THE WAIRARAPA KI TARARUA REPORT

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THE WAIRARAPA KI TARARUA REPORT

Volume III: Powerlessness and Displacement

WAI 863

WAITANGI TRIBUNAL REPORT 2010

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

The cover illustration, reproduced courtesy of Rangitāne o Tāmaki-nui-ā-Rua, shows the Dannevirke rubbish dump and sewage ponds in relation to Mākirikiri Marae. The photographer is unknown.

National Library of New Zealand Cataloguing-in-Publication Data

New Zealand. Waitangi Tribunal.
The Wairarapa ki Tararua report / Waitangi Tribunal.
(Waitangi Tribunal report)
Includes bibliographical references.

ISBN 978-1-86956-296-0

1. Maori (New Zealand people)—New Zealand—Wairarapa—Claims. 2. Maori (New Zealand people)—Land tenure—New Zealand—Wairarapa—History. [1. Tiriti o Waitangi. reo 2. Mana whenua. reo] I. Series II. Title
333.330899944209366—dc 22

www.waitangitribunal.govt.nz
Chapter 8 of this report was previously released on the internet in 2009 in pre-publication format
Published by Legislation Direct, Wellington, New Zealand
Printed by SecuraCopy, Wellington, New Zealand
14 13 12 11 10 5 4 3 2 1
Typeset in Adobe Minion Pro and Cronos Pro Opticals by the Waitangi Tribunal, Wellington, New Zealand

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ABBREVIATIONS

a	acre
AJHR	*Appendix to the Journals of the House of Representatives*
AJLC	*Appendix to the Journals of the Legislative Council*
aka	also known as
APL	Auckland Public Library
app	appendix
art	article
ATL	Alexander Turnbull Library
blk	block
BPP	*British Parliamentary Papers: Colonies New Zealand*, 17 vols (Shannon: Irish University Press, 1968–69)
c	circa
CA	Court of Appeal
CDC	Carterton District Council
cf	compare
ch	chapter
cmd	command
CMS	Church Missionary Society
CO	Colonial Office file
col	column
comp	compiler
CT	certificate of title
DNZB	*The Dictionary of New Zealand Biography*, 5 vols (Wellington: Department of Internal Affairs, 1990–2000)
doc	document
DOC	Department of Conservation
DOSLI	Department of Survey and Land Information
DR	Turton's deed receipt
ed	edition, editor
encl	enclosure
fol	folio
GIS	geographical information system
GBPP	*Great Britain Parliamentary Papers*
GWRC	Greater Wellington Regional Council
ha	hectare
HWB	Turton's deed reference for province of Hawke's Bay
ITQ	individual transferable quota
km	kilometre
ltd	limited
MA	Department of Maori Affairs file
MA MLP	Māori Affairs Māori land purchase files
MDC	Masterton District Council
MOU	memorandum of understanding
MS, MSS	manuscript, manuscripts
n	note
n/a	not applicable
NIWA	National Institute of Water and Atmospheric Research
no	number
NZC	New Zealand Company files
NLC	Native Land Court
NZPCC	*New Zealand Privy Council Cases*
NZPD	*New Zealand Parliamentary Debates*
NZLR	*New Zealand Law Reports*
NZRMA	*New Zealand Resource Management Appeals*
p	page, perch
para	paragraph
PC	Privy Council
pl	plate
pp	pages
pt	part
r	rood
RDB	*Raupatu Document Bank*, 139 vols (Wellington: Waitangi Tribunal, 1990)
reg	regulation
RMA	Resource Management Act 1991
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
sch	schedule
SD	survey district
sec	section (of this report, a book, land, etc)
sess	session
SOC	statement of claim
SOI	Statement of Issues
SOR	statement of response
SWDC	South Wairarapa District Council
tbl	table
TD	Turton's deed reference for province of Wellington
TDC	Tararua District Council
trans	translator
v	and
vol	volume

'Wai' is a prefix used with Waitangi Tribunal claim numbers.
Unless otherwise stated, endnote references to claims, documents, papers, transcripts, and statements are to the Wai 863 record of inquiry, an extract of which is reproduced in appendix IV and a full copy of which is available on request from the Waitangi Tribunal.

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CHAPTER 9

HOW VOLUME III WORKS

9.1 Introduction

In volume III of this report, we explore how the power relationship between settlers and tangata whenua in this district changed profoundly once the ownership of most of the land had passed from Māori to Pākehā.

In the early years of settlement, Pākehā had no choice but to engage productively with Māori. First, settlers took up residence in districts only with Māori sanction. Once established, the settlers needed Māori as workers, as providers of local knowledge, as traders in food and other commodities, and – especially – as owners of land that the settlers might want to lease or buy. So long as Māori were substantial owners of land, they were inevitably part of local decisions. But, well before the end of the nineteenth century, ownership of most of the land had passed out of their hands. Pākehā took over food production and trading, and they established their own formal processes for doing things. Their processes reflected their own cultural preferences, and Māori were substantially excluded. Progressively, Māori had less and less that the settlers wanted or valued, and their influence diminished accordingly. Finally, most Pākehā valued Māori only for their labour in mainly menial jobs. In Wairarapa ki Tāmaki-nui-ā-Rua, Māori became a poor and largely invisible minority.

But the identity of Māori, their sense of who they were, was intimately connected to place, even when they no longer owned the bulk of the land. Losing power and influence in their own rohe (tribal territory) threatened their very existence as people recognisably and viably Māori. The role of hapū and iwi as tangata whenua in the places where their tīpuna (forebears) lived was, and remains, fundamental. This volume of the report traces how, in many areas of local life in this inquiry district, that role has been jeopardised.

9.2 Structure of Volume III

Volume III is organised as follows:

- Chapter 10 sets out the thinking behind the volume. We explain the conceptual framework for grouping together the many subject areas we deal with in this volume. It turns on the relationship between Māori identity and their traditional areas

Māori at Ruamāhanga River, circa 1870s–1880s

of occupation. We describe the connections that bind tangata whenua of this region with places they have inhabited for centuries and examine how those connections were, and are, expressed.

- Chapter 11 describes the landward and seaward terrains that the Māori people of this region occupied.

We then turn to the here and now: who is managing these landward terrains and how are they doing it? How are these processes working for Māori? We investigate the different areas of policy and law affecting the landward terrains as follows.

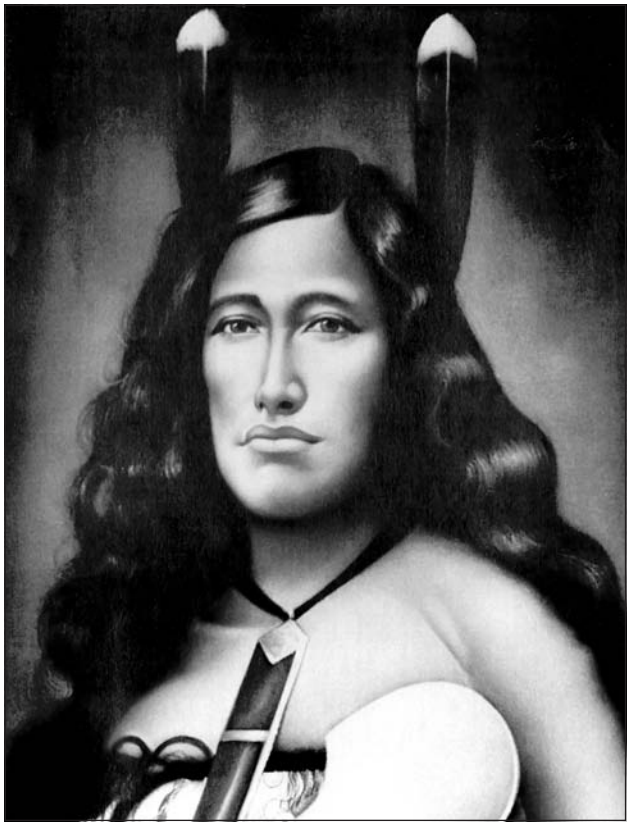
- Chapter 12A traverses what happened to the landward terrains in the process of colonisation. It looks at effects like deforestation, wetland depletion, and species loss.
- Chapter 12B focuses on local government representation and resource management – how the institutions and management of local authorities impact on Māori and how the tyranny of the majority is played out at the local level, where elections deliver little in the way of Māori representation. It also examines how the Resource Management Act 1991 authorises

various uses of the environment and the difficulties for Māori of influencing these processes.

- Chapter 12c looks at how the work of the Department of Conservation affects Māori in this inquiry district and their aspirations for positive change.
- Chapter 12d canvasses heritage management, including both heritage sites (wāhi tapu) and cultural property (taonga), and how the regime for protecting property and places of cultural significance to Māori is structurally flawed.

All these areas of policy and law have important features in common: they concern land and other taonga and they profoundly affect Māori in their traditional areas of occupation. But, despite their importance to Māori, Māori and their concerns occupy a position at the margins: the Pākehā worldview is dominant. Officials are typically Pākehā, and too few are knowledgeable about or interested in a Māori perspective. Only occasionally, and almost by accident, have Māori preferences been endorsed and given effect.

- Chapter 13a examines the seaward terrains and how the effects of colonisation and development affected them somewhat later than the landward terrains. Eventually though, population growth, greater mobility, and increased fishing took their toll, resulting in resource depletion and problems of access for Māori. The enactment of the quota management system is described, as is how Māori became part of the commercial fishing industry.
- Chapters 13b and 13c cover the contemporary management of the seaward terrains. Traditional Māori thinking conceived of the land and sea as part of an indivisible whole, but Māori's experience of colonisation on land differed from their experience in the seaward terrains. That is because the settlers characterised land as a commodity from the outset, whereas until well into the twentieth century the marine environment was conceived as a kind of commons that Māori could share. The creation of private rights to take fish is traced, and the participation of Māori in the commercial fishery since the Treaty settlements of the 1980s and 1990s is noted.
  - Chapter 13b ooks at the customary fishery and how it is managed. What are these claimants' Treaty rights and are they provided for?
  - Chapter 13c explains how, in 2004, the Tribunal issued its substantial report on foreshore and seabed policy as then articulated.[1] The enactment of the Foreshore and Seabed Act 2004 followed. Recently, the Government commissioned a review of that Act, and the panel has reported.[2]



Takare Tohi Renata, tupuna of witness Takare Leach, resplendent in huia feathers

Under these circumstances, and irrespective of the Government's response to the report, it is inappropriate for this inquiry to inquire further or to report on foreshore and seabed issues unless or until the parties have had an opportunity to reassess the situation and apply further.

- Finally, chapter 14 looks at the contemporary situation of Rangitāne in our district inquiry area and examines how their issues with identity are to be viewed in Treaty terms.
- We finish with the Tribunal's findings and recommendations.

Notes

1. Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004)

2. Taihākurei Edward Durie, Richard Boast, Hana O'Regan, *Pākia ki Uta, Pākia ki Tai: Report of the Ministerial Review Panel – Ministerial Review of the Foreshore and Seabed Act 2004*, 3 vols (Wellington: [Ministry of Justice], 2009)

CHAPTER 10

THE THINKING BEHIND VOLUME III

10.1 Introduction

Usually, Waitangi Tribunal reports have treated the topics comprised in volume III as separate chapters, each telling separate stories about how discrete areas of Crown policy have affected Māori. We have chosen not to do that because we want to emphasise the thematic connections between the topic areas. By doing so, we hope to paint a more comprehensive picture of the bind that Wairarapa ki Tāmaki-nui-ā-Rua Māori are in: they still live in areas occupied by their ancestors, they still want to influence what goes on there, but they comprise a small, typically penurious, minority who have access to none of the corridors of power. Volume III goes, topic by topic, through the practical consequences of this situation.

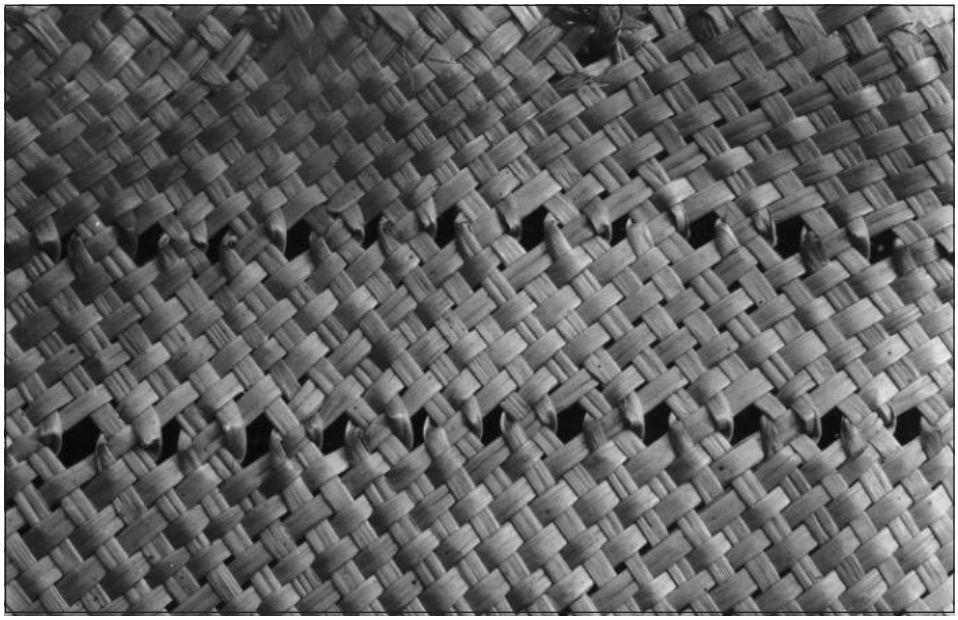
The core concept underlying this volume of the report is how Māoriness is profoundly related to place and how, when Māori are powerless in the very places they spring from, their Māoriness is threatened.

A Māori person is only 'Māori' in relation to tauiwi (non-Māori): in relation to other Māori they are tribal, and their tribe is connected to a rohe (tribal territory). Their stories and their whakapapa confirm their roots in the places occupied by their forebears and their membership of a particular hapū. Who they are and where they come from are thus inextricably intertwined: whakapapa and rohe are like the weft and the warp of a whāriki (woven flax floormat).

Once Pākehā concepts were overlaid, the Māori relationship with land came to be expressed in terms of property rights. But, actually, owning the land in the sense that everybody understands now was simply a definitional precondition to changing the ownership of the land. This was a corollary of colonisation. In Māori terms, the relationship with territory is better expressed in terms of authority, influence, control, and protection and the knowledge, familiarity, and intimacy that comes with long occupation and use.

Colonisation could have been managed in a way that secured the mana of Wairarapa ki Tāmaki-nui-ā-Rua Māori in the continuation of their timeless connection with the land of their forebears, but it did not. Once ownership in English legal terms was transferred to Pākehā, the connection, in tauiwi (non-Māori) eyes, was severed. Indeed, the relentless pursuit by the settlers of ownership transfer was probably motivated in part by a desire to effect that severance, so that the settlers could take over entirely.

▶ Detail of a kete



▼ Close-up of a woman's hands weaving the waistband of a flax skirt

From the point of view of colonisers, colonisation is about transformation – making the new place your own. Were settlers interested in learning about or accommodating the worldview of Māori who had lived in New Zealand for five centuries? Substantially, they were not. They did not seek a place for themselves in a Māori world. Their aim was to create a new society in which they were the centrepiece. Once they owned the land, they set about modifying the landscape so that it looked and felt more like home. They felled the bush. They introduced trees, flowers, crops, birds, and animals from the countries they had left behind, and named the landscape in their own language, English. One hundred and fifty years later, a person driving along the highways of this inquiry district will often struggle to spot a native tree. Sometimes, Māori place names are nowhere to be seen or are so modified as to be unrecognisable to tangata whenua (for example, the 'Haurangi' and 'Rimutaka' Ranges). In these ways, the colonisers effected their transformation. Pākehā came to control and manage nearly everything. By acquiring ownership of land, they took over even places most important to Māori: wāhi tapu, iconic landscape features, mahinga kai (traditional food-gathering sites). By designing and controlling the legal system, they also controlled the practices that defined Māori existence, like tribalism and the practices of tohunga (wizards or priests).

But while this transformation of their rohe was happening, Māori substantially remained in the places they had always inhabited: until the urban drift of the mid-twentieth century, they continued to occupy the valleys, hills, and coastal regions of Wairarapa ki Tararua as tangata whenua there. Although their landholdings steadily diminished, they were still, in their own eyes, the people of the land. They were defined by the land, their knowledge and understanding of it, its expression of their cosmology, and their taking of its bounty, according (as much as they could) to their own norms.

In this inquiry, it was evident to us that, for most of the 170 years that tangata whenua and settlers have been living side by side, the colonisers have had less and less appreciation of this Māori reality. Increasingly, the cultural lens of most Pākehā turned only in one direction: their own. Colonisation obliged Māori to learn to negotiate the Pākehā world, but Pākehā investment in Māori culture diminished as Pākehā dominance deepened and spread.

This is why settler culture conceived and established power structures – local authorities being the prime example – that have been, and remain, largely indifferent to Māori needs and desires.

We heard that the Māori people of this area really want to be able to make a difference in terms of:

- being represented in local government and involved in local government decision-making, especially where that decision-making affects areas of particular concern to them;
- protecting Māori heritage sites and preserving Māori cultural property;
- preventing further takings of Māori land by local authorities (or others) under public works legislation;
- using the Resource Management Act 1991 as a vehicle for making decisions in accordance with Māori views on environmental protection; and
- partnering with the Department of Conservation, especially in places of special significance to them and in relation to species of particular cultural importance.

Māori seek proper acknowledgement of the legitimacy and importance of their active and meaningful involvement in all these areas, without the need on every occasion to battle for such a role.

On the evidence we heard, it would be wrong to say that Wairarapa ki Tāmaki-nui-ā-Rua Māori have no influence as tangata whenua over what takes place in their traditional territory. But the influence they have is usually at the margins.

The relative weakness of the Treaty provisions in statute law affecting these many areas of activity ensure that the ability of Wairarapa ki Tāmaki-nui-ā-Rua Māori to fulfil their aspirations on the local scene is very limited. Usually, we learned, it is dependent upon the goodwill and good

Male and female huia. The specialised beaks were highly differentiated: the male's was long and curved, the female's short and strong.

about the effects on them of the compulsory acquisition of precious remaining landholdings. Secondly, it demonstrates the unwillingness of the modern New Zealand state to give effect to the guarantee in article 2 of the Treaty, even in respect of the vestigial land remaining in the hands of its traditional Māori owners. And, thirdly, it underscores the relative powerlessness of Māori politically, both at the local and at the central government level. The ongoing existence and use of the Public Works Act makes it clear that Māori really are left no space within which to exercise rangatiratanga – even over land of which they remain owners.

We look back now, though, to the centuries when Māori rangatira could, and did, exercise te tino rangatiratanga (the full chiefly authority guaranteed by the Treaty in article 2). We begin by looking at the relationship of traditional Māori with their physical environment – the notion of territory and the connection between landscape and identity. Materially and spiritually, Māori interacted dynamically with the physical world. They knew it intimately; it defined their lives. We examine the nature and extent of this interaction with the physical world in former times, in order to compare – and, in fact, contrast – the situation of modern Māori and their relationship in the present with the lands, waterways, and coastline over which they traditionally held sway.

sense of key individuals in the Pākehā-dominated local authorities and Crown agencies. Where that goodwill and good sense is lacking, Māori cannot get their voice heard and listened to.

Meanwhile, lurking in the background as a kind of festering sore for Māori is the power under public works legislation to acquire their lands compulsorily for public projects. That this power remains on the statute books, in the face of sustained Māori opposition and where (as in the district inquiry area) very little Māori land now remains, underscores three things. First, it indicates the indifference of central government to decades of complaint by Māori

10.2 The Way They Were

Perhaps the genius of pre-contact Māori was their profound and intimate relationship with the natural environment.

Māori conceived of land and sea as a unified whole under the aegis of Rangi and Papa (the legendary male and female progenitors). As described in chapter 1, the coastal marine environment was central to Māori survival, for food and for community. So, too, were the forested hills and the streams and wetlands. For centuries, Māori carefully balanced their use of these different terrains and the resources they supported. They knew the habitats, and the

flora and fauna there, down to the last rock and crevice. This symbiosis was a cornerstone of Māoriness, and in some respects, and for some people, it survives today. The connections with the land are expressed in multiple ways – in cultural practices, stories, names, diet, navigation. The land is an emblem of continuity. Phrases like 'toitū te whenua' are everywhere in waiata, emphasising the transience of humanity and the permanence of land.

10.3 A Conservation Ethic

In the centuries before the pig and the potato arrived, the people had to maintain an intimate relationship with their environment to ensure their physical sustenance. They needed to understand the flora and fauna that produced food in order to ensure their availability in the future.

Although Māori now regard a conservation ethic as integral to their culture, archaeological and other data tell us that the practices that ensured sustainability were learned in the conditions specific to Aotearoa. In the period immediately after the arrival of Polynesian people in this new environment, resources were depleted, and not all of them regenerated.

The reality is that the impact of humans on the islands that make up our country has been devastating. In just 700 years since humans settled here, 40 per cent of all indigenous bird species have become extinct, and 20 species are critically endangered. Extinction rates of bats, frogs, freshwater fish, invertebrates, fungi, and algae are at the same levels.[1] An English ecologist, Dr Tim Blackburn from Birmingham University, comes to New Zealand for two months every year. His expertise is in biological invasions and extinctions and in understanding the factors that drive them. In a 2005 article, he is quoted as saying:

> New Zealand was the last major land mass colonised by humans and that colonisation happened only recently so there's still plenty of evidence, like bones or feathers, of what was here originally. Ecologists can see what has been lost and why. For example, many large species and lots of small ones became extinct after Māori arrived. Hunting took out large birds, including 10 species of moa, and the kiore, the Pacific rat, eliminated many small [birds] so we have these twin drivers of extinction that, combined with habitat destruction, primarily by fire, did terrible work.[2]

Sixty-eight species of New Zealand's indigenous birds have disappeared since human settlement. Most became extinct during the 500 or so years of Māori occupation, prior to European arrival, but 17 species have been lost since then. Currently, 54 indigenous species are listed as threatened. The Department of Conservation has established three categories of threat, with 'nationally critical' being the most endangered. Species on this list have either fewer than 250 adults or a population that has declined by 80 per cent over 10 years. On it, there are 21 bird species. There are parallel lists and classifications of rarity for bats, frogs, freshwater fish, invertebrates, fungi, and algae.[3]

The Māori experience of species loss – particularly the extinction of the moa – and their cumulative, detailed knowledge of how flora and fauna responded to being harvested by humans over time gave rise to the conservationist practices that became a cornerstone of tikanga Māori (traditional rules for conducting life). Archaeological evidence shows that, once the moa was extinct and the seal population significantly reduced, Māori were forced to effectively eat their way down the food chain: the remains found in middens show that they were consuming progressively smaller species.[4] Their initial response was to search for new islands. A navigator named Hui Te Rangiora searched the southern ocean and reported that, apart from the Auckland Islands (which were too inhospitable for settlement), there was no more land to be found – only ice and bull kelp.

At this point, several things happened. Migration came to an end: presumably, word reached the Hawaiki homeland that New Zealand was full, and no more waka came after the Mataatua (around 1500). Secondly, Māori adopted

Māori outside Whare Tawhito at Te Ore Ore, circa 1870s

horticulture to supplement their hunting, fishing, and gathering. The main product was kūmara, which, once people discovered the benefits of creating sheltered stone gardens on the Wairarapa coast, could be grown even in harsh southern locations. Controlled temperature storage of tubers over the winter months was introduced so there would be seed tubers for the new season planting in late spring.

At the same time, Māori developed conservation practices to ensure the continuous supply of native species. For example, kereru (native pigeons) were harvested only in the winter months, and it was prohibited to consume shellfish (such as kina and mussels) on the rocks or below the high-water mark, thus preventing pollution or bacterial invasion of the shellfish.

Unfortunately, when Pākehā arrived, they did not learn from the Māori experience. Ultimately, they learned their own conservation lessons, slowly and painfully, and after further environmental damage and species loss. The result is that now, finally, and hopefully not too late, the New Zealand population as a whole supports the prevention of further species loss.

10.4 Māori and the Concept of Territory

Although food-gathering was a critical aspect of the relationship of Māori with the environment, it would be wrong to think that this was its only focus. The relationship was multi-dimensional. The identity of each hapū was intrinsically linked with its locale. The right to occupy a place was an incident of whakapapa; it was passed by descent and was linked to an entitled ancestor. Major, long-established hapū could trace to the earliest tangata whenua but sometimes to later migrations or to ancestors who had moved and taken up rights to the places their descendants now occupied.

Pepeha (traditional sayings) from the nineteenth century typically linked iwi or hapū with persons with mana over land and with landscape features distinguishing that locale. Down to the present, such pepeha are used to locate Māori people in terms of whakapapa and place. Thus, when he gave evidence before us at Masterton, Matai Broughton introduced himself thus:

> Ko Kupukokore me Taraoneone ngā maunga. Ko Aohanga me Mataikona ngā awa. Ko te Hika o Papauma taku hapū. Ko Papauma me Whakataki ngā marae. Ko Potangaroa te tangata. Ko Kahungunu te iwi. Ko Takitimu te waka.[5]

Likewise, Manahi Paewai at Mākirikiri Marae in Dannevirke: 'Ko Ruahine te maunga. Ko Manawatū te awa. Ko Te Rangiwhaka-ewa te tangata. Ko Kurahaupō te waka. Ko Rangitāne te iwi.'[6] It is interesting to note that the connection with places – mountains and rivers – is recited before the connection with people.

The relationship between identity and place was expressed in many ways. Māori put marks on the land to establish their place there. Often, the most sacred marks were not spoken of in the Native Land Court, but they existed nevertheless. They may have taken the form of tūāhu (altars), pou (posts), or tohu (signs). Sometimes, the act of erecting these marks was very sacred; tūāhu were in this category, signifying the relationship between people and their most tapu (sacred) ancestors. But pou could often simply be indicators of a right to harvest a particular resource – berries, flax, and reeds – or a particularly rich bird habitat, serving to warn off others.

Urupā (burial places) also related a people permanently to a place. People buried their dead only on land to which they had a right. The existence of urupā was therefore one of the primary ways of demonstrating take (legitimate claim) to land.

Naming was another powerful expression of connection with land and dominion over it. The people and events associated with the name given would be synonymous with the place forever. Sometimes, the act of naming was for a particular purpose, perhaps to rāhui the land (set it aside on special terms as a no-go area, for a special purpose and for a fixed period).

People expressed their identity through pepeha, waiata (songs), and kōrero (stories) that spoke of their connection to the land. The more well-known the saying or song, the more irrefutable the connection celebrated by it.

Thus, we see that it was in the very nature of being Māori for a person to have an intense, lifelong – indeed, intergenerational – relationship with the area over which his or her hapū had mana.

Nor should it be supposed that the geographical area with which Māori interacted was necessarily small. Speaking of the nature of hapū, Angela Ballara, perhaps New Zealand's foremost expert on Māori social structure, wrote in her report for the central North Island inquiry:

> Hapū were of various sizes, strengths and degrees of unity. The largest, most powerful hapū did not usually (that is, in times of peace) live together in a single village or defend a single pā (fort). (Very few hapū, even the smallest, lived all together all the time in any one village – they all had multiple residences and small cultivations near their various resources for sustenance during economic tasks.)[7]

This description is consistent with the evidence presented in this district inquiry.

In Wairarapa, groups were located primarily on the

coast, but at particular times of the year they ventured inland along established routes (usually following river valleys) to harvest resources to which they were traditionally entitled.

At the Tāmaki-nui-ā-Rua end of the district, the practice was reversed. Most groups were primarily resident inland, in the vicinity of Te-Tapere-nui-ā-Whātonga (Seventy Mile Bush), which was of course used extensively to gather kai. 'The products traditionally harvested from the bush, often seasonally along kai paths, included birds, eels, fruit, medicinal bark and leaves, wood for canoes and numerous other items.'[8] These hapū also undertook seasonal excursions to the coast to gather kai there.

Thus, all the hapū had principal kāinga (settlements), and usually also pā (forts). But, in addition, there were cultivations and hunting and fishing camps at other locations.

All the places were known intimately, together with the terrain linking them. The places could be far apart. For example, from the kāinga around Te-Tapere-nui-ā-Whātonga to Akitio on the coast was an expedition of several days' duration. Thus, the total area known and regularly visited by those hapū was in the thousands of hectares.

Māori customarily engaged dynamically and profoundly with the locale in which, by birth, they had rights of occupation and resource use.

10.5 The Loosening Connection

Changes in the relationship with the physical environment described above began very soon after the arrival of Pākehā. In his report on Tararua environmental issues, historian Steven Oliver ventured the view that 'Traditional food gathering, and pre-European crops, may have been largely replaced by introduced European food crops and domestic animals as early as the 1850s.'[9]

This rapid change appears to have been referable both to the decline of the traditional resources themselves and to a decline in the use made of them by Māori.[10] We now discuss these two factors.

10.5.1 Decline of traditional resources

The impact of introduced species on the natural environment was astonishingly speedy, and sometimes devastating. Oliver told us that:

> By the mid-nineteenth century or earlier the forest birds which had provided a major food source had been greatly reduced in number by introduced species of rats. . . . The disappearance of forest birds was given as a reason for selling land by Hine-i-paketia, a Ngāti Te Whatu-i-Apiti and Ngāti Kahungunu leader, at the time of the sale of the Waipukurau block in 1850. She said the land was now useless as introduced predators had destroyed the birds and other game and she wanted the land settled by Europeans with whom her people could trade.[11]

The missionary William Colenso voyaged through the district inquiry area on an inland route 'from the southern edge of the Ruataniwha plain to beyond the Ruamāhanga crossing' in 1846.[12] It was all bush travel, with few clearings.[13] Speaking of the dense southern portion of the bush, he said it was:

> the most primeval of any I had seen in [New Zealand]. The soil for many feet in depth was only composed of decayed vegetable matter, mostly leaves; and many of the trees were of immense size. The birds were very few – and a death-like silence reigned – not even broken by the solitary owl.[14]

Thus, it appears that the changes in the environment were sufficiently dramatic as to be noticeable even before land clearances began.

In the section that follows, we discuss the diminishing reliance by Māori on traditional food sources as a result of the introduction of European crops, which were easier to grow, and pigs, which were easier to hunt and provided better nutrition for less effort. It is just as well that alternatives were available to Māori, because once their traditional lands began began to be occupied in earnest by Pākehā, the changes to them were many and swift.

Huge areas of land were deforested in the district inquiry area in the nineteenth century. This had an immediate and profound impact on the habitat of many species – the huia being perhaps the best-known and the most poignant – and the viability of many mahinga kai must have been put into question.

In addition to the reduced area available for hunting and gathering as a result of deforestation and land alienation, there was also competition from European settlers, who also derived part of their livelihood from hunting and gathering.[15] In his report on Tararua environment issues, Oliver refers to settlers hunting for wild cattle, pigs, horses, turkey, geese, peacocks, pheasants, deer, kererū, weka, tui, kākā, eels, and fish.[16] These observations related also to the Wairarapa area. To what extent these activities impacted negatively on the environment or on Māori, we can only speculate. One possibility is that the opportunity to hunt introduced species simply reinforced the hunting economy and Māori's reliance on it, thereby delaying their switch to animal husbandry – and increasing their vulnerability once the forest habitat was reduced by logging.

The increasing competition from European hunters added to the overall picture of decline in those resources upon which Māori had relied for mahinga kai. Changes to waterways brought about by deforestation were another important factor:

> Fisheries were affected by the removal of forest cover as the river and stream banks eroded and wide, shallow channels open to sunlight replaced the deeper, sheltered pools of forest rivers. The velocity of the water also increased. The effect was to reduce the habitat of fish and eels.[17]

10.5.2 Decline in mahinga kai practices

Changes in mahinga kai practices followed hard on the heels of the introduction of potatoes and pigs as an alternative food source. Foss Leach told us that:

> When potatoes and pigs were introduced into New Zealand by Captain Cook and other early European visitors everything changed forever.
>
> It is impossible to over-emphasise the impact that the introduction of these two new items of food had on Māori throughout New Zealand.[18]

Leach quotes the work of Raymond Hargreaves, who concluded:

> Thus by the 1830's the potato was the basic food crop of New Zealand, preferred by the Maoris above all their traditional crops. This was no doubt in large measure due to the ease, and, because of its far greater climatic tolerance, the certainty with which the crop could be grown in all parts of New Zealand. Another major factor which added to its attractiveness was its better keeping qualities when lifted as compared with the traditional kumara.[19]

Leach notes that, because of the relatively harsh climate in the Cook Strait region (which made the cultivation of kūmara marginal), the introduction of the potato increased the carrying capacity of Wairarapa lands. We saw on the southern Wairarapa coast how, before the arrival of Europeans, the people there went to great lengths to encourage the growth of kūmara by increasing the soil temperature with stones and by creating wind barriers. The susceptibility of kūmara to frost meant that its cultivation was possible only where the proximity of the sea made frosts infrequent and light. The greater climatic tolerance of the new food resources made it easier for people to occupy inland areas permanently.[20]

Leach presented to the Tribunal fascinating data about the relative yields of potato and kūmara in the Cook Strait region: the former greatly exceeded the latter, and it was possible for Māori to get two annual harvests of potato. It appears that, whereas kūmara might yield eight to nine tonnes per hectare in the Cook Strait region, potatoes might yield about 15 tonnes per hectare (although the first crop of potatoes raised in the Hutt Valley was pre-1845 and

exceeded 45 tonnes per hectare).[21] If two crops were harvested, obviously this figure (15 tonnes per hectare) would be doubled.[22]

The uptake of European food crops was also evident in the north of the inquiry district. Oliver noted that 'European food crops were adopted at least as early as the 1830s and by 1874 Māori were reported to have produced 2000 bushels of wheat and 200 tons of potatoes on the plains north of Tararua'.[23]

The introduction of the pig influenced settlement patterns too. Pigs had spread throughout the North Island by the 1820s.[24] Leach quotes a contemporary source that has Pākehā observing Māori setting off to hunt them in Wairarapa in 1839. It is stated that pigs were extremely common by 1842 and that 'Wairarapa Māori of the 1840s frequently killed many more pigs than they needed and also kept tame pigs'.[25]

Thus, we see that, even before the process of land alienation was really under way in the inquiry area, significant changes had already taken place. The impact on how Māori perceived their relationship with the environment can only be surmised, but their involvement in raising crops may have reduced the time available for traditional food-gathering expeditions.

Another factor influencing change was the greater efficiency of the introduced food resources in terms of the trade-off between nutritional value and the effort required to obtain the food. A hapū would no longer need to range far and wide to obtain the carbohydrates and protein they required for survival. There would have been declining reliance on certain favoured areas for digging for fern root (the main pre-contact source of carbohydrates in inland areas), on particular groves of trees where birds were caught and berries gathered, and on far-flung eeling streams.

This is certainly the implication in Oliver's evidence. He gathered accounts from Native Land Court records of mahinga kai activities on the various blocks in the Tararua area. At the time when the evidence was being given (roughly from the 1870s on), most of the stories about traditional food-gathering were retrospective. For instance, Tawa Rautahi, talking about Puketōī 6 (a land block situated in the centre of the Tāmaki district at the extreme western end of the Tautāne block), said his father had given up cultivating crops there after the introduction of Christianity (probably in the 1840s) and no one lived there any longer.[26] He went there to hunt pigs and catch birds and had caught eels and rats there in the past. Oliver notes a number of references in the land court minutes to a decline in both traditional food-gathering expeditions from the 1840s and the use of some areas for cultivation.[27] The inference from the evidence is that, once European food crops were available, a hapū could grow sufficient food in one locality, reducing the need for food-gathering expeditions further afield.[28]

The result appears to have been that, by the latter part of the nineteenth century, traditional food-gathering was no longer the major means by which Māori in the inquiry area obtained a livelihood. Hunting pigs and cattle, rather than catching rats and birds, became the motivation for expeditions into the bush.[29] The change was attributable to changing preferences and to the decline in bird numbers; huia and tītī (muttonbirds) disappeared altogether. However, eeling and fishing remained important for much longer.[30] Areas reserved from land sales reflected this emphasis: they were very often near favoured fishing locations.

10.6 The Connection Unravels

Would Wairarapa ki Tāmaki-nui-ā-Rua Māori have perceived at the time that their traditional practices had changed forever? Or that their lives had become more concentrated on the part of their rohe where they cultivated potatoes and raised pigs, so that their interactions with the bush would forever be more spasmodic and less integral to their survival? And might an awareness of these

changing use patterns have influenced Māori behaviour in the sale of land? Did they see themselves as now requiring less land to survive? Possibly.

However, in Wairarapa the evidence certainly indicates a strong preference for leasing land to settlers rather than selling it. The practice was compatible with the traditional custom of allowing refugees from other iwi to settle on hapū or tribal land as vassals who paid tribute to their 'rangatira'. Similarly, the leasing arrangement between rangatira and settlers was a congenial one of mutual benefit: rangatira gained an income which supplemented their traditional gardening, hunting, and fishing economy; settlers gained access to grazing land at a low rent. Moreover, the pattern of leasing adopted in Wairarapa appears to have allowed the hapū connected with the land to maintain their link to it, even though it was occupied by lessees (see ch 2, 6).

It is so difficult now to reconstruct how the people of those times would have processed the many changes confronting them. Before about 1800, most Māori people would have noticed no cultural changes at all in the course of their lifetimes. The human world that individuals entered at birth was the same as the one they left at death. There was variation in events, of course – feasts, famines, local triumphs, and disasters – but the patterns within the society must have seemed immutable. There was just one way to do things, one cosmology, one vocabulary, one set of stories; things were just the way they were. But then, starting with the introduction of muskets and the new plants and animals already discussed, an era of rapid change began, and it has really not stopped since.

The period from 1820 to 1850 was one of upheaval in so many ways. In his report, Leach focused on the experience of Ngāti Hinewaka, a group that traditionally occupied areas of southern Wairarapa. But the same observations could have been made about all the groups in the southern part of our district inquiry area, and of the northern inhabitants too (although probably over a slightly longer timeframe because of the later alienation of their lands):

Eeling remained important for much longer: Ernest Himiona Kawana ('Limbo') in the 1950s

The best way of describing the period from about 1820 to 1850 for the Ngāti Hinewaka people is that it was tumultuous. In the space of one single life-time a series of dramatic changes took place which changed their way of life forever. Apart from the normal culture shock which accompanied all European expansion and colonization, such as accepting new technologies and ideology, Ngāti Hinewaka had to contend with a complete change in the basis of their economic system, a

different settlement pattern and distribution of population, the introduction of new killer diseases, marauding groups of musket-bearing Taranaki Māori, the process of Christianisation, an exodus to Nukutaurua and a later return, and finally the alienation of at least 70 per cent of their traditional lands. That was a lot to contend with.[31]

The evidence certainly suggests that, by the late nineteenth century, Māori in the inquiry district were in a parlous state. Their population had declined sharply – according to Wairarapa native officer E S Maunsell, it had dropped from 1000 in 1866 to 650 by 1880.[32] Maunsell talked of 'want and exposure' causing death, but undoubtedly the vast and usually deleterious changes in the peoples' lives also brought with them spiritual malaise. Oliver speculates that the loss of traditional food resources, and declining access to and control over them, may have been a factor in the decline in population and health of Wairarapa Māori.[33] As a professional historian, he exercises appropriate caution in raising this as a possibility only, because of course there is no proof. But can it really be doubted that Māori of the period were shaken to their very foundation by what they were experiencing? Or that the rapid changes in the landscape – the physical world by and through which they had lived and located their identity and spirituality – were shocking in the most profound way?

In this district inquiry, the Crown has conceded that, by the turn of the twentieth century, there was insufficient land for Wairarapa ki Tāmaki-nui-ā-Rua Māori. It appears to have occurred as a corollary of land sales throughout the district that Māori were left essentially without any kind of influence. Their marginal economic condition, living mostly as seasonal agricultural labourers on lands that they had owned but a generation earlier, no doubt contributed to their lowly status in the rural communities of that era. They were also relatively few and were scattered through a large district where there were a few small towns and an extensive hinterland. It seems that, as a group, they lacked critical mass and had little presence.[34] No doubt all of these factors contributed to their condition as fringe-dwellers in a society where the affluent farming families had the most say about everything.

Perhaps it was inevitable, once the chance of their becoming part of the agricultural land-owning class had passed, that Māori would simply be overlooked and bypassed in local decision-making. It was an era in which the Treaty, if it was speaking at all, was speaking only to Māori and only on marae: to the Pākehā majority, it was pretty much a dead letter. The status of Māori as tangata whenua certainly did not seem to count for much once the whenua was substantially owned by others.

And yet so much local decision-making did impact directly on Māori in their capacity as kaitiaki (caretakers) of natural resources and, albeit now to a vastly lesser extent, as landowners. It is apparent that, when it came to decisions about the environment, the mood of the times favoured development rather than protection or conservation. Flood protection was a major topic in Wairarapa in particular, and the imperatives driving those initiatives were those of the local farmers, who had their own parochial interests and who had little regard for the wider picture, including Māori.[35]

Māori had been invisibilised.[36] Where once they were masters of all they surveyed, now it was as though they were hardly there at all. They did not sit on catchment boards, they were not on councils, and their lands were a resource for others to use, whether through pastoral leases or compulsory acquisition for public projects. It is impossible to escape the conclusion that Māori land was an easy target when it came to locating rubbish dumps and sewerage ponds: Māori protests appear to have been the easiest to resist. Māori were not knitted into the power structures of the day; on every topic, their views did not matter. The experience and knowledge about land and resources that they had built up over centuries was barely known about, and was not valued.

These were the years when acclimatisation societies were in their ascendancy: the introduction of new species for recreational purposes was the flavour of the day.

The protection of existing species and their habitats was of much less importance and had little political traction until the latter years of the twentieth century.

The status of Māori as tangata whenua lived on as a reality in their own hearts and minds, as vibrant as ever in the Māori world but unseen and unheeded by the Pākehā world, where, of course, the power lay.

It is plain, or relatively plain, what happened: Māori were relegated to a marginal and unimportant role in the communities that now lived on what had been their ancestral lands. When the Crown delegated powers allowing the acclimatisation societies to introduce exotic species, Maori were simply sidelined. The same thing happened when local bodies were established and empowered to make decisions about local resources and heritage and other matters: very quickly, the tangata whenua became powerless onlookers who had no meaningful part in the political economy of the day.

Plainly, it was not in the spirit of the times for Māori views and Māori authority to be accommodated in the settler world. But where does that observation take us? Is it simply cringing presentism to insist that the matter should not end there? That something more, or different, should have been done? We do not think so. The Treaty was intended as a foundation document of the new society, enshrining principles that everybody signed up to at the outset, when Māori did have real power. Because the fashions in thinking changed in the course of the nineteenth century and other imperatives took over does not mean that the initial understandings should be consigned to a back drawer labelled 'irrelevant'.

While it was inevitable that the settlers would wish to acquire land, the way in which it was acquired was not the only option. We have already examined that topic (see ch 2). Similarly, having sold their land, it was not an inevitable consequence that Māori would thereafter be relegated to an insignificant role in the communities in which they now lived.

The wrongs encompassed in Māori being rendered powerless in their traditional areas of influence, it seems to us, go beyond the wrongs associated with the overpurchase of their lands. As the earlier discussion indicates, land for Māori was not simply the cornerstone of their material well-being: the land was them, and they were the land. It went to their identity and spirituality, and even when they were no longer its owners, they were still bound up with it and connected to it, simply by virtue of who and what they were. The name says it all: tangata whenua. This is a concept independent of land ownership in the Western sense. It is about belonging, and it lasts forever.

If the Treaty meant anything at all, it must have meant at least that Māori were guaranteed the right to continue to be Māori and to maintain their identity as culturally distinct people in the new society. Arguably even more so after their lands were substantially gone, Māori needed a proper role in the new dispensation, especially at the local level, where their authority and identity had traditionally been expressed. But, in fact, they had almost no influence on local matters, and if legislation did not actually make it so, it certainly did nothing to improve their situation.

It has been suggested that it is unreasonable to posit a more rosy counter-factual in which settler communities or 'the Crown' dealt more fairly with their Māori neighbours, because:

- settlers were focused on their own survival and economic advancement, and it was no business of theirs whether Māori were faring well or not; and
- in the nineteenth century there really was no 'Crown' to speak of: government in New Zealand was essentially laissez-faire in character; the society was new and not affluent, and it was every man for himself; the Crown had neither means nor mechanisms to regulate the activities of settlers in the regions.

Even if this conception were to pass muster in the nineteenth century, what of the twentieth century? Or, for that matter, the twenty-first century?

For the evidence presented to us of Māori powerlessness at the local level was not rooted in the distant past. It concerned events in the living memory of the witnesses, taking us right up to the present day.

Thus, we had before us witnesses who told us about:

- The lack of Māori representation on local councils in the district inquiry area, and their pessimism about the current electoral system ever delivering good Māori representation in local government.
- Māori exclusion from meaningful roles in local government decision-making.
- How 'consultation' with Māori makes huge demands on their time and energy for little return: their input frequently makes no difference and their time is not paid for.
- How Māori land has been taken for public works even in the face of protest, and how powerless they feel to protect their land from such acquisitions.
- The relative unimportance of Māori heritage sites in the official world compared with, for example, the value put on expressions of European culture in the built environment.
- Their desire to have the training, resources, and backing to control their heritage sites and cultural property themselves.
- Their preference for establishing a basis for working in partnership with the Department of Conservation, rather than as an interested party whose views are to be taken into account.
- Their desire for more say under the Resource Management Act 1991, in respect both of planning processes under the Act and their responses to resource consent applications. They would like the importance of their input to be reflected in the availability of financial assistance.

All the problems referred to above occur in the present day, under the present legislative regime. This is an era in which there are no structural reasons why Māori involvement could not be otherwise, and nor is the Government without resources to pay for what needs to be paid for. Meanwhile, the Crown's Treaty responsibilities are understood and acknowledged: in policy terms, the Treaty is not a dead letter, and the Tribunal's role attests to that. And, yet, changes are slow and incremental, and Māori frustration continues.

In the succeeding chapters of this volume, we look at each of the various areas in which the fundamental grievance of Māori is that, in the very places where they live and where they are tangata whenua, they still lack sufficient power to make their cultural preferences count in decision-making.

Notes

1. E Light, 'All Creatures Great and Small', *North & South*, no 235 (October 2005), p 104
2. Ibid, pp 104–105
3. Ibid, p 105
4. Janet Davidson, 'Wāhi Tapu and Portable Taonga of Ngāti Hinewaka: Desecration and Loss; Protection and Management' (commissioned research report: Ngāti Hinewaka Claims Committee, 2003) (doc A67); Foss Leach, 'Depletion and Loss of the Customary Fishery of Ngati Hinewaka: 130 Years of Struggle to Protect a Resource Guaranteed under Article Two of the Treaty of Waitangi' (commissioned research report: Ngāti Hinewaka Claims Committee, 2003) (doc A71)
5. Document C6 (Broughton), p 2
6. Document F18 (Paewai), p 2
7. Document A2 (Ballara) Wai 1130, p 185; Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts' (Wellington: Crown Forestry Rental Trust, 2004), p 185
8. Document A35 (Oliver), pp 6–7
9. Ibid, p 29
10. Ibid, p 30
11. Ibid, pp 30–31
12. Document A27 (Robertson), pp 15–17
13. Ibid, p 15
14. Ibid, p 16
15. Document A35 (Oliver), pp 32–33
16. Ibid, p 33
17. Ibid, p 33
18. Document A71 (Leach), p 6
19. Raymond Philip Hargreaves, 'Changing Maori Agriculture in Pre-Waitangi New Zealand', *Journal of the Polynesian Society*, vol 72, no 2 (1963), p 104 (doc A71 (Leach), p 8)
20. Document A71 (Leach), p 8
21. The Cook Strait kūmara figures are based on experimental research plots of traditional varieties in Palliser Bay and the Marlborough Sounds: doc A71 (Leach), p 9.

22. Document A71 (Leach), p 9–10
23. S Locke to Native Minister, 'Reports of Officers in Native Districts', AJHR, 1874, G-2, p 18 (doc A35 (Oliver), p 31)
24. James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Allen Lane, 1996), p 146 (doc A71 (Leach), p 10)
25. Document A71 (Leach), p 11
26. Document A35 (Oliver), p 29; doc A47 (McBurney), p 239
27. Document A35 (Oliver), pp 29–30
28. Ibid, p 23
29. Ibid, pp 36–37
30. Ibid, p 35
31. Document A71 (Leach), p 17
32. Document A35 (Oliver), p 32
33. Ibid, p 32
34. This was presumably not so at Pāpāwai during the years of the Pāremata there. It is unclear, though, whether the Kotahitanga succeeded in gaining influence for Wairarapa ki Tāmaki-nui-ā-Rua Māori in local issues. The Wairarapa Moana story (ch 7) would tend to suggest not.
35. Document A41 (McClean), pp 19–50. See especially pages 29 and 30, which describe how a stopbank was built over Māori land without following proper procedures and without consulting the Māori landowners. Or see pages 37 to 45 for the 1930s 'battle of the stopbanks'.
36. Document A25 (Marr), pp 37, 59

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CHAPTER 11

WHERE AND HOW MĀORI LIVED

11.1 Nourishing Terrains

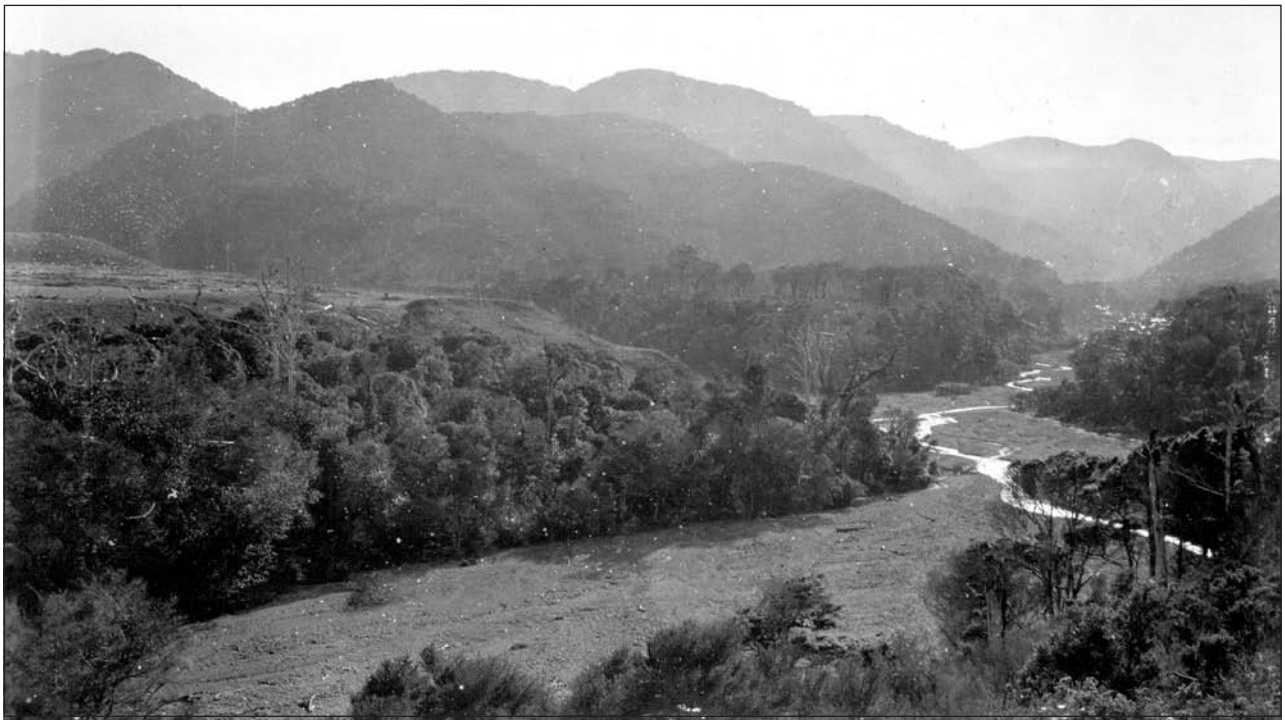
Wairarapa ki Tararua is a rich and fertile environment comprising multiple ecological niches: the wide alluvial lowlands of the Wairarapa valley; the small coastal lowlands between Te Poroporo/Cape Turnagain and Mātakitaki-a-Kupe/Cape Palliser; the dense lowland forest of Tāmaki-nui-ā-Rua/Seventy Mile Bush; the upland forests of the Tararua and Ruahine Ranges; the mixed environment of the coastal hills and ranges; the rivers, lakes, and wetlands; and the estuaries, lagoons, and coastlines.[1]

In volume I, we identified the district's key geographical features and told how and why various hapū came to settle in different localities. We described, in general terms, how Māori used, changed and were changed by the physical environment in the centuries before the arrival of the Pākehā (see ch 1).

In this chapter, we briefly revisit the traditional relationship between the tangata whenua and the local environment in the early nineteenth century and note how that began to change under the impact of European settlement. We consider both the landward and seaward terrains. To tangata whenua, these were inextricably connected. They were – to borrow a phrase used by anthropologist Deborah Bird Rose about the experience of Australian Aboriginals – their 'nourishing terrains'.[2] They were places that gave life and received life; they were lived in and lived with; they provided nourishment for body, mind, and spirit; they were living entities with a yesterday, a today, and a tomorrow.[3] Knowledge of each nourishing terrain was local, specific, detailed, and tested through time. On the evidence before us, there is no place in Wairarapa ki Tararua today that has not been 'travelled, known and named'.[4]

11.2 Learning the Fragile New Environment

This carefully generated local knowledge grew out of, and intermingled with, Polynesian concepts that arrived with the first settlers. They were intentional voyagers, bringing with them carefully selected gene pools of people, plants, and animals.[5] They also brought conceptual tools such as whakapapa, tapu, and rāhui (restriction on access for a set time) that would, in time, provide the foundations for a new and comprehensive environmental ethic. In Aotearoa, they found an environment that was bountiful but also fragile and



Wharepapa River and southern Remutaka Range

highly vulnerable to the arrival of people and animals.[6] It was also decisively different from their tropical homelands. 'Massive, cloudy and cold', writes Professor Atholl Anderson, 'it stretched to the limit the environmental adaptability of the first settlers.'[7] The response, he suggests, was 'typical of colonisation everywhere and at all times'. Because migration to a new environment releases a powerful instinct to expand as rapidly as possible, these first settlers became 'optimal foragers', plundering those resources that offered the greatest return from the least effort.[8]

The consequences of this initial encounter between people and environment, most acute during the first one or two centuries of human occupation, were described in volume 1.[9] This was a time of mutual adaptation, in which new balances were established.[10] Research into the wider prehistory of New Zealand shows that the first settlers did not always have the knowledge or cultural mechanisms to modify their food-gathering practices when necessary for the ongoing health of their people and environment (see sidebar). But that changed over time. Polynesian people became Māori as they explored the new land, observed and experimented, enlarged their local knowledge base, and increased their range of production possibilities. Whakapapa were expanded and adapted to embrace the full range of biota and physical phenomena, including the clouds, winds, water bodies, and landforms of this new environment.[11] Takirirangi Smith, giving evidence for Ngāi Tūmapuhia-ā-Rangi, describes the essence of whakapapa kōrero in these words:

> Essentially everything in the environment was related and a descendent of mother earth (Pap[a]

The First Polynesian Settlers at Palliser Bay

Detailed archaeological research undertaken by Foss and Helen Leach and their Otago University colleagues at coastal sites around Palliser Bay indicates that a small community of Polynesian people arrived and settled there around the twelth century. Their stone artefacts show that they had close links to other communities on the shores of Cook Strait and further afield in the North and South Islands.

In a land not previously settled, and in the absence of specific local knowledge, the settlers' strategy was simple: take and consume the most readily available resources. They had brought plants and animals from Polynesia and attempted to set up a familiar pattern of living in their new place. They established the garden agriculture that had worked well for them in their tropical homelands. They used slash and burn methods to remove the forest, and they moved stones to create plots where the plant materials carried from their homelands could be planted. Bones and shells gathered from middens show that they also exploited the resources of sea, beach, shore platform, estuaries, and forests. However, there is no evidence of either moa or flightless duck (found in pre-settlement archaeological sites), indicating that these species had become locally extinct as a result of climate changes in the centuries before Polynesians arrived.

Unfortunately, there was a mismatch between the settlers' familiar technologies and their new environment. Very few of the tropical plants they brought survived in Wairarapa. Kūmara was marginal, and the garden soils declined in fertility with each successive crop. As a result, while the first generations of Polynesian settlers were fit and healthy, successive generations were less well nourished. The environment also deteriorated: more and more forest was cleared for gardens and then regenerated into scrub and grassland. Erosion followed and the sediment load in streams increased, destroying bivalves and gastropods in the estuaries, lagoons, and coastal waters. An ecological disaster affected humans and environment, and the area adjacent to Palliser Bay was abandoned for a period of between 200 and 400 years.

The tools of the Neolithic Māori. A selection of chisels, hafted adzes, and gouges used for cutting or sawing wood and stone.

The Seasonal Round in Pre-Contact Wairarapa

Takirirangi Smith described the pre-contact round of seasonal activity followed by Ngāi Tūmapuhia-ā-Rangi. It was determined, he told the Tribunal, by the nature of the environment and by the relationship of Rangi and Papa, which controlled the climate and the seasons. Food resources determined the location of whānau at any particular time and were linked by kai pathways, which were themselves part of the manawhenua (customary rights and authority over land and taonga) and mātauranga (knowledge) of hapū.

Winter/Takurua

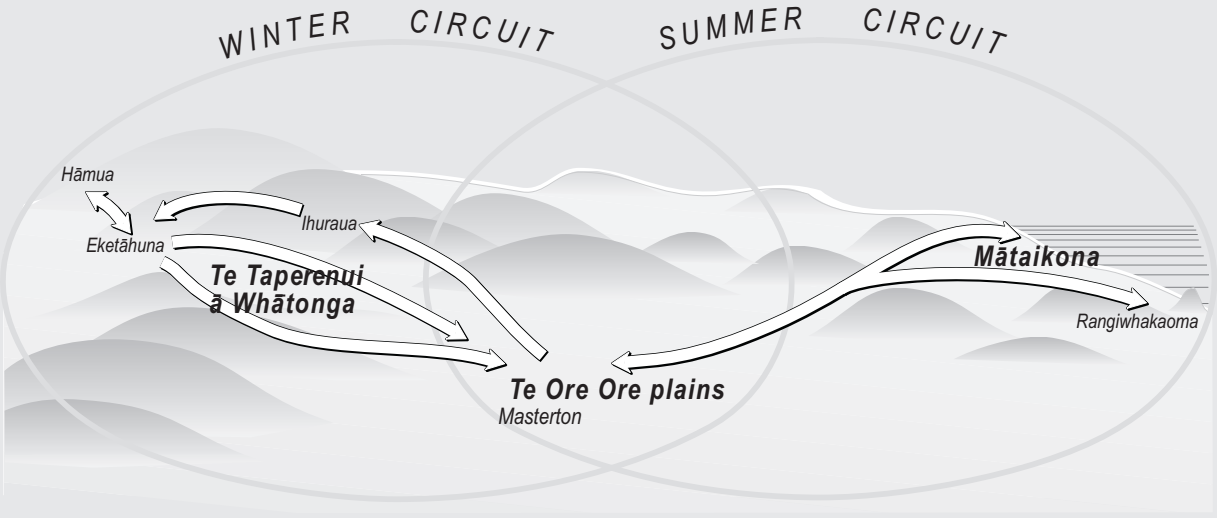
The winter months were spent inland, away from the harsh southerly winds and storms of the coast. Whānau followed the birds that migrated inland each season to the low podocarp forest for shelter and berries. Sometimes there was an expedition to the coast to get seafood. This was noted after the coming of the Pākehā and may have been a continuation of a pattern established in earlier times – particularly if food such as karengo (edible seaweed), which generally arrived in August–September, appeared early. Bird snaring was an important activity, as were rat snaring and the gathering of fernroot and berries, in places where these foods were abundant.

Spring/Te Kōanga

In spring, guided by the appearance of particular birds and other signs, the people moved to the coast. There, they fished, harvested, and planted crops, including kūmara and kōrau (turnip leaves and beet). Later, when European crops were introduced, potatoes, pumpkins, and watermelons were cultivated.

Raumati/Summer and Ngahuru/Autumn

In February, karaka berries were gathered and cooked. Raupō was cut and pollen heads gathered before the onset of rain. In March and April, pā tuna (a weir for catching eels) were attended to for the purpose of repair and maintenance. This was done in time for the two tuna heke (eel migrations) that used to occur in Wairarapa before the wetlands there were substantially drained.



Takirirangi Smith presenting evidence at the Tribunal's hearing at Ōkautete School in June 2004

tuanuku) and sky father (Ranginui). Resource use was conducted with great care and ritual protocol. Conservation values were reinforced by tikanga and kawa. Wasteful use of resources was alien to tikanga and seen as interfering with guardian atua and liable to bring harm to the group.[12]

By February 1770, when Captain Cook's ship stood offshore from Palliser Bay, these concepts underpinned every facet of the relationship that the tangata whenua had with the environment of Wairarapa ki Tararua – their patterns of settlement, the way they grew and gathered food, and the way they travelled about the area according to the seasonal availability of resources.

11.3 Use Dictated by Needs

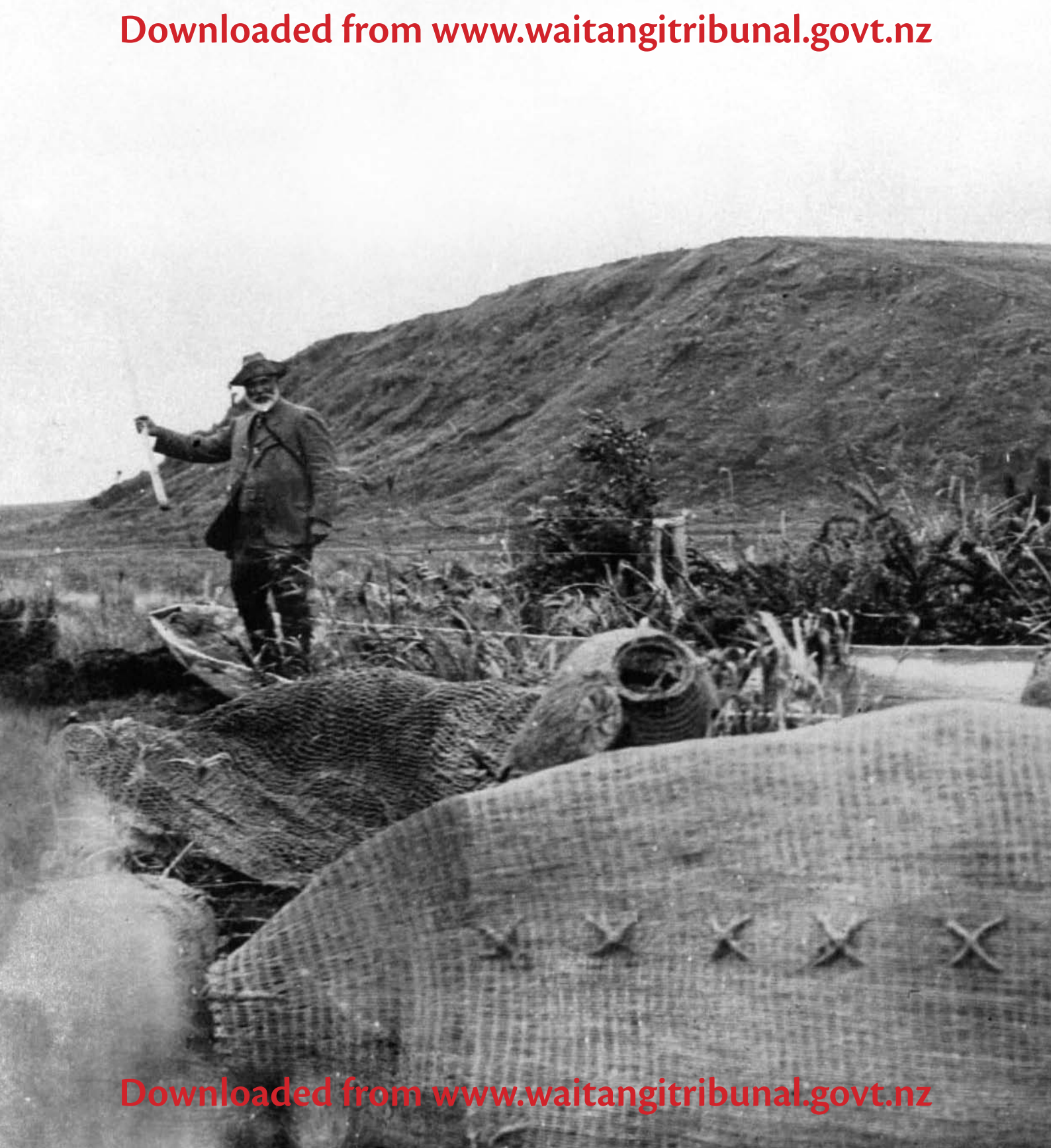
The tangata whenua used the region's resources in ways dictated by nutritional needs. Foss Leach explained that if we are to thrive and survive, we need to derive about 80 per cent of our caloric energy from fat or carbohydrate foods.[13] In Wairarapa ki Tararua, fat could be provided by the blubber from sea mammals and from birds and rats captured at the end of the summer and during the autumn feeding seasons. Carbohydrate was important and was found in kūmara, which came from the Pacific with the first canoes. However, it could be grown only in frost-free areas close to the coast. Aruhe, or fern root, could be cultivated in forest clearings but needed a greater amount of effort and preparation for a smaller amount of food. It was also very fibrous and its detrimental effect on dental health led to premature deaths.

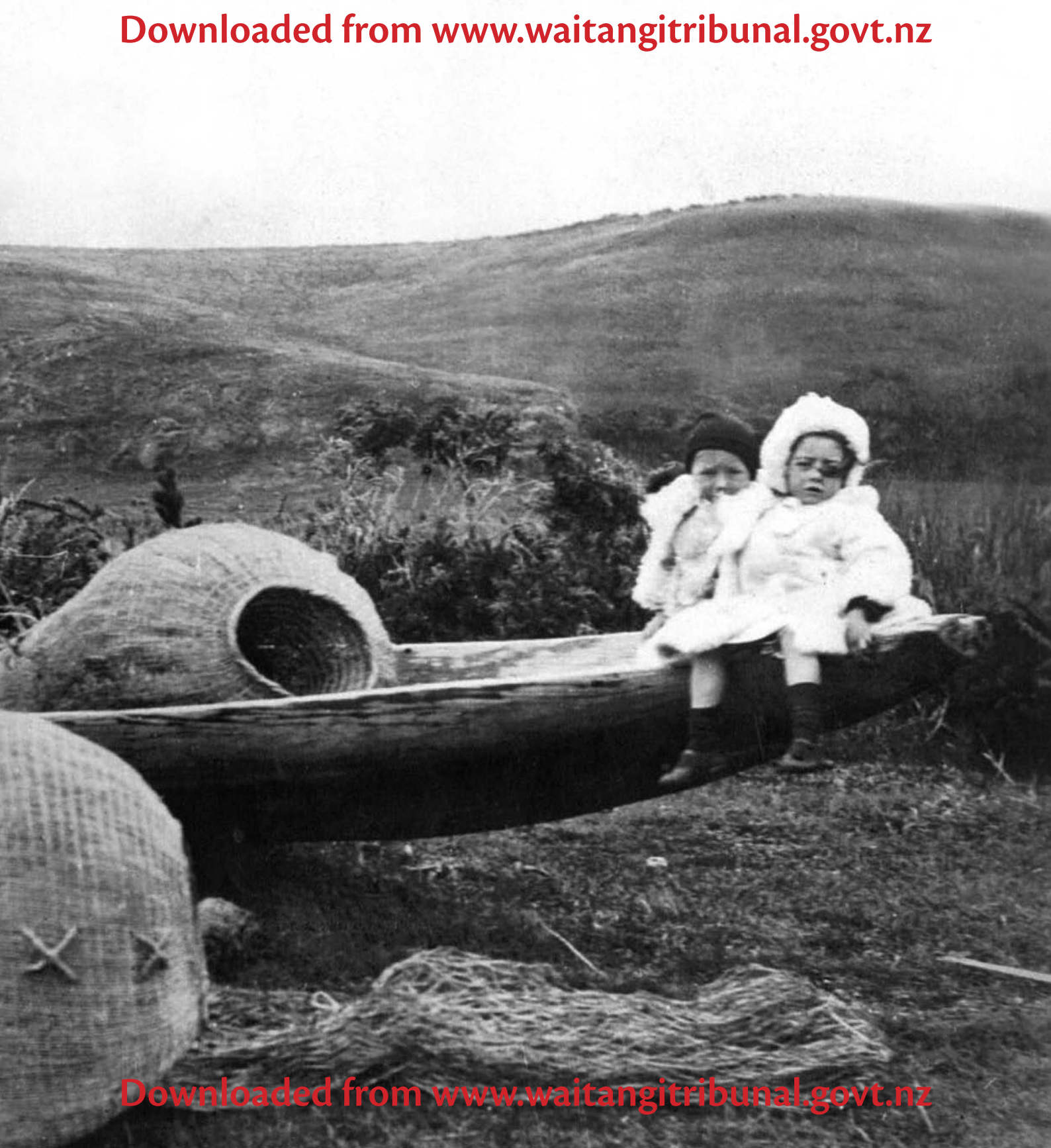
No one locality provided all the foods that were needed, but the abundance of different terrains throughout Wairarapa ki Tararua meant nutritional needs could be met. Hapū across the region followed a seasonal cycle of activities that enabled them to draw on the resources of coast and forest at optimal times of the year (described more fully in chapter 1).[14] The sidebar opposite shows what this meant for hapū whose primary kāinga māra (cultivations) were close to the coast and who moved inland to obtain different foods at certain times. For those hapū who lived mainly inland, the annual cycle was more evenly balanced between forests and coast.

11.4 Kai Pathways

Stephen Oliver gave evidence on kai pathways, based on material drawn from Native Land Court minute books.[15] For example, Tanguru Tuhua, giving evidence at the Waikopiro block hearings in March 1889, named four pathways where rats were caught and groves of miro trees, which were important for birding.[16] At the same hearing, Hori

▶▶ **Major Tuniarangi Brown (also known as HP Tunuiarangi) with several hinaki and the hull of a large waka, circa 1906. The children are unidentified, and the location given is 'Wairarapa Valley'.**





A family (tipuna of the Reiri whānau) outside a whare puni (small communal sleeping house), at Mangaakuta hamlet, near Masterton, circa 1870s

Herehere described a kai trail that followed the Mangapuaka River: along the way were cultivations and camping spots, places where inanga or whitebait could be taken, hinau trees, tutukaka, a place for collecting flax, and a place to go to avoid war parties.[17] Other kaumātua gave the same kind of evidence at other Native Land Court hearings, and some of this mātauranga has been handed down and was given to us by witnesses in this inquiry.[18] William Wright described kai trails that not only linked coast and forest within the Tararua rohe (tribal territory) but also crossed the Tararua Ranges and followed the West Coast rivers to Shannon. 'These were seasonal trips where we'd send dried crayfish and dried fish like kahawai over there', he said. 'They'd get the crayfish from us as they weren't as good over there on the West Coast.'[19] The specifics of kai trails changed as land was sold and vegetation was removed, but the pattern of seasonal movement persisted into the twentieth century.

11.5 Seaward Terrains

As the evidence about kai pathways indicates, for the tangata whenua in the pre-contact era, the nourishing terrains of Wairarapa ki Tararua were offshore as much as onshore. As historian Cathy Marr told us:

> Iwi traditionally used and managed the Wairarapa coastal area as a transport route, and for its coastal resources and fisheries, such as shellfish, crayfish,

seaweed, seal rookeries, seabirds and beached whales. The whole Wairarapa coastline appears to have been used for harvesting resources, with shellfish and crayfish in particular apparently an important part of the traditional diet of Wairarapa Maori. Not surprisingly, archaeological evidence shows that the most favoured sites for camps and settlements before 1840 were those that were most hospitable along the otherwise rugged and exposed coast. These included areas such as Castlepoint, Riversdale, Flat Point, Te Kopi and the Palliser Bay area, still the most favoured areas for both Maori and Pakeha today.[20]

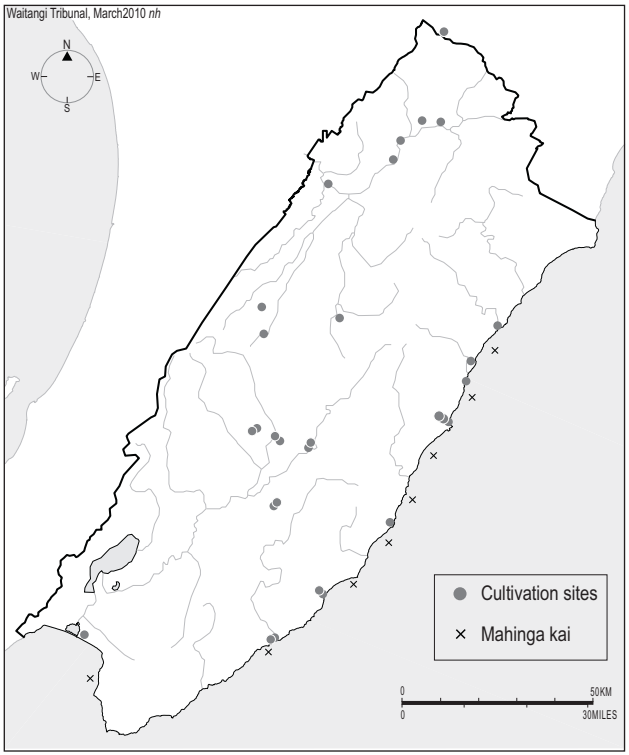
These coasts provided a diversity of habitats, from rocky headlands and reef platforms to sand and gravel beaches, shallow inshore waters with large sub-tidal boulders, and a complexity of streams and channels.[21]

Takiriirirangi Smith described customary uses of the coastal and marine habitat on the coast north of Flat Point:

> The main foods gathered from the shore were paua, koura, kina and all types of shellfish. Seaweeds included karengo and ingo. According to traditions, women carried out this activity[,] and children[,] while men were engaged with the offshore fishing. A wide variety of fish were caught off rocks, using nets, lines or speared. Larger fish such as whales were captured by the use of *hoa*, or sacred chants that were uttered from waahi tapu, usually a high point which looked out into the ocean.[22]

Smith told the Tribunal that Te Rae o Rakaiwhakairi, at the mouth of the Kaihoata River, was one of the places where such karakia (spiritual incantation, prayer) were used, causing the whales to come in and beach themselves. He supplied the karakia *Pakake Parawa Upoko Hue* and an English translation.[23]

Witness Tipene Chrisp collated kōrero (statements, stories) of Rangitāne kaumātua of the late nineteenth and early twentieth centuries that showed how Rangitāne hapū fished at various places along the Wairarapa coast,



Rangitāne mara (cultivations) and mahinga kai (food gathering places)

including at Lake Ōnoke, Pāhaoa, Waikēkeno, Te Unuunu, and Mātaikona.[24] They caught and collected fish, shellfish, and edible seaweeds, including hāpuku and kahawai (fin fish), pāua (a large univalve shellfish), kuku and kūtai (kinds of mussel), and kōura (crayfish). Well-known fishing spots were named and recorded in Rangitāne narratives. Hapū caught large quantities of fish, and much was dried for use in winter and for trade with other hapū.[25] Claimant witness James Rimene recorded a conversation with his mother, who described frequently held hui where Hāmua would bring inland produce and the coastal peoples, Te Hika-ā-Pāpāumu and Ngāi Tumapuhia-ā-Rangi, would bring kaimoana to exchange.[26]

The importance of the coastal resources was reflected in the pattern of Māori occupation and settlement.

Te Hika-ā-Pāpāumu, Ngāi Tumapuhia-ā-Rangi, Ngāti Meroiti, and Ngāti Hinewaka were among many whose main kāinga (settlements) were on the coast.[27] Dr Leach's comments about Ngāti Hinewaka seem to us to be directly applicable to other iwi and hapū:

> Their villages were based around coastal ecotones, that is at the confluence of several different ecosystems, notably the sea, the coastal flat land, a river valley, and the forested interior. This provided all the necessary resources for a successful subsistence economy based on fishing and shellfishing, kūmara cultivation, and birding.[28]

The most vital water terrain was the vast wetland adjoining the coast. This area was called 'Wairarapa Moana', which is shorthand for two adjoining lakes, Lake Wairarapa and Lake Ōnoke. The lakes formed an enormous lagoon-like area that was sometimes open to the sea, and together with the short portion of the Ruamāhanga River that connected them, they formed a single system with marked seasonality. Yearly floods hugely enlarged the area covered with water, and the wetland was a habitat for many species of fish, eel, and water fowl. The critical role and history of this area is set out in chapter 7.

11.6 Change

As Wairarapa ki Tāmaki-nui-ā-Rua Māori and Pākehā increasingly came together from the 1840s onwards, these established patterns began to change, though fairly slowly at first. In lowland areas, Māori began entering into leasehold arrangements with the Pākehā squatters who drove sheep around the rocky coast from Wellington Harbour. While Māori were dependent on the resources of the sea, lake, wetland, rivers, and the forest-wetland margin, the squatters were interested in the areas of bracken fern and native grasses that provided immediate fodder for sheep.[29] The two economies meshed together for the benefit of both. The squatters concentrated their efforts on sheep and pastures, while the Māori communities provided food – pigs, potatoes, pumpkins, and corn, both for their own needs and for cash or exchange – as well as casual labour.[30] The seasonal cycle of food production from multiple mahinga kai sites ('mahinga kai' means the work of gathering food) persisted: coastal and lowland communities continued their excursions into the forests, and the inland communities continued to visit the lakes and the coasts for fishing.[31] Historian Bryan Gilling's analysis of the ecological impact of the squatter economy and Māori adaptations to it shows that areas of open scrub and grassland, of lesser importance to the Māori economy, were modified by the pastoralists, who cut and burnt the existing vegetation and sowed exotic pasture grasses.[32] The forests and the wetlands, important for the Māori economy, were left undisturbed.

But, as the following chapters explore, as Wairarapa Māori progressively lost land and control, their traditional relationships with the landward and seaward terrains changed irrevocably. In their place was a new geometry of farms, fields, introduced livestock, stopbanks, flood works, roads, railways, and commercial fisheries. Chapters 12A to 12D focus on the impact of colonisation and Crown decision-making on the various elements of the landward terrains – the Wairarapa lowlands and the rivers, lakes, and wetlands. In chapters 13A to 13C, the attention shifts to the estuaries, coasts, and blue-water resources of Wairarapa ki Tararua.

Notes

1. Document A25 (Marr), pp 1–7; doc A35 (Oliver), p 1; doc A58 (O'Brien and McLean), pp 7–8; doc A118 (Gilling), pp 28–32; doc A54 (Smith), pp 5–11; doc A56 (Parkyn and Chisnall), pp 3–5
2. Deborah Bird Rose, 'Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness' (Canberra: Australian Heritage Commission, 1996)
3. Ibid, pp 7–8. The term more commonly used in the Australian context is 'country'. We use the more general and international expression

'nourishing terrain' in the New Zealand context. Compare Sean Hand, ed, *The Levinas Reader* (Oxford: B Blackwell, 1989).

4. Rose, 'Nourishing Terrains', p 18; cf doc A54 (Smith), esp chs 4–5; doc A35 (Oliver), ch 1

5. Janet Davidson and Geoffrey Irwin, 'Voyaging and Colonisation: The Spread of Settlement in the Pacific', *Bateman New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei*, edited by Malcolm McKinnon (Auckland: David Bateman Ltd and Historical Branch, Department of Internal Affairs, 1997), pl 10, p 232 col 1; Geoffrey Irwin, *The Prehistoric Exploration and Colonisation of the Pacific* (Cambridge: Cambridge University Press, 1992), pp 105–110; Tipene O'Regan, 'Out of the World of the Pacific: Ngāi Tahu and the Crown – Partnership Promised' in *Rural Canterbury: Celebrating its History*, edited by Garth Cant and Russell Kirkpatrick (Wellington: Daphne Brasell Associates and Lincoln University Press, 2001), pp 1–19, esp p 1

6. Atholl Anderson, 'A Fragile Plenty: Pre-European Māori and the New Zealand Environment', in *Environmental Histories of New Zealand*, edited by Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp 19–34. Professor Anderson, a member of the research team lead by Foss Leach and Helen Leach in the 1970s, is now resident at the Australian National University.

7. Anderson, 'A Fragile Plenty', p 25

8. Ibid, pp 32, 20

9. For evidence for the area adjacent to Palliser Bay, see B Foss Leach and Helen M Leach, eds, *Prehistoric Man in Palliser Bay*, Bulletin of the National Museum of New Zealand 21 (Wellington: National Museum of New Zealand, 1979). The nature and timing of impact would have varied from locale to locale within Wairarapa ki Tararua, as for New Zealand as a whole.

10. Anderson, 'A Fragile Plenty', p 25

11. Mere Roberts, Brad Haami, Richard Benton, Terre Satterfield, Melissa L Finucane, Mark Henare, and Manuka Henare, 'Whakapapa as a Māori Mental Construct: Some Implications for the Debate Over Genetic Modification of Organisms', *The Contemporary Pacific* (Honolulu), vol 16, no 1 (Spring 2004), pp 3–4; Te Ahukaramū Charles Royal, ed, *The Woven Universe: Selected Writings of Rev Māori Marsden* (Otaki: Estate of Rev Māori Marsden, 2003), pp 24–53

12. Document A54 (Smith), p 11

13. Document A71 (Leach), p 6

14. Document A54 (Smith), p 22

15. Document A35 (Oliver)

16. Napier Native Land Court minute book 17, 4 March 1889, fol 264 (cited in doc A35 (Oliver), pp 9–11)

17. Napier Native Land Court minute book 18, 10 May 1889, fol 128; Napier Native Land Court minute book 18, 15 May 1889, fols 150, 159 (cited in doc A35 (Oliver), pp 12–15)

18. Document C14 (Wiremu–Matakatea); doc E5 (Nicholson); doc E30 (Wright). Examples of the evidence given at court hearings includes that of Maata Poraerae, Hēnare Matua, and Matiu Meke at the Ngapaeruru hearings and that of Tupapa Rautatu at the Tiratu hearings: doc A35 (Oliver), pp 15–20, 25.

19. Document E30 (Wright), paras 8–9

20. Document A25 (Marr), p 99

21. Document A71 (Leach), p 91; Gary Williams, 'Mataikona to Owahanga Coast, Wairarapa: Mataikona A2 Block (Wai 420)' (commissioned research report, Otaki: G & E Williams Consultants Ltd, 2003), pp 4–15, esp pp 11–12 (doc A79 (Matthews), attachment C, pp 18–29, esp pp 25–26)

22. Document A54 (Smith), p 36: We have no more specific information about ingo seaweed; Williams' dictionary identifies it simply as 'a variety of karengo seaweed': Herbert W Williams, *Dictionary of the Maori Language*, 7th ed (Wellington: GP Publications, 1971), p 78.

23. Document A54 (Smith), pp 36–37

24. Document A60 (Chrisp), p 52. The kōrero included evidence given by kaumātua to Native Land Court hearings between 1890 and 1911 and material published in the Masterton newspaper *Mātuhi Press* between 1903 and 1906.

25. Chrisp includes a journal entry quotation from Colenso, who visited in 1843 and observed large quantities of kōura hung up on poles to dry: doc A60 (Chrisp), pp 52–53.

26. Document F12 (Rimene), para 16

27. Map 14 in document E39 shows the locations of hapū with Rangitāne associations, and map 7 for coastal kāinga is part of the Rangitāne evidence. We have equivalent evidence for Ngāti Hinewaka in document I5(a) but not for other claimant groups.

28. Document A71 (Leach), p 115

29. Ron Hill and Brad Patterson are among those who have reconstructed the Wairarapa landscape at this time. See Ron D Hill, 'The Land and the Squatter – Wairarapa, 1843–1853: An Essay in Human Ecology' (masters thesis, Victoria University of Wellington, 1962); Ron D Hill, 'Pastoralism in the Wairarapa, 1844–53', in *Land and Society in New Zealand: Essays in Historical Geography*, edited by Raymond F Watters (Wellington: AH & AW Reed, 1965), pp 25–49, esp p 40; Brad Patterson, 'Laagers in the Wilderness: The Origins of Pastoralism in the Southern North Island Districts, 1840–55', *Stout Centre Review* (Wellington), vol 1, no 3 (April 1991), pp 3–14; and Brad Patterson, 'The White Man's Right: Alienation of Maori Lands in the Southern North Island Districts, 1840–1876', in *Dynamic Wellington: A Contemporary*

Sidebars

Page 834: 'The Seasonal Round in Pre-Contact Wairarapa'. Source: doc A54 (Smith), pp 31–32.

Synthesis and Explanation of Wellington, edited by Jack McConchie, David Winchester, and Richard Willis (Wellington: Institute of Geography, Victoria University of Wellington, 2000), pp 155–178.

30. Document A25 (Marr), pp 17–19; doc 118 (Gilling), pp 46–64

31. Document A25 (Marr), pp 18–19, drawing on Austin Graham Bagnall, *Wairarapa: An Historical Excursion* (Masterton: Hedley's Bookshop, 1976), pp 132–134. Contemporary observers such as Octavius Hadfield and Tacy Kemp, who visited in the 1840s, and the scholars who wrote in the 1950s and 1960s had a limited awareness of the dynamics of seasonal resource use and often confused the seasonal relocation of activities with the abandonment of settlements.

32. Document A118 (Gilling), p 53

CHAPTER 12A

THE EFFECTS OF COLONISATION AND DEVELOPMENT ON THE LANDWARD TERRAINS

When the European settlers came to this inquiry district, their focus was on changing and developing the land to maximise its agricultural potential. In this chapter, we survey the various nourishing terrains comprising the Wairarapa ki Tararua inquiry district, identifying for each the primary environmental effects of colonisation and how these affected tangata whenua.

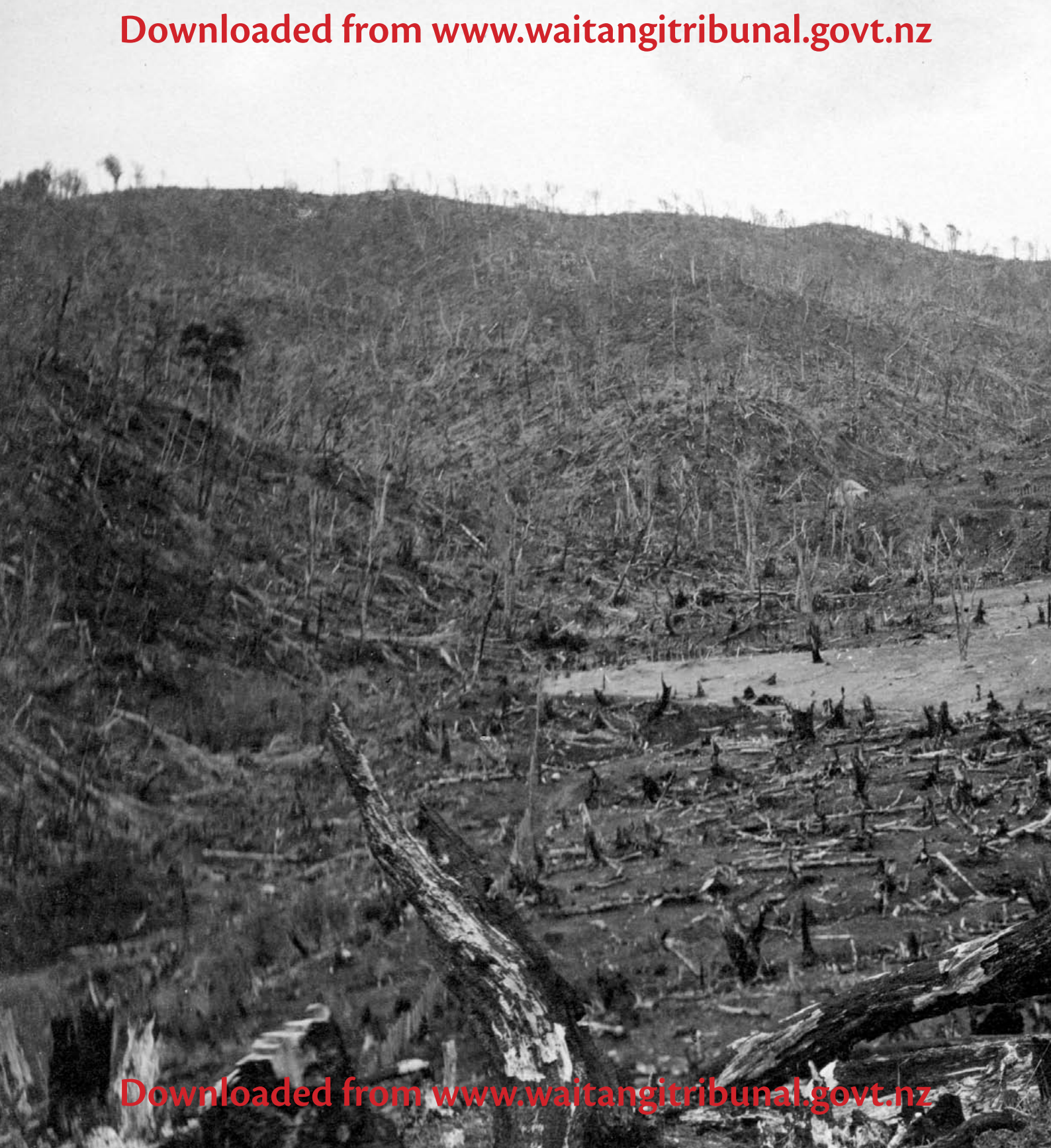
One of the important effects was on the mahinga kai of tangata whenua. We mention this now simply to note that we will use the term 'mahinga kai' in this chapter to mean both the places and the practices of traditional food-gathering.

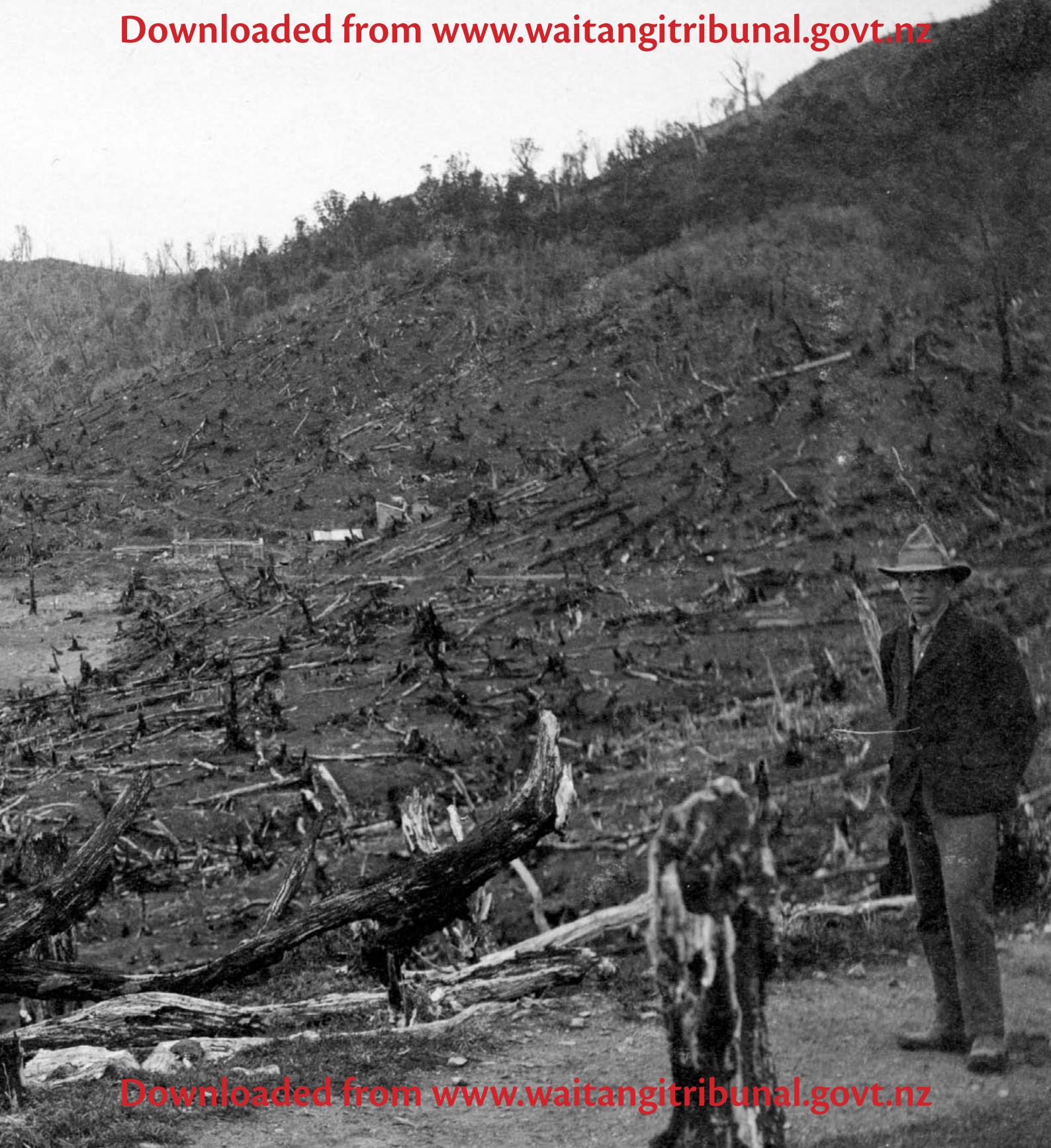
12A.1 Terrain 1: The Wairarapa Lowlands and Wetlands

The Wairarapa lowlands and wetlands were the first area of the inquiry district to be transformed. The leasing era, described in chapter 2, lasted until the first Crown purchases in the early 1850s. Until then, lessees used the natural grasslands for sheep farming. Although grazed, the areas under lease remained otherwise in their natural state. But once Crown land purchases began, the land was surveyed and subdivided, and settlers gradually converted indigenous grassland and scrub into more productive farmland. As farms were established, farmers engaged in a quest to control the water flows in the district: the Wairarapa lowlands are an alluvial plain and flooding is a natural occurrence there.

Meanwhile, Māori were caught up in the sweeping changes. They sold land, they farmed, and they participated in the transformation of the landscape. Their level of opposition to environmental change is not always clear. Only in relation to the wetlands is a story of consistent Māori opposition really discernible – perhaps because tuna (eels) were so important to Māori and because the link between wetlands and tuna survival was so immediate.

▸▸ **Arapeti Stream, where bush was felled for the Mangahao hydro scheme in 1918. The stream is near Pahiatua.**





12A.1.1 Environmental effects of colonisation

(1) *Deforestation*

The nourishing terrains of the Wairarapa lowlands were more than indigenous grassland and scrub. There were significant areas of forest, including groves of miro, tōtara, matai, and kahikatea. The bush was the habitat of many native birds and flora and fauna that tangata whenua used for food and other purposes. Trees were felled to make way for pasture. When the forest habitats of the creatures and plants that lived there were destroyed, their numbers plummeted.

(2) *Catchment control: taming the water*

(a) *Introduction*

Catchment works like stopbanks, groynes, and river diversions figured prominently in the taming of the Wairarapa lowlands for pastoral farming. From the 1860s and the 1870s onwards, settler communities steadily transformed the landscape in their quest to make the water go where they wanted it to.

The Wairarapa lowlands are, by their alluvial nature, a dynamic environment that is regularly flooded and fertilised by sediment carried down from the mountains by high-intensity rainfall. Much of the land was at sea level and below, leaving it prone to inundation. Swamp and marshland abounded, and a lot of the pasture was dry for only some of the year.

For iwi and hapū of the district, the Wairarapa lakes and wetlands were a significant resource. Whānau from across the region converged on Wairarapa Moana in April and May of each year for the annual tuna heke (eel migration). Tuna (eels) were caught in quantity, preserved, and exchanged. For the tangata whenua of Wairarapa Moana, its lagoons, ponds, streams, and wetlands supplied kai year-round in the form of fish, tuna, and waterfowl.

Once farms and towns were established on these floodplains, the settlers badly wanted to keep the water out.[1] To this end, they modified the rivers, lakes, and wetlands by small- and large-scale engineering works from the 1860s onwards.

(b) *Drain, drain, drain*

To begin with, individual farmers built stopbanks to divert floodwaters away from their lands. From about 1870, these personal initiatives were supplemented by collective endeavours supported by Government legislation and subsidies. The Counties Act of 1876 and the River Boards Act of 1884 opened the way for public works to be initiated in Wairarapa. River boards were formed for Waiohine (1876), South Wairarapa (1886), Ahikouka (1907), Kahutara (1921), and Te Ore Ore (1933).[2]

Thus, the Crown delegated to local authorities the power to control water flows. Māori were largely unrepresented on local councils and boards, and there is absolutely no evidence that their views were either sought or heeded. The boards and councils owed their allegiance to the Pākehā farmers and townspeople who were the main ratepayers, and, unsurprisingly, the works undertaken were designed to benefit them.

The best example of the opposition between the approaches of Pākehā settlers and Māori to draining wetlands is the long, bitter stand-off that centred around the opening of Lake Ōnoke to the sea. This is set out in full in chapter 7. Ultimately, there as elsewhere, the settler view prevailed. Drainage of the enormous wetland comprising Lakes Wairarapa and Ōnoke, and many thousands of low-lying acres in their vicinity, continued well into the twentieth century.

(c) *The Soil Conservation and Rivers Control Act 1941*

The Soil Conservation and Rivers Control Act 1941 had a firm focus on preventing flood damage and protecting soils but not on protecting wetlands.

In 1944, the Wairarapa Catchment Board replaced multiple river boards. Larger and more carefully integrated schemes were proposed to reduce flooding, drain wetlands, and create more farms. During the 1960s and 1970s, the Government and catchment board joined forces to implement a large-scale scheme in lower Wairarapa. This enlarged the outlet to Lake Ōnoke in order to lower the level of Wairarapa Moana, and the Ruamāhanga River was

'Lake Onoke Sandbar, 1842' by S C Brees, showing the opening from Lake Ōnoke to Kawakawa (Palliser Bay)

diverted away from Wairarapa Moana into Lake Ōnoke. More drainage was initiated in the area to the east of the lakes. The Lands and Survey Department acquired 13,000 acres of former wetland and set about creating dairy farms. The environmental impacts were greater than those of the previous schemes and, again, Māori were not included in the consultation and decision-making processes. This was, however, the last of the large-scale schemes where land development was given priority over environmental values in Wairarapa.

(d) *The Water and Soil Conservation Act 1967*

The Water and Soil Conservation Act 1967 was, for the first time, legislation with a real ecological focus: it recognised environmental values and was explicit about the importance of the natural character of rivers, lakes, wetlands, and coastal waters. Provision for environmental impact assessment backed up these objectives. When the Wairarapa Catchment Board proposed a further round of drainage and stopbanking, the full gamut of environmental issues was up for consideration but the balance of public and official opinion had shifted. The catchment work initiated in the 1960s was completed, but the new proposals were abandoned.

The ecological importance of the Wairarapa lakes and the remaining wetlands was recognised in the 1980s when the Crown made provision for water conservation orders, and the Wellington Acclimatisation Society obtained one for Wairarapa Moana as an 'outstanding wildlife habitat'. Its importance for Māori was not part of the analysis.[3]

(e) *The Department of Conservation era*

The Conservation Act 1987 and the establishment of the Department of Conservation opened up new possibilities

for Crown and iwi to cooperate over Wairarapa Moana. In Wairarapa, the department has played a convening and coordinating role in implementing the water conservation order obtained for the lake. In keeping with its Treaty of Waitangi requirements, it consulted with Wairarapa iwi and included iwi representatives in the Lake Wairarapa Conservation Committee. It also consulted with Māori throughout the preparation of the *Lake Wairarapa Wetlands Action Plan, 2000–2010*.[4] According to Derek Field of the department, tangata whenua were consulted before other public interest groups; all the concerns they raised were, he considers, addressed in the final plan.[5] Iwi also participated in the preparation of the Wellington conservation management strategy.[6]

Several problems and opportunities have been identified by iwi, including the restoration of eeling rights within reserves administered by the department and a review of the water-level regime in order to enhance fish populations and meet the needs of migratory birds. We were told that these issues are being addressed constructively and that a number of working arrangements have been put in place.[7] Such positive developments in the relationship between Wairarapa ki Tāmaki-nui-ā-Rua Māori and the department demonstrate both that the latter is seeking to involve hapū in decision-making and that tangata whenua are seizing opportunities to exercise their traditional kaitiaki (caretaker) role. Clearly, the interests of the two parties are very often complementary. However, for the claimants, some important issues remain unresolved, including concerns about how joint-management arrangements between iwi and the department are actually put into practice and the extent to which Māori input into decision-making is at the department's discretion. We return to these issues in chapter 12C.

12A.1.2 Effects on tangata whenua

(1) *Deforestation*

The felling of trees happened continuously since the time that farms were first established in Wairarapa valleys. We have before us no very precise evidence about where and when this occurred. Nor is there evidence of Māori efforts to retain areas of forest, or requests for protection of forest habitat, that enables us to discern what their views were at the time or how (or whether) they expressed them.

It is apparent from evidence presented by people still alive today that deforestation continued well into the twentieth century. Kaumātua from Te Uru o Tāne, Hurunui-o-Rangi, and Te Whiti spoke about the relative absence today of forests and native birds that were prevalent when they were children.[8]

(2) *Catchment control: taming the water*

We heard much more evidence about the issues for tangata whenua around the control of water in Wairarapa.

Too many years have passed since the enormous wetland around Wairarapa Moana was lost for the current generation of Wairarapa Māori to be able to give direct evidence about the effects of its loss on tangata whenua. That wetland was the most important tuna fishery in the lower North Island, and the people's decades-long struggle to keep it is testament enough to how vital it was to them (see chapter 7). With the demise of the wetland, a way of life sustained for centuries by the use and management of the tuna fishery was destroyed as well.

Since the loss of that wetland, the viability and quality of other swamps and waterways has continued to reduce as a result of drainage and farm run-off. Many creeks and streams no longer run or are too polluted to play the role in Māori lives that once they did.

Kaumātua told us of the period from about the 1920s to 1950, when they remembered creeks, streams, and ditches that were alive with kai. Te Whakapono Edmonds and Te Arorangi Apanui grew up at Ākura near Masterton. They have memories of eeling, catching crayfish, and gathering watercress in the small creeks close to their homes.[9]

Tame Te Kooti Whaanga, from the same area, describes a creek near to where his whānau lived being used for everyday drinking, washing, cleaning, and bathing.[10] Even Henare Manaena, who grew up at Makora Road,

The Tararua Range and the Mangahao River, photographed by George Leslie Adkin in February 1909

Masterton, and was born as recently as 1953, remembers how the creek behind their home was used for baptisms and for bathing.[11]

The second half of the twentieth century brought changes, however. Te Whakapono Edmonds told the Tribunal that the creeks around Ākura have been filled in to the point where crayfish, eels, and watercress no longer live there.[12] Te Arorangi Apanui related a similar experience she had when she returned to Ākura in 1999:

> The rivers have all changed, you can't get kai from the river anymore. People take gravel from the lands of 1C3B2 without compensating the owners. The[re] used to be young rivers that were a source of food for our whanau. Drains have covered them all up, roads have ruined these young rivers. Farmers have plowed over it as it's a hazard and now there's nothing. No swimming, nothing you can use to make kai. We're fighting for our rights.[13]

Tame Te Kooti Whaanga, also from Ākura, identified the agency that transformed the creek they had used for drinking, washing, and bathing. 'One day the Water Catchment Board diverted the creek', he told the Tribunal, 'and we were left with a dried up creek bed.'[14]

Kingi Mathews explained that tuna stocks are far less now than before and pointed to the sources of the problem: 'Tractors have been digging out the creeks: the water flow is very weak. The creeks are shallow now. All the eels and crawlies have gone . . . Most of the smaller creeks have been turned into irrigation ditches.'[15]

12A.2 Terrain 2: Wairarapa ki Tararua rivers

As explained in chapter 3, the relationship between Māori and river systems was vital to the people's existence – and not only because rivers provided food and a means of transport. For Māori, rivers are 'the blood veins of Papatuanuku', which give life and sustenance to all.[16] Their significance extends much wider than in the Western worldview, as Murray Hemi explained. In the creation narratives, when Ranginui and Papatuanuku were separated,

Rivers of the Wairarapa and Tāmaki-nui-ā-Rua regions

Ranginui's sadness was such that he wept great rainfalls upon Papatuanuku. Hemi told us:

> Water is recognised amongst Māori as the conduit for vital, life sustaining energy. The energy or mauri is carried down from the heavens from Ranginui and is distributed around the earth by a network of rivers, streams, lakes and aquifers. It is this network of waterways that provides the earth with life and sustenance.[17]

Thus, there is a symbolic and spiritual connection between people and rivers: the mana of the people and the mana of the rivers to which they primarily relate are intertwined. Rivers are icons of tribal identity and were part of tribal rituals. We heard how particular river spots were favourite childhood playgrounds, used for swimming and bathing.

Important in this inquiry district are the Ruamāhanga river system in Wairarapa and the upper Manawatū river

system in Tararua, together with the Akitio, Whareama, and other rivers that drain to the eastern coast.

12A.2.1 Environmental effects of colonisation

We have noted already the impact of stopbanks and flood-control schemes on the Wairarapa lowlands. There were also major changes to the rivers themselves and the water-courses and pools within them. Stopbanks, groynes, river cuts, and shingle extraction changed the character of larger streams and rivers, while many smaller streams and creeks disappeared as part of a process of drainage and farm creation. The diversion of the Ruamāhanga River to prevent its flowing into Wairarapa Moana must have been one of the most drastic changes. If the moana is the beating heart of the Wairarapa, changing the course of the Ruamāhanga is like draining the land of its life-giving blood.

The results of these physical changes to the rivers were loss of habitat, loss of indigenous species, loss of mahinga kai, and loss of amenity. As described above in relation to the wetlands, between the 1860s and the 1940s the rivers of the Wairarapa ki Tararua inquiry district were under the control not of the Crown but of a multiplicity of local authorities: county councils, river boards, and drainage boards. The Soil Conservation and Rivers Control Act 1941 led to the formation of the Wairarapa Catchment Board and the Manawatu Catchment Board. From the 1940s onwards, the tendency to make ad hoc and piecemeal changes to rivers gave way to more carefully controlled, integrated, and often substantial works.

Water quality monitoring programmes have been initiated by the Wellington Regional Council and by Horizons Manawatū. Stephanie Parkyn and Ben Chisnall from the National Institute of Water and Atmospheric Research (NIWA) provided an overview of the monitoring systems in place in Wairarapa and Manawatū at the end of the 1990s.[18] Masterton, Carterton, Greytown, Featherston, and Martinborough all discharge partly treated effluent into Wairarapa rivers. Dannevirke discharges effluent into the upper Manawatū system. We do not have comparable information for Norsewood, Woodville, Pahiatua, and Eketāhuna.

