn.<sup>49</sup> In additional apparent recognition, in 1886 native agent George Wilkinson asked Hoani Nahe on behalf of the Government for the names of the lands which Maori understood were to be exempted from

---

45. Copy of 1877 agreement, MA1 20/1/58 (pt 1), Archives NZ (doc A9(a), pp 158–160, 163); doc X39(c)

46. Bennion, p 15

47. Document F21, p 4

48. Tamati Paetai, AJHR, 1885, G-1, p 39 (doc J8, p 135)

49. Document A9, pp 130–131; doc Y1, p 151

rates, and whether or not the council had since demanded rates for this land.<sup>50</sup> There the matter rested until the 1920s (although in the meantime some of the Maori land involved was bearing rates charges; for example, Hikutaia 1G3 block paid rates of £2 3s 4d for the year ending 31 March 1917.)<sup>51</sup>

In 1925, the Thames County Council applied to the Native Land Court for charging orders for rates arrears on some 65 blocks in the district. Maori objected, citing the exemption provided by the 1877 agreement, but the court found that the agreement had 'no legal force or effect' since no authority was conferred on the council to free any property from the statutory burden of rates. A local branch of the Young Maori Party movement, the Young Maori Mutual Advancement Association, protested to the Government, reminding it of the 1877 agreement. As a result, by Order in Council (gazetted 20 February 1930), the Government exempted 31 blocks from the Rating Act 1925. Anderson says that some blocks that abutted the road were missed out, as were all partitions of parent blocks that no longer joined the road. Hori Watene therefore also objected, pointing out that the agreement had allowed for the opening of the whole district. Watene stated that the intention of the agreement had been to cover 'the lands of all the Natives who are willing to give up the same for a road or shall at any future time do so', and that their provision of land for other roads in the district should be viewed in the light of that expectation.<sup>52</sup>

Nothing further happened until the 1960s, though the council objected that some Maori who were in a position to pay rates were using the agreement to avoid doing so. Maori continued to seek to have more land recognised as covered by the agreement. On 18 October 1960, the county clerk wrote to the Minister of Maori Affairs about the matter, and was advised that the Government would prefer that the council and Maori should come to an independent agreement. Viewing this as an impractical option, the council instead applied to the Maori Land Court for a cancellation of the 1930 Order in Council, but the Maori Land Court dismissed the application, citing lack of jurisdiction. The county council again approached the Minister, who agreed that this was indeed a matter for the Maori Land Court, under section 453 of the Maori Affairs Act 1953. Although Hauraki Maori argued before the court that the original agreement had been made in a 'spirit of goodwill . . . providing a pattern of relationships for the future', Judge Prichard recommended that the exemption be phased out over a five-year period. This proposal was endorsed by the chief judge, and gazetted on 16 August 1962, the termination of the agreement to take effect by 1 April 1966.

Thames Maori claim that they should still be covered by the 1877 agreement. David Taipari told us that this remains a live issue for Ngati Maru, and that they have recently

---

50. Wilkinson to Nahe, 1 July 1886, MA1 20/1/58 (doc J8, p 135)

51. Document J8, p 136

52. Hori Watene to Minister of Maori Affairs, 10 March 1930, MA1 20/1/58 (doc A9, p 134; doc A9(a), pp 177–179)

been embarrassed by the council publishing names of those in rates arrears. 'Amongst these listed were whanau of Ngati Maru who maintain their ancestral land and are covered by the agreement.'<sup>53</sup> Taipari said that he contacted the Mayor on seeing the list and advised him that Ngati Maru considered the 1877 agreement still to be in effect. The mayor was surprised to hear of the agreement, and undertook to investigate further. A series of meetings were held between Ngati Maru and the council, and after hearing Ngati Maru's position, the council said they would report back. At the time of hearing, Taipari said they were still awaiting the council's response. McEnteer also talked of their anger at the council's action in publishing the list of defaulters. He thought the council should have considered the 'political sensitivities' flowing from that action, and noted that the land covered by the notice had been compulsorily converted from Maori freehold land to general land following the Maori Affairs Amendment Act 1967.<sup>54</sup> Sam Napia, the chief executive of the HMTB, made the same point, noting that the council was 'big enough to admit its mistake', but should not in the first place have thought it appropriate to humiliate Maori publicly for the council's mistake in charging unjustified rates. Napia stated that some of Hauraki's land base had been lost 'due to the non-payment of rates and local bodies' demands for land in satisfaction of debts'. Of the remaining Hauraki tribal estate, 75 per cent of blocks do not earn an income, and around 37 per cent are without legal road access. (Presumably, much of this land is still charged rates.) Napia also considers local authorities to be legislative organs of the Crown, and so inseparable from central government.<sup>55</sup>

We note that the council commissioned research to identify rate revenue losses and the lands affected (reproduced as appendices to Taipari's evidence).<sup>56</sup>

## **(2) Claimant and Crown submissions**

Although the 1877 agreement was clearly intended to be comprehensive, it did not make clear which Maori land was covered, nor what either party meant by 'rates'. These were matters for submission by counsel in this inquiry.

Claimant counsel interpreted the agreement to mean that Maori owners of land from Te Totara (at Thames) to Hikutaia would be exempt from all rates in perpetuity, as clause 4 seems to indicate.<sup>57</sup> Claimant counsel noted that the 1877 agreement came about because of Maori apprehensions over the results of the Highways Boards and Empowering Act 1871, and the 5 per cent provisions for roading under the Native Land Acts. Hauraki Maori

---

53. Document x39, p 16

54. Document F21, pp 6–8, app B

55. Document H44, pp 8, 10, 14

56. Documents x39(a),(b)

57. Document Y1, p 149. Document x39(a) identifies the land covered by the agreement from Te Totara in the north and Hikutaia to the south as falling within 67 parent Maori blocks, which are listed and shown on maps within the document.



‘insisted that they be exempted from rates before they would agree to the construction of the road through their land.’<sup>58</sup> Their understanding was formalised with the 1877 agreement.

Claimant counsel argued that the Crown has consistently ‘read down’ the agreement, and has never given permanent effect to any part of it. ‘It is submitted that the 1877 Agreement should have been given an interpretation consistent with its language and applied consistently by both Local and Central Government. To do otherwise was a breach of the duties of utmost good faith and active protection.’<sup>59</sup>

Crown counsel, on the other hand, notes that at 1877, Maori land was liable only for road rates. Crown counsel maintains therefore that ‘the agreement contemplated rates collected for roading, it did not extend to rating for other services. The agreement, if in fact it was legally binding, only applied to the levying of rates that were in contemplation at the time.’<sup>60</sup> Moreover, the Crown states that, regardless of the merits of the agreement, the council could not bind the Crown to any exemption. However, the Crown considers that the council did waive the payment of all rates (presumably on Thames Maori land, though we note that some Maori were paying rates in the 1920s) until 1933, and then subsequently for 31 properties.<sup>61</sup>

The Crown notes that, when Ballance met with Maori at Thames in 1885, the Crown was made aware of the 1877 agreement. Since then, the Crown had acted in a manner consistent with its Treaty obligations. The 1931 settlement was always seen as a temporary measure, and reflected the Crown’s hope that the parties would solve the issue amicably and through negotiation. The Crown also on occasion pointed out the obligations of the county council, while using its Order in Council powers to allow an arrangement to be reached. The matter was then referred to the Maori Land Court for a ‘practical solution.’<sup>62</sup>

Crown counsel stressed the Crown’s careful approach to the rating of Maori land. Though Crown policy was always that Maori should pay rates, there was also always recognition from the Crown of ‘the special circumstances applying to Maori land which meant special rules and protections had to apply to prevent an unfair burden falling on Maori and resulting in alienation.’<sup>63</sup> The Crown acknowledged that ‘the rating burden may not have always been fairly applied to Hauraki Maori’, but submitted that contemporary evidence shows local authorities are now taking ‘particular difficulties relating to Maori land’ into consideration when applying rating policy and legislation.<sup>64</sup>

---

58. Document Y1, pp 149–150

59. Ibid, p 152; doc AA14, p 54

60. Document R19, p 7; paper 2.227, p 21; paper 2.550, p 41; doc AA1, p 261

61. Document R19, p 7; paper 2.227, p 21; paper 2.550, p 41

62. Document R19, p 7; doc AA1, pp 264–265

63. Document R19, p 8; doc AA1, p 258

64. Paper 2.550, p 42; paper 2.227, p 21; doc AA1, pp 269–270



**(3) Tribunal comment on the 1877 agreement**

On the face of it, the Crown position, that the agreement could only have been intended for the categories of rates contemplated at the time of the agreement, seems reasonable. Maori were focused on road rates, and this agreement was made to allow a road through Maori land. Other evidence also tends to support this position. Clause 6 of the agreement, for example, guards against the agreement being broken by making Maori ‘liable to pay Rates similar to those payable to Road or Highways Boards’. We note also Tamati Paetai’s evidence to Ballance that the arrangement not to pay rates ‘extended wherever the road went, up to the end of the Hauraki boundary’. We therefore accept that the agreement covered road rates, rather than all rates. (We can only speculate that Maori would have intended it cover all rates had they realised they would be liable for other than road rates in the future.)

Having accepted that the agreement pertained to road rates, we also accept that the council in signing the agreement could not by that action bind the Crown. Nevertheless, both sides entered into the agreement in good faith. Maori *and the council* believed this to be a binding agreement and were anxious to make it as comprehensive as possible, taking care to bind future councils and covering any Acts of Parliament. We think that Maori were encouraged to believe that the council then, and any future permutation of local government since, was bound by the agreement. Because of the political context of putting roads through the Thames–Hikutaia district at the time, Maori viewed the council as representing the Crown, and local government as an extension of central government. Both the council and Maori intended the exemption to continue in perpetuity.

We think it unlikely that Maori would have signed the agreement had they known that the council was not, for these purposes, ‘the Crown’, or that the agreement would be for a limited time only. We think Maori should have been exempt indefinitely from road rates for land on which this road runs. For example, having this road constructed across their land should not have brought Maori under the provisions of the legislation that allowed for the rating of Maori land within five miles of a public road. The 1930 Order in Council exempting 31 blocks from the Rating Act seems to us to have tried to give effect to a similar understanding, whether or not it covered all the right blocks of land (we were not presented with sufficient evidence to be able to judge this for ourselves).

We do not have the jurisdiction to re-litigate the 1960 decision of the Maori Land Court, but we do note the Government’s involvement in referring the council to section 453 of the Maori Affairs Act 1953, and consider that the Crown’s good faith is involved in the following respects:

- The 1877 agreement was clearly a reflection of the political reality at the time. Thames Maori owned and controlled entry into this valley, and stipulated recognition of their rights and of that control in return for access. Both sets of signatories to the agreement entered into a relationship voluntarily. Maori stress this aspect of the agreement. The

key in any relationship is ensuring that an equitable balance remains between the parties. We think that the fact that the political reality later changed, with the local authorities gaining most of the power to manage land for public purposes in their respective districts, should not be used against Maori.

- The agreement, like the Treaty itself, was signed in good faith by both parties. It is clear that the exemption from road rates was intended to be permanent. Therefore, under a strict interpretation the council should have waived all rates pertaining to roading over the relevant land in perpetuity. The difficulty today is in knowing just what proportion of rates a road rate is, as well as which particular lands an ongoing exemption should have covered. We note that the council has begun some research into what blocks of land might have been covered by the agreement.<sup>65</sup>

We think it understandable that Maori did not pay rates that were levied by the local authority while they believed themselves exempt by the 1877 agreement. We note that the council is seeking to present its own solution to the issue. We hope there is now the potential in current legislation to achieve the right balance between local authorities and Maori landowners.

We note the concern expressed by claimants over the vulnerability of former Maori land ‘converted’ under the 1967 Act into general land. No protections cover this land. We have found earlier in this report that the ‘conversion programme’ was in breach of the Treaty and did not offer Maori landowners any protection or recognition of Treaty rights (see sec 18.4.6(3)).

### 21.3.2 Thames township

Dr Anderson reports that no land at Thames township was covered by the 1930 settlement, and that outside the 31 blocks exempted from rating, the Thames county and borough councils actively pursued the sale of Maori land for rates arrears.<sup>66</sup> Mr Hayes agrees that the 1877 agreement did not cover any Thames township lands. He provides evidence that Maori were paying rates in the town by at least the early 1920s, without any apparent evidence of opposition to the rates, or any appeal to the 1877 agreement to exempt them.<sup>67</sup> With no evidence to assist us as to whether township lands should have been covered by the 1930 settlement, we start from the factual position that Maori land in Thames township was rated. In this section, we explore the fate of Maori land in rates arrears in the township.

---

65. Documents x39(b), (c)

66. Document A9, p 135

67. Document R15, p 5; doc R33, p 31; see, for example, Mr Hayes’ evidence that collection of rates from Maori township lands averaged around 80 per cent in the early 1920s (doc R15, p 39)

**(1) Background**

In the late 1920s and early 1930s, Thames township was hit particularly hard by the Depression, because the borough council had borrowed heavily for public works in earlier decades (on the basis of a higher population and an anticipated large revenue from gold). By the early 1930s, the council was defaulting on its loan repayments.<sup>68</sup> Following an audit by the Department of Internal Affairs, Commissioner C L Grange was appointed to manage the finances of the borough. One of Grange's main tasks was to increase the rates revenue, by recovering unpaid rates as well as increasing the percentage of rates paid on time.<sup>69</sup> Many Thames ratepayers were in default at the start of the 1930s: the Internal Affairs audit had noted that judgments for rates arrears of £6458 had been obtained, but of this amount, only £1293 had been collected by September 1931. The audit report noted that there was little point in the council proceeding to the sale of properties in arrears as 'there is no demand in Thames for business or house property'.<sup>70</sup> Included among the defaulters were two prominent Maori landholders: E H Taipari and the Stewart whanau.<sup>71</sup>

Grange achieved a 60 per cent collection level of rates levied in the 1932 to 1933 year. The Under-Secretary of Internal Affairs and asked Grange for a breakdown of defaulters, and Grange identified eight categories of them. 'Native land' was listed seventh, Grange commenting that 'There is a considerable area of Native Land in the borough and this accounts for a substantial proportion of the 35 percent of unpaid rates'.<sup>72</sup> In June 1933, Grange also commented that 'The fact that a large proportion of rates on native land were not paid was an important factor in crippling the Council's finances. No less a sum than £7,135 is owing for rates on native lands for the past five years'.<sup>73</sup>

Grange then commented as to his policy for recovery of rates: 'Equal pressure is being applied to all ratepayers and an efficient follow up system is in operation. The threat of selling the property for satisfaction of rates is of little value in many cases as plenty of ratepayers would be delighted to be relieved of their holdings'.<sup>74</sup>

In his report on the impact of rates on Maori land ownership in the Thames township, Mr Alexander alleges that Grange's comments reveal a disproportionate emphasis on Maori defaulters when by far the greater number of defaulters were owners of general land.<sup>75</sup> Dr Anderson supports this, noting that, though much was made of the percentage of arrears

68. Document F1, pp 4–5; doc R15, pp 27–30

69. Document F1, p 5; doc R15, p 32

70. Supervisor Local Bodies Audit to PM Forbes, 28 September 1931, IA64/24, Archives NZ (doc R15, pp 30–31)

71. An important ancestor of the Stewart whanau was Rapana Maunganoa, whose son-in-law was David Stewart.

72. Grange to Under-Secretary, Internal Affairs Department, 1 April 1933 (doc F1(a), B1.3–1.4; doc F1, p 9; doc R15, p 36)

73. Grange to Secretary Native Land Rates Committee, 9 June 1933, MA20/1/14 (doc F1, p 9)

74. Grange to Under-Secretary, Internal Affairs Department, 1 April 1933 (doc F1, p 9; doc R15, p 37)

75. Document F1, p 11

owing on Maori land, European-owned land owed 'triple the amount owed by Maori for the same period'.<sup>76</sup> Mr Alexander says that, as at September 1933, arrears of £29,528 were owed on township lands. Maori land made up 15.85 per cent of the arrears, or £4679, not £7135 as Grange recorded. However, of the amount owed by Maori, any in arrears for more than two years and not secured by charging order was not collectable. This resulted in the writing off of £1977 of rates owing on Maori land.<sup>77</sup> Mr Hayes considers that Grange's description of the significance of the arrears owed on Maori land was reasonable, 'given the greater difficulty in recovering rates on Maori land'.<sup>78</sup>

## **(2) *Taipari lands***

EH Taipari was said to owe £2946 of the amount of rates arrears owed on Maori land. In February 1934, Taipari and the council came to an agreement over the arrears, under which Taipari transferred a number of his town properties to the borough council in return for a 'complete clearance' for all rates due to both the council and the harbour board. Grange commented that many of the properties transferred were 'very desirable ones in good localities. When the properties are realised, they should produce more than the £2361 owing on them. In the meantime, the rents will go a long way towards meeting current rates'.<sup>79</sup> The question suggests itself to us, why was so much of Taipari's land transferred, if the rates could have been paid from rents.

In addition to the transfer of Taipari's land, the Native Land Court made charging orders for four other Maori-owned properties, but refused vesting orders to the Native Trustee for compulsory sale on three of these properties. The court commented that it was not prepared to submit vesting orders to the Native Minister for his consent, but would consider appointing a receiver (as provided for in legislation). Following this decision, Te Hape North 1A was leased under receivership, while the rates owing on Te Roto 1 block were paid by the rent from Rurunui D block, owned by the same person. Mr Alexander comments that this climate of rates charging orders would have disadvantaged Taipari in his negotiations with the council, 'and almost certainly forced him to make an agreement on unfavourable terms'. There was no indication that Taipari had received independent valuation advice, as to whether the amount of land he parted with was fair for the rates owing. Mr Hayes responds that, because the agreement was made within some five days of the court hearing, 'it is likely that [solicitor] Poulgrain represented Taipari in these negotiations as he represented Taipari in the court hearings'. Mr Hayes also says that Taipari 'had a reputation for being savvy in his dealings with local authorities', but in the absence of any detail on the value of Taipari's

---

76. Document A9, p 135

77. Document F1, pp 10–11; doc R15, pp 41, 54 fn 162

78. Document R15, p 36

79. Document F1, pp 10–13; doc R15, p 54

property that was being transferred to the council or on the rates owing, 'It is difficult to reach an informed view as to the equality of the exchange.'<sup>80</sup>

### (3) *The devaluing of township land*

It seems that Government valuations at the time were considerably higher than prices being achieved on the open market, that is, where a sale could be made at all. In 1933, the nation-wide native land rating inquiry heard from solicitor EJ Clendon representing the Thames Borough Council, that most Maori-owned sections in Thames 'had no great commercial value, no buildings upon them, and no chance of realising a sufficient price to wipe out the rating arrears even if put up for sale.'<sup>81</sup> Clendon noted the rates owed by the Stewart estate – cleared only by the sale of other land – and by Taipari. Clendon blamed the Maori land board for failing to arrange for the sale of other Taipari land to cover the debt, but the board would give approval for sale only if the purchase price met the Government valuation. Clendon said:

The bodies I represent consider that the Native land should be classed as European land . . . they consider that if the Rating Act were amended so as to put the Native Land on the same footing as European land it would operate quite well as far as the . . . local body is concerned in collecting rates. In this borough the capital value is getting high and the Native is unable to sell his land unless he can prove to the Maori Land Board, which passes the transfer, that he is getting Government value.'<sup>82</sup>

Clendon continued that he thought a lot of Maori land could be sold 'if the Native were allowed to take a reasonable price', and gave the example of Taipari, who by 1933, owed £3000 to the Borough in rates arrears. Taipari had himself suggested that the borough should take some of his land in settlement:

[Taipari] said 'Take the vacant lands I have here and give me a reasonable price, but do not take the only few buildings from which I get rentals.' The Native would sell his land at the Government valuation, but the Borough will not take it except the pickings. So on the one hand the borough is unable to collect rates, and the Native on the other hand is unable to sell the land at the price the land is valued at.'<sup>83</sup>

---

80. Document R15, p 67

81. Evidence of Clendon, 14 June 1933, to Report of Committee on Rating of Native Land, MA20/1/14, pt 2 (doc A9(a), doc 16, pp 395–396; doc A9, p 136)

82. Minutes of submissions made by EJ Clendon, solicitor for Thames Borough Council and Thames Harbour Board, and by D MacKay, county clerk, for Thames County Council, 14 June 1933, MA1 20/1/14, pt 2, pp 390–403, Archives NZ (doc R15, p 68)

83. Evidence of Clendon, 14 June 1933, to Report of Committee on Rating of Native Land, MA20/1/14, pt 2 (doc A9(a), doc 16, p 392; doc A9, p 137; doc R15, pp 67–68)

The chairman of the inquiry asked for an explanation as to why Taipari's lands were valued so highly if they could not be rented. He suggested that Taipari's properties might be 'unduly highly valued', and wondered why Taipari had not gone to the Valuation Court to have his valuations reduced.<sup>84</sup> Indeed other landowners in the town had done just that. The deliberate devaluing of their land under section 45 of the Valuation of Land Act 1925 was, according to Mr Hayes, Grange's 'bête noire'. In practice, under this Act, landowners could offer land to the Crown at a reduced valuation, and if the Crown declined to purchase at the nominated price, then that price automatically became the new valuation. Grange highlighted one case where the value of a vacant section was reduced from £160 to £1, 'because the owner had offered the section to the Crown for £1 and the offer was refused'.<sup>85</sup> Grange considered that section 45 destroyed the equitable basis for rating, noting that many properties were being offered to the Crown at 'ridiculous' figures.<sup>86</sup> Clearly, owners were having their properties revalued to avoid high rates.<sup>87</sup>

Mr Hayes notes that 33 Stewart estate properties were revalued from £8020 to £4414, saving rates liabilities of £450. He says that he has no information as to whether Taipari considered a revaluation of his properties, though later in his report, Mr Hayes states that 'Taipari does not appear to have bothered to effect a reduction in the value of his properties', and surmises that this might have been because Taipari perhaps assumed that the council would find it too hard to obtain an order for the sale of his property. Hayes thinks it unlikely that Taipari would not have known of the possibilities for reduction, as his solicitor, Poulgrain was also acting for the Stewart Estate; the Taipari and Stewart whanau are closely related.<sup>88</sup> We note, however, that Poulgrain had, at the 1934 Native Land Court hearing for charging orders against Taipari, requested unsuccessfully a rates exemption under section 108(b) of the Rating Act.

Clendon could not answer the chairman's question as to why Government valuations were so high when the land was not producing any rent.<sup>89</sup> The committee recommended in its final report that a statutory charge for rates should be made against revenue from land, rather than the sale of the land as 'no Government could stand by and watch Native land generally being compulsorily disposed of for rates liabilities'.<sup>90</sup> That is, the committee recommended that land should be rated on its improved value. Had such a recommendation been

84. Evidence of Clendon, 14 June 1933, to Report of Committee on Rating of Native Land, MA20/1/14, pt 2 (doc R15, p 69)

85. Document R15, pp 42–43, 50

86. Grange to Under-Secretary Internal Affairs Department, 27 April 1933, IA1, 103/32/6, vol 1, Archives NZ (doc R15, pp 37–38)

87. Grange to Under-Secretary, Internal Affairs Department, 1 April 1933, 1933, IA1, 103/32/6, vol 1, Archives NZ (doc F1, p 9; doc R15, p 37); doc R15, p 56

88. Document R15, pp 47, 69, 71

89. Document R15, p 69; doc A9, p 137

90. Report of Committee on Rating of Native Land, 18 April 1933, AJHR, 1933, G-II, p 3 (doc A9, p 137)

followed up, at least for the time of greatest financial strain, it would have assisted owners such as Taipari whose rental income clearly fell below rates demands. We note it would have, conversely, reduced the rates basis for local authorities everywhere. Dr Anderson notes that, as a general rule, the Native Minister continued to refuse to endorse the sale of land for rates arrears.<sup>91</sup>

In addition to the Taipari lands, Mr Alexander notes that by April 1935, the council had acquired property with a capital value of £100 (part of the Te Amoriro block) from Tamaiwhiua Ani and Ngamoko in satisfaction of rate arrears of £101. In January 1935, lot 50 Whakaruaki block, owned by Kahu Renshaw, was 'forcibly sold for non-payment of rates'. Alexander does not say if any of this land was Maori or general land, and through which process, Maori or general, the compulsory sale was effected. Mr Hayes says that the sale was effected through the registrar of the Supreme Court; that is, following the process for general land. Hayes wonders if Renshaw had purchased the land from a European.<sup>92</sup> Also in 1935, Ira Anihana and Whakamura Watene agreed to the transfer of a section to the council on which they owed £37 2s 9d in rates.<sup>93</sup>

#### **(4) *The Stewart estate***

In 1936, Grange reached a settlement with the Stewart estate. The rental income of the Stewart estate had fallen below rates demands since the early 1930s. It seems that the estate had voluntarily sold some land to meet arrears in the early 1930s, including some sold to the council for £200 in 1934, then in 1935, offering seven more sections to the council, which it declined. Also in 1935, the estate offered a business-area property to the council in settlement of rates arrears of £500 but then sold it privately instead for £600 and settled some outstanding rates.<sup>94</sup> Clearly, the estate was trying to keep abreast of its rates arrears. Applications for Native Land Court charging orders over many Stewart estate sections were made by the borough council in 1936, but before the court came to hear them, agreement was reached. In settlement of outstanding rates of £1100, the council received estate properties valued at £4210, and a cash payment of £340.<sup>95</sup> Mr Hayes comments that 'there was plainly no relationship between the Government valuation and the actual market value of the properties.'<sup>96</sup> He also suggests that the agreement may have settled not only the rates owed by the Stewart estate but also all the rates owing on the Matiu whanau estate, plus any rates owed by all

---

91. Document A9, p 137

92. Document R15, p 73

93. Document F1, pp 15–16; see also doc R15, pp 51–56, 59–62 for detail as to six periods of takings of lands for rates under Grange.

94. Document F1, pp 16–18; doc R15, pp 71–72

95. Document F1, pp 18–19; doc R15, p 72

96. Document R15, p 62



beneficiaries of both estates on land held in their own right.<sup>97</sup> Mr Alexander observes that the Stewart whanau, like other Maori landowners, were caught in a squeeze between static high rates charges and declining revenue from their properties ‘which could only be alleviated by the loss of land to the Borough Council’.<sup>98</sup> In reporting to the Under-Secretary for Internal Affairs in April 1936, Grange noted that to date, property valued at a total of £10,885 had been acquired by the council. Of this total, the value of Maori land acquired amounted to £7895. Grange commented, ‘It is of great future value to the Council to have Native land Europeanised.’<sup>99</sup>

Mr Alexander says that, throughout the late 1930s and into the early 1940s, the council continued to apply for charging orders over a number of sections. The court granted a number of orders, though noting that ‘Charging Orders are never a very successful means of collecting rates,’ and suggesting that alternative arrangements would be preferable.<sup>100</sup> In 1943, Taipari again came to such an alternative arrangement with the council over arrears of £102 10s 3d, whereby four properties were transferred to the council. Then, in 1944, the council ‘forced’ a sale of land belonging to Hera Ngahua Mare, who owed a substantial amount of rates. The council acquired the property at auction at the reserve price of £169 1s 7d. Alexander does not say how the council forced the sale. By 1946, Taipari again came to an arrangement with the council over another accumulated rates debt of £722 6d. Another four town sections were transferred to the council, with the council paying Taipari £85 as the properties were valued in excess of the arrears.<sup>101</sup>

#### **(5) Part Kauaeranga 9 block: the ‘eyesore’**

Dr Anderson, Mr Alexander, and Mr Hayes all discuss the treatment of the ‘dilapidated’ house on part Kauaeranga 9 block, owned by the Paraone whanau. The house on this property was apparently used by any Maori person stranded in Thames without accommodation, and was not permanently inhabited, nor habitable. Around 1934, the Health Department declared the property uninhabitable and gave notice to the Paraone whanau to vacate it. On the request of the Native Minister, a Maori welfare officer (Mr Te Anga) investigated and reported that the land was low-lying and often flooded in one area by high spring tides. The

---

97. Document R15, p 72. This understanding would seem to be supported by the explanation given to the Native Land Court:

It has been agreed between the Borough Commissioner Mr Grange and the beneficiaries that certain properties shall be vested in the Borough Council in full discharge of all rates due by the Stewart family and the Matiu family up to 31 March 1936; and the Borough undertakes to pay all rates due by both these parties in respect of all Thames Borough properties to the Thames Harbour Board up to 30 September 1936.

From Hauraki minute book 70, fols 271–272; doc F1, p 18.

98. Document F1, p 20

99. Grange to Under-Secretary for Internal Affairs, 29 April 1936 (doc F1, p 20)

100. Document F1, pp 21–22

101. Ibid, p 22



large 'old fashioned' house was then about 60 or 70 years old, in need of re-roofing, and damp and decayed at its base. There was no drainage or sewerage. Te Anga recommended that the building be raised off the ground by at least two feet, and that all decayed sections be replaced. He commended the borough council for its offer to reconnect the water supply and link the house to town drainage, provided the owners pay seven shillings sixpence or 10 shillings per week. Te Anga thought this offer should be taken advantage of immediately.<sup>102</sup> But the repairs were not made and the council's offer was not taken up.

In March 1937, the borough council asked the Native Land Court to place the matter before the Minister to see if he would consider vesting the land in the Native Trustee for sale as 'altogether the position is most unsatisfactory'.<sup>103</sup> The land owed £35 7s 2d in rates at February 1935.<sup>104</sup> While the Minister was generally opposed to vestings for sale, it was thought he might make an exception if the council were to purchase the land at a reasonable price. The matter was dropped until the early 1940s, when the borough council again pressed for a vesting order for sale.<sup>105</sup> In June 1941, the court inspected the property and decided that the problem was somewhat of a title and subdivision problem, with two odd-shaped parcels of land requiring consolidation. One parcel, in European ownership, was a 'mere strip', but took almost all the frontage; the other (the Paraone's land) had almost no frontage. The court adjourned the matter.<sup>106</sup> In September 1943, Commissioner Bell reported on the subject; he thought the land should be vested in the Maori Trustee, and subdivided, with two sections going back to the Maori owners. He had discovered that the land, though presumably still Maori land, was undivided, and was three-quarters owned by Europeans. Bell thought that a vesting order might be the best way of getting around the ownership problems.<sup>107</sup> By April 1945, the block owed £122 2s 7d in rates arrears and court costs. The borough council was prepared to take the land in settlement of this amount, to subdivide it, and convey 'a suitable building section' back to Mr W[iri] Brown [Paraone].<sup>108</sup> At a June 1945 hearing, the court vested the block in the Thames Borough Council under section 113 of the Rating Act 1925, with the requirement that the council subdivide and vest one town section in Queen Street back to the Maori owners.<sup>109</sup>

---

102. Mr Te Anga, Maori welfare officer, to registrar, Native Land Court, 19 December 1934, MA1 20/1/23, Archives NZ (doc R15, pp 74–75)

103. Acting town clerk to under-secretary, Native Affairs, 3 March 1937, MA1 20/1/23, Archives NZ (doc R15, p 75)

104. Document F1, p 23

105. Document A9, pp 137–138; doc F1, p 25

106. Hauraki minute book 71, fols 271–272 (doc F1, p 25)

107. Bell to Judge Beechey, 13 September 1943, Maori Land Court, Hamilton, correspondence file H104 (doc F1, pp 25–26)

108. Town clerk, Thames Borough Council, to registrar, Native Land Court, Auckland, 20 April 1945, Maori Land Court, Hamilton, correspondence file H104 (doc F1, p 27)

109. Hauraki minute book 72, fols 109–110 (doc F1, p 27)

The Hauraki Tribal Executive Committee criticised this vesting in the council, and appealed to the Minister to stay the order. In explaining his decision, Judge Beechey suggested that the tribal committee could have objected much earlier in the process, and noted the lengthy history to get to 'such a satisfactory settlement.'<sup>110</sup> The Minister declined the appeal. Then, in 1947, the section for return to the Paraone whanau was, by agreement, vested only in the name of Iriwata Paraone, as he lived in the area and would be able to build on the section, and it would be 'useless to bring into the Block all the owners, as they will hold only small interests.'<sup>111</sup>

Mr Alexander criticises this process and suggests that the council wanted to acquire the land because it was a physical and legal eyesore. He notes that at one point in the process, the council had offered two sections, but only one was allocated in the outcome, and this 'was granted to one owner, while other descendants of the original owners missed out . . . Notwithstanding the better placed location of the section provided by the Council, the Maori owners still lost a substantial proportion of their town lands because of unpaid rates.'

Mr Alexander comments that, overall, the actions of the Commissioner Grange reduced Maori land holdings in Thames township by two thirds, reducing the economic stake of Maori in the town.<sup>112</sup> Dr Anderson observes that, while Maori land was valued highly for rating purposes, when Maori were compelled to sell land to cover rates arrears, it was acquired for a much smaller amount. This was done 'without any thought for the value of those properties as a basis for future participation in the commercial development of the town.'<sup>113</sup>

#### **(6) Claimant and Crown submissions**

The claimants say that Commissioner Grange unduly targeted Maori land: 'rates not collected on European land were much more important to the overall debt of the Borough and yet it was the unpaid rates by Maori [that] were emphasised by Commissioner Grange. European landowners owed four times as much as Maori.'<sup>114</sup>

Counsel considers that, following the issuing of charging orders, Maori were forced to sell their lands at low value to the council, mainly through 'voluntary' arrangements. There was no provision in the Rating Act that the price paid for Maori land should be at least equal to the Government valuation. Neither was there any consideration given to the potential landlessness caused by such sales, 'or indeed ensuring that Maori retained a presence in Thames.'<sup>115</sup>

110. Judge Beechey to registrar, undated, attached to registrar, Native Land Court, Auckland, to under-secretary, Native Department, 8 August 1945, Maori Affairs head office file 20/1/23 (doc F1, p 28)

111. Judge Beechey to Pita Makiri, Thames, and Ripeka Brown, Gisborne, 16 December 1947, Maori Land Court, Hamilton, correspondence file H104 (doc F1, p 28)

112. Document F1, pp 29–30

113. Document A9, pp 138–139

114. Document Y1, p 154

115. Ibid, p 155

Claimant counsel notes the Crown's acknowledgement (set out in submissions on the 1877 agreement above) that the rating burden may not have always been fairly applied to Hauraki Maori, and asserts further that the acquisition of properties by the council in settlement of rates 'had a clearly disproportionate effect on Hauraki'. Maori gave up land worth £7895, that is, around 75 per cent of the total £10,885 worth of land acquired in settlement for rates, though they owed only 16 per cent of the outstanding rates. This had the effect of reducing Maori land holdings in Thames township from 163 sections in 1932 to 31 sections by 1947. Taipari alone gave up 29 blocks. Counsel for Wai 100 asserted that the Crown should have taken into account that Taipari, who Grange classed as a wealthy landowner, may have been fulfilling the functions of a rangatira and that his landholdings might reflect those of his iwi. Mr Hayes had acknowledged this possibility in cross-examination.<sup>116</sup> Claimant John McEnteer recorded how his grandfather described rent day in Thames in the 1930s. Taipari had one of the first Model T Fords in the area, and he would drive down the main street of Thames stopping to pick up the rent from his rental properties. This was a 'great festival occasion because Taipari also had a monkey', which he got from a circus. 'All the children were given a shilling and a portion of the rent was shared among the different whanau present.'<sup>117</sup> Claimant counsel concluded that rates continue to be a burden to Maori landowners today.<sup>118</sup>

The Crown, however, does not accept that targeting of Maori land occurred under Commissioner Grange's control. Neither does the Crown accept that Grange placed an undue emphasis on Maori landowners in arrears in comparison with other defaulting ratepayers. Instead, the Crown asserts that the commissioner, facing a very difficult task, was even-handed in his actions and always careful to ensure that no homelessness resulted. The Maori landowners in default were 'relatively prosperous, were legally represented, and seem not to have objected to the arrangements they entered into'. The size of their landholdings was exceptional in proportion to other landowners. 'It is submitted the peculiar facts of this situation produced the result rather than targeting.'<sup>119</sup> They were in a particularly anomalous situation because much of their land was not generating a sufficient return to cover the rates.<sup>120</sup> The commissioner made considerable efforts to establish an equitable basis for rating 'so that the burden would be more fairly spread amongst the ratepayers'. Moreover, it was reasonable for Grange to note the arrears owed by Maori: 'The commissioner was also alive to the fact that recovering rates on Maori land was difficult.'<sup>121</sup>

In reply to the claimants' contention that voluntary arrangements such as those reached

---

116. Document R33, p 41; doc Y1, pp 155–156

117. Document F21, p 10

118. Document Y1, pp 155–156

119. Document AA1, pp 267–268; doc R19, p 9

120. Document AA1, p 269

121. Ibid, p 267; doc R19, p 9

between the council and Maori landowners were not subject to the normal protection mechanisms as to price and landlessness, Crown counsel says that the Maori Land Court did in fact vet the voluntary agreements. The various provisions of the Native Land Act 1931 were relevant. The Stewart and Taipari whanau were not rendered landless. The Crown submits that those whanau were likely aware of the protective mechanisms covering their lands, and would have known of the difficulties facing local authorities in obtaining court orders for sale. Neither the court nor the Minister of Maori Affairs was inclined to permit the sale of Maori land for rates. 'It was open to the Stewart Estate and Taipari to refuse to accommodate the Commissioner and permit only the leasing of their lands.' The commissioner did not exert undue pressure on them to come to the voluntary agreements.<sup>122</sup> Rather, 'It is clear that a combination of factors operated together that resulted in a good deal of Maori land passing out of their hands in the 1930s.'<sup>123</sup>

In the Crown's view there is no evidence that Kauaeranga 9 was targeted as an 'eye-sore'. The terms of the settlement with the council does not support the contention that the council saw Maori ownership of borough lands as a problem. Rates were only one of a number of factors leading to the settlement, along with subdivision and frontage problems.<sup>124</sup>

#### **(7) Tribunal comment on Thames township**

We accept that Commissioner Grange had a difficult task during a time of great hardship for many New Zealanders. We agree with the Crown that Grange does not appear to have targeted Maori land for any other reason than that it owed rates. However, we also accept the Crown's acknowledgement that a significant amount of Maori land passed out of Maori ownership under Grange's commission. Maori landowners (and perhaps other landowners who came to voluntary agreements) were caught with outstanding arrears of rates at a time when Thames property values had fallen dramatically.

We do not accept Mr Hayes' assertion that Taipari did not 'bother' to get his values reduced because, in Mr Hayes' supposition, he probably thought the council would not be able to obtain an order for the sale of his property. In none of the evidence presented to us was there any suggestion that Taipari or the Stewart whanau avoided payment of rates. They were paying rates on other lands, and came to several voluntary arrangements to settle rates arrears in the township. Neither do we accept the Crown's implication that a protection mechanism open to Taipari and the Stewart estate was being ignored because of the supposition that the council would face difficulty in getting Ministerial consent for the sale of Maori land. This Crown argument seems to suggest that Maori were responsible for land loss because they did not take advantage of obscure legalities (not open to other citizens) which they may not have known about. Mr Hayes acknowledged in cross-examination that

---

122. Document AA1, pp 268–269

123. Ibid, p 269

124. Ibid, p 268

Maori tended to honour debt when 'there was no legal obligation to do so'.<sup>125</sup> We cannot accept that it is proper for the Crown to offer arcane protections on the basis that if Maori fail to take advantage of them then it is their fault they lose land.

If compulsory sales were the only alternative, then one advantage of voluntary agreements instead of sale was that the owner could rationalise which lands to keep and which to forgo for rates. For example, to some extent Taipari chose which lands he gave up. It seems possible that, because land in the town was so expensive to own at this time due to high valuation for rates, Taipari chose to keep his country farm lands over his town rental lands.

We make a brief observation on Grange's comment, picked up by Mr Alexander, that 'It is of great future value to the Council to have Native land Europeanised'.<sup>126</sup> We suspect that this comment is not as sinister as it may at first sound, and agree with Mr Hayes' comment in cross-examination that 'it was purely that he [Grange] wants a simple, cheap regime to cover rates. The European system should apply to Maori land in the borough'.<sup>127</sup> Clendon, representing the council in 1933, said as much: 'The bodies I represent consider that the Native land should be classed as European land.' We believe that Grange and Clendon both meant that having title 'Europeanised' (ie, converted legally to the status of general land) from fragmented, multiple-ownership, greatly simplified the levying and collection of rates, rather than meaning that land should be alienated from Maori ownership (even though the two often went hand in hand). We stress, as Mr Hayes did, that rates problems stemmed from the title problems caused by years of experimental native land legislation. That legislation resulted, as we have found in chapters 15, 16, and 18, in fragmented title and multiple ownership leading to an inability to develop land and make it revenue-producing and self-sufficient. The impact of fragmented title and the inability to develop the remaining pockets of Maori land is a cost to our wider society, not just to Maori.

Finally, with regard to the Kauaeranga 9 block, we do not accept Mr Alexander's assertion that this case illustrates the targeting of Maori land as an eyesore. We think this case shows instead a considerable amount of care being taken to keep some land in Maori ownership and to give that land better access and frontage. We think it reflects well on the Crown that in one of the few instances we were presented with of the Minister being prepared to allow a vesting for sale, this was in large part for the improvement of access for the Maori owners. We accept Mr Alexander's point that other owners were left off the title after subdivision of the land. But we also think that the most practical solution was adopted in this case. While the subdivision facilitated the collection of rates by the council, the Maori owner also benefited. Again, we think this reveals the long shadows cast by the root problem of fragmented title and fractionated interests.

---

125. Document R33, p 44

126. Grange to Under-Secretary for Internal Affairs, 29 April 1936, Internal Affairs head office file 103/32/6 (doc F1, p 20)

127. Document R33, p 39

**21.3.3 Rating and the relationship with the Thames–Coromandel District Council****(1) *Tikouma 3B2***

The Wai 806 claim concerns in part the rating of land at Tikouma, in particular Tikouma 3B2 block. Rates of approximately \$120,000 were outstanding on this block from 1992 until the time of hearing in August 2002. The claimants object to this block being rated. While claimant Maraea Blomfield accepts in general that they are liable for rates, she does not understand why they should pay rates for this block when no services are received, and considering that they have already lost so much land in the area due to survey liens. The claimants have also constructed a road over the block at their own cost, and have incurred other significant costs in trying to develop and use the block. Meanwhile, the coastal zoning of the block means that the owners cannot construct more than one residence on it. More of them want to live on the block. The rates question has led to an ongoing dispute with the Thames–Coromandel District Council.<sup>128</sup>

Miss Connolly, a trustee for Tikouma 3B2 and a legal executive with significant experience in trust management, presented evidence on the difficulty of developing the block. The trust's first hurdle came in 1975 when they spent much time and money opposing the block being designated as coastal reserve. They finally succeeded in removing the designation in 1980, and then began to look at ways to use the land, which had meanwhile reverted to a rural designation. In the early 1980s, marine farming was beginning as an industry in the Coromandel, and the trust believed that Tikouma Harbour was an ideal place to establish facilities for the industry. The trust decided on building a marine farmers ramp, with road access and parking also provided. To that end, they applied under the Town and Country Planning Act 1977 to the district council for planning consent in May 1988. 'We felt as a Trust that we could take some of the pressure off the council to develop the area and indicated to them that we would build and operate our own ramp on the Harbour, in particular, on the foreshore of the Tikouma 3B2 block.'<sup>129</sup> By this time, the block was designated coastal, and the proposed ramp came under the 1977 Act's 'permitted use' provisions. However, the council required them to notify the application anyway, and 'a horrendously expensive planning exercise followed'. Fifty-five objections were received. The application was granted in August 1988, then appealed, and following meetings with the objectors, final approval was obtained in October 1989. This process cost the trust \$23,000 in legal expenses. Miss Connolly said they had not yet been able to pay these expenses. Neither had they yet been able to settle all the outstanding costs associated with the building of the ramp and its related infrastructure. These amounted to \$260,000, of which they had managed to pay \$100,000. The trust had been unable to borrow any money for the project so the trustees and owners had funded it themselves. The trust also bore responsibility for the cost of the

---

128. Document x26, pp 9–10

129. Document x27, p 3

maintenance of the road, and have never had any assistance from council with this, just as they have never received 'any of the other community values which normally rate payers take for granted'.<sup>130</sup>

While the coastal zoning of the land might have been appropriate for the ramp activities, it was not suitable for owners who wished to live on the block. The trust unsuccessfully tried to get the designation of the block changed to coastal-residential (which allowed for small clusters of houses) when the district plan was reviewed in 1998. The trust then decided it would have to partition the block amongst whanau groups, since this did not require the consent of the council. Partitioning had not been their preferred option as it further fragmented ownership, but at least it allowed for use of the land for residential purposes, and its ultimate retention as Maori land.<sup>131</sup>

Miss Connolly alleges that, while the trustees had discussed rates with the council and at one point offered a lump sum in settlement, they had never once since 1975 received a formal rates demand from the council. But on 15 April 2002, 'completely out of the blue,' the trust received a copy of an application by the council under section 238 of the Te Ture Whenua Maori Act for the trustees to be investigated by the Maori Land Court for the non-payment of rates. Rates arrears for a six-year period amounted to \$121,473.06, including penalties. Tikouma 3B2 has a rateable land value of \$1,123,500. The application suggested that the trust was in receipt of a significant income from the marine ramp.<sup>132</sup>

At the time of hearing in August 2002, the matter was pending resolution between the two parties. This Tribunal has not been informed of any outcome as yet, but for the claimants, the concern is that even if this matter were to be resolved by agreement, 'there is still an ability for the Council to rate the land even in a situation where Council policy makes it impossible to use the land without going to the enormous expense of employing planning and other experts to assist in a planning exercise'.<sup>133</sup> Miss Connolly asserts that the owners would not object to paying rates as long as they could live on the land and use it for their benefit while enjoying normal services and amenities.<sup>134</sup>

Before setting out the submissions from counsel for the Tikouma 3B2 claimants, and the Crown's reply, we briefly note here other claimants' statements about rates and their relationship with the local council. Pongarauhine Renata told the Tribunal about the problems of paying rates on undeveloped land in multiple ownership. Renata said this problem affected everyone in the Manaia Valley. The council put pressure on resident owners to pay the rates: 'thereby those people become debt collectors against the absentee owners.' Renata said that everyone resented rates, because they got no services in return. 'For myself I would

---

130. Ibid, p 4

131. Ibid, p 5; doc x26, p 10

132. Document x27, p 6

133. Ibid

134. Ibid, p 7



## 21.3.3(2)

be happy to pay rates if the Council actually did anything for us locally such as helping with sewerage schemes and tarsealing roads.’ Renata accused the council of lacking understanding of Maori and Treaty issues.<sup>135</sup> James Hemi Mikaere also told us of problems with the Thames–Coromandel District Council over rates. Mikaere said that everyone in the Manaia Valley is behind on rates payments and they do not think they should have to pay since they get nothing in return, and they think that the council does not understand their needs. While they have reached an agreement with the council to pay the arrears, this was because ‘we don’t wish to lose our lands. All we have done is postpone the problem.’<sup>136</sup>

**(2) Claimant and Crown submissions on the rating of Tikouma 3B2**

While claimant counsel acknowledged that rating legislation applies to all landowners and similar rating issues arise for Maori and non-Maori alike, he alleged that there are particular Treaty considerations to take into account with the rating of Maori land. First, the relationship between Maori and land is based on cultural imperatives such as whanaungatanga, turangawaewae, and ahi ka. These imperatives are especially important considering the enormous loss of land already experienced by Hauraki Maori. Secondly, Maori make different uses of their land, not based only on economics. Thirdly, Maori have a kaitiaki role over their land. Fourthly, owners’ future needs should be considered. And, fifthly, the relative landlessness of Hauraki Maori should be considered by the Crown when enacting legislation affecting and impinging on Maori in the use of their land, ‘more so with respect to Hauraki Maori where the scale and volume of the land and alienation had been enormous.’<sup>137</sup> Counsel noted that, in the Tikouma 3B2 case, the Local Government (Rating) Act 2002 does allow for the waiving of rates, but counsel did not accept the Crown’s contention that local authorities are currently using these powers to exempt Maori land, nor is there any evidence of the council taking into account the Treaty implications of the Act. And while the 2002 Act may result in the waiver of the outstanding rates on the Tikouma block, ‘the simple point is that whether it’s a successful outcome for the claimants or not, really depends on the goodwill of the Council.’<sup>138</sup>

Crown counsel asserted that the 2002 Act does give due recognition to Treaty principles, including cultural land use values. But the enforcement of rating on Maori land is a legitimate exercise of government, established by article 1 of the Treaty. The 2002 Act, combined with the 1988 Act, offers a number of mechanisms for rating relief for Maori land in use for customary purposes, or which is landlocked or not receiving services. Counsel asserts that under the 2002 Act, a number of claimants have reached agreement with their local

---

135. Document 118, pp 6–7

136. Document 112, p 8

137. Document 22, pp 12–13

138. Ibid, pp 13–14



authorities.<sup>139</sup> With regard to the application by the council to investigate the trustees of the block for the non-payment of rates:

there appears to be some misunderstanding between the parties (and a possible misapprehension by the council as to the income received from the lands). The Crown submits that some initiative taken by the trustees might assist in resolution of this issue. The council ultimately has the power to waive the rates arrears and the Crown would expect these powers to be exercised in a fair and reasonable manner by the council.<sup>140</sup>

**(3) *Tribunal comment on Tikouma 3B2***

The above claims all relate to the Local Government Rating Act 2002, the effect of which remains to be tested against the Treaty. On the face of it, the Act does seem to offer local authorities some options in tackling the ever-difficult issue of rating un-serviced or non-revenue producing Maori land. We hope that the Act might also offer the chance for local authorities and tangata whenua to improve their relationship.

We note and support the Crown's comments urging the council to act in 'a fair and reasonable manner' in considering waiving the outstanding rates for Tikouma 3B2. But we also accept claimant counsel's argument that any waiver or exemption of rates remains at the council's discretion. We urge the Crown to monitor the legislation to ensure that it is applied by local authorities with consistency and fairness.

We were provided with no information as to the financial position of the Tikouma 3B2 Trust, the soundness of the marine farms services they provide, or their ability to pay the outstanding rates or indeed bear rates in general.

We can take these claims no further at this stage, as the 2002 legislation remains to be tested. Beyond stating the obvious, that the legislation that empowers local authorities is passed by the Crown and should be consistent with the principles of the Treaty of Waitangi, we do not consider the question of whether local authorities are agents of the Crown. The matter was not argued by counsel in these proceedings.

---

139. Crown counsel gives the example of Benjamin Karewa (doc F20). Mr Karewa explained the rating problem experienced by his whanau land, the Papakitatahi A block. This block is landlocked, access to it requiring the permission of neighbouring landowners. It is also subject to regular flooding, increased by the clearance of timber from the Kauaeranga River. The flooding makes cultivation of the land impossible. It is unfenced and used by neighbouring farmers for grazing, though they pay no rental. The owners cannot live on the land but are still charged rates. From 1975, Mr Karewa's mother had tried to get the rates remitted, and when Mr Karewa took over running the whanau interests in 1996, rates arrears amounted to over \$9000. Finally, on 18 October 1998, Mr Karewa received a letter from the Thames-Coromandel District Council informing him that the rates debt on the block would be written off and that no further rates would be charged until the land was being used.

140. Document AA1, pp 272-273

**21.3.4 The Maori Trustee and Harataunga 2A (Rangiriri Island)**

The Maori Trustee's management of the 200-acre island known as Harataunga 2A or Rangiriri Island is closely tied to rating issues. The trustee became involved following a suggestion from one of the owners to subdivide and sell the land to cover past and future rates, while also allowing the owners to retain sections. The subdivision never eventuated due to engineering concerns about access to the island, but costs had accumulated with the Maori Trustee, while rates also continued to accrue. The trustee reclaimed costs on the eventual sale of the island for significantly less than the owners thought they might achieve, and without the retention of any of the land for themselves. During the Maori Trustee administration of the island, no attempt was made by the trustee either to pay the outstanding rates or to come to an agreement with the council for future rates. The rates arrears were finally paid on the sale of the land.

**(1) Background**

In October 1967, Keita Walker, one of the Ngati Porou owners of Harataunga 2A, wrote to the registrar of Maori Affairs from her Ruatoria home. She said that she was aware of local authority concerns over rates on Maori land, and was anxious for the owners of the block (most of them absentee) to discuss the best utilisation of the land. She had recently inspected the block and thought it might be suitable for development as a seaside holiday area. She rejected an earlier idea from the major shareholder, Pakiriki Harrison, for a housing subdivision scheme because she believed that would require considerable outlay and mean an ongoing rates liability for sections not sold in the early stage of the development. She wrote:

Here the same wearisome problem of multiple ownership appears to be the biggest drawback to full utilisation. The farming possibilities cannot be overlooked on certain blocks but of course sound financial backing is essential as a very concentrated and continual development programme is obviously the only worthwhile venture. Anything else is false economy, a waste of time and man power. However, what did draw my attention there was the apparently useless seaside land, which I consider could hold a great potential in the (tourist) holiday makers trade.

We, the owners in this area are all agreed that we should form a company or the likes under one title and apportion shares according to our present interests, and our intention to sell. We realise that legal and survey costs would have to be met and are toying with the idea of offering shares in the company to a solicitor & surveyor in return for their services.

Because the market is virtually untapped and we are only surmising its potential, it is difficult to know whether it is worth bothering the Maori Trustee about.

This brings me to the point of writing to you and seeking advice on what to do and

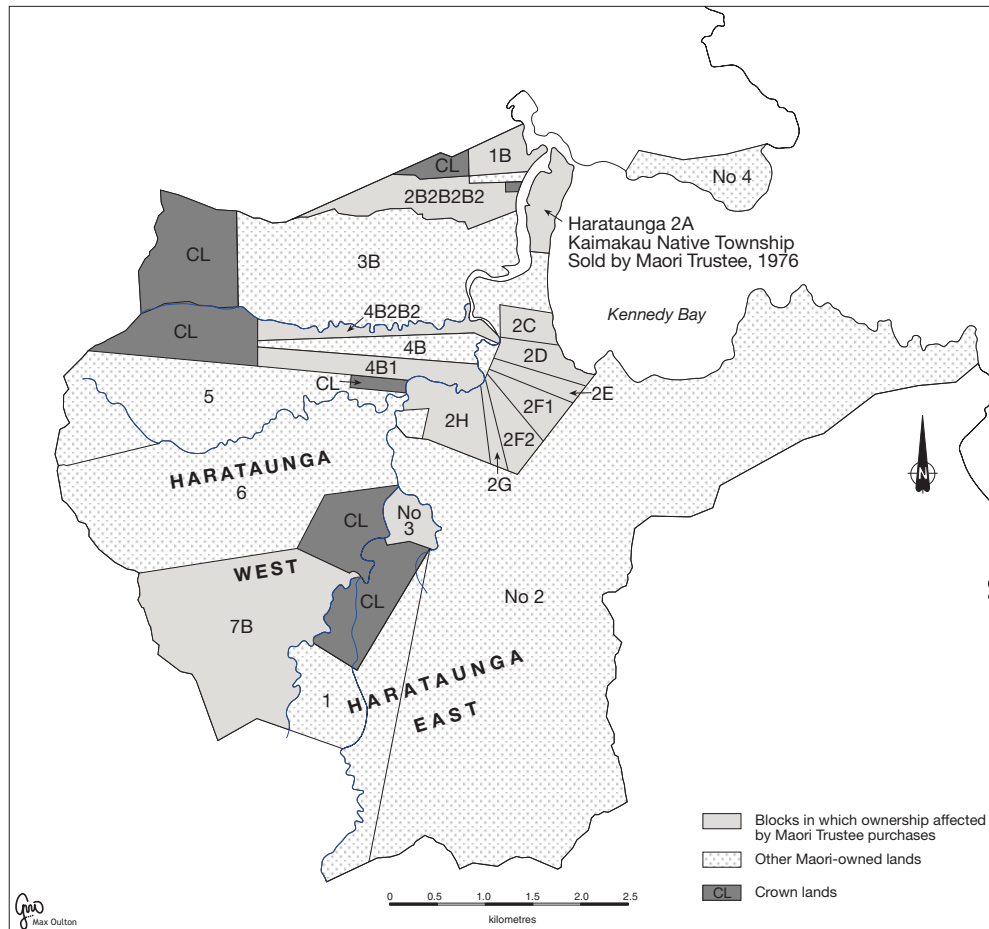


Figure 87: Harataunga blocks affected by the Maori Trustee's purchase of uneconomic interests

what steps one can take to negotiate a profitable sale. This block is owing in rates and it is obviously senseless to remain owners at such a distance and to find it fast becoming a liability with accruing rates.<sup>141</sup>

The Hamilton Maori Affairs office must have passed the letter over to the Maori Trustee,<sup>142</sup> as the trustee's district officer Ivan Apperley replied saying that subdivision had been proposed for Kennedy Bay before, but rejected as land there was not regarded as suitable. (Presumably, Apperley was referring to the Harrison's earlier suggestion of subdivision; however, it is possible he was referring to the 1897 designation of part of Harataunga 2A as Kaimakau native township. The township never eventuated, but the designation remained

141. Walker to registrar, Maori Affairs, Hamilton, 4 October 1967 (doc R16, pp 7–8; doc S8(a), p 162)

142. In general, the department and the trustee worked closely together; see, for example, the Waitangi Tribunal, *Te Whanganui a Tara Me Ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), pp 370, 377, with regard to the two offices being filled by the same people.

in place at least until the 1940s, when the block was repartitioned.<sup>143</sup>) Apperley thought current demand was for land south of the Kennedy Bay area, but he agreed to reconsider. Shortly after, Apperley visited the block and decided that a large part of it would be suitable for subdivision. He discussed this option with the county engineer, who agreed it seemed a good idea, and noted that the county council would welcome such a move as long as several conditions were met. These were that the whole island would have to be involved in the subdivision, that there be a one-chain reserve around the coast of the island, and that the sub-divider should bear the cost of linking the island to the mainland. It was estimated that the cost of a single lane 40-foot bridge would cost £10,560, though that estimate did not include costs for the approaches to the bridge.<sup>144</sup>

In March 1968, the trustee wrote to Pakariki Harrison (the major shareholder with 19 shares out of 52), advising him of the trustee's investigation to date, and suggesting that the land 'may well be suitable for subdivision,' and advising that there was no objection to such a scheme from the Coromandel County Council. He asked if Mr Harrison wanted the trustee to continue investigations into the feasibility of subdivision and sale, and suggested that if so, the owners could vest the block in the trustee. Mr Harrison apparently replied by phone that he would be 'only too pleased' for the Maori Trustee to become the section 438 trustee<sup>145</sup> of the block in order to subdivide and sell it.<sup>146</sup>

In early April 1968, Jim Rabarts, chairman of the Coromandel County Council Development Committee, wrote to Apperley suggesting a meeting between Apperley and Harrison. He noted that several years earlier, he had discussed with Harrison the possibility of subdividing the island, and had urged Harrison then to use the services of the Maori Trustee. Rabarts wrote that his interest in the matter was 'to get some useless Maori land doing something,' and thought the trustee was the only one who could achieve this.<sup>147</sup>

Also early in April, Harrison's mother sought information on the proposed subdivision and advising that a prospective purchaser had already offered £38,000 for the land. Mrs Harrison thought this offer should be accepted, but noted that the owners did not. The trust office's senior estates clerk, Hansen, said that, if the owners wished to sell the land as it was, then the trustee would not 'stand in the way,' and neither would it seek a section 438 vesting in that case. Hansen then recommended that a circular letter be sent to all owners seeking their consent for the section 438 vesting; however, no letter was sent. The trust office began preparing a plan for subdivision the same month, as well as an estimate of the profitability

---

143. Document s8(a), pp 253–264; doc R16, pp 6–7

144. Apperley to senior estates clerk, 15 March 1968 (doc R16, pp 9–10; doc R16(a), p 6)

145. That is, section 438 of the Maori Affairs Act 1953, which empowered the Maori Land Court to vest Maori land in the Maori Trustee for lease or sale. The section was widely used for the creation of trusts, a tool in the 1950s and 1960s for managing multiply owned Maori land: see sec 18.4.6.

146. Maori Trustee, Hamilton, to Pakariki Harrison, 28 March 1968 (doc F16(a), p 7); Ivan Hansen, senior estates clerk, filenote, 1 April 1968 (doc F16(a), p 8; doc R16, p 10)

147. Rabarts to district officer, 2 April 1968 (doc F16(a), pp 10–13; doc R16, p 11)

of the proposed subdivision. Under this estimate, it was predicted that a profit of \$70,000 would result, but the estimate did not include survey, legal, or land agents' costs. The cost of preparing the plan of subdivision was estimated at \$200.<sup>148</sup>

By mid-April, a team from the trust's and Maori Affairs' offices, including Apperley, land utilisation officer Lockie, senior surveyor Kerr, and senior estates officer Hansen had visited the block. On 18 April, Apperley and Hansen met with the Coromandel county clerk and his deputy to discuss the proposal, and divide responsibility for various matters. Access to the island was clearly the main issue, as Hansen wrote in a file note. A key question was whether the stream separating the island from the mainland would revert to its original channel; if so, a bridge of 80 to 120 feet in length would be required; however, if this possibility could be ruled out, a bridge of only 40 feet would be required. Hansen wrote that this would have to be ascertained before any idea of the economics of the proposal could be finalised. Aside from this issue, Hansen seemed quite hopeful that subdivision would be feasible: 'sections at Kennedy's Bay should sell as well as the sections at Whangapoua.'<sup>149</sup>

On 22 May 1968, surveyor Kerr submitted his 'tentative' scheme plan for subdivision, noting that the plan was one of several options. He commented that he had included 'luxurious' amenities in his plan, in the hope these would assist to sell the sections more readily, as too many previous beach subdivisions had not made enough allowance for services. He thought, overall, that the positive aspects of the land – its safe sandy beach, sheltered harbour, good fishing – would outweigh the poor access to the area. In terms of access to the island itself, he favoured a causeway and small bridge, and after consulting the Ministry of Works, revised down the estimated cost of a bridge to \$10,000. He also commented on other general matters such as sewerage, electricity and phone lines. He suggested 147 sections, ranging in size from 28 to 40 perches, with estimated sale prices from \$800 to \$2500, with an average price of \$1631. Hansen estimated that expenditure would come to \$122,490, and revenue to \$251,000, allowing a gross profit of \$128,510, or a return of around 51 per cent. This was significantly higher than the standard return of around 33.3 per cent. However, Kerr cautioned that close settlement of the land might not be ideal, that further erosion around the stream channel was possible, and noted that they must be certain about the permanence of the channel. He closed his report by noting that, while Apperley and other staff were optimistic about the plan, he himself was 'somewhat hesitant to advise any speedy action in developing these sections'. He urged further investigation.<sup>150</sup>

From May to September 1968, Apperley and Hansen discussed the bridge requirements and various options with the county engineer, the Marine Department and the Ministry

---

148. Document R16, pp 11–12

149. Proposed Harataunga 2A subdivision, file 12/265, Ivan Hansen, 19 August 1868 (doc R16(a), p18; doc R16, p14)

150. Kerr to district officer, Hamilton, 22 May 1968 (doc R16(a), pp 27–38; doc R16, pp 14–17); doc S8(a), p163

## 21.3.4(1)

of Works.<sup>151</sup> Then, on 20 September, Hansen met with Pakariki Harrison and apprised him of the bridging concerns. Hayes notes that in this discussion, Hansen ‘purposely’ omitted any discussion of Kerr’s preliminary estimate of development costs, rather focusing on the comparison of the offer of \$38,000 with the projected profit of double that amount from subdivision. Hayes describes this omission as ‘both curious and inappropriate’. At any rate, as Hayes notes, ‘Harrison was attracted to the prospect of subdividing the land rather than selling the block as a whole, as it would enable the owners to retain sections.’<sup>152</sup> To retain sections, the owners would have to purchase them at current market value from the Maori Trustee, if indeed the block were vested in the trustee for subdivision, which Hansen recommended. Hansen and Harrison then inspected the block. It was the first time Hansen had seen the land, and he recorded that on inspection, his doubts were dispelled as to the sufficient elevation of the island.

While visiting the island, Hansen also met with Pakariki Harrison’s father, who agreed to seek the written consent of the remaining owners (living at Ruatoria) to vesting title in the Maori Trustee. Hansen then sent out consent forms for such a course of action, but the other owners refused to sign, requesting further information as to the cost estimates, and the percentage to be taken by the Maori Trustee. The Maori Trustee replied by way of a circular letter, in which the bridging issue was noted, and a variation of Kerr’s plan was set out. Without explanation for the variation, however, this plan contemplated 162 sections instead of the 147 Kerr had suggested, as well as a camping ground, roads, and the one chain wide reserve above the mean high-water mark, as required by statute. The letter also noted that approval for the Maori Trustee to loan the money for subdivision was required from the Board of Maori Affairs, and that the trustee’s interest rate was 6 per cent. By ‘conservative estimate’, the subdivision was predicted to realise about \$200,000, giving a margin of profit of \$94,500, or a 90 per cent return. That is, this proposal was more optimistic than that outlined by Kerr, but no explanation was given for this change, and no mention was made of Kerr’s warning notes. In fact, the letter went on to assure the owners that no difficulty was anticipated in gaining consent from the county council, or from the Marine Department for the causeway and bridge. The trustee concluded the letter by setting out a projected timeline of about two years to recoup the cost of subdivision.<sup>153</sup> Crown witness Mr Hayes comments that ‘It is not clear from the file how the Maori Trustee arrived at his estimate of expenditure or revenue, or, for that matter, the timeline.’ Neither is it apparent that the predictions as to timeline and profit were based on any actual market research.<sup>154</sup>

Mr Hayes also noted other ‘more serious’ omissions in the letter. First, there was no warning to the owners of Kerr’s caveats as to drainage and water supply and, secondly, the letter

---

151. Document R16, pp 17–19

152. Ibid, p 19

153. Circular, 23 October 1968 (doc R16(a), pp 61–62; doc R16, pp 21–22)

154. Document R16, p 23

failed to set out liability for the costs of investigations to date, or for the investigations that were still to be undertaken to advance the proposal.<sup>155</sup>

The letter did not reassure all the owners. The Ngarimu family remained concerned as to the costs of the Maori Trustee, so Hansen suggested a meeting with all the owners to discuss the proposal. The meeting was held at Ruatoria on 23 January 1969, with all owners attending bar a Mrs Maniapoto and Mr Harrison (he was unavailable due to work commitments, but asked Hansen to represent him). A file note recording the meeting has the Hamilton district officer (presumably Apperley) pointing out to the owners the 'very considerable experience' of the trustee in effecting subdivisions, and noting that 'this was not land suitable for farming but it was admirably suitable for subdivision'. Apperley also noted that the Coromandel County Council had 'agreed in principle' to the proposal. Apperley compared the offer of \$39,000 for the whole block with a projected profit from subdivision of \$100,000. But, as with the circular letter, the file note does not record any discussion of Kerr's cautions as to drainage and water supply, or the owners' liability for the Maori Trustee's costs to date and the costs yet to come. Mr Hayes surmises that Apperley and Hansen were now assuming the subdivision would proceed, with only the bridge issue to be resolved. No discussion was recorded as to the trustee's 5 per cent commission, any land agent commissions, interest on a loan from the trustee, or on rates. Kerr's original draft plan had allowed for each of these.<sup>156</sup>

The owners present at the meeting agreed to vest the block in the Maori Trustee for subdivision and sale. On 30 January, the Maori Land Court made the vesting order, noting that eight out of nine owners had agreed.<sup>157</sup> Apperley then applied to the Board of Maori Affairs for loan approval, assuring the board he anticipated no difficulties in selling sections and noting that the Coromandel County Council was supportive of the subdivision. But the Maori Trustee head office sharply reprimanded Apperley for initiating the vesting (now confirmed by the court) without first seeking the permission of the trustee himself: 'Before considering the loan submission we would like to know on what authority the section 438 trust was accepted, as acceptance in a case of this sort does not fall within the Maori Trustee's delegations to district officers.'<sup>158</sup>

Head office also wanted more information on the period of the intended loan, the value of the sections, and whether the 'economics' of the proposal had first been evaluated by the Valuation Department. Apperley advised in response that he had indeed discussed prices with the Valuation Department and the estimates were conservative. He described the popularity of Kennedy's Bay as a holiday destination and renowned fishing ground. But head

155. Ibid, p 23

156. Filenote, 24 January 1969 (doc R16, pp 24–26; doc R16(a), p 78)

157. 'Application for Vesting of Land in a Trustee', 28 January 1969 (doc R16(a), pp 78–80); 'Order Vesting Freehold Land in a Trustee', 30 January 1969 (doc R16(a), pp 81–83); doc S8(a), pp 162–163

158. Head office to Apperley, 7 February 1969, AAMK series, file 869/12461, 54/27/263, Archives NZ (doc S8(a), p 164)



office remained unconvinced of the soundness of the project and was 'reluctant to commit itself to a project of this size.'<sup>159</sup> Head office also questioned the demand for sections, and the stability of the present course of the Harataunga Stream. Hayes thinks Apperley or Hansen must have consulted the Marine Department (orally?) about the stream, and was confident that it was stable.<sup>160</sup> In March 1969, G H Webb of the Hamilton office of the Valuation Department wrote to the Maori Trustee supporting the subdivision, saying he saw great potential in the scheme. He thought the estimated average selling price of \$1200 per section to be on the conservative side.<sup>161</sup>

On 19 March 1969, head office applied to the Board of Maori Affairs for a loan of \$85,500, representing the amount required for a first stage subdivision of 90 sections. Mr Hayes comments that 'There is no evidence on the file of any consultation with the beneficial owners on this variation.' Neither did Hansen mention the variation to owners when he informed them a loan had been approved.<sup>162</sup>

While the loan application was being compiled, Pakariki Harrison's solicitors advised the Hamilton Trust Office that the Coromandel County Council was seeking charging orders for unpaid rates on the land amounting to \$719.30. Harrison could not pay the rates owing. Hansen suggested in reply that the solicitors try to negotiate with the council to delay charging orders by telling the council that they would be able to collect higher rates should the subdivision proceed. Of course, by this time, the land had already been vested in the trustee. Mr Hayes comments that 'It is extraordinary that the Maori Trustee should assume that the Council would remit the outstanding rates (if that is what Hansen meant)'. However, it appears that Apperley had already discussed rates with the council in early February 1969, as the council advised Harrison's solicitors that 'The District Officer [Apperley] advised that the Maori Trustee would not be interested in outstanding rates prior to the date of the order vesting the land in him.'<sup>163</sup> The council rejected the idea that charging orders would interfere with progress of the subdivision, which Hansen appeared to believe might be the case. Mr Hayes suggests that if the Maori Trustee was confident about the success of the proposal, he should have undertaken to clear all outstanding rates on completion of subdivision, as it appears to Hayes that the council would have accepted this as sufficient protection in lieu of a charging order. Harrison's solicitors suggested this course also. But, while the council had to protect its position without any such assurances, it was prepared to assist the subdivision where possible, and made what Mr Hayes calls a generous offer to accept land from the subdivision equal in value to the arrears owing.<sup>164</sup>

---

159. Head office to Apperley, 7 February 1969; Apperley in reply, 14 February 1969 (doc R16(a), pp 89–90; doc R16, p 27); doc S8(a), p 164

160. Document R16, p 28

161. Document S8(a), p 165

162. Document R16, p 28

163. County clerk to Cairns Slane and Company, 7 March 1969 (doc R16(a), p 97; doc R16, p 30)

164. Document R16, p 31



In the event, the court adjourned the hearing for charging orders to give the parties a chance to negotiate, but they were unable to reach agreement. Then in June, the council asked the trustee if he was in a position to give an undertaking to pay the amount owing when funds became available, but the trustee replied he was unable to give such an undertaking until potential erosion issues on the island were resolved.<sup>165</sup> Erosion had become a discussion point in April 1969, when Apperley met with the county engineer and the chairman of the development committee, Rabarts. The council had been concerned about erosion for sometime; there was already evidence of it at the southern end of the island. The bridge, drainage, and roading were also discussed. A meeting took place on site on 13 May 1969 to further these matters, especially the causeway and bridge. It was noted that the bridge would have to cope with the river's propensity to flood. Kerr was asked to prepare a new scheme plan, for a two-stage subdivision, but then was then asked to halt work pending negotiation over erosion and what to do about the course of the Harataunga Stream. But negotiations did not progress much from May 1969 until March 1970, though Kerr did suggest to Hansen in August 1969 that returning the stream to its original course would be cheaper than building a causeway and bridge. In June 1969, the council also advised that it approved the preliminary scheme plan in principle, though remained concerned about the potential for erosion.<sup>166</sup>

By mid to late 1969, Apperley was beginning to doubt the viability of the subdivision. Progress began to slow considerably in comparison with the first flush of optimism. Around the same time, head office asked for a progress report. In December 1969, Harangi Harrison called at the Hamilton office also inquiring as to progress. Both were told that progress had stalled pending resolution of the stream issue. The request for information spurred Hansen into suggesting to Apperley that the beneficial owners should be informed of the current state of affairs and also that the trustee intended to terminate the trust. However, it appears that no circular letter was sent to the beneficial owners at this time.

In 1970, rates again surfaced as an issue, once more prompting action. In late February 1970, the council applied to the Maori Land Court for charging orders for rates arrears of \$356.40. Once again, the council said it would not pursue the charging orders if the trustee would agree to clear all arrears on completion of the project, and once again, the court adjourned the matter *sine die*. (We note it appears from later correspondence that the charging orders were nevertheless granted; see below.)

Momentum was building to consider reverting the stream to its original course. In April 1970, Hansen met with the Ministry of Works Soil Conservation Engineer Attwood to discuss the possibility. In a file note of this meeting, Hansen records his doubt that the subdivision would proceed, but states that Attwood's opinion would determine that. Attwood

165. County clerk to Maori Trustee, 20 June 1969; Apperley to county clerk, 1 July 1969 (doc R16(a), pp 147, 149; doc R16, pp 32–33)

166. Document R16, pp 35–36; doc S8(a), pp 166–167

visited the site on 5 May 1970, and gave his preliminary report on 24 July 1970. If subdivision was to proceed, he preferred returning the stream to its original course as he thought the current course only temporary. However, the strong warnings he gave about the potential for storm and tide damage to the island, and the cost of reverting the stream gave little cause for optimism about subdivision. Hansen commented to Attwood in reply: 'Your forecast that the course of the Harataunga Stream will revert to its old position within the next few years does not fill us with enthusiasm about the idea of spending \$100,000 on the development and subdivision of the land.'<sup>167</sup>

Nothing further happened until October of 1970, when the county clerk asked as to progress, as the council was of course anxious to know when it might receive settlement of the outstanding rates. Apperley replied that the trustee would take no further steps with subdivision until they had received the final report from the Ministry of Works. A similar inquiry as to when funds might be forthcoming from the subdivision and sale (it seems Dalgety NZ Limited was awaiting payment from one of the owners, EP Kawhia, who was relying on his share to settle 'long standing accounts')<sup>168</sup> finally prompted a circular letter from Apperley to all beneficial owners on 10 November 1970. Apperley advised the owners that, though a scheme had been approved in principle, the council wanted confirmation of the course of the stream. Apperley said that he would be in touch again when a decision had been reached.<sup>169</sup> This appears to be the first communication with most of the beneficial owners since January 1969, and as well as there being an almost two-year gap in correspondence with the owners, Crown witness Mr Hayes notes that the letter was lacking in other respects. Apperley did not mention the outstanding rates situation, nor did he fully verse the owners as to the investigations into the stream's course or of the erosion problem. 'In short, the Maori Trustee failed to keep the owners fully informed.'<sup>170</sup>

Once again, the council applied for charging orders for outstanding rates, this time from \$324 for the 1970–71 year. The charging orders appear to have been granted. These rates and those for the 1969–70 year, were both addressed to the Hamilton office of the Maori Trustee. Hayes notes that there is no record of the trustee forwarding the notifications on to the beneficial owners.<sup>171</sup> And once again, an inquiry by one of the owners prompted the next contact with the trustee. Mrs Harrison of Ruatoria visited the Hamilton office on 12 March 1971 and asked as to the progress of the subdivision. Apperley replied that the project was still on hold while they waited for confirmation of the stream's course, saying that it was unlikely that the course would be certain for some years yet. Mrs Harrison apparently said that she now understood the problem and would inform other owners at Ruatoria.<sup>172</sup> In May 1971,

167. Hansen to Attwood, 31 July 1970 (doc R16(a), p 185; doc R16, p 41)

168. Dalgety NZ Ltd to Maori Trustee, 2 November 1970 (doc R16(a), p 190; doc R16, p 42)

169. Apperley to all beneficial owners, 10 November 1970 (doc R16(a), p 193; doc R16, p 42)

170. Document R16, pp 42–43

171. Ibid, p 43

172. Filenote, 17 March 1971 (doc R16(a), p 200; doc R16, pp 43–44)

Pakariki Harrison's solicitors also inquired about the progress. The trust office replied that 'considerable doubts are now being entertained by the Maori Trustee as to the worthiness of the proposal' and that, as trustee and prospective lender, it was the trustee's role to 'ensure that no commitments are entered into ill-advisedly'.<sup>173</sup>

Shortly after, in July 1971, Attwood (the Ministry of Works' soil engineer) made his final report. He recommended that subdivision not proceed, because there was, in his opinion, insufficient protection for residences from storms (most of the island was only four feet above the mean high-water mark), and there were also erosion and accretion problems. The Maori Trustee therefore decided to end the project, terminate the trust and revest the block in the beneficial owners, advising them of this by letter of 26 August 1971.<sup>174</sup> The trustee also advised the council, adding that, because 'no funds are received by the Maori Trustee . . . it is not possible to make any contribution' for rates.<sup>175</sup>

The county clerk replied straight away, asking the trustee not to revest until the council had had time to resolve the rates issue, and also asking the trustee to consider selling the block as a whole, which the trustee declined to do.<sup>176</sup> Pakariki Harrison's solicitors also replied immediately, requesting a copy of Attwood's report, which the trustee declined to release to the owners, saying the report had been 'made to the trustee'. However, the trustee then set out his estimated costs (of \$110), and stated that the Ministry of Works might charge for Attwood's report; that is, the same report which he would not release to the owners. Mr Hayes comments that the trustee's decision to refuse a copy to Harrison's solicitors was 'extraordinary', especially as the same day as this reply to the solicitors, the trustee forwarded a copy to the county clerk. Mr Hayes continues that perhaps even more important was that in signalling his intention to pass on the cost for the report to the beneficial owners, the trustee 'was seemingly oblivious to the fact that he was a trustee for the beneficial owners'.<sup>177</sup>

On 18 November 1971, one of the owners (Huingawaea Harrison) wrote to the Hamilton Maori Land Court registrar, seeking clarification of the rates owing and any charging orders. Harrison also wanted clarification as to whether the Coromandel County Council 'was in a position to ask the Maori Trustee to make provisions for the sale of the Harataunga 2A block if the landowners paid the rates'.<sup>178</sup> The deputy registrar replied that charging orders existed for the periods 1 April 1967 to 31 March 1969 of \$712.80, 1 April 1969 to 31 March 1970 of \$356.40, and 1 April 1970 to 31 March 1971, also of \$356.40. That is, the court had

173. Maori Trustee to Cairns Slane and Company, 21 June 1971 (doc R16(a), p 202; doc R16, p 45)

174. Maori Trustee to beneficial owners, 26 August 1971 (doc R16(a), p 209; doc R16, p 46); see also doc s8(a), pp 168–169

175. Maori Trustee to county clerk, 26 August 1971 (doc R16(a), p 208; doc R16, p 46)

176. County clerk to Maori Trustee, 30 September 1971 (doc R16(a) p 226; doc R16, p 47)

177. Maori Trustee to Cairns, Slane and Company, 10 September 1971 (doc R16(a), p 216; doc R16, p 47)

178. Huingawaea Parearau Harrison to registrar, Maori Land Court, Hamilton, 18 November 1971, BACS series, file A908/2A, C377, Archives NZ (Ak) (doc s8(a), p 170)

## 21.3.4(1)

been making charging orders for the entire period of the proposed subdivision, from 1967 though to 1971.<sup>179</sup>

The application for revesting the block in the beneficial owners and for charging orders for \$106.96 for the trustee's costs went to the Maori Land Court on 30 November 1971. The beneficial owners opposed the application, instead wanting the block sold 'as is'. Kohn, counsel for eight out of nine of the owners, argued that at the January 1969 meeting at Ruatoria, the trustee had asked the owners to vest the land in the Maori Trustee. He also argued that the question of rates had been addressed by Apperley at that meeting, and that Apperley had assured the owners 'that they would not have to worry about rates'. Kohn said outstanding rates now stood at about \$1900, and the trustee had done nothing about these during his trusteeship.<sup>180</sup> Counsel Randall, representing Pakariki Harrison, asserted that the trustee had 'not consulted with his beneficiaries in any way whatsoever', and refused to give Attwood's report to the owners. This refusal he regarded as a breach of trust. He argued that, because the owners wanted the block sold, the trustee had an obligation to assist them to this end.<sup>181</sup> The county council supported a sale, and was 'waiting in the wings', in Mr Hayes' words, with its own application for charging orders (in fact, the county clerk had suggested in September 1971 that the council seek the trusteeship itself 'to promote development and thus secure payment of the rates on the land'.<sup>182</sup> However, the trustee agreed to remain for the purposes of selling the block as a whole, as long as a charging order was granted for his costs to date and for the sale.<sup>183</sup> But the court refused the trustee's application for a charging order for \$106.96, as the amount was not supported by 'particulars' (and the court was not impressed at charges such as 96 cents for interest.) The court also stated that the evidence did not seem to support the trustee's claim that the block could not be subdivided. But the court did vary the trust terms so that the block could now be sold as a whole. The trustee's costs would be revisited at the termination of the trust on sale.<sup>184</sup>

The trustee immediately began marketing the block for sale as a whole. Three tenders were received: one from R L Grey for \$11,128; another from O and A McKay for \$2600; and the final from George W Potae for \$6000. But since the Government valuation was \$16,500, the trustee wrote to counsel for the owners saying he would decline all three offers, and that it was not an opportune time for sale. The trustee thought the block would increase in value in the next years, and he doubted whether the council 'could really achieve anything by way

---

179. ID Bell, Maori Land Court, Hamilton, to Huingawaea Parearau Harrison, 24 November 1971, BACS series, file A908/2A, C377, Archives NZ (Ak) (doc s8(a), p170). For each charging order, there was an additional \$2 in costs.

180. Minutes of hearing (doc R16(a), pp 248–254; doc R16, p 48)

181. Ibid (p 254; p 49)

182. Comments by county clerk to council executive committee, 6 September 1971, SP180, DMA, Kennedy Bay Island, TDCD (doc s8(a), pp 169–170)

183. Document R16, p 49; doc s8(a), pp 170–174

184. Minutes of hearing (doc R16(a), p 261; doc R16, p 50)

of payment of rates in view of the lack of appeal of the property.<sup>185</sup> He asked the owners to reply within a month, and said that he would ask the court to discharge him from his trust and grant charging orders for his costs to date. Counsel for the owners all suggested that the trustee try marketing the property again, through a reputable land agent, or try and increase the offers. Soon after, Pakariki Harrison's solicitors advised the trustee that Harrison had been in negotiations with George Potae, and asked if Potae had been one of the tenderers. The trustee responded that he had tried to increase the offers, and confirmed that Potae had been one of the tenderers. Indeed, in the outcome, the trustee did manage after much negotiation to get Grey to increase his offer to the Government valuation of \$16,500, subject to the trustee loaning Grey \$7500 for a term of five years at 6½ per cent. Grey was to pay for any survey costs to obtain a land transfer title. Settlement of the sale was effected on 12 December 1972. On 20 December 1972, the trustee informed the beneficial owners that the block was sold and their respective shares of the proceeds would be sent after rates and his costs had been settled. By early 1973, the trustee had paid the outstanding rates of \$1902 from the proceeds of sale, and on 5 February 1973, the county council's chairman wrote to the Maori Land Court advising that the council was discharging the three charging orders over Harataunga 2A.<sup>186</sup>

Distribution was not made to the owners until 31 May 1973, though Pakariki Harrison did not receive his share at that time. Harrison wrote to the Minister of Maori Affairs in June 1973 complaining at the lack of distribution. In the letter, he stated:

Several years ago, the Coromandel County Council raised the rates on the [Harataunga 2A block] quite considerably as it was rezoned a Residential property and we were forced to subdivide or sell to meet insistent rate demands. The Maori Trustee suggested that we subdivide and tentative plans were drawn up . . .

Since the sale of the property the values have been lowered considerably and rates are now nominal as it has been rezoned Rural – a very bitter pill to swallow indeed as it was through rezoning from Rural to Residential that we were required to sell in the first place.<sup>187</sup>

We note Mr Harrison's complaint that the land had been rezoned residential at some point, which raised the rates liability of the land, and then rezoned rural after its sale to Mr Grey, lowering the rates liability once again. Unfortunately no further information as to the zoning or valuing of the land for rates purposes was presented to this inquiry. At any rate, the Minister replied to Harrison (after first receiving a report from the Hamilton Maori Affairs office), apologising for the delay in distribution, and explaining that costs, fees, and

---

185. Maori Trustee to Wauchop Kohn and McIntyre and to Miller and Poulgrain (Randall's firm), 24 March 1972 (doc R16(a), pp 299–302; doc R16, pp 51–52)

186. Document R16, p 53; doc S8(a), p 174

187. Pakariki Harrison to Minister of Maori Affairs, 20 June 1973, AAMK series, file 869/12461, 54/27/263, Archives NZ (doc S8(a), p 175; doc R16, p 55)

## 21.3.4(2)

outstanding rates had to be deducted first.<sup>188</sup> Harrison's share had mistakenly been held for him at the Hamilton office, rather than sent to his solicitors as instructed. In the outcome, the trustee charged \$934.52 for his services, including a fee of \$120. The law firm of Wauchop Kohn and McIntyre also invoiced for \$350 plus disbursements of \$88.50, but the trustee challenged this and managed to get these fees reduced by \$75. Mr Hayes comments that 'the Maori Trustee's fees and other charges were extraordinarily modest given the significant amount of work undertaken.'<sup>189</sup>

**(2) Claimant and Crown submissions**

Two groups of Ngati Porou Ki Harataunga Ki Mataora made submissions on this issue, and their submissions differed on some key points. The Wai 866 claimants' position appears to be summed up in the words of claimant John Tamihere, as follows:

Ngati Porou states that the Maori Trustee, in collusion with the Rating Officer of the then Coromandel County Council, applied such duress and pressure as agents of the Crown that Maori owners were left with no option but to sell Harataunga 2A, or Rangiriri Island.<sup>190</sup>

Mr Tamihere states that Rangiriri Island is of special significance and character to Ngati Porou. The remains of both Ngati Porou and Hauraki tupuna are buried there, and it was a strategic area. But the owners were, under duress, put in a position such that the land was a forced sale; 'pressure such as this rather than [n] Maori consent led to many land "sales"'. The key shareholder (Pakariki) was placed in an invidious position, as rating pressure was being applied by the local authority to 'either pay up or sell up.' The owners, who lived away from the land and had large families to support, were 'under significant hardship at this particular point in time.'<sup>191</sup> Counsel John Kahukiwa added that if there had been no rates liabilities, the owners would not have considered selling parts of the island to raise money. The Crown and its agents could have remitted the rates owed, but this does not appear to have been contemplated.<sup>192</sup>

Mr Tamihere considers the Maori Trustee 'colluded' with the local authority by accepting unquestioningly the rates liability, and seeking alienation of the land to end his involvement in the matter. The Maori Trustee wanted to recoup his costs. Tamihere also criticised the Maori Trustee for financing the eventual sale to Mr Grey in 1976, alleging that the trustee financed, at the expense of the owners, the alienation of the land. Further, Tamihere says the trustee did so to 'escape its onerous and fiduciary responsibilities to the Maori owners.'<sup>193</sup>

---

188. Document s8(a), p 176

189. Document R16, p 58

190. Document D32, p 2

191. Ibid, pp 2-4; doc Y19, pp 12-14

192. Document Y19, pp 14-15, 19-20

193. Document D32, pp 2-4; doc Y19, p 20

The trustee did not consider financing an offer by Mr Potae, a tangata hau kainga, or try to negotiate a better offer from Mr Potae.<sup>194</sup>

Tamihere and Kahukiwa both stress that Mr Hayes' report does not take into account the many phone conversations and informal discussions between the owners and the trustee, which provide a fuller context for the owners' decisions as to a continuing role for the trustee.<sup>195</sup> (The Wai 866 claimants also drew attention to the Maori Trustee's compulsory acquisition of 'uneconomic shares'.<sup>196</sup> This issue is discussed in section 18.4.6.)

The Wai 792 claimants, on the other hand, 'do not suggest that the Maori Trustee and the Coromandel County Council colluded to sell Harataunga 2A. They do not agree with any suggestion that the Maori Trustee "forced" the owners to sell Harataunga 2A.' As their researcher Parekura White concluded: 'The Maori Trustee did not initiate the subdivision and or the sale of the block.'<sup>197</sup> Despite this, the Wai 792 claimants have concerns which arise out of the administration and sale of Harataunga 2A. The concerns are that: multiple ownership, as highlighted by Keita Walker, was a drawback to the utilisation and development of the block; the Maori Trustee had failed to keep the owners informed of increasing rates, when rates were a chief reason why the owners wanted the trustee to continue to administer the land for subdivision; and that the Maori Trustee continued to encourage subdivision while being aware of 'serious flaws' associated with it.<sup>198</sup> The accumulation of rates was a 'significant contributing factor in the sale of Harataunga 2A.' In addition, the Crown insisted on a reserve contribution from all subdivisions. The taking of such reserves nibbled away from the ever-diminishing Maori freehold land base, and, together with the legislation that allowed local authorities to sell land in satisfaction of outstanding rates, can hardly be said to show the Crown actively protecting Maori land to the fullest extent possible.<sup>199</sup>

Crown counsel replied to the claims over Harataunga 2A through its submissions on the role of the Maori Trustee. Essentially, Crown counsel endorsed Mr Hayes' conclusions, denying that the trustee forced the owners to sell, or that he colluded with the county council for settlement of rates. Rather, 'It was the owners, doubtless concerned by the burden of rates, who insisted upon the Maori Trustee remaining as trustee for the purposes of selling the block. The Maori Trustee reluctantly acquiesced.' Mr Hayes states that the trustee did not initiate the proposal to subdivide the block, but became involved at the invitation of Keita Walker. Pakariki Harrison had already contemplated a subdivision of the block several years prior to this attempt. 'In short, the owners contemplated selling the block several years before the Maori Trustee became involved.' While there were shortcomings in the trustee's administration of the block, these shortcomings do not, in Mr Hayes' opinion, support the

---

194. Document Y19, p 20; doc AA1, p 290

195. Document S35, pp 29–30; doc Y19, pp 16–19

196. Document Y19, pp 11–12; doc AA1, pp 284–293

197. Document S8(a), p 177

198. Document Y18, pp 21–22

199. Ibid, p 25



essence of the claim. While ‘the burden of rates was a problem for the owners several years before the Maori Trustee became involved’, an omission of the trustee’s administration ‘was his failure to have the owners address their responsibility regarding the rates.’<sup>200</sup>

Crown counsel reiterated that the Maori Trustee did not collude with the county council to force a sale for rates, and neither did the trustee push for a sale of the land to recover his costs. Counsel noted the claimants’ assertion that there was a wider context of ‘gentlemen’s agreements’, but was unable to respond due to lack of evidence.<sup>201</sup> Further, the Crown argued that it would have been irresponsible to accept the Potae offer, which was well under half the largest amount offered (by Grey) for the island as a whole.<sup>202</sup>

### **(3) Tribunal comment on Harataunga 2A**

It seems evident to us that, as the Wai 792 claimants hold, no undue pressure was exerted by the Maori Trustee on the owners of Harataunga 2A to subdivide and then sell the block. It is apparent that the Maori Trustee was, after an initial burst of undue optimism, very reluctant to continue as trustee and sell the land. Neither does it seem to us that the trustee’s costs were particularly significant to the outcome of the block. Moreover, it is clear from Keita Walker’s letter that the owners were aware from the outset that there would be legal costs similar to those charged by the Maori Trustee. Mrs Walker had suggested that the owners might consider giving a solicitor shares in the company they would form for subdivision, in lieu of payment.

But the Maori Trustee should have tried to negotiate some rates agreement with the council, and, as Mr Hayes acknowledged, most definitely should have kept the owners better informed of their rates obligations. It is hardly surprising that, without being advised otherwise, the owners would have assumed the trustee would manage rates during the course of the trusteeship. This would have been especially so as rates were the driving force for having the land vested in the Maori Trustee for subdivision and sale.

We accept that there would undoubtedly have been many informal discussions between the trustee’s office and the beneficial owners, separate from the written record, as is often the case. We are not able to speculate as to what those discussions might have been, and what either side might have informed the other of in such discussions. Regardless, the trustee had a duty to keep the owners informed not only of their rates obligations but also of the lack of progress of the subdivision. That the owners were not notified of the problems for a crucial two-year period clearly shows inadequate consultation and protection by the Maori Trustee. This is compounded by the fact that the owners had been led to believe that, within that same time frame, the next correspondence they could expect to receive would be their share of the sale proceeds. But we do not suggest that the trustee is an agent acting by or on

---

<sup>200.</sup> Document R16, p 58

<sup>201.</sup> Document AA1, p 291

<sup>202.</sup> Ibid, p 292



behalf of the Crown; this was not argued before us, therefore we rely on the findings of the Waitangi Tribunal's *Te Whanganui A Tara* report.<sup>203</sup> This being so, there is a difficulty in seeing how the administrative failings of the trustee can be said to be procedural failings by the Crown. It is easy to understand how the perception might arise, as the Native (later Maori) Trustee was, of course, set up by the Crown, and the work of this office was often carried out by Crown officials in the Department of Maori Affairs. We suspect that the trustee's actions in this regard would not stand up to the Crown's expectations of that office either, as Mr Hayes indeed suggests.

We do not accept counsel for Wai 866's suggestion that the Maori Trustee pressured the owners into subdivision, which was first mooted by Pakariki Harrison and then Keita Walker. The trustee acted on their suggestions, although the office should be admonished for encouraging subdivision unrealistically as a profitable investment before knowing the engineering limitations. We further note that the Maori Trustee's district staff encouraged the owners to vest the land in the trustee rather than accept a very reasonable offer in hand of \$38,000. In hindsight, the owners would obviously have been better off accepting this sum, as they did not retain any sections under the eventual sale of the block for half that amount. The trustee's staff must bear responsibility for 'talking up' the subdivision, with projected returns of 33 per cent to 90 per cent. The beneficial owners were prejudiced by the district office staff's over-enthusiasm for a costly subdivision.

However, the point here is not whether the trustee is an agent of the Crown, nor whether the trustee or the owners first suggested subdivision. Indeed we have dealt with the Harataunga 2A claims in this chapter rather than in the Native Land Court chapters simply because the ultimate point is that subdivision was an attractive proposition because of the never-ending pressure of rates. Most of the owners were absentee, the land was remote and without good access, and did not provide any revenue. In short, the land was a rates burden to the owners. Without either development or sale (with, hopefully, the retention of some sections), the owners would just get deeper into rates debt until charging orders were granted and the land was either leased or sold. Maori freehold land could still be sold for the non-payment of rates in the late 1960s, so this was a very real threat. It is understandable that the owners would want to do something worthwhile with the land to prevent that from happening. In fact, had they done nothing, we suspect that action might have been taken against them eventually for a lack of development under the provisions of section 34 of the Maori Purposes Act 1950, vesting unoccupied and undeveloped land in the Maori Trustee for sale. As Keita Walker said: 'This block is owing in rates and it is obviously senseless to remain owners at such a distance and to find it fast becoming a liability with accruing rates.'

Once again, the real issue behind this claim seems to us to be the familiar problem of fragmented title, inability to develop, and accruing debt. We hope that the 2002 legislation

---

203. Waitangi Tribunal, *Te Whanganui a Tara me Ona Takiwa*, pp 377–378

will provide a case-by-case solution to these old problems. As above, we urge the Crown to monitor the legislation carefully to see if it is being applied consistently by councils, and to ensure that if it is not assisting with these familiar problems, the legislation should be amended so that it does. We further note that the valuation of the land may once again have affected rates, as with Thames township lands. According to Pakariki Harrison, Harataunga 2A was revalued at a higher basis due to a residential designation. We have no information on when this took place, and wonder if the change provoked Mr Harrison's original interest in subdividing the block, prior to Mrs Walker's letter. If the land had been revalued for residential purposes, with the rates liability going up as a result, and then devalued back to a rural designation after the Maori owners had sold it, in large part because of those same high rates, this would indeed have been prejudicial to the former owners. However, we also wonder why the owners had not opposed the designation of the land as residential, with the resulting higher rates liability. We would like to have received more evidence on this particular issue.

We therefore find that the office of the Maori Trustee failed to adequately consult with the owners of Rangiriri Island, or to address the rates obligations of the owners during the time the land was held in trust. We further find that the ongoing pressure of rates was the driving force behind the vesting of the block in the trustee, and the eventual sale of the land.

#### **21.3.5 Te Horete 2C2**

This is another claim that touches on rates and the role of the Maori Trustee, though ultimately the trustee played little role in the alienation of this block of land. No submissions were given by counsel specifically on the rating of this block of land, so we deal with it briefly by way of a short narrative, based on Phillip Cleaver's report, and Tribunal comment.

##### **(1) Background**

In July 1935, an application for charging orders for rates arrears of £12 12s 8d for Te Horete 2C2 was granted by the Native Land Court to the Thames County Council. In 1940, the block was one of several put into receivership by the court, following a request from the Native Minister, due to unpaid survey charges. Daniel Mackay, the clerk of the Thames County Council, was appointed receiver. In that capacity, Mackay also recovered unpaid rates, though it is unclear what the amount of outstanding rates was from 1935 until 1940, when the county council was again granted an application for rates charging orders of £15 11s 6d. Mackay arranged for timber on the block to be sold to cover the various survey and rates debts. In July 1947, the court was informed by the chief surveyor that all survey charges and some interest had been paid, and that the remainder of interest should be remitted. It seems that Mackay had also paid rates of £62 17s 2d, though it is not clear what proportion of rates owing this amounted to. The court agreed, remitting the remaining interest, and

discharging Mackay from his receivership in April 1948. Mackay was instructed to take £15 1s 5d for his fees.<sup>204</sup>

Three years later, the Thames County Council again applied for rates charging orders of £16 1s 6d for the 1949–50 year. On 10 September 1951, it was explained to the court that the roll of owners of the block was not in order and there was no nominated owner of the block. The court did not grant the charging orders, but did, at a separate sitting on 11 December, vest the land in the Maori Trustee for alienation (seemingly, preferably by lease rather than by sale) under section 34 of the Maori Purposes, Act 1950 (discussed in section 21.2). This vesting followed the council's application – after the failure to get charging orders – to have the land alienated, as it was unoccupied and not properly cleared of weeds. It thus met two of the five grounds set out in section 34 for vesting in the Maori Trustee. A local farmer gave evidence that the land was unfenced, with no one living on it, and that there was blackberry and some ragwort on it. There were over 60 owners of the block, and they were widely scattered.<sup>205</sup>

Separately, Henry Robertson Kennedy, one of the 60 owners, summoned a meeting of owners under part 18 of the Maori Land Act 1931 to discuss an offer of purchase from C C McLoughlin. Kennedy does not seem to have been aware of the vesting in the Maori Trustee. The Government valuation was £960, and the Valuation Department described the land as difficult of access but 'quite an attractive block of land, fairly well watered and it could be developed to make a good farming unit.'<sup>206</sup> The meeting was held at the Magistrate's Court in Thames on 15 July 1952. Only six owners were present, with another five represented by proxy. The total shares held by these 11 owners amounted to 1½ out of the 10¼ shares in total. Mr Cleaver comments that it is not clear what efforts the Waikato–Maniapoto Maori Land Board went to notify owners, though they did try to contact those whose addresses were known. One owner returned his notice because he did not understand its contents (which were in Maori), asking for them to be explained to him. However, the lack of notification did not affect progress of the meeting, as under section 416 of the 1931 Act, failure to receive notification could not invalidate resolutions passed at meetings for which notification had not been received. Under section 417 of the same Act, the quorum for meetings of owners was set at only five, either present or represented. It seems that this was regardless of the overall number of owners.<sup>207</sup>

At the meeting, the owners were told that the land had been vested in the trustee for leasing to recover rates, as well as for weed management. However, the 11 owners unanimously agreed to sell to McLoughlin instead. As McLoughlin was not interested in cutting

---

204. Document G11, pp 43–45

205. Ibid, pp 45–47

206. District officer, Valuation Department, to registrar, Waikato–Maniapoto Maori Land Board, 12 February 1952, BACS A449/187g, Archives NZ (Ak) (doc G11, p 47)

207. Document G11, pp 47–48

## 21.3.5(2)

remaining timber from the land, it was not valued in the sale price of £960. In October 1952, the Thames County Council advised the Maori land board that rates had been paid. This does not seem to have come out of the sale price, as the Maori Trustee distributed the full £960 to owners, though it is not clear how the proceeds were divided up to owners. (Although the order vesting the block in the trustee had been cancelled by the court on 11 December, the trustee remained responsible for the distribution of sale proceeds.<sup>208</sup>)

Mr Cleaver comments that, while having only 11 owners represented met the legislative requirements, ‘it seems improper that the land was sold by such a small proportion of the owners, especially given that the notification procedure meant that it was likely that many of the ‘scattered’ owners of Te Horete 2C2 did not receive notice of the meeting’. Though those represented at the meeting made a unanimous decision, Cleaver asserts that it ‘fell well short of being a unanimous decision of all of the owners of Te Horete 2C2.’<sup>209</sup>

**(2) Tribunal comment**

Though we prefer not to make particular findings without the assistance of submissions from counsel, in our view the fate of this block deserves comment as it reveals the impact of the legislation relating to the rating of undeveloped Maori land as well as inadequate notification and quorum procedures (see sec 18.4.1(3)).

Clearly rating arrears led these owners to prefer sale over retention of the block; regardless of their wishes, the council applied for a similar course of action. We must respect the preference of the owners for sale rather than leasing of the block, though in general we maintain that leasing the land allows for its retention. While the role of the Maori Trustee in the management of this land was limited due to its sale, we believe that the legislative provisions that allowed for the block to be alienated (by either lease or sale) through the Maori Trustee did not offer adequate protection to owners. A preferable course would have been for the Government and local authorities to instead support the development of blocks of Maori land, which, like this block, were known to be potentially good farm land. Instead, Maori were often left with sale as the only option to forestall further rates debt, for even had a lease been entered into, without the owners having the means to farm the land themselves on the completion of the lease, rates would have again become a burden.

**21.4 TRIBUNAL COMMENT ON RATING OF HAURAKI MAORI LAND**

We do not know the overall extent of the rates burden borne by Hauraki Maori. While in many of the examples discussed above, Maori land might not have been compulsorily alienated under charging orders, it is obvious that rates debt (and the prospect of future rates

---

208. Document G11, pp 48–50

209. Ibid, p 50

debt) created pressure for selling rather than retaining the land. We note that other briefs of evidence than those discussed in this chapter also mentioned rates pressure leading to sale of land, but without further particulars we are unable to follow up these allegations.<sup>210</sup> However, we do provide a brief overview commentary based on the background and narrative set out above.

First, we note the Crown's acknowledgements that 'a good deal' of Maori land passed out of Hauraki ownership, at least in part due to rates, and that the rating burden might not always have been fairly applied to Hauraki Maori.<sup>211</sup> We note also some positive signs that both the Crown and the Thames–Coromandel County Council are moving towards the rating of Maori land for targeted services only. With all the attendant difficulties faced by Maori in the use of multiply owned land with fragmented title, we welcome and encourage this move. It seems that such a positive move can only aid the fostering of good relations between the parties, and create more equitable operating conditions for Maori landowners.

It is apparent that rates were yet another pressure on Maori owners, already struggling with the costs of partitioning and their corresponding inability to utilise their land. Clearly, it would always prove difficult for the owners to manage small parcels of land efficiently and produce revenue for rates when the ownership of blocks was highly fractionated.

The rates issues highlights the competing and contrasting values that Maori and Pakeha ascribe to land. Native land legislation had created the mess of titles, successions, and increasingly fragmented land ownership of small areas of land that so vexed attempts to rate Maori land successfully. In 1914, a former member of the Tairāwhiti Maori Land Board commented to the commissioner of Crown lands about the problems facing Maori landowners:

The great bar to practical settlement is the partition of the land . . . This has the effect of allocating perfectly useless sections of land to each Native or group of Natives . . . the Natives cannot let or sell them for anything like the price that their share of the block should produce . . .

