Papakitatahi A and Horahia Opou 5A

By Matthew Russell

A Report commissioned by the Waitangi Tribunal for Wai 174

June 1999

TABLE OF CONTENTS

Table of Figures

List of Tables

Author

My name is Matthew Russell. In 1995 I completed a Master of Arts degree, majoring in history, at Auckland University.

Since March 1996 I have been employed as a researcher by the Waitangi Tribunal. During that time, I have written four case studies for a Rangahaua Whanui national theme report on old land claims. I have also helped refine and summarise two national databases, one on old land claims, the other on pre-1865 Crown purchases. More recently, I have completed a report on the Waikawau reserves and on the compulsory acquisition of Opu 3. This last report was also written for Wai 174.

Since March 1996 I have also been the Tribunal's claim facilitator for the Hauraki region.

Table of Abbreviations

Auckland	Akd
Block Order file	BOF
Certificate of Title	CT
Deeds and Titles Office	DTO
Director-General of Lands	DG
District Commissioner of Works	DCW
Document	doc
Folio	fol
Hamilton	Hm
Hamilton Land Registry	HLR
Hauraki Catchment Board	HCB
Lands and Survey Head Office	L. S. H. O.
Maori Trustee	MT
Maori Land Court Plan number	ML
National Archives Auckland	NAA
National Archives Wellington	NAW
No date	n. d.
Paragraph	para
Survey Office Plan number	SO
Thames County Council	TCC
Waikato-Maniapoto Maori Land Court, Hamilton	WMLC
Waitangi Tribunal claim number	Wai

CHAPTER ONE:
INTRODUCTION

The Claim

Pat Bailey (nee Fine) lodged Wai 174 on behalf of Ngati Kotinga in October 1990. The original statement of claim concerned the alienation of five specific blocks. These were:

- Opu 3;
- Kuaotunu 1A and 1B;
- Omahu Quarry Reserve (Sec 3 Blk. IV Waihou SD); and,
- Omahu Sec 19 Blk. Ohinemuri SD

In March 1997, Pat Bailey amended her claim to include a sixth block, Papakitatahi A. A further eight blocks were added in March 1998. These were:

- Wharekawa East 1, 2, and 3;
- Te Horete 1 and 2;
- Wharekawa West;
- Maramarua; and,
- Horahia Opou 5A.

In her original statement of claim, Pat Bailey alleged that 'the moral and ethical aspect of the law was not applied to the sale of these Maori land blocks to the Crown at that time, and is therefore inconsistent with the Treaty of Waitangi'.[1]

In the March 1998 addition to Wai 174, Pat Bailey also requested 'a name change to claim Wai 174 from Ngati Kotinga to Nga Whanau o Omahu'.[2]

The Scope of this Report

This report covers two of the fourteen blocks mentioned in the Wai 174 statement of claim. These two blocks are Papakitatahi A and Horahia Opou 5A. The remaining twelve blocks identified in the Wai 174 statement of claim have been researched in other reports. A brief summary of that research is given in chapter five.

Papakitatahi A is the focus of chapter three of this report. The chapter explores two issues: the alienation of a majority interest in the block in the late 1890s; and the failure to provide the block with legal road access during the 1920s.

Horahia Opou 5A, an urupa, is the focus of chapter four. The chapter explores two issues: the alienation of a minority interest in the block during 1915–1916; and, the compulsory acquisition of nearly half of Horahia Opou 5A for flood control in the 1960s.

Chapter two of this report surveys written historical sources for information on Ngati Kotinga's

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[1] Wai 174 Statement of Claim, 18 October 1990, (Wai 174 1.1), reproduced in Appendix 1

[2] Wai 174, Addition to Claim, 31 March 1998, (Wai 174 1.1 (b)), reproduced in Appendix 1

traditional history and the extent of their interest in the blocks identified in the Wai 174 statement of claim. This is in accordance with the terms of my commission. The commission was released prior to the Wai 174 change of name in March 1998.[3]

[3] Commission, 3 March 1998, (Wai 174, 3.2), reproduced in Appendix 2

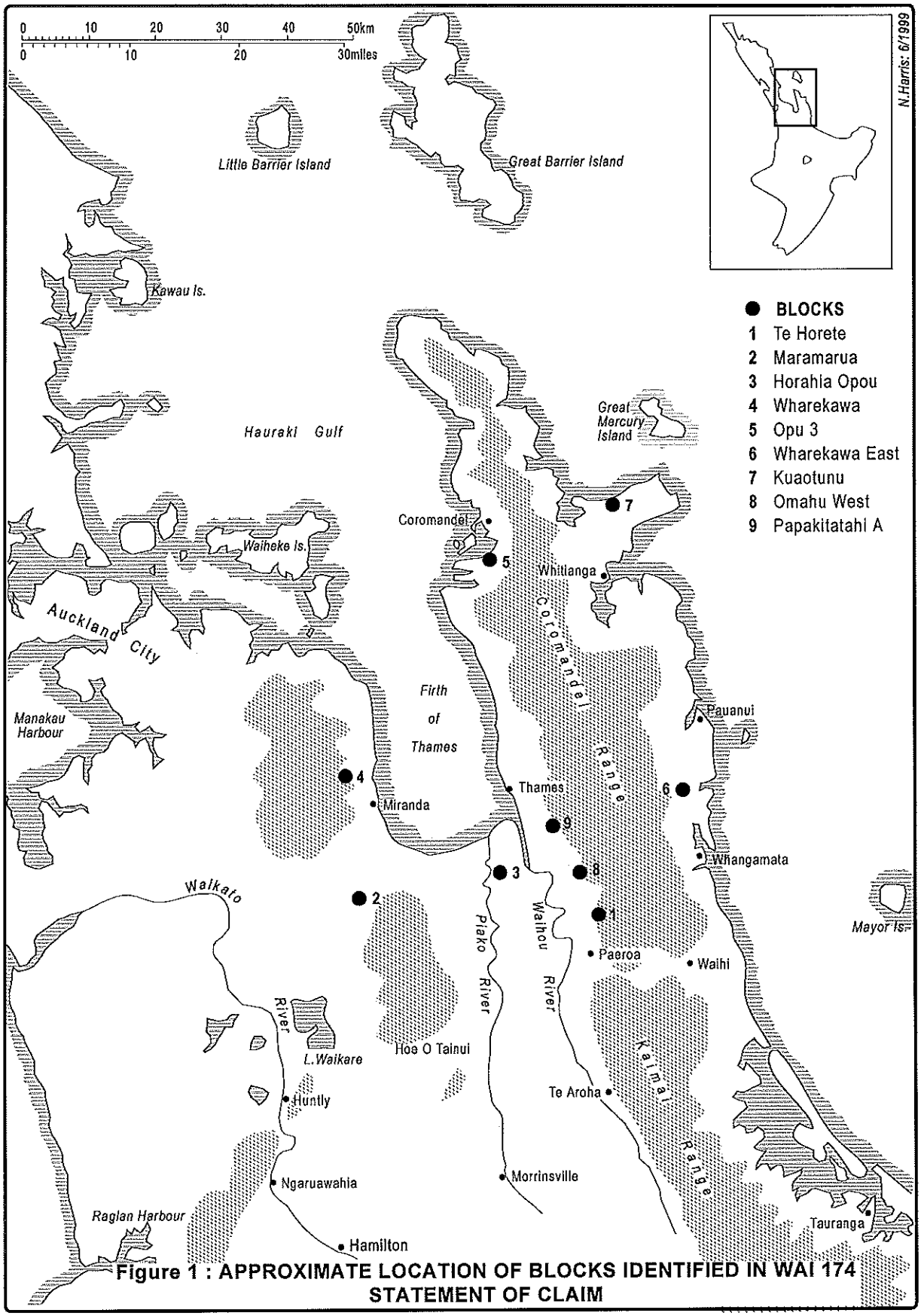

Figure 1 : APPROXIMATE LOCATION OF BLOCKS IDENTIFIED IN WAI 174 STATEMENT OF CLAIM

CHAPTER TWO: TRADITIONAL HISTORY (WRITTEN SOURCES)

Introduction

This chapter is divided into three parts. Part one outlines the sources used in the researching of this chapter. Part two details the information on Ngati Kotinga's traditional history obtained from those sources. Lastly, for reasons discussed below, part three makes some general observations about the likely settlement pattern of Ngati Kotinga in the first half of the nineteenth century.

Sources

There is not a wealth of secondary material that relates the traditional history of the Hauraki people. Such material that does exist generally tends to describe Hauraki's participation in historical events at an iwi level.[4] While some recent publications have begun to identify the historical involvement of particular Hauraki hapu – Phillip Finlay's *Nga Tohu a Tainui* is an example of such a publication – secondary material has been of limited use for this report.

Most of the information in this chapter is drawn from Native Land Court minute books. As will become evident from the following pages, however, the Native Land Court minute books provide an incomplete picture of the traditional history of Ngati Kotinga and of Ngati Kotinga's interest in the blocks subject to this claim.

I have also drawn upon other primary historical sources; in particular, early Church Missionary Society records and Internal Affairs files. I have not, however, undertaken a comprehensive search of those sources myself. Instead, I have relied upon the extensive document bank assembled by the researchers for Wai 100, the Hauraki Maori Trust Board's claim.[5]

Ngati Kotinga's Traditional History

In the Native Land Court minute books, Ngati Kotinga are most frequently identified as being a hapu of Ngati Whanaunga or Ngati Maru. This, in turn, identifies Ngati Kotinga as part of the Marutuahu federation of tribes. The origin of the Marutuahu federation has been covered by several authors; most recently, by the late Taimoana Turoa in his evidence for Wai 100.[6]

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[4] For example, George Graham, 'The Wars of Ngati Huarere and Ngati Marutuahu of Hauraki Gulf', in *Journal of the Polynesian Society*, 1929, pp 37–41

[5] I am indebted to the Hauraki Maori Trust Board for providing me with access to this document bank which is not part of the official record of documents for Wai 100. *Hauraki Historical Archive*, vols 12 and 32, Paeroa, 1997.

[6] Taimoana Turoa, *Ngai Iwi o Hauraki: The Iwi of Hauraki*, Paeroa, 1997 (Wai 686, doc A6). Other authors include: Pei Te Hurinui, *Nga Iwi o Tainui: the traditional history of the Tainui people: Nga korero tuku iho a nga tupuna*, Auckland, 1995, pp 102–107; George Graham and Tukumana Taniwha, 'Marutuahu' in *Journal of the Polynesian Society*, 1941, pp 120–133; John White, *The Ancient History of the Maori, his Mythology and Traditions*, vol 4, Wellington, 1886, chaps 9 and 10; F L Phillips, *Nga Tohu a Tainui: Landmarks of Tainui*, Otorohanga, 1989, vol. 1, pp 39–40.

Hotunui and Marutuahu

The story of the Marutuahu federation begins with the self-imposed exile of Hotunui, a Tainui chieftain, from his home at Kawhia to Puwhenua on the western shores of the Firth of Thames. Hotunui left behind an unborn son – Marutuahu – who, upon reaching manhood, sought out his father on the western shores of the Firth. Marutuahu found his father had been mistreated by the local people and eventually exacted his revenge:

> Maru . . . had married two sisters, Paremoehau and Hinerunga, who were partly of that tribe [Te Uri O Pou] and also of Kahui-Ariki. Seeking the aid of his wives' people he carried out, over a period of time, one of the most ruthless campaigns of revenge against Te Uri-O-Pou. After many major battles this culminated in the final destruction of the unfortunate tribe at Te Urupukapuka. Settling with his family at Te Puia pa, Marutuahu became the lord of all lands in that district.[7]

This pattern of offence, conquest, and settlement was to be repeated by Marutuahu's sons – Tametepo, Tamatera, Whanaunga, Te Ngako and Tauru-Kapakapa – and their descendants until the tribes of the Marutuahu federation 'reigned supreme throughout Hauraki'.[8]

Whanaunga and Kotinga

Whanaunga, the eponymous ancestor of Ngati Whanaunga, was the third son of Marutuahu. I have only managed to find one Native Land Court case in which a line of descent from Whanaunga to Kotinga is given. This was the 1902 investigation of the Court into the relative interests in the Wharekawa 4 block. The hearing involved rival claims between the descendants of Te Kuruki and Puku - both of whom were close relatives of Kotinga.

Appearing for the Te Kuruki claimants, Mare Teretiu stated:

> I live at Kirikiri. I know the land. i.e. I see it on the plan. I have never been on it. I have a right to it thro conquest by the desc of Marutuahu. I claim thro TeKuruki, who took part in the conquest He was desc from Whanaunga, the son of Marutuahu.[9]

Mare then gave the following whakapapa:

Marutuahu
|
Iwituha
|
Kotinga
|
Te Kuruki[10]

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[7] Turoa, quote, p 9; Turoa, pp 8–11

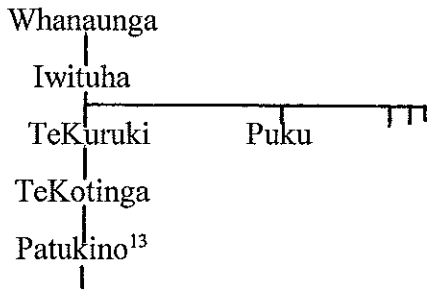
[8] Turoa, quote, p 11

[9] Hauraki Native Land Court minute book 53, fol 12

[10] Hauraki Native Land Court minute book 53, fol 12

Mare went on to state that: 'Puku was called a N.Whanaunga. So was Te Kuruki. Puku is desc. from Whanaunga. But I cant trace him'.[11]

Under cross-examination the following day, however, Mare gave the following testimony: '[Kapihana] told me that the land belonged to Puku. I asked him how. He said conquest . . . He also stated that the land belonged to Puku and his brother. And that my right was thro TeKuruki'.[12] Mare then gave the following whakapapa:



This differed from Mare's earlier whakapapa in two ways. Most obviously, Mare had now reversed the order of descent from Kotinga to Te Kuruki. Secondly, Mare now asserted that Puku and Te Kuruki were brothers - an assertion that conflicts with her earlier statement that she was unable to give a line of descent for Puku.

The most likely explanation for the changes in the whakapapa given by Mare is that she wanted to strengthen the blood relationship between Te Kuruki and Puku. This was important because, in its earlier title investigation of the parent block, the Court had made it 'clear that Puku . . . and his two sons Pokere and Kuri were . . . the ancestors from whom the right to the land was derived'.[14]

The key witness for the Puku claimants was Hori Ngakapa Whanaunga. After introducing himself – 'I live at Wharekawa. My hapu is Te Mateawa of N. Whanaunga tribe I know Wharekawa No 4 I have a right to it I am the owner of it. Puku is my ancestor'[15] – Hori gave the following whakapapa:

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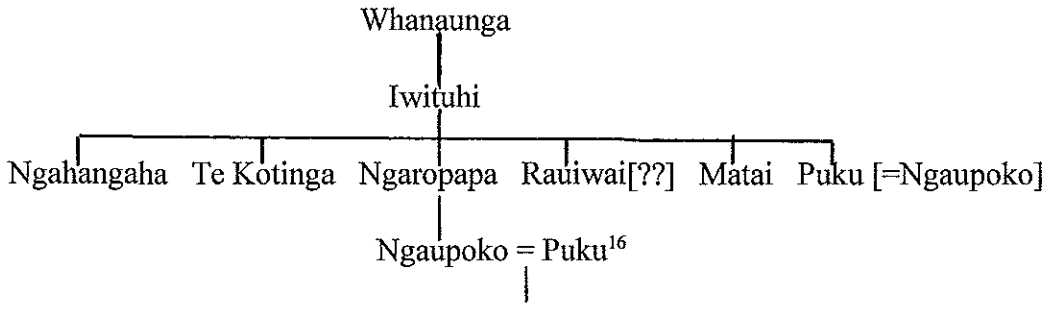
[11] Hauraki Native Land Court minute book 53, fol 13

[12] Hauraki Native Land Court minute book 53, fol 21

[13] Hauraki Native Land Court minute book 53, fol 21

[14] Hauraki Native Land Court minute book 53, fol 73

[15] Hauraki Native Land Court minute book 53, fol 26



Hori's whakapapa is consistent with the first whakapapa given by Mare in that Te Kuruki's absence implies that Kotinga preceded him. Indeed, placing Kotinga ahead of Te Kuruki is consistent with many other whakapapa given in the Native Land Court.[17] The whakapapa given by Hori Ngakapa is also of interest because it is the only one that I have been able to locate that identifies Kotinga's siblings.

Ngati Maru and Kotinga

In comparison with Ngati Whanaunga, locating the ancestor of Ngati Maru is more complicated:

> The Ngati Maru ancestor, Te Ngako, was the son of Marutuahu and Hinerunga. He was about the same age as his half-brother, Whanaunga, and joined him and the other brothers in their struggle for supremacy against the early resident tribes of Hauraki. When Tamatera returned to Whakatiwai after the death of his second wife, he married his step mother [Hinerunga] and lived in the pa at Pukurokoro. This union made Te Ngako and Taurukapakapa (his half-brother) his stepsons. Te Ngako confounded the situation by marrying Paretera, Tama[tera]'s daughter [from his second wife, Ruawehea]. Their son, Kahurautao, compounded the issue further by marrying Hinetera, a granddaughter of Tamatera and their issue was Rautao which is where the story of Ngati Maru really begins.[18]

I have been unable to locate, in the Native Land Court minute books, a direct line of descent from Te Ngako to Kotinga and, more specifically, from Rautao to Kotinga. The closest I have got is the testimony of Mita Watene during the title investigation of the Pouarua Pipiroa block. This block, which is located on the western bank of the mouth of the Piako River, was the subject of a bitter contest between Ngati Maru and Ngati Hako.[19] Appearing for the Ngati Maru claimants, Mita gave a very extensive whakapapa that covered most of the hapu of Ngati Maru and which included the following:

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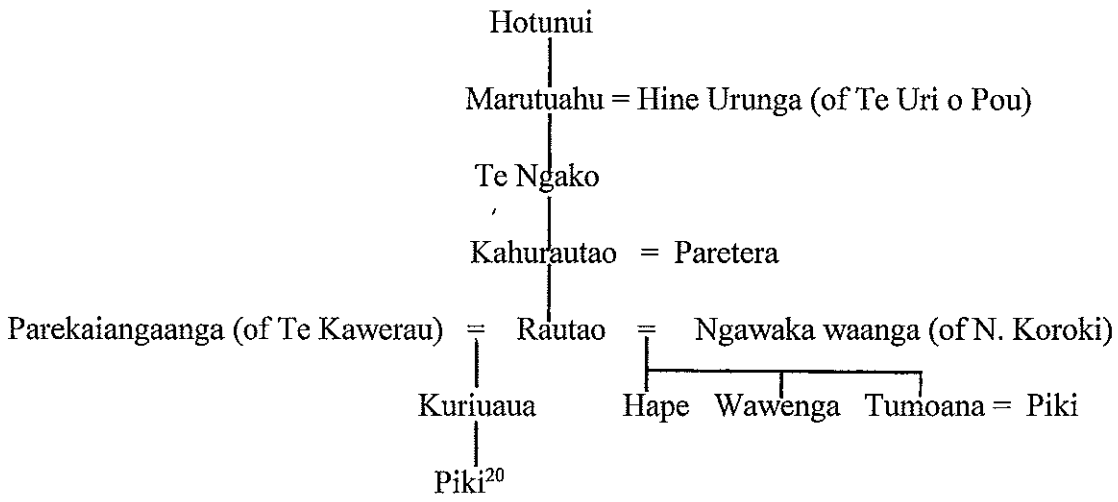
[16] Hauraki Native Land Court minute book 53, fol 26

[17] See testimony of Raika Whakarongatai, Hauraki Native Land Court minute book 18, fol 16; Tuterei Karewa, Hauraki Native Land Court minute book 7, fol 338; Hori Ngakapa Whanaunga, Hauraki Native Land Court minute book 7, fol 417.

[18] Turoa, p 30

[19] David Alexander, *The Hauraki Tribal Lands*, Part 4, Wellington, 1997 (Wai 686, doc A10), pp 282-3



Recorded beside Tumoana's name in the minute book is the comment that 'his descts are N.Kotinga'. This may have been added as a result of Mita's subsequent testimony under cross-examination by the Court's assessor: 'From whom come N.Kotinga?' To which Mita responded: 'They are descts of Tumoana by Kaputuhi a sister of Piki and Hine awatea all wives of him. I cannot show Kotinga's desct from Kaputuhi and Hine awatea'.[21]

I have, however, been unable to locate any other testimony that shows the link between Tumoana and Kotinga.

