

**THE ENVIRONMENTAL MANAGEMENT OF THE  
MOKAU RIVER MOUTH**

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Ministry of Justice WELLINGTON

**Case-study commissioned by the Waitangi Tribunal for Te Rohe Potae district inquiry  
(Wai 898)**

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## ***Explanatory note***

In March 2012 the Chief Historian's rapid appraisal of the research casebook for Te Rohe Potae district inquiry recommended that a district overview report on selected post-1970 environmental and resource management issues be commissioned. It also suggested that targeted research was required on four environmental case-studies: Whaingaroa Harbour, the Mokau River mouth, the Waipa River, and Pirongia Forest Park.<sup>1</sup> Three researchers were commissioned to undertake this project: David Alexander, Martin Fisher and Matthew Cunningham.<sup>2</sup>

At an early stage in the research, the requirement that coverage of the issues be confined to the post-1970 period was discussed. It was agreed, particularly with respect to the four case-studies, that the research would include pre-1970 environmental matters relevant to the Tribunal's commission, and these matters would be reported on where they were not already adequately covered in the research casebook. However, the focus of the report and the case-studies would continue to be the period since 1970. The title of the report reflects this slight change of emphasis.

The environmental overview and the four case-studies were originally intended to form a single combined report. However, it became clear as the commission progressed that the subject material for the four case-studies was substantial enough to warrant being covered in separate documents. In addition, three specific topic-studies emerged from the overview project: the establishment of the Waikato Valley Authority, hydro-electric power generation in the Mokau catchment, and ironsand mining at Taharoa.

It was consequently decided to file the environmental overview and the four case-studies separately on the record of inquiry for Te Rohe Potae. As a result, this research commission is comprised of **five documents** instead of one: an environmental overview (together with the three topic-studies), and separate case studies on Whaingaroa Harbour, the Mokau River mouth, the Waipa River, and Pirongia Forest Park. Whilst each operates as a discrete, standalone report, some minor cross-referencing has been noted to avoid unnecessary overlaps, and the reports should still be read in the context of the original commission. The author of each report is noted in the prefaces: David Alexander for the environmental

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<sup>1</sup> Wai 898 #6.2.43, p 32

<sup>2</sup> Wai 898 #2.3.87

overview (and the three topic-studies), Martin Fisher for the Whaingaroa Harbour and Pirongia Forest Park case-studies, and Matthew Cunningham for the Mokau River mouth and Waipa River case-studies.

The reports are supported by **eight document banks**: the environmental overview, each of the three topic-studies, and the four case-studies. This has been done to allow for ease of use and distribution. The volume numbers for the document banks are as follows:

- Volume 1: Environmental overview
- Volume 2: Topic-study – Waikato Valley Authority
- Volume 3: Topic-study – hydro-electric power generation in the Mokau catchment
- Volume 4: Topic-study – ironsand mining at Taharoa
- Volume 5: Case-study – Whaingaroa Harbour
- Volume 6: Case-study – Mokau River mouth
- Volume 7: Case-study – Waipa River
- Volume 8: Case-study – Pirongia Forest Park

## ***Introduction***

### **Summary**

At the fifth korero tuku iho hearing held at Maniaroa Marae in May 2010, Barbara Marsh (named claimant for Wai 788 and former Chairperson of Mokau Ki Runga Regional Management Committee) began her testimony on the Mokau River with the following statement:

At a fundamental level the loss of our lands has led to our inability to care for our waterways. The kaitiakitanga exercised by our tupuna for hundreds of years and the spiritual bonds that connect the two was in some part replaced by councils and resource management regimes who did not care in the same way as we do.<sup>3</sup>

This case-study, which deals with environmental and resource management of the Mokau River mouth from the 1970s, explores this transition from Maori to Crown authority. It begins with an overview of the process by which the Crown established its authority over the river mouth, particularly in the early twentieth century when commercial activity on the Mokau River was at its peak. The bulk of this section is dedicated to the environmental management regimes that have governed the River mouth from the 1970s. In particular, it explores the management of customary resources and wahi tapu of the Mokau River mouth and the extent to which provision has been made for Maori consultation and participation.

### **Background**

This case-study on the Mokau River mouth arose from a gap in the research on environmental and resource management conducted by a team at Massey University led by Professor Michael Belgrave for the Rohe Potae inquiry. The team produced a scoping or ‘preliminary’ report and a main report. Whilst the scoping report did not discuss the Mokau River mouth, the main report included a chapter on hydroelectric projects in the Mokau River and their effects on tuna migration and adjacent land blocks.<sup>4</sup> This chapter also briefly discussed resource management and wahi tapu at the Mokau River mouth, however the authors noted that the amount of time spent on this subject had ‘been affected by the limited time available’. They recommended that further research be undertaken on ‘the cultural and environmental impact of resource management and wahi tapu concerns at the mouth of the

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<sup>3</sup> Wai 898 #4.1.5, p 56.

<sup>4</sup> Wai 898 #A76, pp 285-297

Mokau River, including the impact of whitebait fisheries on Ngati Maniapoto.’<sup>5</sup> This was endorsed in the Chief Historian’s rapid appraisal in March 2012, which recommended that an environmental overview report be commissioned including case-studies on the Mokau River mouth and several other topics.<sup>6</sup> The subsequent research commission for the overview report instructed that a case-study be prepared dealing with ‘[t]he cultural and environmental impact of the resource management and statutory regimes for protecting wahi tapu at the Mokau River mouth, including the status of wahi tapu not thus protected.’<sup>7</sup> As with the environmental overview report, the commission instructed that this case-study focus on the period ‘from the 1970s until the present day’.<sup>8</sup>

## **Claim issues**

The claim issues of relevance to this case-study are typically concerned with two geographical areas: the Mokau River mouth or harbour, and the Mokau River and its tributaries. These claim issues can be grouped into three main themes: Maori ownership and kaitiakitanga, the management of customary and indigenous resources, and the protection of wahi tapu and other Maori sites of significance.

### ***Maori ownership and kaitiakitanga***

- Ngati Paemate (Wai 1352): claim that the Crown has failed to recognise their ownership and customary rights of access to the Mokau River and harbour. They also object to the enactment of resource planning legislation which fails to take Ngati Paemate and Maniapoto Tainui interests into account.<sup>9</sup>
- Ngati Maniapoto (Wai 329, 535): allege that the Crown has failed to recognise Maniapoto ownership of Nga Wai o Maniapoto, which includes the Mokau catchment, and that it has implemented legislation and policies that have destroyed, degraded or changed those waterways.<sup>10</sup>
- Pio Pio Stores Site Claim (Wai 691) and Mokau Mohakatino and Other Blocks (Maniapoto) Claim (Wai 788): claim that the following pieces of legislation fail to recognise or consider their mana to manage and preserve the awa within their rohe:

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<sup>5</sup> Wai 898 #A76, pp13, 298-301

<sup>6</sup> Wai 898 #6.2.43, p 32

<sup>7</sup> Wai 898 #2.3.87, para 3b

<sup>8</sup> Ibid., para 1

<sup>9</sup> Wai 898 #1.1.94, paras 1, 5, 8

<sup>10</sup> Wai 898 #1.2.19, paras 37-41; Wai 898 #1.2.114, para 6.1f

Soil Conservation and Rivers Control Act 1941, Water and Soil Conservation Act 1967, Town and Country Planning 1977, and the Resource Management Act 1991. They claim that the Resource Management Act contains some provisions for Maori issues, but maintain that it does not guarantee adequate consultation, resourcing, or allow for the full restoration of their cultural relationship with the awa.<sup>11</sup>

- Nga Hapu o Poutama (Wai 1747): claim that their right to exercise mana and kaitiakitanga over their resources, including the Mokau River, has never been surrendered despite it being undermined by the imposition of various systems of management by the Crown through the legislation listed above. They claim that the Resource Management Act is inadequate for protecting Maori interests and does not recognise Maori rights to control, manage and regulate environmental resources.<sup>12</sup>

### ***Customary and indigenous resources***

- Ngati Maniapoto (Wai 329): claim that Crown management of their awa has ‘destroyed or adversely affected associated flora and fauna, particularly bird life and eel fisheries, preventing or limiting the ability of Maniapoto to maintain and exercise their customary practices.’<sup>13</sup>
- Ngati Hikairo (Wai 37, 933, 1196): claim that Crown delegation of authority to local government has led to the loss of fishing reserves and the decimation of customary fisheries in Mokau harbour.<sup>14</sup>
- Ngati Paemate (Wai 1352): claim that fisheries have been depleted by ‘pollution, overfishing and spiritual desecration’.<sup>15</sup>
- Ngati Rungaterangi, Ngati Te Paemate and Ngati Waiora (Wai 849): claim that Crown Treaty breaches have caused the loss of fishing reserves and the decimation of customary fisheries in Mokau harbour, as well as the degradation of water quality.<sup>16</sup>
- Pio Pio Stores Site claim (Wai 691) and Mokau Mohakatino and Other Blocks (Maniapoto) claim (Wai 788): claim that Crown encouragement of landscape

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<sup>11</sup> Wai 898 #1.2.91, paras 12.2.1-12.2.16

<sup>12</sup> Wai 898 #1.2.96, paras 378-390, 410-414

<sup>13</sup> Wai 898 #1.2.19, para 43

<sup>14</sup> Wai 898 #1.2.128, paras 168.1-168.2.

<sup>15</sup> Wai 898 #1.1.94, paras 4. 9.

<sup>16</sup> See also Wai 898 #1.2.60, paras 23-33, 73.1.

conversion along the Mokau River from native vegetation to pastoral agriculture has impacted on soil erosion levels and water quality.<sup>17</sup>

- Nga Hapu o Poutama (Wai 1747): claim that Crown legislation has caused waterway pollution through the clearing of indigenous forest and associated agricultural runoff.<sup>18</sup> They also oppose Crown licensing and sale of whitebait stands along the Mokau River and their effect on fishing stock.<sup>19</sup>

Barbara Marsh also spoke at the fifth korero tuku iho hearing about the pollution of the Mokau River by Piopio wastewater treatment plant and Temapara and Aria rubbish dumps and its effect on tuna, shellfish, pipi, and cockles.<sup>20</sup> Whilst this case-study is focused on the Mokau River mouth rather than the river itself, claimants for Wai 691 and 788 have claimed that changes upstream have increased the accumulation of pollutants and sediment in the harbour, which impacts on traditional food sources located there.<sup>21</sup>

### ***Wahi tapu***

- Nga Hapu o Poutama (Wai 1747): claim that Crown management of customary fisheries has led to the destruction of pa tuna on the Mokau River.<sup>22</sup>
- Karutahi Tangihaere Trust (Wai 2349): claim that Crown management of customary fisheries has led to the destruction of pa tuna on the Mokau River.<sup>23</sup>
- Ngati Rungaterangi, Ngati Te Paemate and Ngati Waiora (Wai 849): claim that Crown management of customary fisheries has led to the destruction of pa tuna on the Mokau River.<sup>24</sup>
- Kawhia Fisheries claim (Wai 74, 1450, 1498, 1975, 1976, 1978, 1996, 2070): claim that Crown management of customary fisheries has led to the destruction of pa tuna on the Mokau River.<sup>25</sup>

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<sup>17</sup> Wai 898 #1.2.91, paras 12.2.39-12.2.47. Mokau ki Runga and Jim Taikoto also discuss the impact of power stations at Wairere and Mokauiti on native tuna populations (Wai 898 #1.2.91, paras 12.2.31-12.2.38; Wai 898 #1.2.60, paras 34-39). Peter Stockman also discusses Wairere power station in the Karutahi Tangihaere Trust claim (Wai 898 #1.1.266, paras 22-26) and spoke about the effects of dams on customary fisheries at the sixth korero tuku iho hearing at Te Tokanganui-a-noho marae, 9-11 June 2010; see Wai 898 #4.1.6, pp 308-309. These issues have been covered in Belgrave's environmental report; see Wai 898 #A76, pp 285-297.

<sup>18</sup> Wai 898 #1.2.96, paras 391-398

<sup>19</sup> Ibid., para 369

<sup>20</sup> Wai 898 #4.1.5, pp 56-64

<sup>21</sup> Wai 898 #1.2.91, para 12.2.45; Wai 898 #4.1.5, p 10

<sup>22</sup> Wai 898 #1.2.96, paras 224, 397-398

<sup>23</sup> Wai 898 #1.1.266, para 42.2

<sup>24</sup> Wai 898 #1.2.60, para 55.2

- Ngati Maniapoto (Wai 329): claim that the Crown has enacted various regulatory and legislative regimes with minimal or no consultation regarding mahinga kai, rongoa and wahi tapu on their awa, and has failed to provide continued access to these resources.<sup>26</sup>
- Pio Pio Stores Site Claim (Wai 691) and Mokau Mohakatino and Other Blocks (Maniapoto) Claim (Wai 788): claim that the Crown has failed to actively protect sites of significance to nga hapu o Mokau ki Runga.<sup>27</sup> One such wahi tapu at the mouth of the Mokau River is an urupa known as Te Naunau that is now the site of baches and holiday homes.<sup>28</sup>

In addition, Marama Henare Waho identified two wahi tapu located at the Mokau River mouth during the fifth korero tuku iho hearing: a ‘Pilot Station’ on the southern bank of the river mouth and the urupa named Te Naunau.<sup>29</sup> Ann Le Mieux also discussed Te Naunau urupa in her testimony.<sup>30</sup>

## **Methodology**

Building upon the claims issues outlined above and the research gaps identified in the casebook review, this case-study is concerned with three interlinked areas of inquiry: environmental management regimes, customary and indigenous resources, and wahi tapu. These areas will be explored thematically throughout the case-study, with a focus on particular historical and contemporary incidents highlighted by claimants. Whilst ample source material was found regarding environmental management regimes and wahi tapu, less was located on customary and indigenous resources. Consequently, more attention is devoted to wahi tapu in this case-study. In particular, no source material has been found that discusses the degradation of water quality and customary fisheries at the Mokau River mouth, although sources of pollution upstream are discussed in the environmental overview report.

This case-study is divided into two parts: a brief historical overview section covering the background of the management and uses (both customary and commercial) of the Mokau

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<sup>25</sup> Wai 898 #1.2.78, para 262.2

<sup>26</sup> Wai 898 #1.2.19, paras 42.3, 43.2i-43.2ii

<sup>27</sup> Wai 898 #1.2.91, paras 13.1-13.2

<sup>28</sup> Ibid., para 5.4.3

<sup>29</sup> Wai 898 #4.1.5, pp 142-146

<sup>30</sup> Ibid., p 89

River mouth until the 1970s, and a main section discussing environmental management regimes, including their administration of customary fisheries and wahi tapu, from the 1970s until the present.

The historical overview section draws on a number of primary and secondary sources. Several existing research reports cover topics relevant to the history and managerial framework of the Mokau River mouth. Of particular importance regarding the general history of land alienation are Paula Berghan's block history and Paul Thomas's report on the relationship between Maori and the Crown in the Mokau region.<sup>31</sup> In addition, Jane Luiten provides the local government framework in Te Rohe Potae, whilst Philip Cleaver's report on Te Rohe Potae industries briefly discusses Maori customary fisheries as well as the current and historical legislative frameworks for commercial fishing in New Zealand.<sup>32</sup> The Wai 262 report and Geoff Park's *Effective Exclusion* provide the overarching context for Crown approaches to indigenous flora and fauna management.<sup>33</sup> Additional background material has been gleaned from Evelyn Stokes' work on Maori perspectives of the Mokau area and Margaret de Jardine's history of Mokau harbour.<sup>34</sup> In terms of wahi tapu, the Maniapoto Oral and Traditional history report provides a detailed list of sites of significance within the Te Rohe Potae inquiry district such as pa, kainga, wahi pakanga, and wahi tapu. This includes sections on Mohakatino, Mokau, and Awakino River Territory and the Mokau, Mapara, and Mangapehia Rivers.<sup>35</sup> These secondary works have been complemented with archival sources on historical local government bodies such as the Clifton and Waitomo County Councils, the Mokau Harbour Board and the short-lived Mokau River Trust.

The section relating to the period from the 1970s comprises the bulk of this report. It relies heavily on primary source material, including archival material from the Waitomo District Council and the Waikato Valley Authority, Maori Land Court records, resource consent applications, and technical reports on environmental issues. It also draws on personal

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<sup>31</sup> Berghan's report includes Mokau, Mokau-Mohakatino, Mokau Village, and Motutawa Island; see Wai 898 #A60, pp 52-55, 579-588, 591-592. For Thomas's report, see Wai 898 #A28

<sup>32</sup> Wai 898 #A24; Wai 898 #A25, pp 268-274

<sup>33</sup> *Ko Aotearoa Tenei: A report into claims concerning New Zealand Law and Policy affecting Maori culture and identity*, (Waitangi Tribunal, 2011), in particular chapter 3; G Park, *Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912-1983*, (Waitangi Tribunal, 2001), in particular chapter 3

<sup>34</sup> Evelyn Stokes, *Mokau: Maori cultural and historical perspectives*, Hamilton, 1988; Margaret De Jardine, *The little ports of Taranaki*, New Plymouth, 1992, pp 6-44

<sup>35</sup> Wai 898 #A110, pp308-315, 319-321

communications at a research hui for this report on 19 February and a field trip with Nga Hapu o Poutama representatives on 22 February, as well as discussions with representatives from Waikato Regional Council, Waitomo District Council, and the New Plymouth office of the Ministry for Primary Industries. Discussions were also held with representatives from Mokau Ki Runga Regional Management Committee (the mandated body for local government consultation in the region) and Maniaroa Marae at a research hui for this report on 7 August, and further feedback was provided by these groups via email.

Due to the combination of general and specific claims regarding the Mokau River mouth, this case-study has adopted a ‘case-study within a case-study’ approach. The existing local government authorities, customary resources, and wahi tapu will be outlined, and case-studies relating to specific claims issues will be used to highlight patterns in the way these authorities exercised their powers regarding environment and resource management, and whether provision has been made for Maori consultation and participation in decision making. It is also worth stressing that this case-study deals solely with environmental and resource management issues on the Mokau River mouth, and not the river itself. However, as noted above, environmental issues up-stream have a run-on effect as they flow down the river to the sea. Therefore, whilst this case-study will not investigate claims issues regarding the Mokau River, it will explore any effect these issues have had on factors such as soil accretion and pollution in the harbour. Broader catchment issues relating to the Mokau River are discussed elsewhere in this report, and any links to harbour matters will be highlighted.

## 1. Chapter 1 - Historical overview

### 1.1 The landscape of the Mokau River mouth

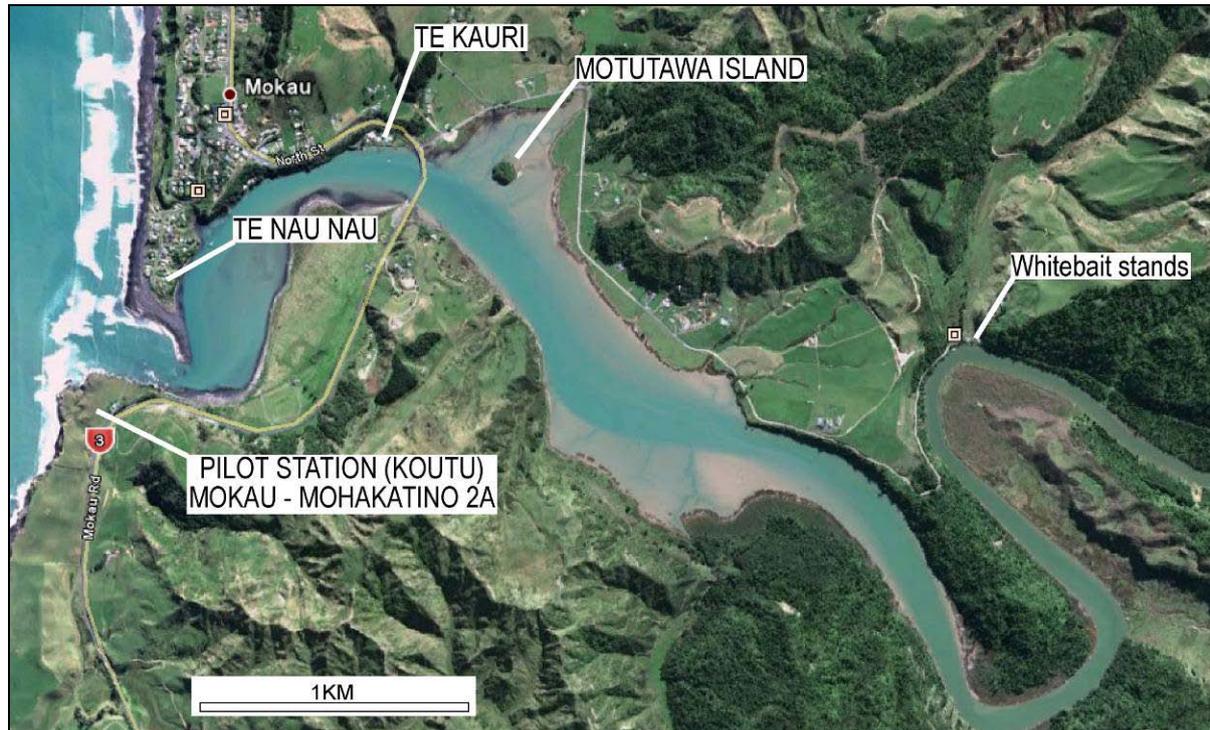


Figure 1: Satellite map of the Mokau River mouth

The Mokau River mouth straddles the unofficial boundary between the King Country and Taranaki on the western coast of New Zealand. It is approximately one hours' drive north of New Plymouth and three hours' drive south of Hamilton. The river is broad where it meets the sea, and the harbour is enclosed by a sandbar commonly known as the Mokau spit. It remains fairly broad as it flows under the Mokau Bridge and past Motutawa Island, and begins to narrow after it meets the Tauwhare stream. The river has a low gradient from the harbour for several miles upstream, and sediment generally flows downstream to the sea from the sandstone and mudstone banks of the lower course of the river. This predominantly ironstone sediment is visible surrounding the sandbar at low tide, but at high tide the harbour and the river are navigable for most vessels.



**Figure 2: Mokau harbour as viewed from the north side**

Overlooking the river mouth from the south are the rolling hills and sharp cliff faces of the old pilot station on Mokau-Mohakatino block, where a flag pole once stood to guide ships into the harbour. As you move along the southern bank of the river you pass various wahi tapu, including pa sites, urupa and middens. The banks of the Mokau begin to narrow after Tauwhare stream, and are increasingly lined with commercial whitebait stands. If you cross here to the north bank, Te Mahoe road follows the river back out to the harbour. After a steep rise and a sharp turn, the road slopes gently downwards past Motutawa Island, the site of a major battle between Ngati Tama and nga hapu o Mokau around 1812. The road then continues past the bridge and the former Maori settlement of Te Kauri to the site of Mokau township.

It is here that the signs of erosion on the northern bank of the Mokau River become apparent. From the bridge to the spit, the banks of the river are lined with dark grey soil. Mokau spit itself epitomises this process of erosion and accretion. Geologist Brad Needham determined that the whole area has been destroyed and rebuilt since the Holocene period, and that the

current spit is only 800-1200 years old.<sup>36</sup> Erosion is a major issue on the spit, which is the location of an important Maori urupa known as Te Naunau, as well as several private sections which were developed in the late 1950s. The development of the spit by local and central government agencies, subsequent erosion events, and the level of government engagement with Maori throughout this process forms a significant part of this report.



**Figure 3: Erosion on the seaward shore of Mokau spit**

## **1.2 Maori and the Mokau River to the 1870s**

Maori first arrived at the mouth of the Mokau River on the Tainui waka, which rested here before its final voyage to Kawhia Harbour. According to the oral testimony of Hinekahukura Aranui, Tainui remained at Mokau for some time and planted a series of poles which eventually became trees at a place known as Te Wehenga.<sup>37</sup> When they departed for Kawhia, the original anchor stone of the Tainui waka was left behind in the shallow water off the

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<sup>36</sup> Brad Needham, 'The Variation in River Mouth Dynamics, Spit and Shoreline Morphology at Mokau' (MA: University of Waikato, 2004) p 13

<sup>37</sup> Wai 898 #4.1.5, p 95

Mokau spit. Here it remained for centuries as a marker of the southern boundary of the Tainui tribal area, until the 1890s when a trader from Waitara stole it. The guardians of the anchor managed to secure its return, and it was relocated to Maniaroa Marae to ensure that it could never again be stolen or vandalised.<sup>38</sup> One account states that the Tokomaru canoe also landed just south of the Mokau River mouth at Mohakatino, where its anchor remained until being carried from the water by Ngati Tama Chief Tupoki prior to 1830 and placed against a cabbage tree. It was relocated several more times after the 1890s in an attempt to protect it from Europeans before finally being gifted to Taranaki Museum in 1927.<sup>39</sup>

Prior to the arrival of Europeans, the Mokau River mouth was solely under the guardianship of Maori. As Barbara Marsh explained at the fifth korero tuku iho hearing, '[s]ince time in memorial [sic.] our whanau have controlled and managed our natural environment in accordance with our tikanga and the exercise of kaitiakitanga and manaakitanga.'<sup>40</sup> Defining kaitiakitanga as it pertains to the river mouth is the responsibility of Maori who hold mana whenua over this region, but a simple explanation is that it involves the protection of the mauri or life-force of an environmental resource. This involves both spiritual and material elements, and it was stressed by claimants at research hui held for this report on 18-19 February 2013 that the two elements cannot be separated where the environment is concerned. The duties of kaitiakitanga are inherited through kinship and whakapapa, and claimants argue that kaitiakitanga should form the basis against which subsequent changes in the environment, and the European regimes which have assumed responsibility for managing that environment, should be weighed.<sup>41</sup>

The Mokau River mouth was an abundant source of food. The sea and the river provided a ready source of tuna and shellfish, and the nearby forests and swamps were home to a variety of bird life including water fowl, kereru, kaka and kiwi. The entrance to the river yielded an 'inexhaustible supply' of mussels which provided the chief food source to local Maori.<sup>42</sup> Potatoes were also cultivated at convenient points along the shores of the Mokau River by the

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<sup>38</sup> Stokes, p 10; testimony of Wiki Henskes, Wai 898 #4.1.5, p 123

<sup>39</sup> Stokes, pp 2-4; 'The traditional anchor (punga) of the Tokomaru canoe', *The Journal of the Polynesian Society*, Vol. 32, No. 4 (December, 1923), pp 244-245

<sup>40</sup> Wai 898 #4.1.5, p 56

<sup>41</sup> Research hui in Te Kuiti, 19 February 2013; field trip with Russell Gibbs and Haumoana White, 22 February 2013.

<sup>42</sup> Stokes, p 28

1840s.<sup>43</sup> Apart from sustaining the Maori who resided at the river mouth, these food sources supported seasonal communities visiting from inland. Tame Tuwhangai described several of these nohoanga kai in his submission to the fifth korero tuku iho hearing, one of which lay in the vicinity of the Mokau Bridge. Such sites were used by local Maori to reinforce kin links with hapu residing elsewhere in the region, and were an important means of trade between coastal and inland hapu.<sup>44</sup> On occasion, large gatherings would be held at the river mouth to resolve differences between hapu. One such gathering in 1846 attracted over 1200 Maori from as far north as Kawhia and lasted for several weeks. The ability to provide for such a large group attracted considerable mana: a contemporary account from local missionary C. H. Schnackenberg described thousands of salmon, eels, and pigs being prepared in advance, as well as a row ‘some hundred yards long’ of potatoes, kumara, taro and corn.<sup>45</sup>

The Mokau River mouth was also important to Maori for strategic reasons. It was a vital link in a communication and transport system that stretched from Waikato in the north to Taranaki in the south. As Cathy Marr noted, iwi and hapu from further north could traverse the Waipa River and its tributaries, cross a short distance by land to join the Mokau River in the Aria district and follow its course downstream to the river mouth.<sup>46</sup> Mokau also lay at the southern end of the Tainui rohe, hence the whakatauki ‘Mokau ki runga, Tamaki ki raro, Mangatoatoa ki waenganui’ (Mokau above, Tamaki below, Mangatoatoa in the middle). As such, it was the site of many heated battles between Ngati Maniapoto, Ngati Toa and Ngati Tama in the late eighteenth and early nineteenth centuries.<sup>47</sup> Motutawa Island, which is located in the Mokau Harbour, was an important pa during this period. It was captured by Ngati Tama around 1812 during a feast hosted there by Ngati Rakei. After being driven out, Ngati Rakei sought refuge amongst allies at Otorohanga where they would ‘listen to the far-distant sound of the breakers dashing on the shore’ and ‘sniff the salt-laden breezes of their old home’. Their grief became so strong that a combined taua of various Ngati Maniapoto hapu journeyed south and regained the area around the river mouth from Ngati Tama.<sup>48</sup>

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<sup>43</sup> Wai 898 #A28, p 12

<sup>44</sup> Wai 898 #4.1.5, pp 223-225

<sup>45</sup> Stokes, p 29

<sup>46</sup> Cathy Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea Block), 1840-1920: Part one, Rangahaua Whanui Series* (Wellington: Waitangi Tribunal, 1996), pp 2-3

<sup>47</sup> See Wai 898 #A28, pp 15-19

<sup>48</sup> S. Percy Smith, *History and Traditions of the Maoris of the West Coast North Island of New Zealand Prior to 1840* (New Plymouth: Polynesian Society, 1910), pp 277-280

The first attempts by the Crown to assume authority over the Mokau region occurred in the 1850s when government land purchase officers began seeking blocks for settlement in the area. There were relatively few European settlers on the Mokau River prior to this point, and their purposes were limited to trade and missionary work. An observation by Schnackenberg in 1846 reflects the continued assertion by local Maori of kaitiakitanga over the Mokau River:

[They] know nothing about the Queen's sovereignty (at least in this part) in New Zealand ... however [they] are not all disposed to quarrel with the Europeans, on the contrary they are very wishful to receive a body of settlers to whom they would sell a tract of land, but they never dream that in such an event they would lose their chieftainship in the river [emphasis added].<sup>49</sup>

The sale of the Mokau block, which included the land north of the Mokau River mouth, was finalised in May 1854 for the amount of £100 despite the opposition of several prominent Mokau chiefs.<sup>50</sup> Three sites were reserved from the sale for Maori; the settlement at Te Kauri, which sat on the north bank approximately where the bridge now resides, was the only reserved site on the river mouth.<sup>51</sup> Thomas concluded that this transaction was 'deeply flawed' and that 'genuine and widespread approval was not sought or given.'<sup>52</sup> The Crown apparently recognised this, as it made no attempt to follow up by on-selling the land it had purchased to settlers.<sup>53</sup>

The pattern of Maori occupation and use of the Mokau River mouth continued relatively unchanged for the next few decades. In effect, local hapu retained implicit authority over the river despite the nominal sale of the land blocks adjacent to it to the Crown. Maori exercised the right to deny or allow passage up the Mokau River to outsiders, which seems to have commenced when Te Kuri and Te Kaka proclaimed a tapu on the river shortly after the 1854 sale, and warned against any European vessels attempting to enter the area.<sup>54</sup> When Percy Smith passed through the area on his way from New Plymouth to Taupo in 1858, local Maori at the Te Kauri settlement negotiated a fee of £10 to take him and his comrades on a tour up

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<sup>49</sup> Quoted in Stokes, p 133

<sup>50</sup> Wai 898 #A28, p 105

<sup>51</sup> Ibid., p 104; Wai 898 #A142, pp 91-92

<sup>52</sup> Ibid., p 133

<sup>53</sup> Ibid., p 130

<sup>54</sup> Ibid., pp 106-108, 125. A tapu had previously been placed on the entire Mokau district in 1845-1846; see Ibid., pp 37-39

the river.<sup>55</sup> Mokau remained relatively isolated from the conflicts of the 1860s, although taua from Waikato occasionally passed through the area on their way to Taranaki. A Crown warship shelled the Mokau River mouth in April 1869 when it was suspected that local Maori were harbouring an outlaw, but no attempt was made to enter the river.<sup>56</sup> The river remained closed until the 1870s due to the alliance of local Maori with the Kingitanga, which sought to preserve the autonomy of the aukati from Crown interference. However, a growing interest amongst local Maori in trade, combined with the potential wealth of the coal and limestone deposits further up the Mokau River, convinced Rewi Maniapoto and local Maori chief Wetera Te Rerenga to allow limited passage to European vessels in 1875.<sup>57</sup>

### **1.3 The Crown assumes control, c.1880-1900**

The Mokau River mouth remained under Maori control at the end of the 1870s, despite the nominal extension of local government boundaries over the area. The 1876 Counties Act established Kawhia County to the north of the Mokau River and Taranaki County to the south.<sup>58</sup> A separate Clifton County was created from the northern portion of Taranaki county in 1884, which was further divided into three ridings: Tikorangi, Urenui, and Mokau.<sup>59</sup> The Mokau riding extended as far north as the southern bank of the Mokau River, however local government attention was rarely focused on the area north of Waitara and Urenui. A small European settlement was established on the southern bank of the Mokau River mouth in 1878, but by 1880 it had collapsed due to a lack of economic development.<sup>60</sup> By 1880 only one vessel was trading on the river.<sup>61</sup>

The arrival of the Native Land Court in the Mokau region in 1882 altered the balance of power between Maori and Europeans. The results of the hearings were initially promising, with local Maori securing ownership of the Mokau Mohakatino block on the southern bank of the river and negotiating a coal extraction deal with the Mokau Coal Company. However, within a few years the Crown recognised the claims of a European named Joshua Jones to an exclusive land lease over most of the block.<sup>62</sup> The success of this venture gave the Crown

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<sup>55</sup> Ibid., pp 131-132

<sup>56</sup> De Jardine, p 8

<sup>57</sup> Wai 898 #A28, pp 182-194; De Jardine, pp 8-9

<sup>58</sup> 1878 No. 35: Harbours Act

<sup>59</sup> *Taranaki Herald*, 19 November 1884, p 2

<sup>60</sup> Wai 898 #A28, pp 194-195, 219; De Jardine, pp 9-10

<sup>61</sup> This was the 'Hannah Mokau'. See De Jardine, p 10

<sup>62</sup> See Wai 898 #A28, chapters seven and eight

confidence to follow up on its purchase of the Mokau block, and by the end of the decade most of the land had been sold or leased to Pakeha.<sup>63</sup> A new township was established on the northern bank of the Mokau River mouth in February 1888, and increased trade commenced between the river, Waitara and New Plymouth.<sup>64</sup>

The Crown extended its authority over the Mokau River mouth in 1900 with the establishment of a Harbour Board. This was done to provide for the demands of the growing economic activity along the river, including the booming coal trade, limestone extraction, and sawmilling. The Act created a Mokau Harbour District comprised of portions of Kawhia and Clifton counties and divided it into three ridings: Awakino, Mokau, and Tongaporutu.<sup>65</sup> Apart from giving control of the river mouth to an elected Harbour Board, the Act also allowed for rates and dues to be levied on pilotage, mooring and goods, as well as on ratepayers in the three ridings. It was constituted under the provisions of the 1878 Harbours Act, which consolidated all of the existing harbour legislation in New Zealand into a uniform set of procedures for the control and management of harbours and port facilities. The Act was vague in its definition of what a harbour was, which included ‘any harbour properly so called, whether natural or artificial, and any haven, estuary, navigable lake or river’.<sup>66</sup> However, it was based on the implicit assumption that the Crown held authority over the resource.