I venture to say that this unpractical subdivision is the fundamental cause of nearly all the evils attendant on the Settlement of Native land. The result is the Native owns an area of land of such a shape and generally without access that it is nearly valueless to him either for sale or settlement.<sup>212</sup>

---

210. See, for example, document Y12, p 5, regarding Hikutaia 1G3, which was under charging orders for survey and rates arrears for several years from 1915 to 1917, when the block was sold. 'No doubt the heavy survey and rates costs contributed to that decision.' See also document Y9, pp72–73, document A6, p15, document A27, p5, and document A23, p7, regarding land being valued, and rated, at subdivision potential rather than for revenue produced from the land.

211. Paper 2.550, p 42; paper 2.227, p 21; doc AA1, p 269

212. Broderick to commissioner of Crown lands, ABWN 7611 W5021 1913/231 (Kathryn Rose, 'Document Banks to Reports by Kathryn Rose in Respect of Te Aitanga-a-Mahaki', 2000 (Wai 814 RO1, doc A18(a), vol 12, pp 8148–8150); Kathryn Rose, 'Te Aitanga-a-Mahaki Land, 1890–1970: Alienation and Efforts at Development', report commissioned by Crown Forestry Rental Trust and Te Aitanga-a-Mahaki Claims Committee, 2000 (Wai 814 RO1, doc A18, pp 348–349))

We note that just three years later, the Native Minister remained insistent that so-called ‘individualisation’ of title (that is, partition of blocks) was the answer to rates arrears, and not one of the main causes.<sup>213</sup>

In sum, we believe that the many problems associated with the rating of Maori land are symptomatic of the greater underlying ill caused by native and Maori land legislation (see chs 15, 16, 18). Alternatives could have always been considered for the way Maori land was rated. For example, one option might have been to consider rating on improved valuation rather than unimproved, though this would of course have had broad implications for all ratepayers and on the financial base of local authorities. If we accept that rating applies to Maori land, the question really becomes how should rating be applied equitably. We acknowledge that the Crown has wrestled with this question since the mid-nineteenth century, and has approached the rating of Maori land with great caution. The Crown has been inclined to allow the compulsory sale of Maori freehold land for rates arrears in the years 1893 to 1988 only. But much Maori land was sold for rates anyway, because there was no development option for the owners to cover the rates otherwise. If Maori were to be made liable for rates, then the Crown should have been equally careful to ensure that adequate assistance was offered to Maori landowners to develop their land and avoid the problems of fragmented title. The Crown should have also taken into account the considerable, often uncompensated, contribution of land for public works and national and local infrastructure made by Maori, both willingly and compulsorily.

Had this acknowledgement been made, along with active assistance provided for the development of Maori land, then we can see no problem in Treaty terms with the concept of rating of Maori land. The Crown hopes the recent legislation may begin to provide a more equitable basis for the rating of Maori land; we consider that the Crown must monitor the legislation to ensure that this so. The legislation could also provide some opportunity for the relief of outstanding rates for the current generation. But it cannot provide relief for the land that could not possibly have borne the rates it was charged with in past generations. Neither does it provide relief for the Maori land (both Maori freehold land and Maori land converted to general land) that was sold under charging orders. As was argued in the

---

213. Native Minister Herries to Internal Affairs Minister Russell, 24 May 1918, MA20/1/1, vol 1, pt 2, Archives NZ (doc R15, p 20; Bennion, p 40). In 1940, Michael Joseph Savage was to echo this comment with his own observation with regard to rates:

It is hoped that one important result of facilitating settlement of Native land will be the gradual solution of the vexed problem of local rating. Believing that it is neither equitable nor just to the Maori race that its birthright should be whittled away through non-payment of rates on areas which have in the past lain idle, the Government is reluctant to agree to the enforcement of rating charges by sale until such time as the particular Native has had a reasonable change of obtaining from his land the necessary revenue to meet living-expenses, farm maintenance, and interest and rates – or, in other words, until he has had the opportunity of using his land to good advantage through the provision of financial assistance and expert farming guidance.

From AJHR, 1940, G-10, p 6 (Bennion, p 69).

House, when debating the 1988 Rating Powers Bill, the sale of Maori land for rates arrears would always be contrary to the principles of the Treaty of Waitangi.<sup>214</sup> We therefore find that the Crown should, in negotiating the settlement quantum for the Hauraki claims, take into account the way Maori were under serious disadvantage in their ability to bear rates by the nature of title created by the Native Land Acts.

---

214. Jonathan Hunt, 7 June 1988, NZPD, 1988, vol 489, p 4165





## CHAPTER 22

### FORESHORE AND SEABED ISSUES IN HAURAKI

#### 22.1 INTRODUCTION

Many Hauraki claimants assert that the Crown has breached the Treaty in failing to recognise Hauraki Maori proprietary rights over their foreshore and seabed lands and resources, and in failing to protect these actively.<sup>1</sup> They assert that their claims relating to these issues are of fundamental importance to Hauraki iwi.<sup>2</sup>

Much evidence presented to us in hearings on these issues concerned the Native Land Court decisions relating to the Thames foreshore and the Crown's purchase of Maori interests in this land. Consequently, we focus our discussion on a general discussion of customary rights, and then turn to the Native Land Court decisions with regard to the Thames foreshore, Chief Judge Fenton's *Kauaeranga* decision in 1870, then Crown foreshore purchases, and the concurrent moves to legislate against the recurrence of this situation. We review continued Maori protest and petitions, and issues relating to the administration and development of the foreshore lands.

In order to avoid any confusion concerning the terms 'foreshore' and 'seabed', we adopt the terminology of the Tribunal's *Report on the Crown's Foreshore and Seabed Policy* (2004):

First, what is the foreshore? It is the intertidal zone, the land between the high- and low-water mark that is daily wet by the sea when the tide comes in. It does not refer to the beach above the high-water mark. The seabed is the land that extends from the low-water mark, and out to sea.<sup>3</sup>

---

1. Paper 2.550, pp 22–24

2. Document v1, pp 57–58

3. Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), p xi. Section 5 of the Foreshore and Seabed Act 2004 defines 'foreshore and seabed' as follows:

'foreshore and seabed'—

- (a) means the marine area that is bounded,—
  - (i) on the landward side by the line of mean high water springs; and
  - (ii) on the seaward side, by the outer limits of the territorial sea; and
- (b) includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and
- (c) includes the bed of Te Whaanga Lagoon in the Chatham Islands; and
- (d) includes the air space and the water space above the areas described in paragraphs (a) to (c); and
- (e) includes the subsoil, bedrock, and other matters below the areas described in paragraphs (a) to (c).

In our findings with regard to the claims concerning the Hauraki Gulf Marine Park Act 2000, we noted that ‘in tikanga Maori, no boundary is recognised between the land above the high-water mark, the foreshore between the mean high-and low-water mark, and the seabed beyond’; consequently, ‘Maori . . . often have difficulty in comprehending the compartmentalized nature of statute law, especially that relating to the management of the resources of the land and sea.’<sup>4</sup> We note again here that terms like ‘boundary’ and ‘tribe’ are problematic and that, while Fenton did use these terms in the *Kauaeranga* decision, the evidence before him suggested a complex situation he did not fully explore.

In treating this subject we are mindful of the wider debate concerning the issue of ‘ownership’ of the foreshore and seabed. We note the view of claimant counsel, with regard to the *Marlborough Sounds* case, that ‘there are issues relating to the foreshore and seabed which cannot at this time be addressed by the Tribunal.’<sup>5</sup> We are familiar with the Court of Appeal’s findings in the *Marlborough Sounds* case, together with the Government’s Foreshore and Seabed Act (and the policies that this legislation is based upon), and the Waitangi Tribunal’s *Report on the Crown’s Foreshore and Seabed Policy* (2004). We are of the view that it is not the place of this Tribunal to comment further on these wide-ranging matters, but rather to address the particular historical foreshore and seabed claims heard within the Hauraki district inquiry. We do, however, refer to some of the general conclusions and findings made in that report with regard to the relationship of Maori to the foreshore and seabed.

The issue of the Crown’s ‘assumption of ownership’ of the foreshore and seabed has been discussed in some detail in the Tribunal’s *Report on the Crown’s Foreshore and Seabed Policy*. We do not intend to revisit this issue in detail in this report, except to note the positions of claimants and the Crown with regard to the particular Hauraki claims.

## 22.2 CUSTOMARY RIGHTS AND BRITISH SETTLEMENT

As noted in chapter 2, the seas and tidal foreshores of Tikapa Moana north to Great Barrier and Mahurangi were as important as the land to the people of Hauraki. In the *Hauraki Gulf Marine Park Act Report* (2001), the Tribunal emphasised the point that ‘Maori custom law recognises an inextricable relationship between ancestry, mana, rangatiratanga, and rights of use, occupation, and ‘ownership’ of the resources of the land and sea.’<sup>6</sup> In the wider Hauraki inquiry we have heard much evidence pertaining to the complexity of Maori customary interactions with the foreshore, sea and inland waters. We have also heard substantial evidence concerning the continued and ongoing use by Maori of coastal lands and waters. European settlers and their activities inevitably encroached upon Maori rights and

4. Waitangi Tribunal, *Hauraki Gulf Marine Park Act Report* (Wellington: Legislation Direct, 2001), p 31

5. Document v1, pp 58–59, 65

6. Waitangi Tribunal, *Hauraki Gulf Marine Park Act Report*, p 32

usages. Yet the connection between Hauraki Maori and the sea has remained strong, and this is reflected in the claims relating to the foreshore and seabed.

Paul Monin, following Angela Ballara, has written that by the time of European contact, 'there was no absolutely unclaimed land in Aotearoa, that is, land freely available for anyone to use. All land (and coastal and inland waters), along with the resources these contained, had been claimed by specific kin groups in a complex system of ownership and rights'.<sup>7</sup> These rights, however – particularly in the case of the Hauraki foreshore and inshore fisheries where the resources were so valued – were often overlapping and contested. 'Access to a variety of resources', Monin continues, 'seems to have been more important than consolidating a particular territory.' He cites James Mackay's later observation: 'here a strip belonging to one, there another strip, and then perhaps a long patch belonging to another tribe'.<sup>8</sup> Nowhere was this complex system of ownership more apparent, as Monin found, than in the Thames foreshore 'in which virtually every hapu of Hauraki sought a share':

By about 1750, a complex settlement had been reached, interests in the fishery being delineated by stakes planted close to the shore. The one-and-a-half mile stretch of foreshore between Tararu Point and the mouth of the Kauaeranga River was divided into forty five such interests.<sup>9</sup>

Elsewhere in Hauraki, Monin notes, 'cultivable lands were limited to small, alluvial river mouths, with correspondingly smaller foreshore resources'.<sup>10</sup> It appears from the evidence we have heard that most hapu controlled the foreshores immediately in front of their settlements, including tidal zones, and sometimes the immediately adjacent waters. As we have seen, however, settlement was by no means static. Monin has stated that the population was highly mobile, 'each hapu rotating among its areas of rights-holdings to harvest resources seasonally and to maintain ahi ka'.<sup>11</sup> Examples of customary uses of foreshore and seabed resources by Hauraki tribes are discussed in section 24.1.1.

In addition to the traditional evidence, we have heard archaeological evidence that 'suggests seafood was a primary source of food for Maori and . . . this seafood diet included mussel, oysters, cockle, pipi, paua, marine mammals, snapper, kahawai, trevally, sharks, rays and other fish'.<sup>12</sup> Louise Furey has traced dietary changes over time as the environment was modified, but also stressed the continued importance of fishing and noted the increased exploitation of estuarine and sandy beach environments over time.<sup>13</sup> Early European accounts likewise confirm the abundant sea fisheries, the range of fishing techniques,

7. Paul Monin, *This Is My Place: Hauraki Contested, 1769–1875* (Wellington: Bridget Williams Books, 2001), p 13

8. James Mackay, evidence, 16 March 1891, AJHR, 1891, G-1, p 39 (Monin, p 13)

9. Monin, p 13

10. Ibid, p 14

11. Ibid

12. Document G2, p 32; doc A7, pp 23–24

13. Document A7, p 26

and the importance of this resource for the peoples of Hauraki. It is our view that prior to the arrival of Europeans, the traditional exchanges that included surplus fish – and for that matter the rights of access to particular areas of the coast for seasonal fishing by inland or neighbouring hapu – were part of the system of complex inter-tribal relationships rather than mere commodity exchanges. As such, ‘the fisheries that provided staple food, and also supported elaborate feasts and gift exchanges, were crucially important to Maori society’ – for Hauraki as much as for any other people.<sup>14</sup>

As noted in section 24.2, in 1769 James Cook observed both the quantity and quality of the fisheries. Following European settlement, commentators noted the industry of Hauraki Maori in utilising these resources, including the smoking and drying of fish for the Sydney market, and later the transportation of both processed and fresh fish and other kaimoana, along with other produce, for sale at Auckland and elsewhere.

As Richard Boast states in his Rangahaua Whanui Report, *The Foreshore* (1996), the tidal zone was important to Maori not only as a source of food. In *In re Ninety Mile Beach*, other uses were noted.<sup>15</sup> As summarised in the Tribunal’s *National Overview Report*, these included:

walkways or highways, by which coastal Maori travelled from one part of their domain to another. In some districts, they also served as battlegrounds. For all these reasons, but especially because of their value as food resources, the possession of, and access to, foreshores was a jealously guarded right. Where there were many claimants, these rights could be, as they were with respect to desirable areas of land, complex, overlapping, and contestable.<sup>16</sup>

Referring to specific Maori claims to particular areas of the foreshore before the Native Land Court, Boast states that:

It is possible that not always was the foreshore ‘owned’ in the same way. Particular parts of it may have been much more valuable than others and title could have been quite variable. Certainly most of the historic claims to areas of the foreshore have been highly particularist and tend to relate to especially prized areas which are valuable in terms of the resources they yielded, or which, like Ninety-Mile Beach, had additional qualities of a spiritual value.<sup>17</sup>

In stating their position with regard to the foreshore and seabed, the Hauraki claimants have cited the 1869 petition of Tanumeha Te Moananui and others as follows:

---

14. Alan Ward, *An Unsettled History: Treaty Claims in New Zealand Today* (Wellington: Bridget Williams Books, 1999), pp 43–44

15. Richard Boast, *The Foreshore*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996); *In re Ninety Mile Beach* [1963] NZLR 461

16. Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, p 337; Boast, pp 17–19

17. Boast, p 18

O friends, our hands, our feet, our bodies, are always on our places of the sea; the fish, the mussels, the shellfish are there. Our hands are holding onto those, extending even to the gold beneath. The men, the women, the children are united in this that they alone are to have control of all the places of the sea . . .<sup>18</sup>

The claimants have stated that ‘the foreshore and seabed around the Hauraki region are held by tangata whenua today, as they always have [been], in terms of Hauraki tikanga’ and that, furthermore:

Hauraki [Maori] consider themselves to be the customary owners of the foreshore and seabed within their rohe – Mai Matakana ki Matakana, including Tikapa Moana. Tikapa Moana itself is a taonga to Hauraki and Hauraki have since time immemorial, and continue to this day to exercise their tino rangatiratanga and responsibilities as kaitiaki over Tikapa Moana, and the wider foreshore and seabed within the Hauraki rohe.<sup>19</sup>

Claimant counsel have stressed that, ‘as kaitiaki of Tikapa Moana and the rivers and other seas and foreshores of Hauraki, the tangata whenua are burdened with serious responsibilities and obligations.’ They have argued that, despite the continued practice of such rights and duties, and the guarantee made in article 2 of the Treaty of Waitangi, ‘the Crown has presumed ownership or at least control of the foreshore and seabed’, and with the limited exceptions on the Thames coast, has never recognised or protected their ‘customary rights of ownership and authority including tino rangatiratanga.’<sup>20</sup> We note that the Foreshore and Seabed Act has changed the situation since these claims were heard.

The claimants have presented evidence of the importance of the tidal flats in particular, and foreshore and seabed of the Hauraki region in general, as a vital traditional food resource for Maori.<sup>21</sup> In 1869, James Mackay described the area of Thames foreshore under discussion by the select committee on the Thames Sea Beach Bill as ‘the most famous patiki (flat fish) ground in New Zealand.’<sup>22</sup> At the same time, W H Taipiri stressed the importance of the foreshore to Maori as a resource:

It is the place from which we obtained flounders and cockles, and was a snipe preserve from the time of our ancestors even down to us. The land was considered valuable by our ancestors, it has been fought for, and men have been killed on account of these lands.<sup>23</sup>

18. Petition of Te Moananui, 5 August 1869, in ‘Report of Committee on Thames Sea Beach Bill’, AJHR, 1869, F-7, app E, p 18 (doc A8(a)), p 1416; doc Y1, p 56)

19. Document Y1, p 56; docs G13, G14, G17, M27, M28, M29

20. Document Y1, p 57

21. Document V1, p 216; doc A7, pp 23–26, 33, 52

22. ‘Report of the Select Committee on the Thames Sea Beach Bill’, 24 August 1869, AJHR, 1869 F-7, p 7

23. ‘Letters from Certain Natives Objecting to the Taking of Lands between High and Low Water Mark at Shortland for Gold Mining’, Le 1/1869/124 (doc A8(a), pp 188–189; doc V1, p 225)

The importance of the foreshore and seabed to Maori, generally, both historically and today, is without doubt. We have heard substantial evidence of the great range of Maori fishing activity throughout the inquiry district, that is, throughout the gulf, and in all bays and harbours, including the annual gatherings for shark fishing at Mahurangi. Almost all claimant groups, and certainly all coastal ones, have provided substantial evidence that they have never ceased to fish on the foreshore and in the adjacent seas. Te Hiiri Ngamane, for example, spoke of growing up at Umangawha or Colville, and receiving from his father, Ngakoma Ngamane, stories about the foreshore and bays of the Moehau area, and the tikanga associated with the foreshore and the sea and in relation to wahi tapu.<sup>24</sup> Among this transmitted knowledge was that relating to the ‘famous pouraka or fish trap’ at Umangawha. Te Hiiri Ngamane told us that ‘in fact the pouraka is still catching fish. This was our primary source of food during the Depression. If it wasn’t for that fish trap, I don’t know where we would have been. The locals respected and looked after it and still do.’ On a good day, we heard, ‘you might catch 50 flounder in the fish trap. But there were also plenty of herrings, snapper, kingfish, frost fish and kahawai which found their way into the trap. In fact everything that could be caught in Tikapa Moana we have caught in the pouraka.’<sup>25</sup>

As noted, European settlement inevitably encroached on Maori rights and usages. According to Monin, ‘Hauraki was the first region in New Zealand to experience extensive, sustained Maori–European contact.’<sup>26</sup> We have discussed above in section 3.1.1 and elsewhere the engagement of Hauraki Maori the new commercial opportunities.<sup>27</sup> With increased European settlement in coastal locations came increasing modifications to parts of the foreshore. The claimants have alleged that, in allowing the construction of wharves and port facilities, navigational marks and lighthouses, and other structures on foreshore lands, ‘all without the consent of or compensation of Hauraki [Maori]’, the Crown has ‘acted in a way which is manifestly inconsistent with’ Hauraki Maori ‘customary rights of ownership and authority.’<sup>28</sup> The evidence suggests that some private Europeans paid Maori owners of the adjacent land before engaging in such activities as commercial fishing or the building of wharves and other infrastructure.<sup>29</sup>

In its submissions, the Crown likewise stressed the significance of the beach in the contact period and the years that followed. Referring to its submissions in the *Marlborough Sounds* litigation before the Court of Appeal, Crown counsel asserted that ‘the modern state of New Zealand was founded on the beachfront’, and stressed the importance of access to and use of the foreshore by both Maori and Pakeha in the period up to and including 1840:

---

24. Document G13

25. Ibid, pp 14–15

26. Monin, p 38

27. Document A8, p 34

28. Document Y1, p 57

29. ‘Report of the Select Committee on the Thames Sea Beach Bill’, 24 August 1869, AJHR, 1869, F-7, pp 7–8

Before 1840, there had been several generations of contact in some parts of the country. Directly or indirectly, this had inevitably meant access across the sea and beaches. That was also the pathway by which number of Maori gained experience of commerce in the high seas and visited some of the great ports of the world. Even before 1840, there had been sales of land to a considerable extent around some harbours . . . Early New Zealand was fundamentally a maritime society. The harbours, ports and roadstead, and the seas beyond, were the nexus linking the new colony with the outside world.<sup>30</sup>

The Crown submitted that, within the Hauraki context, ‘the waters of Tikapa Moana have, of course, been part of that vital nexus – linking not only the new colony with the outside world but providing vital links within the colony itself’. They referred to Monin’s description of the ‘exceptional water access in Hauraki’.<sup>31</sup> Taking this starting point, the Crown argued that:

if sales were to be the vehicle of settlement, it was obvious that the sale of coastal land must have significance in relation to the foreshore and adjacent sea. In many cases, possession of the land would otherwise be pointless . . . The sale of coastal lands necessarily implied the right and ability to use the foreshore and seabed.<sup>32</sup>

As already noted in chapter 9, the factor that brought the issue of ownership of the foreshore into great prominence was the likelihood of finding gold in the mudflats in front of the township of Shortland, and the encroachment of miners below the high-water mark. While we have already discussed this issue with particular regard to gold, we now return to these events with a different focus: the ownership (and alienation) of this area of foreshore. We pay particular attention to Chief Judge Fenton’s 1870 *Kauaeranga* decision, in which the whole question of Maori rights in the foreshore was first judicially examined.

## 22.3 THE THAMES FORESHORE AND THE KAUAERANGA DECISION

### 22.3.1 Background

The background to the ownership of the Thames foreshore has been described in detail in section 9.5. The early phase is summarised again here for convenience. In 1868, gold miners applied to Mackay as warden of the Kauaeranga goldfield to approve claims marked out below the high-water mark. Mackay declined because the claims lay outside his understanding of the boundary of the proclaimed goldfield (the high-water mark). Eventually, Mackay

---

30. Document AA1, p 192

31. Ibid; Monin, p 10

32. Document AA1, p 192



referred the matter to Government. On 17 October 1868, Richmond informed Mackay that land below the high-water mark was in an 'exceptional legal position' in that:

The Native title over it would probably not be recognised by courts of law; at the same time, it is not within the definition of Crown Land, or subject to the ordinary Waste Land laws. The Gold Fields Act of this session points out how it may be dealt with – that is, by agreement between the Colonial Government and the Native owners of adjacent lands.

Mackay was instructed to 'endeavour to arrange with the Native owners for the occupation of this tidal flat upon reasonable terms'.<sup>33</sup>

Having issued a proclamation warning that mining below the high-water mark would be subject to penalty under the Gold Fields Amendment Act 1868, Mackay entered into negotiation for the cession of the foreshore lands. Mackay later reported that he had 'found a very strong disinclination on the part of the Natives to give up their claims to the tidal flats to the north of Karaka Stream'.<sup>34</sup> He was successful in negotiating the Te Hape agreement with rangatira of Ngati Hauauru hapu of Ngati Maru, allowing gold mining over the part of the tidal flats claimed by them, in front of Shortland between the Hape Stream and the northern bank of the Kauaeranga. But Mackay was unable to come to terms with other Maori who hoped to make a more profitable private arrangement.

The Government then drafted the Thames Sea Beach Bill, which, as discussed in section 9.5 was intended to assert the Crown's prerogative right over the foreshore. As previously noted, a revised and more modest Bill, enacted as the Shortland Sea Beach Act 1869, debarred private dealings in the Thames foreshore and did little to clarify the nature of Maori rights. As already signalled, any potential for the involvement of Maori right holders in mining under the tidal flats were dashed by Fenton's decision in *Kauaeranga*.<sup>35</sup>

In February 1870, applications were made to the Native Land Court for the determination of ownership of a number of foreshore blocks from Tarau Creek to Kauaeranga River, including Pukehinau, Opitomoko, and the Kauaeranga mudflats. These cases were adjourned, but in May 1870 the court did hear an application from Tauira Te Wahapa and others for title to Whakaharatau (an area of just one acre one rood 16 perches). While Fenton found that, in this instance, the claimants had proved ownership to only part of the block upon which houses had stood before the sea had encroached on the land, he was of the view that the

---

33. Cooper to civil commissioner, 17 October 1868, 'Papers Brought before Parliament and Select Committees', Le 1/1869/133 (doc A8(a), pp 257–258; doc A8, p 157)

34. James Mackay, 'Report by Mr Commissioner Mackay Relative to the Thames Gold Fields', 27 July 1869, AJHR, 1869, A-17, p 11 (doc A8, p 157)

35. According to Richard Boast, there were instances prior to *Kauaeranga* when the Native Land Court in the Hauraki area had granted freehold title to parcels between the high- and low-water marks, with the plans being approved and registered by the provincial surveyor. Boast notes that the Crown compiled the details of these blocks when preparing for the Ninety-Mile Beach investigation of title in the Maori Land Court in 1957. He adds that the blocks are shown on Maori land plans 1677 and 2390 to 2403: Boast, pp 32, 50. This has been questioned by Fergus Sinclair for the Crown. We have not seen the relevant documents and are thus unable to comment further.



Supreme Court was the proper body to deal definitively with the questions raised concerning ownership of the foreshore.<sup>36</sup> The case was dismissed. In the later *Kauaeranga* judgment, Fenton noted that:

In the previous case (*Whakaharatau*) no proof was given in evidence of the exercise by the Maoris of any easement, or right of fishery, and the land was claimed simply as land above high-water mark is claimed; and the judgment in that case was that the question of ownership of any portion of the foreshore by a Maori must depend simply as a question of fact, and as the claimants had not proved any facts showing ownership, or usufructory occupation, the claim was dismissed.<sup>37</sup>

In his *Whakaharatau* judgment, Fenton did, however, express support for a view that Maori *could* own land in the inter-tidal zone:

I can find no reason or law which renders it incompetent for a Maori to have ownership of land covered by sea at high water, and considering the character of the English original occupation of the Island, the history and intent of the Treaty of Waitangi and the several statutes relating to the wild lands of the colony and the decisions of the Courts in England and in America on matters of this character I am of the opinion that the question of ownership of any portion of the foreshore by a Maori must depend simply on a question of fact.<sup>38</sup>

However, Fenton went on to add that 'At the same time I do not suppose that the Maoris would have ever claimed any right over such land except in the few cases where they had used it in the way of sole property for fisheries.'<sup>39</sup>

On 8–11 November 1870, Fenton heard a series of applications for investigation of title of foreshore blocks. The first to be heard was a portion of foreshore known as Kauaeranga 28A block claimed by Nikorima Pouotara. Based on the evidence heard, the court 'ordered a Certificate of Title to Nikorima Pouotara and Piniha Marutuahu for the right they exercised ['taking pipis and fish'], and left for argument whether they owned below the surface.'<sup>40</sup> This set a precedent for the other applications heard that day for other portions of the foreshore. Similar orders were made for occupation and use rights for a dozen other blocks.<sup>41</sup>

---

36. Hauraki minute book 4, fols 202–203 (doc A8, pp 162–163)

37. *Kauaeranga* [1870], Hauraki minute book 4, fol 236; *Kauaeranga* (1984) 14 VUWLR 227, 228, 239–240

38. Hauraki minute book 4, fols 202–203 (doc A8, p 163)

39. *Ibid*

40. *Ibid*, fol 211 (doc G9, p 22)

41. Pukehinau 1 to Rapana Maunganoa; Moanataiari 4A to Pirika Te Ruipoto, Parata Te Mapu, Piniha Marutuahu, and Waraki; Moanataiari 4B to Rapana Maunganoa; Moanataiari 1 to Maraia Purewa, Wata Tuma, Te Reito Tuma, and Taruhira Rapana; Moanataiari 2 to Aperahama Te Reiroa, Aihe Pepene, and Hirawa Te Moananui; Moanataiari 3 to Tanumeha Te Moananui, Wiremu Kingi, and Mihi Keiti; Moanataiari 5 to Hera Te Whaunga; Moanataiari 6 to Matiu Poono; Moanataiari 7 to Aperahama Te Reiroa, Tanumeha Te Moananui, and Piniha Marutuahu; Moanataiari 8A to Aihe Pepene and Hirawa Te Moananui; Moanataiari 8B to Rapana Maunganoa, Turuhira Poha, and Piniha Marutuahu; and Moanataiari 9 to Aperahama Te Reiroa and Tanumeha Te Moananui: Hauraki minute book 4, fols 211–217; doc G9, pp 23–24.

The issue of title was addressed more fully during the hearing of the application of Hoterēni Taipari for the Kauaeranga Mud Flat. This was a more contentious case in that a substantially larger area of tidal flat was being claimed, and in that there were a number of counter-claimants. In his judgment on the *Kauwaeranga* case, delivered on 3 December, Fenton described the land in question as:

a piece of land near Shortland, bounded towards the east by high-water-mark, towards the south by a line nearly at right angles to the shoreline commencing near the Kauwaeranga Creek, towards the north by a line nearly parallel to the southern boundary, and towards the west by a low-water-mark on the Waihou or Thames River. The land is covered by high-water of ordinary tides, but is left by the water as the tide recedes. It forms an extensive mudflat, and is not available for use as a highway by persons on foot when the waters have left it, except along a narrow margin near the shore.<sup>42</sup>

Fenton further noted that ‘the other facts as proved in evidence, are as follows’:

The land at Shortland abutting on the land claimed has been granted by the Crown, upon certificates of the Court, to the claimants and opposing claimants.

The land claimed has been possessed and used by the claimants and opposing claimants and the ancestors for generations, for fishing with stake nets, and as a preserve for curlews, and as a private ground for gathering shellfish (pipis).

That such use has been exclusive, other tribes having been kept off.

The New Zealand Government has endeavoured to deal with the claimants and others for the purchase of their rights in this land.<sup>43</sup>

At the hearing, Ngāti Maru and Ngāti Whanaunga presented evidence of their long-standing use of the mudflats. Hoterēni Taipari set out his position as follows:

I am N’Maru and many tribes. The land described goes down to the Waihou River – It is the site of certain fisheries and pipi banks and Kuaka preserves before Hobson’s time I and my ancestors exercised the exclusive right of property on this land to the exclusion of others. This was irrespective of the ownership of the land adjoining. There were different names for the mud flats. I have placed nets supported by stakes on the land for fish. My right to do this was held exclusively by me and those whom I called. The stakes were mine. I and my people went into the forests and each cut 1200 stakes. They were placed all on the flats, 500 on this side, 600 on the Hauraki side. No-one attempted to use this land. No-one else came onto this land. The nets were mine and placed by my order. The fish caught were eaten by people gathered together by me. I gave it to them. As to pipis, they came by themselves and it was

---

42. *Kauwaeranga* (1984) 14 VUWLR 227, 228–229

43. *Ibid*

a general rule in former times that anyone could consume them. I objected to no-one who came to get them.<sup>44</sup>

It is worth noting here the distinction in Hotereni's evidence between stake-net fishing and gathering pipi as illustrative of the kinds of rights that Maori recognised, and the layered nature of them as between groups. Ngakapa Whanaunga, who presented his case on behalf of Ngati Whanaunga, likewise spoke of gathering pipis and catching fish. There was, however, some contention between the overarching claim of Hotereni Taipari (and some 20 others) and those who owned certain sections on the mainland adjacent to the foreshore land in question (including Ngati Whanaunga and others). Ngakapa stated that 'When Taipari's people put those stakes, we did not know it was to claim this land. If I had known that – I should have pulled them up.'<sup>45</sup>

James Mackay, who appeared on behalf of all the grantees to the adjacent land at Shortland (some of whom belonged to Ngati Whanaunga), referred the court to prior Government recognition of their interests in the foreshore. As Anderson has stated, Mackay:

arguing that the Queen had acquired sovereignty rather than land by the Treaty of Waitangi, . . . stressed that the Government had entered into agreements with Maori for mining, passed legislation that recognised Maori interest in the foreshore and had 'authorise[d] one of their servants to go and purchase even the right in these lands.'<sup>46</sup>

Later, the Crown, aware of the import of the Native Land Court case, telegraphed that it wished to be heard on the matter. The hearing was adjourned to Auckland, where Fenton presided over a hearing in chambers on 21 November 1870. While the Maori claimants emphasised their rights under the Treaty of Waitangi, Crown counsel focused on Crown rights based on English law. In his judgment, Fenton summed up the Crown's opposition to the claim, on the following grounds:

By the law of England, the foreshore belongs to the Crown, and can only be held by a subject by grant from the Crown, either existing or presumed by prescription. This seisin of the Crown is an incident of sovereignty. The sovereignty of the Crown in New Zealand must not be held to be founded on the Treaty of Waitangi solely, but upon settlement. That this incident of sovereignty has been consistently sanctioned and maintained by decisions of the Courts of England and by the Courts of the United States of America. That the Native Lands Acts do not affect the Crown; and that Maoris cannot own the foreshore according to their customs and usages, as such ownership would be in derogation of the prerogative of the Crown; and that the Court has, therefore, no jurisdiction to try the claim.<sup>47</sup>

---

44. Hauraki minute book 4, fols 217–218 (doc v3(a), pp 89–89A)

45. Ibid, fol 226 (p 89A)

46. Ibid; doc A8, p 163

47. *Kauwaeranga* (1984) 14 VUWLR 227, 228–229

The claimants rejected these arguments on the grounds that they could not be applied to New Zealand, 'the relations between the Crown and the Maoris being strictly defined by the Treaty of Waitangi, and by that document only':

That in England not only the foreshore, but all other land, belonged at one time to the Crown by right of the conquest made by William I; that grants from the Crown are presumed respecting both classes of land alike, and that the foreshore remains in the Crown simply because, generally, it was of no use to anyone. Whereas, in England, all land was originally in the Crown, in New Zealand all land originally belonged to the Maoris. That the doctrines of feudalism can have no application to the lands of New Zealand, and that neither English law nor the Civil Law can be allowed to influence the rights of Maoris to lands which, in the words of the statute, they own according to their customs and usages. That the treaty took none of their territorial rights from the Maoris, but expressly guaranteed the preservation of them as they were in 1840. These rights are not disputed over the main land, and they should not be disputed over land covered by the sea, if they can be proved to have existed. That the Goldfields Act, 1868, recognised these rights to a certain extent; the Shortland Seabeach Act, 1869, repeated such recognition; and that the Executive Government had made attempts to acquire them from the Maoris by purchase.<sup>48</sup>

In his judgment, Fenton more than once acknowledged that 'consistent and exclusive use of the locus in quo [place in question] has been clearly shown from time immemorial' and that the area of foreshore was of great value and importance to Maori:

As far as the evidence goes, no persons except the claimants and their ancestors have, at any time, appropriated to their use this land, nor has the exclusive right of the claimants to enjoy it, as they always have enjoyed it, ever been disputed by anyone up to the present contention. That the use to which the Maoris appropriated this land was to them of the highest value no one acquainted with their customs and manner of living can doubt. It is very apparent that a place which afforded at all times, and with little labour and preparation, a large and constant supply of almost the only animal food which they could obtain, was of the greatest possible value to them; indeed of very much greater value and importance to their existence than any equal portion of land on terra firma.<sup>49</sup>

As with his decision in *Whakaharatau*, Fenton again stressed the importance of 'the question of fact':

The real question is a question of fact – Was the land now claimed, at the date of the Treaty of Waitangi, land or a fishery collectively or individually possessed by aboriginal natives?

---

48. *Kauwaeranga* (1984) 14 VUWLR 227, 229–230

49. *Ibid*, p 240

For, if it was, the full, exclusive, and undisturbed possession thereof is confirmed and guaranteed to the possessors by the Crown of England. And this fact is clearly proved.<sup>50</sup>

As is well known, rather than making an order vesting the soil of the foreshore absolutely, Fenton granted a right of fishery, or piscatory right, to the Maori applicants. He went on to state that ‘It is easy to understand then why the word “fisheries” should appear so prominently in the instrument by which they admitted a foreign authority to acquire rights of sovereignty over their country.’<sup>51</sup> He consequently found that ‘The Court then is of the opinion that the rights which these claimants and their ancestors, from the earliest times, exercised over this parcel of land, constitute a privilege or easement, which is included in the word “fishery” used in the treaty’. In so doing, however, he added that the matter of ‘whether their possession of these mudflats was sufficient to make a title to the soil itself, will remain for inquiry’, presumably by a superior court.<sup>52</sup>

On the matter of ‘whether the right which is the subject of our inquiry comes under the word “land”, which will warrant an order for the soil, or under the word “fishery”, which must limit the Court to a privilege or easement’, Fenton noted that:

it is remarkable that the use to which this land has been immemorially put by the natives is exactly the same as that to which the shore at Great Crosby was put by Blundell, the plaintiff in *Blundell v Catterall*, who had ‘the exclusive right of fishing thereon with stake nets, and of driving those stakes into the soil that they might support the nets’. Still I am of the opinion, though I do not hold the opinion without doubt, that, if the word ‘fishery’ were not present in the Treaty, the word ‘land’ would not suffice to support a claim in the natives to the foreshore of sufficient value to be turned into an absolute freehold interest in the soil, for a ‘fishery’ will mean an interest of no higher character than a privilege or easement.<sup>53</sup>

In making his judgment, Fenton was mindful both of the significance of the case, and of the ‘great public interest involved’. He expressed his ‘hope that a case of so much importance will not be allowed to rest on the opinion of any Court except that of the highest in the land.’<sup>54</sup> He continued:

I think that the Court, in deciding this, the first case of the kind that has occurred in the colony, is justified in allowing some weight to the consideration of the great public interests involved. I cannot contemplate without uneasiness the evil consequences which might ensue from judicially declaring that the soil of the foreshore of the colony will be vested absolutely in the natives, if they can prove certain acts of ownership, especially when

---

50. Ibid, p 243

51. Ibid, p 240

52. Ibid, p 241

53. Ibid, p 244

54. Ibid, pp 244–245

I consider how readily they may prove such, and how impossible it is to contradict them if they only agree amongst themselves.<sup>55</sup>

Fenton concluded that:

Lyttelton's maxim that 'the honour of the King is to be preferred to his profit' has not been forgotten, but it appears to me that there can be no failure of justice if the natives have secured to them the full, exclusive, and undisturbed possession of all the rights and privileges over the locus in quo which they or their ancestors have ever exercised; and the Court so determines, declining to make an order for the absolute propriety of the soil, at least below the surface.<sup>56</sup>

The precise nature of the piscatory rights awarded was not settled until a further hearing on 23 May 1871. It was agreed that the title, as described on the certificates of title, would be 'to the exclusive right of fishing upon and using for the purpose of fishing, whether with stake-nets or otherwise the surface of the soil of all the portion of the foreshore or parcel of land between high water mark and low water mark'.<sup>57</sup> According to Richard Boast, 'what Fenton was prepared to grant, if not the "absolute proprietary", was nevertheless a substantial exclusive property interest'.<sup>58</sup> As shown above, Fenton himself defined the interest as 'a privilege or easement', leaving the question of 'a title in the soil itself' for further inquiry. It would appear that whether the right was a usufruct or a property interest, it could be *either* exclusive or non-exclusive, depending on the facts. As quoted above, in the case of Kauaeranga it would seem that Fenton did regard the right as exclusive, 'other tribes having been kept off'. As we have noted in section 22.1, in his decision Fenton did not specifically address the complexity of proprietary rights, in particular the issue that in Maori society different levels of right could be held in the same land. While Ngati Maru and Ngati Whanaunga 'tribes' gave evidence of their control over the Kauaeranga foreshore, it appears that particular whanau had staked out rights to particular fisheries, as they did with eel and other rights in inland waters and with gardens made within the hapu land.

The effect of Fenton's decisions, as Fergus Sinclair has put it, 'was the division of the foreshore into parcels corresponding to the sections on dry land, the exclusive right of fishing being vested in the owners of those sections'.<sup>59</sup>

The Kauaeranga Mud Flat block, comprising some 352 acres and 15 perches, was awarded to Hotereni Taipari, Wiropi Hotereni Taipari, and Rapana Maunganoa. Following a request from the Crown, the court issued an order preventing the alienation of Maori interests to

---

55. *Kauwaeranga* (1984) 14 VUWLR 227, 244

56. *Ibid*, p 245

57. Hauraki minute book 4, fol 259 (doc G9, p 32)

58. Boast, p 50

59. Document Q1, pp 145–146

any other than the Government.<sup>60</sup> Certificates of title were also ordered to be issued for a number of other blocks within the mud flats at Kauaeranga. As we have already noted, the titles issued following Fenton's judgment were for a right of fishery, and did not include rights to the soil or to the recently discovered minerals.<sup>61</sup>

Fenton sent a copy of the judgment to the Governor, commenting on the 'considerable value' of the fisheries in question, and stating that 'the evidence was short, and the facts were virtually admitted; but the arguments necessarily involved much research and occupied much time'.<sup>62</sup> The Governor sent the judgment to the Colonial Office, London, commenting that it 'afford[s] additional proof of the care with which the Government, Parliament and Courts of this Colony investigate the claims and protect the rights of the Maoris'.<sup>63</sup>

Following Fenton's *Kauaeranga* decision, 'the court seems generally not to have granted titles of this kind, although the question of whether it had the right or the power to do so still remained, as did the question of whether the foreshore was Maori customary land'.<sup>64</sup> This is, of course, the reason for the Foreshore and Seabed Act 2004, and the proving of customary rights in the foreshore is now (2005) in the jurisdiction of the High Court.

### 22.3.2 Crown submissions on the *Kauaeranga* judgment

In these proceedings, Crown counsel contends that Fenton's approach in *Kauaeranga* 'reflected an appreciation that he was at the limits of his jurisdiction', and counsel submits that 'he was encouraged to find a jurisdiction between high and low water marks because of the Treaty guarantee of fisheries to Maori'. This reasoning, Crown counsel argues, 'steered the Court towards awarding an exclusive right of fishery, rather than a Certificate of Title to the foreshore itself'.<sup>65</sup> Crown counsel submitted that:

By reference to an earlier case, *Whakaharatau*, the Chief Judge indicated that it was not to be assumed that all foreshore was subject to native title and it was not enough that 'the land was claimed simply as land above high-water mark is claimed'. Certain evidential tests had to be met, and were met in this case (the exclusive appropriation of the right to take fish). In short, the Court's jurisdiction over foreshore was of a different nature from its ordinary jurisdiction over dry land.<sup>66</sup>

---

60. Hauraki minute book 4, fol 260; doc A8, p 165

61. Hauraki minute book 4, fol 259

62. Fenton to Governor, undated, in Governor to Earl of Kimberley, 10 January 1871, AJHR, 1871, A-1, p 70 (doc G9, p 32)

63. Governor to Earl of Kimberly, 10 January 1871, AJHR, 1871, A-1, p 70 (doc G9, p 32)

64. Ward, *National Overview*, vol 2, p 339; Boast, p 49

65. Document AA1, p 197

66. Ibid

Crown counsel argues that ‘the Chief Judge considered there would be no failure of justice by the order of an exclusive fishery rather than the freehold’; and that ‘such an order protected the traditional rights exercised’. He submits that ‘the Court’s reasoning in this respect bears comparison with modern Canadian and Australian decisions on the definition of rights of native title.’<sup>67</sup>

The Crown cites Fergus Sinclair, at length, with regard to a number of Fenton’s subsequent statements:

These latter statements suggest a number of points. In order for the Court to award rights in the foreshore some tangible act of appropriation must be proved. Fenton insisted that the test was exclusive use, implying that casual or ‘public’ use of an area would not be sufficient. This approach finds parallels in the distinction that Maori in the 19th century often drew between the exercise of a right and the performance of an activity that had no proprietary significance. Certain beaches might thus be regarded as a common highway. Material on a beach that had no recognised value might be subject to claim by any particular party . . . At the other end of the scale, such acts as the imposition of rahui, the naming of a shellfish bed, the staking of nets, or the taking of water birds, were unequivocal marks of ownership. Fenton’s requirement of exclusive use, therefore, had some parallels in custom.<sup>68</sup>

Crown counsel, having reviewed a number of land sales, repeats Sinclair’s view, ‘that it was exceptional for exclusive Maori rights in the foreshore to be held by parties other than those who possessed the adjoining land’. He states that Sinclair notes that ‘the general pattern of evidence supports the view that sales of land were understood to affect any exclusive rights in the foreshore’. The Crown further notes Sinclair’s assertion that such a conclusion is broadly in line with a tentative conclusion in the *Report on the Muriwhenua Fishing Claim* that fisheries associated with the foreshore ‘are “patently connected to the land” and might be affected by land sales.’<sup>69</sup>

The Crown submits that this observation is:

of some significance to Hauraki – and perhaps explains why there is very little evidence of foreshore claims outside of Thames and Coromandel [discussed below], ie Hauraki Maori understood at the time that sales of adjacent land included any rights that they might have in the foreshore.<sup>70</sup>

The Crown has also questioned the extent to which its prerogative rights to the foreshore were applied in Hauraki in practice, particularly where the adjoining land remained in

---

67. *Yanner v Eaton* (1999) 166 ALR 258 (HCA) (doc AA1, p 197)

68. Document Q5, p 155 (doc AA1, pp 197–198)

69. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989) pp 207–208 (doc Q5, pp 161, 167; doc AA1, p 198)

70. Document AA1, p 198



Maori possession.<sup>71</sup> They argue that ‘the wider Treaty issue is whether the Crown acted reasonably in its treatment of Maori interests in the foreshore and whether Maori were prejudiced by Crown action and policy.’<sup>72</sup> In short, the Crown submits that ‘the Crown does not and has not ever recognised Maori ownership of the seabed.’<sup>73</sup> Furthermore, the Crown ‘does not accept that non-recognition of Maori customary title to the seabed was, or is, in breach of Treaty principles.’<sup>74</sup>

We now turn to two linked, parallel strands of this narrative: the Crown’s purchase of the Thames and Coromandel foreshores, and its moves to ensure through legislation that the need to do so did not occur again.

## 22.4 CROWN PURCHASE OF RIGHTS IN THE FORESHORE

### 22.4.1 The purchase of Maori rights on the Thames foreshore

#### (1) Background

In his evidence for the Wai 100 claimants, David Alexander stated that following the granting of foreshore rights, ‘the easiest way for the Crown to resolve its dilemma of recognising the right of the Native Land Court to issue such titles . . . was to purchase from their owners (and thereby in effect extinguish) those foreshore rights.’<sup>75</sup> According to Fergus Sinclair, following the *Kauaeranga* judgment, Fenton ‘detained the certificates while waiting to hear if his judgement would be appealed’, and that, while the claimants had still not ruled out an appeal by August 1871, ‘by this time the Government had renewed its overtures to buy the Maori rights.’<sup>76</sup> According to Mr Alexander, in June 1871, McLean authorised the expenditure of up to £2000 on the purchase of Thames foreshore lands.<sup>77</sup> The Government, represented by EW Puckey, had embarked upon its negotiations in August 1870, and this had prompted Fenton to object on the grounds that his judgment had supported the Crown’s prerogative.<sup>78</sup> According to the evidence of Belgrave et al, the purchase ‘was a pragmatic act, intended to soothe Maori who continued to claim rights to the foreshore despite Fenton’s limited recognition of their interests in the land.’<sup>79</sup>

Dr Anderson has argued that ‘it is not clear whether Maori, largely reliant on the explanations and advice of Government negotiators, fully understood the nature of the right

---

71. Paper 2.550, p 23

72. Ibid, p 23

73. Document AA1, pp 194–195; doc Q4, pp 13–14

74. Document AA1, p 201

75. Document G9, p 37

76. *Daily Southern Cross*, 7 August 1871, p 2 (doc Q5, p 146)

77. Document G9, pp 37–38

78. Document A8, p 208

79. Document v1, pp 223–224

acknowledged by the Crown.’<sup>80</sup> Hauraki Maori, as we have seen, continued to express a strong preference to lease the foreshore blocks at Thames rather than to sell them outright. In August 1870, Puckey reported that having informed Maori of his instructions to open negotiations for the purchase of the sea beach, Waraki argued that ‘they had parted with everything else they had and if this was sold, they would have nothing left.’<sup>81</sup> Dr Anderson has stated that ‘although in straitened financial circumstances, their intention was to raise money to cover their promissory notes, and pay off their liabilities in order to be able to hold onto the mudflats.’<sup>82</sup> According to Dr Anderson, the offer of lease was referred to Clarke, who refused to entertain the proposal, with McLean giving his ‘entire approval’ to this decision.<sup>83</sup>

Daniel Pollen, agent for the general government at Auckland, reported to McLean that he had met with Thames Maori in June 1871:

I went to the Thames . . . and saw the Natives at Puckey’s office about the beach claim. I had the terms of Fentons Judgment interpreted to them and went into the case to show them the difficulty of maintaining these exclusive rights to fishing on the flats and to the use of the surface in face of so large a European population and that it would be better for them to come to some arrangement which would leave them equal right to fish with the Europeans and avoid the chances of trouble and annoyance to either party. I told them that as the question of paying for their interests had been started, and in order to avoid disappointment to them, if they still wished to surrender the exclusive rights which the Court declared them to have, you were disposed to give them some money by way of compensation.<sup>84</sup>

The claimants contend that ‘in essence, Thames Maori were told that they could not look to the Crown to help them enforce their rights against the interests of the European population and that, as a result, they would be better off simply selling their rights to the Crown.’<sup>85</sup>

Pollen’s involvement in the negotiations appears to have reflected an increasing impatience with the lack of headway being made by Puckey who, as Sinclair has written, had been unable to secure the mudflat in one offer, but had ‘predicted more success in buying the rights separately.’<sup>86</sup> By September 1871, Pollen reported that progress was being made, but warned that the Government would have to ‘pay high’ for the Grahamstown area.<sup>87</sup>

---

80. Document A8, p 209

81. Puckey to civil commissioner, 17 August 1870, Native Affairs Department memoranda and registered files, MA1/16/1854 (doc A8, p 209)

82. Document A8, p 209

83. Ibid

84. Pollen to McLean, 12 June 1871, McLean papers correspondence, MS papers 32, folder 508, ATL (doc A8, p 210)

85. Document Y1, p 64

86. Puckey to McLean, 5 August 1871, McLean papers correspondence, MS papers 32, folder 518, ATL (doc Q5, p 146)

87. Pollen to McLean, 20 September 1871, McLean papers correspondence, MS papers 32, folder 508, ATL (doc A8, p 210)

In his evidence, Mr Alexander described in some detail the process by which Puckey proceeded to purchase the interests (or ‘rights’) owned by Maori, identifying the owners from the Native Land Court awards or identifying the owners of adjoining land above the high-water mark:

On the basis of this approach, the foreshore between Tararu Creek and Kauaeranga River could be divided into 44 identifiable portions, 14 of which were specific foreshore grants awarded by the Court, and 30 of which were based upon separately defined portions above high water mark.<sup>88</sup>

Two different pre-printed deeds of purchase were used. The deeds relating to the 14 blocks where use rights had been granted by the Native Land Court, recited the rights conferred by the court and recorded the conveyance of those rights to the Crown. These deeds noted that a certificate of title had been issued by the Native Land Court:

whereby it is certified that the said Native [is] the owner according to Native Custom of the exclusive right of fishing upon and using for the purposes of fishing, whether with stake-nets or otherwise, the surface of the soil of all that portion of the foreshore or parcel of land between high water mark and low water mark.<sup>89</sup>

By early 1873, the Crown had paid a total of over £1350 to Maori grantees for their interests in some 600 acres of foreshore blocks. In 1873, a further £1350 was paid to Rapana Maunganoa for all of his interests in the Thames foreshore between Tararu Creek and Kauaeranga River. Rapana had apparently wanted £4000 for his interests but was allegedly encouraged by his son-in-law David Stewart (who received a further £150 by way of commission) to sell at a ‘reasonable’ price.<sup>90</sup> The Auckland provincial superintendent, Gillies, defended the payment, on the grounds that:

Rapana was the owner of an interest in certain blocks of the foreshore which had already been partly taken possession of, reclaimed, and extensive buildings and machinery erected thereon to the value of at last £50,000; and which, on the extinction of the native claims, will at once produce the annual rental of £400 to £500 for the small portion already occupied.<sup>91</sup>

This annual rental of up to £500 is an indication of the level of urban revenue Thames Maori were unable to avail themselves of through pressured purchasing. (Rent levels are also discussed in section 17.4.2.)

Some months earlier, the Auckland provincial superintendent had reported that ‘the

---

88. Document G9, p 40. A schedule of the Crown’s purchase of the 44 parcels is set out in appendix 1 of Alexander’s evidence: doc G9, pp 117–129.

89. Document G9, pp 40–41; doc Q5, p 146

90. Document A8, p 211; doc G9, pp 46–47

91. Gillies to Colonial Secretary, 22 May 1873, in ‘Papers Relative to the Extinction of the Native Title to the Thames Foreshore’, *Journals of the Auckland Provincial Council*, 1873–74, sess 29 (doc G9, pp 46–47)

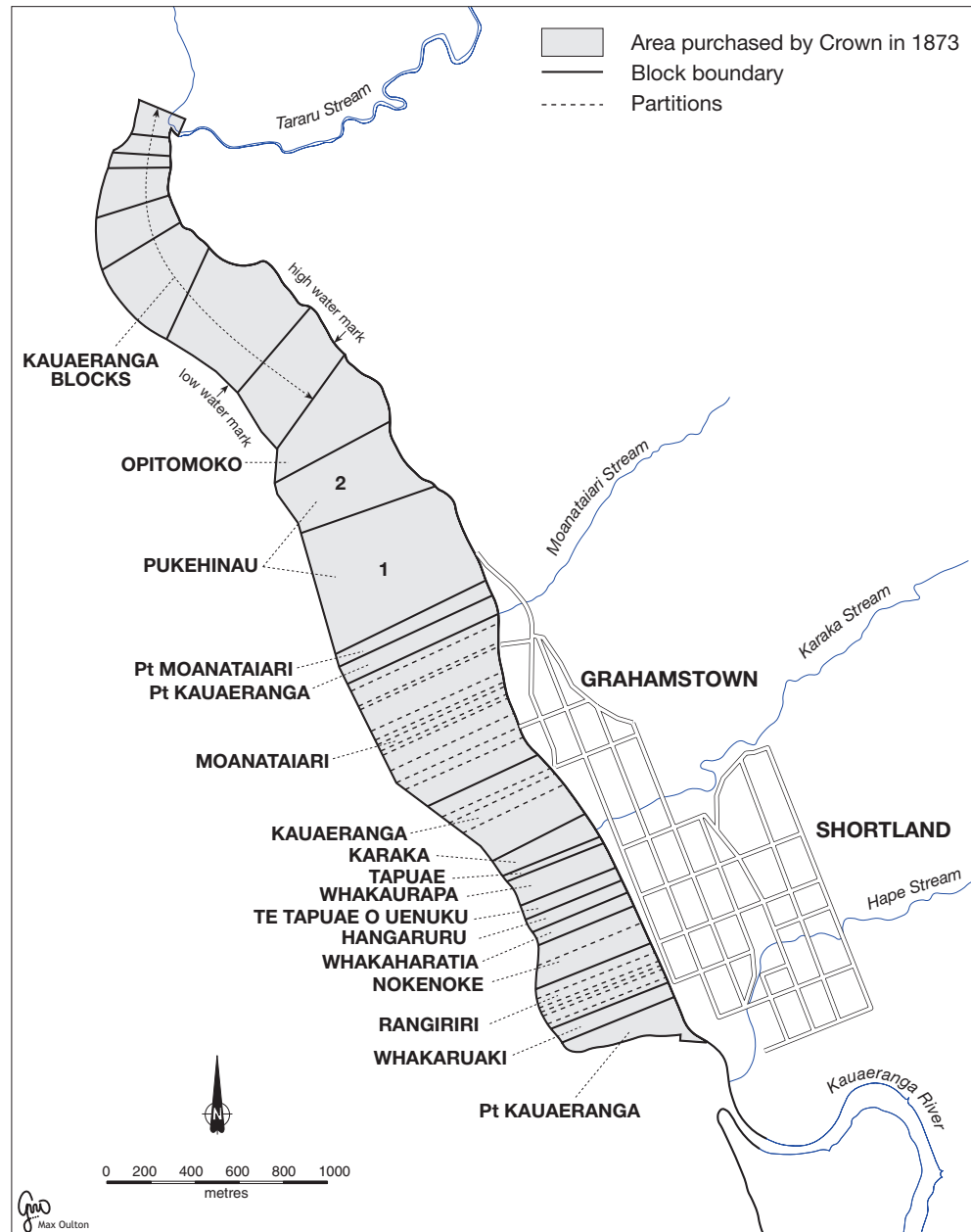


Figure 88: Thames foreshore blocks

demand for battery and other sites has been so great as to compel me to tacitly recognise occupation and reclamation of some portions of the foreshore on the understanding of rental being payable as soon as any recognised title can be given.<sup>92</sup> As Dr Anderson notes, 'it is apparent that no rents were received by Maori for these sites in the meantime.'<sup>93</sup> The claimants have alleged that the Crown recognised both the illegal occupation and the reclamation

92. Superintendent, Auckland, to McLean, 29 March 1873, Auckland provincial papers, 3379/74 (doc G9, p 44)

93. Document A8, p 210

of the foreshore prior to its purchase, and failed or refused to ensure that Hauraki owners were compensated for such use.<sup>94</sup>

Dr Anderson concludes that 'Hauraki control over these lands was rapidly declining whether they sold or not'.<sup>95</sup> She also notes that not only did Maori receive no rental from these sites but, 'more importantly, they were excluded from the anticipated profits of the development of those lands which were to be devoted to "public purposes"'.<sup>96</sup> Such rentals, Gillies had stated, 'will soon repay the cost of extinction of the native claims and will form an endowment for a municipality at the Thames when established'.<sup>97</sup>

While the bulk of the purchasing was carried out between 1871 and 1873, the purchase by the Crown of the remaining interests in the Thames foreshore was not completed until 1879 (with one exception, discussed below). In 1878, the Crown concluded its negotiations (in train since August 1873) for the purchase of the interests in the Thames foreshore of Hotereni Taipari and Wirope Hotereni Taipari.<sup>98</sup> In October 1878, it was reported in Parliament during discussion of the Thames Harbour Bill that '£3496 had been spent in the extinction of the Native title to 812 acres of the Thames foreshore'; that is, £4 an acre.<sup>99</sup> It is not clear if this figure refers only to the area of the Thames foreshore to be vested in the harbour board at this time.

As noted, one very small interest in the Thames foreshore appears to have been overlooked by the Crown purchasers in the 1870s. In her evidence for the Marutuahu claimants, Emma Stevens has outlined the discovery in 1966 (when plans were drawn up for the reclamation of foreshore lands south-east of the Shortland Wharf at the mouth of Kauaeranga River) of a small portion of land described as 'part Kauaeranga Mud Flat Block', that 'was subject to the granting of exclusive fishing rights according to Maori custom to certain former Maori owners'. Stevens reports that Maori Land Court officers were unable to locate a title for the Kauaeranga mud flats block and that, by way of the Reserves and Other Lands Disposal Act 1966, the land, along with a number of other small blocks, was vested in the Thames Borough Corporation, who were also authorised to reclaim or dispose of the land in question.<sup>100</sup>

## **(2) Crown and claimant submissions**

While the Crown has conceded that it did negotiate the purchase of usufructuary interests in the foreshore, and that this was partly as a result of the tension between gold mining and

---

94. Claim 1.3(b), pp 33–35

95. Document A8, p 210

96. Ibid, pp 210–211

97. Superintendent, Auckland, to McLean, 29 March 1873, Auckland provincial papers, 3379/74 (doc G9, p 44)

98. Document G9, pp 50–51, 129

99. Colonel Whitmore, 24 October 1878, NZPD, 1878, vol 30, p 1034 (doc G9, p 52)

100. Document v3, pp 46–47; Stevens notes that the area combined with the other blocks listed amounted to one rood 17 <sup>8</sup>/<sub>10</sub> perches: doc v3, p 47 fn 172.

## 22.4.1(2)

the protection of fishing rights on the foreshore, the claimants challenge the Crown's assertion that 'Hauraki Maori were not pressured to sell their interests and "drove hard bargains" for these rights.'<sup>101</sup> Claimants have identified as a Treaty breach the Crown's alienation of the Thames foreshore, despite the claimed preference of Hauraki Maori to retain ownership of this land, and to enter into lease arrangements only. They also allege that the Crown used 'the fact of the colonisation of Thames, itself actively promoted by the Crown, as a basis for refusing to protect the legitimate property rights of Hauraki iwi in the foreshore and so as to pressure Hauraki into alienation of their rights'. Further, they claim that the Crown entered into negotiations to 'purchase the Kauaeranga and Thames foreshore on the basis that payments constituted compensation for interference with fishing rights only, so as to deny Hauraki ownership of, and receipt of full value for, the foreshore land and resources alienated.'<sup>102</sup>

We heard from the Crown that 'in respect of endowments to the Harbour board and borough it was envisaged that Maori as part of the community would benefit [from Crown endowments of foreshore lands to the Harbour board and borough.]'<sup>103</sup> In addition, the Crown challenged the assertion made by the Wai 100 claimants that 'the Crown "kept the prices very low" for the ultimate purchase by the Crown of Maori interests in the foreshore.'<sup>104</sup> The Crown submitted that 'Dr Sinclair notes that the amounts paid were high' and that '£2941 was paid for interests in 438 acres of the Thames foreshore' (ie, £7 an acre), and that 'no attempt is made by the claimants to argue why the contrary view put by Dr Sinclair might be said to be wrong.'<sup>105</sup>

The claimants have argued that, as a result of the Crown's purchase of their foreshore interests at Thames, Hauraki Maori 'were removed from the foreshore and access to their traditional fishery.'<sup>106</sup> The Crown, in so doing, they argue, 'failed to actively protect the rights of Hauraki to the foreshore at Thames':

The rights established through the *Whakaharatau* and *Kauwaeranga* judgments were immediately eroded through the restrictions imposed on the Native Land Court to prevent further investigations as well as the failure of the Crown to protect the interests awarded in those cases, instead the Crown actively pursued acquisition and control of the rights recognised in the foreshore. When some of Hauraki rights were able to be recognised by mechanisms that the Crown had created, the Crown simply removed access to those mechanisms.

---

101. Paper 2.550, p 24; doc Y1, p 60

102. Claim 1.3(b), pp 34–35

103. Paper 2.550, p 24

104. Document Y1, p 64; doc AA1, p 199

105. Document Q5, p 159; 'Statement Relative to Land Purchases, North Island – Thames and Piako Districts', AJHR, 1875, G-6, p 4 (doc AA1, p 199)

106. Document Y1, pp 64, 65

The claimants allege that ‘the various steps taken to minimise Hauraki rights in the Thames foreshore were in clear breach of the Crown’s duty of active protection and Article 2 of the Treaty’.<sup>107</sup>

#### 22.4.2 The Coromandel foreshore

At Coromandel, where the beach had been pegged out by miners, much of the adjacent land had passed out of Maori ownership through old land claims and the Crown purchase of the Patapata block in 1857. In June 1871, two coastal blocks remaining in Maori ownership, Ngorongoro and Te Umuhau, were brought before the Native Land Court. The court ordered certificates of title that clearly excluded the portions of claimed mudflat below ordinary high tides, and the applicants were advised that a separate claim would have to be made for the foreshore area.<sup>108</sup> Claims to a large area of mudflat (Coromandel foreshore blocks 1–5) were to be heard in May 1872. The situation at Coromandel, it was noted at the time, was different to that at Thames, in that most adjoining land had already been alienated.

But it appears that the Crown anticipated that findings of a similar nature to those at Kauaeranga might be made in respect of the Coromandel foreshore. The day before the Native Land Court was to hear the application, the Crown issued a proclamation suspending the operation of the Native Land Court in the Auckland district in the portion of the province ‘situated below high water mark’.<sup>109</sup> When Crown counsel J C MacCormick advised the court of the proclamation, he said that he had been instructed to ‘impress upon the natives that the hearing of these claims is only deferred, not refused; and that the Government have not the wish, as they have certainly not the power, to deprive the natives of any just rights they have to the foreshore’. According to a report in the *Daily Southern Cross*, MacCormick told the court that:

The Government think it necessary to the public good to suspend for a time the hearing of these claims to the foreshore at Coromandel. It is considered that if the portions of the foreshore were given to the natives, a great wrong would be done to the people of Coromandel, and particularly to the Europeans who own land there fronting the harbour. It would not be right for the natives, after they have sold the land bounded by the sea-shore, to come now and ask to have the right to use the sea-shore taken away from those persons and given to the natives alone, as the claimants here are doing. This is a new thing, this claiming the use of the sea shore for the natives only; it was not heard of before gold was found on the beach, and the Government must take time to consider which is best to be done both for the

---

107. Ibid, p 65

108. Document Q5, pp 147–148; Coromandel minute book 2, fols 208–209

109. ‘Proclamation under the Native Lands Act 1867’, 29 May 1872, *New Zealand Gazette*, 1872, no 28, p 347

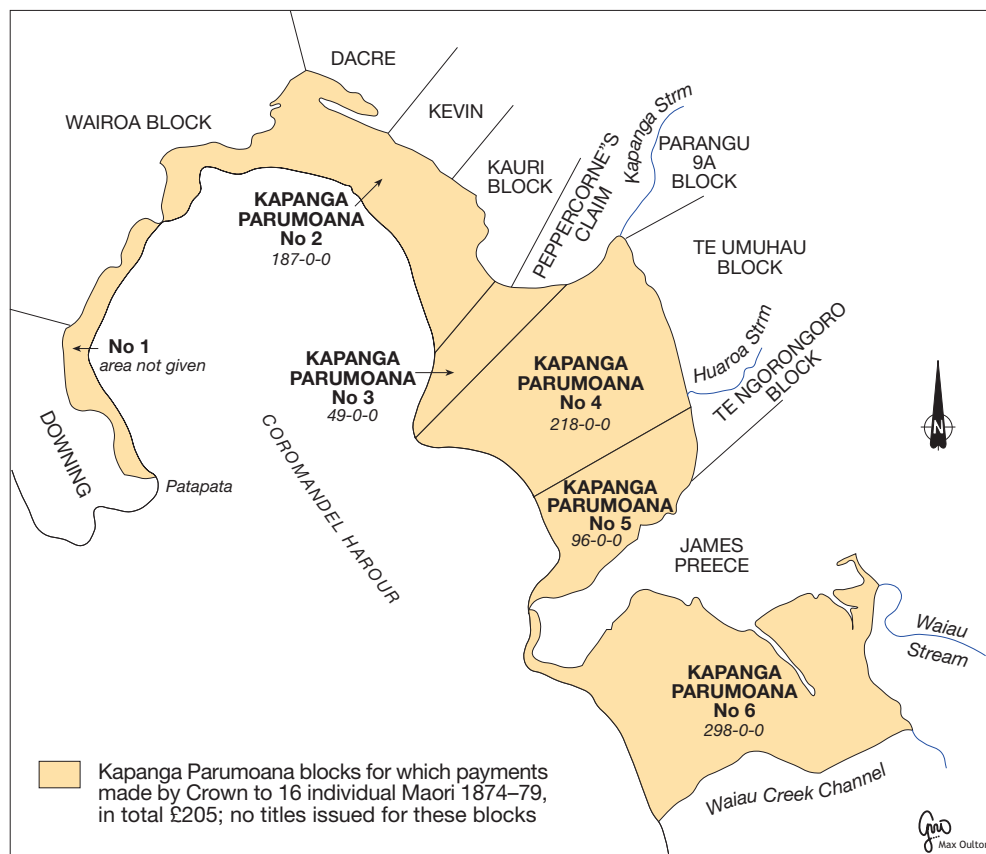


Figure 89: Kapanga Parumoana blocks, Coromandel Harbour. Redrawn from an 1873 survey by Charles Lloyd.

Maori and the European in the matter. It may be necessary that the question of what is to be done with all the claims by natives to the sea-shore should be considered in the General Assembly, where there will be natives to take part in the deliberations upon it.<sup>110</sup>

Although the court was thus prevented from hearing the application concerning the mudflats, and therefore had not been in a position to determine title, the Crown further intervened in 1873 while the proclamation was still in effect, paying for a survey of the mudflats. Six lots were identified (Kapanga Parumoana 1 to 6, of between 49 and 298 acres each.) In August 1874, James Mackay was instructed to purchase those foreshore interests, and between that month and November 1879, 14 payments were made by various Crown agents to the putative owners. Each signatory signed an undated and uncompleted deed.<sup>111</sup> Fergus Sinclair has noted that, in comparison to the money expended in purchasing the foreshore interests at Thames, at Coromandel 'the sums paid to the claimants were certainly more modest; . . . around £200 was spent in extinguishing their claims.'<sup>112</sup>

110. *Daily Southern Cross*, 16 May 1872, p 3 (doc G9, p 35)

111. Document A10, pt 1, pp 156-158

112. Document Q5, p 152



In 1879, the Crown applied to have its interests in the Coromandel foreshore defined by the Native Land Court. Judge Monro declined to hear the case without a special authority, and it was adjourned for Chief Judge Fenton's consideration.<sup>113</sup> In November 1881, the application was heard and dismissed, the court deciding 'Native title not found'.<sup>114</sup> Dr Sinclair suggests that 'the likely explanation for this result is that any Maori interest in the foreshore was deemed to be extinguished by purchases of the adjoining land'.<sup>115</sup> The Crown's application was renewed in 1882. Meanwhile, an application from the presumed Maori owners had also been arranged.<sup>116</sup> Dr Sinclair notes that several applications were made by Maori for portions of the Coromandel foreshore in 1886, but were dismissed due to the lack of the necessary plans, while a further application was made by Wiremu Taipua in 1889, the outcome of which is unknown.<sup>117</sup>

## 22.5 FORESHORE LEGISLATION AND ADMINISTRATION

### 22.5.1 Background

In his *Kauwaeranga* judgment, Fenton noted that 'the fact that the Government has been negotiating for the purchase of their rights is not needed to strengthen the case of the claimants, for it has appeared what rights the Government recognised . . . may be the same that the Court awards'. Fenton also noted that he:

made no allusion to the Goldfields Act, 1868, for the provision contained therein was limited to 'the purposes of that Act', and the Shortland Beach Act, 1869, simply kept things as they were, evidently to give time for Parliament to settle the question by legislation, which it has not done.<sup>118</sup>

Following the judgment, Fenton continued to urge upon Native Minister McLean the need for the issue to be either appealed to the Supreme Court or for legislation to be enacted to settle the issue.<sup>119</sup>

In a report to the Colonial Secretary, McLean gave his reasons for issuing the proclamation suspending the jurisdiction of the Native Land Court over foreshores, stating that:

It appeared . . . that these claims were only the forerunners of others likely to put forth, extending over a much wider area, and embracing so large an extent of property that, with

---

113. Document A10, pt 1, pp 156–158

114. MLC-A1/27, 102, Archives NZ (doc Q5, p 152)

115. Document Q5, p 152

116. Document A10, pt 1, pp 156–158

117. Document Q5, pp 152–153

118. *Kauwaeranga* (1984) 14 VUWLR 227, 245

119. Fenton to McLean, undated, MS papers 32, folder 267, ATL (doc Q5, p 146)

a view to the necessary protection of the important interests involved, it was desirable to place such restrictions as were allowed by law upon the action of the Court, pending the passing of a declaratory Act by the Legislature.<sup>120</sup>

The proclamation lapsed when the Native Land Act 1873 came into effect, and does not appear to have been reinstated.<sup>121</sup> In 1878, the Government strengthened its control over the foreshore by means of the Harbours Act which provided that no part of the foreshore was to be granted or given away other than with the authority of a special Act of Parliament.<sup>122</sup> No reference to compensation for Maori is included in the Act.

Until 1876, when the provinces were abolished, the administration of the foreshore lands purchased by the Crown was the responsibility of the Auckland Provincial Government, which administered Crown lands legislation. As Alexander has noted, 'in theory, as the foreshore lands had only been partially purchased, and those interests which had not been purchased were scattered among those which had been purchased, the effectiveness of the Provincial Government's administration would have been difficult.'<sup>123</sup> This, however, did not deter the provincial government from entering into commitments with certain private individuals: as already noted, by March 1873, they had tacitly recognised occupation and use of the foreshore by miners. As of July 1873, there were four wharves in existence crossing the foreshore in addition to a slipway.

In 1874, the newly proclaimed Thames Borough Council sought to have the foreshore granted as an endowment, but the provincial government opposed the request, wanting to retain control of the lands itself. With the passing of the Thames Harbour Board Act 1876, the new harbour board similarly took steps towards acquiring control of the foreshore lands. This was delayed until the passing of the Thames Harbour Board Act 1878, which came into force on 1 January 1879. In March 1879, an inquiry was held in Thames into what rights over the foreshore were held by Maori and other persons. Contemporary newspaper accounts relate that there were five Maori claimants, who, having been heard, and 'having claims on the foreshore between Kauaeranga and Tararu Creeks, sold their rights, titles and interests to a gentleman on behalf of the Government, who are in a position to fulfil their promise made two years ago, and hand over the foreshore to the Harbour Board.'<sup>124</sup> When the inquiry resumed, they were informed that a further 48 claims had been lodged by Maori, but that these appeared to be outside the proposed grant area. Accepting this as fact, the judge found that 'there were no just claims of Aboriginal Natives to the Thames foreshore (that is between Tararu and Kauaeranga Creeks), and no unfulfilled contracts or

120. McLean to Colonial Secretary, 17 May 1872, Internal Affairs head office file 1872/1399 (doc G9, pp 35–36)

121. Boast, p 34; doc Q5, p 152 fn 63

122. Ward, *National Overview*, vol 2, p 340; Boast, p 34

123. Document G9, p 56

124. *Thames Advertiser*, 13 March 1879 (doc G9, pp 59–83)

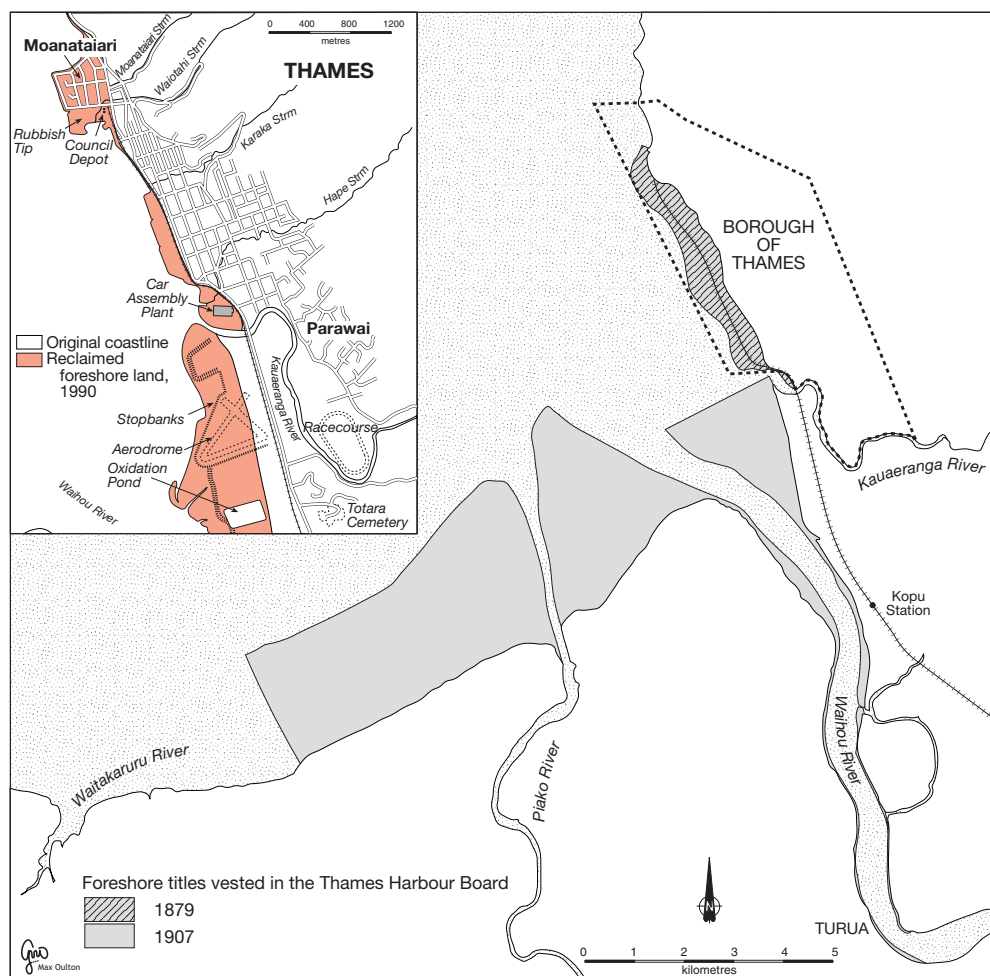


Figure 90: The Thames foreshore

engagements with the Natives respecting it.<sup>125</sup> In June 1879, the grant to the harbour board of the foreshore lands (totalling 620 acres 5 perches) was issued.<sup>126</sup>

In addition to those lands of the Thames foreshore to which title had been granted by the Native Land Court in 1879, other areas of foreshore – at Waihou – which had not been investigated by the Native Land Court and whose title had not been purchased by the Crown, were included in the Thames Port limits following the enactment of the Harbours Act.<sup>127</sup> The Thames Harbour Board Act 1907 provided for an inquiry by a Supreme Court judge into the ownership of the Waihou lands, and in May 1909 Judge Sim held an inquiry at Thames. The claimants argue that:

125. *Auckland Evening Star*, 13 March 1879 (doc G9, p 83)

126. Document G9, p 84

127. *Ibid*, p 88

It appears that Maori were not adequately notified of the inquiry as the notice of the inquiry was not published in Maori despite the judge . . . requesting that it be so translated. As a result no Maori appeared before the inquiry and no evidence of Maori traditional rights such as those acknowledged in *Kauwaeranga* was presented. On the basis of this inadequate investigation, Justice Sim concluded that there were no rights that might be prejudiced by the foreshore being vested in the Harbour Board and a Crown grant was duly issued.<sup>128</sup>

### 22.5.2 Claimant and Crown submissions

The claimants contend that following the Kauaeranga decision, ‘even this narrower recognition of rights was too much for the Crown.’<sup>129</sup> David Williams has argued that:

Despite the transparent political compromise involved in Fenton’s refusal to award the applicants soil and sub-soil property rights, the Government was not happy with the chief judge’s decision. It still required that Maori foreshore fishing rights be purchased or otherwise extinguished in order to ensure that gold mining could proceed in the same area.<sup>130</sup>

Claimants have argued that the Crown, in removing the jurisdiction of the Native Land Court to inquire into claims to the foreshore, ‘destroyed Hauraki access to an institution that may have recognised their claims to the foreshore.’<sup>131</sup> In response to the Crown’s denial that this was the case,<sup>132</sup> the Marutuahu claimants argue that ‘the only rational historical explanation for the Crown’s removal of the foreshore from the jurisdiction of the Native Land Court in 1872 was because of the Fenton decision.’ They allege that ‘the general trend of Crown action was to deny, limit, or remove through purchase, Maori rights to the foreshore.’<sup>133</sup>

Crown counsel denied that the 1872 proclamation suspending the Native Land Court hearing at Coromandel removed a jurisdiction that might have recognised Maori claims to the foreshore.<sup>134</sup> They contest the claimants’ view ‘that the 1872 proclamation, applied in the Coromandel foreshore claims, reflected alarm at the implications of *Kauwaeranga* and that it destroyed in effect a jurisdiction that might have recognised legitimate Maori claims.’ Instead, the Crown follows Sinclair’s argument that ‘the proclamation was “avowedly a

---

128. Document Y1, p 63

129. Ibid, p 62

130. David Williams, *Te Kooti Tango Whenua: The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999), p 44

131. Claim 1.3(b), p 34; doc Y1, p 62

132. Paper 2.550, p 23

133. Document Z6, p 28

134. Paper 2.550, p 23

temporary measure that was not intended to frustrate further Maori claims”<sup>135</sup> The claimants submit that ‘the failure to ensure that Maori were given a proper chance to participate in the inquiry and that their ownership was an issue was a breach of the Crown’s protective function.’<sup>136</sup>

The claimants have stated that the effect of section 147 of the Act (later section 150 of the Harbours Act 1950, until it was repealed in 1991) ‘was not to extinguish Maori customary rights nor vest ownership in the Crown but rather the provisions acted as a procedural bar to the Native Land Court and later the Maori Land Court in considering future applications to determine title.’ They allege that ‘there was therefore little incentive for Hauraki claimants to continue to apply for recognition of rights in the foreshore when these could no longer be granted.’ They claim that:

the deliberate removal of jurisdiction from the Native Land Court from 1872 to 1991 (apart from a couple of years in the 1870s) when the Crown knew that there were interests capable of being recognised by the Court is a significant breach of the Treaty of Waitangi and, in particular, the Crown’s duty to act with utmost good faith and to actively protect the Maori interests.<sup>137</sup>

Crown counsel notes that the Wai 100 claimants ‘are critical of the removal of the Native Land Court’s jurisdiction over the foreshore by section 147 of the Harbours Act 1878,’<sup>138</sup> and states that ‘it is effectively contended that this accounts for a lack of foreshore claims in the Hauraki after those at Coromandel’. In response, the Crown says, ‘the Coromandel foreshore claims were revived in 1874 after the proclamation had lapsed . . . and the application itself was dismissed in 1879.’<sup>139</sup>

Crown counsel denies the allegation that the investigation into ownership of the Waihou was inadequate, rejecting the reasoning that ‘because notice of the inquiry was not published in Maori, no Maori appeared before the inquiry and there was no evidence about Maori traditional rights.’ The Crown submits that ‘lack of formal written notice in Maori cannot fully account for a lack of participation by Maori’, and Crown argues that ‘a general understanding that rights in the foreshore had passed with alienation of the adjacent land may well have been a principal reason for nonattendance by Maori.’<sup>140</sup> The Tribunal is not convinced that this was a valid reason for non-attendance by Maori.

---

135. Document AA1, p 198; doc Q5, p 152

136. Document Y1, p 63

137. Ibid, pp 62–63

138. Ibid, p 62; doc AA1, p 198

139. Document AA1, pp 198–199

140. Ibid, p 199

**22.6 MAORI PROTEST AND CROWN REDRESS**

The claimants have noted that it is poignant ‘that after the Crown had thought it had extinguished Hauraki’s rights to the foreshore that Hauraki continued to look to the Crown to help them maintain their customary rights.’<sup>141</sup> In the late 1870s and early 1880s, Arama Karaka (Ngati Paoa) and Hohepa Mataitaua from Te Kouma, Coromandel, separately petitioned the Government, complaining of European ‘strangers’ removing oysters and other shellfish ‘in great quantities, to the manifest injury of the Maori people.’ They asked that the Government protect them in their exclusive right of use of the foreshore. The Native Affairs Committee made no recommendation on Arama Karaka’s petition stating that this was a matter for the law courts. In the case of Hohepa Mataitaua’s petition, the committee recommended that the Government investigate and take action if necessary, but it appears that the matter was not taken further.<sup>142</sup>

At a meeting in 1885, Matiu Pono and others brought the issue to the attention of the Government, with Pono complaining to Ballance, the Native Minister, that ‘another matter is about the Europeans who go out and catch flat fish on the mudflats. All those mudflats are owned by the Hauraki people.’ He stated that he wished ‘the Government to stand up for them in this matter.’ In response, Ballance stated that:

Matiu Pono and Taipari have referred to flat fish, and another Native has referred to oysters. This is a matter of law, whether Europeans have a right to fish on the foreshore. They may have a right, for they have a right to fish in the ocean. I will make inquiry, and find out whether really they have any rights or not. I am inclined to think that they have rights – that you cannot prevent them by law from catching either fish or oysters.<sup>143</sup>

What was clear by 1885 was that Maori customary fishing rights were recognised in fisheries regulations as domestic, non-commercial rights only. As has been noted elsewhere:

For the remainder of the nineteenth century, a great many Maori petitions were sent to Parliament protesting about the destruction of traditional fisheries, especially shellfish beds, by foreshore development works. On this point, Maori got no satisfaction whatsoever. They also sought exemption from the requirement to have a license to take fish for domestic purposes. Provision was made to reserve some shellfish beds near Maori villages for their domestic consumption, but Maori were denied the right to make and enforce controls on the management of such fisheries.<sup>144</sup>

---

141. Document Y1, p 64; doc A8, pp 211–212

142. ‘Petition of Arama Karaka’, 4 December 1879, AJHR, 1879, sess 2, 1–2, p 16; ‘Petition of Ho[h]epa Mataitaua’, 18 August 1882, AJHR, 1882, 1–2, p 27 (doc A8, pp 211–212)

143. ‘Notes of Native Meetings’, AJHR, 1885, G–1, pp 38, 40 (doc A8, p 212)

144. Ward, *An Unsettled History*, p 45

The matter of fisheries generally has obviously been covered comprehensively elsewhere, notably in the Tribunal's *Ngai Tahu Report 1991*<sup>145</sup> and, following the 1992 Treaty of Waitangi fisheries (or 'Sealord') settlement, is no longer a matter for the Tribunal's jurisdiction. In addition to the fisheries settlement, the Resource Management Act 1991 and the Conservation Act 1987 also address the question of Maori involvement in management of foreshores and fisheries. These Acts are discussed in relation to the environmental claims in chapter 24.

## 22.7 TRIBUNAL COMMENT ON FORESHORE AND SEABED ISSUES IN HAURAKI

There is no doubt that Hauraki Maori have retained a vital association with their coastal domains – and particularly with the rich resources of both foreshore and seabed. Almost all Hauraki claims – and certainly all from coastal hapu and whanau – refer specifically to the foreshore and seabed. The issue of proprietary rights over the foreshore, or at least rangatiratanga or kaitiakitanga over the foreshore and coastal waters and seabed was raised by many claimant groups. The 'ownership' issue has taken particular prominence, via the recent *Ngati Apa* decision in the Court of Appeal and the Government's moves to legislate in this matter, which occurred after the Hauraki Tribunal completed its hearings. We are of the view that the issue has been addressed by another Tribunal in the *Report on the Crown's Foreshore and Seabed Policy* (2004) and is now a matter for the courts rather than for this Tribunal. We do, however, have a number of conclusions to make with regard to the specific Hauraki claims.

It is clear that in negotiating the purchase of the Thames foreshore, the Crown denied Thames Maori the opportunity or right to lease the foreshore lands for the purpose of mining, as a number of contemporary accounts show to have been their preference. The Crown's considerable efforts during the late 1860s and 1870s in seeking to bring the Thames and Coromandel foreshores under its control through the assertion of Crown prerogative and the purchase of Maori rights to foreshore lands were motivated initially by the likelihood of their containing gold and the encroachment of miners below the high-water mark. As the issue became one of national importance, the Crown's efforts were redoubled for the acknowledged sake of 'the public good'. Following Fenton's decision in *Kauaeranga*, and faced with the real possibility of the Native Land Court recognising Maori interests in the foreshore in Hauraki, and elsewhere, the Crown shut down the jurisdiction of the Native Land Court to inquire into such claims. Maori were thus unable to pursue claims at least to a usufructuary right of fishery in other foreshores besides Thames. The Harbours Act

---

145. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols, (Wellington: Brooker and Friend Ltd, 1991)

1878 strengthened the Crown's control over the foreshore by providing that no part of the foreshore was to be granted or given away other than with the authority of a special Act of Parliament.

By the end of the 1870s, control of the foreshore had slipped from Maori hands. Not only were Maori denied proprietary rights over the foreshore lands, but they had lost control of their exclusive rights to the fisheries they harboured. Maori were able to use the foreshore as before, but only in conjunction with other New Zealanders. They protested at the losses involved and were not compensated for the loss of their fisheries at the time. In the 1990s, the Crown made efforts to grant redress (notably in the Sealord settlement, the Resource Management Act 1991, and the Conservation Act 1987) the prejudice involved in the loss of inshore fisheries and exclusion from coastal management. But this is not accepted by Hauraki Maori claimants as addressing all their concerns.

The introduction of the Harbours Act 1878, and the termination of the Crown's purchasing of foreshore rights, left Maori in some confusion as to the nature of their existing rights over the foreshore (and their fisheries). This Tribunal is not in a position to determine the extent of prejudice caused by the prohibition on taking cases concerning customary rights over the foreshore to any court, except to say that it is undeniable that for over 100 years Maori were blocked from bringing such claims and that the denial of such a right is prejudicial.



## CHAPTER 23

### **PUBLIC WORKS : THE COMPULSORY TAKING OF HAURAKI MAORI LANDS**

#### **23.1 INTRODUCTION**

Hauraki claimant groups have alleged that, after land losses from Crown purchase and the operation of the Native Land Court, the Crown eroded their last remaining areas of land through the targeting of Maori land for public works. Both the Crown and the claimants acknowledge that too many small blocks of Maori land were taken across the inquiry district for a detailed discussion of every one. Both parties have instead focused on several categories of public works takings: those for the general provision of roads and railways; for the Hauraki Plains drainage scheme; and for the Waihou and Ohinemuri Rivers improvement schemes. The claimants also drew attention to individual takings, but for the most part the Crown did not address these specific claims. We follow the general lead of the parties and focus on the same three topics, followed by a fourth sample group where we note some examples of specific takings (although we do not provide an exhaustive list).

We begin with an outline of the relevant public works legislation. This is followed by narratives of takings, and the submissions of Crown and claimant counsel. We conclude with our general comments on Hauraki Maori lands taken for public works. We note also that the Crown has been in the process of reviewing public works legislation for some years, and that this process has not yet concluded.

#### **23.2 THE LEGISLATIVE BACKGROUND : THE AVAILABILITY OF MAORI LAND UNDER PUBLIC WORKS LEGISLATION**

##### **23.2.1 Public works legislation and Maori land, 1862–1928**

Taking land for public works from lands purchased from Maori was first legislated for in the Native Lands Act 1862. Section 27 of the 1862 Act allowed the Governor to take for roading purposes up to 5 per cent of such lands. Compensation did not have to be provided to the purchaser, and there was no time limit imposed. The 1862 Act stipulated that lands occupied by buildings, gardens, orchards, plantations, or ornamental grounds could not be taken.

In 1864, for the first time, both customary and Crown-granted Maori land was opened up to the Crown for compulsory taking under the Public Works Lands Act 1864. The key provisions of this Act (which resulted in the regimes for Maori and owners of general or European land differing) were that there was no requirement for notice of the taking to be served on Maori owners, and there was no provision for agreement on purchase to be reached instead of compulsory taking. (In contrast, under the Lands Clauses Consolidation Act 1863, owners of general land received notification of takings and could negotiate a sale. A time limit was specified for the taking authority, some offer-back provisions were provided in case the land became surplus, and Parliamentary approval was required to authorise specific takings.) In her Rangahaua Whanui report on public works, Cathy Marr noted that the 1864 Act was passed following controversy over whether the 1863 Act applied to Maori land. The 1864 Act was part of a raft of wartime measures aimed at Maori, and as such ‘offered fewer protections for Maori owners than for general landowners’. Under the 1864 Act, the Government defined the necessity for a public work by Order in Council, there was no standard of how ‘essential’ the need for the particular piece of land had to be, and neither was there a time limit on when the land could be taken. Any land taken permanently became Crown land, and there was no requirement to return the land should it become surplus to requirements.<sup>1</sup>

The Native Lands Act 1865 introduced two key changes to the provisions of the 1862 Act: first, from 1865, the 5 per cent provision of the 1862 Act applied to all Crown-granted Maori land (under section 76 of that Act), whether purchased or not; and, secondly, the provision remained in force for 10 years from the date of the Crown grant, meaning that 5 per cent of the block could be taken for roading at any time within a 10-year period. This was extended to 15 years by the Native Land Act Amendment Act 1878 (No 2).<sup>2</sup>

Later, under the Provincial Compulsory Land Taking Act 1866, provincial governments were also able to take compulsorily Crown-granted Maori land and Maori reserved land. However, they were not authorised to take customary Maori land until the Public Works Act of 1876.<sup>3</sup>

From the 1870s, with Premier Julius Vogel’s massive programme of public works and infrastructural development, legislation simplified the process of acquiring Maori land for

---

1. Cathy Marr, *Public Works Takings of Maori Land, 1840–1981*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), pp 54–55; Cathy Marr, Philip Cleaver, and Lecia Schuster, ‘The Taking of Maori Land for Public Works in the Wairarapa ki Tararua District, 1880–2000’ report commissioned by the Waitangi Tribunal, December 2002 (Wai 863 ROI, doc A32), pp 21–22; Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, p 307

2. Marr, pp 66–69. Much of the following section is taken from Marr and from Ward, vol 2, ch 11. See also Marr, Cleaver, and Schuster.

3. Marr, Cleaver, and Schuster, p 37; Ward, vol 2, p 308

public works.<sup>4</sup> The Native Land Act 1873, for example, changed the provisions of the 1862 Act protecting residential, burial, and cultivation areas so that such Maori land could now be taken when authorised by the Land Clauses Consolidation Act 1863. Then, under the Public Works Act 1882, different criteria were firmly established for the notification, taking, and compensation for Maori land from those for general land.

The 1882 Act (passed in the wake of events at Parihaka in 1881) has been described as ‘harsh and vindictive.’<sup>5</sup> This Act codified separate provisions for the taking of Maori land with fewer protections than for the owners of general land. For example, under section 24 of the Act, the Crown could take any Maori land regardless of the title under which it was held ‘without complying with any of the provisions hereinbefore contained’. Also, from this point, compensation for customary Maori land was routinely set at lower levels than for other categories of land, and awaited the discretion of the Minister who could choose to (but was not required to) make application for compensation. Ward comments that this Act ‘took away from Maori many of the protections hitherto theoretically available to all landowners in the 1870s and still available for European-owned land under the 1882 Act, while increasing the Crown’s power to take Maori land without prior consultation and agreement.’<sup>6</sup> In 1888, the then Minister of Works stated that ‘wrong had been done’ to Maori in the taking of Maori land instead of European land for roads, that he thought little consideration was shown for Maori interests, and that this was ‘decidedly unfair.’<sup>7</sup>

Amendments to the Public Works Act followed in 1885, 1887, 1889, and 1894 that generally extended the powers of local authorities to take Maori land for public purposes.<sup>8</sup> Ms Marr says that, although amendments to the Act modified some of the harshest aspects of the 1882 Act:

a long term pattern was established of separate provisions for Maori land in general public works legislation that lasted well into the twentieth century . . . the fact that Maori land was generally placed in a separate section is likely to have further encouraged taking authorities

---

4. See Raewyn Dalziel on Vogel for a brief explanation of his public works policy:

He adopted a bold expansionist policy with plans to bring thousands of assisted immigrants to New Zealand, to construct roads, railways, bridges and telegraph lines, and to purchase Maori land for European settlement. His aim was to renew ‘colonisation’ and to stimulate economic growth. The programme was to be financed by borrowing, by paying for works with land grants, and by increases in government revenue resulting from the expanding economy. Vogel’s policy was adopted by the House in 1870 and implemented during the seventies.

(Raewyn Dalziel, ‘Julius Vogel’, DNZB, vol 1, p 564.) See also Marr, ch 8; Ward, vol 2, p 308.

5. Marr, p 105; Marr, Cleaver, and Schuster, pp 51–2; Ward, vol 2, p 311; see also Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington, GP Publications, 1996), ch 8

6. Ward, vol 2, p 311

7. Mitchelson, July 10 1888, NZPD, 1888, vol 61, p 609; Ward, vol 2, p 310

8. Ward, vol 2, p 311

that Maori land was generally easier and cheaper to take, with generally less consultation required and only the minimum of protections.<sup>9</sup>

Also as a result of Vogel's policies, the Public Works and Immigration Act 1870 specifically linked the provision of public works with immigration, for the purpose of the colonisation of Maori land. Ms Marr comments that the 1870 Act:

was intended to solve both the economic woes of the colony and the 'native problem' at the same time. Large-scale borrowing would enable a massive programme of immigration and public works which it was hoped would provide the stimulation the economy needed. At the same time, by 'opening up' the country it was confidently predicted that Maori could be civilised and any further resistance broken down. The works of particular concern in the Act were those believed to be essential in developing the economy and in encouraging further settlement; in particular railways, the supply of water to goldfields, and the construction of roads, bridges, and ferries in the North Island.<sup>10</sup>

The Public Works Act 1894 extended the provisions for taking of up to 5 per cent of Maori land for roading and railways without compensation. This category now included land whose ownership had not been determined by the Native Land Court but which, in the court's opinion, 'did not exceed the 5 percent the Governor was allowed to take had the ownership been determined'.<sup>11</sup> Again, the protections for residential, burial, and cultivation lands were removable by consent of the Governor in Council in the case of roads or railways. In addition, by section 93 of the Act, such land could also be removed from legislative protection for public works activities other than roading.

Separate processes for the taking of European or general land and Crown-granted Maori land from customary Maori land were further entrenched by the 1894 Act. Part II of the Act contained the provisions relating to the taking of *general* land (including Crown-granted Maori land), and contained provisions for the notification of owners and a process for objections. But no such provisions were made in part IV, which set out the provisions for dealing with *customary* Maori land. Similarly, provision was made in part II for voluntary agreement to be reached over a sale of the required land, avoiding the need for a compulsory taking. There was no such provision under part IV: the only way to acquire customary Maori land for public works was by compulsory taking. There was no requirement in part IV for surplus land to be offered back to the original owner in the first instance, or the adjacent owner in the second, as there was in part II. Meanwhile, under part IV, and as in the 1882 Act, applications for compensation were to be made by the taking authority (and not the affected Maori owner or owners) to the Native Land Court within six months of the

---

9. Marr, Cleaver, and Schuster, p 51

10. Marr, p 83

11. Ibid, p 70

gazetting of land being taken; that is, *after* the land was taken. The first opportunity many Maori owners had to oppose a taking of their land was after it had gone. Quite possibly the first time some owners heard of a taking, was after the hearing for compensation was notified in the *Gazette* and its Maori version, the *Kahiti*. This applied to Crown-granted Maori land also, because, after section 14 of the Public Works Acts Amendment Act 1887, compensation for takings of all Maori land was subject to determination by the Native Land Court on the application of the Minister.<sup>12</sup>

The Public Works Amendment Act 1909 attempted to tidy up anomalies in the main Act, as well as the specific provisions relating to public works takings of Maori land.<sup>13</sup> Parts of the Native Lands Act 1909 were inserted into the Public Works Act. The Governor was given wide powers: he could lay out and set apart any customary or Crown-granted land (within 15 years of the grant) for roading without providing compensation, thereby broadening the previous 'five per cent provisions' for roading. Neither was the consent of the owners required.<sup>14</sup> But the Government's power to take land for public works without compensation was not finally abolished until section 30 of the Native Land Amendment and Native Land Claims Adjustment Act 1927. This followed an acknowledgement in the House by the Native Minister that public works legislation had effectively discriminated against Maori. He argued that:

the time has arrived when we can ask Parliament definitely to forego any rights [the 5 per cent provisions] under that Act, and that all Natives as far as compensation is concerned should in future be treated in the same manner as the pakeha – that is to say, he should have the same right to claim compensation as the pakeha for the taking of land.<sup>15</sup>

### 23.2.2 The Public Works Act 1928

The Public Works Act 1928 continued most of the principles and policies contained in previous public works legislation. It confirmed that central and local government could take any Maori land for public purposes.<sup>16</sup> The definition of a 'public work' was very broad and included any land, building, or structure required for any public purpose.<sup>17</sup>

As with the 1894 Act, section 10 of the 1928 Act contained protections for landowners, such as the right to notice and the right to object to takings. There were, again, a number of general exceptions to these protections. They included takings for railways, defence purposes,

---

12. Marr, Cleaver, and Schuster, p 54

13. Marr, p 71

14. Ibid

15. Coates, 25 November 1927, NZPD, 1927, vol 216, p 537; Ward, vol 2, p 313

16. Marr, p 134

17. Ibid

or roads related to these purposes, as well as for waterpower or irrigation works. They also included ‘the taking of Native [customary] land’ for any public works. Thus customary land continued to be explicitly excluded from the protections offered to owners of all other categories of land, not remedied until the passing of the Maori Purposes Act 1974.<sup>18</sup>

Under the 1928 Act, compensation for takings of general land was determined by a compensation court. However, compensation for takings of all categories of Maori land continued to be dealt with only by the Native Land Court, which also decided to whom it should be paid. From 1962, compensation for Maori land was assessed by the Land Valuation Court, as for general land.<sup>19</sup>

The 1928 Act also contained a number of provisions that governed the disposal of land taken for public works purposes but no longer required. Section 35 provided that where land taken was later found to be surplus, it would be offered back to the original owners in the first instance, and then to the adjacent owners. If these offers were not accepted, the land would be then sold at auction. But these provisions were, however, contained in part II of the Act. As with the 1894 Act, part II did not apply to Maori customary land.<sup>20</sup> The provisions did presumably apply to Crown-granted Maori land, but, as Marr says ‘in practice, as taken land became European or general land, it was very difficult in practical terms to re-vest land as Maori freehold land.’<sup>21</sup>

The 1928 Act did recognise that land taken by compulsion should be used for the purpose for which it was taken.<sup>22</sup> New Zealand public works legislation inherited the ancient principle of British public works legislation, but had been diluted in New Zealand by various amendments.<sup>23</sup> Both the Crown and local bodies could change the use of the land from the purpose for which it had been taken, or the land could be declared Crown land. In such situations, though the land might have become ‘surplus’, it would not be offered back.<sup>24</sup> While the 1928 Act was amended from time to time, essentially it remained in place until 1981.

### 23.2.3 The Public Works Act 1981

The Public Works Act 1981 was a major piece of consolidating legislation. For the first time, Maori land came under the general provisions of the Act, and was no longer treated separately. The concept of an essential need for a taking was strengthened in the Public Works

---

18. Marr, pp 139–140

19. Ibid, pp 141–142; Marr, Cleaver, and Schuster, pp 60–61; Ward, vol 2, pp 313–314

20. Marr, p 147

21. Ibid; Ward, vol 2, p 317

22. Marr, pp 145–146

23. Ibid, p 146; Ward, vol 2, p 314

24. Before the Tribunal’s Gisborne inquiry, Crown witness Brent Parker noted that it was common practice all over the country for land taken for one purpose to be used for another: Brent Parker, brief of evidence concerning public works, 2002 (Wai 814 ROI, doc G17), p 41.

Act 1981, though it was still not a blanket requirement.<sup>25</sup> Greater emphasis was given to voluntary agreements between the taking body and the owner of the land, including multiply owned Maori land (via the supervision of the Maori Land Court). Mr Alexander notes that, in the 1981 Act, 'compulsory acquisition became very much a last resort after negotiation had failed'.<sup>26</sup>

The 1981 Act also improved offer-back provisions. The original Maori owner was now, under sections 40 and 41, to have the first opportunity to buy back surplus land at current market value (unless the Commissioner of Lands or a local authority thought this unreasonable). But, Marr notes, 'there were still no specific requirements to take account of Maori interests or treaty considerations'.<sup>27</sup>

We note that the Public Works Act has been under review since the mid-1990s. Recent inquiries of Land Information New Zealand (the department heading the review) suggest that a Bill is not scheduled for consideration by the House within the near future.<sup>28</sup> However, in December 2000 the Government released a paper entitled *Review of the Public Works Act: Issues and Options*.<sup>29</sup> While observing that this paper does not necessarily express the views of the Government, we note that it makes several important Treaty-related points. For example, one key point is to 'ensure that exercise of the 1981 Act powers, functions and duties is within a statutory framework that accords with Treaty of Waitangi provisions'.<sup>30</sup> The paper also refers to the recommendations of previous Waitangi Tribunal reports with regard to public works legislation, particularly whether or not Treaty provisions should be included in any new legislation.<sup>31</sup>

The paper observes that a basic tenet of public works legislation is that public interest sometimes outweighs private damage. The legislation provides for 'full compensation' to be given in such cases to balance out any damage done. 'Generally, the term ['full compensation'] is taken to mean putting the owner in a financial position as close as possible to what he or she would have been in if the acquisition had not taken place'.<sup>32</sup>

The paper notes that the compulsory acquisition of Maori land has been particularly contentious:

For Maori, public works legislation has meant both losses and gains. The loss of considerable tracts of land acquired for public works was deeply felt. Many claims involving public

---

25. Marr, p150. Though this provision was repealed in the Public Works Amendment Act (No 2) 1987, the Planning Tribunal's role was strengthened instead: Waitangi Tribunal, *Te Maunga Railways Land Report* (Wellington: Brooker's Ltd, 1994) p 81.