Ngati Paoa and Ngati Kotinga

Ngati Kotinga also have close links with Ngati Paoa – 'the fifth dimension of the Marutuahu tribal federation'. The eponymous ancestor of Ngati Paoa was a Tainui chieftain who married Tukutuku, the granddaughter of Tamatera. Paoa and Tukutuku had two sons, Tipa and Horowhenua.[22]

Tipa subsequently had a daughter who, according to testimony given by Mita Watene during the title investigation of the Pouarua Pipiroa block, married Kuruki, the son of Kotinga. The marriage between Kuruki and Paoa's granddaughter was mentioned in connection with the gifting of land in the vicinity of the Pouarua Pipiroa block:

> What about that land? a long discussion with [the] witness [Mita Watene]. That land at that time remained in the possession of Marutuahu at a much later date N. Paoa made an attempt to take it.

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[20] Hauraki Native Land Court minute book 36a, fols 69-70; An identical line of descent was contained within a whakapapa given by Hore More, again for Ngati Maru, in the same case, Hauraki Native Land Court minute book 36a fol 158

[21] Hauraki Native Land Court minute book 36a, fol 80

[22] Turoa, p 34

remained in the possession of Marutuahu at a much later date N. Paoa made an attempt to take it.

In whose time was that attempt made?

In the time of Rautao and his children

Was the land taken? It was taken in connection with a man named Kuruki of N. Whanaunga. Kuruki made a song about N.Paoa. His wife was a N. Paoa

[Mita Watene] gives the song.

The song was supposed to be an invitation to N.Paoa to take Marutuahu's land.

N.Paoa took it.[23]

A note in the margin records that 'Kuruki's song' was entitled: 'kua kawaka Parera tera te Kainga ra tangohia'. Later in the case, Mita provided further information on the circumstances surrounding the gifting and on what had motivated Te Kuruki:

What land was it that Kuruki gave in connection with the waiata? Waitakaruru and Tuerarahi

Was Waitakaruru the ancient boundary of land owned by Rautao? Yes

Was not that the bdy [sic] of which you did not know the commencement or end at the previous court? I know it was the boundary of Rautaos land.

When Kuruki made that Gift was not Rautao able to retain it? No it was given up at once by Rautao and Kuriuaua. Were Rautao and Kuruki living at the same time? Yes Kuruki married Tipa's daughter.

What was her name? I don't know

. . .

What was the "take"of Kuruki on this land and on Waitakaruru?

He had none. He was jealous of not having any interest in land where there was so much fish. He was jealous about the land for which he had sung that song.

Who was he? a descendent of Whanaunga's[,] child of Marutuahu. I cannot show his descent.'[24]

Mita's statement that Rautao and Kuruki were alive at the same time is significant. For this to have been true, Kotinga, as Kuruki's father, would have had to have been one of the children of Tumoana. Even then, Rautao would still have been Kuruki's great-grandfather.

Mita Watene's testimony that Kuruki married a woman from Ngati Paoa was subsequently confirmed, with one significant modification, by Matene Te Nga of Ngati Te Aute:

That song of Te Kuruki suggested the taking of the land asking N. Paoa to take possession of it i.e. [sic] Pipiroa.

Why did he give that order?

Because he had married Rangitaua (widow of Tipa) a N. Paoa woman.

Te Kuruki was a N. Whanaunga. In consequence of his order part of the land was taken by N.Paoa. The part taken was from Tuherarahi to Waitakaruru.[25]

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[23] Hauraki Native Land Court minute book 36a, fol 74

[24] Hauraki Native Land Court minute book 36a, fols 140-1

[25] Hauraki Native Land Court minute book 36a, fol 233

Ngati Kotinga Settlement

The terms of my commission called for a 'survey of written historical sources' for information on the extent of Ngati Kotinga's 'interest in the blocks subject to this claim'. This has not proved possible for the reason that none of the blocks identified in the Wai 174 statement of claim were actually claimed under the mana of Ngati Kotinga. Instead, they were claimed under the mana of the principal Marutuahu iwi; in particular, Ngati Maru, Ngati Whanaunga, and, to a lesser extent, Ngati Paoa.

Successful claims resulted in the submission of a list of owners that was typically confirmed by the Court without any inquiry as to the particular iwi or hapu affiliation of the listed owners. As a result, it is not possible to identify, from the written historical record, how many of the grantees in each block belong to Ngati Kotinga.

Ngati Kotinga are, however, mentioned during the title investigations of several other blocks so that, in combination with other sources, it is possible to make some general observations about Ngati Kotinga settlement in the two decades prior to the signing of the Treaty.

The impact of Nga Puhi

Like the rest of their Marutuahu brethren, Ngati Kotinga's choice of residence during the 1820s was influenced by their desire to secure protection against Nga Puhi muskets. This saw Ngati Kotinga abandon their traditional kainga in favour of co-habitation with other Ngati Maru hapu at sites such as Turua, on the western banks of the Waihou River:

> We will now consider the claim of Raika and Hawera who claim descent thru Tumoana. They state that their grandparents and parents assembled with the other hapus of N.Maru at a pa built in the Turoa [sic, Turua] bush for the purpose of mutual protection against an expected attack by Ngapuhi and that while living there they cultivated over part of the land which they call Oparia but neither of them asserts that his ancestor lived on the land before that time And after the Ngapuhi raid took place somewhere about the year 1830 they went to reside in different parts of the country and never returned to Oparia.[26]

The use of 1830 as the date at which 'the Ngapuhi raid took place' is almost certainly an error. For as summarised by Robyn Anderson:

> At first the Marutuahu confederacy held its own [against the Ngapuhi raiders . . . B]y the 1820s, however, the Hauraki tribes had been forced to withdraw into the interior [. . . In November 1821. . .]Totara pa (Thames) fell . . . Ngati Paoa and other 'Thames' tribes took up residence in middle Waikato with Ngati Haua and Ngati Raukawa of Te Kaokaoroa-o-Patetere to whom they were closely allied through marriage.[27]

Ngati Maru were given refuge in 'the Horotiu and Maungatautari district around Cambridge.

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[26] Kaipapaka judgement, Hauraki Native Land Court minute book 17, fol 118

[27] Robyn Anderson, *The Crown, the Treaty, and the Hauraki Tribes 1800–1885*, Wellington, 1997 (Wai 686, doc A8), p 31

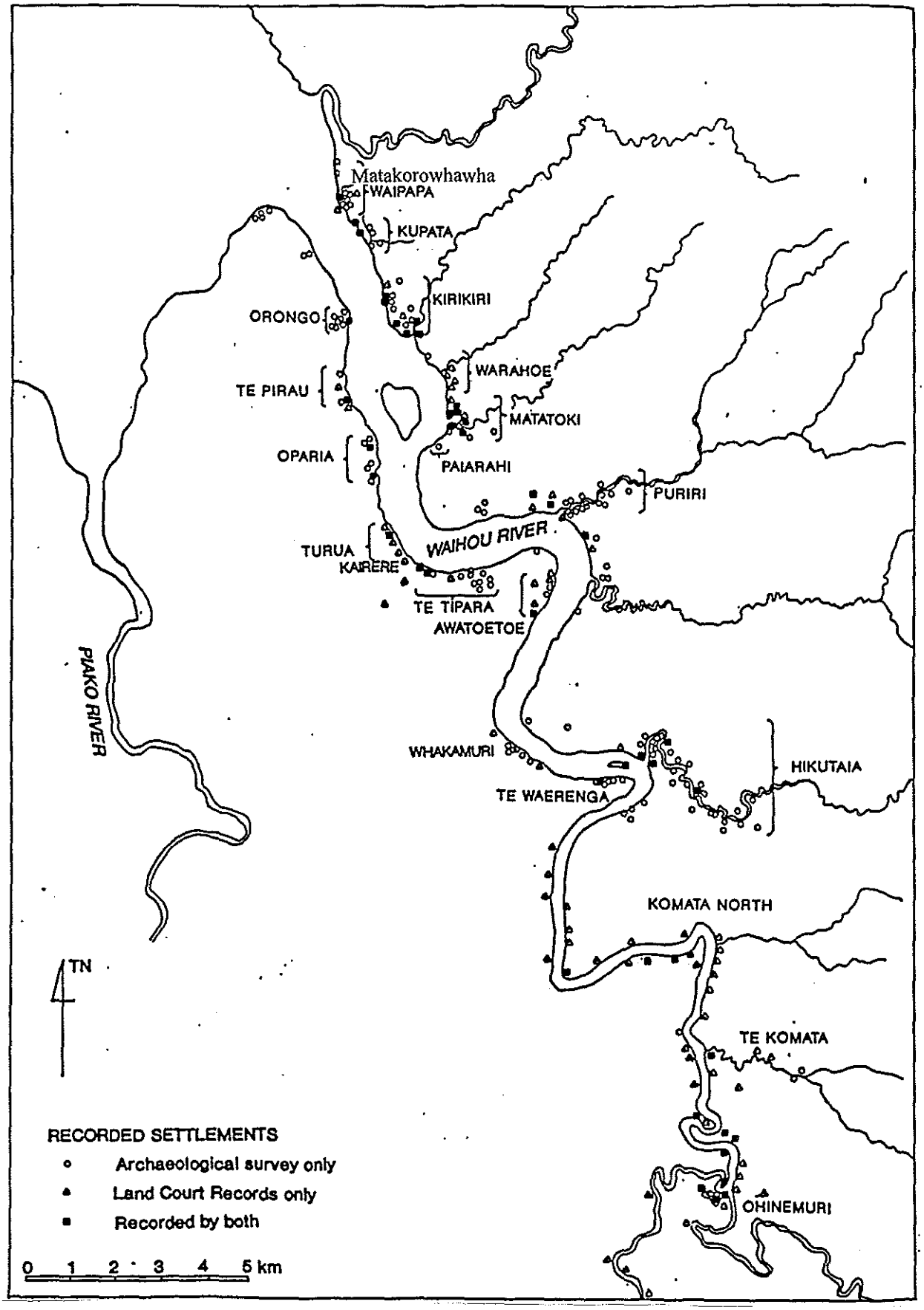

Figure 2: Maori Settlement of the Waihou River Valley

(Source: Wai 686, B1(a))

Even there they built their pa, some 20 in all, in close proximity to each other'.[28] By the late 1820s, however, the continued presence of Ngati Maru and their fortifications around Cambridge had produced 'a continual state of warfare resulting from the attempts of Te Waharoa [of Ngati Haua] to induce Ngati Maru to return to Hauraki'.[29] The tension between Ngati Maru and their Waikato hosts culminated in the battle of Taumatawiwi in 1830. The end result was a negotiated peace whereby Ngati Maru marched north to Hauraki 'escorted by Waikato and their [Ngai Te Rangi] allies.'[30]

Return from Waikato

The writings of CMS missionaries based at Puriri, on the Waihou River, indicate that the possibility of Waikato aggression continued to cast an influential shadow over Hauraki iwi until late 1835.[31] In August 1834, for example, Reverend Brown noted that the 'Natives at this place are in a very unsettled state expecting an attack from Waharoa of Waikato and they have commenced building a pa which is to enclose in it the Mission premises'. Four days later, however, he noted that: 'The Natives are preparing to leave the Pa which they have commenced building at this place and go to Turoa [sic, Turua] – There is no dependence to be placed on any protection that the Natives could afford even were it needed'.[32] This was no idle threat. The previous month, William Fairburn had recorded in his journal that a party from Waikato had attacked Whakatiwai, killing 50 people, with the result that: 'Our people are much alarmed'.[33]

Ngati Kotinga were not exempt from this threat of Waikato aggression. During the title investigation of the Matakorowhawha block, Tuterei Karewa testified that:

> I belong to Ngati Kotinga a hapu of Ngati Whanaunga. I know the land called Matakorowhawha. I have a claim on it. It belonged to my ancestor Kotinga . . . Our great pa was at Kopu. We cultivated on the land [for] three years. It was then worked out and [would] yield no crop, and we abandoned it . . . We commenced to live on this land [after] we came back from [the] Waikato. At the end of [three] years the whole of us left and came to Kauaeranga[.] Te Kirikiri [near Kopu] and all the places up river were abandoned at this time. We all came away for fear of the Waikatos. Kotinga had no land besides this in the vicinity.[34]

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[28] Turoa, p 11

[29] Kelly, p 384

[30] Kelly, p 386

[31] In August 1835, Waharoa of Waikato sent the first of two letters to Hauraki rangatira that appear to signal the end of hostilities between Hauraki and Waikato. See Fairburn's Journal, 29 August 1835, *Hauraki Historical Archive*, vol 32, doc AA 17, p 5; and Fairburn's Journal, 26 October 1835, *Hauraki Historical Archive*, vol 32, doc AA 17, p 8.

[32] Reverend Brown's Journal, 31 July 1834, *Hauraki Historical Archive*, vol 32, doc AA 10, pp 3–4

[33] Fairburn's Journal, 21 July 1834, *Hauraki Historical Archive*, vol 32, doc AA 16, p 7

[34] Hauraki Native Land Court minute book 12, fols 309-310, fol 314; see also Hauraki Native Land Court minute book 36A, fol 119.

In those areas of Hauraki that adjoin the Waikato – such as the Waihou River Valley and the south-western shores of the Firth of Thames – the threat of Waikato aggression seems to have encouraged a concentration of the population in a few large settlements within a relatively small area. The journals of the CMS missionaries based at Puriri record a single settlement on the western shore of the Firth of Thames, at Whakatiwai, with the 'larger body of natives' located 'beyond them . . . principally at Kauaeranga and Kopu'. A third settlement that features in the CMS records is Turua, home to 'a goodly number of natives' and held to be the 'principal residence of Ngatimaru'.[35]

The concentrated pattern of settlement reported by the CMS missionaries is further borne out by the testimony of Mita Watene during the title investigation of the Pouarua Pipiroa block:

> You say that your 4 hapus N. Te aute, N. Kotinga, N.Tahae [and Ngati] Hauauru went to fish, whence did they go? From Hauraki, this side, on the occasions when I saw them.
> What was the names of their Kaingas?
> Kirikiri and Kaueranga [sic] some of my slaves went with them
> Were these the only places they went from to fish?
> Those were the only places on this side.
> assessor. The question is from what permanent Kaingas they went? These are the only Kaingas
> Hare– There are places Kirikiri and Kaueranga [sic], which did the different 4 hapus occupy?
> The whole 4 lived sometimes together at one place and sometimes at another.[36]

The attraction of trade

The pattern of settlement during the 1830s is also likely to have been influenced by a desire, on the behalf of Hauraki Maori, to establish contacts with the increasing number of European traders who were establishing themselves in the region. These traders were situated at coastal localities such as Waiheke Island, Coromandel Harbour, Mercury Bay and Kauaeranga. In December 1881, Tuterei Karewa testified that:

> We constantly resided there [Matakorowhawha block] until Te Kopu pa was broken up and then we went to Te Kouma Coromandel - This is a great many years ago.[37]

Based upon Tuterei Karewa's testimony quoted earlier, Ngati Kotinga's northward migration is likely to have occurred in 1834 or 1835. This was not long before William Webster established 'a station at Coromandel . . . for the milling of spars and provisioning of the New South Wales market'.[38]

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[35] William's Journal, 23 December 1833, *Hauraki Historical Archive*, vol 32, doc AA 6, p 2; William's Journal, 7 November 1833, *Hauraki Historical Archive*, vol 32, doc AA 7, p 4.

[36] Hauraki Native Land Court minute book 36a, fols 114-5

[37] Hauraki Native Land Court minute book 14, fol 42

[38] Anderson, *The Crown, the Treaty, and the Hauraki Tribes 1800–1885*, p 34

Conclusion

As stated above, the historical record provides little specific information on either Ngati Kotinga's traditional history or on Ngati Kotinga's interest in the blocks subject to this claim.

In the Native Land Court minute books, Ngati Kotinga are most frequently identified as being a hapu of Ngati Whanaunga or Ngati Maru. The minute books also suggest, however, that Ngati Kotinga have close links with Ngati Paoa.

Because none of the blocks identified in the Wai 174 statement of claim were actually claimed under the mana of Ngati Kotinga, it has not been possible to make anything more than general observations about the likely settlement pattern of Ngati Kotinga in the first half of the nineteenth century.

That said, figure one illustrates that most of the blocks identified in the Wai 174 statement of claim are not situated within the area most likely to have been permanently occupied by Ngati Kotinga at the time the Treaty was signed. It should be noted, of course, that this was probably true for most Hauraki iwi as at 1840.

CHAPTER THREE: PAPAKITATAHI A

Introduction

The Papakitatahi block is located approximately three kilometres south east of Thames in the Kauaeranga River Valley. In December 1916, Papakitatahi was partitioned into Papakitatahi A (containing 1 acre, 2 roods) and Papakitatahi B (containing 11 acres, 2 roods, 33 perches).[39] The immediate cause of this partition appears to have been a disagreement between a Pakeha orchardist, who held a majority interest in the block, and the five remaining Maori owners. The underlying cause of the partition, however, was the alienation, in 1896 and 1898, of a majority interest in the block to a private pakeha purchaser.

At the time of its creation, Papakitatahi A, in common with the surrounding land blocks, had no legal road access. Today, in contrast with the surrounding land blocks, Papakitatahi A still has no legal road access.

Title Investigation and Successions

The Native Land Court investigated the title to Papakitatahi in November 1870. Hawira Te Wahapu was the principal witness to appear before the Court:

> I belong to Ngati Whanaunga I know the land shown on the map it belongs to me and Ura Takangatai We derive our title from our ancestor Tumoana The land is out of the goldfields - I pointed out the boundaries to the surveyor - I have lived and cultivated on this land - We wish the land to be made inalienable.[40]

There were, however, other claimants to the land under investigation and their claims were subsequently admitted by Hawira: 'Ngakapa Whanaunga and the other claimants should also be in the Grant'. There was no further opposition and the Court subsequently ordered that a certificate of title be issued in the names of Hawira Te Wahapu, Te Ura Takangatai, Ngakapa Whanaunga, Utuku Kopa, Te Pere Torea, Wiremu Te Aramoana, and Apikera. The Court further ordered that the block was: 'To be inalienable . . . out of [the] Goldfields - Both pieces to be in one map'.[41] This last phrase referred to the fact that, at the hearing, the Court had been presented with two separate surveys that, in combination, covered the entire block. The Court's order that there be a single survey plan was subsequently complied with.[42]

In the 22 years following the title investigation, four of the seven original Maori owners died. The Native Land Court appointed successors to each of these owners as summarised in table one below:

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[39] see ML 15628 in doc bank

[40] Hauraki Native Land Court minute book 6, fol 55

[41] Hauraki Native Land Court minute book 6, fol 56

[42] Hauraki Native Land Court minute book 6, fols 56-7; ML 1893

Table One: Papakitatahi Successions, 1870–1893

Original Owner	Successors	Date of Court Order
Te Pere Whatu (aka Pere Torea)	Maui Takangatai, Ngawai Takangatai, Pererangi Takangatai	7 July 1872[43]
Utuku Hopa	Aperahama Utuku, Tirahana Utuku, Mate Utuku, Arohirena Utuku, Kahukore Ramariki Utuku, Meri Utuku, Rangiua Urawhare Utuku, Mihitea Utuku	16 October 1883[44]
Te Ura Whare (aka Te Ura Takangata)	Hawira Wahapu, [Arapera] Apikera, Ngawai Te Pere, Mauwi Utuku, Tirihana [Utuku], Rena Utuku, Te Aperahama Utuku, Meri Utuku, Kahukoro Utuku, Mihi Utuku, Panekena Utuku	6 June 1892[45]
Apikera	Mereana Waata, Raira Apikera, Arapera Apikera	20 January 1893[46]

The Restriction on Alienation

As described above, at the end of the title investigation for Papakitatahi block, the Native Land Court, responding to a request from the owners, made the block inalienable. According to a return tabled in Parliament at the request of Alfred Cadman, the Member for Coromandel, this restriction on alienation was still in place in 1888.[47]

Under the Native Land Administration Act 1888, the Governor–in–Council was empowered to remove restrictions on alienation on the application of a majority of a block's owners. This procedure was amended in 1888, 1889, and 1890. The overall trend of these amendments was to extend this same power of removal to the Native Land Court. Following the passage of the Native Land Court Act 1894, the Native Land Court was enabled to remove restrictions on alienation on the application of a third, as opposed to a majority, of a block's owners. This was qualified by the fact that, where restrictions existed prior to 1888 (as was the case with

[43] R69-153, 150922, DTO, Akd

[44] R 69-153, 150923, DTO, Akd

[45] R69-153, 150924, DTO, Akd

[46] R69-156, 150926, DTO, Akd

[47] 'Return of Lands in the Counties of Ohinemuri, Thames and Coromandel upon which restrictions are placed preventing owners dispossessing of them other than by lease', LE I 1888/7, cited in Robyn Anderson, *The Crown, the Treaty, and the Hauraki Tribes 1885–1980*, Wellington, 1997 (Wai 686, doc A9), p 93. Reproduced doc bank.

