

RECEIVED
CLERK
24/12/97
m²

WAI 47 - A2
WAI 215 - A44

OFFICE

Wai 215/47

MANGATAWA

by

Heather Bassett

A research report
commissioned by the Waitangi Tribunal
for Wai 47

December 1996

TABLE OF CONTENTS

Table of Figures	3
1. Introduction	4
The Claim	4
Location and Block History	5
Issues	7
2. Traditional Histories	10
3. Ministry of Works' Quarry - Maungamana	12
First Acquisition - 1946	12
Quarry Rights - 1958	14
Expansion of the Quarry Rights - 1963 to 1996	16
4. Water Reservoir Sites	20
History of Mount Maunganui Borough Water Supply	20
Planning for the Mangatawa Reservoir	22
Initial Negotiations with the Mangatawa-Papamoa Incorporation	23
Negotiations to Acquire the Land	24
The Deed of Agreement	31
Performance of the Agreement	33
5. Attempts to Prevent Further Desecration	37
The Involvement of the Historic Places Trust	37
Proposed Second Reservoir	41
Restoration of the Quarry	42
6. Summary	45
Bibliography	48
Appendix One: Statement of Claim	50
Appendix Two: Deed of Agreement between Mangatawa-Papamoa Incorporation and Mount Maunganui Borough Council	55

TABLE OF FIGURES

- Figure One: Mangatawa Complex 1958
(from Steedman, p 38)
- Figure Two: Borough of Mount Maunganui
(from Stokes, *The Impact of Urban Growth*, p 30)
- Figure Three: Tamapahore Marae Community Zone
(from Stokes, *The Impact of Urban Growth*, p 32)
- Figure Four: Lands Returned 1886
(from Stokes, *Te Raupatu of Tauranga Moana*, p 189)
- Figure Five: Land Taken for Quarry 1946
(SO 32022)
- Figure Six: Quarry Rights 1957
(from Records of Mangatawa-Papamoa Incorporation)
- Figure Seven: Quarry Rights 1964 and Reservoir Sites
(SO 48012)
- Figure Eight: Mangatawa Quarry Restoration Proposal
(from Records of the Mangatawa-Papamoa Incorporation)
- Figure Nine: Quarry Face 1 October 1996
(Photos taken by author)



MAUNGATAWA COMPLEX

Taken in 1958 before the destruction of the pa site by the Ministry of Works. Signs of early quarrying is evident on the northern face.

Figure One

1. INTRODUCTION

My name is Heather Bassett. I have a Bachelor of Arts Honours degree, majoring in history, from Waikato University. From 1993 to 1995 I worked as a researcher for the Crown Forestry Rental Trust, during which time I co-authored the *Maori Land Legislation Manual*. I was a staff member at the Waitangi Tribunal from June 1995 to October 1996, and have written research reports on the Otawa No 2 blocks (Wai 210) and the urbanisation of Maungatapu and Hairini (Wai 342 and Wai 370). I am currently based in Auckland and working as a commissioned researcher.

All opinions contained in this report are my own, unless otherwise stated. This report is a historical narrative, largely compiled from written sources. Although traditional evidence is cited, the report does not claim to speak for Maori. It is anticipated that the evidence produced in this report will be supplemented at Waitangi Tribunal hearings by submissions from those Maori affected by the events herein described.

The Claim (see Appendix One)

The Wai 47 statement of claim was lodged with the Waitangi Tribunal in February 1990. The claim was made on behalf of Ngati Pukenga, Ngaiterangi and Ngati Ranginui by William Ohia, who was then the chair of the Tauranga Moana Maori Trust Board. The claim lists several grievances relating to the whole of Tauranga Moana, including raupatu, compensation paid under the Tauranga Moana Trust Board Act 1981, Tauranga Harbour, and specific sites of significance.

This report has been produced as a result of a commission from the Waitangi Tribunal to research one aspect of the Wai 47 claim:

5. The failure of the Crown to provide for the control and management by the claimant iwi and hapu of reserve areas and wahi tapu of special significance to them, namely:

Mauao (Mount Maunganui)
 Mangatawa Hill (Maunga Mana)
 Pukewhanake
 Otawhiwhi Reserve
 Nga Kuri a Wharei
 Huharua (Plummers Point)
 Monmouth Redoubt

Mauao and Monmouth Redoubt are under research as part of commissions for other Tauranga claims (Wai 540 and Wai 580 respectively). This report covers Mangatawa Hill, and separate reports have also been completed under this research commission for Otawhiwhi, Pukewhanake, Huharua, and Nga Kuri a Wharei.

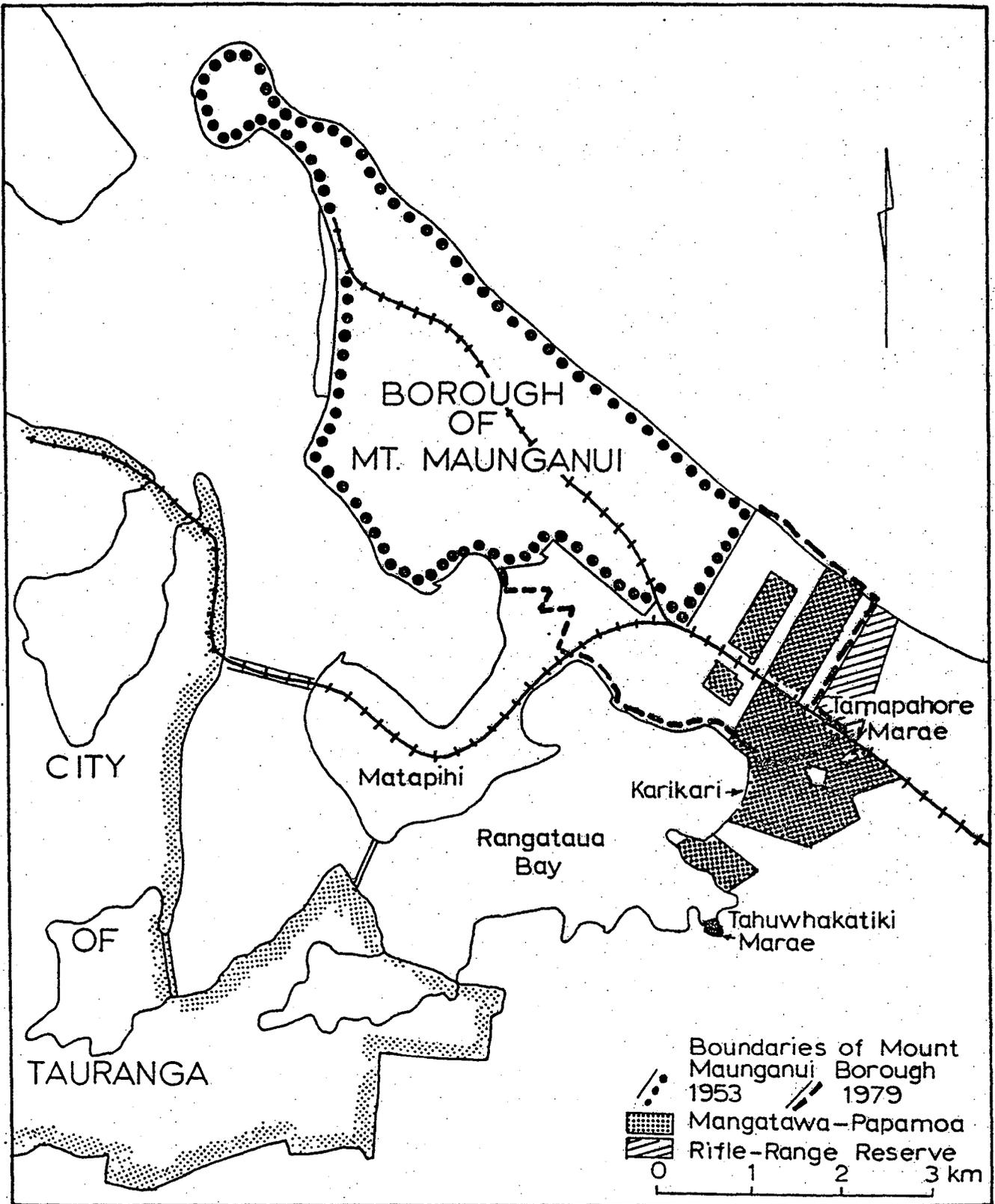


Figure Two

Location and Block History

Mangatawa is a hill range that runs in a northerly direction between Rangataua Bay and Papamoa Beach. The current route of State Highway 2 and the East Coast Main Trunk Railway between Mount Maunganui and Te Puke runs close to the northern end of Mangatawa. Although the remains of fortifications are still visible on some points of the hill, the most heavily terraced area was the northern point, known as Maungamana (see Figure One). Very little remains of Maungamana today, as it was used as a quarry by the Ministry of Works. The quarry remains are clearly visible from State Highway 2 (see Figure Nine).

At the base of Mangatawa, adjacent to State Highway 2, is the Tamapahore Marae of Nga Potiki. The land around the marae has been developed for housing for the hapu, and is known as the marae community zone. The offices of the Mangatawa Papamoa Incorporation are also in this zone, as well as a community health clinic (see Figures Two and Three).

Mangatawa hill is surrounded by reasonably flat rural land. This is the Mangatawa Papamoa block, which is today vested in the 'Proprietors of the Mangatawa Papamoa block' and administered by the Mangatawa-Papamoa Incorporation.

The Mangatawa Papamoa block is made up of various portions of the Mangatawa block and Papamoa No 2 block. Both these blocks were part of the land returned to Maori after the confiscation of the Tauranga district (see Figure Four). The Mangatawa block was an area of 1,295 acres, the ownership of which was investigated by Commissioner Brabant under the Tauranga District Lands Acts 1867 and 1868.¹ Title to the block was issued in 1878 to 102 owners.² In the early 20th century Mangatawa block was partitioned into the following areas.³

Block Name	Area (acres roods perches)
Mangatawa 1	24a. 0r. 00p.
Mangatawa 2	55a. 1r. 18p.
Mangatawa 3	124a. 2r. 00p.
Mangatawa 4	298a. 2r. 20p.
Mangatawa 5	4a. 0r. 00p.
Mangatawa 6	56a. 0r. 00p.
Mangatawa 7A	76a. 0r. 00p.
Mangatawa 7B	67a. 0r. 00p.
Mangatawa 7C	54a. 0r. 00p.
Mangatawa 8	313a. 1r. 15p.
Mangatawa 9	133a. 1r. 20p.
Mangatawa 10	44a. 0r. 00p.
Mangatawa 11	44a. 0r. 00p.
Total	1295a. 0r. 33p.

¹ Brabant, 'Land Returned to Ngaiterangi Tribe Under Tauranga District Land Acts', *Appendices to the Journals of the House of Representatives* (AJHR), 1886, G-10

² Certificate of Title 16/306

³ Areas taken from ML 8133

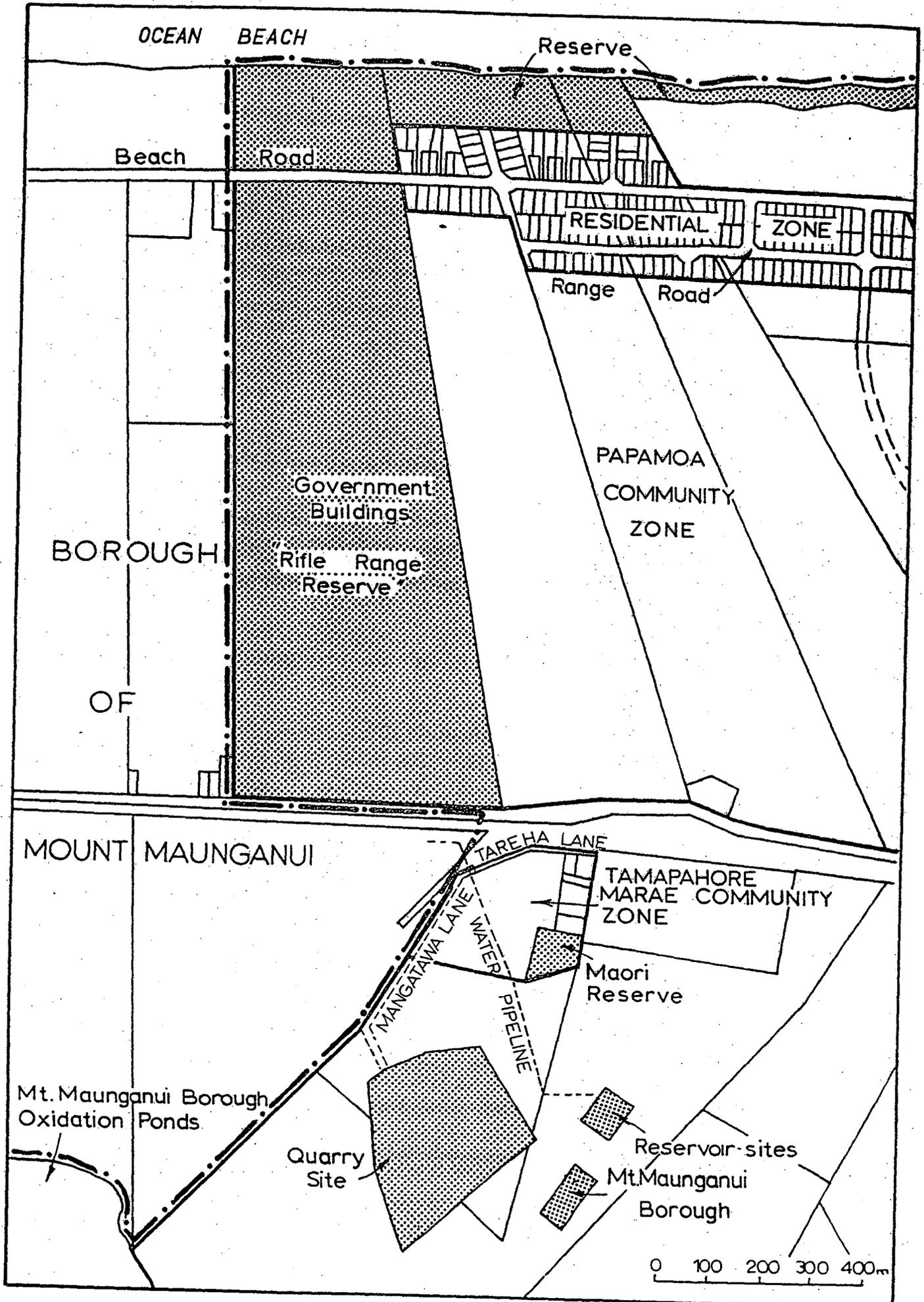


Figure Three

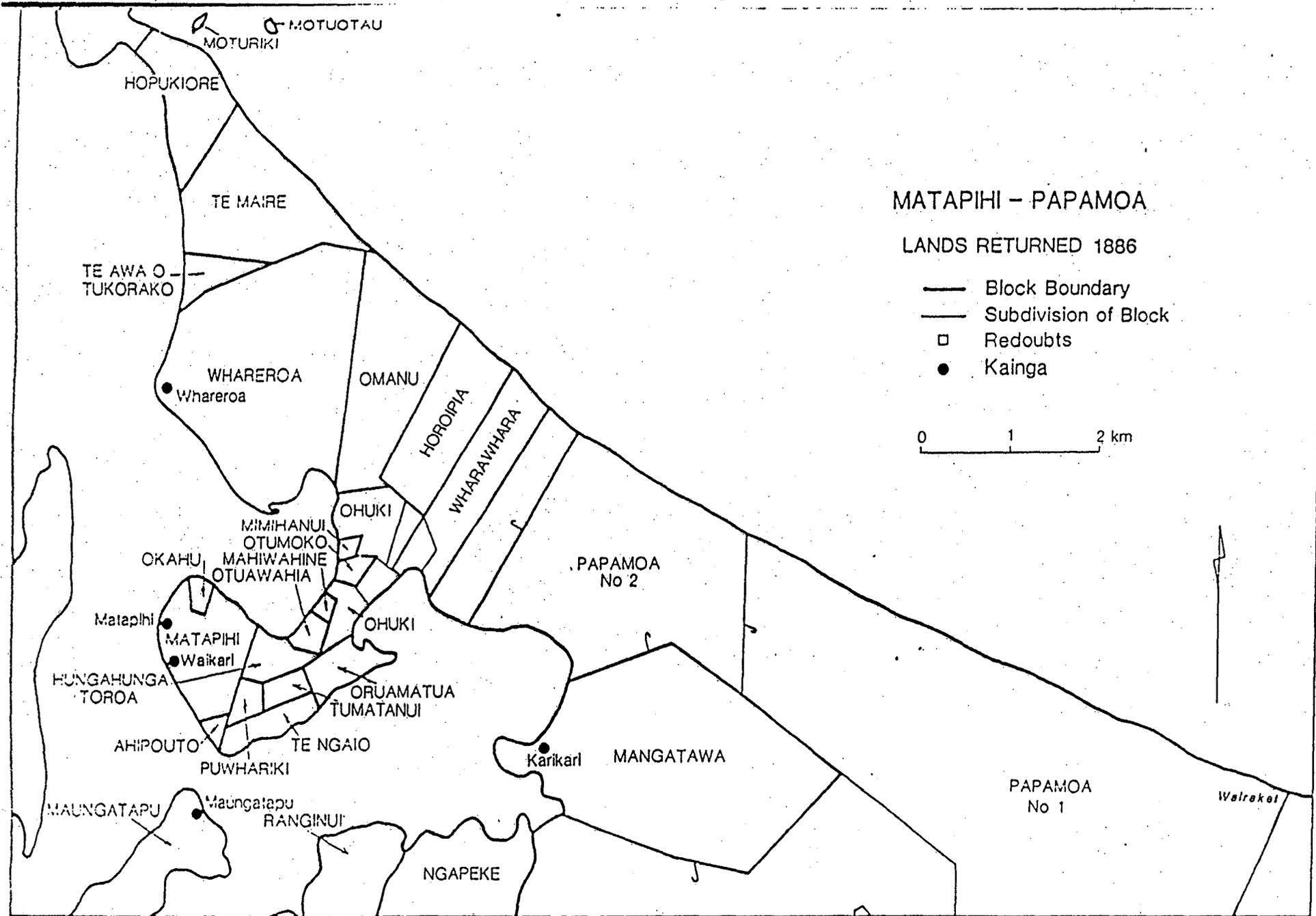


Figure Four

These areas have been further partitioned throughout this century.

In 1937 several Mangatawa blocks, which included Mangatawa itself, and three Papamoa blocks were included in the Tauranga Development Scheme under Part I of the Native Land Amendment Act 1936. The aim was for the Department of Maori Affairs to develop the blocks into working farm units, which could then be farmed by selected owners.⁴ The blocks that made up the Mangatawa Papamoa Scheme were:⁵

Block Name	Area (acres roods perches)
Part Mangatawa 1	19a. 1r. 08.0p.
Part Mangatawa 2	54a. 0r. 38.7p.
Mangatawa 3	122a. 1r. 29.6p.
Mangatawa 6	56a. 0r. 00.0p.
Mangatawa 7C	53a. 0r. 27.9p.
Part Papamoa 2, Section 7A	41a. 1r. 22.0p.
Part Papamoa 2, Section 8	37a. 0r. 23.4p.
Part Papamoa 2, Section 9B	74a. 2r. 20.0p.

In 1957, the Maori Affairs Department ceased to administer the lands in the development scheme, after the owners had agreed to taking over the scheme as an incorporation.⁶ In February 1968 the different blocks were amalgamated by the Maori Land Court into one unit, the Mangatawa Papamoa Block, which was to be administered by the Mangatawa-Papamoa Incorporation.⁷ In 1968 the total area of the block was 774 acres, 1 rood, 13.5 perches, and included:

Mangatawa 1,
 Mangatawa 2B2B,
 Mangatawa 3B2,
 Mangatawa 4A2,
 Mangatawa 4C,
 Mangatawa 4D,
 Mangatawa 4F,
 Papamoa 2, section 8B2D,
 Papamoa 2, section 7A2,
 Papamoa 2, section 9B.⁸

As will be seen, the total area of the Mangatawa Papamoa block has since been reduced, as parts have been sold to meet the demand for residential housing in the area, and land has been acquired for public works.