26. Document F4, p 4

27. Marr, p149

28. Email correspondence with LINZ, 31 January 2006

29. Land Information New Zealand, *Review of the Public Works Act: Issues and Options* (Wellington: Land Information New Zealand, 2000)

30. Ibid, p17

31. Ibid, pp 14, 17, 59-62

32. Ibid, pp 20, 31



works have been lodged with the Waitangi Tribunal. However, Maori, with the rest of the population, have also benefited from the many public works that have built the country's infrastructure, hospitals, schools and other amenities.<sup>33</sup>

Following the release of this paper, in 2001 the Government called for public submissions on the review of the public works legislation. The submission period ended on 31 May 2001, and an executive summary of submissions followed.<sup>34</sup> In brief, the summary noted that all submitters were concerned over the definition of an 'essential work', while Maori especially held the view that Maori land 'should not be compulsorily acquired under any circumstances'. They shared a belief that compensation was inadequate, and did not take into account the 'sacrifice that a landowner made for the good of the country'. Most submitters wanted stronger offer-back procedures of land no longer required for public works. 'Maori had particularly strong views and wanted land to be offered back in all cases, preferably at less than current value or at no cost. Some Maori wanted additional compensation because the acquiring authority had received the benefit of the use of the land.'<sup>35</sup> Maori (and some non-Maori) submitters also sought the inclusion of Treaty provisions in the body of a new Act (and not just in the preamble), to ensure legislative protection of their interests. The summary noted that:

Many Maori are very concerned about protecting the remaining small amount of Maori land. Submissions were emphatic that no more land should be acquired, or only acquired in exceptional circumstances with absolute protection of wahi tapu. Leasing rather than acquisition of the freehold is preferred along with joint management of the public work. Compensation provisions in current legislation are considered deficient in that they do not take into account spiritual, cultural and social values that are associated with the land, and the level of compensation is insufficient to purchase equivalent replacement land.<sup>36</sup>

We note that previous Tribunal reports have recommended that public works legislation be amended to reflect and specifically refer to the principles of the Treaty.<sup>37</sup> The recommendations of the *Turangi Township Report 1991* in particular are most relevant. That Tribunal made three main recommendations, building on those of earlier Tribunal reports.<sup>38</sup> The first covered several aspects: that part II of the Public Works Act 1981 be amended to provide that taking authorities must ensure that no alternative to Maori land is available for a taking; that adequate notice and full consultation should occur with an eye to reaching an

---

33. Land Information New Zealand, *Review of the Public Works Act: Issues and Options*, p 59

34. Land Information New Zealand, *Review of the Public Works Act: Summary of Submissions*, (Wellington: Land Information New Zealand, 2001), pp 1–4

35. Ibid, pp 1–2

36. Ibid, p 3

37. Waitangi Tribunal, *Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), pp 359–366, 382–383

38. In particular, the *Turangi Township Report 1995* built upon the Tribunal's recommendations in its *Ngai Tahu Ancillary Claims Report 1995* (Wellington: Brooker's Ltd, 1995) and *Te Maunga Railways Land Report*.



agreement; but that should agreement not be reached, ‘the power of compulsory acquisition for a public work or purpose should be exercised only in exceptional circumstances and as a last resort in the national interest’: that if Maori land is to be taken, then something less than the freehold should be sought, and Maori should have a right of review by an independent body.<sup>39</sup>

The second recommendation covered offer-back procedures, and recommended that surplus land be offered back to the original Maori owners, or the wider tribal group where appropriate, in the first possible instance, and with an eye to the practicalities of affordability for the original Maori owners. This recommendation was made with ‘the special circumstances of multiple Maori owners’ in mind. These circumstances should be taken into account by the Crown and local authorities when seeking to revest surplus land.<sup>40</sup>

The third recommendation was simply that ‘the Public Works Act 1981 should be amended to provide that it should so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi’.<sup>41</sup>

### 23.3 VARIOUS PUBLIC WORKS TAKINGS INVOLVING HAURAKI MAORI LAND

#### 23.3.1 Roads, railways, and the ‘5 per cent’ provisions of the Native Land Acts

##### (1) *Maori and roading*

Maori concern at the construction of roads across their land dates from the earliest years of the colony. In her overview Hauraki report, Dr Anderson notes that Hauraki Maori were anxious about whether and where the Government would construct roads and railways over their lands without their consent or payment, and whether this would make Maori subject to road taxes. She notes that when Premier Ballance toured Hauraki in 1885, some of the main complaints he heard were about the construction of roads across Maori land:

The focus of Maori complaint when the Hauraki iwi met with Ballance in 1885 was the practice of road building – and in particular, the neglect of protections – rather than the power of the Government to take land for public works. They complained that the route of roads at best ignored Maori needs while respecting Pakeha interests; at worst, took essential Maori lands to avoid taking those of European owners.<sup>42</sup>

The Ngati Tamatera chief, Tareranui complained to Ballance that roads were run directly through Maori cultivations so that the road would be straight, but would bend around Pakeha land. Hoani Nahe complained that Pakeha landowners were always provided with

---

39. Waitangi Tribunal, *Turangi Township Report 1995*, pp 382–383

40. *Ibid*, p 383

41. *Ibid*

42. Document A9, pp 24–25

access across Maori land, but that the reverse never applied. Others complained that roads were transgressing against tapu areas.<sup>43</sup> We have already noted the admission by the Minister of Works in 1888 that Maori land was unfairly targeted over general land for road takings.

The issue of roading came close to causing armed conflict in Hauraki. We have referred in section 21.3.1 to the 1877 rates exemption agreement with the Thames County Council. This agreement opened up the Thames to Hikutaia roading route in return for releasing Maori owners of affected land from rates liabilities. It seems that a similar agreement existed between Tukukino Te Ahiatawa and the Government in relation to the road from Thames to Paeroa and Tauranga. The agreement itself is no longer extant, but enough reference to it exists to piece together a brief narrative.<sup>44</sup>

Tukukino opposed the building of the road at over his land at Komata. Anderson says that Tukukino's resistance to the road stemmed from the Native Land Court decision which excluded him from the Komata South block, and only granted him a one-eighth interest in Komata North (see sec 17.2). Tukukino felt he should have retained the whole block on behalf of his tribe.

In September 1879, as related above in section 17.4.2, a surveyor was shot and wounded, and in response Native Minister Sheehan met with the people of Ohinemuri and threatened confiscation, telling them that:

They had been very troublesome for a long time, and he had been very patient with them, but now they had gone beyond the law he intended to see the matter through. He should take the road, the railway, and the wire through their land, and that was the satisfaction he intended to get from them.<sup>45</sup>

Sheehan did, however, agree to let the runanga adjudicate who was responsible for the shooting.<sup>46</sup> Meanwhile, Sheehan began negotiating with Tukukino to get the railway through Komata. Tukukino declined an offer of half the block as a reserve in return for letting the railway through, as well as the road and telegraph from Komata to Paeroa. By late 1879, Tukukino believed (with good reason, see below) that Sheehan had promised him the return of Komata, and in meetings with Rolleston and Puckey in March 1880, insisted that Sheehan had promised him a reserve of over 1000 acres.<sup>47</sup> This Sheehan denied, though he did admit that he had been willing for the whole block, minus 100 acres for public purposes, to be returned to Tukukino 'on condition that he allowed the road to go'.<sup>48</sup>

---

43. 'Notes of Native Meetings' AJHR, 1885, G-1, pp 33, 37-39 (doc A9, pp 25-26)

44. This agreement is the subject of a specific claim (Wai 865). See claim 1.44, pp 1-2; doc A8, pp 253-261; doc Y1, p 50.

45. Puckey to under-secretary, Native Department, 17 September 1879, AJHR, 1879, G-6, p 2 (doc A8, p 254)

46. Ibid, pp 3, 6 (p 255)

47. Puckey to under-secretary, Native Department, 13 November 1879, NO79/4814 MA13/44, Archives NZ; Puckey to Whitaker, 17 March 1880, NO80/3160, MA13/44, Archives NZ (doc A8, p 256)

48. Sheehan to Whitaker, 2 February 1881, NO80/4167, MA13/44, Archives NZ (doc A8, p 256)

In September 1880, Attorney-General Whitaker met with Tukukino and told him that the matter must be settled; Tukukino replied that Komata was his. Whitaker, though acknowledging that Tukukino had suffered an injustice in being left out by land court decision of the ownership of most of Komata (though blaming Tukukino's people for this), suggested to Bryce that he negotiate a settlement with Tukukino. This was in preference to obtaining a division through the court, where Tukukino 'would probably get a large portion of the block as he was the chief and no doubt the principal owner'.<sup>49</sup> But Government determination to make the road was hardening despite Tukukino's opposition. Native Minister Rolleston informed Tukukino on 29 March 1881 that 'it was too late to think the Europeans [would] put up without having a road through this country'. He gave him a one-week ultimatum to come to agreement.<sup>50</sup> Tukukino still refused to consent, but by April, the survey had begun anyway. Tukukino and others protested, especially against the carrying of the line over land that had not yet been before the court, and for which compensation had not been agreed. Tukukino offered no physical obstruction to the work, but visited the work party regularly, and sent men everyday to ask formally for the work to be stopped. Work was completed by late 1881, and Tukukino could no longer maintain his physical occupation of either Komata North or South; the majority purchaser of Komata South posted trespass notices. In March 1883, Tukukino was awarded 222 acres in that part of Komata North where his residence and cultivations were located, and a further 50 acres which included a wahi tapu. This was in return for conveying his one-eighth share to the Queen. The Government paid the survey and other fees, and reserved the right to take roads through the land.<sup>51</sup>

Dr Anderson comments that the capitulation of Tukukino 'signalled the final crumbling of resistance to public works projects'. The road and the telegraph to Te Aroha were completed, the Waihou River was cleared of snags and the railway from Thames to Paeroa was constructed.<sup>52</sup>

Roading has also been a twentieth-century issue for Hauraki Maori. A major example has been the use of the Public Works Act 1928 for the construction and realignments of State Highway 25A, across the ranges between Kopu and Hikuai. Witness David Alexander outlined the background to the construction of the State highway, and its effect on Maori landowners. He calculates that 11 Maori-owned blocks were affected by the 1960s construction of this road. Mr Alexander goes into some detail as to how each block was acquired, and the different notification and compensation owners received. Where Maori were resident on the block, they did receive notification, but otherwise 'an assumption was made

---

49. Whitaker to Native Minister, 18 October 1880, NO80/3630, NA13/44, Archives NZ (doc A8, p 257)

50. 'Notes of a Meeting between Rolleston and Tukukino at Komata on 29 March 1881', NO81/1143, MA13/44, Archives NZ (doc A8, p 258)

51. Document A8, pp 254–260

52. Ibid, pp 260–261

that, because of multiple ownership and the scattered location of the owners, it would not be possible to obtain full and complete prior consent from all the owners to enter on Maori land. So the land was entered without obtaining prior consent.<sup>53</sup> In such cases, notices of intention to take the land under the Public Works Act were issued once construction had been completed (as was allowed by the Act). Following a 40-day notice period, compensation was negotiated; where there were more than four owners, the Maori Trustee was responsible for compensation negotiations. Alexander notes that in such cases the Maori Trustee was under no obligation to consult with the owners he represented.<sup>53</sup>

## **(2) Claimant and Crown submissions on roading**

Neither the claimants nor the Crown focused particularly in submissions on the events surrounding the Crown's acquisition of Tukukino's land (though Ngati Tamatera claimants argued that the Crown deliberately undermined the tribe to achieve the end result of getting the railway through against Tukukino's wishes.)<sup>54</sup> Rather, the focus in submissions was on the specific examples of the taking of Maori land for the construction of roads,<sup>55</sup> and State Highways 25 and 25A in particular.<sup>56</sup>

---

53. Document F4, pp 44–45, 46–65

54. Document Z3, p 28

55. The Wai 969 claimants note that land was taken from the Oteao 1 block in 1924, 'further eroding' their land base: doc Y13, p 5. The Wai 969 claimants say that the Te Kauanga Whenuakite 1 block had a 10-acre urupa located on it, but though the Native Land Court had ordered the wahi tapu to be absolutely inalienable, it had been taken for roading: doc Y13. The Crown observed in reply that one acre or 30 perches of the block was taken for roading but that the remaining approximately eight acres were returned to Maori ownership: doc AA1, p 310. The Wai 423 claimants say that land was taken for roading from the Mataitai 1 and Te Kawakawa blocks and that, though the total amount taken was small, it contributed to the overall diminishment of the Ngai Tai tribal estate: doc Y15, p 24. The Wai 792 claimants state that 82 acres 14.6 perches of their land were acquired under public works legislation for roading, without adequate notification to the owners and with no evidence of compensation, thereby diminishing the tribal estate: doc S8(a), pp 343–344; doc Y18, p 18; see also doc Y19, p 9. The Wai 866 claimants, Ngati Porou ki Harataunga, allege that such takings were inconsistent with the Treaty of Waitangi. Ngati Pu, Wai 355, allege that in 1942 the Crown took 40 acres of their Hikutaia lands for the Marototo road without compensation; again, a significant loss, considering the small landholdings of the tribe by this time: doc Y8, p 182; doc Y8, p 41. The Wai 174 claimants allege that the remaining portion of Te Horete 2, after alienation of the bulk due to the failure of the Crown's supposed protection mechanisms, was taken for a road without compensation, despite a statutory obligation on the Thames County Council to apply to the Native Land Court to determine compensation: doc Y2, p 5.

56. For example, the Wai 694 claimants gave evidence that they had tried to swap land for the realignment of State Highway 25A with wahi tapu land that should have been reserved to them at Green Point but was not: doc Y11, p 13. The Ngati Tamatera claimants (Wai 418) note that in 1962 two acres 23.5 perches of the Waipatukahu wahi tapu were taken for State Highway 25 (see ch 20) without the original trust status of the land being investigated: doc Y3, p 18; doc A13, pp 18–23. The Wai 970 (Tamatepo) claimants argue that the Kopu–Hikuai State Highway 25A 'cut a swathe' through their whanau land, with no compensation awarded in return: doc Z4, p 32; doc U2(b), pp 4–5. The Wai 464 and 661 claimants say that 12 acres of Parawaha and one acre two roods 18 perches of Waitotara 2 were taken for State Highway 25 with inadequate consultation and compensation, leaving only a 'tiny remnant' of Ngati Hikairo's tribal estate: doc Y4, p 13. The Wai 174 claimants allege both that all of Opu 3 was taken for State Highway 25 in 1975 without notice of intention to take the land being issued and that the original 1969 proposal had been for only part of the block. They further argue that inadequate compensation was received, thereby denying their ability to make future use of the land: doc Y2, p 8.

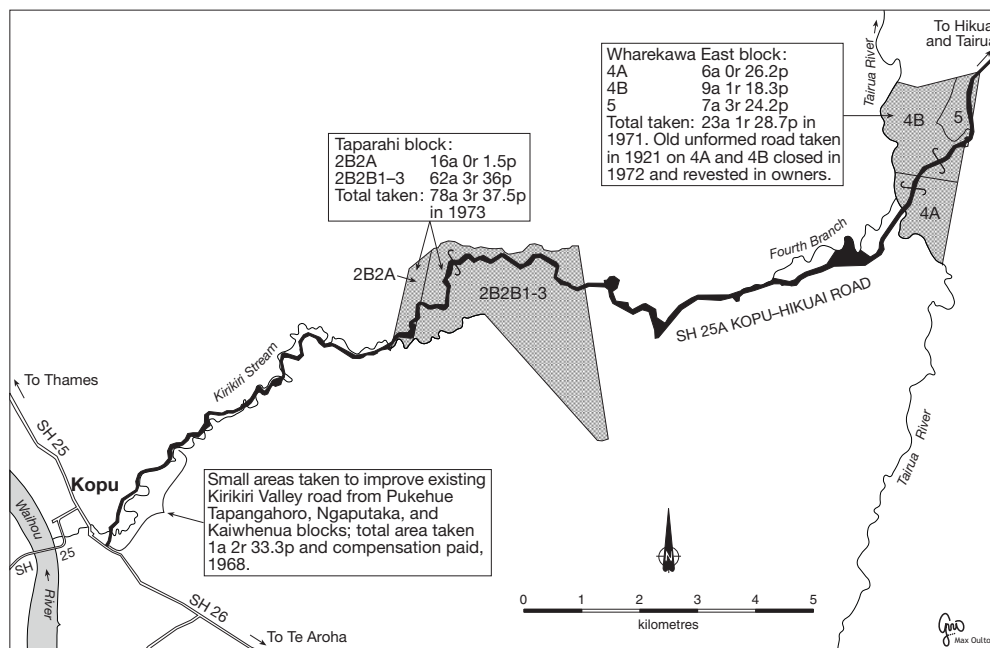


Figure 91: Maori land taken for the Kopu to Hikuai road, 1968-73

Claimant counsel noted that just over 116 acres of Maori land was taken for State Highway 25A. Counsel argued that the different treatment of owners of Maori land compared with those of general land, and lack of provisions for consultation and participation for Maori in the taking process, amounted to 'a breach of the principle of Oritetanga – the equality and privileges of citizenship as guaranteed in Article 3 of the Treaty'.<sup>57</sup>

Crown counsel replied that most of State Highway 25A was constructed on private or Crown land, and not Maori land. Pukehue 1 and 2 blocks were in joint Maori and European ownership, and the Maori owner signed consent prior to entry, notice of intention to take was served and assurances were made about family graves. 'It seems that satisfactory arrangements were made over compensation.' For the Tapangahoro, Ngaputaka, and Wharekawa blocks, no prior consent was sought, but notice was given and no objections were received. Compensation was then arranged through the Maori Trustee. 'These cases illustrate the difficulties of arranging notice for multiple owners of Maori land, and provide the reason for the provision of powers for the Maori Trustee to arrange compensation.' Some consent was given in the case of Kaiwhenua and Taparahi blocks, and there was some involvement by the Maori Trustee:<sup>58</sup>

These examples show a variety of approaches to consultation with and compensation of the Maori owners, and related matters. Occupation of the land seems to have been a major

57. Document Y1, p 129

58. Document AA1, p 254

determinant in whether agreement was obtained from the owner, and compensation was negotiated.<sup>59</sup>

With regard to the ‘5 per cent provisions’ of the Native Land Acts, allowing for 5 per cent of Crown-granted, and then all Maori land, blocks to be taken for roading purposes without compensation, the claimants argued that such takings ‘were frequently made without consultation’ with Maori owners.<sup>60</sup>

In response, the Crown argued that the ‘5 per cent’ takings were to be distinguished from takings for roads compensated under the public works legislation:

It was appropriate for land to be taken for roads without compensation under the Native Lands Acts. (Under that regime, land had to be taken within 15 years). The primary reason for such a provision was the need to not only ensure that land passing through the Court was not ultimately landlocked, but also to provide a district roading scheme over time.<sup>61</sup>

The Crown also referred to David Alexander’s comprehensive discussion of land taken for roading along the western side of the Firth of Thames.<sup>62</sup> This road, the Crown said, was designed to open a large area of useful land for settlement, and as a convenient highway for travellers and stock. ‘There is evidence that agreement was obtained from the Maori owners, that they were keen to have the road because of difficulties of access’, and inquiries were made as to location of cultivations, urupa, and other such areas. Though Mr Alexander says no compensation was given, the Crown argues that some owners were in fact compensated, but offers no evidence for this assertion.<sup>63</sup>

### **(3) Tribunal comment on the use of Maori land for roads**

We have serious concerns with the manner in which the Crown dealt with the chief Tukukino, and the pressure amounting to Crown coercion brought to bear on him to allow the opening up of his tribal land. Tukukino’s property rights were not respected, nor was his chiefly mana. This example suggests that Maori, despite the article 2 Treaty guarantee, could not hold on to their land and property if the Crown desired the land. We refer readers to our overall findings on the pressures of land alienation in chapter 17 where this issue is discussed.

We consider that the ‘five per cent provisions’ of the Native Land Acts were fraught with potentially distressing consequences in Treaty terms. We agree with the Crown that it was important to ensure that Maori land was not landlocked (without road access), although evidence suggests that, due to partitioning, much Maori land ended up in this condition

---

59. Document AA1, p 254

60. Document Y1, p 128

61. Document AA1, p 253

62. Document F3

63. Document AA1, p 253; doc F3, pp 4–24

anyway (see particularly chapters 16 and 21). But requiring Maori to give up 5 per cent of their Crown-granted land without compensation means Maori had to pay for the opening up of their land, often for the benefit of others, and where others did not. This is particularly so in relation to customary land. We refer to our findings on the Native Land Court in chapters 15, 16, and 18, and the overall loss of land of which this is ultimately a subset.

### 23.3.2 The Hauraki Plains drainage scheme

In chapter 17, we have detailed the Crown's acquisition from Maori of part of the Piako wetland plains, which were, until the late nineteenth century, the last great tract of land remaining in Hauraki Maori ownership (see sec 17.4.2(3)). Then, in the early twentieth century, 'without doubt, the most significant public work undertaken in the context of the Hauraki regional inquiry district' commenced: the draining of the plains and their conversion to dairy farming.<sup>64</sup> The environmental importance of the wetlands to Hauraki Maori, and the impacts of the scheme, have been set out below in chapter 24. In this section, we confine ourselves to a discussion of the background to the scheme and the use of the Public Works Act to effect its implementation.

#### (1) Background

In 1907, the Government appointed the engineer W C Breakall to prepare a draft drainage scheme for the plains. Breakall also submitted a map that clearly showed the small amount of Maori land remaining in the Piako River delta. His plan envisaged the acquisition of much of this land, and he urged the Government to move to purchase it before its value rose as a result of drainage:

Besides the question of desirableness of consolidation for purposes of roading and subdivision, there is another important matter to be considered; all the drainage works, stopbank works, floodgates and works incidental thereto will benefit and improve the Native lands as much as the Government lands.<sup>65</sup>

Breakall suggested that if the land was acquired, it would be possible within a year to have 15,000 acres ready for settlement that could reach £8 to £10 or more at auction.<sup>66</sup>

The Government agreed that it was preferable to keep costs to the public purse as low as possible. The Hauraki Plains Act 1908 was introduced the following year.<sup>67</sup> Section 3 authorised the Minister of Lands to construct works 'for the drainage, reclamation, and roading of

64. Document AA1, p 248

65. Breakall to Under-Secretary for Lands, undated, AJHR, 1908, C-1, p 80 (doc F4, p 14; doc A9, p 121)

66. Ibid

67. Document A9, p 122. In fact, 1908 saw a raft of new legislation relating to public works: in addition to the Hauraki Plains Act, a new Public Works Act came in and, following it, a Public Works Amendment Act, as well as the Aid to Public Works and Land Settlement Act 1908.



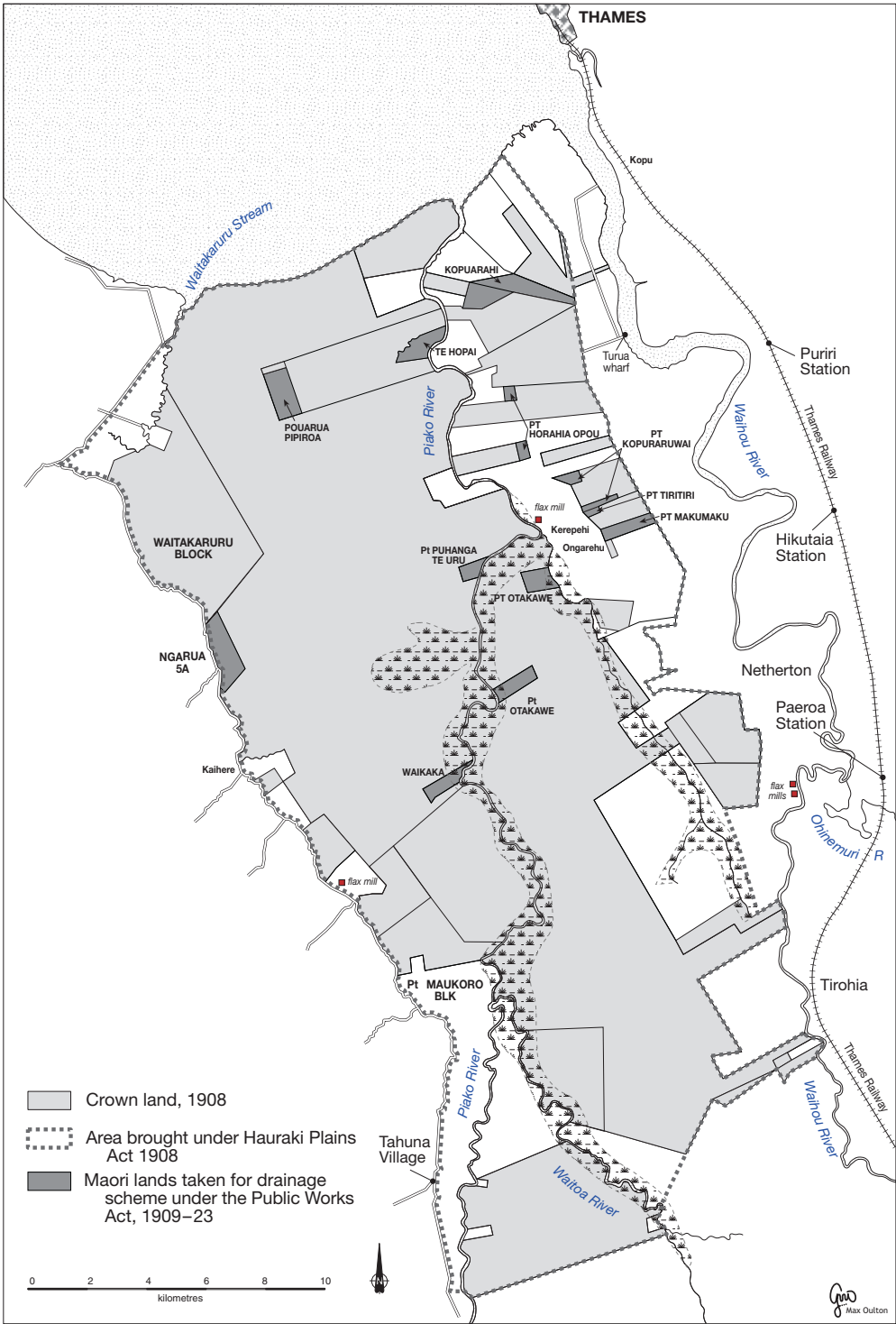


Figure 92: Hauraki Plains land tenure, 1908. Source: AJHR, 1908, C-8; AJHR, 1909, C-1, C-1C.



the said land or otherwise for rendering the same fit for settlement'. Under section 9(1), the Government could, either under this Act or under section 20 of the Maori Land Settlement Act 1905, also take land adjacent to that required for the actual drainage scheme. This was to enable 'the more effective carrying out of the drainage or other works authorised by this Act, or for the better disposal of the land so set apart'. The section was debated in Parliament, where it was explained that the Government could, by this authorisation, purchase small areas of native land surrounded by other takings, and 'which must be acquired in fairness to the country, which was expending public money on the scheme'. Prime Minister Ward observed that it might be necessary to acquire Maori land as a preliminary to the construction of stop-banks and so 'the whole block [could] be better subdivided for settlement'.<sup>68</sup>

Between 1909 and 1919 a number of Maori blocks were taken under the Public Works Act (fig 92). Much land destined for the scheme had already been acquired by the Crown under section 20 of the Maori Land Settlement Act 1905. These public works takings represented a final stage in completion of Crown acquisition of the swampy plains so that the land could be drained, developed and made productive by Pakeha settlers who were allocated farms under a ballot system as drainage progressed. Table 11 shows the Maori blocks were taken under the Public Works Act by 1919. These blocks are all shown in figure 92, except the tiny Rawerawe block, adjacent to the southern boundary of Te Hopai.

Table 12 shows several further takings from 1920 to 1923. The three small partitions of Makumaku block were required for the construction of the Awaitei Canal and part of Ngarua A1 was taken for a spoil pit for the formation of roads.<sup>69</sup> Some land was also taken at Ongarehu involving Kerepehi papakainga. We comment below in chapter 24 on the controversy and complaint from Maori surrounding this taking.

In total, 1923 acres were taken in the first phase (between 1909 and 1911) of the scheme from various Maori-owned blocks.<sup>70</sup> Some of the blocks taken in 1909 involved up to 49 Maori owners; Mr Alexander says there is no evidence of consultation with the owners prior to the taking of the land. While the Crown was prepared to give land in compensation where owners could prove they had insufficient lands, there is, according to Mr Alexander, 'no indication that the Crown made known to the owners its willingness to provide alternative land'. The Native Land Court assessed financial compensation for land taken.<sup>71</sup> However, it is apparent that Maori owners were aware of the Crown's intention to take land in at least some cases, as we discuss in chapter 24.

The development of the land can be seen in figure 93, which shows the modification of existing rivers, by shortening courses through lands and a lattice pattern of drains across the landscape. Some employment as labourers on the scheme was taken up by local Maori

68. Ward, October 6 1908, NZPD, 1908, vol 145, p 920 (doc F4, p 15)

69. Document A9, pp 208–209

70. These blocks were Te Hopai, Horahia Opou, Kopuarahi, Makumaku, Otakawe, Pouarua–Pipiroa, Rawerawe, Kopuraruwai, and Tiritiri: doc F4, pp 17–19; doc A9, p 122.

71. Document F4, p 18

Year	Block	Area		
		(acres, roods, perches)		
1909	Poaroa Pipiroa 1B2, 1C	471	0	0
	Te Hopai 1B, 3, 4	114	3	21
	Otakawe 1B2, 2B, 3B	317	3	26
	Rawerawe	1	3	12
	<b>Total</b>	<b>905</b>	<b>2</b>	<b>19</b>
1911	Kopuarahi 1B, 3D, 3C	654	0	39
	Horahia Opou 3B, 5B	72	3	39
	Kopuraruwai 1B, 4B	134	0	3
	Tiritiri 4B2	31	1	31
	Makumaku 2	125	0	0
	<b>Total</b>	<b>1017</b>	<b>2</b>	<b>32</b>
1916	Ngarua 5A2	394	0	30
	Waikaka A2 and B*	185	1	0
	<b>Total</b>	<b>579</b>	<b>1</b>	<b>30</b>
1919	Puhangateuru 3B2	70	3	17
	<b>Total</b>	<b>70</b>	<b>3</b>	<b>17</b>
<b>Grand total</b>		<b>2573</b>	<b>2</b>	<b>18</b>

\* Document A10, pt 4, pp 353, 356

**Table 11: Maori blocks taken under the Public Works Act by 1919.**

Source: document A9, pp 204–208.

Year	Block	Area		
		(acres, roods, perches)		
1920	Ongarehu*	5	1	0
1923	Parts Makumaku	33	1	25
1923	Part Ngarua 5A1	25	3	26
<b>Total</b>		<b>64</b>	<b>2</b>	<b>11</b>

\* Document A10, pt 4, p185

**Table 12: Takings of Maori blocks from 1920 to 1923**

but this seems to have been their only real involvement. By May 1910, construction of stop-banks along the foreshore and improvements in the Piako River channel were judged sufficient to permit the first ballot to take place of 104 farm sections on 16,398 acres. By March 1915, a total of 38,994 acres, including drainage reserves, had been made available to 294 farmers. This latter area was on the higher lands between the Piako and Waihou Rivers, around Kerepehi, and the western margins of the swampland. Progress was much slower

thereafter as the drainage workers struggled with the deeper peat and the difficulties in constructing roads in this 'soft country'. Drainage of the peat swamps of the Hauraki Plains created particular problems, as geologists John Henderson and John Bartrum pointed out in 1913:

The subsoil of these swamps is clays and unconsolidated pumiceous sands. When a swamp is drained the swamp vegetation dies, the peaty soil contracts, and the surface is lowered many feet. The surface vegetation is usually burned off; but this must be done before drainage has proceeded too far, otherwise the peaty soil itself may burn and the surface may be lowered to such an extent that, when the unburnt portion contracts, the area may be subject to floods.<sup>72</sup>

There was a shortage of labour during the First World War, but by 1920 another 3000 acres were offered for selection, and work proceeded under the impetus of developing land for returned soldiers. From 1923 on, the Department of Lands and Survey began handing over the new roads to local government control and several local drainage boards were set up to look after maintenance of drains.

Work slowed in the 1920s, partly because of the difficulty of working in deep peat swamp, but also because successful drainage was not simply a matter of digging drains and constructing stop-banks. These works had to be maintained and a lot of effort went into maintenance of existing works. Continuous rebuilding of stop-banks is needed where these sink into deep peat, and rates of sinking of up to two metres in 10 years were not unusual. Removal of silt and vegetation from water channels, in canals, and in rivers is also a regular activity. It was realized that the deep peat swamps between the Piako River and Awaitei Stream could not be drained economically. Much of this area remains deep peat swamp that acts as a ponding area for overflows when rivers run high, and to regulate flows downstream. By 1933, over 45,000 acres had been settled and another 12,600 acres were still under development, but much of this latter area on the Pouarua block was still being administered by the Department of Lands and Survey until the early 1970s when it was settled.<sup>73</sup>

Dr Anderson comments that, though the scheme was trumpeted as a success by which a 'dreary waste' had been transformed into a 'generally productive district' and 3500 were now living 'where previously there were only a few Natives and flax workers', a lack of protection for Maori land was evident in the takings for the scheme:

for Maori to benefit, they had to keep hold of their remaining blocks. Instead, their continuing ownership of lands within the district was seen as an impediment to development rather

---

72. John Henderson and John Bartrum, *The Geology of the Aroha Subdivision, Hauraki, Auckland*, Geological Survey Branch Bulletin 16 (Wellington: Department of Mines, 1913), p 28

73. Details of progress on the Hauraki Plains drainage scheme are contained in the annual reports of drainage operations in AJHR, 1908-42, C-8. See also Rufus E Tye, *Hauraki Plains Story* (Paeroa: Thames Valley News Ltd, 1974), pp 62-64.



than as a guarantee that Maori would be able to participate in the benefits deriving from Government public works schemes.<sup>74</sup>

Dr Anderson argues that the drainage scheme, together with the Waihou and Ohinemuri River improvement scheme (discussed below), had a very significant impact on Hauraki Maori. The schemes demanded the largest takings of Hauraki Maori land in the twentieth century but brought little direct benefit to Maori. 'At the best, Hauraki right-holders had been left in possession of small, undeveloped blocks of land, owing rates, and the first target for purchase, as land which was uneconomic, and not fulfilling its dairying potential.'<sup>75</sup> She concludes that:

For Maori, the drainage works and settlement of the Plains were the last blow to their territorial rangatiratanga after the loss of the gold field lands in the nineteenth century. They had lost the old uses of resource gathering, bird snaring, and of the eel weirs, so hotly disputed in the land court hearings of the 1890s. Those areas had been transformed into rich dairy land, but at the end of the process, only a few Maori retained lands for farming. According to one kaumatua of the 1930s, 'on top of all these developments', he could 'safely say that all the Maori farmers operating in the Hauraki district today [could] be counted on the tips of [his] fingers.'<sup>76</sup>

Dr Anderson also notes that the Government relied on section 20(2) of the Maori Land Settlement Act 1905 to acquire Hauraki land, taking compulsorily over 5000 acres from minority holders who did not wish to sell their land (see sec 18.1.2).<sup>77</sup>

## **(2) Claimant and Crown submissions**

Claimant counsel for Wai 100 noted that a 1930s report on the drainage of the plains reported that, prior to drainage, the Hauraki Plains were a 'morass'. This disparaging comment ignored the importance of the wetlands to Maori, and also 'ignored that for Hauraki [Maori] these lands represented among the last significant land holdings of Hauraki after the rapid acquisition of land in the preceding thirty years before 1900'.<sup>78</sup> While the Crown argues that the primary purpose of the drainage scheme was to bring 160,000 acres of swamp and flood-prone land into production, claimant counsel maintains that 'in doing so, the Crown also had an eye on the financial returns as a result of opening up this land'. WC Breakall had said the land could readily sold at from £8 to £10 per acre. Prime Minister Ward repeated this in the House. As a result, land adjoining the drainage channels was also

---

74. Document A9, p 123

75. Ibid, pp 127, 186

76. 'Copy of Minutes Taken for the Representatives of Ngati Maru Present at the Second Hearing of the Petition of Rihitoto Mataia', 6 March 1935, app A, in 'Hauraki Goldfields Native Revenue: Treasury Statement Relative to Petitions', MA13/35c [MA13/35i] (doc A9, p 124)

77. Document A9, p 77

78. Document Y1, p 123

acquired, ‘resulting in the scheme acquiring considerably more land than was necessary to carry out the scheme.’ Over 2500 acres of Maori land was taken under the Hauraki Plains Act 1908. Few Hauraki Maori were better off as a result of the scheme, and there is no evidence that the ‘betterment principle’ should have been applied. (This principle was that any benefit accruing from public works to landowners whose lands were taken was to be noted when assessing compensation, and the sum granted proportionately reduced. This ‘betterment principle’ is discussed in section 23.3.3.<sup>79</sup>)

Claimant counsel maintained that, while the Crown has argued that there was a pressing need for productive agricultural land for the nation, there was no need to acquire the freehold title from Maori compulsorily, or to exclude Maori from the planning of the scheme:

The Crown could have sought Maori participation in and support for the scheme. Such however, would have required consultation, a matter for which there is no evidence that such ever took place . . . Overall, it is submitted that the scheme provides a case study showing clearly how little regard it placed on matters of importance to Hauraki [Maori].<sup>80</sup>

Other claimant counsel also made submissions on the drainage scheme. Counsel for Marutuahu argued that the scheme represented a major blow to Marutuahu land owning, and ‘made it impossible for Marutuahu to be a key part of the expanding and sustainable agricultural economy based on refrigeration.’<sup>81</sup>

In reply, the Crown agreed that it is reasonable to discuss the taking of around 2500 acres of Maori land for the scheme in the context of the impact upon the general land holding of Hauraki Maori. But:

That said, the Crown reiterates . . . [that] the primary purpose of the scheme was to bring some 160,000 acres of swamp and other lands that were prone to flooding into production. The scheme provided considerable flow on benefits and opportunities nationally and to the local communities.<sup>82</sup>

Although the Crown acknowledged that the taking of Maori land further diminished the limited amount of land remaining in Maori ownership, counsel argued that this ‘is to be balanced against the benefit of the scheme for other lands. In its 1930 report, the Lands and Survey Department reported that “about 120 private and native holdings” benefited from the works.’<sup>83</sup>

---

79. Document v1, pp 123–125

80. Ibid, pp 125–126

81. Document z6, p 51. See also the submissions of counsel for Wai 174, Ngati Kotinga and Nga Whanau o Omaha regarding takings from Horahia Opou 5A in the early 1960s for the Piako River drainage scheme, where the claimants allege that the Crown failed to protect the taonga of Ngati Kotinga through the inadequate notification of the taking and the lack of true representation by the Maori Trustee: doc v2, pp 10–12.

82. Document AA1, p 248; paper 2.550, pp 30–31

83. Paper 2.550, p 31; doc AA1, p 248

None of the claimant researchers, according to Crown counsel, have fully researched the benefits provided by the scheme. But, 'it is clear that some Maori farmers must have benefited directly' from the building of canals, roads, bridges, stop-banks, and drains, and from the creation of dairy factories on the plains so that cream no longer had to be sent to Paeroa or Kopu. A big increase in the value and tonnage of dairy products followed the completion of the scheme. By 1930, some 43,000 acres of the plains had been settled. While there is no indication of any number of Maori doing so, they were not prevented by any regulation from applying for new farms on the drained land. The Hauraki scheme was one of many 'in a period when the prospects for the dairy industry through refrigeration and other technological advances made the development of such land feasible'.

Crown counsel noted the argument by claimant counsel that the Crown did not need to take the freehold title, and should have consulted better with Maori. The Crown replied that it is difficult to know from the evidence the quality of any consultation before implementation of the scheme, as well as to know what lands were taken in excess of that needed. But land, Maori or general, was taken not only for drainage but also for the necessary infrastructure of the district:

The scheme was not solely about the drainage of the Hauraki Plains so the land could be farmed, but also about the effective settlement and farming of that land. In light of this wider purpose, the Crown does not discount the possibility that there was insufficient regard to the question of whether Maori wanting to retain land could do so where such retention would not have materially affected the integrity of the scheme. The Crown had the power to re-allocate land to these people from amongst the large land holding it had acquired over the previous 40 years. There is no evidence whether or not this occurred.<sup>84</sup>

The Crown acknowledged that 'it did utilise section 20(2) of the Maori Land Settlement Act, 1905 to compulsorily acquire the interests of the minority after the majority of owners in value had agreed to sell'. But Crown counsel claims it did not acquire 'thousands' of acres under section 20(2) as alleged, but rather some 863 acres only. The Crown's power to acquire minority non-seller interests compulsorily under section 20(2) was removed in 1907. 'The Crown considers that the claimed effect of confiscation and exploitation is exaggerated, but acknowledges the operation of the 1905 Act was similar to a Public Works taking for those who had not consented to sale.'<sup>85</sup> (See our discussion of the 1905 Act in section 18.1.2.)

### **(3) Tribunal comment**

We acknowledge the Crown's concession that insufficient regard may have been shown to the possibility of Maori retaining land under the drainage scheme. We note also the Crown's

---

84. Document AA1, pp 249–251

85. Paper 2.550, p 37; paper 2.227, p 19



acknowledgement that there is no evidence that it actively ensured that land was allocated to Maori so that they would benefit from the drainage scheme. We consider that these concessions point to the heart of the issue. We agree that Hauraki Maori must have received some community benefit from the scheme in terms of use of public roads and bridges, and some opportunities to earn wages, but without land they were unable to take advantage as farmers of the drainage work and infrastructure of the dairy industry.

While it is not possible for this Tribunal to make specific findings in relation to the takings of individual blocks for the Hauraki Plains drainage scheme, we consider some comment is required as to the overall approach of some Crown officials to Maori ownership of land in the plains. The original scheme engineer, W C Breakall, submitted a plan with his 1907 proposal which clearly showed that little Maori land remained in the plains (see fig 92). Moreover, the Stout–Ngata commission reported just a year later in 1908 that Hauraki Maori could not afford to lose any more land (see sec 18.2). These facts, together with the Crown's large-scale alienation of Hauraki land in the nineteenth century, should have alerted authorities to the need to be vigilant to protect the remnants of Maori land ownership.

We note that Crown counsel has said that a principle of public works legislation is that 'full compensation' should be provided to affected owners. Full compensation has been 'taken to mean putting the owner in a financial position as close as possible to what he or she would have been in if the acquisition had not taken place.'<sup>86</sup> We can say with certainty that few Maori affected by the drainage schemes were left in a position close to that prior to implementation of the scheme; it is clear that few were able to utilise or farm plains land after the taking and draining of their former lands. Neither did they always receive full compensation due to the application of the 'betterment principle', and we have seen no evidence that existing 'land for land' options were ever made known to Maori. For such Maori, public works takings must have indeed felt akin to confiscation.

### **23.3.3 The Waihou and Ohinemuri Rivers improvement schemes and the 'betterment principle'**

We have set out the background to the Waihou and Ohinemuri River improvement schemes in some detail below in chapter 24. There, we highlight the siltation and flooding resulting from the 1895 proclamation of the rivers as sludge channels. We note that the Waihou and Ohinemuri River Improvement Act 1910 was passed as an attempt to remedy some of the damage caused since 1895. In the following section, we investigate the correlative use of the Public Works Act 1908.

---

86. Land Information New Zealand, p 31



**(1) Background**

As a result of the 1910 silting commission (see sec 24.3.1), the Waihou and Ohinemuri Rivers Improvement Act 1910 was passed. It was 'An Act to remedy and Prevent the Silting and Overflow of Parts of the Waihou and Ohinemuri Rivers, and to improve the same for Purposes of Navigation'. Under section 11(1) of the 1910 Act, full compensation was to be paid to affected parties, but, under section 11(2), 'In assessing such compensation the Court shall take into account in reduction or mitigation of the claim any benefit which has accrued or is likely to accrue to the claimant by reason of the construction of any work authorized by this Act'; that is, the 'betterment principle' was to be applied. By section 13, the value of any compensation was not to exceed the 1895 value of the affected land, plus improvements since. By section 11(5), a fixed rate of compensation was payable on lands only partially destroyed:

In assessing compensation under this Act the Magistrate shall take into account, in reduction of compensation, the benefit which the remaining lands of the owner, lessee, or occupier will probably derive by the stop-banks and other works constructed or to be constructed under this Act.

Under section 14, affected land could be taken 'as for a public work' without the payment of further compensation.

A later 1919 river commission acknowledged the application of the 'betterment principle' to be unfair, when it stated that the riparian owners had to bear 'all the loss of land without adequate payment, while those remote from the river whose physical betterment is greater (generally much greater) obtain this without any loss of land'.<sup>87</sup> However, Anderson says this recognition came too late for most Maori affected by the scheme. At any rate, though a Government committee recommended that an area of some 8327 acres would be advantaged by the scheme, the Government ultimately decided not to use its power to take this land, in order to give 'private enterprise a chance'.<sup>88</sup>

As the 'river improvement' schemes were implemented, problems caused by flooding continued, as did petitions objecting to resulting losses. Though denying legal liability, in 1927 the Government granted £5000 in full satisfaction of all claims of compensation for injury caused by the river improvement schemes. Of this, £1605 went to Maori. This, according to Anderson, did not offer much of a long-term solution for Maori, who continued to endure continual flooding, and the ongoing destruction of wahi tapu and other remaining lands.<sup>89</sup> Ngati Tamatera leader, Haora Tararanui sent in letters and petitions (as he had prior to

---

87. 'Report of Rivers Commission', 5 December 1919, AJHR, 1920, D-6A, p 4 (doc F4, p 32; doc A9, p 117)

88. Document A9, p 117; land purchase officer to Under-Secretary of Public Works, 25 September 1918, Works and Development head office file 65/16 (doc F4, pp 34-35)

89. Document A9, p 118; doc F4, pp 36-37

the 1910 commission), requesting in particular that a diversion be constructed at Pereniki's Bend, as had initially been planned. Because it had never been built, stop-banks would instead have to be built over Maori riparian land. Tareranui protested that 'Such a stopbank will pass over the two tapu grounds shown on the plan, in which . . . hundreds of his ancestors and their relatives are buried, thus desecrating their tapu ground.'<sup>90</sup> The Paeroa engineer replied that stop-banks could be built to avoid the tapu ground. But in 1928 Tareranui again wrote to the Native Minister, this time requesting that a stop-bank be built (avoiding wahi tapu), because flooding was forcing his people out of their homes:

Insofar as our home and lands are concerned, we do not desire to leave them. This has been a home even from the time of our ancestors, even to the present time. Our ancestors are buried here. Wherefore we respectfully pray, o Native Minister, that you will cause a stopbank to be built here.<sup>91</sup>

However, this and other requests from Tareranui were dismissed on the basis that he had already been paid compensation and because the Public Works Department admitted no liability in the matter.<sup>92</sup>

Anderson argues that the history of the river improvement scheme explicates the 'dilemma of Hauraki Maori' with colonisation: 'a history of supposed "improvement", but which was, in fact, one of degradation for Maori.'<sup>93</sup> With regard to the overall combined effects of the Hauraki Plains drainage scheme and the river improvement schemes, Anderson concludes that:

The Government maintained a fiction of treating Maori equally, or even preferentially. But the underlying policy and practice was marked by a continuing sacrifice of Maori interests to the imperative of development and settlement – most particularly, in the insistence on extensive takings rather than just those areas strictly required for works. This was undertaken for the general 'public good', for the benefit of Pakeha land holders in the district, and for the convenience of the PW Dept even though it was well-known that Hauraki Maori had very little land left to them, and that such blocks sometimes might comprise their papakainga lands. In the meantime, Maori were denied compensation at full value as the Government ensured that it retained much of the benefit of its investment in drainage works by laying down the rules controlling compensatory payments.<sup>94</sup>

---

90. E W Porritt, barrister and solicitor, Paeroa, to Dr Pomare, Wellington, 2 August 1921, attached to district engineer, Auckland, to assistant engineer, Paeroa, 17 September 1921, Works and Development Paeroa file 11/1/10 (doc F4, pp 35–36)

91. Haora Tareranui, Ratana Pa, to Native Minister, 5 September 1928, Maori Affairs head office file 1928/130 (doc F4, p 37)

92. Document F4, pp 37–38

93. Document A9, p 187

94. Ibid, p 127

**(2) Claimant and Crown submissions**

Counsel for the Wai 100 claimants argued that declaration of the Waihou and Ohinemuri Rivers as sludge channels changed the rivers' depth and width; widespread flooding resulted, and silt smothered gardens and wahi tapu. Though witness David Alexander had been unable to calculate exactly how much land had been taken for the improvement schemes, 'it is likely to have been considerable, given that much of the Maori land in the area adjoined the rivers'.<sup>95</sup> The river improvements schemes, like the drainage of the Hauraki Plains, treated Maori unfairly:

Although the lack of records make it hard to draw any absolute conclusions it seems unfair and in breach of the Crown's duty of active protection that having endured flooding created as a result of Crown policy in respect of the gold fields the solution ultimately forced Maori from much of their remaining land altogether. Even the Crown accepts that Hauraki were not better off (through the application of the Betterment principle) as a result of this scheme.<sup>96</sup>

Counsel argued that the Crown had breached the Treaty of Waitangi, and in particular the principle of active protection, by allowing the rivers to become silted following mining operations. The Crown had also failed to provide a remedy that protected Hauraki interests, 'but [one which] rather led to the loss of further scarce Maori land'.<sup>97</sup>

Crown counsel acknowledged that the 'betterment principle' was applied when assessing compensation for land damaged by the schemes. Counsel noted the 1919 report by the river commission concluding that the betterment provisions were inequitable and should be amended as 'they bore unjustly' on riparian owners': 'It is acknowledged that because of the limited Maori land in the area, which was often along the riverbanks, the application of the 'betterment principle' could lead to unfair results'.<sup>98</sup>

Counsel noted that in 1927, and in response to petitions from Maori, the Government made the grant of £5000, 'a large portion being distributed to Maori landowners', for the effects of mining debris carried by the Ohinemuri River and for the disruption caused by the improvement scheme.<sup>99</sup> Despite the recommendation from a committee (set up to identify what lands had benefited from the works and should be compulsorily acquired) that over 6400 acres of largely Maori-owned land should be acquired, there were no further compulsory takings of Maori land. Witness David Alexander been unable to identify with certainty which lands were Maori owned; therefore the Crown submitted that no findings could be made in regard to this land.<sup>100</sup>

---

95. Document Y1, p127

96. Ibid

97. Ibid

98. Paper 2.550, p 30; doc AA1, p 252; paper 2.227, p15

99. Paper 2.227, p 16; paper 2.550, p 30

100. Document AA1, pp 251–252

With regard to the petitions from Maori asking that the Pereniki bend diversion go ahead, Crown counsel notes that Maori were also worried about urupa being buried by the construction of stop-banks, as well as by mining tailings and debris. But counsel notes that Maori received £1605 out of the £5000 compensation granted.<sup>101</sup>

The Crown accepted that the Government response to Maori complaints was to plan to acquire further Maori land, but following legal advice, this was stopped. Although the building of stop-banks was not initially matched with compensation, following inquiry:

land owners were compensated without a corresponding taking of their lands. The Crown submits that that was appropriate and enabled landowners the choice to purchase further land away from the flooding as well as retain the land that was subject to flooding.<sup>102</sup>

In view of this policy, Crown submits that the claim is not made out.

### **(3) Tribunal comment on the river improvement schemes**

Maori clearly lost valuable areas of land following the declaration of the Waihou and Ohinemuri Rivers as sludge channels, and from the construction of stop-banks to channel the water. (We note that tangata whenua evidence also implies that stop-banks could offer some protection to Maori settlements, although of course the protection was only required because of Crown policy.) We discuss the impact of the 1895 declaration of the rivers as sludge channels below in our chapter on environmental impact (ch 24), and our findings as to the impact of the declaration and the associated silting and flooding are there. For the purposes of this chapter, we consider it important to state that the public works termed ‘river improvement’ schemes can not be shown to have greatly benefited Hauraki Maori. The Crown did not attempt to argue that they had.

Maori did not receive adequate compensation when land was taken or damaged, as the Crown denied legal responsibility and then applied the ‘betterment principle’ which the Crown now acknowledges led to some unfair results for Maori. Secondly, we agree with claimants that the improvement schemes did little to benefit them, and overall left them in a worse position than prior to the declaration of the rivers as sludge channels. They lost title to more land, and lost the use and enjoyment of other land even where they retained title. Burial grounds and marae were affected. We consider that the ‘improvement schemes’ can only be judged to have had a significant negative impact on Hauraki Maori, combined as they were with large-scale felling of timber and pollution from mining.

---

101. Document AA1, p 252

102. Ibid, p 253

#### 23.4 SPECIFIC EXAMPLES : LANDS GIFTED OR TAKEN FOR PUBLIC PURPOSES

In this section, we outline the case made by various Hauraki claimant groups about the taking or gifting of specific blocks of land for public purposes. The Crown has not responded to the majority of these specific claims. We focus on three examples of the acquisition of Maori land for schools, as these case studies are the most fully researched and argued by the parties. While many small blocks of Maori land were taken for public works in Hauraki, few details are given for most, and so we are unable to address many of these takings. Otherwise, we address several specific claims as briefly as possible, giving specific findings or comment where warranted. We then go on to outline the Crown's position on public works takings, and give our overall comments and findings on the impact of the compulsory taking of Hauraki Maori land for public works.

##### 23.4.1 Schools

Claimants have made a case against the Crown for the compulsory acquisition or 'gifting' of three separate school sites: Manaia 1C; Puahape 1; and Wharekawa 5B (Pingao).

###### (1) *Manaia 1C*

Ngati Pukenga claimants (Wai 148 and 285) say that three acres of Manaia 1C were gifted for a school in 1897. When the school was moved from the site in 1962, claimants argue that the Crown should have promptly returned the original site once it was no longer being used for the purpose it was gifted.

The three-acre Manaia 1C block had been partitioned off the Manaia 1B block granted to Ngati Pukenga. Manaia 1C was gifted for a school with the full support of the various tribal representatives, who co-signed a letter dated 8 September 1897 offering the land to the Minister of Education. Though it is not clear that the Crown ever acquired title to the land (there is no record of the gifting extant in the relevant records), the site was surveyed by the Education Department and the school was built. The school remained on the site until 1962, when a new school was built on the other side of the Manaia River. The Maori Land Court then considered an application lodged by the Ministry of Works on 27 September 1963 to re-vest the block in those entitled.<sup>103</sup>

After several adjournments, a Tuhoe Mikaere asked the court to once more adjourn so that he could negotiate a purchase or lease of the land. The court finally considered the application on 1 October 1964, noting that the Ministry of Works application stated that the site had been abandoned in part because of subsidence on the land. The Ministry valued the land at about £150, but considered that price was probably too high. The Ministry suggested

---

103. Document A16, pp 5–8; see also doc A17

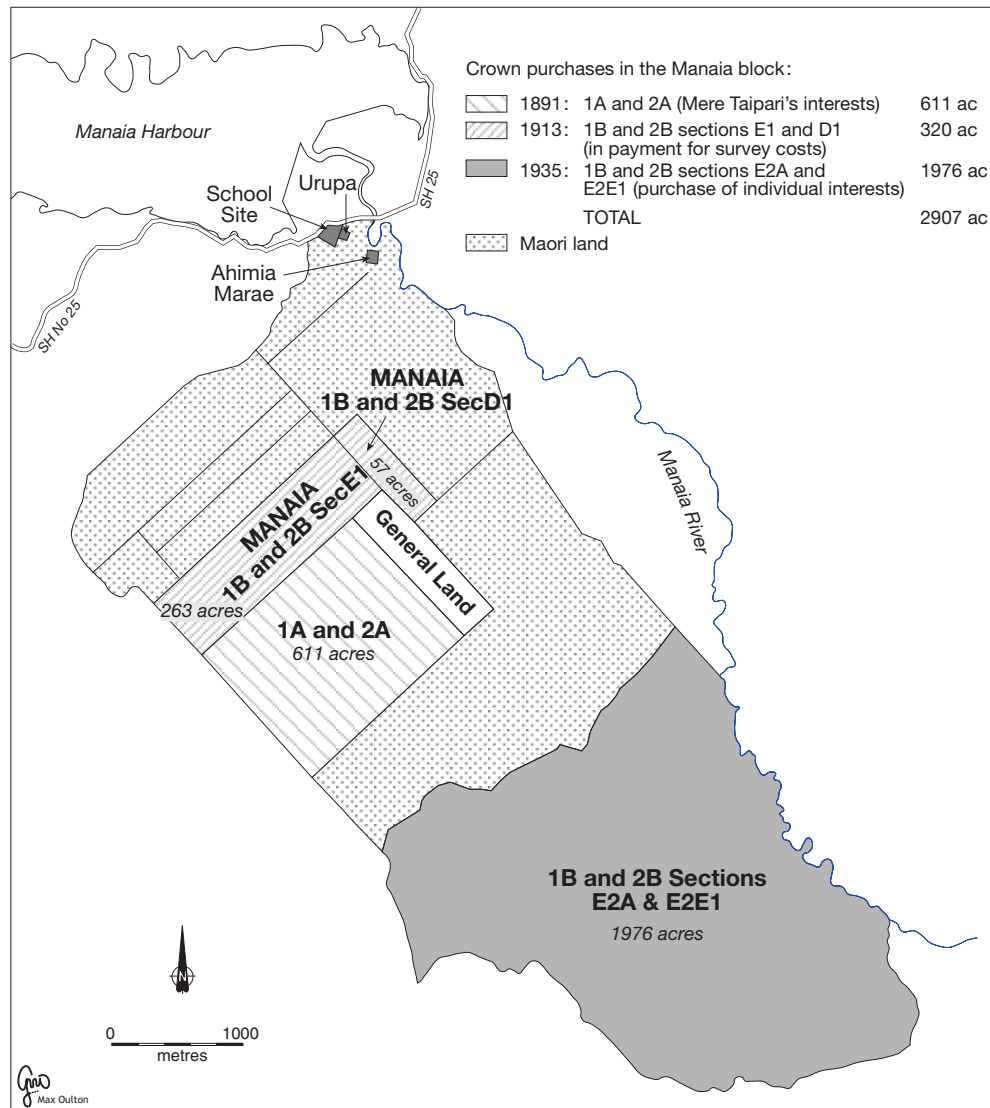


Figure 94: The Manaia block

that revesting the land in 113 owners or their descendants (the beneficial owners of Manaia 1B) would be absurd. Judge Brook of the Maori Land Court agreed, and called a meeting of interested parties. He also requested a report from the Paeroa Maori Affairs welfare officer, VT Nicholls, who spoke with some of the elders and reported that they agreed that vesting in 113 people was not practical; they were prepared to allow one descendant of the original owners – some of whom were expressing an interest in sole ownership – to buy it, and then they would use the sale proceeds for marae improvements.<sup>104</sup>

<sup>104</sup>. Document A16, pp7–8

On 9 December 1964, a public meeting was held at Ahimia, the outcome of which favoured 'by a slender margin' the retention of Manaia 1C as tribal property to be added to the existing marae reservation area. Tui Collier, who ended up buying the land with her husband, was the seconder of this proposal. There was an apparently clear distinction in the voting patterns of younger and older interested parties, with older folk favouring retention of the block over alienation. Meanwhile, Tuhoe Mikaere was still trying to negotiate a purchase.<sup>105</sup>

Welfare officer Nicholls met with the elders again in mid-1965, reporting most to be in favour of a sale if the proceeds were devoted towards marae development, but only if Petera Wiremu (who had moved the proposal to retain the land) agreed. The deputy registrar of the Maori Land Court wrote to Wiremu on 20 July 1965 asking his preference. On 19 August, Puata Williams met with the deputy registrar, and immediately followed up this meeting up with a letter saying that Petera did not object as long as the land was sold to a descendant and that proceeds were used for marae development. A few individuals were nominated as the preferred parties to buy the land, but Judge Brook decided that all would have the same opportunity to tender (though he also agreed that sale to a Maori was preferable). Judge Brook wrote a note on the bottom of the letter on 25 August 1965 stating that an order had already been made for sale, as ample time had already been allowed for submissions.<sup>106</sup>

On 23 August, Judge Brook had ordered first that Manaia 1C be vested in members of Ngati Pukenga and Ngati Maru resident in Manaia district, pursuant to section 436 of the Maori Affairs Act 1953, and secondly that under section 438 of same Act, the land was vested in the Maori Trustee for sale or lease, the proceeds to be made available to the trustees of Ahimia Marae. One reason for his decision was the supposed subsidence of the land and his belief that therefore the land was not suitable for marae use. Also he stated that vesting in numerous owners would be 'absurd'. The order was approved by the Minister of Maori Affairs on 3 April 1966.<sup>107</sup>

But in a report of 14 April 1966, the Valuation Department described Manaia 1C in positive terms, and did not think subsidence an issue: 'There is slight evidence of subsidence between the old playing area and the road, this factor is not serious and appears to have taken place many years ago. There is no recent evidence of any further movement.' Tribunal-commissioned researcher Suzanne Woodley, who completed a report on Manaia 1C, was advised by claimants in 1993 that there had been no further subsidence.<sup>108</sup>

The land was put up for tender. One offer was received, but then was withdrawn. The land was then placed with a real estate company, who sold it to Phillip and Hena (aka Tui) Rangituia Collier (the seconder at the public meeting of 9 December 1964) for £450. On

---

105. Ibid, pp 9–11

106. Ibid, pp 11–12

107. Ibid, pp 12–14

108. Ibid, p 15

7 August 1967, the trustees of Ahimia Marae received \$788.05 after the Maori Trustee's costs of \$66.95 were deducted from the sale price of \$855. No appeals or rehearings followed the sale.<sup>109</sup>

Woodley concludes that:

It is important to consider what Ngati Pukenga and the Ahimia community wanted. It appears that they wanted the land retained in some sort of Maori collective tribal ownership. They also wanted the land to benefit the community as a whole by either making it community property or selling it to an individual and using the proceeds for the benefit of the community. Of these options, retaining the land in community ownership was preferred.<sup>110</sup>

But Woodley also noted that some would-be beneficial owners had preferred the second option, and she considered that others may have changed their minds after the December 1964 meeting. She suggested it was also possible that, because Tui Collier and her husband (the only tenderers) had been involved in the December meeting, they were considered 'acceptable buyers'. 'Given the interest from others in buying the land prior to the vesting this could also suggest that the Colliers were the agreed persons to purchase the land.'<sup>111</sup>

At the time of the completion of Woodley's report in 1993, the land was up for sale once again. The claimants wanted the Crown to purchase and return the land to them. Some Ngati Pukenga witnesses spoke of their attachment to Manaia 1C in evidence before this Tribunal. Claimant Ngarunga Ronald Mikaere attended the school in the 1940s and 1950s. He stated that the loss of the site was against the wishes of the people. But he noted that, because the land was now in private ownership, they did not hold much hope of getting it back. The Crown had never replied as far as he was aware to their request four years earlier for the Crown to purchase the land back for them when it came on the market. He argued that they should be compensated with money, which should be strictly earmarked for community works, for example for the construction and maintenance of roads.<sup>112</sup> Though Manaia 1C was only a few acres in size, this was not a small issue for them, but rather was important for showing how they have been treated.<sup>113</sup>

Claimant counsel argued that Ngati Pukenga wishes were subsumed by the will of the Maori Land Court and the Maori Trustee. Though owners did receive the proceeds of sale, 'it does not get around the fact that Ngati Pukenga were not able to prevent the alienation of lands that should have been returned to them, and the loss of those lands remains a keenly felt breach of the principles of the Treaty of Waitangi'.<sup>114</sup>

---

109. Document A16, p 16

110. Ibid, p 19

111. Ibid, p 18

112. Mr Mikaere argued, however, that roading should really be a cost to local government and not something they should fund themselves: doc 114, p 2.

113. Document 114, p 4; doc 16, para 29

114. Document 17, p 12



Counsel concluded that the case of *Manaia 1C* ‘involved a failure by the Crown to ensure that gifted land was returned to its owners once it was no longer used for the purpose for which it was gifted. Indeed the Crown has responded that its policy is to return such lands.’<sup>115</sup> We note that, by way of general response to claims of gifting, where ‘land gifted for churches, schools and government purposes have not been returned, the Crown says its policy is that where gifts are established, and lands are no longer required for the purposes for which they were gifted, the land is returned if possible.’<sup>116</sup>

## **(2) Tribunal comment on *Manaia 1C***

It seems to us that at least some interested parties got their wish in the sale of the land to a preferred, perhaps even chosen, Maori purchaser. We also consider that a fair purchase price was obtained for the land, and the money was distributed to the correct trustees. One issue that remains is the original vesting in 113 beneficial owners of three acres, which was indeed ‘absurd’. Better options than the final outcome were not explored. The block could have been added to the marae as part of a section 439 trust (under the Maori Affairs Act 1953.) No owners would then have needed to be listed, only the tribe as beneficiary. The judge did not need to consider that sale was the only option. We were presented with no evidence as to why a trust was not considered.

## **(3) *Puahape 1***

Land was taken from *Puahape 1* block for a school in 1954. Tribunal researcher Dougal Ellis completed a report on the *Puahape* block for this inquiry, following an earlier Tribunal-commissioned report by Matthew Russell. In his report, Ellis set out to answer two key questions identified by Russell in the acquisition of *Puahape 1* for a school by the Crown: these were whether the owners were properly notified, and whether the compensation was adequate.

Only in 1953, when the Education Department wanted the block for a school, were the Maori owners made aware that this block actually remained in their ownership. The neighbouring Pakeha farmer had thought he owned the block, and had been paying rates on it for 20 years.<sup>117</sup> On application by the Education Department, the Maori Land Court determined that there were 11 owners or successors for the block, but it only had addresses for

<sup>115</sup> Ibid, p19

<sup>116</sup> Paper 2.550, p 47

<sup>117</sup> The background to *Puahape* is set out briefly in document K2, pp 8–9, and more fully in document R5, pp 92–93. The 28-acre *Puahape* parent block was awarded to nine owners mainly of Te Rapupo hapu in 1866. Two or three years later, eight of the owners sold their interests to one John Middlemass (whose mother was Maori); the trust commissioner approved the transaction but the sale was not completed. In 1889, Middlemass applied to the court for a partition and was awarded 24 acres three roods (*Puahape 2*). *Puahape 1*, comprising one acre one rood, was awarded to Keremeti Maihi, one of the original grantees. (The remaining two acres appear to have been set aside for a road.) It appears, however, that Maihi and his heirs were not aware that *Puahape 1* remained in their possession until the Education Department sought to acquire the land for a school.

## 23.4.1(4)

five. Of these five, three replied to notification sent out in May 1954, agreeing to sale for a school. But not all owners were contacted, so the land was taken by proclamation. Ellis says the minimum notification procedures under the Public Works Act 1928 were followed (ie, notice in the *Gazette* and notice posted for 40 days in the local post office), to which no objections were received. The block was proclaimed as taken on 10 February 1955.<sup>118</sup>

But on 19 May 1955, Aherata Waata, a one-seventh shareholder, wrote to the Minister of Works saying she wanted to keep the land. The reply was that the land had already been taken as no objections had been received within the time allowed. (It is not clear from Ellis's report whether Waata was one of the five owners who were sent notification in May 1954.) Compensation was yet to be assessed at a Maori Land Court hearing on 6 December 1955. At the hearing, Waata and the Ministry of Works were both represented by counsel, but no other owners were present. Compensation was agreed at £330. Waata's counsel thought that this was a very good price as the land had no seaside value and was not a suitable building site.<sup>119</sup>

In answer to Russell's two questions, therefore, Ellis considers that the answers are that compensation was adequate, but that notification was not. Ellis argues that the procedures of the Public Works Act were not adequate to protect owners' rights. Only about a quarter of the owners were even aware of the sale. The case also highlights the fragmentation of ownership, which tended to encourage sales. There was no offer of an exchange for land elsewhere, even when Waata expressed strong desire to have land rather than money. Ellis concludes that the Crown had 'a Treaty obligation to ensure that Maori retained land they wished to retain'. But instead the land was traded for cash, a poor substitute for land.<sup>120</sup>

Counsel for the Wai 705 claimants argued that, though compensation appeared to be sufficient given contemporary land values, notification prior to the taking was not adequate. Only three out of 11 owners were notified, so the majority of owners were not even able to object had they wanted to. Moreover, the Crown failed to have regard to the effect of the taking on Whitianga Maori. (Counsel noted that Ellis says these were the last lands of Te Rapupo hapu.<sup>121</sup>)

**(4) Tribunal comment on Puahape 1**

Clearly notification procedures for Maori owners when their land was to be taken compulsorily were unsatisfactory. Moreover, multiply owned Maori land seems on this occasion (and claimants argue in other examples also) to have been taken by compulsory means precisely because multiple ownership made it difficult for the taking authority to contact all owners to negotiate a purchase. But we cannot comment further on this particular case, as

---

118. Document R5, pp 93–94

119. Ibid, pp 94–95

120. Ibid, p 96

121. Document Y14, pp 25–27

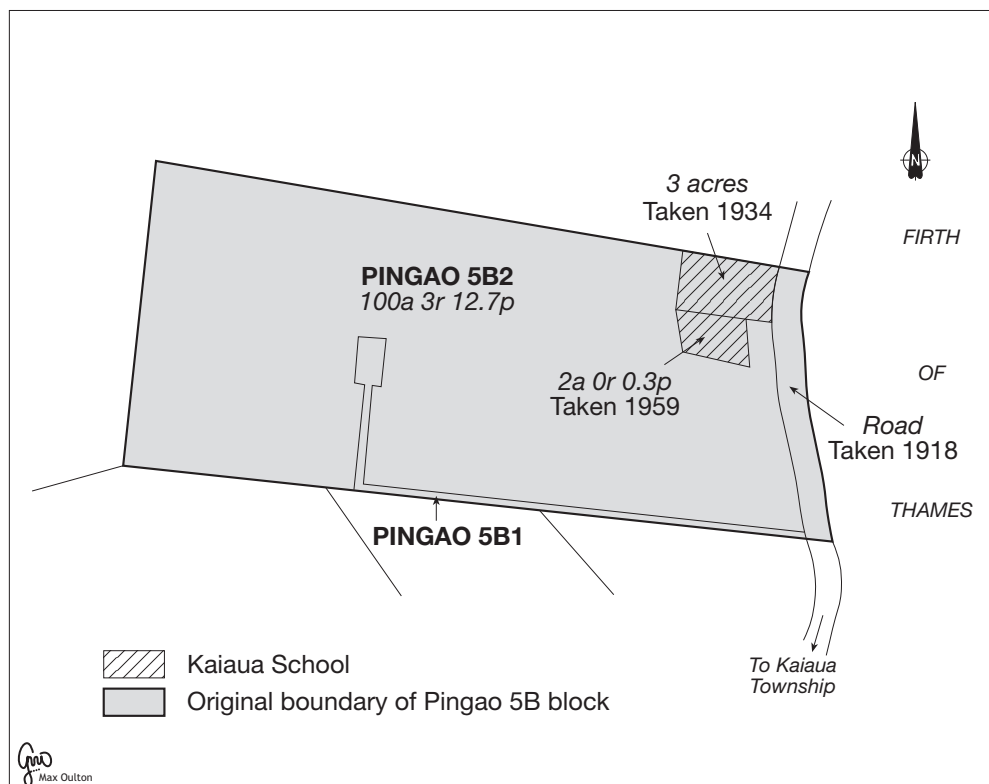


Figure 95: Land taken for Kaiaua School, Part Wharekawa 5B (Pingao), Kaiaua. Source: Alexander (doc A9), p 221.

important details – such as why the Maori owners were not even aware this land was still theirs – were not presented to us.

#### (5) Wharekawa 5B (Pingao)

The acquisition of land from the Wharekawa 5B (Pingao) block consists of land both offered willingly by one owner and taken compulsorily against the wishes of the other owner.<sup>122</sup> In 1932, half-owner Aherata Waata offered to donate two acres of land from the Pingao block for the relocation of Kaiaua School. She also offered to sell another one or two acres at £20 per acre. At the same time, Aherata's husband Wana petitioned for the status of the school to change to a native school. The inspector of schools noted that the offer of the land was in conjunction with this request. He advised that three acres would be required for a native school, so Waata increased her offer to that amount of land. But the proposal to establish a native school met with opposition from local Pakeha residents, as well as from the Auckland Education Board. The Minister of Education therefore decided that Kaiaua School should remain a public school. The local Maori community then petitioned that the existing school should stay where it was and a new native school should be built on the

122. Document C4; doc F4, pp 39–43

Pingao land. But the Education Department assumed that Waata's offer of three acres would still hold for a public school, apparently 'failing to recognise that the offer had been made for a native school'. A local settler, Lowry, resolved the matter by offering personally to pay £20 for Waata's third acre. All three acres were taken under the Public Works Act 1928 on 14 May 1934. The Native Land Court ordered compensation of £34 10s, which was paid to the Maori land board in April 1935.<sup>123</sup>

In 1956, the Kaiaua School committee requested more land so the school could expand. The following year, Wana Waata advised he was planning on subdividing the coastal strip of Pingao into residential sections, but offered to set aside some land for purchase for the school. Negotiations began for two acres on the southern side of the school, fronting the road. But the Ministry of Works was advised by the county council that it was unlikely that Waata would get approval for subdivision, so the Ministry offered only £442 for the land; Waata wanted £2000.<sup>124</sup>

After further negotiations, the proposal was changed to two acres furthest from the valuable coastal frontage of the block. Aherata Waata signed an agreement allowing the Ministry to acquire the land by proclamation with compensation to be assessed by the Maori Land Court, as all attempts to contact the other owner, Te Oru Hoete Waata (Aherata's nephew) had been unsuccessful. Notice of intention to take the land was issued on 2 June 1959; Te Oru Waata (also known as Mason Te Huia) must have become aware of the taking as he now objected; his objection was not upheld. He stated that, 'As a joint owner of the said area, I am not in favour of the taking of my share for the said purpose. The present school site . . . was a foolish gift by my aunty Aherata Waata of Kaiaua, therefore I am not in favour of the proposal.'<sup>125</sup>

On 1 September 1959, just over two acres were proclaimed as taken. An application for compensation was first heard by the Maori Land Court on 6 April 1960. The Valuation Department valued the land for rural purposes at £160, taking no account of any potential for residential subdivision. In response, Wana Waata asked for £800, based on the value of sections sold in the area. Waata's valuer argued that the land was worth £650 on the basis of potential for subdividing into two one-acre sections. The Maori Land Court decided, however, that, because Waata did not have legal consent for his plan prior to the hearing, compensation could be awarded only on the basis of the land being sold as a single undivided block. The court did, however, make some allowance for potential subdivision, awarding £315 compensation plus costs.<sup>126</sup>

Researchers Bassett and Kay conclude that, with regard to the 1934 taking, there was no valuation evidence to assess whether the compensation paid was adequate or not. With

---

123. Document C4, p 15; doc F4, pp 39–40

124. Document C4, pp 16–18

125. Te Oru Waata to Minister of Works, 25 June 1959, Works and Development head office file, 31/736 (doc F4, p 41; doc C4, pp 18–21)

126. Document C4, pp 22–26

regard to the second taking, the issue is the valuation of the land, especially considering that one owner objected:

In both the 1934 and 1959 transactions between the Crown and the Maori owners, the Crown failed to meet the expectations of the owners when they offered to make land available for their community school. In 1934 it was clearly the intention of the donor that a native school would be built to serve the Maori community, which was developing its traditional land. The offer to donate land was really a gift to their own community rather than a gift to the Crown. The fact that compensation was later paid for the land does not alter the fact that the owners had expected a native school in return. In 1959 the owners were willing to sell land for the school, but that willingness arose from their expectation that they would receive a price which matched that for residential sections. If the owners had known that they would only be paid the rural value of the land, plus a small allowance for potential, they may not have been so willing to make land available for the school. Little wonder perhaps that one owner felt the offer to donate land had been 'a foolish gift', as it was based on certain expectations which the Crown had failed to meet.<sup>127</sup>

Claimant counsel submitted that the taking of land in 1959 amounted to a Treaty breach, because the objection of one owner was ignored.<sup>128</sup>

#### **(6) Tribunal comment on Kaiaua**

We do not consider any serious Treaty breach to be evident in this case, although we acknowledge that the Waata whanau were poorly treated; their generosity contrasted with the parsimony of the Ministry of Works. It is unfortunate that Te Oru Waata's objection was not received earlier, as we cannot know if his objection might have been taken into account had it been received in time. However, we would expect this land to be offered back to the Waata whanau should it ever become surplus to education requirements, and at a price that reflected their generosity and gave them a realistic chance of reacquiring the land. We think that this would accord with the Crown's stated policy to return gifted lands where possible.

#### **23.4.2 Other specific public works claims**

In this section, for the sake of completeness, we briefly narrate the background to the taking of an entire island for the Ohinau lighthouse; and some examples of takings from the Wharekawa and Waikawau blocks. These are some of the specific public works claims that

---

<sup>127</sup>. Ibid, p 30

<sup>128</sup>. Document z6, p 60. See also document v1, p 130, where counsel notes, incorrectly, that no compensation appeared to have been paid for the 1934 taking. We note that Bassett and Kay discovered that compensation of £34 was in fact assessed by the Native Land Court: doc c4, p 15. Presumably, document v1 is based on Alexander's report (doc F4), where he states that he was unable to find any evidence of compensation. Bassett and Kay's report, which followed Alexander's, had access to Auckland Archives NZ files that Alexander had not had: doc c4, p 3.

## 23.4.2(1)

have been made out, at least in part, by claimants. The Crown has not responded to these claims. We do not make findings or comment on these takings, because we have insufficient evidence to base findings on. We do not go into the taking of land for the Waikiekie rifle range, which witness claimant David Alexander outlined in his report, as no Treaty breaches against the Crown have been made out in the taking or disposing of the land once surplus,<sup>129</sup> nor the designation of land for Kaimakau township, as that issue is addressed in our sections on Harataunga. We also note that these samples are not indicative of the number of takings of Maori land in Hauraki, which no parties have attempted to list in totality.

**(1) Ohinau lighthouse**

The Wai 110 claimants described how the 72-acre Ohinau Island was taken in 1923 by the Crown under the provisions of the Public Works Act 1908. This was despite the fact that at the same time, an application was pending (by Ngawhira Tanui of Ngati Hei) for investigation of title. The Crown was aware of the application, but proceeded to take the island, claimant counsel says, ‘in an apparent attempt to frustrate and ultimately render the application nugatory’. No compensation was paid. Moreover, this island was one of the last remnants of Ngati Hei land.<sup>130</sup>

Researcher Paul Monin described how Ngawhira Tanui of Ngati Hei wrote to the chief surveyor on 27 March 1924 saying, ‘We did not expect that you, that is the Government, would do this and take our food stores, cultivations and holy grounds. The light [house] was not objected to. You will find my consent with the Registrar. Ngawhira Tanui for the family of Tanui.’<sup>131</sup> Monin observed that this letter reflects the value of Ohinau to Ngati Hei, especially for mutton birds, wahi tapu, and cultivation areas. Ngati Hei continued to visit the island to take mutton birds, Monin says with the ‘informal permission’ of the Marine Department.<sup>132</sup>

Monin outlines how the island was returned to Ngati Hei in 1995, after a protracted revesting process beginning in 1977. At the revesting in 1995, Judge Carter of the Maori Land Court commented that the Crown’s original taking in 1923 did not seem, from the evidence he had seen, to be ‘in accord with what are now recognised as its duties and obligations to Maori as a Treaty partner under the Treaty of Waitangi.’<sup>133</sup> The judge was referring to what Monin describes as a deliberate attempt by the Department of Lands and Survey ‘to frustrate the process of investigation of title to Ohinau so that the island could be taken under the Public Works Act 1908’. The chief surveyor of the department in fact, according to Monin, ‘goaded’ his department into urgently taking the land under public works legislation

---

129. See doc F4, pp 8–12

130. Document Y9, p 56; see also doc N8

131. Ngawhira Tanui to chief surveyor, 27 March 1924, DOSLI, Ohinau 6900-869 (doc N8, p 6); doc Y9, p 21

132. Document N8, pp 6, 8–9

133. Judge Carter, 27 March 1995, Maori Land Court, Hauraki minute book 97, 68, fol 1 (doc N8, p 7)

because of the pending Native Land Court investigation of title. Monin concludes that ‘it is difficult to avoid the conclusion that the Crown handled the task of securing a legal site for the lighthouse on Ohinau in a very high-handed manner indeed vis a vis the interests of the Maori owners.’<sup>134</sup>

Claimant Peter Johnston said that, though Ohinau Island has been returned to Ngati Hei, they sought redress and compensation dating back to 1923. Johnston noted that the lighthouse was built at the southern tip of the island ‘but the Crown took the whole island irrespective’. Counsel for Wai 100 also argued that the taking of the whole island for a lighthouse was ‘clearly excessive’.<sup>135</sup> Monin notes that an annual rental of 10 cents was established for the Ministry of Lands ongoing use of 800 square metres of the island (the site of the actual lighthouse) on 1 February 1995. Claimant Peter Johnston questioned the sufficiency of this rental.<sup>136</sup>

### **(2) Tribunal comment on Ohinau lighthouse**

We consider the claimants should not have been left waiting since the 1920s for a Government response to their concerns nor should it have taken nearly 20 years from 1977 for the island to be revested in Ngati Hei. We do not consider that it was necessary, on the limited evidence we have seen, for the Government to have taken the whole island for the placement of one lighthouse. However, we can see no apparent or ongoing significant material prejudice arising from the taking of the island, as Ngati Hei continued to visit the island after the taking, and have since had the island returned to their ownership. The prolonged slight to the on-going rangatiratanga of Ngati Hei constitutes a degree of non-material prejudice.

### **(3) Two takings from Wharekawa blocks**

Counsel for Wai 100 outlined the taking of Maori land by local authorities, and referred to the substantial report by David Alexander of takings under public works legislation to the west of the Firth of Thames.<sup>137</sup> Counsel cited the taking of Wharekawa 4B1A2 (293 acres) by the Auckland Regional Authority (ARA) under the Public Works Act 1928 for the Waharau Regional Park. Alexander’s evidence also shows that the act was also used in respect of Wharekawa 4B1A1, only about eight acres but of comparable value, being a coastal residential subdivision the owners had intended to lease via the Maori Trustee (see fig 96).<sup>138</sup> As counsel for Wai 110 pointed out, the ARA had resorted to the Public Works Act to ‘force acquisition’ in a situation where some owners had declined to sell and others could not be located.<sup>139</sup> Alexander’s evidence indicates that the Maori Trustee considered that his office

---

134. Document N8, pp 6–7

135. Document N1, pp 37–38; doc Y1, p 131

136. Document N8, p 10

137. Document F3, pp 1–95

138. Ibid, pp 55–95

139. Document Y1, pp 130–131



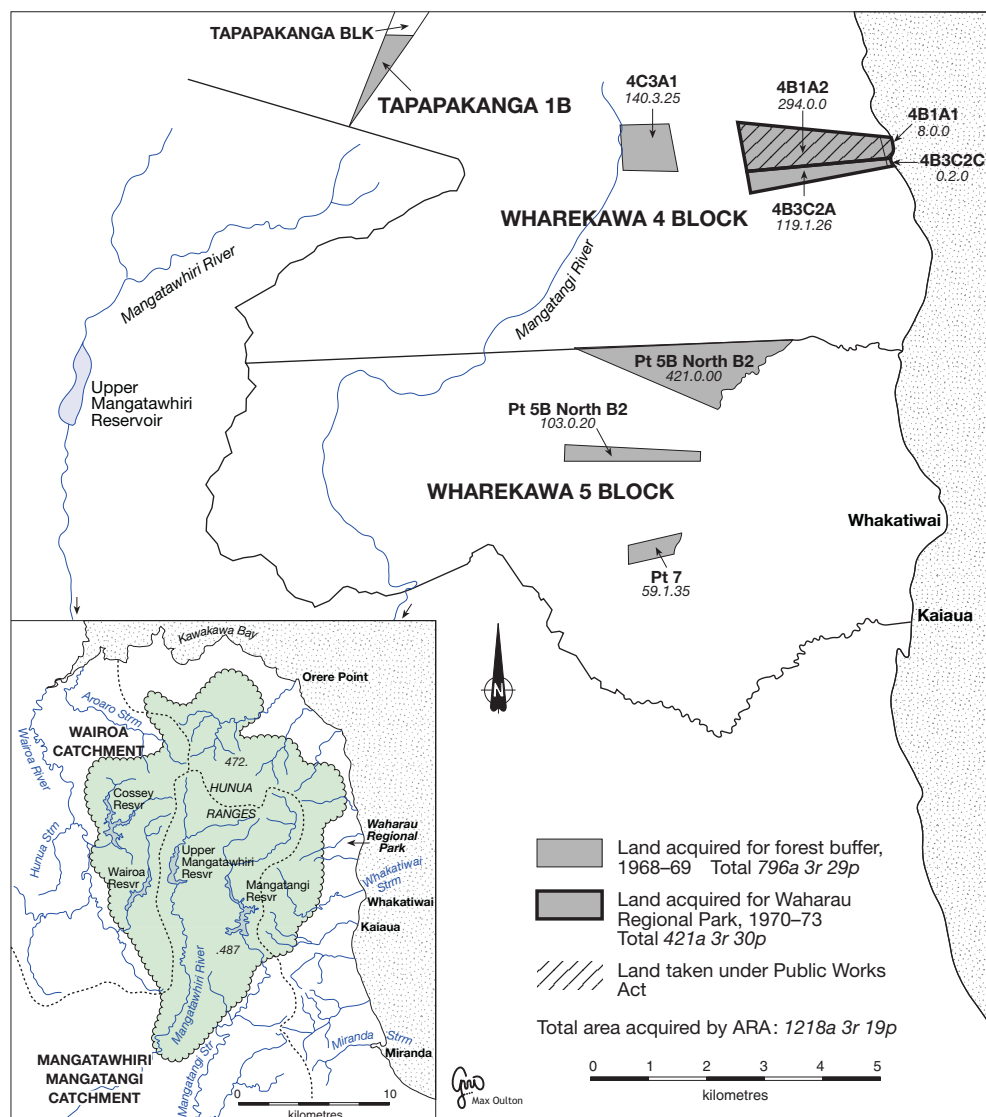


Figure 96: Maori land acquired by the Auckland Regional Authority, 1968-73

could not block the public works taking, but determinedly pursued his and the owners' valuation as against the much lower price offered by the ARA. In the case of Wharekawa 4B1A1, the Maori Trustee effectively won the claim for the higher valuation in the Supreme Court, and the ARA then agreed to pay compensation approaching the owners' and Maori Trustee's valuation in respect of Wharekawa 4B1A1. The episode shows that, notwithstanding the evident public interest in the Waharau Regional Park, the wishes of a considerable number of the owners to lease the land were overridden. The owners eventually received compensation at their and the Maori Trustee's understanding of market value but did have to pay the trustee's commission for acting on their behalf.



Counsel for Wai 174 also referred to the evidence of David Alexander and cited the example of the Crown's taking of portions of Wharekawa 4 and 5 without compensation in 1915 and 1918; these were considered by the court to be within the 5 per cent of Maori land entitled to be taken without compensation for roading under public works legislation of that period. The Wai 174 claim is therefore based around 'the cumulative effects the various Crown policies have had on a small claimant group where little land interests [sic] remain'.<sup>140</sup>

**(4) Tribunal comment on the Wharekawa blocks**

We are unable to make findings on these specific claims, because insufficient details are provided, especially as regards the early takings of Wharekawa land, and because the Crown has not responded to the claims. However, in the next section, we outline our general comments on takings of Hauraki land for public works. Our general comments are intended to cover these specific claims.

**(5) Waikawau 4 and 5**

When it surveyed the Waikawau purchase of 1878 and its reserves, the Crown took the Queen's chain from the frontage of the two coastal reserves (Waikawau 4 and 5), cutting them off from direct access to the foreshore. (The Crown also retained the accretion to the frontage of sections 25, 28, and 29, although these sections had been sold by the Maori owners before the accretion occurred.<sup>141</sup>) Later, in making the coastal road through Tapu the Crown severed a strip of Maori land between the road and Maori freehold land adjacent. It (plus the accretion) was treated by the public as a recreation reserve, and it was also so regarded by the county council, which paid for its maintenance; in 1969 the county council sought to have this strip made formally into a public reserve. The Maori owners were willing to sell the strip at 'fair market value', but the planning appeal bodies favoured the 'public good' argument of the council, and the Maori owners were eventually constrained to accept less than the valuation.<sup>142</sup>

**(6) Tribunal comment on Waikawau 4 and 5**

Again we lack sufficient evidence to make a definitive finding on this case, although on the face of it, it seems that once again Maori landowners were put into the position of being constrained to contribute to the public good at their own expense. Our general comments on public works takings are intended to cover these claims.

---

140. Document Y2, pp 14–15

141. Document J2, pp 7–8

142. Ibid, pp 8–12

**23.5 OVERALL COMMENTARIES ON PUBLIC WORKS TAKINGS****23.5.1 Claimant and Crown submissions**

Claimant witness David Alexander lists what he sees as a number of key deficiencies with the public works legislation prior to 1981. He argues that consultation was lacking prior to many takings; that there was no requirement to notify all owners of a proposed taking; that there was no independent body to judge any objections Maori might make; that provisions allowing a mutual agreement were very rarely used for Maori land, though more commonly so for European-owned land; that there was a lack of provision for Maori to object to takings for road realignments until the taking was already a fact; and that there was a lack of protection by the Crown for Maori ownership of land in general.<sup>143</sup> Alexander comments that there was:

An element of targeting of Maori owned land, because such land was, as a result of ownership complications, frequently the less developed land in a district, and was also therefore cheaper to acquire; the ownership complications also made the use of the compulsory acquisition legislation more attractive than direct willing buyer / willing seller negotiation with the owners.<sup>144</sup>

With regard to compensation provisions, Mr Alexander considers that the Crown preferred financial compensation over other forms, such as an exchange of land; that the Crown rarely considered taking less than the freehold title (eg, a lease or easement); that due to the involvement of the Maori Trustee, the Maori owners were effectively disenfranchised from their land; that the amount of compensation could be offset against any perceived benefit under ‘the betterment principle’; that compensation was often not paid till some time after the taking; and that offer-back procedures for surplus land were not rigorously carried out.<sup>145</sup>

Claimant witness Robyn Anderson says that by the 1930s, the Crown, ‘backed by powers of compulsory acquisition, [had] purchased, drained and burnt the Hauraki floodplain’. The drainage of the plains was followed by other takings: for settlement for returned soldiers, for general land improvements, and for schools and other public infrastructure, and for sale mainly to Pakeha farmers. ‘Thus, by 1939, the area of land left in Maori hands had been reduced to 88,500 acres. This represented 6 per cent of their former land base.’<sup>146</sup> No capital base had been established to replace the land Maori had lost. Anderson quotes Government land purchase officer Mair as commenting to his superiors in November 1896 that ‘after all their lands [were] of very little benefit to them’. Moreover, the evidence suggests, that the only involvement of Hauraki Maori in the labour market was ‘at the most marginal levels’

---

143. Document F4, pp 5–6

144. Ibid, p 6

145. Ibid, pp 6–7

146. Document A9, pp 179

such as in short-term employment on public works. Instead of the hoped for partnership, the relationship of Hauraki [Maori] with the Crown shifted to ‘the primacy of a “public good”’.<sup>147</sup>

Claimant counsel for Wai 100 argued that remaining Hauraki Maori lands were eroded by public works, including flood protection, drainage schemes, road, railways, schools, electricity and phone lines, lighthouses and other public amenities.<sup>148</sup> Counsel continued:

While the quantities of lands in public works takings in the twentieth century were relatively small, they had a cumulative effect of reducing still further an already decimated tribal estate and destroying important food and resource gathering grounds. Mr Alexander has given evidence that Maori owned land was in some instances targeted for public works, because this land was often less developed and therefore cheaper to acquire. Also ownership complications in respect of Maori land made the use of the compulsory acquisition legislation more attractive than attempting to negotiate a purchase with the owners. Mr Alexander also identified a general lack of genuine consultation prior to the taking of Maori land.<sup>149</sup>

Counsel then referred to the findings of other Waitangi Tribunal reports on the taking of Maori land for public works. The *Te Maunga Railways Land Report*, the *Ngai Tahu Ancillary Claims Report 1995*, and, most strongly, the *Turangi Township Report 1991* all recommended that the Public Works Act 1981 be strengthened in various key regards, as set out in section 23.2.1(3) (such as, proper notice, full consultation, Maori land to be taken only if there is no alternative, tightening of offer-back procedures, and taking through leasehold rather freehold). Counsel argued that takings in Hauraki rarely met such criteria. Instead, there was a general lack of consultation, more land than was required was taken, other options were not investigated, and little notice was taken of the concerns of Hauraki owners.<sup>150</sup>

Counsel for Wai 349, Wai 720, and Wai 778 argued that public works takings were the final nail in the coffin of Maori land ownership. Compulsory acquisitions became the norm, meaning that public works became the excuse for further loss of Maori land. Even if takings were relatively small in size (when compared to Crown purchases), counsel argued that they had a profound effect on Maori. Notice and compensation were often issued or negotiated after the completion of the works. There is little evidence that the Crown sought alternative lands, or notified owners and sought their consent, and, as per previous Tribunal reports, takings of Maori land should only have been as a last resort in the national interest.<sup>151</sup> Counsel for Wai 970 argued that, ‘Although not involving land acquisitions on a huge

147. Mair to chief land purchase officer, 4 November 1896, MA-MLP1905/39 (doc A9, pp 179–182)

148. Document Y1, p 122. For example, Mangakirikiri South 3A (409 acres) was acquired as a source of domestic drinking water and a Waiau block of eight acres was purchased for the Thames County Council as a source of roading metal.

149. Document Y1, p 131; doc F4, pp 5–6

150. Document Y1, p 132

151. Document Z3, pp 33–35

scale, the taking of lands for the purpose of public works did have a profound effect on an already diminished tribal estate.’ Counsel noted that due to a lack of information, it can be difficult to know the extent of public works acquisitions from particular groups.<sup>152</sup>

Counsel for the Crown denied that public works were used to undermine the rangatiratanga of Hauraki Maori over their lands. The extension of roading and telegraphs were of ‘significant public benefit.’<sup>153</sup> Counsel argued that the Waitangi Tribunal must weigh up the circumstances of each acquisition, by balancing the guarantee to Maori of rangatiratanga with the Crown’s right of kawanatanga. ‘It must be accepted that from time to time, the Crown has obligations under Article 1 of the Treaty to acquire land compulsorily in the public interest to provide public works.’ Counsel noted the Tribunal’s findings in the *Turangi* and *Te Maunga* reports that takings of Maori land should only occur where there are no other practicable options, and after appropriate compensation.<sup>154</sup>

Crown counsel agreed that the principle of active protection is relevant when considering the taking of Maori land for public works: ‘the Crown must consider whether Maori are left with sufficient land for their present and foreseeable requirements.’<sup>155</sup> Counsel argued that there are five matters to consider: compensation; consultation; whether other sites were considered; whether alternative forms of tenure were considered; and whether the owners were left with sufficient lands for their present and reasonably foreseeable future needs. When considering these questions, the Tribunal must also attempt to weigh up the benefit accruing to the former owners of the land as a result of the particular public work. Such benefits, counsel argued, can be particular or general (or both) in nature.<sup>156</sup>

### 23.5.2 Tribunal comment

While we agree that the specific public works takings are all important matters for consideration, in many cases neither the Crown nor the claimants have provided us with sufficient information to weigh the criteria, or judge the resulting benefits or lack thereof, in any but the most general sense. Our findings on the specific cases which have been researched are to be found following their sections of this chapter.

In general, clearly official notification procedures were inadequate and disadvantaged Maori, especially in cases that involved multiply owned land, and where the court had lost contact with some or all of the owners over time and their whereabouts were unknown. Rights and responsibilities are reciprocal, and Maori individuals must bear some responsibility for maintaining contact. But we note that the Crown is also responsible for creating

---

152. Document Z4, pp 31–32

153. Paper 2.550, pp 29–30

154. Document AA1, p 254

155. Ibid, p 255

156. Ibid

through its legislation the complex system of fragmented multiple ownership. The weight and resources of the Crown, as compared to the limited capacities of private citizens, must be taken into account and every reasonable effort made to redress the imbalance.

It has always been recognised that public notification, by whatever means, gives no assurance that any legal owner of land who has not maintained contact will have their rights protected when the community decides it requires their land. At issue is the question whether the need for a taking is genuine, and whether the public need could instead be satisfied without unwilling vendors being deprived of their ownership.

Without traversing the many legislative changes that have occurred, many of which discriminated against Maori-owned land, we generally concur with claimant assertions that Maori were disadvantaged, particularly during the late nineteenth and twentieth centuries to 1981, when most major land and infrastructure developments occurred.

During this period of continuous European colonisation, Maori had minimal influence in the political establishment and little capacity to defend their ancestral land. Their asset base became an easy target for development purposes, in a primary-producing economy where the cost of providing infrastructure demanded continuous growth in national income. (The effects of the Hauraki drainage and river improvement schemes are further discussed in chapter 24.)

We find that the Crown at times in the past had adopted a cavalier attitude to the taking of Maori land, and took advantage of the inherent problems associated with the administration of multiply owned Maori land, a system devised over time by the Crown itself.

This Tribunal is not unacquainted with the complex, generally unique issues that accompany compulsory takings, and believes that claimants can best address these problems, and revisit specific cases, when in negotiation with the Crown. While acknowledging the dilemmas the Crown faces when confronted by community demands, we nevertheless find that at periods, and in some cases, the Crown fell short of its Treaty responsibilities in both the application and the prosecution of the compulsory taking of Maori land.



## CHAPTER 24

### IMPACTS OF COLONISATION ON MAORI USES OF LANDS AND WATERWAYS

#### 24.1 INTRODUCTION

The principal themes of this chapter include the degree of destruction of the traditional Maori resources of the land and waterways in the Hauraki region since European settlement. It concerns the extent to which the Crown failed to acknowledge Maori spiritual and material values, and failed to take these into account when allowing settler economic exploitation of resources. Many claimant groups complained about loss of food resources, particularly kaimoana and eels, deforestation, erosion, pollution of rivers, and drainage of swamps. A number also suggested that Maori concepts of kaitiakitanga (stewardship or guardianship) and institutions such as rahui (restrictions intended to conserve resources) had been ignored in Crown policies on management of the land and its waterways. The loss of resources is just as keenly felt as the loss of land, and has contributed historically to relegating Hauraki Maori to the fringes of economic development.

The Hauraki region provided an environment rich in resources for Maori settlement. Tai Turoa remarked on the diverse geography, 'warm temperate climate and inexhaustible food resources' in Hauraki. Though much of Hauraki is rugged and mountainous, there were plentiful resources to support permanent Maori settlement: in the forests, streams, and swamps, as well as cultivable lands in sheltered bays and on river banks, and kaimoana on both sandy and rocky shores and in the sea:

Like other tribal districts there was not one piece of their territory with which the people were not familiar. There was no natural feature which defied description and appropriate naming. Ranges, ridges, promontories and streams identified tribal and personal boundaries. Prominent peaks, rivers and seas assured a personification of great reverence. Every topographical feature, however insignificant, promoted commemoration of ancestors, deeds, events, phenomena and the acknowledgement of atua, the gods of creation.<sup>1</sup>

In this chapter, we review the natural state of the landscape and Maori modifications of it before 1840, European exploitation of the kauri forests from the 1830s, the impacts of gold

---

1. Taimoana Turoa, *Te Takoto o te Whenua o Hauraki: Hauraki Landmarks* (Auckland: Reed, 2000), p 35

mining in the Coromandel Peninsula from the 1850s, and the subsequent effects of mining on waterways, particularly the Waihou–Ohinemuri catchment area, and the drainage of the Hauraki Plains in the twentieth century.

#### 24.1.1 Coastal Resources

Hauraki Maori are maritime people and the resources of the sea and the coast continue to play an important part in the lives of those who still live in the region or return periodically to their home marae. The physical environment of much of the Coromandel Peninsula and western shore of Tikapa Moana offered a range of resources, from the forests of the rugged hills inland, the streams, and the estuaries, to the rocky shores and sandy beaches of the foreshore and out to sea. Sea, estuary, and coast were as much part of the resource kit of whanau or hapu as their kainga and cultivations. This typical dispersed resource pattern is shown in figure 97, which illustrates Maori settlement between Tapu and Waikawau. The living places were concentrated near the coast at the mouth of a stream, with the forested hills behind, facing the varied coast and sea of Tikapa Moana. Archaeological studies show many pa in the area occupied at different times in the past. Many sites of kainga and gardens have been destroyed by later subdivision and settlement. Surviving sites revealing early Maori settlement include midden and fish traps on the foreshore.<sup>2</sup>

Tikapa Moana provided both food and communication routes between the many coastal settlements. Riki Rakena told the Tribunal, ‘The sanctity of the water of Tikapa Moana is a major issue for all Maori kaitiaki. The waters are a life blood for all of us.’ He also explained that many local Maori ‘are not rich and still rely on kaimoana’ and would be ‘devastat[ed]’ if there was any restriction on gathering. ‘Sometimes, as kaitiaki, we have to make sacrifices for the benefit of all. We make a rahui over pipi beds and other kaimoana areas when the kaimoana has [been] depleted.’<sup>3</sup> A rahui was (at the time of hearing) currently imposed by Maori elders on gathering shellfish along the coast north of Thames to Wilson Bay. Pani Gage explained:

When I was young there was much more kaimoana than there is today. There used to be plenty of pipi. As kaitiaki we would put rahui over certain places when stocks got low, but today we’ve had to put a rahui over the whole region from Ngarimu to Wilson’s Bay. A few of us kaumatua may give out permits to gather shellfish for tangi or special hui.<sup>4</sup>

Raukawa Balsom described the food resources of the streams and coast around her home in the 1940s at Wharekaho, near Whitianga. There were eels in the local stream, caught with hook and line, and ‘Kutai, pipi, paua, kina, fish and pupu were all readily available to us just

2. See doc G16, p 5; doc G13, p 15

3. Document G17, pp 2–3

4. Document G16, pp 5–6



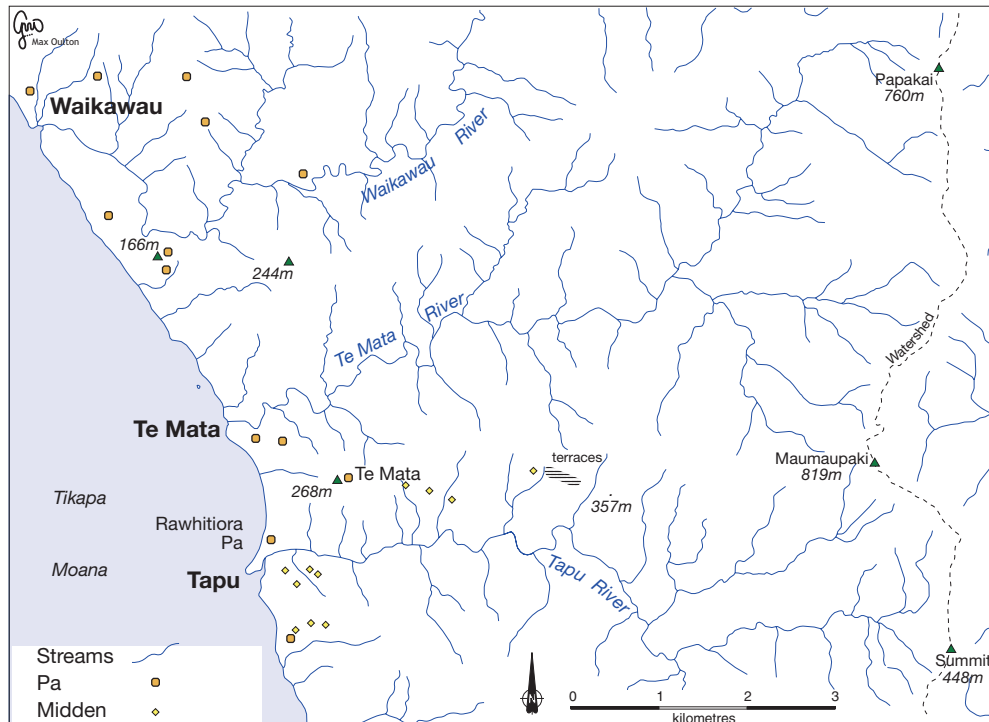


Figure 97: Maori settlement sites from Tapu to Waikawau

below our Homestead.' She was upset that by the 1960s the kaimoana was being plundered and depleted by visiting holidaymakers. 'There were rules as to how we gathered these and we only ever took what was needed.' Commercial fishing also took its toll on the resources of the sea, which was an integral part of their lives. 'We had great respect for the sea and we were taught how to read the waves.' A taniwha was deemed to be her people's kaitiaki or guardian.<sup>5</sup>

Toko Renata Te Taniwha, the chairman of the HMTB, also spoke of the significance of kaimoana, including fish from the sea and shellfish collected along the shore. He described how the coastal resources in and around Manaia Harbour where he lived were named and known for the particular resource there such as crayfish, pipi beds, or fishing spots located by specific landmarks. He also explained that a spiritual guardian or kaitiaki took the form of a stingray named Whaiaro; he looked after their interests in Manaia and Te Kouma Harbours:

And so we say that we are the proper regulators of Manaia Harbour. We are the true guardians. Not the same as the spiritual guardians such as Whaiaro. But it is we who shoulder the heavy burden of caring for this precious treasure (taonga). So that it is not trampled upon by the ignorant or otherwise defiled by wrong doers.