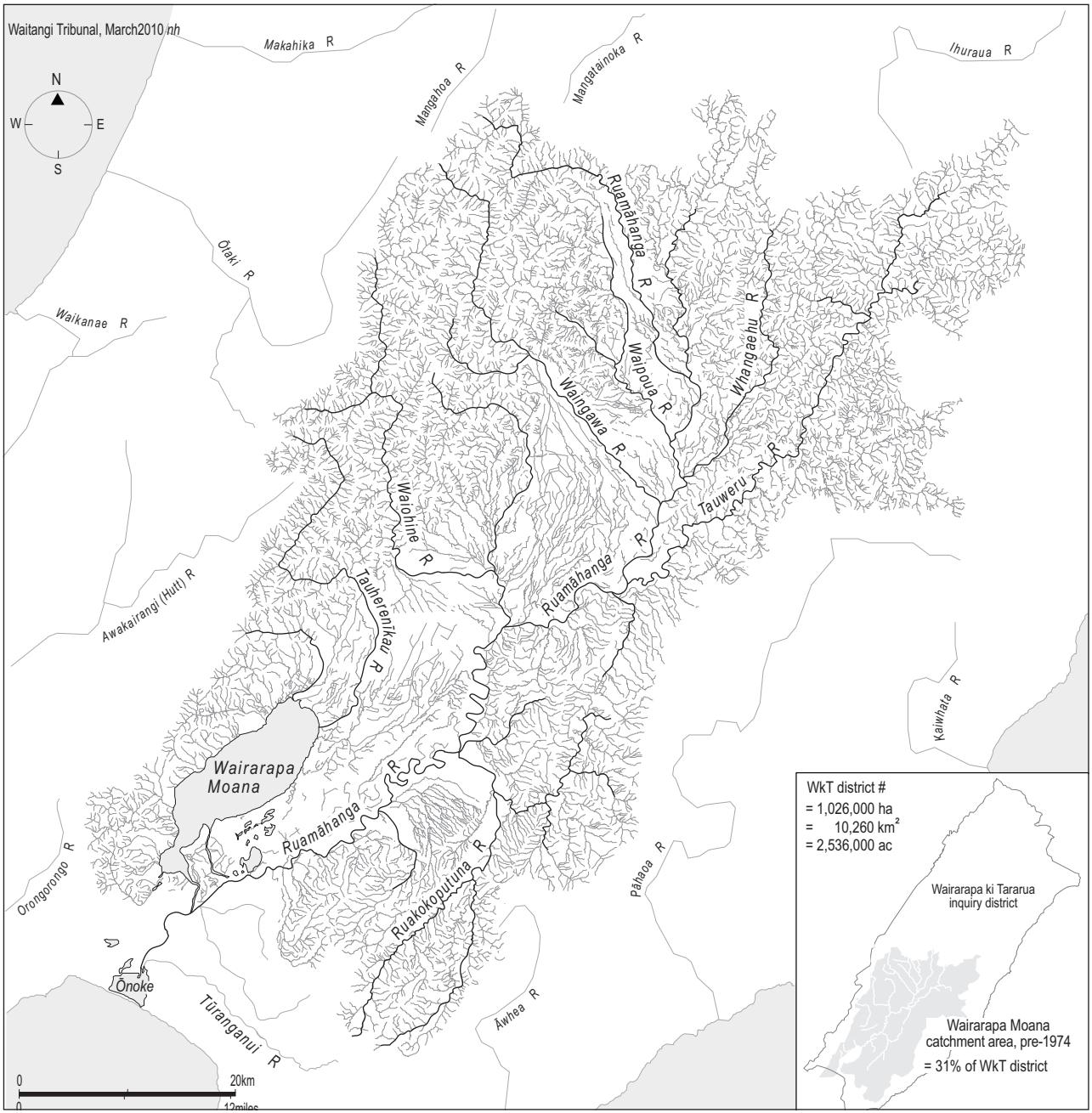
12A.2.2 Effects on tangata whenua

The claimants in the Wairarapa ki Tararua inquiry district were very concerned about pollution and the consequential reduction in water quality. Recent monitoring shows these concerns to be well founded.[19]

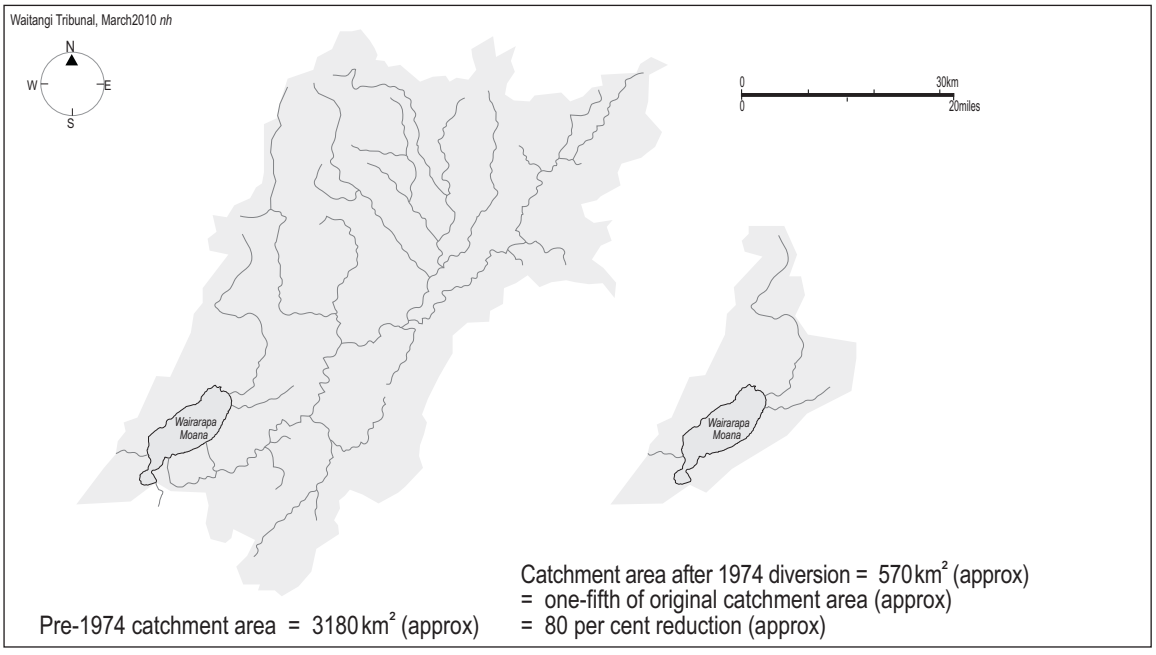
Recollections of Life beside the Manawatū River

Kurairirangi Pearse singing a waiata after presenting her evidence at Mākirikiri Marae at the Tribunal's hearing there in July 2004

Manahi Paewai and Kurairirangi Pearse were among those who lived beside the upper Manawatū River at Kaitoki near Dannevirke. Titihuia Barclay Karaitiana grew up at Tahoraiti in the same area. The Manawatū was a great waterway – a highway for communication, for access to food and materials, and to all of the interrelated kāinga. 'When I was a child', remembered Mrs Pearse, 'our lives were dominated by swimming and eeling'. She then went on to name and describe the various swimming holes. Mrs Karaitiana told of the importance of the Kaiwhakapuki Stream and the Manawatū River for tuna. Herbert Chase, from Kaitoki, remembers the kaitiaki Peketahi (a supernatural guardian) in the Manawatū took the form of both a crayfish and an eel. The practical uses of the river and the spiritual connections were equally strong, as Herbert Chase recalled six decades later.



Wairarapa Moana and the many tributaries that once flowed into it. The Ruamāhanga diversion in 1974 (inset) reduced the catchment area by approximately 80 per cent.



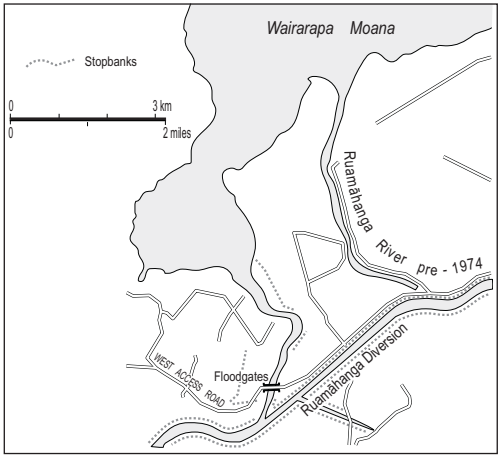
▲ **Changes in catchment area as a result of the Ruamāhanga diversion**

The Ruamāhanga River in Days Gone By

Claimants who grew up at Hurunui-o-Rangi, on the Ruamāhanga River downstream from Masterton, told us about growing up on their awa. Te Oti Josephine Pura remembers the river as a special place, one where the family camped in the summer months. Of life beside the river in the 1930s and 1940s, Lovey Rutene said: 'We swam and played in the water, as well as collecting our water from there for washing and drinking. We would catch eels there and pick watercress along the banks to eat.'

Mary Nunn, born in 1943, confirms that summer camping beside the Ruamāhanga River continued into the 1950s:

> During the summer months, my family lived at the river, in a little lean-to and a fireplace. We slept in tents. The family brought food with them and we spent the days fishing for eel and flounder in the River. It was a bit like a holiday for us, but it was special as we enjoyed being near the River and using what we could get out of it.



▲ **The present-day Ruamāhanga diversion and the control gates**

Sewage treatment at Featherston: oxidation ponds with streams nearby

Sewage treatment at Martinborough: oxidation ponds adjacent to the Ruamāhanga River

Sewage treatment at Greytown: oxidation ponds located near the streams, with river running along the foothills behind

▲ Sewage treatment at Masterton: the Ruamāhanga River runs alongside the Masterton oxidation ponds

▶ Sewage treatment at Carterton: oxidation ponds

The Ruāmahanga River skirts the Masterton rubbish dump

Kaumātua evidence presented at marae across the rohe (tribal territory) told a consistent story. In the 1920s, 1930s, and 1940s, tangata whenua were still living very close to the Manawatū, Ruamāhanga, and Tūranganui Rivers, and in many respects they maintained the physical and spiritual connection with these awa (rivers) that had always been a feature of traditional life.[20]

It was in the 1950s that the failure to control water pollution began to affect Māori – spiritually, physically, and emotionally. There were spiritual effects because, for Māori, water is a taonga: its purity is a prerequisite for both physical and spiritual health. Physical effects arose from damage to mahinga kai, which made traditional foods less abundant or unavailable. And, emotionally, there was sadness about how traditional practices and pastimes were falling away as the environment changed; there was also frustration and anger arising from the tangata whenua's sense that they were powerless to do anything about it.

The pollution that we heard most about in this district inquiry resulted from the uncontrolled dumping of rubbish (often near waterways) and the discharging of effluent from municipal sewerage works at Masterton, Carterton, Greytown, Featherston, and Martinborough. For Pākehā on the councils and in the municipalities, waste disposal into rivers and other bodies of water has too often been seen as a convenient solution to the perennial problem of how to get rid of human waste and detritus. Disposal into and near waterways went on for decades without reference to Māori cultural preferences, and with no concern for the effects on the tangata whenua discussed above. Wāhi tapu and treasured bathing and camping places have been destroyed by engineering works and pollution. Mahinga kai have been lost as a result of habitat destruction and poor water quality. Species loss was exacerbated by the introduction of trout by the acclimatisation societies, because trout prey on indigenous fish. All this led to the reduced availability of favoured foods like tuna and kōura. This diminution in supply is felt especially acutely because it affects the ability of tangata whenua to manaaki manuhiri (provide hospitality to guests). Inability

◀ Lovey Rutene giving evidence at the Tribunal's hearing at Pāpāwai, 31 May–4 June 2004

▶ Frances Reiri-Smith giving evidence on a site visit to Hurunui-o-Rangi Marae in June 2004

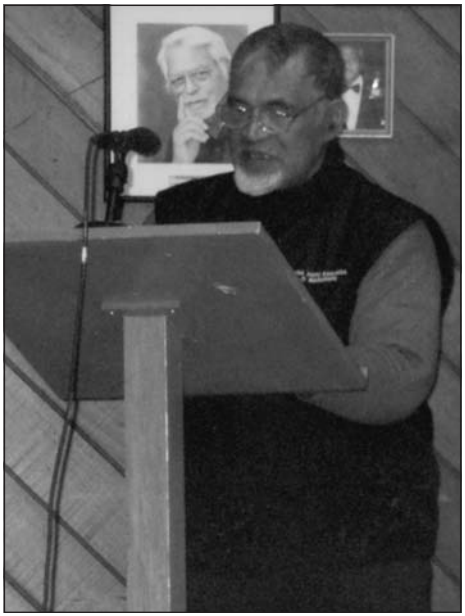
to manaaki connects to a loss of self-esteem and mana as tangata whenua.

Lovey Curry (née Rutene) lived and went to school at Te Whiti, down river from Masterton, in the 1940s. She says that, even then, sewage flowed down river from Masterton, and material from the town rubbish dump leached into waterways.[21] Frances Reiri-Smith lived at Te Whiti and at Hurunui-o-Rangi on the Ruamāhanga near Gladstone in the 1950s. She lived away for many years, returning home in 1994. She described the pollution she came back to. The construction of stopbanks along the Ruamāhanga River has 'had devastating effects', she said, and the sacred pools where kuia koroua (old folk) once went for treatment are no more. Stopbanks on the western side of the river, erected by the catchment board in the 1960s, 'disturbed the natural flow of the river and caused flooding in the winter', which threatened the Hamuera urupā (burial ground) where her parents and whānau are buried.[22]

Tawhao Matiaha also lived at Hurunui-o-Rangi. He told the Tribunal that they could no longer use the river because of a sewerage pipe put into the river near the Wardell Bridge in or around the 1930s. He went on to say that there were now fewer eels and that 'the creek has been blocked off and what's left is full of sewerage'.[23] He would love to go there to take his mokopuna eeling, but he cannot. He described 1958 protests, organised by his mother, against a company that removed gravel from the river. The company took it to Blackbridge, where it was crushed and used for cement; there were piles of left-over shavings that they took away, and their local road was busy with the trucks. Mr Matiaha spoke with passion:

> I don't know who gave them permission to take the gravel, but it certainly wasn't anyone from the marae, as we consider ourselves to be kaitiaki of the river. Being kaitiaki of the river is a big responsibility and we took it seriously.[24]

Kingi Matthews from Pāpāwai spoke about sewage disposal in a similar vein. 'When the Council set up the sewerage ponds, they didn't ask us', he said. 'The Oxidation



◄ Tawhao (Cyril) Matiaha giving evidence at Pāpāwai Marae in June 2004

► Hinepatokoriki Rosina Hawea Karauria Paewai QSM, who prepared evidence for the Tribunal before she sadly passed away. The evidence was read out at the hearing on her behalf.

ponds were put out into the creeks. This is a big problem because a lot of our people fished in this area.'[25]

We heard too about other forms of pollution that the district council does not manage properly. Mary Nunn, also from Hurunui-o-Rangi, complained that 'townies have been allowed to dump their car wrecks and rubbish into our water'. The whānau took action in the 1980s:

> Our whānau decided to take responsibility to try to stop this continued pollution, because it was obvious that the Council were not taking their responsibilities seriously as guardians of the river. So, during the late eighties . . . [we] started a programme of keeping the area tidy and free from rubbish. With hard work from us, the area has improved a lot.[26]

Hinepatokariki Paewai pointed to problems with industrial pollution, especially from the meatworks. Like Mary Nunn, she criticised the district council for not controlling the problem. Her brief of evidence informed the Tribunal about the day when they took the children from the kōhanga reo on a swimming trip, but encountered indescribable material floating down the river. 'That day we didn't stay', she said.[27] Her claim to the Tribunal is a direct response: 'We need to be looking after our river', said Mrs Paewai, 'We need to be looking after our tino rangatiratanga.'[28]

It was not until the 1980s, as the Crown consulted Māori about the proposed reform of resource management law, that it began both to inform itself about Māori values in relation to water and to gain an understanding of kaitiakitanga. Some of these understandings were incorporated into the Resource Management Act 1991 – of which we record our views in chapter 12B.

12A.3 Terrain 3: Te Tapere-nui-ā-Whātonga/Tāmaki-nui-ā-Rua/Seventy Mile Bush

Te Tapere-nui-ā-Whātonga/Tāmaki-nui-ā-Rua or Seventy Mile Bush was an extraordinarily dense lowland forest that extended from Takapau to Pūkaha (Mount Bruce) up to the 1870s.[29] For Pākehā, it was a nigh-on impenetrable barrier between the provinces of Hawke's Bay and Wellington. For tangata whenua, it was a pātaka (foodstore), a succession of well-stocked kai trails, and a place of seclusion and refuge.

Māori remained in charge in this part of the district for longer than in other areas. The purchase of the bush area and the opening of the land for settlement were contemplated as early as the 1850s. But the plans were put on hold because of the availability of large areas of less-forested land in Wairarapa and Hawke's Bay, the land wars further north, and the Government's impecuniousness.[30]

Then, in June 1870, Julius Vogel announced policy that was to profoundly affect Te-Tapere-nui-ā-Whātonga: the Government would borrow £10 million to fund immigration, public works, and land settlement. Thus, in Tāmaki-nui-ā-Rua from 1871 on, land purchasing began, and settlers were brought in from Scandinavia to build roads, bridges, and the railway.[31] Forty-acre sections on the fringes of the bush were allocated to these settlers under deferred payment licences, on condition that a set amount of forest was felled and planted in pasture each year.[32] The onslaught on the forest was rapid and comprehensive.

12A.3.1 Ecological effects of colonisation

While Julius Vogel's policies of the 1870s ushered in an era of dramatic social and environmental change in Te-Tapere-nui-ā-Whātonga, subtle changes may have been happening much earlier.

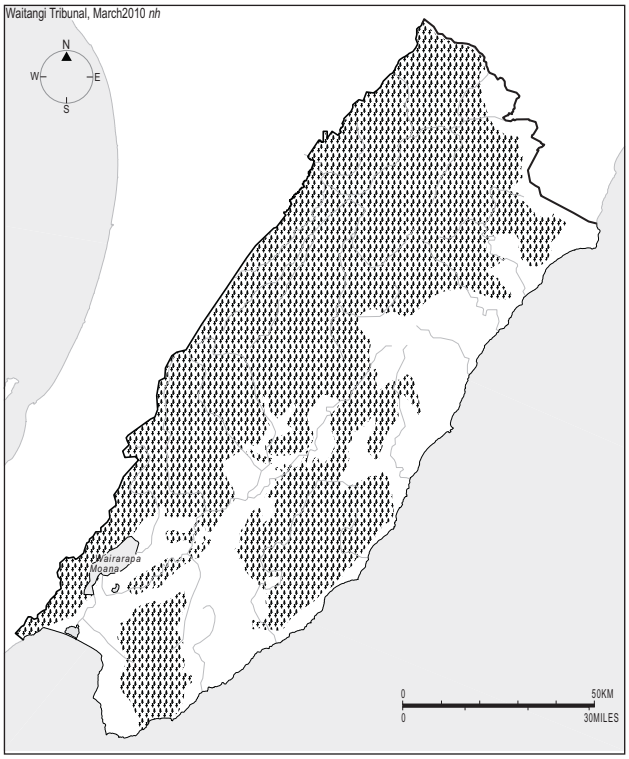
We have evidence in this inquiry suggesting that, as early as the mid-nineteenth century and long before its mighty trees were felled, Te-Tapere-nui-ā-Whātonga was already subject to a stealthier form of environmental degradation that affected traditional hunting practices. The culprit was the rat. It preyed on native birds and may have diminished their numbers significantly as early as 1840. At the same time, the introduction of the pig and the potato was providing an alternative food source. Either or both of these factors may have led to a move away from traditional hunting well before the end of the nineteenth century.

(1) *Bird depletion*

Records left by 'an assortment of curious colonial adventurers' who visited the forest between 1841 and 1853 provide the only early accounts of the place: neither Māori nor the Pākehā farmers who later took up residence there left a written record of their impressions.[33]

Who were these curious adventurers? Charles Kettle and Alfred Wills were surveyors who visited in 1841 and 1842 and reported back to William Mein Smith, the surveyor in charge in Wellington. Mein Smith himself travelled into the bush in 1843.[34] Colenso was a missionary based at Ahuriri (Napier), who travelled through the Wairarapa and Tāmaki-nui-ā-Rua regions each autumn and spring between 1845 and 1852 on Church Missionary Society business.[35] Henry Tacy Kemp was the Native Secretary to Lieutenant-Governor Edward Eyre in the southern province of New Munster and was commissioned to visit all the Māori settlements in Wellington, carry out a census, and report on conditions.[36] Kemp commenced his work in the west of the island and entered Tararua from Manawatū, travelling through the bush to Wairarapa, and then taking the coastal route to Wellington.[37]

These commentators were all careful observers, but they had in common their European cultural baggage, which determined their perspective. They followed the well-trodden tracks used by travellers and war parties. Their guides were Māori from outside the region. Their accounts provide nothing of the perspective of tangata whenua, whose relationship with this terrain would have been much more subtle and intimate. Even curious adventurers often did not see much, travelling in gullies or valleys with limited vistas.[38] And, when they did come upon interesting things, they were in danger of misinterpreting what they were



Forest and scrub coverage in Wairarapa ki Tāmaki-nui-ā-Rua as at 1853

seeing. When Kemp visited Te Hāwera (also known as Te Hāmua) in April 1850, he described it as primitive on the grounds that its inhabitants cultivated nothing but potato and lived in rude, unfinished huts. What he saw may, of course, have been no more than a seasonal camp on a kai route.[39] We have no way, now, of knowing.

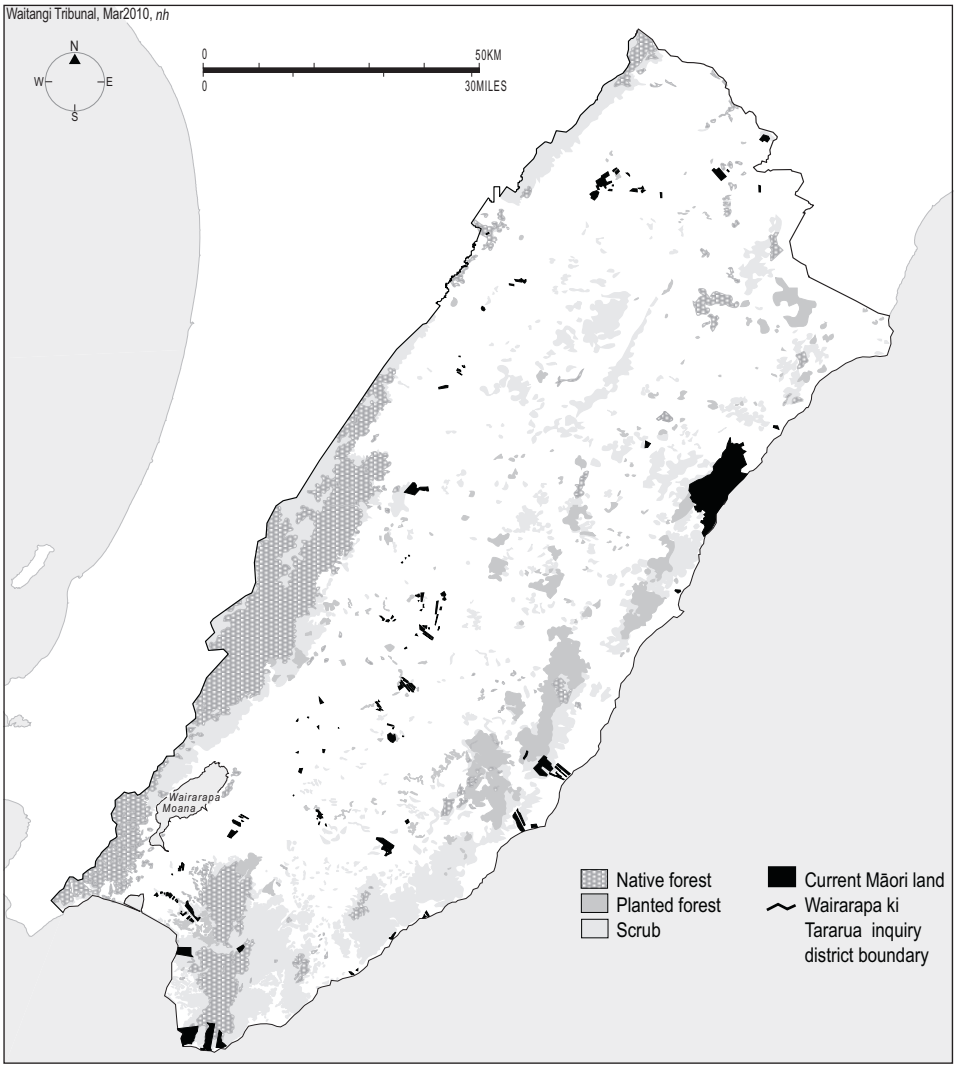
William Colenso was an observant traveller, but his choice of routes was also constrained.[40] He kept to the beaten track, rested at the usual stopping places, and seems to have talked at, rather than listened to, tangata whenua. His description of Te Hāwera, for example, as 'a little open space of fernland, the only one in the whole forest' indicates that he really had no idea what the 'whole forest' might hold (there were certainly many clearings). Colenso was a keen botanist, and on at least one occasion he slipped away from his travelling companions and ventured deeper into the forest. It was here on 24 March 1846 that he wrote down his much-cited observation of the decaying, primeval bush, which seemed to be home to only a handful of birds and where 'a deathlike silence reigned'.[41]

None of us today would have supposed that primeval New Zealand bush was short of birds in the 1840s. It seems, though, that it may have been. We use the word 'may' because the evidence is somewhat equivocal. We give our analysis in section 12A.3.2.

(2) *Deforestation*

Te-Tapere-nui-ā-Whātonga was reputedly the densest of North Island forests. The massive stands of tōtara, matai, kahikatea, and maire were of course a sawmiller's dream. Once Julius Vogel's vision took off in the 1870s, sawmills were set up at successive railheads as roads and railways pushed into the bush, and sawmill settlements flourished.[42] Life was hard for the Scandinavian settlers, who were reliant on the resources of the bush as tangata whenua had been. However, in stark contrast to Māori, they lived off the bush only for so long as it took them to destroy it:

> the families lived a Crusoe-like existence in the great forest, relying on their own ingenuity and the natural products of the bush for most of their food supply. For many years wild cattle and pig shot in the bush, pigeons, venison, eels, wild honey and rauriki were common fare. All members of the family joined in the struggle for existence. While the men were away in the work camps the women and children cut the undergrowth and smaller trees in preparation for the felling, and during the weekends the men felled the heavy timber. All took part in caring for the stock, cultivating and harvesting. As much bush as possible was felled during the winter months and after drying through the hot summer months was burnt off during February and March. When the autumn fires had burnt out, the ash-covered land was surface sown with coarse pasture on which the cattle grazed. The fires did not, of course,



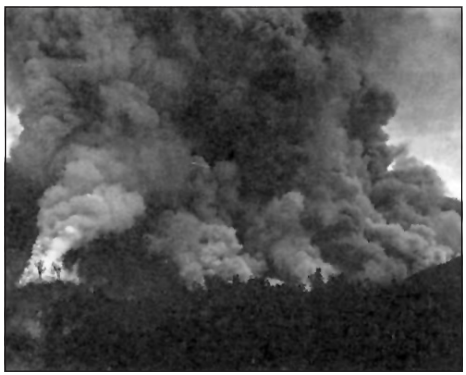
Current forest and scrub coverage and areas of Māori land

consume the larger trunks and stumps, and to prepare patches for agriculture it was necessary to haul and jack the movable logs into heaps and again fire them.[43]

The settlers left few written accounts, but photographers and lithographers have recorded vivid images of the fires and the resulting landscape.

Forest fires were a constant threat, from sawmills and from bush burns that got out of control.[44] Newspapers of the day contain vivid reports of loss of life and property but barely pause to lament the loss of forest areas that were burnt inadvertently.[45] As settlers saw it, the forest had to be conquered, and the men who conquered it were heroes. George Jobberns, professor of geography at Canterbury

Carriage passing through Forty Mile Bush near Dannevirke. This is the area we refer to in this report as the northern Bush.



▶ The start of a bush burn. Smoke might fill the sky for days.

University College, for example, writing in 1956, described the clearing of the New Zealand bush as the 'outstanding achievement of our people in the making of the present grassland landscape' and praised the achievements of 'these struggling people'.[46] Graeme Wynn talked about the fruits of heroic self-denial and patient courage, and declared: 'By 1900 the Seventy Mile Bush, 300,000 acres of forest so intractable that Scandinavian axemen were recruited to lead the charge against it, was no more.'[47]

No one at the time seems to have understood, or even considered, the implications for the environment – or, for

that matter, for tangata whenua – of deliberately destroying that vast ecosystem.

Environmental consequences are of course much better understood today, and we heard such evidence from Rebecca O'Brien and Robert McClean, Steven Oliver, Takirirangi Smith, Titihuia Barclay Karaitiana, Maisie Hanatia Rangimauriora Te Aweawe Tataurangi Gilbert-Palmer, and Punga Paewai.[48] Tawa, maire, kahikatea, tōtara, and rimu – the forest giants – were cut down or burned. Stands of miro, important for kererū, were almost all destroyed.[49] Once the tall trees and forest understorey were gone, there was little habitat left for birds or kiore that survived the fires. It is impossible to quantify, and difficult even to imagine, the loss of flora and fauna that resulted.

There were other effects. The destruction of the forest canopy exposed rock and soil to rain, sun, and wind, and this increased run-off and sedimentation.[50] Creek and river banks were denuded of vegetation, reducing riparian capture of run-off. Without the overhanging forest, creek, stream, and river habitats were profoundly changed. Together with the increased sediment load in the water, fish and other aquatic life must have been severely affected.

In short, the felling of Te-Tapere-nui-ā-Whātonga was a far-reaching ecological disaster – not only in terms of the loss of flora and fauna and the changes wrought on soil and waterways but also in light of what we know today of forests' vital role as carbon sinks.

12A.3.2 Effects on tangata whenua

(1) *Bird depletion*

When we look at what we know about bird life in Te-Tapere-nui-ā-Whātonga in the nineteenth century, its gradual depletion, and the effect on the mahinga kai of tangata whenua, the picture is not simple.

Two strands of evidence were presented to us. One relates how Rangitāne hapū stayed in the forest fastnesses of Te-Tapere-nui-ā-Whātonga when other groups in the district responded to the invasion of western tribes by relocating to Nukutaurua on the Māhia Peninsula. The hapū of the deep forest effectively hid there, and once the immediate threat of invasion had passed, built a series of protective forts around the bush and resumed their seasonal round.[51] Rivers punctuated the tree canopy, as did clearings both natural (where there were swamps and lakes) and artificial (where Māori cleared trees to allow light to penetrate and cultivation to take place).[52] Radiating out from the clearings, and linking forest and coastal resources, kai trails went to all the best places for kiore, manu, tuna, and other aquatic life that inhabited swamps, lake, and river margins. Tangata whenua of the bush continued their mahinga kai as long as they could.

The other strand is given in Steven Oliver's evidence, and the Crown relies on it in its submissions.[53] It contends that predators introduced before 1840 preyed on huia in particular and birdlife in general to the extent that by 1870 – and probably earlier – mahinga kai in Te-Tapere-nui-ā-Whātonga had already declined substantially.[54] If this is so, then the subsequent felling of the bush and settlement of the area by farmers would, by inference, have had only a secondary effect on mahinga kai.

We think that a number of factors were at play. First, as observed earlier (see chapter 11), potatoes and pigs were quickly incorporated into the traditional food production system and the annual cycle of hunting and harvesting. Potatoes especially effected change because they could be grown in māra (cultivations) in inland forest clearings, allowing permanent kāinga to be established in places previously visited only seasonally. Secondly, the arrival of European ships from 1769 onwards resulted in the release of the Norwegian rat and the ship's rat, which multiplied rapidly, spread throughout both islands, and posed a major threat to bird life. Kiore, brought to New Zealand by the Polynesian voyagers, had long been present in the forest, and although they put some bird species at risk, especially during nesting time, Māori managed them to the point where a new equilibrium emerged between kiore, native birds, and hunters.[55] The Norwegian and ship rats were much more aggressive, threatened a wider range of birds, and were not regarded as a food delicacy. Their

spread was rapid and their impact on bird life was more devastating. Thirdly, Māori in Wairarapa and Hawke's Bay had access, from the 1850s onwards, to cash employment and a range of imported foods. This combination, it can be argued, gave them less time, less opportunity, and less need for mahinga kai.

Steven Oliver brought to our attention the evidence of dwindling involvement in seasonal hunting that was given to the Native Land Court from roughly the 1870s onwards. The blocks that engendered the best information of this kind were Waikopiro, Ngāpueruru, Mangatoro, and Puketōī 6.[56] The witnesses who gave the evidence to the court mainly affiliated to Ngāti Kahungunu, who as we know withdrew to Nukutaurua in the 1830s.

It may be that the evidence given about these blocks was representative of the situation that prevailed throughout Te-Tapere-nui-ā-Whātonga. But, alternatively, it may very well be that it was not. We think that this evidence may not have described the situation for the whole of the bush because:

- The flatter and more fertile areas (which were in the path of the proposed railway) were purchased first. The ownership of these blocks – which encompassed the Manawatū–Wairarapa 2, 2A, and 2B blocks – was not contested, and the Native Land Court therefore had no occasion to hear evidence about traditional resource use in those places.
- It is possible that the emphasis on abandoned hunting and gathering practices, and abandoned places of occupation, dominated the accounts given to the Native Land Court because the witnesses were mainly Ngāti Kahungunu, and those were the people who left the district for a significant period.
- It may also be that the parts of the bush that the Native Land Court did not hear evidence about were those occupied continuously by the Rangitāne hapū that did not go to Nukutaurua. Their traditional hunting practices would arguably have continued later into the nineteenth century, because:
  - the areas they traditionally inhabited were the better areas for hunting and gathering (being flatter and more fertile); and
  - their access to settler communities (and the opportunities they provided for alternative food sources) came later.[57]

In conclusion, then, we have insufficient evidence to assess definitively the impact of predators on bird life and bird harvesting across the forest as a whole. We are also reluctant to be categorical about how quickly the traditional uses of the core forest areas of Te-Tapere-nui-ā-Whātonga diminished in the 1830s, 1840s, 1850s, and 1860s. It seems likely that kai paths continued to be used on a seasonal basis to some extent at least and that the cultivations in the forest took on new importance as potatoes replaced aruhe (edible fern root). Pig hunting probably became relatively more important than hunting for some traditional food species, but eeling remained important into the twentieth century both for tangata whenua and for visiting whanaunga (kin) from the coasts to the east and the west.[58]

(2) *Deforestation*

(a) *Loss of species, mātauranga Māori, and cultural practices*

For Māori, Te-Tapere-nui-ā-Whātonga was 'a Māori world, defined by Māori traditions and values'.[59] But to Europeans it was 'a wilderness that needed to be tamed, ordered, legally defined, made economically viable, and "civilised" through European settlement'.[60]

When Māori sold tree-clad land, could they have envisaged the scale of bush clearance that would follow? The systematic destruction of flora and fauna that accompanied it? The resulting devastation of mahinga kai?[61] It hardly seems likely.

As taonga species were lost, so were the mātauranga Māori (traditional Māori knowledge) and cultural practices associated with their use.[62] This was the case, for example, with birds like kererū and animals like kiore that were used for food and clothing, and also plants used for

This sketch called 'On the Road through the Seventy Mile Bush' appeared in the *Illustrated Australian News* on 20 February 1884. As can be seen, tree felling had already begun.

rongoā (traditional remedies) and healing rituals.[63] In some cases, the loss of the resource and the associated tikanga (rules and understandings) was absolute; in others, resources could be obtained from elsewhere. For example, Titihuia Karaitiana told us that, when her grandmother could no longer get ingredients for rongoā from the great bush of Whātonga, she still managed to obtain them from the foothills of the Ruahine Ranges.[64]

By the 1930s and 1940s – the earliest period for which we have direct evidence – the birds and the bush were remnants only. Maisie Gilbert-Palmer, who was born in 1927, told us about the Mangatainoka block. Land there remained in Māori hands for longer than in most other places, and Mrs Gilbert-Palmer told us that, although much of the Pahiatua–Mangatainoka area was still covered with dense bush, the birds had largely gone:

> I can remember my koro, Te Ao, would talk about the loss of the birds. In his own words he would say 'Kaore he korero a te manu' which essentially meant 'the birds are not talking any more'. He would talk a lot about the loss of the huia and the kereru.[65]

It was 60 years later when Mrs Gilbert-Palmer presented her evidence to us, and of course by then the bush was gone too. With the important exception of Pūkaha/Mount Bruce, Te-Tapere-nui-ā-Whātonga remains only in memory.

(b) *Positive Crown action*

Although for the most part authorities were indifferent to the effect of forest clearance on tangata whenua, there is one case where Māori pleas over the loss of wāhi taonga (treasured places) in the bush were heard. In 1887, tangata

whenua at Mangamaire sought the realignment of the railway route from Pahiatua to Wairarapa so that they could remain the owners of an area important for mahinga kai. The Crown agreed. It was not until 10 years later that the line was completed west of the town.[66]

The Crown also reserved part of the bush from destruction. It retained the 942-hectare Pūkaha block in Crown ownership in the 1870s and 1880s, and in the 1930s it included the land in the Tararua State Forest Park. From 1962 onwards, the Crown developed the National Wildlife Centre at the place by then called Mount Bruce. Thus, an important (although unfortunately small) remnant of the once-mighty Te-Tapere-nui-ā-Whātonga was preserved so that future generations could obtain at least a glimpse of the trees, shrubs, and wildlife that were once so plentiful. We talk more in chapter 15 about the present-day relationship between Rangitāne and the Department of Conservation, which is the part of the Crown that now runs Pūkaha/Mount Bruce.

12A.4 Terrain 4: The Remutaka, Tararua, Ruahine, and Aorangi Ranges

A similar environmental story can be told about four mountain ranges – the Remutaka, Tararua, and Ruahine to the west and the Aorangi to the south-east.[67] They were purchased by the Crown in the nineteenth century but were not sold for agriculture or pastoral farming. They were, however, much modified. Clearings were made around the margins as part of unsuccessful attempts at agriculture, tall trees were removed by logging, and fires from sawmills and land clearance in the lowlands spread into the upland forest. All of these diminished the density and the diversity of the forests.

12A.4.1 Environmental effects of colonisation

Although some of the environmental damage suffered by these forests was the result of logging and forest fires associated with sawmilling, predators were the primary cause of the destruction.[68] Sometimes by accident and sometimes by design, numerous predators were released into these terrains: cats, dogs, rats, pigs, goats, trout, Canada geese, deer, possums, stoats, weasels, and ferrets all found their own destructive niche there.[69]

Pigs, goats, and rabbits were released by early explorers, traders, and whalers, while rats and mice escaped from ships and spread throughout New Zealand. Planned settlement, beginning in Wellington in 1840, brought a succession of other releases. Species released intentionally included deer in the 1850s, possums and trout in the 1860s, and Canada geese in the 1870s.[70] Domestic animals that became feral included cats, dogs, and cattle.[71] Māori encouraged the spread of some species; for example, pigs, cattle, and goats. The Government brought in stoats, weasels, and ferrets to control rabbits. Soon after their introduction in the 1880s, these mustelids were characterised as creatures that destroyed 'anything with feathers and fur'.[72] In their work on acclimatisation societies, Dr Carolyn King and Dr Robert McDowall concluded that, in the medium to long term, mustelids posed a much greater threat to bird life than any of the pests their introduction was intended to curb.[73]

Not only was the introduction of most exotic species intentional but it was supported by Government legislation and, in some cases, backed by Government funding. In 1846, for example, the Government passed the Duties and Customs Ordinance, which encouraged the introduction of exotic plants and animals by exempting them from duties.

From the 1860s onwards, the Crown delegated acclimatisation societies with the task of introducing exotic flora and fauna and protecting exotic and indigenous flora and fauna. The societies were set up by Acts of Parliament and supported by Government funds. They acted as public bodies responsible primarily to their membership. 'No other agencies in New Zealand', wrote McDowall, 'have ever been to the same extent self-regulating in a statutory sense, with such minimal Government oversight, or

This view of the Waiohine River and Tararua Range was photographed by George Leslie Adkin in February 1909.

without input into their affairs from the general public at large.'[74]

Trout, deer, and possums were among the wide range of species introduced and released by the societies, then protected by their rangers.[75] While some new species found in the mountain ranges of this inquiry district were introduced by the Wellington Acclimatisation Society, others spread into the district after being released elsewhere.

The specific and detailed impacts of predators within the Remutaka, Tararua, Ruahine, and Aorangi Ranges were not described to the Tribunal, but the broad patterns are well established for New Zealand forests as a whole.[76] Possums browse at canopy level and deer browse at ground level. In combination, their impact is to let light into the bush, which substantially modifies the forest habitat. Similarly, feral cats, stoats, weasels, and ferrets, acting in combination, reduce the number and diversity of birds. The reduction in forest habitat, in turn, increases run-off and sedimentation, which reduces the quality of aquatic habitat.

Brougham and McLennan, in a 1985 report to the Manawatu Catchment Board, indicate when these changes in the forests of the northern Tararua and Ruahine Ranges probably occurred.[77] Deer, goats, and possums, they suggest, did not arrive until the 1930s. Until then, undergrowth remained thick, and there was little erosion.

More recent research, considered by Parkyn and Chisnall in their NIWA report on freshwater rivers, points to a very unstable mountain environment that experienced substantial natural erosion in advance of the forest depletion.[78] We know that major erosion took place from 1935 onwards: huge slips occurred and river valleys filled with rocks and debris. Thus, forest modification, combined with natural erosion, contributed to deposition problems on the lowlands. In sum, the mountain forest environment of Wairarapa ki Tāmaki-nui-ā-Rua in the twenty-first

century is greatly altered and much impoverished compared with how it was in the nineteenth century.

Attempts to do something about the explosion of pests in these forest and mountain terrains have been made over many years. In the 1950s, there was internal debate within the New Zealand Forest Service and the wider scientific community about the management of indigenous forests.[79] The forest park administration, from the 1950s to the 1980s, made substantial efforts to deal with predators and to protect indigenous flora and wildlife. They were well informed, well organised, and well resourced. No doubt the impact of these introduced pests on the mountain and forest terrains in this district and elsewhere would otherwise have been worse. Despite their efforts, however, the effects were very serious.

12A.4.2 Effects on tangata whenua

(1) *Introduced pests*

Although land ownership passed to the Crown, tangata whenua relinquished neither their interests in the species that lived in the forests and rivers nor their kaitiaki responsibilities to engage with, use, and preserve the forest environment. Nevertheless, the destructive impact of pest species, whether introduced by accident or design, has eroded their relationship with these terrains.

Cathy Marr gave the Tribunal an overview of the Crown's role in managing the mountain forests.[80] She says that the Crown assumed that purchase ended Māori interests, whereas in fact the connection between tangata whenua and these mountain terrains remains, although inevitably weakened by the largely uncontrolled introduction of exotic fauna.

Management and control, such as it was, was delegated to agencies like the Wellington Acclimatisation Society. The Crown, Geoff Park reports, worked closely with acclimatisation societies as it passed successive Acts to do with protecting introduced species such as trout, deer, and possums.[81] Māori complaints were voiced but rarely listened to. Settler and sporting values were considered important, but Māori values were not.

(2) *Monocultural management*

The passing of the Conservation Act 1987 marked a new era in which, for the first time, a real connection was recognised between Māori interests and the Crown's management of mountain and forest terrains. In the previous 150-odd years, official New Zealand had been essentially uninterested in this connection.

It was in the late 1870s, with the introduction of the Land Act 1877, that the Crown first began to see its responsibilities as extending to the environment. From this time, protecting forests was seen as a means of preventing erosion in mountain areas which could otherwise threaten lowland farms and towns. Soon after, discourse about the need to protect indigenous birds and trees began to be heard, and by the turn of the twentieth century this had blossomed into a strong movement for the preservation of scenery. These discourses were entirely Eurocentric. Geoff Park comments:

> The Crown's attempt to construct a sense of nationhood through scenery has been called inherently culturalist for the way it wrote the natural curiosities of the land into both a sense and symbolising of identity, but in doing so wrote out the customary place of Maori in the environment of Aotearoa.[82]

The Land Act 1877 and the State Forests Act 1885 made provision for the conservation of upland forests.[83] From 1881 onwards, areas of the Tararua, Ruahine, and Aorangi Ranges were placed under the administration of the State Forest Service.[84] This protected the forests from uncontrolled logging but did little to halt the depredations of predators. The higher and steeper lands were protected under the new regime, but the lowland areas could still be grazed or logged under licence.[85] Management was primarily concerned with the protection of farmlands and water supplies on the adjacent lowlands.

The forest and mountain areas (especially the Tararuas) became popular with recreationalists from the 1890s onwards. Deerstalking and tramping became popular, groups were formed, and committees were established to develop a system of tracks and huts. The Tararua Tramping Club was set up in 1919 and the Victoria University Tramping Club in 1921.[86] The spectrum of interest groups widened and the Native Bird Protection Society was formed in 1920.

Recreation and conservation groups coordinated their efforts in the 1920s to encourage the Government to create a Tararua national park. The Forest Service resisted, working instead with hunting and tramping interests to establish a forest park system for the Tararuas. A sequence of management plans, beginning with one for the decade 1954–63, provided for multiple uses. Preserving the forest and protecting water supplies were the first priorities; recreation and hunting came next. The Forest Service also kept the door open for further timber milling and the possibility of hydroelectric power development.[87]

The service's plans provided a more integrated approach to forest management, including focusing on predators. They did not, however, recognise Māori interests or values or include iwi at all. Marr notes, for example, that the advisory committees – which were described as 'fully representative of all parties' – included catchment boards, recreation and conservation groups, and the Automobile Association.[88] Māori did not figure at all. Under this planning regime, hunters were encouraged to shoot deer and possums but Māori were not allowed to harvest birds or plants for traditional purposes.

Other forest parks were created, building on the Tararua experience: Rimutuka State Forest Park in 1972 and Haurangi State Forest Park in 1974. Duncan McIntyre, then the Minister of Forests, promoted Māori representation on the advisory committees. The Forest Service responded by nominating a Mrs A Kauri from Waikanae to take the place of an Automobile Association member.[89] Marr comments that Mrs Kauri was not on the advisory committee as a representative of Wairarapa iwi, and when her term expired, no other Māori was appointed. There were no Māori on the Tararua, Rimutuka, and Haurangi advisory committees in 1982. None of the management plans for these forest parks made provision for consultation with local iwi.[90]

The Conservation Act 1987 saw the first recognition of Māori values and interests in the conservation task. In the decade since 1987, structures and policies have been put in place to include iwi in the consultation processes in the Wairarapa ki Tararua inquiry district, as elsewhere. Iwi are regularly consulted. A kaupapa atawhai strategy designed to include Māori conservation perspectives was developed and is part of the Wellington conservation management strategy (the Department of Conservation's key planning document for most of the Wairarapa and Tāmaki-nui-ā-Rua regions).[91] As well as these high-level policy developments, there have been other positive changes in the management of the district's forest parks: Haurangi Forest Park, for example, has been renamed Aorangi Forest Park ('haurangi' means drunk) and Māori now participate in the planning and implementation of pest-control strategies.[92]

But many issues are still to be resolved. For example, access to cultural materials such as bones, feathers, and plants used for weaving or rongoā still requires Crown permission and varies according to the goodwill and cultural insights of officials.[93] The control of traditional plant materials remains with the Crown and is neither a partnership responsibility nor an iwi responsibility.[94] The current provisions of the Wildlife Act 1953 and the Conservation Act 1987 fail to give Wairarapa ki Tāmaki-nui-ā-Rua iwi appropriate access to places and materials of cultural and spiritual importance within the forest parks.

12a.5 Terrain 5: Coastal Hills and Ranges

The forests on the western ranges (discussed above) covered land that was too steep for pastoral production.

However, the eastern hills were less steep, so their forests were not similarly preserved.

12A.5.1 Environmental effects of colonisation

The specific details of land clearance for sheep stations were not led in evidence, but the broad pattern is well known.[95] Trees were felled and fired and scrub was cut and trampled by cattle in order to establish pasture for sheep, but the soils were poor and it was a constant struggle to maintain pastures in the face of weed growth, drought, erosion, and scrub regeneration. Land clearance was intermittent, being dependent on the state of the economy and job opportunities elsewhere in New Zealand: it began in the second half of the nineteenth century and extended through the first six decades of the twentieth century.

Steven Oliver, assisted by Philip Cleaver, relied on Native Land Court minutes for evidence about four land blocks – Mangatotoro, Ngāpaeruru, Waikopiti, and Puketōī 6 –in the eastern hills and ranges in the Tāmaki-nui-ā-Rua portion of the district. From it, we gain a picture of how these coastal hills and ranges supported the traditional lives of tangata whenua. Kaumātua who appeared in the Native Land Court hearings for the blocks between 1889 and 1892 gave kōrero (spoken testimony) about clearings, kai trails, miro groves, hinau trees, and eeling places.[96] They referred to mahinga kai and to places for hunting wild pigs and cattle.[97]

Takirirangi Smith's evidence focusing on blocks in Wairarapa showed the same uses of territory. On the Te Maipi and Te Pohue blocks in the hill country between Martinborough and the eastern coast were cultivation sites, mahinga kai locations, rat trails, and miro trees.[98] The forests, shrub vegetation, and groves of miro that provided cover and sustenance for birds and kiore were largely removed, just as they had been in the north of the inquiry district. Nourishing terrains, important for wildlife, were replaced by pastures and second growth.

12A.5.2 Effects on tangata whenua

Māori were intentional actors in the development of pastoral farming on the coastal hills and ranges. They sold blocks of land to the Crown, they took jobs clearing the land and working on the sheep stations, and they were pastoral farmers in their own right.[99] What they did not anticipate was the magnitude of the environmental changes that would ensue – the destruction of habitat and the loss of taonga species and mahinga kai – or how those changes would affect them. When the economy was buoyant and waged employment was available, they could operate more or less in the new dispensation. But when times were hard, they were really hard. The land was no longer there, so they could no longer simply resort to the old subsistence way of life.

A century after the Mangatotoro, Ngāpaeruru, Waikopiti, and Puketōī 6 blocks went through the Native Land Court, maps depicting vegetation on those stretches of hill country reveal that they are forested no longer.[100] All that remains is remnant forest in some gullies and regenerating scrub on some slopes.[101] Without the vegetation that created and supported them, the mahinga kai and food trails of old are a thing of the past. Wild cattle and pigs can be hunted where farmers grant access. Eels are still caught in the rivers and creeks, but the quality and quantity has diminished as a result of erosion, sedimentation, and loss of stream habitat.

12A.6 Species Conservation

As discussed in chapter 11, species extinction is not a new phenomenon in Aotearoa. Nor is it limited to the period since colonisation.

In this district inquiry, however, the extinction of one bird species in particular stands out. It is of interest for many reasons, key amongst them its significance to Māori, its distinctiveness as a species, and the complex involvement of both Pākehā and Māori in its demise. That bird is the huia.

Pūkaha/Mount Bruce

Pūkaha/Mount Bruce is the one area of Te-Tapere-nui-ā-Whātonga where the lowland forest has survived through to the present. This remnant is 942 hectares of rugged land adjacent to State Highway 2 between Eketāhuna and Masterton. It forms the watershed between the Mākākahi River, which flows northwards to join the Manawatū River, and the Ruamāhanga River, which flows south into Wairarapa. Known to Māori as Pūkaha and to Pākehā as Mount Bruce, the land was purchased by the Crown but never subdivided or sold. Marr notes that it includes one of the last substantial remnants of lowland forest, with rimu, rātā, and kāmahi.

The Pūkaha block remained in forest when the rest of Seventy Mile Bush was felled and converted into farmland. Pūkaha was, however, extensively logged and suffered from the impacts of predators during the late nineteenth and twentieth centuries. Mike Grace describes the combined impacts of logging, forest fires, and predators in these words:

> The destruction of the Seventy Mile Bush left Pukaha a charred and battered 942 hectare remnant on the border between the Wairarapa and Tararua districts. It was infested with pests; particularly goats and possums and the birds suffered from unrestrained predation by rats, cats and mustelids.

The State Forest Service, formed in 1921, was given primary responsibility for the Mount Bruce Block and administered it as part of the Tararua State Forest Park. A portion of Pūkaha adjacent to State Highway 2 became home for a bird-breeding initiative by the Wildlife Service from the 1940s onwards, and an area of 55 hectares was gazetted as a native bird reserve.

The wildlife restoration work expanded. The National Wildlife Centre was opened in 1962, and in 1984 the National Wildlife Trust Board, with Government and community membership, was established.

When the Crown conservation estate was reapportioned in 1987, the Pūkaha/Mount Bruce lands passed from the Forest Service to the Department of Conservation. We return to the agency of the Department of Conservation and its relationship with Wairarapa ki Tāmaki-nui-ā-Rua iwi in chapter 12c.

Visitors wonder at the antics of kākā at Pūkaha/Mt Bruce

A boardwalk crosses the wetlands at Pūkaha/Mt Bruce

The visitor centre at Pūkaha/Mt Bruce

12A.6.1 The huia

The huia (*Heteralocha acutirostris*) was a bird of great distinction. To Māori, it was tapu and highly prized for its tail feathers, which were used for personal adornment. The huia's high status among birds, and its association with Te-Tapere-nui-ā-Whātonga, enhanced the mana of the people of that rohe. This is reflected in the claims before us, which characterise the clear-felling of the bush and the loss of the huia as breaches of the Treaty that have had very negative consequences for tangata whenua.[102]

The Reverend Kingi Ihaka, a scholar and broadcaster, was asked in the 1960s to talk about the huia in a Radio New Zealand documentary. He blended together his own insights with the words of Elsdon Best and Sir George Grey:

> The huia was highly prized by the Maori in olden times. It furnished him with no appreciable food supply but it provided him with decorative plumes upon which a high value was placed. These black plumes tipped with white, were passed from tribe to tribe by means of barter. So, reached the Far North and the South Island. These feathers of course were worn as part of a head-dress by the rangitira, the chiefly class, on ceremonial occasions, and were normally kept in a beautifully carved container known as a waka huia. Indicative of the value the Māori placed on wearing the huia feather is this extract from a lament to the late George Grey: 'Bring forth the feathers of the huia, that bird so prized that flicks across the towering hills of Tararua. Bring them to crown the brow of the loved one'.[103]

The huia were remarkable for their beauty. With their glossy green-black plumage, orange wattle, and distinctive striped tail feathers, they were elegant and fine. The huia is often given pride of place in books about New Zealand birds, such as *A History of the Birds of New Zealand* by Walter Lawry Buller (1838–1906).[104] Buller was the first New Zealand-born scientist to build an international reputation, and he wrote extensively about the huia.[105]

Huia were remarkable in another way, too. More than any other bird, the beaks of the male and female were differentiated. The male's beak was short and strong, with muscles enabling it to break open the surface of decaying logs. The female's beak was much longer and was slender and curved; it was perfectly adapted for reaching into rotten wood to extract huhu grubs.[106]

Huia were uniquely suited to a particular type of forest environment. They were most at home in the shade of the forest, where ancient trees were quietly decaying on the forest floor, their soft, damp wood full of fat grubs.[107] They were also reputedly fearless and curious, which must have compounded their problems once habitat loss brought

Habits of the Huia

In *Extinct Birds of New Zealand*, A Tennyson and P Martinson wrote:

> Huia usually fed on invertebrates, especially grubs, but they also ate plant matter, such as berries. They fed commonly from dead standing trees and rotten logs, using their beaks tirelessly, probing or like a 'pick-axe', tearing the wood to pieces. Using their tail, they could prop themselves up vertically on a trunk to feed. Contrary to many popular accounts, the sexes did not forage cooperatively.
>
> Huia pairs kept in touch using a constant soft twittering but the name huia is derived from the bird's early-morning call – 'a strange, deep, melodious whistling-call'. The birds laid two to four eggs, which were grey with dark purplish-grey and brown spots, in September–October. Their nests were sometimes made of sticks, and were seen in large trees, with young being noted from November to February.
>
> Observations and fossil distribution suggest that huia preferred partly open habitats to dense forest. Sometimes small flocks were seen. They were poor fliers but very agile, 'hopping along the ground, occasionally making short flights from branch to branch' and were reputedly able to spring as far as 'twenty feet' at a time.

Two huia sitting on branches of a tītoki tree (with seedpods). The long-beaked male is to the rear, while the female is in front.

them into closer contact with humans. They were attracted by human whistling and would approach without fear, fluttering around the caller. Instead of hiding, huia 'whistled at you, waiting to be knocked over'.[108]

Te-Tapere-nui-ā-Whātonga was the place that met all the huia's needs.[109] Writings by Colenso, Buller, and Best suggest that, by the 1840s and 1850s, they were distributed across only that portion of the bush that lay between Wairarapa and Tararua and extended eastwards around the Puketōī Range towards Akitio.[110] This moist lowland forest provided food and shelter during the cooler seasons of the year. In summer, the huia moved up into the Tararua, Ruahine, and Puketōī Ranges.

12A.6.2 Culpability

There is nothing that is uncontroversial about the huia. That it is indeed extinct is not even agreed, though it is now many years since there was a sighting.[111] And everything about how it came to be extinct (which this Tribunal thinks it probably is) – and in particular who really was at fault – continues to be hotly debated.[112]

The key elements in the debate are:

- the loss of habitat;
- the role played by Māori;
- the role played by the colonists: settlers, hunters, and collectors;
- what was done to save the huia; and
- whether more could or should have been done to ensure its survival.

After canvassing these areas in turn, we draw the threads together to assess whether, on balance, the huia's demise can fairly be characterised as a breach of the principles of the Treaty.

For our knowledge about the huia and what befell it, we rely primarily on two sources: the writing of William Phillipps in *The Book of the Huia* and the evidence before us of Mike Stone. We are indebted, too, to the work of Cathy Marr.[113]

(1) *Loss of habitat and introduced pests*

The huia's very specific habitat requirements made it highly vulnerable to deforestation. It required the kind of moist, ancient forest that was typical of Te-Tapere-nui-ā-Whātonga but not found in many other places.

All indigenous forest birds were susceptible to the combination of deforestation and burning that decimated Te-Tapere-nui-ā-Whātonga from the 1870s onwards, but none more so than the huia. This was how the deforestation was accomplished:

> After a patch of bush was felled it was left, a tangled mass of trunks and branches, to dry during the hot summer months in readiness for the burn-off in February or March . . .
>
> When the burn was taking place the settlers and their families continued to labour by the glare of the fires far into the night . . . the whole valley basin was filled with pungent smoke . . .
>
> When the fires had expended themselves . . . there was left an ugly smoking wound in the green bush, a desolation of blackened earth studded with stumps and littered with the charred trunks of the larger trees . . .[114]

Any huia that survived all of this were left without their habitat, their food supplies, and the natural protection provided by the bush. Evidence suggests that, once the bush was destroyed in the 1870s and 1880s, huia went one of two ways. They either remained year-round in the upland forests on the slopes of the Ruahine, Tararua, and Puketōī Ranges (where they had historically spent the summer only) or spread further afield into forests to the west, north, and south of the Wairarapa ki Tararua inquiry district. The higher forests within the region were too cold to provide a permanent home for the huia, but the birds proved adaptable enough to move to lower forests locally, to the east of the Puketōī Range,[115] and in more distant regions. Huia were reported (usually in pairs) in forests behind Wellington city, Waikanae, Ōtaki, and Wanganui; around Taihape, Ohākune, Taupō, and Rotorua; in the King Country and Urewera; and in parts of Nelson and Marlborough.[116] These alternative habitats might have offered the huia a chance, were it not for the introduced pests.

Huia were affected by both introduced insects and mammals.[117] Bees, introduced from Canterbury to the Forty Mile Bush in the 1880s, proved fatal to some, and others became hosts to ticks, which may have come from India along with the mynah bird, which was introduced in the 1870s.[118] But mustelids affected the huia more seriously. When rabbits invaded sown pastures in the 1870s, settlers combated them first by fencing, trapping, and poisoning, then by bringing in ferrets, stoats, and weasels.[119] The mustelids were imported from Tasmania in the 1880s, bred on larger farms near Puketōī and Akitio, and then released.[120] Alex Sutherland, from Ngaipu and Akitio, explains:

> The rabbit pest in the late 'eighties and early 'nineties was at its worst. . . . Sheep and cattle were suffering from want of feed . . . Stoats and weasels were imported

> from Tasmania and liberated on the stations. . . . They were kept in large ferret boxes and as they increased they were taken out and liberated on the hills.[121]

Rabbit numbers fell. But by the end of the 1890s, weasels and ferrets had spread into the forests, and those huia that survived forest clearances probably had little chance against them. Phillipps wrote:

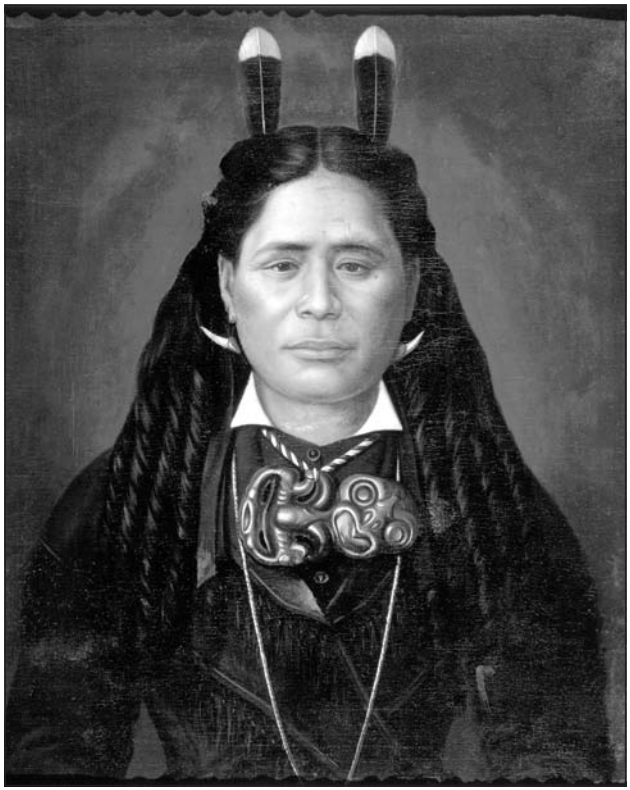
> They were a constant menace to all ground birds and their eggs, and young birds must have been particularly vulnerable. Any group of animals which is denied the right to rear offspring must sooner or later succumb, and this could be a sufficient reason in itself why such a virile species as the huia quickly disappeared in some localities.[122]

Settlers and bush fellers had reported sightings of huia in the forests east of the Puketōī Range in the 1880s and 1890s, but this is adjacent to where Alex Sutherland says the stoats and weasels were released. The sightings did not continue into the twentieth century.[123]

(2) *The role of Māori*

Mike Stone's evidence emphasised the tapu nature of the huia – both the bird itself and its tail feathers. Rangitāne, in their closing submissions, endorsed this evidence: for Māori in general, and for Rangitāne ki Tāmaki-nui-ā-Rua in particular, the huia had more mana than any other bird.[124] The huia feathers were tapu, the human head was tapu, and the rangatira who wore the feathers on their heads as personal adornments were tapu. Huia feathers were passed from tribe to tribe and reached the extremities of the country. The special carved boxes in which they were kept, waka huia, were themselves tapu and were accorded great care and respect.[125]

Both William Phillipps in his 1963 book, and Mike Stone in his evidence to the Tribunal, emphasise that the huia was greatly respected and carefully managed in the decades prior to colonisation. Phillipps writes:



***Mrs Ngahui Rangitakaiwaho of Wairarapa*, painted by Gottfried Lindauer in December 1880, adorned with a magnificent heitiki, shark's tooth earrings, and huia feathers denoting her chiefly rank.**

> The Maori and the huia had survived together for centuries; and while the huia had doubtless been driven from most of the forested plains, there had been established a phase of environmental equilibrium, with the old-time law of tapu holding in check any unwarranted destruction of bird life.[126]

This account from Colenso, a frequent visitor to the Wairarapa and Tāmaki-nui-ā-Rua regions in the 1840s and 1850s, gives some insight into how that equilibrium was maintained:

> At that time . . . there lived at Mataikona, near Castle Point, . . . a very curious eccentric old Maori chief named Pipimoho – a true type of the skilled old Maori *tohunga*, or knowing-man! Pipimoho was the only one in these parts who knew how and where to capture these birds; and this for a long time was his annual occupation, once or twice in the year to go to the inland forests . . . to Puketoi and its neighbourhood . . . to snare the Huia.[127]

Colenso noted that Pipimoho was snaring the huia to provide feathers for Hawke's Bay rangatira Puhara, Te Hāpuku, and Hineipaketia, who were his superiors in rank.

From this snippet, we can infer that rules like these about who could catch huia and where, when, and for whom they could be caught effectively limited the take.

But all this changed once the huia was brought to the attention of the non-Māori world. In 1835, the Reverend William Yate published *An Account of New Zealand*, and his account of the huia alerted scholars and collectors.[128] The first scientific description of the huia was published shortly after, in 1837 by John Gould, a taxidermist, ornithologist, and curator and preserver at the museum of the Zoological Society of London. Gould examined male and female specimens but, confused by the variations in beak structure, identified them as separate species.[129] The following year, J S Polack described the huia in his book *New Zealand: Being a Narrative of Travel and Adventures*.[130]

These writings fomented interest and curiosity about the huia and its plumage, triggering demand for feathers, stuffed specimens, and live birds. Museums, zoological gardens, and private collectors were all eager to obtain specimens, and a brisk trade developed, starting in the late 1830s.

The cultural protection of tapu (permanent restriction on access) and rāhui (restriction on access for a set time) diminished as European interest increased. Marr comments that Māori acquired firearms and turned to hunting huia with guns, rather than catching them with traps.[131]

In the 1850s and 1860s, Māori were drawn into the money economy as their land was sold and their social organisation weakened. Collectors, official and unofficial, employed them to catch and kill huia. Colenso contrasts his account of Pipimoho's careful harvest with a description of an 1850s encounter with a single Māori who had just taken six birds. 'Some were dead, killed in the capturing, and some were still alive', noted Colenso, adding 'I might have bought them from him for a small sum, but I was too far away from my home'.[132]

To meet the ongoing needs of Māori and the growing demand from collectors, hunting and live capture intensified in the decades that followed.

J D Enys from Canterbury visited the east coast of the Wellington province in the winter of 1874. While he was there, he spent time with Māori who were shooting and preserving huia:

> The party I saw most of were two brothers, whom I met at the edge of a large forest, on their return from their expedition. Their equipments were few, consisting of a small blanket, a gun, and a slight stock of provisions. So provided, they started off into the bush, and calling the birds by an imitation of its note, which is well expressed by the native name Huia, they bring them within range of their guns. Formerly they killed them with small sticks.[133]

Enys then described the methods used for preservation, adding that birds were sent as items of exchange to Waikato and Taupō. He feared that the huia would become extinct as more country was opened up, but this did not prevent his own participation:

> I ascertained that over 600 skins were procured last year, from the back ranges of the East Coast of the Wellington Province, by the natives. I may mention, that, part of the ranges had been *tapu* by the natives, for the last seven years, so as to protect the Huia from being killed off.
>
> I exhibit a specimen, obtained with some difficulty, from one of the brothers mentioned [above].[134]

Walter Buller described an excursion in the 1880s when he, his brother-in-law Gilbert Mair, and a Māori huia-hunter spent several days in the bush near Masterton. 'They shot sixteen huia', writes Ross Galbreath, 'and caught another pair alive'.[135] In his 1888 edition of *A History of the Birds of New Zealand*, Buller discusses 'the wholesale slaughter of late years':

> For example: a party of eleven natives went out for a month and scoured the wooded country lying between the Manawatu gorge and Akitio, and brought in 646 skins; and a party of three men obtained a considerable number near Turakirai on the south-western side of the Wairarapa lake. Other instances of the kind might be given, all tending to show that the struggle for existence with the Huia is becoming a severe one.[136]

(3) *The role of the colonists: settlers, hunters, and collectors*

The huia fascinated everybody. Marr comments:

> Many admired the huia for its beauty and novelty, and naturalists and scientists created an enormous demand for skins . . . The prevailing nineteenth century view of many settlers, including scientists, was that indigenous flora and fauna in general (including Maori themselves) were doomed to extinction before the apparently more robust Europeans and their plants and animals. This led to what now seems the incredible actions of noted naturalists in encouraging and participating in the continued hunting and killing of the huia for museum specimens, even when it was known their numbers were rapidly diminishing.[137]

Although huia were sometimes kept as pets, many more were shot:

> an attachment to being able to freely shoot wild animals, and a lack of a long cultural attachment to the huia, meant that settlers often simply shot them for sport, especially as forests were being cleared in lowland areas. Many settlers also copied Maori custom, and bought or traded huia feathers as decorations, including for headwear.[138]

Phillipps agrees:

> To many the bird was simply the New Zealand woodpecker, interesting perhaps but by no means important. Not only that, but guns were essential in every settler's home and young and old were accustomed to shoot at any wild thing that moved. The idea of conservation was a long time in gaining ground.[139]

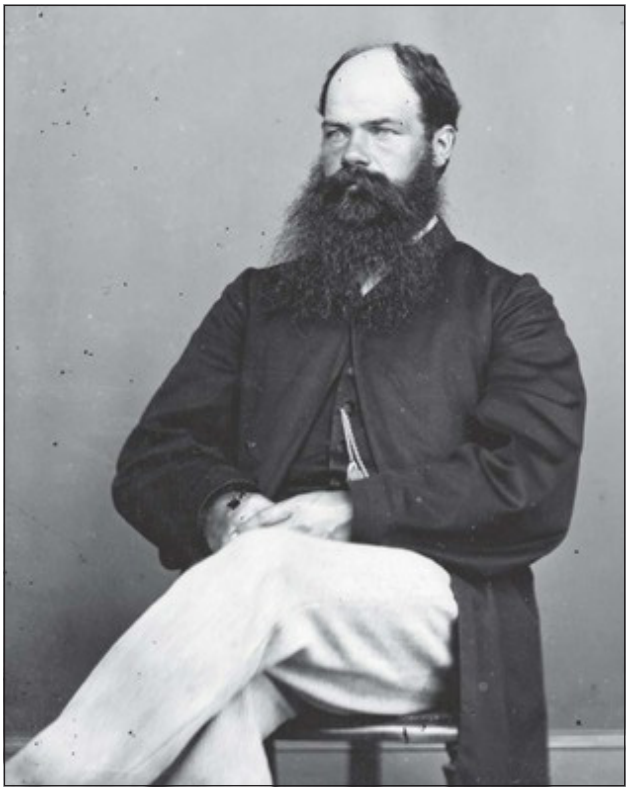
But, probably much more damaging to huia populations than settlers' casual hunting was the heavier hand of collectors.

Ross Galbreath, an ornithologist and Walter Buller's biographer, likened bird collectors to other introduced pests:

> The collectors were, in effect, another form of predator on the bird population, along with the rats, cats, stoats, weasels, and other carnivorous animals colonising the country. In general their impact on bird numbers was probably not great; and displacement – by loss of habitat as the settlers cleared the bush – was more significant than any predation. However, collecting was an important factor in some circumstances. Collectors were not like other predators; they concentrated on the rare and unusual species – those with the highest market value. Species nearing extinction were the most valuable of all and hence the most rigorously hunted.[140]

Collectors were not only those for whom it was a commercial activity, though: huia were also killed, stuffed, and analysed in the name of science. Phillipps recorded that in 1963 the main museums in New Zealand held 119 huia, counting mounted birds, skins, and one skeleton.[141] New Zealand museums were also active in obtaining specimens to exchange with overseas museums. Canterbury Museum, Stone notes, had traded 15 huia with its counterparts around the world.[142]

And then there was Sir Walter Buller himself. He was a



Walter Lowry Buller, photographed by William James Harding in about 1870. Buller was a scientist, magistrate, and bird lover. He was, however, a man of his time, and we would not call him a conservationist today.

capable scientist, a resident magistrate, and a man with a high public profile, both in New Zealand and in England. Hailed as New Zealand's first notable man of science, he was no conservationist – at least, not in any sense that would be recognisable today. Galbreath recounts many occasions when Buller shot or preserved huia or had them captured and exported. He did advocate the statutory protection of native birds, but he prioritised his own interests in collecting and dispatching specimens above their protection.[143] He had no qualms about holding a pair in captivity in 1864, then sending them on to the Zoological Society of London:

> It was most interesting to watch these graceful birds hopping from branch to branch, occasionally spreading the tail into a broad fan, displaying themselves . . . and then meeting to caress each other with their ivory bills . . . They generally moved along the branches by a succession of light hops . . . and they often descended to the floor where their mode of progression was the same.[144]

It is probably ahistorical to find any of this surprising. Buller was, after all, a man of his own time. As Phillipps says:

> Buller has been criticised for shooting native birds, particularly huias; but he belonged to an era when an ornithologist was expected to collect specimens. In any case . . . he apparently believed that the huia was doomed to ultimate extinction.[145]

Later in his life, Buller did give lip service to efforts to establish bird sanctuaries, and he ostensibly supported the addition of the huia to the list of protected birds under the Wild Birds Protection Act 1864. But, as discussed below, his own collecting was unaffected.

(4) *What was done to save the huia?*

First, Māori and, later, the Crown tried to protect the huia.

By the 1870s, Māori were concerned that huia numbers were in decline. As noted above, J D Enys reported in 1875 that part of the ranges on the east coast of Wellington province had been made tapu to help prevent the huia from being wiped out.[146] But, with numbers continuing to decline, in the 1880s a broader initiative got under way. Chiefs from the Wairarapa and Manawatū districts met and renewed the tapu on the Tararua Range and determined to enlist the support of the Government. According to one account, the Governor-General was at the meeting:

> In 1892, when the Earl of Onslow, then Governor of New Zealand, asked an assembly of chiefs for a name

for his newly-born son, they asked him to call the boy 'Huia', and one said:

> There, yonder, is the snow-clad Ruahine Range, the home of our favourite bird. We ask you, O Governor! to restrain the pakeha from shooting it, that when your boy grows up he may see the beautiful bird which bears his name.[147]

The Earl of Onslow, proud parent and nature lover, heeded the call. He took a memorandum to both Houses of Parliament urging the establishment of sanctuaries on off-shore islands and asking that the huia be added to the list of protected birds.[148] The Government agreed. Little Barrier Island in the north and Resolution in the far south were identified as suitable island sanctuaries, and the huia was added to the list of protected birds in the Wild Birds Protection Act in 1892.[149] Buller strongly supported this move – but continued to collect specimens in the leadup to, and after, the *Gazette* notice. He wrote about 'a dozen or more superb specimens' collected at this very time, which are now held in the Carnegie and Canterbury Museums.[150] The labels and letter books for these specimens, which Buller carefully inscribed with his own distinctive script, reveal (according to his biographer) that 'probably ten of the twelve were shot illegally after the protection had been gazetted in February 1892 – several of them by his own hand'.[151]

But these Government efforts to prevent the hunting and killing of huia came too late and were largely ineffectual. The attempts to establish the island sanctuaries (which subsequently also included Kapiti Island) were intermittent, with responsibility split between the Department of Tourism and the Department of Internal Affairs. While parties were sent out to catch huia on at least six occasions, few birds were found. None went to the island sanctuaries.[152]

In January 1893, Charles Robinson, a candidate for one of the island custodian positions, captured a pair of huia intended for the Little Barrier Island reserve. Buller, however, appropriated the pair and sent them off to a collection in England.[153] A decade later, a Mr R B Sayer of Dalefield, near Carterton, caught three huia. These were designated for the sanctuary on Kapiti Island, but the Government officials who were to collect them never arrived and Sayer released the birds back into the wild.[154] This maladministration probably saved the three huia in question at least, because none of the islands had been cleared of predators.[155]

A Royal Occasion

Just after the turn of the twentieth century, the forces of fashion ranged themselves against the survival of the huia. Rod Morris and Hal Smith explain:

> In 1901, the Duke and Duchess of York (the future King George v and Queen Mary) visited New Zealand. It was an event which caused the most lavish celebrations throughout the land. While the Royal couple were in Rotorua, they were given an official Maori welcome. A high-ranking Maori woman, a guide, took a huia feather from her hair and placed it in the band of the Duke's hat, showing that he was regarded as being a great chief. It was a graceful gesture which caught the colonial imagination. But it was disastrous for the huia. Soon many people in New Zealand and in England wanted to follow the royal fashion and wear huia feathers in their hats. The price of tail feathers soared to £1 for a single feather, and some even went as high as £5. Under this relentless commercial pressure, the chiefly tapu and governmental edict against killing huia were forgotten.

(5) *Could or should more have been done to ensure the huia's survival?*

Cathy Marr sums up the various areas of failure concerning efforts to save the huia as follows:

> The later history of government attempts to protect the huia by securing breeding pairs and moving them to sanctuary makes dismal reading. All kinds of

bureaucratic delays and inertia prevented action, until around 1924 it was finally decided that the last certain sighting of the bird had been in 1907 and it was almost certainly extinct. It is possible that all efforts to save the huia may have failed. Nevertheless, the evidence suggests that iwi were not provided with the means to be adequately heard, and found themselves without the necessary protections, to ensure their concerns were adequately met. The Crown appears to have failed in this respect to either adequately support traditional systems of management or to provide adequate replacement protections by which iwi concerns were effectively acted upon.[156]

Although the Crown's efforts were certainly inadequate, we wonder whether, once huia numbers had declined significantly, anything could have been done. Today's knowledge about supporting dwindling bird populations was then sadly lacking. It may be that there were in fact no suitable, predator-free habitats to which breeding pairs could have been taken, given the bird's specialised needs. But, in any event, the expertise in this kind of bird population recovery had not yet been developed.

Notes

1. Robert McClean provides a list of major floods between 1850 and 1960 in document A41, pp 21–23.
2. Ibid, p 20
3. Ibid, p 139
4. Sally Airey, Rachel Puentener, and Aalbert Rebergen, *Lake Wairarapa Wetlands Action Plan, 2000–2010* (Wellington: Department of Conservation, 2000) (doc G3, attachment)
5. Document G3 (Field), p 8
6. Department of Conservation, *Wellington Conservancy: Conservation Management Strategy for Wellington, 1996–2005*, 2 vols, Wellington Conservancy Conservation Management Planning Series no 2 (Wellington: Department of Conservation, 1996)
7. Document G3 (Field). These arrangements include access to raupō (a native bullrush), kiekie (an epiphytic plant, the heart of which was traditionally eaten), and mānuka and the retrieval of fallen tōtara: ibid, p 6.
8. Document C11 (Ngatuere), p 4; doc C13 (Matiaha), pp 5–6; doc C22 (Rutene), p 6
9. Document G4 (Edmonds and Apanui), p 5
10. Document G5 (Whaanga), p 4
11. Document C29 (Manaena), pp 2–3
12. Document G4 (Edmonds and Apanui), p 5
13. Ibid, pp 6–7
14. Document G5 (Whaanga), p 4
15. Document C1 (Mathews), p 5. Tina Rahui, a researcher and archivist, supported this evidence. She described photos of very large eels caught at Pāpāwai in the late 1930s or early 1940s. She confirmed that eels today are much smaller: doc C21 (Rahui), p 8.
16. Document F5 (Burge), p 14
17. Document C35 (Hemi), p 27
18. Stephanie Parkyn and Ben Chisnall, 'Review of the State of Freshwater Resources in the Wairarapa ki Tararua Inquiry District', NIWA Client Report HAM2002–061 (Hamilton: National Institute of Water and Atmospheric Research Ltd, 2002) (doc A56). The authors draw on L Watts, *Wairarapa Municipal Oxidation Ponds: Water Quality Monitoring Report, July 1999 – June 2001*, Wellington Regional Council Technical Report 01/10, 2001; and Russell Death, K McArthur, R Pedley, I Johnston, and Z Dewson, *River Health of the Manawatu–Wanganui Region, State of Environment Report 2002 – Invertebrate and Periphyton Communities* (Palmerston North: Massey University, Institute of Natural Resources–Ecology, 2002)
19. Parkyn and Chisnall, 'Freshwater Resources'
20. Document D3 (Robinson), p 2
21. Document C22 (Rutene), p 6
22. Document C27 (Reiri-Smith), pp 11–12
23. Document C13 (Matiaha), pp 4–5
24. Ibid, p 7
25. Document C1 (Mathews), p 5
26. Document C23 (Nunn), pp 5
27. Document C9 (Paewai), p 13
28. Ibid
29. Three names are commonly used to refer to the area of lowland forest between Takapau in Hawke's Bay and Pūkaha/Mount Bruce in Wairarapa: Te Tapere-nui-ā-Whātonga, Tāmaki-nui-ā-Rua, and Seventy Mile Bush. Claimants Manahi Paewai, Titihuia Karaitiana, and Maisie Gilbert-Palmer use all three: doc E3 (Paewai); doc E7 (Karaitiana); doc E12 (Gilbert-Palmer). In the body of the text that follows, we refer to 'Te-Tapere-nui-ā-Whātonga'. However, it should be noted that the name 'Forty Mile Bush' was also used – confusingly – both for the portion north of the Manawatū River and for the portion south of the Manawatū River. When the Crown purchased large blocks in 1871, it labelled as 'Tamaki' the northern portions that were in Hawke's Bay province, and as 'Seventy Mile Bush' the portions in the Wellington province. The names Tāmaki-nui-ā-Rua and Te-Tapere-nui-ā-Whātonga are used for the denser lowland forests in the inland area but sometimes embrace a more extensive area of forest that includes the slopes of the Puketōī Range and the environs towards the coast, including, for example, the Tautāne Bush: cf doc A47 (McBurney), pp 16–17;

doc A27 (Robertson), pp 31–32; doc A76 (Crown Forestry Rental Trust), map 4; doc E39 (Rangitane), map 3. We use 'Te-Tapere-nui-ā-Whātonga (Seventy Mile Bush)' to refer only to the lowland and inland forests, dealing separately with the upland and coastal areas.

30. James Mackay, 'Sketch Map of the North Island of New Zealand Shewing Approximately the Loyal and Rebel Districts – from the Commencement of the Taranaki War to May 1869 – also the Proportion of Natives in Each District who have Joined in the Rebelllion', AJHR, 1870, D-23. Wairarapa ki Tararua is shown in green as a district where 'nearly all the Natives have not joined in the rebellion' but the interior of the Seventy Mile Bush is shown as an area where 'Disaffected Natives' were 'residing within friendly district'.

31. G C Petersen, 'Pioneering the North Island Bush', in *Land and Society in New Zealand*, edited by R F Watters (Wellington: Reed, 1965), pp 66–79 (doc A25, p 23)

32. Wellington Special Settlements Act 1871; Hawkes Bay Special Settlements Act 1872

33. Document A27 (Robertson), p 14. Peterson comments on the contrast between the rich literature left by the pastoralists with the paucity of personal records left by those who cleared the bush: the latter, he suggests, came from a different stratum of society and were engaged in a constant physical struggle: Petersen, 'Pioneering the North Island Bush', p 66

34. Smith to McLean, 10 November 1853: William Mein Smith, *1799–1869: Report of a Journey in the Wairarapa, Addressed to Donald McLean*, ATL, MS-papers-3440; 'Charles Kettle' and 'William Mein Smith', DNZB, vol 1, pp 226–227, 399–401

35. Colenso usually travelled one way by coast and one way by the inland route: doc A27 (Robertson), pp 15–17; 'William Colenso', DNZB, vol 1, pp 87–89

36. New Munster was based in Wellington and covered the southern part of the North Island and the South Island. The other province, New Ulster, covered the remainder of the North Island.

37. T Kemp, 'Report No 4 Wairarapa District', 15 April 1850, *New Munster Gazette*, 21 August 1850, vol 3, no 16, pp 72–88. McBurney cites this report as BPP, vol 7, sess 1420, pp 237–238: doc A47 (McBurney), p 15 fn 3.

38. Mein Smith, for example, travelled inland from the upper Wairarapa to Mangatainoka. He followed the Kopuaranga River, which he described as 'flowing in a deep bed, the banks are generally from ten to twenty feet high': Mein Smith, *Report of a Journey in the Wairarapa*, p 292

39. T Kemp, 'Report No 4 Wairarapa District', pp 72–88

40. Colenso was also constrained, according to his biographers, by a lack of interpersonal skills and a limited ability to establish good rapport with Pākehā or Māori. See, for example, David McKay's assessment of Colenso's personality in 'William Colenso', DNZB, vol 1, pp 87–89.

41. Document A118 (Gilling), p 31; doc A27 (Robertson), p 16

42. G Wynn, 'Destruction Under the Guise of Improvement? The Forest, 1840–1920', in *Environmental Histories of New Zealand*, edited by E Pawson and T Brooking (Melbourne: Oxford University Press, 2002), p 107. The *Bush Advocate* named some of the 80 sawmills which were active at that date: *Bush Advocate*, 21 September 1893, p 2 (doc A47 (McBurney, p 34).

43. Petersen, 'Pioneering the North Island Bush', p 75

44. Petersen describes a great fire that destroyed 30 settler homes and almost wiped out Norsewood in 1888, and a similar one near Mauriceville in 1893. Rollo Arnold's imagery of the summer fires (Rollo Arnold, *New Zealand's Burning: The Settlers' World in the Mid-1880s* (Wellington: Victoria University Press, 1994), p 38) is much more dramatic:

> Rather than falling upon the district in one clear swoop, they seemed to play a cat and mouse game with the settlers, stirring this way and that with the eddying breezes, ebbing and flowing as the occasional showers broke the long succession of scorching days, wearing the settlers down by insidiously stalking them week after week, then suddenly pouncing as if hoping to catch them off their guard. The settlers first came under real pressure in mid December and were not clearly out of trouble until the end of January.

45. Arnold, *New Zealand's Burning*, especially chapter 3

46. George Jobberns, 'Life and Landscape in New Zealand', in *New Zealand Inventory and Prospect* (Wellington: New Zealand Geographical Society, 1956), cited by Petersen, 'Pioneering the North Island Bush', 66

47. Wynn, 'Destruction Under the Guise of Improvement?', p 110

48. Document A58 (O'Brien and McClean); doc A35 (Oliver); doc A54 (Smith); doc E7 (Karaitiana); doc E12 (Gilbert-Palmer); doc E15 (Paewai)

49. Document A54 (Smith), p 66

50. Document A58 (O'Brien and McClean), pp 21–24; doc A35 (Oliver), p 78

51. Document A47 (McBurney) pp 19–24. McBurney at this point is drawing on evidence provided by Manahi Paewai, Dorothy Ropiha, and Steven Chrisp.

52. Maps of inland pā/kāinga/bush clearings (doc E39, map 6), cultivations and mahinga kai sites (doc E39, map 8), and waahi tapu/urupā (doc E39, map 9) are supported by the claimant evidence given by Manahi Paewai (doc E3), Titihuia Barclay Karaitiana (doc E7), Maisie Gilbert-Palmer (doc E12), and Punga Paewai (doc E15). See, especially, document E15 (Paewai), pp 2–5, for a description of 'Kaitoki', a cultivation in the bush that provided an abundance of food and pharmacy supplies, and document E3 (Paewai), pp 32–33, which names 13 clearings in the forest.

53. Document A35 (Oliver); doc I17(b)

54. Document I17(b), pp 29–35, 42–44

55. The relationship between kiore, management of kiore, and the impact of kiore on other fauna and flora is highly contested within the scientific community, and between the Department of Conservation and iwi such as Ngāti Wai. See Robert McClean and Trecia Smith, *The*

Crown and Flora and Fauna: Legislation, Policies and Practices, 1983–1998 (Wellington: Waitangi Tribunal, 2001), pp 403–406; J L Craig, 'The Effects of Kiore on Other Fauna', in *The Offshore Islands of Northern New Zealand*, Information Series 16 (Wellington: NZ Department of Lands and Survey, 1986), pp 75–83; Bradford Haami, 'The Kiore Rat in Aotearoa: a Maori Perspective', in *Science of Pacific Island Peoples: Fauna, Flora, Food and Medicine*, edited by J Morrison, P Geraghty, and L Crowl (Suva: Institute of Pacific Studies, 1994), vol 3, pp 65–76

56. Document A35 (Oliver), pp 6–9; doc E39, maps 2–4, 8

57. The evidence given by Hori Herehere in May 1889 has, we believe, been misinterpreted. He names and describes more than eight clearings in the forest where there were kāinga. Only one of these, Puta-a-whaki, was abandoned, and this one was close to the path used by war parties. Another, Apananaua Te Kahukahu, was a panganga or hiding place, well removed from war parties: document A35 (Oliver), pp 12–15 draws on Napier Native Land Court minute book 18, 10 May 1889, fol 128, and Napier Native Land Court minute book 18, 15 May 1889, fols 150, 159.

58. Document E12 (Gilbert-Palmer), p 6

59. Document A47 (McBurney), p 25

60. Ibid. Compare wth Wynn, 'Destruction Under the Guise of Improvement?', pp 100–116: Wynn juxtaposes the imagery of 'a tangled and impervious forest' with the 'heroic' efforts of sawmillers and settlers to turn it into useful products and pastures respectively.

61. Document A58 (O'Brien and McClean), p 9

62. Document A54 (Smith), pp 65–66, 69

63. Compare with David V Williams, *Matauranga Maori and Taonga: The Nature and Extent of Treaty Rights Held by Iwi and Hapu in Indigenous Flora and Fauna, Cultural Heritage Objects, Valued Traditional Knowledge* (Wellington: Waitangi Tribunal, 2001), pp 77–86

64. Document E7 (Karaitiana), pp 3–4

65. Document E12 (Gilbert-Palmer), p 9

66. Document A58 (O'Brien and McClean), p 19 draws on evidence from B Bentley, *From Bush Clearing to Borough* (Pahiatua: Pahiatua Printing Company Ltd, 1974), pp 54–62; and C J Carle, *Forty Mile Bush: A Tribute to the Pioneers* (Pahiatua: North Wairarapa News Company Ltd, 1980), p 110.

67. Document A25 (Marr), pp 31–58

68. Document A25 (Marr) has a specific focus on the mountain forests of Wairarapa in chapter 3. Marr has provided us with an awareness of the wider policy and legislative context which applies to the whole region.

69. The presence of rats and cats probably happened by accident, but pigs and goats were released with intent by maritime visitors before 1840; trout and deer and possums were released by acclimatisation societies; and stoats, weasels and ferrets were released by the Crown: Robert M McDowall, *Gamekeepers for the Nation: The Story of New Zealand's Acclimatisation Societies, 1861–1990* (Christchurch: Canterbury University Press, 1994), pp 5–9, 24–33, 116–135, esp pp 130–132 for stoats, weasels, and ferrets.

70. McDowall, *Gamekeepers for the Nation*

71. Carolyn M King, *Immigrant Killers: Introduced Predators and the Conservation of Birds in New Zealand* (Auckland: Oxford University Press, 1984), pp 73–75, 67

72. McDowall, *Gamekeepers for the Nation*, pp 130–132. The feathers and fur imagery, reported by McDowall, was that used by one of the speakers at the Annual Conference of Acclimatisation Societies in 1910.

73. King, *Immigrant Killers*; McDowall, *Gamekeepers for the Nation*

74. McDowall, *Gamekeepers for the Nation*, p 32

75. Ibid, pp 9, 26–33; King, *Immigrant Killers*, pp 65, 112–114; document A25 (Marr), p 36

76. See for example C G R Chavasse and J H Johns, *New Zealand Forest Parks* (Wellington: Government Printer, 1983)

77. Document A35 (Oliver), pp 78–80 cites G G Brougham and N R McLennan, *Mangatainoka River Erosion and Gravel Resources Report* (Palmerston North: prepared for Horizons MW), 1983.

78. Parkyn and Chisnall, *Review of the State of the Freshwater Resources*, pp 3–4 (doc A56)

79. M Roche, 'The State as Conservationist 1920–1960: "Wise Use" of Forests, Lands, and Water', in *Environmental Histories of New Zealand*, edited by E Pawson and T Brooking (Melbourne: Oxford University Press, 2002), pp 190–192

80. Document A25 (Marr), pp 37–55; cf G Park, *Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912–1983* (Wellington: Waitangi Tribunal Publication, 2001), pp 495–533

81. Park, *Effective Exclusion?*, pp 495–533

82. Ibid, p 647. Park traces these ideas back to English romanticism, notes that the word 'scene' derives from the theatre, and links the scenic travel quest to the 'picturesque', the 'sublime' and the 'beautiful'. These ideas are elaborated in J Muir, 'The Changing of the Forest: Ecological Colonisation, Legislation, and the New Zealand Bush, 1840–1920', MPhil thesis, University of Waikato, 1995, p 178. The Muir thesis is not part of the Wai 863 Record of Documents.

83. Wynn, 'Destruction Under the Guise of Improvement?', p 113

84. Document A25 (Marr), pp 45–46. The nomenclature for what became the State Forest Service was not firmly established at this early point in its history.

85. Document A25 (Marr), pp 46–47

86. Document A25 (Marr), pp 49–50

87. Ibid, pp 50–55. Marr draws on H Fyson, *Multiple Use Policy in Tararua Forest Park* (Victoria University of Wellington: Geography Department research paper, 1987); and New Zealand Forest Service, *Tararua State Forest Park Management Plan 1977–87* ([Wellington]: New Zealand Forest Service [1977]) for information about earlier unpublished plans. The 1954–63 working plan was not a formal, published document.

88. Document A25 (Marr), p 51

89. Ibid, pp 52–53

90. Ibid, p 53

91. Department of Conservation, *Kaupapa Atawhai Strategy* (Wellington: Department of Conservation, 1997)

92. Document A25 (Marr), p 57

93. Brad Coombes, 'Postcolonial Conservation and Kiekie Harvests at Morere New Zealand – Abstracting Indigenous Knowledge from Indigenous Polities', *Geographical Research*, 2007, vol 45, issue 2, pp 186–193 provides a parallel example from outside the Wairarapa ki Tararua inquiry region.

94. Document A25 (Marr), p 57. McClean and Smith, *The Crown and Flora and Fauna*, prepared for the Wai 262 flora and fauna inquiry, is a valuable resource for both Tribunals. See especially chapter 6 on conservation policy implementation in the 1990s.

95. Rowan Taylor and Ian Smith, eds, *The State of New Zealand's Environment* (Wellington: Ministry for the Environment and GP Publications, 1997), esp chs 8, 9; Les F Molloy, ed, *Land Alone Endures* (Wellington: Department of Scientific and Industrial Research, 1980), pp 11–21

96. Document A35 (Oliver), sec 1.2, especially the evidence provided by Tanguru Tuhua (pp 10–11), Karaitiana Te Kōrou (p 11), Hēnare Matua (p 17) and Matiu Meke (pp 17–19)

97. William Wright in document E30 (Wright), p 14 described the manner in which bullocks were used to drag logs to flatten the scrub and then, job done, the cattle were allowed to go free.

98. Document A54 (Smith), pp 44–47, 54–61

99. Cathy Marr makes it clear that Māori were not opposed to all of these developments in the eastern hills: they sold land knowing that it would be used for pastoral farming; they cleared their own lands and engaged in sheep farming on those lands; and they took up regular and seasonal employment on sheep stations. Māori entered into the money economy and participated fully and actively in the decades when the economy was buoyant and jobs were plentiful: doc A25 (Marr), p 97

100. P F J Newsome, *The Vegetative Cover of New Zealand* (scale 1:1,000,000) (Water and Soil Division, Ministry of Works and Development, 1987)

101. Taylor and Smith, *The State of New Zealand's Environment*, fig 8.5; I Wards, ed, *New Zealand Atlas* (Wellington: Government Printer, 1976), has maps of vegetation circa 1840 on page 104 and contemporary forest cover on page 106; Newsome, *The Vegetative Cover of New Zealand* provides much finer detail.

102. Document A25 (Marr); doc A35 (Oliver); doc I10, paras 43–45

103. Document E13 (Stone), app B, p 4

104. See, for example, Walter Lawry Buller, *A History of the Birds of New Zealand* (London: John van Voorst, 1873); Walter L Buller, *A History of the Birds of New Zealand* (London: W L Buller, 1888); Walter L Buller and John G Keulemans, *Supplement to the Birds of New Zealand* (London: W L Buller, 1905); Rod Morris and Hal Smith, *Wild South: Saving New Zealand's Endangered Birds* (Auckland: TVNZ and Random House, 1995). Compare with Brian Gill and Paul Martinson, *New Zealand's Extinct Birds* (Auckland: Random Century, 1991); and Ross Galbreath, *Paintings of the Birds of New Zealand: The Art of J G Keulemans* (Auckland: Random House, 2006), who give pride of place to albatrosses, kiwi, and fantail.

105. R Galbreath, *Walter Buller: The Reluctant Conservationist* (Wellington: GP Books, 1989), pp 100–110, 166, 267–268. Buller's *A History of the Birds of New Zealand* was published in London in 1873 and republished in 1888, with magnificent illustrations by Johannes Keulemans. This book gained widespread acclaim, and raised the profile of New Zealand birds inside and outside the country.

106. Morris and Smith, *Wild South*, pp 15–16. Ornithologists are divided as to the extent to which male and female huia cooperated when they foraged for food. T H Worthy and R N Holdaway are clearly sceptical. They call this 'ecological folklore' and remind us that there are no contemporary observations to verify either position: Trevor H Worthy and Richard N Holdaway, *The Lost World of the Moa: Prehistoric Life of New Zealand* (Christchurch: Canterbury University Press), pp 482–483.

107. Buller, *A History of the Birds of New Zealand* (1888), vol 1, p 14; William J Phillipps, *The Book of the Huia* (Christchurch: Whitcombe and Tombs Ltd, 1963) pp 25–28, esp pp 13–16 'introduction'; doc E13 (Stone), pp 4–5; Morris and Smith, *Wild South*, pp 14–21

108. A Tennyson and P Martinson, *Extinct Birds of New Zealand* (Wellington: Te Papa Press, 2006), p 126

109. Evidence provided by place names, and by palaeontology, indicates that the huia may have been found more widely in prehistoric times, from the northern portions of the North Island to the northern portions of the South Island: Worthy and Holdaway, *The Lost World of the Moa*, pp 435–437.

110. William Colenso, 'A Description of the Curiously-deformed Bill of a Huia (*Heteralocha acutirostris*, Gould), an Endemic New Zealand Bird', in *Transactions and Proceedings of the New Zealand Institute*, 1886, vol 19, pp 143–144; Elsdon Best, 'Forest Lore of the Māori', *Dominion Museum Bulletin 14* (Wellington: Polynesian Society in collaboration with Dominion Museum, 1942), pp 221–225; Buller, *A History of the Birds of New Zealand* (1888), vol 1, pp 7–17, esp p 9; cf doc A25 (Marr), p 40.

111. The last verified sighting was in 1907 and reports of sightings, unverified by the ornithologists of the Wildlife Division, continued through until 1961. If the huia survives, it does so because it lives in seclusion, out of reach of human protection. The *Spectrum* documentaries on the huia prepared by Radio New Zealand weigh up the evidence for and against survival: doc E13 (Stone), app B.

112. J G Myers, 'The Present Position of the Endemic Birds of New Zealand', in *New Zealand Journal of Science and Technology*, 1923–1924, edited by J A Thomson (Wellington: Government Printer, 1924), vol 6, no 2, pp 65–99, esp pp 96–97; Worthy and Holdaway, *The Lost World of the Moa*, pp 435–437, 482–3, 556

113. Phillipps, *The Book of the Huia*; doc E13 (Stone); doc A25 (Marr). Phillipps was a staff member of the Dominion Museum under the

leadership of Sir Robert Falla. He spent a decade working on the materials, the publications, and the working files contained in the Dominion Museum and the Wildlife Division of the Department of Internal Affairs, and he sought out and interviewed key informants and scientists in the decade 1953 to 1963. At that time, Phillipps observed, 'Those who knew the huia and helped to kill it, and the few who loved it, are fast dying out' (*The Book of the Huia*, p 15). It was a timely study, and Phillipps was closely supported by Falla at every point (see, for example Falla's foreword and Phillipps's introduction in *The Book of the Huia*, pp 7–8, 13–16).

Mike Stone at the time of hearing was a resource teacher living in Dannevirke and a member of the National Wildlife Trust (doc E13 (Stone), p 1). He had a strong interest in local history and the Tāmaki-nui-ā-Rua environment and was preparing a book of forest walks in Tāmaki-nui-ā-Rua. He had studied the published materials of Buller, Best, Colenso, and Phillipps, and the Radio New Zealand *Spectrum* documentaries (see below). This study has informed interviews with kaumātua, scientists, and officials over the last two decades. In his evidence to the Tribunal, he analysed the role of Sir Walter Buller, and also drew our attention to Radio New Zealand documentaries. The transcript of the Radio New Zealand *Spectrum* documentary produced by Alwyn Owen, called 'The Huia', was appendix B to document E13 (Stone). The audiotape is held in University of Canterbury collection 86/22. We do not know precisely when the documentary went to air, but context suggests that the first version was broadcast in 1968, and an expanded version was prepared in 1979 and went to air sometime after that. The documentaries draw deeply on published sources, eyewitness accounts and special purpose interviews with the late Sir Robert Fowler, Brian Bell from the Wildlife Division of the Department of Internal Affairs, and William Phillipps, author of *The Book of the Huia*. The questions posed in the course of these interviews were those that we ourselves would have asked.

114. G C Petersen, *Forest Homes: the Story of the Scandinavian Settlements in the Forty Mile Bush New Zealand* (Wellington: A H and A W Reed, 1956) pp 56–57

115. Phillipps, *The Book of the Huia*, pp 132–136, citing settler families Daniell and Rutherfurd, correspondence from Mr W Lunt and Dr F E Findlay and Dr J E Simcox, and also Mr E J C Wiffin of the Wellington Acclimatisation Society.

116. Phillipps, *The Book of the Huia*, pp 79–149

117. Document E13 (Stone), pp 12–14; Phillipps, *The Book of the Huia*, pp 60–62; Myers, 'The Present Position of the Endemic Birds of New Zealand', pp 96–97

118. Both Phillipps and Myers make the link between the bird and the insect on the basis of research reported by G E Mason in 'Observations on Certain External Parasites Found Upon the New Zealand Huia (*Neomorpha acutirostris*, Gould) and Not Previously Recorded', in *Transactions of the New Zealand Institute*, 1921, vol 53.

119. Phillipps, *The Book of the Huia*, pp 58–59; doc E13 (Stone), p 16

120. Document E13 (Stone), pp 16–17

121. A Sutherland, *Sutherlands of Ngaipu* (Wellington: A H and A W Reed, 1947), p 100

122. Phillipps, *The Book of the Huia*, p 59

123. Document E13 (Stone), p 10 quotes Carle, *Forty Mile Bush*, p 204, who noted that huia 'were very plentiful . . . until the bush fires of 1898'.

124. Document I8 (Rangitāne closing submissions), p 145; doc E13 (Stone), p 17

125. A waka huia box containing 70 huia feathers and 20 scarlet kākā feathers was found in a rock cleft in inland Otago in 1892 and is now housed in Otago Museum: Phillipps, *The Book of the Huia*, pp 40–41, 43–44; doc E13 (Stone), p 7

126. Phillipps, *The Book of the Huia*, p 15

127. Colenso, 'A Description of the Curiously-deformed Bill of a Huia', p 144

128. Phillipps, *The Book of the Huia*, p 17; William Yate, *An Account of New Zealand; and of the Formation and Progress of the Church Missionary Society's Mission in the Northern Island* (London: Seeley and Burnside, 1835). Phillipps makes the comment that it was the Yate account which 'excite[d] the attention of students and collectors'.

129. John Gould, *A Synopsis of the Birds of Australia and Adjacent Islands* (London: John Gould, 1837); Phillipps, *The Book of the Huia*, p 17

130. Phillipps, *The Book of the Huia*, p 18; J S Polack, *New Zealand: Being a Narrative of Travel and Adventures During Residence in the Country Between the Years 1831 and 1837* (London: Richard Bentley, 1838), p 301

131. Document A25 (Marr), p 40

132. Colenso, 'A Description of the Curiously-deformed Bill of a Huia', pp 143–144

133. J D Enys, 'An Account of the Maori Manner of Preserving the Skin of the Huia, *Heteralocha auctirostris*, Buller', *Transactions and Proceedings of the New Zealand Institute*, 1875, vol 8, p 204. Mr Enys presented his paper, and showed a specimen of the huia, to a meeting of the Philosophical Institute of Canterbury on 3 June 1875.

134. Ibid, p 205

135. Buller, *A History of the Birds of New Zealand* (1888), vol 1, p 12 (cited in Galbreath, *Walter Buller*, p 145)

136. Buller, *A History of the Birds of New Zealand* (1888), vol 1, p 14. The first area described is almost certainly to the east of the Puketōī Range, since that to the west had already been felled by the mid-1880s. The second area is on the slopes of the Remutakas and may well been a place of refuge for huia driven out of the Seventy Mile Bush in the 1870s and early 1880s.

137. Document A25 (Marr), p 41

138. Document A25 (Marr), p 41

139. Phillipps, *The Book of the Huia*, p 14

140. Galbreath, *Walter Buller*, p 142

141. See Phillipps, *The Book of the Huia*, pp 32–36 for a full listing of those held in 1963.

142. Document E13 (Stone), p 6

143. Galbreath, *Walter Buller*, pp 11–12, pp 141–150, 207–215, 264–269. Specific references to Buller's huia collection efforts are found on pp 29, 83, 100, 145, 184–186, 267.
144. Walter Buller, 'On the Structure and Habits of the Huia', *Transactions and Proceedings of the New Zealand Institute*, 1870, vol 3, p 26. Buller goes on to describe the way the two sexes, with differently formed bills, assisted each other 'in the economy of nature'.
145. Phillipps, *The Book of the Huia*, p 19
146. Enys, 'An Account of the Maori Manner of Preserving the Skin of the Huia', p 205
147. Morris and Smith, *Wild South*, p 18–20
148. Lord Onslow, 'Native New Zealand Birds', AJHR, 1892, H-6, pp 1–4 (doc E13 (Stone), app C)
149. Document A25 (Marr), p 43
150. Buller and Keulemans, *Supplement to the Birds of New Zealand*, vol 2, p 157
151. Galbreath, W*alter Buller*, pp 267, 309 'note 6'
152. Phillipps, *The Book of the Huia*, pp 66–78; doc A25 (Marr), p 43; Myers, 'The Present Position of the Endemic Birds of New Zealand', pp 66–70
153. Galbreath, *Walter Buller*, p 267
154. Phillipps, *The Book of the Huia*, p 77. Phillipps found the record in the files and was able to locate and interview Mr Sayer some 60 years after the event.
155. Morris and Smith, *Wild South*, p 20
156. Document A25 (Marr), p 43

Sidebars
Page 851: 'Recollections of Life beside the Manawatū River'. Sources: doc E3 (Paewai), p 32; doc E8 (Pearse), p 5; doc E7 (Karaitiana), pp 2–3; doc E6 (Chase), p 6.
Page 853: 'The Ruamāhanga River in Days Gone By'. Sources: doc C18 (Pura), pp 3–4; doc C22 (Rutene), p 2; doc C23 (Nunn), pp 4–5.
Page 871: 'Pūkaha/Mount Bruce'. Sources: doc A25 (Marr), pp 48–49; doc F7 (Grace), p 4; doc A35 (Oliver); doc I10 (counsel for Nga Hapu Karanga), paras 43–45.
Page 873: 'Habits of the Huia'. Sources: A Tennyson and P Martinson, *Extinct Birds of New Zealand* (Wellington: Te Papa Press, 2006), p 126.
Page 879: 'A Royal Occasion'. Sources: Rod Morris and Hal Smith, *Wild South: Saving New Zealand's Endangered Birds* (Auckland: TVNZ and Random House, 1995), p 20.

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CHAPTER 12B

LOCAL GOVERNMENT: REPRESENTATION AND RESOURCE MANAGEMENT

In the previous chapter, we described how the landward terrains in our inquiry district and the lives of the tangata whenua were transformed by colonisation. In this chapter, we turn our attention to the landward terrains in more recent times – first, to the system of local government that is now responsible for managing the environment and, secondly, to the legislation that authorises how the environment can be used and by whom. We ask to what extent the local government system and resource management legislation are consistent with Treaty principles, what the effects of that system and legislation are on Māori, and whether Māori can influence, control, and participate in the management of the landward terrains and their resources today.

12B.1 Introduction

In Wairarapa ki Tararua, as elsewhere, the Government has delegated many important functions to local councils – they are responsible for managing the process of protecting the environment and controlling its use and they are empowered to raise funds, through rates, with which to carry out these functions.

Councils are elected, not appointed. Unsurprisingly, the way in which councils carry out their functions is substantially a reflection of who local residents elect to represent them, who the councils employ to carry out their work, and the rules established under the legislation that empowers them to operate.

The claimants' main concerns were:

- very low levels of Māori representation on councils;
- monocultural practices that influence all areas of council activity;
- the failure of councils and their officers to approach environmental matters from a Māori point of view or to value that perspective; and
- the failure of the legislation to require councils to pay attention to the Treaty of Waitangi in a way that materially affects Māori's experience of local authorities.

We address these issues by exploring the following questions relating to the present regime:

- How does local government legislation address obligations to Māori under the Treaty?
- What is the regime for electing councils and to what extent does it enable Māori representation?
- How is the Resource Management Act 1991 (RMA) regime working for Māori?
- What are the problems arising from the present regime?
- What has been done about these problems and is it adequate?
- Our discussion reflects the emphases of claimant evidence about the experience of interacting with local authorities, and seeking to play a meaningful part in decision-making that affects their local environment and communities.

12B.2 How Does Local Government Legislation Address Treaty Obligations to Māori?

12B.2.1 The claimants' stance

The claimants say that the Crown has delegated powers to local government bodies without ensuring that the powers and actions of those bodies are consistent with Treaty guarantees and principles.[1] They contend that this is in breach of the principles of partnership, of the Crown's duty of good faith, and of the Crown's obligation to protect the relationship of Wairarapa ki Tararua Māori to their ancestral lands, waters, sites, wāhi tapu, flora and fauna, and other taonga.[2] Furthermore, the claimants say that the Crown has failed to provide them with any meaningful ability to make decisions on these matters, consistent with the guarantee of te tino rangatiratanga (full chiefly authority) in article 2 of the Treaty.[3]

12B.2.2 The Treaty absent from initial delegation of power

To weigh up these claims, we have examined the development of local government legislation over recent years. The Crown began delegating its functions and powers to local government bodies through legislation in the nineteenth century,[4] and this legislation did not contain Treaty provisions. Māori were not consulted about the creation of local government, and the Crown's delegations to local authorities were not agreed to by Māori. It was not until the passing of the Town and Country Planning Act in 1977 that local government was required to acknowledge Māori values and culture.[5] Even so, there was no reference to the Treaty of Waitangi in the Act.

But, over the next decade, the Treaty gained a more prominent place on the national political agenda. In June 1985, Cabinet resolved that references to the principles of the Treaty be incorporated in all new legislation. Several Waitangi Tribunal reports of the period highlighted the links between the exercise of tino rangatiratanga and Māori involvement in environmental decision-making.[6] Māori became involved in the process of research, consultation, and drafting that led to the reform of resource management legislation.

12B.2.3 Failure to engage with Māori about local government law reform

However, Māori were not involved in the concurrent reform of local government legislation, an area equally complex from a Treaty perspective. Iwi expressed frustration when, in 1986 and 1987, the Local Government Commission did substantial work towards reform without engaging with Māori. A discussion paper on the proposed reforms was published in February 1988, but the Māori Local Government Reform Consultative Group was not established until three months later.[7] Academic Hirini Matunga prepared a report for the group in January 1989 recommending that the proposed Local Government Amendment Bill contain an explicit clause requiring local government to give effect to the Treaty of Waitangi. But this advice was not followed when the draft legislation was published in October 1989: the Government preferred the option of Māori advisory committees to provide for

consultation and discussion between tangata whenua and territorial authorities.[8]

Waikato Tainui leader Dr Robert Mahuta, writing from a tribal viewpoint in 1988, expressed widely held Māori concerns about the Local Government Amendment Bill:

> It is not enough to include a general statement [about the principles of the Treaty] in the discussion document. The Bill itself should direct the Commission to have regard, in all its considerations and decisions to the Treaty considerations. In addition the Bill should direct the Commission to have regard to the existence of Tribal Authorities and engage in meaningful dialogue with them.[9]

The Tainui Trust Board wanted the reform process to address several issues. It called for affirmative action to increase the presence of Māori council staff at all levels, especially in planning, development, and community services. The boundaries of territorial authorities were another key concern; Dr Mahuta noted that pre-Treaty rohe (tribal territory) boundaries were more meaningful to Māori than the existing administrative boundaries, which tended to have arisen in an ad hoc way.

Despite the misgivings of the Tainui Trust Board and others, a comprehensive reorganisation of local government went ahead in 1989, although without the benefit of substantial law reform. Boundaries were redrawn and the number of regions and districts reduced: some 625 local authorities were compacted into 94 (13 regions, 74 cities and districts, and seven special purpose boards).[10] However, expert witness Dr Janine Hayward told us that these reforms 'did nothing to answer the question of local government obligations to Māori under the Treaty'.[11]

The Local Government Amendment Bill was stymied when the Labour Government lost the 1990 election. By this time, the Bill's approach to Treaty issues had met with considerable resistance, as Dr Hayward explained:

> The submissions received on the Bill, however, indicated the general view that the Treaty was not relevant to local government because it was a contract between Maori and the Crown. Submissions from Maori demonstrated a resistance to local government as a Treaty partner. Some argued that involving local government would dilute the Crown's role and obligations under the Treaty. The possibility of Maori consulting with multiple Treaty partners in local government was rejected as a device to distance the Crown from its obligations to Maori. Others insisted that local government legislation include the proviso that regional councils and territorial authorities may not act in a manner that is inconsistent with the Treaty of Waitangi. 'To provide less is to delegate Crown responsibility without Crown treaty obligations.'[12]

It is not clear to us why the government of the day was open to Māori involvement in reforming resource management law but not to their involvement in local government reform. This apparent resistance to expanding the Treaty responsibilities of local government has continued. The view remains in some quarters that Treaty responsibilities are a matter for the Crown, while councils are there to meet the needs of the non-Māori electoral majority.

