MANGONUI SEWERAGE REPORT

WAITANGI TRIBUNAL 1988

REPORT OF
THE WAITANGI TRIBUNAL
ON THE
MANGONUI SEWERAGE CLAIM
(Wai-17)

August 1988

Original cover design by Cliff Whiting,
invoking the signing of the Treaty of Waitangi
and the consequent development of Maori-Pakeha history interwoven in
Aotearoa, in a pattern not yet completely known, still unfolding.

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CONTENTS

Figure 1 FIGURE 1 – DOUBTLESS BAY

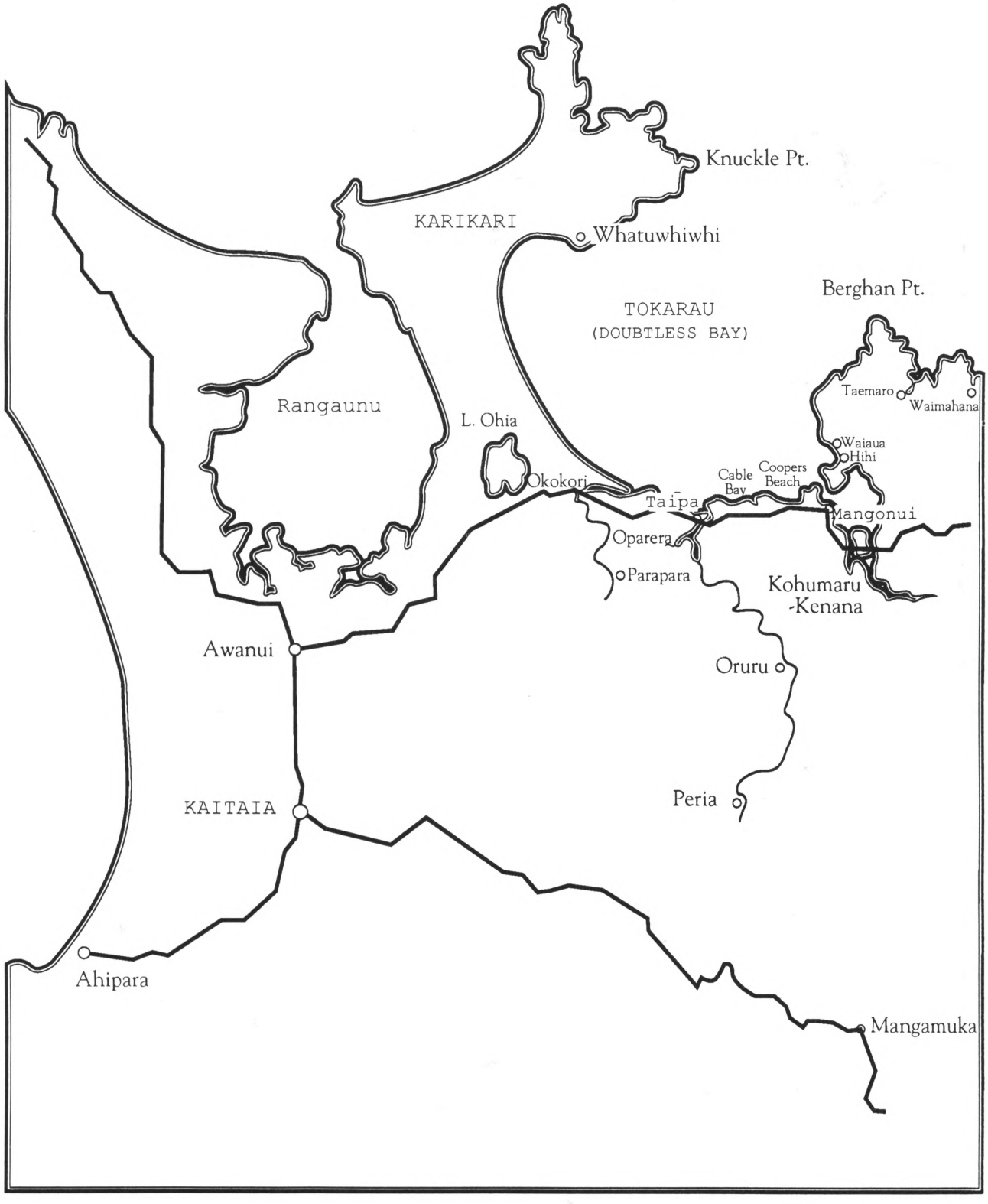
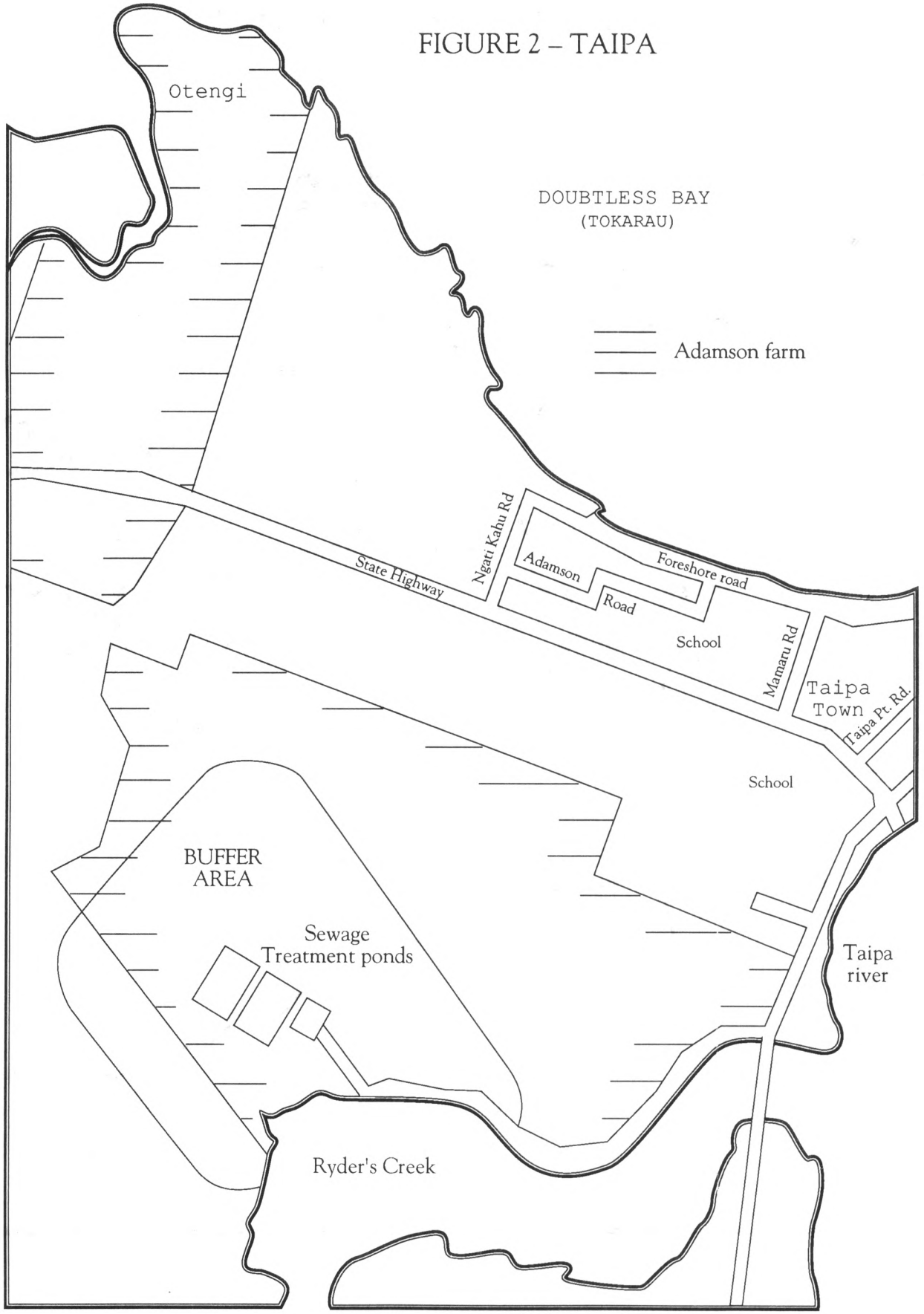


FIGURE 2 – TAIPA



To The Minister of Maori Affairs
Parliament Buildings
WELLINGTON

Te Minita

Te Rangatira, te Matua o nga Hapu o te Iwi. Tena koe.

Te nohanga tuatahi a o pononga i te tipuna Haititai Marangai i Whatuwhiwhi te Mataarae o Karikari te koko urunga mai o Mamaru te waka i Tokarau.

Te Ropu Whakamana i te Tiriti hei ingoa i puta mai i konei.

Pari whakaroto mai te tai. E heke whakawaho te timu pakapaka a te tai, kia pa atu te ringa nga taonga mo nga kete kia kohia mai ma te hapu ma nga mokopuna.

Aue, kia inu mitimiti noa atu i te wai patero kina.

Tetahi o matou ko te kauri haemata o Waipoua kua riro. A Eru Ned Netana.

I whati i konei te hoe. Mahue mai ana e rima, me te tohunga.

Kei te tatari atu ki te hoe kei te taaraitia mai i kona. Mokemoke kau te nohanga i te wehenga. Kua tere atu te moana ki Kiriti, ki Kariki.

Mai te urunga mai o te ra tae noa ki tona toremitanga ka mahara tonu tatou ki a ratou. Ka mahara tonu tatou ki a ratou.

We report to you on the Ngati Kahu claim against the East Coast Sewerage Scheme of the Mangonui County Council.

There are times when Maori interests must take priority, according to the Treaty's terms, for the solemn guarantees in the Treaty were a small price to pay for the cession of sovereignty and Pakeha settlement rights that cannot now be denied. But there are times to recall that our forbears agreed to no less than a Pakeha settlement, and a world of our own where two peoples could belong. This claim is a salient reminder that if the cultures of our founding inheritance are both to stand proud, a compromise is sometimes required.

Construction of any sewage works necessarily imposes certain costs, both financial and cultural, on the local community. Ngati Kahu had good cause to bring their claim and reason to feel aggrieved and yet, the cost to the community, of which Ngati Kahu forms part, would be too great in this instance, if their claim was allowed. We have therefore no recommendations to make in its support.

That is not to say that the Ngati Kahu concerns need not be addressed. They must be. Developments on their once isolated homeland have placed them on the threshold of a new frontier. It was fundamental to the Treaty that Maori would not be threatened in the enjoyment of their ancestral lands for so long as they should wish to keep them. Ngati Kahu are threatened now, and in our view, special measures are needed.

The issues are complex and lateral thinking will be required to maintain the Treaty's goals in our own times, but they are best reserved for the Ngati Kahu land claim that is yet to be heard.

E kore e taea he whakatau.

Ko te tumanako kia pa tonu atu te ringa ki te tai.
Kia mau te takenga o te ingoa Taipa.

PART 1—OUTLINE

1. OVERVIEW AND SUMMARY OF REPORT

1.1 Ngati Kahu lost most of their land for settlement last century, shortly after the Treaty was signed, but they have made some recent gains. They developed a close relationship with certain of the settler families, and in 1974 G P Adamson of Taipa, of old settler stock, gifted a significant headland to the tribe. That was followed in 1986 with the sale to the tribe of the Adamson farm at what we understood to be a concessionary price.

This claim is about certain sewerage works. It will be followed by a land claim but the sewerage scheme raises immediate problems not least of which is the siting of the treatment ponds on the Adamson-Ngati Kahu farm.

Before the scheme is examined the Ngati Kahu position is reviewed together with the history that produced their current situation. Local tribal circumstances are invariably relevant when long term plans are made. Informed decisions require a full awareness of the tribe's background, and of the extent to which the principles of the Treaty have been and can still be upheld.

1.2 Tokarau or Doubtless Bay, in New Zealand's Far North, has been the Ngati Kahu homeland since time began. That at least is a tribal perspective for the tribe was founded some seven hundred years ago when Parata arrived at Taipa from distant Hawaiiki to meet and dwell with Kahutianui, the ancestress for whom Ngati Kahu (the descendants of Kahu) are named. They made their home on the Otengi headland beside the Taipa beach, and at Taipa a tribe was born.

We have thus an indication of the importance of that place in the Maori planning scheme.

The children of Kahu spread across the whole of the Doubtless Bay lands adopting a variety of hapu or clan names. In broad terms their settlements were in three divisions, at Karikari, the northern sentinel of the Bay, at central Taipa, the gateway to the villages of Oruru, Peria and Parapara in the hinterland, and in the eastern Taemaro ranges, where Waiaua, Taemaro and Waimahana nestled into the coastal folds.

Those broad settlement divisions still prevail but unity was based upon central Taipa. Though distanced by the circumference of the Bay, signal fires on the hilltops of Karikari, Otengi and Taemaro were a reminder that they were kindled from a common hearth.

The valley behind Taipa was the choicest part, the Taipa-Oruru river serving a lineage of villages strung along 22 kilometres of watery highway. Eighteenth century explorers were warned of a fighting force there 2,000 strong, suggesting a total population of 8,000 or more, so densely encamped that messages were said to pass in moments by calling from pa to pa. It was possibly one of the heaviest concentrations of Maori in the country.

The evidence today of the former Maori presence in the Oruru valley is some 57 pa sites, but little else remains. The first European visitors brought diseases unknown to Maori to whom even the common cold could mean death. The devastation was worst in thickly settled places and the Oruru

population is thought to have been reduced by well over a half in less than two decades!

That is not the reason why the valley was vacated by the survivors however. Essential to any comprehension of the Ngati Kahu prescence in the Bay, is a knowledge of how they lost their land. It cannot be assumed that they freely and willingly gave them or that the tribal sentiment for certain ancestral places should be diminished by the reality of current ownership.

1.3 Population losses exposed Ngati Kahu to attack from related tribes on their western and southern flanks. When settlers and the Crown arrived there were two rival conquerors neither of whom had scored a conclusive victory over the other; but nor had Ngati Kahu been removed. The conquerors were also their close kin. The two rival chiefs of the adjoining tribes purported to prove their rights to the Ngati Kahu lands by selling them. They did so although they in fact lived elsewhere in their own tribal areas.

The Native Land Court that was established much later, put far more weight on actual occupation to determine ownership, but at that time, when 'might was right', and although the Treaty proposed a safer rule of law, it was politic for the settlers and the Crown to treat with the mighty. Some blocks sold were so large that no small scale map could encompass them.

Taipa-Oruru was most at risk for it was the best land. Needless to say the main tribal wars were fought there. In fact the last battle in the district was a part of the Oruru war fought in 1843 on the Taipa foreshore to settle the very question of who had the selling rights. Forty-six died on the beach.

The result, a draw for the two rival chiefs, was a victory for the Crown. Though both chiefs sought land reserves for themselves, the Crown paid off each to remove the belligerent Maori entirely from the Taipa-Oruru scene, and to keep it clear for the settlers.

Thus did Ngati Kahu lose the Taipa-Oruru lands, eventually without so much as a reserve for their own needs. The most they could do, in the exigencies of the time, was to concur politely in the hope of being paid or to protest mildly and have nothing.

1.4 Ngati Kahu regrouped on the lands that remained but through much intermarriage with the neighbouring rival tribes it was not until several decades later that the common tribal name was restored. The central base was sold and the focus was on the small areas retained. Those lands were held as before in the three districts described but the holdings were so reduced in size that the traditional economies could not be maintained. The remnants of those lands are still there, and in planning for Maori needs, any planner should know where they are. They are at Karikari in the north, at Peria and Parapara in the central hinterland with Okokori on the coast, and at Waiaua, Taemaro and Waimahana in the east with holdings at Kohumaru-Kenana nearer Mangonui.

Though it was inherent in the Treaty that each tribe would retain a sufficient area for its needs, in fact the reserves were grossly inadequate and people had to leave. Through subsequent successions and title fragmentation, some areas now support no more than one or two families. Small though the lands may be for the maintenance of a tribe, they are still

the spiritual base for many who have moved away. Their cultural value has intensified through the other losses sustained.

The sale of Taipa particularly rankled for it was the birthplace of the tribe at the centre of the bay. It was extremely significant therefore when G P Adamson gifted back a part of the Otengi headland in 1974, and in 1986 when the tribe acquired the main farm. For many it symbolised hopes for a tribal rebirth, especially as in the colonisation process, the reserves had been broken up and individualised and none but that now regained at Taipa is tribally owned.

1.5 Such background is important to appreciate the tribe's concerns and to understand their objections to sewerage treatment works on the Taipa farmlands, and their opposition to the loss of one hectare when so little remains.

But the sewerage scheme is symptomatic of a wider problem. For a century or so, the remaining Ngati Kahu lands were freed from further demands. The Mangonui area began with a boom that soon petered out. It became a quiet backwater as the turmoil of development passed to the distant south. In this pastoral and coastal haven of the winterless Far North, Maori and settler families were to co-exist with comparative ease.

Today however, the ancestral lands of Ngati Kahu are once more our northern frontier. Though at the end of the road, the route is now wide and the carriage-way well sealed. On every useable headland and splendid beach that line the southern aspects of the Bay, homes, motels and camping grounds jostle for a share of the Bay's isolation, and development is happening all around.

Subdivisions encroach upon the Waiaua reserve at the eastern extremity, and beside the ancient cemetery a 'For Sale' sign appears. At the northern edge, where Karikari dominates the Bay, holiday homes once more abut the last bastion of Maori lands and a major resort is proposed. There is a fear that the Maori will be rated from their lands. At the centre, the sewerage scheme with its treatment works at Taipa, is symbolic of what the future may portend.

We see no reason why major development and Maori settlements cannot both be maintained. Good planning should ensure that that can be so, but the strategies required for the protection of Ngati Kahu must extend beyond the planning that District Schemes provide.

Questions of rating arise. Restrictions may be needed on the sale of Maori land. The individualised titles, totally foreign to the Maori way, have often resulted in such unusable allotments that sales are the only practical option and there is no tribal control. Maori lands may need to be specially zoned. Ngati Kahu schools and holiday camps may be required if the children of Ngati Kahu now living away, are also to enjoy their tribal lands. Most of all, work is sought.

To view the sewerage scheme in isolation is not to address the problem; it is only for reasons of urgency that we have severed this claim. Of greater interest is the relevance of the Treaty to the life at the new frontier. The situation is conceptually little different in 1988 from that in 1840 when the first settlers occupied the land. The substantive question is whether, after 150 years of experience, our understanding of the significance of the Treaty has improved, and whether our performance will still be found wanting.

1.6 In this context the Treaty is particularly important. The basic concept was that a place could be made for two people of vastly different cultures, to their mutual advantage, and where the rights, values and needs of neither would necessarily be subsumed. That is still the fundamental base from which we examine the sewerage scheme and from which we will later need to consider the developments in Doubtless Bay as a whole. It is obvious however that to achieve the objective, compromises on both sides are required and a balance of interests must be maintained.

Some things on the other hand, like lands and fisheries, could forever be retained, according to the Treaty's terms, for so long as there was a wish to keep them. It was such a small price to pay for the cession of sovereignty and perpetual settlement rights that this part of the Treaty must perforce be strictly construed. The enjoyment and continued possession of lands and fisheries was guaranteed.

1.7 The Treaty envisaged British settlements and the development of new towns. With high concentrations of people, sewerage schemes are required. We must balance in this case the record of Ngati Kahu concerns with the long saga of events behind the sewerage scheme, bearing in mind that such a scheme must proceed. The Mangonui County Council has been working to establish a sewerage scheme since 1959, but through unrelenting outside pressure the Council has had to change its plans many times and the scheme has been delayed. The Council's main problem has been to find the optimum scheme the ratepayers can afford.

Our focus however is on the Crown. The promise to protect Maori interests was made by the Crown and it is against the Crown, not the Council, that this claim must be made. It is the Crown's conditions for the delegation of its governance to a local level that require scrutiny. Did it properly pass on its treaty obligations?

The Crown has restricted local authority powers by establishing broad criteria against which district works, planning schemes and water uses can be assessed. A balancing of conflicting objectives is required but the local body is not the ultimate arbiter of its own plans. Independent bodies have also been appointed by the Crown to assess any proposals where required. They are mainly represented in the Planning Tribunal. Our concern is whether the rules laid down produce the right mix, having regard to the Treaty's terms. It is not our function to assess the performance of the judges.

1.8 Even at the outset there is a Maori complaint that the opportunity to be involved is merely by an objection procedure which operates after the local authority's plans have been drawn and publicised. The procedure is available to the public as a whole. The tribes were given a special status by the Treaty however, and the objection procedures are often inconsistent with their ways, compelling a confrontational stance.

The complaint is valid in our view but not because there is a duty to consult in all cases. It is the prior opportunity to discuss that is most especially wanting. Early discussions build better understandings in an area of cultural contact where the potential for conflict is high. Agreements may not be reached but new insights may be obtained and the subsequent debate may at least be better informed.

Nevertheless it is as wrong to blame the Council if Ngati Kahu were consulted too late as it is to discredit Ngati Kahu if their objections were

not made sooner. There is a decided lack of structure by which to determine the proper tribal members to deal with, or by which an authoritative tribal position can be obtained. The Crown, in our view, has much work to do to complete its Treaty undertakings. It must provide a legally recognisable form of tribal rangatiratanga or management, a rangatiratanga that the Treaty promised to uphold.

Ngati Kahu have been prejudiced through the lack of such a design. At the time, in 1973, there was no provision for an objection to be made to the siting of the works upon the grounds of the ancestral significance of the lands. The cultural factors pertaining may well have become apparent however had prior consultations been held. The Council might at least have been forewarned, and may have taken better precautions to avoid the Taipa site despite the lack of any legal encouragement to do so.

But that in our view is not a ground for stopping the works. It does not follow that, had an enquiry been made for another location, a more suitable site would have been found.

1.9 Many matters are provided for under the general rules that the Crown has laid down, and, as we have said, independent and expert assessors have been appointed to determine debates about them.

It has been argued for example that the treatment works will unduly restrict the farming and future development of what is now tribal land. In fact the Planning Tribunal has already determined that present and future uses will not be unduly impaired. The Maori plans being no different from those that any other land owner might choose, it is not for us to find otherwise. Similarly it was contended that seepage from the treatment ponds may pollute an underground water supply and the estuary that supports fish life. That matter however has been addressed by the Regional Water Board and it has required no more than that the ponds be sealed to its satisfaction. That being the finding of a specialist body, and there having been no appeal to the Planning Tribunal, it is not for us to find otherwise. Though we have grave doubts about the sealing operations proposed, we can do no more than relay them to the Board that has undertaken to maintain a surveillance of the work.

1.10 The same may now be said of claims based upon the cultural significance of land. The planning laws now require District Schemes and Works to have regard to Maori ancestral associations and, since claims that ancestral associations, have not been adequately considered can be taken to the Planning Tribunal, there ought generally to be no need for this Tribunal to intervene.

In this case however, we must intervene. At the time this scheme was before the Planning Tribunal, it was bound by a ruling that ancestral values could not be considered unless the land were Maori owned, and spiritual values relating to water could also not be raised. That may not have constrained the particular Planning Tribunal in this case, but we accept that it may have restricted the claimants from raising contentions that might otherwise have been made. The law has since changed but in this case the damage has been done. To resolve the problem we review the complaints ourselves, though in our case, from the perspective of the Treaty, not the planning laws.

In the first instance it was said that sewerage works were inconsistent with the ancestral significance of the Taipa area. It was the birthplace of

the tribe, central to the tribe's existence and the gateway to the important hinterland. Having regard to the significance of the land to Ngati Kahu and the strong cultural views on human wastes, another site should be sought in our view, if one can reasonably be found.

