# Te Kawakawa Block
# WAI 826

## Research Report

Completed by Rowan Betts
13 April 2001

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# Introduction to the author, the commission, and methodology

My name is Rowan Matthew Betts. I am a Policy Analyst at the Office of Treaty Settlements. In 2000, I graduated from Massey University with an MA (with Distinction), in History. My degree focused predominantly on New Zealand history, and the Treaty of Waitangi in particular.

In August 2000, I was commissioned by the Waitangi Tribunal to produce an historical report on the alienation of the Te Kawakawa block. Located at Kawakawa Bay, this block is subject to a claim made by Te Awanuiarangi Black (Wai 826). More specifically, this report was to focus on the sale of land belonging to the claimant's kuia (Rita Hapi), and to consider whether the process of alienation of this land involved breaches of the Treaty of Waitangi. Attached to the back of this report is a copy of the research commission.

In the preparation for this report I consulted a wide range of written primary documents pertaining to various hearings regarding the Te Kawakawa block. Files held at the Maori Land Court in Hamilton, and the Auckland branches of National Archives and Land Information New Zealand, were of most assistance in tracing the block's history. Additionally, discussions with the claimant, Te Awanuiarangi Black, enhanced my understanding of the issues arising from this claim.

This report aims to provide material that will assist the Tribunal when considering claims in the Hauraki inquiry district. More particularly, this report will examine and highlight the process of alienation for Te Kawakawa in light of claims made by Mr Black to land within this block.

# 1. Introduction to the claim

1.1 The claim: The claimant is Te Awanuiarangi Black, on behalf of the descendants of Titikawhena Oketopa/McMahon (nee Rita Hapi). The Waitangi Tribunal received the claim on 17 May 1999. On 18 April 2000, the claim was registered as Wai 826, the Te Kawakawa block (Clevedon) claim.

Mr Black's claim relates to particular sections of the Te Kawakawa block, namely lots 16 and 18 of subdivision B3B.[1] He asserts that the Crown's establishment of the Native Land Court facilitated the extinguishment of the Maori title to these lots, and that the Crown failed to protect this land in perpetuity for the descendants of Titikawhana Oketopa/McMahon.

Established in 1865, the Native Land Court 'was created by the Crown to administer laws to clarify the ownership of Maori land, so that defined and tradable title could be issued.'[2] This claim focuses on the actions of the court during the 1950s and 1960s. Mr Black states that his kuia was alienated from her interest in the Te Kawakawa block due to the failings of the court during this period. He states that the court first confirmed a succession order for his kuia's interest in the block while she was still alive. Then secondly, when the mistake was later realised, and the land was in the process of alienation, his kuia's permission to sell her interest in the block was secured under false pretenses. Mr Black claims that the court's action disinherited his whanau, and extinguished their links to the Te Kawakawa block. Therefore, his claim (Wai 826) is an attempt to reverse the family's loss of turangawaewae.

[1] Refer to the bold areas in both figures 1 and 2 on the next page.
[2] Office of Treaty Settlements, *Briefing to the Incoming Government*, Wellington, 1996, pp 7-8.

Mr Black alleges that the Crown violated the Treaty of Waitangi by establishing the Native Land Court processes which:

(1) Facilitated the extinguishment of Native title to Te Kawakawa block; and

(2) permitted the subdivision of small interests in the block, thus facilitating the alienation of Maori land.[3]

The crux of Mr Black's claim is that his grandmother was not allowed to exercise her right as a part-owner of the lots in question because she was not privy to the sale process. When the last vestige of family land was alienated in 1999, as result of a mortgagee sale, the family's turangawaewae was extinguished also.

1.2 Location: The Te Kawakawa block is located on the shores of Kawakawa Bay, near Clevedon, approximately 30 minutes south east of Auckland (refer to figure 1). At its first title investigation by the Native Land Court, the block contained exactly 177 acres.[4] The subdivision at the centre of this claim is located on the flat, while the remainder of the original block is undulating. The bulk of the block remains farm land, though the land involved in the claim is residential in nature, having been subdivided during the late 1950s.

As mentioned above, the claim focuses on lots 16 and 18 of Te Kawakawa B3B, which amount to 1 rood 25 perches in total. These lots are located in a cul-de-sac called Turei Road, and are approximately 100 metres from the shoreline of Kawakawa Bay (refer to figures 1 and 2). Lots 16 and 18 are now private, residential land, occupied

[3] Interview conducted by the author with Mr Black at his home in Port Waikato, 7 September 2000.
[4] Hauraki Maori Land Court minute book 6, 18 November 1870, p 145. Also refer to p 4 of the Document Bank for this research commission.

with houses. Denis and Lynette Kipa and Peter and Lesley Smith, own lots 16 and 18 respectively.[5]

1.3 Nature of traditional ownership: Of Ngati Ruanui and Nga Rauru descent, the claimant's ancestors first encountered the block as slaves of the Ngati Paoa.[6] According to oral history, before his death, one of their captors, Te Ahuru, bequeathed (it is unknown when) that the slaves be released and gifted his share of the block. At the block's first title investigation, at Shortland, Thames, on 18 November 1870, Aperahama Pokai of the Te Urikaraka tribe testified that this land belonged to his tribe, but they had abandoned their claim to it and given it to the tauiwi (strangers).[7]

The court accepted this statement and title to Te Kawakawa was awarded to ten owners: Te Keene Pokorewa, Morohea Te Ahuru, Timoti Tataura, Ropata Te Hururangi, Hineona Te Whareata, Piripi Te Rakau, Tiopira Tangata Kawau, Rihari Rikirangi, Wiremu Kotia Te Aitu, and Tamihana Te Kata.[8] Of these ten, Pokorewa, Te Ahuru, Tataura, Te Hururangi, and Te Whareata are the most important figures with respect to this study because the interests of Mr Black's ancestors were inherited from them.