Local government reform remained to be addressed by the new Labour–Alliance Government in 1999. The incoming government announced a comprehensive review of the Local Government Act 1974, and in 2001 it released a substantive policy document for discussion – without first consulting Māori.[13] In the document, the Government identified six key policy areas and set out its position on five of them. The relationship between Māori, the Treaty, and local government remained the one major issue on which the Government had yet to take a position.[14] However, the document stated: 'The local government sector plays an important role in the relationships between Māori and the Crown, and can assist the Government in observing its Treaty relationships.'[15]

The review proposals were taken to a series of public meetings and hui with Māori, but the efforts of Local Government New Zealand and Māori authorities to find

common ground were, in effect, bypassed: the Government followed its own internal processes to redraft the legislation. The Local Government Bill was introduced to the House in December 2001. A 'Treaty clause', inserted as a matter of policy, was indeterminate, stating only that the principles of the Treaty were 'relevant to local authorities'.[16]

In submissions, Māori strongly resisted the Bill and objected to the wording of the Treaty provision. The Federation of Māori Authorities, for example, submitted that, far from clarifying local government's relationship with the Treaty, the Bill was 'fatally flawed':

> There is no onus on Local Authorities to protect Māori interests in accordance with the principles of the Treaty of Waitangi. Under the new regime any such protection will continue to remain dependent on local government goodwill. Furthermore, the Local Government Bill in its current state is insufficient to meet Crown Treaty obligations to actively protect Māori interests, in this instance at the level of local government.[17]

Māori also expressed concerns about the review process itself: 'since Māori and Crown are Treaty partners', they argued in submissions, 'this partnership should have been reflected in the review process and Māori should have been fully involved in the review from the outset'.[18]

12B.2.4 How the reform proposed to cater for Māori

The papers that officials took to Cabinet noted that there was general support from Māori and most councils for legislation that gave practical guidance on how the Treaty could be implemented at the local level. They also pointed to general acceptance among councils that the new Act should not allow councils to behave in ways that were inconsistent with the Crown's Treaty responsibilities.[19] Cabinet agreed that the Treaty and its principles were relevant to local government and weighed up the options for embedding them in the legislation. Finally, it was decided to combine a package of practical provisions with an explicit acknowledgement of the principles of the Treaty. Thus, section 81(1) of the Local Government Act 2002 sets out three practical things that a local authority must do:

> (a) establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority; and
>
> (b) consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; and
>
> (c) provide relevant information to Māori for the purposes of paragraphs (a) and (b).[20]

Section 81(1) is qualified by section 81(2), which requires the local authority, in exercising those responsibilities, to have regard both to its role as set out in section 11 and to 'such other matters as the local authority considers on reasonable grounds to be relevant to those judgments'.

The wording of the 'Treaty clause' (s 4) follows the model of the New Zealand Public Health and Disabilities Act 2000:

> **4. Treaty of Waitangi**—In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes.

There are a number of other practical provisions relating to Māori needs and values in the Local Government Act 2002. For example:

- The membership of the Local Government Commission must include one member who has a knowledge of tikanga Māori (the body of traditional rules for conducting life) and who is to be appointed after consultation with the Minister of Māori Affairs (s 33).

- Following the triennial elections, councils must publish information on the option of establishing Māori wards or constituencies (s 40(1)(d)) and on their policies for liaising with, and memoranda or agreements with, Māori (s 40(1)(i)).
- Local authorities should be good employers (s 39). Arguably, this could involve the obligation to operate a personnel policy that recognises the aims, aspirations, and employment needs of Māori, including their greater involvement as personnel in local authorities.
- Planning and decision-making in relation to land and significant bodies of water must take into account 'the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga' (s 77).

  This latter provision is qualified by the proviso that the council may consider the 'views and preferences of other persons' (s 79).

The Local Government Act also includes detailed and specific provisions for the remission of rates on Māori freehold land.[21] The Act recognises the range of circumstances surrounding Māori land, the factors that have led to alienation, and the need to avoid further alienation. Each local authority is required, in section 102(4)(f), to adopt a policy on the remission or postponement of rates on Māori freehold land and to publish this in its long-term council community plan. Schedule 11 to the Act sets out the matters which must be considered by a council as it determines its policy.

The Local Government Act 2002 was not the only legislation arising from the review of local government. The review also led to the enactment of the Local Electoral Act 2001 (which deals with the electoral process) and the Local Government (Rating) Act 2002 (dealing with the powers of councils to raise revenue through rates).

12B.2.5 Conclusion

In closing submissions, Crown counsel set out the philosophy that underpins the Local Government Act 2002 and argued that the current legislation meets the Crown's Treaty obligations.

The philosophy in the Act is that decisions affecting local people are best made by local communities.[22] The Crown's role is to set the legislative parameters and to provide the support for this to be done. It meets its Treaty responsibilities through local government legislation requiring councils to 'provide opportunities for Māori to contribute to its decision-making processes'.[23] The Crown pointed to the reporting requirements in the Local Government Act, in particular long-term council community plans and annual reports, as the primary legislative tool. The Crown also pointed to policies and activities designed to support capacity-building and to promote practices that enable Māori to participate in decision-making.

We agree that the local government legislation passed in 2001 and 2002 contains important provisions: it encourages collaborative relationships between local government and Māori; it requires local government to be transparent in reporting on these collaborative relationships and proactive in employing Māori; it ensures that Māori have a place on the Local Government Commission; and it reiterates the requirement that local authorities take into account the relationships of Māori to ancestral land, waters, wāhi tapu, and other taonga.

However, in the claimants' case before us we discerned ongoing dissatisfaction with two main aspects: delegation and representation. We address these in turn.

The Local Government Act 2002 is very clear that the Treaty is the responsibility of the Crown, not of local government. Local government is encouraged to maintain and improve opportunities for Māori to contribute to its decision-making processes, but there are few specifics as to how this will be done. We have particular concerns about the way that section 81(2) requires councils to be mindful of 'such other matters as the local authority considers on

The GWRC and the Wairarapa Gravels

Tangata whenua spokesperson and resource manager Murray Hemi is well-versed in local government and environmental management legislation and in mātauranga Māori (traditional Māori knowledge), as it relates to environmental management. He expressed his frustration about the current legislation like this:

> No legislation has ever recognised the philosophical or theological nature of our world. No legislation has ever recognised the imperative of our tino rangatiratanga over resources within our whenua. No legislation has recognised the imperative of our tino rangatiratanga, the value of mauri or the effective expression of kaitiakitanga within its own cultural and traditional context.

The example he chose to illustrate the failure of local authorities to understand the Māori worldview was the actions that the GWRC took in the 1990s to control the use of river gravel – a resource, as Mr Hemi explained, with which Wairarapa Māori have had an association extending 'back to the time of creation'.

The Operations Department of the Greater Wellington Regional Council (GWRC) applied to the GWRC as consent authority to obtain a 'global' resource consent to extract sand and gravel from Wairarapa rivers for a period of 15 years.[24] Its intention was to manage, control, allocate, and charge royalties for all gravel used for commercial, industrial, and highway-building purposes. At no stage was there any engagement with the question as to who properly owned the gravel or any prior rights of tangata whenua. Letters were exchanged between the GWRC and Ngāti Kahungunu ki Wairarapa Māori Executive Taiwhenua Incorporated. The taiwhenua sought a meeting, but no face-to-face discussions ever took place. Instead, in February 1999, the GWRC forwarded a draft assessment of the environmental effects to the taiwhenua for comment, giving five working days to respond. Hemi said:

> The huge number of rivers and streams affected by the proposed request of the Taiwhenua to identify all tangata whenua values affected by this application was no small task. This was to be done without any support, without sufficient resources and without sufficient time to do so. Where the Wellington Regional Council had failed to complete cultural aspects of the AEE [assessment of environmental effects], the Taiwhenua was given five days to undertake that which was the applicant's responsibility and at its own cost.

The global resource consent was granted in May 1999. The GWRC asserted that no Māori values were affected by the proposal on the ground that the taiwhenua had provided no compendium of values in the five days available for comment. Ngāti Kahungunu ki Wairarapa appealed the decision to the Environment Court. Once the evidence was presented, the hearing was adjourned so that the parties could negotiate a protocol; when this was done, consent was granted.

The protocol includes statements about Treaty principles, partnership, the enhancement and protection of the relationship between tangata whenua and river taonga, and the upskilling of all the parties involved in gravel extraction management. It came into effect in 2001.

In June 2004, the Tribunal questioned Hemi about the protocol's operation. He was less than positive. In his estimation, it was being used as a mechanism for consultation, not partnership. Gravel extraction continues in 2009, but there is no evidence in the current long-term council community plan that the protocol or the guardians remain active.

This situation contrasts with the apparently positive interaction between Ngāti Kahungunu and the GWRC on other areas of work; for example, their joint work on mapping cultural sites (p 30).

reasonable grounds to be relevant to those judgements' when facilitating Māori participation in decision-making. The wording simply allows councils to give preference to the views and perspectives of the majority culture.

Overall, the legislation exposes iwi to the policies and actions of local government but does not hold councils to account if they fail to provide opportunities for Māori to participate in decision-making or do not actively protect environmental taonga. In other words, the Crown has delegated responsibility to local councils but no equivalent level of accountability.

Murray Hemi in an animated conversation behind Noa Nicholson, the seated kuia. Both Murray and Nanny Noa played major roles in this district inquiry. The photo was taken at our hearing at Pāpāwai Marae in June 2004.

12B.3 What Is the Regime for Electing Councils and to What Extent Does It Enable Māori Representation?

12B.3.1 Low levels of Māori participation

Under the Local Electoral Act 2001, city, district, and regional councils are elected every three years by citizens who live in their area. Anyone on the electoral roll may vote, and anyone may stand as a candidate. In reality, local authorities are far from representative of their communities. The 2006 census showed that 14 per cent of New Zealanders but less than 5 per cent of councillors identified themselves as Māori.

Māori representation on local authorities was a major concern during the reform debates of the 1980s and 1990s. It was among the issues raised in 1988 by Dr Robert Mahuta, on behalf of the Tainui Trust Board, in response to the proposed Local Government Amendment Bill: 'How do we overcome the preponderance of white middle aged males on local authorities (especially the rural ones)?' he asked. Although the number of local authorities was drastically reduced soon after, nothing in the new regime altered the composition or the culture of the elected councils. This became apparent when, in 1991, the new Resource Management Act required councils to work with Māori in new ways, but few had the Māori representation needed to do this effectively.

In 2001, the discussion document released as part of the Government's review of the Local Government Act 1974 described the issue of Māori representation in the following terms:

> Nationwide figures indicate that there has been a marginal increase in the number and percentage of Māori elected members. In 1992, 2.5% of elected members identified as Māori, in 1995 3.5%, in 1998 5.5%. For 1998, this figure also masks significant local discrepancies even in areas where Māori elected members exist. (eg Gisborne District Council 13% of council are Māori compared with 42% of the population, Kawerau District Council 22% of Council are Māori compared to 58% of the population.)[25]

12B.3.2 Is Māori participation increasing?

The Crown told us that the persistently low levels of Māori participation in local government elections and Māori representation on councils have since been addressed by the Local Electoral Act 2001.[26] The Act requires local councils to select electoral options that provide for the effective representation of all communities of interest, including Māori. Councils may, if the majority of ratepayers give their approval, create Māori wards and Māori electoral rolls. They may also opt for a system of single transferable voting.

The Crown said there had been a substantial nationwide improvement in the numbers of Māori standing for, and being elected to, local authorities. It also pointed to the efforts being made by Crown agencies to encourage Māori participation in local government. Parties did not put before us the kind of specific evidence needed to evaluate the effectiveness of the Local Electoral Act in improving Māori representation on the six local authorities in Wairarapa ki Tararua. However, we have used the results of a survey undertaken by the Department of Internal Affairs to assess the national situation since 2001, the year in which the Local Electoral Act was passed and the Local Government Bill was debated in Parliament.

At the time of each local government election, the department conducts a voluntary survey in which candidates for a wide range of positions are asked about their background, experience, community engagement, and motivation for participating in local government.[27] The survey includes questions about Māori ancestry, iwi affiliation, and ethnicity. The results are published in two forms: the first reflects the responses of all candidates, the second only those who are successfully elected to councils and boards.

We have drawn on the results from the 2001, 2004, and 2007 surveys to complete three tabulations.[28] One compares the percentage of Māori candidates for local government positions with the percentage of Māori in the total population, the second compares the percentage of candidates across five broad ethnic groups, and the third compares the proportion of successful European and Māori candidates. The three tables appear in full after this chapter. Some patterns emerge:

- The percentage of Māori standing for election is well below the percentage of Māori in the population at large, and the percentage of Māori elected to councils and boards is lower still.
- Between 2001 and 2007, there was a small rise (from 9 to 10 per cent) in the proportion of Māori candidates and a small decline (from 89 to 87 per cent) in those of European ethnicity. Overall, the ethnic mix of candidates has slightly increased.
- While the proportion of Māori elected to councils and boards has doubled over the period (from 4 to 8 per cent), the proportion of unsuccessful candidates with Māori ethnicity also increased (from 9 to 12 per cent).

These statistics show some improvement in Māori representation across New Zealand since 2001. However, by and large, the gains achieved up to 2004 were not sustained through to 2007. Pākehā remain consistently over-represented among candidates for local government and, more importantly, among those elected. Conversely, although Māori comprise 16 per cent of the population, they are consistently under-represented among those who stand for councils, community boards, and district health boards. They are even less likely to be elected to community boards and district health boards. We can see that Government agencies and Local Government New Zealand agree that this is a problem, but the efforts made thus far to change the situation are clearly not working.

12B.3.3 Māori representation on local authorities in this inquiry district

We return now to the situation in Wairarapa ki Tararua. Under the Local Government Act 2002, councils must be transparent in their dealings with Māori and in their efforts to build capacity in their own organisations and within the iwi to whom they relate. More specifically, section 40 of the

Act requires councils, after the triennial elections, to publish a local governance statement containing information about voting options and details of their formal relationships with iwi.[29]

We looked at the councils' websites in September 2008 and March 2010 to see what could be learned there. The websites offered only general information, from which we were able to ascertain that councils in the district do have in place some Māori-related policies and functions.

- The GWRC negotiated a charter of understanding in 1993 with Ara Tahi, a group representing the seven iwi in the region, and renegotiated it in 2000. A further review commenced in 2008. The charter looks like a good basis for a robust relationship between regional council and iwi. In 2010, the council co-opted seven Māori representatives on to its Te Upoko Taiao (natural resources plan) committee to help decide the direction of its new 10-year regional plan. The website did not reveal whether the GWRC has Māori councillors, nor anything about the Māori constituency option. The voting options were last reviewed in 2005 and were published in 2008, but changes were not recommended or polled.[30]
- The Horizons Regional Council has within its region (Manawatu to Wanganui) a large number of iwi, hapu, and other Maori groups, including Te Iwi Morehu, based at Ratana. A Māori standing committee (Te Roopu Awhina) has been in place for some years, but the most recent 10-year community plan states that this committee is currently 'in abeyance'.[31] However current planning documents indicate that significant progress has been made by the council in its relationship and consultation with Māori. Two iwi management plans are in place and one memorandum of partnership has been signed, with another pending.[32] The council has also initiated an iwi internship with Ngāti Rangi to help foster council–iwi relations.[33] Horizons has also applied a Te Ao Māori (the Māori world) lens to its current redevelopment of all resource management policy and practices in the region, 'One Plan'.[34] The Horizons website has no post-2007 information about the option of Māori wards, and we could not ascertain whether Māori councillors were among those elected in 2007.
- The Masterton District Council has a Māori liaison committee, and memoranda of partnership are pending with both iwi with manawhenua in the district. The most recent long-term council community plan identifies initiatives it could implement in order to enhance its relationship and engagement with Wairarapa ki Tararua iwi. These include a communications protocol, a kaumatua council liaison, a marae committee liaison, and Maori participation in resource consent hearings.[35] A major representative review was carried out in 2006 without canvassing the option of Maori wards. The need for clear and balanced urban–rural representation was, by contrast, hotly debated and carefully scrutinised by the Local Government Commission.[36]

  We note the presence at the council table of Jeff Workman, a first-time councillor and an employee of the Whaiora Whanui Trust. He was appointed chair of the community development committee and brings a Māori perspective to that committee and to the larger council.[37] Edwin Perry (spokesman for Ngāti Kahungunu) was also elected to the council in 2007 and chairs the Māori liaison committee.
- The Tararua District Council has the highest proportion of Māori in its population of any local authority in Wairarapa ki Tararua. The council configures its relationships with Māori differently from other councils.[38] It has neither a Māori advisory committee nor an iwi liaison committee nor a designated iwi liaison officer. Instead, it has a close working relationship, and a memorandum of understanding, with Rangitāne o Tāmaki-nui-ā-Rua. There is no evidence on the website of any liaison or consultation with Ngāti Kahungunu ki Tāmaki-nui-ā-Rua, who also have a substantial presence within the district. This focus on Rangitāne is manifest in other areas too.

The council will 'consider, and further explore' how it could strengthen this relationship with Rangitāne and develop Māori capacity to participate in council decision-making, as well as compile a 'stocktake' of issues affecting Māori.[39] This emphasis follows what we heard in evidence – namely, that Rangitāne o Tāmaki-nui-ā-Rua have invested considerably in developing their relationship with the council.

Although a review of council representation took place in 2009, there is no indication in any public information that the council considered, or sought public comment on, the option of Māori wards. We are aware that district councillor Koro Mullins provided a strong Māori presence on the council in the period from 2005 to 2007, when the long-term council community plan was formulated and adopted.[40]

- The South Wairarapa District Council relies on its Māori standing committee for Māori representation and advice on matters such as economic development, resource management, tourism, reserve management, environmental health, employment, and community development.[41] The district's two iwi and three marae are represented on the committee. It is funded by the council, meets regularly and has representation on other council committees and working parties. Its role is defined in the council's policy statement on Māori relationships.[42] The standing committee was represented on the working party that developed the council's community plan.
- The Carterton District Council reported in 2004 its aim to establish a memorandum of understanding with local iwi, but this had not come to fruition in 2009, with the council reporting the 'goal of establishing a more formal working relationship with both iwi' of the region.[43] The council does not have a Māori advisory committee or a Māori liaison officer, but it does attend meetings of the Regional Interagency Forum, which brings together councils, representatives of iwi and hapū, and Government agencies in the Wairarapa region.[44] The council is also a member of Waste Management Wairarapa, a joint working party that includes the three district councils, the two iwi, and the GWRC.

The website contains no information on the Māori ward voting option or on Māori councillors. The following phrase is used in several planning and policy documents: 'The Council is committed to fostering positive relationships with local Iwi and Hapu and to actively engage with Maori on matters that affect or concern them.' There is no information, though, on whether or how such active engagement happens.

None of the websites comments on the number or roles of Māori staff working for councils.

12B.3.4 Conclusion

The provisions in the Local Government Act 2002 that empower councils to create Māori wards and electoral rolls and to use single transferable voting seem to be theoretical rather than practically meaningful in this district. They do not appear to be ensuring a Māori presence at the council table when policies are being formulated, priorities set, and decisions made that affect tangata whenua and environmental taonga.

Dr Hayward, in her oral presentation, gave the Tribunal her analysis of the legislation and how it is applied:

- Māori are chronically under-represented in local government;
- the single transferable voting system is available but was not widely used in the 2004 elections and does not ensure Māori representation; and
- the Māori ward system has been tested in the Bay of Plenty region and is effective where there is a high proportion of Māori voters. It is not available on request by Māori, and can be used only when approved by the majority of voters.[45]

Dr Hayward sums up:

> Despite the provisions for local communities to replicate the Bay of Plenty model, the odds are heavily

> stacked against Maori that this will be achieved. Maori cannot independently initiate the introduction of Maori wards themselves, and will be the minority voice if their wider community (which includes non-Maori) choose to debate the issue.[46]

What is difficult in parts of the country where the Māori population is higher than average is likely to be nigh on impossible in districts where Māori are a small minority.

We clearly saw in Wairarapa ki Tararua that iwi and hapū are increasingly confident in their identity and want to play a part in the larger economy and society. But their ability and desire to contribute are not, at this stage, recognised in the structures of elected local government. Māori are not represented on councils in proportion to their population, and this still usually means that they are excluded from the many important decisions and activities for which local authorities are responsible. Tangata whenua of this region are also disadvantaged by the numerous councils with which they must form relationships in order to have influence.

Forming effective relationships is obviously very difficult indeed when councils are out of sympathy with Māori concerns. Marama Kahu Fox told the Tribunal that the cultural aspirations of tangata whenua – especially to retain the distinctive language of their rohe and to pass on Māori knowledge and education systems to future generations – are not well received by many of those elected to represent local people. She pointed to two very public rebuffs:

> Wairarapa's representative to the Wellington Regional Council, suggested in an article in 2000 that Maori should stop wasting their time searching after a lost language and then they might catch up with to 'the rest of us'. One of the current Masterton District Councillors despises the use of Maori design on new buildings and threatens to remove sponsorship of children's playgrounds if designs from our school's children are used in the town's park. We combat an overwhelming population who tell us at every turn that their cultural heritage is more important than ours. This form of cultural elitism is insulting and threatening.[47]

We think it likely that situations like these would be able to be addressed more effectively if Māori themselves sat on councils.

12B.4 How Is the RMA Regime Working for Māori?

Councils have a wide range of responsibilities, including the provision of public works and services, heritage management, cultural activities, and rates. We address public works and heritage management in chapters 8 and 12D. The main focus of this chapter is on councils' responsibilities under the Resource Management Act 1991 and how Wairarapa ki Tāmaki-nui-ā-Rua Māori participate in decisions about the environment.

Our approach is summary in nature, because really this Tribunal is saying nothing new on this topic. The shortcomings of the RMA from a Māori and Treaty point of view are well known and have been discussed in previous reports of the Waitangi Tribunal. Our contribution is to look at the same issues in the light of what we could discern about local circumstances.

12B.4.1 Māori-related provisions in the RMA

The RMA makes certain provision for Māori interests to be protected. Any person or organisation exercising environmental management powers under the Act (as local authorities do) is required to take Treaty principles into account (s 8). The Act also recognises that the 'relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga' is a matter of 'national importance' (s 6(c)) and that all persons exercising powers and functions under the Act shall have particular regard to 'kaitiakitanga' (s 7(a)), which means 'the exercise of guardianship' (s 2).

Other provisions important for iwi include section 61(2)(a)(ii), which requires regional and district councils to have regard to iwi planning documents, and section 74(2)(b)(ii), which asks councils to identify matters of significance to iwi in their regional policy statements.

12B.4.2 Shortcomings previously identified

However, the Waitangi Tribunal has repeatedly found that the RMA, and the way in which it is implemented, does not provide fairly for Māori interests. Nor is the legislation in accord with Treaty principles. The report of the Mohaka River inquiry, written not long after the RMA came into effect, noted that, while the Crown is entitled to devolve its duties under the Treaty to other authorities 'through carefully worded legislation', it cannot divest itself of its Treaty obligation 'actively to protect rangatiratanga over taonga'.[48] That inquiry and others noted that local authorities cannot be relied on to provide such protection because the RMA does not require those administering it to act in a manner that is consistent with Treaty principles – they may choose to do so, but they are not compelled by the legislation.[49]

This was described in 1993 by the Te Arawa geothermal resource inquiry as a 'critical omission', allowing the Crown to read down its obligations under article 2.[50] That Tribunal agreed with the claim that, in the RMA, the Crown had 'failed to provide . . . a system or provisions according the claimants' interest in the geothermal resource a sufficient priority'.[51]

The problem remains. As recently as 2008, the Tribunal for the Te Tau Ihu o te Waka a Maui inquiry noted that 'the Crown, in choosing to delegate authority to local bodies, must do so in a manner that ensures the protection of Maori interests and the fulfilment of its Treaty duties'.[52] In that region (the northern South Island), the Tribunal found that the RMA was being implemented in ways that did not fulfil that requirement. Similarly, the central North Island inquiry found that, while the RMA 'is an advance on previous legislation, it still fails to accord with Treaty principles'.[53] That Tribunal called for an amendment to section 8 or the insertion of some new provision in the Act, describing such a move as 'the only mechanism that can assure Maori that their rangatiratanga or autonomy and self-government can be appropriately considered in RMA processes'.[54]

Other concerns about the RMA regime raised by previous Tribunals are also relevant to this inquiry. One relates to the adequacy of the Act's provisions for consultation with Māori on resource management matters. There is no statutory requirement to consult with Māori during the resource consent process. Indeed, in an amendment Act in 2005, the Government clarified that neither an applicant nor a consent authority (ie, a local authority) has a duty to consult 'any person' about resource consent applications (see section 36A of the RMA). The Ministry for the Environment's website says that the intention of this amendment is 'to clarify that consultation is not required in relation to applications for resource consents . . ., rather the intention is to improve processes for consultation with iwi and hapū in the development of plans and policy statements'.[55] There is no explanation of why these need to be alternatives. Why is there no obligation to consult Māori on both resource consents and plans?[56] We agree with the central North Island Tribunal's comment that, while recent decisions of the Environment Court and the High Court suggest that it would be good practice to engage in consultation on resource consents, 'it is unlikely that the failure to consult (given the new section 36A of the Act), could now be used as the basis for rejecting a resource consent application'.[57]

Another concern is the lack of resources and capacity that prevents iwi from participating effectively in resource management processes, even to the extent allowed them under the Act.[58] In the case of Te Tau Ihu o te Waka a Maui, the Tribunal noted that the inability of iwi to secure such resources from councils, applicants, or the Crown was having 'a serious effect on their ability either to participate at all on matters of importance to them, or to have appropriate influence on the outcome when they did participate'.[59]

12B.4.3 The RMA in this inquiry district

We have referred to previous findings of the Waitangi Tribunal to show that the limitations of the provisions of the RMA in Treaty terms – in particular, the extent to which respect for Māori environmental interests is in effect discretionary – have been in the public domain for nearly two decades. There has been no appetite at a governmental level for making the Act's Treaty provisions more exacting, so that they require a higher level or different kind of response to Māori interests.

All of the comments made by these earlier Tribunals apply in just the same way in the Wairarapa ki Tararua district.

The lack of resources, both human and material, is a major obstacle to hapū and iwi playing the role they would like to play. We had a strong sense that the tangata whenua were often in a real bind in this regard. While they wanted local authorities to engage with them fully and often, their low population, the concentration of relevant skills in only a few, and the huge amount of voluntary time involved meant that 'consultation' was in fact often a real burden. The extent of the personal cost for those who gave up their time meant that there was a high level of frustration and disillusionment when the consultation turned out to be no more than token.[60]

12B.4.4 Delegation of powers

Section 33 of the RMA provides for the transfer of powers or functions from a local authority to another public authority, including an iwi authority. Subsection (4) sets out the guidelines to be followed when such transfers are contemplated. The consultation process, for example, must follow that set out in section 83 of the Local Government Act.

Section 33 provides local authorities with the opportunity to encourage iwi and hapū to participate in environmental decision-making through joint-management arrangements. For Māori, this offers the means to exercise their authority to manage resources. But, again, it is at the discretion of local authorities; they are not obliged to transfer any powers to iwi. Studies by the Parliamentary Commissioner for the Environment, the Ministry for the Environment, and a group of University of Waikato researchers in the 1990s showed that, of the 26 transfers that had been made under section 33, none was to iwi.[61] The researchers suggested a number of amendments to the RMA, and change was considered by the parliamentary select committee during the 2000–01 session. However, it was deemed preferable to promote best practice rather than to amend the legislation.[62] Similar findings emerged from the Ministry for the Environment's 2005–06 survey of local authorities' practices under the RMA, which indicated that no transfers of power to iwi under section 33 had occurred.[63]

Again, the evidence is compelling. Although the legislation provides the potential for Treaty-compliant processes to be established, if it is left entirely to local authorities' discretion, it will not happen.

The evidence thus far with section 33 does not generate optimism that the new provisions for power-sharing (ss 36B–36E) will be widely deployed.[64] They provide for the joint management of natural and physical resources with iwi and hapū. It may be that, because these provisions involve sharing rather than devolving power and because joint-mangement agreements are revocable on 28 days' notice, there will be greater uptake of this device. Only time will tell.

12B.5 What Are the Problems with the Present Regime?

12B.5.1 Local authorities overwhelmingly monocultural

As we have seen, the organisations that control key areas of public policy in Wairarapa ki Tararua are overwhelmingly monocultural. Several local authorities serve populations with a larger proportion of Māori than the national average, yet very few Māori are elected councillors throughout Wairarapa ki Tararua. While some councils have in place

Educator Marama Kahu Fox gave evidence at the Tribunal's third hearing at Pāpāwai Marae, 31 May–4 June 2004

Kōhanga Reo

Marama Fox told the Tribunal about her effort to re-establish kōhanga reo in Carterton in the early 1990s, despite having few resources and little money. She did not anticipate the lack of support and understanding from the local council and media:

> During the pre-opening phase, submissions were filed at the Carterton District Council opposing the move, citing fear of loud noise, abandoned vehicles, gang affiliations and the like. Within days of securing a property the building was vandalised and the entrance tagged with the letters 'KKK'. Within a few months of the refurbishment and opening the building was flooded when a hose was pushed through a window on a weekend and left running. The media was often biased in its reporting of Maori issues despite our hardships.

Two years later, with the first cohort of kōhanga reo pupils ready to enter primary school, she was part of a move to establish Te Kura Kaupapa o Wairarapa. Again, there was a barrage of opposition:

> Despite this positive effect [of kohanga reo] on the tamariki of the area, the proposed opening of the kura was met with huge opposition [by] the surrounding landowners, for similar reasons to those met by the Kohanga Reo. Submissions cited gang connections, noise, all night hui and disruption, increased vandalism and so forth. Somewhere in there, people forgot that we were trying to open a school. Despite heavy opposition the Kura established officially in 1992 and moved to Macara St in 1994.

relationships and processes for working with – usually 'consulting' – local iwi and hapū, there is little evidence of Māori actively participating in local government at a decision-making level.

Many years after the passing into law of the RMA and the Local Government Act, it seems fair to say that there is little likelihood that the monoculturism of local authorities will change under present conditions. Although the legislation provides for councils to create Māori wards, introduce Māori electoral rolls, and use single transferable voting, it falls well short of ensuring Māori a voice on councils. Nor for the most part does it give them the means

of initiating change through the electoral system, because of their relatively low population. There are places in New Zealand where Māori are numerous enough to elect Māori candidates, were they not disillusioned by local authorities' failure to serve their interests. The issue in those places is Māori voter turn-out. In this inquiry district, though, the low Māori population means that the voting system would need to change considerably in order for elections alone to make a difference. Because of this demographic, another process must be arrived at that achieves representation on council of both major iwi.

Instances where there have been satisfactory outcomes for Māori are due to the actions and attitudes of particular individuals, rather than the regime itself.

This situation has frustrated the desire of Wairarapa ki Tāmaki-nui-ā-Rua Māori to see themselves and their identity explicitly reflected in the work of the elected bodies that are supposed to represent them. This was confirmed by the evidence of claimants. Because of this demographic, another process must be arrived at that achieves council representation for both major iwi.

12B.5.2 Claimants' experience

(1) *Marginalisation*

Educator Marama Kahu Fox described how galling it was that tangata whenua were invisible during the official celebrations of Masterton's 150th anniversary:

> No recognition was given to the nearly 2000 years of Maori who lived here prior to the arrival of the Pakeha. Wairarapa invited Pakeha to live here peacefully, and saw the benefits this would bring. Wairarapa Maori, Ngatuere, stopped the Hauhau people coming to make war on the Pakeha settlers. No land wars were fought here, but our biggest losses were inside courtrooms instead of on battlefields.[65]

Linette Rautahi told us about how Ngāti Kahungunu experienced difficulties in establishing a working relationship with the Tararua District Council. We heard good things about the positive relationship between that council and Rangitāne, but Mrs Rautahi said that Ngāti Kahungunu had not been so fortunate. She talked about their long struggle to secure a memorandum of understanding with the council.[66] No progress was made until 2000, when the council, reviewing its operations under the requirements of the Local Government Act, recognised that it should be talking to both Rangitāne and Kahungunu. Kahungunu were asked to describe their history and whakapapa, showing how they came to the area. The history contained details of battles fought and of ancestors burning and eating enemies. Mrs Rautahi continues:

> I guess that the TDC wasn't too happy with our history, so they signed a MOU with Rangitāne and chastised us for our lack of co-operation. This is truly offensive – we have been told that because our history of how Kahungunu came to have tangata whenua status here is too bloody or not politically correct enough we should soften it up . . . We won't do that – it's our history, our whakapapa and our tikanga. It's what gives us the right to be Kahungunu here in Tāmaki Nui a Rua.[67]

As at 2005, the memorandum of understanding was drafted but unsigned. Kahungunu remained hopeful of achieving a memorandum with real meaning for them, but they were not confident that the council understood their concerns. According to Mrs Rautahi:

> We are dealing with a council that wants to slot us into a 'consultation only' box, but they don't grasp that we don't just want to be part of the consultation process, we want to [be] a valued and respected part of the decision making process too.[68]

Mrs Rautahi went on to highlight the public controversy about the Viking icon in Dannevirke:

> Recently, the construction of the Dannevirke Icon has been a hot topic in our town, with a ten metre high Viking, costing the community between 50 and 90 thousand dollars at the centre of the debate. Local

> communities such as the Danes have objected strongly to the statue, stating that the Vikings were murderers and rapists. Our whakapapa history was too sensitive for the Council, but it's somehow okay for them to use funds to build a statue commemorating other people with 'sensitive' histories.[69]

Kahungunu and Rangitāne publicly suggested the alternative of raising a Rangitāne pou at the south entrance to the town and a Kahungunu pou at the north entrance, but the suggestion found little favour with the community. As Mrs Rautahi described it, 'For three weeks after our press release was published, the "letters to the editor" pages ridiculed our Māori stance and reflected in print what we are shown every day'.[70] Mrs Rautahi saw the council as part of the problem rather than part of the solution.

Witnesses' stories like these show that the monocultural composition of most councils mean those bodies are ill-equipped to provide positive, well-informed leadership on cultural issues for Māori. Controversy and conflict might well be avoided if there were more Māori councillors and council staff able to take a leadership role. As already mentioned, we think that Māori representation at the governance level is required, and we recommend to that end. It would also be useful if councils were required to develop an induction pack for incoming councillors and staff covering such matters as the marae traditions of local hapū and iwi, Māori values (wairua) in relation to the natural world, tribal boundaries and structures, and current Treaty issues (see also our findings and recommendations). Such steps would ensure that all those elected to, and working in, local authorities understand the history of colonisation and the current Treaty discourse, and they would better equip councils to play their part in nation-building.

(2) *'Consultation'*

The current regime provides no support for the expression of rangatiratanga in resource management. The best it offers, really, is consultation – but even this is often not carried out consistently or well.

We heard about instances where consultation did not occur at all, as in the case of the GWRC's proposal for a global resource consent to extract gravel from rivers across the region (see sidebar). In other cases, consultation has occurred but has been essentially meaningless, because the councils involved have not seen the Māori worldview as a priority when making environmental decisions. We heard numerous examples of this.

Wirihana Morris from Ngāi Tūmapuhia-ā-Rangi, who lives at Ōkautete and has an intimate knowledge of the coasts between Flat Point and Uruti Point, told the Tribunal about an incident involving a large kōhatu (rock) on the seabed at Te Orui.[71] Mr Emerson, a commercial fisherman holding pāua quota, wanted to blow up the kōhatu so that the channel would provide better access for his boat. The GWRC granted a resource consent, and the New Zealand Army agreed to 'do it for free'. Mr Morris expanded:

> We were told about the consent by locals, and went to see Emerson and the Council to protest. Emerson, a man from the Council, Matt Paku, myself and Glen Meredith (observer) met to discuss it but it was a bit of a stalemate. The Army sent a Major down to talk to us about it but we would not agree. They have not blown up the rock yet, but the issue is that the Council should not have given the consent in the first place.[72]

While the army has since withdrawn its offer to demolish the rock, Mr Morris summed up the incident like this: 'In my view, in the past the Wellington Regional Council has been rednecked, and I don't know how else to put it.'[73]

Takirirangi Smith told us about the development of a pāua farm at Te Awaiti. This time, Ngāi Tūmapuhia-ā-Rangi were consulted, and they contributed to the resource consent process.[74] The establishment of the farm involved the use of explosives to reshape the seabed. The tangata whenua explained why the papa kōhatu (broad flat rock) and associated tikanga (traditional rules for conducting life) were important, and they had the impression they were listened to. Nevertheless, the resource consent was granted and explosives were used. Mr Smith observed that

the people making the decisions did not have the capacity to understand the issues relating to tikanga Māori.[75]

(3) *Talking past each other*

These are all examples of councils' inability, or unwillingness, to conceive environmental issues in a Māori way. Murray Hemi, presenting evidence for Ngā Hapū Karanga o Wairarapa, framed the 'talking past each other' problem more broadly:

> The Maori view of the environment has remained a fundamental element in the definition, development and retention of our people and our whenua. It has enabled Maori to determine their role, purpose and function within the world, to establish the rules for appropriate interaction with nature and to create a system of thought relating to the natural world based on millennia of observations from generation to generation.[76]

Crown policies and practices have progressively undermined this worldview and driven to the margins the Wairarapa Māori customs, practices, and rituals that underpin it.[77] To maintain tribal identity, the integrity of their natural environment also needs to be preserved. Mr Hemi told us that what is needed is a management environment in which kaitiakitanga and rangatiratanga encompass:

- the right to maintain and control our environment according to our own established practices;
- the right to interact with our environment in a manner consistent with our own tino rangatiratanga;
- the legitimate opportunity to practise, exercise and extend our environmental traditions, values and beliefs;
- the purity, potency and integrity of our natural environment.[78]

Lorraine Stephenson, who was appointed by Rangitāne o Tāmaki-nui-ā-Rua to manage portfolios on local government, resource management, and conservation, works in the nexus between the iwi, the Crown, and local and regional government.[79] She sets kaitiakitanga in context like this:

Lorraine Stephenson of Rangitāne o Tāmaki-nui-ā-Rua, who works extensively with local government. She gave evidence to the Tribunal's fifth hearing at Mākirikiri Marae in July 2004.

> The traditional institution of Kaitiaki does not stand alone it is part of a complex social, cultural, economic, and spiritual system that has been established through long tribal association with land and waters. To know kaitiaki is to know the Māori world – the tribal structures of iwi, hapū, whānau, tangata whenua, manawhenua, ahi kaa, kaumātua, kuia, tohunga and whanaunga. These make up a dynamic and thriving

Māori community. These all characterise Rangitane-o-Tāmaki-nui-a-Rua . . . today.[80]

(4) *Resources and capacity*

The claimants also told us about another significant problem associated with consultation to which we have already referred briefly: the time and resource pressures it places on iwi. Claimant witnesses here echoed those in other rohe. Elizabeth Burge, a resource management professional who worked for and with Rangitāne o Wairarapa on many projects between 1994 and 2000 (paid and unpaid, full- and part-time) described the burden of consultation:

> In total, there are thirteen separate Crown and local government entities that Rangitāne o Wairarapa had to work with, consult with and 'be available for' at various stages in terms of conservation and resource management issues. The sheer number of entities forced Rangitāne into prioritising not only who they dealt with, but the issues also had to be placed in some sort of hierarchy. This of course was foreign to what Rangitāne believe and practise. Rangitāne had to compromise their holistic world view in order to 'fit in' to the particular kaupapa of the day.[81]

Ms Burge said that Rangitāne's experience was different according to which local authority they were working with. The GWRC was the first to recognise the heavy demands placed on iwi by the RMA and other legislation. In 1997, Rangitāne negotiated a contract with the GWRC that provided partial support for the tangata whenua consultation component of non-notified resource consents only. The contract was for $12,937 per annum, and in the first year Rangitāne processed 358 consents.[82]

(5) *Dysfunction*

Ms Burge said that Rangitāne's dealings with the Masterton District Council, which set up a Māori task groups in the early 1990s, were quite different:

> From my experience, the Task Group was used on an ad hoc basis. When an issue arose where it was apparent that Māori consultation would be required, they would 'call' the Task Group together and present the issue/activity to them. The MDC would then indicate that they had performed their duty to consult with Māori. Apart from the ad hoc Task Group there was no meaningful ongoing relationship or prospect for involvement between Rangitāne and the MDC in the early 1990s. There is no evidence, in my view, of true understanding or inclusion of Maōri concepts, systems and issues towards their natural environment, and hence no opportunity for the exercise of tino rangatiratanga by Rangitāne.[83]

Neither the operation of the Māori task group nor the holding of face-to-face meetings between the council and the iwi has enabled major issues to be resolved. Discharge from the municipal sewage scheme into the Makoura Stream, for example, continues to be a source of contention.

Relationships with the Carterton District Council were similarly problematical. The council established an informal 'Māori focus group', but it rarely met. Ms Burge said:

> Carterton District Council would simply send a copy of the notified consent or planning document as the Resource Management Act 1991 required them to do so. There was no relationship or consultation of any sort, no face to face meetings or involvement with the council. This remains the position today.[84]

The same issues to do with human sewage discharge arose. Rangitāne worked with the Carterton District Council's consultants but was unable to gain traction. Ms Burge considered that the council had no understanding of Māori values, beliefs, and customs regarding resource-management issues:

> As with the MDC, in my view the CDC placed Rangitāne holistic and spiritual issues in the 'too

hard' basket. The issues were raised but the CDC had difficulty in addressing them. [They] responded to the Rangitāne concerns with engineering solutions which did not meet the expectations and concerns of Rangitāne. The issues of Rangitāne were simply placed aside and left.[85]

(6) *Change needed*

On the basis of Rangitāne's experience of working with the regional council and three district councils, Ms Burge believes that legislative change is needed. She sums up:

> Rangitāne knowledge, tikanga and intimate association with the land and its resources, in my view, would enhance and improve the Wairarapa environment. The opportunities for shared management have been limited due to issues such as authority, control, use, allocation and protection.[86]

12B.6 Has Enough Been Done to Address these Problems?

Our local government inquiry has focused thus far on local authorities in the Wairarapa ki Tararua district and the problems of influence and representation experienced by tangata whenua there. The evidence suggests that the current legislation, which has been in force for more than 15 years, is unlikely to motivate local authorities to increase their responsiveness to Māori needs and interests without external pressure.

In the next section, we look at other players in the local authority scene to ascertain their role in making the work of local bodies more Treaty-compliant over time.

12B.6.1 The Ministry for the Environment

During the 1990s, the Ministry for the Environment played a key role in training relevant agencies and groups to work under the RMA.[87] It helped in the development of iwi management plans, the incorporation of iwi plans into district and regional policy processes, and the development of protocols and memoranda of understanding between iwi and councils. The Ministry's publication *Whakamau ki nga Kaupapa: Making the Best of Iwi Management Plans under the Resource Management Act 1991* gives local authorities practical suggestions for working with iwi.[88]

The Ministry also has a monitoring role. It surveys local authorities about the operation of the RMA and uses these findings to provide benchmarking information, promote local authority best practice, and improve performance. The report on the 2005–06 survey, for example, examines the extent of funding for Māori participation in RMA processes, Māori inputs into consents and plans, and the advice given to applicants who seek consents that may be of interest to iwi or hapū. The report shows that the performance of local authorities vis à vis Māori remains uneven: for example, in 2005–06, only 38 per cent of local authorities made financial provision for Māori participation in RMA processes (down from 49 per cent in 2001–02 and 56 per cent in 2003–04).[89]

Overall, the Ministry for the Environment's monitoring of relationships between local government and Māori indicates that:

- gains are being made in some parts of the country; and
- some local authorities have yet to engage with Māori in a manner that enables them to participate in environmental decision-making.

12B.6.2 The Local Government Commission and Department of Internal Affairs

Working together, the Local Government Commission and the Department of Internal Affairs have done the same sort of work in relation to the local government legislation that the Ministry for the Environment has done for the RMA: they have sought to explain and publicise the Acts and to build stronger links between local and regional councils and Māori.

In 2003 and 2004, these two agencies worked with Local Government New Zealand to organise a series of 'LGKnowHow' workshops, emphasising councils' responsibilities to consult with Māori and to create opportunities for Māori to participate in environmental decision-making.[90] Information was also provided about the Local Government Rating Act 2002 and the provisions of the Local Electoral Act 2001 for the creation of Māori wards and constituencies. The commission has also encouraged Local Government New Zealand, the Office of the Auditor-General, and the Department of Internal Affairs to monitor progress under the legislation and to disseminate good practice guidelines and case studies.

After the 2007 local government elections, the commission formally reviewed the operation of the 2001–02 legislation.[91] It produced a background paper called 'Local Authority Engagement with Māori'.[92] The paper reviewed a wide spectrum of published and unpublished reports by various agencies, the results of Local Government New Zealand surveys of local authorities, and submissions made and questionnaires completed by local authorities in 2007 and 2008.[93] It also compared interviews with local government and iwi representatives in Christchurch, Manukau, and New Plymouth.[94]

The paper reports mixed progress by local authorities in developing their capacity to engage with iwi over the past two decades. Through staff training and skill development, some have 'built a strong capacity base, built and strengthened relationships and developed increasingly effective engagement processes'.[95] Others have done little. The paper acknowledges the complexities of capacity building:

> One of the difficulties that Māori have experienced has been the lack of capacity on the part of local government to engage effectively with Māori. This can be difficult for local authority members and staff. Lack of capacity and lack of confidence can mean that members and staff find engagement processes intimidating, especially if on a marae.[96]

The paper goes on to list some specific skills and strategies that can help councils do better, emphasising that:

> Meeting Māori on their own ground and recognising that Māori appreciate and relate well to kanohi ki te kanohi (face to face) communication is important. So is demonstrating respect for kaumatua, rangatira, and other leaders and knowing, for example, that chiefs talk to chiefs.[97]

We like the way this paper usefully advocates a 'whole of government' approach to Māori organisations.[98] It distinguishes between tangata whenua groups within a rohe and organisations established by taura here (Māori from other regions) that take on social and cultural responsibilities for Māori resident in the district.[99] It emphasises the value of iwi policy documents and, in particular, iwi management plans.

The paper identifies three ways for local authorities to approach their obligations to Māori: by being 'process compliant' (going through the motions or paying lip service); by being 'actively compliant' (being receptive to Māori values and aspirations even though they may not share them); and by adopting a process of 'active enrichment'. The latter process involves recognising that Māori culture and values are part of New Zealand's national identity and that embracing them 'enriches us all'.[100] The background paper concludes:

> The impression that we have is that a number of local authorities are in the active compliance space and some of them are moving into active enrichment. However, in our view a number of local authorities remain located in the process compliance space.[101]

Unfortunately, the Local Government Commission chose not to engage with iwi, hapū, and other Māori groups directly when preparing this paper. Instead, it relied on Te Puni Kōkiri (the Ministry of Māori Development) to provide it with a Māori perspective. Te Puni Kōkiri is a Government department; it does not speak for iwi. It would have been more in the spirit of partnership had the

commission met directly with Māori groups around the country. Although we substantially agree with the report, process is important too. By engaging only internally and with other Government agencies, it seems to us that the commission was really not taking its own advice. It was signalling that it did not value the direct input that it could have obtained from Māori kanohi ki te kanohi (face to face, in person).[102]

In presenting its review to the Minister of Internal Affairs in July 2008, the Local Government Commission said that local authority engagement with Māori was 'patchy' across the country: 'This is due in part to capacity issues for both Māori and local authorities.'[103] It endorsed Local Government New Zealand's efforts to improve local government capacity and pointed to a need for comparable support and information-sharing for Māori.[104] The importance of iwi management plans was recognised and, along with this, the need to develop a 'whole-of-government' funding strategy (ie, a dedicated fund) to support the development of such documents by tangata whenua. The commission saw no need for legislative change at this point. It was impressed with the progress made on a broad front but said an audit was needed:

> We consider that an independent audit of the effectiveness of local authority engagement with Māori would be useful and that periodic reviews should track progress over time. Such an audit should focus on the effectiveness of the engagement rather than on the existence of protocols and agreements. We suggest that the Local Government Commission and the Office of the Auditor-General be assigned to jointly lead this audit.[105]

We note that, currently, Crown entities such as polytechnics and universities are subject to Treaty audits by the New Zealand Qualifications Authority, the New Zealand Universities Academic Audit Unit, and the Institutes of Technology and Polytechnics Quality. We think similar Treaty audits of local authorities should be mandatory.

12B.6.3 Te Puni Kōkiri

As the Crown's principal adviser on Crown–Māori relationships, Te Puni Kōkiri supports Māori capacity-building in many areas, including resource management and local government.

Te Puni Kōkiri encourages Māori to participate in local government, as voters and as candidates, through the provision of a fact sheet describing the processes involved.[106] The agency has also planned and funded two complementary studies (in 2004–05 and 2006–07) seeking ways to improve engagement between councils and Māori under the existing legislation.[107] The first involved Māori resource managers and council staff meeting face-to-face in six regions. These districts differed as to population, size, proportion of Māori and non-Māori, wealth of iwi and council, number of iwi and hapū, and state of relationships between Māori and council.[108] Attendees at the meetings discussed questions developed in consultation with the Department of the Prime Minister and Cabinet and the Ministry for the Environment. The resulting report contained five pertinent findings:

- Effective engagement is about establishing strong personal relationships and depends on trust, transparency, and goodwill. Engagement must be developed at all levels, from councillors and senior managers to operational staff and volunteers.
- Formal documents like memoranda of understanding or charters confirm or clarify relationships that have already been created and provide some certainty that existing relationships will continue.
- Māori are chiefly participating in RMA processes at the resource consent stage. Māori groups consistently expressed the need to move from reactive to proactive participation by getting involved at the planning and policy-making stages.
- Councils are variably wealthy, and they vary also in their willingness to make money available for Māori engagement. Some councils regard Māori input as expert opinion and fund it like any other form of professional advice. Some provide project-based

funding – for example, environmental monitoring, the recording of sites of significance, or the development of iwi management plans. Some councils ensure that Māori resource management groups can recover costs by invoicing consent applicants. Not all Māori groups are able to recover basic costs and have to rely on volunteers.

- Councils and Māori want central government to resolve the resourcing question so that Treaty-based obligations to tangata whenua can be fufilled. All councils report that there have been times when iwi have been invited to participate in various decisions but could not because they lacked capacity. All Māori groups report that basic costs stand in the way and they have to be selective about which issues to engage with due to a lack of resources.[109]

The Te Puni Kōkiri report emphasises that some councils and iwi are building capacity and some real partnerships are being established. For example, in Southland, Te Ao Marama Incorporated is funded by four councils and is recognised as a free-standing resource-management unit representing the four Southland rūnanga.[110] However, the report equally points to a lack of capacity and awareness in other parts of the country. For example, in one area further north, an iwi resource-management unit consists of 'one student volunteer who operates from his bedroom'. 'He sleeps in the lounge because his bed is covered in resource consent applications.'[111]

Overall, the Te Puni Kōkiri report makes clear that the existing legislation works best where councils and iwi have a substantial resource base and iwi and council leaders have strong face-to-face relationships. Where relationships are weak and iwi and councils have a slender financial base, the intent of the legislation is not achieved, the rights and responsibilities of iwi are not recognised, and the Treaty obligations of the Crown are not met.

12B.6.4 Local Government New Zealand

As a non-governmental organisation that is 'the champion of best practice in the local government sector', Local Government New Zealand is well positioned to carry out surveys of current council practice.[112] Working with Te Puni Kōkiri, the Department of Internal Affairs, and the Department of the Prime Minister and Cabinet, it surveyed councils in June 2004 about their engagement with Māori. Every council returned the survey.[113]

All 21 regional and metropolitan councils reported that they had implemented formal and informal consultation processes with Māori, as had 31 of the 38 provincial and unitary councils.[114] Seventeen of the 27 rural councils had a formal consultation process, and another four had processes for informal consultation and information-sharing.[115] Two-thirds of all councils provided internal training, and a similar proportion provided funding for joint initiatives with Māori, although the proportion of rural councils that did this was low.[116]

As with other such surveys, Local Government New Zealand found that many councils were making substantial progress. But, in some areas, there was no evidence that local government legislation was working well for Māori. The performance of councils within Wairarapa ki Tararua was mixed. The Horizons Regional Council reported two iwi relations appointments, a number of staff and councillors attending Māori language classes, and a policy of using Māori commissioners when resource consent applications involving cultural issues were being considered.[117] The GWRC had a Māori advisory committee, a charter of understanding with Te Tangata Whenua o te Ūpoko o te Ika ā Maui (the recognised iwi of the region), and two full-time Māori policy advisers, and it used Māori hearing commissioners for all consent hearings. The regional council also funded iwi projects and held regular technical workshops for council staff and iwi.[118] The Masterton District Council had a Māori liaison committee of three councillors, employed a part-time iwi liaison officer, and aimed to develop a memorandum of

understanding to formalise iwi relationships.[119] Similarly, the South Wairarapa District Council had a Māori standing committee to advise it, which provided a member to sit on the planning and policy committees and working parties.[120] The Carterton District Council was 'developing a process for consulting with Wairarapa iwi in conjunction with neighbouring local authorities'.[121] The Tararua District Council reported a 'memorandum of partnership' with Ngā Hapū o Rangitāne, preferred to deal with Māori issues 'in full council', and had iwi representation on the economic committee and the historic places working party.[122]

It is important to note that this survey asked councils to assess themselves. The results must accordingly be approached with more caution than, say, an external audit of the kind envisaged by the Local Government Commission.

Recognising that its survey information was largely quantitative, Local Government New Zealand also provided a set of in-depth case studies showing councils and Māori working in partnership.[123] None involved councils in Wairarapa ki Tararua.

12B.6.5 The 'Local Futures' research project

The 'Local Futures' research project, funded by the Foundation for Research, Science, and Technology, is part of a five-year study of strategic policy and planning in local government. The project has published a working paper on local government consultation and engagement with Māori.[124] This was based on a sample of 19 councils, and draws on a literature survey, Local Government New Zealand's 2004 survey of all councils, and a comprehensive review of the consultation practices of the participating councils.

The findings of this study reinforce those carried out by other agencies and are presented under six headings:

- *Structures:* Of the 19 local authorities sampled, 10 had a formally recognised committee to assist relationships between the council and Māori. Some provided for input into the decision-making processes via Māori representatives on various committees. None used Māori electoral wards.[125] At the time the information was collected, Carterton District Council had no formal Māori liaison committee, no specific policy statement for engagement with Māori, and no provision for councillor or staff training. However, it reported that it was 'starting a process to establish a memorandum of understanding' with local Māori.
- *Policies:* There was great variation in the intentions described in the councils' long-term community plans and annual plans. Policies for consulting Māori and involving them in decision-making ranged from the specific to the very general. Some councils had formal agreements setting out the nature and frequency of meetings.[126]
- *Staffing:* Different councils resourced staffing for Māori liaison in different ways. Some larger councils had an iwi relationship unit or a Treaty relationship team. A number had iwi relationship officers, while some smaller councils had staff whose job profile includes Māori issues.[127]
- *Training:* Fourteen of the 19 councils provided training programmes or supported training initiatives for staff and elected members.[128]
- *Monitoring:* Only four of the 19 councils used specific tools to monitor the effectiveness of their relationships with Māori or to ensure that Māori were considered in decisions.[129] Two larger councils monitored their relationships by surveying iwi.
- *Organisational perspectives:* Two Auckland councils had adopted a 'whole of organisation' perspective in terms of their relationship with Māori. Manukau City expressed this perspective in Treaty terms: it had a strategic plan outlining how the Treaty of Waitangi would be incorporated into core business; a charter articulating staff commitment to building relationships with Māori; and a 'toolbox' designed to support these relationships.[130] Waitākere City saw community

> interaction as an integral part of decision-making and described interaction with Māori as 'an expression of partnership with Māori rather than communication with stakeholders in the city'.[131]

Overall, the working paper was positive both about the gains made between the 1997 and 2004 Local Government New Zealand surveys and about the examples of good practice reported by several councils.[132] It said that councils' use of consultative processes had 'increased dramatically', and it commented favourably on the 'practices, policies, and structures that help them to engage with Māori'. At the same time, the paper acknowledged that it did not provide a Māori point of view:

> The review presented in this paper highlights a significant information gap. There is material which shows what local authorities are saying and doing in terms of engaging with Māori. But what do Māori think about councils engaging with Maōri and about Māori engaging with local authorities?[133]

12B.6.6 Council websites

In this district inquiry, the South Wairarapa District Council, represented by counsel Tracey Whare, was the only local council to file submissions with this panel. Those submissions concerned the nature of Māori consultation and involvement in council processes and on issues particular to the district (such as rate remissions on Māori freehold land).[134] The other local councils chose not to be represented before the Tribunal or to appear at all. As a result, we do not have before us evidence from these councils about what they do and how they do it. As a commission of inquiry, it is part of our job to look into matters ourselves that we think are necessary to inform our inquiry.

We decided to see what account the local authorities in Wairarapa ki Tararua give of themselves on their websites. Section 40 of the Local Government Act 2002 requires councils to make available information about their Māori-related policies and provisions, and section 40(1)(d) requires them to publish information about the Māori ward option after each triennial election. Most meet this requirement by placing their long-term council community plans on their websites. Few display information about the Māori ward option.

We have collated the information we found on the website into tables, and they follow this chapter. There is a table for each of the six local authorities in Wairarapa ki Tararua in order of population size (largest to smallest).

We include these tables in our report with some caution, because:

- The websites contain the councils' own account of their processes.
- We have had no opportunity to test the councils' accounts, although we do acknowledge that the South Wairarapa District Council did request hearing time.[135] (This was declined because we ran out of space in the hearing schedule, but the council's written submissions were of course duly considered.)
- The councils' websites do not conform to any standard, so although we were consistent about the information we looked for, councils were not consistent in the information they presented. This means that collating the information comparatively runs the risk of indicating more about what the councils have on their websites than their relative performance.

Nevertheless, we think the content of the tables is of interest and is relevant to the matters at issue between local authorities and tangata whenua in this inquiry district. We hope that it may contribute to ongoing dialogue.

What do the websites tell us? Like the other sources we have examined, the website-based information collated in the tables confirms the pattern of widely varying practices among territorial authorities.

The work of the two regional councils, the GWRC and Horizons, is of broader scope; they have a much larger rating base and they have more, and more specialised, staff. Both councils serve areas that fall within Wairarapa ki Tararua only in part, and both their regions are home

to multiple iwi. On the whole, the regional councils seem to have progressed further in developing an approach to working with iwi under the RMA, and this is reflected in their higher levels of activity in more of the fields identified in the tables.

The district councils are much smaller, although Masterton and Tararua are larger than Wairarapa South and Carterton. Their approaches are markedly different, and this is reflected in the tables. With their different rating bases and staff numbers, they seem to have progressed at quite different rates towards putting in place strategies for dealing effectively with tangata whenua. On the information we have available, it is not possible for us to discern why this is so.

12B.6.7 Conclusion

There are many central government agencies and regional bodies working on local government issues affecting Māori. Although there are some very positive developments (see, for example, the sidebars right and over), they fall well short of the kinds of relationships that Māori seek. In some cases, it seems that the efforts of the various central agencies have been to very little effect: councillors and staff still have scant regard for iwi rights and Māori values.

The 'Local Futures' study (which, ironically, did not itself seek a tangata whenua point of view – a failing shared by all but one of the high-level studies and surveys we consulted) commented that relationship-building requires 'trust and a willingness to communicate and engage with each other'. Further research, it suggested, should 'investigate how elements like trust, credibility, integrity and willingness to communicate can be incorporated into local government practice'.[136] We agree, and we also see an associated need both for better management and sharing of information and for research that identifies how information is collected, stored, and made available to Māori and how the information provided by Māori in consultation processes is used to inform strategic policy and planning.[137]

So, despite a good deal of high-level work aimed at

Lorraine Stephenson: When it Works

Lorraine Stephenson, of Rangitāne o Tāmaki-nui-ā-Rua, was named kaitiaki by Rangitāne kaumātua and is responsible for managing local government, resource management, and conservation portfolios in the Tararua portion of Wairarapa ki Tararua. She is the chief executive officer of Rangitāne o Tāmaki-nui-ā-Rua, was appointed to the Tararua District Council's Māori advisory committee in 1990 and the Manawatu Wanganui regional iwi committee in 1995, and is also a hearing commissioner for the regional council.

Stephenson said that the memorandum of partnership between the Tararua District Council and Ngā Hapū o Rangitāne (dating back to March 2000) was demonstrated on many levels. She personally received monthly council minutes; was invited to appropriate training, workshops, and seminars; met regularly with the mayor, mayoress, and council staff; made submissions to most district, annual, and development plans; and presented Rangitāne submissions at nearly every hearing held in the Tararua district:

> On average Rangitāne receive about two requests a month to bless new construction sites. I have participated in numerous events where Rangitāne kaumātua have undertaken an active kaitiaki role in the blessing of new sites and other spiritual and ceremonial occasions, examples being the Alliance Freezing Works, the Dannevirke Warehouse, the Rabobank premises, Autumn Lodge Resthome and the Knox Church. In recognising the services of our kaumātua local people have recognised the kaitiaki responsibilities Rangitāne have.

Rangitāne now also have good relationships with other agencies, such as Transit New Zealand and Meridian Energy, and this has led to positive outcomes in resource consent situations. Examples included the development of the Te Apiti Meridian wind farm and, on a smaller scale, Transit New Zealand's application to realign a section of road at Matamau beside a small cemetery. 'Because of the excellent working relationship with consultants and staff,' she said, 'Rangitāne were able to ensure protocols took place with the outcome being a positive result for all.'

Ngāhiwi Tōmoana, chairman of Ngāti Kahungunu Iwi Incorporated, speaking at the powhiri for the Tribunal at Te Ore Ore Marae in March 2004. He later gave evidence at Pāpāwai Marae at the hearing that ran from 31 May to 4 June 2004.

overcoming the problems associated with the present regime, it is not clear how much of it translates into changes on the ground. It is certainly true that some councils in the region are making substantial progress in developing meaningful and mutually productive relationships with the Māori communities they represent. Overall, though, performance is patchy, and there are no sanctions at all for poor practice.

There are instances where steps have been taken to improve Māori representation and participation in local government decisions, but this is nowhere required. The legislation is enabling but not coercive. As a result, improvements tend to happen arbitrarily. We noticed that the best relationships had arisen serendipitously, where able and committed individuals came together and made changes. Lorraine Stephenson, in her role as representative of Rangitāne with the Tararua District Council, and the work undertaken jointly by representatives of Ngāti Kahungungu and the GWRC on a GIS mapping project are obvious cases in point.

These things should not be left to chance. Good working relationships between councils and tangata whenua are indeed possible. They happen when there are clear flows of information and regular face-to-face meetings between

local iwi or hapū and staff or councillors and where council members have a culture of working with, listening to, understanding – and funding – tangata whenua. What is needed to ensure that this happens all the time rather than only occasionally are clear lines of accountability supported by legislation that enables, promotes, and (at least for key decisions) requires the full involvement of tangata whenua.

Ngāhiwi Tōmoana, the chairman of Ngāti Kahungunu Iwi Incorporated (the iwi authority for Ngāti Kahungunu ki Wairarapa and its counterparts in Heretaunga and Wairoa), put it like this:

> Almost without exception, wherever I visited in the Ngāti Kahungunu rohe there are difficulties experienced by Ngāti Kahungunu caused by the lack of accountability and responsiveness of local councils, both in terms of their Local Government Act processes and their obligations and duties under the Resource Management Act 1991. Put simply, because the Crown has failed to ensure that its councils comply with the Treaty, those councils have generally chosen not to do so.
>
> At the end however, the obligations of councils to Māori need to be spelt out in legislation and that legislation must include a requirement that councils are not permitted to act in a manner inconsistent with the Treaty, as well as meaningful provisions providing for Māori representation at a local authority level.[138]

We agree.

12B.7 Postscript

Because of the time that has elapsed since our hearings finished, things in the local government sphere have inevitably moved on.

It is not possible for the inquiry now to convene supplementary hearings, for that would delay the publication of this report, and it is already well overdue.

The GWRC and Ngāti Kahungungu: When it Works

The project manager for Rangitāne o Wairarapa, Joseph Potangaroa, and the GWRC's former Māori policy adviser, Jason Kerihi (of Ngāti Hāmua, Rangitāne, and Ngāi Tūmapuhia-ā-Rangi), told us about their work with Dane Rimene to map important sites in the Wairarapa area using geographical information systems (GIS). Mr Potangaroa explained its genesis:

> The GIS computer mapping project came about following discussions with the Wellington Regional Council (now known as the Greater Wellington Regional Council). We came up with a proposal to map various places of significance to Ngāti Hāmua in the Wairarapa area. It was the Greater Wellington Regional Council who suggested a GIS computer mapping project be instigated. We agreed and they funded the project.

The computer mapping project drew on interviews with Rangitāne kaumātua and kuia, Native Land Court minute books, whakapapa books, site visits, published and unpublished records, library archives, and Rangitāne o Wairarapa Incorporated archives. From these sources, a database has been developed containing information about most sites significant for Rangitāne o Wairarapa, though the Tribunal, the iwi, and the GWRC are aware that there are some sites of spiritual importance that are unsuitable for inclusion. The data bank is a resource for the people of Rangitāne, in particular Ngāti Hāmua. It also assists the GWRC in its work and in its partnership relationship with the iwi. Although it was not initiated primarily for the claims process, the project has provided the Tribunal with a very significant resource – the Rangitāne map booklet. This document contains a number of valuable maps, showing, for example, inland pā (fortified villages), kāinga (settlements), and bush clearings; cultivation and mahinga kai (food gathering) sites; and wāhi tapu (sacred places) and urupā (burial sites).

We commend the GWRC for its financial and practical support for the GIS project.

However, in order to capture the flavour and context of contemporary Crown and claimant positions on local government, we attach as appendix III recent submissions filed in other inquiries. Counsel for Ngā Hapū Karanga asked that the content be reflected in this report, and this is the means we have chosen for fairly achieving that.[139]

Notes

1. Wai 863 'Final Statement of Issues' (S01) paras 24.1.1, 24.1.2
2. Ibid, paras 24.1.2.2, 24.1.2.3
3. Ibid, paras 24.1.2.4, 24.1.8, 24.1.9
4. Ibid, paras 24.1.2, 24.3.2
5. Document A65 (Hayward), p 6
6. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim* (Wellington: Waitangi Tribunal, 1983); Waitangi Tribunal, *Report of the Waitangi Tribunal on the Kaituna River Claim* (Wellington: Waitangi Tribunal, 1984); Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed (Wellington: Waitangi Tribunal, 1989)
7. The Officials Co-ordinating Committee on Local Government, *Reform of Local Government: Discussion Paper* (Wellington: Department of Internal Affairs, 1988)
8. The Officials Co-ordinating Committee on Local Government, *Reform of Local and Regional Government: Bill for the Establishment of Maori Advisory Committees in Local Government and Explanatory Statement* (Wellington: Department of Internal Affairs, 1989)
9. Robert Mahuta, 'Reform of Local and Regional Government – A Tainui Perspective', *New Zealand Geographer*, vol 44, no 2 (1988), p 84
10. Graham Bush, 'The Historic Reorganisation of Local Government', in *The Fourth Labour Government: Politics and Policy in New Zealand*, edited by Martin Holland and Jonathan Boston, 2nd ed (Auckland: Oxford University Press, 1990), pp 232–250, esp p 243
11. Document A65 (Hayward), p 10
12. Ibid, pp 9–10
13. Department of Internal Affairs, *Reviewing the Local Government Act 1974: Have Your Say – Consultation Document* (Wellington: Department of Internal Affairs, 2001)
14. Ibid, p 7
15. Ibid, p 34
16. Document A65(a) (Hayward), p 7
17. Ibid
18. AC Neilson Ltd, *Review of the Local Government Act 1974: Synopsis of Submissions* (Wellington: Department of Internal Affairs, 2001), p 11
19. Department of Internal Affairs, 'Review of Local Government Act: Paper 7: Treaty of Waitangi and Local Government', paper for Cabinet Policy Committee, POL(01)270, 1 October 2001, pp 2–3. The Government, through the Minister of Local Government, has been transparent at every point of the review, and the minutes of the Cabinet and the Cabinet Policy Committee, released under the Official Information Act 1982, have been placed on the Department of Internal Affairs website.
20. Compare section 14(1)(d): 'a local authority should provide opportunities for Māori to contribute to its decision-making processes'.
21. Local Government Act 2002, ss 102(4)(f), 102(5)(a), 108(4), sch 11
22. Document I17(b) (Crown counsel), pp 3–6
23. Ibid, p 4
24. The Greater Wellington Regional Council was formerly known as the Wellington Regional Council or WRC. For convenience, we have used the council's current name throughout.
25. Department of Internal Affairs, *Reviewing the Local Government Act 1974*, p 35. There is a footnote which acknowledges the Department of Internal Affairs and Local Government New Zealand elected member surveys.
26. Document I17(b) (Crown counsel), pp 6–8
27. The response rate to this voluntary survey has varied between 58 per cent in 2004 and 67 per cent in 2007.
28. Department of Internal Affairs, *A Survey of Local Authority Election Candidates in the 2001 Local Authority Elections* (Wellington: Department of Internal Affairs, 2002); Department of Internal Affairs, *A Survey of Local Authority Election Candidates in the 2004 Local Authority Elections* (Wellington: Department of Internal Affairs, 2006); Department of Internal Affairs, *A Survey of Local Authority Election Candidates in the 2007 Local Authority Elections* (Wellington: Department of Internal Affairs, 2008). We acknowledge the assistance provided by the Department of Internal Affairs when they gave us access to a pre-publication copy of the report for the 2007 elections.
29. Paragraph (d) of section 40 of the Local Government Act 2002 is worded 'representation arrangements, including the option of establishing Māori wards or constituencies, and the opportunity to change them', while paragraph (i) is worded 'policies for liaising with, and memoranda or agreements with, Māori'.
30. Greater Wellington Regional Council, *How You Can Have your Say: Greater Wellington Regional Council's Local Governance Statement* (Wellington: Greater Wellington Regional Council, 2008); Greater Wellington Regional Council, *10-Year Plan, 2009–19: Incorporating the Annual Plan 2009/10 – Approved* (Wellington: Greater Wellington Regional Council, 2009)
31. Horizons Regional Council, *Community Plan, 2009–2019* (Palmerston North: Horizons Regional Council, 2009), p 208
32. Ibid, p 163
33. Ibid
34. See Manawatu–Wanganui Regional Council, 'The Proposed One Plan – The Consolidated Resource Policy Statement, Regional Plan and Regional Coastal Plan for the Manawatu–Wanganui Region', proposed policy statement, 3 May 2007, ch 4

35. Masterton District Council, *2009–2019 Long Term Community Council Plan Policies*, vol 3 of *Shaping our Future*, 3 vols (Masterton: Masterton District Council, [2009]), p 43
36. Local Government Commission, *Determination of Representation Arrangements to Apply to the Election of the Masterton District Council* (Wellington: Local Government Commission, 2007), pp 6–8
37. An article in the *Wairarapa Times Age* of 18 September 2008 describes Jeff Workman's contributions to the council and community and provides sensitive insights into his battle with terminal cancer.
38. Tararua District Council, *Community Plan, 2009–2019* (Tararua: Tararua District Council, 2009)
39. Ibid, p 243
40. We identified Koro Mullins on the Tararua Council website and obtained additional information from Department of Labour, 'Paewai Mullins: Building Leadership and Management Capability', Department of Labour, http://www.dol.govt.nz/workplaceproductivity/case-studies/paewai-building.asp (accessed 20 January 2010). Mullins's iwi affiliation is not reported and he did not stand in the 2007 elections.
41. The absence or presence of Māori councillors was not evident from the website.
42. South Wairarapa District Council, *South Wairarapa Council Community Plan, 2009–2019: Version 3*, 2 vols (Martinborough: South Wairarapa District Council, 2009), vol 2, p 164
43. Local Futures, 'Local Government Consultation and Engagement with Maori' (working paper 5, School of Government, Victoria University, Wellington, 2005); Carterton District Council, *Long Term Council Community Plan, 2009–2019, Incorporating 2009/10 Annual Plan*, 2 vols (Carterton: Carterton District Council, 2009), vol 1, p 38
44. Carterton District Council, *Annual Report for the Year Ending 30 June 2009* (Carterton: Carterton District Council, 2009), p 9
45. Document A65(a) (Hayward)
46. Ibid, p 12
47. Document C25 (Fox), p 12
48. Waitangi Tribunal, *The Mohaka River Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 69
49. See, for example, Waitangi Tribunal, *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* (Wellington: Brooker and Friend Ltd, 1993), p 27; Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993* (Wellington: Brooker and Friend Ltd, 1993), p 152.
50. Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993*, p 32
51. Ibid, p 29
52. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 3, p 1432
53. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 4, p 1409
54. Ibid, p 1458
55. Ministry for the Environment, 'Resource Management Amendment Act 2005 – Improving Certainty for Consultation and Iwi Resource Planning', Information Sheet INFO139 (Wellington: Ministry for the Environment, not dated). The amendment Act brought in clause 3A of the first schedule, which makes more explicit councils' obligation to consult with iwi authorities about plans.
56. The lack of obligation to consult does not, of course, mean that resource consent applicants and local authorities may not consult. The 2005 amendment Act also inserted section 35A, which requires councils to maintain records of iwi authorities and hapū that exercise kaitiakitanga. This is intended to enable local authorities to supply good information to anyone who does want to consult with tangata whenua.
57. Waitangi Tribunal, *He Maunga Rongo*, p 1411
58. See, for example, Waitangi Tribunal, *Report on Northern South Island Claims*, vol 3, p 1432.
59. Ibid
60. This came through in the evidence of Murray Hemi (doc C35), Lorraine Stephenson (doc E16), and Elizabeth Burge (doc F5), who did a lot of this work for Wairarapa ki Tararua Māori.
61. Parliamentary Commissioner for the Environment, *Kaitiakitanga and Local Government: Tangata Whenua Participation in Environmental Management* (Wellington: Ministry for the Environment, 1998); Kristen Maynard, *He Tohu Whakamarama: A Report on the Interactions between Local Government and Maori Organisation* (Wellington: Ministry for the Environment, 1998); Ministry for the Environment, *Iwi and Local Government Interaction under the Resource Management Act 1991: Examples of Good Practice* (Wellington: Ministry for the Environment, 2000); Hamish Rennie, Jill Thompson, and Tikitu Tutua-Nathan, *Factors Facilitating and Inhibiting Section 33 Transfers to Iwi* (Hamilton: Department of Geography, University of Waikato, 2000)
62. Elizabeth Clark, 'Section 33 of the Resource Management Act 1991', in *Local Government and the Treaty of Waitangi*, edited by Janine Hayward (Melbourne: Oxford University Press, 2003), pp 51–54
63. Ministry for the Environment, *Resource Management Act: Two Yearly Survey of Local Authorities 2005/2006* (Wellington: Ministry for the Environment, 2007)
64. Sections 33B to 33E were inserted by the Resource Management Amendment Act 2005.
65. Document C25 (Fox), p 11
66. Document E37 (Rautahi), pp 23–26
67. Ibid, p 25
68. Ibid, p 22
69. Ibid, p 29
70. Ibid, pp 29–30
71. Document D11 (Morris)
72. Ibid, pp 10–11
73. Ibid, p 11
74. Document D12 (Smith), p 10
75. Ibid, p 9

76. Document C35 (Hemi), pp 2–3
77. Ibid, p 3
78. Ibid, p 4
79. Lorraine Stephenson has represented her iwi in its relationships with the Dannevirke Borough Council, the Tararua District Council, Horizons Regional Council, and Transit New Zealand. She has been a member of the Rangitikei–Hawkes Bay Conservation Board and the Queen Elizabeth II Trust and a hearing commissioner for Horizons Regional Council: doc E16 (Stephenson).
80. Ibid, p 4
81. Document F5 (Burge), pp 9–10
82. Ibid. Ms Burge adds that Rangitāne received no contract funding or other financial contribution from the other councils.
83. Ibid, pp 15–16
84. Ibid, p 19
85. Ibid
86. Ibid, pp 21–22
87. Tony Whareaitu, *Consultation with Tangata Whenua: A Guide to Assist Local Authorities in Meeting the Consultation Requirements of the Resource Management Act 1991* (Wellington: Ministry for the Environment, [1991]); Tony Whareaitu, *The Resource Management Act: Kia Matiratira – A Guide for Maori* (Wellington: Ministry for the Environment, [1992]); Maynard, *He Tohu Whakamarama*; Ministry for the Environment, *Iwi and Local Government Interaction under the Resource Management Act 1991*; Beca Carter Hollings & Ferner Ltd, Wellington Tenths Trust, and Te Runanga o Ngāi Tahu, *Te Raranga a Mahi: Developing Environmental Management Plans for Whanau, Hapu and Iwi* (Wellington: Ministry for the Environment, 2000)
88. Ministry for the Environment, *Whakamau ki nga Kaupapa: Making the Best of Iwi Management Plans under the Resource Management Act 1991*, 2nd ed (Wellington: Ministry for the Environment, 2003)
89. Ministry for the Environment, *Two Yearly Survey*, p 30
90. Local Government New Zealand, *The LG 'KnowHow' Seminar Workshops: Māori Provisions of the Local Government Act 2002* (Wellington: Local Government New Zealand, 2003)
91. Local Government Commission, *Review of the Local Government Act 2002 and Local Electoral Act 2001* (Wellington: Local Government Commission, 2008)
92. Local Government Commission, 'Review of the Local Government Act 2002 and the Local Electoral Act 2001: Background Paper – Local Authority Engagement with Māori' (Wellington: Local Government Commission, 2008)
93. Ibid, pp 5–6, 19. 27–41. Annex B contains a résumé of recent reports and case studies used by the authors. Most of those that we had identified were included, along with others that were previously unknown to us. See also Local Government New Zealand, *Local Authority Engagement with Māori: Survey of Current Council Practices* ([Wellington]: Local Government New Zealand, 2004).
94. Local Government Commission, 'Background Paper', p 42
95. Ibid, p 14
96. Ibid, p 15
97. Ibid, p 14
98. Ibid, p 3
99. Ibid, pp 4–7
100. Ibid, p 20
101. Ibid, p 21
102. A second source of concern relates to timetabling. This report was completed and submitted to the Minister of Local Government before Te Puni Kōkiri was able to report to its Minister on Māori and local authority engagement. Local Government Commission staff were aware of the work being done by Te Puni Kōkiri but were unable to use it to full advantage.
103. Local Government Commission, *Review of the Local Government Act 2002 and the Local Electoral Act 2001: Summary Report* (Wellington: Local Government Commission, 2008), p 80. We note that the report was completed in July 2008, several months before the results of the 2007 survey of candidates was released. The commission had no information about the proportion of Māori standing in the local government elections in 2007.
104. Local Government Commission, *Review of the Local Government Act 2002 and Local Electoral Act 2001*, p 81
105. Ibid, 82
106. Te Puni Kōkiri, 'Whaiwāhi ki ngā Pōti ā-rohe: Participate in Local Elections' (information sheet, Wellington: Te Puni Kōkiri, 2007)
107. Te Puni Kōkiri, *Māori and Council Engagement under the Resource Management Act 1991* (Wellington: Te Puni Kōkiri, 2006); Te Puni Kōkiri, *Future Directions in Iwi Management Planning* (Wellington: Te Puni Kōkiri, 2008). Brief information about the content of this research is provided in Local Government Commission, 'Background Paper', pp 27–28.
108. Te Puni Kōkiri, *Māori and Council Engagement*. Derek Fox and a Te Puni Kōkiri policy analyst travelled to each of the six regions to carry out the group interviews.
109. Ibid, pp 7–9, 11. Six of the 11 councils interviewed had memoranda of understanding or similar documents with Māori groups.
110. Ibid, p 14. The four councils are the Gore District Council, the Southland District Council, the Invercargill City Council, and Environment Southland. The four Ngāi Tahu rūnaka in Southland are Ōraka-Aparima, Awarua, Waihōpai, and Hokonui.
111. Te Puni Kōkiri, *Māori and Council Engagement*, p 17
112. Local Government New Zealand, 'Home', Local Government New Zealand, http:\ www.lgnz.co.nz (accessed 20 January 2010)
113. The previous survey in 1997 had yielded a 74 per cent response rate: Local Government New Zealand, *Survey of Current Council Practices*, p 13.
114. Ibid
115. Ibid, p 14
116. Local Government New Zealand, *Survey of Current Council Practices*, p 15
117. Ibid, p 45

118. Ibid, p 47
119. Ibid, p 50
120. Ibid; see also doc G26 (counsel for South Wairarapa District Council), pp 2–3
121. Local Government New Zealand, *Survey of Current Council Practices*, p 49
122. Ibid, p 46
123. Local Government New Zealand, *Co-management Case Studies Involving Local Authorities and Māori* (Wellington: Local Government New Zealand, 2007)
124. Local Futures, 'Local Government Consultation and Engagement with Maori'
125. Ibid, p 5
126. Hurunui District Council, for example, meets annually with Ngāi Tahu and the Porirua City Council meets on a monthly basis with Te Rūnanganui-o-Ngāti Toarangatira: Local Futures, 'Local Government Consultation and Engagement with Maori', p 9.
127. Ibid, pp 13–15
128. Ibid, pp 15–16
129. Ibid, pp 17–18
130. Ibid, p 18
131. Ibid, pp 18–19
132. Ibid, pp 19–20
133. Ibid, p 21
134. Document G26 (counsel for South Wairarapa District Council), pp 1–5
135. Paper 2.422 (counsel for South Wairarapa District Council)
136. Ibid, pp 21–22
137. Ibid, pp 22–23
138. Ibid, p 3
139. Paper 2.467 (counsel for Ngā Hapū Karanga); paper 2.468 (presiding officer); paper 2.469 (Crown counsel)

Sidebars

Page 892: 'The GWRC and the Wairarapa Gravels'. Source: doc C35 (Hemi), pp 5–25, 36, 38–39; Murray Hemi, oral evidence, third hearing, Pāpāwai Marae, Greytown, 2 June 2004 (recording 4.3.15, tape 8). In his evidence, Mr Hemi draws particular attention to the Resource Management Act 1991, the Local Government Act 2002, the Historic Places Act 1993, the Conservation Act 1987, the Environment Act 1986, and the Hazardous Substances and New Organisms Act 1996.

Page 900: 'Kōhanga Reo'. Source: doc C25 (Fox), pp 5, 6.

Page 911: 'Lorraine Stephenson: When it Works'. Source: doc E16 (Stephenson), pp 2–4, 5, 7–8.

Page 913: 'The GWRC and Ngāti Kahungungu: When it Works'. Sources: doc F4 (Potangaroa), pp 2–4; doc F6 (Kerehi), p 2; doc E39 (Rangitāne o Tāmaki-nui-ā-Rua map book).

Downloaded from www.waitangitribunal.govt.nz

LOCAL GOVERNMENT: REPRESENTATION AND RESOURCE MANAGEMENT

The information tabulated below was gathered from councils' websites in September 2008 and March 2010. We focused on nine criteria and examined, in particular, councils' long-term council community plans. We also referred to their annual reports and to audits carried out by the Auditor-General. We searched for local governance statements – where these were not on the website and governance-type information was not included in the long-term council community plan, we checked the sites for information about 'Māori wards' or 'Māori constituencies'. Where neither of these initial searches yielded information, we searched the sites more generally under the heading of 'Māori' and 'iwi'. We also looked for references to transfers of power to iwi authorities under section 33 of the Resource Management Act 1991. We have noted where other information is presented on the website. In the case of the Greater Wellington Regional Council, we also searched for 'gravel guardians' and more generally for 'gravel'.

We also examined, where available, the reports of the Auditor-General on the long-term council community plans but found no specific references in them to relationships with Māori, Māori rate remissions, or the development of Māori capacity. Important clarifications may, however, have been requested and made but not recorded. The Auditor-General, from time to time, carries out audits on special topics. We found none, up to this point (as at March 2010), on the operation of the Māori requirements of the Local Government Act 2002.

In the case of the South Wairarapa District Council, information was also gained from counsel's submissions (doc G26).

Boxes marked with an x indicate clear statements of the current position, those with an (x) indicate that the measure is contemplated, pending, implied, partial, or publicised elsewhere.

Criteria	No information	No provision	Nominal provision	Substantial provision
Māori advisory or liaison committee				x
Memorandum of understanding, memorandum of partnership, or charter with iwi				x
Māori liaison officer				x
Māori sit on resource consent hearings				x
Funding for iwi projects or iwi managment plans				x
Training for staff/council/iwi				x
Rate remission for Māori land				x
Information on Māori wards			(x)	
Māori councillors	x			

The Greater Wellington Regional Council (2006 population 448,956; 11.5 per cent Māori)

Criteria	No information	No provision	Nominal provision	Substantial provision
Māori advisory or liaison committee				x
Memorandum of understanding, memorandum of partnership, or charter with iwi				(x)
Māori liaison officer	x			
Māori sit on resource consent hearings				x
Funding for iwi projects or iwi managment plans				x
Training for staff/council/iwi				x
Rate remission for Māori land				x
Information on Māori wards	x			
Māori councillors	x			

Horizons Regional Council (2006 population 222,423; 17.5 per cent Māori)

Criteria	No information	No provision	Nominal provision	Substantial provision
Māori advisory or liaison committee		(x)		
Memorandum of understanding, memorandum of partnership, or charter with iwi				(x)
Māori liaison officer		x		
Māori sit on resource consent hearings			(x)	
Funding for iwi projects or iwi managment plans	x			
Training for staff/council/iwi	x			
Rate remission for Māori land		x		
Information on Māori wards	x			
Māori councillors		(x)		

The Tararua District Council (2006 population 17,634; 18.3 per cent Māori)

Criteria	No information	No provision	Nominal provision	Substantial provision
Māori advisory or liaison committee				x
Memorandum of understanding, memorandum of partnership, or charter with iwi				(x)
Māori liaison officer		x*		
Māori sit on resource consent hearings		x*		
Funding for iwi projects or iwi managment plans				(x)
Training for staff/council/iwi				(x)
Rate remission for Māori land				x
Information on Māori wards		(x)		
Māori councillors				x

* The council has identified these as initiatives it could pursue

The Masterton District Council (2006 population 22,623; 15.2 per cent Māori)

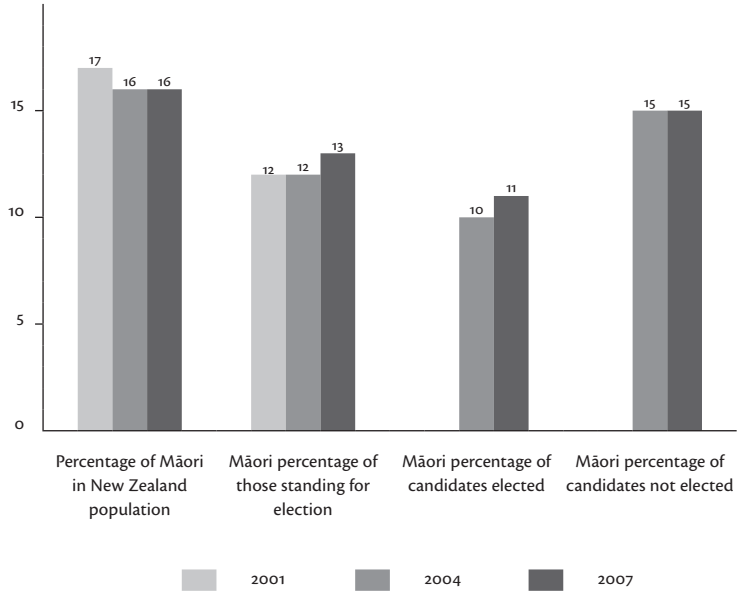
Criteria	No information	No provision	Nominal provision	Substantial provision
Māori advisory or liaison committee				x
Memorandum of understanding, memorandum of partnership, or charter with iwi				(x)
Māori liaison officer				x
Māori sit on resource consent hearings	x			
Funding for iwi projects or iwi managment plans	x			
Training for staff/council/iwi	x			
Rate remission for Māori land				x
Information on Māori wards	x			
Māori councillors	x			

The South Wairarapa District Council (2006 population 8.889; 11.6 per cent Māori)

Criteria	No information	No provision	Nominal provision	Substantial provision
Māori advisory or liaison committee		(x)		
Memorandum of understanding, memorandum of partnership, or charter with iwi		(x)		
Māori liaison officer		x		
Māori sit on resource consent hearings	x			
Funding for iwi projects or iwi managment plans	x			
Training for staff/council/iwi	x			
Rate remission for Māori land				x
Information on Māori wards	x			
Māori councillors	x			

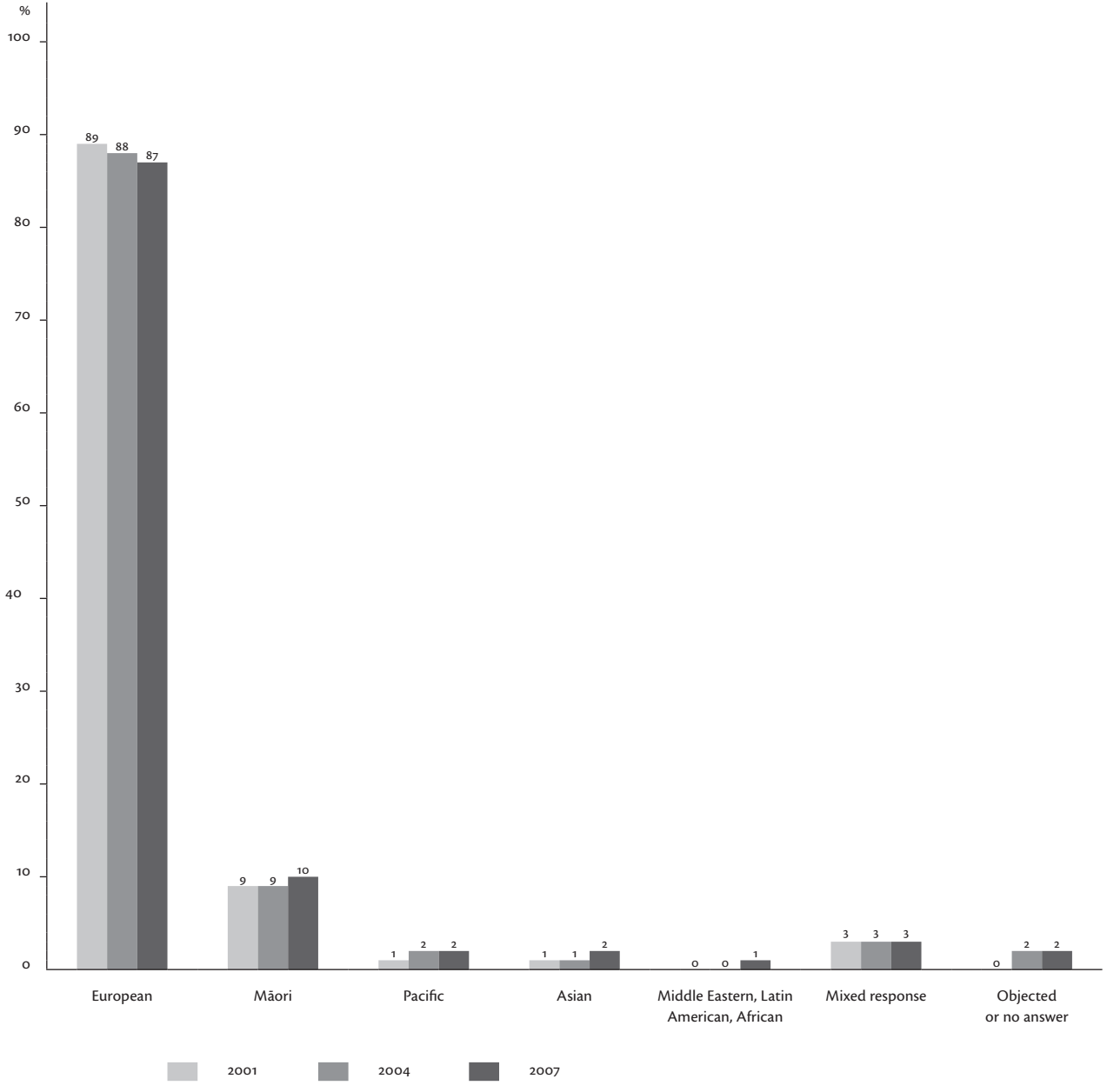
The Carterton District Council (2006 population 7,098; 9.2 per cent Māori)

The following tables draw on surveys conducted by the Department of Internal Affairs at the time of each local government election. As described in section 12B.3, the department invites local body candidates to provide information about their background, experience, community engagement, and motivation for participating in local government. The survey includes questions about Māori ancestry, iwi affiliation, and ethnicity. The results are published in two forms: the first reflects the responses of all candidates, the second only those who are successfully elected. The following three tables are based on results from the 2001, 2004, and 2007 surveys, as reported in Department of Internal Affairs, *A Survey of Local Authority Election Candidates in the 2001 Local Authority Elections* (Wellington: Department of Internal Affairs, 2002); Department of Internal Affairs, *A Survey of Local Authority Election Candidates in the 2004 Local Authority Elections* (Wellington; Department of Internal Affairs, 2006); and Department of Internal Affairs, *A Survey of Local Authority Election Candidates in the 2007 Local Authority Elections* (Wellington:, Department of Internal Affairs, 2008). We acknowledge the assistance provided by the Department of Internal Affairs when they gave us access to a pre-publication copy of the report for the 2007 elections.



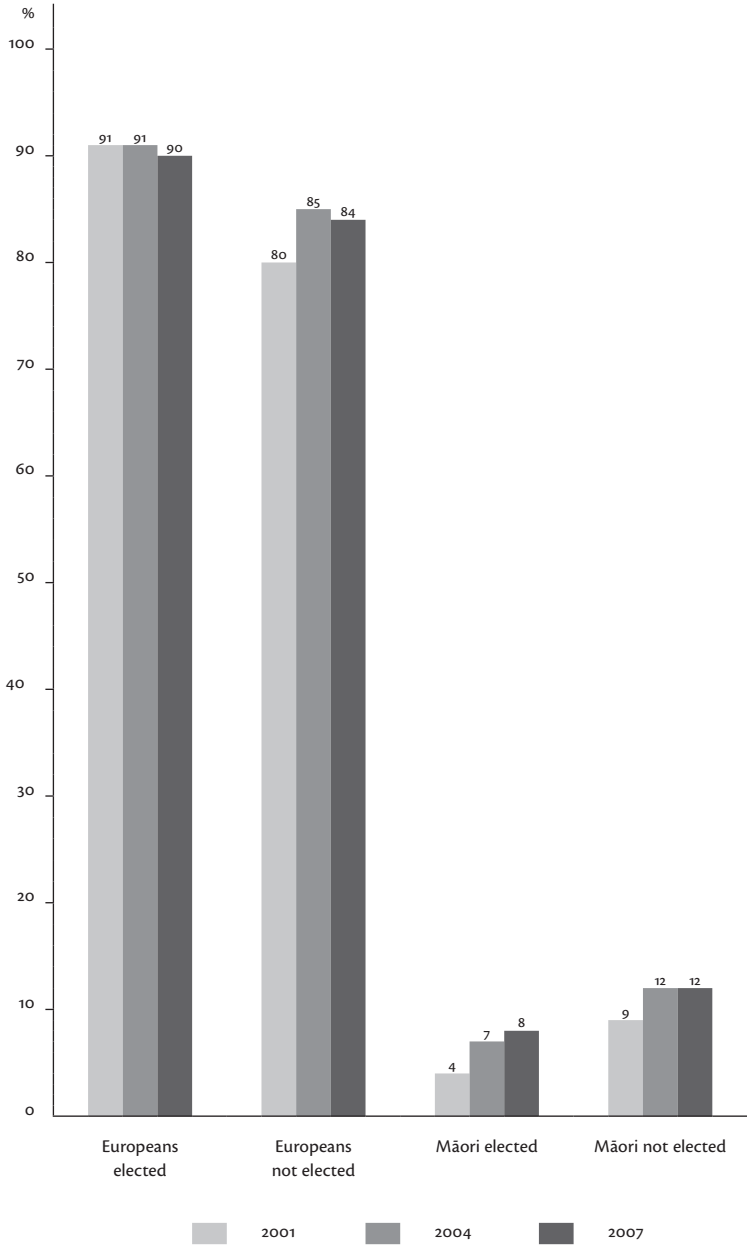
Māori Ancestry and Participation in Local Government 2001, 2004, 2007

Candidates were asked to designate one or more ancestries. This table summarises information for candidates with Māori ancestry and compares it with the percentage of people with Māori ancestry at the time of each election:



Ethnicity and participation in local government elections in 2001, 2004, and 2007

This table compares data for five broad ethnic groups and those who have given mixed responses (eg, 'Kiwi' or 'New Zealander') with those who have either objected or left this question blank. Multiple responses are possible and percentages may exceed 100 per cent.



Successful and unsuccessful candidates: percentage by ethnic groups, 2001, 2004, and 2007

This table compares the proportion of successful and unsuccessful candidates according to ethnicity (European and Māori only).

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CHAPTER 12c

THE DEPARTMENT OF CONSERVATION

12c.1 Introduction

Some 14 per cent of the land area in this inquiry district is 'conservation estate' managed by the Department of Conservation (DOC). Conservation lands include three major forest parks: the Tararua Forest Park (120,000 hectares, established in 1954), the Rimutaka Forest Park (22,000 hectares, gazetted in 1972), and the Aorangi Forest Park (19,373 hectares, gazetted in 1978). Reserves include the important Lake Wairarapa wetlands management area (which includes Lakes Ōnoke and Wairarapa and adjacent land reserves), the Castlepoint scenic reserve, the National Wildlife Centre (at Pūkaha Mount Bruce), and Kupe's Sail rock recreation reserve (Ngā Rā ā Kupe).[1]

DOC was created by the Conservation Act 1987. Under section 6, DOC is charged with managing the nation's conservation estate (all land, natural, and historic resources held under the Act), as well as any privately owned land or resources that the owner agrees should be managed by the department. DOC is also responsible for preserving indigenous freshwater fisheries and freshwater fish habitats, and has a wide-ranging conservation advocacy, promotion, and education mandate. It aims to foster the recreational use of New Zealand's natural and historic resources and to allow their use for tourism where this is not inconsistent with their conservation.

DOC's relationships with iwi around the country have sometimes been strained. The tension arises, we think, from an underlying belief amongst many Māori that, although the Crown legally owns the conservation estate, the injustices inherent in Crown land purchases entitle them to something analogous to an equitable interest in DOC land. We sensed this in claimants in this inquiry district too, and it heightens their dissatisfaction when DOC is seen to be unresponsive to Māori concerns and aspirations. However, in this inquiry district, we did hear that department officials have increasingly involved iwi in planning and management processes over the past decade. Several local initiatives between iwi and DOC are beginning to meet the aspirations of Māori for the management of their natural environment.

In this chapter, we review DOC's work in the Wairarapa ki Tararua inquiry district as it affects Māori, and we consider four key concerns raised by the claimants. First, though, we briefly summarise the legislative and organisational context in which DOC was established and now operates.

12C.2 The Legislative and Organisational Context

Environmental interests and the restructuring of the public service drove the reforms of conservation legislation and administration that led to the Conservation Act 1987. Environmental interests were seeking the protection of indigenous forests on Crown land, while the architects of public service reform wanted to separate commercially productive lands from 'non-productive' indigenous forests, so that they could be managed differently.[2] By contrast, Māori interests and values received little attention. According to historians Robert McClean and Trecia Smith, throughout the debate, 'Māori participation was limited since it was thought issues relating to the Treaty of Waitangi were not relevant to the restructuring of conservation administration'.[3]

The outcome of the reform process was a very different conservation regime from that which had existed previously. In the early 1980s, there had been five 'core' conservation laws administered principally by three Government agencies; in addition, the New Zealand Forest Service managed various protected areas as forest parks and sanctuaries. Now, DOC – with its head office in Wellington and conservancies across the country – became the central conservation agency. The Department of Lands and Survey and the New Zealand Forest Service, formerly powerful players in conservation, were disestablished. DOC took over the administration of a wide range of conservation laws, lands, and protected species.

Section 4 of the new Act required it to be 'interpreted and administered as to give effect to the principles of the Treaty of Waitangi'. However, it did not stipulate how this was to be done. McClean and Smith note that, even when the Act was in draft form, the Department of Māori Affairs had reservations, commenting in its review of the Bill that it:

> lacked specific provisions requiring cognisance to be had of Māori values and interests with regard to matters such as preparation and review of plans, representation on advisory committees, and Maori utilisation of natural resources within conservation areas.[4]

Another problem stemming from the Act's Treaty clause soon emerged: whether the section applied to the other conservation-related Acts listed in the first schedule to the Conservation Act – for example, the Wildlife Act 1953. Most of these statutes did not contain references to the Treaty. While DOC initially considered that the Treaty provision did apply, in 1988 it concluded that the relationship between the Conservation Act and the other Acts was unclear. In an internal memorandum, the department concluded that the 'precise relevance and weight to be given to Treaty principles must be a matter of judgment in each case having regard to all the relevant facts'.[5]

12C.2.1 DOC's aspirations for its relationships with Māori

In 1996, as part of a wider vision-setting exercise called 'Atawhai Ruamano' or 'Conservation 2000', DOC developed a draft strategy for Māori relationships. The vision expressed was that 'By the year 2000, New Zealand's natural ecosystems, species, landscapes and historical and cultural places [will] have been protected; people [will] enjoy them and [be] involved in their conservation'.[6] The mission of the draft strategy was:

> to welcome and foster the Maori contribution to conservation management by: supporting the development of a tikanga approach to conservation; integrating Maori initiatives into the programmes of the department; and adopting aspects of tikanga into the management practices of the department.[7]

To make this happen, DOC appointed Kaupapa Atawhai staff to its conservancies in the early 1990s. Their job, according to a DOC briefing to the incoming government in 1993, was 'to work with iwi and to ensure steady progress toward the ideal of partnership'.[8] At the time of

our hearings, DOC employed 14 regionally based Kaupapa Atawhai managers to monitor and coordinate relationships with iwi in each district. In 1997, the department formalised its policies for working with Māori in its Kaupapa Atawhai strategy, which described DOC, Māori, and the community 'working co-operatively to conserve the natural and historic heritage of New Zealand, for present and future generations'.[9]

Over time, all DOC's conservancies have developed conservation management strategies that set out objectives and policies aimed at giving effect to the Treaty. For this inquiry district, the relevant conservancy is Wellington. Its strategy has eight objectives relating to Māori, all intended to:

- assist with the settlement of Treaty claims, as directed by the Crown, in consultation with iwi, to ensure the protection of historical and natural resources;
- develop cooperative working relationships with the tangata whenua in the management of the conservation estate; and
- integrate 'giving effect to the principles of the Treaty' into all aspects of the department's work.[10]

12C.2.2 Getting in the way of good relationships

Despite these measures, problems beset the relationship between DOC and Māori in the mid-1990s. McClean and Smith attribute these in part to Māori concerns with the Crown's 1994 proposals to settle Treaty claims, a key tenet of which was that the conservation estate would not be readily available for that purpose. Frustrated, Māori challenged DOC's right to 'manage land that they considered should be returned as part of a Treaty of Waitangi settlement'. Other issues that raised tensions between the department and Māori included the taking of kererū (a protected species) for cultural purposes, especially in Northland; DOC's use of the pesticide 1080 in traditional food-gathering areas; and the issuing of permits to whale-watching companies.[11]

Community Involvement in Conservation

Lorraine Stephenson of Rangitāne ki Tāmaki-nui-ā-Rua represents Māori in this inquiry district on the New Zealand Conservation Authority. This body came into being under the Conservation Act 1987 in order to provide for community involvement in conservation management. It comprises 10 to 12 members who advise the Minister of Conservation on matters of conservation policy, review and approve planning and management documents, review the department's administration of the 1987 Act, and investigate other conservation matters it considers nationally important. There are three Māori members on the authority, two of whom are appointed on the recommendation of the Minister of Māori Affairs and one who is nominated by Te Rūnanga o Ngai Tahu.

Stephenson was appointed in 1998 and, part-way through her second term on the authority, told us:

> I believe that our presence at these board tables has ensured that the values we hold dear to our hearts as descendants of Rangitāne, and conservators of our natural resources, have assisted in the strength of these organisations today. It feels absolutely right that we actively participate at these highest levels of decision-making.

Community input into local conservation management is also achieved through regional conservation boards, which provide advice to DOC, approve management plans, and oversee the development of conservation management strategies in each conservancy district. The Act requires the Minister of Conservation to take account of the interests of the local community, including the tangata whenua, when appointing members to conservation boards. Since the boards were established in 1990, several Māori from this district have served on the Wellington Conservation Board: Mita Carter, John Rhodes, Sonny Wirihana, Ian Buchanan, George Mikaera, Elizabeth Burge, Dianne Anderson, Geoff Doring, and Haami Te Whaiti. At the time of the writing of this report in 2009, however, there were no Māori from this inquiry district on the board.

Ngā Rā ā Kupe (Kupe's Sail). The geological feature known as Ngā Rā ā Kupe is an area of great importance to Ngāti Hinewaka, who are its traditional kaitiaki (guardians). The site also has significant heritage value and is administered as a recreation reserve by DOC. Haami Te Whaiti related the origins of the name, telling us how, while camped in the area, Kupe and his companion, Ngake, had a competition to find which of them could make a sail in the shortest time. Kupe completed his that night, Ngake the following morning, and both are visible today as the distinctive cliffs at Ngā Rā ā Kupe.

A review of DOC's service delivery to Māori carried out by Te Puni Kōkiri in 1998 confirmed that many Māori stakeholders were dissatisfied with the department. Interviewees felt that DOC was not meeting its obligations under section 4 of the Conservation Act 1987 and saw conflicts between its role in the Treaty settlement process and its position as the manager of conservation lands. They criticised 'consultation', wanting instead opportunities to 'contribute to, and be actively involved with, the department in the co-operative management of the public conservation estate', including participating in granting concessions for commercial activities.[12] One of the barriers to improving the DOC–Māori relationship, according to Te Puni Kōkiri, was inadequate resourcing, especially for the Kaupapa Atawhai Division.

McClean and Smith considered that a significant factor in the tension that developed between DOC and Māori in the 1990s was the philosophical foundation of the new

conservation management regime. The regime was based on ecological or intrinsic values, and it upheld the right of species to exist in New Zealand on their own merits, independent of any human values that were associated with them. This put 'Maori interests [second] to the primary conservation objective'.[13]

DOC has sought to address past problems in its relationships with iwi by improving Māori participation in its work, better providing for Māori interests in its plans and policies, and consulting Māori on significant management decisions affecting protected areas or species. However, at the end of the day, DOC is the decision-maker, and the Crown owns and manages conservation lands and protected species. According to McClean and Smith:

> Historically, the Crown has assumed the right to govern in the interests of conservation. While some concessions to Maori have been made during the 1980s and 1990s, the Crown is still very much in control of conservation policy, laws, and practice.[14]

12c.3 DOC's Work in Wairarapa ki Tāmaki-nui-ā-Rua

From the outset, DOC has been a decentralised organisation. Regional conservancies (originally eight; in 2009, there were 12) are located throughout New Zealand and are responsible for conservation management in their area.[15] Most of the Wairarapa ki Tararua inquiry area falls within the Wellington conservancy, with some northern areas coming under the East Coast–Hawke's Bay conservancy.

At the time of our hearing, DOC's Wairarapa area manager was Derrick Field. He and the department's community relations manager, Jeff Flavell, told us about developments over the past decade that showed DOC and iwi increasingly working together, to their mutual benefit. We outline some of these developments below:

- *Pūkaha Mount Bruce:* Rangitāne has signed a memorandum of understanding to work in partnership with DOC and the National Wildlife Centre on several fronts – restoring the Pukaha Mount Bruce forest, conserving endangered species, and promoting conservation awareness. We discuss this joint initiative – the most fully developed in the Wairarapa ki Tararua inquiry district – in section 12c.4.4(1).
- *Wairarapa Moana:* Local DOC staff and iwi are working together to put into practice the Lake Wairarapa action plan for 2000 to 2010. The plan calls for iwi and hapū, as kaitiaki (environmental guardians) of the area, to be involved in any decision that has potential effects on the lake's wetlands.
- *Ngā Rā ā Kupe:* DOC administers the Kupe's Sail rock recreation reserve. In 2001, the reserve was enlarged when DOC purchased two hectares of adjacent land on the Mangatoetoe Stream.[16] The same year, DOC began consulting iwi over changing the reserve's current classification (under section 17 of the Reserves Act 1977) as an area for 'recreation and sporting activities and the physical welfare and enjoyment of the public', recognising that this did not adequately recognise Ngāti Hinewaka's cultural and spiritual relationship with the site. DOC is also discussing with Ngāti Hinewaka plans to enhance the site and to manage it jointly with its traditional owners.[17]
- *Aorangi Forest Park:* In 1974, the 20,000-hectare Aorangi Forest was originally declared a State forest park called Haurangi Forest Park. Even now, the Crown can shed no light on how it got the name 'Haurangi' (which means 'drunk' in Māori) rather than 'Aorangi', the traditional Māori name for the mountain range.[18] DOC inherited the name when it became responsible for administering the park. In 1991, Wairarapa kaumātua Mita Carter formally requested a name change to Aorangi Forest Park and, following public consultation, the change was accepted and included in the final conservation management strategy for Wellington.[19] But this was not enough to give it statutory effect. According to Jeff Flavell, the park 'does not have a formal legal name at

this stage'.[20] Nevertheless, 'Aorangi' is now commonly used, appearing in signage, internal documents, and publicity material. Crown counsel advised us that 'the Conservancy now intends to take action to formalise the name "Aorangi" as the legal name by which the Forest Park shall be known'.[21]

- *Castlepoint scenic reserve:* DOC is currently developing a management plan for the 36-hectare Castlepoint scenic reserve. Derrick Field said that the department is placing a higher priority on consultation with the local marae committee than with other groups:

> The basic approach that I've taken with this process, and probably the previous management plan development process, with Lake Wairarapa, is that we've had a forum with the local marae committee first and we've attempted to resolve things there before we've gone any further. So, we're at the stage now of having a draft plan which we're discussing only with the marae committee right now. And while the [Castlepoint] residents . . . have . . . a very strong association with the reserve and, to some extent, those discussions [have] become a little bit intertwined, there is quite a clear hierarchy, for want of a better word, in my view, that we want to resolve the issues with the hapu and with the marae committee first.[22]

DOC also became involved when a jetty was proposed at Castlepoint in the late 1990s. Considering it an inappropriate development for the area, the department was opposed to the consent application. Several local Māori groups (Ngāi Tūmapuhia-ā-Rangi, Rangitāne, and Ngāti Kahungunu) were also concerned about the proposal's effect on significant sites in the area. The department presented a case against the proposal, the objection was successful, and the jetty was not built.[23]

- *Coastal issues:* Protecting the coastal marine environment is a key issue for DOC and for Wairarapa ki Tāmaki-nui-ā-Rua Māori. DOC has initiated a project to investigate the need for further legal protection for the region's marine environment, and iwi are represented on the project steering group. DOC says it will consider the appropriateness of mechanisms such as taiāpure and mātaitai (both statutory means of designating customary fishing areas), and marine reserves, as measures to protect the coastal environment.[24]
- *Wāhi tapu:* DOC is responsible for protecting wāhi tapu on conservation land and is developing nationwide guidelines. In Wairarapa ki Tāmaki-nui-ā-Rua, representatives of Rangitāne or Ngāti Kahungunu are contacted whenever work is proposed in an area that staff believe may contain wāhi tapu or when culturally significant materials (including kōiwi or human remains) are discovered during work.