5. Document N18, pp 2-3

In the same way if a person dies there then a rahui is placed on the harbour. We impose that discipline on ourselves.<sup>6</sup>

The abundant resources of the sea, land and waterways of Hauraki supported numerous Hauraki Maori communities at the time of European arrival. Captain James Cook described his view of Mercury Bay in 1769, from a hillside on the eastern side of the 'River of Mangroves' looking upstream to:

the head of the River, it here branched into several Channels and form'd a number of very low flat Islands all cover'd with a sort of Mangrove trees and several places of the Shores on both sides of the River were cover'd with the same sort of wood: the sand banks were well stor'd with Cockles, and clams and in many places were Rock Oysters. Here is likewise pretty plenty of wild Fowl such as Shags, Ducks, Curlews, and a Black Bird as big as a Crow . . . We also saw Fish in the River.<sup>7</sup>

The landscape around Mercury Bay had been modified by Maori occupation. Cook described the quality of the land:

The Country on the SE side of this River and Bay is very barren producing little but Fern and such other Plants as delight in a poor soil. The land on the NW side is pretty well cover'd with Wood, the soil more fertile and would no doubt produce the necessary's of life was it cultivated.<sup>8</sup>

Many coastal areas cleared of forest later reverted to fern. Maori horticultural techniques included clearing an area, cultivating and planting crops for a few years, then moving on to another place and repeating the process, leaving the old garden fallow, perhaps for later use. There was, therefore, some modification of the natural vegetation before European settlement, but in Hauraki it was on a small scale and did not significantly deplete the resources that supported Maori occupation.

#### 24.1.2 Rivers and swamps

The Piako and Waihou Rivers provided the main highways through the extensive swamps of the Hauraki Plains and provided access to food resources such as eels, fish and wild fowl, berries and birds in the kahikatea swamp forest, and plants with many uses such as raupo and flax. The swamps were not a 'dreary waste' (see section 23.3.2(1); this was common settler opinion in the late nineteenth century), but were the food baskets of the people. Villages

---

6. Document G14, pp 39–40

7. J C Beaglehole, ed, *The Journals of Captain James Cook: Addenda and Corrigenda to Volume 1: the Voyage of the Endeavor, 1768–1771* (Cambridge: Cambridge University Press, 1968; reprint 1999), pp 196–197

8. *Ibid*, p 203

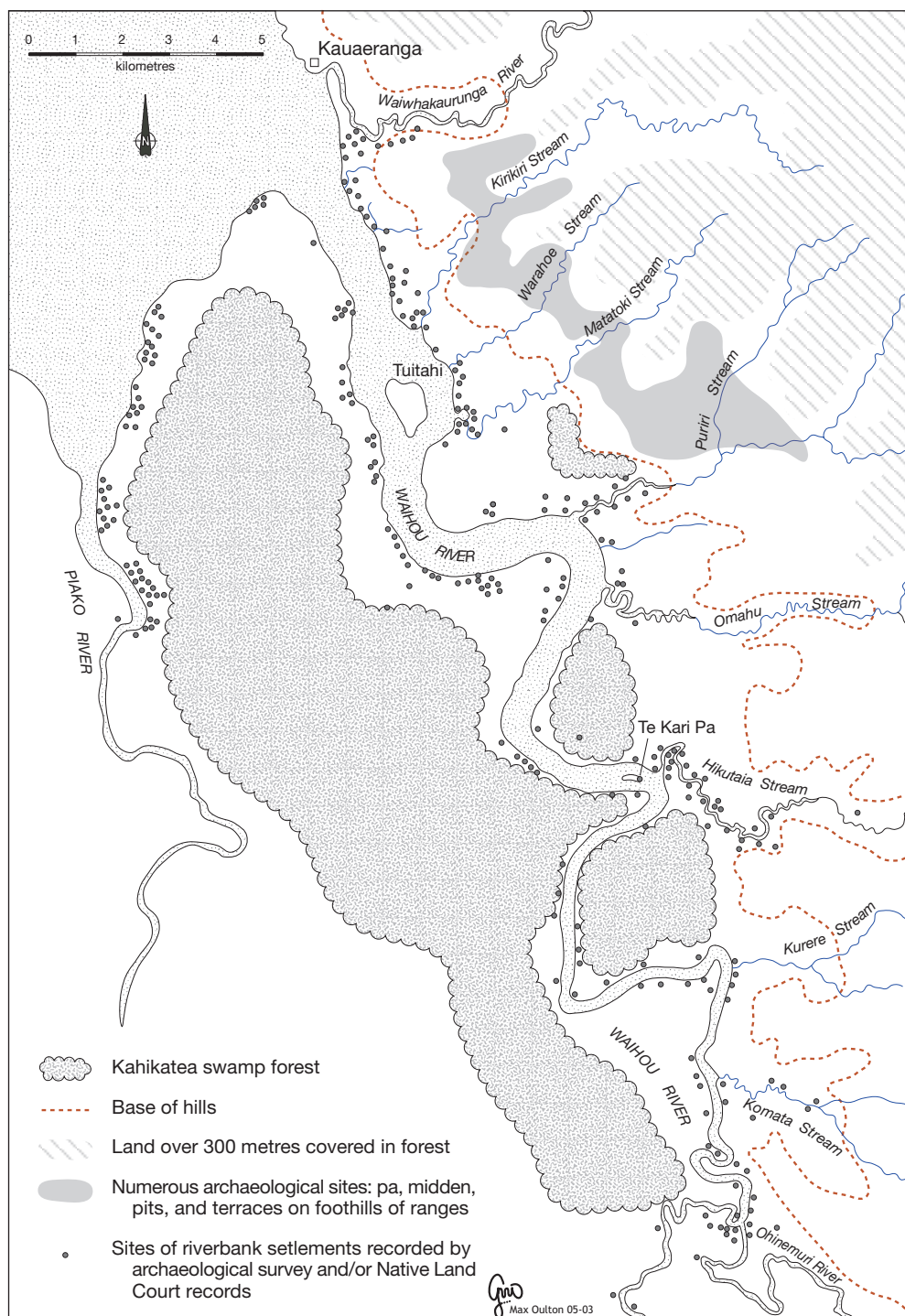


Figure 98: Maori settlement sites on the lower Waihou River. Source: Phillips, 2000.

were established along the banks of these rivers, on the higher levels built up by successive floods. The value of the area to Maori is shown by the fact that on the Piako, many pa sites were artificially constructed with transported filling raising them above swamp level.<sup>9</sup> The name Piako, meaning emptying waters, indicates that flooding was a regular occurrence, but local people had adapted to their watery environment.

The Waihou River supported a significant population (fig 98). The archaeologist Caroline Phillips told us that 186 sites had been recorded along the riverbank upstream to the junction with the Ohinemuri, 152 kainga and 29 pa, and also garden sites, although not all would have been occupied at the same time:

Studies of the natural environment of the Waihou River show that there were a wide range of resources important to pre-European Maori such as flax and raupo, timber trees, berries from karaka, kahikatea, kiekie and hinau, eels and shell fish, ducks, [and] tui. The river also provided a route, which enabled easy access for these resources and facilitated trade and exchange networks with settlements further afield.<sup>10</sup>

Not all of these sites are now obvious. Many have been covered by silt in successive floods, and others destroyed during construction of stop-banks, drains, and other flood-control works, and changes in the river's course. Other sites were named in evidence given to the Native Land Court but have not been identified on the ground. Ms Phillips estimated that two-thirds of the known Waihou sites had been damaged or destroyed by flood protection works and farming.<sup>11</sup> The most intensively settled areas were the flat lands above spring tide level on the right bank between Omahu and the Kauaeranga River, at Hikutaia, and around the junction of the Ohinemuri River. People would move around their territory seasonally to garden areas, to eel camps or the forests, so that each hapu and whanau had several living places.

The rivers had a practical role as transport route and fishing places in people's lives, but also had cultural significance, as Tai Turoa explained:

The Hauraki people have long regarded the Waihou River with great reverence and refer to it often in tribal oratory and song. Most of the tribal settlements were situated along its banks because of its food resources and it was used frequently as a means of communication between various local tribal sections and related tribes of the interior, such contact being made possible by the long stretch of flat plains through which the water flowed. Its 150 km length reaching back into the hinterland also allowed easy access for war parties traveling south on expeditions. A Hauraki proverb refers to their prowess as canoe travellers: 'Nga

---

9. Turoa, p 94

10. Document G7, pp 2–3

11. Ibid, pp 12–16; see also Caroline Phillips, *Waihou Journeys: The Archaeology of 400 years of Maori Settlement* (Auckland: Auckland University Press, 2000)

ringa kei Waihou, miti taiheke’ – ‘The hands of the paddlers at Waihou, they lick up the ebb-tide’. The boast is appropriate as great skill is still required in negotiating the strong tidal changes from its mouth to points 80 km inland.<sup>12</sup>

The name ‘Waihou’ means newly formed waters, which may refer to its propensity to flood or to form a new course (or both), because in the lower reaches of their estuaries the Piako and Waihou Rivers were actively building up the land.

For mariners in ships of greater draught than Maori canoes, the approaches to the Waihou River were a challenge. In 1769, Captain James Cook sailed from Mercury Bay, north of Cape Colville, which he named after Lord Colville, and into Tikapa Moana (the Firth of Thames) and south toward the ‘River Thames’, now called the Waihou:

The land on the East side of the broad part of this River is tollerable high and hilly, that on the west side rather low, but the whole is Cover’d with Woods and Verdure and looks to be pretty fertile but we saw but a few small places that were cultivated. About the entrance of the narrow part of the River [mouth of Waihou] the land is mostly cover’d with Mangroves and other Shrubs, but further in are immense woods of as stout lofty timber as is to be found perhaps in any other part of the world: in many places the woods grow close upon the very banks of the River but where it doth not the land is Marchey [marshy] such as we find about the Thames in England. We saw poles stuck up in many places in this River to set nets for catching of fish, from this we emmagined that there must be plenty of fish [*sic*].<sup>13</sup>

Cook went in a ship’s boat upstream to inspect the ‘immence woods’ of kahikatea forest. The depths were sounded at regular intervals and Cook recorded the greatest depth at 26 fathoms, which ‘decreaseth pretty gradually’ to between 1 and 1½ fathoms.<sup>14</sup> ‘In the mouth of the fresh water stream or narrow part is 3 and 4 fathoms but before this are sand banks and large flatts.’ Cook estimated a tidal rise ‘near 10 feet’ and suggested that ‘a ship of a moderate draught of water may go a long way up this River with a flowing tide’. The editor of Cook’s journal, J C Beaglehole commented on this passage in a footnote: ‘Not now, because the disappearance of the forests has meant erosion and together with the tailings from the Thames goldfield had silted up the river entrance.’<sup>15</sup> We discuss this development below.

In order to understand how much the Hauraki Plains were transformed – from wetlands and rivers to the roads and dairy farms of the twentieth century – we review some descriptions recorded by travellers in the early 1840s. With a local Maori guide, George Clarke, the chief protector of aborigines, journeyed by boat in December 1840 to the Piako River mouth, moving upstream for several kilometres before making camp:

---

12. Turoa, p 195

13. Beaglehole, p 209

14. One fathom equals 1.83 metres.

15. Beaglehole, pp 209–210

The following morning at four o'clock we commenced our course up the Piako with the flood tide, which for eight hours carried us up at the rate of about four miles an hour, through one continued course of swamp; the last four miles the banks of the river were higher, and the land more solid, when at length we opened upon an immense flat, extending over a country as far as the eye could reach. There is however, a large proportion of swamp in connexion with this plain, and I must confess, I was somewhat disappointed at finding the banks of the river so low as to render the immense swamp, from the entrance of the Piako to this place, a distance of nearly 40 miles in the circuitous route of the river, unavailable for agricultural purposes, with the exception of one small place, about 10 miles from the entrance.<sup>16</sup>

From Piako, Clarke sailed to the mouth of the Waiwhakaurunga, now the Kauaeranga River, near the present town of Thames. After visiting chiefs at the Kauaeranga village, Clarke travelled up the Waihou River, and stopped at the CMS mission station at Puriri. Then, 'accompanied by the principal chief Hou', he continued upstream to Taraia's village 'at a native fort named Kari', where the Hikutaia joins the Waihou:

The banks of the river about here are not more than two-and-a-half feet above the top of the spring tides, which rise to six or eight feet, and at low water there are not more than five or six feet over the flats. The soil is rich, and during heavy rains in the winter season has been known at times to be flooded.

There is one great drawback to the immediate cultivation of the land, namely, that it is heavily timbered with kahikatea; it will require great labour to clear it, but being on the banks of a river, the timber might be available, either sawn on the spot or floated down on logs to any market in the Thames.<sup>17</sup>

At Taraia's village, Te Kari, 'the banks of the river are much higher, and secure from all floods'. After much discussion Taraia gave permission to continue the journey upstream to the Matamata district:

The soil is good, sufficiently elevated to be secure from floods, part wooded, part clear, adapted for immediate culture. The water at this season is very low, yet we had about six feet during the day, and by calculation made about 20 miles . . . I have scarcely seen a piece of land to-day on which pretty farms might not be made and laid out to great advantage.<sup>18</sup>

The dense kahikatea forest along the banks of the lower portion of the Waihou River gave way to fern with patches of bush and clumps of cabbage trees. Clarke saw no Maori settlement in the border zone between Hauraki and Ngati Haua territory south of Te Aroha,

---

16. George Clarke, 'Protector of Aborigines' Report of his Visit to the Thames and Waikato, 7 March 1841, BPP, vol 3, pp 442-443

17. Ibid, p 443

18. Ibid, p 444

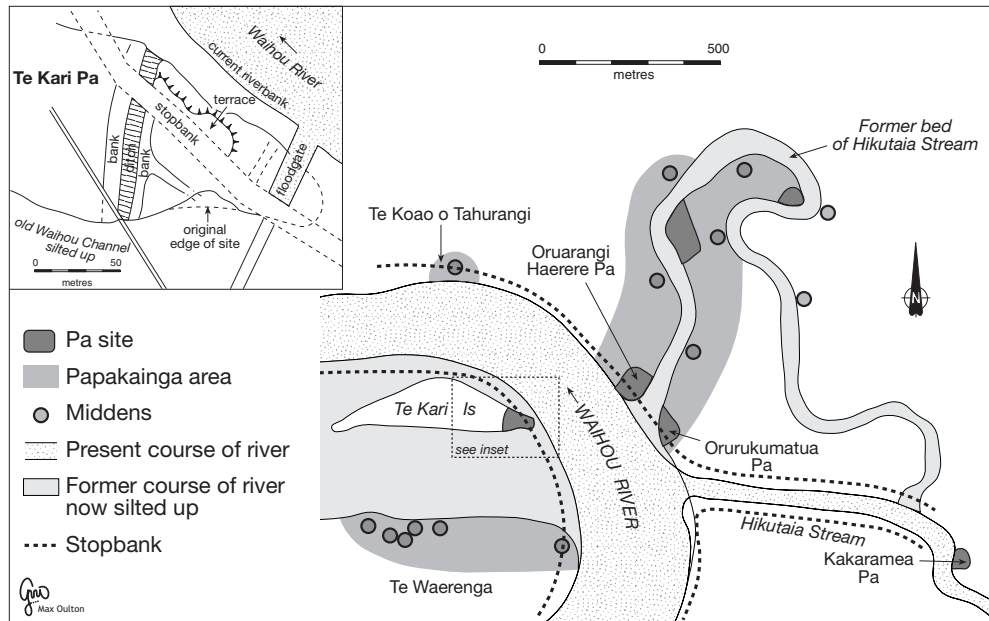


Figure 99: Riverworks and archaeological sites on the Hikutaia River

because they 'having for years have been hostile to each other are afraid to cultivate near the borders' (see secs 2.2.3, 2.2.4). However, Clarke considered that much of the land here could be farmed once the swamps were drained:

These swamps are highly prized by the natives, on account of the eels with which they abound, and as they have abundance of land besides this, it is an object of interest to keep them, as such parties are not unacquainted with the art of draining, and when the subject is pressed upon them they commonly say, 'Shall we destroy our eels, when we have plenty of land besides this?' The outlets to these swamps abound with small native sluices where they put down their nets and catch abundance of eels after the heavy rains.<sup>19</sup>

In 1840, George Clarke saw little to attract European settlement in the sodden Hauraki Plains:

Every winter the swamp from the entrance of Piako to the interior, for about 30 miles, is an inland sea, in which nothing but water and the tops of a few kahikatea trees are to be seen, with canoes sailing in all directions over the expanse of water. The only place secure from these inundations is the little elevated spot on the east side, about 10 miles from the entrance of the river, which, in winter season becomes an island, and if a small town were built thereon, it would remind you of those on the Nile, at the time it overflows its banks. I see no probability of redeeming a country so low, and receiving such an immense body of water from the interior, with a channel of little more upon an average than 10 yards wide,

19. Ibid, p 444



at any rate it must be many years before it can in any part be made available, and only then with the outlay of immense capital, and a redundant population.<sup>20</sup>

Ernst Dieffenbach, a naturalist employed by the New Zealand Company, described the Hauraki Plains in 1841:

with the exception of the banks of the rivers, where the kahikatea pine grows to great perfection, the whole valley is occupied by fern, flax, and manuka. This vegetation is interrupted by large raupo (typha) swamps, which increase toward the mouths of the rivers, where the country is low and subject to inundations. Flights of the common brown duck, and of the blue-breasted, red-billed water-hen, people these swamps.<sup>21</sup>

Dieffenbach also described a journey in June 1841 from the Matamata district to the Piako River.

We passed several large raupo swamps, and crossed a tributary of the Piako, which was swollen by the late rains.

The next day, in travelling down the valley we passed many swamps, but a perfect drainage of them might be easily affected. The soil was better, and here and there it was covered with grass.

The travellers crossed the land in Webster's Piako old land claim where two houses had been built by local Maori for an unnamed European:

The Piako here closely approached the western hills. A little lower down was a small settlement, from which the natives brought a canoe and conveyed us rapidly down the river, the banks of which were very beautiful. The river being much swollen, reached at some points nearly to the foot of the banks, but in most places they appeared to be above the highest floods. They were slightly wooded, and patches of forest alternated with open spaces covered with a soft grass.<sup>22</sup>

Dieffenbach and his party camped on the river bank but found themselves stranded in their tents for the next week by stormy weather and heavy rain. The Piako overflowed its banks around them. When the weather cleared 'our considerate friend the chief prepared his largest canoe to bring us down the river', and so the travellers continued their journey downstream:

The shores of the Piako in this part of its course were grown over with brushwood, and the lower we descended the more we found the land on both sides overflowed, so that we

---

20. Clarke, p 443

21. Ernst Dieffenbach, *Travels in New Zealand: With Contributions to the Geography, Geology, Botany, and Natural History of that Country*, 2 vols (1843; reprinted Christchurch: Capper Press, 1974), p 276

22. Ibid, pp 414–416



actually sailed over what is in summer a swamp of raupo and flax. The tops of both plants reached above the surface of the water. As the weather again became squally, our natives did not venture to leave the river, and we pitched our tents on some elevated ground, but were surrounded on all sides by the low swampy delta, intersected by deep arms of the river, in which the water was black.<sup>23</sup>

Dieffenbach also noted that the people of the village they stopped at were of Ngati Paoa; they usually lived at Coromandel, but in this area, ‘They have great quantities of pigs, which have run wild, but are easily caught by dogs.’ Domestic poultry also ran wild, and likewise cats which ‘form a great obstacle to the propagation of any new kinds of birds, and also tend to the destruction of many indigenous species.’ Dieffenbach mused on the ‘chain of alterations’ that ‘takes place from the introduction by man of a single animal into a country where it was before unknown.’<sup>24</sup> Already in the 1840s there were changes in the ecology of the swamps of the Hauraki Plains.

For most of the nineteenth century the Waihou and Piako Rivers continued to serve as transport routes for Maori and for Pakeha settlers, with settlement developing in the better drained Morrinsville and Matamata districts south of the Hauraki inquiry area. In the 1870s, one of these settlers, Josiah Firth, cleared most of the ‘snags’ in the Waihou River, blasting away old tree trunks and rocks to make the river navigable as far as his Matamata Estate, and planted willows on the riverbanks. By the end of the nineteenth century, the Crown had begun purchasing large chunks of the land in the lower reaches of the Piako and Waihou Rivers and sawmillers had begun extracting kahikatea logs from the swamp forests to make butter boxes for the rapidly developing dairy industry of the Waikato region and for export. We review the Hauraki Plains drainage scheme of the 1900s in a later section of this chapter.

## 24.2 EXPLOITATION OF THE FORESTS

In 1820, the British Royal Navy ship *Coromandel* entered the harbour that now carries the ship’s name in search of spar timber. The great trees that Cook had reported growing along the banks of the Waihou River were kahikatea but spars from this tree proved unsuitable, and kauri quickly became the preferred species for naval purposes. The principal sources of kauri in the 1820s were Hokianga, the Bay of Islands and Mangonui but by the early 1830s Mercury Bay was seen as a prospective source which provided a sheltered anchorage for ships. In sections 3.1.1 and 14.1, we have described early timber trading, including such characters as Captain Ranulph Dacre, who established a timber operation there in 1836

---

23. Ibid, pp 417–418

24. Ibid, pp 416–417



Figure 100: The boom, Mercury Bay, circa 1910. Photograph by William Price.

Reproduced courtesy of the Alexander Turnbull Library, Wellington, William Price collection (G-679-½).

following an abortive attempt in 1831. In 1840, the HMS *Buffalo*, loaded with a cargo of spars, was wrecked in Mercury Bay when it foundered off Buffalo Beach. By this time, kauri timber stations were also established at Tairua, Coromandel Harbour and on the lower Waihou River, at Kopu and Hikutaia, in places where ships could come in to anchor and logs could be floated out to them.<sup>25</sup> In 1841, Dieffenbach noted that 'Coromandel Harbour has been resorted to by vessels for the trade in kauri-timber, which is abundant on the hills from Cape Colville to Katikati in the Bay of Plenty' (the southern boundary of kauri). 'The spars were cut by the natives under the direction of the Europeans and shipped either at Mercury Bay or at Coromandel Harbour.' Dieffenbach also suggested that ship building might be established because of the abundance of kauri and other timbers. However, 'the rugged nature of the country and from the scantiness of the labour, the expenses of bringing down the timber would be very great'. Coromandel also had the drawback of a shallow harbour, although 'Provisions of all descriptions, poultry, pigs, and vegetables, can be obtained from the natives at a cheap rate.'<sup>26</sup>

Initially, the market for kauri timber was the growing town of Auckland, but soon markets opened up in other New Zealand towns and in Australia and California. From the

25. Michael Roche, *History of New Zealand Forestry* (Wellington: New Zealand Forestry Corporation and GP Books, 1990), pp 16–21, 30–31

26. Dieffenbach, p 273

1870s, gold mining also provided a local market for timber. By 1875, over a dozen mills were operating on the Coromandel Peninsula producing kauri timber, and two at Kopu and Paeroa had begun work on the kahikatea forests of the lower Waihou River (fig 67). These developments are discussed above in part IV of this report.

The forests of the ranges west of Tikapa Moana were less accessible with no harbours or navigable streams. In December 1840, George Clarke, embarked on the journey mentioned in section 24.1.3 to look for tracts of land that Maori leaders might be persuaded to sell. His first stop was at the Wairoa River, which he described as navigable for craft drawing fewer than two metres for eight to 10 miles. ‘The land on the banks of the river is good, but confined, the back ground well wooded’. Further upstream, ‘the river became so choked with timber, that it was dangerous for the boat to go further’. The dense forest of the hill country was seen as a disadvantage for immediate settlement in the lands of the western shore of the Firth of Thames and there was no good harbour along this coast for convenient access. There were several Maori kainga along this coast and Clarke concluded that the land here was ‘better calculated for native culture than European.’<sup>27</sup> Dieffenbach in 1841 described the western shores of Tikapa Moana as ‘picturesque’ and noted that ‘luxuriant vegetation covers them to the water’s edge or alternates with the clearings made by the natives.’<sup>28</sup>

In due course, the timber trees including kauri in these forests were extracted, but the Hunua forests, where no gold was found, did not suffer the same devastation as the forested ranges of the Coromandel Peninsula. Early in the twentieth century, the forested hills of the Hunua Ranges were recognised as a potential source of water storage for the growing Auckland urban area and much of the forest cover was protected. Clearance of scrub and bush occurred only in the narrow strip of lowland along the western coast of Tikapa Moana.

By the early 1900s, the Kauri Timber Company (KTC), a syndicate of Auckland and Melbourne timber merchants formed in 1888, had gained control of kauri logging in the Coromandel Peninsula.<sup>29</sup> Although large quantities of logs were shipped direct to Auckland mills, two KTC sawmills were operating in 1907 at Mercury Bay and Tairua, with about 60 mill workers employed in each, and producing about six million feet of kauri timber annually, which was shipped to Australia and New Zealand ports. At Kopu and Turua were two large mills cutting kahikatea, exported mainly to Australia as well as New Zealand ports. At Kopu Robert Gibbins’ mill employed 25 men and produced about four million feet of timber, and the ‘Bagnall Brothers’ Turua mill employed 70 and produced 4.9 million in 1907. A smaller mill at Puriri, Bedford Brothers’ mill, cut about 40,000 feet of kauri, rimu, and tawa for local use and employed only three men. At Paeroa, a sawmill and joinery factory

---

27. Clarke, pp 441–442

28. Dieffenbach, p 276

29. R Stone, *Makers of Fortune: A Colonial Business Community and its Fall* (Auckland: Auckland University Press, 1973), pp 103, 106–111

operated for about eight years, employing 15 workers and producing 656,000 feet of kauri, rimu, and kahikatea for local use. Two mills, owned by B L Knight in 1907, one about eight kilometres south of Waihi and the other at Katikati, cut kauri and rimu for local use in building and mining purposes, a total of about 1.75 million feet.<sup>30</sup> These production figures would not have included firewood for the steam boilers that powered mining pumps and stamper batteries, which was cut by local contractors.

Dougal Ellis has remarked in his report on Whitianga that from the first days of the colony, the Crown paid scant regard to the conservation of timber and allowed the wholesale milling of timber.<sup>31</sup> While this is broadly true, it was not until the 1870s that the destructive capacity of mills and the infrastructure of railways and dams began to be felt. Pleas for forest conservation had begun in the late 1860s and were heard with sympathy in Parliament, but a fierce struggle ensued between central and provincial governments. Under Donald McLeans's aegis, a Conservation of Forests Bill was prepared in 1873 which would have provided for a system of licensing and auctioning of timber leases to the highest bidder. This Bill might have had considerable effect on the harvesting of forests on Maori land, although it is not clear if it was intended only to apply to Crown land.<sup>32</sup> In any case, it was held over, and Vogel introduced a new Forests Bill in 1874. This contained quite modern ideas about forest management and reforestation. However, it was bitterly opposed by provincial interests and the Act as passed was watered down. A Conservator of Forests was appointed but it is not clear if his authority extended to milling on Maori land. It is apparent from Michael Roche's analysis that provincial and business interests accepted little restraint. Until the sheep-meat and dairy industries were well established, timber milling remained a mainstay of the Auckland economy, and governments allowed the rapid clearing of Hauraki forests to continue.<sup>33</sup> By 1900, kauri was in short supply, and by the 1920s virtually cut out.

A major problem with extracting kauri logs was access, because kauri trees grow mainly in single trees or small groves on the drier ridges in the rugged ranges of Coromandel Peninsula and in the Hunua Ranges. However, kauri logs float, and from the early 1860s, when the more accessible trees had been logged, the preferred method of extraction was to 'drive' them down rivers to 'booms', usually a string of logs chained together, set up at convenient places in estuaries. There, the logs could be contained and loaded on barges or scows and taken to Auckland. By the 1870s, a number of mills were established near these booms, and the logging gangs moved further upstream. Coromandel streams are relatively short, steep, and rocky, and subject to frequent 'freshes' after heavy rain. The solution for the timbermen was to build a timber dam across a gully allowing the water to back up

---

30. Thomas E Simpson, *Kauri to Radiata: Origin and Expansion of the Timber Industry of New Zealand* (Auckland: Hodder and Stoughton, 1973), pp 281–282

31. Document R5, p 32

32. Roche, pp 84–85

33. Ibid, pp 74–99







Figure 102: Kauri logs being loaded on a scow at Kennedy Bay. Photograph by W Stevenson.

district and Kawakawa Bay, and three near Miranda. In the Coromandel Peninsula, over 300 timber dams have been identified, 55 of these in the Kauaeranga catchment area, where logs were driven to booms in the river at Parawai from 1871 to 1927.<sup>35</sup> The geologists Bell and Fraser remarked in 1912 on the modification of streams in the upper reaches of the rivers flowing east to Mercury Bay, Tairua, and Opoutere:

As the [district] has for many years been an extensive timber-producer, the 'driving' of the large kauri-logs in the creeks by 'tripping' dams during flood-time has had a marked effect on many of the water courses. The softer debris at the angles in the stream-beds has been torn away, corners of harder rocks have been broken off and the whole courses of streams have been widened. The lumberman, furthermore, resorts to wholesale blasting operations in order to provide a smoother course for the passage of the logs. In places even new channels have been formed, and arable alluvial land devastated.<sup>36</sup>

The maps of dams in figures 104 and 105 have been compiled from the topographic plans in Bell and Fraser's report.

In the early years of log driving, Maori owners of adjacent land or of eel weirs in the river likely to be destroyed in a drive were paid some money, or more frequently, the timber

35. Diamond and Hayward, p 6

36. James Bell and Colin Fraser, *Geology of the Waihi-Tairua Subdivision, Hauraki Division* (Wellington: Department of Mines, Geological Survey Branch, 1912), p 34



Figure 103: Whangapoua, circa 1890s. Photographer unknown. Reproduced courtesy of the Alexander Turnbull Library, Wellington, Coromandel School of Mines Museum collection (C-23275-½).

companies purchased such land along driving streams. However, disputes did occur and some ended in litigation, such as Mohi Mangakahia's lease at Whangapoua, discussed in sections 14.4.1 and 14.4.2<sup>37</sup>

There were also disputes between timbermen, and in 1872 Parliament moved to regulate the practice by introducing a Tidal Creeks Floatage of Timber Bill, intended to resolve issues of public use of tidal creeks and freshwater streams. This Bill was withdrawn and replaced with another which became the Timber Floating Act 1873 (also discussed in section 14.4.2). The Act provided that the provincial superintendent could notify in the *New Zealand Gazette* what streams and tidal creeks could be used for floating timber. Any person wishing to do so could apply for a licence, objections could be heard from owners and occupiers of any land that might be affected, and a licence could be issued. In section 4 of this Act:

It shall be lawful for the licensed owner of any logs lumber timber firewood posts rails or other wood, flax gum or other substances or materials, either by himself or by his servants or workmen to raft or float the same, or to cause the same to be rafted or floated, down and along the course of any river stream or tidal creek mentioned in his licence.

---

37. Simpson, pp 101–104; doc G2, pp 35–37

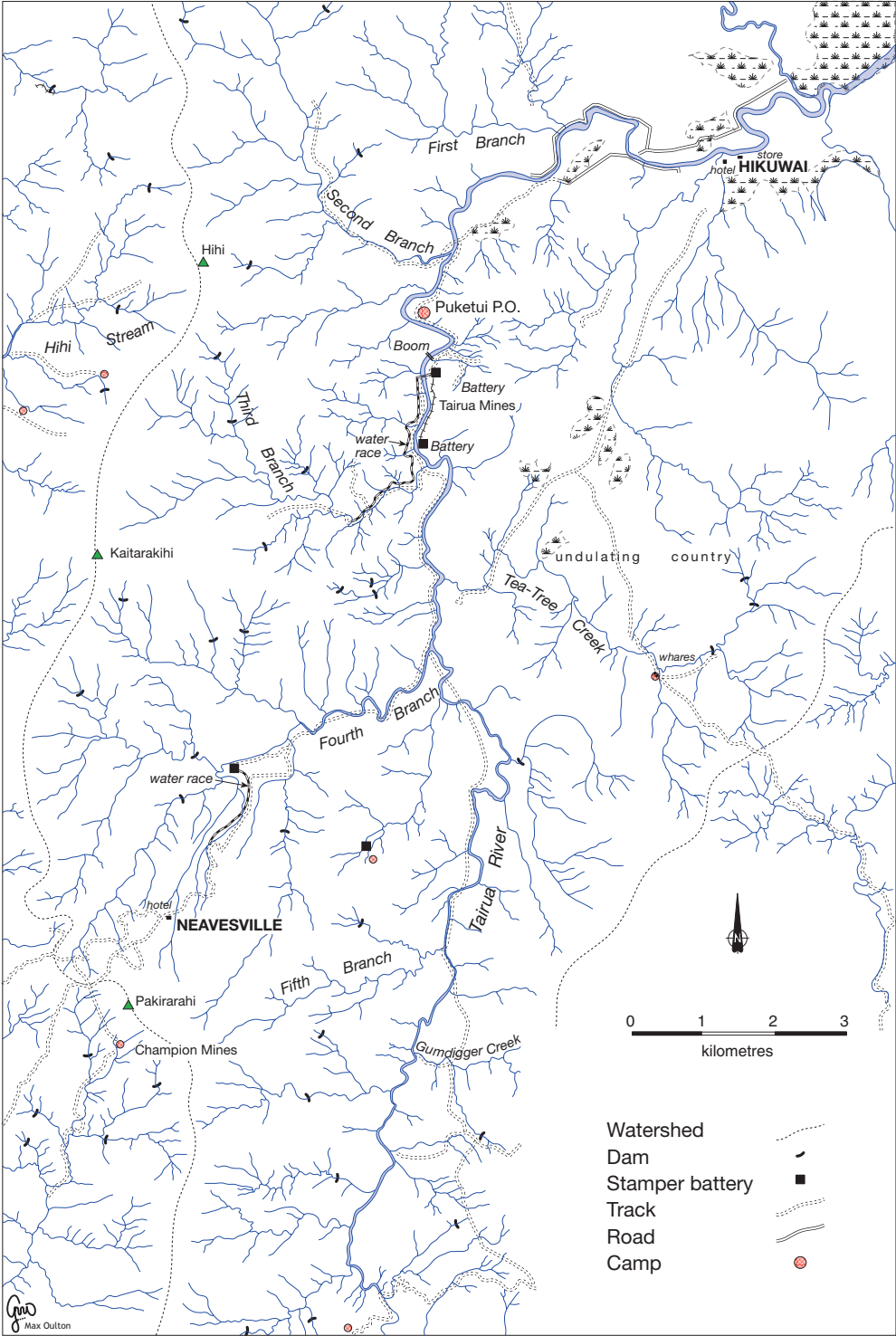


Figure 104: Gold and timber workings on the Tairua River, 1912.  
Source: Bell and Fraser, 1912; New Zealand Geological Survey Bulletin 15.



There was also a provision that the licence-holder was liable to pay compensation for any damage, and should not interfere with normal navigation. Compensation for the value of actual damage could be sought in an action in the nearest Magistrate's Court, and the licence-holder was required to enter into a bond to cover such cases. The 1873 Act was later replaced by the Timber Floating Act 1884, which transferred administration to the commissioner of Crown lands and the Crown land board but retained similar licensing provisions. There were protests from Maori and local settlers from the 1880s on, about damage to river-banks and loss of navigation by silting as a result of log driving but no effective action was taken against the timber companies.<sup>38</sup>

The modification of water courses by erosion from increased runoff in the catchment area and damage from log driving had an inevitable impact on the estuaries of rivers. Gary Williams, a consultant engineer, prepared a report for the Tribunal on the estuaries of the eastern Coromandel coast. He reviewed historical literature and more recent scientific studies, noting that there was little specific information on the state of the estuaries before Europeans began extracting timber. He concluded that, although there would have been some modification of the land around these estuaries by Maori, no significant alteration of their form and character had taken place before European settlement. But:

Following European settlement there was a profound and devastating change to the catchment vegetation and over time to the immediate surrounds of the estuaries. The catchment vegetation was virtually destroyed by milling and fire, and this has given rise to greatly increased rates of sediment accumulation in the estuaries.<sup>39</sup>

Since the 1920s, farming and planting of exotic pine forests has probably maintained higher levels of sedimentation and nutrient levels in run off than would occur if the indigenous vegetation had been allowed to regenerate. In recent years increasing population in seaside subdivisions has increased the pressure on estuaries in the eastern Coromandel Peninsula.

The damage from increased silting up of these estuaries was the result of a series of factors beginning with the exploitation of the forests by timber companies:

It was not just the effect of the cutting down of the large trees within the forest. The felling, removal and cutting to waste of the branches and head of the trees left behind a great deal of dead wood, debris and litter. This provided a lot of easily burnt material, and in spite of the high rainfall of the peninsula, bush fires were very common, and some were undoubtedly very destructive.<sup>40</sup>

---

38. For an account of Maori protest at Mercury Bay, see document G2, pp 49–57.

39. Document K4, p 4

40. Ibid, p 14

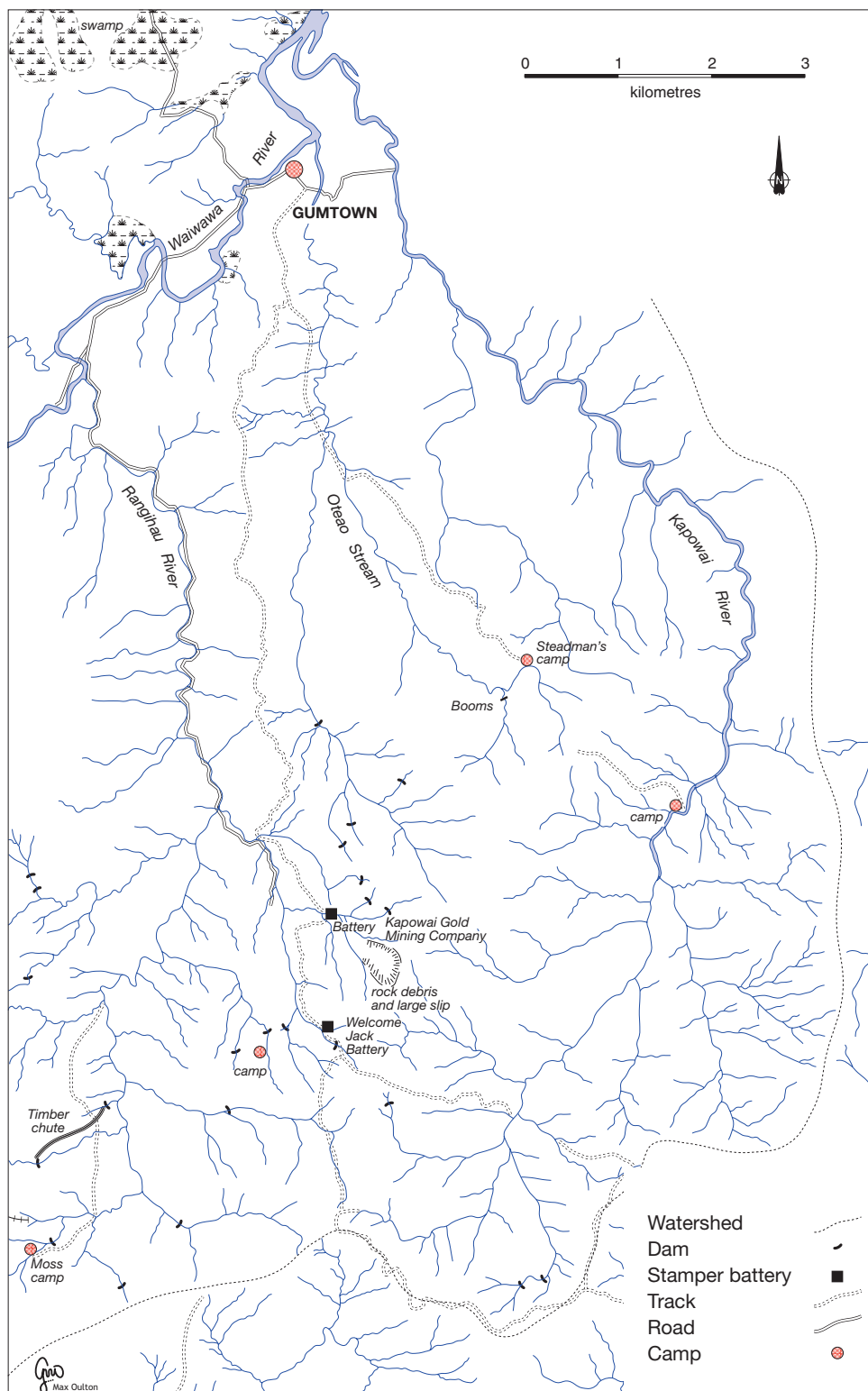


Figure 105: Gold and timber workings in part of the Waiwawa catchment area, 1912.

Source: Bell and Fraser, 1912; *New Zealand Geological Survey Bulletin* 15.

Fire was certainly a cause of deforestation in the Coromandel Peninsula, whether accidental or deliberate. Both gold prospectors searching for new reefs and diggers looking for kauri gum were known to light fires to clear the vegetation to make their task easier. Kauri trees in particular are very sensitive to fire and even scorching will kill them. An 1896 report described the devastation of a fire in Coromandel kauri forest:

In the State forests reserves near the Whangamata, 16 million ft have been burnt, and last summer the remaining green timber on this reserve would have been burnt had it not been for the strenuous exertion of some forty bushmen who happened to be working there, whilst the contractor had great difficulty in getting the authority to send police to arrest one gum-digger who was seen to fire the bush.<sup>41</sup>

A major consequence of a bush fire is rapid runoff in a heavy rainfall, accelerated erosion in gullies, and deposition of sediments in tributary streams, adding to the load carried which eventually found its way to the estuary.

Much of the damage to water courses and estuaries was the result of log driving, as Williams explained:

This log driving generated mini dam burst flood pulses, and with the logs being transported, and the cumulative results of sequential dam tripping, these 'drives' would have had a marked scouring effect on the bed of streams and rivers, giving rise to constant re-working of the channels. Sediment transport rates would have been greatly above natural levels, while the debris brought down would have been vastly above even a most severe natural event in the original forested catchments.<sup>42</sup>

In the estuaries, the major result was a buildup of sediments, but with some localised scouring, and near the mills additional deposition from sawdust and timber waste. Some indication of the effect of silting seriously affecting navigation is demonstrated by the example of the Waiwawa River (fig 106). Guntown, now known as Coroglen, was a small gum-digging settlement with a hotel, store, and Maori village, which could be reached by a ferry from Whitianga in the 1880s. In 1907, a local settler complained about silting up in the Waiwawa River and proposals to construct dams in the Kapowai catchment area:

Timber of all kinds are allowed to remain in the bed of the said river, thereby causing shallows to form in which was formerly deep water. There is one part of the River which formerly had 16 foot of water at low tide which at the present time has not more than 6 inches at low tide.<sup>43</sup>

---

41. WB Leyland, paper read at Timber Conference, Wellington, 1896 (Simpson, p 96)

42. Document K4, p 14

43. Nicholson to Minister of Marine, 1 January 1907, M1 4/468 (doc G2, p 59)

The Crown lands ranger who investigated acknowledged that the river and its estuary were now shallower and that there was some flood damage. His only recommendation was that KTC should remove the snags from the river. Within a few years, it was no longer possible to go by boat to Guntown even at high tide, and in 1920 an informal landing place some distance downstream at the confluence with the Kapowai River was being used. The district engineer of the Public Works Department was clear that log driving by KTC in the upper catchment area was the source of the silt that had 'rendered useless' the wharf at Guntown. Remedial works were suggested, but the Coromandel County Council balked at the cost, stating that KTC should pay. The company refused liability, stating that no logs were impeding navigation and it was not responsible for silt in the river. No action could be taken as proposed by the Marine Department and commissioner of Crown lands. The Minister of Marine wrote to the Minister of Works that the Timber Floating Act left the Lands Department in such a weak position that the timber company could deny responsibility for the increased amount of silt, snags, and debris in the river.<sup>44</sup>

### 24.3 IMPACTS OF GOLD MINING

In catchment areas where there was both timber milling and gold mining, the twin impacts of deforestation and silting up of water courses were even more devastating. In most of the eastern Coromandel catchment areas, there was relatively little gold but, even so, batteries located in the upper catchment areas of the Harataunga, Waiwawa, and Tairua Rivers had an additional sediment load dumped into their waterways. In the larger mining areas of Coromandel, Thames, and Ohinemuri, the effects were even more widely felt, both from the dumping of mine waste and local deforestation for firewood to fuel the stream boilers for pumps and batteries, as well as timber for mine props and buildings.

Mining by its very nature involves the shifting of large quantities of rock and earth material from its natural location, thus exposing it to weathering, erosion, and ultimate deposition in streams, estuaries, and the sea. The earliest forms of mining involved panning and washing of existing river gravels, but there was little gold from this source in the Coromandel Peninsula. Sluicing was attempted at Coromandel and in the Harataunga and Waikoromiko Valleys east of the divide at Tokatea, but it proved unproductive. However, in the process large chunks of landscape would be removed and deposited in the nearest water course. Dredging had the same effect of rearranging sediments on the coastlines and foreshore. Dredging on the Thames coast and foreshore, and under the Mining Amendment Act 1894 below the low-water level, yielded about £367,500 worth of bullion over the period 1889 to 1905. Dredging was also attempted on the Coromandel foreshore around 1900, some

---

44. Document G2, pp 59–62

of this below the low-water level. By 1906, gold worth about £404,000 had been extracted. Another attempt was made in the 1920s, but the high costs of extraction precluded further activity.<sup>45</sup> Dredging was also carried out on the Ohinemuri River upstream of Paeroa and we review the impacts on this catchment area in more detail below.

By far the largest source of sedimentation in waterways came from material extracted from the mines which had to be crushed and processed. On every stream and creek on the Thames goldfield, there were stamper batteries crushing ore and depositing tailings into the waterways. The figures in table 13 relate to the early 1870s.

Stream	Number of batteries	Total number of stampers
Tararu	5	141
Shellback	3	33
Kuranui	3	70
Moanataiari	9	148
Waiotahi	6	129
Karaka	14	138
Hape	2	18
<b>Total</b>	<b>42</b>	<b>677</b>

**Table 13: Stamper batteries in the Thames goldfield in the early 1870s.**  
 Compiled from F W Weston, *Thames Goldfields: A History from Pre-proclamation Times to 1927: Thames Diamond Jubilee Souvenir, 1867–1927* (Thames: Thames Star, 1927), p 70 .

Until 1878, most of these batteries were powered by steam in boilers heated by firewood. With the completion of a Government-funded water race at a cost of £20,000, most mining companies substituted water turbines and Pelton wheels for the old boilers in their crushing plants.<sup>46</sup> With the opening of a railway to Thames in 1899, coal could be brought more cheaply from the Huntly mines to power the mine machinery by steam boilers again. This development came too late to prevent the wholesale deforestation of surrounding hills to fuel the boilers in the early years.

In 1895, the Waihi, Ohinemuri, and Kuaotunu Rivers were proclaimed water courses under section 152 of the Mining Act 1891, into which mine tailings and other waste could be discharged. We consider this proclamation in more detail in the next section, but it seems that mining companies had long been discharging wastes into the nearest stream. A similar provision was retained in section 108 of the Mining Act 1898. In 1899, the Monowai Gold Mining Company applied for a permit to continue using the Waiomo Stream to discharge mining waste. The mining inspector recommended the company be allowed to continue discharge of its cyanide-treated waste, as prohibition would end the mining operation. A

45. Ronald Hubbard, 'Factors of Accessibility which Influenced Development of the Hauraki Goldfields', MSoc Sc. thesis, University of Waikato, 1975, pp 110–112

46. Weston, p 76

Mr Trotter, the Pakeha leaseholder of Maori land downstream, objected as the water downstream was now unfit for cattle or domestic use. The mining company got its way when the stream was declared open to mining discharges in 1900. Trotter had sued the company for damages and after negotiation accepted a payment of £100 compensation. Anderson suggested that there was an official 'attitude of neglect' because in this incident no account was taken of Maori occupation of the area, or the loss of food resources in the river. During the hearing of Trotter's case, defence witnesses had admitted that the water was not fit for use and in a previous operation the cyanide in the mine waste had killed all the eels in the river. Anderson also cited another example of neglect of Maori interests in Tapu where the effect of dumping mine tailings had altered the lower course of the stream and threatened a bridge, as well as accelerating encroachment by the sea on coastal land. When the Thames county engineer found that it was Maori land affected, and not Crown land, no action was taken.<sup>47</sup>

The official neglect of Maori communities persisted elsewhere too. Te Ratoru Sonny Te Iri described how, in addition to their dairy farm and vegetable garden, families in the Hikutaia Valley lived off the resources of river and land. The Hikutaia Stream was an important source of tuna (eels), koura (freshwater crayfish), and kakahi (freshwater mussels), as well as being their source of water when rainwater was scarce. He complained about how the river had been affected by farming and mining activities, that it is now much more shallow because of silting from farm drainage and tailings from the Maratoto mine: 'I remember as a child that the mining company at Maratoto would flush its cyanide tanks from time to time into the Hikutaia Stream. When this was done you were not able to catch any tuna or koura for months afterward.' The effect was also to make the river water undrinkable. Neither the local council nor any Government official stepped in to stop this and because local people were also employed at the mine they did not object. The mine closed about 1946.<sup>48</sup>

Local Maori (and Pakeha settlers) lost control of their environment when a large mining company moved into the neighbourhood. Perhaps the most devastating effects on the forests and waterways were inflicted around the Waihi-Karangahake mines of the Ohinemuri goldfield (fig 101). McAra, a historian of the Waihi gold mines, reviewed the power sources required for working the heavy machinery and pumps:

The only economic types of energy available at Waihi were, first, water-power, obtained by building dams and constructing many miles of water-races and using the water to drive Pelton wheels and water-turbines, and, second, steam-engines, whose boilers had to be fired by vast quantities of wood, cut from the bush and hauled over miles of tramways.<sup>49</sup>

---

47. Document A9, pp 110–113

48. Document K16, p 4

49. JB McAra, *Gold Mining at Waihi, 1878–1952* (Christchurch: Pegasus Press, 1978), p 80

The cost of coal was 'prohibitive', but 'dray loads of smithy coal' were imported from the West Coast of the South Island and landed at Bowentown, at the western end of Tauranga Harbour, because it was 'essential for the sharpening of hard rock-drills'. Firewood, costing about one shilling threepence per ton, was the main source of energy. One estimate was that for the drying kilns alone a ton of firewood was needed for one ton of dried ore, and in 1891 that amounted to 11,000 tons. The firewood was collected from the bush north of Waihi and transported up to four kilometres on a wooden tramway to the mine. Firewood was also needed in large quantities for the steam-boilers that powered the pumps. In June 1890, consumption was 143 tons, a daily rate over five tons per day, and in October the total reached 203 tons.<sup>50</sup> In February 1899, the amount of firewood consumed to power the pumps at 1 and 2 shafts in the Waihi mine was 1000 tons. McAra commented:

Add to this the large quantity used in the kilns for drying the ore at Waihi and Waikino batteries, and for steam-power when water was scarce, and also the large amount of timber used for mining purposes and general building, and it can be seen that the rate of forest denudation in the hills at the back of Waihi was enormous. Several gangs of contractors worked in the various 'bushes' served by some miles of tram lines delivering timber to the mines.<sup>51</sup>

Ben Gwilliam described his arrival in Waihi in 1894, after travelling by boat up the Waihou River to the Junction Wharf at Paeroa and then by coach over a muddy road: 'And then Waihi, with not a tree to be seen, only stunted scrub about 18 inches high, leaning on one side with the wind. The only bush was at Bulltown [to the north of Waihi] and that was being felled for mining props and for roasting the ore for dry crushing.'<sup>52</sup> Gwilliam also commented on the mud in winter and the dust in dry weather which was blown about the streets.

Another contributor to the Waihi Diamond Jubilee publication, GH Worth, described how the 'virgin bush' on the hills around Waihi was removed by cutting timber for mining:

But the biggest inroads into the devastation of the forests was for firewood. In the early days of mining all steam was raised by firewood stoking and hundreds of tons weekly were used. I well remember stacks of firewood up to a quarter of a mile long at No 1 and No 2 Shafts and at the Union battery. A tremendous lot of firewood was used in the kilns. In the dry crushing days, all quartz was roasted in kilns before going to the stamps. The idea was to burn the sulphur out of the quartz as sulphur was the bugbear of treatment and no other

---

50. Ibid, p 93

51. Ibid, p 113

52. Waihi Borough Council, *Waihi Borough Celebrates its Diamond Jubilee, November 27 – December 1962* (Waihi: Waihi Borough Council, c 1962), p 84

method of getting the sulphur out of quartz was known. Huge kilns were constructed and a layer of firewood and a layer of quartz alternated until the kiln was full. The firewood was then ignited and the fires raged until the quartz was red hot. It was then allowed to cool and when ready was trucked to the stamps.

Worth also described how the bush was clear cut including all of the smaller shrubs: 'The method of working was by low-level tramline to remove all bush on the lower slopes and by incline and top-level tramline to remove the balance of timber to the top of the range.'<sup>53</sup>

Morton, writing in 1962, also referred to the denudation of land around the Waihi gold mine:

Timber was needed in large quantities and bush workers stripped the bush clad slopes hugging the north of the town, baring the terrain for some two miles to the east and west to provide fuel and structural timber.

Navvies excavated hills and filled gullies to form a bed for the tramlines which conveyed the timber to the mines and the hills are still girded by the water-races which bled every hillside stream to provide more water for the thirsty treatment plants and the tanks of boilers powering the machines.<sup>54</sup>

Morton also commented on the 'terrible' appearance of the Waihi mining township in 1902:

A barren, treeless landscape, dotted by struggling houses, and dominated by mine poppet heads and mullock [excess rock] tips gave little encouragement to the early planners. Settlement sprawled as most holders of miners' rights had taken their full acre and gullies, swamps and creeks made access difficult. The square mile or so of mining property round which the settlement was fringed accentuated the sprawl . . .

The bare soil broke up into a fine powder which provided a sea of mud in the wet winter and made travel difficult. In summer it was another sorry story. The westerlies roared into town carrying clouds of dust from Broadway, as Seddon Avenue was then known, and everything and everybody was coated with grit.<sup>55</sup>

However, the mullock heaps scattered about the mining area did provide material as a base for some local road construction, but there was no attempt to curb runoff from these piles of waste material into local waterways:

Mullock piles (non ore-bearing rock removed during mining) were also created at each mine; in most cases this material was piled up outside the entrance of each mine. During heavy rains these piles could become unstable and sometimes slide into the river further

---

53. Waihi Borough Council, pp 87–88

54. Ibid, p 19

55. Ibid, p 21



contributing to the suspended or traction load of the streams. This mullock was usually coarse and would have contributed to infilling of the lower Ohinemuri channel below the Karangahake Gorge. In addition the mullock was not a weathered rock and contained metal sulphide minerals (eg pyrite) that could leach acidic, heavy metal contaminated water into the river.<sup>56</sup>

#### 24.3.1 The Waihou–Ohinemuri sludge channel

In section 152 of the Mining Act 1891, provision was made to ‘proclaim and declare that any watercourse shall be a watercourse into which tailings, mining *debris*, and waste waters of every kind used in, upon, or discharged from any claim or licensed holding shall be suffered to flow or be discharged’ (emphasis added). The term ‘watercourse’ meant ‘any river, stream, creek, pool, or any portion thereof, or any tributary thereof’. In 1895, a proclamation was published, taking effect on 10 July, declaring the whole of the Waihou and Ohinemuri Rivers, and their tributaries, with the exception of Komata and Tarariki Creeks, to be watercourses under section 152 of the Mining Act.<sup>57</sup> The ‘Kuaotunu Creek’ was also included in this proclamation, but discussion in this section will focus on the Waihou–Ohinemuri River system. In general parlance at the time, the rivers became known as sludge channels, the means by which the tailings and other waste from the ore-processing works were disposed of.

The inevitable result of using rivers as sludge channels was the massive silting up of river beds. A major flood in 1907 stimulated a series of petitions from local farmers and Maori in the Paeroa district complaining about the dumping of mining waste and asking for it to stop. But counter petitions from mining interests suggested that the flood was a natural event and that any curtailing of mining rights to deposit tailings and waste would be a severe blow to the industry. All petitions were referred to the Goldfields and Mines Committee. After hearing much evidence, the committee reported that any expenditure on a scheme to arrest the silting in the Waihou and Ohinemuri Rivers ‘should be on a contributory basis, the local bodies whose districts are affected by such silting providing their quota towards the cost’. The petitions were referred to Government ‘for favourable consideration’. No recommendation was made on the petitions from mining interests.<sup>58</sup> No action was taken and the status quo was preserved.

Most of the mines had been allowing waste to flow into the streams before 1895 but the introduction of the cyanide process in 1892 was the reason for an increased output from a number of stamper batteries in the Ohinemuri catchment area. Enormous quantities of

56. Document R8, p16

57. ‘Proclaiming Certain Rivers and Creeks, Together with their Tributaries, in the Provincial Districts of Auckland and Nelson, to be Watercourses’, 25 March 1895, *New Zealand Gazette*, 1895, no 25, p 601

58. Mr Poland, ‘Report of the Goldfields and Mines Committee’, 13, 20 November 1907, AJHR, 1907, I-4, p 4; ‘Minutes of Evidence’, AJHR, 1907, I-4A

gold-mining waste including contaminated ground water, ended up in the streams and rivers of the Ohinemuri district. Table 14, which summarises the tonnage of ore crushed by the principal companies and their years of operation up to 1909, provides some indication.

Company	Years of operation	Short tons
Waihi Gold-mining Company	1896–1909	3,135,720
Waihi Grand Junction Company	1906–09	155,985
Talisman Gold-mining Company	1896–1909	407,361
New Zealand Crown Mines Company	1891–1909	333,746
Komata Reefs Company	1897–1908	156,335
Woodstock Gold-mining Company	1896–99	27,583
Waitekauri Gold-mining Company	1896–1904	148,895
Waihi–Silverton Gold-mining Company	1897	7707
Union-Waihi Gold-mining Company	1901	19,418
<b>Total</b>		<b>4,392,750</b>

Table 14: Principal companies' years of operation and ore tonnages crushed up to 1909.

Source: Charles Rhodes, 'Exhibit 77', 6 June 1910, in 'Report of Commission Waihou and Ohinemuri Rivers', 14 May 1910, AJHR, 1910, C-14, p 305.

There is no doubt that the Maori communities along the Ohinemuri River in the Paeroa district were seriously affected. The 1907 petition of Haora Tararanui on behalf of Ngati Tamatera set out their concerns that, having in 1875 concluded an agreement with the Crown to cede land in the Ohinemuri district for mining purposes and reserving lands to live on outside this boundary, they were now badly affected by mining activities:

Your petitioners then occupied and still occupy nine settlements on the banks of the Ohinemuri River, and their cultivations are on the flat lands adjacent to the river-banks.

When your petitioners ceded the land for mining purposes the Ohinemuri River contained pure clear water, and for the first few years it continued unpolluted, and was suitable for domestic and other purposes, and no injury was inflicted on your petitioners.

That in consequence of the Proclamation in 1895 of the Ohinemuri and Waihou Rivers to be places of deposit for tailings, mining *debris*, and waste water from the mines, the river-water became contaminated and so polluted as to be unfit for use by man or beast.

The petition then set out how previous complaints about loss of a good water supply had been met by a payment authorised by Premier R J Seddon to provide an alternative water supply.<sup>59</sup> The petition also stated that local Maori had not been notified about the proclamation and so had not been able to object within the time allowed by section 152 of the Mining Act, and only heard about it after the Ohinemuri became polluted. The petition

59. An account of how the water supply problem was dealt with is provided in document R7, pp 206–216. See also document A9, p 111.

drew 'attention to the fact that at the present time about 40,000 tons of quartz is crushed every month at the various reduction-mills in the district, the tailings, sludge, sand, *debris*, and waste water therefrom being deposited in the Ohinemuri River'. As a consequence, the river:

is diminished in depth and width, and is incapable of carrying the same volume of storm-water as it did in former times, resulting in our cultivation-grounds being easier flooded than formerly was the case, and places not previously submerged within the memory of our old people are now reached by the flood waters.

Local Maori had lost their crops, that 'a very slight covering of water will destroy growing potatoes' and that the deposited sludge and sand was 'of an infertile and injurious nature, and damages grass paddocks'. Furthermore:

the Ohinemuri was a good eel and whitebait fishing-place, and these fish were part of our sustenance and food-supply; but the deposit of cyanide sludge has killed all the fish in the river. This appears to us to be a breach of the Treaty of Waitangi, as our fisheries were by it specially reserved for our use and enjoyment.

Fears were also expressed that, unless deposit of mining waste in the river was stopped, 'the whole of our lands on both banks of the Ohinemuri River' would be 'rendered useless' for cultivation and mean 'ruination and starvation' for the Maori communities. 'We have very little dry land of any kind left to us as nearly all the hill country we owned was included in the area ceded for mining purposes.'<sup>60</sup>

In his evidence before the Goldfields and Mines Committee, Haora Tareranui stated that 'at least 500 acres of our land have been destroyed' including all the potato and other crops, and he thought that their lands outside the ceded mining district should have been protected from mining activities. He also refuted arguments that much of the sand and silt had come from higher up the Waihou River, because the deposits from the Ohinemuri differed from riverbed material above the junction with the Waihou: 'I say definitely that the water that is causing the trouble at Ohinemuri is from the mines. And here the sand has come down further and smothered up all the land about my kainga and all around there, and it is from the mines and nowhere else.'

Taranui then explained that before the river was polluted, there was plenty of food from the river, eels and whitebait in particular, and the water was clear and fit for drinking. Steamers could no longer come up the river to Paeroa as the Ohinemuri was so choked with silt. He suggested that the Government should purchase their damaged land and exchange it for better land elsewhere in Hauraki. 'We did not hand over the [Ohinemuri] goldfield

---

60. Haora Tareranui, 'Exhibit 22: Petition from the Natives of the Ohinemuri District', AJHR, 1910, C-14, pp 275-276; Tareranui petition, T50.2, Archives NZ (doc A9, p 112)

for the purpose of injuring Europeans; we handed it over so that it might be of advantage to Europeans and to ourselves as well.' He regarded the effects of the silting and flooding as a failure of the Crown to protect them from injury and therefore a serious breach of their agreement with the Crown to cede the Ohinemuri land for mining purposes.<sup>61</sup>

In March 1910, there was another major flood on the Ohinemuri and Waihou Rivers and more complaints from local farmers and Maori about the effects of dumping mining wastes in their sludge channels. The Government set up a commission to inquire into all aspects of the discharge of mine wastes into the Ohinemuri and Waihou Rivers, including damage to land, impeding navigation, any remedial measures that 'can be adopted without injury to any other persons, corporations, or interests,' and how the cost of such measures might be apportioned. The silting commission, as it came to be known, was appointed on 14 May, heard 92 witnesses, visited all the areas affected, reviewed the evidence produced for the goldfields and mines committee in 1907 and other departmental reports, and produced its own report in July 1910.<sup>62</sup> Figure 106 is derived from the map of areas affected by the 1910 flood which illustrated this report.

In his evidence before the silting commission, Haora Tareranui reiterated the Maori concerns expressed in the 1907 Ngati Tamatera petition. He added that the Maori families living on the Ohinemuri River bank no longer cultivated such a large area of crops because of the flood risk and the damage done to the soil from silting. He also stated that since just before 1907 'floods have been more frequent, and higher, and larger.'<sup>63</sup> Paora Tiunga also gave evidence supporting Tareranui, and explained how overflow from both Waihou and Ohinemuri Rivers had flooded his land and home at Awaiti, on a ridge between the Awaiti Stream and the Waihou that usually remained dry. James Mackay spoke in support of the Maori complaints, noting also that he had been present with Sir Donald McLean when the Ohinemuri cession agreement with the Crown was signed in 1875: 'they were assured by Sir Donald McLean and myself that the only lands that would be used by the miners or taken by the Government would be those included in the agreement.'<sup>64</sup> The lands occupied by Maori on the Ohinemuri near Paeroa were all outside the ceded area.

Tukukino gave evidence to the silting commission based on his own recent experience of working for three years at Komata Reefs battery:

Twenty-one trucks, each containing 4 tons, were put through daily. I know the difference between coarse and fine tailings. Those that go through the filter are heavy and settle quickly; they are fine as flour. If there is a quantity of water, they will go down the river; if only a small quantity of water, they will settle. They will settle in the form of cement. It was

61. Haora Tareranui, 'Minutes of Evidence', AJHR, 1907, I-4A, pp 16-17

62. 'Report of Commission Waihou and Ohinemuri Rivers', 14 May 1910, AJHR, 1910, C-14

63. 'Exhibit 33: Evidence of Haora Tareranui', AJHR, 1907, I-4, p 4; 'Report of Commission Waihou and Ohinemuri Rivers', 14 May 1910, AJHR, 1910, I-4A, C-14, p 69

64. 'Exhibit 34: Evidence of Paora Tiunga', 'Exhibit 35: Evidence of James Mackay', AJHR 1907, I-4A, p 70

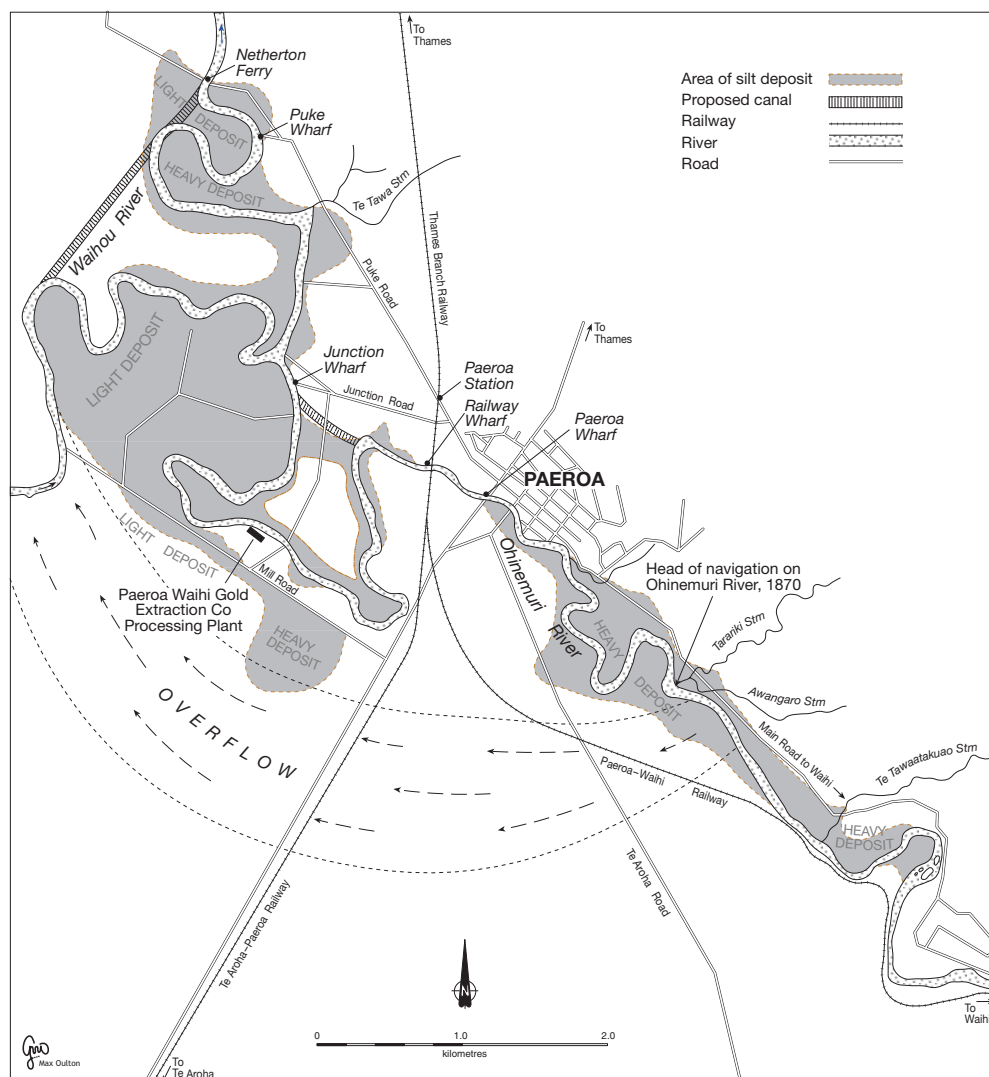


Figure 106: Silting by the Ohinemuri and Waihou Rivers in 1910 flood

my duty to clean out the shoot in the battery. When the stuff broke away from the vats I would have to go and clean it with a 2 in[ch] hose. Used to put nozzle on hose and flush it away. Had considerable work to clear this stuff away.<sup>65</sup>

In its report, the silting commission first addressed the question of the extent to which the natural characteristics of the Waihou–Ohinemuri catchment area had been modified, beginning with the ‘Upper Waihou’, upstream of the junction with the Ohinemuri:

Floods in this river, before the bush was cleared off and drains were made through the flats and swampy lands of its basin, used to take three or more days to reach the Junction.

65. Tukukino, ‘Report of Commission Waihou and Ohinemuri Rivers’, 14 May 1910, AJHR, 1910, C-14, p 348

Since settlement has taken place on these upper areas the bush has been cut down and the swamps and the low-lying grounds drained to a considerable extent by very many miles (possibly amounting in all to hundreds of miles) of drains. The rain-waters, instead of taking weeks to gradually soak out of the bush, swamps and lagoons, now come down more quickly and in much greater volume, and therefore more rapidly fill the river-bed than formerly. The sectional area and inclination of the river, which may or may not have been sufficient in a state of nature to unwater the district without serious flooding, is now quite insufficient to provide for the more rapid discharge caused by these operations of man in deforesting and draining the country.<sup>66</sup>

The increased runoff following settlement was exacerbated by cutting drains which 'rapidly carry into the river large quantities of light volcanic and pumiceous sands and silt, which have tended to block their watercourse, and raise its ordinary level in relation to the surrounding lands'. Another factor was that the willows planted by settlers to protect river banks had 'not been kept within any reasonable bounds', and the river was 'choked' by them, retarding normal flow, contracting the channel and raising water level, so that in a flood the river overflowed its banks, backed up drains and flowed onto farm land. A 'serious' overflow occurred at Tirohia where the Waihou flowed over its bank into the Awaiti lagoon and stream, a tributary of the Piako. If the Piako was also in flood, the water backed up at Netherton, and in a large flood flowed back into the Waihou. Not only was there a risk of a permanent change of course of the Waihou, an event that had occurred in past centuries, but with increased runoff following deforestation and settlement, floods were more frequent, with serious consequences for farmers.

This pattern of flooding on the Waihou became more serious if the Ohinemuri was also in flood. The Ohinemuri River catchment area is small, about 36,422 hectares, in the Waihi Basin and with tributaries flowing into Karangahake Gorge. It then flows in a very sinuous course over flat lands to join the Waihou. In the March flood, an easterly storm had deposited heavy rainfall, 14 inches over 16 hours measured at Waihi:

The Ohinemuri, at the eastern mouth of the Karangahake Railway Tunnel, then rose to some 14 feet higher than was shown by any previous record, and swept down from its upper reaches large volumes of mining tailings which had been the accumulation of many years, flooding the Township of Paeroa, and covering lands to a height and extent that had previously been unknown, leaving on fertile lands a considerable volume of tailings and slimes.<sup>67</sup>

---

66. Fergusson, Mitchelson, Flatman, and Vickerman, 'Report of Commission Waihou and Ohinemuri Rivers,' 8 July 1910, AJHR, 1910, C-14, p vii

67. Ibid, p viii

There were also willows clogging the banks of the Ohinemuri downstream of Mackaytown but the river was 'laden as a sludge channel by exceedingly large volumes of mining tailings' deposited on 'successive floods and freshes' on the banks of the Ohinemuri and 'for very many miles' on the Waihou below the confluence of the rivers.

The commission concluded that floods had always occurred in the Waihou–Ohinemuri catchment area but, 'being only laden with good alluvial deposit they did no permanent harm'. This natural regime had been aggravated by uncontrolled growth of willows choking the streams, increased runoff from clearance of vegetation for farming, and the river beds could no longer cope:

with the result that the freshes and floods are becoming more numerous and of a higher and more disastrous character; and, being now laden with injurious mining slimes and sands, there has been caused a material loss to the owners of flooded lands. It is also probable that, as the settlement of the river-flats has increased materially since the rivers have been used for sludge channel purposes, and as the values of the lands have increased so largely through the growth of the dairying industry, the effect of the floods is more noticed than it used to be when the population was sparser.<sup>68</sup>

A further complication was the effect of tides, which extended up the Waihou and into the Ohinemuri about 3.2 kilometres above the confluence with the Waihou, and which had the effect of pushing sands and silts into banks or shoals, seriously impeding navigation.

The commission was 'satisfied that material damage' had been done to lands in Paeroa, and to existing and potential farm lands on the Ohinemuri, Komata and Waihou Rivers; 'and that this damage is directly due to the deposit in the Ohinemuri River of mining silts and slimes under the sanction of the [1895] Proclamation.'<sup>69</sup> Since 1895 the volume of sands, tailings and slimes discharged had increased to about 550,000 tons annually by 1910. Initially, the mining waste was coarse sands, but with improved crushing and grinding machinery, more of the material dumped was finely ground slimes. Much of this material could be carried in suspension in river waters over long distances, and eventually out to sea in Tikapa Moana. However, in a flood, this material washes over pasture and 'clings like a white wash' on grasses and leaves, destroying vegetation or making it unfit for cattle to eat. Nor was there any fertiliser value in sands and slimes derived from crushed quartz. It was alleged that cattle had died 'through eating slime-covered grass'. There were also accusations that the sands and silts were impregnated with cyanide but the mining interests claimed almost all cyanide was recovered from the ore treatment process and used again. The silting commission concluded:

---

68. Ibid, p ix

69. Ibid, p x



Though the settlers have been deprived of the use of the Ohinemuri and Lower Waihou for watering their stock, owing to their silt-laden condition, and although there appeared at times to be a faint chemical smell in the river-water, the Commissioners do not think that the farmers have suffered to any serious extent by the presence of cyanides or other poisonous material in the rivers, except so far that no fish are now found in the Ohinemuri or in the upper reaches of the Lower Waihou.<sup>70</sup>

The commission also recommended a scheme of compensation for the 371 acres (150 ha) 'totally destroyed' and the 7507 acres (3038 ha) 'affected deleteriously':

The large quantities of mine waste in the Ohinemuri plus alluvial material from the upper Waihou 'seriously affected' navigation. Before 1895 river craft drawing up to 2.2 metres loaded could berth at Paeroa, at Wharf Street, and on high tide a little further upstream:

Subsequently, owing partly to the silting of the river and partly to the commercial necessity of getting up and down on the one tide, the steamers deserted the town wharves, and lay at a wharf in the Ohinemuri immediately above the Junction. About seven years ago the Junction Wharf was deserted, and the steamers of the Northern Steamship Company . . . now berth as a terminus at Te Puke Wharf, at a point some two miles (3.2 km) by road and about seven miles (11.2 km) by river, below the Township of Paeroa.<sup>71</sup>

Not only was there less depth in the river, but channels were narrower, with more shoals, and the effect of the finely ground slimes was a hardening of the sediments in the river bed in place of loose, mobile sands. The slimes filled the interstices in the sands, and even as far downstream as the Waihou River mouth, the soft muds had compacted and increased shoaling could be expected over time.

Among the remedial measures recommended were the restriction of the use of rivers as sludge channels, that only slimes be discharged and that mullock and other waste be stacked away from water courses, the removal of willows from river banks, the dredging and construction of stop-banks and flood gates, and, in places, the diversion of the river by cutting canals. Various ways of disposing of mining waste were also reviewed, although mining interests were stoutly opposed because the additional costs would threaten the viability of the mining industry. The commission was particularly critical of the use of the Komata Stream as a sludge channel when specifically exempted in the 1895 proclamation. The Komata had been described as tributary to Ohinemuri, when it actually flows directly into the Waihou: 'advantage has been taken of this erroneous description to avoid the exemption provided in the Proclamation'. The Tarariki Stream had also been exempted, but it remained protected because it provided the water supply for Paeroa.

---

70. Fergusson, Mitchelson, Flatman, and Vickerman, p xii

71. Ibid, p xv





Figure 107: Scene alongside the Ohinemuri River, near Paeroa, with a goldmining dredge, circa 1916.  
Photograph by Albert Godber. Reproduced courtesy of the Alexander Turnbull Library, Wellington,  
A P Godber collection (G-705-½).

The commission also commented critically on the issue of a mining licence on 18 March 1910 to the Waihi–Paeroa Gold Extraction Company for a dredging operation on the Ohinemuri River. The company wanted compensation if any river control works impinged on its licence area, in particular a proposed canal, the Pereriki Cut (which was not implemented). Adjacent landowners who held riparian rights to the middle line of the river had also disputed this licence:

The Commissioners deem it strange that the law should, on the one hand, permit the agricultural value of river-bank lands to be depreciated by the deposit therein and adjacent thereto of mining tailings, and should, on the other hand, take from the owner of such lands any chance of recouping himself, out of such accretions of area and of material, by the issue to other persons of a right to exploit the wealth contained in such deposits.<sup>72</sup>

The Maori community on the Ohinemuri River had also objected to the failure to acknowledge their riparian rights.

---

72. Ibid, pp xxi–xxii

Between 1903 and 1918, about 14 kilometres of the Ohinemuri River bed near Paeroa were dredged and over 900,000 tonnes of mine tailings reprocessed, producing gold worth about £900,000. The waste was returned to the river in the form of finely ground slimes. Initially, the Ohinemuri River Claims Syndicate, backed by the Woodstock Mining Company, which had a battery at Karangahake, began processing dredged tailings on a small scale. There were objections from Maori and Pakeha landowners to the granting of new mining rights in 1910, but the warden of the goldfields could not refuse to allow disposal in the river because it had been declared a sludge channel.<sup>73</sup> In 1908, the operation had been taken over by the Waihi–Paeroa Gold Extraction Company, and a new processing plant was established in 1911 on the river bank near Paeroa. Sand was lifted by dredge onto barges and taken for processing here, but as dredging progressed upstream, dredged sands were carried up to 1½ kilometres in a flume. In spite of problems created by periodic floods and snags of old trees in the river, this was a profitable operation, but after another major flood in 1917, work ceased in 1918. In this year, the last of the Karangahake mining companies, the Talisman, also ceased operation. However, mining at Waihi continued, and the Waihi Gold Mining Company operation at Martha mine and Victoria battery at Waikino continued until 1952.<sup>74</sup>

The silting commission also recommended the setting up of a rivers board for the whole catchment area, except the Waihou River mouth controlled by the Thames Harbour Board. Finance to carry out flood-control works would be derived from gold duty paid annually by mining companies (three-sixths) and ‘one-sixth should be contributed by those mines and extraction companies which discharge their tailings into the rivers or water courses’, one-sixth to be from rates paid by all landowners, including Maori but not the Crown, and one-sixth by the Government. The commission also recommended that all flood-control works ‘be carried out as speedily as possible by the Public Works Department’. On completion, such works would be handed over for administration and maintenance by the river board.<sup>75</sup>

In December 1910, the Waihou and Ohinemuri Rivers Improvement Act was passed into law, implementing some of the recommendations of the silting commission. The long title was ‘An Act to remedy and prevent the Silting and Overflow of Parts of the Waihou and Ohinemuri River and to improve the same for Purposes of Navigation.’ The Act provided for a Waihou and Ohinemuri river board with jurisdiction over the whole catchment area of these rivers. However, this board was never set up. The Ministry of Works was authorised to construct protective and other works in and around the rivers, and remained in control until 1961.<sup>76</sup> The Minister of Public Works was empowered to take any land required for flood control or watershed protection under the Public Works Act 1908, and pay compensation,

---

73. ‘Exhibit 95: Waihi–Paeroa Gold Extraction Company’s Application for Nine Rivers Claims – Warden’s Written Judgement and Notes of Evidence’, AJHR, 1910, C-14, pp 339–341

74. Hubbard, pp 109–110

75. Fergusson, Mitchelson, Flatman, and Vickerman, pp xxiv–xxv

76. A R Acheson, *River Control and Drainage in New Zealand and Some Comparisons with Overseas Practice* (Wellington: Ministry of Works, 1968), p 17

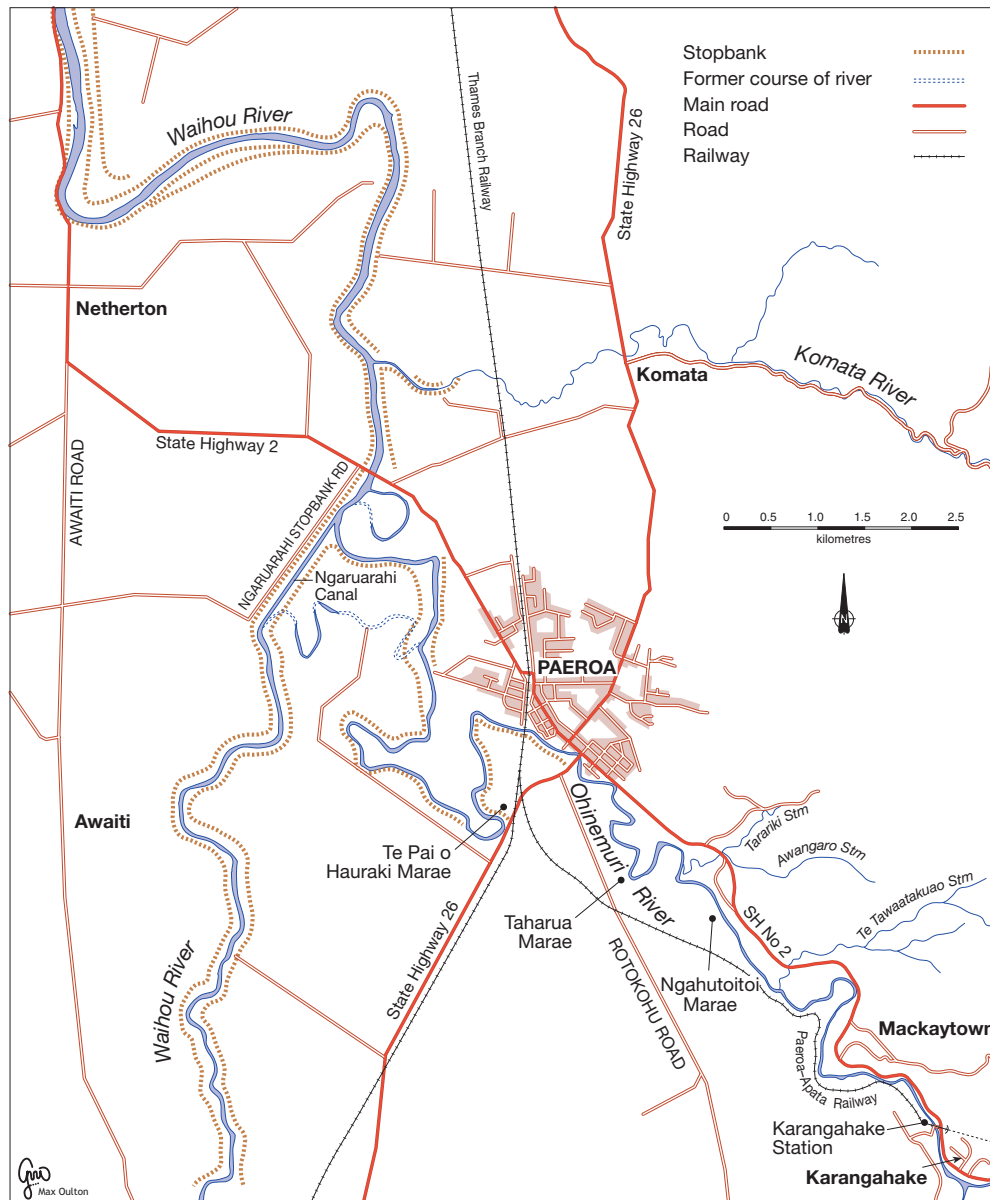


Figure 108: The junction of the Waihou and Ohinemuri Rivers, 1990

less an amount assessed because of benefit that might accrue from such works. (This was further use of the ‘betterment principle’, discussed in section 23.3.3.) The Act also provided for the appointment of a magistrate to assess compensation for loss or damage by floods. The sum of £150,000 was allocated from Government funds and provision made for annual payments of £5000 from the gold duty that would otherwise be paid to local authorities. No provision was made in the Act for any restriction on use of the rivers as sludge channels.

Between 1912 and 1932, the Public Works Department carried out major works on the Waihou River downstream from the junction with the Ohinemuri and in the vicinity of

Paeroa. There were two more commissions of inquiry in 1919 and 1921 but these were mainly concerned with how the flood-control works were to be financed.<sup>77</sup> Stop-banks were constructed from Paeroa downstream along the length of the river; canals were cut below the Ohinemuri confluence to shorten the flow path of the Waihou, and dredging around Te Puke wharf was carried out. In 1946, the Hauraki Catchment Board was formed under the Soil Conservation and Rivers Control Act 1941, but it was not until 1961 that it took over control of the Waihou catchment area from the Public Works Department. There had been several floods which showed up weaknesses in existing works and in 1965 the Hauraki Catchment Board produced a comprehensive 'Waihou Valley catchment flood protection and erosion control scheme'. In 1971, this scheme was approved by the Government and funded as a work of national and local importance. In 1976, arguments over funding of continuing maintenance work were finally settled when a rating scheme was implemented. In 1988, the Hauraki Catchment Board functions were transferred to the Waikato Regional Council and in 1995 the Waihou Valley scheme flood protection works were finally completed. Figure 108 is derived from a modern topographic map and shows the extent of stop-bank works in the Paeroa district. It is another source of local grievances that more Maori land was acquired in the process.<sup>78</sup>

#### 24.3.2 Impacts on Ohinemuri Maori communities

The Tribunal heard statements from a number of people affiliated to Ngati Tamatera, Ngati Koi, Ngati Tara, and Ngati Tawhaki, whose marae are located along the Ohinemuri River near Paeroa. These people and their marae have been seriously affected by the numerous floods through the twentieth century.

The name 'Ohinemuri' is a shortened version of Te Waitangi o Hinemuri, the weeping waters of Hinemuri, and there are several versions of how this name came about, all of which stress Hinemuri's long sorrow, and her identification – and therefore that of her descendants – with the river. Tai Turoa recorded two, one describing Hinemuri as the youngest daughter of the chief, Te One ki te Akau. She was not allowed to wed until after her elder sisters and shed copious tears which formed the Ohinemuri River. Another version of this story is that Hinemuri was away when her village at Te Kahakaha (Mackaytown) was attacked. She found strangers occupying her kainga and fled to the river, seeking shelter with the taniwha, Ureia. The taniwha cared for her and fell in love with her. However, when her people recaptured their pa they also reclaimed Hinemuri. The taniwha was broken hearted

77. F W Funkert, 'Report of the Rivers Commission on Waihou River', 5 December 1919, AJHR, 1920, D-6A; H J H Blow, 'Report of Waihou and Ohinemuri Rivers Commission 1921', 26 September 1921, AJHR, 1921, D-6F

78. Graham Watton, *Taming the Waihou: The Story of the Waihou Valley Catchment Flood Protection and Erosion Control Scheme* (Hamilton: Waikato Regional Council, 1995)

and left the river, journeying downstream to the Waihou and out to sea, never returning. She wept for him.<sup>79</sup>

Pitau Williams told the Tribunal that Hinemuri was ‘a beautiful young chieftainess of Ngati Hako’ who lost her dog. She searched along the banks of the river but could not find him. Suspecting he had been taken by a taniwha, she overcame her fear and approached the taniwha’s lair and called for his return. The taniwha had been annoyed by the dog, and called it ‘Hoha kuri’ (nuisance dog), but showed remorse for taking it when he found out it belonged to the beautiful Hinemuri. She was persuaded to enter the taniwha’s lair and he told her of his loneliness and cast a spell to keep her there. Her dog had been transformed into part of the river and she was held captive, never to return to her people. She began to cry, and her tears mingled with the river. She remained imprisoned and sometimes she can still be heard weeping. From that time the river has been named Te Waitangi o Hinemuri, the weeping waters of Hinemuri. ‘The waters are truly the tears of our ancestress.’ Pitau Williams concluded that this incident was more than just a story. ‘It teaches us that we are a part of the river. That we descend from it’ and that he and his people are its kaitiaki.<sup>80</sup>

Pitau Williams also told the Tribunal about the attitudes toward the Ohinemuri River of people who lived on its banks:

The Ohinemuri river defines us the river tribes. It was our greatest economic asset, our transport system and our most revered spiritual asset. We have lived beside our tupuna for hundreds of years. The only way I can get across how we feel about Ohinemuri is that it is like a leg or arm from our bodies. When that river became polluted it was like polluting our bodies. When it became silted up, it was like clogging up our own arteries.<sup>81</sup>

He also spoke of the dominance of the river in tikanga and korero, not only the physical dominance in their land and lives but also the spiritual dimension:

Fresh water or wai Maori is a core element of Maori spirituality. Water heals. It heals the physical body and it heals the spirit and mind. Whenever our people suffer from ‘mate’ [illness] they are taken to wai – to water. Some healing places are in the Ohinemuri. Others are springs elsewhere – particularly mineral springs. When our people are troubled, or need solace or awhi [comforting embrace] for any reason – we go to the wai. We go to Ohinemuri.

He then explained that there was both a physical flow and a spiritual flow in the Ohinemuri. ‘I don’t think it’s an accident that the spiritual side of things is called Wai-rua. Two waters. The second water is this spiritual flow that I mentioned.’ In spite of the river

---

79. Turoa, pp 181–182

80. Document G18, pp 3–6

81. Ibid, p 6

having been ‘knocked about by mining and pollution’, and it is still ‘taking a pounding’, this spiritual flow continues, ‘and our people are drawn to it like metal to a magnet’.<sup>82</sup>

Eruini Te Moananui spoke about his personal relationship with the Ohinemuri River which evolved when as a child he lived at Taharua:

From my earliest childhood memories I have always experienced a strong link with Ohinemuri. Perhaps a good example of this link can be related to the ease with which I accept the concept of Taniwha and the stories related thereto. My position acknowledges that the stories told and retold are about incidents involving our people, they are about the need to rationalize the unique and ordinarily unfathomable, they are about enforcement, they are about respect and they are about security.

The deities alluded to offer another component in that matrix that comprise the psyche of Maori. To me in contemplation of all this I see similarities between this practice of Maori and the use of parables two thousand years ago.<sup>83</sup>

Te Moananui also commented: ‘While there is a fear in our relationship with the river there has always been a sense of spiritual harmony in our intimate association with it.’ He noted that their ancestral urupa are close by the river and he grew up accepting ‘the fact that they, our ancestors from the past co exist with us of the present’.<sup>84</sup>

The return of the Ohinemuri River to its former state is a top priority for local people. Te Moananui recalled the several years before 1952 of watching the river, when, after the Christmas break, the crushers at Waikino started up again on the ore from the Martha mine. He observed ‘the clear demarcation line between the downward surge of silted water and the outward rush of clear water with fish of all kinds thrashing around in a frenzy’. While there was a brief period of catching them there was also sadness: ‘It is impossible to imagine the sudden shock of seeing huge eels belly up’, as well as ‘strange-shaped eels’ in this ‘annual catastrophe’ in their river.<sup>85</sup>

Tairi Tahuri Hoani Wereta Taiawa told the Tribunal that when he was a child living at Waikino, the Waitawheta, a tributary stream to the Ohinemuri, was ‘full of tuna’; there were koura too. They had their own fishing place on the river upstream of the batteries. They used to go to Waihi Beach for kaimoana. There was also a lot of bush and scrub still, and there was plenty of kai in earlier years: ‘Now we hardly go back there as most of the bush has been cleared for farming. The bush that is left, in the reserve, is fenced off. We don’t go there now because there is no kai, no watercress and no tuna’.<sup>86</sup>

Rose Okeroa Warutau Mohi described how the river near her marae, Ngahutoitoi, was

---

82. Document G18, pp 6–7

83. Document G19, pp 2–3

84. Ibid, pp 5–6

85. Ibid, p 11

86. Document R10, pp 3–4



‘always very dirty’. She lived at Waikino and family members worked there in the battery before 1952:

The river was a dirty colour, thick like milk, and if you put your hand in the water you couldn’t see your fingers or hand under the water. People still used to swim at Ngahutoitoi but there was no kai in the river. You couldn’t see any eels or whitebait. We had to go to the small drains or streams feeding the Ohinemuri. It was not until about 10 years after the closing of the mine that fish and eels started to return but the whitebait did not return until a long time after that. Today you only get a cupful after hours of waiting . . .

Rose Mohi also referred to the taniwha named Rapatitio, who was ‘the kaitiaki of the river. People say that something happened and he went away. People also say that Papakauri, the taniwha in the Waihou, has also gone.’<sup>87</sup> The implication was that the damage to the river system by silting had also driven away their guardian taniwha.

Riki Rakena told the Tribunal about the concept of kaitiakitanga, stewardship, and respect for the Ohinemuri River and its resources:

My own marae, Te Pai o Hauraki, rests on the banks of a river [Ohinemuri] from which we still gather many foods but especially eels and fish. There is a special place from which we collect many eels. We never take from the awa [river] without karakia [prayer] and we ensure everything is tika or spiritually correct. As kaitiaki we have serious responsibilities to our awa.<sup>88</sup>

The intense feelings of local Maori toward the Ohinemuri and its spiritual qualities go much deeper than simply a matter of dealing with the physical damage caused by silting, flooding, and damage to property, including local marae.

In evidence, the Reverend Colin Sutherland suggested that the periodic floods on the Ohinemuri ‘must have had a devastating effect on the Maori settlements situated on the higher ground of the natural silt levees beside the river banks’. In its natural state, the river rarely overflowed and the levees on the left bank were drier and more fertile as places to live and cultivate crops than the swamps further away from the river. Sutherland noted that stop-bank construction had disrupted the local communities (fig 109). Both the meeting houses, Te Pai o Hauraki (on Te Aroha Road) and Taharua (on Rotokohu Road), had to be shifted:

Subsequent silting under the floorboards of the Meeting Houses, before the stopbanks were adequately completed, brought premature rotting of the subfloor framing which eventually required early replacement of the floors. In excess of 20 cubic metres deposited below

---

87. Document R13, pp 3–4

88. Document G17, p 2

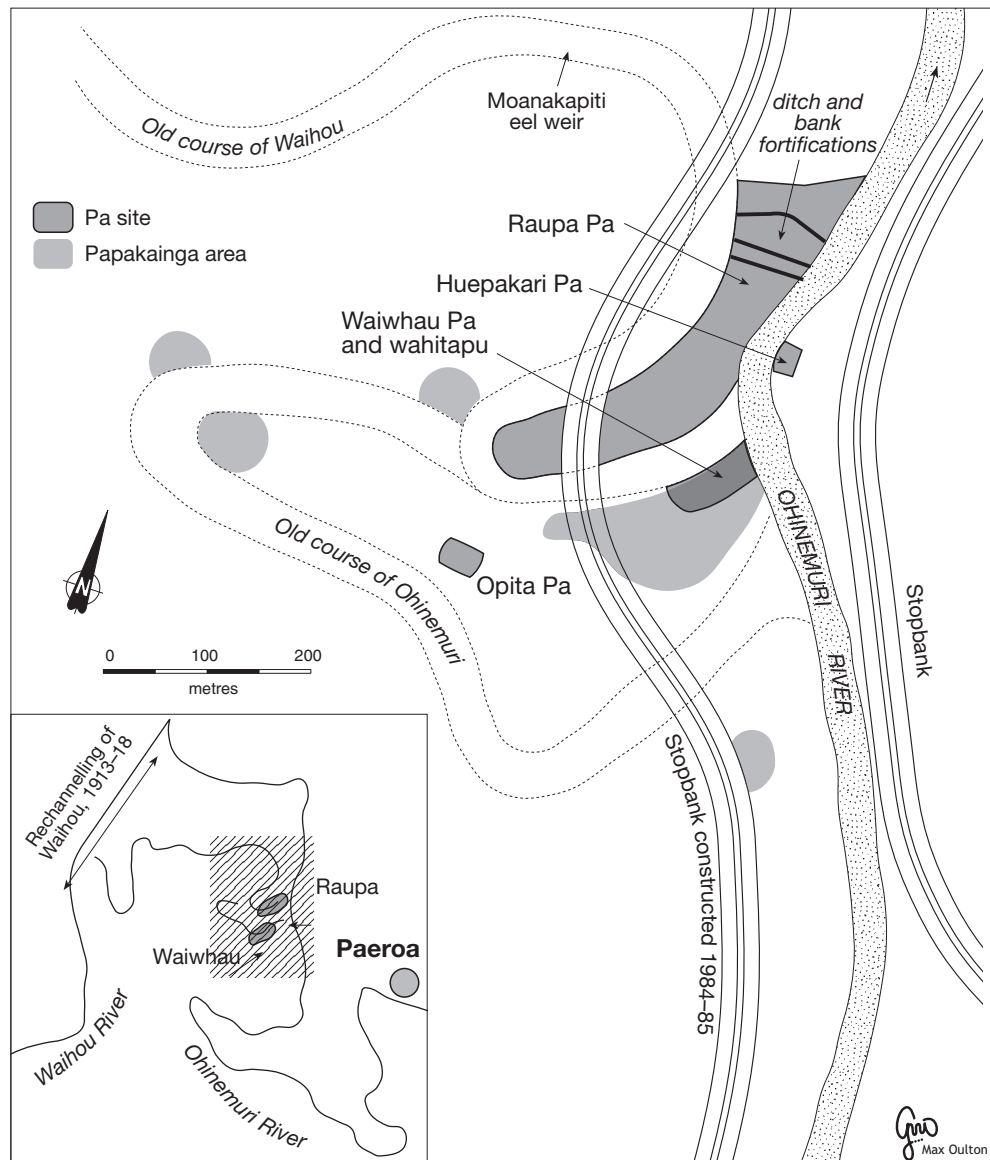


Figure 109: Ohinemuri Junction: river works and archaeological sites. Source: C Phillips, 2000.

the floor of Te Pai o Hauraki. I was personally involved with clearing this silt before repair. Damage to the stopbank by the 1981 flood required further removal of 'Taharua' to allow new stopbanks and a widening of the Flood Channel. Urupa on the river banks in the vicinity of Mill Road are no longer useable causing whanau who formerly used those sites to accommodate themselves, at greater expense, in the public cemetery, or rely on the generosity of other whanau.<sup>89</sup>

89. Document G20, pp 7-8



The National Institute for Water and Atmospheric Research in Hamilton prepared a report on the ecology of the Ohinemuri River which supported the claimants' concerns. The report noted the large quantities of sediment dumped in the river, although both the flow and the amounts varied. 'Suspended sediments have major impacts on New Zealand's freshwater fauna.' The effects include loss of food sources, and less dissolved oxygen available and suffocation by fine sediments in the gills of fish. The high rates of input of sediment would have eliminated 'all resident stream invertebrate life' downstream of tailings discharge areas by 1900, with a consequent loss of food sources for any fish that might have otherwise survived. The sediments in the Ohinemuri also formed a barrier preventing migratory fish reaching clear water in tributary streams to spawn.<sup>90</sup>

The impacts of sediments deposited on land by floods included destruction of pasture and subsequent devaluation of farm lands. The sediment that was deposited on flax during floods was damaging to machinery in flax mills. There were also impacts from heavy metals increasing the acidity of water and toxic effects when concentrations were high. Sources of such contamination include leaching from tailings material and mullock, and also ground water flowing out of old mines. Some recent measurements at specific sites have indicated concentrations of arsenic and lead higher than accepted guidelines. Common heavy metals identified in the Ohinemuri include iron, zinc, copper, and manganese, but it is not known to what extent these affect individual fish species.<sup>91</sup> Nor is the impact of cyanide quantifiable, and opinions varied:

Intentional releases of cyanide would have been unlikely and because the gold was dissolved in the cyanide during the gold recovery process and the mining companies would have released as little as possible with the tailings into the Ohinemuri River. However, 100% cyanide recovery was unlikely and some contamination at least around the batteries was likely.<sup>92</sup>

It is difficult to separate out specific mining impacts with any precision because there are other factors that have been operating too, such as removal of native forest and scrub, introduction of exotic fish species, planting of willows and their removal, expansion of farming activities, including use of fertiliser, and occasional dairy company spillages which have all impacted on the Waihou and Ohinemuri Rivers.<sup>93</sup>

---

90. Document R9, pp 4–5

91. Ibid, p 8

92. Ibid, p 9

93. See document R8 for details of impacts.

**24.4 THE HAURAKI PLAINS DRAINAGE SCHEME**

The Hauraki Plains are a structural lowland, the depressed floor of a rift valley, bounded east and west by faults and steeply rising ranges. We have already noted the naturally low-lying, swampy condition of much of this area. At Matamata, some 80 kilometres from the Waihou River mouth, the land is only about 60 metres above sea level. Awaitei, west of Paeroa, is only five metres above sea level. The rift valley extends north into Tikapa Moana and has been partially filled with alluvial sediments deposited by the Waitakaruru, Piako, and Waihou Rivers. Until about 20,000 years ago, the Waikato River flowed through the Hinuera Valley and Matamata district into Tikapa Moana, depositing large quantities of alluvial pumice material from the Taupo district. The Waikato River overflowed, probably blocked by a raft of pumice at Piarere, and shifted into its present route through the Karapiro Valley into the Hamilton basin. The present river systems of the Hauraki Plains have evolved since, producing a lowlying landscape of old levees and sand banks, and deep peat swamps, marking the former courses of these rivers. The raised areas provided higher ground above flood level where Maori made their kainga and temporary camps.

We have already noted the significance of the resources of the wetlands for Maori. Pakeha settlers initially avoided them, and most early attempts at drainage failed. In the 1830s, traders encouraged local Maori to cut and scrape flax but this activity languished in the 1840s. In the 1890s, several flax mills were established on the lower Waihou and Piako Rivers and at Kaihere and Awaitei. Some of the Crown land was alienated as flax leases in 1908 (fig 111). There were some private flax-cutting agreements on Maori blocks. However, wasteful cutting of flax areas exhausted local supplies, plans for managed flax farms were never fully implemented, and by the 1920s the industry had faded against competition from other fiber sources world wide, although the Kaihere mill operated intermittently until the 1940s. Farming in the late nineteenth century was concentrated in the narrow strip of lowland east of the Waihou and in the higher lands of the Morrinsville–Matamata district, along the railway line between Hamilton and Te Aroha which was completed in 1886. North of this line and west of the Waihou, the Hauraki Plains lay untouched by Pakeha settlement in 1900, apart from the timbermen extracting kahikatea from the swamp forest around Turua, on the west bank of the Waihou.

Government interest in draining the swamps was sparked by the reports of HH Hazard, who was a survey inspector for mines based at Thames. From 1899 on, a series of trial survey levels were begun to check out feasibility, and from 1902 small sums were allocated to complete survey work for development of a drainage scheme. In the early 1900s, the Crown stepped up its land purchase programme in the Hauraki Plains, with a number of large purchases made under the Maori Land Settlement Act 1905. In 1907, WC Breakall, a drainage engineer, was appointed to report on the Piako lands and prepare a scheme for drainage and reclamation of the swamp. In 1908, the Hauraki Plains Act was passed which authorised the Department of Lands and Survey to drain and develop the land, and construct



Figure 110: Men labouring on the Maukoro Canal, Hauraki Plains, circa 1904–10.

Photographer unknown. Reproduced courtesy of the Alexander Turnbull Library, Wellington (F-103449-½).

roads and stop-banks, with the intention of subdividing it for sale by ballot to prospective Pakeha farmers. (For more detail, see sections 18.2.3 and 23.3.2.)