During the time of the title investigation, Mr Black's great-great-grandfather, Marino Turei, resided on the block with others including Te Raupura, Titi Kawhena, and Piki Huia. It is uncertain exactly when Marino Turei first settled on the block. However, on

[5] These names were found using records held at the Auckland branch of Land information New Zealand.
[6] Mr Black's grandmother said that she belonged to Ngati Paoa, not Ngati Ruanui or Nga Rauru; she did not elaborate on why this was. Mr Black surmised that this situation might have been the result of tribal intermarriage.
[7] Hauraki Maori Land Court minute book 6, 18 November 1870, p 145.
[8] Please note that some names may be spelt incorrectly due to difficulty in deciphering handwriting.

30 September 1911, at a succession hearing for Timoti Tataura, Te Kupenga Te Waero identified Marino Turei as one of the original occupiers who were gifted Te Kawakawa.[9] On 16 September 1899, Marino consolidated his position on Te Kawakawa by procuring half of Morohea Te Ahuru's interest in the block through succession.[10]

In later years, Rita Titikawhena Hapi (Marino Turei's granddaughter and Mr Black's grandmother), settled on whanau land at Te Kawakawa with her mother's people after the separation of her parents. They lived in a large papa kainga called Turei's marae, behind which stood Turei's hill. Eventually, the block came to the court's attention on a number of occasions for the partitioning of interests, and it is from here that Mr Black alleges that his family's interests in Te Kawakawa were alienated by 'foul means'.[11]

## 2. Nature of ownership of the Te Kawakawa block after the first title investigation by the Native Land Court

Te Kawakawa was initially dealt with by the court under the provisions of the Native Lands Act 1867. This Act, moving on from its 1865 predecessor, stated that land could not be alienated, nor mortgaged, until it had been subdivided. However, the ten owners who appeared on the certificate of title could lease the land for a period not exceeding 21 years.[12]

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[9] Te Keene Pokorewa, one of the original ten owners, initially proposed to send the 'strangers' back to Taranaki. However, his ancestors insisted that the land be gifted to Marino Turei and his whanau, out of 'aroha'. See Auckland Maori Land Court minute book 10, 30 September 1911, p 225.
[10] Refer to p 11 of the Document Bank for this research commission.
[11] Refer to the Statement of Claim received by the Tribunal on 17 May 1999, and included with the Document Bank, p 75.
[12] James Carroll, Thomas Mackay, and William Rees, 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', *Appendices to the Journals of the House of Representatives*, 1891 vol II, G-1, p vii. Also refer to *Statutes of New Zealand*, 1867, p 476.

Although some Maori gained income from renting, it appears that it was not substantial by any means and, by 1891, the popularity of leasing declined significantly. While the majority of long-term leases were signed in the 1870s, few additional areas of land were leased in the 1880s, and most long-term leases were allowed to lapse in the 1890s as blocks were partitioned.[13]

In the case of Te Kawakawa, after ownership had been ascertained, the land was made inalienable on the urging of the court's interpreter, Mr Mackay (who also asked Te Urikaraka to abandon their claim to Te Kawakawa),[14] and the unoccupied portion of Te Kawakawa was leased to Barnard Keane for 21 years from 1 April 1871.[15]

Until the early 1960s, Te Kawakawa remained in Maori ownership. On the few occasions when the block did come before the court for various reasons, there was no significant opposition to any succession, or partition (until the subdivision of B3B on 18 December 1956, which will be explored further in section 4 of this report). While many blocks of Maori land were rapidly alienated, Te Kawakawa remained intact and in Maori hands.

Between 1890 and 1939, Maori land, as a proportion of all land contained within the Hauraki district, fell from ninety to one percent.[16] In that respect, Te Kawakawa may be considered an exception to the general rule. This situation can be attributed to the original owners' desire not to sell, and to Mr Mackay's direction that the block be made

[13] Alan Ward, *Waitangi Tribunal Rangahaua Whanui Series: National Overview*, vol II, GP Publications, Wellington, 1997, p 13.
[14] Hauraki Maori Land Court minute book 6, 18 November 1870, pp 145-146.
[15] Auckland Land Registry Deeds Register, book 2f, p 333.
[16] Alan Ward, vol II, p xxiv.

inalienable. In a more general sense, David Williams aptly explains the court's stance in his book *Te Kooti tango whenua*, below:

> Restrictions on alienation could be imposed by the court in order for Maori to retain the land on which they lived, while surplus lands were made available to settlers. From 1883, as the amount of Maori land rapidly decreased, but settler pressure for land increased, power was given to the governor and/or the court to remove restrictions on sale. At no time were alienation restrictions intended by the Government in office to be permanent restrictions which would create reservations for Maori. Rather, they were seen as necessary to slow the speed of land alienation and to avoid Maori becoming paupers who might become dependent on the state. They were to remain only until such time as Maori moved away from communalism, found their place in the colony and assimilated Pakeha ways of providing for themselves. In 1909, alienation restrictions were removed by law without any court process or consultation with owners of land still subject to them.[17]

As late as 1886, Te Kawakawa is officially identified as inalienable.[18] Hence, while many other blocks of Maori land, especially in Hauraki, were alienated early on, the Te Kawakawa block remained in its original state until 1911, when the first partition of the block occurred. However, due to the succession process, the number of owners increased during the twentieth century. Thus, while the land remained in Maori hands, the nature of its ownership became increasing fragmented.