⁴ For more detail on the development schemes in general, and the Mangatawa/Papamoa scheme see Tony Nightingale, 'Tauranga Land Development Schemes 1929-1955', Report commissioned by the Waitangi Tribunal for Wai 215, November 1996

⁵ *New Zealand Gazette*, 1937, p 1624

⁶ Nightingale, pp 47-48

⁷ Ibid

⁸ Mangatawa Title Binder, Waikato - Maniapoto Maori Land Court, Hamilton

Issues

This report examines in detail the use made of Mangatawa hill for two major public works. The work which had the most damaging impact on the hill, which is sacred to Tauranga Maori, was the virtual destruction of Maungamana by the Ministry of Works. In 1946 the Crown, under the Public Works Act 1928, acquired a 5 acre area on the hill as a quarry site. The quarry was expanded in the 1950s and 1960s to supply the massive development work in the Bay of Plenty at that time. Strong resistance from the incorporation administering the land meant that agreements were made to grant the Crown the right to quarry for a 33 year period, and the owners were able to retain the freehold of the land. This process was repeated in the 1970s when the Mount Maunganui Borough Council wished to acquire the site on which it had built a water supply reservoir. Instead of selling the land, the owners negotiated a 999 year lease for the site of the present reservoir and another site for the construction of future reservoirs.

When considering the use made by the Crown of the Public Works Act, the Waitangi Tribunal has found that a failure to give adequate consideration to acquiring the leasehold rather than freehold of Maori land was inconsistent with the Crown's duties under Article 2 of the Treaty of Waitangi.⁹ It is very unusual to come across examples, such as those at Mangatawa, where the owners successfully avoided having the freehold of the land compulsorily acquired. However, it will be seen that even the negotiation of a lease has been the cause of dissatisfaction for the incorporation, who have recently been seeking ways to have those leases renegotiated or overturned. The concerns of the Incorporation regarding the quarry rights agreement were expressed in a 1989 draft statement of claim to the Waitangi Tribunal (the claim was never submitted as the incorporation continued negotiations with the Ministry of Works):

- (a) Mangatawa is sacred to Maori, being the site of one of Tauranga's most historic pas and the subject of some of its best known legends.
- (b) Maori have viewed with concern and dismay the desecration of Mangatawa by quarrying over many years.
- (c) The Mangatawa Papamoa Block Incorporation granted leases to the Ministry of Works for quarrying only after it had suffered compulsory quarrying by the Ministry over many years and then only because it was clear that, failing agreement, the Ministry would use its powers under the Public Works Act to quarry and remove metal from the land. The granting of leases was perceived to be the lesser of two evils
- (d) Even though the Ministry of Works has undertaken to carry out restoration work at the end of the lease term the land can never be put back as it was.
- (e) Mangatawa has provided rock and metal for the largest public works carried out in Tauranga over the last 30 years. It has been plundered for long enough.¹⁰

Although this report focuses on the most obvious impacts on Mangatawa hill, the quarry and the reservoir, the owners of the Mangatawa and Papamoa blocks have seen other areas of those blocks being used for public works. As well as land that has been

⁹ Waitangi Tribunal, *The Turangi Township Report 1995*, Wellington, Brookers Ltd, 1995, p 312

¹⁰ Draft statement of claim, 1989, Records of the Mangatawa-Papamoa Incorporation [pp 16-17 Document Bank]

alienated from them for public works, by both central and local government, several easement lines run over the blocks for gas pipelines and the like, which impact on the use that may be made of the land. Kupapa McLeod, a member of the committee of management for the incorporation, recently prepared the following report on the land alienations:

Over the course of this century, Mangatawa has had to contend with the ever increasing demands of a rapidly growing urban area. Alienation of land for Municipal purposes has been the inevitable result of this urban growth.

Land alienations that are currently subject to Waitangi tribunal investigation, have mainly occurred before the turn of the century. In the case of Mangatawa however, alienation has occurred within the living memories of it's [sic] current shareholders.

Much of this alienation has occurred [sic] through the invocation of the Public Works Act, or has been brought about by the pressure to sell tracts of land in order to pay huge debt commitments - these being foisted onto the shareholders through the advice of past government advisers. (eg. Kiwifruit orchard)

Successive local body administrations have justified this alienation as being in the interests of the wider community. Certainly if one were to view things as a civic minded citizen, then one would have to be *proud* of the way that Mangatawa has served the wider community.

Land has been taken for *roads, railways, rubbish dumps, water pipelines, sewerage pipelines, gas pipelines, reservoirs*, and of course the most *pleasing* civic contribution of all, *the quarry*.

And again, one would have to be *proud* of the way the authorities ignored our pleas to site the sewerage ponds elsewhere but chose to put them right on our doorstep thus ensuring that Mangatawa should continue to do their bit for the 'good of the community'.¹¹

The incorporation remains opposed to the construction of a second reservoir on Mangatawa, and has sought to renegotiate the lease for the site of the existing reservoir. The Tauranga District Council maintains that the incorporation has received the benefit of the following council services as a result of the water reservoir being on Mangatawa:

Construction of bridge on road from State Highway 2 to marae	\$156,150
Roading associated with bridge	<u>\$37,287</u>
Total	<u>\$193,437</u>
Water - Fire supply to marae and 2 inch main for house supply	\$8,000
Water - Farm supply	<u>\$2,000</u>
Total	<u>\$10,000</u> ¹²

While the provision of the water supply services was a condition of the agreement to lease the reservoir sites, members of the committee of management claim that the

¹¹ 'The Reservoirs - More Alienation', Kupapa McLeod, Committee of Management, Mangatawa-Papamoa Incorporation

¹² Chief Executive Tauranga District Council to author, 23 October 1996 [pp 40-41]

roading construction work was the result of other agreements with the council.¹³ There is no mention of roading construction in the agreements or negotiations relating to the reservoir. Further research would be required to ascertain what obligations, if any, the council had to carry out the roading work.

The next section of this report gives a brief outline of some Maori histories associated with Mangatawa. Section 3 examines the acquisition of land and quarry rights at Mangatawa by the Ministry of Works, and section 4 details the negotiations held between the Mangatawa-Papamoa Incorporation and the Mount Maunganui Borough Council to acquire the site of the water reservoir. Section 5 outlines various attempts made in the last 20 years to stop Mangatawa being further desecrated.

¹³ Personal communication, Rangi McLeod and Kupapa McLeod, 1 October 1996

2. TRADITIONAL HISTORIES

Mangatawa is sacred to Ngati Ranginui, Ngaiterangi, and Te Arawa iwi. The maunga is associated with the arrival of waka in the region, and with several important ancestors who settled in this area. Before the maunga was damaged by quarrying, its shape was said to resemble that of a whale gazing out to sea, with the northern point, Maungamana, representing the eye of the whale.

Because of its shape Mangatawa is also known as Te Tohora, the whale. The following quote explains how the whale became a landform:

Long, long ago, a whale and her baby cruised into the harbour through the entrance past Maunganui and Matakana. They swam up the harbour past Te Papa and Matapihi toward Maungatapu. They found the water was getting more shallow and they turned round to return to deeper water. Unfortunately, they turned into the Rangataua arm of the harbour between Matapihi and Maungatapu. They knew which direction the ocean lay. They could hear the waves pounding on the beach at Omanu and Papamoa. They struggled over the mudflats of Rangataua, trying to find a way back to the open sea. They stopped at Karikari on the eastern shore of Rangataua. There was a spring there and they drank from it, because they were tired and thirsty. They did not know that this spring was magic. All life departed from the body of the mother whale and she was fixed there, gazing northward out to sea. The baby nestled beside the mother and was also fixed there as the smaller hill beside Mangatawa on the Papamoa side.¹⁴

The father whale later came in search of his family and unfortunately also turned to stone, becoming Kopukairoa hill, south of Mangatawa. The spring at the base of Mangatawa, near Rangataua Bay, is called Te Waiu o te Tohora, the milk of the whale, because:

Sometimes the water flowing from it is quite white, so it must be the milk from the whale, which rests there as a guardian of the people of Te Arawa and Tauranga Moana.¹⁵

Te Arawa tradition says that Mangatawa was the taniwha which guided their canoe from Hawaiki to Maketu.¹⁶ Tamarangi, who was the son of Haerehuka of Te Arawa, was killed during a battle of Ngapuhi and Te Arawa against Ngaiterangi. Haerehuka wanted to protect Tamarangi's body from desecration and so carried him to the summit of Mangatawa for cremation.¹⁷

The Takitimu waka arrived at Tauranga moana under the command of Tamatea, who was known as Tamatea mai tawhiti and Tamatea ariki nui.¹⁸ After implanting the mauri of his people on Mauao, Tamatea built a pa at Mangatawa, on Maungamana. The grandson of Tamatea was Tamatea pokai whenua who, after voyaging around

¹⁴ Evelyn Stokes (ed), *Stories of Tauranga Moana*, Centre for Maori Studies and Research, University of Waikato, 1980, Mangatawa

¹⁵ Ibid

¹⁶ Ibid

¹⁷ 'Submission to Tauranga County Council and Bay of Plenty Harbour Board from Tauranga Moana District Maori Council', in Evelyn Stokes, *Te Raupatu o Tauranga Moana: Volume 2: Documents Relating to Tribal History, Confiscation and Reallocation of Tauranga Lands*, University of Waikato, 1992, p 56

¹⁸ Stokes, *Stories of Tauranga Moana*, Takitimu Te Waka, Tamatea Te Ariki

Aotearoa, returned to settle in the Mangatawa area.¹⁹ Ranginui, the ancestor of Ngati Ranginui, was a son of Tamatea pokai whenua.

Hare Piahana recounts that the second wife of Tamatea pokai whenua, Iwipupu, and her family lived in the Mangatawa area:

Iwipupu's family resided at Papamoa Pa near where the quarry now is. There their descendants lived for over 200 years. Their cultivation plots were on the flat below where the Webster family now resides at the place which now goes under the name Taranaki Lane. Their fishing spot was Otira on the beach between Omanu and Papamoa; here they made their hauls of fish for current use and for curing for winter use at their Papamoa Pa.²⁰

The dining hall at Huria marae commemorates the name of Iwipupu.²¹

One of Iwipupu's sons was Kahungunu, who lived at Mangatawa. Kahungunu quarrelled with his older brother Whaene, and as a result left Mangatawa:

One day he and his half-brother, Whaene, and other men from the pa were on the beach at a place called Otira, in the Papamoa area. They were pulling in the nets full of fish. Kahungunu became so excited he rushed in and seized the biggest fish for himself. Whaene told him off for pushing in. Whaene picked up a fish and threw it at Kahungunu. He tried to protect himself but was pricked by the sharp fin of the fish. Whaene was right but Kahungunu was very angry too. Kahungunu had forgotten the custom that the first fish taken from a catch was always offered back to Tangaroa, the god of the ocean. When he calmed down, Kahungunu realised he had broken the custom. He felt humiliated and insulted by Whaene. He went away to Opotiki and stayed with his cousin and her husband. She had a baby while he was there. Kahungunu asked that the boy be named Tutamure (the pick of the tamure, or schnapper) to remember his grudge against Whaene at Tauranga.²²

Kahungunu eventually settled at Mahia, where he established the Ngati Kahungunu iwi.²³

After Ngaiterangi, under the leadership of Tamapahore, defeated Ngati Ranginui at Mauao (Mount Maunganui), Tamapahore established his pa at Mangatawa. Tamapahore was buried there.²⁴ Being an isolated hill Mangatawa was a good location for a pa. Not only did it provide clear views of the surrounding district, but it was surrounded by good land for growing crops, and was close to food sources in the harbour and ocean.²⁵ The Nga Potiki hapu of Ngaiterangi have continued to live in the area and use Mangatawa as a burial ground. In the early 19th century Nga Potiki moved their marae from Karikari, on the foreshore of Rangataua, to the present site at the base of Mangatawa on State Highway 2. The marae is named after Tamapahore.²⁶

¹⁹ Ibid

²⁰ Hare Piahana, 'A fragment of Ngati Ranginui History' in Stokes, 1992, p 27

²¹ Stokes, *Stories of Tauranga Moana*, Takitimu Te Waka, Tamatea Te Ariki

²² Ibid

²³ Ibid

²⁴ Evelyn Stokes, *Tauranga Moana: A Study of the Impact of Urban Growth on Rural Maori Communities*, Centre for Maori Studies and Research, University of Waikato, 1980, p 31

²⁵ Evelyn Stokes, *A History of Tauranga County*, Dunmore Press, Palmerston North, 1980 p 38

²⁶ Stokes, *Tauranga Moana: A Study of the Impact of Urban Growth on Rural Maori Communities*, p 31

3. MINISTRY OF WORKS' QUARRY - MAUNGAMANA

The highest point of Mangatawa is at the northern point, known as Maungamana, and the eye of the whale.²⁷ This was once a heavily fortified pa site, which is clearly evident in a photo taken in 1958 (see Figure One).²⁸ Today, little remains of Maungamana (see Figure Nine), as the Ministry of Works developed an extensive quarrying operation for rhyolite rock at Mangatawa.

The first official interest obtained by the Ministry of Works was by a compulsory acquisition of land in 1946 under the Public Works Act 1928, and further quarrying rights (as opposed to acquiring the land) were negotiated in the 1950s and 1960s. Unfortunately, departmental records relating to the quarry are now missing, which means that only an outline of these transactions can be given in this report. It has also been claimed that the Public Works Department removed rock from the site, without any legal authority, in the 1920s for the construction of a section of the East Coast Main Trunk Railway.²⁹ Again, lack of departmental records means that no documentary evidence of quarrying in the 1920s can be presented, and this question will need to be addressed by the claimants in their evidence to the Tribunal.

It will be shown that the supply of rock from Mangatawa contributed significantly to the development of Tauranga and Mount Maunganui. As well as the obvious damage caused to the maunga, local Maori were effected by the quarry in other ways. The quarry was located very close to Tamapahore Marae and was surrounded by the working farm of the Mangatawa-Papamoa Incorporation. Blasting could easily be felt by Maori at the marae, and rocks often landed in the adjacent paddock. Bones and other signs of Maori occupation were also exposed by the quarrying.³⁰

First Acquisition - 1946

The correspondence files of the former Public Works Department are now held by Works Consultancy Services. Unfortunately, to date, neither head office, or the Hamilton branch of Works Consultancy have been able to supply the departmental files detailing the acquisition of the land on Mangatawa for the quarry.

A Notice of Intention to take land for the quarry was issued on 21 November 1945.³¹ The Proclamation declared that 5 acres 1 rood 11.6 perches, being part Mangatawa No 2, was to be taken for a quarry, and 3 roods 5.2 perches from part Mangatawa No 2, together with 13.3 perches from Part Papamoa No 2 Section 7A, were required for an easement to construct a right of way to the quarry (see Figure Five). A plan of the land affected was open for inspection at the Tauranga post office, and the notice instructed that:

²⁷ Stokes, 1992, p 58

²⁸ John A. W. Steedman, *Nga Ohaaki o Nga Whanau o Tauranga Moana: Known Genealogies and History of the Maori Families of Tauranga and Surrounding Districts*, p 38

²⁹ See *Bay of Plenty Times*, 12 August 1961, Des Tatana Kahotea, 'Tauranga Urban Growth Strategy: Cultural Resource Inventory', Tauranga District Council, 1992, p 68, and Minutes of a Special Meeting, 19 November 1984, 8320-14 Tauranga District Council [pp 53-58].

³⁰ Personal communication, Rangi McLeod and Kaupapa McLeod, 1 October 1996

³¹ *New Zealand Gazette*, 1945, p 1458

SEC. 7A

C.T. 622/172
Native Owners
Part Tauranga Development
Scheme - vide Gaz. 1937 p. 1624

PT MANGATAWA

No. 2

N.L. 18508

N.L. 8133
C.T. 16/306
Native Owners
Part Tauranga
Development
Scheme - vide
Gaz. 1937 p. 1624

PT No. 1

Land to be taken for R.O.W.
" " " " for Quarry

A.R.F.
0.3.18.5
5.1.11.6
6.0.30.1

No. 3

Int. to take land and an easement over land for
a Quarry. To be taken for Quarry - 5.1.11.6
Over which easement to be taken - 0.3.05.2.0.0.183

Gaz 45p

Taken Gazette 1940 p. 410
8/4/40

P. J. Gilding
Regd. Surveyor.

33000 N.

185

RIGHT OF WAY AND
PLAN OF LAND TO BE TAKEN FOR QUARRY BEING

PART PAPAMOA No. 2 SEC. 7A AND PART MANGATAWA No. 2 Approved

Figure Five

Agreed to for Railway purposes

J. S. O'Sullivan
Resident Engineer,
Hamilton.
23/7/45.

This plan is in accordance with the instructions
of the Public Works Department.

H. P. Pennington
District Engineer.
24/2/45.

ss referenced.
received 16-2-47. W. J. J. S.

32020

all persons affected by the taking of the said land or by the taking of the said easement should, if they have any well-grounded objections to the taking of such land or to the taking of such easement, set forth the same in writing, and send such writing, within forty days from the first publication of this notice, to the Minister of Works at Wellington.

Section 22 of the Public Works Act 1928 laid out the procedure to be followed to notify the owners of an intention to acquire the land. A plan, which included the names of the owners and occupiers of the affected land, was to be lodged in a public place, and a Notice of Intention was to be published in the *New Zealand Gazette* and local newspapers. Written objections had to be lodged within 40 days from the first publication. While these requirements were clearly followed to acquire the quarry site, section 22 also specified that notice should be served on all owners of the land. However, this requirement could be avoided in the case of Maori freehold land, if the owners of the block were not registered under the Land Transfer Act (ie, on a land transfer certificate of title rather than only on the Maori Land Court title). In such cases it was sufficient for the Notice of Intention to be published in the *Gazette* (section 22(4)). In the absence of departmental files it is uncertain whether any attempt was made by the Public Works Department to notify the owners of the proposed takings, either directly or through the Maori Land Court or Maori Land Board. Even if some of the owners had been notified, it is possible that they may have felt powerless to object to the taking. This was expressed by Turi te Kani in 1984 who said:

the owners' forefathers were under the impression that nothing could be done against the Public Works Act...³²

Four months after the Notice of Intention was issued, the land was proclaimed as taken on 30 March 1946. The *Gazette* notice was to take effect from 8 April 1946. As well as acquiring the land for the quarry, it spelt out the rights vested in the Crown over the easement land:

full and free liberty, right, license, and authority in perpetuity to construct and use a right-of-way, with the right for His Majesty's servants, agents, and workmen from time to time and at all times hereafter to go, pass, and repass with or without horses or other animals or vehicles over the said land, and to maintain, repair, and keep open the said right-of-way for the purpose of providing access to the said quarry.³³

Under section 104 of the Public Works Act 1928 the compensation to be paid for Maori land taken for public works was to be assessed by the Maori Land Court. The first time the application for assessment of compensation came before the court, the application was adjourned by the Crown with the agreement of the solicitor for the owners, Mr Cooney.³⁴ The application may have been adjourned to allow for a valuation to be prepared.

³² Minutes of a Special Meeting, 19 November 1984, 8320-14 Tauranga District Council [pp 53-58]

³³ *New Zealand Gazette*, 1946, p 410

³⁴ Tauranga Minute Book vol 15, fol 394,

The compensation award was not made until 11 November 1948.³⁵ At the Maori Land Court hearing the Crown was represented by Mr Gumbly, a district land purchase officer, and Cooney appeared for the Maori owners. Gumbly submitted that the Crown and district valuers had agreed that £133.1.3. should be paid for the land taken. In addition £20 would be paid for the right of way over Mangatawa 2, and £5 for the right of way over Papamoa 2 Section 7A. Cooney said that while he agreed with the values submitted by Gumbly, the owners were concerned about making the quarry safe for stock by fencing it off, and were also worried that stock might get onto the main road via the right of way. In reply, Gumbly said that the Public Works Department undertook to fence the quarry and to maintain cattle stops on the access to the main road.

The judge then awarded the following amounts as compensation:

Block	Area (acres roods perches)	Purpose	Compensation
Mangatawa 2	5a. 1r. 11.6p.	Quarry	£150.0.0
Mangatawa 2	0a. 3r. 05.3p.	Easement	£23.0.0
Papamoa 2 Sec 7A	0a. 0r. 13.3p.	Easement	£6.0.0
Cooney, Lees & Morgan		Costs	£3.3.0
Total			£182.3.0

The minutes record no explanation of why the amounts awarded were higher than those agreed on by Cooney and Gumbly. One explanation could be that interest since the time that the taking was gazetted was included in the final award. The compensation for each block is roughly equivalent to the valuation submitted by Gumbly, plus 5% interest for 2 ½ years.

The court also directed that the compensation should be paid by the Public Works Department to the Maori Land Board for distribution to the owners.

Quarry Rights - 1958

The 1950s were a period of rapid growth in Tauranga and Mount Maunganui. During this time numerous public works were undertaken to construct and develop the local infrastructure. As well as extensive roading construction and upgrades, the major development was the planned construction of the international shipping port at Mount Maunganui, which included extensive reclamation of land. Most of these developments were supplied with the necessary rock and fill from the Mangatawa quarry, and by the mid-1950s the Public Works Department wished to enlarge the Mangatawa quarry operation.