The Hauraki Plains drainage scheme, as it came to be known, involved only the Piako catchment area and west to the Waitakaruru Stream. One of the problems was that the Waihou River in flood overflowed into the Awaite Stream, a tributary of the Piako. It was determined that flood-control works on the Waihou should be designed to prevent this happening, especially after the big silt-laden floods of 1907 and 1910. As discussed in section 24.3.1, under the Waihou and Ohinemuri Rivers Improvement Act 1910, flood-control work on these rivers was carried out by the Public Works Department. The two catchment areas were managed quite separately until the Hauraki Catchment Board took over the Hauraki Plains drainage scheme in 1950 and the Waihou–Ohinemuri scheme in 1960:

The Hauraki Plains Drainage Scheme involved improvements to 30 miles of the Piako River, construction of the Maukoro and Pouarua Canals to collect water from the hills west of the plains; an internal drainage system including the installation of flood gates; stop-banks along the foreshore and the lower reaches of the rivers to prevent tidal and flood overflow; and the construction of roads, bridges and wharves.<sup>94</sup>

94. Acheson, p190

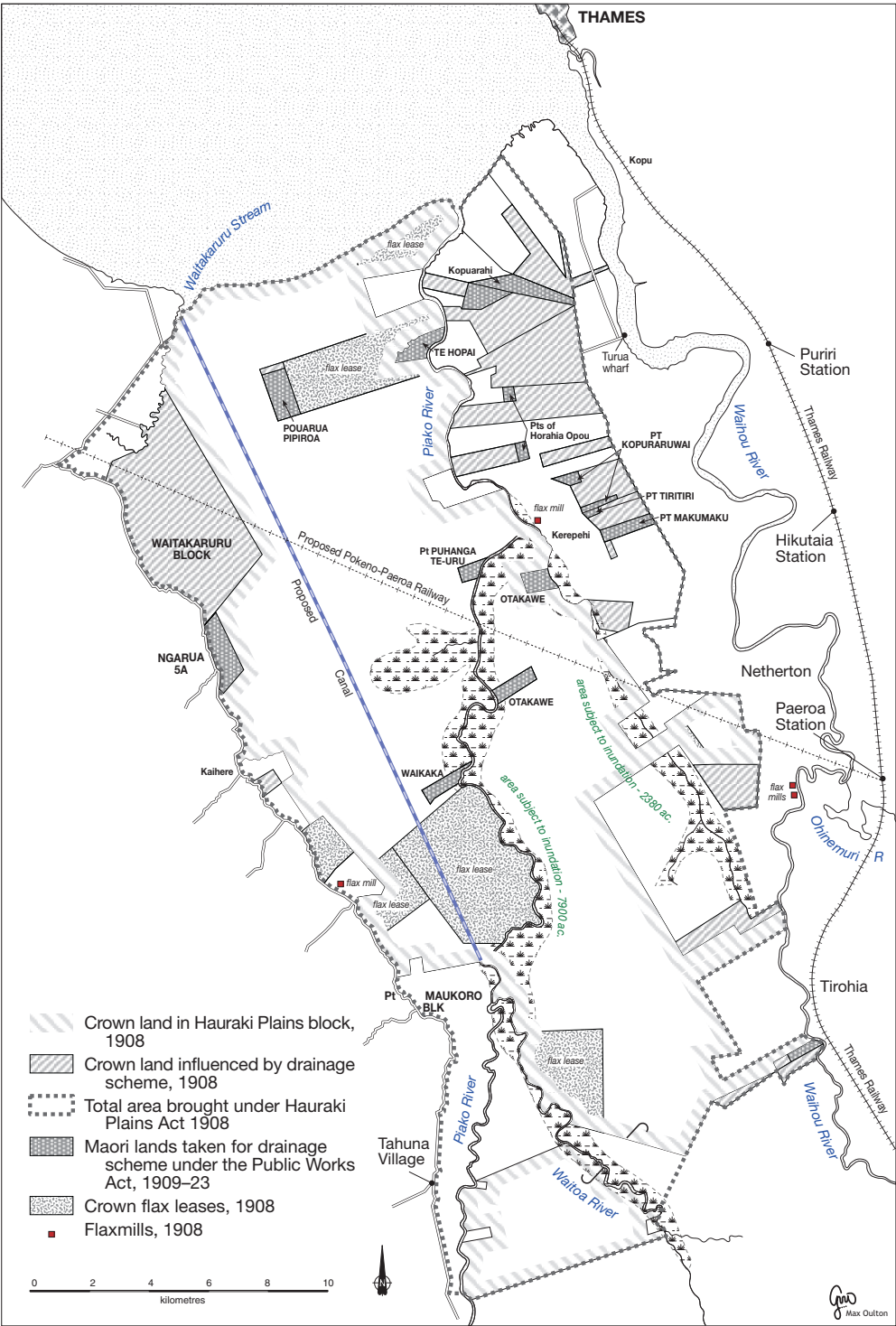


Figure 111: Hauraki Plains drainage scheme. Source: AJHR, 1908, C-8; AJHR, 1909, C-1, C-1C.

The Hauraki Plains drainage scheme was a major effort by the Crown to develop some 90,000 acres of swamp and transform it into productive dairy farms. However, in the early reports on the scheme there was no suggestion that any of this development should benefit Hauraki Maori. Most comments were concerned with acquisition of remaining remnants of Maori land to allow a rational layout of drains and farms.

Some of the takings of Maori land proved controversial. For example, Maori protested against the takings of Ongarehu, a papakainga at Kerepehi. They stated that there was no swamp on this land and it did not need drainage. The land was required for a stores depot, workshops and slip for punts and launches, as Kerepehi had become the headquarters for drainage operations. The owners protested again, after one of their number had been prosecuted for obstruction, and petitioned the Native Minister, objecting to their papakainga being taken and stating that they had no other land to live on. An inquiry by Judge MacCormick of the Native Land Court clarified that the land was indeed a papakainga and that the owners had only small interests elsewhere. There was also a kainga on the adjacent Tiritiri block but none of the Ongarehu owners had interests there. The chief drainage engineer responded to a suggestion that only part of the land be acquired with this comment:

Past experience has proved that with Native habitations on the Block it is impossible to keep the Natives from wandering promiscuously about the depot buildings and yards, and in the interests of sanitation and health it is not desirable to have their habitations adjacent to married workmen's quarters.<sup>95</sup>

Panikena and Kahukore Utuku wrote to the Native Minister with regards to the Horahia Opou block, saying that they had no other land for themselves or to leave to their children.<sup>96</sup> The under-secretary of the Native Department forwarded the objection to the under-secretary of the Lands Department; the reply was that this land was necessary for the effective carrying out of the drainage scheme. The Auckland drainage engineer responsible for the scheme reported that 'These Native areas are an impediment to the more successful drainage of the adjoining land, besides being detrimental to the interests of settlers who are anxious to fence, and are mulcted in the whole cost of fencing Native boundaries.'<sup>97</sup> The lands were taken in May 1911, with compensation fixed by the Native Land Court.

In 1916, the Maori owners of Ngarua 5A2 block opposed sale of the block. This land was described as 'first class', required for the scheme as the block cut off the plains from the main road, and 'The Department will be able to cut up the Hauraki Plains area to better advantage if we acquire this block.'<sup>98</sup> The land was taken in June 1916 under the Public Works Act. The amount taken was reduced from the original proposal of 452 acres, down to 394

95. Chief drainage engineer to Under-Secretary of Lands, 1 November 1923, MA1 1920/301 (doc A9, p 126)

96. Document F4, pp 19–20; doc A9, pp 123–124

97. Drainage engineer, Auckland, to Under-Secretary of Lands, 24 April 1911, AJHR, 1911, C-8, p 6 (doc F4, p 20)

98. Under-Secretary of Lands to Minister of Lands, 28 August 1915, MLP1914/75 (doc F4, p 21)



acres, to take account of land actually occupied, but nevertheless an urupa was included in the taking. At the Native Land Court hearing to assess compensation, the 'betterment principle' was successfully invoked by the Crown, reducing the amount of compensation by £800 (leaving £2200 from the original amount of £3000).<sup>99</sup> This despite that fact that the sitting judge was in 'some doubt as to the extent of the benefit' to that particular block. He was convinced of the overall benefit of the scheme to Maori, however. By the same reasoning, no compensation was paid for the 72 acres taken from the Horahia Opou 3B, 5B and Rawerawe blocks.<sup>100</sup>

#### 24.4.1 Impacts on Hauraki Plains Maori

There is little documentation of the impacts on Maori communities of the Hauraki Plains. Among numerous contributions from local settler families to the *Hauraki Plains Story* in 1974, only one Maori account was included. Rawiri Wharengaro was at school in Kerepehi in 1902, and described life during the early years of the drainage scheme:

Some of the tribes were the Ngatihako, Ngatipaoa, Ngatihora, Ngatirua. There was an abundance of sea foods such as fish, pipis, mussels, from the [Hauraki] Gulf, eels from the river and kumeras, corn and native plants in the soil. All we lacked was flour, and live pigs would be taken to Thames and traded at 10/- (\$1) a head.

There were plenty of wild pigeons and pigs in the bush and before land settlement developed mobs of horses in a wild state roamed the countryside. It was five gallons of beer for a horse and in the drives to capture them many were the volunteers at hand.

In the heyday of Bagnall Bros' mills and the cutting of the kahikatea forest, the tramlines ran across from the Waihou River and were a good means of travel for us.

With the coming of the Lands and Survey Department parties there were plenty of camp-sites all along the rivers. The orchard, at Ngatea, was there long before this and we walked or canoed down river to pick the quinces and other fruits that grew there.

Ngatea was originally known locally by settlers as Orchard, because of the old peach, apple, cherry, quince and other trees growing on the site of an old Maori camp. Kerepehi in the early 1900s was the principal Maori settlement and many young men were employed locally in the flax industry. Local Maori utilised the swamp:

In big floods and before the Government land drainage works were underway it was a sea of water stretching from one side of the valley to the other and boats would cross the Plains and not keep to the rivers.

---

99. Document F4, pp 21–22; doc A9, p 124

100. Document A9, p 124. Alexander gives some details for other Maori-owned blocks taken: doc F4, pp 22–24.

The canoe 'Mangonui' built by my father, is now in the Auckland Museum. It was built of kahikatea and would carry 12 men. The big canoe, named 'Te Puki', carried 100 men and was often used to go on fishing expeditions. Big flax nets were made often two to five chains [40–100 m] long and would be worked on by many people and take a long time to complete.

We used to cut flax for 9/- (90c) a ton and five tons was a good day's cutting. When no transport was available it would be floated down drains to the mill, being tied in bundles and lashed together. Scotchers' and Tizzard's flax mills operated at Kerepehi . . .

For overland journeys wide canoes would be used for the transport of flax and goods being pulled by horses or manpower as they, with the pointed bows would glide over the stumps and roots of trees and float over the swampy parts.<sup>101</sup>

Several claimants told the Tribunal about the impact on their traditional way of life of the loss of land and access to the resources of the Piako swamps. Amy Cooper explained the impact of the taking of Te Hopai block in 1909 for the Hauraki Plains drainage scheme:

Flax at the time was about 25 shillings a ton, while it would at other times rise to £6.0.0 a ton so it was a source of income for us. However, once Te Hopai was taken we were deprived of our income due to the loss of our flax on the land, and could no longer harvest our natural resources like Eels, Patiki etc.

Te Hopai was well known for its eels. Many Maori prized above all other species of eel, the fresh water silver-bellied eel or tuna for its large size, taste, great abundance and ability to preserve well. Though this eel was available everywhere and was easily captured, the eels of the Hauraki Plains area, especially at Te Hopai, were considered to be the biggest with horns and whiskers and the most sought after by many Maori.

The loss of this block represented a significant loss of a food resource for the owners and their families. Amy Cooper was particularly concerned that land not needed for drainage works was not returned to them, but sold to Pakeha: 'after all there are many farms in the Plains areas including Te Hopai, none of which we own or operate.'<sup>102</sup>

John Linstead complained that the operation of the Native Land Court 'allowed the cutting up, and division of tribal land, which saw Ngati Hako whenua, settlements, cultivations and wahi [t]apu alienated and separated from our people by these new boundaries.'<sup>103</sup> In particular, he was concerned about damage and destruction of significant sites by construction of the railway, roads, and river works, the taking of sand and fill for such works without permission, and the taking of land under the Public Works Act, which was not returned to Maori when no longer required.

101. Rufus E Tye, *Hauraki Plains Story* (Paeroa: Thames Valley News, 1974), pp 36–37

102. Document x29, p 3

103. Document F17, p 1

Pauline Clarkin was also concerned about the loss of land and resources of Ngati Hako in the Hauraki Plains drainage scheme:

Maori land has been taken for public works at the expense and detriment of Maori. It was not that Ngati Hako was necessarily opposed to progressive development. It was just that we never saw any of its benefit (except maybe as channel diggers and roadworkers). We lost our traditional kai places – the swamp and the waterways – but we never got to participate in the new wealth that was supposed to result from the schemes. Because we had so little land left the drainage of the plains produced fewer benefits to us except as labourers. On the other hand we paid a high price in land and the loss of the rich traditional swamp and river resources.<sup>104</sup>

Clarkin described the network of kainga and cultivations in the Hauraki Plains, and the ‘wealth of resources for trading and sustenance’ available to iwi and hapu groups in the wet lands. ‘The waterways provided a network of water trails that allowed for freedom of movement by our people across the wetlands’. For Ngati Hako, the wetlands were their ‘kete kai’ (their food basket), ‘a significant taonga’, and ‘a source of spiritual life, which also sustained our livelihood.’<sup>105</sup>

Clarkin also referred to the flood protection works on the Waihou River and the taking of numerous small pockets of Maori land from 1978 to the early 1990s for stop-banks and other works in the Waihou Valley scheme constructed between 1991 and 1995. These takings further alienated local Maori from the waterways as the policy was to acquire all land from and including the stop-bank to the river bank, and the stop-bank did not always follow the course of the river. Compensation money received by Ngati Hako for eight acres at Totara in 1980 was put toward building a new wharekai (dining hall) at Tirohia Marae, as a way ‘to ease the loss of this traditional kai gathering area’. However, there was another loss here too. ‘In 1989 Kotahitanga Marae at Tirohia was forced to relinquish its ownership of lands from the Marae reserve down to the river edge’. Subsequent negotiations with Environment Waikato in 1997 did allow Ngati Hako access for customary uses of the river.<sup>106</sup>

The tenor of Ngati Hako and other Hauraki Maori complaints can be summed up in Clarkin’s conclusion:

The swamp and rivers were kete kai and spiritual places for our people. The drainage and improvement schemes took them away. The Crown did not replace them with a means of sustenance for us . . .

Ngati Hako saw no benefits from these improvements.<sup>107</sup>

---

104. Document F16, pp 1–2

105. Ibid, pp 2–3

106. Ibid, pp 7–11

107. Ibid, p 12



#### 24.4.2 Kaitiakitanga

A number of claimants told the Tribunal about their traditional home areas, the land and resources, and their feeling of loss because these resources were no longer freely available to them. David Robson, for example, provided a detailed account of the traditional landmarks and resources of the Totara district, on the Waihou River, south of Thames:

Maramarahi was in easy reach of or in close proximity to the full range of traditional food resources from the sea, mudflats, swamps, forests, bush, gardens and rivers. If one looks outside of here [Mataiwhetu Marae] in all directions, one can understand the abundance of kai that was originally available to our tupuna from the cupboards of Tane Mahuta and his children.<sup>108</sup>

This Maori landscape has now been transformed by land development, cutting of timber, road construction, stop-banks and housing:

The fruit trees, karaka, tikouka, kowhai and tapu puriri have gone and replaced by an exotic blanket of trees. Maramarahi papakainga and the wider Hauraki lands have been transformed into a foreign exotic floral landscape.

This landscape epitomizes the Crown's objective to destroy the infrastructure of iwi/hapu while transposing the English countryside in Aotearoa. One can see this while traveling across the Hauraki Plains – count how many native trees you see.<sup>109</sup>

In conclusion, Mr Robson commented that the 'health and well being of a people, whanau or hapu, is reflected by the health of their ancestral lands, water, sites, wahi tapu and other taonga'. However, the 'systematic and gradual alienation' of his people from their lands and resources 'has lead to a breakdown of the hapu and whanau customary structure'.<sup>110</sup> The only land left, and therefore the only ancestral link for his people, is Mataiwhetu Marae at Totara, developed on an old school site near Kopu.

Others also dwelled on the losses, sometimes expressing these metaphorically as the loss of a caretaker taniwha, a guardian spirit or kaitiaki. Winnie McKenzie described the protective taniwha at Parawai, at the south end of Thames on the bank of the Kauaeranga River:

Te More was our kaitiaki taniwha and was a giant Tuna [eel]. We were its caretakers and it was our guardian. It is said by my mother that when a member of our whanau died Te More would collect the wairua [spirit] in preparation for the final journey to Hawaiki.

'Te Kauri' one of our whanau homes at Parawai has been in our whanau for generations. There is a fresh water underground spring that our whanau still use today. Flowing from that spring was a tributary that eventually found its way to Tikapa Moana.

---

108. Document x33, p 2

109. Ibid, p 7

110. Ibid, p 13

Te More lived in this tributary and we cared for him thus when members of our whanau died he would accompany the wairua from our stream to [name missing], and then across Tikapa Moana to aid the journey to Te Rerenga Wairua or Cape Reinga.

Uncontrolled development by Council has destroyed the aboveground stream and as a result our taniwha has not been able to return to his home, and we have not seen our Taniwha in that place for many years.<sup>111</sup>

Amy Cooper also spoke of Te More: 'My mother Lena Meremana said we are the kaitiaki of the Taniwha called "Te More", a giant Tuna, and he in return is our guardian. He was often seen around the Booms, the log storage areas on the Kauaeranga River near Parawai.<sup>112</sup> We have already noted that people from marae near Paeroa talked about the disappearance of their taniwha after the Ohinemuri River was polluted by mining waste.

Pauline Clarkin explained the Maori view that 'everything in the natural world possesses mauri or a physical life force'. It was the duty of kaitiaki to care for and protect valued resources:

The present generations have such responsibilities passed to them by preceding generations. To care for not only the resource but also for each generation yet to be born. The responsibility is to ensure that the available livelihood of the resource is passed on to future generations in no worse state that it was given.<sup>113</sup>

As an example, she explained that sand mining at Whiritoa beach was carried on from about 1947 on, with the consent of Maori owners of the land with riparian rights. After a series of storms in the 1970s and consequent coastal erosion, some investigation suggested the mining had aggravated the situation, although there were other factors too, including coastal subdivision and wind erosion due to loss of vegetative cover on the dunes. The owners agreed to negotiate with Environment Waikato and have been prepared to forego the income from sand mining by phasing it out over three years and in return a 'beach care' programme will be implemented to replant the dunes. Ms Clarkin used this example to illustrate the role of kaitiaki in protecting resources, not only to stop any action that might threaten the long-term viability of the resource but also to take remedial action to rejuvenate that resource:

If we take, we have a duty to give. Kaitiaki must make decisions about their resource that not only look after their needs but the needs of the wider community. We believe that when

---

111. Document x30, pp 2–3

112. Document x29, p 4

113. Document G21, p 3

tangata whenua are given real and meaningful involvement in decision making then our environment is better cared for – for the future generations.<sup>114</sup>

Underlying the complaints of Hauraki claimants about the loss and degradation of traditional resources is a sense of the loss of control of their environment. As David Robson put it: ‘Kaitiakitanga, aroha and customary rights were no match for individuality, greed and private property rights.’<sup>115</sup> Liane Ngamane saw a future in greater recognition by the Crown of the Maori concept of kaitiakitanga:

Iwi have a planning tradition in respect of the natural environment that is rights and obligation based – it is a relationship of reciprocity that has been built up from centuries of interaction . . . Its approach is pragmatic and practical. It emanates from a framework that treats the environment and human interactions within it as a holistic concept. It has a comprehensive knowledge base of tikanga that is legitimate and equal to western science. It accommodates diverse traditions and approaches and is solution focused. We believe it ultimately seeks better environmental outcomes for all.<sup>116</sup>

Ngamane maintained that ‘the Treaty provided the basis for the evolution of a dual environment planning tradition’ in which Maori and ‘western’ traditions and practices ‘be allowed to co-exist’.<sup>117</sup> She outlined a number of planning issues in the Hauraki region, suggesting that local and regional authorities had not sufficiently taken into account the obligations of the Treaty to acknowledge rangatiratanga and kaitiakitanga of Hauraki Maori. ‘The continued relationship of iwi with their natural resources, knowledge, traditions and cultural heritage forms the very core of our identity.’

Like many other claimants, Ngamane felt that the Resource Management Act, although a considerable improvement on previous legislation, still did not address Hauraki Maori concerns adequately:

Current approaches towards how natural and cultural resources are managed must change. Fundamental to this is the recognition that iwi have never let go of their natural and cultural resources, their places of the sea and the rivers.

Iwi have practiced resource management in these lands since time immemorial. We are still carrying out our responsibilities as kaitiaki today. However, we are held back by the Crown through the [Resource Management Act] when the Treaty demands support.<sup>118</sup>

---

114. Ibid, p 22

115. Document x33, p 11

116. Document G24, p 2

117. Ibid, pp 2–3

118. Ibid, pp 15–16

**24.5 CROWN AND CLAIMANT SUBMISSIONS**

In a statement responding to factual issues identified by claimants, Crown counsel acknowledged the issues concerning environmental degradation set out in the statements of claim of Wai 100 and 14 other Hauraki claimant groups:

The Crown acknowledges the effects on Hauraki Maori of the declaration of the Waihou and Ohinemuri Rivers as sludge channels under the Mining Act 1891. This was an inevitable by-product of mining during the period in question. However, it is acknowledged that the effects on the communities along the river should have been addressed earlier. It is noted that steps were taken to provide clean water when the problem was drawn to the attention of senior Crown Ministers.

The Resource Management Act 1991 provides for the exercise of customary harvest rights. However, these rights cannot be pursued without some form of regulatory environment in view of the numbers of competing users of resources and intensive agricultural and industrial development.<sup>119</sup>

Earlier, Crown counsel commented on the Waihou and Ohinemuri Rivers Improvement Act 1910 and noted that, following Maori petitions in 1927, the Government made ‘a grant of £5000, a large proportion being distributed to Maori landowners, for the effects on land of mining debris carried by the Ohinemuri River after 1895 and for the disruption brought about by the improvement scheme.’<sup>120</sup> In a comment on the Hauraki Plains Drainage Act 1908, Crown counsel acknowledged ‘the destruction of bird, fish and other resources of the wetlands’ but this impact had to be balanced against the ‘benefit’ of making a significant area productive for dairying and able to support a greater population, although the acquisition of more Maori land for this purpose further diminished the amount of land held by Hauraki Maori.<sup>121</sup>

Further, the Crown stated that, while there needs to be a balancing of benefits against the loss of wetlands, ‘it acknowledges the tangata whenua evidence in support of the effects of that impact’. The Crown agreed that some takings do cause concern, in particular: the taking of land from Panikena and Kahukore Utuku when they argued they had no other lands; the taking of 394 acres of Ngarua 5A2 including urupa and wahi tapu; and the taking of land from the Makumaku block, as it was severed by the Awaiti canal from adjoining lands, and so was joined to neighbouring Crown lands instead of being retained in Maori ownership.<sup>122</sup>

---

119. Paper 2.550, pp 40–41

120. Ibid, p 30

121. Ibid, pp 30–31

122. Document AA1, p 250

Crown counsel also submitted that the Crown should not be judged by today's standards of the protection and value of wetlands: 'Utilisation of land was of singular importance to the community at that time.' Counsel argued that:

The destruction of bird, fish and other resources of the wetlands as a result of the operation of this legislation is acknowledged. This impact is to be balanced against the Crown's objective of making a large portion of land productive in a period where there was an emphasis on bringing land into production, particularly for dairy farming. The benefit of the scheme is in part demonstrated by the enhancement of the value of the adjacent lands, and the ability for the land to support a greater population, and generate a much greater income which was ultimately for the benefit for New Zealand as a whole.<sup>123</sup>

In closing submissions, counsel for Wai 100 acknowledged Crown concessions concerning the use of the Waihou and Ohinemuri Rivers as sludge channels but questioned the Crown statement that the effects were 'an inevitable by-product of mining'. The Crown failed to stop or control the pollution, failed to consult with Maori or consider the effects on water supply, eels and other fish and their cultivations.<sup>124</sup> Likewise, counsel submitted, the Crown had failed to protect forests from over-exploitation and to control the effects of timber extraction, including damage to rivers from log driving, the destruction of traditional Maori gathering areas, and a general failure to acknowledge Maori rights as kaitiaki over their rivers and forests.<sup>125</sup> Hauraki Maori had paid a high price for the exploitation of gold and timber from their lands but had failed to prosper from these industries: 'The rapid degradation of the environment, particularly over the nineteenth century and particularly of the rivers and waterways, progressively prejudiced the health and well-being of Hauraki and interrupted their well-established customs of kaitiakitanga.'<sup>126</sup>

Other claimant counsel made similar comments. Counsel for Ngati Tamatera (Wai 349, Wai 720, and Wai 778) summed up the Crown's breaches of the Treaty under the heading of environmental degradation as:

- ▶ failure to protect the lands, forests, and rivers of Ngati Tamatera;
- ▶ failure to consult and to act in good faith in allowing legislation to be passed creating the means of causing the environmental impacts; and
- ▶ failing to actively protect the tino rangatiratanga of Ngati Tamatera as applies to their tribal and chiefly authority over the rivers of Waihou and Ohinemuri.<sup>127</sup>

---

123. Paper 2.227, p 16; paper 2.550, p 31

124. Document v1, pp 165–167

125. Ibid, pp 169–174

126. Ibid, p 161

127. Document z3, p 31

Counsel for Ngati Koi, Ngati Tara, and Ngati Tokanui (Wai 714) endorsed the remarks of counsel for Wai 100 and emphasised the ‘devastating’ impact on these tribes of the pollution of the Ohinemuri River, loss of food resources, flood damage, and the failure of the Crown to instigate these effects in the face of local Maori protest, a failure of the Crown in its duty of active protection.<sup>128</sup> Counsel for the Marutuahū group of claims (Wai 345, Wai 495, Wai 563, Wai 695, Wai 811, Wai 812, and Wai 867) challenged the Crown statement referred to above about balancing the ‘benefit’ of Hauraki Plains drainage and farm development against the destruction of the significant food resources of the wet lands. ‘The grim reality, however, is that it is our loss which “is to be balanced” by Pakeha gain.’ Hauraki Plains Maori not only lost most of their remaining lands but were also excluded from assistance in land development. The Treaty breach was ‘the Crown’s legislative alienation of the Hauraki Plains and lack of active protection’ by failing to include Maori in the benefits of land development.<sup>129</sup>

Counsel for the descendants of Tamatepo (Wai 970) focused on ‘the widespread loss of forests’, loss of plant resources of the forest, and damage to rivers from log driving. Counsel submitted that the Crown was aware of the damage to river banks and eel weirs allowed by Timber Floating Acts, which had ‘a detrimental effect’ on the kaitiaki role of Hauraki Maori, and ‘their ability to continue the tikanga associated with food gathering’. But in spite of Maori protest, the Crown did nothing to curb or control this damaging practice, and this was a ‘breach of the Crown’s duty of good faith towards Maori’.<sup>130</sup> Counsel for Ngati Paoa (Wai 72), Ngati Hei (Wai 110), and several other whanau and hapu groups (Wai 177, Wai 475, Wai 693, Wai 810, Wai 865, and Wai 997) also made submissions on the effects of log driving:

Timber driving down rivers had an overwhelmingly negative impact on the riverbanks and river ecosystem that Maori depended on as a part of their food supply, and as a place where other resources were gathered. Rivers were, and remain, places of great emotional and spiritual significance.<sup>131</sup>

Counsel submitted that claimants had ‘been forced to watch the degradation of their natural environments’ and feel frustrated at the Crown’s inadequate conservation measures. Claimants sought ‘the opportunity for active and effective involvement in conservation policy and in particular the Hauraki lands administered by the Department of Conservation’.<sup>132</sup> Counsel also submitted that, in spite of the provisions in the Resource Management Act 1991 that the principles of the Treaty of Waitangi be taken into account, the Act ‘fails to provide for Maori themselves to act in their own capacity as kaitiaki of their taonga, according

---

128. Document Y20, pp 10–15

129. Document Z6, pp 51–54

130. Document Z4, pp 23–25

131. Document Y9, p 39

132. Ibid, p 68

to tikanga and by reason of their rangatiratanga'. Counsel concluded: 'What has eventuated is that Treaty rights or principles are outweighed by other considerations pursuant to the Act, particularly where local authorities acting with delegated powers under the Resource Management Act claim, where convenient, that other interests take priority.'<sup>133</sup>

The closing submissions of the Crown, under the heading of environmental degradation, addressed the issues of impacts of gold mining on the Waihou and Ohinemuri Rivers, the extraction of timber, the continuing effects of deforestation and mining, modern conservation and environment issues, and the Resource Management Act 1991. We review each of these issues in turn.

Crown counsel submitted that the adverse effects on the Ohinemuri and Waihou Rivers 'became an issue in the 1890s as a result of the introduction of the cyanide extraction process and more particularly after the declaration of the Ohinemuri and Waihou rivers as sludge channels', in 1895, under section 152 of the Mining Act 1891.<sup>134</sup> In 1907, in response to complaints from both Europeans and Maori, the goldfields select committee heard evidence on the issue. In 1910, the Waihou and Ohinemuri River Silting Commission heard evidence about poor water quality and flooding, and its recommendations were followed up in the Waihou and Ohinemuri Rivers Improvement Act 1910. Crown counsel had previously acknowledged the effects of the sludge channel on local Maori communities. Counsel also noted that the claimants submitted that the Crown had not provided for 'Maori input or control over their resources' and had failed to consult with Maori. Counsel suggested, 'This is a late twentieth-century perspective on these issues. However, the Crown acknowledges some elements of this grievance.' In summary, these are as follows:

- ▶ The arrangements between Maori and Mackay left Maori with 'some expectation' that Maori lands outside the goldfield cession areas would not be affected by mining.
- ▶ Mining companies took advantage of rights granted over waterways regardless of any detrimental effects downstream.
- ▶ The Department of Mines appears to have assumed that the provisions in legislation for compensation and objection were adequate.
- ▶ Maori landowners were particularly vulnerable in that they were 'less likely to be able to utilize the few protections that existed within the system' and their interests were 'more likely to be considered of little account' by those in responsible positions in the mining industry.
- ▶ There are examples of Government Ministers meeting with Maori 'and arranging for steps to be taken to mitigate some of the harm'.
- ▶ 'It clearly was not an option for the government to close down the mines causing the problems, there does not appear to be any evidence of alternatives to the dumpings, and so the payment of compensation was the alternative for government to consider.'

133. Ibid, p70

134. Document AA1, p 217



- ▶ The Government responded to Maori complaints by arranging meetings with senior Ministers, select committees, and a commission of inquiry, a response 'seen in the context of the times as vigorous and responsive'.
- ▶ This response 'did not address the issue of food supplies, waahi tapu and spiritual concerns', but for the Government and society of the time, mining was very significant to the economy. 'Whether the response was sufficient is difficult to judge but in our submission there was response and remedy', although it would have been preferable to consult and negotiate sooner, 'but to some extent the government was forced into a reactive mode'.<sup>135</sup>

On the issue of timber extraction, Crown counsel noted claimants' concerns about over exploitation of the forest, the deleterious effects of timber extraction on food gathering areas and damage to rivers from log driving, and the alleged failure of the Crown 'to protect Maori rights over the management of their forests and rivers'. The debate over the Timber Floating Bill, 1873 illustrates 'the dilemma faced by government with the conflict between the rights of private landowners and the goals of State resource development'.<sup>136</sup> Counsel noted the diversity of Maori opinion on the issue in the nineteenth century, Government attempts to resolve conflicts and the significant involvement in the timber industry by Hauraki Maori, both through leasing forest areas and working as loggers.

Counsel quoted the evidence of Professor Gary Hawke who suggested that nineteenth century-governments were not concerned about longer term environmental impacts. 'But it is anachronistic to think that modern ideas of environmentalism, even those which are not extreme, could conceivably have had any influence in nineteenth century New Zealand.' Likewise, 'It is even more anachronistic to transfer to the nineteenth century modern ideas about conservation.'<sup>137</sup> Crown counsel stated in concluding submissions on timber extraction:

The Crown denies that it failed to actively protect Hauraki [Maori] and their property. The needs of the timber industry were balanced against private property interests, including those of Maori, as is evidenced by the Timber Floating legislation . . . Processes were put in place and amended over time to provide for the protection of private property rights. It is acknowledged that the resources of the rivers which were of importance to Maori were damaged. But it is submitted there had to be a balancing of interests in the exploitation of the resources at the time.<sup>138</sup>

Crown counsel acknowledged that nineteenth century timber extraction, deforestation and mining activities are still affecting rivers and estuaries of the Coromandel Peninsula.

---

135. Document AA1, pp 220–221

136. Ibid, pp 221–222

137. Ibid, p 224; doc 04, pp 29, 36

138. Document AA1, p 225

However, local district and regional councils are well aware of the historical factors affecting the environment and are implementing much better land use management and monitoring. A number of specific issues were raised by claimants, most of which were within the jurisdiction of local or regional councils, to be resolved by negotiation, or by appeal to the Environment Court. Crown counsel noted 'a number of difficulties faced by tangata whenua in participating in processes provided for under the Resource Management Act 1991'. Counsel provided a detailed outline of the provisions in this Act protecting Maori interests, and suggested that the forum set up under the Hauraki Gulf Marine Park Act 2000 could provide a coordinating function in dealing with the various local councils within the Hauraki claimants' area of interest.<sup>139</sup> Counsel also outlined provisions for monitoring Resource Management Act processes in Treaty claim settlement offers as well as a review of other Resource Management Act initiatives related to Maori environmental concerns and sources of funding.<sup>140</sup>

In responding to Crown closing submissions, counsel for Wai 100 suggested that the Crown had made:

a number of concessions relating to the impact of mining on the Waihou and Ohinemuri Rivers including the nuisance from sludge and effects on downstream users of the rivers and that the [Crown] response did not address the issue of food supplies, wahi tapu and spiritual concerns.

The Crown also acknowledged that 'the resources of rivers of importance to Maori were damaged as a consequence of policy balancing different interests'. Counsel also suggested that the Crown 'does not dispute contemporary problems with the [Resource Management Act] although it regards them primarily as implementation issues.'<sup>141</sup>

Counsel for Wai 100 did take issue with Crown counsel's reference to the views of Professor Hawke quoted above on nineteenth century environmental impacts, suggesting that views expressed in cross-examination required some qualification.<sup>142</sup> Counsel for Wai 970 submitted that Crown reference to the same quotations was:

a post modern analysis of environmentalism; that what was perceived as being forest conservation at that time cannot be judged according to contemporary standards. However Counsel submits that if true partnership had been intrinsic in the relationship between Hauraki and the Crown then a more pertinent and lasting kaitiakitanga of the ngahere [forest] would have ensued, as this taonga would have remained under the control of Hauraki Maori.<sup>143</sup>

---

139. See Waitangi Tribunal, *Hauraki Gulf Marine Park Report* (Wellington: Legislation Direct, 2001)

140. Document AA1, pp 226–246

141. Document AA14, p 9

142. Ibid, pp 48–49

143. Document AA5, p 11

Counsel for Wai 100 also commented on the inadequacy of the Resource Management Act, suggesting that section 8 ‘requires decision makers only to “take into account” the principles of the Treaty’, and noted that the Ngawha Tribunal had concluded the legislation is flawed, as Treaty principles were only to be considered alongside a number of other matters.<sup>144</sup> Counsel also refuted the Crown suggestion that the Hauraki Gulf Forum is ‘a vehicle to “promote coordination and communications” between councils’. This did not address concerns about ‘holistic resource management’ and, in any case, the ‘Forum has no powers and all councils to all intents and purposes continue to conduct their operations independently.’<sup>145</sup>

#### 24.6 TRIBUNAL COMMENT AND FINDINGS

It is abundantly clear that much devastation was wrought on the land and waterways of Hauraki in the name of colonisation and economic development. Natural resources, such as timber and gold, were exploited with little thought for environmental consequences because the focus was on economic growth. Consequently the legislative framework in place by the end of the nineteenth century fostered and reflected the growth of settler industry. In a review of water use conflicts over riparian rights and the proclamation of sludge channels, geographer Terry Hearn commented that the ‘major purpose’ of nineteenth century mining law in New Zealand ‘was to promote and encourage rather than to direct, regulate or restrict mining activity’. He contrasted New Zealand provisions for proclaiming rivers and sludge channels for mining purposes with practices in other gold-mining regions:

Whereas in California and Victoria the costs and consequence of unrestrained discharges had been clearly recognised and statutory bodies created to control the mining industry’s use of watercourses, the New Zealand legislature fashioned and adhered to a policy which allowed miners to dump tailings and foul water at will. It was not until 1921, by which time mining activity was comparatively insignificant, that the first modification was made to the policy of proclamation. But even that alteration represented more of a concession to what may be termed ‘utilitarian conservationism’ arriving from the need to arbitrate among competing interests than to any demands that policies be devised and adopted to conserve and ensure the careful use of the country’s waters.<sup>146</sup>

---

144. Document AA14, p 50; see also Waitangi Tribunal, *Ngawha Geothermal Resources Report* (Wellington: Brooker and Friend Ltd, 1993), p 145

145. Document AA14, p 51

146. T J Hearn, ‘Riparian Rights and Sludge Channels: A Water Use Conflict in New Zealand, 1869–1921’, *New Zealand Geographer*, vol 38, no 2 (October 1982), p 55

A similar comment can be made about the kauri timber industry and the Timber Floating Act in the Coromandel Peninsula. As Hearn remarked, such policies suggested a 'willingness . . . to discount long-term costs, both resource and social, in favour of immediate exploitation and the harmonisation of opposing interests.' There was no debate about environmental consequences or policy alternatives. 'Resource supply and resource use conflict were economic and political issues rather than matters of resource conservation and management.'<sup>147</sup>

From our twenty-first century viewpoint, we may feel appalled, as many claimants have told us, at the wanton destruction of land, forests and waterways. Hauraki Maori have certainly suffered the loss of resources. Pakeha settlers, too, found their interests were secondary to the interests of gold-mining and timber companies. But, by the 1920s, these industries were fading fast, to be replaced by dairy farming and farm-related economic activities. But farming too has contributed a share toward the pollution of rivers from fertiliser runoff into streams, effluent from cow sheds and dairy company wastes and spills. There have been pressures from growing towns and seaside subdivisions. The forests have been ravaged by introduced deer, goats, and possums. Blackberry and gorse have flourished on the land. The native birds have been killed off by rats, stoats, feral cats, and possums.

Maori in Hauraki have suffered a loss of traditional resources. Eel weirs were destroyed in timber drives, the ecology of waterways was polluted by mining waste dumped in rivers renamed sludge channels. The hills, denuded by timbermen and miners, have eroded and sediments filled the watercourses. The legacy of all this is continuing, expensive flood-control schemes on the rivers of the Hauraki Plains. We acknowledge and welcome the Crown's concessions on these subjects.

We were presented with evidence on Maori values and attitudes toward the natural environment, and the need for Maori concepts of stewardship, *kaitiakitanga*, in the management of resources. However, we also note, as Professor Oliver has pointed out, that many Maori themselves participated eagerly in early trading, processing flax and timber extraction:

Though much of the trade was in the hands of Pakeha entrepreneurs, with Maori receiving royalties and rents, some Maori were themselves entrepreneurs, felling and selling timber trees while still working communally. The early timber trade was to the mutual advantage of Maori and Pakeha, but this phase was superseded by settler capitalist control.<sup>148</sup>

Hauraki Maori also participated in gold mining, but likewise found themselves sidelined by settler capitalist mining companies. Professor Stone also referred to the 'corrosive effects' on indigenous societies absorbed into the western economic system.<sup>149</sup>

147. Ibid, p 55

148. Document A11, p 3

149. Gareth Stedman Jones, *Independent*, London, 3 July 1995 (doc A12, p 15)

There were economic forces at work in the nineteenth century in Hauraki and elsewhere in New Zealand in which the natural environment was as much the victim as Maori because no protective mechanisms were put in legislation to regulate the impacts of industrial and economic development. While there is now more awareness of environmental issues, and more enlightened legislation in the Resource Management Act and other statutes, Hauraki claimants also made it clear to us that they felt that their concerns were still not being fully acknowledged.

But our concerns are necessarily for Maori, for whom the Treaty of Waitangi provided a guarantee of protection of lands and resources. In failing to protect the land, forests and waterways on which Hauraki Maori relied, the Crown was in breach of the Treaty. The Treaty was also breached in that Maori concerns, expressed consistently in petitions and at parliamentary inquiries over the many instances of damage to their lands and resources outlined in this chapter, were almost always the Crown's last priority. The evidence has shown an official attitude of neglect towards Maori, whose lands Crown officials often regarded as an impediment to their development schemes and whose presence was to be circumvented. The Crown's duty of active protection towards Maori was often not honoured in Hauraki.

PART VI

SOCIO-ECONOMIC IMPACTS OF COLONISATION ON HAURAKI MAORI





## PROLOGUE

In the light of this report's detailed survey, what was the situation of Hauraki Maori after more than 150 years of British colonisation? We have seen in part iv that Hauraki iwi are left with only about 2.6 per cent of the land in the claim area in their possession, and that the Crown conceded in closing submissions that its aggressive land purchasing policy 'contributed to' the landlessness of Hauraki iwi. However, Crown counsel has also stated that it is 'not (as it has said on many previous occasions) acknowledging that landlessness equates with poverty. The purchase of Hauraki Maori land was not in itself a determinant of Hauraki Maori economic fortunes.'<sup>1</sup>

All claimant groups, however, clearly consider the loss of their traditional patrimony to be a direct cause of their poor socio-economic situation. Almost all resident tangata whenua witnesses refer to living in very modest circumstances at best, and often very miserable ones, in comparison with most Pakeha. They were heavily reliant on growing vegetables, fishing, and gathering bush produce, with the men often working away from home in a variety of unskilled or semi-skilled work. There were some dairy farms, but these were often small and scarcely viable. Very few Hauraki Maori were drawing significant income from rents. After the Second World War, most young people left the district in search of employment and better living standards. This in turn meant the demise of much of the community life that had been sustained even under the hardships of previous decades. In short, as claimant counsel stress in their submissions, the poverty and social distress of Hauraki Maori is linked to their landlessness. The land has passed to others, who are profiting from it.

We are thus obliged to consider the connection between land loss and social and economic outcomes. This issue is closely related to the wider question of the responsibility of the State towards Maori. As we have seen in our discussion of land law and land alienation, the Crown has argued that Maori themselves must take a considerable share of the responsibility for land loss. They were not merely passive victims in the situation, but played an active role in bringing land before the court, offering it for sale and seeking the removal of restrictions on titles in order to sell. The Crown has also questioned how far it could legitimately go in inhibiting Maori from alienating their land, given their rights and entitlements as British subjects.

We must consider whether the State had an obligation to assist Maori to develop their land rather than sell it. Crown witness Professor Gary Hawke and Crown counsel suggest that it would be unhistorical to suggest that, in what is commonly called a 'laissez faire' age,

---

1. Document AA1, p166

the State's role was anything other than merely to provide frameworks within which private enterprise could operate; it would not normally be expected to assist people at individual level.

The first chapter in this part, chapter 25, will begin by briefly setting out some of the principal submissions of Crown and claimant witnesses as to the social and economic outcomes of colonisation for Hauraki Maori. Evidence before us relates to population numbers and migration, indices of economic situations, sources of income, health, education, and housing. In discussing these matters, we will also have regard to the effects of land alienation on Maori, and we will compare what the State was doing for Maori with that done for non-Maori to meet identified needs.

Then, chapter 26 will consider the Crown's responsibility towards Maori from 1840 to the present. Given the historical contexts, including the Treaty, we must consider the measures the Crown might reasonably have been expected to take to avert disadvantages for Maori.

## CHAPTER 25

### OUTCOMES OF COLONISATION

#### 25.1 HAURAKI DEMOGRAPHY : DECLINE AND RESURGENCE

##### 25.1.1 Census returns

We have discussed nineteenth century population figures briefly in section 2.3, but we outline them again here. Careful assessments of available demographic data have been made by Professor Oliver for the Wai 100 claimants and by Dr Cybele Locke for the Marutahu claimants. Both note the difficulty of relying on nineteenth century censuses, when for various reasons the collection of data was somewhat erratic. In addition, boundaries of counties (the usual unit by which figures were grouped after 1876) changed from time to time, as did the 'boundary' of 'the Hauraki district'. In recent decades the definition of 'Maori' has also changed. The witnesses giving demographic evidence have, however, made allowance for these factors and the following reasonably reliable findings emerge:

- ▶ The Hauraki Maori population in 1840 was about 4000. This is considered by demographers (notably Professor Ian Pool) to represent a significant decline from the population at the time of Cook's landfall in 1769, largely due to the effect of the introduction of diseases to which Maori had no natural immunity.<sup>1</sup>
- ▶ Fenton's 1857 census gives a population of 2279, which Pool believes to be an underestimation. Professor Oliver suggests that the figure should be about 2500, which (even allowing for over-estimation of the 1840 figure) means that there was a sharp decline in the 1840s and 1850s, 'probably through increased mortality, and possibly reduced fertility and out-migration'.<sup>2</sup> Dr Locke cites a number of contemporary sources reporting the prevalence among Maori communities of epidemic diseases such as measles, whooping cough, typhoid fever, influenza, mumps and scarlet fever, together with tuberculosis and bronchitis.<sup>3</sup>
- ▶ Professor Oliver offers an informed guess at the Hauraki Maori population in 1870 as 2000, representing a 20 per cent decline on Fenton's 1857 figure. He suggests that this is 'perhaps not unreasonable in the light of the events of the 1860s': war, blockade, gold

---

1. Document D16, p198; doc A11, pp16–17; doc V4, pp60–61; Ian Pool, *Te Iwi Maori: A New Zealand Population, Past, Present and Projected* (Auckland: Auckland University Press, 1991), p 45

2. Document A11, p 17

3. Document V4, pp 61–63

rushes, land purchasing, and Pakeha settlement, and is in keeping with later census figures.<sup>4</sup> With reference to this period, John Hutton's research (cited by Dr Locke) discusses the 'social dislocation' caused by the influx of 10,000 miners into the Thames district in 1867–68. In the 1850s, the non-Maori population of the claim area consisted of the settlers scattered through the gulf islands and a number of semi-itinerant traders and timber workers, but from 1852–54 early gold discoveries brought a relatively small, temporary influx of diggers seeking alluvial gold. In the 1860s, the European population increased as steam-driven sawmills were established and employed as many as 50 Pakeha workers each.<sup>5</sup> In the same period, the gold rushes brought thousands of people who lived in close proximity in Thames especially, with open sewers providing a fertile breeding ground for diseases, which quickly spread to Maori communities. Although many miners dispersed after the rush of the 1860s, Thames still had a population of 5672 in 1874, and new clusters grew at Karangahake and Waihi, the latter developing into a town of several thousand by the early twentieth century. Meanwhile, the timber industry grew, and farmers settled along the Waihou, the Hikutaia and other valleys.

- The official censuses of the 1870s, although imprecise, indicate a continued slow decline in Maori numbers. Professor Oliver considers that Professor Pool's analysis of the Maori population as a whole (which reveals a rapid decline from 1840 to 1878, followed by a slower decline from 1878 to 1891) is reasonably applicable to Hauraki. Allowing for under-estimates by the census-takers Oliver suggests approximate totals for the Hauraki region of about 1900 in 1874, 1700 in 1878, and 1600 in 1881.<sup>6</sup> (The same censuses give a reasonably good indication of the relative sizes of the various iwi, although as discussed in section 2.3, the various main 'tribes' were often deemed to include fluctuating numbers of non-affiliated hapu, differing in each census.<sup>7</sup>) Europeans swarming into the district for the gold, timber, and flax must have seen themselves as dealing with small numbers of Maori, scattered in clusters through the region.
- Census returns based on counties commenced in 1886 and do not marry completely with the previous census districts. The Maori figures are 2408 in 1886, 2133 in 1891, 2376 in 1896, 2161 in 1901, 2185 in 1906, 2055 in 1911, and 1767 in 1916.<sup>8</sup> Although the 1886 figure may be an over-count, the pattern is of 'a significant increase in the mid-1890s followed by a decline'. Professor Oliver shows the rising Maori population of the counties which fringe Hauraki – Manukau, Franklin, and Waikato – and suggests that the decline in the core counties is likely to be due to out-migration to the fringe counties for work. Moreover, a significant number of Hauraki people would in any case have

---

4. Document A11, p 21

5. Paul Monin, *This Is My Place: Hauraki Contested, 1769–1875* (Wellington: Bridget Williams Books, 2001), pp 135–209; doc D16, pp 204–205

6. Document A11, p 22

7. Document V4, pp 69–70

8. Document A11, p 23

normally lived at times in the fringe counties, which include land adjacent to the Firth. For the 40-year period, there is a decrease of some 25 per cent in the core counties and an increase of 30 per cent in the fringe counties. Taking the numbers in the two groups of counties together, 'the figures suggest a modest overall decrease in the range of 3–4%'. This is against the national trend towards a steady rise beginning in the 1890s as shown by Pool. Because there is little indication of out-migration beyond the fringe counties, Oliver suggests that the overall Hauraki picture of a slight decline in the later nineteenth and early twentieth centuries is due to a high local death rate. 'Hauraki Maori experienced the general Maori predicament rather more severely than many others.' A renewed influx of colonists in the late nineteenth century, together with proximity to Auckland, would have continued the exposure to epidemic diseases.<sup>9</sup>

- By the 1920s, the Maori demographic resurgence was under way nationally, despite the continued severity of endemic and epidemic diseases. In 1945, the Maori population of Hauraki in the counties of Coromandel, Thames, Hauraki Plains, Ohinemuri, Piako, and part of Franklin was 4020.<sup>10</sup> Most, though not all, would have been of Hauraki iwi, while many Maori of Hauraki origin would have been living outside the region. The trend to out-migration for work accelerated. Locke, citing Pool, states that the Thames–Coromandel region had 2 per cent of the national Maori population in 1945 and only one per cent in 1966.<sup>11</sup>

### 25.1.2 Socio-demographic profile of the late twentieth century

Dr Mervyl McPherson and Dr Michael Belgrave have compiled for the Marutuahu claimants 'A Socio-Demographic Profile of the People of Marutuahu and Pare Hauraki', based upon censuses from 1981 to 1996. This includes analysis of a range of demographic factors together with the socio-economic indicators of use of te reo Maori; educational qualifications and school attendance; employment; income distribution; housing tenure and occupancy; access to telephones, the internet, and motor vehicles; incidence of smoking; health disabilities; proportion of sole parents; and crime rates.<sup>12</sup>

Their key demographic findings were that:

In 2001 a total of 9231 people of Maori ancestry reported affiliation to a Hauraki iwi. If a reasonable proportion of the 'Ngati Maru not further defined' is included the figure would be over 10,000.

---

9. Ibid, pp 23–25

10. Maori Social and Economic Advancement Act 1945, welfare officer, H123475 130/18, Archives NZ (doc v4, pp 191–192)

11. Pool, p 157; doc v4, p 191

12. Document v5, pp 13–94

Less than one in five (19%) of these Hauraki iwi members resides within the Hauraki Inquiry District. This means that a large majority of members (81%) live outside the Inquiry District. A similar proportion to those living within the Inquiry District lives in the neighbouring Auckland Regional Council (ARC) area (17%).

Within the Hauraki Inquiry District, Hauraki iwi members make up 3% of the total population and just 15% of the Maori population . . .<sup>13</sup>

The growth in multiple iwi affiliation is greater among younger members and those not resident in the Inquiry District. As these two groups are growing, multiple iwi affiliation is therefore likely to keep increasing, with a converse decline in the proportion resident in the Inquiry District. This has implications for the delivery of iwi based services.<sup>14</sup>

The researchers sought to identify strengths as well as weaknesses in the socio-economic indicators for Hauraki Maori. Their main findings were:

The impact of economic restructuring in the 1980s . . . was particularly bad for Maori, but even worse for Hauraki iwi, and the Inquiry District was affected more than that rest of the country . . .

Based on the indicators available, Hauraki iwi have improved their position relative to other Maori at national level since 1991 so that they are now closing on most indicators – *with the exception of health and housing. In relation to non-Maori, their health status is not improving, and their position on housing, geographic mobility and sole parent families is worsening.*

The disadvantage of Hauraki iwi compared to other Maori on the available health indicators demonstrates an urgent need for more iwi based health data.

Within the Inquiry District, Hauraki iwi are generally worse off than other Maori, as well as non-Maori, although somewhat improving their relative position on the key economic indicators of education, employment, occupation and income. Although no direct comparisons with Turanganui a Kiwa iwi have been made for this analysis, the Turanganui a Kiwa iwi were generally better off than other Maori within their Inquiry District. (Belgrave, M, McPherson, M and Mataira, P, 'Turanganui a Kiwa: a Socio-Demographic Profile of the Gisborne Inquiry District', a report commissioned by the Crown Forestry Rental Trust for claimants in the Gisborne Inquiry District before the Waitangi Tribunal, 2002).

[Hauraki] Iwi within the Inquiry District have strengths in stability and affordability of housing compared to outside the region and other Maori. However, housing is a declining strength as indicators are showing downward trends . . .

Hauraki iwi are doing less well than other Maori within the Inquiry District, and Maori and iwi are doing poorly compared with non-Maori generally [in] the new indicator of internet access.

---

13. Document v5, pp 30–32

14. Ibid, p 96

Unless improvement on economic indicators continues and catches up with other sectors of the population, the aging of the large 25–44 year age group, combined with continuing disadvantage on economic and health indicators, will have significant adverse implications for the future for Hauraki iwi, especially in terms of their ability to provide for a larger proportion of old people with their consequent needs for health care and retirement income support.

Overall, despite some relative improvements over the last decade, Marutuahu and Pare Hauraki living within the Inquiry District are worse off in many of the major key indicators of well-being than are other Maori and non-Maori. This is in itself in marked contrast with the iwi of Turanganui-a-Kiwa, where iwi members within the GIBORNE Inquiry District were better off than the other Maori. Marutuahu and Pare Hauraki are also much more demographically marginalized within the Inquiry District, in making up only 3% of the total population. [Emphasis added.]<sup>15</sup>

We would stress that the above analysis is a statistical profile, showing the relative situation of Hauraki Maori *resident* in the inquiry district *relative* to other Maori and non-Maori. It does not record the socio-economic situation of individual Hauraki Maori, both within and without the inquiry district. On that point we could not but be aware of the many Hauraki families and individuals who have succeeded remarkably well across the whole range of vocations, often for several generations. Indeed many of these men and women gave evidence before us. They had worked hard, overcome adversity and taken advantage of what educational and employment opportunities were available to them. They are to the fore in the ongoing resurgence of Hauraki. This is not to deny, however, the McPherson–Belgrave evidence that statistically, Hauraki iwi have been disadvantaged on various socio-economic measures.

As to the causes of this relative disadvantage, Drs McPherson and Belgrave note that it is difficult to disentangle the influence of the Crown's actions from other socio-economic impacts. They nevertheless conclude:

What can be said is that the social and economic disadvantage that was demonstrated around the time of the First World War has not been eliminated in a century of Crown policies and broader social and economic change. While there is no necessary causal link between historical Crown actions and contemporary socio-economic disadvantage among Marutuahu and Pare Hauraki, that is not to say that such a causal link does not exist.<sup>16</sup>

In closing submissions, Crown counsel has queried the validity of aspects of the McPherson–Belgrave findings:

---

15. Ibid, pp 96–97

16. Ibid, p 11



The Crown submits . . . that there are very real questions as to whether these differences [between Maori within the Inquiry District and those outside it] . . . are simply a reflection of rural/urban differences or even of the availability of migration as a means of material betterment.<sup>17</sup>

In closing responses, counsel for the Marutuahu claimants noted that Mr Andrew, for the Crown, had put this point to Dr McPherson in cross-examination. Dr McPherson replied that ‘there is obviously some effect from those that live in an urban area’ but that one can control for that effect by comparing iwi within an inquiry district with other Maori in the same inquiry district; that is, a rural to rural comparison. On that measure, Hauraki Maori in the inquiry district were worse off than Maori from other iwi living in the district.<sup>18</sup>

We have seen much evidence detailing land loss and paucity of employment for Hauraki Maori, but no specific evidence about why the non-Hauraki Maori living in the district score better on the McPherson–Belgrave indices, or why such a low proportion of Hauraki Maori live in the inquiry district. One likely explanation (besides insufficient usable land and lack of employment) is that (as the claimants argue) Hauraki Maori moved out early – in the 1920s and 1930s rather than the 1950s and 1960s – and put their roots down in the Auckland and Waikato districts, from where they could still fairly readily visit their traditional rohe.

We have some concern about the methodology of the McPherson–Belgrave analysis, because there are many variables and the averaging of data grouped under mesh-blocks gives an incomplete picture. Nevertheless, we accept that the indicators of the socio-economic situation of Hauraki Maori show that they are generally disadvantaged, not only in relation to non-Maori in the inquiry district but also in relation to non-Hauraki Maori.

We now turn to some of the historical evidence for indications of what might have brought about this situation.

## **25.2 MAORI HEALTH AND OFFICIAL RESPONSES**

### **25.2.1 A chronicle of loss**

We have noted in section 25.1.1 that the most authoritative demographic research, that of Professor Ian Pool, shows a serious decline of the Maori population from Cook’s landfall till 1840 due to the impact of epidemic diseases for which Maori had no natural immunity. Pool considers that the decline continued at a similar rate until the 1870s, from an estimated 1840 population of 4000 in Hauraki to about 2500 in 1857 (based on Fenton’s census) and an estimated 2000 in 1870. The missionary Lanfear’s accounts of the ravages of epidemic diseases in Hauraki in the 1850s and 1860s make depressing reading. It is hard to envisage the

---

17. Document AA1, p 313

18. Document AA13, p 58

effect upon small communities of death rates such as the loss in 1862 of 44 people at Manaia (including 20 from diphtheria) or 24 from typhoid fever at Te Kouma.<sup>19</sup> The bare statistics cannot convey the misery and confusion that such death-tolls must have caused.

There was official concern about Maori health from the establishment of the colony. The humanitarian movement, powerful in the English Parliament, had opposed further settlement colonies in the Pacific precisely because it seemed inevitably accompanied by the demise of indigenous peoples, largely through epidemic disease. When colonisation of New Zealand occurred anyway and British officials negotiated the cession of sovereignty at Waitangi, they did so with a mix of wanting to avert the usual catastrophes from the Maori people and a rather fatalistic expectation that they could not succeed (see prologue to part III). Thereafter, the impact of epidemic diseases was noted, partly with genuine concern, partly from anxiety that diseases endangered settlers as well, but partly with a belief that Maori rates of mortality confirmed the moral and physical superiority of the colonists. Professor Oliver observes: 'Given this ambivalence, between compassion, self-interest and self-congratulation, it is not surprising that Maori health presented a problem which governments found they could neither leave alone nor manage effectively.'<sup>20</sup>

Early efforts consisted of promoting smallpox vaccination, often through the missionaries. Lanfear and his Maori teachers vaccinated many in Hauraki in the 1850s. Maori generally availed themselves of the new medicines while also continuing with traditional remedies. The civil list budget of £7000 at the Governor's disposal from 1852 provided for the building of hospitals in the main centres and for the appointment of 'native medical officers' (NMOs) under Grey's 'plan of native government' in the 1860s. But these services did not reach Hauraki for some decades. Instead, doctors, including Charles Hovell in 1863, were sent to investigate epidemics. These visiting doctors could do little except distribute medicine and urge resident magistrates to make distributions of emergency rations. Hovell, who espoused a local woman, attended Maori patients free of charge in the villages of the peninsula until 1878, when, following a petition by Ngakapa Whanaunga and others, he was given a Government stipend of £25 as an NMO, from which he was expected to pay for the medicines which his patients usually could not afford.<sup>21</sup> The NMO system was expanded nationally in the 1880s and 1890s and is said by Dr Locke to have had 'a significant effect' on Marutuaahu.<sup>22</sup>

Yet, the Government was very parsimonious with the 'native civil list', and discontinued Hovell's official position in 1884. Dr Payne, who had been appointed NMO at Thames in 1874, was also dismissed from that office in 1880, but was reinstated in 1883 when epidemics of measles and scarlet fever (accompanied by a smallpox scare) spread through the peninsula.

---

19. Document V4, pp 63–64

20. Document A11, p 43; Monin, p 177

21. Document V4, pp 63–64

22. Ibid, p 95

Wilkinson reported that Payne's 'efficient medical assistance' checked the spread of the epidemics, but after Hovell lost his position Payne remained the sole NMO for Hauraki. In 1885, a Maori deputation asked the visiting Native Minister, John Ballance, for a medical officer to be appointed to Coromandel, but according to historian Derek Dow this was declined, with the comment that Hovell had been 'paid £25 a year for doing next to nothing'.<sup>23</sup> In 1888, the Native Department sought to reduce Payne's salary from £50 to £25. Payne protested that he was paying about eight to 10 shillings a week for medicines for the various scattered communities he visited (which left him about 10 shillings a week from his stipend as NMO) and had hoped for an increase, not a decrease of salary. His protest was taken as a resignation and his official appointment ceased. W H Taipari and 49 others petitioned in vain for his reinstatement, saying that few Maori could afford to go to hospital for treatment and pay the fees required. From 1888 till 1899, when Dr Bull at Coromandel hospital was appointed to treat indigent Maori in the district, there was no NMO in Hauraki.<sup>24</sup>

Professor Oliver has provided some figures showing the importance of the Coromandel hospital to local Maori. In 1888, out of 30 admissions, two were Maori; in 1898, 10 out of 78 admissions were Maori; in 1903, 21 out of 94 admissions were Maori. Given that the Maori population of Coromandel county was estimated to be 579 and the 'European' population 4169, Maori were proportionately making more use of the hospital.<sup>25</sup>

Dr Locke has provided evidence from Payne's returns showing the link between bad health and living conditions. Earth-floored whare might have sufficed in pre-contact times if located on well-drained ground, but many Maori had moved to the valley floors, where their damp and draughty housing contributed particularly to onset of bronchitis, pneumonia, and tuberculosis.<sup>26</sup> Some Maori still resorted to cold bathing or ritual practices for cures. There were ample reasons why Maori communities needed extra help to overcome diseases new to them.

The teacher appointed to the native school at Manaia in 1897 began pressing his superiors for food for the local people, whose potato and kumara crops failed in a drought over the summer and autumn of 1897–98. Flour and seed potatoes were indeed supplied from the civil list vote, and neighbouring hapu also assisted, but the lack of medical care was felt. In 1899, Wiremu Renata and others petitioned as follows:

We the people of Manaia being 200 in number are in a state of lamentation owing to the prevalence of sickness amongst us which commenced in 1897 and has continued down to the present time, many have died and many are ill at present, it is because of our ignorance

---

23. Document A11(a), p 2; Derek A Dow, *Maori Health and Government Policy, 1840–1940* (Wellington: Victoria University Press, 1999)

24. Document A11, pp 52–54; doc v4, pp 101–102

25. Document A11(a), p 2

26. Document v4, pp 99–101



Figure 112: The hospital at Coromandel, circa 1900–30. Photograph by William Price.

Reproduced courtesy of the Alexander Turnbull Library, Wellington, William Price collection (G-213-½).

of what to do with those who are sick that we appeal to you to send a doctor to examine the nature of our complaints. Commencing from the date mentioned and down to the present time 19 persons have died and with children 30 or more.<sup>27</sup>

Charles Walter added his support and Dr Bull was sent to Manaia. He reported that two-thirds of the houses were built on the swampy floor of the valley, on the damp ground. Half were of sawn timber and the others were whare (presumably of raupo) with no light or ventilation when the doors were closed. Infant deaths exceeded births. He recommended that a medical man visit the community once a week to give advice on house building, sanitation, and the proper feeding of infants and that Maori receive free treatment at Coromandel Hospital, estimating the cost at £130 per annum. This was declined by Waldegrave, the Under-Secretary for Justice in Wellington, because of the many calls on the native civil list and perhaps because Bush, the resident magistrate at Thames, had said that Maori would ‘not comply with the doctor’s advice’. The department offered Bull £30 per annum, which he accepted provided Maori paid for their own drugs, and he offered free treatment at his clinic in Coromandel. Health in the community improved considerably, partly because

27. Wiremu Renata and others to Minister, 25 April 1899, J1 1903/1586, Archives NZ (doc v4, p 108)

Walter oversaw the administration of medicines, some of which he paid for himself. All the same, in 1901, Morehu, rangatira of Ngati Maru at Manaia, lost his sixth child to consumption since 1895.<sup>28</sup>

A similar story emerges from the records of Te Kerepehi Native School, also in a district where there was no regular visiting doctor and much reliance was placed on the native school teachers. The chronicle of loss is outlined by Professor Oliver and Dr Locke, mainly from school records.<sup>29</sup> It is unnecessary to retrace all the details here, but two particularly sorry episodes should be mentioned:

- The smallpox epidemic of 1913 was introduced by an infected Mormon missionary to a hui in Tai Tokerau and passed to many Maori communities including some in Hauraki. According to an analysis by Alison Day, the Health Department was slow to diagnose the disease. Smallpox affected more Maori than Pakeha and added to the growing social discrimination against Maori. Day comments, ‘The low level of infection amongst Pakeha and the predominance of the disease amongst Maori was not attributed to inherited immunity amongst Europeans but rather to superior European sanitation and modes of living.’ There is evidence of increased avoidance of contact with Maori, even by doctors. Whole communities were quarantined when smallpox was notified, which made getting supplies difficult. There was continued wrangling among Health Department officials and hospital boards about admission of Maori to hospitals. Day suggests that vaccine was first given to Europeans in towns and then ‘what was left over’ was given to Maori. But Locke also acknowledges that there was in fact no shortage of vaccine and her evidence indicates that doctors and medical officers did come to the remote Maori communities to vaccinate them: the apparent discrimination may have been simply a question of dealing with the closest first, though it must soon have been obvious that, in terms of mortality owing to the disease, the Maori need was the greater.<sup>30</sup> At Te Huruhi, Waiheke, the vaccination did not ‘take’ and the local school was closed. The teacher reported the situation but the doctor requested did not arrive quickly: instead he sent the police to take the sick patients away and only then came to re-vaccinate the community.<sup>31</sup>
- Official returns on the 1918 influenza pandemic show that the Maori mortality rate was five times higher than that for Pakeha. The historian Geoffrey Rice, however, considers that there was under-counting of Maori losses and that the rate was at least seven times higher. Thames was one of the areas worst affected, with 160 deaths out of a population of 2000 for the health district, a rate of 80 deaths per thousand. A field hospital had to

---

28. Document v4, pp 109–110

29. Document A11, pp 47–51; see also doc v4

30. Alison Day, ‘“Chastising its People With Scorpions”: Maori and the 1913 Smallpox Epidemic’, NZJH, vol 33, no 2 (April 1999), p 187 (doc v4, pp 127–129)

31. Document v4, pp 128–129

be set up on the Paeroa racecourse to deal with the Maori cases.<sup>32</sup> By contrast, the rate for Pakeha in the combined Thames–Bay of Plenty district was close to the national average of 5.5 deaths per thousand. Rice attributes the high Maori mortality to low immunity and poor living conditions, especially housing and nutrition.<sup>33</sup>

### 25.2.2 The State's role in Maori health

Professor Oliver has considered the question of the State's responsibility towards the problems of Maori health, given that the nineteenth and early twentieth centuries were an era when most people were expected to provide for their own health care by paying for doctors or providing through hospital rates for the construction of community hospitals. Relative to the native medical officer scheme discussed above, Professor Oliver observes that in 1906 there were 38 'Medical men subsidised by government for attendance on Maori', 16 in the South Island and 22 in the North. The nearest to Hauraki were at Otorohanga and Whakatane.<sup>34</sup> The disproportionate number in the South Island (relative to the distribution of the Maori population) was largely due to funding from the trust administering the 'Nelson tenths,' an example perhaps of how a reserves system could be made to last and to provide service for the beneficial owners.

In 1900, a bubonic plague scare was the catalyst for the passage that year of the Public Health Act and the formation of the Department of Public Health in 1901. The department was concerned with preventive measures, including improved sanitation. Initiatives in this area had already been undertaken by the Young Maori Party, whose relationship with James Carroll had underlain the passage of the Maori Councils Act 1900. Under this measure, Maori councils were formed at local level, and native sanitary inspectors and native health nurses appointed. Dr Maui Pomare was appointed native health officer of the Public Health Department.<sup>35</sup>

But, although the country was divided into districts for the election of Maori councils, Professor Oliver comments that 'the Hauraki region fell outside the scope of this initiative.'<sup>36</sup> This was partly the result, once again, of parsimonious funding. According to Locke, Carroll had wanted to establish a network of Maori-staffed cottage hospitals for which Maori were willing to offer land and money, but Premier Seddon would not go so far.<sup>37</sup> Oliver also shows that responsibility for Maori health was something of a political football between the Native Department, the Justice Department, and the Department of Public

---

32. Ibid, pp 132–133

33. Geoffrey Rice, *Black November: The 1918 Influenza Epidemic in New Zealand* (Wellington: Allen and Unwin, 1988), pp 102–106 (doc A11, p 60)

34. Document A11, p 44

35. Document A4, p 93

36. Document A11, p 57

37. Document V4, p 94



Health. Subsidised NMOS were continued but, as we have noted, doctors tended to be sent to Hauraki communities only when epidemics were reported. Indeed the chief health officer, T Valentine, argued in 1910 that the Department of Public Health was not responsible for medical treatment of any sort, whether for Maori or Pakeha, apart from the control of infectious diseases and improvement of sanitation. On the other hand, James Carroll, the Native Minister, said that his department was responsible only for emergency assistance to 'indigent natives'. These were usually the elderly, who were given rations when there was no supporting breadwinner. A year later, in 1911, Valentine argued that no special machinery was needed for Maori health except where their numbers were great and the hospital facilities limited. R H Makgill, the district health officer for Auckland (including Hauraki) dissented strongly, noting that Maori neither notified infectious diseases nor registered deaths; a new department was needed 'to break them from their uncivilized habits'. Typhoid was endemic in Auckland, and Maori were regarded as a danger to their white neighbours. Some of the school teachers reported similarly.<sup>38</sup> Oliver concludes from such evidence that Maori health was worse than Pakeha health. Pakeha also suffered from epidemic diseases which sometimes closed schools, but they had a higher level of acquired immunity and also had better access to medical services. (In Thames, for example, two doctors had received £73 from local bodies in 1893 for notifying infectious diseases; this was at a time when Payne's and Hovell's subsidies as NMOS had been withdrawn.) Meanwhile, hospital care for Maori was still problematic; Maori were being admitted to local hospitals, often at no charge, but there are some indications that access was more difficult for them than for Pakeha, partly because local authorities considered that Maori did not pay rates.<sup>39</sup> But when Dr Cheeseman, successor to Dr Bull as NMO, resigned in 1903, the Justice Department declined to transfer to the Coromandel Hospital Board the £30 per annum Cheeseman had received for treating Maori patients.<sup>40</sup> Oliver concludes that the Crown's response to the evident needs of Hauraki Maori before 1912 'fell well below the needs of Maori and below the level of facilities available to Pakeha'.<sup>41</sup> As late as the 1920s there was no resident doctor in Paeroa, the closest being at Waihi.<sup>42</sup>

A significant improvement in Hauraki began when district nurses began to be appointed, the first at Thames in 1913 and others subsequently. Oliver's and Locke's evidence indicate their important work in vaccinating against smallpox, dealing with typhoid at Paeroa, and thereafter in serving isolated Maori communities. These women played a vital role in rural New Zealand, especially for the poor of all races. When reliable statistics for Maori health

---

38. Document A11, p 44

39. Ibid, pp 45-46, 53-54

40. Document v4, p 111

41. Document A11, p 45

42. Document H15, p 2



began to be collected from about 1918, they revealed ‘that by a range of measures it was at a lower level than Pakeha health – measures relating to mortality, infant mortality, life expectancy, incidence of communicable diseases – and that this situation was closely related to the prevailing standard of living and access to medical services.’<sup>43</sup> There was some improvement for Maori generally in the 1920s. Dr Peter Buck (Te Rangi Hiroa) was appointed medical officer for Maori after the 1918 influenza epidemic and ‘director of hygiene’ in 1920. Maori councils were brought under the Health Department that year, still with an emphasis on improving sanitation. But Hauraki was still deprived, relative to other communities. The Maori committees there seem to have been transient affairs, with no established marae on the Coromandel Peninsula and no officially recognised Maori council until 1932.<sup>44</sup> There was still no permanent NMO stationed at Thames in the 1920s and the struggling, indebted communities relied heavily on the district nurses, who provided food, blankets and clothing when they could, as well as medical care.

Following a tour of inspection by a health and housing inspector in 1930 Hauraki leaders sought official recognition of the marae or village committees that the inspectors recommended. There were delays, because Hauraki had been grouped administratively with Waikato and there was no Waikato Maori council to coordinate the committees. In 1932, a Mr Ormsby, native health inspector, attended a hui at Paeroa to seek consent for the formation of a Hauraki Maori council, covering the counties of Ohinemuri, Thames, Coromandel, and adjacent islands. Te Rata Mahuta, fourth Maori King and head of the Kingitanga, gave his support and a council was formed comprising Te Rihototo Mataia (widow of the late W Nichols), and Titi Royal, Tamaiwhiua Rawiri, William Brown, Joe Ngapo, Wharepapa Ngakura, and Niu Tireni Williams. Supporting the proposal, the Director-General of Health wrote, ‘This area as far as sanitation is concerned is perhaps one of the most backward areas in the North Island and the formation of a new and active Council would probably do much to alleviate this condition.’<sup>45</sup>

In regard to hospital care, as late as the 1930s, medical officers were still reporting that, ‘some public hospital authorities are unsympathetic to Maori, do not provide as complete a service as for Europeans, and some staffs either show, or the Maori instinctively detects, racial antipathy.’<sup>46</sup> Nevertheless, Professor Oliver’s figures on Maori use of the Coromandel Hospital show that Hauraki Maori did use the hospitals.

The evidence cited by Dr Locke shows that the first systematic analysis of tuberculosis, that of Dr Turbott on the East Coast in 1933, shows a much worse situation among Maori

---

43. Document A11, p 58

44. Document v4, pp 132, 155

45. Director-General of Health to medical officer, 27 May 1932, H1 B78 121/31 (doc v4, pp 155–156)

46. Linda Bryder, ‘“If Preventable, Why Not Prevented?”: The New Zealand Response to Tuberculosis, 1901–1940’, in *A Healthy Country: Essays on the Social History of Medicine in New Zealand*, edited by Linda Bryder (Wellington: Bridget Williams Books, 1991), p 125 (doc v4, p 150)

than among Pakeha. At 56.8 per thousand of population, the incidence among Maori was 10 times higher than that among Pakeha. The reasons were thought to be, in order of importance: social customs, leading to contact between the infected and the susceptible; poverty and malnutrition; reluctance to seek treatment; and poor housing. As a result, the number of district nurses was increased by a third and they were stationed near Maori communities to educate them in health care, hygiene, and nutrition. Dr Locke incorrectly calls this assistance 'misdirected' but she also rightly points to the fact that it did not address the underlying economic causes of poverty and ill-health.<sup>47</sup> In the 1940s, before the era of antibiotics, Maori tuberculosis patients were often isolated in hutments provided by the State, rather than being sent to sanatoria.<sup>48</sup>

The above evidence thus points to a serious legacy of inadequate and tardy health care for Maori in Hauraki, almost certainly a part-explanation at least of their relative disadvantage today, as shown by the McPherson–Belgrave indices. The much higher levels of health care achieved in the 1930s and 1940s, especially under the Labour Government's programme of free medical, hospital and maternity care, coupled with child endowment, better employment opportunities, improved housing, and the advent of antibiotics to defeat diseases such as diphtheria, tuberculosis and pneumonia, have all made a dramatic difference. These efforts by the State, together with the growing Maori natural immunity to European diseases, have resulted in a burgeoning of the Maori population from the mid-twentieth century. Whereas up to about 1900 (and perhaps to 1918 in Hauraki) Maori life expectancy was probably less than at the time of Cook's landfall, it is now much higher.

Nevertheless, as the McPherson–Belgrave study shows for Hauraki, Maori health indices still lag behind those of non-Maori. This is borne out also by the submission of Dr David Colquhoun, who has worked as a mobile general practitioner in the district for many years and since 1997 for Te Korowai Hauora o Hauraki. Dr Colquhoun notes the ongoing impacts upon health of unemployment, dysfunctional families, cold, damp housing, and excessive drinking and drug use. He considers that heart disease, lung disease (often associated with tobacco smoking), hypertension (high blood pressure), and gout are more common among Maori than among Pakeha. 'Hauraki rangatahi have one of the highest youth pregnancy rates in Aotearoa' and immunisation rates of tamariki are 'probably not as high as in the Pakeha community'. His main concern for the future health of Hauraki Maori centres on the use 'of an introduced weed – tobacco', and suggests that the Government could be more generous in handing back for Auahi Kore programmes some of the significant revenue raised in taxes upon cigarettes.<sup>49</sup>

---

47. Bryder, pp 123–124 (doc v4, pp 148–149)

48. Document v4, p 198

49. Document H24, pp 3–8

**25.2.3 Crown and claimant submissions**

We must consider to what extent Hauraki health problems, past and present, can be attributed to the failure of governments. In their amended statement in response dated 2 September 2002, Crown counsel submit that:

Contemporary knowledge and beliefs did not impose a high degree of responsibility on 19th or early 20th century governments to maintain the health of its population. It is also fair to say that contemporary knowledge was not such that governments had a great ability to maintain the health of the community. The issue is the degree of Crown culpability in assuming that the State needed to do more for Maori than it did for anyone else and whether the State should have done more to ensure that Maori, whose condition of health was worse than that of Pakeha, had the same level of access to health services.<sup>50</sup>

Mr Majurey, for the Marutuahu claimants, has suggested that this statement:

echoes older 19th century assertions that Maori society was already degenerating prior to the coming of the Pakeha, and this in itself absolved settler society, or the Government of responsibility for Maori population decline. Such a view has been consistently discredited by much anthropological and historical work undertaken over the 20th century. When such argument was presented in the 19th century, it was often clearly linked to escaping blame for poor Maori health.<sup>51</sup>

Of course, in hindsight (and with the benefit of twentieth century research), we know that nineteenth-century theories and assumptions were wrong, and that Maori were not 'a dying race'. But we must be careful about applying hindsight to judge the actions of our forebears.

We have noted in sections 25.2.1 and 26.2.1 that it was widely believed in the nineteenth century that indigenous peoples were doomed to wane and even disappear in the face of European colonisation. The history of the Americas and, closer to home, of New South Wales, seemed to prove it. When Charles Darwin published his *Origin of Species* in 1859 his theory of the 'survival of the fittest', in nature, was commonly also applied to the human condition, especially to the competition between nations and peoples, and labelled 'social Darwinism'. Observing their own burgeoning numbers in New Zealand, and the decline of Maori as revealed by censuses, many Pakeha felt that Maori were destined to suffer the fate of other indigenous peoples and possibly even die out.<sup>52</sup> Certainly, some Pakeha were indifferent (or even gratified) at what they believed to be happening, and (as Mr Majurey suggests) prone to use popular social Darwinism as an excuse for not doing more to help Maori overcome disease. But that is not the whole story, or even the main response of Pakeha. The

---

50. Paper 2.550, p 43

51. Document 26, p 10

52. See Angela Ballara, *Proud to be White? A Survey of Pakeha Prejudice in New Zealand* (Auckland: Heinemann, 1986), pp 82–87

main response of British governments was to introduce the policy of racial ‘amalgamation’ in New Zealand. It was hoped that, if Maori social institutions could be changed, the Maori ‘race’ could be saved. Hence, the efforts to intersperse settlers and Maori in the early settlements, the reluctance to create large reserves, and the effort to extend British law among the tribes. Hence, too, the enthusiasm of the framers of the Native Land Acts to individualise Maori land tenure and break up ‘beastly communism’ (see secs 15.2.1–15.2.5). Through competition and individual endeavour, it was believed, many Maori would not only survive but even prosper. Inter-racial marriage was also approved. Maori culture might die out, but a thriving mixed-race people, speaking English and sharing the same laws and institutions, would be the distinctive mark and the pride of New Zealand.<sup>53</sup> That vision is far from dead among Pakeha. Nor do all Maori today wholly reject it, though most would hope to speak te reo Maori as well as English and to preserve their tribal allegiance as well as succeed in all modern walks of life.

Thus, in a broad sense, all the elements of the ‘amalgamation’ policy were meant to be ‘health’ measures as well. But there was a nasty corollary to social Darwinism: because it was competitive and accepted struggle as normal, it tended to regard those who did not succeed as responsible for their own condition. If Maori sold their land at low prices and dissipated the profits, or if they (or anyone, including Pakeha), persisted in living in squalid housing, practised minimal hygiene, drank and smoked heavily, and ate unhealthy foods, it was assumed that this must be because they preferred to live that way. It was not until well into the twentieth century that it was seen as the State’s responsibility to overcome poverty and the diseases of poverty systematically. Such attitudes go far to explaining why the State’s efforts at curative and preventive health care were so tardy, and why the advent of the ‘welfare state’ in the late 1930s was seen as so revolutionary.

But we must ask, could and should not the State have done more, much earlier, to relieve the particular health problems of Maori? This is certainly the view of Professor Oliver, principal witness for the Wai 100 claimants. Professor Oliver, an influential critic of ‘presentism’ in historical judgement (‘presentists’ are deemed to judge the past subjectively in terms of the values of the present), has sought to appraise the Crown’s responsibility in a balanced manner. On the matter of new diseases, he cites Pool’s view:

basic to the condition of 19th century Maori [was] the impact of an ‘immunologically experienced’ population upon an ‘immunologically innocent’ one. The latter suffer much more severely from the same diseases than the people who brought them; the two populations do not approach anything like parity until the ‘innocent’ population has become ‘experienced’. Obviously enough, governments can not be held to have caused either the absence of immunity or its gradual growth. But that conclusion does not finish the matter; governments

---

53. Ballara, pp 88–89

may seriously affect other relevant factors, specifically the standard of living and access to medical services. They did affect them – by ensuring the virtual landlessness of Hauraki Maori and by failing to provide more than an unduly modest level of medical care.<sup>54</sup>

We will consider further in the next chapter the connection between landlessness and low living standards. But here we note Professor Oliver's comments on the Crown's early meagre provision of medical services for Maori and their contraction in the 1880s:

A public effort in the health field as sustained as that in the education field would still have been quite inexpensive. It would have been well within the scale of existing state activities; it would have required no more than a modest extension (instead of, as in fact happened, a considerable contraction) of existing services. Increased activity on such a scale, rather than a premature anticipation of the welfare state, could have been reasonably expected of government. In the event, Maori were deprived in part even of inadequate services.<sup>55</sup>

The State, said Oliver, 'through its health and educational officials, and indirectly through public hospitals', was 'not inactive' in response to the situation:

However, it is also clear that its responses were on a small scale, often tardy and inadequate, and always dominated by strict financial constraints. Even when, in the early 20th century, the state began to shift its emphasis towards a preventive approach, through the Maori Health Officers and the Maori Councils, the Hauraki region fell outside the scope of this initiative.

. . . even though health services in later 19th century New Zealand, for Pakeha as well as Maori, were poor compared with the level to be attained in the 20th century, it remains the case that Maori, including Hauraki Maori, presented a distinct range of problems. Maori health was in fact regarded as a special case by the state in the late 19th century and early 20th century. Whether out of compassion, a sense of duty, or a fear that diseased Maori would transmit infection to the community at large, governments did make special provision for what were recognised as special circumstances. The charge to be made against the New Zealand state is not that it did nothing but that it saw a problem and responded inadequately.<sup>56</sup>

Earlier in his report, Oliver had remarked that the provision of some health care for Maori 'in fact . . . did have a beneficial effect for brief periods in specific localities; a moderate expansion would have had a greater effect in more places and for a longer time'.<sup>57</sup>

---

54. Document A11, p 60

55. Ibid, p 59

56. Ibid, pp 57, 59

57. Ibid, p 13

Professor Oliver's assessments on the question of Maori health have been accepted both by claimants and Crown counsel. In closing submissions, counsel for Wai 100 cites Oliver's measured conclusion:

It would be unreasonable to argue that Maori should have received health services above the level of those that were generally available; the welfare state was still half a century away. Here a less ambitious argument is advanced: that though the condition of Maori health was worse than that of Pakeha they had even less access to health services than Pakeha. The state could have been expected to make more of an effort to bridge the gap. . . . Governmental action fell well below the needs of Maori and below the level of facilities available to Pakeha.<sup>58</sup>

Counsel also points to the persistence of serious problems in Maori health today.

In their closing submissions, Crown counsel do not dispute that the condition of Hauraki Maori health was worse than that of Pakeha in the nineteenth century and that Hauraki Maori had less access to health services than Pakeha. Counsel quote sections of the statements by Oliver cited above, in effect accepting his assessment as balanced and reasonable.<sup>59</sup>

#### **25.2.4 Tribunal comment on Maori health**

We concur with Oliver's views in respect of the nineteenth century and indeed much of the twentieth century (as Dr Locke's evidence shows), and there is little point in our adding further to what claimant and Crown counsel have agreed on the matter. In relation to the current situation it is common knowledge that on many indices Maori health still lags behind that of Pakeha, but that the post-war state has made considerable efforts to meet Maori health needs. No systematic analysis of the strengths and weaknesses of the State's more recent and on-going efforts in health care has been put before us. Nor have we seen a careful comparison of the situation of Maori with other Pacific island peoples who have not been heavily colonised, still retain most or all of their land but still experience serious health problems arising sometimes from traditional practices but mainly from contact with the wider world.

Despite these gaps in the evidence and argument we accept and note with concern Dr David Colquhoun's submission on the current health problems of Hauraki Maori and agree that more remains to be done, by state agencies among others, to overcome them.<sup>60</sup> We consider that the principle of equity between the peoples of New Zealand is relevant and that, while the health of Maori continues to lag behind that of the general community in

---

58. Document A11, p 45; doc Y1, p 189

59. Document AA1, p 312

60. Document H24

any respect, the finding of the Tribunal in *The Napier Hospital and Health Services Report* remains valid:

A general quality of health outcomes for Maori as a whole is one of the expected benefits of citizenship granted by the Treaty. Its achievement is a long-term goal that depends on a broad range of State policies and services. Until realised, failure to set Maori health as a health gain priority [*sic*] would be inconsistent with the principle of equity.<sup>61</sup>

## 25.3 PENSIONS AND UNEMPLOYMENT RELIEF

### 25.3.1 Old-age pensions

Maori and Pakeha were alike eligible for the old-age pension introduced by the Liberal Government in 1898. Maori widows were also eligible for the widow's pension of about £58 a year until they remarried. Pensions were not automatically available for persons of either race, because they were means tested, graded according to the number of dependents and available only for those without other means of support. Pensions were stopped or reduced if there were able-bodied but unemployed men in the household. There was a difference in the way pensions were administered for Maori, because 'indigent' Maori were also eligible for assistance from the 'native civil list' vote, administered by the Native Department. This was sometimes paid in situations of evident need until pensions came through. Applications for pensions or civil list support were often vetted for the Pensions Office by local magistrates or police and, according to Dr Locke, the fact that an applicant held shares in land mysteriously counted in his or her favour: presumably such applicants were deemed to be doing something for themselves. Perhaps the best synopsis of this arcane subject is provided by Margaret McClure, as cited by Locke:

Some magistrates undertook extensive research; some dismissed Maori claims categorically; some judged Maori poverty from appearances rather than land ownership; and some followed the direction from head office to limit Maori pensions in any way possible and granted a £12 annual pension to all Maori [applicants at] two-thirds of the European rate of £18.<sup>62</sup>

Dr Locke outlines a number of individual cases where applications were lodged, often at the instigation of district nurses. It is clear that there were often long delays before Maori applicants received the pension, despite the urgent needs of widows (or widowers) and their

61. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 70

62. Margaret McClure, *A Civilised Community: A History of Social Security in New Zealand, 1898–1998* (Auckland: Auckland University Press, 1998), pp 26–27 (doc v4, p 131)



dependants, although as stated, interim assistance was sometimes provided. Pensions were frequently paid as credit to storekeepers for food purchases by the pensioners. This was perhaps an understandable precaution to ensure that food reached the mouths of children and the elders but it gave storekeepers a degree of control over their lives.<sup>63</sup> The teacher at Manaia, E Greensmith, while active in securing pensions for the elderly, was indignant that young men also batted upon them. 'It is a striking fact', he wrote, 'that all the younger people of our village belonging to households with no pensioner are away at work, and in every case when there is a pensioner able bodied men are living with them.' In response to such information, the Pensions Department cut off or reduced pensions. The Native Department also refused assistance to wives of men who had been gaoled.<sup>64</sup>

Problems about 'rotting the system' of course continue to this day, and are by no means confined to Maori, but it is evident that the lines were drawn very tightly in the 1920s to induce self-reliance and discourage dependency on the State. The evidence available is not clear cut on the question of whether the bureaucratic scrutiny in respect of old-age or widow's pensions was more demanding for Maori than it was for Pakeha applicants, but it shows that the situation could become desperate for the elderly before pensions became universal.

### 25.3.2 Unemployment relief

The evidence regarding unemployment relief is quite clear as to the discriminatory treatment of Maori. Most Maori were understood to have interests in land sufficient to provide for subsistence gardens. Since 1870, officials, not understanding the pauperising effect and utter confusion that the land-purchase system had induced, had regularly lambasted Maori for not doing more to grow food for themselves. In the 1930s, in an effort to induce Maori to rely on their cultivations, the Unemployment Board reduced relief payments to between 30 per cent and 50 per cent below those payable to Pakeha unemployed. Maori were also denied access to most works schemes commencing in 1933.<sup>65</sup> The inequality was not addressed until the advent of the Labour Government in 1935 when relief payments for Maori unemployed were increased to the same level as those for Pakeha. Meanwhile, Maori who were fortunate enough to find work on the land development schemes run by the Native Department were able to secure what was effectively a form of unemployment relief. After 1935, Maori working on contracts for the department were paid at the same rate as those on the Labour Department's public works schemes (for which Maori were also

---

63. Document v4, pp134-144

64. Greensmith to director of education, 31 March 1920, MA 11919/79 (doc v4, pp137-140)

65. Ngata to Commission of Inquiry on Native Affairs, 1934, MSS3376 4/2/8g, ATL (doc v4, pp145-146). Ngata's statement says that Maori had access to scheme 5 of the Unemployment Board.

eligible), usually 16 shillings per day.<sup>66</sup> In relation to development schemes, it was noted that the health of Maori on the schemes had improved.<sup>67</sup> But there was no large-scale development scheme in Hauraki: there was not enough suitable land left to support one.

#### 25.4 HOUSING

The connection between poor housing and disease had been reported by medical officers since the 1880s. Thereafter, doctors reporting on epidemics in Maori communities regularly drew attention to the problem. Not until the 1930s, however, were measures introduced to deal with it systematically in Hauraki. Initially, this took the form of inspections of 13 or more settlements by a nurse and housing inspector to improve existing water supplies and sanitation, the formation of village committees to enforce Health Council by-laws, and follow-up visits to see that necessary improvements had been effected.<sup>68</sup>

Better housing was seen as an integral part of the efforts, begun by Ngata and carried on by his successors, to improve titles and grant low interest loans for land development. The consolidation schemes under the 1931 Native Land Act and the later 'conversion' procedures of the 1953 Act were used to enable some owners to put together enough interests in one title to give them sufficient land, or equity in land, to secure a housing loan, although this commonly meant giving up interests in other blocks. The designation of some properties as being under the Hauraki Maori land development scheme (see sec 18.4.5) did enable a small number of families to secure houses under Maori Affairs Department loans. Tangata whenua evidence shows how very important this was for the families concerned, and how their health improved as a result. But by now there was little suitable land available for such schemes. Some housing schemes, such as Te Moananui Flats near Paeroa, were contemplated but not proceeded with because the land provided insufficient support or was too low-lying for housing.<sup>69</sup>

Aside from land development schemes, the Coalition Government of 1935 passed the Native Housing Act just before the election that year which brought Labour to power. Because of the complexity of their land titles and doubts among lenders as to their credit-worthiness, few Maori had been able to secure private funding for housing. Under the 1935 Act the Board of Native Affairs could lend for this purpose, but repayments were expected to meet interest payments and slowly redeem the capital. For some years, therefore, loans

---

66. Document v4, p 156

67. 'Annual Report on the North Auckland and Thames-Tauranga Health Districts, 1934', H12198 172/21/58 (doc v4, p 154)

68. Document v4, pp 151-154

69. Ibid, pp 168-175

continued to be tied to land, and were usually made only when the borrower had an undivided interest in land or was in receipt of rents which could be assigned against the loan. Few qualified in either sense. In 1937, a survey by Dr Turbott of the Health Department disclosed the huge backlog of housing problems, including 36 per cent unfit for habitation.<sup>70</sup> In consequence, the Government departed from the requirement that Maori had adequate security in land and made £50,000 available for housing for 'indigent' Maori. This was soon raised to £100,000, and Maori workers under Public Works Department managers began to build housing under this scheme. But progress was slow. Dr Claudia Orange's research indicates that nationally, only 1592 houses had been built by 1940 under the scheme, at a cost of £170 to £500 per house. In contrast the foundations had been laid for 5000 urban state houses, to be built at an average cost of £1000 each, and a budget allocated for state houses of \$5 million.<sup>71</sup>

At a conference on Maori housing in 1945, Dr Turbott of the Health Department reported that, from his department's point of view, housing policy was not meeting the needs of the Maori people:

It had always puzzled him why the state had a rental policy for pakehas and not for the Maoris . . . native housing could have proceeded much quicker if the Maori had the same opportunity to rent houses, and his own experience was that Maori, given a chance, did not fail as much as the pakeha.<sup>72</sup>

In fact, the department did provide some rental housing for Maori, including pensioners, in towns such as Paeroa. The houses were often of a very modest quality, in keeping with the low level of rent payments the occupants could afford.<sup>73</sup> In Waihi, there was a particular problem because significant numbers of Maori had replaced Pakeha employees in the mine during the war, but private owners there resisted letting houses to Maori. Rangi Royal, chief welfare officer in the Department of Native Affairs and himself of a Hauraki family, investigated the situation in 1945 and reported on the overcrowding in the few houses available. He recommended a housing scheme on an unused recreation reserve in the borough, but the evidence does not reveal whether it was established.<sup>74</sup>

Figures gathered by Dr Locke for the Marutuahu claimants show that in the Thames district (boundaries unclear), by 1945, 23 houses had been built under land development schemes and five repaired. Sixteen houses and two pensioners' huts had been built under the Native Housing Act and two houses renovated. The total number of Maori housed in the district was 90. However, a serious backlog of low-standard and over-crowded housing

---

70. Claudia Orange, 'A Kind of Equality: Labour and the Maori People, 1935-1949', MA thesis, University of Auckland, 1977, pp 86-87 (doc v4, p162)

71. Ibid, pp 84-94 (pp 162-164)

72. Minutes, 14 September 1945, ABQU632 W4452, box 1240, 194/3 (doc v4, p164)

73. Document v4, p165

74. Ibid, pp 175-184

remained, and the housing and health officials condemned a good many of the shacks that had served (after a fashion) in the past.<sup>75</sup>

It was re-emphasised by the Native Minister, HGR Mason, in 1942, that the Native Department housing was no longer tied to farm development. Rebuking an official who assumed that a proposed development at Te Moananui Flats development required adequate land for farming, Mason wrote that that might be an ideal:

but if the Government has a housing system for landless Pakeha, as it does, it must also do something for Maoris similarly placed. That is the purpose of my memorandum . . . I am given to understand that the individual interests [on Moananui Flats] are so small and the title position so involved that no one owner could make worthwhile use of his or her interest . . . From the economic standpoint these people can only be considered as wage earners and pensioners . . . and the Department will have to rely on repayments from these two sources. Those who have interests in Moananui Flat will be able to offer their interests as further security.<sup>76</sup>

The greater difficulty, however, was the lack not only of land but also of employment opportunities for Maori in rural Hauraki.

There was some assistance to returned Maori soldiers – one farming loan, two housing loans, one loan for furniture and one for business expenses by 1946. Five other returned servicemen had asked for farming loans by 1947 and one to purchase a house. These applications were approved but there was difficulty locating suitable properties. By 1951, five people had received educational assistance and 14 some kind of trade training in the Paeroa area. But Dr Locke considers that ‘Less assistance was offered [to] returned servicemen in Hauraki than in other areas.’<sup>77</sup> The question of multiple titles and the consequent delays in securing subdivisions also continued to dog the housing situation. There were nine priority houses approved for Hauraki in 1957 awaiting necessary title work by the Maori Land Court, and 65 applicants for housing loans. The officer responsible reported:

the Department is endeavouring to arrange for suitable sites to be made available as early as possible. Some sites have been made available by the Lands and Survey Department at Kerepehi and the Department is arranging for sites at Paeroa on Maori land which has [been] vested in the Maori Trustee. It is hoped to purchase other sites to overcome this problem.<sup>78</sup>

But Hauraki Maori were already on the move to Auckland or other areas where full-time work was available. Building projects continued at Paeroa, Thames, Waharoa, Te Poi, Hoe-a-

---

75. Ibid, pp 167–168, 184–185

76. Mason to under-secretary, 26 November 1942, AAMK869/1023F 30/3/66, pt 1 (doc v4, p 174)

77. Document v4, p 187

78. AE Edwards, 4 September 1957, AAMK869/1023F 30/3/66, pt 1 (doc v4, p 188)

Tainui, Te Aroha, and Kerepehi, but in 1958 applicants were cancelling their applications and in the 1960s some projected housing schemes in the district were abandoned.<sup>79</sup> The greater housing needs were in the city or in the forestry schemes, where the work was. The Maori War Effort Organisation recognised this fact and in 1942 set up the first women welfare officers to assist with employment and accommodation in urban areas.<sup>80</sup> Notwithstanding the emphasis on urban housing, a rural assistance scheme also operated whereby, because of manpower shortages created by the war, farmers and local timber companies were able to apply to the State Advances Corporation for housing for their workers, provided they guaranteed the rent payments.

The 'pull' factor of movement to towns for housing was accompanied by a strong 'push' factor, as Health Department officers, in an effort to combat the dreadful toll of disease in Maori communities, continued to condemn scores of rural shanties and damp, ill-drained houses in Hauraki as elsewhere. (This included the large house owned by the Paraone family on Kauaeranga 9, which had come to be used as a kind of informal 'hostel' for visiting Maori (see sec 21.3.2(5))). This was no doubt very disruptive of surviving rural Maori communities but it did save Maori lives. There can be no question that better housing, albeit urban housing, contributed to the steady post-war improvement in Maori health statistics.

An additional difficulty was created by section 23 of the Maori Affairs Amendment Act 1967, which required that partitions of land by the Maori Land Court for building purposes had to comply with the planning provisions of the Counties Act (as amended in 1961). The previous practice of the court of making subdivisions in Maori land – as at Ngahutoitoti – for housing purposes was effectively stopped. This restriction has been removed in recent years, in particular to facilitate the 'kaumatua housing' schemes, on rural whanau land. The trust arrangements and leasing and licensing provisions of the Te Ture Whenua Maori Act have also overcome title difficulties to some extent.

There remains, however, the almost inescapable difficulty that housing ultimately has to be paid for, and is best paid for through employment in the area where the housing is built or let. Governments were not simply being unreasonable or callous in requiring that occupiers pay rent or refund loans. In North America and Australia, the provision of free housing in areas where there is no work has contributed greatly to the pauperisation and welfare dependency of some Native American communities. However, this is not to say that, given the shorter distances in New Zealand, more assistance could not have been given by the Crown to housing projects on or near traditional kainga (such as the projects at Manaia which the Ngati Pukenga claimants gave evidence of), from whence the breadwinners of the community could readily commute to Auckland or Waikato for the working week.<sup>81</sup>

---

79. Document v4, p188

80. Claudia Orange, 'An Exercise in Maori Autonomy: The Rise and Demise of the Maori War Effort Organisation', NZJH, vol 21, no 1 (January 1987), pp 73–76 (doc v4, p178)

81. Document 115, pp 4–6; doc 118, p 5

**25.5 EMPLOYMENT**

When steam-powered saw mills came to Hauraki in the 1860s it was soon apparent that millers preferred Pakeha labour. Later in the century, so did the flax millers who set up their operations along the Waihou River.<sup>82</sup> There was no shortage of Pakeha labour for such purposes as the gold rushes had brought an influx of miners, but then threw them onto the local labour market as the quartz mining industry was rationalised. There was a similar effect from the expansion of mining again in the late 1880s and early 1890s, followed by a depression in mining for some years from 1897. Ex-miners and new immigrants moved into timber milling, bush clearing, fencing, road works and flax milling. Professor Oliver reports a further flow of immigration to rural New Zealand, particularly from Australia, in the late nineteenth and early twentieth centuries.<sup>83</sup> Dr Locke reports an influx of 3500 to the district in connection with the Hauraki Plains drainage scheme.<sup>84</sup>

Public works brought sporadic employment for Hauraki Maori, with governments regularly offering contracts for road building and telegraph construction to the hapu with whom they were negotiating for the necessary land or right of traverse. But this did not last. Oliver and Locke both provide evidence indicating that longer term employment by local councils or railway contractors, tended to prefer Pakeha employees, although there is also evidence that some Maori were employed in drainage works in the district.<sup>85</sup>

During the 1880s and 1890s, Hauraki Maori came increasingly to rely on digging for kauri gum. To some extent, they were competing with Pakeha and Maori from other districts. The Kauri Gum Commission investigating the industry in 1893 found 1118 people working on the fields in Hauraki and Waikato. How many were of Hauraki iwi is not known but reports by Wilkinson and by the school teachers at Manaia, Te Kerepehi, and Opoutere indicate that many local families were involved in the gum trade. Locke reports that the work was hard and unhealthy, with prices for gum fluctuating and workers often obliged to use the gum as currency for food and other necessities.<sup>86</sup> In 1905, there was a sharp fall in the price for kauri gum and in 1914 the market virtually collapsed as other products replaced gum as a varnish for fine furniture. Locke notes that the population of Thames and Coromandel counties declined between 1911 and 1916 and suggests that this is because the former gum diggers had to move elsewhere in search of work.<sup>87</sup>

In the twentieth century, the Hauraki land scheme provided some employment, but limited, and the elements of the scheme were often a failure. In March 1938, the Paeroa supervisor of the Native Department drew attention to the poverty and virtual landlessness of many Maori on the east coast of the Coromandel Peninsula, Waihi to Opoutere, so much

---

82. Document v4, pp 84, 88

83. Document A11, pp 29–30

84. Document v4, p 87

85. Document A11, pp 30–31; doc v4, p 107

86. Document v4, pp 87–91

87. Ibid, p 126

so that housing applications could not be considered. He suggested that Crown land in Whangamata and Ohinemuri subdivisions be committed to development schemes, for dairy farms and pine forest. Some 2800 acres were so committed in 1939 and approximately 2000 acres in 1942. The Second World War interrupted progress and expenditure was confined to keeping Maori in employment. £11,567 had been expended and 340 acres was in pasture by 1945. Further development continued, and the Crown sought to buy Maori land in the schemes, prior to subdivision and allocation to Maori farmers (with priority for returned soldiers). Because of the dispersed ownership this proved difficult, but four returned soldiers, some of whom were local men, were located on dairy farms at Whangamata, in 1952–54, under freehold title and each with 50 cows and a ‘Rehab’ loan. Although these appear to have been viable farms, two owners had sold their properties by 1963. The balance of the land in the scheme was transferred to the Department of Lands and Survey for inclusion in their schemes for Pakeha servicemen; it carried a net debt of £77,314, far in excess of its improved value of £40,980.<sup>88</sup> Mataitai 1A2B5A2B (269a 2r 20p) was also purchased in 1946 for the purpose of a returned servicemen’s settlement scheme. The scheme failed and the land was sold by the Board of Maori Affairs in 1956.<sup>89</sup>

Oliver concludes in relation to employment opportunities:

In broad terms, the potential sources of Maori employment may be readily identified – gum digging, public works, drainage schemes, farm labouring including seasonal work, and (probably) casual labouring work in general. These are also the ways in which the humbler elements of the rural Pakeha population made, or sought to make, a living. That fact in itself, given the disproportion of the two populations and the existence of continuing and at times high unemployment in the region, meant that Maori job seekers experienced a good deal of competition.<sup>90</sup>

## 25.6 EDUCATION

### 25.6.1 Availability of schooling

Apart from some education on the mission stations the first schools in Hauraki were provided by Auckland province following the gold rush. Ten Maori children were reported by Puckey to be attending, presumably at Thames, in 1876, but there was as yet no school provided under the Native Schools Act 1867. Puckey had in fact urged his superiors in 1874 to make reserves for school purposes out of the very extensive land purchases then under

---

88. Document J8, pp 159–162

89. Document Y15, p 14; doc T2, pp 104–107

90. Document A11, p 29



way.<sup>91</sup> But, as we have seen, that was not Crown policy; reserves in Crown purchases were not placed under trusts for educational or hospital endowment as they had been in the New Zealand Company purchases of the 1840s.