## 3. An account of partitioning and individualisation of the block through the Native Land Court

The table below illustrates precisely how the block's state and ownership changed, through succession and sale, in the years after its title investigation.[19]

[17] David V Williams, *'Te Kooti tango whenua' - The Native Land Court 1864-1909*, Huia Publishers, Wellington, 1999, p 275.
[18] *AJHR*, 1886 vol III, G-15, p 15.
[19] Timeline produced through the use of the block file at the Maori Land Court in Hamilton, as well as the utilisation of court minute books.

# Transformation of Te Kawakawa 1870-1999
(Original owners underlined)

## Successions 1889-1960

- 21 March 1889 - Tuihana Piki Huia succeeded to the interests of Ropata Te Hururangi in Te Kawakawa block [20]
- 21 March 1889 - Titi Kawhena and Ruta Ngauta succeeded to the interests of Te Keene Pokorewa in Te Kawakawa block [21]
- 16 September 1889 - Marino Turei and Hema Watene succeeded to the interests of Morohea Te Ahuru in Te Kawakawa block [22]
- 21 December 1910 - Henare Turei (1/3 share), Pikihuia Turei (1/3), Rihi Miua (also spelt Muia on odd occasion), Mihi Miua, and Katerina Miua (1/9 each), all succeeded to the interests of Titi Kawhena in Te Kawakawa block [23]
- 22 September 1911 - Tiwai Himiona succeeded to the interests of Hineona Te Whareata in Te Kawakawa block [24]
- 22 September 1911 - Henare Turei and Hariata Turei succeeded to the interests of Tuihana Piki Huia in Te Kawakawa block [25]
- 19 February 1912 - Henare Turei and Hariata Turei succeeded to the interests of Timoti Tataura in Te Kawakawa B [26]
- 20 November 1919 - Henare Turei (1/3 share), Pikihuia Turei (1/3), Rihi Miua, Mihi Miua, and Katerina Miua (1/9 each), all succeeded to the interests of Ruta Ngauta in Te Kawakawa B3 [27]
- 20 November 1919 - Henare Turei (1/3 share), Pikihuia Turei (1/3), Rihi Miua, Mihi Miua, and Katerina Miua (1/9 each), all succeeded to the interests of Marino Turei in Te Kawakawa B3 [28]
- 27 July 1920 - Henare Turei (1/3 share), Pikihuia Turei (1/3), Rihi Miua, Mihi Miua, and Katerina Miua (1/9 each), all succeeded to the interests of Hariata Turei in Te Kawakawa B3B [29]

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[20] Hauraki Maori Land Court minute book 20A, 21 March 1889, p 25.
[21] Hauraki Maori Land Court minute book 20A, 21 March 1889, p 25.
[22] Refer to p 11 of the Document Bank.
[23] Hauraki Maori Land Court minute book 60, 21 December 1910, pp 175-176.
[24] Refer to p 18 of the Document Bank.
[25] Refer to p 17 of the Document Bank.
[26] Refer to p 22 of the Document Bank.
[27] Refer to p 27 of the Document Bank.
[28] Refer to p 26 of the Document Bank.
[29] Refer to p 32 of the Document Bank.

- 2 February 1955 - Henare Turei (1/3), Pikihuia Turei (1/3), Rihi Miua, Mihi Miua, and Katerina Miua (1/9 each), all succeeded to the interests of Tiwai Himiona in Te Kawakawa B3B [30]

- 20 July 1955 - Dolly (also known as Ria) Hapi, Willie Hapi, Charlie Hapi, Marama Hapi, Rita Hapi, all succeeded to the interests of Pikihuia Turei in B3B [31]

- 19 July 1960 - Charlie, Willie, Marama, and Rita Hapi, all succeeded to the interests of Dolly Hapi in B3B [32]

Investigations, Partitions, Subdivisions, and Alienations 1870-1999

- 18 November 1870 - Title Investigation by the Native Land Court, ownership attributed to ten owners (see paragraph 1.3 where owners listed)

- 22 September 1911 - First partition of Te Kawakawa:

  Te Kawakawa A (containing 17.7 acres) owned by: Riwa Tai, Rahea Titia, Rangitungoa Tamatea, Ritihia Parewhahaaugi, Ropiha Parewhahaaugi, Te Hoeroa Parewhahaaugi [33]

  Te Kawakawa B (70.8 acres) owned by: Ruta Ngauta (1/2 of a share), Henare Turei (2/3), Hariata Turei (1/2), Pikihuia Turei (1/6), Rihi Miua (1/18), Mihi Miua (1/18), Katerina Miua (1/18), Marino Turei (1/2), Hema Watene (1/2), Timoti Tataura (1), Tiwai Himiona (1), equating to 5 shares

  Te Kawakawa C (88.5 acres) owned by: Rawinia Piharu, Te Karawa Tiopera, Tiwai Himiona [34]

- 11 February 1918 - Partition of Te Kawakawa B (Note from this point the focus is on Te Kawakawa B)

  Te Kawakawa B1 (1 rood) - urupa

  Te Kawakawa B2 (7 acres 3 roods 8 perches) - owned by Hema Watene

  Te Kawakawa B3 (75 acres 0 roods 27 perches) - owned by Henare Turei 1 1/6 shares), Hariata Turei (1), Rihi Miua (1/18), Mihi Miua (1/18), Katerina Miua (1/18), Marino Turei (1/2), Pikihuia Turei (1/6), Ruta Ngauta (1/2), Tiwai Himiona (1), equating to 4 1/2 shares

- 20 November 1919 - Te Kawakawa B3 partitioned:

[30] Refer to pp 36-37 of the Document Bank.
[31] Auckland Maori Land Court 19, 20 July 1955, p 364. Also refer to pp 38-39 of the Document Bank.
[32] Auckland Maori Land Court minute book 20, 19 July 1960, p 144. Also refer to pp 59-60 of the Document Bank.
[33] Please note that these names may be spelt incorrectly due to difficulty in deciphering handwriting.
[34] These details about the first partition of Te Kawakawa are in the Auckland Maori Land Court minute book 10, 22 September 1911, pp 174-175.