Again, in the absence of the Ministry of Works files, this report can only provide an outline of the transaction made, but the records that do exist clearly suggest that the owners of the land were opposed to the Ministry's plans. It is likely, should the head office files be located, that a very interesting history would be revealed. The following section is largely compiled from minutes of the Maori Land Court hearing

³⁵ Tauranga Minute Book vol 16, fols 60-61, 11 November 1948

confirming the agreement reached between the Ministry and the Mangatawa-Papamoa Incorporation.

As was the usual practise, the Ministry of Works intended to acquire the freehold of the further land required for the quarry. However, this was opposed by the owners who succeeded in negotiating an agreement to allow the Ministry the right to quarry the land (approximately 6 acres 1 rood) for a ten year period from 1 August 1957 for a payment of £2000. The agreement was made between the committee of management of the Mangatawa-Papamoa Incorporation and the district land purchase officer at a meeting on 30 July 1957. It was then confirmed by the Maori Land Court at a hearing on 28 August 1958, and a formal agreement to sell the quarry rights was signed on 12 January 1959. No proclamation was gazetted.

The solicitor for the incorporation, Cooney, outlined the history of the negotiations to the Maori Land Court, as follows:

Negotiations started with offer by Maoris to sell by royalty. Then notice of intention to take was issued - strong opposition by Maori comm [committee of management]. Representations to Minister of Wks [Works]. He instructed negotiations. We felt that our hands tied by Finance Act 1944. We felt that at that figure it was advisable to settle rather than fight. Eight of comm present at meeting - we advised sell land. Number of Maoris employed at quarry. We knew what we were getting - to fight we did not know. The land is retained - the area reduced.³⁶

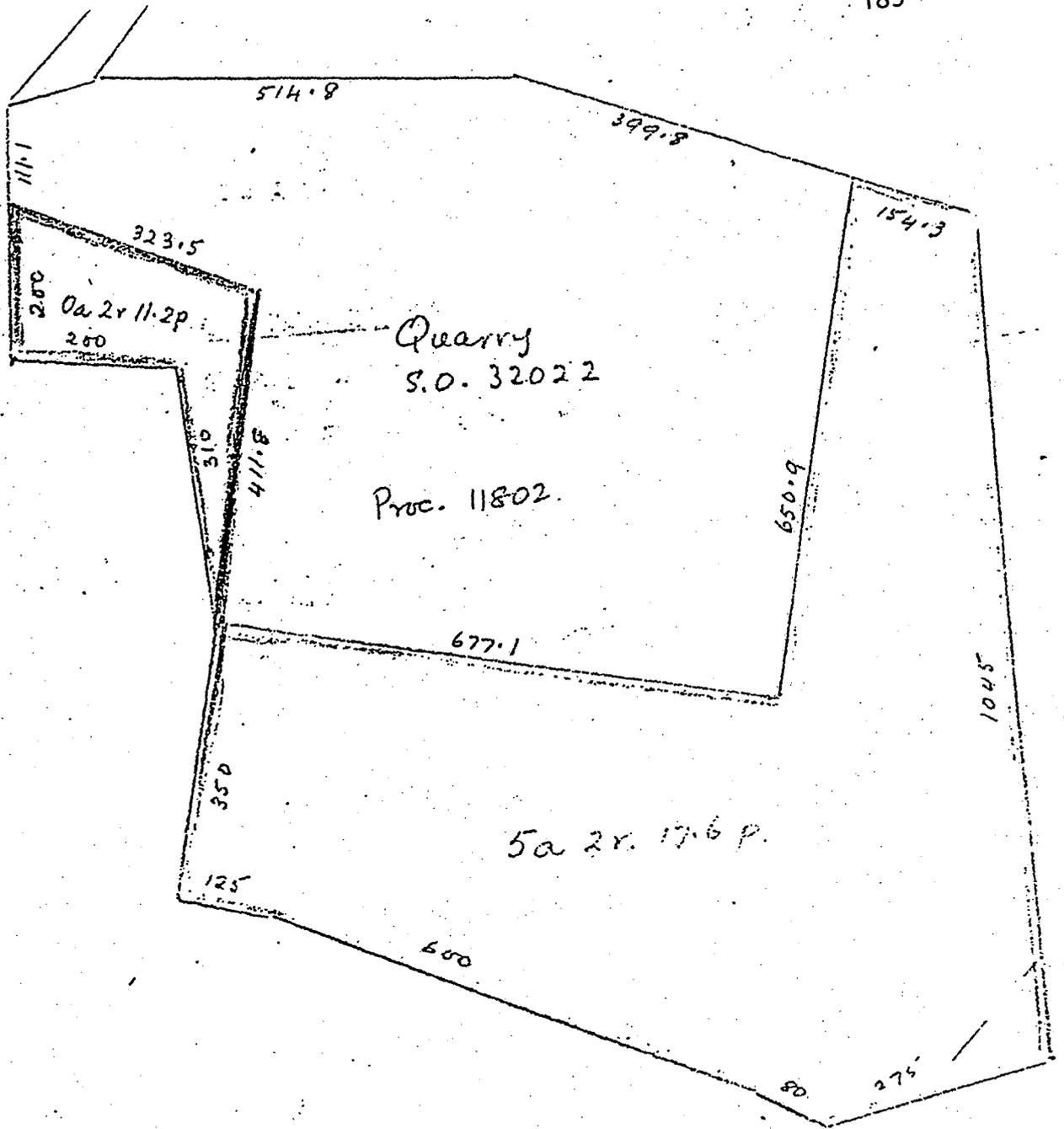
The way Cooney's submission has been recorded in the minutes makes it a little difficult to fully understand, but it seems reasonable to make the following comments:

- The owners were clearly opposed to the further acquisition of land, and the reasons for their opposition may have been accepted by the Minister of Works who instructed that negotiations take place rather than compulsory acquisition;
- The reference to the Finance Act 1944, which sets out the considerations to be taken into account by the Maori Land Court when assessing compensation, probably means that the owners did not think they would be awarded fair compensation if the matter proceeded under the Public Works Act 1928;³⁷
- Cooney states that the committee of management accepted this settlement, rather than risk failing if they continued their opposition. While they were pleased to maintain the freehold of the land, they probably remained opposed to further quarrying, but felt this was the best deal they could achieve.

Gumbly, appearing for the Crown, told the court that Works was not sure how much metal would be removed from the site during the ten years, but did say there was an estimate of 140,000 yards, which at £6 per yard would be worth £3500.

³⁶ Tauranga Minute Book vol 20, fols 320-322, 28 August 1958 [pp 1-3]

³⁷ This could have been a result of the 1956 Whareroa case, where the Court of Appeal's interpretation of the compensation legislation resulted in Tauranga Maori being awarded considerably less compensation than they argued the land was worth. See Kere T. Cookson-Ua 'Te Awa-o-Tukorako & Whareroa Blocks', (Wai 215, A27), 1996.



No 2

No. 3

Manga Tawa Block

Figure Six

The court confirmed the agreement made, and directed that £2000, plus £100 interest should be paid to the incorporation, and £100 costs for Cooney, Jamieson and Lees. It is interesting to note that the court directed the payment should be paid to the incorporation itself, rather than to the owners of the block affected (at this time the blocks administered by the Incorporation had not yet been amalgamated into one block):

The Incorporation is a joint undertaking and the £2100 is deemed by the Court to be part of the moneys of the Incorporation under Sec 454(4) and not of the owners of 2B. Mr Cooney to advise those owners of 2B, who might think otherwise of this and that if they wish to contest it they must take legal advice at once.³⁸

The court also stated for the record that although no proclamation taking the interest had been issued, the court had dealt with the matter as if it had been proclaimed and the court was assessing compensation.

The agreement was then recorded in a formal document whereby the proprietors of Mangatawa and Papamoa blocks offered to sell to the Crown for £2100 the sole right to quarry and remove metal from parts Mangatawa No 2 and No 3 for 10 years from 1 August 1957.³⁹ The offer was signed by the following representatives of the incorporation; T. Makarauri, M. Roto, J.H. Evans, R. Ririnui, T. Kakau and S.K. McLeod.

Although the agreement reserved to the Crown the option of proclaiming the rights acquired under the Public Works Act, the Ministry of Works did not issue a proclamation recording the agreement. Instead, the Crown's interest in the land was protected by a compensation certificate, S154251, registered against the title to the block (CT 16/306). The plan attached to the compensation certificate shows the exact area over which quarrying rights were obtained to have been 6 acres 0 roods 28.8 perches (see Figure Six).⁴⁰

Expansion of the Quarry Rights - 1963 to 1996

By 1961, as reported in the *Bay of Plenty Times*, nearly one side of the hill had been removed, as approximately 180,000 tons of metal had been extracted in the previous 12 months for use in wharf construction at Mount Maunganui.⁴¹ A Ministry of Works engineer estimated that more than 500,000 cubic yards had been taken out of the hill since 1956, and commented that the 180,000 tons would have covered 20 miles of road construction with a six inch layer. As Mangatawa was only a short distance from Mount Maunganui it had proved to be an economical source of metal because haulage costs were reduced. The article also commented on Mangatawa's archaeological significance and included a photo of a quarry worker 'inspecting the remains of a Maori oven' exposed in the quarry.

Despite the 10 year quarrying rights which had been obtained in 1958, development work in Tauranga was such that by 1963 the area acquired had been worked out. The

³⁸ Tauranga Minute Book vol 20, fol 322, 28 August 1958 [pp 1-3]

³⁹ Records of the Mangatawa-Papamoa Incorporation [p 8]

⁴⁰ Tracing from Comp. Cert., Records of the Mangatawa-Papamoa Incorporation, see Figure Six

⁴¹ *Bay of Plenty Times*, 12 August 1961

Ministry of Works therefore wished to extend both the area of land available for quarrying, and the length of time it would be able to carry out quarry operations.

Negotiations between the land purchase officer, Gumbly, and the committee of management were again held to expand the quarrying area by approximately 9 acres. Again, the land purchase officer initially tried to acquire the freehold of the land, but this was 'strongly resisted' by the owners.⁴² An agreement was reached at a meeting in February 1963 with Cooney, J. Evans, and T. Kakau (representing the committee of management) for a similar arrangement to that agreed on in 1957, however, this time it was to be for a 33 year term. The agreement not only covered the additional area of land, but included an extension to the period of time the earlier 6 acre area could be worked.

After the meeting the land purchase officer reported on the agreement to the District Commissioner of Works. He listed the following conditions to the agreement, which were still to be approved by the owners:

- (a) A lump sum payment of £4,000 plus £200 for legal costs. I have a feeling that at the meeting of owners they may ask for more and I think we should seek approval up to £5000.
- (b) Term for both areas to be 33 years.
- (c) Access to be fenced both sides. Mr Abey agreed with this - the total distance is less than $\frac{3}{4}$ mile. With heavily laden trucks downhill the stock does not have much chance.
- (d) Loose rock blown from the Quarry to be removed. The paddock below the quarry was used for hay but it is now impossible to put a mower in.
- (e) Drains and fences affected by quarry wash to be attended to.
- (f) At the end of the term the quarry floor to be left reasonably flat.⁴³

It should be noted that these conditions indicate various ways in which the land owners were negatively affected by having quarrying operations carried out on their land. Rock blasted from the quarry was falling on the incorporation's farmland, fences and drains were damaged by flooding, and it would appear that stock were being killed or injured by trucks leaving the quarry, despite the earlier assurance given to the Maori Land Court that the Ministry would fence the quarry.⁴⁴ Compensation for quarrying rights and land acquired does not seem to have included any allowance for compensating the owners for nuisance suffered as a result of the quarry.

Approval for the agreement was given by head office on 1 May 1963, subject to the district office adjusting metal prices to cover the cost of acquisition and fencing.⁴⁵ However, sales of metal for the purposes of constructing or maintaining state highways were to be exempted from the increased metal prices. The cost of

⁴² District Land Purchase Officer to District Commissioner of Works, 18 March 1963, Records of the Mangatawa-Papamoa Incorporation [pp 9-10]

⁴³ Ibid

⁴⁴ That stock were being killed is supported by the terms of the final agreement in which £100 was paid for stock.

⁴⁵ Commissioner of Works to District Commissioner of Works, 1 May 1965, Records of the Mangatawa-Papamoa Incorporation

acquisition was to be charged against the funds of the National Roads Board. This clearly shows that the quarry was required to keep up with the extensive roading programme under way in Tauranga and the Bay of Plenty at that time.

Having received approval the District Commissioner of Works wrote on 14 May 1963 to confirm the terms of agreement with Cooney, Lees and Morgan:

- (1) The Crown to obtain quarrying rights for a period of 33 years over the new area of approximately 9 acres, edged red on plan TDO. 7742, the existing right over the area edged yellow to be extended and be co-terminous.
- (2) The Crown to pay the owners the sum of £4,000 plus £100 for stock plus £200 for legal costs, the latter sum to be paid direct to you.
- (3) Quarry access to be fenced on both sides.
- (4) Loose rock to be removed from the paddock north of the quarry.
- (5) Drains and fences affected by wash from the quarry to be attended to.⁴⁶

It should be noted that these conditions vary slightly from those previously recorded. The provision of payment of £100 for stock was not mentioned previously, but the possibility of paying up to £5000 was also not offered at this stage. The condition requiring that the quarry floor be left reasonably flat at the end of the 33 years was now omitted. The district commissioner asked the solicitors to confirm that these were the conditions agreed to.

Although there is no more correspondence available on this matter, it would appear that Cooney, Lees & Morgan accepted the agreement on 24 May 1963.⁴⁷ Unlike the events of 1958, no formal agreement was drawn up recording the conditions under which the Crown obtained its interest in the land. Rather, Gumbly had advised Cooney, Lees & Morgan in June 1963 that if the quarrying rights were declared by a proclamation under the Public Works Act a formal agreement was not necessary.⁴⁸ This was confirmed by a 1983 letter from the District Commissioner of Works in which it was stated that the letter of 14 May 1963 'forms the basis of the agreement'.⁴⁹

Steps were taken to legalise the Crown's interest before the proclamation was issued. A compensation certificate (S.260356) was registered against the title to the block on 28 June 1963, and there is a voucher on file recording the £4100 payment (plus costs). More information should be sought by the claimants and the Crown as to how the amount of compensation paid compared to average prices for land in the area and the price of metals.

⁴⁶ District Commissioner of Works to Cooney, Lees & Morgan, 14 May 1963, Records of the Mangatawa-Papamoa Incorporation [p 11]

⁴⁷ District Commissioner of Works to Cooney, Lees & Morgan, 30 September 1983, Records of the Mangatawa-Papamoa Incorporation [p 12]

⁴⁸ Ibid

⁴⁹ Ibid

The proclamation itself was not issued until 9 October 1964, possibly because it had to wait until a survey was completed. The gazette notice declares that under section 32 of the Public Works Act 1928, an agreement had been made which gave the Crown the sole right to quarry and remove metal from the land for a term of 33 years, commencing 1 June 1963.⁵⁰ The areas of land affected were: (see Figure Seven)

Block	Area (acres roods perches)
Part Mangatawa No 3	0a. 0r. 14.9p.
Part Mangatawa No 2B2B	10a. 0r. 16.5p.
Part Mangatawa No 3	4a. 3r. 29.1p.
Total	15a. 0r. 20.5p.

For the next twenty years the quarry continued to be heavily used by the Ministry of Works in Tauranga and a substantial amount of rock was removed from the hill. In 1984 a Works' representative, Bosselmann, reported that:

the quarry had been important to the Ministry for many years. Metal had been originally used for the construction of the railway, it had been used in the construction of the Mount Maunganui wharf, (over one million cubic metres), it had been used on almost all of the highway re-construction in the area, on the oxidisation ponds and on the Kaituna river protection scheme.⁵¹

This quote clearly shows that the construction of much of the urban infrastructure of Tauranga and Mount Maunganui was due to rock extracted from Mangatawa hill.

Matters relating to the management of the quarry in the period after 1984 will be covered in a later chapter dealing with attempts made by the incorporation to prevent further damage being done to the maunga. This includes arrangements made to landscape the land before the expiry of the 33 year quarrying rights.

⁵⁰ *New Zealand Gazette*, 1964, p 2021

⁵¹ Minutes of Special Meeting, 19 November 1984, 8320-14 Tauranga District Council [pp 53-58]



This plan has been prepared in conjunction with SO's 48008 - 48011

SCHEDULE OF AREAS		
Land To Be Taken For Reservoir Site		
Shown	Description	Area
(G)	Pt Mangatawa Papamoa Blk	6224 m ²
(H)	Pt Mangatawa Papamoa Blk	3539 m ²
Total		9763 m ²

SCHEDULE Easements To Be Taken		
Shown	Purpose	Description
(I)	Butter Easement	Pt Mangatawa Papamoa Blk
(J)	ROW and Water Pipeline Easement	Pt Mangatawa Papamoa Blk
(K)	ROW and Water Pipeline Easement	Pt Mangatawa Papamoa Blk
(L)	ROW	Pt Mangatawa Papamoa Blk
(M)	Water Pipeline Easement	Pt Mangatawa Papamoa Blk
(N)	ROW	Pt Mangatawa Papamoa Blk
(O)	ROW	Pt Mangatawa Papamoa Blk
(P)	ROW	Pt Mangatawa Papamoa Blk

E.B. = Easement Boundary

Total Area 9763m²
Comprised in C.T. 16/306, 5D/109, 5C/105

I Peter Derald Peterbridge Auckland
Registered Surveyor and holder of an annual practicing certificate hereby certify that this plan has been made from Survey conducted by me or under my direction that this plan and Survey are correct and have been made in accordance with the regulations under the Surveyors Act 1908

