

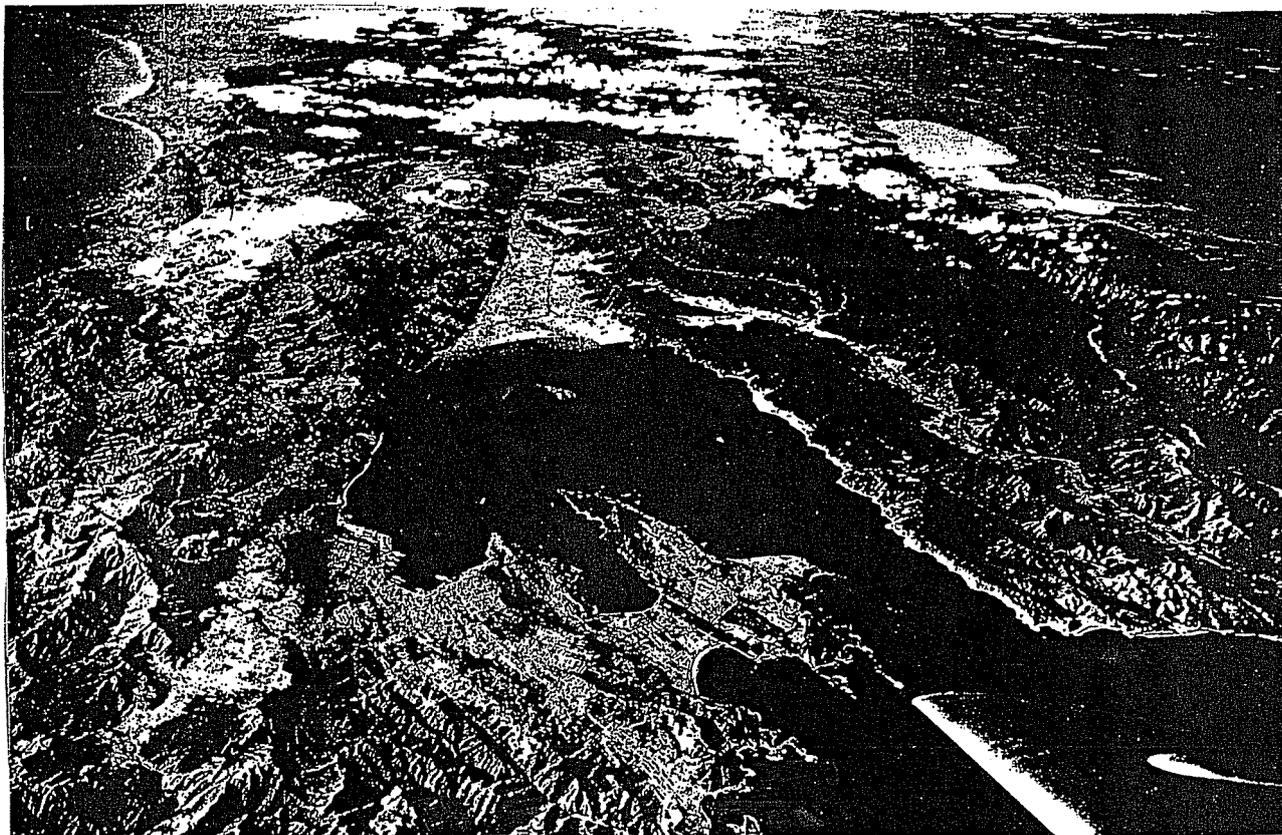
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Wai 145 #19

TE WHANGANUI-A-TARA

FORESHORES RECLAMATIONS

REPORT



VOLUME ONE AND TWO: MAIN REPORT AND APPENDIX

ROBERT A McCLEAN

TE WHANGANUI-A-TARA

FORESHORES RECLAMATIONS

REPORT

*VOLUME ONE AND TWO
MAIN REPORT AND APPENDIX*

WAI 145

ROBERT A McCLEAN

Any conclusions drawn or opinions expressed are
those of the author

November 1997

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ACKNOWLEDGEMENTS

I would like to express my appreciation to all those persons who have helped me carry out research for this report. Especially: all the staff at the Wellington Regional Council Library and Sara Bagnell who have been really helpful, Ann Williams, Tony Walton and Bruce McFadgen at DOC, Mitch Glockling at the Maritime Museum, Wellington City Council Archives, and all the team at the Waitangi Tribunal especially Noel, Bronwyn, Anita and the Wellington Tenths Research Team. As usual, special thanks go to Kathrin and my children for their unfailing support and encouragement.

CONTENTS

VOLUME ONE; MAIN REPORT

List of Abbreviations	7
List of Illustrations	8
Explanation of Terms	9
Report Summary	11
<u>Chapter One: TE WHANGANUI-A-TARA AND THE WELLINGTON TENTHS CLAIM</u>	16
1.1 Claims over Te Whanganui-a-Tara	16
1.2 Main Issues	23
1.3 Methodology	28
<u>Chapter Two: TAKING POSSESSION AND CREATING TE WHANGANUI-A-TARA</u>	32
2.1 Creating Spaces	32
2.2 Mapping Power/Knowledge	34
2.3 Creating a harbour seascape	35
2.4 Making Te Whanganui-a-Tara a harbour	36
<u>Chapter Three: TE WHANGANUI-A-TARA; UNDERSTANDINGS OF GEOLOGY AND A MAORI HISTORICAL GEOGRAPHY.</u> ..	40
3.1 Geology; everything always changes	40
3.2 A Political Geography of Te Whanganui-a-Tara	44
3.2.1 Settlement	46
3.3 Places of Value; Tribal histories of Te Whanganui-a-Tara	50
3.4 1820s, Changing Places at Te Whanganui-a-Tara	59

**Chapter Four: THE NEW ZEALAND COMPANY
TAKES CONTROL OF TE WHANGANUI-A-TARA. 78**

4.1	Plans for Te Whanganui-a-Tara	78
4.2	Port Nicholson; Harbour and Tribal Politics, the view from the <i>Tory</i> . .	86
4.3	Purchasing the Port	92
4.4	Port Nicholson; Fishing and Survey	96
4.5	Settling in at Port Nicholson	102
4.6	Crown Intervention	107
4.7	Foreshore Rights and Private Wharves	114
4.8	Harbour Control until 1852	117

Chapter Five: RECLAIMING PORT NICHOLSON, 1852-1878 . . 128

5.1	Sir George Grey's Reclamation, 1852	128
5.2	Public Reserves Act 1854	129
5.3	Wellington Provincial Reclamation Plans	131
5.4	The Port of Wellington	140
5.5	Harbour Pollution	142
5.6	Railways and Reclamation by the Crown	143
5.7	Wellington City Reclamation Plans	147

**Chapter Six: RECLAMATIONS 1878-1923;
THE WELLINGTON HARBOUR BOARD,
CITY COUNCIL, MARINE DEPARTMENT AND TE ARO. 156**

6.1	Harbours Act 1878	156
6.2	Wellington Harbour Board	163
6.3	Te Aro Reclamation	171
6.4	Railway Reclamation; The Wellington Manawatu Railway Company	177
6.5	Hutt Road and Railway	179
6.6	Waterloo Quay and the Greater Thorndon Reclamation	182
6.7	Effect of Reclamations on Maori interests	188

**Chapter Seven: OUTSIDE LAMBTON HARBOUR;
RECLAIMING HUTT ESTUARY AND EVANS BAY. 198**

7.1	Hutt Estuary	198
7.2	Harbours Act 1923	202
7.3	The Hutt Estuary Reclamation gets going	204
7.4	Evans Bay	212

Chapter Eight: THE RE-EVALUATION OF RECLAMATION

AND THE HARBOUR, 1960-1991.	217
8.1 Learning about the Harbour; Pollution and Ecosystems	217
(includes a section on effect of reclamations on Maori piscary interests)	
8.2 Reclamation in Action, 1960-1988	228
8.3 NZ Ports Authority	230
8.4 Towards Town and Country Planning Control	231
8.5 Action against Reclamations	236
8.6 Planning Context for Reclamations 1977-1991	239
8.7 Reclamations with Environmental Information 1974-1991	241
8.8 Reclamation under a new regime; the RMA 1991.	244
<u>Chapter Nine: CONCLUSIONS</u>	248

VOLUME TWO; APPENDIX AND BIBLIOGRAPHY

Appendix A Research Commission

Appendix B Places within Te Whanganui-a-Tara

Appendix C Legislation; Grants and authority to reclaim land.

List of Reclamations, 1847-1997

Appendix D Reclamation Control, 1977-1988

Appendix E Maori and reclamation provision under the Resource Management Act .
1991

Bibliography

VOLUME THREE; MAPS AND DOCUMENT BANK

LIST OF ABBREVIATIONS

AfE	Action for Environment
AJHR	<i>Appendices to the Journals of the House of Representatives</i>
ATL	Alexander Turnbull Library
BOD	Biological Oxygen Demand
CT	Certificate of Title
DOC	Department of Conservation
EIA	Environmental Impact Assessment
EIR	Environmental Impact Report
ES	Environmental Statement
GBPP	<i>Great Britain Parliamentary Papers</i>
HCC	Hutt County Council
HRB	Hutt River Board
JALC	<i>Journal and Appendix of the Legislative Council</i>
JPWPC	<i>Journal and Proceedings of the Wellington Provincial Council</i>
NA	National Archives
Maori	Marine Department
MB	Minute Book
MD	Marine Department Map Series
MHWS	Mean high water springs
MOT	Ministry of Transport
MPA	Maritime Planning Area
NM	New Munster
NZPA	New Zealand Ports Authority
NZPD	<i>New Zealand Parliamentary Debates</i>
NZC	New Zealand Company
NZG	<i>New Zealand Gazette</i>
RCP	Regional Coastal Plan
RMA	Resource Management Act 1991
ROD	Record of Documents
RPS	Regional Policy Statement
TCPA	Town and Country Planning Act
WCC	Wellington City Council
WHB	Wellington Harbour Board
WHMPA	Wellington Harbour Maritime Planning Authority
WMRC	Wellington Manawatu Railway Company
WRC	Wellington Regional Council
WRPA	Wellington Regional Planning Authority
Wai	Waitangi Tribunal Claim

LIST OF ILLUSTRATIONS

- 1.1 Reclamation with Lambton Harbour, 1839-1980
- 2.2 Port Nicholson or Wanganueatera, 1826
- 3.1 Location and Distribution of Beach Ridges in Petone
- 3.2 Paleoshorelines stranded by Holocene movements, Rongotai
- 3.3 Archaeological Sites, Wellington District
- 3.4 Te Whanganui-a-Tara, Routeways and Strategic Pa
- 3.5 Mataitaua Pa, Pauatahanui
- 3.6 Place names associated with Kupe
- 3.7 Te Whanganui-a-Tara
- 4.1 Sketch of Te Whanganui-a-Tara, Thomas Shepherd, 1826
- 4.2 Chaffers Chart of Port Nicholson, 1839
- 4.3 Birds eye view of Port Nicholson, 1840
- 4.3a Town of Wellington, 1840
- 4.4 Port Nicholson, 1846
- 4.5 Lambton Harbour, 1846
- 5.1 Plan of Reclaimed Land, 1863
- 5.2 Plan of Wellington Harbour, 1873
- 6.1 Port Nicholson, Foreshore granted to Wellington Harbour Board, 1880
- 6.2 Wellington Harbour Improvements, General Plan
- 6.3 Te Aro Reclamation, 1881
- 6.4 Lands Reclaimed from Port Nicholson, 1899
- 6.5 Old Kaiwharawhara
- 7.1 Hutt River Board Plans
- 7.2 Plan of Reclamation, Hutt Estuary, 1922
- 7.3 Hutt Harbour Proposal, 1944
- 7.4 Western Arm of the Hutt River.
- 8.1 Water Classification, 1971
- 8.2 Classification of the Wellington Area, 1971
- 8.3 Shellfish Beds, Wellington Harbour, 1982.

Appendix

- A.1 Basic Procedures for Reclamation Authority, 1978
- A.2 Legislative Administration of the Coastal Environment, 1979
- A.3 Administration of the WHMPA, 1988
- A.4 Legislation affecting Coastal and Maritime Areas, 1988
- A.5 The Coastal Environment, 1991.

EXPLANATION OF TERMS

Acres, Roods, Perches

Old imperial measurement for area. 1 acre = 4 roods = 160 perches. 1 acre equals .4047 hectares or 4047 square metres. Or 1 hectare equals 2.4711 acres.

Biological Oxygen Demand (BOD)

This is an indicator of residual organic content in the effluent. This content may involve further biodegradation and therefore place a demand on oxygen in the environment.

Declamation

Opposite of reclamation. Taking or removal of material below MHWS.

Faecal Coliforms (FC)

These are bacteria that are present in the gut and in the faeces of warm blooded animals. For this reason they are often used to indicate the presence of pollution (bacterial pathogens) derived from humans. Faecal coliforms are less useful as indicators of excreted viruses.

Foreshore

Usually refers to the area between the high tide and low tide mark. Sometimes also used to refer to land adjacent to the high tidal area.

Mean High Water Springs or Mean High Water Mark

Refers to the average of each pair of successive high waters during a period of about 24 hours in each semi-lunation (approximately every 14 days) when the range of tides is the greatest.

Reclamation/Reclaiming

Permanent infilling of the foreshore or seabed with earth, sand or rock and results in a surface area above MHWS.

Sewage

Generally refers to the actual liquid waste of a community. Sometimes this sewage may include

stormwater infiltration.

Sewage sludge

Solid material derived from settled material during treatment process

Sewerage

Refers to both the sewage and the trunk mains or pipes that carry the sewage. As a network which is installed to service a town (replacing septic tanks) these trunk mains and pipes are referred to as reticulation.

Suspended Solids (SS)

Indicator of suspended matter in the effluent

Wastewater

This is the liquid sewage waste after it has been processed by treatment. Also called sewage effluent.

REPORT SUMMARY

Since 1840 the foreshore and sea of Te Whanganui-a-Tara has been modified for the purposes of wharves, city development, and communications. The most important modification of the foreshore has been in the form of reclaiming the harbour-bed to create land. This reclamation activity has been concentrated at Lambton Harbour, the western shoreline, Hutt estuary, Evans Bay and Lyall Bay.

The purpose of this report is to provide information to the Waitangi Tribunal on reclamations and foreshore issues in Te Whanganui-a-Tara as part of the Wellington Tenths Inquiry.

The report will cover the following matters as provided in the Research Commission:¹

- *customary Maori use and ownership of Te Whanganui-a-Tara based on written evidence;*
- *history of reclamations undertaken by the Crown and other bodies since 1839;*
- *consideration as to whether Maori were consulted in relation to any reclamations;*
- *assessment of the effects reclamations had on local Maori;*
- *an assessment of Maori protest or other evidence of the attitude of Maori towards reclamations; and*
- *the effect on Maori of any actions of the Crown, or by other bodies exercising powers conferred by statute, that may have resulted in the environmental degradation of Te*

¹ Direction Commissioning Research, 8 October 1997, Waitangi Tribunal, Appendix A

Whanganui-a-Tara.

These matters could be summarised in the following key issues:

- 1. What was, and continues to be, the nature and extent of Maori customary use and ownership of Te Whanganui-a-Tara?*
- 2. What specific actions or omissions of the Crown have prejudicially affected Maori customary use and ownership of Te Whanganui-a-Tara in regard to the reclamation of the seabed?*
- 3. What was the legislative process that enabled reclamation to proceed and did this process involve participation with, or consent from, local Maori?*
- 4. What specific actions or omissions of the Crown have prejudicially affected Maori customary use and ownership of Te Whanganui-a-Tara in regard to environmental degradation?*

In an attempt to provide an answer to the questions raised in these four issues, this report has nine main parts:

Chapter One examines the issue of foreshores and the harbour within the Statements of Claim (Wellington Tenths Claims) and takes a brief look at previous Waitangi Tribunal reports that have dealt with foreshores and reclamations. The main issues are clarified within this chapter.

Chapter Two gives an explanation of an historical geographical approach to the study of harbours and uses the first survey by the *Rosanna* and the *Lambton* in 1826 as an example of creating a seascape using hydrographic survey. This survey has produced a context within which

narratives about Te Whanganui-a-Tara have been written.

Chapter Three situates the harbour within the region and explores geology, archaeological and Maori tribal geography. Tribal geography is sourced from the written sources related to Kupe, Ngati Mamoe, Kurahaupo, Takitimu, Horouta, and the tribes that arrived in the 1820s in the various heke. The author will attempt to construct an overview of customary use rights in Te Whanganui-a-Tara and the surrounding political context.

Chapter Four details the arrival of the *Tory* and reviews written evidence from those persons on board related to their impressions of the harbour, tribal politics and fishing interests. The author will also give a brief account of the founding of Wellington, the assumption of control over the harbour by the Crown, harbour survey, the Spain Commission, and the first public works.

Chapter Five gives an overview of reclamations and harbour alienations between 1852 and 1878. This overview has a particular focus on the reclamation plans and works by the Wellington Provincial Government under the Public Reserves Act 1854.

Chapter Six carries on the reclamation story with an examination of the doings of the Wellington Harbour Board, the City Council, and the Marine Department under the Harbours Act 1878. Te Aro, Hutt Railway, and the Greater Thorndon Reclamation are illustrated in some detail. The effect of reclamations on Maori reserves is also explored in this chapter.

Chapter Seven provides a description of reclamation activity outside Lambton Harbour at the Hutt Estuary and Evans Bay.

Chapter Eight gives an account of reclamation activity between 1960 and 1991 as reclamation was brought under the control of the Town and Country Planning Acts (1953/1977). The chapter also includes sections on harbour pollution, water quality, and the effect of reclamations on Maori piscary rights.

Chapter Nine sums up the report with concluding remarks. A brief sketch of these conclusions are outlined as follows:

Main Conclusions

1. Te Whanganui-a-Tara has never, until now, been the subject of a Commission of Inquiry. Maori customary use, ownership, and harbour issues were not investigated by the Spain Commission or the Native/Maori Land Court. All conclusions contained in this report, are tentative and subject to limitations mentioned in Chapter One.

2. Based on written sources, it seems customary use of Te Whanganui-a-Tara was first exercised by tribes associated with the Kurahaupo waka; Rangitane (including Ngai Tara, Ngati Mamoe), and maybe Ngati Rangi and Mua-Upoko. The Kurahaupo tribes also claim decent from Kupe. These tribes were later joined by Ngati Ira and Ngati Kahungunu. After 1819, tribes from Taranaki and Ngati Toa Rangatira began arriving and started to exercise customary use within Te Whanganui-a-Tara.

3. The New Zealand Company and the Crown assumed ownership of Te Whanganui-a-Tara (that is, the harbour) after 1839, but no evidence suggests that the customary title was ever extinguished by a 'clear and plain executive or legislative action by the Crown.' This suggests that Te Whanganui-a-Tara may remain under customary use and ownership of the tribes to this present day.

3. On assuming ownership, the Crown passed legislation between 1852 and 1988 allowing the harbour-bed to be granted as title in various Crown or local authority bodies. The Crown also passed legislation between 1852 and 1988 (see Appendix C for a full list of legislation) allowing reclamation of the harbour by itself and various local authority bodies. This granting and reclamation was carried out with no regard to customary Maori interests.

4. While reclamation had an adverse effect on Maori customary interests, there is little record

of Maori protest against reclamation until the 1990s.

5. Reclamation was generally preceded by environmental degradation of the harbour waters by pollution and other contaminants. Evidence suggests that much of the foreshore was already polluted before reclamation took place. The author has been unable to find any record of protest by Maori against this pollution before 1970.

CHAPTER ONE: TE WHANGANUI-A-TARA AND THE WELLINGTON TENTHS CLAIM

Wai 145 is the master claim for claims concerning the Port Nicholson Block (Wellington district). Wai 145 was registered on 23 December 1987 on behalf of Nga Iwi o Taranaki who claim to be prejudicially affected by acts, policies and omissions of the Crown concerning the alienation of the Wellington lands and the failure to ensure that land equal to one tenth of the Block was reserved for the chiefs and their families as provided for in the Port Nicholson (New Zealand Company) Deed. A number of other claims which have an interest in the Wellington district have also been aggregated with Wai 145. These claims include: Wai 105, 175, 183, 207, 366, 377, 415, 442, 474, 543, 562, and 660. Since the Waitangi Tribunal has researched and conducted hearings into the Wellington Tenths claim, the focus of the proceedings has been the actual land alienation process. This report, however, will illustrate a history of sea and foreshore alienation within Te Whanganui-a-Tara; Port Nicholson, Wellington Harbour.

1.1 CLAIMS OVER TE WHANGANUI-A-TARA

Wai 145 Nga Iwi o Taranaki

Among the aggregated Wai 145 claims, a number of claimants refer to acts of the Crown within the sea and foreshore area. Wai 145 asserts that the iwi has been prejudicially affected:

By denial of fishing rights as guaranteed by the Treaty of Waitangi in relation to the rivers, lakes, coastlines and harbours within the boundaries of Nga Iwi o Taranaki.

By denial of the fishing rights guaranteed by the Treaty of Waitangi in relation to the Tasman Sea, Cook Strait and the Pacific Ocean offshore from the lands within the tribal boundaries of Nga Iwi o Taranaki.

By denial of fishing rights in and around the Chathams Islands.²

The amendment of Wai 145 (1.2a) is more specific. In the introduction of the amended claim it is stated that “nga iwi katoa o Taranaki residing in Whanganui-a-Tara (nga Tangata Whenua) have had to live in a state of sadness through watching their lands and taonga being destroyed generation after generation by the people they welcomed in as partners in their land.”³ It is further asserted that in “1840 the rohe of the claimants were all the lands which became to be known as Te Whanganui-a-Tara being both the *harbour and surrounding hinterland*” [emphasis added].⁴ This clause in the claim is important to note, as the name ‘Te Whanganui-a-Tara’ is used to refer to the Wellington area; harbour, land, and rivers.

While most of the alleged Treaty breaches contained in Wai 145, 1.2a, relate to ‘land’ issues (for example, loss of wahi tapu, gardens, marae, and urupa⁵), loss of access to the foreshore is regarded as an important issue especially in relation to pa and reserve allocation:

4.24 The Crown breached Tangata Whenua proprietary rights when no change occurred in allocation of Tangata Whenua Reserves despite evidence in 1844 to show that some of the Whanganui-a-Tara Reserves were selected in areas “a considerable distance from the beach; they might have been chosen in much better situations if the gentlemen who had the choosing of them had known better what was requisite for the native wants.”

4.25 The Crown breached Tangata Whenua proprietary rights when despite the recognition by the Crown of the sacredness of Pah sites and access to the beach the Crown in 1844 made no provision for access to the beach at the Te Aro Pah in order to facilitate the Tangata Whenua at

² Statement of Claim, Wai 145.

³ Amended Statement of Claim, Wai 145, 1.2a, p 1.

⁴ Ibid, p 2.

⁵ Although I have classified these issues as pertaining to ‘land’, the boundary between foreshore and land issues was not ‘clear-cut’. For example most pa were coastal and were valued in relation to their command over the sea. Also wahi tapu could also be located in the foreshore or sea. Kaimoana and seaweed gathering places could also be thought of as sea ‘gardens’. Many caves around the coast were also used for urupa before the introduction of Christian burial rites.

Te Aro Pah remaining at the Pah.⁶

More specific to the alienation of the harbour and reclamations is the claim that:

11.27 In November 1873 the Crown failed to protect Tangata Whenua access to the inner harbour coastline from Te Aro around to Evans Bay when it proposed to grant the area for reclamation and proceeded to do so.⁷

13.2 That the Crown breached its duty to the Tangata Whenua when it allowed Tangata Whenua land to be taken under the Wastelands Act 1858. This land included Matiu (Somes) Island.⁸

14.3 That the Crown was negligent in its duty to Tangata Whenua when it passed the Te Aro Reclamation Act 1879 giving wide powers of reclamation in the harbour to the Corporation of Wellington, without putting in sufficient controls.⁹

15.3.1 The Crown failed in its duty to protect Tangata Whenua proprietary interests when it allowed Matiu Island to be reserved at a time when the Colonial Government had no legal authority to take land from Tangata Whenua without their consent and when no consent was given.¹⁰

The third amended statement of claim (Wai 145,1.2c) also includes specific claims against the Crown in regard to reclamations:

6.17 The Crown allowed reclamation of land around the foreshore of Whanganui a Tara without compensation to Tangata Whenua and without proper consultation with Tangata Whenua.

⁶ Statement of Claim, Wai 145, 1.2a, p 6.

⁷ Ibid, p 19.

⁸ Ibid, p 20.

⁹ Ibid.

¹⁰ Ibid, p 22.

6.17.1 The Crown enacted legislation vesting Whanganui a Tara foreshore and harbour in local and national government, thus depriving Tangata Whenua of their entitlements guaranteed under the Treaty.

6.17.2 The reclamation of land deprived Tangata Whenua of access to fisheries, shellfish gathering sites, transport areas and other uses, including kai tiakitanga of waahi tapu.

6.17.3 The reclamation of land deprived Tangata Whenua of access to kai moana which drove Tangata Whenua away from their pa sites in or near the foreshore of Whanganui a Tara.

6.17.4 The Crown authorised sales and leases of the reclaimed land without consultation with Tangata Whenua.¹¹

In addition Wai 145,1.2c alleges that the Crown has failed to protect the fishing rights of the Tangata Whenua and has allowed the degradation of the harbour waters and loss of kai moana by serious environmental damage arising from the discharge of raw sewage and other pollutants. The Crown has also failed to ensure by legislation that the “Tangata Whenua had an effective role in the conservation and management of the waters of Whanganui a Tara in accordance with their status as Tangata Whenua and equal Treaty partners.”¹²

Wai 175 and 543 Rangitane

Wai 175 and 543 is a claim on behalf of the iwi and hapu of Rangitane. The claimants assert that Rangitane exercised tino rangatiratanga over: the land, lakes, rivers and swamps of Te Whanganui-a-Tara which included the rohe from Wairaka Point, across to Abbots Creek, down to Turakirae Head, across to Cape Terawhiti, and back to Wairaka Point, including Matiu Island. Within this rohe are some 22 sites of unique cultural significance to Rangitane. Most of these sites are pa located around the shores of Te Whanganui-a-Tara. One site is located at the entrance of Wellington harbour; Te Punga Whangai o Tuteremoana, a fishing area seaward of Barretts

¹¹ Statement of Claim, Wai 145, 1.2c, p 25-26.

¹² Ibid, p 26.

Reef. Also of significance is the “resources of the sea along the coastline of the coastal Pa” and the coastal resources of Matiu Island.¹³

Alleged breaches of the Treaty of Waitangi specific to Te Whanganui-a-Tara include:

permitting the continual disturbance and desecration of Rangitane waahi tapu within Te Whanganui-a-Tara and wider Wellington region;

allowing the pollution of the air and waters of Rangitane within the Te Whanganui-a-Tara and wider Wellington region.¹⁴

As a consequence of these (and other breaches) Rangitane claim to have been prejudicially affected by a number of aspects which include “loss of lands, mountains, forests, rivers, swamps and lakes” and “pollution of the air and waters of Rangitane and consequence loss or deterioration of those resources.” Relief actions also include:

- The transfer of all existing property rights to the relevant coasts, foreshores and harbours.
- The return of Matiu Island and the recognition of Rangitane ancestral, customary and historical associations.
- The taking of such steps as are necessary and appropriate to remove (and maintain the removal of) pollution from the air and waters of Rangitane.
- Recognition of the importance and primacy of all Rangitane place names, waahi tapu and ancestral sites within the region of Te Whanganui-a-Tara.¹⁵

¹³ Statement of Claim, Wai 175 and 543, p 4-5.

¹⁴ Ibid, p 10-11.

¹⁵ Ibid, p 15-16.

Wai 207 Ngati Toa Rangatira

Ngati Toa Rangatira claim:

Loss of 'Tino Rangitiratanga' and also lands and islands, rivers and lakes, forests, harbours, seas, and seashores, fisheries, waahi tapu and all other taonga within the area bounded by Whangaehu, then east to the Tararua ranges, south to Turakirae Heads across the Cook Strait to Kaikoura and west to the Arahura and back to Whangaehu.¹⁶

Within this boundary, the Tribunal is asked for compensation in respect to loss of fisheries from pollution, works and development, and loss of the Parumoana/Porirua Harbour sea bed. It is also asserted that "Ngati Toa Rangatira exercised control and rangatiratanga (together with other iwi) over the coasts, foreshores, and harbours in their rohe, more particularly those at Te Whanganui-a-Tara and Porirua." On the basis that the Crown has assumed ownership of the harbour bed and foreshore, Treaty breaches include:

- destroyed fisheries with reclamation work and by other means;
- lands and resources, including waahi tapu have been damaged, depleted and polluted by Crown management practices, policies, including indigenous forest deforestation, exotic afforestation, and pollution of coastal and marine resources; and
- dispossessed of their economic and sustaining resources, including mahinga kai, birding, cultivation, gathering and fisheries resources.¹⁷

Recently Ngati Toa Rangatira lodged a further additional statement of claim. This claim has a specific focus on Te Whanganui-a-Tara. Relevant paragraphs are as follows:

That in 1840 the foreshore, seabed, and associated fisheries and other marine resources within

¹⁶ Statement of Claim, Wai 207.

¹⁷ Statement of Claim, Wai 207, 1.1a, p 11-12.

the area later defined by the boundaries of the Port Nicholson deed (the Wellington area) were in the ownership and control of those iwi with rights according to tikanga Maori in the region. Ngati Toa Rangatira was one of those iwi.

That Ngati Toa Rangatira also had a spiritual interest in these resources, because they brought their ancestral guardians with them when they moved from Kawhia. They exercised a role as kaitiaki in the Wellington area.

That the Ngati Toa people, as Tangata Whenua of the Wellington area, frequented kainga and sites around the Wellington harbour both before and after 1840, and used the marine resources of the harbour and of the southern and western coasts of the Wellington area. In particular, they used marine resources around Ohariu and also at Island Bay and Petone.

That the Crown assumed ownership and control of the foreshore and seabed, and undertook reclamations in the Wellington area without consulting or having regard to Ngati Toa Rangatira as one of the Tangata Whenua with an interest in the area.¹⁸

Wai 377 Ngati Tama

Ngati Tama claim on the basis of their rohe in the Ohariu region and at pa located on the harbour. Within an area marked on a map of western Wellington (Amendment 377, 1.1b), Ngati Tama claim to have exercised rangatiratanga and the primary ownership interest. This area includes the coastal environment from Pipinui point to Rimurapa and the coastal environment of the Lambton harbour area from the central city to Ngauranga. Prejudicial affects by acts and omissions of the Crown include:

- The failure by the Crown to ensure that Taringa Kuri and his people retained sufficient land and access to mahinga kai to enable them to maintain their traditional lifestyle and live in accordance with their own cultural norms.
- Failure of the Crown after 1848 actively to foster, protect and safeguard Ngati Tama interests by taking the steps necessary to ensure that Ngati Tama were able to withstand and adapt to the rapidly changing

¹⁸ Further Statement of Claim, 15 September 1997, Wai 207.

environment brought about by intensive European settlement of the Wellington Ngati Tama homeland.¹⁹

Wai 442 Taranaki ki te Upoko o te Ika

This claim is in regard to the original Waiwhetu pa taken under the Public Works Act 1908 for river protection purposes. The land was of “significant importance to our Tipuna as kainga and wahi tapu.”²⁰

Wai 562 Puketapu hapu of Te Atiawa iwi

This is a claim against the alleged wrongful alienation of the Pipitea pa lands in the City of Wellington. The claim is focused on Pipitea land alienation.

Wai 571 Wellington Tenths Trust

This is also a claim concerning the Pipitea pa lands, and alleges that part of the pa (CT 36c/251) was a canoe landing site.

1.2 MAIN ISSUES

In summary, the claims over Te Whanganui-a-Tara involve five main aspects:

1. Claims that the Crown did not confirm the tribes’ interests in Te Whanganui-a-Tara either when the New Zealand Company purchase was under inquiry by the Land Claims Commission or in the issue of the Crown Grant (Wai 175,543,207).
2. Claims that the Crown assumed ownership of Te Whanganui-a-Tara foreshore, sea bed, and

¹⁹ Wai 377,1.1c, p 8.

²⁰ Statement of Claim, Wai 442.

islands (Wai 145, 175, 207).

3. Claims that the action of reclaiming the sea bed of Te Whanganui-a-Tara has had an adverse affect on Maori in the region (Wai 145,175/543, 207, 377,422). These effects include:

- loss of kai moana;
- desecration of waahi tapu;
- loss of coastal frontage to settlements and pa sites; and
- loss of waka landing sites (tauranga waka).

4. Claims that the action of reclamation of the sea bed of Te Whanganui-a-Tara was undertaken without consultation with or consent of local Maori (Wai 145, 207)

5. Claims that the Crown did not compensate or consult with local Maori when reclaimed land was sold (Wai 145, 207).

The practice of coastal and foreshore alienation has been a significant issue in relation to the Treaty relationship between Maori and the Crown, and in claims brought before the Waitangi Tribunal. Earlier claims focused on the adverse effects of sewerage and pollutants on tribal kaimoana areas (Kaituna, Wai 4; Motunui, Wai 6; Manukau; Wai 8; Mangonui Sewerage, Wai 17). The *Orakei Report* (Wai 9), while concentrating on the alienation of the Orakei lands, also commented on the effects of loss of coastal access, the harbour aspect, kaimoana and flooding caused by works of the Auckland Drainage Board.²¹ Regarding the loss of foreshore and sea fishing interests, the *Muriwhenua Report* and *Ngai Tahu Sea Fisheries Report* (Wai 22 and 27) have given prominence to the process of foreshore alienation and the Crown's assumption of

²¹ *Orakei Report*, 1987, p 220-221.

ownership of lands below the mean high water mark under English common law. The boundary between land and sea was found to be somewhat arbitrary as both are to be viewed as “a seamless whole which cannot properly be divided into parts.”²² Both reports had found that the Crown failed to protect Maori interests in the foreshore and sea in regard to tribal rights of rangatiratanga and self-management of the coastal environment under article 2 of the Treaty of Waitangi.²³ The most relevant report, however, to this study, is the more recent *Te Whanganui-A-Orotu Report* (Wai 55). The Te Whanganui-A-Orotu inquiry dealt with a number of issues common to Te Whanganui-a-Tara including: customary ownership, the assumption by the Crown of harbour ownership, effect of land movement and uplift, alienation of harbour islands, effect of pollution, sewerage disposal and especially reclamations. The Waitangi Tribunal found that, in regard to Te Whanganui-A-Orotu, the harbour was a taonga protected under the general principle of active protection contained in article 2 of the Treaty of Waitangi. The specific breaches of the Treaty are worth quoting in full:

The Crown has been in breach by:

- a. not making it clear that it believed that Te Whanganui-a-Orotu was included in the original purchase and then relying on what were, at most, legally ambiguous provisions in documents prepared by the Crown as a basis for claiming Te Whanganui-a-Orotu;
- b. purporting to rely on the common law principle of ‘arm of the sea’ to acquire Te Whanganui-a-Orotu without the consent of Maori;
- c. enacting legislation to vest Te Whanganui-a-Orotu in the Napier Harbour Board and to authorise a series of reclamations and sales and leases of it, more particularly to the Napier Borough (City) Council for urban development;
- d. compulsorily acquiring islands, without paying any compensation, that were clearly outside the purchase and recognised by statute as customary Maori land;
- e. depriving Maori of access to Te Whanganui-a-Orotu for fishing, shellfish gathering, transport, and other uses, including kaitiakitanga of wahi tapu;
- f. permitting serious environmental damage and destruction to occur to Te Whanganui-A-Orotu; and
- g. failing to ensure, by legislation or otherwise, that Maori had an effective role in the

²² *Ngai Tahu Sea Fisheries Report*, 1992, p 6.

²³ *Ngai Tahu Sea Fisheries Report*, p 305; *Muriwhenua Fishing Report*, 1988, p 225-230.

conservation and resource management of Te Whanganui-a-Orotu in accordance with their status as Tangata Whenua and Treaty partners.²⁴

This report describes a similar story to the Te Whanganui-a-Orotu alienation but with a particular 'Raukawa/Cooks Straits flavour.' Key differences include: the combined activities of the New Zealand Company and the Crown in the purchase of the Wellington area, the general lack of visible presence of Maori in Wellington between 1860 and 1960, and the large numbers of groups and agencies who were in the business of reclaiming Te Whanganui-a-Tara. These groups and agencies include:

- The Crown
- New Munster Government
- Wellington Provincial Government
- Private owners
- Wellington and Manawatu Railway Company
- Wellington Harbour Board
- Wellington City Council
- New Zealand Railways
- Wellington Patent Slip Co. Limited

Together these agencies reclaimed approximately 337.71 hectares of Te Whanganui-a-Tara between 1852 and 1979.

²⁴ *Te Whanganui-A-Orotu Report*, 1995, p 210-211.

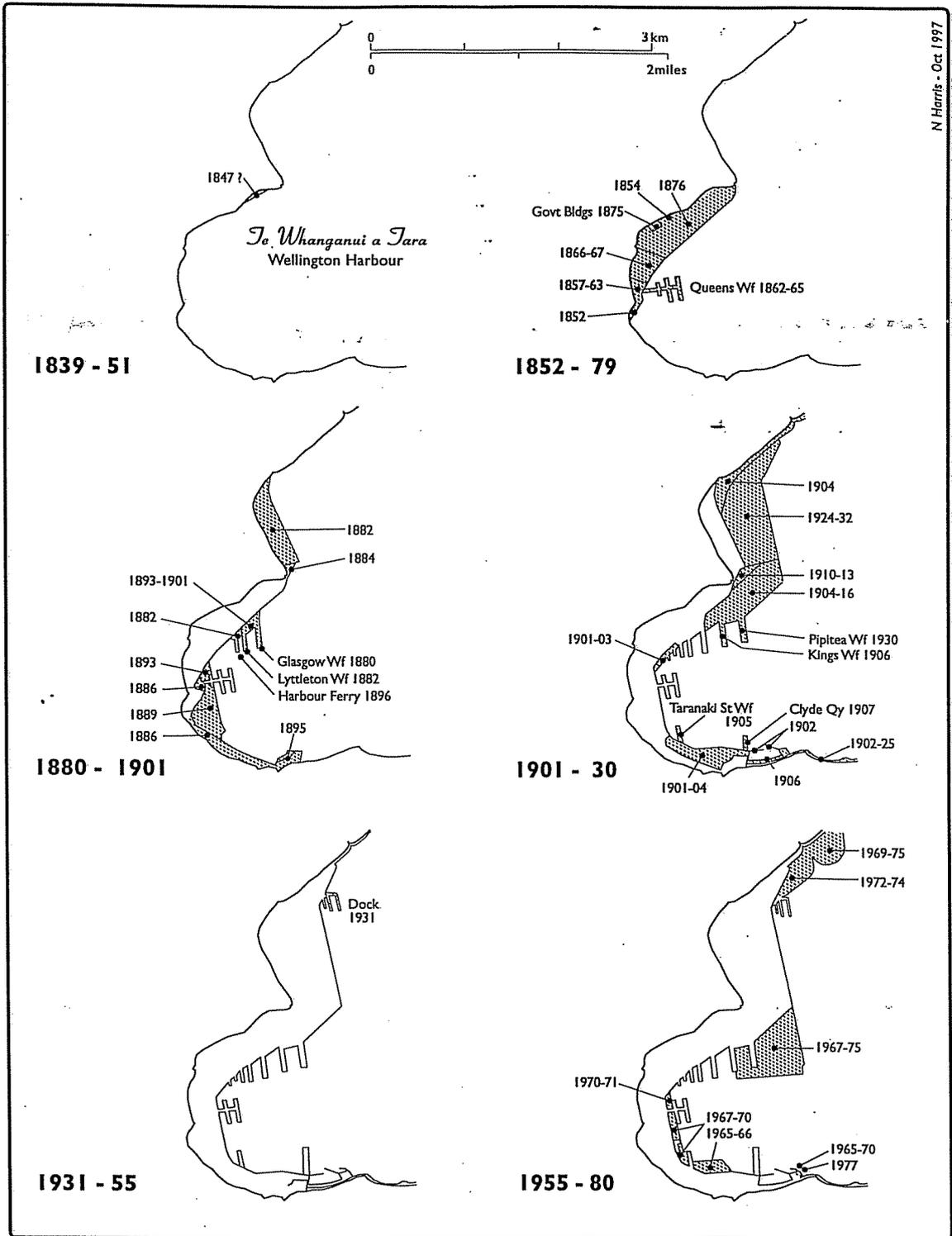


Figure 1.1 Reclamations within Lambton Harbour, 1839-1980.

In summary the main issues identified are:

- 1. What was, and continues to be, the nature and extent of Maori customary use and ownership of Te Whanganui-a-Tara?*
- 2. What specific actions or omissions of the Crown have prejudicially affected Maori customary use and ownership of Te Whanganui-a-Tara in regard to the reclamation of the seabed?*
- 3. What was the legislative process that enabled reclamation to proceed and did this process involve participation with, or consent from, local Maori?*
- 4. What specific actions or omissions of the Crown have prejudicially affected Maori customary use and ownership of Te Whanganui-a-Tara in regard to environmental degradation?*

1.3 METHODOLOGY

In order to address these main issues within a limited time framework (less than 3 months) the author's research focused on three main strategies:

1. Making the 'harbour' using mapping

A historical geographical perspective was adopted and concentrated on the mapping process of Te Whanganui-a-Tara. Information sources included published cartographic literature and hydrographic charts of the harbour.

2. Maori customary use and ownership of the 'harbour.'

A lot of material has been collected and reported on Maori customary tenure in the Wellington

district as part of the Wai 145 inquiry.²⁵ Outside of the Wellington tenths inquiry there has also been a large number of books published which include chapters on the Maori history of Te Whanganui-a-Tara.²⁶ While many of these secondary publications have used material from primary sources such as the Old Land Claims files and Land Court Minute Books, salient among publications on Wellington history has been the writings of an older generation of pakeha ethnologists such as: Leslie Adkin, Henry Christie, James Cowan, Elsdon Best, Alexander Shand and Percy Smith, who published widely in the *Transactions of the Scientific Institute* and the *Journal of the Polynesian Society*. Of these men, Elsdon Best was prominent and most history of Wellington before the mid 1830's has largely been dependant on Elsdon Best's narratives, especially his stories of Te Whanganui-a-Tara published in the *Journal of the Polynesian Society* in 1901 and 1917.²⁷ In an attempt not to 'restate' the contested history of Te Whanganui-a-Tara, this report aims to provide a 'fresh view' of customary ownership and use of Te Whanganui-a-Tara using the following sources:

1. The fieldnote books of Adkin, Best, and Shand. Within these fieldnote books, one can get an understanding of how these authors constructed 'their history' of Te Whanganui-a-Tara.
2. The letters and journals of early Pakeha traders and settlers.

²⁵ Anderson, R. *Historical Overview of Wellington Region*, Report for CCJWP, Wai 145 Doc A44; Anderson, R and Pickens, K. *Wellington District: Port Nicholson, Hutt Valley, Porirua, Rangitikei, and Manawatu*, Rangahaua Whanui Series, August 1996; Bauchop, H. *Ngati Ira and Rangitane in Te Whanganui-a-Tara to 1865*, 1997, Wai 145, Doc H5; Boast, R.P. *Ngati Toa in the Wellington Region*, 1997, Wai 145 Doc H8; Ehrhardt, P. *Te Whanganui-a-Tara customary tenure 1750-1850*, Waitangi Tribunal Research Series, No.3, 1993; Gilmore, N. *The Myth of the Overlords, Tenure in Whanganui a Tara 1819-1847*, Wai 145, Doc G3A; Hippolite, J. *Ngati Rangatahi*, 1997, Wai 145, Doc H4; Moore, D. *The Origins of the Crowns Demesne at Port Nicholson, 1839-1846*, 1995, Wai 145, Doc E3-E5; Walzl, T. *Ngati Tama in Wellington, 1820-1920*, Wai 145, Doc H7.

²⁶ For example; Adkin, G.L. *The Great Harbour of Tara*, Whitcombe and Tombs Ltd, 1959; Ballara, A. 'Te Whanganui-a-Tara: phases of Maori occupation of Wellington Harbour, c. 1800-1840, In. Hamer, D and Nicholls, R. *The Making of Wellington, 1800-1914*, Victoria University Press, 1990; Butterworth, S. *Petone, A History*, Petone Borough Council, 1988; McGill, D. *Lower Hutt, The First Garden City*, Lower Hutt City Council, 1991; Park, G. *Nga Uruora, Ecology and History in a New Zealand Landscape*, Victoria University Press, 1995; Ward, L. *Early Wellington*, Whitcombe and Tombs Ltd, 1928; Wellington City Council, *Nga wahi taonga o Te Whanganui-a-Tara, Maori Sites Inventory*, 1995.

²⁷ Best, E. 'Te Whanganui-a-Tara, *JPS*, Vol 10, p 107-165; Best, E. 'The Land of Tara' *JPS*, vol 26-28.

3. Old Land Claim files and evidence presented to the Spain Commission and the Native Land Court concerning customary use of the harbour.

4. Other sources: maps, photos, Tribunal Reports and secondary sources.

Using these sources the author hopes to construct an historical geography of Te Whanganui-a-Tara. The understandings related in this report have been limited by time constraints but also my own perspective informed by a particular geographic and post-colonial academic enterprise and my reliance on archival material written in the English language. I have, therefore, not attempted to integrate Maori oral history unless this history was recorded in English and published in various sources.²⁸

The author's perspective is also shaped by family history and experience. Beginning with the arrival of Marino Vella in the mid 1860s, the author's family have maintained a close presence in the waters of Raukawa Moana (Cook's Strait) in small scale fishing operations. This presence is continued today by the author's father (who worked for the Wellington Harbour Board) and brothers. The author cannot view the history and geography of Te Whanganui-a-Tara from a position of detachment but from a perspective which affirms the interrelationships of people and place.

3. Foreshore reclamations and pollution.

Material relating to reclamations and pollution of the harbour was sourced from National Archives, Wellington Regional Council, Wellington City Council, Maritime Museum and Alexander Turnbull Library. The author's approach in this report does not give a 'blow by blow' account of how every reclamation in the harbour was conducted and I have not included all of the many hundreds of maps related to reclamations. Instead, the author has focused on particular reclamations as 'case studies' in order to illustrate how reclamations were conducted in terms of

²⁸ For example, evidence recorded at the Wellington Tenth hearings.

the legal process which was undertaken by various agencies to gain permission to reclaim. This report does not detail what works were involved in the actual reclaiming, but focuses rather on who the authorities involved were, and how the Crown attempted to regulate reclamations. As this regulation was based on the assumption of Crown ownership of the foreshore and seabed, an analysis of common law in regard to foreshores is necessary.

Evidence regarding Maori attitudes and responses to reclamation, foreshore alienation and pollution was sourced from: the archives of the Governor, New Munster, Department of Maori Affairs, Health Department, Marine Department, Ministry of Transport, Wellington Provincial Government, Wellington City Council, Wellington Regional Council, Parliamentary Debates, daily newspapers, minute book of the Ngati Poneke Tribal Committee (ATL), some Maori Land Court records, and material filed in ROD Wai 145 (for example, Heaphy's minute book and petitions).

CHAPTER TWO: TAKING POSSESSION AND CREATING TE WHANGANUI-A-TARA.

Te Whanganui-a-Tara, Port Nicholson, Wellington Harbour, Lambton Harbour, Port of Wellington are common names used to define a place situated at the southern end of the North Island/Te Ika a Maui. In this chapter the author will use historical geographical understandings of space, territory and maps to explain how the British colonial authorities took possession of Te Whanganui-a-Tara.²⁹

The core argument is that the harbour - as a defined space - needed to be created using a map in order to be taken in possession for the purposes of colonisation.

2.1 CREATING SPACES

Traditional geographical scholarship viewed the ideas of place and space as naturally occurring realities which form a 'landscape.' In this view, places and landscapes such as mountains, rivers, lakes and harbours existed as the backcloth on which history is written and life evolves.³⁰ More recent geographical understandings have rejected this viewpoint by emphasising the constructed cultural notions of place, time, landscapes, and space. Essentially humans, like most other animals, are territorial and territories are created and reproduced for the interest of the human group. Robert Sack finds territoriality consists of three basic and interrelated concepts:

1. classification of an area;

²⁹ This chapter is only a summary of the author's argument concerning power, space and mapping. For a fuller discussion see; McClean, R.A. *Power/Knowledge and Space: The Creation and Alienation of the 'Reserve' at Porirua, 1996*. Unpublished MPhil Thesis, Massey University.

³⁰ This view of reality being understood by using the category of 'place' has its foundation in Aristotle's theories on material reality. See, Tarnas, R. *The Passion of the Western Mind*, Ballantine Books: New York, 1991, p 35.

2. communication by a boundary; and
3. the presence of enforcement.

Combined together, territory is a concept that involves a “human strategy to affect, influence, and control.”³¹ In other words territory (or places) are created by the activity of naming (classification of an area using words like lake, harbour, mountain), boundary marking, and groups of people who are willing to maintain the sense of place.

Marking out a territory using space by a particular group serves to support power. Power, as defined by Michel Foucault, is seen as the ability to produce things. Power produces knowledge, it enables things to ‘happen’ as it is possible to have the power to ‘do things’ with knowledge. In order for knowledge, however, to be effective and to make ‘sense,’ it is organised spatially and chronologically; things happen in a place and at a time. Power derives from the ability of knowledge to create a spatial context or territory:

Once knowledge can be analysed in terms of region, domain, implantation, displacement, transportation, one is able to capture the process by which knowledge functions as a form of power and disseminates the effects of power.³²

While Michel Foucault’s sense of power was in a positive sense, the Marxist critique of ideology views power in a repressive or oppressive form; ideological power as defined by knowledge which aims to dominate others and uphold unequal power relations.³³ Henceforth, power may be regarded in a positive (allows things to get done) or negative (allows some groups of people to oppress others) sense, and a value judgement is required on what sort of knowledge or ideas could be regarded as ideological or oppressive.

³¹ Sack, R. *Human Territoriality*, Cambridge University Press, p 2.

³² Foucault, M. ‘Questions on Geography,’ in *Michel Foucault, Power/Knowledge*, Harvester Press: Sussex, 1980, p 69.

³³ See, Eagleton, T. *Ideology*, Longman: New York, 1994, p 1.

In summary, people create spaces and these spaces form a landscape (or seascape). There is no position from which we can 'view' the landscape from a detached perspective. As Tim Ingold finds, "the landscape, in short, is not a totality that you or anyone else can look at, it is rather the world in which we stand taking up a point of view on our surroundings."³⁴

2.2 MAPPING POWER/KNOWLEDGE

Maps are essentially tools which people use to mark out and reproduce territory. The power of the map is in its ability to organise knowledge in space. Rather than promoting the idea that maps represent a 'mirror image' of landscape, cartographic theorists assert that maps actually reproduce landscapes in the interest of particular groups. Henceforth, maps need to be analysed within their social and political context. In the colonial context, maps were critical to the creation of an empire; in one sense the Empire was partly a creation of cartography as the map created an enframed global territory of spaces (coloured red for the British empire). The key to the power of the map within the colonial system was to create places (by naming and boundary marking) that could be viewed as 'empty.' By depicting a landscape that was empty (without indigenous trails, villages, gardens, or seafood gathering areas not illustrated on the map), a new colonial geographical order could be in-placed. This new colonial order had two main elements; creation of a seascape based on the discipline of coastal survey/charting and the creation of a landscape based on the discipline of cadastral and topographical survey. Both these colonial traditions produced a landscape which meshed with imperial aspirations of control and surveillance. In order to take possession of the 'landscape,' it first had to be created using the survey and map.³⁵

³⁴ Ingold, T. 'The Temporality of the Landscape' *World Archaeology*, Vol 25,2, 1993, p 171.

³⁵ A number of examples are given in the author's thesis in terms of the alienation of the Porirua reserve. For example the power of the Native Land Court, it is argued, lay in its close relationship with the Survey Department and Land Transfer Office. Territory was first created by survey who classified Maori lands into 'blocks.' Once a block was defined it could then appear before the Native Land Court. In this way the contest for 'land' was organised within the context of surveyed 'blocks'; this spatial power was central to the power of the Court. See, McClean, R.A. *Power/Knowledge and Space*, p 124-175.

2.3 CREATING A HARBOUR SEASCAPE

Charting as a scientific discipline within English social history, emerged in the early 16th Century when Britain was beginning to develop as a significant naval sea power. It was not until 1670, however, that King Charles II commissioned the first systematic survey of the British coast. The coastal survey discipline was divided into two, sometimes competing interests; the 'official' maritime survey under the control of the Navy and 'private' maritime survey carried out by various navigators who were organised into guilds. Within these guilds "much information, especially of local harbours and estuaries, was not written down, let alone charted, in order to maintain the power and independence of the guilds"³⁶ Empire, the extension of control over other land (scapes), was based on the ability of explorers to find 'harbours' from which a point of attachment could be made between the 'new' land and the colonial power base (London). The City founded at the point of attachment is regarded as the beach-head settlement.

Charts were originally produced from *portolani* or 'sea books' which contained intricate lists of navigational instructions. Charts, up to the present day, have remained focused on providing such instructions including; direction, location of safe harbours, watering places, soundings, dangers (reefs, shoals, etc) and matters relating to military endeavours (locations of enemy forts, towns, ports, battlements, etc). Harbours and ports were, therefore, defined in relation to the needs of colonial maritime objectives. A harbour is defined as:

a place naturally adapted or artificially made for the safe riding of ships. The term, therefore, includes ports.³⁷

Important points to note in this definition of a harbour is that it is:

1. a place; defined by a boundary and classified by a name;

³⁶ Edney, M. *Cartography with progress: Reinterpreting the nature and historical development of mapmaking*, Cartographica, Vol 30, 2-3, 1993, p 60.

³⁷ Byrne, W.J. *A Dictionary of English Law*, Sweet and Maxwell Ltd: London, 1923, p 438.

2. a place defined for the purpose of safe riding or shelter of ships; and
3. a place that also may be a port.

A 'port' is defined as:

a place by the shore where ships may run in for shelter from storms, or to load and unload; a harbour, a haven.³⁸

a harbour where customs officers are established, and where goods are either imported or exported to foreign countries, as distinguished from a mere harbour or haven, which is simply a place, natural or artificial, for the safe riding of ships. It is said that every port comprehends a city or borough (sometimes called *caput portus*), with a market and accommodation for sailors.³⁹

This definition means a port is:

1. a harbour or consisting of harbours (being a place with a name and boundaries);
2. a harbour where trade in material goods is carried out; and
3. a harbour which has a town. Often the name 'port' would include both town and harbour.

Harbours and ports are, therefore, places as defined by hydrographic survey for the use of safe riding of ships. Once created (using a map) the harbour could then be defined as a port for the interests of trade.

2.4 MAKING TE WHANGANUI-A-TARA A HARBOUR

³⁸ *Oxford English Dictionary*, 1989, Clarendon Press; Oxford, p 142.

³⁹ *Ibid*, p 678.

Te Whanganui-a-Tara was defined as a harbour and port by Captain James Herd in the barge *Rosanna* and Captain Barnett in the cutter *Lambton* in 1826 while on a preliminary expedition for the first New Zealand Company. Although other Europeans (mostly whalers) had visited the area before this visit,⁴⁰ Herd and Barnett were the first Europeans to survey and chart the waters of the 'harbour' and both men produced two different charts of Te Whanganui-a-Tara suggesting they undertook separate surveys (Figure 2.2 and Map 2.1 and 2.2, Document Bank, Vol III). On both charts Te Whanganui-a-Tara is named as Port Nicholson. This name was probably added later when Barnett had returned to Sydney and presented his chart to John Nicholson, Harbourmaster of Sydney harbour.

Both charts produced a view of Te Whanganui-a-Tara and this 'view' or 'prospect' became the dominant context for further discourse concerning the 'harbour' since. The view is from the 'sky' (rather than from the ship or hill lookout) and so the whole area of the harbour is shown from an imaginary perspective. The boundaries of the harbour are defined as the high tide mark with the only significant 'gaps' in the harbour boundary being the river estuary and the harbour entrance. No Maori features are presented on either chart as both surveys were conducted for the aims of navigation: soundings, anchorages, watering spots, reefs, etc. In summary, the survey of Herd and Barnett defined Te Whanganui-a-Tara as a place (Port Nicholson or Wanganuiatera), with boundaries (high tide level) and emptied of previous place names and features for the purposes of European navigation and exploration (soundings, reefs, shoals, etc). The prospect of these 1826 charts is of a generally safe, expansive harbour offering good watering and shelter without any sign of occupation, possession or settlement by any other peoples, indigenous or otherwise. In other words, Port Nicholson/Te Whanganui-a-Tara became part of the 'new world' emplaced on the maps of the colonial empires and ready for further exploration, trade, or settlement. This

⁴⁰See Johnson, D. *Wellington Harbour*, Wellington Maritime Museum Trust, 1996, p 1-27; It seems the *Wellington* and *Mermaid* entered Te Whanganui a Tara in late 1824. On board the *Wellington* were two well-known whalers, Jacky Guard and Joseph Thoms. In the 1940s, Joseph Thoms recounted to George Angas that he was the first European to discover Port Nicholson. As Brian Hooker states, "There is an absence of firm evidence concerning early exploration of Port Nicholson, but few significant New Zealand coastal features were unknown to Sydney-based sealing and trading captains by 1823" (Hooker, B. "The origin of Taranaki Bay in Early New Zealand Maps' *New Zealand Geographer*, Vol 46,2,1990, p 92).

first survey of Te Whanganui-a-Tara was an act of taking possession, in a cultural rather than legal sense, creating the 'harbour' and this harbour view has been reproduced in all hydrographic surveys afterwards.

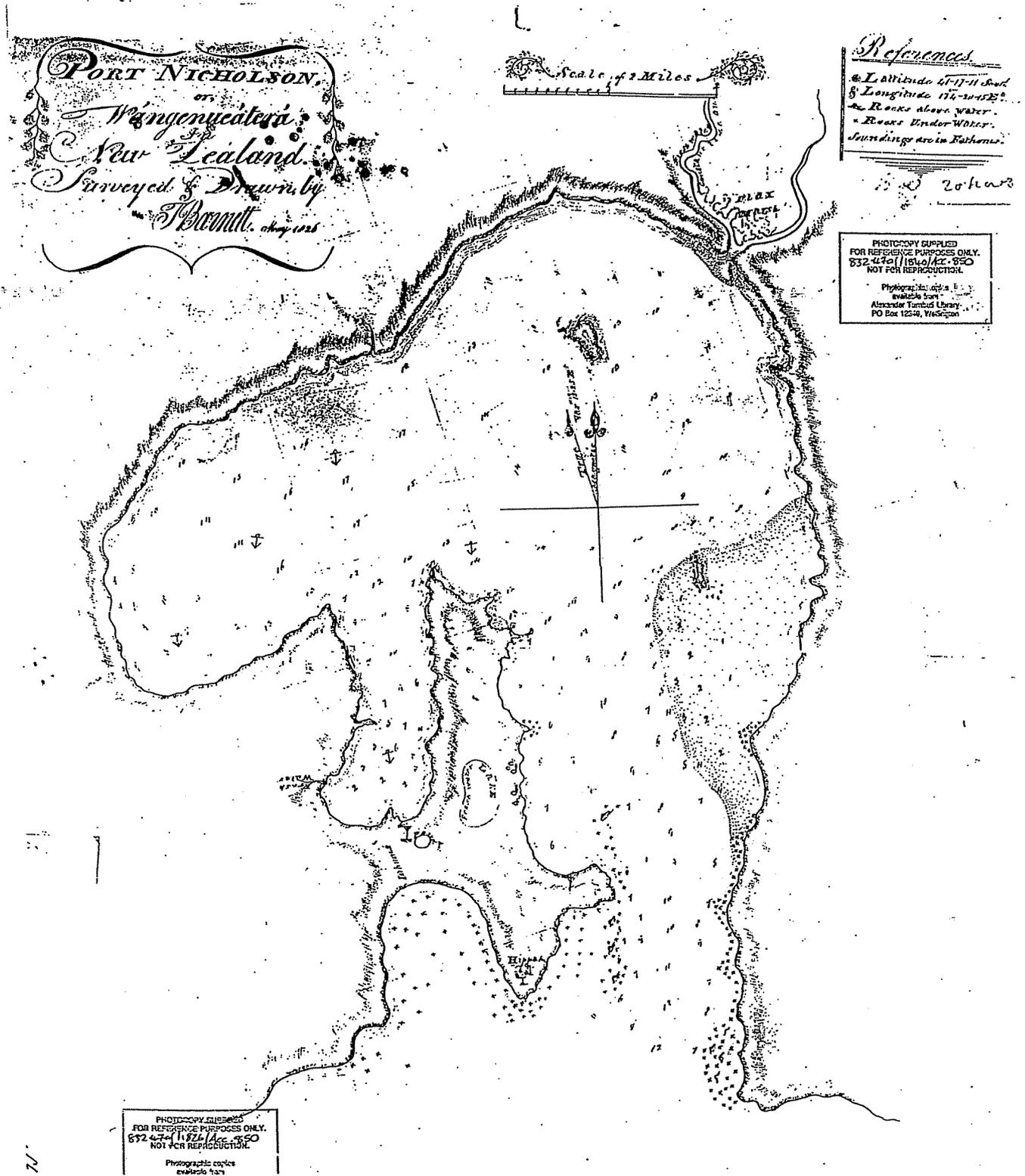


Fig 2.2 Port Nicholson or Wanganueatera, 1826. Thomas Barnett of the Lambton, ATL

CHAPTER THREE: TE WHANGANUI-A-TARA; UNDERSTANDINGS OF GEOLOGY AND A MAORI HISTORICAL GEOGRAPHY.

Within the context of Te Whanganui-a-Tara as defined by the image produced by Herd and Barnett, this chapter will examine the historical geography of the harbour from a perspective of geology, geography and Maoritanga. After briefly discussing geological features of the harbour landscape, the author will endeavour to construct a Maori geography and history of Te Whanganui-a-Tara. This discussion will illustrate how such a Maori geography is essentially tribally-based, dynamic, contested, and open to revision. Therefore the possibility of constructing 'The History' of Maori (or paheka) Te Whanganui-a-Tara is an elusive goal.

3.1 GEOLOGY; EVERYTHING ALWAYS CHANGES

Te Whanganui-a-Tara Port Nicholson Wellington Harbour is located on the southern tip of Te Ika a Maui (North Island).⁴¹ The place (as defined by the shore line) is a roughly circular basin of 85km in area or 8,900 hectares (including reclaimed land). Geological research finds Te Whanganui-a-Tara in existence because of a complex interaction between two tectonic plates; the Pacific and Australian. The tension between these plates is expressed in a number of faults, and earth movement against these faults creates fault-angle depressions. Te Whanganui-a-Tara occupies the drowned portion of the most southerly of three fault-angle depressions lying on the downside of the well-known Wellington Fault. Earth movement within the lower North Island faultal system has formed a large area of uplifted hillcountry interspaced by medium sized river and lake systems (Ruamahanga, Orongorongo, Hutt⁴²). Te Whanganui-a-Tara was essentially

⁴¹ During this report, the author will begin with naming the 'harbour' Te Whanganui-a-Tara, then Port Nicholson and Wellington Harbour to illustrate the changing dynamics and contestability of naming traditions from the 1820s to the present day.

⁴² Hutt river, also called Heretaunga and Te Awa kai rangi. The author will use the term Hutt river to avoid confusion.

the tidal delta of the Hutt river and in past geological history, the river discharged into the sea further up the Hutt valley. Henceforth, the valley is interspersed by beach ridges as the sea has retreated down to its present location (figure 3.1). The geological trend is towards further uplift and reduction of the waters of Te Whanganui-a-Tara. Natural reclamation of the sea bed has been taking place for a long time. As Graeme Stevens comments, "the Wellington area is therefore likely to keep on going up, and Port Nicholson's fine harbour may be doomed eventually to be shallowed to a serious extent, if not drained quite dry."⁴³

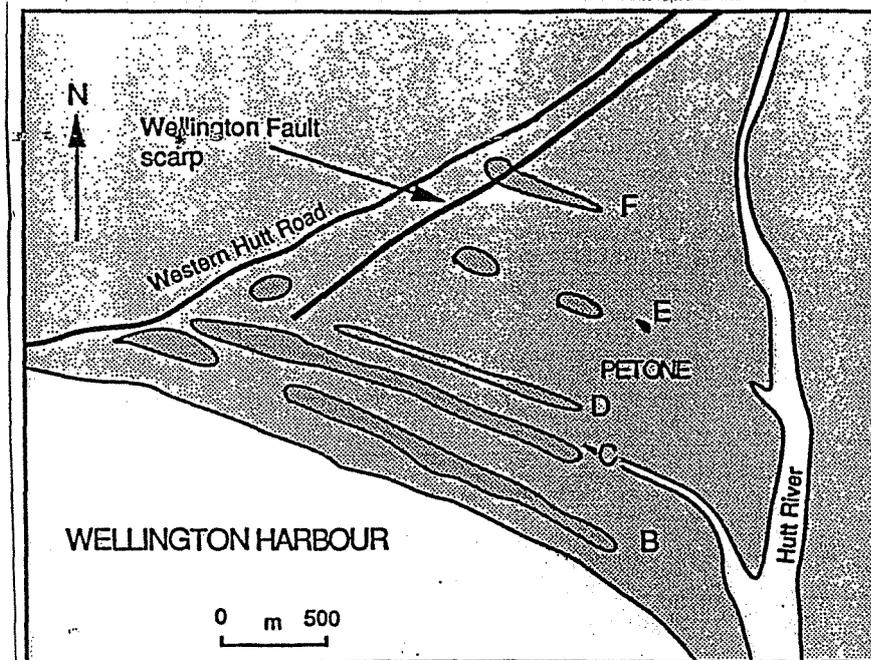


Figure 3.1 Location and Distribution of beach ridges in Petone.

Source, Dunbar, G. *Seismic and Cultural Influences on the Sedimentary Record, Wellington Harbour, NZ*, Unpublished Msc Thesis, Victoria University, 1994, p 11.

⁴³ Stevens, G.R. *Rugged Landscape; The Geology of Central New Zealand*, DSIR Publishing, 1974, p 264.