B3A, owned solely by Pikihuia Turei

B3B, owned by Hariata Turei (1 share), Henare Turei 1 1/2), Pikihuia Turei (4/33) (having most of her interest then in Te Kawakawa B3A), Rihi Miua (1/6), Mihi Miua (1/6), Katerina Miua (1/6), Tiwai Himiona (1), out of 4 4/33 shares

- 29 July 1920 – Henare Turei given permission to incorporate Tiwai Himiona's interest in Te Kawakawa C (17 acres) into Te Kawakawa B

- 11 July 1921 - Pikihuia Turei sold B3A and her interest in Te Kawakawa B to Henare Turei, for £1000 [35]

- 3 May 1956 - Henare Turei adds B3A to a proposed subdivision scheme for Te Kawakawa B3B, to increase size of the scheme, and his own share

- 18 December 1956 - Subdivision of Te Kawakawa B3B, owned by: Henare Turei, Rihi Miua, Mihi Miua, Katerina Miua, Dolly Hapi, Charlie Hapi, Willie Hapi, Rita Hapi, Marama Hapi
  Please note, the Hapi family gained their interest in this land from their mother Pikihuia Turei. After selling her interests in Te Kawakawa to Henare Turei in 1921, Pikihuia regained an interest in this land by succeeding from Hariata Turei and Tiwai Himiona. These successions amounted to 1/5 and 1/3 of a share respectively.

- 26 April 1962 - Lot 16 alienated to Graham Galbraith for £400 [36]

- 17 April 1969 - Change in the status of lot 18, ceased to be Maori land [37]

- 1999 - Lot 18 alienated as a result of a mortgagee sale [38]

## 4. An examination of the alienation process for Te Kawakawa B3B lots 16 and 18

After the partition of Te Kawakawa B3 on 20 November 1919, Henare Turei (Rita Hapi's uncle) moved to consolidate his interests. Firstly, on 29 July 1920, he appealed to the court to move Tiwai Himiona's interest in Te Kawakawa C to Te Kawakawa B.[39] Then, on 11 July 1921, Henare bought from Pikihuia Turei B3A, and her interests in

[35] Refer to pp 33-35 of the Document Bank.
[36] Refer to pp 61-71 of the Document Bank.
[37] Refer to p 74 of the Document Bank.
[38] This information is held in records held at Land information New Zealand (Auckland).
[39] On 2 February 1955 Henare secured 1/3 of Himiona's interest by succession.

B3B, for £1000.[40] Henceforth, Henare became the primary owner of Te Kawakawa B3.

The first sign that there could be a subdivision of B3B came on 27 October 1954, when Mihi Miua, Rita Hapi's cousin and Henare Turei's niece, approached the court to have a section partitioned from this block for herself.[41] After the hearing, the court inspected the block, which was occupied at this time by Henare Turei.

Under the Maori Affairs Act 1953, the court was given a new focus regarding multiple ownership of Maori land. As mentioned previously, multiple ownership was often seen to hinder the effective use of such land. Thus, the 1953 Act sought to rectify the situation by allowing blocks to be brought before the court which could be better utilised through a reorganisation of owners and their interests.[42]

Te Kawakawa B3B qualified under this Act's title improvement provisions as the court described the block as 'dilapidated, with fences down and land reverting'.[43] Because of Henare's advanced age - he was 92, and 'long since past work' - and because rates had not been paid in several years, the court concluded that the 'block is well worth being properly subdivided' in order to prevent further deterioration of the situation.[44] However, before this process could commence, the court had to clarify who actually had shares in the block. It is at this point that the interest of Rita Hapi in the block is first identified and defined. Additionally, this is when the events surrounding the

[40] National Archives Auckland, BACS A 449/17/25d - Kawakawa B3B Subdivisions 1958-60. This source can also be found on p 35 of the Document Bank.
[41] Auckland Maori Land Court minute book 19, 27 October 1954, p 305.
[42] 'Land Title Improvement', *AJHR*, 1956 vol III, G-9, p 8.
[43] Auckland Maori Land Court minute book 19, 2 November 1954, p 312.
[44] Auckland Maori Land Court minute book 19, 2 November 1954, p 312.

alienation of her interests in Te Kawakawa B3B are of particular importance to the Wai 826 claim by her grandson, Mr Black.

On 20 July 1955, the court heard evidence relating to the succession of Pikihuia Turei's interest in Te Kawakawa B3B by her children. One of her daughters, Marama Hapi, appeared and said that her mother had died 35 years ago and that Pikihuia had issue: Dolly, Rita, Willie, Charlie, and Marama. Marama went on to say that she did not know whether any of her siblings were still alive:

> I was told by Charlie that Rita died 3 years ago. Someone told me Dolly had died about 2 years ago. I can't remember who it was. Charlie told me about Rita last year. I left home about 37 years ago....I don't know if Rita and Dolly left children.[45]

Henare Turei then appeared before the court and stated that he knew both Willie and Charlie were alive, and living in Tauranga and Morrinsville respectively. However, he had no knowledge of either Dolly or Rita's whereabouts. Regardless of the evidence presented, the court decided that all five Hapis would be named as successors to Pikihuia Turei.