We would not impose an absolute prohibition on the use of the site however. Regard must be had to the actual impact. The works are proposed on the distant perimeter of a large flat where they are mainly obscured from view. In addition, the original proposal to discharge treated effluent in the Taipa area has been abandoned. It is now to be piped elsewhere. Further regard must be had to the need for the works and the financial limitations of the ratepayers. Because of the topography of the reticulated area and the longtitudinal spread of the smallish population, the scheme as it stands imposes a relatively heavy cost burden. The Treaty, as we have said, envisaged a place for two peoples. To provide for that, the cultural mores of one ought not overly to restrict the needs of the other where reasonable compromises have been sought.

The second concern was that the treated effluent is now to be piped to a wetland marsh in the adjoining catchment. It was contended by some that the eventual flow of a residue of water to the Parapara Stream is offensive to Maori of the Parapara area and would affect traditional sources of food.

We accept entirely that the discharge of human wastes to water regimes that support food is abhorent in the Maori scheme and that, in their view, such wastes should pass to the land. There is a strong biological base for that opinion but it is the breach of the spiritual ethic that causes concern. Other races share this world view; for example it is an aspect of Jewish rabbinical law.

The wetland marsh proposal however is a reasonable compromise. The effluent, already highly treated, is purified further by natural land and plant processes, to a greater extent than if the effluent were sprayed on the hills, where in this locality a high run off could be expected. It has the benefit of the earth's cleansing systems and, with good management, the Regional Water Board observed, the quality of the residue flowing to the stream should be better than the waters already there.

The complaint illustrates the need for some tolerance. Taipa is significant for many, Parapara has significance for some. It was even considered during the course of our proceedings that the whole scheme should be directed the other way, with the discharge point near Mangonui or Hiha where the reticulation scheme is to begin. But at that end we find another important Maori reserve, at Waiaua. The reality is that the ancestral lands cover the whole of Doubtless Bay.

1.11 To complete the works the site must be purchased or, if need be, compulsorily acquired. In that respect we deeply share the Ngati Kahu feeling that with so little land remaining on which to re-establish the tribe, not one hectare of their land should be affected, including that recently purchased.

It may be that Maori land should be exempt from compulsory acquisition having regard to the Treaty's terms, but we do not address that question here. A distinction must be made between land long held and that recently acquired. Land later gained may also require protection in some cases to achieve the Treaty principle that each tribe should have a proper land endowment for its needs. Planning laws in our view ought properly to recognise the retention of Maori lands and the maintenance of

tribal endowments as proper national objectives, but an allowance must still be made for lands acquired subject to proposals already in train.

The treatment works have been proposed for this site since 1973, well before the land was purchased. The works have proceeded a distance, in good faith, based on the planning consents obtained, and it would be overly prejudicial to the Council if the existing rules were changed at this stage.

1.12 The main argument has been that because of the cultural significance of the land, the works should be sited elsewhere. Our concern has been that that matter was not argued at the relevant time because of the then state of the law, and that it may be too late to raise it as an objection to the taking of the land, so as to compel a greater search for alternatives than might otherwise be required.

Without wishing to encroach on the Planning Tribunal's jurisdiction, it appeared to us that the tests to be applied on an objection to the taking of the land, after its designation, may be circumscribed. The adequacy of the search for alternative sites and methods is to be assessed against the Council's own objectives, and it could be that the test is not whether there are reasonably practical alternatives that avoid the chosen site.

We therefore commissioned a consultant to review alternatives near to the Taipa area, the works having progressed in that direction beyond a point of no return. None of the alternatives proposed was clearly superior, and although each costed less at the construction stage, they required another form of treatment and greater operating expenses. They also posed other problems that could very well result in further objections from Maori and non-Maori alike, when planning consents were sought. We consider none is sufficiently free of other problems to warrant Parliamentary intervention to require the relocation of the ponds. We have weighed the alternatives with the reality that the works on the proposed site will be largely obscured from view and that the discharge will be effected elsewhere.

We find more particularly that the omission to consider the ancestral significance of the site in the planning arena, because of the then state of the law, and the possibility that the ancestral significance will not be weighed in the balance under procedures yet to be pursued, is not in all the circumstances prejudicial to the claimants having regard to the Treaty's terms. We emphasise that we make that assessment solely upon the principle of the Treaty that, to accommodate two peoples, an even balance is required. Whether the Public Works Act in fact compels a higher standard of consideration is for the Planning Tribunal to decide.

1.13 The Treaty as we have said, requires a balancing of interests in some cases, and a priority for Maori interests in others. This is one occasion where a balancing is needed and some compromises must be made. We have considered at length the background to both the tribe and the scheme and we have noted that the land was acquired after the designation was made. The scheme, we note, has been arranged and changed to reduce the cultural impacts, and the continued possession and enjoyment of tribal land and fisheries is not in the circumstances unduly encroached upon.

We therefore decline to make recommendations on this part of the claim.

1.14 That is not to say we are unmindful of the Ngati Kahu concerns. The need for Ngati Kahu to re-establish themselves on a more secure economic footing is readily apparent in reviewing their lands and the families they support. The reality too is that the relationship of Maori, their culture and traditions with their ancestral land, is best achieved if they own a fair share.

We can appreciate therefore the sad irony for Ngati Kahu. Having just recovered a most significant part of their ancestral land, they are about to lose a part for a sewerage scheme where the greater number to benefit are from the new beach settlements.

The works are thus symptomatic of a wider concern, as new developments encroach upon the formerly isolated Bay, that without proper care, Kahu's descendants may yet be condemned to city pavements as others move to the tribe's homeland. It may be crucial, if the Treaty is to work well in our time, that the tribe be better involved in planning for the Bay and that new arrangements be made for the protection and use of existing Maori lands. Those issues however ought properly to be addressed in the land claim.

1.15 The above opinions are more particularly given and are more especially based on the findings in the balance of the report that follows.

PART II—BACKGROUND

2. THE CLAIM

2.1 BACKGROUND TO THE CLAIM

Of many grievances affecting Ngati Kahu, this report deals with only one—a sewerage scheme with its treatment works at Taipa. Because urgency attaches to the scheme, it has been necessary to isolate this part of the claim. It ought nonetheless to be seen as part and parcel of a number of concerns that are now briefly described.

(a) The Karikari Complex

When we were first informed of an intended claim in respect of the sewerage scheme, in January 1985, we were advised as well of a proposed claim affecting a projected resort development on Karikari peninsula. At the time however, the Karikari project was at an uncertain development stage and it was agreed that that matter should be deferred.

(b) Fishing Claims

The Ngati Kahu people were involved in the Muriwhenua fishing claim that has recently been reported on (Wai 22). Indeed it is with considerable regret to the other parties involved in this case, that the fishing claim had to take priority. Although the sewerage scheme is undoubtedly urgent too, the fishing claim affected a major industry and an important national policy in the process of implementation.

(c) General Land Claims

It is claimed in this case, that a number of early arrangements were contrary to the principles of the Treaty and that compensation should be given. A similar claim by Ngati Kahu is made with other tribes in what we have called the Muriwhenua Land Claim. Both of those claims could be heard together but in each case much research is first required. Commissioned research has begun but, because of other work, has not proceeded very far.

(d) Specific Land Claims

There is a separate claim in respect of the Taemaro block in the Ngati Kahu area, part of which is said to be included in the 'lands and survey' Stony Creek farm settlement. This claim could possibly be heard with the general claims as well.

The sewerage claim that is dealt with now, was amended several times. Its final form is printed as *appendix 1*. The proceedings are set out in *appendix 2* which gives the dates and places of hearing, the notices posted, those who appeared and the documents produced. The final form of claim is document B24.

The claim is divisible into two parts, the first relating to the sewerage scheme, the second to the general land claims. This report deals only with the sewerage scheme, but because some issues relevant to the scheme arise from land matters, an introduction to the land claims is provided.

2.2 ISSUES IN THE CLAIM

The claim is made by MacCully Matiu and the Ngati Kahu Trust Board on behalf of Ngati Kahu and associated tribes. The claimants object to the siting of a sewerage treatment plant at Taipa with oxidation ponds to be constructed beside a creek that flows to the Taipa river.

The Mangonui County Council, the promoter of the scheme, argued that the claimants had every opportunity to raise their concerns before but at no stage had they objected to the siting of the ponds, which is the main complaint now upon the grounds of the land's ancestral significance. The works having proceeded a distance, it was argued that the Council would be prejudiced if new complaints were allowed at this stage.

Issue 1 (on estoppel) is whether the opposition to the siting of the ponds, because of the significance of the land, could and should have been raised earlier to be settled and resolved elsewhere and whether, as a result, this inquiry should proceed.

In reply, the claimants contend the objection procedures provided in planning laws do not adequately cater for their way.

Issue 2 (on objections) is whether the claimants have been prejudiced by the objection procedures that the Crown has prescribed, and if so, whether those procedures are consistent with the Treaty of Waitangi.

Issue 3 (on consultation) is whether the Treaty contemplated instead, prior consultation with the tribes, and whether the claimants are prejudiced by any omission to provide for consultation.

The farm, on part of which the treatment works are to be located, has recently been acquired by the Ngati Kahu Trust Board. Part is to be taken for the works. A buffer zone precludes any residential development on a surrounding part.

Issue 4 (on land use) is whether the works will unduly affect farming operations and long term development plans, and if so, whether that is consistent with Treaty principles.

It is claimed that seepage from the ponds will pollute an important aquifer, or underground water source lying close to the surface. It has been a reliable water supply for the Taipa people since ancient times and it is still the main water source for those on the flats today.

Seepage, it is contended, will also flow to the Taipa river, and will pollute the large seafood resource that has also been relied upon for centuries and which is harvested by New Zealanders to this day.

Issue 5 (on Taipa waters) is whether the claimants are likely to be prejudiced by seepage from the ponds, and if so, whether the prejudice arises from any omission of the Crown inconsistent with the principles of the Treaty.

Following treatment at the ponds, the effluent is to be pumped over a rise to an artificial marsh in the adjoining catchment. Seepage from the marsh flows to the Parapara river and eventually to the sea at Aurere beach. There were some objections to the use of that watercourse, because of the actual or cultural contamination that it was claimed would ensue, but for others the Parapara route was an acceptable compromise. The principal claimant considered that the treatment works as a whole should be sited by the marsh. Nonetheless, there were some objections on this count.

Issue 6 (on the Parapara stream) is whether the discharge to the Parapara stream is prejudicial to the claimants, and whether any omission of the Crown to guard against it is inconsistent with the Treaty.

More emphasis was given to the siting of the treatment ponds. It was claimed that the pond site has special significance for the Ngati Kahu people.

Issue 7 (on the pond site) is whether the pond site has such significance for the claimants that it would be inconsistent with the Treaty to use it for the purpose proposed.

The main concern however, was not with the significance of the particular site but with the area as a whole. The Taipa lands are highly important in local Maori custom and tradition, so important it is claimed that the treatment ponds and the sewerage pipeline that feeds them, should not be placed near Taipa at all. That contention is made although the Taipa lands have not been Maori owned for over 100 years.

Issue 8 (on ancestral associations) is whether, because of any significance of the area, the location of the treatment works on the Taipa flats is contrary to the principles of the Treaty, and whether the Crown has omitted to provide proper protection for the claimants' interests.

It nonetheless appeared that the gravamen of the complaint related to the Ngati Kahu circumstance as a whole. For a number of reasons, barely of their own making, Ngati Kahu own very little of their original tribal demesnes. They once spanned the whole of the district of Doubtless Bay. Again for diverse reasons, that need to be explained, they have not held land at Taipa for more than a century, though Taipa was the birthplace of the tribe and was central to their subsequent growth.

For obvious reasons the tribe places great store on such land as remains, but since the titles are fragmented and individually owned, it is difficult to exercise any tribal control. The tribal anxiety has intensified in recent years. Much of the Bay has seen the growth of holiday homes and resorts, as the need for a sewerage scheme shows, and further development is projected. It is more necessary than before for the tribe to hold a secure footing, the more so since many of the tribe, for the lack of land, have been forced to move away.

It has been fortuitous that with the help of one family of early settler stock, the tribe has recently acquired land at Taipa, at precisely the place where the tribe first began. It is now held as a tribal endowment for the re-establishment of the tribe, and is the only Ngati Kahu land that is tribally owned. Not unnaturally, there is consternation that it is upon the farm that Ngati Kahu has acquired that the treatment works are proposed.

Though the site for the treatment ponds was fixed well before Ngati Kahu bought the land, it is contended nonetheless that the ponds should be shifted elsewhere.

Issue 9 (compulsory acquisition) is whether, having regard to the principles of the Treaty, the Crown should permit the acquisition of the site for a public work.

Because of the broad circumstances relevant to the last two issues, we begin by examining the background to the tribe and the disposal of its lands (in chapter 3). We then balance the tribal background with the protracted saga behind the sewerage scheme. That background, and the efforts of the Council to obtain a measure of ratepayer accord, is described in chapter 4.

3. THE NGATI KAHU LANDS

3.1 THE LANDS

The lands of Ngati Kahu focus upon the waters of Tokarau, or 'many fishing grounds'. Doubtless Bay, as it is now called by most, is a large, shallow and sandy-bottomed indentation of partially sheltered water. The entrance between Knuckle and Berghan Points spans 11 kilometres, with the width increasing to 18 kilometres inside. Because of its shape it is not directly open to ocean influences (see Fig.1).

From the imposing hills of Karikari Peninsula at the northern end, the land sweeps down to a long, and sandy isthmus dividing Doubtless Bay from Rangaunu Harbour on the west. On both sides, splendid beaches exist. The western beach 13 kilometres long, is dominated by a white sand the brilliance of which even travel brochures could not exaggerate; but due to remoteness, resort development has only now been contemplated. The lands between are partly farmed but are largely in scrub.

From Tokerau Beach the shoreline curves back to the east. There the high hills of the hinterland provide a commanding backdrop with the spine of the main ridge running parallel to the coast only three kilometres from the foreshore. Like fingers extending from a hand, a series of elevations protrude into the sea, providing rocky points on the coast with fine stretches of sandy beach in between. Lining them can be found the most populous settlements of today, Taipa, Cable Bay, Coopers Beach and Mangonui.

Beyond the Mangonui harbour inlet, which bulges from off the Bay, a deep and rocky shoreline continues out to Berghan Point. There, access is difficult and a mountainous land mass prevails.

It is in all a most scenic locality, additionally blessed with an equitable climate. It is remote however, and in only recent decades have large numbers sought to inhabit the tribe's ancestral lands. The resultant development has concentrated along the southern shores of the Bay, where the state highway, now sealed, wends westward along the undulating coastlands from Mangonui. It is the only through road for the area.

The district has a long history. Leigh Johnson, an archaeologist, considered the Maori population was once several times the total population of today (Johnson 1986). They lived mainly on the coastal hillsides, where nature provided all necessary drains and cultivations could be developed with ready access to the resources of both land and sea.

In contrast, most people today occupy the foreshore flats in a ribbon development. The built up area of the southern coast is some 9.0 kilometres long and on average 0.3 kilometres wide.

Perhaps because the surrounding hills so clearly define it, early seafarers were attracted to Doubtless Bay. Kupe, the discoverer of New Zealand according to some accounts, is said to have made his first landing at Taipa on the Bay's southern shores. When the Maori settlers arrived on Mamaru canoe, possibly 700 years ago, they settled at Taipa, and the original dwelling place at Otengi headland, is sacred to this day. The people's main pa was built there. The main shellfish beds were nearby too.

Centuries later, in 1770, Captain James Cook and the French explorer J F M de Surville were both in the Bay within a few days of one another. Due to a violent storm de Surville hove to on three anchors but had then to cut

loose leaving 2 behind. They are now in New Zealand museums. Cook left behind the name of Doubtless Bay.

Early whalers were drawn to the area as well, probably commencing with the William-and-Mary in 1792; and a bustling industry was developed at Mangonui, mainly by Maori, with the provisioning of whaling boats. Traders soon followed in search of flax and timber. In due course missionaries and settlers were attracted to the area, all well before treaty times.

In the century that followed the Treaty, Mangonui saw slow economic growth. Gum digging and timber milling in the nineteenth century gave way to pastoral farms in the twentieth. But the main economic growth took place far to the south. Electricity and sealed roads came much later to Doubtless Bay than elsewhere.

Today there are few remnants of the original kauri forest cover. Of the rural land, about half is presently used for farming, mainly sheep, and apart from small areas of forest plantation, the balance is in scrub or regenerated bush.

The population is rapidly increasing in this part of the Far North however, as holiday makers, retired persons and resort developers discover the advantages of its climate and scenic havens. It has once more become the new frontier. For Ngati Kahu however, though many have now left, the Bay has never been their distant frontier, but the bosom of their existence.

Taipa was the hub of the Ngati Kahu lands, and the gateway to the extensive Oruru valley that may have supported one of the densest ever Maori populations. It was the birthplace of the tribe, and was central not only to the Bay but to the tribe's thinking. There was therefore contention when the treatment works were proposed at Taipa, to service a sewerage scheme made necessary by the new subdivisions.

3.2 EMERGENCE OF NGATI KAHU

According to local history, it was at Taipa that Kupe first landed. He is credited with discovering the country but it is not certain that he did so. Recent archaeological evidence indicates that Maori were clearing the Northland forests as early as 500 AD (see document A14).

He called the Taipa river Ikatiritiri (to apportion fish) because of the abundant fish life to be found. At the adjoining Otengi headland, he made a place for his daughter to stay while he explored the country. It was from Taipa that Kupe returned to Hawaiiki, according to Ngati Kahu history.

In Hawaiiki Kupe gave instructions on how to reach here and on the places to be found. Those descriptions, it seems, were passed down over some generations as Kupe's descendants set sail.

Whatever navigational aids were used they appear to have been accurate for Tumoana was to bring his canoe, Tinana, to the very places that Kupe had described. His people, including his daughter Kahutianui,were to dwell at Tauroa near Ahipara, but Tumoana journeyed back to Hawaiiki, promising to send his nephew Parata, as a husband for Kahutianui, and prophesying that certain signs would announce Parata's arrival at Taipa.

At Hawaiiki, the Tinana canoe, re-adzed and enlarged, was relaunched under the new name of Mamaru, under Parata's command. Landfall was made at the Otengi headland at Taipa, amidst a gathering storm. The

lightning, we were told, alerted Kahutianui who knew the time had come to journey to the Bay. She was a woman of great lineage, courage and leadership and it is from her that Ngati Kahu take their name.

The coast was explored by Mamaru and at Karikari peninsula, or Rangiawhia as they called it, the first pa was erected to stand sentinel over the bay. Eventually however the canoe was beached at Otengi, where Kupe's daughter had stayed, and it was there that Parata and Kahutianui made their home. It was to be the birthplace of Ngati Kahu.

Thus was the tribal pepeha raised

Ko Mamaru te waka	Mamaru was the canoe
Ko Parata te tangata	Parata was the man
Ko Kahutianui te wahine	Kahutianui was the woman
Ko Ngati Kahu te iwi	And Ngati Kahu began.

Two logs or skids, carried from the homeland to beach the canoe, were then planted there. Two tawapou trees are there to this day. From cuttings, others have been established on the lands of related tribes.

At Taipa an abundance of fish was found, and shellfish of great variety—toheroa, tipa (scallops), kokota (pipi), huai (cockles), karahu (periwinkles), kutai (mussels), tio (oysters), kina, pupu and koramarama (rock periwinkles), paua, patiotio (limpets), ngakihikihi (small mussels) and kotoremoana (shell-less paua). The kokota beds at the Taipa river mouth exceed five acres; there are large huai beds a little upstream and karahu are found on the nearby mangrove mudflats.

Fresh water was available by digging holes in the Taipa sands, a practice that continued to modern times (see documents A2 and B26).

At Otengi headland a defensive Pa was built, called Mamangi, after the daughter of Parata and Kahutianui. Parata and Kahutianui lived alternately at three important headlands of the Bay, at Karikari to the north, Otengi at the centre and at Taemaro on the east. But Otengi at Taipa was the main base, where there were direct lines of sight to the other headlands and to promontories inland. As the descendants settled the whole of the Doubtless Bay lands, signal fires were used to maintain contact between them.

In the course of time the people multiplied and grew, supplemented from marriages with other Maori from the many other canoes that came. Originally there were three hapu or clans on the Mamaru canoe, Te Rorohuri, Patu Koraha and Te Whanau Moana. Those names have always been maintained but in later years numerous sub-tribal groups adopted additional tribal names that came to apply to different localities. For convenience, we refer to the sub-tribes collectively as Ngati Kahu, although the name was not revived until the 1920's, and although for the greater period of the time described, different groups of the same people preferred their separate hapu names.

By the eighteenth century the main settlements were broadly in three areas, at the eastern peninsula leading to Mangonui Harbour and in the surrounding valley and hills; in the central area inland from Taipa and nearby coastal places; and at the Karikari peninsula on the northern extremity of the Bay. In all these places, pa were built, but villages were everywhere.

It is likely that for every coastal headland there was a pa, and many were built inland, on well drained hills, at strategic spots on communication lines, and at places with ready access to the resources of the dense forests and the open seas. On carefully chosen sites, extensive gardens were established.

Taipa, and the Oruru valley behind it, remained the most popular of the places, though few Maori live there today. Hikurangi became the main Ngati Kahu pa, and was located at Taipa on what became the Adamson's farm. Most of the people however, had spread up the Oruru Valley, where the river provided an easy pathway to the sea, extending as far as the fertile Peria valley, where Kauhanga pa was maintained. Dr Susan Bulmer, regional archaeologist for the New Zealand Historic Places Trust, provided this description (document A14)

> The Oruru was an extraordinary valley, one of the longest in Northland (22km) and it had excellent garden land. It possibly supported one of the densest concentrations of population in the country; a late 18th century map recorded a fighting force of 2,000 men, suggesting there may have been around 8,000 people in the Oruru Valley at that time. This population was gone by the early 19th century and Leigh Johnson concluded from his studies that this was likely to have been a consequence of a devastating epidemic of disease about 1794. There were 57 pa along the ridges of Oruru valley, and each had many associated pit and terrace sites of undefended settlement. Altogether this adds up to one of the most spectacular archaeological landscapes in the country.

We were advised that the area was so densely settled that news and messages could be shouted from Taipa to Kauhanga, from one pa to the next.

3.3 EUROPEAN ENCOUNTERS AND THE NGATI KAHU DECLINE

The northern Maori were keen to treat with the whalers and traders who arrived from the early 1790s. The provisioning of their boats brought trade and the introduction of new kinds of clothes, articles and food. Some new resources came by other means. Tuki Tuhia of Taipa for example was kidnapped and taken to Norfolk Island, because he was presumed to have knowledge of flax planting and preparation. He was restored to Taipa by Governor King, in 1793, with a range of exotic plants and animals.

Mangonui became a significant provisioning area, although never rivalling the Bay of Islands or Hokianga. Through the whalers, Maori were to export the produce of their labours and gain new materials and experiences. Unfortunately, the visitors brought diseases, to which Maori were unaccustomed, and even the common cold had catastrophic consequences for them. By the end of the eighteenth century, local populations are thought to have been reduced by well over a half (Johnson oral evidence 21.10.86).

The ravages of disease exacted their most terrible toll where Maori settlements were thickest, and few were as dense as those in the Oruru valley where whole pa were wiped out. A secondary consequence, as dreadful as the first, was that disparity in population losses altered the earlier balance of tribal power, and exposed Ngati Kahu to the pretensions of neighbouring tribes against whom they had once held their own.

The remnants of Ngati Kahu were caught between the powerful tribal coalitions of Te Rarawa on the west and Ngapuhi to the immediate south east. Both became major contenders for the Ngati Kahu lands. Taipa-Oruru lay midway between the rivals' home bases, and inland valley routes put Oruru within easy reach.

It assisted Ngati Kahu a little that Te Rarawa and Ngapuhi were both their blood relations. They were conquered but not driven from their lands. The main question was whether they should acknowledge Te Rarawa or Ngapuhi as holding an authority in the Bay, or whether they could maintain an independence of their own.