The uneven pattern of uplift caused by the 1855 earthquake⁴⁵ is summarised below:

Location	Uplift (metres)
Lambton Harbour	0.6
Miramar/Rongotai	1.5
Petone	2-2.5
Turakirae Head	6.5

Table 3.1. Spatial differences in uplift associated with the 1855 earthquake.

Sourced from, Dunbar, *Seismic and Cultural Influences*, 1994, p 10-14.

The 1855 uplift, therefore, acted like a huge hinge with only a small net uplift effect near the Wellington fault and a larger net uplift affect towards the Wairarapa fault to the east.

Associated with tectonic uplift is sedimentation discharge into the harbour which has the effect of natural reclamation. The majority of sediment discharge into the harbour comes from the Hutt river system and Dunbar has estimated that for the period 1971-1988 some 55,000 square metres of sediment was discharged into the harbour from the Hutt river.⁴⁶ Since 1839 sedimentation of the harbour increased dramatically as a result of extensive bush clearance in the Hutt catchment and an increase in the capacity (after 1855) of the Hutt river to move sediment.⁴⁷ This means the Petone foreshore has been raised by both the 1855 earthquake and the increased sedimentation disposal rate after 1839:

The increase in sedimentation rate and arrival of European settlers appear coeval. It is probable that the sudden increase in sedimentation rate was due to European clearing of the forest, providing a much increased rate of sediment supply. A change in the nature of the Hutt river from

⁴⁵ Although there have been many earthquakes recorded in Te Whanganui-a-Tara since 1839, only the 1855 earthquake has caused land to uplift.

⁴⁶ Dunbar, *Seismic and Cultural Influences*, p 17.

⁴⁷ *Ibid*, p 59.

a deep slow moving body of water to a shallower, higher velocity form following uplift in 1855 have also contributed to the increase in sedimentation rate.⁴⁸

Increased rates of discharge means that the Petone seafloor has increased by 3-4 metres in mud above its natural profile.⁴⁹ This increased rate peaked “around the turn of the century” and a decrease since then has been observed which is related to reduced catchment erosion and armouring of the Hutt River.⁵⁰

3.2 A POLITICAL GEOGRAPHY OF TE WHANGANUI-A-TARA

The author’s understanding⁵¹ of Maori geography is a perspective that the material or physical world of Te Ao Marama derives from the realm of the spiritual world of Te Korekore. Te Korekore evolved over aeons of time to become Te Po and Te Po in more aeons of time became Te Ata, Te Aoturoa and then Te Aomarama; the realm of being. Within Te Aomarama dwelt Rangi and Papa and their children; Tane, Tu, Rongo, Haumie, Tangaroa (and others). The children all tried to separate their parents but only Tane succeeded. Rangi henceforth became Ranginui (the sky) and Papa became Papatuanuku. Papatuanuku is referred to as not only the earth but as “rock foundation beyond expanse, the infinite.”⁵² Tane thus became Tane-toko-Rangi or Tane Mahuta.⁵³ After Tane created the forests to clothe his mother (papatuauku) he created people as the offspring of Hine-titama, the earth maiden. People became the children of

⁴⁸ Ibid, p 86.

⁴⁹ Ibid, p 58.

⁵⁰ Ibid, p 87. The term ‘armouring’ refers to river protection works such as the construction of stop-banks.

⁵¹ This understanding is largely dependent on the writings of Maori Marsden, ‘God, Man and Universe, A Maori View’, in King, Maori (ed) *Te Ao Hurihuri*, Longman Paul, 1985, and Te Pakaka Tawhai, ‘Aotearoa’s spiritual heritage’ in Donovan, P (ed) *Religions of New Zealanders*, Dunmore Press, 1990 p 15-19.

⁵² Maori Marsden, 1985, p 162.

⁵³ Te Pakaka Tawhai, 1990, p 15.

Tane.

In the great battle between the sons of Ranginui and Papatuanuku after the separation, Tangaroa fled for the safety of the ocean while Tane stayed on the land and withstood the anger of Tawhiri-ma-tea. Since this time there has been a division between the domains of Tane and Tangaroa with each fighting each other:

Hence Tane supplies the offspring of this brother Tu-matauenga with canoes, with spears and with fish-hooks made from his trees, and with nets woven from his fibrous plants, that they may destroy the offspring of Tangaroa; whilst Tangaroa, in return swallows up the offspring of Tane, overwhelming canoes with the surges of his sea, swallowing up the lands, trees, and houses that are swept off by floods, and ever wastes away, with his lapping waves, the shores, that confine him, that the giants of the forests may be washed down and swept out into his boundless ocean, that he may then swallow up the insects, the young birds, and the various animals which inhabit them.⁵⁴

Maori geography is all united upon the common physical element of Papatuanuku; the land. Upon Papatuanuku are two major domains; Tane and Tangaroa divided at the water edge. Both domains had a degree of tapu⁵⁵ but as explained above, journeys by people onto the domain of Tangaroa had an element of danger and required appropriate karakia and ritual. Like the domain of Tane, the various elements of the seas were defined and named. Some names relating to harbours include:

Aka	harbour
Akaau	rocky coastline
One	beach
Tahamoana	foreshore
Takitai	movements of the tides
Takutai	sea coast

⁵⁴ Grey, Sir George, *Polynesian Mythology* [1855] Whitcombe and Tombs, 1961, p 7.

⁵⁵ Tapu is understood to mean a condition or state related to the care of the Gods.

Whanga	Bay, stretch of water ⁵⁶
Wahapuu	Mouth of a river or bay

These names (there would be many others) suggest areas within the domain of Tangaroa were defined as different 'places.' The unity to this separation is Papatuanuku; the land which does not stop at the seashore. This geography was also intersected by the realm of the spiritual. An example is that one of the most prominent features on Tuki's map (drawn in 1793 at Norfolk Island) was the path of the souls which travelled from Raukawa Moana to the North Cape.⁵⁷

3.2.1 Settlement

In examining the historical settlement pattern around Te Whanganui-a-Tara it is important to situate the harbour within the 'Wellington' region. The author's idea of a Wellington region is based on the topography of the 'place;' the hills and valleys are used to define what is 'in' and 'outside' of Wellington. Generally when the author has driven past Paekakariki, the feeling experienced is that he has gone out of Wellington and into the Kapiti Coast. Similarly when driving over the Rimutaka Hill Road, the feeling is going out of Wellington and into the Wairarapa. Thus, the author would define Wellington region as a place bounded to the north by Paekakariki over to Kaitoke and bounded on the east by the Rimutaka Ranges. The southern boundary is more difficult to define and would include Mana Island and most of the Cook Strait.

This idea of Wellington is also the boundary used by the New Zealand Company in their map of the Port Nicholson District dated 1846. On this map the boundary of Port Nicholson began at the Wareroa stream (just north of Paekakariki), went over to Kaitoke and along the Rimutaka ranges to Turakirae Head.⁵⁸ This is also the district of Wellington as defined by DOC in their

⁵⁶Taken from Ngata, H.M. *English-Maori Dictionary*, Whai Ngata, 1993; Williams, M.A. *Dictionary of the Maori Language*, GP Publications.

⁵⁷ Kelly, J. 'Tuki's map of New Zealand' *NZ Map Society Journal*, No.9, 1995, p 11-18.

⁵⁸ The author has not been able to find the original 1846 map but John Weale produced a copy and published it in the *New Zealand Journal* in February 1850 (Map 2.2a, Document Bank, Vol III).

definition of Ecological Regions and Districts of New Zealand and in 1870 as the military district of Wellington.⁵⁹

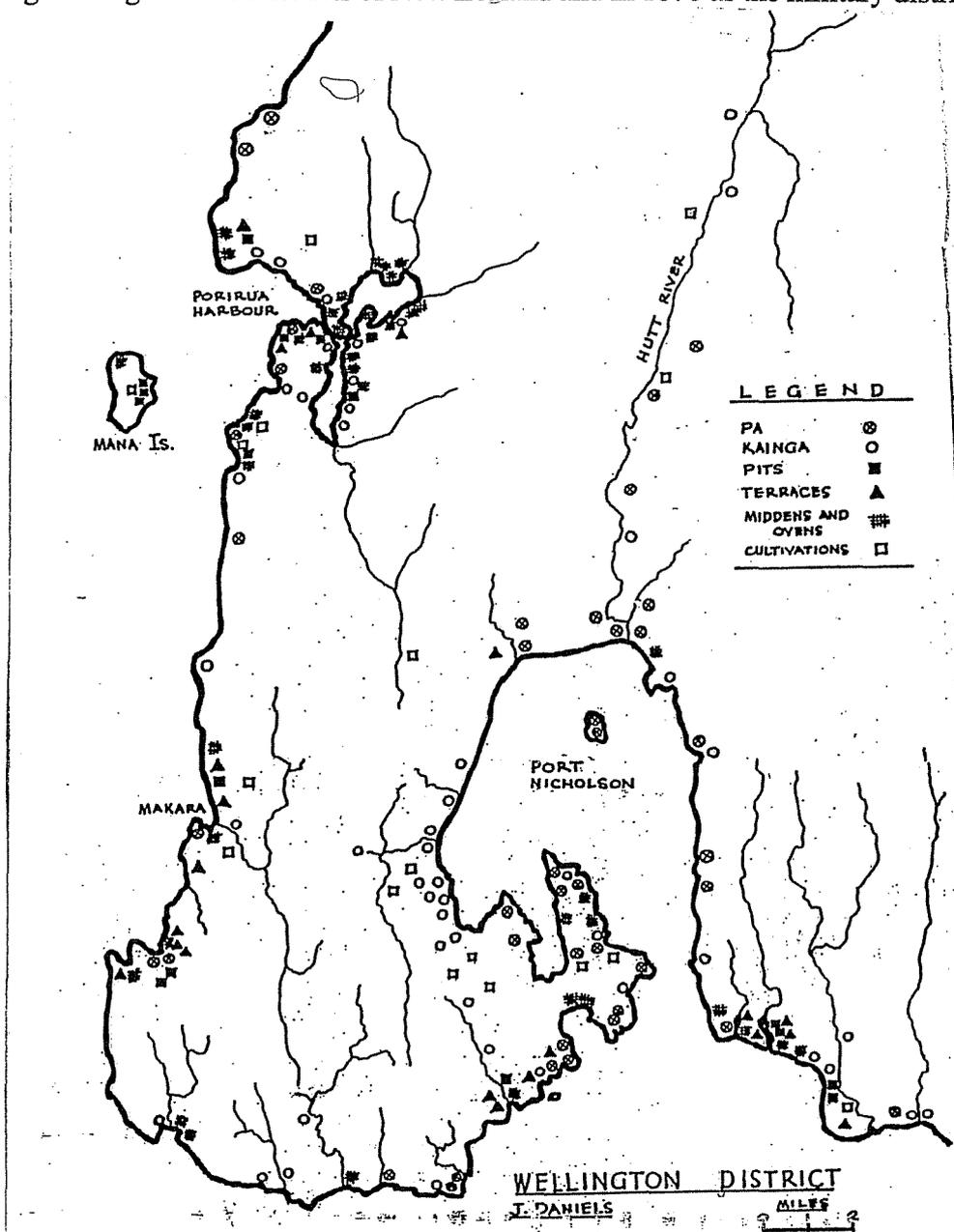


Figure 3.3 Archaeological Sites, Wellington District. Source, Daniels, J. 1965.⁶⁰

⁵⁹ Militia of New Zealand Act, 1870; Wellington Conservancy, *Conservation Management Strategy*, 1996.

⁶⁰ Fewer sites are now recorded by DOC on the Archaeological Site Register. A 1997 print-out of archaeological sites shows no kainga sites at Lambton Harbour and fewer midden sites. For example the middens identified by Daniels at Rongotai are now gone. 19 middens are recorded as in existence within the harbour. These middens are located at Palmer Head, Dorset Point, Kau Bay, Pipitea Point, Seaview, Robinson Bay, near Hinds Point and Pencarrow.

Archaeological evidence around the shores of Te Whanganui-a-Tara gives the impression that the harbour, while occupied for a long period, was never home to a geographically fixed and huge population before the 1820s.⁶¹ With the indigenous forest coming down to reach the shore, settlement was located close to the water's edge and distributed in two ways: kainga or shelters/camps located within small bays and beaches, or pa upon promontory/ridges.

Kainga are undefended small settlements usually found with a midden (rubbish heap) and kumara pits. Material from these middens indicate that Maori occupation around the harbour was dependent largely on kaimoana. Some examples of midden are outlined below:

Examples of Middens; Te Whanganui-a-Tara

Site: Main Camp Site, Paraoanui, Eastern Wellington Harbour

Date: 1956

Source: Palmer, 1956

Midden contents:

Maori dog: canine teeth

Dolphin: teeth of Bottle-nosed dolphin

Fish: bones of barracouta and parrot fish

Birds: weka and other unidentified bird bones

Mollusca: paua, limpet, turban shell, mussel, pipi, cockle

Site: Middens 2, Nga Hu and Nga Rerenga, Eastern Wellington Harbour

Date: 1956

Source: Palmer, 1956

Midden Contents:

⁶¹ See: Adkin, L.G. *The Great Harbour of Tara*, Whitcombe and Tombs, 1959; Best, E. 'Miramar Island and its History' *Transactions of the New Zealand Institute*, Vol 54, 1923, p 779-91; Daniels, J. 'Site Types and their distribution in the Wellington Area' *NZ Archaeological Association Newsletter*, vol 8, 1965; Heaphy, C. 'Notes on Port Nicholson and the Natives in 1839' *Transactions of the New Zealand Institute*, Vol XII, 1879, p 32-89; Palmer, J.B. 'Notes on Maori Sites in Eastern Wellington Harbour' *Journal of Polynesian Society*, Vol ,65, 1956, p 342-355; Wellington City Council, *Nga Waahi Taonga o Te Whanganui-a-Tara/Maori Sites Inventory*, 1995.

Dog: two mandibles
 Fish: Parrot, Frost, Barracouta
 Birds: not identified
 Mollusca: cockle, sea-snail, pipi, whelk, limpet, mussel, turban shell, cat's eye, paua

Site: Rongotai Ridge
 Date: Published in Adkin, 1959.
 Source: Adkin, 1959

Midden Contents:

Mollusca: pipi, tuangi (cockle), mussel, paua, turban shell.

While taking into account the many middens and others sites which have been destroyed by urban expansion, the amount of archaeological sites around the Porirua harbour (especially at Kakaho and Wai-o-Hata⁶²) suggests that Porirua harbour was the focus of pre-1820 settlement and Te Whangau-i-a-Tara was more of a back water.⁶³

Pa sites around the harbour before 1820 were located on ridges or promontories. These were generally small and chosen for their natural defensive features. Pa located around Te Whanganui-a-Tara tended to be places of refuge; a place where in times of trouble the locals (living in undefended kainga around the harbour bays) could easily get to. The most important of these refuge pa were on the islands; Matiu, Makaro, Tapu te Rangi, and Motu-kairangi (Miramar when it was an island).⁶⁴

⁶² Wai-o-Hata (Duck Creek area) had 14 recorded midden sites in 1970 and the Kakaho stream valley contains 11 midden and terrace sites. Many other middens are visible along the foreshore of the Pauatahanui arm of Porirua Harbour.

⁶³ For an overview of Porirua, see Best, E. *Porirua and they who settled it*, Canterbury Times, 1914.

⁶⁴ While the author has classified these pa as 'refuge pa' they also existed for reasons of strategic control over adjacent areas of the harbour.

In summary, the settlement pattern of Te Whanganui-a-Tara involved small undefended kainga scattered around the harbour bays and the sometimes large, island pa as places of refuge.

3.3 PLACES OF VALUE: TRIBAL HISTORIES OF TE WHANGANUI-A-TARA

Like other communities, Maori individuals and tribes named various parts of both the land and sea scape and created a geography of places related to the people. Different places and areas were, and still are, valued by different groups for different reasons. An indication of this value can be measured by how a particular group creates a place and a history of that place. By creating places, the landscape is then connected with a particular group; landscape becomes part of whakapapa. In other words, Maori geographical knowledge is based on an oral tradition with each iwi, hapu, or whanau having its own particular 'story' to tell concerning the history of Aotearoa or Te Whanganui-a-Tara. While stating that Maori geography was essentially tribal, the author does affirm the complexities and interrelationships between the various tribal groups. Maori society was, and continues to be, dynamic and the boundaries between tribal identities can be fluid.⁶⁵

Within tribal Maori geography there are common threads; places which were named and events which happened (at a place) which have been affirmed by many different traditions. In the difference there may be a unity; "some plausible statements about the past which few would deny."⁶⁶

Maui Tikitiki a Taranga

Maui's deeds and exploits are generally well known, and detail on the story of Maui and his fish (Te Ika a Maui) is not required. It is accepted by many and various tribal traditions that Maui

⁶⁵ This point is illustrated well by Richard Boast, *Ngati Toa in the Wellington Region*, 1997, Wai 145 doc H8, p 8-15.

⁶⁶ Boast, *Ngati Toa*, 1997, p 13.

fished up the island using the jaw bone of Murirangawhenua and, due to his brothers actions, the fish was cut resulting in its mountainous terrain. The southern North Island is known as the head of the fish; Te Upoko o te Ika. Te Whanganui-a-Tara along with Lake Wairarapa are regarded as the eyes of the fish.⁶⁷

Kupe

Like the story of Maui, the Kupe tradition is also widely accepted but is strongest in the regions of Te Tai Tokerau, Hawkes Bay and around Raukawa Moana (Cook Strait). Ngai Tara, Rangitane, MuaUpoko and Kahungunu ki Wairarapa in particular claim descent from Kupe.⁶⁸ Best, quoting Te Whatahoro, published an account in 1917 of Kupe's visit to Te Whanganui-a-Tara. From his notebook, the basic details of Kupe involved the following events:

Kupe crossed the great of Ocean of Kiwa in his canoe Matahourua. Reached Te Whanganui-a-Tara and landed at Hataitai. On Kupe's arrival he named Pinnacle Rock (Aroro-o-Kupe) at the entrance to the harbour after himself and the two islands (Makaro and Maitu) after his two nieces. He then went to Te Rimurapa near Te Ra-whiti (Terawhiti). From Te Rimurapa, Kupe crossed Raukawa Moana to kill the gigantic octopus known as Te Wheke-a-Mutu-rangi. After leaving his daughters at Te Rimurapa, they sorrowed for Kupe's absence and lacerated themselves creating red rocks (pari where). Two rocks in this place were called Mohuia and Toka-haere in memory of the daughters of Kupe.⁶⁹

Tipene O'Regan provided a further variation on the Kupe story for the New Zealand Geographic

⁶⁷ See, Grey, *Polynesian Mythology*, p 31-34.

⁶⁸ McEwen, J. *Migrations to and settlement of the Wellington Area*, Victoria University, 1971.

⁶⁹ Best, E. Maori Notebook, No. 13, 1911, qms 193, p 15, ATL. Also see Riwai Te Kukutai Whakapapa notebook, contains account of Kupe's visit to Te Whanganui-a-Tara and the journey of Hau down the West Coast; NZ Maori Purposes Fund Board, 1864, ms papers 121, ATL. The debate on Te Whatahoro's writings is generally well-known. McEwen regarded most of Te Whatahoro's material as invented and imaginative history to be used with caution; McEwen, 1971.

Board in 1990.⁷⁰ In this account, Kupe settled just inside Te Whanganui-a-Tara at Maraenui (Seatoun).

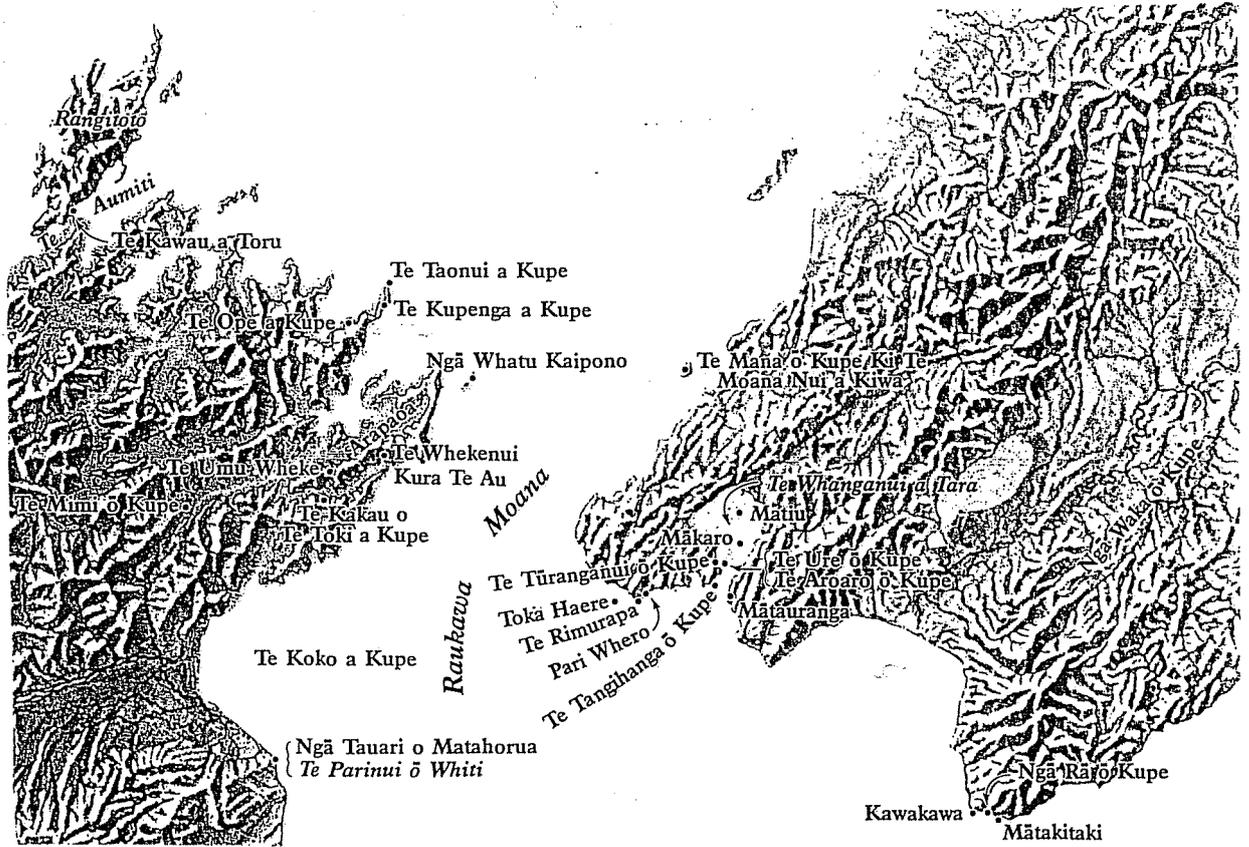


Figure 3.6 Place names associated with Kupe, NZGB, 1990, p 8.

Ngake and Whataitai

This story was published by Best in 1917 as follows:

Another old local myth is to the effect that our harbour was at one time a lake in which dwelt two monsters named Ngake and Whataitai. These two being attempted to force their way out of the harbour. Ngake succeeded by forming the present entrance, but Whataitai failed in a similar attempt at Evans Bay. Hence he assumed the form of a bird and betook himself to the summit of

⁷⁰ New Zealand Geographic Board, *He Korero Puuraakau mo ngaa Taunahanahatanga a ngaa tuupuna, Place names of the Ancestors*, 1990, p 14-17.

Tangi-te-keo (Mt Victoria) where his shrieks were plainly heard.⁷¹

This narrative was given to Best by H.M. Stowell and Alexander Shand in 1911.⁷²

The story of the two taniwha was also published with a few variations by David McGill in 1984 and 1991 on information supplied by Tipene O'Regan.⁷³

Waitaha

The Waitaha people were regarded by Leslie Adkin⁷⁴ as the earliest inhabitants of the Wellington area.⁷⁵ Best also briefly mentions that Waitaha were one of the original groups of inhabitants.⁷⁶

Ngati Mamoe and Mua-Upoko

Like Waitaha, Ngati Mamoe is also regarded as one of the earliest groups of inhabitants by Adkin. Using information from Rev Richard Taylor (who got his information from Mua-Upoko), Ngati Mamoe were identified as the original tangata whenua who were driven out by Mua-Upoko. Mua-Upoko did, however, marry captured female Ngati Mamoe and thus Mua-Upoko

⁷¹ Best, *The Land of Tara*, 1917, p 147.

⁷² Best, *Maori Notebook*, No, 13 p 76 and 155.

⁷³ McGill, D, *The Pioneers of Port Nicholson*, Reed, 1984, p 6; McGill, D. *Lower Hutt, the first garden city*, Lower Hutt City Council, 1990, p 14-15.

⁷⁴ Information on the Waitaha people were supplied to Adkin by Murihiku Beattie. Anthony Dreaver gives a good account of Leslie Adkin, his sources, and ideas in regard to Maoritanga. For example, Adkin had little knowledge of Te Reo Maori and few informal contacts with Maoridom and was dedicated to the tradition of science rather than of Maori. See, Dreaver, A. *The Life and Work of Leslie Adkin*, Victoria University Press, 1997, p 254-255.

⁷⁵ Adkin, G.L. *Horowhenua*, Dept of Internal Affairs, 1948, p 112-122; Adkin, G.L. 'Supplementary Data Relating to the Ancient Waitaha in the Horowhenua, Te Whanganui-a-Tara area, North Island, New Zealand.' *Journal of the Polynesian Society*, Vol 59, 1, 1950.

⁷⁶ Best, 1900-1, p 109.

whakapapa comes from both the Kurahaupo waka and Ngati Mamoe.⁷⁷ In 1900, Best stated that Ngati Mamoe were originally from the East Coast but “I have been informed by one of the leading Wairarapa Natives that when the ancestors of this tribe (Ngati Kahungunu of ‘Takitumu’) first reached Te Whanganui-a-Tara, they found Ngati Mamoe living there.”⁷⁸ By 1917 and under the influence of Te Whatahoro, Best’s Ngati Mamoe story changed with Ngati Tara being the first to settle Te Whanganui-a-Tara and Ngati Mamoe arriving afterwards. In this story Tara ‘handed over’ lands to the west of Te Whanganui-a-Tara called Pahua (generally Karori and south coast) for Ngati Mamoe’s habitation.⁷⁹ This story was gained from Te Whatahoro’s book in 1911.⁸⁰ Adkin states that the Ngati Mamoe name for the harbour was Te Whanganui o Orotu (also the name of Ahuriri Lagoon).⁸¹ Jock McEwen traces Ngati Mamoe from Te Tini-o-Whatumamoa and Te Tini-o-Orutu who were originally from the Hawkes Bay and displaced by Ngai Tara. Orutu, chief of Te Tini-o-Orutu, is said to have settled at Sinclair Head and was the first Wellington settler.

Mua-Upoko’s original territory was described by Rod McDonald as all the lands between the Rangitikei River and Wellington.⁸² Adkin also placed Mua-Upoko at the ‘head of the fish’ especially between the Manawatu River to Porirua, and Best records a number of stories concerning raids by Mua-Upoko into Te Whanganui-a-Tara. With the arrival of the northern tribes after 1824, Mua-Upoko was largely contained around Lake Horowhenua.⁸³

⁷⁷ Adkin, G.L. 1948, p 123.

⁷⁸ Best, 1900-1.

⁷⁹ Best, 1918, p 2.

⁸⁰ Best makes a note concerning history of Ngai Tara and Ngati Mamoe: “Original Tangata Whenua, occupation of Wellington District. This seems to be an unknown quantity to Whatahoro and has apparently been neglected or concealed by the descendants of the Takitimu immigrants. He seems to claim that Ngai Tara, descendants of Tara, son of Whatonga, were the first occupants of the district” (Best, Maori Notebook, No. 13, p 85).

⁸¹ Adkin, 1959, p 102.

⁸² McDonald, R.A. *Te Hekenga; Early Days in Horowhenua*, 1929.

⁸³ *Ibid*, p 125. Also Maclean, C. *The Story of a Mountain Range*, Whitcombe Press, 1994, p 56.

Kurahaupo

Ngai Tara, Rangitane and Mua-Upoko derive from the Kurahaupo waka. Ngai Tara were the descendants of Tara, son of Whatonga and captain of the Kurahaupo waka. Tautoki was the half brother of Tara and the father of Rangitane while Mua-Upoko are descended from Hotuwaipara, wife of Whatonga (and, as stated, Mua-Upoko also claim descent from Ngati Mamoe). Jock McEwen sees the arrival of Ngai Tara as a number of very small groups who were sprinkled around the coast and came into Te Whanganui-a-Tara from the east.⁸⁴

Crawford relied on an account by Te Manihera of the Wairarapa to state that Rangitane were the first occupants of Miramar under the chiefs; Te Rerewa, Te Hautaki, Rangitahatiti and Tukanae. On the arrival of Ngati Kahungunu, the Miramar was given to the new comers and Rangitane crossed over to the South Island.⁸⁵

Te Whatahoro's book was used by Best to recount the story of the exploration and settlement of the Wellington district by Tara and Tautoki.⁸⁶ In summary the story tells how Tara and Tautoki set off for an exploration of the district (Wellington, Wairarapa, Porirua) and then came back and gave details to their father, Whatonga. Tara and Tautoki told their father that there were three islands in the harbour but the largest one (Motu-kairangi/Miramar) was too big and required "a numerous people who could occupy and hold this large island."⁸⁷ It was thought that Matiu island might be the best place to settle as the population of the tribe was not large. Thus a decision was made and Whatonga plus family arrived at Te Whanganui-a-Tara and settled on Matiu island. Te Whanganui-a-Tara was named after Tara. Three large houses built on Matiu were named Haere-moana, Aotearoa, and Te Puotetonga. Later, Whatonga and the tribe moved to Motu kairangi and the Mt Victoria area. Here they constructed a number of pa along the island

⁸⁴ McEwen, J, 1971.

⁸⁵ Crawford, J.C. 'Notes on Miramar Peninsula,' *TINZ*, 5, 1873, p 398.

⁸⁶ Best, *Maori Notebook*, No. 13, p 125.

⁸⁷ Best, 1917, p 154.

including Te Whetu kairangi (the largest pa), Uruhau, Te Aka-tarewa, and Te Waihirere. A refuge pa was also built near Wainuiomata called Takapurangi. From this beginning the territory of Ngai Tara and Rangitane extended over the lower North Island and the divisions between the tribes are blurred, as all three tribes were very closely related. As Jock McEwen says “all of these Ngai Tara people that were here...always referred to as Rangitane” and “we have bound up the Ngai Tara under their new name of Rangitane and in fact they were partly Rangitane.”⁸⁸ At one time the rohe of Ngai Tara extended as far as Kapiti Island (Te Waewae Kapiti o Tara raua ko Rangitane).

Rangitane identity was still in existence when the New Zealand Company settlers started arriving. During a hearing of the Spain Commission on June 10 1842, Wakefield recognised the presence of Rangitane:

Q: Have not some of the tribes who were conquered by Rauparaha and Ngatiawa in many instances resumed the occupation and possession of the land from which they had been driven?

A: From all that I have heard on the subject, most of the famous possessors were killed and eaten. One chief of the Rangitane Tribe by name Pakiuri has lived for many years with two or three of his followers hiding among the mountains at the head of the Ohere. It is only within the last few months and since the comparative civilization of the natives that he has dared to show his face on the sea-coast. The rest of that tribe are working as slaves for Rauparaha and his relations at the Ohere.⁸⁹

Ngati Apa

Ngati Apa are also from Kurahaupo and had a presence in the Wellington area under the name Ngati Rangi. Jock McEwen traces the history of Ngati Rangi from Rangiheke who came from the Rangitikei. He was considered to be part of the Ngati Apa tribe. Ngati Rangi came to live at Porirua, Paekakariki and Upper Hutt. Ngati Apa/Ngati Rangi are mentioned by Crawford and

⁸⁸ McEwen, 1971.

⁸⁹ Quoted in Moore, D, *The Origins of the Crown's Demesne*, p 231.

Best as having invaded the Wellington area on a number of occasions.⁹⁰

Takitimu and Horouta.

Like the descendants of the Kurahaupo, the tribes of Ngati Ira (Horouta) and Ngati Kahungunu (Takitimu) also migrated to Te Upoko o te Ika at some point in time. The Rangitane and Ngati Ira tribes were also closely related and connected in marriage between Hineipurangi and Te Whakumu. It seems Ngai Tara gave Ngai Ira the Porirua district for their habitation.⁹¹ Ngati Ira, together with the Ngati Kahungunu hapu Rakaiwhakairi and Ngati Kahukura-awhitia, seemed to have taken control over Te Whanganui-a-Tara with some of Ngai Tara migrating to the South Island. The interrelationships and fluidity between Ngati Ira, Ngati Kahungunu, Rangitane and Ngai Tara is emphasised by Jock McEwen:

The fact was that these people all intermarried. They intermarried again and again with local people. All of them - the Kahungunu and the Ngati Ira, the Ngai Tahu, the whole lot of them - intermarried so much that they are neither one thing nor the other these days.

The point about these people is that they are all the same people - the people pretty well from Napier to Wellington - on both coasts; Manawatu to Wellington - they are all the same mixture - the same fruit salad. They are the descendants of Whatonga, descendants of Kupe, descendants of Ira Turoto with a little Kahungunu mixed up here and there.⁹²

Jock McEwen finds the identity labels and names may have changed over time but essentially the people were the same; first Ngai Tara, who became Rangitane, who then became Ngati Ira and Kahungunu, to end up with the label Kahungunu Ki Wairarapa. All these groups descended from the Kurahaupo waka.

⁹⁰ McEwen, 1971, Crawford, 1873, Best, 1900.

⁹¹ Best, Maori Note Book, No.13, p 83.

⁹² McEwen, 1971.

By 1819 the pattern of settlement around Te Whanganui-a-Tara could be summarised as:

1. Ngati Ira and/or Rangitane at Te Whanganui-a-Tara, South Wairarapa and Porirua .⁹³
2. Ngati Rangi at Porirua and Upper Hutt.
3. Ngati Kahukura-awhitia of Ngati Ira in Upper Hutt
4. Ngati Rakaiwhakairi of Ngati Ira, descendants of Te Aomatarahi in Lower Hutt.
5. Mua-Upoko on the west coast to Waimapihi or Porirua.⁹⁴

This changing status quo was soon disrupted by another arrival of more tribes from the north beginning in 1819.

⁹³ Evidence of Rangitane occupation in Te Whanganui-a-Tara at the time of Ngati Mutunga and Te Atiawa migrations is found in a letter from Alexander Shand to Percy Smith (30 Sept 1893). Shand notes he got the lament of Te Toherga-aitu of Rangitane before he was killed by Ngati Mutunga; Letters of A.Shand to S.Percy Smith, 1869-1910, ATL.

⁹⁴ According to Aperahama Mira of Ngati Toa, Waimapihi was viewed as a Mua-Upoko pa on their arrival from Kawhia in 1822; Best, Miscellaneous Papers, ms papers 1187, ATL.

3.4 1820's CHANGING PLACES AT TE WHANGANUI-A-TARA.

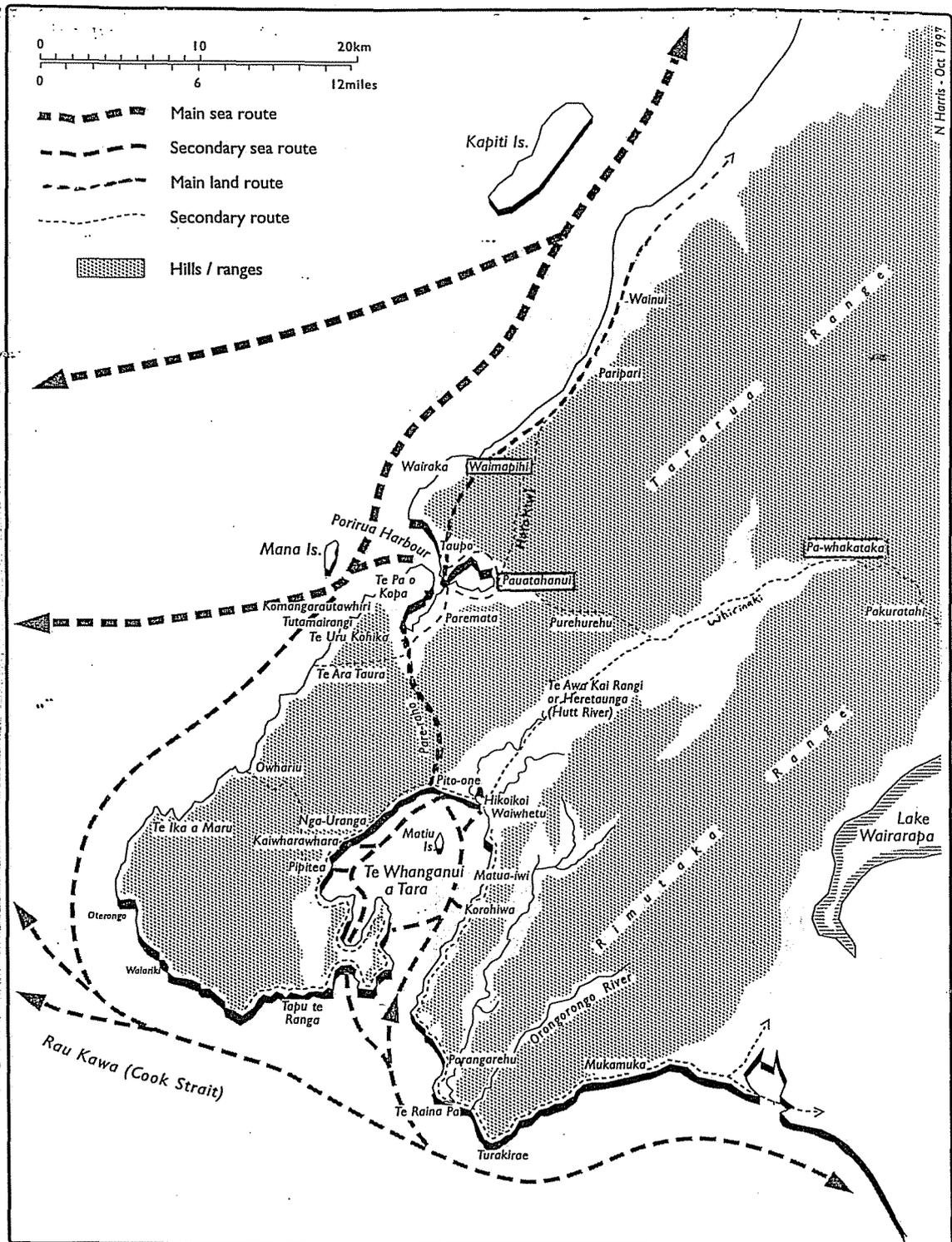


Figure 3.4. Control of Te Whanganui-a-Tara. Map showing strategic Pa and Routeways, circa 1839. R. McClean, 1997.

Control of Te Whanganui-a-Tara meant access to food resources; customary use of the harbour. To take and maintain control of the area, a group or tribe needed to command strategic access ways or highways.

Te Whanganui-a-Tara was located near two important ancient highways; the eastern and western highways.⁹⁵ The eastern highway involved groups moving south from the Wairarapa and Hawkes Bay to the South Island and the western highway which was the path of travel from the west coast to the South Island (or from the South to the North). The western highway was probably more important. This highway came down the western Kapiti coast until Porirua and from there (or from Kapiti Island) crossed over to the South Island. Visiting Te Whanganui-a-Tara was not a requirement for groups crossing Raukawa Moana.

To gain access to Te Whanganui-a-Tara from these highways, the group or individual needed to take secondary paths. Coming from the east the choice involved taking a waka around the coast from Palliser Bay (as Kupe had done), using the coastal track from Palliser Bay around Turakirae Head, or the Pakuratahi trail over the Rimutaka ranges.

Coming from the west the choice included a number of options:

1. For those who were willing to risk the south-coast, they could take a waka around the coast from Porirua, past Makara and into the harbour.
2. Land the waka at Owhariu bay and using the track overland to Pipitea.
3. Land at Porirua (Te Uru-Kahika) and using the Pare-raho track overland to Te Korokoro.

⁹⁵ The term highways is used to define well travelled routeways or tracks. Information for the author's account on the highways comes from a variety of sources. For example Bagnall gives a good summary of travels along the eastern highway (Bagnall, A. G. *Wairarapa; An Historical Excursion*, Masterton Trust Lands Trust, 1976). Other sources includes maps, journals, material from Best's notebooks.

4. Land at Pukerua, walk over the Taua-Tapu track to Taupo (Plimmerton) catch a waka across the Porirua harbour to Te Uru-Kahika and then walk over to Te Korokoro.

For groups without a waka, the options were limited to taking the Taua-Tapu track from Pukerua Bay, hoping to borrow a waka to cross Porirua harbour at Taupo, and walking over to Te Korokoro. An alternative walking route was to take the old Horokiri track which came to Pauatahanui and go around the Porirua harbour to Te Uru-Kahika or go over the Purehurehu track to the Heretaunga river.

Commanding these access ways required pa situated at strategic points. Generally, if a number of these pa were taken over by invading groups, Te Whanganui-a-Tara would be taken except for some refuge pa. On the western highway, the most important strategic pa were of two main types; pa which commanded a water highway and pa which commanded a land highway. Examples of important strategic water commanding pa were Te Pa-o-Kapoa, Komangarautawhiri and Tutamaurangi pa along the Titahi Bay coast. Examples of important land commanding pa were Waimapihi at Pukerua Bay and Pauatahanui. An indication, therefore, of who was in effective political control of Te Whanganui-a-Tara was what groups were holding the key strategic pa on the western or eastern highways.⁹⁶

Waimapihi, Pa-whakataka and the 1819 Expedition

Waimapihi was located at the beginning of the Taua-Tapu Track at Pukerua Bay. In terms of strategic location, this pa would have been the most important for gaining control over Porirua and Te Whanganui-a-Tara. Essentially if the northern-invading group could 'take out' this pa, the harbour was also taken by the group except for some patches of resistance on island refuge pa and other isolated places (for example, pa sites up the Hutt Valley).

The 1819 expedition was led by Ngapuhi chiefs and included a number of Ngati Toa Rangatira

⁹⁶ On the eastern highway an important strategic pa was built by Ngati Tama at Mukamaka point.

including Te Rauparaha, Te Rangihaeata, Tungia, Nohorua and others. While the size and composition of this taua is debated, information supplied by Petera to Alexander Shand on the Chatham Islands (and this information was sent to Percy Smith in 1894) finds that the heke consisted of:

Chiefs Tuwhare, Te Taoho of Ngati Whatua, Te Pouroto, Patuone and Wahahene of Ngapuhi
Te Rauparaha and 300 of Ngati Toa Rangatira⁹⁷
100 of Ngati Whatua and 100 of Ngaputu.⁹⁸

Best's account of the attack on Waimapihi by the first Ngai Puhi/Ngati Toa Rangatira expedition in 1819/20 is as follows:

On arriving at the narrow pas at Te Paripari, the abrupt ending of the Paekakariki Range, they found further progress stopped by the people of the Waimapihi pa which was situated on the cliff above the beach, and just below the present railway station of Pukerua. Waimapihi was manned by a mixed garrison of Ngati-Ira and Mua-Upoko, the latter under the chief Kotuku, and the former under Whanake, Te Kekerengu, Whatirangi, and Te Pua. This fort commanded the only trail by which an enemy coming from the West Coast would enter the Ngati-Ira country, and was therefore the key to the district. The people of the Ngati-Ira knew this full well, and hastily summoning their clansmen of the Pukerua, Porirua and Pauatahanui districts to Waimapihi, they strove to beat back the northern war party. The assault on the pa was commanded by Tuwhare, who after a fierce struggle, succeeded in taking the place. Te Pua was killed by Tuwhare, but most of their followers escaped by the Waimapihi Creek into the ranges, having previously, I am told buried their most prized meres and other articles of value to prevent them falling into the hands of the enemy. So the key of the Harbour of Tara was in possession of the taua, who then came on by canoe to Wellington, which they found almost deserted, the inhabitants having fled to Wairarapa and elsewhere.⁹⁹

⁹⁷ 300 or 30? See Boast, *Ngati Toa*, p 32-33.

⁹⁸ Letters of A.Shand to S.Percy Smith, 1869-1910, ATL.

⁹⁹ Best, 1900-1.

After this battle, details of the taua's activities in Te Whanganui-a-Tara are sketchy (and contested), but one version from Honiana Te Puni (given to Best in 1912) is that the taua came over the Taua-Tapu track from Waimapihi, looted canoes at Taupo beach (Plimmerton), and then took the coastal route around Cape Tarawhiti. At Te Rimurapa the taua met the force of the south coast winds and one canoe capsized and all aboard were drowned.¹⁰⁰ After arriving at Te Whanganui-a-Tara, the taua camped at Pipitea and Te Aro where no food could be found and some of the party went on an expedition to Orongorongo where they were attacked by Ngati Kahungunu. Then the party moved up the Hutt river and attacked a number of pa (Te Horopai, Hau-karetu, Pawhakataka), went over the mountains to Wairarapa, then back by sea to Te Whanganui-a-Tara and north. This expedition was followed by Te Amio-Whenua in 1821-22 which consisted of Ngati Whatua, Waikato, Ngati Tipa, Ngati Maru and Ngati Paoa. This taua came south into Te Whanganui-a-Tara and Porirua from the Wairarapa and according to Percy Smith found the place empty.¹⁰¹

Pa-whakataka

Pa-whakataka commanded a strategic position at the northern end of the Upper Hutt Valley located at the junction of the Mangaroa and Heretaunga Streams. Groups coming up the valley using the Whirinaki track or by waka crossed over to the Wairarapa up the Pakuratahi River (current route of the Rimutaka Incline) at Pa-whakataka.¹⁰² Pa-whakataka was an important pa for groups wanting to control the Hutt Valley and as an outpost for the protection of the Wairarapa. Jock McEwen describes the attack of the Ngapuhi/Ngati Toa Rangatira taua on the pa:

They carried on up the Hutt Valley and came to a strong pa call Pa Whakataka which is above Upper Hutt. The pallisade posts were sawn up for firewood by a Pakeha farmer within living

¹⁰⁰ Best, Maori Notebook, No.13, p 179.

¹⁰¹ Smith, P.S. 'History and Traditions of the Taranaki Coast' *Journal of the Polynesian Society*, Vol 18, 1909, p 101.

¹⁰² Colonel Wakefield was told that you could travel by canoe up the Hutt River for two days. *Journal of Colonel Wakefield*, 21 September 1839, G.B.P.P

memory. It makes me sick to think about it. The Ngati Ira, that is the Ngati Kahukurawhitie hapu of Ngati Ira, were inside their pa and the invaders decided to attack them - and altogether although they had a few guns by this time they were quite unable to take the pa. They had several goes at it but were not successful. So Te Rauparaha said in his wily way: 'Well we will have to fix this.' And then they made a great show one afternoon of continuing their journey. They packed up everything, loaded up their kawenga and off they went and disappeared into the bush. During the nighttime they crept back from the bush and hid near the pa - and in the morning when the Ngati Ira opened the gates and came out and - bang! that was the end of them.¹⁰³

Best also gives an account of the same battle. In this account a different strategy was used but had the same effect. While noting that the names of the villages sacked by the taua included Te Horopari, Hau-karetu, and Pa-whakataka, Best says "it is doubtful if the raiders went so far up the river."¹⁰⁴ After the taua returned north, the Pa-whakataka was probably re-occupied by Ngati Kahukura-awhitia but it was not mentioned by Dieffenbach on his journey up the river in 1839. Later in 1846, Pa-whakataka was defined as the north eastern boundary of the Porirua district (and later the Wainui Block) by Ngati Toa Rangatira chiefs when the Porirua district was purchased by Governor Grey.

Te Heke-mai-raro 1821-22?

This was the main Ngati Toa Rangatira heke which possibly left Kawhia in late 1821. The heke picked up groups of Ngati Mutunga, Ngati Tama and some Te Atiawa along the way and arrived on the Kapiti Coast at Waikawa and Waikanae. Te Heke-mai-raro was the name given to both stages of the heke; Te Heke-Tahutahu-Ahi and Te Heke-Tataramoa. According to Matene Te Whiwhi, the heke went on to Porirua and took Waimapihi after a battle with Mua-Upoko but the new comers did not hold the pa for long:

¹⁰³McEwen, J. Lecture 3, p 6. Kellecher also gives an account of the battle at Pawakataka largely based on discussions with McEwen. Kellecher also says that Robert Martin "wrote a letter to the Upper Hutt Leader, September, 1964, that he was familiar with the remains of a fortified pa with a cliff face approach on Maori Lookout, across the river from Te Marua golf links. His father had a farm block to the west;" Kellecher, J.A. *Upper Hutt; The History*, Upper Hutt City Council, 1991, p 17-18.

104

We lived at Pukerua and Porirua. Our reason was because we could get Pauas and mussels. It was in April when we went to Waikanae, I think about the year 1815 or 1816. We remained there three months living about Waikanae and Porirua. The Ngati Kahungunu heard about us, and their war party came from Wairarapa to Pukerua and attacked us in the night and killed 20.¹⁰⁵

Waimapihi, being designed to repel invaders from the north, was easily taken by Ngati Kahungunu coming from the south. After this conflict Ngati Toa Rangatira remained on Kapiti until the battle of Waiorua in 1824.¹⁰⁶ At Waiorua the tribes of the lower North Island were defeated and possession of the western highway was obtained. Thus, after Waiorua, Ngati Toa Rangatira shifted themselves along the highway to Porirua and lived at Wainui, Mana Island (Te Rangihaeata), Waimapihi and Wairaka (Pukerua Bay), Taupo (Plimmerton end of the Taua-Tapu track), Paremata, Papakowhai, Te Ura Kahika/Takapuwhia and the Titahi Bay coast.

In the 1830s Waimapihi was occupied by Te Peehi and Te Hiko of Ngati Toa Rangatira and was visited by many European travellers using the western highway. One traveller, Thomas Bevin, described the pa in detail and said that it contained “many hundreds of inhabitants.”¹⁰⁷

Pauatahanui and other strategic Pa

Pauatahanui pa was located on a headland at the site of the current Anglican Church. Pauatahanui’s strategic importance was based on its position at the junction of the Horokiwi and Purehurehu trails. Before the 1855 uplift, the headland was nearly completely surrounded by water except for the eastern entrance. Two stories of early battles are told by Best:

¹⁰⁵Matene Te Whiwhi, Kukutauaki Case, 1872, 1 Otaki MB. It seems Porirua was first gained by Ngati Toa Rangatira by their relationship with Ngati Apa (as this was Ngati Rangi’s old territory) as this was before the battle of Waiorua.

¹⁰⁶While remaining on Kapiti until 1824, Matene Te Whiwhi remembers fishing expeditions as far south as Ohariu. Ibid. See also Carkeek, *The Kapiti Coast*, p 18.

¹⁰⁷ Bevin, T. *Reminiscences of an Old Colonist*, Otaki Mail, 1907.

A force of Rangitane and Mua-Upoko marched down the coast and attacked and defeated Ngati Ira at Te Pourewa. These raiders then attacked Pauatahanui, where Ngati-Ira and Ngati Kaitangata were defeated. Coming on to Papakowhai (site of an old time hamlet, on section 103, between the Porirua and Paremata railway stations) they killed more of Ngati Ira now retired to Matiu, or Somes Island, an old sanctuary of the local tribes.

After the arrival of Rangitane and Mua-Upoko at Te Whanganui-a-Tara, the tribes encamped on Matiu Island decided to go attack the raiders but were defeated at Puarere.¹⁰⁸ Another battle involving Ngati Rangi and Ngati Ira occurred when Ngati Ira held the strategic Waimapihi pa at Pukerua Bay. Ngati-Rangi who claimed ownership of Pukerua, decided to travel south from Paraparaumu using the Horokiwi trail in order to attack Waimapihi from the rear. However, Ngati Ira got word of Ngati Rangi's plans and lay in ambush beside the Horokiwi track not far from Pauatahanui. This time Ngati Rangi were defeated. As will be discussed, Pauatahanui pa became more important after 1840.

Other pa of strategic value were located at the Hutt River mouth; Waiwhetu and Pito-one. These pa were taken by the Ngapuhi taua and Ngati Mutunga when they settled around Te Whanganui-a-Tara. Susan Butterworth comments that Pito-one (situated at Korokoro) was strategic because "whoever occupied Korokoro Corner, as it was known, could control movement along the Hutt Road."¹⁰⁹ Korokoro was also the beginning of the Pare-raho track over to Porirua.

On the eastern highway a series of pa were important for securing Te Whanganui-a-Tara from the east. These included Mukamuka, Te Raina, and Parangarehu.

The Taranaki Tribes settle in at Te Whanganui-a-Tara

Te Nihoputa Heke 1822-24

¹⁰⁸ Best, E. *The Land of Tara*, p 56-57.

¹⁰⁹ Butterworth, S. *Petone; A History*, Petone Borough Council, 1988, p 84.

This heke left Waitara in December 1822. It consisted of Ngati Mutunga (largest group), Ngati Hinetuhi, Kaitangata, Tera ki te Whakarewa, Te Kekeawai, Ngati Hineuru, Te Atiawa and others. According to Percy Smith, this Heke arrived after the battle of Waiorua.¹¹⁰ The invaders arrived at Waikanae and stayed for one or two years, then many of the group went to Te Whanganui-a-Tara. The original version of the settlement of Te Whanganui-a-Tara given by Rangi-pito to Percy Smith and Shand is given below:

They were one year at Waikanae after the arrival of Nikoputa before they moved to Poneke where they occupied the coast from Te Aro to Kaiwharawhara. The Ngati Tama occupied and cultivated at Raurimu and Tuiokori stream and made clearings there. Subsequently Awa went beyond Tinakori hills, Otari and cultivated there. All Thorndon at that time was cultivated by Awa, who felled the bush and there we used to get firewood, the main pa being at Pipitea. Ngati Kahungunu or Ngati Ira did not cultivate they lived on aruhe and fish, paua etc. Ngati Kahungunu were at the east side of the harbour and at this time we attacked them at Parawa-nui where they were defeated and fled to Wairarapa. At this time Ngati Toa occupied Kapiti and Mana for they were afraid to live on the mainland. It was at this time also that Awa went to Aropaoa and to Te Taitapu (Tasman's Bay).¹¹¹

Shand's version of the episode is as follows:

After arriving and taking possession of Port Nicholson (Whanganui-a-Tara) the Ngatitama section moved to the Wairarapa, as stated, but previously had assisted Ngatimutunga in treacherously murdering the Ngati-Ira, a section of the Ngatikahungunu tribe, who were the former owners of Port Nicholson. The Ngati-Ira were destroyed at Waiwhetu, Te Mahau, Okiwi, Kohanga-te-ra, Orongorongo and Paraoa-nui.¹¹²

This happened after Ngati Ira and Ngati Mutunga were living together at Te Whanganui-a-Tara for some time. Ngati Ira's last stand was made at Tapu-te-ranga pa.

¹¹⁰ Smith, P. 'History and Traditions of the Taranaki Coast' *JPS*, Vol 18, 1909 (extracts), p 165.

¹¹¹ Polynesian Society Papers, ms papers 1187, ATL

¹¹² Shand, A. 'The Occupation of the Chatham Islands by the Maoris in 1835.' *JPS*, Vol 1, 1892.

Evidence presented during the Spain Commission by Te Kaeaea, Muturoa and Te Rauparaha generally supports this story and places emphasis on Te Rauparaha's interests in Te Whanganui-a-Tara. For example Te Kaeaea's version on 28 May 1842:

Mare (Pomare), Rauparaha, Pehi, Hiko came to Kapiti first. I came down afterwards. Rauparaha started the fight with Kahungunu, but they were not conquered [before Mare came down]; they still lived here,... The whole of this place and the neighbourhood belonged to [Te Kaeaea] and Mare alone, before the others came down (May 28).¹¹³

Later on 27 June Te Kaeaea gave further detail. In reply to the question by Evans; "on what grounds had they ceded the land to Wakefield?"

A: Lest Rauparaha and Watanui should come and fight with us.

Q: What reason had you for fearing they would do so?

A: Rauparaha was offended because the place was taken up by the Ngatiawa.

Q: Did Rauparaha ever claim that land [the Hutt], and what were the grounds of his claim?

A: Yes we killed all the men of the place.

Q: What land did Rauparaha claim in this place?

A: It is all Rauparaha's¹¹⁴

And evidence from Muturoa and Mangatuku as questioned by Hanson on 20 June:

Q: After the Ngatikahuhunu were driven away to whom did that Tribe belong?

A: When there were very few men left the Ngatimutunga came and took possession of this land.

Q: Did not Rauparaha conquer it, and gave his share to Mare and his people?

¹¹³Moore, p 207. Te Kaeaea was also asked if Te Rauparaha gave Port Nicholson to Mare as a result of taking his daughter in marriage, on condition of driving out Kahungunu. Te Kaeaea did not know anything of this event.

¹¹⁴ Moore, p 250.

A: Rauparaha took this land; I do not know anything further about it.

Q: Where you and Moturoa here at the time Mare went to the Chatham Islands?

A: Moturoa was here, I was at Wairarapa... After the Ngatimutunga went to the Chatham Islands, there was no one at Pipitea.¹¹⁵

Te Rauparaha and Te Hiko where questioned by Spain on 9 June and stated their interest on the basis of conquest:

They had come many years hence with Te Pehi from Kawia and Mokao and taken possession by conquest and the extermination of the ancient tribes of both sides of Cooks Straits within the boundaries named in the deed (9 June).¹¹⁶

Later in 1843, Te Hiko claimed “Kapiti, Mana, Cloudy Bay, Taitapu, Otaki and Porirua” and an interest in Port Nicholson.¹¹⁷

During the same hearing, Tutahanga was questioned by Spain and disputed the idea that Ngatiawa had ‘taken places’ from Ngatitōa. However, Tutahanga did state that Ngatiawa were in possession of Port Nicholson, Ohariu, Tekamaru, Ohaua, Oterango and Rimurapa. Duncan Moore comments that this evidence of Tutahanga is “the most definite statement in the Land Claims hearings of customary interests in the coastal settlements.”¹¹⁸

Tama te Uaua Heke 1832

This heke consisted mainly of Te Atiawa¹¹⁹ and Ngati Tama with Richard Barrett, Jack Love and

¹¹⁵ Ibid, p 246

¹¹⁶ Moore, p 222

¹¹⁷ Ibid, p 367

¹¹⁸ Ibid

¹¹⁹Te Atiawa. Also referred to as Te Atiawa and Ngatiawa. Usually the identity of Te Atiawa is used to include other Taranaki tribes such as Puketapu and Ngamotu.

Billy Keenan.¹²⁰ It also included elements of Ngamotu, Puketapu, Kaitangata, and Ngati Mutunga. They arrived at Waikanae and after the battle of Hao-Whenua went to Te Whanganui-a-Tara. While at Waikanae, the group was joined by another smaller heke called Te Heke Paukena which had left Taranaki at the end of 1833. This group was not at Te Whanganui-a-Tara very long before some of them went to the Wairarapa for a year, returning to Te Whanganui-a-Tara in early 1835 before Ngati Mutunga left for the Chathams Islands in November/December 1835.

Ngati Mutunga's departure for the Chathams left some places within the harbour under possession of Te Atiawa and Ngati Tama. It is important to note that not all Ngati Mutunga left and some, such as their chief Pomare, returned to live at Te Whanganui-a-Tara for a time. Some concept of the boundaries of the various groups living around the harbour can be gained from dealings with the New Zealand Company in 1839, and from evidence presented during the Spain Commission. Te Atiawa evidence recorded during the April 29 1843 hearings of the Court at Waikanae emphasised Te Atiawa's role as independent from Te Rauparaha. From the view of Hetakikari, Ngati Toa Rangatira and Te Atiawa had both conquered the region but Te Atiawa had now taken places from under the influence of Te Rauparaha by fighting so that "Ngatiawa alone have a right to it now, without Rauparaha."¹²¹ One of the places mentioned by this witness that Te Atiawa had taken from Te Rauparaha was Port Nicholson.

Wi Tako's account of his settlement was as follows:

When we left Taranaki we went to Otaki and Waikanae; we stayed there two years. We then went to Wairarapa, were two years there -- the people of this place went to Warekuri; we came to this place -- this is the seventh of our years here.¹²²

¹²⁰These three pakeha whalers had married into the Te Atiawa tribe and had helped defend Taranaki by an invasion of the Waikato tribes.

¹²¹ Ibid, p 365.

¹²² Ibid, p 199.

On arriving at Te Whanganui-a-Tara, Wi Tako recounts that “there were no people living in the place” so they took possession.¹²³

Evidence from Te Puni and Mahau, meanwhile, concentrated on their rights to the land as gifted by Ngati Mutunga when they left for the Chathams in 1834. Te Puni stated that Kotiriki said:

Remain here, Wharepouri! on your land Port Nicholson; Remain here on your land the Hutt. Remain here on your land Petone; remain here on your land Ngauranga Tahatahara; Remain here on your land Pepitea; Remain here Wharepouri, on your land Kumutoto, etc..(also including Te Aro, Omarukaikuru, Haitaitai, Temahanga, Kakariki, Pounamukati, Paewenua, Tarakena, Paikawakawaka and all the sea).¹²⁴

This gift, however, did not extend to Moturoa or the Pipitea chiefs as they were not related to Ngati Mutunga. And despite the gift and being on the Chathams, Te Puni still regarded Ngatata, Mare and Matangi as having a right to sell Kumutoto.¹²⁵ After Te Puni, Mahau (of Ngatitawhitikura, Pitone) also gave an account of the gifting:

The land belongs to my tribe. I cultivated the piece of land between Richard Barrett’s house and Dr Evans when the Ngatimutunga were here - when the Ngatimutunga went away to the Chatham Islands, I tapued it. The Matihou were at Wairarapa. They came and took the land and we did not fight because they had no land, and so we let them occupy the land quietly. When the first vessel went to the Chatham Islands, the Matihou were at Wairarapa. When they returned the second vessel sailed. The Ngatimutunga were all at Matiu before they sailed, because they were afraid of the Ngatiraukawa ---, Moturoa then returned to Wairarapa, for their women and children they returned and landed at Onehunga.¹²⁶

¹²³ Just after this comment, however, Wi Tako stated that when he came from the Wairarapa to Port Nicholson he found the Ngatiruanui/Taranaki at Te Aro, Ngati Tama at Kaiwharawhara, Matangi at Ngauranga and Matehou at Waiwhetu.

¹²⁴ Ibid, p 254. Places named in Te Puni’s version of the gifting indicate the transfer of use rights over some parts of the harbour and the coast especially in the phase ‘and all the sea’. Also Te Mahanga was a fishing and bird-collecting resort used in the summer.

¹²⁵ Ibid, p 258

¹²⁶ Ibid, p 270

Mohau also acknowledged his tribe's recent occupation: "This land did not belong to our forefathers. It of right belongs to the Ngatikahununu; but the people here have taken the land."¹²⁷

The Whalers

In addition to the new tribes were traders and whalers from Sydney. These new arrivals began to operate in the Cook Strait after 1820. The trade was mostly in flax and food stuffs and focused on the Western highway. Whalers began to establish whaling stations in the Kapiti, Porirua, and Marlborough Sounds areas after 1830. John Bell also arrived from Sydney in 1832 and established a farm on Mana Island under the care of Te Rangihaeata. Thoms' whaling station began to operate from Paremata in 1835 and soon thereafter other stations were built at Te Korohiwa and Mana Island. From their base on Mana and Kapiti, Ngati Toa Rangatira managed to maintain a certain degree of command over these trading and whaling stations. This position gave the tribe access to ships and enabled the extension of their sphere of influence into the South Island. Wiremu Te Kanae notes: "the very seas were taken possession of by Te Rauparaha and his tribes."¹²⁸ It could be argued that Ngati Toa Rangatira had more command over the seas than the land.

Trading and whaling reinforced the importance of the west coast highway and left Te Whanganui-a-Tara as a 'backwater,' (although it did have some use as a flax gathering centre). As Charles Heaphy recalled in 1879, "the place lay out of the track of whaling ships, and there was little flax-trading to be done at it," and as a result "the place was unfrequented, and remained with its people in a more primitive condition than any of the surrounding harbours."¹²⁹ Instead the *Sydney Herald* in 1834 was advertising Mana Island as the port of call in the Cook Strait area:

¹²⁷ Ibid, p 275.

¹²⁸ History of the tribes by Wiremu Te Kanae, 20.8.1888, ms 731, ATL.

¹²⁹ Heaphy, 1878, p 32-33.

Vessels homeward bound through Cook's Strait will find Manna a very convenient place to refresh at. The anchorage is safe at all times, wood and water are both good and plentiful, and fresh beef, mutton, lamb, and pork, with rabbits, poultry, and vegetables may be procured at Mr Bell's establishment on reasonable terms.¹³⁰

At the arrival of the New Zealand Company in 1839 the settlement pattern was focused on Porirua, Kapiti and the Marlborough Sounds with Ngati Toa Rangatira centred at Porirua, and Te Atiawa, Ngati Tama and Ngati Mutunga and other groups from Taranaki based at Te Whanganui-a-Tara. While control of the western highway had been secured by Ngati Toa Rangatira, the eastern boundary remained fluid with ongoing clashes between the new comers and the older peoples (Ngati Kahungunu, Ngati Ira, Rangitane). This boundary was not secured until June 1840 when some of the Wairarapa chiefs made an agreement with Te Wharepouri and Te Atiawa. It is uncertain if this agreement included Rangitane, who have maintained a claim over the Te Whanganui-a-Tara lands.¹³¹

¹³⁰ Quoted in Keith, Maori. *They Came on the Tides*, Porirua City Council, p 14.

¹³¹ See, Ehrhardt, P. *Te Whanganui-a-Tara customary tenure, 1750-1850*, p 33-34.