Dated at Auckland this 25th day of October 1974 S.O. 48011
Field Book 64-19 p.129-138 License Book S.O. 57-59-63
Reference Plans SO's 32022 47567, 48008, 48009, 48010, 48011, 48012, 48013, 48014, 48015, 48016, 48017, 48018, 48019, 48020, 48021, 48022, 48023, 48024, 48025, 48026, 48027, 48028, 48029, 48030, 48031, 48032, 48033, 48034, 48035, 48036, 48037, 48038, 48039, 48040, 48041, 48042, 48043, 48044, 48045, 48046, 48047, 48048, 48049, 48050, 48051, 48052, 48053, 48054, 48055, 48056, 48057, 48058, 48059, 48060, 48061, 48062, 48063, 48064, 48065, 48066, 48067, 48068, 48069, 48070, 48071, 48072, 48073, 48074, 48075, 48076, 48077, 48078, 48079, 48080, 48081, 48082, 48083, 48084, 48085, 48086, 48087, 48088, 48089, 48090, 48091, 48092, 48093, 48094, 48095, 48096, 48097, 48098, 48099, 48100, 48101, 48102, 48103, 48104, 48105, 48106, 48107, 48108, 48109, 48110, 48111, 48112, 48113, 48114, 48115, 48116, 48117, 48118, 48119, 48120, 48121, 48122, 48123, 48124, 48125, 48126, 48127, 48128, 48129, 48130, 48131, 48132, 48133, 48134, 48135, 48136, 48137, 48138, 48139, 48140, 48141, 48142, 48143, 48144, 48145, 48146, 48147, 48148, 48149, 48150, 48151, 48152, 48153, 48154, 48155, 48156, 48157, 48158, 48159, 48160, 48161, 48162, 48163, 48164, 48165, 48166, 48167, 48168, 48169, 48170, 48171, 48172, 48173, 48174, 48175, 48176, 48177, 48178, 48179, 48180, 48181, 48182, 48183, 48184, 48185, 48186, 48187, 48188, 48189, 48190, 48191, 48192, 48193, 48194, 48195, 48196, 48197, 48198, 48199, 48200, 48201, 48202, 48203, 48204, 48205, 48206, 48207, 48208, 48209, 48210, 48211, 48212, 48213, 48214, 48215, 48216, 48217, 48218, 48219, 48220, 48221, 48222, 48223, 48224, 48225, 48226, 48227, 48228, 48229, 48230, 48231, 48232, 48233, 48234, 48235, 48236, 48237, 48238, 48239, 48240, 48241, 48242, 48243, 48244, 48245, 48246, 48247, 48248, 48249, 48250, 48251, 48252, 48253, 48254, 48255, 48256, 48257, 48258, 48259, 48260, 48261, 48262, 48263, 48264, 48265, 48266, 48267, 48268, 48269, 48270, 48271, 48272, 48273, 48274, 48275, 48276, 48277, 48278, 48279, 48280, 48281, 48282, 48283, 48284, 48285, 48286, 48287, 48288, 48289, 48290, 48291, 48292, 48293, 48294, 48295, 48296, 48297, 48298, 48299, 48300, 48301, 48302, 48303, 48304, 48305, 48306, 48307, 48308, 48309, 48310, 48311, 48312, 48313, 48314, 48315, 48316, 48317, 48318, 48319, 48320, 48321, 48322, 48323, 48324, 48325, 48326, 48327, 48328, 48329, 48330, 48331, 48332, 48333, 48334, 48335, 48336, 48337, 48338, 48339, 48340, 48341, 48342, 48343, 48344, 48345, 48346, 48347, 48348, 48349, 48350, 48351, 48352, 48353, 48354, 48355, 48356, 48357, 48358, 48359, 48360, 48361, 48362, 48363, 48364, 48365, 48366, 48367, 48368, 48369, 48370, 48371, 48372, 48373, 48374, 48375, 48376, 48377, 48378, 48379, 48380, 48381, 48382, 48383, 48384, 48385, 48386, 48387, 48388, 48389, 48390, 48391, 48392, 48393, 48394, 48395, 48396, 48397, 48398, 48399, 48400, 48401, 48402, 48403, 48404, 48405, 48406, 48407, 48408, 48409, 48410, 48411, 48412, 48413, 48414, 48415, 48416, 48417, 48418, 48419, 48420, 48421, 48422, 48423, 48424, 48425, 48426, 48427, 48428, 48429, 48430, 48431, 48432, 48433, 48434, 48435, 48436, 48437, 48438, 48439, 48440, 48441, 48442, 48443, 48444, 48445, 48446, 48447, 48448, 48449, 48450, 48451, 48452, 48453, 48454, 48455, 48456, 48457, 48458, 48459, 48460, 48461, 48462, 48463, 48464, 48465, 48466, 48467, 48468, 48469, 48470, 48471, 48472, 48473, 48474, 48475, 48476, 48477, 48478, 48479, 48480, 48481, 48482, 48483, 48484, 48485, 48486, 48487, 48488, 48489, 48490, 48491, 48492, 48493, 48494, 48495, 48496, 48497, 48498, 48499, 48500, 48501, 48502, 48503, 48504, 48505, 48506, 48507, 48508, 48509, 48510, 48511, 48512, 48513, 48514, 48515, 48516, 48517, 48518, 48519, 48520, 48521, 48522, 48523, 48524, 48525, 48526, 48527, 48528, 48529, 48530, 48531, 48532, 48533, 48534, 48535, 48536, 48537, 48538, 48539, 48540, 48541, 48542, 48543, 48544, 48545, 48546, 48547, 48548, 48549, 48550, 48551, 48552, 48553, 48554, 48555, 48556, 48557, 48558, 48559, 48560, 48561, 48562, 48563, 48564, 48565, 48566, 48567, 48568, 48569, 48570, 48571, 48572, 48573, 48574, 48575, 48576, 48577, 48578, 48579, 48580, 48581, 48582, 48583, 48584, 48585, 48586, 48587, 48588, 48589, 48590, 48591, 48592, 48593, 48594, 48595, 48596, 48597, 48598, 48599, 48600, 48601, 48602, 48603, 48604, 48605, 48606, 48607, 48608, 48609, 48610, 48611, 48612, 48613, 48614, 48615, 48616, 48617, 48618, 48619, 48620, 48621, 48622, 48623, 48624, 48625, 48626, 48627, 48628, 48629, 48630, 48631, 48632, 48633, 48634, 48635, 48636, 48637, 48638, 48639, 48640, 48641, 48642, 48643, 48644, 48645, 48646, 48647, 48648, 48649, 48650, 48651, 48652, 48653, 48654, 48655, 48656, 48657, 48658, 48659, 48660, 48661, 48662, 48663, 48664, 48665, 48666, 48667, 48668, 48669, 48670, 48671, 48672, 48673, 48674, 48675, 48676, 48677, 48678, 48679, 48680, 48681, 48682, 48683, 48684, 48685, 48686, 48687, 48688, 48689, 48690, 48691, 48692, 48693, 48694, 48695, 48696, 48697, 48698, 48699, 48700, 48701, 48702, 48703, 48704, 48705, 48706, 48707, 48708, 48709, 48710, 48711, 48712, 48713, 48714, 48715, 48716, 48717, 48718, 48719, 48720, 48721, 48722, 48723, 48724, 48725, 48726, 48727, 48728, 48729, 48730, 48731, 48732, 48733, 48734, 48735, 48736, 48737, 48738, 48739, 48740, 48741, 48742, 48743, 48744, 48745, 48746, 48747, 48748, 48749, 48750, 48751, 48752, 48753, 48754, 48755, 48756, 48757, 48758, 48759, 48760, 48761, 48762, 48763, 48764, 48765, 48766, 48767, 48768, 48769, 48770, 48771, 48772, 48773, 48774, 48775, 48776, 48777, 48778, 48779, 48780, 48781, 48782, 48783, 48784, 48785, 48786, 48787, 48788, 48789, 48790, 48791, 48792, 48793, 48794, 48795, 48796, 48797, 48798, 48799, 48800, 48801, 48802, 48803, 48804, 48805, 48806, 48807, 48808, 48809, 48810, 48811, 48812, 48813, 48814, 48815, 48816, 48817, 48818, 48819, 48820, 48821, 48822, 48823, 48824, 48825, 48826, 48827, 48828, 48829, 48830, 48831, 48832, 48833, 48834, 48835, 48836, 48837, 48838, 48839, 48840, 48841, 48842, 48843, 48844, 48845, 48846, 48847, 48848, 48849, 48850, 48851, 48852, 48853, 48854, 48855, 48856, 48857, 48858, 48859, 48860, 48861, 48862, 48863, 48864, 48865, 48866, 48867, 48868, 48869, 48870, 48871, 48872, 48873, 48874, 48875, 48876, 48877, 48878, 48879, 48880, 48881, 48882, 48883, 48884, 48885, 48886, 48887, 48888, 48889, 48890, 48891, 48892, 48893, 48894, 48895, 48896, 48897, 48898, 48899, 48900, 48901, 48902, 48903, 48904, 48905, 48906, 48907, 48908, 48909, 48910, 48911, 48912, 48913, 48914, 48915, 48916, 48917, 48918, 48919, 48920, 48921, 48922, 48923, 48924, 48925, 48926, 48927, 48928, 48929, 48930, 48931, 48932, 48933, 48934, 48935, 48936, 48937, 48938, 48939, 48940, 48941, 48942, 48943, 48944, 48945, 48946, 48947, 48948, 48949, 48950, 48951, 48952, 48953, 48954, 48955, 48956, 48957, 48958, 48959, 48960, 48961, 48962, 48963, 48964, 48965, 48966, 48967, 48968, 48969, 48970, 48971, 48972, 48973, 48974, 48975, 48976, 48977, 48978, 48979, 48980, 48981, 48982, 48983, 48984, 48985, 48986, 48987, 48988, 48989, 48990, 48991, 48992, 48993, 48994, 48995, 48996, 48997, 48998, 48999, 49000, 49001, 49002, 49003, 49004, 49005, 49006, 49007, 49008, 49009, 49010, 49011, 49012, 49013, 49014, 49015, 49016, 49017, 49018, 49019, 49020, 49021, 49022, 49023, 49024, 49025, 49026, 49027, 49028, 49029, 49030, 49031, 49032, 49033, 49034, 49035, 49036, 49037, 49038, 49039, 49040, 49041, 49042, 49043, 49044, 49045, 49046, 49047, 49048, 49049, 49050, 49051, 49052, 49053, 49054, 49055, 49056, 49057, 49058, 49059, 49060, 49061, 49062, 49063, 49064, 49065, 49066, 49067, 49068, 49069, 49070, 49071, 49072, 49073, 49074, 49075, 49076, 49077, 49078, 49079, 49080, 49081, 49082, 49083, 49084, 49085, 49086, 49087, 49088, 49089, 49090, 49091, 49092, 49093, 49094, 49095, 49096, 49097, 49098, 49099, 49100, 49101, 49102, 49103, 49104, 49105, 49106, 49107, 49108, 49109, 49110, 49111, 49112, 49113, 49114, 49115, 49116, 49117, 49118, 49119, 49120, 49121, 49122, 49123, 49124, 49125, 49126, 49127, 49128, 49129, 49130, 49131, 49132, 49133, 49134, 49135, 49136, 49137, 49138, 49139, 49140, 49141, 49142, 49143, 49144, 49145, 49146, 49147, 49148, 49149, 49150, 49151, 49152, 49153, 49154, 49155, 49156, 49157, 49158, 49159, 49160, 49161, 49162, 49163, 49164, 49165, 49166, 49167, 49168, 49169, 49170, 49171, 49172, 49173, 49174, 49175, 49176, 49177, 49178, 49179, 49180, 49181, 49182, 49183, 49184, 49185, 49186, 49187, 49188, 49189, 49190, 49191, 49192, 49193, 49194, 49195, 49196, 49197, 49198, 49199, 49200, 49201, 49202, 49203, 49204, 49205, 49206, 49207, 49208, 49209, 49210, 49211, 49212, 49213, 49214, 49215, 49216, 49217, 49218, 49219, 49220, 49221, 49222, 49223, 49224, 49225, 49226, 49227, 49228, 49229, 49230, 49231, 49232, 49233, 49234, 49235, 49236, 49237, 49238, 49239, 49240, 49241, 49242, 49243, 49244, 49245, 49246, 49247, 49248, 49249, 49250, 49251, 49252, 49253, 49254, 49255, 49256, 49257, 49258, 49259, 49260, 49261, 49262, 49263, 49264, 49265, 49266, 49267, 49268, 49269, 49270, 49271, 49272, 49273, 49274, 49275, 49276, 49277, 49278, 49279, 49280, 49281, 49282, 49283, 49284, 49285, 49286, 49287, 49288, 49289, 49290, 49291, 49292, 49293, 49294, 49295, 49296, 49297, 49298, 49299, 49300, 49301, 49302, 49303, 49304, 49305, 49306, 49307, 49308, 49309, 49310, 49311, 49312, 49313, 49314, 49315, 49316, 49317, 49318, 49319, 49320, 49321, 49322, 49323, 49324, 49325, 49326, 49327, 49328, 49329, 49330, 49331, 49332, 49333, 49334, 49335, 49336, 49337, 49338, 49339, 49340, 49341, 49342, 49343, 49344, 49345, 49346, 49347, 49348, 49349, 49350, 49351, 49352, 49353, 49354, 49355, 49356, 49357, 49358, 49359, 49360, 49361, 49362, 49363, 49364, 49365, 49366, 49367, 49368, 49369, 49370, 49371, 49372, 49373, 49374, 49375, 49376, 49377, 49378, 49379, 49380, 49381, 49382, 49383, 49384, 49385, 49386, 49387, 49388, 49389, 49390, 49391, 49392, 49393, 49394, 49395, 49396, 49397, 49398, 49399, 49400, 49401, 49402, 49403, 49404, 49405, 49406, 49407, 49408, 49409, 49410, 49411, 49412, 49413, 49414, 49415, 49416, 49417, 49418, 49419, 49420, 49421, 49422, 49423, 49424, 49425, 49426, 49427, 49428, 49429, 49430, 49431, 49432, 49433, 49434, 49435, 49436, 49437, 49438, 49439, 49440, 49441, 49442, 49443, 49444, 49445, 49446, 49447, 49448, 49449, 49450, 49451, 49452, 49453, 49454, 49455, 49456, 49457, 49458, 49459, 49460, 49461, 49462, 49463, 49464, 49465, 49466, 49467, 49468, 49469, 49470, 49471, 49472, 49473, 49474, 49475, 49476, 49477, 49478, 49479, 49480, 49481, 49482, 49483, 49484, 49485, 49486, 49487, 49488, 49489, 49490, 49491, 49492, 49493, 49494, 49495, 49496, 49497, 49498, 49499, 49500, 49501, 49502, 49503, 49504, 49505, 49506, 49507, 49508, 49509, 49510, 49511, 49512, 49513, 49514, 49515, 49516, 49517, 49518, 49519, 49520, 49521, 49522, 49523, 49524, 49525, 49526, 49527, 49528, 49529, 49530, 49531, 49532, 49533, 49534, 49535, 49536, 49537, 49538, 49539, 49540, 49541, 49542, 49543, 49544, 49545, 49546, 49547, 49548, 49549, 49550, 49551, 49552, 49553, 49554, 49555, 49556, 49557, 49558, 49559, 49560, 49561, 49562, 49563, 49564, 49565, 49566, 49567, 49568, 49569, 49570, 49571, 49572, 49573, 49574, 49575, 49576, 49577, 49578, 49579, 49580, 49581, 49582, 49583, 49584, 49585, 49586, 49587, 49588, 49589, 49590, 49591, 49592, 49593, 49594, 49595, 49596, 49597, 49598, 49599, 49600, 49601, 49602, 49603, 49604, 49605, 49606, 49607, 49608, 49609, 49610, 49611, 49612, 49613, 49614, 49615, 49616, 49617, 49618, 49619, 49620, 4962

4. WATER RESERVOIR SITES

History of Mount Maunganui Borough Water Supply

Prior to 1938, Mount Maunganui had no water supply scheme and the residents were dependent on rain water collection and deep bores which supplied poor quality water. This situation was improved in 1938 when a pipeline from Tauranga city was laid across the harbour (over the rail bridge) to Matapihi.⁵² At that time it had also been planned to construct a reservoir on Mount Maunganui itself, but the outbreak of World War Two meant that this work was postponed. However, wartime use of the new aerodrome at Whareroa was to be a factor in getting approval (and a subsidy) for the construction of the reservoir on the Mount, as the town clerk argued to the Public Works Department that the location of the pipeline in the vicinity of the aerodrome made the supply from Tauranga city vulnerable to aerial attack.⁵³ This suggestion was not as unreasonable as it may appear today when examined in the context of the Japanese threat in the Pacific and attack on Pearl Harbour only 7 months earlier. The possibility of the pipeline being destroyed meant a reservoir was necessary to protect the supply of water to both the Mount Maunganui township and the aerodrome.

By 1951 the reservoir which had been built on Mount Maunganui was becoming inadequate, and the idea of building an additional reservoir on Mangatawa was first suggested. Rapid population growth meant that the demand for water in both Tauranga and Mount Maunganui boroughs was such that the Tauranga Borough Council could not always guarantee enough water could be supplied across the pipeline. Problems were also caused by the fact that the reservoir on the Mount was at an elevation of only 140 feet, which meant that the water pressure was very low. In times of peak demand it was possible that there would be no reserve in the tank sufficient for fire fighting purposes, and water was already being rationed during the summer holiday season.⁵⁴

As a result the Mount Maunganui Borough Council proposed to obtain its own water supply from the Tautau stream catchment on Otanewainuku, which would remove the borough's dependence on Tauranga city. The proposal was supported by the Ministry of Works' engineer in Tauranga, who commented that the recent decision to site an international deep water shipping port at Mount Maunganui made the provision of an adequate water supply even more important. He concluded:

The existing supply to the Mount by using maximum safe boosting might suffice for 3 years, but the provision of a permanent supply is very urgent. Taking all the circumstances into consideration the proposed scheme is recommended.⁵⁵

A Ministry of Works' file note on the proposal noted that there were only two possible sites where a new reservoir could be constructed, on Mount Maunganui or

⁵² Acting Resident Engineer to District Engineer, 16 July 1951, ABKK W4357 50/579 pt 1, NA Wellington

⁵³ Town Clerk to District Engineer, 27 July 1942, ABKK W4357 50/579 pt 1, NA Wellington

⁵⁴ Acting Resident Engineer to District Engineer, 16 July 1951, ABKK W4357 50/579 pt 1, NA Wellington

⁵⁵ Acting Resident Engineer to District Engineer, 16 July 1951, ABKK W4357 50/579 pt 1, NA Wellington

Mangatawa. Works recommended that the decision on the site should be delayed until the exact location and layout of the port had been determined so that the pipeline route would not be affected.⁵⁶

Central government played a role in the water supply schemes of the Mount Maunganui Borough by approving the proposed schemes for the purposes of qualifying for a loan or subsidy from the Crown. In addition, however, by 1952 the Ministry of Works had a vested interest in ensuring that the borough had sufficient water resources:

This Department [Ministry of Works] now has a direct interest in the Mount Maunganui water supply in that the construction of 100 State Rental Houses on the Williams Block has been authorised. The Department will also be responsible for water supply to the deep water wharf.⁵⁷

Despite these considerations, approval for the scheme was delayed a number of years as the possibility of increasing the amount of water drawn from the Tauranga city supply was investigated. The Borough Council continued to prefer the development of a supply from the Tautau stream, to ensure that sufficient water could be obtained, and because the stream was thought to supply pure water which would not require treatment. These considerations were important not only for residents, but also for the local economy. By this time it was clear that the new port would generate considerable income for the borough. The Mayor, S.F. Newton, was reported as saying:

Members of the Port Allocation Committee knew that there was going to be a big demand for water for industrial purposes. If the council waited until industries came before trying to get a better supply, they would probably not come at all. The council should move ahead of the growth of industry.⁵⁸

Another councillor referred to the water purity, and commented: 'But we cannot get past the fact that shipping has refused Tauranga water, and one of the things we will have to do here is to supply shipping.'⁵⁹

When the Tautau water supply scheme was finally approved, Mount Maunganui was chosen as the most suitable reservoir site. Construction of the scheme started in 1956 and a new one million gallon tank was constructed on the Mount.⁶⁰ The scheme was operational on 16 November 1958, after which the town clerk wrote to thank the Minister of Works for departmental assistance in ensuring that the water pipeline was complete in time to meet the summer demand:

⁵⁶ File note, 17 October 1951, ABKK W4357 50/579 pt 1, NA Wellington

⁵⁷ District Commissioner of Works to Commissioner of Works, 16 October 1952, ABKK W4357 50/579 pt 1, NA Wellington

⁵⁸ Clipping from *Bay of Plenty Times*, 8 July 1954, ABKK W4357 50/579 pt 1, NA Wellington

⁵⁹ *Ibid*

⁶⁰ Town Clerk to Minister of Works, 20 February 1959, ABKK W4357 50/579 pt 1, NA Wellington

During this time the co-operation received from the Engineers and other staff of the Ministry of Works was exceptional in every way and the assistance received was one of the main factors in achieving speedy completion of pipelaying construction to connect the main at these two points. I am asked by my Council to extend its thanks for the co-operation received and, in particular, for the attention which you gave to the alleviation of this problem when consulted by His Worship the mayor on the occasion of your visit to the Tauranga area some time ago.⁶¹

Planning for the Mangatawa Reservoir

Despite the expectation that water from the Tautau catchment would not need purification treatment, it turned out that some human and animal pollution was contaminating the supply. By 1967 the Health Department was placing pressure on the Mount Maunganui Borough Council to improve the water quality:

If anything, the position at Mount Maunganui is more serious in that overseas shipping is entitled to water complying with World Health Organisation Standards. The Health Department attitude is, therefore, quite understandable.⁶²

In addition, continued population growth, and the expected spread of residential housing towards the Papamoa area meant that the future demand for water would be greatly increased 'and quite logically an additional reservoir load centre will be constructed on Maungatawa [sic].'⁶³

In response to these problems the Borough Council proposed to upgrade the supply scheme by constructing a water treatment plant, as well as additional larger pipelines, and a reservoir on Mangatawa. The proposal was supported by the local representative of the Ministry of Works, who predicted that the current water supply would be insufficient within 15 years, and also commented that fire fighting water supplies could easily be at risk.⁶⁴ In regard to the request for a loan from central government to finance the development he concluded:

I consider the work should be regarded as one calling for urgency and that the proposals should be approved without delay.⁶⁵

However, approval was delayed while the economics of amalgamating water supply services with the Tauranga City Council were considered. This option was rejected by the Mount Maunganui Borough Council, and at the end of 1971 a water supply improvements loan proposal was submitted to the Local Authorities Loans Board, requesting \$782,000. The schedule of planned improvements included provision for the construction of a two million gallon reservoir on Mangatawa in 1972, with additional reservoirs planned for construction in 1987 and 1996.⁶⁶

⁶¹ Ibid

⁶² Special Report Regarding the Possible Amalgamation of the Tauranga City and Mount Maunganui Borough Water Supplies, no date [1966?], ABKK W4357 50/579 pt 1, NA Wellington

⁶³ Ibid

⁶⁴ Resident Engineer to District Commissioner of Works, 17 January 1967, ABKK W4357 50/579 pt 1, NA Wellington

⁶⁵ Ibid

⁶⁶ Town Clerk to Local Authorities Loans Board, 2 December 1971, ABKK W4357 50/579 pt 1, NA Wellington [p 6]

The Ministry of Works recommended that the loan should be approved, on the following grounds:

- (1) The work is becoming increasingly urgent and construction should not be delayed any longer than is necessary.
 - (2) There is no indication that the Mount would favour a combined scheme at this stage.
 - (3) The proposed work will not detrimentally affect future amalgamation and rationalisation of the two water supplies.
 - (4) The proposed work scheme reduces the need for booster pumping which would be required if the Mount's water supply was drawn from the Oropi Road treatment plant. . . .
- (a) The proposal is essential to cope with the expanding needs of the Borough.⁶⁷

Initial Negotiations with the Mangatawa-Papamoa Incorporation

Construction of the reservoir on Mangatawa began in 1973 and was completed by November of that year.⁶⁸ Prior to the beginning of construction, the council held meetings with some representatives of the incorporation in order to obtain permission to enter the land to construct the reservoir. The Mangatawa-Papamoa Incorporation is missing its records for this period, and the records supplied by the Tauranga District Council only indicate that an agreement was reached and suggest some terms or conditions that might have been attached to the agreement.