The first native school in Hauraki was built at Kirikiri, near Shortland, in 1883, on land donated by WH Taipari, Hoani Nahe, and Hori Matene. It became a general school under the Education Board in 1894, over the protests of Hoani Nahe. Manaia Native School was created in 1897 and Te Kerepehi in 1902 (some 20 years after Maori had first requested it), Mataora Bay in 1908, Wharekawa also in 1908, and Te Huruhi (Waiheke Island) in 1911. Te Kerepehi was transferred to the Education Board in 1912. Kennedy's Bay Native School was established in 1942.<sup>92</sup>

Professor Oliver estimates that in 1911 Hauraki had 4.1 per cent of the Maori population, 4.8 per cent of the schools, and 3.4 per cent of pupils in the native school system. He concludes in relation to education 'that Hauraki Maori did not to a significant extent suffer from neglect in comparison with other regions, if public school as well as native school education is taken into account'.<sup>93</sup> He acknowledges that there would have been some frustration with the system as a whole, especially among communities which were not granted schools, or had native schools turned into board schools: 'The state's performance was perhaps less than exemplary, but at least it was sustained over time and extensive over the region. Set alongside health provisions, the state's educational record looks good.'<sup>94</sup>

Dr Locke draws attention to eight applications for native schools which were turned down. These include Great Barrier and Matakana Island, which are both outside the inquiry district and also perhaps so small that, at that time, a viable school might not have been possible.<sup>95</sup> The rolls of the various schools in 1911, after all, ranged from 21 to only 32.<sup>96</sup> The fact that three schools which had begun as native schools were converted to general schools when their roll became 50 per cent Pakeha is cited by claimants as a grievance and a Treaty breach, especially when Maori had donated the land for a native school (see sec 23.4.1).

### 25.6.2 Claimant submissions on education

The comment that runs through a great many tangata whenua submissions concerns the prohibition on speaking te reo Maori in schools, and the corporal punishment of children caught breaching it. Many witnesses who gave evidence of their schooling between the 1930s and 1950s refer to this. Moreover, because that generation of children grew up not speaking

---

91. Document V4, pp 72–73

92. Ibid, pp 103–106, 156–158

93. Document A11, p 39

94. Ibid, p 59

95. Document V4, pp 103–104

96. Document A11, p 39

Maori in the home, the prohibition in during their schooling contributed to the loss of the language among succeeding generations. Many have submitted that in imposing this policy the Crown breached its Treaty responsibilities to protect Maori taonga.<sup>97</sup>

### 25.6.3 Tribunal comment on education

On the main point at issue, we do not consider that providing Education Board schools rather than native schools necessarily breached Treaty principles. The State certainly had an obligation to provide education to fit New Zealand children, including Maori children, to take their place in society. This it tried to do, either via the native schools (which taught in English) or via Education Board schools. In this respect, the State did reasonably well, as far as primary schooling is considered in Hauraki.

The question of the prohibition on speaking Maori is somewhat complex. Contemporary evidence clearly indicates that Maori parents wanted their children taught English and other skills to fit them for modern life.<sup>98</sup> It is therefore something of a paradox that earlier generations of parents supported native schools (and state education generally) for this purpose, but that the products of that schooling now commonly complain that they were forbidden to speak te reo Maori and punished if they did.

Whether the State, in addition to equipping children with the skills of the wider world *also* had an obligation to preserve and foster Maori language and culture is another question. In hindsight, arguably it did. A previous Tribunal has found that the Crown breached the Treaty, via its education policies, in not protecting and fostering te reo Maori, although there was some ambiguity in the evidence it canvassed as to whether there was in fact a clear official policy on prohibiting the speaking of Maori in schools.<sup>99</sup> Since that Tribunal reported, important academic research has been published on that question, notably the 2001 publication *A Civilising Mission?*, edited by Judith Simon and Linda Smith. What that work discloses is that in the nineteenth century English and Maori were not seen to be in competition, but that teachers might actually use Maori to assist the learning of English. The celebrated inspector James Pope even translated some small texts from English to Maori for use by teachers. About the 1890s, however, language teaching was strongly influenced by the ‘direct method’, which recommended total immersion in the new language, preferably to the exclusion of the learner’s first language. First applied to the teaching of French in secondary schools, it came to be seen as a useful approach to teaching English to Maori children. It had been observed that Maori children in general board schools, where settler children were in

97. See doc H10, pp 3–4; doc H13, pp 5–6; doc H16, p 5; doc H23, p 4; doc H26, p 2; doc H28; doc H30, p 8; doc H36, p 4; doc H37, p 7

98. See Judith Simon and Linda Tuhiwai Smith, eds, *A Civilising Mission: Perceptions and Representations of the Native Schools System* (Auckland: Auckland University Press, 2001), pp 56–173

99. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 2nd ed (Wellington: Waitangi Tribunal, 1986)

a majority, were learning English quickly because it was the language of the playground as well as of the classroom, whereas children in native schools usually resumed speaking in Maori among their classmates, outside the formal lessons, and hence made slower progress in English than their Board school counterparts. This explains the ambiguity in the earlier evidence about whether there was or was not an official policy of prohibiting the speaking of Maori in the playground and classroom, and in the anecdotal evidence about punishment for so doing. The policy of prohibition undoubtedly existed, during the first half of the twentieth century, but mainly in the native schools, rather than the board schools, where it was felt to be less necessary.<sup>100</sup> As our tangata whenua witnesses have amply testified, a lot of punishment was undoubtedly handed out during that period, contributing to the loss of te reo Maori. Whether the prohibition did have the affect of promoting the quicker learning of English is in fact doubtful: other education theory holds that it is better to become fluent in the reading and writing of one's first language before embarking on a second.

While accepting the Maori were prejudicially affected by the policy of deterring (rather than encouraging) the use of te reo in schools, we do not consider that this was the sole or even the main reason for the decline of the language among Hauraki Maori, to which many tangata whenua witnesses referred. The movement of Hauraki Maori away from their communities in search of work, usually in an English-speaking environment, no doubt contributed. So to did the influx of non-Maori into Hauraki during and after the gold rushes. English was the language of the new settlements with te reo surviving as a household language only in the more isolated communities such as Harataunga and Manaia.

However, while accepting the tangata whenua evidence on this matter, we make no recommendation about the issue. It was fully addressed by the Tribunal in the *Report on the Te Reo Maori Claim*, and a great deal of important action has been taken by the State (such as supporting the Kohanga Reo movement and establishing the Maori Language Commission) both before and since the report to promote the retention and recovery of the language. We welcome such initiatives and encourage the Crown to keep the necessary support for te reo Maori under constant review along with the State's primary responsibility to ensure that the teaching of English and other needed skills are available to all children in the country.

Until the advent of the first Labour Government, secondary education was often a privilege available only to those who lived in or near towns. Rural New Zealand children of *any* ethnic group could not usually attend unless their parents could afford to send them to board in the nearest town or to private boarding schools such as those still run by the churches. Maori were certainly not discouraged by the State (or, as far as can be discerned from evidence before us, by the community) from attending secondary schools in towns if they could reach them. The difficulty for Maori was that until after the Second World War, most were rural dwellers and bus services were limited. Secondary schooling became much

---

100. Simon and Smith, pp165, 170–171

more available in rural areas when 'district high schools', attached to the largest primary schools in a district, were built under the first Labour Government, and buses provided to bring students from quite remote areas to attend them. (Private, secondary boarding schools affiliated to the churches partly filled the gap, the fees of individual pupils funded through such Maori institutions as Maori trust boards and church scholarships, but there was no such trust board in Hauraki.) There is no evidence of any greater indifference on the part of the State to providing secondary education for Maori than for Pakeha students, but a considerable time-lag in providing it adequately for rural children generally. From 1961, the State-funded Maori Education Foundation also assisted many Maori secondary and tertiary students.

Where the State might be more legitimately criticised is in its tardiness in recognising the intrinsic worth of Maori language and literature in New Zealand society at large, including higher studies. Paradoxically perhaps, Governor Grey himself had shown an intense interest in it on his arrival in the colony in 1845. His association with Maori elders and with scholarly clergy such as Bishop Selwyn, contributed to on-going state support for the church boarding schools (at that time teaching in Maori). Grey's own collection and publication of works such as *Nga Mahi a Nga Tupuna* and *Ko Nga Moteatea Me Nga Haki-rara o Nga Maori*, gave a lead at the highest official level. But the initiative was not followed up, not even by Grey himself in his second governorship and his premiership. It was left to enthusiastic amateurs such as S Percy Smith and Edward Tregear, founders of the Polynesian Society in the late nineteenth century, to foster formal studies of Maori culture and history through their journal. But there was a degree of condescension in the attitudes of these early amateurs, who viewed Maori more as survivors of a once-glorious but disappearing past rather than as a vital people and culture. It was not until the 1920s and later that Maori leaders themselves such as Ngata and Buck, already leading a cultural resurgence among their own people, secured sufficient influence and authority for the State to begin to recognise and support their efforts through such organisations as the Maori Purposes Fund Board. Yet, while Ngata secured approval in principle in 1927 for the inclusion of Maori language as a subject in universities, it was only after the Second World War that it was actually introduced. One outcome was that even when te reo Maori was finally included in the secondary school curricula as an optional subject, because of the long neglect of Maori language and culture among state education authorities, there were very few teachers in the secondary schools qualified to teach them. The result was that (as many of the tangata whenua witnesses in these proceedings testified) many young Maori going through secondary school in the period 1940 to 1960, fell into a gap in which the language was fast declining in the home but not yet available in the schools. In recent decades, the State has made considerable efforts to meet the need, but the long period of neglect of Maori studies has left not only Maori but all New Zealanders the poorer.

On the question of land being donated by Maori for schools, we do not consider it

unreasonable for the State to build a general school rather than a native school if the balance of Maori and Pakeha population made that more appropriate. It is in fact, one of the most laudable features of New Zealand life that neither Maori nor Pakeha pupils were debarred from attending either kind of school. If the school was a general school, however, we think it only reasonable that the Maori donors of the land should be compensated for that land, and that if the land ceases to be used for a school or other public purpose it should be returned to the donors: without cost, if no compensation has been paid meanwhile (see section 23.4.1, where various schools and the land for them are discussed in the context of public works takings).

### 25.7 CLAIMANT SUBMISSIONS ON SOCIO-ECONOMIC ISSUES

We have had the benefit in this inquiry of nearly 60 submissions by individual Hauraki people.<sup>101</sup> They spoke on their experiences growing up in the district and also of having to leave it behind. These witnesses include kaumatua and kuia of the various claimant groups, and also many people in their forties and fifties who have grown up since the Second World War, partly in the district and partly in areas to which they have moved for education, work, or to accompany their spouses. All spoke and wrote from the heart, and often very feelingly, about their family life and work in the inquiry district. Because they offer firsthand personal experience, their testimony is of particular value to our study of social and economic situation.

Their submissions are too numerous for us to discuss individually, but taken together they give a comprehensive picture of life in Hauraki since the 1930s. In this section, we seek to draw together some of the important themes that run through the great majority of the submissions.

- The dominant emphasis by far is a positive affirmation of family life centred on the growing, gathering and sharing of food. Many witnesses speak of their household gardens in which a wide variety of vegetables were grown, and often fruit and berries as well. There is almost equal emphasis on gathering the produce of rivers and streams, the bush and the sea. Most of this produce was indigenous or had existed here prior to colonisation; some was introduced after 1840. There are many accounts of eeling, hunting for pigs and pigeons in the bush, and shooting rabbits in the fields. There are comprehensive and detailed accounts of sea-fishing and the gathering of shell-fish, including remarkable information on the variety of species and their behaviour, detailed local knowledge of seas and tides, the varied techniques used in catching fish, and the methods of preserving them. The pride and importance attached to the cultivation

---

101. Many are listed in chapter 1, in footnotes to the sections describing each claim.

or gathering of food, and of sharing it, reveals a strong continuity with long-standing values and traditions.

- ▶ Witnesses speak of this domestic economy as primary, supplemented by the wage labour of some of the men, sometimes reliable but often sporadic and seasonal, sometimes local but often only secured by leaving the villages on weekdays for work outside the district. There was an obvious pride in self-reliance, including reliance on traditional remedies for illness. But the accounts cannot entirely cloak the precariousness of the semi-subsistence rural economy. The flush of foods in summer and autumn, were followed by meagre winters, in which food was sometimes scarce, notwithstanding the sun-dried and smoked fish and the jars of preserved fruit. Some witnesses speak of hard times and of having to seek assistance from more distant kin, or from the Government. Many families lived on the edge of poverty, or beyond.
- ▶ The accounts reveal other serious underlying problems. While crowding together in bed or on mattresses on the floor is often remembered nostalgically, some witnesses speak of cold and draughty housing, and (in the relatively few occasions that this occurred) of the immense satisfaction in moving to modern Maori Affairs houses. Many accounts also speak of the ill-health of one or more family members, of the difficulty of reaching doctors and hospitals and of early deaths.
- ▶ Many accounts express regret at the passing of what witnesses recall as a largely self-reliant family and community lifestyle, recalled more for its pleasures than its difficulties and hardships. Its passing was commonly attributed to the need for out-migration, mainly for work opportunities, since the land left could not support the growing population. Comments about more recent decades refer, among other matters, to the different attitudes of a younger generation influenced by city living, and too often characterised by rejection of the (to them) increasingly irrelevant old ways, leading to important social gaps in their lives and to anti-social behaviour and drugs, although other accounts speak of efforts to recreate community where there is enough land for housing and local employment.

#### 25.8 TRIBUNAL COMMENT

The above survey enables some broad conclusions to be drawn about the social and economic outcomes for Hauraki Maori of 150 years of colonisation. A steep fall in numbers was followed by a more gradual fall which persisted somewhat longer in Hauraki than in the Maori population generally, followed by a burgeoning of the population from the 1920s until today. But much of the recent growth of Hauraki iwi has not taken place in Hauraki itself. About the turn of the century and again after the Second World War great

numbers of Hauraki Maori had moved to adjacent districts in search of work and better living conditions.

We have noted the devastating impact of epidemic and endemic diseases and cited evidence to show that the State's response to the health needs of Maori was tardy and, up to the 1930s at least, limited. Similarly, the general state of Maori housing was poor, and contributed notably to the incidence of disease and mortality. This in turn was linked to low and sporadic incomes and to unemployment, in short, to poverty and ill-health. From the 1930s the State was not inactive in trying to alleviate unemployment and poverty, but the opportunities in Hauraki itself were limited, and Maori faced constant competition from a numerous Pakeha population, also in search of work. Maori children had access to primary education not far removed from that of most rural communities. Secondary and tertiary education was accessible only to those, Maori and Pakeha alike, who could live in the towns or afford boarding schools. Because most Maori were rural dwellers until after the Second World War, secondary education often depended on spare household income or rare church school scholarships, or, after 1961, selection for support by the Maori Education Foundation.

Although they have made gains in recent decades, Maori living in the inquiry district are, on several indices, still disadvantaged in relation to other Maori and to non-Maori. Hauraki claimants have laid the responsibility for their disadvantage squarely upon the State, principally in having swiftly acquired some 90 per cent of their land and provided few opportunities for lasting betterment in return. As Professor Oliver put it:

The loss, to such an extreme degree, of this economic base was not accompanied by the opening of reliable additional economic opportunities. The proceeds from land cessions, leases and sales, proved to be transitory and delusive. Even at the lower end of the socio-economic scale, in such activities as gum digging and road and rail construction, Maori workers suffered from unreliable returns, crippling competition and discriminatory practices.<sup>102</sup>

The evidence summarised in previous chapters and in preceding sections of this chapter, supports this conclusion.

---

102. Document A11, p58





## CHAPTER 26

### MAORI LANDLESSNESS AND POVERTY AND THE CROWN'S RESPONSIBILITY

#### 26.1 INTRODUCTION : THE FUNDAMENTAL QUESTION

In closing submissions, counsel for Marutuahū drew attention to what is apparently the Crown's view on socio-economic outcomes in relation to the negotiation of Treaty settlements. Counsel cites a passage from a 2002 *Office of Treaty Settlements Briefing to the Incoming Minister in Charge of Treaty Negotiations* as follows:

In addressing expectations for redress . . . the Government will need to emphasise that the level of redress is based on the nature and severity of the Treaty breaches suffered, not on current socio-economic disparities. Individual and regional socio-economic deprivations are matters that are appropriately addressed by other government initiatives.<sup>1</sup>

If this is the case, the *current* socio-economic situation of Hauraki Māori has little relevance in the context of historical claims. However, in these proceedings, the Crown has not sought to evade consideration of land alienation, economic disparities, health and education as part of the appraisal of 'the nature and severity of the Treaty breaches suffered'. Rather, it asks what the responsibility of the Crown was for those things, relative to the responsibility of Māori, and relative to world-wide (or at least nation-wide) trends over which it had little or no control. In the previous chapter we have sought to find answers to these questions in respect of some of the particular issues arising in employment, health, education and housing. In the following sections, we take up the issue of the role of the State in the economy generally and towards the place of Māori in that economy.

It is generally accepted in these proceedings that the initial engagements of Hauraki Māori with the wider world and the money economy were relatively successful. They profited from the timber and flax trades and their supply of produce to the Sydney and Auckland markets. In the late 1860s they were among the wealthiest tribes in New Zealand, if wealth is measured by the flow of revenue from the goldfields, from the continued demand for timber for the mines, and from the growing townships. By the end of the nineteenth century, however, the revenue from timber and gold had largely dried up, most Hauraki land had been sold,

---

1. Office of Treaty Settlements, *Office of Treaty Settlements Briefing to the Incoming Minister in Charge of Treaty Negotiations* (Wellington: Ministry of Justice, 2002), p 9 (doc z6, p 57)

there were few successful Maori farmers, and out-migration for work had begun. Little but kauri gum-digging and sporadic wage labour provided income for Hauraki Maori in their own rohe.<sup>2</sup>

In 1945, Rangi Royal, as mentioned in section 25.4, was responsible for an 'Economic and Domestic Survey' of the Maori situation. In stark contrast to the promises of Maori sharing prosperity along with Pakeha, held out by colonial politicians to Hauraki iwi when negotiating for their land<sup>3</sup>, he gave this succinct summary:

The Government of the day was wide awake to the possibilities of the District and, by agreements and promises cajoled the Maori into parting with the control of their gold bearing lands, their timbered forests and pastoral country. There followed a period of peaceful penetration and with cheque books, orders on storekeepers, breweries and peddlers of pakeha wares, Government Agents bought or purported to buy the Maoris' birthright. Private individuals also had their share until prohibited by an Act of Parliament from acquiring Native Land.

So you have today, living in a district from Waihi to Coromandel, communities of Maori, almost landless, certainly indigent, and the most backward and neglected of the Maori tribes in New Zealand.<sup>4</sup>

We must ask, whether this dismal outcome was the scarcely avoidable consequence of Maori engagement with the wider world since 1769, or whether it was the result of action or inaction by governments. This fundamental question indeed runs through all Treaty claims, and other Tribunals have not found it easy to determine causes or attribute responsibility. The Ngati Awa Tribunal has commented that:

even where it is evident that large numbers of tribal members left their home area for opportunities elsewhere, it is not always certain that this was a consequence of raupatu or other losses of resources. Maori and Pakeha alike in the middle part of this century left rural areas of New Zealand for better employment, education and entertainment prospects that the towns and cities offered.<sup>5</sup>

The Whanganui River Tribunal has also referred to the 'world-wide economic forces leading to urban migration globally that were beyond the power of a government to control'.<sup>6</sup>

In these proceedings, particularly in closing submissions and responses, claimant and Crown counsel have paid much attention to the role of the State in shaping the fortunes of Hauraki Maori. We must consider their differing positions.

---

2. Document A11, p10

3. See the 1867 promises of provincial superintendant John Williamson in section 6.8.2(2).

4. Rangi Royal, 'Economic and Domestic Survey', 17 April 1945, AAMK869/1019c, Archives NZ (doc v4, p160)

5. Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p101

6. Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), p83

### 26.1.1 Claimant submissions on the Crown's responsibility

Virtually all claimants in this inquiry either infer, or explicitly state, that they have been economically marginalised and their social order disrupted by the actions of the Crown, mainly through excessive land purchasing and the introduction of a tenure system which put much of the remaining land beyond economic use. The Crown did little to assist Hauraki Maori into new economic enterprises, and they were left marginalised and dependent. This section summarises the arguments of the two largest claimant groups, the Wai 100 claimants and the Marutuahua claimants, whose submissions have been adopted by most other claimants.

#### (1) Wai 100

The Wai 100 claimants submit that the Crown, largely by reference to the evidence of Professor Gary Hawke, has 'chosen to argue that there was a certain historical inevitability' about the marginalisation of Hauraki Maori.<sup>7</sup> Professor Hawke pointed to the unsuitability of most Hauraki land for sheep-grazing, which effectively precluded the growth of the wool economy in the region. Once the extractive industries of gold and timber declined, Hauraki as a district, and Maori within it, were vulnerable.

Counsel for Wai 100 rejects these arguments. With or without wool, he submits, the Hauraki economy thrived in the nineteenth century. He cites Professors Belich and Stone to show the importance of the market provided by the growth of Auckland, the very substantial investments in the exploitation of Hauraki timber and gold, the extension of road, rail, telegraph and shipping services, and the drainage of the Piako swamps for dairying in the twentieth century. Belich has noted that Thames was the second largest town in Auckland province in the 1870s, with over 7000 people, and even in 1911, after the waning of the gold rushes, Waihi was still twice the size of Hamilton, with a population of 6436.<sup>8</sup>

Despite all this economic activity, including short-term returns to Maori from timber and gold, and despite the Crown's capacity for intervention, Hauraki Maori did not benefit from the gold and timber industries in a *lasting* way. Instead, gold discoveries were the trigger for the Crown's huge programme of pre-emptive purchase of Hauraki land: 'By the time the focus in Hauraki had turned to agriculture in the twentieth century, particularly with the draining of the Hauraki plains, Hauraki [Maori] possessed neither the land, nor capital, to benefit.'<sup>9</sup>

Counsel for the Wai 100 claimants also takes issue with Professor Hawke's assertion that the Crown, in the nineteenth century especially, 'was not seen as responsible for an economic strategy and it did not direct the course of economic development', and therefore could not have been expected to assist Hauraki Maori much more than it did.<sup>10</sup> The

7. Document v1, pp 8–9

8. Ibid, p 10

9. Ibid, p 11

10. Document 01, pp 22, 34

claimants assert that, on the contrary, the Crown intervened heavily in shaping the New Zealand economy, noting, for example, the development of the Native Land Court system and the administration of the goldfields. They cite Professor Belich's description of the role of governments (national and provincial) in funding immigration and public works, offering bounties for gold discoveries, stimulating industries by offering rewards to first producers of various manufactures, establishing the State Life Insurance Office and the Post Office Savings Bank, and building and running large sectors of the transport and communications infrastructure, including the railway workshops.

The impact of 'Vogelism' is particularly pertinent to Hauraki, and with it a connection between governments and the Bank of New Zealand. The borrowing of some £20 million between 1870 and 1880 for the development of public works – notably railways, roads, bridges, and harbour infrastructure – was meant to stimulate the opening of vast areas of land to new settlement and commercial agriculture. The increased tax revenue and rising value of land was meant to fund the repayment of the loans. But the loans were wildly excessive, and the Grey Government in 1879 had to ask the Bank of New Zealand to assist with its repayments to English creditors. In 1894, the Seddon Government returned the favour and rescued the bank from bankruptcy, occasioned largely by the defaults on mortgages on large areas of land, which the bank had accumulated uselessly in its estates company. Among the many furious public controversies over these decades was a parliamentary row in 1876 over the sale of Piako swamp lands by the Crown to a syndicate which included Thomas Russell, a director of the Bank of New Zealand and a close supporter of conservative governments since the 1860s.<sup>11</sup> This kind of connection underlies Professor Belich's observation that public and private sector roles converged and, to a large extent, 'were run by the same people'.<sup>12</sup> Many members of Parliament, members of provincial councils, and Ministers of the Crown were also leading New Zealand landowners, financiers, and industrialists.

The Wai 100 claimants add war and confiscation of Hauraki land to the list of Crown interventions, although (as we have seen) the Crown regards such actions as arising not from economic motives but from the Crown's obligation to provide for public security. The claimants also stress that the determined acquisition of Maori land, including Hauraki land, through Crown purchases and facilitation of private purchases under the Native Land Acts, was an active Government policy and programme, designed to advance the colonial economy.<sup>13</sup>

---

11. See W J Gardner, 'A Colonial Economy', and Raewyn Dalziel, 'The Politics of Settlement', in *The Oxford History of New Zealand*, edited by Geoffrey Rice (Auckland: Oxford University Press, 1992), pp 71–75, 95–109

12. Document Y1, pp 11–13

13. Ibid

**(2) *The Marutuahu claimants***

Mr Majurey, counsel for the Marutuahu claimants, has built his discussion of the 'overall Crown position' around the Crown's 'Further amended statement in response to factual issues', dated 2 September 2002.<sup>14</sup> He notes that Crown counsel have asked, perhaps rhetorically: 'what the Crown, in the sense of the newly emerging nation State, could reasonably have done in the context of the irresistible forces of colonisation and a Treaty which itself contemplated land sales and European settlement.'<sup>15</sup>

Mr Majurey submits that 'the Tribunal must forcefully reject the Crown's fiction of "fatal necessity"'. The Treaty involved the Crown in a very grave commitment: 'it was that the Crown was putting itself between the forces of colonisation and Maori in the interests of protecting Maori self-government and well-being.'<sup>16</sup>

He then draws upon the cross-examination of Dr Belgrave, to indicate some alternatives available to the Crown. These include:

- ▶ working with various institutions by which Maori themselves sought to regulate their engagement with modernity, notably the runanga movement, the Kotahitanga and the Kingitanga;
- ▶ the provision of much greater reserves such as those which enabled south Taranaki Maori eventually to enter the dairy industry;
- ▶ reserving a proportion of Maori income in trust (governments were aware, and sometimes warned by their own officials, that the timber and gold would eventually run out, leaving a transformed economy).

Mr Majurey then refers to the Crown's view of the Native Land Acts and the Native Land Court, rebutting the suggestion that the law and the court offered 'a straightforward and equitable process' and suggesting instead that 'many Crown policies were blatantly partisan in the active support of settlers'.<sup>17</sup>

An important Crown policy was its preference for dealing with Hauraki Maori as a series of individuals, with little regard for a tribal or collective approach. This was significant not only in relation to land but also in relation to the Crown's approach to governance, and to its obligations under article 2 of the Treaty.<sup>18</sup>

With respect to management of resources, Mr Majurey quotes the Crown as follows:

The key issue is not so much whether Maori were deprived of gold and/or timber or denied a fair return for these resources, but whether more could have been done to enable

---

14. Paper 2.550

15. Ibid, p 2

16. Document z6, p 6. Mr Majurey then refers to the guarantee of tino rangatiratanga in the Maori text, apparently in explanation of the term 'self-government'.

17. Document z6, p 9

18. Ibid, pp 10–11

Maori to participate in providing the labour, knowledge and capital which earned a return in goldmining and timber industries.<sup>19</sup>

This, suggests Mr Majurey, is a telling acknowledgement ‘that the Crown had a much larger responsibility to interfere in the 19th century market place in these industries on behalf of Maori themselves’. He implies that the Crown is aware that it failed to take up that responsibility adequately.

#### **26.1.2 Crown submissions on the Crown’s responsibility**

We have noted in the land chapters (pt IV) and in the prologue to this part, that the Crown accepts substantial responsibility for the excessive land alienation in Hauraki but denies that there is a necessary link between landlessness and poverty. In a response to factual issues filed by claimants, Crown counsel commented, ‘land ownership is not an economic panacea’.<sup>20</sup> In closing submissions, Crown counsel make a similar point in regard to the out-migration and urbanisation of Hauraki Maori. While accepting that, as the Marutuahu claimants contend, this trend may have happened ‘much earlier’ for Hauraki Maori than for other Maori, Crown counsel submit that:

care should be taken not to too readily presume this was a result of landlessness. Urbanisation was of course one of the dominant historical movements of the 20th century – and Hauraki Maori would have been significantly affected by such trend, even if they had retained a far larger land base. Furthermore, the Crown cannot be seen to be responsible for historical trends of this kind.<sup>21</sup>

Despite their references to such world-wide trends, Crown counsel reject the charge that they are using such arguments to evade all responsibility.<sup>22</sup> They note that the Crown has made some clear acknowledgments of breaches of Treaty principles, but has also responded in detail as to ‘the nature and extent of breaches acknowledged, and, where appropriate . . . why there is a denial of any breach at all’:

Throughout these submissions there will be repeated references to notions of ‘complexity’, ‘difficulty’, and ‘hard to conceive of a realistic alternative’. These terms, frequently the language of mitigation, are not to be interpreted as a denial of overall Treaty responsibility or some fundamental ambivalence on the Crown’s behalf. Equally, however, the Crown does often seek to qualify the extent of responsibility accepted and to emphasise the importance of dealing with the past with integrity. Frequently the real issues between claimants and

---

19. Document Z6, p 11; paper 2.550, p 3

20. Paper 2.550, p 43

21. Document AA1, p 313

22. Document Y1, pp 8–9; doc AA1, pp 4–7



Crown in this forum relate to extent and degree of breach and prejudice, the twin requirements of a well-founded claim under the Tribunal's empowering legislation.

The Crown's approach generally through this inquiry (and which it urges the Tribunal to adopt) has been one of seeking to acknowledge the complexity of the past, where, as Paul Monin describes it, 'interaction outweighed confrontation, where ground was shared as well as contested by European and Maori, and where both races made strategic decisions on how best to advance their respective interests.'<sup>23</sup>

This is a reference to Paul Monin's concept of 'dual agency', a stream of historiography which recognises the 'contribution of indigenous, as well as European, forces to the making of the contemporary Pacific.'<sup>24</sup> Crown counsel continues:

An acknowledgement of some element of Maori agency should not be automatically interpreted as criticism of some of the historical Maori actors – ie the tipuna of some of the claimants. In some cases the external influences were too powerful, too hard to anticipate for any success to be guaranteed. In other cases, it is likely that the accident of history played a role – so, too, on occasion, there was miscalculation. This is of course, all part of human experience. But just as these factors affected choices Hauraki Maori made, so too were Crown historical actors constrained. It is within the parameters of these constraints that a principled approach to a conception of Crown Treaty responsibilities is to be found – and within these parameters the Crown does acknowledge that changing circumstances over time led to the disadvantage of Hauraki Maori and that Crown action or omission did contribute to that disadvantage.<sup>25</sup>

Crown counsel also quote the acknowledgment by Belgrave et al, witnesses for the Marutahu claimants, as follows:

It may seem unfortunate to many historians that we are judging nineteenth century officials against criteria, the principles of the Treaty, about which they knew very little and which their superiors had relegated to a simple nullity. In reviewing these histories, however, we need to maintain some degree of fiction that Crown agents, such as some land-purchasing agents in Whitianga, could have acted differently if consistently instructed to honour the principles of the Treaty of Waitangi.

Having acknowledged these difficulties, however, this research tried to follow a middle road, conscious of the need for the Tribunal to review historical events according to its jurisdiction, and trying to anticipate the kinds of questions that the Tribunal may find important in carrying out its role. On the other hand, the principal focus is on a policy environment within its own context. Our primary concern here is with the Crown's own stated

23. Document AA1, p 1

24. Paul Monin, *This Is My Place: Hauraki Contested, 1769–1875* (Wellington: Bridget Williams Books, 2001), p 3

25. Document AA1, p 2

## 26.1.3

policies and on alternatives that would have been practically possible within the particular policy environment of the time.

It is clear that Crown counsel quote these words approvingly, as illustrating (in counsels' words) the 'difficulty and tensions inherent in any judgement of the past in this forum'.<sup>26</sup>

### 26.1.3 Claimant responses

In their responses, claimant counsel regard such arguments as an attempt by the Crown to mitigate its responsibility and 'explain away and rewrite its history' in New Zealand.<sup>27</sup> They submit that the Crown cannot downplay its responsibility for the 'diaspora' and poor economic position of Hauraki Maori by arguments based on world wide trends. All claimant groups, either explicitly or implicitly, attribute responsibility for the poor socio-economic situation of Hauraki iwi directly to the Crown, mainly because of its aggressive land purchase programme. Counsel for the Marutuahu claimants reiterates his clients' view that the evidence has shown that:

- ▶ Marutuahu were a landless people, via Crown Treaty breaches, well and truly by the 1920s.
- ▶ The resulting diaspora occurred 1–2 generations before that which occurred for others.<sup>28</sup>

The link between land alienation and poor socio-economic outcomes for Hauraki iwi is again made central to assessing the Crown's responsibility.

### 26.1.4 Tribunal comments on the Crown's responsibility

#### (1) *The basis of assessment*

We concur with the opinion of Belgrave et al quoted in section 26.1.2 by Crown counsel. In one sense, the Treaty of Waitangi Act 1975 establishes the principles of the Treaty above the flux of history. However, the most authoritative interpretation of Treaty principles, that of the Court of Appeal in the *Lands* case (or the *Maori Council* case) of 1987, affirmed that one of the key principles was that Crown and Maori were obliged to deal with each other reasonably and with the utmost good faith. 'Reasonableness', we believe, must also be the test of the Crown's actions historically. We must consider, then, what might reasonably have been done at the time of the events under consideration. Notwithstanding the perennial quality of Treaty principles, historical contexts cannot be ignored.

---

26. Document AA1, pp 2–3; doc v1, p18

27. See doc AA13, pp 6–7

28. Document AA13, pp 58–59

In navigating through these turbulent methodological straits one light in particular has helped us to steer between the Scylla of 'presentism' and the Charybdis of 'historical inevitability', namely, whether an idea or concept had been voiced at the time, and was 'in the public arena', to use a modern expression. If Maori, in particular, had spoken or written to Crown officials or politicians about their concerns, asked for remedy or sought support for a measure they thought beneficial; or if (as Dr Belgrave suggests) the Crown's own stated policy proposals included certain options, we think it entirely reasonable that such concerns and options be used as a measure of subsequent Crown action or inaction. We have seen much evidence of this type, and we illustrate our point below, with reference to some of the larger controversies in these claims.

## **(2) A contradiction in the Crown's position**

At the outset, however, we note a contradiction in the Crown's position, to which the claimants have drawn attention. As noted earlier, the Crown has conceded in its closing submissions that its large scale and vigorous programme of acquisition of Hauraki land, especially in the latter part of the nineteenth century, contributed to the overall landlessness of Hauraki Maori and that:

this failure to ensure retention of sufficient land holding by Hauraki Maori constituted a breach of the principles of the Treaty of Waitangi . . . In making this acknowledgement the Crown is not (as it has said on many previous occasions) acknowledging that landlessness equates with poverty. The purchase of Hauraki Maori land was not in itself a determinant of Hauraki Maori economic fortunes.<sup>29</sup>

We would point out at once that this assessment sits very awkwardly with an earlier passage in the same closing submissions, wherein the Crown acknowledges a Treaty duty:

to ensure that there was sufficient land holding retained [*sic*] by Hauraki Maori for their future *sustenance and growth* and that its failure to ensure they retained possession of *adequate* land constituted a breach of the principles of the Treaty of Waitangi. [Emphasis added.]<sup>30</sup>

Unless the Crown is referring only to land for Maori subsistence agriculture (which would be a less than minimalist interpretation of its Treaty obligation) what else do the italicised words refer to other than economic development? In other words the Crown itself implies a link between retention of 'adequate' land and economic opportunity.

This being so, it is contradictory of the Crown to take issue with the claimants' assertion that the Crown played 'a major interventionist role' in Maori society in the nineteenth

---

29. Document AA1, p 166

30. Ibid, p 2

## 26.1.4(3)

century, and to continue to press Professor Hawke's views.<sup>31</sup> The Crown presumably sees no contradiction because it adopts Professor Hawke's argument that governments concerned themselves with 'the framework of economic activity rather than engaging directly in the economy itself', and that 'Governments did not see their role as providing assistance to individuals'.<sup>32</sup> The Wai 100 claimants rightly point out, however, that '*frameworks*', such as the operation of the Native Land Acts and the goldfields administrative regulations involved massive interventions in Maori society, with huge consequences for the society as a whole and individuals within it. They also point out that Professor Hawke conceded in cross-examination that his own book, *The Making of New Zealand*, expresses doubt whether there was '*any area in which the Government did not have a legitimate interest*'.<sup>33</sup> Moreover, when Mr Clark, counsel for the Wai 423 claimants, asked Professor Hawke whether he agreed with the general proposition that land loss experienced by Maori, for whatever reason, 'did have a harmful effect on Maori social and economic development', Professor Hawke replied, 'With qualifications, yes'.<sup>34</sup>

**(3) Intervention on whose behalf?**

The suggestion that the Crown was largely non-interventionist in economic matters, including such fundamental matters as land tenure and the land market, does not bear scrutiny. What is at issue is, for whose benefit the Crown intervened, and whether it could not have done so more determinedly, or more adroitly, on behalf of Maori. Many claimants have also asserted that the Crown should, in a sense, have intervened *less*, by providing a legal framework which would have left Maori much more in control of their own land, or left them free to deal with the private sector. We have discussed throughout part IV (but especially in sections 18.7 and 18.8) the role of Maori agency in land alienation, in relation to the constraints, erected by the State, in which they tried to operate. We now briefly survey some of the broader aspects of the State's interventions, seeking to draw together some of the themes discussed in earlier chapters.

**26.2 CROWN INTERVENTIONS SINCE THE 1830S****26.2.1 Crown interventions from the foundation of the colony**

We have noted in our prologue to part II of this report and in section 3.1 that the British Government's policy towards New Zealand in 1837–40 itself involved a massive intervention. It was an intervention driven by two rather contradictory forces:

---

31. Document AA1, p 4

32. Ibid

33. Document AA14, pp 13–14

34. Document O14, p 140

- British policy in the 1830s was driven by economic theories which favoured free trade and the encouragement of private enterprise. Protection of British subjects in pursuit of legitimate commerce in New Zealand, including the establishment of ports, was one of the objectives of the British policy. It also shaped Captain William Hobson's initial suggestion in 1838 that Britain acquire 'factories' (enclaves of territory under British control where trade and manufacture could develop) in New Zealand.<sup>35</sup>
- In the same decade, the English humanitarians, having established powerful lobbies in Parliament and brought about the end of legalised slavery in the British empire, set up two committees to examine the condition of the aboriginal peoples subject to British colonisation and recommend the appropriate action to be taken by the British Government. These committees, and the lay organisations which supported Christian missions in New Zealand, were supportive of trade in the South Pacific but not of settlement and formal colonisation of New Zealand. Their pressure resulted in the Government denying a charter to Edward Gibbon Wakefield's New Zealand Company. But colonisation began to flow from New South Wales, the New Zealand Company sent out its ships in any case, and Busby's efforts to establish an effective Maori government seemed to be foundering amidst renewed tribal feuding in the Bay of Islands. At that stage, the humanitarians, led by the missionaries in New Zealand, changed their stance, and urged the British Government to establish its authority in order to regulate colonisation and protect Maori interests.

The British Government's instructions to the Governors of New Zealand, and the Treaty of Waitangi itself, were shaped by the tension between the private drive towards colonisation, and the humanitarian desire to protect Maori. The outcomes are examples of early Crown intervention affecting Maori in New Zealand:

- There was a fundamental acceptance by the Crown that British colonisation of New Zealand was inevitable, and that there was a duty on the Crown to legitimise and assist orderly colonisation.
- The Crown positioned itself between the forces of colonisation and Maori, with the purpose of protecting Maori from the fate that had overtaken most indigenous peoples under European colonisation previously. By assuming the sovereignty of New Zealand the Crown could control, to a considerable extent, which lands the emigrants occupied and on what terms. It could also shape the developing relationship between the colonists and Maori.
- Crown counsel has demonstrated in these proceedings that promoting the amalgamation of races was a major objective of the Native Lands Act 1862 and subsequent land

---

35. See Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830–1847* (Auckland: Auckland University Press, 1977), pp 51–174

legislation.<sup>36</sup> While most leading British politicians and officials regarded the *uncontrolled* acquisition and settlement of Maori land as fraught with danger for Maori, many believed that the *controlled* settlement of the vast areas of undeveloped or ‘waste’ Maori land through the operation of these Acts was well-intentioned and, in principle, was a benign intervention.

### 26.2.2 A contradiction in Normanby’s instructions to Hobson

We have observed in chapter 3 that there was an almost inescapable contradiction in British policy at the founding of the colony, whereby Hobson was instructed on the one hand to buy land by ‘fair and equal contracts’, on the other to buy it cheaply in order to finance the development of the colony (see sec 3.1.2). The way out of the contradiction, in theory, was that the remaining Maori land, interspersed with that of the settlers, would gain added value from the enterprise of the settlers. This was the argument regularly used by Crown and private land purchase agents in succeeding decades to persuade Maori, including Hauraki Maori, to part with vast acres, while securing to themselves reserves under Crown or land court title.

But the question remains, whether the Crown’s land purchase plan allowed Maori *to gain access to the added value* of their reserves or remaining lands. Professor Hawke, a principal witness for the Crown in these proceedings, has referred to the very important economists’ distinction between ‘finance’ and ‘capital’. ‘Finance’ may be raised by sale, lease or mortgage of land, but unless it is applied to investments which have the capacity to generate further output and income, it does not become ‘capital’. The ownership of the asset (land) does not of itself result in capital formation: at various times and places the Crown, Maori and settlers alike have all possessed land of little capital value. Professor Hawke notes the possibly greater contribution to capital formation of ‘savings’, notably the investment of labour (including Maori labour) in railways and roads, which generated both income for workers at the time and the infrastructure for a future income generation. He notes a similarly positive outcome from Maori investment of finance and labour in flour mills and sailing ships, though of course market conditions also hugely affect the income-generating capacity of the investment.<sup>37</sup> There is clearly more to successful capital formation than the possession or

---

36. Paper 2.550, p 25; doc AA1, p 166; docs O1, P1. Since the publication of Professor Ward’s *A Show of Justice: Racial ‘Amalgamation’ in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1974), historians have followed his lead in arguing that the British Government decided that the best course for Maori was to amalgamate with the incoming social order rather than to cling to outmoded forms of their own society on large reserves. This was supported by humanitarian Europeans in New Zealand. In ‘The Origins of the Anglo-Maori Wars: A Reconsideration’, NZJH, vol 1, no 2 (October 1967), pp 148–170, esp pp 168–169, Ward showed that, while many of the clergy and former chief justice Sir William Martin (active humanitarians) opposed Governor Browne’s attempt to coerce Wiremu Kingi over the Waitara purchase in 1860, they mostly supported Grey’s decision to invade the Waikato in 1863, because they believed the Kingitanga was retrogressive and retarded Maori advancement.

37. Document O1, pp 25–26; doc O14, p 109

transfer of land. Nevertheless land had to be the foundation of the process for most Maori. Unless they were able to raise finance by sale or lease of some land at good prices, and invest finance and labour on the remainder, it is difficult to see how they could readily have entered the new economy on anything like equal terms with settlers.

The catch for Crown and Maori was inherent in the details of land tenure. It was not the ownership of land per se but the *tenure* by which land was held, the *modes* by which it was transferred, and the *manner* in which finance so raised was then managed or invested that would determine whether Maori (or anyone else) made capital gains and competed on equal terms with settlers. That is why this report has focused on these matters. Land tenure, modes of transfer, and investment of finance in development of other lands, in new enterprises, in trusts with potential for growth or in education and training, are all central to whether the contradiction in Normanby's instructions would be resolved and Maori actually benefit along with the colonists from British settlement.

### 26.2.3 Further instructions: idealism compromised

Of all the royal instructions to governors, Normanby's instructions to Hobson have attracted much the greatest focus in Treaty claims. In fact, though crucially important, they were brief and general. British policy towards Maori was spelled out in much more detail in subsequent years. Lord John Russell's instructions to Hobson in 1840 referred in some detail to support for education for Maori, for their employment and training in Government projects and to their recruitment in the militia. There was then some effort by officials in New Zealand to establish trusts for the management of the Maori reserves, which were to provide income for health care and education. The planning was flawed and the implementation even more so, as the Tribunals' *Report on the Wellington District* makes clear in great detail.<sup>38</sup> But the fact remains that British politicians and officials had recognised *from the very outset of the colony* that specific efforts had to be made not merely to grant Maori formal legal equality with the settlers (as implied in article 3 of the Treaty) but to help them become 'equal in the field' with settlers, by appropriate management of reserved lands, education and training, and a share in the machinery of the State.<sup>39</sup>

We have also observed, however, that the Crown's idealism proved brittle in the face of

---

38. Waitangi Tribunal, *Te Whanganui a Tara me Ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003)

39. Ward, *A Show of Justice*, pp 34–60. The goal of assisting Maori to become 'equal in the field' with settlers was advanced by an English clergyman, the Reverend Montagu Hawtrey, whose views were published in a New Zealand Company pamphlet. Hawtrey argued that nominal legal equality can lead to actual equality only 'between parties who have the same power in the field'. Where one of two parties was unsophisticated in the forms of Western civilisation, 'the only consequence of establishing the same rights and the same obligations for both will be to destroy the weaker under a show of justice': Montagu Hawtrey, 'Exceptional Laws in Favour of the Natives of New Zealand', in E G Wakefield and J Ward, *The British Colonization of New Zealand* (London: John W Parker, 1837), app A (Ward, *A Show of Justice*, p 34).



the fierce competition that developed between Maori and settlers over land. The assumption of the British planners was either that Maori had *already* sold a great deal of their land to settlers and entrepreneurs in the 1830s or that they would soon readily sell land to the Crown (see sec 3.1.2). In the early 1840s (as we have discussed in section 3.6.1), this proved not to be the case. If anything, Maori showed themselves more willing to transact with private settlers.

Fresh instructions for Grey were written in London in 1846. They began the devolution of representative government to settlers. Reflecting the pressure from the New Zealand Company and its shareholders in England, the 1846 instructions also directed Grey to register all uncultivated lands as demesne land of the Crown. Grey declined to do so, aware that Maori resistance would make it impossible. Instead he implemented his policy of huge Crown purchases in the South Island, Hawke's Bay, and the Wairarapa (see sec 4.1.1). The tactics of the Crown's land purchase officers, including Donald McLean, became increasingly manipulative and covert, commonly relying upon a personal influence brought to bear on a few senior chiefs whose agreement was deemed to transfer the patrimony of their tribe. As we have shown in chapters 4 and 5, Hauraki Maori resisted large-scale Crown purchases, but the claims of chiefs involved in the Crown's purchases in the gulf islands and South Auckland touched upon the interests of the Hauraki and Waikato tribes further south.

By the late 1850s, the lines of future confrontation were drawn. Under the 1852 Constitution Act and further accompanying instructions, the settlers had been granted both a central General Assembly and regional provincial councils. Maori, along with unpropertied non-Maori, were effectively excluded from both by the property franchise. But they were well aware that most settlers were very resentful of the frustration of their claim over the 'waste' lands, and of the Governor's continued control of Native Affairs, which had offered Maori some protection. But Maori had become increasingly distrustful of the Crown, mostly because of its land purchase methods, and distrustful too of the tendency of individual chiefs to sell their tribes' patrimony. The Kingitanga and powerful district runanga emerged to resist land-selling, and a significant number of Hauraki leaders supported the former.

As we have outlined in chapter 5, the army was used in Taranaki by Governor Browne in 1860–61 essentially to support the Crown's claim to purchase from individual hapu leaders and to deny the right of any overarching tribal authority to veto sales. The British Government decided that Browne's cause was ill-chosen and removed him. But the next set of instructions, to Grey beginning his second term, directed him, first, to transfer control over Native Affairs to the settler Ministers and, secondly, to accept legislation authorising the direct purchase by settlers of Maori land. By 1862 in practice (and by 1865 formally), settler governments were in control of Maori affairs and land policy. Grey's last major act as British pro-consul was to order the advance of the British army against the Kingitanga, and to authorise the confiscations of land in Waikato and Hauraki. Thereafter, Grey himself

became a settler leader and, as we have discussed in chapter 17, as Premier in 1877–79, he and his Native Minister, John Sheehan presided over a round of large-scale purchases in Hauraki under Crown pre-emption.

Thus, in terms of practical politics, after 1862 there was no longer any real sense of the Crown standing *between* settlers and Maori to see fair play for the latter, given that ‘the Crown’ was the Crown-in-Parliament, that is, the settler Parliament and settler governments. Settlers had long been frustrated by the rejection of their claim to the ‘waste’ lands, and by what they saw as a dog-in-the-manger attitude of Maori in holding on to much more land than they could apparently use. Obligated to purchase – rather than just take – such lands, settler governments were prone to finding the most expedient and inexpensive ways of doing so. They were not prone to take much trouble to see that Maori secured a fair share of the increased capital value of the lands they retained. The politics of settler self-government meant that the idealism imbuing ‘the Crown’ of the late 1830s and early 1840s was unlikely to imbue ‘the Crown’ post-1862 if Maori stood in the way of land acquisition and development of the colony.

### 26.3 LAND LOSS AND POVERTY

#### 26.3.1 The political underlay to land purchase

Ultimately, then, the reason why Hauraki Maori did not benefit in a lasting way from economic development of their region was that settlers controlled the making of law and its administration. In particular they controlled the law relating to Maori land. The alienation to the Crown and settlers of all but a remnant of Hauraki land, and the growing poverty of Hauraki Maori, is in the main the detailed reflection of this underlying fact.

In our chapters on the securing of gold-mining cessions (part III, including chapters 6 to 13), we have shown how the Crown – that is settler governments and the officials they directed – from time to time resorted to underhand and divisive tactics to overcome Maori resistance to land alienation (as Crown counsel has conceded, particularly with regard to Ohinemuri and Te Aroha; see particularly sections 10.1.7, 11.1.1, and 11.1.2). In our chapters dealing with the Native Land Acts and Native Land Court (chs 15, 16, 18) we have observed how the law was shaped to foster a system of piecemeal purchase of individual interests and to minimise collective tribal control, and that governments kept returning to this principle. The Waitangi Tribunal’s *Turanga Tangata, Turanga Whenua* report shows that Parliament declined to accept McLean’s Native Councils Bill in 1872 for fear that it would restore tribal control and limit land-selling. When hapu control was at least notionally restored by the Native Land Administration Act 1886 and actually restored by the Maori Land Administration, Act 1900, land sales slowed in each case, and the law was soon ‘amended’ to

favour alienation.<sup>40</sup> In 1888, direct purchase of undivided individual interests was restored and from 1905 a variety of devices were introduced, including compulsory vesting of land in the Maori land boards for sale or lease, and decision by meetings of owners assembled on the day. All of the main land legislation, including the 1865 Act, the 1873 Act and the 1909 Act commonly resulted in situations whereby some Maori did not actually know that the land of which they were part-owners was being alienated, until the court's notification of a partition hearing (see chs 16, 18).

These policies and laws were Crown interventions which the claimants rightly point out were detrimental to Maori. They also rightly point out that it is misleading of the Crown to refer to the role of individual Maori in selling land – which is undeniable – without also referring to the many organised protests against the laws and procedures which facilitated individual selling. These protests culminated in the Kotahitanga campaigns of the 1890s, supported and partly led by Hauraki leaders such as Hamiora Mangakahia and Hoani Nahe.

Politicians of the day, as well as Crown counsel, constantly pointed out that Maori also benefited from the building of roads, railways, and bridges. This is true of course but it is not a complete defence of Crown actions vis-à-vis Maori and their land. The land policy inaugurated by Lord Normanby, in which Maori land was bought at low prices and governments tried to develop the country on the profits of resale, persisted throughout the nineteenth century. It was, as we have seen, reinforced in Hauraki by the systematic extension of Crown pre-emption over most of the district. As we have discussed in our chapter on local body rating (ch 21), Maori leaders considered that Maori were paying disproportionately for development through the Crown monopoly, through the compulsory contribution of 5 per cent of subdivided land for roading, and through local body rates (see sec 21.2).

We have noted in our chapters on gold mining, timber extraction, and environmental impacts on rivers (chs 6–14, 24) that the Crown was not reluctant to intervene, if not actually in support of Pakeha individuals, then certainly in support of private European companies which demanded that the Government provide an infrastructure of roads, drainage works, town planning, and harbour facilities, together with more specific assistance such as the right to float timber or use rivers as sludge channels.

It is undeniable that the Crown regularly intervened to support economic development. The question we must answer is, whether, in practice, the Crown could or should have done more to ensure that Maori also benefited from the new economy.

---

40. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report of the Turanganui a Kiwa Claims* (Wellington: Legislation Direct, 2004), pp 416, 460–470

### 26.3.2 Limited interventions on behalf of Maori

#### (1) *Failure to ensure access to market prices*

In successive chapters in this report we have noted numerous devices imposed by the Crown which hindered accumulation and investment of capital by Maori. First, there were the techniques which prevented their access to the full market value of land: Crown monopoly, the legalisation of dealings prior to land going through the court, the facilitation of piecemeal purchasing of undivided interests from individuals, then provisions for the successive partitioning of blocks. We have noted the refusal of governments to introduce a regular system of alienation by public auction or tender, though this was mooted at the highest level from at least 1865. The fact that auction or tender was possible under the 1886 and 1900 legislation scarcely alters the case, since those Acts failed for other reasons and were soon repealed. We have noted also the failure (acknowledged by Crown counsel) to institute a mechanism by which the multiple owners on titles could make considered, collective decisions about the future of their land, although this too was foreshadowed, at least in embryo, in the role initially intended for runanga under the 1858 legislation and in the planning of the 1862 Act.

In our chapters on land alienation in the nineteenth and early twentieth centuries (chs 17, 18), we have instanced a number of occasions (such as Mackay's purchases in the 1870s, or the Crown's drive to secure the Hauraki Plains in the 1910s) where Crown pre-emption was proclaimed over the lands the Crown sought to purchase, shutting out private purchasers and enabling the Crown to buy at prices lower than those offered by private buyers.

In this context, it is also necessary to refer to the inability of Hauraki Maori to raise significant capital from leasing. The Crown's hostility to Maori leasing was also a long-standing policy, emerging in the 1840s. Direct leasing threatened to undermine the Crown's control of land transactions which it intended to achieve through its pre-emptive right of purchase. The possibility of direct leasing would have been a natural extension of timber-cutting agreements between Maori and millers in Hauraki. These private, informal timber agreements were formalised as leases through the land court (see ch 14), and gold-bearing lands brought revenue to Maori through miner's right and other fees, and leasing of residential and business sites in the gold-mining towns (see chs 7–13). But, except for these categories of lease and lease-like arrangements, direct leasing of land was not common in Hauraki. This too reflects the Crown's determination to buy the freehold of most of the district, leaving relatively little spare land to lease. The sporadic attempts at direct leasing of urban or suburban property in the gold towns of Thames, Kuaotunu, and Te Aroha produced significant income for some rangatira and their families, for a time at least, but as the boom times ended the revenues yielded were slender.

The protective intentions of some Crown policy must be acknowledged, but again the consequence was a limiting of opportunity for Maori to tap the potential private leasehold market and gain essential commercial experience while retaining the freehold of the land.

‘Counterfactual history’ (ie, inference about ‘what might have been’ if different decisions had been taken) cannot be taken far lest it descend into mere speculation. But it is nevertheless probably very regrettable that direct leasing was not *officially* fostered (rather than just condoned) during FitzRoy’s governorship or Grey’s first governorship, with statutory guidelines as to lease terms and officials of the Protectorate or magistrates empowered to monitor the agreements to prevent fraud. Had that been the case, obviously the relationship between Maori and the Crown (as well as between Maori and settlers) might have evolved quite differently. There would at least have been some experience of a more equal partnership between Maori and settlers. An *officially supported* direct leasing system, with proper safeguards, could conceivably have opened the prospect of Maori remaining the owners of much more of New Zealand, with settlers as their tenants or business partners, although after the establishment of settler-dominated Parliaments and governments it is doubtful that this would have been tolerated for long. As it was, the main role assigned to Hauraki Maori in the developing economy was as land-sellers, alienating their land to the Crown.

There is much justification for Professor Hawke’s opinion that the prospect of acquiring land under freehold tenure was an important and indeed necessary incentive to immigration, and that the settlement and development of New Zealand had potential benefits for Maori as well as settlers.<sup>41</sup> But the crucial elements – security of tenure, and adequate returns on capital and labour invested on land – could have been secured through long leases and compensation for improvements. A mix of freehold and leasehold was entirely feasible, and did start to emerge under the Native Land Acts in districts such as Turanganui.<sup>42</sup> But such possibilities for Maori leaseholds never emerged fully in Hauraki, even in the locations where they might have been viable, such as Thames, because the Crown was so intent on securing the freehold of the auriferous lands and strategically important areas such as Ohinemuri.

By the 1880s, when the settlers had overwhelming numerical superiority, as well as military and political control, the focus of Crown policy began to move from acquiring more land to breaking up big private estates in the interests of closer settlement. In this context Maori were explicitly depicted as large landowners, and ‘Maori landlordism’ had become a derogatory term. More than any other factor, Ballance’s effort via the 1886 Native Land Act to allow a greater measure of leasing by Maori committees, cost him the 1887 election. When he did regain office he did not appoint as Native Minister James Carroll, who favoured leasing, but the member for Thames, Alfred Cadman, who favoured a renewed drive to purchase the freehold of remaining Maori land suitable for settlement. After Carroll’s tenure as Native Minister from 1899 to 1911, the post went to William Herries, the member for Tauranga, who led the determined drive to secure for the Crown the freehold of remaining

---

41. Document O14, p 124

42. See Waitangi Tribunal, *Turanga Tangata Turanga Whenua*

Maori land in Hauraki, notwithstanding the recommendations of the Stout–Ngata commission that Hauraki Maori needed all the land that remained to them.

**(2) Failure to establish trusts and management systems**

If the initial purchase by the Crown of Maori land at low prices could be seen as a public benefit, the continuance of the same practice *in respect of the reserved land* was quite contrary to the original protective intention of Normanby's instructions (discussed in the prologue to part II). Maori retention of their reserves was not protected, and they were not assisted in the development of their reserves – their potential capital – over the long term. In fact, very little land in Hauraki was reserved to the Maori owners in perpetuity. Most 'reserves' were merely lands placed under restriction on alienation to lease for up to 21 years, save with the permission of the Governor in Council (or, between 1894 and 1909, a judge of the Native Land Court, and after 1909 the approval of the relevant Maori land board). As Crown policy intended, restrictions on title only delayed a further round of purchases. The reserved lands became little more than a diminishing fund to meet debt and day-to-day needs through piecemeal alienation, a procedure which tended to the pauperisation of Maori and the discouragement of renewed efforts at farming. For example, early in 1872 native agent Puckey reported a renewed interest among local Maori in fencing, grass sowing, cropping and the purchase of cows and horses, but by 1873 they were neglecting their cultivations due to 'pledging their lands for sale to the Government', and subsequently grew mainly subsistence crops. Wilkinson reported that, as the flush of landselling in the 1870s was waning, Maori were growing more food on 'the small portions of land remaining in their possession' but many were relying on gum digging and 'what revenue they can obtain from Pakeha sources' (a term which might have included gold revenues or land sales).<sup>43</sup> The flow of reports from Government officers on requests for removal of restrictions or offers of sale to the Crown in the 1880s and 1890s also reveal that many Maori owners did not regard their reserved land as a lasting asset, but as a commodity to be realised to meet immediate needs, and to avoid tedious disputes about collection and distribution of revenue from gold licence fees or rents.

There was no serious effort by the Crown to enable Maori to safeguard and invest the profits of land sales (when any existed, after allowing for advance payments, survey and court costs, and raihana payments sometimes extending over several years). Crown counsel has asserted that any compulsory investment of purchase money would have been unpopular with Maori vendors, and would have constituted 'inappropriate paternalism' on the Crown's part. Yet, various forms of avoiding lump-sum payments of the whole purchase price had long been adopted: payment by instalments had been used in respect of various Crown purchases in various districts in the 1840s and 1850s; 10 per cent (in Auckland) and

---

43. Document A11, p 34

5 per cent (in Wairarapa) was paid to the vendors on the resale prices received by the Crown in respect of certain blocks, in addition to the initial purchase price; one-third of the agreed purchase price of £6000 for Stewart Island was reserved for an educational endowment in 1865. Writing in 1872, when he had estimated that the total price of all the blocks that he proposed to purchase would amount to some £108,000, James Mackay added: 'In cases of very large purchases it might be found desirable to make the payments by instalments running over a term of years. It would also be beneficial to induce the Natives to invest some of their money in Government annuities.'<sup>44</sup> His suggestion was obviously intended for the Government's convenience as well as for the benefit of Maori, but it was a suggestion with much merit nevertheless. Nothing of this kind was, however, attempted. The Crown took less interest in such ideas in 1873 than it had before 1865.

The longer term development of reserved land would have required the abolition or surmounting of Native Land Court titles which vested ownership in a number of individuals as absolute owners. Proper trusts or legal personalities would have been needed or corporate management provided for (eg, by the election of management committees with clear authority to develop land, accountable to periodic general meetings of owners and perhaps to a scrutiny of accounts by the Native Land Court). Such systems as block committees were suggested from time to time by Maori leaders, often in meetings with Pakeha authority figures, discussed above in sections 16.2.1 and 16.3.2. A similar system eventually evolved on the East Coast in the 1890s, and led to the emergence of Maori incorporations and organisation such as the Wi Pere Family Trust, or in recent decades to the trusts created under section 438 of the Maori Land Act 1953. There was no guarantee that these would necessarily have led to viable enterprises in all cases: some incorporations and trusts have failed and have had to be wound up. But at least such arrangements offered owners the possibility of attempting to develop their multiply owned land, and gaining experience which could have contributed to better-managed properties. In the twentieth century, such experience has been important in parts of New Zealand where significant areas of land have remained in Maori ownership.

But the requisite policies and laws emerged too late for Hauraki Maori; they no longer had sufficient land to incorporate; most of it had been purchased by the Crown.

### **(3) *Insufficient land for earning income***

Experience in other inquiry districts, such as Wellington, has shown that there *is* a link between excessive land alienation and economic disadvantage. We have noted above that relatively little land was leased in Hauraki, except for a while in the gold towns. Such rentals as there were from rural land, when divided among a number of owners, often did no more than help to meet the day-to-day needs of owners, and leased lands tended to be sold

---

44. MacKay to Minister for Public Works, 'Reports from Officers Engaged in the Purchase of Native Lands', 24 January 1872, AJHR, 1873, G-8, p 5



in the twentieth century to pay off accumulated debt. Because of the relative scarcity of the available farming land in Maori ownership, few Hauraki Maori would have prospered from leasing, but tangata whenua evidence shows that some families were drawing modest rents from leasing their remaining parcels of rural land to adjacent Pakeha farmers in the 1940s and 1950s, supplementing the subsistence economy and income from unreliable wage labour. Had there been more land to lease, income from it could have lifted more Hauraki families above the poverty line.

**(4) *Lack of opportunity to gain commercial experience***

Crown purchase of the freehold had serious implications for Hauraki Maori beyond the loss of the asset. The Crown has rightly pointed out that possession of land of itself does not guarantee economic success, and that knowledge and skills are also crucial. Professor Hawke has remarked 'Normally, the common way of acquiring skills is learning by doing it, so it is going to take time and participation.'<sup>45</sup> But Maori could not gain relevant knowledge and skills as economic managers unless they had experience as landlords, or entered into joint venture arrangements with colonists. A very few like the Taipari family did so, largely because they were recognised as owners in more land than most, and their interests were in and near centres of business such as Thames; they learned from both success and failure. But few others were in a position to follow their example, partly because their interests in land, often fewer to start with, were not so favourably located.

**(5) *Shortlived assistance for Maori agriculture and trade***

Early Crown policy included encouragement of Maori farming. Lord John Russell's December 1840 instructions to Hobson emphasised the continued importance of the Christian missions, which had been training Maori on and around the mission stations in a variety of agricultural skills since the 1820s. These included the CMS station at Parawai (Kauaeranga). Mission training establishments received fairly regular assistance from Government funds, especially after 1856, at least until the outbreak of war in 1863.

Having abolished the Protectorate of Aborigines, Governor Grey began to make gifts to chiefs of seed grain or potatoes, agricultural implements, horses, and carts. Settlers derided Grey's efforts as a 'flour and sugar' policy, designed to ingratiate the Governor with the chiefs (in part, certainly Grey's intention), but the assistance, coming as it did in support of pre-existing Maori agricultural skills and Maori eagerness to produce marketable surpluses, was helpful. The flow of Maori produce to markets in Auckland and beyond is well known, and much of it came from Hauraki. Mr Monin writes that since the 1840s 'the district had been the fruit bowl of Auckland', delivering peaches and other fruits in summer and autumn; Maori orchardists learned the skills of budding and grafting.<sup>46</sup> Official assistance

---

45. Document O14, p 120

46. Document D16, p 201

accepted by Hauraki Maori (among others) involved not only gifts but also interest-free loans for such enterprises as the building of flour mills or the purchasing of trading schooners. But these loans left them indebted and vulnerable when the Australian grain market collapsed in 1858.

How far should the Crown be held responsible for such outcomes? Mr Monin's study of the Hauraki economy has shown the mix of factors at work. From 1851, Hauraki enthusiasm for growing wheat and building flour mills was often in response to Grey's exhortations that they should take advantage of the Australian goldfields market, and to the advancement of loans. Cultural factors also operated and there was considerable competition between hapu and iwi to acquire whaleboats and sailing schooners: 'by 1847 Hauraki hapu owned no fewer than 15 schooners, a number far exceeding their needs for trade, particularly considering their continued use of large canoe fleets as well.'<sup>47</sup> An excessive number of flour mills was also built, despite the relatively limited area of land available for growing cereals.<sup>48</sup>

Over-capitalisation, based on loans, was illustrated by the building of Te Urikaraka's mill at Rotopiro:

To safeguard Maori interests, the office of Native Secretary had directed all stages of the project from collection of the £450 contract price to the final quality check on construction. Maori were in a position to excavate the dam and channels, but the mill itself was the work of a European millwright. On completion in July 1852, it was pronounced in perfect working order but a year later, an engineer, despatched by the Native Secretary to investigate complaints by its owners, found it 'much out of repair and the natives most dissatisfied with it – having paid so large a sum without adequate advantage from it'. A millwright was needed to put it right and would require money Urikaraka did not have. Only on the pledge of land as payment were these repairs made and the mill returned to production in 1856, soon to break down again, it would seem. When the block on which the mill was located passed through the Native Land Court in 1867, 217 acres were cut out to settle accounts with the millwright W Clow.<sup>49</sup>

As Monin argues, only the availability of a new marketable commodity could forestall the sale of land to relieve debt. For some Hauraki hapu, timber came to the rescue, first by sale of individual trees, then by sale of whole blocks' worth of trees to the entrepreneurs building mills at Kapanga, Cabbage Bay, Whangapoua, and elsewhere. Maori were paid ill-defined sums during the period of informal leasing before 1865, and about £7000 during the formalisation of the leases in 1871–73 – payments which, together with surveys paid for by the millers, totalled some £42,000 according to the millers' returns to James Mackay (see sec 14.3.5). There were other bold enterprises by Maori too, such as Te Patukirikiri's use of

---

47. Document D16, p 199

48. Ibid

49. Ibid, p 200

their schooners to provide the passenger, freight and postal service between Coromandel and Auckland from 1858 to 1862. Then, as we have seen, Coromandel gold revenues reached Te Patukirikiri from 1862. But along with this income there was also lavish expenditure, such as the great mana-enhancing hui at Kapanga in 1861, where 80 Pakeha and four times as many Maori sat down to a splendid meal, involving European foods. By that time, Te Patukirikiri were coming to rely on store goods, purchased from timber and gold revenues, rather than cultivating. In 1865, they were among the first in the district to put land through the court and sell it.

The war and blockade brought dislocation of cultivation and trade in Hauraki, although not a complete cessation of it, followed by a modest recovery of agriculture in some areas in the 1870s. Mr Monin's analysis shows, however, that the advent of steam power was bringing about a huge change. From the early 1860s all major extractive industries – timber, gold and flax – relied on steam-driven machinery. Even the steam ferry services outbid Maori schooners. Maori were not trained to work this machinery and the entrepreneurs usually preferred Pakeha labour. Moreover, steam driven machinery was capital intensive. 'Where in a less capitalised economic environment they had enjoyed the initiative and competed on equal terms with Europeans they now found themselves very much at a disadvantage and relegated to a subject labour force', cutting flax, de-snagging streams, and competing with Pakeha labour in the timber industry.<sup>50</sup> From the 1870s, the pauperising effect of land sales spread through the region, further disrupting the cycles of cultivation and inducing increased dependency on store goods.

In the light of Treaty principles, we must ask what role the Crown should have played in all this change. In Professor Hawke's view, it was not normally considered the responsibility of nineteenth-century governments to iron out fluctuating incomes caused by market changes.<sup>51</sup> He is no doubt largely correct in this; the formation of produce marketing boards and other such devices to ameliorate the effects of boom and bust are twentieth century inventions. Under the circumstances, Grey's and the Native Department's encouragement of Maori wheat-growing and milling in the 1850s can be viewed as well-intended, even though it left Maori vulnerable when the Australian market collapsed: they were indebted, yet now accustomed to spending on manufactured commodities and foods.

Essentially, the Crown's efforts to assist Maori into the commercial economy were not sustained, fiscally prudent or sufficiently expert, nor did they involve significant expenditure on training. Maori were enthusiastic traders, skilled horticulturalists and remarkably committed to repaying loans. But they were as yet inexperienced in business skills involving long-term investment, management of capital assets, depreciation, interest payments and all the paraphernalia of sustained commercial success. A combination of the Crown's

---

50. Ibid, pp 204–205

51. Document 014, pp 76–77

inexpert meddling and Maori enthusiastic inexperience contributed to Maori pauperisation. But this was decades before governments became seriously involved in technical and commercial education, and the mission schools, though Government-supported, were devoted to training in such skills as farming or carpentry, not business.

Where governments can be reasonably criticised is in their failure to foster a properly structured system of tenancies and joint ventures on Maori land. They had plenty of precedents. England was long accustomed to complex tenancy systems, with legislative protection for landlord and tenant, and to joint ventures overseas, not least in India, where complex manufacturing systems had developed involving English capital and senior management and local labourers and foremen. The timber, gold, and flax industries offered scope for such developments. Indeed the timber and flax trades had been commenced in New Zealand (including Hauraki) largely on the basis of contracts between British naval captains or merchants and Maori chiefly entrepreneurs who organised the cutting of timber or the dressing of flax by their communities. The yards where timber was dressed and small ships built also began to involve Maori. But this trend was not sustained once New Zealand was perceived as a land ideally suited for European settlement. As we have seen, governments' efforts were bent increasingly on acquiring Maori land and encouraging European immigration. Maori were pestered for their land and their children given elementary education but otherwise they were largely sidelined. Almost the only concrete example of joint venture arrangements and commercial investment revealed in the evidence before us is centred on W H Taipari, joint venturer in the Turua sawmill in 1869, investor in several mines, and lessor of numerous sections in Thames. Taipari was no doubt a skilled businessman, but he was virtually unique in Hauraki. Other Maori rangatira, such as Mohi Mangakahia, made attempts to participate in the business world but brought disaster including land loss on themselves and their families. It is not beyond reasonable expectation that governments could have fostered a wider Maori involvement in the new economy, monitored, perhaps, by official protectors replacing the soon defunct office of protector of aborigines.

#### **(6) Political factors**

It is impossible to discuss the role of the State in relation to Hauraki economic marginalisation without regard to over-arching political contexts. In chapter 5, we related that in the 1850s New Zealand was moving rapidly into a crisis between Maori and the Crown over the issue of effective sovereignty: that is, not only whether British sovereignty would apply nominally (as it had since Hobson's proclamations of 21 May 1840) but also whether the Queen's law would in practice prevail over Maori law in the resolution of disputes or conflicts of interest. In the 1840s, Grey had suppressed by military force the challenge offered by chiefs such as Hone Heke and Te Rangihaeata, but in the 1850s, actual conflict or disputes were increasing in many districts. Despite this conflict, the influence of the British justice system was growing among Maori, notably through the involvement of chiefs as assessors

in the Resident Magistrate's Court and the recruitment of Maori police under British officers. Maori were not unmindful of advantages offered by aspects of British law, certainly as regards disputes between Maori and settlers, and even in disputes between Maori, if resort to the magistrates could avert needless disputes provoked by the actions of one or two hot-headed kinsmen.<sup>52</sup>

However, this growing collaboration was cut across by two developments. First, Crown land purchasing, which divided Maori between 'landsellers' and 'landholders', provoking the serious divisions mentioned above; secondly, the grant of self-government to the settlers and mounting concern among Maori that the Crown was increasingly siding with settlers. In response, as discussed in chapter 5, Maori adopted the Kingitanga (centred in Waikato, Hauraki, Tauranga, and the central North Island) and coalesced in other political, land-sale resisting movements elsewhere to protect their own interests, followed later by the spread of Pai Marire or the 'Hauhau' system of belief from Taranaki. These movements were interpreted by many settlers and officials as resistance both to land selling and to the authority of the Crown.<sup>53</sup> We have discussed in chapter 5 above the Government's belligerent responses in 1860 and 1863. Senior officials like James Mackay continued to refer to Hauraki Maori who opposed land purchases or the court as 'Kingites' and 'Hauhau'. They regarded overcoming Te Hira's resistance to the gold-mining cession in Ohinemuri or that of Tūkukino to the road and telegraph through Komata as advancing the Crown's authority ('the Crown' now being the settler Ministries in Parliament).

We consider that these developments provide an essential context to the unfolding events in Hauraki. Political considerations, in the wider sense, affected all other considerations, including land purchase, recognition of customary Maori land tenure, and projects for the conversion of that tenure into some form of Crown-recognised title. We recall that support for the Native Lands Act 1862 was driven partly by strategic considerations and the hope of pushing roads through the Maori heartland; that some of the proposals to grant Maori runanga greater authority over land (such as McLean's Maori Council Bill of 1872) were rejected for fear that they would give Maori too much control; and that the 1886 and 1900 legislation which favoured Maori aspirations to control their land was soon amended or repealed in Parliament because it threatened to 'lock up the country', an expression which had political connotations as well as concerns over land purchase.

With political power in settler hands and with many settlers still resentful that Grey and the Colonial Office had recognised Maori claims to the uncultivated 'waste' lands in 1847, the political conditions under which governors had given some tentative assistance to Maori agriculture no longer obtained. Assistance to Maori by settler Ministers and officials

---

52. Texts discussing these developments include Ward, *A Show of Justice*; FM Brookfield, *Waitangi and Indigenous Rights: Revolution, Law and Legitimation* (Auckland: Auckland University Press, 1999); and Alex Frame, *Grey and Iwikau: a Journey into Custom* (Wellington: Victoria University Press, 2002).

53. Keith Sinclair, *The Origins of the Maori Wars* (Wellington: University of New Zealand Press, 1957)

usually had blatantly ulterior motives: as we have seen, Mackay's advances to Maori for tangi or other pressing needs, were secured against the title to land (see sec 10.1.7).

### **26.3.3 Gold and the convenience of Crown ownership**

In Hauraki, the knowledge that land was, or might be, auriferous became a particularly strong motive for the Crown to secure the freehold, rather than let it pass into private hands. We have discussed in part III (in the prologue and chapters 6 and 13 in particular) the reasons for this, which focused on clear legal authority, efficient administration, and maintaining public access to mining which private owners might have blocked. The Crown considered its policy to be in the public interest and in response to public demand, but it deprived Maori of the revenue that accrued from a cession of mining rights, and the freehold title upon which other enterprises could have been based. We noted, for example, that, even under the terms of the cession in Ohinemuri in 1875, the Crown secured the access rights not only to gold but also to other minerals and coal and timber, and even the right to arrange pastoral leases (see secs 10.3, 10.4). In this large, important district, Maori were marginalised in the nineteenth century rather than brought into the new ventures. Later, even the Ohinemuri reserves were targeted.

The twentieth century was no different. The Hauraki drainage scheme was also based on the policy of buying Maori out and securing clear title upon which to carry out the planned works. The scheme was intended to increase the amount of Hauraki land available for agricultural development enormously, but the beneficiaries of the scheme were not Maori. Maori interests and needs were sidelined or ignored.

In short, from about 1850 to 1920, successive governments were focused on relieving Hauraki Maori of their undeveloped land, and doing so under conditions of monopoly. The promise of a more fruitful partnership between Maori and the Crown or between Maori and settlers (of which there were signs in the first decades of the colony) had withered by the 1870s. Whatever the strengths or weaknesses of the economic potential of the Hauraki region, Maori were excluded from them.

## **26.4 THE LIMITED ECONOMIC POTENTIAL OF HAURAKI ?**

We must consider how far the geography and resources of Hauraki could have allowed for successful and sustained Maori participation in the new economy, even under a favourable legal and administrative regime. Professor Hawke argued that neither the steep bush-clad terrain of the Coromandel Peninsula nor the swampy plains of the Piako and Waihou readily permitted the pasturing of sheep for wool, the mainstay of the New Zealand economy

in the nineteenth century and beyond. This meant that Hauraki Maori – and many settlers too – would be struggling once the boom periods of the extractive industries had passed.<sup>54</sup>

It should perhaps be observed at the outset that there are problems with building an argument based mainly on the possibility of entering the wool economy. Districts where Maori still retained considerable land in the nineteenth century, such as the East Coast, inland Hawke's Bay, the Murimotu country, or even upper Whanganui, were devoted to early wool growing by Maori. Yet, their people still had to struggle for any kind of prosperity; there are obviously other factors at work than the mere possession of land, even land suitable for wool growing.

A focus on wool-growing also tends to preclude consideration of dairy farming, sheep raising for mutton, and cropping on arable river flats. Had a greater proportion of these lands been left in Maori ownership, more Hauraki families would have been able to participate in the modern economy, particularly when the flood-control schemes were implemented and the swamps were drained. Having only recently acquired the title to the wetlands by purchase from Hauraki tribes, the Crown could have included Maori more generously in the allocation of farms. Probably, there would still have arisen issues such as the repayment of development loans and the long-term viability of farms, but there is no obvious reason why more Maori farmers should not have been included in the Hauraki Plains scheme, other than that the scheme was intended to benefit Pakeha only.

When all the difficulties have been acknowledged, it is difficult to deny that the permanent possession of freehold of land allows the possibility of riding out many economic fluctuations. The ownership of land is a form of stored wealth, to be tapped when needed. The kauri timber industry passed, but forestry on suitable lands continues. It could have continued on Maori land. If Hauraki Maori had retained significant areas of coastal land they would have been able to benefit, as others now do, from subdividing and letting land for the boom in holiday and retirement homes and in catering for the tourist industry.

Land offers sanctuary as well as sustenance. As many witnesses testified, Maori villages provided social stability, even when the land about them was not sufficient to provide adequate incomes in a modern economy. World-wide trends suggest urban migration would have occurred anyway, but the retention of more papakainga land by Hauraki Maori would have enabled more families to keep their ties to their communities and their traditional land, and thus their culture and social bonds strong. For this reason (among others) we welcome the Crown's acknowledgement that the continued purchase of Hauraki lands after the Stout–Ngata commission had reported is among the most problematic of Crown policies.

One other important area of long-term economic potential was the sea. Hauraki Maori would certainly have benefited by inclusion in the commercial fishing industry which grew

---

54. Document 01, p 5



in non-Maori hands, within the traditional Maori fisheries during the nineteenth century. But Maori did not own or control the retail outlets, nor significant refrigerated storage. They were obliged for the most part to be suppliers of fresh seafood to non-Maori companies. However, the question of commercial fisheries has been explored in depth in the Muriwhenua and Ngai Tahu claims, addressed in the Treaty settlement of 1992 and placed beyond the realm of this inquiry by the legislation giving effect to that settlement.

### 26.5 TRIBUNAL FINDINGS

In the light of the foregoing, we make the following findings:

- ▶ We accept that economic and social outcomes are by no means wholly within the control of the State. The State, for example, was not responsible for the collapse of the Australian market in the mid-1850s, nor for the economic effects of the discovery of gold, nor for later periods of economic depression. The early era of trade in rural produce and timber gave way to another era of huge capital investment with the Thames gold rush and the Vogel immigration and development schemes. Hauraki iwi were overwhelmed by the immigrants and their control of technology and capital. But we consider that the Crown could have done more to assist Maori to share in the development opportunities, particularly by fostering leasehold tenure and joint ventures on land still in Maori ownership.
- ▶ On the Crown's own evidence (and as Crown counsel has acknowledged), Crown policies in New Zealand were highly interventionist and included interventions imposed on Maori land rights. As discussed in the land chapters in part IV and again in this chapter, those interventions were designed largely to facilitate the transfer of most Hauraki land to the Crown and to settlers, leaving too little land in Maori hands to be useful.
- ▶ We reject the suggestion that there is no connection between the wholesale acquisition of Maori land and the economic marginalisation of Hauraki Maori. We note that the Crown's principal witness on this question, Professor Gary Hawke, admitted in cross-examination that the Crown's land policies had some adverse impact upon Maori. Indeed one has only to note that the same land has brought considerable prosperity to many non-Maori to be aware of the connection.
- ▶ We nevertheless accept the Crown's argument that the mere possession of land is no guarantee of prosperity. Much depends upon the quality and location of that land, the tenure under which it is held, the management structures and access to capital and skills to assist development. To comment further on these points:
  - Quality and location: we accept that a relatively low percentage of Hauraki land is suitable for arable or pastoral farming, and much of the lowlands required

expensive drainage work to bring them into production. Nevertheless, of those arable and pastoral lands, too little was reserved in Maori ownership, even in the Waihou and other valleys where Maori settlement had traditionally been clustered, or in the wetlands which had been a traditional source of hunting and fishing. Even the permanent reservation to Maori owners of the 15 per cent of such lands, which remained at the time of the Stout–Ngata commission, would have enabled many more Maori to engage in cropping and stockraising. Similarly, if Maori had been enabled to retain the freehold of a significant proportion of land on the bays and harbours, and of subdivisions in the small towns, they would eventually have had the benefit of greater access to rising capital values, and better incomes from leasing, both to the private sector and to the Crown. We accept that Hauraki Maori could not have provided good livings from farming for all Hauraki Maori, particularly when the population began to burgeon in the twentieth century. Urbanisation was bound to occur to some extent, as elsewhere in New Zealand. But we also accept the evidence that because of early landlessness it occurred earlier in Hauraki than in other areas, and left very few communities able to maintain a core of customary life and values on papakainga land.

- Tenure and management structure: as discussed in the previous part, the form of title under which reserved land was held, and the lack of appropriate management structures permitted in law, greatly handicapped Maori in making good use of what land remained to them. Most of the reserves were soon eroded by piecemeal purchase. Maori had persistently lobbied for greater legal recognition of their runanga and committees but this was long denied by the Crown. One of the most serious handicaps frustrating Maori aspirations to engage with and prosper in the new economy was their inexperience in managing debt. That difficulty could have been ameliorated had the native land legislation provided for an appropriate and accountable structure for the management of land in multiple ownership. The Crown has conceded that one of the most serious limitations of the Native Land Act 1873 was the lack of such a structure. It has pointed out, correctly, that this omission began to be rectified with the provision for incorporation of owners commencing in 1893. But this came too late for Hauraki and was contradicted by the systematic purchase of most remaining Hauraki lands.
- Capital and skills: in his note attached to the report of the 1891 Royal Commission on Native Land Laws, James Carroll identified two ways in which the Government inhibited Maori progress in agriculture: first, the Crown monopoly led to low prices for land sold and so to a lack of money to reinvest in farming and, secondly, Maori were ineligible for Government assistance to become ‘useful settlers’. Professor Oliver has commented:

successive governments paid little attention to Maori needs in a new [economic] environment. This contrasts with the attention paid by the same governments to the needs of Pakeha. Though not as active as they were to become in the second quarter of the 20th century, governments were not at all inactive in promoting Pakeha land settlement and farm efficiency. Schemes for closer land settlement proliferate from the 1880s. From the 1890s onwards the Department of Agriculture encouraged settlers to improve production levels, especially in the case of refrigerated dairy exports. Maori were not included in the land settlement schemes and few (with the possible exception of Ngati Porou on the East Coast) were in a position to take advantage of the export market.<sup>55</sup>

Until the Advances to Settlers legislation of 1894, few farmers received development money from the State, but even that money was not available to Hauraki Maori farmers because State Advances loans depended upon repayment guarantees. Maori could not usually provide these guarantees because of their complex land tenure (see secs 16.3.3(2), 18.1, 18.4).<sup>56</sup> The best prospect for Hauraki Maori to have gained access to development finance and to acquire management skills was to have entered into partnerships with the private sector. We have commented in our chapters dealing with gold and with timber leases that possibilities of this kind were emerging in relation to mining and timber milling (see secs 9.3.2, 14.2), but that they were inhibited by the Crown's refusal to legalise direct leasing until 1862 and thereafter by its imposition of its pre-emptive right over most of Hauraki by proclamation, including the gold-bearing and forested lands. In view of such sudden acquisitions of funds that did occur (as in the flush of mining royalties in Thames, or large payments for land) it would not have been unreasonably paternalistic of the Crown to have intervened to the extent of seeing that trusts were put in place to manage some of the funds for development purposes, as well as to repay debt or meet immediate needs.

- We consider that, while the Crown could not have guaranteed continued prosperity for Hauraki Maori, it chose to introduce laws and land purchase programmes which contributed to their economic marginalisation. These policies were driven largely by the underlying strategy upon which the colony was founded, whereby the Crown deprived Hauraki Maori of the bulk of their land, at low prices, in order to provide land for

---

55. Document A11, p 28

56. In closing submissions, the Crown drew attention to legislation of 1903 to 1908 extending the authority for Maori to borrow from public sources such as the State Advances Office: doc AA1, p 5 fn 12; Crown counsel, closing submissions, June 2002 (Wai 814 RO1, doc H14, issue 21, para 28). As far as Hauraki is concerned, this is little more than a cruel irony, since these measures were introduced precisely at the time the Crown was embarking on its systematic purchase of the Hauraki Plains, almost the last remaining lands where development by Maori owners based upon livestock and chattel mortgages, or loans secured against leases, might have been helpful.

settlement and to fund development. Political factors such as controlling strategic land in order to control the region by opening communications routes also affected the situation. It is also noticeable that some of the early attempts to help Maori secure revenue from land or to develop land in the Crown colony period, dropped away after 1865 when the settlers themselves controlled Parliament and the Government. In other words, political factors contributed to economic and social outcomes.

- As regards the acquisition of Maori land generally, vis-à-vis the inevitable flow of European colonisation to the non-industrialised world, and vis-à-vis Maori participation in land transactions, we note with approval Professor Oliver's conclusion on the matter:

because the . . . policy-makers only grudgingly or nominally accepted the reality and justice of Maori land ownership, purchase was often conducted in ways which at least reduced if they did not quite negate the difficulties inherent in that acknowledgement. Certainly the generality of land transactions do not resemble deals freely entered into by equal contracting parties; as certainly, many purchases were effected through undue pressure, engineered divisions among right holders, underhand devices and promises never fulfilled. Again the responsibility of the state lies in the modes and the consequences of land acquisition; it is a responsibility which is not to be ignored because the colonisation and settlement of New Zealand, and of Hauraki, was in one way or another inevitable. It was a question of the way in which it was quite deliberately decided to act.<sup>57</sup>

To this, we add the finding that (as discussed in the land chapters in part iv) the kind of tenure created by the Crown and the modes of acquisition hugely disrupted Maori social organisation, fostered internal divisions, led to needless partitioning of land, and virtually precluded considered, long-term development planning on multiply owned land. The results were extremely damaging to Maori social and economic advancement.

- We note and welcome the concession by Crown counsel that 'The Crown does not dispute the fact that the condition of Hauraki Maori health was worse than that of Pakeha in the 19th century. It is similarly not disputed that Hauraki Maori had less access to health services than Pakeha.'<sup>58</sup> We wonder though why the Crown confines this comment to the nineteenth century. It is of course undeniable that Maori were devastated by new diseases mainly because they lacked natural immunity to them and that immunity took some generations to acquire. But we believe that the evidence shows that poverty did contribute significantly to the impact of these diseases, notably through

---

57. Document A11, p 61

58. Document AA1, p 312

the very poor housing which was all many Maori could afford, until the 1950s or even later. In other words, failure to include Maori in the developing economy, poverty and disease are all linked. We also note some early efforts by the Crown to bring medical services to Maori (in the 1870s in particular) and to the curtailing of those services in the 1880s and 1890s. We are aware that many Pakeha, especially the Pakeha poor and unemployed, also suffered appalling health. Nevertheless, in the light of the constant drawing of attention to Maori needs by school teachers and district nurses from the 1870s onwards, we consider that the Crown was particularly parsimonious and tardy in assisting Maori in the areas of health and housing.

- We note the comment of Drs McPherson and Belgrave, witnesses for the Marutuahu claimants on the current socio-demographic profile of Hauraki Maori, that:

It is . . . difficult to make a direct causal link between historical Crown actions and contemporary socio-economic disadvantage because it is difficult to disentangle the varying importance of recent socio-economic changes, some for which the Crown may be responsible, from historical social and economic impacts. What can be said is that the social and economic disadvantage that was demonstrated around the time of the First World War has not been eliminated in a century of Crown policies and broader social and economic change.<sup>59</sup>

McPherson and Belgrave go on to refer to the particularly dramatic rise in Maori unemployment in the 1980s, following the Government's economic restructuring, but also to the signs of improvement in Maori employment statistics in the 1990s. They are reluctant to identify the causes of the improvement but comment 'It is likely that the declining pace of change after 1993 is a factor.'<sup>60</sup> We consider these comments appropriate. As to historical changes, we accept that it is not possible to be precise as to the relative impact of the Crown's actions and other factors. We nevertheless consider that the Crown's land purchase policies undeniably affected Maori socio-economic circumstances and have set out above our reasons for that view.

---

59. Document v10, p 6

60. Ibid

## PART VII

### COVERAGE OF NON-HMTB CLAIMS





## PART VII

### **PTVII.1 INTRODUCTION**

In this part, we provide a brief summary of the matters brought before us by the many individual claims which are additional to those of the HMTB (Wai 100). In chapter 1, we introduced the claimants and summarised their main issues of claim. Here, we note where those issues have been discussed in the generic chapters of the report, and in cases where the matter is specific to the individual claim, summarise our findings with regard to that matter. In most cases we have simply noted that the submissions and evidence presented by and on behalf of each claimant group have contributed to our understanding of issues that affect Hauraki Maori generally, and we refer the reader to our discussions and findings in the appropriate chapters. In addition, we briefly consider any issues unique to individual claims that may not have been addressed within the scope of the generic chapters. We regret that time and space have precluded mention of every particular of every claim.

We have organised the sections below around natural groupings where possible, and in order of Wai numbers.

### **PTVII.2 NON-HMTB CLAIMS AND FINDINGS, AND THEIR LOCATION IN THIS REPORT**

#### **PTVII.2.1 Wai 72 (Ngati Paoa) and Wai 808 (Ngati Horowhenua hapu)**

As noted in chapter 1, the Ngati Paoa claims before this Tribunal focus on the issue of the East Wairoa confiscation. These matters are set out in chapter 5 (particularly in section 5.6.2; our general findings are in section 5.8.4). We have been greatly assisted on these issues by the evidence submitted by the Wai 72 claimants. Our findings on these issues in chapter 5 relate to many Hauraki groups; we do not recapitulate them here.

With regard to other issues, we note that Ngati Paoa had already lost much land to the combined effects of old land claims, pre-emption waiver purchases and Crown purchases before the wars. We note for instance that, by way of the waiver purchases, Ngati Paoa lost the central and southern areas of Waiheke, their first agricultural base for trade with Auckland, and the sale by Patukirikiri of land at Putiki obliged Wiremu Hoete of Ngati Paoa to move westward to Te Huruhi. These matters are discussed throughout chapter 3. We also note that it appears that in some cases, particularly with regard to Waiheke purchases, it is likely that the Ngati Paoa chiefs (active in initiating transactions) were somewhat favoured by the Crown to the disadvantage of others. Waiheke is also discussed in section 17.2. We refer also to Ngati Paoa participation in later Crown purchasing, noting that several Ngati

Paoa chiefs continued to be active sellers. Notwithstanding this, however, we note that the Crown has conceded with regard to Waiheke, that the failure to implement the reserve scheme proposed by McLean was significant to Ngati Paoa and Ngai Tai, in the light of later sales and confiscations. We also note Ngati Paoa's participation (along with other Hauraki Maori) in transactions relating to gold, from an early stage. (These matters are discussed generally in chapter 4, and specifically in sections 4.2.3(5) and 4.3.1.) Ngati Horowhenua's claim is specifically discussed in section 4.3.1(3).

We make reference in section 16.1.5(3) to the sale by Ngati Paoa of the Te Hoe o Tainui 3 block because of survey and other costs. Because the land was under negotiation by the Crown, Ngati Paoa had to accept a price well below the price for comparable land, and well below the price recommended by the Crown's agent, Gilbert Mair. In addition, early in the twentieth century the Crown applied to the Native Land Court for an award to cover the cost, plus interest, of a subdivision survey at Te Hoe o Tainui, resulting in Ngati Paoa making over some 4000 acres. In chapter 17, we discuss Crown purchases including the 1874 agreement made between Ngati Paoa and Mackay with regard to Piako and the Crown's purchase of interests in this large area of land (see sec 17.4.2(3)). We note also that the Ngati Horowhenua hapu of Ngati Paoa (Wai 808) adopts the Wai 100 submissions as to the Native Land Acts and subsequent loss of land.

We make reference in chapter 20 to the possible loss of reserved land and the encroachment of roading on a wahi tapu area located at the site of the Kaiaua township (see sec 20.4.3(1)). Our findings on this issue are to be found in section 20.4.3(2). Ngati Paoa issues in relation to land prices are discussed in sections 4.2.3(2) and 4.2.3(3); East Wairoa is discussed in section 5.6.2 and East Waikato in section 5.6.3.

One matter raised by the Wai 808 claimants that has not been covered in the preceding chapters is the issue of the difficulties faced in trying to correct the mis-recording of names in official documents. In her statement of evidence, Marion Peeke spoke of the ongoing problems faced by her whanau resulting from the mis-recording of their name (a transliteration of the English 'bag' or 'pack') bestowed upon her tupuna Tamehana, in recognition of his services as a runner or messenger for his people: 'From the earliest legal documents, such as birth certificates for Tamehana Peeke's children, there have been numerous errors in the spelling of "Peeke". We now have "Peeke", "Peke", "Peka" and "Baggs". The name on my own birth certificate is "Peka".' The 'nub of this grievance', as claimant counsel put it, 'is that the present statutory mechanism for rectifying errors in their recording of names is costly and difficult to use.'<sup>2</sup> It was submitted that 'the problems faced by Maori for the correction of names are distinct, and it is presumed, widespread' and that, in this matter, the Crown has failed 'to properly protect Ngati Horowhenua's customs relating to the naming of individuals', and 'should establish a specific modified system to provide greater flexibility

---

1. Document T32, p 3

2. Document Y6, p 13; see also doc T32, pp 3-4

for Maori to change historically mis-recorded names.<sup>3</sup> In response, counsel for the Crown submitted that ‘the mechanism for rectifying errors in names is set out in the Births, Deaths and Marriages Registration Act, 1995 and applies to all New Zealanders equally.’<sup>4</sup> We are of the view that this is a personal matter for the particular individuals and whanau, and not a claim against the Crown under the Treaty of Waitangi.

In general terms, we consider the Wai 72 and Wai 808 claims to be well founded, and recommend that they be included in a comprehensive settlement for the Hauraki inquiry district.

#### **PTVII.2.2 Wai 96 and Wai 423 (Ngai Tai Ki Tamaki)**

As noted in chapter 1, the Wai 96 claim focuses almost solely on Ngai Tai interests in the eastern Wairoa confiscated lands. These matters are addressed in chapter 5 (see sections 5.1, 5.5, 5.6.2, 5.6.4, and 5.8 in particular). Our findings in that chapter on these matters relate to the Wai 96 claimants, as well as the Wai 100 claimants, Wai 423 claimants, and other Hauraki groups; we do not repeat them here.

In addition, the Wai 423 claimants, have raised a number of other issues of claim for Ngai Tai relating to the loss of land. Most of the matters raised pertain to Ngai Tai generally and, for the most part, provide examples of the experiences of Hauraki Maori as a whole. We have discussed these issues in general terms in this report with reference to all claimants, and do not recapitulate here all of our discussion and findings. We do, however, make several points with regard to Ngai Tai specifically, as follows.

Throughout chapter 3, we address matters of pre-Treaty and pre-emption waiver transactions relating to Ngai Tai, the gulf islands, and the Cleghorn–Goodfellow purchase. (See the discussion on the Cleghorn–Goodfellow purchase, the adequacy of the investigation in 1847–48, and the gulf island purchases in sections 3.7.4, 3.10.3, and 3.10.4.) We note that these issues are closely linked to whether adequate reserves were made in the Fairburn purchase on the other side of the river (and thus outside of the Hauraki inquiry district), where it was assumed, in 1844 at least, that substantial reserves would be made for Ngai Tai. We have recommended that the Tribunal investigating the Fairburn purchase also have regard to our discussion of the Cleghorn–Goodfellow purchase.

In chapter 4, we address the matter of the Crown’s purchases of Ponui and Waiheke Islands (see sections 4.2.3(3), 4.3.1(2), and 4.3.1(3), which include our findings on these subjects).

The Wai 423 claimants adopt the submissions of the Wai 100 claimants with regard to the operations of the Native Land Court, and they provide evidence to show that, as elsewhere, considerable areas of land were sold to pay for survey costs. In chapter 23, the claim that land was taken for roading from the Mataitai 1 and Te Kawakawa blocks is used as an

---

3. Document Y6, pp 13–14

4. Paper 2.550, p 47

example of public works takings for roads (see sec 23.3.1(2)). We find that, although the total amount taken was small, it contributed to the overall diminishment of the Ngai Tai tribal estate.

In general terms, we consider the Wai 96 and Wai 423 claims to be well founded, and recommend that these claims be included in a comprehensive settlement for the Hauraki inquiry district.

### **PTVII.2.3 Wai 110 (Ngati Hei)**

The Wai 110 claim is wide-ranging in its scope, covering many of the issues presented by the HMTB, of which Ngati Hei are constituent members. It is apparent from the evidence presented for and on behalf of the Wai 110 and other claims that, the majority of matters raised in this claim are of relevance not just to the Wai 110 claimants (and the other Ngati Hei claimants), but also to other Hauraki Maori with interests in this area. We have considered most of these issues generally, making use of particular case studies to illustrate our discussion, and we have taken into account the evidence presented to us for and by the Ngati Hei claimants and have incorporated this material into our report where appropriate.

We note in chapters 3 and 4 that Ngati Hei were among those Hauraki Maori who were feeling the pressure of land alienation, including by way of old land claims and pre-1865 Crown purchases, from an early time (see secs 3.3.2, 4.2.1). Land was alienated around Mercury Bay in a succession of deals with established timber merchants and traders as well as the Crown (see sec 3.1.1). We discuss the matter of the Kuaotunu goldfield in chapter 7 (see particularly section 7.5.2), while the later purchase by the Crown of the Kuaotunu blocks is discussed in chapters 12 (see sec 12.4.2) and 17 (see sec 17.4.3(2)(a)). In chapter 16, we discuss the claim that the Wai 110 claimants were prejudicially affected by the Validation Court (an instrument little used in Hauraki) in respect of Kuaotunu 3 block (see section 16.3.4, where our findings are incorporated in the last two paragraphs of the section). We note that the Wai 110 claimants have shown that the Native Land Acts undermined Ngati Hei rangatiratanga of their land, broke down communal title, and introduced a confusion of laws and high survey costs, which ultimately resulted in the tribe's virtual landlessness. Much of Te Kaunga Whenuakite, for example, was sold to meet a survey lien (see sec 16.1.5(3)). We discuss the sale and purchase of forests and forested lands in chapter 14 and make particular reference to the Whangapoua transactions (see sec 14.4.1). We discuss the creation and alienation of Tairua and other reserves, with reference to a number of claimant groups, in several chapters of the report (see secs 12.5.1, 14.3.6, 17.4.1(3),(4), 20.4.1(1)).

The submissions made by counsel for the Wai 110 claimants have contributed to our discussion of the protection of cultural taonga in chapter 20, particularly with regard to the sale of the Opito canoe prow (see sec 20.3). We also note in this chapter the Wai 110 claims with regard to the protection of wahi tapu (see sec 20.4.1).

We discuss in chapter 23 the matter raised by the Wai 110 claimants with regard to the taking of Ohinau Island in 1923 by the Crown under the provisions of the Public Works Act 1908, for the purpose of erecting a lighthouse. Our findings are to be found in section 23.4.2(2).

We note the Wai 110 submissions and evidence with regard to rivers, the foreshore and the sea. The claims relating, generally, to the issue of ‘ownership’ of the foreshore are addressed in chapter 22. Other matters, including the environmental impacts of mining and timber extraction upon waterways, are discussed in chapter 24. We note that the Wai 110 claim refers to the effects of land loss and turangawaewae; Peter Johnston described ‘a sense of hopelessness and humiliation’ among Hauraki Maori.<sup>5</sup>

In general terms, we consider the Wai 110 claim to be well founded, and recommend that this claim be included in a comprehensive settlement for the Hauraki inquiry district.

#### **PTVII.2.4 Wai 148 and Wai 285 (Ngati Pukenga claims)**

In chapter 2, we have discussed the circumstances of the *tuku whenua* of Manaia lands to Ngati Pukenga (see sec 2.2.5(2)). We noted that, unlike the situation with regard to the *tuku* of Harataunga land to the three Ngati Porou hapu, we have not heard any issues of claim relating to the *tuku* of lands at Manaia to Ngati Pukenga, but set out its details (as they were presented to us) to provide a context for the Ngati Pukenga presence in, and claims relating to, Manaia. We note the allegation made by the Ngati Pukenga claimants that they lost tribal control of their lands at Manaia due to the operations of the Native Land Acts and the titles created under them. Manaia 1A and 2A were purchased from individuals named in titles, as if they were absolute owners, not trustees for the group (see sec 15.4.1). This subject is discussed generally in chapters 15, 16, and 18 (see particularly section 18.4.3(2)). The same process (including purchase from absentee owners), plus survey charges, resulted in the alienation of Manaia 1B and 2B. The claim relating to the Manaia 1C block, given for a school in 1897 and then sold by the Maori Trustee following the school’s relocation in 1962, is discussed in chapter 23 (see sec 23.4.1(1)). The Wharekawa blocks which figure in their claim, are discussed in various sections, but particularly in section 12.5.3.