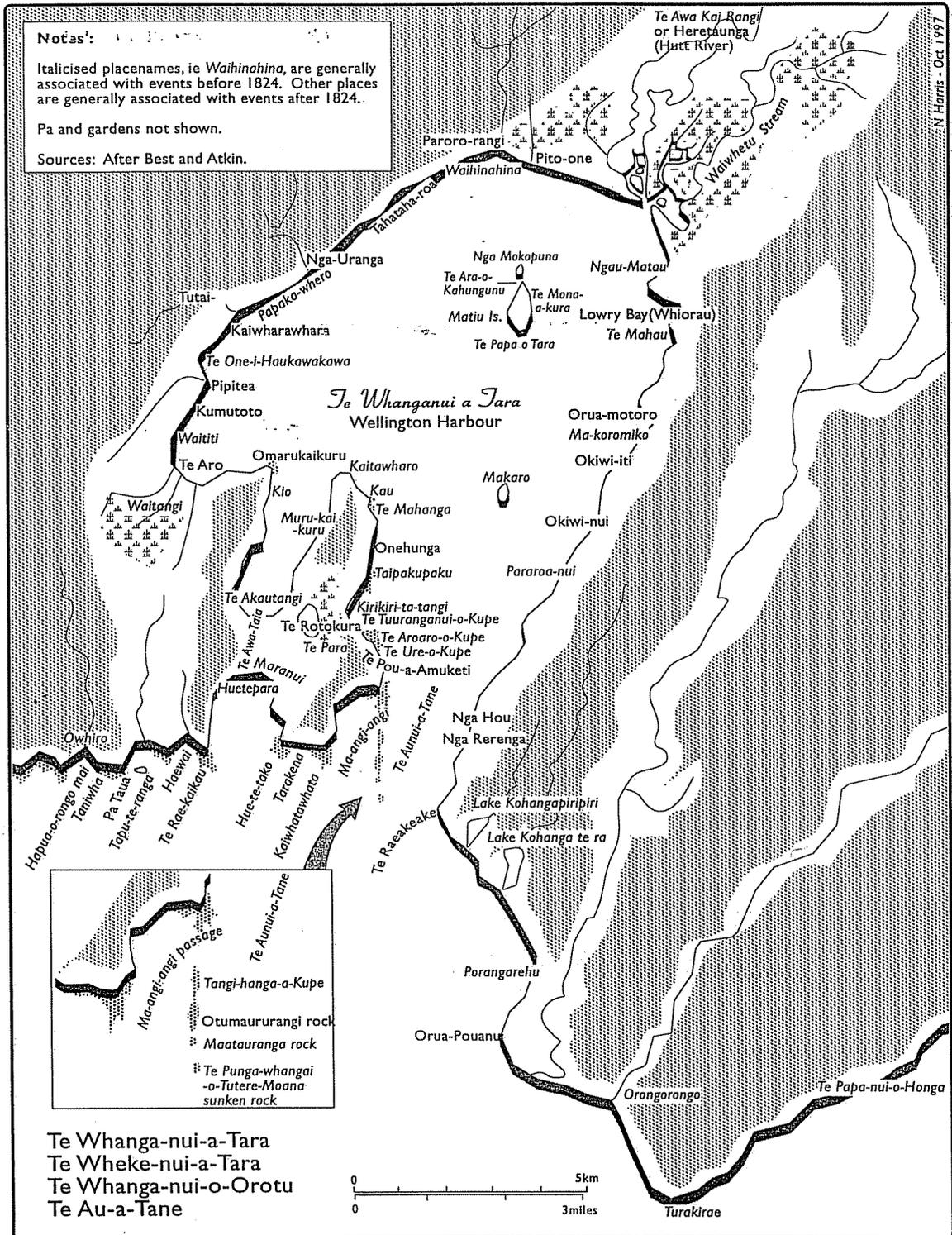


Figure 3.7 Te Whanganui-a-Tara. Place names within the harbour. R McClean.

Conclusion to Chapter Three

Clearly customary use and occupation of Te Whanganui-a-Tara have always been dynamic and contested. The author's approach emphasises that possession of the harbour was directly related to the exercise of control over strategic pa and routeways within the Wellington area.

Before 1819, Te Whanganui-a-Tara was under the customary use of tribes associated with the Kurahaupo waka; Rangitane, Mua-Upoko, and Ngati Apa/Ngati Rangi. Beginning with Kupe, these tribes generally discovered and named the harbour. The name Te Whanganui-a-Tara comes from Rangitane sources.

While the Kurahaupo tribes were in occupation of the harbour, other tribes descended from the Takitimu and Horouta waka arrived. The new arrivals - under the identity of Ngati Kahungunu and Ngati Ira - intermarried and settled in with the previous occupants. Accounts of battles at Miramar, Pauatahanui and Waimapihi illustrates that the new arrivals did attempt to conquer the Wellington region by force. But evidence suggests this new order was never complete and the Kurahaupo tribes retained a presence in the Wellington area until the 1820s.

Another phase of change in Wellington area began in 1819 with the arrival of the Ngapuhi/Ngati Toa Rangatira raiding party. Between 1819 and 1825 Ngati Toa Rangatira and their allies gained control of Wellington by intermarriage and by a series of battles of which a summary is provided below:

TAKING CONTROL OF TE WHANGANUI-A-TARA			
Significant Military Engagements; 1819-1924			
Date	Location	Participants	Outcome
1819	Waimapihi	Pa held by Ngati Ira and Mua-Upoko. Attacked by Ngapuhi, Ngati Whatua and Ngati Toa Rangatira raiding party	Pa taken by the raiding party
1819	Pa- whakataka	Pa held by Ngati Kahukura-awhitia or Ngati Ira. Attacked by Ngapuhi, Ngati Whatua and Ngati Toa Rangatira raiding party	Pa taken by the raiding party
1822	Waimapihi	Pa held by Mua-Upoko Attacked by Ngati Toa Rangatira	Pa taken by Ngati Toa Rangatira
1822	Waimapihi	Pa recently taken by Ngati Toa Rangatira. Attacked by Ngati Kahungunu	Pa taken by Ngati Kahungunu.
1824	Waiorua	Kapiti Island held by Ngati Toa Rangatira and Taranaki allies. Attacked by a confederation of the Kurahaupo tribes and Ngati Kahungunu/Ngati Ira.	Attacking tribes defeated

After the victory at Waiorua, Ngati Toa Rangatira and their allies were able to take possession of Porirua and Te Whanganui-a-Tara. Ngati Mutunga settled in at Te Whanganui-a-Tara and 'mopped up' patches of resistance towards the east of the harbour.

The changing political geography in the 1820s of the lower North Island meant that settlement patterns also changed around Te Whanganui-a-Tara. In general, the pattern of this change was an abandonment of ridge-top/island refuge pa and kainga towards concentrated settlement on the shores of the harbour at Lambton Harbour, Kaiwharawhara, Ngauranga, Korokoro, and Petone.

These settlements, located near ship anchoring sites so as to take advantage of the flax trade, were generally stockaded flat land pa and were an expression of security.¹³²

Security and possession of the area was founded on an alliance of tribes; Ngati Mutunga, Te Atiawa, Ngati Tama, Ngati Toa Rangatira and others from Taranaki, positioned within the Wellington area at strategic pa and routeways.

The author considers Haowhenua and Kuititanga battles as more 'civil wars' resulting from the arrival of Ngati Raukawa. Despite these battles and the conflicting divisions in Ngati Toa Rangatira (which placed Te Rauparaha more with Ngati Raukawa than with Te Atiawa), the Wellington-Porirua alliance remained steadfast and generally focused on the chiefs; Rangihaeata, Te Hiko, Pomare, Wharepouri and Wi Tako.

This new status quo, supported by whaling and trading interests, was only in its formative stages when it was disrupted by a further new and highly organised arrival; the New Zealand Company.

¹³² Heaphy, C, 1879, p 37. The security, however, offered by, pa like Waimapihi, did not extend to the protection of the harbour from Ngati Kahungunu incursions, who in the words of Heaphy were "defeated but not subdued, would operate in their rear, making the position very critical."

CHAPTER FOUR: THE NEW ZEALAND COMPANY TAKES CONTROL OF TE WHANGANUI-A-TARA

While settlement around Te Whanganui-a-Tara was dynamic during the 1820-30s, the harbour remained 'occupied space' being under control of the various tribes explained in the preceding chapter. This chapter will illustrate how the New Zealand Company and the Crown took possession of the harbour using a number of tactics which included survey, purchase rituals, sovereignty proclamations and military conquest.

4.1 PLANS FOR TE WHANGANUI-A-TARA

While Captain Cook never made it into Te Whanganui-a-Tara, Forster's (who accompanied Cook on his second voyage) journal told the English speaking world that Te Whanganui-a-Tara (or the Wairarapa) was open for European settlement:

Between the capes Tera Wittae and Palliser we discovered a very deep bay, of which the shores had everywhere a gentle slope, and especially towards the bottom where the hills were removed to such a distance that we could but just discern them. If there is a sufficient depth of water for ships in this bay, and of that we had no room to doubt, it appears to be a most convenient spot for an European settlement. There is a great stretch of land fit for cultivation, and easily defensible; there is likewise plenty of wood, and almost certain indications of a considerable river; and lastly, the country does not seem to be very populous, so that there would be little danger of quarrels with the natives; advantages which are not frequently to be met with jointly in many spots of New Zealand.¹

As told in Chapter One, Captain Herd and the first New Zealand Company party entered in 1826 and produced the first chart of Te Whanganui-a-Tara. Details of this visit were recorded by Thomas Shepherd in his journal and a sketch made:

¹ Quoted in, Best, E. *The Discovery and Rediscovery of Wellington Harbour*, Wellington Harbour Board, 1918, p 12-13.

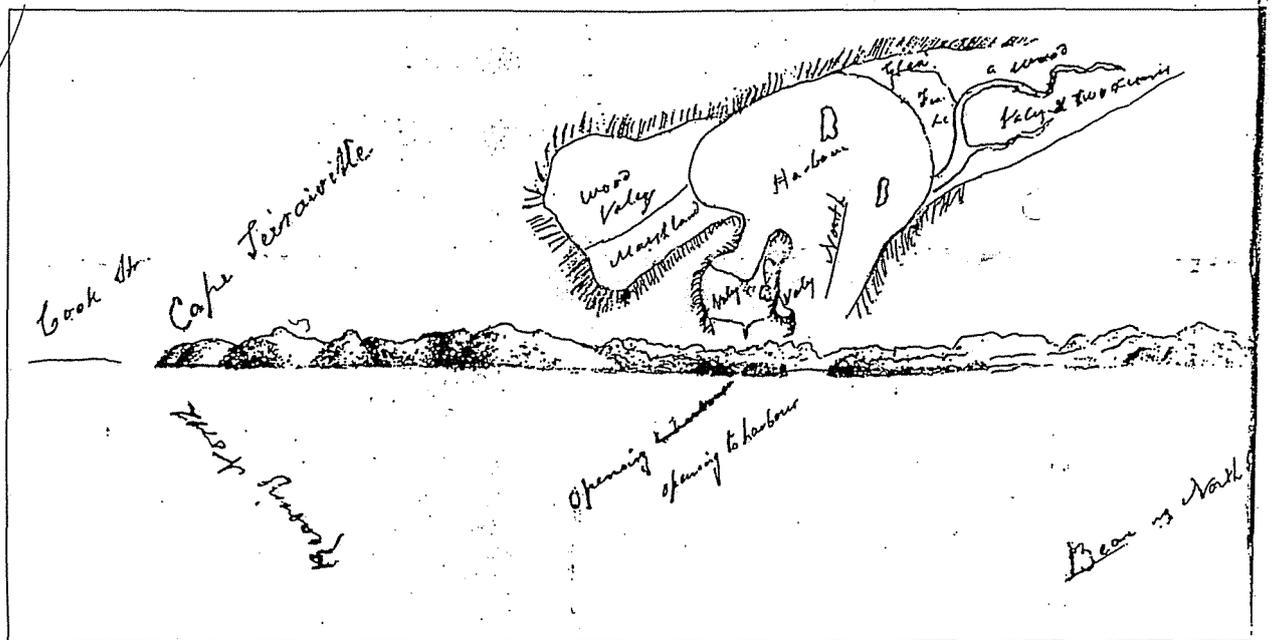


Figure 4.1 Sketch of Te Whanganui-a-Tara. Thomas Shepherd, 1826. ATL.

Shepherd's journal generally supports Foster concerning the harbour and possibilities for settlement:

25 May 1826

Entered Wanga Nui Harbour which has two islands near its centre, the one about a mile in circumference and the other about a quarter of a mile (its situation is good being so near Cook's Straits which gives an opening to the East and West Coasts). The harbour is about six miles inland from the sea and about four or five miles wide -- is an excellent harbour its depth of water from about 3-17 fathoms. Landed with Captain Herd on left hand side [probably Lambton Harbour]. Walked around the coast about two miles around the beach without seeing anything...came to a flat piece of land at the bottom of a hill where we found some huts and a

shallow bower of trees where we found a good spring water and plenty of cabbages...

We have seen a few of the Natives who yet had been ____? They brought us a quantity of crab fruit which was very good. They said they had got 4 or 5 baskets of flax and plenty of potatoes, but no hogs and we caught several sorts of fish which were good.

1 June 1826

I have this day completed the survey of the grounds which surround this Harbour in company with Captain Herd and Captain Bell. On the right-hand side [eastern harbour] is a ridge of hills of various heights from 300 to 1000 feet with a number of Bays and inlets at their feet. Their natural productions are a variety of Timber trees growing close together in particular places of beautiful appearance and various sizes and at other places an appearance of shrubs, tufts of wood flax grass and co. with naked rocks and barren ground. The greater part of a loamy nature at the head of the harbour on the right-hand side...

At the entrance of these rivers [Hutt Estuary] the natives have a few temporary huts where they are building a small canoe. Here we were kindly received and asked us to eat with him...

On the southwest side is a valley of large extent probably 500 acres.... This is the most preferable for a settlement as it is well sheltered by hills, a good beach for near two miles in front of it and the best part of this large harbour for ships to lay at anchor.²

This first pakeha account of Te Whanganui-a-Tara generally shows that the harbour was thinly settled in 1824 with the main settlements (undefended) at Pipitea and Waiwhetu/Petone. No pa sites were mentioned by Shepherd and the tribe in residence was not identified. Shepherd also presented a vision of Te Whanganui-a-Tara as good shelter for ships, close to trade routes, water, and not densely populated by the indigenous people or whalers. It was this vision that became the central focus of the New Zealand Association and its plans to create a new society (but still connected to Britain) in the South Pacific. As G.S. Evans told the 1838 Select Committee on the Islands of New Zealand in regard to the plans of the New Zealand Association:

² Journal of Thomas Shepherd, 1826. On micro-film, ATL.

Q. Why do you prefer beginning at Cook's Straits?

A. We think it is more central; and that there would be a very great Advantage in keeping away from the Missionary Settlements, as we are sorry to find there is a Degree of Jealousy. We would rather take up new Ground; and we think the most important Point for Commerce would be Cook's Straits; that will be the Route of the homeward-bound vessels from Australia.

Q. Are there good Harbours in the Straits?

A. There are Harbours of the first class; we have Charts of Four Harbours within Thirty Miles of each other, each of which is quite equal to the Cove of Cork.³

During the same inquiry, Captain R. Fitzroy warned against the implementation of the New Zealand Company reserve plan (which involved allocating a tenth of the sections to the chiefs) in regard to the loss of harbour frontage:

Q. Is there any thing you wish to add to the Evidence you have given to this Committee?

A. Yes; there are a few Remarks I should be glad to make with respect to the Reservation of Land. I was asked by your Lordships when I was last here, whether, by reserving a certain Portion of Land, the Natives, and especially the Chiefs, might be provided for. I did not then mention that the Natives live almost entirely upon the Sea Coast, and that the Part which is of most Use to them is that immediately round the Harbours, which is also the Part which would be of most Use to Settlers; therefore it appears to me that it might be difficult to preserve land for the Natives which would be of real Value to them.

Fitzroy goes on to explain that arrangements for access to the sea would be important in any colonisation plan:

The Natives of that Country are much upon the Water in their Out-of-door Pursuits, and they could not, without changing their habits very materially, retire far from the Sea Coast, which Peculiarity it would be necessary to consider in making any Arrangement to provide for them in the Event of Part of the Country being colonized.

Q. Should you suppose that any System of Colonization could be applied that could prevent the

³ Report on the Present State of the Islands of New Zealand, 1838, GBPP, Vol 1.

Access of the Natives to the Seas and the Bays?

A. An Englishman settling in that Country, with Ideas of Property learned in England, might think it very strange that a Tribe of Natives, or any Number of Natives, should cross his Property whenever and wherever they liked, and one of the first Points he would urge would be, that it was his Land, and that they must not trespass upon it.

Q. Down to Low-water Mark, probably?

A. I should suppose that would be the limit.⁴

Fitzroy had touched on an important failing of the New Zealand Association reserve scheme. The scheme assumed the chiefs would live upon the 110 sections as selected by the Association within the 1,100 town sections. Except for maybe a few sections, the reserves would be away from the coastline and within the planned town. In other words, the reserve scheme would alienate the indigenous people from their main source of subsistence; fish and other sea food. Fitzroy regard the inhabitants of New Zealand as “essentially fishermen” who used “very large fishing nets.”⁵ Without harbour frontage and provision for access, Maori would be alienated from the harbour on which they relied.⁶

In other words, the Crown was informed in 1838 of the foreseeable impact of the New Zealand Association’s reserve system in terms of the social consequences for the indigenous population. The reserve system would destroy the basic material and economic foundation of Maori society; access to the sea.

Fitzroy made this point again in 1846 when he commented that essentially the existence of the tribes was “dependent on free access to the sea shore.” Without large inland hinterlands (like Australia), the New Zealand Company’s reserve scheme was considered by Fitzroy to be totally

⁴ Ibid, p 335-7.

⁵ Ibid, p 336.

⁶ For a further discussion on the nature of reserves see, McClean, *Power/Knowledge and Space*, 1996.

unsuited to New Zealand.⁷

Despite these warnings, the New Zealand Association (which became the second New Zealand Company) was not stopped by the Crown, the details of its reserve system were not adjusted, and it proceeded to establish its first settlement at Te Whanganui-a-Tara.

The *Tory* left Plymouth on 12 May 1839 and sailed to the harbours of the Cook's Straits. Colonel Wakefield had instructions from the directors of the New Zealand Company to take possession of Port Nicholson:⁸

That harbour in Cook's Strait is the most valuable, which combines with ample security and convenience as a resort for ships, the nearest vicinity to, or the best natural means of communication with, the greatest extent of fertile territory. So far as we are at present informed, Port Nicholson appears superior to any other.⁹

While 'fertility of the soil' was a consideration in the selection of a settlement site, the Company's directors stressed the overriding importance of the need for a harbour that offered the best strategic location in terms of communication and transport. It seemed that taking possession of a 'harbour' was regarded as important as taking possession of the 'land:'

Mere fertility of soil, therefore, though not to be overlooked, is a far less important consideration than natural facilities of communication and transport. There is probably some one part of the islands better suited than any other to become the centre of their trade, or commercial metropolis, when they shall be more fully inhabited by Englishmen; and there must be many other spots peculiarly eligible for the sites of secondary towns. The shores of safe and commodious harbours, the sheltered embouchures for extensive rivers communicating with a fertile country, the immediate neighbourhood of powerful falls of water which might be expected to become the seats of manufactures, --- these are the situations in which it is most to be desired that you should

⁷ Robert Fitzroy, *Remarks on New Zealand in 1846*, W. H. White, London, 1846, p 55-56.

⁸ Instructions to Colonel Wakefield, May 1839, G.B.P.P,

⁹ *Ibid.*

make purchases of land.¹⁰

The foreshore of this strategic harbour was to receive special attention by Wakefield in order to secure a site for a 'successful' port:

And especially you should endeavour to make an extensive purchase on the shores of that harbour, which all things considered, shall appear to offer the greatest facilities as a general trading depot and port of export and import for all parts of the islands,--as a centre of commerce for collecting and exporting the produce of the islands, and for the reception and distribution of foreign goods. In making this selection, you will not forget that Cook's Strait forms part of the shortest route from the Australian Colonies to England, and that the best harbour in that channel must inevitably become the most frequented port of colonized New Zealand.¹¹

In the plans of the New Zealand Company, taking possession of Port Nicholson and its foreshore was the key to future construction of a regional Pacific trading and commerce centre. The control of a harbour with good trading links was of overriding importance and was of primary value to the Company. Within this plan, Maori interests were to be provided for in the reserve scheme which ignored Maori rights to the harbour and foreshore; values concerning tauranga waka, pa, access routes, and kai moana were ignored. This ignorance contained the seeds for much misunderstanding and conflict in later years.

Taking possession of the harbour would involve the simple, common law, transaction of rights; the deed of sale. This sale was to be achieved by visiting Entry (Kapiti) and Mana Islands and negotiating a sale with Nayti's tribe (and by using Nayti as an interpreter) "to which, as we are informed, both sides of Cook's Strait belong."¹²

¹⁰ Ibid

¹¹ Ibid

¹² Nayti or Ngatai belonged to Ngati Toa Rangatira tribe and lived in London with Wakefield for a time before coming back to New Zealand on the *Tory*.

Excluding the sailors (the workers), the crew of the *Tory* consisted of: Captain Edmund Chaffers, Colonel William Wakefield, Wakefield's nephew Edward Jerningham Wakefield, Doctor Ernest Dieffenbach (naturalist), Charles Heaphy (draughtsman), John Dorset (colonial surgeon), Nayti, Richard Lowry (chief mate) and George Robinson (surgeon). Both of the Wakefields, as well as Dieffenbach and Heaphy, left written accounts of the arrival of the *Tory* and the subsequent attempt to purchase Port Nicholson. As instructed by the directors of the New Zealand Company the *Tory* first visited the Queen Charlotte Sound area before proceeding to Port Nicholson. The visit to the Sounds was important in two main aspects; firstly it gave the Europeans their first experience of Maori tribal society and politics, mostly via the understandings of whaler Richard Barrett (who was married to Rangī, a high ranking woman of Te Atiawa) and others, and secondly the services of Barrett were acquired for the task of taking possession of Port Nicholson (rather than using Nayti). Some of the experiences recorded in the Sounds area included:

Colonel William Wakefield

These men are of the Nyati-inhatuigh tribe¹³, whose chief lives here, and is tributary to Raupero, the head of the Capiti tribes, who lives at Capiti or Entry Island. This part of the Sound, however, is owned by Hiko, Raupero's nephew, who inherited it from Tipahi, and who will probably succeed Raupero as chief of the Capiti tribes...

Neither Raupero nor Hiko possesses the power of absolute disposal of any portion of land in the Straits. Great confusion exists respecting vested rights. Many white men have established themselves amongst different tribes, and have occupied and cultivated land to any extent within their power...

So uncertain is the right of ownership in land (which has been usurped by tribe after tribe during a series of wars), that a body of settlers might locate themselves without purchase in almost any part of the shores of the Strait, unmolested by anybody.¹⁴

Edward Jerningham Wakefield

¹³ Nyati-inhatuigh tribe. This term could refer to Ngati Hinetuhi who lived in the Sounds.

¹⁴ Journal of W. Wakefield, Colonel Wakefield to the Sec of the Company, G.B.P.P

We also learnt from him [Barrett] how unsettled a state was the proprietorship of land about Cook's Strait. The country had been conquered about fourteen years before by the Kawhia tribe [the Ngatitōa]. They had almost exterminated the Muaupoko, Rangitane, and Ngatiapa, who were the original occupiers. And in the event, the spots now occupied were in dispute between the conquerors and the Ngatiawa, who followed nine years afterwards in their tracks...¹⁵

Just before we reached our destination for the night, we fell in with a party of the Rangitane, or tributary natives. These came to our assistance at the last severe rapid, and obeyed, in apparent fear and trembling, every direction of Charley and the other members of the victorious tribe. They had ascended hither from Anakoha Bay, in order to collect flax and work it into mats as part of their tribute to Rauparaha.¹⁶

Due to Colonel Wakefield's experience in the Sounds, the plan to alienate Port Nicholson was altered, Richard Barrett would be used (instead of Nayti) to achieve the purchase, which would be negotiated in the first instance with Te Atiawa living at the harbour. Te Rauparaha's and Hiko's interest (in Port Nicholson) would then be recognised in a later negotiation.

4.2 PORT NICHOLSON: HARBOUR AND TRIBAL POLITICS; THE VIEW FROM THE TORY.

The *Tory* arrived in Port Nicholson on Friday 20 September 1839. The two Wakefields, Heaphy and Dieffenbach all gave glowing accounts of the harbour:

Colonel Wakefield

On entering the harbour, a fine expanse of water presents itself to view. The distance from the reef and from the top of the harbour inside to the beach at the bottom of it, is about six miles, and three or four in width, over the whole of which is found anchorage ground; and in the deep bay, which forms the real harbour, perfect shelter from all winds...

An island, placed near midway down the harbour, is of considerable size, and offers itself as adapted for a fort

¹⁵ Wakefield, E.J. *Adventure in New Zealand, 1845*, Golden Press, 1971, p 14.

¹⁶ *Ibid*, p 20.

which would command the entrance and the whole extent between the hills which enclose Port Nicholson to the east and west.¹⁷

Edward Jerningham Wakefield

The harbour expanded as we advanced, two deep bays stretching to the south-west from the innermost end of the entering channel. From their western extremity the land tends round to a valley lying at the northern end of the harbour.¹⁸

Charles Heaphy

On entering Port Nicholson, one is struck with the grandeur of the view. The harbour resembles an inland lake rather than an arm of the sea, and in beauty, certainly far surpasses that of our English lakes. As we worked up to the anchorage, the noble expanse of water surrounded by a country of the most picturesque character, formed a scene of indescribable beauty.¹⁹

Ernest Dieffenbach

We beat up against the breeze, and entered the harbour of Port Nicholson. There is plenty of ship-room at the entrance, and the dangers which exist are all apparent. The soundings are between seventeen and eight and a half fathoms. After passing the inner heads a spacious basin appears.²⁰

Captain Chaffers

This port, which hitherto has been little known, and generally represented as a bar harbour, certainly ranks among one of the finest in the world; its entrance is easy, the dangers all shewing, and plenty of room to work in, with eleven fathoms in the narrowest part, and is capacious enough to contain numerous fleets.²¹

¹⁷ Journal of W. Wakefield, Colonel Wakefield to the Sec of the Company, G.B.P.P

¹⁸ Wakefield, E.J. 1845, p 26.

¹⁹ Heaphy, C. *Narrative of a Residence in New Zealand, 1842*, Smith, Elder; London, p 3.

²⁰ Diffenbach, E, 1843, p 66.

²¹ Captain Chaffer's Report, Port Nicholson, 8 October 1839, G.B.P.P

These accounts are very similar and basically provide a vision of a large and safe harbour, unoccupied and ready to provide for the needs of settlement and ships. This vision has been re-written in many other early settler journals; the harbour is beautiful, great for trade, safe, with fresh water, and available for the needs of settlement.²²

On arrival at Te Whanganui-a-Tara, Colonel Wakefield had decided that the tribes living around the harbour had right of possession and could, along with Te Rauparaha, sell the land to the Company:

Wharepori and the six tribes who now inhabit the whole district of Port Nicholson, were a little before that time driven out of their own country in the neighbourhood of Mount Egmont by the tribes about the Boiling Springs, and have the same right to this place as Raupero has to Entry Island, and as the Waikato people have to Kawia, from which they expelled the latter chief. The right is that of possession, sanctified in this case in the opinion of the natives of all these parts, by the formal cession of land by the natives who abandoned it, and constitutes the lawful power of use and disposal.²³

Young Edward Jerningham generally supported this view and recounted that Te Puni and Wharepouri of Te Atiawa arrived from Taranaki in 1834 and found the place “occupied by Ngatimutunga who determined to seek a new location.” Before the departure of Ngati Mutunga, “Pomare their head chief, formally ceded the place to Wharepouri in exchange for some clubs of green-stone or mere pounamu.”²⁴ The claim of Ngatiawa was also in-placed within the claim of Ngati Toa Rangatira: “the Kawhia tribe, indeed, laid a claim to this whole neighbourhood, also without exact boundaries. The Ngatiawa chiefs knew that they had a right to occupy any portion

²² See, Patterson, B.R. *Reading between the lines: People, Politics and the Conduct of Surveys in the Southern North Island, New Zealand, 1840-1876*, PhD thesis, Victoria University, 1984; p 157-169. Patterson divides the first impressions of the Port Nicholson landscape into six categories: the easily daunted, the romantics, the semi-romantics, the cautious optimists, the informed observers, and the Company boosters. Each group tended to organise and create a landscape according to their own vision or ideas.

²³ Journal of Colonel Wakefield, 20 Sept 1839, G.B.P.P

²⁴ Wakefield, E.J. 1842, p 26-27.

of the land near Port Nicholson, because Pomare had told them to do so.”²⁵

Dieffenbach conducted a survey of the Maori population and settlement at Te Whanganui-a-Tara and later published his findings in 1843. The harbour was thought to contain eight main settlements with a total population estimated at 800. The settlements and tribes were listed as:

Oario	Puketapu
Pitone	Ngamotu ²⁶
Nauranga	Ngamotu
Kaiwareware	Nga te toma
Pipitea	Nga te toma
Wahi-pirau	Puketapu
Waiwata	Nga te motunga
Taranaki	Nga te rua nui ²⁷

Tribal interests were divided into four main groups by Dieffenbach: Cafia (Ngati Toarangatira), Te Atiawa, Waikato and the ‘Nyatinhatuigh.’ Both Cafia and Nyatiawa were “united in war upon the Nyatinhatuigh who lived in the neighbourhood of Manganui Atera or Port Nicholson.”²⁸ It was clear to Dieffenbach that the tribes now living around the shores of the harbour were not the “ancient inhabitants of the place” and that Te Whanganui-a-Tara had been “wrested from the Nga te Kahohunu” by Nga te Motunga (Ngati Mutunga) who, except for a few individuals, had gone to the Chatham Islands.²⁹ Dieffenbach, in particular, comments on the continued presence of Ngati Kahungunu although they had “retired through the valley to the eastward” and argues that

²⁵ Wakefield, E.J. 1842, p 36.

²⁶ Pitone was regarded as the largest pa and was located at the western end of Pitone beach at the outlet of the Korokoro stream. This was also the beginning of the Pare-raho track over to Porirua. While the *Tory* was at Te Whanganui-a-Tara there was frequent communication between Porirua and Pitone by messages using the Pare-raho track. See, Journal of Colonel Wakefield, 18 and 22 Sept 1839, G.B.P.P.

²⁷ Dieffenbach, 1843, p 195.

²⁸ Report by Dieffenbach, 1839, G.B.P.P.

²⁹ Dieffenbach, 1843, p 93.

the death of Puakawa (who was found killed near Petone in February 1840) was done by Ngati Kahungunu who “were actuated by feelings of revenge and envy, which had been again called forth by the recent sale of Port Nicholson.”³⁰ Dieffenbach also used the services of a Ngati Kahungunu slave as a scout for his search in hunting Huia and believed that the Maori living around the shores of the harbour never went into the surrounding bush and hills for “fear of the Nga te Kahohunu, the former proprietors of the place, and their greatest enemies.”³¹

Charles Heaphy (writing in 1873) emphasised the conflict between Ngatiawa and the ‘Wairarapa’ people and the links between Te Atiawa and Ngati Toa Rangatira:

The Port Nicholson natives when the *Tory* arrived here, were a fine specimen of the Maori race. All the men were tried warriors, and had fought successively the Waikato, the Wanganui and the Wairarapa people. But they occupied rather an inconvenient corner of territory. As long as they could maintain peace with the Ngatitōa at Porirua and Kapiti, and the Ngatiraukawa of Otaki, they were tolerably safe; but in the event of serious hostilities in the direction of the West Coast, and such hostilities were threatening, the Wairarapa people, whom they had defeated but not subdued, would operate in their rear, making the position very critical. It was this feeling of insecurity which caused them so readily to sell land to Colonel Wakefield, and to hail the arrival of Europeans.³²

Later, during the Spain Commission, both Wakefield and Barrett gave their opinion on customary title in the Cook’s Straits area. This version basically stated that Ngatiawa’s interests at Te Whanganui-a-Tara were linked with Ngati Toarangatira:

Clarke: Do you not know that [Port Nicholson] has been for several years an undisturbed possession of the Ngatiawa Tribe?

Wakefield: I have always understood that the Kawia Chiefs allowed a portion of the Ngatiawa tribe to reside there.

³⁰ Dieffenbach, 1843, p 92.

³¹ Ibid, p 73.

³² Heaphy, 1873, p 37.

Q: Do you consider that the Ngatiawa tribe had a right to sell the land at Port Nicholson?

Wakefield: I do not think any purchase would have been valid one unless it had been confirmed by the Kawia tribe.³³

This logic was also extended to Queen Charlotte Sounds Chiefs [Te Atiawa] whose consent was also required to confirm the Port Nicholson sale.³⁴ Later, Wakefield focused on Te Hiko, as the nexus of both Ngati Toa Rangatira and Te Atiawa, in discussions concerning the names of the chiefs on both the Kapiti and Queen Charlotte Sound Deed. Te Hiko, Wakefield argued, “combines the influence of the Ngatiawa and Ngatitioa tribe” and “Hiko, the son of Tipehi, who is the most influential chief among the Ngatiawa tribe, as well as the Ngatitioa.”³⁵ Although Te Rauparaha was viewed by Wakefield as having ‘authority’ over all the lands described in the Kapiti Deed, this authority was also shared by the leaders of both Te Atiawa and Ngati Toa Rangatira.³⁶

Richard Barrett gave his evidence during February 1843 and generally supported Wakefield’s dual-tribal customary authority. As Moore states, “Barrett believed that Ngatiawa and Ngatitioa (and possibly Ngatiraukawa) claimed Port Nicholson and the places in the North by conquest and occupation, but the places in the South Island by occupation alone.”³⁷ This statement was modified later by Barrett who affirmed Ngati Mutunga’s role in conquering Port Nicholson with Te Atiawa.

³³ Ibid, p 223.

³⁴ Ibid, p 225.

³⁵ Ibid, p 229-230.

³⁶ Ibid, p 230.

³⁷ Ibid, p 352.

4.3 PURCHASING THE PORT

The details of the Port Nicholson purchase have been illustrated in detail in other reports,³⁸ therefore, the author will only outline a few relevant observations in regard to the harbour.

Colonel Wakefield arranged the sale of Port Nicholson with two Te Atiawa chiefs; Wharepouri and Te Puni. On the day of the purchase ritual, there was only one dissenter recorded by the two Wakefields; Puakawa of Te Atiawa. Puakawa warned that the 'land to the sea' would be parted with.³⁹ Despite Puakawa's opposition, the deed of purchase for Port Nicholson was signed on the *Tory* on 27 September 1839. The boundaries of the deed included the harbour and foreshore:⁴⁰

We the Chiefs whose names are signed to this Deed or Instrument, have this day sold and parted with all Right Title and interest in all the said Lands Tenements, Woods, Bays, Harbours, Rivers, Streams and Creeks as shall be hereafter described unto William Wakefield.

The boundaries of this title proceeded from the low water mark at Turakirae around the mountain range to the low water mark at Rimarapa. Within this area:

The whole of the Bay, Harbour, and District of Whanga Nui Atera, commonly called Port Nicholson situate on the North Eastern side of Cook's Straits in New Zealand...

Be it also known that the said Bay, Harbour and district of Whanganui a Tara or Port Nicholson does include the islands of Makaroa and the island of Matiu, which islands are both situate in the said Harbour of Whanganui a Tara or Port Nicholson.

In the days following this purchase, Wakefield was informed that Te Rauparaha was unhappy about the proceedings at Port Nicholson and the *Tory* proceeded to Kapiti and Queen Charlotte

³⁸ See, Moore, D. 1995 and Armstrong and Stirling, December 1992.

³⁹ Puakawa's use of the term 'land to the sea' could indicate an objection to the alienation of both; land and sea.

⁴⁰Port Nicholson Block, Wellington District, Deed, No.427. In Turton, *Maori Deeds of Old Private Land Purchases in New Zealand, 1815-1840*, George Didsbury. Government Printer.

Sound to arrange for Ngati Toa Rangatira chiefs to sign another Deed of Purchase in order to gain ratification of the Port Nicholson purchase. This ratification would ensure that “no future question shall arise as to the Company’s right to that territory, and to put an end to the opposition experienced from the subordinate Kafia chiefs in all parts of Cooks Straits.”⁴¹ The acknowledgement and cession of both Ngati Toa Rangatira and Te Atiawa interests in Te Whanganui-a-Tara was regarded by Wakefeild as a method of ensuring a secure title for the New Zealand Company.

The Kapiti Deed, signed on 25 October, also included ‘Bays, Harbours, Rivers’ and ‘Whanga Nui Atera or Port Nicholson’. It is also worth noting that both Deeds provided only for a ‘portion of the land’ to be reserved for the Chiefs. No reference was made to reserving parts of the foreshore or harbours.⁴²

After the ritual of the Deeds of Purchase was completed, Wakefield believed he had purchased Te Whanganui-a-Tara; the foreshore and the harbour itself.

Evidence presented to the Spain Commission some time after the purchase illustrated the complex nature of customary title of the harbour and land. For example, Te Kaeaea’s recital of Ngati Tama’s and Ngati Mutunga’s rohe after a question by Evans to name all the land in the district that belonged to Ngati Tama and Ngati Mutunga:

It begins at Paekaka, goes from thence to Papakawero, which belongs to Mare; from thence it goes to Nguranga, which is Mare’s to the interior - Ngaki’s further into the interior Ngatimutunga’s - Poki’s further inland Ngaki, then crosses the stream Waiwetū Ngatimutunga’s - Heretaunga belonging to Ngaki and Patukawenga and Hika Okiwi belonging to me and Ngaki Parangarahau belonging to Kainga, thence to Orongorongo belonging to Poki, the interior belonging to Patukawenga, from thence to Mukamukanui, belonging to myself; further is Warepapa, belonging to me; then Wairarapa, where the Ngaikahungunga are living: Warepouri

⁴¹ Journal of Colonel Wakefield, 14 October 1839, G.B.P.P

⁴² Second Purchase, New Zealand Company, No. 429. Ibid.

brought them from the Ngapuhi to be his slaves and to catch eels and feed pigs.⁴³

It remains unclear if a place referred to such as Okiwi also included use rights over the Okiwi Bay.

It is also apparent that use rights over parts of the harbour and foreshore were contested by the different groups living around Te Whanganui-a-Tara. One example of this contest for the scarce seafood resources was the dispute between Kopekā and Ngatitawitikura over shellfish gathering at Petone. Te Puni explained that “the Te Aro people (Kopekā) did curse us: They said the crawfish of Paikawakawa were Wharepouri and they called the stingrays of Haitaitai me. They eat crawfish and stingrays, and pierced them with spears.”⁴⁴ After making this curse, Pitone broke the canoes of Te Aro and Pipitea. Mahau also explained to the Court that Kopekā (of Te Aro) had pierced some fish so “all the fish might be tapued, and no one might fish.” As a result, Mahau “broke Te Aro’s canoes and burnt them.”⁴⁵ The result was Kopekā shifting to Te Aro and Ngatitawitikura stayed at Petone and Pipitea.

The importance of the waters of Te Whanganui-a-Tara is also indicated in understandings about what was actually sold to the New Zealand Company in 1839. A recurring theme throughout the hearings as given by the various chiefs was that payment had been given for the sea only, or for anchorage rights. Consider the following comments:

Wi Tako

Q: Then what did you consider that it was payment for?

A: Payment for the anchorage ground of the vessels.

⁴³Ibid, p 207-8. Moore provides a summary of the rohe/boundaries presented to the Court (see Table 1, Part 2 of 3).

⁴⁴ Ibid, p 253.

⁴⁵ Ibid, p 272.

A: [Barrett said] This European does not like the land; it is all his; the sea is good.⁴⁶

Te Kaeaea

Barrett explained: "Be not angry about your land. The payment is for the sea. The shore is good. The Europeans do not like the land. It is all mountains and stones"⁴⁷.

Wairarapa

Dicky Barrett said to me, to William and my son, The payment is for the sea. The Europeans do not like the shore the land is all mountains... Before I wrote my name I called out to Puni and Wharep - "The payment's for the sea at Korokoro, Waihanahina and Heretaunga." Puni said "No it is for Pepitea." I replied "No, not Pepitea, that place has been tapued by Davis."⁴⁸

This misunderstanding seems to have arisen when Richard Barrett was in a conversation with some chiefs:

Some natives came to me and the Colonel and asked if it was a good plan? I said yes it was a good Harbour. The natives said the land is bad, and I made mention 'Never mind the land [may be?] hilly as long as theirs is a good harbour.'⁴⁹

It is clear the New Zealand Company thought they had purchased the waters of Te Whanganui-a-Tara in 1839. This sale was carried out with a small number of Te Atiawa chiefs who claimed to have ownership over the harbour. Generally, the author views the sale as the formation of a new alliance between the New Zealand Company and Te Atiawa. Te Atiawa would gain the presence of Europeans which meant security and the Company gained the harbour.

⁴⁶ Ibid, p 193.

⁴⁷ Ibid, p 249.

⁴⁸ Ibid, p 260.

⁴⁹ Ibid, p 349

With Europeans as some amount of security, old alliances could be re-evaluated.

It did seem that many of the chiefs were aware that they were selling some sort of interest in the harbour when they signed the deed. This willingness to 'sell' the harbour probably reflected their sense of ownership over the waters; European ships could come but they had to pay for the right of anchorage.

4.4 PORT NICHOLSON: FISHING AND SURVEY

After arrival of the *Tory*, the Wakefields and others did recognise the fishing potential of the harbour, and expeditions to catch fish under Maori guidance were common. As Edward Jerningham Wakefield recalled:

Our fishing parties were generally directed to a snug cove about a mile south-east of the river's mouth, and we christened Lowry Bay, after the first mate, who used to be head fisherman, and direct our bungling exertions in the management of the seine. In this place we generally had a fine haul of plaice, sole, and several other kinds of fish. On the beach near Petone we obtained several immense hauls, whenever a shoal of kahawai came into that part of the bay. The natives catch large quantities of them with a bone hook at the end of a fish-shaped piece of wood, inlaid with the shell of the mutton-fish, of haliotis, which bears the lively colours and brilliancy of mother-of-pearl. This hook requires no bait, and a dozen of them are dragged along the water by a canoe which pulls at full speed through the shoal.⁵⁰

Charles Heaphy also remembered the Lowry Bay fishing spot and other details on kaimoana:

Our ship lay to the northward of Somes Island, and frequent trips were made of an early morning to haul the fishing net in Lowry Bay. Large trees there overhung the beach, making it a delightful camping place. We were always successful with the net, taking large quantities of kahawai, moki, and flounders. From this bay the course by boat into the Hutt river and up the branches into which it divides, was most interesting and picturesque. A pa stood at the mouth of the river on the eastern side, with large war canoes drawn up on the beach, while at the hill foot were tall stages,

⁵⁰ Wakefield, E.J. 1842, p 40.

from which hung great quantities of fish in the process of sun-drying. Here the natives came out and hailed the boat's crew to land, and ashore it was high festival. Their canoes had come in, the night before, from Island Bay, loaded with korua or crayfish, which were at the moment cooking in the hangi or Maori stone-oven, with pumpkins, cabbage, and potatoes.⁵¹

Captain Chaffers also recorded good fishing near Evans Bay:

Evans Bay runs in south, two miles and a quarter from off Point Halswell; the shores are bold on each side of the bay, with ten and eleven fathoms in the middle. Burnham Water is east, nearly a quarter of a mile from the head of the bay; it abounds in eels and wild ducks. There is a good sandy beach round the head of the bay for hawling the seine, the natives consider it the best place for fishing.⁵²

Chaffers concluded by stating that "different bays abound in fish of many sorts, particularly the flat fish, which are very large, and a haul with the seine would supply a ships company for the day."⁵³ Dieffenbach, meanwhile, reported that fish were in 'great abundance.'

flat-fish, soles, skates, the curious *Achirus marmoratus*, likewise a flatfish with a spotted skin; eels, conger eel and another which, when caught, emits a great quantity of slime, some other small cartilaginous fishes, resembling the shark (gurnards), herrings, and mackerels.⁵⁴

It seems, however, according to William Wakefield that the fishing was not so good without a local Maori as a guide:

The weather was very bad today and prevented communication with the shore by canoes. One of our boats was out fishing with the seine, but took very little. There are places in this port abounding in fish of the best quality, such as the snapper, sole, hake, haboaka and a species of

⁵¹ Heaphy, C. 1879, p 35.

⁵² Chaffer's Report, Port Nicholson. 8 October 1839, G.B.P.P.

⁵³ Ibid.

⁵⁴ Report of E. Dieffenbach, 1839, G.B.P.P.

salmon, which we have found excellent eating. The natives are experienced in the seasons and times of day and weather in which to employ themselves in fishing; and, hereafter, I doubt not that the fishing grounds will afford occupation and profit to many English boat's crews.⁵⁵

These accounts of fish resources were also accompanied by descriptions of the mouth of the Hutt River. As Heaphy and Dieffenbach recounted:

The river Eritonga forms at its outlet a broad basin in the sandy downs of the coast, and is joined, not far from its mouth, by three tributaries, the Okatu, Emotu, and Waiwatu. During flood tide it is easily entered by large boats, which can go up for about six miles, when the shallowness of the water, and the danger arising from the snags which are imbedded in its bottom, prevent their farther progress.⁵⁶

At the estuary of the river of Port Nicholson a species of the recurvirostra, of the size of a snipe, with a long flexible beak, is found in large flocks; its colour is a greyish-brown.⁵⁷

I remember, especially, the enormous number of waterfowl frequenting the shallows at the mouth of the Hutt River. Cormorants, ducks, teal, oyster-catchers, plovers, sand-pipers, curlew, and red-legged waders, were there in pairs, detachments and masses, and so tame that it was slaughter, rather than sport, to shoot them.⁵⁸

Colonel Wakefield also wandered up the Waiwhetu branch of the river and noted "the grove, through, which runs the stream, contains still finer trees than up the other branch, and teems with birds, which, with the ducks of all descriptions in the river, afford abundant sport."⁵⁹

⁵⁵ Journal of W. Wakefield, 28 Sept 1839.

⁵⁶ Dieffenbach, E. 1843, Vol 1, p 73. Dieffenbach also gives a detailed description of the forest within the Hutt river catchment.

⁵⁷ Report of E. Dieffenbach, 1839, G.B.P.P.

⁵⁸ Heaphy, C. 1879, p 33.

⁵⁹ Journal of W. Wakefield, 2 Oct 1839.

This evidence suggests that Wakefield viewed the harbour fisheries as under ownership of both Maori and paheka; a 'public right' for anybody to exploit. Maori interest and knowledge in fisheries was acknowledged and this knowledge would be harnessed by the New Zealand Company for the benefit of the new settlers.

While Colonel Wakefield was arranging for the purchase of Port Nicholson, Captain Chaffers conducted a hydrological survey of the harbour between 23-27 September 1839. This survey was achieved with the help of Te Whare, Te Puni's eldest son. (Figure 4.2 and Map 3.2, Document Bank, Vol III).⁶⁰

As in the tradition of the previous survey, Chaffers' survey re-emphasised European possession of Te Whanganui-a-Tara. The name 'Te Whanganui-a-Tara' was replaced by 'Port Nicholson' and all the significant headlands and bays were re-named by Colonel Wakefield, as recorded by Edward Jerningham Wakefield in his journal.⁶¹ Heretaunga became the Hutt, Matiu became Somes and so forth.

⁶⁰ Wakefield, E.J, 1842, p 44.

⁶¹ Ibid, p 44.

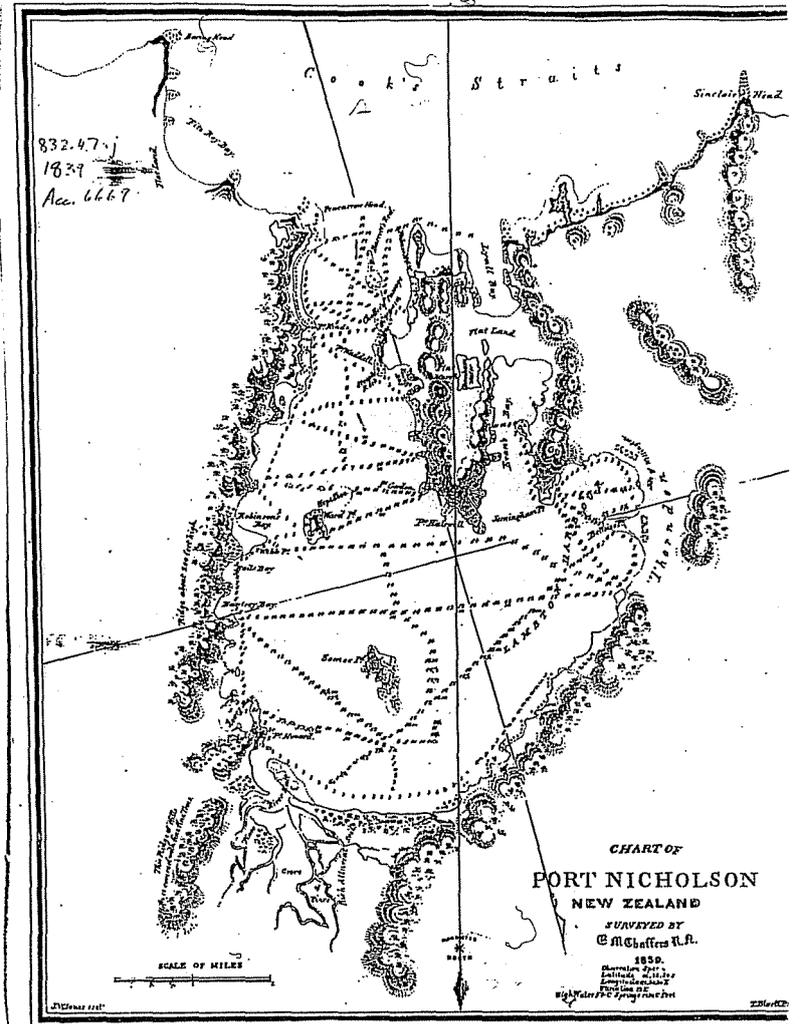


Figure 4.2 The original Chaffers' Chart of Port Nicholson has not survived. This version, a copy was published in Wellington, May 1841. Source, ATL

Chaffers' survey and Heaphy's drawings also provided the raw material for the New Zealand Company's propaganda machine. The chart arrived in London on 2 May 1840 and the Directors of the Company commissioned Thomas Allom to produce a painting of Port Nicholson. This was done and published in the *New Zealand Journal* on 2 October 1841. This well-known painting achieved a similar effect as the survey charts; a large expanse of water with lots of European ships present, a wide 'park-like' Hutt Valley, and a land largely empty of Maori occupation; a

'waste land' and sea ready for settlement. This view was displayed in the New Zealand Company officers where many settlers would have viewed 'their new home.' Port Nicholson as a place occupied and in possession by the New Zealand Company was created before the Deeds of Purchase were signed, especially with regard to renaming the landscape.

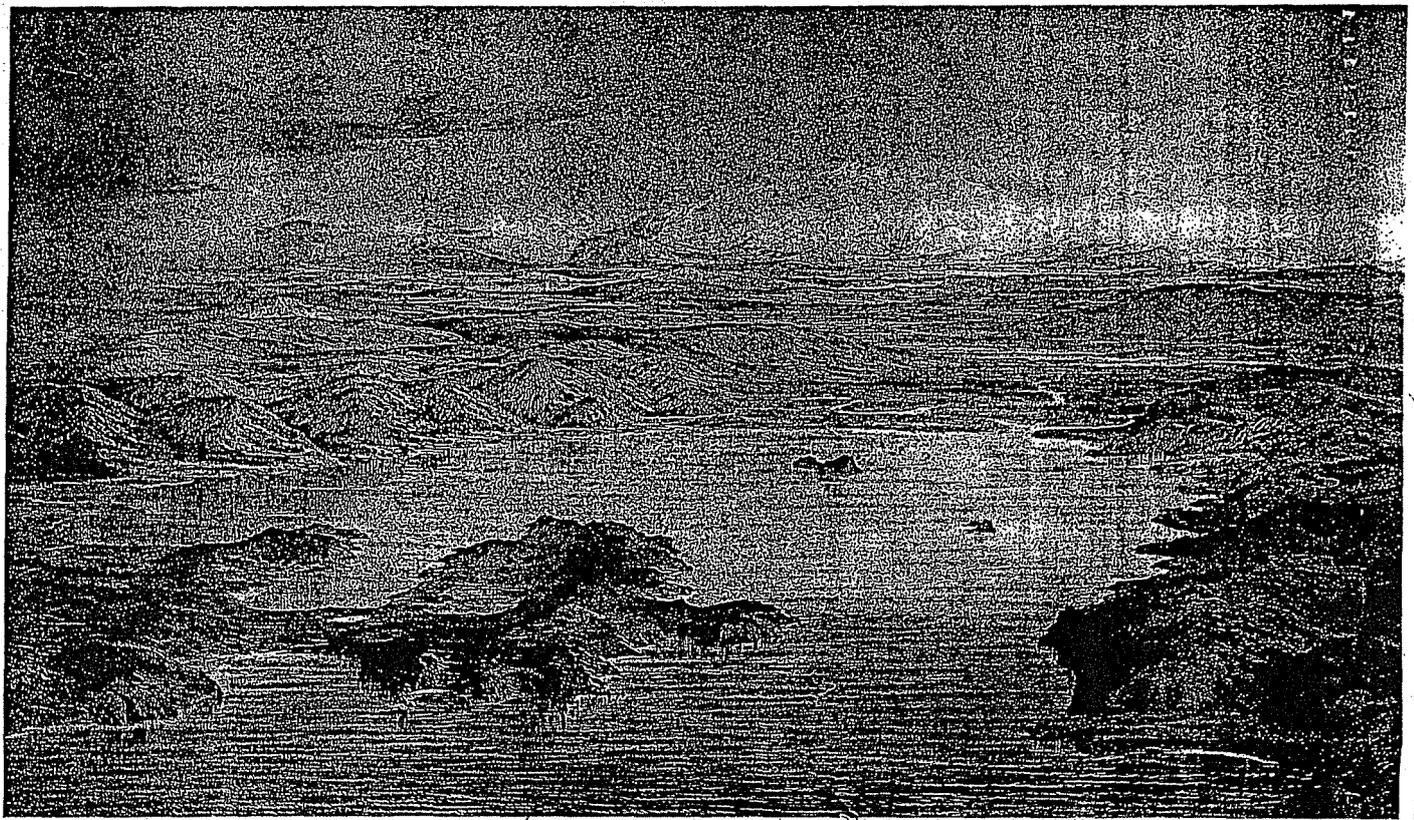


Fig 4.3 Birds-Eye view of Port Nicholson, Thomas Allom 1841

Source, Anderson.G, *Fresh about Cook Strait*, Methuen, 1984.

4.5 SETTLING IN AT PORT NICHOLSON

Soon after the *Tory* had departed for Northland, the *Cuba* arrived at Te Whanganui-a-Tara carrying the survey party. The Surveyor-General of the New Zealand Company, William Mein Smith, was instructed to lay out a grandiose town consisting of a network of rectangularly aligned streets and sections, containing defined retail, commercial, and residential sectors and also generous public reserves. The town was to have no less than 1100 one acre town sections.

The town planning paradigm which influenced Smith and the other surveyors, hinged on the key idea of concentrated settlement as outlined in Edward Gibbon Wakefield's fictional narrative; *A Letter from Sydney*.⁶² Wakefield argued that if settlers were to live in a land that was deemed to be too large for their needs, the product would be "uncouth and ignorant" generations where the boundary between the settler and the savage would break down; "our children will be a race of unmixed barbarians, more ungovernable than even the white savages of Kentucky."⁶³ Henceforth any settler colonies which were founded in boundless regions or 'waste lands' would breed revolutionary aspirations and their inhabitants would degrade to become half-barbarous.

Wakefield's solution was to prevent the settlers from spreading by ensuring "CONCENTRATION [which] would produce what never did and never can exist without it -- CIVILIZATION."⁶⁴ Systematic colonization aimed to produce concentration along the theme of Thomas Moore's *Utopia*; planned urban centres linked by communication lines within fertile countryside.⁶⁵ These themes came together in Wakefield's package scheme. There was to be a 'town' separated from a 'country' using a wall or green belt. Like the town, the country would be planned and organised into country sections in which "the settlers would work in the fields

⁶²Wakefield, E.J. 'A Letter from Sydney' [1829] in Prichard Lloyd, M.F. *The Collected Works of Edward Gibbon Wakefield*, Collins:London, 1968.

⁶³ Wakefield, 'A Letter from Sydney' p 114-124.

⁶⁴ Ibid, p 134.

⁶⁵ David Hamer calls this a form of 'urban imperialism'; Hamer, D. *New Towns in the New World*, Columbia University Press, 1990, p 253.

during the day and seek shelter in the village at night.”⁶⁶ Within these boundaries of town and country, concentration would occur and civilization flourish.

It is the author’s view that both Shepherd (in 1826) and Wakefield (in 1839) selected Lambton Harbour as the site for the new town not only for the harbour, but as a site that would promote concentrated settlement within the mountain boundaries.

Despite Colonel Wakefield’s selection of Thorndon/Te Aro as the site of the town, Smith choose the Hutt Valley as the only possible site that could contain the Company’s ‘vision’ and began the survey in January 1840, just as the first boat load of settlers began to arrive at Petone beach.⁶⁷ With the first settlers encamped on the beach and only a partial outline of the town (Britannia) completed, the Hutt Valley was abandoned in April 1840 after a small flood of the river. Smith attempted to create the grandiose 1100 one acre town sections within the more rugged Lambton Harbour area. As Brad Patterson notes:

With the clamour from irritated purchasers growing in intensity, the town was crammed on to the limited lands available, and, despite misgivings on the part of the survey head, many of the previously accepted design features had to be dispensed with. It was the first major concession to pragmatism, and clear evidence that the expeditious fulfilment of contracts to supply land was considered to be of overriding importance.⁶⁸

Two important implications for the future development of the town was the loss of public reserves and the creation of private sections along the Te Aro foreshore where the sections were surveyed down to the low water mark. These private sections essentially created a private beach whereas other part of the foreshore were marked out as a roadway (Lambton Quay). Between Petone and the new town site at Lambton there was a track which was difficult to negotiate at high tide and most travel between the two sites was done by boat.

⁶⁶ Ibid, p 233.

⁶⁷ Before Smith’s arrival, the Hutt Valley was considered a place for cultivation and agriculture.

⁶⁸ Patterson, B. 1984, p 31.

It was within the network of the 1100 town selections that the native reserves were selected by lot in London. This selection was later modified by Mein-Smith in regard to the four pa that were encompassed within the boundaries of the new town: Te Aro, Kumutoto, Pipitea and Tiakiwai, of which all settlements had water frontage but separated from the sea by a Quay. In the end only four reserves selected had water frontage and those reserves were adjacent to both Kumutoto and Pipitea along Lambton and Thorndon Quays. Te Aro and Tiakiwai was not selected as reserves and presumed to be sections available for settlement (Figure 4.3a).

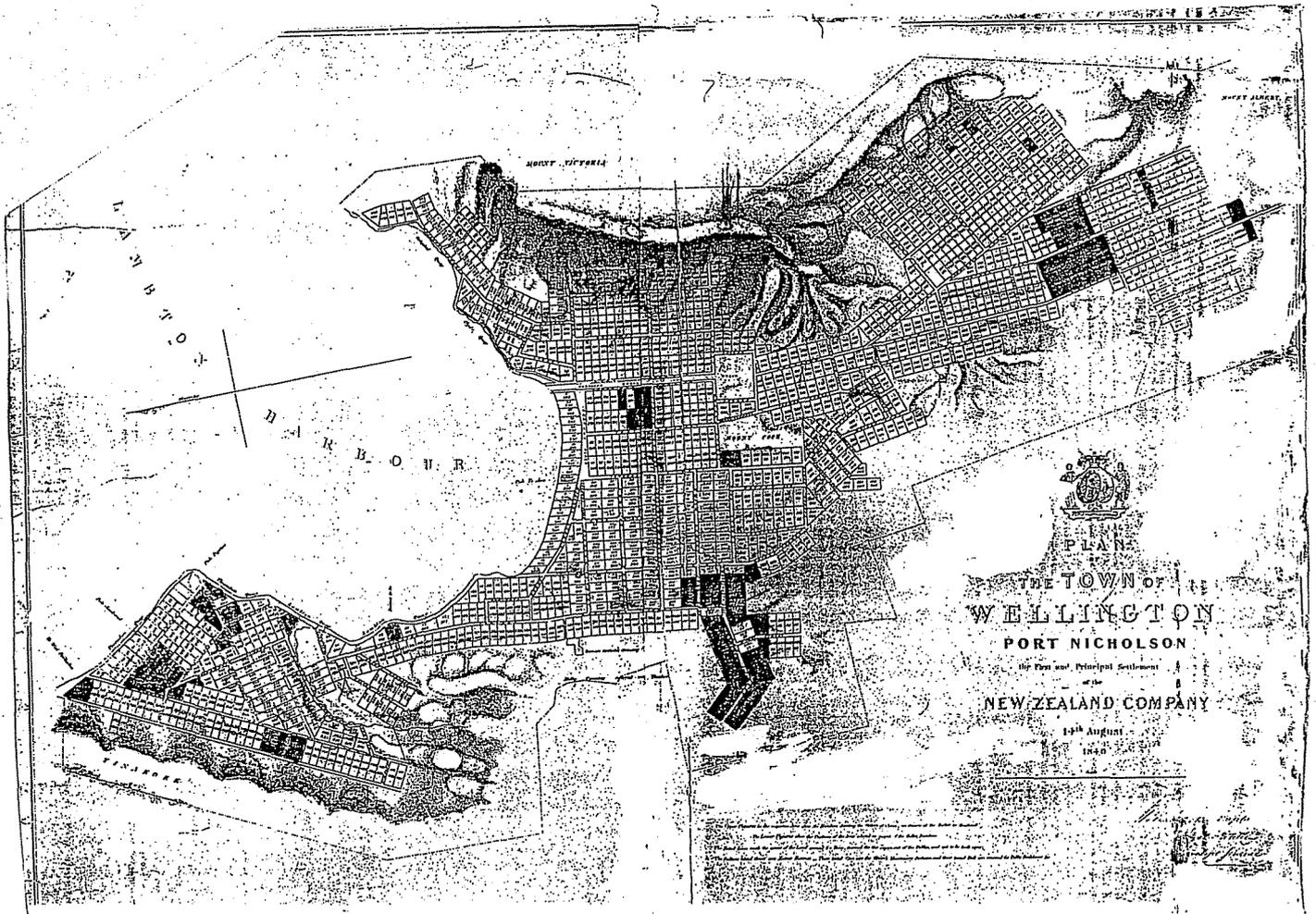


Figure 4.3a. Plan of the Town of Wellington. W.M.Smith, 1840.

Meanwhile settlers (and others) arriving at Te Whanganui-a-Tara, like those on the *Tory*, also recorded their first impressions of the harbour and foreshore. Johnny Knocks, who lived on Mana Island between 1832 and 1840, arrived in the harbour on the *Tory* when it returned from the Hokianga in February 1840. Knocks recalls walking around the harbour and finding bush growing down to the high water mark in all places except Pipitea Point.⁶⁹ James Crawford also arrived at Te Whanganui-a-Tara via Mana Island after landing there in a storm on coming from Sydney in 1839. From Mana Island, Crawford crossed to Porirua and walked over the Pare-raho track to Petone just after the *Tory* had departed for Kapiti. Crawford described the landscape around Miramar in 1873 noting extensive swamps and a lake (called Burhham Water).⁷⁰ Maxwell also recalled that the Lambton area was covered with bush that reached down to the waters edge, except at Te Aro and Island Bay. At Te Aro meanwhile was a huge swamp (called Waitangi) where, according to Ward, inanga and eels could be easily caught.⁷¹ Most settler accounts, however, focus on the harbour and land in relation to the requirements of settlement and pay little attention to ignore Maori use and occupation of the foreshore and sea. For example, Mr John Pierce who arrived on the *Duke of Roxburgh* in April 1840:

Today we go to Thorndon. Thorndon Bay is a delightful place; it is 8 miles across the harbour and forms a complete amphitheatre bounded on three sides by the sea, good anchorage and safe shelter for any number of ships. Excellent water, good clay, and it is said, plenty of coal, iron and limestone. Vegetation seems constantly to be going on. In our garden parsley grows in abundance down nearly to low water mark.⁷²

Some of the settlers did mention fishing possibilities. Joseph Greenwood arrived on the *Lady Lugent* in 1841, and noted the popular fishing spots at Lowry Bay.⁷³ Thomas Kimpton arrived

⁶⁹ Knocks, J.A. *Reminiscences of early Wellington and Mana Island*, ms papers 4385, ATL.

⁷⁰ Crawford, J.C. 'Notes on Miramar Peninsula' *TINZ* Vol 5, 1873; Ward, Early Wellington, Research Notes, qms 2120, ATL.

⁷¹ Quoted in Dunbar, 1994, p 61.

⁷² Quoted in Ward, L. *Early Wellington*, Witcombe and Tombs Ltd, 1928, p 45.

⁷³ Diary of Joseph Greenwood, 1841-47, ms papers 4882, ATL.

on 7 March 1840 and wrote home saying: "Port Nicholson is a fine large harbour 30 miles round with two islands near the middle of it and plenty of fish in it of all kinds."⁷⁴ Hall arrived at Port Nicholson in May 1842 and recalled fishing around the Hutt River mouth where he caught Kahawai and speared flounders with apparent ease.⁷⁵ Ensign Best also gave a glowing account of the harbour's fisheries in his journal entry of 5 June 1840:

Port Nicholson abounds with fish the principal are the kawa kawa, Snapper, Harbouker, Barracouta, a large red fish name unknown and some smaller kinds no doubt on further acquaintance I shall find many more I have not seen any oysters but there are plenty of Cockles, Muscles, and the fish which inhabit Venus Ear [paua]. In the summer the Natives get Craw Fish. Whales occasionally come in and Porpoises in great numbers.⁷⁶

Isaac Featherston, in his account of being on board the *Olympus*, gives an account of local Maori acting as pilots when ships were in difficulty when entering the harbour:

In passing the entrance we had the satisfaction of seeing a boat pull off from the shore and make towards us, in a short time it came up and six Natives were soon upon the Quarter Deck shaking hands with us all. The Chief acted as our pilot and the entrance which appeared so terrible, proved on of the finest entrances to certainly one of the more magnificent harbours in the World.⁷⁷

In the late 1840s Maori were still acting as pilots and the Colonial Secretary was encouraging the Harbour Master to employ Maori pilots.⁷⁸ The continued use of Maori as pilots is significant and indicates that the tribes may have retained a degree of control over the harbour.