From at least the 1810s, members of both Te Rarawa and Ngapuhi occupied different parts of the Ngati Kahu lands. In the crucial Taipa-Oruru area, Ngati Kahu were joined by Te Rarawa towards the coast and by Ngapuhi further inland. The position was uncertain when the European settlers came, and as shall be seen, the control of the Taipa-Oruru area, the choicest part of the Ngati Kahu lands, was to be crucial in the subsequent contentions.

It was also ominous that the European settlers sought the same thing—more land. Their greatest weapon however was not the taiaha but the pen.

3.4 LAND TRANSACTIONS

It was mooted, by the Mangonui County Council, that the Taipa lands where the treatment ponds are proposed, may hold no special significance for the tribes because for over a century they have not been Maori owned. Copies of the relevant titles to the Taipa lands were produced to show that that was so.

That gave merely a fraction of the story. The submission was indicative of how much there is to learn and of why the circumstances that led to the early sales require examination. Though we have no wish to introduce the land claims at this stage a broad outline of the background is required because of the submission made. It is relevant as well to the claimants' contention that because so much of the Ngati Kahu lands have passed from their hands, not one more hectare of that now held should be taken away.

Our description that follows, though given in general terms and without full references, is subject to the caveat that it may need amending, for the research is far from complete and the land claims are yet unheard.

3.4.1. Pre-Treaty

Of the many leaders of the two main protagonists, Nopera Panakareao of Te Rarawa and Pororua of Ngapuhi stand out. For convenience we refer only to them although other rangatira were involved. Panakareao lived mainly at Kaitaia and Pororua at Whangaroa, but both came to occupy parts of the Ngati Kahu land with members of their tribes, from time to time.

When European settlers came, in search of land, Panakareao and Pororua developed rival land-sale policies to attract settlers, for both were eager to add Pakeha to their tribe to elevate their own status and economic prowess. It did not assist Ngati Kahu that Panakareao and Pororua both claimed authority over the Doubtless Bay lands, and that they sought to prove their over-right by granting Europeans access to them. In those

days, as Europeans were befriended by one or other side, Ngati Kahu in the middle had but a minor say.

The different land-sale policies were largely due to the establishment of a mission station at Kaitaia in the west and a trading port at Mangonui in the east. Panakareao sought an alliance with the missionaries, and was much influenced by them. Thousands of acres were transferred to them in a handful of deeds, but to the apparent intent that Maori and missionary families would develop them in association. It was a way of protecting the tribal land and of assuring the advance of the tribe. The policy suited the missionaries as well. They accepted much more land than they required or even sought, to prevent sales to the traders and others, whom they often described as the "riff-raff" of western civilisation. In the result, some of the deeds refer to a continued Maori use of cultivations and dwelling places on the lands sold.

Some sales were to other than missionaries however, though made on a similar basis. A sale of 10,000 acres to Southee at Awanui, for example, assumed that Maori would continue to farm large parts, learning British farming skills in the process.

On the eastern side however, Pororua sought protection for the traders. Many were stationed at Mangonui where boats were provisioned, and flax and kauri timber spars were traded. Pororua's sales were rather like allocating the traders a place to live under his protection, and where they in return would give support. The traders arranged the sale of flax and timber from the land that Pororua claimed.

In both cases, the chiefs sought alliances in the land deals and a new economic base through farming or trade. In customary Maori style, a personal relationship was meant to enure.

3.4.2 Treaty Changes

The Treaty of Waitangi introduced a change, for thereafter sales could be only to the Crown. To Panakareao, this presented the chance for an alliance with a yet more powerful body. When the Treaty was taken from Waitangi to the Far North, Panakareao persuaded his fellow chiefs that the Treaty should be signed. His statement on the occasion is well known. "Ko te atakau o te whenua i riro i a te Kuini", he said, "ko te tinana o te whenua i waiho ki nga Maori" (The shadow of the land passes to the Queen, but the substance remains with us) (per Shortland to Hobson 6 May 1840, CO 209/7). That statement may indicate not only his view of the Treaty, but his perspective of the early sales where a continuing Maori presence was intended to be maintained.

Shortly after the enthusiastic signing of the Treaty at Kaitaia, Hobson himself travelled North to meet with the friendly Te Rarawa. The Lieutenant Governor was greatly impressed with the tribe's commitment to the new relationship with the Crown. He learnt however of the rivalry over the Oruru and Mangonui lands. The hostility was such that the settlers feared for their own safety and promptly told Hobson so.

The Lt. Governor appears to have struck upon a solution of his own though he knew very little of the Maori mind. Reports of the event are obscure and contradictory and more research is required, but it appears that on the spur of the moment he agreed to pay a nominal sum in exchange for Te Rarawa's claims to the whole of the disputed land.

Far from easing the situation, the "purchase" inflamed it. To Pororua the transaction was a treaty between Te Rarawa and the Crown in which

the latter recognised a Te Rarawa right over Ngapuhi land. He protested vehemently to Hobson and insisted on negotiating a matching deed over the same piece of land for a similar price. It was no longer a matter of land or money for a question of honour was involved.

Pororua's settlers were equally incensed. Their rights to the land depended upon Pororua's claim. Nor was Panakareao appeased. He appears to have demanded further payment from the Crown and possibly from the settlers Pororua had placed on the Mangonui lands. Eventually he repudiated the deed completely claiming that the L100 he had been paid was no more than a koha for Hobson's entertainment and accommodation at Kaitaia.

Tension was heightened, fighting pa were constructed and each side called in reinforcements. When a Land Commissioner arrived in Mangonui in January 1843, the district was on the brink of war.

3.4.3 Land Claims Commissions

Land sales were at the heart of the Treaty debate. Maori who had welcomed Europeans and had entered into a wide range of agreements with them over access to the land became increasingly disturbed at the consequences as the trickle of migrants became a flood. While some Europeans anticipated the arrival of the Crown and hoped for quick profits from land dealings, others were as concerned as their Maori hosts about the consequences of New Zealand becoming a British colony. Any failure to uphold the claims of their benefactors undermined their own purchases. All kinds of rumours flourished in the communities—Maori and non-Maori alike—during the months of uncertainty prior to Hobson's arrival. It was all very worrying for the Ngati Kahu occupants. They had sold nothing but for that very reason no settler was minded to back them.

The Crown's stated intention to recognise only its own land grants was widely known and debated. Prior to the Treaty discussion on 5 February 1840 Hobson met with various settlers and promised that those who had made equitable purchases in good faith would receive Crown grants. To Maori it was promised that land not justly purchased would be returned, a promise that was repeated during the signings at Waitangi.

In 1841 a Land Claims Commission was established to examine these pre-treaty transactions. The Commission was to reject fraudulent claims and to recommend the award of Crown grants to European claimants who could prove a genuine purchase. So began a long and tortuous process. It took twenty years before most claims were resolved. Others took longer, an American claim remaining in litigation until 1925. Maori complaints over the way the Crown dealt with the issue have continued to the present, and were the subject of a Royal Commission appointed in 1946.

The investigation of pre-treaty transactions is the subject of several claims to this Tribunal that will need to be researched in greater depth, but the broad principles are clear. The Crown insisted on separating its investigation of the nature of the sales from the process of determining how much land should be awarded to those settlers who had purchased in good faith.

The first Land Claims Commission, (there were several), examined the claimants' deeds, the testimony of Maori witnesses and usually one or two of the witnesses to the deed. Few Maori were examined, but the hearings were held in open session, usually with local Maori assembled.

On proof of a sale the Maori title was deemed to be extinguished and held by the Crown without encumbrance. It did not follow that all of the land passed to the purchaser. The buyer received a Crown Grant for an area of land commensurate with the sum paid, up to a maximum of four square miles (2,560 acres) unless the Governor in Council awarded a larger area. The result was a large surplus for the Crown which became known, in the course of time, as the 'surplus lands'.

There were several reasons for the Crown's purchase policy. It was known that some deeds conveyed huge territories, (although most of these would be eventually disallowed) particularly in the South Island, and the Colonial Office was anxious that the millions of acres involved should not pass to a few individuals. Following the land regulations of New South Wales, the maximum any individual could hold was set at four square miles. Up to that maximum grants were based not on the land bought but the amount paid according to the date of payment thus:

1815–1824	6d	per acre
1825–1829	6d to 8d	" "
1830–1834	8d to 1s	" "
1835–1836	1s to 2s	" "
1837–1838	2s to 4s	" "
1839–1840	4s to 8s	" "

Through changing ordinances and the rather arbitrary grants of the Governors the formula was far from strictly adhered to. In the 1850s, for instance, additional land was awarded for survey costs. The Land Commissioners and Governors tended to make as liberal awards as the regulations would allow, believing that the awards were from Crown Land, the Maori ownership having been extinguished.

Maori, and many non-Maori too, saw the Crown's free acquisition of large areas as a major injustice. Many Maori it appears would have been more or less content had the claimants obtained title to the whole area in the deed, providing that their understanding of the arrangement prevailed. Land transactions were seen in the Maori view as the first step in a long-term personal relationship between the tribe and the purchaser, where both would have continuing obligations to each other through subsequent generations. But for the Crown to gain an interest in the land, without any agreement with the tribe, was another matter. Maori tribes asked where was the Crown's Deed and to whom was the money paid?

In awarding land to claimants on the basis of a sliding scale of acres to the pound, the Crown was seen as fixing the fair price for land sold prior to the Treaty. The Crown persistently argued that the scale was no more than an arbitrary method of determining how much land it would award from its own estate. Maori responded, often with non-Maori support, that the Crown had fixed a limit on what could fairly have been purchased by Europeans. Any land above this limit was obviously unfairly acquired in their view and should revert to Maori ownership.

Protest at the Crown's retention of the surplus land has continued from the 1850s, the concern being heightened as more and more land passed from Maori ownership through later sales and the operations of the Native Land Court. In 1946 a Royal Commission was established to look at the issue. Although the Commissioners were divided, the majority decision was that the Crown's actions in taking the surplus land were unjust and that compensation should be paid. Much of the surplus land was in North Auckland, and eventually L40,000 was paid in compensation, leading to

the establishment of the Tai Tokerau Maori Trust Board. Ngati Kahu disatisfaction with the Commission's decision cannot be gone into here. It is at the heart of the land aspects of this claim.

The prominence given the surplus land grievance actually obscured more serious difficulties. The Land Claims Commissioners generally treated the land transactions as simple sales. The pre-treaty agreements however were personal, incorporating a purchaser into the tribe, or securing a compact with a church, with mutual and ongoing obligations involved. Many had been renegotiated to deal with changing circumstances. In some deeds Maori rights to continue using the land were protected, in others where no such rights were specified they continued in practice. Once land had been through the Commission however and Crown Grants made, quite usually for smaller areas especially in the case of the missionaries, the purchasers were freed of all such tribal obligations unless a reserve was clearly specified in the deeds. In the few cases where this was so, it was usual to reserve part of the land to the Maori sellers, an expedient which did not necessarily reflect the spirit of the original understanding. With a Crown grant based on survey, Europeans could mortgage, subdivide or alienate land as they pleased, without any reference to the needs or wishes of the tribe from which it was purchased.

In all however, there was no full inquiry by the Land Claims Commissioners as to who really had the right to sell, whether absolute sales were intended at all, or whether lands unjustly held should be returned.

3.4.4. Land Claims Commission in Mangonui

Commissioner Edward Godfrey found a tense situation at Mangonui when he attempted to examine the pre-Treaty purchases in 1843. He was greeted by around 250 Te Rarawa who were determined to resist and dispute all land claims not approved by Panakareao. Two days later Pororua arrived with a similiar contingent, equally determined to support their European claimants and to resist some of the Te Rarawa sales.

In the heated atmosphere Godfrey negotiated with both sides but each refused to acknowledge the mana of the other to the lands in dispute. The inquiry was unable to proceed and while Godfrey appears to have believed that in most cases the Europeans had made bona fide purchases, it was obvious that he would be unable to secure them on the lands they claimed.

The doubtful exceptions were Dr Samuel Ford's purchase of the Oruru valley, and Richard Taylor's Muriwhenua purchase. Both men were missionaries. Although the Taylor purchase does not concern us in this instance, the Oruru purchase became the focus for the continually fermenting inter-tribal dispute.

The Ford purchase occurred late in 1839 and partially involved lands occupied by a section of Ngati Kahu who were at the time associated with Pororua rather than with Panakareao. Panakareao had effectively sold land over which he had no control. When Godfrey failed to resolve the issue, the opposing forces gathered at Oruru and prepared for war. After a number of indecisive skirmishes and the deaths of a significant number of contenders, each side withdrew. (The last battle was fought on the Taipa foreshore where 46 died.) The land was temporarily abandoned, but the whole issue was no nearer resolution.

A year later many of the European claimants requested and were awarded an amount of scrip equal to the award they would have received

had their claims been successful. Scrip was a credit in land which could be used to purchase Crown land elsewhere in the country. In return, the claimants turned their deeds over to the Crown and left the Government to recover what it could of the lands they had purchased. Samuel Ford was among those to swap his deeds for scrip. Some of the Europeans who remained and who eventually received Crown grants managed to gain access to their land by gaining the support of both tribal groups.

Little happened in the next decade to change the situation. Both Maori parties continued to claim the mana of the valley, and the Crown maintained that through the Ford purchase it too had a major interest in the land. In 1854 Panakareao was persuaded by W B White, the Government's agent and magistrate in Mangonui since 1848, to sign a final agreement to part with his claims to the Oruru lands in return for L100 and a reserve of 100 acres. White had been encouraged to enter negotiations by several Euopeans who wished to settle at Oruru. With the obstacle of Panakareao removed, the Crown believed it had extinguished all Maori claims to the Oruru and set about selling off parcels of the land for between L3–4,000.

Maori resistance to the presence of new settlers and their persistent cultivation of the land made it clear that their title was far from extinguished in their view. The Crown became embroiled in yet a further attempt to resolve the Oruru issue, but in seeking a final settlement, it sought to open the door to large scale land purchasing from all the surrounding tribes. With Panakareao's influence waning, due to his great age, it was finally possible for Ngati Kahu to make an independent appearance but at a time when the land was all but gone.

3.4.5 Land Purchase Commissioners

In 1855 the Government stepped up its land purchasing program in Northland. Henry Tacy Kemp was dispatched to the Bay of Islands with instructions to identify lands not already owned by the Crown, to purchase lands offered by Maori and to allocate reserves.

At this point we recall an important principle of the Treaty, as found in the *Orakei Report* (1987), that in the acquisition of land the Crown would ensure to each tribe a sufficient land endowment for their future needs. The principle was spelt out in Lord Normanby's instructions to Lt. Governor Hobson in 1839, and was implicit in the Crown's pre-emptive purchase right that the Treaty secured. The intention to maintain that undertaking was often made clear, but in practice it was not always applied.

Accordingly, when Land Purchase Commissioners were sent to acquire more of the Ngati Kahu lands the Chief Land Purchase Commissioner, Donald McLean, instructed them to do so "subject to [creating] ample reservations for [the Maoris] own present and future wants." That was not to be. The failure to provide those reserves is central to the tribe's subsequent problems.

By then a different situation prevailed in Doubtless Bay. The Maori population had dramatically declined, hopes for economic growth had been thwarted, the early land sale claim areas were still held by the Crown, and tension and confusion remained over who really had the right to sell. In any event, the Crown agents were soon involved in buying several blocks each involving thousands of acres, but still the doubts remained as to who really had the selling rights.

In fact less than four months after Panakareao had received his payment for the land the whole Oruru issue was re-opened. White's assurances that the valley could be peacefully settled were proved groundless. McLean was forced to ask for a full report on the ongoing saga. He was told that as far as Panakareao was concerned the land had gone to the Crown, but that there were still outstanding claims by Pororua and the Mauriuri of Hokianga, Puhipi of Te Rarawa and Tipene, a young chief respresenting Ngati Kahu, identified as 'the original possessors of the land in question' (AJHR, 1861,C-1,1).

Tipene had managed to detach himself from Panakareao and with the assistance of Tamati Waka Nene took Ngati Kahu's claim to the Governor in Auckland. The matter dragged on for some time, until in late September 1856 it was finally accepted that Pororua would be paid L200 and Tipene L150 as a final payment for the Oruru. It was suggested that Tipene be responsible for passing on some of his payment to some other claimants, in particular Rangatira Moetara of Hokianga. Although Rangatira Moetara appears never to have received his L50 and minor tension continued for some time, it does appear that for the time being the conflict of the Oruru had been put to rest.

Settling the Oruru dispute opened the way for the Crown to purchase tens of thousands of acres in the Far North within a few short years.

One of the first purchases was of the Otengi Block of 2,722 acres to the west of the Oruru and including the whole of Taipa. A leverage to effect the sale was that the Crown claimed an interest from the old land claims and the settlement with Panakareao. Indeed, various parts were already occupied by settlers. The Taipa lands, for example, were in actual possession of a settler, W J Clarke, at the time of the Otengi sale. Certain of Te Rarawa maintained they had not been paid out. Others of Ngati Kahu claimed a right to be in while some wanted land for Ngati Kahu to be retained. In the end the land was sold with 79 acres to be reserved for Tipene of Ngati Kahu. Whether it was meant for him personally is not clear. Based on the Crown's contemporary thinking on the size of reserves that Maori were thought to require, it is likely the 79 acres were intended to support a number of families, though the same area would not have done for one settler. The reserve, called Waimutu, was surveyed and located at the very rear of Taipa, and included the site where the sewerage treatment works are now proposed.

While the Government saw no reason why Waimutu reserve or that in the Oruru occupied by Panakareao's family should be purchased by the Crown, correspondence shows quite clearly the anxiety of the local agents to have all Maori entirely removed from the whole Taipa-Oruru area. In the end both areas were acquired though they were meant to be reserves. Waimutu was purchased for L39 10s in 1864 and with it went the last Ngati Kahu foothold at Taipa.

3.4.6 Native Land Court

By the 1860s, which marks an important historical divide, there was very little of the Ngati Kahu lands left in Maori ownership. There were aggregations of Maori lands on the northern Karikari penisula, along the central Parapara river in the valley adjoining Oruru and at Peria, and in the eastern sector around and beyond Mangonui. On the eastern headland some small areas had been reserved, at Waimahana, Taemaro and Waiaua.

In all however, the vast bulk of the land, probably about 85%, had changed hands and very little had been reserved for the present and future economic needs of the hapu involved. Such reserves as had been made were not awarded to the hapu, but mainly to a few leading individuals to appease their claims and counter-claims. Nor were they properly reserved, for the whole or parts of some were subsequently acquired.

Counsel for the claimants understood that on the allocation of lands for settlement, some of Ngati Kahu had sought to buy back in. Sales were restricted to individuals however, and Ngati Kahu sought to buy as a group. Of five applicants for land at Oruru for example, she claimed, three represented Maori, but only the two non-Maori were successful.

The land retained had then to pass through the Native Land Court, established in 1865, a Court that was expected to individualise the tribal lands that remained. At least the Court had regard to actual occupations so that Ngati Kahu, at last, were included, but in dividing the smallish lands between the largish numbers of owners, and in subsequently arranging successions to their heirs, the land was awkwardly divided and the allotments became multiply owned. This negated rather than assisted the promotion of viable farming schemes, and if it facilitated anything at all, it was mainly the sale of more land.

The failure to establish adequate reserves or to uphold agreements or arrangements effected in the pre-treaty period, was not the focal point of subsequent complaints. The Maori could not get past the fact that the surplus lands, amounting to many thousands of acres in the Far North, had been retained by the Crown. As has been seen, a Commission was established to investigate that matter in 1946, but more significantly, prior to the Commission's inquiry, the many subtribal groups of Doubtless Bay had met, and the common tribal name of Ngati Kahu was revived.

3.5 REBIRTH OF NGATI KAHU

Meanwhile, European settlement had increased. In Taipa it began in 1831, when Captain Dacre brought the schooner Darling to the river mouth for the loading of kauri spars. Stephen Wrathall, one of the crew, was the first white settler at Taipa but was moved off the area by the Ngapuhi contenders. W J Clarke was the first settler to hold to his site, building a two-storey house on the Taipa river-side in 1842. After the Otengi purchase, in 1858, he was to obtain a title for the land, and was to become the first European owner of the Taipa flats.

Shortly afterwards, the Maori were to be removed from Taipa-Oruru entirely, as has been seen.

Clarke sold to R J Adamson in 1867. Strangely, though the Ngati Kahu presence was no longer there, we can see with hindsight that this propitious bargain was eventually to contribute to the Ngati Kahu rebirth; for the Adamsons have lived with Taipa, and Taipa has been with them ever since. Now, the grandson of R J Adamson has made arrangements to reunite Ngati Kahu with the land.

In addition to farming, R J Adamson was to establish a trading complex, which included gum buying at Taipa with branches at Waimahia, Kaimaumau and Oruru. Many Maori families were involved in gum extraction, working on communal lines, and a close association with Maori began that was to last over 100 years. It is said that Mr Adamson would take a large canoe laden with six tons of merchandise up the Taipa-Oruru

river to Kauhanga pa in the Peria valley where a large Maori population still remained.

His son Alfred built the current Adamson house in about 1900. Needless to say, it is filled with the evidence of a long traditional past. The first school at Taipa was a cottage in the house grounds, and the home has hosted nearly all visiting priests who came to minister to the Ngati Kahu tribe.

The land then passed to the current owner, Gerard Adamson, who has now farmed the property for over 60 years. His wife, Freda, was a nurse amongst the Maori in the 1930s, the most economically depressed years for Ngati Kahu. We were told that the Adamsons have always been a source of inspiration for the Ngati Kahu people. The tribe was to present Gerard and Freda Adamson with two important carved sticks. Called Parata and Kahutianui respectively, they represent the progenitors of the tribe.

Gum digging, on which Ngati Kahu had depended, was to cease to be economically important in the first two decades of this century. Their small farms were not sufficient for their support, and fishing and farm labouring was needed to supplement their low returns. From the 1940s, many of Ngati Kahu had to leave the district for work, and the urban drift began. Today, at least three generations of Ngati Kahu have lived and worked in distant places, Whangarei and Auckland in particular, but the district of Doubtless Bay is still their homeland.

The loss of land at least had the benefit of ending the tribal land wars, and the impositions of other tribes that had caused the identity of Ngati Kahu to be subsumed. Only then were Ngati Kahu freed to assert their own status but the process of revival, when so little remained, has been slow and painful indeed.

3.6 NEW FRONTIER

The lands still held by Ngati Kahu are certainly not large. They are roughly divided to the eastern, central and northern portions described. On the eastern headland of the Bay are the smallish but significant residues of the Waimahana, Taemaro and Waiaua reserves, while to the south of the Mangonui harbour are the Kohumaru—Kenana lands, some 950 ha in numerous blocks, with 190 ha in pasture and the balance in rough scrub.

At the centre, a short distance from Taipa, the Okokori block stands over Aurere beach. Three kilometres up the Parapara valley behind it are the Parapara and Te Ahua lands. Until recently they supported substantial Maori settlements, but through fragmentation and land sales, only some 600 ha remains. Most is in multiply owned fragmented titles under grazing arrangements. The important Oruru valley that adjoins has not been Maori owned since the 1850s, but in the fertile Peria valley behind it, 410 hectares remain.

At the Bay's northern extreme are the important Karikari lands, on a remote and scenic peninsula where Maori lands predominate. An isolated spot it may be, but it is the spiritual base for the local Ngati Kahu. It is there that the first Ngati Kahu pa was built, and it provides the main visible evidence of the peoples' continued stand.

That is all that remains of the Ngati Kahu lands, though the survival of the tribe may depend upon their continued retention. They are at risk

nonetheless, though they have always been susceptible to acquisition. But they are particularly at risk now, for Doubtless Bay is rapidly becoming a haven for many from the south who seek its warm climate and scenic attractions. From the 1950s, settlements have sprung up along the Bay's southern shores, and new subdivisions have encroached from Waiaua at one end to Karikari at the other. The lands of Ngati Kahu are once more at a new frontier.