In June 1972 the town clerk, V.B. Cunningham, wrote to the accounting firm Hickey, Collings & Grogan, which acted as secretary to the incorporation, as follows:

Following a recent meeting with Messrs. J.H. Evans and Paraire, who act as trustees for the Mangatawa Papamoa Incorporation I was asked to write to you to obtain formal consent for the right of access to the Mangatawa area for the purpose of earthworks to establish a site for the reservoir to be constructed on the hill.

I understand all matters have been settled to the satisfaction of the parties. A survey is to be undertaken to establish easements and to provide a basis for the assessment of compensation and the trustees are to provide an estimate of water requirements so that provision can be made for required fittings to the pipeline which will pass through the property.⁶⁹

This letter suggests two conditions of the agreement to allow the council to enter the land: firstly, that water supply would be provided to the incorporation; and secondly, that it had been agreed that compensation would be paid for the land. The committee of management for the incorporation agreed at its next meeting that the contractor would be allowed access to build the reservoir and accepted the valuer suggested by the council to determine the value of the land for compensation purposes.⁷⁰

⁶⁷ District Engineer to District Commissioner of Works, 24 December 1971, ABKK W4357 50/579 pt 1, NA Wellington [pp 4-5]

⁶⁸ *Bay of Plenty Times*, 31 October 1973

⁶⁹ Town Clerk to Hickey, Collings & Grogan, 21 June 1972, 8320-14 Tauranga District Council [p 73]

⁷⁰ Hickey, Collings & Grogan to Town Clerk, 27 June 1972, 8320-14 Tauranga District Council [p 72]

During 1973, while construction was already underway on the incorporation's land, there was some dispute between the Mount Maunganui Borough Council and the incorporation over the provision of water supply. At the end of January 1973, the incorporation requested the opportunity to discuss with the council the incorporation's ability to receive water from the pipeline which would run from the reservoir.⁷¹ Despite what seems to have been a previous agreement, the council advised that its current policy was not to provide services to the Te Maunga, Mangatawa and Papamoa areas as they were outside the borough boundaries, and ratepayers would thus be paying for the extension of services to non-ratepayers.⁷² As a result the committee of management sought a meeting with the Mayor because:

The Incorporation feels that arrangements entered into, and which were presumably discussed with the town clerk, the Chairman of the Works Committee and the Consulting Engineers are not being implemented.⁷³

This indicates that the initial agreement had been made with the Mayor, although the previous correspondence from the town clerk confirms that he too should have been aware of the terms of agreement. The subsequent meeting with the Mayor apparently clarified that some agreement to supply water had been made, as the town clerk then wrote that the council had considered the matter:

It is realised that there was room for some difference of opinion at an earlier date when the question of reservoir siting was first considered, and in view of this the Council will be prepared to re-consider the question of making water supply available at normal rates when the present reservoir construction and pipeline work is completed.⁷⁴

Negotiations to Acquire the Land

It was not until after the reservoir was completed that formal negotiations to acquire the land were entered into. Not only did the council need to obtain title to the site where the reservoir had been built, but it also needed to acquire an area of land as an accessway to the reservoir, and wished to obtain a further area for a proposed second reservoir to be constructed at a future date.

In March 1974 the solicitors for the council, Maltby, Hare & Willoughby, reported that they had had discussions with the firm of Cooney, Lees & Morgan, solicitors for the incorporation. Both sets of lawyers were ready to enter into a formal agreement, but were seeking instructions on what the terms of the agreement should be.⁷⁵ Apparently the precise terms of any agreement that had been made were still unclear to the council, as a meeting was then held with the committee of management to discuss what arrangements needed to be made. The meeting was attended by the Mayor, town clerk and borough engineer, and the town clerk reported that the following points had been agreed upon:⁷⁶

⁷¹ Hickey, Collings & Grogan to Town Clerk, 26 January 1973, 8320-14 Tauranga District Council

⁷² Town Clerk to J.H. Evans, 22 February 1973, 8320-14 Tauranga District Council

⁷³ Hickey, Collings & Grogan to Mayor, 26 June 1973, 8320-14 Tauranga District Council [p 71]

⁷⁴ Town Clerk to Hickey, Collings & Grogan, 26 July 1973, 8320-14 Tauranga District Council [p 70]

⁷⁵ Maltby, Hare & Willoughby to Town Clerk, 15 March 1975, 8320-14 Tauranga District Council

⁷⁶ Town Clerk to Hickey, Collings & Grogan, 1 April 1974, 8320-14 Tauranga District Council [pp 68-69]

- The council would purchase the two sites and access ways on the basis of a valuation to be made by S.M. Jones;
- Rights of way over the access would be granted in perpetuity to the present owners;
- If possible the site of the future reservoirs would be exchanged with land in the present quarry site;
- The position of the site for future reservoirs would be more closely defined;
- The council undertook to make water supply available to the farm on the same basis as to borough consumers;
- Fire fighting hydrants would be provided;
- Erosion as a result of the site excavation would be repaired to the satisfaction of the committee; and
- The pipeline alignment would be re-sown by the farm manager with seed provided by the council.

Again, despite the agreement on the provision of water supply, the town clerk tried to suggest that this would depend on Mangatawa being included within the borough boundaries. The Local Government Commission had approved a scheme to extend the borough boundaries, which was now to be the subject of a public poll. While the council said there would be no difficulties in providing water reticulation once the boundary change had been completed, the council might have to review the position if the scheme failed. The town clerk wrote:

I hope it can be seen that it would be invidious in the extreme if owners of property within the area covered by the final scheme should determine by poll that they do not wish their properties to be included within the borough and at the same time expect an extension of municipal services.⁷⁷

By August 1974, however, the town clerk wrote to advise Hickey, Collings & Grogan that the water connection to the meeting house and farm had been installed which meant all actions required of the council had been completed. All that remained to be done was for compensation to be settled.⁷⁸ Once the survey was complete the valuer, Morris Jones, would carry out the valuation to determine compensation. In response to this, the town clerk was informed that:

The Committee of Management has determined that no agreement was reached at the meeting on the Site in March to sell Council the approximate 2½ acres of land involved with the Reservoir Siting but that it would be prepared to discuss the leasing in perpetuity of the required area at an annual rental equal to 10% of the valuation arrived at by Mr. Morris Jones.⁷⁹

The position expressed by the incorporation was then the subject of a meeting held at Mangatawa on 30 September 1974. The meeting was attended by the Mayor, T. Te Kani, T. Kakau, J.H. Evans (committee of management), C.L. Hickey (secretary), and the town clerk. The Mayor pointed out that it had been agreed in March 1974 that the council would purchase the land, and that the council required to obtain the freehold

⁷⁷ Town Clerk to Hickey, Collings & Grogan, 22 April 1974, 8320-14 Tauranga District Council

⁷⁸ Town Clerk to Hickey, Collings & Grogan, 20 August 1974, 8320-14 Tauranga District Council

⁷⁹ Hickey, Collings & Grogan to Town Clerk, 28 August 1974, 8320-14 Tauranga District Council [p 67]

of the land. He also expressed concern that future rent reviews might create problems, and that, as the land was being acquired for a public utility for the benefit of both Maori and Pakeha in the Mount Maunganui area:

he did not think this Council, or any future Council would be prepared to commit the ratepayers of the Mount Maunganui Borough to a leasehold arrangement whereby they would be paying many times over for land which is to be used for such a purpose.⁸⁰

In response Turi Te Kani argued that the incorporation was endeavouring to act in the best interests of the owners of the land, and that an annual rental payment would be easier to budget for in the future rather than one lump sum payment at that time. No agreement was reached at the meeting, rather the incorporation representatives said that the points raised by the council would be considered at the next meeting of the committee of management.

After its meeting, the committee of management requested that the survey of the present reservoir site should be completed before any decision was made on whether to sell the land or not. They also instructed that the land required for future reservoir sites would be the subject of separate negotiations at the time the reservoirs were to be built.⁸¹ In response the town clerk said he had already sent the incorporation survey plans, and requested that a decision be made.⁸²

However, no decision was forthcoming, and the town clerk arranged in early 1975 for S.M. Jones to carry out a valuation of the land to be acquired (see Figure Seven).⁸³ The valuation was done of the two sites known as H (present site) and G (future site). Site H was an area of 3539m² (3 roods 19.922 perches) and site G was 6224m² (1 acre 2 roods 6.077 perches). Both sites were described as 'steepish' pasture land on a property zoned as Rural B. The valuer commented:

The market price of this class of land varies with its location and contour. This land is very well located but in my opinion does not lend itself to other than pasture farming.

Taking any area such as this is usually viewed as a nuisance by a farm owner and he usually requires some premium before he will consider selling such an area. . . .

A liberal approach is usual in cases such as this if costly court proceedings are to be avoided.⁸⁴

He concluded that a fair market value for site H would be \$1,500 and for site G \$2,250, a total of \$3,750.

This total value was communicated to the Mangatawa-Papamoa Incorporation by the town clerk, who asked the committee of management to decide whether they would transfer both pieces of land for that amount.⁸⁵ In July 1975 the town clerk was

⁸⁰ Notes on Meeting held on Mangatawa Hill with Members of Mangatawa/Papamoa Incorporation, on Monday, September 30, 1974, 8320-14 Tauranga District Council [pp 65-66]

⁸¹ Hickey, Collings & Grogan to Town Clerk, 1 October 1974, 8320-14 Tauranga District Council

⁸² Town Clerk to Hickey, Collings & Grogan, 18 October 1974, 8320-14 Tauranga District Council

⁸³ Town Clerk to S.M. Jones, 14 February 1975, 8320-14 Tauranga District Council

⁸⁴ S. Morris Jones to Town Clerk, 24 March 1975, 8320-14 Tauranga District Council [pp 63-64]

⁸⁵ Town Clerk to Mangatawa-Papamoa Incorporation, 28 April 1975, 8320-14 Tauranga District Council

informed that the committee of management had decided that they would not discuss site G at that time and that site H would be offered to the Borough under perpetual lease at a rate of 6% of the valuation, subject to rent reviews every seven years.⁸⁶

This was clearly still unacceptable to the council, which then resolved to acquire the land using the compulsory acquisition powers of the Public Works Act:

The position is that the Council has spend [sic] some years in negotiating with the Maori owners in connection with the reservoir sites and has been unable to obtain any form of satisfaction, leaving it no option but to ask you to proceed to take the land under the provisions of the Act.⁸⁷

Solicitors for the council were instructed to take the necessary steps in August 1975, but problems with defining the surveys for the accessway and other difficulties meant that little was done until almost a year later. In July 1976 the town clerk had to again formally instruct the solicitors that a leasehold was unacceptable and that the council wished to use the Public Works Act to obtain title to the land if necessary.⁸⁸

At the same time, in mid-1976, three years after construction was completed, the chairman of the incorporation, Turi Te Kani, wrote in the annual report of the committee of management that: 'Finality has not yet been reached with the Borough Council over settlement of the "reservoir" land and the Committee is adamant that the land will not be sold.'⁸⁹

Again, there was a delay before any formal action was taken by the borough's solicitors, possibly due to survey requirements and council elections. In late 1977, after the election of a new Borough Council, Hickey, Collings & Grogan stated the incorporation's attitude:

It refuses to sell the land, but has offered to lease the area in perpetuity. It is true that some years ago, the then Committee of Management met with Mr R.A. Owens [Mayor] on the site and indicated a willingness to confer with the Shareholders with a view to sale. It is interesting to note that even then, the exercise was one of retrospective adjustment, as the building of the reservoir was already completed. Nothing however was done to finalise the situation and, as with Council, personnel of the Committee of Management has changed.

It is pertinent to re-state that it is alien to the philosophy of the Maori People to dispose of these particular lands by way of sale, being as they are of very considerable historical importance.

For its part, the Incorporation wholly recognises that public facilities must be placed somewhere. The only argument is whether the land should be freehold or leasehold so far as Council is concerned. Our clients cannot see that Council's position could be in anyway less secure under a leasing arrangement and asks that a decision to accept this be made and that the appropriate financial arrangements be concluded.⁹⁰

⁸⁶ Hickey, Collings & Grogan to Town Clerk, 23 July 1975, 8320-14 Tauranga District Council [p 62]

⁸⁷ Town Clerk to Maltby, Hare & Willoughby, 22 August 1975, 8320-14 Tauranga District Council

⁸⁸ Town Clerk to Maltby, Hare & Willoughby, 21 July 1976, 8320-14 Tauranga District Council

⁸⁹ Report of the Committee of Management for the year ended 30th June, 1976, Records of the Mangatawa-Papamoa Incorporation

⁹⁰ Hickey, Collings & Grogan to Town Clerk, 25 November 1977, Records of the Mangatawa-Papamoa Incorporation [pp 28-29]

The above letter appears to have been written in response to a threat from the council to disconnect water supply to the incorporation because of an overdue water account. The letter explained that the incorporation had not paid the account as an attempt to force the council to reach a settlement on leasing the site.

While the letter did cause the Mount Maunganui Borough Council to take action, it was not the response the incorporation had been hoping to achieve. Instead of negotiating a lease, the council (as planned) issued a Notice of Intention to take the land under the Municipal Corporations Act 1954 and the Public Works Act 1928, which was sent to the incorporation on 28 November 1977.⁹¹ The town clerk explained this action to the incorporation by stating that the 'terms of use of the land', meaning a leasehold, were unacceptable to the council, and contrary to earlier arrangements when the council had agreed to supply water to the Mangatawa block.⁹²

However, for some reason, the town clerk soon reconsidered the position, and offered to make a deal with the incorporation. He explained that the council was unwilling to pay annual rent for the site, which would quickly mount up to paying more than the land was worth, and that Mangatawa was the only site in the region which was technically suitable for the reservoir location. He also acknowledged that ownership of the land was important to Maori, and offered the following arrangement:

1. The council would pay the value of the land as determined by an independent valuer.
2. The incorporation would grant a lease in perpetuity at a peppercorn rental and agree to the registration of a right of way and pipeline easements.
3. If the Ministry of Works and Development should no longer require the quarry site, or the lease had expired, the incorporation would exchange land within the quarry site for the land acquired by the council for future reservoir sites.
4. The council would continue to provide fire-fighting water services to the marae and would consider making supply available to a marae community zone subdivision.⁹³

In response to this offer, Cooney, Lees & Morgan, following instructions from the incorporation, wrote that, while the committee of management was favourable towards the proposal, they had the following additional matters to propose:

1. The land should revert to the incorporation if no longer required for water purposes in the future.
2. If a further reservoir was built the area around it should be landscaped.
3. Planting should be carried out to screen the present reservoir site.
4. The council should pay valuation and legal costs incurred by the incorporation.⁹⁴

⁹¹ Maltby, Hare & Willoughby to Mangatawa-Papamoa Incorporation, 28 November 1977, Records of the Mangatawa-Papamoa Incorporation [p 30]

⁹² Town Clerk to Hickey, Collings & Grogan, 6 December 1977, Records of the Mangatawa-Papamoa Incorporation

⁹³ Town Clerk to Hickey, Collings & Grogan, 16 December 1977, Records of the Mangatawa-Papamoa Incorporation [pp 31-32]

⁹⁴ Cooney, Lees & Morgan to Town Clerk, 21 December 1977, Records of the Mangatawa-Papamoa Incorporation [p 33]

At the same time Cooney, Lees & Morgan lodged an objection to the Notice of Intention with the Town and Country Planning Appeal Board. The objection to the taking was based on the following grounds:

- (a) The taking of such land as is specified in the Schedules to the said Notice is not fair, sound or reasonably necessary for achieving the objectives of the Mount Maunganui Borough Council
- (b) The objector is prepared to grant the Mount Maunganui Borough Council rights to occupy the land proposed to be taken under easement or lease but is totally opposed to the surrender of ownership of Maori land
- (c) The unnecessary seizure of Maori land is contrary to the provisions of the Treaty of Waitangi and contrary to the national interest.⁹⁵

The objection was lodged to protect the interests of the incorporation if the latest negotiations with the council should fail.

Both sets of proposals made by the town clerk and Cooney, Lees & Morgan were agreed to by the Mount Maunganui Borough Council. At its February 1978 meeting the council recommended that:

- a) The council ratify terms 1-3 offered by the town clerk to the incorporation, and the additional terms requested by Cooney Lees & Morgan;
- b) S. Morris Jones be appointed to determine the value of the land;
- c) The town clerk and borough engineer be authorised to deal with an application for water supply to the marae community centre;
- d) The Town and Country Planning Appeal Board be notified of the negotiations;
- e) The council request discussions with the Trustees over their objections to Mangatawa being included within the boundaries of the borough.⁹⁶

After receiving notice of the council's agreement, Cooney Lees & Morgan wrote that the incorporation was happy to accept Morris Jones as valuer, but questioned why the fourth term offered by the town clerk, the provision of water supply services, had been excluded.⁹⁷ Once again, it appears, the provision of water supply to the marae was to be tied up with the Borough Council's desire to expand its boundaries to include Mangatawa. As well as objecting to the Notice of Intention to acquire land, the incorporation had lodged an objection with the Minister of Local Government to the Borough Council's proposal to include the Mangatawa and Papamoa areas within its boundaries.⁹⁸ The town clerk explained that the council was willing to consider making water supply available to a proposed community zone, but that the council was disappointed that the incorporation had lodged an objection to the boundary change. His letter implies that agreement to the boundary extension would be an unwritten condition for the supply of water from the reservoir above the marae and proposed community zone:

⁹⁵ Notice of Objection Pursuant to Section 22, 21 December 1977, 8320-14 Tauranga District Council [pp 60-61]

⁹⁶ Council minutes, Records of the Mangatawa-Papamoa Incorporation [p 34]

⁹⁷ Cooney, Lees & Morgan to Town Clerk, 2 March 1978, Records of the Mangatawa-Papamoa Incorporation

⁹⁸ Cooney, Lees & Morgan to Minister of Local Government, 21 December 1977, 8320-14 Tauranga District Council

it is a pity the action [the objection] was taken without consultation so soon after the Council had agreed to consider the Incorporation requirements. The Council believes it has a lot to offer the Incorporation but very obviously consideration of some features must be dependent on the outcome of the wider issue and it would like to discuss with the trustees a basis for the withdrawal of the territorial objection mentioned.⁹⁹

Although part of the Mangatawa-Papamoa block was included in the Borough boundaries in 1979, the more southerly area, containing the marae, quarry and hill range remained within the jurisdiction of the County Council.¹⁰⁰ Despite this, the Borough Council did eventually agree to make a water supply available to the Marae Community Zone. The incorporation made a formal application for supply, including plans of the proposed subdivision on 3 May 1978, and the council approved supply, subject to certain conditions, in June 1978.¹⁰¹

Now that the water supply and other matters had been settled, steps were taken to draw up a formal agreement as per the proposals agreed to by letter between the town clerk and Cooney, Lees & Morgan. In August 1978 the town clerk instructed Maltby, Hare & Willoughby to work with Cooney, Lees & Morgan and draw up the terms of agreement.¹⁰² When the document had been executed by both parties the council intended to withdraw the Notice of Intention to acquire the reservoir sites.

The overdue water account that was the subject of correspondence in 1977 was still outstanding at the beginning of 1979, at which time the assistant town clerk wrote to the Mangatawa-Papamoa Incorporation asking for that amount of \$965.70 be paid, as the negotiations between the incorporation and council were complete.¹⁰³ In response, Hickey, Collings & Grogan advised that the committee of management wished that the amount of the debt should be deducted from the compensation money due for the reservoir land.¹⁰⁴ They also pointed out that the incorporation was anxious to see the matter of compensation finalised.