At least initially, Henare Turei presented resistance to the subdivision scheme of his nieces. At a court hearing on 24 November 1955, his solicitor, Mr Piggin, pleaded: 'He has allowed people to put baches on. His 75 year possession shows no desire to sell'.[46] Despite Henare's objections, the court found no grounds on which the subdivision should be prevented, and said on 23 December 1955:

> The applicants (Miua sisters) for partition have...good reasons to ask that it [subdivision] be proceeded with even though their object may be sale. One of them for example states that she proposes to sell and use the proceeds as a deposit on a house. Henare Turei has been on the land very many years and

[45] Auckland Maori Land Court minute book 19, 20 July 1955, p 364.
[46] Auckland Maori Land Court minute book 20, 24 November 1955, p 46.

> the court can well understand that he desires the block to remain unchanged. Multiplicity of ownership however gives the minor owners the right to ask for partition and the court does not consider them unreasonable in this case in applying for such.[47]

While the decision in favour of subdivision had been made, this would prove only half of the battle. The court's minute books through 1956 and early 1957 reveal that there were many discussions regarding the distribution and location of lots in B3B.

Initially, the court allotted land based on calculations made by the court clerk, N. Rogers, on 23 December 1955.[48] These were:

| Owner | Acres | Roods | Perches |
|---|---|---|---|
| Henare Turei | 45 | 1 | 20 |
| Rihi Miua | 7 | 0 | 15 |
| Mihi Miua | 7 | 0 | 15 |
| Katerina Miua | 7 | 0 | 15 |
| Pikihuia family (Dolly, Rita, Charlie, Willie, Marama Hapi) | 8 | 1 | 35 |

However, the court readily admitted that these figures would be contentious and that it was not confident it had sufficient knowledge to order that these figures be final.[49] Solicitors for both Henare Turei and the other owners debated these figures and, on top of this, Henare then elected to add his solely-owned section - B3A - to the subdivision. Additionally, Henare questioned the size of Pikihuia's share in the block, as she had sold her interests to him in 1921.

[47] Auckland Maori Land Court minute book 20, 23 December 1955, p 56.
[48] Auckland Maori Land Court minute book 20, 23 December 1955, p 56.
[49] The court noted that neither solicitor could agree with the other's land values or methods of subdivision. Furthermore, they did not accept the court's land values or methods either. Refer to Auckland Maori Land Court minute book 20, 23 December 1955, p 56.

Henare claimed that Pikihuia's share of Hariata Turei's succession of 27 July 1920 should pass to him. The court did not accept this claim. Therefore, Pikihuia gained an interest in Te Kawakawa through succession to other owners, even though she had previously alienated all her interests. Hence, the Hapi share of B3B was derived from Pikihuia's succession to Hariata Turei and Tiwai Himiona. However, as the form of the subdivision changed, after objections from solicitors for both Henare and his nieces, so did the amount of land involved. Accordingly, the figures tabled by the court clerk above, changed significantly.

On 18 December 1956, Te Kawakawa B3B was subdivided. The owners were: Henare Turei, Rihi Miua, Mihi Miua, Katerina Miua, Dolly Hapi, Charlie Hapi, Willie Hapi, Marama Hapi, and Rita Hapi (the Hapi's having succeeded to Pikihuia Turei's interest in Te Kawakawa B3B). However, not until 22 January 1957, was final agreement reached on the form the subdivision would take. Only then was the partition order for Te Kawakawa B3B, which was made on 18 December 1956, completed. The subdivision would take the form of a cul-de-sac (see figure 2) consisting of 27 lots, totaling 76 acres 3 roods 25.8 perches. This included Te Kawakawa B1, the urupa, which consisted of 1 rood. Two lots, 25 and 26, were designated as a public road.[50] The precise figures for the amount of land in each lot can be found in the table below:[51]

| B3B | Area | Owner |
|---|---|---|
| Lot 1 | 33.2 p | M. Miua |
| Lot 2 | 33.6 p | R. Miua |
| Lot 3 | 37.7 p | K. Miua |
| Lot 4 | 36.0 p | All |
| Lot 5 | 32.7 p | All |

[50] New Zealand Gazette 27, 9 May 1963, p 610.
[51] Refer to the Document Bank, where the plan for this subdivision - ML 13947, has been included, p 43.

| | | |
|---|---|---|
| Lot 6 | 35.0 p | All |
| Lot 7 | 1 r 29.5 p | H. Turei |
| Lot 8 | 37.7 p | H. Turei |
| Lot 9 | 1 r 12.4 p | H. Turei |
| Lot 10 | 34.3 p | H. Turei |
| Lot 11 | 33.1 p | H. Turei |
| Lot 12 | 33.4 p | H. Turei |
| Lot 13 | 32.4 p | M. Miua |
| Lot 14 | 35.8 p | R. Miua |
| Lot 15 | 38.0 p | K. Miua |
| Lot 16 | 32.2 p | Hapi family |
| Lot 17 | 1 r 5.6 p | Miua and Hapi families |
| Lot 18 | 33.4 p | Hapi family |
| Lot 19 | 32.8 p | Miua and Hapi families |
| Lot 20 | 36.2 p | H. Turei |
| Lot 21 | 38.2 p | H. Turei |
| Lot 22 | 38.2 p | H. Turei |
| Lot 23 | 36.4 p | H. Turei |
| Lot 24 | 32.1 p | All |
| Lots 25 & 26 | 3 r 3.9 p | Public Road |
| Lot 27 | 70 a 1 r 2 p | H. Turei |

For the purposes of this section, it can be seen that the five members of the Hapi family received lots 16 and 18, totaling 1 rood 25 perches.[52]

In addition to lots 16 and 18, the Hapi family received 14 shares each in lots 17 and 19 (equaling 70 shares out of 350 for each lot). Initially lots 4, 5, 6, and 24 were vested in the Maori Trustee to cover the cost of forming the subdivision. However, on 23 December 1957, the Maori Trustee declined to become involved in this trust, for reasons unknown.[53] Instead, an Auckland solicitor, Mr TW McCown, was employed to act in lieu of the trustee. Furthermore, so sufficient funds could be lent from the Maori Trustee to defray roading and other costs associated with the subdivision, the court resolved, on 14 July 1958, that lots 17, 19, and 20 be added to the trust.[54] Finally, on

[52] Auckland Maori Land Court minute book 20, 22 January 1957, p 234.
[53] Auckland Maori Land Court minute book 21, 27 February 1958, p 35. This document refers to a memorandum from the Maori Trustee dated 15 July 1957 that outlines its reasons for declining to become involved in the trust. I have been unable to locate this memorandum.
[54] Auckland Maori Land Court minute book 21, 14 July 1958, p 99.