⁷⁴ Letter of T. Kimpton, 11 April 1841, ms papers 2287, ATL.

⁷⁵ A.H. Hall, Echos from the past, ms papers 676, ATL.

⁷⁶ Taylor, N. M (ed) *Journal of Ensign Best*, Owen, Government Printer, 1966, p 230.

⁷⁷ Letter from Isaac Earl Featherston, qms 0719, ATL.

⁷⁸ Col Sec/Harbour Master, 5 July 1849, NM 10/9, NA.

4.6 CROWN INTERVENTION

With the arrival of the settlers, Wakefield organised a council to govern the affairs of the new colony under the authority of the sovereign Chiefs of Whanganui- a-Tara. This council undertook the responsibility for the administration of the newly acquired harbour territory (whose boundary was defined by Chaffers' survey); officers were appointed and public works planned. Chaffers was appointed harbour master and Somes Island (Matiu) was selected as a site for powder magazine and gun emplacement.⁷⁹ Requests were also made to the British Government for funding of a lighthouse on Pencarrow Head.⁸⁰

The first public work undertaken by Smith was the building of a small wharf on the Pitone foreshore in February 1840. Later (and deemed to be the more important) the New Zealand Company began the construction of a road from Thorndon to Petone. Work started on the road in early May 1840 by A. McEwen.⁸¹

While the New Zealand Company settlers and surveyors were busy marking out the new town of Wellington on the shores of Te Whanganui-a-Tara, the Crown decided to enter the scene and bring New Zealand formally into the British Empire. This annexation was achieved between 14 January and 21 May 1840 by a series of Proclamations and the signing of the Treaty of Waitangi (the Treaty of Waitangi was later signed by both Te Atiawa and Ngati Toa Rangatira chiefs in April 1840).⁸² Sovereignty was accompanied by the New Zealand Land Claims Act of 1840, passed in Sydney, which provided for the establishment of Land Claims Commissioners who would examine and report upon claims for grants of land purchased before 1840, upon the

⁷⁹Wakefield, E.J, p 92. Also, Wards, I. *The Shadow of the Land*, Department of Internal Affairs, 1968, p 50. Later Somes Island was leased for sheep and cattle grazing by Swainson in June 1841 (Swainson/Wakefield, 26 June 1841, 108/1 NZC, NA).

⁸⁰ Somes/Stanley, 5 November 1841, G.B.P.P, 1835-42.

⁸¹ Wakefield/Somes, 3 May 1840, 108/1 NZC, NA.

⁸² As quoted in Wards, Hobson told Major Bunbury to "pay particular attention to Te Rauparaha whom Hobson believed exercised absolute authority over the southern districts and whose adherence to the Treaty would secure to the Crown undisputed sovereignty of that area," Wards, p 47.

referral of the Governor.

Common Law rights to foreshore

As discussed by Duncan Moore,⁸³ the Land Claims Commission was an *Inquest of Office* established to determine the Crown's right to possession by a matter of record as "the Crown could not acquire possession, and therefore, could not take an estate or interest in land, otherwise than by a matter of record."⁸⁴ A 'matter of record' would include "a memorial of a court of record or Parliament, or by letters patent, which being under the Great Seal."⁸⁵ English common law presumes that the foreshore, tidal rivers, and coastal waters are owned by the Crown. This presumption is based on the idea that the sea is unoccupied space:

Except where a pier, retaining wall, or the like is built, they cannot be occupied in the same way as other lands. More commonly they are unoccupied, and probably always have been, and are therefore presumed to have remained in the original occupation of the Crown, which extends to all waste lands that have never been held by subjects. Furthermore, there are important public rights of navigation and fishing over tidal and coastal waters that need to be protected. Consequently the ownership of the Crown is for the benefit of the subject.⁸⁶

On this assumption, common law allows possession by the Crown without a matter of record or *Inquest of Office*:

In the case of the foreshore and sea-bed the Crown is presumed to have been in possession all along. Accordingly no record of the Crown's title is necessary.

It has therefore never been necessary for the Crown to initiate an inquest of office to establish its original title to the foreshore or sea-bed. It could simply lay an information of intrusion, thereby

⁸³ Moore, *Origin of the Crown's Demesne*, p 2-51.

⁸⁴ McNeil, K. *Common Law Aboriginal Title*, Clarendon Press, 1989, p 95.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*, p 104.

casting the burden on the defendant to prove either a Crown grant or continuous occupation of sufficient duration for a grant to be presumed or a title by limitation acquired.⁸⁷

This position is the basis for the Crown's assumption of ownership over Te Whanganui-a-Tara since 1840. The harbour was acquired when sovereignty was proclaimed.

Law based on aboriginal title and customary usage questions this assumption. As Richard Boast has argued, aboriginal title exists until it is extinguished by a clear and deliberate executive or legislative action by "means of a deliberate Act authorised by law and unambiguously directed towards that end."⁸⁸ Customary or aboriginal title is said to exist over both the land and sea until extinguished by the Crown using a 'matter of record'.

Land Claims Commission and the Crown comes to Port Nicholson

On the assumption of Crown ownership of the foreshore and sea, the 1840 Land Claims Act prohibited the Commissioners from granting any "headland, promontory, bay, or island that may hereafter be required for any purpose of defence, or for the site of any town or village reserve,... or any land situate on the sea-shore within 100 feet of high-water mark." This ruling established the Land Claims Commission as a land inquiry; inquiry over occupation or ownership of the foreshore and sea was not to be permitted as this space was deemed to be already Crown-owned by right of sovereignty. With this focus on determining land rights, the 1840 Act provided the mechanism for achieving three goals:

1. to ascertain which lands were 'essential' to Maori and ought to be excepted from the awards to colonists, as well as deemed inalienable for the future (even to the Crown);
2. to recommend what lands should be granted to the colonists; and

⁸⁷ Ibid, p 104-5

⁸⁸ Boast, R. *The Foreshore*, Rangahaua Whanui National Theme Q, Waitangi Tribunal, 1996, p 28.

3. to identify which lands were 'rightfully occupied' by which Maori -- in order to produce the official record of the Crown's title to the lands *not* rightfully occupied by Maori (either due to lack of occupation, or the lack of right to occupation -- either due to alienation, or within custom itself).⁸⁹

Before the Land Claims Commission began its sittings at Te Whanganui-a-Tara (in the person of William Spain),⁹⁰ the Crown was determined to bring the Company's settlement under its authority. The first act of authority was in the form of Colonial Secretary Shortland's visit to the harbour in August 1840. After disbanding the 'treasonous' settler council, Shortland attempted to deal with the issue of Te Aro where a Company settler had tried to move onto his allotment and was resisted by Te Aro Maori. Muturoa had stated that he had not sold his land at Te Aro or Pipitea to the New Zealand Company and "would not give it up." Shortland's solution was in a deed which stated that Te Aro Maori would "assign over and yield to...Her Majesty Queen Victoria, all our right, title and interest in certain lands situate on a bay in the harbour of Port Nicholson."⁹¹

Importantly in regard to the foreshore and sea, the New Zealand Company gave up its claim over the harbour in the November 1840 agreement with Lord Russell. This agreement guaranteed a grant of land to the Company in exchange for the disclaiming of other interests which included disclaiming any title to lands except those granted by the Crown.⁹² Clause 9 granted to the Company lands subject "to all laws having for their objects the opening of public roads, wharves, quays, or other such like works, and reserving to the public at large free access to, and the free

⁸⁹ Moore, p 50.

⁹⁰ William Spain did not arrive in Port Nicholson until May 1842. As discussed by Moore, this inquiry had its purpose to determine the *colonists'* title not *Native title* and for this goal Maori were interviewed as witnesses to answer the question on "determining who could sell land and whether they had done so to the Company." Despite this restricted focus, the inquiry did expose Maori understandings of the Port Nicholson purchase that were not apparent to those on aboard the *Tory* (The author has discussed evidence of the Commission above).

⁹¹ *Ibid*, p 64-65.

⁹² Recognising the Company's title to lands above the high water mark was also contained in Hobson's 1841 Proclamation (which was later withdrawn). The Proclamation stated that the Crown would issue a title to the New Zealand Company for all lands outlined in the Schedule except for lands below the high-water mark and public reserves; Proclamation, 3 September 1841, G.B.P.P, 1844.

use of, all sea-ports, landing places, and navigable rivers.”⁹³ In other words, the November 1840 agreement made the original Port Nicholson deed (which included the harbour) null and void and the Company would only receive a grant of land (above high tide mark) as derived from the Crown.

It was not until August 1841 that Governor Hobson visited Wellington along with the two Clarkes (Senior and Junior Aboriginal Protectors) and his Surveyor-General, Felton Mathew. The Protectors and Mathew were given the task to “mark out the public reserves considered necessary for Government purposes...and to supervise the native reserves and to inquire into native complaints.”⁹⁴ With eyes on the Te Aro foreshore, Hobson tried to shift the Te Aro Maori community to land-locked native reserves and buy the kainga and two private sections as a site for a customs house and public wharf. This attempt failed when Te Aro Maori refused to move.⁹⁵ In his report after the visit, the Surveyor-General provides a comprehensive evaluation of the town of Wellington, its harbour, and need for reclamations to provide for public reserves and communication links:

The town itself is advantageously situated around the shores of that indentation of the port which is distinguished by the name of Lambton Harbour, and presents a very eligible site for a town of moderate extent. There is a beautiful flat, known as Thorndon Flat, having an area of probably 50 acres, forming the northern portion of the town; and at the head of the bay there is an extent of about 300 or 400 acres of level and undulating land, highly favourable for the purpose for which it is intended...

On that part of the shore which intervenes between these two flats, the spurs from the mountain ranges close in upon the harbour, leaving a space barely sufficient for the erection of houses, and for a carriageway between the base of the hills and the water’s edge...

The water, however, in this part of the harbour is very shallow, and at a comparatively trifling

⁹³ Somes/Stanley, 29 July 1842, G.B.P.P, 1844.

⁹⁴ Ibid, p 87.

⁹⁵ Ibid, p 88-89.

expense a considerable extent of land may be recovered, which at a future time will become highly valuable as a site for a custom-house and other public buildings, and for commercial purposes.⁹⁶

This was the first official recognition by the Crown that reclamations would be planned and carried out for use of public and private organisations. While arguing that the topography required reclamation, Felton also regarded the size of the one acre sections as too large. Smaller sections would have accommodated a greater number of inhabitants in a smaller area “instead of being scattered along a beach of two miles in extent.”⁹⁷ Regarding public reserves, Felton observed:

In examining the reserves left by the New Zealand Company, it becomes evident the no consideration has been given to the various public purposes for which these reserves may at a future time be required, but that such portions only have been retained as, from having a greater or less area than an acre, having not been found suitable for appropriation among the shareholders; the reserves are, as a necessary consequence, insufficient in number, some of them very limited in extent.

Due to this ‘poor planning’ Felton made arrangements for the appropriation of public reserves which involved the selection of suitable sites along the foreshore. Sites selected, which were occupied by pa, included Thorndon Flat (for a market place) and Te Aro (for a Custom House). As the Maori community at Te Aro were unwilling to vacate their pa, Felton planned for a Custom House on reclaimed land:

Custom-house: This spot was originally intended for a public landing place, and being situated in what constitutes at present the most commercial part of the town, it would have appeared a desirable situation also for a custom house; but it is occupied by a native pah, which the natives manifest the most decided determination to retain in their own hands. The best situation ultimately for a custom house will be that previously adverted to, between Pipitea Pah and Te

⁹⁶ Surveyor-General Report, 20 October 1841, G.B.P.P, 1844.

⁹⁷ Ibid.

Aro, and in front of Lambton Quay, which must be recovered from the water.⁹⁸

After sorting out these internal town matters, Felton commented on the problem of Wellington's position "entirely surrounded by lofty hills, in most parts thickly timbered and very difficult of access." The main communication route north over to Porirua⁹⁹ was considered very rugged with a "sudden and precipitous rise from the very shores of the harbour." This mountain barrier "presented a difficulty which cannot be surmounted without a very considerable expenditure of labour and money." The communication route to Petone was easier and the Company was building a road along the foreshore as Felton noted:

During my stay at Port Nicholson there were from 50 to 70 men employed; the road, where completed, is about 12 feet wide; there is a good deal of side cutting, the rocks being very steep, close to the waters edge; there are several small bridges erected, and when finished it will afford a very desirable and excellent means of communication between the town and the settlements on the Hutt.¹⁰⁰

During the visit of Hobson and his team to Port Nicholson, the Crown decided that reclamations would be required of the harbour bed to provide for public reserves and other uses. This reclamation would be carried out on the assumption that the bed of the harbour was owned by the Crown. Hobson proclaimed reserves for public purposes in the Gazette which included public reserves in the town (including Pipitea, Kumutoto and Te Aro pa), the town belt and promontories around the harbour (including Points Jerningham, Halswell, Waddell, Dorset and Pencarrow).¹⁰¹ The roads described by Felton were also approved and were soon to be vested in

⁹⁸ Ibid

⁹⁹ The New Zealand Company had began the construction of the Porirua road in mid-1841. Instead of following the Pare-raho track, which began at Korokoro, the new road began at Kaiwharawhara and went over to Johnsonville before dropping down into the Porirua valley.

¹⁰⁰ Surveyor-General's Report, 1841.

¹⁰¹ New Zealand Gazette, 16 October 1841. In September 1841 Hobson also issued a Proclamation that confirmed the title of the New Zealand Company all lands above the high water mark. After objections from Wakefield this Proclamation was withdrawn and replaced with a letter (dated 6 September 1841) promising a Crown Grant on all lands that have been validly purchased from the Natives. The reference to lands above the high water

the Crown along with the foreshore, under the 1844 Municipal Corporations Ordinance. Somes Island (Matiu) was also labelled a public reserve and leased out by Wakefield with the permission of Hobson for an indefinite period. The settlers had also requested a lighthouse to be placed at the entrance of the harbour under the control of the Company, and funded by a fee levied on ships entering the port.¹⁰²

All of these appropriations and plans for reclamations were planned before the Land Claims Commissioner had began his inquiry into the Port Nicholson purchase.

4.7 FORESHORE RIGHTS AND PRIVATE WHARVES

Since the extinguishment of the self-styled colonists' council in 1840, the Company settlers pushed the Governor for some form of local government structure. The result of this lobbying was the Municipal Corporations Bill. The Attorney-General considered that this Bill was a practical approach to government where settlers would manage their own local affairs such as roads, navigation and port maintenance.¹⁰³ Settlers holding sections along the Te Aro foreshore were, however, unhappy with the Bill. In February 1842 they sent a memorial to the Directors of the New Zealand Company stating that Schedule D of the Bill, which defined Wellington as sections above the high water mark, would alienate a section of their lands and their rights of wharfage. Unlike the rest of the town's foreshore, which was boarded by a Quay (an expression of the belief that the foreshore is a public domain), these Te Aro sections had been surveyed down to the low water mark. During Hobson's visit in 1841 the seaward boundary of these sections was affirmed on the condition that a private road could be opened to the public above the high water mark. Wakefield commented on the memorial:

The acres of land as laid down by Captain Smith do not run into the water further than low water

mark had been dropped in the letter; Hobson/Wakefield 6 September 1841, G.B.P.P, 1844.

¹⁰² Somes/Stanley, 5 November 1841, G.B.P.P, 1844.

¹⁰³ Bretts, G.M. *Bretts on Wellington*, A.H and A.W Reed, Victoria University, 1970, p 25.

mark and that consequently not so much as a tenth of them would be taken away by the regulations contemplated in the Municipal Bill. At any rate it was never my intention when I directed the Surveyor-General to allot the water frontage to the land holders they should recover from the sea further than the limits of the respective areas. Neither did I contemplate their having less than an acre each...

Governor Hobson's view of the question was a fair one, that it would be an encouragement to the holders to build wharves if they were allowed to occupy the frontage but that the convenience of the public required that a road (to be liable to be closed at night) should run at the back of the wharfs...

In case the space ceded to the Corporation, they would probably grant long leases to the present holders, but should they be determined to build wharfs in front of this land which is improbable as there are many better places, they could do so beyond low water mark.¹⁰⁴

Back in London, Somes took up the Te Aro issue with Lord Stanley and questioned the Crown's right of foreshore ownership:

It would seem clear that the land between high and low water mark is no more the property of the Crown than any other land in New Zealand which has been acquired from the aboriginal inhabitants, and appropriated for sale to colonists; and that the same authority which could alienate the latter is equally empowered to dispose of the former.¹⁰⁵

Eventually the Bill that was passed in January 1842 had dropped Schedule D and provided for the election of a Council who would have certain powers including control of the harbour:

6. Whenever the limits of any borough shall extend to or comprise any harbour on the sea-shore, or any navigable river, the Council shall also have power to construct and maintain all such docks, basins, locks, wharfs, quays, piers, and landing places, and to set and erect all such buoys, beacons, landmarks, and lighthouses, and to execute all such other works, and do all such acts as may be deemed necessary for the purpose of rendering the navigation thereof safe, easy, and

¹⁰⁴ Wakefield/Sec. NZC, 8 February 1842, 3/2, NZC, NA.

¹⁰⁵ Somes/Stanley, 29 July 1842, G.B.P.P, 1844.

commodious.¹⁰⁶

The Municipal Corporations Ordinance was closely followed by the Harbour Regulations Ordinance which provided for the legal regulation of harbours by allowing the Governor to issue harbour regulations concerning pilotage, quarantine, navigation, landing, etc. Regulations under this Ordinance were issued on 1 October 1844 and gave the harbour-master control over the foreshore, with clause 17 providing for a fine if persons were found to be removing “shingle, stone, shells, or any part of the soil, without permission from the harbour-master, or in the absence of the harbour-master.”¹⁰⁷

Neither the harbour regulations or the Municipal Corporations Ordinance gained the approval of the Colonial Office, with a key reason given that it “placed the power of establishing beacons and lighthouses in the hands of the Corporation” and “vested in the Corporation property of the Crown which Her Majesty had not placed at the disposal of the local legislature.”¹⁰⁸ The newly born Wellington Municipal Corporation was disbanded and control (in theory) of the foreshore remained with the Governor.

The Te Aro sections, meanwhile, remained bounded by the low tide mark and the road of access along the foreshore was never built. During the 1860s these boundaries were confirmed in Crown Grants.¹⁰⁹ Private control of the Te Aro foreshore continued until the Te Aro reclamation in the 1880s, and as will be explained, persons holding rights over the foreshore were entitled to compensation.

¹⁰⁶ Section 6, Municipal Corporations Ordinance, 1842.

¹⁰⁷ Harbour Regulations, 1 October 1844, G.B.P.P, 1843-45.

¹⁰⁸ Bretts, p 29.

¹⁰⁹ For example, Section 208, Crown Grant Vol 3, No. 2276, LINZ.

4.8 HARBOUR CONTROL UNTIL 1852

With the arrival of the New Munster government in 1848 administration of the harbour tended to be divided between the Governor, the Colonial Secretary, the New Zealand Company and private individuals. Like the New Zealand Company, the Governor defined the harbour by survey using the H.M.S *Acheron* which carried out a survey of Port Nicholson in 1847 and 1849 (figure 4.4 and 4.5). These Charts defined the harbour and its boundaries until the survey of the H.M.S *Lachlan* in 1950.

Since 1840 wharves had been built by private individuals and operated for a profit. The first wharf was built on Thorndon Beach for Mr J.H. Wallace and “consisted of an empty dry goods hogshead placed as far out below low-water mark as possible, then filled with stones to form the outside pier.”¹¹⁰ Other wharves were built adjacent to Wallaces’ pier. Some of these included: Van Alzdorf’s wharf, Moore’s wharf, Plimmer’s wharf (which became known as Noah’s Ark), Tankersley’s wharf, Bowler’s wharf, and Watt and Tyser’s wharf. Control of these wharves seemed to reside in the New Zealand Company. For example, when Alzdorf requested permission to build a wharf in front of his property along Lambton Quay, the Colonial Secretary stated that “the New Zealand Company alone possesses authority to sanction the erection of wharves.”¹¹¹ The author is unsure why the New Zealand Company retained some control over the building of private wharves.

Responsibility for public works did shift from the New Zealand Company to the Governor. The road from Thorndon to Pitone was maintained with the construction of sea walls as directed by the Governor beginning in 1848 and continuing until 1852.¹¹² Parts of the Lambton Quay

¹¹⁰ Neilson, D.R, *Wellington; The Heritage of Tara*, Reed, 1970, p 19.

¹¹¹ Alzdorf/Col.Sec, 8 August 1849, 10/9 NM, NA.

¹¹² Tender for construction of sea wall to Ngauranga, 6 December 1848, New Munster Gazette. In 1851 a public meeting was held and committee appointed concerning the state of the Hutt Road. This meeting was attended by the Governor and recommend the erection of a sea wall along the Petoni road from South East Bay. The

roadway were also repaired with tenders called in 1847 for the construction of timber breastwork because high tides covered the Quay in places. These sea walls and breastworks, constructed for the protection of the coastal roadway, could be considered the first reclamations of Te Whanganui-a-Tara.

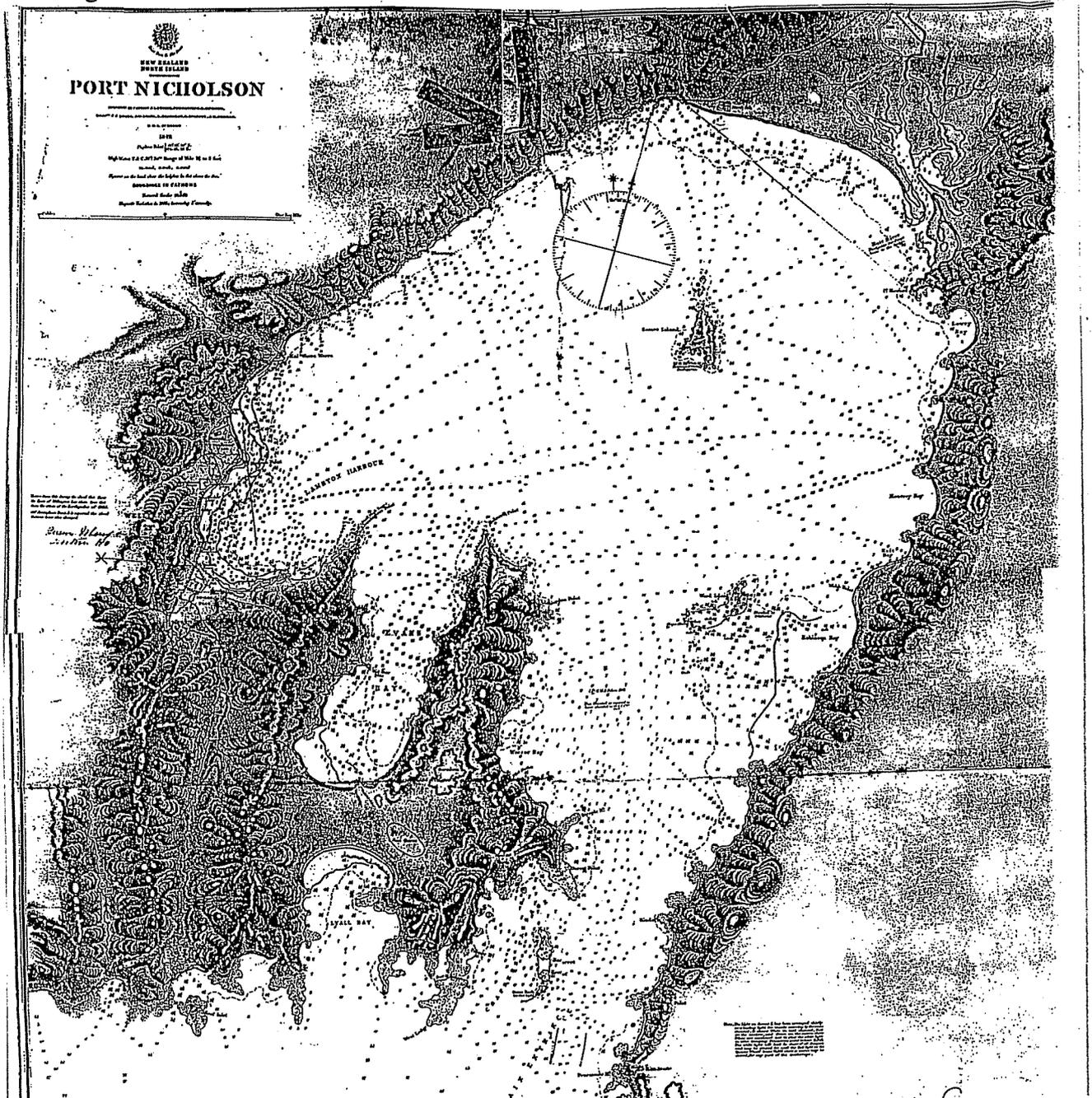


Figure 4.4. Port Nicholson, 1847. H.M.S *Acheron*. Source, Marine Plans, WRC.

Colonial Secretary contracted a Mr Alfred Ludlam to carry out this work on 26 August 1851; Domett/Ludlam, 26 August 1851, 10/12 NM, NA.

During this period, the settlers were in control of the foreshore along Te Aro Beach. For example when the harbour master tried to stop contractors taking gravel at Te Aro, the Colonial Secretary admitted the Government could not stop them taking gravel without harbour regulations in force.¹¹³ John Wood, arriving in December 1841, was most displeased with private foreshore control:

A great injustice has been committed on the community by a large part of the beach frontage being considered private property. The right of ground between high and low water mark should be vested in the Crown or Company; and a broad road where practicable reserved beyond high-tide mark for the free use of the town people. Wellington is a free port.¹¹⁴

For those Maori settlements within the town (except for Te Aro) and between Thorndon and Petone, access to the sea was now separated by a public right of way. Despite this Maori use of the harbour continued and Maori harvested seafood for sale at the market in Wellington town (as will be discussed in chapter six).

End of the Spain Commission and the military solution

By 1843 relations between some Maori and paheka had deteriorated in the Wellington area. The tribes at Te Aro were unwilling to vacate their harbour-front pa, a Ngati Toa woman of rank named Kuika was brutally murdered at Kakapo Bay in Port Underwood, survey parties had met with resistance in Porirua, and George Clark reported that graves had been violated by settlers looking for ornaments.¹¹⁵ Adding to this, a well-known conflict took place on the Wairau plains during June 1843. A further long-running dispute was the occupation of the Hutt Valley by Ngati Rangatahi under the leadership of Kaparatehau, who refused to leave their cultivations at the request of the incoming settlers.

¹¹³ Domett/Harbour Master, 4 August 1849, 10/10 NM, NA.

¹¹⁴ Wood, John, *Twelve Months in Wellington, Port Nicholson*, 1843, Pelham Richardson, London, p 30. ATL.

¹¹⁵ Carkeek, *The Kapiti Coast*, p 68.

Within the context of this tension and hostility between the colonists and some of the tribes, William Spain carried on his investigation. The author has mentioned some of the proceedings of the Spain Commission and restatement all the details is not necessary (see Moore's report). Very briefly, the outcome of the inquiry (remembering it was a land inquiry) was 'messy' with an attempt to settle the whole problem by arbitration. Spain produced an interim report in September 1843. Generally, this report confirmed the opinion of Robert Fitzroy regarding the New Zealand Company reserve system; the reserves were "almost useless to the natives," and the selection process had little regard to Maori interests. On the evidence of Wakefield's purchasers, Spain concluded the whole region remained under the ownership of the various tribes; "the whole town of Wellington stands upon the lands belonging to these tribes, and their country lands include many thousands acres."¹¹⁶ The solution was to pay compensation to those tribes who had not received payment and the lands, except those under direct occupation, were to be alienated.¹¹⁷

On this basis, the tribes around the harbour were 'paid-off' for their interests in a number of transactions called the 1844 releases. For example, on 26 February 1844, the tribes living at Te Aro, Kumutoto, Pipitea, and Tiakiwai all received money in return for the surrender of all their claims to land within the vicinity of Port Nicholson except for pa, cultivations, sacred places, and reserves.¹¹⁸ Alienation of Harbour and foreshore interests was not mentioned in these releases. Attempts to get Te Rauparaha and Ngati Toa Rangatira to surrender their interest in Port Nicholson was not so easy. Meetings were held and money offered, but the Ngati Toa chiefs refused to sell.

Both Spain and Richmond (the Superintendent) considered military power as the only solution to get Ngati Toa Rangatira and Ngati Rangatahi to withdraw their claims over the Hutt Valley

¹¹⁶ Report of Commissioner Spain, 12 September 1843, G.B.P.P, 1844.

¹¹⁷ Report of Mr Commissioner Spain, 12 September 1843, G.B.P.P, 1844.

¹¹⁸ Moore, p 498. These payments were ranged between 30 and 300 pounds. Duncan Moore estimates Wellington water frontage was probably worth between £3,800 and £4,000 in 1839. See Moore, p 478.

and Port Nicholson.

A boundary between Porirua and Port Nicholson was, at this time created by the Surveyor-General in October 1844, so the Company could receive a Crown Grant to Wellington which excluded Porirua. This boundary (the Fitzgerald line) divided the Wellington region at a line coming from the coast, south of Te Arataura, over to the Hutt River and up to Pa-whakataka. This line is now the northern boundary of the current Wellington Tenth's hearing area.

Spain, meanwhile, was most upset that Ngati Toa Rangatira chiefs were unwilling to surrender their interests south of the Fitzgerald line. In his final report published in 1845, Spain decided Te Rauparaha had no interest in the Port Nicholson district as he was not in actual possession.

Richmond, however, continued to get Te Rauparaha to alienate his Port Nicholson interest and offered 400 pounds which was accepted by Te Rauparaha on 7 March 1846.¹¹⁹ Carkeek reports that Te Rangihaeata never agreed to this deal and his signature was written not by himself, but by Martin, grandson of Te Rauparaha.¹²⁰

The military solution to get both Ngati Toa Rangatira and Ngati Rangatahi out of Wellington was taken by Governor Grey when he arrived in Wellington on 12 February 1846 with some 800 troops. With the need to provide support for Ngati Rangatahi allies in the Hutt Valley, Te Rangihaeata had built a gun fighter's pa at Pauatahanui called Mataitaua.

¹¹⁹ Richmond/Governor, 20 April 1844 and 7 March 1846, NM 10/2, NA.

¹²⁰ Carkeek, p 74.

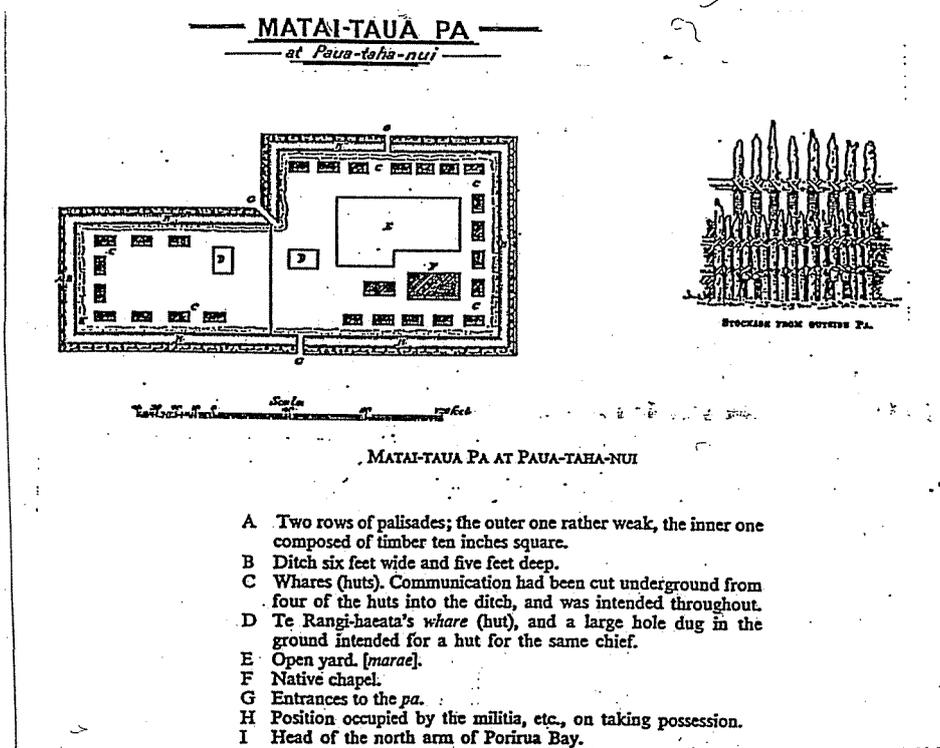


Figure 3.5 Matai-Taua Pa, Pauatahanui. Source, Best, E. *The Pa Maori*, 1975, p 377.

Governor Grey quickly realised that control of the Wellington area rested with taking command of Porirua, especially Matakaitaua:

Porirua is the key to the Wellington district, being the point through which the roads from all other settlements pass to that place, I determined to take possession of Porirua, and to hold it by a strong military force.¹²¹

Governor Grey's plan to secure Wellington involved three main aspects. Firstly control over the water highway using the three small warships; *Castor*, *Calliope*, and *Driver*, which would patrol the Porirua coastline. Secondly the construction of a military road from Wellington to Matakaitaua and thirdly the construction of four stockades between Johnsonville and Tawa, one fort at

¹²¹ Grey to Lord Stanley, 7.5.1846, *G.B.P.P.*

Porirua, and an encampment at Paremata.¹²² Grey also enlisted Te Atiawa to help and most of the fighting, according to Carkeek was carried out by Te Atiawa. Wiremu Kingi at Waikanae also managed to stop Ngati Raukawa reinforcements from coming south to help Ngati Toa Rangatira.¹²³

This strategy, in the end, proved successful for Grey and by late 1846 the Colonial forces, with the help of Te Atiawa, gained control of the western highway using the military road and a string of forts. Te Rauparaha was captured and Te Rangihaeata was chased out of Matakaitaua and north into the Manawatu.

Meanwhile, Spain's final report of 1845 did mention the importance of water frontage to the pa for Maori.

At Te Aro our countrymen found a large pah thickly inhabited by natives, the spot being admirably selected from its immediate contiguity to the beach, where the natives haul up their canoes in safety; proceeding round the beach towards the north, they are also found the following paha: Kumutoto, Pepitea, Tiakiwai, Kaiwharawhara, Ngauranga, Petoni and Waiwatu; all of them being situated near the water, with a beach to haul up their canoes, besides several smaller paha inland.¹²⁴

Pa were, however, defined without their foreshore as ground under cultivation or occupation:

The limits of the paha to be the ground fenced in around their native houses, including the ground in cultivation or occupation around the adjoining houses without the fence; and cultivations as those tracts of country which are now used by the natives for vegetable productions, or which have been so used by the aboriginal natives of New Zealand since the establishment of the colony.¹²⁵

¹²²Best, E. 'Old Redoubts, Blockhouses, and Stockades of the Wellington District' *Transactions of the New Zealand Institute*, vol 53, 1921, p 14-28; Baillie, H. 'The first New Zealand Navy' *Transactions of the New Zealand Institute*, Vol 53, 1921, p 29.

¹²³ Carkeek, p 73.

¹²⁴ Final Report, Commissioner of Land Claims, 31 March 1845, G.B.P.P, 1846.

¹²⁵ Ibid.

Spain concluded by recommending a Crown Grant be issued to the New Zealand Company for 71,900 acres of land at Port Nicholson (south of the Fitzgerald line). Exempt from this grant were “all paha, burial places, and grounds in cultivation by the natives.” By defining pa without reference to foreshore, Spain did not specifically recommend that foreshore access or harbour rights be secured for Maori by the Crown.¹²⁶

Spain’s recommendations and the Crown Grant required the definition of the boundary between Maori reserves (which were to include pa and cultivations) and the Company’s land. This task was given to Colonel McCleverty in 1846. McCleverty’s arrangements confirmed the position of many harbour-side pa with foreshore access. For example, Petone, Waiwhetu, Ngauranga, Kaiwharawhara, Pipitea, Kumutoto, Tiakiwi and Te Aro all were defined as reserves with some parts of the reserve as having harbour frontage. These pa, except for Petone, Waiwhetu and Te Aro, were separated from the foreshore by a public road. One large reserve at Wainuiomata, granted to the inhabitants of Petone pa, had foreshore frontage from Mukamuka to Pencarrow Head. These reserves will be discussed in greater detail in chapter six.

The McCleverty awards did, in some respect, confirm the importance of Maori foreshore access and harbour frontage for pa.

Conclusion to Chapter Four

In 1839 the New Zealand Company assumed they had purchased Te Whanganui a Tara from those tribes they considered held ownership of the harbour. Immediately after the ritual of purchase, the Company defined its interests by survey and began to execute works such as roading. Colonel Wakefield selected Lambton Harbour as the site for the principal Company settlement and this site was surveyed by William-Mein Smith in 1840. The settlement involved sections intersected by roads and surrounded by a green-belt. While most of the foreshore was

¹²⁶ Ibid.

used as a roadway, Te Aro was surveyed down to the low-water mark. Based on the principles of concentrated and urban colonization, the Lambton harbour foreshore became an intense focal point of trade and communications. From 1841, government officials that reclamation of the sea bed was considered necessary to provide for future expansion in communication and trade, and provide for public reserves and private industry.

The Crown intervened in the plans of the New Zealand Company and assumed the ownership of the harbour as a consequence of its acquisition of sovereignty in February 1840. Purchase of the sea or harbour below high-tide mark was not considered necessary under English Common Law and after the Spain Commission had finished its proceedings, the New Zealand Company received a deed of grant for the Port Nicholson area which excluded the harbour itself. Colonel Wakefield was of the view that the harbour fisheries now belonged to the 'public,' that is to both peoples. Eventually the government did recognise some private titles to Wellington foreshores.

Many Maori considered the first purchase in 1839 by the New Zealand Company as an agreement pertaining to the harbour; the Company was allowed certain rights to use the harbour in return for a number of items and the benefits of European contact. The 1839 purchase was an agreement between two main groups; the Company and Te Atiawa. These groups formed a new but uneasy alliance.

By 1846 the Crown, with Te Atiawa support, attempted to extinguish Ngati Toa Rangatira and Ngati Rangatahi interests over Port Nicholson south of the Fitzgerald line. This attempt involved military action.

Concerning the harbour, the impact of settler arrival between 1839 and 1852 was focused on Lambton Harbour. Within this area, rights to the foreshore became public rights with access from the Quays with the exception of Te Aro beach which was controlled by private individuals who built wharves. Coastal pollution of Lambton Harbour would also have begun as the town was established without sewerage systems. Outside of this area the harbour remained under the customary use of the various tribes. Kemp's report of 1850 illustrates that many Maori

settlements, whose location on the foreshore was confirmed by McCleverty and Governor Grey, were collecting seafood for export or local sale at Wellington. The larger pa (Petone and Takapuwhia), had schooners for this trade. Local Maori also acted as guides on the pilot boat.¹²⁷ The settlers were settling in and this had a great impact on Maori settlements inside the town belt. The harbour itself remained relatively untouched by the invasion.

¹²⁷ Kemp Report, 21 August 1850. In 1846, Richmond reported that three Ngati Toa Chiefs (David Puaha, Joseph Honia, and Solomon Matekapu) had brought a coastal trader called the *'The Three Brothers'* from Joseph Thoms and was visiting Wellington and trading in whale oil; Richmond/Governor, 7 March 1846, 10/2, NM, NA.

CHAPTER FIVE: RECLAIMING PORT NICHOLSON.**1852-1878**

In 1852 the English Government gave the New Zealand General Assembly full power to make laws under the 1852 New Zealand Constitution Act. By this time, the New Zealand Company had ‘closed shop’ and the Company’s interests were transferred to the General Government. Under the 1852 Constitution Act, the Provincial Governments were given wide powers which did not, however, include the “erection and maintenance of beacons and lighthouses.”¹ This chapter explores control and reclamation of Te Whanganui a Tara between 1852 and 1878. This era was dominated by the Provincial Governments and General Government and these two institutions began the first large scale reclamations at Lambton Harbour.

5.1 SIR GEORGE GREY’S RECLAMATION 1852

This reclamation was authorised by the Governor before the arrival of Provincial Government. On the 23 February and 13 March 1852 the following notices were printed by the Colonial Secretary:

Tenders will be received at this Office until the 15th March next, from persons desirous of contracting for the execution of certain improvements about to be undertaken in connection with Lambton Quay, by reclaiming a portion of land from the harbour, and for repairs to the present Beach Road.²

Tenders will be received at this Office until the 24th Instant, from persons desirous of contracting for reclaiming a part of Lambton Harbour.³

¹ Section XIX, 7, New Zealand Constitution Act, 1852.

² Tender for reclaiming portion of Lambton Quay, 23 February 1852, New Munster Gazette.

³ Tender for reclaiming Lambton Harbour, 13 March 1852, New Munster Gazette.

This contract was won by Charles Carter who gives an account of the work in a later publication:

In March of that year, tenders for reclaiming from the sea, at the south-west corner of Lambton Harbour, a piece of land 360 feet in length by 100 feet in breadth, were called for. This contract required considerable care on my part in estimating, for it involved building a wood retaining wall out in the water, and filling in behind it with earth,...

This contract I commenced at once (for, in consequence of the Australian gold diggings, labour was to be scarce), and although a heavy sea once carried away some of the timber wall and a considerable quantity of earth forming the filling-in, I completed the contract within the time specified, and made out of it a clear profit of 212 pounds.⁴

According to Herbert Ballie, land from this reclamation was sold by the Colonial Secretary as it became available to private individuals and the unsold land was granted to Wellington College as an endowment. The total value of the reclamation was estimated by Baillie to be £1,992 against an expenditure of £1,092 (Map 4.1, Document Bank, Vol III).

5.2 PUBLIC RESERVES ACT 1854

The Public Reserves Bill was introduced to the House of Representatives on 23 June 1854 by Henry Sewell for the purpose of better regulation of Crown reserves set aside for public purposes. "Its design was to prevent the misapplication of the lands which had been set apart for public reserves, and to secure the beneficial administration of them by placing them under the direction of the Superintendent and Council of each province."⁵ While the bill inspired little debate, members of the General Assembly clearly considered the role of the Superintendent and Provincial Governments to be one of a trustee, as Dr Richardson explained:

The Superintendents and Provincial Councils would, in fact, be trustees, and it was a great object to have persons near to perform the formal functions necessary to a due execution of the trust.

⁴ Carter, C.R. *Life and Recollections of a New Zealand Colonist*, Madley; London, 1866, p 23-26.

⁵ Sewell, 23-29 June 1854, NZPD.

If they failed, the case could be dealt with by the Courts of law, which would now be accessible to every one,...

The Superintendent's powers would not be uncontrolled.⁶

With the objective of vesting public reserves under the guardianship of the Provinces, the bill was passed by the House in September 1854 with the title "An Act for regulating the Management of certain Lands reserved for Public Purposes in the several Provinces of New Zealand." The management role of the Provinces is emphasised in the preamble:

Whereas in the several Provinces of New Zealand, lands have been heretofore and may hereafter be reserved for various purposes of public utility, the legal title whereto is vested in Her Majesty: and whereas it is expedient to establish in each of the said Provinces a system of local management of such of the said lands as are or may be held for purposes of local concern.

With Section 1 providing for the granting of any lands "forming part of the demesne of the Crown," section 2 provided for the granting of land below the high-tide mark to the Provincial Governments:

It shall be lawful for the Governor of the said Colony with the advice of this Executive Council to grant and dispose of any land reclaimed from the sea, and of any land below high-water mark in any harbour, arm, or creek of the sea, or in any navigable river or on the sea coast within the said Colony, either to the Superintendent of the Province and his successors, in or to which such land is situate or adjacent, or in such other manner to such other persons and upon such terms as shall be thought fit: provided always that every such grant or disposition within any Province, other than to the Superintendent thereof, shall be made in pursuance of a joint recommendation by the Superintendent of such Province and of the Provincial Council thereof: Provided also that nothing herein-contained shall prejudice the rights of persons claiming water frontage.⁷

The Superintendent was given full power "to dispose of and manage" the reserves subject to the

⁶ Richardson, 18 July 1854, NZPD.

⁷ Section 2, Public Reserves Act, 1854.

advice of the Provincial Executive and on the proviso that alienation could not occur within three years of the Grant unless by an Act or Ordinance of the Province which required the approval of the Governor. Also, any change in the appropriation of the reserve to other purposes required the authority of a Provincial Act. Reserves already proclaimed in the NEW ZEALAND. Gazette could not be alienated by sale or lease but could be granted to the Superintendent by the Governor if the land was not required by the General Government.

The Public Reserves Act made a distinction between lands that were the demesne of the Crown and lands below high-tide mark. By allowing the Governor to grant the sea bed to the Provinces, or in fact to any person as recommended by the Provincial Governments, the Crown was assuming Crown ownership of the sea bed and foreshore.

5.3 WELLINGTON PROVINCIAL RECLAMATION PLANS

Featherston opened the first session of the Wellington Provincial Government with a 'stirring' speech to the members of the Council. Wellington was referred to as a territory of above ten million acres with a natural geographical advantage and "harbour not surpassed, if indeed equalled by any other in the whole colony." Four key means to accomplish the settlement of the Province and to "render it attractive to that capital and labour" were outlined by Featherston as:

1. To carry out the Constitution in accordance with its own spirit, and with the practice at home.
2. To extinguish the Native Title to as great an extent and as rapidly as possible, so as to have always at the disposal of the Government an ample supply of land open to purchase and settlement.
3. To render the lands available by opening out the communications over the whole Province, and by the construction of other necessary public works.

4. And to promote and establish a continuous stream of immigrant labour.⁸

The communications objective tended to take top priority and Featherston focused on the “two main arteries of the Province,” the Rimutaka Road and the North Western Road (which ran from Kaiwharawhara to Wanganui). Influenced by a petition from the inhabitants of Porirua, Featherston considered the construction of a new road north from Ngauranga over to Porirua for a cost of 400 pounds.⁹ On this subject a Roads Committee was appointed and recommended that a road be constructed up Ngauranga stream “at the earliest period.”¹⁰ Powers for the construction and maintenance of roads were vested in Road Boards which were created under the first Roads Act of 1854.

Reclamations were soon to be an integral part of the Provincial public works scheme. At the opening of the second session in December 1854, Featherston outlined his plans under the provisions of the Public Reserves Act 1854 with an eye for profit rather than guardianship:

The Governor being authorised under the Public Reserves Act to convey to the Superintendent Lands set apart as ‘Public Reserves’ and also Land below high water mark, I have already applied for a Grant of such Land within this harbour, and shall be prepared on receiving it, to submit a Bill enabling the Government to commence the Work of reclaiming the land on the plan originally proposed by Mr Roberts; and also for making provision for the management and disposal of the property, for there is little doubt that the whole land may be reclaimed not only without loss but at a considerable profit.¹¹

Featherston was successful and a grant of 117 acres of land below the high-water mark was

⁸ Speech of the Superintendent, 28 October 1853, JPWPC.

⁹ Ibid

¹⁰ Report of the Road Committee, 1853, JPWPC.

¹¹ Speech of the Superintendent, 21 December 1854, JPWPC.

vested in the Superintendent on 16 October 1855.¹² The wording of the Grant reflected the trusteeship theme of the Public Reserves Act:

Whereas it is expedient that the land, hereinafter described, be granted to the Superintendent and his successors, for the public service of the said Province, but the trusts and uses for which the same should be granted, have not been defined, and it is desirable that the same should be laid down and described by an Act or Acts of the Superintendent and Provincial Council of the said Province of Wellington...¹³

The boundaries of the grant are thereafter stated. These boundaries included all the seaward side of Lambton Harbour from the 1852 reclaimed land at Willis Street, along Lambton Quay to the end of Thorndon Quay at Kaiwharawhara; a massive section of the harbour foreshore. The land was to be held by the Superintendent “upon such trusts and for such uses for the public service of the said Province as shall be enacted and declared in that behalf by any act of the Superintendent and Provincial Council of the said Province.”¹⁴

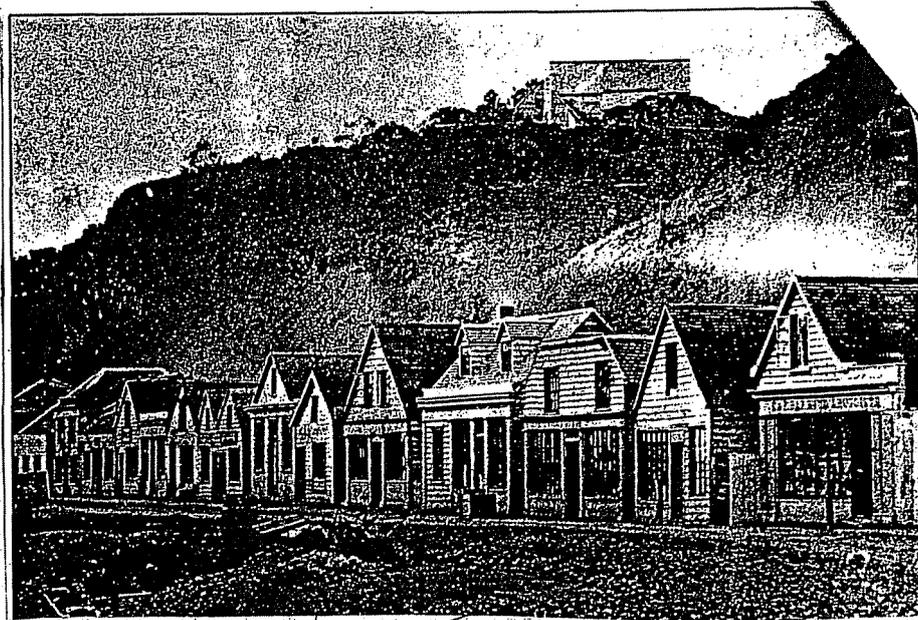
Two other Crown Grants were issued to the Superintendent over the foreshore. On 21 June 1861 a grant of 15 acres below the high tide mark was issued under the Public Reserves Act. This grant covered the site of the Basin Reserve, which was marked out as a boat harbour, and the canal running between Kent and Cambridge Terrace.¹⁵ Another grant, which the author has been unable to find, vested a large area of foreshore from Te Aro east to Point Jerningham.

¹² Power of Superintendent to Sell Harbour Reserves, Council Paper, 1875, JPWPC. The original grant was destroyed in the Provincial Government Buildings fire on 20 June 1862 and another grant in confirmation was issued recorded as 6A/293.

¹³ Copy of the Original Grant, Power of Superintendent to Sell Harbour Reserves, Council Paper, 1875, JPWPC.

¹⁴ Ibid.

¹⁵ Crown Grants, Vol 2, p 151, 21 June 1861, LINZ.



21.

Lambton Quay in the early 1860s. Source, Anderson, 1984, p 113.

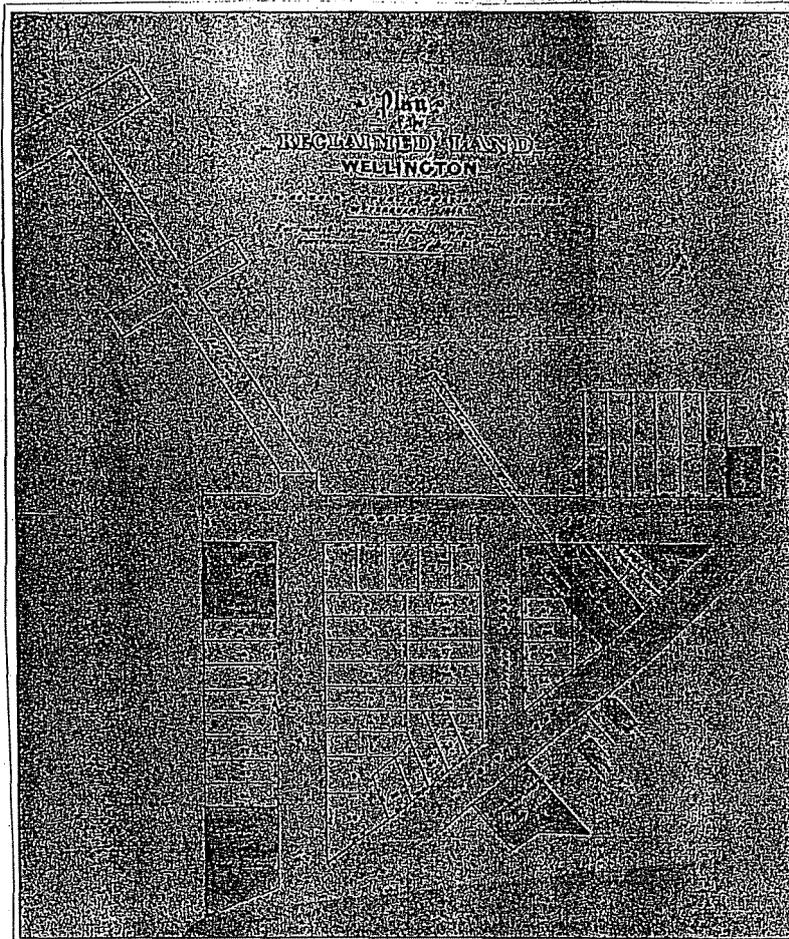


Figure 5.1. Plan of Reclaimed Land, Wellington 1863. Source, ATL.

Along with the possibility of reclamations, the earthquake of 25 January 1855 also provided the Provincial Government with land for communications.¹⁶ While the official reports focus on damage sustained to buildings, it is assumed that the earthquake had limited impact on the Lambton Harbour foreshore with only two feet raised. Waitangi swamp was said to have been drained by the uplift¹⁷ but evidence suggests the swamp was already being drained from the early 1850s as a channel had been cut with an average width of 10-12 yards from the head of the swamp to an outlet at Te Aro beach.¹⁸ Work on the Te Aro drain was still being carried out in the 1880s.¹⁹ Crawford also describes the draining of Burnham Water (Roto te Kura) at Miramar:

The flat may be said to have been chiefly occupied by water. A shallow lake, called by Colonel Wakefield Burnham Water, spread over about 200 acres of the central area, and the water from it extended up the large swamps both to north and south...

Finding it impossible to keep open an outlet into Lyall Bay for the drainage of the flat ground, I determined to drive a tunnel from Evans Bay through the narrow ridge which separates that bay from Burnham Water. This work was first executed in the year 1849, and was subsequently enlarged and further extensive drainage works carried on in the year 1859. The result has been that the water-level has been lowered about six feet, that the swamps have solidified, and the former vegetation which covered them has been replaced by a sward of English grasses, and that the former bed of Burnham Water is being rapidly covered with grass.²⁰

As indicated in Chapter One, the 1855 earthquake has its greatest uplift effect towards the east, especially at the Hutt Estuary where the foreshore was extended by 30-100 metres.²¹ Along the

¹⁶ See chapter two for a discussion on the uplift effects of the 1855 earthquake.

¹⁷ See Dunbar, 1994, p 13.

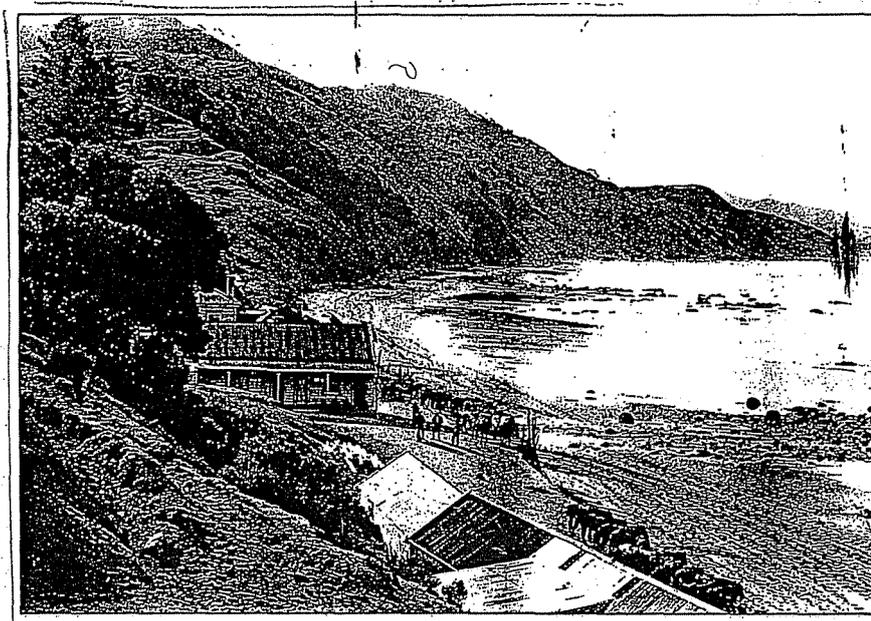
¹⁸ 5 March 1853, Wellington Spectator.

¹⁹ Inwards Correspondence, letter book, 1878-1883, WCC.

²⁰ Crawford, 1873, p 398.

²¹ The uplift, however, did not stop the Hutt river from flooding and a Provincial Committee of 1855 recommended "placing the water-courses of the Hutt Valley in trust" so funds may be raised for flood-mitigation works. Later another committee recommended the election of a Board for managing the conservation or cleansing of the Hutt River; Report of the Select Committee on the State of the River Hutt, 13 March 1855; Report of the Hutt River Conservation Bill Committee, 16 February 1857, JPWPC.

coast from Petone to Thorndon, the earthquake contributed towards the creation of a wider coastal strip which was subsequently used by the Wellington-Hutt roadway.



Hutt Road before the Construction of the Railway. Source, Butterworth, 1988, p 89.

Concerning the newly acquired 117 acre grant of the harbour, the Provincial Government established a Harbour Reserves Committee which reported in January 1856 but it was unable to “propose any specific plan for the management of the Harbour Reserves.”²² Without a plan, the Committee proposed ad-hoc reclamation in separate blocks. As each block was to be reclaimed, streets were laid out, public reserves set aside and the rest sold by public auction. Concerning those persons occupying the reserve land by wharfs and buildings (such as Noah’s Ark) it was recommended that they “should have the right of pre-emption over the allotments comprising such wharves at the average price of the adjoining land.”²³ The Committee’s recommendations were quickly implemented and the Provincial Government vested the Superintendent with “full power to manage and administer the land” comprised in the Grant of 16 October 1855 by passing the Harbour Reserves Act. In summary the Act provided for:

²² Report of the Committee on the Harbour Reserves Bill, Council Paper, 1 February 1856, JPWPC.

²³ Ibid.

- public reserves to be made by the Superintendent with the rest sold by public auction;
- rights of pre-emption given to persons who owned wharves and buildings extending into the reserved land;
- lease of a portion to a Tradesmen's Club; and
- power of the Superintendent to contract for reclaiming any portion of the reserve.²⁴

The contract for the first Provincial reclamation was again awarded to Carter who, towards the end of 1857, began the construction of sea-wall from Chew's land jetty to Clay point at Noah's Ark. By 1858 this reclamation was completed, divided into twenty-five sections and advertised for sale. This land now comprises the area of the old BNZ, Lambton Quay, Customhouse Quay and Grey Street. David Johnson comments:

Great chunks were carved out of the cliff at the back of Lambton Quay and dumped into the sea on the other side of the road. Seemingly endless lines of draught-horses and carts became part of street life as they hauled unwanted soil, clay and rubble from building sites. A triangle crept out from Lambton Quay...

By 1859 the Provincial Council had spent £5580 and collected £1900 from land sales. It now saw the foreshore as the site for important government buildings, and as a major source of revenue for the council. Reclamation was to become a way of life.²⁵

The sale of the reclaimed land, however, met with objections from individuals who had already purchased part of the lands. These persons questioned the power of the Government to continue to sell. The issue was referred to the Supreme Court which found in favour of the would-be purchasers who thus declined to make any further payments to the Province. The Court decision

²⁴ Harbour Reserves Act, 1855, JPWPC.

²⁵ Johnson, 1996.

also stopped the remaining portion of the reclaimed land from being sold. The issue was also complicated by a mistake in the New Provinces Act which meant that the public reserves of Wellington were vested in the Superintendent of Hawkes Bay.²⁶ Despite these set backs, the reclamation plans were to be expanded and would carry on “on a much more extensive scale than hitherto.”²⁷ Profit from the sale of reclaimed lands would contribute towards the building of a new deep-water wharf (Queen’s wharf) which was to become Wellington’s first public wharf.²⁸

In May 1861, Featherston was more specific about his wharf and reclamation plan. Speaking to the Council at the opening of the first session of the third Provincial Council, Featherston continued to focus on the profits foreseen from reclamation and the strategic importance of the new wharf:

The extent to which this reclaiming is to be carried is a question to which I would invite your early attention. Believing that in the present state of our finances and with our future prospects there will be no necessity for forcing sales -- the property thus created will ever yield a large profit -- that the cost of reclamation will be diminished in proportion,...I cannot help recommending that the reclaiming should be continued in its present line to the Kumutoto stream.²⁹

In regard to the position of the new wharf, Featherston thought that by placing it between Noah’s Ark and Kumutoto “you could confer an increased value on a much larger portion of the reclaimed land than would be the case were the wharf nearer to Noah’s Ark.”³⁰

²⁶ Speech of the Superintendent, 30 August 1859, JPWPC.

²⁷ Ibid.

²⁸ The issue of the new public wharf involved extensive debate during 1856-7 with the Petone Wharf Select Committee recommending the construction of a wharf near Point Howard and the Harbour Wharf Committee unable to settle the question on where the new deep-water wharf within Lambton Harbour was to be located; Report of the Petone Wharf Select Committee, Council Paper, 1857; Report of the Harbour Wharf Committee, Council Paper, 1857, JPWPC.

²⁹ Speech of the Superintendent, 20 May 1861, Council Paper, JPWPC.

³⁰ Ibid.

The Superintendent's plans found substance in the Wharf Act and Harbour Reserves Amendment Act of 1861. The Wharf Act empowered the Superintendent to authorise the construction of a wharf and to appropriate funds raised from the sale of reclaimed lands or by the mortgaging of any land vested under the Public Reserves Act 1854.³¹ The Harbour Reserves Amendment Act, meanwhile, allowed the Superintendent to have full rights to sell the reclaimed land and declared all sales made to have been valid and effectual. The Act also provided for a small section of the sea-bed to be conveyed to the Order of Odd-Fellows who had consent to reclaim the land at their own expense.³²

Work began on the next section of the harbour in 1866 by Mr W. Tonks and comprised of 13 acres from Panama Street to north of Waring Taylor Street and was to be completed in June 1867 (Map 4.2 Document Bank, Vol 1).³³ This land was ear-marked for the site of Provincial Government Buildings and a larger than necessary reclamation was proposed by the Superintendent:

I feel satisfied that when you consider the wasteful expense incurred in reclaiming small pieces, and the value of the block in process of reclamation, that you will acknowledge that in every respect, especially in an economic point of view, it would have been unwise to have gone on with the work on a smaller scale...

The land reclaimed at a cost of £26,000 will yeild at least £55,000.³⁴

³¹ Wharf Act, 1861, JPWPC.

³² Harbour Reserves Amendment, 1861, JPWPC.

³³ Baillie, 1924, p 713.

³⁴ Speech of the Superintendent, 22 May 1866, Council Paper, JPWPC. It seems the contract for this reclamation was not authorised by the Provincial Government but carried out by the Superintendent alone. Mr Hickson moved that it was "a direct violation of the rights and privileges of this Council,[and] is also unconstitutional." As a result, Mr Boralase introduced a Bill to provide that "no land below high water mark in the harbour of Port Nicholson, shall be filled up, reclaimed, sold, leased, or dealt with in any manner without the sanction of the Council." This Bill, however, was later thrown out. Minutes of the Wellington Provincial Council, 29-31 May 1866, JPWPC.

The Clerk of Works reported in May 1866 that “reclamation works in Lambton Harbour are being carried out in an energetic and satisfactory manner” and would consist of 14 acres when completed.³⁵

While work was in progress two small sections of the sea-bed were conveyed to the Ancient Order of Foresters and the Society of Freemasons in July 1864. Both organisations were given 12 months to reclaim the land which was situated between Waring Taylor Street and Stout Street on Lambton Quay.³⁶ A small area of 2 roods was also granted to Joseph and Company in 1865.

Another section of the harbour foreshore was alienated by occupation in 1864. This alienation was for the site of a Patent Slip³⁷ and authorised under the Wellington Patent Slip Act 1863. After a report by the Patent Slip Committee in May 1863, the Provincial Government allowed the Superintendent to purchase a twenty acre site for the Patent Slip at Evans Bay. This land would be conveyed to any person who would undertake to erect a slip on the land (which lay outside the 1855 Grant). While alienation of land below the high-water mark was not authorised by these Acts, the Patent Slip by its very nature occupies the foreshore.³⁸

5.4 THE PORT OF WELLINGTON

Along with a new wharf, the Provincial Government took charge of the harbour and erected a lighthouse on Pencarrow Point. The lighthouse issue was a subject of intense debate between the

³⁵ Report on Harbour Works, 1866, JPWPC.

³⁶ Freemasons' Grant Act, Foresters Grant Act, 1864, JPWPC.

³⁷ Patent Slip; Slipway used for the repair and construction of large ships.

³⁸ Report of the Patent Slip Committee, May 1863, Council Paper; Patent Slip Site Act, July 1864, JPWPC; Renner, K.S. *Patent Slip Area and Adjacent Land*, Wellington Harbour Board, 1975. In 1866, the Legislature passed the Crown Grants Act 1866 which set the boundary of ordinary grants at the high water mark but did not vest the foreshore in the Crown.

General Government and the Province. With the approval of the Colonial Secretary in 1852, the Province had erected a temporary lighthouse and planned for a permanent lighthouse during 1856-57. However on the basis of section 19 of the Constitution Act, the General Government objected to the plans. Despite the objection and the disallowance of the Scrip Extension Act (which authorised the Superintendent to raise £25,000 for the lighthouse) the Superintendent went ahead with his plans so that “no time shall be lost in erecting it.”³⁹

The Provincial Government, did not have charge of the foreshore of the whole harbour. Under the Regulations for the Port and Harbour of Wellington, issued in November 1858, control of the foreshore was to be exercised by the Harbour Master. Under clause 33 it is found:

Any person removing shingle, stone, shells, or any part of the soil below high-water mark (except where the water frontage has been given by the New Zealand Company to their purchases) without permission from the Harbour Master, or in the absence of the Harbour Master the Resident Magistrate shall forfeit a sum not exceeding ten pounds.⁴⁰

Other powers under the regulations included: control of rubbish, control of material thrown overboard from ships, damage to beacons, firing of guns after sunset (and on the Sabbath) and the throwing of any dead animal into the harbour without sufficient weight to sink it.⁴¹ Control of the ports by the General Government further expanded with the Marine Boards Act of 1863 and the Marine Acts of 1866-1867. This legislation firmly placed the harbours under the control of the Governor who acted through a Marine Board. The powers included:

- defining the limits of any port;
- determination of port charges;

³⁹ Speech of the Superintendent, 2 June 1857; Correspondence relative to the Harbour Lighthouse, 5 February 1857, Council Paper, JPWPC.