A draft of the agreement was completed by July 1979, at which time a few minor changes were recommended by the town clerk and Hickey, Collings & Grogan.¹⁰⁵ There was then a delay before the document was executed while legal matters relating to access through the quarry were sorted out. During this time the basis for compensation was discussed. After seeing the draft agreement, Hickey, Collings & Grogan advised Cooney, Lees & Morgan that:

⁹⁹ Town Clerk to Cooney, Lees & Morgan, 22 March 1978, 8320-14 Tauranga District Council

¹⁰⁰ see Figure Two

¹⁰¹ Town Clerk to Hickey, Collings & Grogan, 22 June 1978, 8320-14 Tauranga District Council [p 59]

¹⁰² Town Clerk to Maltby, Hare & Willoughby, 10 August 1978, 8320-14 Tauranga District Council

¹⁰³ Assistant Town Clerk to Mangatawa-Papamoa Incorporation, 31 January 1979, 8320-14 Tauranga District Council

¹⁰⁴ Hickey, Collings & Grogan to Assistant Town Clerk, 14 February 1979, 8320-14 Tauranga District Council

¹⁰⁵ Hickey, Collings & Grogan to Cooney, Lees & Morgan, 25 July 1979, Records of the Mangatawa-Papamoa Incorporation, and Town Clerk to Maltby, Hare & Willoughby, 26 July 1979, 8320-14 Tauranga District Council

in view of the very protracted nature of this business that the valuation which was done some years ago by Mr Morris Jones in order to determine the virtual compensation was no longer acceptable to the Committee who request that an up-to-date valuation be provided and form the basis of this settlement.¹⁰⁶

Maltby, Hare & Willoughby, for the council, however, took the opposite view. They argued that it was usual in compensation cases for the valuation to be as at the earlier date, when the land was affected, and then to pay interest for the period of time elapsed since the valuation was made.¹⁰⁷

Following pressure from the council for the payment of compensation to be finalised, Maltby, Hare & Willoughby suggested to Cooney, Lees & Morgan in February 1980 that an advance payment could be made to the incorporation. This would allow the incorporation to earn a better rate of interest off the payment than the interest which would be included in the final award when it was eventually made.¹⁰⁸ Although Cooney, Lees & Morgan recommended this to the incorporation, the suggestion was greeted unfavourably by the committee of management who wanted to know why the agreement could not be finalised and compensation paid:

The Incorporation does not require monies on account, it merely requires finality and it cannot see at this stage any reason why Mr Willoughby can't totally finalise the transaction.

The draft agreement was produced by him some months ago and with time going by as quickly as it does, in all probability it was nearer a year ago.

We have discussed the question further with Mr Cunningham [town clerk] who is at the stage also of saying that he knows no reason why the whole matter cannot be finalised and quickly.¹⁰⁹

The Deed of Agreement (see Appendix Two)

The Deed of Agreement was finally executed in mid-1980, seven years after the reservoir was constructed on the incorporation's land. It was signed by T. Te Kani, R. Paraire and T. Kakau for the Mangatawa-Papamoia Incorporation on 27 May 1980. The Mayor, a councillor and the town clerk of Mount Maunganui Borough signed the agreement on 15 July 1980. It contains the following preamble which sets out the purpose of the agreement:

Whereas the Incorporation is the owner of the lands described in the Schedule hereto
and Whereas the Council wishes to convey water to and from such sites over other lands of the Incorporation
and Whereas the Council wishes to protect the reservoir sites by batters
and Whereas the Council requires access to and from the reservoirs pipelines batters and associated installations and equipment
and Whereas the Incorporation will make provision for the aforesaid wishes and requirement of the council on the terms herein set out...

¹⁰⁶ Hickey, Collings & Grogan to Cooney, Lees & Morgan, 26 July 1979, Records of the Mangatawa-Papamoia Incorporation

¹⁰⁷ Maltby, Hare & Willoughby to Town Clerk, 16 November 1979, 8320-14 Tauranga District Council

¹⁰⁸ Cooney, Lees & Morgan to Hickey, Collings & Grogan, 28 February 1980, Records of the Mangatawa-Papamoia Incorporation

¹⁰⁹ Hickey and Grogan to Cooney, Lees & Morgan, 3 March 1980, Records of the Mangatawa-Papamoia Incorporation

The provisions of the agreement can be summarised as follows:

1. The reservoirs will be leased by the incorporation in perpetuity to the council;
2. The incorporation grants to the council the right to convey water in pipes through, along and under the land in the Schedule, and to construct and maintain the pipes;
3. The incorporation grants the council and its agents full rights of way to pass over the lands in the Schedule;
4. The incorporation grants the council the right to landscape the 'batter easements' for the purpose of protecting the reservoirs;
5. The incorporation will use its best endeavours to ensure that the council may use the right of way passing through land held by the Ministry of Works. If the council cannot have such access the incorporation will grant an alternative right of way. If the Ministry of Works relinquishes its rights to the land the incorporation will assign the present right of way to the council;
6. For the purposes of inspection, repair and maintenance of all works the incorporation grants the council full liberty to enter upon and pass over the lands and to perform such acts on the lands as are necessary.
7. The council will maintain pipes and equipment in good order and prevent them from becoming a nuisance;
8. In consideration of the grants made by the incorporation the council agrees:
 - (a) to pay the value of the land as fixed by an independent valuer;
 - (b) the lease will cease if the council no longer requires the land for water reservoir purposes and ceases to use the land for water supply purposes for a period of two years (barring earthquake, flood or other major disaster);
 - (c) if the Ministry of Works relinquishes the quarry sites before the council wishes to build further reservoirs the incorporation will exchange sufficient land within the quarry site for the 6224m² site;
 - (d) the council will provide firefighting water services for Tamapahore Marae and will consider a request for water supply to the Marae Community Zone;
 - (e) should any additional reservoir be built the council will landscape the site so that it is not obvious to view;
 - (f) the council will carry out planting to screen the present reservoir site;
 - (g) the council will pay valuation and legal fees incurred by the incorporation;
9. If the council enters the land to carry out any work it should complete such work with as little disturbance to the surface of the land as possible and will restore the surface of the land as nearly as possible to its original condition;
10. The incorporation shall not interfere with the rights and liberties granted to the council, but the incorporation may continue to use the land for pastoral purposes;
11. The council may, if it desires, proceed under section 32 of the Public Works Act 1928 [acquisition of land rights by agreement];

12. The incorporation will support the registration of a caveat until the lease and rights are registered, provided the council will remove the caveat to enable the incorporation to register any dealing which does not affect the rights granted to the council.

The following areas of land were included in the Schedule to the agreement:

Description	Purpose
3539m ² being Part Mangatawa 3	Reservoir site
6224m ² being Part Mangatawa 3	Reservoir site
Part Papamoa 2 Sec 9B	For water pipeline and use of existing right of way
Part Papamoa 2 Sec 8	“ “ “ “
Part Papamoa 2 Sec 7A	“ “ “ “
Part Mangatawa 2B2B	“ “ “ “
Part Mangatawa 3	“ “ “ “
Part Mangatawa 2B2B	For water pipeline
Parts Mangatawa 3	For water pipeline, rights of way and batter easement
Parts Mangatawa 2B2B	For rights of way
Parts Mangatawa 2	For right of way

Performance of the Agreement

Although the Deed of Agreement was largely retrospective, in that the reservoir had been constructed and pipelines laid, there was still some matters arising from the agreement that had to be finalised. The most important were the execution of a lease, the payment of compensation, and tree planting to screen the existing reservoir.

The Memorandum of Lease was signed by the Mayor, Councillor Carson, and the town clerk of Mount Maunganui Borough on 9 October 1982.¹¹⁰ It was then signed by T. Kakau and P.B. Reweti for the owners of the Mangatawa and Papamoa blocks on 20 December 1982. The main points to note from the lease are as follows:

- The term of the lease is for 999 years from 25 August 1980;
- The yearly rental is ‘one peppercorn’¹¹¹;
- The lessee (council) will fence the land within 2 years of the commencement of the lease;
- The lessee will repair and maintain all constructions and fittings on the land, carry out planting to screen the present reservoir, and will landscape the site of any additional reservoirs;
- The lessee will pay all costs incurred in the preparation of the lease;
- The lessor (incorporation) cannot be compelled to contribute to the cost of any boundary fence;

¹¹⁰ [pp 35-59 in Document Bank]

¹¹¹ A peppercorn rental is the standard term used for a nominal rental.

- Milling timber, flax, coal or any other minerals in or upon the land are exempted from the lease;
- No compensation will be paid to the lessee for improvements;
- The lessee may construct batters for the protection of the reservoir sites and may move, disturb and contour the surface of the land as appropriate;
- The lessor may use the land for pastoral purposes, but not so as to interfere with any rights granted to the lessee;
- The lease shall cease if the lessee no longer requires the land for water reservoir purposes or ceases to use the land for a period of two years (barring earthquake, flood or other major disaster).

Even after the Deed of Agreement was signed by both parties, discussions continued on what valuation should be used to settle the amount of compensation to be paid. The records provided by the council and the incorporation do not give full details of the payment.

Although the committee of management requested that that the valuation done by Morris Jones in 1975 should be updated, the town clerk and the Borough Solicitor felt that the original valuation should be used, or if a new valuation was made, the council should be able to appoint its own valuer.¹¹² A new valuer would have to be appointed in any case, as Morris Jones was no longer in practice. The council had therefore resolved in November 1980 that each party should appoint independent valuers. However, the incorporation seems to have been reluctant to appoint its own valuer:

The committee considers the Councils [sic] current attitude to be a major shift from that which was earlier agreed to, but in an attempt to bring to an end this most protracted business as expeditiously as possible, the Incorporation advises that it would be prepared to consider a valuation done by Councils [sic] valuer and that, if in the light of this, it considered that a further valuation was needed then it would proceed with that at that time.¹¹³

Maltby, Hare and Willoughby advised the council against having one valuation done which could then be accepted or rejected by the incorporation, and repeated their earlier opinion that interest should be paid on the original valuation.¹¹⁴ However, they did say that one valuer could be appointed to whom both parties could express their opinion.

After this advice there is no correspondence on the file supplied by Tauranga District Council which indicates whether a new valuation was done, and how much compensation was finally paid. The matter appears to have been resolved by May 1983, when the bill for Cooney, Lees & Morgan's services in respect of the Mangatawa reservoir was forwarded to the council.¹¹⁵ A handwritten note on the letter indicates that it followed an earlier letter detailing the agreement.

¹¹² Town Clerk to Hickey and Grogan, 19 November 1980, 8320-14 Tauranga District Council

¹¹³ Hickey and Grogan to Town Clerk, 23 December 1980, 8320-14 Tauranga District Council

¹¹⁴ Maltby, Hare & Willoughby to Town Clerk, 13 January 1981, 8320-14 Tauranga District Council

¹¹⁵ Maltby, Hare & Willoughby to Town Clerk, 16 May 1983, 8320-14 Tauranga District Council

If there was a new valuation done, there is no copy of it on the file supplied to the author. The most likely explanation is that, in the interests of finally achieving settlement it was agreed to pay interest on the \$3750.00 valuation made by S. Morris Jones. However, again there is no record of the final amount on file, so exactly how much compensation the Mangatawa-Papamoa Incorporation received for its agreement to lease the land in perpetuity at a peppercorn rental cannot be shown at this stage. This information should be supplied to the Tribunal by either the Tauranga District Council or the claimants.

With the restructuring of local government in 1989 the Tauranga District Council assumed the previous jurisdiction and responsibilities of the Mount Maunganui Borough Council. This included the leasehold on the reservoir sites. On 16 April 1991, the Secretary of the Mangatawa-Papamoa Incorporation, T.K. McDonnell, from the accounting firm of KPMG Peat Marwick, wrote to the Tauranga District Council, pointing out that certain conditions in the lease were not being fulfilled.¹¹⁶ The committee of management were concerned that tree planting had not been carried out to screen the reservoir and reported that drainage problems around the reservoir meant that houses at the rear of the marae had been flooded.

During 1991 and 1992 the Tauranga District Council made plans for the tree planting to be carried, and even ordered trees from a local supplier and arranged for a contractor to do the planting. However, although the file suggests that the work was carried out, trees have not in fact been planted around the reservoir and it remains clearly visible above the marae. A site visit carried out by the author in October 1996 confirmed this.

Although the work has not yet been carried out, it is worth quoting from the planting design plan that was drawn up:

The existing hills are rather bare, there is no significant treeplanting here, hence no "theme" exists. The water reservoir is a landmark which is rather overpowering when viewed from the Marae. The dominant tree species in the immediate vicinity are the willows and pines which make up the shelter belts surrounding the orchards on the flat land below; the later creating a rather strong colour contrast in this landscape. . . .

The planting of native trees and shrubs in a pattern resembling naturally developed bush or treegroves and omitting sharp contrasts of any kind will result in site sensitive landscape enhancement and a blending in of the water reservoir and the hillside without compromising any Maori interests.¹¹⁷

Previously, in 1985, the borough engineer had told Turi te Kani that the Mount Maunganui Borough Council intended to landscape and screen the reservoir, but this was difficult because the base was on solid rock and a substantial amount of top soil would be required for the trees to grow.¹¹⁸ However, the planting of trees around the reservoir was a condition of both the Deed of Agreement signed in 1980, and the

¹¹⁶ T.K. McDonnell to Chief Executive Tauranga District Council, 15 April 1991, 8320-14 Tauranga District Council

¹¹⁷ Landscape/Design Officer, 'Papamoa Water Reservoir' (no date), 8320-14 Tauranga District Council

¹¹⁸ Minutes of a Special Meeting of a Working Party, 18 March 1985, 8320-14 Tauranga District Council [pp 47-52]

lease drawn up in 1982. Sixteen years after reaching an agreement, and 23 years after the reservoir was built, it still sits exposed on the hillside above the marae.

5. ATTEMPTS TO PREVENT FURTHER DESECRATION

The Mangatawa-Papamoa Incorporation had already shown its opposition to the loss of Maori land for public works on Mangatawa by insisting on leasehold arrangements rather than allowing the land to be alienated from Maori. From the mid-1980s, further steps were taken to try and halt, or minimise, further use of the maunga by the Ministry of Works and the local council. At this time the Mount Maunganui Borough Council was continuing with plans for the construction of a second reservoir on Mangatawa, and there was a renewed demand for rock from the quarry as a result of the decision to construct a new harbour bridge between Mount Maunganui and Tauranga city.

The 33 year quarrying rights granted to the Ministry of Works were also due to expire in 1996 and negotiations were held regarding the condition in which Works would leave the quarry at the end of the term. As outlined in section 3 of this report, the conditions of the agreement between the Ministry of Works and the incorporation were those specified in the letter from the District Commissioner of Works written on 14 May 1963. It will be recalled that this letter did not include a previously agreed stipulation that the Ministry would leave the floor of the quarry reasonably flat. However, later correspondence indicates that the Crown accepted it had an obligation in this regard:

During discussions with the then Ministry of Works and Development in 1976, it was generally agreed that the Crown should carry out restoration work following termination of the lease.¹¹⁹

The Involvement of the Historic Places Trust

In 1984 the incorporation sought the protection of the Historic Places Trust for Mangatawa. On 6 September 1984 the trust declared Mangatawa a traditional site under section 50 of the Historic Places Act 1980 in recognition of the 'special significance of this site to the western Bay of Plenty tribes, and especially the Nga Potiki hapu of the Ngaiterangi tribe'.¹²⁰ Mangatawa was also declared to be an archaeological site within the meaning of the Historic Places Act 1980. The trust explained that it had the following powers regarding the protection of traditional sites:

1. Recommend that the area be made a reservation in accordance with Section 439A of the Maori Affairs Act 1953.
2. Refer the matter to an appropriate Maori authority to consider what action, if any, should be taken in regard to the place or site.
3. Recommend proposals to any appropriate body or person for the recognition and preservation of the traditional site.¹²¹

¹¹⁹ Works Consultancy Service, Mangatawa Quarry Restoration Proposal, 24 November 1993, Records of the Mangatawa-Papamoa Incorporation [pp 26-27]

¹²⁰ Advisory Officer Historic Places Trust to Proprietors of the Mangatawa-Papamoa Block Incorporation, 13 September 1984, Records of the Mangatawa-Papamoa Incorporation

¹²¹ Ibid

The trust had apparently decided that the third option would be the best one to take, and over the next year a series of meetings was convened with representatives from the incorporation, local councils, and the Ministry of Works with the aim of reaching an agreement that there should be no further damage done to the site.

The first meeting was held on 19 November 1984, and was attended by T. Te Kani, S. McLeod, R. Bluett, and T. McLeod from the incorporation, the town clerk and borough engineer from the Mount Maunganui Borough Council, C. Bosselmann and other representatives from the Ministry of Works, representatives from the Tauranga County Council, and J. Daniels and Dr. B. McFadgen from the Historic Places Trust.

Daniels explained that McFadgen had carried out an archaeological survey of the hill, and that the meeting had been called because:

rather than attempt to apply draconian statutory powers or rather than work through local authority district scheme arrangements, it would be better if all parties could come to some mutual agreement so that consensus could be reached for future planning.¹²²

Turi te Kani spoke for the owners of the land and explained that they realised that the damage done in the past could not be reversed, but were now concerned that the quarrying should not advance any further and that the borough council should not use any further land for a new reservoir. He raised the suggestion that the new reservoir could be sited within the quarry.

Bosselmann, from the Ministry of Works, explained that the quarry had been an important source of rock, and that Works would require that quarrying was continued until the expiry of the lease in 1996. Metal was going to be needed for highway widening, and the approaches to the Tauranga-Mount Maunganui harbour bridge. Bosselmann stated that there was no other rock in the region similar to that obtained from Mangatawa:

Mangatawa hill was the most northerly splatter from the Taupo volcanic region, the rock was a popular one as it has excellent weathering properties and there was no similar site within the region.

Works had a management plan in preparation to landscape the quarry and produce grassed slopes. He also stated that the incorporation should be 'given the opportunity to contribute towards that planning'¹²³:

The council, too, insisted that its plans for Mangatawa could not be changed. The town clerk said 'the Council regard it as absolutely essential the need to retain sites on Mangatawa hill for these two reservoirs'. Although the council's lease included land for the future reservoirs it was happy to consider exchanging that land for sites within the quarry, as was provided for in the lease and agreement. However, an engineering survey would be required to determine if the quarry would provide a suitable site.

¹²² Minutes of a Special Meeting, 19 November 1984, 8320-14 Tauranga District Council [pp 53-58]

¹²³ Ibid

As a result of the meeting a working party was established to further consider planning for Mangatawa. The first stage was to be a detailed archaeological survey by McFadgen to identify archaeological sites so that damage to them could be avoided.

The working party met on 18 March 1985, and McFadgen presented a map detailing the sites of archaeological remains.¹²⁴ He explained that both any further quarrying to the west and the proposed reservoir sites would affect archaeological sites, and tried to get Works and the council to propose ways that the impact could be lessened. In response, Bosselmann maintained that it was 'vital' that the quarry remain open and that it would be used until 1996. As regards the western side of the quarry, he explained that it had so far been preserved so that surface material from it could be used to restore the shape of the quarry at the expiry of the lease. If the archaeological remains were to be preserved, that would affect the landscaping proposals. McFadgen advised that the Historic Places Trust would probably not approve the western side being used for landscaping, and Turi Te Kani said:

the terraces are very important. At first the Maori people thought there was no defence against the Government taking the land for quarrying, but now the people are very keen to reserve the terraces.¹²⁵

The council advised that it was essential that the new reservoir be built close to the Mount Maunganui urban area, for which there were only two suitable sites, the Mount itself (another sacred maunga) and Mangatawa. The nearest alternative suitable site would be on the Papamoa hills, and the borough engineer estimated that it would cost at least an extra two million dollars to construct the reservoir there, and also require extra piping. Throughout the meeting McFadgen tried to discuss the options of finding other sites for the quarry and reservoirs, but both Works and the council seem to have been reluctant to admit of other possibilities, citing costs and location difficulties. Turi Te Kani also stressed that landscaping and planting should be carried out to make the existing and proposed reservoirs less obvious, and suggested building the next reservoir encased within a hole. Again the borough engineer responded by saying that this would involve increased costs. Perhaps sensing that neither Works nor the council had seriously considered abandoning their rights to Mangatawa, McFadgen requested both the Ministry of Works and the council to provide further information for the next meeting about the feasibility of alternative quarry and reservoir sites and cost estimates.