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<sup>63</sup> *Ibid.*, pp 387-394

<sup>64</sup> *New Zealand Herald*, 24 February 1888, p 4

<sup>65</sup> 1900 No 31: An Act to constitute a Harbour District and a Harbour Board for the Harbour of Mokau

<sup>66</sup> 1878 No. 35: Harbours Act

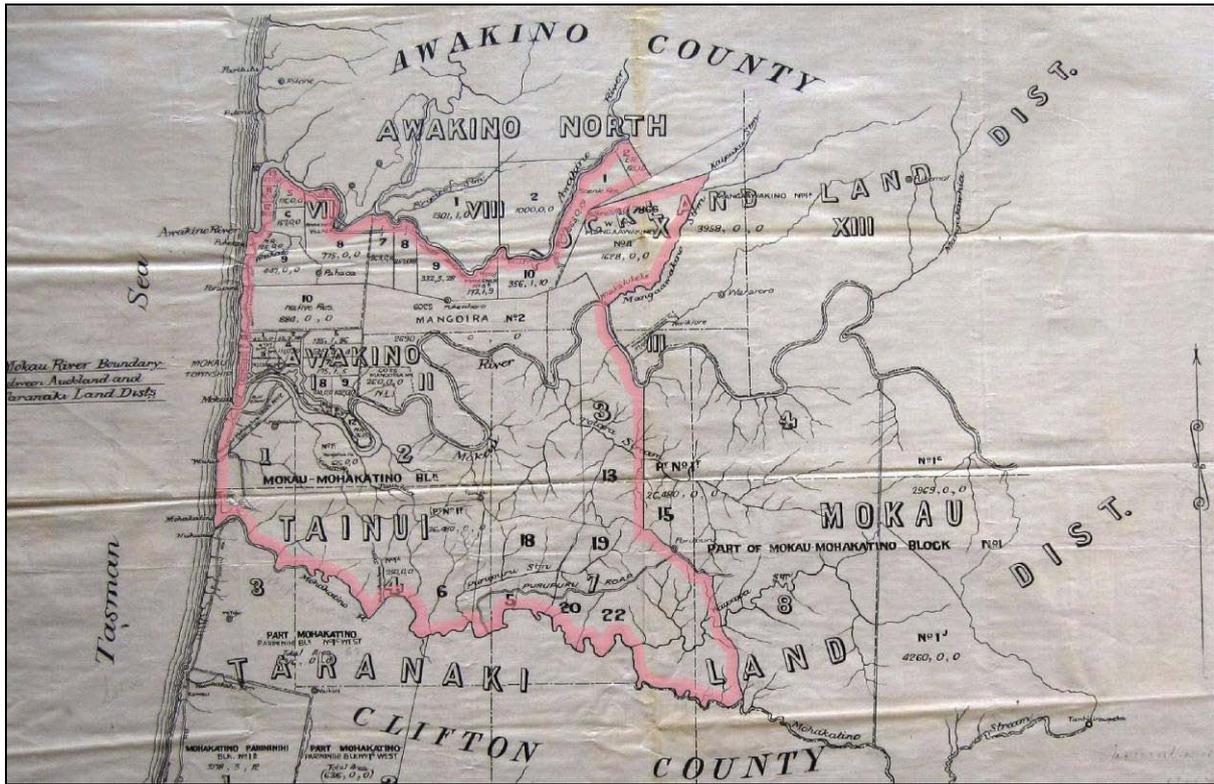


Figure 4: Rating Area of the Mokau Harbour Board, 1912

#### 1.4 Local government management of the Mokau River mouth, 1901-1970s

The primary concern of the new Mokau Harbour Board was to manage the increasing commercial traffic on the river. One of its first actions was to purchase a wharf from a private owner in 1901 and erect a shed.<sup>67</sup> At the same time, the Harbour Board commenced efforts to build a new wharf. After some discussion, it was decided in 1904 to construct the wharf on the western corner of Te Kauri block, the site of a Maori reserve. The location of the new wharf was a subject of contention with the Maori residing at Te Kauri. This is explored in a later section of this report. Further upgrades to the wharf were approved in 1912.<sup>68</sup>

<sup>67</sup> De Jardine, p 20

<sup>68</sup> Minister for Marine to the Secretary of the Marine Department, 1 May 1912. M1 1132 25/76 1, Archives New Zealand (supporting papers #12); 1912 No. 4: Mokau Harbour Board Empowering Act.



**Figure 5: The Mokau wharf in 1928, looking downstream from Te Kauri**

Snagging was another issue with which the Mokau Harbour Board was concerned. In 1904 the Mokau River Trust was established to deal with snagging issues further upstream, as well as to preserve ‘the Conservation of the Natural Scenery of the Upper Waters of the Mokau River’.<sup>69</sup> Whilst this Act explicitly vested authority over the Mokau River in a Crown-delegated body, it also coincided with the passing of the Coal-mines Act Amendment Act in 1903 which proclaimed that the bed of all navigable rivers in New Zealand were, and always had been, vested in the Crown.<sup>70</sup> Since the Mokau River Trust Act charged the new authority with ‘the Protection of the Navigation of the said Waters’, it implied that the Mokau River was considered to be wholly or partially within this category. In 1909 the bounds of the River Trust’s authority were extended as far upstream as Totoro.<sup>71</sup> A lack of funds seriously hampered the work of the River Trust, and in 1912 it applied to the Marine Department for an additional subsidy. The Marine Department determined that the River Trust Board has mis-spent a portion of its public funds on travel arrangements for its members, and refused to

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<sup>69</sup> 1903 No. 36: Mokau River Trust Act

<sup>70</sup> 1903 No. 80: Coal-mines Act Amendment Act 1903, section 14

<sup>71</sup> De Jardine, p 23

grant the subsidy.<sup>72</sup> The River Trust was abolished later that year due to its perilous financial situation. Its lands were placed in the public domain under the Department of Lands and Survey and its properties and liabilities were vested in the Mokau Harbour Board, whose authority could then be extended to the bounds of the former River Trust when required.<sup>73</sup>

Flooding had a deleterious effect on Mokau River industries, and a particularly severe flood in November 1915 washed enough timber, logs, and silt downstream so as to virtually halt coal extraction for two years.<sup>74</sup> By then the financial situation of the Harbour Board had worsened to the point where a rate increase on wharfage, storage, berthage, and port charges was introduced. This increase had little effect as the traffic on the river was steadily declining by that point.<sup>75</sup> To supplement its income, the Harbour Board rented out a snagging punt it constructed in 1923 to private sawmillers up the river. The Public Works Department also rented the punt during the construction of the Mokau River Bridge from 1923-1927.<sup>76</sup>

By the 1930s the coal and timber trade on the Mokau River had almost ceased, and the income of the Harbour Board had declined to the point where it struggled to fulfil its duties. The situation was worsened in May 1931 when the Marine Department removed its subsidy to the Harbour Board due to the widespread belt-tightening of the public sector in response to the Great Depression.<sup>77</sup> The Harbour Board protested the move, claiming that they would be unable to continue operating without the subsidy. To compensate for the shortfall, it considered extending its rating area or charging fees for shingle extraction, and its Secretary voluntarily reduced his salary by a third.<sup>78</sup> These measures prolonged the life of the Harbour Board, but by 1939 coastal shipping had ceased and the only users of the wharf were settlers from further up the river.<sup>79</sup>

When it became clear that the Harbour Board could no longer afford to function, the Marine Department suggested that central government assume authority for the administration of Mokau harbour. Treasury replied that it was unwilling to do so. Instead, it suggested that the

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<sup>72</sup> *Ibid.*, p 23

<sup>73</sup> 1912 No. 46: Reserves and other Lands Disposal and Public Bodies Empowering Act, section 17

<sup>74</sup> *Ibid.*, p 31

<sup>75</sup> *Ibid.*, pp 31-32

<sup>76</sup> *Ibid.*, p 36

<sup>77</sup> *Ibid.*, p 34

<sup>78</sup> *Ibid.*, pp 39, 42

<sup>79</sup> Robert Bell, Secretary of the Mokau Harbour Board, to the Secretary of the Marine Department, 6 March 1939. M1 523 4/510, Archives New Zealand (supporting papers #13)

extension of the rating area for the Waitomo County Council in 1938 to include lands on the south bank of the river meant that it should also absorb the functions of the Harbour Board.<sup>80</sup> Waitomo County Council was strongly opposed to the suggestion, since the meagre income it had gained from the 1938 extension did not cover the costs for administering the harbour.<sup>81</sup> The Clifton County Council was similarly reluctant to take on the responsibilities of the Harbour Board as Mokau was no longer part of its rating area.<sup>82</sup> Waitomo County Council was eventually persuaded by the promise of a £100 annual subsidy from the Marine Department and that it would pay for maintenance of wharf facilities, and from October 1940 it assumed authority over the Mokau River mouth.<sup>83</sup>

By 1963 the wharf was in a serious state of disrepair, and the only harbour functions being administered by Waitomo County Council were the regulation of power boats and water skiers. The Council suggested that the Harbour Board be dissolved and that the regulation of powered vessels be vested in the Marine Department under the 1962 Motor Launch Regulations.<sup>84</sup> Whilst it was not explicitly mentioned by the Council, dissolution of the Harbour Board would result in its powers being passed to the Marine Department under the 1950 Harbours Act. The Marine Department was initially reluctant to agree to this course of action, however it agreed provided that the remaining cash assets of the Board were directed towards the maintenance of the wharf. In 1972 the Waitomo County Council ceased to exercise or perform the powers of a Harbour Board and assumed control of all former Mokau Harbour Board property.<sup>85</sup> Authority of the Mokau River mouth passed to the Marine Division of the Ministry of Transport, which had been established in 1968 to take over the harbour functions of the Marine Department. The wharf remained a hazard, and after repeated complaints from local residents and boat owners it was finally torn down in 1974.<sup>86</sup>

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<sup>80</sup> Secretary to the Treasury to the Minister of Finance, 26 March 1940. M1 405 3/13/218 2, Archives New Zealand (supporting papers #16).

<sup>81</sup> Waitomo County Clerk to the Secretary of the Marine Department, 17 January 1940. M1 405 3/13/218 2, Archives New Zealand (supporting papers #14).

<sup>82</sup> Marine Department Secretary to the Minister of Marine, 26 January 1940. M1 405 3/13/218 2, Archives New Zealand (supporting papers #15).

<sup>83</sup> Waitomo County Clerk to the Secretary of the Marine Department, 26 September 1940. M1 405 3/13/218 2, Archives New Zealand (supporting papers #17).

<sup>84</sup> Waitomo County Clerk to the Secretary of the Marine Department, 16 July 1963. Series 1 Box 3 54/1/431, Waikato Regional Council (supporting papers #142).

<sup>85</sup> Local Government Commission Provisional Local Scheme Report, 12 October 1970. BAAS A362 24464 Box 1 f 6/9, Archives New Zealand (Auckland office) (supporting papers #89); Waitomo County Council Harbour Board (Mokau Harbour Board) Order 1972, SR 1972/55.

<sup>86</sup> De Jardine, p 43

## ***2. Chapter 2 - Local government regimes since the 1970s***

In 1976 the Waitomo County Council and the Te Kuiti Borough Council amalgamated to form the Waitomo District Council, the boundaries of which have remained the same until the present day.<sup>87</sup> In 1983 the District Council regained control over the Mokau River mouth from the Marine Division of the Ministry of Transport through a grant of control over the waters and foreshores of the Mokau, Marokopa and Awakino Rivers under sections 8A and 165 of the Harbours Act 1950. This also allowed the Council to appoint its own harbourmaster for the Mokau River mouth.<sup>88</sup> The reason for the Council's renewed interest in the management of the harbour and waterways is not clear, but it may simply have been that it wished to remove itself from the oversight of the Waikato Valley Authority which had extended its authority over the Mokau catchment in 1973.<sup>89</sup> The Marine Division approved of such decentralisation of authority as it 'allows for discussion to take place at a local level'.<sup>90</sup> However, the grant of control proved to be an unwanted burden on the Waitomo District Council due to the large number of whitebaiting consent applications that it was required to process, and in 1987 it surrendered its grant to the new Department of Conservation. This is explored in more depth in the section on customary resources below.

The passing of the Resource Management Act in 1991 vested the management of New Zealand's waterways in the eleven regional councils established in 1989.<sup>91</sup> For the Mokau catchment this new regional authority was the Waikato Regional Council, which was colloquially known as Environment Waikato.<sup>92</sup> Whilst Waitomo District Council still retained control of the river mouth, two subsequent Acts redistributed some of its powers. The first was the Maritime Transport Act 1994, which contained provisions regarding local boating and navigation safety.<sup>93</sup> The second was the Local Government Amendment Act 1999 which divided the responsibilities for harbour control between regional and district councils. Regional councils are now assigned the responsibility for erecting and maintaining

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<sup>87</sup> 'District Profile', *Waitomo District Council website*, <http://www.waitomo.govt.nz/council/our-place/history/district-profile/>. The last boundary revision prior to this occurred in 1956 when Kawhia County was disestablished and portions of it were absorbed into the Waitomo and Otorohanga Counties.

<sup>88</sup> *New Zealand Gazette*, No. 59, 5 May 1983, p 1372

<sup>89</sup> The extension of the Waikato Valley Authority district over the Mokau catchment is discussed in the environmental overview report.

<sup>90</sup> T. E. Law for the Secretary of Transport to the Chief Engineer of the Waitomo Electric Power Board, 9 August 1982. Series 1 Box 20 54/20/87, Waikato Regional Council (supporting papers #145).

<sup>91</sup> The regional councils are listed in schedule 2 part 1 of 2010 No. 37: Local Government Act.

<sup>92</sup> This case-study has used the title 'Waikato Regional Council' except where 'Environment Waikato' has been used in quoted material or in footnoted references.

<sup>93</sup> 1994 No. 4: Maritime Transport Act, in particular maritime rules part 91.

navigation aids and removing obstructions and impediments to navigation, whilst district councils retain the power to erect and maintain wharves, quays, and other such works. Crucially for the erosion-prone Mokau harbour, district councils also retain responsibility for erecting and maintaining protective works designed to prevent the encroachment of waters through erosion or flooding.<sup>94</sup> Waikato Regional Council currently exercises its navigational responsibilities through its 2009 Navigation Safety Bylaw, which dictates speed restrictions and appoints harbourmasters to enforce them.<sup>95</sup>

The Resource Management Act recognises elements of the Maori worldview. Section 6 lists ‘the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga’ and ‘the protection of protected customary rights’ as two of its ‘matters of national importance’, whilst section 7 is required to give ‘particular regard’ to the duties of kaitiakitanga. The Local Government Act 2002 also requires local authorities to actively encourage and provide opportunities for Maori engagement in decision making. Waikato Regional Council has given effect to these requirements by creating a dedicated consultation team named Tai-ranga-whenua and compiling a list of iwi and hapu within their region for consultation.<sup>96</sup> Waitomo District Council has declared its desire to encourage Maori participation in decision making.<sup>97</sup>

The key Maori consultative body identified by Waikato Regional Council and Waitomo District Council for the Mokau region is Mokau Ki Runga, which is one of seven mandated Resource Management Committees under the Maniapoto Maori Trust Board.<sup>98</sup> At the fifth korero tuku iho hearing, Barbara Marsh was critical of the relationship between Waitomo District Council and local Maori, particularly regarding the continued discharge of sewage into the Mokau River at Piopio and its effects on customary practices and resources.<sup>99</sup> Nga Hapu o Poutama argue that Mokau tends to be overlooked by both Waitomo District Council and the Maniapoto Maori Trust Board due to its remoteness and the fact that it is viewed as of

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<sup>94</sup> 1999 No. 24: Local Government Amendment Act, part 39A.

<sup>95</sup> ‘Waikato Regional Council Navigation Safety Bylaw 2009’, <http://www.waikatoregion.govt.nz/Council/Policy-and-plans/Rules-and-regulation/Navigation-safety-bylaw/Navigation-Safety-Bylaw-2009/>, pp 30-31

<sup>96</sup> ‘Iwi in our region’, Waikato Regional Council website, <http://www.waikatoregion.govt.nz/Community/Your-community/Tangata-Whenua/Iwi-in-our-region/>

<sup>97</sup> *Waitomo District Council Annual Report 2011-2012*, p 15

<sup>98</sup> ‘He Mahere Taiao: The Maniapoto Iwi Environmental Management Plan’, Maniapoto Maori Trust Board, 2007, pp 50, 57-59.

<sup>99</sup> Wai 898 #4.1.5, p 64

secondary importance to the joint management arrangements for the Waipa River. They also stress that local government provisions for Maori tend to be more about ‘consultation’ than ‘participation’: consultation is perceived as occurring after a decision has been reached, whilst participation would involve greater involvement in decision making.<sup>100</sup>

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<sup>100</sup> Research hui in Te Kuiti, 19 February 2013; field trip with Russell Gibbs and Haumoana White, 22 February 2013.

### ***3. Chapter 3 - Management of customary resources***

Customary fisheries in New Zealand are managed under three key pieces of legislation: the Fisheries (Amateur Fishing) Regulations 1986, the Fisheries (Kaimoana Customary Fishing) Regulations 1998, and the Fisheries (South Island Customary Fishing) Regulations 1999. Of these three pieces of legislation, only the former two are relevant to the Mokau River mouth.

In 1986, the Crown introduced a Quota Management System (QMS) to the New Zealand commercial fishing industry in order to preserve fish stock. In the same year the Fisheries (Amateur Fishing) Regulations 1986 were passed to manage non-commercial fishing activities, and the Fisheries Amendment Act 1986 declared that these non-commercial interests should be preserved separately from the total allowable catch designated under the QMS.<sup>101</sup> Section 27 of the Fisheries (Amateur Fishing) Regulations 1986 allowed the taking of fish for hui or tangi provided that the appropriate Fishery Officer was consulted.<sup>102</sup> A modification of this section by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 allowed Crown authority for approving these activities to be delegated to recognised Maori committees or kaitiaki. It also expanded the scope of such activities to include hui, tangi and 'traditional non-commercial fishing use'.<sup>103</sup> The Fisheries (Customary Fishing) Notice 2006 separated hui and tangi from traditional non-commercial fishing uses into a sub-category that allowed fishing applications to be submitted directly to recognised Marae Committees, Runanga, or Maori Trust Boards.<sup>104</sup> This means that the authority to approve activities that come under the definition of hui or tangi is delegated to Maori, whilst the management of other traditional non-commercial fishing uses still requires the Crown to delegate authority.

The Fisheries (Kaimoana Customary Fishing) Regulations 1998 are designed to provide greater Maori control over customary fishing practices in their rohe moana. For these provisions to be enacted, Maori in a particular region must agree on who holds mana whenua and appoint tangata kaitiaki or tangata tiaki to act as guardians of their rohe moana. The Ministry of Primary Industries then confirms and appoints these guardians. Additionally, Maori can request that a particular area within their rohe moana be set aside as a special

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<sup>101</sup> 1986 No. 34: Fisheries Amendment Act, section 28C(1)

<sup>102</sup> Fisheries (Amateur Fishing) Regulations 1986, SR 1986/221

<sup>103</sup> 1992 No. 121: Treaty of Waitangi (Fisheries Claims) Settlement Act, Section 37(1)

<sup>104</sup> Fisheries (Customary Fishing) Notice 2006, F357

reserve or 'mataitai', which allows them to modify the rules associated with customary fishing practices in that reserve. As more areas are defined as rohe moana and mataitai under this legislation, the default provisions contained in section 27 of the Fisheries (Amateur Fishing) Regulations 1986 will eventually become defunct. However, since no rohe moana or mataitai have been defined that include the Mokau River or the river mouth, the regulation of customary fisheries in this area remain under section 27 of the Fisheries (Amateur Fishing) Regulations 1986.

Under section 27a of the Fisheries (Amateur Fishing) Regulations 1986, the New Plymouth branch of the Ministry for Primary Industries have listed Merepaea Rauputu of the Maniaroa Marae Committee as their contact for issuing and approving customary fishing licences for the Mokau River and harbour. William Wetere, the Chairperson of Mokau Ki Runga and Maniaroa Marae, noted several concerns with the way that the customary fishing regulations are managed:

The rules regarding appointments are not entirely to the mana whenua liking. The ability of the tribal authority to make appointments has the potential to cause internal conflict, this is an arrangement that should be agreed between manawhenua and the tribal authority, not guaranteed by the Crown. The need to have the Crown's final approval of kaitiaki is also an interference in our mana motuhake. In general however we do support the managed sustainability of this resource.<sup>105</sup>

Nga Hapu o Poutama have also expressed dissatisfaction with the way that section 27 regulations are managed south of Mokau. They claim that it took a great deal of time and effort to secure authority to issue customary fishing licenses from the Ministry of Primary Industries, and that as of 22 February 2013 they were still waiting to receive their permit book.<sup>106</sup> Many claimants have also expressed concerns regarding the impact of commercial fishing practices and river pollution on customary activities. The following examples discuss these issues.

### **3.1 Whitebait stands**

Whitebait fishing is managed by a slightly different process than other commercial, recreational and customary fishing practices in New Zealand. The key piece of legislation is

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<sup>105</sup> Email from William Wetere, Chairperson for Mokau Ki Runga Regional Management Committee and Maniaroa marae, 5 September 2013.

<sup>106</sup> Field trip with Russell Gibbs and Haumoana White, 22 February 2013.

the Whitebait Fishing Regulations 1994 and subsequent amendments passed in 1995, which set restrictions on whitebait fishing and assign the responsibility for enforcing these regulations to the Department of Conservation.<sup>107</sup> The regulations restrict the fishing season to between 15 August and 30 November, from 5 a.m. to 8 p.m. during New Zealand standard time and 6 a.m. to 9 p.m. during daylight saving time, and limit the size and number of nets that can be used by each individual. Section 18 allows for the taking of whitebait for hui and tangi provided that ‘the intention to take the whitebait has been notified to a warranted officer by or on behalf of a council or committee representing any Maori community’. The regulations also prohibit whitebait fishing from bridges or vessels, so the preference of most whitebaiters is to set up stands on the shore from which they can operate their nets. Since these structures must be placed on the river bed, they technically require a resource consent under the Resource Management Act from the relevant regional council.<sup>108</sup> However, this resource consent requirement can vary between regions.

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<sup>107</sup> Whitebait Fishing Regulations 1994, SR 1994/65. These regulations were made under section 48 of the Conservation Act 1987. Separate regulations exist for whitebait fishing on the West Coast of the South Island and the Chatham Islands.

<sup>108</sup> ‘Whitebait and Whitebaiting’, *Te Ara encyclopedia*, <http://www.teara.govt.nz/en/whitebait-and-whitebaiting/page-4>



**Figure 6: An example of a whitebait stand on the Mokau River**

The banks of the Mokau River are lined with hundreds of whitebait stands from a point shortly after the bridge extending several kilometres inland. These stands are privately owned and operated, and reside on both privately and publicly owned land. Whilst whitebaiting has been a pastime of Mokau residents for decades, the recent surge in popularity seems to have begun in the early 1980s. This coincided with an application by the Waitomo District Council in 1982 for a grant of control over the waters and foreshores of the Awakino, Marokopa and Mokau Rivers. Further information on this application, and its extension to include the foreshore, riverbed and waters of the Mokau River, is provided in the environmental overview report. Notice of the grant application was published in the *Waitomo News* and the *New Zealand Herald* in July calling for feedback by 31 August.<sup>109</sup> As part of this process of public consultation, Waitomo District Council held a Town Hall meeting in Mokau around this time. At a research hui held in Te Kuiti on 7 August 2013, one claimant recalled attending this meeting with several members of her whanau where they expressed their

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<sup>109</sup> *New Zealand Herald*, 31 July 1982 [page uncertain] (supporting papers #146).

concerns about the decline of whitebait populations in the river. She claimed that the government officials at the meeting promised to monitor the construction and activity of whitebait stands on the Mokau River on an ongoing basis, but that they failed to do so.<sup>110</sup> The present writer has been unable to find an archival or newspaper reference for this meeting.

In April 1983 the Waitomo District Council received the grant of control. A by-law was passed in December 1983 that defined its authority in relation to the licensing of foreshore structures such as whitebait stands.<sup>111</sup> Over the next two years the demand for whitebait stands on the river grew exponentially; however, it was not until 1985 that the Council began issuing licenses under the by-law after conflicts arose amongst whitebaiters on the Mokau River.<sup>112</sup> In October 1985 the Council wrote to the Marine Division of the Ministry of Transport that it had been ‘inundated by applications for foreshore licences for whitebait structures’ that year and that it sought to repeal the by-law due to the prohibitive cost of dealing with this surge in applications.<sup>113</sup> The reply from the Ministry noted that the by-law could not be repealed because whitebait jetties fell under the category of structures in the Harbours Act 1950, and by extension under the grant of control to the Council.<sup>114</sup>

During 1986 a dispute over the whitebait stands arose between Waitomo District Council and the Department of Lands and Survey who owned a considerable amount of scenic reserve land along the Mokau River. In February the Marine Division of the Ministry of Transport organised a meeting between the Council, the Commissioners of Crown Lands for Hamilton and New Plymouth and the Ministry of Agriculture and Fisheries to discuss the matter. The Commissioners of Crown Lands raised a number of issues that highlight the increasing number of stands on the river and the possibility that they were impacting negatively on the environment:

Concern was expressed at the number of “illegal” stands, stands abutting scenic reserves, the length of stands which in some cases extended well out into the river creating navigational hazards and in some cases corrugated iron was being attached to

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<sup>110</sup> Research hui in Te Kuiti, 7 August 2013

<sup>111</sup> Waitomo District Council foreshore, riverbed and waters bylaws, 15 December 1983 (supporting papers #147).

<sup>112</sup> Administration Officer, Waitomo District Council, to the Commissioner of Crown Lands, 23 October 1985. Series 1 Box 16 54/14/101, Waikato Regional Council (supporting papers #149).

<sup>113</sup> Waitomo District Council Administration Officer to the Ministry of Transport, 15 October 1985. Series 1 Box 20 54/20/87, Waikato Regional Council (supporting papers #148).

<sup>114</sup> M. P. Boland for the Secretary for Transport to the District Clerk, Waitomo District Council, 12 November 1985. Series 1 Box 20 54/20/87, Waikato Regional Council (supporting papers #150).

stands to direct the whitebait. From the discussion it became apparent that the river was starting to be used by commercial operations (3 at February 1986) and there is a seeming lack of control of safety being exercised.<sup>115</sup>

The Commissioners also complained that the Council had been issuing licenses to stands adjoining scenic reserve land without consulting with them, and that some licensees seemed to believe that they possessed the rights to a 50-metre strip of river alongside their stands.<sup>116</sup> No concrete solutions appear to have come out of this meeting, for in June 1986 Lands and Survey protested that Waitomo District Council was still issuing scenic reserve licenses without consultation.<sup>117</sup> The Council replied that its policy was to only issue licenses to those who had secured written permission from the landowner to access their whitebait stand or else an agreement that they only intended to access their stand by boat.<sup>118</sup>

In July 1986 Lands and Survey decided to pursue their own solution independent of Waitomo District Council. They protested to the Marine Division of the Ministry of Transport that they had not been consulted about the grant of control issued to the Council. They also informed Waitomo District Council that they were preparing a management plan for the Mokau River scenic reserves that would attempt to balance the recreational activities of whitebaiters with the interests of other reserve users such as trampers, canoeists and birdwatchers. Since whitebait stands on reserve land did not confer additional land rights to the licensee, Lands and Survey argued that other boat users or fishermen could legally occupy registered stands ahead of the licensee.<sup>119</sup> In August Waitomo District Council complained to the Marine Division that Lands and Survey staff were informing applicants for whitebait stands that the Council had no authority to issue licenses.<sup>120</sup> In October Lands and Survey suggested to the Marine Division that it might be appropriate for the Director-General of Lands to take over the Council's grant of control for the lower reaches of the Mokau River.<sup>121</sup>

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<sup>115</sup> Secretary of Transport to the Regional Secretary for the Marine Division, 6 October 1986. Series 1 Box 16 54/14/101, Waikato Regional Council (supporting papers #157).

<sup>116</sup> Ibid.

<sup>117</sup> Commissioner of Crown Lands to the District Manager of the Waitomo District Council, 17 June 1986. Series 1 Box 16 54/14/101, Waikato Regional Council (supporting papers #151).

<sup>118</sup> Administrator Officer of the Waitomo District Council to the Commissioner of Crown Lands, 18 June 1986 (supporting papers #152); Chief Executive Officer of the Waitomo District Council to the Commissioner of Crown Lands, 24 June 1986. Series 1 Box 16 54/14/101, Waikato Regional Council (supporting papers #153).

<sup>119</sup> Commissioner of Crown Lands to the Chief Executive Officer of the Waitomo District Council, 23 July 1986. Series 1 Box 16 54/14/101, Waikato Regional Council (supporting papers #154).

<sup>120</sup> Waitomo District Clerk to the Secretary for Transport, 4 August 1986. Series 1 Box 16 54/14/101, Waikato Regional Council (supporting papers #155).

<sup>121</sup> Secretary of Transport to the Regional Secretary for the Marine Division, 6 October 1986. Series 1 Box 16 54/14/101, Waikato Regional Council (supporting papers #157).