Papakitatahi), restrictions could 'only be removed by the Governor, on recommendation of the Court'.[48]

I have found no evidence that the restriction on the alienation of Papakitatahi, requested by the block's owners in 1870, was removed during the period 1888–1898.[49] The significance of this fact is discussed below.

Alienation of a Majority Interest

The 1896 deed

In March 1896, the three surviving original owners in Papakitatahi – Hawira Te Wahapu, Wiremu Te Aramoana, and Ngakapa Whanaunga – did 'convey and assure' to Joseph Clark, a pakeha settler, their interests in the 11 acre block.[50] In return, they received a total consideration of £25:13:0. I have been unable to locate any evidence that explains why Hawira Te Wahapu – having requested the block be made inalienable in 1870 – now wished to sell his share in the block.

Endorsed upon the deed of conveyance was a declaration by Edward McDonnell, licensed interpreter, that the three vendors had signed the deed in his presence and in accordance with the requirements of section 53 (2) (D) of the Native Land Court Act 1894. These requirements related to the 'formal execution' of the deed; specifically, that before the deed was signed by the vendors:

- a plan of the land to be sold had been endorsed on the deed;
- a statement in the Maori language, duly certified by a licensed interpreter as correctly explaining the effect of the deed, had been endorsed on the deed; and,
- the effect of the deed had been explained, by a licensed interpreter, to each of the vendors.[51]

Under sections 55 and 57 of the 1894 Act, the deed could not be registered in the Land Titles Office until it had been endorsed with a confirmation order from the Native Land Court or a certificate from a Trust Commissioner. In this case, the deed was endorsed with a declaration by Native Land Court Judge Scannell, that:

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[48] For a summary of the relevant legislation, see Robyn Anderson, *The Crown, the Treaty, and the Hauraki Tribes 1885–1980*, pp 96–98

[49] I have searched the following sources: Papakitatahi Block Order File (WMLC); Hauraki Native Land Court minute books 19–42 (1888–1896); Coromandel Native Land Court minute books 4–5 (1888–1895); *New Zealand Gazette*, 1888–1896; *Appendices to the Journal of the House of Representatives*, 1890–1896, *Appendices to the Journal of the Legislative Council*, 1884–1891.

[50] R69-154, 150925, DTO, Akd; By the same deed Hawira also sold the interest he had obtained as one of the many successors to Te Ura Whare (also known as Te Whare Takangatai).

[51] Declaration by Edward McDonnell, R69-154, 150925, DTO, Akd

after due investigation and inquiry in open court and this Court being satisfied that the alienation purporting to be effected by this within deed has been effected in all respects in accordance with the said Act it is hereby ordered that the said alienation be and the same is hereby confirmed.[52]

Confirmation by the Native Land Court

Section 53 of the Native Land Court Act 1894 outlined the matters upon which the Native Land Court had to be satisfied before it could confirm any alienation of Maori land. These were:

- that the alienation was not 'contrary to equity and good conscience';
- that the alienation did not breach any trust or contravene any restriction upon alienation;
- that the consideration did not involve alcohol or guns;
- that the land was not subject to a proclamation under the Native Land Purchase Act 1892 or the Land Purchase and Acquisiton Act 1893;[53]
- that the consideration had been paid;
- that the vendors retained sufficient land for their support;
- that the deed had been executed in accordance with certain formal requirements (as set out in section 53 (2) (D) of the 1894 Act); and,
- that each signature was witnessed by an independent witness not involved in the transaction.

The Court's inquiry into the above matters is recorded in the minute book:

> Papakitatahi – interest in 11 acres.
> Conveyance from Hawira Te Wahapu, Ngakapa Whanaunga, and Wiremu Te Aramoana to Joseph Clark. – Consideration £25.13.0. date of deed 26 March 1896. no apparent trust. deed duly executed.
>
> Ngakapa Whanaunga sworn.– We the vendors received the money £25.18.0. I saw Wiremu Te Aramoana get the money for his share and I got mine I have 100 acres in Te Ahuroa. and 67 acres in Tarakiwhati Wiremu Te Aramoana has an interest in the same blocks as I am in. I cant say what his interest is although they have been ascertained – he has, also an interest in other blocks – I am satisfied with the deed. except three acres which Wiremu Te Aramoana and I should have got were given to Hawira Te Wahapu. I got £6.5.0. So did Wiremu Te Aramoana.
>
> Subject to declaration under sec 5, [Native Land Laws Amendment] Act 1895 [concerning the size of the land holdings of the pakeha purchaser]. and no notice under land purchase Acts. Confirmation order will be granted to be issued in fourteen days.[54]

While the Court appears to have canvassed most of the matters outlined in section 53 of the 1894 Act, there is one striking omission. There is no indication from the above minutes that Judge Scannell inquired whether the proposed sale 'contravene[d] any restriction upon alienation'. This omission is extremely significant given that a restriction on the alienation of Papakitatahi was ordered by the Court in 1870. As discussed earlier, I have found no evidence that the restriction was removed prior to the Court's confirmation of the 1896 sale. It would seem that the Court, through lack of inquiry, remained unaware of this restriction on the alienation of Papakitatahi.

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[52] Declaration by Judge Scannell, 21 September 1896, R69-154, 150925, DTO, Akd

[53] The effect of such proclamations was to restore the Crown's pre-emptive right.

[54] Hauraki Native Land Court minute book 40, fol 33

Also absent from the above minutes is any explanation as to why Hawira Te Wahapu, having asked for the block to be made inalienable in 1870, felt the need to sell his share in Papakitatahi in 1896. I have found no evidence that would shed further light on this particular matter.

The testimony of Ngakapa Whanaunga raises a further question: why did Hawira Te Wahapu receive the 'lions share' of the consideration when, under the Court's original award, the seven owners were awarded equal shares in the block? Is this somehow linked to the three acres 'given', incorrectly it is asserted by Ngakapa, to Hawira? Unfortunately, no answers on this matter are forthcoming from the Court minutes as the Court did not seek testimony from the other two vendors.

Lastly, while the testimony of Ngakapa Whanaunga refers to the additional land holdings of Ngakapa and Wiremu Te Aramoana, the Court appears to have made no inquiry into whether Hawira Wahapu retained sufficient land elsewhere for his support.

In spite of the above, most notably the existence of a restriction on alienation, Judge Scannell was evidently satisfied that the alienation was not 'contrary to equity and good conscience' and subsequently confirmed the alienation as evidenced by his declaration on the deed itself.

The 1898 deed

In March 1898, Joseph Clark executed a further deed of conveyance relating to Papakitatahi.

Table Two: Signatories to the 1898 Deed

Original owner	Successor(s) who sold.	Non-selling successor(s).
Te Pere Whatu (aka Pere Torea)	Maui Takangatai, Ngawai Takangatai	Pererangi Takangatai
Utuku Hopa	Kahukore Ramariki Utuku, Tirahana Utuku, Meri Utuku, Aperahama Utuku	Mate Utuku, Arohirena Utuku, Rangiua Urawhare Utuku, Mihitea Utuku
Te Ura Whare (aka Te Ura Takangata)[55]	[Arapera] Apikera, Tirihana, Rena Utuku, Meri Utuku , Mihi Utuku , Panekena Utuku , Te Aperahama Utuku	Ngawai Te Pere, Mauwi Utuku, Kahukoro Utuku
Apikera	Mereana Waata, Raira Apikera, Arapera Apikera	

[55] Te Ura Whare's one share was not succeeded to equally: Hawira Wahapu and Arapera Apikera received one-quarter each; Ngawai Utuku and Mauiwi Utuku received one-eighth each; while the remainder received one-twenty eighth each. R69–153, 150924, DTO, Akd

This second deed involved the payment of a total consideration of £23:12:0. With this second deed, Joseph Clark acquired the rough equivalent of a $^{6}/_{7}$ interest in Papakitatahi.

Like its 1896 predecessor, this second deed was endorsed with a declaration by a licensed interpreter – this time it was E Tizard – that the deed had been signed in his presence and in accordance with the requirements of section 53 (2) (D) of the Native Land Court Act 1894. Similarly, Judge Scannell had endorsed upon the deed his declaration that he was satisfied that the alienation purporting to be effected by the deed had been executed in accordance with the requirements of the 1894 Act.[56]

Confirmation by the Native Land Court

The extent of Judge Scannell's inquiry into the 1898 purchase is recorded in the minute book:

> [Confirmation] No 273. Papakitatahi 11 acres
> Conveyance from Mereana Maata and others to Joseph Clark – 25 March 1895 – Consideration £23.12.0.
>
> Deed duly executed. and forms of declaration show that in each case. the vendors received the consideration and have other sufficient lands.[57]

Once again, there is no indication that the Court inquired into whether or not the proposed sale 'contravene[d] any restriction upon alienation'. This was presumably on the basis that this matter – along with the requirement that the Court be satisfied that the alienation of the block did not breach any trust or impinge upon any proclamation under the Native Land Purchase Act 1892 or the Land Purchase and Acquisition Act 1893 – had already been determined by Judge Scannell in 1896. If this was the Court's reasoning, then it was based on incorrect information. As has already been shown, Judge Scannell failed in 1896 to inquire into whether there were any restrictions on the title of Papakitatahi preventing alienation.

Nor did the Court, when inquiring into the 1898 sale, hear testimony from any of the vendors. Instead, the Court relied on each vendor signing a printed 'form of declaration'. This form presumably covered most of the other matters raised in section 53 of the Native Land Court Act 1894; namely, that the vendors had sufficient land elsewhere, that they had received the full consideration, and that the said consideration had not involved alcohol or guns. This left one matter to be determined – that the deed had been executed in accordance with the formal procedures set out in section 53 (2) (D) of the 1894 Act. On this relatively simple matter the Court could have inspected the deed itself or, alternatively, it could have accepted at face value the declaration of E Tizard which had been endorsed on the deed itself.

On the basis of this most cursory of examinations, Judge Scannell felt able to endorse the deed with his declaration that the proposed sale 'has been executed in all respects in accordance with

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[56] Manuscript copy of Deed of Conveyance, 25 March 1898, R69–156, 150927, DTO, Akd

[57] Hauraki Native Land Court minute book 51, fol 271

the [. . . 1894] Act'.[58]

Partition

In March 1915, nearly two decades after Joseph Clarke's purchase of a $^{6}/_{7}$ interest in Papakitatahi, an attempt was made to partition the block. By this time, Clark had sold his interest in the block to a Mr Chambers who, in turn, had sold his interest to a Mr Brownlee.

This first partition application was not, however, lodged by Mr Brownlee. Rather, it was lodged by Pererangi Maui (alias Pererangi Takangatai) – one of the non-sellers from the 1898 deed – and Wiremu Maui. This initial partition application was dismissed.[59] A second application by the same two applicants, lodged in October 1916, was, as the minute books record, more successful:

> Pererangi Maui.
> Prop[ose]d to cut out non sellers. Sale was effected many years ago.
> No objectors to prop[ose]d part[ition]
> Mr Miller announced that Mr Brownlee did not wish to be represented.
>
> Order to
> Pererangi Takangatai alias
> Pererangi Maui m. $^{19}/_{48}$
> Te [illegible] Aperahama f. $^{9}/_{112}$
> Eruini m. $^{9}/_{112}$
> Kahukore Utuku f. $^{1}/_{16}$
> Wiremu Maui m.19. $^{9}/_{56}$
> for an area of 1 ac. 1 rd. 00 ps to be called [Papakitatahi] A.[60]

The minutes further stated that Papakitatahi A was to be located in the north western corner of the block (see figure three), with the residue of the block to be called Papakitatahi B.

Appeal

Contrary to the assurances of Mr Miller, Mr Brownlee subsequently lodged an application under section 121 of the Native Land Act 1909 for the cancellation of the partition order issued by the Court. Mr Brownlee's application was heard in September 1917. The minutes of that hearing are significant for providing an insight into the circumstances that preceded the successful partition application.

According to Mr Hogben, Brownlee's lawyer, the partition application had been before the Court 'for about 3 years'. In that time, and before the successful application in December 1916, he had appeared before the Court on three separate occasions regarding the partition of Papakitatahi. On each occasion, Judge Holland had struck out the application. The first time because he considered

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[58] Manuscript copy of Deed of Conveyance, 25 March 1898, R69–156, 150927, DTO, Akd

[59] Partition order, BOF H462, WMLC

[60] Hauraki Native Land Court minute book 65, fols 184–5

it would cost the Maori owners too much to mark out the partition. The second and third times because he 'did not agree to deal with it' – suggesting instead 'that [the] natives should sell'.[61] It is not clear from Hogben's testimony on whose behalf these earlier applications were lodged. I have been unable to find any references in the Court minute books to these earlier applications.

After providing this background information, Hogben then explained the basis for Brownlee's present application for the cancellation of the Court's partition order. Hogben had been unable to attend the December 1916 sitting because he had been taken ill. His replacement, Mr Miller, 'knew nothing of the matter'. Unfortunately, at this crucial juncture in Hogben's testimony the minute book is intermittently illegible. Hogben appears to suggest, however, that the entire area of an orchard belonging to Mr Brownlee was in fact encompassed within the boundaries of Papakitatahi A. And, furthermore, that Brownlee 'knew nothing' of the partition until the period for appealing the partition order had expired.[62]

Kahukore Utuku, a seller in 1898 who had subsequently succeeded to a further interest in the block, then gave evidence to the Court. Kahukore stated that: 'before the partition they wanted rent for the orchard which was planted [by] Mr Clark'. To that end, they approached Mr Hogben, who directed them on to Mr Brownlee: 'but he wd [would] not pay rent'. Kahukore indicated that this approach had been made approximately two years before the first partition application was sent to the Court. Kahukore's version of events was disputed by Hogben who maintained that Kahukore had initially approached him 'with a view to sale not payment of rent'. On this conflicting note the hearing was then adjourned, with the mutual consent of all parties, until the next sitting of the Court.[63]

I have been unable to locate any evidence that the hearing was continued at a later date. The most probable explanation for this is that, under section 121 (2) of the Native Land Act 1909, the Court was only able to cancel a partition order – where that order gave effect to a partial alienation of a block – if the person whose interest was originally partitioned gave their consent. This section was probably intended to protect the interests of private purchasers who sought to partition out undivided interests in Maori owned land. In this instance, however, it served to protect the interests of the Maori owners of Papakitatahi A, without whose consent Brownlee's application was doomed to lapse. This appears to be what happened. In July 1920, Brownlee's application was formally dismissed by the Court.[64]

Conclusion

It is important that the immediate cause of the partition of Papakitatahi – the apparent disagreement over the payment of rent for the orchard – not distract attention from the more significant underlying cause of the partition. This was Joseph Clarke's purchase of a $^{6}/_{7}$ interest

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[61] Hauraki Native Land Court minute book 65, fol 362

[62] Hauraki Native Land Court minute book 65, fol 362

[63] Hauraki Native Land Court minute book 65, fols 362–3

[64] Schedule of Memorials, BOF H462, WMLC

in Papakitatahi between 1896 and 1898. The partition of Papakitatahi in December 1916 was the inevitable result of these much earlier transactions.

The adequacy of the Native Land Court's inquiry into these earlier transactions needs to be questioned. Most significantly, the Court failed, on both occasions, to inquire whether Papakitatahi was subject to any restrictions on alienation. Had it done so, the Court would have been alerted to the fact that the block had, in 1870, been made inalienable at the request of the Maori owners. As discussed earlier, I have not found any evidence that this restriction on alienation was removed prior to the Court's confirmation of both sales.

That there were no restrictions on alienation was one of several criteria upon which the Court was required to be satisfied before it could confirm any proposed alienation. The adequacy of the Court's inquiry into some of these other criteria is also open to question. In 1896, the Court failed to inquire whether one of the three owners, Hawira Te Wahapu, retained sufficient land elsewhere for his support. In 1898, the Court, rather than examining the vendors in person, was content to rely on each vendor signing a printed 'form of declaration' stating that they had sufficient land elsewhere, that they had received the full consideration, and that the consideration had not involved alcohol or guns.

Legal Road Access: 1916–1918

In December 1916, Papakitatahi, in common with surrounding land blocks, had no legal road access. Instead, access to the block was gained via one of two routes (see figure three).[65] The first was rather circuitous and involved travelling approximately 700 metres in a southerly direction to join up with a road that branched off the main Thames-Paeroa highway. The second involved fording the Kauaeranga River to the north in order to reach a road that passed through Parawai and then went directly on to Thames. It is was this second route, which offered a much shorter journey into Thames, that local settlers preferred.