  DOC witnesses told us that the department is seeking to build cooperative working relationships with tangata whenua on many levels. It has worked with Ngāti Hinewaka to educate the public on the importance of the archaeological sites at Palliser Bay and has provided technical assistance and funding for the hapū to produce interpretative materials for the sites.[25] In 1999 and 2000, DOC contributed 'modest funds' to help Ngāti Kahungunu prepare a database that the iwi could use to respond to public inquiries about the presence of wāhi tapu.[26]

  DOC also advocates for the protection of wāhi tapu on private land, usually as a party to resource consent application processes: the department makes submissions on between three and six resource consent applications a year in Wairarapa Tāmaki-nui-ā-Rua.[27] Its primary concern is to protect conservation values, but these often overlap with Māori values. It has opposed sewage discharges to water, for example, on the ground that such discharges have a cumulative adverse effect on cultural, ecological, and recreational values.[28]
- *Indigenous flora protection, restoration, and cultural use:* DOC cited a range of work being carried out to restore and protect indigenous plant species and

The Ōkautete Native Bush Reserve

DOC's nationwide Ngā Whenua Rahui fund aims to protect indigenous ecosystems on Māori land by creating incentives for voluntary conservation projects. The scheme utilises mechanisms such as covenants and the creation of Māori reservations under the Te Ture Whenua Māori Act 1993 to enable Māori landowners to retain control.

In Wairarapa ki Tāmaki-nui-ā-Rua, the Ngā Whenua Rahui scheme helped the Ngāpine Tarawa Trust to protect a lowland kahikatea remnant known as the Ōkautete Native Bush Reserve at Homewood. DOC staff, members of the Society of Forest and Bird, and the pupils of Ōkautete School were all involved. The project won the 2000 DOC kaitiakitanga (environmental guardianship) award.

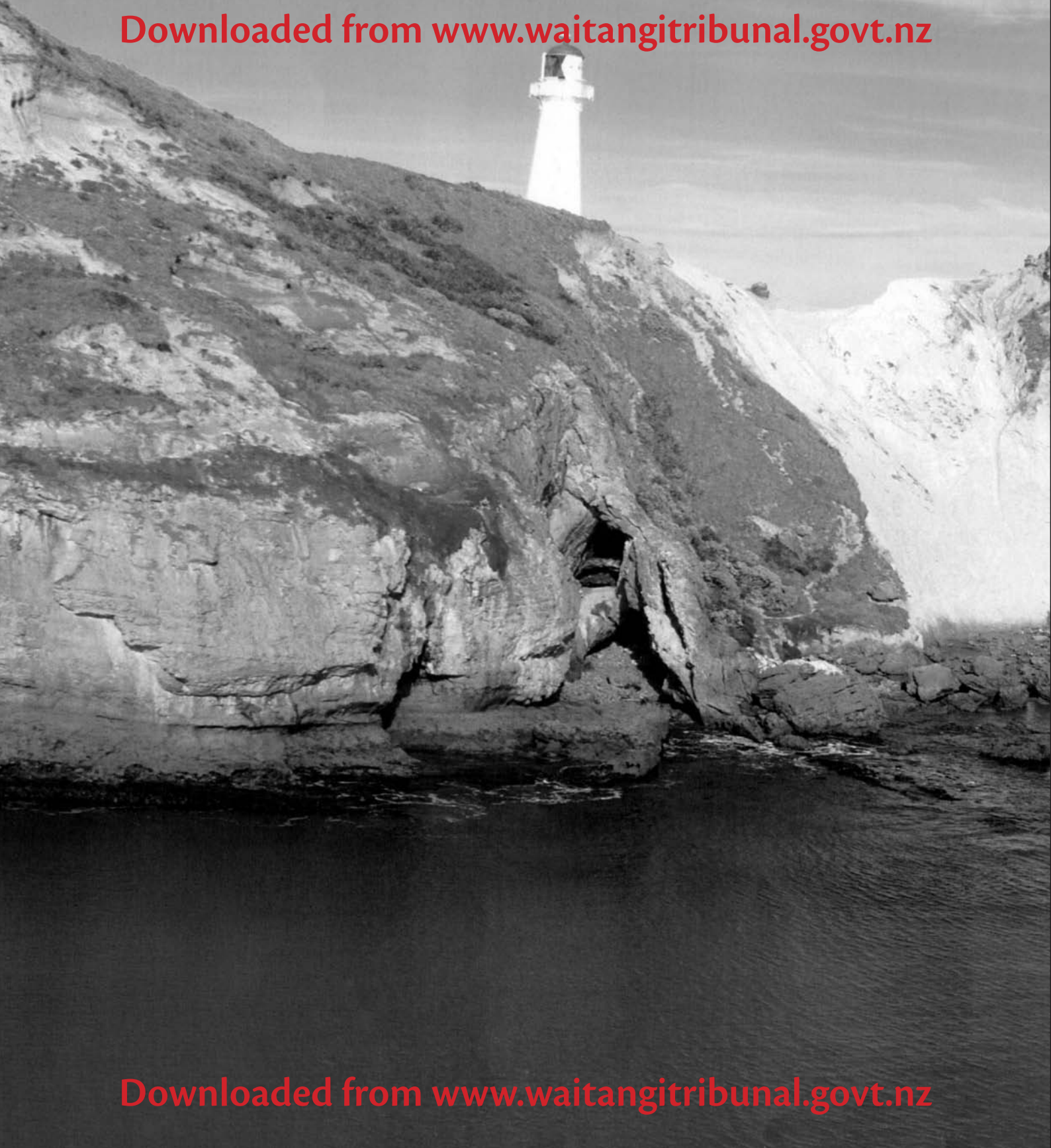
Tinirau Akuirau and Owen Perry of the Ngāpine Tarawa Trust are shown at right.

habitats on conservation, Māori, and private land. In southern Wairarapa, it is working with the ID2 Land Trust to apply for legal protection of forest at Kawakawa in Palliser Bay. It has also provided advice to the trust on the protection of rare plants on the block and on the restoration of wetland at Punuruku near Ngāwi.[29] Across the region, DOC carries out 'protected natural area' surveys to identify forest habitats worthy of protection that are located on private properties. It recommends conservation measures, and this sometimes involves negotiating with the landowners for legal protection for certain blocks.[30]

DOC has helped Ngāti Hinewaka fence and restore an area of the rare coastal plant pingao (traditionally used for weaving and rope making) at Te Kopi, and it has helped protect other areas of pingao at Pahao, at the Castlepoint scenic reserve, and at Otakaha.[31] The department and Ngāti Hinewaka have also established an ongoing programme to protect established sites of self-sustaining populations of the very rare plant tororaro (*Muehlenbeckia astonii*).[32] Rangitāne in Tāmaki-nui-ā-Rua have undertaken similar initiatives with DOC. Lorraine Stephenson told us about two projects. The first is the establishment of the Ngā Whenua Rāhui reserve at Mohangaiti Lake, which is a native nursery at Te Kura Kaupapa Māori o Tāmaki-nui-ā-Rua in Dannevirke used for education and forest restoration. The second is a scheme to gather native plants from conservation lands for rongoā (traditional remedies), with tangata whenua and DOC agreeing on how to harvest the plants.[33]

DOC has established an informal land protection group made up of regional councils, the QEII Trust, and Federated Farmers. Iwi representatives have participated in the group in the past; however, Derrick Field said that their attendance had fallen away recently – due, he felt, to the pressures on their time.[34]

The department has formal procedures allowing hapū access to cultural materials such as marine mammals (mostly whalebone), bird feathers, and



◄ Revegetation of sandhills using pingao (*Desmoschoenus*)

▼ Branches of tororaro (*Muehlenbeckia astonii*), showing their distinctive divarication. This plant is now very rare in the wild because of browsing stock.

◄ One of the mighty specimens in the Ōkautete Native Bush Reserve. This small remnant forest comprises mainly kahikatea, interspersed with tōtara, tītoki, and nīkau. Under the Ngā Whenua Rāhui scheme, fencing has enabled the exclusion of stock, and a healthy understorey has regenerated in only a few years.

◄ Ano o te Wheke o Muturangi (cave of the octopus at the end of the heavens) at Castlepoint. The cave is part of the Castlepoint scenic reserve.

plant material. The marine mammal stranding contingency plan for the Wairarapa area documents procedures by which hapū may obtain an authority to take whalebone for traditional use. Similar procedures exist for authorising the use of feathers from native birds. DOC has also supported the gathering of raupō (bullrush), kiekie (epiphytic plant, the heart of which was traditionally eaten), and mānuka for exhibition at Te Papa, as well as the retrieval of fallen tōtara for use at Hau Ariki Marae in Martinborough.[35]

- *Other processes:* Under the Conservation Act 1987, any person wanting to operate a commercial activity on conservation land must apply to DOC for a concession.[36] The department is not required under the Act to consult iwi over concession applications, but it routinely asks applicants to discuss proposals with affected hapū and iwi. It then checks with iwi that the consultation has been adequate.[37]

12c.4 Claimant Concerns

The claimants acknowledged the developments we have described but continued to have concerns:

- Despite DOC's moves to seek genuine iwi input into the management of certain sites (and, in some cases, to facilitate iwi control over those sites), the devolution of decision-making power to iwi happens rarely, and only if it suits DOC.
- Positive outcomes depend on the goodwill and competence of staff on the ground, but local concerns and initiatives are not necessarily understood or supported by senior staff based in Wellington.
- Where provision has been made for iwi and hapū input into conservation planning and management, Māori groups have neither the resources nor depth of skills to participate on a sustainable, professional basis. Inevitably, the task falls to the same few iwi members. There is an urgent need for money to be made available for iwi to develop the necessary skills and for people who provide input to be paid for their involvement.
- While opportunities exist for iwi to develop cultural-commercial enterprises on conservation land, there are significant obstacles that have yet to be properly addressed.

We discuss each of these in turn.

12c.4.1 Who makes the decisions?

As we stated earlier, it is the Crown that owns and manages the conservation estate and protected species. Under the Conservation Act 1987, it is DOC that has the final right to make conservation management decisions affecting protected areas or species – however much it may be willing to consult and work with Māori or any other stakeholders.

Yet, DOC is also obliged to give effect to the principles of the Treaty of Waitangi.

The Crown contends that DOC fulfils this obligation by the inclusion of explicit provisions in its strategic and management documents and through various working arrangements it has put in place with iwi.

(1) *DOC's documents*

It is certainly the case that the department has conscientiously incorporated references to Treaty principles into almost all of its strategic documents and plans,[38] perhaps reflecting the mandatory nature of the Conservation Act's Treaty clause. For example, Jeff Flavell pointed us to the department's statement of intent for 2004 to 2007, which includes 'working with tangata whenua for conservation and the enhancement of mātauranga Māori [traditional Māori knowledge]' as one of its key outputs. The document explicitly links this output with the department's Treaty obligations, identifies commonality between the kaupapa (issues, agenda) of the department and iwi, and proposes

that iwi are dealt with by the department in a similar way to local authorities:

> Participation in decision making processes and conservation activities enables tangata whenua to exercise their customary role as kaitiaki according to their tikanga and is in accord with the department's statutory obligations.
>
> Tangata whenua groups can prove to be powerful allies in supporting and promoting conservation initiatives, particularly at the local level. Many tangata whenua groups have developed conservation strategies and initiatives for taonga within their rohe or area and have their own environmental management capability. In the way that the department works with territorial authorities on environmental management matters, we work with tangata whenua.[39]

Other national documents contain Treaty-related policies. For example, DOC's New Zealand coastal policy statement contains policies designed to protect characteristics of the coastal environment of special value to tangata whenua, and it reiterates that the principles of the Treaty are to be taken into account in the Crown's management of the coastal marine area.[40] We also heard that the department was developing internal guidelines enabling Māori participation in the protection and management of wāhi tāpu on conservation land. These guidelines provide for the recognition of Treaty rights through partnership agreements, the protection of cultural knowledge, public education, and tangata whenua control of discrete wāhi tāpu sites where appropriate.[41]

At the local level, many of DOC's Wellington conservancy's documents explicitly refer to the Treaty. The key planning document, the Wellington conservation management strategy, was approved in 1996 after a consultation process that began in 1990 and involved iwi authorities.[42] Jeff Flavell told us that the draft was amended in response to iwi concerns raised by the Wairarapa Māori Executive

Ngā Whakamaramatanga o te Moana/ Voices from the Coast

Ngā Whakamaramatanga o te Moana/Voices from the Coast was an oral history project undertaken jointly by Ngāti Kahungunu, Rangitāne o Wairarapa, and DOC as part of the coastal protection project. Local kaumātua were interviewed to capture iwi perspectives on marine and coastal management. An exhibition developed from the project has been shown at the Aratoi Wairarapa Museum of Art and History in Masterton and at libraries and schools throughout the Wairarapa ki Tararua inquiry district.

Taiwhenua.[43] It reiterates three core Treaty-related objectives governing DOC's work and says that DOC will address Treaty principles in Wairarapa Tāmaki-nui-ā-Rua by:

- consulting iwi over the management of species important to them;
- committing to undertake the transfer of species in accordance with tikanga Māori (that is, traditional Māori rules and procedures);
- establishing systems jointly with Māori for the storage, distribution, and cultural use of marine mammal resources and indigenous plant and animal material;
- consulting Māori over the protection and interpretation of historic resources;
- supporting groups making mātaitai and taiāpure applications;
- consulting over the use of poisons;
- consulting over the delegation of management of reserves and conservation areas;
- sharing information on sites of significance in the conservation estate;
- achieving iwi input into the conservation management strategy; and
- using the Ngā Whenua Rahui fund (established in

1990) to help preserve and develop indigenous forests on Māori land.[44]

This list is soundly conceived; unfortunately, though, we saw instances where DOC's practice falls short of its good intentions.

(2) *Where the real power lies*

DOC's public declarations show an intention to give practical effect to its Treaty obligations, and the initiatives listed are all positive. But there is no concealing where the real decision-making power lies. DOC will decide what level of meaningful input 'consultation' entails: the role for iwi remains that of supplicant when they seek participation in conservation planning and management. Derrick Field's responses to questions from claimant counsel Grant Powell shows how DOC decides how much influence Māori have:

> Powell: Who makes the decision whether it's to be just consultation or joint decision-making?
>
> Field: Well, I suppose the approach that we take is, by myself, I think the consultation is probably the formal processes that we have for consents and the development of strategies is simply a decision that I make when we're in a process of development of strategies that do involve the iwi or hapu that we try to work in that relationship.
>
> Powell: It's the Department that makes the decision as to whether to push beyond consultation? The Department, through you?
>
> Field: Well, I suppose if they're our initiatives, then that's inevitable, I suppose.[45]

It seems to us that the challenge for DOC is to find ways to devolve and share its statutory decision-making powers to and with Māori. Only then will there be a genuine partnership. We think that partnership is the practical effect of section 4.

The department may be right that joint management arrangements are a good way to make this happen. The claimants are eager to take up such opportunities, as we saw at Pūkaha Mount Bruce (discussed later in this chapter). Setting up these arrangements, and making them work, will not be without problems. That is inevitable when cultures meet – and here we are talking not only about Māori and Pākehā culture, but also about DOC culture. Nature protection by Government departments in New Zealand was for many years the province of white, science-based, 'outdoorsy' blokes. But times have changed, and DOC must change with them. What is needed is a commitment to working through issues as they arise. For DOC employees, this is part of their job. On the iwi side, changes must be made so that the time and effort of iwi representatives is also rewarded. How all this cultural change might be achieved has yet to be conceived or implemented. A good first step would be for DOC to recruit more Māori personnel and to make more space for Māori at DOC's management level (at head office and in the district conservancies). Despite the cultural and fiscal challenges for DOC, in our view the time is right to embrace these necessary changes, so that for the first time the department gives effect to the principles of the Treaty in all its work.

12c.4.2 To what extent is DOC's responsiveness dependent on individuals?

The claimants acknowledged the value of DOC initiatives in Wairarapa Tāmaki-nui-ā-Rua but were concerned that positive results continued to be 'as much due to the efforts of individuals on both sides, as to the structures of DOC itself'.[46]

However, Derrick Field denied that the quality of the relationship was dependent on the personalities involved, noting that DOC had a statutory requirement to build relationships with hapū.[47]

Certainly, DOC refers in numerous high-level official documents to its obligations under the Conservation Act 1987 to give effect to Treaty principles. However, the key factor enabling it to develop effective 'on the ground' relationships with hapū – and critical to its ultimate goal of providing for the meaningful exercise of kaitiakitanga by

Lake Ōnoke spills into Kāwakāwa (Palliser Bay). The small opening into the bay was blocked by sand for most of the year until it was kept open artificially from early in the twentieth century. This is the southern boundary of what was once the enormous Wairarapa Moana wetland.

tangata whenua over their rohe (tribal territory) – will always be the inclinations and skill of department staff and hapū representatives. In reality, these count for more than any number of planning and policy documents.

It appears that the claimants' chief concern is that their arrangements with department staff and managers like Derrick Field may be vulnerable should those staff leave the department in the future – hence their desire for existing understandings to be formalised.[48]

We wanted to explore this concern further, so we looked at it in the context of the arrangements that have been put in place to manage Wairarapa Moana.

(1) *The arrangements for Wairarapa Moana wetlands*

The Wairarapa lakes have always been a taonga for Māori in this rohe. Today, DOC administers the lakes and several adjacent reserve areas.[49] Since 1991, the department has convened a coordinating committee on an occasional basis to work with the various groups with interests in the lakes and wetlands. The committee comprises landowners, iwi and hapū, recreational groups, and statutory organisations with responsibilities in the area (the Greater Wellington Regional Council, the South Wairarapa District Council, the Wellington Fish and Game Council, and the Ministry of Fisheries).[50]

The key planning document is the *Lake Wairarapa Wetlands Action Plan, 2000–2010*.[51] It was developed in 1998 and 1999 in consultation with iwi, statutory agencies, and other stakeholders. Derrick Field told us that, in preparing the plan, DOC consulted iwi and hapū before any other groups, and he believed that all the concerns they raised were addressed in the final plan.[52]

One of the plan's five broad goals is to protect and recognise the cultural and historic values of the Lake Wairarapa wetlands. It also calls for the integrated management of the Lake Wairarapa wetlands by the various statutory and interest groups that have a stake in them. The plan says DOC will work to:

- consult iwi about issuing concessions;
- work with iwi and hapū to protect sites of significance;
- support iwi and hapū to develop and administer a system allowing for sustainable customary eel fishing within wildlife reserves;
- promote communication between iwi, the Ministry of Fisheries, and DOC on commercial eel fishing in the lake;
- develop a raupō (bullrush) management strategy with iwi and recreational waterfowl hunters; and
- support iwi to re-establish mahinga kai (food gathering) resources and taonga raranga (materials for weaving) in appropriate areas.[53]

The plan states that iwi and hapū, as kaitiaki of the area, should be involved in any activity or issue that has a potential effect on the Lake Wairarapa wetlands.[54] Appended to the plan are guidelines that:

- cover consultation with iwi and hapū;
- define 'consultation' as presenting 'a proposal not yet finally decided upon, listening to what others have to say considering their responses and then deciding what will be done';
- propose that DOC meets with iwi twice a year to enable their input into the following year's projects; and
- state that DOC will provide information and advice to iwi in preparing submissions on activities affecting the wetlands.[55]

Derrick Field told us how the action plan has been put into practice. For example, in response to the wish of iwi to use raupō for cultural purposes, DOC no longer allows the Fish and Game Council to chemically spray it (this was done to improve waterfowl hunting). He said that instead DOC is currently developing an agreed strategy with all stakeholders to control the raupō.[56] In addition, the department is working with iwi representatives to introduce iwi administration of eel harvesting.[57]

(2) *Are local arrangements like these vulnerable to personnel changes?*

In closing submissions, counsel for Ngā Hapū Karanga, Grant Powell, acknowledged that the department's Lake Wairarapa action plan had been 'successful'. However, he argued that such local initiatives were 'not well understood' at higher levels in the department, particularly at the conservancy level.[58] He referred to Jeff Flavell's comments during cross-examination about DOC's practical efforts to give effect to Treaty principles in Wairarapa Tāmaki-nui-ā-Rua. Flavell said that the department had:

> reached understandings with regard to particular activities we carry out and I think Derrick [Field] is probably better placed than myself to speak to the specifics of what we've done, as most of the understandings are locally discussed and agreed upon, rather than being at my end back in Wellington, so I don't have personal views or experience of those sorts of understandings . . .[59]

Flavell agreed that the department's efforts to give effect to Treaty principles took two forms. Locally, there were the 'on the ground' agreements developed by DOC staff around matters such as the allocation of faunal materials for cultural use, and general provision for consultation about the effects of DOC activities on Wairarapa ki Tāmaki-nui-ā-Rua Māori. More formally, there were the provisions of the Wellington conservation management strategy and a number of national policy documents.

Our impression was that local officers have a lot of

discretion and that managers at head office are relatively hands-off. This tends to support iwi anxiety about the vulnerability to personnel changes of arrangements like that for the Wairarapa Moana wetlands, although this vulnerability will presumably be less so where (as in this case) the arrangements take the form of a written plan.

Counsel for Ngā Hapū Karanga submitted that existing understandings between DOC and Wairarapa ki Tāmaki-nui-ā-Rua Māori needed to become more formal. He suggested establishing a joint working group, comprising representatives from iwi and DOC, to review DOC's activities and current relationships within the region and to identify opportunities for joint decision-making and funding for Māori programmes.[60] We support these suggestions. It is vital that on-the-ground understandings and arrangements are 'owned' by the whole department, so that, when officers who have played a critical role move on, their replacements have a clear grasp of what is required. Moreover, DOC must demand it of them: head office must become more proactive in overseeing Treaty compliance and in disseminating best practice to all conservancies. The time must soon come (if it has not already) when it is not discretionary for DOC officers and managers to have strong, functional relationships with iwi.

12c.4.3 Paying for iwi input into conservation planning and management

In chapter 12B, we saw that taking part in local government consultation processes, as required under the Resource Management Act 1991 and other legislation, demands much of iwi. Participating in conservation planning and management makes similar demands.

Hapū and iwi welcome opportunities for greater involvement in conservation decisions, but the practical reality is that the few qualified and able volunteers end up completely over-stretched. For example, Rangitāne witness and former Wellington Conservation Board member Elizabeth Burge told us that taking part in the management of Wairarapa Moana requires Rangitāne to maintain relationships not only with DOC but also with the Greater Wellington Regional Council, the South Wairarapa District Council, the Ministry of Fisheries, the Fish and Game Council, and the Historic Places Trust. Moreover, each of these agencies has a 'vastly different kaupapa not only from Rangitāne but also [from] each other'.[61] Even by prioritising environmental issues in general, and the protection of certain taonga in particular, Burge maintained that the workload overwhelms the available resources.

This difficulty also constrains Rangitāne's ability to play their part in the Pūkaha Mount Bruce partnership. Mike Grace, a witness for Rangitāne and a former DOC community relations manager, said:

> Attendance by Rangitāne o Wairarapa at the NWCT [National Wildlife Centre Trust] bi monthly meetings is intermittent at best and Rangitāne o Wairarapa do not engage with the partnership on a regular basis. The reactive/responsive nature of the Rangitāne role in engagement in Pukaha is a significant limitation on their ability to negotiate development of their vision for Pukaha. . . . I am conscious that Rangitāne have a number of large projects currently on their plate, in particular the necessity to gear up for and present evidence before the Waitangi Tribunal and their current fish negotiations. Rangitāne have a number of other contracts to run as service providers in Masterton. They also have other relationships with territorial and regional authorities. This is a huge drain on a relatively small organisation with limited funding.[62]

Other witnesses, including Jeff Flavell, told us how the limited resources of iwi adversely affect DOC's efforts to work with them on resource consents.[63] The same factors limit iwi involvement in heritage management decisions, as we discuss in chapter 12D.

Iwi who face significant resource constraints – human and financial – will find it difficult, perhaps impossible, to realise plans such as Rangitāne's for Pūkaha Mount Bruce. Until this question of resources is addressed, the success of any DOC initiative to increase Māori involvement

Visitors to Pūkaha Mount Bruce look on from the bridge while a guide explains about the feeding of tuna (eels) below

in the planning and administration of sites such as Lake Wairarapa and Pūkaha Mount Bruce will be in doubt.

In the short term at least, the Crown must fund the upskilling and participation of te iwi Māori in environmental decision-making. This is a requirement across the board, affecting local government and the Resource Management Act 1991, heritage management, and DOC. Perhaps, in a post-settlement world, Māori will take on financial responsibility for their own training and participation in these processes. But that is some way off for many iwi, including those in Wairarapa ki Tāmaki-nui-ā-Rua. In the meantime, if the kind of partnership we think is inherent in section 4 of the Conservation Act 1987 is to have any prospect of success, funding must be made available to enable iwi to fulfil their proper role.

12c.4.4 Developing cultural–commercial enterprises on conservation land

We have described already how, in Wairarapa Tāmaki-nui-ā-Rua, Māori are seeking to make the most of opportunities to exercise their traditional role as kaitiaki of the natural environment. Possibilities have also been identified for iwi and hapū to benefit economically from the natural environment, and their unique relationship with it, through sustainable and profitable cultural–commercial enterprises.

It is this vision that underpinned Rangitāne's decision to enter into a partnership with DOC and the National Wildlife Centre Trust at Pūkaha Mount Bruce. This is the most highly developed joint initiative involving iwi and DOC in the inquiry district. We focus on it now to ascertain

A rare Kōkako, one of the birds that Pūkaha Mount Bruce endeavours to preserve through a captive breeding programme

to what extent it has, and has not, fulfilled Rangitāne's aspirations for a partnership with DOC in managing this last remnant of the once-great Te Tapere-nui-ā-Whātonga (Seventy Mile Bush).

(1) *The development of the Pūkaha Mount Bruce partnership*

When the Crown purchased the Seventy Mile Bush blocks in the 1870s (see chs 4, 12A), it kept approximately 942 hectares of land at Pūkaha Mount Bruce as a forest reserve. In 1958, Elwyn Welch, a gifted amateur ornithologist, brought takahē chicks from Fiordland to be reared near Mount Bruce. By 1962, the Wildlife Service had taken over Welch's work and established the 55-acre Mount Bruce Native Bird Reserve on its present site. Several captive breeding programmes were successfully carried out – for the takahe, the blue duck, the brown teal, and a number of other birds.[64]

In 1984, the Mount Bruce Native Bird Reserve became the National Wildlife Centre, and a trust was established to raise money. Over time, the breeding facility and visitors' centre became a major tourist destination, attracting 50,000 visitors a year.[65] Then, in 1987, DOC took over the work of the Wildlife Service and began operating the National Wildlife Centre in conjunction with the National Wildlife Centre Trust. The wider Pūkaha Mount Bruce area was redesignated a scenic reserve.

For Rangitāne, Pūkaha's significance of course predated the Crown's decision to keep it as a forest reserve. The Māori name for Seventy Mile Bush, Te Tapere-nui-ā-Whātonga, means Whātonga's large territory. Whātonga was a tipuna of Rangitāne. The former chair of Rangitāne o Wairarapa Incorporated Society, kaumātua Jim Rimene, described the importance of the area to his iwi like this:

> Pūkaha contains some of the last remnants of Te Tāpere nui o Whātonga, it is the last reminder of our tūpuna and their taonga such as ngā manu. Pūkaha was a pātaka (food house) for us, Pūkaha contains our whakapapa. Pūkaha contained our rongoa (medicines). I was often told by my old people that Pūkaha was like a dictionary for Rangitāne.[66]

In the 1990s, Jim Rimene sought recognition for Rangitāne by those running what was then the National Wildlife Centre. He had worked in the forest and learnt from his kaumātua the associated whakapapa and tikanga. From this sprang his vision for Pūkaha as a place where Rangitāne could:

- engage in natural heritage activity on their whenua tipuna;
- retain and regain cultural knowledge; and
- build an economic opportunity for the future, providing jobs and income for their people.[67]

A three-way partnership between Rangitāne, DOC, and the National Wildlife Centre developed. According to Mike Grace, Rangitāne brought cultural leadership to the group, supporting the movement of birds to and from Pūkaha by ensuring that tikanga (traditional Māori practice) was followed.[68] In May 2002, the parties signed a formal memorandum. They agreed to build a working partnership for conservation outcomes at Mount Bruce and to 'develop a unique eco tourism product to be known as "Pukaha"'.[69]

The first practical expression of the partnership was a forest restoration project, initiated in May 2001 to restore the wider Pūkaha Mount Bruce bush area and to return

locally extinct bird species to the wild there. A Task Force Green work scheme under Work and Income New Zealand enabled the project to take on unemployed workers from Rangitāne and other iwi to make 100 kilometres of track and to lay bait as part of a pest-control programme. Many of the participants acquired transferable work skills and qualifications through their involvement.[70] The forest restoration project has been a success. Kākā, kiwi, and kōkako were returned to the bush and are re-established and breeding, and the work scheme continues. According to Derrick Field, DOC intends to expand the variety of jobs available in the future to cover other conservation areas, such as interpretative guide work. Although the project as a whole is underwritten by DOC, approximately half the cost is covered by community fundraising initiatives such as Rangitāne's compact disc of birdsong, *Pūkaha Songs of the Forest*, which won an 'Innovation in Conservation' award in 2002.[71]

The name of the National Wildlife Centre has informally changed from Mount Bruce to Pūkaha Mount Bruce. The new name appears on some signage and brochures and on the DOC and National Wildlife Centre websites. Field told us that the purpose of the name change was to establish a unique brand that identifies the Māori interest in the area.[72] Similarly, according to the National Wildlife Centre:

> Pukaha is the original name for the area, and using it conveys the wider scope of what we do here now. It also recognizes the strong iwi connection with Pukaha and the work undertaken here. The National Wildlife Centre still exists and is the area where the captive breeding and visitor facilities are provided next to State Highway 2.[73]

(2) *Has the partnership stalled?*

By many measures, the three-way partnership at Pūkaha Mount Bruce has been a success. But the claimants told us that, from Rangitāne's viewpoint, the relationship had stalled. Rangitāne witness Mike Grace told us that, in its current form, the memorandum of understanding constrained Rangitāne's involvement at Pūkaha Mount Bruce, especially in terms of their wish to develop an ecological–cultural tourism business there:

> while the MOU accurately represents Rangitāne's aspirations there are as yet no structural mechanisms or agreements that might actively support these developments or protect Rangitāne o Wairarapa investment. All proposed activities on DOC estate are required to apply to DOC for a concession and neither Rangitāne o Wairarapa nor NWCT has any special status in this regard.
>
> Further, I believe that there is an inherent tension in the mix of outcomes sought by the three parties in the MOU. The Pūkaha Restoration has an overriding ecological goal and yet Rangitāne o Wairarapa are clearly seeking to benefit their people directly, in a cultural, spiritual and material sense through their engagement in the Restoration Project. . . . While the three parties agree very well on the central ecological purpose of the MOU, Rangitāne o Wairarapa's intention to derive economic benefit for their people from Pūkaha has yet to be acknowledged, addressed or developed in any structural way.[74]

According to Grace, Rangitāne's engagement in Pūkaha at present tends to be 'entirely responsive', with kaumātua often called upon to do such things as host visitors and receive and release birds. Crucially, such 'cultural attendances' do not provide any income for the iwi.[75]

Rangitāne o Wairarapa presented us with a clearly articulated vision for how the Pūkaha Mount Bruce partnership should develop. They seek a greater decision-making role in the management of Pūkaha Mount Bruce and the ability to generate financial revenue for the iwi from their taonga. They want to develop a profitable, sustainable ecological-cultural tourism business. Guides conversant in te reo, Rangitāne history, tikanga, (traditional rules and practices) and Māori ecology would provide a fuller experience

for visitors. Jim Rimene emphasised the importance of the cultural dimension:

> What is missing from Pūkaha is the 'Māori wairua' in terms of its management and day to day operation. Tourists should in conjunction with the technical side of bird rearing and restoration hear the kōrero about the Rangitāne view of the ngāhere and its taonga. Whilst we have a relationship with DOC, it does not equate to true management which will allow us to ensure a tuturu Rangitāne wairua is present at Pūkaha. Return of that taonga to the ownership and management of Rangitāne together with DOC would be a dream come true for me.[76]

Mike Grace, drawing on his experience working for both DOC and Rangitāne, and his present position as a member of the National Wildlife Centre Trust, said he thinks that Pūkaha Mount Bruce does have the potential to become a viable ecological–cultural tourism venture. If developed along similar lines to Kaikōura Whale Watch and Kapiti Alive, it could:

- build the capacity of Rangitāne people as business or project managers and ecological tourism providers, and enable them to establish connections with the tourism industry;
- generate training and employment opportunities and income for Wairarapa Māori;
- promote understanding and knowledge of Wairarapa's ecology and the relationship between Māori and Te Waonui ā Tane (the natural world) to the people of New Zealand; and
- facilitate the retention of te reo and tikanga Māori by the next generation of Rangitāne.[77]

Another concern mentioned by witnesses for Rangitāne was the ownership of Pūkaha Mount Bruce. In the short term, the key focus for the claimants is the development of an eco-tourism project, but they also have longer-term aspirations to own a share of Pūkaha Mount Bruce. For Jim Rimene, it would be 'a dream come true'.[78] Mike Grace said he believed that 50:50 iwi–Crown ownership of Pūkaha Mount Bruce could work in practice.[79]

(3) *Will DOC support what Rangitāne want?*

Where does DOC stand? Certainly, the department appeared to recognise the importance of Rangitāne's current role in the Pūkaha partnership, and the interconnectedness of cultural and ecological imperatives. Derrick Field summarised how DOC sees the aims of the forest restoration project like this:

- the development of a working relationship between the department, the National Wildlife Centre Trust, and Rangitāne;
- the restoration of forest and wildlife, including kiwi, kōkako, kākā, and other threatened species;
- the retention of tikanga Māori, and renewed mauri and mana, within Rangitāne;
- the appreciation of tikanga Māori by visitors to Pūkaha Mount Bruce;
- the creation of employment and the development of skills among Rangitāne in conservation, tourism, and Te Ao Māori (the Māori world); and
- the development of Pūkaha Mount Bruce as a tourism and conservation education showcase, where tikanga Māori and conservation are demonstrated.[80]

Mike Grace was unsure whether DOC and the National Wildlife Centre would really commit to a vision for Pūkaha Mount Bruce that inextricably linked the wellbeing of tangata whenua with the wellbeing of the environment.[81] DOC controls almost all resources relating to Pūkaha Mount Bruce and the operation of the visitor centre.[82] In order for Rangitāne to embark on the kind of ecological-cultural tourism venture they aspire to, DOC would have to be completely on board. Whether that will happen, Grace said, 'must be tested'.[83]

Grace also identified the need for Rangitāne to build capacity to properly participate in any joint management arrangement. This might involve specialist training in environmental management and tourism to build a bigger

team who can meet the demands of full participation in decision-making and planning processes.[84]

(4) *Where to now?*

Rangitāne o Wairarapa told us what they believe is needed for the project to move forward:

- the informal name change to Pūkaha Mount Bruce must be formalised;
- the ecological tourism project should be developed to the point that Rangitāne derive income and an income stream from it; and
- a joint management plan should be developed for Pūkaha Mount Bruce between Rangitāne and DOC.[85]

DOC's views on these objectives are not entirely clear, as intimated by Mike Grace. The department and Rangitāne are aligned in many ways, but on the issue of greater Rangitāne involvement in Pūkaha Mount Bruce, DOC had not reached a firm position at the time of our hearings. Derrick Field acknowledged that Rangitāne hoped to generate financial revenue from Pūkaha Mount Bruce, and stated that he saw Rangitāne's desire to establish a cultural tourism project as complementary to the department's objectives for the area. He could not say, however, what role Rangitāne would play in such an enterprise, or how it might operate. DOC seemed open to a range of options.[86]

We also heard that DOC believed the respective roles of the Pūkaha partners needed clarification. A consultant had been engaged to review the Pūkaha relationship and to develop a new memorandum of understanding. Part of that consultant's brief was to prepare a long-term sustainability plan, taking into account the objectives of all partners, and to advise Rangitāne on developing a tourism enterprise.[87] Derrick Field also had 'no doubt' that the name change would be formalised in the future.[88]

Hopefully, then, differences in the views of Rangitāne and DOC will turn out to be differences of emphasis only. Rangitāne are more concerned with capacity building and developing a profitable ecological tourism venture, whereas DOC's primary concerns are ecological. Rangitāne are explicit in their desire to manage a tourist operation themselves. Derrick Field, while agreeing that creating employment opportunities for Rangitāne and developing a tourism 'showcase' are important outcomes of the Pūkaha restoration project, did not go so far as to support Rangitāne managing such an operation.

Perhaps the partnership at Pūkaha Mount Bruce has reached the end of one phase, and is yet to enter the next. The ability of Rangitāne to develop a profitable, sustainable eco-tourism enterprise that benefits local Māori will be crucial in determining how the next phase unfolds. For Rangitāne to manage, and have a significant ownership interest in, a tourism operation on conservation land at Pūkaha Mount Bruce would be consistent with section 4 of the Conservation Act, and the relationship of partnership envisaged there. In a situation that was in some respects analogous, the Te Arawa geothermal resource Tribunal emphasised in 1993 the Treaty right of Māori to develop resources: 'the claimants' interest in the resource is not confined by traditional or pre-Treaty technology or needs, but in appropriate cases includes the development of the resource for economic benefit and by modern technology'.[89]

In another analogous set of circumstances, the Court of Appeal observed in 1995 that commercial whale watching was a very recent enterprise 'founded on the modern tourist trade and distinct from anything envisaged in or any rights exercised before the treaty'. Nevertheless, 'a right of development of indigenous rights is indeed coming to be recognised in international jurisprudence'. The court found that even though a commercial whale-watching venture was not a taonga as contemplated by the Treaty, 'a reasonable treaty partner would recognise that treaty principles were relevant'. Thus, the court said, when DOC was issuing permits for commercial whale watching within the rohe of Ngāi Tahu, 'a residual factor of weight must be the treaty duty to recognise the special interests that Ngāi Tahu had developed in the use of these coastal waters'. The court ruled that the Director-General of Conservation 'should

take into account, among the factors relevant to whether or not he should grant any further permit for commercial whale-watching off the Kaikōura coast, protection of the interests of Ngāi Tahu in accordance with Treaty of Waitangi principles'.[90]

We consider that these observations are relevant to the situation in which Rangitāne and DOC find themselves today. Rangitāne's relationship with the forest remnant of Te Taperenui o Whātonga (Seventy Mile Bush) at Pūkaha Mount Bruce is analogous with Ngāi Tahu's relationship with the coastal waters. Treaty considerations are relevant to any decision-making about supporting a commercial joint venture with Rangitāne. We support Rangitāne's aspirations to develop an ecological-cultural tourism enterprise at Pūkaha Mount Bruce, and also their desire to formalise the Pūkaha Mount Bruce brand and to develop a joint management plan with DOC.[91] We are confident that Rangitāne and DOC are more than capable, over time, of working together to overcome the inevitable hurdles they will face to making these dreams a reality.

12c.5 Conclusion

12c.5.1 The law

The law requires that DOC interprets and administers its Act so as to give effect to the principles of the Treaty.[92] These are strong words. Whereas others are required to 'have regard to' or 'take into account' the Treaty principles in exercising their functions, DOC must give effect to them.

The Waitangi Tribunal is not a court: it is not our job to ascertain whether DOC is complying with the requirements of section 4 of its Act. Our job is to inquire into claims that the Crown has breached the principles of the Treaty. From our point of view, the fact that section 4 was enacted is a mark on the positive side of the ledger for the Crown. The effect of section 4 is to oblige DOC to exercise its functions in a way that arguably makes Treaty principles law. This gives the Treaty principles higher status in conservation of the natural world than is usually seen in legislative schemes in New Zealand.

12c.5.2 Genuine progress

That the Act does not specify how DOC must fulfil its Treaty duty is said to be a diluent: DOC can too easily sneak out from under. This may be so, but in this district we saw that DOC is making genuine efforts to change the way it conducts the business of conservation. Producing a plethora of documents stating the intention to comply with the principles of the Treaty is not, of course, tantamount to achieving this goal. However, perhaps the documents have set the scene for the kinds of on-the-ground co-operation we saw in the Wairarapa Moana wetlands project, and at Pūkaha Mount Bruce. These joint initiatives, we believe, are the signs of real change. They give substance to the Crown submission that the department is moving towards creating partnerships with Māori.[93]

12c.5.3 Problems remain

We heard from claimant witnesses that although progress is acknowledged, significant problems remain from the point of view of tangata whenua.

In our estimation, the chief issues that have yet to be satisfactorily addressed are these:

(1) *Resources and training*

Simply, iwi have too few to enable them to engage with the department as they would wish. They need to be paid for their engagement with DOC on the many issues affecting them, and they need financial and other assistance to upskill so that more tangata whenua can contribute effectively.

Members of our Tribunal were attracted to the idea of a DOC cadet scheme for the rangatahi of Wairarapa ki Tāmaki-nui-ā-Rua Māori. This would enable tangata whenua and DOC together to 'grow' young Māori of the

district with expertise in both Māori and Pākehā conservation perspectives and techniques. Such a scheme might appeal not only to the young: there is no age limit on acquiring knowledge and skill.

It seems to us that genuine dialogue is required between DOC and tangata whenua about how these twin issues of resources and training can best be addressed.

(2) *Cultural-commercial enterprises on conservation land*

Cooperation and dialogue is also required in order to develop better understanding about Māori cultural-commercial enterprises on conservation land. It is not clear at all in what circumstances these kinds of ventures would be contemplated by DOC. From what we could see, proposals are dealt with on an ad hoc basis. This was probably why the DOC witnesses did not crystallise what the issues are for DOC. We think there needs to be more openness and clarity about this, together with a preparedness to work through the issues to reach a position where cultural-commercial Māori enterprises can proceed down a defined path in appropriate cases.

The place where this issue has come into focus is at Pūkaha Mount Bruce. Claimants told us that, in their eyes, the partnership there has 'stalled' because they want to develop a cultural-commercial enterprise there, and to move towards joint management and joint ownership. DOC is not yet on board with these aspirations. No doubt it has its reasons but, as mentioned above, they are not being openly discussed. A proper forum for this discussion is needed (see our recommendation below about the establishment of a joint working group).

(3) *Devolution of power to iwi*

DOC has been resistant to yielding up real decision-making to iwi in any area. Partnership – which entails the joint exercise of power – is a good model for the relationship between DOC and iwi. But joint exercise of power should default to iwi control in some situations. The management and control of wāhi tapu is an obvious example.

This topic too needs to be fully debated. DOC will inevitably balk at the prospect of yielding up authority, but thorough ventilation of the issues should reveal that, in the right circumstances, there is really nothing to fear and much to gain. For instance, reference is often made to the reluctance of tangata whenua to give up traditional information about wāhi tapu. We think they are likely to be much more forthcoming when they are themselves making the decisions about management and control of wāhi tapu on conservation land.

(4) *The vulnerability of local arrangements to personnel changes*

It certainly was our impression that many of the best outcomes for Māori had arisen from the coincidence of particular personalities and individual inclinations in a certain place and time. Perhaps this will always be so, because that is how life works. But the Treaty principles require DOC to ensure that good relationships with, and good decisions affecting, Māori are fully integrated in the administration of the department at every level. Only then can they predictably and routinely give effect to the Treaty principles in all their work. And only then can tangata whenua be confident that advances, when they are made, are entrenched and permanent – and not dependent on key individuals remaining in their posts.

(5) *Genuine partnership*

Cultural change takes time, and cultural change is what is required for DOC to meet the partnership expectation inherent in section 4. We were satisfied that the change is underway, but with different levels of commitment to it within the department.

We think that DOC must continue to reach out to the tangata whenua, and seek and promote opportunities for co-operation, joint management, and joint ventures. If the right kinds of relationships are established, the possibilities for cross-fertilisation of ideas and perspectives, techniques and beliefs, are legion. There needs to be recognition of the contributions to be made on each side: on the Māori side, tradition, experience, spirituality, passion and

commitment; on the Pākehā side, science, technology, analysis and commitment. Marriage of all these elements could give rise to a marvellous and enduring partnership. Genuine desire, openness and out-reaching is required to make it a reality.

12c.6 Recommendations

We agree with counsel for Ngā Hapū Karanga that what is needed is something like a joint working group, comprising representatives from iwi and DOC, to review the department's activities and current relationships within the region and to identify opportunities for joint decision-making and funding for Māori programmes, especially in the training area.[94]

We noted earlier the force of the legislative requirement on DOC to give effect to the Treaty. It seems to us that, to achieve this, there must be Māori staff working at the highest level in DOC's head office, ensuring that the law is implemented from a Māori perspective. We understand that some of this work is underway.

With respect to Pūkaha Mount Bruce, we think that joint management and joint ownership would be the ultimate expression of partnership between the Crown and Rangitāne. We would regard the return of part ownership of the reserve as fitting cultural redress for Rangitāne.

Notes

1. Document G2 (Flavell), p 6, fig 2. A map provided by DOC community relations manager Jeff Flavell showed that the southern two-thirds of our inquiry district falls within the department's Wairarapa area (part of the Wellington conservancy), which is administered from Masterton, while the northern third falls within the Hawke's Bay area (part of the East Coast Hawke's Bay conservancy), administered from Napier.
2. Robert McClean and Trecia Smith, *The Crown and Flora and Fauna: Legislation, Policies, and Practices, 1983–98* (Wellington: Waitangi Tribunal, 2001), p 361
3. Ibid, p 362
4. Ibid
5. Department of Conservation, 'Relationship between Conservation Act and other Acts Administered by the Department', internal memorandum, ACT 0005, 1998; McClean and Smith, *The Crown and Flora and Fauna*, p 373
6. Department of Conservation, *Greenprint: Conservation in New Zealand – A Strategic Overview*, 2 vols (Wellington: Department of Conservation, 1996), vol 1, p 3
7. Ibid, p 19; McClean and Smith, *The Crown and Flora and Fauna*, p 369
8. McLean and Smith, *The Crown and Flora and Fauna*, p 369
9. Ibid, pp 370–371
10. Department of Conservation, *Wellington Conservancy: Conservation Management Strategy for Wellington, 1996–2005*, 2 vols, Wellington Conservancy Conservation Management Planning Series no 2 (Wellington: Department of Conservation, 1996), vol 1, pp 135–136 (doc G2, attachment)
11. McLean and Smith, *The Crown and Flora and Fauna*, pp 370, 406–415
12. Te Puni Kōkiri, *Review of the Department of Conservation: Service Delivery to Maori* (Wellington: Te Puni Kōkiri, 1998); McLean and Smith, *The Crown and Flora and Fauna*, pp 371–372
13. McLean and Smith, *The Crown and Flora and Fauna*, p 483
14. Ibid, p 485
15. Department of Conservation, 'Structure', Department of Conservation, http://www.doc.govt.nz/about-doc/structure (accessed 3 July 2009)
16. Document G2 (Flavell), p 21
17. Ibid, pp 21–22; doc G3 (Field), p 5
18. Document I17(b) (Crown counsel), p 62
19. Document G2 (Flavell), pp 19–20; Department of Conservation, *Wellington Conservancy*, vol 1, p 95
20. Document G2 (Flavell), p 20
21. Document I17(b) (Crown counsel), pp 62
22. Derrick Field, response to cross-examination by Grant Powell, eighth hearing, Pāpāwai Marae, Greytown, 20–23 December 2004 (doc H16, p 4)
23. Document G2 (Flavell), p 17
24. Document G3 (Field), pp 15–16. There are some issues that have arisen in relation to the use of these devices as protective measures, such as the parking and operation of boats within marine reserves: ibid, p 4. See also document A25 (Marr), pp 154–155, for a discussion on the problems of taiāpure.
25. Document G3 (Field), p 6
26. Document G2 (Flavell), p 20
27. Ibid, pp 15–16
28. Ibid, p 16
29. Document G3 (Field), p 5
30. Ibid, p 4
31. Ibid, p 5
32. Ibid
33. Document E16 (Stephenson), p 10

34. Derrick Field, response to cross-examination by Grant Powell, eighth hearing, Pāpāwai Marae, Greytown, 20–23 December 2004 (doc H16, p 5)
35. Document G3 (Field), p 6
36. Conservation Act 1987, ss 170–17Z
37. Document G2 (Flavell) p 14
38. See, for example, Jacinta Ruru's findings in her article 'Managing our Treasured Home: The Conservation Estate and the Principles of the Treaty of Waitangi', *New Zealand Journal of Environmental Law*, vol 8 (2004), pp 243–266.
39. Department of Conservation, *Statement of Intent, 2004–2007* (Wellington: Department of Conservation, 2004), p 37 (doc G2, attachment)
40. As required under section 8 of the Resource Management Act 1991. New Zealand coastal policy statements are incorporated into the law through sections 56 to 58 of the Resource Management Act 1991. The New Zealand coastal policy statement goes further in that it requires anybody exercising powers and functions under the Resource Management Act 1991 in regards to the coastal environment not only to take into account the principles of the Treaty of Waitangi but also to conduct ongoing and meaningful consultation with the tangata whenua. Relevant iwi planning documents must also be taken into account, as well as the incorporation of Māori customary knowledge in policy statements and plans and in the consideration of resource consents.
41. Department of Conservation, 'Waahi Tapu Policy Guidelines – Draft Policy', in *Nga Akiakitanga Nuka Kaupapa Maori a Te Papa Atawhai: Kaupapa Maori Strategic Policy Initiatives* (Wellington: Department of Conservation, 2001) (doc G2, attachment)
42. Department of Conservation, *Wellington Conservancy*. Under section 17F of the Conservation Act 1987, DOC must prepare a draft conservation management strategy for each conservancy area, in consultation with the relevant conservation board and any other people or groups that the department considers appropriate. Local, regional, and iwi authorities in the area are notified of the draft, and submissions from these groups and the public are invited. A revised draft is sent for final approval by the Conservation Authority.
43. A similar management strategy for those parts of Wairarapa ki Tarararu that come under DOC's Hawke's Bay conservancy was due to enter the review phase in December 2004, although Jeffrey Flavell noted that work might be delayed due to internal departmental restructuring: doc G2 (Flavell), p 13; doc H15 (Flavell), pp 4–5.
44. Document I17(b) (Crown counsel), pp 53–168
45. Derrick Field, responses to cross-examination by Grant Powell, eighth hearing, Pāpāwai Marae, Greytown, 20–23 December 2004 (doc H16, p 3)
46. Ibid, p 6
47. Ibid
48. Document I2 (counsel for Ngā Hapū Karanga), pp 34–35
49. Department of Conservation, *Wellington Conservancy*, vol 1, pp 29–30
50. Sally Airey, Rachel Puentener, and Aalbert Rebergen, *Lake Wairarapa Wetlands Action Plan, 2000–2010* (Wellington: Department of Conservation, 2000), p 5 (doc G3, attachment)
51. Ibid
52. Document G3 (Field), p 8
53. Airey, Puentener, and Rebergen, *Lake Wairarapa Wetlands Action Plan, 2000–2010*, pp 27–31
54. Ibid, p 44
55. Ibid, p 65
56. Document G3 (Field), pp 9–10
57. Ibid, p 9
58. Document I2 (counsel for Ngā Hapū Karanga), pp 34–35
59. Document H15 (Flavell), p 5
60. Document I2 (counsel for Ngā Hapū Karanga), p 35
61. Document F5 (Burge), p 8
62. Document F7 (Grace), p 14
63. Document H15 (Flavell), p 7
64. National Wildlife Centre Trust, 'History of the National Wildlife Centre', Pukaha Mount Bruce, http://www.mtbruce.org.nz/nwc_history.htm (accessed 17 February 2006; page now discontinued); Gareth Winter, 'Elwyn Owen Arnold Welch', *Dictionary of New Zealand Biography*, pp
65. Document F7 (Grace), p 5
66. Document F1 (Rimene), p 33
67. Document F7 (Grace), p 7
68. Ibid
69. Department of Conservation and Rangitāne o Wairarapa Incorporated, *The Restoration of Mount Bruce Forest – An Opportunity for Partnership* (Masterton: Department of Conservation, undated) (doc G3, attachment)
70. Document F7 (Grace), p 8
71. Document F25; Document F7 (Grace), p 9
72. Document G3(Field), p 12
73. National Wildlife Centre Trust, 'Frequently Asked Questions', Pukaha Mount Bruce, http://www.mtbruce.org.nz/faq.htm (accessed 20 February 2006; page now discontinued)
74. Document F7 (Grace), pp 10–11
75. Ibid, p 14
76. Document F1 (Rimene), p 33
77. Document F7 (Grace), pp 12–13
78. Document F1 (Rimene), p 33
79. Mike Grace, response to questioning, sixth hearing, Te Oreore Marae, Masterton, 21 September 2004
80. Document G3 (Field), pp 12–13
81. Document F7 (Grace), p 10
82. Ibid, p 14
83. Ibid, pp 14–15
84. Ibid, p 16
85. Document I8, p 161

86. Derrick Field, response to cross-examination by Stephen Clarke, eighth hearing, Pāpāwai Marae, Greytown, 20–23 December 2004 (doc H16, p 12)
87. Document G3 (Field), p 14
88. Derrick Field, response to cross-examination by Stephen Clarke, eighth hearing, Pāpāwai Marae, Greytown, 20–23 December 2004 (doc H16, p 10)
89. Waitangi Tribunal, *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims 1993* (Wellington: Brooker and Friend Ltd, 1993), p 34
90. *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 (CA)
91. Document I8, p 161
92. Conservation Act 1987, s 4
93. Document I17(b) (Crown counsel), pp 62–63
94. Document I2 (counsel for Ngā Hapū Karanga), p 35

Sidebars

Page 929: 'Community Involvement in Conservation'. Sources: doc G2 (Flavell), p 8; doc E16 (Stephenson), p 11; Conservation Act 1987, ss 6B, 6M, 6P.

Page 937: 'Ngā Whakamaramatanga o te Moana/Voices from the Coast'. Source: doc G3 (Field), p 16.

Page 933: 'The Ōkautete Native Bush Reserve'. Sources: doc G3 (Field), p 3; Department of Conservation, 'Nga Whenua Rahui', Department of Conservation, http://www.doc.govt.nz/getting-involved/volunteer-join-or-start-a-project/start-or-fund-a-project/funding/for-landowners/nga-whenua-rahui/nga-whenua-rahui-fund (accessed March 2010)

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CHAPTER 12D

MĀORI HERITAGE MANAGEMENT

12D.1 Introduction

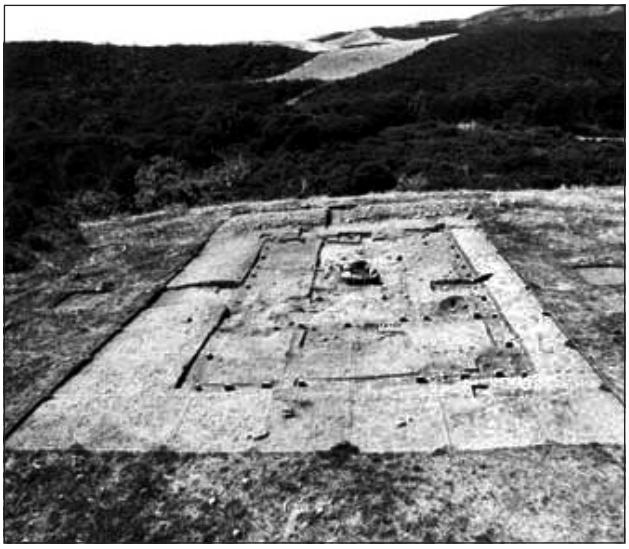
The Wairarapa ki Tararua district is full of places and objects that have special significance for Māori. They include urupā (burial sites), pā (fortifications), tauranga waka (canoe-launching places), pou (ritually carved poles), battle sites, kāinga taniwha (places where other-worldly beings lived), rākau whenua (particular groves of trees), māra kūmara (kūmara cultivations), and kāinga (villages). These places are enduring physical manifestations of nearly every aspect of traditional Māori life.

The south Wairarapa coastline is archaeologically important. This Tribunal learned that humans inhabited the Palliser Bay coast earlier than almost anywhere in New Zealand, and it is home to sites of national and international significance. It has been the subject of numerous archaeological investigations, including extensive excavations carried out between 1969 and 1973 as part of an Otago University project. Researchers excavated stone walls, garden plots, kōiwi (human remains), kāinga (villages), middens, rubbish dumps, fortified pā, house platforms, and food-storage pits.

Māori oral tradition articulates centuries of intimate connection between tāngata and whenua. Heritage sites provide tangible evidence of a people's deep knowledge of local resources and climate – knowledge that allowed them, in numerous simple but effective ways, to extract all they could from the environment without damaging it. The still-discernible traces of where and how tūpuna lived are a vivid link with the lives they led so long ago.

Today, though, the district's heritage sites are at considerable risk of degradation and, in some cases, destruction. This has not always been the case. Until comparatively recently, southern Wairarapa was a rural backwater. The small local population and the relatively few visitors meant that the environment – and the cultural sites within it – remained fairly undisturbed. Now, however, the dramatic coastline is luring property developers, and coastal archaeological sites are under threat from subdivision and related development. Much damage has already been done.

In this chapter, we want to emphasise why it is so important to secure better protection for Māori heritage sites in Wairarapa ki Tararua. In section 12D.2, we identify the shortcomings of the present statutory regime for heritage protection and management and then, in section 12D.3, we outline steps to improve it. More detail is provided in chapter 15.



Excavations undertaken at Ōmoekau

12D.2 WHY BETTER PROTECTION IS NEEDED FOR MĀORI HERITAGE SITES

We are not the first to identify problems with the regime for protecting Māori heritage sites. Others have articulated many of the same criticisms and suggestions over the last decade, but as far as we can see, there has been no material change.

Three key reasons underpin our call for a better protection regime for Māori heritage sites.

12D.2.1 The importance of Māori heritage sites to tangata whenua

We recognise the great importance of physical heritage to the claimants. They sent us a clear message that:

- Management of wāhi tapu is part of the customary role of kaitiaki (caretakers).
- Physical heritage reminds them of who and what they were in pre-contact times, providing clues to the lives and times of their tīpuna. It also provides tangible evidence of Māori occupation over many, many centuries in a district where visibility of Māori is now marginal. In both these senses, claimants said that preserving the physical aspects of Māori heritage acts to strengthen the identity of Māori in Wairarapa ki Tararua today.
- Specific wāhi are tapu because of significant events that occurred there, or because of associations with particular tūpuna.
- More broadly, claimants believe that the protection and appreciation of Māori heritage sites will help ensure that the Māori side of New Zealand history remains important in the public mind.

In a sense, the vision that claimants have for Māori heritage protection is very simple. They want a statutory regime capable of ensuring that:

- physical aspects of Māori heritage in Wairarapa ki Tararua are not destroyed or damaged; and
- wherever possible, Māori sites of significance are in Māori ownership, or under some kind of Māori control.

12D.2.2 The importance of Māori heritage sites to everybody

Improving the way Māori heritage sites are protected is not something to be done for Māori alone. The heritage of New Zealand's indigenous people exists only here; it is unique to this place, and is a precious part of the story of our land – a taonga for us all. Sadly, however, the marks on the land that tell the story are not indelible. We must look after them. Their maintenance and protection is an imperative not only for Māori but for all New Zealanders. Once the remains of the past are lost, they are gone forever, and we are all the poorer for that loss.

12D.2.3 Recognising Treaty rights and balancing them with other rights

Because many Māori heritage sites are located on land now owned by others (particularly so in this inquiry district),

Some Definitions

Section 2 of the Historic Places Act 1993 defines 'wahi tapu' as a place sacred to Māori in the traditional, spiritual, religious, ritual, or mythological sense. A 'wahi tapu area' is defined as an area of land containing one or more wāhi tapu.

However, archaeologist Dr Janet Davidson told the Tribunal that understandings of wāhi tapu vary widely between regions, iwi, and hapū. Wāhi tapu may be tangible or intangible. She said that the Historic Places Trust Maori Heritage Council prefers to register as 'wahi tapu' those places where people and remains (or placenta) were buried, baptismal rites were performed, battles were fought, or water was sourced for healing and death rites. Pā and kāinga (fortified villages and settlements), on the other hand, are more appropriately registered as 'historic places'. Davidson said that the Resource Management Act 1991 provides for tangata whenua to make their own definitions and assessments of significant places.

there is a delicate balancing exercise to be undertaken between Māori Treaty rights, and others' property rights.

(1) *Treaty rights*

The Treaty explicitly guarantees to Māori the full expression of rangatiratanga over wāhi tapu, because wāhi tapu are 'taonga' or 'treasures'. Sir Hugh Kawharu's translation of the Māori version of article 2 of the Treaty reads:

> The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures.

Sir Hugh translates 'taonga' as 'treasures', but he says that 'taonga' refers to 'all dimensions of a tribal group's estate, material and non material heirlooms and tapu (sacred places), ancestral lore and whakapapa (genealogies), etc'.

(2) *Heritage sites on Māori land*

Once, Māori had both possession of and control over the land their tūpuna occupied, enabling them to protect wāhi tapu. Where Māori still own the land and the wāhi tapu located on it, the Crown's role is to support rangatiratanga, as the Te Roroa Tribunal found in 1991:

> Wahi tapu are taonga of Maori, acknowledged as such in article 2 of the Treaty. The role of the department [of Conservation] and Historic Places Trust in the 'partnership' is not a decision making role or being 'included' in what is not theirs. Rather, it is to assist Te Roroa by the provision of services and advice when they are sought, to enable them to protect and care for the wahi tapu.[1]

(3) *Heritage sites on Crown land*

Where wāhi tapu are located on land owned by the Crown, the Crown's Treaty duty is untrammelled by the countervailing property rights of other citizens. The Treaty guarantee of rangatiratanga over taonga can be amply fulfilled in this situation. How the guarantee should be honoured will depend on the circumstances and is for the Crown and tangata whenua to work out together.

(4) *Heritage sites on land owned by local authorities*

The same reasoning applies to heritage sites on land owned by local authorities as to others where the Crown has delegated powers and responsibilities to local authorities. The Crown's Treaty duty in respect of taonga is not explicitly delegated to local authorities, but it should be. It is not Treaty-compliant for the Crown to abandon its Treaty responsibilities by handing roles to others without passing on the Treaty obligations that attach to them.

It follows that we see a significant role for the Crown in supporting local authorities and tangata whenua to operate

Charmaine Kawana giving evidence at the Tribunal's hearing at Pāpāwai, May and June 2004. She told us about urupā and other wāhi tapu at Taueru, many of which have been lost to the tangata whenua through destruction or desecration following land sales or through the removal of access. She described damage to the urupā on the Taumataraia B block through lime extraction and stock grazing. The urupā boundary is no longer visible, but the rākau whenua (the tree under which placenta are buried) remains. Some graves have been reinterred elsewhere as a result of the damage to the urupā.

a workable protection regime for heritage sites located on local authority land.

(5) *Heritage sites on land owned by others*

When Māori heritage sites are on private land rather than on land that is owned by the Crown or Māori, the situation is more complex in Treaty terms. This is largely the case in Wairarapa ki Tararua, where very little land remains in Māori hands. Many wāhi tapu are on privately owned land, while others are on small Māori-owned blocks now landlocked by privately owned farms.

These circumstances create the potential for wāhi tapu to be damaged, and the claimants told us about too many such incidents.

Too often, when wāhi tapu were on land legally owned by people other than those traditionally connected with the sacred site, the activities of the landowner were regarded as effectively beyond the reach of either the former Māori owners or the authorities. Authorities did not want to, or thought they could not, interfere. There was little or no focus on what the Treaty guarantee of 'taonga' meant in practical terms.

Today, however, balancing Treaty and other rights is the name of the game: neither Māori Treaty rights nor landowners' property rights can be ignored or overridden. It is in the interests of all New Zealanders for the remaining physical sites that bear testament to the long occupation of the Māori people to be looked after and protected, even where they are located on private land. Ways and means must be found to achieve equilibrium between the Crown's duty to tangata whenua to protect their taonga and the property rights of other citizens.

As a society, we have traditionally accorded great weight to the rights of landowners; we have been reluctant to limit their right to use and develop their land for any reason, although environmental concerns are now usually accepted as a legitimate basis for interfering with private property rights. This is because everybody is potentially

affected by environmental decisions private landowners make – for instance, when they decide to change water flows or cut down trees.

We think that the same kind of reasoning applies to heritage sites. We all have an interest in protecting them, because when they are lost or destroyed, part of our country's past is wiped out. When sites are located on private land, the landowner should be regarded as a custodian for the whole society. His or her choices about how to use and manage the land should be limited accordingly, and the people ancestrally connected with the site in question should have special rights. This is good policy in every sense, not only in relation to the Treaty.

12d.3 Shortcomings of the Current Regime for Managing and Protecting Māori Heritage Sites

From the evidence of claimants about ongoing damage to heritage sites, supported by the expert analysis of Dr Janet Davidson, it is clear to us that the present legislative regime fails to work in the interests of Māori. It does not, and cannot, guarantee to Māori the protection of their taonga that was envisaged in the Treaty.

In this chapter, we list what we consider to be the claimants' nine primary criticisms of the heritage management regime. We describe the regime and how it works in the context of addressing each criticism in turn.

We note parenthetically that many of the problems the claimants' witnesses point out have been identified elsewhere. In particular, the 1996 report of the Parliamentary Commissioner for the Environment, the 1998 ministerial report by archaeologist and Historic Places Trust board member Dr Harry Allen, and the report by Historic Places Trust analyst David Derby in 1999 all traverse similar ground.[2] However, their work is no longer recent, and unfortunately the problems they identified have not been fixed. We have no hesitation in embarking on our own inquiry with the particular emphasis dictated by the Tribunal's jurisdiction. As explained at the outset, this Tribunal is particularly concerned about Māori heritage in Wairarapa ki Tararua, and it brings real emphasis to this part of its inquiry.

The claimants' nine main criticisms are that:

- the protective mechanisms in the Historic Places Act 1993 (HPA) are ineffective;
- the Māori Heritage Council is insufficiently resourced to carry out its functions;
- Māori heritage sites are under-registered by the Historic Places Trust;
- local authorities fail to include registered sites in district plans;
- local authorities fail to use provisions in the Resource Management Act 1991 (RMA) for the transfer of powers and joint-management agreements;
- the resource consent process fails to protect Māori heritage values;
- there is a lack of coordination between various Government agencies and between these agencies and Māori;
- there is a lack of public awareness about Māori heritage issues; and
- protection for portable taonga is inadequate.

Before embarking on our consideration of the criticisms, we pause to describe briefly the legislative regime for heritage management.

12d.3.1 Overview of the legislative scheme

The current statutory regime to protect Māori heritage is centred on the HPA and the RMA. The former governs the Historic Places Trust, a Crown entity responsible for the protection and conservation of heritage sites. The trust identifies, researches, and assesses historic sites and also maintains the historic places register.[3]

However, the HPA is not self-contained. It interacts with the RMA to bring site protection into the legislative scheme for resource management, thus enabling historic sites to be protected by including them in territorial authorities' planning documents.

Section 22 of the HPA requires the Historic Places Trust to maintain a register of four kinds of heritage sites: historic places, historic areas, wāhi tapu, and wāhi tapu areas. But listing on the register does not ensure protection; it may confer only acknowledgement of a site's importance. The trust has the legislative power to protect archaeological sites, but other historic sites are protected by means of heritage orders and heritage covenants, which the trust can obtain only where others cooperate (see below).

It is fair to say that the legislative scheme is difficult to follow. The rule of law requires clear, easily accessible enactments or other sources of law. These characteristics are wholly absent from heritage management law. Even the most enthusiastic protector of Māori heritage sites would be hard-pressed to make sense of the scheme as enacted. In the case of heritage orders, for instance, cross-references between and within the Acts are numerous and confusing, and language is used in a specialised and obfuscatory way. For instance, the legislation gives phrases like 'heritage protection authority', 'requirement for a heritage order', and 'requiring authority' particular meanings that make the provisions obscure. Likewise, the intermingling of provisions for 'requiring' a designation for a public work with those for 'requiring' a heritage order is unclear. A single, simple, clear source of law to regulate this area is sorely needed. Our call is for plain English.

12D.3.2 How effective are the protective mechanisms in the HPA?

The HPA provides for three protection mechanisms: heritage orders, heritage covenants, and protection for archaeological sites.[4] The claimants say that these are ineffective in protecting Maori heritage sites. We look at each in turn.

(1) *Heritage orders*

Section 5 of the HPA provides that the Historic Places Trust or the Minister responsible for the Act may give notice to the relevant territorial authority of a requirement for a heritage order in accordance with the RMA. Heritage orders are to protect the whole or part of historic places and wāhi tapu, and necessary surrounding land.[5]

This seems straightforward enough on its face, but the reference to the RMA directs us to that Act, which is a different story. For instance, if we go to the definition of 'heritage order' in the RMA, the HPA is not mentioned. Instead, we learn in section 187 that a 'heritage order' means 'a provision made in a district plan to give effect to a requirement made by a heritage protection authority under section 189 or section 189A'.

Section 5 of the HPA says who may take action to get a heritage order and in respect of what kind of place. Section 189(1) of the RMA tells us that the purpose of a heritage order is to protect:

> (a) Any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural, or historical reasons; and
>
> (b) Such area of land (if any) surrounding that place as is reasonably necessary for the purpose of ensuring the protection and reasonable enjoyment of that place.

A heritage protection authority may give notice to the relevant territorial authority that a heritage order is required to protect a historic site. It is then up to the territorial authority to consider the application. The interaction of the two Acts is nowhere obvious.

The next step in our effort to understand how heritage orders work is to ascertain what is meant by 'a heritage protection authority'. The HPA speaks in section 5 of the Minister and the Historic Places Trust. Are they heritage protection authorities or is a heritage protection authority something different? Section 187 of the RMA says that a heritage protection authority is any Minister of the Crown, a local authority, the Historic Places Trust, or 'a body corporate that is approved as a heritage protection authority under section 188'. The Act gives no indication of the kind of entity that is contemplated by the last category, but the helpful website of the Ministry for the

Environment notes that five entities have been approved as heritage protection authorities.[6] They include the Save Erskine College Trust (1992), the Friends of Mount Street Cemetery Incorporated (1994), and the Orchid Council of New Zealand Incorporated (2008). None of the entities approved so far is Māori-related.

This short excursion through the statutory provisions for heritage orders is a foretaste of the complexity of those provisions, illustrating how every stage raises questions in the mind of the inquirer. In this report, we give our understanding of the provisions and how they appear to work, but we received no detailed submissions on this. We offer our interpretation without overwhelming confidence that how the scheme appears to work is how it actually works in practice.

(a) *Territorial authority: decision-maker or recommender?* The RMA provisions concerning what a territorial authority does when it receives notice that a heritage order is required are virtually impenetrable. As we understand it, though, a territorial authority has the discretion to decide whether to publicly notify its receipt of a notice of requirement for a heritage order and receive submissions, and whether to 'confirm' the 'requirement' for a consent order (ss 189A, 191). Section 189A(11) says that the territorial authority may confirm, modify, or withdraw the requirement for a heritage order. However, when we go to section 191, we find that the territorial authority must have regard to a list of considerations and may then recommend that the requirement be confirmed, modified, or withdrawn. It must also give reasons for its recommendation.

We do not understand why section 189A(11) appears to give a territorial authority power to confirm a requirement, whereas section 191 speaks in terms of a territorial authority recommending its confirmation.

Other provisions (sections 171 to 181, discussed below) indicate that a territorial authority's role here is to make recommendations, so the question is then to whom such recommendations are made. Tracking down an answer is no easy task. Under section 192, a 'designation' by a 'requiring authority' is to be deemed a 'requirement' by a heritage protection authority. In effect, this requires the RMA regime for getting protection for a heritage site in a district plan to be conceived in terms of the regime for getting a public work built.

Making sense of it all is a nightmare. If the reader is finding this explanation confusing, be assured that we are doing our level best to make it all as clear as we can. Frankly, we doubt that clarity is by any means possible, for which we can only apologise.

(b) *The superimposition of RMA provisions concerning public works:* Pressing on, we now turn to sections 171 to 181 of the RMA to find out what happens to a territorial authority's recommendation about a heritage order.

A heritage protection authority must determine whether to accept a territorial authority's recommendation in whole or in part (s 172(1)). Under section 173, notice of that decision must be given to submitters and others affected (like landowners). If there is no appeal, the territorial authority must include the heritage order in its district plan 'without further formality' (ss 174, 175).

Close scrutiny of these provisions gives rise to a question about this process that we cannot answer: Why would the process prescribe a recommendation to the heritage protection authority when the heritage protection authority 'required' the heritage order in the first place? It does not seem to us to make sense, but that is what the legislation says.

To remove all doubt, we now summarise step by step the process the RMA dictates:

- Section 189 says that a heritage protection authority gives notice to a territorial authority of its requirement for a heritage order.[7]
- Section 191(1) and (2) outlines what the territorial authority must have regard to in deciding whether to 'confirm', 'modify', or 'withdraw' the 'requirement'.
- Section 192 says that a 'designation' by a 'requiring authority' is to be deemed a 'requirement' by a 'heritage protection authority'.

- Section 171 deals with how the territorial authority must go about considering a 'requirement'. Subsection (2) says that the territorial authority must recommend to the 'requiring authority' – which of course section 192 requires us to deem to be a heritage protection authority – that the heritage order be confirmed, modified, or withdrawn, or have conditions imposed upon it.
- Sections 172 and 173 deal with what the heritage protection authority must do once it has made a decision about the territorial authority's recommendation.

Thus, this legislation provides for a heritage protection authority to 'require' something of a territorial authority; in return, the territorial authority makes a recommendation on the 'requirement' to the heritage protection authority, then the heritage protection authority decides whether to accept the territorial authority's recommendation on its own 'requirement'. We discern no sense in this.

As drafted, the provisions do allow the public to comment if the territorial authority decides to notify the requirement and they also give the territorial authority the real decision-making power as to whether or not an order is made to protect a particular site. But neither of these explains why the legislation provides for a bizarrely cumbersome and circuitous process that is certainly not the best way to protect sites of historical significance.

(c) *The effect of a heritage order:* Happily, section 193, which deals with the effect of a heritage order, is clearer. Once a heritage order is included in a district plan, no one may use, subdivide, or change the affected land in any way that would nullify the effect of the heritage order, wholly or in part. An exception is where the would-be user obtains the written consent of the relevant heritage protection authority. In practice, this is presumably usually the Historic Places Trust.

(2) *Heritage covenants*

The HPA does not say so, but heritage covenants seem to be the device for protecting historic places with the landowner's agreement. This contrasts with heritage orders, which can happen – theoretically, at least – without the landowner's agreement.

Section 6 of the HPA authorises the Historic Places Trust to negotiate and agree with any owner, lessee, or licensee of a historic place (including wāhi tapu) for a heritage covenant to be executed over the land to provide for that place's protection.

The focus of a historic covenant is controlling the use of the land so that the historic site is preserved. Section 8 makes provision for the registration of a covenant against the land title: the covenant runs with the land and binds all subsequent owners.[8]

Again referring to the Ministry for the Environment's website, we learn that, nationwide, the trust has entered into over 80 heritage covenants with landowners. Some protect rock art, archaeological sites, and pā sites.[9]

In her evidence, Davidson, who gave us much information about archaeological sites of significance in the inquiry district, said that the regime's provision for covenants and orders had not worked for the claimants in this inquiry. Her evidence does not explain in detail why the many important sites had not been the subject of orders and covenants, but they had not. She gave this example:

> A proposal by the late Mita Carter to [the Historic Places Trust] to establish a Heritage Covenant over an archaeological site, thought possibly to be the traditionally important settlement of Wharau o Kena, apparently came to nothing, despite the willingness of the landowner.[10]

Certainly, given the significance of the sites in south Wairarapa, it is indeed surprising that, except in one instance, they have not been the subject of either an order or a covenant.[11] The exception is a heritage covenant at Mangatoetoe. Davidson told us that the heritage covenant was placed on the archaeological site there by mistake:

> The authority for the subdivision at Mangatoetoe was granted subject to restrictive building covenants.

> However, the owner's solicitors formed the mistaken impression that the covenant mentioned was a heritage covenant under the HPA 1980. As a result, a heritage covenant covering an area of garden walls was drafted and signed in 1985. The Authority also required notification of the [Historic Places Trust] and archaeological monitoring when building was to be undertaken. On only one occasion in the next few years was the Trust notified; an archaeologist went out and nothing was found. The conditions and the covenant were subsequently breached.[12]

(3) *Archaeological sites*

Eleven sections of the HPA – sections 9 to 19 – are devoted to protecting archaeological sites. No one may destroy, damage, or modify the whole or any part of an archaeological site, even if only for the purposes of investigation, without the Historic Places Trust's permission (ss 10, 11(1)). Applicants must provide comprehensive information for the trust's careful consideration (ss 11(2)(a)–(e), 14). Relevant factors include the effect of the proposed work on Māori heritage values and whether consultation with interested parties (including tangata whenua) has taken place (s 11(2)(c), (d)). In certain situations, applications must be referred to the Māori Heritage Council for it to make recommendations to the trust 'following such consultation as [it] considers appropriate' (s 14(3)).

(4) *Penalties*

There are substantial fines for offences under the HPA: up to $40,000 for intentionally modifying an archaeological site or covenanted historic site (or any other site or property controlled by the trust), and up to $100,000 for intentionally destroying such a site.[13]

It does not appear that the full force of the law has been much deployed in defence of these special places, though. We were pointed to no cases where high fines were imposed. Prosecutions and convictions are probably not all that frequent. The Historic Places Trust's 2008 annual report says that, in 2008, the trust investigated 125 instances of site damage. As a result, two local authorities were prosecuted, and three individuals faced charges.[14]

(5) *Do these protective mechanisms work?*

As to the question of whether these protective mechanisms work, Davidson and the claimants told us they do not. We have already indicated some areas of difficulty, which we now examine in more detail, with reference to the evidence we heard.

(a) *Heritage orders and covenants:* The Historic Places Trust cannot itself decide to implement either a heritage order or a heritage covenant. With orders, the territorial authority's role is considerable; with covenants, the landowner's agreement is required.

The Parliamentary Commissioner for the Environment observed in 1996 that heritage orders were rarely used, and were not understood by councils or tangata whenua.[15] Given our own difficulty in following the legislation, we find this unsurprising. Nowadays, of course, the Ministry for the Environment's website is available to explain what the legislation is supposed to mean; this may assist the process.[16]

The use of heritage orders and covenants is also limited by a lack of money. Processing a heritage order can be expensive, and heritage protection authorities cannot always afford it.[17] The cost is almost certainly also a factor in the relatively low number of covenants put in place. That the trust has entered into only 80 heritage covenants since its establishment in 1954 suggests to us that this mechanism has not proved to be a means to protect a great number of sites.

As already mentioned, Davidson's evidence about the efforts to protect Ngāti Hinewaka's wāhi tapu concluded with the observation that, although trust staff put in 'considerable effort', there was little to show for it.[18]

(b) *Archaeological sites:* Davidson also said that, while there are many archaeological sites in the Wairarapa district and coastal development is increasing, the Historic Places

Trust granted only three authorities to modify such sites between 1976 and 2004 in the region.[19] This suggests that archaeological sites are being damaged and modified without the trust's knowledge.

Again, money is a factor – possibly *the* factor.

In order for the trust to police the provisions for protecting archaeological sites, it would need to take positive and active steps. We heard about the need for a register of archaeological sites in Wairarapa ki Tararua. Some moves have been made in this direction (see sec 12D.3.5), but the task remains substantially undone. Without such a register and with limited funds – and in spite of the threat of heavy penalties for unauthorised damage – the trust will not be able to prevent archaeological sites from being modified without authorisation, and the protective mechanisms in the Act will simply go largely unused.

(c) *Penalties:* The Act provides for substantial fines. However, the ability to properly investigate potential transgressions and bring prosecutions depends on the availability of reliable information. In order for a court to impose a hefty fine, it needs compelling evidence. This is unlikely ever to be forthcoming unless or until skilled staff are on the job policing an up-to-date register.

12D.3.3 Is the Māori heritage council adequately resourced to carry out its functions?

The Māori Heritage Council was established under the HPA (ss 84–96). It comprises eight members, at least four of whom are members of the Historic Places Board and three of those four must have knowledge of te ao Māori (the Māori world) and tikanga Māori (traditional rules about how to conduct life) (ss 42(3), 84(2)). Four other Māori members are appointed by the Minister of Culture and Heritage, in consultation with the Minister of Māori Affairs and the trust board, and they must have appropriate skills and background (s 84(2)(c)).

The council considers and makes proposals for the registration of sites of Māori interest, and it develops programmes that allow heritage sites of Māori interest to be identified and conserved by Māori. It also advises the trust on a wide range of issues relating to Māori heritage, such as developing iwi consultation processes and making recommendations on resource consents (s 85).

12D.3.4 How the Māori Heritage Council works

Ngāti Hinewaka witness Haami Te Whaiti was a member of the Māori Heritage Council for two years, and he gave us a first-hand account of its operations. He considered that, as a national body, it lacked the resources and support staff to effectively monitor what was happening in local areas. He considered it unable to carry out its functions under the Act.[20]

Others agreed. In 1996, the Parliamentary Commissioner for the Environment identified the limited decision-making powers of the Māori Heritage Council as one of the deficiencies of the Māori heritage management regime.[21] The commissioner recommended that the council convene a hui to consider systemic problems in Māori heritage management, review initiatives being undertaken by Māori, and develop strategies for protecting Māori heritage more effectively in future. The hui was held in November 1996, and the council resolved to establish a stand-alone Māori heritage body over the following year.[22] This has not happened.

Auckland University archaeologist and Historic Places Trust board member Dr Harry Allen, in a 1998 report on heritage management in New Zealand, identified similar limitations. He said that, while the Māori Heritage Council was the appropriate body to advocate for Māori on heritage matters, it should be reconstituted under its own Act. It needed expanded powers to advise the Government on the full range of Māori heritage matters (cultural and historical), develop a national Māori heritage strategy, and advocate for the delegation of powers to iwi authorities under the RMA.[23] None of this has happened either.

We heard no evidence that the Māori Heritage Council works well.

12D.3.5 Are Māori heritage sites under-registered by the Historic Places Trust?

The Historic Places Trust is required under statute to establish and maintain a register of four kinds of heritage sites: historic places, historic areas, wāhi tapu, and wāhi tapu areas.[24] The purpose of the register is to inform the public about historic places, to notify owners of historic places, and to help protect historic places under the RMA.

Anyone can apply to the trust to have a historic place or area registered. In the case of wāhi tapu, application is made to the Māori Heritage Council. The trust then applies the criteria set out in the HPA in order to assess the site's significance. If it decides to register the site, the trust must first notify the owner or owners, the relevant territorial authority, the appropriate iwi (in the case of wāhi tapu), and the public. Once the site is on the register, which remains open for public inspection, anyone can apply for a review of the registration or for a site to be removed from the register.

Nationwide, relatively few Māori heritage sites are registered by the trust. In order to update the information we received at the hearing, we obtained data from the trust. As of June 2009, there were 5570 entries on the register. Of these, 5329 were historic places, 115 historic areas, 52 wāhi tapu areas, and 74 wāhi tapu. As elsewhere, in Wairarapa ki Tararua the majority of sites on the trust's register are (Pākehā) built heritage sites. In this inquiry district, the trust has registered 129 historic sites, comprising 122 historic places, five historic areas, one wāhi tapu, and one wāhi tapu area.

In the case of archaeological sites, we heard from Davidson that the trust largely relies on the (non-statutory) database of the New Zealand Archaeological Association for information.[25] According to Davidson, the original intention was that the trust would establish a comprehensive register of archaeological sites, using the association's records as a starting point. However, this did not happen. Instead, archaeological sites have been added to the trust's archaeological register (now amalgamated into the historic places register) in an ad hoc manner that varies widely from region to region.[26] In 1996, there were 1012 archaeological sites on the historic places register, out of the 49,000 on the association's file.[27]

The Parliamentary Commissioner for the Environment's 1996 report on historic and cultural heritage management in New Zealand found that, where archaeological sites were included in the historic places register, this was typically done with no assessment of their value from a Māori perspective.[28] All archaeological sites are listed in the register as category II historic places, despite the fact that some sites may be more accurately categorised as wāhi tapu.

Attempts by the Historic Places Trust and the New Zealand Archaeological Association to systematically compile a comprehensive list of Wairarapa ki Tararua's archaeological sites have been largely unsuccessful, although there has been some progress (see sec 12D.5).[29]

12D.3.6 Factors contributing to under-representation

(1) *Lack of resources*

We were told of many factors contributing to this situation, but perhaps the most important is the Historic Places Trust's lack of resources, which prevents it from proactively investigating and registering sites, district by district.[30] Presumably, for the most part, it relies instead on registration applications from interest groups and members of the public.

(2) *Lack of expertise*

The reasons for the under-representation on the register of all kinds of significant Māori sites – including non-built wāhi tapu of cultural significance and remote archaeological sites – go beyond the trust's resourcing issues. Davidson described how the trust began as 'a group of highly able and committed people who had great skills as historians, sympathy with but little knowledge of Maori, concentrating on European heritage because that was what they knew about and what the Trust had always done'.[31] She acknowledged that the trust's knowledge and expertise has advanced but said that Māori heritage protection

continues to lag behind European heritage protection.[32] Witness Haami Te Whaiti described the HPA as 'workable' but stated that it could be improved in line with Davidson's recommendations. As noted above, Te Whaiti stressed the need for Ngati Hinewaka themselves to be 'properly resourced to play the leading role in the management of [their] own heritage'.[33]

(3) *Landowners' opposition*

Another factor in the under-registration of Māori historic sites by the trust has been opposition from local Pākehā landowners. This was shown in the frustrating and costly two-year process of registering Mātakitaki-ā-Kupe as a historic area.[34] In that case, opposition stemmed from the landowners' perception that their ability to use their land would be restricted if the historic site on it were registered.[35] Registration was eventually achieved, but as described on page 976, further opposition from landowners has prevented the area from being listed in the district plan.

(4) *Barriers facing Māori*

Davidson commented on the barriers facing Māori groups working toward having more sites registered. First, they lack the resources to undertake the necessary preliminary research, such as establishing boundaries and title for affected properties. Secondly, she believed that among Māori there was a general disillusionment with the heritage protection regime – a sense that, if protection is inadequate at present, what could be achieved by listing more sites?[36] While funding can overcome the first of these issues (although we note that regional authorities, not the trust, are the main source of the funding that has become available), the second is more problematic.

(5) *Attempts to increase registration of Māori sites*

Various attempts have been made to increase the registration of Māori sites in Wairarapa ki Tararua. In 1997, the Historic Places Trust investigated the cost of creating a comprehensive register of all Māori and archaeological sites in south Wairarapa: it was estimated that $175,000 would be required to complete the work. Nothing more happened.[37] Some local iwi have sought funding so that they can start recording and registering historic sites and wāhi tapu; Rangitāne's GIS (geographic information systems) project, funded by the Greater Wellington Regional Council, is an example.[38] We were further told that Ngāti Kahungunu intend to undertake a similar project in the near future.[39]

(6) *Conclusion*

So, the Historic Places Trust's limited resources mean that its registration work is reactive. But what is needed to increase registration generally, and especially of Māori heritage sites, is initiative and verve. Significant barriers face Māori who seek to have sites registered. Although registration does not necessarily guarantee that a site will be protected, it is a prerequisite if the site is to receive other legal protection. The protection mechanisms described in section 12D.3.2 have their shortcomings, as we have seen, but they are the only tools currently available. Moreover, almost always, they are used after registration: registration is a vital first step.

12D.3.7 To what extent do local authorities include registered sites in district plans?

Including a heritage site in a district plan is beneficial in several ways. First, it is a general acknowledgement by the local authority that the site is significant, that it needs to be protected, and that it will be a part of statutory council planning processes. Secondly, it ensures that a heritage site will be taken into account during the resource consent application process. The RMA requires consent authorities, when considering consent applications, to have regard to the relevant district plan: obviously, this cannot happen if a heritage site is not included.[40] A consent application affecting a site that is not included in the plan is unlikely

to be publicly notified, meaning iwi and others have no opportunity to make submissions.

One of the most important consequences of the under-registration of Māori heritage sites (see sec 12D.3.5) is that such sites are less likely to be included in district plans and therefore do not attract the maximum statutory protection available under the RMA. Local authorities rely almost entirely on the Historic Places Trust's register to find out what local heritage sites should be included in their district plan, and it is unusual for an unregistered site to be included.

(1) *Māori heritage a low priority for local councils*

Haami Te Whaiti of Ngāti Hinewaka told us that the most significant problem affecting the Māori heritage regime is the attitude of local councils and residents. He argued that territorial authorities in Ngāti Hinewaka's rohe (tribal territory) do not value Māori heritage and have been ineffective in protecting it. He cited his hapu's difficulties in trying to get the Mātakitaki-ā-Kupe area included in the south Wairarapa district plan and various resource consent decisions.[41]

Greater Wellington Regional Council Māori policy adviser Jason Kerehi observed under cross-examination that heritage issues in general were not a high priority for local councils and that Māori heritage still tended to come second to Pākehā heritage – there were, he said, more notable trees in district plans than wāhi tapu.[42] He considered that, for regional councils, 'heritage is not deemed as significant a priority as the core responsibilities of air, water, soil, biodiversity and transport', and he noted that the Greater Wellington Regional Council had recently decided not to produce a regional heritage plan.[43]

Jason Kerehi also described a lack of knowledge and understanding of Māori heritage issues among councillors and local authority staff. Many had no previous experience in dealing with Māori communities, he said, and little or no knowledge of tikanga Māori (traditional Māori rules and practices).[44] Davidson also noted 'ignorance among some Council staff and the community at large about the importance of the Maori archaeological sites in the [southern Wairarapa] District, particularly on the coastal strip'.[45]

(2) *Inclusion of registered sites in district plans in Wairarapa ki Tararua*

Statistics suggest that local authorities in Wairarapa ki Tararua do include registered sites on district plans. They appear to regard themselves as being obliged to do this, which is particularly pleasing because there is no legal obligation on them to do so. The lack of compulsion means that there is the potential for registered sites to be overlooked, but apparently this is not currently a problem in this district. Rather, the key issue here is under-registration.

In 2009, of the 129 total sites listed in the historic places register for the Wairarapa ki Tararua district, 121 are included in the district plans of the four relevant local authorities. The omitted sites comprise one wāhi tapu in the Tararua district that was registered only very recently and the seven historic places or areas in south Wairarapa that are in the district council's 'silent file'. The South Wairarapa District Council places its wāhi tapu and other taonga in this file so that they are omitted from the district plan but remain protected from subdivision or development.[46] It is not clear exactly how this process works, and Davidson drew attention to the potential dangers of omitting these sites from the plan, given the district council's limited resources.[47] It is possible that Carterton may also omit Māori sites from its district plans, as its district council espoused the benefits of doing that.[48]

(3) *Māori reluctance to list wāhi tapu in public planning documents*

One issue that was traversed before us is whether an obstacle to Māori sites being included in registers and plans is that Māori are reluctant to list them in this way. We heard that Māori sometimes prefer to keep the location of significant sites confidential, to prevent vandalism and other

Destructive path: This pa site with kumara pits, terraces and a defensive ditch near Pirinoa in South Wairarapa was damaged when a track was built.

Iwi struggle to protect history

TANYA KATTERNS

DAMAGE to Maori archaeological sites as developers snap up prime coastal land is frustrating Wairarapa iwi.

Recent damage around a pa site on the rugged south coast at Tora has led to a call for district councils and the Historic Places Trust to do more policing and monitoring.

Martinborough Coastal Developments, which breached resource consent conditions while developing a 24-lot subdivision near Tora in Te Awaiti Rd, was let off with a warning.

An archaeologist was supposed to be present to protect sites believed to be in the area, but work was halted in June when it was discovered no monitor had been at the site.

Though iwi are satisfied with the eventual outcome at Tora, there is concern over other developments. Historian and Ngati Hinewaka hapu chairman Haami Te Whaiti said wholesale development was making it difficult to protect historic sites.

Haami Te Whaiti: Says it is difficult to keep historic sites safe.

Other reports of damage involved a track to a pa site near Pirinoa, a track up on to Pukeatua pa at Matakitaki, and garden walls at Te Humenga and Pararaki South.

"The present intensive pressure for coastal subdivision poses a serious new threat to our heritage but we have no authority to stop any development or try to regulate them.

"The current heritage provisions are not working well.

"A lesson has been learnt from the Awhea development mistakes at Tora but what we need is for the local authorities to consider iwi values and provide better protections under their district plans.

"Where applications from developers are insufficient, send them back and ensure there is really strong safeguards as to what is good development and who and what may be affected."

South Wairarapa District Council said no landowner would be able to subdivide as of right.

The Historic Places Trust said it would act if there were clear breaches of consent conditions.

Talks resolve fence dispute

NEGOTIATIONS between iwi, an Auckland property developer and the Historic Places Trust have resolved a dispute over the protection of a Maori heritage site in South Wairarapa.

The site at Awhea, near Tora, which includes terraces and pits, has been at the centre of debate about the position of a boundary fence on a coastal subdivision owned by developer Ian Redshaw.

Though resource consent given for the housing development allowed a fence to go along a ridge which divided the heritage site, local iwi had been concerned about possible continuing damage.

The fence line is to be moved to preserve the site.

These pieces in the *Dominion Post* on 21 October 2008 indicate the issues that Wairarapa Māori are facing in this area of heritage protection

damage. They fear that the risk of damage created by publicly disclosing locations outweighs any statutory protection that the sites may enjoy.

The South Wairarapa District Council gave this as a reason for its decision not to list Mātakitaki-ā-Kupe in its district plan. Crown counsel noted that in the past 'some iwi members have preferred their sites not to be listed in the district plan'.[49] According to Davidson, Mita Carter had opposed earlier attempts to include sites in the Featherston county district scheme, and 'this attitude was carried into the early stages of the attempt to list sites in the SWDC Plan'.[50] However, she said that, during the 1980s and 1990s, Ngāti Hinewaka's attitude gradually changed; the hapū now recognised that sites could be protected only when their locations were known. Davidson considered that the council 'took advantage of Maori concerns about disclosure of site information to avoid upsetting landowners'.[51]

Some local authorities in Wairarapa ki Tararua have found ways of reconciling the need to protect sites with the need for confidentiality in some circumstances. They include the South Wairarapa District Council's 'silent file' and methods to protect such sites from subdivision or development without their being listed in the district plan.[52] The Carterton district plan recognises the desire of iwi not to publicly disclose sites of significance; where an activity may affect Māori heritage sites, it requires the application to be brought to the attention of iwi – even if the site is not listed. During cross-examination by Crown counsel, Jason Kerehi described a practice adopted by Rangitāne and the Greater Wellington Regional Council whereby the latter has the coordinates and reference number of each heritage site on Rangitāne's GIS database but no further information. This means it can contact Rangitāne when a consent application may affect a site, and Rangitāne can respond as appropriate.[53]

Thus, there are administration solutions available for maintaining the confidentiality of sites without compromising statutory protection mechanisms. However, the issue of whether (or how) to publicly list sites becomes relevant only where sites have been identified, and we reiterate the fundamental need for the investigation and registration of sites.

(4) *No statutory requirement to include registered sites in plans*

Even though data from the Historic Places Trust suggests that registered sites are routinely listed in district plans in this area, we must emphasise that inclusion is discretionary. We stress this point because, although the councils are currently exercising their discretion and choosing to list sites, where there is no compulsion to do so, the risk remains that sites will not be included.

The statutory position is this: the RMA places no positive obligation on local authorities to include heritage sites in their district plans and the Historic Places Trust has no power to compel local authorities to do so. Section 74 of the RMA simply requires that a territorial authority have regard to any relevant entry in the historic places register when preparing or changing a district plan; section 61 places a similar requirement on regional councils preparing or changing regional policy statements.

Various other provisions in the Act require local authorities to take account of heritage and Māori issues in more general ways. Section 6 lists seven 'matters of national importance' which anyone exercising functions and powers under the Act must 'recognise and provide for'. They include the 'protection of historic heritage from inappropriate subdivision, use, and development' and the 'relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga'.

We consider that the legislation must be changed so that councils are compelled to list registered sites in plans. This change would help protect both Pākehā and Māori heritage sites, but it is particularly important for Māori heritage sites because fewer of them have thus far been recognised in any way. Although the fundamental problem lies with low levels of registration of Māori sites, we think the whole system needs to be 'beefed up'. If more priority is accorded to managing our heritage – especially Māori sites

– our heritage will be more highly valued and better protected. The stories in the sidebars show that we are a long way from keeping our precious heritage safe.

12D.3.8 Do local authorities use RMA provisions for transfer of powers and joint-management agreements?

Under section 33 of the RMA, local authorities can transfer any of their functions, powers, or duties under the Act to any other public authority, including an iwi authority. Both authorities must agree that such a transfer is desirable for one or more of the following reasons: efficiency, technical expertise, or because the authority taking on the powers represents the appropriate community of interest to exercise them. Local authorities can also make joint-management agreements with other public authorities – such as an iwi authority or a group representing hapū – to enable them jointly to perform statutory functions relating to natural or physical resources (s 36B).

(1) *Provisions little used*

These provisions have been little used. Dr Janine Hayward said in her 2002 report on local government that until then, Māori had not been alert to the possibility that powers might be transferred. However, as at 2002, she had noted a surge of interest in the provision among Māori. Nevertheless, few iwi had made requests under section 33, and all the requests she knew about were unsuccessful.[54]

There appear to be several reasons why the provisions have not been used. These include confusion about the requirements for an application; the question of who will pay for the process; the Act's specification of an 'iwi authority' (rather than a marae, hapū, or trust board); and a widespread reluctance among local authorities to transfer authority to tangata whenua.[55]

(2) *Provisions' potential unlikely to be realised*

We consider that both RMA provisions have real potential, but thus far potential is all they have. It is difficult to see what will make power-holders willing to release some of it. The RMA has been in place for nearly two decades. It is probably time to say that the ideas underpinning sections 33 and 36B were good, but they have not been taken up and there is no indication that they ever will be.

At present, because there are no formal consultation requirements in the Act, hapū must formally object to consent applications – sometimes over issues that could have been better addressed through early notification and consultation. The costs to hapū of giving input in consent applications are very high – whereas applicants will be usually pursuing only one application, hapū must consider all applications in their rohe.

Heritage management is an area where devolving powers to Māori is a particularly appropriate approach. Instead of formally objecting to consent applications, hapū could play a greater role at the planning and policy development stages and in considering consent applications. Devolution or joint-management arrangements would of course involve making funds available to iwi. In the words of Haami Te Whaiti: 'There is a need for Ngati Hinewaka to be properly resourced to play the leading role in the management of our own heritage.'[56]

12D.3.9 Does the resource consent process protect Māori heritage values?

A key role for local and regional authorities under the RMA, and one that has enormous consequences for the protection of Māori heritage, is considering resource consent applications.

Most activities that present risks to wāhi tapu – such as subdivision, earthworks, and other kinds of property development – require approval through the resource consent process. Archaeological sites cannot be recovered once disturbed, so in that sense they are a non-renewable resource. Here, too, the need for the resource consent process to closely monitor any proposed disturbance is absolutely critical. Counsel for Rangitāne drew an analogy between the role of local authorities in considering consent applications and the traditional role of the kaitiaki.[57]

The archaeological complex at Waikēkeno

(1) *Local authorities have too little information and expertise*

However, we heard of a number of recurring problems with this aspect of the heritage management regime. First, claimants reported that local authorities largely lack the knowledge, understanding, and expertise to give proper consideration to the potential adverse affects of proposed consents on Māori heritage values. In many cases, local authorities find in favour of the applicants, despite submissions opposing the proposed activity from Māori groups and the Historic Places Trust (see the discussion of the Te Awaiti aquaculture ponds below).

Yet again, this situation points to poor information about heritage sites and to the tendency for few Māori sites to be included in district plans. For example, when Davidson's evidence was prepared in 2002, the South Wairarapa District Council based its resource consent application decisions on a Historic Places Trust list from 1985 giving information about local archaeological sites.[58] Under such circumstances, it is difficult to see how local authorities can make fully informed decisions about consent applications affecting Māori heritage sites or even to know whether a consent application is likely to affect such a site. It is not hard to imagine how this leads to such egregious decisions

Trying to Protect Heritage Sites

Coastal sites threatened by subdivision

Increasing pressure on coastal land for residential development presents a considerable threat to archaeological sites, particularly in south Wairarapa. Coastal subdivisions around Palliser Bay – including at Lake Ferry, Whatarangi, Ngawi, and Mangatoetoe – have probably already destroyed archaeological sites.

Two larger subdivision proposals on the east coast have required resource consents with some heritage protection, but they still pose a serious risk to heritage sites. At Te Unuunu (Flat Point) a large coastal subdivision is planned in an area of unrecorded wāhi tapu. The Carterton District Council granted the resource consent for the subdivision in 1998. One of the conditions of the consent was that, if wāhi tapu were discovered, work would stop and the applicants would contact iwi representatives and the council. This left the applicants themselves to decide what might constitute a wāhi tapu requiring protection.

Another subdivision proposal at Te Oroi (White Rock) will certainly impact on archaeological sites and will require a Historic Places Trust authority to proceed. Following consultation on the proposal, an archaeological survey was completed. However, a smaller subdivision 'slipped through' earlier without Ngāti Hinewaka being notified, allowing a building to be constructed close to a registered urupā.

Mairirikapua: character fragmented, wāhi tapu destroyed

The Black Rock Road area, immediately south of Masterton, is known as Mairirikapua. Located beside the Ruamāhanga River, it contains marae, Māori land, urupā, and wāhi tapu of great significance to Rangitāne. Elizabeth Burge, who advocated for Rangitāne interests in resource management, described a 'flurry' of successful resource consent applications for subdivisions in recent years, leading to the area's special character becoming fragmented.

According to Burge, the Masterton District Council failed to take into account Mairirikapua's significance when considering consent applications. She implied that, when resource consents were granted, their conditions required the applicants themselves to notify the council and iwi if wāhi tapu were discovered (similar to the conditions on the Te Unuunu subdivision consent discussed above). Burge argued that the council should have instead initiated a project to investigate and record sites and to educate the public about Rangitāne's contemporary and historical association with the area.

Many wāhi tapu are scattered along waterways and water bodies within the Wairarapa ki Tararua district, among them places for ceremonies associated with cleansing and healing and sites for baptism, thanksgiving, and purification. Witness Murray Hemi told us that water is sometimes taken to other areas for separate ceremonies. Rocks imbued with the mauri of Hawaiiki have been placed along the Wairarapa coastline (eg, at Te Rangiwhakaoma). According to Hemi, many places 'remain endowed with particular attributes and values associated with sacred ceremonies relating to birth, life and death'.

Nevertheless, many such sites on inland waterways have been destroyed by river works, subdivision, and pollution. Hemi identified gravel extraction as a particular problem. In the early 2000s, the Greater Wellington Regional Council (acting as consent authority for its own application) gave itself approval to extract gravel across the Wairarapa rohe for 15 years. According to Hemi, in granting the consent, the council did not identify any wāhi tapu (sacred sites), nohoanga (traditional camping sites), or mahinga kai (food gathering places) that might be affected. In fact, during the time in which the council developed its 'global' gravel extraction proposal, there was no face-to-face consultation with Wairarapa Māori and only sporadic contact. Hemi said that the council was reluctant to discuss Ngāti Kahungunu's interests in gravel and insisted that it was incumbent on Wairarapa Māori (rather than the council itself) to research and list all such potentially affected sites.

Finally, the iwi was sent a draft assessment of environmental effects for comment, with five days to respond. Hemi said that this was a 'patently absurd' timeframe for the massive task of researching and describing all the sites in the Ruamāhanga catchment area and that Wairarapa Māori were simply unable

to respond appropriately. In his view, the council had 'determined that bulldozer drivers and gravel extractors could be relied on to identify spiritual sites and sites of significance if and when these were uncovered'.

Te Awaiti Station: 'indifference' to heritage sites

The privately owned Te Awaiti station contains three landlocked reserves still held by Ngāti Hinewaka (Te Awaiti, Huariki, and Pakuroro) and known archaeological and wāhi tapu sites. In 1994, an aquaculture pond (below) was excavated on the station, along with other earthworks. Although Haami Te Whaiti, Foss Leach, and the Historic Places Trust all objected, the work was carried out before a full archaeological survey of the affected area could be completed. When the landowner applied for a backdated resource consent, the trust opposed the application. However, consent was granted. The fact that the work had already taken place, and that there was no evidence that any unrecorded sites had been destroyed in the process, made it difficult to oppose the consent. This presumably prevented the trust from pursuing a prosecution under the HPA. The case highlights the difficulty of protecting sites that have not been recorded, registered, or included in the district plan. Haami Te Whaiti told us that neither the landowner nor the council had any interest in protecting the heritage sites at Te Awaiti.

as the granting of consent by the Wairarapa South County Council under the Town Planning Act 1977 for an abattoir to be built adjacent to an urupā and very near to Hurunui-o-Rangi marae (see ch 8).[59]

(2) *Consultation with tangata whenua variable*

Tangata whenua themselves have little influence over decisions to grant or decline resource consents. Section 8 of the RMA requires consent authorities to take into account the principles of the Treaty in exercising their powers under the Act, but the courts have found that this does not oblige local authorities to consult with tangata whenua over consent applications.[60]

In fact, many local authorities in Wairarapa ki Tararua do consult with tangata whenua about consent applications, but approaches vary considerably, even within this district. Ideally, iwi would be involved in consent applications at an early stage, but even more fundamentally they would be fully involved in formulating district plans and participating in council processes. The role of iwi should not just be reactive. If their involvement comes only after resource consent applications are fully developed, it is much more likely that, in order to have influence, all they can do is take part in costly objection and hearing processes.

Some local authorities in the district have made progress on consultation, notably the South Wairarapa District Council, which has established a Māori standing committee. This council has also published a small pamphlet for applicants about consultation with tangata whenua.[61] Davidson described other examples in south Wairarapa where Ngāti Hinewaka have been satisfied with the process due to hapū members attending an excavation, meaningful consultation occurring, archaeological surveys being completed before the earthworks commenced, or some combination of these factors.[62] She noted that the original subdivision proposal at Waikēkeno will likely be replaced with an amended proposal which will not impact on the large and spectacular archaeological complex there.[63]

(3) *Iwi participation under-resourced*

Another reason why the resource consent process is failing to protect Māori heritage is that iwi have no money to participate. As we discuss in chapter 12B, this is a huge barrier to effective Māori participation in resource management, including heritage protection.

Some extremely modest funding is available at present: the Greater Wellington Regional Council, for example, gives iwi $12,000 a year to respond to the council's own consent applications and a further $15,000 a year so that iwi authorities can upskill iwi workers.[64]

The case studies in the sidebar show how resource consents are not being managed so as to look after Māori heritage values.

12D.3.10 How well do Government agencies work together and with Māori?

In Wairarapa ki Tararua, four local authorities (the South Wairarapa District Council, the Carterton District Council, the Masterton District Council, and the Tararua District Council) and two regional authorities (the Greater Wellington Regional Council and Horizons Manawatu–Wanganui) have responsibilities for heritage management. In addition, some aspects are handled by the Department of Conservation and the Historic Places Trust.

The Historic Places Trust has a public advocacy role, but it is not a central decision-making body with the power to develop and implement nationwide strategy and policy. As we have seen, the trust's current funding is too low to enable it to proactively research and register Māori heritage sites or to police the provisions of the HPA effectively. Meanwhile, the Department of Conservation's role in heritage management is limited to sites on conservation estate lands.

(1) *Territorial authorities have most power*

By virtue of their powers under the RMA, local authorities are the most powerful agencies in Māori heritage management. However, there is no consistency in the way in

which they approach Māori heritage issues when making plans and policy or in the way in which they manage their relationships with iwi.

Although there is provision for Māori heritage protection in the regional policy statements prepared by the two regional councils in our district, these statements lack the statutory clout of district plans. The Manawatu–Wanganui regional policy statement recognises the spiritual links of the tangata whenua with their ancestral lands, water, wāhi tapu, and other taonga, and it provides for wāhi tapu to be protected from uses that may compromise their tapu state.[65] Similarly, various provisions in the Greater Wellington Regional Council's regional policy statement relate to Māori heritage protection.[66]

Across the district, there have been some attempts to coordinate the policies and procedures of different local authorities. Probably the two key initiatives have been the Wairarapa coastal strategy and the draft Wairarapa combined district plan, although neither has any statutory effect.