The restoration of the tribe will be difficult, perhaps impossible, on the Maori lands that remain. With successions and title fragmentation even workable areas have been made unusable and families have shifted. The modern Maori land title system however, with its individual ownership, has existed now for nearly 125 years. It has nothing to do with the customary mode of tenure but can not now be replaced without substantial injustices. Accordingly the most significant development for Ngati Kahu, in terms of its holdings, has been the recent transfer of land to the tribe.

In June 1974, Mr and Mrs G P Adamson gifted part of their farm to the Ngati Kahu Trust Board for the Ngati Kahu people as a whole. It was 20 acres, which may seem small, but it was the most significant 20 acres of the ancestral demesne. It was the Otengi headland where the tribe was born. The gift was symbolic of the re-emergence of the tribe.

In late 1986, an agreement was entered into for the transfer to the tribe of the balance of the Adamson Taipa farm, at what was described to us as 'a very fair price'. A transfer has now been registered. As tribal land, and the only land in the district that will be tribally owned, it has the potential to contribute to the future economic wants and needs of the tribe. It reminded us of the instructions of Lord Normanby, in 1839, in seeking a Treaty with a pre-emptive right of purchase by the Crown, that the Crown should act judiciously to reserve sufficient land for the future needs of the tribes. It seemed fitting that one of the old settler stock, should have taken the initiative to help rectify the Crown's parsimony.

Mr Gabel of the Ngati Kahu Trust Board advised that any development undertaken would not alter the landscape or compromise the ancestral and historical links with the land. Little wonder then that many of Ngati Kahu resent the current proposals to construct works upon the land for the treatment and disposal of the sewage of the new subdivisions. It is after all, not only the land of their origin, but the only part of their ancestral land that will be owned on ancestral terms.

To that extent, the sewerage scheme is symptomatic of a wider Maori concern. With the new growth and developments going on all around, the question is whether there will be a sufficient space for the Maori on the Ngati Kahu lands, and whether the principle of the Treaty, that areas would be protected for them, can ever be maintained.

4. THE EAST COAST SEWERAGE SCHEME

4.1 DESIGN

4.1.1 The East Coast Sewerage Scheme of the Mangonui County Council proposes the piping of sewage from several small communities stretched along the southern shores of Doubtless Bay, to a treatment plant at Taipa, the most westerly of the current settlements. Following treatment, the waste water is disposed of by relatively novel means. It is not piped to the sea or discharged to a river, as is usual, but is pumped overland to percolate through an artificial marsh in the adjoining catchment, some 2.5 kilometres from the Taipa town. The eventual discharge passes through various streams and rivers that find their way to Doubtless Bay at Aurere beach some three kilometres from Taipa.

It became important to the scheme that the discharge should be as far as practicable from Taipa. Taipa is a valuable fishing and recreational area, with potential for major resorts. It is also of immense significance in Maori history, and the foreshore provides a customary supply of food.

4.1.2 The treatment plant at Taipa is to be comprised of an aerated lagoon, which retains the effluent for three days, and a maturation pond, designed for 20 days retention. A mechanical aeration system enables the lagoon to be smaller than usual, with less flat land needed as a result. That is important in this area where flat land is at a premium. The maturation pond however is large. It is possible to have much more mechanised systems that use much less land than this scheme requires.

4.1.3 Sewage treatment may be classified according to three standards: primary, which involves solids' separation, secondary, which requires a biological breakdown, and tertiary, which provides for the removal of nutrients. The Taipa oxidation ponds provide a degree of treatment approaching tertiary. More intensive biological systems are available but do not cope with the varying loadings peculiar to summer resort areas. The main disadvantage with oxidation ponds is the large land requirement, but they appear to be preferred wherever the required land is available. Further nutrient removal is proposed in the use of the marsh.

4.1.4 The Taipa treatment site is 1 kilometre back from the foreshore, and adjoins Ryders Creek, which flows to Doubtless Bay at Taipa via the Taipa river. We will refer to it as 'the Ryders Creek Site'. Its location at that point reflects an original intention to discharge the treated effluent by that water-course. That was unacceptable to Taipa residents and local Maori; and rightly so in our view.

The Taipa river is a significant marine breeding area. J E Morton, Professor of Zoology at Auckland University, stressed the importance of the Taipa river mangroves and swamp marshes in the ecological cycle, and explained the deleterious impact of deoxygenation from treated effluent (documents A10 and A11).

In addition, at the river mouth and extending along the adjoining beach are the major shellfishing beds on the southern shores of the bay. That near the river mouth is said to be unique in New Zealand as three types of pipi are found there, covering an area of over 5 acres. On adjoining rocky areas, huai (cockles), paua and kina are to be found, while the mudflats, some 200 yards upstream, are used for floundering and the harvesting of

karahu (periwinkles) (see evidence of Kawiti Tomars, documents A24, A26, A33, A41, A42). Traditionally the Taipa beach and river constitutes a major food gathering area that today is used by large numbers of the general public.

Oxidation ponds reduce but do not eliminate pathogenic bacteria and viruses from waste waters and their concentration in shell fish is such that a bacterially safe effluent would be required for a discharge at Ryders Creek, as was originally proposed.

4.1.5 Accordingly, a sea outfall at Doubtless Bay was subsequently mooted. As much dilution and bacterial die off would occur in the saline waters, and Taipa has a natural offshore current, the proposal may be technically feasible. There was much local opposition nonetheless. Doubtless Bay, though large, is relatively shallow, and being semi enclosed, is not directly open to ocean influences. At Taipa, the shore shelves very gradually and is still shallow 600 feet offshore. The Bay is more sensitive to environmental changes than an exposed coastline. There is also a growing opinion that bacteria and viruses survive in salt waters to join the food chains (see for example J Brisou:1976 and the submission of J Griggs, an environmental planner for the Ministry of Works and Development at Whangarei, document A12). In any event, a sea outfall was similarly abandoned.

4.1.6 The marsh disposal system was then settled upon. It was resolved to pump the effluent some 1500 metres from the maturation pond over the adjoining saddle to an artificial marsh of about four hectares to the south-west. Though the cost of pumping to the marsh is high, owing to the height of the lift and the length of the rising main, the marsh alternative is cheaper than a sea outfall.

The marsh would feed into the adjoining catchment. It will discharge to a maintained drain of some 1000 metres before the residue enters Te Moho creek, and thence the Parapara stream which flows to Doubtless Bay at Aurere via the Awapoko river. We refer to the location of the marsh as the 'Parapara marsh site,' as it lies in the Parapara valley. In the planning documents it is called the 'Te Moho site'.

The polishing of treated waste water by marsh systems is new, but, in the opinion of the Water Resources Manager of the Northland Catchment Commission and Regional Water Board, it is well merited (document A18). It has been tried now in four Northland places (three artificial and one natural) though each with low loadings. Basically the treated effluent is exposed to further biological action as it passes through marsh vegetation. In the opinion of Mr Griggs waste-water quality is improved dramatically through the process of filtration, settlement, soil absorption, microbial action and nutrient uptake by the wetland plant material (document A12).

The system is also said to have received support from Northland Maori communities (see the evidence of R W Cathcart, chief executive officer, Northland Catchment Commission, document A18). There is a Maori view that water should be kept pure and waste should be discharged to land. It was also said, though we were given no direct evidence, that the owner of the proposed marsh site and some Maori of the affected catchment area have also accepted it, on assurances that the marsh was an effluent disposal system and not part of the sewerage treatment process (per Cameron, document B6 page 3).

The matter is not as simple as that however. While it appears to be accepted that the Ryders Creek plant will produce effluent treated to a relatively high standard, the marsh does provide a further polishing and tertiary treatment of its own, with some destruction of pathogens and the lowering of nitrogenous and phosphatic nutrients through evaporation, transpiration and ground soakage (see document B31 pp 4–6, and B6 p6). The marsh is described as a "polishing agent" in a letter of the Council to the Regional Water Board of 1.8.85 (document B48).

Nor is the effluent completely land bound. A series of low dams are contemplated on a downhill slope of a gradient of 1 in 10 at the head but levelling out at the bottom. Planting is proposed around the dam perimeters, with more concentrated planting at the bottom and it appears that with good plant selection much of the treated effluent can be removed by transpiration, but a residual flow to the catchment is contemplated (document B31 p4). That flow will be relatively small, it is said. It has been estimated that it will be about 261m3 per day (document B48), after allowing for evaporation, transpiration and soakage. Infiltration or soakage, it has been thought, will absorb some 240m3 per day, or 0.25mm per hour (document B.48). We thought that was a generous assessment for the marsh is constructed upon the impermeable clay that predominates in this district (document B31 p6). In any event, there will be some residual flow and the Regional Water Board has placed water standard conditions on the discharge, to be tested at a sampling point at the end of the marsh before it encounters any waterway (document A38). The Council's description of the marsh as a disposal system was an exaggeration in our view.

Accordingly, although there was indirect evidence that some local Maori had accepted the marsh system, it is clear from the claims to us that others had not. Robert Gabel, for example, who is a member of the Ngati Kahu Trust Board, contended there is a risk to food sources in the middle to lower reaches of the Parapara river at Aurere, and that the proposal was an affront to the hapu of the Parapara area (document A2). In granting a water right in 1986 however, the Regional Water Board considered that "the proposed system of sewage treatment is, with good management, capable of producing an effluent quality superior to the existing water quality of the Parapara stream".

Full land disposal is impracticable in any event. There is very little suitable land available. Most of the hill country is steep and the local heavy clays have very poor soakage properties. The treated effluent would merely run overland, we were informed, with very little takeup in the soils.

4.1.7 As has been said the scheme is to provide a comprehensive sewerage system for the many small communities that lie within the enveloping folds of the hilly coast line. Each is an attractive settlement, from Hihi in the East and thence westward through Mangonui, Coopers Beach, Otanenui, Chucks Cove, Cable Bay, Owhetu and Kuihi to Taipa. They are relatively small communities, averaging a few hundred persons each, lying within eight separate catchments. The number of permanent residents in the total area is about 1500.

The main population aggregation is at the eastern end, furtherest from the point of discharge. Coopers Beach, with the longest coastline and the largest population adjoins Mangonui, a very old town with the second highest population and the largest proportion of permanent residents. Taipa, at the other end, has a much smaller population, but provides the

only sizeable flats in the scheme area, some 120 hectares of sandy flat bounded to the east and south by the Taipa river. This provides Taipa with the greatest potential for future resort development. It also gives one of the few level sites in the area for oxidation ponds. Level sites in the rural areas behind Hihi and Coopers Beach would require much excavation work and would be elevated.

Though the communities are separate at present, the whole of this extensive coastline will soon constitute a continuous subdivision. It has been urged that for the purpose of providing a sanitary service for the area, that is how it should be seen.

The longitudinal development of relatively low density settlement calls for a lengthy pipeline for the population size, with the main trunk for Mangonui to Taipa extending 9.2 kilometres. It is longer with the addition of Hihi, which is likely to become a most popular holiday area. Although a conventional gravity reticulation is mainly proposed, the undulating topography has compelled the positioning of eight main pumping stations of increasing capacity along its length. There is also a harbour and many streams and rivers to cross, including the wide estuary of the Taipa river towards the pipeline's end. A break in the pipeline at that point, or some fault in the pumping station, would result in the most serious pollution of the Taipa river and beach.

4.1.8 The population is far from saturation point. Many sections have yet to be built upon and there is much room for further subdivisions in all areas. Growth rates in the permanent population have been quite high, partially constrained by the lack of a comprehensive sewerage scheme despite evidence of a lessening demand for places remote from large centres in recent years. Nonetheless, any planned sewerage scheme must allow for future growth, and in this district, it is likely to be high.

4.1.9 The main peculiarity of the area is the low proportion of permanent dwellers. There are a number of camping grounds and motels in the area; and in summer the population increases four times. Most of the holiday-makers are campers. As at 1986, the area's winter population was 1,150, but was estimated at 4,720 during the summer. (By the 1996 design year, the winter population is expected to be 1,560, and the summer population 5,476). The summer shock loading poses additional technical problems and places limits upon the effectiveness of alternative treatment schemes.

4.1.10 In all, the undulating topography, the ribbon-like settlement pattern and the variable population give rise to the most taxing difficulties for the County in arranging a sewerage scheme. A major problem as a result is the tax on ratepayers. An expensive scheme is required but the smallish population is hardly in a position to bear it.

It might seem strange, for example, that the sewage is carried to the west, away from its main source, and towards the inner recesses of a relatively sheltered bay, the more so since a tidal rip sweeps several kilometres into Doubtless Bay at the eastern end much closer to the entrance. With high current velocities and good water depths, a point at the eastern end has been described as undoubtedly the best outfall location; but the cost of an outfall at that place is simply too high.

Similarly, Taipa adjoins more westerly beaches at Otengi and Aurere. Although currently undeveloped, these areas have considerable potential and have also large rural expanses behind them. The lack of flat land in the current scheme area has inhibited the choice of options, and the chosen site will likely restrict residential development at Taipa in the long term. The farm areas inland from Otengi and Aurere have not been explored for this purpose, and nor have Otengi and Aurere been surveyed for their development potential; but again, the additional piping required would involve more costs than the current community can afford. In this case, it would also add more problems. The longer the sewerage line, the greater the risk of sewage arriving at the plant in septic condition, requiring additional plant and equipment to correct it.

The conundrum for the affected ratepayers, is that they are altogether too few and though many more ratepayers are required, more people add to pollution and threaten the existing Shangri-la. One thing is certain however—that which has been done cannot be undone, and the need for a sewerage scheme is urgent now, just as it has been for many years.

4.2 NEED

We need not consider whether a sewerage scheme is needed, for the Planning Tribunal has already determined that a sewerage system of a scale proposed by the Council is reasonably required (see document A35). It is not our function to assess those matters within the particular jurisdiction and expertise of other Tribunals. In addition, the Board of Health requisitioned the Council to provide a sanitary drainage service for the area in 1972, and that requirement has not been removed. In fact, in 1982 the Council sought to have the requisition lifted, but instead it was affirmed. The sewerage plans have been approved by the Board of Health.

It is helpful nonetheless to be reminded of the urgency of a sanitation scheme. Septic tanks do not work well in the eastern area from Mangonui to Cable Bay. Heavy clay soils prevail and the soakage is virtually non-existent. As a result of the housing development, septic tank effluents run across sections in built up areas into roadside stormwater channels or into streams, and discretely or directly discharge to the sea, contaminating recreational waters and shellfish beds. Of 240 septic tanks inspected in 1972, 153 had defective effluent disposal. Sixty dwellings had pan privies in an area without a night soil collection. At Mangonui, effluent is either piped direct to the sea or finds its way there via the nearest stream. Signs warn Hihi residents that local waters may be polluted. The community septic tanks at Coopers Bay could not cope with peak summer conditions and foreshore privies seeped directly to the sea. There have been restrictions from the late 1960s on further subdivisional development at Coopers Bay. Coopers Bay has been recognised as presenting the most serious problems (see documents A3, 23, 28, 30, 36).

The situation is different at Taipa. The residential area is on a sandy foreshore with good soakage, but shallow bores draw water from the same area. Testing by the Department of Health in 1972 showed the ground water to be contaminated by sewage, though it is used for drinking and other domestic purposes. Through seepage, sewage was also finding its way to the estuary and beaches (per P G Brown, Principal Health Protection Officer, Northland, document A3).

There have since been improvements in the area with privately arranged treatment schemes, but public health authorities are agreed that the overall

picture continues to give cause for grave concern. There are still many opportunities for serious public health nuisances to occur. The scheme however, will eliminate the discharge of septic tank effluent from approximately 465 properties and the discharges from several small treatment plants. Adding to difficulties, a reticulated water supply is not contemplated in the forseeable future.

In addition, these problems must be seen in the light of a long and costly saga that led to the current proposed scheme. We do not consider any decisions should be made without an awareness of that background.

4.3 BACKGROUND

4.3.1 From 1954 when the first subdivision was proposed at Coopers Beach, there was trouble over the Council's sanitation plans. Tests showed the ground was unsuitable for septic tanks, and the subdivision was approved on condition that contributions would be made to a sewerage trust fund as sections were sold. The subdivider repudiated the agreement but eventually it was held, on an appeal determined in 1959, that the amount should be paid if a drainage scheme was started within the next decade.

The following ten years were troublesome. A new sewerage scheme was immediately prepared for Coopers Beach and Cable Bay, but it was rejected on a poll of ratepayers in 1961. The same happened again on further schemes promoted in 1965 and 1967. On each occasion residents were deterred by the cost, but to gain the benefit of the appeal decision, sewer pipes were laid in Coopers Bay in 1969. They have yet to be connected to anything.

By then it appeared to the Council that a single scheme for the whole area from Mangonui to Taipa would be cheaper and better in the long term. A commissioned report of 1970 proposed two alternatives to the Council, a single district scheme with treatment and discharge at Taipa, and a dual scheme with separate treatment and disposal facilities at Taipa and Coopers beach (see document A22). The dual scheme required some duplication but was cheaper in the shorter term. The long term economics favoured the single scheme, the more so since the Coopers Beach treatment plant, which had to be limited having regard to the site, would eventually become redundant as the population outgrew it. The Council favoured the single scheme but ratepayers were attracted to neither. Arguments developed over who should bear the bill, the ratepayers as a whole, or those of the affected area. It appears the latter were most likely to bear at least the greater burden, but after several well attended meetings it was resolved, unanimously amongst the ratepayers present, that neither scheme should proceed, or at least not until there were more ratepayers to pay for it.

It was immediately apparent that a stalemate had been reached. A loan was necessary to finance the works, but the Local Authority Loans Act 1956 prevented the raising of a loan without ratepayers' consent. It was obvious that that was not forthcoming. It appeared to the Council however that the impasse could be resolved with the help of the Board of Health.

4.3.2 The Board of Health is constituted under the Health Act 1956. It could in certain circumstances require that a local authority provide certain sanitation works.

The important point for the purpose of this debate, is that where such works were required, and were requisitioned by the Board, the local authority could raise the necessary loans even without the ratepayer's prior approval. In 1972 the Medical Officer of Health, Whangarei, reported that the Council had asked the Board of Health to serve a requisition. It is apparent from a further report of the Principal Environmental Health Engineer that an approach had been made to the local member of Parliament to support that requisition and that he in turn had approached the Minister of Health who directed that a report be provided (see document A3).

From the full sanitary survey that followed, it was obvious that a sewerage scheme was required. In December 1972 the Board issued a requisition for sewerage works to be provided from Mangonui to Taipa and directed that proposals be submitted to it within three months.

An updated report was immediately arranged. The Council's consultants affirmed the Council's choice of a single scheme with the treatment and discharge at Taipa (see document A23).

In all subsequent investigations, inquiries for the best site for a treatment plant have been confined to the Mangonui-Taipa area. No doubt costs have dictated what might be done but in the longer term it is likely that coastal settlements will extend beyond the eastern and western extremities described. Indeed, Hihi has since been added.

4.3.3 It was proposed, when the scheme was first put to the Health Department, that the treatment plant and a single stage pond would be sited on low-lying marshy land next to Ryders Creek, the effluent to be discharged to the creek after treatment. It was no doubt economical to locate the pond at the point of discharge, but the proposed discharge drew immediate fire from local residents. The idea was abandoned even before the Board of Health had considered it. The Council opted for a sea outfall some 600 feet off the western end of Taipa beach, a distance from the river estuary.

That was only one occasion when the Council was forced to more costly improvements. In 1974, when authority was sought to arrange a loan, the Board of Health rejected the single stage treatment pond, and required a two stage primary and polishing pond. Of the original treatment and discharge proposals therefore, only the treatment site has remained the same.

4.3.4 The changes did little to appease the local people. Following the designation of the works in the Council's District Scheme there were 253 objections backed by 406 notices of support. Later 27 persons lodged appeals to the Town and Country Planning Appeal Board, objecting to both the outfall and the pond's location.

The Appeal Board dealt only with the latter. There was insufficient evidence to satisfy it that the site was either proper or the only possible site or that sufficient regard had been given to protecting the natural character of the river and coastal environments from unnecessary development (see document A25).

The Regional Water Board then dealt with the sea outfall, but faced with 80 objectors, and with insufficient evidence that currents would disperse the introduced water to avoid contamination of the foreshore, the right to discharge to the sea was also declined (see document A27).

4.3.5 Both authorities left openings for the Council to apply again after making more extensive studies. An alternative site inland from Coopers Beach was examined in 1975. Though feasible, it was more costly, and introduced a new risk for the site was astride a stream (document A29).

A major reappraisal of alternatives in 1977 (document A28),opted once more for the Taipa scheme. Separate discharge and treatment points were considered at Upper Mangonui, Cable Bay, at two separate places near Cooper's Beach, and at Ryder's Creek, Taipa. Separate reticulation schemes for various of the catchments were also reviewed, but the scheme most favoured remained the same. The original proposal, with its one place of discharge and one treatment plant was considered to give fewer environmental problems and was more economical in construction and maintenance. The only possible advantage of the separate schemes was that they might cope better with peak flow problems. What was not considered however was whether some other site at Taipa should be preferred.

There was then a greater measure of accord. After a series of meetings the two major action groups of local ratepayers reached an agreement with the Council that the Taipa scheme should proceed provided the outfall was shifted to the large headland at the far western end of Taipa beach. It was agreed to, though it added substantially to costs.

It was also accepted by the Regional Water Board, although there were still many objections when the water right was sought (document A34). The Board is concerned only with the maintenance of water qualities, and with new evidence of sea water movements, and the greater distance from the beach, it was satisfied that the recreational and fishing pursuits at Taipa would be largely unaffected.

4.3.6 That left unanswered a complaint from the Maori communities. Otengi point was the headland concerned, and as has been seen, it was the birthplace for the Ngati Kahu tribe. It is thus sacred, in that sense, and the disposal of even treated effluent in the vicinity of such areas is a profanity in their view. The Council protested that it had consulted with the New Zealand Historic Places Trust on the matter, which offered no insurmountable objection, but of course, it is the tribe that is the custodian of its own cultural values. Though the headland had been sold early last century, ancestral associations, like historical connections do not depend upon the vagaries of current ownership; but in this particular case, the land owner, appreciating the significance of the headland, had recently gifted it back to the tribe from whence it came.

That, and other objections were considered by the Planning Tribunal in 1980, in the Council's second attempt to provide for the works in its District Scheme. The Tribunal approved the siting of the oxidation ponds after hearing much debate, but declined to approve the outfall alignment which it deleted from the plan. Noting that as a matter of law the pipeline alignment was not required to be specified in the plan, it nonetheless cautioned against the proposed route, having regard to the evidence of the Maori interest in the headland (document A35).

4.3.7 Costs continued to loom large in ratepayer thinking. With the introduction of private enterprise alternatives, package treatment plants at a Coopers Beach motor camp and a motel, oxidation ponds at two subdivisions in Cable Bay, and a large septic tank and soakage field serving sections elsewhere, the Council was persuaded to review the scheme once more. Further reports were commissioned in 1981 and 1982 to consider the technical feasibility and cost benefits of alternative schemes (document A36). Although some immediate cost savings in reticulation would be made, the problems associated with effluent disposal were not resolved by the alternative solutions proposed, and the Taipa scheme remained the first choice. At the same time the Council had requested the Board of Health to withdraw the 1972 requisition. A second sanitary survey in 1983 found that conditions had not materially improved, and the requisition remained in force (document A3).

Meanwhile, the Government had introduced specific environmental protection and enhancement procedures that the Department of Health was obliged to apply. In response, the Council produced an environmental impact assessment on the trunk main, which had not been reviewed before (document A45).