Not long after Papakitatahi was partitioned, however, surrounding property owners began to experience difficulty in fording the Kauaeranga River. Responsibility for this difficulty was attributed to the activities of the Lands Department; specifically, the Chief Drainage Engineer:

> Mr W.T. Cox of Parawai, Thames, the owner of a section south of the Kauaeranga River advises that in consequence of shingle having been [re]moved by the Chief Drainage Engineer from the two crossings which the settlers have been using for the past 30 or 40 years, the crossings have become dangerous and it is difficult for him to gain access to his section.[66]

The Lands Department denied any responsibility for the change in the flow of the Kauaeranga River. Nonetheless, officials were willing to suggest two potential means of rectifying the lack

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[65] Based upon index map of Thames County, 1907, YBAZ, A491 (map 108), NAA

[66] Unknown [but most likely, the District Engineer] to Under Secretary, Public Works Department, 31 October 1918, PW 34/1507, W1, NAW

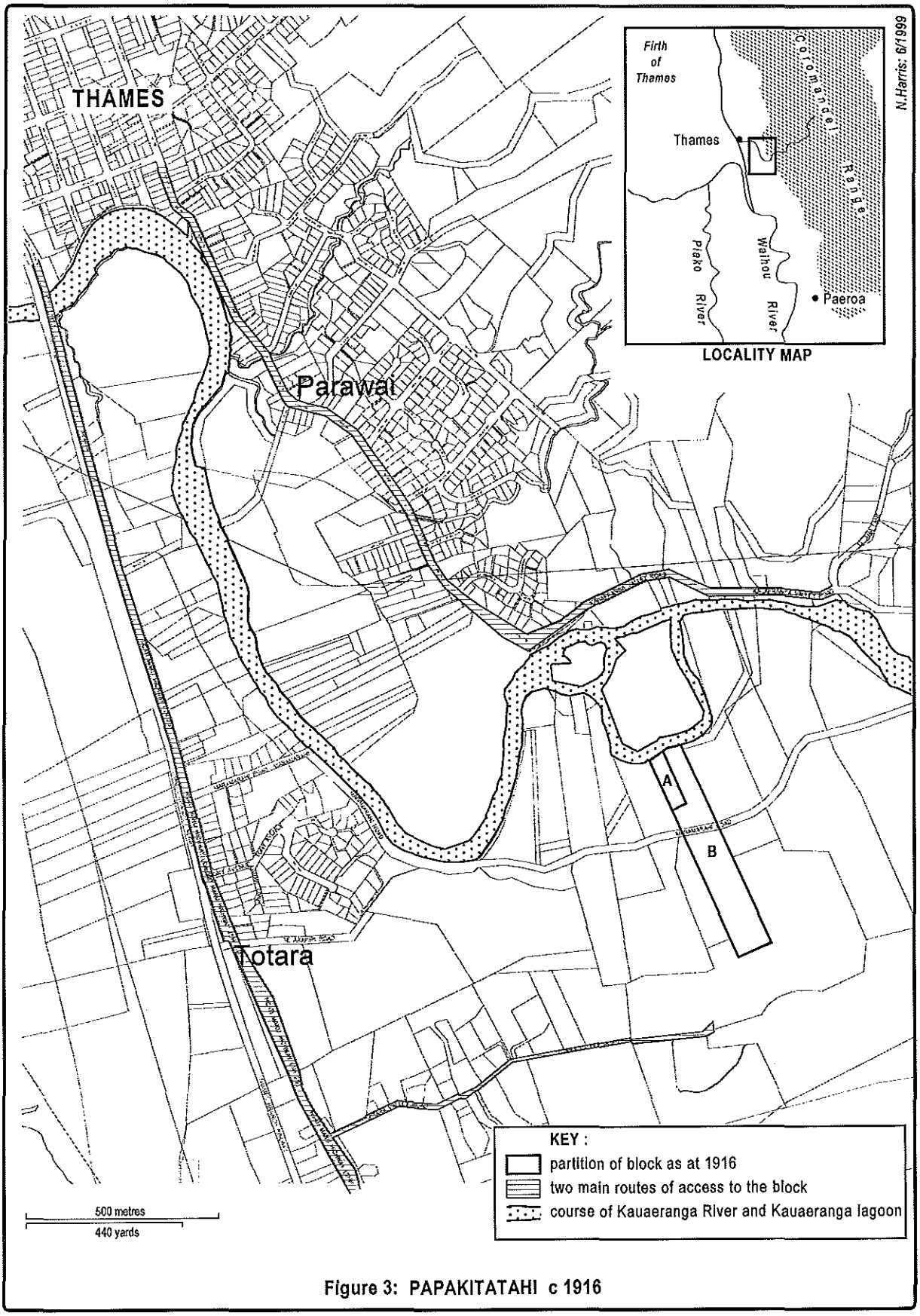

Figure 3: PAPAKITATAHI c 1916

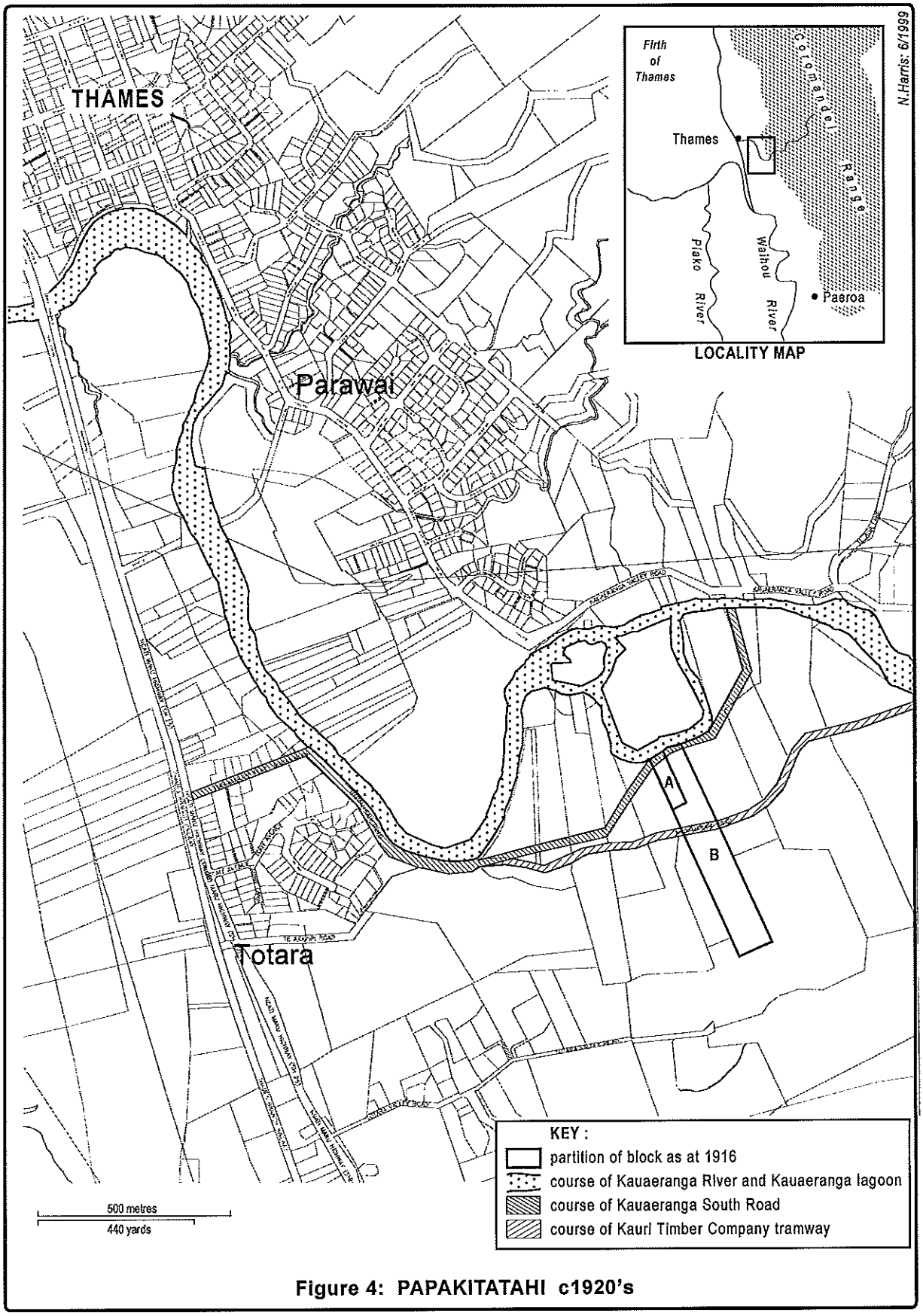

Figure 4: PAPAKITATAHI c1920's

of legal access to the blocks south of the Kauaeranga River.[67] These were:

- the construction of a road along the river frontage of the sections presently without legal road access. The road to join up with a bridge, that would have to be specially built, across the Kauaeranga River.

- the construction of a road through the middle of the sections presently without legal road access. The road to parallel the route of a private tramway already established by the Kauri Timber Company. The proposed road would then join up with the Thames-Paeroa highway in the west (see figure four).

The Kauri Timber Company's Tramway

The Kauri Timber Company tramway was a private tramway established in late 1914. It was built on land leased by the Company from property owners in the Kauaeranga Valley. When the tramway was first established, the majority interest in Papakitatahi was owned by S. Chalmers, who, for a consideration of £100, did:

> give and grant to the Company full and free right authority licence and liberty at all times . . . during the term of 10 years from the first day of March One Thousand Nine Hundred and Fourteen . . . to lay down and construct repair maintain continue and use . . . a strip of land twenty feet wide . . . for use as a railway or tramway in connection with the bushfelling or timber milling operations of the Company and for the purpose of conveying thereon any timber logs goods material or things whatsoever.[68]

The lease also contained a clause providing for the lease to be extended beyond the ten year term. All that was required for such an extension was the payment of £10, in advance, each year that the lease was to be extended for another year. Those Maori who still retained an interest in Papakitatahi played no part in the granting of this lease to the Kauri Timber Company.

From the perspective of departmental officials, constructing a road that ran parallel to the course of the Kauri Timber Company's tramway was the best means of remedying the lack of legal road access to properties south of the Kauaeranga River. Cost is likely to have been an important consideration in their arriving at this preference – unlike the northern route along the river frontage, the Kauri Timber Company option would not require the construction of a bridge.

Judging from its later actions, the Thames County Council probably also favoured constructing an access road through the middle of the affected bocks.[69] In contrast with departmental officials,

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[67] Under Secretary to District Engineer, 9 January 1919, PW 34/1507, W1, NAW; Unknown [but most likely, the District Engineer] to Under Secretary, Public Works Department, 31 October 1918, PW 34/1507, W1, NAW

[68] Manuscript copy of Lease, 22 October 1914, R69–156, 150926, DTO, Akd

[69] The Council's thoughts on the suitability of both routes have to be deduced from its subsequent actions. This inevitability involves a degree of conjecture. The reason for this is that only a very incomplete series of Thames County Council minute books (YBAZ, 1222) and inward and outward correspondence books (YBAZ, 1231 and

however, it is unlikely that the Council favoured constructing a completely new road parallel to the Kauri Timber Company's tramway. Instead, the Thames County Council seems to have preferred to wait for the Kauri Timber Company to relinquish its tramway lease, and then use the same strip of land for an access road. Unfortunately, the timber company's lease was not due to expire until March 1924, assuming there were no extensions. The Council probably considered that this was too long a wait for the affected settlers.

The Kauaeranga South Road

In March 1919, the Thames County Council wrote to the affected settlers with a proposal to construct a road that initially followed the tramway, before swinging in a north-easterly direction along the river frontage of the sections without legal road access (see figure four).[70] This proposal was quickly endorsed by most of the affected settlers.[71]

The Council then sought central government approval for, and, more importantly, funding of, the proposed road. In requesting funding for the road, the Council emphasised that, in addition to the provision of access to the settlers, the proposed road would provide access to the Kauaeranga quarry. This, in turn, would enable the Council to provide cheaper gravel for the upgrading of the Thames-Paeroa road – another project that the Council was lobbying central government to fund.[72] These arguments were ultimately successful. In January 1921, the government agreed to a maximum subsidy of £2,000 (£1 for £2) for the proposed Kauaeranga South Road.[73]

With funding assistance secured, the Thames County Council engaged James Adams, a licensed surveyor, to survey the proposed route of the Kauaeranga South Road (see figure four). In June 1921, Adams wrote to the Council about his survey of that portion of the Kauaeranga South Road that traversed the Papakitatahi block:

> the road as it passes through Papakitatahi Block and Te Poka No 2 Block has a portion of the [Road] Reserve in the present lagoon representing the former bed of the Kauaeranga River.
> . . .
> The position, as I understand it, is that the portion of Papakitatahi Block required for the purpose of a road was occupied by Basil C. Smith and used as an orchard; that an arrangement was made

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1233) has been transferred to National Archives, Auckland.

[70] K N Smith to TCC, 8 March 1919, inward letter B at meeting of 2 April 1919, YBAZ 1279/1, NAA; A M Crawford to TCC, 16 October 1919, inward letter G, meeting of 5 November 1919, YBAZ 1279/1, NAA

[71] A M Crawford to TCC, 12 March 1919, inward letter J at meeting of 2 April 1919, YBAZ 1279/1, NAA. There was some disagreement over the route of the portion of the road that joined the Thames-Paeroa road.

[72] See for example, Department of Lands and Survey to TCC, 1 August 1919, inward letter K, meeting of 6 August 1919, YBAZ 1279/1, NAA; County Chairman, TCC, to J Coates, Minister of Public Works, undated [but around November 1919], PW 34/1507, W1, NAW

[73] This subsidy was transferred from what the government had already agreed to contribute towards the upgrading of the Thames-Paeroa road. The implication being that it would reconsider its subsidies for the Thames-Paeroa road once construction of the Kauaeranga South Road was complete. Coates, Minister of Public Works, to TCC, 17 January 1921, PW 34/1507, W1, NAW

> by a representative of your Council with BC Smith by which he removed the fruit trees from a certain portion of his ground leaving it for a road reserve, sufficient in width for the anticipated traffic; that in the event of the width of road on the present high ground, eventually, not proving sufficient to cope with the traffic your council intended to reclaim the old bed of the river to obtain greater width; that the position of the Road Reserve through Te Poka No 2 Block, in order to avoid excessive bends in the road, is dependent of the position of the Road Reserve through Papakitatahi Block, and that the same condition as to reclamation applies.[74]

It is clear from the above letter that Adams was unaware that Papakitatahi block had been partitioned and that the road actually traversed both partitions. This is confirmed by reference to his eventual survey plan (SO 21672) which shows the road traversing an unpartitioned Papakitatahi. This was despite the fact that, at the original partition hearing back in 1916, the Court had amended the original survey plan for Papakitatahi (ML 1893) to reflect the partition into A and B (ML 1893A). This amended plan is not listed amongst Adams's reference plans for his survey. ML 1893, however, is. In summary, although Papakitatahi was partitioned five years earlier, Adams was not provided with up to date survey information when he was commissioned to survey the proposed route of the Kauaeranga South Road. As will be seen below, this error was not discovered until 1936.

In the meantime, on 7 July 1921, the Thames County Council published in the *New Zealand Gazette* its intention to take certain lands for the Kauaeranga South Road. This notice was based upon Adams' incorrect survey plan and thus included '0.1.13 Papakitatahi' when it should have read: '0.0.23 Papakitatahi A and 0.0.30 Papakitatahi B'.[75] The land for the road was formally acquired by a notice in the *New Zealand Gazette* four months later.[76]

Changed Circumstances

In August 1923, 22 months after the Thames County Council had first acquired the land required for the Kauaeranga South Road, the District Engineer decided that the Public Works Department should obtain the metal required for the upgrading of the Thames-Paeroa road from a different quarry – this one at Matatoki: 'This Quarry would be more central, and would obviate the need of opening up the Kauaeranga South Quarry.' As a result, the government reduced its maximum subsidy for the construction of the Kauaeranga South Road from £2,000 to £500.[77]

Judging from the later actions of the Thames County Council, it is clear that the reduction in the central government subsidy for the construction of the Kauaeranga South Road caused the Council to reconsider its earlier decision to construct the road. Such reconsideration seems especially likely given that, as highlighted by Adams in June 1921, any increase in the amount of traffic using the road might necessitate a costly reclamation to widen the road where it traversed Papakitatahi and Te Poka blocks.

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[74] James Adams, Licensed Surveyor, to County Clerk, TCC, 9 June 1921, YBAZ 1279/2, NAA

[75] *New Zealand Gazette*, 14 July 1921, p 1927

[76] *New Zealand Gazette*, 24 November 1921, p 2805

[77] District Engineer to Minister of Public Works, 20 August 1923, PW 34/1507, W1, NAW

The changed funding circumstances meant that, by comparison, utilisation of the Kauri Timber Company's tramway was now a much more attractive alternative. After all, once the tram rails had been removed, the tramway offered a ready made route through the middle of the blocks. Construction of a road along this route was dependent, of course, on the Kauri Timber Company relinquishing its lease. When the government announced its reduction in the subsidy for the Kauaeranga South Road in August 1923, the lease only had seven months left to run.

To briefly summarise then, subsequent actions of the Thames County Council strongly suggest that the reduction in the central government subsidy for the Kauaeranga South Road led the council to reconsider its earlier decision to build a road along the river frontage of the affected blocks. The result of this reconsideration appears to have been a decision to provide legal access by building a road along the route of the Kauri Timber Company's tramway. The Kauaeranga South Road remained a 'paper road' in the meantime.

A Six Year Delay

The Thames County Council's plan for providing legal access to Papakitatahi and surrounding blocks was dependent upon the Kauri Timber Company deciding not to invoke the lease's annual extension clause at the end of the lease's ten year term. In fact, the Company did invoke this clause in March 1924, 1925, 1926, and 1927. This prompted the Council, in September 1927, to approach the Kauri Timber Company to inquire when it was intending to relinquish the lease. In response, the Company promised that it would remove all timber and tram lines from the leased strip by March 1928.[78]

The Kauri Timber Company subsequently failed to keep its promise – renewing its lease for another year in March 1928 and again in March 1929. In April 1929, the Thames County Council sought Ministerial assistance as negotiations with the Kauri Timber Company ground to a halt:

> A hitch has apparently occurred in the negotiations between the Thames County Council and the Kauri Timber Company. The latter Company has a registered right over the land which will ultimately be used for this road and although milling operations have ceased, it appears that the Company will not relinquish its rights either by consent to the taking of the lands required for the road or by cancellation of the registered instrument under which the rights are obtained.[79]

The Kauri Timber Company subsequently chose not to renew the lease for a further year. It is not clear what role, if any, Ministerial influence played in securing this outcome.

Maramarahi Road

In February 1932, the former route of the Kauri Timber Company's tramway was taken for roading purposes. Today, this road is known as the Maramarahi road. The same *Gazette* notice

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[78] District Engineer to Minister of Public Works, Head Office, 20 September 1927, PW 34/1507, W1, NAW

[79] Minister of Public Works to Under Secretary of Public Works, 4 April 1929, PW 34/1507, W1, NAW; District Engineer to Permanent Head, Public Works, 2 May 1929, PW 34/1507, W1, NAW

that created the Maramarahi road closed the Kauaeranga South Road.[80]

What Does it Matter?

The decision not to proceed with the Kauaeranga South Road, in favour of a road along the former route of the Kauri Timber Company's tramway, had two immediate impacts upon Papakitatahi A.

The first, and most significant in the long-term, was that it deprived Papakitatahi A of the legal road access that had been granted to the block – albeit unwittingly – in 1921. As can be seen in figure four, if the Maori owners of Papakitatahi A wish to reach their block from Maramarahi road, then they have to arrange to cross the privately owned Papakitatahi B. This situation remains today and is less than ideal. One consequence of the lack of legal road access is that it makes it more difficult to gain consent to build a dwelling on Papakitatahi A.

The second impact of the decision not to proceed with the Kauaeranga South Road was that, consistent with the incorrect survey plan produced by Adams, the admittedly small area of stopped road on both Papakitatahi A and B was revested in Papakitatahi B. This error, and the underlying problem of the incorrect survey, was not discovered until 1935:

> The area of 23 perches, together with the adjoining area of 30 perches, was vested in Basil Conran Smith, of Thames, Orchardist, by Governor General's warrant, in term of section 12 of the Land Act, 1924.
>
> The land was taken on the assumption that it belonged to Smith, whereas portion of it was native land, namely Papakitatahi A Block. The Chief Surveyor informs me that it is intended to amend the Governor-General's warrant granting the area of 1 rood 13 perches to Mr B. C. Smith so as to reduce the area granted to 30 perches. The area of 23 perches should therefore be vested in native owners or their successors. This will have the effect of correcting the titles, and will enable the Lands Department, as mortgagee in possession of Smiths titles, to complete its titles and to carry out a contract of sale with one Brokenshire.[81]

In order to 'correct the titles', the Chief Surveyor applied to the Maori Land Court to have the 23 perches of stopped road mistakenly vested in Papakitatahi B revested in Papakitatahi A. Appearing in the Maori Land Court, Crown counsel, after briefly stating that the land for the road had been acquired in 1921 and stopped in 1932, concluded with the statement that: 'A more suitable road was substituted'. Queried by the Court as to why this more suitable road 'does not appear to touch this land', Crown counsel replied that the 'partn was effected long before there was any road'. This led the Court to conclude: 'Well as the road had been stopped already I can see nothing to do except grant the applicn. The owners will be no worse off at all events. Vesting order or amendment of title as may be found more expedient'.[82]

For some reason, the same application then came before the Court again several months later.

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[80] *New Zealand Gazette*, 9 February 1932, p 316

[81] Assistant Under Secretary of Public Works to Registrar, WMLC, 9 January 1936, BOF H462, WMLC

[82] Hauraki Native Land Court minute book 70, fol 246

Concurring with Crown Counsel's statement that 'the Ct is familiar with this matter', the Court reaffirmed its previous order.[83] The 23 perches of stopped road were revested in the correct owners, the Maori owners of Papakitatahi A, on 12 August 1937.[84]

Conclusion

Papakitatahi had no legal road access at the time of partition. This situation would have been rectified by the proposed Kauaeranga South Road as surveyed by James Adams in 1921. Significantly, for reasons that cannot be determined so many years after the fact, Adams was unaware that Papakitatahi had been partitioned five years earlier. This meant that the provision of legal access to Papakitatahi A was not considered by the Thames County Council when, in late 1923, it decided to abandon the construction of the Kauaeranga South Road in favour of a more southerly route.

The mistake in Adams' survey was not detected until 1935. Upon detection, the Maori Land Court restored to Papakitatahi A the small area of closed road wrongly vested in the adjoining Papakitatahi B. With respect to the issue of legal access, however, the Court concluded that there was 'nothing [for it] to do'. As a result, the owners of Papakitatahi A have, up until the present day, remained dependent upon the good-will of the owner of Papakitatahi B for access to their land.