Whilst this debate was occurring, the administrative workload of registering the stands was continuing to stretch the resources of Waitomo District Council. In August 1986 the Council noted that:

The most obvious and onerous duty imposed on Council staff by reason of the Grant of Control has been the task of licensing whitebait stands along the Mokau River. By agreement with the Clifton County Council we handle the licensing of structures on both sides of the Mokau and so far we have registered something [sic.] in the order of 160+ stands – and I suspect there are many more to go. The work involved in licensing so many stands places a fairly heavy strain on our somewhat limited resources[.]<sup>122</sup>

The issue with Lands and Survey also appeared to be causing dissatisfaction amongst the whitebaiters themselves, and in September the Council noted that the police had begun ‘taking an active interest in what is going on’. If the situation did not improve, Waitomo District Council stated that it would consider surrendering its grant of control.<sup>123</sup>

In October 1986 the Marine Division of the Ministry of Transport suggested convening a second meeting between all of the agencies involved in order to resolve the whitebaiting issue.<sup>124</sup> A meeting was scheduled for January 1987, but the subject lapsed when the Department of Lands and Survey informed Waitomo District Council of ‘the implementation of a new Department’ that would handle whitebait stand licenses.<sup>125</sup> This was the Department of Conservation, which was established under the 1987 Conservation Act to consolidate several functions of Lands and Survey as well as the Forest and Wildlife Services.<sup>126</sup> Within one month of being established the Department of Conservation wrote to the Ministry of Transport noting that the Mokau whitebait question had ‘raised its head already, as you

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<sup>122</sup> Waitomo District Clerk to the Secretary for Transport, 4 August 1986. Series 1 Box 16 54/14/101, Waikato Regional Council (supporting papers #155).

<sup>123</sup> Waitomo District Clerk to the Secretary for Transport, 24 September 1986. Series 1 Box 16 54/14/101, Waikato Regional Council (supporting papers #156); Waitomo District Clerk to the Secretary for Transport, 21 October 1986. Series 1 Box 20 54/20/87, Waikato Regional Council (supporting papers #158).

<sup>124</sup> Secretary of Transport to the Regional Secretary for the Marine Division, 6 October 1986. Series 1 Box 16 54/14/101, Waikato Regional Council (supporting papers #157).

<sup>125</sup> M. R. Biddle for the Regional Secretary for Transport to the Waitomo District Clerk, 19 December 1986 (supporting papers #159); Waitomo District Council Administration Officer to the Regional Secretary for Transport, 22 December 1986. Series 1 Box 20 54/20/87, Waikato Regional Council (supporting papers #160).

<sup>126</sup> 1987 No. 65: Conservation Act

predicted.’<sup>127</sup> Waitomo District Council relinquished its grant of control on 19 October 1987 and began handing it over to the Department of Conservation the following year.<sup>128</sup>

With the establishment of the Resource Management Act in 1991, Waikato Regional Council assumed control of all structures on the beds of lakes and rivers, including whitebait stands. The various changes in administration and regulation that have occurred since then suggest that the stands remain costly and time consuming to monitor. Waikato Regional Council returned control of whitebait stands to the Department of Conservation in 1992, but the Department of Conservation transferred it back three years later ‘due to workload and administrative pressures’.<sup>129</sup> Waikato Regional Council subsequently decided in 1998 to create permitted activity rules that would remove the need for resource consents to be issued for whitebait stands. The professed reason for these rules, which came into effect in 2007, was that whitebait stands are perceived by Waikato Regional Council as having minimal environmental impact. The conditions stipulated in permitted activity rule 4.2.6.1, which applies to whitebait stands outside the coastal marine area, are that stands must:

- be at least 30 metres from any other whitebait stand on the same bank of the river;
- have a deck area (not including accessways onto the structure) no greater than 4 square metres (4 metres x 1 metre);
- not be located at a point where the river is less than 10 metres wide;
- not extend out into the river from the river bank for more than 10 per cent of the river width, or 5 metres, whichever is the lesser;
- be at least 20 metres from any flood gate, confluence, culvert, bridge or sand/gravel mining operation;
- not impede the flow of water;
- not cause or result in any damage to river protection works or other existing structure;
- be kept free of debris;
- be maintained in a structurally sound condition at all times;
- Any erosion resulting from the structure must be remedied as soon as possible.<sup>130</sup>

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<sup>127</sup> Regional Manager of the Department of Conservation to the Secretary for Transport, 13 March 1987. Series 1 Box 16 54/14/101, Waikato Regional Council (supporting papers #161).

<sup>128</sup> Secretary for Transport to the Administration Officer of Waitomo District Council, 13 January 1988 (supporting papers #19); Administration Officer of Waitomo District Council to the Ministry of Transport, 19 January 1988. ABPL W5762 7457 Box 227 43/156/10 1, Archives New Zealand (supporting papers #20).

<sup>129</sup> 'Whitebaiting: all you need to know', Environment Waikato, undated (circa 1996). Series 7 22/03/35, Waikato Regional Council (supporting papers #170).

<sup>130</sup> 'Whitebait stands application form', Waikato Regional Council, <http://www.waikatoregion.govt.nz/PageFiles/3027/whitebait%20form%2008.pdf>, p 3

Under the Waikato Regional Council's permitted activity rule, the process for establishing and operating a whitebait stand on the Mokau River is relatively straightforward. Firstly, an individual approaches the landowner, whether private or public, and gains their approval before erecting their stand. They are then required to fill out a Regional Council form informing them of the GPS coordinates of their stand, to which the Regional Council responds confirming the stand and issuing a reference number. No further monitoring of the new stand occurs unless it is removed, destroyed or changes ownership, but this is dependent on the owner informing the Regional Council of the change. Whilst the Regional Council used to monitor whitebait stands on the Mokau and Awakino Rivers with the Department of Conservation, they no longer possess the funds to do so. As a result, the 490 stands registered on the Mokau River are no longer monitored for compliance, although the Department of Conservation perform inspections each season to ensure that whitebait fishing regulations are being adhered to.

Maori have raised several concerns with the way that whitebait fishing on the Mokau River is managed. Mokau Ki Runga are concerned with the lack of monitoring, the intensive stand placements and the fact that neither the Department of Conservation regulations nor the Waikato Regional Council permitted activity rules place any limit on the amount of whitebait that can be harvested.<sup>131</sup> The only harvesting restrictions imposed by the Department of Conservation, which have not changed since the mid-1990s, are by season and time of day. Recent scientific research suggests that these restrictions may not be congruent with whitebait migration and breeding patterns.<sup>132</sup> Mokau Ki Runga are also concerned with the possible use of this recreational fishery for commercial gain by whitebait stand owners.<sup>133</sup> Nga hapu o Poutama are similarly concerned with the lack of monitoring of whitebait stands, and claim that there are as many as 200 unregistered stands along the Mokau River.<sup>134</sup> The stands are also quite lucrative, and can sell for as much as \$10000 each.<sup>135</sup> Finally, Poutama argue that

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<sup>131</sup> Email from William Wetere, Chairperson for Mokau Ki Runga Regional Management Committee and Maniaroa marae, 5 September 2013.

<sup>132</sup> 'Whitebait and Whitebaiting', *Te Ara encyclopedia*, <http://www.teara.govt.nz/en/whitebait-and-whitebaiting/page-1>; 'Fears of losing whitebait prompt ban call', *Fairfax NZ*, 28 July 2012, <http://www.stuff.co.nz/environment/7366591/Fears-of-losing-whitebait-prompt-ban-call>

<sup>133</sup> Email from William Wetere, Chairperson for Mokau Ki Runga Regional Management Committee and Maniaroa marae, 5 September 2013

<sup>134</sup> Field trip with Russell Gibbs and Haumoana White, 22 February 2013.

<sup>135</sup> 'Whitebait in decline', *Taranaki Daily News*, 15 August 2009, <http://www.stuff.co.nz/taranaki-daily-news/news/2755157/Whitebait-in-decline>

no consultation has been undertaken with local Maori in either the establishment or the ongoing maintenance of the stands.<sup>136</sup>

### **3.2 Pollution**

A number of claimants have suggested that pollution on the Mokau River has impacted on fish stock located in the harbour. Jacob Hiriaki, a kaumatua from Maniaroa Marae, stated the following in his submission to the fifth korero tuku iho hearing:

We come down to Mokau; you can get mussels there across the bridge. Move over to Te Kauwai, you can get karengo mussels and under the bridge at Mohakatino and under the bridge at Mokau, one time you could get pipi's, fat pipi's at Mohakatino and cockles under the Mokau bridge. Across by the island you could get pupu. Today you are struggling to get those things. Why? Because the rivers are polluted.<sup>137</sup>

Whilst this case study is limited to environmental changes at the Mokau River mouth, the effects of waste discharge at the Piopio treatment plant are discussed in the environmental overview report. From the sources consulted for this case study, there does not appear to have been any studies undertaken on fish stock at the Mokau River mouth and any impacts of pollution arising from upstream.

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<sup>136</sup> Field trip with Russell Gibbs and Haumoana White, 22 February 2013.

<sup>137</sup> Wai 898 #4.1.5, p 10

#### ***4. Chapter 4 - Management of wahi tapu***

The New Zealand Historic Places Trust was established in 1954 to ‘promote the identification, protection, preservation and conservation of the historical and cultural heritage of New Zealand.’<sup>138</sup> In 1993 its powers and functions were refined to incorporate the protection and registration of wahi tapu and assisting Maori in the preservation and management of heritage resources. Authority for these functions was vested in a special Maori Heritage Council, and is accomplished through a register of heritage sites such as historic buildings, places, and wahi tapu.<sup>139</sup> However, the responsibility to actually protect these items lies with territorial authorities including District Councils, and section 74.2(b) of the Resource Management Act requires territorial authorities to take account of relevant entries in the historical register when preparing or modifying their District Plans.

The Waitomo District Council has addressed this requirement in their 2009 District Plan, which spells out their commitment to the preservation of heritage and archaeological sites as well as the rules around permitted and non-permitted activities on such sites. However, no historical sites of significance are listed for the Mokau River mouth, and the Council note that ‘non-disclosure of locations of places known to Maori may be an option that is taken to preserve the waahi tapu nature of those places.’<sup>140</sup> This section addresses several such unregistered sites which Maori have raised concerns about.

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<sup>138</sup> 1954 No. 14: Historic Places Act

<sup>139</sup> 1993 No 38: Historic Places Act

<sup>140</sup> Waitomo District Plan, March 2009, pp 90-114

## 4.1 Te Naunau

As discussed earlier, the spit extending from the northern bank of the Mokau River mouth is the site of an important urupa known as Te Naunau. The history of the Crown's management of this site is convoluted, and involves several competing local and central government departments. It can be roughly divided into two chronological parts: prior to 1953, when the spit was subdivided by the Crown for private holiday homes; and post-1953, when recurring erosion events have seriously damaged the sections that were laid out. This section explores that history, with a particular focus on the extent to which Maori interests regarding the subdivision of the urupa and the erosion process have been recognised or addressed by the Crown.

### 4.1.1 Background, c. 1800-1941

Belgrave et al. note that Te Naunau was the site of a major battle between Ngati Maniapoto and Ngati Tama during the campaigns of Te Rauparaha in the early 1800s. The dead that fell there eventually became a part of the landscape, and as a result Mokau spit is considered to be particularly tapu.<sup>141</sup> Te Naunau has been used as a burial ground by a large number of different iwi and hapu since then. When the Maori Land Court heard issues relating to the development of the spit in 1953, the following iwi and hapu were listed as having deceased buried there: Ngati Rakei, Ngati Tu, Ngati Wai, Ngati Waikorara, Ngati Mihi, Ngati Waiora, Te Paemate, Ngati Tumarouru, Ngati Rahiri, Ngati Kahu, Ngati Rungaterangi, Ngati te Atiawa, Ngati Mutunga, Ngati Tama, Ngati Toa, Ngati Rarua, Nga Ruku, as well as several individual whanau.<sup>142</sup> However, it is important to note the difference between those hapu who had deceased buried on Te Naunau and those who held ongoing interests there. Ann Le Mieux claimed at the fifth korero tuku iho hearing that the spit was 'designated an urupa and set up for the use of nine hapu being Te Paemate, Waikorara, Ngati Tu, Ngati Rahiri, Ngati Tama and four other hapu of which I do not know the names.'<sup>143</sup>

When the Crown followed through on the sale of the Mokau block in the 1880s, Te Naunau was not one of the areas set aside as a Maori reserve. It is not clear why this was the case, however it will be shown below that Mokau Maori in the 1950s believed that it should have

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<sup>141</sup> Wai 898 #A76, p 300

<sup>142</sup> Otorohanga Minute Book 78, p 76 (supporting papers #131); Minutes of Maori Land Court meeting in Te Kuiti, 1 May 1953, p 5. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #63)

<sup>143</sup> Wai 898 #4.1.5, p 89

been set aside. A survey undertaken by Thomas Perham for the Public Works Department in 1884 labelled the spit as 'Naunau' and noted that a 'Maori cemetery' lay on its east side facing into the harbour. The seaward shore on the west side of the spit was described as 'loose sand and driftwood'. When the blocks for Mokau Township were laid out in February 1888, no lands on the spit were included. A survey of the township by A. O. Donahoo in 1899 denoted the cemetery as occupying a small piece of land opposite the Tainui anchor stone on the harbour-facing side of the spit. This appears to have been the area that a local Maori named Hauraki described to James Cowan during a canoe voyage up the Mokau River in 1905:

When I was young we never failed to take the first mullet or kahawai we caught when we were out fishing in our canoes and offer it with a prayer to the *atua* [original emphasis], the god who sent us the fish. We laid those offerings on the tapu sandbank, between the Stone of Power and the Heads, the holy place Te Naunau. But now no one makes offerings and first-fruits. We are like the pakeha; we don't trouble about the *tapu* [original emphasis] now.<sup>144</sup>

However, Cowan observed that Hauraki 'doth protest too much' when it came to tapu, for when the taniwha known as Te Kauri was later spotted on the river Hauraki took great care to observe proper tikanga.<sup>145</sup>

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<sup>144</sup> James Cowan, 'Up the Mokau', *New Zealand Railways Magazine*, Vol. 12, No. 10 (January, 1938), p 13.

<sup>145</sup> *Ibid.*

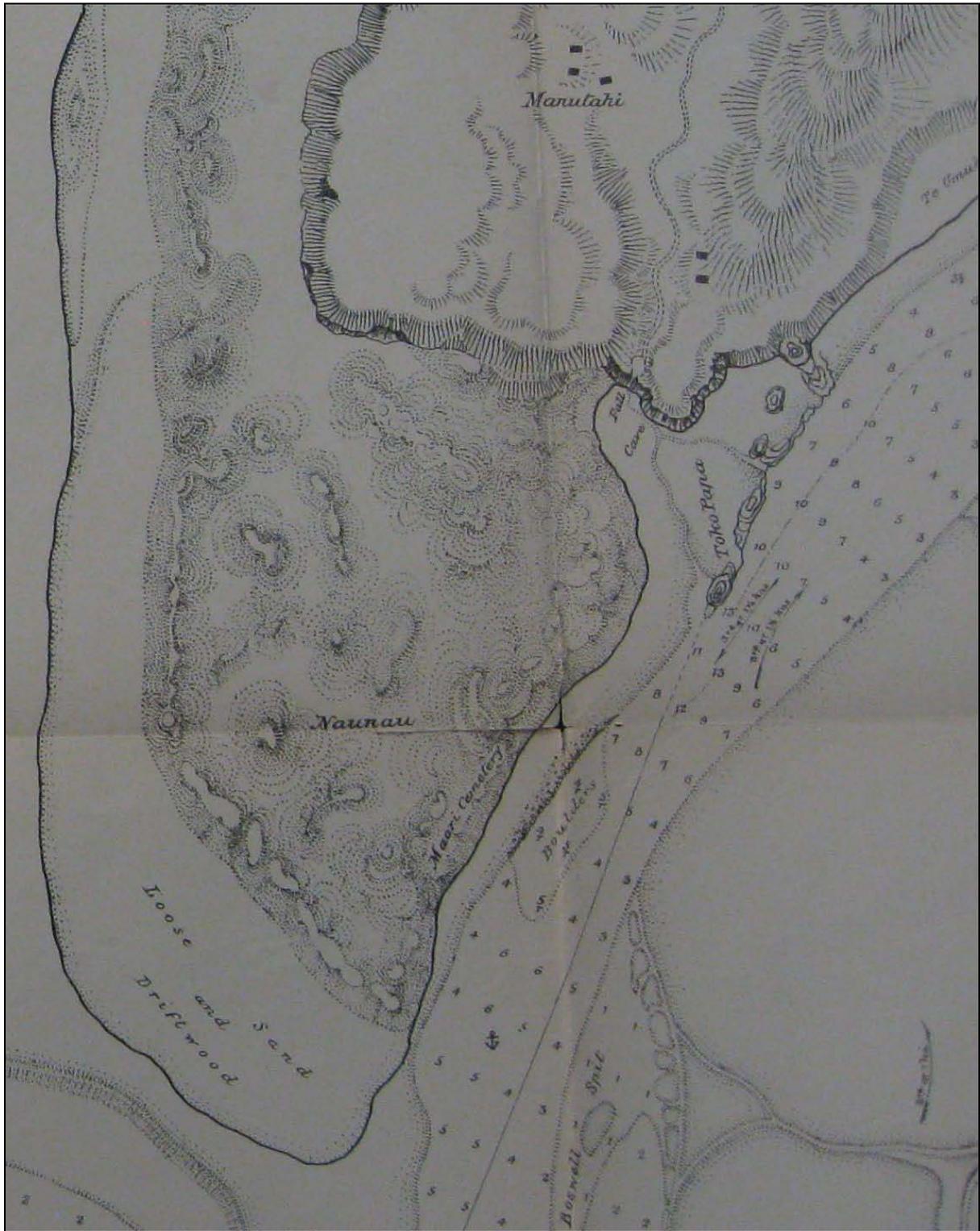


Figure 7: Te Naunau as surveyed by Thomas Perham in 1884

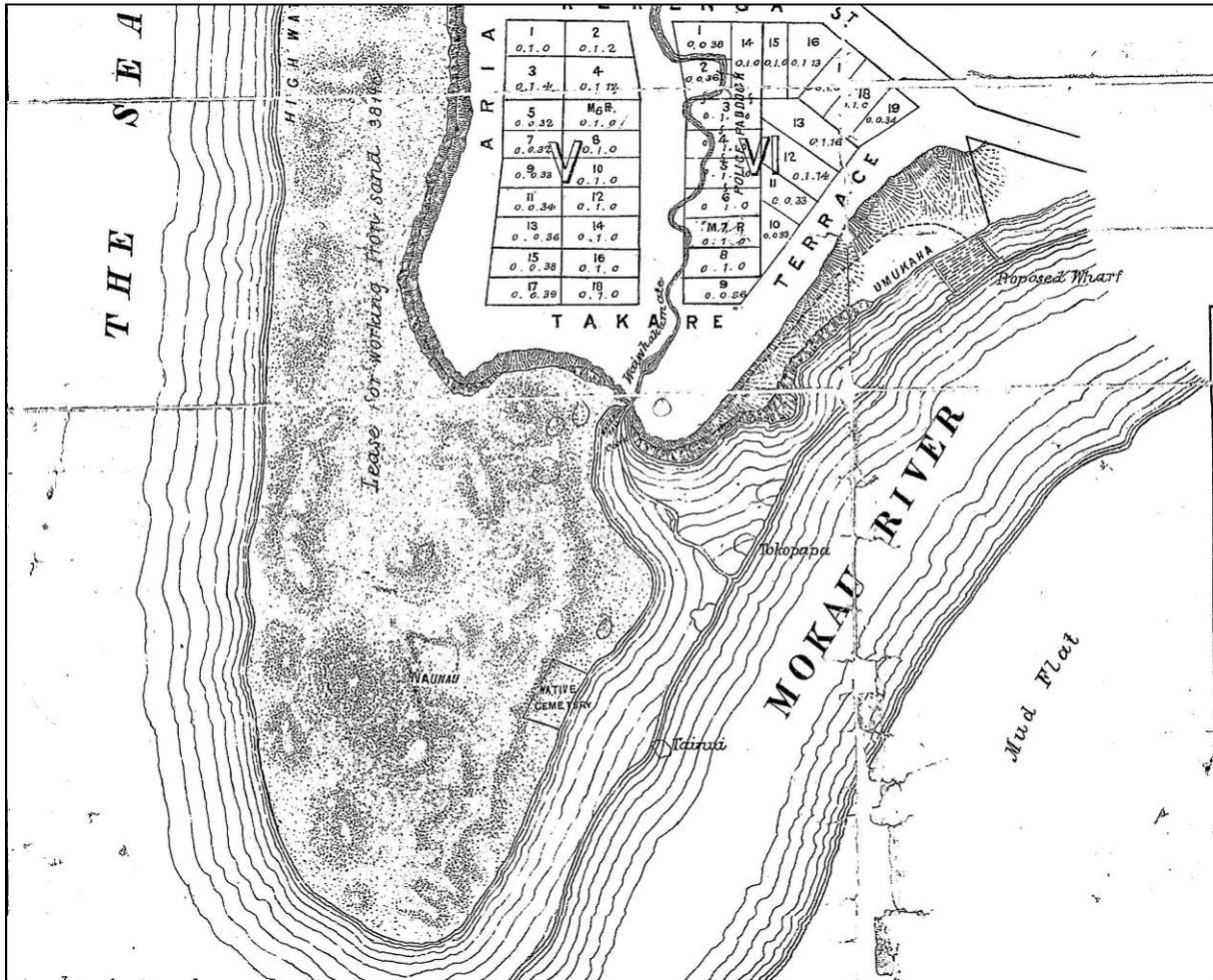


Figure 8: Te Naunau as surveyed by A. O. Donahoo in 1899

Local Maori appear to have first sought the protection of Te Naunau by the Crown in 1921. In January of that year, Minister of Lands D. H. Guthrie advised the Mokau Harbour Board that he would be visiting the region during the parliamentary recess in response to a petition from settlers on the Manga-Awakino block calling for closer settlement.<sup>146</sup> It appears that he may have been approached by local Maori about Te Naunau during his visit, as he informed the Harbour Board in March that he was ‘making enquiries into the matter of the Native Cemetery on the sand hills near Mokau Heads’.<sup>147</sup> The Department of Lands and Survey considered the request in May 1921 and advised the Harbour Board of their decision:

<sup>146</sup> Minutes of meeting of the Mokau Harbour Board, 13 January 1921. Accession No. ARC2001-1/2, Puke Ariki (supporting papers #97)

<sup>147</sup> Minutes of meeting of the Mokau Harbour Board, 10 March 1921. Accession No. ARC2001-1/2, Puke Ariki (supporting papers #98)

[Guthrie] had inquired into the position regarding the area of sandhills near the Mokau Heads which the Natives desired to be set apart as a burial ground. He found it quite unsuitable for the purpose, and therefore it was not proposed to set it apart.<sup>148</sup>

The present writer was unable to find the original Lands and Survey files regarding this request or the correspondence that was sent to the Mokau Harbour Board.

When the effort to secure protection for Te Naunau through the Department of Lands and Survey failed, local Maori turned to the Native Land Court. On 6 November 1923 Pahiri Wiari and Tanirau Eria (also known as Tokoihi) lodged an application with the Court to investigate the title to the Mokau spit. It is possible that these two individuals were the ones who approached the Minister of Lands in 1921. The Department of Lands and Survey appear to have tasked one of their Field Inspectors to survey the area, because a plan dated November 1923 denotes an 8 acre area on the harbour-facing side of Mokau spit as the site of 'Te Naunau Burial Ground' as pointed out by an individual named Toheriri Tauwhara. The matter was heard by the Native Land Court in Te Kuiti on 25 September 1924. Present at the meeting were Wiari and a Mr Darby for the Crown. Darby argued:

We claim that this is Cr [Crown] land. It is a purchase referred to in Turtons deeds. The deed gives the boundaries [and] mentions 3 reserves but Te Naunau is not among them. I produce [an] extract from the deed & will observe that it is expressly decl'd [declared] that except the ment'd [mentioned] reserves there are no reserves on the ld [land] which is entirely given up by the vendors to Queen Victoria.

In reply, Wiari requested an adjournment 'to get a lawyer'.<sup>149</sup> However, Wiari does not appear to have done so, and on 12 June 1925 the Court noted that it had decided not to pursue the matter as Mokau spit was 'clearly Cr [Crown] land'.<sup>150</sup> An assessment by a Lands and Survey Field Inspector in 1951 claimed that Wiari's decision to abandon the case was 'probably for financial reasons after it had been pointed out that the land was definitely the property of the Crown.'<sup>151</sup> Wiari's wife recalled that 'through lack of knowledge and inability to prosecute the application, it was dismissed by the Court.'<sup>152</sup>

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<sup>148</sup> Minutes of meeting of the Mokau Harbour Board, 11 May 1921. Accession No. ARC2001-1/2, Puke Ariki (supporting papers #99)

<sup>149</sup> Otorohanga Minute Book 65, p 114 (supporting papers #129)

<sup>150</sup> Otorohanga Minute Book 65, p 304 (supporting papers #130)

<sup>151</sup> Field Inspector to the Commissioner of Crown Lands, Hamilton, 24 July 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #43)

<sup>152</sup> Newton Taylor to the Director-General of Lands, 27 August 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #44)

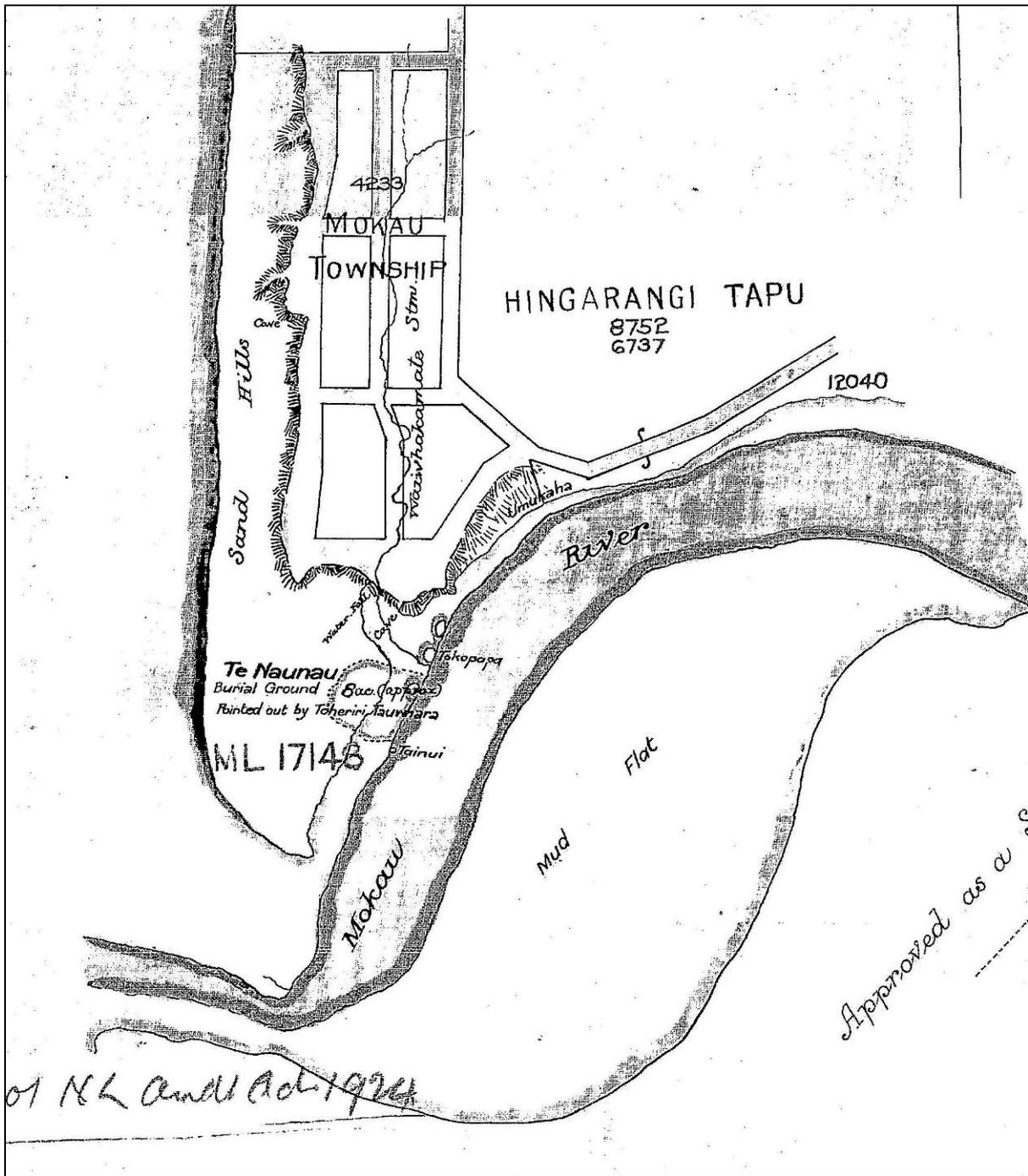


Figure 9: Sketch of the Mokau spit by the Department of Lands and Survey, 1923

Despite these unsuccessful efforts, the following sections will show that, throughout the first half of the twentieth century, local Maori believed that the entire spit was an urupa and continued to use it for that purpose.

#### **4.1.2 Private development, 1941-1951**

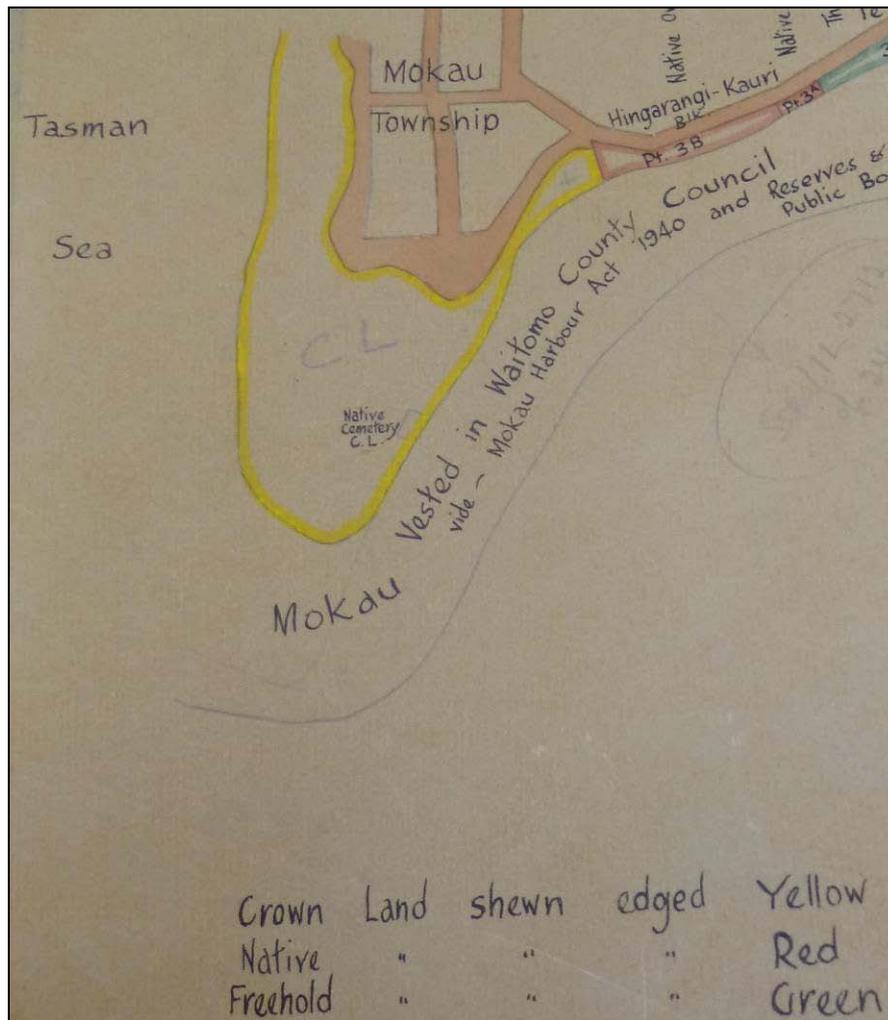
During the 1940s, the Mokau spit attracted an increasing amount of interest from individuals seeking to construct holiday homes. In April 1941 Waitomo County Council informed the Department of Lands and Survey that '[f]rom time to time' it had received requests asking for permission to build on the spit, but it was unaware whether the land was a 'Native Reserve' or whether it was owned by the Marine Department, the County Council, or the disestablished Mokau Harbour Board.<sup>153</sup> The reply from Lands and Survey stated that the spit was owned by the Crown, although the sketch which they provided also denoted the Maori cemetery on the harbour-facing side of the spit.<sup>154</sup> It appears that the first bach was erected on the spit around this time, and that several Mokau Maori led by Te Koro Wetere threatened to tear it down. The owner shifted the bach to the northern point of the spit, which appeared to satisfy the concerns of Mokau Maori.<sup>155</sup>

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<sup>153</sup> Waitomo County Engineer to the Chief Surveyor, Lands and Survey Department, 22 April 1941. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #21)

<sup>154</sup> Chief Surveyor, Lands and Survey Department, to the Waitomo County Engineer, 12 May 1941. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #22)

<sup>155</sup> No contemporary records of this confrontation in 1941 were found, but this information was recalled during the discussions held in 1951-1953 about subdividing the Mokau spit. See for example C. W. Powell to the Commissioner of Crown Lands, Hamilton, 10 July 1951 (supporting papers #41); Mokau meeting minutes, 17 April 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #49).