12 December 1960, the court discharged Mr McCown from his duties as trustee as he had completed all transactions regarding the subdivision of Te Kawakawa B3B.[55]

At a court hearing on 19 July 1960, Dolly Hapi's four siblings succeeded to her interests in B3B. This meant that Willie, Charlie, Marama, and Rita now each had a 1/4 share in lots 16 and 18, as opposed to 1/5 prior to the succession. Based solely upon the following evidence given by Marama Hapi, Dolly's interest in the block was extinguished: 'My mother (Pikihuia Turei) told me when I was 10 or 12 years old that my sister Dolly was dead and she was going to the funeral. We were left at Kawakawa Bay for a week while mother went to Taranaki.'[56] This evidence is questionable simply because it clashes with what Marama said to the court, regarding the whereabouts of Dolly, at the succession hearing for her mother on 20 July 1955 (refer to p 12 of this report).

However, at a hearing in Auckland on 18 October 1961, Dolly's interest in the block was restored when the mistake was realised. However, this restoration was only in terms of an equal share of the proceeds from the sale of lot 16 with her siblings. Willie Hapi, on behalf of his siblings, stated before the court:

> All owners are brothers and sisters, another sister Dolly Hapi (Mrs. Wharemate) is present and should have been in title - we other three [Willie, Rita, and Charlie were present at the hearing] recognize her as a 1/5 owner with us and I produce an undertaking which we have executed.[57]

[55] For the buyers of lots sold by the trustee, and other lots sold by the Maori owners, see Document Bank pp 1-3.
[56] Auckland Maori Land Court minute book 22, 19 July 1960, p 144.
[57] Auckland Hauraki Alienation minute book 2, 18 October 1961, p 78. Also refer to pp 66-67 of the Document Bank.

Dolly then stated before the court that she agreed with the sale of lot 16 to Graham Galbraith for £400.[58] Hence, on 26 April 1962, lot 16 was alienated. Only lot 18 remained of the original Hapi interest in Te Kawakawa, and this was so until 1999.

In summary, it appears that Dolly Hapi was alienated from the title of both lots 16 and 18 due to the court's acceptance of Marama's uncorroborated evidence on 19 July 1960 that Dolly was deceased. It should be remembered that Marama had also stated at the succession hearing for her mother that someone had told her of Dolly's death (but the court awarded Dolly a share in any case). Nevertheless, the court hearing of 18 October 1961 appears to have rectified the situation in relation to lot 16, as Willie, Rita, Marama [59], and Charlie all acknowledged that Dolly was wrongly succeeded, and authorised their solicitor to grant her 1/5 of the sale proceeds from that lot.

Included in the Document Bank for this report is a copy of the undertaking that the Hapi siblings produced before the court on 18 October 1961. It states:

> In order to save the costs and expenses of applications to the Maori Land Court to restore her to the title we acknowledge that the purchase money of £400 receivable on sale of land to Graham Clarence Galbraith is to be divided to include such sister (Dolly) in all respects as though she was on the title in equal shares as one of the owners. We authorise Messieurs Clarke, Burns and Lowe as our solicitors to pay one fifth of the above purchase moneys to the said Ria [Dolly] Wharemate.[60]

While the process of alienation for lot 16 is relatively transparent, that for lot 18, once it became general land, is not. Records kept at the Maori Land Court at Hamilton on

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[58] Auckland Hauraki Alienation minute book 2, 18 October 1961, p 78. Also refer to pp 66-67 of the Document Bank.
[59] Refer to pp 66-67 of the document bank. Although Marama did not sign the undertaking signed by Willie, Rita, and Charlie, her name was included in the document, and she was expected to sign the transfer agreement the following day.
[60] National Archives Auckland, BACS A 187/205/624 - Subdivision of Te Kawakawa block B3B, p 6. Also refer to p 67 of the Document Bank.

lot 18 are complete up until the lot was Europeanised on 17 April 1969. Even then, the reason for changing the status of the land is not clear, though the change would have been initiated by Part I of the Maori Affairs Amendment Act 1967. Notwithstanding this, Te Kawakawa B3B lot 18 remained in family hands until Charlie Hapi was compelled to sell in a mortgagee sale in 1999. While the sale was not executed until then, it has not been established how Charlie came to be the sole owner of this lot.

## 5. Conclusion – The effect of the alienation of this land on the descendants of Rita Hapi

Te Awanuiarangi Black's claim to sections of the Te Kawakawa block focuses on his assertion that the Maori Land Court process facilitated the alienation of whanau land. However, it appears that, notwithstanding Marama's evidence at the succession hearing for her mother, Mr Black's grandmother's sister, Dolly, was affected, and not his grandmother, Rita.

While the above illustrates clearly that Dolly Hapi had been on the receiving end of a poor decision by the court, the same cannot be said for Rita Hapi. Mr Black alleges irregularities in securing Rita Hapi's consent to sell lot 16. He suggests that Rita thought she was signing something relating to rates, and did not know that she was consenting to the alienation of lot 16.