The special roll for the special rating area was authenticated by the County in September 1984. Loan sanction was granted by the Local Authorities Loan Board in January 1985, a loan of $2,022,100 having been proposed. In September 1984 the Department of Health had approved a subsidy of $1,205,240.

4.3.8 The rest of the saga to date has been adverted to. The cost of a sea outfall is very high, compared with laying a pipeline on land, and when the prospective success of a marsh system at Paihia was made known, the Council sought and found a suitable site for an artificial marsh near Taipa, which it is able to acquire by agreement. An attractive feature of the constructed marsh technology is its relatively low cost in construction, operation and maintenance.

Approvals were then sought to discharge the treated effluent to an artificial marsh. In August 1985, the Department of Health approved of a variation in the subsidy (document A4 p5). Following the hearing of objections, in December 1985, the Regional Water Board determined to approve the broad proposal. There being no appeal, a water right was granted in March 1986, for the comparatively lengthy period of ten years. No planning approval was sought and we presume that none was required.

PART III—CONCLUSIONS

5. JURISDICTION AND CROWN RESPONSIBILITIES

5.1 JURISDICTION

The claim is not against the County Council, though the Council promoted the sewerage scheme. It is important that the tribe and the Council should understand that to be so, for some individual comments suggested that this case is a contest between them. In fact the claim concerns the arrangements the Crown has made, or has omitted to provide, for the protection of Maori treaty interests in the provision of public schemes. For the continuance of amicable relations it ought not to be forgotten that the sewerage scheme arose not from whim but need, and that the County has been responsive to Maori concerns in the past. It introduced papakainga housing to its district scheme when the concept was still new, adopted Maori as an official language and has engaged a Maori adviser for many years. We would not minimise the fund of goodwill that exists, for that is essential if better understandings are to be achieved.

Instead the claim is against the Crown. Our Act requires that that should be so, section 6 enabling claims only in respect of the acts or omissions of the Crown. Our task is to measure the performance of the Crown, in providing for orderly settlement, against the broad principles arising from the Treaty of Waitangi. The Treaty requires that in all its doings, the Crown's commitment to the original occupants must be considered.

It does not follow that local schemes cannot be reviewed. All that Councils do, they must do according to law, and it is the Crown, through Parliament, that provides that law. Indeed, Maori bargained for "the necessary laws and institutions" in the Treaty of Waitangi, but the question for us is whether the laws and institutions provided for, and the national criteria laid down for local administration, are necessary and proper having regard to the Treaty's terms.

If they are not then it ought to be borne in mind, that Parliament retains the ultimate right to govern and can change the law. If Maori have suffered a loss in the interim, or could be prejudically affected by some current scheme approved under laws that conflict with the principles of the Treaty, Parliament has the authority to remedy the loss or amend the scheme.

We must therefore consider the national rules made for local government control, but in doing so we are reminded that we too are constrained. It is essential to our brand of democracy, that the authority in any body, be it a Parliament, court, tribunal, state department, county council or a tribe, should be subject to a check so that a balance is maintained. Such checks and balances put paid to the situation that once plagued Ngati Kahu, when only might was right and the more populous tribes prevailed.

The constraint on this Tribunal is that claimants cannot range freely over all aspects of state laws and policies. They must show that they have been or may be prejudiced by the laws and policies made, and that the laws and policies are inconsistent with the principles of the Treaty. Without evidence of that prejudice, we can not recommend a change.

In this context it is important to review once more the claims that have been made, as described at 2.2.

1. The Council argued that the claimants should have made known certain of their concerns much earlier, and should have lodged proper objections.
2. The claimants contend the objection procedure is inimical to their ways, and
3. that there should have been prior consultation with the tribe at an early planning stage.
4. It was contended that the land needed for the works and the surrounding buffer zone will unduly restrict farming and future developments, and
5. that seepage or spillage from the treatment ponds may occur, and will threaten the aquifer that provides the town of Taipa with its main freshwater source, and the adjoining estuary that supports a variety of life forms and provides food.
6. Some contended that the residual flow from the marsh will affect the food resources of the Parapara stream and Aurere beach and is in any event culturally offensive, for the Maori spiritual ethic demands exceedingly high standards in the maintenance of clean water regimes.
7. The pond site itself was said to be on important ancestral land, but
8. a more serious contention was that the location of the treatment works at Taipa, is inconsistent with the ancestral significance of Taipa as a whole.
9. Finally it was contended that the proposed works conflict with the tribal need to maintain a proper land reserve.

For a combination of those reasons it is argued that the works should be sited elsewhere.

In this chapter we consider the arrangements the Crown has made in delegating its governance to a local level, and the extent to which it has enabled certain of the claims to be addressed. Whether adequate protection has been given for the claimants treaty interests is considered in the following chapter, where each of the issues is assessed.

5.2 PUBLIC HEALTH

The Department and Board of Health, which have important roles in the formulation, management and enforcement of public health policies, have an expansive view of the necessary ingredients for good health. They consider it important to maintain those cultural preferences that contribute to a people's sense of well being (see document B49). In that context, the Maori view that sewage effluent should not pass to waters used for drinking or to support food, no matter how highly the effluent is treated, is seen to be relevant to sanitation plans (per D R Cameron oral and document B48).

It does not follow that the Department or Board will intervene to protect the Maori position when local body sewerage schemes are proposed.

They have several opportunities to do so. It is fundamental to public health administration that health services should be provided at a district or area level with only some central control. Local authorities are bound to

provide all necessary sanitation works (section 23 Health Act 1956) and they may be required to do so in some cases (section 25). Where they are so required, the Board (or now, the Director-General) must approve of the works. Similarly, most of such schemes are financed from loans and government subsidies. The Department must approve of the works where a subsidy is given, and again, when a loan sanction is sought of the Local Authorities Loans Board. Additionally the Ministry of Works and Development advises on the capability of the works to meet required water right standards, whether it provides the most economic option and whether certain engineering criteria will be met (document B50).

The Health Department's Senior Environmental Health Engineer submitted that matters of treatment, disposal and plant location are for the local authority to determine (document A4 para 2). If that is so, of what must the Department or Board approve? It seems clear that an approval is required. In section 25, for example, where a sewerage scheme has been required plans and specifications must be submitted; for no other reason we presume than that they must be approved. It is then provided (in subsection 7) that the Board (or now, the Director-General) may approve of the proposals with or without modifications and conditions, which seems rather like saying that an approval is required, but the submitted plans may be approved with such conditions or amendments as may be needed.

In this case an approval was given and was subject to substituting the proposed single pond with a two pond system. That condition relates to treatment and possibly to disposal too, for the standard of treatment was relevant to the then intention to discharge near a public beach. It is not beyond anyone's wit to consider either, that the siting of a treatment plant could be relevant to public health concerns.

Nonetheless, although that the Board has in fact intervened to require an amendment to the sewerage scheme, we can understand that neither the Department nor the Board should wish to be overly prescriptive, or to look beyond preventing an unwise expenditure of public money on a clearly defective scheme. It seems reasonable that the Council paying the cost and bearing responsibility should select the means of achieving the ends, and that the main control on local authorities should not come from specific directions on every case, but from the enactment of general criteria stated in advance.

Accordingly, while the Department and Board of Health have important educative roles, and can influence local authorities to provide for Maori needs, under current policies they are not the ultimate guardians of Maori interests in the formulation of sewerage schemes.

5.3 WATER CONTROL

The same may be said of the Catchment Commissions that operate at a district level. They are concerned with the overall management of a district's water resources and, the maintenance of water standards and to that end, they conduct research, promote policies and monitor certain works.

Like the Department and Board of Health, the Northland Catchment Commission has recently experienced some attitudinal change. Conscious of the Maori preference for land based treatment systems, it has carefully monitored and cautiously promoted the wetland marsh system, and appears to have advised the Mangonui County Council which has now accepted such a scheme. The Northland Catchment Commission was also

the Regional Water Board. Both bodies have since merged into the Northland Regional Council.

The Commission has an invaluable role in bringing about improvements but it cannot stipulate that the Council adopt a particular type of works.

5.4 WATER RIGHTS

Instead, the Crown has provided general criteria for the control of a local authority's powers, and the first of those to be considered relates to water rights. The discharge of waste to natural water requires a water right from a Regional Water Board. Members of the public may object to any proposed discharge, and will be heard by the Board. There are rights of appeal to the Planning Tribunal.

The criteria are prescribed by the Water and Soil Conservation Act 1967. The basic approach however may be seen as inimical to Maori concerns. The right to discharge waste to natural water is assumed provided prescribed water standards appropriate to an area can be maintained, including, where required, standards necessary for the protection of fisheries. That is anathema to many Maori for whom waste can never be discharged to waters that support food.

There is a biological base for that view but for Maori it is manifest as a spiritual belief. Maori values are quite often brought into account by Water Boards and the Planning Tribunal, but for a time spiritual values transcending the physical environment were seen as not strictly recognised under the Act. More recently, that opinion has been revised by the High Court, which considered that spiritual matters could be brought into account, but since we understand that that case is subject to an appeal we explore the matter no further at this stage. We need only note that at all material times in the case under review, Maori spiritual concerns had no relevance to planning laws, but in future the situation may be different.

The prescribed methodology for the Board is to set the standard of water quality that a discharge must achieve. Technically the Board is not primarily concerned with the treatment to be used for so long as the desired target is capable of being reached. In practice the standard set may determine the form of treatment required, or whether the proposed discharge can be effected at all at the intended location. In setting standards the Board must have regard to safeguarding fisheries and wildlife habitats (section 20 (c)). Those are only some of the things that need to be considered however, and in the competition for various uses of water, other and conflicting interests must be brought into account.

5.5 PLANNING REQUIREMENTS

A similar situation applies in assessing the impact of the works upon the land. Nowadays, public works must be integrated with comprehensive land use plans. They must be provided for in district planning schemes with due regard for certain broad criteria laid out in the Town and Country Planning Act 1977. Once more the public has certain rights of objection and appeal involving again, the Planning Tribunal.

Two important criteria set out in section 3 are that regard must be had to (a) the conservation, protection and enhancement of the physical, cultural and social environment and (b) the relationship of the Maori people and their culture and traditions with their ancestral land. Once more, they are merely some of the factors that must be considered and weighed with

competing demands, but it was at least necessary to know in this case, that when balanced with other objectives, the works were in reasonable harmony with those broad principles.

The two items referred to go a long way to satisfying Maori concerns, although in some cases the treaty guarantees in respect of lands and fisheries would appear to require not a balancing of interests but a priority for the Maori claim. In this case however, there is a another problem again. When the matter was before the Planning Tribunal in 1980, Ngati Kahu did not own the land, and the view prevailed that if the land was not Maori owned an objection based upon ancestral associations could not be sustained (see *Knuckey* v *Taranaki County Council* (1978) 6 NZTPA 609, *Emery* v *Waipa County Council* (1979) Planning Tribunal No. 1 Division appeal 549/78 and *Mirrielees* v *Cook County Council* (1979) Planning Tribunal No. 2 Division, appeal 834/78. Later cases holding to the same opinion include *Auckland District Maori Council* v *Manukau City Council* (1982) Planning Tribunal No. 1 Division appeal 99/82 and *NZ Synthetic Fuels Application* (1982) 8 NZTPA 138).

That may have inhibited an objection based on the location of the treatment works, but if the claimants were prejudiced at the time, they need not be prejudiced again, for since then, legal opinions have again changed.

In recent years, Maori interests have been incorporated into planning laws through a number of decisions of the Planning Tribunal and High Court. We need not review the cases here. It is sufficient to say that the previous decisions on the meaning of ancestral land were specifically overturned by the High Court in a judgment given in March 1987, *Royal Forest and Bird Protection Society Inc* v *W A Habgood Ltd*, High Court, Wellington, M655/86, 31 March 1987. It is now clear that it is the relationship that Maori have with any particular land, and the manner in which any development may affect it, that is important, not the historical accidents that have given rise to the current legal tenure.

That resolves a problem for future cases, but not here, where due to the then state of the law, the question was by-passed. For that reason, and because there are doubts that the matter can be caught up with under the Public Works procedures that follow, we will examine the ancestral significance in this case, though in the context of the Treaty not the planning laws. But for that lacuna we would not have intervened however, for as we have said, it is not for this Tribunal to settle matters entrusted to the consideration of another.

5.6. COMPULSORY ACQUISITION

Although since the inclusion of public works in district schemes, one might expect the designation of a work to be conclusive of the right to acquire the necessary land, in fact the acquisition of the land requires an additional procedure. Following the notice of an intention to take, an objection may be made, and under the Public Works Act 1981, the Planning Tribunal that hears it is to consider yet further criteria.

It is a quite separate action, it seems (see *Davis* v *Wanganui City Council* (1985–1986) 11 NZTPA 240, at 241–2). Amongst other things the Planning Tribunal must ascertain the local authority's objectives, enquire into the adequacy of the consideration given to alternative sites, routes or other methods of achieving the objectives, and determine whether it would be

fair, sound and reasonably necessary for the land to be taken to achieve the Council's ends (section 24 (7)).

Whether the national criteria set out in the Town and Country Planning Act 1977 can also be incorporated into the Public Works laws is by no means clear. Certain passages in *Huakina Development Trust* v *Waikato Valley Authority*, High Court, Wellington, M430/86, 2 June 1987 suggest that may be so.

There are also considered views that the Planning Tribunal is not directed to locate the best site or the optimum method, for those are policy matters for the local authority to determine. The main concern, it seems, on one interpretation of the Act, is to ensure that the site has not been fixed or the works proposed in some arbitrary way that does not give justice to the landowner affected.

Much also depends on how the objectives are framed, for the exercise it seems, is not to question the objectives but the inquiries made into the alternatives for achieving them.

In this case we must exercise some care, for any objections to the compulsory acquisition will later be heard by the Planning Tribunal. Indeed the Waitangi Tribunal does not usually inquire until all other hearings have been concluded lest we prejudice the proceedings of those bodies, that unlike us, make final determinations. We have taken steps in this case because of the urgency that has arisen and the costs attendant on delays, and because we are primarily concerned with the framing of the ground-rules, not their application.

Therefore at this stage we should say no more than that there are doubts that under the Public Works Act the ancestral significance of land and the need to maintain adequate tribal reserves, can be brought into the arena to compel a better search for options than might normally be required. The former issue, it could be said, belongs more to the Town Planning hearings following the Works designation. The second is not provided for at all unless it is an aspect of the ancestral land provision. The question for us is not what the law might be but whether, for those reasons, the land should be taken having regard to the principles of the Treaty.

5.7 LOCAL AND TRIBAL GOVERNMENT

It has been seen that the Crown has provided a number of opportunities for members of the public to object. That of course includes Maori but some contention was made that, in terms of the Treaty, the tribes should have a greater say, and not merely as objectors.

Counsel for the claimants referred to the evidence of John Bayley, a Canadian Attorney who appeared before the Tribunal and who is involved in Indian claims (document B10); and to a paper that he presented to the XIIth Congress of the International Academy of Comparative Law (Sydney 1986) describing how Canadian tribes held half of the seats on various resource advisory Councils. Reference was made also to the paper by Professor Douglas Sanders of the law faculty of the University of British Columbia, given to the same conference (document B22), which outlined political developments in Canada for the recognition of certain tribal rights of self government within a proposed Canadian constitution.

Counsel contended that in this country all projects affecting natural resources or Maori interests should be taken to the tribes, as a matter of

right, and that their Councils and Boards should be involved in discussions with local authorities at an early planning stage.

We are not sure that all such matters should be taken to the tribes as a matter of course, but we can see many advantages in improving upon the opportunities for the tribes and local authorities to consult. It also reflects the nature of the relationship inherent in the Treaty. The main problem, as we see it, is that the legal status of tribes is ill-defined. The lack of a recognised structure makes it as difficult for project promoters to know where to go as it does for the tribes to formulate an authoritative tribal position.

As matters stand, the Crown has made some arrangements for District Maori Councils to be involved with planning schemes. The Councils however, cannot always speak for the local tribe in all places. It appears to us that a great deal needs to be done to give formal recognition to properly structured tribal bodies, to define their roles, to provide for consultation between local and tribal authorities in proper cases, and to furnish the resources for tribal councils to be adequately informed and effectively involved.

6. PARTICULAR CLAIMS

This chapter makes findings in terms of our jurisdiction on the issues that were raised, as summarised at 2.2.

6.1 ESTOPPEL

The County Council contended the inquiry should not proceed for at no stage had the ancestral significance of the pond site been raised. Each step taken in the statutory planning process was reviewed along with the opportunities for the claimants to object, and copies of some previous objections were filed. The Council was prejudiced as a result, it was claimed, for having obtained certain statutory approvals, it had proceeded with the works (documents A20 and B32).

Counsel for the claimants replied that, because of the then state of the law, the ancestral significance of the lands could not have been raised at any stage in the objection procedures. It was not the Council but the claimants who were prejudiced as a result, she argued, and not only by the inadequacy of those procedures but also by the failure of the Council to consult at an early stage.

The Council reviewed each step in the planning process and we will do the same. The Ryders Creek site, with a discharge to the creek itself, was first publicly disclosed in 1973 when particulars of the sewerage scheme were sent to ratepayers and the scheme was notified in the District Plan. There were 253 objections and in 1974 there was an appeal to the Town and Country Planning Appeal Board. Mr G P Adamson was represented in that appeal.

There were no Maori appellants but Mr Adamson explained why (document B46). He pointed out that his family has had a long relationship with the Ngati Kahu tribe and with Kawiti Tomars in particular. When the sewerage scheme was first notified he and the Maori people discussed the matter. It was decided that Ngati Kahu would contest the discharge of the effluent and Mr Adamson would oppose the designation of the works on his farm. It was their opinion, which was true at the time, that the tribe had no standing to debate the use of lands that they did not own. Accordingly, on the Town Planning question, Mr Adamson appealed and Kawiti gave evidence in support.

Kawiti Tomars was a generally accepted spokesperson for Ngati Kahu. His recent death is widely mourned. He was a member of the Ngati Kahu Trust Board, the Ngati Kahu Executive and the Tai Tokerau District Maori Council. The latter body represents tribal executives throughout Northland. Kawiti was the local representative.

Kawiti complained in evidence that the extensive shellfish beds of the Taipa estuary might become polluted (see document A24). He stated "if an oxidation pond were sited where the Mangonui County Council proposes, people would stop taking shellfish from the beds and in due course a notice would appear saying 'unsafe for human consumption'".

Despite the Council's complaint that Kawiti said no more, it is difficult to conceive of any other grounds on which he might have objected at that time. The requirement to consider the Maori relationship to land was not introduced into planning laws until 1977. The Act, as it was, provided for no more than the recording of historic sites on town plans and the pond site was not an historic site for the purposes of that provision.

In the event a planning consent was denied as the Council had not properly examined alternatives, but the battle was continued in the application to the Regional Water Board for a right to discharge the effluent, also heard in 1974. By then it had been decided to shift the discharge from Ryders Creek to a sea outfall off Taipa beach near to the Otengi headland.

Otengi however was special. As the resting place of the Mamaru canoe and the site where Ngati Kahu began, it might be considered an historic site, even by non-Maori. Kawiti objected to the water right on the grounds of both fishing and the importance of the Otengi headland (document A26). Once more a right was refused but again for other reasons. The Council had not adequately researched water movements, but leave was given to apply again.

When the Council did apply a second time, in 1979, the outfall pipe had been shifted to Otengi Point itself, with the pipes traversing the headland. It was the very spot to which Kawiti had been most opposed and demonstrated the weight the Council attached to the tribe's ancestral land claim. If Otengi was to be so regarded, even after notice had been given, what hope might there have been in raising the cultural significance of other areas?

The Council's explanation is indicative of the mindset of the time. It advised the plans had been approved by the Historic Places Trust Board. The Board had no objection so long as archaeological sites were not disturbed. The Trust Board has an important role in protecting sites of scientific value and can require the completion of archaeological surveys before they are destroyed, but Ngati Kahu was not conceived for the benefit of scientists.

In accordance with the Adamson pact, Kawiti objected once more. He was then supported by two others of Ngati Kahu and each referred to the importance of the Otengi headland (documents A31, A32, A33). They need not have bothered. Neither cultural relationships nor historic sites were relevant to water rights laws at the time. The Regional Water Board had merely to adjudicate on whether the discharge at the point proposed was compatible with the desired quality of the receiving water.

At the same time, in 1979, the Council again sought to include the works and the Otengi outfall in the district scheme. The Council stressed to us once more that no Ngati Kahu objections were received though specific notice had been sent to the Tai Tokerau District Maori Council.

That Council, as has been seen, spans Northland. No notice was sent to the Ngati Kahu Trust Board. The Board however, was aware of the position and representatives for Ngati Kahu were in fact involved in accordance with the pre-arranged plan. This being a land use matter Mr Adamson objected. On his eventual appeal to the Planning Tribunal Ngati Kahu appeared in support, Kawiti and R S Gregory raising again the importance of the headland (see document A35 pp 12–16 and document A41).

It is hardly surprising in our view that there was no reference to the significance of other areas of land at that time (1979). In 1977 the legislature had enacted that the relationship of Maori people with their ancestral land had properly to be brought into account, but the Planning Tribunal had already determined, in other cases, that the provision could relate to no more than Maori owned land (see 5.5).

Ngati Kahu were well aware of that interpretation of the law. Only months before, the relationship of Ngati Kahu to other lands had been

argued in another case and the Tribunal had held that, as the land was not Maori owned, the objection could not be sustained (see *Quilter* v *Mangonui County Council* Planning Tribunal No.1 Division, decision of 12 October 1978).

Otengi headland had by then passed to Ngati Kahu ownership, but technically even that was without the benefit of the new "ancestral land" provision as the Planning Tribunal in this particular case was to observe. The earlier Planning Tribunal decisions had held that the land had *always* to have been Maori owned, and those decisions were binding.

Nonetheless, Kawiti and R S Gregory objected to the outfall from off the headland, perhaps hoping that the tribe's acquisition of the headland in the interim, might have made some difference; and the Planning Tribunal was sympathetic. It observed that the headland had "deep significance" for Ngati Kahu, and should, if practicable, be avoided (document A35 p 11). However the Tribunal concluded that the location of the outfall was not its concern. By section 64 of the Town and Country Planning Act 1977 pipelines could be laid throughout the area without a planning consent, landowners having objection rights under the sixteenth schedule of the Local Government Act 1974. Planning consent was granted. That decision was affirmed by the High Court in 1981 following proceedings initiated by the Environmental Defence Society.

The five yearly review of the District Scheme provided a further opportunity to object but, as the Council again pointed out, there were no objections based on the ancestral significance of the treatment site. The law however, was still the same. It was still the opinion that the land had always to have been Maori owned. G P Adamson and Kawiti Tomars in fact objected, a matter the Council appears to have overlooked, but with Kawiti still relying on the threatened despoilation of fishing grounds and the significance of Otengi Point (document A42, as produced by the claimants). The matter had been before the Planning Tribunal before however, and following that, the High Court. When the objections were disallowed by the Council, as must have been expected, it was natural that there should have been no further appeal.

Then in 1986 there was a change to the Parapara marsh site and a new water right was required. Mr Adamson objected once more to the treatment site, referring to the cultural and historic values of Taipa as a whole, but the Regional Water Board had earlier determined that such matters were outside its purview.

In all it is clear that at all material times, the nub of the Ngati Kahu complaint, that Taipa was one of their more significant ancestral homes, was not a matter that the law could entertain, let alone comprehend, until the ancestral land provision in the Town and Country Planning Act was directly before the High Court in 1987, as explained at 5.5. Until then, the most that Ngati Kahu might have hoped for was that the headland would be spared, because of its historical importance and because, during the course of proceedings, the tribe had come to own it once more. Even that could not be protected, as it turned out, although the Planning Tribunal was clearly concerned.

Nor can we accept that the Council endeavoured to accommodate the Ngati Kahu concerns, at least not until the very last stage. The Council was limited by its ratepayers means, but it is difficult to escape the impression that the original scheme involved the most minimal proposal and that each improvement was solely the result of external pressure from other than Maori forces.