**Figure 10: Sketch of the Mokau spit by the Department of Lands and Survey, 1941**

Despite Waitomo County Council being made aware of the Crown's ownership of Mokau spit, dwellings began to be erected there by private individuals without the Council's permission. In October 1941 a solicitor informed the Council that two of his clients had erected dwellings on Mokau spit, whilst a third was hoping to do so, and all were hoping to secure tenancy from the relevant government agency.<sup>156</sup> Waitomo County Council did not follow up on this for several years, which may have been due to New Zealand's engagement in the Second World War and the consequent drain on domestic manpower and resources. In February 1945 the County Clerk informed the Commissioner of Crown Lands in Auckland that several cottages had been erected in or around Mokau without permission and which did

<sup>156</sup> File note dated 22 October 1941. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #23)

not appear on the valuation roll.<sup>157</sup> The Commissioner replied that he had no knowledge of these cottages and suggested that Waitomo County Council follow up with the Marine Department.<sup>158</sup> Based on the archives consulted, the Council do not appear to have done this.

The matter of tenancy on the Mokau spit appears to have lapsed again, for in March 1948 Waitomo County Council requested that the Commissioner of Crown Lands in Auckland vest the land in the Council so it could establish a public camping ground. Whilst the land was Crown owned, the Council noted that it was 'locally known as a Marine reserve'.<sup>159</sup> The Commissioner declined this request and suggested that a smaller area, as opposed to the entire spit, would be more suitable.<sup>160</sup> This may have been due to a desire to preserve the spit for future subdivision and private sale, because in November 1948 the Minister of Works eased the wartime policy of directing construction material towards primary residences rather than secondary residences such as holiday homes. Consequently, the Minister of Lands lifted an embargo on the offering of seaside Crown sections for private sale and informed the various Commissioners of Crown Lands that they could begin opening such lands for selection where there was a ready demand for them.<sup>161</sup> As will be shown below, this encouragement of private sale influenced the approach of the Department of Lands and Survey to Mokau spit throughout the 1950s.

In August 1949 a Field Inspector for the Commissioner of Crown Lands in Auckland prepared a report on the desirability of subdividing the Mokau spit for private sale. The report considered the areas suitable for subdivision, public roads that would need to be constructed, potential locations for a camping ground, and the Maori burial ground on the harbour-facing side of the spit. The Inspector's commentary on the Maori burial ground was brief, but it revealed that Maori believed the urupa was much larger than the small section highlighted on the map:

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<sup>157</sup> Waitomo County Clerk to the Commissioner of Crown Lands, Auckland, 19 February 1945. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #24)

<sup>158</sup> Commissioner of Crown Lands, Auckland, to the Waitomo County Clerk, 22 February 1945. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #25)

<sup>159</sup> Waitomo County Clerk to the Commissioner of Crown Lands, Auckland, 24 March 1948. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #26)

<sup>160</sup> Commissioner of Crown Lands, Auckland, to the Waitomo County Clerk, 2 April 1948. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #27)

<sup>161</sup> Under-Secretary for the Minister of Lands to the Commissioner of Crown Lands, Auckland, 15 February 1949. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #29)

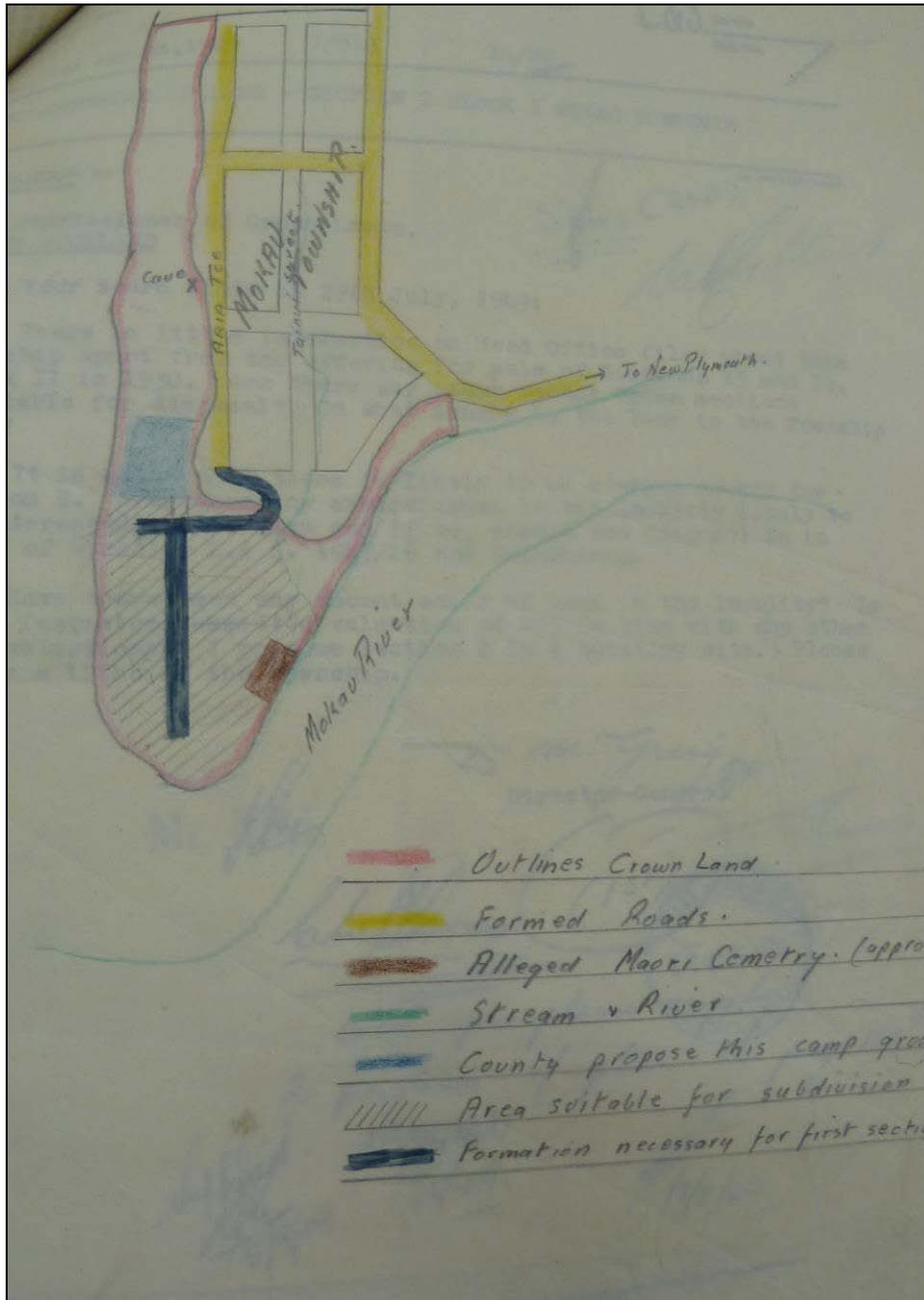
The location of [the urupa] is unknown but is believed to lie about the place shown. I am advised that the local Maoris claim it was a good deal further north than shown, in fact they claim an area almost up to the road reserve to the west of the creek. The whole proposal would, of course, be subject to the extent and location of this burial ground.<sup>162</sup>

The Inspector was hesitant to comment on what the potential demand for sections on the spit might be, but he did note that it was the only Crown-owned land near Mokau Township that was suitable for subdivision. Other lands at or near the township were privately owned, and whilst their owners were presently holding out on subdividing in the hopes of better prices, the Inspector suggested that the opening up of the spit would force them to reconsider. Furthermore, he suggested that Mokau could vie with the popularity of Kawhia harbour for residents of the Te Kuiti and Taumarunui areas.<sup>163</sup>

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<sup>162</sup> Field Inspector to the Commissioner of Crown Lands, Auckland, 15 August 1949. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #30)

<sup>163</sup> Ibid.



**Figure 11: Sketch of the Mokau spit by the Department of Lands and Survey, 1949**

As more private individuals began building houses on Mokau spit without permission, the question of what action the Crown should take became more urgent. In January 1950 the Field Inspector for Te Kuiti informed the Commissioner of Crown Lands in Hamilton that there were now four baches on the spit, along with two baches that had been erected on the riverbank at Te Umukaha. He informed one of the owners that, whilst the Department of Lands and Survey had no immediate intention to remove the baches, the owners were nevertheless trespassers and the Crown could opt to remove the baches at a future date. The

Inspector considered that subdivision and settlement would address all of the competing demands on the spit:

I think the time is ripe to offer some sections on the [spit]. When the question of camping site and Native Burial ground are finalised we should get a survey done & offer some sections. The local body should be asked what they are prepared to do about road formation particularly as the camping site is involved.<sup>164</sup>

In addition, the Commissioner of Crown Lands became aware in May 1950 of a request by a private individual to build a bach on or near the site of the Maori cemetery on the harbour-facing side of the spit. This request was originally received in February 1949, but had been overlooked.<sup>165</sup> In May 1950 the Assistant Commissioner informed the individual that the land in question was Crown property and that they declined permission for the bach to be built. However, the Assistant Commissioner also informed the Field Inspector in Te Kuiti that it was possible the individual had gone ahead with building his bach regardless, due to the delay in responding to his request, and that the Inspector should investigate the next time he was in Mokau.<sup>166</sup> This bach does not appear to have been built.

The matter of private development on the spit became pressing enough that the Commissioner of Crown Lands in Hamilton decided to raise the matter with the Director-General of Lands in Wellington. In July 1950 the Assistant Commissioner wrote to the Director-General recommending that the spit should not be opened up for development, and that the owners of the existing baches be given a two-year deadline in which to relocate their residences.<sup>167</sup> The Director-General appears to have disagreed with this recommendation, for in October the Surveyor-General was sent to Mokau to inspect the spit with the Commissioner and make his own recommendations. He described the area in question and the baches existing thereupon:

The sand hill area at the foot of the cliffs west of the Aria Terrace and south of Takarei Terrace and bounded by the river and the open sea is mostly covered with scrub, marram grass and lupins. There are three or four poor baches erected in this

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<sup>164</sup> Handwritten note, 17 January 1950. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #31)

<sup>165</sup> C. Bolton to the Chief Surveyor, Auckland, 8 February 1949. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #28)

<sup>166</sup> Assistant Commissioner of Crown Lands, Hamilton, to the Field Inspector, 19 May 1950. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #32)

<sup>167</sup> Commissioner of Crown Lands, Hamilton, to the Director-General of Lands, 4 July 1950. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #33)

area and unless steps are taken to stop the unlawful erection of further baches there will be a danger of sand-drift and the destruction of the natural growth. The area is very suitable for controlled development as a small seaside subdivision incorporating provision for a camp site at the foot of the cliffs west of Aria Terrace and suitable recreation areas.<sup>168</sup>

The Surveyor-General recommended that a topographical survey be undertaken in the interests of preparing the spit for subdivision, with the existing baches being incorporated as best as possible so that tenure could be provided to the owners. He also recommended a seaside subdivision for a campsite and a reservation of at least three chains along the sea shore. The Maori cemetery was not mentioned in his recommendations.<sup>169</sup> These recommendations were forwarded to the Minister of Lands, and a public notice was placed in the *Taranaki Daily* warning the public against constructing further private residences on the spit before it was surveyed and subdivided.<sup>170</sup>

In January 1951 the Tainui Wetere Domain Board wrote to the Commissioner of Crown Lands in Hamilton about the proposed development on the spit. Despite the name 'Tainui Wetere', this organisation does not appear to have represented Maori interests: it was responsible for managing the lands of the Tainui Sports Club on the south bank of the Mokau river mouth, which had been gifted to them by Te Koro Wetere in 1938.<sup>171</sup> The Board considered that it would be in the best interests of the Mokau community if the spit development plans went ahead, as it was currently 'covered with lupins, boxthorn, blackberry, ragwort and every other kind of growing rubbish.' However, they also noted that '[a]s far as the people here know this is mostly Maori land'.<sup>172</sup> This suggests that, despite the fact that the Mokau spit was owned by the Crown, local residents associated the land with prior, or continued, Maori interests.

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<sup>168</sup> Surveyor-General to the Director-General of Lands, 27 November 1950. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #34)

<sup>169</sup> Ibid.

<sup>170</sup> Commissioner of Crown Lands, Hamilton, to the Field Inspector, Te Kuiti, 3 January 1951. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #35)

<sup>171</sup> Wai 898 #A60, p 585.

<sup>172</sup> Tainui Wetere Domain Board to the Commissioner of Crown Lands, Hamilton, 20 January 1951. BAOB A1239 1542 Box 306 14/20 1, Archives New Zealand (Auckland) (supporting papers #36)

#### 4.1.3 Maori interests in Te Naunau, 1951-1952

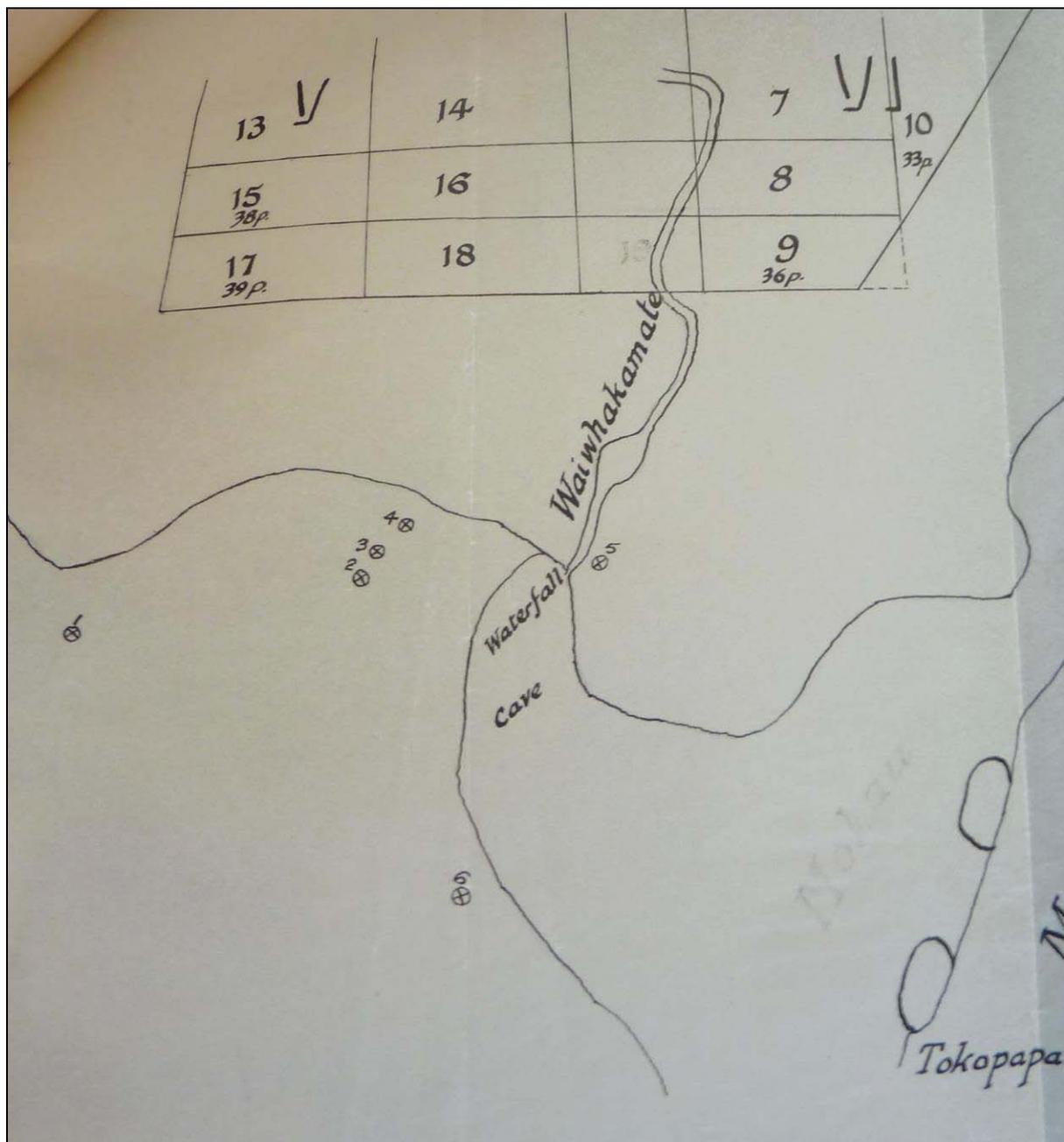


Figure 12: Locations of private baches on Mokau spit, c. 1951

Mokau Maori began to express concern about the development of Mokau spit after the plans were publicised in early 1951. Their concerns were chiefly relayed through Newton Taylor, a Pakeha businessman who ran a store and a small campsite in Mokau. Taylor was connected to the Mokau Maori community through his wife Mihi, who was the daughter of Pairoruku and Ngahaki Rikihana. In March 1951 a Surveyor for the Commissioner of Crown Lands in Hamilton visited Mokau to survey the spit and gather information about it from local

residents, including Taylor. For the first time since the discussions on subdivision began, it became clear to the Crown representatives that Maori interests in the spit were much broader than originally assumed. Whilst the 'head' Mokau Maori were away at the time of the Surveyor's visit, he was nevertheless able to ascertain that 'the Maoris claim the whole of the partition, to the South of the proposed road ... as a burial reserve.' In particular, he was informed that members of the Te Ripo family had been burying their deceased on the spit for decades in an area near the centre of the spit.<sup>173</sup>

The Commissioner requested that the Surveyor find out additional information on the exact number and location of burials on the spit.<sup>174</sup> During subsequent investigations in June 1951 the Surveyor was informed of at least seven burials that had occurred on the spit over the previous 40 years: Henry Te Hau, Queenie Ripo, Johnny Waka, Henare, 'Old Man' Ripo, Captain McCarthy, and Mary Phillips. Whilst most of these were located in roughly the same area in the middle of the spit, Te Hau had apparently been buried '4 – 6 chains south to east of the Repo [sic.] plot'. There were also reports of an infant having been buried north of the Te Ripo family burials. Furthermore, bones had been uncovered by gales at the original burial site on the harbour-facing side of the spit and along the coast as far north as Awakino. The Surveyor considered these to be 'hurried burials during or after wars and are very old.'<sup>175</sup> Despite the dispersed locations of the burials, the Surveyor argued that the plans for subdivision should only take the most recent burials into account:

While it is quite apparent that the whole sandspit was recognised as a burial ground, such burials go back far into the past and the only burials now affecting the proposed subdivision, in my opinion, are those of the Repo [sic.] family including Henry Te Hau.<sup>176</sup>

If subdivision were to proceed, he recommended that only the area of the Te Ripo burials in the centre of the spit should be set aside as a native burial reserve.

The Commissioner of Crown Lands in Hamilton agreed that a reserve would likely be necessary. However, in order to prevent the situation becoming further complicated, he

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<sup>173</sup> Staff Surveyor to the Commissioner of Crown Lands, Hamilton, 30 March 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #37)

<sup>174</sup> Commissioner of Crown Lands, Hamilton, to the Director-General of Lands, 30 May 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #38)

<sup>175</sup> Staff Surveyor to the Commissioner of Crown Lands, Hamilton, 20 June 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #39)

<sup>176</sup> Ibid.

requested that the local police constable in Mokau prevent any further Maori burials from occurring on the site until the boundaries of the urupa had been fully defined:

Because of unauthorised burials [emphasis added] in the past, it seems likely that it will be necessary to set aside some of the Crown land as a reserve for Maori burial ground and to vest control in a suitable Board consisting of interested Maoris and possibly a representative of the County Council.

...

Pending a decision as to the future utilisation of this area it would be greatly appreciated if you would prevent any further burials taking place.<sup>177</sup>

A copy was also sent to the Director-General of Lands, who cautioned against the use of the term ‘unauthorised burials’:

May I suggest please that the term “unauthorised burials” be used as sparingly as possible. Burials have apparently taken place over many years in accordance with the customs of the Maori race, and people whose ancestors and relatives rest there would not like to regard the burials as unauthorised.<sup>178</sup>

This suggests that the Director-General was sensitive to the fact that the Crown’s ownership of the Mokau spit did not necessarily coincide with Mokau Maori customs and traditions.

In July 1951 the Mokau Police Constable, C. W. Powell, wrote to the Commissioner of Crown Lands in Hamilton about Maori concerns with the spit development. His letter was very critical of Mokau Maori, arguing that they had more than ample land supply in the region to bury their deceased:

The trouble with these old Maoris here, they have had their own way too long over land questions here.

At the present time there are not more than [sic.] 10 Maori families [sic.] living within [sic.] six miles of the Mokau Post Office, not more than about 45 Maoris including children. In that area they have to my knowledge eight Maori burial grounds including the big burial ground at Maniaroa Pah. This Pah which is half way between Mokau and Awakino consists of about 250 acres. There are no Maoris living on it and the ground is rented to a European farmer. They have enough space there to provide a burial ground for the whole of the Maoris in the Tainui District.

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<sup>177</sup> Commissioner of Crown Lands, Hamilton, to the Mokau Police Department, 3 July 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #40)

<sup>178</sup> Director-General of Lands to the Commissioner of Crown Lands, Hamilton, 13 July 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #42)

You can see from this how stupid the whole set up is - Europeans here are paying £200 and more for a 1/4 acre section to build on - yet these Maoris are trying to hang on to every piece of land they can.

...

One point that may be of interest to you - this ground is supposed to be the Ripo burial ground - the last two deaths in that family have not been buried there, but in the burial ground at the Pilot station, across the river - so any contention that these Maoris must be buried in their own family burial ground is all bun-kum.<sup>179</sup>

Furthermore, he suggested that the land was useless in its native state and was in need of development:

In my opinion this Point is ideal for the purpose your Department proposes and if say an acre of it was fenced off for this Maori burial ground, the rest of the sections would be snapped up like hot cakes.

I know the Maoris here claim this Point as a Maori burial reserve, and will be very hostile about it being used for any other purpose. I suppose that idea has been handed down to them. In reality the Point is nothing but a weed invested [sic.] piece of useless ground, that could be made very serviceable to the District.<sup>180</sup>

The Police Constable does not appear to have considered the customary Maori use of Mokau spit as holding any intrinsic value when compared to the economic benefits associated with development.

On 15 July 1951 the Field Inspector for the Hamilton Commissioner of Crown Lands met with Taylor in Mokau. Taylor was also accompanied by two kuia, one of whom was Kiri Ka Wiari (also known as Kopa Ngatohu), the widow of Pahiri Wiari who had lodged the Native Land Court application in 1923. Wiari stressed that the entirety of Te Naunau 'has been, and is still considered a native burial ground', and that burials had occurred at various locations across the entire spit. However, neither of the two kuia could identify the exact locations where any of these burials had occurred. Taylor stated that he would be willing to gather more precise information and present it before the Native Land Court. The Field Inspector recommended to the Commissioner that, due to the 'indecisive evidence' presented by Taylor and the two kuia, the best course of action would be for the Crown to formally notify its

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<sup>179</sup> C. W. Powell to the Commissioner of Crown Lands, Hamilton, 10 July 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #41)

<sup>180</sup> Ibid.

intent to develop the spit, at which time Mokau Maori could raise a complaint that could be heard and resolved by the Native Land Court.<sup>181</sup>

In August 1951 Newton Taylor wrote a letter to the Director-General of Lands in Wellington providing additional information on Maori interests in the spit. He relayed the opinions of Mokau Maori that they had always perceived Te Naunau as having belonged to them:

Te Naunau has been a burial ground from the time the Tainui canoe landed there and that tangis were held at the Kauri Pah just along the river bank, and that the burials took place at Te Naunau. In the olden days it was the only burial ground ... I feel certain from exhaustive enquiries that I have made, the Maori Owners understood that Te Naunau was one of the areas excluded from the original purchase [in 1854].<sup>182</sup>

By way of additional evidence, Taylor prepared a sketch with the assistance of Kiri Ka Wiari outlining the areas of interest of nine Maniapoto hapu on Te Naunau. This appears to be the sketch which Ann Le Mieux drew upon at the fifth korero tuku iho hearing in 2010.<sup>183</sup> Unfortunately, this sketch has not been preserved in the archives. Taylor also cited three burials that had been recorded in the diary of his father in law, Pairoruku Rikihana: Hariata Mihi on 3 May 1919, Te Ianui Mihi (also known as Te Kaka) on 8 October 1919, and Tanirau Eria (also known as Tokoihi) on 13 November 1923. Taylor himself claimed to have attended the burial of a Rawea Te Huia on the spit.<sup>184</sup> He suggested that the entire area be set aside as a reserve or memorial, which Mokau Maori were willing to help fund:

The suggestion for your consideration is that all houses and baches and boat sheds be removed and the whole burial ground or Urupa area be set aside and planted out in trees [and] that a monument suitably inscribed be erected on the River bank above where the Tainui anchor stone rested. The Maoris have indicated their willingness to subscribe an amount of money towards the cost of planting trees and erection of some suitable memorial. These suggestions if put into effect would safeguard the sacred burial place of the Maori people, and would marke [sic.] the landing place of the Tainui canoe.<sup>185</sup>

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<sup>181</sup> Field Inspector to the Commissioner of Crown Lands, Hamilton, 24 July 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #43)

<sup>182</sup> Newton Taylor to the Director-General of Lands, 27 August 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #44)

<sup>183</sup> Wai 898 #4.1.5, p 89

<sup>184</sup> Newton Taylor to the Director-General of Lands, 27 August 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #44)

<sup>185</sup> Ibid.

The Director-General forwarded Taylor's letter to the Commissioner of Crown Lands in Hamilton, noting that there was 'some justification for the reservation and planting of the area as a permanent reserve, but your further advice is awaited.'<sup>186</sup> The Commissioner replied that he did not think it was suitable to set the entire spit aside, as there was 'considerable doubt as to who was buried and when and where.' Instead, he believed that it would be possible to set aside certain areas where burials had been confirmed whilst subdividing the rest of the spit for development. He also suggested that a meeting should be organised between his office and Mokau Maori so that the precise locations of the various burials could be ascertained.<sup>187</sup>

The Commissioner of Crown Lands in Hamilton decided to meet with Taylor and Mokau Maori in April 1952. To assist him, he wrote to the Chief Surveyor in Auckland requesting him to send a representative to attend the meeting.<sup>188</sup> The Chief Surveyor sought the advice of the Maori Branch of the Commissioner of Crown Lands in Auckland, who considered the request of Mokau Maori to be 'unreasonable' but advised a cautious approach:

While the Maoris' claim that the whole of the area we desire to lay out as a township should be set aside as a Maori burial ground is unreasonable, I think we should exercise care in our dealings with them. This type of matter can easily lead to a petition to Parliament with all its subsequent repercussions involving considerable time and money. However if we offer an area [for reservation] ... and give a liberal period in which all burials known to be outside that area could be moved therein, such a proposal seems quite reasonable and should allow the Commissioner of Crown Lands to deal with the residue.<sup>189</sup>

The Maori Branch recommended that the Crown should pursue an application to reserve any burial grounds under section 472 of the Native Land Act 1931 whilst preserving the rest of Mokau spit for development. This legislation specified that, where Maori burial grounds were found to exist on Crown land, the Minister of Maori Affairs could, with the consent of the Minister of Lands, apply to the Native Land Court to vest those lands in the individuals selected by the Court.<sup>190</sup> The Maori Branch argued that, unless such an application was

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<sup>186</sup> Director-General of Lands to the Commissioner of Crown Lands, Hamilton, 3 September 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #45)

<sup>187</sup> Commissioner of Crown Lands, Hamilton, to the Director-General of Lands, 11 December 1951. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #46)

<sup>188</sup> Commissioner of Crown Lands, Hamilton, to the Chief Surveyor, 14 February 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #47)

<sup>189</sup> Investigating Officer, Maori Branch to the Chief Surveyor, 11 March 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #48)

<sup>190</sup> 1931 No. 31: Native Land Act, section 472

granted, there would be ‘little hope of finally overcoming [Maori] objections to the residue area being used for bach sites.’<sup>191</sup>

The meeting of Department of Lands and Survey staff and Mokau Maori was held on 17 April 1952 at the Mokau Post Office. Present at the meeting were:

Mokau Maori and representatives: Tikipate Armstrong, Amokura Marshall, Te Uru Tohia, Rangi Tahuna Wetere, Teremai Te Ripo, Kiri Ka Wiari, Huirua Pairama, Ngawai Aterea, Te Atarua Waho, Newton Taylor

Department of Lands and Survey staff: N. J. Till (Commissioner of Crown Lands, Hamilton), P. B. Wright (Investigating Officer, Maori Branch of the Auckland Commissioner of Crown Lands), W. R. Mulligan (Field Inspector)

Mokau residents: Constable C. G. Carlson, N. N. McAlley, N. R. Morris, S. W. Whitehead, M. W. Fleming, H. Houghton<sup>192</sup>

The main thrust of the argument presented by Lands and Survey was that, when the Mokau block was purchased in 1854, Te Naunau was not one of the areas set aside as a reserve. They also pointed out that a Maori petition to Parliament in 1938 regarding the purchase of the Mokau and Awakino blocks did not raise Te Naunau as a point of contention. However, the Crown was willing to set aside portions of the spit as burial grounds provided that Maori could identify the precise locations of individuals buried there. Wright, who was attending for the Chief Surveyor in Auckland, suggested that this was ‘a very fair and generous offer’.<sup>193</sup>

In response, Taylor reiterated that Mokau Maori had always considered the entire spit to be urupa. The korero of Kiri Ka Wiari, translated from te reo Maori by Tikipate Armstrong, is recorded in the minutes:

She says as far as her ancestors and she knows herself that place has always been a burial ground and she or her ancestors never knew that this place was sold to the Crown. She wants to know why is it now after all these years the Crown is making investigations into this, what is to them sacred ground, and as far as Maori people are concerned they would never sell burial ground not knowing. Ever since Tainui Canoe came to New Zealand this has always been their burial ground. When they died they

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<sup>191</sup> Investigating Officer, Maori Branch to the Chief Surveyor, 11 March 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #48)

<sup>192</sup> Mokau meeting minutes, 17 April 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #49)

<sup>193</sup> Ibid.

were buried there, this is the Maniapoto Tribe. So this old lady says would you sell your graveyards.

Everybody present verified this statement.<sup>194</sup>

Taylor also made reference to the non-written nature of Maori evidence when it came to cultural practices, especially those that extended over long periods of time:

We have the evidence of these eight people and other old people who I have discussed it with. There is nobody left today who saw the burials prior to 1854. The only evidence that we can rely on is the evidence of the people who have the knowledge which has been handed down to them when these people were buried here. The Maoris are well known for their good memories. Part of their training is to memorise events that take place and so on.<sup>195</sup>

Wright replied that '[w]e well know and appreciate the good memories of the Maoris and consequently we feel confident that these old people can point out to us where the burials have taken place.' When asked to point out exactly where the burials had taken place, neither Taylor nor the Mokau Maori attendees could recall exactly where they occurred. This may have reflected Maori cultural practice, for Armstrong noted that the Maori attendees were 'browned off' by the question.<sup>196</sup> The meeting concluded without reaching any agreement.