In the meantime, the incorporation sought further support from the member of Parliament for Eastern Maori, Peter Tapsell. The MP attended a meeting at the marae on 28 August 1985, at which he heard the concerns of local Maori about the quarry and the reservoirs.¹²⁶ As a result Tapsell wrote to both the Minister of Works and the Mayor of Mount Maunganui Borough to express the concerns he had heard, and suggest that meetings should be held with the incorporation to discuss the matter. In

¹²⁴ Minutes of a Special Meeting of a working party, 18 March 1985, 8320-14 Tauranga District Council [pp 47-52]

¹²⁵ Ibid

¹²⁶ Peter Tapsell to Minister of Works, 4 September 1985, Records of the Mangatawa-Papamoa Incorporation [p 13]

both letters Tapsell pointed out that the maunga was the 'head of a mythological whale' and of great historical significance, and used the same terms to describe the disfiguration caused by the public works:

They point out further that such quarrying as has progressed to date, has greatly disfigured the mountain proving an *eyesore* on the skyline.¹²⁷ [Emphasis added.]

they were particularly concerned that it is the intention of your Council to site two very large water reservoirs in the area and they are anxious that these should not prove an *eyesore* on the skyline.¹²⁸ [Emphasis added.]

In the letter to the council, Tapsell reassured the Mayor that Maori had 'no wish to prevent an urgent public work', but wanted to ensure that it was done with minimum damage to the environment.¹²⁹

A further meeting of the working party was then held on 20 September 1985.¹³⁰ The Ministry of Works presented a model and plan of the present shape of the quarry and how it would look in 1996. A further 400,000 m³ of metal was to be extracted. Works was also charging a royalty of \$1.00 per m³ to all customers except the National Roads Board, which would provide a fund to pay for final landscaping of the quarry at the expiry of the lease. Works wished to recommence quarrying in mid-1986 to extract approximately 70,000 m³ for the harbour bridge, and requested the incorporation to consider the management plan and give their approval as soon as possible. As for the reservoirs, the town clerk and borough engineer were agreeable to using sites within the quarry, and were to liaise with the Ministry of Works so that the landscaping proposals could be co-ordinated.

Following this meeting the Minister of Works replied to the letter from Tapsell. He pointed out that the quarry was a local source of good quality rock for both roading works and the development of Tauranga Harbour. He then outlined the responsibilities that were being accepted by his department:

It is acknowledged that quarrying operations will diminish over the next 10-12 years and it is accepted that when quarrying operations cease (in 1996), the quarry and land must be handed back in an appropriate state, from both an engineering and visual point of view.¹³¹

The Minister also pointed out that a management plan was being prepared which would be discussed with the owners. Later correspondence states that the incorporation was 'agreeable' to the management plan, but, for some reason, it was not implemented at that time.¹³²

¹²⁷ Ibid

¹²⁸ Peter Tapsell to Mayor Mount Maunganui Borough Council, 4 September 1985, Records of the Mangatawa-Papamoa Incorporation [p 14]

¹²⁹ Ibid

¹³⁰ Minutes of a Working Party Meeting, 20 September 1985, 8320-14 Tauranga District Council [pp 42-46]

¹³¹ Minister of Works and Development to P. Tapsell, 7 October 1985, Records of the Mangatawa-Papamoa Incorporation [p 15]

¹³² Works Consultancy Services, Mangatawa Quarry Restoration Proposal, 24 November 1993, Records of the Mangatawa-Papamoa Incorporation [pp 26-27]

The September meeting seems to have been the last convened by the Historic Places Trust, and the end of its active involvement in planning for the maunga. Plans for the construction of a new reservoir continued, and use of the quarry was renewed for the approaches to the harbour bridge. A 1988 report for the council describes the way the quarry was used in the mid-1980s:

For many years the quarry was disused however with construction of the Tauranga Harbour Bridge approaches the quarry was reopened in 1986 as the only nearby source of good rock. In the future it is likely that substantial quantities of rock will be required from the quarry for "Tauranga Arterial Route P".

The quarry operations involve blasting hard rock from the pit area at the lower level and ripping the softer rock from the upper slopes. The better quality rock which will require greater explosive effort is situated on the lower levels of the quarry closer to the quarry entrance. . . .

To limit vibrations to houses approximately 200 metres away from the quarry, limits have been set on explosive quantities. These limits are strictly adhered to and do not place an unreasonable restriction on quarry operations.

Blasting operations are limited to a maximum explosive quantity per delay of 30 kg with a 25 millisecond delay. A sequence of 8 charges are generally used.

This maximum explosive quantity of 30 kg is only used on hard rock. Smaller charges are used for minor blasting for quarry wall and floor clearing and on the upper levels for extraction of the softer rock.¹³³

Proposed Second Reservoir

As had been foreshadowed by the meetings with the Historic Places Trust, the Mount Maunganui Borough Council was continuing with plans to upgrade its water supply, including the construction of a second water reservoir on Mangatawa. In November 1985 it was projected that the reservoir would be built in the 1990 - 1991 financial year, and the borough engineer commented:

The construction of an additional reservoir apart from securing the upgraded fire classification of the Borough gives added safeguard in the event of a bulk main failure and secures our requirement for reservoir siting at Mangatawa.¹³⁴

The council's plans were communicated to the incorporation on 3 February 1986, with the comment that discussions would be held with the Ministry of Works over the best site for the reservoir.¹³⁵

The council then applied to the Department of Health for a subsidy to fund the water supply upgrading. The district Medical Officer of Health recommended that the subsidy should be approved, and cited projected population growth figures leading to

¹³³ Works Consultancy Services, Mount Maunganui Borough Council Mangatawa No 2 Reservoir Investigations for Siting Proposal, July 1988, 8320-14 Tauranga District Council

¹³⁴ Borough Engineer's Report, November 1985, ABKK W4357 50/2115 Mount Maunganui Water Supply, NA Wellington

¹³⁵ Borough Engineer to Peat Marwick Mitchell & Co, 3 February 1986, 8320-14 Tauranga District Council

increased water demand.¹³⁶ A 24 percent subsidy was granted by the Department of Health, which meant that central government would pay \$192,000 towards the \$800,000 cost of the new reservoir.¹³⁷

In 1988 the Mount Maunganui Borough Council contracted Works Consultancy Services to carry out vibration investigations at possible reservoir sites within the quarry, to test whether blasting would impact on the reservoir. The report recommended two possible sites towards the upper boundaries of the quarry site.¹³⁸

However, the second reservoir has not yet been built on Mangatawa. This was probably a result of local body amalgamation in 1989, at which time the Mount Maunganui Borough Council and the Tauranga City Council were subsumed by the Tauranga District Council. It is likely that resulting combined water supply schemes meant that it was decided not to proceed at that time with further reservoir construction on Mangatawa. It should be noted however, that the Tauranga District Council still retains the 999 year leasehold of the second reservoir site (outside the boundaries of the quarry) negotiated in the Deed of Agreement of 1980 and the current committee of management still wish to halt any further construction.¹³⁹

Restoration of the Quarry

By 1989 the incorporation was looking at the legal possibilities of halting the quarry operations. Cooney Lees & Morgan were asked to apply for an injunction, but advised that this had little hope of success.¹⁴⁰ Instead, a draft claim to the Waitangi Tribunal was prepared (quoted in the introduction to this report), but this was not proceeded with.

At the same time, Works Consultancy Services advised that the management plan for the quarry was being updated.¹⁴¹ It would appear that Works was replying to a request from the incorporation for information on the royalties being collected to fund restoration, as the letter commented that although the fund was not growing rapidly it was hoped that it would be sufficient by 1996 to offset most of the cost of restoration work. Works, however, refused to disclose the amount of money currently held in the fund, and implied that the incorporation had no rights over the money. The letter also implied that Works must have the final say on how the quarry would look after restoration work:

It is obvious that the public will be judging the final outcome and if a positive plan for the quarry's restoration is not adopted and carried out the Rounding Authority would get the blame for leaving an eyesore whether it was responsible for it or not.

¹³⁶ Medical Officer of Health to Director-General of Health, 29 April 1986, ABKK W4357 50/2115 Mount Maunganui Water Supply, NA Wellington

¹³⁷ Department of Health to Town Clerk, 28 August 1986, ABKK W4357 50/2115 Mount Maunganui Water Supply, NA Wellington [p 7]

¹³⁸ Works Consultancy Services, Mount Maunganui Borough Council Mangatawa No 2 Reservoir Investigations for Siting Proposal, July 1988, 8320-14 Tauranga District Council

¹³⁹ Personal communication, Rangī McLeod, 1 October 1996

¹⁴⁰ Cooney, Lees & Morgan to Committee of Management, 17 February 1989, Records of the Mangatawa-Papamoa Incorporation

¹⁴¹ Works Consultancy Services to Peat Marwick, 28 February 1989, Records of the Mangatawa-Papamoa Incorporation [pp 18-19]

The only way that money could be made over to the Mangatawa landowners would therefore have to be on the basis of a formal contract for the restoration to be carried out to set standards and not as considered to be necessary by the landowners themselves.¹⁴²

This comment brought an angry response from the committee of management:

Your letter is an insult to the owners of the Incorporation. You advised that the Ministry is more concerned with the public's reaction to the landscaping than with the feelings of the original owners once the land is returned to them. Your reasoning and logic is totally unacceptable.¹⁴³

Over the next twelve months the solicitors for the incorporation (no longer Cooney, Lees & Morgan) were requesting information from Works on the original quarry rights agreement, and it was some time before it was revealed that no formal agreement had been drawn up. The member of Parliament for Eastern Maori again endeavoured to assist the incorporation, and wrote to the Minister of State Owned Enterprises in September 1991:

It seems clear to me that my constituents have been treated if not unfairly then certainly in a manner which would not be acceptable today. They ask that the new Works Corporation enter into discussions with them aimed at clarifying the situation and providing for an orderly and environmentally accepted closure of the quarry.¹⁴⁴

One year later the relationship between Works and the incorporation seems to have improved. The two parties met in September 1992, and Works assured the incorporation that while it was keen to continue operating the quarry, it was 'equally eager to form a sound relationship with the incorporation to ensure that the quarry operation benefits both our organisations'.¹⁴⁵ Works presented a proposal which it hoped would: allow quarry operations to recommence until the quarry reached the designed level; establish a working relationship with the incorporation; and provide a better financial return to the incorporation. The main elements of the proposal were:

- A quarry manager to be nominated by the incorporation with whom Works could liaise on blasting operations;
- blasting and quarry operation to be kept to an absolute minimum;
- Works to have responsibility for drainage and silt control;
- approximately 100m³ of rock per annum would be set aside for use by the incorporation, for which the incorporation would pay a royalty and quarry fees;
- the existing royalty would continue to be paid to the Crown for restoration of the quarry;
- an additional royalty would be paid to the incorporation of five percent on the price of material sold at the quarry gate (it was estimated that this could total \$12,500 if all the material left in the quarry was sold);

¹⁴² Ibid

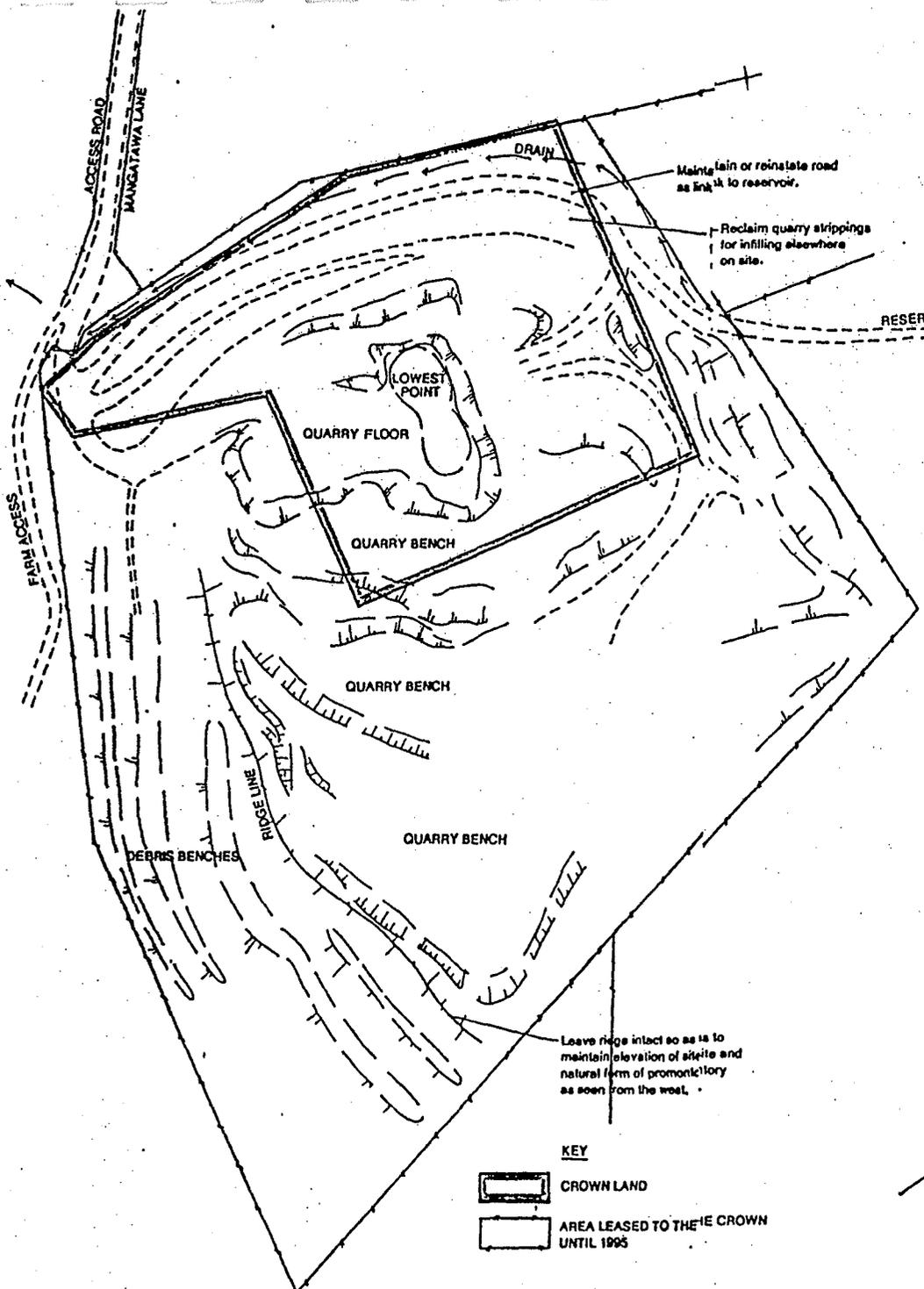
¹⁴³ Peat Marwick to Ministry of Works, 19 April 1989, Records of the Mangatawa-Papamoa Incorporation [p 20]

¹⁴⁴ Peter Tapsell to Doug Kidd, 24 September 1991, Records of the Mangatawa-Papamoa Incorporation

¹⁴⁵ Works Civil Construction to Mangatawa-Papamoa Incorporation, 20 October 1992, Records of the Mangatawa-Papamoa Incorporation [pp 22-25]

VT POND

Figure Eight



Maintain or reinstale road as link to reservoir.

Reclaim quarry strippings for infilling elsewhere on site.

RESERVOIR ACES

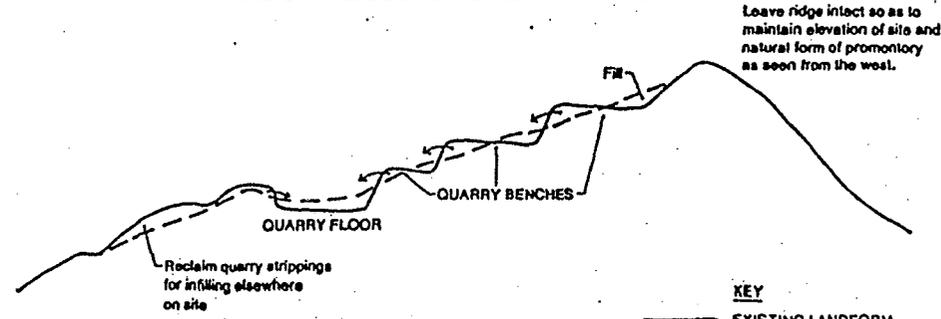


TAURANGA DISTRICT COUNCIL RESERVOIR

PROPOSED EARTHWORKS

- upgrade existing sediment pond in consultation with landowner; clear existing drain leading to sediment pond
- break down outer edges of quarry benches to infill area down slope
- shape existing loose material and quarry strippings to form an even slope by infilling major depressions; slope to fall towards lowest point of quarry and towards existing drain, contour drains to be installed at appropriate intervals
- if inadequate material on site, infill remaining depressions with imported granular fill, such as strippings from a local operating quarry
- overlay resultant slope with imported subsoil to 150mm depth
- topdress with imported topsoil to 50mm depth
- oversow with grass and fertiliser
- on western slope of site, remove debris benches, topsoil and oversow with grass and fertiliser

INDICATIVE SECTION OF EARTHWORKS



KEY

- CROWN LAND
- AREA LEASED TO THE CROWN UNTIL 1995

KEY

- EXISTING LANDFORM
- PROPOSED LANDFORM

- the incorporation would support Works Civil Construction's operation of the quarry and would support Works being appointed as the contractor to undertake the restoration work.

Unfortunately, there is no correspondence on file to indicate whether or not the incorporation accepted the above proposal.

A year later, however, the incorporation did agree to the proposal for the restoration of the quarry. The restoration proposal was based on that prepared in 1985, and since then the quarry benches had been worked in line with that design. The proposal was to: (see Figure Eight)

- break down outer edges of quarry benches to infill area down slope
- shape existing loose material and quarry strippings to form an even slope by infilling major depressions; slope to fall towards lowest point of quarry and towards existing drain, contour drains to be installed at appropriate intervals
- if inadequate material on site, infill remaining depressions with imported granular fill, such as strippings from a local operating quarry
- overlay resultant slope with imported subsoil to a 150mm depth
- topdress with imported topsoil to 50mm depth
- oversow with grass and fertiliser
- on western slope of site, remove debris benches, topsoil and oversow with grass and fertiliser.¹⁴⁶

The proposal also included planting the area facing the marae with native shrubs, and a special condition that the Tauranga District Council reservoir could be sited within the quarry. The proposal was agreed to and signed by representatives of the incorporation and Works Consultancy Services. In March 1994, Works advised the incorporation that they would be contacted about the restoration work in the near future.¹⁴⁷

When the author visited Mangatawa on 1 October 1996, the area was largely grass covered, but some quarry benches were clearly exposed, and water was pooling at the lowest point (see Figure Nine). It does not appear that the quarry has been restored to a grassed slope as envisaged in the restoration proposal. It should also be noted that, by virtue of the 1946 proclamation, the Crown still has title to the original (smaller) quarry site. The committee of management have approached Transit New Zealand to request that this be returned to the incorporation, but have, so far, had no response.¹⁴⁸

¹⁴⁶ Mangatawa Quarry Restoration, Restoration Concept Plan, May 1994, Records of the Mangatawa-Papamoa Incorporation [pp 22-27]

¹⁴⁷ Works Consultancy Services to Mangatawa-Papamoa Incorporation, 23 March 1994, Records of the Mangatawa-Papamoa Incorporation

¹⁴⁸ Personal communication, Rangi McLeod, 1 October 1996



Figure Nine

6. SUMMARY

- Mangatawa hill is a zoomorphic representation of a whale. The maunga is sacred to at least three iwi in the Bay of Plenty because of its close links with the arrival of waka and ancestors in the region.
- Mangatawa is part of the land confiscated by the Crown at Tauranga in 1865. Under the Tauranga District Lands Act 1867 and 1868, the Mangatawa block was returned to Maori ownership.
- In 1946 the Crown acquired 5 acres 1 rood 11.6 perches of Mangatawa for a quarry. This was a compulsory acquisition under the Public Works Act 1928. It is not known whether any attempt was made to consult with the owners before the land was taken. In 1948 the Maori Land Court awarded £182.3.00. compensation for the quarry site.
- The construction of an international port at Mount Maunganui, and other major public works in the Tauranga region created an enormous demand for material quarried from Mangatawa. Today, little of the northern point, Maungamana, remains, as most of it has been quarried away. Rock from Mangatawa helped to build important parts of Tauranga's infrastructure and contributed to industrial development in the region.
- An agreement was made between the incorporation and the Ministry of Works to allow a further six acre area to be quarried for ten years from 1 August 1957. In return the incorporation was paid £2,000. No proclamation of the quarry rights was issued. The incorporation signed the agreement to avoid the land being taken compulsorily under the Public Works Act.
- In 1963 a further agreement was negotiated to allow the Crown the right to quarry over the area agreed upon in 1957, plus an additional nine acres, for a period of 33 years. Again, the incorporation agreed to this arrangement to avoid land being compulsorily acquired under the Public Works Act. The Ministry of Works paid £4,100 for the 33 year quarry rights. Although no formal agreement was drawn up, the conditions of the agreement were detailed in correspondence. The Ministry was to be responsible for fencing the accessway, removing loose rock from the paddock below the quarry, and repairing drains and fences. The right of the Crown to quarry was gazetted in 1964.
- In the late 1980s the Ministry of Works renewed quarry activities at Mangatawa, in order to provide material to construct the approaches to the Tauranga-Mount Maunganui harbour bridge. This was despite approaches from the incorporation and the Historic Places Trust that quarrying should be stopped.
- The Ministry of Works accepted responsibility for landscaping the quarry at the end of the lease period. Restoration work was to be financed by royalties charged on material from the quarry. The Ministry drew up a management plan for how the quarry would be worked until 1996, and a restoration proposal was accepted by

the incorporation. Today, despite this agreement, the quarry remains are still clearly evident from State Highway Two. The Crown still owns the five acre area acquired in 1946.