[83] Hauraki Native Land Court minute book 71/9

[84] BOF H462, WMLC

CHAPTER FOUR: HORAHIA OPOU 5A

Introduction

Horahia Opou 5A, an urupa, is located approximately one and a half miles north of the township of Ngatea on the Hauraki plains (see figure five). According to evidence given before the Native Land Court in 1897, the parent block – Horahia Opou – was 'part swamp and part Kahikatea forest, and though a great deal of it has been under cultivation, there is no permanent settlement on the block at the present time.'[85] An 1897 survey plan shows the area that would become Horahia Opou 5A as 'heavy raupo swamp'.[86]

This chapter focuses on two events:

- the Waikato–Maniapoto Maori Land Board's confirmation, in October 1916, of the alienation of an undivided interest in Horahia Opou 5A. This interest was equivalent to a $^{7}/_{18}$ share in the ten acre block;
- the compulsory acquisition, in 1965, of the river frontage of Horahia Opou 5A as a result of the Piako River Drainage Scheme. At 4 acres 2 roods and 18 perches, this represented nearly half the total area of the ten acre block.

Title Investigation

The Native Land Court investigated the title to the Horahia Opou block in 1897. As summarised by David Alexander:

> The hearing . . . was a lengthy affair, and became entwined with the investigation of title to the Puhangateuru block on the opposite bank of the Piako River. Both Ngati Hako and Ngati Maru put in strong claims. Ngati Hako's claim was made . . . on the grounds of ancestry and occupation. Ngati Maru claims were variously made on account of conquest, of gift, and of ancestry from the ancestor Tumoana.[87]

One of the Ngati Maru claimants was Hori Ngakapa Whanaunga. Hori Ngakapa claimed that his ancestor, Tumoana, had been gifted part of the block by Korohura (vanquisher of the original inhabitants of this part of the Piako – Te Uriopou, Waitaha, and Ngamarama).[88] This gifting was in recognition of the assistance rendered by descendants of Marutuahu, including Tumoana, in avenging the murder, by Te Uriopou, of two of Korohura's brothers.[89] It was Hori Ngakapa's testimony that, upon receiving this gift:

> Tumoana marked out his own piece [the] boundary begins at Te Awatupapaku then to Te

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[85] Horahia Opou and Puhangateuru Judgement, Hauraki Native Land Court minute book 46, fol 217

[86] ML 6501, reproduced in Alexander, *The Hauraki Tribal Lands: Supporting Papers*, Wellington, 1997 (Wai 686, doc A10 (a)), doc N.216

[87] Alexander, *The Hauraki Tribal Lands*, Part 4, p 60

[88] Hauraki Native Land Court minute book 46, fol 19

[89] Horahia Opou and Puhangateuru Judgement, Hauraki Native Land Court minute book 46, fol 213

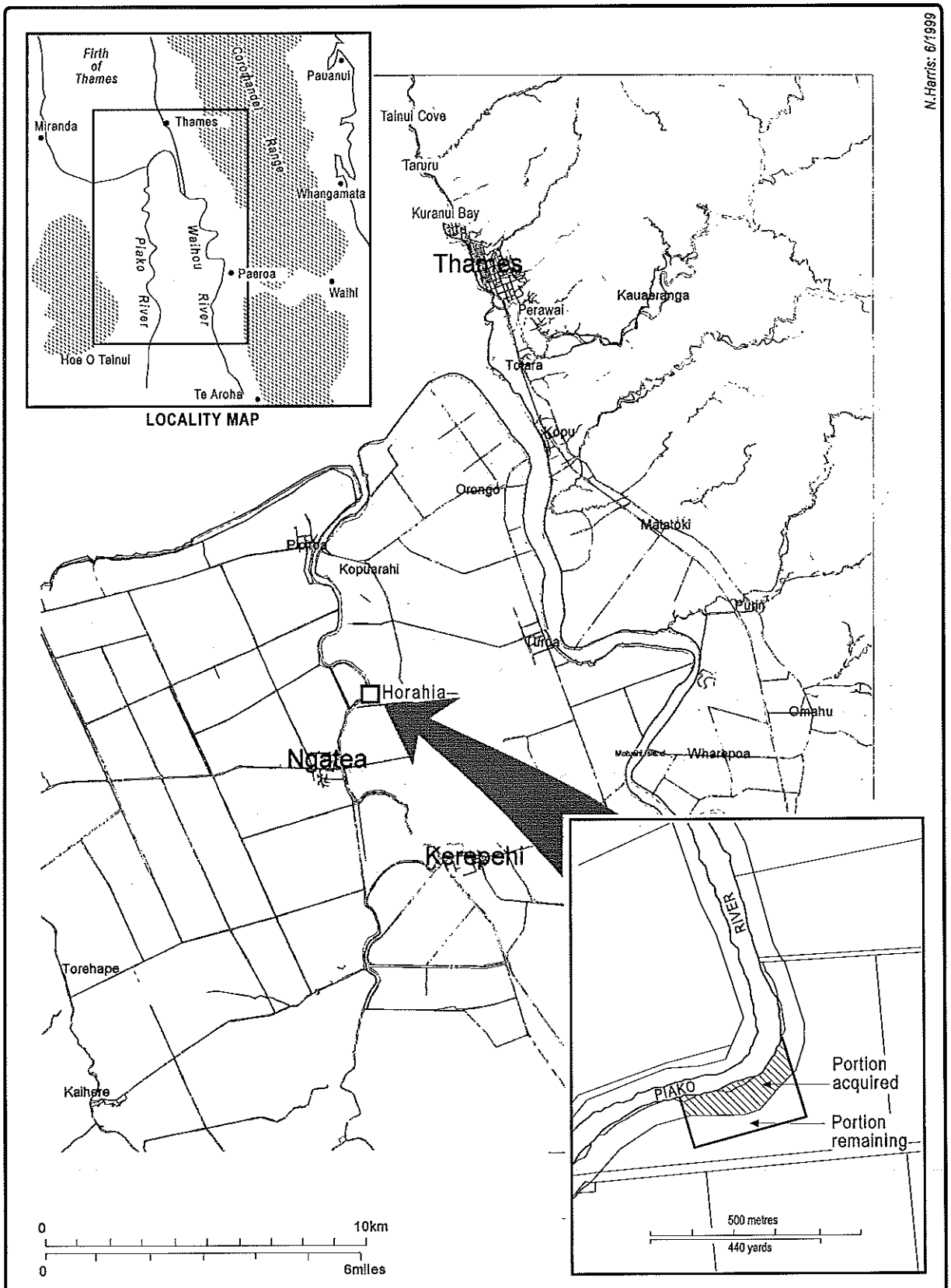

Figure 5: LOCATION OF HORAHIA OPOU 5A

> Mangapu (where Tumoana is buried) then to Hui Kiao, then Eastwd to Kaka near Whaka[??], then Southwd to Powhiriwhiri, then Westerly to Te Awatupapaku. Tumoana lived at Opou he took Kuriuauai [??] daughter for [his] wife, his children were all born at Opou[90]

The locations of Te Awatupapaku and Te Mangapu were recorded on the survey plan produced before the Court (see figure six). It is worth noting that there are actually two Mangapu's recorded on this plan. Both are located on the block's western boundary. As can be seen from figure seven, the northernmost Te Mangapu was subsequently included in Horahia Opou 5 – the portion awarded to Hori Ngakapa and others. This suggests that it was the northernmost Te Mangapu that Hori Ngakapa was referring to in his testimony quoted above.

As summarised by David Alexander, the Court eventually delivered a 13 page judgement in which it 'concluded that the people entitled to be in the title to Horahia Opou were the original inhabitants (known as Te Horoawatea), many of whom had become mixed into but were still distinguishable from Ngati Hako, and their conquerors Ngati Maru. Horoawatea then came under the mana of Ngati Maru'.[91] With this decision, 'the chief question' left for the Court to decide was 'how to share the land fairly between Ngati Maru and Te Horoawatea'. On this matter the Court, in its judgement, stated 'we will have no difficulty showing that they (Ngati Maru) are entitled to a substantial share'.[92] The subsequent Court award is summarised in table three below.[93]

Table Three: Court Award Following Horahia Opou Title Investigation

Partition	Party	Award
Horahia Opou 1	Children of Wiropi Taipari	300.0.0
Horahia Opou 2	Tira Horomona and party	650.0.0
Horahia Opou 3	Hori More and others	745.0.0
Horahia Opou 4	Te Ripikoi 'and the rest of Te Horoawatea'	2100.3.0
Horahia Opou 5	Hori Ngakapa Whanaunga	450.0.0
	Total	4245.0.0

In making the above award, the Court delayed making formal orders and expressed its hope that the 'parties will be good enough to send in their lists of names with the least possible delay'. The Court also indicated that in determining where the above awards should be located on the ground

[90] Hauraki Native Land Court minute book 46, fol 20

[91] Alexander, *The Hauraki Tribal Lands*, Part 4, p 61

[92] Horahia Opou and Puhangateuru Judgement, Hauraki Native Land Court minute book 46, fol 215

[93] Horahia Opou and Puhangateuru Judgement, Hauraki Native Land Court minute book 46, fol 218

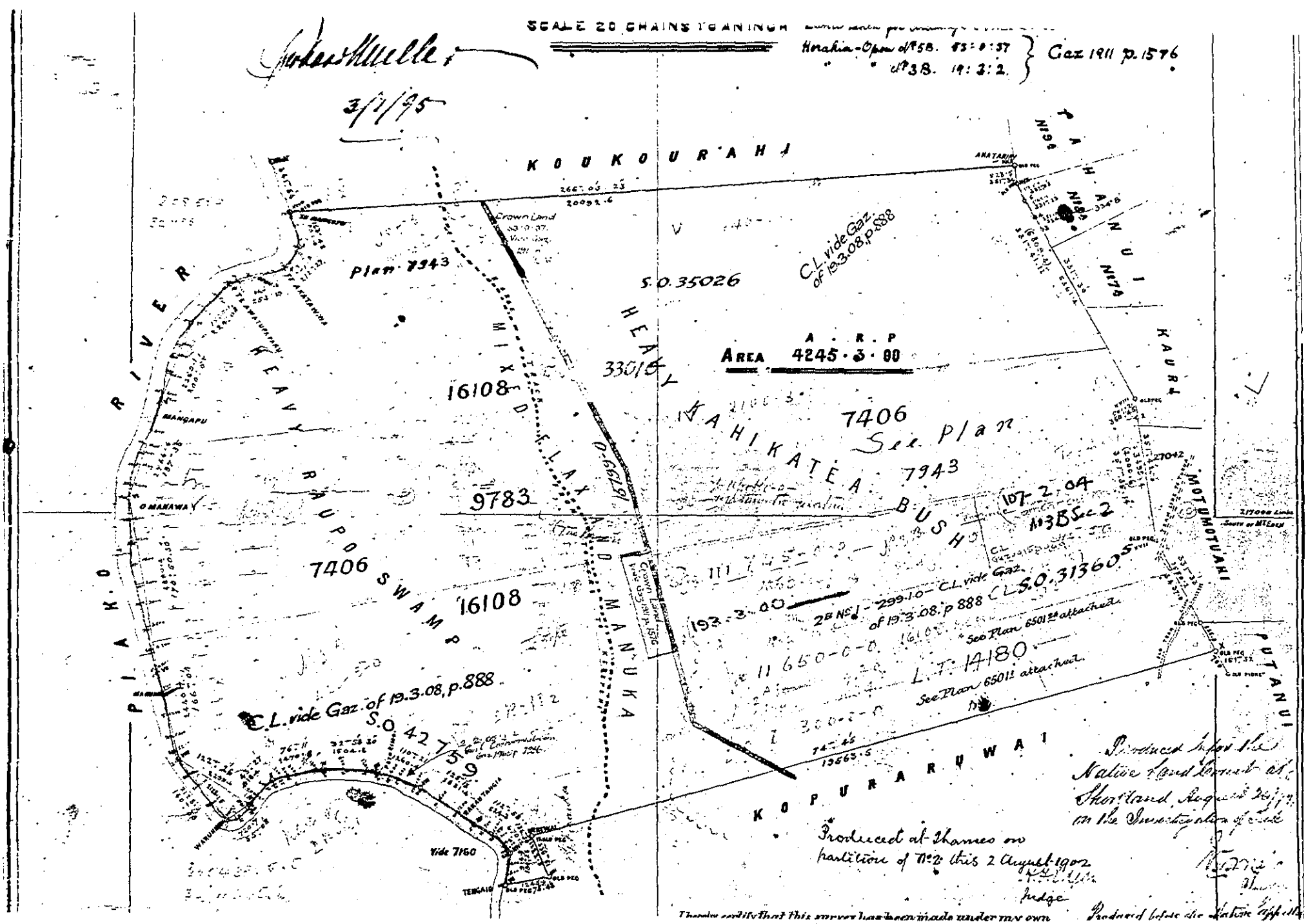

Figure 6: Location of Te Mangapu and Te Awatupapaku (as marked on ML 6501)

it had been heavily influenced by the block's topography:

> In dividing these blocks among the parties we will as far as possible adopt straight lines from the river to the back, so as to give each party a fair share of the different qualities of the land. This method may in some cases interfere with the views of some of the parties who fancy particular spots, but it will not interfere with any permanent "Kainga."[94]

The resultant pattern of partition is demonstrated in figure seven.

Creation of Horahia Opou 5A

As can be seen from table three above, the original Court award did not provide for Horahia Opou 5A. This occurred four days later, when Hori Ngakapa Whanaunga submitted his list of names for Horahia Opou 5:

> Horahia Opou No 5.
> Hori Ngakapa List. Read. Passed. Ten acres at Opou to be cut off as a tapu and the three names put in viz
> Hori Ngakapa
> Hawira Te Wahapu
> Wiremu Taipua. To be inalienable. No 5 A.[95]

The Court subsequently made an order that Horahia Opou 5A – a ten acre 'burial place' that was to be 'absolutely inalienable' – was to be held in equal shares by Hori Ngakapa Whanaunga, Hawira Te Wahapu, and Wiremu Taipua. There is nothing in the minute books to indicate that the Native Land Court intended the three grantees to be trustees of Horahia Opou 5A.[96]

Interestingly, when the Court made its order creating Horahia Opou 5A it did not decrease the acreage for Horahia Opou 5, or for any of the other partitions of Horahia Opou. This 'oversight' was not picked up until 1907, when the Crown applied to the Court for the definition of its interest in Horahia Opou 5 (the block was one of several on the eastern side of the Piako River 'which were targeted for purchase by the Crown in 1906 and 1907 under the provisions of the Maori Land Settlement Act 1905.')[97] In calculating the area to be awarded to the Crown and to the 'non–sellers', the Court began on the basis that the true area of Horahia Opou 5 was 440 acres – rather than the 450 acres indicated in the Court's order of 1897.[98]

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[94] Horahia Opou and Puhangateuru Judgement, Hauraki Native Land Court minute book 46, fol 218

[95] Hauraki Native Land Court minute book 46, fol 224

[96] Hauraki Native Land Court minute book 46, fols 233, 248–250, reproduced in Alexander, *The Hauraki Tribal Lands: Supporting Papers*, J53.26 and J53.32–34

[97] Alexander, *The Hauraki Tribal Lands*, Part 4, p 63

[98] Hauraki Native Land Court minute book 57, fol 351, reproduced in Alexander, *The Hauraki Tribal Lands: Supporting Papers*, J64.20

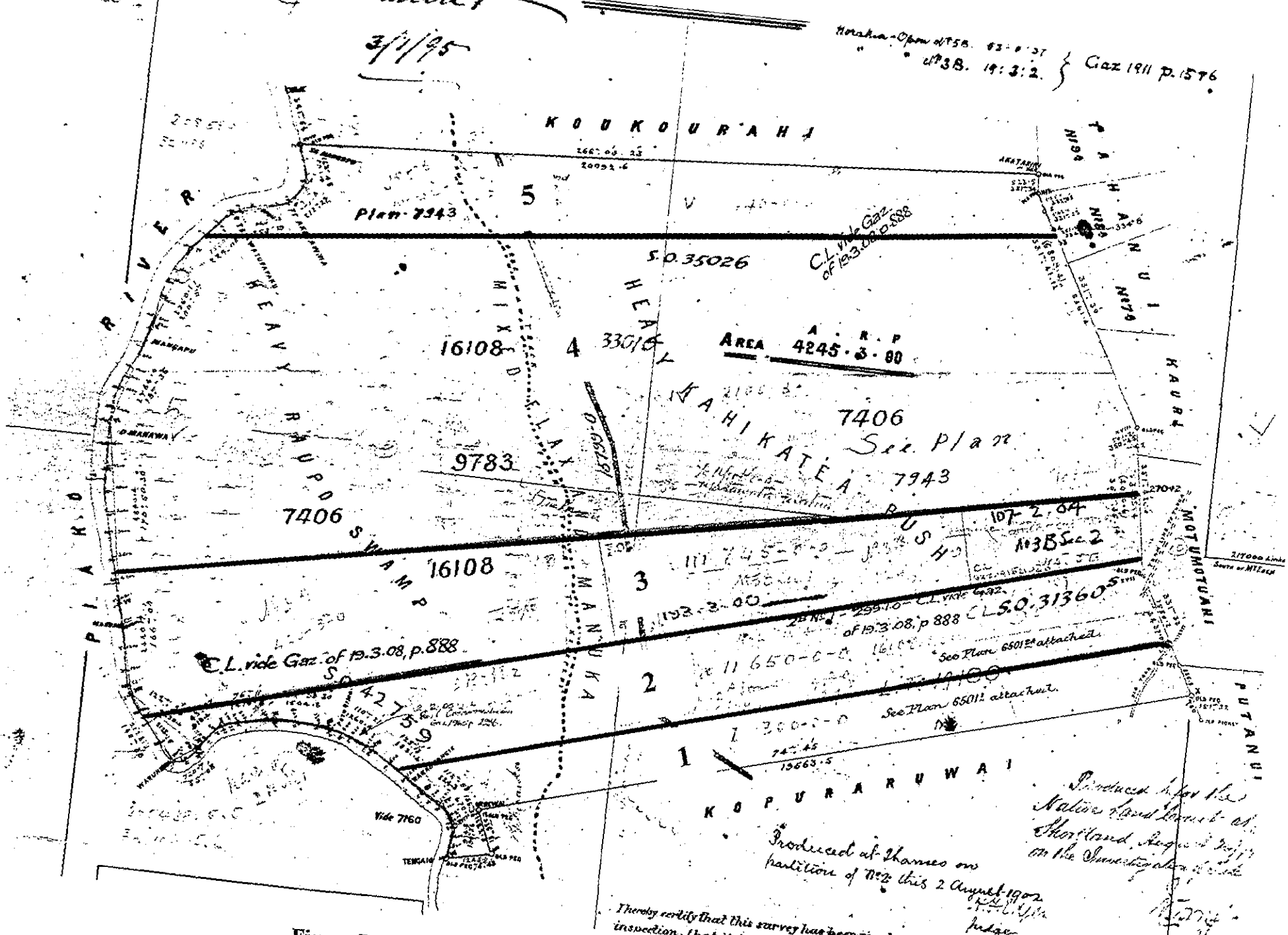

Figure 7: Horahia Opou partitions (prior to the creation of 5A)

The location of Horahia Opou 5A within Horahia Opou 5 is shown in figure eight.[99] It is worth noting that the northern boundary of the block begins at Te Awatupapaku and ends at Te Akatawhia. As such, the block does not appear to include Te Mangapu – the place where, according to Hori Ngakapa Whanaunga's testimony, Tumoana was buried.

To summarise then, it was the testimony of Hori Ngakapa Whanaunga that his ancestor, Tumoana, was buried on Horahia Opou. Despite this, the original award of the Court in 1897 did not include provision for an urupa. Hori Ngakapa Whanaunga subsequently requested, when handing in his 'list of names' for Horahia Opou 5, that an urupa be established. This request was acceded to by the Court and a ten acre 'burial place' was created out of the total acreage of Horahia Opou 5. The Court vested the block in three 'owners' and made the block 'absolutely inalienable'. On the basis of the available survey evidence, however, it would appear that Horahia Opou 5A does not include Te Mangapu – the place where, according to Hori Ngakapa Whanaunga's testimony, Tumoana was buried.