After the meeting, Wright sent a summary of his thoughts and recommendations to the Commissioner of Crown Lands in Hamilton. He argued that, whilst all the Maori attendees had agreed that the urupa extended over the entire spit, they had not provided any 'factual evidence' regarding the burials. He added that '[i]t pleased Mr. Taylor to be extremely vague as to the location of the burials he had personally attended.'<sup>197</sup> One potential solution to the stalemate would be for the Crown to apply to reserve the burial grounds under section 472 of the Native Land Act 1931, but Wright was concerned that the Native Land Court might decide to set aside the entire spit rather than a few sections. Given this uncertainty, he suggested that the scheme be abandoned altogether:

I think the proposed town subdivision could be abandoned indefinitely and the possibility investigated of obtaining access to the small area north of the supposed burial ground ... The present proposal regarding the setting aside of an area as a

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<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Investigating Officer, Maori Branch to the Commissioner of Crown Lands, Hamilton (undated). BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #50)

recreational ground etc., to be controlled by the local authorities, would be effected if this suggestion were carried out.<sup>198</sup>

However, when the Commissioner wrote to the Director-General of Lands about the meeting, he suggested that the best course of action would be to reserve only the section on the harbour-facing side of the spit as a burial reserve and allow the bones from the other burials to be relocated there before subdivision occurred.<sup>199</sup>

In May 1952 the local Police Constable in Mokau wrote to the Commissioner of Crown Lands in Hamilton with a suggested solution to the impasse. He recommended that the Commissioner speak with a Pakeha named William Bailey who had resided at Mokau for 40 years and who was only aware of four burials occurring on the spit during this time. Bailey was willing to point out the approximate location of these burials, which had originally been surrounded by a wooden picket fence.<sup>200</sup> Around the same time, Mokau Maori sent a telegram to the Minister of Maori Affairs objecting to the proposed development of the spit. The Under-Secretary wrote to the Director-General, who wrote to the Commissioner of Crown Lands in Hamilton requesting an 'urgent reply'.<sup>201</sup>

In response to this growing pressure from Wellington, the Commissioner sent his Field Inspector to Mokau to meet with Bailey. Bailey highlighted an area in the middle of the spit where three burials had occurred: Queenie Ripo (approx. 1924), Dan Toko (approx. 1929), and 'old man' Ripo (approx. 1931). Bailey added that two of the individuals mentioned to the Surveyor in June 1951 – Henry Te Hau and Johnny Waka – had been buried elsewhere, although he was uncertain about the burials of Henare, Captain McCarthy, Mary Phillips and the infant Jessie Matatu. Another Mokau resident named Mrs Warren was able to confirm that Phillips had been buried on the spit, and added that she believed the parents and grandparents of a man named Tommy Piko had also been buried there.<sup>202</sup> The Inspector concluded that all known burials appeared to be located in the area denoted as the 'Repo

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<sup>198</sup> Ibid.

<sup>199</sup> Commissioner of Crown Lands, Hamilton, to the Director-General of Lands, 23 April 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #51)

<sup>200</sup> Mokau Police Constable to the Commissioner of Crown Lands, Hamilton, 4 May 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #52)

<sup>201</sup> Director-General of Lands to the Commissioner of Crown Lands, Hamilton, 12 May 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #53)

<sup>202</sup> Field Officer to the Commissioner of Crown Lands, Hamilton, 19 May 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #54)

[sic.] plot' by the Surveyor in June 1951, but that he would try to ascertain further details on the other burials.

The Mokau Police Constable also suggested that the Field Inspector meet with a Pakeha resident named Ernest Batley who had resided in Mokau since 1905 and had married a Maori woman.<sup>203</sup> The Inspector met with Batley in July 1952, who stated that he was aware of nine burials occurring on the spit during his lifetime: Kotuku (Captain McCarthy), Ngakote (Mrs Harry Phillips), Te Ringi Ringi (Mrs Piko), Ngawhiwi Piko, 'Old Man' Ripo, Queenie Ripo, Te Arewaka (Johnny Waka), Rangi Hauraki, Toko Iwi (Dan Toko), and the infant Jessie Matatu. Whilst he had only attended one of these funerals, Batley stated that it was common knowledge that the spit had always been used by Maori:

He has always understood the total area to be a Native Burial Ground, knows the Natives believe it so, and is confident that the area was used extensively prior to his arrival in the district. While he states that he held numerous old plans he cannot understand why the area is not marked as a burial ground.<sup>204</sup>

In the same month the Minister of Maori Affairs received a further telegram from Mokau Maori arguing that the entire spit was urupa.<sup>205</sup> The Commissioner of Crown Lands in Hamilton asked the Field Inspector to meet with Batley again to see whether he thought Mokau Maori would be satisfied with the Commissioner's proposal that the harbour-facing cemetery be reserved and that the bones from the other known burials be relocated there.<sup>206</sup>

The Inspector relayed this proposal to Batley, who replied firmly in the negative:

Mr Batley is confident that any suggestion of declaring portion of the area Maori Burial Reserve and removing known remains to this block, would be strongly opposed. He did not want to commit himself by giving his opinion to such a proposal, but stated that as few burials could be exactly located and as the whole area has always been recognised as a burial ground and the strong belief that the area has been used more extensively by earlier generations would result in heated opposition.<sup>207</sup>

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<sup>203</sup> Mokau Police Constable to the Commissioner of Crown Lands, Hamilton, 19 May 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #55)

<sup>204</sup> Field Officer to the Commissioner of Crown Lands, Hamilton, 8 July 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #56)

<sup>205</sup> Telegram from Rangitahuna Wetere to the Minister of Maori Affairs, 27 July 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #57)

<sup>206</sup> Commissioner of Crown Lands, Hamilton, to the Field Inspector, 25 September 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #58)

<sup>207</sup> Field Inspector to the Commissioner of Crown Lands, Hamilton, 20 October 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #59)

The Commissioner forwarded this information to the Director-General of Lands, who noted that the Minister of Maori Affairs was in frequent contact with him requesting updates.<sup>208</sup>

#### 4.1.4 Te Naunau and the Maori Land Court, 1953

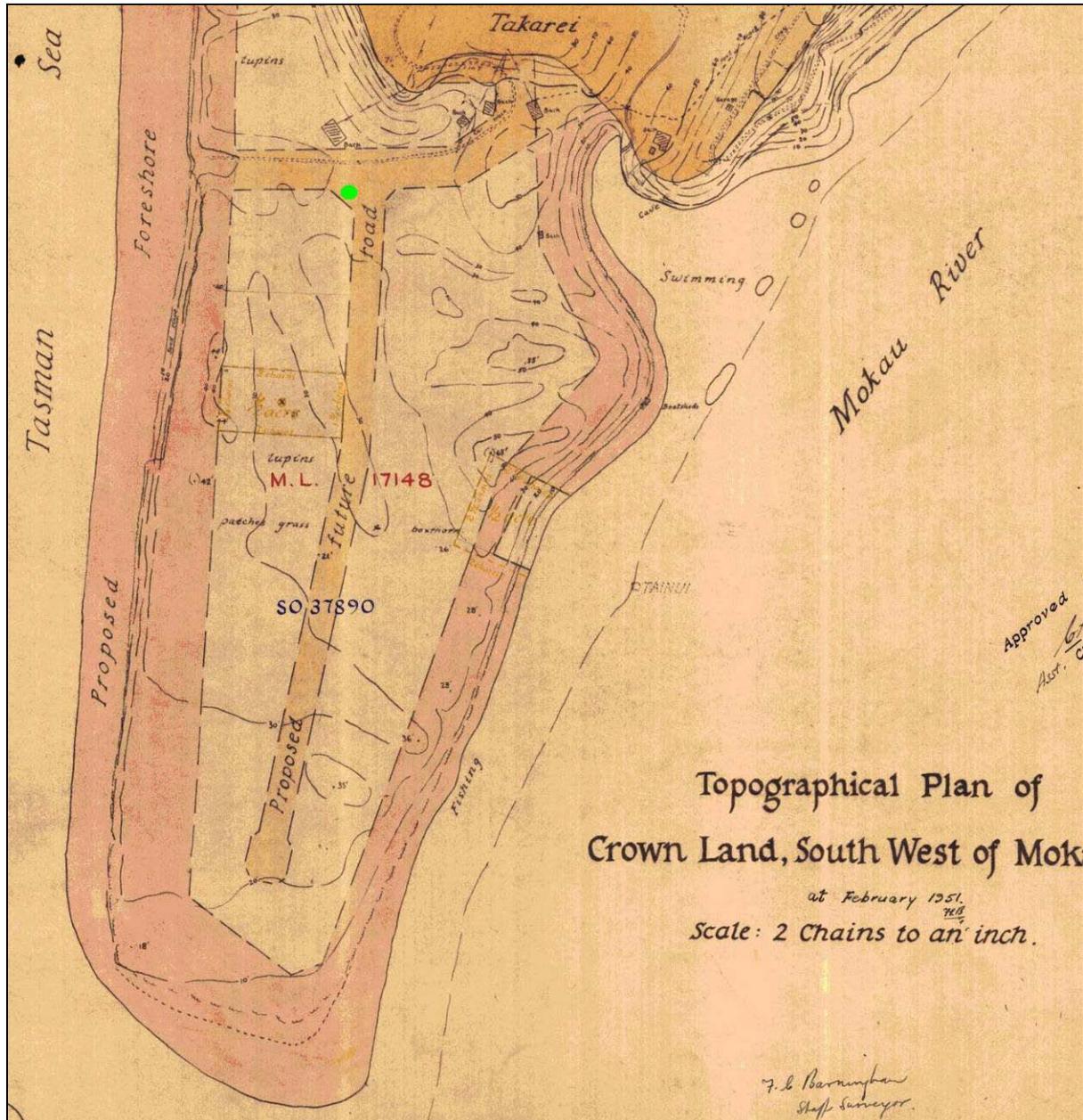


Figure 13: Plan of the Mokau spit by the Department of Lands and Survey with proposed Maori reserves (edged yellow) and site of isolated burial (Jessie Matatu, indicated by green mark), 1953

<sup>208</sup> Director-General of Lands to the Commissioner of Crown Lands, Hamilton, 26 November 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #60)

With mounting pressure on all fronts to resolve the situation, the Minister of Maori Affairs and the Minister of Lands agreed at the beginning of 1953 to apply under section 472 of the Native Land Act 1951 to set aside portions of the Mokau spit as a Maori burial ground.<sup>209</sup> The areas selected for being set aside were a ½ acre section in the middle of the spit where the Ripo burials were believed to have occurred and a further ½ acre section on the harbour-facing side of the spit opposite the former location of the Tainui anchor stone. To support the Crown's case, the Chief Surveyor in Auckland requested that two long-time (over 45 years) Pakeha residents from Mokau present evidence: Frederick Charles Bailey and Willie Douglas Black. Despite the extensive discussions with William Bailey and Ernest Batley the previous year, neither of these men was approached by the Chief Surveyor, although it is possible that Frederick Bailey was a relative of William's. The Surveyor's choice of witnesses appears to have been specifically aimed at countering the evidence of Newton Taylor:

After interviewing several people in Mokau it has been decided to call two old residents of over 45 years standing. These two gentleman, Messrs. Black and Bailey are able to give evidence from personal knowledge which will refute some of the evidence which it is thought will be drawn by Mr. Taylor.<sup>210</sup>

Along with this careful selection of witnesses, it appears that the Chief Surveyor was willing to place significant weight upon their oral testimony as a form of evidence. This contrasts with the attitude taken by Lands and Survey delegates to the korero of the kuia who had attended the meeting organised in April 1952.

The case was heard before the Maori Land Court in Otorohanga on 1 May 1953 under Judge Ernest Mansfield Beechey. P. B. Wright, the Investigating Officer for the Maori Branch of the Auckland Commissioner of Crown Lands, began by presenting a number of old surveys which revealed the land purchased by the Crown in 1854, the reserves that had been set aside (which did not include Te Naunau), and more recent plans of Mokau Township and the spit to the south. He argued that, despite considerable investigation having been undertaken to assist the Court, no historical reference had been found that referred to the entire spit as a Maori burial ground. Wright then questioned W. R. Mulligan, the Field Inspector for Lands and Survey, about the burial sites. Mulligan argued that Maori burials on Mokau spit were

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<sup>209</sup> Director-General of Lands to the Commissioner of Crown Lands, Hamilton, 5 February 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #61)

<sup>210</sup> Chief Surveyor to the Director-General of Lands, 22 April 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #62)

limited to two locations: the area opposite the anchor stone, which had been used as an ancient burial ground; and the area highlighted in the middle of the spit, which had only been used in the last fifty years. He had pinpointed one other burial, that of the infant Jessie Matatu, that had taken place outside of these two areas. Wright argued that the two areas indicated by Mulligan would be sufficient for vesting in Mokau Maori, and that Matatu could be exhumed and reinterred at one of those locations. He contrasted this with the 'visionary claim' made by Mokau Maori that the entire spit was an urupa.<sup>211</sup>

Newton Taylor replied on behalf of the Mokau Maori who were present at the hearing. He began by reiterating that the entire spit was considered an urupa by Maori, and that they were willing to invest considerable time and money into preserving it:

We do not contest that it is Crown land, we ask that it be set aside for a burial ground. The Maoris continued to make burials there and have never ceased to make burials there, except recently - no burials have taken place because of the Maoris being confused by the fact that Pakehas have built baches on the ground etc.

...

The whole area is a burial ground. It begins at Te Naunau bounded by the cliff on the North, the river on the South East and the seashore on the West. Maoris would put up a considerable sum of money to plant trees and erect monuments.<sup>212</sup>

Taylor added that he had attended one funeral on the spit himself, that of Rawea Te Huia, and he thought he may also have attended another but could not remember the specific details.<sup>213</sup> He also pointed out that there was a small area at the northern point of the spit which Mokau Maori would not object to being developed for baches. This was presumably the area where the four existing baches had been erected.<sup>214</sup>

Taylor also called upon several Maori witnesses. The first was Kiri Ka Wiari, who noted that she was approximately 90 years of age. Wiari listed the various hapu that held interests in, or had historical burials on, Te Naunau: Ngati Rakei, Ngati Tu, Ngati Wai, Ngati Waikorara, Ngati Mihi, Ngati Waiora, Te Paemate, Ngati Tumarouru, Ngati Rahiri, Ngati Kahu, Ngati

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<sup>211</sup> Minutes of Maori Land Court hearing, 1 May 1953, pp 1-4. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #63). A separate set of minutes is also recorded in Otorohanga Minute Book 78, pp 73-81 (supporting papers #131).

<sup>212</sup> Minutes of Maori Land Court hearing, 1 May 1953, pp 4-5. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #63)

<sup>213</sup> Investigating Officer, Maori Branch, to the Chief Surveyor, Auckland, 5 May 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #64)

<sup>214</sup> Minutes of Maori Land Court hearing, 1 May 1953, p 9. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #63)

Rungaterangi, Ngati te Atiawa, Ngati Mutunga, Ngati Tama, Ngati Toa, Ngati Rarua and Nga Ruku. She also mentioned the following whanau as having buried family members on the spit during her lifetime:

Nga Ruku: Te Kaka, Te Ianui, Tokoihi, Taima

Ngati Tu: Pereni and his family, Parehuakirua and his family, Te Ripo, Te Arawaka, Rangiauraki, Te Rira, Te Ahiahi, Kei Te Kutu, Pareatu, Ngara, Waata, Te Rupe

Ngati Wai: Pahiri Wiari's parents<sup>215</sup>

The Judge then proceeded to ask Wiari a series of questions about the burials which revealed the Maori practice of dispersed burial and their reluctance to dig up the bones of the deceased:

Judge: Were they buried where this old road is?

Answer: Yes. They were buried fairly close to the old road but scattered - had to pick a place easy to dig.

Judge: Was it not all sand?

Answer: The Maori way of burying is not side by side but in a scattered way.

Mr. Taylor: Would you tell the Court if the members of the various hapus were buried in known places or anywhere?

Answer: She cannot very well point it out on the map but if on ground could then do so.

...

Judge: Would it not be possible for the Maoris to investigate and look for old bones?

Mr. Taylor: They would not like to do it but would if the Court insisted.<sup>216</sup>

The second Maori speaker was Teremai Te Ripo, a 67 year old woman who had come to Mokau from Oparure in 1930. She stated that her husband and three of their children had been buried on Te Naunau, but was unable to point out the exact location on the map. Through her husband, she had always understood that the whole of the spit was an urupa.<sup>217</sup> The third Maori speaker, Ngawai Taniora, was also 67 years of age, and had lived in Mokau her entire life. As a child she had been told by her elders not to go on the land as it was tapu.<sup>218</sup> She noted that burials had taken place at multiple sites on the spit: Ngati Tu, for example, were mostly buried along the seashore, whilst Ngati Waikorara were buried further

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<sup>215</sup> Minutes of Maori Land Court hearing, 1 May 1953, pp 5-6. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #63)

<sup>216</sup> Ibid., p 6

<sup>217</sup> Ibid., p 7

<sup>218</sup> Otorohanga Minute Book 78, pp 74-78 (supporting papers #131)

inland around the middle of the spit. The Waikorara whanau who were buried on the spit included Ngawai, Tukino, Hema, Te Atakoro, and Ngaonepu.<sup>219</sup>

Wright responded by calling on Willie Douglas Black and Frederick Charles Bailey, the two local Pakeha residents. As was suggested above, it appears that the main reason these two individuals were chosen by Lands and Survey was to counter the evidence of Newton Taylor and the Mokau Maori witnesses. Black, who had resided in Mokau since 1894, argued that there were seven other burial grounds in the Mokau area and that Maniaroa pa had been the main burial ground for Mokau Maori for 40 years. Furthermore, he had been told that the bones located on Te Naunau had previously been removed and reinterred elsewhere. When asked by Taylor who had told him that, Black replied that he was unwilling to mention names but that it was 'common talk at the time.'<sup>220</sup> Bailey, who had lived in Mokau for 45 years, claimed that the bones had been moved by a Maori man named Glen Whitney who had died during World War One. He also claimed that one of the individuals whom Mokau Maori claimed had been buried on the spit, Te Ianui Mihi, had actually been buried at Maniaroa. At this point Bailey appears to have addressed Taylor directly, stating that 'Te Ianui Mihi lived at Mokau with you Mr. Taylor: [I] saw [the] funeral go up [the] road to Maniaroa. About 25-30 years ago.'<sup>221</sup>

The final speaker was Norman John Till, the Hamilton Commissioner of Crown Lands. Till expressed his frustration with the lengthy process of attempting to locate burial sites on Mokau spit. He stated the following about the meeting held the previous April at the Mokau Post Office:

I communicated with Mr. Taylor and Mr. Taylor's reply was that he would produce witnesses who would arrange the location of known graves. We [had] gone to a lot of investigation prior to this meeting, spread over a number of months and it was anticipated and hoped that at this meeting some finality would be reached as to where these burials took place. Actually, I was fairly confident that we would be able to mark these burial grounds and I took with me some survey pegs and an axe for that purpose so that it could be marked definitely on the ground and could be fixed later on the ground by a surveyor.

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<sup>219</sup> Minutes of Maori Land Court hearing, 1 May 1953, p 8. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #63)

<sup>220</sup> Ibid., p 9

<sup>221</sup> Ibid., p 9; Otorohanga Minute Book 78, p 81 (supporting papers #131).

We were unable to get anybody to point out any location.<sup>222</sup>

Judge Beechey decided that there was insufficient information available to set the entire spit aside as a Maori burial ground and adjourned the hearings until August 1953. In the meantime, he directed that the spit should be dug over by Mokau Maori to determine whether burials existed at any other sites apart from the two that had been identified by the Department of Lands and Survey. He added that a representative of Lands and Survey should be present when this digging occurred.<sup>223</sup>

The Chief Surveyor sent his notes of the meeting to the Director-General of Lands, who offered his congratulations and approved a witness allowance of 24/- per day to be paid to Black and Bailey.<sup>224</sup> The Chief Surveyor also wrote to Bailey and the Mokau Police Constable requesting that they notify him if they observed any signs of Maori activity on Mokau spit.<sup>225</sup> He was particularly praising of the Constable:

Your past assistance in this matter and the help given to officers of this Department is acknowledged with thanks, and it is hoped that our combined efforts will result in cleaning up an eyesore to the locality.<sup>226</sup>

The Constable replied that he was more than willing to assist the Department, but that he was uncertain of the legalities involved:

I will be very pleased to assist you in any possible way in this matter - but I think this matter has come to a stage when I should have some official authority from my own Department to act any further ... In any dealings with a Public Place or Crown property I know my authority as a policeman and where I stand. There seems to be some doubt whether this Point is Crown or Native Land.

...

[S]upposing Mr Taylor or some of his friends (I think you can leave any Maoris out of this) decided to start any investigations on this Point, unknown to your Department, what could I do about it. If the Maoris could establish a claim to this Point and I interfered with any of their activities there, I might easily find myself in a very awkward position.

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<sup>222</sup> Minutes of Maori Land Court hearing, 1 May 1953, p 11. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #63)

<sup>223</sup> Ibid., p 12

<sup>224</sup> Director-General of Lands to the Chief Surveyor, Auckland, 14 May 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #68)

<sup>225</sup> Chief Surveyor to Mr F. C. Bailey and Constable Powell, 5 May 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #65 and #66)

<sup>226</sup> Chief Surveyor to Constable Powell, 5 May 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #66)

Now on the other hand if I had the authority from the Commissioner of Police to act in anyway [sic.] at all as regards this Point, it would be a different matter ... If that authority was forthcoming I would be only too pleased to do all I could to help your Department - I think you know this.

The Constable also believed that Newton Taylor might attempt to force the hand of the Maori Land Court by conducting a fresh burial on the spit:

I have no illusions about Mr Taylor - he is a shrewd, wide awake fellow and a hard man to bowl ... As you know a Maori known locally as Ripo is buried there. His wife [Teremai Te Ripo] is an aged and very sick woman. She is liable to die at any time. It would be a very shrewd move by the Party opposing your Department to bury the old woman beside her husband, and thereby establish a recent burial on the Point.<sup>227</sup>

The Chief Surveyor replied that he had requested the Director-General 'to arrange urgently for authority for you to act in this matter to emanate from your own Department.'<sup>228</sup> In his letter to the Director-General, the Surveyor noted that '[a] new burial in this area would considerably weaken the Crown's case, and it is thought that it should be prevented if at all possible.'<sup>229</sup> The Director-General replied in June that arrangements had been made with the Commissioner of Police for the Mokau Police Constable to assist the Department of Lands and Survey as required.<sup>230</sup>

By the end of June 1953 digging had yet to occur on Mokau spit. On 10 July, the Chief Surveyor wrote to Taylor advising him that, since no communication had been received from him regarding the excavation of the spit for bones, Lands and Survey intended to request the next sitting of the Maori Land Court in August to reserve only the two identified areas as Maori burial grounds.<sup>231</sup> Taylor does not appear to have replied to this letter, or to a follow-up letter than was sent in August.<sup>232</sup> The lack of activity may have been due to the declining health of Teremai Te Ripo, who succumbed to tuberculosis around 27 July. Mokau Maori desired to bury Te Ripo beside her whanau at Te Naunau, which caused a series of phone

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<sup>227</sup> Mokau Police Constable to the Chief Surveyor, Auckland, 12 May 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #67)

<sup>228</sup> Chief Surveyor, Auckland, to the Mokau Police Constable, 18 May 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #69)

<sup>229</sup> Chief Surveyor, Auckland, to the Director-General, 18 May 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #70)

<sup>230</sup> Director-General to the Chief Surveyor, Auckland, 25 June 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #71)

<sup>231</sup> Chief Surveyor, Auckland, to Newton Taylor, 10 July 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #72)

<sup>232</sup> Chief Surveyor, Auckland, to Newton Taylor, 7 August 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #73)

calls between the Police Commissioner in New Plymouth, the Mokau Police Constable, the Commissioner of Crown Lands in Hamilton, and the Lands and Survey Field Inspector in Te Kuiti. It was eventually decided that, so long as the burial occurred on the ½ acre area in the centre of the spit that had been proposed as one of the burial reserves, the Department of Lands and Survey would not oppose it. To ensure that this happened, the Field Inspector and the Mokau Police Constable were instructed to attend the burial.<sup>233</sup>

The Maori Land Court resumed hearings on 14 August 1953. P. B. Wright, the Investigating Officer for the Maori Branch of the Auckland Commissioner of Crown Lands, told the Court that neither Newton Taylor nor Mokau Maori had dug over the spit as the Judge had directed despite having ‘ample time’ to do so. He requested that the Court proceed with reserving the two ½ acre areas identified by the Department of Lands and Survey. Taylor himself was not present at the hearing, but he had instructed a Solicitor from Te Kuiti named Mr. Hine to request a further adjournment to provide more time for the excavation to take place:

Mr. Hine explained that his instructions were to ask for adjournment but some of the owners were present and probably could give evidence of further burials. The old women present were Kirika Weara [Kiri Ka Wiari], Kora Wetere and Ngawai Rangi[a]mohia. The result was the same as previously, the whole area was claimed to be a burial ground but positions of any graves could not be pointed out by these people. Mr. Hine then submitted that the application should be adjourned to give more time to call the meeting and raise money to put a bull-dozer over the ground.<sup>234</sup>

The Judge declined this request, and ordered that only the two burial grounds be vested in the ‘Tainui tribe and sub-tribes’. He added that if additional burial grounds were discovered at a later date, Mokau Maori could apply for a further order to be issued.<sup>235</sup>

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<sup>233</sup> Handwritten notes dated 27 July 1953 (supporting papers #74); Field Officer to the Commissioner of Crown Lands, Hamilton, 28 July 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #75)

<sup>234</sup> Investigating Officer, Maori Branch, to the Chief Surveyor, Auckland, 17 August 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #76). ‘Kora Wetere’ may have been the widow of ‘Te Koro Wetere’, whose name was Rangitahuna. She had written to the Minister of Maori Affairs about Te Naunau the year before – see telegram from Rangitahuna Wetere to the Minister of Maori Affairs, 27 July 1952. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #57)

<sup>235</sup> Otorohanga Minute Book 78, p 197 (supporting papers #132).

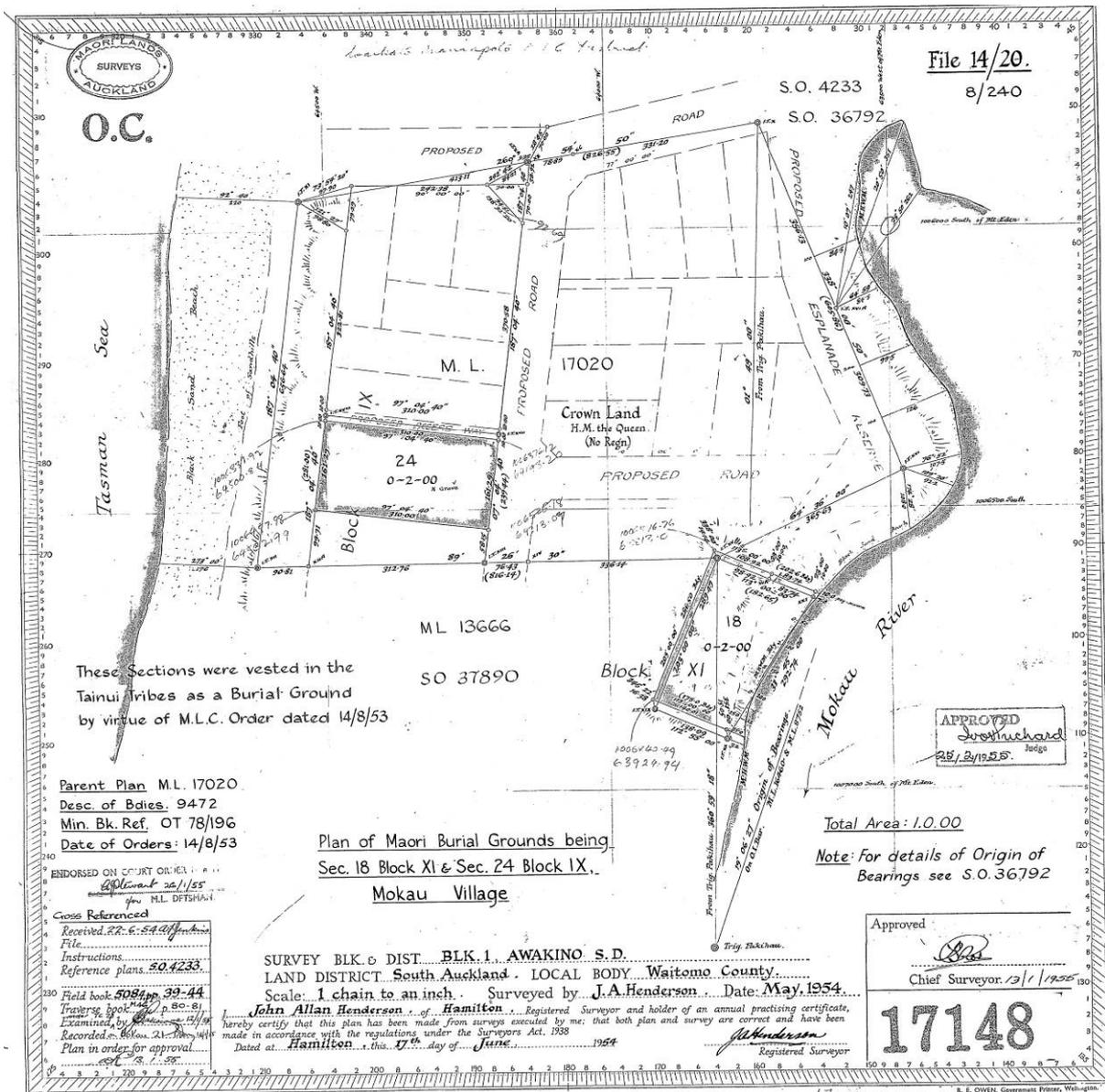


Figure 14: The two areas of Mokau spit vested in Maori ownership on 14 August 1953

#### 4.1.5 Subdivision and the first major erosion event, 1953-1965

With the Maori Land Court judgment now passed, the Department of Lands and Survey was keen to progress with the subdivision and development of Mokau spit as soon as possible. In his report to the Chief Surveyor in Auckland on the Maori Land Court decision, Wright noted that ‘Taylor [and] the old women he has with him may still be difficult, and with his help try to push their claim for the whole area.’ He suggested that one potential way of mitigating this would be for Lands and Survey to pay for the two burial reserves to be fenced off.<sup>236</sup> The

<sup>236</sup> Investigating Officer, Maori Branch, to the Chief Surveyor, Auckland, 17 August 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #76)

Commissioner of Crown Lands in Hamilton agreed that fencing was a good idea. He also requested that the Chief Surveyor in Auckland organise for the survey to be undertaken as soon as possible in conjunction with the Waitomo County Engineer and the Ministry of Works. However, he cautioned that '[c]are should be taken that no Maoris are employed in the construction work in case any old bones turn up.'<sup>237</sup> The Director-General of Lands also suggested that publicly-funded fencing would be a good idea, and asked the Chief Surveyor in Auckland if it would be possible.<sup>238</sup> Nevertheless, by June 1954 this fencing had yet to be done, and the Commissioner of Crown Lands in Hamilton wrote to the Director-General of Lands requesting that it be done 'immediately' at an estimated cost of £100.<sup>239</sup> However, despite the enthusiasm expressed by the Director-General the previous year, he now replied that it was 'the responsibility of the interested Maoris and not of this Department'.<sup>240</sup> The Commissioner subsequently requested that the Ministry of Maori Affairs consider constructing the fence, but this does not appear to have been done.<sup>241</sup>

The Department of Lands and Survey scheme for developing the spit was approved on 5 November 1954 under section 5(4) of the Land Subdivisions in Counties Act 1946.<sup>242</sup> The two areas reserved as Maori burial grounds were assigned the designations Section 24 Block IX and Section 18 Block XI, Village of Mokau. The Waitomo County Council approved the scheme provided that the sale of the new sections commence from the northern end of the spit '[a]s the area is subject to sand drift'.<sup>243</sup> This suggests that they were aware that erosion was a potential issue on the spit. Applications to purchase the new sections were accepted by Lands and Survey from September 1957.<sup>244</sup> It is unclear from the archives consulted whether Mokau Maori undertook any efforts to uncover or relocate any bones before construction began. Nga Hapu o Poutama claim that bones were uncovered when the streets were dug, but

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<sup>237</sup> Handwritten note, 27 August 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #78)

<sup>238</sup> Director-General to the Chief Surveyor, Auckland, 24 August 1953. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #77)

<sup>239</sup> Commissioner of Crown Lands, Hamilton, to the Director-General of Lands, 8 June 1954. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #79)

<sup>240</sup> Director-General of Lands to the Commissioner of Crown Lands, Hamilton, 25 June 1954. BAOB A1239 1542 Box 306 14/20 2, Archives New Zealand (Auckland) (supporting papers #80)

<sup>241</sup> Registrar, Waikato-Maniapoto District Maori Land Court, to the Commissioner of Crown Lands, Hamilton, 24 September 1954. BAOB A1239 1542 Box 308 b 14/20/1 1, Archives New Zealand (Auckland) (supporting papers #81)

<sup>242</sup> 1946 No. 23: Land Subdivision in Counties Act, section 5(4)

<sup>243</sup> T. S. Roe, Chief Surveyor, to the Surveyor-General, 26 October 1954. LS1 1817 25/659, Archives New Zealand. (supporting papers #18)

<sup>244</sup> 'Terms and conditions of offering of beach sections at Mokau', Department of Lands and Survey, September 1957. File No. 504/014A, Waitomo District Council. (supporting papers #100)

the present writer has been unable to find any archival evidence that this occurred.<sup>245</sup> However, it is possible given that at least one burial site – that of the infant Jessie Matatu – appeared to lie on a proposed road site.