The original proposal was for a single stage treatment pond. It was the Department of Health that required a two stage system.

The initial intention was to discharge to Ryders Creek, despite the proximity of important fishing grounds. Change came only in the face of 253 objections from local residents, backed by some 406 notices given in support of those complaints.

The first sea outfall site was likewise opposed and planning approvals were denied. Neither the Planning Tribunal nor the Regional Water Board was satisfied with the inquiries made.

The second outfall site at Otengi was chosen in spite of Ngati Kahu's recorded objections to a discharge near the headland concerned. Change came when the Planning Tribunal expressed its disquiet.

Then the marsh system was proposed. The Council placed great weight on the fact that its officers then met with Ngati Kahu, at their marae, to explain it. That meeting we note, was not held until the claim to this Tribunal had been filed and notified.

The marae meeting raised another question. The County Chairman believed that the meeting was very sucessful and he referred to a letter from the Executive Officer of the Tai Tokerau District Maori Council expressing the appreciation of the Ngati Kahu people (document A37). The letter stated

> [Ngati Kahu] were particularly pleased to hear of the proposals for the on-land disposal of sewage effluent. . .. The whole purpose of taking a case to the Waitangi Tribunal was to protect their kaimoana and it will no longer be necessary to pursue that course if the marsh system of disposal is adopted.

Before us the Executive Officer was to say that he left the meeting early, and he was not aware of the objections that were subsequently made.

We think it entirely to be expected that a discussion followed the retirement of the Council's officers after the marsh idea had been explained. Such proposals need to lie with any group for quite some time before positions can be taken. We were advised that there was initial enthusiasm for the marsh system for Otengi would be spared, the disposal would be to land, and the Council was understood to have said that the marsh would produce no final sewerage leachate. Later however there were misgivings about the continued location of the treatment works, and divided opinions on whether the Parapara stream would be affected. In any event the claim to the Waitangi Tribunal was not withdrawn.

We are satisfied that the opposition to the siting of the treatment works because of the significance of the land, was not a matter that could have been settled and resolved elsewhere, or that any other good cause has been given why this inquiry should not proceed.

The position is rather the reverse. Ngati Kahu were prejudiced by the state of the law at the time, and by the general opinion that Maori relationships to the land need not be seriously regarded.

6.2 OBJECTIONS

Significantly the claimants also took issue with the objection procedures and argued that better arrangements should be made to give the tribes a greater say. This item was introduced to this report at 5.6.

It has been a matter of comment in this and other claims to this Tribunal, that Maori did not fully avail themselves of opportunities to object or to be heard, that complaints were made rather late in the day, or that some complained of one thing and others of another so that there were divided views. Maori society is no different from any other, of course, in having members with opposing opinions, but that need not prevent the settlement of a general tribal position. Of greater concern is the recurring criticism that objections were not made, were made too late, or that positions taken were changed.

We consider there are cultural constraints that need to be addressed. Maori have their own consultation and discussion processes which do not usually fit with the requirement to file an objection, within a given number of days.

There are at least three elements in traditional procedures, the first that proposals should lie for some time before any final debate. It is contrary to the traditional ethic that a position is taken on matters that have not been both casually and formally discussed within the various whanau.

It is also important that the 'take' or topic should be introduced at a marae or some other open forum. Maori leaders are regularly asked for their views, and quite often an opinion has been given, but in the final analysis a tribal leader must represent any common opinion of the group. It follows that a leader's initial position may need to change, though it be to the frustration of others.

The need for a meeting of the group, as a group, is thus endemic. It explains why many Maori are not content with a notice, or a right of individual objection, and consider that the proposer of the development should first consult with the group as a whole.

The third aspect, of course, is that the group may not come to a common opinion. It is time that brings consensus, and skilful diplomacy in drawn out debate, but accord is not always found, or the time required is not available. It is nonetheless important in tradition that the debate within the tribe should be informed.

We appreciate that modern circumstances do not usually permit of the time that Maori processes require and that it is not always practicable to follow the traditional route. Tribal structures have not been provided for in law, nowadays groups may be difficult to call together, and traditional processes are not always maintained by modern Maori either.

We nonetheless consider that Maori and non-Maori have widely different perceptions on how public issues should be resolved. To file an objection or take a stance before the subject has been discussed is anathema to the traditional way, for once a position is taken, honour demands that there be no retreat.

We do not pretend to know how the different cultural approaches might be reconciled but solutions may come with time. More Maori today use objection procedures despite cultural inhibitions, and there is increasing awareness amongst developers of the need to consult with Maori in the traditional manner. In this case it can be said, in our view, that the claimants may have suffered in a general way from the uncustomary objection procedure, but the gravamen of the complaint, as outlined by Counsel for the claimants, is not so much in the procedures themselves as the need for consultation, and much sooner than that which occurred at the meeting in 1985.

6.3 CONSULTATIONS

In accordance with the Treaty, there should be consultations with the district tribes in our view, when certain local projects are proposed. An individual right of objection is not an adequate response to the Treaty's terms. The problem however is in consulting with tribes when no one tribal body has lawful authority to speak for the tribe on local issues. It is essential in our view that steps be taken to provide the tribes with such legally cognisable authorities as they may prefer.

It ought not to be forgotten that the Treaty was with tribes, being signed at different places and times by persons on their behalf. The Treaty itself recognised the sovereignty which individual chiefs "respectively exercise or possess or may be supposed to exercise or to possess over their respective territories." The contemporary perception of 'chiefs' and 'tribes' may not have been quite right but the intention to respect customary institutions was sound. It was also clear in the Maori text and in the statements made at the time, that traditional mechanisms for tribal controls would continue to be respected and maintained.

The main difficulty is that they were not. On the contrary, as the *Orakei Report* makes clear, policies were introduced over a century ago to put an end to tribal powers. The New Zealand Wars were very largely fought on that one issue and much of our subsequent racial history revolves around official policies to stymie tribal authorities and Maori endeavours to maintain them. At least on the larger world scene there is now a gathering momentum of opinion that indigenous peoples have inherent rights of tribal self-management through institutions of their own choosing, a view made clear by Madame Erica-Irene Daes, Chairwoman of the United Nations Working Group on Indigenous Peoples, following her visit to New Zealand in January of this year.

Criticism that a tribe has failed to object is largely to blame the victim of the historic process for its current condition. The nub of the problem is in the omission of the Crown to recognise the tribal position and to provide the legal foundation and resources for tribes to contribute more fully to local affairs and to take all necessary steps for the protection of tribal interests.

Ngati Kahu were prejudiced in our view through the failure of the Crown to provide the necessary structure for the proper management of their affairs. With such a structure, and statutory recognition of a right to represent tribal opinion on local issues, discussions may well have happened early in the planning stage, and objections may have been more clearly defined.

The failure to recognise tribal status in district affairs is not the sole cause of the problem however or even the main cause in this case. In the early 1970s when the scheme was first proposed, Maori were in any event reluctant to talk openly of the significance of the landscape for them. Too often their opinions were greeted with mild amusement at best, or at worst, with barely concealed scorn. That we consider was a major reason why such matters were not always raised. In any case, as we have pointed out, such opinions were also irrelevant in the then planning laws.

Accordingly, on this issue we need state no more than our general opinion.

(a) The Treaty requires the recognition of tribal self management rights.

(b) Modern circumstances compel the need for legally cognisable forms of tribal institutions with authority to represent the tribe on local issues and adequate resources to assist the formulation of tribal opinion.

(c) Such tribal institutions should provide a means whereby local authorities and private interests can confer with the tribe where desired.

(d) The Planning Tribunal, in our view, should have power to defer proceedings where, in its opinion, consultation ought reasonably to have occured but was not sought.

(e) The objection procedure is important however, and necessary where tribal institutions and local authorities or developers do not agree.

(f) Nothing should prevent an individual Maori from lodging an objection at variance with any stated tribal stance.

(g) The prejudice to Ngati Kahu in this case however is not a reason for setting aside the sewerage scheme; but it does provide good grounds for a review of the issues that for various reasons were not fully canvassed before.

6.4 LAND USE

It was argued that the treatment plant is not the best use of the land involved and that the land needed for the works and the surrounding buffer zone will restrict farming and future development.

The treatment site covers 7.4095 hectares of inferior land, swampy, low lying and in rough pasture infested with reed. It is at the rear of the Adamson farm. A perimeter of 150 metres from the boundaries of the treatment site describes a buffer zone, where farming and forestry are allowed but residential buildings are prohibited (document B52). This area is in good farm pasture and has two small plantations.

It was put to us that the treatment site would preclude the effective operation of the farm, and the buffer zone would prejudice a recreational-tourist complex on the land in the long term.

It is not the function of this Tribunal to review the findings of other judicial bodies, especially, as here, where they have a specialist experience in the matters entrusted to them by Parliament. The contention that the works will unduly restrict farming and future development was specifically rejected by the Planning Tribunal in this case, in 1980, and accordingly it is not for us to revive it.

It was argued however that because of new technologies a much smaller area is now required. C B M Duncan, a public health engineer consultant, pointed out that when the designation was first proposed, in the 1970s, 10 hectares was thought to be required. The current wisdom, as exemplified is the 1986 water right approval, gives a design requirement enabling smaller ponds he claimed, and no more than 4 hectares would be needed (document A13). This opinion appears to be affirmed in a report prepared for the Council in 1987 (document B31 p6) which considers that an even smaller pond area is required.

The Council has recently advised, after the grant of the water right, that the area proposed to be taken has been reduced to 7.4095 hectares, which will include ponds, pumping stations and ancilliary buildings (document B52). The area is still much more than Mr Duncan envisaged, but Mr

Duncan was proposing a more mechanised anaerobic system. The Council has consistently been opposed to a highly mechanised system. The smaller area that it now seeks arises for another reason, that more recent patterns indicate a lower population growth than that projected when the first water right was sought. In particular it is now anticipated that the daily quantity of waste to be treated by the design year will be reduced from the 1200 cubic metres originally projected, to 893 cubic metres.

In addition it appeared to us that in future the treatment works may need to expand, the design being based on projections to 1996. Future expansion does not seem to have been emphasised much at the time, but is referred to quite often in the most recent report for the Council given in 1987 (document B31).

The area of land reasonably required and the reasonableness of the particular works proposed are matters that may be raised upon a compulsory acquisition, as has been seen (5.6). A further issue arising, that as a result of the small land requirement of the new technologies, other sites may now be practicable, is dealt with later. Under the land use heading however, a diminution of the area reduces the adverse impact that is claimed, and the changed circumstances do not justify a re-opening of the issue.

It was further advised that the land concerned had been sold to Ngati Kahu. That also raises another issue dealt with elsewhere, but it cannot alter the finding that the Planning Tribunal has made, that the treatment ponds would not preclude the effective operation of the farm, or unduly prejudice a recreational-tourist complex in the longer term.

6.5 TAIPA WATERS

Much evidence was given that seepage or spillage from the treatment ponds may occur, and will threaten the aquifer that provides the town of Taipa with its main freshwater source, and the adjoining estuary that supports a variety of life forms and provides food.

Taipa sits upon a large aquifer or under-ground water supply that lies unusually close to the surface. There being no water reticulation to the schools, homesteads and businesses of the area, the aquifer provides an important bore-water supply. The treatment ponds, it was argued, threaten the security of the Taipa aquifer, and for that reason the ponds should be sited elsewhere.

This matter, we find, was also raised before the Planning Tribunal in 1980. It was not its function, the Planning Tribunal declared, "to determine whether a site selected for a project is the only suitable site, or the most suitable site, but merely whether or not it is *a* suitable site "(emphasis supplied). It was presented with claims of a possible seepage from the treatment ponds to the aquifer, but the Tribunal preferred the evidence of the engineer for the County that substantial seepage was unlikely, and in any event, the ponds could be sealed. It concluded "although the site itself may not be particularly well suited for the purpose in respect of the permeable nature of its soils and its location on the edge of the service area, we conclude that in the circumstances it is not an unsuitable site" (document A35). But since then, it was argued in this case, more information has come to hand.

The treatment site lies in a depression below the immediately adjoining land. It is a swampy area less than one metre above high tide level and,

although it is one kilometre from the foreshore, it closely adjoins the tidal arm of Ryders Creek. It is to be built upon the aquifer. Beneath a 200 mm peaty topsoil is a sandy clay, relatively waterproof according to the County Engineer, and about 400 mm thick. Below that again is the permeable grey sand. At this point, the fresh ground water is within 700 mm of the surface. The 1986 water right envisages a maximum depth of 1.5 metres for the maturation pond (document B31 page 6).

C M Adamson explained the nature of the aquifer on the Taipa sandspit and assessed its potential, although he pointed out that his figures were partly estimates and a full hydro-geological survey is required (document B14). He holds a post-graduate certificate in engineering hydrology from the University of New South Wales and has had 18 years overseas experience in land use planning, agricultural hydrology and soil conservation work. He is a member of the Adamson family of Taipa.

An aquifer is comprised of porous sand, gravel or rock that both stores water and permits of water flow within it. The Taipa aquifer is unconfined, that is to say it is located freely within the coastal surface sands which extend over 85 hectares of the flats, bounded by the Taipa river to east and south, and by high hills to the south and west. The water table is to be found 1.5 to 3.0 metres under-ground, and extends to 7 metres below the surface giving an effective depth of 4 to 5 metres of ground water. In brief, it is shallow and large. The storage capacity has been assessed at 157,000 m3.

The aquifer provides a substantial, accessible and good quality water supply. The porous medium acts as an excellent filter. If not disturbed it gives a safe domestic water supply. It has also good recharge characteristics with a likely inflow of 1.8 million m3. In all, the aquifer was described as unique in the district and a very valuable natural resource.

A limitation on the aquifer is that the water table height is maintained by the sea level, and the interface between the salt and sea water depends on the freshwater outflow to the sea. The aquifer is fed from run-off from the 60 hectares of high hills in the south that are coated with non-porous clay. Over-exploitation of the aquifer could result in the intrusion of the salt water inland (which has already occured, as shall later be seen, as a result of works excavations). Nonetheless, in Mr Adamson's estimation, if only half of the 1.6 million m3 of annual yield was taken up, the aquifer could provide sufficient water for 350 permanent households, or a resident population of 2,000, without recourse to roofed catchment or other sources.

The value of the aquifer is increased by the lack of alternative sites for a reticulated water supply. Mr Adamson thought the nearest reasonable site for a water dam was 30 kilometres inland. He was therefore opposed to the sewage treatment site on the aquifer land. Pollution of an aquifer is irreversible in the short term, in his view. There is only one opportunity to make the correct decision, he said, and he urged the evaluation of alternatives. There are at least five concerns. The unconfined aquifer covers a wide field, and although the sand provides its own filtering, continual seepage from the treatment ponds may eventually carry pathogens into domestic water supplies. The second is that seepage of over-enriching nutrients to the adjoining Ryder's creek would also disturb the ecological balance of the estuary, and pathogens may be carried into the food chains (document A10, A11). The ponds are dangerously close to the estuarine ecosystem, Professor Morton considered, and he explained in that context the value of the adjoining mangroves.

> The mangroves carry a hard economic justification for their presence in addition to every aesthetic argument that can argued. The areas of estuaries and harbours lined by them are the shallow breathing sectors of the inter-tidal shore, with a high surface area in relation to depth and water volume. Water is withdrawn from them at each ebb of the tide, carrying out and mixing into general circulation the productivity achieved. In production of biomass, mangrove swamps are the equivalent of tropical agricultural land, with a higher yield than a temperate farm pasture. The beneficiaries of the food—benthic invertebrates and the rest of the burrowing fauna and the oxidised productive skin at the surface, goes in large part to sustain our shallow water fisheries. . .. Mangroves are the nurseries for 20 or more of New Zealand's economic fish species.

He considered the proposal to discharge the effluent to an artifical marsh elsewhere, called into question the decision to site the ponds by an estuary at all. That leads to the third concern, that a pump failure or pipe damage could result in a pond overflow to Ryders creek. The ponds however have a seven day storage capacity above the level of discharge to the top of the pond embankment, according to the County Council (document B48). The Regional Water Board considered ponds are normally constructed with at least one metre freeboard which in this case would allow at least 10 days for remedial action to be taken in the event of pump failures.

Fourthly, Professor Morton speculated that seepage could apply the other way, affecting operations with estuary water passing to the ponds, but that is probably of lesser concern. The fifth disturbing feature, as C M Adamson made clear, is that the water flows to the aquifer from the hills behind Taipa. The treatment ponds lie between the two, in the narrow channel between Ryders Creek and the adjoining range.

Though much of the necessary knowledge came to light after the Planning Tribunal hearing, in 1980, it had still to be tested before the Regional Water Board. A new water right was required following the change from a sea outfall in favour of the artificial marsh and was heard in December 1985. Two objections were lodged including one from the Adamsons who specifically referred to the importance of the aquifer and the possibility of seepage from the ponds. The Design Engineer for the County advised that it was intended to seal the ponds with a layer of clay (document B48). On that occasion, as distinct from the last, the Board added a new condition, that the ponds be sealed during construction, to the satisfaction of the Board.

Although there was no appeal to the Planning Tribunal from that decision, it has done little to allay the fears of certain of those who appeared before us. C B M Duncan, a consultant public health engineer called by the claimants, considered that although the compacted clay liner would reduce waste water seepage from the ponds, "it can be expected that some seepage will still occur" (document A13). Professor Morton was of a similar mind (document A11). He was sceptical of the ability to line the ponds against seepage except by concreting, which he considered to be overly expensive. He warned of the suck down effect to the creek at low tide, from the high level of water in the pond.

Counsel for the claimants referred to a publication of the Public Health Engineering Section of the Ministry of Works and Development, entitled "Guideline for the Design, Construction and Operation of Oxidation Ponds". Although produced in 1974, it is still current, we were advised. At page 7 there is a warning on sealing—

> When choosing a site for an oxidation pond full consideration must be given to subsoil conditions, groundwater levels and the availability of local sealing materials. It is important that the pond be adequately sealed. . ..
>
> Some types of ground, such as pumice and river gravels, may be unsuitable for the construction of ponds without the use of imported sealing material or impervious membranes. Where there are doubts about subsoil permeability consideration should be given to relocating the pond: if this is impracticable the use of special compaction and sealing methods must be considered at the outset. A layer of properly compacted clay may be used. In pumice country a penetration bitumen seal may be satisfactory. Full liners have been used recently, using either butyl sheeting throughout or using butyl sheeting over the full bank height with a lighter membrane on the floor; these techniques have been used for water storage ponds but have not yet been fully evaluated for oxidation pond construction in New Zealand.
>
> In cases where the ground watertable can rise above pond floor level the pond must be filled as quickly as is practicable and must be kept full, to prevent the sealing layer from being lifted.

Finally, the claimants obtained the opinion of A G Brantley, principal hydrogeologist of a private consultancy firm with a wide experience in projects requiring hydrogeological evaluation. He considered

> An effective impermeable barrier can be obtained by placement of a suitable clay fill under controlled conditions, particularly in view of the limited hydraulic head pressure produced in a relatively shallow oxidation pond. However, placement and adequate structural compaction of clay fill onto saturated ground is next to impossible, and such construction would again require localised dewatering to achieve the desired end result (document B13).

He was careful to say however, that the proposed oxidation pond on ground overlying the near-surface aquifer, should not be categorically rejected.

Local residents were reminded of the vulnerability of the aquifer in the following August of 1986. During construction of the pipeline and pumping station on the main Taipa road, it was necessary to pump water from an excavated 27 foot hole, some 20 thousand gallons per hour being taken over several days. The result was to shift the seawater-freshwater interface near to the sandspit edge admitting salt-water to household and business bores. The complaints were well borne out by tests, though taste alone was enough to prove it, and the Northland Catchment Commission, which was also the Regional Water Board, concluded that no further dewatering should occur in the immediate area (see documents A17, A47). In the opinion of the Commission, and of A G Brantley, the salt water intrusion would have long term effects.

How safe then, is the aquifer, when a much larger work is proposed, though considerably further inland? The Council was confident that adequate sealing would be achieved but gave no evidence to impart that confidence to us. It was unable to specify the material and method that would be used, variously referring to local clays, imported clays, bonding resins and membranous materials. Nor were we enlightened on any special measures proposed to avoid salination of the aquifer during the extensive dewatering of the excavations that would be needed during

construction and sealing. No response was given either to suggestions that during construction, or on emptying the pool for cleaning, the seal would be ruptured or lifted as a result of the pressure from the surrounding water table.

In all we have very grave doubts that serious seepage can be avoided or that the seal can be maintained; but in the final analysis we must accept the decision of the Regional Water Board acting under the provisions of the Water and Soil Conservation Act 1967. The Board is an independent body which must be taken to have found that the ponds can be satisfactorily sealed. We are bound by that finding. We must also have regard to the fact that there was no appeal to the Planning Tribunal from the Board's decision that the ponds be simply sealed to the Board's satisfaction. Since that decision, the Northland Regional Council, constituted this year, has replaced both the Northland United Council and Northland Catchment Commission and has been given the functions and duties of the Regional Water Board. It is now that body that must be satisfied.

For this Tribunal to intervene it is necessary to establish that the Board, as a statutory body and in the performance of a statutory function, acted contrary to the principles of the Treaty, or was unable to give effect to the principles of the Treaty, having regard to the statutory rules that bind it. That has not been established.

Counsel for the claimants contended that under the Water and Soil Conservation Act 1967, the Regional Water Board is not bound to give any special weighting to Maori concerns for the maintenance of pure waters. She referred to the evidence of R Gabel that Maori once dug in the Taipa sands to create water ponds (document A2) and to that of G P Adamson, that in his youth, before bores were thought of, open wells existed (document B26). We accept that the river waters surrounding the Taipa flats are brackish at best, and that a large Maori population at Taipa in former years probably relied upon the aquifer for fresh water.

It may very well be that the Water and Soil Conservation Act should be amended to provide better for Maori interests. The Waitangi Tribunal so recommended in the *Manukau Report*. But it does not follow that a prejudice resulted in this case. We do not think the Ngati Kahu interest in the aquifer was any greater than that it was a freshwater source, and since the non-Maori interest in the aquifer is the same, it matters not if the interests of Ngati Kahu were not specifically addressed in the water right proceedings.

6.6 PARAPARA STREAM

There was at least one opinion that the residual flow from the marsh would affect the food resources of the Parapara stream and Aurere beach and was in any event culturally offensive; for the Maori spiritual ethic demands exceedingly high standards in the maintenance of clean water regimes.

The possibility of biological pollution was considered by the Regional Water Board. It found "the proposed system of sewerage treatment is, with good management, capable of producing an effluent quality superior to the existing water quality of the Parapara stream". As is usual in rural areas, the stream is substantially affected by farm runoff.

Once more it could be said however, that Maori cultural concerns, being not provided for in the Act, could not have been brought into account.

That we think, would grossly overstate the position. The whole point of the marsh option is to provide as much disposal to land as is practicable. Certainly there will still be a residual flow to the catchment but much will be lost by evaporation, transpiration and soakage, and the land and marsh reeds will provide a natural cleaning and purifying regime.

6.7 POND SITE

The oxidation ponds are proposed on part of the former Waimutu Reserve set aside for Tipene of Ngati Kahu but long since sold, and Counsel inferred that the land must have held special significance to have been so reserved. We would not so presume.

Dr Bulmer, regional archaeologist for the New Zealand Historic Places Trust, advised there had been no archaeological excavation of the site but surface examinations suggested it had been used for wet gardens and for crops such as taro and tii. There are a series of pit sites nearby, probably used for crop storage, while an area of rising ground beside the pond site was probably used as a dwelling place. Others described how the Waimutu reserve was once strategically located on the pathway from Taipa to Kaitaia. The well-worn foot track, still known to local Maori, crossed the reserve and the Paraheki hill leading to Parapara pa. The creek itself was said to be a landing place for canoes and we suspect there may have been moorings in the swampy area to help preserve the wood.