The Ngati Pukenga claims raise a number of socio-economic issues that we discuss generally in chapter 25. These matters include the claimants’ relationship (as a relatively isolated community) with local and central government, the loss of language and culture, health issues, the lack of infrastructure, and the difficulties of providing for housing and community facilities and building and sustaining an economic base, particularly in the face of a heavy and mounting rate burden. In their opening submissions, counsel for the Wai 148 and Wai 285 claimants submitted that ‘The community in Manaia, and in particular Ngati

---

5. Document N4, p30

Pukenga, is struggling against the various consequences of the Crown's breaches of the Treaty of Waitangi'. Counsel listed the consequences as follows:

- (a) Difficulties with the management and administration of heavily fractionated Manaia lands;
- (b) Lack of land and/or share available for Ngati Pukenga to return to Manaia;
- (c) the loss of cultural identity and traditions;
- (d) the gradual loss of te reo Maori in Manaia;
- (e) Lack of economic infrastructure for Ngati Pukenga in Manaia;
- (f) Lack of capital to develop remaining lands or to participate in opportunities in area including tourism and marine farming;
- (g) the general lack of employment in the Manaia region;
- (h) the lower than average educational and other qualifications of Manaia individuals;
- (i) the high incidence of poverty and lack of essential services in Manaia;
- (j) the poor health of the Manaia community.<sup>6</sup>

The Ngati Pukenga claimants complain of rigidity about use of Maori land for housing, even in papakainga schemes after the 1980s. Owners were obliged to relinquish interests to help someone make up a half-acre site. They consider that it would have been better if the iwi had owned the land and had allocated land for individuals to live on.<sup>7</sup> They feel that the Department of Maori Affairs and local bodies wanted them out of Manaia.<sup>8</sup> The Wai 148 and 285 claimants acknowledge that remote and economically marginal communities are problematic, but suggest that the Crown should continue to assist research for project development, and offer seeding grants for those which appear viable.<sup>9</sup>

Slim Mikaere told us:

We have the younger generation moving back to Manaia from the big cities with big city attitudes and problems. It is hard to teach these people about the old ways. The old ways are alien to them. There is a lack of discipline and responsibility among our families and this has lead to drug and alcohol abuse. Our young people are turning to drink and drugs in Manaia because it is an easy way out of confronting the problems that life presents to them. Sometimes they learn these tactics from their parents who learn them from their parents. If we are to break the cycle, we will need help in the valley. There is no help available right now. There are no programmes to deal with these problems. There are no resources to help us confront them. If they are not dealt with they will continue onto the next generation and the generation after that. Maybe our Treaty settlements will help us turn this around.<sup>10</sup>

---

6. Document 110, p 8

7. Document 118, p 5; doc 120, p 2

8. Document 115, pp 4-6

9. Document 110, p 8; doc 112, p 9; doc 115, p 8

10. Document 112, p 8

Many of the issues of claim raised by the Wai 148 and Wai 285 claims are similar in nature to those cited, in general terms, by the Wai 100 claimants. We note here the Wai 148 and Wai 285 claimants' support of the Wai 100 claim, and do not recapitulate here all of our discussion and findings on the Wai 100 claims for which the Wai 148 and Wai 285 claims provide examples.

In general terms, we consider the Wai 148 and Wai 285 claims to be well founded, and recommend that these claims be included in a comprehensive settlement for the Hauraki inquiry district.

#### **PTVII.2.5 Wai 174 (Ngati Kotinga and Nga Whanau o Omahu)**

As noted in chapter 1, the claimants have cited as causes of action a succession of block studies which, according to their counsel, substantiate the allegations made by the Wai 100 claimants. For this reason, and because the claimants are represented on the HMTB, we do not recapitulate all of our discussion and findings on the Wai 100 claims, of which these claims are examples. This is most notably evident in respect of the extent to which their lands were alienated and the manner of their alienation.

We note that the alienation of Te Horete 1 and 2 and their subdivisions exemplifies some of the serious concerns we have expressed regarding the Native Land Act and land purchase methods, and the land board, discussed in chapters 18 and 21 (see particularly sections 18.4.1(3) and 21.3.5). We note that, as the title became fractionated by succession, most of the interests were acquired by private purchasers, raising doubts as to the adequacy of checks by the board. The unsold portion of the block, Te Horete 2C2, was charged with arrears of rates and vested in the Maori Trustee for alienation. We note that the private purchase of the Papakitatahi A block provides an example of land under restriction being sold without the restriction on its alienation, other than by lease of up to 21 years, formally being removed, in apparent ignorance or breach of this restriction.<sup>11</sup> We also refer in chapter 17 to the Kuaotunu 1 block, and the Wharekawa East 1, 2, and 3 blocks, as examples of the alienation of land to meet survey costs, and subsequent Crown purchase of remaining interests in the block by purchase of undivided interests and application to the court for title to the land. In the case of the Wharekawa East 1, 2, and 3 blocks, the survey liens were acquired by the Crown, which asserted a pre-emptive right of purchase over the land because it was thought likely to be auriferous (see secs 12.5.3, 17.4.3(2)). We refer in chapter 23 to the acquisition of parts of Wharekawa East 4 and 5 blocks under public works legislation, sometimes without compensation (see secs 23.4.2(3), 23.4.2(4)). We note the allegation that the Opu 3 block was taken for State Highway 25 in 1975, without notice of intention to take the land being issued, and that inadequate compensation was received. While we have insufficient evidence to

---

11. Document H1, pp 19–33



**PTVII.2.6**

make findings on these specific claims, these examples do inform our discussion and findings with regard to this matter generally. We also note that the loss of Hohia Opou 5A urupa reserve is an example of the effect of the removal of alienation restrictions over wahi tapu under the Native Land Act 1909.

In general terms, we consider the Wai 174 claim to be well founded, and recommend that this claim be included in a comprehensive settlement for the Hauraki inquiry district.

**PTVII.2.6 Wai 177 (the Gregory–Mare whanau)**

As noted in chapter 1, the issues of claim raised by the Wai 177 claimants are, for the most part, those cited by the Wai 100 claimants and the Marutuahu iwi, of which the Gregory–Mare whanau are a constituent group. The series of block histories presented by and on behalf of the Wai 177 claimants provide good examples of a number of issues with regard to land alienation (including timber leases, survey liens, Crown purchases, the alienation of reserves and the protection of – and loss of control of – wahi tapu) and we have taken this material into consideration in our discussion and findings on these matters.

The Wai 177 claimants have drawn particular attention to issues regarding the principles of succession to land rights established by the legislation and by the court, which they claim contributed to loss of control over land by those who would have inherited according to custom, and thence to alienation of land. We consider the specific examples raised by the Wai 177 claimants (notably with regard to the Totara-whakaturia, Pukewhau, and Wharekawa East 2 blocks) as case studies in chapter 16 (see sec 16.3.5(2)), and we acknowledge the contribution of this material to our consideration of the broader issues as set out in chapter 14, chapter 15 (see particularly section 15.3.6(1)), chapter 16, chapter 18 (see secs 18.4.1(2), 18.4.4, 18.5.1(2))), and section 18.5.2. We do not repeat our discussion or findings here. Wahi tapu issues are discussed in section 20.4.3.

In general terms, we consider the Wai 177 claim to be well founded, and recommend that this claim be included in a comprehensive settlement for the Hauraki inquiry district.

**PTVII.2.7 Wai 289, Wai 792, Wai 866, and Wai 968 (the Harataunga claims)**

While the main issues raised by the Harataunga claimants are generally not dissimilar to those of other claimants in this inquiry, it is apparent that there are a number of particular issues that we have needed to address separately. Chief among these is the matter of the *tuku whenua* and its implications (discussed in section 2.2.5(1)). We note that there appears to be general agreement that the Ngati Porou hapu do not consider themselves to have the status of *tangata whenua* with regard to the Harataunga lands and resources, but that they do have an established set of rights as the result of the 1852 *tuku* and the continued use

and occupation of this land by members of the three Ngati Porou hapu. This relationship with, or association with, the land has been described to us as that of ‘tangata hau kainga’. However, many Harataunga families today derive from inter-marriage between Ngati Porou and Ngati Tamatera and have descent and kinship links with the tangata whenua.

Harataunga issues are discussed in chapters 12 (see sec 12.2 passim), chapter 14 (see sec 14.4.3), chapter 15 (see sec 15.4.2), chapter 16 (see sections 16.1.5(3) and 16.3.1 on partitioning), and chapter 18 (see secs 18.2.1, 18.4.6(2)).

Several other significant issues concerning the Harataunga claims have been covered under general thematic chapters elsewhere in this report – notably claims relating to gold mining and the findings of the MacCormick commission, and foreshore and seabed issues. The issue of uneconomic interests and the role of the Maori Trustee are discussed in general terms, while the particular example of the alienation of Rangiriri (also known as the Harataunga 2A block) provides a useful case study in our discussion of rates in chapter 21 (see sec 21.3.4.) The evidence submitted by and for the Harataunga claimants has greatly assisted us in our consideration of these matters. We have also considered the evidence of the Harataunga claimants with regard to the Hauraki development scheme.

We note the submission of counsel for the Wai 792 claimants that ‘the relatively small percentage of land acquired by the Crown at Harataunga owes more to the resistance of the owners than any other factor.’<sup>12</sup> It is clear that the Crown did alienate land from the Harataunga owners over the late nineteenth and twentieth centuries. In addition to the land sold both by owners and the Maori Trustee, we heard evidence of some land taken for survey liens, for roading, for a village that never eventuated, for a school, and through allegedly incorrect surveying of the Whakanekeneke block. With regard particularly to lands taken for roading, and for the Kaimakau native township (while this land was not permanently alienated), we found that there was a lack of sufficient evidence – from either Crown or claimants – particularly with regard to the issue of consultation.

One further matter raised as part of the Wai 866 claim was Desmond Harrison’s claim regarding the alleged use by Telecom, without permission or compensation, of a timber track that in part passes over ‘at certain points the western boundaries of Harataunga West 7B and Harataunga West 6B.’<sup>13</sup> Insufficient evidence was provided for the Tribunal to make a finding on this matter.

In general terms, we consider the Wai 289, Wai 792, Wai 866, and Wai 968 claims to be well founded, and recommend that these claims be included in a comprehensive settlement for the Hauraki inquiry district.

---

12. Document Y18, pp17–18

13. Document S24, pp 2–3

**PTVII.2.8 Wai 349, Wai 720, and Wai 778 (Ngati Tamatera, and Wai 418 – the Waikawau purchase)**

As noted in chapter 1, counsel for the claimants acknowledged the evidence and submissions relating to Ngati Tamatera, and to Hauraki Maori generally, made by and for the Wai 100 and Marutuahu group claims (as well as by and for the Wai 418 claim). We acknowledge the significance of the experiences of Ngati Tamatera to this inquiry and address the wide-ranging matters raised by the Ngati Tamatera claimants throughout this report, both with specific reference to Ngati Tamatera, and in general. We therefore do not repeat our discussion and findings on these matters here. That said, one issue that is of particular relevance to the Ngati Tamatera claimants, we mention here in any case. In chapter 10, we address the mining cession and Crown purchase of Ohinemuri, noting the opposition of Ngati Tamatera, in particular, to the sustained Crown pressure to open the area up for mining and for sale (see secs 10.1.1, 10.2). We note the Crown's acknowledgement that the difficulties surrounding the acquisition of gold-mining rights, then the freehold, of Ohinemuri were of its own making, and that 'The practice of raihana, particularly in relation to Ohinemuri, is one of the more regrettable elements of the Hauraki claim' (sec 10.5.2). We are of the view that the methods which the Crown employed to open Ohinemuri breached Treaty principles (see esp sec 10.1.7).

The main issues raised by the Wai 418 claimants relate to the Crown purchase of the Waikawau block, the alienation of the Waikawau reserves, the alienation and protection of Wairotoroto, Waipatukahu and Omawhiti wahi tapu, and the alienation of the Tapu reserve. These matters are addressed in general terms, in chapters 17 (see secs 17.4.2(2), 17.4.3(2)(c), 17.5.2(6)), chapter 18 (sec 18.4.1(2)), chapter 20 (sec 20.4.2(1)), and chapter 23 (secs 23.4.2(5),(6)). We note claimant counsel's submissions that this claim forms a case study within the framework of the Wai 100 claim, and is also described as being a subset of the wider Ngati Tamatera claims.

In general terms, we consider the Wai 349, Wai 720 and Wai 778 claims to be well founded, and recommend that these claims be included in a comprehensive settlement for the Hauraki inquiry district.

**PTVII.2.9 Wai 355 and Wai 704 (Ngati Pu and the Hikutaia and Whangamata lands)**

As noted in chapter 1, the 'core grievance' identified by counsel for the Wai 355 claimants relates to Hikutaia – in particular the McCaskill transactions, which we address in some detail in chapter 3 (see secs 3.2, 3.3, and esp 3.10.1). We note that several hapu, notably Ngati Pu (but also Ngati Karaua and Ngati Tamatera), suffered significant prejudicial consequences from the inadequate investigations at Hikutaia, prior to Bell's awards of 1862 and 1864, and that the subsequent award of land to Ngati Pu was inadequate redress. We also discuss Ngati Pu claims relating to Hikutaia (secs 3.10.1, 18.4.3(2)), Whangamata (see secs

12.5.2, 16.3.1(3), 17.3.4, 18.4.3(1),(2)), and other lands in our chapters on Crown purchasing (including the actions of Mackay in his negotiations over Hikutaia), the Native Land Court (including the matter of survey costs and the sale of land to meet these and other costs; see sections 16.1.3(2) and 16.1.5(3)), land committed by the Maori land boards and Maori Trustee, rating, intestate succession (see sec 18.5.2), the loss of wahi tapu, and the taking of lands by the Crown for public works. We note especially that Ngati Pu lacks the land area, the local community, and the local income flow necessary to sustain a marae.<sup>14</sup>

In general terms, we consider the Wai 355 and Wai 704 claims to be well founded, and recommend that these claims be included in a comprehensive settlement for the Hauraki inquiry district.

#### **PTVII.2.10 Wai 464 and Wai 661 (Ngati Hikairo)**

As noted in chapter 1, the combined Wai 464 and Wai 661 claims refer to the alienation of Ngati Hikairo interests in lands including Pakirarahi, Wharekawa East and other blocks. We note that the Wai 464 and Wai 661 claimants rely on the evidence presented for the Wai 100 claim and the Wai 100 closing submissions. We discuss the alienation of the Pakirarahi lands in chapter 12 (see secs 12.3 passim, 13.2.4(1), 13.7.1), where we accept the argument of both the Wai 464 and 661 claimants and that of the Wai 100 claimants (of whom the Wai 464 and 661 claimants are a constituent group), that the owners of Pakirarahi 1 lost control over the land from about 1888 to 1990, and access to the mining revenues payable for that block. We go on to note that we are of the view that, as mining also took place on Pakirarahi 2, the extent of actual prejudice in relation to Pakirarahi 1 is indeterminate. We note that the Wai 464 and Wai 661 claimants' submission that the alienation of Wharekawa East 1 and 2 and several blocks at Manaia resulted from the Native Land Court process, including survey costs, Crown proclamations of pre-emptive right of purchase and removal of restrictions on alienation. (For the Wharekawa blocks, see sections 12.5.3, 16.3.5(2)(c), 17.4, and 17.4.1(2).) Elsewhere, we refer to Ngati Hikairo claims relating to the protection of wahi tapu including urupa (see ch 20). We note the allegation that lands at Parawaha and Waitotara were taken for roading without adequate consultation or compensation, and discuss these issues in general in chapter 23.

In general terms, we consider the Wai 464 and Wai 661 claims to be well founded, and we recommend that these claims be included in a comprehensive settlement for the Hauraki inquiry district.

---

14. Document K19, pp 5–6

**PTVII.2.11 Wai 475 (the Mangakahia whanau claim)**

The issues of claim raised by the Wai 475 claimants are those that have affected Hauraki claimants generally. As such, our findings on these general issues relate to the Wai 475 claimants, along with the Wai 100 claimants and other Hauraki groups, and we do not recapitulate them here. We have, however, taken close account of the Wai 475 submissions and evidence in relation to transactions at Whangapoua and have included a substantial discussion of this matter in chapter 14 (see secs 14.4.1, 14.4.2). We have also discussed the case of *Mangakahia v The New Zealand Timber Company* in chapter 17 because of its importance in disclosing the nature of the titles created under the Native Land Act 1873 (see sec 17.3.1). In section 20.4.3, we discuss wahi tapu issues of importance to these claimants.

We consider that the Wai 475 evidence, taken in conjunction with the evidence submitted by Wai 100 and many other groups in relation to the same issues, establishes that the actions of the Crown prejudiced the Wai 475 claimants, as discussed in the relevant chapters of this report, and that their claim is well founded. However, by the claimants' own evidence, they are closely inter-related with Ngati Hei, Patukirikiri and other Hauraki iwi, in Whangapoua particularly, and we are unable to determine any particular proportion of injury suffered by the Wai 475 claimants, relative to that of other groups who had interests in the same land.

**PTVII.2.12 Wai 663 (Ngati Rahiri Tumutumu)**

As outlined in chapter 1, the Wai 663 claimants rely on, and support, the submissions of the Wai 100 claimants with regard to the issues of 'the general policies and practices of the Crown . . . concerning Crown purchases, the Native Land Court and the Crown's treatment of taonga'.<sup>15</sup> This being so, we do not repeat here our discussion and findings on these matters, for which the Wai 663 claims provide examples. We discuss the specific Wai 663 issues of claim relating to the Te Aroha block, the Te Aroha springs, and the loss of lands in Te Aroha township in chapter 11 and chapter 19.

In general terms, we consider the Wai 663 claim to be well founded, and recommend that this claim be included in a comprehensive settlement for the Hauraki inquiry district.

**PTVII.2.13 Wai 693 (Matamata-harakeke block claim)**

As noted in chapter 1, the Ngati Raukauri claim relates to the alienation of the Matamata-harakeke block, and we repeat the statement made in the evidence of Whaitiri Mikaere on behalf of the claim that 'for Ngati Raukauri the common theme – one that is common for all Hauraki Maori – of . . . landlessness and economic and social decay [is] the same'.<sup>16</sup> The Wai 693 claimants have provided a detailed history of the alienation of the Matamata-

---

15. Document v5, p 2

16. Document m16, p 3

harakeke block and we have referred to this example in our general discussion of land alienation, and, more particularly, with reference to the alienation of land by will in breach of customary principles of descent, in chapters 15, 16, and 18 on the Native Land Acts and their operation (in sections 15.4.1, 16.3.5(2),(3), 18.4.6(2), 18.5.1(2), and 18.5.2).

In general terms, we consider the Wai 693 claim to be well founded, and recommend that this claim be included in a comprehensive settlement for the Hauraki inquiry district.

#### **PTVII.2.14 Wai 694 (the Tairua block and Te Karo 1 block claim)**

As noted in chapter 1, the Wai 694 claim was lodged on behalf of the descendants of Hori Kerei Tuokioki, one of the 5 original grantees of Tairua and Te Karo. We discuss the alienation, by way of lease and sale, of the Tairua and Te Karo blocks (including the investigation into the Tairua transactions) in chapter 14 (see sec 14.3.6). We note in chapter 20 the Crown's acknowledgement that, in the context of the large size of the Tairua block, 'it failed to protect the waahi tapu at Te Karaka – and that it ought to have done so' (see sec 20.4.1). We consider this to be a serious breach of the Treaty. In addition, we note several other examples cited by the Wai 694 claimants with regard to the loss of other urupa and wahi tapu, and in section 23.3.1 we look at the taking of land for public works. We do not repeat our discussion of these matters here.

In general terms, we consider the Wai 694 claim to be well founded, and recommend that this claim be included in a comprehensive settlement for the Hauraki inquiry district.

#### **PTVII.2.15 Wai 705 (the whanau of Peneamene Tanui)**

As noted in chapter 1, the claims of the Wai 705 claimants relate to issues that, for the most part, affect Hauraki claimants generally. We have been greatly assisted in our consideration of those issues by the evidence submitted by and for the Wai 705 claimants. In particular, we have taken close account of the Wai 705 submissions and evidence in relation to timber-cutting contracts and timber leases, and we have referred expressly to those matters in chapter 14, which deals with these issues. Our findings on these general issues relate to several claimant groups (along with the Wai 100 claimants), including the Wai 705 claimants, especially those whose interests intermingled with those of Te Rapupo whanau at Whitianga (see sec 14.4), and we therefore do not recapitulate them here. The Pakirarahi and Titirangi blocks are discussed in section 14.4.4 and the Te Weiti block in section 15.4.3, their wahi tapu claims are mentioned in section 20.4.1, and the Puahape School is covered in section 23.4.1.

We consider that the Wai 705 evidence, taken in conjunction with the evidence submitted by Wai 100 and many other groups in relation to the same issues, establishes that the actions of the Crown prejudiced the Wai 705 claimants, as discussed in the relevant generic

chapters of this report, and that their claim is well founded. However, by the claimants' own evidence, as well as that of other claimant groups from the Whitianga area, they are closely inter-related with Ngati Hei, Ngati Whanaunga, Ngati Paoa, Ngati Hura, the Mangakahia whanau, and other Hauraki hapu, at or near Whitianga. It is quite impracticable to determine any particular proportion of injury suffered by the Wai 705 claimants, relative to that of other groups who had interests in the same area.

**PTVII.2.16 Wai 714 (Ngati Koi, Ngati Tara, Ngati Tokanui)**

As noted in chapter 1, the Wai 714 claimants adopt the submissions of the Wai 100 claim, stating that their claim is complementary to that of the HMTB. The particular issues of claim raised by the Wai 714 claimants relate to the Ohinemuri lands and river. We have addressed the issues of claim relating to gold mining and the Crown purchase of Ohinemuri (including the use of raihana and advances made against the land) in chapter 10 (see secs 10.3.2, 10.4.1, 10.4.2, 10.5.3), and the operations of the Native Land Court with regard to this land in sections 16.1.5(3) and 17.4.2(2)(c). We discuss the environmental impacts upon the Ohinemuri River in chapter 24, and we refer to issues raised by the Wai 714 claimants with regard to wahi tapu in section 20.4.3(1). We do not repeat our discussion and findings with regard to these matters here.

We discuss the Ngati Koi relationship with Marutuahu in chapter 2, and again in chapters 10 and 15, when discussing Ohinemuri and the Native Land Court as an example of how the new pressures and processes strained relationships and created divisions between Maori (see secs 10.1.6, 15.4.1). However, we must stress that the Waitangi Tribunal has no authority to review Native Land Court findings nor recommend changes to its records.

In general terms, we consider the Wai 714 claim to be well founded, and recommend that this claim be included in a comprehensive settlement for the Hauraki inquiry district.

**PTVII.2.17 Wai 806 (Kuaotunu and Tikouma blocks)**

As noted in chapter 1, the Wai 806 claim relates to the Native Land Court investigations and subsequent partitions and alienation of the Kuaotunu and Tikouma blocks. We refer to the alienation of the first of these two blocks in section 17.4.3(2)(a) as an example of partition and alienation following conversion of tenure under the Native Land Acts. We discuss the Kuaotunu goldfield in section 12.4.2, noting that it was the most productive of the goldfields on the eastern Coromandel, and the alienation of Kuaotunu lands (which had begun prior to the discovery of gold in 1887, with the Crown's purchases of Kuaotunu 1A and 1B in 1878–82). We do not repeat our lengthy discussion here. Later Crown purchases are discussed in section 17.4.3, while in section 16.3.4 we discuss the operation of the Validation Court with regard to Kuaotunu 3 block. In chapter 21, we take the example of the rating of the Tikouma



3B2 block as a case study and discuss the matter at some length. Rather than repeat or summarise our discussion and comments here, we refer the reader to section 21.3.3(1).

In general terms, we consider the Wai 806 claim to be well founded, and recommend that this claim be included in a comprehensive settlement for the Hauraki inquiry district.

#### **PTVII.2.18 Wai 810 (Waiheke Island lands)**

As noted in chapter 1, it is our understanding that the matter of the lease by the Auckland City Council of the Ostend Domain to the Waiheke Sports Club has been resolved, at least in so far as the lease has been extended. With regard to the administration of the reserve and other reserve lands, including the Tawaipareira reserve, we encourage all efforts made by both the Auckland City Council and Ngati Paoa (along with the Department of Conservation and any other Government departments involved) to engage in real and effective co-management of such lands.

#### **PTVII.2.19 Wai 865 (Waihou railway land claim)**

As noted in chapter 1, we received no evidence with regard to this claim. While we have made mention of the example in our chapter on lands taken by the Crown for the purpose of public works, we are unable to make any findings on this particular matter due to insufficient evidence. We do suggest, however, that, if the land in question is available to form part of any future Treaty settlement for Hauraki Maori, then it may well be used for that purpose.

#### **PTVII.2.20 Wai 949 (Ngati Koheriki)**

The Wai 949 claim relates primarily to the loss of Ngati Koheriki land within the East Wairoa confiscation block. These issues have been addressed in chapter 5, and we have been greatly assisted in our consideration of these issues by the evidence submitted by and for the Wai 949 claimants. Our findings on these matters relate to the Wai 949 claimants, as well as the Wai 100 claimants and other Hauraki groups, and we do not repeat them here.

In general terms, we consider the Wai 949 claim to be well founded, and recommend that this claim be included in a comprehensive settlement for the Hauraki inquiry district.

#### **PTVII.2.21 Wai 969 (the Harrison whanau claim)**

As noted in chapter 1, this is a Ngati Hei whanau claim with regard to the alienation of 11 blocks in the Mercury Bay area. The issues raised by the claimants are, generally speaking, those at issue for all Hauraki Maori and we therefore do not repeat our discussion and

findings with regard to these general matters here. We do, however, note that the claimants are correct in suggesting that their claim does provide us with a useful close study of the effects of land alienation on an individual whanau and this is something that we have borne in mind in our deliberations.

In general terms, we consider the Wai 969 claim to be well founded, and recommend that this claim be included in a comprehensive settlement for the Hauraki inquiry district.

**PTVII.2.22 Wai 970 (Ngati Tamatepo/Ngati Rongo-U) and Wai 997 (the Papaaroha blocks claim)**

As noted in chapter 1, the Wai 970 claimants acknowledge that the issues raised in their claim relate to Hauraki Maori generally, and as such ‘draw liberally’ on the submissions of the Wai 100 claimants to emphasise ‘distinctly Tamatepo experiences’. We acknowledge the claimants’ emphasis on the loss of taonga tuku iho and note the claimants’ assertion that their claims are not only about the loss of land and resources but also about what they describe as the Crown’s contempt for rangatiratanga and tikanga. Almost all tangata whenua evidence – 50 or more submissions – refer to the combined effects of land loss and lack of economic opportunity as a loss of identity and sense of wholeness, and of spiritual connection to birthplace and turangawaewae. The opinion is general that these factors underly the high incidence of alcoholism and psychiatric disorder among Maori.<sup>17</sup>

We note in section 5.4 the bombarding of Papaaroha in the wars. We note in the various sections on Moehau/Tokatea (especially sections 8.2.3, 8.4.4, and 8.6.2) the claimants’ submission that the history of the Papaaroha block illustrates the difficulty and expense of the Native Land Court process. We refer in chapter 24 to the issues relating to environment impacts raised by the Wai 970 claimants, particularly ‘the widespread loss of forests’, the loss of plant resources of the forest, the damage to rivers from log driving, and the associated impact on the kaitiaki role of Hauraki Maori and on ‘their ability to continue the tikanga associated with food gathering’. In chapter 23, we make reference to the submissions of counsel for the Wai 970 claimants with respect to the taking of lands for public works (see sec 23.3.1). The issues raised by the Wai 970 claimants are, generally speaking, those at issue for all Hauraki Maori and we therefore do not repeat our discussion and findings here.

The issues raised by the Wai 997 claimants with regard to the alienation of the Papaaroha block are likewise, for the most part, those claimed by Hauraki Maori generally with regard to alienated lands. These issues include boundary disputes, the sale of lands to cover debts from surveys and other charges, and succession outside the tangata whenua line and subsequent sale of land to non-resident non-Hauraki owners. As noted above we refer to the Papaaroha block in chapter 8. The issues relating to wahi tapu and the loss of tino

---

<sup>17</sup> See, for example, doc x1

rangatiratanga and kaitiakitanga over taonga are also addressed, in general terms, in chapter 20. We therefore do not repeat our discussions and findings on these matters here. We do, however, note two additional matters raised in the submissions on behalf of the Wai 997 claim: the alleged sale of the interests of Maraea Tauteka against her wishes, and the alienation of areas of land for which, it was claimed, only the rights to extract shingle below the high-water mark had been sold, and the grant by the Crown of an exclusive right of extraction without considering the rights of the owners of the block.<sup>18</sup> In both cases, we received insufficient evidence and are therefore unable to make any comment on these matters.

In general terms, we consider the Wai 970 and Wai 997 claims to be well founded, and recommend that these claims be included in a comprehensive settlement for the Hauraki inquiry district.

**PTVII.2.23 The Marutuahu group of claimants (Wai 345, Wai 346, Wai 349, Wai 454, Wai 495, Wai 563, Wai 695, Wai 754, Wai 778, Wai 809, Wai 811, Wai 812, Wai 867, and Wai 968)**

For the most part, the issues of claim raised in relation to the Marutuahu group of claimants, are the same as those of the HMTB claim (Wai 100), but presented from a Marutuahu perspective (see sec 1.2.2(26)). We note that the majority of claims that make up the Marutuahu group acknowledge and adopt the submissions made on behalf of the Wai 100 claimants (of whom they are constituent groups). We also note, as stated in chapter 1, that counsel for the Marutuahu claims acknowledged that various aspects of their claims have been detailed by counsel for the HMTB, along with other claimant counsel, and that the complementary approach taken by counsel for the Marutuahu claimants was to address the ‘big picture’. The main areas of focus in the submissions of counsel for the Marutuahu group of claimants, for the most part, mirror those presented by counsel for the Wai 100 claim (as well as counsel for other claimants in this inquiry), notably: the issues of old land and surplus land claims, pre-emption waiver claims, and surplus lands; land purchases from 1840 to 1865; the impact of war and confiscation; gold; issues relating to foreshore, seabed, and rivers; the operations of the Native Land Court; land purchases in the 1870s and 1880s; issues relating to the Hauraki Plains; twentieth-century land-related issues; and Marutuahu socio-economic deprivation. The submissions and evidence presented for and by the Marutuahu claimants have contributed to our understanding of Hauraki Maori claims against the Crown, and we have utilised this material throughout the report. We recognise the significance of Marutuahu within the peoples of Hauraki, and we therefore see no need to repeat the discussion and findings made throughout the report for Marutuahu alone.

Distinct issues of claim raised by individual claims within the Marutuahu group have been addressed in the appropriate chapters of the report. For example, we consider the issue

---

<sup>18</sup>. Document 19, pp 65–67

**PTVII.3**

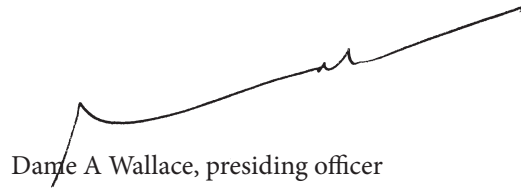
raised by the Wai 563 claimants with regard to the taking of land by the Crown for Kaiaua school in chapter 23 (see sec 23.4.1(5)); and we consider the Wai 695 claims relating to Te Aroha in chapters 11 and 19.

In general terms, we consider the claims heard under the Marutuahu ‘umbrella’ to be well founded, and we recommend that these claims be included in a comprehensive settlement for the Hauraki inquiry district.

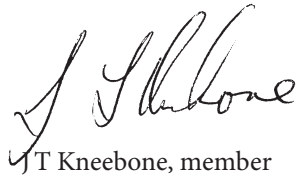
**PTVII.3 OTHER CLAIMS (WAI 30, WAI 236, WAI 326, WAI 330, WAI 364, WAI 369, WAI 508, AND WAI 826)**

In chapter 1, we identified eight ‘other claims’ which were not specifically heard in this inquiry because they lay outside the Hauraki inquiry district and they were withdrawn or simply not proceeded with by the claimants (see sec 1.2.2 (27)). We note, however, that many of the matters raised in the claims have been discussed in this report. In particular, the question of claims to the Maramarua State Forest, raised by the Wai 30 claimants, have been considered in great detail in chapter 5 (especially in section 5.7).

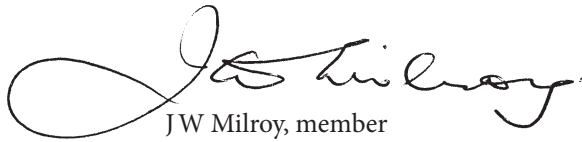
Dated at *Auckland* this *6<sup>th</sup>* day of *June* 20 *06*



Dame A Wallace, presiding officer



J T Kneebone, member



J W Milroy, member





## APPENDIX

### RECORD OF INQUIRY

#### RECORD OF HEARINGS

##### THE TRIBUNAL

The Tribunal constituted to hear Wai 686, concerning the Hauraki claims, comprised Dame Augusta Wallace (presiding), John Kneebone, Wharehuia Milroy, and Dame Evelyn Stokes, who passed away shortly before the completion of the report.

##### THE HEARINGS

###### First hearing

The first hearing was held at Paeroa from 14 to 18 September 1998.

###### Second hearing

The second hearing was held at Paeroa from 12 to 16 October 1998.

###### Third hearing

The third hearing was held at Thames from 27 to 30 October 1998.

###### Fourth hearing

The fourth hearing was held at the Thames Racecourse from 30 November to 4 December 1998.

###### Fifth hearing

The fifth hearing was held at the Thames Racecourse from 15 to 19 February 1999.

###### Sixth hearing

The sixth hearing was held at the Thames Racecourse from 19 to 23 April 1999.

###### Seventh hearing

The seventh hearing was held at the Thames Racecourse from 21 June to 25 June 1999.

###### Eighth hearing

The eighth hearing was held at Ngahutoitoi Marae, Paeroa, from 2 to 6 August 1999.

###### Ninth hearing

The ninth hearing was held at Manaia Marae, Manaia, from 4 to 8 October 1999.

###### Tenth hearing

The tenth hearing was held at Te Pai o Hauraki Marae and the Te Aroha Racecourse from 6 to 9 December 1999.

###### Eleventh hearing

The eleventh hearing was held at Matai Whetu Marae, Thames, from 21 to 24 February 2000.

###### Twelfth hearing

The twelfth hearing was held at Whangapoua from 20 to 24 March 2000.

###### Thirteenth hearing

The thirteenth hearing was held at Thames from 17 to 21 July 2000.

###### Fourteenth hearing

The fourteenth hearing was held at Whitianga from 28 August to 1 September 2000.



**APP**

**Fifteenth hearing**

The fifteenth hearing was held at Thames Race-course from 24 to 27 October 2000.

**Sixteenth hearing**

The sixteenth hearing was held at Thames from 4 to 8 December 2000.

**Seventeenth hearing**

The seventeenth hearing was held at Whangamata from 13 to 15 February 2001.

**Eighteenth hearing**

The eighteenth hearing was held at Paeroa from 6 to 10 August 2001.

**Nineteenth hearing**

The nineteenth hearing was held at Coromandel from 1 to 5 October 2001.

**Twentieth hearing**

The twentieth hearing was held at Waiheke Island from 13 to 17 May 2002.

**Twenty-first hearing**

The twenty-first hearing was held at Matai Whetu Marae, Thames, on 18 June 2002.

**Twenty-second hearing**

The twenty-second hearing was held at Matai Whetu Marae, Thames, from 1 to 5 July 2002.

**Twenty-third hearing**

The twenty-third hearing was held at Te Pae o Hauraki Marae, Paeroa, from 29 July to 2 August 2002.

**Twenty-fourth hearing**

The twenty-fourth hearing was held at Matai Whetu Marae, Thames, from 26 to 30 August 2002.

**Twenty-fifth hearing**

The twenty-fifth hearing was held at the Thames War Memorial Civic Centre, Thames, from 21 to 26 October 2002.

**Twenty-sixth hearing**

The twenty-sixth hearing was held at the Thames War Memorial Civic Centre, Thames, from 4 to 6 November 2002.

**Twenty-seventh hearing**

The twenty-seventh hearing was held at the Thames War Memorial Civic Centre, Thames, from 18 to 21 November 2002.

**COUNSEL**

The following list is a record of counsel who have made opening or closing submissions (or both) at hearings in the course of the Wai 686 inquiry. Other counsel made appearances before the Tribunal at hearings but are not noted here.

Carl Schnackenberg and Gerard Brown made submissions on behalf of the Wai 30 claimants; Charl Hirschfield and Tavake Afeaki made submissions on behalf of the Wai 72, Wai 110, Wai 177, Wai 236, Wai 475, Wai 693, Wai 810, Wai 865, and Wai 997 claimants; LG Powell, DGS Wilson, and CJ Duncan gave submissions on behalf of the Wai 96, Wai 100, Wai 148, Wai 174, Wai 285, Wai 326, Wai 373, Wai 418, Wai 464, Wai 661, Wai 663, Wai 720, Wai 728, and Wai 808 claimants; FR McLeod made submissions on behalf of the Wai 728 claimants; Marilyn Connolly made submissions on behalf of the Wai 691 claimants; JD Rangitauira and Haimona Hemi Te Nahu made submissions on behalf of the Wai 349, Wai 720, and Wai 778 claimants; Joe Williams made submissions on behalf of the Wai 100 and Wai 728 claimants; DJ Ambler and JP Koning made submissions on behalf of the Wai 36 and Wai 355 claimants; Anthony John Fraser made submissions on behalf of the Wai 369 claimants; Paul Majurey made submissions on behalf of the Wai 345, Wai 346, Wai 454, Wai 495, Wai 563, Wai 695, Wai 754, Wai 811, Wai 812, Wai 867, and Wai 968 claimants; Prue Kapua and Joni Bryant made submissions on behalf of the Wai 272, Wai 283, Wai 705, and Wai 766 claimants; A E Ngapo-Lipscombe made submissions on behalf of the Wai 968 claimants; KM Tan made submissions on behalf of the Wai

969 claimants; Stephen Clark made submissions on behalf of the Wai 423, Wai 694, Wai 704, Wai 792, Wai 806, and Wai 969 claimants; Hamish Kynaston made submissions on behalf of the Wai 714 claimants; John Kahukiwa made submissions on behalf of the Wai 866, and Wai 809 claimants; James Johnston and Peter Johnston made submissions on behalf of the Wai 949 claimants; Annette Sykes and Carl Mika made submissions on behalf of the Wai 970 claimants; Whitiera Kaihau made submissions on behalf of the Wai 508 claimants; JK Guthrie made submissions on behalf of the Wai 289 claimants; Joh Marshall made submissions on behalf of the Wai 714 claimants; and Ansley Kerr and Peter Andrew made submissions on behalf of the Crown.

## RECORD OF PROCEEDINGS

### 1. CLAIMS

#### 1.1 Wai 30

A claim by R Mahuta and others concerning the Tainui raupatu, 16 March 1987

- (a) Amendment to claim 1.1, 16 March 1987
- (b) Amendment to claim 1.1, 12 August 1987
- (c) Amendment to claim 1.1, 17 June 1991

#### 1.2 Wai 72

A claim by Hariata Gordon concerning Ngati Paoa lands, 21 October 1987

- (a) Amendment to claim 1.2, 24 April 1989
- (b) Amendment to claim 1.2, 7 November 1989
- (c) Amendment to claim 1.2, 26 June 1990
- (d) Amendment to claim 1.2, 27 June 1990
- (e) Amendment to claim 1.2, 27 February 1991
- (f) Amendment to claim 1.2, 10 April 1992
- (g) Amendment to claim 1.2, 15 October 1993

#### 1.2(a) Wai 96

A claim by Ngeungeu Te Irirangi Zister concerning the Wairoa and Otatau blocks, 22 September 1989

#### 1.3 Wai 100

A claim by H Tukukino (deceased) concerning Hauraki, 30 April 1987

- (a) Amendment to claim 1.3, undated
- (b) Amendment to claim 1.3, 29 August 2002

#### 1.4 Wai 110

A claim by Rebecca Fleet concerning Ngati Hei lands, undated

- (a) Amendment to claim 1.4, 4 February 1988
- (b) Amendment to claim 1.4, 6 December 1990
- (c) Amendment to claim 1.4, 21 August 2000

#### 1.5 Wai 148

A claim by Ngaruna Ronald Mikaere concerning the Manaia 1C school site, 28 April 1990

- (a) Amendment to claim 1.5, 20 December 1999

#### 1.6 Wai 174

A claim by Ata Patricia Bailey concerning Nga Whanau o Omahu, 18 October 1990

- (a) Amendment to claim 1.6, 3 March 1997
- (b) Amendment to claim 1.6, undated
- (c) Amendment to claim 1.6, 30 November 1999

#### 1.7 Wai 177

A claim by Selwyn Tukumana Gregory and others concerning Hauraki gold-mining land, 23 February 1991

- (a) Amendment to claim 1.7, 27 July 1992
- (b) Amendment to claim 1.7, 11 October 1994
- (c) Amendment to claim 1.7, 17 July 2001

#### 1.7(a) Wai 236

A claim by Te Kani Kingi (deceased) and others concerning early land transactions, 28 August 1991

- (a) Amendment to claim 1.7(a), 24 June 1992

#### 1.8 Wai 285

A claim by Shane Ashby and others concerning the Manaia blocks, 9 September 1991

- (a) Amendment to claim 1.8, 20 September 1996
- (b) Amendment to claim 1.8, 9 January 1997
- (c) Amendment to claim 1.8, undated
- (d) Amendment to claim 1.8, undated

#### 1.9 Wai 289

A claim by Sam (Hamiora) Moke concerning the Hauraki goldfields agreement, 21 May 1992

- (a) Amendment to claim 1.9, undated

APP

**1.10 Wai 326**

A claim by William Alexander Ngawati concerning the Cathedral Cove–Mercury Bay marine reserve, 11 December 1992

**1.10A Wai 330**

A claim by Ngarau Tupea and others concerning Auckland and South Auckland lands, 16 November 1992

- (a) Amendment to claim 1.10(a), 11 December 1992
- (b) Amendment to claim 1.10(a), 19 August 1993
- (c) Amendment to claim 1.10(a), 5 October 1993

**1.11 Wai 345**

A claim by Maude Moerangi Rawiri and another concerning the Fairburn block, 27 January 1993

- (a) Amendment to claim 1.11, 27 August 2002

**1.12 Wai 346**

A claim by W Rawiri and another concerning the Fairburn purchase, 24 January 1993

**1.13 Wai 349**

A claim by Tewi Wiremu Mataia Nicholls concerning the Hauraki tribal rohe, undated

- (a) Amendment to claim 1.13, 11 April 2001
- (b) Amendment to claim 1.13, 23 July 2002

**1.14 Wai 355**

A claim by Ropata Rare and another concerning Hikutaia and Whangamata land, 17 April 1993

**1.15 Wai 364**

A claim by R Tooke concerning Tamaki Hauraki (Tooke), 10 May 1993

- (a) Amendment to claim 1.15, 22 February 1995
- (b) Amendment to claim 1.15, undated
- (c) Amendment to claim 1.15, 23 February 1998
- (d) Amendment to claim 1.15, 18 November 1998

**1.16 Wai 369**

A claim by Horimatua Evans concerning Waiheke Island, 13 August 1993

- (a) Amendment to claim 1.16, 14 September 2000

**1.17 Wai 373**

A claim by Toko Renata Te Taniwha and others concerning Maramarua State Forest, 19 August 1993

- (a) Amendment to claim 1.17, 22 September 1995

**1.18 Wai 418**

A claim by Rikiriki Rakena and others concerning the Waikawau purchase, 26 September 1993

- (a) Amendment to claim 1.18, 30 November 1999

**1.19 Wai 423**

A claim by Te Warena Taua and another concerning the Ngai Tai ki Tamaki rohe, 16 December 1993

- (a) Amendment to claim 1.19, 17 April 2002

**1.20 Wai 454**

A claim by Walter Taipari and another concerning the Marutuahu tribal region, 26 April 1994

- (a) Amendment to claim 1.20, 5 March 2001

**1.21 Wai 464**

A claim by Gavin Caird and others concerning the Pakirarahi 1C block, 18 April 1994

- (a) Amendment to claim 1.21, 21 April 1995
- (b) Amendment to claim 1.21, undated
- (c) Amendment to claim 1.21, 21 October 1999

**1.22 Wai 475**

A claim by Remehio Te Maunga Mangakahia and others concerning Whangapoua Forest, 4 October 1994

- (a) Amendment to claim 1.22, undated

**1.23 Wai 495**

A claim by Mahuta Pitau Williams concerning Marutuahu tribal lands, 15 March 1993

- (a) Amendment to claim 1.23, undated

**1.23A Wai 508**

A claim by Whititera Kaihu concerning Ngati Te Ata, 12 May 1995

- (a) Amendment to claim 1.23, 3 September 2002

**1.24 Wai 563**

A claim by Andrew Anaru Andrews and others concerning Kaiaua School lands, 7 November 1995

**1.25 Wai 661**

A claim by Shane Ashby and others concerning the Wharekawa East 2 block, 19 November 1996

- (a) Amendment to claim 1.25, 4 April 1997
- (b) Amendment to claim 1.25, 16 August 1998
- (c) Amendment to claim 1.25, 25 November 1998
- (d) Amendment to claim 1.25, undated

**1.26 Wai 663**

A claim by Tanengapuia Te Rangiawhina Mokena concerning Te Aroha lands, 14 January 1997

- (a) Amendment to claim 1.26, 8 September 1997
- (b) Amendment to claim 1.26, 18 February 2000

**1.27 Wai 693**

A claim by Whaitiri Mikaere concerning the Mata-mataharakeke blocks, 27 November 1997

- (a) Amendment to claim 1.27, 29 June 2000
- (b) Amendment to claim 1.27, 29 June 2000
- (c) Amendment to claim 1.27, 2 March 2001

**1.28 Wai 694**

A claim by Reremoana Jones and others concerning the Tairua block and forest, 27 November 1997

- (a) Amendment to claim 1.28, undated
- (b) Amendment to claim 1.28, undated

**1.29 Wai 695**

A claim by Peter TeWharau concerning Te Aroha land and mountain, 25 November 1997

**1.30 Wai 704**

A claim by Dianne Chalmers concerning the Whangamata 4D4B2A block and others, 2 February 1998

- (a) Amendment to claim 1.30, 22 June 1998
- (b) Amendment to claim 1.30, 10 September 2001

**1.31 Wai 705**

A claim by Barbara Hui Francis concerning Whitianga township and Te Whanganui-o-Hei Harbour, undated

- (a) Amendment to claim 1.31, 3 September 2001

**1.32 Wai 714**

A claim by Hone Tewaewae Williams concerning Ngati Koi reserves and other Hauraki blocks, 23 March 1998

- (a) Amendment to claim 1.32, 17 July 2001

**1.32A Wai 720**

A claim by Tamatehura Nicholls (deceased) concerning Mahurangi-Omaha (Hauraki Gulf), undated

- (a) Amendment to claim 1.32A, 19 November 1998
- (b) Amendment to claim 1.32A, 11 April 2001
- (c) Amendment to claim 1.32A, 23 July 2002

**1.33 Wai 728**

A claim by Toko Renata Te Taniwha and Hauraki Maori Trust Board concerning Tikapa Moana National Marine Park, 19 June 1998

- (a) Amendment to claim 1.33, 20 June 2000
- (b) Amendment to claim 1.33, 1 February 2001

**1.34 Wai 754**

A claim by Garrick Cooper concerning Tairua and other blocks, 18 September 1998

**1.35 Wai 778**

A claim by Tewiremu Mataia concerning Ngati Tamatea lands and taonga, 12 November 1998

- (a) Amendment to claim 1.35, 11 April 2001
- (b) Amendment to claim 1.35, 23 July 2002

**1.36 Wai 792**

A claim by Parekura Tamati White concerning the Harataunga blocks, 14 October 1999

- (a) Amendment to claim 1.36, 27 July 2000
- (b) Amendment to claim 1.36, undated

APP

**1.37 Wai 806**

A claim by Maraea Rihi Blomfield concerning the Tikouma blocks and the harbour, foreshore, and seabed, 3 August 1999

- (a) Amendment to claim 1.37, 31 March 2000
- (b) Amendment to claim 1.37, 5 July 2000
- (c) Amendment to claim 1.37, 20 August 2002

**1.38 Wai 808**

A claim by Hoe o Tainui Ki Mahurangi concerning Tupuna whaea lands of Ngati Horowhenua within the Hauraki rohe, 18 January 2000

- (a) Amendment to claim 1.38, 8 November 2001
- (b) Amendment to claim 1.38, 1 May 2002

**1.39 Wai 809**

A claim by Toko Renata Te Taniwha concerning Ngati Whanaunga in the Hauraki district, 19 January 2000

- (a) Amendment to claim 1.38, 26 August 2002

**1.40 Wai 811**

A claim by William Kapanga Peters and Te Warana Williams concerning lands and taonga of Te Patukirikiri iwi in Coromandel, 21 January 2000

**1.41 Wai 810**

A claim by Moana Te Aria Te Uri Karaka Te Waero concerning Waiheke Island, Hauraki Gulf, 20 January 2000

- (a) Amendment to claim 1.41, 12 March 2001

**1.42 Wai 812**

A claim by Clive John Majurey concerning lands and taonga within the Marutuahu rohe, 20 January 2000

- (a) Amendment to claim 1.42, 5 March 2001

**1.43 Wai 826**

A claim by Te Awanuiarangi Black concerning the Te Kawakawa block, Clevedon, 5 May 2000

**1.44 Wai 865**

A claim by Richard Murray and others concerning Waihou railway land, 13 April 2000

**1.45 Wai 866**

A claim by Pakariki Harrison concerning Ngati Porou ki Harataunga ki Mataora, 28 June 2000

- (a) Amendment to claim 1.45, 28 September 2001

**1.46 Wai 949**

A claim by Taka o Te Rangi concerning Ngati Koheriki land in East Wairoa confiscation block, 31 October 2001

- (a) Amendment to claim 1.46, 15 April 2002

**1.47 Wai 867**

A claim by Amy Cooper and Waimanauka Meremana concerning lands and resources within Marutuahu tribal region, 26 July 2000

**1.48 Wai 968**

A claim by Korohera Ngapo concerning the Moehau 2A2 block, 7 February 2002

- (a) Amendment to claim 1.48, 14 August 2002

**1.49 Wai 969**

A claim by Reece David Harrison concerning the Crown's assumption of ownership of lands that belonged to his grandfather, 16 August 2001

- (a) Amendment to claim 1.49, 13 June 2002

**1.50 Wai 970**

A claim by Florence Te Paea Watene Gurnick concerning lands and resources of Tamatepo in Hauraki, 14 December 2001

- (a) Amendment to claim 1.50, 13 June 2002

**1.51 Wai 997**

A claim by Daniel Hitchcock concerning the Papaaroa 1 block, 23 May 2002

**2. PAPERS IN PROCEEDINGS**

**2.1** Chairperson, direction to register Wai 72, 29 May 1989

- (a) Chairperson, direction to register Wai 96, 20 October 1989

**2.2** Chairperson, direction concerning application by Andrew Styler, 26 October 1989

## RECORD OF INQUIRY

APP

- |   |  |
|---|--|
| <p><b>2.3</b> Chairperson, direction to register Wai 100, 3 November 1989</p> <p><b>2.4</b> Chairperson, direction to register amendment to Wai 72, 24 November 1989</p> <p><b>2.5</b> Notice of Wai 72, 30 November 1989</p> <p><b>2.6</b> Chairperson, direction to register Wai 110, 23 January 1990</p> <p><b>2.7</b> Notice of Wai 110, 2 February 1990</p> <p><b>2.8</b> Chairperson, direction to register Wai 148, 29 June 1990</p> <p><b>2.9</b> Notice of Wai 148, 5 July 1990</p> <p><b>2.10</b> Chairperson, direction to register Wai 174, 25 January 1991</p> <p><b>2.11</b> Notice of Wai 174, 30 January 1991</p> <p><b>2.12</b> Chairperson, direction to register Wai 177, 11 March 1991</p> <p><b>2.13</b> Chairperson, direction concerning Wai 110, 15 March 1991</p> <p><b>2.14</b> Notice of Wai 177, 18 March 1991</p> <p><b>2.15</b> Notice of amendment to Wai 110, 22 March 1991<br/> <b>(a)</b> Chairperson, direction to register Wai 236 claim, 8 November 1991<br/> <b>(b)</b> Notice of Wai 236 claim, 11 November 1991</p> <p><b>2.16</b> Chairperson, direction to consider submission of Ms Steele, 31 January 1992</p> <p><b>2.17</b> Chairperson, direction to distribute document A17, 31 January 1992<br/> <b>(a)</b> JR Sinclair, letter to registrar concerning amendment to Wai 96, 22 April 1992</p> <p><b>2.18</b> Chairperson, direction to register Wai 285, 29 May 1992</p> <p><b>2.19</b> Notice of Wai 285, 2 June 1992</p> <p><b>2.20</b> Chairperson, direction to register Wai 289, 9 June 1992</p> <p><b>2.21</b> Notice of Wai 289, 11 June 1992<br/> <b>(a)</b> Notice of Wai 236 amendment, 7 July 1992</p> | <p><b>2.22</b> Chairperson, direction to register addition to Wai 177, 21 September 1992</p> <p><b>2.23</b> Chairperson, direction to register Wai 326, 2 February 1993</p> <p><b>2.24</b> Notice of Wai 326, 5 February 1993<br/> <b>(a)</b> Chairperson, directions to register Wai 330 claim, 15 February 1993<br/> <b>(b)</b> Notice of Wai 330 claim, 18 February 1993</p> <p><b>2.25</b> Chairperson, direction to register Wai 349, 14 May 1993</p> <p><b>2.26</b> Notice of Wai 349, 20 May 1993</p> <p><b>2.27</b> L Mangakahia and V Phillips, application for urgent hearing concerning disposal of Part Hikutawatawa, Opitonui and Waitekuri block, 22 June 1993</p> <p><b>2.28</b> Chairperson, direction concerning paper 2.27, 22 June 1993</p> <p><b>2.29</b> Chairperson, direction to register Wai 355, 30 June 1993</p> <p><b>2.30</b> Notice of Wai 355, 2 July 1993</p> <p><b>2.31</b> Chairperson, direction to release document A16, 3 August 1993</p> <p><b>2.32</b> Chairperson, direction to release document A34, 3 August 1993</p> <p><b>2.33</b> Chairperson, direction to register Wai 364, 4 August 1993</p> <p><b>2.34</b> Tainui Maori Trust Board, application for the return of Onewhero and Maramarua forests, 23 August 1993</p> <p><b>2.35</b> Chairperson, directing conference of parties to discuss paper 2.34, 24 August 1993</p> <p><b>2.36</b> Chairperson, direction to register Wai 373, 27 August 1993</p> <p><b>2.37</b> Notice of Wai 373, 27 August 1993<br/> <b>(a)</b> Chairperson, direction to register amendment to Wai 330 claim, 30 August 1993<br/> <b>(b)</b> Notice of Wai 330 amendment, 1 September 1993</p> |
|---|--|

## THE HAURAKI REPORT

### APP

- 2.38** Chairperson, direction to register Wai 369, 13 September 1993
- 2.39** Crown Forestry Rental Trust counsel, memorandum concerning Onewhero and Maramarua forests, 20 September 1993
- 2.40** Wai 30 claimant counsel, memorandum to the Tribunal concerning conference, 21 September 1993
- 2.41** Notice of Wai 369, 29 September 1993
- 2.42** Chairperson, memorandum concerning Onewhero and Maramarua forests, 7 October 1993
- 2.43** Department of Conservation, letter to registrar concerning Cathedral Cove, 18 October 1993
- 2.44** Chairperson, direction to consolidate Panmure and East Tamaki alienations and Auckland–Hauraki claims generally, 16 November 1993
  - (a)** Chairperson, directions to register amendment to Wai 330, 26 November 1993
  - (b)** Notice of Wai 330 amendment, 2 December 1993
- 2.45** Chairperson, direction to register Wai 418, 10 February 1994
- 2.46** Chairperson, direction to register Wai 423, 1 March 1994
- 2.47** Notice of Wai 418, 10 March 1994
- 2.48** Chairperson, memorandum concerning Ngati Paoa representatives, 14 April 1994
- 2.49** Wai 326 and Wai 406 claimant, letter concerning Cathedral Cove, 16 September 1994
- 2.50** Deputy chairperson, direction to register Wai 454, 14 February 1995
- 2.51** Notice of Wai 454, 15 February 1995
- 2.52** Deputy chairperson, direction to register Wai 464, 27 February 1995
- 2.53** Notice of Wai 464, 2 March 1995
- 2.54** Deputy chairperson, direction to register Wai 475, 2 March 1995
- 2.55** Notice of Wai 475, 10 March 1995
- 2.56** Deputy chairperson, direction to register amendment to Wai 364, 24 March 1995
  - (a)** Wai 96 claimant, letter concerning status of claim, 27 March 1995
- 2.57** Chairperson, direction to register Wai 495, 12 April 1995
- 2.58** Notice of Wai 495, 13 April 1995
- 2.59** Deputy chairperson, direction to register addition to Wai 464, 11 May 1995
- 2.60** Notice of addition to Wai 464, 15 May 1995
  - (a)** Deputy chairperson, memorandum directing registration of Wai 508 claim, 19 May 1995
  - (b)** Notice of claim, 22 May 1995
- 2.61** Deed of Settlement between Her Majesty the Queen and Waikato Tainui, 22 May 1995
- 2.62** Chairperson, memorandum directing release of document A2, 25 May 1995
- 2.63** Wai 406 claimant, letter to registrar concerning Tainui Trust Board, 30 May 1995
- 2.64** Wai 373 and Wai 494 claimant counsel, letter to registrar concerning opposition to Wai 373 and Wai 494 being heard, 31 May 1995
- 2.65** Wai 423 and Wai 357 claimant, letter to registrar concerning Wai 30 raupatu settlement and iwi and hapu rights, 13 June 1995
  - (a)** Chairperson, memorandum directing registration of amendment to Wai 357 claim, 26 July 1995
- 2.66** Hauraki Maori Trust Board, submissions concerning opposition to hearing of Wai 494, 16 June 1995
- 2.67** Wai 30 claimant counsel, memorandum responding to Wai 494 counsel's 16 June 1995 memorandum, 13 July 1995
- 2.68** Waikato-Tainui Raupatu Claims Settlement Bill
  - (a)** Notice of hearing, 19 September 1994



## RECORD OF INQUIRY

APP

- |   |   |
|---|---|
| <p>(b) Dispatch notice of hearing, 21 September 1994</p> <p><b>2.70</b> Proposed amendments to Waikato-Tainui Raupatu Claims Settlement Bill, 25 September 1995</p> <p><b>2.71</b> Wai 373 claimant counsel, memorandum supporting urgent application, 27 September 1995</p> <p><b>2.72</b> Deputy chairperson, direction concerning Waikato-Tainui Raupatu Claims Settlement Bill and to register addition to Wai 373, 28 September 1995</p> <p><b>2.73</b> Chairperson, direction to release document A19, 25 October 1995</p> <p><b>2.74</b> Wai 30 claimant counsel, memoranda advising settlement of raupatu claims, 15 November 1995</p> <p><b>2.75</b> Waikato Raupatu Claims Settlement Act 1995</p> <p><b>2.76</b> Deputy chairperson, direction to register Wai 563, 15 January 1996</p> <p><b>2.77</b> Notice of Wai 563, 1 February 1996</p> <p><b>2.78</b> Ministry of Education, letter to registrar concerning Kaiaua School, 20 February 1996</p> <p><b>2.79</b> Wai 30 claimant counsel, memorandum concerning document A2, 12 March 1996</p> <p><b>2.80</b> Deputy chairperson, direction concerning application by L A Clarke Builders Ltd under section 8D of the Treaty of Waitangi Act 1975 concerning land at 2 Racecourse Road, Waiuku, 9 April 1996</p> <p><b>2.81</b> Department of Conservation, letter to registrar concerning Maori archaeological sites at Pauanui, 17 May 1996</p> <p><b>2.82</b> Deputy chairperson, direction to register addition to Wai 177, 12 July 1996</p> <p><b>2.83</b> Notice of addition to Wai 177, 18 July 1996</p> <p><b>2.84</b> Wai 100 claimant counsel, letter to registrar concerning application by V F Handley and H J Milroy under section 8D of the Treaty of</p> | <p>Waitangi Act 1975 concerning land at Junction Road, Paeroa, and claimants' interest in that land, 18 July 1996</p> <p><b>2.85</b> Wai 364 claimant, letter to registrar concerning application by V F Handley and H J Milroy, 7 August 1996</p> <p><b>2.86</b> Wai 349 claimant counsel, letter to registrar concerning application by V F Handley and H J Milroy, 11 August 1996</p> <p><b>2.87</b> Wai 495 claimant counsel, letter to registrar concerning application by V F Handley and H J Milroy, 11 August 1996</p> <p><b>2.88</b> Wai 100 claimant counsel, letter to registrar concerning application by Inner City Properties Ltd under section 8D of the Treaty of Waitangi Act 1975 concerning land at 91 Airedale Street, Auckland, and claimant's interest in that land, 27 August 1996</p> <p><b>2.89</b> Wai 100 claimant counsel, letter to registrar concerning application by Television New Zealand Ltd under section 8D of the Treaty of Waitangi Act 1975 concerning land at Grattan Road, Te Aroha and claimant's interest in that land, 2 October 1996</p> <p>(a) Wai 96 claimant counsel, letter to registrar concerning section 8D application and claimant's interest in land at corner of East Tamaki and Chapel Roads, East Tamaki, 4 November 1996</p> <p><b>2.90</b> Wai 72, Wai 236 claimant counsel, letter to registrar concerning application by Michael's Management Services Ltd under section 8D of the Treaty of Waitangi Act 1975 concerning land on corner of East Tamaki and Chapel Roads, East Tamaki, and claimants' interest in that land, 8 January 1997</p> <p><b>2.91</b> Deputy chairperson, direction to register amendment to Wai 285, 5 March 97</p> <p><b>2.92</b> Deputy chairperson, direction to register Wai 661, 5 March 1997</p> <p><b>2.93</b> Notice of amendment to Wai 285, 7 March 1997</p> <p><b>2.94</b> Notice of Wai 661, 11 March 1997</p> <p><b>2.95</b> Deputy chairperson, direction to register Wai 663, 18 March 1997</p> |
|---|---|



## THE HAURAKI REPORT

### APP

- 2.96** Notice of Wai 663, 21 March 1997
- 2.97** Deputy chairperson, direction to register addition to Wai 174, 2 April 1997
- 2.98** Notice of addition to Wai 174, 10 April 1997
- 2.99** Deputy chairperson, direction to register addition to Wai 661, 30 April 1997
- 2.100** Notice of addition to Wai 661, 30 April 1997
- 2.101** Wai 100 claimant counsel, letter to registrar concerning application by A Broadbent, G Broadbent and L Broadbent under section 8D of the Treaty of Waitangi Act 1975 concerning land at Victoria Street, Waihi, and claimants' interest in that land, 21 May 1997
- 2.102** Registrar, letter to C Kirkwood concerning Hauraki casebook geographical boundaries, 19 June 1997
- 2.103** Chairperson, direction to release document A18, 17 July 1997
- 2.104** H Gordon, letter to registrar concerning interest in Hauraki inquiry, 25 July 1997
- 2.105** Wai 364 and Wai 406 claimant, letter to registrar concerning application by A Broadbent, G Broadbent, and L Broadbent, 8 August 1997  
(a) Chairperson, direction to release document A46, 24 September 1997
- 2.106** Chairperson, direction to release document A9, 4 December 1997
- 2.107** Chairperson, direction to release document A10, 4 December 1997
- 2.108** Chairperson, direction to release document A13, 16 December 1997
- 2.109** Deputy chairperson, direction to register amendment to Wai 663, 18 December 1997
- 2.110** Notice of amendment to Wai 663, 19 December 1997
- 2.111** Deputy chairperson, direction to register amendment to Wai 100, 18 December 1997
- 2.112** Notice of amendment to Wai 100, 15 January 1998
- 2.113** Deputy chairperson, direction to register Wai 693, 16 January 1998
- 2.114** Deputy chairperson, direction to register Wai 694, 16 January 1998
- 2.115** Deputy chairperson, direction to register addition to Wai 285, 20 January 1998
- 2.116** Deputy chairperson, direction to register Wai 695, 20 January
- 2.117** Deputy chairperson, direction concerning consolidation and aggregation of Wai 686 record of inquiry and to withdraw Wai 110, Wai 148, Wai 174, Wai 177, Wai 285, Wai 289, Wai 326, Wai 355, Wai 369, Wai 373, Wai 418, Wai 464, Wai 475, Wai 563, Wai 661, Wai 663, Wai 693, and Wai 694 from the record of inquiry for Wai 406, 20 January 1998
- 2.118** Notice of Wai 693, 23 January 1998
- 2.119** Notice of Wai 694, 27 January 1998
- 2.120** Notice of Wai 695, 27 January 1998
- 2.121** Notice of addition to Wai 285, 28 January 1998
- 2.122** Chairperson, direction to register amendment to Wai 364, 18 February 1998
- 2.123** Notice of amendment to Wai 364, 2 March 1998
- 2.124** Deputy chairperson, direction to register Wai 704, 9 March 1998
- 2.125** Notice of Wai 704, 16 March 1998
- 2.126** Deputy chairperson, direction to register addition to Wai 364, 9 March 1998  
(a) Deputy chairperson, memorandum directing registration of Wai 705 claim and consolidation with record of inquiry for Wai 686, 9 March 1998
- 2.127** Notice of addition to Wai 364, 18 March 1998
- 2.128** Notice of Wai 705, 20 March 1998

- 2.129** Chairperson, direction appointing Dame Augusta Wallace as presiding officer of Wai 686 Tribunal, 3 April 1998
- 2.130** Department of Conservation, letter to registrar from concerning interest in Wai 693 claim, 30 April 1998
- 2.131** Deputy chairperson, direction to register Wai 714, 6 May 1998
- 2.132** Notice of Wai 714, 21 May 1998
- 2.133** G Cooper, letter to Tribunal concerning Wai 110 research, 15 May 1998
- 2.134** Chairperson, direction constituting Wai 686 Tribunal, 22 May 1998
- 2.135** Deputy chairperson, direction registering additions to Wai 72, 5 June 1998
- 2.136** Notice of addition to Wai 72, 18 June 1998
- 2.137** Presiding officer, direction to register addition to Wai 174, 14 June 1998
- 2.138** Notice of addition to Wai 174, 19 June 1998
- 2.139** Wai 454 claimant counsel, memorandum concerning issues raised at the pre-hearing conference, 24 June 1998
- 2.140** Minute from pre-hearing conference concerning applications to the Crown Forestry Rental Trust for funding, 25 June 1998
- 2.141** Minute from pre-hearing conference concerning surplus Crown properties, 25 June 1998
- 2.142** Deputy chairperson, direction to register Wai 728, 15 July 1998
- 2.143** Notice of Wai 728 claim, 16 July 1998
- 2.144** Wai 728 claimant counsel, application for urgent hearing, 14 July 1998
- 2.145** Deputy chairperson, direction to release document A35, 23 July 1998
- 2.146** Presiding officer, direction registering amendment to Wai 704 claim, 28 July 1998
- 2.147** Crown Forestry Rental Trust, memorandum to registrar concerning Hauraki Maori Trust Board funding assistance, 28 July 1998
- 2.148** Notice of amendment to Wai 704, 22 June 1998
- 2.149** Notice of change of counsel, 30 July 1998
- 2.150** Crown counsel, memorandum concerning proposed Hauraki Gulf Marine Park Bill, 31 July 1998
- 2.151** Wai 728 claimant counsel, memorandum concerning proposed Hauraki Gulf Marine Park Bill, 3 August 1998
- 2.152** Wai 720 claimant counsel, memorandum concerning interest in Wai 728 claim, 12 August 1998
- 2.153** Wai 289 claimant counsel, memorandum concerning interest in Wai 728 claim, 12 August 1998
- 2.154** Wai 364 claimant, submission concerning interest in Wai 728 claim, 8 August 1998
- 2.155** Wai 728 claimant counsel, submission concerning application for urgency, 13 August 1998
- 2.156** Crown counsel, submissions in opposition to application by Wai 728 claimants' for urgency, 13 August 1998  
(a) Supporting documents to paper 2.156, various dates
- 2.157** Wai 454 claimant counsel, memorandum concerning interest in Wai 728 claim, 13 August 1998
- 2.158** Wai 349 claimant counsel, submission concerning interest in Wai 728 claim, 13 August 1998
- 2.159** Department of Conservation, letter to registrar concerning proposed Hauraki Gulf marine park, 14 August 1998
- 2.160** Presiding officer, direction concerning application by Wai 728 claimants for urgent hearing, 19 August 1998

## THE HAURAKI REPORT

### APP

- 2.161** Wai 423 claimant counsel, letter to registrar concerning the exclusion of various Wairoa blocks from the Hauraki claim, 15 August 1998
- 2.162** Presiding officer, direction concerning deadlines for the filing of evidence prior to each hearing week for the entire Hauraki inquiry, 21 August 1998
- 2.163** Wai 522 claimant counsel, memorandum concerning interest in Wai 728 claim, 19 August 1998
- 2.164** Presiding officer, direction concerning the extension of the Hauraki inquiry district, the aggregation and consolidation of Wai 236, Wai 330, Wai 508, and Wai 96 with the Wai 686 record of inquiry and the withdrawal of Wai 96 from the Wai 406 record of inquiry, 26 August 1998
- 2.165** Wai 100 claimant counsel, memorandum concerning deadlines for the filing of evidence, 24 August 1998
- 2.166** Crown counsel, letter to registrar concerning a meeting scheduled between the Minister of Conservation and Hauraki iwi concerning the proposed Hauraki Gulf Marine Park Bill, 27 August 1998  
(a) Presiding officer, direction to release document D19, 31 August 1998
- 2.167** Wai 100 claimant counsel, memorandum concerning the proposed hearing timetable, 26 August 1998
- 2.168** Presiding officer, direction concerning leave for Wai 100 counsel to file briefs of evidence prior to the first hearing, 3 September 1998
- 2.169** Notice of first hearing, 2 September 1998
- 2.170** Dispatch notice of first hearing, 4 September 1998
- 2.171** Wai 100 claimant counsel, memorandum concerning agenda for first hearing, 7 September 1998
- 2.172** Wai 30 claimant counsel, letter to registrar concerning the Waikato Raupatu Settlement and the blocks of Wairoa and Maioro, 2 September
- 2.173** Crown counsel, memorandum concerning Waihi and Te Aroha hospitals as surplus Crown properties (paper 2.141) and statement of issues in response to the statement of claim 11 September 1998
- 2.174** Wai 423 claimant counsel, memorandum outlining the extent of interests within the Hauraki inquiry district, 14 September 1998
- 2.175** Presiding officer, direction to register addition to Wai 661, 7 September 1998
- 2.176** Presiding officer, direction in response to paper 2.174, 24 September 1998
- 2.177** Notice of Wai 661 addition, 25 September 1998
- 2.178** Notice of second and third hearings, 5 October 1998
- 2.179** Dispatch notice of second and third hearings, 6 October 1998
- 2.180** Presiding officer, direction to release document C4, 15 October 1998
- 2.181** Wai 100 claimant counsel, memorandum concerning the Crown's obligation to file a statement of defence, 6 November 1998
- 2.182** Presiding officer, direction to register Wai 754 claim, 30 October 1998  
(a) Presiding officer, direction to release John Neal, 'Tairua Block', 30 October 1998
- 2.183** Notice of Wai 754, 12 November 1998
- 2.184** Crown counsel, memorandum concerning draft Hauraki Gulf Marine Park Bill, 11 November 1998
- 2.185** Crown counsel, memorandum concerning hearings week 4 and 5 and in response to paper 2.181, 13 November 1998
- 2.186** Wai 100 claimant counsel, memorandum concerning hearing weeks 4 and 5 and Crown's obligation to file statement of defence, 19 November 1998
- 2.187** Notice of fourth hearing, 16 November 1998

## RECORD OF INQUIRY

APP

- |  |  |
|--|--|
| <p><b>2.188</b> Dispatch notice of fourth hearing, 16 November 1998</p> <p><b>2.189</b> Crown counsel, memorandum concerning statement of factual issues, undated<br/> <b>(a)</b> Presiding officer, direction to register addition to Wai 364, 16 December 1998<br/> <b>(b)</b> Presiding officer, direction to register amendment to Wai 495, 16 December 1998</p> <p><b>2.190</b> Presiding officer, direction to register addition to Wai 661, 24 December 1998<br/> <b>(a)</b> Presiding officer, direction to register addition to Wai 720 claim and aggregate with Wai 686, 24 December 1998</p> <p><b>2.191</b> Notice of addition to Wai 661, 14 January 1999<br/> <b>(a)</b> Wai 100 claimant counsel, memorandum concerning hearing programme and hearing week six, 22 January 1999</p> <p><b>2.192</b> Notice of Wai 364 addition, 27 January 1999</p> <p><b>2.193</b> Notice of Wai 495 amendment, 29 January 1999</p> <p><b>2.194</b> Notice of Wai 720 addition, 1 February 1999</p> <p><b>2.195</b> Notice of fifth hearing, 1 February 1999</p> <p><b>2.196</b> Dispatch notice of fifth hearing, 1 February 1999</p> <p><b>2.197</b> Wai 289 claimant, letter concerning support to Hauraki claims, 4 February 1999</p> <p><b>2.198</b> Notice of sixth hearing, 23 March 1999</p> <p><b>2.199</b> Dispatch notice of sixth hearing, 25 March 1999</p> <p><b>2.200</b> Presiding officer, direction appointing Joanne Morris to act as presiding officer at sixth hearing, 29 March 1999</p> <p><b>2.201</b> Presiding officer, direction to register Wai 778 and aggregate with Wai 686, 31 March 1999</p> <p><b>2.202</b> Notice of Wai 778, 15 April 1999</p> | <p><b>2.203</b> Wai 110 and Wai 475 claimant counsel, letter to registrar concerning preferred weeks of hearing, 31 March 1999</p> <p><b>2.204</b> Wai 96, Wai 100, Wai 148, Wai 174, Wai 285, Wai 418, Wai 464, Wai 661, and Wai 663 claimant counsel, memorandum concerning preferred weeks of hearing, 7 April 1999</p> <p><b>2.205</b> Wai 355 claimant counsel, letter to registrar concerning preferred weeks of hearing, 24 March 1999</p> <p><b>2.206</b> Nicola Ngawati, letter to registrar concerning preferred weeks of hearing, 12 April 1999</p> <p><b>2.207</b> Wai 714 claimant counsel, memorandum concerning preferred weeks of hearing, 16 April 1999</p> <p><b>2.208</b> Wai 693 claimant counsel, memorandum concerning preferred weeks of hearing, 21 April 1999</p> <p><b>2.209</b> Wai 694 claimant counsel, letter to registrar preferred weeks of hearing, 23 April 1999</p> <p><b>2.210</b> Wai 148, Wai 174, Wai 285, Wai 418, Wai 464, Wai 661, and Wai 663 claimant counsel, letter to registrar concerning technical witnesses intended to be called for hearings, 26 April 1999</p> <p><b>2.211</b> Wai 364 claimant, letter to registrar requesting discontinuation of Wai 100 claim, 21 April 1999</p> <p><b>2.212</b> Wai 289 claimant counsel, memorandum concerning preferred weeks of hearing, 30 April 1999</p> <p><b>2.213</b> Wai 110 and Wai 475 claimant counsel, letter to registrar concerning the calling of witnesses and site visits, 30 April 1999</p> <p><b>2.214</b> Chairperson, direction to release document G1, 15 April 1999</p> <p><b>2.215</b> Presiding officer, direction to release document G2, 27 April 1999</p> <p><b>2.216</b> Wai 72 claimant counsel, letter to registrar concerning preferred weeks of hearing, 5 May 1999</p> |
|--|--|

## THE HAURAKI REPORT

### APP

- |  |   |
|--|---|
| <p><b>2.217</b> Notice of seventh hearing, 31 May 1999</p> <p><b>2.218</b> Dispatch notice of seventh hearing, 1 June 1999</p> <p><b>2.219</b> Presiding officer, direction to release document G11, 14 June 1999</p> <p><b>2.220</b> Presiding officer, direction to release document H1, 23 June 1999</p> <p><b>2.221</b> Presiding officer, direction to release document H2, June 1999</p> <p><b>2.222</b> Presiding officer, direction to release document H3, 23 June 1999</p> <p><b>2.223</b> Minute following conference, 5 May 1999, Auckland</p> <p><b>2.224</b> Notice of eighth hearing, 12 July 1999</p> <p><b>2.225</b> Dispatch notice of eighth hearing, 12 July 1999</p> <p><b>2.226</b> Presiding officer, direction to release document H6, 5 July 1999</p> <p><b>2.227</b> Crown counsel, memorandum concerning first amended statement of factual issues (paper 2.189), 30 July 1999</p> <p><b>2.228</b> Notice of change of instructing solicitor for Wai 475 from Marshall Bird and Curtis to Morton Tee and Company, 29 July 1999</p> <p><b>2.229</b> Notice of change of instructing solicitor for Wai 177 from Marshall Bird and Curtis to Morton Tee and Company, 29 July 1999</p> <p><b>2.230</b> Wai 177 claimant counsel, memorandum requesting a judicial conference concerning counsel representation, 13 August 1999</p> <p><b>2.231</b> Presiding officer, direction to release document I1, 12 August 1999</p> <p><b>2.232</b> Notice of change of instructing solicitor for Wai 110 from Marshall Bird and Curtis to Morton Tee and Company, 9 August 1999</p> <p><b>2.233</b> Presiding officer, direction to release document I2, 2 September 1999</p> | <p><b>2.234</b> Notice of ninth hearing, 20 September 1999</p> <p><b>2.235</b> Dispatch notice of ninth hearing, 21 September</p> <p><b>2.236</b> Wai 326 claimant counsel, letter to Crown counsel concerning document A19, 3 September 1999</p> <p><b>2.237</b> Crown Law Office, letter to Walters Williams letter concerning document A19, 9 September 1999</p> <p><b>2.238</b> Wai 326 claimant counsel, letter to Crown Law Office concerning document A19, 9 September 1999</p> <p><b>2.239</b> Crown Law Office, letter to Walters Williams concerning document A19, 20 September 1999</p> <p><b>2.240</b> Presiding officer, direction following a conference concerning taking document A19 as read, 27 September 1999</p> <p><b>2.241</b> Minute following conference held Ngaruawahia on 14 September 1999 concerning address for service and acting counsel for Wai 177 claim, 20 September 1999</p> <p><b>2.242</b> Notice of change of instructing solicitor for Wai 177, 8 October 1999</p> <p><b>2.243</b> Crown Law Office, memorandum concerning question on evidence of Nicola Ngawati concerning Cathedral Cove–Mercury Bay marine reserve, 12 October 1999</p> <p><b>2.244</b> Presiding officer, direction concerning the right of Crown and claimant counsel to submit written questions for Suzanne Woodley and Antoine Coffin, 13 October 1999</p> <p><b>2.245</b> Acting chairperson, direction to register Wai 792 claim, 14 October 1999</p> <p><b>2.246</b> Presiding officer, direction to release Dr Tracy Tulloch Wai 754 scoping report, 14 October 1999</p> <p><b>2.247</b> Crown Law Office, memorandum concerning questions on the evidence of Antoine Coffin, 29 October 1999</p> |
|--|---|

- 2.248** Presiding officer, direction concerning forward planning for Hauraki inquiry and close off date, 20 January 2000, for any claims registered to be consolidated or aggregated for inquiry with Wai 686, 26 October 1999
- 2.249** Notice of Wai 792 claim, 8 November 1999
- 2.250** Wai 693 claimant counsel, memorandum to registrar concerning 5 November 1999 conference and readiness to be heard, 1 November 1999
- 2.251** Wai 714 claimant counsel, memorandum to registrar concerning 5 November 1999 conference and readiness to be heard, 2 November 1999
- 2.252** Crown Law Office, memorandum to registrar concerning not filing written questions for Suzanne Woodley, 3 November 1999
- 2.253** Wai 720 claimant counsel, memorandum to registrar concerning 5 November 1999 conference and readiness to be heard, 4 November 1999
- 2.254** Presiding officer, direction to release document 17, 4 November 1999
- 2.255** Notice of tenth hearing, 22 November 1999
- 2.256** Dispatch notice of tenth hearing, 22 November 1999
- 2.257** Wai 72 claimant counsel, letter to registrar concerning 5 November 1999 conference and readiness to be heard, 5 November 1999
- 2.258** Minute following 5 November 1999 conference concerning readiness of claims for hearing, 24 November 1999
- 2.259** Presiding officer, direction to register amendment to Wai 464 and Wai 661, 24 November 1999
- 2.260** Notice of amendment to Wai 464 and Wai 661, 24 November 1999
- 2.261** Wai 100 claimant counsel, memorandum requesting an interim report, 9 December 1999
- 2.262** Wai 464 and Wai 661 claimant counsel, memorandum concerning answers to written questions by Antoine Coffin, 29 November 1999
- 2.263** Nicola Ngawati, memorandum in response to questions on evidence concerning Cathedral Cove–Mercury Bay marine reserve (paper 2.243), 6 December 1999
- 2.264** Presiding officer, direction concerning counsel for Wai 100 and others asking the Hauraki Tribunal to consider issuing an interim report on the Hauraki claims, 20 December 1999  
**(a)** Presiding officer, direction to register amendments to Wai 148 and 285 claims, 20 December 1999
- 2.265** Wai 355 claimant counsel, memorandum to registrar concerning the issuing of an interim report, 23 December 1999  
**(a)** Notice of Wai 148 and 285 amendment to claims, 7 January 2000  
**(b)** Presiding officer, direction to register amendment to statement of claim for Wai 174, 24 December 1999  
**(c)** Presiding officer, memorandum directing registration of change of named claimant for Wai 464, 24 December 1999  
**(d)** Presiding officer, memorandum directing registration of amendment to statement of claim for Wai 418, 24 December 1999
- 2.266** Wai 704 claimant counsel, memorandum concerning issuing of interim report, 11 January 2000
- 2.267** Wai 349 and Wai 778 claimant counsel, memorandum concerning issuing of interim report, 11 January 2000
- 2.268** Wai 693 claimant counsel, memorandum concerning issuing of interim report, 11 January 2000
- 2.269** Wai 714 claimant counsel, memorandum concerning issuing of interim report, 11 January 2000
- 2.270** Wai 454 claimant counsel, memorandum concerning issuing of interim report, 11 January 2000
- 2.271** Wai 72 claimant counsel, memorandum concerning issuing of interim report, 11 January 2000

## THE HAURAKI REPORT

### APP

- 2.272** Wai 475 claimant counsel, memorandum concerning issuing of interim report, 18 January 2000
- 2.273** Wai 110 claimant counsel, memorandum concerning issuing of interim report, 18 January 2000
- 2.274** Crown counsel, memorandum concerning issuing of interim report, 20 January 2000
- 2.275** Wai 289 claimant counsel, memorandum concerning issuing of interim report, 20 January 2000
- 2.276** Wai 694 claimant counsel, memorandum concerning issuing of interim report, 21 January 2000
- 2.277** Notice of eleventh hearing, 21 January 2000
- 2.278** Dispatch notice of eleventh hearing, 21 January 2000
- 2.279** Wai 355 claimant counsel, memorandum concerning the issuing of an interim report, 24 January 2000
- 2.280** Notice of amendments to Wai 174, Wai 464, and Wai 418, 7 February 2000
- 2.281** Wai 110 claimant counsel, memorandum concerning questions on evidence of Nicola Ngawati concerning Cathedral Cove–Mercury Bay marine reserve, 26 January 2000
- 2.282** Wai 495 claimant, memorandum concerning the issuing of an interim report, 12 January 2000
- 2.283** Wai 364 claimant, memorandum concerning the issuing of an interim report, 24 January 2000
- 2.284** Presiding officer, direction to release document K2, 20 January 2000
- 2.285** Presiding officer, direction following 27 January 2000 conference, 9 February 2000
- 2.286** Presiding officer, direction to register amendment to Wai 663 claim, 18 February 2000
- 2.287** Notice of amendment to Wai 663 claim, 18 February 2000
- 2.288** Notice of twelfth hearing, 1 March 2000
- 2.289** Dispatch notice of twelfth hearing, 3 March 2000
- 2.290** Wai 110 claimant counsel, memorandum to registrar concerning 13 March 2000 conference and the scheduling of hearing dates, 18 February 2000
- 2.291** Wai 289 claimant counsel, letter to registrar concerning 13 March 2000 conference and the scheduling of hearing dates, 23 February 2000
- 2.292** Wai 714 claimant counsel, letter to registrar concerning 13 March 2000 conference and the scheduling of hearing dates, 23 February 2000
- 2.293** Wai 714 claimant counsel, letter to registrar concerning 13 March 2000 conference and the scheduling of hearing dates, 7 March 2000
- 2.294** Wai 694 claimant counsel, letter to registrar concerning 13 March 2000 conference and the scheduling of hearing dates, 8 March 2000
- 2.295** Wai 693 claimant counsel, letter to registrar concerning 13 March 2000 conference and the scheduling of hearing dates, 8 March 2000
- 2.296** Wai 289 claimant counsel, letter to registrar concerning 13 March 2000 conference and the scheduling of hearing dates, 8 March 2000
- 2.297** Acting chairperson, direction to register Wai 806, 25 February 2000
- 2.298** Notice of statement of claim for Wai 806, 9 March 2000
- 2.299** Acting chairperson, direction to register Wai 808, 25 February 2000
- 2.300** Notice of statement of claim for Wai 808, 10 March 2000



## RECORD OF INQUIRY

APP

- |  |  |
|--|--|
| <p><b>2.301</b> Acting chairperson, direction to register Wai 809, 25 February 2000</p> <p><b>2.302</b> Notice of statement of claim for Wai 809, 14 March 2000</p> <p><b>2.303</b> Wai 369 claimant counsel, letter to registrar concerning 13 March 2000 conference and the scheduling of hearing dates, 10 March 2000</p> <p><b>2.304</b> Acting chairperson, direction to register Wai 811, 25 February 2000</p> <p><b>2.305</b> Notice of statement of claim for Wai 811, 15 March 2000</p> <p><b>2.306</b> Acting chairperson, direction to register Wai 810, 25 February 2000</p> <p><b>2.307</b> Notice of statement of claim for Wai 810, 15 March 2000</p> <p><b>2.308</b> Acting chairperson, direction to register Wai 812, 25 February 2000</p> <p><b>2.309</b> Notice of statement of claim for Wai 812, 15 March 2000</p> <p><b>2.310</b> Presiding officer, direction scheduling claimant hearings 17–21 July and 28 August–1 September, 21 March 2000</p> <p><b>2.311</b> Presiding officer, direction to release document M2, 3 April 2000</p> <p><b>2.312</b> Wai 110 claimant counsel, response to further questions on evidence of Nicola Ngawati, undated</p> <p><b>2.313</b> Presiding officer, direction to register amended statement of claim for Wai 475, 10 April 2000</p> <p><b>2.314</b> Notice of Wai 475 amended statement of claim, 14 April 2000</p> <p><b>2.315</b> Deputy chairperson, memorandum directing registration of Wai 826 claim, 12 April 2000</p> <p><b>2.316</b> Notice of Wai 826 claim, 18 April 2000</p> <p><b>2.317</b> Presiding officer, memorandum directing release of document M4, 22 June 2000</p> | <p><b>2.318</b> Notice of thirteenth hearing, 14 June 2000</p> <p><b>2.319</b> Dispatch notice of thirteenth hearing, 27 June 2000</p> <p><b>2.320</b> Crown counsel, memorandum addressing procedural issues associated with hearings scheduled for October 2000, December 2000 and February 2001, 28 June 2000</p> <p><b>2.321</b> Wai 110 claimant counsel, memorandum concerning hearing preparation for 28–31 August 2000, 3 July 2000</p> <p><b>2.322</b> Presiding officer, memorandum directing registration of Wai 693 amended statement of claim, 3 July 2000</p> <p><b>2.323</b> Presiding officer, memorandum directing registration of Wai 728 amended statement of claim, 3 July 2000<br/> <b>(a)</b> Crown statement of response to Wai 728 amended statement of claim, 14 July 2000<br/> <b>(b)</b> Notice of Wai 693 and Wai 728 amended statements of claim, 13 July 2000</p> <p><b>2.324</b> Presiding officer, memorandum directing registration of Wai 865 claim, 17 July 2000</p> <p><b>2.325</b> Notice of Wai 865 claim, 31 July 2000</p> <p><b>2.326</b> Presiding officer, memorandum directing registration of addition to Wai 806 claim, 26 June 2000</p> <p><b>2.327</b> Presiding officer, memorandum directing registration of second amendment to Wai 693 claim, 17 July 2000</p> <p><b>2.328</b> Presiding officer, memorandum directing registration of amendment to Wai 289 claim, 17 July 2000</p> <p><b>2.329</b> Presiding officer, memorandum concerning Crown evidence, 17 July 2000</p> <p><b>2.330</b> Presiding officer, memorandum directing registration of amendment to Wai 694 claim, 17 July 2000</p> <p><b>2.331</b> Notice of Wai 806 amended statement of claim, 4 August 2000</p> <p><b>2.332</b> Notice of Wai 693 second amended statement of claim, 4 August 2000</p> |
|--|--|



## THE HAURAKI REPORT

### APP

- 2.333** Notice of Wai 289 amended statement of claim, 4 August 2000
- 2.334** Notice of Wai 694 amended statement of claim, 4 August 2000
- 2.335** Notice of fourteenth hearing, 10 August 2000
- 2.336** Dispatch notice of fourteenth hearing, 15 August 2000
- 2.337** Wai 355 claimant counsel, memorandum concerning Wai 100 evidence, 4 August 2000
- 2.338** Crown Law Office, memorandum concerning Crown's response to the Hauraki Gulf Marine Park Act 2000, Wai 728 claim, 18 August 2000
- 2.339** New Zealand Railways Corporation, letter to registrar concerning the Waihou railway land claim, 14 August 2000
- 2.340** Presiding officer, memorandum directing registration of Wai 866 claim, 8 August 2000
- 2.341** Notice of Wai 866, 15 September 2000
- 2.342** Wai 866 claimant counsel, memorandum in support of statement of claim, 12 July 2000
- 2.343** Presiding officer, memorandum directing registration of Wai 110 amended statement of claim, 14 September 2000
- 2.344** Notice of Wai 110 amended statement of claim, 14 September 2000
- 2.345** Notice of fifteenth hearing, 25 September 2000
- 2.346** Dispatch notice of fifteenth hearing, 25 September 2000
- 2.347** Presiding officer, memorandum directing registration of amendment to Wai 369 claim, 23 September 2000
- 2.348** Presiding officer, memorandum directing registration of amendment to Wai 792 claim, 23 September 2000
- 2.349** Presiding officer, memorandum directing registration of addition to Wai 806 claim, 23 September 2000
- 2.350** Notice of amendments to Wai 369 and 792 claims, and addition to Wai 806 claim, 13 October 2000
- 2.351** Wai 728 and Wai 110 claimant counsel, memorandum from objecting to legal submissions of Graeme Campbell, 24 October 2000
- 2.352** Acting chairperson, memorandum concerning request for urgent hearing from Wai 705 claimants, 13 November 2000
- 2.353** Notice of sixteenth hearing, 15 November 2000
- 2.354** Dispatch notice of sixteenth hearing, 20 November 2000
- 2.355** Presiding officer, memorandum directing release document P3, 13 November 2000
- 2.356** Wai 728 claimant counsel and crown counsel, joint memorandum, 30 November 2000
- 2.357** Wai 714 claimant counsel, memorandum concerning appointment of new counsel and cross-examination of Crown witnesses concerning gold mining and the Native Land Court, 1 December 2000
- 2.358** Wai 100 claimant counsel, memorandum concerning cross-examination of Donald Loveridge at sixteenth hearing, 13 December 2000
- 2.359** Presiding officer, memorandum concerning scheduling of further hearing weeks, 13 December 2000
- 2.360** Presiding officer, memorandum directing registration of amendment to Wai 694 claim, 22 January 2001
- 2.361** Notice of amendment to Wai 694 claim, 30 January 2001
- 2.362** Entry vacated (see doc Q10)
- 2.363** Notice of seventeenth hearing, 31 January 2001

- 2.364** Dispatch notice of of seventeenth hearing, 1 February 2001
- 2.365** Entry vacated (see doc Q11)
- 2.366** Entry vacated (see doc Q12)
- 2.367** Presiding officer, memorandum directing registration of amendment to Wai 728 claim, 13 February 2001
- 2.368** Crown counsel, statement of response to Wai 728 claimants' 1 February 2001 second amended statement of claim (claim 1.33(b)), 20 February 2001
- 2.369** Notice of statement of amendment of claim for Wai 728, 27 February 2001
- 2.370** Wai 369 claimant counsel, memorandum in response to paper 2.359, 5 March 2001
- 2.371** Wai 423 claimant counsel, memorandum in response to paper 2.359, 5 March 2001
- 2.372** Wai 454 and Wai 812 claimant counsel, memorandum in response to paper 2.359, 5 March 2001
- 2.373** Wai 705 claimant counsel, memorandum in response to paper 2.359, 5 March 2001
- 2.374** Wai 714 claimant counsel, memorandum in response to paper 2.359, 5 March 2001
- 2.375** Wai 792 claimant counsel, memorandum in response to paper 2.359, 5 March 2001
- 2.376** Wai 806 claimant counsel, memorandum in response to paper 2.359, 5 March 2001
- 2.377** Notice of change of solicitor for Wai 809 claim, from Duncan Campbell of Walters Williams to John Kahukiwa of Corban Revell, 5 March 2001
- 2.378** Wai 809 claimant counsel, memorandum in response to paper 2.359, 5 March 2001
- 2.379** Wai 866 claimant counsel, memorandum in response to paper 2.359, 5 March 2001
- 2.380** Wai 177 claimant counsel, letter from in response to paper 2.359, 5 March 2001
- 2.381** Wai 810 claimant counsel, letter in response to paper 2.359, 5 March 2001
- 2.382** Crown counsel, memorandum in response to paper 2.359, 12 March 2001
- 2.383** Presiding officer, memorandum concerning hearing schedule and submissions, 21 March 2001
- 2.384** Presiding officer, memorandum directing registration of amended statements of claim for Wai 454 and Wai 812, 21 March 2001
- 2.385** Notice to change representative claimant, 28 March 2001
- 2.386** Presiding officer, memorandum directing registration of addition to second amended statement of claim of Wai 693, 30 March 2001
- 2.387** Presiding officer, memorandum directing registration of first amended statement of claim for Wai 810, 12 March 2001
- 2.388** Notice of change of counsel for Wai 72, 4 April 2001
- 2.389** Wai 423, Wai 694, Wai 704 Wai 792, and Wai 806 claimant counsel, memorandum, 12 April 2001
- 2.390** Wai 809 claimant counsel, memorandum intended for 24 April 2001 judicial conference, 12 April 2001
- 2.391** Wai 454 and Wai 812 claimant counsel, memorandum concerning 24 April 2001 judicial conference, 12 April 2001
- 2.392** Notice of amended statement of claim for Wai 812, 17 April 2001
- 2.393** Notice of amended statement of claim for Wai 454, 17 April 2001
- 2.394** Notice of amended statement of claim for Wai 810, 18 April 2001
- 2.395** Notice of amended statement of claim for Wai 693, 18 April 2001
- 2.396** Crown counsel, memorandum concerning judicial conference on 24 April 2001, 20 April 2001

## THE HAURAKI REPORT

### APP

- 2.397** Presiding officer, memorandum concerning revised hearing programme for 2001, 26 April 2001
- 2.398** Presiding officer, direction to release document R4, 23 May 2001
- 2.399** Presiding officer, direction to release document R5, 23 June 2001
- 2.400** Wai 714 claimant counsel, memorandum, 25 June 2001
- 2.401** Crown counsel, memorandum concerning the draft evidence of Mark Lindsay of the Ministry for Culture and Heritage, 9 July 2001
- 2.402** Presiding officer, memorandum directing registration of amended statement of claim for Wai 349, Wai 720, and Wai 778, 9 July 2001
- 2.403** Presiding officer, memorandum concerning evidence of Mark Lindsay and Mr McGovern-Wilson submitted by Crown for the August 2001 hearing, 12 July 2001
- 2.404** Notice of eighteenth hearing, 23 July 2001
- 2.405** Dispatch notice of eighteenth hearing, 23 July 2001
- 2.406** Wai 714 claimant counsel and crown counsel, agenda for the eighteenth hearing 6–10 August 2001 at Ngahutoitoi Marae, Paeroa, July 2001
- 2.407** Presiding officer, memorandum directing release of document R17, 23 July 2001
- 2.408** Presiding officer, memorandum directing registration of amended statement of claim for Wai 177, 23 July 2001
- 2.409** Presiding officer, memorandum directing registration of amended statement of claim for Wai 714, 23 July 2001  
(a) Registrar, letter to advise of incorrect document number allocated to the original amended statement of claim for Wai 714, 30 July 2001
- 2.410** Wai 72, Wai 110, Wai 177, Wai 475, Wai 693, and Wai 801 claimant counsel, memorandum in reply to presiding officer's 12 July 2001 memorandum, 23 July 2001
- 2.411** Wai 100 claimant counsel, memorandum in response to presiding officer's 12 July 2001 memorandum, 25 July 2001
- 2.412** Wai 355 claimant counsel, memorandum in response to presiding officer's 12 July 2001 memorandum, 26 July 2001
- 2.413** Crown counsel, memorandum on evidence concerning Harataunga 2A block, 26 July 2001
- 2.414** Notice of amendment to statement of claim for Wai 349, Wai 720, and Wai 778, 27 July 2001
- 2.415** Notice of amendment to statement of claim for Wai 177, 27 July 2001
- 2.416** Notice of amendment to statement of claim for Wai 714, 27 July 2001
- 2.417** Presiding officer, direction authorising Stephen Clark to commission Gael Ferguson to complete research report, 27 July 2001
- 2.418** Notice of nineteenth hearing, 6 September 2001
- 2.419** Dispatch notice of nineteenth hearing, 6 September 2001
- 2.420** Presiding officer, memorandum directing release of document s8, 12 September 2001
- 2.421** Presiding officer, memorandum directing registration of amended statement of claim for Wai 792, 13 September 2001
- 2.422** Notice of amendment to statement of claim for Wai 792, 20 September 2001
- 2.423** Wai 792 claimant counsel, agenda for the nineteenth hearing, 19 September 2001
- 2.424** Presiding officer, memorandum concerning revised hearing programme for 2002, 22 September 2001
- 2.425** Presiding officer, memorandum directing registration of amended statement of claim for Wai 704, 25 September 2001
- 2.426** Notice of amendment to statement of claim for Wai 704, 26 September 2001

# RECORD OF INQUIRY

APP

- 2.427 Presiding officer, memorandum directing registration of amended statement of claim for Wai 705, 25 September 2001
- 2.428 Notice of amendment to statement of claim for Wai 705, 26 September 2001
- 2.429 Wai 866 claimant counsel, memorandum, 26 September 2001
- 2.430 Wai 792 claimant counsel, letter concerning memorandum of Wai 866 claimant counsel, 27 September 2001
- 2.431 Wai 96 claimant counsel, memorandum concerning request for video of Ngeungeu Zister, 27 September 2001
- 2.432 Wai 866 claimant counsel, memorandum concerning the written evidence of Pakariki Harrison, 10 October 2001
- 2.433 Wai 423 claimant counsel, memorandum concerning 30 October 2001 judicial conference, 12 October 2001
- 2.434 Wai 663 and Wai 695 claimant counsel, memorandum concerning 30 October 2001 judicial conference, 11 October 2000
- 2.435 Wai 806 claimant counsel, memorandum concerning 30 October 2001 judicial conference, 15 October 2001
- 2.436 Wai 809 claimant counsel, memorandum intended for 30 October 2001 judicial conference, 15 October 2001
- 2.437 Crown counsel, memorandum concerning 30 October 2001 judicial conference, 23 October 2001
- 2.438 Presiding officer, memorandum directing registration of amended statement of claim for Wai 866, 17 October 2001
- 2.439 Wai 454 and Wai 812 claimant counsel, memorandum, 23 October 2001
- 2.440 Wai 705 claimant counsel, letter advising counsel will not be attending 30 October 2001 judicial conference, 24 October 2001
- 2.441 Wai 349 and Wai 778 claimant counsel, memorandum, 23 October 2001
- 2.442 Notice of amended statement of claim, 25 October 2001
- 2.443 Wai 100 claimant counsel, memorandum for 30 October 2001 judicial conference, 26 October 2001
- 2.444 Wai 100 and Wai 355 claimant counsel, memorandum for 30 October 2001 judicial conference, 29 October 2001
- 2.445 Waitangi Tribunal, *The Hauraki Marine Park Report* (Wellington: Legislation Direct, 2001)
- 2.446 Presiding officer, memorandum directing scheduling hearing and conference dates for 2002
- 2.447 Wai 369 claimant counsel, memorandum of counsel, 20 November 2001
- 2.448 Wai 949 claimant counsel, memorandum seeking leave to be included in the Hauraki Claims Inquiry, 30 October 2001
- 2.449 Wai 949 claimant counsel, memorandum seeking leave to be included in the Hauraki Claims Inquiry, 30 October 2001
- 2.450 Presiding officer, memorandum directing claim be registered, 5 December 2001
- 2.451 Notice of claim for Wai 949, 17 December 2001
- 2.452 Wai 454 and Wai 812 claimant counsel, memorandum, 21 December 2001
- 2.453 Presiding officer, memorandum outlining agenda for 11 February 2002 judicial conference, 29 January 2002
- 2.454 Wai 714 claimant counsel, memorandum, 5 February 2002
- 2.455 Wai 355 claimant counsel, memorandum concerning 11 February 2002 judicial conference, 7 February 2002
- 2.456 Wai 695 and Wai 806, memorandum concerning 11 February 2002 judicial conference, 8 February 2002

## THE HAURAKI REPORT

### APP

- 2.457** Presiding officer, memorandum following 11 February 2002 judicial conference, 12 February 2002
- 2.458** Wai 809 claimant counsel, memorandum concerning Maramarua forest, 11 March 2002  
(a) Wai 809 claimant counsel, amendment to memorandum, 15 March 2002
- 2.459** Wai 100 and Wai 373 claimant counsel, memorandum concerning Maramarua forest, 14 March 2002
- 2.460** Crown counsel, memorandum concerning Maramarua forest, 15 March 2002
- 2.461** Wai 454 and Wai 812 claimant counsel, letter concerning Maramarua forest, 28 March 2002
- 2.462** Crown counsel, memorandum concerning Maramarua forest, 8 April 2002
- 2.463** Presiding officer, memorandum directing release of document T2, 12 April 2002
- 2.464** Presiding officer, memorandum directing release of document T3, 12 April 2002
- 2.465** Presiding officer, memorandum of directing release of document T4, 12 April 2002
- 2.466** Presiding officer, memorandum directing registration of amended statement of claim for Wai 808, 19 April 2002
- 2.467** Presiding officer, memorandum directing registration of amended statement of claim for Wai 949, 19 April 2002
- 2.468** Presiding officer, memorandum directing registration of amended statement of claim for Wai 423, 19 April 2002
- 2.469** Wai 30 claimant counsel, letter concerning claim of Waikato Tainui to Maramarua lands, 23 April 2002
- 2.470** Wai 72 and Wai 810 claimant counsel, letter concerning twentieth hearing schedule, 24 April 2002
- 2.471** Notice of amended statement of claim for Wai 808, 26 April 2002
- 2.472** Notice of amended statement of claim for Wai 949, 26 April 2002
- 2.473** Notice of amended statement of claim for Wai 423, 26 April 2002
- 2.474** Dispatch notice of twentieth hearing, 26 April 2002
- 2.475** Notice of twentieth hearing, 26 April 2002
- 2.476** Crown Law Office, letter concerning cross-examination of Tom Bennion, 7 May 2002
- 2.477** Wai 72 claimant counsel, memorandum concerning twentieth hearing, 8 May 2002
- 2.478** Presiding officer, memorandum directing registration of amended statement of claim for Wai 808, 8 May 2002
- 2.479** Notice of amended statement of claim for Wai 808, 9 May 2002
- 2.480** Wai 705 claimant counsel, letter concerning attendance at subsequent Hauraki hearings 2002, 8 May 2002
- 2.481** Wai 30 claimant counsel, memorandum concerning Maramarua forest, 13 May 2002
- 2.482** Presiding officer, memorandum, 17 May 2002
- 2.483** Gary John Blair, affidavit in opposition to the application by Horimatua Evans, 21 March 2002
- 2.484** Wai 969 claimant counsel, memorandum concerning paper 2.482, 27 May 2002
- 2.485** Crown counsel, memorandum concerning hearing proposed for 17–18 June 2002, 28 May 2002
- 2.486** Wai 970 claimant counsel, memorandum concerning hearing proposed for 17–18 June 2002, 29 May 2002
- 2.487** Wai 968 claimant counsel, memorandum concerning paper 2.482, 29 May 2002
- 2.488** Dispatch notice of twenty-first hearing, 6 June 2002