⁴⁰ Harbour Regulations, 5 November 1858, NZG.

⁴¹ Ibid.

- erection and maintenance of harbour marks, buoys, lights, beacons (which were now to be vested in the Governor);
- appointment and removal of harbour masters;
- harbour survey; and
- quarantine and harbour regulations.

Penalties included a fine if any tree which was felled on the side of a navigable river which lay below high-tide mark, was not removed within two days. The Provinces, meanwhile, were allowed powers for the regulation of boats, tugs, berthing and wharfage.⁴² Under the Marine Act, the Port of Wellington was defined as having a sea-ward limit of “a circle of three nautic miles radius from the Outer Rock of Barrett’s Reef.”⁴³ This sea-ward limit became the legal definition of Wellington Harbour.

5.5 HARBOUR POLLUTION

Harbour regulations could not stop harbour pollution. The first drainage regulations were acted by the Provincial Government in 1855 and provided for a Streets and Drainage Board and a Health Officer. The Board had powers for the control of all drains, privies, and cess pools and the construction of common sewers. Section 79 also empowered the Board to make alterations to river beds to cause sufficient acceleration in the situation when a river, into which sewage is discharged, has diminished water quality.⁴⁴ In other words, the streams could be altered to make the sewage wash faster down to the sea! By the 1860s the population of Wellington within the Town Belt had exceeded 4,000 and reclamation work was restricting the ability of the streams

⁴² Marine Board Act, 1863; Marine Act 1866.

⁴³ Port of Wellington, 1868, p 549, NZG.

⁴⁴ Streets Sewerage and Drainage Act, 1855, JPWPC.

to wash away the sewage. During 1861, eighteen residents of Lambton Quay complained to the Provincial Government stating:

Drains for carrying off the surface water and other refuse matter from the premises now in their occupation have been stopped by land reclaimed from the harbour. That in consequence of the stoppage of the drains, the water and refuse matter not being able to run away, they accumulate and stagnate so as to become offensive to the sight and injurious to public health.⁴⁵

This petition was affirmed by a Select Committee who recommended the construction of a large drain running through the reclaimed land.⁴⁶ During the 1870s pollution and drainage problems did not go away. In 1873 Mr Mantell was most distressed by the state of Wellington's drains around the centre of town especially the Kumutoto street which drain was a "very offensive institution" and "showed a percentage of unhealthy matter a great deal larger in proportion to anything customary not only in water which was wholesome to drink but even to wash with." Mantell also claimed that:

a serious illness occurred to one of the inhabitants of Government House, which simply arose from the exhalations of the unhealthy atmosphere from the drains in the vicinity of Bowen Street.⁴⁷

5.6 RAILWAYS AND FURTHER RECLAMATIONS BY THE CROWN

While the Provincial Government was carrying on with its reclamation money-creation scheme, other institutions and organisations were making a claim on the harbour sea-bed for reclamation. The need to provide for a railway was first discussed by a Provincial Select Committee in 1863 which recommended that a railway be constructed from Wellington to the Wairarapa on land provided by the Government free of cost. Clearly land obtained from reclamation was to be a key

⁴⁵ Petition, Council Paper, 1861, JPWPC.

⁴⁶ Report of Committee, 25 May 1861, JPWPC.

⁴⁷ Mantell, 28 August 1873, NZPD.

ingredient in the Railway proposal:

The railway would commence at the present Custom House, along the proposed quay to Pipitea Point, enclosing the remainder of the land to be reclaimed from the harbour, thence skirting the road on the western side of the harbour to Petone...[The] breastwork would reclaim the remainder of the land proposed to be taken from the harbour...From Pipitea to Petone in carrying the railway along the western side of the harbour, it would probably be found expedient to construct the line on a raised causeway between the extreme points of the different indentations or bays instead of following their circuit, but the diminution of the distance and other advantages to be gained would more than compensate for the cost.⁴⁸

By 1866 the railway idea had become more serious and another Provincial Select Committee recommended the construction of a railway from Wellington to the Wairarapa for a cost of £150,000. It was proposed that a Railway Company would be formed and that a grant would be made to the Company of “any land that may be reclaimed by it outside the boundary of the present road, or to pay for the works of reclamation,” and to “give the right of laying a line of railway within and along the seawall of the reclamation as in progress to the Steam Boat Pier.”⁴⁹ In 1866, the Provincial Government also passed an Act authorising the Superintendent to enter into a contract for the construction of a railway at a cost not exceeding £300,000. This contract would include the provision that land would be provided by the Province “at the public cost.”⁵⁰ These plans did not, however, gain the support of the Superintendent who regarded the whole scheme as impracticable. This judgement was based on the Rimutaka mountain obstacle and the costs involved in building a permanent causeway in the sea between Wellington and the Hutt.⁵¹

Eventually the railway became a reality as part of Vogel’s public works scheme of 1870. Under the Immigration and Public Works Act and Railways Act of 1870, the Wellington to Napier line

⁴⁸ Report of Select Committee, April 1863, Council Paper, JPWPC.

⁴⁹ Report of the Wairarapa Railway Committee, June 1866, Council Paper, JPWPC.

⁵⁰ Railways Contract Act, 1866, JPWPC.

⁵¹ Speech of the Superintendent, 19 May 1868, JPWPC.

became a priority. The first section of the railway to be built was to proceed from Wellington, at the southern boundary of Grey Street, to Silverstream and the foreshore was acquired by the Crown for purposes of railway on 25 September 1872. The legal description of the line involved:

Commencing in the City of Wellington, at the southern boundary line of Grey Street, thence crossing the said street, and along Custom House Street, thence in a curved line to Pipitea Point, and passing along the seaside of Thorndon Quay, and of the main road to the Hutt...and passing through or over the several sections of land, roads, reserves, places, water-courses, and sea beaches.⁵²

The lands taken included: Grey Street, Custom House Street, portions of Lambton Harbour, private sections, native reserves, the sea beach, and adjoining roads, streams and rivers. Maori reserves effected included Pipitea, Kaiwharawhara, Ngauranga and Petone. These places now had a road and railway separating the reserve from the foreshore. All the Petone reserve sections (1,2, and 3) that had harbour frontage were taken.

It was assumed that the railway would begin at Grey Street, the site of the first Provincial Reclamation, proceed up Custom House Quay over to Pipitea Point on the as yet unreclaimed land and proceed to the Hutt Valley on the coastal side of the Wellington-Hutt Roadway.⁵³ As the large area of harbour between Waring-Taylor Street and Pipitea Point was still in the process of reclamation, the Public Works Department reclaimed a small area of land at Pipitea for a temporary railway station (Map 4.2, Document Bank, Vol III).⁵⁴

Work on the line took longer than expected and problems arose along the Hutt Roadway as there was little space for a railway between the cliffs, road and sea. The Provincial Engineer stated that before the commencement of the railway, the Hutt Road had an average width of 24 feet 5

⁵² Land taken for Railway, 25 September 1872, NZG.

⁵³ General Conditions for the Wellington and Hutt Railway, D-19, 1872, AJHR.

⁵⁴ The Superintendent regarded the Pipitea Terminus as a 'provisional arrangement' and that "it would be necessary that the line should be continued to the reclaimed land;" Fitzherbert/Minster for Public Works, 5 February 1873, Correspondence Relative to the Deviation of the Wellington/Hutt Railway, JPWPC.

inches. This 'minimum' width had been decreased considerably "principally at points projecting out towards the sea" as the railway had been constructed at places on the road-way; "for years past we have been gradually increasing the width of the road by the removal of slips and scrapings; through the railway constructed so close to the road this has been all cut away, and the original width only remains."⁵⁵ The Engineer also stated that access and use of the foreshore was now limited:

The railway prevents communication with the beach; all the side approaches thereto have been destroyed, and it will be impossible to obtain the metal for repairs for the places we have been accustomed to; this will cause additional cartage, and of course, expense.⁵⁶

The first Wellington-Hutt railway essentially took possession of, and destroyed much of the Western harbour beach and foreshore. It also provided a major obstacle to access for fishing purposes.

The General Government's plans for a new centre at Wellington also increased the Crown's involvement in reclamation. In October-November 1873 a deal was worked out between the Superintendent and the Minister of Public Works (Reynolds) for reclamation rights. Key elements of the arrangement included:

- Reclamation of 51 acres would continue to proceed with as little delay as possible by the Provincial Government. This section included the harbour-bed north of Waring-Taylor Street within the 1855 Grant.
- That the Provincial Government would convey 11.5 acres to the Crown for the purposes of public buildings for the General Government and for extending the railway from Pipitea Point into the City of Wellington. The General Government would pay all costs

⁵⁵Baird/Fitzherbert, 22 February 1873, Correspondence Relative to the Deviation of the Wellington/Hutt Railway, JPWPC.

⁵⁶ Ibid.

for this reclamation.⁵⁷

Just over 2 acres of this area was reclaimed by the Public Works Department in 1875 and is the present site of the Government Buildings.

5.7 WELLINGTON CITY COUNCIL RECLAMATION PLANS

Wellington City Council was established in 1867 under the Municipal Corporations Act 1867. The Act defined the City of Wellington according to the Plan of the Town of Wellington annexed to the Crown Grant of the New Zealand Company, dated 27 January 1848, and included:

certain portions of the Harbour of Wellington as are comprised in a certain Crown Grant thereof dated the 18th October 1855 subject to the exception hereinafter mentioned and also the Town Belt, the Canal and Basin and the Public Reserves belonging to the City of Wellington but excepting all lands, houses or buildings belonging to the Crown or Provincial Government or granted to the Superintendent by the Grant dated the 18th of October 1855 by Thomas Gore Browne the late Governor of the Colony and grant in confirmation thereof so long as any such land or any part thereof shall remain undisposed of or such as are reserved for public purposes.⁵⁸

In other words, the boundaries of the Town of Wellington did not extend over the reclaimed and unreclaimed lands of the 1855 Grant, but this part of the harbour remained in possession of the Provincial Government and the Crown. Wellington City Council had no authority over the reclaimed land to improve drainage and construct lighting, water supply, and bridges.⁵⁹

It was not long after the City Council was created, it attempted to secure reclaimed land and the right to carry out reclamations. On the 12 May 1870 negotiations began with the Provincial

⁵⁷ Copy of Correspondence Relative to the Reclamation of 51 Acres of land in the Wellington Harbour, Council Paper, C-2, 1873, JPWPC.

⁵⁸ First Schedule, Municipal Corporations Act 1867.

⁵⁹ Whitmore, 14 August 1878, NZPD.

Government who agreed to sell 36 acres of reclaimed land to the Council for a sum of £30,000. This right of sale was questioned by a petition of some 546 Wellington ratepayers who requested that the General Government should not give the Corporation approval to raise a loan to pay for the reclaimed land.⁶⁰ The reasons for the petition went beyond the simple issue of loan approval and included:

- reclaimed land is the only source of revenue for the City Council;
- the Provincial Council has reclaimed land for general Provincial purposes (not for the benefit of the City) and has raised finance on reclaimed and un-reclaimed lands (£31,000 and £25,000 respectively as authorised by the General Government in the Consolidated Loan Act 1869);
- reclamation has resulted in sewerage problems on the land behind it;
- all assets of the Provincial Council should be surrendered to the City (the City should not have to pay for the reclaimed or unreclaimed land);
- the city is entitled to the waste land within its boundaries;
- profit made on the reclamations by the Provincial Government amounts to over £40,000 and all reclaimed and unreclaimed land should be given to the City; and
- the House should define what property by right belongs to the City.⁶¹

The result of this petition and the request for loan approval by the City Council resulted in a long debate within the General Assembly over rights to reclaimed and unreclaimed land within

⁶⁰ Petition of Wellington Ratepayers, No.8, 1871, JALC.

⁶¹ Ibid.

Wellington Harbour. Mr Waterhouse summed up the issues:

The Province of Wellington was possessed of certain lands which the Corporation of Wellington were desirous of acquiring. Those lands were what were known as the reclaimed land and the wharf and store,...the power which it [the Province] possessed over the reclaimed land was not absolute as it was mortgaged to the General Government as a security for a loan of £31,000...A point of importance which they should closely scrutinize was, the extent to which the General Government of the Colony was likely to be injuriously affected by the transfer of land.⁶²

The House was not so supportive of the petition. Mr Mantell “did not believe that Corporations were at all improved by being heavily endowed, and that if the Corporation of Wellington, was to get the reclaimed land at all, the higher it had to pay for it the better.”⁶³ The Bill was passed and the Wellington Reclaimed Land Act 1871 gave the Governor power to sell the reclaimed land and provided for the raising of a loan by the City Council.

The debate highlighted the uncertainty over the Crown’s title to lands below the high tide mark under the Public Reserves Act. An opinion was sought from the Attorney-General, James Prendergast, who stated:

1. A grant from the Crown made by the Governor in Council by virtue of the second section of ‘The Public Reserves Act 1854’ does give an actual title to lands below high watermark. Such a grant would be made by virtue of the Statute referred to.
2. The Governor, either in Council or otherwise, can make grants only by virtue of legislative provision; and this, whether of ordinary Waste Lands or lands below high watermark.⁶⁴

Despite this opinion and the passing of the Wellington Reclaimed Land Act, the right of the Superintendent to sell the foreshore was questioned in 1874 by Mr Travers, Solicitor of the

⁶² Waterhouse, 4 October 1871, NZPD.

⁶³ Mantell, 4 October 1871, NZPD.

⁶⁴ Opinion of the Attorney-General relating to title of lands below high watermark, 12 April 1872, No.1 JALC.

Wellington City Council. Travers looked in detail at the provisions of the Public Reserves Act 1854 and the Grant made to the Provincial Government of October 1855 and came to the conclusion that there were three key questions:

1st. Is the grant itself in conformity with the provisions of 'The Public Reserves Act, 1854?'

2nd. If not, is it of any effect for the purpose of vesting the lands comprised in it in the Superintendent?

3rd. Even if it be sufficient, can any sale or mortgage be made of the lands in question except for the purpose of reclamation or wharf construction?

Regarding these questions, Travers argued that the "grant is not in conformity with the provisions of the Public Reserves Act 1854" for a number of reasons, which included: the grant was not made with the advice of the Executive Council, purposes were not declared in the grant, the Governor had no authority to delegate the declaration of purposes, and there was no power of sale vested in the Superintendent. For these reasons, Travers concluded that if "I were acting for a purchaser under the alleged power, I should not accept title."⁶⁵ This opinion shocked the Superintendent and three legal opinions were ordered to review Travers' statements; Brandon, Cook and Smith. All three disagreed with Travers and regarded the grant of 18 October 1855 as sound and in accordance with the Public Reserves Act. Cook said "I am of opinion that the Crown Grant of the 18 October, 1855, is not impeachable upon either of the grounds referred to."⁶⁶ The three lawyers also thought title of the reclaimed lands was valid and the Superintendent had full power to sell the lands within the granted boundary.

On this legal advice, the Provincial Council ceded 36 acres of reclaimed land to the Wellington

⁶⁵Opinion of Mr Travers, November 1874, Power of Superintendent to Sell Harbour Reserves, Council Paper, C-8, JPWPC.

⁶⁶Opinion of Cook, 22 March 1875, Power of Superintendent to Sell Harbour Reserves, Council Paper C-8, JPWPC.

City Council for a sum of £30,000 on 5 March 1875.

Another challenge to the reclamation regime under the Public Reserves Act came from the member for Southern Maori, H. K. Tairaroa. He asked the question in the House:

By what authority any land below high water mark has been reclaimed for public purposes in the North Island, and whether such reclamations are not in contravention of the rights reserved as to fisheries to the Native Race by the Treaty of Waitangi; and if infringement of the Treaty has taken place, how the Maori people can obtain compensation.⁶⁷

McLean responded to the question by making two key arguments. Firstly, the reclamations were not in breach of the Treaty because the Superintendents held Crown Grants to the foreshore issued under the Public Reserves Act 1854. Secondly, McLean claimed that when the land was ceded to the Crown, all rights connected to the land - access, rivers, streams, subsurface interests, and foreshore - were also ceded.⁶⁸ This position, however, did not reflect the judgement of the Native Land Court in the 1883 *Parumoana* (Porirua Harbour) decision. This case stated that, although no title could be issued to Maori below the high tide mark, Maori had remaining piscatory rights over the foreshore.⁶⁹

It seemed that in McLean's view that compensation arrangements for damage caused by reclamations was provided for only if the interest in the foreshore was held as title not as an piscatory interest under the Treaty. As argued above, however, it was by no means clear that McLean's second assertion was in fact correct, and that Wellington harbour and foreshores had been fully and deliberately ceded to the Company or its legal successor, the Crown. Nor did McLean address the issue of what should be done if reclamations damaged or reduced access to Maori-owned fishery. In fact, he neatly sidestepped this issue in his response to Tairaroa's question.

⁶⁷ Tairaroa, 1874, NZPD, p 508.

⁶⁸ McLean, 1874, NZPD, p 509.

⁶⁹ Boast, 1996, p 50-51.

In 1875 the Provincial Councils were disbanded and the era of Provincial reclamation came to an end. Under the Abolition of Provinces Act 1875, the foreshore reserve granted in 1855 became vested in the Crown, and the Public Works Department finished the large reclamation of 46 acres which reached Pipitea Point in late 1876.

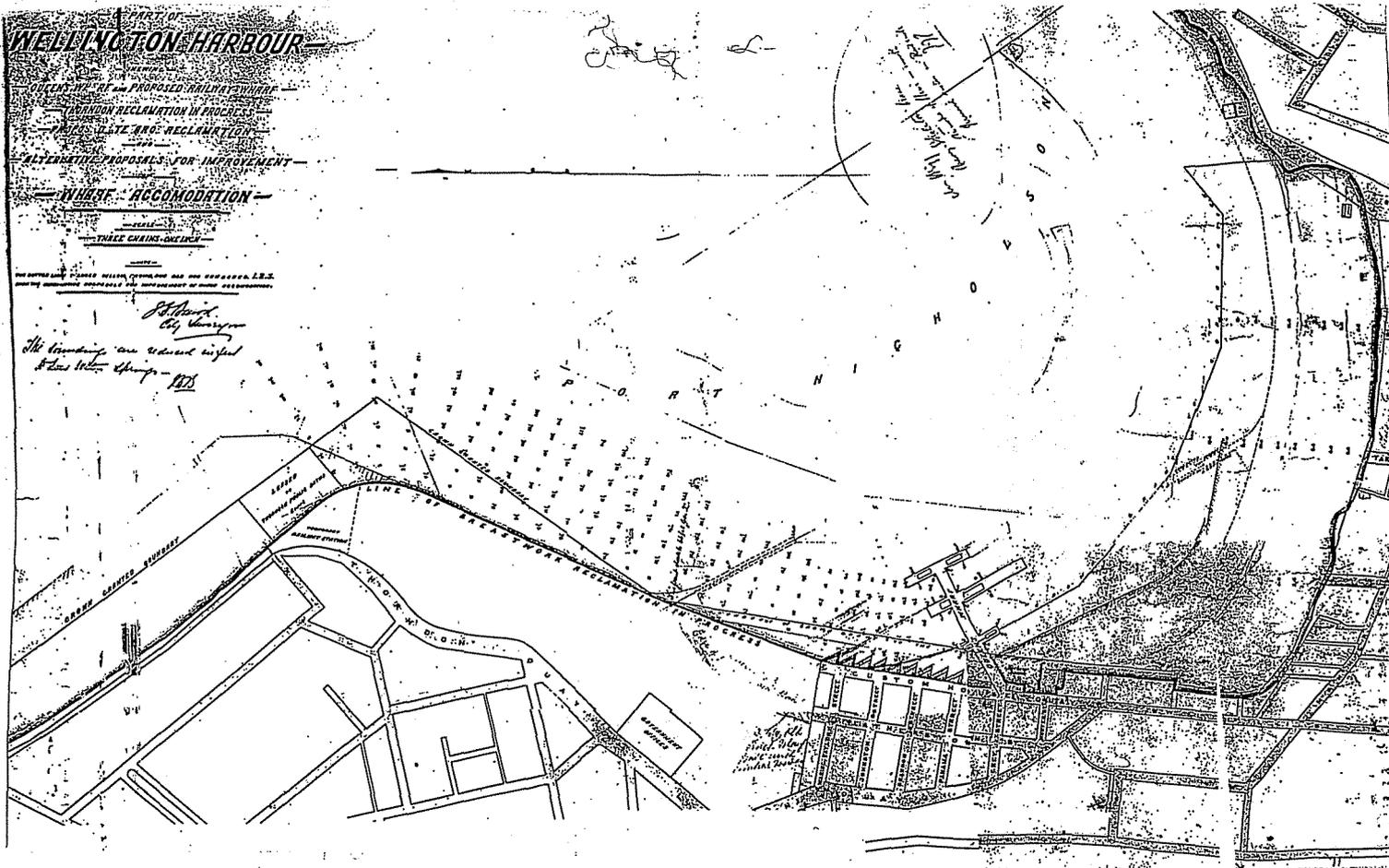


Figure 5.2. Plan of Wellington Harbour, 1873. Reclamation. Source Marine Department, WRC.

Conclusions to Chapter Five

Reclamations between 1840 and 1878 amounted to over 76 acres of the sea-floor of Lambton Harbour. All these reclamations, except one, were carried out by the authority of a Crown Grant issued under the Public Reserves Act 1854. This Act gave the Governor the right to grant ownership of the foreshore to Provincial Superintendents. The era was dominated by the reclamation plans and activities of the Provincial Government which used the Grant to secure funds for the Province. The Public Reserves Act's system of local management of lands to be held in *trust for the public service* was abandoned in favour of a 'culture of reclamation' whose motive was profit making and expansion of business facilities, transportation, etc. The adverse effects of these reclamations was focused on Lambton Harbour (an effect which included loss of drainage and foreshore), and along the western foreshore with the construction of the Wellington-Hutt Railway in 1872.

The only regulation during this time was the boundaries outlined on the Crown Grant and the resolutions of the Provincial Government. Within the boundary it was all *go!* Reclamation along the Lambton Harbour foreshore was being carried out and sold off as fast as possible. This situation was radically altered with the repeal of the 1854 Public Reserves Act and the passing of the Harbours Act 1878. Reclamation grants now needed a separate Act of Parliament and the Harbours Act introduced a regulation system for reclamations and harbour works. As will be illustrated in the next chapter, the Te Aro reclamation became a key point of struggle between the reclamation power of the City Council and the regulation power of the Marine Department.

During this time, the reclamation regime was silent on the issue of Maori interests in the foreshore. It seems such an interest, in the Wellington area, was never considered by the Legislature or the Provincial Government. The Public Reserves Act 1854 and Crown Grants covering the foreshore were enacted without providing for rights promised to Maori under the Treaty of Waitangi. There was also no space for Maori participation or consultation in the reclamation system, with Tairaroa's question in Parliament being a lone voice of dissent. McClean's response to Tairaroa generally expressed a desire by the Crown to avoid the issue and

continue with the belief in the Crown's assumption of ownership of land below high tide mark. Taiaroa's voice could be easily ignored. An evaluation of the effect of the Wellington reclamations on Maori will be included in the next chapter.

CHAPTER SIX: RECLAMATIONS 1878-1923; THE WELLINGTON HARBOUR BOARD, CITY COUNCIL, MARINE DEPARTMENT AND TE ARO.

By 1878 the remains of the Provincial Government were buried and four major institutions sought control over Wellington's Harbour: The City Council, who had a Crown Grant to reclaim 70 acres at Te Aro; the Wellington Harbour Board, who were to gain control over the harbour foreshore; the Public Works Department which reclaimed land in the interests of the Crown; and the Marine Department, which regulated reclamations under the Harbours Act.

6.1 HARBOURS ACT 1878

As stated in Chapter Four, the Crown regulated the harbours of New Zealand via the 1862 Marine Boards Act and 1866-7 Marine Acts. The life of the Marine Boards was short as the Shipping and Seamen Act of 1877 created the new Marine Department, which was set up to exercise control over fisheries, machinery inspection, and harbour administration. The new Marine Department was instrumental in advocating for general harbour regulations which would cover the whole country and the growing numbers of Harbour Boards. W. Seed, Secretary of the Department, reported to the Select Committee on the first Wellington Harbour Board Bill of 1876 that:

The [Harbour] Board should not have power to proceed with any reclamation or other works on the foreshore or in the harbour until detailed working plans have been submitted to and approved by the General Government, and Government should have power to stop any works if they are proceeded with contrary to approved plans, and to remove the same at the cost of the Board. This should be provided for in a general harbour Act applicable to all Harbour Boards; but I mention it here in case this Bill should be proceeded with and the general controlling Act should not be introduced this session.¹

¹ W.Seed, Memo regarding Te Aro Reclamation, 14 April 1882, Maori 1 4/3084, NA.

In the Memorandum that accompanied the draft Harbours Bill, Seed made the following comments in regard to the conservation of harbours:

In addition to the question of wharfage dues and charges on shipping, there is the important one of the protection of navigation. Expensive rates and charges can be lowered by the price of public opinion or by the action of the Legislature, but expensive reclamation or ill designed works may cause permanent injury to a harbour. Provision should therefore be made to prevent as far as possible any such works from being undertaken. I have frequently drawn attention to the desirability of framing regulations to prevent foreshores and land covered by tidal waters from being granted away without proper precautions being taken to prevent such foreshores and land from being reclaimed in such a way as would do permanent injury to harbours, or to interpose impediments to free navigation...The harbour and navigable waters of the colony belong to the colony as a whole; they should therefore be subject to a certain amount of control on the part of the General Government.²

With this intent of reducing some of the adverse effects of reclamations and bringing control of all harbours under the Government, the Harbours Bill was introduced to the House and debated during August 1878. The purpose of the Bill was stated as the “management of shores, wharves, and docks contiguous to or within the harbours of New Zealand.” It was hoped the operation of the eighteen Harbour Board Acts already passed by the House would be unified and there would be one uniform harbours law. The Bill met with the overall support of the House except for a few issues. Mr Hall, for example, objected to clause 148:

which provided that no land should be reclaimed from the sea or in any harbour, and no graving dock or breakwater constructed except under the authority of a special Act; and it required the plans should be deposited in the Marine Department on a certain day...But surely they might very safely trust the Marine Department with power to sanction the erection of a graving dock or breakwater. The Assembly was not now asked for authority to carry on harbour works, which the Harbour Boards had authority to undertake with the sanction of the Government.³

² Ibid.

³ Hall, 14 August 1878, NZPD. During the debate the member for Waikato suggested (as a Joke) that he should propose a “scheme for filling up the Harbours of Dunedin, Lyttelton, Wellington and Auckland, as they

Key provisions of the 1878 Harbours Act relating to reclamations are summarised below:

Summary of Reclamation Control provisions under the Harbours Act 1878

Section 5. Existing Rights. The Act shall not affect existing rights regarding the punishment for any nuisance or protection of navigation affecting any sea, harbour, tidal water or tidal lands.

Section 8. Definitions.

Harbour and Port are defined as “any harbour properly so called whether natural or artificial and any haven estuary navigable lake or river dock pier jetty and work in or at which ships do or can obtain shelter or ship or unship goods or passengers and any port defined under the Marine Act 1867 and any harbour defined under this Act and the same terms or either of them when used in any provision relating to the jurisdiction or power may be exercised.”

Harbour works includes “any basin graving dock slip dock pier quay-wharf jetty bridge viaduct breakwater embankment of dam or any reclamation of land from the sea navigable lake or river or excavation deepening dredging or widening of any channel basin or other part of a harbour and generally any works for the improvement protection or management of a harbour whether complete or incomplete in the sea or in on or near the shore of the sea or of any creek bay arm of the sea or navigable river communicating therewith.”

Section 9. Harbours

The Governor may define, alter or redefine the limits and name of any harbour. Existing powers of Harbour Boards over a harbour remain and the rights and powers of the Harbour Board extend

would be no longer required when such a number of small harbours were established, and they could be better utilized by turning them into farms;” Barton, 29 August 1878, NZPD.

to the limits of the harbour as altered under this Act.

Sections 65-141. Powers and Duties of Harbour Boards.

Board may enter into contract for any permitted or authorised harbour work (reclamations).

Board may make by-laws regulating the removal of material (rock, shingle, etc) from any tidal lands, tidal water, or sea shore below high watermark within its harbour jurisdiction (section 103)

Board may permit material to be taken for reclamation purposes or ballast from any lands vested in the Board (section 104).

Board may construct and maintain harbour works

Sections 142-146. Resumption of Land

The Crown may take lands vested in the Harbour Boards for railway or public utility.

Sections 147-151. Foreshores and Reclamations

Foreshore and land under the sea only to be granted by special Act of General Assembly

No land shall be reclaimed from the sea except under authority of a special Act. Plans to be deposited with the Marine Department three months before a special Act is sought.

Reclaimed land comes under the jurisdiction of the local governing body (i.e. City Council).

Governor may grant lands to be reclaimed to the Harbour Boards subject to the provisions of the Act.

Section 152-165. Harbour Works

Every Board may make, construct, and maintain harbour works subject to the provisions of the Act.

No harbour works can be constructed on tidal lands without the sanction of the Governor in Council.

Before a Harbour Board or any other body or person "commences the construction of any harbour works or other structure of any kind in over through or across tidal lands or a tidal water or sea shore below low-watermark or in the bed or bottom of any port or harbour by virtue of this or any other Act the following provisions shall have effect:"

1. Detailed plans of the proposed work shall be deposited at the Marine Department.
2. If the work proposed will not "tend to the injury of navigation" the Governor-General may approve of the work subject to any "restriction, condition necessary for the preservation of any public right."
3. Work will not be constructed unless approved.
4. Work will be removed and site restored if unapproved works are carried out.
5. No person with an approved work can be indicted for nuisance or perpesture.

Section 162. Exemption for works under authority of the Crown

The approval process for reclamations and other harbour works "shall not apply to public works made constructed or authorised by or under the authority of Her Majesty of the Governor or the

Government of the colony under the provisions of any Act of the General Assembly heretofore or hereafter to be passed." The provisions also "shall not control or limit any special power or privilege given to Her Majesty or the Government of the colony by any Act or Ordinance not hereby repealed, altered or amended."

Section 164. Exemption for works under the Public Reserves Act 1854 and Public Reserves Amendment Act 1862

"Nothing herein contained shall prejudice or affect the rights powers and privileges of any body corporate or person of in and to any land below high-watermark in any harbour arm or creek of the sea or in any navigable river or on the sea coast granted" under the Public Reserves Acts. Rights and powers and privileges obtained under the Public Reserves Acts will remain and continue unaffected.

"No harbour works shall be constructed on such land except with the consent of the Governor in Council."

Section 217. Offences

Harbour Boards may fine persons who deposit substances into the sea, tidal lands, harbour or shore below low-watermark which tend to the injury of navigation.

Control over reclamation was substantially amended in the 1883 Harbours Act Amendment Act. This amendment changed the formal legal process for all harbour works. Under section four, the Harbour Board, instead of applying for a special Act under section 147 of the original Act for the approval of works, could apply to the Governor for a special order which could be granted after the following conditions were met:

1. Plans are submitted to the Minister of Marine

2. Duplicate plans are lodged at the Customs House
3. The Board shall notify all persons “whose lands adjoin or may be injuriously affected by the execution or construction of the proposed works.” Notice shall also be printed in a newspaper for a period of four consecutive weeks.
4. Objections may be lodged in writing against the proposed harbour work.
5. After considering any objections, the Governor may grant a special order authorizing the harbour works.

This order would have the same effect as if “a special Act had been passed.” Where the foreshore was vested in the Harbour Board, sections 9-12 allowed the Board to issue a licence to make and construct any necessary reclamation. This license was subject to section 156 of the Harbours Act 1878 and no licence (or Order in Council) could be issued if it “will unduly interfere with or restrict any public right of navigation or the public convenience; and, in so far as relates to wharves or landing places, shall be made or granted subject to the right of the public to use.” Sections 22-24 made explicit reference to the Crown’s interest in land which had become raised during the construction of the legal reclamation. This land which may rise above the high-tide mark gradually or imperceptibly as a result of harbour works, “shall continue vested in the Queen and her successors, as if the same had continued subject to the flow and reflow of the ordinary tides.” Section 24 also stated:

If in the course of the execution of any harbour works authorized under the said Act, or this Act, or any other Act, any part of the shores or bed of any harbour or tidal water, or of the sea, beyond the mouth or entrance thereof, belonging to the Queen, shall be gained or reclaimed from the water, no person or body shall have or exercise any right upon the same or in respect thereof, and shall not enter upon, take, use, or interfere with the land so gained or reclaimed for any purpose without the consent of the Governor in Council on behalf of Her Majesty, but such gain or

reclamation shall endure absolutely for the benefit of the Queen and her successors.⁴

After the passing of the Harbours Act and its amendment, three potential legal processes were opened for reclamation approval. The first option was to deposit the proposed plans with the Marine Department and then seek a special Act under sections 147-151. The second option was to treat the reclamation as a harbour work and apply for an Order in Council using the approval process of sections 152-165. The third option, provided in the amendment Act, allowed the Harbour Board to apply to the Marine Department for an Order in Council using the approval process contained in section 4. As will be illustrated, a combination of these options were used by the Wellington Harbour Board and Wellington City Council to gain reclamation powers.

6.2 WELLINGTON HARBOUR BOARD (WHB)

The new Harbours Act was less than a year old when the Wellington Harbour Board was created with the passing of the Wellington Harbour Board Act 1879. The new Board would exercise all powers and functions as outlined in the Harbours Act. The Term 'Wellington Harbour' was defined as the existing definition outlined in the New Zealand Gazette, 1868, p 549 (This notice actually did not define the harbour as such, but the seaward limits of the port; a circle of three nautical miles from Barrett's Reef). On 20 February 1880 the Board held its first meeting consisting of representatives from Wellington ratepayers, Wairarapa County Council, Hutt County Council, Wellington Chamber of Commerce, the Governor and the Mayor of Wellington. Yet at this stage the Board had no money, no assets and no endowment. On this issue, members of the Board visited the Minister of Marine on 10 April 1880 who ended up promising, subject to confirmation by Parliament:

- the railway wharf;
- a portion of unsold reclaimed land (nearly 1 acre), and;

⁴ Section 24 Harbours Act Amendment 1883.

- the whole of the foreshore of the harbour including Evans Bay subject to any reserves the Government might require.

A draft Bill for endowments was prepared by the Board and sent to the Colonial Secretary who forwarded it to the Marine Department for comments. Seed suggested that reserves for the Crown from Pipitea Point to Korokoro stream be set aside for railway purposes and Point Jernnigham for Defence purposes.⁵ He also suggested that the foreshore might also be vested in the Board, except for the Patent Slip, but the Government should retain the power to re-enter any portion required for public purposes.⁶ One official (Shaw) also pointed out to the Minister of Marine in a memorandum that the definition of the harbour was poor and that the Gazette notice of 1868 “does not appear to me satisfactory.” The harbour itself had never been defined in law.⁷

The Bill was introduced into the House and was passed with little debate except questions concerning the endowment of the railway wharf and the foreshore. For example Mr Turnbull questioned the idea of foreshore vesting which involved “parting with property to the extent of nearly half a million” which eventually would “become of very great value.”⁸ Mr Wright also objected to “this wholesale alienation of the public estate,” especially the Railway wharf.⁹ With the amendments proposed by the Marine Department, the Wellington Harbour Board and Corporation Land Act 1880 vested the following endowment in the Wellington Harbour Board:

- small section of reclaimed land on Waterloo Quay;

⁵WHB/Colonial Sec, 1 June 1880, TR 1 43/17/6, NA. This military foreshore was vested in the WHB in 1965 under section 11 of the Reserves and Other Lands Disposal Act, 1965.

⁶ Memo to Min. Marine, 7 April 1880, Ibid.

⁷ Memo to Min. Marine, 16 April 1880, Ibid.

⁸ Turnbull, 26 August 1880, NZPD.

⁹ Wright, 27 August 1880, NZPD.

- Waterloo Quay;
- the Railway wharf;
- the pilot and signal station on Miramar Peninsula;
- all that portion of the foreshore of Port Nicholson (i.e., the land lying between high-water mark and low-water mark) from:

Dorset Point Military Reserve to Patent Slip Grant at Evans Bay

From Patent Slip Grant to Point Jerningham Magazine Reserve

From the Magazine Reserve to the Te Aro Foreshore Grant

From Korokoro to Pencarrow Head (Figure 6.1 and Map 3.7 Document Bank, Vol III).

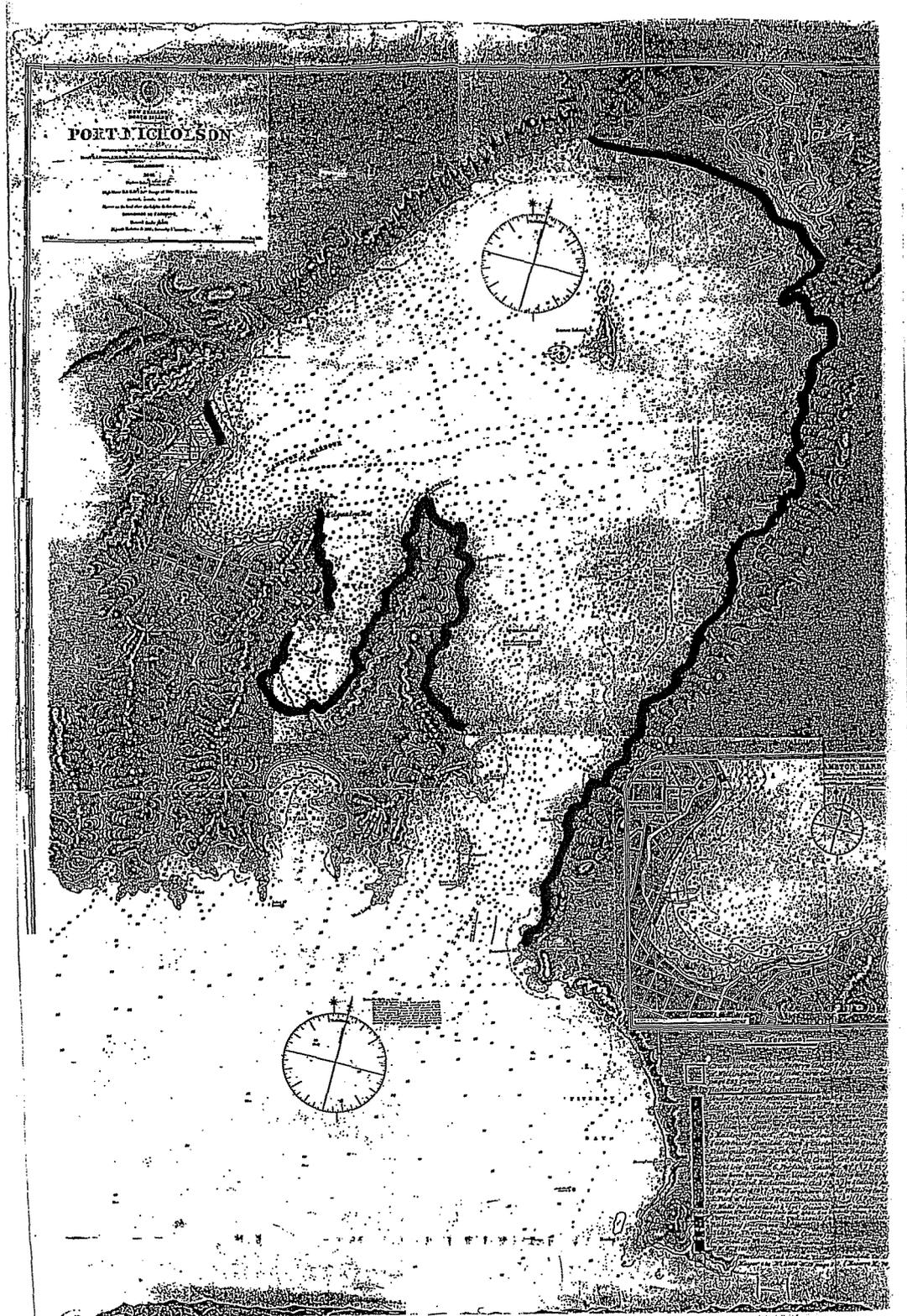


Figure 6.1 Foreshore Granted to the WHB, 1880. Port Nicholson as defined by the HMS *Acheron*, 1847. Source, Marine Department, WRC.

All the foreshore of Wellington Harbour was vested in the Harbour Board except for the North-Western shoreline which was to be kept for roading and rail purposes, the Lambton Harbour area, Point Jerningham, Dorset Point and the whole of the south-coast. The land to be held by the WHB was “absolutely vested in the Board, and shall be held by it for the purposes for which the said Board is constituted.” As a result of a private petition, the Act also contained a compensation clause in section 10:

The Corporation or Harbour Board shall make to every person having any estate or interest in any land injuriously affected by this Act, and to every person who may suffer any loss or damage from the exercise of any of the powers hereby given, full compensation for the same, and such compensation shall be ascertained in the manner pointed out in Part III. of ‘The Public Works Act’...In ascertaining and determining the title of any claimant to compensation, the Compensation Court shall not be bound to regard strict legal rights only, but may award such compensation in respect of any claim which the Court may consider reasonable and just having regard to all the circumstances.¹⁰

With endowments and most of the foreshore under its control, the Wellington Harbour Board began a massive wharf improvement scheme. Queen’s wharf was purchased from the City Council and £30,000 was raised in London for harbour improvements. The proposed improvements included eight new wharfs, dredging, small reclamations to provide for the wharfs and the planning of major reclamation to the north-west.

¹⁰Section 10, Wellington Harbour Board and Corporation Land Act, 1880. This section was repealed by the an amendment in 1882 which stated that claims for compensation could only be brought against the City Council or Harbour Board and not against the Crown or Government of the Colony; Section 9 Wellington Harbour Board and Corporation Land Act, 1880 Amendment.

These plans were given no formal approval but the ideas persisted and began to be implemented by William Ferguson. Ferguson's (as Chief Officer of the WHB) influence on the design and construction of the Port and the Thorndon railway lands was salient and his skill in using the regulatory system (special Acts and Marine Department approval) was critical in gaining the Harbour Board's authority to reclaim. The first harbour works approved by the Marine Department were in regard to the renewal and reconstruction of Queen's wharf. These works included dredging, and the dredging was required to counteract unauthorised reclamation caused by silting. Johnson finds:

As the Council improved the roads on the edge above the harbour, and particularly as it improved the Terrace, loose shingle and sand was washed down drains and sewers which led to the harbour. There the debris formed a new, unauthorised reclamation. From Clyde Quay to Waterloo Quay a semi-circular mudbank formed wherever pipes discharged. In some places where there had once been two metres of water at low tide, it now became possible to paddle about with dry knees.¹¹

Thus, dredging was necessary and the material from the harbour bed was deposited behind breast-works for reclamation.

Reclamations carried out by the Harbour Board between 1883 and 1910 were authorised by a number of Special Acts and Order in Councils. A summary of these special Acts is provided below (for a full list of legislation see appendix C):

¹¹ Johnson, 1996, p 145.

Wellington Harbour Board: Reclamation Empowering Acts 1883-1910	
SPECIAL ACT	Provision
WHB Land and Reclamation Act 1883	Authorise reclamation for purpose of widening approach to Queen's Wharf. Vested in the WHB and WCC
WHB Loans, Consolidation and Empowering Act 1884	Authority to construct graving dock, slip, other works
Special Powers Contracts Act 1886	Large endowment of harbour bed eastward of Waterloo Quay between Pipitea Point and the Railway Wharf vested in WHB, subject to Harbours Act, on condition that the land is reclaimed.
Reclamation Within the Harbour of Wellington Act 1887	Set the limit of the Te Aro reclamation. Part of Te Aro foreshore vested in the WHB for graving dock. Authority to construct seawall. Part of harbour bed granted to WHB.
WHB and WCC Empowering Act 1890	Authorise reclamation for wharfage and berthage
WCC Reclamation and Public Baths Act 1898	Authorise the WCC and WHB to reclaim land for public baths along Clyde Quay
WHB Reclamation and Empowering Act 1898, No. 1	Authorise reclamation for purpose of railway station extensions to Te Aro, Waterloo Quay, Customs House, and also road improvement
WHB Reclamation and Empowering Act, 1898, No. 7	Authority to reclaim parts of harbour bed for wharfage and berthage, extension of railway, and other harbour works.
WHB Empowering Act 1902	Authorise reclamation for purpose of graving-dock
WHB Reclamation and Empowering Act 1903	Authorise 21 acre reclamation for harbour purposes, railway
WHB Reclamation and Empowering Amendment Act 1903	Authorise additional 10 acre reclamation for harbour purposes, Government buildings
WHB Empowering Act 1908	Foreshore granted to Patent Slip Company at Evans Bay. Authority granted to reclaim 10 acres of harbour bed.
WHB Reclamation and Empowering Act 1908	Authorised huge reclamation at Evans Bay of 156 and another 314 acres vested in the Board for other purposes.

Wellington Harbour Board: Reclamation Empowering Acts 1883-1910	
WHB Empowering Act 1910	Authority to construct dock

Not all authorised reclamations were carried out. The following list is of actual reclamations between 1882 and 1916 carried out by the Wellington Harbour Board:

Reclamations by the Wellington Harbour Board, 1882-1916.

1. 1882	1r. 21p	
2. 1886	3r. 26p	Hunter Street Endowment
3. 1893	1a. 21p	Te Aro railway, Store No.7
4. 1893-1901	3a. 30p	
5. 1901-1903	2a. 2r. 17p	For Government, Custom House Site, etc
6. 1904-1916	34a.2r. 16p	Waterloo Quay ¹²

These reclamations were all authorised by a special Act and went through the standard Marine Department approval procedure outlined in sections 152-165 of the Harbours Act 1878.

6.3 TE ARO RECLAMATION

With a reminder that prominent members of the Provincial Government were also members of the City Council, Mr Pearce moved a resolution in the Provincial Council that:

This Council recommends that the tract of land, now covered with water, extending from Te Aro Flat into Lambton Harbour, comprising 70 acres or thereabouts, as shown on the plan annexed to this resolution, be granted to the Mayor, Councillors, and Citizens of the City of Wellington, as part of the Corporate property, to be reclaimed by them from the sea, so as to be converted into land suitable for building, and for purposes of public utility, and that his Honour the

¹² Wellington Harbour Reclamations, M, 1 4/2895, NA.

Superintendent be requested to concur in this recommendation.¹³

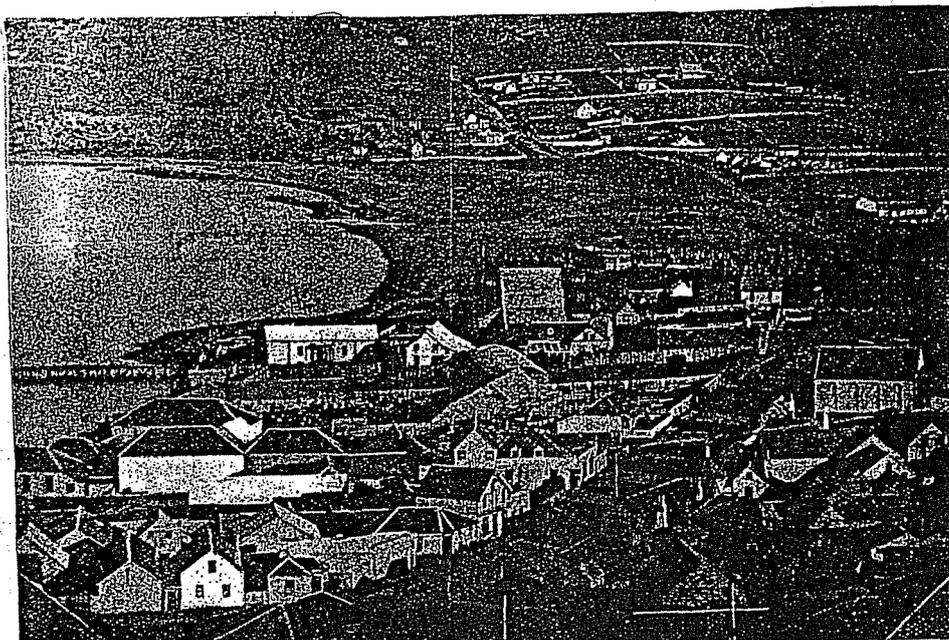
This resolution was approved and the Wellington City Council was given a Grant on 24 June 1874 of 70 acres of the Te Aro foreshore/harbour upon trust for reclamation and purposes of public utility under the provisions of the Public Reserves Act 1854. This grant essentially shifted the ownership of the Te Aro foreshore from private individuals and Te Aro Maori to the City Council.

Soon afterwards the Public Reserves Act was repealed by a new Public Reserves Act of 1877 which did not contain a section allowing the Governor to vest lands below the high tide mark to local authorities. The repeal of the 1854 Act did not, however, affect “anything already done” or any “right or title acquired,” nor any grants and leases entered into under the old Public Reserves Act. Section 8 also confirmed the valid title of any endowment to a Municipal Corporation for public purposes.¹⁴ The Public Reserves Amendment Act 1878 also tidied up the reserves administration by providing for three classes of reserves; Municipal, Public Works, and Harbours. The Harbours class of reserves included reserves for the improvement of harbours, foreshore reserves, docks, quays, and landing-places. If there was any doubt about the purpose of a particular reserve, the Act empowered the Governor to define the purpose by a notice published in the Gazette.¹⁵

¹³ Pearce, Minutes of the Wellington Provincial Council, 13 May 1873, JPWPC.

¹⁴ Section 2, 8 Public Reserves Act 1877.

¹⁵ Section 7 Public Reserves Act Amendment 1878. Public Reserve in this Act in compassed a definition which included land set apart by the New Zealand Company for a public reserve.



Te Aro, 1857. Showing Te Aro pa and Waitangi Swamp. Source, Wards, 1928, p 305.

The Te Aro reclamation was the first real test of the 1878 Harbours Act. On the basis of the 1874 Crown Grant, the City Council believed at first that it had the necessary power to begin reclamation. However, on the advice of the City Solicitor (who considered the title granted under the 1854 Public Reserves Act to be flawed) a bill was introduced into Parliament to confirm the reclamation authority and raise a loan.¹⁶

By 1877 the bill was still 'fumbling' through the House and did not gain serious attention until 1879 (after the enactment of the Harbours Act). The Attorney-General and other members were opposed to the bill stating that the foreshore should not have been vested in the City Council in the first place and rightly should belong to the Harbour Board. Reynolds considered that the huge reclamation would affect shipping in the harbour which was a concern to the whole colony. As the harbour-bed had been granted in the WHB, it was thought paramount that the reclamation should come under the control of the Harbours Act. As Sir Dillon Bell stated "It was obvious that, if it were intended to go on with this Bill, the provisions in the Harbours Act referred to

¹⁶ Te Aro Reclamation, M 1 4/3084, NA.

must be carried out: it would be monstrous if such a carefully prepared measure as that should be set aside by a private bill.”¹⁷ Waterhouse, however, reminded the House that the granted area was now the private property of the Council and this Grant was for the purposes of reclamation and public utility. This comment won the support of Whitaker:

There was a private grant to the Corporation of this land, and therefore it could not in any way be interfered with. He (Mr Whitaker) at once admitted that in the case of a Crown Grant to a private individual it would be absolutely impossible to interfere with the grant, because it would be tampering with private property in a way which the [Legislative] Council would never countenance.¹⁸

The Te Aro Reclamation Act was passed by both Houses and approved by the Governor on 19 December 1879. Section 3 allowed the City Council to reclaim the entire 70 acres granted by the Governor on 24 June 1872. Section 11 provided for all works to be subject to the operation of section 156 of the Harbours Act which “shall apply absolutely to the Act, and shall also conform and be subject to all the provisions of the Harbours Act 1874 so far as the same do not conflict with the powers given by this Act.”¹⁹ Compensation was also included in section 4 for all persons having an estate, interest, or who might suffer loss and damage by the execution of works under the Act.

In compliance with both the Te Aro Reclamation Act and the Harbours Act, the Town Clerk forwarded plans to the Marine Department for approval on 7 December 1881. The Marine Engineer, John Blackett, considered the plans (Maps 4.1, 4.2.4.3, Document Bank, Vol III) and would not give approval without substantial modifications. In a memorandum to the Minister for Marine, Blackett thought the proposed works “if carried out, will materially decrease the area of a most useful portion of the harbour.” He suggested that the reclamation line should be taken

¹⁷ Dillon Bell, 4 December 1879, NZPD.

¹⁸ Whitaker, 4 December 1879, NZPD.

¹⁹ Section 11, Te Aro Reclamation Act.

back towards the land which would conserve the harbour and reduce work costs.²⁰ After several deputations to the Minister, Major Atkinson, by the City Council, an inquiry by the Harbour Board and opinions gathered from sources around the country, both parties held their ground; the City Council wanted to reclaim to the boundary of the 1874 Grant and the Marine Department would only approve of the reclamation if the line was taken back to the foreshore.

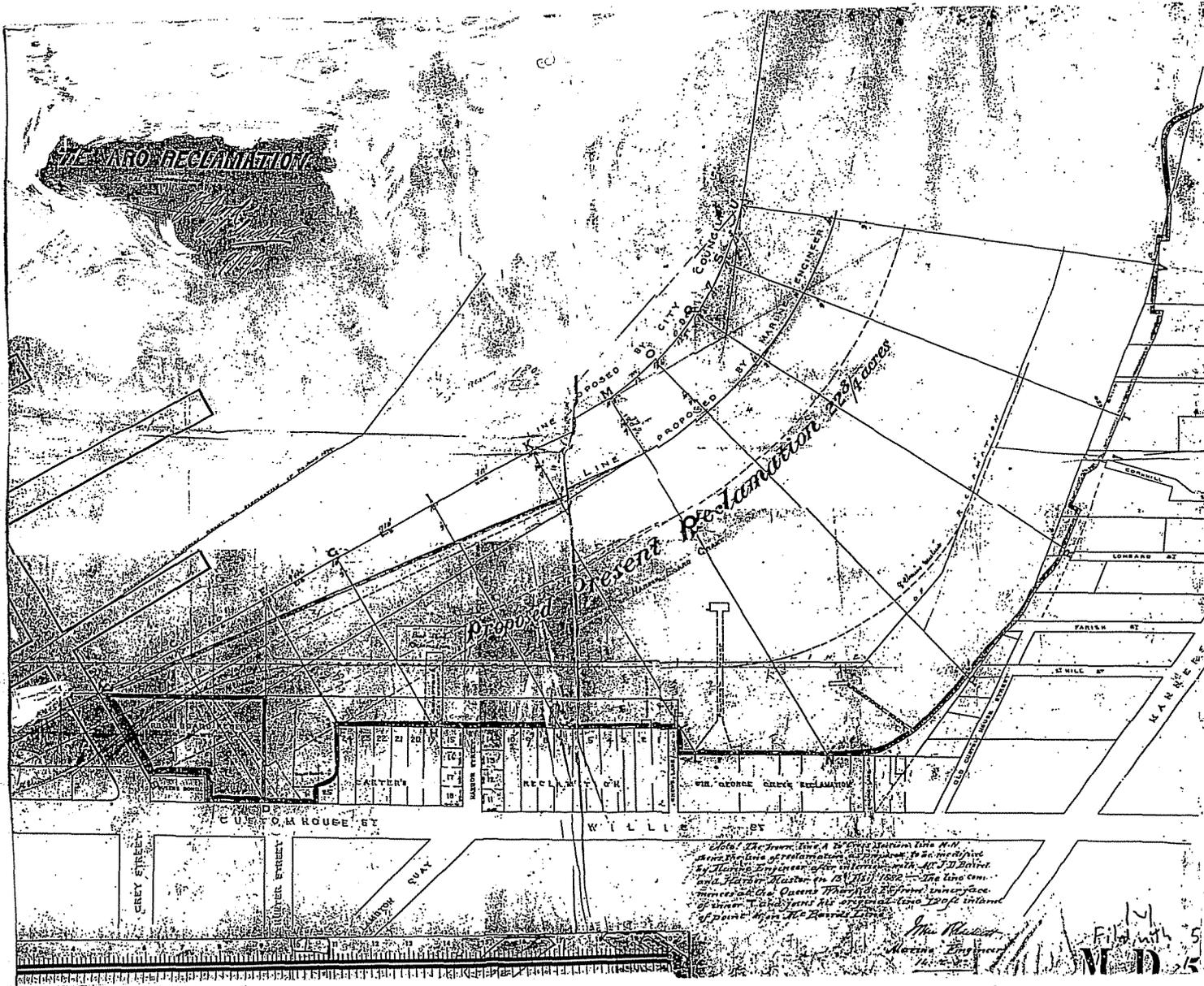


Figure 6.3. Te Aro Reclamation, 1881. MD 589, WRC.

²⁰ Blackett/Min.Marine, 24 January 1882, D-8, AJHR; also Te Aro Reclamation, M.1 4/3084, NA.

By March 1882 the City Council decided that it did not need the approval of the Minister of Marine to carry out the reclamation:

Whilst it may fairly be contended that the Governor in Council has power to deal with questions affecting the mode of carrying out the proposed reclamation, and the works ancillary thereto, having regard to their possible effect upon the navigation of other parts of the harbour, they cannot admit the existence of any right whatever to interfere with the discretion of the City Council in regard to the area to be reclaimed.²¹

In a meeting between the City Council and Atkinson on 8 April 1882, both parties decided that the Supreme Court would be the most appropriate place to resolve the issue. The case (*Attorney General v The Corporation of Wellington*) was heard before Chief Justice Richmond and Mr Justice Williams, and their decision was printed in the *New Zealand Times* on 5 June 1882. The question submitted was:

Whether the defendants are entitled, without having previously obtained the approval of the Governor in Council, in the manner provided by sections 156 and 164 of 'The Harbours Act, 1878' or either of them, to proceed to fill up the said land, and to erect the necessary retaining wall, under the provisions of the 'Te Aro Reclamation Act, 1879.'²²

While the Judges confirmed that section 11 did place the Te Aro Reclamation Act within the authority of section 156 of the Harbours Act, it was thought "absurd to suppose that when Parliament had specially authorized the construction of particular works, that authorization could be rendered completely nugatory by another body." For this reason the answer to the question was affirmative; the City Council did have the power to carry out the Te Aro Reclamation without the approval of the Minister of Marine.

The Te Aro Reclamation Act was considered a mistake by Robert Stout after the Court of Appeal decision, and Seed commented that he (Seed) was absent as secretary between April 1878 and

²¹ Graham/Min.Marine, 9 March 1882, D-8, AJHR

²² *Attorney-General v the Corporation of Wellington*, Court of Appeal, 5 June 1882, D-8, AJHR.

October 1880 at the time when the Te Aro Reclamation Bill went through Parliament. Seed also commented that “if I had any responsibility in regard to it I feel certain that I should have strongly urged the necessity for the Bill being made subject to the provisions and restrictions of the Harbours Act 1878 in respect of Harbour Works.”²³

Without the limitations of the Harbours Act, the Wellington City Council began reclamation work on the Te Aro foreshore in 1886. In 1887, however, the City Council had run out of money to continue the work and had to enter into negotiations with the Harbour Board on the final line of reclamation. In the end of this long saga, which the author has covered very briefly, the City Council and Harbour Board could not agree and asked the Minister to mediate. The outcome was the Reclamation within the Harbour of Wellington Act 1887. This Act set the limit of the reclamation at a new line called Duthies’ line which was close to the line wanted by the Marine Engineer. It was agreed that the Wellington City Council could not reclaim any lands beyond Duthies line. The land lying between this line and the Te Aro grant line was vested in the Harbour Board for the construction of harbour works *except for reclamations*. A large part of the original Te Aro site was also set aside for a large dock. This proposal came to nothing and was reclaimed by the Harbour Board between 1901-1914.

With this Act in hand the City Council reclaimed a further 17 acres at Te Aro after 1889.

Between 1886 and 1914 a total area of approximately 57 acres were reclaimed by the City Council and Harbour Board within the Te Aro Grant area.

6.4 RAILWAY RECLAMATION; THE WELLINGTON-MANAWATU RAILWAY COMPANY.

With the Hutt-Wairarapa railway connecting Wellington City to ‘its’ eastern hinterland, Wellingtonians also aimed to get the western ‘wilderness’ under control and linked by railway.

²³ Seed, Memo, 14 April 1882, M1, 4/3084, NA.

With key support from Sir George Grey, a public meeting was held in 1879 which decided that building a railway from Wellington to the Manawatu was a necessity for the prosperity of the city and country. While work began on the rail-link in late 1879, the project was abandoned by a new Government in August 1880. Without further Government action likely, a group of private individuals led by James Wallace and John Plimmer formed a private railway company in 1880 called the Wellington and Manawatu Railway Company. The plans of the Company were fully supported by the Government in the Railways Construction and Land Act 1881.²⁴ As part of the deal between the Government and the Company, the Government agreed to grant reclamation rights along Thordon Quay on the foreshore next to the Hutt-Wairarapa line. A Bill was introduced into Parliament and met with little opposition. One comment was made, however, by Mr Tawhai:

This Bill was a similar measure to one that was passed by the House last session, and was now only being opposed by one or two members. However, he saw a new provision in the Bill -- namely, that a part of the sea was to be reclaimed -- and he felt a considerable amount of pity for the fishes which would be driven off. The food too for the fishes would be buried under this debris. He would now turn to a previous date, and consider where their ancestors lived. The land they lived on must now be buried some ten feet under the soil. When the Natives sold the land the European surveyors only measured the surface of it, and did not go below the surface to measure there, or he would know to what depth the Europeans had brought. By the Treaty of Waitangi it was supposed that the Maoris were to retain all their goods and property whether above or below the earth, and the Europeans only brought the surface. He would now simply state that he would support the Bill because it was similar to the original Bill which was passed last session. He hoped it would at once pass its second reading without further discussion.²⁵

This is the first comment by any Maori Member of Parliament regarding a Wellington reclamation Bill. While stating his concern about reclamation, that concern did not go so far as

²⁴ See, Churchman, G, *The Story of the Wellington to Johnsonville Railway*, Industrial Publishing Ltd, 1988; Cassells, K.R. *Uncommon Carrier; The History of the Wellington and Manawatu Railway Company 1882-1908*, NZ Railway and Locomotive Society, 1994; Leitch, D.B. *Railways of New Zealand*, David and Charles, Newton Abbot, 1987.

²⁵ Tawhai, 14 August 1882, NZPD.

to lead him to oppose the Bill, because he supported the building of the Manawatu railway.

The Thorndon Reclamation Act 1882 authorized the Wellington and Manawatu Railway Company to reclaim over 28 acres of harbour-bed at Thorndon between Kaiwharawhara and Pipitea Point. This land was provided for rail yards and as a site for which the Company could deposit soil from the rail works. The work was carried out quickly and finished in late 1883. Most of this reclamation was within the bounds of the original 1855 grant made to the Provincial Government.

Surplus reclaimed land was sold as frontage by the Company for £8 to £10 a foot.

6.5 HUTT ROAD AND RAILWAY

While the private company was busy cutting a line into the Manawatu, the residents of the Hutt were asking for improvements for the line between Petone and Wellington. Petone by this stage was becoming a workers' suburb and the rail link was becoming very popular with commuting trains introduced in 1899. Laurence Evans comments that the track between Petone and Wellington was nicknamed the 'Crooked Line' and Captain Fraser in the House regarded the curves as dangerous.²⁶ Nearly ten years later, Fitzherbert was calling for the straightening of the Wellington-Petone line and asked for the introduction of a bill which would enable the reclamation of the foreshore for this purpose.²⁷ Public pressure mounted, letters were written by the Chamber of Commerce, a deputation of Council members met the Premier, Richard Seddon to urge for the realignment. Also a large public meeting was held at Petone in July 1899 which passed a resolution calling for the "immediate straightening and duplication of the Wellington-Hutt railway line." Reclamation for the railway would also provide an opportunity to widen the

²⁶Evans, L. *The Commuter, the Car and Metropolitan Wellington*, Victoria University, 1972, p 14; Fraser, 23 October 1879, NZPD.

²⁷ Fitzherbert, 17 December 1887, NZPD.

roadway.²⁸

The matter started to gain serious attention by the Government with questions in the House and two bills were introduced: the Hutt Road Bill and Hutt Road and Railways Bill. The Hutt Road Bill was concerned about who should manage the Hutt Road which was at that time under the authority of the Onslow Borough Council. After a lengthy debate and conference with the various local authorities, it was decided that Wellington City Council should take over the reconstruction and maintenance of the Hutt Road with costs contributed by the Onslow, Petone and Lower Hutt Borough Councils. This scheme was provided for in the Hutt Road Act 1903. Soon afterwards, the Government realized the value of placing the Hutt road and rail projects into one scheme under the control of the Railways Department. The Minister of Railways introduced the Bill:

The development of a great city like Wellington necessitates the provision for taking and improving the railway; but we do not want the unnecessary land which will be reclaimed to give effect to this thrown upon our hands for all time...The business of the Railway Department is not to provide land by reclamation but to get the line as straight as we can.²⁹

Yet the sale of the surplus reclaimed land was regarded as the key incentive to the provision of a financially viable road and rail network. As Ward continued: "I would not be surprised to find after it is finally completed that the cost to the colony will be practically nothing, on account of the proceeds from the sale of reclaimed land." And from Field:

Not only will this work when carried out be a great benefit to Wellington and the surrounding districts, but it will prove a splendid investment for the colony as a whole, as the land when reclaimed will be exceedingly valuable, and will more than repay the cost of the construction of the new line and the formation of the road. The investment is in every way a thoroughly profitable one. No member of this House, no matter what part of the country he comes from, should oppose this Bill.³⁰

²⁸ Secretary WGTN Chamber of Commerce/Min. Railways, 5 May 1900, R 3 00/730, NA.