Yet even accepting those accounts there is no evidence that Waimutu was selected for the reserve because it was culturally significant. The main villages had been either on the hills or nearer the coast. Waimutu has not the importance of Otengi for example and the reserve appears to have represented no more than the award of an area of land at the back of the flats as distant as practicable from the settlers homes by the coast. Evidence of past occupations, or even extensive user, is not in itself sufficient to warrant restrictions. That must be so for all of Doubtless Bay was occupied at some stage, and the whole of Taipa-Oruru was extensively used. It is the relative importance of a place in the living culture and tradition that needs to be established.

6.8 ANCESTRAL ASSOCIATIONS

Ma te kai te toto o te tangata, te oranga o te tangata, he whenua—food supplies the blood but the essence of life is land. Maori feelings for the lands of their ancestors transcend the vagaries of modern occupation. The lament of the chief taken prisoner in battle "tukua mai he kapunga oneone ki au, hei tangi" (send me a handful of soil that I may weep over it) is reminiscent of the settlers who yearned for the hills of home. To each it was known that the love of one's homeland was not dependent on owning it. For Maori the treasures inherent in land were far greater than mere possessions—he kura kainga e hokia, he kura tangata e kore e hokia.

It does not auger well for the maintenance of two cultures therefore, if we assume that life began in New Zealand in 1840, if place names are changed as though there were no prior history or if we settle the land without regard for the integrity of existing cultural associations. 'Your past is our past' is an alternative philosophy, for we are now inextricably mixed, and whether that past begins in England or Hawaiiki, we are one people when we honour both traditions.

Taipa, as has been seen, was the cradle of Ngati Kahu existence, the centre of their later development and now the hoped-for base for their rebirth. In the spiritual order of Maoridom, the collection of human wastes in such an area defiles that which should be esteemed. Even for those untutored in Maori law, sewage treatment ponds may be seen as incompatible with places of high regard.

Counsel for the claimants referred to this extract from Buick (1936:379) as summarising the position for a tribe.

> The case of a tribe's own territory was developed to an absorbing degree, for tribal history was written over its hills and vales, its rivers, streams and lakes and upon its cliffs and shores. The earth and caves held the bones of their illustrious dead and dirges and laments teemed with references to it.

Ngati Kahu's tribal history was related to us with references to particular sites. Our attention was directed to the Otengi headland where the Mamaru canoe finally rested, and where Mamangi, an ancestress of the tribe had her home. The tawapou trees at Te Paraua, overlooking the point, are said to have come as skids in the canoe, planted after the canoe landed.

Further down the headland, overlooking the Taipa beach, is the site of Otanguru Pa. There the last battle was fought, using muskets, as part of the Oruru war, and 46 died on the sands. On the eastern sentinel at the other end of the beach stood the Te Huiki and Pekehorohoro pa.

Throughout the whole of the Taipa flats and on the surrounding hills that define the bowl, are a host of other sites. Dr Susan Bulmer, further advised that 97 archaeological features have been recorded at Taipa, grouped into 42 separate sites including 30 habitation areas and 4 where burials have been found (document A14). Gerard Adamson, who has farmed at Taipa for over 60 years, described a period in his youth when the sandhills were littered with the bones of Maori dead from past battles, sometimes exposed by the winds. They were periodically gathered and removed, he said, by Maori people (document B26).

Dr Bulmer explained that when the Historic Places Trust was first approached by the Mangonui County Council, there was very little data on Taipa on which the Trust could give advice. "There have since been many more sites located at Taipa" she said, "and it is clear that the information available in 1979, of only 6 sites, was grossly incomplete and misleading."

Taipa, as has been said, was the gateway to the Oruru valley, possibly one of the most densely settled areas in the country and 22 kms long, with the Taipa-Oruru river as its main road. Recently, an unusual find of wood carvings concealed in a pit was made in the Oruru Valley. In Taipa itself artefacts found near the surface suggest that sites of great archaeological interest will be discovered. Finds have included adzes of argillite from the South Island, indicating the extent of the early Maori trade. They also suggest that settlements existed there as early as 500 A.D, or "as early as any place in Northland, or in the entire country for that matter" as Dr Bulmer put it. Taipa is still barely discovered in archaeological terms, Dr Bulmer said, "but it is a very special component of a very special historical landscape—one that deserves to be treated as a national reserve."

It is not for the discoveries that may be made however, in the Taipa hills and flats, that this claim is brought. Taipa is important because of its

known history. We accept that it has special significance for Ngati Kahu and that they have good reason to be disturbed by the various proposed sewerage plans for the area.

Against that however is the pressing need for a sewerage scheme, and the long saga of efforts to accommodate several conflicting interests. Following the changes made, a practical assessment of the likely impact of the works is required. The sewage is still to be transported to Taipa, but, after treatment, is now to be discharged elsewhere. The maturation ponds are on the perimeter of sizeable flats in a low lying position at the rear, at the point most distant from the Otengi headland and foreshore. The pipes are to be buried and the works themselves will be largely hidden from view.

The Treaty provides no absolute bar to the location of the works on this site, in our view, and this is properly a case where some compromise is required. We go no further than to consider that the works should be elsewhere but only if another site can reasonably be found having regard to the Council's means.

6.9 COMPULSORY ACQUISITION

A question then arises of whether, in all the circumstances and in the context of the Treaty, the Crown should permit the acquisition of the site for a public work and whether we should recommend the intervention of the Crown to stop the taking, if need be by special legislation.

Opposition to the compulsory acquisition of the land extends beyond matters of its cultural significance. There is little tribal land remaining on which the tribe can rely. As found in the *Orakei Report* 1987, it was a principle of the Treaty that the Crown would assure an adequate land base for the projected economic wants of the tribes, acquiring only that which was excessive to their needs. No detailed accounting is required to ascertain that the principle was not maintained in Doubtless Bay. It is not surprising that large numbers of the tribe have had to shift elsewhere.

The Ngati Kahu question revolves around that problem,—the lack of land. Though it has been a tribal problem for over one hundred years it has not gone away. The tribe's purchase of the original tribal base has merely highlighted the situation. Of the little land remaining in Doubtless Bay only the part now acquired is tribally owned, and that is little enough for the work schemes and the endowment that tribal programmes require. Little wonder then that the tribe is reluctant to allow one hectare to pass from their control or their enjoyment of the land to be restricted by the works proposed. Thus the cultural value of Taipa has an added value now, for the birthplace of the tribe is the place where there are new hopes for a tribal renaissance.

The retention of Maori owned land appears to be outside the scope of the Planning Tribunal to consider in any contest on compulsory acquisition. It is pertinent to ask whether the law should be changed clearly to protect Maori owned land where little tribal land has been reserved. The provision in the Town and Country Planning Act to consider the relationship of Maori people, their culture and traditions with their ancestral land is very important for Maori, but there is nothing that better promotes that relationship than the ownership of a fair share.

For the purposes of planning, the retention of Maori land in Maori ownership ought properly to be a national objective in our view, having regard to the Treaty's prior design. We consider also that land restoration

is as valid as land retention, in Treaty terms, when unconscionable land losses have been sustained. A nice point arises however, requiring the aid of legal debate, on whether the Treaty forbids the compulsory acquisition of Maori land in any circumstance. We are relieved from that debate in this case however, since it seems to have been accepted that a distinction should be drawn between lands long held and those acquired already subject to a works designation.

We have considered in this case the compelling need of Ngati Kahu for an adequate land base, the paucity of the lands available to them, the significance of this particular farm at this location and their natural anxiety that having just acquired a foothold in this area, they should not be about to have it impaired. Weighted against that, however, is the history of the troubled sewerage scheme, the amendments made that accommodate earlier Maori concerns, and most especially the simple fact that the site has been proposed since 1973, long before the land passed to Ngati Kahu. Unless reasonable alternative sites are available, in our view, the current ownership of the land ought not to bar the Council's right to pursue the acquisition of the land in accordance with the law as it stands.

6.10 ALTERNATIVE TAIPA SITES

For a variety of reasons—hindrance of future developments, possible effects on the aquifer or estuary waters, inconsistency with cultural values and the need for tribal endowments—it was claimed that the treatment ponds should be sited elsewhere. We agree, provided there are reasonably practical alternatives. A full analysis of alternative sites at Taipa has not been made by the Planning Tribunal, the Tribunal stating in this case "it is not the Tribunal's function to determine whether a site selected for a particular project is the only suitable site, but merely whether or not it is *a* suitable site" (emphasis supplied). It added

> . . .the availability of alternative sites is relevant only to the necessity or otherwise of developing the treatment works on a site in the coastal environment. . . we consider that the obligation on the [Council] is to establish that responsible consideration has been given to other possible sites (and particularly those which are not in the coastal environment) but that it is not necessary for the Tribunal itself to reach a conclusion as to which of the possible sites is the better one. That is an executive decision for which the authority having financial responsibility must be responsible.

There is sense in this approach since the Council bears the cost, and the wrath if plans go awry. The difficulty in this case is that matters of ancestral land and land retention were not and could not have been argued at the relevant time, but had they been, a better search for other sites may have been required. Nor can it be assumed that the omission will be rectified in proceedings yet to be taken under the Public Works Act (see 5.5 and 5.6). In those proceedings the adequacy of the consideration given to alternatives is based on the Council's stated objectives. It may be that other objectives, like the maintenance of the integrity of the Maori association with the land, are irrelevant; but we can say no more for that is for the Planning Tribunal to decide.

We distinguish here the search for alternative sites in the area of the scheme, near Mangonui, at Coopers Beach and at Cable Bay. The question is whether there are other sites near Taipa. In addition it has not been suggested that sites should be sought further west at Otengi or Aurere

which have future development potential. It seems to be accepted that that would add too much to the cost.

We are only concerned here with the search for alternative sites near Taipa. Taipa was chosen for the treatment ponds as it had the only adequate area of flat land for the size of ponds then required and which allowed for future expansion. The selection of the Ryder's Creek site in particular appears to stem from the original intention to discharge effluent to Ryder's Creek but that intention was abandoned in 1974.

Now, it was argued, a much smaller site is needed if there is a change to a more mechanised system that recent technological improvements allow. The area thought to be required in 1973 was 10 ha (25 acres), which included ponds with a surface area of 7.6 ha (19 acres). The total area required has since been reduced to 7.4095 ha but C B M Duncan, Director for Public Health Engineering in a private consulting firm, considered it could still be much smaller. He considered the waste could be treated in a two stage pond system involving a mechanically aerated pond covering a mere 0.5 ha, and a maturation pond on 1.5 ha requiring a maximum of 4 ha in all with the addition of ancillary works (document A13).

A report prepared for the Council in 1987 assessed the net pond area required on this basis at 1.25 ha (document B31). These assessments envisage an anaerobic lagoon however. It requires more mechanisation but enables other sites to be considered that earlier would have been seen as too small.

We commissioned Mr D R Cameron to investigate alternative sites in the Taipa area having regard to the recent technological developments that had been referred to. Mr Cameron, a public health engineering consultant, is a member of the Standing Committee for Health Protection of the Board of Health, and has a specialist expertise in sewage treatment and reticulation. His report is document B6.

To recapitulate, the County sewerage scheme involved a single cell aerated lagoon of 3 days retention and a maturation pond to hold the waste for 20 days at the Ryders Creek site, with the pumping of the treated effluent to the Parapara artificial marsh. In Mr Cameron's opinion, the large maturation pond is unnecessary, provided the single cell aerated lagoon is upgraded to a two cell, facultative aerated lagoon with a six day retention in all, and provided a marsh system is still used at the end.

With that alternative form of treatment in mind, Mr Cameron proposed four alternative sites. One on rising ground near Ryders Creek had the advantage of avoiding the Taipa water table, but was impracticable, in the opinion of the Council's advisers, and was not seriously pursued. The others are reviewed below.

(a) The alternative the principal claimant preferred was to pump the sewage to the Parapara site and to establish the treatment plant there. Against that site is the elevation of the pond, a regular concern when ponds may break or overflow, the levelling involved, higher operating costs, the regular inspections required, difficulties of access and the provisions of power supplies and the extra pumping of raw sewage required. The landowner, we were advised, would be opposed. The Council argued that the marsh would be a more integral part of the treatment process and that the Maori of Parapara and Aurere would object.

(b) Mr Cameron preferred a site 1.2 kms further up Ryders Creek, in a valley separated from Taipa and beside the Oparera Stream with the

effluent to perculate through an existing marsh before passing to the creek. A problem with this site was the lack of room in which to expand, but there is also likely to be much concern from local residents and Maori that the effluent, though very highly treated, will nonetheless flow to the Taipa river.

(c) A further alternative was to pump the treated effluent from the Oparera site to the Parapara marsh. The treated effluent pipeline would be about as long as that from Ryders Creek for the Parapara marsh is roughly equidistant between the two. As we have said however the useable area is small, requiring hill excavations and leaving little room to expand, and we also understand that it is not too distant from another marae.

All options are feasible from an engineering point of view and although no detailed cost estimates could be provided, it seems likely that with the deletion of the maturation pond a lower construction cost is involved. In addition, and most especially in our view, the problems of sealing the Ryders Creek ponds and the heavy costs likely to be incurred in that task, would be obviated. It cannot be denied however, that other problems arise. Some of these have been mentioned. The Council referred as well to the delays inherent in obtaining further planning consents especially if there are objections. The subsidy would be lost too, it was claimed, though we doubt that must follow. It appears to us that approvals may be readily given on a site relocation. We place greater weight on what appears to us to be the Council's main reason for opposing any change. It has consistently sought to avoid a highly mechanised works with attendant risks of failure and which involves more supervision, a specialised staff and higher operating and maintenance expenses.

We have here to balance the cultural concerns of Ngati Kahu with the needs and circumstances of the total community. On the one hand we must assess the actual cultural impact having regard to the fact that the ponds are largely obscured and the discharge is elsewhere, and remind ourselves that we are bound by the opinion of the Regional Water Board that the ponds can be satisfactorily sealed. On the other we must consider the disadvantages to the general community, if the works are to be relocated, and that the alternative sites raise other problems and require a more mechanical system with greater operating expenses involved. In all, we have come to the conclusion that the balance is not so clearly in the claimants' favour as to warrant a recommendation that Parliament intervene to compel the relocation of the works.

7. FINDINGS

It was a condition of the Treaty that the Maori possession of lands and fisheries would be guaranteed. The guarantee requires a high priority for Maori interests when works impact on Maori lands or particular fisheries for their guarantee was a very small price to pay for the rights of sovereignty and settlement that Maori conferred. In other cases however, it is a careful balancing of interests that is required. It was inherent in the Treaty's terms that Maori customary values would be properly respected, but it was also an objective of the Treaty to secure a British settlement and a place where two people could fully belong. To achieve that end the needs of both cultures must be provided for and, where necessary, reconciled.

This is a case in our view, where the Treaty requires a balancing of Maori concerns with those of the wider community of which Maori form part. The construction of sewerage works imposes unavoidable costs, financial and cultural, on all members of the community, on the general populace as well as the local tribe. To find the proper balance between cultural and financial concerns is no mean task. The Maori spiritual ethic was singularly suppressed or overlooked in the past but recent Planning Tribunal and High Court decisions show that that need no longer be so. A balance must be maintained however, not an over-redress. In this case it is at least clear that an absolute priority for Maori cannot be upheld. The plans have been changed to avoid the significant fisheries, and the Maori owned lands affected were acquired well after the works were proposed.

The Treaty did envisage however a place of respect for the tribes. This is clearer in the Maori text than the English. The rights of tribal self management that flow from the Treaty require, in certain cases, the right of a tribe to be heard and in a manner consistent with tribal norms.

The Crown's role is apparent from the Treaty's words, as protector of the Maori interests; not as an advocate however but as a judge of fair and expansive mind. Waka Nene captured that image during the Treaty discussions, when he called upon the Governor to remain for all as "father, judge and peacemaker". Much of the judging role has since been passed to the Courts, in this case to the Planning Tribunal. Thus it is that every Judge holds the Governor-General's warrant and is sworn to uphold and apply the Crown's laws. It is important to understand however that it is not the function of this Tribunal to judge the Judges. We are not an appellate court. Our task is to measure the Crown's laws by which the judgments are made against the Crown's undertakings in the Treaty.

With those principles in mind we have made these findings, and for the reasons earlier given.

1. The objection rights in planning laws do not fulfill Treaty obligations when there is not the facility for prior consultation with local tribes. The practical difficulty is that, through the neglect of tribal rights in former years, there is now a dearth of legally cognisable institutions representative of the tribes readily able to formulate a tribal position. Subject to the provision of such institutions, which in our opinion the Crown must now provide, the Planning Tribunal should have power to defer proceedings where in its opinion consultation is required.

2. Such an arrangement ought not to prevent any Maori from lodging an objection at variance with the tribal stance.

3. Ngati Kahu as a tribe were prejudiced in the planning proceedings, for consultation came too late, but the prejudice is not in itself such as to warrant the relief that was mainly sought, namely a change in the sewerage plans.
4. The residual flow to the Parapara stream from the effluent disposal marsh does not strictly comply with Maori traditional standards but is a reasonable compromise. Earth, air and vegetation combine to provide natural purification and substantially satisfies the Maori requirement that wastes should pass to the land.
5. Though we have doubts that the treatment ponds can be adequately sealed, it has not been demonstrated that the claimants have been prejudiced in this instance by those water rights laws on which the decision on sealing depended. There was no appeal to the Planning Tribunal and the judgement of the Regional Water Board must therefore stand.
6. The principles of the Treaty require that planning should have regard to the retention of lands in Maori ownership especially, as here, where insufficient land reserves were made. In this case however the Maori owned land affected by the scheme was acquired after the works were proposed and any contest on its compulsory acquisition should be judged on the law as it stands.
7. The relationship of Maori people, their culture and traditions with the lands of their forebears, ought always to be relevant in land use planning. The assessment of that relationship ought not to depend on the ownership of the land, the more so when, as here, it cannot be assumed that the land was freely and willingly sold with appropriate tribal sanction. The current law provides for this assessment but the claimants were prejudiced by the law as it stood at the time.
8. There is no evidence however that the treatment ponds are sited on culturally critical lands.
9. Taipa as a whole, on the other hand, ranks high in the traditional order. Having regard to the customary opinion that wastes defile that which is esteemed, Maori planning would require the works to be elsewhere.
10. The ancestral significance however, is properly to be weighed with any other relevant factors. In this case the impact on the cultural mileu is not obvious, the works being largely hidden and the discharge being elsewhere. With that must be measured the needs and financial limitations of other affected citizens. The ponds should be resited we find, only if there are reasonably practical alternatives.
11. Of the alternatives proposed, none is sufficiently free of other problems to warrant Parliamentary intervention to require the ponds' relocation.
12. We should say no further on the various statutes referred to in the formal claim. Some provisions may be inconsistent with the principles of the Treaty but, except as above given, the respects in which the claimants have been prejudiced have not been demonstrated.

As a result of the findings, no recommendation is made. Ngati Kahu had good grounds to bring a claim and reasons to feel aggrieved, but on the weighing of their concerns with those of the wider community, whose rights were also represented in the Treaty, we cannot on balance intervene. The sewerage scheme is symptomatic of wider problems however,

arising from the more intensive use of the Ngati Kahu ancestral lands, and other action may be required if the tribal foothold in the territory is to be maintained. Any necessary action on that count however, is properly to be addressed in the land claim.

In declining recommendations we do not predicate the result of other proceedings that may be taken under the Public Works Act. Our conclusion is based upon the Treaty not the Planning Laws. Whether or not the Crown has required a more dedicated pursuit of alternatives in such circumstances, in terms of the Public Works Act, is for the Planning Tribunal to determine. Matters of ancestral significance, should they be relevant to those proceedings, are now within the legal competence of the Planning Tribunal to resolve, and the actual competence too. There is no impediment to that tribunal reaching an entirely different conclusion from our own.

Dated at Wellington this 16th day of August 1988.

Chief Judge E T J Durie, Chairman

THE SEAL OF THE WAITANGI TRIBUNAL

M A Bennett, Member

M E Delamere, Member

Georgina Te Heuheu, Member

M P K Sorrenson, Member

APPENDIX 1

THE CLAIM

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of a claim by MacCully Matiu on behalf of the Ngati Kahu Trust Board on behalf of the Ngati Kahu Tribe and associated Tribes

TO: The Waitangi Tribunal

I, MACCULLY MATIU, of the Ngati Kahu Trust Board on behalf of the Ngati Kahu Trust Board, Ngati Kahu Tribes and associated Tribes state as follows:

WHEREAS the Ngati Kahu Trust Board is a duly constituted Trust Board set up under the Charitable Trust Act 1957

AND WHEREAS the Board is authorised to speak for and on behalf of the Ngati Kahu Tribe and associated Tribes

AND WHEREAS the lands rivers foreshores and fisheries all within the Ngati Kahu boundaries have ancestral and cultural and spiritual significance for the said Tribes

AND WHEREAS the Mangonui County Council has obtained all ministerial and statutory approvals for sewage oxidation ponds at Taipa and pipelines and a discharge pipe across the river and into marshlands beyond Taipa

AND WHEREAS the lands the subject of the sewerage proposed were sold by Nopera [Panakareao] to Dr Samuel Ford, the Crown andothers in or about November 1839 such sale being disputed by Chief Porirua who claimed possession by conquest and cultivation of those lands for 30 years prior to their supposed sale

AND WHEREAS the Treaty of Waitangi was signed by our ancestral chiefs on 5 February 1840

AND WHEREAS the Treaty of Waitangi 1840 Article II guarantees to the chiefs and tribes of New Zealand and to respective families and individuals thereof the full exclusive and undisturbed "te tino rangatiratanga" of their lands and estates forests fisheries and other properties

AND WHEREAS part of those ancestral lands were under dispute between the New Zealand Government and the Tribes from 1840 onwards and were subsequently sold to peoples other than the affected Tribes or retained as Surplus Lands by the Crown

AND WHEREAS the Royal Commission on Surplus Lands reporting in 18 October 1948 recommended compensation be paid to the Tribes in respect of those Surplus Lands and an ex gratia payment was made

AND WHEREAS ancestral land are not those necessarily in Maori ownership

AND WHEREAS part of the ancestral lands which were in Pakeha ownership have been gifted back to the Ngati Kahu by the Adamson family at Taipa

AND WHEREAS the land on which the oxidation ponds are proposed to be situated was set aside as the Waimutu Reserve by the Crown for the tribes and were part of the ancestral lands of the Ngati Kahu tribe

AND WHEREAS the lands at Taipa which are the site for pipelines and oxidation ponds have important cutlural significance for the the Ngati Kahu tribe

AND WHEREAS the fisheries adjacent to the siting of the oxidation ponds have been fixed since time in memorial by the Maori tribes

WHEREFORE I CLAIM

1. The Royal Commission on Surplus Lands inquired into such lands and dealings before the Treaty of Waitangi Act 1975 provided for the observance and confirmation of the principles of the Treaty of Waitangi 1840.
2. The Treaty of Waitangi 1840 imposed upon the Crown an obligation to act in the interests of the tribes in respect of their ancestral lands. The *Land Claims Ordinance 1841* and subsequent Land Claims Settlement Acts were Acts which prejudicially affect the claimants as descendants of the original owners of the said ancestral lands and were in breach of the Crown's obligation under the Treaty.
3. The sewerage scheme proposed is the result of an action policy and practice by and on behalf of the Crown within the terms of Section 6(1) of the Treaty of Waitangi Act 1975.
4. The Water and Soil Conservation Act 1967 which authorises sewage schemes on ancestral lands of the hapu is an Act for the time being in force which prejudicially affects the claimants in terms of Section 6(1) of the Treaty of Waitangi Act 1975.
6. The Public Works Act 1928 which authorises the taking of ancestral lands for sewage oxidation ponds and ancillary pipelines is an Act for the time being in force which prejudicially affects the claimants in terms of Section 6(1) of the Treaty of Waitangi Act 1975.
7. The Health Act 1956 which authorises the Minister of Health to give approval for subsidies for works which will affect Maori traditional rights is an Act for the time being in force which prejudicially affects the claimants in terms of Section 6(1) of the Treaty of Waitangi Act 1975.
8. The Harbours Act 1950 which authorises the Minister of transport and/or his agent the Ministry of Works to lay a pipeline across ancestral Maori foreshores and lands is an Act for the time being in force which prejudicially affects the claimants in terms of Section 6(1) of the Treaty of Waitangi Act 1975.
9. The restriction of Maori ancestral lands as interpreted under the Town and Country Planning Act 1977 (Section 3(1)(g)) to land only in Maori ownership is a practice adopted by or on behalf of the Crown which prejudicially affects the claimants in terms of Section 6(1) and of the Treaty of Waitangi Act 1975.
10. The aforementioned Acts and their attendant regulations and resulting policies and practices and acts are/and were inconsistent with the principles of the Treaty of Waitangi.