In April 1962 it was reported by the new section owners that severe erosion was occurring on Mokau spit. This sparked a debate over which local or central government agency was responsible for addressing the problem. The Waitomo County Council initially suspected that the cause of the erosion was the removal of 5000 cubic yards of shingle from the area by the Ministry of Works in 1960, and it requested the Department of Lands and Survey inspect the site and propose means to address it.<sup>246</sup> However, the Commissioner of Crown Lands in Hamilton considered that it was the responsibility of the County Council to investigate the issue and report its findings to the Ministry of Works, who would then undertake any remedial steps it deemed necessary.<sup>247</sup> Nevertheless, he arranged for his Field Inspector in Te Kuiti to work with the Resident Engineer of the Ministry of Works to prepare a report on the matter.<sup>248</sup> The report, which was sent to the Commissioner of Crown Lands, the District Commissioner of Works, and the Superintendent of Marine, determined that the Mokau River mouth was returning to the state it was in prior to the 1915 flood, and that remedial work to halt the change would be uneconomical.<sup>249</sup> In October 1962 the Waitomo County Engineer wrote to the Ministry of Works confirming that no further erosion had been reported.<sup>250</sup>

Complaints from spit residents of further erosion continued to be raised over the next few years. The Department of Lands and Survey maintained that the Crown was not liable for any damages incurred by property owners on the spit; however, it agreed to refund principal instalments to three sections held on deferred payment licenses. Increasing publicity of the

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<sup>245</sup> Haumoana White to Environment Waikato, 12 January 2007. File No. 504/014A, Waitomo District Council. (supporting papers #123)

<sup>246</sup> J. N. O'Brien, Waitomo County Clerk, to the Commissioner of Crown Lands, Hamilton, 18 April 1962. File No. 147386, Waitomo District Council (supporting papers #101).

<sup>247</sup> Commissioner of Crown Lands, Hamilton, to C. R. Rowe, 12 June 1962. BAAS A362 24464 Box 1, Archives New Zealand (Auckland office) (supporting papers #84).

<sup>248</sup> The Commissioner originally requested the Marine Department to assist his Field Inspector in preparing the report, but this was forwarded on to the Ministry of Works by the Marine Department. See Commissioner of Crown Lands, Hamilton, to the Marine Engineer, New Plymouth, 2 May 1962 (supporting papers #82); Superintendent of Mercantile Marine to the Resident Engineer, Te Kuiti, 11 May 1962. BAAS A362 24464 Box 1, Archives New Zealand (Auckland office) (supporting papers #83).

<sup>249</sup> Resident Engineer to the Superintendent of Marine, 18 June 1962. BAAS A362 24464 Box 1, Archives New Zealand (Auckland office) (supporting papers #85).

<sup>250</sup> Waitomo County Engineer to the Resident Engineer, Ministry of Works, 23 October 1962. BAAS A362 24464 Box 1, Archives New Zealand (Auckland office) (supporting papers #86).

erosion in the *Taranaki Daily News* throughout November-December 1963 led Lands and Survey to consider extending these refunds to other property owners:

This Department is considering making further ex gratia payments but before seeking the necessary approval, it is necessary to decide now how far we should go in this matter bearing in mind the fact that the Crown has no legal responsibility [emphasis added].<sup>251</sup>

This consideration was bolstered by a report from the Resident Engineer in February 1964 that remedial works could cost up to £15000 – well beyond the estimated £4800 cost of the fourteen or so sections that were being affected.<sup>252</sup> By the end of 1965 11 sections on the Mokau spit had been revested in the Crown. Full compensation was paid to original 1957 purchasers, whilst owners who had purchased their property from a 1957 buyer were offered a 50% refund as the Crown took the position that ‘[its] obligation to them was not as great as to the original owners.’<sup>253</sup>

In December 1974 the strip of land along the waterfront of the Mokau spit, as well as the 11 sections that had been revested in the Crown, were set apart as a reserve and vested in the Waitomo County Council as Sections 23 and 24, Block I, Awakino Survey District.<sup>254</sup> A local spit resident complained of erosion on the Mokau spit in 1976, but this appears to have been fairly minor and no remedial works were carried out by local or central government.<sup>255</sup>

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<sup>251</sup> Commissioner of Crown Lands, Hamilton, to the Resident Engineer of the Ministry of Works, 18 December 1963. BAAS A362 24464 Box 1, Archives New Zealand (Auckland office) (supporting papers #87).

<sup>252</sup> Resident Engineer of the Ministry of Works to the Commissioner of Crown Lands, Hamilton, 24 February 1964. BAAS A362 24464 Box 1, Archives New Zealand (Auckland office) (supporting papers #88).

<sup>253</sup> R. W. Barnaby, Curnow Tizard Limited, to John Moran, Waitomo District Council, 29 November 2000. File No. 504/014A, Waitomo District Council (supporting papers #105).

<sup>254</sup> *New Zealand Gazette*, No. 1, 16 December 1974, p 16

<sup>255</sup> Letter from the Chief Executive of the Waikato Valley Authority to H. Muggeridge, 27 July 1977. Series 2A 9 21/407000 1, Waikato Regional Council (supporting papers #144).

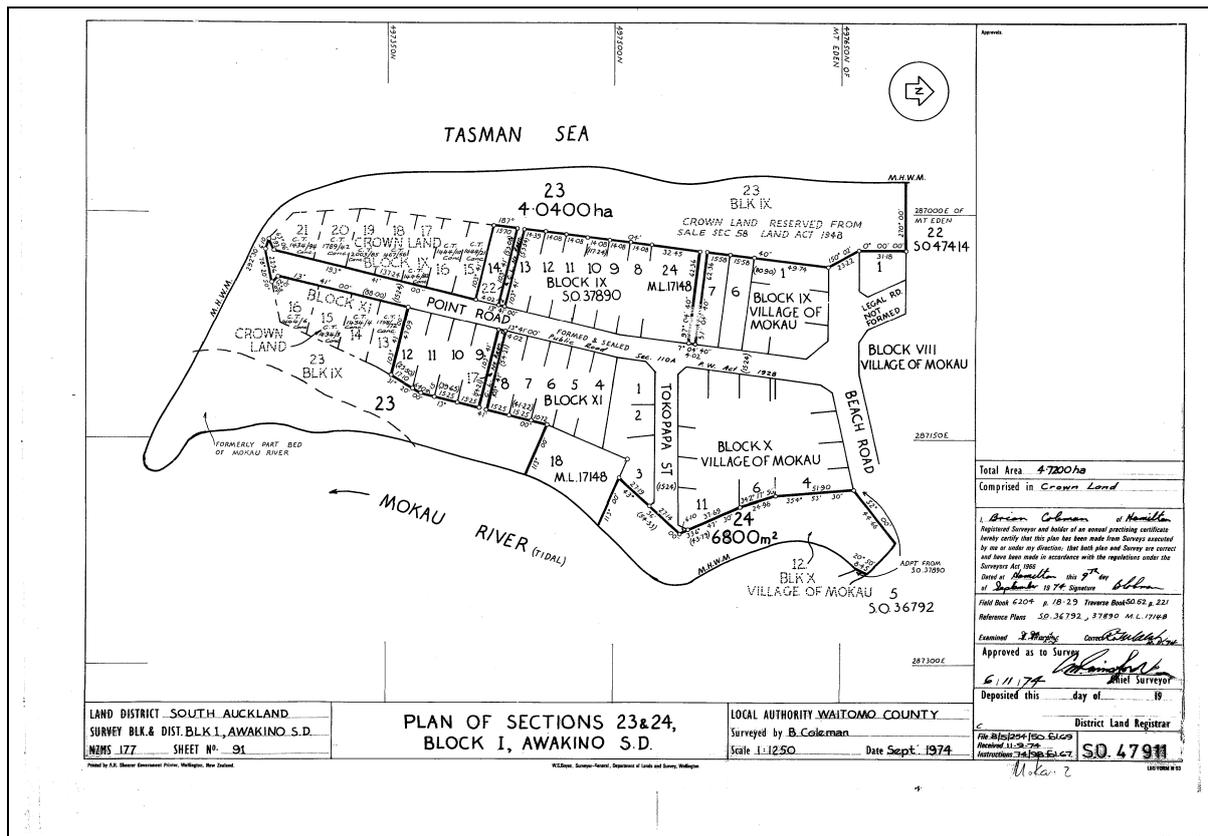


Figure 15: The area of the Mokau spit set aside as a reserve on 16 December 1974

#### 4.1.6 The second major erosion event, 1994-1999

A second major erosion event occurred in the mid-1990s. As in the 1960s, this event marked the beginning of an ongoing debate that persists to the present day over which local or central government agency should assume responsibility for addressing the problem. The Waitomo District Council's Chief Executive Officer stressed that, since the initial development was carried out entirely by the Crown, 'no liability can devolve onto Council', although he noted that some of the bach owners were 'trying to coerce Council into some liability.' The extent of the Council's involvement, he stated, would be limited to streamlining the building consent process for baches that needed to be relocated.<sup>256</sup> In March 1994 Waikato Regional Council attempted to halt the erosion by conducting riparian planting on the dune system with the assistance of a local private organisation known as the Tainui Residents and Ratepayers Association.<sup>257</sup> Further erosion in May 1994 undermined these efforts. Waikato Regional Council subsequently decided that coastal protection schemes would be too costly and

<sup>256</sup> Memo from D. G. Muir, Chief Executive Officer, to Waitomo District Councillors, 19 May 1995. File No. 504/014A, Waitomo District Council (supporting papers #102).

<sup>257</sup> Secretary of the Tainui Residents and Ratepayers Association to Environment Waikato, 24 April 1994. Series 46 02 48 Vol. 1, Waikato Regional Council (supporting papers #162).

unlikely to succeed, and that the best solution would be for the properties to be relocated away from the shore or off the spit entirely. It added that it would not accept any financial liability for erosion damage to properties.<sup>258</sup>

Since local government had opted against mitigation efforts, the residents of the spit constructed their own sand-bag wall along the beach front. Waikato Regional Council did not believe that the wall would have the intended effect, and might cause further problems if sand bags were washed away. Furthermore, any structure built on the beach front without a resource consent could be removed by Waikato Regional Council; however, it agreed not to do so until a permanent solution to erosion had been agreed upon, provided that the owners took ‘a responsible approach to the issue of bags that are washed away.’<sup>259</sup> Throughout 1995 Waikato Regional Council received several complaints that sand bags were being washed away and deposited along the coast as far as New Plymouth. They had also been spotted as far as three miles out to sea by local fishing vessels. As a result, in September the Council informed the local residents on the spit that the sand bag wall was illegal and ordered it to be removed.<sup>260</sup> Waikato Regional Council and Waitomo District Council subsequently agreed that construction would be prohibited within the area of public and private land that had been eroded on the spit, and designated a 50 metre strip along the coast as ‘coastal hazard area A’ where new constructions would require a resource consent. Waitomo District Council accepted responsibility for enforcing these rules under section 27 of its 1999 District Plan.<sup>261</sup>

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<sup>258</sup> ‘Environment Waikato: Coastal Erosion at Mokau Spit’ (undated, c. 1995). File No. 504/014A, Waitomo District Council (supporting papers #103).

<sup>259</sup> Ibid.

<sup>260</sup> Circular from the Group Manager Resource Use, Waikato Regional Council, to Mokau residents, 20 September 1995. Series 46 02 48 Vol. 1, Waikato Regional Council (supporting papers #165).

<sup>261</sup> Circular from John Moran, Waitomo District Council, 5 May 1999. File No. 504/014A, Waitomo District Council (supporting papers #104).

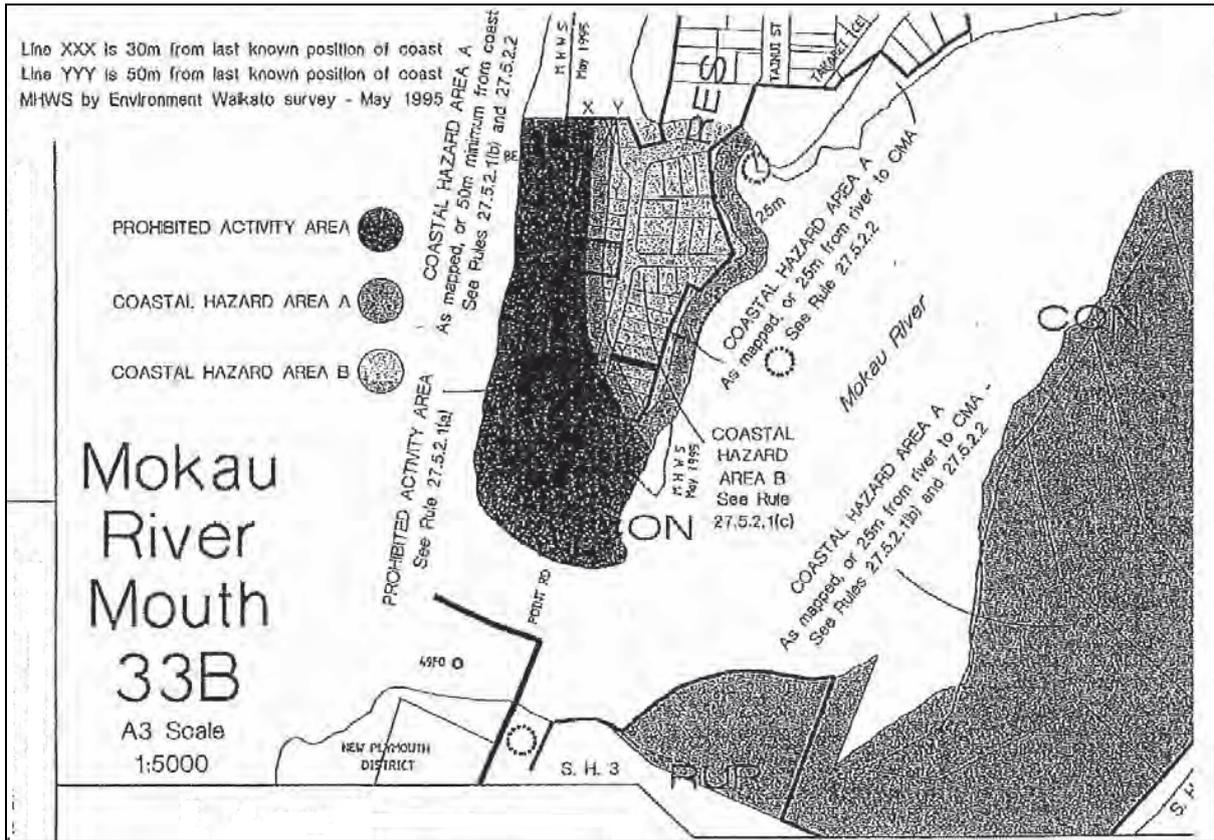


Figure 16: Prohibited Activity and Coastal Hazard Areas on the Mokau spit

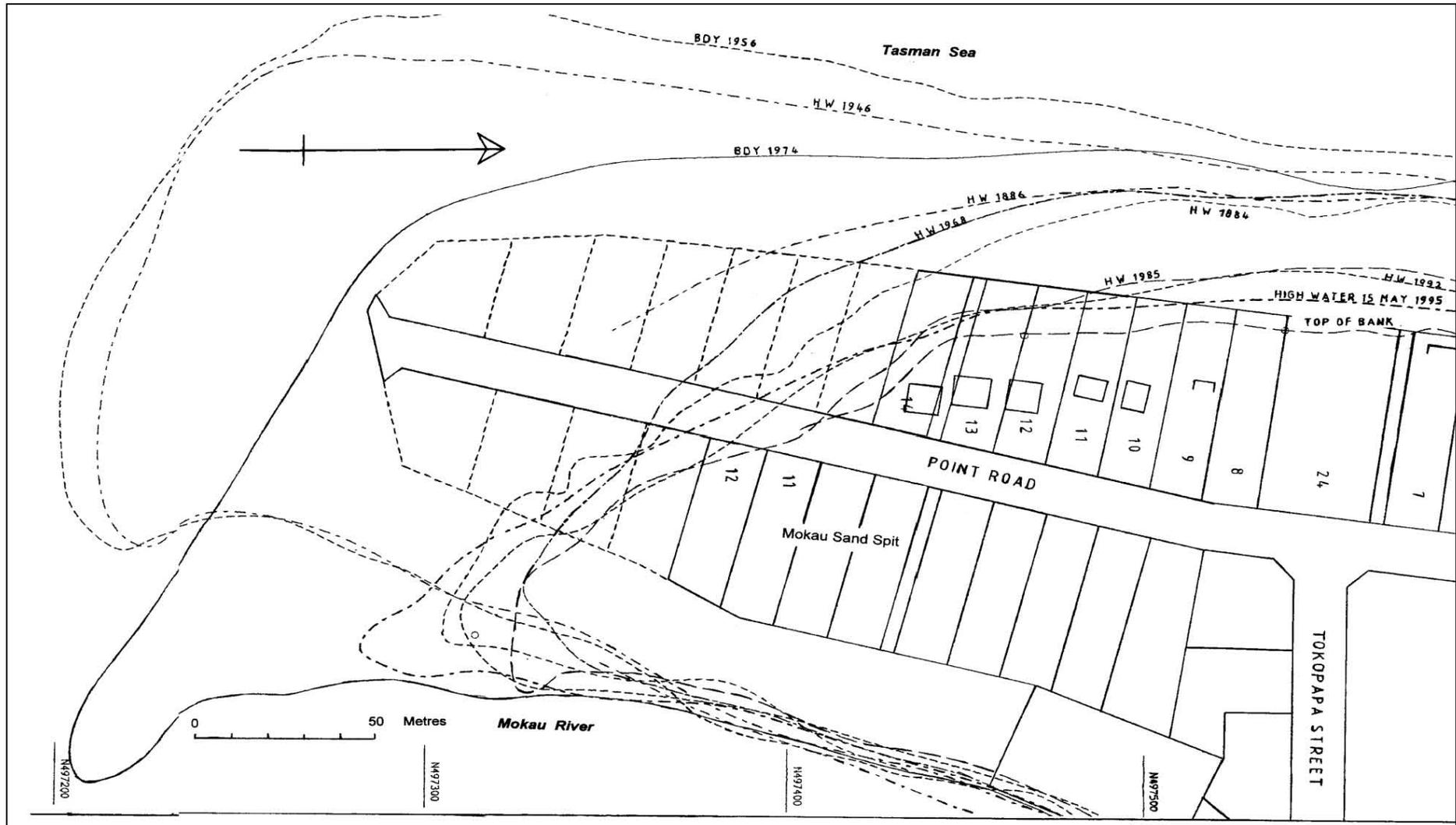


Figure 17: Shoreline changes of the Mokau spit in the period 1884 to 1995

The second major erosion event also affected the Maori urupa on the seaward side of Mokau spit. On 29 May 1995 the Secretary of the Tainui Residents and Ratepayers Association informed Waikato Regional Council that the urupa was being eroded, although the erosion was still several metres away from the gravesites and there was no sign of broken graves. The Association had informed local Maori elders.<sup>262</sup> On 3 August the Secretary informed Waikato Regional Council that the urupa was ‘eroding badly’.<sup>263</sup> She reported bones being uncovered on several occasions throughout the remainder of the year:

[M]ore bones have been uncovered about 1-2 metre from top about on the boundary of Mason’s/urupa near the Norfolk Island Pine. A group of Maori arrived to retrieve them as we walked away. Later I saw them reburying the bones further inland on the urupa reserve.<sup>264</sup>

It is unclear what the position of Mokau Maori was on the erosion at this time. When Waikato Regional Council organised to meet with the Ratepayers’ Association in September 1995 to discuss the sand bag wall they had erected, the Secretary informed them that they had invited local Maori to attend:

We also arranged for invitations to go to 2 local Maori. Bill Waho has performed the appropriate rites when bones have been uncovered. Olive Stephenson is usually his assistant and lives across the river mouth at the “Pilot Station”.<sup>265</sup>

However, when Waikato Regional Council decided to remove the sand bag wall, it was noted that an adjoining property owner had placed bags in front of the urupa without the permission of the Maori owners. Mokau Maori stated that they had no objection to the bags being removed.<sup>266</sup> The Secretary of the Ratepayers’ Association later claimed to have worked closely with Mokau Maori:

Olive told me that you had been to see her. As her reaction to your visit was very positive, I think you will find her helpful. I find her so. Apart from her now being a special friend when I want or need a Maori perspective on any issue she gives me the

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<sup>262</sup> Marian Mackle to Jim Dahm, Environment Waikato, 29 May 1995. Series 46 02 48 Vol. 1, Waikato Regional Council (supporting papers #163).

<sup>263</sup> Marian Mackle to Jim Dahm, Environment Waikato, 3 August 1995. Series 46 02 48 Vol. 1, Waikato Regional Council (supporting papers #164).

<sup>264</sup> Marian Mackle to Jim Dahm, Environment Waikato, 31 December 1995. Series 46 02 48 Vol. 2, Waikato Regional Council (supporting papers #169).

<sup>265</sup> Marian Mackle to Jim Dahm, Environment Waikato [undated, c. September 1995]. Series 46 02 48 Vol. 1, Waikato Regional Council (supporting papers #166).

<sup>266</sup> Tompkins Wake to the Chief Executive Officer, Environment Waikato, 31 October 1995. Series 46 02 48 Vol. 2, Waikato Regional Council (supporting papers #167).

facts and insight into the cultural implications without a load of emotional hype. We have some long and deep discussions at times.<sup>267</sup>

However, by this time the Secretary appears to have been acting in her capacity as a member of the Mokau Community Health Board rather than the Ratepayers' Association, and it is unclear whether she supported or opposed Waikato Regional Council's decision to remove the sand bags.

#### **4.1.7 The third major erosion event, 2004-2010**

A third major erosion event began in March-April 2004. It is from this point that Mokau Maori once again appear prominently in the archival material, chiefly in regards to their conflicting responses to any attempt to construct artificial barriers against erosion. To compensate for the third major erosion event, residents of the spit began constructing a new seawall out of wool bales filled with sand. In response, Waitomo District Council sought a legal opinion on which government bodies should be involved in addressing the problem of erosion and the non-consented seawall construction. The legal opinion determined that the Waitomo District Council was chiefly responsible under section 27 of its District Plan, however the participation of Waikato Regional Council during previous erosion events suggested that it should be involved as well.<sup>268</sup>

Representatives of the Waikato Regional Council met in early June 2004 to discuss the unauthorised seawall. They conferred with Waitomo District Council staff, who advised them that the wall was classified as a prohibited activity under its District Plan, and that the Council was preparing a briefing paper summarising potential options that would be presented to a meeting of Mokau residents. Waikato Regional Council also contacted Barbara Marsh, a leading figure within Mokau Ki Runga and the Maniapoto Maori Trust Board, whose comments on the seawall suggest that Mokau Maori had opposed such constructions for some time:

Hugk K[eane] also phoned Barbara Marsh, Maniapoto Trust Board. She had heard that a wall had been built. Barbara considered that Iwi remained opposed [emphasis

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<sup>267</sup> Marian Mackle to Jim Dahm, Environment Waikato, 21 November 1995. Series 46 02 48 Vol. 2, Waikato Regional Council (supporting papers #168).

<sup>268</sup> Memo from J. M. Harris to John Moran, Waitomo District Council, 4 June 2004. File No. 504/014A, Waitomo District Council (supporting papers #106).

added] to further ad hoc structures being used. I advised her what had been happening over the last few days and confirmed the next public meeting in the Mokau Hall[.]<sup>269</sup>

The meeting with Mokau residents was held on 13 June 2004. The two briefing paper options that attracted the most support were for a comprehensive engineering solution or a managed relocation, but there was debate over whether the considerable cost of either option should be met by local government or by the property owners themselves.<sup>270</sup> A ratepayers' committee was formed to discuss the two options with Waikato Regional Council and Waitomo District Council. One of the members of this committee was Barbara Marsh, although it is not clear whether she was acting as a ratepayer or as a Mokau Ki Runga representative.<sup>271</sup>



**Figure 18: The sandbag wall erected on the Mokau spit in 2004**

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<sup>269</sup> Memo dated 1 June 2004. Series 61 29 92A Vol. 1, Waikato Regional Council (supporting papers #171).

<sup>270</sup> John Moran, Waitomo Council Report, 21 June 2004. File No. 504/014A, Waitomo District Council (supporting papers #107).

<sup>271</sup> Circular from John Moran, 14 July 2004. File No. 504/014A, Waitomo District Council (supporting papers #109).

Waikato Regional Council and Waitomo District Council favoured managed relocation via purchase of the affected properties by central government. They noted, however, that it was difficult to involve the Crown in local issues ‘as they have largely devolved relevant responsibilities to district and regional councils.’ Land Information New Zealand was suggested as one central government agency to approach, given that it was the successor to the Department of Lands and Survey.<sup>272</sup> An application to the National Heritage Fund of the Department of Conservation was also considered.<sup>273</sup> To gather support for such an initiative, the ratepayers’ committee conducted a survey of spit residents to gauge popular support for the two options and potential funding sources. The result indicated an almost universal opposition to relocation. Support for a seawall was higher, but the majority of spit residents were unwilling to fund it themselves. As a result, Waikato Regional Council and Waitomo District Council agreed on a ‘managed status quo’ option with the ratepayers’ committee.<sup>274</sup>

In the second half of 2005, a group of Mokau spit residents formed the Mokau Protection Society for the purpose of constructing a new seawall comprised of rocks. The Waitomo District Council warned them that any construction in the area was a prohibited activity and would be met with legal action.<sup>275</sup> The warning was not heeded, and in December 2005 they began unauthorised construction on the new seawall. In response, Barbara Marsh phoned the District Council to complain about the structure.<sup>276</sup> In January 2006 an additional complaint was raised by Russell Gibbs and Haumoana White for Nga Hapu o Poutama:

We note that further illegal seawalls have been erected at Mokau. We understand this is a prohibited activity and that the bach owners were aware of this before construction. Could you please arrange removal immediately. The Hapu is prepared to assist with disposal.<sup>277</sup>

The email was cc’d to several MP’s, including Metiria Turei, Nanaia Mahuta, Tariana Turia and Shane Ardern, although it is unclear whether they had any direct involvement in the

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<sup>272</sup> Jim Dahm, Eco Nomos Ltd., to Environment Waikato and Waitomo District Council, 1 July 2004. File No. 504/014A, Waitomo District Council (supporting papers #108).

<sup>273</sup> Memo from Rick Liefing, 14 July 2004. File No. 504/014A, Waitomo District Council (supporting papers #110).

<sup>274</sup> Mokau coastal erosion update (undated, c. July 2004). File No. 504/014A, Waitomo District Council (supporting papers #111).

<sup>275</sup> John Moran, Waitomo District Council, to the Moselen family, 22 September 2005. File No. 504/014A, Waitomo District Council (supporting papers #112).

<sup>276</sup> Waitomo District Council to Barbara Marsh, 15 December 2005. Series 61 29 92A Vol. 1, Waikato Regional Council (supporting papers #172).

<sup>277</sup> Email from Haumoana White et al. to the Waitomo District Council, 19 January 2006. File No. 504/014A, Waitomo District Council (supporting papers #113).

events at Mokau. However, it will be shown below that Ardern was at least aware of the erosion occurring at Mokau and held a significant amount of archival material on the matter.

Despite having issued a warning to the Mokau Protection Society, the Waitomo District Council made no move to dismantle the unauthorised rock wall. Therefore, on 23 December 2005 Waikato Regional Council served abatement notices on the property owners who had constructed the wall. These noted that:

1. The erosion protection works are likely to exacerbate erosion effects at either ends of the walls, leading to increased erosion on other properties.
2. The works that have been done require resource consent, and no resource consent has been obtained.
3. The erosion protection works are likely to fail during storm events, leading to debris being spread onto the beach, and potentially posing a risk to navigation and safety.<sup>278</sup>

Waikato Regional Council informed Barbara Marsh and Nga Hapu o Poutama of the abatement notices.<sup>279</sup> They also advised Waitomo District Council that they had received ‘numerous complaints ... from local iwi who are very concerned about the effect on urupa adjacent to the stretch of beach affected’, and strongly advised the Council to enforce its responsibilities under section 27 of its 1999 District Plan to remove the seawall. They believed that any action to the contrary would send mixed messages to the bach owners and undermine the united front that the two local government bodies had thus far presented.<sup>280</sup>

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<sup>278</sup> Environment Waikato to Raymond Andrew Cook, 22 December 2005. Series 61 29 92A Vol. 1, Waikato Regional Council (supporting papers #173).

<sup>279</sup> Programme Manager, Environment Waikato, to Barbara Marsh, 11 January 2006 (supporting papers #174); Environment Waikato to Haumoana White and Russell Gibbs, 18 January 2006. Series 61 29 92A Vol. 1, Waikato Regional Council (supporting papers #175).

<sup>280</sup> Harry Wilson, Environment Waikato Chief Executive, to the Chief Executive of the Waitomo District Council, 24 February 2006. File No. 504/014A, Waitomo District Council (supporting papers #114).



**Figure 19: The rock wall at Mokau spit**

The response of the Waitomo District Council demonstrated an attempt to balance its District Plan commitments with its sympathy for the bach owners residing on the spit. ‘Whilst there are obvious breaches of regulations’, it argued, ‘it is equally obvious and understandable that residents want to take steps to protect their properties.’ The Council also debated whether or not the rock seawall constituted a ‘building or structure’ as it was defined in their District Plan. Whilst it agreed that a wooden barrier constructed by one resident met this definition, it did not believe that the rocks constituted a ‘building or structure’. The Council’s suggestion was to adopt a ‘wait and see’ position rather than risk inflaming matters by enforcing the regulations contained in their District Plan. The Council also suggested that the concerns of local Maori should be addressed by the spit residents themselves:

We are aware that the local Iwi Regional Committee people [Mokau Ki Runga] have expressed some concerns and we need to work through those in due course with the

local community. I believe the best outcome will be reached when the community of Mokau and Iwi resolve the matter between them.<sup>281</sup>

This suggests that Waitomo District Council was keen to avoid becoming entangled in the debate between Mokau spit residents and Maori.

To address the abatement notices, the Mokau Protection Society decided to apply to Waikato Regional Council for a retrospective resource consent for the rock wall it had constructed.<sup>282</sup> This application, which was prepared with Environment Management Services Limited, was lodged in July 2006. The Society asserted that the rock wall it had constructed was ‘generally acceptable from an engineering perspective’ and that it would mitigate erosion, preserve the natural character of the spit and prevent a loss of ecological values in the area. They requested that a resource consent be issued for ten years so that the performance of the wall could be evaluated.<sup>283</sup>

The Mokau Protection Society also argued that the wall would protect the section on the seaward side of the spit designated as an urupa. By way of consultation with tangata whenua, the Society contacted Aroha Terry, ‘a member of the Maniaroa Marae who holds manawhenua for the Maniaroa urupa’, and secured her approval for the works to continue.<sup>284</sup> In emails sent by Terry in June 2006 to the Mokau Protection Society, Waikato Regional Council and Waitomo District Council, Terry offered the support of herself and a number of other Maori from Maniaroa Marae for the seawall. Those listed were Richard Howe, Mary Anne Terry, Vanessa Wilson who served as Chairperson of Maniaroa Marae, and Jess Te Waitehu Aterea Terry who ‘holds the mana as kuia to Maniaroa and Mokau.’ In an apparent reference to the mandate of Mokau Ki Runga to deal with local government in the region, Terry told Waikato Regional Council and Waitomo District Council that:

I am aware you have dealings with one of two people who may appear to be your only link to Mokau, however, i [sic.] can assure you there are others ... My point in sharing this information is to allow you to hear from others rather than one or two who dont

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<sup>281</sup> David Jack, Chief Executive of the Waitomo District Council, to the Chief Executive of Environment Waikato, 7 March 2006. File No. 504/014A, Waitomo District Council (supporting papers #115).

<sup>282</sup> Glenys Waters, Secretary of the Mokau Protection Society, to Waitomo District Council, 11 July 2006. File No. 504/014A, Waitomo District Council (supporting papers #118).

<sup>283</sup> ‘Mokau Beach Erosion Protection Works’, Mokau Protection Society Inc., July 2006. File No. 504/014A, Waitomo District Council (full application not included in supporting papers, but extracts can be found in supporting papers #116 and #117).

<sup>284</sup> *Ibid.*, p 31

[sic.] necessarily have the same knowledge or passionate link to Mokau. And to also help your awareness that in Maoridom not only is whakapapa important, rather it is the strength of it that forms a line of Rangatiratanga.