Successions

As discussed above, the Native Land Court vested Horahia Opou 5A in the three individuals whose names were supplied by Hori Ngakapa Whanaunga in 1897. Between 1905 and 1907, the interests of two of the three original 'owners' were succeeded to as shown in table four below:

Table Four: Horahia Opou 5A Successions, 1897–1907

Original Owner	Successors	Date of Court Order
Hori Ngakapa Whanaunga	Te Mataiti te Aramoana, Wiremu te Aramoana, Te Aurere te Aramoana, Piwa te Aramoana .	15 April 1905.[100]
Wiremu Taipua	Hera Taipua, Mata Taipua, Wiremu Ututangata Taipua.	7 November 1907.[101]

Alienation of an Undivided Interest

The purchase deed

In May and August 1915, John Kneebone, a Pakeha farmer, purchased the interests of two of the three successors to Wiremu Taipua (namely, Mata Taipua and Wiremu Taipua) and two of the

[99] The location of the block has been determined using ML 6501, ML 6501 (2) and the large topographical map of the Hauraki Plains used during the Wai 100 hearings (Wai 686, G6).

[100] Z12045 on CT 271/291,HLR

[101] Z12044 on CT 271/291, HLR

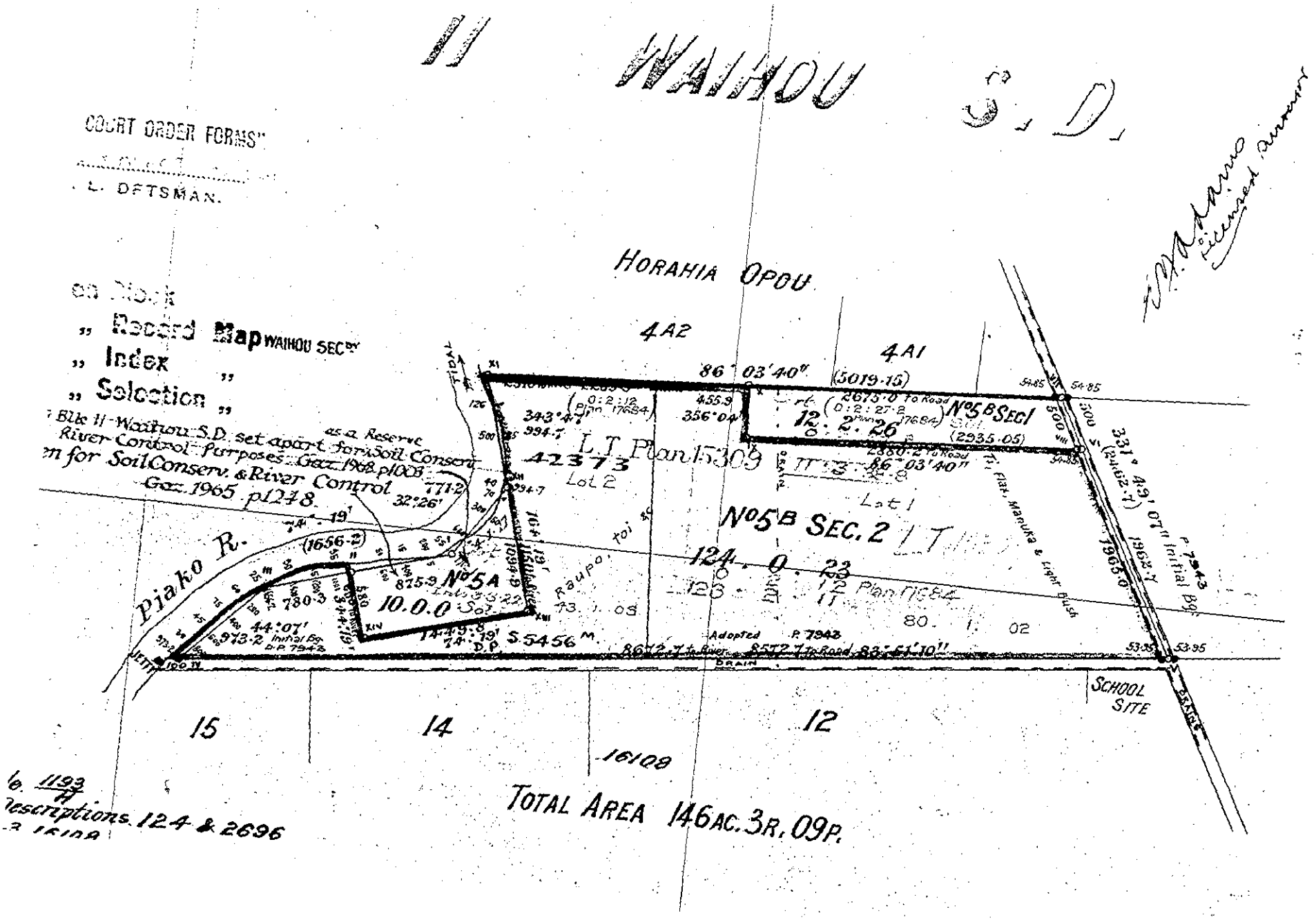

Figure 8: Location of Horahia Opou 5A within Horahia Opou 5

four successors to Hori Ngakapa Whanaunga (namely,Te Mataiti te Aramoana and Wiremu te Aramoana). Collectively, this represented 1.167 out of the total 3 shares; or, to express it another way, a $^{7}/_{18}$ interest in the block.

In return for the alienation of this $^{7}/_{18}$ interest, the purchase deed provided for a total consideration of £77:15:8. This equated to slightly less than £20 per acre. The consideration was divided amongst the four sellers according to the size of their respective shares.[102]

The purchase deed was witnessed by a solicitor who attested that, prior to the vendors signing the deed, the deed had been endorsed with a plan of the land to be alienated and a statement in the Maori language – certified by a licensed translator – accurately representing the effect of the deed.[103]

Maori Land Boards and the Native Land Act 1909

Under the Native Land Act 1909, however, the purchase had to be 'confirmed' by the local Maori Land Board before it was considered to have legal 'force or effect'.[104] Such confirmation could only be given if the Board was satisfied that certain criteria had been met. These criteria were laid out in section 220 (1) of the 1909 Act:

> (a.) That the instrument of alienation has been duly executed in the manner required by this Part of the Act:
> (b.) That the alienation is not contrary to equity or good faith, or to the interests of the Natives alienating:
> (c.) That no native will by reason of the alienation become landless within the meaning of this Act:
> (d.) That the consideration (if any) for the alienation is adequate:
> .....
> (g.) That the alienation is not in breach of any trust to which the land is subject:
> (h.) That the alienation is not otherwise prohibited by law.[105]

Under the 1909 Act, confirmation by the local Land Board replaced the wide range of restrictions upon alienation that had previously applied to Maori land. These former restrictions were invalidated by section 207 of the 1909 Act:

> All prohibitions or restrictions on the alienation of land by a Native, or on the alienation of Native Land, which before the commencement of this Act have been imposed by any Crown grant, certificate of title, order of the Native Land Court, or other instrument of title, or by any Act, are

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[102] T98915 on CT 271/291, HLR

[103] T98915 on CT 271/291, HLR

[104] s 217 Native Land Act 1909, cited in Donald Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), December 1996, p 83

[105] s 220 Native Land Act 1909

hereby removed, and shall, with the commencement of this Act, be of no force or effect.[106]

Several authors have questioned the adequacy of the investigations undertaken by the various Maori Land Boards in fulfilment of their obligations under the 1909 Act:[107]

> Dr [Donald] Loveridge doubts that the checks required before the confirmation by land [boards] . . . . could have been adequate in view of the sheer number of transactions passing through them . . . [John] Hutton, who studied the Waikato-Maniapoto board in some depth, considers that the 1909 Act created a huge work load of work for the boards which were given few additional resources . . . With a steady schedule of meetings, and upwards of thirty applications at each meeting, 'it is difficult to see how the board could have properly gauged whether or not the sale was "contrary to equity or good faith or to the interests of Natives alienating"'.[108]

Confirmation

On 11 October 1916, the Waikato–Maniapoto Maori Land Board confirmed the alienation of a $^{7}/_{18}$ interest in Horahia Opou 5A to John Kneebone. Two points arise from this confirmation.

Firstly, and most significantly, there is no indication in the relevant alienation file that the Maori Land Board considered, in any way, the fact that Horahia Opou 5A was an urupa and had previously been 'absolutely inalienable'.[109] The likely reasons for this are discussed in the following section.

A second issue arises from the confirmation certificate itself:

> Whereas the said Board after due inquiry is satisfied that the alienation purporting to be effected by the within deed has been effected in all respects in accordance with the law in force at the time of the execution thereof and as to all matters upon which the said Board is by law required to be satisfied the said Board hereby confirms the alienation (so far as it affects the shares of those persons whose names are written in the schedule hereto) purporting to be effected by the within deed *the consideration having been increased to £200 for the whole block* [sic] in terms of Section 91 of the Native Land Amendment Act 1913 [emphasis added].[110]

The use of the term 'the whole block' in the above certificate is misleading. The Board was only confirming the alienation of a $^{7}/_{18}$ interest in the block to Kneebone. As such, the adjustment in

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[106] s 207 (1) Native Land Act 1909

[107] John Hutton, ''A ready and quick method': the alienation of Maori Land by sales to the Crown and private individuals, 1908–30', (Report for the Crown Forestry Rental Trust in negotiation with the Waitangi Tribunal Rangahaua Whanui Series Wellington, 1996); Loveridge, *Maori Land Councils*; Bennion, *The Maori Land Court and Land Boards*; Rachael Willan, 'Maori land sales, 1900–1930', (Report for the Crown Forestry Rental Trust in negotiation with the Waitangi Tribunal Rangahaua Whanui Series Wellington, 1996).

[108] Ward, p 392. Ward is quoting from Hutton, p 23.

[109] Horahia Opou 5A alienation file, BCAC A110/779/box 100, NA, Akd. I am grateful to the research assistance of Bassett Kay Research on this matter.

[110] T98915 on CT 271/291, HLR

the purchase price ordered by the Board represented a substantial increase. The purchase price set by the Board (£51 per acre) was more than two and a half times the price per acre originally negotiated by Kneebone. Exactly what motivated the Board to order this increase is unclear. The nature of this uncertainty is discussed below.

Discussion of the Issues

That the block was an urupa

It is perhaps not all that surprising that the Maori Land Board did not consider, in any way, the fact that Horahia Opou 5A was an urupa before it confirmed the alienation of a $^{7}/_{18}$ interest in the block to John Kneebone. The matters that the Board was *required* to consider before confirming any alienation were set out in section 220 of the Native Land Act 1909. These matters did not specifically include whether or not the block concerned was an urupa.

Even so, it might be argued that the fact that Horahia Opou 5A was an urupa was relevant to section 220 (1) (B) of the 1909 Act: 'That the alienation is not contrary to equity or good faith, or to the interests of the Natives alienating'. Such an argument, while not without merit, ignores two significant facts about the operation of the Maori Land Boards under the Native Land Act 1909.

The first of these has already been mentioned above but it bears repeating:

> the 1909 Act created a huge work load of work for the boards which were given few additional resources . . . With a steady schedule of meetings, and upwards of thirty applications at each meeting, 'it is difficult to see how the board could have properly gauged whether or not the sale was "contrary to equity or good faith or to the interests of Natives alienating"'.[111]

In other words, it is unlikely, given the limited time and resources available to the Board, that the Board went beyond those matters explicitly mentioned in section 220 of the 1909 Act when considering if a proposed sale would be contrary to 'equity and good faith'.

Secondly, it is likely that the Land Board, when considering if a proposed sale would be contrary 'to the interests of the Natives alienating', perceived those 'interests' largely in economic terms. This can been seen most clearly from section 220 (1) (C) of the 1909 Act which provided that no proposed sale could be confirmed if it would render the seller(s) 'landless'.[112] This was defined under the Act to mean when 'the total beneficial interests' of an individual owner were 'insufficient for his adequate maintenance'.[113] Of course, as a means of economic support, Horahia Opou 5A was not important to its Maori owners. The significance of the block to its owners derived from the fact that the block was an urupa. This had been recognised by the Native Land Court in 1897 when the block was made 'absolutely inalienable'.

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[111] Ward, p 392. Ward is quoting from Hutton, p 23.

[112] Although this was subsequently modified by s 91 Native Land Amendment Act 1913, discussed below.

[113] s 2 Native Land Act 1909; Bennion, p 5

The restriction on alienation imposed by the Native Land Court in 1897 was removed by section 207 of the Native Land Act 1909. In its place, a system was established whereby all proposed sales of Maori land had to be confirmed by the local Maori Land Board. The Waikato–Maniapoto Maori Land Board subsequently confirmed the alienation of a $^{7}/_{18}$ interest in Horahia Opou 5A. In doing so, the Board gave no consideration to the fact that Horahia Opou 5A block was an urupa that had been established at the request of the owners and that had been created out of the total area of their original Court award.

As such, the protections offered by the local Maori Land Board and section 220 of the Native Land Act 1909 were 'illusionary' in practice and, in this particular instance, clearly operated in a manner that was contrary to the wishes of the original owners who had sought to protect their wahi tapu for all time against just such a future circumstance.

On the other hand, it is important to recognise that four of the successors to these original owners had been willing to alienate their interests in the block. Unfortunately, I have been unable to locate any evidence that would provide a specific context to this sale; in particular, to explain what might have motivated Mata Taipua, Wiremu Taipua, Te Mataiti te Aramoana, and Wiremu te Aramoana to alienate their interests in Horahia Opou 5A.

Adjustment in the purchase price

It is not clear why the Waikato–Maniapoto Maori Land Board ordered such a substantial increase in the purchase price when Kneebone was only purchasing a $^{7}/_{18}$ interest in Horahia Opou 5A. Two conflicting explanations arise from the documentation.

One possible explanation for the increase in the purchase price to £200 is that this was the government valuation for the whole block.[114] Under section 223 of the Native Land Act 1909, the government valuation was a key benchmark for the local Maori Land Board in determining 'the adequacy of the consideration' paid for any particular block (or portion thereof). In cases where the consideration paid was shown to be inadequate, section 88 of the Native Land Amendment Act 1913 empowered the Board to require an increase in the purchase price before it confirmed the sale:

> If on the application for confirmation it shall appear to the President of the Maori Land Board . . . dealing with such application that the alienation is made *bona fide*, but that some modification ought in justice to be made in the terms of such alienation in favour of the Native owner alienating (whether such modification be an increase of the amount payable by way of rent, or purchase–money, or interest, or otherwise howsoever), it shall be lawful for the President . . . with the consent of the alienee, to modify the terms of such alienation and to confirm the same as modified, and to embody the terms of such modification in the order of confirmation[.][115]

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[114] Miller and Son to Registrar, Waikato–Maniapoto Maori Land Board, 26 October 1916, BCAC A110/779/box 100, NA, Akd, reproduced in doc bank; Valuation for Horahia Opou 5A, 27 November 1915, BCAC A110/779/box 100, NA, Akd, reproduced in doc bank.

[115] s 88 Native Land Act Amendment Act 1913

Such an explanation is problematic, however, for the simple reason that the Board was considering the alienation of a $^{7}/_{18}$ interest, rather than of the whole block. Little surprise then, that in this instance the Board *did not* use section 88 of the 1913 Act to order an increase in the purchase price.[116]

Instead, the Board ordered the increase in the purchase price under section 91 of the 1913 Act. This section amended section 220 (1) (c) of the Native Land Act 1909 so that the amended sub–section read:

> (1) No alienation shall be confirmed unless the Board . . . is first satisfied as to the following matters: –
>
> . . .
>
> (c) That no Native will by reason of the alienation become landless within the meaning of this Act. Excepting in cases where it appears to the satisfaction of the tribunal dealing with the application for confirmation that the land which is the subject of alienation is not, having regard to all circumstances, likely to be a material means of support to such Native, and excepting in cases where the Native alienating is qualified to pursue some avocation, trade, or profession, *or is otherwise sufficiently provided with a means of livelihood* [emphasis added].[117]

This would suggest that the alienation of a $^{7}/_{18}$ interest in Horahia Opou 5A to John Kneebone was going to render at least some of the alienating owners 'landless'. And, that the Maori Land Board ordered an increase in the purchase price to provide the alienating owners with a cash endowment that would satisfy the requirement that the owners be 'otherwise sufficiently provided with a means of livelihood'. Such a scenario goes some way towards explaining why the Board ordered that a $^{7}/_{18}$ interest should be purchased for the equivalent of the government valuation for the whole block.

Whichever of the two explanations is correct, the question of what motivated the Board to increase the purchase price by £122 is really a secondary one. The principal issue is that Horahia Opou 5A was an urupa and, as such, was culturally and spiritually significant to its owners, their predecessors, and their eventual successors. As discussed above, the Land Board appears to have given no consideration to this fact. Nor is it possible to determine, from the extant historical record, whether the four selling owners considered the matter at all.

Piako River Drainage Scheme

The Piako River Drainage Scheme was a response to the flooding of the Piako plains in the early 1960s. In mid-September 1960, a state of emergency was declared on the Hauraki plains after heavy rains saw the Piako River reach its highest level for 30 years. Although the Piako River did not burst its banks, there was still considerable surface flooding that resulted in 'very serious dislocation' of farming activities.[118]

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[116] T98915 on CT 271/291, HLR

[117] s 220 (1) (c) Native Land Act 1909; as amended by s 91 Native Land Amendment Act 1913.