²⁹ Ward, 17 November 1903, NZPD.

³⁰ Field, 17 November 1903, NZPD.

With control confirmed in the Railways Department, the Crown gave the Minister authority to reclaim a huge section of harbour-bed lying to the east of the shoreline from the Thorndon Esplanade to Petone in the Hutt Railway and Road Improvement Act 1903. Costs for construction of the road were borne by the surrounding local authorities. There was no provision for compensation of existing foreshore users.

After another conference with local bodies, work began on the new road and railway. This new railway soon received the attention of the Premier who realized that funds to be generated from the sale of surplus reclaimed land were not appearing.³¹ The Premier blamed this on errors made in the construction of the line in his report to the Minister for Railways:

Looking at the line, and the proposed reclamation of the land, as marked along the route of the line, it does not appear to me that there will be much land for sale...From a causal observation I should say that the line as at present laid out has been designed for the purpose of speed, than for the reclamation of land...The general contour of the line and at points where more land could have been reclaimed and at the same time the line made straighter. This has not been done. There appears to be places too where the water is very shallow and where good profit could have been made by the sale of the land with great advantage - this was clearly intended by the Act.³²

The Chief Engineer defended himself before the General Manager, stating that it was correct the line had been laid with "more a view to the improvement and duplication of the line than to reclamation of land" but, as advised in 1903, deeper reclamation was not economic and generally unsuitable for residential purposes.³³ On this advice, the line remained and the whole works involved a 124 acre reclamation from the sea. The larger reclamation was not carried out.

³¹ Chief Railway Engineer, John Coom, had recommended to the General Manager that reclamation proposals were not going to be a financial success due to the high depth of water in which the reclamations would be made. Croon investigated two plans; 1st reclaiming 59 acres at a cost of £364,769 and 2nd, reclaiming 77.5 acres at a cost of £529,603; Coom/General Manager, 19 September 1903, R 3 00/730, NA.

³² Prime Minister/Acting Min.Railways, 4 May 1906, R 3 00/730, NA.

³³ Croom/General Manager, 9 May 1906, Ibid.

6.6 WATERLOO QUAY AND THE GREATER THORNDON RECLAMATION

In May 1883, the Railways General Manager proposed that the foreshore north of Pipitea should be proclaimed and taken for railway purposes. A line was drawn on a map³⁴ as the limit of reclamation and approved by the Minister of Public Works. It was stated that “the colony, the city, the Harbour Board, and the district all deeply interested in securing this and there are no other interests which should be allowed to prevail against these.”³⁵ No action was taken until 1891 when the Thorndon Esplanade Act was passed which gave the Department authority to reclaim a large area of Thorndon. Under this Act, over 22 acres of harbour-bed adjacent to the Wellington-Manawatu Railway Company reclamation, was taken for the purposes of railway.³⁶

Government plans of railway expansion meshed with the Harbour Board’s plans of wharf expansion at Waterloo Quay. For these two main purposes, the harbour-bed along Waterloo Quay was vested in the Harbour Board in the Special Powers and Contracts Act 1896. Later in 1889 reclamation was authorised under a special Act; The Wellington Harbour Board Reclamation and Empowering Act. This Act gave authority for the Harbour Board to reclaim for the purposes of harbour facilitates, railways, a Customs House site, and other works.

Specific reclamation plans were then prepared in 1898 by Ferguson for the foreshore adjacent to Waterloo Quay, and were forwarded to the Marine Engineer who gave the stamp of approval as they “will not be or tend to the injury of navigation.” This approval was then followed by an Order in Council during August 1901 and work began.³⁷

In 1903, Ferguson prepared further plans of an extended Waterloo reclamation scheme which included the construction of four wharfs similar to the existing Glasgow Wharf. Material for

³⁴ Marine Plan No. 108.

³⁵ General Manager, Railways/Under-Sec, Public Works, 3 October 1888, R 3 10/1171/1, NA.

³⁶ Land taken for Railway, 7 May 1891, NZG.

³⁷ Waterloo Quay Reclamation, 1898-1956, M.1 4/2836, NA.

reclamation would be produced from dredging. These plans were forwarded to the Marine Department which had no objection and were also considered by the Railways Department. John Croom, the Chief Engineer, found Ferguson's plan to be sufficient to meet the needs of future railways but admitted that it was difficult to estimate future requirements, as the Railways Department was in the process of purchasing the Wellington-Manawatu Railway Company.³⁸ On this recommendation, the General Manager advised the Minister for Railways that there was no objection to the WHB plan except for a few amendments.

The expanded plan was provided for in the 1903 WHB Reclamation and Empowering Act (and amendment of 1906) which gave the Board authority to reclaim a further 26 acres eastward of Waterloo Quay and outside the area granted in the Special Powers and Contracts Act 1886.

By 1908 the Harbour Board's Waterloo reclamation was fast expanding and Ferguson wrote to the Railways saying that it was necessary to extend north towards Kaiwharawhara and gave detailed suggestions for rail-wharf linkages.³⁹ This plan was called the 'Greater Reclamation' and was the early blueprint for the current railway and wharf area between Pipitea and Kaiwharawhara. It was assumed that this Greater Reclamation was provided for in the Hutt Railway and Road Improvement Act of 1903. The response by the Railways Department was cautious; the Greater Reclamation would involve the most costly and deepest reclamation ever to be carried out on the harbour and details on railway sidings could not yet be determined. Costs were estimated at around £600,000 and the General Manager recommended that the work could be postponed for several years.⁴⁰

After several years, the Harbour Board proposed its Greater Reclamation scheme again at a meeting with Railway staff in November 1915. As a result, a specific reclamation agreement was prepared by Mr Daniell, Chairman of the WHB. Main points of the proposed agreement

³⁸ Croom/General Manager, 6 March 1903, R3 10/1171/1, NA.

³⁹ Ferguson/Chief Engineer, 3 January 1908, R 3 10/1171/1, NA.

⁴⁰ General Manager/Min of Railways, 1 May 1908, Ibid.

included:

- Railway Department and the WHB would both construct the reclamation from Waterloo Quay towards Kaiwharawhara.
- Approximately 50 acres of harbour-bed would be reclaimed.
- Two thirds of the reclaimed land would be taken for railways and one third for the Harbour Board.
- Costs (approx £272,000) would be shared.
- The Te Aro Railway Station and line would be abandoned and a new Railway Station would be built at Thorndon.⁴¹

Again the response by the Railways was guarded with decisions not yet made on the location of the new Railway station (which at that time was located at Te Aro). The Chief Engineer of the Railway Department also had other views about the huge Greater Reclamation proposals:

There is no doubt that the matter is to a large extent of national importance, as Mr Daniell [WHB] claims it to be, but even at the risk of appearing to take a narrow Departmental view of it, there are interests outside of the city, and harbour, of Wellington involved - those of the whole community of New Zealand - which have to be safeguarded while dealing with the interest of the locality.⁴²

One such 'interest of the locality' was the "value of Thorndon Esplanade as a recreation ground" due to its harbour frontage. Despite the hesitation, plans were prepared and a conference was held on 9 October 1918, attended by the Railway Department, Wellington City Council and the

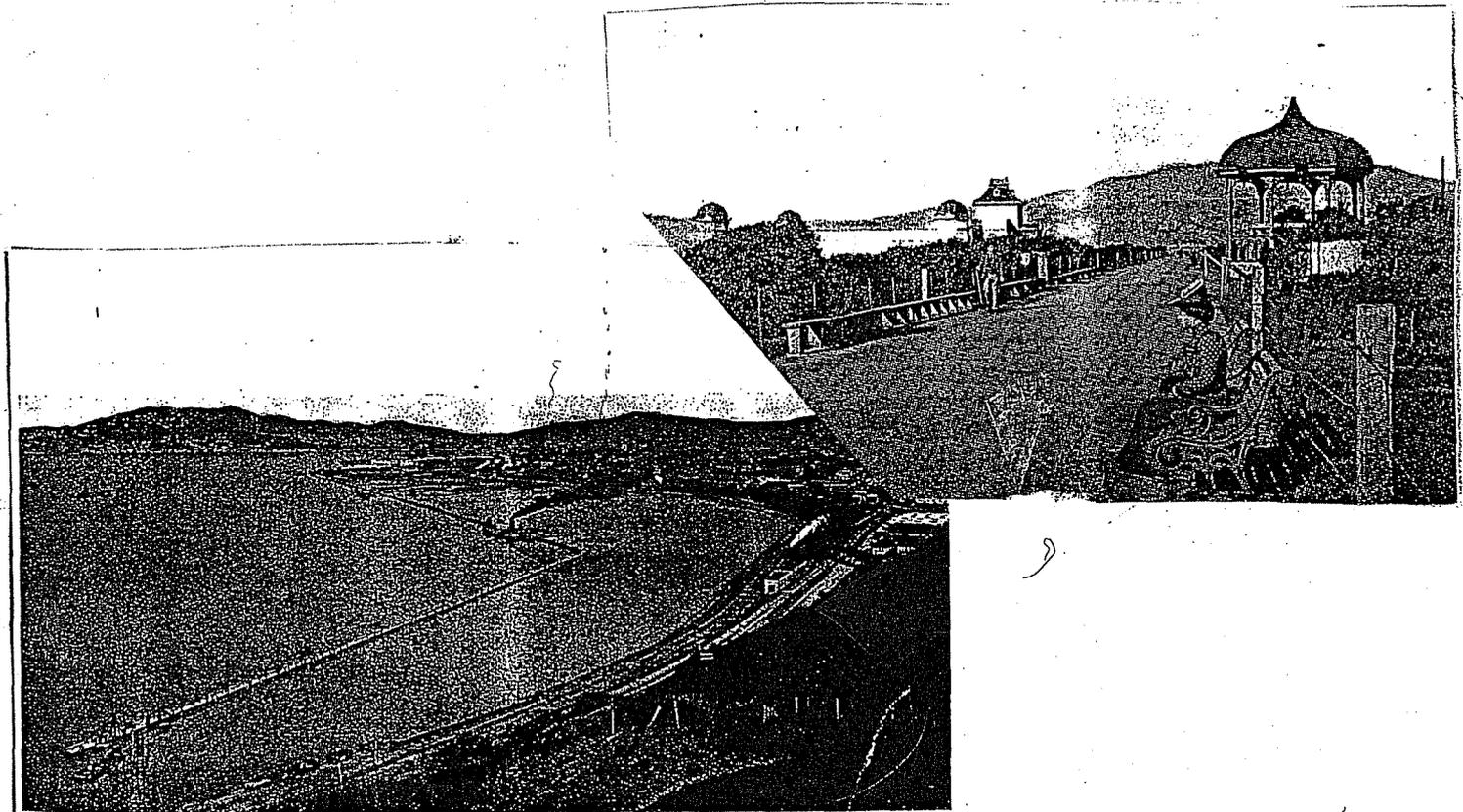
⁴¹ Daniell/Hiley, 7 December 1917, Ibid.

⁴² Chief Engineer/General Manager, 19 November 1917, Ibid.

Wellington Harbour Board. At this conference Hiley, Railways General Manager, proposed a reclamation of 65 acres with 50 reserved for railways, 5 for road and 10 for the Harbour Board; the Thorndon water frontage would be totally devoted to wharfage. The Mayor of Wellington stated a general objection on the basis of public interest and access to the harbour:

The Thorndon Esplanade at present gave them access to the waterfront in the locality and this he considered of the greatest importance. The question was more than one of sentiment. He had not realised until this meeting that the proposals meant shutting out the public from the waterfront, and must protest against such a proposal. The present proposals would mean that the whole of the waterfront as far as Petone would be barred to the public...He [also] considered it absolutely essential that there should be baths at the Thorndon end.⁴³

Mr Daniell (WHB) meanwhile supported the Railways view - Thorndon reclamation would be used for wharves - and hoped the City Council would be "able to agree to this."



Thorndon Esplanade, 1900 and 1927. Source, Wards, 1928, p 307.

⁴³ Mr Luke, Conference 9 October 1918, *Ibid.*

Agreement was reached between Railways and the WHB on 18 March 1921 without the participation of the City Council, and a draft Bill was prepared for Parliament. The result of this was the Thorndon Reclamation Act 1921 which repealed the Thorndon Esplanade Act 1891. This Act confirmed the Railways/WHB agreement and authorised the reclamation of over 59 acres for the purposes of railway and harbour works. The City Council would receive compensation and the old Thorndon Baths would be buried.

In total the Waterloo and Greater Reclamation scheme reclaimed approximately 108 acres of harbour-bed between 1904 and 1932. Each section of the reclamation and harbour works was submitted to the Marine Department for approval. Usually this approval procedure was very quick with most cases approved in 5-10 days (or faster if requested by Ferguson for good reasons). Without a special Act, the Waterloo and Greater Reclamation would have needed to go through the process of notification and objections provided in the 1883 Harbour Act Amendment Act, something which neither Railways nor the WHB were willing to contemplate.

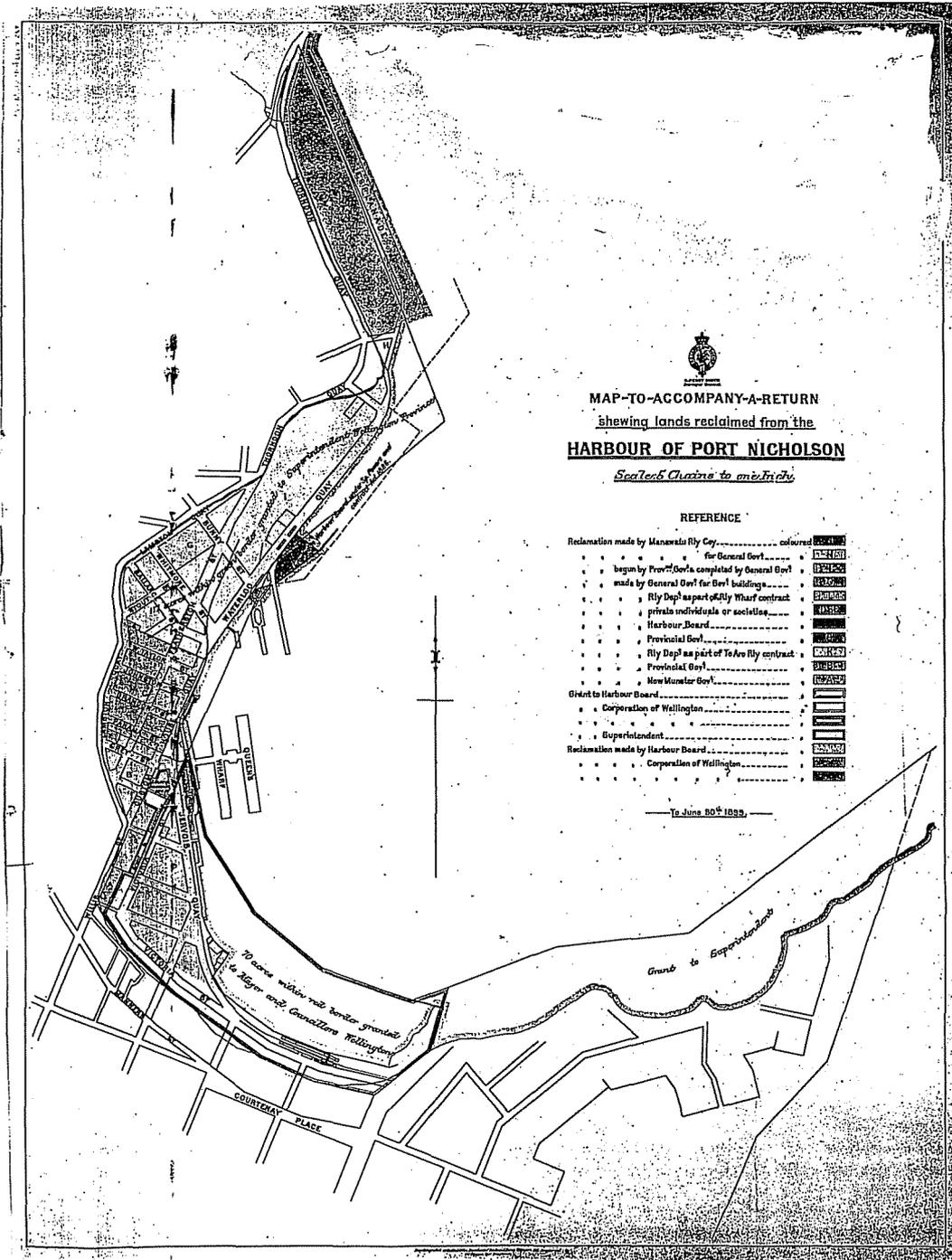


Figure 6.4 Lands reclaimed from Port Nicholson, 1899. ATL

6.7 EFFECT OF RECLAMATIONS ON MAORI INTERESTS

At the end of the 19th Century massive reclamation had been carried out at Lambton Harbour and more was planned to cater for advances in communication; port, railway, and road development. These developments were spreading over to the Hutt Valley. In this reclamation activity, the Harbour Board played a key role with many other agencies (Railways, City Council and the Crown) using the experience of the Harbour Board to build the breastwork. Once the breastwork was constructed, material was thrown behind it, usually sourced from dredging or city works.

The effect of reclamations on Maori interests in the foreshore can be divided into two main areas; effect of reclamations on piscary rights, and the effect on pa and reserves which had water frontage. The effect on piscary rights will be considered in chapter eight.

Effect on pa and reserves

The general effect of reclamation was to separate many pa sites and reserves from the sea. Maori rights to land around Lambton Harbour had been reduced to the Wellington Tenth reserves and the reserves created by Colonel McCleverty. Some of these reserves had foreshore frontage. These included: Petone, Waiwhetu, Wainuiomata, Ngauranga, Kaiwharawhara, Pipitea, Kumutoto, and Te Aro. Another small beach settlement existed at Karaka Bay until the late 1870s. This settlement was located between the sea and the land owned by Crawford.

Te Aro

The Te Aro pa reserves were confirmed by McCleverty in 1847 and had full foreshore frontage down to the low tide mark (like the settler Te Aro sections). The location of this settlement was at the corner of Manners and Lower Taranaki Street. George Angas, who visited Wellington in 1845, found the Te Aro community collecting oil from a whale which had been beached at the

entrance of the harbour. This oil was contained in large pods of seaweed collected from Evans Bay.⁴⁴

Te Aro was subdivided in 1866 by George Swainson. With subdivision, the pa was divided into sections and so resulting in the loss of harbour-frontage by some of the sections. Sections that retained harbour frontage included No. 6, 7, 8, 16, 17, and 28. The greater majority of the reserve was alienated before the Te Aro reclamation began in 1886 with the Provincial Government acquiring most of the pa in the early 1870s.⁴⁵ Land sold to the Provincial Government included sections 1, 2, 7, 8, 15, 16, 17, and 28.⁴⁶ A search of inwards correspondence between 1878 and 1893 has found no reference to damage caused to the Te Aro reserves by reclamations.⁴⁷

While the Te Aro pa land was bounded by the sea at the low tide mark, the area between the high and low tide marks was taken by the Crown when the Te Aro Crown Grant was issued in June 1874. This grant vested all land below the high tide mark in the City Council. The foreshore of Waitangi swamp was also alienated by the 1861 Crown Grant of the Basin Reserve and Canal.

The author is not aware of any compensation that was paid to Te Aro Maori for the damage incurred by reclamation, or for loss of access to the sea.

Kumutoto

This was a settlement on the banks of the Kumutoto stream which met the sea at approximately the intersection of Woodward Street and Lambton Quay. Kumutoto stream was a well-known eel habitat. The pa had harbour frontage and was confirmed as a reserve on part of section 487

⁴⁴Angas, G.F. *Savage Life and Scenes in Australia and New Zealand*, Smith Elder and Co, London, 1847, p 237.

⁴⁵ Wellington City Council, *Nga Waahi Taonga o Te Whanganui-a-Tara*, 1996, M 67.

⁴⁶ Heaphy's Minute Book, 1867-1879, A35, ROD Wai 145.

⁴⁷ Inwards Correspondence, letter books, 1878-1893, WCC.

in 1847. Ward notes that Kumutoto was 'on the beach' and had a number of canoes.⁴⁸ The construction of Lambton Quay separated the pa from the foreshore. A Crown Grant was issued in 1853 to Wi Tako for part section 487 and parts of the section remained in Maori ownership until the 1950s.⁴⁹ As stated, Kumutoto stream was used as a public sewer and reclamations created problems of discharge in 1860. The site of accumulation and stagnation of the sewer waste would have been close to Kumutoto reserve.

Pipitea

Pipitea is a well-known pa site. The name Pipitea refers to 'white pipis' and as Pipitea Point was surrounded by shallow waters, the author assumes it was a shell-fish gathering area. Angas visited Pipitea in the early 1840s and made a particular comment on the number of canoes on the Pipitea foreshore.⁵⁰ Five war canoes were recorded by Kemp at Pipitea in 1850. Pipitea lost its direct harbour frontage when Thorndon Quay was built in the 1840s. Like Kumutoto, Pipitea stream also became a sewer drain. Perhaps influenced by the pollution of the stream, many of the occupants of Pipitea left the pa during the 1850s and 1860s. Generally, reclamation around Pipitea point began in the early 1870s and the author has found no evidence suggesting reclamation caused the Pipitea pa to be vacated. In 1866, Ihaia Porutu claimed in a letter, the sea beach in front of Pipitea. No reply to this claim was found by Armstrong and Stirling.⁵¹

The land below the high water mark in front of Pipitea was alienated from Maori in the 1855, 117 acre Crown Grant issued to the Provincial Superintendent.

⁴⁸ Ward, L. *Early Wellington*, 1928, p 246.

⁴⁹ Wellington City Council, 1995, M66.

⁵⁰ Angas, 1847, p 235.

⁵¹ Armstrong and Stirling, *A Summary History of the Wellington Tenth, 1839-1888*, Wai 145, C1, p 358.

Kaiwharawhara

Kaiwharawhara became an early centre of industry from 1842 when Mathieson began a shipbuilding yard and Kaiwharawhara has retained an industrial area ever since. Kaiwharawhara pa had direct foreshore frontage but the beach became part of the Porirua and Hutt roadway from early 1840. McCleverty's award confirmed harbour frontage with a small pa reserve at the outlet of Kaiwharawhara stream and at section 4 (a 104 acre block north of the stream outlet). During the Native Land Court hearings in 1868, it was noted that McCleverty's plan showed the pa as 1 rood and 19 perches, not 2 roods 19 perches as marked on Swainson's plan. The increase of the 1 rood was due to the 1855 earthquake and this rood was awarded to the Crown by the Court. The foreshore of Kaiwharawhara was alienated by the Crown for the railway built in 1872 and all the pa land had been sold by 1894.⁵²

Kaiwharawhara pa and reserve was, thus, gone before reclamation work began along the western foreshore in 1904.

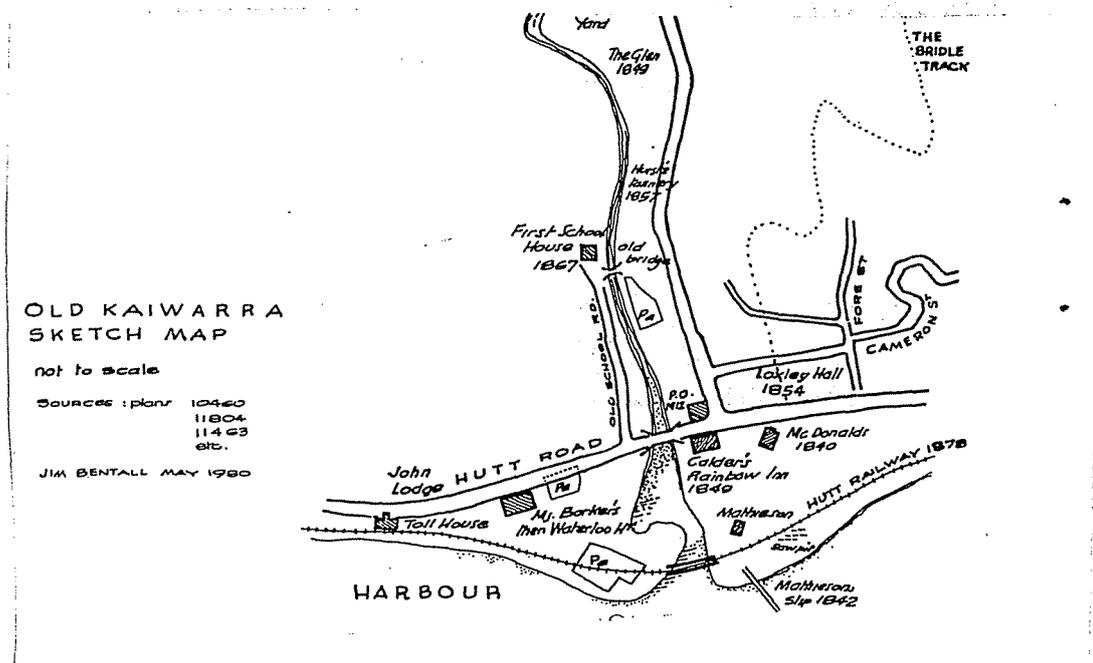


Figure 6.5. Kaiwharawhara. Source, Bremner, J. 1980, p 12.

⁵² Bremner, J. 'Old Kaiwarra' *The Onslow Historian*, 10,2,1980.

Ngauranga

Ngauranga, as the name suggests, was a tauranga waka or canoe landing site. The pa was located on the foreshore at the Ngauranga river mouth. A large and famous canoe monument was erected here in memory of Te Wharepouri in the 1840s. This monument was upset by road widening and the remains were taken to the Te Puni Street cemetery by Hapi Love in 1928. Kemp's 1850 report stated that the Ngauranga community were selling fish for the Wellington market. McCleverty's settlement provided for a reserve with harbour-frontage at section 8; the outlet of Ngauranga stream. Like Kaiwharawhara, Ngauranga lost its direct foreshore access by the construction of the Hutt railway and was further alienated by railway reclamations constructed in 1904. Correspondingly, in 1904 and 1906 two large sections of the Ngauranga reserve were sold. The rest of the reserve land was sold after a partition in 1914.⁵³

Ngauranga reserve was directly affected by the 1904 Hutt road and railway reclamations.

Petone

Petone was always the largest of the Wellington pa and was located directly on Petone Beach near the Korokoro stream. Petone pa was the only Maori settlement that owned a schooner (of 35 tons), and in 1850 had 8 war canoes. In 1872, E. Maidment recorded more than twenty fishing canoes on Petone beach.⁵⁴ These canoes were still in use after the Gear Meat Works began operating in the 1880s. Under McCleverty's awards, Petone pa maintained harbour frontage with sections 1, 2, and 3 designated as reserves. McCleverty also awarded section 5 (between Kaiwharawhara and Ngauranga) and the large Wainuiomata block in Petone Maori. These sections also had harbour frontage.

As stated in this report, sections 1, 2, and 3 (and sections 16 and 20) were taken for railway in

⁵³ WCC, 1996, M50.

⁵⁴ Quoted in Butterworth, S, 1988, p 90.

1872. 270 pounds was paid in compensation to Petone Maori.⁵⁵ Heaphy records that Henare Te Puni and others, wanted the Government to purchase all the lands after the railway was constructed as damage had been done to their properties and fences.⁵⁶ This damage may have included foreshore alienation. Heaphy did not recommend the sale beyond that actually required by the railway.

Ngati Toa from Porirua also travelled to Petone to gather shellfish after a southerly storm and also out to Island Bay.⁵⁷ Maori customary use, however, of Petone was seriously damaged by industrial pollution, the construction of the railway and the Gear Meat Company works.

Waiwhetu

This was a small pa at the junction of the Hutt River and Waiwhetu River. Before the 1855 earthquake, the Waiwhetu river mouth was a small shipbuilding centre. The Waiwhetu reserve made by McCleverty confirmed the harbour-frontage and included parts of the Hutt river. 7 war canoes were recorded by Kemp at Waiwhetu in 1850. All of the Waiwhetu reserve was taken for river protection works and reclamation by the Hutt River Board in 1928.

Petitions by Enoka Te Taitu and others of Petone and Waiwhetu expressed opposition to the reclamation regime. Extracts from these petitions are outlined below:

During the reign of subsequent Governments the mana of the Maoris became defunct and the Government usurped the whole right in the administration of those tenths, the consequence is that our landing places and our mud banks and shell fish and other sources of obtaining food has been lost to us.⁵⁸

⁵⁵ Heaphy's Minute Book, 1867-1879, A36, ROD, Wai 145.

⁵⁶ Ibid.

⁵⁷ See evidence of Ruhi Solomon and Ariana Rene, Wai 145 H18, H20.

⁵⁸ Petition No. 629, 1891, Wai 145, A39, p 96-7.

After the Government the mana of the Maori people over these 'tenths' was lost and they (the Government) took over the management of them and the mooring ground and landing places for our canoes were taken and our pipi beds were reclaimed and buried up with many other kinds of food.⁵⁹

After the reign of that Government the power that the natives held formerly fell into the hands of the Government who administered those Reserves and we lost our landing places and on mud banks, and many other products that we derived from the sea.⁶⁰

In 1886 there was a large petition against reclamations by Wiremu Katene and 11,976 Others. The petition refers to the burial of mussels and fisheries (resources confirmed in the Treaty of Waitangi) by works in Auckland and other places. The Native Affairs Committee recommended:

That the subject of the Maori rights to coastal and other fisheries present serious difficulties, and as settlement progresses, these difficulties are likely to increase. The Committee recommends that the Government should, as soon as possible, institute a searching inquiry, and try to have the rights of the Natives defined and secured as far as possible. The Government is referred to the statement made by Mr Hakuene, M.H.R., as evidence in this case. It shows the great value the Natives set upon these fishing rights.⁶¹

No further detail on this petition can be found by the author.

Despite the fact that grants and reclamations alienated the foreshore from Maori, the author has able to find only a small amount of protest against these alienations (above). It seems, Maori interests had been contained within the reserves above high tide mark and no legal rights of Maori were recognised over the foreshore.

⁵⁹ Petition No. 234, 1895, Wai 145, A39, p 71-2.

⁶⁰ Petition No. 487a, 1893, Wai 145, A39, p 92.

⁶¹ Petition No. 278, 1885, and 91, 1886, AJHR, I-2, 1886, p 27.

CHAPTER SEVEN: OUTSIDE LAMBTON HARBOUR; RECLAIMING HUTT ESTUARY AND EVANS BAY.

While the reclamation industry was always focused on Lambton Harbour, two other secondary centres developed at Evans Bay and the Hutt Estuary.

7.1 HUTT ESTUARY

As discussed earlier, the local authorities had a keen interest in controlling the Hutt River to stop flooding and to facilitate urban development. For these purposes, the Hutt River Board was established in 1878 under the Wellington Rivers Act 1875 and had jurisdiction within the boundaries of the Hutt River District.¹ Powers of the Board included the construction of works, drainage and defences related to the control of river water flow. The Board did little and was replaced by a revamped Board under the 1884 River Boards Act. This Act provided for the control of Hutt River within the Hutt River District with the power to take lands, remove soil, make river works, and the construction of works on tidal waters, all with the consent of the Governor. Two definitions of tidal lands and water are provided in the Act:

Tidal lands - means such parts of the bed, shore, or banks of a tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring-tides.

Tidal water - means any part of the sea or of a river within the ebb and flow of the tide at ordinary spring-tides.²

The new Board began an extensive programme of river works and the whole of Gear Island was purchased according to a huge river re-alignment and subdivision plan:

¹ Boundaries of Hutt River District, 27 December 1878, NZG.

² Section 3, River Boards Act 1884.

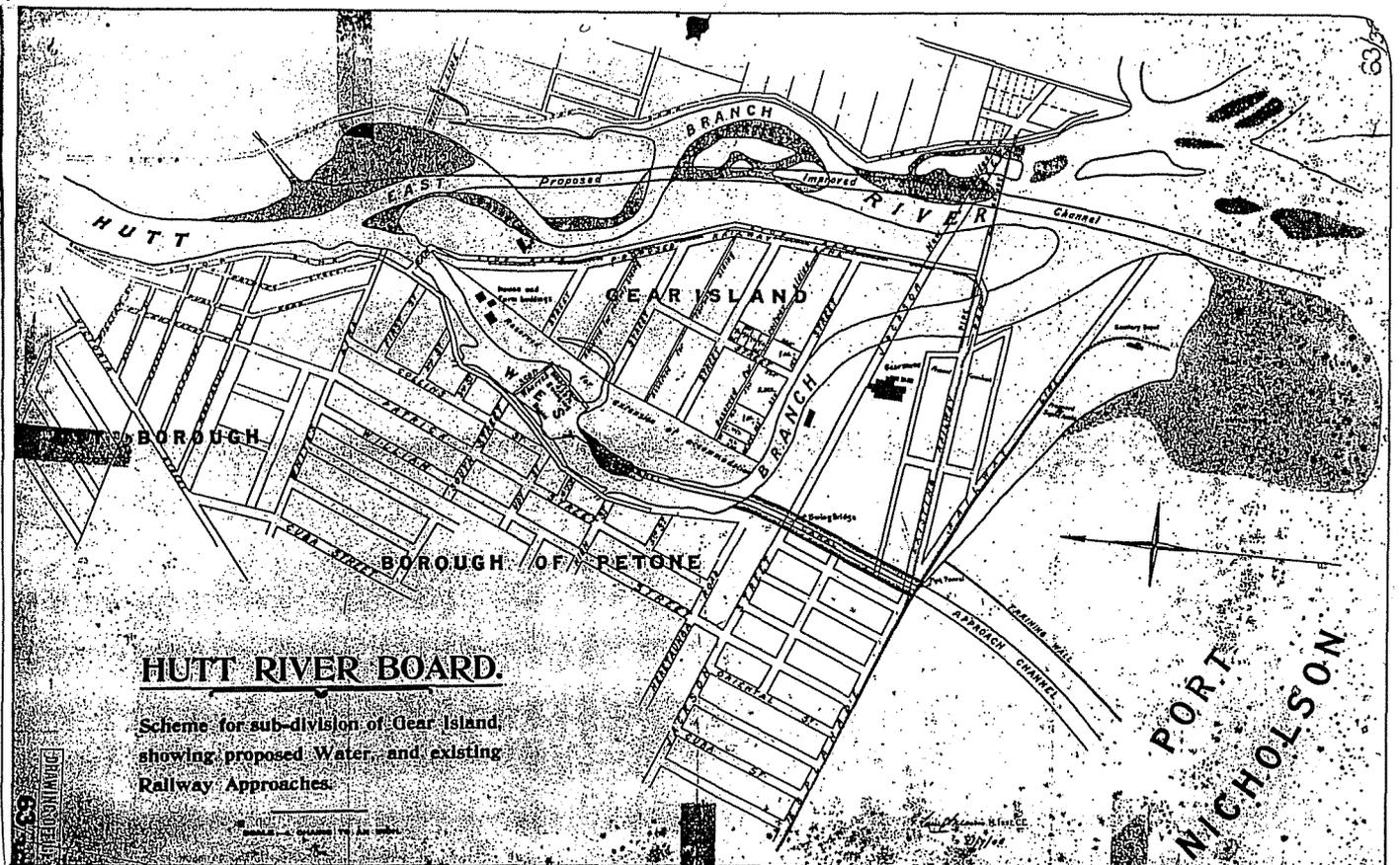


Figure 7.1. Hutt River Board Plans, Source Butterworth, S. 1988, p 152.

While the River Board was planning its river control, the mouth of the Hutt River was being used as a “depot for the burial of wastes and the cleansing of closet pans.”³ By 1922 the Hutt River Board turned its attention to the mouth of the River and began discussions with the Marine Department on improvements at the estuary. The Marine Engineer, F. Furkert, found the proposals satisfactory and gave approval for the construction of a half-tide wall.⁴ Wall construction also brought the opportunity for reclamation and the River Board began negotiations with the WHB and Marine Department. With the agreement of the Harbour Board, a bill was drafted and introduced into Parliament as the Hutt River Board Improvement and Reclamation Bill for the reclamation of some 300 acres of harbour-bed (Figure 7.2). On receiving the Bill, Mr Furkert found he had no particular objection but thought that 30 acres of the reclaimed land should be vested in the Crown for roading purposes.⁵ The River Board agreed with this idea and the Minister of Marine approved the amendment on 6 September 1922.

The Hutt River Improvement and Reclamation Act 1922 validated the agreement between the WHB and Hutt River Board over the reclamation of the Hutt Estuary. The Act divided up the Estuary between the two Boards and the Petone Borough Council. The area to be reclaimed (total of 265 acres, marked as A-F on figure 7.2) was vested in the Hutt River Board and the area seaward outside the reclamation boundary (A-F) for a distance of 400 feet was vested in the WHB. Any further land that “may accrue owing to the construction of the undertaking” was vested in the Wellington Harbour Board. It was estimated and provided for in the Act, that most of the 265 acres would be created by ‘natural means’ or be “self-reclaimed from the waters of Wellington Harbour.”⁶ Inside the 265 acre boundary, the River Board had full power to reclaim and sell the lands.

³ Butterworth, S. *Petone; A History*, Petone Borough Council, 1988.

⁴ Furkert, Marine/Hutt River Board, 30 May 1922, M.11.4/1280, NA.

⁵ Marine Dept Memo, 16 August 1922, Ibid.

⁶ Preamble, Hutt River Improvement and Reclamation Act, 1922.

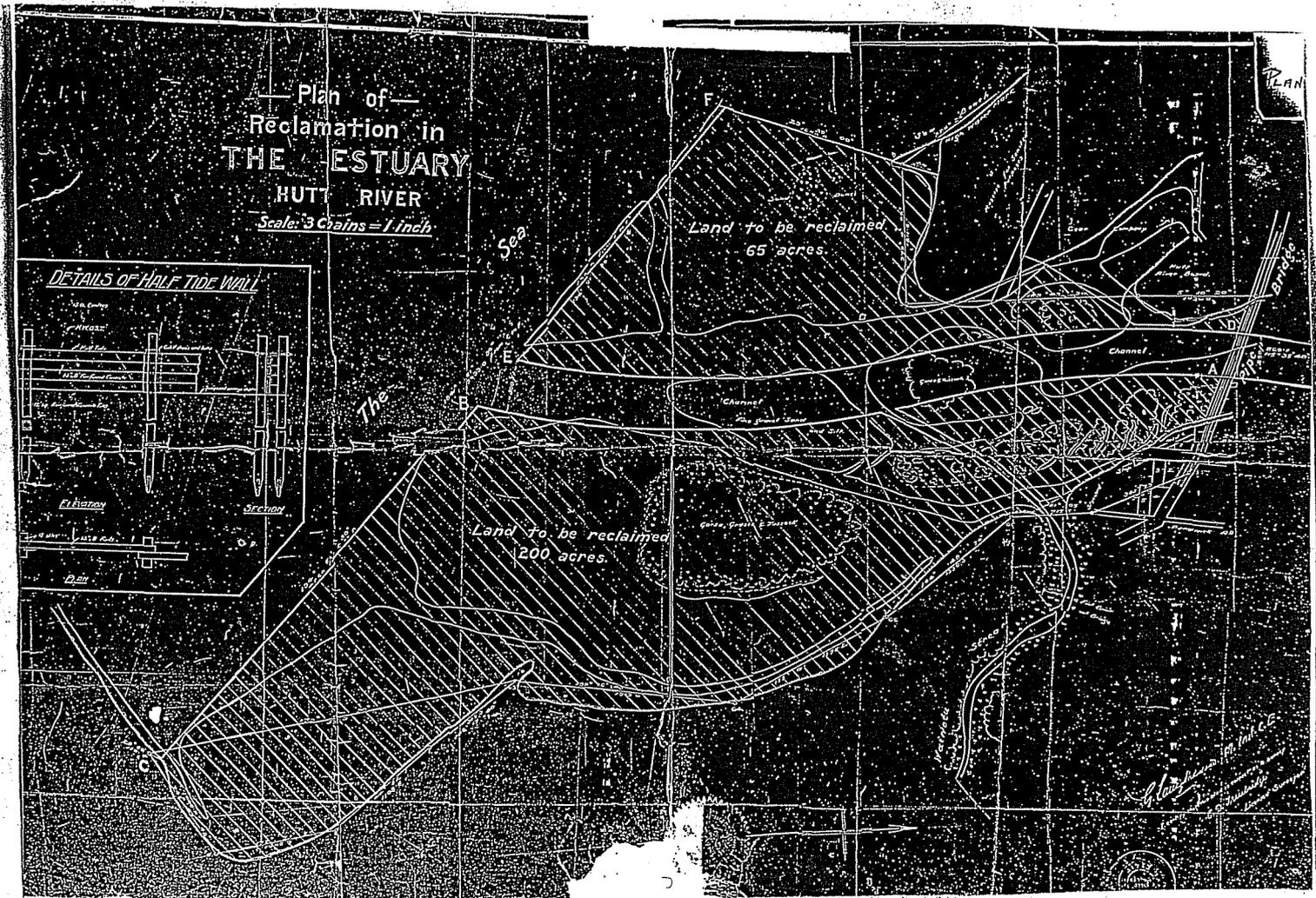


Figure 7.2, Plan of reclamation in the Estuary of the Hutt River. MD 5473, WRC.

Despite the authority, the reclamation work could not begin as the Hutt River District Ratepayers refused to sanction the raising of a loan to enable the work to be carried out. Thus the Board let the plans gather dust and continued to allow persons to deposit waste material and take sand from the area. Objections by the Harbour Board and Marine Department to the taking of sand from the estuary area led to the decision of the Hutt River Board to close the estuary for takings on 3 June 1931.⁷

7.2 HARBOURS ACT 1923

While the Hutt River Board was waiting for its land to be reclaimed from the sea, the Government passed a new Harbours Act in 1923. This Act modified the earlier 1878 Harbours Act as summarised below:

Reclamation Control; Harbours Act 1923

Definitions. These remained similar. Harbour works included reclamations.

Sections 125-129 Powers and Duties of Harbour Boards

May contract out any harbour works (section 125)

Sections 144-165 Reclaimed land and Disposal of Foreshores

No foreshore lands can be granted out without the authority of a special Act unless vested or granted in an authority by an Act. Where foreshore is vested in a local authority, certain powers

⁷ The Marine Department considered that the Hutt River Board, instead of promoting reclamation was doing the exact opposite; Memo, Chief Clerk, 23 April 1931, M,11,4/1280, NA.

under the Act may be exercised (sections 144-145)

Lands deemed to be the property of the Crown (the foreshore, being between high and low tide mark) and foreshore vested in Harbour Boards may be reclaimed for agricultural purposes (sections 146-147). Reclamation approval was to follow the process set out in section 171 (see below).

A local authority may license and permit reclamation relating to harbour works within its vested area subject to section 171 of this Act (sections 150-151)

Governor-General may vest control of the foreshore in a local authority (section 158)

Board has control of the takings of materials within its jurisdiction (section 159)

Any accretions arising from works shall be deemed vested in the Crown "as if the same had continued subject to the flow and reflow of the ordinary tides." (section 161)

Land reclaimed comes under the control of local authority, i.e. County Council (section 164)

Sections 166-182 Harbour Works

Board may carry out harbour works within its jurisdiction (section 166)

No land shall be reclaimed from the sea except under the authority of a special Act, except as otherwise provide in this Act. "The Governor-General may from time to time by Order in Council, authorize any local authority or Harbour Board to reclaim areas not exceeding five acres in extent in any case where he considers that the reclamation will not affect navigation and is for the benefit of the public, and in such case it shall not be necessary to obtain a special Act (section 168, 1). A special Act is also not required when land is reclaimed from the sea under licence for agricultural purposes.

Plans for harbour works requiring an Order in Council or special Act are required to be deposited in the Marine Department.

No authority may carry out harbour works on tidal lands without the sanction of the Governor-General in Council in relation to land for agricultural purposes under license and reclamations less than five acres.

Section 171 Approval process for harbour works

Plans to be deposited and may be approved if will not be or tend to the injury of navigation

Harbour works may be approved in special cases (section 179). Approval process includes plans forwarded to Marine Dept, notice given to those persons affected, advertised for four weeks, objections lodged, Governor-General makes decision.

The 1923 Harbours Act brought two major changes. Firstly, reclamations below five acres or foreshore granted for agricultural purposes did not need a special Act and could be carried out on the approval of the Governor in Council, subject to the approval procedure of section 171. Secondly, the category of harbour-works on Tidal lands was a new addition and was significant as it meant reclamations could not be simply included as a standard harbour work but required a special Act, or Order in Council if they were to cover less than five acres.

7.3 THE HUTT RIVER ESTUARY RECLAMATION GETS GOING

The depression of the 1930s got the Hutt Estuary reclamation project going with a proposal by Mark Fagan, MP to reclaim the Hutt River mouth to provide work for the unemployed. Fagen suggested a conference be held between the Unemployment Board, Hutt River Board, Hutt

County Council and the WHB.⁸ Petone Borough Council immediately supported the idea and requested a meeting with Walter Nash on the desirability of the reclamation for a new aerodrome. The officials got together and visited the estuary on 7 November 1933. The visit included: the Minister of Public Works, Walter Nash, the Mayors of Lower Hutt, Petone, and Eastbourne, and officials from the Hutt County Council, Hutt River Board and WHB.⁹ A scheme was proposed and was to be carried out by the Public Works Department and the Unemployment Board. The Hutt River Board agreed in principle to yield its right to reclaim 174 acres of land at the river mouth in return for a certain amount of made-up land. The Hutt River Board wanted to focus more on flood control rather than reclamation. The whole plan was described as having tremendous benefit with thousands of yards of spoil to be removed from the river by dredging.¹⁰ After further discussions and planning, the WHB also supported the scheme which would involve the reclamation of 192 acres at a small cost. The Harbour Board's engineer stated that he "could not imagine a better place where they could reclaim land."¹¹ After another tour of inspection by officials, the WHB resolved to inform the Unemployment Board of its agreement. It proposed to waive its rights to tidal lands in return for receiving 15 acres above mean high tides. Final agreement was reached between the Public Works Department, Hutt River Board and WHB on 8 February 1936.¹²

Information on the agreement was forwarded to the Marine Department, after which the Secretary summarised the project in a memorandum to the Minister. Key elements of the reclamation plan were as follows:

1. Hutt River Board is to be released from undertaking to reclaim the 200 acre block.

⁸ Hutt Reclamation, 28 October 1933, *The Dominion*.

⁹ Visit to Estuary, 7 November 1933, *The Dominion*.

¹⁰ Reclamation Scheme, 10 November 1933, *The Dominion*.

¹¹ Hutt Reclamation, 23 May 1935, *The Dominion*.

¹² Barnett/Chairman WHB, 17 February 1936, M.1,4/1280, NA.

2. Reclamation east of the river is to be restricted to 92 acres and to be reclaimed by the Public Works Dept. 15.5 acres of this land to be vested in the Hutt River Board
3. Reclamation west of the river to be dealt with under the old agreement by the Hutt River Board in due course.
4. Harbour Board will retain its foreshore right of 400 feet seaward.
5. Harbour Board will retain its rights over accretions as a result of the undertakings.
6. 245 acres of the harbour bed will be vested in the WHB. This includes about 100 acres of the original reclamation block.¹³

The 245 acre grant to the WHB was questioned by the Marine Secretary who thought that it was unwise to grant large areas of the harbour to the Harbour Boards without any special reason; "I feel that it is inadvisable for the Crown to part with the title in cases where a Board has no definite scheme for an early utilisation of the area, and that even then the title should only pass in respect of these areas of sea bed which may be reclaimed."¹⁴ The Secretary also considered that the early 1922 agreement was invalid as the reclamation work had never progressed due to the ratepayers' objections, and thus the original 1922 Act "has nothing to validate and authorise." Officials from the Board were 'hauled up' to Parliament for a talk with Peter Fraser (Minister of Marine) to explain the situation. After Mr Barrer (Chairman of WHB) explained the agreement, Fraser replied:

It is regrettable, however, that the Public Works Department did not consult the Marine Department. It is not the fault of the Board or any officer of the Board. When the matter came up before the Harbour Board, as you know, I raised the point because I knew the attitude taken up over a long period of years that the Marine Department was not in favour of alienating the bed

¹³ Sec.Marine/Min.Marine, 20 March 1936, Ibid.

¹⁴ Ibid.

of the ocean until such time as there was reclamation work. The moment that happened and the ground reclaimed, then the title would go automatically to whatever local body did that...The point I wish to make is that I am anxious to get a uniform national policy in regard to the alienation of the bed of the harbour, but I am quite willing to help and give any promise you like that the moment reclamation work is done, that is vested right away into the Harbour Board.¹⁵

Despite the pressure from the Marine Department, the agreement was only amended in minor details and validated by the Government in section 20 of the Reserves and Other Lands Disposal Act 1936. This enabled the Public Works Department and WHB to begin the reclamation work which started on 8 July 1936. The final division of the reclamation rights involved Public Works gaining 92 acres on the eastern side, the Hutt River Board got 65 acres on the western side and the WHB was still granted title to 245 acres between the Hutt River Mouth and Point Howard Wharf for harbour development uses.

As reclamation progressed during World War II, the Minister of Works, Semple, decided a Commission ought to be set up to “enquire into and report upon the various proposals for the development of the area in the vicinity of the mouth of the Hutt River.” A Commission of three persons was appointed on 24 April 1944 and some of the questions the Commission was to answer were:

- Is the construction of a harbour at or near the mouth of the Hutt River necessary in the public interest?
- If so, where should it be located? If at the mouth of the Hutt River should the river be diverted and , if so where should the diversion be located?
- For what classes of shipping should it provide berthage and what depth of water at the wharves do you consider necessary for such shipping?

¹⁵ Fraser, Min. Marine, Conference, 27 May 1936, M.1,4/1280,NA.

- What would be the general nature of such a harbour?¹⁶

A proposed harbour at the Hutt River was drawn by Dr Mawson, a Town Planner (Figure 7.3). This very messy map shows two major ideas: shifting the river to the west closer to Petone township and creating a large harbour to the east with an area of about 248 acres. The construction of the harbour would require the reclamation of 130 acres of harbour bed.

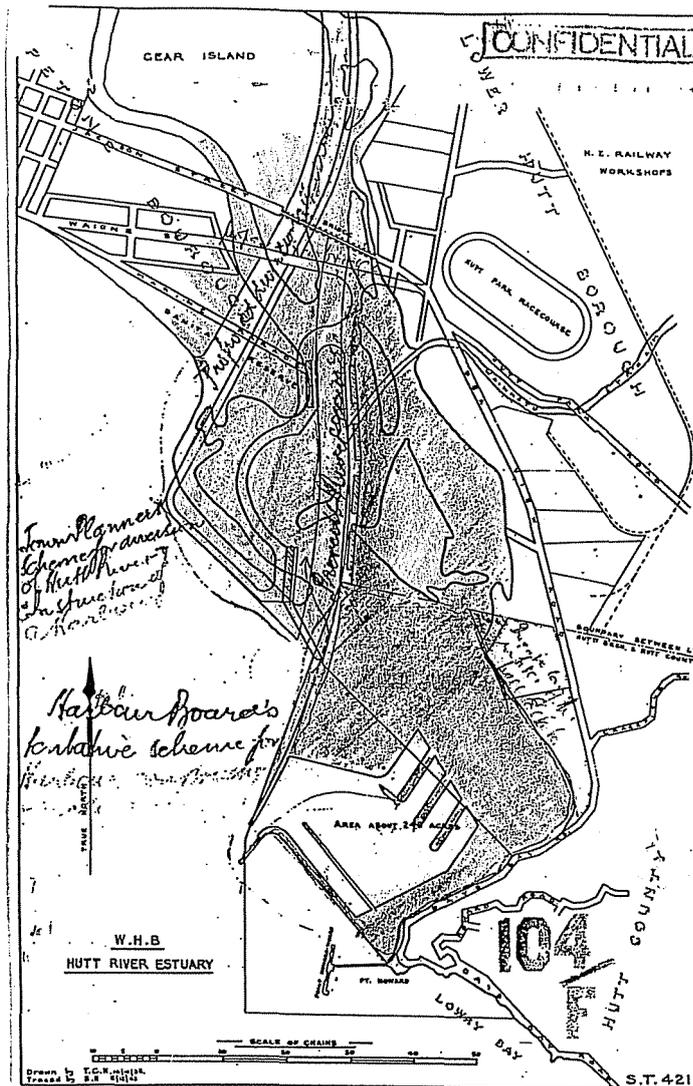


Figure 7.3. Hutt Harbour Proposal, 1944. Source, Marine file M1, 4/1280, NA.

¹⁶ Min.Works/Min.Marine, 22 April 1944, Ibid.

The inquiry lasted from September 1944 to February 1945 with a massive amount of evidence submitted by Government departments, local authorities and individuals. This evidence was printed in the Dominion on a regular basis. Statements were made by the following organisations:

- Lower Hutt City Council
- Petone Borough Council
- Hutt Valley Chamber of Commerce and Industry
- NZ Railways
- Transport Department
- Wellington City Council
- NZ Shipowners Federation
- Main Highways Board
- Wellington Harbour Board
- Waterfront Control Commission
- Hutt Valley Electric Power Board
- Hutt River Board
- Wairarapa Local Authorities
- Wellington Chamber of Commerce.¹⁷

The Commission generally focused on issues of Port development, roading and rail development, economic considerations, and the effect of construction on the Hutt Valley artesian water supply. It seems there was no participation by Maori in the proceedings and Maori interests were not considered. In the end, the Commission recommended that the construction of a new port near the mouth of the Hutt River “would not be an economic undertaking and that it is not necessary in the public interest.”¹⁸ However, in the event that a port may be built at Point Howard in the future, it was recommended that “no further reclamation be permitted to proceed seaward

¹⁷ Hutt Valley Development Works Commission, *Report*, 14 October 1944.

¹⁸ *Ibid*, p 15.

of the existing foreshore and the southern boundary of the reclamation recently carried out by the Crown.”¹⁹

No port was ever built at Point Howard and reclamation plans were delayed until the mid 1950s.

Reclamation plans were also disrupted by a claim by the Gear Meat Company on part of the bed of the Hutt River at the estuary as defined in their Crown Grant of 22 March 1887.²⁰ Gear Meat wished to sell this part of the river/estuary to Lever Brothers who wanted to “use the land under the water as a cinder dump, in time reclaiming it for building and in the meantime getting cheap disposal of innocuous refuse.”²¹ The Marine Department was notified of this claim by the District Lands Registry and the Secretary quickly informed the Registry that the Marine Department intended to contest the claim and would inform the Solicitor-General.²² The WHB also opposed the claim, stating that the entire foreshore along Petone was vested in the Board under the Wellington Harbour Board Act 1880, which would include land on both banks of the tidal portion of the river. It was thought the existence of privately owned foreshore would increase costs in the form of compensation if the land was later required for harbour works.²³ With a view to deciding who actually owned the bed of the Hutt River, the Crown Solicitor proposed to commence a suit in the Supreme Court.

The claim by Gear Meat brought out all the arguments concerning the Crown’s title to the foreshore. In a 15 page report, the Secretary of the Marine produced a detailed statement concerning the Crown’s title to Wellington Harbour.²⁴ Arguments raised in the report included:

¹⁹ Ibid.

²⁰ CT 44/116.

²¹ Currie/Under.Sec Lands, 19 June 1946, Ibid.

²² Claim to River Hutt River, March 1946, Ibid.

²³ Sec.Marine/Under Sec.Lands, 11 March 1946, Ibid.

²⁴ Sec.Marine/Under Sec.Lands, June 1946, Ibid.

- The Port of Wellington was defined under the Marine Act 1867, and its limits were determined in 1868 as a circle of three miles from the outer rock of Barrett's Reef.
- This definition would include the tidal water of the Hutt River.
- WHB's interest in the harbour amounted to control not ownership (these concepts were undefined).
- The 1878 Harbours Act definition of Harbour also included any estuary or navigable river.
- Port of Wellington is a statutory creation by section 3 of the WHB Act 1879 and first defined in the NZ Gazette as Port Nicholson.²⁵ The term 'Port of Wellington has only been in use since 1856.
- Foreshore is undefined in Harbours legislation but meant the same as tidal lands and tidal waters; as being land that "for the most part of the year is reached and covered by the tides."
- Crown's right to the foreshore was based on the nature of the foreshore as it was land subject to tides, thus not available for cultivation or other land activities. The Crown's interest was, however, subject to "the special public rights attached to the foreshore such as rights of fishing and navigation."

In the end the claim did not have to enter the Supreme Court as a deal was reached between Gear Meat and the Lands and Survey Department. This deal involved the transfer of all the lands under water to the Crown. Lands and Survey also struck an agreement with the Harbour Board in which involved the reclamation of seven acres on the western arm of the Hutt River and the

²⁵ NZG, No.20, 1841, p 137.

surrender of any right or interest held by the Board to the reclaimed land to the Crown. This reclamation of the western arm of the Hutt River was authorised in the Wellington Harbour Board Reclamation and Empowering Act 1972. This Act was subject the provisions of the Town and Country Planning Act 1953.

During the 1950s the WHB began to reclaim some 129 acres of harbour-bed out of the total 245 acre grant made in 1936. Another agreement was reached between Lower Hutt City and the WHB and this was validated in the 1955 Wellington Harbour Reclamation Act. The reclaimed land was designated in the Act for heavy industry and was by section 7(2) outside the jurisdiction of the Town and Country Planning Appeal Board under the Town and Country Planning Act 1953. The Marine Department had no objections to this Act or reclamation plans forwarded for approval by the WHB in September 1956. This approval was regarded as unnecessary as a special Act had been obtained (the 1955 Act) but consent was given by the Minister of Marine to carry out the first stage of the Hutt reclamation (Map 6.2 Document Bank, Vol III).²⁶

Work began in September 1956 on the first stage (31 acres) with the land designated for the oil industry.

7.4 EVANS BAY

This Bay had received early attention as the site of the patent slip and by 1878 10 acres of the harbour-bed and foreshore around the patent slip were vested in the Wellington Patent Slip Company. The situation changed in 1908 when the Union Steam Ship Company acquired a controlling influence in the affairs of the Patent Slip Company. The WHB was not happy about this and wrote to the Marine Department saying “existing private rights over the foreshore should be extinguished and not allowed to develop to the public detriment.”²⁷ Negotiations began and an agreement was struck between the Patent Slip Company and the WHB. This deal was

²⁶ Memo of Min.Marine, 10 December 1956, *Ibid*.

²⁷ Sec.WHB/Sec.Marine, 13 March 1908, M.1,4/885, NA.

confirmed in the WHB Empowering Act 1908 which allowed the Company to retain the slip for another 25 years. Within that period, the Company had authority to reclaim about 10 acres of the harbour-bed around the Patent Slip (Map 5.1, Document Bank, Vol III).

During July 1907 the Harbour Board also set up a joint committee with the City Council to consider the proposal of providing cheap land by reclamation at Evans Bay for the purpose of industrial development. As a result, the Board resolved to obtain Parliamentary sanction for the vesting of the Bay in the Board and the power to reclaim a large area at the head of Evans Bay. Plans of this proposal were sent to the Marine Department on 13 March 1908.²⁸ The end result was the Wellington Harbour Board Reclamation and Empowering Act 1908 which gave authority to reclaim 156 acres to provide engineering and industrial sites or other harbour works. Another 314 acres was vested for the “purposes for which the Board is constituted” (Map 5.4, Document Bank, Vol III).²⁹

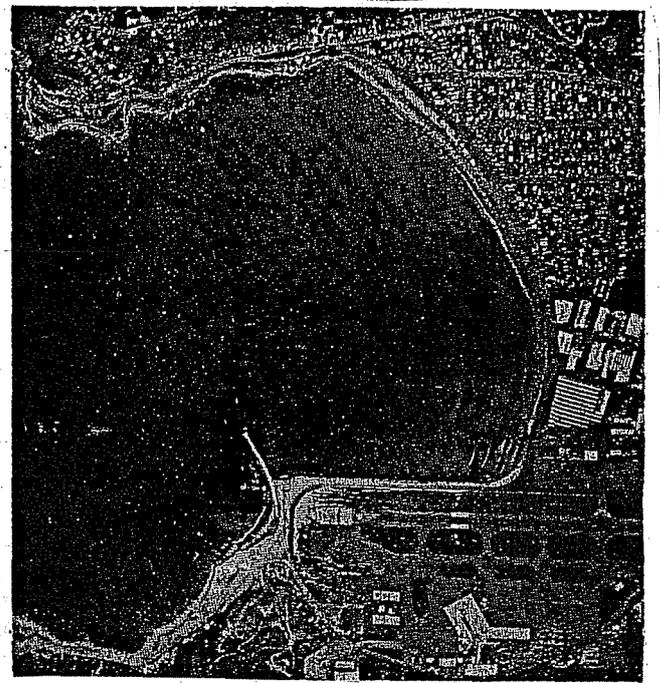
Meanwhile, the City Council was building a roadway around the coastline and gained the power to reclaim 18 acres at Evans Bay under section 7 of the Wellington City Reclamation and Empowering Act 1906. These plans had been previously approved by the Marine Department. Reclamation on this area began in August 1912 and the City Council was given a time extension in section 46 of the Reserves and Other Lands Disposal Act 1918. The work was not completed until 29 October 1942 and is now the site of Kilbirnie Reserve (Map 5.3 Document Bank, Vol III). The City Council was also authorized to reclaim 26 acres of land at Lyall Bay (seaward of the Moa Point Road) under the Wellington City Reclamation and Empowering Act 1936

Apart from this 1912-1942 18 acre reclamation, the only other reclamation carried out by Harbour Board was the construction of the Evans Bay boat harbour between 1935 and 1967. This reclamation involved 9 acres of harbour bed. In 1952 all of the harbour bed and reclamation rights were taken by the Crown for the construction of Rongotai Aerodrome under section 40 of

²⁸ Nicholls/Sec.Marine, 13 March 1908, Ibid.

²⁹ Section 9, WHB Reclamation and Empowering Act 1908.

the Reserves and Other Lands Disposal Act 1952. This section (which was deemed to be a special Act within the meaning of the Harbours Act 1950) extinguished the Harbour Boards' title to 470 acres of land in Evans Bay and the City Council's 26 acres at Lyall Bay, and vested this land in the Minister of Works. The Minister was then empowered to reclaim 102 acres at Evans Bay and 52 acres at Lyall Bay for the Aerodrome. This reclamation was carried out between 1952 and 1960 (Map 5.5 Document Bank, Vol III).



Vertical aerial photographs of Lyall Bay. 1941 and 1969. Before and after the building of Rongotai Airport. Source, Pickrill, R.A. *Beach and Nearshore Morphology, Lyall Bay, Wellington, NZOI, 1979.*

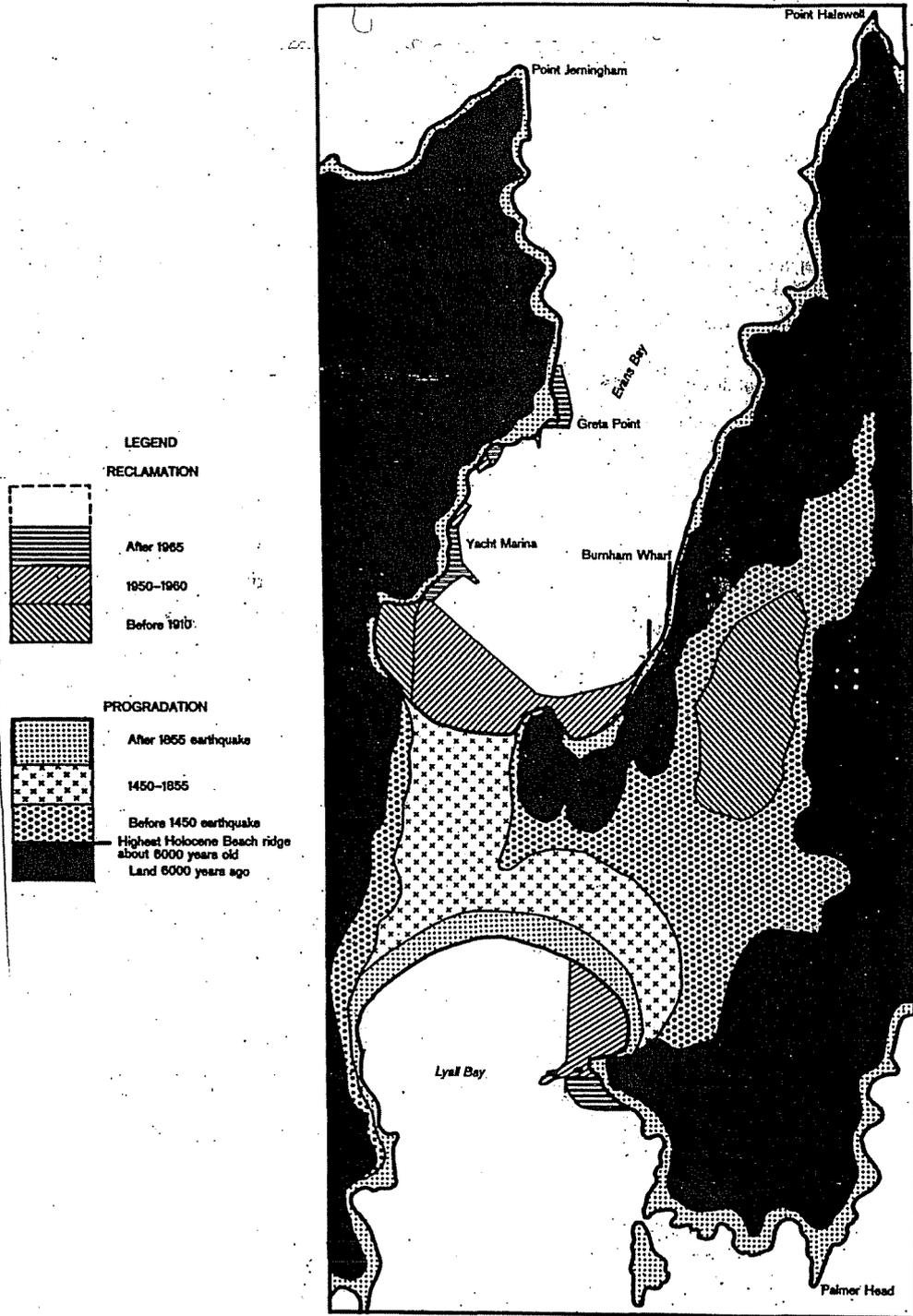


Figure 7.4 Reclamation and progradation at Evans and Lyall Bay. Source, Lewis and Carter, *Depths, Sediments and Faulting on each side of the Rongotai Isthmus, Wellington*. Victoria University, p 27.