It is not the role of this researcher to speculate whether or not this is the case. There is no evidence to suggest that Rita Hapi made a written complaint about the process.

Furthermore, her presence alongside her siblings during court hearings to include Dolly in the division of proceeds received from the sale of lot 16, seems to suggest some degree of understanding of the situation. All the historical record illustrates is that at the court hearing of 18 October 1961, Rita Hapi signed a document that confirmed the sale of lot 16.[61]

While it has been generally accepted that the Native Land Court facilitated the alienation of Maori land, in the case of Wai 826, it cannot be said categorically that the court is the cause of the Mr Black's inability to settle on Te Kawakawa. While the court allowed the block to be partitioned and individualised, a sale was only executed when the agreement of each Hapi was attained.

While the question of the level of Rita Hapi's understanding of the situation remains, a fuller examination of this issue should be left for tangatawhenua evidence. In any case, one thing is certain. The ability of the descendants of Rita Hapi to return and settle on a portion of Te Kawakawa was extinguished after 1999.

[61] Auckland Hauraki Alienation minute book 2, 18 October 1961, p 78. Also refer to pp 66-68 of the Document Bank.

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**Land Information New Zealand**

Maori Land Map 13947

**Maori Land Court - Hamilton**

Auckland Hauraki Alienation Minute Books

Hauraki and Auckland Minute Books

Boxes 318-320: Te Kawakawa block, lists of owners, title orders, succession orders, miscellaneous papers

Folder 49: list of owners of subdivisions, Te Kawakawa B No. 1

**Waitangi Tribunal**

David Alexander - Document Bank of Supporting Papers related to Te Kawakawa

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**WAITANGI TRIBUNAL**

| | |
|---|---|
| **CONCERNING** | the Treaty of Waitangi Act 1975 |
| **AND CONCERNING** | Te Kawakawa block claim |

## MEMORANDUM - DIRECTION OF PRESIDING OFFICER

1 Pursuant to clause 5A(1) of the second schedule of the Treaty of Waitangi Act 1975, the Tribunal commissions Rowan Betts of Wellington to complete a research report for this claim covering the following matters:

(a) A brief description of the Wai 826 claim, as well as the geographical features of the Kawakawa block, Kawakawa Bay, Clevedon

(b) The nature of ownership of the Kawakawa block subsequent to the initial investigation of the land by the Native Land Court;

(c) A brief account of the ensuing partitioning and individualisation of the Kawakawa block through processes of the Native land court;

(d) Identify and examine the process under which specific Kawakawa blocks and partitions were alienated.

(e) Identify the outcome of the alienation of the Kawakawa block on the descendants of Titikawhena Oketopa/McMahon (nee Hapi).

2 This commission commences on 12 October 2000, and the receipt of written confirmation of the commissionee's acceptance of the terms and conditions of the commission.

3 The commission ends on 25 March 2001 at which time one copy of the report will be filed in unbound form together with an indexed document bank and a copy of the report on disk.

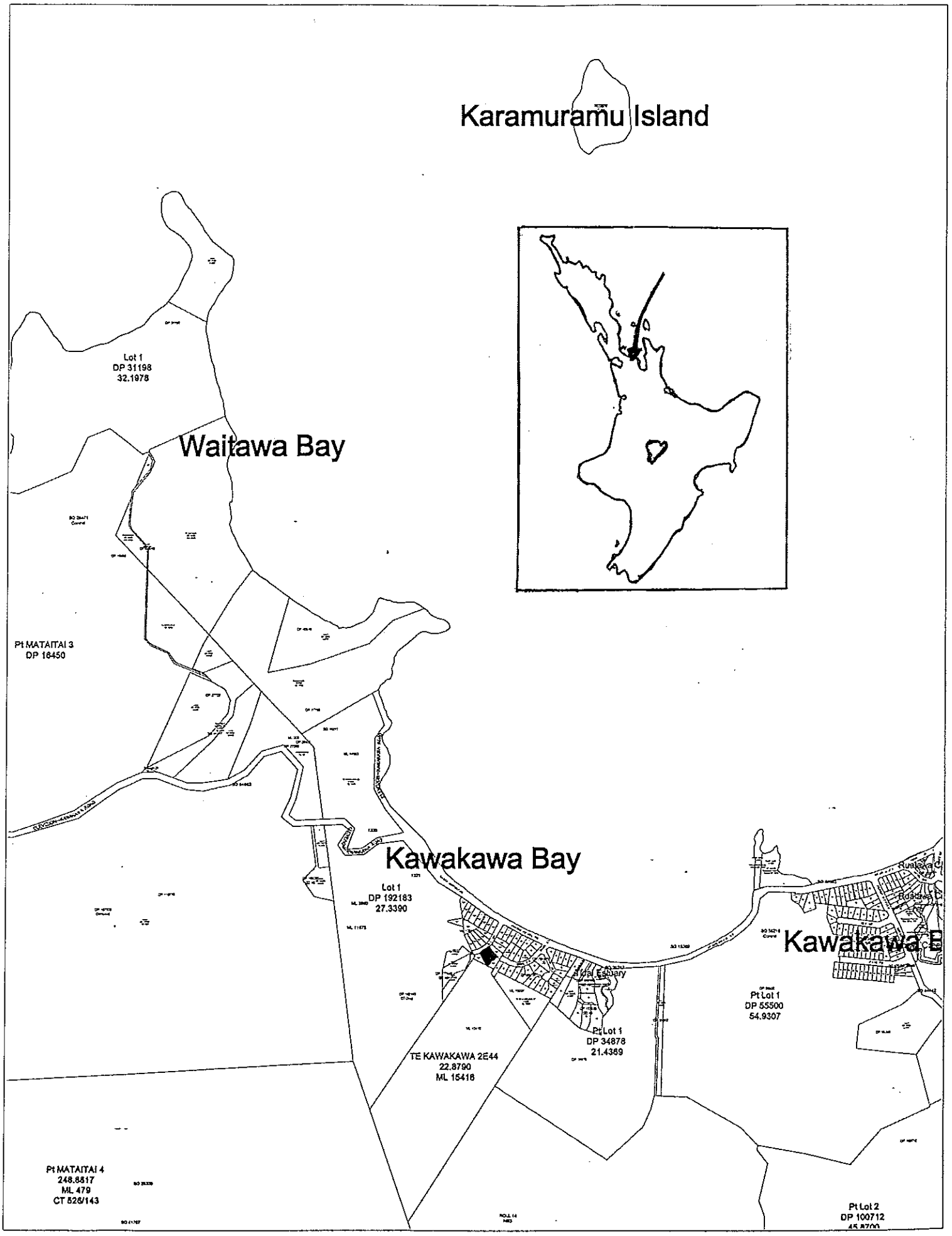
4 The report may be received as evidence and the author may be cross-examined on it.