The Wairarapa coastal strategy was produced jointly in 2004 by the Greater Wellington Regional Council, the Masterton District Council, the Carterton District Council, the South Wairarapa District Council, Rangitāne o Wairarapa, and Ngāti Kahungunu ki Wairarapa, largely in response to pressure from coastal land development. According to Jason Kerehi, there was strong community input into the strategy, including from iwi.[67] It addresses a broad range of heritage issues, among them the current performance of local authorities and various threats to heritage sites in the region. It also makes recommendations on how best to protect the heritage values of the Wairarapa coast.[68] However, it is up to each local authority to decide whether to adopt these recommendations; iwi have no further role in their implementation.

(2) *Many agencies for tangata whenua to deal with*

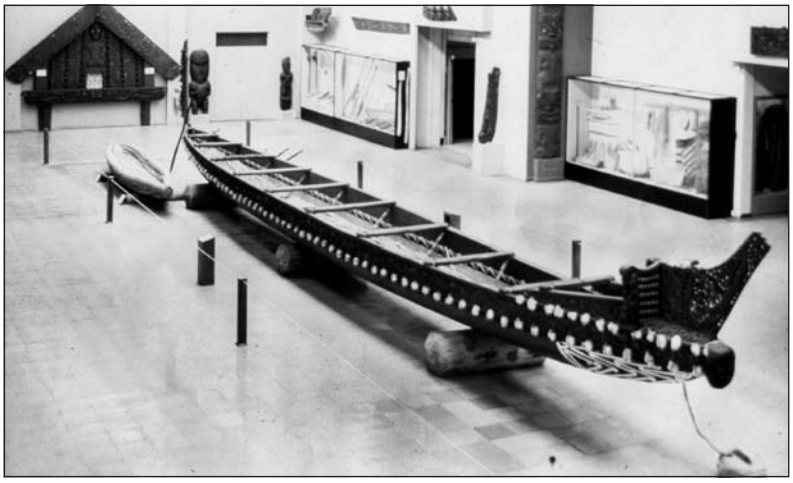
The rohe of the various tangata whenua groups of course do not align with territorial authority boundaries, so most hapū and iwi organisations in the region must deal with a number of councils, as well as central government agencies. Maintaining relationships with all these agencies is enormously expensive for under-resourced hapū. Costs include people's time, research costs, office and administration expenses, and the costs of hosting and travelling to consultations at marae. This work will often fall on one or few volunteers from within the hapū and provides no income for the iwi. Thus, in Jason Kerehi's words, 'iwi are caught between the duty to protect their heritage and the reality that there is little or no recompense for doing so.'[69] Inevitably, there is duplication and inefficiency in dealing with a great number of agencies.

(3) *Categorising of heritage sites inconsistent*

Local authorities, regional authorities, and heritage protection authorities do not have a consistent method of categorising heritage sites. While the proposed Wairarapa district plan presents data from the Carterton, Masterton, and south Wairarapa districts, the categorisation of this data is inconsistent across those districts. While 'sites of significance to tangata whenua' are listed for Masterton and Carterton, they are not listed for south Wairarapa at all (for reasons outlined in section 12D.3.7), and the category is not used by the Tararua District Council or the Historic Places Trust. The fact that a plan may list other 'heritage items' that are also of significance to Māori causes further confusion.[70] The Tararua district plan categorises its heritage sites differently from the Wairarapa councils; it includes the category 'archaeological sites and wāhi tapu', which does not specify whether a particular site is considered to be an archaeological site or a wāhi tapu.

All these different methods of categorisation make it difficult to compare sites across districts or to determine the exact nature of the sites themselves. The inconsistency extends further. Davidson told us that the Historic Places Trust's inclusion of sites on its register 'tended to be *ad hoc* and to vary widely from region to region.'[71]

It is difficult to escape the conclusion that, like other areas of endeavour that are inadequately funded, heritage management is incoherent. There are too many agencies



This waka, called Te Heke Rangitira, is held at Te Papa. Ngāti Hinewaka claim it as a taonga of theirs.

playing different roles, and they do what they do differently. With no clear game plan or funding, tangata whenua face the problem of understanding what all these agencies are doing and then working out how to influence them to take account of Māori imperatives. This is a recipe for frustration and failure. No wonder Māori are disillusioned with it all.

12D.3.11 What is the state of of public awareness about Māori heritage issues?

It is fair to say that there is a general lack of awareness about Māori heritage issues among the public, including many people who own land on which heritage sites are located. The need to raise public awareness was identified in the Wairarapa coastal strategy, which recommends the development of information resources for landowners, industry, and schools and the provision of heritage trails, brochures, and signage at heritage sites.[72] We agree, and we suggest that a useful start could be made by commissioning Te Puni Kokiri to write an instruction manual for councils on the nature and importance of Māori heritage sites and how to engage with Māori authorities to identify and list them.

For, as Davidson reminded us, registering sites and including them in district plans is an important means of increasing public awareness and appreciation of heritage sites. She said that sites already known to the public are a source of great pride to south Wairarapa residents, both Māori and Pākehā.[73]

Nevertheless, we acknowledge that there will always be resistance from a proportion of private landowners to any restrictions on their use of their property.

Increasing public awareness of heritage and sites and increasing motivation to protect sites go hand in hand. We did not receive evidence about how much the Wairarapa public knows about and appreciates Māori heritage sites, but we think it is probably little. Pākehā New Zealanders are typically not well-informed about anything to do with te ao Māori, past or present. This means that they do not have a context for understanding the importance of heritage sites.

Issues like these are ingrained in the fabric of our society and are not easily fixed. Indeed, the work of this Tribunal is part of the fixing process. Nevertheless, we think that if, as we are suggesting, the whole heritage management regime were 'beefed up' – especially for Māori heritage sites – awareness and appreciation would gradually grow.

12d.3.12 Are portable taonga adequately protected?

The Antiquities Act 1975 provided statutory protection for portable taonga such as stone, bone, shell, and carved wooden artefacts (including larger objects such as waka). It was substantially amended in 2006 by the Protected Objects Amendment Act and renamed the Protected Objects Act 1975.

Under the Antiquities Act, it was necessary for claimants to go through costly court cases to determine ownership of portable taonga (moveable Māori cultural property). The 2006 amendments simplified this process by allowing the chief executive of the Ministry for Culture and Heritage to act on behalf of a claimant and apply for an order from the registrar.[74] Under the amendments, the definition of 'antiquities' was revised to define nine categories of 'protected New Zealand objects', including taonga tūturu (literally means genuine treasures, but the statute provides a special definition) and kōiwi (human remains).[75]

The Act requires that anyone who finds an artefact anywhere in New Zealand must notify the Ministry for Culture and Heritage or the nearest public museum.[76] All artefacts are registered by the Museum of New Zealand Te Papa Tongarewa and are deemed to be prima facie the property of the Crown; they are then held by the Crown until their ownership can be established.

(1) *What is wrong with the portable taonga regime?*

Claimants and witnesses at our hearing criticised the regime for protecting taonga. We summarise their comments as follows:

- *Unreported finds:* Since 1975, only five findings of artefacts have been notified in southern Wairarapa. Davidson said that this figure is 'ridiculously low' given the number of archaeological sites in the district.[77] She related anecdotal accounts of unreported finds, including wooden carvings found near Lake Onoke,[78] and considers that finds routinely go unreported. She also told us that the penalties imposed under the current statutory regime do not work.[79]
- *Iwi are not involved in the management of artefacts:* The Antiquities Act 1975 did not require the Crown to notify or consult with iwi over the management of Māori artefacts.[80] Now, though, whenever a taonga tūturu is found, the chief executive of the Ministry of Culture and Heritage must notify the public and any parties that may have an interest. The Māori Land Court is available to resolve any competing claims.[81]
- *The process for vesting ownership in iwi is unworkable:* Under section 12 of the Antiquities Act 1975, anyone with an interest in an artefact could apply to the Minister to have the Māori Land Court vest the ownership of that artefact in them. In practice, however, no such applications were ever made, probably because of the cost. Under section 11 of the Protected Objects Act 1975, a particular person or persons can apply to the Minister to vest ownership of an item. It remains to be seen whether this will be any more effective in facilitating the return of taonga to their rightful owners.
- *Repatriation not provided for:* Before the Antiquities Act 1975, there was no statutory protection for artefacts; a find became the property of the landowner or other finder under the 'finders keepers' rule.[82] But nothing in the Protected Objects Act 1975 provides for the protection or management of pre-1975 finds, and innumerable taonga remain in private collections. This includes material from the southern Wairarapa excavated by archaeologists since the 1950s.[83] The only way for hapū to reacquire items in which they have interests is to buy them on the open market.

(2) *Conclusion*

Because of the wealth of archaeologically significant material in south Wairarapa, groups there have been particularly exposed to the inadequacies of both the 'finders keepers' rule (up until 1975) and the bureaucratic approach under the Antiquities Act 1975.

Although the law was changed in 2006, it is still too early to say whether the changes will constitute a major improvement for iwi.

Our Heritage Is Not Safe

Bad things have happened to precious heritage sites in Wairarapa ki Tararua. One of the real fears about coastal development in Wairarapa in particular is that the protection regime is not rigorous enough to ensure that damage to sites is all in the past.

These stories are about Mātakitaki-ā-Kupe, and the ongoing struggle to protect it. This is not the only place in our inquiry district where important heritage sites have been irretrievably damaged. Nor, regrettably, are these isolated incidents – the fate of Ngā Rā ā Kupe is all too reminiscent of the dynamiting of Te Taka ā Taiau (which marked the southern boundary of Ngāti Porou's territory) at the entrance to Turanganui (Gisborne) Harbour.

Mātakitaki-ā-Kupe

The area around Cape Palliser known as Mātakitaki-ā-Kupe is enormously significant for Ngāti Hinewaka and has many important associations with Kupe. Following the Crown's land purchases in the 1850s, the whenua around Mātakitaki-ā-Kupe, although comprising fewer than 50,000 acres, made up Ngati Hinewaka's largest remaining area of land.

In 1995, as part of the south Wairarapa district plan hearing process, the Historic Places Trust made submissions proposing that the Mātakitaki-ā-Kupe area and several other sites be included in the plan. Federated Farmers and the Ministry of Forestry opposed the proposal. The South Wairarapa District Council chose not to list the sites, citing the need to protect the confidentiality of their locations and the effect on landowners of including the areas in the plan. The trust appealed this decision to the Planning Tribunal but later dropped the appeal when the district council undertook to vary the plan within 12 months. An affected landowner besieged the trust with letters, opposing the proposed change to the plan. Well over a decade later, the plan remains unchanged. Davidson told us that landowners' opposition prevented the inclusion of Mātakitaki-ā-Kupe and other areas.

Meanwhile, activities have damaged sites at Mātakitaki-ā-Kupe. Haami Te Whaiti attributes this to the non-inclusion of this heritage area in the district plan. There has been unauthorised bulldozing and damage to the Pukeatua Pā site. Had Mātakitaki-ā-Kupe been listed in the district plan, Ngāti Hinewaka would have been notified automatically of the subdivision application and could have objected. In the event, the lesser protection afforded to the area through its inclusion in the South Wairarapa District Council's coastal protection policy was not sufficient to prevent this damage.

The failure to get this site into the district plan is an indictment of the heritage protection regime. Mātakitaki-ā-Kupe is hugely significant to the tangata whenua. It is also a site of international archaeological importance. That it remains unprotected and unacknowledged is a startling omission.

Meanwhile, though, we think it appropriate in the Treaty context for the Crown to set about remedying some of the mistakes of the past. Discussions with Ngāti Hinewaka about their taonga that are located in various museums is a good place to start. For the Crown to assume the ownership of the taonga of iwi is clearly not in accordance with Treaty principles. Iwi should not have to buy their taonga back, and that scenario should be avoided wherever possible.

Another factor to be considered is the need to ensure that antiquities are properly stored and maintained so that they do not deteriorate. Some suggestions are outlined in chapter 15.

This Tribunal is extremely concerned that the marvellous and unique Māori heritage of the Wairarapa ki Tararua district is protected. This is the first time that a Waitangi Tribunal has comprehensively addressed heritage management, and this emphasis is a direct reflection of this Tribunal's passion for the heritage and distress that the regime for its protection is so poor.

Ngāti Hinewaka witnesses told us about other examples of damage to archaeological sites at Mātakitaki-ā-Kupe:

Te Kopi

Road construction damaged an urupā at Te Kopi. The urupā was an unrecorded archaeological site. Land for a road was taken from the site under the Public Works Act on three occasions: in 1934, in 1968, and then in the late 1990s. No one consulted Ngāti Hinewaka in 1934, when the road was built. In 1968, when erosion threatened the road, there may have been some limited consultation, although this is not clear. When more work was done in the 1990s, the tangata whenua were involved, and at this time the trust issued an authority to modify the urupā. In 1998, the South Wairarapa District Council sought assurance from the trust that work could continue under the existing authority.

Mangatoetoe

In 1991, roading contractors damaged an archaeological site (kumara garden walls) at Mangatoetoe, which was protected by a heritage covenant at the time. The damage to the stone walls constituted two breaches of the covenant. In one instance, a site was clearly modified and possibly damaged but remained intact; in the other instance, the stone wall was substantially damaged by the construction. It appeared that the damage was not wilful, and there were no attempts to prosecute. The Historic Places Trust reported to Dr Foss Leach that, while prosecution would not be pursued, 'landowners were now aware of their responsibilities and [south Wairarapa district] Councillors were keen to ensure the preservation of the stone fields'.

Ngā Rā ā Kupe (Kupe's Sail)

During construction of a road in the late 1940s, the toe of Ngā Rā ā Kupe (Kupe's Sail) – a striking rock formation – was substantially altered by dynamiting. The contractor and the bulldozer driver knew that the rock was a wāhi tapu at the time of construction. There was at least one local Māori involved in the construction, and no consultation or protest occurred at the time. However, in 2002 at a claims committee hui, the incident was referred to as a remembered grievance.

Mātakitaki Pā Site

In 1991, a bulldozer damaged a fortified headland pa site at Mātakitaki. Dr Leach informed the Historic Places Trust of the disturbance of middens and other archaeological deposits at the site. The site was registered with the trust at the time, but the new owner was apparently unaware of the registration details. It was unclear exactly when the damage took place, and it appeared to be unintentional.

12d.4 Overall Conclusion

We have given our views on the claimants' nine main criticisms of the present regime, and we have suggested changes. In brief, we think that the problems lying at the heart of a generally poor heritage management system are:

- The system is too poorly funded to allow it to achieve its objectives.
- Site registration is an important objective that is falling woefully short. Too few sites of any kind are registered, but Māori sites in particular are under-represented. Also, no register of archaeological sites has yet been set up. Registration is the first necessary step for protection, and it is not happening.
- The key protection mechanisms are clumsy, overly bureaucratic, and confusing.
- Although these inadequacies affect the management of all heritage, Māori heritage generally fares the worst.
- Tangata whenua are far too little involved in making decisions about their sites and taonga.

Changes need to be made to address these serious problems.

Generally, we express our suggestions for improvement in fairly general terms, because we are not experts in heritage management. Changes are needed in really every area, although we acknowledge that some have been made quite recently in the moveable cultural property area, and these may bear fruit. While we hesitate to be prescriptive about the steps needed to remedy the problems we have identified, our findings and recommendations outline what needs to be achieved. It is the task of heritage management experts – both Māori and Pākehā – to work out exactly what is required for a more effective and culturally responsive regime. We think that Haami Te Whaiti and Dr Janet Davidson would be important members of the team.

Claimants express their dissatisfaction with the level of protection for their heritage sites on the Tribunal's site visit to Hurunui-o-Rangi. From left, Leonard Hemi, Charmaine Kawana, and Murray Hemi.

12D.5 A POSTCRIPT: POSITIVE DEVELOPMENTS

Although our impressions of heritage management in Wairarapa ki Tararua are generally negative, we do not want to leave the subject without recording the hopeful signs we have seen:

- The GIS computer mapping project being undertaken by Rangitāne with funding from the Greater Wellington Regional Council is a positive step. Initiated in 2002, the project involves researching, photographing, and mapping a wide variety of sites of significance to Rangitāne o Wairarapa.[84]
- Department of Conservation community relations manager Jeff Flavell showed us the department's wāhi tapu guidelines and described the consultation protocols that apply when proposed work will affect a known site. Between 1999 and 2000, the department also contributed $5000 (an amount Flavell described as 'modest') to Ngāti Kahungunu so that they could prepare a database of wāhi tapu sites. It is intended that Ngāti Kahungunu will hold the database and alert members of the public to the presence of wāhi tapu.[85]
- Both the Masterton and South Wairarapa District Councils provide brochures on how resource consent applicants should engage with Māori on heritage matters. The Masterton District Council has also introduced financial incentives to encourage landowners to identify and protect archaeological sites.[86]

Notes

1. Waitangi Tribunal, *The Te Roroa Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 254
2. *Parliamentary Commissioner for the Environment, Historic and Cultural Heritage Management in New Zealand (Wellington: Parliamentary Commissioner for the Environment, 1996), Harry Allen, Protecting Historic Places in New Zealand (Auckland: Department of Anthropology, University of Auckland, 1998), David Derby, Background Paper to Managing Maori Ancestral Lands, Sites, Wahi Tapu and Archaeological Sites under the Resource Management Act and Other Associated Legislation (Wellington: Historic Places Trust, 1999)*
3. Historic Places Act 1993, ss 22, 39
4. Ibid, ss 5–21
5. Ibid, s 5(a)–(b)
6. Ministry for the Environment, 'Heritage Orders and Heritage Protection Authorities', Ministry for the Environment, http://www.mfe.govt.nz/rma/central/heritage (accessed 4 February 2010)
7. We note that a 2005 amendment to the RMA (s 36A) says that neither the heritage protection authority nor the territorial authority has a duty to consult with 'any person', which of course includes tangata whenua, about the notice of requirement.
8. Historic Places Act 1993, s 8(1)(b)
9. New Zealand Historic Places Trust, 'Heritage Covenants', New Zealand Historic Places Trust, http://www.historic.org.nz/ProtectingOurHeritage/Covenants.aspx (accessed 4 February 2010)
10. Document A67 (Davidson), p 32
11. Ibid, pp 32–45
12. Ibid, p 35
13. Ibid, ss 97–99
14. New Zealand Historic Places Trust, *Annual Report for the Year Ending 30 June 2008* (Wellington: New Zealand Historic Places Trust, 2008), p 28
15. Parliamentary Commissioner for the Environment, *Historic and Cultural Heritage Management in New Zealand*, p 63 (doc A67(a)) (Davidson), p 319)
16. Ministry for the Environment, 'Info About . . .', Ministry for the Environment, http://www.mfe.govt.nz/index.html (accessed 4 February 2010)
17. Parliamentary Commissioner for the Environment, *Historic and Cultural Heritage Management in New Zealand*, pp 44–45, 63–64
18. Document A67 (Davidson), p 45
19. Ibid, pp 34–35
20. Document D8 (Te Whaiti), p 21
21. Document A67(a) (Davidson), p 324
22. Document A67 (Davidson), p 23
23. Document A67(a) (Davidson), p 383
24. Historic Places Act 1993, ss 22–37. Additionally, there are two classifications of historic place and a category I site will have a higher level of historical or cultural heritage significance than a category II site.
25. Established in 1955, the New Zealand Archaeological Association is an incorporated society with a membership spanning students, amateurs, professionals, and institutions involved in archaeology. The association's objectives are to promote and foster research into the archaeology of New Zealand. It is active in lobbying central and local government for the protection of New Zealand's cultural heritage.
26. Document A67 (Davidson), pp 30–31
27. Document A67(a) (Davidson), p 319
28. Ibid, p 315
29. Document A67 (Davidson), p 42
30. Ibid, p 45
31. Ibid, pp 24–25
32. Ibid, p 25
33. Document D8 (Te Whaiti), pp 20, 21
34. Document A67 (Davidson), p 33, app 3
35. See, for example, doc A67(a) (Davidson), pp 439–440
36. Document A67 (Davidson), p 55
37. Ibid, p 42
38. Document F4 (Potangaroa), pp 3–6
39. Document F6 (Kerehi), p 15
40. Resource Management Act 1991, s 104(1)
41. Document D8 (Te Whaiti), pp 20–21
42. Document F29 (Kerehi), p 3
43. Document F6 (Kerehi), p 13
44. Ibid, pp 20–21
45. Document A67 (Davidson), p 60
46. Document I17(b) (Crown counsel), p 20
47. Document A67(b) (Davidson), pp 24–25
48. Document I17(b) (Crown counsel), p 20
49. Ibid
50. Document A67 (Davidson), p 39. Haami Te Whaiti mentions Mita Carter's objection to the inclusion of archaeological sites in the Featherston County District Scheme at document D8 (Te Whaiti), p 22.
51. Document A67 (Davidson), p 40
52. Document I17(b) (Crown counsel), p 20
53. Document F29 (Kerehi), pp 1–2
54. Document A65 (Hayward), pp 63, 64
55. Quality Planning Project, 'Quality Planning: The RMA Planning Resource – Delegations and Transfers', Ministry for the Environment, http://www.qualityplanning.org.nz/monitoring/deleg-transfer.php (accessed 25 June 2009); doc A65 (Hayward), pp 64–66
56. Document D8 (Te Whaiti), p 21
57. Document F6 (Kerehi), p 22
58. Document A67 (Davidson), p 43
59. Document A32, pp 166
60. *Hanton v Auckland City Council & BP Oil New Zealand Ltd* [1994] NZRMA 289
61. Document A67(a) (Davidson), pp 860–861
62. Document A67 (Davidson), p 55

63. Ibid, p 56; doc D23 (Ngāti Hinewaka me ōna Kārangaranga), fig 35
64. Document F29 (Kerehi), pp 8–9
65. See, for example, policies 3.1, 3.2, 3.3, 3.4, 3.5, 10.1, and 10.2 in Manawatu–Wanganui Regional Council, *Regional Policy Statement for Manawatu–Wanganui* (Whanganui: Manawatu–Wanganui Regional Council, 1998), pp 62–63, 121.
66. See, for example, policies 5 and 6 in Wellington Regional Council, *Regional Policy Statement for the Wellington Region* (Wellington: Wellington Regional Council, 1995), p 40.
67. Document F6 (Kerehi), pp 10–11
68. Wairarapa Coastal Strategy Group, *Wairarapa Coastal Strategy* (Wellington: Wairarapa Coastal Strategy Group, 2004), pp 19–21
69. Document F6 (Kerehi), p 22
70. Masterton District Council, Carterton District Council, and South Wairarapa District Council, *Proposed Wairarapa Combined District Plan*, revised ed, 2 vols ([Masterton]: [Masterton District Council], 2008), vol 1, app 1
71. Document A67 (Davidson), pp 30–31
72. Wairarapa Coastal Strategy Group, *Wairarapa Coastal Strategy*, p 20
73. Document A67(b) (Davidson), pp 24–25
74. Protected Objects Act 1975, s 11
75. Ibid, s 4
76. Ibid, s 11
77. Document A67 (Davidson), p 54
78. Document A67(b) (Davidson), p 19
79. It remains to be seen whether the increased fines under section 11 of the Protected Objects Act 1975 make a difference: a person who fails to report finding taonga tuturu within 28 days is liable to be fined up to $10,000 for each item.
80. Document A67 (Davidson), pp 15–16
81. Protected Objects Act 1975, s 11
82. Document I17(b) (Crown counsel), pp 21–22
83. Protected Objects Act 1975, s 11(3); doc A67 (Davidson), pp 28–29; doc A67(a) (Davidson), pp 386–387; doc D8 (Te Whaiti), p 22. Artefacts from south Wairarapa are held by public museums, among them material collected during the Otago University archaeological research programme that was based in southern Wairarapa between 1969 and 1972. With the agreement of then-representatives of the local Māori community, including Mita Carter, programme leaders Foss and Helen Leach arranged for excavated artefacts and faunal material to be held by the National Museum. Human remains were taken to the University of Otago for study. Haami Te Whaiti argued that the Crown should now fund Ngāti Hinewaka to negotiate the return and ongoing care of the taonga and koiwi taken during the research. Artefacts excavated during the project are probably the property of the Crown. Dr Janet Davidson noted that there is a strong feeling among Ngāti Hinewaka that Mita Carter exceeded his authority in agreeing that kōiwi should be taken to Otago University. Several other taonga of Ngāti Hinewaka are held at Te Papa. They include four dug-out waka and a large carved waka, Te Heke Rangatira, which was gifted to the Dominion Museum in the early twentieth century by Ani Hikooterangi. Originally held by Canterbury Museum, these waka were taken to Te Papa in the 1970s following efforts by local member of Parliament Ben Couch; he envisaged them ultimately being displayed in a waka museum at Pirinoa.
84. Document F4 (Potangaroa), pp 3–6. Sites include urupā and other burial areas, caves, maunga, rivers, lakes, pā sites, and associated resource areas such as trees, harakeke and running water, battlegrounds, taniwha lair, mahinga kai, bird-snaring areas, papakainga, tracks, monuments, kainga, birthing places, water bodies where ceremonial rites were carried out, gardens, refuge places, and tauranga waka (coastal and river).
85. Document G2 (Flavell), p 20
86. Document F6 (Kerehi), p 14

Sidebars
Page 955: 'Some Definitions'. Source: doc A67 (Davidson), pp 8–9.
Page 970: 'Trying to Protect Heritage Sites'. Sources: doc A67 (Davidson), pp 37, 56; doc A67(b) (Davidson), p 10; doc C35 (Hemi), pp 32–33, 37, 38; doc D8 (Te Whaiti), p 21; doc F5 (Burge), p 18.
Page 976: 'Our Heritage Is Not Safe'. Sources: doc A67(b) (Davidson), p 7; doc A67 (Davidson), pp 26–27, 35, 36–37, 39–43; doc D8 (Te Whaiti), p 21; doc I17(b), pp 20–21; doc I22, p 13; doc A67(a) (Davidson), pp 498–499, 502.

CHAPTER 13A

THE EFFECTS OF POPULATION GROWTH AND EXPLOITATION ON THE SEAWARD TERRAINS

So far, the focus of volume III has been on the landward terrains of Wairarapa ki Tararua: how the various environments were changed by the arrival of the Pākehā, the impacts of those changes on tangata whenua, and the management and legislative regimes that control the land and its resources today. Now, our attention shifts to the coastal marine environments and the sea itself. Until well into the twentieth century, these were bountiful environments for Māori and were seamlessly entwined with the land and the seasonal patterns that regulated their lives.

13A.1 Introduction

As we saw in chapter 12A, the degradation of landward terrains by rodent infestation may have been discernible as early as the 1830s. Certainly, introduced species affected vulnerable fauna early in the contact period, and by the end of the nineteenth century, the Wairarapa ki Tararua landscape was also very extensively modified by pastoral farming and associated service towns. A visitor to New Zealand's shores at the start of that century would barely have recognised most parts of the country 100 years later.

By comparison, the seaward terrains changed relatively little over the same period. European settlement in this inquiry district was concentrated in inland towns, located some considerable distance from the coast. Before the motor car, the coastline was relatively inaccessible to most locals, and visitors were deterred by the long distances and winding, unsealed roads.

In chapters 1 and 12A, we discussed traditional Māori settlement patterns – how the bulk of the Māori population lived on the coast, although they travelled inland too as part of the seasonal round of resource harvesting. Kaimoana played a critical role in the traditional diet, and the seaward terrains also featured in traditional cosmology and spirituality.

Although Māori's settlement patterns came to be influenced by where Europeans lived and where the work opportunities were, their strong connection with the coast endured, and continues today. In this chapter, we discuss how, in the twentieth century, population

Foss Leach (holding papers) on a site visit to Mātakitaki-ā-Kupe with the Tribunal in June 2004

growth, greater mobility through better roads and vehicles, and light regulation of activity in out-of-the-way places took their toll on coastal reaches, from Cape Palliser in the south of our inquiry district right up to Pōrangahau, just north of the district's northern boundary. We examine the impact on the environment and on tangata whenua.

13A.2 Land Sales and Coastal Resources

13A.2.1 What did Māori want to retain?

As we have seen in earlier chapters, Māori sold land from 1853 onwards but very deliberately reserved from sale those resources that were most important for their subsistence, their way of life, and their spiritual connections.

When, for example, the Castlepoint block was sold, extensive areas of the coast were reserved.[1] When Ngāti Hinewaka sold land, they held on to places important for fishing and shellfishing. 'It was simply inconceivable', Dr Foss Leach told us, 'that life could be maintained without these resources.'[2] Using his own and Bruce Stirling's research, Dr Leach mapped and described 20 specific places that Ngāti Hinewaka reserved in order to maintain their exclusive rights to land and fisheries.[3] Dr Leach wrote:

> In trying to establish fishing reserves, Ngāti Hinewaka were seeking to preserve their customary fishery, and to ensure the continuation of all the rights they had previously exerted in relation to it. Their focus was primarily on the inshore region of rocky habitats, where most of the foraging for shellfish is done, but included some specially named places further out to sea.[4]

George Ngatiamu Matthews, presenting evidence for Te Hika-ā-Pāpāumu, explained the importance of the Mātaikona reserve, which was retained in 1853 when

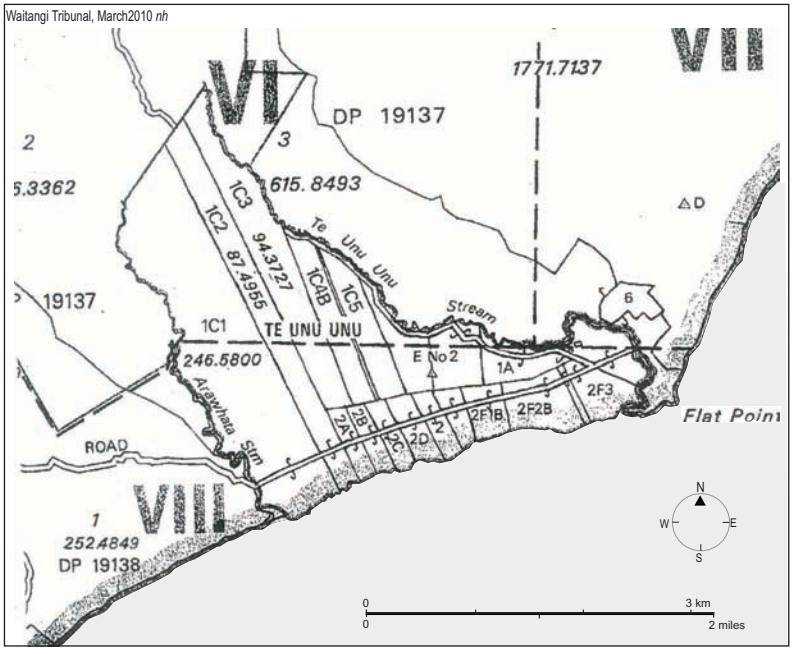
George Matthews singing a waiata with Evelyn Chase after giving evidence at the Tribunal hearing at Mākirikiri Marae near Danevirke in July 2004

Castlepoint was sold. He told the Tribunal that Te Hika-ā-Pāpāumu have always been a coastal people and that the name 'Mātaikona' combines the words 'mātai' (to collect food) and 'konā' (there):

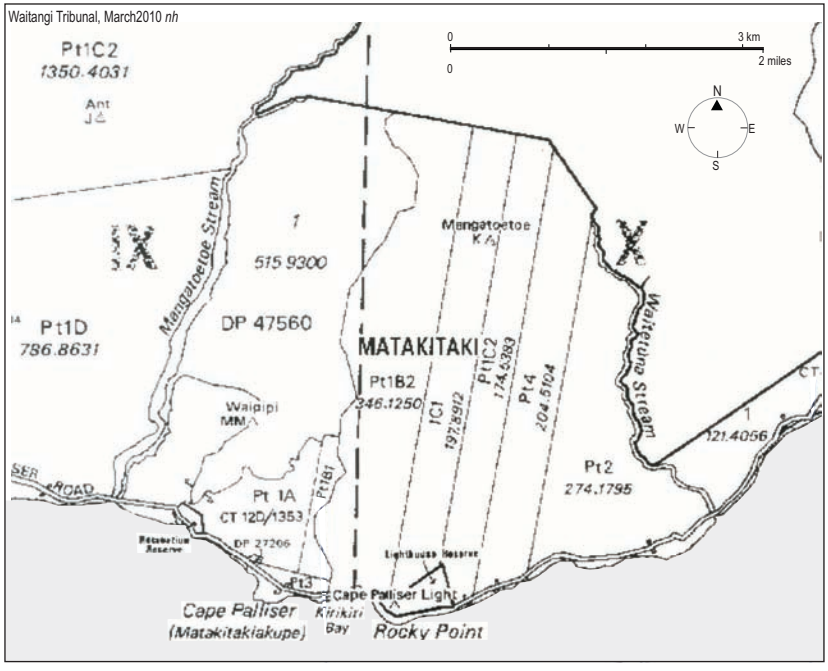
> . . . Mataikona is an area rich in kaimoana and other resources from the sea. The coast was, and is still a valuable source of food and provided both a vast food basket as well as an economic resource. A fundamental prerequisite for a people contemplating long term occupancy.
>
> . . . . . .
>
> . . . the retention of the Mataikona block was also the recognition of the ocean, reefs, foreshore, land, rivers, and the bush as being their resources and, in that, a complex of resources to be kept together.[5]

(1) *The Māori conception of coastal land and resources*

Māori traditionally saw the land and sea as one entity. Dr Leach outlined how this conception flows from a worldview established in Polynesia and carried to places as far-flung as Hawaii, Tahiti, the Cook Islands, and Aotearoa New Zealand.[6] Nutrition needs across Polynesia were met by a combination of land and sea resources. Property rights embraced the three resource domains important for human survival: forest, land suitable for cultivation, and the sea, especially inshore.[7] Tenure of land and sea was marked by narrow strips starting in the interior of an island, running down to flatter land adjacent to the shore, and continuing across the lagoon to the reef edge. Dr Leach told us that the same configuration is found in New Zealand, and cited in support the writings of Nicholas (1817), Colenso (1890), Shortland (1865), Firth (1929), Metge (1967), and Kawharu (1977). He explained how this pattern of resource entitlement operated for Ngāti Hinewaka in strips of Māori land at Te Unuunu/Flat Point and Mātakitaki. Ngāti Hinewaka thought that, after selling land to the Crown, they could retain reserves 'to live on with the expectation that they would continue to have undisturbed and exclusive rights to the land and the inshore areas adjacent to their land'.[8]



◄ Native reserve at Te Unuunu



► Native reserve at Mātakitaki

(2) *Mana extended offshore*

Māori conceived their mana as extending to fishing rocks, submerged rock pinnacles, and fishing holes offshore. Such places were identified and named in the minutes of Wairarapa and Te Maipi Native Land Court hearings in the 1880s and 1890s. Dr Leach gave as examples Te Ruaara, an offshore fishing rock where hāpuku congregate, and Te Hohonu, a fishing hole where kōura are caught off Te Hūmenga.[9] Takirirangi Smith, using the records of the Te Maipi hearings in September 1888, described a number of rua kōura and rua hāpuku (crayfish and groper holes) owned by those giving evidence. These were located not within the land area claimed but offshore.[10] George Matthews similarly described the interests of Te Hika-ā-Pāpāumu in pinnacles and rocks, including the twin sisters Ngāpuketerua and Ngāpukeriki and the rocks Mahuika and Pūtaki.[11]

Dougal Ellis researched the history of the Wai 420 claim, where the owners of the Mātaikona A2 block (the proprietors of Ōwahanga Station) argued that they held a 'blue water title' that included the foreshore, the sea, and the seabed.[12] He concluded:

> There was no evidence of the Maori owners willingly or knowingly relinquishing those rights. The historical record shows that the original owners, as much as was legally possible in New Zealand law, sought a communal title to their lands which were defined as belonging to Te Hika a Papaumu. The leaders of that community sought to prevent the individualisation, partition and alienation of the land but this proved impossible under the legislative regime and the block was partitioned in 1895, (although not completed until 1922). The will to retain the lands persisted however, with the result that today the block is nearly as complete as when reserved from the Castlepoint sale 150 years ago. This is a remarkable achievement and demonstrates the strength of community will to retain their ancestral lands.[13]

As far as the tangata whenua were concerned, their ownership of the land at Mātaikona extended to the adjacent seas:

> Ownership and occupation of the block, in Maori terms, came with a bundle of rights to utilise the adjacent marine resources, including fish, shellfish and seaweed. The fishing resource was undoubtedly one reason why the owners chose to reserve the Mataikona block from the Castlepoint transaction. Evidence given for the Mataikona block in the Native Land Court in 1895 show that fishing rights were not a general 'public' right of all Maori, but attached to certain people at certain places. This accords with the general understanding of Maori fishing rights in other parts of the country.[14]

(3) *Pākehā conception of land and sea different*

From the outset, the colonists' different conception of land and sea as distinct environmental zones affected the ability of Māori to articulate and obtain what they wanted and needed as owners of coastal resources.

When surveyors prepared maps and the Native Land Court defined titles, their focus was on the land. In some cases, the seaward boundary was defined by the high-water mark, in others by the low-water mark. Wilkinson, who surveyed the Mātaikona block in December 1868, shows a double line on his map ML 3025 with the words 'low water mark' written on the outer line.[15] The inner line, presumably the high-water mark, was the one that appears in subsequent title documents. These marks on maps meant nothing to Māori: for them, land and sea were seamlessly linked. Te Hika-ā-Pāpāumu claim that they never relinquished, and continued to assert, their customary rights to the eight kilometres of coast between the Mātaikona and Ōāhanga Rivers[16], but that they nevertheless lost them.[17] They were usurped by Crown practice and, subsequently, by laws that were incompatible with their customary interests.

The coastline near Akitio in 1939

13A.3 The Coast Begins to Change

It is clear from kaumātua evidence and technical reports that customary use of the coastal resources continued into and through the twentieth century. Indeed, in practical terms, until the second half of the twentieth century it was as though Te Hika-ā-Pāpāumu had remained legal owners of their coastline, because until then the lack of coastal roads and naturally sheltered points for mooring were a barrier to outsiders gaining access. Hapū further south also experienced little interference from outsiders, although their access to the coast was sometimes problematical because their adjacent landholdings were few.

It was the construction of lighthouses and the associated roading that permitted access to these coastal areas: at Cape Palliser in 1897; Castlepoint in 1913; and Honeycombs in 1929.[18] Then, as coastal shipping services were withdrawn, sheep and cattle station owners built coastal roads to link up with inland roads. Townspeople could now drive to the coast for recreation, and campsites, baches, and holiday homes followed. Arrangements were often informal, so records are skimpy, but we do know that in the 1920s the Marine Department sold surplus land and buildings at Castlepoint to members of the public seeking 'seaside shacks'.[19] Development eased in the 1930s

and 1940s as a result of depression and war, but since the 1950s use of the seaward terrains in this inquiry district has steadily increased.[20] Complaints over growing commercial and recreational pressure on previously abundant fish stocks, including pāua and kōura, date back to that time.

The 1950s saw a national upsurge in the number of motor vehicles and holiday homes, and in the 1960s local authorities in Wairarapa ki Tararua sealed many rural roads.[21] Coastal settlements at Castlepoint, Riversdale, and Akitio expanded, and new subdivisions were allowed at Ocean Beach, Whatarangi, Ngāwhi, Te Kopi, Tora, Te Awaiti, and Cape Palliser.[22] These developments were mostly unplanned, and a number were unauthorised:

> The development of such settlements, without the knowledge of Crown agencies, indicates the lightness of the official presence in the coastal areas of the district. When illegal baches were discovered on Crown land, the state agencies were adamant that they had to be removed. In 1964 the Commissioner of Crown Lands met with Featherston County officials and insisted not only that no new baches were allowed on Crown land but also that no additions were to be made to those already there; and that all had to be removed by 1980. The county was, however, much more amenable to the existence of the baches, and in the following years acted as an advocate for them on many occasions to try and resolve the problem.[23]

Successive Ministers of Conservation made compromises, and in 1993 there were proposals for rates or rentals to be paid in return for council provision of rubbish collection and access roading.[24]

13A.3.1 Onshore coastal activity: impacts on tangata whenua

Many of the coastal settlements and campsites, as well as the roads out to the coast, were built on unstable terrain subject to coastal erosion. They brought people into the area, threatening archaeological sites and wāhi tapu. The disposal of sewage and household refuse created further problems. Māori became increasingly concerned about impacts on the environment through pollution, degradation, and the lighting of fires in dangerous and inappropriate places.[25]

Reports and investigations carried out in the 1960s and 1970s resulted in closer cooperation between Crown agencies and local authorities, and there was less informal and unplanned bach and campsite development.[26] However, planned and authorised subdivisions increased in number and size from the 1970s onwards. In every decade, the number of people visiting, camping, or staying in holiday homes increased.

Māori were consulted in situations where their land was needed for subdivisions or for access, but their environmental concerns were otherwise not much heeded.[27] Station owners and Māori landowners alike found it increasingly difficult to control and monitor access across their lands during the busy summer holiday period. Public confrontations occurred in the 1990s when owners moved to restrict public access and prevent people lighting campfires on private land.[28]

Along with the growth of holiday home ownership and camping, there has been an expansion of commercial enterprises such as tourist lodges, farmstays, adventure tourism, and marine mammal watching. There have been new land uses like forestry, horticulture, and deer and goat farming too, often set up on 'lifestyle' blocks.[29] All of these have brought new people into the coastal districts and added to the pressures on the coastal environment and resources. In the 1990s, oil exploration franchises showed an interest in the Tararua coasts and the waters offshore. Resource consents were sought, but no explorations were active when Marr reported in 2001.[30] Innovations such as four-wheel-drive vehicles now allow vehicle access to the beach, with negative consequences for birds and native grasses.

The Resource Management Act 1991 defined responsibility for planning and policy-making for the coastal environment. The Department of Conservation prepares the

Ngāti Hinewaka's team for the Waitangi Tribunal hearing, including claimant witnesses, lawyers, and technical support, Pirinoa Hall, June 2004

New Zealand coastal policy statement and approves regional policy statements. Once these are in place, regional and district councils have responsibility for the day-to-day management of activities such as coastal subdivision, land reclamation, the erection or alteration of coastal structures, discharge into water, and the extraction of sand, shingle, or gravel.[31]

Responsibilities towards iwi are set out in the formal documents: iwi values and ancestral links to the lands and the coasts are to be recognised, and iwi are to be consulted when new developments are proposed. These spell out a more explicit role for tangata whenua than formerly, but as in other areas of environmental management, the Māori voice is muted (see ch 12B). Tangata whenua are not at the table when policy is made, and they are not involved as managers. As usual, this delivers them to the status of people with whom consultation must be undertaken. When culturally important philosophies, practices, and places (like wāhi tapu) are at issue, 'consultation' is inadequate. It is surely a far cry from the rangatiratanga that tangata whenua properly expected to retain, at least over the areas reserved from purchase.

13A.3.2 Offshore coastal activity: impacts on tangata whenua

We have talked already about the nature and importance of coastal resources and kaimoana for Wairarapa ki Tararua iwi and hapū. These resources were protected in the decades between the 1840s and the 1930s not by

action, regulation, or reservation by the Crown but by the vigilance of customary fishers and by the simple fact that the fishing grounds were distant from larger centres of population. Commercial fishing, for wetfish and crayfish, expanded from the 1930s onwards under the control of the Marine Department, which registered fishing boats and issued licences to fish.[32] Boats operating out of Wellington fished for groper and crayfish, and the Wairarapa ki Tararua coasts came under increasing pressure. Ngāti Hinewaka, closest to Wellington, felt these pressures first. Their evidence, presented in the following section, provides the best example in this inquiry of a sustained struggle to assert rights in the sea adjacent to tribal territory.

13a.4 The Ngāti Hinewaka Experience

This account of Ngāti Hinewaka's struggle to get the Crown to recognise their customary fishing rights in the waters off their rohe (tribal territory) highlights the contributions of Jack Carter, Hiorangi Te Whaiti, and Mita Carter over the last 50 years of the twentieth century.

13a.4.1 Background

In June and July 1894, the Native Land Court recognised the inshore fisheries close to Mātakitaki-ā-Kupe as a fishing reserve.[33] Prominent rangatira Piripi Te Maari held it in trust as 'a fishing place for all the members of Ngatihinewaka who are entitled to the land'.[34] Although Ngāti Hinewaka clearly understood the reserve to comprise the inshore fishery as well as an onshore landing place, the Crown neither recognised nor surveyed the seaward dimension.

In September 1940, the owners of the reserve moved to formalise their status. They lodged an application, under section 5 of the Native Purposes Act 1937, for Mātakitaki 3 to be declared a 'native fishing reserve'.[35] In November 1940, the Native Land Court investigated and agreed to a 'landing place and a fishing ground for the common use of the Native owners of Te Kopi, Kawakawa and Matakitaki blocks'.[36] Once more, although the landing place was clearly identified and demarcated, the fishing ground was not.

At that time, the Marine Department licensed fishing boats and issued licences for commercial fishers.[37] Although the Native Land Court's decision was published in the *New Zealand Gazette*, the department did not pick up the implications for its management of the fishery. Commercial fishermen from Island Bay in Wellington were fishing for groper and crayfish in just the same waters that Ngāti Hinewaka considered had been reserved to them.[38]

In 1945, in the aftermath of the Second World War, the Māori Social and Economic Advancement Act was passed with multi-party support.[39] It was seen as an affirmation of Māori contributions to the war effort through the Māori War Effort Organisation, and its purpose was 'to promote the well being of the Maori race' and 'to cover every possible field of endeavour'. Customary fishing was one of those fields, and section 33(1) allowed the Minister of Marine to designate fishery reserves:

> The Governor-General may, on the recommendation of the Minister of Marine and subject to such conditions (whether as to compliance with all or any of the provisions of the Fisheries Act, 1908, or otherwise) as he thinks fit, by Order in Council, reserve any pipi-ground, mussel-bed, other shell-fish area, or fishing-ground or any edible seaweed area for the exclusive use of Maoris or of any tribe or section of a tribe of Maoris.

Rangi Royal was the name of the man who held the position with the surprising title of controller, Māori social and economic advancement. In 1948, he sent a memorandum to the Marine Department in which he commented on a number of received or proposed fishery reservation applications and offered to work closely with the department on them.[40] It is not apparent what the department thought of this, but it did alert the Department of Native Affairs when an Italian fisherman (presumably from Island

Bay) applied to take fish, including crayfish, from Palliser Bay. Native Affairs in turn alerted the Pirinoa Tribal Committee.

13A.4.2 Jack Carter on the job

This was enough to get Ngāti Hinewaka rangatira Jack Carter on the job. In November 1949, he wrote an urgent letter on behalf of the Pirinoa Tribal Committee. He enlisted the help of the Minister of Marine to prevent the issuing of licences that would allow commercial fishing within the three-mile limit between Ōnoke and Cape Palliser.[41] Carter's letter spelt out Ngāti Hinewaka's concerns. He appended a sketch map that showed important kaimoana sites between Te Kopi and Mātakitaki-ā-Kupe, and asked that these at least be excluded from commercial fishing licences.

The Marine Department had at least two means of protecting traditional inshore fisheries. It could have used the Fisheries Act 1908 to regulate or prohibit commercial fishing in designated areas or it could have recommended the reservation of designated fishing grounds for the exclusive use of Māori under section 33 of the Māori Social and Economic Advancement Act 1945.[42] But the Ministry was not minded to use these provisions. Its minimal response simply noted that one licence had been issued under specific conditions: the representations of the tribal committee would be taken into account in dealing with future applications.[43]

Outsiders continued to fish in the waters around Mātakitaki. In September 1951, Joe Paku and George Te Whaiti contacted the Department of Māori Affairs seeking protection for their fishing grounds. This led to a face-to-face meeting, but the parties were talking past each other. The Ministry of Marine focused attention on the existing surveyed land reserves, whereas Ngāti Hinewaka wanted their coastal waters to be designated and protected. The Department of Native Affairs fell into line with the Ministry. In October 1951, the Under-Secretary for Māori Affairs wrote to Paku and Te Whaiti informing them that the title of their reserve did not extend below the mean high-water mark. And, he added, 'as regards taking fish or crayfish from the sea . . . the Maori Trustee has no authority at all to prevent this, nor could he prevent any one from passing along the edge of the sea below mean high water mark'.[44] Plainly, no action had been taken to designate the fishing ground confirmed by the Māori Land Court in November 1940. The under-secretary did, however, point to the significant new opportunity offered by the Māori Social and Economic Advancement Act:

Dear Sir, re application for licence to take fish (including crayfish) from area lying between Lake Ferry (Onoke) and Palliser Point.

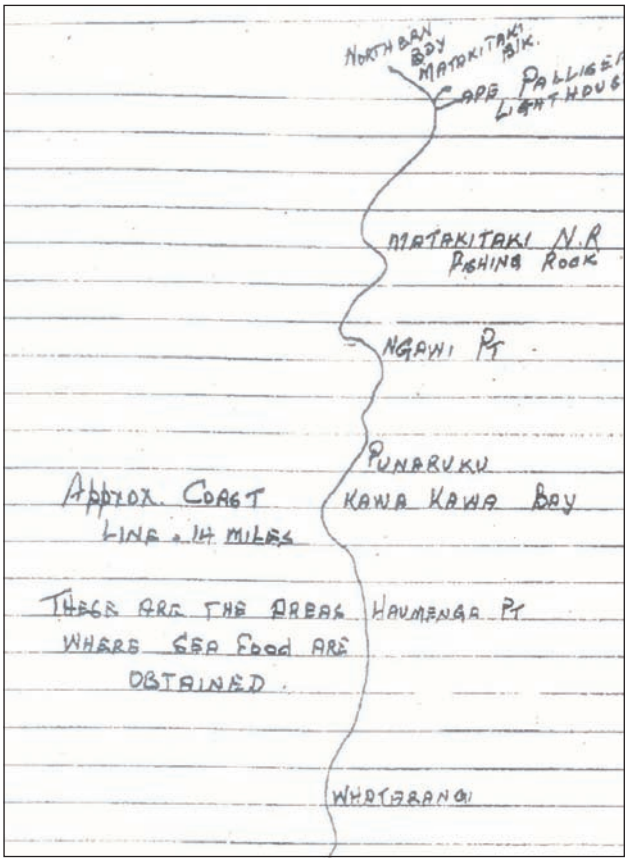
My Committee is informed that an application here has been filed with your department. The Natives (Maoris of this area through its tribal committee) and with the whole hearted support of the Martinborough Maori tribal committees protest strongly against any licence being granted unless certain areas as shown on the rough sketch herewith attached is excepted. To submit

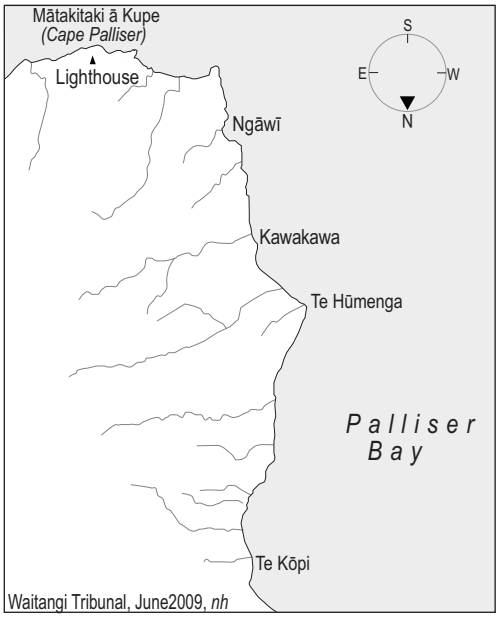
1. That if a licence is granted it would mean the depletion of paua beds as this seafood would be used for baiting purposes.
2. That if a licence is granted the extensive operations that would eventuate would deprive the Maoris (and pakehas) the opportunity of obtaining fish, crayfish and other sea edibles for their own consumption.
3. That if a licence is granted which we assume is for that area within the three mile limit from Onoke to Palliser Point then we respectfully ask that the area set out in the sketch herewith attached be accepted.
4. That the named points on the sketch herewith are the localities where fish and other sea edibles are obtained.

I thank you for your earnest and favourable consideration of this matter.

Yours faithfully,
JS Carter
Hon Sea Pioneer
Tribal Committee

Transcription of Jack Carter's letter





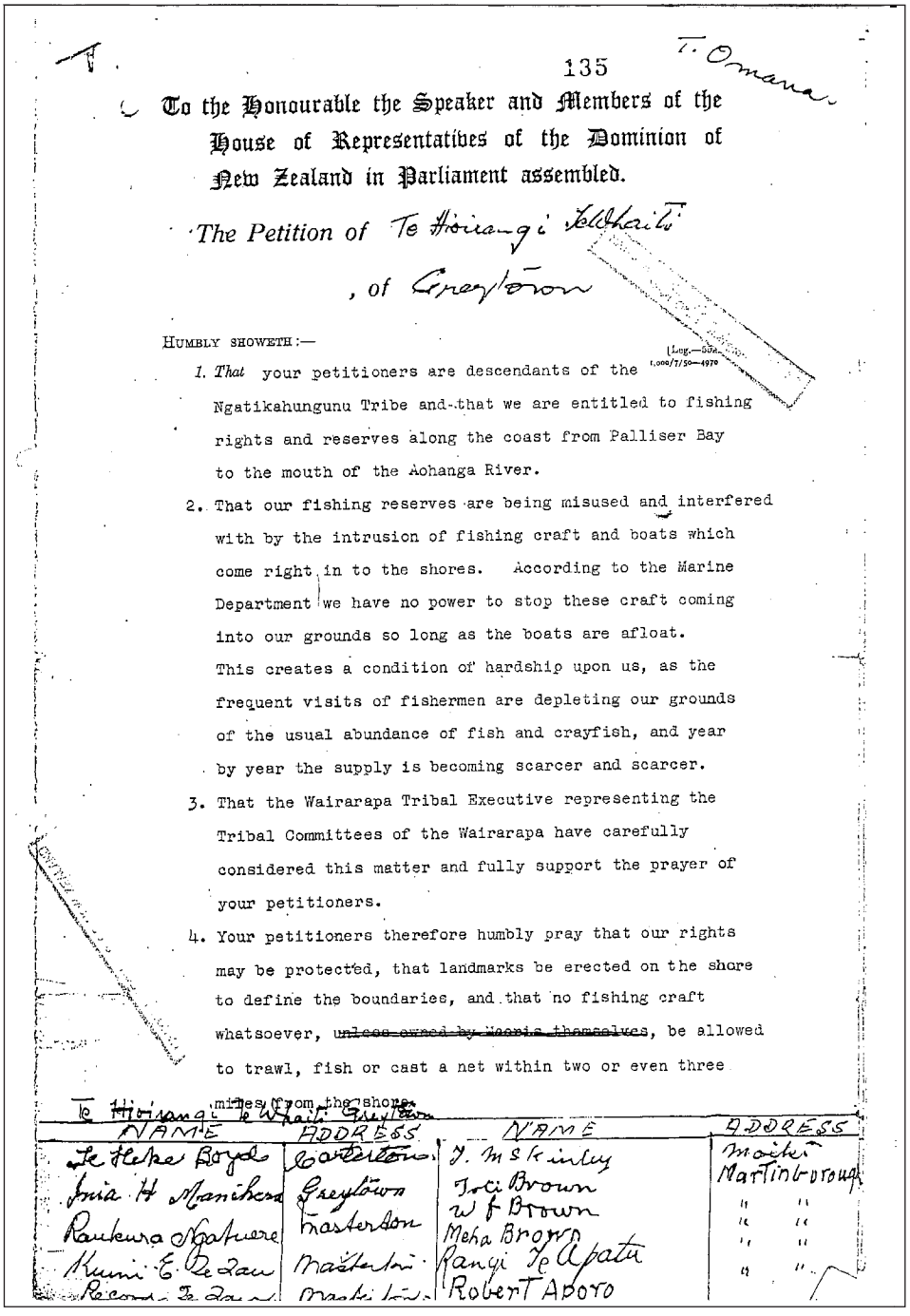
▲ Location map
◄ The sketch map that Jack Carter appended to his letter to the Minister of Marine in November 1949, asking that at least the important kaimoana sites noted be excluded from commercial fishing licences

> I understand that if a Maori community makes frequent use of an area for obtaining food supplies, as opposed to mere sport or recreation, the Marine Department will consider reserving a fishing area. If you would give me some idea of the number of Maori people who are accustomed to take koura at this place, and the frequency of their visits, I would be pleased to take the matter up with the Marine Department.[45]

13A.4.3 Hiorangi Te Whaiti's petitions

This was just what Ngāti Hinewaka needed to hear. They mounted two parallel petitions to Parliament: the first by Hiorangi Te Whaiti and 81 others of Greytown; the second by Hiorangi Te Whaiti and 13 others of Pirinoa.[46] The petitions asserted Ngāti Hinewaka's interest in coastal waters, explained the problems caused by commercial fishing, and sought the kind of protection envisaged in section 33 of the Māori Economic and Social Advancement Act 1945.

The petition was referred to the Ministry of Marine and the Department of Native Affairs, whose response must have been very frustrating for Hiorangi Te Whaiti and the people of Ngāti Hinewaka. The Ministry noted that the petition referred to reserves and asked that these be 'detailed and defined'. The department simply passed back to the petitioners the task of defining the reserves.[47] This



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T. Omana

To the Honourable the Speaker and Members of the House of Representatives of the Dominion of New Zealand in Parliament assembled.

The Petition of Te Hiorangi Te Whaiti, of Greytown

HUMBLY SHOWETH:—

1. That your petitioners are descendants of the Ngatikahungunu Tribe and that we are entitled to fishing rights and reserves along the coast from Palliser Bay to the mouth of the Aohanga River.

2. That our fishing reserves are being misused and interfered with by the intrusion of fishing craft and boats which come right in to the shores. According to the Marine Department we have no power to stop these craft coming into our grounds so long as the boats are afloat. This creates a condition of hardship upon us, as the frequent visits of fishermen are depleting our grounds of the usual abundance of fish and crayfish, and year by year the supply is becoming scarcer and scarcer.

3. That the Wairarapa Tribal Executive representing the Tribal Committees of the Wairarapa have carefully considered this matter and fully support the prayer of your petitioners.

4. Your petitioners therefore humbly pray that our rights may be protected, that landmarks be erected on the shore to define the boundaries, and that no fishing craft whatsoever, ~~unless owned by Maoris themselves~~, be allowed to trawl, fish or cast a net within two or even three miles from the shore.

Te Hiorangi Te Whaiti Greytown

NAME	ADDRESS	NAME	ADDRESS
Te Hekea Boyde	Carterton	J. McKinley	Maiki Martinborough
Inia H Manihera	Greytown	Toti Brown	" "
Raukura Kahuere	Masterton	W J Brown	" "
Kumi E Te Lau	Masterton	Meha Brown	" "
Rieora Te Lau	Masterton	Rangi Te Apatu	" "
		Robert Adoro	

The second of 10 pages of Te Hiorangi Te Whaiti's petition about fishing reserves, which went to the House of Representatives on 15 April 1953

was bureaucratic stonewalling at its finest. Although Ngāti Hinewaka could give very specific details for Mātakitaki-ā-Kupe, they lacked the resources to complete the task for other reserves.

The bureaucratic obduracy faced by Ngāti Hinewaka no doubt had its roots in the Crown's longstanding reluctance to acknowledge any Māori proprietary rights seaward of the high-water mark. On the face of it, the 1945 legislation should have provided a way forward, but the departments' response really shows a disinclination to implement the provisions of the Act. Indeed, Dr Leach drew our attention to an internal memorandum dated January 1960 that leaves no doubt about the Ministry of Marine's agenda. The Ikaroa District Council (a Māori body) had written asking about fishing reserves for Māori. A Government official searched the files and summarised the position in a report to a Mr Hercus of the Department of Māori Affairs:

> I have been unable to find any record of a reserve created in terms of Sec 33 of the MS and E/A Act 1945. In fact from the time the legislation was passed the Marine Department has been consistent with its policy of not recommending to the Minister applications from Maori groups and individuals for reservations under this section of the Act . . . Over the years it has become quite obvious . . . that the Marine Department has no intention of recommending to its Minister that reserves be created under the 1945 Act in spite of the fact that numerous petitions have been placed before Parliament.[48]

The official then revealed why the Marine Department always said no:

> The practical implication that would follow the making of such a reserve would be an unfortunate and undesirable distinction and segregation of races that have lived and intermarried happily together.[49]

Thus, we see laid bare the Ministry of Marine officials' own assimilationist overlay to the law masking the reality of monocultural power and decision-making. Not that the Department of Māori Affairs and its Minister, Walter Nash, were of a different opinion. Nash replied to the Ikaroa District Council:

> My present feeling in the matter is that the making of such reserves might create an unfortunate and undesirable distinction and a segregation of races who are increasingly intermingling on terms of equality of opportunity and responsibility, and that little would be gained and much might be lost by dividing the foreshore into separate areas for Maori and European.[50]

Ngāti Hinewaka's existing fishing reserve at Mātakitaki-ā-Kupe was neither recognised nor protected, and no new fishing reserves eventuated, there or elsewhere. The door on reserves was shut in 1951, and it remained so through the 1950s and 1960s.[51]

We agree with the Ngāi Tahu Tribunal, which said in its *Sea Fisheries Report 1992*: 'The Crown's simple solution was to treat the law and the rights conferred on Maori by s 33 of the 1945 Act with contempt by refusing to consider applications on their merits.'[52]

13A.4.4 Mita Carter's petition

Ngāti Hinewaka may well have despaired of ever having their customary fishing rights recognised. But 28 years later, under the leadership of a new generation, they regrouped.[53] Jack Carter's son Mita documented the extent of commercial fishing in Ngāti Hinewaka's waters and the damage being done to inshore fisheries.[54] In 1987 and 1988, he interviewed kaumātua John Clarke, J W Sinclair, G Hawkins, Bill Mikaera, and William Te Kani. Carter had a flair for the collection of oral historical material and had already published a book entitled *Early Palliser Bay*.[55] Then, he became aware of an opportunity created by the Māori Fisheries Act that Parliament passed in December 1989.[56]

Among other important provisions, the 1989 legislation introduced taiāpure – local customary fisheries for Māori (the legislation is discussed more fully in chapter 13B). In

Section 54A of the Māori Fisheries Act 1989

PART IIIA

Taiapure – Local Fisheries

54A. Object—The object of this Part of this Act is to make, in relation to the area of New Zealand fisheries waters (being estuarine or littoral coastal waters) that have customarily been of special significance to any iwi or hapu either—

(a) As a source of food; or

(b) For spiritual or cultural reasons,—

better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article 11 of the Treaty of Waitangi.

many ways, taiāpure were a better articulated version of what the now-defunct section 33 of the Māori Social and Economic Advancement Act 1945 envisaged. It was the window of opportunity that Mita Carter had been looking for.

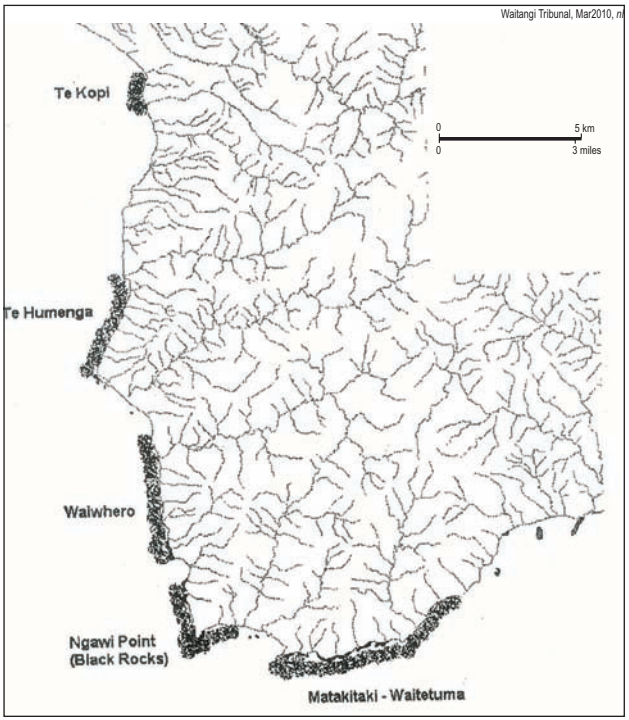
In 1990 and 1991, Carter organised a series of petitions supporting the concept of non-commercial taiāpure and identified six areas within the rohe of Ngāti Hinewaka suitable for establishing them. Each petition was headed 'Taiapure or Local Non-Commercial Fisheries'. Five fisheries were on the coast and a sixth involved the moana called Lake Ōnoke.[57] Europeans signed the petitions too.[58] When Carter collated the petitions for presentation in 1992, he described the extent of the boundaries and showed them on a map (see box). Dr Leach noted when he presented this evidence to the Tribunal that the Ngāti Hinewaka fishing reserve that the Māori Land Court called the Mātakitaki 3 block was not included in any of Carter's petitions or proposals. Dr Leach surmised that this was because Carter 'considered that its status as a Fishing Reserve could not be improved'.[59]

13A.4.5 Working on getting a taiāpure

In Dr Leach's evidence and document bank, we can track how, between 1990 (when Carter began to shape his taiāpure application) and 1995 (when the Cape Palliser taiāpure were gazetted), Carter's vision of large taiāpure that would protect customary fisheries from commercial fishing gradually became unattainable.[60]

During 1990 and 1991, while Carter was consulting and collecting signatures for the six fishery areas, there were letters and hui involving the applicants, the Māori Land Court, the Ministry of Fisheries, the Department of Conservation, and the Iwi Transition Agency (the successor to the Department of Māori Affairs). Tom Gemmell, the manager of the Iwi Transition Agency, convened a working meeting in Masterton in June 1991. Present were Carter and Bill Mikaera from Ngāti Hinewaka, senior policy officer Ruth Marsh from the Ministry of Fisheries, four unnamed representatives from the Department of Conservation, and Gemmell.[61] The intent of the legislation, the desires of Ngāti Hinewaka, the nature and extent of the application, and the practicalities of the notification and hearing process were all traversed. It was agreed that it would be better to separate the issue of protecting Lake Ōnoke from the application for the coastal taiāpure. The Department of Conservation would work with Wairarapa iwi on the protection of the Wairarapa lakes, and the Ministry of Fisheries would work with Ngāti Hinewaka on the coastal taiāpure application. The meeting at Masterton was positive, and matters moved forward again in July when the group, then expanded to include member of Parliament Ben Couch and the Māori liaison officer for the Federation of Commercial Fishermen, visited all six sites.

A good working relationship was established between Carter and Marsh, and the two agreed to work together to shape the application into a form suitable for submission to the Director-General of Fisheries. More than Carter, Marsh understood the wider policy arena and the kinds of objections that might arise when the first taiāpure application was gazetted. She knew the relative priority that the



This map was attached to Mita Carter's petition of 1991–92. It shows the extent of the customary fishing reserves that he had in mind and prompts comparison with the vastly smaller extent of the taiapure that was designated in 1995.

Ministry accorded commercial and customary fisheries and the level of anxiety among commercial fishers in the Wellington region. Ngāti Hinewaka's taiāpure proposal was proceeding at the same time as an application for a taiāpure that included the whole of Manukau Harbour. Commercial fishers' anxiety about this application raised the political temperature considerably.

Marsh took Carter's material back to her Nelson office and worked on the application during August and September of 1991. By October, when she sent the completed application, and a covering letter for Carter to sign, the areas covered in the application had reduced from five to two.[62] Te Kopi and Te Hūmenga were included; Waiwhera, Ngāwī Point, and Mātakitaki–Waitetuma were not. Carter wrote back thanking Marsh for the work she had done but asking that the area from 'Ngāwīhi' to the Waitetuma Stream be included 'now or at a later date'. Replying, Marsh suggested that 'we begin working on that as we receive feedback on the Palliser Bay application'.[63] Carter and Mikaera signed, and the application was lodged with the Director-General of Fisheries.

It is difficult to know how to assess what happened. Marsh supported the taiāpure concept. She was eager for the application to be made and approved, for the mana of Ngāti Hinewaka to be recognised, and for the legislation to be shown to be workable. But she reduced the dimensions of the application to what she judged to be acceptable. No doubt in doing this she took into account the political temperature of the Ministry of Fisheries, the fishing industry, and the public at large, exercised her own judgement, and acted accordingly. Unless she read the situation wrongly, the vastly reduced area in the application was probably a measure of how little support there was in the Ministry for customary fisheries of any size to be reserved for Māori.

Marsh drafted the formal application that the taiāpure tribunal considered and that Carter and Mikaera signed. The transcripts of oral evidence and the full set of petitions that Carter collected were now only appendices to the formal document.

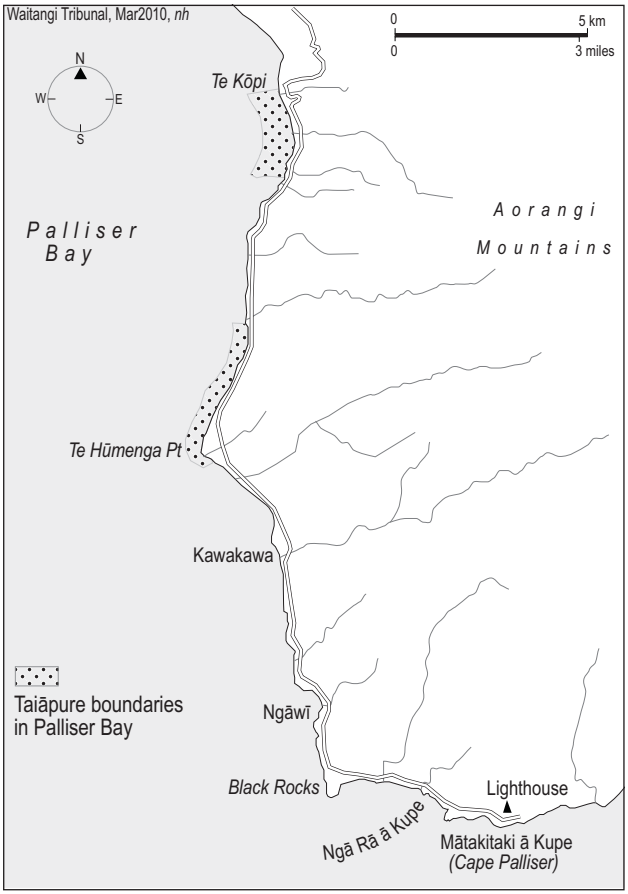
13A.4.6 The long haul

The Minister of Fisheries received the application and consulted with the Minister of Māori Affairs, who confirmed his agreement. The Palliser Bay taiāpure was approved in principle, and notices were published in the *New Zealand Gazette* and in national and regional newspapers at the end of March 1992.[64] Copies of the proposal could be inspected in Martinborough, Masterton, Hastings, Lower Hutt, or Wellington, and objections or submissions could be lodged with the registrar of the Māori Land Court in

Hastings. Some objections and submissions were received, and preparations for a tribunal were set in place. But then two things happened that derailed the process for more than two years.

Ngāti Hinewaka had consulted user groups and other interested parties but not, it seems, Rangitāne, who had parallel interests in the same Wairarapa ki Tararua coasts. Alerted by the public notices, James Rimene of Rangitāne o Wairarapa wrote a brief but formal objection on 27 May 1992.[65] The taiāpure proposal was important for Rangitāne, he said, and overlapped with other issues to do with the Crown's recognition of them as tangata whenua in Wairarapa (see ch 14). Ultimately, a hui in August 1994 restored the relationship, and Rangitāne o Wairarapa withdrew its objection and indicated that it would attend the formal hearings. (In the event, Rangitāne leaders present at the hearings were not allowed to contribute for procedural reasons: Rangitāne had not filed a written 'submission' and had withdrawn its 'objection'.)

Meanwhile, the Huakina Development Trust's large Manukau Harbour taiāpure application was meeting strong resistance from commercial fishers and other groups.[66] The Fishing Industry Board, anxious to minimise the size of taiāpure and the potential constraint on commercial fishing, went to the High Court in June 1992 to clarify the meaning of 'taiāpure–local fishery' and 'estuarine or littoral coastal waters'. The board said it accepted taiāpure in principle but favoured 'small discrete areas within an estuary or on a coastline'; it believed that applications as large as the Manukau Harbour were contrary to the public interest.[67] Other taiāpure applications could not proceed until the High Court had considered these questions. This, together with the time taken to resolve the Rangitāne objection, meant that the Palliser Bay application remained unheard in 1992 and 1993. In July 1994, the Fishing Industry Board and the Huakina Trust reached agreement on the Manukau taiāpure, and the High Court action was adjourned. The way was now open for Carter's application to be heard in Masterton in September 1994.



Taiāpure boundaries as presented in the application for the Palliser Bay taiāpure

13A.4.7 Taiāpure finally achieved at Palliser Bay

The taiāpure tribunal appointed for the Palliser Bay application had its hearing on 28 September 1994.[68] The two sites were small – approximately three square kilometres in total – and were located on rocky coast exposed to south and west winds.[69] Te Kopi was the smaller of the two and extended 800 metres offshore. Te Hūmenga covered a longer total distance but extended only 300 metres offshore (see map above). The two areas were identified as

important for mahinga kai (traditional food gathering) and for spiritual and cultural reasons (16 wāhi tapu are located on the map).

Carter and Ngāti Kahungunu ki Wairarapa had met with the Palliser Bay Commercial Fisheries Association, the New Zealand Federation of Commercial Fishermen, and the New Zealand Underwater Club to resolve potential conflicts in advance of the hearing. Commercial fishing for pāua and crayfish would be allowed to continue in Te Hūmenga but not in Te Kopi. Recreational fishing would be allowed in both and would be open to Māori and non-Māori alike. The management system, in keeping with the spirit of the legislation, would acknowledge te tino rangatiratanga (full chiefly authority), kaitiakitanga (environmental guardianship), and tikanga Māori (traditional Māori ways of doing things):

> Both areas will be managed largely as non-commercial fisheries. Area one (Te Kopi) will be managed entirely as a recreational and traditional fishery to the exclusion of all commercial fishing within the Taiapure. Area two (Te Humenga) will also be managed as a recreational and traditional fishery and will include the present rock lobster commercial fisheries. Commercial harvesting of drift agar seaweed (*Pterocladia*) will also be permitted.[70]

The proposal says that Ngāti Kahungunu ki Wairarapa would be supported as managers of the taiāpure by the Ministry of Fisheries, the Federation of Commercial Fishermen, and the State park forest ranger living adjacent to the taiāpure.

Following publication of the proposal in the *New Zealand Gazette* and newspapers, the registrar received 16 written submissions, the majority of which were in opposition to the scheme. The most vigorous objectors were individual commercial fishermen, independent of the Federation of Commercial Fishermen; they supported neither the concept of taiāpure nor the Palliser Bay application. The New Zealand Fishing Industry Board had a carefully articulated position: it expressed reservations about the lack of a formal definition of littoral waters but supported the proposed taiāpure. They were, after all, exactly the small, discrete kind that the board favoured.

Having heard the parties, the tribunal reported to the Minister of Fisheries that the application could be approved.[71] It said, though, that the Crown needed both to revisit the legislation and define 'littoral coastal water' and 'estuarine' and to consider compensation for people who could prove pecuniary loss because of the creation of a taiāpure. The Minister accepted the first recommendation but not the second and confirmed the taiāpure as defined in the application.[72]

13A.4.8 Assessment of the Palliser Bay taiāpure

The process initiated by Mita Carter in 1988 was finally completed when the taiāpure was designated in 1995 and its management committee was appointed in October 2000. In retrospect, the whole endeavour looks rather like an awful lot of effort for not very much. Ngāti Hinewaka did not get what they wanted, and their mana and rangatiratanga were compromised in the process.

There is no doubt that this application suffered from being one of the two first applications to get off the ground: everyone was wary and cautious. As a result, the two areas comprising the Palliser Bay taiāpure are minute compared with the customary fisheries of the hapū. Their size compares unfavourably with those created for Maketū in 1996 and Kāwhia Aotea in 2000. The taiāpure approved for Porangahau, on the southern Hawke's Bay coast just north of the Wairarapa ki Tararua district inquiry boundary, corresponds much better to the customary fishing resources of the Ngāti Kere applicants there. That taiāpure extends for more than 40 kilometres along the coast from Cape Turnagain to Blackhead Beach and out to sea for one nautical mile from the mean high-water mark and comprises an area of 67 square kilometres.[73] The table over sets out the dimensions of taiāpure that have been approved and

Taiāpure	Date	Area (km²)
Palliser Bay (southern Wairarapa)	July 1995	3
Maketū (Bay of Plenty)	September 1996	55
Pōrangahau (southern Hawke's Bay)	December 1996	67
Waikare Inlet (Northland)	December 1997	18
East Otago	July 1999	23
Kāwhia Aotea (Waikato)	May 2000	137
Whakapuaka (Delaware Bay, Nelson)	February 2002	25
Akaroa Harbour (Banks Peninsula)	March 2006	45

Taiāpure–local fisheries established in New Zealand, 1995–2006

shows how relatively poorly Ngāti Hinewaka were served by the process.

Dr Leach has worked with Ngāti Hinewaka for many years, and he was clearly disappointed that, for all their efforts, they achieved taiāpure for only two small areas 'after a great deal of heartache and opposition'.[74] The Te Kopi taiāpure, although important for spiritual reasons, was very unsatisfactory for customary fishing. Dr Leach hoped that the Te Hūmenga (Kumenga) taiāpure would rejuvenate over time if it could be protected from 'black market profiteering', and he expressed disquiet about the provisions that allowed commercial crayfishing to continue within an area designated to protect customary rights.[75]

Dr Leach then directed his attention to the larger coastline:

> While Ngāti Hinewaka accept that some small progress has been made, they are dismayed that the really important inshore areas further south in Palliser Bay and all along the coast of Eastern Wairarapa, continue to be plundered. Before Mita Carter died, he made a final plea to the Ministry of Fisheries that the coast from Ngawi to Waitetuma stream which borders Māori freehold land must be included in a Taiapure now or at a later date.[76]

On balance, our misgivings about how the system worked for Ngāti Hinewaka align with Dr Leach's. Ngāti Hinewaka suffered from being the guinea pigs in the new customary fisheries regime. Both they and the Crown officials lacked experience; the legislation was new and the application was complex; the definition of littoral and estuarine waters was untested; and the parties perceived customary fisheries very differently. The Ministry of Fisheries was under pressure from commercial fishing interests. The New Zealand Fishing Industry Board, uncertain about where the new legislation might go, was pressing constantly for the area applied for to be kept to a minimum.[77] Certainly, as ultimately defined and gazetted, the taiāpure at Te Kopi and Te Hūmenga (Kumenga) do not meet Ngāti Hinewaka's needs. They comprise a very small proportion of the customary fisheries of Ngāti Hinewaka and an even smaller proportion of the customary fisheries of the tangata whenua of this inquiry district.

The petitions that Mita Carter mounted in 1989 and 1990, and the statements attached to the application, show an intention to exercise rangatiratanga over far more extensive areas of customary fishery. It may be that, in a different political climate, the existing taiāpure legislation would enable them to do this. However, because of the uncertainty about what the word 'littoral' means in the context of the legislation, we think that an amendment of the legislation is called for, and we recommend accordingly.

13A.5 Conclusion

The material in this chapter overlaps with the chapters on local government and the Resource Management Act 1991 (ch 12B), customary fisheries (ch 13B), and heritage

management (ch 12D). Those chapters need to be read together with the material in this chapter. Only then is it plain that, even though Wairarapa ki Tararua has been relatively isolated in the past, the development of its coastal reaches is now affecting the natural environment. It is also endangering the tangata whenua's relationship with their mahinga kai and wāhi tapu and threatening their ability to keep intact important archaeological sites that record their past. The tangata whenua are poorly placed to bring about changes to mitigate these effects because, as we have seen, they have a low level of influence on local bodies and because the legislation is framed in ways that permit low levels of responsiveness to their needs. Also, as far as customary fisheries are concerned, Māori in Wairarapa ki Tararua have been unable – thus far, at least – to make the customary fisheries legislation work for them.

Notes

1. Problems were created for later generations when the Crown surveyed the landward portions of these reserves without considering the seaward portions.
2. Document A71 (Leach), p 115
3. Ibid, pp 116–136; see also doc A59 (Stirling)
4. Document A71 (Leach), p 137
5. Document E38 (Matthews), paras 9, 15
6. In document A71, pp 19–48, Leach draws in Kirch (1984), together with Williamson (1924), Buck (1934), Burrows (1938), Firth (1957), Crocombe (1964), and Oliver (1974).
7. In document A71, Leach cites evidence and reproduces maps for Hawaii (Kirch, 1985), Rarotonga (Crocombe, 1964), Mangaia (Buck, 1934), Futuna (Burrows, 1936), and Tahiti (Williamson, 1924). Those cited are all high islands, comparable to New Zealand. There are variant patterns of resource use for low islands made up of motu, reef, and lagoon.
8. Document A71 (Leach), p 48
9. Leach lists 20 to 30 names that occur and recur in the evidence: doc A71 (Leach), p 46.
10. Document A54 (Smith), pp 48–49. Huitau, for example, had a toka kōura at Kaihoata while Te Ikaraeroa and Tumupuhia and Hikawera were given two toka hāpuka, Rangipo and Puritia, at Te Unuunu. Spearfishing pools were called wai tahere: Nepia Pohatu identified two of these by name, Hangukarearea and Te Mania.
11. Document E38 (Matthews), paras 54–64
12. Document A31 (Ellis), p 4
13. Ibid, p 60
14. Ibid. Ellis adds that the Māori owners invested in equipment and engaged in commercial agar collection, 'with the Crown['s] acquiescence', from the 1940s to the 1960s.
15. Ibid, p 14
16. This was the substance of Wai 420, the claim by Warren Chase and Te-Hika-ā-Pāpāumu: doc A31 (Ellis), pp 33, 39–40. Ellis reviewed the files containing the complaint and the Crown responses and concludes that the owners could, and did, enforce their exclusion rights. He notes an example in 1968 of tangata whenua ordering a seaweed collector off their block.
17. The loss to Māori of rights in the commercial fishery was redressed by a series of settlements from 1989 to 1992, and the Tribunal is precluded from inquiring further into any matters relating to the commercial fishery.
18. Document A25 (Marr), pp 103–109
19. Ibid, p 108
20. Ibid, p 109. Ellis (doc A31, pp 35–46) and Smith (doc A54, pp 64–65) are less specific about the development of roads and recreational access north of Castlepoint. These coasts are more distant from Wellington and Masterton. The impression we gain in terms of chronology is similar to that reported by Marr: an increase of interest in the 1920s, a pause in the 1930s and 1940s, and a resumption of interest in the 1950s. The Ellis evidence thus suggests that pressures were less north of Castlepoint.
21. See, for example, document A25 (Marr), p 110.
22. Document A25 (Marr), p 110; doc A31 (Ellis), p 45
23. Document A25 (Marr), p 112. Marr is citing J Dunmore, *Around the Shining Waters: A History of Featherston County Council* (Waikanae: Heritage Press, 1991), at this point.
24. Document A25 (Marr), p 112
25. Ibid, p 115
26. Ibid, p 116
27. Ibid, pp 116–117
28. Ibid, pp 120–121
29. Ibid, pp 130–131
30. Ibid, p 132
31. Ibid, pp 123–124
32. *New Zealand Year Book 1942*, pp 376–381; 'Report of the Sea Fisheries Investigation Committee', AJHR, 1937–38, H-44A
33. Document A71 (Leach), p 137; doc A71(b) (Leach), pp 241–248, esp p 243
34. Document A71 (Leach), p 138; doc A71(b) (Leach), p 243
35. The Native Purposes Act, passed in March 1938, contained provision in section 5 for the setting aside of reserves for different purposes. It does not contain explicit reference to fisheries reserves and there was no discussion about clause 5 when the Bill was debated on 11 March 1938: NZPD, vol 250, pp 297–303.
36. Document A71 (Leach), p 139; doc A71(b) (Leach), p 230
37. Waitangi Tribunal, *Ngai Tahu Sea Fisheries Report, 1992* (Wellington: Brooker and Friend Ltd, 1992), secs 6.3–6.3.5. The Wai 27 Tribunal

was, at that point, drawing on evidence provided by Crown historian David Armstrong, the Minister of Agriculture, and forestry and fisheries researcher Robert Cooper, who provided the Tribunal with a report entitled 'Maori Fisheries Issues: Sources in Government Archives since 1840' prepared for the Joint Working Group on Māori Fisheries.

38. Document A71 (Leach), pp 68–90, figs 22, 25

39. NZPD, 1945, vol 272, pp 468–476, 514–515. The Bill was moved by McLagan and received strong support from all speakers, including Peter Fraser and Messrs Mawhete, Sullivan, Tirikatene, Omana, Paikea, and Corbett.

40. Document A71 (Leach), pp 146–147; doc A71(b) (Leach), pp 122–125

41. Document A71(b) (Leach), pp 113–118

42. The Fisheries Act 1908 contains sections on regulation (s 5(d), (h), (m)–(p)), the protection of fish (s 10), and the protection of edible shellfish (s 46).

43. Document A71(b) (Leach), p 117

44. Document A71 (Leach), pp 140–141; doc A71(b) (Leach), pp 107–109. Leach comments that this letter from the Ministry of Maori Affairs would have been devastating for Ngāti Hinewaka: doc A71 (Leach), p 141.

45. Document A71(b) (Leach), pp 107–108

46. Document A71 (Leach), p 151 identifies the petitioners as 'Te Hiorangi Te Whaiti and 81 Others'. The Joint Working Group on Māori Fisheries (*Maori Fisheries Issues: Guide to Sources in Government Archives since 1840*, prepared for the Joint Working Group on Maori Fisheries in 1988) lists two 1953 petitions, numbers 4 and 16, and provide the additional information about the two lists.

47. The draft report *Maori Fisheries Issues: Guide to Sources in Government Archives since 1840* prepared for the Joint Working Group on Maori Fisheries in 1988 has some perceptive comments about the passive role of the Maori Affairs Department and the narrowly focused perspective of the Marine Department: see page 18.

48. Document A71 (Leach), p 145

49. Ibid

50. Document A71(b) (Leach), p 207

51. This was confirmed in the internal memorandum in 1960 (doc A71(b) (Leach), p 208) and again in the Law Commission's *Report on the Treaty of Waitangi and Maori Fisheries* (1989), p 177. No reserves were created under section 33 of the Maori Social and Economic Advancement Act 1945, and this provision was repealed, without parliamentary comment, when a Maori Welfare Act was passed in 1962.

52. Waitangi Tribunal, *Ngai Tahu Sea Fisheries Report 1992* (Wellington: Brooker and Friend, 1992), sec 6.10.5. The Wai 27 Tribunal was at this point drawing on evidence provided by Crown historian David Armstrong and the Minister of Agriculture.

53. Document A71 (Leach), p 158

54. Ibid, pp 159–63; doc A71(b) (Leach), pp 573–577

55. Mita Carter, *Early Palliser Bay* (Featherston: Featherston Publishing Committee, 1982)

56. Document A71 (Leach), p 163

57. The five coastal fisheries were Kawa Kawa (doc A71 (Leach), p 164; doc A71(b) (Leach), pp 562–563); Matakitaki 1 and 2 (doc A71 (Leach), pp 164–5; doc A71(b) (Leach), p 569); Te Kopi 2 (doc A71 (Leach), p 165; doc A71(b) (Leach), p 570); and Kawa Kawa 1 and 2 (doc A71 (Leach), p 165; doc A71(b) (Leach), p 571). One other has 23 signatures with the location not named (doc A71 (Leach), p 164; doc A71(b) (Leach), p 566). The petition for Lake Oneke has 77 signatures (doc A71 (Leach), p 164; and doc A71(b) (Leach), pp 564–565, 567–568) Both spellings – Onoke and Oneke – are used in the documentation.

58. Document A71(b) (Leach), pp 562–571

59. Document A71 (Leach), p 166

60. Ibid, pp 166–177, with page references to various parts of document A71(b) (Leach).

61. Ruth Marsh prepared a memorandum which recorded the content of the meeting: doc A71(b) (Leach), pp 337–339.

62. Compare the petitions in document A71 (Leach), pp 164–166 and the summary map in figure 11.3 above, with the application in document A71(b) (Leach), pp 347–374. See especially section 3 on location and boundaries, pp 350–352. Carter worked on the application as a member of Ngāti Hinewaka, the hapū which exercised manawhenua manamoana for these coasts; the application was lodged by him under the name of Ngāti Kahungunu ki Wairarapa, the larger iwi grouping of which Ngāti Hinewaka was part. The distinction is not problematic but needs to be noted since the Leach evidence consistently refers to 'Ngati Hinewaka' and the formal application and reports refer to 'Ngati Kahungunu ki Wairarapa'.

63. Document A71(b) (Leach), pp 344–345

64. *New Zealand Gazette*, 2 April 1992, no 45, pp 956–957

65. Document A71(b) (Leach), p 492

66. Details of this resistance can be found in the *Manukau Harbour Taiapure Report and Recommendations*, which was eventually heard and declined in 1998. The application has not been resubmitted and the report has not, at this stage, been published in the *New Zealand Gazette*. See 'Fisheries (Notification of Proposal to Establish the Manukau Harbour as a Taiapure–Local Fishery)', 23 April 1992, *New Zealand Gazette*, 1992, no 57, pp 1164–1165; Ministry of Fisheries update, july 2007 (http://www.fish.govt.nz/en-nz/Publications/Ministerial+Briefings/Ministerial+Briefing+05/Ministerial+Actions+and+Issues+to+December+2005/Operational+issues.htm, accessed 13 July 2009).

67. Ray Dobson, press release, June 1992 (doc A71(b) (Leach), p 487)

68. *New Zealand Gazette*, 20 April 1995, no 36, pp 998–999

69. Taiapure proposal, sec 3.3 (doc A71(b) (Leach), pp 347–374)

70. Taiapure proposal, sec 5 (doc A71(b) (Leach) p 353)

71. The two areas were accepted as described. The Tribunal followed the New Zealand Geographic Board and used the spelling 'Te Kumenga', rather than 'Te Humenga'. It also corrected an error in the coordinates for latitude and longitude which had been given incorrectly in the initial *Gazette* notice.

72. The Ministerial confirmation was gazetted in April 1995: *New Zealand Gazette*, 20 April 1995, no 36, pp 998–999. The Minister did 'not

consider the creation of a taiapure would itself impinge on commercial fishing rights to the point where compensation could be sought.' The need for expanded definitions was considered but not taken up in legislation. The Fishing Industry Board continued to express concern about this, and the task of addressing the questions of definition fell to later taiāpure tribunals.

73. Porangahau taiāpure local fishery proposal (recommendation and decisions): *New Zealand Gazette*, 6 June 1996, no 57, pp 1464–1465. The Tribunal, recognising problems of definition of littoral waters, recommended that the proposed reserve extend 'no more than one mile' from the coastline. The Minister of Fisheries, aware that demarcation was important and that a marine reserve, immediately adjacent, would extend out one nautical mile from the coast, applied that same measure to the taiāpure.

74. Document A71 (Leach), p 178

75. Ibid

76. Ibid, pp 178–179

77. When the board went to the High Court in June 1992, it sought a declaration that the words 'taiāpure – local fishery' mean a small circumscribed area of New Zealand fisheries waters that have customarily been of special significance to Māori: statement of claim in *New Zealand Fishing Board v Durie* unreported, 23 June 1992, High Court, Wellington, CP441/92 (doc A71(b) (Leach), pp 481–485).

Maps

Page 996: 'Taiāpure Boundaries as Presented in the Application for the Palliser Bay Taiāpure'. Source: Donald W McKenzie, ed, *Heinemann New Zealand Atlas* ([Auckland]: Heinemann and Department of Survey and Land Information, 1987).

Tables

Page 998: 'Taiāpure–Local Fisheries Established in New Zealand, 1995–2006'. Source: Ministry of Fisheries, 'Update on Mataitai Reserve Applications and Taiāpure–Local Fishery Proposals to July 2007, Area Management Tools', Ministry of Fisheries, http://www.mahingakai.org.nz/area-management-tools (accessed 8 February 2008).

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CHAPTER 13B

MANAGING THE CUSTOMARY FISHERY

13B.1 Introduction

As we saw in chapter 13A, tangata whenua in this inquiry district protested the negative effects of commercial fishing on their customary fisheries as early as 1949. Until then, the Wairarapa ki Tararua coast had been sufficiently isolated, and fish stocks elsewhere sufficiently abundant, for customary use of the fisheries to be relatively unaffected by incursions from outsiders. But, gradually, over the succeeding decades came a growing awareness that commercial fishers were affecting Māori customary fishing.

New Zealand's fishery was run under a licence system for most of the twentieth century. Effectively, anyone who had a licence could sell all the fish they could catch. As fishing efforts increased in the latter half of the century and fish stocks declined as a result, it became obvious that the licence system was not a sustainable way of managing the fishery.

13B.2 The Development of the Modern Commercial Fishery Regime

13B.2.1 The quota management system

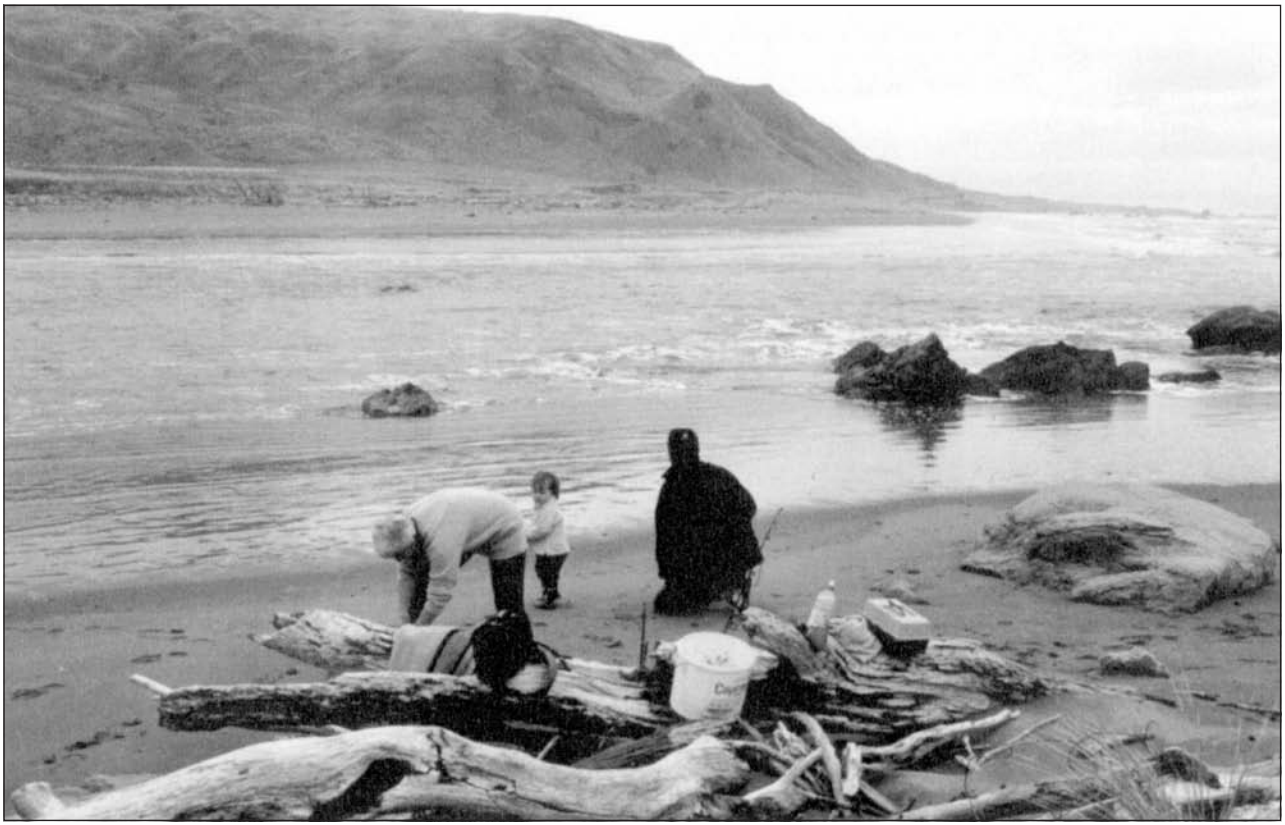
Policy-makers promoted the introduction of the quota management system, under which records of fishers' catches over a certain period of years gave rise to a right to take a defined tonnage of specified species ('individual transferable quota', later called ITQ or 'quota'). The system was sustainable, because the total allowable catch of any fish species would be scientifically determined on the basis of data about fish stocks. If fish stocks in any species declined to an unsustainable level, quota in that species would be reduced.

Quota was to be tradable: conceptually, it is a property right akin to what common law calls a 'profit á prendre'. Making it tradable instantly gave it a price. It made the right to catch fish into a commodity.

Conviction about the need for New Zealand's fishery management to change to conserve the plundered fishing resource coincided with the assertion of a Māori right to the commercial fishery. That right was based either on the Treaty or on the assertions in successive Fisheries Acts that nothing in those Acts would affect any Māori fishing rights.[1] Realisation slowly dawned that much might turn on the meaning and effect of these words.

Artist reconstruction of Palliser Bay in the 13th century, based upon archaeological research. There was no need to go far offshore to catch fish in those days; even groper could be taken with a line from the rocks. Note the pumice net floats, dentalium necklace, ear pendant, and tattooing, which were present in those times.

The 1980s were a decade of transition as far as Treaty awareness was concerned. The Government held two national hui, one at Turangawaewae in 1984 and the other at Waitangi in 1985. From these emerged new policy initiatives about the place of the Treaty in national life and in domestic law. In April and June 1986, Cabinet passed resolutions requiring all Government departments to recognise the Treaty in the preparation of new legislation.[2] The Waitangi Tribunal reported on a cluster of environmental and fisheries claims in the course of the decade, culminating in the *Report on the Muriwhenua Fishing Claim* in 1988.[3] At the same time, the Government engaged in comprehensive reviews of environmental and fisheries legislation.[4]



Whānau at the Ōwahanga River mouth. The Ōwahanga River forms one of the boundaries of Aohanga/ Ōwahanga Station.

13B.2.2 The Māori commercial fishing right

The Waitangi Tribunal embarked on a consideration of commercial fishing issues when it convened in Te Hapua on 8 December 1986 to hear the Muriwhenua claim (Wai 45). In that same week, the Ministry of Fisheries proposed to allocate individual transferable quota for commercial fish species. The Tribunal hastily prepared a memorandum asking the Ministry to delay that allocation.[5] The Ministry replied that it was unable to do so, with the result that iwi asked the High Court to intervene.[6] The High Court granted injunctions and encouraged the two parties, the Crown and iwi (whose interests were represented by the New Zealand Māori Council), to negotiate a fisheries settlement. These negotiations took place in the lead-up to the Maori Fisheries Act 1989 and continued until 1992, when the 'Sealord deal' was brokered and enacted in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. In the course of these commercial fisheries negotiations, customary fisheries rights were also addressed and legislated for.

13B.3 The Tribunal's Jurisdiction

The measures enacted in the Māori Fisheries Act 1989 and the Treaty of Waitangi (Fisheries Claims) Settlement Act

1992 together constitute a full and final settlement of all Māori claims to commercial fishing rights. The Tribunal's jurisdiction to inquire into or make findings on any claim that relates to Māori commercial fishing rights was removed by this legislation.

However, there is no jurisdictional bar to the Tribunal considering claims relating to Māori non-commercial fishing rights, as the settlement legislation specifically states that these rights continue to give rise to Treaty obligations on the part of the Crown.[7]

13B.3.1 The parties' positions

The Crown's position before this Tribunal was that we should not inquire into customary fishing in this district. It submitted that regulations have already been put in place to fulfil the Crown's Treaty obligations as they relate to customary fishing. It further contended that, if we investigate the customary fishing regime now in place and identify prejudice to Māori arising from it, any remedy we recommend would focus on how to prevent such prejudice occurring in the future. At the time of our hearings, the Crown was reviewing the operation of the regulatory framework and how the implementation of the regulations might be improved. Crown counsel argued that the normal policy and legislative process should be allowed to take its course and that sufficient time had not yet passed to indicate that the Tribunal's guidance on customary fisheries was needed.[8]

However, the claimants in this inquiry raised as a central concern the management, protection, control, and use of their coastal fisheries and their access to the coastal environment. They seek to have their interests in these areas prioritised and enhanced.[9]

13B.3.2 Our approach

The Tribunal formed the view early in the inquiry that, even though the Government had announced its intention to review its customary fisheries policies, we should respond to the claimants' desire for us to inquire into claims relating to customary fisheries within the Wairarapa inquiry district. Our consideration could include the adequacy or otherwise of the present regulatory regime in Treaty terms.[10]

In the interim between the hearing and the release of this report, we have sought updates from the Crown Law Office on the Government's review.[11] These have been provided and are reflected in this chapter. We cannot say whether the changes are working as intended, of course, because the time to hear the claimants' on-the-ground accounts is long past. Nevertheless, we note the changes that have been introduced, along with our comments.

Our impression of the Ministry of Fisheries staff who gave evidence and helpfully responded to questions is that they will be interested in the Tribunal's observations of the regime as it then was. We hope that Māori customary fisheries provisions will remain under scrutiny, allowing an ongoing assessment of whether the changes introduced have fixed the problems we identified. If they have not, we trust that our observations will suggest where further changes might assist.

13B.4 Customary Fisheries: The Current Regime

In this section, we examine the measures passed into law to provide for Māori customary fishing; their implementation; and the claimants' experience as outlined in evidence. Are the measures working as intended, what are the problems, and how might those problems be fixed? Finally, we note changes made to customary fishing regulations and their implementation since our hearings ended, and we comment on these changes.

13B.4.1 Taiāpure

The first substantial Government initiative for customary fisheries came when provisions for the establishment of taiāpure-local fisheries were enacted in part IIIA of the

Māori Fisheries Act 1989. The object of this part of the Act is to make:

> in relation to areas of New Zealand fisheries waters (being estuarine or littoral coastal waters) that have customarily been of special significance to any iwi or hapu either—
>
> (a) As a source of food; or
>
> (b) For spiritual or cultural reasons,—
>
> better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi.

The process for establishing taiāpure is set out in the provisions of part IIIA (subsequently replaced by part 9 of the Fisheries Act 1996). Proposals for taiāpure are made to the Director-General of Fisheries, after which the application is publicly notified in the *New Zealand Gazette* and local newspapers. A tribunal chaired by a judge of the Māori Land Court conducts a public inquiry on the proposal. This tribunal delivers a report and recommendation to the Minister of Fisheries, who then decides whether to grant the application. If the answer is 'yes', the Minister recommends that the Governor-General make an Order in Council establishing the taiāpure and appointing a management committee. Tangata whenua nominate the management committee members for the Minister's approval.

Taiāpure involve tangata whenua directly in the management and conservation of the local fishery through the committee of management, which may comprise both Māori and non-Māori fishing interests. Committees of management can recommend regulations to the Minister of Fisheries for the conservation and management of the taiāpure fishery.[12] These regulations apply to all forms of fishing, whether commercial, recreational, or customary. Commercial fishing can continue in a taiāpure but is subject to any regulations recommended by the committee.

(1) *The Wairarapa experience*

The Wairarapa district is home to one of the first taiāpure to be created, over Te Hūmenga and Te Kopi at Cape Palliser. This Ngāti Hinewaka taiāpure was established by the Fisheries (Palliser Bay Taiāpure) Order 1995, gazetted on 13 July 1995. However, the Tribunal heard, in the evidence of Dr Foss Leach and Haami Te Whaiti, that Ngāti Hinewaka had originally hoped to establish a much larger, more ambitious taiāpure. (Ngāti Hinewaka's experience of using taiāpure as a means of protecting their customary fishing interests is discussed in chapter 13A. There, their difficulties with the taiāpure process are described in greater detail, as part of a narrative about their struggle, especially since the 1950s, to maintain their mana over their seaward terrains.)

The original proposal, initiated in 1989 by Mita Carter, was to include fisheries at Waiwhero, Ngāwi Point, Mātakitaki–Waitetuma, and Lake Ōnoke. These fisheries were withdrawn from the proposal before its eventual establishment, which Dr Leach attributes to 'fierce opposition from parties whose interests are entirely pecuniary'.[13] Dr Leach also informed the Tribunal that, of the two fisheries remaining in the taiāpure, Te Kopi was principally included in the proposal because of its historical importance and the wāhi tapu it contains, rather than its suitability as a fishery. The waters there are unsafe due to a strong undertow and do not support a high population of fish and shellfish suitable for customary food gathering.[14] This leaves Te Hūmenga as the only fishery included in the taiāpure that was principally included for its value as a customary fishing site. Concerns were raised in evidence about the extent to which commercial crayfishing continues in the taiāpure, as well as the fact that the most significant customary fishing area in the original proposal, between Ngāwi and the Waitetuma Stream, was not included in the final order. Dr Leach called the taiāpure in its present form 'a pale reflection of the original grand scheme'.[15]

The claimants also highlighted the length of time taken both for the taiāpure to be established and for a management structure to be appointed. After the initial proposal was lodged in 1992, it was three years before the Palliser Bay taiāpure was established by order in 1995.[16] A management

committee for the taiāpure was not established until 2003, and at the time of our hearings, the committee had not recommended regulations to the Government. In his evidence to the Tribunal, committee member Haami Te Whaiti described the problems that had been encountered by Ngāti Hinewaka in utilising the taiāpure process as a mechanism to protect and promote customary fishing:

> The Taiapure regime does not give us the control of our customary fishery as provided for in the Treaty. When the Taiapure were first put in place it allowed for commercial crayfishing at Te Humenga, though commercial paua fishing and other fishing is excluded. This is of some benefit, though we have yet to see the results. The real problem is that the management committee has no teeth with which to enforce the Taiapure or change it as is needed. In order to change any part of the Taiapure the committee must lobby the Minister, must then go through a public process and then any changes can only be implemented by way of regulation. . . . The fact that we receive no support or resources to undertake these processes is indicative of the Crown's poor commitment to the implementation of these regulations.[17]

In response, the Crown said that iwi, not the Ministry of Fisheries, selected the sites and then reduced their size. Similarly, on the issue of commercial fishing the Crown noted that the applicants specified in their proposal that they would allow the commercial fishing of rock lobster to continue if a taiāpure were established at Te Hūmenga. If it is now desired to prohibit commercial crayfishing, the onus is on the committee of management to recommend regulations to the Minister to provide for this.[18]

In his evidence, Terry Lynch of the Ministry of Fisheries said that the selection and reduction of sites appeared to result from discussions between the applicants and local fishing groups. He also noted that the 'significant hiatus' before the management committee was established occurred despite Ministry staff seeking nominations on various occasions. He acknowledged that the Te Kopi site is subject to 'extensive and very active coastal erosion', that the water is 'almost perpetually turbid' and that rock structures that may have supported paua have been 'covered or removed', but the applicants knew that when they sought to have the site in the taiāpure.[19]

Lynch stressed the preference for 'people to work towards voluntary agreements or internal arrangements that mitigate the need for the Crown to step in as the law-maker' and that both Māori and non-Māori are keen to embrace local management mechanisms.[20] In order for taiāpure to be a vehicle for local communities gaining local control, consensus is required.[21] He asserted that, 'once Maori were actually in a position of being, not even a decision-maker, but a recommendatory body to the Minister, that changed their status and role in those communities from invisibility to someone you needed to get on with.'[22]

(2) *Tribunal comment*

On the face of it, taiāpure seem to be a vehicle for Māori to exercise more control over their traditional fisheries. But, for us, there is a real question about whether the statutory scheme is really adequate, both in its conception and in its implementation, to help Māori realise their aspirations for their customary fisheries. To use a Pākehā whakataukī, the proof of the pudding is in the eating. Extending the metaphor, the Crown duty does not end with writing the recipe. It must help locate and provide the right ingredients and keep a close eye on the kitchen. In other words, it must ensure that the mechanisms are, in fact, working to provide the better recognition of rangatiratanga that is the statutory goal.[23] It was clear from what we heard that applicants for taiāpure need support, in the form of expertise and money. Selecting suitable sites and managing other stakeholders' interests are key. After establishment, applicants need help both to set up and to run management committees.

These needs are not peculiar to the Wairarapa district. While a number of taiāpure have been established around the country since 1989, very few, if any, have reached the stage of having had regulations implemented to manage

their customary fisheries. Taiāpure provisions have been in place for 20 years, so it is clear that a serious rethink is required.

When questioned about taiāpure and the difficulties encountered by Māori in establishing and administering them, we interred from what Leach said that the Crown considers them to have had their day:

> Taiapure, when it was developed . . . was a creature of its time and it looked to provide a recommendatory role to the Minister of Fisheries. That same outcome, and to be able to set rules to protect customarily important fishing grounds and, as you say, enhance and rehabilitate them to the best extent that you can. . . . Mataitai has these same outcomes. It has less imposition from the Minister, in that having established a mataitai reserve, the committee makes the bylaws. The Minister must approve the bylaws unless they're contrary to the Fisheries Act. So, to that extent, the role that taiapure were designed to carry out, can be achieved by, in a mataitai reserve, but with more direction by the Maori community over these decisions.[24]

Perhaps this is why the Crown's new initiatives concentrate on assisting with the appointment of tāngata kaitiaki (persons exercising environmental guardianship) and on applications for mātaitai, rather than on taiāpure.

However, taiāpure provide different outcomes for Māori – they potentially cover larger areas, where it may not be possible to exclude all commercial interests like in a mātaitai, but where iwi or hapū nonetheless wish to assert and protect their rights to customary take. To alleviate the kinds of frustrations we saw in Wairarapa, funding and assistance are required to enable Māori to establish and administer taiāpure effectively.

The claimants in this inquiry were concerned about how commercial and other non-Māori interests have to be accommodated within taiāpure. While Lynch emphasised the Crown's preference for taiāpure to work towards voluntary internal arrangements within local communities, this is a tall order. What do tangata whenua need to give up in order to get stakeholders to agree? Does this process dilute the right to control customary fisheries guaranteed by the Treaty? This was clearly what Ngāti Hinewaka felt occurred in Cape Palliser, with the removal of numerous proposed sites from the taiāpure and the accommodation of commercial crayfishing interests at Te Hūmenga. While it is good if other stakeholders support taiāpure, at the same time the Crown should ensure that Māori are not placed in a position where they are forced to concede much of what is sought in order to gain broad-based support. It may not necessarily be popular, but we are sure that there are situations where the Crown must simply join with Māori to insist on the priority of customary rights over other rights if Māori Treaty rights are to be given effect.