WHEREFORE I SEEK THE FOLLOWING RELIEF:

1. A recommendation that the sewage scheme and its ancillary works be not proceeded with across Maori ancestral lands foreshores and

fisheries *AND THAT* Government and Council authorities seek alternatives elsewhere.

2. A recommendation that Section 3(1)(g) of the Town and Country Planning Act 1977 does not give adequate spiritual and cultural protection to Maori ancestral lands.
3. A recommendation that Maori ancestral land is not necessarily that land which is in Maori ownership.
4. A recommendation that the actions of the New Zealand Government in 1840 onwards in respect of the tribal lands was wrong and contrary to the spirit of the Treaty of Waitangi and that compensation determined by the Tribunal should be awarded to the descendants of those Tribes accordingly.
5. Costs of this action.
6. Such further or other relief as this Tribunal thinks fit.

DATED this 30th day of March 1987

'MacCully Matiu'
On behalf of the Claimants

APPENDIX 2

RECORD OF THE INQUIRY

A 2.1 Constitution and Appointments

The Tribunal constitued for the inquriy into the claim comprised Chief Judge E T J Durie (Chairman),Bishop M A Bennett, Mr M E Delamere, Mr E D Nathan, Professor M P K Sorrenson and Mrs G M Te Heuheu.

Following the death of Mr Nathan, the Tribunal was reconstituted to comprise the balance of members.

Mrs S E Kenderdine (Simpson Grierson) was appointed as counsel to assist the claimants.

Mrs M Szazy (Te Aupouri) and Mr S Jones (Ngai Takoto) were appointed interpreters.

Mr D R Cameron, Public Health Engineer and Consultant, was commissioned in association with a member of the Tribunal's staff, Dr C M M Goodall, to investigate and report on the proposed methods of sewage treatment, siting and plant design, and on possible alternatives for treatment and disposal in the Taipa area.

A 2.2 Notices

Notice of the Taipa Claim and first hearing was sent to

Dept Health, Wellington	J O'Grady
Dept Health, Wellington	R Runciman
Dept Health, Wellington	J Edwards
	(Director of Enviromental Health)
Board of Health, Wellington	
Commission for Environment, Wellington	J Boshier
Ministry Works and Development	J Galen
Dept Maori Affairs, Wellington	P Park
Dept Maori Affairs, Whangarei	R R P Wells
Dept Maori Affairs, Whangarei	H Te Whata
Ministry of Transport	A J Cooke
	(Regional Solicitor)
Director, New Zealand Historic Places Trust	
County Clerk, Mangonui County Council	
Tai Tokerau	
District Maori Council	J M Booth
Ngati Kahu Trust Board	R Rutene
R Gabel, Chartered Accountant	
Enviromental Defence Society Inc	
M Blomkamp, Barrister and Solicitor	
G P Adamson, Farmer	
New Zealand Maori Council	Sir Graham Latimer

Public notices of the claim and hearings were given in the *Northern Advocate* and *New Zealand Herald* on 30 September 1986, and in the *Northern Advocate, New Zealand Herald,* and *Northern Age* on 14 March 1987.

A 2.3 Appearances

Hearings were held at the Haititai Marangai Marae, Whatuwhiwhi, Doubtless Bay, in the weeks commencing 20.10.86 and 6.4.87. Those who appeared in a representative capacity were

Mrs S Kenderdine for the claimants

Mr J O'Grady for the Dept of Health

Mr D R Cameron for the Board of Health

Mr P G Brown for Northland Area Health Board

Mr A Cooke and Mr A Locke for Ministry of Transport

Mr A Galen and Mr R Sutherland for Ministry of Works and Development

Mr R Wells for the Dept of Maori Affairs

Mr J Boshier for the Commission for the Environment

Mr R Cathcart for National Catchment Commission

Dr S Bulmer for the Historic Places Trust

Mr B Smith for Mangonui County Council

Mrs J Cashmore for Houhora Riding Residents Association

Mr J Booth for Tai Tokerau District Maori Council

A 2.4 Submissions

In addition to counsel, those who gave written or oral evidence were

Names	*Description*	*Oral*	*Written*
Sir G Latimer	Ngati Kahu	20–10–86 22–10–86	
Rev M Marsden	Ngati Kahu Trust Board	20–10–86	A48
S Jones	Ngai Takoto	20–10–86	
R Gabel	Ngati Kahu Trust Board		A2
M Matiu	Ngati Kahu Trust Board (Chairman)	20–10–86	
J Bayly	Canadian lawyer	20–10–86	B10
K Brown	Ngati Kahu	20–10–86	
Te W Karena	Te Aupouri	21–10–86	
J Aperahama	Ngati Kahu	21–10–86	
P Brown	Te Aupouri	21–10–86	
J O'Grady	Dept of Health	21–10–86	
D Cameron	Consultant Engineer	21–10–86	
K Brown	Te Aupouri	21–10–86	
Te K Kapa	Ngati Kahu	21–10–86	
S Bulmer	NZ Historic Places Trust	21–10–86	
C Adamson	Engineer	21–10–86	

P Brown	Engineer, MOW and D	21–10–86	
M Hetaraka	Ngati Kahu	21–10–86	
Ng Minhinnick	Ngati Te Ata	21–10–86	
L Johnson	Archaeologist, Univ. of Auckland	21–10–86	A16
B Te Wake	Ngati Kahu	21–10–86	
Sir G Latimer	Ngati Kahu	22–10–86	
M Matiu	Ngati Kahu	22–10–86	
J Campbell	resident	22–10–86	
W Erstich	Ngati Kahu	22–10–86	
G Ulrich	Ngati Kahu	22–10–86	
Prof Morton	Marine Biologist, Univ. of Auckland	22–10–86	A10 A11
B Smith	Counsel, Mangonui County Council	22–10–86	A45
J Grigg	Ministry of Works and Development	22–10–86	A12
C B M Duncan	Bruce Wallace Partners Consulting Engineers, Auckland	22–10–86	A13
M Paul	Ngati Awa	22–10–86	
J Booth	Sec, Tai Tokerau Dist Maori Council	22–10–86	
A Cooke	Ministry of Transport	22–10–86	
D Cameron	Consultant Engineer, Commissioned by Tribunal	6–4–87	B6
W Marsh	Ngati Kahu	6–4–87	
Sir G Latimer	Ngati Kahu	6–4–87	
M Matiu	Chairman, Ngati Kahu Trust Board		B24
B Tamano	Ngati Kahu	6–4–87	
B Smith	Mangonui County Council		B32
M Srhoj	Chairman, Mangonui County Council		B30
J Reynolds	Ratepayers' Assn	6–4–87	
P G Brown	Northland Area Health Board	6–4–87	
R Sutherland	MOW and D	6–4–87	
G Adamson	Farmer, Taipa	4—8–87	B14 B26
J Bayly	Canadian Attorney	6–4–87	B10
Frazer Thomas	Engineering Consultants Partners		B31

A 2.5 Commissioned Report

In the course of the inquiry the Tribunal commissioned Mr D R Cameron, Public Health Engineer Consultant, in association with Dr C M M Goodall of the Tribunal's staff, to investigate alternatives for the treatment and disposal of sewage in the Mangonui County's East Coast Sewerage Scheme. Those notified of Mr Cameron's appointment were the County Chairman, the County Engineer and later Manager, Mr L Howell, counsel for the claimants and J O'Grady for the Dept of Health.

Mr Cameron filed a written report on 5 December 1986.

A 2.6. Conference of Parties

A conference in chambers was held at the Chairman's direction at Community House, Commerce Street, Kaitaia, 22 December 1986. Those notified and forwarded a copy of Mr Cameron's report were counsel for the claimants with Sir Graham Latimer, M Matiu and R Rutene; counsel for Mangonui County Council, together with Mr M Srhoj, Chairman and L Howell, Manager; Mr J Reynolds, Chairman of the East Community Council; and Mr J O'Grady, Dept of Health.

Those who attended were the Chairman and Members, Waitangi Tribunal, Dr C M M Goodall (Senior Research Officer), D R Cameron (Consultant), J O'Grady for the Dept of Health, M Srhoj, Chairman, Mangonui County Council, L Howell, Manager, Mangonui County Council; counsel for the claimants, counsel for Mangonui County Council, Sir Graham Latimer and J Reynolds, Chairman, East Community Council.

The meeting was to ascertain whether those interested were agreeable to any of the alternatives proposed in Mr Cameron's report. No matters were agreed upon.

A 2.7 Record of Documents

Documents A1—A50 were admitted to the record at the first hearing. Documents B1—B47 were admitted at the second hearing. Documents after B47 were subsequently received.

The documents presented in the claim, with the presenter named in brackets, are

#A 1 Extract from "Fatal Necessity British intervention in New Zealand 1830–1847" by P Adams. (S Kenderdine)

#A 2 Submission, R Gabel (member of Ngati Kahu Trust Board)

#A 3 Submission, P Brown, Northern Area Health Board, with attachments;

(a) Loan Proposal Report dated 28.5.74

(b) Sanitary Surveys 1972 & 1983 of East Coast Bays Areas

#A 4 Submission, J O'Grady, Department of Health.

#A 5 Submission, D R Cameron, Board of Health.

#A 6 First submissions of counsel for the claimants

#A 7 Submission on the Town and Country Planning Amendment Bill (S Kenderdine)

#A 8 Background information from National Archives (MA 91/2). (Senior Research Officer)

#A 9 Commissioners report on claim 442 of John Ryder (12.5.1844) (Senior Research Officer)

#A 10 Submission, Professor J E Morton.

#A 11 Professor J E Morton's addendum (to A 10)

#A 12 Submission, J P Griggs, B.Sc. entitled 'Constructed Wetlands: A Low Cost Reliable Alternative for Wasteland Treatment' with attachments 'Effect of particulates on virus survival in seawater' by C P Gerba & G E Schaiberger 'The antibiotic power of

the sea is a myth' (from An Enviromental Sanitation Plan for the Mediterranean Seaboard—Pollution and Human Health—by J Brisou).

#A 13 Submission, C B M Duncan of Bruce Wallace Partners Ltd, Consulting Engineers, Auckland.

#A 14 Submission, Dr S Bulmer, Regional Archaeologist (Auckland-Northland), Historic Places Trust.

#A 15 Map submitted by V Gregory.

#A 16 Map submitted by L Johnson on Taipa archaeological sites

#A 17 Page 17 of Taipa Area Newsletter No. 11, and copy news item. (S Kenderdine)

#A 18 Submission, R W Cathcart, Chief Executive Officer, Northland Catchment Commission.

#A 19 Submission, Counsel for Ministry of Transport

#A 20 Submission, M Srhoj, Chairman, Mangonui County Council.

#A 21 Further submission, M Srhoj.

#A 22 Report for Mangonui County Council, 'Sewerage of Coopers Beach'by Steven & Fitzmaurice (October, 1970). (M Srhoj) **

#A 23 Supplementary Report for Mangonui County Council, 'Sewerage of Coopers Beach' by Steven & Fitzmaurice (February, 1973) (M Srhoj)

#A 24 Statement of Kawiti Tomars in objection to sewerage scheme. (M Srhoj)

#A 25 Town and Country Planning Appeal Board Decision on 526–553/73 of 29.8.74. (M Srhoj)

#A 26 Statement of Kawiti Tomars further objecting to sewerage scheme (M Srhoj)

#A 27 Decision of the Tribunal appointed by the Water Resources Council. (M Srhoj)

#A 28 Reassessment Report for Mangonui Council 'Sewerage of the East Coast Area Mangonui County' by Steven & Fitzmaurice (October 1977). (M Srhoj)

#A 29 Letter, Steven & Fitzmaurice to County Engineer (22.5.75) with two drawings attached, re Kanekane stream option.

#A 30 Sewerage of East Coast Areas Mangonui County Council Outfall Survey and covering letter from Steven & Fitzmaurice (18.12.78). (M Srhoj)

#A 31 Ngati Kahu Trust Board objection to water rights application by Mangonui County Council, 13.6.79 (M Srhoj)

#A 32 Letter, V Gregory, objecting to sewerage scheme (14.6.79). (M Srhoj)

#A 33 Letter, Kawiti Tomars to Northland Catchment Commission (12.6.79). (M Srhoj)

#A 34 Report of the Standing Tribunal of Northland Catchment Commission on water right application No 1920 (Jan 1980). (M Srhoj)

#A 35 Interim Decision of Planning Tribunal on appeals by Adamson and others, decision A134/80, 29.10.80. (M Srhoj)

#A 36 Mangonui County Council East Coast Sewerage Scheme "An Examination of Alternatives", Murray-North Partners, February 1982. (M Srhoj)

#A 37 Letter, Tai Tokerau District Maori Council to Mangonui County Council, (16.7.85). (M Srhoj)

#A 38 Water Right 4007, 24.3.86, Northland Catchment Commission and Regional Water Board. (M Srhoj)

#A 39 Turton's Deed No. 36 (English translation) (B Smith)

#A 40 Certificates of Title under Land Transfer Act (Adamson's Farm) (M Srhoj)

#A 41 Statement of K Tomars further objecting to sewerage scheme 12.6.79. (S Kenderdine)

#A 42 Statement of K Tomars further objecting to sewerage scheme (13.7.84). (S Kenderdine)

#A 43 Letters, Department of Health to Dept of Maori Affairs, Whangarei, 30.9.86 & 6.10.86 (S Kenderdine)

#A 44 Letter, Comm for Environment to Dept Maori Affairs, 1.10.86. (S Kenderdine)

#A 45 Enviromental Impact Assessment prepared by Mangonui County Council, May 1984. (B Smith)

#A 46 Submission, L Howell, County Engineer and County Manager

#A 47 Report of A G Phipps, Senior Investigations Officer, Northland Catchment Commission on complaint W 33/3796 by Robinson, De Surville Motor Inn, Taipa re Effect of Dewatering for Sewerage Pipeline Installation on Taipa Sandspit Groundwater. (S Kenderdine)

#A 48 Tape recording of Rev. M Marsden (in Maori). (S Kenderdine)

#A 49 Transcription of tape item 48 by Te A Hona, C M M Goodall (Senior Research Officer)

#A 50 Report on the evaluation of *Wetland Treatment Systems in Northland* by G C Venus, Environmental Consultant, for the Northland Catchment Commission and Regional Water Board (1986). (D L Roke)

#B 1 Letter Dr C M M Goodall to D R Cameron of 4.11.86. (Senior Research Officer)

#B 2 Letter Dr C M M Goodall to S Kenderdine, Mangonui County Council, claimants and Dept of Health of 6.11.86. (Senior Research Officer)

#B 3 Chairman's Directions of 4.12.86 re conference at Kaitaia on 22.12.86 and reports of C M M Goodall and D R Cameron re treatment and site alternatives.

#B 4 Letter D R Cameron to Dr Goodall of 28.11.86. (Senior Research Officer)

#B 5 Report to Tribunal of Dr Goodall dated 5.1.86.

#B 6 Report to Tribunal of Mr Cameron, of 22.12.86, with *appendix* re impact of treated discharge on the Taipa estuary.

#B 7 Submission of MacCully Matiu

#B 8 Letter, NZ Board of Health to Waitangi Tribunal (16.12.86). (Senior Research Officer)

#B 9 Letter Senior Research Officer to Mrs Kenderdine (14.1.87). (Senior Research Officer)

#B 10 Transcript of evidence of John Bayly (Canadian Attorney) (Tape 1 : 4311 to 477)

#B 11 Inventory—Maori Land in Mangonui County near Taipa (includes seven maps). (Dept Maori Affairs)

#B 12 Letter Mangonui County Council to Waitangi Tribunal (23.12.86). (Senior Research Officer)

#B 13 Report of A G Bradley on Taipa Groundwater 5.11.86. (S Kenderdine)

#B 14 Submission, C M Adamson

#B 15 Copy decision *Royal Forest and Bird Protection Society Inc* v *Habgood and others*, High Court, Wellington, M655/86, 31.3.87. (S Kenderdine)

#B 16 Extracts form "The life of Henry Williams, Archdeacon of Waimate" by H Carleton, Vol 2, publ. Wilson & Horton, Auckland, 1877 (pp 12–13, 58–59, 62–67). (S Kenderdine)

#B 17 Copy letter W Hobson, Lt Governor, to Sir George Gipps, Governor NSW, 5.5.1840. (S Kenderdine)

#B 18 Extracts from Report from the Commissioner of Native Reserves, AJHR 1871, paper F-4 with (schedule, Class B 1 Reserves) (S Kenderdine)

#B 19 Map, Waimutu Blk, Mangonui Dstr. (S Kenderdine)

#B 20 Map, Mangonui Dstr, (Pororua's Claims, 19.5.1863) (S Kenderdine)

#B 21 "Acquisition of Maori Land for Public Works" by K A Palmer in Town Planning Quarterly vol 65 pp 35–43. (S Kenderdine)

#B 22 "Indigenous Peoples in Canada" by Douglas Sanders (Prof of Law, Univ of British Columbia), 25.6.86 (paper to Congress on Legal Pluralism, Sydney, 1986) (S Kenderdine)

#B 23 Planning Tribunal decision No. A46/86 re Mining Act application by Mineral Resources (NZ) Ltd dated 16.6.86. (S Kenderdine)

#B 24 Amended Statement of Claim by MacCully Matiu (filed 30.3.87) (S Kenderdine)

#B 25 'Guideline for the Design, Construction and Operation of Oxidation Ponds' Public Health Engineering Section, Civil Engineering Division, Ministry of Works and Development, Wellington. September 1974. (S Kenderdine)

#B 26 Submission, G P Adamson

#B 27 Final submission, counsel for claimants.

#B 28 Extracts from Milligan's Book. (S Kenderdine)

#B 29 Sketch Maps, Taipa, from doc B 28. (S Kenderdine)

#B 30 Statement of Mangonui County Council. (M Srhoj)

#B 31 "Alternatives for Sewage Treatment and Disposal"—a review of the Cameron report for the Mangonui County Council by Fraser Thomas Partners. (M Srhoj)

#B 32 Submission, counsel for the Mangonui County Council

#B 33 "Wetland Systems for Wastewater Treatment: Engineering Applications" by N N Hantzsche. (S Kenderdine)

#B 34 "Wetlands Treatment: A Practical Approach". (S Kenderdine)

#B 35 "Improving the Quality and Public Acceptability of Wastewater by Treatment in Artificial Marshes". C D Willmot, Senior Public Health Engineer, Head Office. (S Kenderdine)

#B 36 "Artificial Reedbeds For The Treatment of Wastewaters in New Zealand". (S Kenderdine)

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#B 38 "Organic Engineering", Brian Dumbleton, extract from New Civil Engineer, 6 March 1986. (S Kenderdine)

#B 39 Article on Root Zone Method bed at Acle for Anglian Water Authority. (S Kenderdine)

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#B 42 1864 Deed Extract, No. 19 Waimutu Block, Taipa, Mangonui District. (S Kenderdine)

#B 43 Extract from Turton's Epitome of Official Documents etc. C. No 6, Pg 4, W B White, Esq., Resident Magistrate to the Chief Commissioner, reporting difficulties from non-settlement of Oruru claim, dated 25.6.1856. (S Kenderdine)

#B 44 Extract from Turton's Epitome etc. C. No 5, Pg 3, Commissioner Kemp to Chief Commissioner, dated 12.4.1856. (S Kenderdine)

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#B 46 Extract from Turton's Epitome etc. C. No 10, Pg 6, Commissioner Kemp to Chief Commissioner, reporting final settlement of Oruru claims, dated 29.9.56. (S Kenderdine)

#B 47 Extract from "Te Whainga i Te Tika—In Search of Justice" pages 13–18. (S Kenderdine)

#B 48 Letter, Northland Regional Council to Waitangi Tribunal dated 24.6.88 with plan showing marsh catchment, copy water right application of 1985 with supporting papers and objections, evidence and submissions received, findings and decision. (Northland Regional Council)

#B 49 Department of Health Circular Memorandum, 9 May 1988, Ref. 194/9, 349/17.

(i) Major Recommendations of Hui Whakaoranga March 1984

(ii) Department of Health Circular Memoranda

(a) Treaty of Waitangi and Maori HealthSeptember 1986

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(c) Creation of Area Health Boards: Treaty of Waitangi October 1987

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(v) Departmental Policies

(a) Treaty of Waitangi Biculturalism and Partnership April 1988

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(c) Selection and Recruitment April 1988

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(vii) Bicultural Training April 1988

(viii) Board of Health Call for Maori Representation on Area Health Boards August 1986

#B 50 Dept Health, Subsidies for Water Supplies, Fluoridation, Sewerage, 1982 (Senior Research Officer)

#B 51 Nature Conservation Council Information Leaflet No 17, Sewage, its Treatment and Disposal, Revised Edition, 1981. (Senior Research Officer)

#B 52 Letter, Mangonui County Council to Waitangi Tribunal dated 24.6.88 with plan attached. (Mangonui County Council)

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INDEX

List of Reports of the Waitangi Tribunal

Wai-1	Fisheries regulations (Ngati Whatua)	March 1978
Wai-2	Waiau Pa Power Station (Waikato)	February 1978
Wai-4	Kaituna River (Te Arawa)	November 1984
Wai-6	Motunui (Te Ati Awa)	March 1983
Wai-8	Manukau (Ngati Te Ata and Tainui)	July 1985
Wai-9	Orakei (Ngati Whatua)	November 1987
Wai-10	Waiheke Island (Ngati Paoa)	June 1987
Wai-11	Te Reo Maori (Waikerepuru & ors)	April 1986
Wai-12	Motiti Island (Ngati Awa, Ngai Te Rangi)	May 1985
Wai-15	Ngai Tahu fishing rights (Te Weehi)	May 1987
Wai-17	Mangonui Sewerage (Ngati Kahu)	August 1988
Wai-18	Taupo fishing rights (Ngati Tuwharetoa)	October 1986
Wai-19	"Special Privileges"	May 1985
Wai-22	Muriwhenua Fishing, (Hon Matiu Rata Ngati Kuri & ors)	(*proceeding*) June 1988
Wai-25	Auckland Regional Authority (Auckland District Maori Council)	December 1986

[Reports Wai-8 (Manukau), Wai-9 (Orakei), Wai-11 (Te Reo Maori), Wai-17 (Mangonui Sewerage), and Wai-22 (Muriwhenua Fishing) are available from Government Print, Wellington, New Zealand.

The other Reports are to be published later also in standard format; in the meantime typescript copies are available from The Waitangi Tribunal, Department of Justice, Wellington, New Zealand.]

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Waitangi Tribunal Reports; 3

August 1988

Mangonui Sewerage Report (Wai-17)

August 1988
Mangonui Sewerage Report (Wai-17)
Waitangi Tribunal Reports; 3

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