- 2.489** Dispatch notice of twenty-second hearing, 6 June 2002
- 2.490** Presiding officer, memorandum concerning issues for next judicial conference and twenty-first hearing, 6 June 2002
- 2.491** Notice of twenty-first hearing, 6 June 2002
- 2.492** Notice of twenty-second hearing, 6 June 2002
- 2.493** Wai 454 and Wai 812 claimant counsel, letter concerning twenty-second hearing, 31 May 2002
- 2.494** Crown counsel, memorandum concerning Marutuahu evidence, 7 June 2002
- 2.495** Wai 96 and Wai 100 claimant counsel, memorandum from concerning Wai 423 evidence, 7 June 2002
- 2.496** Wai 454 and Wai 812 claimant counsel, memorandum concerning hearing programme and Marutuahu evidence, 10 June 2002
- 2.497** Presiding officer, memorandum directing consolidation of records of Wai 867, Wai 968, Wai 969, and Wai 970 with Wai 686, the combined record of inquiry for the Hauraki district inquiry, 10 June 2002
- 2.498** Presiding officer, memorandum directing registration of amended statement of claim for Wai 969, 13 June 2002
- 2.499** Notice of amended statement of Claim for Wai 969, 13 June 2002
- 2.500** Presiding officer, memorandum directing registration of amended statement of claim for Wai 970, 13 June 2002
- 2.501** Notice of amended statement of claim for Wai 970, 13 June 2002
- 2.502** Wai 355 and Wai 970 claimant counsel, memorandum concerning twenty-first hearing, 14 June 2002
- 2.503** Wai 423 claimant counsel, memorandum in response to paper 2.495, 14 June 2002
- 2.504** Presiding officer, direction to register claim as Wai 867, 8 August 2000
- 2.505** Notice of claim for Wai 867, 18 September 2000
- 2.506** Wai 72 claimant, letter to registrar objecting to the Wai 867 claim, 26 September 2000
- (a) Extract from Te Hoe o Tainui
- (b) Waiheke Island: Ancient Maori History, Auckland Museum Library, MS 120
- (c) Colin Banfield, *Sowers of Seed: A Story of the Anglican Church on Waiheke Island*
- 2.507** Presiding officer, memorandum directing registration of claim as Wai 968, 30 April 2002
- 2.508** Notice of statement of claim for Wai 968, 8 May 2002
- 2.509** Presiding officer, memorandum directing registration of claim as Wai 969, 30 April 2002
- 2.510** Notice of Wai 969 statement of claim, 8 May 2002
- 2.511** Presiding officer, memorandum registration of claim as Wai 970, 3 May 2002
- 2.512** Notice of statement of claim, 8 May 2002
- 2.513** Wai 30 claimant counsel, memorandum concerning Maramarua Forest and non-attendance at 17 June 2002 judicial conference, 17 June 2002
- 2.514** Crown counsel, memorandum concerning Ngati Koheiriki claim to Waikaraka reserve, 14 June 2002
- 2.515** Wai 454 and Wai 812 claimant counsel, memorandum concerning recording of the Marutuahu hearings, 24 June 2002
- 2.516** Wai 949 claimant counsel, memorandum concerning paper 2.514, 23 June 2002
- 2.517** Wai 949 claimant counsel, memorandum seeking leave to appear at twenty-second hearing, 25 June 2002
- 2.518** Wai 349 and Wai 720, Wai 778, memorandum concerning twenty-second hearing, 26 June 2002

## THE HAURAKI REPORT

### APP

- 2.519** Wai 968 claimant counsel, memorandum seeking leave to appear at twenty-second hearing, 28 June 2002
- 2.520** Wai 349, Wai 495, Wai 695, Wai 720, Wai 778, and Wai 811 claimant counsel, letter concerning twenty-third hearing, 10 July 2002
- 2.521** Wai 349, Wai 720, and Wai 778 claimant counsel, memorandum concerning Maori interpreter at twenty-third hearing, 12 July 2002
- 2.522** Notice of twenty-third hearing, 15 July 2002  
**(a)** Amendment to certificate of notice of twenty-third hearing, 17 July 2002
- 2.523** Notice of twenty-third hearing, 15 July 2002  
**(a)** Dispatch notice of twenty-third hearing, 17 July 2002
- 2.524** Wai 968 claimant counsel, memorandum seeking leave to attend the twenty-third hearing, 18 July 2002
- 2.525** Presiding officer, memorandum directing registration of amended statement of claim for Wai 349, Wai 720, and Wai 778, 23 July 2002
- 2.526** Notice of amended statement of claim for Wai 349, Wai 720, and Wai 778, 23 July 2002
- 2.527** Wai 349, Wai 720, and Wai 778 claimant counsel, memorandum advising witnesses for twenty-third hearing, 29 July 2002
- 2.528** Presiding officer, memorandum concerning closing submission, 8 August 2002
- 2.529** Wai 968 claimant counsel, memorandum seeking leave to extend filing dates for expert evidence and tangata whenua evidence, 6 August 2002
- 2.530** Presiding officer, memorandum directing registration of Wai 997 claim and consolidation with Wai 686, 8 August 2002
- 2.531** Notice of the Wai 997 claim, 9 August 2002
- 2.532** Wai 997 claimant counsel, memorandum concerning statement of claim of Hera Maraea Tauteka of Ngati Rongo U, 4 July 2002
- 2.533** Presiding officer, memorandum directing registration of amended statement of claim for Wai 968, 14 August 2002
- 2.534** Wai 454 and Wai 812 claimant counsel, memorandum concerning amendment to filing of closing submissions, 13 August 2002
- 2.535** Wai 100 claimant counsel, memorandum concerning amendment to filing of closing submissions, 13 August 2002
- 2.536** Crown counsel, memorandum concerning amendment to filing of closing submissions, 14 August 2002
- 2.537** Wai 454 and Wai 812 claimant counsel, memorandum concerning amendment to filing of closing submissions, 16 August 2002
- 2.538** Wai 714 claimant counsel, memorandum concerning amendment to filing of closing submissions, 15 August 2002
- 2.539** Presiding officer, memorandum concerning Wai 364, 16 August 2002
- 2.540** Notice of twenty-fourth hearing, 19 August 2002
- 2.541** Dispatch notice of twenty-fourth hearing, 19 August 2002
- 2.542** Hearing programme for the twenty-fourth hearing, 20 August 2002
- 2.543** Wai 968 claimant counsel, memorandum seeking appointment of interpreter, 20 August 2002
- 2.544** Wai 809 claimant counsel, memorandum seeking leave for witness, 20 August 2002
- 2.545** Presiding officer, memorandum directing registration of amended statement of claim for the Wai 806 claim, 22 August 2002
- 2.546** Notice of amended statement of claim for the Wai 806 claim, 22 August 2002
- 2.547** Wai 714 claimant counsel, memorandum, 23 August 2002
- 2.548** Wai 949 claimant counsel, memorandum concerning closing submissions, 28 August 2002



- 2.549** Wai 72, Wai 110, Wai 177, Wai 475, Wai 693, Wai 810, and Wai 997 claimant counsel, memorandum advising the registrar on matters concerning closing submissions, 3 September 2002
- 2.550** Crown counsel, further amended statement in response to factual issues identified by the claimants, 3 September 2002
- 2.551** Wai 100 claimant counsel, memorandum concerning closing submissions, 2 September 2002
- 2.552** Wai 810 claimant counsel, letter seeking leave to extend filing date of closing submissions, 2 September 2002
- 2.553** Wai 423, Wai 694, Wai 704, Wai 792, Wai 806, and Wai 969 claimant counsel, memorandum concerning closing submissions, 2 September 2002
- 2.554** Wai 349, Wai 720, and Wai 772 claimant counsel, memorandum concerning closing submissions, 3 September 2002
- 2.555** Wai 355 claimant counsel, memorandum concerning closing submissions, 3 September 2002
- 2.556** Wai 289 claimant counsel, memorandum concerning closing submissions, 5 September 2002
- 2.557** Wai 809 claimant counsel, memorandum concerning closing submissions, 6 September 2002
- 2.558** Wai 866 claimant counsel, memorandum concerning closing submissions, 6 September 2002
- 2.559** Wai 968 claimant counsel, memorandum concerning closing submissions, 5 September 2002
- 2.560** Wai 970 claimant counsel, memorandum concerning closing submissions, 6 September 2002
- 2.561** Wai 364 claimant, letter to the registrar notifying response to memorandum of presiding officer, 8 August 2002
- 2.562** Wai 177 claimant counsel, letter concerning existing reports and replacement report on the record of inquiry, 30 August 2002
- 2.563** Presiding officer, memorandum directing registration of amended statement of claim for Wai 508, 16 September 2002
- 2.564** Presiding officer, memorandum directing registration of amended statement of claim for Wai 345, 16 September 2002
- 2.565** Presiding officer, memorandum directing registration of amended statement of claim for Wai 809, 16 September 2002
- 2.566** Notice of amended statement of claim for Wai 508, 19 September 2002
- 2.567** Notice of amended statement of claim for Wai 345, 19 September 2002
- 2.568** Notice of amended statement of claim for Wai 809, 19 September 2002
- 2.569** Presiding officer, memorandum concerning closing submission filing dates and hearings, 20 September 2002
- 2.570** Wai 865 claimant counsel, memorandum in response to paper 2.569, 30 September 2002
- 2.571** Wai 30 claimant counsel, memorandum concerning jurisdiction of Tribunal, 9 October 2002
- 2.572** Notice of twenty-fifth hearing, 11 October 2002
- 2.573** Dispatch notice of twenty-fifth hearing, 11 October 2002
- 2.574** Hearing programme of the twenty-fifth hearing
- 2.575** Notice of amended statement of claim for Wai 100, 15 October 2002
- 2.576** Presiding officer, memorandum directing registration of amended statement of claim, 15 October 2002
- 2.577** Wai 809 claimant counsel, memorandum, 14 October 2002



## THE HAURAKI REPORT

### APP

- 2.578** Wai 508 claimant counsel, memorandum, 14 October 2002
- 2.579** Wai 349, Wai 720, and Wai 778 claimant counsel, memorandum, 14 October 2002
- 2.580** Notice of twenty-sixth hearing, 17 October 2002
- 2.581** Dispatch notice of twenty-sixth hearing, 17 October 2002
- 2.582** Wai 464 and Wai 661 claimant counsel, memorandum concerning the evidence of Wai 177, 18 October 2002
- 2.583** Hearing programme of the twenty-sixth hearing
- 2.584** Presiding officer, memorandum concerning jurisdiction of Tribunal to inquire into Wai 30 claim, 30 October 2002
- 2.585** Notice of twenty-seventh hearing, 1 November 2002
- 2.586** Dispatch notice of twenty-seventh hearing, 1 November 2002
- 2.587** Wai 349, Wai 720, and Wai 778 claimant counsel, submission concerning jurisdiction of Tribunal to inquire into the Wai 30 claim, 1 November 2002
- 2.588** Crown counsel, letter from in response to paper 2.584, 1 November 2002
- 2.589** Wai 345, Wai 346, Wai 563, Wai 754, Wai 812, Wai 867, and Wai 968 claimant counsel, memorandum concerning Maramarua, October 2002
- 2.590** Wai 100 claimant counsel, submission concerning Maramarua, 5 November 2002
- 2.591** Wai 809 claimant counsel, memorandum concerning Maramarua, dated 1 November 2002
- 2.592** Wai 970 claimant counsel, memorandum concerning Maramarua, 1 November 2002  
**(a)** Crown counsel, transcript of Peter Andrew's verbal submission concerning jurisdiction to hear the Wai 30 claim to the Maramarua Lands, twenty-sixth hearing, 4–6 November 2002
- 2.593** Presiding officer, memorandum concerning jurisdiction to hear Wai 30 claim to Maramarua lands, 11 November 2002
- 2.594** Hearing programme of the twenty-seventh hearing held at Thames War Memorial Civic Centre, Thames: 18–22 November 2002
- 2.595** Nicola Ngawati, submission to advise absence from twenty-seventh hearing, 31 October 2002
- 2.596** Auckland City Council, submission concerning the Wai 810 claim, 18 November 2002
- 2.597** Wai 810 claimant counsel, letter concerning paper 2.597, 27 January 2003
- 2.598** Presiding officer, memorandum instructing registrar that Wai 369 has been settled and withdrawn, 4 August 2003
- ### 3. RESEARCH COMMISSIONS
- 3.1** Research agreement between Tainui Maori Trust Board and Waitangi Tribunal, 27 June 1989
- 3.2** Direction commissioning Liane Ngamane to prepare research report, 9 June 1992
- 3.3** Direction commissioning Ann Parsonson to prepare research report, 9 June 1992  
**(a)** Direction commissioning David Ambler to prepare research report, 16 June 1992
- 3.4** Direction commissioning Suzanne Woodley to prepare research report, 8 June 1993
- 3.5** Direction commissioning Ann Parsonson to prepare research report 12 July 1993
- 3.6** Direction commissioning Suzanne Woodley to prepare research report 12 July 1993
- 3.7** Direction commissioning Nicola Ngawati to prepare research report, 4 August 1994
- 3.8** Direction extending research commission of Nicola Ngawati, 18 August 1994  
**(a)** Direction commissioning Tom Benion and Stephanie McHugh to prepare research report, 2 September 1994

- 3.9** Direction extending research commission of Nicola Ngawati, 13 January 1995
- 3.10** Direction commissioning Paul Monin to prepare research report, 26 July 1996
- 3.11** Direction commissioning David Alexander to prepare research report, 11 September 1996
- 3.12** Direction commissioning Robyn Anderson to prepare research report, 11 September 1996
- 3.13** Direction commissioning Matthew Russell to prepare research report, 19 June 1997
- 3.14** Direction commissioning Matthew Russell to prepare research report, 14 August 1997
- 3.15** Direction authorising P Hikairo to commission researchers to prepare research report, 11 September 1997
- 3.16** Direction extending research commission of Matthew Russell, 22 September 1997
- 3.17** Direction extending research commission of P Hikairo, 6 November 1997
- 3.18** Direction commissioning Matthew Russell to prepare research report, 3 March 1998
- 3.19** Direction commissioning Heather Bassett and Richard Kay to prepare research report, 8 April 1998
- 3.20** Direction commissioning Dion Tuuta, to prepare research report, 22 April 1998
- 3.21** Direction extending research commission of Matthew Russell, 8 May 1998
- 3.22** Direction authorising Alexandra Kupka to commission John Neal to prepare research report, 28 May 1998
- 3.23** Direction extending research commission of John Neal, 19 June 1998
- 3.24** Direction commissioning Whaitiri Mikaere to assist Heather Bassett and Richard Kay to prepare research report, 19 June 1998
- 3.25** Direction commissioning Heather Bassett and Richard Kay to assist W Mikaere to prepare research report, 19 June 1998
- 3.26** Direction commissioning Heather Bassett and Richard Kay to prepare research report, 31 July 1998
- 3.27** Direction commissioning Heather Bassett and Richard Kay to prepare research report, 31 July 1998
- 3.28** Direction extending research commission of Whaitiri Mikaere, 21 August 1998
- 3.29** Direction extending research commission of Matthew Russell, 15 October 1998
- 3.30** Direction commissioning Phillip Cleaver to prepare research report, 8 February 1999
- 3.31** Direction commissioning Grant Young to prepare research report, 8 February 1999
- 3.32** Direction commissioning Dr Tracy Tulloch to prepare research report, 8 February 1999
- 3.33** Direction authorising Ngati Pukenga ki Manaia Incorporated Society to commission Buddy Mikaere and Shane Ashby to prepare research report, 23 March 1999
- 3.34** Direction commissioning Phillip Cleaver to prepare research report, March 1999
- 3.35** Direction commissioning Grant Young to prepare research report, 10 April 1999
- 3.36** Direction commissioning Robert McClean to prepare research report, 10 April 1999
- 3.37** Direction commissioning Dr Tracy Tulloch to prepare research report, 26 May 1999
- 3.38** Direction amending and extending research commission of Dr Tracy Tulloch, 14 June 1999
- 3.39** Direction commissioning Phillip Cleaver to prepare research report, 23 June 1999
- 3.40** Direction commissioning Grant Young to prepare scoping report, 2 July 1999
- 3.41** Direction commissioning Matthew Russell to prepare scoping report, 21 July 1999
- 3.42** Direction commissioning Dr Tracy Tulloch to prepare scoping report, 9 August 1999

## APP

3.43 Direction commissioning Grant Young to prepare research report, 28 July 1999

3.44 Direction commissioning Dr Tracy Tulloch to prepare research report, 14 October 1999

3.45 Direction commissioning Matthew Russell to prepare research report, 31 January 2000

3.46 Direction cancelling research commission of Matthew Russell, 14 April 2000

3.47 Direction commissioning Rowan Betts to prepare research report, 31 August 2000

3.48 Direction commissioning Rowan Betts to prepare research report, 21 October 2000

3.49 Direction commissioning Garrick Cooper to prepare scoping report, 12 December 2000

3.50 Direction commissioning Dougal Ellis to prepare research report, 12 December 2000

3.51 Direction extending research commission of Garrick Cooper, 31 December 2000

3.52 Direction commissioning Gael Ferguson to prepare scoping report, 1 February 2001

3.53 Direction extending research commission of Gael Ferguson, 25 February 2001

3.54 Direction commissioning Dr Barry Rigby to prepare research report, 29 May 2001

3.55 Direction commissioning Parekura White to prepare research report, 22 June 2001

3.56 Direction commissioning Gael Ferguson to prepare research report, 22 June 2001

3.57 Direction commissioning Barry Rigby to prepare research report, 29 August 2001

3.58 Direction commissioning Gael Ferguson to complete research report 30 September 2001

3.59 Direction commissioning Barry Rigby to complete research report 9 February 2002

3.60 Direction commissioning Bryan Gilling to complete research report, 14 March 2002

## RECORD OF DOCUMENTS

\* Document confidential and unavailable to the public without a Tribunal order

† Document held in Waitangi Tribunal library

## A. RECEIVED PRIOR TO FIRST HEARING

A1 Tainui Maori Trust Board, 'Tainui Claims to Onewhero and Maramarua Forests', research report commissioned by the Crown Forestry Rental Trust, May 1993

A2 Ann Parsonson, 'Tainui Claims to Onewhero and Maramarua Forests: Historical Overview', research report commissioned by the Tainui Maori Trust Board, May 1995

A3 Proceedings of native meeting at Thames on 11 and 12 December 1874, ATL

A4 Kate Riddell, 'Pre-1865 Crown Purchases in the Coromandel Peninsula and Hauraki Region', scoping report commissioned by the Waitangi Tribunal, 1994

A5 Hauraki Maori Trust Board, 'The Claims', 1997

A6 Taimoana Turoa, 'Nga Iwi o Hauraki: The Iwi of Hauraki', research report commissioned by Hauraki Maori Trust Board, 1997

A7 Louise Furey, 'Archaeology in the Hauraki Region: a Summary', research report commissioned by the Hauraki Maori Trust Board, 1997

A8 Robyn Anderson, 'The Crown, the Treaty and the Hauraki Tribes, 1800–1885', research report commissioned by the Hauraki Maori Trust Board, 1997

(a) Supporting documents to document A8, various dates, pts 1–3

A9 Robyn Anderson, 'The Crown, the Treaty and the Hauraki Tribes, 1880–1980', research report commissioned by the Hauraki Maori Trust Board, 1997

(a) Supporting documents to document A9, various dates

**A10** David Alexander, 'The Hauraki Tribal Lands', research report commissioned by the Hauraki Maori Trust Board, 1997, 4 pts  
 'Part 1: Moahau District; Coromandel and Manaia District; Whangapoua and Kuaotonu District; Waikawau District'  
 'Part 2: Mercury Bay District; Tairua and Whangamata District; Thames and Hikutaia District'  
 'Part 3: Ohinemuri District; Te Aroha and Paeroa District; Wairoa and Orere District'  
 'Part 4: Hauraki Plains District'  
 (a) Supporting documents to document A10, various dates, pts 1–28

**A11** W H Oliver, 'The Social and Economic Situation of Hauraki Maori After Colonisation', research report commissioned by the Hauraki Trust Board, 1997  
 (a) Additions and corrections to report, 28 July 1999

**A12** R C J Stone, 'The Economic Impoverishment of Hauraki Maori Through Colonisation 1830–1930', research report commissioned by the Hauraki Maori Trust Board, 1997

**A13** Matthew Russell, 'Waikawau Reserves', research report commissioned by the Waitangi Tribunal, 1997  
 (a) Supporting documents to document A13, various dates

**A14** J da Silva, Motairehe judgment concerning an application pursuant to section 161 of the Maori Affairs Act 1953; H McGregor on behalf of the Aotea Maori Tribal Committee and by the Hauraki Maori Trust Board on behalf of the Marutuahu Confederation, applications pursuant to section 132 of Te Ture Whenua Maori Act 1993 by, to investigate the title and ownership of Maori customary land in the environs of Aotea, 23 February 1998

**A15** Peter Tiki Johnston, Patricia MacDonald, 'Puihiwai Block, Whangapoua Forest License; Investigations of Pts. Ramarama, Papatai, Iwituaroa, Otama East, and West and Closed Road', research report commissioned by the Crown Forestry Rental Trust, 1993

**A16** Suzanne Woodley, *Manaia 1C, Coromandel*, Waitangi Tribunal Research Series, 1993, no 11, August 1993

**A17** Joy Hippolite, 'The Manaia 1C Claim', research report commissioned by the Waitangi Tribunal, November 1990

**A18** Matthew Russell, 'Opu 3', research report commissioned by the Waitangi Tribunal, June 1997

**A19** Nicola Ngawati, 'Cathedral Cove/ Mercury Bay Marine Reserve', research report commissioned by the Waitangi Tribunal, 1997  
 (a) Supporting documents to document A19, various dates

**A20** Board of Maori Affairs to G Evans, B Evans, and J Evans, land transfer searches and memorandum of lease of several pieces of land, 19 March 1985

**A21** Claimant counsel Wai 10, memorandum concerning statement of principles, 23 February 1987

**A22** Department of Maori Affairs, letter concerning costs to terminate Mr Evans' lease, 10 March 1987

**A23** Board of Maori Affairs, memorandum concerning action against the Aho Matariki Farm Partnership, 13 March 1987

**A24** Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim* (Wellington: Department of Justice, 1987)

**A25** *Evans v Attorney-General* unreported, 27 August 1991, Wylie J, High Court, Auckland, CP2282/89

**A26** *Evans v Attorney-General* unreported, 9 July 1992, Court of Appeal, CA310/91

**A27** Photographs  
 (a) Houses North of Omawhiti block  
 (b) Pylons  
 (c) Pylons  
 (d) Batter on northern side of Omawhiti block  
 (e) Batter on northern side of Omawhiti block  
 (f) Erosion of steep batter beside Omawhiti block  
 (g) Southern boundary of Omawhiti block beside highway

## THE HAURAKI REPORT

### APP

- A28** Peter McBurney, 'Te Whanau o Hamiora Mangakahia: Mana Whenua Report', research report on Whangapoua district commissioned by claimants, November 1996
- A29** Peter McBurney, 'Overview Report for Te Whanau o Hamiora Mangakahia', research report commissioned by the claimants, March 1997
- A30** Peter McBurney, 'Block Histories Report: the Whangapoua and Other Blocks Originally Owned by the Descendants of Te Whanau o Hamiora Mangakahia', research report commissioned by the claimants, June 1997
- A31** Supporting documents to documents A28–A30, various dates
- A32** Maori Land Information Office, Pingao estate Wharekawa 5B (Pingao block) school site
- A33** R Te Kiore, supporting documents concerning an extract of evidence given by Tutuki
- A34** Suzanne Woodley, 'Manaia 1A and 2A, Coromandel', research report commissioned by the Waitangi Tribunal, August 1993  
(a) Supporting documents to document A34, various dates
- A35** Heather Bassett and Richard Kay, 'Matamataharakeke', July 1998
- A36** David Ambler, 'The Wairoa and Otatau Blocks Claim', research report commissioned by the Waitangi Tribunal, December 1992
- A37\*** Rachael Ngeungeu Zister, video recording of interview to accompany document A1, 19 September 1994
- A38** Rachael Ngeungeu Zister, documents relating to the confiscation of Wairoa and Otatau Blocks
- A39** Tom Bennion 'Preliminary notes on the Ngai Tai Claim Wai 96', September 1994
- A40** Tom Bennion, background documents  
(a) Michael Belgrave, 'Ngati Paoa: An Investigation of their Land Loss Due to the New Zealand Settlements Act 1863', research report commissioned by the Waitangi Tribunal, 1987  
(b) 'Te Tuhi-a-Manawatore and other legends of Maraetai, Auckland', *Journal of the Polynesian Society*, vol 30 (1921); 'Te Heke o Nga Toko Toru', *Journal of the Polynesian Society*, vol 31, (1922); 'Ngati Huarere', *Journal of the Polynesian Society*, vol 32 (1923)  
(c) Ian Barton, *Auckland's South Eastern Bulwark: A History of the Hunua Ranges* (Hunua: I L Barton, 1978)  
(d) Alan La Roche, *The History of Howick and Pakuranga* (Auckland: Howick and Districts Historical Society, 1991)
- A41** Claimant counsel, opening submissions, 3 October 1994
- A42** Tai Turoa, brief of evidence, 3 October 1994
- A43** Te Warena Taua, brief of evidence  
(a) Supporting documents to document A43, various dates
- A44** E Karaka to the Minister of Treaty Negotiations, letter requesting intervention into the sale of Duder Farm, 7 February 1995
- A45** Minister of Treaty Negotiations to E Karaka, letter from Minister of Treaty Negotiations concerning request for intervention, 9 March 1995
- A46** Tom Bennion, 'Ngai Tai and the East Wairoa Confiscation', research report commissioned by the claimants, July 1997
- A47** Robin Anderson, brief of evidence concerning the Hauraki claims
- A48** David James Alexander, brief of evidence concerning Hauraki claims
- A49** William Hosking Oliver, brief of evidence concerning overview of report
- A50** David Vernon Williams, brief of evidence concerning Hauraki claims
- A51** Wai 100 claimant counsel, synopsis of submissions by Wai 100 counsel
- A52** John McEnteer, brief of evidence concerning the Hauraki Maori Trust Board  
(a) Map of Hauraki (Tikapa Moana)  
(b) Map of Hauraki

**A53** James Ponui Nicholls, submission concerning iwi overview

**A54** Wiremu Takarei, John Linstead, and Pauline Clarkin, submission concerning Ngati Hako

- (a) Photograph of Hako marae
- (b) Photograph of Te ahi kaa roa
- (c) Photograph of Nga tohu whenua

**A55** Hutana Macaskill, brief of evidence concerning Ngati Tumutumu

**A56** Tane Mokena, brief of evidence concerning Ngati Rahiri Tumutumu

**A57** Mapuna Turner, brief of evidence concerning Ngati Rahiri ki Hauraki

**A58** Wiremu Peters, brief of evidence concerning Te Patukirikiri

**A59** Toko Renata Te Taniwha, brief of evidence on behalf of Ngati Whanaunga

**A60** Te Hiri Ngamane, brief of evidence concerning Ngati Maru

**A61** James Ponui Nicholls, brief of evidence concerning Ngati Maru

**A62** John Hikairo, brief of evidence concerning Ngati Hikairo

**A63** Shane Ashby, brief of evidence concerning Ngati Hikairo

**A64** Richard Rakena, brief of evidence concerning Ngati Tamatera

- (a) Old mining voucher
- (b) Pollution: goldmining and the effects of cyanide
- (c) Taukotarei block

**A65** Kemara Tukukino, brief of evidence concerning Ngati Tamatera

**A66** Turiakotahi Rawiri, brief of evidence concerning Ngati Paoa

**A67** Tomo Baggs, brief of evidence concerning Ngati Paoa

- (a) Whakapapa from Hoturoa through Paoa and Tukutuku

**A68** Stephen Zister, brief of evidence concerning Ngai Tai

- (a) Petition

**A69** Pani Ru Pahata Hori Keeti, brief of evidence concerning Ngati Tara Tokanui and Ngati Koi

**A70** Hemi Mikaere, brief of evidence concerning Ngati Pukenga

**A71** Buddy Mikaere, brief of evidence concerning Ngati Pukenga

**A72** Whaitiri Mikaere, brief of evidence concerning Ngati Huarere

- (a) Whaitiri Mikaere, additional brief of evidence

**A73** Mahinarangi Maika, brief of evidence concerning Ngati Porou ki Harataunga, ki Mataroa

- (a) Supporting document concerning appointment of Mere Ngawaka as trustee

**A74** Josephine Anderson, brief of evidence concerning the Hauraki Maori Trust Board

## **B. RECEIVED PRIOR TO END OF FIRST HEARING**

**B1** Louise Furey, brief of evidence concerning gold

- (a) Pictures of adzes, weapons (patu) musical instruments maps and sketch of Opita

**B2** Robyn Anderson, brief of evidence concerning gold

**B3** David Williams, brief of evidence concerning gold

**B4** Russell Stone, brief of evidence concerning gold

**B5** Wai 100 claimant counsel, synopsis of submissions by concerning gold

**B6** Airiini Hale, brief of evidence concerning gold

**B7** Richard Rakena, brief of evidence concerning gold

APP

**B7**—*continued*

(a) Matiu Rata to Mr Watene, letter with copy of minutes from meeting held 26 September 1975 and press statement issued from the meeting, 30 September 1975

**B8** Kemara Tukukino, brief of evidence concerning gold

**B9** John Linstead, brief of evidence concerning gold

**B10** Tane Mokena, brief of evidence concerning gold

**B11** Shane Ashby, brief of evidence concerning gold

(a) Copy of address of James Mackay to the Ngatimaru tribe of Hauraki, 25 May 1896

**B12** Liane Ngamane brief of evidence concerning gold

**B13** Report by Mackay; New Zealand Herald, 19 October 1869

**B14** Transcript of entry from Thomas Lanfear's journal

**B15** P Moore and N Ritchie, *Coromandel Gold: A Guide to the Historic Goldfields of the Coromandel Peninsula* (Palmerston North: Dunmore Press, 1996), p 41

**B16** Directors of the Coromandel Goldmining Company, *New Zealand Herald*, 2 January 1867

**B17** Robyn Anderson and Russell Stone, transcript of cross-examination at second hearing, 27 September 2002

**C. RECEIVED PRIOR TO END OF SECOND HEARING**

**C1** Robyn Anderson, brief of evidence concerning land loss 1840–1865

**C2** Paul Monin, brief of evidence concerning land loss 1840–1865  
(a) Sketches of Waiheke Island watering place and others

**C3** David Alexander, brief of evidence concerning land loss 1840–1865

(a) Supporting documents to document C3, various dates

(b) Map of the Firth of Thames

**C4** Heather Bassett, Richard Kay, 'Kaiaua School Site', research report commissioned by the Waitangi Tribunal, August 1998

**C5** Paul Derek Monin, 'The Islands Lying between Slipper Island in the South-East, Great Barrier Island in the North and Tiritiri-Matangi in the North-West', research report commissioned by the Waitangi Tribunal, December 1996

**C6** Synopsis of submissions on behalf of the Wai 100 claimants concerning land loss 1840–1865

**C7** Shane Ashby, brief of evidence concerning land loss 1840–1865

**C8** Bessie Karu, brief of evidence concerning land loss 1840–1865

**C9** William Peters, brief of evidence concerning land loss 1840–1865

**C10** John Tamihere, Ngati Porou perspective Te Take o Te Manawhenua Mana Moana Ki Hauraki

**C11** Pauline Clarkin, brief of evidence concerning land loss 1840–1865

**C12** Bella Te Aku Graham, brief of evidence concerning land loss 1840–1865

**C13** Tipa Compain (Rawiri), brief of evidence concerning land loss 1840–1865

(a) Supporting documents to document C13, various dates, pts 1–5

**C14** Map of Hauraki site visits on 12 October 1998 and 27–30 October 1998

**C15** Hobson to Gipps, 25 October 1840, encl 15 in dispatch from Gipps to Russell, 5 March 1841, GBPP, vol 3, p 438

**C16** George Clarke to Russell, letter, 16 November 1840, NZ41/2, Archives NZ

**C17** Robyn Anderson, transcript of cross-examination at third hearing, 27 September 2002



**D. RECEIVED PRIOR TO END OF THIRD HEARING**

- D1** Peter McBurney, Garth Banks, 'The Ancestors of the Gregory–Mare Whanau: Whakapapa Report', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D2** John Hutton, 'Contested Ground: An Historical Context for the Gregory–Mare Whanau Forestry Land Claim', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D3** B A Dingle, 'Wills, Probate and Succession: A Discussion Report for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D4** John Hutton, 'Te Ahuroa 1B: Block History for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D5** B A Dingle, 'Te Ipuwhakatara: Block History for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D6** Peter McBurney, 'Ngawhakapoupou: Block History for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D7** John Hutton, 'Ohinemuri 20E: Discussion Document for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D8** Peter McBurney, 'Omahu: Block History for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D9** John Hutton, 'Pukewhau: Block History for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D10** Peter McBurney, 'Te Rereapahau: Block History for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995

- D11** B A Dingle, 'Taparahi 3C1 and 3C2: Block History for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D12** John Hutton, 'Totarawhakaturia: Block History for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D13** B A Dingle, 'Wharekawa East No 1: Block History for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D14** B A Dingle, 'Wharekawa East No 2: Block History for the Gregory–Mare Whanau', research report commissioned by the Gregory–Mare Whanau Claims Committee, 1995
- D15** Sue Nikora, submission on behalf of Wai 289  
(a) Supporting appendix
- D16** Paul Monin, 'The Maori Economy of Hauraki, 1840–1880', *New Zealand Journal of History*, vol 29, no 2, 1995
- D17\*** Draft Hauraki Gulf Marine Park Bill
- D18** Bella Graham, 'Consideration for Compensation', 1990
- D19** Heather Bassett, Richard Kay, 'Manaia 1B and 2B: Survey Charges', research report commissioned by the Waitangi Tribunal, August 1998  
(a) Document bank, October 1999
- D20** Marilyn Connolly, brief of evidence on behalf of the claimants  
(a) Resident site licences: summary of valuations according to current Government roll valuation  
(b) Topographical plan of Angler's Lodge Motel, Amodeo Bay  
(c) Agreement between the New Zealand Guardian Trust Company Ltd and the Minister of Lands concerning ceded lands, 24 June 1986
- D21** John Neal, 'Tairua Block', research report commissioned by the Waitangi Tribunal, July 1998  
(a) Supporting documents to document D21, various dates



APP

**D22** Table of estimates of surplus land retained by Crown in Hauraki rohe

**D23** George Clarke to Colonial Secretary, 31 July 1844, GBPP, vol 4, p 458

**D24** Walter Brodie, evidence before the House of Commons Select Committee on New Zealand, 4 June 1844, GBPP, vol 2, p 40

**D25** James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Penguin, 1988), pp 128–129

**D26** Edward Shortland to George Clarke, 10 June 1844, Shortland's Letterbook, MS86A, Hocken

**D27** Walter Brodie, evidence before the House of Commons Select Committee on New Zealand, 4 June 1844, GBPP, vol 2, pp 46–47

**D28** Map of the site visit route up the Firth of Thames, 4 December 1998

**D29** Map of the site visit route to Wilsons Bay, 1 December 1998

**D30** Wai 100 claimant counsel, opening submission concerning Native Land Court and land purchase policy

**D31** Kemara Tukukino, brief of evidence concerning Native Land Court and land purchase policy

**D32** John Tamihere, brief of evidence concerning Native Land Court and land purchase policy  
(a) Parekura White, 'Maori Trustee: In the Interest of Whom?'  
(b) Harataunga 2A, Harataunga East 1B1, Harataunga West 7, Maori Land Court block titles

**D33** Tipa Compain, brief of evidence concerning Native Land Court and land purchase policy

**D34** Jessie Pakura, brief of evidence concerning Native Land Court and land purchase policy

**D35** Tane Mokena, brief of evidence concerning Native Land Court and land purchase policy  
(a) Copy of correspondence taken from *Thames Advertiser*, 13 January 1877

**D36** Mapuna Turner, brief of evidence concerning Native Land Court and land purchase policy

**D37** Wiremu Peters, brief of evidence concerning Native Land Court and land purchase policy

**D38** Pauline Clarkin, brief of evidence concerning Native Land Court and land purchase policy

**D39** Buddy Mikaere, brief of evidence concerning Native Land Court and land purchase policy

**D40** Robyn Anderson, Paul Monin and David Alexander, transcript of cross-examination of witnesses at the hearing, 27 September 2002

**E. RECEIVED PRIOR TO END OF FOURTH HEARING**

**E1** David Williams, brief of evidence concerning Native Land Court and Crown purchase policy

**E2** Robyn Anderson, brief of evidence concerning Native Land Court and Crown purchase policy

**E3** David Alexander, brief of evidence concerning Native Land Court and Crown purchase policy

**E4** Wai 100 claimant counsel, opening submissions concerning Native Land Court

**E5** Shane Ashby, brief of evidence concerning Native Land Court

**E6** Walter Ngamane, brief of evidence concerning Native Land Court

**E7** Raumiria Katipa, brief of evidence concerning Native Land Court

**E8** Selwyn Te Wani, brief of evidence concerning Native Land Court

**E9** Walter Rawiri, brief of evidence concerning Native Land Court

**E10** John McEnteer, brief of evidence concerning Native Land Court

**F. RECEIVED PRIOR TO END OF FIFTH HEARING**

- F1** David Alexander, brief of evidence concerning loss of land in the Thames borough due to unpaid Rates  
**(a)** Supporting documents to document F1, various dates  
**(b)** Map of Maori owned land in Thames at 1932
- F2** David Alexander, brief of evidence concerning private land purchasing under the Native Land Act 1909  
**(a)** Supporting documents to document F2, various dates  
**(b)** Maps of subdivisions of Papaaroa 1
- F3** David Alexander, 'The Western Side of the Firth of Thames in the Twentieth Century', research report commissioned by the claimants, 1999  
**(a)** Supporting documents to document F3  
**(b)** Supporting documents to document F3  
**(c)** Map of Wharekawa 4B2A1B  
**(d)** Map of Auckland Regional authority acquisitions, 1968–73
- F4** David Alexander, 'Selected Public Works takings in the Twentieth Century', research report commissioned by the claimants, 1999
- F5** David Alexander, brief of evidence concerning a summary of Crown purchase activity
- F6** Wai 100 claimant counsel, opening submission
- F7** Danny Hitchcock, brief of evidence concerning Hera Tauteka and Papaaroa block
- F8** Rose Williams, brief of evidence concerning Hera Tauteka and Papaaroa block
- F9** Turoa Royal, brief of evidence concerning Wharekawa 4B2A1B and the family farm Waimango
- F10** Caud Royal, brief of evidence concerning Wharekawa 4B2A1B and the family farm Waimango
- F11** Ira Makea (née Royal), brief of evidence concerning Wharekawa 4B2A1B and the family farm Waimango

- F12** Wiremu Taurau Royal, brief of evidence concerning Wharekawa 4B2A1B and the family farm Waimango
- F13** Pani Ru Pahata Hori Keeti, brief of evidence concerning land taken for public works
- F14** Richard Rakena, brief of evidence concerning land taken for public works  
**(a)** Map of Nga Tomo Tawakohia Tairahi Houkotuku Tuku te Tai Heke Urupa  
**(b)** Map of Maori lands in the Pereniki bend, Ohinemuri river, Paeroa
- F15\*** Whakapapa in support of Francis Elenor's oral evidence
- F16** Pauline Clarkin, brief of evidence concerning the Hauraki Plains drainage scheme and the Waihou and Ohinemuri Rivers improvement scheme  
**(a)** Supporting document concerning papakainga land at Kerepehi  
**(b)** Map of Hauraki Plains block, circa 1909  
**(c)** Map of birds-eye view of the drainage works, 1910  
**(d)** Map of Maori land blocks, Hauraki Plains  
**(e)** Map of land blocks, Hauraki Plains  
**(f)** Map of Ongarehu  
**(g)** Map of Waihou Valley catchment scheme  
**(h)** Map of stop-banks in Paeroa  
**(i)** Map of Te Totara, 1911
- F17** John Linstead, brief of evidence concerning the Hauraki Plains drainage scheme and the Waihou and Ohinemuri Rivers improvement scheme  
**(a)** Map of Raeotepapa boundaries  
**(b)** Plan of Te Raeotepapa
- F18** Ata Bailey, brief of evidence concerning Opu 3 and taking of land under the Public Works Act 1928
- F19** Mapuna Turner, brief of evidence concerning taking of land under public works legislation
- F20** Benjamin Karewa, brief of evidence concerning rates on Maori Land
- F21** Terrence John McEnteer, brief of evidence concerning rates on Maori Land
- F22** Maps of Mt Te Aroha site visit, 23 April 1999

## THE HAURAKI REPORT

### APP

#### G. RECEIVED PRIOR TO END OF SIXTH HEARING

**G1** Dion Tuuta, 'Te Aroha Gold Fields Township, 1878–1925', research report commissioned by the Waitangi Tribunal, 1998

**G2** Robert McClean, 'Eastern Coromandel Foreshore, Fisheries and Coastal Issues Report', research report commissioned by the Waitangi Tribunal, April 1999  
(a) Document bank

**G3** Peter Johnston, transcript of evidence given at first hearing concerning Ngati Hei, 15 September 1998

**G4** Topographical map, with block boundaries superimposed, of the western Firth

**G5** Topographical map, with block boundaries superimposed, of Thames, Te Aroha, and Ohinemuri

**G6** Topographical map with block boundaries superimposed of the Hauraki Plains

**G7** Caroline Phillips, brief of evidence concerning archaeological sites along the Waihou River

**G8** Louise Furey, brief of evidence concerning Hauraki taonga and collection holdings

**G9** David Alexander, brief of evidence concerning Thames and Waihou Foreshores  
(a) Supporting documents to document G9, various dates

**G10** David Alexander, brief of evidence concerning 'Further Crown Dealings on the Western Side of the Firth of Thames in the Twentieth Century', research report commissioned by Hauraki claimants, 1999  
(a) Supporting documents to document G10, various dates

**G11** Phillip Cleaver, 'Te Horete 1 and Te Horete 2, Tairua Reserves', research report commissioned by the Waitangi Tribunal, May 1999  
(a) Supporting documents to document G11, various dates

**G12** Wai 100 claimant counsel, opening submission

**G13** Te Hiiri Ngamane, brief of evidence concerning Hauraki resources

**G14** Toko Renata, brief of evidence concerning Hauraki resources  
(a) English translation  
(b) Map of Te Kouma and Manaia Harbour

**G15** John McEnteer, brief of evidence concerning Hauraki Gulf marine park

**G16** Pani Keeti, brief of evidence concerning Hauraki resources  
(a) Map of Tapu–Thames Coast

**G17** Richard Rakena, brief of evidence concerning Hauraki resources

**G18** Pitau Williams, brief of evidence concerning Hauraki resources

**G19** Eruini Te Moananui, brief of evidence concerning Hauraki resources

**G20** Colin Sutherland, brief of evidence concerning Hauraki resources

**G21** Pauline Clarkin, brief of evidence concerning Hauraki resources  
(a) Ngati Hako Maori cultural values assessment report to H G Leach and Company Ltd on the proposed Tirohia landfill

**G22** Tane Mokena, brief of evidence concerning Hauraki resources

**G23** Stephen Zister, brief of evidence concerning Oue Pa

**G24** Liane Ngamane, brief of evidence concerning Hauraki resources

#### H. RECEIVED PRIOR TO END OF SEVENTH HEARING

**H1** Matthew Russell, 'Papakitahi A and Horahia Opou 5A', research report commissioned by the Waitangi Tribunal, June 1999  
(a) Supporting documents to document H1, various dates

**H2** Grant Young, 'The Waitotara and Parawaha Blocks at Manaia, Coromandel', research report

commissioned by the Waitangi Tribunal, June 1999

(a) Supporting documents to document H2, various dates

**H3** Shane Ashby, Marilyn Connolly, Gillian Warren, John McEnteer, Antoine Coffin, 'Ngati Hikairo Research Report', research report commissioned by Hauraki claimants, October 1998

(a) Supporting documents to document H3, various dates

**H4** Janet Sceats, brief of evidence concerning 1996 census data for the Hauraki iwi

**H5** Terry Innis, brief of evidence

**H6** Phillip Cleaver, 'Kaiaua Township', scoping report commissioned by the Waitangi Tribunal, June 1999

**H7** Wai 100 claimant counsel, opening submissions

**H8** Josie Anderson, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H9** John McEnteer, brief of evidence concerning taonga or cultural property  
(a) Treatment report of kahu kiwi korowai

**H10** Makere Kaa, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H11** Richard Rakena concerning, brief of evidence ka kawē i nga tupuna, ka hikoi ki mua

**H12** Te Uira Rakena, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H13** Laura Hiku, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H14** Matekino Royal, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H15** Henrietta Te Moananui, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H16** Patricia MacDonald, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H17** Harata Williams, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H18** Nancye Gage, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H19** Isabelle Davis, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H20** Myra Hemara, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H21** Hoha Sutherland, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H22** Pongarauhine Renata concerning ka kawē i nga tupuna, ka hikoi ki mua

**H23** Haerengarangi Mikaere, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H24** David Colquhoun, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H25** Joseph McEnteer, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H26** Roy McEnteer, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H27** Amy Cooper, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H28** Ngakoma Ngamane, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

(a) Principal of Paeroa School, brief of evidence

**H29** Michael Baker, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua

**H30** Hine Poutu, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua  
(a) Te Korowai Hauora o Hauraki pamphlet

APP

- H31** Carrie Albrecht, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H32** Toko Taniwha, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H33** Richard Murray, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H34** Eruini Te Moananui, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H35** Mirth Ngapo, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H36** Karen Murphy, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H37** James Nicholls, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H38** John Tamihere, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H39** William Peters, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H40** Alice Anderson, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H41** Mapuna Turner, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H42** Haerengarangi Mikaere, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H43** Kemara Tukukino, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua
- H44** Sam Napia, brief of evidence concerning ka kawē i nga tupuna, ka hikoi ki mua  
(a) Hauraki Maori Trust Board, 1999–2000 annual plan

**I. RECEIVED PRIOR TO END OF EIGHTH HEARING**

- I1** Dr Tracy Tulloch, 'The Alienation of Poihaere Hura's Interests in Seven Hauraki Land Blocks', research report commissioned for the Waitangi Tribunal, July 1999  
(a) Supporting documents to document I1, various dates  
(b) ML plan 3387–9 Mangakirikiri 1  
(c) Auckland deed 1193 Mangakirikiri 1  
(d) ML plan 1829–29A Te Kapua 1  
(e) Auckland deed 1480 Te Kapua 1  
(f) ML plan 5006 Tahanui  
(g) ML plan 1832 A–B Ohoupo 1A  
(h) ML plan 1833 Ohoupo 2  
(i) ML plan 9301 Hikutaia 1  
(j) ML plan 3038 1A–1B Hikutaia–Whangamata  
(k) ML plan 3038 Hikutaia–Whangamata  
(l) ML plan 13158/F2 Whangamata  
(m) ML plan 13158/F2 Whangamata  
(n) Map of Wai 704 case study blocks
- I2** Buddy Mikaere and Shane Ashby, 'The Ngati Pukenga Manaia 1 and 2 Blocks Claim: Historical Background Report', research report commissioned by the Waitangi Tribunal, August 1999
- I3** Grant Young, brief of evidence concerning the Waitotara and Parawaha blocks
- I4** Heather Bassett and Richard Kay, brief of evidence concerning Manaia 1B and 2B survey charges, October 1999
- I5** Shane Ashby brief of evidence concerning document A34
- I6** Buddy Mikaere, brief of evidence concerning document A16
- I7** Shane Ashby, brief of evidence concerning the alienation of Wharekawa East 1 and 2
- I8** Marilyn Connolly, brief of evidence concerning the award and alienation of Pakirarahi 1
- I9** Antoine Coffin, brief of evidence concerning the social and economic impacts on Ngati Hikairo
- I10** Grant Powell, opening submissions on behalf of Ngati Pukenga

# RECORD OF INQUIRY

APP

**111** Lawson Richards, brief of evidence on behalf of Ngati Pukenga claimants

**112** James Mikaere, brief of evidence on behalf of Ngati Pukenga claimants

**113** Awanuiarangi Black, brief of evidence on behalf of Ngati Pukenga claimants

**114** Ngaruna Mikaere, brief of evidence on behalf of Ngati Pukenga claimants

**115** Tira Makete, brief of evidence on behalf of Ngati Pukenga claimants

**116** Buddy Mikaere, brief of evidence on behalf of Ngati Pukenga claimants

**117** Whaitiri Williams, brief of evidence on behalf of Ngati Pukenga claimants

**118** Pongarauhine Renata, brief of evidence on behalf of Ngati Pukenga claimants

**119** Waitotara site visit summary

**120** Alec Richards, brief of evidence on behalf of Ngati Pukenga claimants

**121** Martin Mikaere, brief of evidence on behalf of Ngati Pukenga claimants

**122** Jim Wilson, brief of evidence on behalf of Ngati Pukenga claimants

**123** Haerengarangi Mikaere, brief of evidence on behalf of Ngati Pukenga claimants

**124** Claimant counsel, opening submissions on behalf of Ngati Hikairo claimants

**125** Te Uruwehea Caird, brief of evidence on behalf of Ngati Hikairo claimants

**126** John Hikairo, brief of evidence on behalf of Ngati Hikairo claimants

**127** Te Pitihana Hikairo, brief of evidence on behalf of Ngati Hikairo claimants

**128** Paremataiti Rhind, brief of evidence on behalf of Ngati Hikairo claimants

**129** Phillip Hikairo, brief of evidence on behalf of Ngati Hikairo claimants

**130** Gavin Caird, brief of evidence on behalf of Ngati Hikairo claimants

**131** Diane Halliday, brief of evidence on behalf of Ngati Hikairo claimants

**132** Heather Hikairo Smith, brief of evidence on behalf of Ngati Hikairo claimants

**133** Richard Williams, brief of evidence on behalf of Ngati Hikairo claimants

**134** Joseph Barlow, brief of evidence on behalf of Ngati Hikairo claimants

**135** Shane Ashby, brief of evidence on behalf of Ngati Hikairo claimants

**136** Shane Ashby, powerpoint display

## J. RECEIVED PRIOR TO END OF NINTH HEARING

**J1** Dr Tracy Tulloch, 'The Descendants of Purangataua Taiporutu and the Blocks: Tairua, Kahuwera, Rautawhiri-o-te-ao, Whenuakite, Te Pepe, Waipatukahu, Onepu, Te Kauanga Whenuakite, Kuaotunu, Whangamata 2 and Whangamata 5', scoping report commissioned by the Waitangi Tribunal, September 1999

**J2** Matthew Russell, brief of evidence concerning Waikawau reserves

**J3** Matthew Russell, brief of evidence concerning Papakitatahi A and Horahia Opou 5A

**J4** Matthew Russell, brief of evidence concerning Opou 3

**J5** Dion Tuuta, brief of evidence concerning Te Aroha goldfields township, November 1999

**J6** Philip Cleaver, brief of evidence concerning Te Horete 1 and Te Horete 2, Tairua reserves, December 1999

**J7** Grant Young, 'The Mining Township at Kuaotunu', research report commissioned by the Waitangi Tribunal, October 1999

(a) Document bank

## THE HAURAKI REPORT

### APP

- J8** Paul Derek Monin, 'Ngati Pu Historical Report', research report commissioned by Te Runanaga o Ngati Pu, October 1999  
(a) Supporting documents to document J8, various dates
- J9** Louise Furey, 'Ngati Pu', research report commissioned by the claimants, 1999
- J10** Claimant counsel, opening submissions concerning Ngati Tamatera, 6 December 1999
- J11** Rikiriki Rakena, brief of evidence concerning Ngati Tamatera
- J12** Ohomauri Nicholls, brief of evidence concerning Ngati Tamatera
- J13** Kemara Tukukino, brief of evidence concerning Ngati Tamatera
- J14** Claimant counsel, opening submissions concerning Ngati Kotinga and nga whanau o Omaha, 8 December 1999
- J15** Ata Bailey, brief of evidence concerning Ngati Kotinga and nga whanau o Omaha
- J16** Ngati Kotinga hapu whakapapa in support of Toko Renata's oral submission
- J17** Claimant counsel, opening submissions concerning Ngati Rahiri Tumutumu, 8 December 1999
- J18** Tane Mokena, brief of evidence concerning Ngati Rahiri Tumutumu
- J19** Hutana Macaskill, brief of evidence concerning Ngati Rahiri Tumutumu
- J20** Mapuna Turner, brief of evidence concerning Ngati Rahiri Tumutumu  
(a) Te Aroha Domain management plan
- J21** Te Aroha Domain site visit, 7 December 1999

### K. RECEIVED PRIOR TO END OF TENTH HEARING

- K1** Tony Walzl, 'Overview Report on the Claim of Te Whanau o Hamiora Mangakahia, 1840–1940', research report commissioned by the claimants, November 1999

- K2** Matthew Russell, 'Flax Fires and Timber Mills', scoping report commissioned by the Waitangi Tribunal, January 2000
- K3** Louise Furey, 'The Archaeological Landscape of Whangapoua Harbour', research report commissioned by the claimants, 1999  
(a) Preamble to document K3
- K4** Gary Williams, 'East Coast Coromandel Peninsular Estuaries: Tairua Harbour, Whangapoua Harbour', research report commissioned by the Waitangi Tribunal, January 2000  
(a) Preamble to to document K4  
(b) Copy of extract from Waikato state of Environment Report – Coastal resources
- K5** Elisabeth Taingahue, brief of evidence
- K6** Edward Shaw, brief of evidence
- K7** Kahurangi Te Mihinga Tukaki, brief of evidence
- K8** Ruth te Aue Wikaira, brief of evidence
- K9** Witarina Anne MacKenzie (née McRae), brief of evidence
- K10** Kiri Anne McRae, brief of evidence
- K11** Raymond McCaskill, brief of evidence
- K12** Paul Derek Monin, brief of evidence
- K13** Louise Furey, brief of evidence
- K14** Susan Hana King, brief of evidence
- K15** Dorothy Dempsey, brief of evidence
- K16** Te Ratoru Te Iri, brief of evidence
- K17** Ropata Rare, brief of evidence
- K18** Hohepa Te Paora Rare, brief of evidence
- K19** Claimant counsel, opening submissions for Wai 355
- K20** Agenda for site visit held 23 February 2000  
(a) Video in support of site visit



**K21** Paul Monin, Louis Furey and Susan King, transcript of cross-examination at eleventh hearing, 19 September 2002

**L. RECEIVED PRIOR TO END OF ELEVENTH HEARING**

**L1** Robert Christian, brief of evidence

**L2** Raukawa Adams, brief of evidence

**L3** Winifred Mareroa, brief of evidence

**L4** Remesius Mangakahia, brief of evidence

**L5** Maureen Brown, brief of evidence

**L6** John Nicholls, brief of evidence

(a) Maps and photographs

**L7** Cheryl Darling, brief of evidence

**L8** Moncrieff Nicholls, brief of evidence

**L9** Hinemoa Bright, brief of evidence

**L10** Michael Smith, brief of evidence

**L11** Tony Walzl, summary of document K1

(a) Extract from *New Zealand Herald*, 6 July 1871

(b) Extract from *New Zealand Herald*, 7 January 1871

(c) Copy of petition of Mohi Mangakahia and 19 others

(d) Summary of title activity on Whangapoua Mangakahia Land

**L12** Peter McBurney, summary of documents A28 and A30

**L13** Claimant counsel, opening submissions by Wai 475

**L14** Ruhiana (Lucien) Issac Mangakahia, brief of evidence

(a) Extract from Angela Ballara, 'Hamiora Mangakahia The Turbulent Years'

(b) Video of sites

**L15** Mary Mikaire, brief of evidence

**L16** Wayne Smith, brief of evidence

**L17** John Willockra Browne, brief of evidence

**L18** Peter McBurney, summary of document A29  
(a) Copies of correspondence between Pareake Bright and Office of the Minister of Maori Affairs and others

**L19** Judy Nicholls, brief of evidence

**L20** Graham Christian, brief of evidence

**L21** Map of Whangamata, Hikutaia, Omaha and others

(a) Department of Conservation estate, State-owned enterprises allocations and Crown land (overlay)

(b) River-Junction Blocks (overlay)

(c) Reserves awarded as compensation (overlay)

(d) Lessong and Buscke Survey – November 1872 for Maori Land Court (overlay)

(e) Crown Purchases – Turtens Deeds 11 January 1873 (overlay)

(f) Blocks Awarded to Ngati Pu – Native Land Court 9 Jan 1873 (overlay)

**L22** Map of Coromandel, Hikutaia, Waihou River and others

(a) Comments on sketch plan James Mackay 1866 (overlay)

(b) Bell awards, 1862, 1864 Hikutaia North, Hikutaia South (overlay)

(c) Survey by James Campbell – plan of land claim, August, September, October 1858 (overlay)

**L23** Map of Whangamata 4 Block

(a) Land remaining in Ngati Pu ownership (overlay)

(b) First major partitions of block (overlay)

(c) Current Maori Land (overlay)

(d) Whangamata 4 block – 5721 (overlay)

**L24** Map of Hikutaia 1 block (Wai 355, A22)

(a) Land included in the Hauraki development scheme (overlay)

(b) Land remaining in Ngati Pu ownership at 1931 (overlay)

(c) First major partitions of block (overlay)

(d) Current Maori Land (overlay)

(e) Hikutaia 1 block – 2070 acres (overlay)

**M. RECEIVED PRIOR TO END OF TWELFTH HEARING**

**M1** Hauraki Gulf Marine Park Act 2000, 27 February 2000

## THE HAURAKI REPORT

### APP

- M2** Dr Tracy Tulloch, 'Purangataua Whanau Trust Claim: The Alienation of Interests in Eleven Hauraki Land Blocks', scoping report commissioned by the Waitangi Tribunal, 1999  
(a) Document bank
- M3** Notes from the Kauri Timber Company Ltd, Archives of the University of Melbourne
- M4** Whitiri Mikaere, Heather Bassett, and Richard Kay, 'Ngati Raukatauri Hapu of Ngati Huarere', research report commissioned by the Waitangi Tribunal, June 2000
- M5** Summary of Whitiri Mikaere concerning document M4, June 2000
- M6** Summary of brief of Heather Bassett and Richard Kay concerning document A35, June 2000
- M7** Pera Kingi, brief of evidence
- M8** Tira Wiremu Makete, brief of evidence
- M9** Pongarauhinē Renata (née Brown), brief of evidence
- M10** Wai 289 claimant counsel, memorandum concerning matters to be raised at the July hearing
- M11** Sam Moeke, brief of evidence
- M12** Pakariki Harrison, brief of evidence
- M13** Michael Copeland, brief of evidence  
(a) Change in consumer price index between 1939 and 2000
- M14** Frances Mikaere, brief of evidence
- M15** Betty Williams, brief of evidence
- M16** Whitiri Mikaere, brief of evidence on social and economic impact
- M17** Reremoana Jones, brief of evidence concerning Tairua and Te Karo 1 blocks  
(a) Supporting documents to document M17, various dates
- M18** Kahui Wight, brief of evidence concerning Tairua and Te Karo 1 blocks
- M19** John Walker, brief of evidence concerning Tairua and Te Karo 1 blocks
- M20** George Ngataki, brief of evidence concerning Tairua and Te Karo 1 blocks
- M21** Don Wight, brief of evidence concerning Tairua and Te Karo 1 blocks
- M22** Thomas Jones, brief of evidence concerning Tairua and Te Karo 1 blocks
- M23** Wayne Jones, brief of evidence concerning Tairua and Te Karo 1 blocks
- M24** Theo van der Heijden, brief of evidence concerning Tairua and Te Karo 1 blocks  
(a) Photographs of Paku maunga and other sites  
(b) DOSLI to M Walker, Oturu Trust, 7 October 1994  
(c) DOSLI to M Walker, Oturu Trust, 7 April 1995  
(d) Handwritten notes, letters, and documents, various dates
- M25** Louise Furey, 'Ngati Hei Archaeological Report', research report commissioned by claimants, 2000
- M26** Wai 728 claimant counsel, opening submissions
- M27** Toko Te Taniwha, brief of evidence concerning Wai 728
- M28** Te Hiiri Ngamane, brief of evidence concerning Wai 728
- M29** Richard Rakena, brief of evidence concerning Wai 728
- M30** Kenneth Linstead, brief of evidence concerning Wai 728
- M31** Betty Whitiri Williams, brief of evidence concerning Wai 728
- M32** Laura Hiku, brief of evidence concerning Wai 728
- M33** John McEnteer, brief of evidence concerning Wai 728
- M34** John McEnteer, brief of evidence concerning Tikapa Moana

- M35** Wai 693 claimant counsel, opening submissions
- M36** Wai 694 claimant counsel, opening submissions
- M37** Claimant counsel, opening submissions
- M38** Wai 289 supporting documents
- M39** Sketch map of goldfield at Kennedy Bay
- M40** Copy of Maori Land Court minutes in reference to Paul Majurey's cross-examination of Whaitiri Mikaere concerning Ngati Huarere
- M41** Pakariki Harrison and Sam Moeke, transcript of the evidence heard, cross-examination and questioning of witnesses at thirteenth hearing, 24 October 2002

**N. RECEIVED PRIOR TO END OF THIRTEENTH HEARING**

- N1** Peter Johnston, brief of evidence concerning Ngati Hei claim
  - (a) Documents concerning Ngati Hei Maori land blocks and the draft minerals (petroleum) programme
  - (b) Documents concerning public reserves in the Coromandel district
  - (c) Documents concerning research reports by Peter Tiki Johnston and Patricia MacDonald
- N2** Peter Tiki Johnston, 'Ngati Hei Mana Whenua Report', research report commissioned by the claimants, 2000
  - (a) Supplementary documentation in support of the Wai 110 Ngati Hei claim
  - (b) Appendix B in support of Peter Tiki Johnston's report
  - (c) Pat Mizen, 'Ahuahu – Great Mercury Island'
- N3** Peter Tiki Johnston, 'Particular Land Issues Impacting on Ngati Hei', research report commissioned by the claimants, 2000
- N4** Peter Tiki Johnston, 'Ngati Hei Contemporary History Report', research report commissioned by the claimants, 2000
  - (a) Supporting materials and commentaries
- N5** Dr Tracy Tulloch, brief of evidence concerning Te Kauanga Whenuakite 3

- N6** Ripeka Fleet, brief of evidence
- N7** Robert McClean, summary of evidence concerning Eastern Coromandel Foreshore, Fisheries and Coastal Issues Report
- N8** Paul Derek Monin, 'Ohinau Island, Land History Report 1923–2000', research report commissioned by the claimants, 2000
- N9** Tony Walzl, 'Overview Report on the Claim of Ngati Hei, 1840–1900', research report commissioned by the claimants, August 2000
- N10** Summary of document N9
- N11** List of maps and plans exhibited in support of the Ngati Hei claim
- N12** Wai 110 claimant counsel, opening submissions
- N13** Joseph John Davis, brief of evidence
- N14** Josephine Davis, brief of evidence
- N15** Patricia McDonald, brief of evidence
  - (a) Supporting documents to document N15, various dates
- N16** Ned Davis, brief of evidence
  - (a) Tape
- N17** Joan Neil, brief of evidence
  - (a) Transcribed version of Joan Neil's evidence including amendments made in document N17
- N18** Raukawa Balsom, brief of evidence
- N19** Barbara Francis, brief of evidence
- N20** Shirley Anita McLean, brief of evidence
- N21** Moyra Johnston, brief of evidence
- N22** Grant McLean, brief of evidence

**O. RECEIVED PRIOR TO END OF FOURTEENTH HEARING**

- O1** Gary Hawke, 'Economic History Issues', research report commissioned by Crown Law Office, September 2000

## APP

**02** John Battersby, 'Evidence of John Battersby Concerning War and Blockade Issues', research report commissioned by Crown Law Office, September 2000

**03** John Battersby, 'Evidence of John Battersby Concerning the Hauraki Economy', research report commissioned by Crown Law Office, September 2000

**04** Evidence of Graeme Campbell concerning the Hauraki Gulf Marine Park Act 2000, 13 October 2000

- (a) Attachments to the evidence of Graeme Campbell concerning the Hauraki Gulf Marine
- (b) Map of Hauraki Gulf and catchment area–Hauraki Gulf marine park
- (c) Auckland regional conservation management strategy, 3 vols
- (d) Waiata 'Te Ia O'Nuku' – a waiata for the Department
- (e)(i) Cabinet strategy committee, minutes, STR(98)M28/12, 2 September 1998
- (e)(ii) Paper to Cabinet Economic Committee, ECO(98)152, 1 September 1998
- (f)(i) Cabinet Legislation Committee, minutes, LEG(00)M1/4, 17 February 2000
- (f)(ii) Cabinet Legislation Committee, paper, LEG(00)4, 16 February 2000
- (f)(iii) Briefing paper to Government caucus executed by Sandra Lee, Minister of Conservation and J Tamihere, member for Hauraki
- (f)(iv) Cabinet, minutes, CAB(00)M4/1D(1), 14 February 2000

**05** Marilyn Fullam, brief of evidence concerning Hauraki Gulf Marine Park Act 2000 and Hauraki Gulf Forum, 6 October 2000

**06** John Battersby, 'Evidence of John Battersby Concerning Gold Issues', research report commissioned by Crown Law Office, October 2000

**07** Supplementary appendices referred to in evidence of Graeme Campbell

**08** John Battersby, summary of evidence concerning war and blockade issues, October 2000

**09** John Battersby, summary of evidence concerning historical economic issues, October 2000

**010** Crown counsel, opening submissions

- (a) Copy of decision of an appeal between Tandem Marine Enhancement Ltd and Waikato Regional Council
- (b) Copy of decision of an appeal between G R Kemp, E E Kemp, and E A Billoud and Queenstown Lakes District Council
- (c) List of attachments illustrating different statutory instruments
- (d) Department of Conservation pamphlet 'Kura Tawhiti: Treasure from Afar'

**011** Crown counsel, opening submissions

**012** Extract from the *New Zealander*, 11 April 1846 concerning Maori employed by Mr Webster in Kaipara

**013** Copy of extract from the *New Zealander* concerning Maori hospital

**014** John Battersby and Gary Hawke, transcript of cross-examination of witnesses at fifteenth hearing, 27 September 2002

#### P. RECEIVED PRIOR TO END OF FIFTEENTH HEARING

**P1** Donald Loveridge, brief of evidence concerning the origins of the Native Land Acts and Native Land Court in New Zealand, 3 November 2000

- (a) Volume 1: supplementary documents, archival materials
- (b) Volume 2: supplementary materials, newspapers

**P2** Evelyn Cole, 'Evidence of the Ministry of Economic Development on the Crown Minerals Act and the Management of Access to Gold', research report commissioned by Crown Law Office, November 2000

- (a) Supporting documents to document P2
- (b) Annual royalty return form
- (c) Further information by the Ministry of Economic Development, 23 August 2002

**P3** Rowan Betts, 'The Te Kawakawa Block', scoping report commissioned by the Waitangi Tribunal, 22 September 2000

**P4** Summary of Donald Loveridge concerning the origins of the Native Land Acts and Native Land Court in New Zealand

**P5** John Battersby, summary of evidence concerning gold issues, December 2000

**P6** Crown counsel, opening submissions concerning gold and native land issues

**P7** John Battersby, Evelyn Cole, and Donald Loveridge, transcript of cross-examination and questioning of witnesses at sixteenth hearing, 23 October 2002

**Q. RECEIVED PRIOR TO END OF SIXTEENTH HEARING**

**Q1** Robert Hayes, 'Native Land Legislation, Post-1865 and the Operation of the Native Land Court in Hauraki', research report commissioned by Crown Law Office, 17 January 2001

(a) Corrections to evidence of Robert Hayes on the Native Land Legislation post-1865 and the operation of the Native Land Court in Hauraki, 17 January 2001

(b) Letter and table from Crown counsel filing further corrections to the text of the evidence of Robert Hayes on the Native Land Legislation post-1865 and the operation of the Native Land Court in Hauraki, 2 October 2002

**Q2** Gregory Martin, evidence on behalf of the Department of Conservation, 17 January 2001

**Q3** Summary of document Q1

**Q4** Crown counsel, opening submissions on the operation of the Native Land Court in Hauraki and other matters

**Q5** Fergus Sinclair, 'Kauwaeranga In Context', (1999) 29 VUWLR 139

**Q6** Waikato Conservation management strategy, 2 vols

**Q7** Historic resources strategy, Waikato conservancy

**Q8** Conservation progress, 1995–2000, Waikato conservancy

**Q9** Department of Conservation, *Restoring the Dawn Chorus: Department of Conservation Strategic Business Plan, 1998–2000* (Wellington: Department of Conservation, 1998)

**Q10** Claimant counsel, closing submission for Wai 110 and Wai 475 concerning Wai 728  
(a) *Te Runanga a Iwi o Ngati Tametera Inc v Thames–Coromandel District Council and Whitianga Waterways Ltd* unreported, 26 January 2001, Environment Court, A014/01

**Q11** Claimant counsel, closing submissions on behalf of Wai 728 concerning Wai 728

**Q12** Crown counsel, closing submissions concerning Wai 728

**Q13** Fergus Sinclair, 'Native Land Court on the Chatham Island', research report commissioned by the Crown, November 1995

(a)<sup>†</sup> Summary of document Q13, 14 November 1994

(b)<sup>†</sup> Map of state of tenure, 1878

(c)<sup>†</sup> Map of state of tenure, 1907

**Q14** Fergus Sinclair, 'Some Thoughts on the Origin and Application of the "Ten Owner Rule"', research report commissioned by Crown Law Office, November 1995

(a) Summary of document Q14, 14 November 1995

**Q15** Greg Martin and Robert Hayes, transcript of cross-examination and questioning of witnesses at seventeenth hearing, 5 September 2002

**R. RECEIVED PRIOR TO END OF SEVENTEENTH HEARING**

**R1** Wai 110 and Wai 475 claimant counsel, reply to Crown closing submissions concerning the Hauraki Gulf Marine Park Act 2000 claim, 22 February 2001

**R2** Interpolations and corrections to Crown closing submissions concerning the Hauraki Gulf Marine Park Act 2000 claim, 23 February 2001

**R3** Wai 728 claimant counsel, reply to Crown closing submissions concerning the Hauraki Gulf Marine Park Act 2000 claim, 1 March 2001

**R4** Rowan Betts, 'The Te Kawakawa Block', research report commissioned by the Waitangi Tribunal, 13 April 2001

(a) Supporting documents to document R4, various dates

## THE HAURAKI REPORT

### APP

- R5** Dougal Ellis, 'Whitianga', research report commissioned by the Waitangi Tribunal, 2001
- R6** Mark Lindsay, 'Draft Evidence for the Ministry for Culture and Heritage on the Protection of Cultural Heritage', research report commissioned by Crown Law Office, 9 July 2001 (later reclassified as final version)
- (a) Mark Lindsay, brief of evidence on the protection of cultural heritage, 7th August 2001
- (b) Crown counsel, letter advising that the draft evidence is now final and noting amendment
- (c) Mark Lindsay, written responses to questions of claimant counsel, 8 November 2001
- (d) Additional list of artefacts found in the Hauraki region under Antiquities Act, 2 October 2002
- R7** Heather Bassett, Richard Kay, 'Ngati Koi, Ngati Tara and Ngati Tokanui', research report commissioned by the Crown Forestry Rental Trust, July 2001
- (a) Supporting documents to document R7, various dates
- R8** Richard Allibone, Ian Boothroyd, Keith Smith, Chris Hickey, John Quinn, and John Clayton, 'Ecology of the Ohinemuri River: Historical Changes and Current Status', research report commissioned by the Ngati Koi Trust, July 2001
- R9** Ohinemuri River Impact Summary report, NIWA client report, July 2001
- R10** Tairi Tahui Hoani Wereta Taiawa, brief of evidence on behalf of Wai 714, 16 July 2001
- R11** Whakapapa presented by Tairi Tahuri Hoani Wereta Taiawa on behalf of Wai 714, 16 July 2001
- R12** Amelia Amy Tuihana Williams, brief of evidence on behalf of Wai 714, 16 July 2001
- R13** Rose Okeroa Warutau Mohi, brief of evidence on behalf of Wai 714, 16 July 2001
- R14** Tony Walzl, 'Overview Report on the Claim of the Gregory-Mare Whanau, 1840-1940', research report commissioned by the Gregory-Mare Whanau Claims Committee, July 2001
- R15** Robert Hayes, 'Brief of Evidence of Robert Hayes on Thames Rating', research report commissioned by the Crown Law Office, 2001
- (a) Robert Hayes, revised summary of evidence concerning Thames rating, 26 July 2001
- (b) Supporting documents to document R15, various dates
- R16** Robert Hayes, 'Brief of Evidence of Robert Hayes Regarding the Maori Trustee's Administration of Harataunga 2A', research report commissioned by Crown Law Office, 2001
- (a) Supporting documents to document R16, various dates
- R17** Barry Rigby, 'Hauraki and the East Wairoa Confiscation Scoping Report', scoping report commissioned by the Waitangi Tribunal, July 2001
- R18** Diane Holloway, 'Brief of Evidence on Claims by Ngati Paoa to the Tawaipareira Reserve, Waiheke Island in the Wai 810 Claim', research report commissioned by the claimants, 2001
- R19** Crown counsel, opening submission on Taonga and rating issues, 7 August 2001
- R20** Rick McGovern-Wilson, brief of evidence for the Historic Places Trust, 7 August 2001
- (a) Rick McGovern-Wilson, written responses to questions of claimant counsel, 20 December 2001
- R21** Claimant counsel, opening submission on behalf of Wai 177, 8 August 2001
- R22** Entry vacated
- R23** Wai 177 claimant counsel, survey plans of locations of Gregory-Mare whanau land interests, 8 August 2001
- R24** Joe Gregory, brief of evidence on behalf of Wai 177, 8 August 2001
- R25** Richard Mare, brief of evidence on behalf of Wai 177, 8 August 2001
- R26** John Anderson, brief of evidence on behalf of Wai 177, 8 August 2001
- R27** Garth Banks, brief of evidence on behalf of Wai 177, 8 August 2001
- R28** Colt Gregory, brief of evidence on behalf of Wai 177, 8 August 2001

**R29** Kevin Murray, brief of evidence on behalf of Wai 177, 9 August 2001

**R30** Claimant counsel, opening submission on behalf of Wai 714, 9 August 2001

**R31** Heather Bassett, executive summary Ngati Koi, Ngati Tara, and Ngati Tokanui Wai 714, 9 August 2001

(a) Heather Bassett, Richard Kay, Ngati Koi, Ngati Tara, and Ngaati Tokanui; Grayson Neal Ltd, map book, August 2001

**R32** Aerial photo showing the mining exploration lines and mining tailings from the Martha mine, in relation to Motuehu (Black Hill)

**R33** Mark Lindsay, Rick McGovern Wilson, Robert Hayes, Kevin Murray, Heather Bassett, Richard Alibone, and Joh Quinn, transcript of cross-examination and questioning of witnesses at eighteenth hearing, 12 September 2002

#### **S. RECEIVED PRIOR TO END OF EIGHTEENTH HEARING**

**S1** Gael Ferguson, 'Ngai Tai ki Tamaki (Hauraki District) claim; scoping report commissioned by the Waitangi Tribunal, April 2001

**S2** Brent Matua Evans, brief of evidence on behalf of Wai 369, undated

**S3** Samson Hamahona Te Whata, brief of evidence on behalf of Wai 369, undated

**S4** Albert John Evans, brief of evidence on behalf of Wai 369, undated

**S5** Georgina Marie Iritana Zervudachi, brief of evidence on behalf of Wai 369, undated  
(a) Department of Maori Affairs, minute, 2 April 1987

(b) Department of Maori Affairs, summary of meeting, 2 April 1987

(c) Department of Maori Affairs to Mr G Evans concerning resolution established at meeting, 2 April 1987

**S6** Graeme Thomas Foster, brief of evidence on behalf of Wai 369, undated

(a) Board of Maori Affairs, minutes, 12 July 1989

(b) Graeme Thomas Foster to Department of Maori Affairs concerning Waiheke Station, undated

**S7** Horimatua Evans, brief of evidence on behalf of Wai 369, undated

(a) Appendices to document s7, undated

**S8** Parekura White, 'Te Aitanga a Mate, Te Aowera and Te Whanui a Rakairoa', research report commissioned by Hauraki claimants, 2001, 5 vols

(a) Traditional report

(b) Traditional report

(c) Traditional report

(d) Parekura White, 'Maori Trustee in the Interest of Whom?', research paper, November 1998

**S9** Summary of document s8

**S10** David Francis, brief of evidence on behalf of Wai 705, undated

**S11** Alice Loft, brief of evidence on behalf of Wai 705, undated

**S12** Patricia Ngaere MacDonald, brief of evidence on behalf of Wai 705, undated

**S13** Barbara Francis, brief of evidence on behalf of Wai 705, undated

**S14** Dougal Ellis, summary of document R5, undated

**S15** Dianne Chalmers, 'Social and Economic Impact Report: A Whanau Perspective', research report commissioned by the claimants, October 2001

(a) Map of Hikutaia 1G3

(b) Map of Whangamata 4D, 4B, 2A

**S16** Dr Tracy Tulloch, brief of evidence on behalf of Wai 704, undated

**S17** Robert Hayes, summary of evidence on the Maori Trustee's Administration of Harataunga 2A, 24 September 2001

**S18** Claimant counsel, opening submission on behalf of Wai 792, undated

**S19** Tautohe Te Mamaeroa Kupenga, brief of evidence on behalf of Wai 792, 1 October 2001



## THE HAURAKI REPORT

### APP

**S20** Tuta Nihoniho (Beau) Haereroa, brief of evidence on behalf of Wai 792, 1 October 2001

**S21** Wai 866 claimant counsel, opening address, undated

**S22** Piriha Potae, brief of evidence on behalf of Wai 866, undated

**S23** Winiata Harrison, brief of evidence on behalf of Wai 866, undated

**S24** Desmond Harrison, brief of evidence on behalf of Wai 866, undated

**S25** Mihihara Steedman, brief of evidence on behalf of Wai 866, undated

**S26** John Tamihere, brief of evidence on behalf of Wai 866, undated

**S27** Pakariki Harrison, brief of evidence on behalf of Wai 866, undated

**S28** Wai 369 claimant counsel, opening submission, undated

**S29** Wai 705 claimant counsel, opening submission, undated

**S30** Removal of restriction on alienation relating to Te Weiti 4, undated

**S31** Wai 704 claimant counsel, opening submission, undated

**S32** Suzanne Savage, brief of evidence on behalf of Wai 704, undated

**S33** Dr Tracy Tulloch, letter to registrar concerning Poihaere Hura's interest in seven Hauraki land blocks, undated

**S34** *Social Impact Report on Behalf of the Wai 704 Claim*, videotape, undated

**S35** Piriha Potae, Winiata Harrison, Desmond Woodward Harrison, Mihihara Steedman, John Tamihere, and Robert Hayes, transcript of cross-examination and questioning of witnesses at nineteenth hearing, 31 October 2002

### T. RECEIVED PRIOR TO END OF NINETEENTH HEARING

**T1** Claimant counsel, response to Crown closing submissions, March 2002

**T2** Gael Ferguson, 'Ngai Tai ki Tamaki within the Hauraki Inquiry, research report commissioned by the claimants, February 2002  
(a) Summary of document T2, 22 April 2002

**T3** Barry Rigby, 'Hauraki and East Wairoa', research report commissioned by the Waitangi Tribunal, April 2002  
(a) Summary of document T3, 23 April 2002

**T4** Bryan Gilling, 'Dispossession and Exile: Ngati Koheriki of Hunua', research report commissioned by the Waitangi Tribunal, April 2002  
(a) Summary of document T4, April 2002

**T5** Selwyn Pearson, brief of evidence on behalf of Wai 810, 15 April 2002

**T6** Moana Te Aira Te Uri Karaka Te Waero, brief of evidence on behalf of Wai 810, 15 April 2002  
(a) Insertion of evidence as presented to the Tribunal on 16 May 2002, 31 May 2002

**T7** Peter Lee, brief of evidence on behalf of Wai 810, 16 April 2002  
(a) Pages 24 and 25 of Judge Harrison's judgment that were omitted from original brief of evidence, 6 May 2002  
(b) Peter Lee, transcription of, brief of evidence, 30 August 2002  
(c) Charl Marshall (1830–1862); Jim Shepherd, Maori Land Information Office, maps; Hannah Arendt, 'Men in Dark Times', 2 September 2002

**T8** Rawiri Toko, brief of evidence on behalf of Wai 810, 16 April 2002

**T9** Moana Te Aira Te Uri Karaka Te Waero, brief of evidence on behalf of Wai 810, 22 April 2002  
(a) Supporting documents to document T9, various dates  
(b) Tristram Speedy, survey map, plan of Te Huruhi 12 and 13, Waiheke Island, 1914, 14 May 2002  
(c) Claimant counsel, memorandum of counsel in respect to addendum to document T9, 6 September 2002  
(d) Addendum to document T9, 6 September 2002

**T10** Diane Holloway, 'Claims by Ngati Paoa to the Ostend Domain on Waiheke Island', research report commissioned by the claimants, July 2001  
(a) Supporting documents to document T10, various dates

**T11** Crown counsel, index to supporting documents, 13–17 May 2002

**T12** Wai 72 claimant counsel, opening submission, 13 May 2002  
(a) Wai 72 claimant counsel, memorandum concerning issue of clarification in document T12, 20 May 2002

**T13** Joseph Michael Birch (Hohepa Taipari Paati), brief of evidence on behalf of Wai 72, 13 May 2002

**T14** Edward Thomas Birch, brief of evidence on behalf of Wai 72, 13 May 2002

**T15** Teddy Andrews, brief of evidence on behalf of Wai 72, 13 May 2002

**T16** Meto Hopa, brief of evidence on behalf of Wai 72, 14 May 2002

**T17** Wai 810 claimant counsel, opening submission concerning whenua and urupa, 14 May 2002  
(a) Department of Conservation, letter of 3 May 2002, 10 May 2002

**T18** Moana Te Aira Te Uri Karaka Te Waero, brief of evidence on behalf of Wai 810, 14 May 2002  
(a) Supporting documents to document T18, various dates

**T19** Wai 810 claimant counsel, opening submission, 14 May 2002

**T20** Wai 423 claimant counsel, opening submission, 15 May 2002  
(a) Supporting documents to document T20, various dates

**T21** Te Roto Ki Hikurangi Ngarongokahau Jenkins, brief of evidence on behalf of Wai 423, 15 May 2002

**T22** Pita Turei, brief of evidence on behalf of Wai 423, 15 May 2002

**T23** Josephine Joan Cameron, brief of evidence on behalf of Wai 423, 15 May 2002

**T24** Te Warena Taua, brief of evidence on behalf of Wai 423, 15 May 2002  
(a) Map of Maori placenames, Te Wairoa  
(b) Letter from secretary, Tainui Maori Trust Board, 22 September 1988  
(c) Letter from Tainui Maori Trust Board to T Wood, 5 May 1989  
(d) Letter from Hauraki Maori Trust Board to Mrs E Karaka, 11 May 1993  
(e) Letter from Te Warena Taua to Hauraki Trust Board, 25 June 1993  
(f) Presentation slides of Ngai Tai Wai 423

**T25** Wai 949 claimant counsel, opening submission, 16 May 2002

**T26** Taka o Te Rangi Taka, brief of evidence on behalf of Wai 949 claim, 16 May 2002

**T27** Wiremu (Bill) Taka, brief of evidence on behalf of Wai 949, 16 May 2002

**T28** Ira Taka, brief of evidence on behalf of Wai 949, 16 May 2002

**T29** Pateriki Joseph (Joe) Johnson, brief of evidence on behalf of Wai 949, 16 May 2002

**T30** Wai 808 claimant counsel, opening submissions, 17 May 2002

**T31** Raumiria Te Mihiao o Katipa, brief of evidence on behalf of Wai 808, 17 May 2002

**T32** Marion Peeke, brief of evidence on behalf of Wai 808, 17 May 2002

**T33** Photograph of the Te Huruhi 13A block, 17 May 2002

**T34** Photograph of Church Bay, Hangaura, 17 May 2002

**T35** Photograph of Wahitapu on the Matiatia foreshore, 17 May 2002

**T36** Photograph of the headstone of Ropata Roa, 17 May 2002

**T37** Photograph of Putikiokahu mountain, 17 May 2002

## THE HAURAKI REPORT

### APP

**T38** Hariata Gordon, transcript of brief of evidence on behalf of Wai 72, 21 June 2002

**T39** Meto Hopa, transcript of brief of evidence on behalf of Wai 72, 24 June 2002

**T40** English translation of extracts from the Wi Taka whanau book on behalf of Wai 949, 9 July 2002

(a) Letter advising corrections to English translation of extracts from the Wi Taka whanau book, 9 July 2002

**T41** Barry Rigby and Bryan Gilling, transcript of cross-examination and questioning of witnesses at twentieth hearing, 18 November 2002

### U. RECEIVED PRIOR TO END OF TWENTIETH HEARING

**U1** Andy Andrews, brief of evidence, 27 May 2002

**U2** Henrietta Dawn Darby, 'Tamatepo Research Report', research report commissioned by claimants, 12 June 2002

(a) Appendices to document U2

(b) Summary of document U2

(c) Supporting documents to document U2, various dates

**U3** Wai 969 claimant counsel, opening submissions, 18 June 2002

**U4** Reece David Harrison, brief of evidence on behalf of Wai 969, 18 June 2002

**U5** Judy Te Kani, brief of evidence on behalf of Wai 969, 18 June 2002

**U6** Wai 970 claimant counsel, opening submissions, 18 June 2002

**U7** Billy Wi Williams, brief of evidence on behalf of Wai 970, 18 June 2002

(a) Supporting documents to document U7, various dates

**U8** Peter Hemara Barrett, brief of evidence on behalf of Wai 970, 18 June 2002

**U9** Hakaraia Paul Watene Gurnick, brief of evidence on behalf of Wai 970, 18 June 2002

(a) Supporting documents to document U9

**U10** Carolyn Williams, brief of evidence on behalf of Wai 970, 18 June 2002

**U11** Matenga Nohotahi Henare, brief of evidence on behalf of Wai 970, 18 June 2002

**U12** Frances Henare, brief of evidence on behalf of Wai 970, 18 June 2002

**U13** Wiremu Te Moananui, brief of evidence on behalf of Wai 970, 18 June 2002

**U14** Michael Francis O'Donnell, brief of evidence on behalf of Wai 970, 18 June 2002

**U15** Daniel Alexander Benson, brief of evidence on behalf of Wai 970, 18 June 2002

(a) Appendix 1: Whakapapa

(b) Appendix 2: proclamation and declaration of tino rangatiratanga acknowledging legal status of Te Matahau hapu of Marutuahu ki Tipaka Moana

(c) Appendix 3: Decendants of Te Matahau

(d) Appendix 4: Confidential

(e) Appendix 5: Maori Land Court records

(f) Appendix 6: The declaration of independence of New Zealand, 28 October 1835

(g) Appendix 7: The Treaty of Waitangi

(h) Appendix 8: Richmond, 'Elective Franchise'

(i) Appendix 9: John Eldon Gorst extract

(j) Appendix 10: Mackay, report, AJHR 1869, A-17, p 9

(k) Appendix 11: Mackay, report, AJHR 1869, A-17

**U16** Jon Barry Clark, brief of evidence on behalf of Wai 970, 18 June 2002

**U17** Arapeta Fortunate Watene, brief of evidence on behalf of Wai 970, 18 June 2002

**U18** Reece Harrison and Henrietta Danby, transcript of cross-examination and questioning of witnesses at twenty-first hearing, 12 December 2002

### V. RECEIVED PRIOR TO END OF TWENTY-FIRST HEARING, 18 JUNE 2002

**V1** DrMichael Belgrave, Dr Tracy Tulloch, and Dr Grant Young, 'The Marutuahu Historical Overview', research report commissioned by the Maratuaha claimants, June 2002

**v2** Grant Young and Michael Belgrave, 'The Operation of the Native Land Court in Hauraki', research report commissioned by the Marutuahu claimants, June 2002

**v3** Emma Stevens, 'Nine Marutuahu Block Reports', research report commissioned by the Marutuahu claimants, June 2002

**(a)** Supporting documents to document v3

**v4** Cybele Locke, 'The Social and Economic Circumstances of Marutuahu – 1840 to 1960', research report commissioned by the Marutuahu claimants, June 2002

**v5** Mervyl McPherson and Michael Belgrave, 'A Social-Demographic Profile of the People Marutuahu and Pare Hauraki', research report commissioned by the Marutuahu claimants, May 2002

**(a)** Crown counsel, memorandum concerning Statistics New Zealand comments on documents v5, v10, 7 August 2002

**(b)** Mervyl McPherson and Michael Belgrave, supplementary brief of evidence in response to Statistics New Zealand comments on documents v5 and v10

**v6** Dr Michael Belgrave, Dr Tracy Tulloch, and Dr Grant Young, summary of document v1, June 2002

**v7** Grant Young and Michael Belgrave, summary of document v2, June 2002

**v8** Emma Stevens, summary of document v3, June 2002

**v9** Cybele Locke, summary of document v4, June 2002

**v10** Mervyl McPherson and Michael Belgrave, summary of document v5, May 2002

**v11** Claimant counsel, outline of submissions on behalf of the Marutuahu claimants, 1 July 2002

**v12** Claimant counsel, memorandum of amendments on behalf of the Marutuahu claimants 12 August 2002

**(a)** Grant Young, supplementary evidence concerning the role of agents in the court and in the alienation of Maori land, 12 August 2002

**(b)** Michael Belgrave, supplementary evidence concerning war issues, 12 August 2002

**(c)** Dr Tracy Tulloch, supplementary evidence concerning storekeepers and raihana, 12 August 2002

**(d)** Dr Tracy Tulloch, amendment to document v1, 12 August 2002

**(e)** Cybele Locke, amendment to document v9, 12 August 2002

**(f)** Michael Belgrave, supplement evidence, 12 August 2002

**(g)** Mervyl McPherson, supplementary evidence, undated

#### **W. RECEIVED PRIOR TO END OF TWENTY-SECOND HEARING**

**w1** Claimant counsel, opening submissions for Ngati Tamatera, 12 August 2002

**w2** He Korero a Mataia Hori Nicholls (Nikora) e pa ana ki te tino rangatiratanga o Ngati Tamatera, 12 August 2002

**(a)** English translation of He korero a Mataia Hori Nicholls (Nikora) e pa ana ki te tino rangatiratanga o Ngati Tamatera, 26 August 2002

**w3** Hare Koroneho, brief of evidence, 12 August 2002

**w4** Kiri Ramanui-Hirama, brief of evidence, 12 August 2002

**w5** He korero a te Wiremu Mataia Nicholls e pa ana ki nga waahi tapu o Ngati Tamatera, 12 August 2002

**(a)** English translation of He korero a Te Wiremu Mataia Nicholls e pa ana ki nga waahi tapu o Ngati Tamatera, 26 August 2002

**(b)** Appendices, 18 September 2002

**w6** Rihari Franks, brief of evidence, 12 August 2002

**w7** Rawinia Ruth Brownlee, brief of evidence 12 August 2002

**w8** Ohomauri Mataia Nicholls, brief of evidence, 12 August 2002

**w9** Ngaringi Te Moananui, brief of evidence, 12 August 2002

**w10** Motea Watene, brief of evidence, 12 August 2002

## THE HAURAKI REPORT

### APP

- W11** Hariata Kui Kui Sorenson, brief of evidence, 12 August 2002
- W12** Shayle Bidois, brief of evidence, 12 August 2002
- W13** Greg Baggs, brief of evidence, 12 August 2002
- W14** Map of mining liscence holders, 12 August 2002
- W15** Mahuta Pitau Williams, brief of evidence, 12 August 2002
- W16** George Tutuki Te Wharau, brief of evidence, 12 August 2002
- W17** Peter William Tutuki Te Wharau, brief of evidence, 12 August 2002
- W18** John Nicholas Wickliffe, brief of evidence, 12 August 2002
- W19** Robert Tutuki Te Wharau, brief of evidence, 12 August 2002
- W20** Billy Peters, brief of evidence, 12 August 2002
- W21** David Condon Williams, brief of evidence, 12 August 2002
- W22** William Kapenga Peters, brief of evidence, 12 August 2002
- W23** Grant Young, transcript of cross-examination and questioning of witnesses at twenty-third hearing, 17 December
- X. RECEIVED PRIOR TO END OF TWENTY-THIRD HEARING**
- X1** Daniel Hitchcock, brief of evidence, 8 August 2002
- X2** Scott Ngapo-Lipscombe, 'The Tuku Whenua of Harataunga: A Waitangi Claim for Tangata Whenua Rights', research report commissioned by the claimants, August 2002
- X3** Garrick Cooper and Tipa Compain, 'He Kohinga Korero Mo Te Takenga Mai o Ngati Whanaunga Me Ona Hapu', research report commissioned by the Wai 809 claimants, August 2002
- (a)** Addendum to document x3, 26 August 2002
- (c)** Map of places associated with Ngati Whanaunga, 14 October 2002
- X4** Korohere Ngapo, brief of evidence on behalf of Wai 968, 26 August 2002
- (a)** Korohere Ngapo, further evidence, 5 September 2002
- X5** Myra Ngapo-French, brief of evidence on behalf of Wai 968, 21 August 2002
- X6** Hekiera Ngapo, brief of evidence on behalf of Wai 968, 21 August 2002
- X7** Kim Ngapo-Thwaites, brief of evidence on behalf of Wai 968, 21 August 2002
- X8** Samuel McLean, brief of evidence on behalf of Wai 968, 21 August 2002
- X9** Toni Ruangapurapura Knap, brief of evidence on behalf of Wai 968, 21 August 2002
- X10** Scott Nolan Ngapo-Lipscombe, brief of evidence on behalf of Wai 968, 21 August 2002
- X11** Wai 809 claimant counsel, opening address, 26 August 2002
- X12** Tipa Compain, brief of evidence in support of Wai 809, 26 August 2002
- (a)** Supporting maps, 26 August 2002
- X13** Parewaikato Compain, brief of evidence in support of Wai 809, 26 August 2002
- X14** John Cooney, brief of evidence in support of Wai 809, 27 August 2002
- X15** Carol Munro, brief of evidence in support of Wai 809, 27 August 2002
- X16** Charles Davis, brief of evidence in support of Wai 809, 27 August 2002
- X17** Te Rore Neho, brief of evidence in support of Wai 809, 27 August 2002
- X18** Garrick Cooper, brief of evidence in support of Wai 809, 27 August 2002

- x19** Nathan Kennedy, brief of evidence in support of Wai 809, 27 August 2002
- x20** Rodney Renata, brief of evidence in support of Wai 809, 27 August 2002
- x21** Paretakangaroa Anaru, brief of evidence in support of Wai 563, 27 August 2002
- x22** Hemi Waata, brief of evidence in support of Wai 563, 27 August 2002
- x23** Andrew Andrews brief of evidence, in support of Wai 563, 27 August 2002
- x24** Tipa Compain brief of evidence in support of Wai 345, 27 August 2002
- x25** Wai 806 claimant counsel, opening submissions, 28 August 2002
- x26** Maraea Blomfield, brief of evidence in support of Wai 806, 28 August 2002
- x27** Merrilyn Connolly, brief of evidence in support of Wai 806, 28 August 2002
- x28** Wai 968 claimant counsel, opening submission, 28 August 2002
- x29** Amy Cooper, brief of evidence in support of Wai 867, 29 August 2002
- x30** Winifred McKenzie, brief of evidence in support of Wai 867, 29 August 2002
- x31** Naomi Mary Tutuki-Te Wharau, brief of evidence in support of Wai 867, 29 August 2002
- x32** Waimanuka Meremana, brief of evidence in support of Wai 867, 29 August 2002
- x33** David Robson, brief of evidence in support of Wai 867, 29 August 2002
- x34** Anitana Stevens, brief of evidence in support of Wai 867, 29 August 2002
- x35** Walter Ngamane, brief of evidence in support of Wai 867, 29 August 2002
- x36** Arthur Povey, brief of evidence in support of Wai 867, 29 August 2002
- x37** Walter Taipari, brief of evidence in support of Wai 454, 29 August 2002
- x38** Sydney Keepa, brief of evidence in support of Wai 454, 29 August 2002
- x39** David Taipari, brief of evidence in support of Wai 454, 29 August 2002  
**(a)** Grayson Neal Ltd, property status information: 15 parent Maori blocks; Thames–Hikutaia highway, December 2000  
**(b)** Grayson Neal Ltd, Maori block information: Thames–Hikutaia highway  
**(c)** 1877 road aating agreement
- x40** John McInteer, brief of evidence, 30 August 2002
- x41** Clive Majurey, brief of evidence in support of Wai 812, 30 August 2002
- x42** Whititera Kaihau, brief of evidence in support of Wai 508, 17 September 2002
- x43** Toko Renata Te Taniwha, transcript of evidence in support of Wai 809, 26 August 2002
- x44** Transcript of cross-examination and questioning of witnesses in support of Wai 809 at twenty-fourth hearing, 26–27 August 2002
- x45** Toko Renata Te Taniwha, English translation of evidence given and cross-examination at twenty-fourth hearing, 26–27 August 2002
- Y. RECEIVED PRIOR TO END OF TWENTY-FOURTH HEARING**
- Y1** Wai 96, Wai 100, and Wai 373 claimant counsel, closing submissions, 30 September 2002  
**(a)** Appendix A: maps, 1 October 2002  
**(b)** Appendix B: petition of Taranui and others, MDI 1906/1214, 1 October 2002
- Y2** Wai 174 claimant counsel, closing submissions, 17 October 2002
- Y3** Wai 418 claimant counsel, closing submissions, 17 October 2002
- Y4** Wai 464 and Wai 661 claimant counsel, closing submissions, 17 October 2002

## THE HAURAKI REPORT

### APP

**Y5** Wai 663 claimant counsel, closing submissions, 17 October 2002

**Y6** Wai 808 claimant counsel, closing submissions, 17 October 2002

**Y7** Wai 148 and Wai 285 claimant counsel, closing submissions, 17 October 2002

**Y8** Wai 355 claimant counsel, closing submissions, 14 October 2002

**Y9** Wai 72, Wai 110, Wai 177, Wai 475, Wai 693, Wai 810, Wai 865, and Wai 997 claimant counsel, closing submissions, 14 October 2002

**Y10** Wai 810 claimant counsel, closing submissions, 23 October 2002

**Y11** Wai 694 claimant counsel, closing submissions, 14 October 2002  
(a) Survey plan 1; cadastral map 2

**Y12** Wai 704 claimant counsel, closing submissions, 14 October 2002

**Y13** Wai 969 claimant counsel, closing submissions, 14 October 2002

**Y14** Wai 705 claimant counsel, closing submissions, 14 October 2002

**Y15** Wai 423 claimant counsel, closing submissions, 14 October 2002

**Y16** Wai 949 claimant counsel, closing submissions, 14 October 2002

**Y17** Wai 289 claimant counsel, closing submissions, 14 October 2002

**Y18** Wai 792 claimant counsel, closing submissions, 14 October 2002

**Y19** Wai 866 claimant counsel, closing submissions, 14 October 2002  
(a) Wai 866 claimant counsel, memorandum concerning closing submissions, 15 November 2002

**Y20** Wai 714 claimant counsel, closing submissions, 14 October 2002  
(a) Claimant counsel, memorandum concerning Ngati Koi, Ngati Tara, and Ngati Tokanui, 25 November 2002

**Y21** Wai 508 claimant counsel, opening submissions, 14 October 2002

**Y22** Wai 508 claimant counsel, closing submissions, 14 October 2002

### **Z. RECEIVED PRIOR TO END OF TWENTY-FIFTH HEARING**

**Z1** Wai 809 claimant counsel, closing submissions, 14 October 2002

(a) Supporting documents to document Z1, various dates

(b) Wai 809 claimant counsel, memorandum in respect of matter raised in closing submissions for Ngati Whanaunga, 11 November 2002

**Z2** Wai 806 claimant counsel, closing submissions, 14 October 2002

**Z3** Wai 349, Wai 720, and Wai 778 claimant counsel, closing submissions, 14 October 2002

(a) Te Ruunanga a Iwi o Ngati Tamatera, letter and map concerning foreshore, 21 October 2002

(b) Wai 349, Wai 720, and Wai 778 claimant counsel, memorandum in response to request of presiding officer to supply further references for the closing submissions of Ngati Tamatera, 12 November 2002

**Z4** Wai 970 claimant counsel, closing submissions, 15 October 2002

(a) Wai 970 claimant counsel, supplementary memorandum of additional references in support of closing submissions, 13 November 2002

**Z5** Wai 968 claimant counsel, closing submissions, 30 October 2002

**Z6** Wai 345, Wai 454, Wai 563, Wai 695, Wai 811, Wai 812, and Wai 867 claimant counsel, closing submissions, 17 October 2002

**Z7** Wai 30 claimant counsel, closing submission, 6 November 2002

### **AA. RECEIVED PRIOR TO END OF TWENTY-SIXTH HEARING**

**AA1** Crown counsel, closing submissions, 12 November 2002



## RECORD OF INQUIRY

**APP**

**AA2** Tapaetanga Whakautu Mo Wai 705: Te Taone o Whitianga Me Te Whanganui o Hei, 15 November 2002

**AA3** Wai 949 claimant counsel, response to Crown closing submissions, 18 November 2002

**AA4** Wai 508 claimant counsel, response to Crown closing submissions, 20 November 2002

**AA5** Wai 970 claimant counsel, response to Crown closing submissions, 20 November 2002

**AA6** Wai 289 claimant counsel, response to Crown closing submissions, 19 November 2002

**AA7** Wai 349, Wai 720, and Wai 778 claimant counsel, response to Crown closing submissions, 20 November 2002

**AA8** Wai 809 claimant counsel, response to Crown closing submissions, 19 November 2002

**AA9** Wai 968 claimant counsel, response to Crown closing submissions, 20 November 2002

**AA10** Claimant counsel for Wai 423, Wai 792, Wai 704, and Wai 694, response to Crown closing submissions, 20 November 2002

**AA11** Wai 355 claimant counsel, response to Crown closing submissions, 21 November 2002

**AA12** Claimant counsel for Wai 72, Wai 110, Wai 177, Wai 475, Wai 693, Wai 810, Wai 865, and Wai 997, response to Crown closing submissions, 21 November 2002

**AA13** Marutuahu claimant counsel, response to Crown closing submissions, 20 November 2002

**AA14** Wai 100, Wai 96, Wai 148, Wai 174, Wai 285, Wai 373, Wai 418, Wai 464, Wai 661, Wai 663, and Wai 808 claimant counsel, response to Crown closing submissions, 21 November 2002

**AA15** Wai 806 claimant counsel, response to Crown closing submissions, 22 November 2002



## GLOSSARY

<i>ahi ka</i>	occupation rights
<i>arataki</i>	lead, guide
<i>ariki</i>	first born, chief of chiefs
<i>aroha</i>	love, sympathy, pity
<i>aukati</i>	constraint, injunction
<i>hakari</i>	feast, gift
<i>kainga</i>	village, home, settlement
<i>kaitiaki</i>	trustee or guardian
<i>kaitiakitanga</i>	ethic of guardianship
<i>karakia</i>	prayer
<i>kaumatua</i>	elder
<i>kawanatanga</i>	government, Government forces
<i>kingitanga</i>	kingship movement
<i>kupapa</i>	loyalist
<i>mana</i>	authority, power, prestige
<i>mana whenua</i>	customary rights and authority over land and taonga
<i>maunga tapu</i>	sacred mountain
<i>mauri</i>	life principle
<i>moana</i>	lake, sea
<i>mokai</i>	slave
<i>murū</i>	plunder, confiscate, cleanse
<i>papakāinga</i>	original home, home base
<i>patu</i>	weapon, wall, boundary
<i>pepeha</i>	proverb, motto
<i>rangatira</i>	chief
<i>rangatiratanga</i>	chieftainship, leadership, self-determination
<i>raupatu</i>	confiscation
<i>ritenga</i>	custom
<i>rohe</i>	territory
<i>runanga</i>	assembly
<i>takiwa</i>	region
<i>tangata whenua</i>	people of the land
<i>tangi</i>	funeral, cry, mourn
<i>taniwha</i>	supernatural guardian of waterway, protector
<i>taonga</i>	treasured possession, property
<i>taonga tuku iho</i>	treasures handed down from ancestors
<i>tapae toto</i>	offer
<i>tapu</i>	sacred
<i>taua</i>	war party, army
<i>tikanga</i>	custom
<i>tino rangatiratanga</i>	full (chiefly) authority
<i>tipuna</i>	ancestor

## THE HAURAKI REPORT

<i>tuku whenua</i>	gift of land, permission to settle or occupy
<i>tupuna</i>	ancestor
<i>turangawaewae</i>	home turf
<i>urupa</i>	cemetery, tomb, burial site
<i>utu</i>	compensate, revenge, response, reciprocation
<i>wahi tapu</i>	sacred place
<i>whakapapa</i>	ancestry, lineage, geneology
<i>whakatauki, whakatauki</i>	proverb
<i>whanaungatanga</i>	relationship, kinship
<i>whangai</i>	adopted child
<i>wharehau</i>	meeting house
<i>whenua</i>	the land