13B.4.2 Further legislative enactments

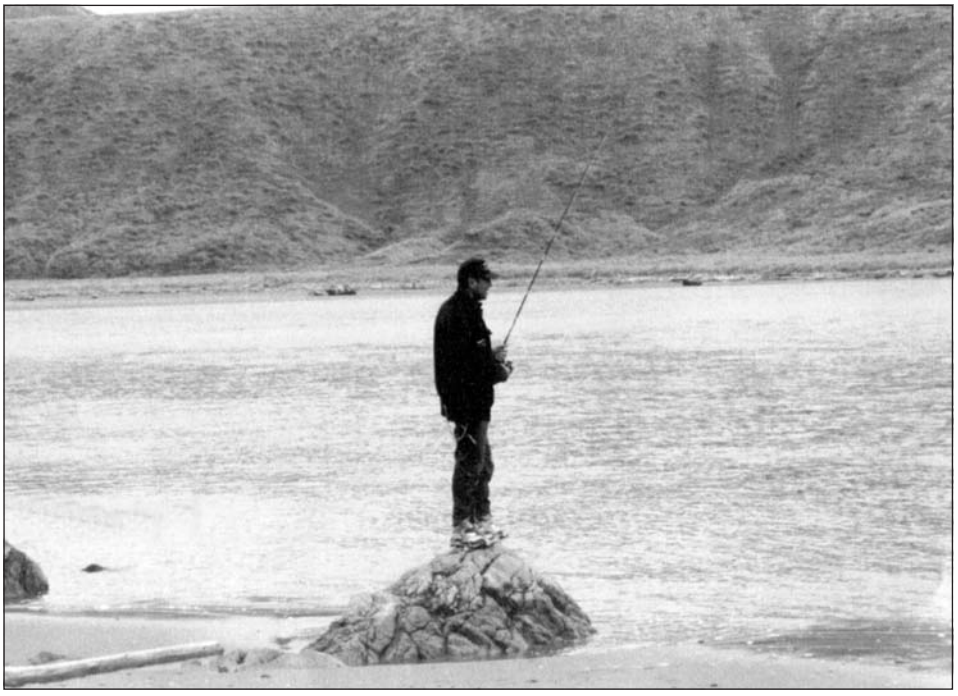
While the events described above were unfolding, and proposals for taiāpure were being made within and beyond Wairarapa ki Tararua, the Crown and iwi reached agreement on the allocation of commercial fish quota. A deed of settlement was signed and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 was passed. The negotiators on both sides were careful to ensure that non-commercial customary uses and the exercise of kaitiakitanga over these fisheries were confirmed, not curtailed, by the legislation. Section 10 of the Act directed the Minister of Fisheries to prepare and recommend to the Governor-General regulations that would recognise places important for customary food gathering by Māori, and it also introduced the concept of mahinga mātaitai (places where seafood is gathered) into the legislative arena (see sec 13B.4.4).[25]

The Fisheries Act 1996 reiterated the mātaitai provision in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Mātaitai reserves would be non-commercial, in areas of importance for customary food gathering, and would ensure that the customary needs of local marae were met. They would be controlled by marae committees. Section 186 of the Fisheries Act 1996 also made brief provision for local marae to designate tangata kaitiaki, who

To the left of this point is Te Hūmenga taiāpure

would authorise the taking of fish, aquatic life, or seaweed to sustain the functions of the local marae.[26] The section reiterated the requirement for regulations pertaining to customary fishing, tauranga ika (fishing spots, traditional fishing ground), and mahinga mātaitai to be promulgated. The broad sweep of the legislation was to be elaborated in detail by regulation and enforced by local marae committees and the Ministry of Fisheries acting in concert. Given this lead, the Ministry and iwi were able to draft regulations and strengthen the customary fisheries components of a new Fisheries Act.[27] This happened between 1996 and 1998. The Fisheries (Kaimoana Customary Fishing) Regulations were promulgated in 1998 to cover the North Island, including Wairarapa ki Tararua, while separate South Island customary fishing regulations were promulgated in 1999.

The regulations set out procedures for the appointment of tangata kaitiaki and the establishment of mātaitai. They also added to the taiāpure and mātaitai options by making provision for rāhui or temporary closures. Tangata whenua, aware that particular areas have become depleted by overfishing and need to be closed to rebuild fish stock, can ask the Minister of Fisheries to close or restrict fishing for a period not exceeding two years. The provision



A customary fisherman

is mentioned briefly in the regulations and highlighted alongside taiāpure and mātaitai reserves in fisheries publications.[28]

13B.4.3 Kaitiaki

(1) *The Fisheries (Kaimoana Customary Fishing) Regulations 1998*

Before the tangata whenua can manage customary food gathering within their rohe moana (tribal territory at sea) under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, they must nominate a person or persons to act as tāngata kaitiaki over the area. These kaitiaki are responsible for authorising customary take. If there is disagreement as to the appointment of one or more kaitiaki, a dispute resolution process is set out in regulation 8.

Kaitiaki have no powers to police authorisations or bylaws. To have powers to question, search, and seize, they must be appointed honorary fishery officers under the Fisheries Act 1996. Under regulation 14, kaitiaki can, however, participate in the development of sustainability and management strategies relating to rohe moana.

Joseph Potangaroa gave evidence before our Tribunal for Rangitāne and, in particular, for the Ngāti Hāmua hapū. Speaking as a claimant who had been directly involved in the kaitiaki appointment process, he provided an analysis of these regulations. He told the Tribunal that the regulations had been problematical for the following reasons:

- The dispute resolution process for kaitiaki appointments is flawed. Groups with little or no interest in the coastal area hinder the process when they object to a nomination, and there is no provision in the regulations giving the power to an independent body, such as the Minister or the Māori Land Court, to become involved and potentially adjudicate. If a dispute arises, the Minister can only recommend that

parties agree on a process for resolving the dispute. If they cannot agree, the process is deadlocked.[29]

- The regulations have strained and divided traditional relationships between coastal hapū and between inland and coastal hapū. Rangitāne have been pitched into a competitive process with their coastal whanaunga (relatives) for the appointment of kaitiaki.[30] This has led to claims for the exclusive control of specific areas, resulting in disputes about kaitiaki nominations. Conflict has been exacerbated by the inadequacy of the dispute resolution mechanisms under the regulations. A bottleneck in the kaitiaki nomination process has consequently been created, leading to a delay in appointments.[31]
- The regulations have created a crude distinction between 'inland' and 'coastal' hapū that ignores traditional seasonal migration patterns, to the disadvantage of supposedly 'inland' hapū such as Ngāti Hāmua.[32]
- The claimants have received no support or resources to undertake the processes provided for under the regulations (even though regulation 33 requires the Minister to provide kaitiaki with 'information and assistance as may be necessary for the proper administration of these regulations').[33]

At the hearing, the Crown acknowledged problems with the kaitiaki dispute resolution process, especially where people could object in order to delay the appointment process and no one has the power to compel resolution.[34] The Crown also acknowledged that its 'stand back' approach to disputes has not helped.[35] We outline new Crown initiatives to address this issue at the end of this chapter.

The Crown argued that competition for kaitiaki status between hapū is unnecessary, as the regulatory scheme does not preclude more than one iwi or hapū nominating a kaitiaki to the same or overlapping areas.[36] Similarly, boundaries for kaitiaki can be adapted to reflect the exercise of discrete customary food gathering rights within particular areas.

(2) *Tribunal comment*

Multi-kaitiaki arrangements or overlapping authorisation areas are not clearly provided for in the Fisheries (Kaimoana Customary Fishing) Regulations 1998. While regulation 8(3) states that, during a dispute resolution process, parties can agree on boundaries for the proposed customary food gathering area that differ from the original application, the regulations do not explicitly provide for boundaries overlapping. Nor do they provide for the appointment of a number of kaitiaki (from different iwi or hapū) for the same area. Instead, the opposite impression is given: under regulation 9(1)(a), the Minister cannot confirm the appointment of a kaitiaki if that appointment is opposed or if a competing notification is received.

The lack of an effective mechanism for dealing with disputes has clearly stalled and frustrated the kaitiaki appointment process. Groups who dispute kaitaki nominations or boundaries can of course seek a mandate determination under section 30 of the Te Ture Whenua Māori Act 1993. This process can be equally time consuming, and the Māori Land Court prefers not to impose a decision in these circumstances. We are pleased to see that the Crown has developed new initiatives to respond to these issues. The new initiatives appear to be well-tailored to address and resolve the previous kaitiaki appointment disputes and ensure better processes are put in place. There have now been 36 kaitiaki appointments within the Wairarapa ki Tararua district: eight from Ngāti Hinewaka, six from 'Tumapuhiarangi/Hamua', five from Te Hika ā Pāpāuma, and 17 from Ngāti Kere.

The appointment of kaitiaki has a direct impact on the ability of Māori to exercise their customary fishing rights. Until kaitiaki are appointed over a particular area, customary fishing under the regulations can be carried out only in accordance with regulation 27, meaning that kaimoana can be collected solely for hui or tangi. Those undertaking customary fishing for any other purpose will face tough new penalties. Expectations of kaitiaki will also increase as a result of these new penalties, while the lack of financial

assistance for them remains. It is therefore important that the appointment process is monitored, lest it fail again. If issues surrounding kaitiaki are not resolved, Māori cannot exercise their customary fishing rights satisfactorily.

13B.4.4 Mātaitai

(1) *The Fisheries (Kaimoana Customary Fishing) Regulations 1998*

Under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, kaitiaki can apply for the establishment of a mātaitai reserve over a traditional fishing ground in their rohe moana. If a coastal area becomes a mātaitai reserve, commercial fishing is prohibited unless otherwise recommended by kaitiaki, and kaitiaki can make bylaws that promote the sustainable use of the fishery by either restricting or prohibiting non-commercial take. In comparison with the taiāpure procedures, mātaitai allow for the exercise of customary fishing rights over more specific, discrete areas, generally to the complete exclusion of commercial fishing interests.

However, before a mātaitai is approved, it must be established that a special relationship between the tangata whenua making the application and the proposed mātaitai reserve exists, that the aims of management are consistent with sustainable use, and that the proposed area for the mātaitai is of an appropriate size for effective management.

The local community, and recreational or commercial fishers whose interests may be affected by a mātaitai reserve, must also be consulted. If the ability of a person to take kaimoana for non-commercial purposes is unreasonably restricted or if commercial fishers are prevented from taking their quota entitlement or exercising their permit rights, then a mātaitai cannot be established.

As of our hearings, no mātaitai had been established or applied for in the Wairarapa ki Tararua inquiry district.[37] Indeed, the Crown acknowledged at hearings that, since provision was made for the creation of mātaitai under the regulations, only three had been established, all of them in the South Island. The Crown considered that this was in part due to the delay in kaitiaki appointments. They also conceded in their closings that there was a need to develop clear policy directions and standards for the processing of mātaitai applications, and noted that these were currently being improved.[38]

The Crown submitted that the very few mātaitai might indicate simply that they may not be the preferred way for iwi to address their customary fishing requirements.[39]

(2) *Tribunal comment*

On the face of it, mātaitai have characteristics that should make them appealing to Māori seeking to protect customary fisheries:

- they provide for a swifter process, without the requirement for a public inquiry (which the taiāpure process demands);
- they provide for the direct control by Māori of a particular customary fishing resource, without a management committee like that required for taiāpure, which typically involve non-Māori fishing interests; and
- they automatically exclude all commercial fishing from the mātaitai area, subject to any regulations to the contrary made by kaitiaki.

And yet, few mātaitai have been sought or obtained. It seems unlikely that the low level of uptake can be attributed simply to a delay in kaitiaki appointments. Nor should we readily assume that mātaitai are not the preferred fisheries management tool of Māori. We think that if they worked, and were known to work, Māori would use them. Possibly, there is also a lack of information on how to unlock their utility.

It may also be that applications are seen as futile because, if an area suitable for a mātaitai is also subject to commercial fishing, those commercial fishing interests will thwart the establishment of a mātaitai. The Crown noted in its submissions that mātaitai can be created over an area subject to a commercial fishing quota, so long as there is

A fisherman (presumably Māori) at a river in the Forty Mile Bush, with virgin forest growing down to the water, circa 1890s

capacity for that quota to be filled in another part of the fishery. They also noted that, under the regulations, a mātaitai must be established if all of the regulatory tests are met.[40] However, it was not at all clear whether Māori know this, or whether there are concrete examples of applicants successfully negotiating the multiple regulatory tests.

At the moment, it certainly seems that it is too hard for unfunded and untrained Māori to manage a process that requires them to engage with all the vested interests in the fishery in question and to persuade them to consent to (or, at a bare minimum, not oppose) the creation of a reserve that, if established, will exclude them.

It is important, then, that kaitiaki fully understand the complexities of the mātaitai process, so that this mechanism is not discounted. The Crown have begun to address this issue, with the appointment and training of kaitiaki forming the key focus of their new initiatives to address Māori frustrations with the current system. When the new

initiatives are in place, pou hononga or regional facilitators will need to engage in the mātaitai establishment process, approaching kaitiaki within their region, bringing everyone up to speed on how it all works, facilitating dialogue between all the stakeholders, and encouraging consensus and agreements.

The new initiatives do not address whether the bar is set too high for Māori to establish mātaitai. In our minds, a question remains as to whether mātaitai really are a viable option for many communities. Māori must consult with stakeholders, including commercial fishers, recreational fishers, and conservation and local community groups, and satisfy the Minister that a mātaitai will not 'unreasonably' affect these groups' interests. It is not clear what happens to the application if there are objections. Perhaps the system anticipates such objections, and there is a dispute mechanism already in place to deal with them, but this was not clear in the material we saw.

13B.4.5 Rāhui

Two sets of procedures are in place for North Island Māori to put rāhui over particular fisheries. Neither provision uses the term 'rāhui', but contextual material makes it clear that these procedures are effectively statutory recognition of this custom.[41]

The first procedure is under regulations 28 and 29 of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. These regulations apply when one or more kaitiaki have established a mātaitai over a particular fishery. Kaitiaki may then put in place bylaws:

> restricting or prohibiting the taking of fisheries resources from within the whole or any part of a mataitai reserve for any purpose that the Tangata Kaitiaki/Tiaki considers necessary for the sustainable utilisation of the fisheries resources in that mataitai reserve.

Any such bylaws must be approved by the Minister of Fisheries under regulation 29 before they take effect.

The second procedure is set out in section 186A of the Fisheries Act 1996. Under this section, the Minister of Fisheries may temporarily close any North Island or Chathams Islands fisheries waters (in respect of any species of fish, aquatic life, or seaweed) or temporarily restrict the use of any fishing method in such waters. A request for a temporary closure or rāhui can be made to the Minister by any individual or group, Māori or non-Māori. Before deciding whether to put a rāhui in place, the Minister must consult all interested groups; apart from tangata whenua, these are defined as environmental, commercial, recreational, and local community groups. But tangata whenua interests are accorded priority. The legislation requires the Minister to provide for 'the input and participation in the decision-making process of tangata whenua with a non-commercial interest in the species or the effects of fishing in the area concerned, having particular regard to kaitiakitanga'. To grant a closure or restriction, the Minister must be satisfied:

> that it will recognise and make provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing rights by—
>
> (a) improving the availability or size (or both) of a species of fish, aquatic life, or seaweed in the area subject to the closure, restriction, or prohibition; or
>
> (b) recognising a customary fishing practice in that area.[42]

The legislative framework for effecting rāhui was not explored before this Tribunal, although the claimants and an expert witness gave evidence about the depletion of their fisheries over the past five decades.[43] The first procedure described involves kaitiaki. With only a handful of kaitiaki appointments in the Wairarapa ki Tararua district and no mātaitai established, this option has not been available to Māori in this district. However, we do not know why the second procedure is not being used. Possibly, there has been insufficient publicity and promotion about it. Terry Lynch mentions it only once in his evidence and does not elaborate.[44] We can go no further

than recommending that the Crown undertakes activities aimed at ensuring that Māori know about and understand the various options available to them under different legislative provisions.[45]

13B.4.6 Freshwater customary fishing rights

As outlined above, the Crown is obliged under section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 to promulgate regulations that recognise and provide for customary fishing practices. In discharging this obligation, the Crown promulgated the Fisheries (Kaimoana Customary Fishing) Regulations 1998, which apply to all coastal fisheries resources managed under the Fisheries Act 1996. However, as stated in regulation 3(2), the regulations do not apply to freshwater fisheries.

The reason for the exclusion of freshwater fishing rights is historical. At the time the regulations were drafted, Te Arawa and others requested that freshwater fisheries be excluded from their reach. Te Arawa wanted to test the inclusion of freshwater fisheries resources in the fisheries settlement and planned to challenge the issue in the courts. They were of the view that to include North Island freshwater fisheries in the regulations would prejudice their position, so freshwater fisheries were excluded from the scope of the regulations.

The High Court did not find in Te Arawa's favour and it confirmed that freshwater fisheries were explicitly included in the fisheries settlement. Therefore, the Crown's Treaty duty in relation to commercial freshwater fishing rights is fully settled, and the Tribunal cannot inquire into any claims relating to commercial freshwater fishing in the Wairarapa ki Tararua district. However, the Crown remains under a Treaty duty to recognise and provide for customary food gathering in freshwater fisheries.

The Fisheries (Kaimoana Customary Fishing) Regulations had not, at the time of our hearings, been amended to reflect the High Court determination. There were thus no regulations in place recognising Māori use and management practices in the North Island in relation to customary freshwater fishing. In effect, regulation 27 of the Fisheries (Amateur Fishing) Regulations 1986 was the only mechanism through which customary freshwater fishing could be undertaken.

The Tribunal had intended to recommend that the lack of regulations in relation to freshwater customary fishing in the North Island failed to adequately provide for the exercise of rangatiratanga and did not meet the Crown's undertakings under the 1992 settlement Act. However, in November 2008, the 1998 regulations were amended by the Fisheries (Kaimoana Customary Fishing) Amendment Regulations 2008 to include freshwater fisheries. This amendment answers the Tribunal's concerns, giving freshwater customary fishing rights the same status as coastal rights in the North Island.

13B.5 New Customary Fishing Initiatives

As we said earlier, since the hearings in this inquiry ended, the Tribunal has sought regular updates from the Ministry of Fisheries on new initiatives in customary fisheries. Crown witness Terry Lynch first described these initiatives in the evidence he gave in September 2004, and he updated us on their progress in May 2006 and November 2008. Claimants have not had the opportunity to tell us about how the new developments are working from their point of view, so our comments can be regarded only as provisional. Nevertheless, we offer them in the hope that they might assist in the ongoing process of addressing the problems with the customary fisheries mechanisms that we have discussed.

Lynch said that the new initiatives were to address the following iwi concerns about a lack of:

- understanding of the Crown's fisheries management methods and processes;
- understanding of the fishing practices being carried out in their region by other sectors and the impact of these practices on the fishery, the aquatic environment, and customary fishing;

- financial resources and policy skills to provide effective representation at meetings;
- skills and understanding within the Ministry of tikanga Māori (traditional Māori rules and practices) and kaitiakitanga (the ethic of guardianship); and
- coordinated governance structures within iwi.[46]

The six Ministry initiatives that Lynch told us about were regional fisheries forums, relationship facilitators, extension officers, training and support, fisheries management advisers and compliance resources, and mediation.

13B.5.1 Regional fisheries forums

The Ministry of Fisheries has instituted a number of regional forums in order to:

> provide a focus for iwi and hapū groups to work together, hear each other's issues and collectively engage with the Ministry about fisheries management issues in their region and make real progress, whilst also maintaining a flow of information back to each of the iwi and hapū in the region.[47]

When the Tribunal was told about this in 2004, it was expected that 14 such forums would eventually be established. In his updated evidence of 15 May 2006, Lynch said that there were now eight. The Te Kupenga forum covers the area from Mahia Peninsula in the north to the western end of Palliser Bay in the south and includes kaitiaki from Rongomaiwahine, Ngāti Kahungunu, and Rangitāne. It is 'starting to develop a strategic plan to manage customary fishing and to advocate for the inclusion of initiatives reflecting its aspirations in the Crown's fishing management processes'.[48]

13B.5.2 Relationship facilitators

Relationship facilitators have been appointed in the regional forum areas to:

- assist in the 'flow of information' between Ministry staff and tangata whenua;

The members of the Hawke's Bay–Wairarapa Regional Fisheries Forum Te Kūpenga Whituarouroa ā Māui

- establish and organise the regional forums;
- provide advice to the Ministry on when and how to engage with tangata whenua; and
- assist with the appointment of kaitiaki and the notification of boundaries under the customary fishing regulations.[49]

In his 2006 evidence, Lynch told us that 14 such facilitators, known as pou hononga, had been appointed, with at least one associated with the Te Kupenga forum area.[50]

13B.5.3 Extension officers

Terry Lynch described the role of extension officers as assisting iwi and hapū representatives within each regional forum to undertake their role. This assistance would include identifying how the key objectives of hapū and iwi might be achieved and, where possible, sorting out problems outside forum hui. Extension officers would initially be employed by the Ministry, but 'Once the fora and governance arrangements across the iwi and hapū are established [they] could be contracted directly by the forum to assist the designated iwi/hapū representatives.'[51]

In 2006, Lynch said that five extension officers, known

as pou takawaenga, had been employed and that interviews to appoint a further three had recently been conducted. One of those three new officers was to work in the Te Kupenga forum area.[52] In 2008, Lynch told us that an extension officer for this region was in place.[53]

13B.5.4 Training and support

When Terry Lynch gave his evidence, he said that:

> Fisheries legislation and processes contain tools (eg, the customary fishing regulations) to address many of the problems identified by tangata whenua, but a lack of understanding of those tools prevents tangata whenua using them to address their concerns.

Lynch identified a need for information and training to be given to Māori on the options available to them under the different legislative provisions, the way in which those options are implemented, and the fishing activities in their region. Appointed kaitiaki also needed training. To this end, the Ministry was planning a 'regionally targeted training programme' that would be available to all tangata kaitiaki appointed under customary fisheries regulations and designated representatives participating in the regional fishing forums.[54]

In his 2008 supplementary evidence, Lynch informed the Tribunal that New Zealand Qualifications Authority approval had been received for a regionally based tangata kaitiaki programme. Approximately 30 tangata kaitiaki in the Te Kupenga forum area have completed level one training in this programme.[55]

13B.5.5 Fisheries management advisers and compliance resources

Fisheries management advisers provide input at regional forums and assist with the development of fisheries plans and mātaitai proposals.[56] In his 2006 evidence, Lynch told us that four additional advisers had been appointed.[57]

Lynch told us when he presented his evidence at hearing that additional compliance personnel would be required to 'provide information to the forums, respond to issues as required and attend, and/or present to, forums as required'. He stated that a review of compliance resource requirements would be undertaken once the regional forum programme was proceeding and that at that stage the Ministry anticipated the need for two additional compliance personnel.[58] In his 2006 evidence, Lynch informed the Tribunal that the compliance review was under way.[59] He added nothing more in 2008.

13B.5.6 Mediation

Lynch's original brief of evidence outlines a Ministry proposal to provide independent mediators where disputes about boundary issues had led to an impasse in the kaitiaki appointment process that the pou hononga could not resolve.[60] In 2008, he told us that resources had been made available for this purpose and that the Ministry had mediated two disputes within the Wairarapa ki Tararua region 'through Pou Hononga who acted as facilitators'.[61]

13B.5.7 Tribunal comment

In closing submissions, counsel for Ngāti Hinewaka me ōna Karangaranga said:

> Mr Lynch was refreshingly candid in identifying the deficiencies of [the current customary fishing] regimes and explained the Crown's current moves to implement a new regime. Whether this new proposal can achieve tangible benefits for Ngati Hinewaka and Wairarapa Ki Tamakinui-a-Rua Maori in general, has yet to be seen.[62]

We agree. The new initiatives do seem to show a commitment on the part of the Crown to look for solutions to customary fishing problems. In particular, it is clear that the Ministry was aware of the impasse in the kaitiaki appointment process and took steps to resolve it.

In fact, the initiatives seem particularly targeted at assisting Māori with the kaitiaki appointment and mātaitai

establishment processes under the Fisheries (Kaimoana Customary Fishing) Regulations 1998. The taiāpure and rāhui mechanisms receive almost no attention.

The initiatives also appear to be principally geared towards addressing inter- and intra-Māori disputes rather than the encroachment of other fishing interests on customary fishing rights outlined particularly in relation to the taiāpure process above. Moreover, the initiatives proceed on the premise that current legislation provides Māori with the tools they need to manage customary fisheries. We would like to agree that the only missing ingredients are information about accessing the tools and funding, but while these have been lacking, we fear that some of the difficulties are more fundamental, and go to shortcomings in the legislative provisions themselves.

13B.6 Conclusion

Customary fishing rights remain a live issue before the Tribunal. The Crown has a Treaty obligation to provide for them. This is recognised in the words of section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, which states that the Government shall consult with tangata whenua and develop policies to recognise 'customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance'.

The Crown has devised a number of tools for Māori to use to establish and exercise their customary rights to gather fish, seafood, and aquatic life. However, it was clear from the evidence that effective provision for Māori customary fisheries is still very much a work in progress.

13B.6.1 Taiāpure

Taiāpure have proven very difficult for Māori to establish and administer. As of our hearings, only seven had been established around the country, with no regulations recommended to the Minister, even though this legislation has been in force for over 15 years. The difficulty is partly the time-consuming and costly nature of the process required for establishing a taiāpure and forming a management committee. But equally problematical is that taiāpure are often viewed as 'toothless' by Māori. Establishing them requires tangata whenua to negotiate with other groups with interests in the relevant fishery, and at the moment the claimants feel that they are forced to concede so much in the accommodations they must make that what emerges is a hopeless compromise. This was certainly the experience of Ngāti Hinewaka with its taiāpure at Te Hūmenga and Te Kopi.

13B.6.2 Kaitiaki

The regulations governing the appointment of kaitiaki lack clarity as to whether multiple kaitiaki may assert an overlapping authority over certain areas. This has led to disputes between iwi and hapū as nominees are challenged on the basis of claims (real or perceived) to exclusivity over a particular area or fishery. The lack of any dispute resolution process to deal with these objections has both frustrated Māori and created a large backlog in nominations. New Ministry of Fisheries initiatives will hopefully work to relieve this situation.

13B.6.3 Mātaitai

The process for establishing mātaitai also lacks clarity and, as with taiāpure, appears to set the bar too high to enable Māori to gain recognition of their customary fishing rights. No mātaitai have been established in the Wairarapa ki Tararua district, and as of our hearings only three had been established in the whole country, all in the South Island. This is despite the fact that mātaitai offer unique advantages to Māori in the use and protection of their customary fishing rights. Either the process itself is wanting or there is insufficient information and practical assistance available on how to make the process work for Māori, or both.

13B.6.4 Generally

At our hearings, the Crown was commendably open in admitting that there had been flaws in the implementation of customary fishing legislation to date. It identified the key issue as a lack of information and resourcing to help Māori use the legislative tools available to them. New initiatives have now been put in place to engage with Māori communities on customary fisheries and, in particular, to provide training for kaitiaki and assistance in breaking the deadlock around many kaitiaki appointments.

This seems to us a positive and necessary step towards answering some of the Tribunal's concerns. However, it is again premised on the notion that the problem is not with the customary fishing provisions as they currently stand, just with people's understanding of them. As we have said, we doubt that the difficulties are really so limited.

Perhaps most frustrating for the claimants was their perception that they must gain the cooperation of other stakeholders in the fishing environment before either taiāpure or mātaitai can be put in place. This means making unsatisfactory compromises to accommodate those stakeholders' interests. With taiāpure, stakeholders' concerns may be met by agreeing to give them a seat on the management committee. But if too many stakeholders have to be accommodated in this way, how will the tangata whenua be able to achieve the level of control that they want and need in order to manage *their* customary fishery? We think it likely that this inherent weakness in the mechanisms explains the low uptake of taiāpure and mātaitai as tools for exercising rangatiratanga. Simply, they offer too little rangatiratanga to justify the resources (time, effort, and money) required to establish them.

If this fundamental criticism of these statutory measures is unwarranted, the Crown gave us no insight as to how Māori seeking to put in place taiāpure or mātaitai could avoid the need to enter into a web of compromising relationships with other stakeholders.

We hope that the current legislative regime will remain under scrutiny in the Ministry of Fisheries. If the new initiatives described here do not have the effect of increasing the efficacy and uptake of the protective measures for customary fishing rights, the Crown will have to think again. We consider that another review will be required within five years, and we recommend accordingly.

Ultimately, we think that, in order for its provision for Māori customary fisheries to be effective, the Crown may need to:

- make those provisions easier to understand; and
- create a more explicit priority for Māori customary fishery rights among the plethora of fisheries interests.

The fishing resource is valuable and hotly contested by interest-holders. Both the recreational fishing and commercial fishing lobbies are motivated and powerful. Requiring Māori to negotiate sufficient space for their customary interests in this environment may simply not be a viable way of providing for their customary fishing rights under the Treaty. Establishing a clear and enforceable priority for an appropriate level of Māori customary interest would not be popular, but it may prove to be necessary. It would involve the Crown taking on the task of managing the competing interests itself, rather than requiring Māori to do it. Effectively, this is what has happened to secure the space within which Māori now exercise their commercial fishing right.

We stop short of making specific recommendations about this now (apart from our recommendation that the Crown review the current situation after five years), because we think it reasonable that the new initiatives be given time to demonstrate their effectiveness. However, if the Crown reviews the current arrangements after five years and it is apparent that provision for Māori customary fisheries has not significantly improved or if the Crown does not undertake a review, the claimants have leave to return to the Tribunal to ask for a further inquiry into their claims in this area.

Notes

1. Section 77(2) of the Fisheries Act 1908 says that 'Nothing in this Part of this Act shall affect any existing Maori fishing rights', and section 88(2) of the Fisheries Act 1983 says that 'Nothing in this Act shall affect any existing Maori fishing rights'.
2. Geoffrey Palmer, *New Zealand's Constitution in Crisis: Reforming our Political System* (Dunedin: John McIndoe, 1992), p 82; David Williams, 'The Constitutional Status of the Treaty of Waitangi: An Historical Perspective', *New Zealand Universities Law Review*, vol 14, 1990, p 31; Department of Justice, *Principles of Crown Action on the Treaty of Waitangi* (Wellington: Department of Justice, 1989)
3. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, 2nd ed (Wellington: Government Printing Office, 1989); Waitangi Tribunal, *Report of the Waitangi Tribunal on the Kaituna River Claim*, 2nd ed (Wellington: Government Printing Office, 1989); Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989). W H Oliver, *Claims to the Waitangi Tribunal* (Wellington: Waitangi Tribunal Division, Department of Justice, 1991), chs 2–3
4. Ministry for the Environment, *People, Environment and Decision Making: The Government's Proposals for Resource Management Law Reform* (Wellington: Ministry for the Environment, 1988); Law Commission, *The Treaty of Waitangi and Maori Fisheries* (Wellington: Law Commission, 1989), esp pp 1–4
5. Waitangi Tribunal to director-general, Ministry of Agriculture and Fisheries, 10 December 1986 (Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, p 292)
6. The initial injunction was sought by Muriwhenua; later injunctions were sought by Ngāi Tahu and then the New Zealand Māori Council: see William Renwick, *The Treaty Now* (Wellington: GP Books, 1990), pp 63–64.
7. Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, s 10
8. Paper 2.249, pp 8–11
9. Papers 2.261; 2.262; 2.263
10. Paper 2.273, pp 4–5
11. Papers 2.263, 2.464
12. Fisheries Act 1996, s 185(1)
13. Document A71 (Leach), p 172
14. Ibid, p 173
15. Ibid, p 172
16. Ibid, pp 166–172
17. Document D8 (Te Whaiti), p 19
18. Document I17(a) (Crown counsel), p 60
19. Document G1 (Lynch), pp 19–20
20. Transcript 4.4 (Lynch), p 8
21. Ibid, p 17
22. Ibid, p 8
23. Fisheries Act 1996, s 174
24. Transcript 4.4 (Lynch), pp 17–18
25. Section 10(c) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 identifies these as 'places which are of customary food gathering importance' and also recognises the importance of tauranga ika, the places where fish are landed.
26. Fisheries Act 1996, s 186. Part 9 of the Fisheries Act 1996 deals with taiāpure, mātaitai, and the making of regulations for customary fishing.
27. See, for example, Ministry of Agriculture and Fisheries, *Kaitiaki o Kaimoana: The Treaty of Waitangi (Fisheries Claims) Settlement Regulations* (Wellington: Ministry of Agriculture and Fisheries, 1993); Ministry of Māori Development *Ngā Kai o Te Moana Kaupapa Tiakina Customary Fisheries: Philosophy and Practices Legislation and Change* (Wellington: Ministry of Māori Development, 1993)
28. See, for example, Ministry of Fisheries, *The State of Our Fisheries, 2008* (Wellington: Ministry of Fisheries, 2008), p 20, and the list of customary management tools provided at Ministry of Fisheries, 'Customary Management', Ministry of Fisheries, http://www.fish.govt.nz/en-nz/Maori/Management/default.htm (accessed 3 November 2009).
29. Document I8 (counsel for Rangitāne), p 154
30. Ibid, pp 153–154
31. Ibid, p 154
32. Document F4 (Potangaroa), pp 22–23; doc I8 (counsel for Rangitāne), p 153
33. Document F4 (Potangaroa), p 20; Fisheries (Kaimoana Customary Fisheries) Regulations 1998, reg 33
34. Document I17(a) (Crown counsel), p 58
35. Transcript 4.4 (Lynch), p 12
36. Document I17(a) (Crown counsel), p 59
37. In his supplementary evidence of 14 November 2008, Terry Lynch noted that since the conclusion of hearings two applications to create mātaitai have been made in the region, both by Ngāti Hinewaka me ōna Kārangaranga: one covering an area approximately 0.65 square kilometres at Pūkaroro; the other for seven square kilometres at Mātakitaki ā Kupe: paper 2.464 (Lynch), para 2.
38. Document I17(a) (Crown counsel), p 61
39. Ibid
40. Ibid
41. See, for example, Ministry of Fisheries, *The State of Our Fisheries 2008* (Wellington: Ministry of Fisheries, 2008), p 20
42. Fisheries Act 1996, s 186A
43. We particularly have in mind the evidence collected around the experiences of Jack Carter, Haami Te Whaiti, and Mita Carter and presented to us alongside the scientific evidence of Dr Leach.
44. Document G1 (Lynch), p 17
45. We note that in his evidence Terry Lynch identified the need for education about the options available under the various

legislative provisions. We hope that this need is now being addressed by the 'regionally targeted training programme' that Lynch told us the Ministry is planning to make available to all tangata kaitiaki appointed under customary fisheries regulations and to designated representatives participating in the regional fishing forums.

46. Document G1 (Lynch), p 29
47. Ibid, p 30
48. Paper 2.463, para 2.2
49. Document G1 (Lynch), p 31
50. Paper 2.463, para 2.3
51. Document G1 (Lynch), p 32
52. Paper 2.463, para 2.4
53. Paper 2.464, para 4
54. Document G1 (Lynch), pp 32–33
55. Paper 2.464, para 5
56. Document G1 (Lynch), p 34
57. Paper 2.463, para 2.6
58. Document G1 (Lynch), p 34
59. Paper 2.463, para 2.7
60. Document G1 (Lynch), pp 34–35
61. Paper 2.464, paras 7–8
62. Document I5 (counsel for Ngāti Hinewaka), p 42

CHAPTER 13c

FORESHORE AND SEABED CLAIMS

13c.1 History

Several claimants alleged that they were prejudicially affected by the Crown's past and then-developing policy on the foreshore and seabed. Broadly, the claimants alleged that the Crown had failed to formally recognise or actively protect the rights of Wairarapa ki Tāmaki-nui-ā-Rua Māori in the customary ownership and management of the foreshore and seabed, instead assuming ownership of this area without consulting, or gaining the consent of, the claimants. The claimants cited the Territorial Sea and Exclusive Economic Zone Act 1977, the Foreshore and Seabed Endowment Revestment Act 1991, and the Resource Management Act 1991 as particular Crown Acts that contributed to this breach.[1]

On 10 September 2003, the Tribunal granted urgency to a number of claimants (including several from the Wairarapa ki Tararua district), who sought an inquiry into the Crown's recently proposed policy regarding Māori rights in the foreshore and seabed. It was noted at the time that this issue would therefore not be addressed in the Wairarapa ki Tararua inquiry, but that our Tribunal would still hear claims alleging prejudice arising from the Crown's assumed ownership over the foreshore and seabed since 1840.[2]

Hearings for the urgent foreshore and seabed inquiry were held in January 2004, and the Tribunal's findings and recommendations were subsequently released on 8 March 2004 in the *Report on the Crown's Foreshore and Seabed Policy*. There, the Tribunal found that the Crown policy was expropriatory of legal property rights; lacking in necessary detail, clarity, certainty, safeguards, and protections; inconsistent with other recent Crown policies in relation to Māori property rights; and inconsistent in its treatment of Māori property rights when compared with other classes of property rights, and that it denied Māori the opportunity to manage their own affairs and exercise their legal rights.[3] The Tribunal consequently found that the policy breached the provisions and principles of the Treaty of Waitangi and prejudiced Māori by devaluing Māori citizenship, creating powerlessness through uncertainty, and denying Māori mana and property rights in the foreshore and seabed.[4]

Following the release of this report, the government of the day introduced an amended version of its foreshore and seabed policy to the House of Representatives. The Foreshore and Seabed Act 2004 was passed midway through our hearings. In their closing submissions, the claimants asked the Tribunal to consider this Act in light of the findings that had already been made on the Crown's earlier policy and to assess whether and how the

Children and a kuia on the foreshore at Whangaimoana, Kawakawa (Palliser Bay), between 1890 and 1923

changes that were incorporated into the Act had affected the Treaty principles and their rights.[5]

13C.2 CLAIMS

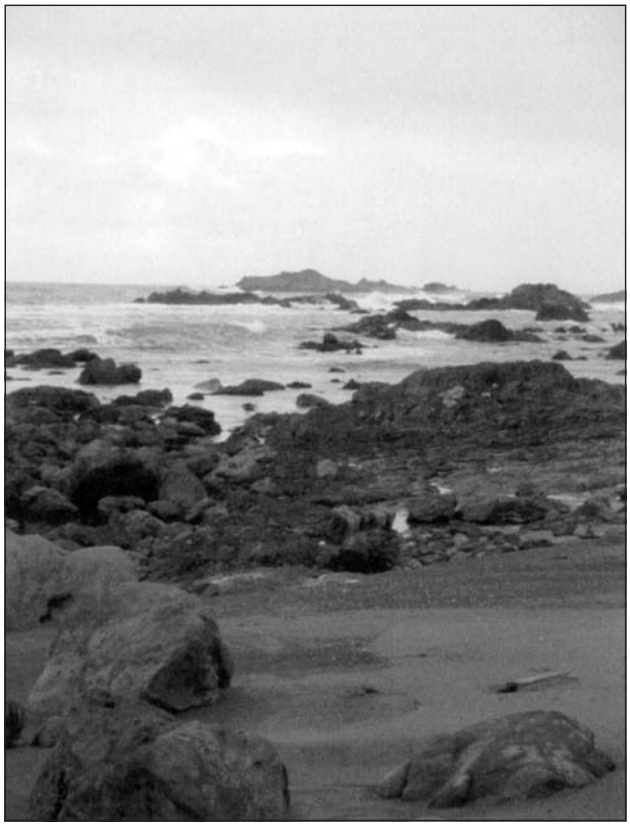
In this inquiry, two claimant groups in particular emphasised their foreshore and seabed interests: Ngāti Hinewaka me ōna Kārangaranga in southern Wairarapa and Te-Hika-ō-Pāpāuma at Mātaikona/Aohanga Station.[6] They both gave evidence to the Tribunal about their connection since time immemorial with the coastline bordering their rohe.

The situation of Te-Hika-ō-Pāpāuma is particularly unusual. Ōwahanga/Aohanga Station, the largest tract of Māori land remaining in this district, lies along and behind 18 kilometres of coastline. The claimants have exercised continuous control over this coastal land since before 1840. While the legal title to the land block ends at the high-water mark, the claimants say that they have always asserted a 'blue-water title'; that is, ownership of the foreshore and seabed bordering the block.[7] Indeed their claim, Wai 420, was initially filed in response to a proposal to allow offshore drilling by AMOCO New Zealand Exploration Company Limited on the seabed adjoining Ōwahanga Station. In their statement of claim, filed

on 22 November 1993, the claimants assert that 'we claim the ownership of the seabed and therefore the decision to enter [into an offshore drilling agreement] does not rest with the Crown ministers'.[8] Thus, their assertion before the Tribunal of rights to continuous, and continuing, control of the seabed adjacent to Ōwahanga Station goes back more than 15 years.

In his affidavit, filed in both this inquiry and the foreshore and seabed policy inquiry, George Ngatiamu Matthews of Te-Hika-ō-Pāpāuma stated that the hapū exercises:

> the full dominion and control of Mataikona. Access is eliminated in times of high fire risk and in dangerous sea conditions. Any other time, access is by permission only and is generally only given to members of the hapū.
>
> Te Hika a Papauma have never explicitly or implicitly alienated themselves from their foreshore or seabed. Both during traditional times and through the whole period of land purchases in the Wairarapa, any attempt to alienate Mataikona was and has been fiercely resisted.
>
> This attitude continues to the present day. Te Hika a Papauma continues to exercise its tino rangatiratanga over Mataikona whenua.
>
> The right of Te Hika a Papauma to exercise its tino rangatiratanga over Mataikona is reaffirmed in the Treaty of Waitangi. This right has never been relinquished and cannot now be removed or compromised.
>
> Te Hika a Papauma are the owners (in the sense of English freehold) of the foreshore and seabed within its hapu rohe.
>
> Te Hika a Papauma assert they are the owners because they have established an exclusive use and possession of the foreshore and seabed at Mataikona. The use and possession of Mataikona by Te Hika a Papauma has never been disturbed or previously challenged.
>
> Te Hika a Papauma however acknowledge that they permit public access and the controlled use of the foreshore and the seabed, provided this is seen not to detract from their traditional rights based on tikanga and provided this is seen not to disturb their ownership of the foreshore and seabed.[9]



Customary Māori land

We consider that the evidence we heard from Te-Hika-ō-Pāpāuma and Ngāti Hinewaka discloses a very significant interest in the foreshore and seabed. Indeed, we doubt that any tribal group would be able to adduce better evidence of sustained and unbroken customary connection with a piece of coastline than Te-Hika-ō-Pāpāuma's in relation to the coastline adjoining Ōwahanga Station. However, we go no further in our assessment of the evidence, because what

kind of legal interest these connections may give rise to is currently at large. We discuss this situation next.

13c.3 Recent Developments

The Wairarapa ki Tararua Tribunal initially intended to inquire into and report on the specific claims before us against the Crown's foreshore and seabed policy to the extent necessary to ascertain whether the claimants had been prejudiced differently or more than those claimants who were heard by the panel that released the *Foreshore and Seabed Policy* report. We intended to analyse the Foreshore and Seabed Act 2004 to identify how, and to what extent, it differs from the policy that was considered in the 2004 report. In that light, we would make findings on the claims before us.

Since our hearing of these claims, however, the Government put in place a ministerial panel to undertake a review of the Foreshore and Seabed Act and to report by 30 June 2009. The panel comprised Associate Professor Richard Boast, Hana O'Regan, and Justice Edward Taihākurei Durie, formerly both a judge of the High Court and the chairperson of this Tribunal. The Attorney-General, Christopher Finlayson, announced on 4 March 2009 that the Government intended to make a decision on the future of the Foreshore and Seabed Act by the end of 2009.

The panel was directed in its terms of reference to investigate and provide independent advice on:

- The nature and extent of the mana whenua (customary rights and authority over land and taonga) and public interests in the coastal marine area prior to the Court of Appeal's decision in *Attorney-General v Ngati Apa*.[10]
- The options available to the Government to respond to the decision in *Attorney-General v Ngati Apa*.
- Whether the Foreshore and Seabed Act 2004 effectively recognises and provides for customary or aboriginal title and public interests (including Māori, local government, and business interests) in the coastal marine area and maintains and allows for the enhancement of mana whenua.
- If the panel considers that the Foreshore and Seabed Act does not provide for the above, options as to the most workable and efficient methods by which both customary and public interests in the coastal marine area could be recognised and provided for and, in particular, how the processes of recognising and providing for such interests could be streamlined.[11]

The panel's report was released on 1 July 2009 and recommended two proposals for a settlement on customary usage, authority, and ownership issues at either the national level or the regional iwi or hapū level; or a mix of both.[12] We note that both proposals, which are based on a Treaty of Waitangi framework, assume that the Act will be repealed and that the new legislation will contain a core set of fundamental principles to govern the resolution of foreshore and seabed issues. These core principles are as follows:

- *The principle of recognition of customary rights:* Customary interests in the foreshore and seabed represent property rights.
- *The principle that customary rights attach to hapū and iwi (as defined by hapū and iwi themselves) and not to Māori in general:* Customary property rights are the property rights of specific hapū and iwi with traditional interests in the coastal marine area.
- *The principle of reasonable public access:* 'Reasonable' public access should be defined and provided for by statute.
- *The principle of equal treatment:* There should be equal and consistent treatment for similar cases in respect of Māori and other property rights, and in hapū and iwi engagement and influence over policy making at the national level.
- *The principle of due process:* Access to due process should not be removed or unduly constrained.
- *The principle of good faith:* Negotiations substantially completed should be respected.

The Mātaikona foreshore, part of the very extensive coastline adjoining Aohanga/Ōwahanga Station

- *The principle of restricting alienation:* Whether the foreshore and seabed is ultimately held by Māori, the Crown or non-Māori private interests, there should be restrictions on alienation.
- *The principle of compensation:* Where private property rights, of any kind, are extinguished in the foreshore and seabed, such extinguishment should in principle be compensated.
- *The principle of the right to development:* Customary rights and interests in the foreshore and seabed should not be frozen in time as at 1840 but have the right to develop.[13]

The review panel considers that a political solution is required based upon Treaty principles of good faith.[14]

Whether or not the Government elects to amend or repeal the Foreshore and Seabed Act 2004 in light of the panel's findings, we think that the situation with respect to Māori rights to the foreshore and seabed has changed irrevocably. Whatever happens, the approach of the parties in this inquiry is likely to change. It would be wrong for this Tribunal to make findings and recommendations without giving them the opportunity to reappraise the situation and, if necessary, express views to the Tribunal anew.

Moreover, in the event that the Government has not decided on its response to the review panel's report by the time this Tribunal reports, it would be wrong for the Tribunal to express its views before the Government acts.[15]

We will therefore not report further on foreshore and seabed issues here. If the Government elects not to change the Act, or makes changes that make no material difference to the Act's effect or that (in the claimants' estimation) increase the prejudice to them, the claimants in this inquiry have leave to seek further inquiry into the foreshore and seabed situation as it is then.

Notes

1. Statement of issues 1, p 163
2. Paper 2.273 (Wainwright), pp 3–4
3. Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), pp 121–125
4. Ibid, pp 136–138
5. Document I1 (counsel for Ngā Hapū Karanga), p 66
6. Statement of issues 4; statement of claim 13
7. Document E44 (counsel for Te-Hika-ō-Pāpāuma), pp 5–8
8. Wai 420 (SOC 13), claim 1.1, p 1
9. Document A79 (Matthews), pp 11–12
10. *Attorney-General v Ngati Apa* [2003] 3 NZLR 643
11. Taihākurei Edward Durie, Richard Boast, and Hana O'Regan, *Pākia ki Uta, Pākia ki Tai: Report of the Ministerial Review Panel – Ministerial Review of the Foreshore and Seabed Act 2004*, 3 vols (Wellington: [Ministry of Justice], 2009), vol 1, p 10
12. Ibid, pp 154–158
13. Taihākurei Edward Durie, Richard Boast, and Hana O'Regan, *Pākia ki Uta, Pākia ki Tai: Summary Report of the Ministerial Review Panel – Ministerial Review of the Foreshore and Seabed Act 2004* (Wellington: [Ministry of Justice], 2009), pp 10–11
14. Ibid, p 13
15. We see that on the 31 March 2010 the Government released a public consultation document '*Reviewing the Foreshore and Seabed Act 2004, Consultation document, Have your say*' with a closing date of 30 April 2010 for submissions.

CHAPTER 14

RANGITĀNE IDENTITY

14.1 Introduction

14.1.1 The claim

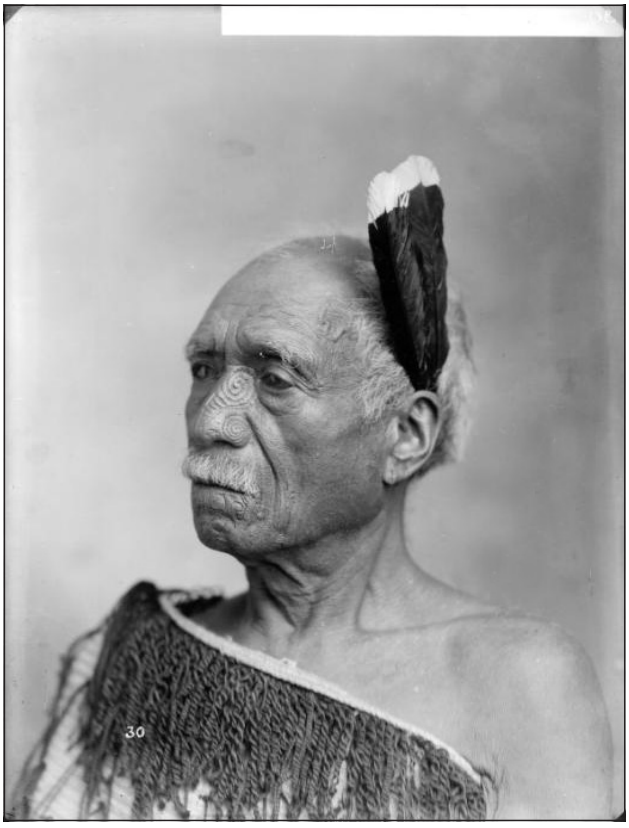
This is an unusual claim. The claimants described to us the failure of officials and the wider public, both Māori and Pākehā, to recognise Rangitāne as an iwi with tangata whenua status in Wairarapa ki Tararua. They argued that, since the 1850s, Crown officials acted in such a way that the identity of the Rangitāne hapū was subsumed under the tribal banner of Ngāti Kahungunu. It is important to note that the emphasis in the claim was firmly on the Crown's conduct. No wrongdoing by Ngāti Kahungunu was alleged.

The evidence supports the contention that, for most of the twentieth century and for much of the late nineteenth century, descendants of Rangitāne in Wairarapa ki Tararua were described in Crown records as Ngāti Kahungunu. In this chapter, we ask how this state of affairs came about and consider to what extent it can fairly be said that the Crown was, or is, responsible for it. First, we inquire into the nature of the Crown's Treaty responsibility with respect to Māori tribal identity. Then, we ask to what extent the Crown was responsible for the loss of Rangitāne's tribal identity in Wairarapa ki Tararua. In addressing these issues, we were fortunate to be able to draw on the scholarship of Tipene Chrisp, a witness in our inquiry who is a whāngai of Rangitāne (ie, Rangitāne have adopted him).[1]

14.1.2 The claimants' case

On the nature of the Crown's Treaty responsibility with respect to Māori tribal identity, counsel for Rangitāne, Stephen Clark, submitted that tribal identity and tangata whenua status underpin 'the very essence of Māori identity' and are taonga to be protected under article 2 of the Treaty. He argued that the Crown's duty of active protection extends to the protection of Māori language, culture, and knowledge. It followed, therefore, that the Crown has a Treaty duty to actively protect the tribal identity and tangata whenua status of iwi.[2] For reasons of 'bureaucratic convenience', the Crown 'actively subsumed' the identity of Rangitāne under the general banner of Ngāti Kahungunu and thus failed to protect the identity of Rangitāne in Wairarapa ki Tararua.

Counsel pointed to evidence from which the Crown could, and should, have informed itself about the existence and significance of Rangitāne as tangata whenua of this inquiry district. Sources included Native Land Court records and Māori newspapers, which were



Hirawanu Kaimokopuna of Rangitāne wearing a korowai (tag cloak) and huia feathers to connote his rangitira status, circa 1900

collected and published by the Crown itself. Often, the tribal name of Rangitāne was omitted from maps, official documents, historical works, and other scholarship on Māori topics.[3]

Three main areas of prejudice arose, the claimants said, from the Crown's failure to recognise Rangitāne's status in Wairarapa ki Tararua. First, it had led to decades of dispute within and between hapū over their tribal affiliation, damaging whanaungatanga (kinship bonds) in those Māori communities. Secondly, it had resulted in a very long struggle with both local and central government officials and their political masters, fighting for recognition as tangata whenua. Lastly, the time and energy spent battling for tangata whenua status could have been used more productively on tribal development.[4]

14.1.3 The Crown's case

Counsel for the Crown submitted that the recognition or otherwise of Rangitāne's identity is not a matter within the Crown's responsibility and control: iwi identity is a matter for iwi, hapū, and whānau to determine. Crown counsel noted instances where descendants of Rangitāne accepted being described as Ngāti Kahungunu by the Crown.

Counsel said that the Crown was not responsible for the historical lack of recognition of Rangitāne as tangata whenua in Wairarapa ki Tararua. He submitted that much of the information on which the Crown based its understandings about tribal affiliations came from Māori themselves. For example, tribal affiliations stated on title deeds, on the list of chiefs attending the famous hui at Kohimārama in 1860, and on the register of chiefs were given by literate Māori, who at the time apparently did not object to being described as Ngāti Kahungunu.[5] Moreover, many Wairarapa ki Tāmaki-nui-ā-Rua Māori have descent lines from both Rangitāne and Ngāti Kahungunu, and according to Chrisp's evidence, some Rangitāne chiefs may have accepted the description of their hapū as Ngāti Kahungunu in an effort to 'look for an overarching common identity'. Thus, even chiefs whose primary affiliation was to Rangitāne may have gone along with the use of the Ngāti Kahungunu label as a 'macro label for the benefit of outsiders'.[6] Counsel further submitted that the denial of Rangitāne's tangata whenua status in Wairarapa ki Tararua emanated principally from the writing of Stephenson Percy Smith in the late nineteenth century and was entirely independent of the Crown. Probably, Smith's opinions influenced Government officials, rather than the reverse.

As to prejudice, the Crown argued that the Rangitāne claimants could show none. Whatever troubles they may

have had in the past, Rangitāne are now as strong as any other iwi. Since the 1980s, they have re-established their profile and mana in Wairarapa ki Tararua and have 'firm relationships' with local and central government authorities in the Tāmaki-nui-ā-Rua area.

Thus, the Crown maintains that it has no case to answer: there is no duty, no breach, and no prejudice.

14.2 What is the Crown's Treaty Duty Concerning Māori Tribal Identity?

The guarantee in article 2 of the Treaty of te tino rangatiratanga (absolute chieftainship) is one of the pou tokomanawa of the Treaty.[7]

The Treaty was the blueprint for the arrangements that would obtain when settlers arrived (as they were expected to) in Aotearoa. It confirmed for rangatiratanga a central role, and in doing so it recognised and endorsed tribalism. Tribes were the social, political, and economic entities that controlled and defined Māori lives. It was as tribal members that rangatira played out their roles as leaders and decision-makers of hapū and iwi.

'Whanaungatanga' is the Māori word for the connection between people of common descent. As the Tribunal said in the *Tāmaki Makaurau Settlement Process Report*:

> Article 11 guarantees te tino rangatiratanga, which is the absolute authority of chiefs to be chiefs, and to hold sway in their territories. By that guarantee, the Crown recognised and confirmed Māori relationships and property that were in existence when the Treaty was signed. Confirmation of te tino rangatiratanga is about the maintenance of relationships. In traditional Māori society, chiefs were only rarely autocrats. They sprang out of and were maintained in their positions of authority by their whanaunga; their kin. Whangaungatanga was therefore a value deeply embedded in the maintenance of rangatiratanga. It encompassed the myriad connections, obligations and privileges that were expressed in and through blood ties, from the rangatira to the people, and back again.[8]

Whanaungatanga and rangatiratanga are the twin pillars of ngā iwi Māori. Each tribe is unique because its members have a whakapapa (genealogy) that connects them with each other in a way that is theirs alone. This singularity gives each tribe its special and distinct identity, through which, and by which, its members define themselves. Tribal identity and te tino rangatiratanga (the full chiefly authority guaranteed in article 2 of the Treaty) go hand in hand – you cannot have one without the other.

That the Crown's duty as a Treaty partner extends to protecting Māori tribal identity does not seem to us to be the kind of proposition that should be regarded as controversial. It is a natural consequence of the tikanga (traditional rules and understandings) enshrined in te tino rangatiratanga and the Crown's responsibilities in that regard.

As a Tribunal, we are not attracted to the concept of tribal identity as a taonga. For us, as explained above, tribal identity is inextricably bound up with rangatiratanga, and the Crown's obligations towards tribes arise from that connection. We see taonga rather differently. Taonga are possessions; something owned by and important to people, but not in them and of them. Tribal identity is in the people and of them.

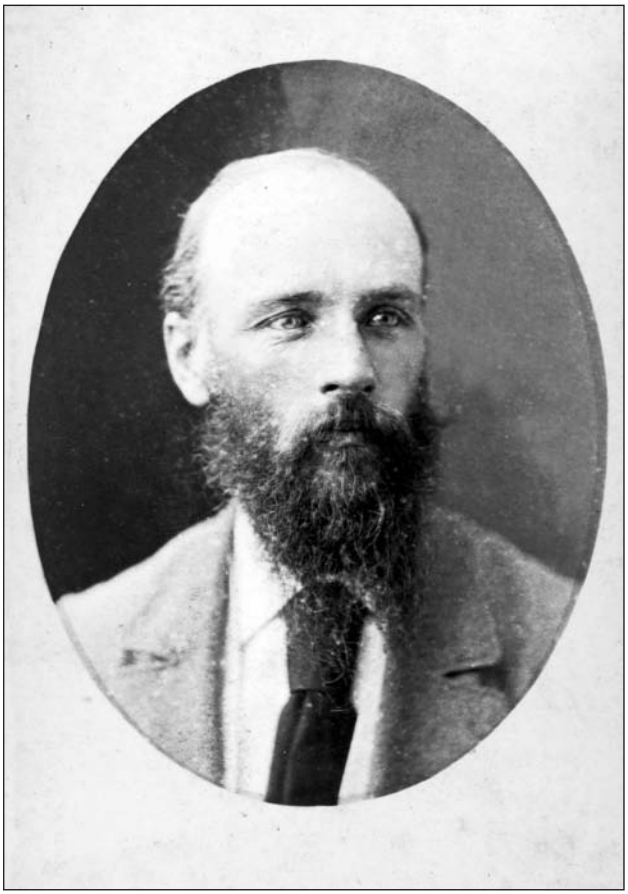
Thus, the Crown does have a duty to tribes to recognise them and to protect their tangata whenua status, and this arises as an inextricable part of the guarantee in the Treaty of te tino rangatiratanga. The Crown cannot honour the guarantee of te tino rangatiratanga unless it understands tribes and the importance of tribal affiliation to ngā iwi Māori. Thus, the duty entails an obligation to know who groups are and how they relate to each other and to their rohe (tribal territory). Such knowledge is impossible without at least a rudimentary understanding of the role that whakapapa plays in self-identification by Māori and the affiliation of hapū to iwi and waka (canoes).[9]

We look at the content of the Crown's duty in the context of Rangitāne and its subordination in the next section.

14.3 Was the Crown Responsible for the Loss of Rangitāne's Tribal Identity?

14.3.1 The central allegation

The claimants do not contend that the Crown deliberately subordinated or undermined Rangitāne's tribal identity. As a result, we are not dealing with a situation where bad faith is alleged. Rather, as we describe below, the central allegation in the claim is that the Crown perpetuated a flawed interpretation of the mana whenua (customary rights and authority over land and taonga) in Wairarapa ki Tararua. We were offered three possible accounts of the origin of that flawed interpretation. It may have come from the writings of nineteenth-century anthropologist Stephenson Percy Smith; it may have flowed from erroneous accounts given by other Māori; or it may have arisen from a failure of understanding on the part of the Crown itself. Perhaps a combination of these factors was at play. We next review the evidence of what happened and then discuss the obligations of the Crown with respect to tribal identity.



Anthropologist Stevenson Percy Smith in the 1870s

14.3.2 Rangitāne's identity: their experience through time

Since the early 1990s, researchers have drawn on Native Land Court records, Māori newspapers, and Te Whatohoro Jury's whakapapa manuscripts to establish that during the nineteenth century, while many hapū in Wairarapa ki Tararua descended from both Rangitāne and Kahungunu, certain hapū claimed their take to the land exclusively through their Rangitāne whakapapa.

Noted historian Dr Angela Ballara said in her thesis on Ngāti Kahungunu that the major group of people of 'pure' Rangitāne descent living east of the Tararua Range was Ngāti Hāmua.[10] In the 1830s, when many other Wairarapa hapū took refuge at Nukutaurua with Ngāti Kahungunu, Ngāti Whatuiāpiti, and Ngā Puhi, Ngāti Hāmua joined Rangitāne at Manawatu. During Native Land Court hearings, Hāmua's whakapapa was always given as deriving from Rangitāne. According to Ballara, in no cases were Ngāti Hāmua 'traced from Kahungunu or by any other ancestral line'. Ballara found that within Wairarapa many or most hapū had links to Rangitāne through intermarriage. However, although Ngāti Hāmua's ties to Rangitāne were obviously very strong, neither they nor any other Rangitāne-descended group living east of the Tararua and Ruahine Ranges 'called itself by his name'.[11]

Major Hoani Paraone Tunuiarangi (usually referred to historically simply as H P Tunuiarangi) reading from a book to his daughter Inuwai in August 1904

Tipene Chrisp has conducted the most exhaustive research on the history of Rangitāne's tribal identity in Wairarapa ki Tararua. In an article published in 1993, he described how, from the early twentieth century, Rangitāne were virtually 'written out' of the history of the area.[12] Chrisp argued that a 1904 article in the *Journal of the Polynesian Society* by Stephenson Percy Smith became the definitive, orthodox view of the history of the occupation of the region. Subsequently, this orthodoxy was uncritically accepted and repeated by any number of authors.

In simple terms, Smith's article explained that the original tangata whenua of the area were Rangitāne. Subsequently, by conquest, gift exchange, and cession, Rangitāne gave over portions of their land to Ngāti Kahungunu, who attained 'sole tribal ownership or *tangata whenua* status of the Wairarapa region'.[13] Rangitāne were thus a defeated people with no take (claim) to Wairarapa ki Tararua lands.

Chrisp described how in researching his article Smith drew almost exclusively on information given to him by a Kahungunu man called Hoani Paraone Tunuiarangi (also known as Major Tunuiarangi). What Tunuiarangi told Smith – and Smith appears to have accepted uncritically – was essentially a Kahungunu version of the mana whenua in Wairarapa, one that emphasised the occupation by Ngāti Kahungunu of southern, eastern, and mid-Wairarapa.[14]

Chrisp maintained that Tunuiarangi was jaundiced by his experience in the Native Land Court in the 1890s, when the court was determining interests in the Ngā Waka ā Kupe block and found in favour of Rangitāne hapū and

against his own.[15] According to Chrisp, Tunuiarangi deliberately fed Smith an interpretation of Ngāti Kahungunu's immigration into Wairarapa that supported his hapū's take to the land blocks under dispute in the land court. This was no more than rational behaviour for a rangatira of a hapū whose mana was at stake.[16] Tunuiarangi was well aware of Smith's stature and influence in Māori and Pākehā spheres, and he made the most of the opportunity available to him as one of the anthropologist's select few Māori 'favoured providers' of customary history.

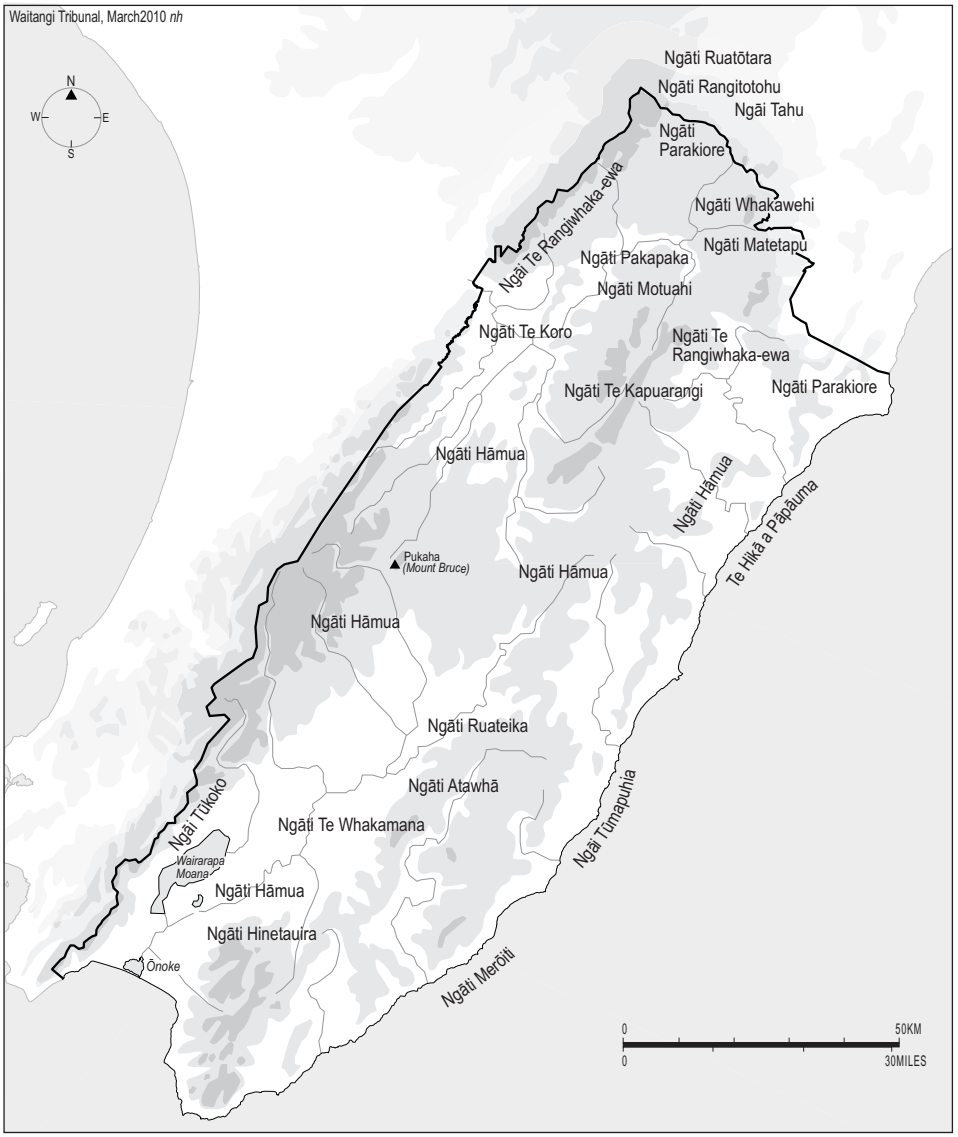
Chrisp catalogued the many authors who have reiterated the Smith–Tunuiarangi orthodoxy. Its uncritical repetition was the result of inertia rather than malice, and Chrisp acknowledged that 'none of the authors appear to have any overt bias towards Ngāti Kahungunu'.[17]

In his critique of this orthodoxy, Chrisp examined contemporary documentary evidence in order to show that some Wairarapa whānau and hapū consistently identified themselves with Rangitāne throughout the nineteenth century. The eponymous ancestors of several hapū were associated exclusively with Rangitāne. In a number of land court cases, hapū were found to have take to land in Wairarapa (eg, at Te Hauokoekoe and Maipi) because of their Rangitāne whakapapa. Thus, in the late nineteenth century, Rangitāne's identity was intact in Wairarapa; Rangitāne have always been 'co-occupants' of Wairarapa, with tangata whenua status in the rohe. Moreover, Chrisp argued, there was ample documentary evidence of this available to the Crown. Yet, from the time of the first substantial Crown contact with Wairarapa Māori in the 1850s, officials consistently described all Māori in Wairarapa as Ngāti Kahungunu. Chrisp showed how this ascription was used in purchase deeds, the register of chiefs, and official censuses.[18] And, yet, Native Land Court evidence clearly shows that many Wairarapa hapū identified primarily with Rangitāne. Chrisp argued that the most likely reason for the Crown's misrepresentation of the tribal situation in Wairarapa ki Tararua was simply 'bureaucratic convenience'.

In his brief of evidence in our inquiry, Chrisp described how the subordination of Rangitāne's identity continued into the twentieth century and how this affected Rangitāne people.[19] In his view, the negative effects were not really evident before the 1920s, because, in the earlier period, Rangitāne were a people confident in their own identity; their social and cultural networks were robust; and official descriptions had little or no impact on their lives. Chrisp accepts that individual Rangitāne, many of whom also had whakapapa links to Ngāti Kahungunu, were sometimes prepared to accept the latter name as a 'convenient macro label for the benefit of outsiders'.[20]

It was from the 1920s to the 1960s that the impact on Rangitāne's identity was most keenly felt. This period saw the active suppression of te reo Māori by the Crown and the widespread urbanisation of Māori, which often decimated traditional marae-based hapū communities. Chrisp argued that a consequence of Government policies and social trends of the time was the disruption and destruction of the hapū's mechanisms for transmitting traditional information. He described how the wharenui at Te Ore Ore burned down, communities were dispersed, and whakapapa books were buried with deceased kaumātua. The cumulative effect of these changes was that Wairarapa Māori became much more likely to rely on Government and Pākehā sources of information on tribal identity, and such sources routinely perpetuated the Smith–Tunuiarangi orthodoxy.

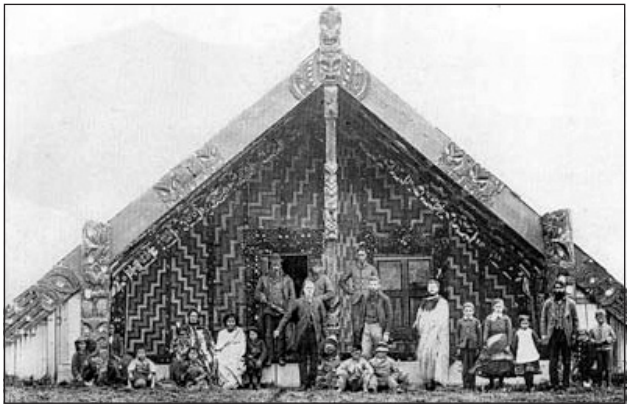
From the 1960s, governments began initiatives to reinvigorate Māori culture. However, the renewed focus on kaupapa Māori (Māori issues) in Wairarapa often brought with it misinformation. Because the customary networks for the transmission of cultural information had largely broken down, young Rangitāne were particularly vulnerable. Māori high school teachers often came from outside the rohe, making it likely that they too would uncritically repeat the Ngāti Kahungunu orthodoxy. Likewise, in the 1980s, the regional office of the Department of Māori Affairs perpetuated the notion that Ngāti Kahungunu was the only iwi with tangata whenua status in the region.[21] Chrisp listed publications produced since the late 1970s



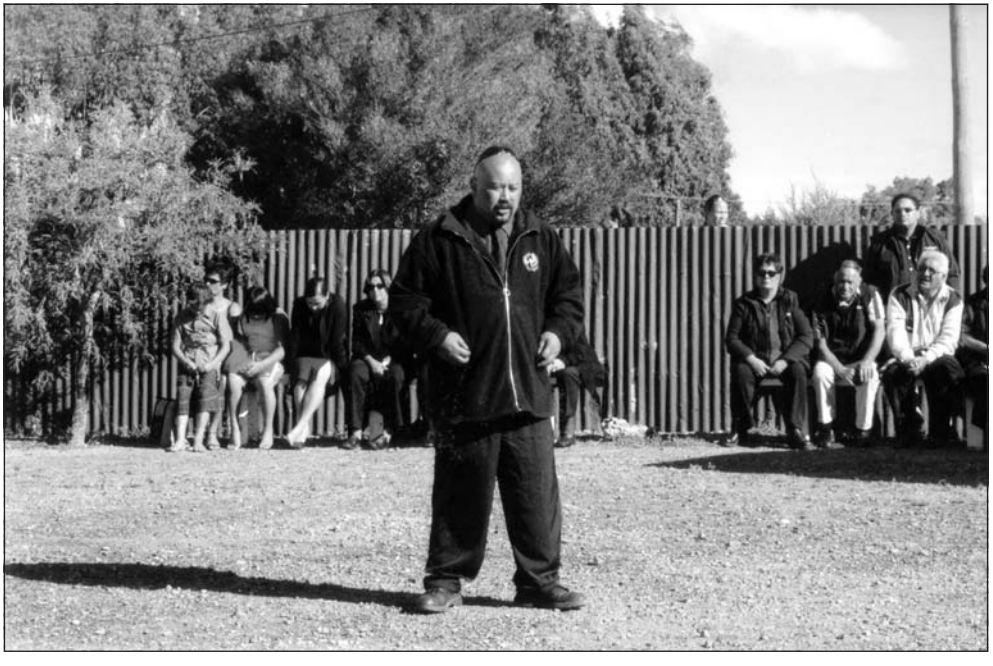
Approximate locations of hapū in Wairarapa ki Tāmaki-nui-ā-Rua with Rangitāne associations

by or with the assistance of Government departments that show only Ngāti Kahungunu as tangata whenua. These include the *New Zealand Historical Atlas* and the *New Zealand Yearbook*.

It is not surprising that the first attempts in the 1980s by Rangitāne individuals to reassert their identity met with resistance and created intense debate and friction within Wairarapa ki Tararua hapū and whānau. Although controversy continues to some extent, it is clear that a group of dedicated Rangitāne leaders have succeeded in reasserting



▲ Wharenui at Te Ore Ore Marae: 'Te Whare Tuatahi' (the First House) before the fire that destroyed it in 1939 and Ngā Tau e Waru (Eighty Years), the rebuilt house, today ►



◄ Mike Kawana doing whaikōrero (traditional oratory) at the pōwhiri for the Tribuanal at Te Ore Ore Marae on 28 March 2004

Manahi Paewai speaking to the Tribunal at Mākirikiri Marae in July 2004, with children from Te Kura Kaupapa o Tāmaki-nui-ā-Rua in the foreground

the tangata whenua status of the iwi within Wairarapa ki Tararua. The Tribunal witnessed the tangible outcomes of this revival in spirited waiata performed by the pupils of the kura kaupapa (school where education is delivered in the Māori language) in Dannevirke, who sang 'Tini whetu ki te rangi, ko Rangitāne ki te whenua'.[22]

Kaumātua Jim Rimene has been a key figure in the re-emergence of Rangitāne identity in Wairarapa since the 1980s. He was one of the few Rangitāne people in the region who were raised in the knowledge of their links: 'I have been learning Rangitāne tribal history since my childhood. I was one of the lucky people in that I was taught by my old people the Rangitāne traditional tribal history for the Wairarapa area.'[23] Rimene recited the names of the Rangitāne hapū of Wairarapa: Ngāti Hāmua, Ngāti Whātui, Ngāi Tūmapuhia-ā-Rangi, Ngāti Te Raetea, Ngāti Moehau, Hinetearorangi, Te Hika a Papauma, Ngāti Tangatakau, Ngāti Tamahau, Ngāti Tohinga, Ngāti Te Noti, and Ngāti Taimahu.[24] Ngāti Hāmua remain the principal Rangitāne hapū in the district.

In his statement of evidence, Rangitāne witness Piriniha Te Tau described the emergence of Rangitāne's tribal identity in Wairarapa since the 1980s.[25] From this time, Rimene was staunchly insisting that the tipuna Hāmua was a descendent of Rangitāne, not Kahungunu, and that members of Ngāti Hāmua (including Te Tau) should therefore identify with Rangitāne rather than with Ngāti Kahungunu. Once he learned Rangitāne whakapapa, Te Tau became disheartened that Rangitāne went unacknowledged by Crown agencies and by Ngāti Kahungunu in Wairarapa. When he sought to uphold the mana of Rangitāne, the friction that resulted 'clearly tested and [a]ffected whanaunga relationships within a large section of the Māori community in the Wairarapa'.[26]

In the 1980s, local dissatisfaction with the Wairarapa tai-whenua of Te Rūnanganui o Ngāti Kahungunu led to Te Ore Ore Marae in Masterton withdrawing from the tai-whenua. This was in part an expression of affiliation with Rangitāne. Te Tau told us that the people of that marae subsequently experienced real difficulties in dealing with central and local government agencies:

> initiatives or developments by local government and Crown agencies historically sought the consent and

Children from Te Kura Kaupapa Māori o Tāmaki-nui-ā-Rua singing during the Tribunal's hearing at Mākirikiri Marae near Dannevirke in July 2004

> approval of our Te Ore Ore Māori Committee, [but] this quickly changed after we commenced our journey. Within a very short time all consents and approvals pertaining to the Te Ore Ore Māori Committee became the domain of the Taiwhenua which was operating out of the Māori Affairs office.[27]

In this period, Māori who identified as Rangitāne missed out on Government funding and assistance (such as the State-run MACCESS programme for Māori unemployed), because the Crown would deal only with the Ngāti Kahungunu taiwhenua. When Rangitāne people in Wairarapa applied for education grants under the Pāpāwai and Kaikokirikiri Trust Board and the Wairarapa Moana Trust, they were told they were ineligible. Chrisp said in evidence that some Rangitāne children did receive scholarships, but 'under the mantle of Ngāti Kahungunu'.[28]

In 1989, the Rangitāne o Wairarapa rūnanga was established. This was the predecessor to the Rangitāne o Wairarapa Incorporated Society, which is the governing body of Rangitāne o Wairarapa today. According to Te Tau, by the early 1990s perceptions were evolving as Wairarapa Māori and members of the public began to recognise Rangitāne's status in the region. Rangitāne o Wairarapa

are now accepted as tangata whenua in the rohe, and have formal relationships with central and local government agencies. As we discuss in chapters 12B and 12C, Rangitāne have a memorandum of understanding with the Wairarapa District Health Board and a formal relationship with the Department of Conservation and the National Wildlife Centre at Pūkaha. Maintaining these relationships is hard work, however, and possible only through the work of volunteers. Te Tau told us that Rangitāne o Wairarapa have 'never received significant funding or resources to maintain these relationships, and to deliver to our beneficiaries fully'.[29] Rangitāne o Wairarapa currently provide services in the health, education, and social services sectors, along with cultural advice on resource management.[30]

In their evidence, Mike Kawana and Manahi Paewai gave many examples of the re-emergence of Rangitānetanga in this inquiry district.[31] We now list them, because together they comprise an irresistible picture of the reassertion of mana.

Rangitāne have been involved in the following projects:

- They formed the Kurahaupō Waka Society Tribal Authority in 1987.
- They formed Te Rūnanganui o Rangitāne in 1989.
- They produced a one-hour programme for the television series *Waka Huia* in 1994.
- They established kohanga reo and kura kaupapa.
- They gave lectures as part of the Ngāti Kahungunu exhibition *Ka Moe ka Puta*, which was held in Masterton in recent years.
- They negotiated undertakings with organisations like the police, Rotary, district health boards, and the Accident Compensation Corporation.
- They are called upon to bless new buildings like school marae, the Warehouse, and a Masterton café.
- They work closely with the Department of Conservation at Pūkaha Mount Bruce (see ch 12C).
- They have placed rāhui (cultural no-go areas, often declared after a drowning or death) on the coast at Castlepoint and Mataikona and over part of the Ruahine Range.
- They were involved in discussions and negotiations over the relocation of the Matamau Scandinavian Cemetery.
- They celebrated the reopening of the wharekai at Mākirikiri, the Rangitāne marae in Dannevirke.
- They are called upon to perform rituals (whakawātea, for clearing spirits; tohi, for purification; and pure to remove tapu) at the Oringi freezing works.

Thus, it is plain that, in the years since about 1980, Rangitāne have energetically and determinedly engaged in many activities that, taken together, have succeeded in re-establishing this iwi as tangata whenua in Wairarapa ki Tararua alongside Ngāti Kahungunu.

14.3.3 Tribunal comment

(1) *Rangitāne's separate tribal identity*

We accept the evidence of Chrisp and others that Rangitāne exists, and has always existed, as an iwi of Wairarapa ki Tararua with its own unique whakapapa and identity. Like Ngāti Kahungunu, Rangitāne are tangata whenua in Wairarapa ki Tararua.

We also accept that Rangitāne's own tribal identity and tangata whenua status were not widely recognised or understood outside well-informed Māori circles for about 100 years from the late nineteenth century until the 1990s.

The work of Chrisp and Ballara establishes that, up until the end of the nineteenth century, certain hapū in Wairarapa ki Tararua identified primarily or exclusively with Rangitāne. Typically, chiefs would not use the term 'Rangitāne' to identify themselves but would give their hapū name instead. Ngāti Hāmua was the principal Rangitāne hapū, and that identification was often used. The name 'Rangitāne' is not seen in Crown records like purchase deeds and censuses.

In 1904, Stephenson Percy Smith's article sowed the seeds of the view that Ngāti Kahungunu had exclusive tangata whenua status in Wairarapa. Those seeds took root and the plant bore fruit. We accept Chrisp's assessment of the widespread and persistent influence of Smith's work,

which remained unchallenged until the early 1990s. We also note, however, that Crown officials were not involved with Smith's work in any way, although they (like everybody else) were probably influenced by it.

(2) *Complexity*

We recognise that many Māori in Wairarapa ki Tararua regard themselves as 'aho rua' (two lines). This means that they have links both to Ngāti Kahungunu and to Rangitāne.

Whakapapa relationships within and between Wairarapa ki Tararua iwi and hapū were and are complex. Under cross-examination, Chrisp gave this brief characterisation of mana whenua in the district:

> the two iwi shared mana whenua status throughout the district, and with respective strengths of interest. That Rangitāne were concentrated, as you've heard, Hāmua in the Masterton north; Te Hika o Papauma, Castle Point, and you've heard about other hapū with stronger Kahungunu affiliations in the south. But, having said that, of course, there are Rangitāne hapū in the south Wairarapa, and aho rua hapū as well, so I think it's that level of sophistication that needs to be brought to the discussion.[32]

Similarly, counsel for Ngā Hapū Karanga submitted that 'every hapū named in the Rangitāne evidence as solely Rangitāne could whakapapa to both Kahungunu and Rangitāne'.[33] While there is contention over these matters, the key point is that most hapū in Wairarapa ki Tararua have at least some connection to both Rangitāne and Ngāti Kahungunu, and these connections are not always straightforward or uncontested. Given the circumstances, it was probably inevitable that there would be some delay in, or even resistance to, the renaissance of Rangitāne after so many decades of non-recognition. We think that the degree of this resistance reflects the pervasiveness of the Smith–Tunuiarangi orthodoxy.

(3) *Resistance*

There clearly was resistance in some Government departments – perhaps particularly in the Department of Māori Affairs in Wairarapa in the 1980s – to the reawakening of Rangitāne. But often the failure to properly identify Rangitāne as tangata whenua was the result of, first, ignorance and, later, inertia. Many of the maps presented to us dating from the 1980s, 1990s, and 2000s, both official and other, simply repeat the same omission over the years. Until the 1980s, there was no contradiction of the orthodox view, and thus for the vast majority of people there was no reason to question it.

Rangitāne leaders have had to battle this inertia, and this has been frustrating. Witnesses Mike Kawana, Manahi Paewai, and others told us about the successes achieved. Since the 1990s, central and local government agencies have largely responded to the energy and assertiveness of Rangitāne's leadership and taken steps to recognise and build relationships with the iwi. One example of this is the memorandum of understanding between the Tararua District Council and Rangitāne o Tāmaki-nui-ā-Rua.

(4) *Effects*

We accept Chrisp's assessment that it was in the mid-twentieth century that Rangitāne people were really affected by the subordination of their tribe to Ngāti Kahungunu in public records and documents and in the estimation of officials and the general public. This happened in the period when Government policy, combined with the social and economic effects of urbanisation, broke down traditional systems of knowledge within the Māori communities of Wairarapa ki Tararua. Chrisp describes the 1940s and 1950s as a time of disruption, relocation, and abandonment of marae, as much of the Māori population of the area migrated to the larger towns. It was then that the means by which Rangitāne people had passed on the mātauranga (traditional knowledge) of their tribal identity to the next generation fell away and they could resist the Smith–Tunuiorangi orthodoxy of exclusive

Ngāti Kahungunu mana whenua no longer. It became not just the official version of mana whenua in Wairarapa ki Tararua but effectively the only version, because Rangitāne no longer had a firm understanding of who they were and why. Rimene remembered that he was one of the few people of his generation who was taught Rangitāne traditions.

We accept Chrisp's argument that the suppression of te reo and tikanga Māori by governments in the twentieth century and the breakdown of cultural networks brought about by Māori migration to larger towns and cities were significant factors in the dissipation of Rangitānetanga in Wairarapa ki Tararua.

Both these factors in cultural loss – that is, language loss and urban drift – have been discussed by previous Tribunals. In its report, the te reo Tribunal described the destructive effect of education policy and urbanisation on the health of the Māori language over the twentieth century, and it found that the Crown was operating its education system in breach of the Treaty.[34]

No Tribunal has yet considered in real depth the interaction between mid-twentieth-century urban migration and the Crown's Treaty obligations to protect Māori interests. In general, though, Tribunals have indicated that they see urbanisation as a global trend outside the control of the Government that affected Māori and Pākehā alike. For example, the Whanganui River Tribunal wrote that:

> We have not inquired fully into the causes of the Maori migration. Maori access to European goods and services and the pursuit of work were obviously important, and no doubt there were world-wide economic forces leading to urban migration globally that were beyond the power of a government to control.[35]

In the context of the Rangitāne identity claim, the important point here is that the effects of urbanisation were widespread and in Wairarapa ki Tararua affected not only Rangitāne but all iwi, to a greater or lesser extent. The effects of Crown actions, and of urbanisation in this period, were spread across Wairarapa ki Tararua iwi indiscriminately. There is no suggestion that the Crown targeted Rangitāne hapū or intentionally sought to misrepresent or suppress their tribal identity. According to Chrisp, 'Crown actions were not necessarily intended to destabilise systems for the transmission of Rangitānetanga. However, these "unintended consequences" certainly had that effect.'[36]

We consider that the continued non-recognition of Rangitāne identity in Wairarapa ki Tararua was a symptom of a wider suppression and loss of language and culture, and social change on a national (in fact, global) scale. It might be said that the Rangitāne hapū of Wairarapa ki Tararua suffered more from the impact of the Crown's suppression of language and urbanisation, although not as a result of any targeted Crown policy or action.

Since the re-emergence and reassertion of Rangitāne identity began in the 1980s, Crown agencies have gradually got on board. Perhaps more insight and knowledge would have assisted in the early years, but we do not perceive evidence of any real Treaty breach. We would like once again to pay tribute to the men and women of Rangitāne who fought to overcome the loss of identity and knowledge among their own people in the face of resistance from Wairarapa ki Tāmaki-nui-ā-Rua Māori communities and official ignorance. It took more than a decade to overcome these barriers. By the early 1990s, Rangitāne iwi organisations were established in Wairarapa ki Tararua, and Ballara's and Chrisp's research had shed light on their story. After the better part of a century, the 'historical orthodoxy' was being seriously challenged.

We saw the tamariki (children) of Te Kura Kaupapa Māori o Tāmaki Nui a Rua perform traditional and new Rangitāne waiata. We understand that the resurgence of Rangitāne has been achieved only by a great deal of effort on the part of the Rangitāne people of Wairarapa ki Tararua. Chrisp and Manahi Paewai both spoke of the opportunities that Rangitāne have lost in spending time and money fighting for recognition, which could have been spent developing their resources. Nevertheless,

as a consequence of this effort, Rangitāne's identity in Wairarapa ki Tararua today appears to us to be as strong as Ngāti Kahungunu's. Since the 1980s, Rangitāne have themselves overcome the problem of their non-recognition. We saw little or no ongoing prejudice to Rangitāne arising from their historical non-recognition in the district. There was no doubt in our minds that this was attributable to the work and determination of the men and women of Rangitāne, who have successfully re-established the presence of the iwi in Wairarapa ki Tararua. From what we heard and saw of Rangitāne tamariki, rangatahi (young people), pakeke (adults), and kaumātua, the future of Rangitāne in Wairarapa ki Tararua looks healthy.

14.4 Conclusion

Māori people commonly have whakapapa connections with more than one iwi, and this was certainly the case with tangata whenua in Wairarapa ki Tararua. How people choose to express those affiliations is a matter of personal choice. That choice is variously motivated: sometimes it is made because of an emotional connection, as in a strong love for a particular relative or tipuna (ancestor) or for a particular part of the whānau; sometimes it can be made for political reasons; and sometimes it is a function of upbringing.

In areas such as Wairarapa ki Tararua, where many hapū can trace their whakapapa to two different tūpuna and to two different waka, the possibilities for affiliation are numerous. Rangitāne and Ngāti Kahungunu witnesses acknowledged that there are several aho rua hapū (that is, hapū where people descend from two different lines of whakapapa) in Wairarapa ki Tararua, as well as hapū that whakapapa more or less exclusively to either Rangitāne or Kahungunu. These things change over time. Whereas members of the Ngāti Hāmua hapū might now typically state their affiliation to Rangitāne, we were told that, in the nineteenth century at least, they would not have used that appellation. Chrisp confirmed his view that 'tribal identity is a personal issue that is influenced by a range of variables, and . . . people will reach their own conclusions about who they are'.[37]

It was evident to us that Wairarapa ki Tāmaki-nui-ā-Rua Māori who had the same kinds of tribal connections did not necessarily express them in the same way. It seemed that most members of most hapū could have established a whakapapa connection to both Rangitāne and Ngāti Kahungunu. This is what some chose to do. Others told us that their affiliation was to Ngāti Kahungunu or Rangitāne alone, with no affiliation at all to the other. Some said they affiliated to a hapū that had whakapapa connections to one or other tribe, or to both, but that their affiliation went no further than to the hapū.

How and why Māori choose to affiliate is no business of the Crown: at least in the sense that it is no part of the Crown's role to seek to influence that choice. Crown counsel in this inquiry accepted that this was so, but the history of emphasis on Ngāti Kahungunu in this district almost certainly had the effect of encouraging Māori people there to emphasise their connection with that part of their whakapapa.

However, as we have said already, to the extent that the Crown was implicated, this emphasis on Ngāti Kahungunu at the expense of Rangitāne was a consequence of ignorance on the part of persons engaged in Crown business in the twentieth century. It was an unfortunate by-product of the loss of cultural knowledge that came about as a result of urbanisation and the suppression of the Māori language.

It is certainly arguable that the Crown breached the Treaty of Waitangi in failing to acquire and maintain a sufficiently sound knowledge of the tribal origins of the peoples of the Wairarapa ki Tararua district. This failure would breach the principle that the Crown has a duty actively to protect the interests of Māori. As we have said, the interests at stake here are important ones, for of course tribal identity is an intrinsic part of rangatiratanga.

We have decided that, on balance, we do not want to go as far as to find that the Crown breached the principles of the Treaty in this respect. This is for two reasons:

- The loss of knowledge about Rangitānetanga and the emphasis instead placed on Ngāti Kahungunu was definitely a phenomenon in the nineteenth and early twentieth centuries. However, Stephenson Percy Smith's role in promoting his Tunuiarangi-based orthodoxy means that the Crown's part in causing the problem is not at all clear.
- It is not apparent that, in the nineteenth century at least, Rangitāne people were especially concerned about asserting their separate identity. The desire to do this arose at a later stage in colonisation, once the effects of cultural loss began to bite.

Urban drift in the 1950s and 1960s also played an important role in cultural loss, and the Crown's culpability here is again uncertain – it was the subject of neither evidence nor argument before us.

Certainly, the Crown was responsible for suppressing te reo Māori, and this significantly undermined Māoritanga, but the Crown has already been found in breach of the Treaty in this regard.[38] And, while language loss and loss of Rangitāne identity are related, one is not a direct consequence of the other.

Even if the Crown was at fault in failing properly to come to terms with the tribal landscape in this district, the question of prejudice remains. As we said above, the efforts of Rangitāne leaders over the last 20 years or so have effectively overcome the negative effects of the loss of Rangitāne identity and of having previously been subsumed under the mantle of Ngāti Kahungunu. Thus, as far as this aspect of their claim is concerned, Rangitāne are really victims of their own success. They cannot succeed in their claim against the Crown because they are so manifestly succeeding as a people. This is a turn of events that the Tribunal would be happy to see more often.

Although we have not found that the Crown breached the Treaty in relation to Rangitāne's identity, we do have some suggestions for Crown actions that we hope will find favour.

We certainly expect that future publications produced by Government departments will include reference to both Rangitāne and Ngāti Kahungunu as tangata whenua of Wairarapa. In negotiating with Wairarapa ki Tararua iwi over these claims, the Crown may consider writing to the chief executives of local and regional authorities to confirm its recognition of Rangitāne as tangata whenua of Wairarapa ki Tararua and, where no relationship already exists, to encourage local government to develop working relationships with the Rangitāne tribal organisation.

Rangitāne suggest the following name changes:

- not Tararua but Tāmaki-nui-ā-Rua;
- not Tākitimu (Māori Land Court district) but Ikaroa; and
- not Rimutaka but Remutaka.[39]

We support these suggestions because they more accurately reflect Māori tradition and good use of language.

Rangitāne have also requested that the Pāpāwai and Kaikokirikiri Trusts Act 1943 be amended to include Rangitāne as explicitly eligible for education scholarships.[40] The trusts were established to provide for the education of the descendants of the people who gifted land for native schools at Pāpāwai and Kaikokirikiri.[41] If it can be established that Rangitāne hapū were right-holders in the land that was gifted to the Crown for schools, then we can see no reason for excluding Rangitāne children from eligibility to benefit under the Act. This issue should be investigated and, if necessary, the Act be amended as sought.

Notes

1. Tipene Chrisp is listed as Steven Chrisp on the record of inquiry.

2. Document I8 (Clark), pp 179–180

3. Examples of such scholarship include: Michael King, *Māori* (Auckland: Heinemann, 1983); James Belich, *The New Zealand Wars* (Auckland: Auckland University Press, 1986); Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen & Unwin, 1987); Judith Binney, Judith Bassett, and Erik Olssen, *The People and the Land* (Wellington: Allen & Unwin, 1990); Ranginui Walker, *He Tipua* (Auckland: Viking, 2001); and Tania M Ka'ai et al, *Ki te Whaiao: An Introduction to Maori Culture and Society* (Auckland: Pearson Longman, 2004).

Many of the official maps, forms, and the like from which Rangitāne's name was omitted are reproduced as appendices to document F11 (Chrisp), including: *Turton's Deeds*, 1877; *He Matapuna*, 1979 (New Zealand Planning Council); *Te Māori*, 1986; *New Zealand Official*

Yearbook, 1996; *New Zealand Historical Atlas*, 1997; Maori Land Court, Te Pouwhenua. O'Leary in document A62 analyses other official documents such as the record of the Kohimārama conference, 1860; register of chiefs, (c1866); censuses in 1874, 1878, and 1881; Pāpāwai and Kaikōkirikiri Trusts Act 1943.

4. Document I8 (Clark), pp 190–191

5. The register of chiefs (MA23/25) is an index of North Island (and Nelson) chiefs appearing to date from the late 1860s to early 1870s. The register's origin and author are unknown, though it appears to have been compiled from circa 1866. The register contains a Crown official's assessment of each individual chief's level of influence in his community and how well predisposed he was to the Government or, alternatively, how supportive he was of the Kīngitanga, Ringatu, Pai Marire, and 'Hauhau' movements.

6. Document F11 (Chrisp), p 29

7. Pou tokomanawa are the posts supporting the ridge pole of a meeting house; figuratively, a pou is that which provides support and sustenance.

8. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2007), p 6

9. Each iwi or tribe identifies with a larger grouping of tribes that all descend from ancestors who arrived from Polynesia in named waka or canoes.

10. Document A83 (Ballara), p 159

11. Ibid, p 158

12. Tipene Chrisp, 'The Occupation of Wairarapa: Orthodox and Non Orthodox Versions', *Journal of the Polynesian Society*, vol 102, no 1 (1993) (doc A57), p 41

13. Ibid

14. Chrisp said in his *Journal of the Polynesian Society* article that, although Percy Smith 'fleshed out the story with the preamble and a few editorial comments', much of the text had obviously been lifted from Tunuiarangi: Chrisp, 'Occupation of Wairarapa', p 47.

15. Chrisp's own translation of Native Land Court decision: Chrisp, 'Occupation of Wairarapa', pp 46–53.

16. Tunuiarangi had lodged a Native Land Court claim on behalf of his hapū Ngāti Kahukuranui.

17. Chrisp, 'Occupation of Wairarapa', p 47

18. Chrisp gives as examples the Castlepoint, West side of lake, Te Ore Ore, Part Pāhaua, Koangawariwari, and Ōpaki deeds: doc F11 (Chrisp), pp 27–28. In Native Officer Wardell's 1874 census of hapū in Wairarapa, of the 41 hapū listed, most are linked to Ngāti Kahungunu, and none with Rangitāne.

19. Ibid

20. Ibid, p 29

21. Ibid, p 37

22. 'As the millions of stars in the sky, so are the Rangitāne on land.' The words come from *Rangitāne Tangata Rau*, a waiata by Sharon Paewai: doc E23, p 13.

23. Document F1 (Rimene), p 4

24. Document F12 (Rimene), p 4

25. Document F10 (Te Tau)

26. Ibid, p 10

27. Ibid, p 7

28. Document F30 (Chrisp), p 15

29. Document F10 (Te Tau), p 18

30. Ibid, p 17

31. Documents F3 (Kawana), E19 (Paewai)

32. Document F30 (Chrisp), p 18

33. Document I7 (counsel for Ngāti Kahungunu), p 9

34. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 3rd ed (Wellington: Brooker's Ltd, 1993), pp 8–10, 38

35. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 83

36. Document F11 (Chrisp), p 35

37. Ibid, p 41

38. See Waitangi Tribunal, *Report on the Te Reo Maori Claim*

39. Document F1 (Rimene), p 23; doc I8 (Clark), p 200

40. Papawai and Kaikokirikiri Trusts Act 1943, s 12(4)(a)

41. Document A51 (Stirling), p 180

CHAPTER 15

FINDINGS AND RECOMMENDATIONS

For convenience, and for clarity, we have taken from the body of the report our findings and recommendations on each topic, and we bring them together definitively here in this findings and recommendations chapter.

Not all chapters have findings. Some have findings but no recommendations. This depends on the nature of the subject matter. We make no specific recommendations where the findings relate to historical circumstances only, and the Tribunal has no power to recommend redress that relates directly to those circumstances. Mostly, the claimants' grievances relating to the nineteenth century are about land, and we may not recommend the return of land not in Crown title. In those cases, the redress will be the subject of negotiation between claimants and Crown, and we leave that to them.

15.1 Chapter 2: The Rise and Fall of the Wairarapa Leasehold Economy

15.1.1 Crown concession

The Crown acknowledges that its initial response to the theft of property and assaults on Barton's Run, which required Māori to cede a large area of land at Maungaroa, was disproportionate to the offences that had been committed, and was a breach of the Treaty of Waitangi and its principles. The Crown also says that this breach did not cause material prejudice to Māori (for reasons given in its closing submissions).[1]

15.1.2 Tribunal findings

We find that:

- The Crown did not exercise in good faith its legal right to control all transactions in customary land between British subjects and Māori. We have found no evidence that the Crown explained to Māori that its control of land transactions would include leases, or that Māori really understood pre-emption at all. Nor was there a 'law and order' imperative that gave legitimacy to the exercise of such a power.
- Making leases illegal so that Māori had no alternative to sale if they wanted the benefits of settlement was neither fair nor reasonable. The Native Land Purchase Ordinance 1846, and the pressure it put on Māori, represented an unwarranted

interference in te tino rangatiratanga (full chiefly authority), undermining Māori capacity to engage with settlement on equal terms and on a self-sustaining basis. The Crown's opposition to settlers leasing land directly from Māori occasioned the loss of a major opportunity for Māori to participate in the colonial economy on an equal footing from the outset. This breached the article 2 guarantee of te tino rangatiratanga.

- In its application rather than in its drafting, the application of the 1846 ordinance privileged settler interests over the interests of their Māori landlords. Māori were threatened with the removal of squatters, but the squatters themselves were reassured: their tenure would be protected and strengthened if they assisted the Crown in acquiring the freehold from Māori. This differential treatment breached the Treaty principles of good faith and equity, and the guarantee of citizenship in article 3.
- The cession of Maungaroa (Barton's Run): This 1845 incident arose when Te Weretā and others with interests in land leased to Barton were aggrieved because they had been left out of the leasing arrangements, and carried out a muru (traditional plunder) of goods. The response of Sub-Protector Forsaith was to require Te Weretā to cede a large block of land as penance. We consider that response was disproportionate. Forsaith's actions could have been reversed by subsequent Crown agents, notably Crown purchase agent Donald McLean, but they were not. The Crown advanced its wider purchase objectives while maintaining the appearance of legality and impartiality.

We find that the Crown breached Treaty principles by:

- failing to act in good faith (particularly in not undoing Forsaith's deeds once the extent of their unfairness was appreciated);
- failing to actively protect Māori interests;
- failing to accord Te Weretā and affected others equality before the law (the process Forsaith engaged in with Wairarapa Māori would never have been imposed on Pākehā), thereby denying those Māori the rights of British citizens under article 3; and
- insisting on an outcome that allowed it to keep the land concerned, avoid admitting fault and losing face, leave Te Weretā ostensibly in the wrong for the events of 1845, and earn a respectable profit. This conduct breached article 2 and the principle of active protection.

15.2 Chapter 3A: Crown Purchasing – Policy and Practice

15.2.1 Tribunal findings

(1) *Crown practices*

Article 2 of the Treaty guarantees te tino rangatiratanga of te iwi Māori. The guarantee states that Māori could keep their land until they wished to sell. This puts on the Crown a significant onus of proof: only those sales where Māori willingly, freely, and knowingly consented were made in accordance with the Treaty. Where there is no informed consent, transactions breach the Treaty, both in its terms and its principles.

In the 1850s, the Crown and its officers knew and understood the tenets of good purchasing. Getting agreement before purchase on area, boundaries, interest holders, shares, and price is the sensible, reasonable, and fair way of making sure that there is informed consent. The Crown did not conduct its purchasing activities in this inquiry district in accordance with these tenets. In the Wairarapa, standards were lowered to facilitate speed, so that the district could be opened for settlement. In Treaty terms, the desire for speed does not justify dispensing with the procedural safeguards that ensure that consent is informed.

A district-wide purchase was assumed by the Crown

from the first, with Māori to be confined to occupation reserves. It is nowhere apparent that Māori agreed to this approach. Even if at the komiti nui (a pivotal hui) they agreed in principle to large-scale Crown purchase, that agreement was conditional upon the details of each transaction being separately ascertained and agreed, and on the Crown delivering on its promises of other benefits. Neither of these conditions was fulfilled.

With the possible exception of the Castlepoint purchase, the Crown did not conduct a proper investigation of rights before embarking upon purchase. There were no hui on the land in question where interest holders could openly debate who owned what and in what proportion. There were no surveys to show clearly what land was being sold and what reserved. There was therefore no informed consent, and later payments and adjustments of boundaries did not remove the prejudice that flowed from this want of good process.

We are particularly critical of the Crown's practice of making initial payments to favoured rangatira away from the eyes of other leaders and resident hapū. These payments were effectively deducted from the tribal patrimony without community knowledge or consent. This was a deliberate strategy on the part of the Crown to predispose persons of influence to their way of thinking. Nor did later settlements negotiated with those who were at first ignored mitigate the prejudice.

The koha/five percents were also wrongly deployed to pressure Māori into accepting the Crown's offer to finally settle purchases that they were disputing. Again, this breaches the principle of active protection and is, in our view, a cynical departure from the message conveyed to Māori at Tūranganui. We also think that Māori were entitled to an endowment of five percent of the on-sale price on all the lands that they sold. Crown officers should not have withheld entitlement to this benefit as a means of offsetting the relatively high cost of purchasing the homestead blocks.

Because many of the purchases were so ill defined, Māori could not really negotiate a deal to which they *could* meaningfully consent. For instance, how could there be a real negotiation on price when significant terms of the contract (such as exactly where the boundaries were, and the location and size of reserves) were at large? Perhaps at the time Māori did not feel disempowered by this, because they trusted that the Crown would deliver the wider benefits that were promised. But it did not. This makes the imposition on Māori of such an unfair bargaining situation, in which the usual advantages of a vendor with a willing buyer were effectively removed, even more serious. This was a conspicuous failure actively to protect Māori, or even just to accord them the ordinary terms of fair contractual practice.

Accordingly, *we find* that the Crown's abandonment of good purchasing practice in the Wairarapa purchases we have described undermined the capacity of Māori to make informed community decisions. This was a diminution of te tino rangatiratanga, and breached the Treaty.

The practices described, which were adopted by McLean and continued by his successors, were the antithesis of what was required – that is, a process that provided for free, willing, and informed consent, a fundamental requirement of article 2 of the Treaty. They therefore breached article 2, the Crown's duty to act in good faith, and the principle of active protection.

(2) *Surveys*

We find that the Crown's failure to survey land before the sale was finalised, or indeed within a short period thereafter, compounded the breaches already identified. Deeds signed without survey, and where the price was arrived at without information about the number of acres involved, were deficient purchases.

The Crown knew that purchases conducted in this way were deficient. Crown officials regularly acknowledged that survey was a priority, and necessary to make sure that reserves were protected and owners received their Crown titles. But nevertheless, purchasing continued without

survey information. This conduct breached the Crown's obligation to act towards its Treaty partner in good faith.

Only at Castlepoint were boundaries at all defined before the purchase was undertaken. Subsequent deeds routinely purported to transfer land ownership even though the boundaries of the land to be transferred were undefined and uncertain. Purchases arranged like this lacked informed consent, because the vendors did not know – and could not know – what they were agreeing to. This is a clear breach of article 2.

The lack of surveys meant that there was no overall picture of the dimension of the Crown's purchases until it was too late. By the time realisation dawned and a reaction started in the early 1860s, well over 1,500,000 acres had been sold to the Crown. The absence of maps and plans deprived Māori of the ability to monitor what was happening across the district, and protect themselves from selling too much land. Likewise, Crown officials, lacking survey information, could not act to protect Māori from excessive land sales even if they had been so minded. This breached the Crown's duty of active protection and the guarantee of te tiro rangatiratanga.

(3) *The Tautāne block*

When McLean purchased this block from Te Hāpuku's party and a scattering of Wairarapa-based chiefs, the Crown knowingly ignored the rights of resident hapū. Legitimate right holders were denied the opportunity to exercise a genuine and informed choice about the land before any moneys were paid or promises made. Effectively, the Crown trapped certain landholders into agreeing to the sale – an undeniable act of bad faith. The Crown's actions were compounded by its subsequent decision to substitute a one-off payment of £500 for the koha/five percents to which the former owners of Tautāne block would otherwise have been entitled.

Accordingly, *we find* that the Crown's conduct breached the Treaty and the principles of partnership, active protection, and equal treatment.

15.3 Chapter 3B: Crown Purchasing – Reserves

15.3.1 Crown concession

The Crown acknowledges that:

> to the extent that it failed adequately to delineate and protect reserves agreed upon in Wairarapa land purchases, or that it unreasonably delayed issuing grants where these were promised, Wairarapa ki Tararua Māori suffered prejudice and that these failures were in breach of the Treaty and its principles.[2]

15.3.2 Tribunal findings

We find that, in failing to reserve adequate land for Māori, the Crown breached its duty actively to protect Māori interests. Māori were prejudiced in that the Crown's meagre provisions effectively precluded their engaging with the settler economy, except as wage labourers and subsistence farmers.

The Crown also breached the principles of the Treaty by failing to ensure that Māori were protected in the ownership of their reserves by:

- vaguely defining reserves and failing to survey them, rendering them incapable of precise identification and therefore protection;
- purchasing reserves from the Tūrakirae, Hikurangi, and Ngātapu purchases and others, especially where such purchases were from a limited number of vendors;
- purchasing reserves as a purported means of resolving disputes, when it had caused the disputes by poor purchase practice, and other solutions were not explored; and
- purchasing reserves from individuals, when the true ownership lay with a larger group, and the Crown knew that to be the case.

For example, part of the Whāwhānui reserve was mistakenly included in the on-sale to Barton.

We see these practices and instances as a clear Crown

failure to honour its duty to protect the interests of all those who legitimately held them.

The Crown breached the principle of active protection in all these cases, and also breached its duty to act towards Māori with the utmost good faith. Māori were prejudiced because the Crown's breaches undermined their tino rangatiratanga and helped propel them towards landlessness.

Despite later Crown efforts to investigate complaints that promised reserves had not in fact been set aside, or had been incorrectly purchased, remedies were rarely found. When they were, they took a long time, and resolution was seldom fully satisfactory. In cases where achieving a fair result for Māori would involve upsetting Pākehā settlers, the settlers' interests were routinely put before those of Māori.

Accordingly, *we find* that the Crown's efforts to redress longstanding problems were too long delayed and too limited to mitigate the Treaty breaches detailed above.

15.4 Chapter 3C: Crown Purchasing: Benefits of Settlement in Terms of Education and Health

15.4.1 Tribunal findings on education

We find that none of the education that the Crown provided met the needs of Māori children. Both native and board schools failed them. Even the schools that Wairarapa Māori themselves endowed with land were allowed to founder.

This was a signal breach of promise, given the Crown's reliance on promises of (inter alia) education as a means of persuading Wairarapa Māori to let the Crown purchase their land, and open up the district to settlement.

After Governor Grey made these promises in 1853, a crucial 30 years elapsed before there was any meaningful effort to provide schools for the Māori community in the Wairarapa. This was an opportunity lost. Good education for Wairarapa Māori from the time when land purchases began might have facilitated an altogether different transition from traditional to colonial life.

This delay, together with the typically short lifespan, meagre spread, and low standard of the district's native schools, and the unsuitability for Māori of both native and board schools, had multiple negative consequences. They exacerbated disparities in the socio-economic position of Māori and non-Māori. They neither prepared Māori to advance educationally to tertiary level nor provided the kind of agricultural skills training that might have enabled them to develop their remaining land assets. These failings breached the Crown's duties of good faith and active protection.