5 The Registrar is to send copies of this direction to:

Rowan Betts
Solicitor General, Crown Law Office
Director, Office of Treaty Settlements
Secretary, Crown Forestry Rental Trust
Chief Executive, Te Puni Kokiri
Counsel for Claimants Wai 826

Dated at Auckland, this 21st day of October 2000

Dame Augusta Wallace
Presiding Officer
**WAITANGI TRIBUNAL**

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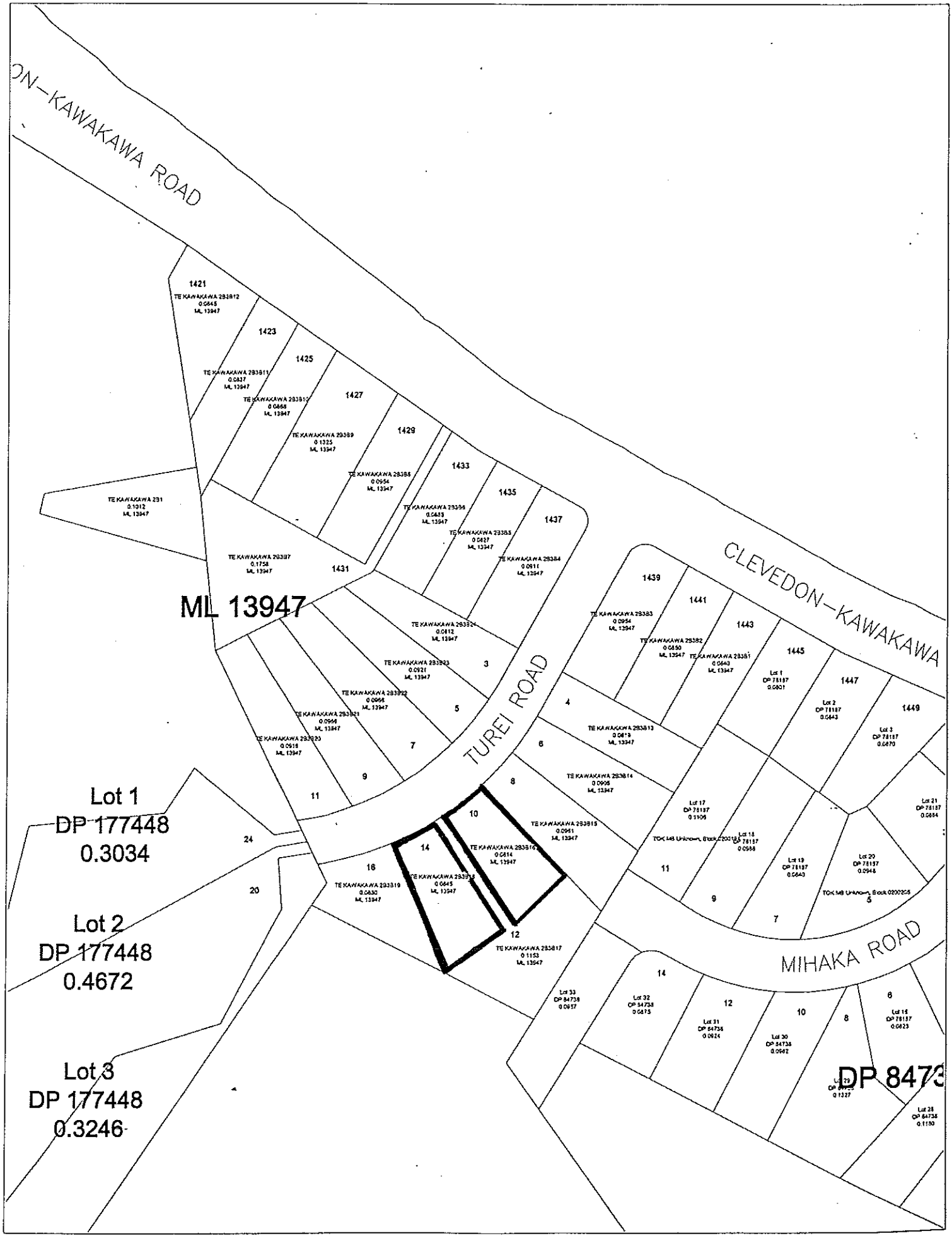
Te Kawakawa B3B Lots 16 and 18

Figure 1




Te Kawakawa B3B Subdivision

Figure 2