Another major reclamation involved the construction of the Hutt Motorway. This huge reclamation was carried out between 1961 and 1966 by the Public Works Department. It seems reclamation authority for this was assumed by the Crown under the 1903 Hutt Railway and Road Improvement Act. Plans for the reclamation were approved by the Marine Department on 31 July 1962. The Hutt Motorway reclaimed approximately 105,200 square metres of harbour bed from Kaiwharawhara to Ngauranga.

Both the huge Evans/Lyall Bay and Hutt Estuary reclamations were authorised by the transfer of reclamation rights granted under earlier Acts to a new authority. The Evans Bay reclamation of the 1950s had its legal basis in the WHB Reclamation and Empowering Act 1908 and the Hutt Estuary reclamation had authority in the Hutt River Improvement and Reclamation Act 1922. The next chapter will illustrate that, for the first time, the reclamation ethos and legal basis was now challenged by a very vocal environmental movement from the late 1960s to the early 1980s.

CHAPTER EIGHT: THE RE-EVALUATION OF RECLAMATION AND THE HARBOUR 1960-1991.

Between 1852 and 1900, reclamation works were entirely focused on Lambton Harbour to provide land for the city, Government buildings, railway and harbour works. Between 1900 and 1940, reclamation schemes spread out to the Kaiwharawhara-Petone foreshore and around the coast to Evans Bay. After 1940 the Hutt Estuary and Evans/Lyall Bay became the key reclamation projects. By 1960 attention was turning again to Lambton Harbour and the need to revamp the wharves to cater for containerisation of trade and other developments such as the introduction of roll on/roll off ferries. Three developments became important during the reclamation schemes of the 1960s-80s; a new reclamation regulation environment determined by the Town and Country Planning Act 1977, an increasing amount of scientific information about the harbour and an increasing vocal protest by Wellingtonians about the environmental effects of reclamations. Both of the last two developments influenced new rules concerning the legal consent process.

8.1 LEARNING ABOUT THE HARBOUR; POLLUTION AND ECOSYSTEMS

Since the 1960s a massive amount of studies have investigated the marine environment of Wellington Harbour and the south coast. These studies have largely been conducted in response to local authority sewerage proposals and reclamation projects. As discussed earlier, sewerage disposal in Wellington was becoming a serious problem in the 1870s and - importantly - was having an impact on Government buildings. As Mantell stated in the Legislative Council during the reading of the Wellington Drainage and Sewerage Bill:

All that he (Mr Mantell) could say was, that the state of the drainage in Wellington was absolutely execrable. There could be no doubt about it...He especially called the attention of the Council to this fact: that the entrance used by those members who had to come to the Council by way of Sydney Street was in a disgraceful state. On one side was a reeking dunghill, he supposed for the

purpose of manuring what remained of the Governors kitchen garden, and on the other side, recently arranged by the Colonial Architect, was a square drain constantly delivering the outflow from the cesspools attached to the buildings, and the effluvia from the two was most intolerable.³⁰

These drains deposited straight into Lambton Harbour which was described in the 1880s as “dirty, black , badly polluted with sewerage.”³¹ The Wellington Drainage and Sewerage Act of 1873 was the first attempt to provide substantial financial backing to the City Council for the provision of sewerage reticulation. This Act was accompanied by the creation of Local Health Boards in 1876 under the Public Health Act of that year, which were given powers to control sewer discharges, offensive ditches and nuisances.

In 1877, 1878, and 1890 the Wellington City Council prepared a number of reports on the sewerage problem and outlined various alternatives. One proposal included the land disposal of effluent on to the sand hills between Evans and Lyall Bay at a Rongotai sewerage farm.³² In 1890 a final scheme was presented to the City Council by Ferguson and Cuthbert. This report proposed a sea outfall at Rongotai (Moa Point) and a reticulation scheme that would provide for a total population of 75,000 having a maximum density of 50 persons per acre.³³ Authority to construct this scheme was provided for in the Wellington City Drainage Empowering Act 1894 and work was completed in 1898. While the adoption of the Moa Point outfall had reduced sewerage discharge into the harbour, by 1935 the sewerage reticulation scheme was declared overloaded in “practically all of its component parts” with serious breakdowns. It was also proposed that the scheme be extended to Johnsonville and the Rongotai area.³⁴ A comprehensive rehabilitation scheme was recommended and work began in 1936.

³⁰ Mantell, 27 September 1873, NZPD.

³¹ Johnson, 1996, p 146.

³² Davis, K.R. *Wellington Harbour*, Water Resources, Wellington Regional Council, 1982, p 16.

³³ Luke, K.E. *Report on Main Sewerage System, City of Wellington*, WCC, 1936, p 4.

³⁴ *Ibid*, p 12-13.

This sewerage scheme was still being constructed in the 1950s when another City Council report in 1954 highlighted major water pollution in the Harbour. This report was commissioned after complaints by bathers and swimmers at Oriental Bay.³⁵ Sources of this pollution were found to be from ships, overflows during wet weather and a number of septic tanks which had not yet been hooked onto the main reticulation scheme. The most polluting septic tanks included:

- Johnsonville. Which served a population of 3,000 and discharged into the Ngauranga Stream.
- Ngauranga. Served a population of 1,500.
- Kaiwharawhara. Several tanks, serving a population of about 10,000.
- Island Bay. Several tanks, serving a population of 13,000³⁶

After investigations, the report concluded that “bacterial evidence of pollution could be traced in almost any portion of the harbour.”³⁷ It was recommended that reticulation continue to be extended to Kaiwharawhara but it was thought “that the harbour water can absorb without detriment the sewage and trade waste from Ngauranga provided adequate screening or disintegration is carried out.”³⁸ It was not until 1980 that Johnsonville and Newlands were connected to the reticulation system and the City Abattoirs were connected in 1982.³⁹

Sewer and industrial waste from the Hutt Valley increased with the arrival of Gear Meat and other industries in the 1880s, which discharged directly into the sea off the Petone foreshore and

³⁵ Jeffreys, F.B.C. *Report on Pollution of Western Portion of Wellington Harbour*, WCC, 1954.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Davis, 1982, p 17.

Hutt River estuary. Domestic drains were meanwhile served by septic tanks which also discharged into the Hutt River. As part of the Hutt Valley Development Scheme, the Director-General of Health recommended the establishment of a sewerage and drainage board in July 1946. The Hutt Valley Drainage Board was established in 1948 under the Hutt Valley Drainage Act of that year. After some discussion, the Board decided to construct a sewer outfall at Fitzroy Bay (Pencarrow Head) for the sewerage disposal of the whole Hutt Valley. Permission for the outfall from the Marine Department was requested on 3 October 1949.⁴⁰ In its first report, the Board's engineer recommended the removal of all waste from Petone Beach and the construction of an outfall at Fitzroy Bay.⁴¹ The engineer stated:

The primary duty of the Hutt Valley Drainage Board is to provide a means of disposal of the sewage from its district. Analyses of the existing effluent show that this had become an urgent necessity. In addition, the disposal of trade wastes directly into the river is adding to the burden of pollution which the waters in the vicinity of the Petone beach have to carry.

In my opinion, and in the opinion of many, Petone beach could become one of the finest harbour beaches in New Zealand. It is essentially a safe bathing beach, suitable for the children for paddling, and if all pollution could be removed from the waters adjacent to it, and the beach surface maintained by modern mechanical means, it would become known throughout the country as an ideal harbour beach.⁴²

While the Board, at first considered treatment necessary, the issue was re-evaluated in 1952 because it was thought that any treatment scheme would be financially impossible. The Board gained permission for the construction of an outfall without a treatment process at a meeting with the Prime Minister on 20 June 1952. This meeting was also attended by the Ministers of Works,

⁴⁰ Bach/Sec.Marine, 3 October 1949, 54/7/370, WRC.

⁴¹ Bach, H.R.*Report on Alternative Schemes for Dealing with the Disposal of Sewage from the Hutt Valley*, Hutt Valley Drainage Board, 1950.

⁴² *Ibid*, p 39.

Agriculture, Marine and Health.⁴³ Work began on the scheme in 1955⁴⁴ and finished in 1962.

In 1971 Steven and Fitzmaurice produced a major report for the Hutt Valley Drainage Board. This report was commissioned because defects in the main Pencarrow sewer outfall were involving costly repairs during which untreated sewerage was discharged in the Harbour.⁴⁵ The report illustrated gross pollution of the Hutt Estuary and Waiwhetu Stream. Apart from visual evidence, "mud samples showed presence of large amounts of iron, copper, and sulphur."⁴⁶ Other sources of pollution included the Gear Meat outfall which discharged near Petone Wharf, four other industrial discharges along Petone Beach, a large industrial discharge into the Hutt Estuary, Ngauranga, four industrial discharges at Kaiwharawhara and a number of discharges from septic tanks from Point Howard to Point Arthur, south of Eastbourne.

Water Classification

Waste discharges along the eastern shore were now a restricted activity as the waters had become classified as SA (under the Water Pollution Regulations published in 1970 and finalised in June 1971). The intention of the water classification scheme was to manage water not unlike land use planning. As on land, where District Schemes were used to determine the 'best' use of land based on a zone, water classifications aimed to provide for various water uses in a structured approach. SA zone would contain the highest standard of water, while SC provided for general uses including waste discharge. The water classification regime was administered by the Pollution Advisory Council (who became the Water Pollution Control Council) and the Regional Water Boards.

⁴³ Meeting with Prime Minister, 20 June 1952, 54/7/370 WRC.

⁴⁴ Construction of the outfall also involved a small reclamation of the foreshore at Fitzroy Bay. This area was Proclaimed on 27 March 1953 and the works were approved by the Marine Department.

⁴⁵ Steven and Fitzmaurice, *Disposal of Hutt Valley Wastes*, Hutt Valley Drainage Board, June 1971.

⁴⁶ *Ibid*, p 33.

Wellington's 1971 classification regime (figure 8.2) zoned most of the harbour as SC but provided for a higher quality of water at popular beaches (SB) and along the eastern shore (SA). Any sewerage discharge along the eastern shore would not meet SA standards.

WATER CLASSIFICATION, 1971		
Water	Predominant Use Envisaged	Treatment Requirements for Effluent Discharges into Water
Fresh Water		
A	Controlled water supply catchment	No discharges permitted
B	General water supply services	Complete biological treatment plus dilution control
C	Primary contact recreation (bathing, ski-ing)	High standard complete biological treatment plus bacterial removal
D	General recreation, agriculture and general industrial water supplies	Complete biological treatment or partial treatment and dilution control
X	Supplementary Class applied to B & D above where such waters considered to be sensitive to enrichment	Treatment requirement may include higher standard than those above plus nutrient removal
Saline Water		
SA	Shellfish beds	Generally treatment standard too high to allow economical direct discharge; high standard treatment
SB	Primary contact recreation (bathing, surfing)	High standard complete biological treatment plus bacterial removal or dilution control
SC	Harbours, enclosed bays, estuaries	Complete biological treatment and dilution control
SD	Open coastal general recreation and fishing	Biological treatment or partial treatment and dilution control
SE	Ocean areas remote from general public use	Disintegration only of wastewater solids
X	Supplementary Class applied to SA to SC above where such waters considered sensitive to enrichment	As for fresh water above

Source: Schedules to Water and Soil Conservation Amendment (No. 2) Act, 1971.

Figure 8.1 Water Classification 1971. Michael Roche, *Land and Water*, p 127

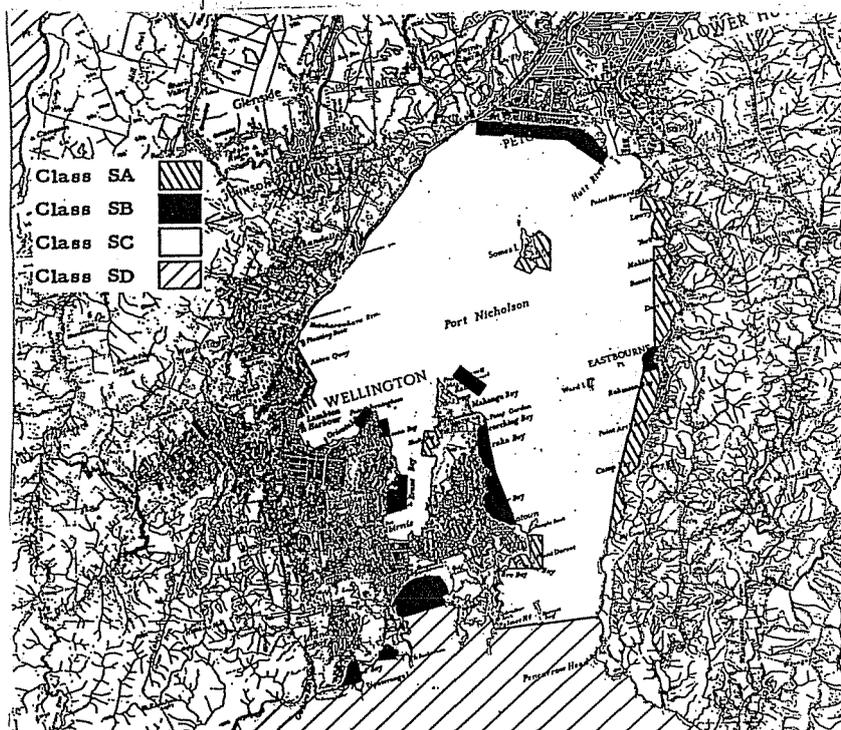


Figure 8.2 Classification of Wellington Area, 1971. Source, Steven and Fitzmaurice, *Disposal of Hutt Valley Wastes*, 1971, p 19.

The water classification regime was reviewed in the early 1980s. As part of this review, there was some attempt to recognise Maori interests with an amendment of the Water and Soil Conservation Act. This amendment provided for the appointment of a person to the National Water and Soil Authority to represent Maori interests. A draft water classification plan was released in 1985. This plan had zoned most of the harbour as SB (bathing waters) and the Hutt Estuary and Lambton Quay zoned as SC. This draft plan was labelled as racist by City Councilor, Helene Ritchie who stated that there was “no cultural consideration about how the Maori people valued the sea” and she wanted “nothing short of water standard for edible shellfish [SA].”⁴⁷

Another review of the water classification plan was carried out by the Wellington Regional Council in 1987. This review included two submissions from Wellington Maori (R Ahipene-Mercer and R Love). These submissions stated that discharge from Moa Point was in violation of the Treaty of Waitangi because of its effect on traditional Maori fishing grounds.⁴⁸

The water classification scheme has now been replaced by the Resource Management Act 1991 and the standards contained in the Regional Coastal Plan.

Ecological health of the harbour

Before 1989, ecological monitoring of the harbour was dependent on the information gathered from small localised studies commissioned as part of environmental impact assessments. One exception to this rule was the Davis report of 1982. This report involved the comprehensive evaluation of shellfish resources within Wellington Harbour by sampling at 37 places from Pencarrow Head to Seatoun. On the basis of this sampling, a map of shellfish beds was made (Figure 8.3).

⁴⁷ ‘Draft Sea Classification Racist says Ritchie’ 17 May 1985, *The Dominion*.

⁴⁸ WRC, *Water Classification Investigation, Report and Recommendations, Wellington Harbour and South Coastal Waters*, 1987, p 7-8.

The interesting feature of this map is that it shows mussels and small scallops below the reclaimed land at Lambton Harbour. Davis concluded that all the shellfish in the harbour were considered to be contaminated:

On the basis of analytical data presently available together with the knowledge that there are: 77 identifiable emergency sewage discharge points around the harbour of which any number can operate at one time, numerous unidentified discharges of faecal contamination via stormwater systems including streams and the mere fact that there are still some sewers discharging into the harbour including Pencarrow and Moa Point outfalls, then it can only be concluded that most if not all shellfish are likely to be contaminated at some time. As the level of contamination is likely to be variable it must be further concluded that all shellfish are subject in terms of health risk at all times and that the taking of shellfish for human consumption, especially for eating raw, is not be encouraged.⁴⁹

Recent reports based on monitoring by the Wellington Regional Council find water quality within the harbour as showing a gradual improvement especially along the eastern harbour.⁵⁰ However, it is still found that few sites met SA classification and shellfish gathering is not recommended in the vicinity of urban areas. The Hutt River estuary remains highly polluted but is improving. In 1990, 660 faecal coliforms per 100 millilitres were recorded but by 1991 this had dropped to an average of 369 faecal coliforms per 100 millilitres. Worst sites within the harbour are at the wharf areas, Hataitai Beach, the south-coast near the Pencarrow/Moa Point outfalls, and the Waiwhetu Stream. Some improvement should occur when the Moa Point treatment facility begins operating in 1999.

⁴⁹ Davis, 1982, p 93.

⁵⁰ Berry, A. *Coastal Water Quality Monitoring Network, Western Wellington Region, 1995/6*, WRC, 1996.

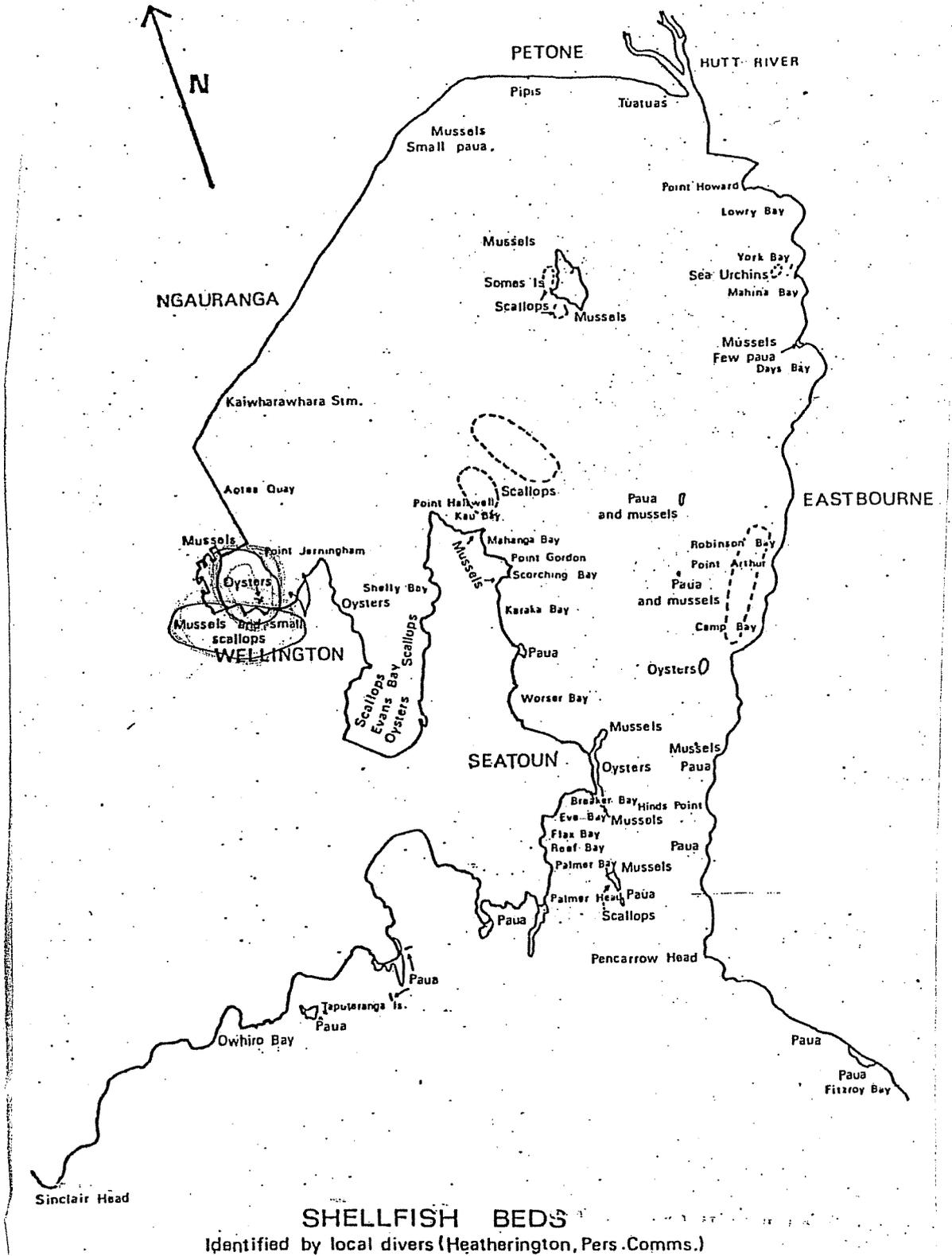


Figure 8.3 Shellfish Beds, Wellington Harbour, 1982. Source, Davis, 1982, p 94.

Effect of reclamations on Maori piscary interests

Generally there is little written evidence about Maori attempts to maintain their piscary rights within Wellington Harbour. Evidence does, however, suggest, that the waters of Te Whanganui-a-Tara did contain fisheries and kaimoana of value to Maori. Different places within the harbour were used for different reasons. For example Evans Bay was a source of seaweed, Petone and the Hutt Estuary a source of shellfish and mullet, and Pipitea is assumed to have had shellfish beds. Oyster beds were also found at Evans Bay and Seatoun. Claimants should provide oral evidence and submissions to the Tribunal about their alienation from fisheries within the harbour and shellfish on the foreshore.

Most marine habitats along the foreshore of Lambton Harbour, Hutt Estuary and Evans Bay have been destroyed by reclamations, but many of these habitats were highly polluted (especially at the Hutt and Lambton Harbour) before reclamation began. Reclamation work also accelerated marine pollution problems. For example, the Lambton Harbour reclamations involved the construction of huge breastworks. These breastworks separated the area to be reclaimed from the sea. Henceforth, the area was contained and sewage coming in from the streams could not escape. In some cases it took many years before the area between the breastwork and the land was filled by soil and rock disposal.

Evans Bay sea-waters, meanwhile, were clean enough for oyster farms and Marine Department records show a number of oyster farms were established around Evans Bay and Seatoun in the late 19th Century.⁵¹

Absence of a record of Maori protest of piscary rights at Wellington contrasts with a very extensive record of Maori protest at Porirua. The Porirua record begins in 1878 when Wiremu Parata and eight others claimed 656 acres of land below the high tide mark at Porirua Harbour.

⁵¹ For example, H Palmer was given permission to build a large oyster farm at Balena Bay in 1896; Source Marine Plan, 21 October 1896, WRC.

This claim, called Te Parumoana, was heard by the Native Land Court on 7 August 1883. The Court was asked to provide title to these lands between high and low tide mark which from time immemorial were pipi collection grounds. While the Court ruled that the claimants had no right to the title of such lands, the Court did find that Ngati Toa Rangatira did have a fishing right within Porirua Harbour.⁵² The issue of Maori interests within Porirua harbour surfaced again in the 1950s when the Works Department reclaimed part of the harbour for the expansion of Porirua City. Despite protest by Ngati Toa Rangatira, the Crown ignored the 1883 Land Court decision and decided (on advice by the Crown Law Office) that Ngati Toa Rangatira had no greater interest in the harbour than anyone else.⁵³ In 1960 Ngati Toa Rangatira petitioned the Crown for compensation for loss of fishing beds and other damage. The Maori Affairs Committee had no recommendation to make on this petition.⁵⁴ During the 1970s, attention shifted to the Titahi Bay coast when a sewerage outfall was planned to be constructed at Komangarautawhiri. Protest by Ngati Toa Rangatira was partially successful and the outfall was shifted north to its present location (just south of Titahi Bay beach).⁵⁵

It was after Maori protest against the Porirua sewerage outfall had received wide publicity, that Wellington Maori began questioning the right of the Wellington City Council to discharge untreated waste at Moa Point. A report on upgrading the Moa Point outfall was produced in 1972 by the City Engineer. This report recommended the building of a treatment station in the Moa Point area. In 1975 further plans were prepared and copies of the proposals were sent to a number of organisations which did not include Maori.⁵⁶ Another report was finalised in 1977 which also did not include Maori interests or objections. On the basis of this report, the City Council proceeded to designate the Moa Point area as a site for a new treatment station. This designation

⁵² Parumoana decision, 7 August 1883, MLC, Wellington Minute Book, 1c.

⁵³ Maori Affairs Memorandum, MA, 1 5/5/59, NA. See also, 18/7/1955, The Dominion.

⁵⁴ Petition of Tutuira Wineera and 88 Others, 12 October 1960, AJHR, I-3, 1960.

⁵⁵ 'Ngati-Toa fight for burial area' 5 April 1976, The Dominion; 'Maoris try to protect Kupe's landing spot' 24 November 1981, The Evening Post.

⁵⁶ Report on Upgrading of Wellington Sewerage System, 1972, WCC; Proposed Treatment Plant Site, 1975, WCC; In, Moa Point file, 12/868, 1960-1975, WCC.

order was challenged in the Planning Tribunal by local residents. WCC won the case and the Planning Tribunal found the Moa Point site was appropriate.⁵⁷

Instead of full primary and secondary treatment of sewage, the City Council chose to build a milliscreening plant in 1983. This decision became the focus of intense debate between the City Council and opponents. The most vocal of the opponents being Helene Ritchie and the Wellington Clean Water Campaign environmental group. Wellington Maori, especially Ralph Love and Ray Ahipene-Mercer (who was chairperson of the Wellington Maori Council), also were vocal in their opposition to the proposed milliscreening plant. Ray Ahipene-Mercer wrote a number of letters to local papers stating that the City Council had ignored Maori interests in the sea and that the sewerage discharge was in breach of article II of the Treaty of Waitangi.⁵⁸ A number of protests by Maori were also held at Moa Point. In 1986 the Wellington Maori Council lodged a claim to the Waitangi Tribunal (Wai 28) stating that continued discharge of raw sewerage at Moa Point was in breach of the principles of the Treaty of Waitangi. With a decision by WCC to treat the Moa Point sewerage, Wai 28 was closed in 1988.⁵⁹

Reclamation in Wellington Harbour never gained the same sort of recorded protest from Maori despite the destruction of fishing grounds and alienation of the foreshore.

8.2 RECLAMATION IN ACTION, 1960s-80s

In the 1950s the WHB began to have further visions of large reclamations for Wellington Harbour. At a meeting of the Board on the 22 August 1951 it was discussed that some 200 acres could be reclaimed along the Petone foreshore. The *Dominion* reported that 'WELLINGTON MUST RECLAIM LAND FROM THE SEA' and quoted the chairman of the WHB as saying

⁵⁷ *Archer v Wellington City Council*, PT W57/82.

⁵⁸ 'Moa Point,' 30 March 1985, *The Evening Post*; 'Obligations Should be Heeded' 27 November 1985, *Eastern Suburbs News*.

⁵⁹ WCC, *Treatment and Disposal of Wellington's Sewage; EIS*, March 1988.

“if Wellington is going ahead and any more land is required, it can only be taken from the sea.”⁶⁰ After some studies, the Harbour Board announced in 1952 that reclamation might yield not 200 acres but 957 acres.⁶¹ One response to this was from Mr J Roberts who said that the “harbour does not belong to the WHB or the shipping people, it belongs to the people who live in the district.” While saying this, however, he also agreed that more reclamation must take place.⁶² The big reclamation plan was forwarded to the Wellington Regional Planning Authority and the City Council who gave their blessing and further studies were conducted focusing on reclamation along Jervois Quay. In the end high costs of reclaiming deep water placed these proposals in the rubbish-bin and the Board restricted itself to reclaiming land at Seaview.

Other grandiose reclamation schemes were planned by the Wellington City Council at Lambton Harbour in 1957 and the Petone Borough Council floated the idea of reclaiming 230 acres of the Petone foreshore (which had become vested in the Council) in 1968. The Marine Department response to these ideas was cautious and recommended that special Acts would be required rather than relying on an old reclamation Act or an Order in Council.

The Wellington Harbour Board did, however, push through its plans for further reclamation. In 1966 these plans included the expansion of Taranaki Wharf and the creation of a container patch at Thorndon. The WHB first applied for reclamation rights without a special Act in regard to the harbour-bed at Te Aro. After advice from the Crown Law Office, the Marine Department decided that the Harbour Board was unable to carry out the reclamation under the 1898 WHB Empowering Act 1898 and that a special Act was necessary.⁶³ The WHB, therefore, forwarded a bill to Parliament which was passed as the Wellington Harbour Board Loan and Empowering Act 1967. This Act amended the 1898 Act and provided for the authority to reclaim the harbour-bed in six places:

⁶⁰ Wellington Must Reclaim from the Sea, 23 August 1951, The Dominion.

⁶¹ Reclamation could yield 957 acres, 18 December 1952, The Dominion.

⁶² Harbour Board Policy and Ship Owners, 13 October 1953, The Dominion.

⁶³ Sec. Marine/WHB, 30 November 1966, TR 1 43/17/6, NA.

1. 6 acres for the Taranaki Wharf development;
2. 1 acre and breastwork at Lambton Harbour;
3. 21 acres for the Thorndon Wharf development (the Thorndon Container Patch);
4. Reclamation associated with the construction of the Rail-Road ferry berth;
5. 20 acres at Kaiwharawhara for an oil terminal; and
6. 10 acres at Point Howard for a second wharf.

8.3 NEW ZEALAND PORTS AUTHORITY

The New Zealand Ports Authority (NZPA) exercised some authority over reclamations after 1967. Under the New Zealand Ports Authority Act 1967, the NZPA had to prepare a National Plan for Ports. In adopting a proposal (such as a reclamation) which would directly affect the operation of any port, the NZPA were required to consult with the harbour boards, Government departments, local bodies and other persons directly concerned. After a decision was made, there was a two month provision for any appeals to the Minister of Marine on the grounds that the decision was not in the national interest (the term 'national interest' was not defined). The Minister's decision was final.

Henceforth, reclamation proposals after 1967 needed to be forwarded to the NZPA for approval in regard to the national interest. In 1968 the New Zealand Ports Authority Act was amended giving the NZPA the power to approve deviations from works authorised under Harbour Board Empowering Acts.

It seems the Taranaki Wharf development, Lambton Harbour redevelopment, the Rail-Road

Ferry berth and the Thorndon Container patch reclamations were all approved by the NZPA and carried out between 1967 and 1974. Only a small section of the Kaiwharawhara oil terminal was ever reclaimed.

The Port Howard Wharf development, however, struck opposition from local residents. The NZPA carried out consultation meetings with the local authorities and progressive associations and visited the site. Submissions on the proposal were called for and objections were considered. These objections included loss of an amenity, lack of legal rights to reclaim, and that alternative sites had not been considered. After this process had been carried out, the Chief Executive Officer of the NZPA recommended that the WHB amend its scheme and final approval not be given until further investigations were carried out.⁶⁴

As a result the Point Howard second wharf and reclamation never proceeded.

The New Zealand Ports Authority and the National Ports Plan was the first attempt to provide some sort of planning regulation and upset the independence of the Harbour Board in relation to harbour works and reclamations.

8.4 TOWARDS TOWN AND COUNTRY PLANNING CONTROL

Despite the National Ports Plan and the influence of the NZPA, the Marine Works engineer commented on the need for some control and an overall harbour plan for Wellington Harbour in September 1968:

There are a considerable number of local bodies engaged independently in reclamation and it is probably the time for consideration to be given to the overall sea bed use adjacent to the harbour foreshore. It would be a pity if the individual reclamations and works ultimately closed off the harbour over extended lengths from recreational use and it would be better if specific areas could

⁶⁴ Point Howard Wharf Development, NZPA, October 1971, Ibid.

now be set aside as future domains, reserves and access routes to the foreshores.

This may be a suitable time for the Marine Department to initiate discussions with the other parties concerned, namely the WHB, WCC, Hutt City, Petone Borough, and Eastbourne Borough, with a view to a broad plan for utilisation in which industrial and recreational activities would each be given a fair share of the waterfront.⁶⁵

This advice, word for word, was relayed to the Commissioner of Works by the Secretary for Marine who requested the co-operation of the Town and Country Planning Branch for the preparation of large scale harbour plans. It was also requested that the Town and Country Branch might “consider some tentative zoning of foreshore development.”⁶⁶

Other factors were also pushing reclamations towards the procedures of the Town and Country Planning Act 1953.⁶⁷ The Associated Chambers of Commerce wrote to the Minister of Justice in April 1963 stating a resolution from their recent conference:

That this Conference affirms the view expressed over many years that it is opposed to any in-roads on the rights of citizens to seek redress through judicial and semi-judicial tribunals of New Zealand and views with concern a breach of this principle contained in section 7 of the Wellington Harbour Reclamation Act 1955.⁶⁸

The Secretary of the Chambers of Commerce added:

It is extremely disconcerting to discover that no authority or individual has any right of appeal

⁶⁵ Simpson/Sec.Marine, 11 September 1968, TR 1 43/17/6, NA.

⁶⁶ Kerr/Commissioner of Works, 30 September 1968, Ibid.

⁶⁷The Town and Country Planning Act 1953 set up the first comprehensive mechanism for regional and district planning. The regional scheme was to provide for the “conservation and economic development of the region” and the development and preservation of amenities. The Act set up the first Wellington Regional Planning Authority who produced a Regional Development Map in 1966. This map did not refer to any harbour issues. District Schemes were also prepared by the Wellington City Council and local authorities. These scheme, however, also excluded harbour planning or reclamations.

⁶⁸ Sec. Associated Chambers of Commerce/Minister of Justice, 30 April 1963, TR 1 43/17/6/1, NA.

against what may well be an arbitrary decision of the Wellington Harbour Board in so far as reclaimed land in the Lower Hutt City and Hutt County area is concerned.⁶⁹

As a result a bill was introduced which would introduce the appeal procedure under the Town and Country Planning Act 1953 into the Wellington Harbour Reclamation Act 1955. The Secretary for Marine commented:

It is considered unlikely the Wellington Harbour Board would have undertaken the Gracefield reclamation authorised by the 1955 Act if the appeal procedures had been allowed to be operative. The Board would want to know with reasonable assurance the end use of the land once reclaimed in order to ensure an equitable return for the money it would expend in costly reclamation work. With the appeal procedures applying it is considered the establishment of the land under industrial C zone use would be very difficult.⁷⁰

While the Hutt County Council supported the bill, it was opposed by Wellington City Council and was withdrawn. The matter did not rest, however, and a petition was presented to Parliament by James Henderson and 1,879 residents of Eastbourne and Eastern Bays in July 1969. The petition stated that the foreshore of the harbour was beautiful and a valuable asset which required preservation. Existing legislation was considered inadequate to protect this amenity and consultation was required before any reclamation work should be carried out. Vesting of 245 acres in the Wellington Harbour Board in 1936 and 1952 for reclamations was an "example of the inadequacy of existing legislation." This meant:

The Wellington Harbour Board which was thereby given authority to reclaim the 245 acres at any time for harbour purposes leaving no legal machinery by which any person might object to any such reclamation being carried out and reclamation in the area has proceeded from time to time since 1956 without consultation with the people residing in the area.⁷¹

⁶⁹ Ibid.

⁷⁰ Sec. Marine/Clerk. Local Bills Committee, 19 August 1965, Ibid.

⁷¹ Petition of James Herbert Henderson and 1879 Others, No.26, 1969, Ibid.

For this reason, the petitioners requested that the Town and Country Planning Act 1953 and the Harbours Act 1950 be amended to make provision for the regulation of reclamations by regional and district schemes, long term planning of the foreshore, and appeal rights to the Town Planning Appeal Board.

The response of the Secretary for Marine was not enthusiastic. He considered the Harbours Act adequate and thought the wider 'national interest' might be subordinated in the application of appeal rights. Such appeal rights would "jeopardise the long term planning of the Boards" under the New Zealand Ports Authority Act. Also:

The Marine Department and Parliament have always jealously guarded the foreshore and sea bed and have endeavoured to ensure they are retained for posterity. However, it is realised that some works must alienate parts of these areas, but each request is looked at most carefully before any approval is given.⁷²

With guarded support from the Ministry of Works, another Wellington Harbour Reclamation Amendment Bill was sponsored by the Eastbourne Borough Council and introduced into the House and submitted to the Bills Committee.⁷³ After hearing submissions, the Bills Committee recommended that "it is desirable that the use of harbours and coastline should be the subject of regional and district planning and that the procedures of approval, objection, and appeal under the town planning legislation should apply."⁷⁴

The issue went before Cabinet in November 1969 who requested the advice of the Minister of Works and Marine. The Marine Department had, meanwhile, come slowly around to the idea and

⁷² Sec. Marine/Clerk. Local Bills Committee, 9 July 1969, Ibid.

⁷³ Ministry of Works generally supported the idea that reclamation under the Harbours Act should be integrated into the provisions and schemes of the Town and Country Planning Act 1953. The Commissioner of Works did, however, point out that the 1966 amendment of the TCP Act did allow district schemes to include any adjacent reclaimed land or any land authorised pursuant to any Act to be reclaimed; Laing/The Clerk. Local Bills Committee, 9 July 1969, Ibid.

⁷⁴ Local Bills Committee, 5 August 1969, Ibid.

submitted that the Harbours Act could be amended to provide for forms of consent under the Town and Country Planning Act 1953 for all reclamations except those which are minor or those for "shipping purposes in the National interest."⁷⁵ The Commissioner of Works, meanwhile submitted the Harbours Act be amended to provide that all reclamations should come under the Town and Country Planning Act's appeal provisions before a special Act or Order in Council was granted.⁷⁶

On the 25 August 1969 an amendment to the Wellington Harbour Reclamation Act 1955 was passed by Parliament. Section 2 of this Amendment allowed for the provisions of 28c and 28d of the Town and Country Planning Act 1953 to apply to the reclaimed land zoned industrial C. The amendment, therefore, did not bring reclamation itself under the Town and Country Planning Act, but only the land once it had been reclaimed. The 1969 amendment was later repealed in 1983 and then reinstated in 1986 when the Town and Country Planning Act 1977 was to apply over all the Hutt estuary reclaimed land (the Town and Country Planning Act 1997 introduced some recognition of Maori interests, see appendix D). By this stage all the land had been reclaimed and was in use by heavy industry.

While the reclaimed land created under the Wellington Harbour Reclamation Act 1955 was brought within the influence of town planning, bigger changes to the Harbours regime were proposed. A major amendment (No.3) to the Harbours Act was recommended to cabinet in 1969. This amendment involved three main parts; that authorisation by special Act should be no longer required, that all reclamations be authorised by an Order in Council and all reclamations be subject to the objection and appeal provisions of the Town and Country Planning Act 1953.⁷⁷ This amendment was bitterly opposed by the NZPA which thought it "would be ludicrous for the

⁷⁵ Sec.Marine/Minister of Marine and Fisheries, 26 March 1979, Ibid.

⁷⁶ Commissioner of Works/Minister of Works, 18 March 1970, Ibid.

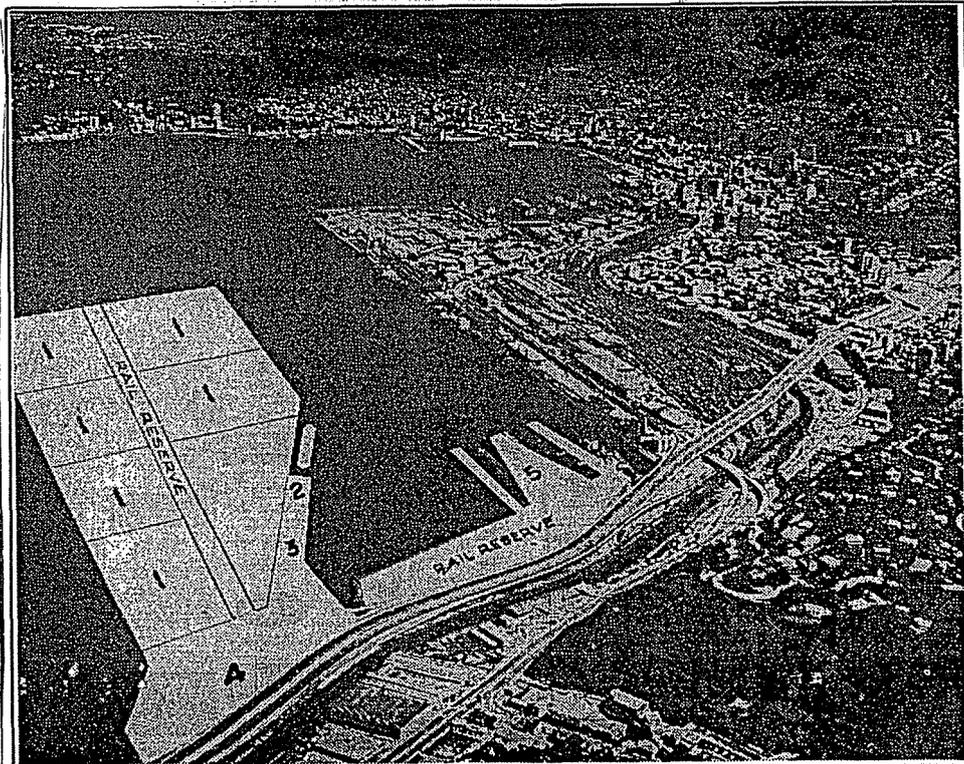
⁷⁷ An attempt was made by the Eastbourne Borough Council to bring part of the harbour under their control in a variation to the District Scheme which would provide for an Aquatic Reserve Zone from Point Howard South to Pencarrow. Reclamation within this area would be not permitted. The Marine Department's legal opinion regarded this action as illegal stating that the District Scheme is confined to land only. The WHB and the NZPA was also most upset and argued the Borough Council had no jurisdiction over the harbour.

Authority to be faced with having to battle a case to the Town and Country Appeal Board for a 'change in use' to enable a wharf to be built in the national interest on the foreshore and sea bed."⁷⁸

While the Harbours Amendment (No.3) Bill was under consideration, another petition by J.N. Laursen and 3,318 residents of Eastbourne was received by the House in June 1972. This petition basically restated the objections to the Wellington Harbour Reclamation Act 1955 and wanted all reclamations subject to the Town and Country Planning Act 1953.

In the end, the Harbours Act only had a minor amendment in 1973 to include that the public interest be taken into account when applications for works and reclamations were under consideration.

8.5 ACTION AGAINST RECLAMATION



Proposed Kaiwharawhara reclamation. 1972.

⁷⁸ NZPA/Sec.Marine, 18 October 1971, Ibid.

By this stage, reclamation was a very 'hot' topic in Wellington with active attempts by the Nature Conservation Council and Action for Environment to stop unregulated and unplanned reclamations.⁷⁹ The proposed Kaiwharawhara reclamation was especially targeted for objection as it was considered to be a huge 'eyesore.'

Action for the Environment produced a letter stating 12 concerns on Wellington Harbour in July 1973. These concerns included:

- need for recreational facilities;
- all harbour development should be subject to Environmental Impact Reports;
- reclamation should be limited and be aesthetically planned with the natural form of the land retained;
- views of the harbour should be retained;
- access to the sea should be preserved;
- greater co-operation is needed between the WHB and local authorities;
- need for an overall harbour plan;
- public must have full rights to appeal;
- wildlife and wetlands must be preserved; and
- public must be kept informed.

The general theme of this opposition to unregulated reclamation was that the harbour was public space. In a letter to the Minister of Transport, the Secretary of Action for Environment stated:

We are most concerned that it should be clearly recognised that the harbour and its shoreline does not belong exclusively to the harbour board, but that it should equally serve the interests of those

⁷⁹ AfE, *A Harbour View*, December 1978; Webb, A. 'The Square Look' *AAA Bulletin*, No.44, March 1972.

who live and work on its borders and use it for recreational purposes.⁸⁰

In a deputation to the Minister in October 1975, Action for Environment also wanted the Harbours Act to be amended to cover environmental effects, the exclusion of reclamations from section 185 (of the Harbours Act), the need for one harbour authority elected by the people, and the need for the NZ Ports Authority to include environmental factors when considering proposals for harbour works.⁸¹

Action for Environment also kept a close eye on reclamation works around the harbour. Requests were made to the NZ Army to clean up the Fort Dorset foreshore, and on 13 and 14 of July 1974, one member of the Action for Environment found a 'smoking gun' by witnessing and taking photos of an un-authorized reclamation at Korokoro. Rubble was being dumped at the Hutt Valley Rowing Club building and then being bulldozed into the sea. Action for Environment considered this was an action liable for prosecution after section 242 of the Harbours Act.⁸²

The Minister of Transport confirmed that the reclamation was unauthorised and stopped all filling operations from 18 July 1974. In an explanation, the Rowing Club considered the land seaward of their boundary as part of the lease (granted in 1965) from NZ Railways. The foreshore had suffered from erosion and the Club thought that a 'reinstatement' of land could be undertaken.⁸³ The issue was referred to the District Commissioner of Works who considered that the reclamation should be legalised and further dumping could occur "to preserve the area from natural erosion."⁸⁴ In the end, no prosecutions were carried out and the illegal reclamation was validated and vested in the WHB.⁸⁵

⁸⁰ Rainforth, AfE/Min. Transport, 22 September 1973, 96-204-2/12, ATL.

⁸¹ Interview with AfE, 31 October 1975, Ibid.

⁸² Rainforth/Minister of Transport, 6 August 1974, 54/16/216, WRC.

⁸³ Min. Transport/Rainforth, 21 August 1974, Ibid.

⁸⁴ District Commissioner of Works/Commissioner of Works, 16 August 1974, Ibid.

⁸⁵ Sec. Transport/Sec. WHB, 15 July 1985, 54/16/1 WRC.

Another illegal reclamation was discovered in May 1980 by the Ministry of Transport. This reclamation involved the creation of a 50 metre breakwater for a small boat harbour and associated facilities at the mouth of the Hutt River.⁸⁶

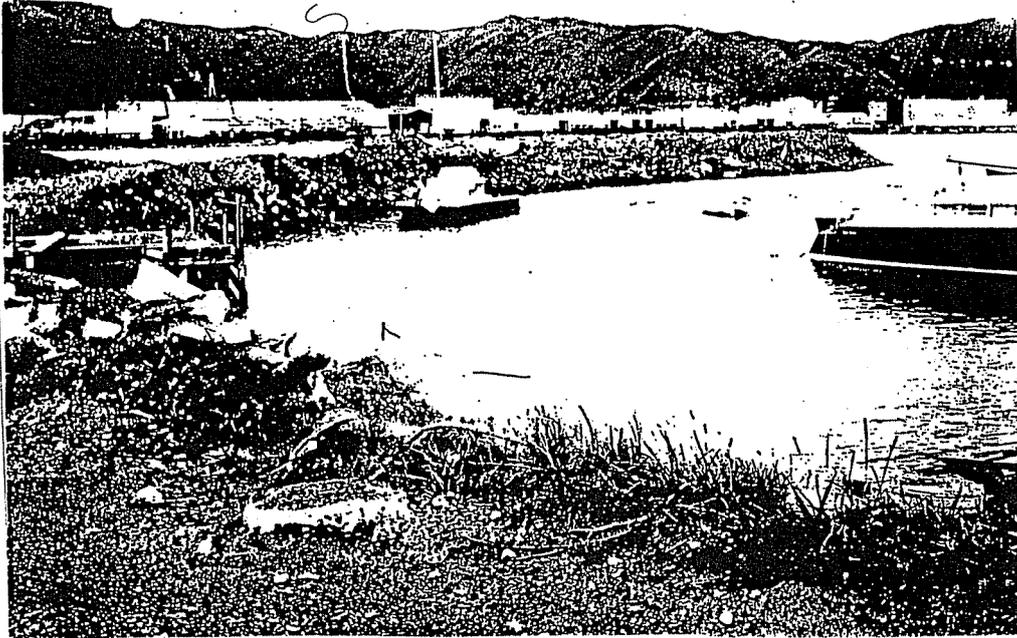


Photo of illegal reclamation, Hutt River Mouth, May 1980. Source, file 9980 WRC.

After an extensive investigation by the Ministry of Transport, it was decided that prosecution might not be successful and the Ministry would not proceed with it. Instead, the reclamation was brought under the control of the Harbour Board and the illegal work was approved by the Regional Marine Officer in 1981.⁸⁷

8.6 PLANNING CONTEXT FOR RECLAMATIONS 1977-1991.

Action towards bringing the coastal marine area under planning control materialised during the Physical Environment Conference in 1970. After the Peart Report of the 1973 Officials Committee for the Environment, the decision was made to set up the Commission for the

⁸⁶ Acting Regional Sec. Transport/Controller, Marine Admin, Head Office, 12 May 1980, 9980, WRC.

⁸⁷ Carr/Sec.WHB, 6 July 1981, Ibid.

Environment. The Commission for the Environment became responsible for all environmental enhancement procedures concerning all proposals for large physical development under the Environmental Protection and Enhancement Procedures Act 1974.

Various types of environmental information were required by the Commission for the Environment in relation to the type and extent of the proposed development. These included:

Environmental Impact Report; advertised, submissions made, and audited by the Commission for the Environment.

Environmental Impact Assessment; advertised for public input or distributed to selected Government Departments or organisations. No formal audit procedure.

Environmental Statement; assessed by the appropriate Government department or other agencies.

Later in 1976 when the Town and Country Planning Act was under review, the decision was made to include maritime planning section in the new Town and Country Planning Act, but with the administration of maritime planning remaining with the Ministry of Transport. The basic provisions of the 1950 Harbours Act remained unchanged.⁸⁸

A summary of the Harbours Act 1950, the Town and Country Planning Act 1977 and the Wellington Harbour Maritime Scheme is provided in Appendix D of this report. The formation of a Maritime Plan meant that for the first time reclamations were to be controlled by a planning regime. This regime allowed for the consideration of a whole range of factors when the proposed reclamation was assessed for approval. The approval process had finally gone beyond the standard test of effects on navigation assessment by the Marine Department/Ministry of Transport.

⁸⁸ Ministry of Transport, *Coastal Zone Management Seminar*, March 1980.

The Maritime Scheme, for the first time, included general policies regarding Maori interests within the harbour. Policy 2B4 and Ordinance 3B7 stated:

To recognise and provide when possible for the protection of the parts of the Area which have a significance for the culture and tradition of the Maori People.

To provide for the protection of those parts of the Area which have special significance for the culture and traditions of the Maori people.⁸⁹

Specific Maori interests, however, were not included in the criteria assessment when reclamations applications were processed.

Importantly, the WHB became the new Maritime Planning Authority and was granted control of the foreshore and seabed within the Maritime Planning Area (the whole of the harbour out to Pencarrow and Owhiro Bay). Before this time only the foreshore had been granted to the WHB.⁹⁰ It seems, however, this grant of control did not extend to actual ownership rights.

8.7 RECLAMATIONS WITH ENVIRONMENTAL INFORMATION 1974-1991

With the arrival of the Commission for the Environment and later the Maritime Scheme, large reclamations were subject to environmental impact assessments and submissions. The most important to go through this process was the completion of the Thorndon Container Terminal 1975, Wellington Airport Extension 1975, Lowry Bay Boat Harbour 1975, Kaiwharawhara development 1978, and the Seaview Marina 1988.

In 1974 the WHB required approval for the extension of the Thorndon Container Terminal to cater for an increasing amount of container trade. The extension would involve an 18 acre

⁸⁹ Wellington Maritime Planning Scheme, 1988.

⁹⁰ Wellington Harbour Board Foreshore and Seabed Control Order, 11 November 1982, NZG.

reclamation. Authority had already been granted for a 7.75 acre reclamation and further approval was required for 11.14 acres. An environmental impact assessment was prepared in November 1974 and an environmental impact report was published in May 1975. Public comment was invited and a total of 31 submissions were received by the Commission for the Environment. These submissions generally focused on the visual effect of the reclamation and other issues such as noise, water quality, flora and fauna, traffic, and planning controls. No submissions were received from a Maori organisation.⁹¹ An Environmental Impact Audit was conducted by the Commission and released on 8 October 1975. The Commissioner recommended to the Minister of Transport that due to the visual effect of the reclamation, the justification of the proposal needed to be examined and that the appearance of the water edge should be improved.⁹²

In 1975 the Civil Aviation Division of the Ministry of Transport released an Environment Impact Report for a proposal to extend Wellington Airport. This extension was considered necessary with the arrival of DC-10 aircraft. Public notices in the national newspapers invited public comment. 48 submissions were received. Most of these submissions concentration on the adverse effects of noise. No Maori organisations made a submission. In their submission the Historic Places Trust did point out that there was an historic pa site located nearby; Rangitatau, and another site at Tarakina Bay. The Commissioner for the Environment recommended that the Civil Aviation Division reconsider the need to extend the airport and if it was extended it should go to the south (Lyall Bay).⁹³ While the Runway Extension project was never carried out, it is worth noting that some of the reasons for abandoning the project included the planning difficulties raised by the new maritime plan. Advice from the Crown Law Office also found that although the Crown could carry out the reclamation without the authority of a special Act, reclamation authority would end up being tested in the Courts and a full Environmental Impact

⁹¹ WHB, *Environmental Impact Assessment; Thorndon Container Terminal*, November 1974; Commission for Environment, *Submissions received on Thorndon Container Terminal*, September 1975.

⁹² Commission for the Environment, *Environmental Impact Audit*, October 1975.

⁹³ Civil Aviation Division, MoT, *Wellington Airport Runway Extension; EIR*, September 1975; Commission for the Environment, *Wellington Airport Runway extension, EIR*, 1975; Commission for the Environment, *Environmental Impact Audit, Wellington Airport Runway Extension*, May 1976.

Report and special Act would be politically necessary.⁹⁴

One large reclamation project that did end up in Court was the Kaiwharawhara development. The WHB produced an extensive Environmental Impact Statement on this development in March 1978. This report included an in-depth biological and hydrological survey by Marine Consultants Limited. Maori issues or concerns were not raised in the statement.⁹⁵ This report was soon followed by an Environmental Impact Report in 1979 on Stage 1 of the Kaiwharawhara Development. The whole proposal ended up in Court and never proceeded. In 1989 the Kaiwharawhara project was still under consideration but it is likely that the project was buried by the advent of the Resource Management Act 1991.

One project that did go ahead was the Seaview Marina scheme. An Environmental Assessment report was prepared in July 1988 by the WHB. This report included a description of shellfish habitat at Seaview:

A large shellfish bed made up mainly of cockles *Austrovenus stutchburyi*, and of pipis (*Paphies australis*) stretched from close to shore down to just below 5 metres depth and lies within the area of the proposed marina. Pipi densities are very high, and the area appears to be a significant site for breeding and recruitment in Wellington Harbour. However, shellfish beds of at least equivalent density have been located and samples from along Petone foreshore...Deeper than 3 metres the majority of the shellfish were dead, most probably killed by a chemical spill, via the stormwater drain, which occurred in the area in mid 1987.

All Seaview shellfish samples analysed for faecal coliform bacterial content indicate that they are unfit for human consumption, with specific samples exceeding the allowable limit of 230 to 240 f.c./100g flesh sometimes by as much as a factor of 6 times. Similar results were found for shellfish from Lowry Bay and Petone Beach.

The proposal to build a marina in the Seaview Bay area by reclaiming part of the Bay and

⁹⁴ Foreshores, Airport Extensions, 54/16/238, WRC.

⁹⁵ WHB, *The Kaiwharawhara Development, Environmental Impact Assessment and Feasibility Study*, March 1978; WHB, *The Kaiwharawhara Development, Stage 1, Environmental Impact Report*, February 1979.

dredging other parts will severely damage the present extensive shellfish bed. The shellfish in the bed are not, however, suitable for human consumption and other beds of equal density and greater extent exist in Wellington Harbour.⁹⁶

The consultation process included meetings with the NZ Maori Council and local Maori interests. Feedback from this consultation was described as:

Discussions with several Kaumatua of the Te Ati Awa indicated that there was no concern for the Seaview area as either an area of historic value or an important fishery resource. Further north in the area now reclaimed the former estuarine area had been a handy resource of mullet for bait but this was irretrievably lost. It was acknowledged that the shellfish now present in the modified bay were highly polluted and considered unacceptable for consumption. The plea was made for provision in the development for recreation facilities for all members of the community including mothers and children.⁹⁷

With this stamp of Maori and community approval, the WHB received a special Act - Wellington Harbour Board (Seaview Marina) Reclamation Act 1989 - which gave authority for the construction of the marina and the reclamation of 4.7 hectares of foreshore. This is the last reclamation Act that the author is aware of in relation to Wellington Harbour.

8.8 RECLAMATION UNDER A NEW REGIME; THE RESOURCE MANAGEMENT ACT 1991.

The new Maritime Scheme, finally operative in 1988, did not have a long life. Major changes in both harbour administration, conservation and resource management had been taking place since 1984 and these changes led to a new system for the control of reclamations and providing for the interests of Maori. Remembering that control of the whole of the harbour bed and foreshore of Wellington Harbour was vested in the WHB after 1982, a change of major significance has been the abolition of Harbour Boards and the creation of new Port Companies under the Port

⁹⁶ WHB, *Proposal Seaview Marina, Environmental Assessment*, July 1988, p 77-78.

⁹⁷ *Ibid*, p 88.

Companies Act 1988 and a series of Waterfront Industry reform and restructuring Acts in 1989. The upshot of these changes for Wellington Harbour was that the WHB was dis-established and its regulatory functions transferred to the Department of Conservation and the Wellington Regional Council. Its commercial functions were transferred to a revamped Port of Wellington Company. This Company inherited 72 hectares of land, all reclaimed land holdings from the WHB. The land holdings of the Port Company can be divided into four main locations:

1. Burnham Wharf/Miramar reclamation on the eastern side of Evans Bay.
2. Commercial port area extending from Shed 21 and the Waterloo Wharf to the Kaiwharawhara reclamation.
3. The oil tank area at the Seaview reclamation, leased to oil companies.
4. Land at the base of the Seaview wharf oil tanker terminal.⁹⁸

The rest of the land and seabed under the control of the Harbour Board was re-vested in the Crown under the Foreshore and Seabed Endowment and Revesting Act 1991. Key provisions of this Act are as follows:

Section 3 included a Treaty of Waitangi clause that stated:

All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Section 4 set out that the Act applied to all land that -

(a) Was formerly alienated from the Crown and vested in a Harbour Board or a local authority, whether by or under the authority of any enactment or otherwise and

⁹⁸ Property Services, *Background Report on Port of Wellington Land Holdings*, August 1990.

(b) At the commencement of this Act, either -

(I) Is foreshore or seabed and is vested in a local authority (whether as a successor or otherwise); or

(ii) Is land that has been reclaimed from the sea unlawfully.

This land does not, however, apply to freehold interests, land held by the Port of Wellington, the Lambton Harbour Development Area, and any land that “in its natural state or as a result of a lawful reclamation, is no longer covered and uncovered by the flow and ebb of the tide at mean spring tides.”

All the original vestings of land to which this Act applies are revested in the Crown “as if it had never been alienated from the Crown and free from all subsequent trusts, reservations, restrictions, and conditions.”⁹⁹

In 1994 Amendment, the extent of land revested in the Crown was expanded by section 9A which stated that all the “foreshore and seabed within the coastal marine area (within the meaning of the Resource Management Act 1991) or was foreshore, seabed, or both within the coastal marine area,...on the 1st October 1991 and has been reclaimed (whether lawfully or otherwise) on or after that date; and is for the time being vested in the Crown,...shall be land of the Crown.”

The Act provides that such coastal marine area lands held by the Crown under the Revesting Act 1991 shall be held by the Crown in perpetuity and shall not be sold or otherwise disposed of. Nothing in the Forest and Rural Fires Act 1977 or the Resource Management Act 1991 is derogated in these provisions and shall not limit or affect prior agreements (sales, lease, licence) or any interest in that land held by any person other than the Crown.¹⁰⁰

The reclamation and Maori interest provisions of the Conservation and Resource Management

⁹⁹ Section 5, Foreshore and Seabed Endowment Revesting Act 1991.

¹⁰⁰ Section 2 Foreshore and Seabed Endowment Revesting Amendment.

regime are set out in appendix E. The new system has not been tested yet as the Seaview Marina was the last reclamation constructed. Essentially the RMA is not a controlling or prescribing piece of legislation. All activities are permitted in general except those which are found to have an adverse effect on the environment. This intent is reflected in the Wellington Regional Policy Statement and Regional Coastal Policy Statement.

The basis of reclamation control is the determination of adverse effects. If these effects can be avoided or mitigated, reclamations may be given approval. One of the criteria in calculating 'adverse effect' is the effect on Maori values and the Principles of the Treaty of Waitangi which are to be taken into account. There is no acknowledgement in the RMA or the relevant policy statements of Maori customary ownership of (or surviving interests in) the foreshore as the regime asserts Crown ownership in the public interest.

The current resource management regime has made significant progress in relation to the recognition of Maori values and the many objectives and policies providing for Maori in the various plans are to be commended. It seems, however, the coastal policy regime established under the RMA tends towards full protection of natural coastal areas, while the planning approach in already modified areas is more flexible. Reclamation within Wellington Harbour may, therefore, may continue in the future.

CHAPTER NINE: CONCLUSIONS

The aim of this report is to provide information for the Waitangi Tribunal on the issue of customary use, reclamations, and pollution within Te Whanganui-a-Tara. This information will provide evidence which is required to ascertain if the Crown has breached the principles of the Treaty of Waitangi as alleged in the Statements of Claims outlined in Chapter One. In response to the issues raised by the various claims, three answers are required in this conclusion:

1. Who held and continues to hold customary ownership and use of Te Whanganui-a-Tara?
2. Did the Crown breach the principles of the Treaty of Waitangi by assuming ownership of, and then reclaiming the foreshore of Te Whanganui-a-Tara?
3. Did the Crown breach the principles of the Treaty of Waitangi by allowing environmental degradation?

1. *On Customary Ownership and Use*

Since 1839 the Crown and its agencies and other organisations (who have exercised authority on behalf of the Crown) have attempted to define, control and use Te Whanganui-a-Tara. These organisations include: the New Zealand Company, Marine Boards, Provincial Councils, City Council, Marine Department and the Wellington Harbour Board. From this view, which has become nearly hegemonic, Te Whanganui-a-Tara = Port Nicholson/Wellington Harbour; a place for international shipping, commerce, communication and trade. The result of these networks is Wellington City. This possession and occupation was established on the idea (marked out on a map) of the 'harbour' as 'empty' and without occupation; a seascape without a tenure of which the Crown could assume ownership in the public interest.

Maori understandings of Te Whanganui-a-Tara were, and continue to be, complex and diverse.

Different tribal groups viewed the place as holding many places. Places valued for; their history, as waahi tapu, as a source of kaimoana, as a route of travel, and as a place which was included within the whakapapa of the tribe. Many of these places still remain and have never been sold or alienated to the Crown.

Land surrounding Te Whanganui-a-Tara has been alienated by the workings of two main inquiries; the Land Claims Commission and the Native Land Court. The 'harbour' has never been the focus of an inquiry and the main concentration of this inquiry (the Waitangi Tribunal) has been the Wellington Tenth. No Commission of Inquiry has ever determined the nature and extent of Maori customary ownership and use over the foreshore, seabed, and waters of the whanga.

From the author's view point, qualified by the limitations and capacities mentioned in Chapter One and based on the evidence outlined in the report, any conclusions on customary interests of tribal groups associated with the Te Whanganui-a-Tara are very tentative. A summary of these tentative conclusions are outlined below:

Evidence of customary interests of tribal groups associated with Kurahaupo; Rangitane, Ngai Tara, Ngati Mamoe, Ngati Rangi and Mua-Upoko.

These groups are generally acknowledged to be the first occupants of Te Whanganui-a-Tara and claim descent from Kupe who discovered the 'harbour.' Te Whanganui-a-Tara is recognised as a Rangitane name and Rangitane were present at Te Whanganui-a-Tara when Ngati Mutunga arrived in the 1820s. Archaeological evidence, however, illustrates that this occupation was generally sparse and limited to small kainga, camp sites and pa principally on the islands. Mua-Upoko and Ngati Mamoe are a different branch from the same Kurahaupo waka and could have occupied Te Whanganui-a-Tara for a time. By the early 1820s it seems Mua-Upoko's southern most settlement was at Waimapihi but that occupation is significant in the control of the district.

With the arrival of the northern tribes after 1819, the Kurahaupo tribes tended to withdraw to the

other side of the Rimutakas. From this base in the Wairarapa, the relationship and memories of Te Whanganui-a-Tara were kept alive in tribal whakapapa. These memories were 'tapped' by Elsdon Best in the 1900s (Appendix B). Best's Wairarapa sources illustrated complex knowledge of the 'harbour' and this knowledge enabled Best to create the well-known map of Maori placenames of the Wellington Country District published in 1917.

Evidence of customary interests of tribal groups associated with Takitimu and Horouta; Ngati Kahungunu and Ngati Ira

These two groups have also had a historical association with Te Whanganui-a-Tara. This association is also derived from their settlement and intermarriage with Kurahaupo tribes. Te Whanganui-a-Tara takes an important place within their tribal whakapapa and by 1820 the identity of the people living at the 'harbour' were sometimes grouped under the label of Ngati Kahungunu. There is little evidence of a Ngati Kahungunu presence at Te Whanganui-a-Tara after 1840.

Evidence of customary interests of Ngati Toa Rangatira

Arriving from the Kawhia Harbour in the early 1920s. Ngati Toa's association derives from a number of sources which include:

- marriage with Ngati Apa (Ngati Rangi?);
- conquest of the district based on the success for the tribe at Waimapihi and Waiorua;
- control of the district from the occupation of strategic pa sites and routeways at Porirua; and
- continued presence in the region and use of the harbour since the early 1820s until the present day.

Ngati Toa Rangatira's view-point of Te Whanganui-a-Tara was as a place of secondary importance in comparison with Porirua and the occupation of the western highway. In regard to

Ngati Rangitahi, it is unclear if this tribe exercised actual customary rights in Te Whanganui-a-Tara.

Evidence of customary interests of the Taranaki Tribes: Ngati Mutunga, Ngati Tama and Te Atiawa

All of these tribes arrived during the 1820s and came to call Te Whanganui-a-Tara as 'theirs.' It seems Ngati Mutunga settled around the harbour after the battle at Waiorua and 'mopped-up' patches of resistance. After Ngati Mutunga's departure for the Chathams, some places and interests were given over to Ngati Tama/Te Atiawa. Occupation and possession of Te Whanganui-a-Tara was, therefore, gained on the basis of an alliance with Ngati Mutunga and Ngati Toa (especially Te Hiko). Together, the tribes had command of strategic pa, and were able to maintain generally secure possession. This possession was maintained despite the arrival of Ngati Raukawa on the Kapiti Coast. Ngati Mutunga's presence in Wellington has been maintained principally by the Pomare family who continue to have a strong association with the harbour, especially Matiu Island.