The evidence does not allow us to answer with certainty whether these failings amounted to a breach of article 3 rights of equal access. What we can say is that fewer children went to native schools in this district than in many other places. Lack of access to purpose-built Māori education in native schools *should* have prejudiced Māori children in the Wairarapa ki Tararua inquiry district. However, the evidence about native schools – their low aspirations for Māori children enshrined in less academic curricula, and their lower qualification standards – indicates that missing out on them may not have been a disadvantage at all. However, the alternative – board schools – were probably no better for Māori children, and because of the discrimination they suffered, might even have been worse. The Crown failed in its duty, which arose both from its own undertakings and from its duty of active protection under the Treaty, to devise and provide effective means of delivering education to Māori children.

As regards te reo Māori, we acknowledge that the Crown's responsibility for language and culture loss – especially in this district, where settlers so quickly outnumbered Māori – is a complex matter. We acknowledge the efforts of recent leaders to set up kōhanga reo and kura kaupapa in the district, in the face of considerable local Pākehā opposition. The Crown, via the

Education Department, should have taken a more active role in promoting the value of Māori educational initiatives – kōhanga reo (pre-schools), kura kaupapa (primary schools), and wānanga (tertiary institutions) – to all sections of the Wairarapa ki Tararua community. *We recommend* that the Crown constantly reviews the degree of support necessary for te reo to be preserved and promoted in this region, in partnership with the iwi of Wairarapa ki Tararua.

15.4.2 Tribunal findings on Pāpāwai and Kaikōkirikiri gifted lands

The Crown failed to intervene to protect Wairarapa Māori from the wrongful implementation of their gift of land for schools. By the time the Government passed the necessary legislation in the 1940s, needs had changed, and the establishment of Māori schools on the land gifted for that purpose was no longer viable.

We find that the Crown breached the principle of active protection when it failed to step in early in the life of the trust to ensure that the Anglican Church handled the gift and the resulting trust properly. It failed also – and its failure is especially critical in those first 30 years, when Wairarapa Māori children lacked a suitable school – to help establish the schools that both Church and Crown promised.

We recommend that the Crown enters into discussions with the beneficiaries of the trust about implementing the original intention that the children of all tangata whenua of the Wairarapa are entitled to benefit.

15.4.3 Tribunal findings on health

We find that, in land purchase negotiations between Crown officials and local Māori in the early years of the colony, the Crown undertook to provide hospitals and doctors for Wairarapa Māori.

We do not consider that the services of one native medical officer – for which the Crown paid only in part – fulfilled this promise. Certainly, providing doctors and hospitals in the Wairarapa in the 1850s and 1860s would have demanded a great deal of political motivation and funding at a time when the State's attention was usually elsewhere, and money was often short. Nevertheless, we hold the Crown to the understandings that we believe would have been held by the Māori who gathered at the Tūranganui komiti nui in 1853: that the Crown would provide doctors and hospitals for Māori, without delay. Here, the Crown clearly failed. If the health services for Māori that followed had been of an altogether different standard, the prejudice suffered from the failure to implement its promises fully and early, as it should have done, might have been mitigated. But they were not.

The limitation of subsidised health services to those communities of Māori that were classed as 'indigent' was a particular feature of Māori health care into the twentieth century. The application of this policy consistently went against the interests of Wairarapa Māori, who for reasons that are difficult to discern, were not considered poor enough to qualify.

We find that the subsidised services were wrongly limited to exclude Wairarapa Māori. They should have received the free medical care they continually asked for, and officials should have acknowledged that the duty arose from earlier Crown promises of health benefits, rather than looking at the financial status of recipients. The Crown erred when it refused the health-related petitions of Wairarapa Māori, and when it consistently confined its assistance to minimal levels.

Overall, the Treaty, the land fund, and the Crown's specific undertakings to Wairarapa Māori, together meant that tangata whenua of this district were – and are – entitled to receive good health care without extra cost to them. Historically, the care provided should have been of a nature and extent that, as far as possible, protected them against the adverse effects of settlement, and fitted them physically and mentally for full participation in the new colonial order. The care was not of such a standard. *We find* that the Crown breached its promise and breached the Treaty.

15.5 Chapter 3D: Crown Purchasing: Koha/Five Percents

15.5.1 Crown concession

The Crown acknowledges that:

> it failed reasonably to discharge its obligations under the five percent clauses that were incorporated into certain purchase deeds in the Wairarapa area. This failure caused prejudice to Wairarapa ki Tararua Māori, and was a breach of the Treaty and its principles.[3]

15.5.2 Tribunal findings

We find that, in both process and substance, the Crown breached the Treaty in its interpretation and management of the koha/five percent clauses and the fund. It breached the contracts it entered into in the deeds, breached article 3 by using fund moneys to pay for services to which Māori were entitled as citizens, and also signally failed to protect Māori interests actively.

We also find that the Crown breached article 2, because Grey's promise of the koha/five percents, and their underpinning of general benefit, persuaded Māori to consent to the purchase of their land. But they were duped. The promises – including provision of additional assistance via the koha/five percent clauses to engage with the new colony – were broken. Thus, the Crown gained Māori consent to the sale of their land under false pretences; there was no free and willing consent.

15.6 Chapter 4: The Native Land Court and Land Purchasing, 1865–1900

15.6.1 Crown concessions

In regard to the Native Land Court:

- The Crown concedes that it failed to ensure that Seventy Mile Bush reserves, which were set up under the Volunteers and Other Lands Act 1877, came under the Native Equitable Owners legislative regime. This Act was designed to remedy ill-effects of the 10-owner rule (implemented under section 23 of the Native Lands Act 1865). The Native Equitable Owners Act provided for the identification of the trust inherent in titles where the few named on the title were there in a representative capacity, and enabled all the right holders to be named.[4]
- It admits that it breached the Treaty to the extent that Crown officials 'used unreasonable pressure' to obtain the remaining signatures in favour of sale of certain Seventy Mile Bush blocks.[5]

In regard to Nireaha Tāmaki, the Crown said that it did not consider that the evidential basis was sufficient to support an acknowledgement of Treaty breach.[6]

15.6.2 Tribunal findings

Māori opposition to the Native Land Court resulted in efforts to establish an alternative mechanism – a national body, or Pāremata (Parliament), to make laws and regulations for their own land and resources. Like earlier Tribunals, *we find* that this was entirely consistent with the Crown's kāwanatanga (government) and with the Treaty's guarantee of tino rangatiratanga.[7] When, through the Kotahitanga Movement, Māori did set up their own self-funded elected body with very considerable popular support, the Crown should have worked with it and empowered it. By failing to do so, we consider that the Crown missed a crucial opportunity to effect a Treaty partnership and institutionalise Māori autonomy centrally and locally. This was especially the case since the moderate wing of the Kotahitanga, with which the Seddon Government carefully cultivated a relationship, was not seeking to usurp the role of the New Zealand Parliament. It proposed to put the Pāremata's measures before the New Zealand Parliament for ratification.

We endorse the central North Island Tribunal's finding that:

In failing to incorporate Kotahitanga into the machinery of the State, and share power with Maori in a meaningful way at the central level, the Crown acted in serious breach of the principles of the Treaty.[8]

We also find, as regards the Native Land Court, that:

- While some settler politicians genuinely believed that Māori would benefit from the establishment of the Native Land Court and the conversion of customary title to Crown title, this 'humanitarian' objective was secondary to the Crown's goal of facilitating land acquisition. If the main aim was truly to create a government-endorsed forum where disputes over land, title, and resources could be resolved, Māori should have been consulted about what they needed and how it might be achieved. As the Hauraki Tribunal noted about the argument that good intentions lay behind the establishment of the Native Land Court, good intentions are 'not enough for adequate fulfilment of the Crown's Treaty obligations to Maori'.[9]
- By 1865, it was clear that some modification of Māori customary land tenure was needed to allow settlement to proceed and to allow Māori to benefit from new economic opportunities. But this did not require all customary lands to be converted, or purchased from Māori – especially in the Wairarapa, where some 1.5 million acres of freehold land had already left Māori hands to make the region available for settlement.
- The option of holding on to some lands in customary tenure should have been available to Wairarapa Māori. But it was not, because the Native Land Court undermined collective decision-making, and because by the time the court was established, customary processes were already under strain – partly as a result of extensive Crown purchasing, much of it rushed and in contravention of established practices for gaining full, informed consent.
- The Native Land Court exacerbated this strain by imposing new processes that substituted traditional dispute resolution and usurped traditional roles. It did not allow proper consideration of what land Māori really needed to retain, nor did it respect deliberate decisions by Māori to withhold certain land from the Crown. Yet Wairarapa Māori who wanted to engage with the modern economy had no choice but to go to the court.
- The Crown, when designing and implementing the Native Land Court, did not seek the consent and cooperation of Wairarapa Māori. The Crown's guarantee of te tino rangatiratanga implies that the full understanding and consent of Māori was required when law changes were proposed that would profoundly affect them and their chief asset (land). A hui similar to that held at Kohimārama in 1860 should have been convened to discuss the proposed court with Māori, before the Native Lands Bill went to Parliament and became law in 1865.[10]
- The system created under the native land laws made it very difficult for Wairarapa Māori to keep any of their land under customary tenure. If they wanted to participate in the colonial legal, political, and economic system (and even if they did not), they needed a title that they could use in the commercial world – and the Native Land Court process was the only way of securing one. We reject the Crown's argument that native land legislation provided opportunity (except for a brief period) to select a 'form of communal title'. None of the legislative measures cited by the Crown provided for the real communal title or effective communal control that many Wairarapa Māori sought. No effective corporate title was created in law until the twentieth century.
- The costs associated with the Native Land Court process (which included fees, surveys, attendance, and the toll that absence took on normal economic activities) is likely to have contributed significantly to the hardships faced by Wairarapa ki Tāmaki-nui-ā-Rua Māori in the late nineteenth century. The burden cannot be quantified, partly because of inadequate record-keeping. We accept the claimants' argument

that the Crown was obliged to keep such records as part of its protective function in monitoring the court and its effects. The Crown cannot advance the unavailability of such evidence to support its case that costs were not excessive. Nor is it necessary for the claimants to show that costs were always excessive, and always resulted in immediate alienation, to demonstrate that Native Land Court costs were part of an inequitable system that undermined Māori capacity to exercise rangatiratanga over their lands and resources.

- As regards *the northern Bush blocks*, the Native Land Court process surrounding the Crown's acquisition involved serious Treaty breaches. In particular:
  - Paying 'groundbait' payments to selected chiefs as a means of luring right holders into selling before they had the opportunity to decide for themselves was a particularly egregious breach of article 2. The owners never gave their full and free consent to sell the land, and the Crown deliberately undermined their rangatiratanga.
  - The hui held at Waipawa before the court sitting did not satisfy the requirement for transparent dealing. Advance payments had already been made to a number of individual claimants, and clearly the land was destined to go before the court irrespective of the outcome of this meeting (given that the native land laws permitted an application by any Māori).
  - The Native Land Court was shown to be an inadequate and flawed forum for determining customary rights, making its decisions on the northern Bush lands not necessarily reliable. Native Land Court Judge Rogan's application of the 10-owner rule undoubtedly resulted in prejudice to the wider community, in terms of both the sale of land and ownership of land that was retained. This is particularly blameworthy because the court had available to it, and failed to use, legislative alternatives that would have allowed all those entitled to be recognised on titles.
  - The Crown prioritised purchasing land over honouring Māori wishes to keep certain lands sacrosanct either by keeping them as reserves or by the insertions on their title of restrictions on permanent alienation. This represents a serious Treaty breach. We strongly reject the Crown's argument that the fact that some lands were retained by Māori in the initial purchasing period (such as the Tāmaki and Piripi blocks) showed they could control the process of land alienation. In fact, Māori were able to retain lands only insofar as they remained outside the ambit of the Crown's immediate land purchase objectives and the interests of settlement.
- The Crown breached its duty of active protection by putting in place a legislative regime that did not allow Wairarapa Māori to retain sufficient land for their present and future needs. The Crown could have worked with Māori to develop ways for them to make decisions about their land that would allow them to engage with the new economic opportunities of the colonial world, while ensuring the collective interests of Māori communities were not hijacked by the actions of individuals. But the Crown did not do this. Instead, it set up a system that individualised land – awarding titles to 10 or fewer owners – and provided no other effective choice of tenure. At the same time, despite acknowledging that Māori were fast becoming landless, Crown agents were purchasing 'inalienable' lands as cheaply as possible – the very antithesis of active protection.
- The legislative reforms that followed the introduction of the Native Land Court Act 1865 (for example, the 1867 section 17 amendment and the 1873 Act) were inadequate and came too late to address the concerns of Wairarapa Māori about the role of the Native Land Court, the Native Land Act, and the 10-owner rule.
- The Crown failed in its duty to provide accurate

surveys before any land was permanently transacted through the court, or even negotiated.

- The Crown's actions following Nireaha Tāmaki's appeal to the Privy Council over the disputed Mangatainoka–Kaihunu transactions breached the Treaty. Through the Land Titles Protection Act 1902, the colonial Parliament removed the capacity of Māori to challenge the legality and validity of the Crown's extinguishment of native title in the New Zealand courts, thereby denying Māori the potential benefit of the Privy Council's finding. As well as being constitutionally dubious, this breached article 2, which guarantees that Māori can keep all land they do not freely wish to sell: any legislation that takes away the courts' power to interrogate whether land was legitimately sold derogates from this guarantee. The Crown's actions also breached article 3, which guarantees Māori the rights and duties of citizenship, because it removed the right of Māori to have their claims heard in court.
- The Crown failed to provide for informed community consent about Native Land Court processes and sale. Simply calling a big hui before land was sold was not in itself sufficient for the Crown to be able to claim that there was adequate consultation and an informed, self-managed process of consent to land alienation. Consensus could not be reached in one meeting when many interests were involved, and when the details of the purchases were unknown. Moreover, when land was taken to court, Māori generally found they had little control over how the court's investigations proceeded and what form of title would result, and were not adequately informed about how individualised title would affect collective control over land in future. And their desire for collective control was thwarted by the introduction of majority decisions in land dealing in 1869, which meant the interests of the collective could be hijacked by the binding decisions of individuals.
- The Crown advantaged the purchase process and purported settlement needs over reasonable and necessary protections for Māori. The Crown made certain concessions here – namely, that undue pressure was placed on some owners to complete purchases – but we consider that what actually happened was a far more serious breach of the Treaty than the Crown has conceded. Considerable pressure was placed on individuals who were representing (but were not legally responsible to) their hapū to encourage alienation of very extensive areas at the lowest possible prices. This sometimes happened before any court investigation and without adequate discussion of boundaries or the extent of customary rights and tikanga (traditional rules for conducting life) over the lands. It was done with very little care to ensure owners were in position to make informed and careful decisions on behalf of others about their present and future needs. These acts and omissions breached article 2 guarantees and the Crown's duty of active protection.

15.7 Chapter 5: Sufficiency: How Much Was Enough?

15.7.1 Crown concession

The Crown concedes that it failed actively to protect the lands of Wairarapa Māori to the extent that today Wairarapa and Tāmaki-nui-ā-Rua Māori are virtually landless, and this was a breach of the Treaty of Waitangi and its principles.[11]

15.7.2 Tribunal findings

While many influences contributed to the impoverishment of iwi of Wairarapa ki Tāmaki-nui-ā-Rua in the late nineteenth century – including international economic trends and the activities of unscrupulous individuals – we are in no doubt that the Crown was primarily to blame. Its land purchase, land title, and land development policies adversely affected the capacity of Māori to retain and manage

their land and consequently their chance to prosper. The Crown's early and rapid purchase of most of the Wairarapa district under pre-emption, closely followed by a concerted buy-up of Tāmaki-nui-ā-Rua under the Native Land Court system, left iwi with nothing even resembling adequate landholdings. This in turn initiated a downward spiral, which officials and observers began commenting on well before the turn of the century. Despite this recognition, the Crown failed to put in place systems to ensure that Māori continued to retain the land they still owned at that point.

At the same time, the Crown was taking an active role in the development of farming – providing settlers with titles to established land blocks with access and infrastructure as well as targeted financial assistance. Māori argued for something equivalent, but it did not materialise. This effectively denied Māori the same opportunities as the rest of the population, at a time crucial for the development of their remaining land interests as viable farms.

Accordingly, *we find* that:

- the Crown breached its duty of active protection by failing to take the necessary steps to ensure that iwi in Wairarapa ki Tararua had a real prospect of retaining sufficient land to enable them to participate in the colonial economy on terms of reasonable equality, and to provide for their own cultural needs; and
- the Crown, in implementing policies to assist smallholders, including state lending, breached the guarantee to Māori of equal treatment as British citizens under article 3.

15.8 Chapter 6: The Management of Māori Land in the Twentieth Century

15.8.1 Tribunal findings

Our findings on sufficiency and landlessness in Chapter 5 apply also to the twentieth century. Here, we are particularly concerned with the Government's legislative regime. Developments such as the abolition of the Māori land councils, the reopening of Māori land to purchase under the 1905 and 1909 Native Land Acts, the land board regime created by those Acts, and the succession laws that applied until Te Ture Whenua Māori Act 1993 – all contributed to Māori being progressively less able, until the very end of the twentieth century, to hold on to what little land they retained.

Accordingly, *we find* that:

- The Crown's failure to intervene earlier to prevent the ongoing diminution of Māori land in the twentieth century breached its Treaty obligation of active protection. This is as serious as the breaches of the nineteenth century, because, by the twentieth century, it was so much more critical to ensure that tangata whenua kept the little whenua (land) they had left.
- By the twentieth century, the Crown knew more, and could do more, because New Zealand was a fully developed state with resources at its disposal. At least, Māori should have been offered similar assistance to that made available to others, especially Pākehā owners of smaller areas of undeveloped lands, who had limited capital. Steps the Crown could have taken included assessing the land needs of iwi and hapū, providing access to state lending (at least equivalent to what was available to Pākehā), and halting further attrition of their land base. All these options were possible in the early decades of the twentieth century. Development schemes were a well-intentioned Crown initiative to remedy some of the problems afflicting Māori land. But they came too late to make much of a difference, and the way they were implemented – including the failure to involve owners in the management of the land – meant they were largely unsuccessful.
- The Crown's duty to support Māori in their own tikanga in relation to their own land remained *at all times*, including times when other policy emphases prevailed. Thus, the Crown's obligations under the Treaty applied even when assimilationist views generated legislation that allowed Māori land to be bequeathed outside the family.[12]

- Such legislation breached the Treaty because it eroded Māori land tenure, whakapapa (lineage), and whanaungatanga (ethic of connectedness by blood), all guaranteed to Māori under article 2. Prejudice certainly resulted.
- The legislative regime also breached the principle of options (as articulated by the Muriwhenua Tribunal in 1988). The laws governing Māori land tenure between 1909 and 1993 reflected not only the desire for settlers to readily purchase Māori land, they also reflected the belief that Māori would ultimately be assimilated into English society and become subject entirely to the common law. While some Māori of course yielded to this pressure, the Crown was not entitled to impose its assimilationist views on its Treaty partner so that effectively there was little or no choice to be had. It is plain to us that Māori choices about their land in the twentieth century were far too often forced.

15.8.2 Tribunal recommendations

The damage done by the legislative regime that was in place for much of the twentieth century cannot be undone because the Tribunal has no jurisdiction to recommend the return of land in private ownership. We are limited to suggesting legislative and policy changes, and compensation – which is, of course, an inadequate remedy for situations where the prejudice to tangata whenua concerns their mana (authority), identity, and tūrangawaewae (core tribal land).

In addition to general redress for the breaches committed and the prejudice suffered, *we recommend*:

1. That the Crown works with Wairarapa ki Tāmaki-nui-ā-Rua Māori in the light of the significant breaches of the Treaty relating to keeping and using Māori land, to design a means whereby the Crown either:

   (a) lends money to owners of Māori land on the security of that land; and/or

   (b) guarantees lending to owners of Māori land by other institutions unwilling to accept Māori land as security;
2. That the Crown engages with Wairarapa ki Tāmaki-nui-ā-Rua Māori in a Crown-funded project to assist Māori to engage (if they wish to) in the level of Māori Land Court activity that would be necessary in Wairarapa ki Tararua to:

   (a) effect amalgamations and exchanges to ameliorate the effects of the poor partitioning of titles in the past; and

   (b) apply for the court to exercise its new jurisdiction to facilitate access to landlocked land. The Pūkaroro reserve will be a good starting point.
3. This recommendation, if accepted, would involve the Crown in paying for the costs of surveyors and lawyers;
4. That the Crown provides financial assistance to enable Māori owners to enforce court orders in respect of their land; and
5. That the Crown assists the owners of Taueru urupā to work with local bodies to form the roads that will afford access to their urupā. If this avenue does not succeed, assistance to invoke the Māori Land Court's jurisdiction with respect to landlocked land will be required (see recommendation 2(b) above).

15.9 Chapter 7: Wairarapa Moana and Pouākani

15.9.1 Crown concessions

The Crown acknowledges that at the time of the 1896 Wairarapa Lakes agreement, it did not ensure that the parties had a clear understanding of what would constitute ample reserves and their location. It also did not ensure that it could successfully implement the reserves provision in a timely way. This resulted in considerable delay before lands to meet the Crown's obligation were vested in Māori and surveyed access provided. This contrasts with the fact the Lakes agreement immediately gave the Crown a clear

title over the Wairarapa lakes, which enabled it to address settlers' concerns.

The Crown acknowledges that its accumulated acts and omissions in relation to the Lakes agreement constitute a breach of the Treaty and its principles. It also acknowledges that its failure to inform Māori and discuss the proposed taking of Pouākani prior to the Crown's entry on to the land and the construction of a number of structures on that land constitutes another breach.[13]

15.9.2 Tribunal findings

In numerous ways, Māori property rights were overridden, disregarded, and dishonoured during the events that led to the transfer of ownership of Lakes Wairarapa and Ōnoke (and their surrounds) from tangata whenua to the Crown, and Wairarapa Māori subsequently taking ownership of land at Pouākani instead.

We find that the Crown's conduct amounts to a grievous breach of its obligations to act towards its Treaty partner with the utmost good faith, and so as to protect their interests actively. Counsel for the Crown acknowledged that the Crown's failure to make lakeside reserves, and the delay in vesting and surveying the Pouākani lands, were 'regrettable'.[14] Our assessment is that the Crown's culpability is altogether more serious.

We find that the Crown's actions in compulsorily acquiring 787 acres of Pouākani land for the Maraetai dam, and compulsorily leasing 683 acres as a site for Mangakino township breached the principles of the Treaty – and specifically its duties of active protection, and to act with the utmost good faith – because:

- The owners will never get back the land that is under the dam and under the town, and these acres were the best farmland in the block.
- The Crown's process for taking the land for the Maraetai Dam was deficient in several respects, including the notice given and the process for assessing and paying compensation.
- The compensation paid was niggardly in the extreme. The compensation principles applied allowed the Crown to pay a price that was discounted because the Crown had not provided road or rail access to the land since 1916; the only 'betterment' that had occurred came as a result of the hydro works, and the landowners were considered to be entitled to only some of the benefit of this.
- The owners have not been compensated for the loss of productivity of Pouākani land as a result of approximately 191 hectares of power line corridors located there, although evidence presented showed financial loss as a result.[15]
- Mangakino township was never going to be viable after the works finished, and encouraging the Pouākani owners to take over the leasing scheme 'principally to ensure that the Crown could achieve the best possible price for houses erected on the land'[16] breached the Crown's duty to actively protect Māori interests. Even if (and we doubt this)[17] officials genuinely believed that Mangakino would thrive, and that the leases would prove to be an asset for the Māori landowners, a Crown properly focused on the welfare of these Māori would have tested optimism more rigorously by conducting a study *before* transferring the leases to the Māori owners; and developed a mechanism to rescue them from their plight in the event that the predictions of those who doubted that Mangakino was viable came to pass.
- The basis upon which the owners took over management of the Mangakino leases – especially the fixed terms for 14 years – was uncommercial, and exacerbated the problems that the owners faced as a result of the failing town. The Crown did not properly advise or assist the owners to manage the risks of taking over the scheme.

We find no Treaty breach in relation to the development scheme at Pouākani.

Overall, *we find* that the Crown's conduct in respect of Wairarapa Moana and Pouākani prejudiced Wairarapa Māori in that:

- Their mana in and around Wairarapa Moana, and their spiritual connection with the Moana was, if not lost, then dramatically undermined.
- This loss of mana affected their status and identity.
- The costs of many decades of conflict brought about by the Crown's conduct were high. They included the emotional and spiritual costs of the stress of participating in a dispute on a long-term, relentless basis; very considerable financial costs; and the loss, as a result of engaging in the conflict, of other opportunities that they could otherwise have pursued.
- Because the Crown did not grant reserves beside or near Wairarapa Moana, Wairarapa Māori had no base there for fishing or other hapū or tribal activities, nor any presence there as tangata whenua. Their connection with their ancestral lakes has thereby been reduced and diminished.
- Their traditional leaders were undermined by the unavailability, as a result of the Crown's conduct, of options that would really promote the welfare of Wairarapa Māori – either the lakes themselves, or the reserves that were promised. As a result, leaders were left with no alternative but to lead their people towards options they would never have chosen or promoted had real choice been available.
- The relationship between Wairarapa Māori and Waikato Māori was jeopardised by the grant to Wairarapa Māori of land in the southern Waikato, where they were not tangata whenua.
- Wairarapa Māori received no benefit at all from the Pouākani land for the first 40 years of their ownership of it. It was in fact a detriment, as they struggled in vain to get the Crown to provide assistance with access or development. At the same time, their wetlands were being drained, and commercial eelers were allowed access to their fishery. They had to live with the manifest unfairness of this 'exchange': while they had years of enduring adverse effects, the Crown and settlers instantly benefited from their gift of the lakes, from the attendant right to control the outlet from Lake Ōnoke to the sea, and from the sale of land around the lakes.
- Before they derived any benefit from the Pouākani land, nearly 800 acres of it were compulsorily acquired for hydro works, and another nearly 700 acres were compulsorily leased for Mangakino township. The process by which the acquisition was undertaken showed them no respect at all as owners, and the compensation principles applied were designed to ensure that the price they received was very low.
- In human and financial terms, running the Mangakino leases took a huge toll on the community of Pouākani landowners in the Wairarapa.

15.9.3 Tribunal recommendations

We recommend that, in addition to general redress that responds to the serious Treaty breaches identified, the Crown should:

1. Return to Wairarapa Māori ownership of the bed of Wairarapa Moana.
2. Gift to tangata whenua any land in Crown ownership adjacent to either of the two lakes, Wairarapa and Ōnoke, or anywhere in their vicinity, as a reserve or reserves.
3. Work with tangata whenua to design a special arrangement for management and control of Wairarapa Moana (including Lake Wairarapa, Lake Ōnoke, and such of their surrounds that are not in private ownership) that recognises and gives effect to the status of Wairarapa Māori as its rightful owners and kaitiaki (guardians). This arrangement should:

   (a) fully reflect the special relationship between tangata whenua and their customary fishery in the lakes; and

   (b) go well beyond the existing wetland plan in

providing for the primacy of tangata whenua interests in the lake.

4. Compensate Pouākani owners for the opportunity cost of bearing the burden of administering the Mangakino leases for nil real return over 40-odd years.
5. Reassess the compensation paid to the owners for the land taken for the Maraetai dam in the light of new, Treaty-compliant criteria, including:

   (a) compensation for the unique qualities and hydro potential of the land;

   (b) compensation for all 'betterment' effected by the hydro works.
6. Compensate the Wairarapa Māori owners of the land at Pouākani for the loss of productivity occasioned by the power line corridors.[18]
7. In relation to the 'lost 200 acres', *we recommend* that the Crown either accepts the conclusions of its witness Andrew Joel; or, if it wishes to go further, commissions a survey and legal opinion of the kind that would have resulted from a title investigation, if the Native Land Court had undertaken one in 1930. If the conclusions of Joel's opinion are confirmed, a process to assess compensation should ensue. Compensation should then be paid, with interest, to the land's traditional owners.

15.10 Chapter 8: Public Works Takings

15.10.1 Tribunal findings

We find that the compulsory acquisition of Māori land for public works in Wairarapa ki Tararua breached article 2 of the Treaty of Waitangi. No acquisitions in the district met the test of being required in circumstances where the national interest was at stake and where there were no other options.

There are three factors that exacerbate the Crown's Treaty breach in respect of public works:

- Māori were not represented in Parliament at the time when their Treaty rights were abrogated by the adoption of English public works norms through legislation.
- The land fund model of colonisation implemented in New Zealand involved Māori accepting a low price for their land in return for other benefits, including infrastructure like roads and bridges. Requiring them then to give up ownership of further land for public works, sometimes without compensation, was an extra and unfair burden.
- There is a quality of exploitation about how this burden was imposed: Māori land was made subject to the five percent rule and local authorities were allowed to compulsorily acquire Māori land, just as Māori political power was declining because of greater settler numbers and the land wars.

The whole public works regime was, and remains, monocultural. The Crown failed to apprehend, and take account of, the special significance of land to Māori. In particular, it had no regard to the fact that, by the twentieth century, the land remaining in Māori hands was usually important or strategic for both cultural and economic reasons. Continuing to facilitate the land's easy compulsory purchase by (mainly) local authorities was a woeful failure to protect Māori from unnecessary cultural, spiritual, and financial loss.

The legislation was not procedurally fair as it related to Māori land. Most public works Acts contained different regimes for Māori and other land, and owners of Māori land had fewer procedural protections. The requirements that were developed in England for procedural protection of landowners' rights – especially good notice to every individual with interests in the land, fair compensation, the right to object, and offer-back for repurchase when the original purpose expired – were inconsistently and poorly applied to Māori land.

The Crown's delegation of compulsory acquisition powers to local authorities breached the Treaty.

Compulsory acquisition is a significant erosion of Māori property rights that should only be contemplated in rare and tightly controlled circumstances. Legislation that allowed the State's power to be deployed by many different local authorities for evermore trivial purposes flagrantly cut across the guarantees to Māori in article 2. The Crown also failed to supervise offer-back provisions, allowing local authorities to redeploy land for other purposes, or offer the land back to others because offering it back to the descendants of multiple Māori owners was characterised as impracticable.

The small-scale and humdrum nature of the many local authority takings in the district meant that it was not necessary to acquire Māori land compulsorily, as many other sites would have been suitable. A possible exception to this may have been certain coastal roads, and possibly also particular stopbanks and gravel pits. However, the Crown offered neither evidence nor submission to this effect. Moreover, there is no evidence of attempts to acquire land for these kinds of purposes by negotiation rather than compulsion. In every instance, negotiated purchases could have been – and should have been – tried before any compulsory measures were taken. The legislation provided no threshold for resorting to compulsory measures for trivial works; nor was there any requirement to consider alternative sites before taking Māori land; nor was there any requirement to consider whether owners of land sought for works had other Māori landholdings. All these omissions breached the Crown's Treaty duties, particularly its duty of active protection.

Where Māori land was taken in preference to general land – which *we find* occurred at least in the case of the Dannevirke Borough Council's takings in the Tahoraiti blocks – the Crown failed to monitor the situation. It failed also to provide a legislative regime that curtailed authorities' power to act in this way. These failures breached article 3 of the Treaty, and also the Crown's duty of active protection.

The failure of the Crown to ensure that all compulsorily acquired Māori land was offered back once no longer required for the original purpose was a lamentable breach of its duty to actively protect Māori interests. Had a proper offer-back regime been in place, some of the negative effects of compulsorily acquisition might have been averted.

15.10.2 Tribunal recommendations

The constant delay in making changes to the public works regime, which clearly conflicts with Māori rights under the Treaty, reflects badly on the Crown's bona fides in the Treaty area. It is not even as though public bodies are in the business, nowadays, of compulsorily acquiring land to any extent. Even if, sometimes, it is deemed necessary to compulsorily acquire land, Māori land now comprises only five percent of land in New Zealand. Surely the time has come to compel authorities to look elsewhere for any land that simply must be purchased.

Hence, *we recommend* a number of specific changes to public works legislation. Many have been recommended by previous Tribunals, but are yet to be implemented; others are additions of our own.

(1) *Recommendations on legislation*

We recommend that the Crown acts to change the current public works regime without further delay:

1. In particular, *we recommend* that the Public Works Act 1981 be amended to provide that it should be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.
2. As a consequence of recommendation 1, *we recommend* that part 11 of the Public Works Act 1981 be amended so that:
   (a) The Crown and local authorities are expressly authorised to:
      (i) acquire a lease, licence, or easement over;
      (ii) enter into a joint-venture arrangement in respect of; or
      (iii) arrange for an exchange of land in respect of Māori land required for public purposes,

instead of acquiring the freehold title of such land.

(b) The Crown or local authority should not seek to acquire Māori land without first ensuring that no other suitable land is available as an alternative.

(c) If the Crown or a local authority wishes to acquire Māori land for a public work or purpose, it should first give the owners adequate notice and, by full consultation, seek to obtain their informed consent at an agreed price.

(d) If the owners are unwilling to agree, the power of compulsory acquisition for a public work or purpose should be exercised only in exceptional circumstances and as a last resort in the national interest.

(e) If the Crown or a local authority does seek to acquire the use of Māori land for a public work, it should do so by acquiring a lease, licence, or easement, as appropriate, on terms agreed upon with the Māori owners or, failing agreement, by appropriate arbitration. Should there be exceptional circumstances where the acquisition of the freehold by the Crown or a local authority is considered to be essential, Māori should have the right to have that question determined by an appropriate person or body, independent of the Crown or local authority.

3. As a consequence of recommendation 1, *we also recommend* that part III of the Public Works Act 1981 be amended to require the Crown or local authority, as the case may be, to:

   (a) consult with former Māori owners or their successors before deciding not to offer surplus land back to such owners, and before putting any land taken for a public work to any other purpose; and

   (b) offer to return surplus land to Māori ownership at the earliest possible opportunity with the least cost and inconvenience to the former Māori owners.

4. In determining the price at which the land is offered back to the former Māori owners, *we recommend* that the Crown or local authority:

   (a) share with such owners the increased value in the land arising from the use and development of their land;

   (b) have regard to the means of such former Māori owners;

   (c) have regard to the circumstances surrounding the compulsory acquisition of such land;

   (d) have regard to the special circumstances of multiple Māori owners and to seek to accommodate such circumstances;

   (e) have regard to the adequacy of the compensation paid when the land was compulsorily acquired, in the light of Treaty principle; and

   (f) have regard to whether the Crown should pay compensation to Māori when the land is returned. The quantum of any such compensation is to be assessed on the basis of a fair return to Māori for the use of the land by the Crown, and the length of time the land has been used for any public purpose.

5. If for any reason the former Māori owners are unable or unwilling to take up the offer-back, *we recommend* that the Crown or local authority is to offer the land to the wider hapū or tribal group to which the former Māori owners belong.

6. In order to facilitate the process of offer-back, *we recommend* the amendment of section 134 of the Te Ture Whenua Māori Act 1993. This section enables the Māori Land Court to vest any Māori land acquired by the Crown or a local authority for public works purposes, for which it is no longer required, in those Māori found by the court to be entitled to receive it. However, under section 134, only the Crown or a local body may make such an application to the court. *We recommend* that the Act be amended to enable the owners from whom the land was originally taken or their descendants to apply to the court for the return of such land.

7. *We recommend* that section 342 of, and schedule 10 to, the Local Government Act 1974 should be amended or repealed to prevent local bodies from avoiding the requirements of the Public Works Act 1981 to offer

back lands to their former owners once they are no longer required for public works.

(2) *Recommendation on offer-back standards*

We recommend that Land Information New Zealand retains its existing standards relating to the offer-back of gifted land and continues to give vendor agencies the discretion to return improvements on gifted land for less than current market value.

(3) *Recommendation on Ōkautete School*

Having already acted properly in giving the Ōkautete School site back to the tangata whenua, *we recommend* that the Crown now also gives to those people the school buildings and school house located on the site.

(4) *Recommendation on research assistance*

We have found that the land compulsorily acquired for public works in Wairarapa ki Tararua should not have been so acquired, for its acquisition in that way breached the principles of the Treaty of Waitangi. *We recommend* that the Crown now assists the claimants to find out more about what happened to land that was compulsorily acquired from Māori in this inquiry area. They require access to information that will tell them what compulsorily acquired land has been disposed of without offering it back to its former Māori owners. If it exists, they should also be given access to information about any compulsorily acquired land that may be declared surplus and offered back to the descendants of the original owners in the future. Investigation of the former will help avert further Treaty breach and investigation of the latter will provide better information about the extent of the prejudice flowing from compulsory acquisitions.

These recommendations should be brought to the notice of the Minister of Lands, the Minister of Justice, the Minister in Charge of Treaty of Waitangi Negotiations, and the Minister of Māori Affairs.

15.11 Chapter 12B: Local Government Legislation

15.11.1 Tribunal findings

We find that, while the Local Government Act 2002 exposes iwi to the policies and actions of local government, it does not hold councils to account if they fail to provide opportunities for Māori to participate in decision-making or do not actively protect environmental taonga (treasured property). In other words, the Crown has delegated responsibility to local councils but has not delegated an equivalent level of accountability.

In the public works chapter (ch 8), we have already discussed the Crown's delegation of powers to local authorities. There we found that that the Crown may not avoid its Treaty obligations by unilaterally deciding that Crown functions will be carried out by others.

Delegation of Crown functions is of course in accordance with the Treaty if the Crown's Treaty obligations go with the delegation. However, we have seen in all spheres of local government activity that the Treaty provisions in the relevant legislation are not sufficiently prescriptive to oblige local bodies to conduct themselves in a manner that is consistently Treaty-compliant. In this, the Crown fails in its duty of active protection.

Thus we consider that both the Local Government Act and the Resource Management Act require more compelling Treaty provisions. Also needed are regular audits, and sanctions for non-compliance.

15.11.2 Tribunal recommendations

We recommend that the Government commit to a comprehensive review of these Acts that achieves:

- a representative of Rangitāne and a representative of Ngāti Kahungunu on all territorial and district councils in this inquiry;
- engagement by all local authorities with the Māori communities they serve;
- concentration of functions in fewer local authorities, so that the burden on Māori of having to form

effective relationships with many different bodies is lessened;

- increased participation of Māori in voting for, working for, and serving on councils;
- shared power and delegation of local authorities' functions to Māori entities in all appropriate areas and circumstances;
- increased capacity of tangata whenua to engage meaningfully in resource management decision-making (which will involve paying and training them); and
- substantial upskilling of council staff and councillors in understanding the Māori world-view, including enhanced skills in te reo Māori me ōna tikanga (the Māori language and related customs). Councils should also be required to provide incoming councillors and new staff with information and education material on (among other matters) local tribal boundaries and significant sites; local tribal organisations, trust boards, corporations and leaders; the current Treaty discourse; Treaty settlements; and Crown Treaty obligations and how they are expressed in the Resource Management Act 1991 and local government legislation.

We also endorse the findings of the 2005 'Local Futures' study, which called for further research 'investigat[ing] how elements like trust, credibility, integrity and willingness to communicate can be incorporated into local government practice'.[19] We agree, and see an associated need for better information management and information-sharing.

While we recognise that steps have been taken by some local authorities in some places to improve Māori representation and participation in local government decisions, we emphasise that this is not required in the legislation – and nor are there sanctions for poor practice. To ensure that good working relationships happen all the time, rather than arbitrarily or opportunistically, we call for clear lines of accountability that are supported by legislation that enables, promotes, and (at least for key decisions) *requires* full involvement of tangata whenua.

15.12 Chapter 12c: The Department of Conservation

15.12.1 Tribunal findings

We find that partnership is the practical effect of section 4 of the Conservation Act 1987. For the Department of Conservation, this means identifying ways to devolve and share its statutory decision-making powers to Māori or with Māori, thereby achieving genuine partnership. Only then can the department be said to be truly giving effect to the principles of the Treaty of Waitangi in all its work.

15.12.2 Tribunal recommendations

(1) *Recommendations on Department of Conservation*

As a first step, *we recommend*:

- The establishment of a joint working group comprising representatives from iwi and the Department of Conservation. Its role should be to review the department's activities and current relationships within the region and to identify opportunities for joint decision-making and funding for Māori programmes.[20] Situations where it is appropriate for iwi to have control, rather than being part of a joint decision-making arrangement, should be identified – a notable example is the management and control of wāhi tapu (sacred places). Opportunities for Maori cultural–commercial enterprises on conservation land should also be on the working group's agenda.
- That the Crown fund the upskilling and participation of te iwi Māori in environmental decision-making. This concerns not only the involvement of tangata whenua with conservation issues and the Department of Conservation but also with local government, the Resource Management Act 1991, and heritage management. Crown funding is necessary so that iwi can properly fulfil the partnership role inherent in section 4 of the Conservation Act 1987.

In addition, the following should be explored:

- A Department of Conservation cadet scheme for the rangatahi (young people) of Wairarapa ki Tāmaki-

nui-ā-Rua. This would enable the tangata whenua and the department together to develop expertise in both Māori and Pākehā conservation perspectives and techniques among local people, especially the young.

- More dialogue between the Department of Conservation and tangata whenua about how best to address the twin issues of resources and training.

(2) *Recommendation on Pūkaha Mount Bruce*

Regarding the future of this partnership, we consider that joint management and joint ownership would be the ultimate expression of partnership between the Crown and Rangitāne.

We recommend the return to them of part-ownership of the reserve as fitting cultural redress for Rangitāne o Tāmaki-nui-ā-Rua.

15.13 Chapter 12D: Māori Heritage Management

15.13.1 Tribunal findings

We find that there is real disillusionment with the present heritage management regime. To overcome it, a less bureaucratic and more Māori-driven system is required. Reconstituting the Māori Heritage Council as an independent body running its own heritage protection regime could be an option, but it may be too costly to have separate bodies for Māori and Pākehā heritage. But a body with more Māori expertise and leadership, comprising people whose main interest is Māori heritage, is required.

15.13.2 Tribunal recommendations

We recommend legislative change in a number of areas:

- The Resource Management Act 1991 (ss 33, 36B) or the Historic Places Act 1993 or both must be amended to *require* Māori involvement in decision-making about consent applications that involve Māori heritage, and also in decisions about heritage orders. Māori need to be involved from the outset, and need to be properly funded to do so. At present, local authorities are not using the available legislative opportunities to devolve power to tangata whenua.
- Another way that the Resource Management Act could strengthen the heritage obligations of local authorities is simply by making heritage a more important priority for them. We note that 'the protection of historic heritage from inappropriate subdivision, use, and development' was only listed as a matter of national importance under the Act in August 2003.[21] We hope this change to the Act will influence the next round of district plans. However, at present, heritage protection matters are not specifically mentioned under the functions of either regional or territorial authorities.[22]
- The legislation must be amended to compel councils to list registered sites in plans. This change would help protect both Pākehā and Māori heritage sites, but is particularly important for Māori heritage sites, because fewer of them have so far been recognised in any way. This move, accompanied by a drive to increase the number of sites registered (see below), would greatly strengthen the ability of the whole system to provide genuine protection.
- The Historic Places Act's provisions for heritage orders must be overhauled. The aim should be to remove the present cumbersome, complex, and expensive process whenever a heritage protection authority seeks a heritage order to protect a historic place or wāhi tapu. Instead, we propose a simple 'one-stop shop' whereby the heritage protection authority itself makes a proposal, advertises it, takes submissions, and then sets up a body to decide whether, in accordance with the objectives of the legislation, the order should be granted. If the answer is 'Yes', the territorial authority should be obliged to include it as a designation in the relevant district plan.

We also recommend:

- As a matter of priority, more funding for the Historic

Places Trust to enable it to create a register of archaeological sites in the Wairarapa ki Tararua inquiry district. Such a register is vital to ensuring that the Historic Places Act's protective mechanisms actually work. Additional funding would enable not only the creation of a register but also allow it to be maintained and added to, investigative staff to be employed, and prosecutions to be brought when sites are damaged or modified without authorisation.

- A registration drive to encourage more Māori sites in Wairarapa ki Tararua to be registered. Rangitāne's GIS project should be used as a starting point. Councils could encourage iwi trust boards and corporate bodies to identify and register their sites by offering to fund 0.5 percent of an employee's salary.

15.13.3 Tribunal recommendations on portable taonga

It is appropriate in the Treaty context for the Crown to set about remedying some past mistakes in this area. Discussions with Ngāti Hinewaka about their taonga that are currently held in various museums is a good place to start. For the Crown to assume ownership of the taonga of iwi is clearly not in accordance with Treaty principles. Iwi should not have to buy them back, and that scenario should be avoided wherever possible.

Accordingly, *we recommend* that iwi and the Crown work towards arrangements that:

- recognise Ngāti Hinewaka's relationship with these taonga;
- acknowledge that the Crown's conduct in former times breached the principles of the Treaty;
- articulate the principles for how protecting and looking after taonga should proceed in the twenty-first century;
- reflect the importance of the taonga as the physical evidence of how Māori lives were lived in the Wairarapa over the centuries;
- put in place a plan for the taonga and their future.

15.14 Chapter 13A: The Effects of Population Growth and Exploitation on the Seaward Terrains

The experience of Ngāti Hinewaka in attempting to assert their mana moana (traditional authority) over their seaward terrains demonstrate how difficult it is. Their endeavours to establish taiāpure (a tribal fishery protected under statute) were only partially successful. The petitions that Mita Carter mounted in 1989 and 1990, and the statements attached to the application, show an intention to exercise rangatiratanga over much more extensive areas of customary fishery than are comprised within the taiāpure in Kawakawa (Cape Palliser). It may be that, in a different political climate, the existing taiāpure legislation would enable them to do this. However, because of the uncertainty about what the word 'littoral' means in the context of the legislation, we think that an amendment of the legislation is called for.

We recommend a legislative change to make it clear that taiāpure do not need to be small, discrete areas but may be of significant size when the circumstances make that appropriate.

15.15 Chapter 13B: The Customary Fishery

15.15.1 Tribunal findings

We find that the current customary fisheries regime does not fulfil the Crown's Treaty obligation to provide for Māori customary fisheries set out in section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

We find that the present legislative provisions under which Māori can establish and exercise customary fishing rights (including provisions for taiāpure, rāhui (temporary restrictions on access), mātaitai (food from the sea), and kaitiaki appointments) lack clarity, are difficult to put into effect, and are often viewed by Māori as 'toothless'. These factors have contributed to poor uptake. The Ministry of Fisheries has put in place some new initiatives aimed at

overcoming the problems, but these must be monitored to see if they are effective.

We saw some fundamental difficulties that seemed to have no resolution in sight – particularly the reconciliation of Māori customary rights with those of commercial fishers. However, it is apparent that effective provision for Māori customary fisheries is still very much a work in progress, and it may be that current initiatives will mend the flaws that we saw. We make no findings about Treaty breach at this stage, because the new measures have not yet been fully tried. However, our recommendations make apparent our willingness to re-enter this topic should the new initiatives prove ineffective.

15.15.2 Tribunal recommendations

We recommend that the Crown

- undertakes activities aimed at ensuring that Māori know about and understand the various options available to them under different legislative provisions; and
- reviews the current legislative regime again in five years' time, looking particularly at whether the new initiatives introduced by the Ministry of Fisheries have increased the efficacy and uptake of the provisions described above. If the review shows that provision for Māori customary fisheries has not significantly improved, or if the Crown does not undertake a review, claimants have leave to return to the Tribunal to ask for further inquiry into their claims in this area.

15.16 Chapter 14: Rangitāne Identity

Although we have not found that the Crown breached the Treaty in relation to Rangitāne identity, *we nonetheless recommend* that:

- The Crown ensures that all future publications produced by government departments refer to both Rangitāne and Ngāti Kahungunu as tangata whenua of Wairarapa. The Crown may consider writing to the chief executives of local and regional authorities to confirm its recognition of Rangitāne as tangata whenua of Wairarapa ki Tararua, and to encourage local government to develop working relationships with the Rangitāne tribal organisation, where no relationship already exists.
- The Crown takes the steps necessary to bring about the following name changes for places in Rangitāne's rohe (district):
  - Tararua to Tāmaki-nui-ā-Rua;
  - Tākitimu (Māori Land Court district) to Ikaroa;
  - Rimutaka to Remutaka.

Notes

1. Document I17(j) (Crown memorandum), p 2
2. Ibid
3. Ibid
4. Ibid, p 4
5. Ibid, pp 4–5
6. Ibid, p 5
7. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct 2008), vol 1, pp 384–385
8. Ibid, vol 1, p 385
9. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 2, pp 777–778
10. Ibid, vol 2, pp 662, 777
11. Paper 2.249 (Crown statement of general position), p 3; SOR1A (Crown final statement of response – Ngā Hapū Karanga pt A), p 2
12. Document I17(g) (Crown closing submissions), pp 3, 5
13. Document I17(j) (Crown memorandum), p 3
14. Document I17(c) (Crown closing submissions), p 13
15. Document A80 (Colley), p 6, apps 1, 2
16. Document H6 (Smiler), p 14
17. On this point, we accept the submissions of Ngā Hapū Karanga: doc I1(c) (Ngā Hapū Karanga closing submissions), pp 8–10.
18. Document A80 (Colley), pp 5, 6, apps 1, 2. As regards the presence of power lines on the land, forestry consultant George Colley estimates that the incorporation has lost $575,714 in earnings and interest from stumpage and rental payments. He has also calculated the potential future earnings the incorporation might have expected to earn if there were no power line corridors on the land.
19. Local Futures, 'Local Government Consultation and Engagement

with Maori' (working paper 5, School of Government, Victoria University, Wellington, 2005), pp 21–22, 2005

20. Document 12 (Murray Alan Hemi claim closing submissions), p 35

21. Resource Management Act 1991, s 6(f) (paragraph (f) was added by section 4 of the Resource Management Amendment Act 2003)

22. Ibid, ss 30, 31

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Dated at Wellington this 23rd day of June 2010

C M Wainwright, presiding officer

M C Bazley, member

J W Milroy, member

R J I Walker, member

THE SEAL OF THE WAITANGI TRIBUNAL

C M Wainwright

M C Bazley

J W Milroy

R J I Walker

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APPENDIX I

RECORD OF CLAIMANT GROUPS AND HEARINGS

This appendix is in four sections. They are as follows:

- A list of the claims filed in the Wairarapa ki Tararua (Wai 863) district inquiry.
- A description of the claimants' groupings, and the claims and claimants that fell under them.
- A schedule setting out when and where the Tribunal held hearings and site visits in this inquiry district.
- A schedule setting out who gave evidence on behalf of whom, and where and when they presented their evidence.

Accompanying the text is a series of photographs, taken by Tribunal staff during the hearings.

THE 28 CLAIMS FILED IN THE WAIRARAPA KI TARARUA DISTRICT INQUIRY

Associated group	Wai	Named claimant
Ngā Hapū Karanga	52	Jean Budd and others
	97	Hinepatokariki Paewai (deceased) and Niniwa Munroe
	744	Bernard Patrick Manaena
	897	Toi Walker and Rehu Hawea (deceased)
	939	Matai Broughton and Takare Leach
	944	Frances Reiri-Smith and Henare Manaena
	1019	Murray Hemi
	1022	Jim Hemi, Amelia Jaro, and Kingi Matthews
	1023	Noelene Reti
	1049	Charmaine Kawana
	1057	Manu Te Whata and Michael Allen Jnr
Rangitāne o Tāmaki-nui-ā-Rua	166	Manahi Paewai
Rangitāne o Wairarapa	175	James Rimene and Pirinihia Te Tau
Ngāti Hinewaka	959	Memory Te Whaiti (deceased)
Ngāi Tūmapuhia-ā-Rangi	429	Ryshell Griggs
Wairarapa Moana ki Pouākani Inc	85	Kingi Smiler
Ngā Hapū Karanga	741	Murray Hemi
Ngāti Kahungunu ki Tāmaki-nui-ā-Rua	652	Josephine Hape
	1021	Claude Pene
Jury whānau	962	Rebecca Harper
Ratima whānau	943	Lance Ratima
Anaru whānau	1008	Kerylee Jan Anaru
Karaitiana whānau	770	Edward Karaitiana
Mātaikona A2	420	Warren Chase
Hēnare Matua whānau	171	Henare Matua Kani
Chown whānau	1050	Dorothy Chown and others (neither appeared at hearings nor filed evidence)
Joe Runga	687	Te Okoro Joe Runga (deceased)
Randell whānau	1056	Michael Randell

Claimant Groupings, Claimants, and Claims

Ngā Hapū Karanga

Ngā Hapū Karanga was a large cluster of claims and claimants mainly affiliate to Ngāti Kahungunu.

The matters canvassed under the Ngā Hapū Karanga umbrella were focused on the Wairarapa part of the district inquiry and covered the alleged breaches of the Crown at the iwi level, throughout the whole period of Crown-Māori engagement.

The claims comprised within parts A and B of the umbrella Ngā Hapū Karanga claim are:

- Wai 97: Wairarapa Moana Trust: Hinepatokariki Paewai (deceased) and Niniwa Munroe.
- Wai 744: The Wairarapa Five Percents claim: Bernard Patrick Manaena (deceased).
- Wai 897: The Ōkautete School Lands claim: Toi Walker and Rehu Hawea (deceased).

  This claim concerns land gifted to the Crown for a school at Ōkautete.
- Wai 939: Te Hika-o-Pāpāuma o Wairarapa ki Kahungunu: Matai Broughton and Takare Leach.
- Wai 944: Hurunui-o-Rangi Marae claim: Frances Reiri-Smith and Henare Manaena.

  This claim addresses issues specifically affecting the people of the Hurunui-o-Rangi Marae, such as the taking of land for a road, and for two gravel pits.
- Wai 1019: The Wairarapa Rohe Crown Consultation claim: Murray Hemi.
- Wai 1022: Pāpāwai Marae Committee claim: Jim Hemi, Amelia Jaro, and Kingi Matthews.
- Wai 1023: The Pouākani Wairarapa Exchange claim: Noelene Reti.

  This claim concerns the issue of the exchange interests in Wairarapa Moana for land at Pouākani.
- Wai 1049: Descendants of Taueru claim: Charmaine Kawana.
- Wai 1057: Akura Marae, Ngāti Hāmua, Ngāti Ahuahu claim: Manu Te Whata and Michael Allen junior.
- Wai 52: Muaūpoko claim.

Muaūpoko claimants ended up pleading their claim under the Ngā Hapū Karanga umbrella.

Some Wairarapa Māori have a distinct line of descent to Muaūpoko, but there was no evidence to identify as yet a group of Wairarapa-based people for whom Muaūpoko is (or even was) their primary affiliation. Ms Ertel acknowledged the difficulty of identifying a distinct and separate Muaūpoko interest in the historical record, and except in the Tararua block, we could not discern distinct Muaūpoko interest separately from those groups (Rangitāne and Ngāti Kahungunu) with whom they have a shared ancestry.

Final statement of claim SOC 1B listed Wai 52 as:

> Jean Elizabeth Budd, Katie Taumou Lynch, Danny Leslie, Hancock, Miller Thomas Joseph Waho, Matthew Mate, Matamua, Marokopa Wiremu-Matakatea, James Okeroa, Broughton, Beau Marokopa Wiremu-Matakatea, Shane Antony Wilson (aka Shane Antony James), Kay Kahumaori Pene, George Tukapua, James Joseph Tukapua, Teresa Mary Moses, and Timothy Tukapua on behalf of themselves and on behalf of the descendants of the eponymous ancestor, Moe Te Ao, and Mahanga, who founded or parented the founders of the hapū Ngati Moe (descendants of Moe Te Ao), Ngati Hamua (descendants of Hamua), Ngati Rua (descendants of Ruatapu), and Ngai Te Ao (descendants of Te Aonui) being the Muaupoko Wairarapa hapu.

Claimant counsel: Grant Powell and Kathy Ertel

Rangitāne o Tāmaki-nui-ā-Rua
Rangitāne o Wairarapa

Claim: The Rangitāne iwi claims before the Tribunal are these:

- Wai 166: The Rangitāne ki Tāmaki-nui-ā-Rua claim: Manahi Paewai.
- Wai 175: The Rangitāne ki Wairarapa claim: James Rimene and Pirinihia Te Tau.

Rangitāne form a coherent cluster connected both by whakapapa and take. Wai 175 and Wai 166 are iwi claims, which together cover the whole of the inquiry district. They address all the main categories of alleged Crown breach, and the prejudice allegedly flowing to Rangitāne hapū and whānau. Their allegations against the Crown cover the whole period of Crown-Māori interaction in this district inquiry.

Claimant counsel: Aidan Warren

Ngāti Hinewaka (Wai 959)

Claimant: Memory Te Whaiti (deceased), now Haami Te Whaiti

Claim: This is a hapū claim, which engages with the wider generic issues of the inquiry, but not across the entire inquiry district. It focuses on the Ngāti Hinewaka rohe, which lies in the southern part of the district.

The allegations in the claim concern specific impacts of alleged Crown breaches on the lands and resources of the hapū, and the consequential prejudice. In many ways, this claim is in the nature of a case study of the relationship between the Crown and the members of the hapū throughout the entire period of contact.

Claimant counsel: David Ambler, now Curtis Bidwell (2008)

Ngāi Tūmapuhia-ā-Rangi (Wai 429)

Claimant: Ryshell Griggs

Claim: This also is a hapū claim. Like the Ngāti Hinewaka claim, it covers issues of a generic nature related specifically to the lands and resources of this hapū in the Wairarapa area, from the beginning of contact between Māori and the Crown, up to the present day.

Claimant counsel: Prue Kapua (Tamatekapua Law)

Wairarapa Moana ki Pouākani Incorporation (Wai 85)

Claimant: Kingi Smiler

Claim: This claim focuses specifically on the alleged breaches of the Crown in relation to the exchange of interests in Wairarapa Moana for interests in the Pouākani Block, on part of which was constructed the Mangakino hydro-electric power scheme. It overlaps with matters pleaded in the Ngā Hapū Karanga statement of claim on behalf of the claimants in Wai 97. Many Wairarapa Māori had interests in Wairarapa Moana and were affected by the Crown's allocation of interests in the Pouākani block.

Claimant counsel: John Stevens (Johnston Lawrence)

Local government, Department of Conservation, and taonga protection claim (Wai 741)

Claimant: Murray Hemi

Claim: This is an issues-based claim brought on behalf of Ngā Hapū Karanga o Wairarapa and four named hapū but pleaded separately. It alleges breaches by the Crown in this inquiry district relating to the role of local authorities, the Department of Conservation, the Historic Places Trust, and the Ministry of Culture and Heritage.

Claimant counsel: Grant Powell

Ngāti Kahungunu ki Tāmaki-nui-ā-Rua (Wai 652)

This claim originally formed a mini-cluster with Wai 1021 for hearing purposes, affecting interests of tribes whose rohe are in the north of the district inquiry.

Claimant: Josephine Hape

Claim: The claims clustered in Ngā Hapū Karanga address the interests of Ngāti Kahungunu in Wairarapa. The Rangitāne claimants address the interests of Rangitāne throughout the district inquiry. This claim addresses the interests of Ngāti Kahungunu in the Tāmaki-nui-ā-Rua area of the district inquiry.

Thus, this is an iwi claim that alleges Crown breaches in respect of this iwi at a general level.

Claimant counsel: Kathy Ertel

Ngāti Whātuiāpiti land reserves claim (Wai 1021)

This claim originally formed a mini-cluster with Wai 652 for hearing purposes, affecting interests of tribes whose rohe are in the north of the district inquiry.

Claimant: Claude Pene

Claim: The interests of this iwi within this inquiry district lie to its very north. The claim therefore effectively relates only to a number of land blocks in that northern region.

Claimant counsel: Kathy Ertel

Jury whānau lands claim (Wai 962)

Claimant: Rebecca Harper

Claim: The claim relates to the interests of this whānau in specific land blocks located variously throughout the district inquiry. It concerns the adverse effects on those interests as a result of the Crown's alleged Treaty breaches.

Claimant counsel: Grant Powell

Ratima whānau claim (Wai 943)

Claimant: Lance Ratima

Claim: This whānau claim concerns the loss by the whānau over time of lands awarded by the Native Land Court. It challenges the relevant Māori land legislation.

Claimant counsel: Darrell Naden

Anaru whānau claim (Wai 1008)

Claimant: Kerylee Jan Anaru

Claim: This whānau claim concerns the loss by the whānau over time of lands awarded by the Native Land Court. The lands are located throughout the inquiry district. The claim challenges the relevant Māori land legislation, and alleges failure by the Crown to protect the whānau's claims.

Claimant counsel: Darrell Naden

Karaitiana Te Korou whānau (Wai 770)

Claimant: Edward Karaitiana

Claim: This claim concerns the interests of a particular whānau in specific land blocks, and alleges that actions of the Crown have adversely affected those whānau in relation to their interests in those blocks. The claim provides a case study of the impact of alleged Crown breaches on this whānau, and in that way links to generic issues pleaded at the iwi level.

Claimant counsel: Charl Hirschfeld

Mātaikona A2 foreshore and seabed claim (Wai 420)

Claimant: Warren Chase

Claim: The Wai 420 claim concerns a single issue: the ownership of the foreshore and seabed adjacent to the lands of the hapū Te Hika-o-Pāpāuma. This issue is similarly pleaded with respect to other hapū in other statements of claim for this inquiry.

Claimant counsel: Charl Hirschfeld

Land interests of Henare Matua claim (Wai 171)

Claimant: Henare Matua Kani

Claim: This claim mainly concerns the interests of Henare Matua in the Tautāne Native Reserve and his loss of right through alienation. It alleges failure on the part of the Crown to ensure the preservation of the reserved land to this whānau in perpetuity. The claim also concerns the acquisition of land for public works.

Claimant counsel: Paul Harman

Ngā Aikiha claim (Wai 1050)

Claimant: Dorothy Chown and others

Claim: The Ngā Aikiha (Wai 1050) claim is pleaded on behalf of the people of Ngāti Hinewaka, Ngā Aikiha, and Ngāti Moe of Wairarapa. The Wai 1050 claim area straddles both the Ngā Hapū Karanga and Ngāti Hinewaka (Wai 959) claim areas. Wai 1050 covers the issues of pre-1865 Crown purchases, the Native Land Court process, twentieth-century land alienations, the alienation of Wairarapa Moana and Pouakani exchange, and ownership of the foreshore and seabed.

Claimant counsel: Steve Barter, but no evidence or submissions were received for Wai 1050, and no representative attended hearings.

Kahungunu–Rongomaiwahine claim: Te Okoro Joe Runga claim (Wai 687)

Claimant: Te Okoro Joe Runga (deceased)

Claim: This claim concerns the loss of Māori ownership of certain rivers including the Ruamāhanga River and its tributaries, and the degradation of freshwater resources, particularly eel fisheries.

Claimant counsel: Charl Hirschfeld

Randell whānau claim (Wai 1056)

Claimant: Michael Randell

Claim: This claim concerns the loss of ancestral land, in particular Part Pāpāwai 4A2 block, through the operation of the Crown's process of succession to Māori land, including the operation of the Māori Affairs Amendment Act 1967 and the Native Purposes Act 1941.

Claimant counsel: Charl Hirschfeld

Schedule of Tribunal Hearings and Site Visits

Week 1: 29 March–2 April 2004

Hearings were held at the Copthorne Resort, Solway Park, Masterton, in Wairarapa.

Week 2: 10–14 May 2004

Hearings were held at Dannevirke Town Hall, Dannevirke, in Tāmaki-nui-ā-Rua.

Week 3: 31 May–4 June 2004

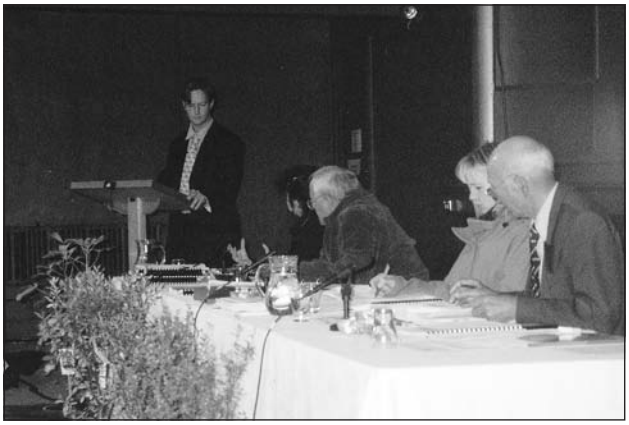
Hearings were held at Pāpāwai Marae, Greytown, in Wairarapa.

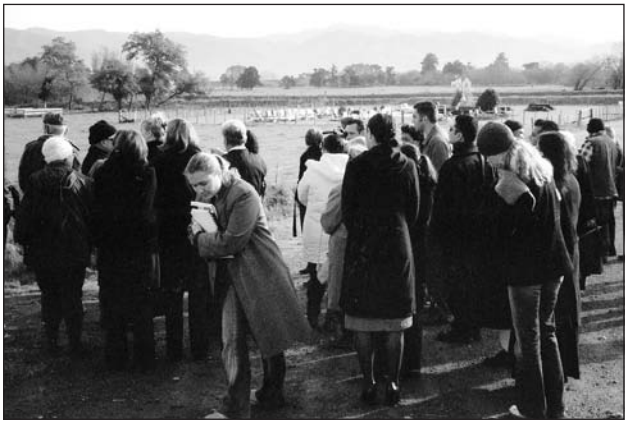
There were site visits on 2 June 2004 to Blackbridge urupā, Hurunui-o-Rangi Marae, Gladstone, and the Masterton District Council sewage treatment station and oxidation ponds, and on 3 June 2004 to the Pāpāwai oxidation pond, Pāpāwai urupā, Pāpāwai Road, St Joseph School, the western side of Lake Wairarapa, the Lake Wairarapa flood gates, and the Wairarapa lake area (Whāngaimoana).

Week 4: 21–25 June 2004

Hearings were held at Kohunui Pā, Kohunui (Pōwhiri); Pirinoa Hall, Pirinoa (21–22 June); and Ōkautete School, Ōkautete (23–25 June), in Wairarapa.

There were site visits on 23 June 2004 to Te Kōpi, Mātakitaki-ā-Kupe, the Cape Palliser lighthouse, Ngā-Rā-a-Kupe, the Maungatoetoe settlement, Ngāwī Point (Black Rocks), Ngāwī township, Kawakawa, Pararaki, Te Humenga Point, Te Humenga taiāpure, Washpool, Whatarangi Point, Te Kōpi taiāpure, Moikau, Lake Ferry, Tūranganui, Pirinoa reserve, Rānana urupā, Parikarangaranga Pā, and Ōkautete, and on Thursday 24 June 2004 to Taumataraia.





Week 5: 26–31 July 2004

Hearings were held at Mākirikiri Marae, Dannevirke, in Tāmaki-nui-ā-Rua.

There was a site visit on Wednesday 28 July 2004 to Te Kura Kaupapa Māori o Tāmaki-Nui-ā-Rua.

Week 6: 20–24 September 2004

Hearings were held at Te Ore Ore Marae, Masterton, in Wairarapa.

There were site visits on Tuesday 21 September 2004 to Rangitāne sites of significance and to Pūkaha.

Week 7: 26–29 October 2004

Hearings were held at the Copthorne Resort, Solway Park, Masterton, in Wairarapa.

Week 8: 20–23 December 2004

Hearings were held at Pāpāwai Marae, Greytown, in Wairarapa.

Week 9: 7–11 March 2005

Hearings were held at the Copthorne Resort, Solway Park, Masterton, in Wairarapa.

Evidence Given in Support of Claims

Ngā Hapū Karanga

Niniwa Kahurangi Akuira Munro (for Hinepatokariki Paewai) (Wai 97), Murray Hemi (Wai 1019), Janice Wenn, and Tawhao Matiaha gave evidence on Monday 31 May 2004 at Pāpāwai Marae.

Kingi Matthews (Wai 1022), Heather Norman, Colleen Pringle, Mihipa McGrath, Lovey Wiramena Curry (née Rutene), Marama Kahu Fox (Wai 944), and Rawiri Richard Smith (Wai 944) gave evidence on Tuesday 1 June 2004 at Pāpāwai Marae.

Frances Reiri-Smith (Wai 944), Henare Manaena (for Bernard Manaena) (Wai 744), Charmaine Kawana (Wai 1049), Roka Rewi, and Tina Joy Rahui gave evidence on Wednesday 2 June 2004 at Pāpāwai Marae.

Peter Te Tau gave evidence on Thursday 3 June 2004 at Pāpāwai Marae.

Tutahanga Otekai-Arahi Ngatuere, Toi Waaka (Wai 897), Kay Kahumaori Pene (Wai 52), Noelene Johanna Reti (Wai 1023), and Malcolm Mulholland gave evidence on Tuesday 26 October 2004 at the Copthorne Resort, Masterton.

Matai Hamuera Joseph Broughton (Wai 939), Takare Hineari Leach (Wai 939), Henare Manaena (Wai 944), and Murray Hemi gave evidence on Wednesday 27 October 2004 at the Copthorne Resort, Masterton.

Rangitāne o Tāmaki-nui-ā-Rua (Wai 166)

Manahi Paewai and Kurairirangi Pearse gave evidence on Monday 26 July 2004 at Mākirikiri Marae, Dannevirke.

Titihuia Karaitiana, Reihana Rautahi, John Meha, Peter Thornton Ropiha, Maisie Hanatia Rangimauriora Te Aweawe Tataurangi Gilbert-Palmer, Mike Stone, Hepa Mei Tatere, Punga Barclay Paewai, Lorraine Stephenson, and Stephen David Paewai gave evidence on Tuesday 27 July 2004 at Mākirikiri Marae, Dannevirke.

Manahi Paewai gave evidence on Wednesday 28 July 2004 at Mākirikiri Marae, Dannevirke.

Rangitāne o Wairarapa (Wai 175)

James Rimene, Michael Ian Joseph Kawana, and Joseph Michael Potangaroa gave evidence on Monday 20 September 2004 at Te Ore Ore Marae, Masterton.

Elizabeth Anne Burge and Mike Grace gave evidence on Tuesday 21 September 2004 at Te Ore Ore Marae, Masterton.

Jason Reuben Warena Kerehi gave evidence on Tuesday 21 September and Wednesday 22 September 2004 at Te Ore Ore Marae, Masterton.

Manahi Paewai, Punga Paewai, Tina Maureen Te Tau-Brown, Piriniha Edward Tikawenga Te Tau, and Tipene Chrisp gave evidence on Wednesday 22 September 2004 at Te Ore Ore Marae, Masterton.

Ngāti Hinewaka (Wai 959)

Haami Te Whaiti gave evidence on Monday 21 June 2004 at Pirinoa Hall, Pirinoa.

Tikitikiorangi Vernon (Dick) Te Whaiti, Whare Gray Te Hokimate (Sonny) Te Maari, Anne Maria Robinson, Akiaha Te Raki Painoaiho (Pai) Te Whaiti, Niniwa Kahurangi Neva Munro, and Memory Memilia Hineikakerangi Te Whaiti gave evidence on Tuesday 22 June 2004 at Pirinoa Hall, Pirinoa.

Ngāi Tūmapuhia-ā-Rangi (Wai 429)

Owen Tinirau Akuira, Denis Walter Paku, and Patricia Arohanui Bolstad gave evidence on Thursday 24 June 2004 at Ōkautete School, Ōkautete.

Wirehana Terei Sam Morris, Mark Rei Paku, Matt Paku, Richard Colin Tutekohi Paku, Ryshell Griggs, and Robert Hill gave evidence on Friday 25 June 2004 at Ōkautete School, Ōkautete.

Wairarapa Moana ki Pouakani Incorporation (Wai 85)

Akiaha Te Raki Painoaiho (Pai) Te Whaiti gave evidence on Monday 20 December 2004 at Pāpāwai Marae, Greytown.

Kingi Smiler gave evidence on Monday 20 December and Tuesday 21 December 2004 at Pāpāwai Marae, Greytown.

Local government, Department of Conservation, and taonga protection claim (Wai 741)

Murray Hemi, Atareta Poananga, and Ngahiwi Tomoana gave evidence on Wednesday 2 June 2004 at Pāpāwai Marae.

Ngāti Kahungunu ki Tāmaki-nui-ā-Rua and Ngāti Whātuiāpiti land reserves claim (Wai 652 and Wai 1021)

Kay Kahumaori Pene, Theodosia Miriama Hape, Linette Keita Rautahi, and Sharon Kay Harrison-Mason gave evidence on Thursday 29 July 2004 at Mākirikiri Marae, Dannevirke.

Richard Rehiri Maniapoto (for Peni Takirirangi Pine whānau), Ivan Wiremu Hape, Kay Kahumaori Pene, Ngakawe Noti Pene, Kahumaori Patricia Alice Peachey, Cheryl-Ann Broughton Kurei, Meri Te Aouru Tipene (on behalf of Tipene whānau), and William John Wright gave evidence on Friday 30 July 2004 at Mākirikiri Marae, Dannevirke.

Jury whānau lands claims (Wai 962)

Rebecca Huana Harper gave evidence on Tuesday 26 October 2004 at the Copthorne Resort, Masterton.

Ratima whānau claim (Wai 943)

Waikari Tuairangi Ratima gave evidence on 29 July 2004 at Mākirikiri Marae, Dannevirke.

Anaru whānau claim (Wai 1008)

Kerylee Jan Anaru gave evidence on Thursday 23 September 2004 at Te Ore Ore Marae, Masterton.

Karaitiana whānau claim (Wai 770)

Earl Karaitiana, Christine Karaitiana, Edward Karaitiaina, and Julie (Huria) Robens gave evidence on Thursday 23 September 2004 at Te Ore Ore Marae, Masterton.

Mātaikona A2 foreshore and seabed claim (Wai 420)

Warren Chase (for Dick David Power) gave evidence on Wednesday 28 July 2004 at Mākirikiri Marae, Dannevirke.

Hepa Mei Tatere and George Ngatiamu Matthews gave evidence on Thursday 29 July 2004 at Mākirikiri Marae, Dannevirke.

Hēnare Matua whānau (Wai 171)

Hēnare Matua Kani (Wai 171) gave evidence on Wednesday 28 July 2004 at Mākirikiri Marae, Dannevirke.

Ngā Aikiha claim (Wai 1050)

There was no evidence for this claim.

Kahungunu-Rongomaiwahine claim: Te Okoro Joe Runga claim (Wai 687)

Te Okoro Joe Runga gave evidence on Thursday 23 December 2004 at Pāpāwai Marae.

Randell whānau claim (Wai 1056)

Henare Randell, Michael Randell, Callaghan Naea (on behalf of Debra Randell), Callaghan Naea gave evidence on Wednesday 27 October 2004 at the Copthorne Resort, Masterton.

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APPENDIX II

NEW CLAIMS

As a result of a Government policy change, 1 September 2008 was nominated as the last date on which historical claims could be filed with the Waitangi Tribunal (see section 6AA of the Treaty of Waitangi Act 1975). Once established, this deadline encouraged many claimants to send in claims.

The Tribunal received claims relating to districts where the Tribunal's inquiry had gone past the point at which new claimants could be admitted. The Wairarapa ki Tararua inquiry was one of them. By 1 September 2008, the hearings had closed several years previously, and the Tribunal's report was approaching conclusion. This meant that the new claims relating to this district could not be incorporated into this Tribunal's inquiry. However, because it is uncertain when, or whether, further inquiries will ever be held into claims in districts where there have already been inquiries or Treaty settlements (or both), we felt that it was important to record for posterity the information that we hold about the new claims in this district.

This appendix to the report therefore serves as an acknowledgement of each of the seven new claims that relate to this district. In relation to each, the following table:

- identifies who the claimant is (individual, group, or organisation);
- says how each new claim relates to other claimants and claims already in the inquiry;
- records our understanding of the matters alleged in the claim; and
- identifies where this report addresses similar claims issues.

This Tribunal makes no findings or recommendations specifically in relation to the claims listed in the table.

Claimant	Group or organisation	Relationship to existing Wai 863 groups	Key issues
Wai 1453			
Janine Anne Smith-Iaea	Claim made on behalf of Ngāti Mihiroa and Ngāti Ngarengare	The hapū named does not appear in the existing Wai 863 statements of claims. Mihiroa Marae is part of the Ngāti Kahungunu Heretaunga Taiwhenua grouping and is situated in central Hawke's Bay.	The key issue concerns the Native Land Court. From the thematic list of issues for the Wai 863 inquiry, the relevant issues include: 7, 'Native Land Court – general'; 11, 'Native Land Court – protection'; and 23, 'Socio-economic impact'. The claimant alleges that the Crown has actively set in place policies and regimes that did not protect Māori land interests and were designed to force Māori to sell their lands. In particular, the claim refers to Crown policies that prohibited the leasing by Ngāti Ngarengare of lands around Pōrangahau, Pourere, Kairākau, Waipukurau, Waipawa, and Masterton, and the Crown's provision of inadequate reserves for Ngāti Ngarengare when these lands were sold. The claimants allege that, as a result, Ngāti Ngarengare lost the opportunity to be self-sufficient and to derive economic benefit, which breached the principles of the Treaty of Waitangi. The report addresses these issues in chapters 4 and 5.
Wai 1569			
Tina Harawira, Jackie Rongonui, and Cherry Ngatai	Claim made on behalf of the whānau that stem from Kere Te Manaia	Claimants are of Ngāti Kahungunu descent.	The key issue concerns the Native Land Court and succession laws. From the thematic list of issues for the Wai 863 inquiry, the relevant issue is 7, 'Native Land Court – general'. The claim alleges that prejudice was caused by Native Land Court practices in the distribution of Kere Te Manaia's assets. Neglect of mana of tīpuna is another issue, where the Crown allegedly failed to uphold mana whenua and mana tangata of Kere Te Manaia. The claim further alleges that probate was granted on Hipa Maremare's will on 30 October 1963, but the probate file was not sent forward with the succession file. No person has succeeded to date. Prejudice has been caused by the consequences of discrepancies in the Native Land Court procedures. Claimants say they are barred from redressing their mana whenua issue due to the statue of limitations, as the original hearing was held on 20 December 1966.

			It is not clear which specific land interests are included in the Te Manaia estate. The claim area is from 'Wairarapa to Bridge Pa'. There are no specific Wai 863 references to Kere Te Manaia. However, similar issues were raised by other claimants and are addressed in chapters 4 and 6.
Wai 2211			
Leonard Tami Te Hiko Thompson, Olivia Horiwia Tamihana, and whānau	Claimants refer to Te Hiko. Te Hiko's principal hapū were Rakaiwhakairi, Ngāti Kahukura-awhitia, and Ngāti Rangitawhanga. Te Hiko's tribal affiliations were to Ngāti Kahungunu, Rangitāne, Ngāti Ira, and Ngāi Tahu.	Rakaiwhakairi and Ngāti Kahukura-awhitia are hapū within the Ngā Hapū Karanga and Ngāti Hinewaka me ona Kārangaranga groups. Te Hiko's tribal affiliations were to Ngāti Kahungunu, Rangitāne, Ngāti Ira, and Ngāi Tahu of Wairarapa. All of these hapū and iwi relate to those coming under Ngā Hapū Karanga in this inquiry.	Claimant counsel Quentin Hix submitted that he was told the following Wai 863 technical evidence might be relevant to his clients' claim: documents A5 (White), A37 (Crocker), A55 (McCracken), A60 (Chrisp), and A69 (McIntyre). The key issue concerns the Wairarapa lakes and land blocks in the Wairarapa area, specifically Pouākani. From the thematic list of issues for the Wai 863 inquiry, the relevant issues are: 16, 'Customary fisheries'; 17, 'Ownership of foreshore and seabed and rivers'; 18, 'Alienation of Wairarapa Moana'; and 19, 'Pouākani issues'. The Wai 2211 claimants allege that the Crown ought to have negotiated with their ancestor, Te Hiko, over the sale of the Wairarapa lakes. Te Hiko was involved in negotiations with the Crown over the lakes in 1876 and signed a deed of sale. Ngāti Hinewaka (Wai 959) and Ngāi Tūmapuhia-ā-Rangi (Wai 429) and several claimants in the Ngā Hapū Karanga claimant grouping have Wairarapa Moana claim issues. The report addresses this issue in chapter 7.

Claimant	Group or organisation	Relationship to existing Wai 863 groups	Key issues
Wai 2213			
Jenny Winipere Mauger and Jim Hutcheson	The Coastal Hapū Collective 'mai i Paritu tai ki Tūrakirae' claim to represent the majority of whānau and hapū that hold kaitiaki status within the coastal borders from Paritu to Tūrakirae. Membership of this collective includes coastal hapū within Rongomaiwahine, Rakaipāka, Rangitāne, and the greater Kahungunu.	Whakapapa connections listed include Ngāti Hori, Hawea, Hinemoa, Hinepare, Mahu, Tāwhao, Kautere, Manuhiri, Parakiore, Ngāti Maru, Ngāti Kere, Pīhere, and Tamatera. Ngāti Hinepare is mentioned in Ngā Hapū Karanga and Ngāi Tūmapuhia-ā-Rangi claims. Ngāti Mahu is mentioned in Ngā Hapū Karanga, Rangitāne ki Tāmaki-nui-a-Rua, and Ngāi Tūmapuhia-ā-Rangi claims. Ngāti Parakiore is mentioned in the Rangitāne ki Tāmaki-nui-a-Rua and Ratima whānau (Ngāti Te Hore) claims. Ngāti Maru in mentioned in the Ngāi Tūmapuhia-ā-Rangi claim.	The key issue concerns the effects of Crown policies on coastal resources. From the thematic list of issues for the Wai 863 inquiry, the relevant issues are: 14, 'Degradation and pollution'; 16, 'Customary fisheries'; 17, 'Ownership of foreshore and seabed and rivers'; and 18, 'Alienation of Wairarapa Moana'. The claim concerns the effects of a number of Crown actions regarding coastal resources. The claimants allege that the Crown's policies have caused destruction and desecration of moana and the adjoining coastline among other effects, in breach of Treaty principles. The claim is about the loss of foreshore, seabed, estuaries, and associated water bodies, and loss of access to and management of these resources. The report addresses these issues, including Te Hiko's 'sale', in chapters 7 and 13.
Wai 2225			
Kaea Aotea Matiaha Te Arōhatai Te Rangipūataata.	The claim is made on behalf of Ngāi Tahumākakanui. The claim's geographical area includes most of the South Island up to and including Tauranga.	Claimant says he is of Ngāi Takitakitū, Ngāti Waipūhoro, Ngāi Te Aomataura, Ngāi Te Aomatarahi, Ngāi Tahumākakanui.* Ngāi Taha-mākakanui is an iwi or hapū within the Ngā Hapū Karanga grouping. This table also notes Waipūhoro is a hapū associated with Ngā Hapū Karanga. Ngāi Tahu (Mākakanui), Ngāti Te Aomataura, and Ngāti Waipūhoro are hapū associated with the Hurunui-o-Rangi Marae. Ngāti Te Aomataura is a Ngāti Ira hapū.	The key issues are heritage management, Crown purchases, and the operation of the Native Land Court. From the thematic list of issues for the Wai 863 inquiry, the relevant issues are: 7, 'Native Land Court – general'; 9, 'Crown purchasing in the Native Land Court era, 1865–1900'; 23, 'Socio-economic impact'; and 25, 'Heritage management'. The claimant alleges that his iwi was prejudicially affected by the Crown's alienation of various blocks of land through purchases and the Native Land Court. It is alleged that the Crown, from 1840, attempted to omit the tribe's status, traditions, and identity from history. The report addresses these issues in chapters 4, 5, and 12D. Specific land blocks associated with this claim include those up to Te Makatea, Remutaka, Tūrakirae (including Wairarapa Moana),

			Hurunui-o-Rangi, Ngai Tūkoko, Waikoukoutauanui, Te Ahiaruhe, Tūpurupuru, Taupapanui, Waiparapara, Rangiwhakaoma, Taratahi, Hikawera, Kahutara, Ōtāraia, Tauwharenīkau, Maunga-a-rake, Maungaraki, Te Weraiti, Tuhitarata, Tauānui, Tūranganui, Mātaikona, Aowahanga, Mangatainoka, Akitio, Tararua, Tāmaki-nui-ā-Rua, Te Iringa, Arikirau, Kuramahinono, Hinana-a-Manaia, Pāpāwai, Tipua Mapunatea, Te Uru o Tāne, Pukengaki, Pēhimotumotu, Tauwharerātā, Wharepapa, Ngā Waka ā Kupe, Pāhaoa, Huangārua, Te Takapau-o-Rangaranga, Hāpuakorari, Kohikutu, Waingawa, Ruamāhanga, Kahutara, Te Ore ore, Taueru, Rangitūmau, Te Whiti-o-Tūtawake, Whangaehu, Rongomaipare, Ruakōkoputuna, Wainuiorū, Whareama, Whakataki, and Pōrangahau. In summary, the claimants allege that their land interests cover roughly one-third of the Wairarapa ki Tararua region. Some of the above land blocks are associated with other iwi as well as Ngai Tahumākakanui.
Wai 2269			
Rex Murray Allan Hemi, on behalf of himself and his whānau and hapū	Whānau names are Hone Himu, Ngāiro, Ropoama, Reiri, and Hemi-Matiaha. Hapū names are Ngāti Kaiparuparu, Ngāti Moe, and Ngāti Hamua. Iwi names are Ngāti Kahungunu ki Wairarapa and Rangitāne o Wairarapa.	Rex Hemi's claim comes under the Ngā Hapū Karanga umbrella of historical claims.	The key issues are overall land loss, and lack of protection for Māori land owners in the Native Land Court process, facilitating land alienation. From the thematic list of issues for the Wai 863 inquiry, the relevant issues are: 7, 'Native Land Court – general'; and 10, 'Private alienations in the Native Land Court era, 1865–1900'. Claimant counsel Grant Powell submits that the claim relates to the alienation of the Te Whiti North block and the native land tenure processes that facilitated alienation against the wishes of all owners. These included allowing alienation restrictions to be lifted without the agreement of all owners, the impact of court and survey costs on owners, and the diminishing individual interests caused by succession. All these contributed to land alienation. The title investigation for this block took place in 1868. By 1911, following partition and removal of restrictions, the block was eventually alienated by sale. The report addresses these general issues in chapter 4.

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Claimant	Group or organisation	Relationship to existing Wai 863 groups	Key issues
Wai 2241			
Hone Oneroa, Rāwiri Smith and Manu Te Whata, on behalf of themselves and on behalf of Te Rūnanga o Ākura Marae Inc and the descendants of Te Hou and Ākura.	The claimants are all descendants of Te Hou and Ākura, and these whakapapa connections mean that the claimants relate both to Kahungunu ki Wairarapa and Rangitāne ki Wairarapa.†	Claimants have whakapapa connections with both Kahungunu ki Wairarapa and Rangitāne ki Wairarapa. Hone Oneroa's original statement of claim noted that he has the 'explicit support of Manu Te Whata' (chairperson of Te Rūnanga o Ākura Marae Inc) to make this claim.‡ Manu Te Whata (Wai 1057) is an existing Wai 863 claimant and within the Ngā Hapū Karanga cluster. The Wai 1057 claim is made by Manu Te Whata and Michael Allen Jnr on behalf of Ngāti Hāmua and Ngāti Ahuahu, and has the support of Ākura Marae. Hapū associated with Ākura marae include Ngāti Ahuahu, Ngāti Maruinga, Ngāti Hāmua, and Ngāti Matangiuru.	The key issues concern the Native Land Court, land purchasing, and the protection of taonga. From the thematic list of issues for the Wai 863 inquiry, the relevant issues appear to include: 7, 'Native Land Court – general'; 9, 'Crown purchasing in the Native Land Court era, 1865–1900'; 11, 'Native Land Court – protection'; 14, 'Degradation and pollution'; 15, 'Natural environment and its resources'; 16, 'Customary fisheries'; 17, 'Ownership of foreshore and seabed and rivers'; 23, 'Socio-economic impact'; 25 'Heritage management'; and 27, 'Gifted lands for school – Pāpāwai and Kaikōkirikiri trusts'. The claimants' amended statement of claim alleged a number of Treaty breaches, namely that the Crown purchased land without gaining consent; the wrong type of school was built after Māori gifted 190 acres of land at Kaikōkirikiri; the Native Land Court failed to recognise customary interests; and the Crown failed to ensure that Māori were able to retain sufficient lands and protect their waterways, wāhi tapu, te reo, and other taonga. The original statement of claim sought the return of all taonga, including te reo, kaitiakitanga over resources, tikanga Māori practices, and copyright over kōrero tīpuna. It sought compensation to address the displacement of uri from their papakāinga, to regain use of water over boundaries, and the return of the Tararua ranges. Core land blocks include Tauwharenīkau 4 or Mōroa, Manawatū, Ōpaki Waipoua, Tūpāpakurua, Mākōura, Kōhangawariwari, Taratahi, Hikawera, Karamu, Manaia, Tararua, Tirohanga, Ākura, Mākirikiri, Te Para, and Taumata. The claimants acknowledge that some of the land overlaps with that of other hapū of Ngāti Kahungunu and Rangitāne. Core rivers include Ruamāhanga, Waiohine, Waingawa, Waipoua, Mākōura, and Kuripuni. The report addresses these issues in chapters 4, 12, and 13.

* See amended statement of claim filed 15 December 2009 (Wai 2225), p 1

† See amended statement of claim filed 18 December 2009 (Wai 2241), p 2

‡ See statement of claim filed 1 September 2008 (Wai 2241), p 1

APPENDIX III

RECENT SUBMISSIONS ON LOCAL GOVERNMENT

Wai 863, #2.467

IN THE WAITANGI TRIBUNAL WAI 863, WAI 741

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF a claim by Murray Allan Hemi in respect of local government, taonga and conservation issues in the Wairarapa/Tararua claim area.

Memorandum on Behalf of Wai 741 Regarding Update on Local Government Issue, SOC 7

May it Please the Tribunal

1. The purpose of this memorandum is to update the Tribunal on various issues relating to the Local Government cause of action in the Wai 741 claim.[1]

2. As the Tribunal will recall, the present local government regime – the Local Government Act 2002 and Local Electoral Act 2001 were addressed under the subheading 'Local Government Regime'.[2] In summary it was submitted that existing Local Government legislation was not Treaty consistent and did not provide for tangible Maori representation in local government.

3. Since the hearings concluded in 2005 it should be noted that the 2007 local government elections took place with no Maori wards or constituencies having been established. Since then no council established Maori wards or constituencies by 23 November 2008, which means that the 2010 elections will likewise not contain any Maori wards and constituencies,[3] and demonstrates the ineffectiveness of the provisions in the Local Electoral Act in ongoing adequate Maori representation in local government.

4. The failure of the Crown to ensure that local government acts consistently with the Treaty including providing adequate representation for Maori for the 2010 local government election was challenged in respect of Hamilton City by Matiu Dickson and Owen Purcell in the Wai 2100 claim. A copy of the Statement of Claim and Memorandum in Support are annexed and marked 'A' and 'B' respectively.

5. In a decision dated 28 August 2009 Judge Coxhead while recognising the importance of the issues and the prejudice that continues to be suffered, declined urgency for the Wai 2100 claim,[4] in part because the issues were national issues already under consideration by the Wairarapa ki Tamaki Nui a Rua Inquiry and in Wai 262.[5] In the circumstances counsel submits that the Wai 2100 claim provides a useful update for the Tribunal to address the local government issues raised as part of the Wai 741 claim. Accordingly, it is requested that the matters set out in the Wai 2100 memorandum in support be considered by the Tribunal together with any other part of the Wai 2100 Record of Inquiry the Tribunal considers can assist the Tribunal.

DATED at Auckland this 24th day of February 2010

L G Powell / J M Braithwaite
Counsel for the Claimant in SOC 7

Notes

1. SOC7

2. Wai 863 #12, paras 21–30 in response to issues 24.4.4, 24.4.5 and 15.4.4 of the Statement of Issues

3. Refer to s192 of the Local Electoral Act 2001, which required a decision by 23 November 2008 for any changes to take effect for the 2010 elections.

4. Wai 2100 #2.5.6

5. Wai 2100 #2.5.6, para 47

Annex A

IN THE WAITANGI TRIBUNAL

In the Matter of The Treaty of Waitangi Act 1975

and

In the Matter of a claim by Matiu Dickson and Owen Lasalo Purcell on behalf of themselves and matāwaka Maori within Hamilton City, in respect of local government issues

Statement of Claim

Dated 12 June 2009

The Claimants Say

1. They make this claim on behalf of themselves and matāwaka Maori within Hamilton City, in respect of local government issues ('the claimants').

The Claim

2. The claimants say that they and their tupuna have been, are, or are likely to be prejudicially affected by the ordinances, Acts, regulations, proclamations, notices and other statutory instruments and the policies, practices, acts or omissions of the Crown which were and are inconsistent with the principles of the Treaty of Waitangi as set out in this statement of claim.

Background

3. Since 1852 the Crown has chosen to statutorily delegate some of its functions and powers obtained pursuant to the Treaty of Waitangi to subordinate organisations including provincial governments, river boards, road boards, highway boards, catchment boards, borough councils, county councils, regional authorities, regional councils and territorial authorities, including Hamilton City Council ('local government organisations').

4. At the current time the operation of local government, including Hamilton City Council, is delegated by the Crown through legislation including the Local Electoral Act 2001 and the Local Government Act 2002 ('local government legislation'), and in particular:

4.1 The Local Electoral Act 2001 governs the conduct of local elections and polis held by local government, including for the Hamilton City Council and includes specific provisions regarding the establishment of Maori wards.

4.2 The Local Government Act 2002 sets out the purpose of local government, including for the Hamilton City Council and provides the framework and powers for local government, including Hamilton City Council, to undertake its activities.[1] The Local Government Act 2002 also provides principles and requirements for local authorities, including Hamilton City Council, that are intended to facilitate participation by Maori in their respective local government's decision making.[2]

Principles of the Treaty of Waitangi

5. The Treaty of Waitangi principle of active protection requires the Crown to actively protect, *Inter alia:*

5.1 The Maori right to political representation;[3]

5.2 Maori against the adverse effects of settlement;[4]

5.3 Maori rangatiratanga;[5] and

5.4 Relations between Maori groups.[6]

6. The Treaty of Waitangi principle of partnership is founded on the principle of exchange[7] and requires the

Crown not to delegate its powers acquired under the Treaty without consequent delegation of its obligations under the Treaty.[8]

7. The principle of partnership includes a duty on the Crown, its agents and statutory delegates to act reasonably and in the utmost good faith. This duty includes:

7.1 A requirement not to act in a manner inconsistent with the principles of the Treaty of Waitangi;

7.2 Consultation with Maori on decisions that affect Maori;

7.3 An assurance that Maori are fairly represented;[9] and

7.4 A requirement on the Crown to adequately inform itself of the actions or inactions of its statutory delegates in relation to Maori.

8. The principle of equality requires Maori to be attributed the same rights as non-Maori, including the right to political representation.[10]

First Cause of Action – Statutory Delegation Inconsistent with Treaty of Waitangi

9. In breach of the Treaty principles set out in paragraphs 5–8 above, the Crown has consistently failed to ensure that its statutory delegation to local government organisations, including Hamilton City Council, was consistent with the terms and principles of the Treaty of Waitangi.

Particulars

9.1 In local government legislation, the Crown has manifestly failed to require those exercising powers within local government organisations, as statutory delegates of the Crown, to observe or give effect to the principles of the Treaty of Waitangi.

9.2 In local government legislation, the Crown has manifestly failed to provide Maori, including the claimants, any meaningful ability to exercise decisions in accordance with the guarantee of tino rangatiratanga in Article 2 of the Treaty.

9.3 In local government legislation, the Crown has manifestly failed to provide any mechanism to ensure adequate representation for Maori, including the claimants, in local government within Hamilton City. In particular:

9.3.1 The Local Electoral Act 2001 governs the conduct of local government elections and polls;

9.3.2 The Local Electoral Act 2001 does not refer to or require territorial authorities, such as the Hamilton City Council, to act consistently with the terms and/or principles of the Treaty of Waitangi;

9.3.3 The Local Electoral Act 2001 does not require territorial authorities to consult with Maori; and

9.3.4 The Local Electoral Act 2001 permits but does not require the establishment of Maori Wards or constituencies.

9.4 The Crown has, since 1994, failed to ensure that local government organisations are accountable in Treaty terms by failing to define local government as 'the Crown' or 'a Crown Entity' for the purposes of the Public Finance Act 1989.

9.5 The Crown has failed to make appropriate changes to local government legislation when it knew or ought to have known and/or had been put on notice that such legislation was in breach of the Treaty.

9.6 The Crown has continued the existence of the Local Government Commission to provide information about and promote good practice amongst local government under the Local Government Act 2002, but has failed to ensure that the Local Government Commission acts in a manner consistent with the terms and principles of the Treaty of Waitangi. In particular:

9.6.1 The Local Government Commission was required to undertake a review of the operation

of the Local Government Act 2002 and the Local Electoral Act 2001 ('the Review');[11]

9.6.2 The Local Government Act 2002 did not require the Local Government Commission to consult with Maori in respect of the Review, nor did it require the Local Government Commission to take into account the principles of the Treaty of Waitangi in the Review;

9.6.3 The Local Government Commission completed its Review in July 2008:

9.6.4 The Local Government Commission did not take into account the principles of the Treaty of Waitangi in the Review;

9.6.5 The Local Government Commission did not consult with Maori in respect of the Review; and

9.6.6 The Local Government Commission Review did not recommend any changes to provisions in the local government legislation that would ensure that local government act in a manner consistent with the Treaty of Waitangi.

Second Cause of Action – Crown Has Permitted Hamilton City Council to Act in a Manner Inconsistent with Treaty of Waitangi

10. In breach of the Treaty principles set out in paragraphs 5–8 above, the Crown has consistently failed to ensure that Hamilton City Council is either consistent with, or otherwise not in a manner inconsistent with, the principles and the terms of the Treaty of Waitangi.

Particulars

10.1 The Hamilton City Council is a territorial authority, empowered by the Crown through the Local Government Act 2002, to, in Hamilton City:

enable democratic local decision making and action by, and on behalf of, communities; and

to promote the social, economic, environmental, and cultural well being of communities, in the present and for the future.[12]

10.2 The Local Government Act 2002 does not require the Hamilton City Council to act in a manner either consistent with, or otherwise not in a manner inconsistent with, the principles or the terms of the Treaty of Waitangi;

10.3 Hamilton City Council prepares annual plans and long term community plans ('plans') to describe its intended activities for the future and to provide a focus for its decisions. In preparing and implementing its plans:

10.3.1 Hamilton City Council is not required to and does not consult with Maori in advance of its preparation of its plans; and

10.3.2 Hamilton City Council has ignored and/or declined requests by Maori for mechanisms and funding that will protect their rangatiratanga.

10.4 The Hamilton City Council is required to make decisions on a daily basis that affect the claimants. In making its decisions:

10.4.1 The Hamilton City Council fails to consult with all Maori groups with an interest in the particular issue; and

10.4.2 The Hamilton City Council has failed to sufficiently inform itself about the needs of its Maori constituents, through a lack of consultation, lack of sufficient and appropriate staff and a lack of desire.

10.5 The Hamilton City Council has not provided for any or any adequate representation for Maori, including the claimants, in local government in Hamilton City including through the creation of Maori Wards or the adoption of a Single Transferable Vote voting system (STV). In particular:

10.5.1 The Hamilton City Council resolved in 2005 and 2008 not to establish Maori Wards;

10.5.2 The Hamilton City Council did not consult with Maori on its decision not to establish Maori wards;

10.5.3 The Hamilton City Council's reasons for its decision not to establish Maori wards ignore the principles of the Treaty of Waitangi;

10.5.4 The Hamilton City Council resolved not to change its electoral system to STV in 2002 or 2005 notwithstanding that the Council accepted in 2005 that STV is the system that:

> is seen as a fairer system as the system provides increased opportunity for the proportional election of candidates preferred by minority groups[13]

10.5.5 The reason for the Hamilton City Council not adopting STV in 2005 for the 2007 and 2010 elections was because it undertook a poll on this issue, notwithstanding a poll was not required nor was there any consultation with Maori, including the claimants, on its decision to hold a poll on this issue.

Prejudice

11. As a result of the breaches set out in paragraphs 9–10 above Maori, including the claimants, have suffered prejudice.

Particulars

11.1 Maori, including the claimants, have been excluded from participation in decision making undertaken by local government organisations, including Hamilton City Council in Hamilton.

11.2 Maori, including the claimants, have been unable to be properly represented in local government organisations, including Hamilton City Council.

11.3 Maori, including the claimants, have been excluded from participation in the review of the Local Government Act 2002 and the Local Electoral Act 2001.

11.4 The protections accorded to Maori, including the claimants, under the Treaty of Waitangi have been ignored and undermined.

11.5 As a result of local government institutions continued under the Local Government Act 2002 not being defined as 'the Crown' or as 'a Crown entity', lands held by such institutions are not subject to recommendations by the Waitangi Tribunal even when acquired and/or retained in breach of the Treaty of Waitangi.

Relief Sought

A. A finding that the current legislative framework for local government is in breach of the Treaty of Waitangi.

B. A finding that local government are statutory delegates of the Crown.

C. A recommendation that the local government legislation be reviewed and amended so as to be consistent with the principles of the Treaty of Waitangi including in particular:

(a) A recommendation that amendments be made to the Local Government Act 2002 and Treaty of Waitangi Act 1975 to provide that City, District and Regional Councils are for the purposes of the Treaty of Waitangi, the Crown and subject to Treaty of Waitangi claims.

(b) A recommendation that an amendment be made to the Local Electoral Act 2001 and the Local Government Act 2002 requiring that all persons

and entitles carrying out functions or exercising powers under the Local Electoral Act 2001 and the Local Government Act 2002 are not permitted to act in a manner inconsistent with the principles of the Treaty of Waitangi.

(c) A recommendation that an amendment be made to the Local Electoral Act 2001 and the Local Government Act 2002 to require consultation with Maori in respect of all decisions made in relation to representation, electoral systems and planning documents prior to the decision being made.

(d) A recommendation that an amendment be made to the Local Electoral Act 2001 and the Local Government Act 2002 to provide for an appropriate level of Maori Representation in all City, District and Regional Councils.

(e) A recommendation that all proposed amendments to the Local Electoral Act 2001 and the Local Government Act 2002 (except that referred to in (d) above), both as a result of this claim and generally) be prepared as a joint initiative by a working party comprising at least the same number of Maori representatives as non-Maori representatives.

D. A recommendation that all current and proposed policies and plans prepared under local government legislation (included but not limited to annual plans and strategic plans) of City, Regional and District Councils be reviewed, amended and monitored so as to ensure consistency with the Treaty of Waitangi, in consultation with Maori in each respective territorial authority.

E. A recommendation that the terms of reference of all future reviews of any aspect of local government legislation be amended to require substantive engagement with Maori.

F. A recommendation that no action be taken as a result of the Local Government Commission review until meaningful consultation with Maori has been undertaken.

G. Costs.

This Statement of Claim is filed by Laurence Grant Powell solicitor for the abovenamed claimant of the firm of Powell Webber & Associates.

The address for service on the abovenamed claimant is at the offices of Powell Webber & Associates. Solicitors, Level 11, Peace Tower, 2 St Martins Lane, Grafton, Auckland.

Documents for service on the abovenamed claimant may be left at the address for service or may be:

(a) Posted to the solicitor at Powell Webber & Associates, PO Box 37 661, Parnell, Auckland: or

(b) Left for the solicitor at a document exchange for direction to Powell Webber & Associates, DX CP27025, Auckland; or

(c) Transmitted to the solicitor by facsimile to facsimile no (09) 3074301.

(d) Transmitted to the solicitor by email to grant@pwalawyers.co.nz

Notes

1. s3 Local Government Act 2002

2. s4 Local Government Act 2002

3. Refer discussion in Wai 413 *Maori Electoral Option Report* (1994) at part 3.5

4. Refer discussion in Wai 692 *Napier Hospital and Health Services Report* (2001) at part 3.4

5. Refer discussion in Wai 414 *Te Whanau o Waiparelra Report* (1998) at part 1.5

6. Refer for example, discussion in Wai 1362 Tamaki Makau Rau Report (2007) at page 101

7. Refer discussion in Wai 1024 *The Offender Assessment Policies Report* (2005) at page 10

8. Refer for example discussion in Wai 304 *Ngawha Geothermal Resource Report* (1993) at 5.1.2

9. Refer for example discussion in Wai 692 Napier Hospital and Health Services Report (2001) at page 61

10. Maori Electoral Report (2004) at page 12

11. s32 Local Government Act 2002

12. s10 Local Government Act 2002

13. Hamilton City Council, Council Report for meeting on 29 August 2005

Annex B

IN THE WAITANGI TRIBUNAL

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF a claim by Matiu Dickson and Owen Lasalo Purcell on behalf of themselves and matāwaka Maori within Hamilton City, in respect of local government issues

MEMORANDUM IN SUPPORT OF URGENCY

MAY IT PLEASE THE TRIBUNAL :

1. The claimants seek an urgent hearing in respect of the operation of local government[1] in Hamilton City, both in terms of the structures established by the Crown and the Treaty inconsistent actions of the Hamilton City Council ('the Council') that are thereby permitted by the Crown, in breach of the principles of the Treaty of Waitangi.

2. It is submitted that for the reasons set out in the Statement of Claim, the evidence of Mere Balzer, Matiu Dickson, Tureiti Moxon, Maree Pene, Alvina Barrett-Nepe and Owen Purcell filed in support and the contents of this Memorandum that this claim meets the criteria for urgency.

3. In particular, if urgent steps are not taken to identify and address the lack of Maori participation and representation in local government and to ensure local government acts in a manner consistent with the Treaty of Waitangi, the claimants and Maori generally will continue to suffer severe, irreversible and ongoing prejudice.

SUMMARY OF CLAIM

4. This claim has arisen because of the actions of the Council in failing to provide for any form of Treaty consistent participation or representation for Maori in Hamilton. When the issues of participation and representation have been raised with the Council, the response has essentially been that the Council considers it is acting fully in accordance with its legislative responsibilities.[2] Accordingly, and also because the Council is not 'the Crown' (or a Crown entity) in terms of the Treaty of Waitangi Act 1975 this claim becomes primarily about the Crown's responsibility for delegating powers to a statutory delegate, without ensuring a commensurate Treaty accountability, and permitting the Council to thereby act in a manner inconsistent with the Treaty, albeit consistent with the legislative regime for local government.

5. This claim does not address or challenge the issues relating to local government under the Resource Management Act 1991 as the numerous difficulties and Treaty inconsistencies of 1hat Act have been considered at length in other Tribunal inquiries.[3]

6. The statement of claim therefore confirms two causes of action:

6.1 In breach of the principles of the Treaty of Waitangi the Crown has consistently failed to ensure that its statutory delegation to local government organisations,[4] including the Council, was consistent with the terms and principles of the Treaty of Waitangi.[5]

6.2 In breach of the principles of the Treaty of Waitangi the Crown has consistently failed to ensure that the Council is acting in a manner either consistent with, or otherwise not in a manner inconsistent with, the principles and terms of the Treaty of Waitangi.

7. The evidence shows clearly that as a result of the failure to require Treaty accountability Maori, including the claimants, in Hamilton City have been completely

excluded from participation in decision making and/or Treaty consistent provisions for representation.[6] It is now too late for Hamilton City to rectify the lack of representation in time for the 2010 local body elections,[7] and the Crown has refused to intervene.[8] The claimants therefore seek the Tribunal's intervention through an urgent hearing to ensure that the Crown takes appropriate steps to implement a Treaty consistent regime in time for the 2010 local body elections.

8. This memorandum will set out the nature of the Crown's obligations to provide for a Treaty consistent local government regime that provides for Maori participation and representation. The memorandum will then set out why the current legislative regime for local government is inconsistent with the Treaty, and fails to provide for participation and representation, how the Hamilton City Council has acted inconsistently with the Treaty and the prejudice thereby caused, before turning to a consideration of the criteria for urgency.

Nature of the Obligation to Provide for Participation and Representation in Local Government

9. The starting point for a consideration of the Crown's obligations to ensure participation and representation of Māori, including the claimants, in local government are the Treaty principle of active protection, the related Treaty principles of partnership and exchange and the principles of redress and equality.

10. The right to participation and representation in local government stems in the first instance from the Article 3 Treaty principle of equality. The right is also founded in the principle of active protection and the protection of Maori tino rangatiratanga inherent within that principle.

11. It is submitted that only a cursory analysis of Article 3 of the Treaty is required to establish that the right to political representation is a right and privilege of a modern day 'British Subject' and that as such it is one of the rights which Maori should be equally entitled to. This proposition was readily accepted by the Tribunal in the Maori Electoral Report (2004), where it stated, after also considering whether that right extended to separate Maori political representation, that:

> The fact that it [political representation] is, and has been since 1867, different from that of Pakeha representation, does not mean that it is not embraced by article 3 of the Treaty. On the contrary, the extension to Maori under article 3 of all the rights and privileges of British subjects must necessarily include the rights of political representation conferred from time to time on Maori by the New Zealand legislature. While article 3 speaks of British subjects if necessarily extends to all Maori who are New Zealand citizens and eligible to vote. It is difficult to imagine a more important or fundamental right of a citizen in a democratic state then (sic) that of political representation. This right is clearly included in the protection extended by the Crown to Maori under article 3.[9]

12. The Tribunal concluded its considerations in that Report by stating that:

> The [T]ribunal finds that the Crown in under a Treaty obligation actively to protect Maori citizenship rights and in particular existing Maori rights to political representation conferred under the Electoral Act 1993. This duty of protection arises from the Treaty generally and in particular from the provisions of article 3.[10]

13. It is submitted that just as the Tribunal found the protection of the Maori right to political representation at a national level – as a fundamental component of citizenship – was included within the duty of active protection, so

too is the right to political representation at a local government level.

14. The reality is that in today's society the exercise of kawanatanga (a right which the Crown gained under the Treaty) permeates the lives of all citizens, including Maori and the claimants, most obviously on a daily basis at the local government level. Accordingly, it is submitted that Maori representation at a local level is required to give effect to the related Treaty principles of partnership and exchange, which have been aptly described by the Tribunal in the *Te Whanau o Waipareira Report* (1998):

> In the Treaty the gift of kawanatanga was in exchange for protection and the guarantee of rangatiratanga in all its forms.[11]

15. It is submitted that the Crown's exercise of the kawanatanga it acquired under the Treaty (whether it be through the Crown or its statutory delegates), can only be exercised in combination with protection of Maori tino rangatiratanga, which must include the right of Maori to meaningfully participate in and be represented at local government. To do otherwise is a fundamental breach of the principles of partnership and reciprocity which dictate that one half of a reciprocal relationship cannot exist in isolation from the other. It is unfortunate that at a local government level this is and has been the position since 1852.