[118] HCB, '15th Annual Report', 23 November 1960, L.S.H.O 15/244/14, NAW, pp 2–3

As a result, the Piako River Drainage Scheme was conceived. The scheme involved a considerable programme of civil works with the general aim of 'improving the present inadequate margin of flood protection in the lower reaches [of the Piako River] and to substantially improve the function of the river system as a drainage outlet for the whole district.' This included widening the existing river channel between Pipiroa and Kaihere (see figure five).[119]

In 1961, however, the heavy rains returned. The Piako River reached its highest level since records began in 1917 before bursting its banks and flooding the plains. Although the impact of the flooding was lessened by river works undertaken in the last 12 months, damage was still extensive:

> Flooding and dislocation of traffic in this county was more serious than at any other time in recent years; and probably since the early years of the century. Almost all the main roads of the County were closed at some stage.[120]

Following the 1961 flood, the Minister of Finance declared the Piako River Drainage Scheme a work of national and local importance in terms of section 31 of the Finance (number 3) Act 1944. This meant that the Hauraki Catchment Board would be able to borrow money to fund the scheme – rather than being reliant solely on rating revenue.[121] It also meant that the Hauraki Catchment Board was able to hand over to the Ministry of Works 'all work involving the acquisition of land and payment of compensation'.[122]

It was anticipated that significant economic benefits would result from the Piako River Drainage scheme:

> The total area of benefit, as mentioned earlier, is about 200,000 acres on which it has been estimated there is a potential increase in butterfat production rising to 6 million lbs [pounds] a year 20 years after the scheme is completed. On present prices this represents [a] 61 million a year increase in production.
>
> Over the 10 year period 1952–1961 the assessed cost of flood damage and loss of production from flooding in the Hauraki plains area within the present scheme totals £343,000.[123]

It is difficult to determine what percentage of the 200,000 acres that would benefit from the scheme was still in Maori ownership as at 1960. Some idea can be perhaps gained from figure nine, which illustrates the relatively small amount of land remaining in Maori ownership as at

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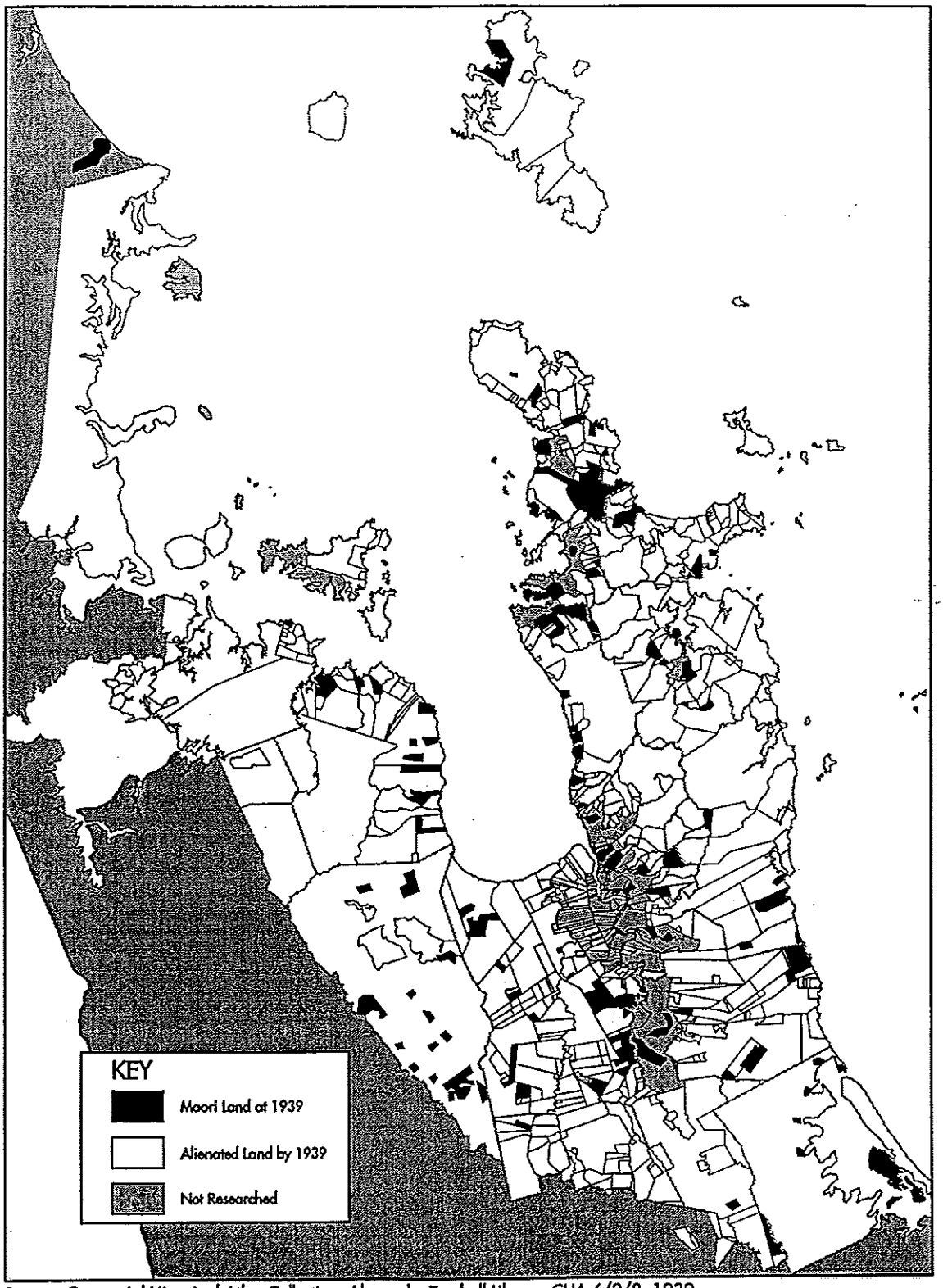
[119] HCB, '15th Annual Report', 23 November 1960, L.S.H.O 15/244/14, NAW, p 1

[120] R Harris, Chief Engineer, HCB, 'Report of Flooding of the Hauraki Catchment District', July 1961, L.S.H.O 15/244/14, NAW, p 1

[121] s 31 (6) Finance Act (number 3) 1944; HCB, '17th Annual Report', 22 November 1962, L.S.H.O 15/244/14, NAW, p 1

[122] HCB, '17th Annual Report', 22 November 1962, L.S.H.O 15/244/14, NAW, p 2

[123] 'Background speech notes', PW 96/091000/0 part 8, AATE W3404, NAW



Source: Centennial Historical Atlas Collection, Alexander Turnbull Library, CHA 6/2/8, 1939

Figure 9: Land in Maori ownership as at 1939

(Copied from Wai 686, A5, page 15)

1939.

The Piako River Drainage scheme officially commenced in July 1962.[124]

Acquisition of the River Frontage of Horahia Opou 5A

I have been unable to determine exactly when the Hauraki Catchment Board decided it would be necessary to acquire the river frontage of Horahia Opou 5A for the Piako River Drainage Scheme. After the land had been acquired, the Catchment Board, in response to a request from the Maori Trustee, put forward 25 September 1962 as the date upon which its workers had first entered the block for the purposes of the scheme.[125]

Before the river frontage of Horahia Opou 5A could be legally acquired for the Piako River Drainage Scheme, there were certain procedures that had to be followed. These procedures were set out in section 22 of the Public Works Act 1928. In the first instance, a survey of the proposed acquisition had to be completed and then deposited in a 'convenient' location where it was available for public inspection. This fact then had to be gazetted and publicly notified on at least two occasions. Furthermore, provided their title was registered under the Land Transfer Act 1915, all landowners had to be formally notified of the government's intention to acquire the land. Lastly, the owners of the land had 40 days from the completion of the survey to object to the acquisition.[126]

Notification

As previously mentioned, because the Piako River Drainage Scheme had been declared a work of national and local importance, the Hauraki Catchment Board was able to delegate to the Ministry of Works the task of carrying out the procedures outlined in section 22 of the Public Works Act 1928.[127]

In early 1965, the Ministry of Works undertook a title search to ascertain who were the owners of Horahia Opou 5A. This revealed that John Kneebone's $^{7}/_{18}$ interest had been transferred to a Mr J.E. Blake, with the balance being unevenly distributed amongst nineteen Maori owners.[128] The large number of Maori owners on the title prompted the Ministry of Works to 'consult' with the Department of Maori Affairs. As a result, it was decided 'that compensation for the Maori owned balance [should] be assessed by the Maori Trustee and paid to him after the issue of the proclamation taking the land. Settlement with Mr Blake will also be made on the issue of the

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[124] HCB, '17th Annual Report', 22 November 1962, L.S.H.O 15/244/14, NAW, p 1

[125] Secretary, HCB, to MT, Hm, 18 July 1966, MA 14/11, BBHW 4958 [1416j], NAA

[126] s 22 Public Works Act 1928

[127] s 31 Finance Act (number 3) 1944; HCB, '17th Annual Report', 22 November 1962, L.S.H.O 15/244/14, NAW, p 2

[128] Title search sheet in PW 96/091000/0 part 1, AATE W3404, NAW

proclamation.'[129]

In March 1965, the Ministry of Works publicly notified its intention to acquire 4 acres, 2 roods, and 18 perches of Horahia Opou 5A for 'soil conservation and river control purposes'. The Gazette notice stated that a plan of the land was open for inspection at the Ngatea Post office and that those affected by the taking had forty days to lodge an objection with the Ministry of Works in Wellington.[130]

This only partially fulfilled the Ministry's obligations under section 22 of the Public Works Act 1928. The Ministry still had to individually notify *all* the land owners of its intention to acquire the land.[131] This task was entrusted to M Lancaster, the Resident Engineer, who reported in May 1965 that he had been:

> [un]able to trace all the Maori owners, and in any case your memorandum arrived so late as to give little time to trace the owners and serve the notices. Would you please note that you could assist me in such cases by giving a list of the owners names, even if as in this case their addresses are not known to you[.][132]

In fact, Lancaster managed to serve notices on only three of the nineteen Maori owners in the block. He also filed a copy of the notice of intention with the Department of Maori Affairs.[133]

Later that month, the Chief Postmaster informed the Ministry of Works that the notice of intention and survey plan had been displayed at the Ngatea Post office 'in excess of 40 days' and that no objections had been received.[134]

Formal acquisition

On 5 August 1965, the Ministry published a notice in the *New Zealand Gazette* formally acquiring the river frontage of Horahia Opou 5A for soil conservation and river control purposes.[135] Subsequent to this, the river frontage was:

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[129] Filenote, 19 February 1965, PW 96/091000/0 part 1, AATE W3404, NAW

[130] *New Zealand Gazette*, 18 March 1965, p 349

[131] s 22 (E) Public Works Act 1928

[132] M Lancaster, Resident Engineer, to DCW, Hm, 12 May 1965, PW 96/091000/0 part 1, AATE W3404, NAW

[133] The three owners he was able to notify were Bartlett Watene, Tea Eruini Hurukino, and Bartlett's brother, 'in Kingseat Hospital'. M Lancaster, Resident Engineer, to DCW, Hm, 12 May 1965, PW 96/091000/0 part 1, AATE W3404, NAW

[134] Chief Postmaster to Ministry of Works, Wellington, 17 May 1965, PW 96/091000/0 part 1, AATE W3404, NAW

[135] *New Zealand Gazette*, 5 August 1965, p 1247

- declared to be Crown Land subject to the Land Act 1948;[136] and,
- set apart for soil and conservation purposes under section 167 of the Land Act 1948.[137]

These declarations were a precursor to the Hauraki Catchment Board being appointed to control and manage the river frontage under section 21 (1) of the Reserves and Domains Act 1953.[138]

Discussion of the issues

Two important issues are raised by the actions of the Ministry of Works in its acquisition of the river frontage of Horahia Opou 5A.

First, and foremost, is the failure of the Ministry of Works to fulfil its statutory obligation to notify all of the owners of Horahia Opou 5A of its intention to acquire a substantial portion of the block for river works. In fact, the Ministry served notices on only three of the nineteen Maori owners.

Had the Ministry notified all of the block's owners, it is probable that it would have found out that the block was an urupa. This would have allowed the Ministry to undertake an assessment of what impact the proposed works would have on the urupa. The Ministry could then have discussed this assessment with the owners, before making an informed decision on whether the proposed works should proceed (perhaps in a modified form).

Instead, the acquisition of Horahia Opou 5A is consistent with Alan Ward's observation that 'by the 1960s and 1970s it was still common for [the Department of] Works to undertake smaller public works assignments . . . without consultation with the Maori land owners'.[139] Ward attributes this, in part, to the 'complications of multiple ownership' which provided the Ministry of Works with an excuse to 'ignore all the normal protections for landowners when dealing with Maori land'.[140] As Ward himself points out, however, the fragmentation of Maori title was itself a product of 'Crown policies'.[141]

A second issue arising from the Ministry of Works' acquisition of the river frontage of Horahia Opou 5A is that there is no evidence to indicate that the Ministry, at any stage, considered anything less than a complete alienation of the freehold. An agreement based upon a lesser form of alienation – such as a lease, easement, or licence – could have provided the Hauraki Catchment Board with the necessary access to the block, while also ensuring that the owners retained ownership of their urupa.

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[136] *New Zealand Gazette*, 4 August 1966, p 1238. This was under section 35 Public Works Act 1928.

[137] *New Zealand Gazette*, 13 June 1968, p 1003

[138] DG to Minister of Works, 4 June 1968, L.S.H.O 15/244/14, NAW

[139] Ward, p 316

[140] Ward, p 316

[141] Ward, p 315

These two issues need to be considered in context. The Piako River Drainage scheme was a response to the extensive flooding caused by the Piako River in the early 1960s. This flooding was reported as being 'more serious than at any other time . . . since the early years of the century', resulting in serious economic disruption and the declaration of a state of emergency.[142]

The Tribunal has previously argued that the compulsory acquisition of Maori land for public works may be justified 'in exceptional circumstances and as a last resort in the national interest'.[143] This argument has been qualified with the statement that, because such acquisitions are inconsistent with the guarantee of Maori rights conferred by article two of the Treaty, the Crown, if it is contemplating such an acquisition, should:

- undertake full consultation with the Maori owners in order to gain their informed consent;
- if at all possible, seek a lesser form of alienation such as a lease, easement, or licence.[144]

The acquisition of the river frontage of Horahia Opou 5A fails to satisfy either of these two qualifications.

I do not know what physical impact the subsequent river works had upon the urupa. It is possible that the claimants can provide the Tribunal with further information on this matter.

Compensation

Under section 6 of the Public Works Amendment Act 1962, 'the Maori Trustee had a statutory responsibility to negotiate compensation for Maori land in multiple ownership but the trustee could not act until after a proclamation taking the land was published in the *New Zealand Gazette*.'[145]

Initial contact: The Maori Trustee and Blake

Such a proclamation had not yet been issued for Horahia Opou 5A when the Maori Trustee was contacted by a solicitor acting for Mr Blake. The solicitor, operating from the mis-informed assumption that there were only four Maori owners in Horahia Opou 5A, hoped to persuade the Maori Trustee to engage him to negotiate a settlement with the Ministry of Works on behalf of the Maori owners. The size of Blake's share in Horahia Opou 5A and his ownership of adjoining lands – some of which were also targeted for compulsory acquisition – were both put forward as reasons why the Maori owners should engage Blake's solicitor to negotiate on their behalf.[146]

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[142] R Harris, Chief Engineer, HCB, 'Report of Flooding of the Hauraki Catchment District', July 1961, L.S.H.O 15/244/14, NAW, p 1; HCB, '15th Annual Report', 23 November 1960, L.S.H.O 15/244/14, NAW, pp 2–3

[143] Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, Brooker's Ltd, Wellington, 1995, p 11, cited in Waitangi Tribunal, *Turangi Township Report* 1995, Brooker's Ltd, Wellington, 1995, p 359

[144] Waitangi Tribunal, *Ngai Tahu . . .*, p 10–11, cited in Waitangi Tribunal, *Turangi Township . . .*, p 359

[145] Waitangi Tribunal, *The Turangi Township Report 1995*, Wellington, Brookers Ltd, 1995, p 273; s 6 Public Works Amendment Act 1962

[146] O'Donnell, Vautier, Wood, and Walsham to MT, Hm, undated, MA 14/11, BBHW 4958 [1416j], NAA

After referring the matter to head office in Wellington, the Hamilton District Office was instructed to decline the offer from Blake's solicitor on the grounds that the Maori Trustee had no authority to act in the matter until it had received formal notice of the taking.[147] Of course, it was not until April 1965, 16 months after the initial approach by Blake's solicitor, that the Maori Trustee was served with a copy of the *notice of intention* to acquire part of Horahia Opou 5A. A filenote attached to the notice records that 'no consultation' had occurred with the Maori owners.[148]

Nonetheless, receipt of the notice of intention prompted the Maori Trustee to write to Blake's solicitor to inquire what, if anything, the solicitor had done to negotiate compensation for the compulsory acquisition of the river frontage of Horahia Opou 5A. The Maori Trustee also wanted to know whether Blake's solicitor was still interested in acting on behalf of the Maori owners of Horahia Opou 5A in this matter.[149]

Blake's solicitor replied that he had not attempted to individually contact each of the Maori owners. Instead, Blake had reached agreement with the Ministry of Works for compensation of $^{7}/_{18}$ of £350 – the mutually agreed value for the acquired land. As a result, Blake's solicitor was no longer interested in representing the Maori owners in their compensation negotiations.[150]

Negotiations commence

The Maori Trustee, in recognition of the limitations imposed by section 6 of the Public Works Amendment Act 1962, then sought confirmation from the District Commissioner of Works that the river frontage of Horahia Opou 5A had actually been acquired. Upon receiving a copy of the relevant Gazette notice, the Maori Trustee asked the District Commissioner for details of the settlement already negotiated with Blake for his $^{7}/_{18}$ interest in the block. The Trustee also sought an indication as to 'whether you are willing to make an offer as to the amount of compensation to be paid to the other remaining owners'.[151]

The District Commissioner's reply contradicted much of the information previously supplied by Blake's solicitor. In the first instance, the District Commissioner indicated that the Ministry of Works had not 'fixed or paid out [any] compensation' for Horahia Opou 5A. Indeed, the Ministry indicated that it had 'not [been] prepared to deal with this land in which Mr Blake has an interest until you [the Maori Trustee] were prepared to act also'. That said, the Ministry had indicated to Mr Blake that it was eventually prepared to compensate him for his interest in Horahia Opou 5A at the same rate at which it had settled his claims involving adjoining lands. For these lands,

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[147] MT, Head Office, to MT, Hm, 10 December 1963, MA 14/11, BBHW 4958 [1416j], NAA

[148] Filenote, 15 April 1965, MA 14/11, BBHW 4958 [1416j], NAA

[149] MT, Head Office, to O'Donnell, Vautier, Wood, and Walsham, 24 April 1965, MA 14/11, BBHW 4958 [1416j], NAA

[150] O'Donnell, Vautier, Wood, and Walsham to MT, Hm, 15 June 1965, MA 14/11, BBHW 4958 [1416j], NAA

[151] MT, Hm, to DCW, 1 September 1965, MA 14/11, BBHW 4958 [1416j], NAA

Blake had received compensation of £900 (plus interest and costs) for the compulsory acquisition of an area of 7 acres 1 rood 32 perches. Applying this to Horahia Opou 5A, where 4 acres 2 rood 18 perches had been taken, the total amount of compensation on offer was £500 (plus interest and costs).[152]

Cavers' valuation: 'A red herring'

When the Maori Trustee raised the District Commissioner of Work's version of events with Blake's solicitor, the Trustee was informed that:

> It appears that what happened was that Mr Blake agreed to a figure suggested by Mr Walton [of the Ministry of Works] as he was anxious to bring the matter to finality and he did not obtain my advice before so doing. The figure is not in accord with the report and valuation which I obtained from D. H. Cavers. His figure, overall, for the land being farmed by Mr Blake was £1900 and as he received only £1050 for the land standing in his own name, the claim in respect of the remaining land [Blake's interest in Horahia Opou 5A] amounted to £850.
>
> It will thus be seen that the matter is certainly open to re-negotiation.[153]

Here was yet a third figure for the value of the river frontage of Horahia Opou 5A. Given that it was the highest of the three, the Maori Trustee was understandably keen to gain further information from Blake's solicitor as to the details of Cavers' valuation:

> As suggested in . . . your letter, there does appear to be a possibility of negotiating a more favourable settlement on behalf of the owners. On the assumption that Mr D.H. Cavers, spoken of by you, is a registered valuer, may I perhaps suggest that his valuations be used as a basis for fresh negotiation by us with the Ministry of Works on behalf of our respective clients.
>
> Would you therefore confirm that his valuation for Horahia Opou 5A was in fact £850.[154]

Once again, however, Blake's solicitor was shown to have provided a misleading version of the actual facts. In response to the Maori Trustee's request for confirmation that Cavers' valuation for Horahia Opou 5A was in fact £850, Blake's solicitor stated: 'I cannot provide an answer to this in a simple way because Mr Cavers did not approach the valuation in this way'.[155] The 'way' in which Cavers approached his valuation was as follows:

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[152] DCW to MT, Hm, 6 September 1965, MA 14/11, BBHW 4958 [1416j], NAA

[153] O'Donnell, Vautier, Wood, and Walsham to MT, Hm, 20 September 1965, MA 14/11, BBHW 4958 [1416j], NAA

[154] MT, Hm, to O'Donnell, Vautier, Wood, and Walsham, 11 October 1965, MA 14/11, BBHW 4958 [1416j], NAA

[155] O'Donnell, Vautier, Wood, and Walsham to MT, Hm, 11 November 1965, MA 14/11, BBHW 4958 [1416j], NAA

Blakes' freehold interest in adjoining lands	£1,830
Blake's $^{7}/_{18}$ share in Horahia Opou 5A	£ 70
Total value of acquired lands	£1,900[156]

The implications of this latest correspondence from Blake's solicitor were well summarised in the following filenote from the Maori Trustee file:

> If Blake accepted £1050 compensation for his own land compared with his valuers assessment of £1830, I cannot see that he can expect to recover the balance of £850 from the Maori land.
>
> On the basis of the valuation of the assessment of compensation at £70 for Blake's share of the Maori land taken it would seem that the value of the whole area of Maori land taken would be approx [sic] £180. This does not seem to tie up with the offer of £500 from the Ministry of Works. It looks as though we may have to employ a pvte [sic] valuer to assess the value of the land taken.[157]

Ashworth's valuation: 'Further up the garden path'

In June 1966, the Maori Trustee, having confirmed that Blake was willing to share the cost, commissioned Mr Vincent Ashworth to provide a valuation specific to the river frontage of Horahia Opou 5A. Two months later, Ashworth provided the Maori Trustee with a report on his progress to date:

> The writer has in fact made an inspection and arrived at a reasonable valuation of the land concerned. There are, however, other factors to be taken into consideration and it is upon these that we are now working.
>
> It is our opinion that the land taken has a very special value to the adjoining owner, Mr. J.E. Blake, who owns an undivided share of $^{7}/_{18}$th of the total block involved.
>
> We have written to Mr Blake and asked him for information regarding carrying capacity and financial returns so that we may a make a reasonable compensation claim for the special value to him personally.[158]

This progress report must have been somewhat disconcerting to the Maori Trustee given the emphasis placed by Ashworth upon the loss to Blake, rather than the loss to their own clients.