According to Terry, the whakapapa for her whanau came from Taniora Wharauoa, who she claimed was ‘the head ancestor Rangatira of Mokau.’<sup>285</sup>

A large number of submissions were received in response to the resource consent application. Out of the 170 submissions, 165 supported the consent, three were neutral, and two opposed. Several of the supporting submissions were from Maori associated with Maniaroa Marae: Aroha Terry, Maria Terry-Ward, Huriwhenua Terry, Larnia Aroha Paranihi, Wayne Rani Paranihi, Tane Paranihi, Hori Terry-Waho, and Daniel Winiata-Terry. Huriwhenua Terry’s reason for supporting the application reflected the reasoning utilised in most of these submissions:

To stop my ancestors and bones to be seen on the beaches. To allow my ancestors to have that privacy behind a retaining wall that will protect them and keep them in a safe enclosure (urupa).<sup>286</sup>

In addition, Aroha Terry praised the Mokau Protection Society for its work in constructing the rock wall:

Surrounding homes and batches [are] affected by the erosion. These homes and residence[s] have maintained and protected the urupa throughout time and have never sought compensation. Their good will to caretake the urupa has not gone unrecognised and appreciated by the direct descendents of the ancestors who lay there.<sup>287</sup>

The remainder of the supporting submissions were mostly from Mokau residents. One of the neutral submissions was from the Department of Conservation.

The two submissions opposing the consent were from Mokau Ki Runga Regional Management Committee and Nga Hapu o Poutama. Mokau Ki Runga lodged a ‘total

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<sup>285</sup> Email from Aroha Terry to Andrew Cook, 6 June 2006; email from Aroha Terry to John Moran and Hugh Keane, 20 June 2006. Appendix I, ‘Mokau Beach Erosion Protection Works’, Mokau Protection Society Inc., July 2006. File No. 504/014A, Waitomo District Council (supporting papers #116 and #117).

<sup>286</sup> Submission of Huriwhenua Terry, 5 January 2007. Series 61 40 82A Vol. 2, Waikato Regional Council (supporting papers #176).

<sup>287</sup> Submission of Aroha Terry, 4 January 2007. File No. 504/014A, Waitomo District Council (supporting papers #121).

objection’ to the consent as the ‘mandated authority’ representing ‘the collective interest of Marae and Hapu in our rohe of Mokau Ki Runga’, including Maniaroa Marae.<sup>288</sup> Poutama submitted that the previous wall constructed on the spit in 2005 had actually caused ‘accelerated erosion’, and that remnants had washed up on the shore ‘as far south as Paraninihi.’ Their submission also stressed Poutama’s ancestral connection with Te Naunau and their customary rights and responsibilities as ‘Kaitiaki Urupa’:

Te Nau Nau was always customary land. The occupation by the bach owners is a very recent event. Hapu and whanau gave no such consent, and in fact were still burying the dead here. The Urupa is not limited to the area defined in the application. Koiwi were uncovered when the streets were bulldozed. Baches have led to seawalls and seawalls lead to more and bigger seawalls. We do not consent to the removal or extinguishment of customary rights.

They also considered erosion to be a natural process in line with the Maori worldview:

It is customary practice for Maori to move as the elements dictate. Maori have always lived with the elements. Whatever Tangaroa or Tawhiri Matea have dished up we have lived with. The elements have their own mauri and are always changing. When the beaches moved, as they have done since time immemorial [sic.], we have moved with them.<sup>289</sup>

Furthermore, Poutama claimed that they had invited Mary-Anne Terry to meet at their Marae at Te Kawau to discuss the resource consent application, but claimed that she had ‘not seen fit to meet [with us]’.<sup>290</sup>

The conflicting views of Maniaroa Marae on the one hand, and Mokau Ki Runga and Nga Hapu o Poutama on the other, continued after submissions were filed. In February 2007 Richard Howe, Chairperson for Maniaroa Marae, wrote a response to the opposing submissions of Mokau Ki Runga and Nga Hapu o Poutama. He argued that, whilst Maniaroa was one of the Marae represented by Mokau Ki Runga Regional Management Committee, its nominated representative had not signed either of the opposing submissions. Therefore, he requested that Waikato Regional Council deem the opposing submissions invalid.<sup>291</sup> Mary-

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<sup>288</sup> Barbara Marsh, Secretary of Mokau Ki Runga, to Environment Waikato, 11 January 2007. File No. 504/014A, Waitomo District Council (supporting papers #122).

<sup>289</sup> Haumoana White to Environment Waikato, 12 January 2007. File No. 504/014A, Waitomo District Council (supporting papers #123).

<sup>290</sup> Ibid.

<sup>291</sup> Richard Howe to Environment Waikato, 21 February 2007. Series 61 40 82A Vol. 2, Waikato Regional Council (supporting papers #177).

Anne Terry also wrote a letter to Haumoana White in response to the submission of Nga Hapu o Poutama:

Contrary to your claim that you invited me to Te Kawau is not at all correct. I approached you; you did not return that respect I showed you to even follow that through to discuss the sea wall.

...

Taniora was removed from [Te Naunau] and now rests at Maniaroa, My [sic.] tupuna in their wisdom removed him to safer ground. Why Rodney do you wait for them to be washed out to sea before doing any thing [sic.]. Why now! have you any thing [sic.] to say. You have done nothing to protect that Urupa & our Tupuna. Is it good enough to have a Karakia after their bones are picked up off the beach?

...

I hope the pakeha protect those of our Tupuna left, & that you are not the one who stops this from happening.<sup>292</sup>

No agreement appears to have reached between the Maori supporters and opponents of the rock wall.

Members of the Mokau Protection Society tried to reach agreements with Mokau Ki Runga and Nga Hapu o Poutama in March-April 2007. They attempted to organise a meeting with Barbara Marsh and the Chairperson of Mokau Ki Runga but had trouble getting in contact with them. They also met with Haumoana White and Russell Gibbs but ultimately decided to 'agree to disagree'.<sup>293</sup> White wrote two subsequent letters to Waikato Regional Council in July 2007 protesting against the fact that the rock wall had still not been removed and arguing that the wall had caused 'accelerated erosion' on Mokau spit. He also suggested that the baches could be relocated to a site further upstream on Te Mahoe Road, where a large section had recently come up for sale.<sup>294</sup>

Whilst submissions were being accepted on the resource consent application, a debate took place between Waikato Regional Council and Waitomo District Council over whether the consent was a regional or a district council matter. Waikato Regional Council argued that the rock wall lay outside of the coastal marine area, which meant that a building consent was required from Waitomo District Council before the resource consent could be processed. The

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<sup>292</sup> Mary-Anne Terry to Haumoana (Rodney) White, 22 February 2007. Series 61 40 82A Vol. 2, Waikato Regional Council (supporting papers #178).

<sup>293</sup> File note dated 4 April 2007. Series 61 40 82A Vol. 2, Waikato Regional Council (supporting papers #179).

<sup>294</sup> Letters from Haumoana White to Environment Waikato, 4 July 2007 and 17 July 2007. Series 61 40 82A Vol. 2, Waikato Regional Council (supporting papers #180 and #181).

District Council replied that, as it did not consider the rock wall to constitute a ‘building or structure’, it did not require a building consent. The resource consent process was put on hold in 2007 whilst this debate occurred.<sup>295</sup> The Waitomo District Council sought legal opinion on the matter in June 2007 from Le Pine & Co., who informed them that a building consent was indeed required before the resource consent could proceed. However, it also stated that there was legal precedent for the rock wall to be approved as a discretionary activity despite it being located in an area marked as prohibited under the Council’s District Plan.<sup>296</sup>

The Mokau Protection Society’s resource consent application has not progressed any further since 2007 as Waitomo District Council do not appear to have lodged a building consent application. A structural assessment of the seawall carried out in March 2007 by Tonkin and Taylor on behalf of Waikato Regional Council noted that it would provide ineffective protection against erosion in the long term and was potentially unstable.<sup>297</sup> This seemed to be confirmed during a further erosion cycle in June-July 2008 which destroyed an outbuilding and led to the relocation of another. The Waitomo District Council reported that the seawall had ‘failed due to poor design, haphazard construction and wave overtopping.’<sup>298</sup> Spit residents responded by commencing repairs and improvements to the rock wall, which led local Maori to raise a complaint with Waikato Regional Council.<sup>299</sup> Russell Gibbs and Haumoana White of Nga Hapu o Poutama visited the spit whilst construction work was being undertaken and served their own trespass notices on the digger.<sup>300</sup> As a result, the diggers removed the portion of the rock wall in front of the urupa on the seaward side of the spit.<sup>301</sup>

Waikato Regional Council and Waitomo District Council responded to the fresh construction work by holding a meeting with members of the Mokau Protection Society on 15 August

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<sup>295</sup> Amy Robinson, Coastal Resource Officer for Environment Waikato, to John Moran, Waitomo District Council, 7 September 2006 (supporting papers #119); John Moran, Waitomo District Council, to P Laing, lawyer for the Mokau Protection Society, 1 November 2006 (supporting papers #120); Harry Wilson, Chief Executive of Environment Waikato, to Chris Ryan, Chief Executive of the Waitomo District Council, 18 May 2007. File No. 504/014A, Waitomo District Council (supporting papers #125).

<sup>296</sup> Le Pine & Co. to the Chief Executive of the Waitomo District Council, 4 July 2007. File No. 504/014A, Waitomo District Council (supporting papers #126).

<sup>297</sup> ‘Structural Assessment of Mokau Seawall’, Richard Reinen-Hamill, Coastal Engineer for Tonkin & Taylor, 2 March 2007. File No. 504/014A, Waitomo District Council (supporting papers #124).

<sup>298</sup> Memo for the Waitomo District Council, 30 September 2008, p 2. File No. 097/001, Waitomo District Council (supporting papers #127).

<sup>299</sup> Call No. 104209 (identity confidential), 8 July 2008. Complaints database, Waikato Regional Council. Not included in supporting papers.

<sup>300</sup> Email from Mark Ammon, 18 August 2008. Series 61 29 92A Vol. 1, Waikato Regional Council (supporting papers #182).

<sup>301</sup> Phone contact, 18 August 2008. 61 40 82A Vol. 2, Waikato Regional Council (supporting papers #183).

2008. Also in attendance was Shane Ardern, the MP for Taranaki-King Country. After reminding the Mokau residents of the restrictions that prohibited seawall construction and maintenance, Ardern was quizzed about the possibility of central government involvement:

I raised the possibility the crown (as original subdivider) might pay some compensation. Shane Ardern said he had a thick file on the history of the subdivision - suggested too much time had elapsed since the time of subdivision for much chance of help from the crown.<sup>302</sup>

Waikato Regional Council and Waitomo District Council followed up on the meeting with a joint abatement notice on P. Cowley, the resident who appeared to be leading the construction works, along with abatement notices on several other residents.<sup>303</sup>

In September 2008 Waikato Regional Council and Waitomo District Council met to consider several possible options: do nothing, prosecute the bach owners, develop an engineered solution, remove the seawall, change the provisions of section 27 of the Waitomo District Council District Plan, or a managed retreat policy. They agreed that managed retreat was the best option. Unlike the managed retreat option considered in 1995, however, this version would require extensive cooperation – both administrative and financial – between Waikato Regional Council, Waitomo District Council, central government, and the bach owners:

Managed retreat under this proposal would see a partnership developing between the agencies involved and the property owners on the seaward side of Point Road. It is proposed that Central Government be approached by representatives from this Council and Environment Waikato to establish a joint fund which would be used to purchase foreshore properties (for land value) if owners were willing to relocate ... Over time, all the properties on the seaward side of Point Road would be in public ownership allowing the Crown and the two Council's [sic.] involved to manage the erosion in a sensible and co-ordinated manner.<sup>304</sup>

'Managed retreat' has remained the official policy of Waikato Regional and Waitomo District Councils until the present day, although no efforts appear to have been made to involve any central government agencies.

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<sup>302</sup> Ibid.

<sup>303</sup> Memo for the Waitomo District Council, 30 September 2008, p 3. File No. 097/001, Waitomo District Council (supporting papers #127).

<sup>304</sup> Memo for the Waitomo District Council, 30 September 2008, p 6. File No. 097/001, Waitomo District Council (supporting papers #127).

Complaints were raised by local Maori in 2010 regarding fresh construction work taking place on Mokau spit.<sup>305</sup> In March 2010 Waikato Regional Council received separate communications from Barbara Marsh and Nga Hapu o Poutama reporting on this work and inquiring as to whether the Council intended to enforce its abatement notices.<sup>306</sup> Waikato Regional Council confirmed that the abatement notices were still current and sent copies to the owners of the baches involved in the renewed construction efforts.<sup>307</sup> Nevertheless, Waitomo District Council has still not taken action to prosecute spit residents or remove the rock wall, which still stands as at the present day apart from a small gap in front of the urupa on the seaward side.

#### **4.1 8 The fourth major erosion event, 2013**

A severe storm at the beginning of August 2013 led Waitomo District Council to install its own rock armouring at the end of Beach Road on the Mokau spit. This work was carried out under Section 330 of the Resource Management Act which allows a territorial authority to carry out remedial measures to protect public works and utilities or natural resources without applying for a resource consent. Any actions carried out under this provision must be notified to the appropriate resourcing authority within seven days and a retrospective resource consent application lodged within twenty days.<sup>308</sup> Waitomo District Council state that they have carried out the work to protect the public roads on the spit, and that this does not represent a deviation from the policy of ‘managed retreat’ that it has agreed with Waikato Regional Council.<sup>309</sup> William Wetere and Nga Hapu o Poutama have expressed concerns with the lack of Maori consultation in this process, in particular regarding the retrospective resource consent application.<sup>310</sup>

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<sup>305</sup> See for example call no. 106629 (identity confidential), 3 February 2010. Complaints database, Waikato Regional Council. Not included in supporting papers.

<sup>306</sup> File note, 2 March 2010 (supporting papers #184); Email from Russell Gibbs and Haumoana White to Environment Waikato, 2 March 2010. 61 40 82A Vol. 2, Waikato Regional Council (supporting papers #185).

<sup>307</sup> Memo from Investigations and Complaints, Environment Waikato, 19 March 2010. 61 40 82A Vol. 2, Waikato Regional Council (supporting papers #186).

<sup>308</sup> 1991 No. 69: Resource Management Act, section 330

<sup>309</sup> Email from John Moran, Regulatory Services Manager for the Waitomo District Council, 2 September 2013.

<sup>310</sup> Email from William Wetere, Chairperson for Mokau Ki Runga Regional Management Committee and Maniaroa marae, 9 October 2013; email from Russell Gibbs, 12 August 2013.



**Figure 20: The rock wall constructed by Waitomo District Council in August 2013**

## **4.2 Te Kauri**

As was discussed earlier, Te Kauri was set aside as one of three Maori reserves during the purchase of the Mokau block in 1854. Comprising 2.7 acres, it is located on the northern bank of Mokau harbour next to where the bridge now runs. It was the site of a Marae known as Te Kohaarua before it was moved to Maniaroa in the late 1800s.<sup>311</sup> Given its proximity to the bridge, it is possible that Te Kauri was the site of the historical nohoanga kai identified by Tame Tuwhangai at the fifth korero tuku iho hearing.<sup>312</sup> Te Kauri is also the name of a taniwha who manifests as a totara log and travels along the Mokau River. According to tradition, a young man who once dared to cut a notch in the side of the log was found lying dead on the beach the next day.<sup>313</sup> At the fifth korero tuku iho hearing, Jay Hiriaki stated that he had not seen the taniwha since his grandmother's death.<sup>314</sup>

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<sup>311</sup> Wai 898 #4.1.5, p 9

<sup>312</sup> Wai 898 #4.1.5, pp 223-225

<sup>313</sup> Wai 898 #A110, p 263; James Cowan, 'Up the Mokau', *New Zealand Railways Magazine*, Vol. 12, No. 10 (January, 1938), p 13.

<sup>314</sup> Wai 898 #4.1.5, p 276

When Te Kauri block was brought before the Native Land Court in 1897 it was split into two parts. The northern, and far larger, portion was named Hingarangi Kauri, whilst the smaller portion in the south became known as Te Kauri. Evidence about the ownership of Te Kauri was heard by the Native Land Court on 16 March 1904. Pepene Eketone testified at the hearings that Te Kauri was a kainga and that an important chief named Wetere Te Rerenga had died there. The block was split into three parts: Te Kauri 1 was awarded to Niwha Te Awa and three others; Te Kauri 2 to Te Ianui and four others, and Te Kauri 3 to Erana Wetere and 18 others. However, it appears that the partition order was not given effect to at the time.<sup>315</sup>

Shortly after its establishment in 1901, the Mokau Harbour Board expressed an interest in constructing a new wharf to replace the private wharf that it had previously purchased. The Engineer for Water Conservation Thomas Perham made a site visit to Mokau in May 1901 and wrote to the Marine Department suggesting three possible sites for a new wharf: the same site as the existing wharf, the western corner of Te Kauri pa, and a location further downstream near the spit named Te Umukaha. Whilst the location at Te Kauri was favoured the most by the Harbour Board, Perham argued that the shallow water in front of the property would require a much longer and more expensive wharf to reach deeper water. The only advantage of this would be to ‘prevent erosion and save the Natives property.’ He therefore recommended construction of the new wharf at Te Umukaha and a short service road connecting it to the Mokau Township.<sup>316</sup> The Marine Department had no objections to this proposal, and a sum of £200 was made available to assist the construction.

Plans for constructing the new wharf did not get underway until 1904, by which time the Mokau Harbour Board had decided to strengthen the existing wharf instead.<sup>317</sup> However, it was soon discovered that it was not possible to drive the wooden piles into the sandstone rock at this location, so the Harbour Board decided to build the new wharf at the Te Kauri site instead.<sup>318</sup> The Marine Department approved the proposal, since it did not believe it would

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<sup>315</sup> Wai 898 #A142, pp 85, 91-92

<sup>316</sup> T. Perham to the Undersecretary for the Marine Department, 10 May 1901. M1 523 4/510, Archives New Zealand (supporting papers #1).

<sup>317</sup> Chairman of the Mokau Harbour Board to the Minister of Marine, 6 January 1904. M1 523 4/510, Archives New Zealand (supporting papers #2).

<sup>318</sup> Chairman of the Mokau Harbour Board to the Minister of Marine, 30 January 1904. M1 523 4/510, Archives New Zealand (supporting papers #3).

impede on river navigation, and the Harbour Board began putting out tenders for construction.<sup>319</sup> The site at Te Umukaha recommended three years earlier by Perham was not mentioned, nor were his misgivings about building a wharf at Te Kauri.

Maori residing at Te Kauri only became aware of the plans for the new wharf as the wooden piles were stacked on the shore. In October 1904, a letter of protest signed by Tatana Te Awaroa and 25 others was sent to the Minister of Native Affairs, who forwarded it to the Marine Department. The letter criticised the lack of consultation from the Mokau Harbour Board and the perceived effect that the proposed wharf would have on customary practices at Te Kauri:

Now we, the Maori people, living at this place, Te Kauri, whose kainga that is and the land also, make known to you our objection with reference to the place where it is intended the site is to be for that wharf: it is at our very kainga: the place marked off is a chain distant from our large house ... the site as marked interferes and damages our kainga and the place where our canoes lie. There are many places suitable as wharf sites on other parts of the bank: well it is because the Pakehas so look down on the Maoris that they take a site for a wharf right to the doorway of our house ... The Pakehas make their own representations to the Government without informing us, and we feel assure [sic.] that the Government would not assent if they were to see that place and our kainga ... Our kainga occupies but a limited place between the road and the sea beach with no room for us to move, the inland part being barred by the road, and being kept back by the sea, the wharf and its roads: consequently we are in a fix.

With a note of urgency, the letter concluded that '[t]he timber for the wharf is on the ground, and work will soon be commenced.'<sup>320</sup>

In response to Te Awaroa's letter, the Marine Department recommended that the Mokau Harbour Board find a new site for the wharf that would not interfere with Te Kauri or the 'riparian rights of Maoris'.<sup>321</sup> The Harbour Board declined to relocate the proposed wharf for several reasons. Firstly, they claimed that the new wharf would not interfere with Te Kauri settlement or the riparian rights of Maori since it would not extend to the high water mark.

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<sup>319</sup> Minute from Marine Engineer, 5 February 1904. M1 523 4/510, Archives New Zealand (supporting papers #4).

<sup>320</sup> Tatana Te Awaroa to the Minister of Native Affairs, 19 October 1904. M1 523 4/510, Archives New Zealand. A full list of authors is provided in the original letter, which was written in te reo Maori: Tatana Te Awaroa, Te Oro Watihī, Marohau Tohoroa, Ngawhakaheke, Ngawai, Rangiamohia, Teia Wei, Pukatea, Parehuakirua, Ngareta, Ki Whatewa, Ara Waka, Taiaroa Neha, Aterea Te Mata, Rangitua Kingi, Turahingi, Takerei Kingi, Te Ra Wetere, Tuirangi Wetere, Kingi Wetere, Te Koro Wetere, Taniora Wharauroa, Rawiri Wiari, Te Wera Wetere, Tiramate Wetere, Te Kupa Kangaro (supporting papers #5 and #6).

<sup>321</sup> Telegram from the Secretary for the Marine Department to the Secretary of the Mokau Harbour Board, 10 November 1904. M1 523 4/510, Archives New Zealand (supporting papers #7).

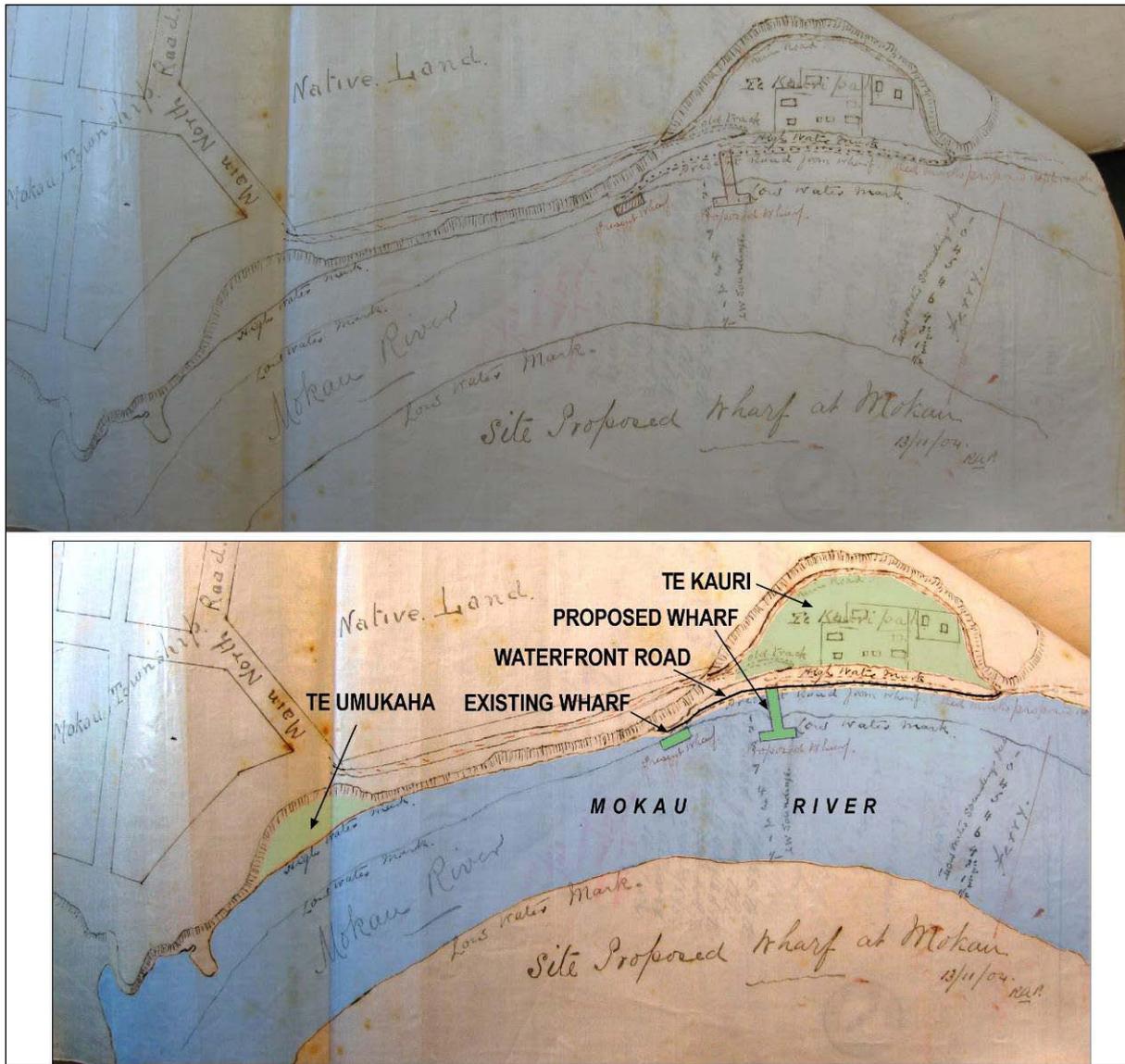
Secondly, they argued that alternative sites for the wharf were impracticable: building it downstream would be ‘very much more expensive’ and ‘next to impossible’ to reach by road, whilst construction near the ferry would have to extend two-thirds of the way across the river to get to deep water. Finally, the Harbour Board replied that the Maori who objected to the proposed wharf lived ‘many miles away from here’ and did not actually reside at Te Kauri.<sup>322</sup> The Marine Department accepted the arguments of the Harbour Board and approved construction of the wharf at the Te Kauri site.<sup>323</sup> The Department of Native Affairs replied to Tatana Te Awaroa that ‘no harm will be done to your kaianga [sic.] by the construction of the wharf at the place intimated.’<sup>324</sup> No response appears to have been written by Te Awaroa or any other Maori associated with Te Kauri.

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<sup>322</sup> Secretary of the Mokau Harbour Board to the Minister of Marine, 16 November 1904. M1 523 4/510, Archives New Zealand (supporting papers #8).

<sup>323</sup> Minute from Marine Engineer, 22 November 1904. M1 523 4/510, Archives New Zealand (supporting papers #9).

<sup>324</sup> Secretary of the Department of Native Affairs to Tatana te Awaroa, 5 December 1904. M1 523 4/510, Archives New Zealand (supporting papers #10).



**Figure 21: Proposed location for the new wharf at Te Kauri, 13 November 1904**

The wharf was completed by July 1905. In its report to the Marine Department, the Mokau Harbour Board noted that the final length of the wharf was 20 feet longer than originally proposed. This was due to the fact that the Mokau River had ‘silted up somewhat’, which the Harbour Board claimed had been caused by the construction of the ferry approach on the south bank which was ‘depleting the current and causing the sand to bank up more on the north side about the site of the new wharf.’<sup>325</sup> Whilst it was not stated by the Harbour Board, this siltation would presumably have affected the river frontage in front of Te Kauri as well.

<sup>325</sup> Secretary of the Mokau Harbour Board to the Minister of Marine, 28 July 1905. M1 523 4/510, Archives New Zealand (supporting papers #11).

It is also worth noting that Perham had observed in 1901 that the riverbed in front of Te Kauri was shallow for some distance and would require a much longer wharf to reach deep water.

By 1912 the wharf was in a ‘deplorable condition’ and ‘likely to collapse any day’, and the Mokau Harbour Board was empowered to raise £1000 to repair it.<sup>326</sup> The available sources do not reveal that local Maori were consulted about these repairs despite their concerns about the wharf’s location having been raised only eight years before. In 1920 the owners of Te Kauri requested a new partition order from the Crown, and the hearings of the Native Land Court suggest that erosion and a lack of access had contributed to a decline in the number of residents at the site. Pepene Eketone noted that ‘[p]art of the land has ... been eaten away by the river’ since the initial hearings in 1904 and ‘a dray road along the river has rendered the frontage to the river useless’. He noted that ‘[t]here are few persons there now’ and all parties desired that the land be split between those still occupying it and those who were not. Also present at the hearing were Te Ripo Te Huia for the Niwha family, Takerei Kingi for the Wetere family, and Tokoihi Tanirau for Te Ianui, each of whom endorsed what Eketone had said.<sup>327</sup>

The Court awarded Te Kauri 1 to Te Ripo Te Huia and Te Wairua Tumanako, Te Kauri 2 to Tanirau Eria, and Te Kauri 3 to Takerei Kingi. Te Kauri 2 and 3 were then sold to the Mokau Co-operative Dairy Company in 1922 and 1935, leaving only the 0.4 acre Te Kauri 1 block in Maori ownership.<sup>328</sup> The status of Te Kauri 1 was only clarified as Maori freehold in 2008.<sup>329</sup> Marama Henare Waho described this discovery at the fifth korero tuku iho hearing:

When I was growing up in Mokau we sort of knew it as the dairy factory hill, the hill behind. There is a little piece of grass left there still and that is our whenua. It has been eaten into by the river, by the road, when they were making the bridge and the neighbours have got a little bit of it. But it is still there, it is still there. I found that out when we got the block surveyed and found that the survey pegs, one is in the middle of the road, another one is in the neighbour’s garden, the other was a bit in the river,

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<sup>326</sup> Minister for Marine to the Secretary of the Marine Department, 1 May 1912. M1 1132 25/76 1, Archives New Zealand (supporting papers #12); 1912 No. 4: Mokau Harbour Board Empowering Act.

<sup>327</sup> Otorohanga Minute Book 62, p 96 (supporting papers #128). Taniora Wharauoa (one of the signatories to the letter written by Tatana te Awaroa in 1904) told a travelling journalist in 1927 that former Maori residents at Te Kauri were ‘dispersed and scattered’; see *Auckland Star*, 17 December 1927, p 12.

<sup>328</sup> Wai 898 #A60, p 244. Wai 898 #A142, pp 91-92. See also ‘Mokau Co-operative Dairy Factory’, *Kete New Plymouth*, [http://ketenewplymouth.peoplesnetworknz.info/taranaki\\_dairy\\_factories/topics/show/1411-mokau-co-operative-dairy-factory](http://ketenewplymouth.peoplesnetworknz.info/taranaki_dairy_factories/topics/show/1411-mokau-co-operative-dairy-factory)

<sup>329</sup> Otorohanga Minute Book 135 pp 167-169 (supporting papers #141)

or would have been a bit in the river. Anyway, we find these things out as time goes on.<sup>330</sup>

Part of Te Kauri 3 was taken for an extension of the highway in 1955.<sup>331</sup> The Mokau Co-operative Dairy Company entered into liquidation in 1962.<sup>332</sup> Its former lands now appear to reside in private hands, apart from a small subdivision of Te Kauri 2 along the waterfront known as the 'esplanade' (Lot 3) which was declared a public reserve in 1961.

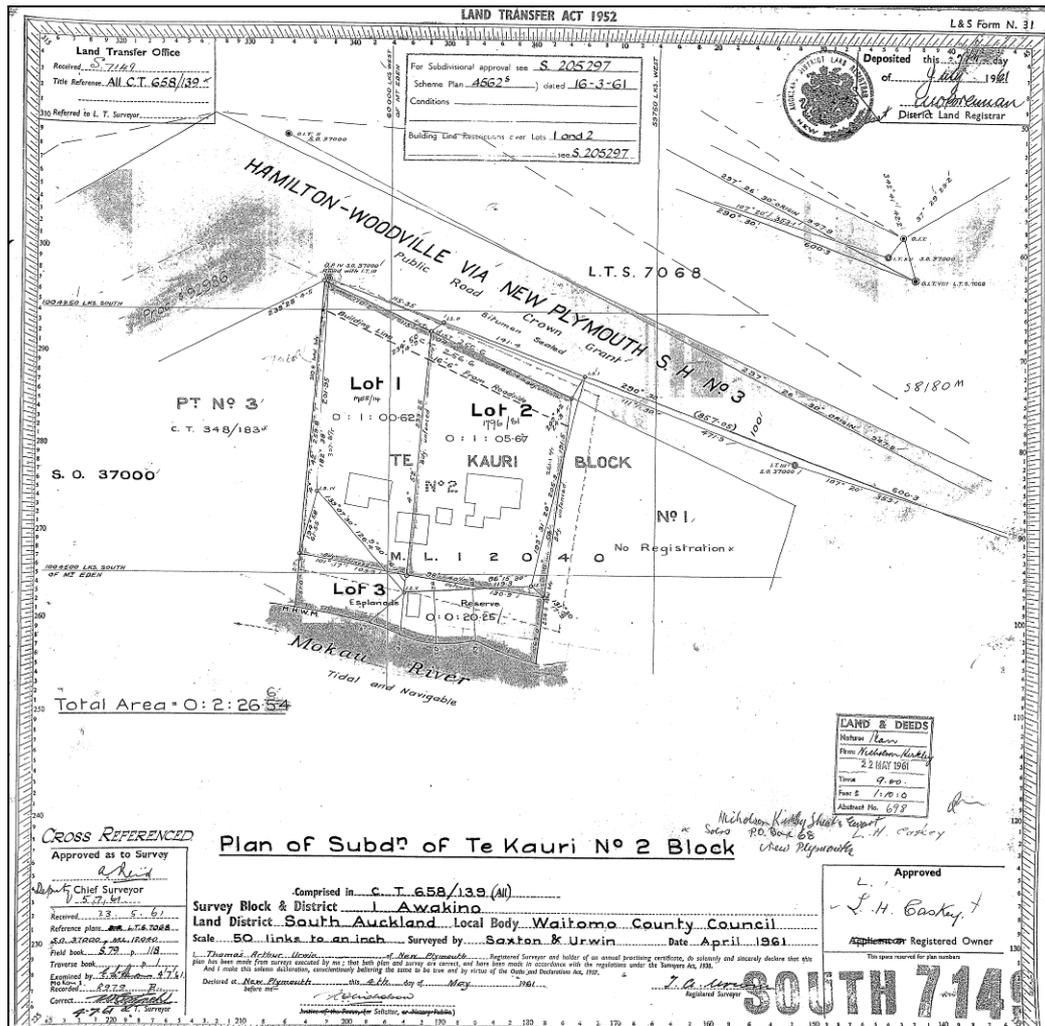


Figure 22: Subdivision of Te Kauri 2 in 1961

<sup>330</sup> Wai 898 #4.1.5, pp 141-142

<sup>331</sup> *New Zealand Gazette*, 18 August 1955, No. 54, p 1293

<sup>332</sup> Minute sheet for the Waitomo County Council, 14 October 1970. Series 1 Box 3 54/1/431, Waikato Regional Council (supporting papers #143).