16. The right to participation and representation at a local level is also found in the requirement of the Crown to protect Maori from the adverse effects of settlement – a statement which has been accepted as a Treaty principle by the Tribunal in the *Napier Hospital and Health Services Report* (2001).[12] It is clear on the evidence in this claim alone[13] that for Maori, including the claimants, the establishment and ongoing exercise of kawanatanga by local government, without sufficient protection of Maori rights under the Treaty of Waitangi, is a particularly adverse effect of settlement which the Crown should have protected Maori from.

17. It is apparent from the fact that the right to participation and representation at a local government level is manifested in so many Treaty principles that this is not just a right for certain Maori, nor just for mana whenua within a certain area. The principles which give rise to the right to participation and representation arise from the Treaty as a whole and as such these rights are owed to all Maori, mana whenua and matāwaka alike. Accordingly, it is submitted that when it comes to local government matters (as distinct from resource management matters) all Maori are entitled to participation and representation. This has been implicitly accepted by the Crown in the current wording of the Local Government Act 2002 and Local Electoral Act 2001 which both use only the word Maori, compared to the Resource Management Act 1991 which refers to both Maori generally and more specifically to mana whenua.

18. Two other findings of earlier Tribunals are of particular relevance to this claim:

18.1 First, the Tribunal noted in the *Te Whanau o Waipareira Report*[14] that the Treaty obligations that the Crown has towards Maori are owed to all Maori, regardless of whether they are residing within or outside of their traditional tribal rohe,[15] and that the Treaty partnership is between the Crown and Maori generally; and

18.2 Secondly, the Crown is required to not create divisions between Maori in accordance with the principles of active protection.[16] The Crown's inaction in respect of local government conduct has allowed the Hamilton City Council to ignore the views and/or status of matāwaka in Hamilton.

Royal Commission on Auckland Governance

19. The critical issues raised in this claim have also been recently considered in a different context by the Royal Commission on Auckland Governance, where these concepts are addressed in a practical manner. The Royal Commission on Auckland Governance recommended, notwithstanding the existence of the Local Electoral Act 2001, that three seats be reserved for Maori – two to be filled by general election, in which all Maori would be eligible to stand and vote and one seat to be filled by an appointee, appointed by the Mana Whenua forum. The Royal Commission explained that:

> In the Commission's view, the key reasons for establishing safeguarded Maori seats relate to:
>
> - [T]he special status of mana whenua of the Auckland region, and their obligations of kaitiakitanga and manaakitanga
> - [T]he special status of all Maori as partners under the Treaty of Waitangi[17]
>
> . . . . .
>
> [T]he Commission's primary reason for making these recommendations is to give effect to obligations under the Treaty of Waitangi. General considerations of equity and fairness of representation also come into play, but to a lesser extent.[18]

20. The Royal Commission also carefully considered any differences between mana whenua and non-mana whenua rights to representation and noted that:

> Many mana whenua groups told the Commission that the obligation of manakitanga requires mana whenua to take non-mana whenua interests into account in their role as 'hosts'. On this basis, non-mana whenua representation would not be required.
>
> Nonetheless the Commission is cognisant of the article 3 Treaty rights which were guaranteed to all Maori, in addition to those Treaty rights that are specific to mana whenua.[19]

21. It is regrettable that the Commission's considered recommendations have been completely ignored by the Crown – a decision ironically justified on the basis that the legislation challenged by this claim contains sufficient mechanism to establish Maori wards. However, the positive indication that has come from the Crown's dealing with the super city issue is the realisation that the Crown is able to make radical changes to local government legislation before the 2010 elections and accordingly there is no practical basis upon which the Crown can justify not taking action to ensure the establishment of Maori wards in Hamilton for the 2010 election.

Local Government Regime Inconsistent with Treaty of Waitangi

22. Since 1852 when the Constitution Act 1852 introduced local government decision-making into New Zealand, there has been a fundamental failure by the Crown to address the issue of the Treaty accountability of local government organisations. The inevitable result has been that local government organisations have consistently and continuously operated without any form of Treaty accountability.

23. The failure to make local government accountable has on many occasions been justified on the basis that the Treaty was between the Crown (central government) and Maori, and that any implementation or recognition of the Treaty should be left to the Crown.

24. This argument may have some validity if local government organisations were indeed entirely independent from the Crown. What this argument overlooks is that local government organisations are entirely creatures

of statute. All authority wielded by the Hamilton City Council (or any other local authority), is sourced directly from the Crown. As a result local government organisations are in fact merely statutory delegates of aspects of the Crown's governmental functions.

25. It is a fundamental proposition that any such delegation cannot be carried on in a manner inconsistent with the Treaty. The Crown entered the Treaty of Waitangi with Maori. As a Treaty Partner, the Crown had, and continues to have, the responsibility to ensure that the process of settlement, colonisation and ongoing functioning of society proceeds in accordance with its Treaty obligations.

26. Any purported delegation, under local government legislation, is therefore required to be consistent with the Treaty, not only at the time of the delegation but throughout the period of the delegation. That the Crown cannot escape liability under the Treaty by delegating its powers is well-established before the Waitangi Tribunal. As the Waitangi Tribunal in its *Whanganui River* (1999) report noted in relation to the Resource Management Act 1991:

> functions under the Resource Management Act are generally exercised not by the Crown but by bodies that the Crown has established. The point has been well made, however, in earlier Tribunal reports, from 1983, that the Crown's duly of active protection of Maori property interests is not avoided by legislative or other delegation. If the Crown chooses to so delegate it must do so in terms that ensure that its Treaty duty of protection is fulfilled.[20]

27. Likewise, the Waitangi Tribunal in its *Te Arawa Representative Geothermal Resource Report* (1993) noted:

> the Crown cannot avoid its Treaty duty of active protection by delegation . . . of responsibility for the control of natural resources in terms which do not require such bodies to afford the same protection as required by the Treaty to be afforded by the Crown. If the Crown chooses to so delegate it must do so in terms which will ensure that its Treaty duty of protection is fulfilled.[21]

28. It is submitted that statutory delegation at a local level demands appropriate recognition and protection of the Treaty relationship and Treaty guarantees to Maori. How such a regime could and should be effected requires a carefully coordinated process of negotiations that would necessarily include the Crown, Maori and local government. No system can however be Treaty compliant when decisions on matters of importance to Maori continue to be made in a framework outside the guarantees contained in the Treaty (i.e. in the absence of an appropriate Treaty clause and consequent meaningful involvement of Maori), and by decision-makers not representative of the communities affected, or with Maori communities otherwise excluded from the decision-making process. Until each of these components has been addressed and integrated into an overall Treaty consistent framework, local government decision making will remain an ongoing source of Treaty grievance.

29. In the absence of an integrated Treaty consistent regime the lack of Treaty accountability noted above is manifest in different ways across the full spectrum of Local Government decision making, and in particular in the context of this claim, under the Local Government Act 2002 and Local Electoral Act 2001. As will be discussed later on in these submissions, there is currently no effective Treaty clause in any statute governing the actions of local government, including specifically either the Local Government Act 2002 or the Local Electoral Act 2001, which requires local authorities to either give effect to or at least not act inconsistently with the principles of the Treaty. This means that local authorities, as statutory delegates of the Crown are not bound by the principles of the Treaty of Waitangi, nor are they required to give effect to or implement them in the course of their activities.

30. As a result, when decisions are taken, for example to acquire land, carry out works, planning, or to exercise other powers and functions under the Local Government Act 2002, there is no requirement whatsoever to ensure that the principles of the Treaty are complied with or the interests of Maori protected. Despite the fact that local government is the face of implementation of kawanatanga in the twenty-first century, with most of the official decisions that affect Maori being carried out by local government, local authorities are nonetheless able to continue to deny any responsibility or obligation to act in a manner consistent with, or even, not inconsistent with, the principles of the Treaty. At the same time the Crown refuses to accept a day-to-day responsibility to ensure its delegates are meeting the Treaty obligations that accompany the powers the Crown has chosen to delegate.

31. The lack of Treaty accountability is compounded through leaving the actions of local authorities out of the Treaty claims and settlement process. Although local authorities are statutory delegates of the Crown, they are not defined as the Crown for the purposes of the Public Finance Act 1989. This means that local authorities such as, as has been already noted, the Hamilton City Council in this claim, cannot be held directly accountable in the Waitangi Tribunal. In practical terms therefore, even if Councils act in a manner that is manifestly inconsistent with the principles of the Treaty, as long as they can show that they have acted in accordance with their statutory authority, no liability follows.[22]

32. In addition, any assets that have been transferred by the Crown to local authorities or acquired directly by local authorities through public works legislation, no matter how they were acquired from Maori, are treated as 'private' property.[23] As a result such lands are not subject to the recommendations of the Waitangi Tribunal, and do not ordinarily form part of the redress able to be obtained in settlement of historical Treaty claims through negotiation with the Office of Treaty Settlements.

33. The refusal of the Crown or indeed those charged with administering local government to face up to this blatant injustice and inconsistency amounts to a significant and deliberate ongoing breach of the principles of the Treaty.

34. The key problems with local government – the lack of local government accountability in Treaty terms and the rack of any representation for Maori in local government – have long been recognised, and were reiterated in the context of the Local Government Act 1974 in the course of the Local Government Review which took place in 2001. Despite this, the Local Government Act 2002 and Local Electoral Act 2001, which emerged from the Local Government Bill signally failed to address these fundamental issues in anything like satisfactory terms and the current local government legislation remains entirely inconsistent with the principles of the Treaty of Waitangi.

35. Ironically both problems are recognised to a limited and impractical degree. The Local Government Act 2002 does indeed contain a 'Treaty clause', while the Local Electoral Act 2001 contains specific provisions regarding the representation of Maori, but in neither case is anything substantive delivered. This memorandum will now look at each of these Acts in turn.

Local Government Act 2002

36. The Local Government Act 2002 delegated to local authorities powers to fulfil their purposes, which are:[24]

> (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
> (b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.[25]

37. In relation to Treaty accountability, section 4 provides:

Treaty of Waitangi

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

38. While issue can be taken with the summation of the Crown's responsibility to only 'take appropriate account of the principles of the Treaty of Waitangi', the big problem is that the section does not impose any duties or obligations on either local or central government. The section simply points those interested in the direction of Parts 2 and 6. Those parts contain the principles that relate to local authorities and the procedure for decision-making.[26] Neither of those Parts require local government officers or organisations to comply with, or to otherwise not act inconsistently with the Treaty. Part 2 of the Local Government Act 2002 does contain limited obligations imposed for local government 'to provide opportunities for Maori to contribute to its decision-making processes',[27] but this simply reinforces that the decisions have to be made by the local authority rather than any form of joint decision on issues affecting Maori. Likewise, in Part 6 when significant decisions are being made, local authorities are required to 'take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga',[28] but this requirement is in substance no different from the substantially identical requirement to take into account the interests of the rest of the community which is contained in s 78(1) which provides that a local authority must 'give consideration to produce and preferences of persons like the to be affected by, or have an interest in, the [decision].' Even then, in both cases the local authority is given a wide discretion as to 'how to achieve compliance with sections 77 and 78' including:

79. Compliance with procedures in relation to decisions

(1) It is the responsibility of a local entity to make, in its discretion, judgments—

. . . . .

(b) about, in particular—

(i) the extent to which different options are to be identified and assessed; and

(ii) the degree to which benefits and costs are to be quantified; and

(iii) the extent and detail of the information to be considered; and

(iv) the extent and nature of any written record kept the manner in which it has complied with those sections.

39. The effect of this section is to make it extraordinarily easy for any local authority to show compliance with the law while in no way delivering anything substantive to Maori or otherwise acting in a manner that is consistent with the Treaty.

40. A similar discretion also applies in respect of section 81 which requires a local authority to establish and maintain processes to provide Maori with opportunities to contribute to decision making processes;[29] it must keep Maori informed for the purpose of the section[30] and must foster the development of Maori capacity to contribute.[31] Section 81(2) provides the local authority with discretion as to the manner in which it complies with section 81(1). Specifically the local authority must have regard to the role of the local authority and such other things it considers on reasonable grounds to be relevant.[32] Accordingly the local authority must balance competing factors, which it considers relevant with its obligation to provide opportunities for Maori, thus giving little priority to Maori participation in the decision making process.

41. It is submitted that none of the decision-making provisions go anywhere near far enough to remedy the failure to require Treaty accountability. Instead, it is likely

that the requirement to take into account matters of importance to Maori is interpreted as simply amounting to a formal obligation to consult. This approach is reflected in the overview of feedback from the LG KnowHow workshops sponsored by Local Government New Zealand and the Department of Internal Affairs published by the Department of Internal Affairs in December 2003. That summary shows that the nature of the discussion was that consultation was perceived as the central focus of the provisions and while broader issues appear to have been discussed, there seems to have been little or no consensus as to how to move forward.[33]

Local Electoral Act 2001

42. On the issue of representation the situation is even worse. The provisions of the Local Government Bill relating to the local government electoral regime, were split off into the Local Electoral Act 2001 at the end of the reform process. The resulting Act makes provision for both territorial authorities and regional councils to establish '*Maori wards and constituencies*' and to change the electoral system from First Past the Post (FPP) to Single Transferable Vote (STV), which could also increase the opportunity for Maori involvement in local government.[34]

Maori Wards and Constituencies

43. In order to establish Maori wards and constituencies the process is quite unlike the simple process that applies to determine the number of Maori seats in Parliament – where the number of Maori seats is determined by those who choose to be on the Maori roll. Instead, the establishment of Maori wards and constituencies requires a resolution of the council involved in favour of such change.[35] Whether or not a local authority can be persuaded to pass such a resolution, public notice must be given of the right to demand a poll on the issue, so that the issue ultimately becomes one for the majority of electors to decide.[36] It is no surprise whatsoever that no council has adopted Maori wards and constituencies even though two complete electoral cycles have taken place in 2004 and 2007, and that the time for Councils to implement change in time for the 2010 election has now passed.[37]

Single Transferable Vote Electoral System

44. The STV electoral system is the preferred system for increasing diversity on local government,[38] but only 9 out of 86 Councils implemented STV in time for the 2007 election.[39]

45. A change to the STV electoral system can be initiated through: a resolution by Council[40] (which can be countermanded by a poll);[41] a request for a poll by 5% or more of the enrolled electors;[42] or a resolution by Council to hold a poll on whether the electoral system should be changed[43] and then a favourable poll result.

46. In practical terms the procedure makes it almost impossible for Maori wards to be created through these provisions, nor is STV a practical alternative. The only other alternative, seeking private legislation of the type used in the Bay of Plenty Regional Council (Maori Constituency Empowering) Act 2001 is even more difficult than the process specified under the Local Electoral Act 2001.

Conclusion on Local Government legislation

47. Accordingly while in some relatively minor respects the Local Government Act 2002 and Local Electoral Act 2001 represent a slight advance on their predecessors, they more fundamentally represent a missed opportunity where the key issues of Treaty accountability and tangible Maori representation were not addressed. As the foregoing discussion sets out, the legislation does not provide sufficient opportunities to provide tangible Maori representation in the local government level, or for real participation in local decision-making. The result is a regime which remains fundamentally inconsistent with the principles of the Treaty of Waitangi.

48. The fact that no effort has been made to rectify the defects which have now been raised on many occasions including in the Local Government Review 2001, the select committee process that led to the Local Government Act 2002 and the Local Electoral Act 2001 and the Wai 741 and Wai 262 claims means that a fundamentally flawed and Treaty inconsistent regime remains. The only review undertaken of the Local Government legislation was by the Local Government Commission ('the Commission').

Rectifying these defects: Local Government Commission

49. The Local Government Commission is a Commission of Inquiry established under the Local Government Act 1974 and continued under the Local Government Act 2002. The Commission's functions include a requirement to review the operation of the Local Government Act 2002 and the Local Electoral Act 2001.[44]

50. The Commission completed its review of the local government legislation in July 2008 and presented it to the then Minister of Local Government. Prior to the completion of the Review, the Commission released a special topic paper on representation, which specifically considered whether any changes were required to the statutory provisions relating to the establishment of Maori wards/constituencies.[45] The paper concluded, notwithstanding – a complete absence of consultation with Maori, no reference to the various claims brought before the Waitangi Tribunal, a complete lack of submissions and the fact that no Maori wards had been established – that no changes were required.

51. The Local Government Act 2002 did not require the Commission to consult with Maori, nor did it require the Commission to take into account the consistency (or otherwise) of the local government legislation with the Treaty of Waitangi. Accordingly, the Review undertaken by the Commission was both fundamentally flawed and inconsistent with the principles of the Treaty of Waitangi.[46]

Treaty Breach in Hamilton

52. The fundamental Treaty breach caused by the inconsistency of the current local government regime with the principles of the Treaty, has caused prejudice to Maori throughout the country. However, on a daily basis the claimants are being subjected to Treaty breaches perpetuated by the Hamilton City Council. Those breaches are discussed in this section.

53. The Hamilton City population is 129,249.[47] According to the 2006 census 21,915 of those residents are Maori and of those Maori, 5,541 indicated (in the 2006 census) an iwi affiliation to Tainui or Waikato. The approximately 16,000 other Maori residing in Hamilton City are therefore matāwaka Maori.[48]

54. The Hamilton City Council is comprised of 12 councillors and the Mayor. None of the elected Council members are Maori. There have been no Maori councillors since Pat Kaeo whose term concluded in 1995.

55. The evidence establishes that the Hamilton City Council has, as a statutory delegate of the Crown, breached the principles of the Treaty of Waitangi an numerous occasions through failing to provide for Maori (both matāwaka and mana whenua) participation in decision-making in a Treaty consistent and meaningful manner, as summarised below:

55.1 Hamilton City Council has not consulted with Maori in advance of its preparation of annual and/or long term plans;[49]

55.2 Hamilton City Council has ignored and/or declined requests (including submissions in respect of the annual and long term plans) for mechanisms and funding that will protect and enhance Maori rangatiratanga;[50]

55.3 Hamilton City Council has inconsistently consulted Maori in its decision making processes and has failed to ensure that all affected Maori are consulted;[51]

55.4 Hamilton City Council has failed to sufficiently inform itself about the needs of its Maori constituents, through a lack of consultation, lack of sufficient and appropriate staff and a lack of desire.[52]

56. While arguably complying with its legislative obligations the Hamilton City Council has acted in a manner inconsistent with the principles of the Treaty of Waitangi in failing to provide for Treaty consistent Maori representation. In particular:

56.1 The Hamilton City Council elected not to change its electoral system in 2002, then in 2005 it resolved to change its electoral system, but subsequently overturned its own decision and instead held a poll. The poll was in favour of retaining the FPP electoral system, accordingly FPP was used in the 2007 election and in the absence of changes imposed by the Government will also be used in the 2010 election.[53]

56.2 The Hamilton City Council resolved in 2005 and 2008 not to establish Maori wards.[54] No consultation was held with Maori regarding this decision and the reasons provided for not establishing Maori wards in 2005 and 2008 respectively were:

(a) The establishment, of 'ethnic' wards creates an electoral privilege which is not seen in the best interests of the City's cultural development.

(b) The establishment of Maori wards will create confusion amongst electors as to how and where they can vote, particularly if the electoral boundaries differ from the general wards.

(c) The use of a single electoral system ensures that all electors can vote for individuals based on their preferences and are not excluded from supporting candidates because of ethnically derived electoral boundaries.[55]

It is felt that the establishment of specific Maori wards creates an electoral privilege which is not regarded as being in the best interests of the City's cultural development. In addition to this, the establishment of Maori wards has potential to create confusion for electors as to how and for who they can vote, particularly if the electoral boundaries differ from the general Wards. For these reasons, the introduction of dedicated Maori wards is not supported.[56]

57. The reasons the Hamilton City Council has provided for not establishing Maori wards in a City such as Hamilton which has an almost 20% Maori population are difficult to reconcile given the lack of any consultation, and the stated reasons do not sustain scrutiny given the nature of Maori entitlement to representation set out in ss 19z–19zh Local Electoral Act 2001. Likewise the fact that such a position can be taken and be consistent with the legislative regime and the fact that the result is so unrepresentative of its Maori community and so ignorant in its decision-making, shows that the local government legislation is completely flawed, ineffective and in breach of the principles of the Treaty of Waitangi.

58. It is submitted that the foregoing analysis shows that in real terms local authority decision-making remains fundamentally inconsistent with the principles of Treaty of Waitangi. Although the Local Government Act 2002 and Local Electoral Act 2001 do not blatantly ignore Maori in the same way and to the same extent as their statutory predecessors, it is equally apparent that neither delivers tangible benefits to Maori consistent with the principles of the Treaty.

Urgency

59. The factors the Tribunal will consider in determining an application for urgency are set out in paragraph 2.5

of the Guide to Practice and Procedure of the Waitangi Tribunal. Those factors are:

59.1 The Claimants will suffer significant and irreversible prejudice as a result of current or pending Crown actions or policies;

59.2 There is no alternative remedy that, in the circumstances it would be reasonable for the Claimants to exercise;

59.3 The Claimants are ready to proceed urgently to a hearing;

59.4 Whether the claim or claims challenge an important current or pending Crown action or policy;

59.5 Whether any injunction has been issued by the courts because the claim or claims have been submitted to the Tribunal; and

59.6 Whether there are any other grounds sufficiently justifying urgency.

60. These factors are considered below.

Claimant will suffer significant and irreversible prejudice as a result of current or pending Crown actions or policies.

61. The claimants and Maori generally have suffered and will continue to suffer irreversible prejudice if the local government legislation and policy framework remains without amendment. In particular:

61.1 Maori, including the claimants, have been excluded from participation in decision making undertaken by local government organisations, including Hamilton City Council in Hamilton.

61.2 Maori, including the claimants, have been unable to be properly represented in local government organisations, including Hamilton City Council and will not be represented in the 2010 local government elections unless there is legislative change.

61.3 Maori, including the claimants, have been excluded from participation in the review of the Local Government Act 2002 and the Local Electoral Act 2001.

61.4 The protections accorded to Maori, including the claimants, under the Treaty of Waitangi have been ignored and undermined.

61.5 As a result of local government institutions continued under the Local Government Act 2002 not being defined as 'the Crown' or as 'a Crown entity', lands held by such institutions are not subject to recommendations by the Waitangi Tribunal even when acquired and/or retained in breach of the Treaty of Waitangi.

62. Unless these issues are heard by the Tribunal it is inevitable that the 2010 local body elections will be held under the FPP electoral system, without Maori wards and the lack of Maori representation will be perpetuated.

Whether the claim or claims challenge an important current or pending Crown action or policy

63. This claim challenges the lack of Treaty accountability of local government in the exercise of its delegated powers. Local government makes critical and pervading decisions on a daily basis that affect all Maori through New Zealand.

64. The powers that local government exercise under the local government legislation are ongoing, extensive and formidable. The fact that these powers are being exercised with complete disregard for the Treaty of Waitangi, is a matter of immense importance and concern to all New Zealanders.

Whether any injunction has been issued by the courts because the claim or claims have been submitted to the Tribunal

65. This factor is not applicable to this application.

Whether there are any other grounds sufficiently justifying urgency

66. The fact that the Local Government Commission has released its statutory review of local government legislation and that that review has not considered at all the Treaty consistency of the legislation or undertaken consultation with Maori, means that it is all the more important that these issues (as raised in this claim) be considered by an independent body with Treaty expertise. Furthermore the Crown's failure to ensure that the Local Government Commission, a body corporate maintained by the Crown to provide it with information about local government practices, consults with Maori in its reviews of local government legislation and acts in a manner consistent with the terms and principles of the Treaty of Waitangi is clearly a significant and ongoing breach of the principles of the Treaty.

67. It is anticipated that an amendment bill will be introduced in response to the Commission's recommendations shortly and accordingly the time is right for the Tribunal to provide recommendations on the Treaty consistency (or otherwise) of the local government legislation.

68. The claimant evidence sets out clearly other reasons why this claim is also urgent and requires the immediate consideration of the Tribunal. In summary:

Maori Wards/Territories

68.1 All regional and city councils had the opportunity to resolve by 23 November 2008, whether to establish Maori wards (or territories) for the 2010 election. No council resolved to establish Maori wards (or territories). This is the third occasion that councils have had an opportunity to consider this matter and none have elected to do so.

68.2 The reasons provided by the Hamilton City Council for not establishing Maori wards demonstrate a fundamental lack of respect and understanding for the Treaty of Waitangi and Maori. Legislative change is urgently required to rectify the complete lack of establishment of Maori wards (or territories) and the lack of understanding demonstrated by it.

Planning Documents

68.3 The Hamilton City Council (and it is understood, all Councils) are currently working on the 2009–19 Long Term Community Plan for the representative committees. The Long Term Community Plan is a critical Council planning document, which sets the Council's direction for the next 10 years and it is fundamental that Maori are a meaningful part of this process and that Treaty accountability is included in the Long Term Community Plan.

68.4 The plan is required to be adopted by Council by 30 June 2009 and in force from 1 July 2009. Accordingly, now is the optimal time for the Tribunal to signal to the Crown how councils should be directed to meaningfully involve Maori and recognise the Treaty principles in its everyday activities.

69. A Tribunal hearing is required into this matter now, to allow the Tribunal's recommendations to inform any legislative amendments as a result of the Local Government Commission Review, the implementation of Maori wards in time for the 2010 local body elections and to influence the long term Council plans. Changes to these three aspects of local government will have a substantial effect on increasing Maori involvement, participation and representation in local government.

70. A Tribunal hearing at this time would be appropriate and worthwhile, as it could directly influence the Crown before it amends the local government legislation, influence the Crown to require its statutory delegates to include appropriate Maori and Treaty related obligations

in its plans for the next 10 years and would ensure that at the next local government election, Maori will have representation.

71. It is noted that the Crown has confirmed (through the introduction of urgent legislation regarding the Auckland supercity) that it is able to introduce substantial changes to local government before the 2010 local body elections, if those changes are commenced now.

There is no alternative remedy that, in the circumstances it would be reasonable for the Claimants to exercise

72. The claimants have raised their concerns generally with the Hamilton City Council in a number of fora – including through direct correspondence with the Council, through the now defunct Joint Venture Committee and through annual submissions.[57]

73. The claimants have also raised their concerns directly with the Crown – through correspondence with Hon. Nanaia Mahuta (the former Minister of Local Government) and a meeting and correspondence with the Hon. Rodney Hide (the current Minister of Local Government).

74. The Royal Commission on Auckland Governance is another forum that has recently considered similar issues and its recommendations which were largely in sync with this claim have been ignored by the Crown.

75. Accordingly as the claimants concerns have not been addressed despite repeated requests to their Council and to the Crown, there is no alternative remedy available to the claimants.

The Claimants are ready to proceed urgently to a hearing

76. The claimants are ready for a hearing on this matter at short notice and request an immediate telephone conference to discuss appropriate timetabling for an urgent inquiry to take place.

DATED at Auckland this 12th day of June 2009

L G Powell / S J Eyre
Counsel for the Claimants

Notes

1. Including provincial governments, river boards, road boards, highway boards, catchment boards, borough councils, county councils, city councils, regional authorities. regional councils and territorial authorities.
2. Refer letter dated 30 July 2008 from Swarbrick Dixon (the Council's lawyers) which is annexure C to the Brief of Evidence of Matiu Dickson
3. Refer for example the Indigenous Flora and Fauna and Cultural Intellectual Property Inquiry (Wai 262) and the Wairarapa ki Tararua Inquiry (Wai 863)
4. Including provincial governments, river boards, road boards, highway boards, catchment boards, borough councils, county councils, city councils, regional authorities, regional councils and territorial authorities.
5. Refer statement of relevant Treaty principles in paragraphs 57–10 of the Statement of Claim
6. Refer detailed discussion in paragraphs 52 to 58 of this memorandum.
7. Refer detailed discussion in paragraphs 52 to 58 of this memorandum.
8. Refer detailed discussion in paragraphs 62–58 of this memorandum and refer also paragraph 78 and annexures KK–NN of the Brief of Evidence of Maliu Dickson.
9. Page 12
10. Page 37 at paragraph 5.1
11. Page 27
12. Refer page 63
13. In addition to submissions and evidence presented in earlier Tribunal inquiries regarding Maori and local government (refer footnote 3)
14. (1998)
15. Page 27
16. Refer *Tāmaki Makaurau Settlement Process Report* (2007) at page 101
17. At paragraph 22.58
18. At paragraph 22.60
19. At paragraphs 22.68–22.69
20. At pages 331–332
21. At page 41

22. Refer examples of this occurring in Hamilton in the Briefs of Evidence of Tureiti Moxon at paragraphs 13 and 26 to 35 and the Brief of Evidence of Matiu Dickson at paragraphs 20 and 30 to 64
23. Section 6(4A) Treaty of Waitangi Act 1975
24. ss 10, 11 and 12 Local Government Act 2002
25. s10 Local Government Act 2002
26. The only actions a Council is required to take in relation to Maori (there is no distinction in the Local Government Act 2002 between mana whenua Maori and matāwaka Maori) require it to:

a. Provide, establish and maintain opportunities for Maori to contribute to its decision-making processes (s14(d) LGA 2002), and provide relevant information to Maori for this purpose (s81 (1)(a) and (c) LGA 2002);
b. Include in its local governance statement information on policies for liaising with, and memoranda or agreements with, Maori (s40(1) LGA 2002), and ensure that it has in place processes for consulting with Maori (s82(2) LGA 2002);
c. Take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga, in respect of certain decisions (s77(1)(c) LGA 2002); and
d. Consider ways in which it may foster the development of Maori capacity to contribute to the decision-making processes of the local authority and provide relevant information to Maori for this purpose (s81(1)(b) and (c) LGA 2002).

27. Section 14(1)(d)
28. Section 77(1)(c)
29. Section 81 (1)(a)
30. Section 81(1)(c)
31. Section 81(1)(b)
32. Section 81(2)(a)
33. Refer annexure Q to the Brief of Evidence of Tureiti Moxon
34. Refer discussion of these electoral voting systems in the Brief of Evidence of Matiu Dickson dated 12 June 2009 at paragraph 32 and annexure 9
35. Maori wards can be initiated under the Local Electoral Act 2001, through a resolution by Council (s19z Local Electoral Act 2001) (which can be countermanded by a poll); a request for a poll made by 5% or more of the enrolled population of the Council, (s19zb local Electoral Act 2001) or a resolution by Council to hold a poll on whether Maori wards should be established (s19zd Local Electoral Act 2001). A demand for a poll and the actual poll on whether to establish Maori wards include all electors, not just Maori electors.
36. Sections 19za and 19zb Local Electoral Act 2001
37. Refer s19z Local Electoral Act 2001 which required a decision by 23 November 2008 for any changes to take effect for 2010
38. Refer annexure G to Brief of Evidence of Matiu Dickson
39. Refer annexure H to the Brief of Evidence of Matiu Dickson
40. s27 Local Electoral Act 2001
41. s28 Local Electoral Act 2001
42. s30 Local Electoral Act 2001
43. s31 Local Electoral Act 2001
44. s32 Local Government Act 2002
45. Refer excerpt from Report to Minister or Local Government on the Review of the Local Government Act 2002 and the local Electoral Act 2001: Special topic paper: Representation (February 2008), attached as annexure Z to the Brief of Evldence of Matiu Dickson
46. Refer paragraphs 68–76 and annexures Z–HH to the Brief of Evidence of Matiu Dickson
47. Refer annexure F of the Brief of Evidence of Matiu Dickson
48. Refer annexure F of the Brief of Evidence of Matiu Dickson for copies of these census results
49. Refer paragraphs 21–25 of the Brief of Evidence of Tureiti Moxon dated 12 June 2009
50. Refer examples in the Brief of Evidence or Tureiti Moxon at para 13, 18–20 and 26–35, refer also paragraph 17 of the Brief of Evidence of Alvina Barrett-Nepe dated 12 June 2009, refer also paragraphs 22–40 in the Brief of Evidence of Mere Balzer dated 12 June 2009, refer also paragraphs 33–36 and 58–61 of the Brief of Evidence of Matiu Dickson dated 12 June 2009
51. Refer for example the failure of the Joint Venture Committee discussed in the Brief of Evidence of Tureiti Moxon at paragraphs 11–12. Refer also paragraphs 21 and 35–39 of the Brief of Evidence of Tureiti Moxon dated 12 June 2009. Refer also paragraphs 13–14 and 22–27 of the Brief of Evidence of Maree Pene dated 12 June 2009, refer also Brief of Evidence of Mete Balzer dated 12 June 2009 at paragraphs 12 and 42–44, refer also paragraphs 65–67 of the Brief of Evidence of Matiu Dickson dated 12 June 2009
52. Refer paragraphs 16–19 of Brief of Evidence of Maree Pene dated 12 June 2009, refer also paragraphs 15–17 of the Brief of Evidence of Owen Purcell dated 12 June 2009, refer also paragraphs 45–50 of the Brief of Evidence of Mere Balzer dated 12 June 2009, refer also paragraphs 30–31 of the Brief of Evidence of Matiu Dickson dated 12 June 2009
53. Refer paragraph 10 of Brief of Evidence of Maree Pene dated 12 June 2009, refer also paragraphs 32 and 37–50 of the Brief of Evidence of Matiu Dickson dated 12 June 2009
54. Refer paragraphs 11–12 of Brief of Evidence of Maree Pene dated 12 June 2009, refer also paragraphs 7–14 of the Brief of Evidence of Owen Purcell dated 12 June 2009, refer also paragraph 10 of the Brief of Evidence of Alvina Barrett-Nepe dated 12 June 2009, refer also paragraphs 51–57 of the Brief of Evidence of Matiu Dickson dated 12 June 2009.
55. Refer annexure Q to the Brief of Evidence of Matiu Dickson dated 12 June 2009
56. Refer annexures T and U to the Brief of Evidence of Matiu Dickson dated 12 June 2009
57. Refer respective claimants and witness evidence

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Wai 863, #2.468

WAITANGI TRIBUNAL WAI 863

Concerning The Treaty of Waitangi Act 1975
and the Wairarapa ki Tararua district inquiry

Memorandum–Directions of the Presiding Officer

1. On 24 February 2010 the Tribunal received a memorandum of counsel, filed by Mr Grant Powell on behalf of Wai 741 (Wai 863, #2.467).

2. Mr Powell proposes that the Wairarapa ki Tararua Tribunal considers material filed in Wai 2100, a claim relating to recent local government matters in Hamilton, as an update on developments in local government issues since hearings for this inquiry closed in 2005.

3. The Tribunal is minded to agree to Mr Powell's proposal, because local government concerns in Wairarapa ki Tararua are of particular concern, and our inquiry was hampered by too little focus on this important area, especially from the Crown, which continues to insist that the Crown is implicated only marginally. This part of the Tribunal's Wairarapa ki Tararua report is in final draft, and it is unclear to what extent new material can be incorporated. However, the Tribunal is conscious that it is too long since it heard parties on these matters, and an update is always useful.

4. The Registrar is accordingly directed to circulate Mr Powell's memorandum to the Crown for its response. The Crown will please file any response it wishes to make by Wednesday 31 March 2010 at noon.

The Registrar is to send this direction to all those on the notification list for Wai 863, the combined record of inquiry for the Wairarapa ki Tararua claims.

Dated at Wellington this 25th day of February 2010

Judge C M Wainwright
Presiding Officer
Waitangi Tribunal

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Wai 863, #2.469

BEFORE THE WAITANGI TRIBUNAL WAI 863

In the Matter of The Treaty of Waitangi Act 1975

and

In the Matter of claims in the Wairarapa-ki-Tararua inquiry district

Crown Response to Tribunal Memorandum–Directions Dated 25 February 2010

May it Please the Tribunal

1. This memorandum responds to the Memorandum–Directions of the Presiding Officer dated 25 February 2010, outlining the Tribunal's decision to agree to consider material filed in the Wai 2100 claim relating to recent local government matters in Hamilton. In that Memorandum–Directions the Tribunal directed that the Crown file any response it wishes to make by noon on Wednesday 31 March 2010.

2. The Crown's position on local government issues is outlined in its closing submissions in the Wairarapa district inquiry. In addition the Crown refers to its Memorandum dated 9 July 2009 (Wai 2100 #3.1.2) filed in the Wai 2100 claim.

31 March 2010

Helen Carrad
Crown Counsel

Wai 2100 #3.1.2

BEFORE THE WAITANGI TRIBUNAL

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF an application by Matiu Dickson and Owen Lasalo Purcell on behalf of themselves and Matawaka Māori within Hamilton City

MEMORANDUM OF COUNSEL FOR THE CROWN

MAY IT PLEASE THE TRIBUNAL

1. This memorandum of counsel sets out the Crown's response to the application for an urgent hearing of the claim by Matiu Dickson and Owen Purcell on behalf of themselves and Matawaka Māori within Hamilton city in respect of local government issues.

2. By Memorandum–Directions dated 24 June 2009 the Tribunal directed the Crown to file its response to the application by 12 noon Thursday 9 July 2009.

SUMMARY OF CROWN POSITION

3. The Crown opposes the application for an urgent hearing. The Crown says that this is not an 'exceptional case' requiring the diversion of Tribunal and the parties' resources to an urgent hearing:

3.1 The application asks the Tribunal to convene an urgent hearing, and presumably issue its report, so as to inform and enable fundamental legislative reform prior to the local body elections in October 2010 (at least in relation to Hamilton City, but presumably on a national basis also);

3.2 The generality of the relief sought (for example, a recommendation that legislation provide for an 'appropriate level' of Māori representation in local authorities) masks the true nature and scope of any proposed inquiry. Not only would a significant number of the groups likely seek to participate in the inquiry, the issues do not lend themselves to a quick report by the Tribunal. To assist in informing the legislative reform in advance of next year's elections which is sought (and which is not currently contemplated), practical and detailed recommendations (as opposed to the general recommendations sought by the claimants) would be required. Any such inquiry would appear to be more of a scale similar to the Wai 262 inquiry or Petroleum inquiry, rather than the quick and discrete inquiry that the claimants appear to contemplate;

3.3 Even if a report could be produced within reasonable timeframes, time would be required to assess any findings and recommendations, consult with stakeholders, develop policy and prepare legislation. This would all need to occur sufficiently in advance of the 2010 elections to allow any new system to be implemented. It is, in the Crown's submission, unrealistic to suggest that there is time for all such steps to take place prior to the 2010 elections;

3.4 There is nothing that distinguishes this claim from other claims filed with the Tribunal relating to local government issues such as to justify treating this claim as exceptional;

3.5 There is no current or pending Crown action identified that can be said to cause, or be likely to cause, any significant and irreversible prejudice on the part of the claimants;

3.6 The delay in bringing the claim, and the failure to pursue alternative options, tells against the arguments for urgency;

3.7 The issues raised in this claim, and in particular issues of Māori participation and representation,

are being considered in a number of current initiatives, most notably the proposals for the reorganisation of Auckland governance. Those processes should be allowed to run their course, and provide a forum for debate and consideration of those issues.

3.8 The Local Government (Auckland Council) Bill is currently before the House. It is apparent that consideration of this Bill, and submissions made, will require consideration of the same issues raised in this claim. The principles that underpin s 6(6) of the Treaty of Waitangi Act 1975 suggest the need for caution.

The Claim

Statement of claim

4. There are two causes of action:

4.1 That the Crown has breached the principles of the Treaty of Waitangi by consistently failing to ensure that its 'statutory delegation to local government organisations', including the Hamilton City Council, was consistent with the terms and principles of the Treaty of Waitangi.

4.2 In breach of the principles of the Treaty of Waitangi, consistently failed to ensure that the Council is acting in a manner either consistent with, or otherwise not in a manner inconsistent with, the principles and terms of the Treaty of Waitangi.

5. The claimants are said to be suffering the following prejudice as a result of the alleged breaches:

5.1 Exclusion from participation in decision making undertaken by local government, including Hamilton City Council;

5.2 Being unable to be properly represented in local government, including Hamilton City Council;

5.3 Exclusion from participation in the review of the Local Government Act 2002 (LGA) and the Local Electoral Act 2001 (LEA);

5.4 The protections accorded to Māori under the Treaty of Waitangi being ignored and undermined; and

5.5 As a result of local government not being defined as 'the Crown' or as 'a Crown entity', lands held by local government not being subject to recommendations by the Waitangi Tribunal even when acquired and/or retained in breach of the Treaty of Waitangi.

6. Relief sought includes:

6.1 A finding that the current legislative framework for local government is in breach of the Treaty of Waitangi.

6.2 A finding that local government are statutory delegates of the Crown.

6.3 A recommendation that legislation provide that local authorities are, for the purposes of the Treaty of Waitangi, the Crown, and subject to Treaty of Waitangi claims.

6.4 A recommendation that legislation require that all persons and entities carrying out functions or exercising powers under the LEA and the LGA are not permitted to act in a manner inconsistent with the principles of the Treaty of Waitangi.

6.5 A recommendation that legislation require consultation with Māori in respect of all decisions made in relation to representation, electoral systems and planning documents prior to the decision being made.

6.6 A recommendation that legislation provide for an 'appropriate level' of Māori representation in local authorities.

6.7 A recommendation that all current and proposed policies and plans prepared under local government legislation be reviewed, amended and monitored so as to ensure consistency with the Treaty

of Waitangi, in consultation with Māori in each respective territorial authority.

6.8 A recommendation that no action be taken as a result of the Local Government Commission review until 'meaningful consultation' with Māori has been undertaken.

Application for urgency

7. It is claimed that the claimants will suffer significant and irreversible prejudice as a result of current or pending Crown actions or policies given that, unless these issues are heard by the Tribunal, the 2010 local body elections will be held under the FPP electoral system, without Māori wards and the lack of Māori representation will be perpetuated.[1]

8. It is said that the claim challenges an important current or pending Crown action or policy in that local government makes critical and pervading decisions on a daily basis that affect all Māori throughout New Zealand.[2] The powers that local government exercise are said to be 'ongoing, extensive and formidable'.[3]

9. The claimants anticipate that an amendment bill will be introduced shortly in response to the Local Government Commission's ('the Commission') review of local government legislation. The claimants therefore say that the 'time is right' for the Tribunal to provide recommendations on the Treaty consistency (or otherwise) of the local government legislation.

10. The claimants identify the Hamilton City Council's Long Term Council Community Plan (LTCCP) as a critical planning document which sets the Council's directions for the next 10 years. The claimants note that the plan is required to be adopted by Council by 30 June 2009 and enforced on 1 July 2009. It is alleged that now is the optimum time for the Tribunal to signal to the Crown how councils should be directed, to meaningfully involve Māori and recognise the Treaty principles in its everyday activities.

11. In sum, the claimants say that a Tribunal hearing is required into this matter now so that any recommendations can inform legislative amendments that may be implemented in time for the 2010 local body elections.

Legislative Background

12. The applicants allege that the local government legislative framework is a breach of the principles of the Treaty of Waitangi in that it does not ensure that local authorities, in carrying out powers and functions under that legislation, must act consistently with the principles of the Treaty.

Local Government Act

13. The Local Government Act 1974 contained no reference to the Treaty, although a number of pieces of legislation relating to particular areas of local government activity did include reference to the Treaty.[4] In 2000, a review of the Rating Powers Act 1908,[5] Local Elections and Polls Act 1976 and the Local Government Act 1974 was initiated.

14. The LGA was the endpoint of this review. There were four broad policy objectives for the review of the LGA. They were to develop a new statute which:

14.1 Reflects a coherent overall strategy on local government;

14.2 Will involve a move to a more broadly empowering legislative framework under which local authorities can meet the needs of their communities;

14.3 Involves the development of a partnership relationship between central and local government;

14.4 Clarifies local government's relationship with the Treaty of Waitangi.

15. The review included significant consultation, in particular a comprehensive consultation process in 2001. Six hundred and sixty-five submissions were received. Of these 62 (13%) were from Māori groups, organisations and individuals. More than 20 consultation hui with Māori were held around the country.

16. Ultimately, an overarching Treaty clause was not included in the LGA as it was considered that such a clause could not provide Māori or councils with certainty as to what was intended or required. Rather, a package of practical provisions clearly setting out what was required, coupled with acknowledgement of the Crown's Treaty responsibilities, was preferred. It was through this approach that the then government considered that clarity as to local government's relationship with the Treaty would best be achieved.

17. The approach taken in the LGA seeks to recognise that it is the Crown, and not local government, that is the Treaty partner and who has Treaty responsibilities. Section 4 reflects this approach. Section 4 of the Act provides that:

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

18. Section 4 mirrors the approach taken in the New Zealand Public Health and Disability Act 2000. The equivalent section in that Act (s 4) was commented on by the Tribunal in the Napier Hospital and Health Services Report. The Tribunal observed that the Act:

> included an explicit commitment to 'recognise and respect the principles of the Treaty.' The Act included a number of provisions promoting Māori participation in decision-making and service delivery. It set health boards the objective of revising health disparities affecting Māori, and any other population group, by improving their health outcomes, and, more generally, of removing such disparities through targeted services developed in consultation with the groups concerned. We consider the Act makes sufficient provision for the recognition and application of Treaty principles in the state health sector.[6]

19. Part 2 sets out the purpose and principles of local authorities. Section 10 of the LGA sets out the purpose of local government:

> The purpose of local government is—
> (a) To enable democratic local decision-making and action by, and on behalf of, communities;
> (b) To promote the social, economic, environmental, and cultural wellbeing of communities, in the present and for the future.

20. Section 14 sets out the principles relating to local authorities. These include:

> (b) a local authority should make itself aware of, and should have regard to, the views of all its communities; and
> (c) When making a decision, a local authority should take account of—
> (i) the diversity of the community, and the community's interests, within its district or region; and
> (ii) the interests of future as well as current communities; and
> (iii) the likely impact of any decision on each aspect of wellbeing referred to in s 10:
> (d) a local authority should provide opportunities for Māori to contribute to its decision-making processes:

. . . . .

(g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region; and

(h) in taking a sustainable development approach, a local authority should take into account—

(i) the social, economic, and cultural wellbeing of people in communities; and

(ii) the need to maintain and enhance the quality of the environment; and

(iii) the reasonably foreseeable needs of future generations.

21. Part 6 deals with local authority planning, decision-making, and accountability. Section 77(1) (a) provides that a local authority must in the course of the decision-making process seek to identify all reasonably practicable options for the achievement of the objective of a decision. Section 77(1)(c) provides that if any of those options involves a significant decision in relation to land or a body of water, then the local authority must take into account the relationship of Māori in the culture and traditions with their ancestral land, water, sites, wahi tapu, valued flora and fauna, and other taonga.

22. Section 81 provides that a local authority must:

22.1 establish and maintain processes to provide opportunities for Māori to contribute to the decision-making process of the local authority;

22.2 consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes; and

22.3 provide relevant information to Māori for the purposes of paragraphs 22.1 and 22.2 above.

23. Section 82 sets out the principles of consultation. Section 82(2) provides that a local authority must ensure that it has in place processes for consulting with Māori.

24. Other provisions that do not refer specifically to Māori are relevant also. For example, s78 provides that a local authority must, in the course of its decision-making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

25. In addition to the provisions in Part 6 of the Act, s40 requires that following the triennial general election of members, a local authority must prepare a local government statement that includes information on policies for liaising with, and memoranda or agreements with, Māori. Clause 5 of schedule 10 to the Act requires that a local authority's LTCCP[7] must set out any steps that the local authority intends to take, having considered ways in which it might foster the development of Māori capacity to contribute to the decision-making processes of the local authority, over the period covered by that plan. Clause 21 of the second schedule provides that the local authority's annual report must include a report on the activities that the local authority has undertaken in the year to establish and maintain processes to provide for opportunities for Māori to contribute to the decision-making processes of the local authority.

Local Electoral Act

26. The Local Electoral Act emerged from the same review process initiated in 2000. The LEA enabled councils to choose to use the single transferable vote electoral system. As part of the Local Government Act review, the Act was amended to enable councils to adopt Māori wards. This followed the passage of the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001.

Requirement to hold Elections

27. Section 10 of the LEA provides:

10 Triennial general election

(1) The next triennial general election of members of every local authority and community board is on 13 October 2001.
(2) A general election of members of every local authority or community board must be held on the second Saturday in October in every third year after the general election referred to in subsection (1).

28. Elections of members of local authorities are held once every three years, on the second Saturday in October. The last elections were held on 13 October 2007.

29. Elections for regional councils, city and district councils and community boards, district health boards and licensing trusts are held at the same time.

30. The next general local election is required to be held on Saturday 9 October 2010.

Choice of electoral system

31. Two years prior to each Local Authority election Councils and communities have the opportunity to decide on the choice of electoral system (i.e. single transferable vote (STV) or first past the post (FPP)) for their next two Local Authority elections. The effect of section 27 LEA is that prior to 12 September 2008, Councils whose electoral system had not been determined for the previous election, may have made a decision on whether to retain the existing electoral system or change to the alternative system for the 2010 Local Authority Election.

32. Such Councils were required by 19 September 2008 to give public notice of the right of 5% of electors to demand on a poll to determine the electoral system for the next election. If 5% of electors demanded a poll by 28 February 2009, then a poll was required to be held by 21 May 2009 and the result would take effect for the 2010 Local Authority elections and at least the following triennial elections.

33. If a valid poll demand is received after 28 February 2009 then the poll must be held after 21 May 2009 and will not take effect until the 2013 Local Authority elections and also apply at least for the following triennial elections.

Māori wards and constituencies

34. Māori wards may be established for cities and districts and Māori constituencies may be established for regions. Similar to the Māori Parliamentary seats, these Māori wards and constituencies establish areas where only those on the Māori Parliamentary electoral roll vote for the representatives. They sit alongside the general wards and constituencies which also cover the whole city, district or region. Those voting in Māori constituencies receive only the same number of votes as anyone else.

35. Māori wards and constituencies may be established through one of the following processes:

35.1 A council may resolve to establish Māori wards or constituencies. If so, a poll to establish Māori wards or constituencies must be held if 5 percent of the electors of the city, district or region request it.

35.2 A council may decide to hold a poll on whether or not there should be Māori wards or constituencies.

36. In addition, a poll on whether there should be Māori wards or constituencies must be held if requested by a petition signed by 5 percent of the electors of the city, district or region. The result of these polls is binding on the council.

Relevant Context and Recent Initiatives

37. The issue of the relation between local authorities, Māori and the Treaty has recently been, and is being, discussed in a number of different contexts around the country. For example:

37.1 The Te Arawa Lakes Settlement established the Rotorua Lakes Strategy Group as a permanent

joint committee within the meaning of clause 30(10(b) of schedule 7 of the Local Government Act. The Group comprises two representatives from each of the Te Arawa governance entity, Bay of Plenty Regional Council and the Rotorua District Council.

37.2 The relationship between local government and Māori is increasingly being discussed in settlement negotiations. For example:

37.2.1 Co-management arrangements in relation to the Waikato River.

37.2.2 The proposed creation of statutory boards or alternative co-management arrangements in relation to conservation land.

37.2.3 Enhanced participation of Māori in local government decision-making (for example, the Nga Hapū o Ngāti Porou Foreshore and Seabed Agreement).

37.3 Most obviously, the role of Māori in local government, and in particular the issue of Māori participation and representation, is a live issue being considered in the context of the reorganisation of local authority governance in Auckland. The Local Government (Auckland Council) Bill has been introduced into the House. The Bill is the second of three anticipated bills giving effect to the reorganisation of Auckland local governance. The first, the Local Government (Tamaki Makaurau Re-Organisation) Act 2009, established the Auckland Transition Agency which is charged with overseeing the transition from the current arrangements into the new governance structures.

37.4 The Local Government (Auckland Council) Bill provides for the proposed governance structure of the Auckland Council, including:

37.4.1 The high level framework for the structure of the Auckland Council (including its membership) and for local boards (in the order of 20–30), including their high level functions; and

37.4.2 Direction and provision of powers for the Local Government Commission to determine the boundaries of the wards of the Auckland Council and the local boards, and the number of local boards and their membership.

Crown Response

38. The Tribunal will grant urgency in exceptional cases only. The grounds for urgency are whether:

38.1 The claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;

38.2 There is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and

38.3 The claimants are ready to proceed urgently to a hearing.

39. Other factors that will be considered include whether:

39.1 The claim challenges an important current or pending Crown action or policy;

39.2 An injunction has been issued by the Courts on the basis that the claim or claims for which urgency has been sought have been submitted to the Tribunal; and

39.3 Any other grounds justifying urgency have been made out.

Claim not 'exceptional'

40. A number of claims have been filed previously with the Waitangi Tribunal alleging that the local government legislative framework (including rating) is inconsistent with the principles of the Treaty of Waitangi. There is nothing in the current claim in respect of Hamilton City

Council that sets this claim apart as exceptional and therefore requiring urgency.

41. The claimants have said that a Tribunal hearing at this time would be 'appropriate and worthwhile'.[8] Again, this does not make the claim 'exceptional' such as to require the diversion of resources of both the Tribunal and parties.

Significant and irreversible prejudice

42. The prejudice pleaded and the relief sought in the statement of claim are set out at paragraphs 5 and 6 above. The statement of claim pleads that all Māori, including the claimants, have suffered prejudice. The claim is not filed on behalf of all Māori. For the purposes of the application of urgency, the claimants must demonstrate that the claimants have suffered, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions.

43. The alleged prejudice is, for the most part, not particularised.

43.1 It is alleged that the claimants have been excluded from participation in decision-making undertaken by the Hamilton City Council. The legislation requires that the Council establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes (s 81). The claimants' own evidence clearly demonstrates that the claimants have 'participated' in the decision-making processes.

The claimants may argue that this does not provide for Treaty consistent participation. This may be the underlying issue; however the Crown does not accept, nor does the evidence demonstrate, that the claimants have been excluded from participation.

43.2 The claimants have alleged they are prejudiced through being excluded from participation in the review processes leading to the LGA and LEA. It is not accepted that the claimants were excluded from the review. As noted above, significant consultation was undertaken as part of the review. Submissions were received from Māori groups and organisations; there was no exclusion.

43.3 The claimants allege that they are suffering prejudice as a result of local government land not being subject to recommendations by the Waitangi Tribunal. No details of how the claimants are suffering, or are likely to suffer, prejudice in this regard have been provided; no claim advanced by the claimants in which they might otherwise seek recommendations in relation to local government land has been identified. No material prejudice has been identified.

43.4 The claimants accept that the issues about which they claim have been resolved by the Council and are now in place for the 2010 election. For example, the Council is required to have already made, and has already made, decisions about the electoral system for the 2010 elections. Indeed, the Council had no ability to reconsider whether the STV or FPP system should be used for the 2010 election, being bound by the outcome of the poll conducted in 2010.[9] The Council resolved in December 2008 not to establish Māori wards.[10]

43.5 The claimants note that the Council, at the time of filing the application, was finalising the LTCCP for the period 2009–2019. They noted that at the time of filing Council was required to adopt the plan by 30 June 2009 and the plan was required to be in place by 1 July 2009.[11] Those dates have now passed.

43.6 Even by the time of filing the application (12 June 2009) the LTCCP would have been progressed to the point where it would not have been possible to prevent the LTCCP being in place by 1 July 2009.

This is a statutory obligation. There are significant steps that need to be followed in the preparation of the LTCCP; for example, the plan can only be adopted after following the special consultative procedure set out in s 83.

43.7 Although the LTCCP is to cover a period of no less than 10 years (s 93 (7)(a)), it remains in force until the end of the third year to which it relates (s 93(6)), and may be amended at any time (s 93(4)). It will be next reviewed in 2012.

Crown action

44. The claimants identify no current or pending Crown action said to cause, or be likely to cause, significant and irreversible prejudice to the claimants.[12]

45. The claimants 'anticipate' that amending legislation may be introduced shortly in response to the Local Government Commission's recommendations following its review in 2008. Thus, it is said that the 'time is right' for the Tribunal to provide recommendations on the Treaty consistency of local government legislation.

46. The task of the Commission was to review the operation of the LGA and LEA having regard to the policy intent underpinning those Acts.[13]

47. The Commission noted that the LGA is clear in requiring local government to engage with Māori. Where there are variances in the level of the engagement turns on behavioural issues, rather than the legislative framework. As a result the Commission recommended the development and dissemination of further good practice guidance relating to local government engagement with Māori and opportunities for contributions to decision-making.

48. The Commission's focus was on the operation of the legislation, rather than on policy issues as to the content of the legislation.[14] There is no intention to undertake a general review of the legislation as a consequence of the Commission's review. The Government has initiated work to improve local government transparency, accountability, and financial management, which may result in changes to discrete aspects of the existing legislation. It is not intended that this work or any resulting legislation will address issues concerning representation or electoral systems.

49. In any event, the Crown submits that it is not realistic to suggest that, even should urgency be granted, there would be sufficient time to undertake a comprehensive review of local government participation and representation, including the possibility of amending legislation, prior to the local body elections in October 2010.

50. As noted below, it is likely that other parties may seek to participate in any hearing (should urgency be granted). For the Crown's part, time would be required to prepare evidence. Time would be required for a hearing and for delivery of the report. Once any report is released, the Crown would need to review its findings and any recommendations before undertaking consultation with stakeholders. If thought appropriate legislation would then be required. This would need to be in place sufficiently in advance of October 2010 to allow all necessary practical steps to occur prior to the election (for example, calling for nominations, preparation of voting papers etc). By contrast, local authorities were required to have made decisions on the electoral system for the 2010 election by November 2008.

51. In short, there is no current or pending Crown action that will, or is likely to, cause significant or irreversible prejudice to the claimants.

52. To the contrary, it is through the current Crown action being pursued through the initiatives outlined above that the issues raised by the claimants can be, and are being, progressed. This is discussed further below.

Alternative remedies/options

53. The claimants allege, amongst other things, that the Council is not adequately discharging its statutory functions; for example, it is alleged that its consultation is inadequate.[15] The statutory obligations of the Council are set out earlier. If the claimants consider that the Council is not fulfilling these obligations, it is open to the claimants to seek judicial review of the Council's actions and/or decisions.

54. It is also noted that a number of potential remedies or options available to the claimants were not taken by them.

55. As noted above, a poll may be held on whether or not there should be Māori wards or constituencies. A poll must be held if requested by a petition signed by 5 of the electors of the city or district. The poll is binding on local authorities. There is no evidence of any attempt to initiate such a petition.

56. Similarly, the claimants did not appeal, as they are able to do, against the Council's decision on general representation arrangements, including the decision not to establish Māori wards.

57. The issues raised in this claim were raised with the Council by claimant counsel's letter dated 24 July 2008 alleging, amongst other things, that the Council has not met its statutory obligations.[16] A response was demanded by 30 July 2008. The Council responded by this date.[17] On 22 August, claimant counsel responded.[18] Again, the Council responded promptly (1 September).[19] Correspondence with Ministers followed, the most recent being in March 2009.[20]

58. The lapse in time since these issues were first raised, coupled within the failure to pursue options provided in legislation, must, in the Crown's submission, counter against the claim for urgency.

59. As noted above, there are a number of current initiatives, both in the context of Treaty settlement negotiations, and in the context of the proposals for the reorganisation of Auckland governance, where the issues raised in this claim are being aired.

60. The Auckland governance proposals in particular require focus on the issue of the appropriate level of Māori participation and representation in local government in Auckland. The Local Government (Auckland Council) Bill is currently with the Auckland Governance Legislation Select Committee. Submissions on the Bill closed on 26 June 2009. The committee is scheduled to report to the House on 4 September 2009.

61. Around 1500 submissions, plus approximately 1000 form submissions, have been lodged in respect of the Bill. The Select Committee began hearing submissions this week. It can readily be anticipated that many of these submissions raise issues of Māori participation and representation. These issues will need to be addressed, considered and debated in the course of the progress of this, and any related, legislation. These issues will be heard on marae around Auckland by a special subcommittee of the Auckland Governance Legislation Select Committee comprising Tau Henare, Simon Bridges, Hone Harawira and Shane Jones. This is the first time a special Māori sub-committee has been established to separately hear submissions.

62. Section 6(6) of the Treaty of Waitangi Act precludes the Tribunal from inquiring into any Bill that has been introduced into the House unless that Bill has been referred to the Tribunal in accordance with s 8. Although the claimants are concerned with the actions of the Hamilton City Council, and have not directly sought to have the Tribunal inquire into the Local Government (Auckland Council) Bill, the claim challenges the legislative framework generally, and in particular issues such as participation in decision-making and representation on local government (for

example, should there be separate Māori wards, or should the STV (as opposed to FPP) system be adopted).

63. The Crown says that the principles that underpin s 6(6) mean that the Tribunal needs to be cautious about inquiring into these issues which, while being addressed in the context of Auckland and not in the context of the legislative framework generally, nevertheless will be considered as part of a pending legislative process.

64. The outcome of these various streams of work will be influential in informing the Crown's position forward more generally. An urgent hearing will be premature. There is no current or pending Crown action identified by the claimants that will cause, or is likely to cause, any significant or irreversible prejudice to the claimants. The Crown says that the current process and initiatives identified above are alternative options through which these issues can be, and are being, considered and should be allowed to run their course.

Readiness to proceed

65. The claimants advise that they are ready to proceed to a hearing. Indeed it is clear that significant time has been put into preparation of the briefs of evidence and the large amount of attached documents.

66. The Crown understands, however, that the Hamilton City Council has not been served with either the claim or the application, despite allegations being made directly against it. Nor does it appear that the Tribunal have distributed the claim to the Council, despite the direction that it be distributed to all interested parties. The involvement of the Council would appear critical in respect of both the substantive claim and the application for urgency. The Crown is not in a position to respond to the allegations concerning the Council's conduct.

67. Likewise, it is to be expected that other Māori would have an interest in this matter. The differing interests of tangata whenua (in the present case, Waikato-Tainui) and taura here would need to be reflected.[21] Given that relief is sought in relation to the legislative framework generally, and that other claims have been made to the Tribunal concerning local government, Māori from other areas would likely be interested. As too might other local authorities, or Local Government New Zealand.

Other grounds

68. The relief sought includes a recommendation that legislation require that all persons and entities carrying out functions or exercising powers under the Local Electoral Act 2001 and the Local Government Act 2002 are not permitted to act in a manner inconsistent with the principles of the Treaty of Waitangi.

69. As noted above, s 4 of the LGA was formulated in a way to provide clarity and certainty. In this regard, the Crown notes the observations of Professor Boast in his essay, 'The Treaty and Local Government: Emerging Jurisprudence':[22]

> All of the above factors point, I believe, to the manifest unsuitability of the Treaty of Waitangi at the present time as a guide and set of principles for local government, and highlight the attention that should be paid to the Local Government Bill's Treaty provisions now and in the future. Local Government has to deal with practical issues in the here and now. Grand constitutional debates about sovereignty and kawanatanga (governance) exist on a plane light years away from difficult local problems. . . . Solving these by means of statutory invocation to the Treaty of Waitangi just fails to help matters in a meaningful way. To drag in the Treaty at this level only exposes local bodies and Māori communities to legal and constitutional debate that

cannot be resolved. For the core problems are about sovereignty and the distribution of power.

It is far preferable for local bodies to be given clear and precise statutory duties and responsibilities that outline their obligations toward local Māori communities. The various specific consultation requirements of the Resource Management Act 1991 are an example and seem to work with little difficulty. The problematic section in the RMA has been section 8, which has inevitably led to considerable confusion and uncertainty. Rather than foist unresolvable difficulties on local bodies by extending statutory references to the Treaty to the Local Government Act 1974, it would be better for our legislators to carefully and responsibly consider the actual day-to-day problems that currently exist and draft pragmatic solutions to assist in their resolution. This appears to have been the intention of the Labour Alliance Cabinet in the review of local government; whether practical statutory guidelines exist in the Local Government Bill remains to be seen.'

70. As Professor Boast notes, the review of local government that resulted in the 2002 Act focussed on identifying 'clear and precise statutory duties and responsibilities' for local authorities through the provisions of Part 6 of the Act in particular. The Crown says that the processes and initiatives described above should be allowed to run their course. It is through such processes that clear and pragmatic options can be identified.

Conclusion

71. The Crown opposes the application for urgent hearing for the reasons set out in this memorandum.

DATE: 9 July 2009

D N Soper
Counsel for the Crown

Notes

58. Memorandum in Support of Urgency, Paragraph 62
59. Memorandum in Support of Urgency, paragraph 63
60. Memorandum in Support of Urgency, paragraph 64
61. Resource Management Act, Foreshore and Seabed Endowment Act, Harbour Boards Dry Land Endowment Act, Hazardous Substances and New Organisms Act, and Hauraki Gulf Marine Park Act
62. This resulted in the Local Government (Rating) Act 2002. This is beyond the scope of the current claim.
63. Page 398.
64. The purpose of a LTCCP is to: describe the activities of the local authority; describe the community outcomes of the local authority's district or region; provide integrated decision-making and co-ordination of the resources of the local authority; provide a long-term focus for the decisions and activities of the local authority; provide a basis for accountability of the local authority; and provide an opportunity for participation by the public in decision-making processes on activities to be undertaken by the local authority (s93(6)).
65. Memorandum in Support of Urgency, paragraph 70.
66. Dickson, paragraph 48
67. Dickson, paragraph 57
68. Memorandum in Support of Urgency, paragraphs 68.3–68.4
69. See Memorandum in Support of Urgency, paragraphs 63–64. No Crown current or pending action is identified; rather it is simply alleged that the powers exercised by local government are 'ongoing, extensive and favourable.
70. Dickson, Attachment CC
71. Dickson, Attachment CC
72. Statement of Claim, paragraph 10; see also Attachment B to Dickson. This letter to the Council alleges that the Council has breached its obligations under the LGA.
73. Dickson, Attachment B
74. Dickson, Attachment C
75. Dickson, Attachment D
76. Dickson, Attachment E
77. Dickson, Attachment FF–HH, LL–NN
78. It is understood that Waikato-Tainui and various urban Maori organisations have made submissions on the Auckland Bill and will be presenting these to the special sub-committee.
79. In *Local Government and the Treaty of Waitangi*, Hayward (ed), Oxford University Press, 2003

Downloaded from www.waitangitribunal.govt.nz

APPENDIX IV

SELECT RECORD OF INQUIRY

SELECT RECORD OF PROCEEDINGS

1.1 Statement of Issues

s011 Final statement of issues for claims in the Wairarapa ki Tararua district inquiry, 2004

1.2 Papers in Proceedings

2.249 Crown counsel, statement of general position, 1 August 2003

2.255 Crown Law Office, memorandum concerning current acreage calculations, 1 August 2003

2.261 Counsel for Rangitāne o Wairarapa, memorandum concerning Crown statement of general position and statement of response to s0c3, 22 August 2003

2.273 Judge C M Wainwright, memorandum concerning foreshore and seabed, customary fisheries, additional issues for the Ngāti Hinewaka, and draft statement of issues, 3 October 2003

2.383
(b) Crown counsel, memorandum concerning Māori language deeds, 22 July 2004

2.437 Crown counsel, memorandum concerning the status of the offer-back of Ōkautete School, 17 December 2004

2.448 Crown counsel, memorandum concerning Ōkautete School and the attachment of the Crown's disposal of gifted land, 23 February 2005

2.463 Crown counsel, letter to the Tribunal concerning customary fishing, 15 May 2006

2.464 Crown counsel, letter to the Tribunal concerning post-April 2006 fisheries evidence update, 20 November 2008

1.3 Transcripts and Translations

4.1 Transcript of first hearing held in Masterton, 29 March–2 April 2004

4.2 Transcript of second hearing held in Dannevirke, 10–14 May 2004

4.4 Transcript of David Ambler cross-examining Terry Lynch, seventh hearing, 26 October 2004

4.5 Transcript of Fergus Sinclair cross-examining Bob Hayes, seventh hearing, 26 October 2004

4.6 Transcript of Prue Kapua cross-examining Lyndsay Head, seventh hearing, 26 October 2004

4.7 Transcript of Fergus Sinclair cross-examining Paul Goldstone, seventh hearing, 26 October 2004

4.8 Transcript of Grant Powell cross-examining Don Loveridge, seventh hearing, 26 October 2004

SELECT RECORD OF DOCUMENTS

A Series

A1 Brad R Patterson, 'The Pre 1865 Wairarapa Land Purchase Surveys: A Preliminary Assessment', 1998

A3 Joy Hippolite, 'Wairoa ki Wairarapa Report: An Overview' (commissioned research report, Wellington: Waitangi Tribunal, 1991)

A4 Paul Goldsmith, *Wairarapa*, Rangahaua Whanui series (Wellington: Waitangi Tribunal, 1996)

A5 Ben White, *Inland Waterways: Lakes*, Rangahaua Whanui series (Wellington: Waitangi Tribunal, 1998)

A6 Phillip Cleaver, 'A History of the Purchase and Reserves of the Castlepoint Block' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2000)

(a) Phillip Cleaver, summary, 'A History of the Purchase and Reserves of the Castlepoint Block', 2004

A18 Angela Ballara and Gary Scott, 'Tāmaki or the Seventy Mile Bush', in 'Crown Purchases of Maori Land in Early Provincial Hawke's Bay: vol 1, Ahuriri–Mōhaka-Waikare', report on behalf of the claimants for Wai 201 to the Waitangi Tribunal, 1994

A19 Angela Ballara and Gary Scott, 'Tautāne', in 'Crown Purchases of Maori Land in Early Provincial Hawke's Bay: vol 1, Ahuriri–Mohaka-Waikare', report on behalf of the claimants for Wai 201 to the Waitangi Tribunal, 1994

A24 Peter McBurney, 'The Court Cases of Nireaha Tamaki of Ngati Rangitaane, 1894–1901' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001)

A25 Cathy Marr, 'Wairarapa Twentieth Century Environmental Overview Report: Lands, Forest and Coast' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)

A26 Barbara Gawith and Eve Hartley, 'The Native Land Court in Wairarapa, 1865–1900: A Statistical Profile' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001)
(1)–(293) Barbara Gawith and Eve Hartley, document bank

A27 Stephen Robertson, 'The Alienation of the Seventy Mile Bush (Wairarapa)' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001)

A28 Janet Sceats, Tahu Kukutai, Ian Pool, and Portal Consulting, 'The Socio-Demographic and Economic Characteristics of Maori in the Wairarapa ki Tararua region, 1981–2001' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)

A29 Warren Wairau, 'Wairarapa Maori ki Pouakani Research Report' (commissioned research report, Wellington: Waitangi Tribunal, 2002)

A30 James Mitchell, 'Land Alienations in the Wairarapa 1880–1900' (commissioned research report, Wellington: Waitangi Tribunal, 2002)

A31 Dougal Ellis, 'The Wai 420 Claim Marine Issues Report' (commissioned research report, Wellington: Waitangi Tribunal, 2002)

A32 Cathy Marr, Phillip Cleaver, and Lecia Schuster, 'The Taking of Maori Land for Public Works in the Wairarapa ki Tararua district, 1880–2000' (commissioned research report, Wellington: Waitangi Tribunal, 2002)
(a) Cathy Marr, Phillip Cleaver, and Lecia Schuster, document bank for 'The Taking of Maori Land for Public Works in the Wairarapa ki Tararua district, 1880–2000', not dated

A33 Barry Rigby with Andrew Francis, 'Wairarapa Crown Purchases, 1853–1854' (commissioned research report, Wellington: Waitangi Tribunal, 2002)

A34 Tom White, 'The Jury Whanau Land Claims' (commissioned research report, Wellington: Waitangi Tribunal, 2002)

A35 Steven Oliver, 'Tararua Environmental Issues Report' (commissioned research report, Wellington: Waitangi Tribunal, 2002)

A36 Merata Kawharu and Katie Poledniok, 'Wairarapa ki Tararua Customary Tenure Overview' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)

A37 Therese Crocker, 'History of the Alienation of Wairarapa Moana' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)
(a) Therese Crocker, supporting papers to accompany 'History of the Alienation of Wairarapa Moana', 2001

A39 Paula Berghan, 'Block Research Narratives of the Tararua: 1870–2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)
(a)–(o) Paula Berghan, supporting papers for 'Block Research Narratives of the Tararua: 1870–2000'

A40 Tony Walzl, 'The Wairarapa Five Per Cents: 1854–1900' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001)
(a) Tony Walzl, presentation summary and response to issues for the report 'The Wairarapa Five Per Cents: 1854–1900', not dated

A41 Robert McClean, 'Wairarapa 20th Century Environmental Overview Report: Inland Waterways' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)

A42 Tony Walzl, 'Wairarapa Land Issues Overview: 1900–2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)
(a) Tony Walzl, presentation summary and responses to issues for the report 'Wairarapa Land Issues Overview: 1900–2000', 2004

A43 Tony Walzl, 'Ngai Tumapuhia Reserves and Non-Purchase Land Blocks' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001)
(a)–(l) Tony Walzl, supporting papers for 'Ngai Tumapuhia Reserves and Non-Purchase Land Blocks', not dated

A44 Tony Walzl, 'Land Purchasing in the Wairarapa: 1840–1854' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001)

A45 Takirirangi Smith, 'Tukuwhenua and Maori Land Tenure in Wairarapa' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001)

A46 Helen McCracken, 'Land Alienation in the Wairarapa District Undertaken by the Crown and the Wellington Provincial Council: 1854–1870' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001)
(a) Helen McCracken, supporting papers for 'Land Alienation in the Wairarapa District Undertaken by the Crown and the Wellington Provincial Council: 1854–1870', not dated
(c) Helen McCracken, executive summary and response to issues for the report 'Land Alienation in the Wairarapa District Undertaken by the Crown and the Wellington Provincial Council 1854–1870', 2004

A47 Peter McBurney, 'Tamaki-nui-a-Rua: Land Alienation Overview' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)
(b) Peter McBurney, 'Appendix 1: Summary of Sales of Māori land in Tāmaki-nui-a-Rua', 2004

A48 Bruce Stirling, 'Wairarapa Maori and the Crown: vol 1 – Karanga: The Promise' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)

A49 Bruce Stirling, 'Wairarapa Maori and the Crown: vol 2 – Wero: The Challenge' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)

A50 Bruce Stirling, 'Wairarapa Maori and the Crown: vol 3 – Whakautu: The Response' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)

A51 Bruce Stirling, 'Wairarapa Maori and the Crown: vol 4 – Nonoke: The Struggle' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)
(a)–(g) Bruce Stirling, supporting papers for 'Wairarapa Maori and the Crown'
(h) Bruce Stirling, summary of evidence for 'Wairarapa Maori and the Crown: vol 4 – Nonoke: The Struggle', 2004

A53 Takirirangi Smith, 'Koha and The Ngati Kahungunu: Interpretation of the Five Percent Purchases in Wairarapa' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)

A54 Takirirangi Smith, 'Land, Water and Resource Use in Wairarapa' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001)

A55 Helen McCracken, 'The Proprietors of the Mangakino Incorporation Pouakani no 2 Trust and the Crown, 1896–1990s, the evidence of Helen McCracken' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001)

A56 NIWA, 'Review of the State of Freshwater Resources in the Wairarapa ki Tararua Inquiry District' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)

A57 Steven Chrisp, 'The Occupation of Wairarapa: Orthodox and Non Orthodox Versions', in *Journal of the Polynesian Society*, vol 102, no 1, 1993, pp 39–70

A58 Rebecca O'Brien and Robert McClean, 'Environmental Issues Overview Report for the Tararua District, Scoping Report' (commissioned research report, Wellington: Waitangi Tribunal, 2001)

A59 Bruce Stirling, 'Ngati Hinewaka Lands: 1840–2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003)

A60 Steven Chrisp, 'He Kōrero Tuku Iho mō Rangitāne o Wairarapa, Traditional History', 2002
(a) Steven Chrisp, executive summary of 'He Kōrero Tuku Iho mō Rangitāne o Wairarapa, Traditional History'

A61 Craig Innes and Bob Metcalf, 'Te Karaitiana Te Korou Report (Wai 770)' (commissioned research report, Wellington: Waitangi Tribunal, 2003)

A62 Michael O'Leary, 'Ngā Take Motuhake a Rangitāne: Rangitāne, the Crown and the Alienation of the Wairarapa ki Tamaki nui ā Rua rohe' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)

A63 Angela Ballara and Gary Scott, 'Introduction', in 'Crown Purchases of Maori Land in Early Provincial Hawke's Bay: vol 1, Ahuriri–Mohaka-Waikare', report on behalf of the claimants for Wai 201 to the Waitangi Tribunal, 1994

A64 Monica Irvine, 'Tamaki-nui-a-Rua, Social-Economic, 1870–1960' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003)

A65 Janine Hayward, 'The Treaty Challenge: Local Government and Maori; A Scoping Report' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002)
(a) Janine Hayward, summary of 'The Treaty Challenge: Local Government and Maori; A Scoping Report'

A67 Janet Davidson, 'Wahi Tapu and Portable Taonga of Ngati Hinewaka: Desecration and Loss; Protection and Management', report prepared for the Ngāti Hinewaka Claims Committee, 2003
(a) Janet Davidson, supporting papers for 'Wahi Tapu and Portable Taonga of Ngati Hinewaka: Desecration and Loss; Protection and Management', 2003
(b) Janet Davidson, summary of report of 'Wahi Tapu and Portable Taonga of Ngati Hinewaka: Desecration and Loss; Protection and Management', 2004

A68 Patrick Parsons and Dorothy Ropiha, 'Rangitāne o Tamaki-Nui-a-Rua Traditional History', 2003

A69 Roberta McIntyre, 'A History of Wairarapa Moana, 1896–1944' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003)
(a) Roberta McIntyre, summary of evidence of 'A History of Wairarapa Moana, 1896–1944', 2004

A70 Fiona Small and Dougal Ellis, 'Maori Land Blocks in the Wairarapa ki Tararua District Inquiry: Acreage and Alienation Data from 1865' (commissioned research report, Wellington: Waitangi Tribunal, 2003)

A71 Foss Leach, 'Depletion and Loss of the Customary Fishery of Ngati Hinewaka: 130 Years of Struggle to Protect a Resource Guaranteed Under Article Two of the Treaty of Waitangi', report prepared for the Ngāti Hinewaka Claims Committee, 2003
(b) Foss Leach, supporting papers for 'Depletion and Loss of the Customary Fishery of Ngati Hinewaka: 130 Years of Struggle to Protect a Resource Guaranteed Under Article Two of the Treaty of Waitangi'

A76 Inquiry District Map Book, pt 2 – Depiction of Historic Land Blocks, 1853 to 1900 (Wellington: Crown Forestry Rental Trust, not dated)

A77 Frances Reiri-Smith, 'Māori Language Resource Project' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003)

A78 Steven Oliver, 'Tararua District: Twentieth Century Land Alienation' (commissioned research report, Wellington: Waitangi Tribunal, 2004)

A79 George Ngatiamu Matthews, affidavit in support of claims in the foreshore and seabed urgent inquiry, 2004

A80 Michael George Colley, brief of evidence, 30 January 2004

A81 Donald M Loveridge, 'An Object of the First Importance – Land Rights, Land Claims and Colonization in New Zealand, 1839–1852' (commissioned research report, Wellington: Crown Law Office, 2004)

A83 Angela Ballara, 'The Origins of Ngati Kahungunu', PhD thesis, Victoria University of Wellington, 1991

A85
(f) AJHR and ALC sources, vol 4, commissioned database (Wellington: Crown Law Office, 2004)

A86 Paul Goldstone, 'The Native Land Court at Wairarapa: 1865–1882' (commissioned research report, Wellington: Crown Law Office, 2004)

A87 Opening submissions of Hēnare Matua whānau claim, Wai 171, 29 March 2004

A97 Paul Meredith, 'Translations of Māori Newspaper Material' (commissioned research report, Wellington: Crown Law Office, 2004)

A98 Robert Hill, statement introducing claims of Ngāi Tūmapuhia-ā-Rangi, 5 May 2004

A99 Nelson Francis Rangitākaiwaho, brief of evidence, 15 May 2004

A100 Turton's Deeds for the Province of Wellington

A102 Tūranganui – East Side of the Lake – deed 219

A103 Castlepoint deed

A105 Tūranganui – East Side of the Lake – deed 582

A107 Bob Hayes, 'Protection Mechanisms (Issue 17)' (commissioned research report, Wellington: Crown Law Office, 2002)

A110 Donald M Loveridge, 'Maori Lands and British Colonization, 1840–1865: A Preliminary Analysis' (commissioned research report, Wellington: Crown Law Office, 2001)

A111 Lyndsay Head, 'Land, Citizenship and the Mana Motuhake Movements among Ngati Kahungunu: A Study of Maori Language Documents in Ngati Kahungunu History, 1840–1865' (commissioned research report, Wellington: Crown Law Office, 1999)

A113 Donald M Loveridge, 'Evidence Concerning the Origins of the Native Land Acts and Native Land Court in New Zealand' (commissioned research report, Wellington: Crown Law Office, 2000)

A114 Professor Gary Hawke, 'Evidence Concerning Economic History Issues' (commissioned research report, Wellington: Crown Law Office, 2000)

A117 Donald M Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952*, Rangahaua Whanui series (Wellington: Waitangi Tribunal, 1996)

A118 Dr Bryan Gilling, 'Lands, Funds and Resources: Aspects of the Economic History of Maori in Wairarapa ki Tararua since 1840' (commissioned research report, Wellington: Waitangi Tribunal, 2004)

A119 Duncan Anderson, 'Index to Database on Squatting in the Wairarapa, the Native Land Purchase Ordinance and its Enforcement' (commissioned research report, Wellington: Crown Law Office, 2004)

A120 Andrew Joel, 'A Study of the Status of a Portion of Land on the Margin of Lake Onoke at the Junction of the Turanganui and Ruamahanga Rivers, 1853–1931' (commissioned research report, Wellington: Crown Law Office, 2004)
(a) Andrew Joel, supporting documents to accompany 'A Study of the Status of a Portion of Land on the Margin of Lake Onoke at the Junction of the Turanganui and Ruamahanga Rivers, 1853–1931', 2004
(b) Andrew Joel, summary of report 'A Study of the Status of a Portion of Land on the Margin of Lake Onoke at the Junction of the Turanganui and Ruamahanga Rivers, 1853–1931', 2004

A121 Michael Batson, 'Nga Waka-a-Kupe Block Research Narrative 1870–1970' (commissioned research report, Wellington: Crown Forest Rental Trust, 2004)
(a) Michael Batson, supporting papers for 'Nga Waka-a-Kupe Block Research Narrative 1870–1970', 2004

C Series

C1 Kingi Matthews, brief of evidence, 21 May 2004

C5 Charmaine Kura-o-Tahu Kawana, brief of evidence, 21 May 2004

C6 Matai Hamuera Joseph Broughton, brief of evidence, 21 May 2004

C7 Peter William Hawaikirangi Te Tau, brief of evidence, 21 May 2004

C9 Hinepatokoriki Paewai, brief of evidence, 21 May 2004

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SELECT BIBLIOGRAPHY

Anderson, Atholl. 'A Fragile Plenty: Pre-European Māori and the New Zealand Environment'. In *Environmental Histories of New Zealand*. Edited by E Pawson and T Brooking. Melbourne: Oxford University Press, 2002, pp 19–34

Arnold, Rollo D. *New Zealand's Burning: The Settlers' World in the mid 1880's*. Wellington: Victoria University Press, 1994

Bagnall, Austin Graham. *Wairarapa: An Historical Excursion*. Masterton: Hedley's Bookshop, 1976

Ballara, Angela. 'The Origins of Ngati Kahungunu'. Doctoral thesis. Victoria University of Wellington, 1991

———. 'Tribal Landscape Overview, c 1800–c 1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts'. Report commissioned by the Crown Forestry Rental Trust, 2004

———. 'Te Whanganui-a-Tara: Phases of Maori Occupation of Wellington Harbour c 1800–1840'. In *The Making of Wellington, 1800–1914*. Edited by David Hamer and Roberta Nicholls. Wellington: Victoria University Press, 1990, pp 9–34

Ballara, Angela and Gary Scott. *Crown Purchases of Maori Land in Early Provincial Hawke's Bay*. 2 vols. Report on behalf of the claimants for Wai 201 to the Waitangi Tribunal, 1994

Barrington, John. *Separate but Equal?: Māori Schools and the Crown, 1867–1969*. Wellington: Victoria University Press, 2008

Barrington, J M, and T H Beaglehole. *Maori Schools in a Changing Society: An Historical Review*. Wellington: New Zealand Council for Educational Research, 1974

Belich, James. *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century*. Auckland: Allen Lane, 1996

———. *Paradise Reforged: A History of the New Zealanders from the 1880s to the Year 2000*. Auckland: Penguin Press, 2001

———. *The New Zealand Wars*. Auckland: Auckland University Press, 1986

Bennion, Tom. *Maori Land Court and Boards, 1909 to 1952*. Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1997

Best, Elsdon. 'Forest Lore of the Maori'. In *Dominion Museum Bulletin 14*. Wellington: Polynesian Society in collaboration with Dominion Museum, 1942

Binney, Judith, Judith Bassett and Erik Olssen. *The People and the Land*. Wellington: Allen & Unwin, 1990

Brooking, Tom. '"Busting Up" The Greatest Estate of All: Liberal Maori Land Policy, 1891 –1911'. In *New Zealand Journal of History*. vol 26, no 1, April 1992, pp 78–98

Buller, Walter Lawry. *A History of the Birds of New Zealand*. London: John van Voorst, 1873

———. *A History of the Birds of New Zealand*. London: W L Buller, 1888

———. 'On the Structure and Habits of the Huia'. In *Transactions and Proceedings of the New Zealand Institute*. vol 3, 1870

Buller, Walter Lawry, and John Gerrard Keulemans. *Supplement to the Birds of New Zealand*. London: W L Buller, 1905

Burdon, Randall Matthew. *High Country: The Evolution of a New Zealand Sheep Station*. Auckland: Whitcombe and Tombs, 1938

Bush, Graham. 'The Historic Reorganisation of Local Government'. In *The Fourth Labour Government: Politics and Policy in New Zealand*. Edited by Martin Holland and Jonathan Boston. Auckland: Oxford University Press, 1990, pp 232–250

Chavasse, Claude Geoffrey Rowden, and John Henry Gerard Johns. *New Zealand Forest Parks*. Wellington: Government Printer, 1983

Clark, Elizabeth. 'Section 33 of the Resource Management Act 1991'. In *Local Government and the Treaty of Waitangi*. Edited by J Hayward. Melbourne: Oxford University Press, 2003, pp 43–54

Colenso, William. 'A Description of the Curiously-deformed Bill of a Huia (*Heteralocha acutirostris*, Gould), an Endemic New Zealand Bird'. In *Transactions and Proceedings of the New Zealand Institute*. vol 19, 1886

Coombes, Brad. 'Postcolonial Conservation and Kiekie Harvests at Morere New Zealand: Abstracting Indigenous Knowledge from Indigenous Polities'. In *Geographical Research*. vol 45, issue 2, 2007, pp 186–193

Cowie, Graham Bruce Alistair, and Robert Alan Wilson. 'Public Health Survey of Maoris in the North Wairarapa District'. Unpublished fifth year medical student research essay. Dunedin: Otago University Medical School Library, 1934

Craig, J L. 'The Effects of Kiore on Other Fauna'. In *The Offshore Islands of Northern New Zealand*. Edited by A E Wright and R E Beever. Information series 16. Wellington: Department of Lands and Survey, 1986, pp 75–83

Daamen, Rose. *The Crown's Right of Pre-emption and Fitzroy's Waiver Purchases*. Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1998

Davidson, Janet, and Geoffrey Irwin. 'Voyaging and Colonisation: the Spread of Settlement in the Pacific'. In *Bateman New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei*. Edited by Malcolm McKinnon. Auckland: David Bateman Ltd, 1997, plate 10

Deans, John. *Pioneers on Port Cooper Plains: The Deans Family of Riccarton and Homebush*. Christchurch: Simpson & Williams, 1964

Department of Education. *The Teaching of English in Native Schools: The Direct, or Natural, Method*. Wellington: Government Printer, 1917

Department of Conservation. *Lake Wairarapa Wetlands Action Plan, 2000–2010*. Wellington: Department of Conservation, 2000

Department of Internal Affairs. *A Survey of Local Authority Election Candidates in the 2001 Local Authority Elections*. Wellington: Department of Internal Affairs, 2002

———. *A Survey of Local Authority Election Candidates in the 2004 Local Authority Elections*. Wellington: Department of Internal Affairs, 2006

———. *A Survey of Local Authority Election Candidates in the 2007 Local Authority Elections*. Wellington: Department of Internal Affairs, 2008

———. *Dictionary of New Zealand Biography*. 5 vols. Wellington: Department of Internal Affairs, 1990–2000

———. *Reviewing the Local Government Act 1974: Have Your Say Consultation Document*. Wellington: Department of Internal Affairs, 2001

Department of Justice. *Principles of Crown Action on the Treaty of Waitangi*. Wellington: Department of Justice, 1989

Dow, Derek A. *Maori Health and Government Policy, 1840–1940*. Wellington: Victoria University Press, 1999

Durie, Mason. *Whaiora: Māori Health Development*. 2nd ed Auckland: Oxford University Press, 1998

Enys, J D. 'An Account of the Maori Manner of Preserving the Skin of the Huia, *Heteralocha auctirostris*, Buller'. In *Transactions and Proceedings of the New Zealand Institute*. vol 8, 1875
Evans, B L. *Agricultural and Pastoral Statistics of New Zealand, 1861–1954*. Wellington: Government Printer, 1956

Galbreath, Ross. *Paintings of the Birds of New Zealand: The Art of J G Keulemans*. Auckland: Random House, 2006
———. *Walter Buller: The Reluctant Conservationist*. Wellington: GP Books, 1989
Gill, Brian, and Paul Martinson. *New Zealand's Extinct Birds*. Auckland: Random Century, 1991
Goldsmith, Paul. 'Medicine, Death and the Gospel in Wairarapa and Hawke's Bay, 1845–1852'. In *New Zealand Journal of History*. vol 30, no 2, 1996, pp 163–181
———. *Wairarapa*. Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1996
Gould, Ashley. 'Maori Land Development, 1929–1954'. Report commissioned by the Crown Forestry Rental Trust, Wellington, 1996
Gould, John. *A Synopsis of the Birds of Australia and Adjacent Islands*. London: J Gould, 1837

Haami, Bradford J T M. 'The Kiore Rat in Aotearoa: A Maori Perspective'. In *Science of Pacific Island Peoples: Fauna, Flora, Food & Medicine*. 4 vols. Edited by J Morrison, P Geraghty, and L Crowl. Suva: Institute of Pacific Studies, University of the South Pacific, 1994, vol 3, pp 65–76
Hambly, Raymond Ernest. 'Dairying in the Wairarapa: A Socio-Economic Survey Interpreted in Terms of Historical Small Farm Settlement'. Masters thesis, Victoria University of Wellington, 1966
Hand, Seán. Ed. *The Levinas Reader*. Oxford: B Blackwell, 1989
Hardie, Bruce. *Statistics of New Zealand for the Crown Colony Period, 1840–52*. Auckland: Department of Economics, Auckland University College, 1954
Hargreaves, Raymond Philip. 'Changing Maori Agriculture in pre-Waitangi New Zealand'. In *Journal of the Polynesian Society*. vol 72, no 2, 1963, pp 101–117
Hasman, Cynthia. *Mangakino in Perspective: The Story of a Hydro Town*. Turangi: Tongariro Welfare Association, 1976
Hawke, Gary Richard. *The Making of New Zealand: An Economic History*. Cambridge: Cambridge University Press, 1985
Hill, Ron D. 'The Land and the Squatter: Wairarapa, 1843–1853 – An Essay in Human Ecology'. Masters thesis. Victoria University of Wellington, 1962
———. 'Pastoralism in the Wairarapa: 1844–53'. In *Land and Society in New Zealand*. Edited by R F Watters. Wellington: Reed, 1965, pp 25–49
Hunn, J K. *Report on Department of Maori Affairs with Statistical Supplement*. Wellington: Government Printer, 1961

Irwin, Geoffrey. *The Prehistoric Exploration and Colonisation of the Pacific*. Cambridge: Cambridge University Press, 1992

Ka'ai, Tānia, Michael Reilly, John Moorfield, and Sharon Mosely. Eds. *Ki te Whaiao: An Introduction to Maori Culture and Society*. Auckland: Pearson Longman, 2004

King, Carolyn M. *Immigrant Killers: Introduced Predators and the Conservation of Birds in New Zealand*. Auckland: Oxford University Press, 1984

King, Michael. *Maori: A Photographic and Social History*. Auckland: Heinemann, 1983

Lange, Raeburn. *May the People Live: A History of Maori Health Development, 1900–1920*. Auckland: Auckland University Press, 1999

Law Commission. *Report on the Treaty of Waitangi and Maori Fisheries*. Wellington: Law Commission, 1989

———. 'Māori Custom and Values in New Zealand Law'. Study paper 9. Wellington: Law Commission, March 2001

Leach, B Foss, and Helen May Leach. 'Prehistoric Communities in Eastern Palliser Bay'. In *Prehistoric Man in Palliser Bay: National Museum of New Zealand Bulletin 21*. Edited by B Foss Leach and Helen May Leach. Wellington: National Museum of New Zealand, 1979, pp 251–272

Light, Elizabeth. 'All Creatures Great and Small'. *North & South*. Issue 235, October 2005

Lloyd Prichard, Muriel F. *An Economic History of New Zealand to 1939*. Auckland: Collins, 1970

Local Futures. *Local Government Consultation and Engagement with Māori*. Wellington: School of Government, Victoria University of Wellington, 2005

Local Government Commission. *Determination of Representation Arrangements to Apply to the Election of the Masterton District Council*. Wellington: Local Government Commission, 2007

———. 'Review of the Local Government Act 2002 and the Local Electoral Act 2001 Background Paper: Local Authority Engagement with Māori'. Wellington: Local Government Commission, 2008

———. *Review of the Local Government Act 2002 and the Local Electoral Act 2001: Summary Report*. Wellington: Local Government Commission, 2008

Local Government New Zealand. *Co-management Case Studies Involving Local Authorities and Māori*. Wellington: Local Government New Zealand, 2007

———. *Local Authority Engagement with Māori: Survey of Current Council Practices*. Wellington: Local Government New Zealand, 2004

Loveridge, Donald M. *Maori Land Councils and Maori Land Boards: A Historical Overview 1900 to 1952*. Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1996

McClean, Richard, and Trecia Smith. *The Crown and Flora and Fauna: Legislation, Policies and Practices, 1983–1998*. Wellington: Waitangi Tribunal, 2001

Macdonald, George Ranald. *The Canterbury Frozen Meat Company Ltd: The First Seventy-Five Years*. Christchurch: Whitcombe and Tombs, 1957

McDowall, Robert Montgomery. *Gamekeepers for the Nation: The Story of New Zealand's Acclimatisation Societies, 1861–1990*. Christchurch: Canterbury University Press, 1994

McEwen, Jock M. *Rangitāne: A Tribal History*. Auckland: Reed Books, 1986

McFadgen, Bruce G. *Archaeology of the Wellington Conservancy: Wairarapa: A Study in Tectonic Archaeology*. Wellington: Department of Conservation, 2003

McHugh, Paul. *The Māori Magna Carta: New Zealand Law and the Treaty of Waitangi*. Auckland: Oxford University Press, 1991

McLauchlan, Gordon. *The Farming of New Zealand: The People and the Land*. Auckland: Penguin, 2006

McNab, Robert. Ed. *Historical Records of New Zealand*. 2 vols. Wellington: Government Printer, 1908

Mahuta, Robert. 'Reform of Local and Regional Government: A Tainui Perspective'. In *New Zealand Geographer*. vol 44, no 2, 1988, pp 84–85

Maling, Peter Bromley. *Samuel Butler at Mesopotamia*. Wellington: Government Printer/New Zealand Historic Places Trust, 1984

Martin, John E. *The Forgotten Worker: The Rural Wage Earner in Nineteenth-Century New Zealand*. Wellington: Allen & Unwin/Trade Union History Project, 1990

Mason, George E. 'Observations on Certain External Parasites Found upon the New Zealand Huia (*Neomorpha acutirostris Gould*) and Not Previously Recorded'. In *Transactions of the New Zealand Institute*. Vol 53, 1921

Massy, Charles. *The Australian Merino: The Story of a Nation*. Melbourne: Viking O'Neil, 1990

Ministry for the Environment. *He Tohu Whakamarama: A Report on the Interactions between Local Government and Maori Organisations*. Wellington: Ministry for the Environment, 1998

———. *Iwi and Local Government Interaction Under the Resource Management Act 1991: Examples of Good Practice*. Wellington: Ministry for the Environment, 2000

———. *Resource Management Act: Two Yearly Survey of Local Authorities 2005/2006*. Wellington: Ministry for the Environment, 2007

———. *Resource Management Consultation with Tangata Whenua*. Wellington: Ministry for the Environment, 1991

———. *Te Raranga a Mahi: Developing Environmental Management Plans for Whanau, Hapu and Iwi*. Wellington: Te Runanga o Ngai Tahu, Beca Carter Hollings and Ferner Ltd, and Wellington Tenths Trust, 2000

———. *The Resource Management Act Kia Matiratira: A Guide for Māori*. Wellington: Ministry for the Environment, 1992

———. *People, Environment and Decision Making: the Government's Proposals for Resource Management Law Reform*. Wellington: Ministry for the Environment, 1988

Ministry of Fisheries. *The State of Our Fisheries 2008*. Wellington: Ministry of Fisheries, 2008

Molloy, Les F. Ed. *Land Alone Endures*. Wellington: Department of Scientific and Industrial Research, 1980

Morris, Rod, and Hal Smith. *Wild South: Saving New Zealand's Endangered Birds*. Revised and extended edition. Auckland: TVNZ and Random House, 1995

Morrison, Catherine. Ed. *Nga Maharatanga o Wairarapa: The Past Around Us*. Masterton: Masterton District Library, 1991

Muir, J. 'The Changing of the Forest: Ecological Colonialism, Legislation, and the New Zealand Bush, 1840–1920'. Masters thesis. University of Waikato, 1995

Murray, Jenny E. *Crown Policy on Maori Reserved Lands, 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900*. Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1997

Myers, J G. 'The Present Position of the Endemic Birds of New Zealand'. In *New Zealand Journal of Science and Technology*. vol 6, no 2, 1923

Notes of Meetings between His Excellency the Governor (Lord Ranfurly), the Rt Hon R J Seddon, Premier and Native Minister, and Hon James Carroll, Members of the Executive Council Representing the Native Race and the Native Chiefs and the People at Each Place, Assembled in Respect of the Proposed Native Land Legislation and Native Affairs Generally during 1898 and 1899. Wellington: Government Printer, 1899

Oliver, William Hosking. *Claims to the Waitangi Tribunal*. Wellington: Waitangi Tribunal, 1991

Orange, Claudia. *The Treaty of Waitangi*. Wellington: Allen & Unwin, Port Nicholson Press with assistance from the Historical Publications Branch, Department of Internal Affairs, 1987

O'Malley, Vincent. *Agents of Autonomy: Maori Committees in the Nineteenth Century*. Wellington: Huia, 1998

O'Regan, Tipene. 'Ngai Tahu and the Crown: Partnership Promised'. In *Rural Canterbury: Celebrating its History*. Edited by G Cant and R Kirkpatrick. Wellington: Daphne Brasell Associates and Lincoln University Press, 2001, pp 1–20.

Palmer, Geoffrey. *New Zealand's Constitution in Crisis: Reforming Our Political System*. Dunedin: John McIndoe, 1992

Palmer, P H. 'Wairarapa Maori Health Problems – In Relation To Other Districts'. MB ChB thesis. Medical School, Otago University, 1957

Park, Geoff. *Effective exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912–1983*. Wellington: Waitangi Tribunal, 2001

Parliamentary Commissioner for the Environment. *Kaitiakitanga and Local Government: Tangata Whenua Participation in Environmental Management*. Wellington: Parliamentary Commissioner for the Environment, 1998

Patterson, Brad. 'Laagers in the Wilderness: The Origins of Pastoralism in the Southern North Island Districts, 1840–1955'. In *Stout Centre Review*. vol 1, no 3, 1991, pp 3–14

———. 'The White Man's Right: Alienation of Maori Lands in the Southern North Island Districts, 1840–1876'. In *Dynamic Wellington: A Contemporary Synthesis and Explanation of Wellington*. Edited by J McConchie, D Winchester, and R Willis. Wellington: Institute of Geography, Victoria University of Wellington, 2000

Peden, Robert L. 'Pastoralism and the Transformation of the Rangelands of the South Island of New Zealand, 1841 to 1912: Mt Peel Station, a case study'. Doctoral thesis. University of Otago, 2007

Petersen, George Conrad. *Forest Homes: The Story of the Scandinavian Settlements in the Forty Mile Bush New Zealand*. Wellington: AH & AW Reed, 1956

———. 'Pioneering the North Island Bush'. In *Land and Society in New Zealand: Essays in Historical Geography*. Edited by R F Watters. Wellington: Reed, 1965, pp 66–79

Petrie, Hazel. *Chiefs of Industry: Māori Tribal Enterprise in Early Colonial New Zealand*. Auckland: Auckland University Press, 2006

Phillipps, William John. *The Book of the Huia*. Christchurch: Whitcombe and Tombs Ltd, 1963

Phillipson, Grant A. *The Northern South Island: Part 1*. Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1995

Polack, Joel Samuel. *New Zealand: Being a Narrative of Travel and Adventures During Residence in the Country Between the Years 1831 and 1837*. London: Richard Bentley, 1838

Pool, Ian. *Te Iwi Maori: a New Zealand Population Past, Present and Projected*. Auckland: Auckland University Press, 1991

Rennie, Hamish Gordon, Jill Thompson, and Tikitu Tutua-Nathan. 'Factors Facilitating and Inhibiting Section 33 Transfers to Iwi'. Hamilton: Department of Geography, University of Waikato, 2000

Renwick, William. *The Treaty Now*. Wellington: GP Books, 1990

Rice, Geoffrey W. *Black November: The 1918 Influenza Pandemic in New Zealand*. 2nd ed Christchurch: Canterbury University Press, 2005

Roberts, Mere, Bradford Haami, Richard Anthony Benton, Terre Satterfield, Melissa Finucane, Mark Henare, and Manuka Henare. 'Whakapapa as a Māori Mental Construct: Some Implications for the Debate Over Genetic Modification of Organisms'. In *The Contemporary Pacific*. vol 16, no 1, 2004, pp 1–28

Roche, Michael. 'The State as Conservationist 1920–1960: 'Wise Use' of Forests, Lands, and Water'. In *Environmental Histories of New Zealand*. Edited by E Pawson and T Brooking. Melbourne: Oxford University Press, 2002, pp 183–199

Rose, Deborah Bird. *Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness*. Canberra: Australian Heritage Commission, 1996

Royal, Te Ahukaramū Charles. Ed. *The Woven Universe: Selected Writings of Rev Māori Marsden*. Ōtaki: Estate of Reverend Māori Marsden, 2003

Ruru, Jacinta. 'Managing our Treasured Home: The Conservation Estate and the Principles of the Treaty of Waitangi'. In *New Zealand Journal of Environmental Law*. vol 8, 2004, pp 243–266

Rutherford, J. *Sir George Grey KCB, 1812–1898: A Study in Colonial Government*. London: Cassell, 1961

Sage, I V. 'The Wairarapa: A Comparison of Geographic Character in 1853 and 1953'. Masters thesis. University of New Zealand, 1954

Saunders, T V. 'The Eels of Lake Wairarapa'. In *Te Ao Hou*. no 51, June 1965, pp 36–37

Simon, Judith and Linda Tuhiwai Smith. Eds. *A Civilising Mission? Perceptions and Representations of the New Zealand Native Schools System*. Auckland: Auckland University Press, 2001

Simon, Judith. Ed. *Ngā Kura Māori: The Native Schools System, 1867–1969*. Auckland: Auckland University Press, 1998

Sinclair, Keith. *Kinds of Peace: Maori People After the Wars, 1870–85*. Auckland: Auckland University Press, 1991

———. *The Origins of the Maori Wars*. Wellington: New Zealand University Press, 1957

Strong, T B. 'The Education of South Sea Island Natives'. In *Maori and Education: Or the Education of Natives in New Zealand and its Dependencies*. Edited by Patrick Jackson. Wellington: Ferguson & Osborn, 1931, pp 188–194

Sutherland, A. *Sutherlands of Ngaipu*. Wellington: AH & AW Reed, 1947

Tate, John William. 'The Privy Council and Native Title: A Requiem for *Wi Parata*'. In *Waikato Law Review*. vol 12, 2004, pp 101–152

Taylor, Rowan, and Ian Smith. Eds. *The State of New Zealand's Environment*. Wellington: Ministry for the Environment and GP Publications, 1997

Te Puni Kōkiri. *Māori and Council Engagement Under the Resource Management Act 1991*. Wellington: Te Puni Kōkiri, 2006

———. 'Progress towards Closing Social and Economic Gaps Between Māori and Non-Māori: A Report to the Minister of Māori Affairs'. Wellington: Te Puni Kōkiri, 1998

———. 'Whaiwāhi ki ngā Pōti ā-rohe/Participate in Local Elections'. Information sheet. Wellington: Te Puni Kōkiri, 2007

Tennyson, A, and P Martinson. *Extinct Birds of New Zealand*. Wellington: Te Papa Press, 2006

Vennell, Charles William. *A Century of Trust*. Auckland: Wilson & Horton Ltd, 1973

Waitangi Tribunal. *The Hauraki Report*. 3 vols. Wellington: Legislation Direct, 2006
———. *The Kaipara Report*. Wellington: Legislation Direct, 2006
———. *He Maunga Rongo: Report on Central North Island Claims*. Revised ed 4 vols. Wellington: Legislation Direct, 2008
———. *The Mohaka ki Ahuriri Report*. 2 vols. Wellington: Legislation Direct, 2004
———. *The Mohaka River Report 1992*. Wellington: Brooker and Friend Ltd, 1992
———. *The Mokai School Report*. Wellington: Legislation Direct, 2000
———. *Muriwhenua Land Report*. Wellington: GP Publications, 1997
———. *The Napier Hospital and Health Services Report*. Wellington: Legislation Direct, 2001
———. *The Ngai Tahu Ancillary Claims Report 1995*. Wellington: Brooker's Ltd, 1995
———. *The Ngai Tahu Report 1991*. 3 vols. Wellington: Brooker and Friend Ltd, 1991
———. *The Ngai Tahu Sea Fisheries Report 1992*. Wellington: Brooker and Friend Ltd, 1992
———. *Ngawha Geothermal Resource Report 1993*. Wellington: Brooker and Friend Ltd, 1993
———. *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims*. Wellington: Brooker and Friend Ltd, 1993
———. *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands*. Wellington: Legislation Direct, 2001
———. *Report of the Waitangi Tribunal on the Kaituna River Claim*. Wellington: Waitangi Tribunal, 1984
———. *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*. Wellington: Waitangi Tribunal, 1988
———. *Report of the Waitangi Tribunal on the Manukau Claim*. Wellington: Government Printer, 1985
———. *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*. Wellington: Waitangi Tribunal, 1983
———. *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*. Wellington: Waitangi Tribunal, 1988
———. *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*. 2nd ed Wellington: Government Printing Office, 1989
———. *Report of the Waitangi Tribunal on the Orakei Claim*. Wellington: Waitangi Tribunal, 1987
———. *Report of the Waitangi Tribunal on the Te Reo Maori Claim*. Wellington: Government Printer, 1986
———. *Report on the Crown's Foreshore and Seabed Policy*. Wellington: Legislation Direct, 2004
———. *Te Maunga Railways Land Report*. Wellington: Brooker's Ltd, 1994
———. *The Mohaka ki Ahuriri Report*. 2 vols. Wellington: Legislation Direct, 2004
———. *The Tamaki Makaurau Settlement Process Report*. Wellington: Legislation Direct, 2006
———. *Te Tau Ihu o Te Ika a Maui: Preliminary Report on Customary Rights in the Northern South Island*. Wellington: Legislation Direct, 2007
———. *Te Tau Ihu o Te Ika a Maui: Report on Northern South Island Claims*. 3 vols. Wellington: Legislation Direct, 2008
———. *The Te Roroa Report 1992*. Wellington: Brooker and Friend Ltd, 1992
———. *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*. 2 vols. Wellington: Legislation Direct, 2004
———. *The Turangi Township Report 1995*. Wellington: Brooker's Ltd, 1995
———. *The Wananga Capital Establishment Report*. Wellington: GP Publications, 1999

———. *The Whanganui River Report*, Wellington: Legislation Direct, 1999

Walker, Ranginui. *He Tipua: The Life and Times of Sir Āpirana Ngata*. Auckland: Viking, 2001

Ward, Alan. *A Show of Justice: Racial 'Amalgamation' in the Nineteenth Century*. Auckland: Auckland University Press, 1973

———. *National Overview*. 3 vols. Wellington: GP Publications, 1997

Wards, Ian. Ed. *New Zealand Atlas*. Wellington: Government Printer, 1976

Weld, Frederick. *Hints to Intending Sheep Farmers in New Zealand*. London: Trelawney Saunders, 1851

White, Ben. *Inland Waterways: Lakes*. Rangahaua Whanui Series. Wellington: Waitangi Tribunal, 1998

Williams, David. 'The Constitutional Status of the Treaty of Waitangi: An Historical Perspective'. In *New Zealand Universities Law Review*. vol 14, no 1, 1990, pp 9–36

Williams, David V. *Te Kooti Tango Whenua: The Native Land Court, 1864–1909*. Wellington: Huia Publishers, 1999

Williams, Herbert W. *A Dictionary of the Maori Language*. 7th ed. Wellington: Government Printer, 1971

Williams, Jeanine. 'Pastoralist and Maoris: Frederick Weld at Wharekaka'. In *New Zealand Journal of History*. vol 11, no 1, 1977, pp 28–53

Wilmshurst, Janet M, Atholl Anderson, Thomas F G Higham and Trevor H Worthy. 'Dating the Late Prehistoric Dispersal of Polynesians to New Zealand Using the Commensal Pacific Rat'. In *Proceedings of the National Academy of Sciences of the United States of America*. vol 105, no 22, 2008, pp 7676–7680

Worthy, Trevor H, and Richard N Holdaway. *The Lost World of the Moa: Prehistoric Life of New Zealand*. Christchurch: Canterbury University Press, 2002

Wynn, Graeme. 'Destruction Under the Guise of Improvement? The Forest, 1840–1920'. In *Environmental Histories of New Zealand*. Edited by E Pawson and T Brooking. Melbourne: Oxford University Press, 2002, pp 100–116

Yate, William. *An Account of New Zealand: and of the Formation and Progress of the Church Missionary Society's Mission in the Northern Island*. London: Seeley and Burnside, 1835

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