- The Mount Maunganui Borough Council provided water supply to its ratepayers from the Tautau Scheme Catchment. Continued population growth meant that the council was often looking to expand its water supply capacity. The Crown played an important role in the council's water supply schemes by approving plans and providing loans and subsidies for the work.
- In 1971 the Mount Maunganui Borough Council applied for a subsidy from the Local Authorities Loan Board to finance, amongst other things, a two million gallon water reservoir on Mangatawa, with plans to construct another reservoir in 1987.
- The reservoir was built in 1973. The incorporation did agree to allow the council access onto the land for the construction work. Although the details are sketchy, it also appears that some arrangement was made at this time with the Mayor to sell the site to the council.
- However, in 1974 the incorporation informed the council that it would not sell the land required, and offered to lease the land to the council instead at an annual rental of 10 percent of the value of the land. For several years the council insisted that leasehold tenure of the reservoir sites was unacceptable.
- In 1977 the council issued a Notice of Intention to acquire the land under the Public Works Act 1928. Shortly thereafter an offer was made to the incorporation to lease the land in perpetuity for a peppercorn rental and to pay for the land as per its valuation. Again the incorporation was placed in the position of negotiating a lease under threat of the Public Works Act.
- Two small areas of land were wanted by the council. The of site the existing reservoir was an area of 3 roods 19.9 perches (3539m²), which had been valued at \$1,500. The site for future reservoir construction was 1 acre 2 roods 6.1 perches (6224m²), valued at \$2,250.
- After certain terms had been negotiated, a Deed of Agreement was finally signed in 1980 by the incorporation and the Mount Maunganui Borough Council. The Deed allowed the council to lease the land for 999 years at a peppercorn rental, and to use pipeline easements and accessways. In return, the incorporation was to be paid the value of the land and receive water supply services. The council was also required to take steps to ensure that the present reservoir, and any future reservoirs, were screened from view. The lease of the land was executed in 1982.
- Tree planting and landscaping work required by the Deed of Agreement have still not been carried out.

- Mangatawa was declared a traditional site under section 50 of the Historic Places Act 1980 in 1984. The Historic Places Trust held a series of meetings with the incorporation, Ministry of Works, and the council to discuss ways of halting further damage to the site. These meetings were largely unsuccessful as both the Ministry and the council continued to insist that there were no alternative suitable sites in the region. Their reasons for this insistence seem to have been largely based on cost factors.
- Although a second reservoir has not yet been built on Mangatawa, the Tauranga District Council retains the leasehold of the site. In the past the council has agreed that the second reservoir may be built within the former quarry site. The incorporation remains opposed to the construction of another reservoir on the maunga, and has sought to have the lease renegotiated.
- The Mangatawa-Papamoa Incorporation was fortunate in being able to retain the freehold of land on Mangatawa. However, it must be remembered that the leasehold agreements that were negotiated have effectively alienated the land from Maori on a permanent basis. While the quarry rights were for a 33 year period, the very activity of quarrying has meant that the land itself has been physically removed, even if a freehold title on the map remains. The lease to the Tauranga District Council still has 983 years to run, and the fact that the council paid the full value of the land in return for the lease illustrates the true nature of the transaction. The incorporation, when insisting on a lease, were asking for a fair annual rental to be paid, and it was only after a Notice of Intention to acquire the land was issued that the incorporation agreed to leasing the land for a peppercorn rental.
- The quarry and water reservoir are just two examples of Maori land that has been used for public works in the Mangatawa - Papamoa area. The Incorporation is now firmly of the view that no further Maori land should be targeted for public purposes.

BIBLIOGRAPHY

Published Sources

Appendices to the Journals of the House of Representatives

Bay of Plenty Times

New Zealand Gazette

Steedman, John A. W., *Nga Ohaaki o Nga Whanau o Tauranga Moana: Known Genealogies and History of the Maori Families of Tauranga and Surrounding Districts*, (no publisher, no date)

Stokes, Evelyn, *A History of Tauranga County*, Dunmore Press, Palmerston North, 1980

Stories of Tauranga Moana, Centre for Maori Studies and Research, University of Waikato, 1980

Tauranga Moana: A Study of the Impact of Urban Growth on Rural Maori Communities, Centre for Maori Studies and Research, University of Waikato, 1980

Te Raupatu o Tauranga Moana: Volume 2: Documents Relating to Tribal History, Confiscation and Reallocation of Tauranga Lands, University of Waikato, 1992

Waitangi Tribunal, *The Turangi Township Report 1995*, Wellington, Brookers Ltd, 1995

Unpublished Sources

Cookson-Ua, Kere, T., 'Te Awa-o-Tukorako & Whareroa Blocks', (Wai 215, A27), 1996

Kahotea, Des Tatana, 'Tauranga Urban Growth Strategy: Cultural Resource Inventory', Tauranga District Council, 1992

Maori Land Court, Tauranga Minute Books

Nightingale, Tony, 'Tauranga Land Development Schemes 1929-1955', Report commissioned by the Waitangi Tribunal for Wai 215, November 1996

Files

ABKK W4357 50/579 pt 1 Mount Maunganui Borough Council Sewerage and Water Supply, National Archives, Wellington

ABKK W4357 50/2115 Mount Maunganui Water Supply, National Archives, Wellington

8320-14 Correspondence relating to Mangatawa Reservoir, supplied by Tauranga District Council

Records of the Mangatawa-Papamoa Incorporation, correspondence supplied to the author

The Registrar
Waitangi Tribunal
Tribunal's Division
Justice Department
Private Bag
Postal Centre
WELLINGTON

I, WILLIAM OHIA of "Kopukairoa", Welcome Bay Road, R D 5, Tauranga, for myself and the Ngati Pukenga iwi of which I am a member and for the iwi and hapu of Ngaiterangi and Ngati Ranginui (and with the consent of the Tauranga Moana Maori Trust Board of which I am Chairman, whose members comprise representatives of all those iwi and all but two of those hapu) CLAIM to be prejudicially affected or likely to be prejudicially affected by the following actions, omissions, policies and practices of the Crown:

1. The confiscation last century by the Crown and its Agents of lands belonging to the hapu of the Ngaiterangi, Ngati Ranginui, Ngati Pukenga and related peoples. These lands are known as Raupatu lands. The confiscations deprived these iwi and hapu of their mana and of an economic base on which to live and develop contrary to the guarantee of tino rangatiratanga in Article II of the Treaty.
2. The failure of the Crown adequately to compensate the claimants for this wrongful confiscation. While the claimants acknowledge that the payment by the Crown of \$250,000.00 on the setting up of the Tauranga Moana Maori Trust Board is a partial compensation for the confiscations, they insist that this payment is totally inadequate given the Crown's acknowledgement of the injustices which occurred and the catastrophic effect of the confiscations on the claimant iwi and hapu.
3. The failure of the Crown contrary to Article II of the Treaty to

Cont...
10c/18

.../2

40-

protect the claimant iwi and hapu in the use control and management of the Tauranga Harbour and in the use, control and management of their shell and other fisheries within the Tauranga Harbour.

4. The failure of the Crown contrary to Article II of the Treaty to protect the claimant iwi and hapu in the use, control and management of their coastal fisheries which extend along the shore line from Maketu Bar to Whangamata to a distance of 100 miles off shore at right angles from that shore line.
5. The failure of the Crown to provide for the control and management by the claimant iwi and hapu of reserve areas and wahi tapu of special significance to them, namely:

Mauao (Mount Maunganui)
 Mangatawa Hill (Maunga Mana)
 Pukewhanake
 Otawhiwhi Reserve
 Nga Kuri A Wharef
 Huhara (Plummers Point)
 Monmouth Redoubt

6. The failure of the Crown to provide for the control and management by the claimant iwi and hapu of their ancestral places of special significance to them including:

The Te Ranga battle site
 Karewa Island
 Motuotau
 Moturiki
 Hopu Kiroe (Mt Drury)

Cont...
 10c/19

.../3

W.O.

-3-

8. Restrictions or prohibitions placed by the Crown on the taking by the claimant iwi and hapu of matapuna kai (tītī & godwits).

AND WE CLAIM:

1. That all these matters are inconsistent with the principles of the Treaty of Waitangi.
2. The Tribunal is asked to recommend as follows:
 - (a) Compensation by the return of all tribal lands still in Crown ownership and the payment of monies sufficient for the iwi of Ngati Pukenga and the iwi and hapu of Ngaterangi and Ngati Ranginui to restore their mana and rebuild their tribal economy.
 - (b) The amending of the Tauranga Moana Maori Trust Board Act 1981 to provide proper compensation for the claimant iwi and hapu for the raupotu lands.
 - (c) Proper legislative measures to ensure that the claimant iwi and hapu regain a say in the use control and management of the Tauranga Harbour and regain and maintain the use, control and management of their shell and other fisheries within the Tauranga harbour.
 - (d) Proper legislative action to ensure that the claimant iwi and hapu regain and maintain the use, control and management of their coastal fisheries.
 - (e) Proper legislative provision to ensure that the claimant iwi and hapu regain and maintain the control and management

Cont...

10c/20

.../4

W.O.

of reserve areas wahi tapu and ancestral places of special significance to them.

- (f) The restoration of the right to take matapuna kai
 - (g) Such further or other relief as the Tribunal considers appropriate.
3. The Tribunal is asked to commission a researcher to report on this claim before any hearing. We seek leave to amend this claim following that report.
 4. The Tribunal is asked to appoint Mr J C Gooch of the firm of Messrs Cooney Lees & Morgan, Solicitors, Tauranga to assist me.
 5. The Tribunal is asked to hear the claim at a Marae in Tauranga.
 6. Persons affected by this claim and who should have notice of it are:
 - (i) The Treasury Box 3724 Wellington
 - (ii) Works & Development Services Corporation (New Zealand) Limited, Box 12-041 Wellington.
 - (iii) Western Bay of Plenty District Council Private Bag, Tauranga
 - (iv) Tauranga City Council Private Bag, Tauranga
 - (v) Ministry of Agriculture and Fisheries, Private Bag, Wellington

Cont...
10c/21

.../5

- (vi) Department of Conservation, PO Box 10420, Wellington
- (vii) Land Corporation Limited, PO Box 1790, Wellington
- (viii) Department of Lands, PO Box 12162, Wellington
- (ix) All other persons who may have lodged or who may lodge claims with the Tribunal concerning or touching any of the matters in respect of which this claim is made.

- 7. This claim amends and replaces the claim as given in the letter of 4 February 1988.
- 8. Notices to the claimant should be sent to the Offices of Messrs Cooney Lees & Morgan, Solicitors, 87 First Avenue (PO Box 143), Tauranga.

.23.2.1990. Date

W. Ohia..... Signature
WILLIAM OHIA

14/8

THIS DEED made the 15th day of July 1980
BETWEEN THE MOUNT MAUNGANUI BOROUGH COUNCIL (hereinafter called "the
 Council") of the one part and THE PROPRIETORS OF MANGATAWA & PAPAMO A BLOC
 (hereinafter together with its successors and assigns called "the
 Incorporation") of the other part

WHEREAS the Incorporation is the owner of the lands described in the
 Schedule hereto

AND WHEREAS the Council wishes to convey water to and from such sites over
 other lands of the Incorporation

AND WHEREAS the Council wishes to protect the reservoir sites by batters

AND WHEREAS the Council requires access to and from the reservoirs pipe-
 lines batters and associated installations and equipment

AND WHEREAS the Incorporation will make provision for the aforesaid wishes
 and requirements of the Council on the terms herein set out

NOW THEREFORE in consideration of the premises :

1. THE Incorporation will lease in perpetuity to the Council the areas
 land more particularly defined in the Schedule hereto and described as
 "Reservoir Sites".

2. THE Incorporation hereby grants the Council its successors and assigns
 full free right liberty and licence for all times to carry and convey in
 and over through along and under that portion of the lands described in
 Schedule hereto more particularly delineated on the plan annexed hereto
 into and through pipes and conduits water from the Council's water supply
 undertaking to and from reservoirs built or to be built on the aforesaid
 reservoir sites and for such purposes from time to time to dig up to any
 depth and again fill the soil of the said delineated portion of land and
 to alter repair duplicate replace and maintain such pipes and conduits
 and to lay down construct erect and make in or over through along and
 under the said delineated portion of land pipes and conduits of such size
 and kind as the Council shall think fit for carrying and conveying water
 with such manholes inspection chambers valves surface boxes and other
 fitments as the Council shall think fit and from time to time to inspect
 maintain cleanse repair extend remove enlarge duplicate replace such
 pipes and conduits manholes inspection chamber valves surface boxes and
 fitments.

3. THE Incorporation hereby grants to the Council its successors and

WMS
 [Handwritten signature]

2.

assigns full free right liberty and licence for all times to pass over the lands referred to in the Schedule and described as Rights of Way on the plan hereto annexed by its members engineers surveyors workmen agents servants and contractors with or without vehicles and machinery of every kind.

4. THE Incorporation hereby grants to the Council its successors and assigns the right to move disturb build up and otherwise contour the surface of the areas referred to in the Schedule and described on the plan annexed hereto as Batter Easements for the purpose of protecting the reservoir sites by the making consolidating and establishing of batters.

5. WHEREAS part of the access to the said reservoir sites is by way of a right of way granted to the Minister of Works the Incorporation will use its best endeavours to ensure that the Minister will permit use of such right of way by the Council and also obtain the consent of the said Minister where this grant of rights of way to the Council traverses the quarry taken by Proclamation 11802 and the quarrying rights delineated by plan S.O.42605. Failing the establishment of satisfactory access for the Council to its reservoir sites in terms of the foregoing provisions of this paragraph the Incorporation will grant alternative access to the Council by right of way. If and when the Minister of Works relinquishes his quarry and quarrying rights the Incorporation will subject to paragraph 8 hereof assign or re-grant to the Council as may be appropriate the present rights of way attaching to such quarry and quarrying rights.

6. FOR the purposes or any of them hereinafter set out and for the purposes of inspection repair and maintenance of all works connected with the exercise by the Council of its rights and powers hereunder the Incorporation hereby grants to the Council its successors and assigns the full free right liberty and licence for and at all times to enter upon and pass over the lands described in the Schedule hereto by its members engineers surveyors workmen agents servants and contractors with or without vehicles and machinery of every kind and to remain on such land as shall be necessary for such purposes and generally to do and perform such acts and things upon the said lands as may be proper or necessary for or in relation to any of the aforesaid purposes.

7. THE Council shall and will at all times maintain all such pipes conduits and their associated fittings and equipment in good and serviceable order for the purposes for which the same are designed and

prevent the same from becoming a nuisance.

8. IN consideration of the grants hereunder made by the Incorporation to the Council the following agreements are made :-

- (a) The Council will pay to the Incorporation the value of the land required for the reservoir sites shown on Plan No.T.81753 dated November 1976 lodged in the office of the Council, such value to be fixed by an independent valuer acceptable to both parties.
- (b) The lease granted to Council will be in registrable form in perpetuity at a peppercorn rental, but will cease if Council no longer requires the land for the purposes of a water reservoir and water pipelines and ceases in the absence of earthquake flood or other major disaster to use the land for such purpose for a continuous period of two years.
- (c) Should the Ministry of Works no longer require its present quarry area or should the present lease to the Ministry of Works expire before Council proposes to build a second or third reservoir on the said land the Incorporation will exchange sufficient of the quarry area to enable Council to build a second and/or third reservoir on the quarry site and the appropriate area of land will be included in the lease to the Council in place of the 6224 square metres site shown on the abovementioned plan. Such site shall then be removed from the lease.
- (d) Council will provide firefighting water services for the protection of the Tamapahore Marae. Council will consider a formal request for a water supply to allow for a limited subdivision of the Tamapahore Marae Community Zone for residential purposes, to be paid for at the rates fixed for Borough ratepayers.
- (e) Council will landscape the area should any additional reservoir be built so that the reservoir is not obvious to view.
- (f) Council will carry out planting to screen the present reservoir to achieve a pleasant outlook.
- (g) Council will bear the reasonable costs of the Incorporation's valuer and legal advisers, the valuer's fee to be in accordance with Valuers' Scale and the legal fees to be subject to the approval of Council's solicitors.

4.

9. SHOULD the Council enter into and upon the aforesaid lands described in the Schedule hereto for any of the purposes or pursuant to any of the permissions hereby granted it will carry out the inspection and work required and complete the same with as little disturbance to the surface of the land as possible and shall and will immediately upon the completion of any such work restore the surface of the land as nearly as possible to its original condition provided always that where the movement of earth the sowing of seed or the planting of trees or shrubs is involved such work shall be subject to the dictates of prevailing weather conditions and the season or seasons of the year involved.

10. THE Incorporation will not at any time hereafter do permit or further any act whereby the rights powers licences liberties hereby granted and the Council may be interfered with or affected but subject thereto the Incorporation shall be at liberty to continue to use the land for pastoral purposes.

11. THE Council shall be at liberty hereafter if considered expedient to proceed pursuant to Section 32 of the Public Works Act 1928.

12. UPON completion of survey the Incorporation will execute all such transfers grants and assurances as may be necessary to give effect to the provisions of this deed and will consent to the support of the same by Caveat pending completion of survey and registration provided always that the Council will remove or lift any such Caveat to enable the Incorporation to have registered in respect of the lands described in the Schedule any dealing not derogating from the Council's rights hereunder.

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore written.

SCHEDULE

Part Papamoa No. 2 Sec. 9B	C.T.893/291
Part Papamoa No. 2 Sec. 8	" 628/70
Part Papamoa No. 2 Sec. 7A	" 5D/110
Part Mangatawa 2B2B	" 5D/109
Part Mangatawa No. 3	" 16/306

for water pipeline and use of existing R.O.W. in Proc.11802 over Mangatawa 2B2B and Papamoa 2 Section 7A in favour of Mangatawa No.2

5.

Pt. Mangatawa 2B2B for water pipeline	C.T.5D/109
Pts. Mangatawa No.3 for water pipeline Rs.O.W. and batter easement	" 16/306
Pts. Mangatawa 2B2B for Rs.O.W.	" 5D/109
Pt. Mangatawa No.2 for R.O.W.	" S.O.32022

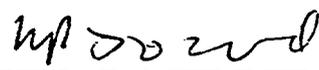
RESERVOIR SITES

3539m ² being Part Mangatawa No.3	C.T.16/306
6224m ² being Part Mangatawa No.3 for leases	" 16/306

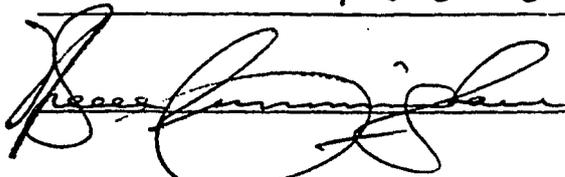
THE COMMON SEAL of THE MOUNT MAUNGANUI)
BOROUGH COUNCIL was hereunto affixed)
in the presence of :)



Mayor



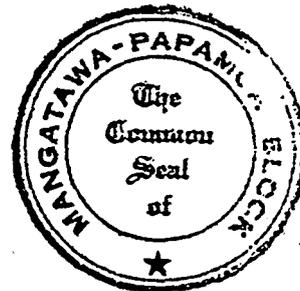
Councillor



Town Clerk



THE COMMON SEAL of MANGATAWA-)
PAPAMOA BLOCK INCORPORATED was)
hereunto affixed this 27th day of)
May 1980 in the presence of the)
following members:)



J. La Kani
Rini Parahi
J. Kaker