The Maori Trustee received Ashworth's valuation on 10 October 1966. In his valuation, Ashworth stated, without any significant explanation as to his reasoning, that the value of the 4 acres 2 roods acquired for the Drainage Scheme was £450. The remainder of Ashworth's valuation attempted to quantify the 'potential or special' value of the river frontage of Horahia Opou 5A to Mr Blake. It was Ashworth's contention that:

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[156] Cavers' valuation was originally attached to O'Donnell, Vautier, Wood, and Walsham to MT, Hm, 11 November 1965, MA 14/11, BBHW 4958 [1416j], NAA. It is not, however, attached to the file copy. The details of the valuation have been extracted from subsequent filenotes.

[157] Filenote, undated, MA 14/11, BBHW 4958 [1416j], NAA

[158] Ashworth to MT, Hm, 22 September, MA 14/11, BBHW 4958 [1416j], NAA

- the acquisition of the river frontage of Horahia Opou 5A, in combination with the loss of adjoining lands owned exclusively by Blake, had reduced the total area farmed by Blake from 53 to 41 acres so that it no longer represented an economical farm unit; and,
- that the river frontage of Horahia Opou 5A had been used for intensive dairy production and, as such, had a 'productive' value that was greater than what the land would sell for on the open market. Ashworth estimated that 'the value of this land at the present time from a productive point of view is approximately £720.'[159]

Whatever the merit of the above arguments – Ashworth himself admitted 'that such a claim and calculation can not be substantiated by previous Court decisions'[160] – they were of little benefit to the Maori owners who had not been involved in the farming of the block.

More significantly, Ashworth's valuation made no mention of the 'special value' of Horahia Opou 5A to the Maori owners of the block. This 'special value' derived from the fact that the block was an urupa. As such, Ashworth, like the Maori Land Board before him, failed to recognise that the significance of Horahia Opou 5A to its owners was not economic but cultural and spiritual.

The role of the Maori Trustee

In Ashworth's defence, it should be noted that the Maori Trustee did not tell Ashworth that the block was an urupa when it commissioned him to undertake the valuation. Nor is the fact that the block was an urupa mentioned in the Maori Trustee's critique of Ashworth's valuation.[161] Indeed, there is not a single reference to the fact that Horahia Opou 5A was an urupa in the Maori Trustee file for the block. This would strongly suggest that the Maori Trustee was, in fact, unaware that the block was an urupa.

This raises a further issue: how could the Maori Trustee, as the agency with the statutory responsibility to represent the owners' interests in negotiating compensation, have remained unaware of the fact that the block was an urupa? The Maori Trustee could have found out this important piece of information from two sources.

Firstly, and most obviously, the Maori Trustee could have found out that Horahia Opou 5A was an urupa by contacting the block's Maori owners. There is no indication in the relevant Maori Trustee file, however, that the Trustee made contact with any of the block's Maori owners during the course of its negotiations with Blake's solicitor and the Ministry of Works. This is possibly a consequence of the fact that under section six of the Public Works Amendment Act 1962, there was no need (in a strictly legal sense) for the Maori Trustee to contact the owners until after the compensation negotiations had concluded.

A second source that might have allowed the Maori Trustee to learn that Horahia Opou 5A was

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[159] Ashworth to MT, Hm, 10 October 1966, MA 14/11, BBHW 4958 [1416j], NAA

[160] Ashworth to MT, Hm, 10 October 1966, MA 14/11, BBHW 4958 [1416j], NAA

[161] See, for example: Filenote, undated, MA 14/11, BBHW 4958 [1416j], NAA, fol 47; MT, Hm, to O'Donnell, Vautier, Wood, and Walsham, 21 November 1966, MA 14/11, BBHW 4958 [1416j], NAA

an urupa was the records of the Maori Land Court. The Trustee did undertake a title search for the block in the early stages of its negotiations with Blake and the Ministry of Works. This revealed that the block had nineteen owners in addition to Blake. There was no indication from the search that the block was held in 'trust'.[162] This was an accurate representation of the legal status of the block's title once the restriction on alienation was removed by section 207 of the Native Land Act 1909.

Acceptance of the District Commissioner of Works' offer

In light of Ashworth's valuation, and the fact that the Maori Trustee seemed to be unaware that Horahi Opou 5A was an urupa, it is hardly surprising that the Maori Trustee concluded that 'the obvious solution appears to be to accept the amount [£500 . . . initially] offered by the Ministry of Works'.[163] This decision was conveyed to Blake's solicitor to see if Blake was agreeable to accepting the Ministry's offer of £500 compensation. Six months passed before Blake eventually acquiesced provided that the Ministry of Works agreed to pay costs and interest, from the date of entry, in addition to the £500.[164] In August 1967, just under two years from the date of formal acquisition, the amount of compensation to be paid was agreed to as follows:

Compensation for land taken	£500. 0. 0
Interest (5%) for 5 yrs	125. 0. 0
Valuation cost	29. 12. 6
Legal costs	5. 15. 0
TOTAL	**£670. 7. 6** [165]

Of this total amount, Blake received approximately £261 and the Maori owners received approximately £409.

Discussion of the issues

It is doubtful that any sum of money could have adequately compensated the owners of Horahia Opou 5A for the loss of a substantial portion of their urupa. As has been stated previously, the importance of the block to the owners was not economic but cultural and spiritual.

Even so, the fact that the Maori Trustee seems to have been unaware that the block was an urupa

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[162] Minute, undated, on O'Donnell, Vautier, Wood, and Walsham to MT, Hm, undated, MA 14/11, BBHW 4958 [1416j], NAA; Assistant District Officer to Head Office, 20 December 1963, MA 14/11, BBHW 4958 [1416j], NAA.

[163] Filenote, undated, MA 14/11, BBHW 4958 [1416j], NAA, fol 47

[164] MT, Hm, to O'Donnell, Vautier, Wood, and Walsham, 21 November 1966, MA 14/11, BBHW 4958 [1416j], NAA; O'Donnell, Vautier, Wood, and Walsham to MT, Hm, 26 May 1967, MA 14/11, BBHW 4958 [1416j], NAA

[165] This was equivalent to $1,340.75; DCW to MT, Hm, 4 August 1967, MA 14/11, BBHW 4958 [1416j], NAA

is significant. Firstly, because the Maori Trustee possessed a statutory responsibility to represent the owners' interests in the compensation negotiations. And, secondly, because it suggests that the Trustee did not contact any of the Maori owners during the negotiations. This raises the further possibility that some of the owners may not have been aware that a substantial portion of their urupa had been acquired until after the compensation negotiations had concluded and they received their share of the compensation. It is possible that the claimants can provide the Tribunal with further information on this matter (including the issue of whether or not the owners actually received any of the compensation negiotated by the Maori Trustee) and on the status of the urupa today.

Bearing the above factors in mind, it is worth noting that unlike many compensation negotiations involving Maori land, the negotiations for Horahia Opou 5A were not particularly adversarial or drawn out over a long time.[166] The initial offer of compensation from the Ministry of Works proved to be greater than the market value of the acquired portion as calculated by at least two valuers. Furthermore, while there was a three and a half year delay between the date of entry and the formal acquisition, after that the amount of compensation was agreed in under two years (five months of which was attributable to Blake's preference for Cavers' valuation).

[166]For a general overview see Ward, pp 316–317. For a specific example, see M Russell, 'Opu 3', report commissioned by the Waitangi Tribunal, June 1997 (Wai 686, doc A18).

CHAPTER FIVE:
THE OTHER BLOCKS

This chapter summarises the research undertaken elsewhere on the alienation of the blocks identified in the Wai 174 Statement of Claim. The location of the various blocks is shown in figure one.

Opu 3

Opu 3 was taken in 1980 under section 32 of the Public Works Act 1928. The public work precipitating this acquisition was the re-alignment of State Highway 25. The issues raised by the compulsory acquisition of Opu 3 are canvassed in my earlier report for Wai 174.[167]

Kuaotunu 1A and 1B

The alienation of both these blocks has been researched by David Alexander.[168]

Kuaotunu 1A was created out of Kuaotunu 1 in September 1878 'to pay [the Crown] for Rawiri's debts, and for the surveys, and for the money [£300] there given to me [Hohepa Mataitaua] on behalf of the Government.'[169]

In December 1881, Kuaotunu 1B was created out of Kuaotunu 1. This was after the Crown had purchased the interests of 11 of the 13 Maori owners. The remaining area of Kuaotunu 1, belonging to the two non-sellers, was given the appellation Kuaotunu 1C.[170]

David Alexander also traces the alienation of Kuaotunu 1C and Kuaotunu 1D. This latter block was created by the Native Land Court in October 1889 and vested in the 13 original owners of Kuaotunu 1. This rectified an earlier mistake of the Court wherein the Court had intended to issue a separate Crown grant for the area of Kuaotunu 1D but had forgotten to do so.[171]

With the discovery of gold at Kuaotunu in the late 1880s, the Crown sought to acquire the freehold over these two remaining Maori-owned portions of the Kuaotunu block. The government, however, was forced to accept a lesser alienation – a ceding of the mining rights – after a private individual and then the mining warden established a mining township over part of the blocks. It is not clear from Alexander's report whether this was before or after the cession

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[167] M Russell, 'Opu 3', report commissioned by the Waitangi Tribunal, June 1997 (Wai 686, doc A18)

[168] Alexander, *The Hauraki Tribal Lands*, Part 1, pp 234–254

[169] Hauraki Native Land Court minute book 24, fol 87, quoted in ibid, p 236

[170] Alexander, *The Hauraki Tribal Lands*, Part 1, p 238

[171] Alexander, *The Hauraki Tribal Lands*, Part 1, p 238

agreement was reached.[172]

The Crown eventually purchased the last Maori freehold interest in Kuaotunu 1C in 1903. The last Maori freehold interest in Kuaotunu 1D was purchased by the Crown in 1905. The Maori owners appear to have received at least some rentals from the township before then.[173]

Omahu Quarry Reserve (Sec 3 Blk. IV Waihou SD)

The land that today forms the Omahu quarry reserve was previously part of the 890-acre Omahu West 2A block.

As detailed by David Alexander, Omahu West 2A was created in August 1878 when the Crown purchased the interests of 34 of the 41 Maori owners of Omahu West 2. The Native Land Court sanctioned this purchase when it awarded the Crown Omahu West 2A. The remaining interests of the non-sellers were defined as Omahu West 2B.[174]

The 41-acre quarry reserve was created out of Omahu West 2A in 1889; that is, 11 years after the land had been purchased by the Crown.[175] In 1891, the quarry was vested in the Thames County Council.[176]

Omahu Sec 19 Blk. Ohinemuri SD

Omahu Section 19 was created out of Crown land that had originally been part of Te Horete 1A and 1B1 and Omahu West 1 and 2A.[177] Details of the Crown's purchase of each of these blocks — in 1878, 1896, 1879, and 1878 respectively — can be found in David Alexander's reports.[178]

During the 1970s, Omahu Section 19 was set aside as permanent State Forest.[179]

Wharekawa East 1, 2, and 3

Wharekawa East was investigated by the Native Land Court in December 1872. At that time, it was partitioned into five blocks. Wharekawa East 1 was purchased by the Crown in February

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[172] Alexander, *The Hauraki Tribal Lands*, Part 1, pp 239–249

[173] Alexander, *The Hauraki Tribal Lands*, Part 1, pp 249–254

[174] Alexander, *The Hauraki Tribal Lands*, Part 2, pp 238–239

[175] *New Zealand Gazette*, 30 January 1890, p 115

[176] *New Zealand Gazette*, 14 January 1892, p 22

[177] see SO 45026 in doc bank

[178] Alexander, *The Hauraki Tribal Lands*, Part 2, pp 172–174 and pp 238–241

[179] *New Zealand Gazette*, 6 May 1971, p 847

1879; Wharekawa East 2 in May 1887; and Wharekawa East 3 in July 1879. Timber leases to private individuals preceded the Crown's purchase of Wharekawa East 1 and 3. The Crown purchase of Wharekawa East 2 was complicated by uncertainty about the legality of a lease that James Mackay, acting in a private capacity, had over the block.

David Alexander covers all of the above events in his research for Wai 100. Wharekawa East 1 and 2 are also covered in the research of Bridget Dingle for Wai 177, the Gregory-Mare whanau claim.[180] Lastly, the alienation of Wharekawa 2 will also be covered by research soon to be completed for Wai 661.

Te Horete 1 and 2

A majority interest in Te Horete 1 (17 of 20 owners) was purchased by the Crown in 1878. The non-sellers' portion, to be known as Te Horete 1B, was subsequently partitioned in two. One of these partitions was purchased by the Crown in 1896. The remaining portion was sold, by the sole owner's trustee, to a private purchaser in 1897. These transactions are covered in the research of David Alexander and Phillip Cleaver.[181]

Te Horete 2 was reserved from the purchase of Te Horete 1 and made inalienable. In 1914, the block was partitioned in three. Two of those partitions (2A and 2B) were sold to private purchasers in 1917. The remaining portion (2C) was then partitioned in two. Both portions were eventually sold to private purchasers. These transactions are covered by Phillip Cleaver.

Wharekawa West

This refers to the Wharekawa blocks located on the western shore of the Firth of Thames. There are five Wharekawa blocks and it is not clear from the statement of claim which blocks Wai 174 covers.

Wharekawa 2 and 3, awarded to Ngati Paoa, were privately purchased in 1868. David Alexander suggests that these two blocks were sold to pay for survey costs.[182] Ngati Paoa retained the 6,430 acre Wharekawa 1 block into the twentieth century.

Wharekawa 5, belonging to Te Urikaraka (a branch of Ngati Paoa), and Wharekawa 4, belonging to Ngati Whanaunga, were also retained into the twentieth-century. The twentieth century history of all three of these blocks is currently being researched by David Alexander.

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[180] Alexander, *The Hauraki Tribal Lands*, Part 2, pp 129–145; Bridget Dingle, 'Wharekawa East 1: Block History for the Gregory-Mare Whanau', 1995, (Wai 686, D13) and 'Wharekawa East 2: Block History for the Gregory-Mare Whanau', 1995, (Wai 686, D14)

[181] Alexander, *The Hauraki Tribal Lands*, Part 2, pp 172–175; Phillip Cleaver, *Te Horete 1 and Te Horete 2, Tairua Reserves*, Report commissioned by the Waitangi Tribunal for Wai 174, 1999, (Wai 686, 3.34)

[182] David Alexander, Statement of Evidence, (Wai 686, C3), p 76

Maramarua

These 'blocks' fall within the central Waikato confiscation. The jurisdiction of the Tribunal to inquire, under this claim, into the land within the central Waikato confiscation boundaries was removed by section 8 (1) of the Waikato Raupatu Claims Settlement Act 1995.

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Appendix One: Statement of Claim and Additions to the Claim

WAI 406 #1.8

DUPLICATE

Claim
WAI 174

1.1

The Registrar,
Waitangi Tribunal.

STATEMENT OF CLAIM.

1&2. In the matter of a claim by ATA PATRICIA BAILEY on behalf of herself, and on behalf of the decendants of the Ngati Kotinga ancestors whose names are recorded on the Titles as original owners in the following Blocks.

(1) Kuaotunu 1A and 1B
(2) Omahu Quarry Reserve Sec 3 Blk. 1V Waihou S.D.
(3) Omahu Sec 19 Blk. Ohinemuri S.D.
(4) Opu No3 Blk.

3. I claim under Sec 6 of the Treaty of Waitangi Act 1975. That we are and are likely to be prejudicially affected by the action of the Crown in the aquisition by sale or by the taking of land pursuant to a statute, as it effects the above mentioned Blocks, and other Blocks as forthcoming Research may reveal.

4. That the moral and ethical aspect of the law was not applied to the sale of these Maori Land Blocks to the Crown at that time, and is therefore inconsistent with the principles of the Treaty of Waitangi.

Relief Sought by Claimant.

5. That the Lands described in paragraph 1&2 above be returned to us, and such other relief as the Tribunal considers appropriate.

6. I wish the Tribunal to commission a researcher to report on the claim and I ask leave to amend this claim after the research work has been done.

7. A lawyer has been appointed by the Hauraki Maori Trust Board, and this claim will come under the general Hauraki claim.

8. I wish the claim to be heard at a time and place to be arranged by the Tribunal and myself, and to be included on the Hauraki Maori Trust Boards agenda of hearings.

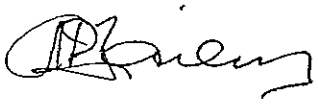
9 I believe the following persons and organizations should be notified of this claim.

(1) Department of Conservation
(2) Thames Coromandel District Council
(3) Decendants of the Ngati Kotinga ancestors as outlined in paragraph 1&2 of whom many are unknown to me at this time. This list may be added to after the research in paragraph 6 is completed and submitted.

10. I can be contacted at the following address:

A. P. Bailey
1 Harold Lane,
Hamilton.
Telephone (071) 460 381, Fax (071) 433 701
P.O. Box 16143, Glenview
Hamilton.

Date. 18 Oct 1990

Signature. 

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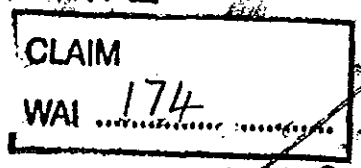
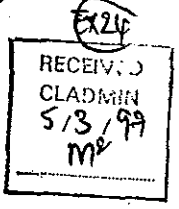


#1.1(a)

Ref: 174/0

3 March 1997

Wai406 #1.8(a)



The Registrar,
Waitangi Tribunal
P.O. Box 5022
Wellington.

Please amend my Claim to include Papakitatahi A Block, and I want the Tribunal to research it.

Yours faithfully.

Pat Bailey.

Wai 174, #1.1(b)
Wai 686, #1.6(b)

4c Parkeko Pl.
Private Bag 3008
Hamilton.

31st March 1998
Ref. Wai 174

The Registrar.
Waitangi Tribunal
P.O. Box 5022
Wellington.

Tena Koe,
We wish to have the following blocks included in Claim Wai 174.

- Wharekawa East No 1.2.3.
- Te Horete No 1 & 2
- Wharekawa West
- Maramarua Blocks
- Horohia Opou Block 9A.

We advise a name change to Claim Wai 174 from Ngati Koinga to Nga Whanau o Horohia.

Kia Ora.

A.P. Baikey.

Appendix Two: Research Commission

Appendix Two: Research Commission

WAI 174 # 3.2
WAI 606 # 3.17

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND CONCERNING the Ngati Kotinga Lands claim

DIRECTION COMMISSIONING RESEARCH

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

(a) a survey of written sources on Ngati Kotinga's traditional history and their interest in the blocks subject to this claim
(b) the partition of Papakitatahi A

2 This commission commences on signing and ends on 20 April 1998, 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.

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

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

Matthew Russell
Claimants
Counsel for Claimants
Solicitor General, Crown Law Office
Director, Office of Treaty Settlements
Secretary, Crown Forestry Rental Trust
Director, Te Puni Kokiri

Dated at Wellington this 3rd day of March 1998.

Chief Judge E T J Durie
Chairperson
WAITANGI TRIBUNAL

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WAI 174 # 3·3
Wai 686, 3·21

WAITANGI TRIBUNAL

CONCERNING	the Treaty of Waitangi Act 1975
AND	The Ngati Kotinga Lands claim

EXTENSION TO DIRECTION COMMISSIONING RESEARCH

WITH AMENDMENT

1 Pursuant to clause 5A(1) of the 2nd schedule of the Treaty of Waitangi Act 1975, Matthew Russell, a member of staff, of Wellington was commissioned on 3 March 1998 to prepare a research report for Wai 174 the deadline for which was 20 April 1998.

2 An extension to the deadline has been agreed to and the new completion date is 21 July 1998.

3 The Commission has been amended to include the words "and the alienation of Horahia Opou 5A"

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

Matthew Russell
Claimants
Claimant Counsel
Solicitor General, Crown Law Office
Director, Office of Treaty Settlements
Secretary, Crown Forestry Rental Trust
Director, Te Puni Kokiri

Dated at Wellington this 8th day of May 1998.

Chief Judge E T Durie
Chairperson
Waitangi Tribunal