### 4.3 Mokau pilot station (Koutu)

The area known as the Mokau pilot station lies on the south bank of the Mokau River mouth overlooking the harbour on the block known as Mokau Mohakatino 2A. Historically known as Koutu, the station is the papakainga of Ngati Tu (also known as Ngati Tumai) and is one of the few portions of the old Mokau Mohakatino block that remains in Maori ownership. Marama Henare Waho gave a detailed description of Koutu and its significance at the fifth korero tuku iho hearing, in particular regarding a small area of land adjacent to the Mokau Mohakatino 2A block that was taken for a signal station in the nineteenth century.<sup>333</sup> This section provides the details of that taking.

When the Mokau Mohakatino block came before the Native Land Court in the 1880s, an area on the south bank of the river mouth comprising 272 acres was envisioned by the Crown as a possible site for a township. However, when faced with the opposition of several local Maori and the leaseholder Joshua Jones, the proposed township was moved to the northern side of the river. The area on the south bank was partitioned as Mokau Mohakatino No.2 and was heard before the Court in 1889. An area overlooking the sea comprising 5 acres 3 roods 22 perches was claimed by Te Rira Te Huia through right of occupation. It was partitioned by the court as Mokau-Mohakatino 2A and awarded to Te Huia, his mother Parehuia Kirua, Ngarata Rangiahio, Ngaropano and Wata Te Matatu.<sup>334</sup>

In the 1890s the Crown expressed an interest in developing the harbour to facilitate European settlement and commercial river traffic. A survey undertaken by Thomas Perham, the Engineer for Water Conservation, proposed several potential measures for ‘improving’ the harbour including leading works and roads. He also surveyed a 2 acre area of land on the south bank of the river mouth and suggested that a pilot station be established there to aid with navigation.<sup>335</sup> At some point after 1891 when Prime Minister Seddon and the Inspector of Mines visited Mokau, Walter Jones (the son of Joshua Jones) was appointed to serve as a signalman for the Mokau harbour under the supervision of the harbourmaster at Waitara.<sup>336</sup> The present writer been unable to ascertain the details of this arrangement, but it appears that Jones conducted his duties from a small homestead on Mokau Mohakatino No.2 named Kauporera.

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<sup>333</sup> Wai 898 #4.1.5, pp 136, 142-143

<sup>334</sup> Wai 898 #A60, pp 579-581

<sup>335</sup> Plan No. MD1726. Accession No. ARC2002-172/1, Puke Ariki (see figure 23)

<sup>336</sup> *Evening Post*, 20 February 1891, p 2

In January 1896 the Marine Department sought to formalise the arrangement with Jones by acquiring land on the south bank of the Mokau river mouth for a signal station. The Department of Lands and Survey instructed its Chief Surveyor in New Plymouth to survey potential sites on Mokau Mohakatino Nos. 2 and 2A with the assistance of the harbourmaster at Waitara. Lands and Survey noted that '[t]he land is leased to Walter Jones by the Maories, and as there would be a difficulty in purchasing, it has been decided to take about an acre under the Public Works Act.'<sup>337</sup> The Chief Surveyor replied requesting that a warrant be issued to undertake the survey, which Lands and Survey provided.<sup>338</sup> He then requested that the harbourmaster at Waitara accompany his Assistant Surveyor William Morpeth to Mokau to point out potential sites for the signal station including the land that had previously been surveyed by Perham.<sup>339</sup> The harbourmaster suggested that Jones would be better suited to this task and arranged for him to meet with Morpeth when he arrived at Mokau.<sup>340</sup>

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<sup>337</sup> Department of Lands and Survey to the Chief Surveyor New Plymouth, 6 January 1896. Accession No. ARC2002-172/1, Puke Ariki (supporting papers #90.)

<sup>338</sup> Chief Surveyor New Plymouth to the Surveyor General, 10 January 1896 (supporting papers #91); Department of Lands and Survey to the Chief Surveyor New Plymouth, 18 January 1896. Accession No. ARC2002-172/1, Puke Ariki (supporting papers #92).

<sup>339</sup> Chief Surveyor New Plymouth to the Waitara Harbourmaster, 22 January 1896. Accession No. ARC2002-172/1, Puke Ariki (supporting papers #93).

<sup>340</sup> Waitara Harbourmaster to the Chief Surveyor New Plymouth, 26 January 1896. Accession No. ARC2002-172/1, Puke Ariki (supporting papers #94).



**Figure 23: Plan of signal station reserve, 1896**

Morpeth visited Mokau at the end of February 1896. Acting upon Jones’s advice, he surveyed an area comprising 1 acre 0 roods 7 perches on a portion of Maori-owned land adjacent to Mokau Mohakatino 2A that had yet to be issued a title by the Native Land Court. Morpeth considered this site to be superior to the one previously surveyed by Perham and recommended that it be chosen for the new signal station. Upon visiting the site surveyed by Perham, he noted that ‘there was no sign whatever of old [surveying] pegs, which Mr Jones informed me were all destroyed by the natives years ago.’<sup>341</sup> The Commissioner of Crown Lands in New Plymouth relayed Morpeth’s recommendation to the harbourmaster at Waitara, who agreed that the newly surveyed site was ‘by far the best position and commands a good view of both Bar and River which the other side does not.’<sup>342</sup> The land was subsequently taken by proclamation on 12 December 1896 and was given the designation of Section 1 Block 1 Tainui SD.<sup>343</sup>

<sup>341</sup> William Morpeth to the Chief Surveyor New Plymouth, 2 March 1896. Accession No. ARC2002-172/1, Puke Ariki (supporting papers #95).

<sup>342</sup> Waitara harbourmaster to the Commissioner of Crown Lands New Plymouth, 9 April 1896. Accession No. ARC2002-172/1, Puke Ariki (supporting papers #96).

<sup>343</sup> *New Zealand Gazette*, 21 January 1897, p 127

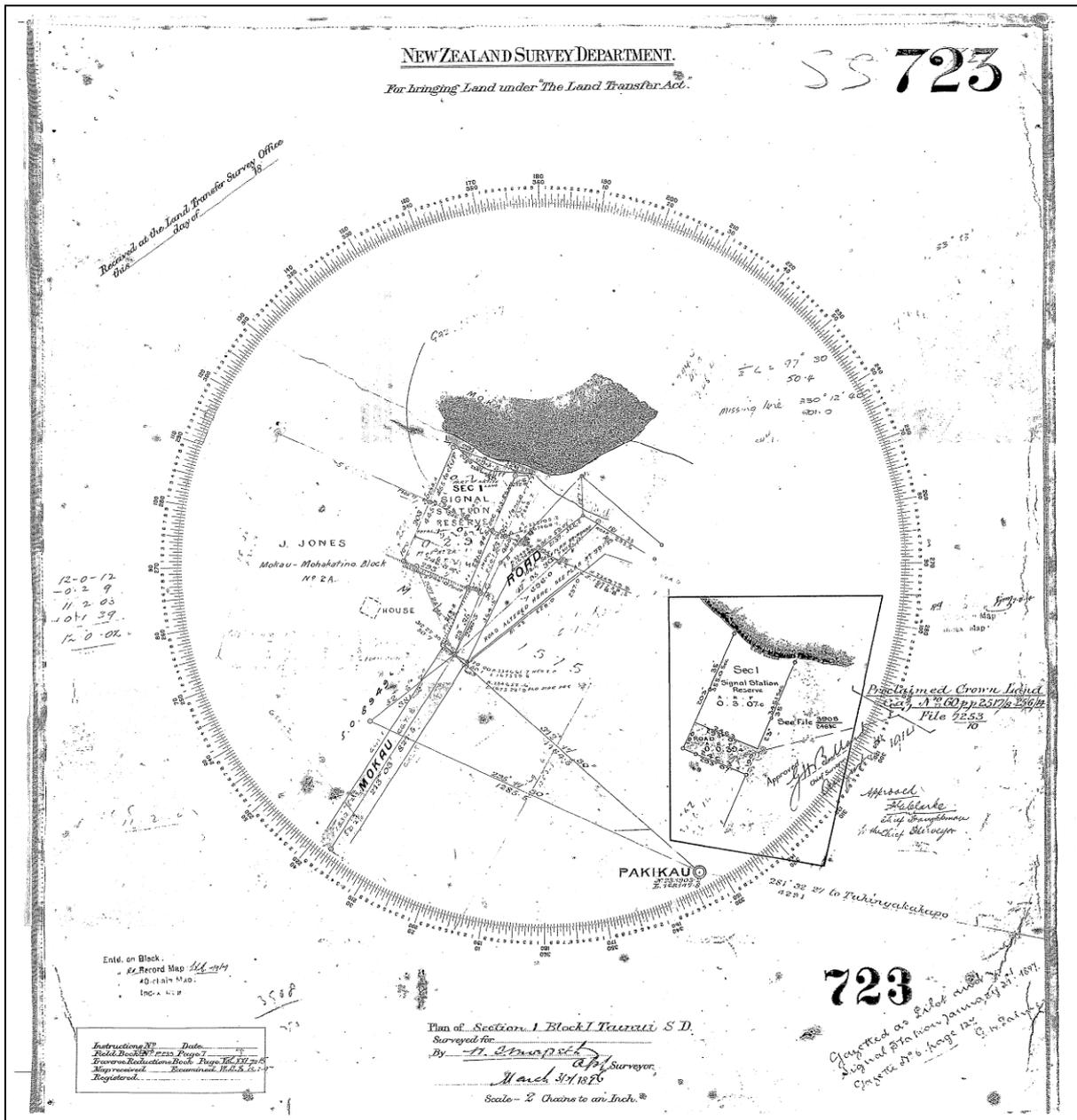


Figure 24: Area of land taken for a signal station at Mokau, 12 December 1896

The signal station was vested in the Mokau Harbour Board when it was established in 1900, which it operated with the assistance of an annual grant by central government.<sup>344</sup> According to Marama Henare Waho, her grandmother Marion Te Ripo – who was born at Koutu in 1924 – claimed that the station was no longer in use by the late 1920s.<sup>345</sup> This was almost certainly the case by the 1930s when the Harbour Board was struggling to fund or perform its core

<sup>344</sup> *Taranaki Herald*, 25 October 1902, p 7

<sup>345</sup> Wai 898 #4.1.5, pp 142-143

functions. It is unclear whether the Waitomo County Council made use of the land after it took over the functions of the Harbour Board in 1940. In 1971 the Waitomo County Council surrendered control of the harbour to the Marine Department and assumed control of all former Mokau Harbour Board property, including any lands it still held. This would have included the signal station.<sup>346</sup> Waho claimed at the fifth korero tuku iho hearing that Ngati Tu has held ongoing discussions with the Waitomo District Council about having the signal station returned, but that the Council have thus far been disinclined to do so.<sup>347</sup>

#### **4.4 Motutawa Island**

Motutawa Island is an important wahi tapu for Mokau Maori. As discussed earlier, it was the site of a major battle between Ngati Tama and nga hapu o Mokau around 1812, and it has been used as an urupa since that time according to Mokau Maori. However, like Te Naunau, Motutawa Island was not one of the areas set aside as a reserve when the Crown followed through on the sale of the Mokau block in the 1880s. The subsequent attempts by Maori to have their interests in the island recognised by the Crown provide a useful comparison with the Te Naunau case study.

Mokau Maori appear to have first sought protection for Motutawa Island in 1931. At that time, an application for investigation of title was lodged with the Native Land Court by Erina Pahiri, Hemaina Pahiri, Ngawhakea Pahiri, Rauputu Tumuokemoke, and Kopa Ngatohu.<sup>348</sup> The Department of Lands and Survey opposed the application for investigation of title and submitted that the island was Crown property:

[T]he land described embraces portion of the Mokau Block purchased from the natives by the Crown 1/4/1854 ... It would be necessary to have a survey made before a satisfactory plan could be prepared of the area, but in view of the facts as to ownership it would appear inexpedient to incur heavy survey costs. The application would of course be opposed by the Crown.<sup>349</sup>

The matter appears to have not progressed any further until 1938 when Hemaina Pahiri petitioned parliament for the return of Motutawa Island to Maori ownership:

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<sup>346</sup> Local Government Commission Provisional Local Scheme Report, 12 October 1970. BAAS A362 24464 Box 1 f 6/9, Archives New Zealand (Auckland office) (supporting papers #89).

<sup>347</sup> Wai 898 #4.1.5, pp 142-143

<sup>348</sup> Application for Investigation of Title (undated, 1931). Wai 898 #A59(b), p 2700

<sup>349</sup> Chief Surveyor of the Auckland office of the Department of Lands and Survey to the Registrar, Native Land Court, 17 August 1931. Ibid., p 2701

[A]n Island in the Mokau River known as Motutawa which has been a Cemetery or Urupa for over a hundred years and is still used as a [sic.] Urupa is shown on the 1935 map of Awakino North and Awakino Survey Districts as a Scenic Reserve.

Wherefore, As [sic.] Motutawa is Sacred ground (a Wahi Tapu) your petitioners humbly pray for its return to the Maori people.<sup>350</sup>

The petition was referred to the Native Affairs Committee, who sought further information from the Department of Lands and Survey. An investigation by Lands and Survey revealed that the 1935 map had incorrectly labelled Motutawa Island as a scenic reserve:

An officer of the Lands Department 'phoned to say that they have telephoned their Auckland Office and searched their old Head Office files but there is no evidence that the land referred to in the petition was actually reserved for scenic purposes. It appears as a scenic reserve on the maps and there is a record of a recommendation having been made regarding the setting aside of the land as a scenic reserve, but apparently this was not done - in any case they can find no record of it.<sup>351</sup>

The Native Affairs Committee subsequently resolved to make no recommendation on the matter.<sup>352</sup>

On 3 February 1972 a new application for investigation of title was lodged with the Maori Land Court. It is not clear who the applicant was, but from the surrounding material in the Maori Land Court minute books it appears to have been a member of the Rauputu family. Mr Phillips, who represented the applicant, sought the granting of freehold title upon seven individuals under section 161 of the Maori Affairs Act 1953, which allowed the Court to make freehold orders in respect of customary land:

[I]t is the intention to have this land set aside as a reservation for a Maori cemetery. The applicant's statement ... [is] that he believes 7 persons to be entitled & that the land has been in the use and occupation of their family group for many generations extending prior to 1840 & down to the present time. I respectfully submit all the requirements have been established that it is customary land & that the 7 persons named are entitled to be found as owners of the reserve for freehold title.<sup>353</sup>

The Court chose to reserve its decision.<sup>354</sup>

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<sup>350</sup> Petition No. 27/1938 - Hemaina Pahiri and 7 others, 29 March 1938. Ibid., p 2699

<sup>351</sup> Letter dated 13 August 1938. Ibid., p 2697

<sup>352</sup> Report on the petition of Hemaina Pahiri and 7 others, 15 September 1938. Ibid., p 2695

<sup>353</sup> Otorohanga Minute Book 91, p 31 (supporting papers #133)

<sup>354</sup> Ibid.

At a subsequent sitting of the Maori Land Court in Hamilton on 22 June 1972, Judge K. B. Cull spoke extensively about the application and the evidence presented by the applicant. Drawing upon Judge Norman Smith's 1960 book on Maori land law, Cull argued that Motutawa Island was customary land on the basis of its continued use as an urupa by Mokau Maori.<sup>355</sup> However, Cull also considered that the applicant's evidence was 'meagre', and argued that the island was more likely to have been used by Maori residents at the Te Kauri settlement during the late nineteenth and early twentieth centuries:

The evidence available does not establish that this island was substantially used in those early days and the Court finds great difficulty in reconciling the evidence given in support of this application, meagre though it is, that there are indications of kumara pits of previous occupancy and the same evidence showing that for a large period of time this same island has been used as a burial ground extending far into the history of the neighbouring peoples. It seems more likely, having regard to the fact that there is evidence in the records of the Court, of a village on the mainland near to the island named Te Kauri, that this island belonged to the people living in that village and the area surrounding it and which generally comprised the whole of the Te Kauri Blocks.<sup>356</sup>

Cull directed that the application could not proceed until Mr Phillips had expanded the list of proposed freehold title owners to include the descendants of those Maori who had been awarded ownership of the Te Kauri blocks through the 1920 partition order:

It is understood that the intention is to have this island set aside as a Maori Reservation and this Court anticipates an application being made to give effect to this. There remains now the matter of determining the persons whose names should appear in the freehold order and their relative shares and the Court invites submissions by Mr Phillips as to the most effective manner in which finality could be reached on this aspect of the case. A perusal of the records once again of the Court shows that the present Whakapapa is completely inadequate and that from the succession order on file a considerably vast number of persons would be entitled to share in this land.<sup>357</sup>

The application was adjourned so that Phillips could ascertain this information.

It soon became clear that the number of descendants of the Te Kauri blocks was impractically large. At sittings of the Maori Land Court on 2 February 1978 and 2 October 1978, Phillips

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<sup>355</sup> Otorohanga Minute Book 91, p 142 (supporting papers #134)

<sup>356</sup> Ibid., pp 146, 148

<sup>357</sup> Ibid., p 154

noted that he was still working on the list of names.<sup>358</sup> When the Court next sat in Hamilton on 20 November 1978, Phillips requested that, instead of producing a full list of suggested freehold owners, the Court consider vesting the land in a small number of trustees under section 438 so that the land could then be set aside as a Maori reservation:

Mr Phillips has advised the Court that it would be a mammoth task to compile a list of the persons entitled and that the time is hardly warranted when the area is to be set aside as a Maori Reservation. The Court has before it an application for an order under Sec 438 which when an order is made will give the Court the necessary jurisdiction to set the island aside as a Maori Reservation.<sup>359</sup>

Judge Cull suggested a compromise – rather than requesting a complete list of freehold owners, he was willing to vest the ownership of the land in ‘a former Chief of the area’ named Te Reringa under section 161 of the Act.<sup>360</sup> Phillips had no objections to this, and at a subsequent Court sitting on 14 December 1978 Motutawa Island was vested in the sole ownership of Te Reringa. The Court also made a recommendation under section 439 of the Maori Affairs Act that the island be set aside as a Maori reservation ‘as a place of historical interest and urupa for the Ngati Waiora hapu’.<sup>361</sup> This recommendation was later revised upon the wishes of the applicant to include all of Ngati Maniapoto, and on 14 May 1981 Motutawa Island was set aside as a Maori reservation by the Minister of Maori Affairs ‘for the purposes of a place of historical interest, and an urupa, for the common use and benefit of the Ngati Maniapoto Tribe.’<sup>362</sup> William Wetere informed the present writer that several hapu currently hold interests in the use and management of Motutawa Island.<sup>363</sup>

The setting aside of Motutawa Island as a Maori reservation contrasts with the subdivision of the Mokau spit. The Crown’s attitude towards Motutawa Island in the 1930s was similar to that taken towards Te Naunau in the 1950s: it argued that the land in question was owned by Crown courtesy of the sale of the Mokau block in 1854. However, the Crown did not oppose the application to set aside Motutawa Island as a Maori reservation in the 1970s.<sup>364</sup> In contrast, whilst the Crown was willing to engage with Maori about Te Naunau in the 1950s,

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<sup>358</sup> Otorohanga Minute Book 96, pp 332-333 (supporting papers #135); Otorohanga Minute Book 97, p 118 (supporting papers #136)

<sup>359</sup> Otorohanga Minute Book 97, p 138 (supporting papers #137)

<sup>360</sup> Ibid. It is likely that the Judge was referring to Wetere Te Rerenga.

<sup>361</sup> Otorohanga Minute Book 97, p 139 (supporting papers #138)

<sup>362</sup> *New Zealand Gazette*, No. 62, 14 May 1981, p 1443

<sup>363</sup> Email from William Wetere, Chairperson for Mokau Ki Runga Regional Management Committee and Maniaroa marae, 5 September 2013

<sup>364</sup> Otorohanga Minute Book 91, p 142 (supporting papers #134)

Maori interests in preserving their urupa were weighed against the economic benefits which the Department of Lands and Survey hoped to realise in subdividing the spit. The differing time periods may have contributed to this contrasting position. Mokau spit was subdivided in the 1950s during a period of low Maori visibility in government management regimes. In contrast, Motutawa Island was reserved during a period of growing Maori visibility which included the creation of the Waitangi Tribunal and the passing of the 1977 Town and Country Planning Act.<sup>365</sup> The unsuitability of Motutawa Island for development may also have contributed to its reservation, unlike Mokau spit which was seen as a lucrative development opportunity. However, there appears to have been some awareness amongst Waitomo County Council officials in the 1950s that erosion on the spit raised some questions about its suitability for development.<sup>366</sup>



**Figure 25: Motutawa Island**

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<sup>365</sup> 1977 No. 121: Town and Country Planning Act. This Act contained a provision for recognising ‘the relationship of the Maori people and their culture and traditions with their ancestral land’ when considering the management of land resources.

<sup>366</sup> T. S. Roe, Chief Surveyor, to the Surveyor-General, 26 October 1954. LS1 1817 25/659, Archives New Zealand. (supporting papers #18)

## **5. Conclusion**

The history of Crown management of the Mokau River mouth has been a patchwork of different central and local government regimes. Mokau was originally under the exclusive control of local Maori, and this remained the case until the 1880s despite the Crown purchase in the 1850s and fledgling attempts to introduce European settlement and commerce to the region in the following two decades. When Taniora Wharauoa recalled this period in 1927 he spoke of ‘the grand free life by field and bush, river and sea ... when Weterere’s orders were law in the Mokau.’<sup>367</sup> The balance of power shifted in the 1880s when the Crown followed through on its 1850s purchase, and the establishment of a Mokau Harbour Board in 1900 marked the assumption of river mouth management by the Crown through the delegation of Marine Department powers under the 1878 Harbours Act. These powers passed between multiple bodies over the following eighty years – first the Harbour Board, then the Waitomo County Council, then the Marine Department, and finally back to the Waitomo District Council. The advent of the 1991 Resource Management Act and subsequent Local Government Acts divided authority over the river mouth between Waikato Regional Council and Waitomo District Council.

Maori appear to have been virtually invisible in the management of the Mokau River mouth until the 1990s, both in the provisions of the various management regimes and in their daily practices. Any concerns that were raised by Maori, such as the construction of a wharf at Te Kauri and the subdivision of Mokau spit, were ultimately sidelined by the interests of local and central government in the economic development of the region. This is not to say that the Crown completely ignored Maori interests: the Marine Department tried to recommend an alternative location for the wharf, and the Department of Lands and Survey consulted with Maori about the locations of the urupa on Mokau spit. However, these efforts failed to take account of Maori customary interests and kaitiakitanga, and any concessions that were made – such as the setting aside of two sections on the spit as burial reserves – were relatively minor and did little to assuage the concerns of local Maori. The exception to this was Motutawa Island, which was set aside in its entirety as a Maori reservation in 1981. This appears to have been due in part to the more recent time period, as previous efforts to have the island returned to Maori ownership in the 1930s were unsuccessful.

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<sup>367</sup> *Auckland Star*, 17 December 1927, 12

Maori concerns regarding environmental management have become more prominent with the passing of the Resource Management Act 1991 and the Local Government Act 2002. Provisions for Maori consultation are now incorporated into the Regional and District Plans of the Waikato Regional Council and the Waitomo District Council, and the two Maori bodies that are most often consulted in the Mokau region are Mokau Ki Runga and Nga Hapu o Poutama. The Waitomo District Council also consults the relevant items in the heritage register of the Historic Places Trust when constructing its District Plan, although the register contains no wahi tapu from the Mokau River mouth. Customary fishing practices on the Mokau River mouth are managed by the Ministry for Primary Industries under section 27 of the Fisheries (Amateur Fishing) Regulations 1986, although the enforcement of specific rules and regulations, such as those regarding whitebait and whitebait stands, are carried out by the Department of Conservation and the Waikato Regional Council.

Despite these measures, local Maori have expressed continued dissatisfaction with the environmental management of the Mokau River mouth, particularly as it relates to wahi tapu. Te Naunau remains a major site of contention, and the unilateral actions of Mokau residents to combat erosion on the spit, the reluctance of Waitomo District Council to confront them, and the general confusion over which local or central government agency is responsible for addressing the problem remains an issue to this day. Maori concerns regarding their urupa seem to have been sidelined in this debate. The 'managed retreat' option that has been consistently suggested by Waikato Regional Council and Waitomo District Council is largely preferred by Maori, although Maori concerns do not appear to have been a significant factor in the reasoning of the Regional and District Councils. Furthermore, whilst the question of Crown liability for erosion damage to private property has been frequently discussed by Waitomo District Council, a similar liability for Maori loss of their urupa has not been raised. This is an important distinction given that, to this day, Maori still maintain that the entire spit is an urupa rather than just the two sections set aside in 1953.

Local Maori are also concerned with the management of recreational whitebait fishing and whitebait stands on the Mokau River and its impact on customary resource use. The minimal regulation that exists is split between Waikato Regional Council and the Department of Conservation, neither of which possess the resources to actively enforce these regulations. This seems to have been a problem for at least the last thirty years: the Waitomo District Council was concerned about the time, effort and cost of managing whitebait stands in the

mid 1980s, and responsibility has bounced between multiple local and central government agencies since then. Maori do not appear to have been consulted in this process, nor have their concerns about declining numbers of whitebait, the lack of regulation of whitebait stands and fishing industry, and the profits associated with buying and selling stands been addressed.

## Appendix A – Commission

**OFFICIAL**

**Wai 898, # 2.3.87**

Wai 898

### IN THE WAITANGI TRIBUNAL

#### CONCERNING

the Treaty of Waitangi Act 1975

#### AND

the Te Rohe Pōtae District Inquiry

### DIRECTION COMMISSIONING RESEARCH

1. Pursuant to clause 5A of the second schedule to the Treaty of Waitangi Act 1975, the Tribunal commissions David Alexander, an independent researcher, Matthew Cunningham and Martin Fisher, members of the Tribunal's staff, to prepare an overview research report on selected issues concerning non-land resources, environmental management and impacts in Te Rohe Pōtae inquiry district from the 1970s until the present day, complementing the existing casebook research. The commission also includes four local case studies of the Mōkau River mouth, the Waipā River, Pirongia Forest Park and Whaingaroa Harbour. This project is a result of the Tribunal's Chief Historian's rapid appraisal review of the Te Rohe Pōtae research casebook and subsequent discussions with parties to the inquiry (Wai 898, #6.2.43 and #2.5.126).
2. Significant issues concerning Crown policy and action affecting Te Rohe Pōtae Māori that the researchers should address in this district overview include:
  - a) The provision and implementation of harbour management regimes, in particular their impact on kaimoana and Māori access to and kaitiaki responsibilities for customary marine resources;
  - b) The provision and implementation of local government zoning schemes and their impact in particular on Māori communities adjacent to towns and on coastal land;
  - c) The provision and implementation of management regimes for forest parks and any other conservation estate areas;
  - d) The provision and implementation of management regimes, for the control and prevention of the environmental degradation of coastal areas, harbours and natural waterways, and associated resources. The coverage should include:
    - i) industrial pollution and gravel and sand extraction and their impacts on customary Māori usage and guardianship; and
    - ii) mahinga kai, kaimoana and customary management of inland waterways and estuaries;
  - e) The provision and implementation of environmental management regimes for introduced species in waterways and the consequences for Te Rohe Pōtae Māori in respect of customary freshwater fisheries, including tuna;

- f) The implementation, insofar as they affect Te Rohe Pōtae inquiry district, of statutory provisions and regimes for the protection of wāhi tapu from damage, and of portable taonga from damage, desecration and removal;
  - g) The adequacy of Crown-established environmental and resource management regimes implemented in this district, including those with powers and responsibilities delegated to local authorities, for enabling consultation with and the participation of Māori, including for decision-making and the exercise of kaitiakitanga and focusing in particular on the operation of the Resource Management Act 1991; and
  - h) The adequacy of the Crown's monitoring of delegated powers for environmental and resource management in Te Rohe Pōtae district.
3. The report will provide more in-depth coverage of the above issues by way of four case studies:
- a) A case study of Whaingaroa Harbour and the surrounding area, covering environmental management provisions and implementation, local authority powers and zoning, introduced and native species protection and control, management powers for water rights, powers for the protection of wāhi tapu and cultural heritage items and consideration of impacts of these in areas such as the continued exercise of kaitiakitanga, participation in environmental decision making, water pollution and loss of water quality, losses or reductions in customary fishery resources and loss or damage to wāhi tapu and cultural heritage items.
  - b) The cultural and environmental impact of the resource management and statutory regimes for protecting wāhi tapu at the Mōkau River mouth, including the status of wāhi tapu not thus protected.
  - c) The environmental management regime provided for the Waipā River and its tributaries, in particular downstream of Te Kuiti, and its impacts on the exercise of kaitiakitanga over the waterways and their resources, the maintenance of water quality, the maintenance and protection of customary river resources, including fisheries, and the protection of wāhi tapu and cultural heritage items.
  - d) The establishment of Pirongia Forest Park, the management regime provided and implemented, and its impacts on continued Māori kaitiakitanga over park resources, customary uses and interests in the park, and the adequacy of Department of Conservation's engagement with tangata whenua over the administration and decision-making for the park.
4. A complete draft of the report will be circulated to claimants and the Crown for comment prior to the report being finalised.
5. The commission ends on 16 December 2013, at which time one copy of the final report must be submitted for filing in unbound form. An electronic copy of the report should also be provided in Microsoft Word or Adobe Acrobat format. Indexed copies of any supporting documents are also to be provided as soon as it is practicable after the final report is filed. The report and any subsequent evidential material based on it must be filed through the Registrar.

6. At the discretion of the Presiding Officer the commission may be extended if one or more of the following conditions apply:
- a) The terms of the commission are changed so as to increase the scope of work;
  - b) More time is required for completing one or more project components owing to unforeseeable circumstances, such as illness or denial of access to primary sources; and
  - c) The Presiding Officer directs that the services of the commissionee be temporarily reassigned to a higher priority task for the inquiry.
7. The report may be received as evidence and the researchers may be cross-examined on it.
8. The Registrar is to send copies of this direction to:
- David Alexander, independent researcher
  - Matthew Cunningham and Martin Fisher, Research Analysts/Inquiry Facilitators
  - Claimant counsel and unrepresented claimants in the Te Rohe Pōtae district inquiry
  - Director, Waitangi Tribunal
  - Chief Historian, Waitangi Tribunal
  - Manager – Research Inquiry Facilitation, Waitangi Tribunal
  - Inquiry Supervisor, Waitangi Tribunal
  - Inquiry Facilitator, Waitangi Tribunal
  - Solicitor-General, Crown Law Office
  - Director, Office of Treaty Settlements
  - Chief Executive, Crown Forestry Rental Trust
  - Chief Executive, Te Puni Kōkiri

**DATED** at Wellington this 18<sup>th</sup> day of December 2012.



Judge D J Ambler  
Presiding Officer

**WAITANGI TRIBUNAL**

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