In 1839 Te Atiawa forged a new alliance with the New Zealand Company and this alliance gave the tribe a certain degree of independence and security. From this basis Te Atiawa has maintained a visible presence within Te Whanganui-a-Tara despite many of the tribe leaving for Taranaki after 1860. Mrs Te Puni illustrated complex knowledge of the harbour in 1912 (Appendix B) and many places within Te Whanganui-a-Tara were given a new name and identity by Te Atiawa. Despite pollution and reclamations, Te Atiawa have maintained and exercised at least some customary use of the harbour until the present day.

Te Whanganui-a-Tara, henceforth, carries many intersecting layers of interests which vary in scope and time. Different groups have lived and gained sustenance from its gifts and there is no method to mesh these interests together in a 'box' under the term 'ownership' or 'mana moana.'

2. On Hydrology and Geology

Geological research finds that Te Whanganui-a-Tara as the creation of complex plate tectonics. The trend is towards uplift, with the waters of the harbour retreating with successive fault movement and sedimentation. Despite many earthquakes, the only major uplift occurred during the 1855 earthquake. This uplift was geographically uneven and higher lift was experienced towards the east. The 1855 quake had less impact on the foreshore at Lambton Harbour. Increased rates of sedimentation since the destruction of the indigenous forest in the Hutt river catchment after 1840 has also had a major impact on reclamation especially along the Petone foreshore. With re-forestation, this sedimentation rate has now decreased.

3. On Harbour Pollution

Harbour Pollution has not been the main focus of this report but on the basis of the information reviewed it seems harbour pollution followed a trend involving:

1. Pollution began at Lambton Harbour from the early 1860s. This pollution was sourced from open sewer drains and ships.
2. A large quantity of this sewerage was transferred to the south coast via the Moa Point outfall after 1898.
3. After 1880 major sources of pollution were sourced from industrial development at Kaiwharawhara, Ngauranga, Korokoro, and Petone.
4. Hutt Valley development had the effect of heavy pollution in the Hutt river and estuary after 1930.
5. The quality of the harbour waters has improved recently thanks to the control programmes of the Wellington Regional Council. The new Moa Point treatment plant will further improve matters. Sewerage from Pencarrow outfall remains untreated.

4. On Reclamations

Reclamations have had a huge impact on the development of Wellington City and its region. Reclamation enabled the City to grow by providing land for the connection of communication links both internationally and nationally. These communication links have included; road transport, railway, wharves, and airports. Reclamation also provided land for the private and state sectors. Reclaimed land essentially provided Wellington with wealth and dominance.

Reclamations, however, were initially the result of a policy decision by the New Zealand Company and Government to make the foreshore 'land' by filling it in with rubbish, sand and rocks. Lambton Harbour was selected as a site for the City based on its harbourage and the hills which would promote concentrated settlement. Ringed by the Town Belt, Wellington remained compact and concentrated until the 1930s. Concentrated settlement planning required reclamations. After 1930, Wellington's urban environment spread up the Hutt Valley and over to Porirua. Reclamations also connected Wellington with its suburbs.

It is difficult to imagine Wellington in the 1990s without reclamation. Such a City would have its centre in the Hutt Valley and over to Pauatahanui rather than at Lambton Harbour.

As illustrated in the story of the Hutt Railway, further reclamation was halted by the presence of deep water. In deeper water, the financial viability of reclamation decreases. The geography of reclamation is, therefore, generally determined by the presence of shallow waters.

In article II of the Treaty of Waitangi, the Crown pledged to protect Maori interests in lands, estates, forests, fisheries and other properties. Nevertheless, the Crown assumed ownership of the harbour and foreshore, granted foreshore lands to agencies and even (because of long occupation by individuals at Te Aro) to private persons, but still without recognition of any persisting Maori rights or ownership. The Crown also passed reclamation legislation without protection of Maori interests. These actions may be in breach of the provisions and principles of the Treaty of Waitangi.

Reclamations had three major effects on Maori. Firstly kaimoana, tauranga waka, waahi tapu were destroyed. Secondly, Maori settlements lost water frontage and access and lastly, reclamation alienated the foreshore which was under use and ownership by Maori. Reclamation has the effect of bringing both the high and low tide marks together so in effect making the foreshore disappear. With the Crown claiming all land below the low tide mark and private title bounded by the high tide mark, Maori customary rights are left with nothing in between after the carrying out of reclamation works.

Most reclamation was carried out under the authority of the Crown by Act of Parliament or by an Order in Council. This authority, however, was exercised without reference to Maori rights confirmed in the Treaty of Waitangi.

Reclamation itself, of course, is not inherently 'bad.' It must, however, be controlled and carefully regulated not just because of aesthetic considerations, navigation, public access or visual effects, but because the Crown has a duty to protect Maori Treaty interests in the foreshore, the wider harbour and the traditional fisheries.

This protection has been lacking.



VOLUME TWO

APPENDIX AND BIBLIOGRAPHY

ROBERT A McCLEAN

CONTENTS

Appendix A	Research Commission
Appendix B	Places within Te Whanganui-a-Tara.
Appendix C	Legislation; Grants and Authority to Reclaim land within Te Whanganui-a-Tara/Wellington Harbour. List of Reclamations, 1847-1997.
Appendix D	Reclamation Control, 1977-1988.
Appendix E	Maori and Reclamation provision under the Resource Management Act 1991.
Bibliography	

APPENDIX A

WAITANGI TRIBUNAL

WAI 1451-332

CONCERNING

The Treaty of Waitangi Act 1975

AND CONCERNING

The Wellington Tenth's claims

DIRECTION COMMISSIONING RESEARCH

1. Pursuant to clause 5A(1) of the second schedule of the Treaty of Waitangi Act 1975, the Tribunal commissions Robert McClean of Levin, a member of staff, to prepare a research report on reclamations and the foreshore in Te Whanganui-a-Tara (Wellington Harbour) for the Wellington Tenth's inquiry. The report is to cover the following matters:
 - (a) written evidence about the customary Maori use and ownership of Te Whanganui-a-Tara
 - (b) a history of reclamations undertaken by the Crown and other bodies from 1839
 - (c) a consideration as to whether Maori were consulted in relation to any such reclamations
 - (d) an assessment of the effects that any such reclamations had upon Wellington Maori
 - (e) any protest by Maori in connection with any such reclamations or other evidence that shows the attitude of Maori to the reclamations
 - (f) the effect upon Wellington Maori of any actions by the Crown, or by other bodies exercising powers conferred by statute, that may have resulted in the environmental degradation of Te Whanganui-a-Tara
2. This commission commenced on 1 September 1997.
3. The commission ends on 31 October 1997 when one copy of the report will be filed in unbound form together with an indexed document bank and a copy of the report on disk.
4. The report may be received as evidence and the author may be cross-examined on it. The Registrar is to send copies of this direction to:

Robert McClean
 Claimants and counsel party to the Wellington Tenth's inquiry
 Solicitor General, Crown Law Office
 Director, Office of Treaty Settlements
 Secretary, Crown Forestry Rental Trust
 Director, Te Puni Kokiri

Dated at Wellington this 8th day of October 1997.


 GS Orr
 Presiding Officer

APPENDIX B; PLACES WITHIN TE WHANGANUI-A-TARA

List of Maori sites associated with Te Whanganui a Tara. This list does not contain names of all inland pa sites, streams, cultivation areas, hills, etc. Source, Various field notebooks of Elsdon Best held in Alexander Turnbull Library.

Kupe

Te Tuuranganui o Kupe	Seatoun beach
Te Tangihanga o Kupe	Barretts Reef (mournful waters)
Te Ure o Kupe/Te Aroaro o Kupe	Steeple Rock fishing place
Maatauranga	Rock at entrance of harbour
Maakaro	
Matiu	
Te Rimurapa	Where Kupe's family made large poha (kelp bags) for food preservation.
Pari whero	
Toka haere	Rock that always seemed to be moving because of strong currents in the area. Famous fishing ground, taurangaika.

Places associated with traditions from Kurahaupo, Takitimu and Horouta.

Te Whanganui a Tara: Regarded as the Rangitane name of the harbour.

Te Whanganui-o-Roto and Te Wheke nui a Tara: These two alternative names of Te Whanganui a Tara were supplied to Elsdon Best by A.H. Kumeroa, of Greytown.

Pa	Whetu kairangi, Rangitatau, Te Waihirere, Te Akatarewa, Tapu te Ranga Island, Motuhaku, Mataki kai Poinga, Okiwinui, Okiwi-iti, Oruaiti, Otuamotoro, Pararoanui, Parangarehu.
Haukawakawa	Ngati Ira name of beach along Thorndon to Pipitea point
Kakariki	Pa beyond Pilot Station
Matua-iwi	Pa at Robinsons Bay
Matiu Island	Pa established on the island by Kainga kiore of Ngati Ira
Te Rimurapa	Source of bullkelp using for making preservation containers
Puna a Tara	Tara's spring near Whetu kairangi
Te Au nui a Tane	Entrance to Te Whanganui a Tara
Te Awa a Taia	Entrance to Te Whanganui a Tara before the creation of the sand barrier which connected Te Whetu Kairangi island to the mainland.
Parangarehu	Pencarrow Head, site of Rangitane pa
Rukutoa	Name of two big rocks at Point Halswell. A source of paua only obtainable by diving.
Taipakupaku	Karaka Bay
Tapu te ranga	Pa held by chiefs, Uru and Te Una
Te Ana o Kahungunu	Cave at northern end of Matiu Island
Te Awa kairangi	Hutt river (watercourse of greatest value)
Te Papa o Tara	Rock at south end of Matiu Island
Te Punga-whangai-o-Tuteremoana	Famous hapuku fishing rock seaward of Barrett Reef
Waititi	Beach at Bowen street

Places associated with the Taranaki Tribes and Ngati Toa Rangatira

Pa	Te Aro, Pito-one, Raurimu, Pipitea, Kumutoto (also name of the beach at Woodward street), Paetutu, (at mouth of Hutt river), Waiwhetu.
Waitangi	Swamp area at Basin reserve/Cambridge terrace. It was said a Taniwha lived in it, but left and disappeared prior to arrival of first settlers because it knew the Europeans were coming.
Tapu te Rangi	Tapu island, no one lived on it. Also fishing spot.
Te Roto-kura	Lake at Miramar. Served as an eel preserve for eels caught from the Hutt river and then taken when wanted. Only the Matamoe and Haumate species of eel were put there.
Nga-Uranga	Named by Te Atiawa, tauranga waka
Ngau matau	Headland, northern side of Lowry Bay
Otu-mauru rangi	Large rock at entrance of harbour
Toka te arunga	Rock or place within the harbour
Te Ana-puta	Hutt side of Pararorangi
Te Rimurapa	Remembered as the place where a waka was capsized during the first expedition with Ngai Puhi

Mrs Te Puni (interviewed by Esldon Best, 1912)

Nga Hou	Both names applied to beach north of Pencarrow Head
Nga Rerenga	
Orua-motoro	Days Bay
Okakao	Pa and stream at Fitzroy bay
Okiwi-iti	Browns Bay

Okiwi-nui	Robinson's Bay
Omaru kai kuru	Point Jerningham
Onehunga	Karaka Bay
Orua poua nui	Baring Head
Otumaaururangi	Barretts reef or rock near it
Pa taua	Rock off Island Bay
Pipitea	
Tapu te rangi	Fishing spot
Tahataha-roa	Name of beach from Ngauranga to Pararurangi
Te Pou a amuketi	Seatoun Beach, named after Captain Kent
Te Raeakeake	Pencarrow Head
Te Rae o Paua	Mahinga kai in Fitzroy Bay
Tutai-weera	This was a place near Kaiwharawhara which was used to spot shoals of fish
Whiorau	Lowry Bay

Tahu of Ngatiawa interviewed by Best, 27.11.92

Raurimu

Kakariki Pa beyond pilot station

Tapu te ranga

Te Mahanga Wi Tako Ngatata's hapu's fort at Cow Bay

Ngati Toa Rangatira (most names given were places associated with Porirua Harbour, a few places mentioned concerning Te Whanganui-a-Tara are listed below)

Toms Rock also known as Toka-haere

Omere

Aperahama Mira and wife of Wainui (north of Paekakariki) told Esldon Best in 1912 that "Omere

is between Owhariu and Waiariki, that is the point from which the coast tends inward to Wellington Harbour, that fishing canoes going out from Wainui and adjacent places paddled out until they saw Omere point clear of Wairaka pint and then they cast anchor.”

Tapu te ranga Te Rauparaha and Tuwhare of Ngapuhi took this pa, was held by Ngati Kahungunu

Other places identified by Best and Adkin

Hue-te-para	Lyall Bay beach
Kirikiri-tatangi	Seatoun beach and foreshore
Kokotahi	Unlocated place within the harbour
Ma-angiangi	Chaffer's Passage
Maranui/Hue-te-para	Lyall Bay foreshore
Matai-moana	Harbour viewing spot
Nga Mokopuna	Rock north end of Matiu Island
Okautu	Lower branch of Hutt River at its mouth
Papaka-whero	Foreshore between Nga Uranga and Kaiwharawhara
Te Mahau	Unlocated place within the harbour near Lowry Bay
Te Akau tangi	Former shoreline prior to reclamation at Kilbirnie
Te Awa-koria	Path of the immature kahawai
Te Kai-whatawhata	Fishing rock off Palmer Head, especially hapuku
Te Papa-nui-a-Henga	Fishing place at Orongorongo
Te Tuahiwi-o-Raukawa	Shoal ridge of Raukawa moana, includes fisherman's rock
Parakaihoru	Foreshore north of Pipinui point
Tahataha-roa	Beach between Paroro-rangi and Nga Uranga

APPENDIX C; LEGISLATION: FORESHORE GRANTS AND AUTHORITY TO RECLAIM LAND WITHIN TE WHANGANUI-A-TARA.

Foreshore Grants and Legislative Authority to Reclaim the Harbour-Bed of Te Whanganui-a-Tara/Wellington Harbour 1840-1997	
<u>Legislation</u>	<u>Details</u>
Public Reserves Act, 1854	Act for regulation of Public Reserves. Allowed the Governor to vest any land below high water-mark in the Provincial Superintendent.
Crown Grant, 16 October 1855 Reissued, 20 June 1862, 6A/293	117 acres of foreshore in Lambton Harbour granted to the WGTN Provincial Superintendent under Public Reserves Act 1854.
Crown Grant, 21 June 1861	15 acres of foreshore in Lambton Harbour granted to the WGTN Provincial Superintendent under the Public Reserves Act: Basin Reserve and Canal.
Crown Grant, 1860s?	Large area of foreshore east of Te Aro along Clyde Quay granted to WGTN Provincial Superintendent under the Public Reserves Act (unable to find details of this grant).
Crown Grant, 24 June 1874	To the Wellington City Council under the Public Reserves Act 1854 for 70 acres of Te Aro foreshore.
WGTN PROVINCIAL GOVERNMENT ACT'S (under authority of the Public Reserves Act 1854)	

Foreshore Grants and Legislative Authority to Reclaim the Harbour-Bed of Te Whanganui-a-Tara/Wellington Harbour 1840-1997	
Harbour Reserves Act 1855 (WP)	Authority to reclaim Public reserves made and surplus land sold Pre-emption rights to existing foreshore uses Portion leased to Tradesmen's club
Harbour Reserves Amendment 1861 (WP)	Authority to reclaim and sell reclaimed lands Authority to raise money by mortgage for reclaiming Small grant of foreshore to Order of Oddfellows
Foresters Grant Act 1864 (WP)	Small grant of foreshore to Order of Foresters
Freemasons Grant Act 1864 (WP)	Small grant of foreshore to Freemasons Society
	Also small grant of foreshore to Joseph and Company of 2 rods and 1.2 peaches
Sale of Reclaimed Land Confirmation Act 1865 (WP)	Confirms sale of reclaimed land to certain individuals
Reclaimed Land Act 1865 (WP)	Authority to sell land by public auction
Sale of Reclaimed Land Act 1867 (WP)	Authority to sell land for telegraph office
Reclaimed Land Sale Act 1872 (WP)	Authority to sell reclaimed land by private auction
Thorndon Baths Act 1874 (WP)	Authority to lease portion of foreshore for construction of Thorndon Baths
Wellington Harbour Reserves Sale Act 1875 (WP)	Authority to sell portion of reclaimed land to the Wellington City Council
ACT'S OF THE LEGISLATIVE COUNCIL AND PARLIAMENT	
Railway Act 1870	Authority to build Wellington-Hutt railway. Lands taken by proclamation included foreshore and sea beach

Foreshore Grants and Legislative Authority to Reclaim the Harbour-Bed of Te Whanganui-a-Tara/Wellington Harbour 1840-1997	
Patent Slip Act 1872 (and Patent Slip Act 1864, WP)	Authority to build Patent Slip on foreshore at Evans Bay.
Wellington Reclaimed Land Act 1875	Empowers the City of Wellington to purchase reclaimed lands from Wellington Provincial Government.
Te Aro Reclamation Act 1879	Grants City Council authority to reclaim 70 acres of the Te Aro foreshore. Allows for compensation to be granted to affected persons.
Harbours Act 1878 and Amendment 1883, Harbours Act 1823, Harbours Act 1850.	Authority to reclaim harbour by a special Act or by an Order in Council
Wellington Harbour Board and Corporation Land Act 1880	Vests most of the foreshore of Wellington Harbour in the Wellington Harbour Board. Also railway wharf, Beacon hill station, small area of reclaimed land near Featherston Street.
Wellington Harbour Board and Corporation Land Act 1880 Amendment 1882.	Provides for compensation for every person suffered loss or damage from reclamation. To be paid by City Council and Harbour Board. No claim be taken against the Crown.
Thorndon Reclamation Act 1882	Authority to the Wellington and Manawatu Railway Company Act to reclaim 28 acres of foreshore for railway purposes.
Wellington Harbour Board Land and Reclamation Act 1883	Authorise reclamation for purpose of widening approach to Queens Wharf. Vested in WHB and WCC.
Wellington Harbour Board Loans Consolidation and Empowering Act 1884	Authority to construct graving dock, dredging, reclamation, slip and other harbour works between Railway and Queens Wharf.

Foreshore Grants and Legislative Authority to Reclaim the Harbour-Bed of Te Whanganui-a-Tara/Wellington Harbour 1840-1997	
Special Powers and Contracts Act 1886	Large endowment of harbour bed eastward of Waterloo Quay between Pipitea Point and the Railway Wharf. Vested in WHB on condition land is reclaimed. Subject to Harbours Act 1878.
Reclamation Within the Harbour of Wellington Act 1887	Set limit of the Te Aro reclamation at defined line. Part of Te Aro grant land vested in WHB for graving dock. Subject to all provisions of the Harbours Act 1878 Authority to construct seawall Harbour bed between Te Aro grant limit and defined line granted in WHB for the construction of harbour works except reclamation.
Wellington Harbour Board and Wellington Corporation Empowering Act 1890	Authorise reclamation for wharfage and berthage.
Thorndon Esplande Act 1891	Authority to Minister for Railways to reclaim 22 acres of foreshore at Thorndon
Wellington City Reclamation and Public Baths Act 1898	Authority to Wellington City Council to reclaim foreshore at Oriental Bay for street widening. Grant of foreshore for swimming baths WHB foreshore rights remain
Wellington Harbour Board Reclamation and Empowering Act 1898, No. 1	Authority to reclaim parts of harbour bed for railway extensions to Te Aro, Waterloo Quay, Customs House, and road improvement.
Wellington Harbour Board Reclamation and Corporation Empowering Act 1898, No. 7.	Authorise reclamation for wharfage and berthage, extension of railway, and other harbour works.

Foreshore Grants and Legislative Authority to Reclaim the Harbour-Bed of Te Whanganui-a-Tara/Wellington Harbour 1840-1997	
Wellington Harbour Board Empowering Act 1902	Authorise reclamation for purpose of graving-dock and other harbour works.
Hutt Railway and Road Improvement Act 1903	Authority to Minister for Railways to reclaim part of Wellington Harbour east of the foreshore from Thorndon Esplande and Petone.
Wellington Harbour Board Reclamation and Empowering Act 1903	Authorise reclamation of 21 acres eastward of Waterloo Quay for harbour works and railway
Wellington Harbour Board Reclamation and Empowering Act 1903 Amendment	Authorise extensions of 10 + acres of harbour bed granted for reclamation in the principal Act.
Wellington City Reclamation and Empowering Act 1906	Authority to reclaim 18 acres of harbour bed at Evans Bay.
Wellington Harbour Board Empowering Act 1908	Foreshore granted to Patent Slip Company at Evans Bay. Authority granted to reclaim 10 acres of harbour bed.
Wellington Harbour Board Reclamation and Empowering Act 1908	Authorised huge reclamation at Evans Bay of 156 acres and another 314 acres vested in the WHB for harbour purposes.
Wellington Harbour Board Empowering Act 1910	Authority to construct dock.
Reserves and Other Lands Disposal and Public Bodies Empowering Act 1918	Extension of time to WCC for reclamation at Evans Bay.
Thorndon Reclamation Act 1921	Repealed Thorndon Esplande Act 1891 and provided for the reclamation of over 59 acres for the Greater Thorndon Reclamation and Harbour Works
Hutt River Improvement and Reclamation Act 1922	265 acres granted to Hutt River Board for reclamation. Seaward boundary of foreshore granted to WHB

Foreshore Grants and Legislative Authority to Reclaim the Harbour-Bed of Te Whanganui-a-Tara/Wellington Harbour 1840-1997	
Wellington City Reclamation and Empowering Act 1936	Authority to reclaim 26 acres along the Moa Point Road.
Reserves and Other Lands Disposal Act 1936	Validation of agreement between the Hutt River Board, WHB and Public Works Department. Hutt River Board's reclamation rights transferred to Public Works and WHB. 92 acres vested in Public Works Department and 245 acres vested in WHB for harbour purposes.
Reserves and Other Lands Disposal Act 1952	Rights of WCC and WHB at Lyall and Evans Bay to reclaim land extinguished and transferred to the Minister of Works for Rongotai Aerodrome. Authority given to Minister of Works to reclaim 154 acres of harbour bed at Evans and Lyall Bay.
Wellington Harbour Board Loan and Empowering Act 1952	Authority to reconstruct Wharves at Lambton Harbour.
Wellington Harbour Reclamation Act 1955	Authority to WHB for reclamation of 129 acres foreshore at Hutt Estuary. Amended 1969 to provide for Town and Country Appeal Planning Act appeal rights. Repealed by section 3(2) of 1983 amendment. Amended 1986 to provide for Town and Country Planning Act appeal rights.
Wellington Harbour Board Loan and Empowering Act 1957	Authority to WHB to construct harbour works; Queens Wharf and completion of Hutt reclamation, 109 acres.
Wellington Harbour Board Loan and Empowering Act 1959	Authority to WHB to construct harbour works; Kings Wharf, Inter-Island Wharf, Outer tee Queens Wharf.
Local Legislation Act 1960	small section of foreshore granted to Eastbourne Borough Council from WHB.

Foreshore Grants and Legislative Authority to Reclaim the Harbour-Bed of Te Whanganui-a-Tara/Wellington Harbour 1840-1997	
Wellington Harbour Board Loan and Empowering Act 1961	Authority to construct harbour works; Overseas Passenger Terminal and reconstruction of Kings Wharf.
Wellington Harbour Board Loan and Empowering Act 1964	Authority to construct harbour works; Glasgow Wharf and Inter-Island Wharf.
Reserves and Other Lands Disposal Act 1965	Foreshore of military reserves and Patent Slip granted in WHB
Territorial Sea and Fishing Zone Act 1965 (and 1977)	Seabed below low-water mark vested in the Crown.
Wellington Harbour Board Loan and Empowering Act 1967	Authority to WHB for reclamation at Queens Wharf, Thorndon Container Terminal, Inter-Island Terminal, Kaiwharawhara, and Point Howard Wharf.
Wellington Harbour Board Reclamation and Empowering Act 1972	Authority to WHB to reclaim western arm of Hutt River and reclaim harbour bed for Thorndon Wharf development.
Wellington Harbour Board (Seaview Marina) Reclamation Act 1989	Authority to WHB to reclaim 4.7 hectares for Seaview Marina.
Foreshore and Seabed Endowment Revesting Act 1991	WHB endowments vested in the Crown (most of the foreshore of the harbour) except for Port Company lands and Lambton Harbour Development Area.

RECLAMATIONS WITHIN TE WHANGANUI-A-TARA, 1839-1997

Reclamation within Te Whanganui-a-Tara/Wellington Harbour 1840-1997			
<u>Date</u>	<u>Area</u>	<u>Authority</u>	<u>Locality and Purpose</u>
1840	?	New Zealand Company	Forming part of small private wharves along Lambton Harbour
1847	?	New Munster Government	Forming part of Lambton Quay roadworks.
1852	0a 3r 6.5p	New Munster Government	Lambton Harbour; Sir George Grey's reclamation:
1857- 1863	7a 3r 34p	Wellington Provincial Government	Lambton Harbour: City extension
1859	1r 20p	Order of Oddfellows	Lambton Harbour
1864	24p	Order of Foresters	Lambton Harbour
1865	2r 1.2p	Joseph and Company Ltd	Lambton Harbour
1866- 1867	12a 3r 29p	Wellington Provincial Government	Lambton Harbour: City Extension
1875	2a 2r 32p	General Government	Lambton Harbour: Govt Buildings
1876- 1893	46a 2r 16p	Began by Provincial Government. Completed by General Government	Lambton Harbour: Railway, Public Buildings, City Extension, Wharves.
1882- 1884	29a 0r 24p	Wellington and Manawatu Railway Company	Lambton Harbour: Railway
1882	1r 30p	General Government	Lambton Harbour: Railway Wharf

Reclamation within Te Whanganui-a-Tara/Wellington Harbour 1840-1997			
1882	1r 21p	Wellington Harbour Board	Lambton Harbour: Wharves
1884	1a 0r 10p	Wellington and Manawatu Railway Company	For General Government. Lambton Harbour; Railway
1886	3r 26p	Wellington Harbour Board	Lambton Harbour: Hunter Street
1886	22a 2r 20p	Wellington City Council	Te Aro Reclamation, No. 1 and 2
1889	17a	Wellington City Council	Te Aro Reclamation, No. 3.
1893	1a 1r 21p	General Government	Lambton Harbour; Te Aro Railway Store for WHB
1893- 1901	3a 0r 30p	Wellington Harbour Board	Lambton Harbour; Harbour Works
1895	1a 2r 0p	Wellington City Council	Lambton Harbour; Yards
1900	1a	Wellington City Council	Te Aro; Public Baths
1901- 1903	2a 2r 17p	Wellington Harbour Board	Lambton Harbour: For Government Custom House Site
1901- 1914	18a 3r 35p	Wellington Harbour Board	Te Aro former dock site
1902- 1925	4a 1r	Wellington City Council	Clyde Quay and Oriental Bay Road Widening and Seawall

Reclamation within Te Whanganui-a-Tara/Wellington Harbour 1840-1997			
1904	124 a (approx)	Minister of Railways	Hutt Road and Railway
1904- 1916	34a 2r 16p	Wellington Harbour Board	Lambton Harbour; Waterloo Quay
1906	1a 0r 43p	Wellington Harbour Board	Lambton Harbour: Boat Harbour
1910- 1913	4a 3r 16p	Crown	Lambton Harbour
1910	2a 0r 11p	WGTN Patent Slip Company	Patent Slip
1911	23p	Wellington City Council	Oriental Bay; Public Baths
1912- 1937	18a 1r 0p	Wellington City Council	Evans Bay; Kilbirnie Reserve
1924- 1932	68a 2r 32p	Wellington Harbour Board	Lambton Harbour; Greater Thorndon Reclamation (Railways and Wharves).
1928	1a 3r 21p	Wellington Harbour Board	Burnham Wharf
1935	27p	Wellington Harbour Board	Point Howard Wharf
1935- 1967	9a	Wellington Harbour Board	Evans Bay Boat Harbour
1936- 1965	201a (approx)	Public Works Department and Wellington Harbour Board	Hutt Estuary

Reclamation within Te Whanganui-a-Tara/Wellington Harbour 1840-1997			
1942	4a	Crown	Evans Bay, Naval Depot, Shelly Bay
1946	32p	Wellington City Council	Balaena Bay: Recreation Reserve
1952-1960	90a	Minister of Works	Evans/Lyall Bay: Airport
1953	?	Hutt Valley Drainage Board	Fitzroy Bay Sewer Outfall
1954	2a	Minister of Works	Evans Bay: Flying Boat Base
1956-1961	2a	Minister of Works	Lower Hutt- Eastbourne: Road Widening
1960-1966	26a	Minister of Works	Kaiwharawhara-Ngauranga Motorway
1961	1r 10p	Minister of Works	Sunshine Bay: Donated to Eastbourne Borough Council
1965	1.4 a	Wellington Harbour Board	Adjacent to Patent Slip
1966-1967	6a (approx)	Crown	Evans Bay: Fisheries Research
1966-1974	7.5a (approx)	Minister of Railways	Kaiwharawhara; Rail-Road Ferry
1965-1970	5a	Wellington Harbour Board	Korokoro: Site for dumping of clean spoil.
1967	1.4a	Wellington Harbour Board	Evans Bay: Site for dumping of clean spoil
1967-1974	3a (approx)	Wellington Harbour Board	Lowry Bay Boat Harbour

Reclamation within Te Whanganui-a-Tara/Wellington Harbour 1840-1997			
1967- 1969	6a	Wellington Harbour Board	Taranaki Street Terminal
1968- 1974	21a	Wellington Harbour Board	Thorndon Container Terminal
1968- 1974	1a	Wellington Harbour Board	Lambton Harbour; Harbour Works
1969	1.5a (approx)	Wellington Harbour Board	Evans Bay: Incinerator Site
1965- 1971	5a	Wellington Harbour Board	Kaiwharahara: Site for dumping of clean spoil.
1972	?	Wellington Harbour Board	Small Reclamation at Waterloo Quay
1973	2r 6.1p	Eastbourne Borough Council	Mahina Bay: Road Realignment
1973	2a (approx)	Wellington City Council	Ferguson Pool: Car Parking
1973- 1974	1a	Wellington Harbour Board	Point Howard: Seaview Wharf
1974- 1987	?	Hutt Valley Rowing Club	Illegal Reclamation at Korokoro. Completed by Wellington Harbour Board.
1976	7a	Wellington Harbour Board	Western Arm of Hutt River
1978- 1979	3a (approx)	Minister of Railways	Ngauranga-Petone: Access and Protection

Reclamation within Te Whanganui-a-Tara/Wellington Harbour 1840-1997			
1981	?	Wellington Harbour Board	Small Reclamation at Greta Point
1980-81	50 meter break-water	Petone small boat owners	Illegal Reclamation. Finished by Wellington Harbour Board.
1980	5 a (approx)	Unilever Co. Ltd	Illegal Reclamation. Hutt Estuary
1988	4.7 hectares	Wellington Harbour Board	Seaview Marina

APPENDIX D; RECLAMATION CONTROL, 1979-1988**1950 Harbours Act**

This Act is administered by the Marine Department which became part of the Ministry of Transport in 1968. The Harbours Act, while still in force, has been substantially amended and changed by planning legislation and the Resource Management Act 1991. In September 1995, the Minister of Transport announced a review of the Harbours Act especially in relation to issues for tangata whenua.¹

Reclamation under the Act is said to be:

Any filling which prevents the tidal movement in an area previously covered with water at high tide during ordinary spring tides, or the raising of a part of the bed of a navigable lake or navigable river above normal lake or river level.

Reclamation control under the 1950 Harbours Act is similar in scope to the earlier 1923 Harbours Act. Importantly all reclamations require approval under the Act regardless of ownership of the area. Key provisions are:

Section 175(1) Reclamations over 4 hectares are normally authorised by a Special Act of Parliament.

Section 175(2) Reclamations less than 4 hectares may be authorised by an Order in Council.

Section 175(3) Reclamations less than 4 hectares may be authorised by an Order in Council after objections have been called for and considered.

Section 185 Provides Harbour Boards to carry out urgent reclamations over 4 hectares by an Order in Council in urgent circumstances.

Section 157. Allows very small reclamations as part of a harbour work. Approved by an Order in Council.

¹ Ministry of Transport, *Issues for Tangata Whenua, Harbours Management*, September 1995.

The Crown is not bound by the Harbours Act and reclamations by the Crown were usually approved by the Ministry of Transport after checking navigational safety. By 1978 the Ministry of Transport had established a number of policies to guide reclamations. These policies included:

- reclamation must be justified and as small as possible;
- reclamation should not be carried out for private gain. Foreshore and seabed is considered publicly owned open space or treated as a public reserve;
- refuse tipping in reclamations be phased out;
- reclamation for spoil disposal will be opposed; and
- tidal flows should be maintained by causeways if possible.²

Applications for reclamations followed the following process:

1. Early consultation with the Ministry of Transport is recommended and talks held with the Commission for the Environment about the type of environmental impact report required.
2. Survey plans and environmental information are prepared.
3. Survey plan is submitted to the Department of Lands and Survey.
4. With the approval of the Chief Surveyor, plans and environmental information is forwarded to the Ministry of Transport.

² Ministry of Transport, *A Guide to Reclamation Procedures*, April 1978, p 11.

5. Proposal is advertised at least twice in a newspaper with an interval of at least five or ten days between each publication. Advertisement must make it clear that objections can be lodged (objection period usually lasted two months) and submissions can be made on the environmental information.
6. Ministry of Transport may obtain other technical reports and information from other agencies.
7. After closing of objections, applicant has the right of answer to the Ministry of Transport within three months.
8. All information is handed over to the Minister who makes the decision.

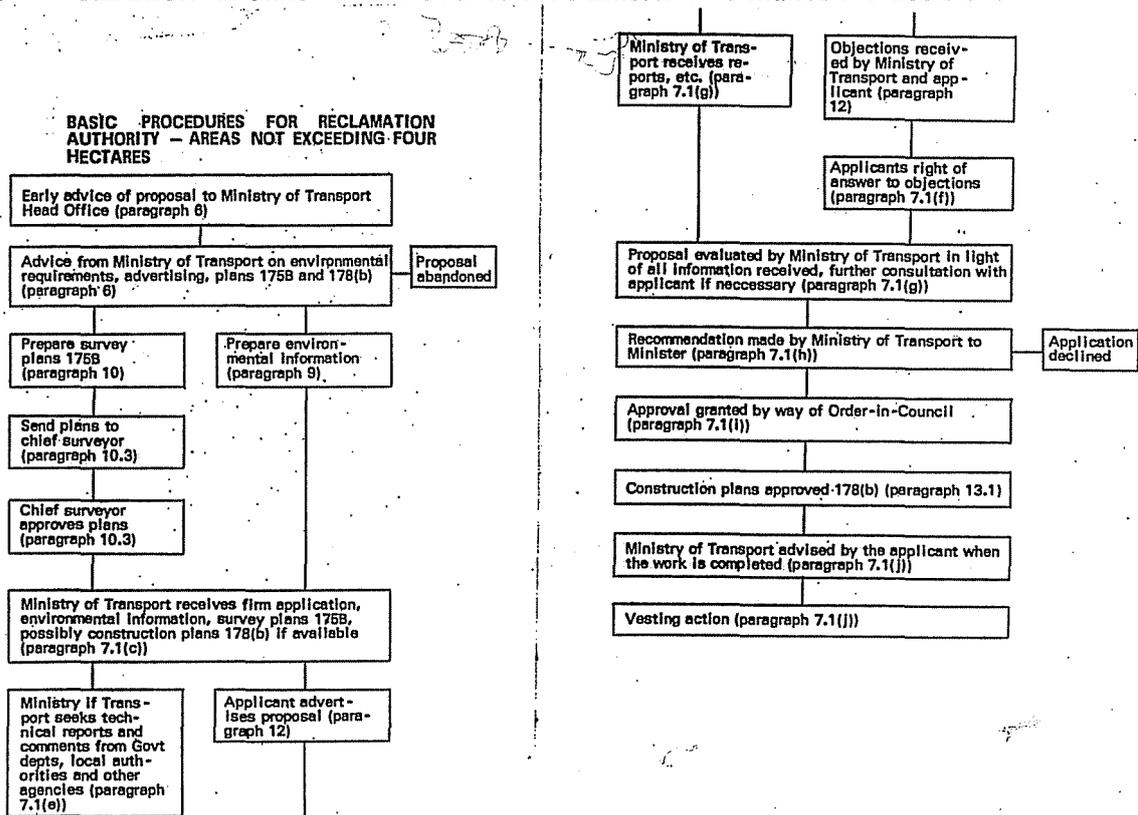


Figure.A.1. Basic Procedures for Reclamation Authority - Areas not exceeding four hectares. Source, Ministry of Transport, 1978, p 28-29.

Town and Country Planning Act 1977

Administered by Ministry of Works. Gave significant planning responsibilities to City Councils, County Councils and Regional Council established under the Local Government Act 1974.

Regional, District and Maritime Planning schemes (Maritime planning schemes were introduced in 1978) under the Town and Country Planning Act needed to recognise and provide for a number of matters of national importance. These matters included:

- (a) the conservation, protection and enhancement of the physical, cultural and social environment;
- (b) the wise use and management of New Zealand's resources;
- (c) the preservation of the natural character of the coastal environment and margins of lakes and rivers and the protection of them from unnecessary subdivision and development;
- (d) the relationship of the Maori people and their culture and traditions with their ancestral land.³

The purpose of planning was defined in section 4 as:

the wise use and management of the resources, and the direction and control of development of a region, district or area in such a way as will most effectively promote and safeguard the health, safety, convenience, and the economic, cultural, social and general welfare of the people and the amenities, of every part of the region, district or area.⁴

In the implementation of a planning scheme, regard shall also be had to the principles and objectives of the Water and Soil Conservation Act 1967. These objectives included: the conservation, allocation, use and quality of natural water, promotion of multiple uses of water, drainage of land, account taken of the needs of primary and secondary industry and forms of water-based recreation, fisheries and wildlife habitats.⁵

³ Section 3, Town and Country Planning Act 1977.

⁴ Section 4, Town and Country Planning Act 1977.

⁵ Preamble, Water and Soil Conservation Act 1967

Wellington Regional Planning Authority

The Wellington Regional Planning Authority or WRPA (later the Wellington Regional Council) was responsible for the overall regional planning of the Wellington Region and was constituted under section 8 of the 1953 Town and Country Planning Act. The Primary function of the Authority was to prepare a Regional Scheme which guides the preparation and content of District Schemes. Both the Regional and District Schemes generally dealt with issues above mean high water springs.⁶ Reclamation schemes after 1955 (that did not include a clause stating an exception to the Town and Country Planning Act) were generally forwarded to the Regional Planning Authority for their consideration. The Wellington Region Planning Area included Wellington Harbour and seas out to the 12 mile limit. In 1972 the Regional Planning Authority produced a *Statement of Objectives and Policies relating to Wellington Harbour*.⁷ Policies related to reclamation are summarised as follows:

- ◆ Surface areas of the harbour should be kept as large as possible.
- ◆ Water quality be maintained for contact sports and aquatic life.
- ◆ Reclamations will only be allowed that have substantial public benefits. Port activities are the principle function of the region.
- ◆ All reclamations should be considered within the context of an overall Port Development Plan and alternatives considered.
- ◆ Water based recreation should be provided for.
- ◆ Public access be maintained were possible.

⁶ WRPA, *Final Report on Regional Administration*, 1964.

⁷ WRPA, *Statement of Objectives and Policies relating to Wellington Harbour*, October 1972.

- ◆ Any reclamation should enhance the visual quality of the Harbour.

In October 1979 the Wellington Regional Planning Authority issued a revised statement on objectives and policies for coastal and marine planning. No specific mention was made in this report of Maori interest in the coastal marine area. Objectives and Policies regarding reclamations included:

4.2.8 Objectives

1. To recognise that reclamation for port or utility development is acceptable providing the need is proved in terms of national economy.
2. To ensure that reclamation proposals give consideration to its impact on the physical environment and the social environment.
3. To ensure that in all cases alternatives to reclamation are fully considered.

Policies

- To ensure that the area of reclamations are the minimum necessary to achieve the desired goal and are considered against alternatives and tested by public opinion through District and Maritime Planning Schemes before commencement.
- To ensure that District and Maritime Planning Schemes provide for the design and appearance of reclamations or development on reclamations to be carefully and sympathetically handled.
- To minimise the length of shore alienation in any reclamation.
- To ensure that the opportunity is taken with all reclamation to provide for improved public access and appreciation of the coast.
- To seek a concern from initiating bodies for public consultations on all reclamation proposals.
- To recognise that reclamation to meet entirely social/recreation needs is of low priority.

- To keep reclamation for utility development purposes such as sewage treatment works to a minimum.
- To ensure that where reclamation is carried out, in the Wellington Harbour, it is kept to a minimum consistent with the efficient functioning of the harbour and its varied activities and does not adversely affect water quality, ecological values, circulation or public access to the coastal edge.

Objectives and policies concerning environmental impacts (4.2.9) provided that an Environmental Impact Report would be prepared automatically for all port reclamations. These reports were to contain a list of matters (environmental effects, aesthetic considerations, water quality, etc) which did not include issues relating to Maori.

Wellington Harbour Maritime Planning Authority

Maritime Planning Scheme procedure was provided for in the Town and Country Planning Regulations 1978. Each Maritime scheme was to be prepared by a Maritime Planning Authority within designated Maritime Planning Areas (sections 41 to 52 of the regulations). All schemes were to be prepared by a process involving: public notification of the draft scheme, copies sent to various authorities including the District Maori Council, submissions and objections obtained, variations or changes made, and approval obtained by the Minister of Works. Operative schemes were then sent to the various authorities. Consent by the Maritime Planning Authority was needed to use any part of a harbour within a Maritime Planning Area under section 102A of the Town and Country Planning Act.

Matters to be dealt with in Maritime Schemes is outlined in the Third Schedule of the Act. After an amendment, the Schedule included "provision for Maori traditional and cultural uses, including fishing grounds."

The Wellington Harbour Maritime Planning Area (WHMPA) was established on 31 July 1979 and the Wellington Harbour Board was appointed as the first Maritime Planning Authority (MPA). The boundary of the WHMPA was defined in the NZ Gazette (31 July 1979). This definition was complex but generally includes all of the foreshore of Wellington Harbour out to a boundary line

that commenced at Pencarrow Head to a point just east of Owhiro Bay (Map 3.7 Document Bank, Vol 1). This area included the four islands; Makaro, Matiu, Mokokuna and Taputeranga. During 1982 the WHB applied for a grant of control of the WHMPA. This application was considered by the Ministry of Transport, and advertised with comments on the application received. The grant of control of the foreshore and seabed within the WHMPA was confirmed by an Order in Council on 11 November 1982.⁸

The WHB established a Wellington Harbour Maritime Planning Committee to administer the WHMPA. In 1987 this committee consisted of:

- 5 members of the WHB
- 2 members of the WRC
- 1 member of the Ministry for Environment
- 1 member of the Ministry of Transport
- 1 member representing local authorities
- 1 member who has special knowledge of the harbour

Henceforth, the WHB acted as both a statutory authority and a commercial authority with the WHMPA having only a statutory function. After 1988 the commercial function of the WHB was transferred to a company; The Port of Wellington Ltd.

In June 1980 the MPA issued a Preliminary Statement consisting of a number of issues including reclamations and history. Reclamations were permitted if there was a demonstrable need with no reasonable alternative and all reclamations must be designed to minimise detrimental effects. 'Approved needs' included: for port, recreation, road and rail transport, airport and sewerage disposal works. Each reclamation would be assessed according a criteria as follows:

- proposal economics;
- alternatives available and justification;

⁸ Wellington Harbour Board Foreshore and Seabed Control Order, 11 November 1982, NZG.

- special attributes of the site and minimum necessary area used;
- long term impact on the marine ecology and effects of the sea-bed and water circulation;
- consideration on earthquake risk;
- compatibility with local authority planning schemes;
- traffic flows;
- effects on shipping movements;
- effects on recreation and harbour access; and
- visual impact and other effects such as noise and dust.⁹

History objectives provided for the identification and preservation of structures, objects and areas of historic or other interest. Two key policies involved the identification and recording of sites of historic importance of both Maori and European settlement and to “make sure that all proposals for development are examined with regard to the effect on known sites of historic significance, with particular reference to the provisions of the Historic Places Act 1980.”¹⁰

3,300 copies of the Preliminary Statement were issued and distributed in libraries and public places. Displays were arranged and talks given to local groups. No Maori group or organisation were identified as receiving the Preliminary Statement.¹¹ 104 submissions were received from the public. One submission stated that “the Maritime Plan be used as a vehicle for the preservation and promotion of the traditional Maori place names and localities around Wellington Harbour.”¹² No Maori organisation made a submission.

The draft scheme was issued in March 1985 with further comments, submissions and objections

⁹ WHMPA, *Maritime Planning Scheme, Objectives and Policies*, December 1981.

¹⁰ WHMPA, 1981, p 33.

¹¹ WHMPA, *Report on Submissions on Preliminary Statement*, April 1981.

¹² *Ibid*, p 36.

received. The Draft Scheme included specific policies regarding Maori issues and the harbour. Policy 2B4 and Ordinance 3B7 stated:

To recognise and provide when possible for the protection of the parts of the Area which have a significance for the culture and tradition of the Maori People.

To provide for the protection of those parts of the Area which have special significance for the culture and traditions of the Maori people.

Policies included the identification of sites of importance to Maori and to ensure all proposals for development are examined in regard to the effect on historic sites.

As part of the process a number of studies were commissioned by WHMPA on various issues relevant to the area. One study was carried out by Boffa Miskell Partners entitled *Historical and Cultural Resources Study of the Wellington Harbour Maritime Area*. Peter Adds provided a large section on 'Traditional Maori Sites and Resources.' This section contained identification and commentary on 25 sites around the harbour. Most of the information was based on Adkin, 1959.

In a summary to the draft maritime scheme, a key objection raised was the "inadequate consideration of Maori cultural values."¹³ The final operative Maritime Planning Scheme for Wellington Harbour was published on 23 November 1988. Legislation affecting coastal and maritime area included the Treaty of Waitangi:

¹³ WHMPA, 1988, p 22.

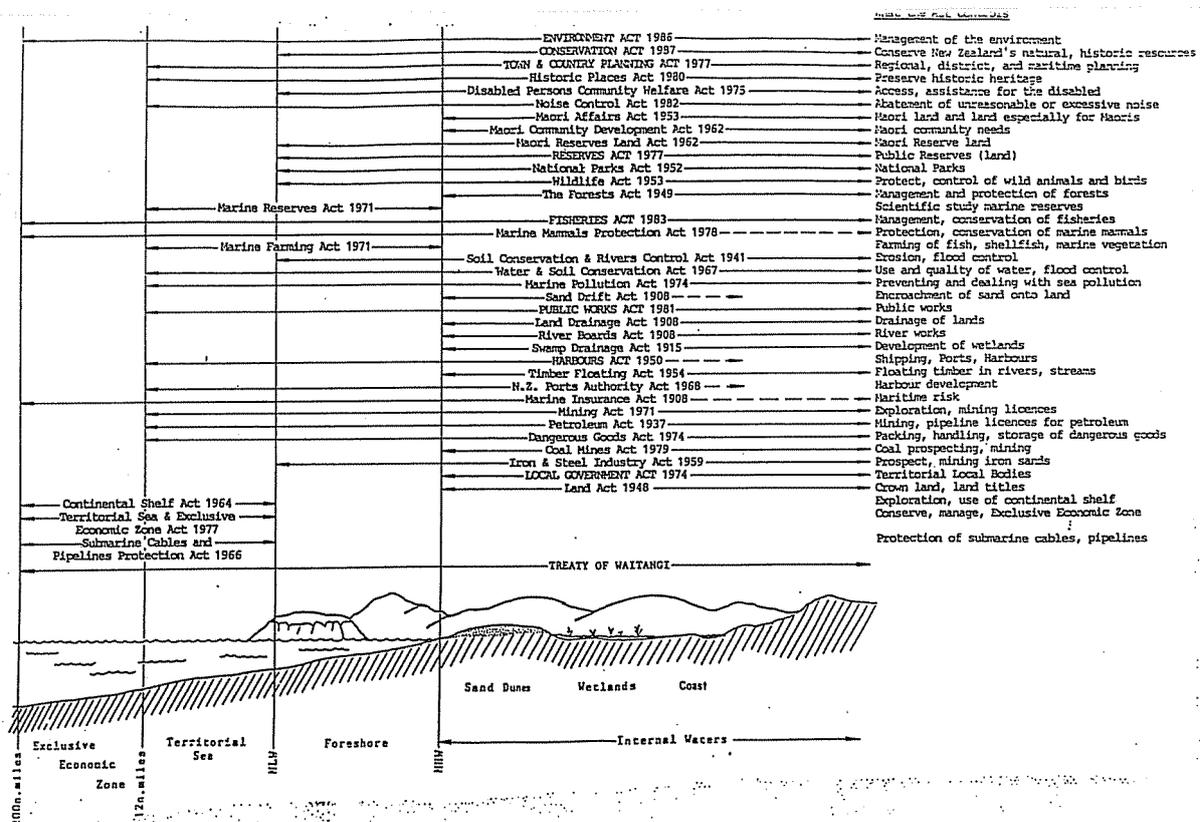


Fig. A.2. Legislation Affecting Coastal and Maritime Areas, 1988. Source, WHMPA, p 9.

In regard to Maori interests, the final operative scheme retained Policy 2B4, Ordinance 3B7 and policies relating to the identification of sites of importance to Maori (as outlined in the Draft scheme above).

Commenting on reclamations, the final scheme focused on elements of design, visual acceptability, public access issues, effects on water quality and the blanketing of shellfish. Three future reclamations were provided for in the scheme plan; Korokoro, Access (Kaiwharawhara) and Kaiwharawhara. A request by NZ Railways for an extension of rail track protection was rejected as a result of objections. The scheme plan also included the extent of existing reclamation rights but stated that all reclamations required planning approval whether or not they were included in the scheme or had Harbours Act approval. All applications for reclamations were also to be publicly notified.

Works objectives allowed reclamations only for permitted uses which would minimise detrimental effects and the consideration for full public participation in reclamation planning. A criteria of no less than 22 issues were to be used when assessing reclamations. These criteria included: use, benefits, alternatives, justifications, special site attributes, area necessary, construction safeguards, long term effects, water classification, micro-climatic factors, stability, compatibility, transport,

recreation, access, visual impact, effects on historical sites, design, and surface maintenance.

In summary, the first (and last) operative maritime scheme gave a degree of support for necessary reclamations, but “should only be approved after consideration of all aspects of the proposal through the maritime planning processes.”¹⁴

Conservation Act 1987

The Conservation Act 1987 brought some major changes in the reclamation control regime. This Act established the Department of Conservation for the purpose of promoting the conservation of New Zealand’s natural and historical resources. In the administration of this task, the Department and the Minister of Conservation is required to give effect to the principles of the Treaty of Waitangi (section 4). Under section seven of the Act, any land or foreshore may be declared for conservation purposes. Foreshore was defined in an amendment (1990) as:

such parts of the bed, shore, banks of a tidal water as are covered and uncovered by the flow and ebb of the tide at mean spring tides.

In the Schedule to the Conservation Act, the Harbours Act was amended to provide for dual-control system over reclamations. Generally this system provided for the definition of port boundaries by the Governor on recommendation. Within the port boundaries reclamations were under control of the Minister of Transport who consulted with the Minister of Conservation. Outside the port area, both the Ministers of Transport and Conservation were to exercise control over reclamation. In effect, DOC took over control of reclamation in all areas except the ports after 1987.

The most important policy document to provide for general policies and integrated management of natural and historic resources is the Conservation Management Strategy (CMS). Wellington Conservancy CMS was finalised and published in 1996. Since then, the Resource Management

¹⁴ Ibid, p 54.

Act as become the main source of legislation for the control of reclamation and the CMS provides for an advocacy role for DOC over lands not directly managed by DOC in the foreshore. Generally the CMS is focused on the use of Marine Reserves under the Marine Reserves Act 1971 for marine habitat conservation. Lands managed by DOC near the Wellington Harbour foreshore include:

- Matiu, Mokopuna and Makaro Islands.
- Korokoro Reclamation Stewardship. 2.0450 hectares of beach west of the Korokoro stream. Contains the waterskiing clubrooms.
- Kiawharawhara stream bed and banks. 0.1370 hectares.
- Seaview marginal strip. Right bank of the Waiwhetu stream, 0.1937 hectares.

The Minister of Conservation approved a small reclamation at Korokoro of 1180 sqm in 1987 and the 1988 Seaview Marina reclamation.

APPENDIX E; MAORI AND RECLAMATION PROVISION UNDER THE RESOURCE MANAGEMENT ACT 1991

Resource Management Act 1991

The purpose of the Resource Management Act 1991 is to "promote the sustainable management of natural and physical resources." Sustainable management is defined as:

Managing the use, development, and protection of natural and physical resources in a way or rate which enables people and communities to provide for their social, economic and cultural well being and for their health and safety while -

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

In achieving this purpose a number of matters of national importance must be recognised and provided for (Part II, section 6). These matters include:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development:
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

- (e) The relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu, and other taonga.

Other relevant matters (Part II, section 7) that must have regard to:

- (a) Kaitiakitanga:
- (b) The efficient use and development of natural and physical resources:
- (c) The maintenance and enhancement of amenity values:
- (d) Intrinsic values of ecosystems:
- (e) Recognition and protection of the heritage values of sites, buildings, places, or areas:
- (f) Maintenance and enhancement of the quality of the environment:
- (g) Any finite characteristics of natural and physical resources.

Part II, section 8, states that:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Under the RMA, coastal marine area means:

- the foreshore, seabed, and coastal water, and the air space above the water -
 - (a) Of which the seaward boundary is the outer limits of the territorial sea:
 - (b) Of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of
 - (i) One kilometre upstream from the mouth of the river; or
 - (ii) The point upstream that is calculated by multiplying the width of the river mouth by 5.

The term 'mouth' for the purpose of defining the landward boundary of the coastal marine area means the mouth of the river as agreed by the Minister of Conservation, Regional Council and appropriate authority "in the period between consultation on, and notification of, the proposed regional coastal plan." or as declared by the Planning Tribunal (Environment Court).

The terms 'reclamation' or 'coastal environment' are undefined in the RMA.

Under section 12(1 and 2) of the Act, no person in the coastal marine area may:

- (a) Reclaim or drain any foreshore or seabed; or
- (b) Erect, reconstruct, place, alter, extend, remove or demolish any structure or any part of a structure that is fixed in, on, under, or over any foreshore or seabed; or
- (c) Disturb any foreshore or seabed...
- (d) Deposit in, on, or under any foreshore or seabed any substance in a manner that has or is likely to have an adverse effect on the foreshore or seabed; or
- (e) Destroy, damage, or disturb any foreshore or seabed...in a manner that has or is likely to have an adverse effect on plants or animals or their habitat; or
- (f) Introduce or plant any exotic or introduced plant in, on, or under the foreshore or seabed -- unless expressly allowed by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or a resource consent.

In relation to land of the Crown in the coastal marine area, or land in the coastal marine area vested in the regional council, no person may --

- (a) Occupy the land and any related part of the coastal marine area; or
- (b) Remove any sand, shingle, shell, or other natural material from the land --

unless expressly allowed by a rule in a regional coastal plan and in any relevant proposed

regional coastal plan or by a resource consent.

Reclamation under the RMA is, therefore, disallowed unless allowed by a rule in a regional coastal plan or by a resource consent. A resource consent that allows someone to do something in a coastal marine area that would contravene section 12 (and 14/15) is called a coastal permit (section 87(c)).

Other relevant sections of the RMA concerning reclamations include:

Section 152-156 Coastal Tendering

On the application for an Order in Council (section 153) the Governor-General may by an Order in Council direct that a consent authority shall not grant a coastal permit in respect of any Crown land which would authorise the holder to occupy, remove sand, etc, and reclaim or drain any foreshore or seabed. Unless the applicant for a coastal permit is already authorised to reclaim land, etc.

Notice of making of the Order in Council and its effect is to be served on the Minister for Environment, Ministry for Environment, appropriate local authorities, and "the tangata whenua of that region, through iwi authorities and tribal runanga" (section 154).

Unless authorised, the holder of an Order in Council shall not occupy, remove sand, etc or reclaim or drain the foreshore.

Section 245-246 Reclamations

Unlike the Harbours Act which requires the approval of a plan of the reclamation before it is constructed, section 245 requires a survey plan to be submitted to the consent authority for approval after the land has been reclaimed. The survey plan must show the area

reclaimed, its location, and the position of all new boundaries.

A consent authority shall approve of the survey plan if the reclamation conforms with the resource consent, the regional plan, and any conditions. If the reclamation is a restricted coastal activity, the approved survey plan is forwarded to the Minister of Conservation (as the consent authority) who approves it if the reclamation conforms with the resource consent, the regional plan and any conditions. If the reclamation is not a restricted coastal activity, the survey plan is approved by the Regional Council if the reclamation conforms to the resource consent, the regional plan and any conditions. After the plan is approved it is deposited under the Land Transfer Act 1952.

Section 355 Vesting of Reclaimed Land

Provides for the Minister of Conservation to vest title in any person on application of a portion of reclaimed land or lake/river bed.

Plans and Policy Statements

The purpose and objectives of the Resource Management Act are to be achieved by using a range of policy statements and plans. These plans are prepared and implemented by the District Councils, Regional Councils, the Ministry for Environment and the Department of Conservation. Relevant plans in regard to the management of reclamations are the NZ Coastal Policy Statement, the Regional Policy Statement and the Regional Coastal Policy Statement.

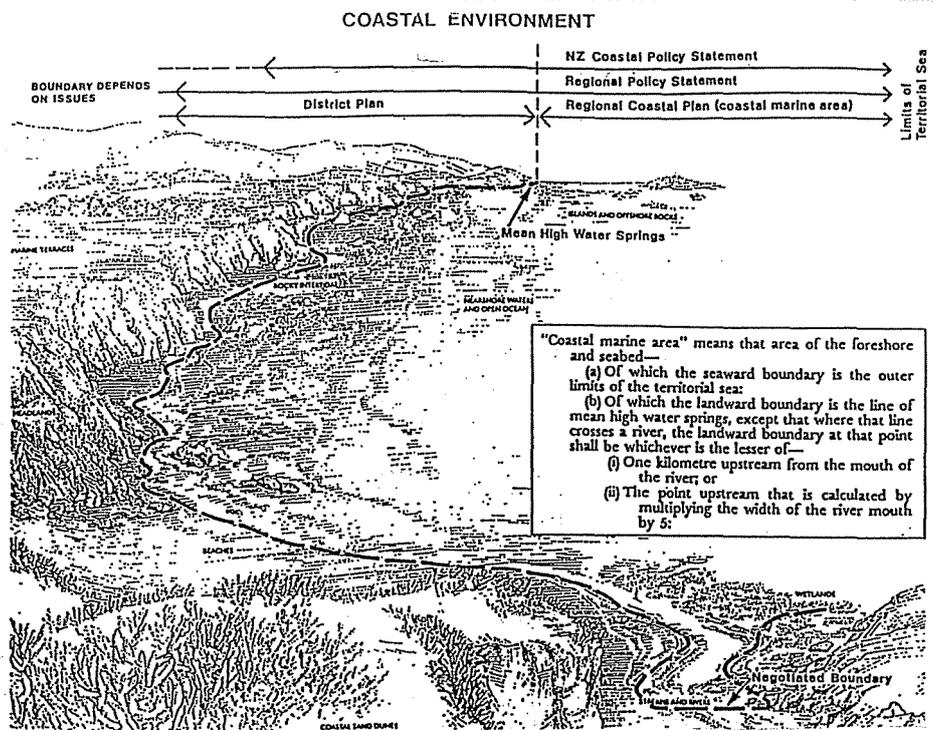


Fig A.3 The Coastal Environment. Source, Johanna Rosier, Massey University Planning Department (used with permission).

1. New Zealand Coastal Policy Statement

The purpose of the New Zealand Coastal Policy Statement is “to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand”¹⁵ The Coastal Policy Statement is the only mandatory national policy statement and is prepared by the Minister of Conservation. New Zealand’s first Coastal Policy Statement was issued on the 5 May 1994. In addition to setting out the principles of the Resource Management Act (Part II), the Coastal Policy Statement includes a number of relevant general principles including:

1. Some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural well-being of people and communities. Functionally certain activities can only be located on the coast or in the coastal marine area.
2. The protection of the values of the coastal environment need not preclude appropriate use and development in appropriate places.
4. Expectations differ over the appropriate allocation of resources and space in the coastal

¹⁵ Section 56, Resource Management Act 1991.

environment and the processes of the Act are to be used to make the appropriate allocations and to determine priorities.

6. The protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities.

5. People and communities expect that lands of the Crown in the coastal marine area shall generally be available for free public use and enjoyment.

8. Cultural, historical, spiritual, amenity and intrinsic values are the heritage of future generations and damage to these values is often irreversible.

9 The tangata whenua are the kaitiaki of the coastal environment.

11. It is important to maintain biological and physical processes in the coastal environment in as natural a condition as possible, and to recognise their dynamic, complex and interdependent nature.

12. The ability to manage activities in the coastal environment sustainably is hindered by the lack of understanding about coastal processes and the effects of activities. Therefore, an approach which is precautionary but responsive to increased knowledge is required for coastal management.

Chapter 1. National priorities for the preservation of the natural character of the coastal environment including protection from inappropriate subdivision, use and development.

This chapter contains policies that aim to:

- promote appropriate subdivision (policy 1.1);
- protection of significant indigenous vegetation and significant habitats of indigenous fauna (policy 1.1.2);
- protection of features which include the “characteristics of special spiritual, historical

or cultural significance to Maori identified in accordance with tikanga Maori” and places of significant historic or cultural values (policy 1.1.3);

- natural character of the coastal environment (policy 1.1.4); and
- the restoration and rehabilitation of the natural character of the coastal environment (policy 1.1.5).

Chapter 2. The protection of the characteristics of the coastal environment of special values to the tangata whenua including waahi tapu, tauranga waka, mahinga maataitai, and taonga raranga.

The following policies are provided for:

Policy 2.1.1

Provision should be made for the identification of the characteristics of the coastal environment of special value to the tangata whenua in accordance with tikanga Maori. This includes the right of the tangata whenua to choose not to identify all or any of them.

Policy 2.1.2

Protection of the characteristics of the coastal environment of special value to the tangata whenua should be carried out in an accordance with tikanga Maori. Provision should be made to determine, in accordance with tikanga Maori, the means whereby the characteristics are to be protected.

Policy 2.1.3

Where characteristics have been identified as being of special value to tangata whenua, the local authority should consider:

- (a) The transfer of its functions, powers and duties to iwi authorities in relation to the management of those characteristics of the coastal

environment in terms of section 33 of the Resource Management Act 1991;
and/or

(b) The delegation of its functions, powers and duties to a committee of the local authority representing and comprising representatives of the relevant tangata whenua, in relation to the management of those characteristics of the coastal environment in terms of section 34 of the Resource Management Act 1991.

Chapter 3. Activities involving the subdivision, use or development of areas of the coastal environment.

Relevant policies include:

Policy 3.1.1

Use of the coast by the public should not be allowed to have significant adverse effects on the coastal environment, amenity values, nor on the safety of the public nor on the enjoyment of the coast by the public.

Policy 3.2.2

Adverse effects of subdivision, use or development in the coastal environment should as far as practical be avoided. When complete avoidance is not practicable, the adverse effects should be mitigated and provision made for remedying those effects, to the extent practicable.

Policy 3.2.4

Provision should be made to ensure that the cumulative effects of activities, collectively, in the coastal environment are not adverse to a significant degree.

Policy 3.2.5

Subdivision, use and development in the coastal environment should be conditional on the provision of adequate services (particularly the disposal of wastes), and the adverse effects of providing those services should be taken into account when preparing policy statements and plans and when considering applications for resource consents.

Policy 3.2.8

Provision should be made for the protection of habitats (in the coastal marine area) of species which are important for commercial, recreational, traditional or cultural purposes.

Policy 3.5.4

Policy statements and plans should as far as practicable identify the access which Maori people have to sites of cultural value to them, according to tikanga Maori.

Chapter 4. The Crown's interest in land of the Crown in the Coastal Marine Area.

Policy 4.1.4

Provision should be made to ensure that material used to create and form a reclamation, or material sited on a reclamation, in land of the Crown in the coastal marine area, does not include contaminants which are likely to, or have the potential to, adversely affect the coastal marine area.

Policy 4.1.6

Policy statements and plans should require that on applications for coastal permits for the following in relation to lands of the Crown in the coastal marine area:

- (a) reclamations;
- (b) the removal of sand, shingle, shell or other natural materials for commercial purposes; and
- (c) rights to occupy;

regard shall be had to any available alternatives to what the applicant seeks to do, and the applicant's reasons for making the proposed choice.

Policy 4.2.1

All persons exercising functions and powers under the Act in relation to land of the Crown in the coastal marine area shall recognise and facilitate the special relationship between the Crown and the tangata whenua established by the Treaty of Waitangi (Te Tiriti o Waitangi).

Policy 4.2.2 also provides for Maori interests in relation to land of the Crown, including guidelines, to take into account of the Treaty of Waitangi, provision for consultation with tangata whenua, have regard to iwi planning documents, involvement of iwi in plans and policy statements, and the incorporation of Maori customary knowledge into plans and policy statements.

Chapter 5. The matters to be included in any or all Regional Coastal Plans in regard to the preservation of the natural character of the coastal environment, including the specific circumstances in which the Minister of Conservation will decide Resource Consents.

Policy 5.1.1

Rules should be made as soon as possible with the object of enhancing water quality in the coastal environment (including aquifers) where that is desirable to assist in achieving the purpose of the Act, and in particular where:

- a. there is a high public interest in, or use of the water;
- b. there is a particular tangata whenua interest in the water;
- c. there is a particular value to be maintained or enhanced; or
- d. there is direct discharge containing human sewage.

Policy 5.3.1

The types of activities which have or are likely to have a significant or irreversible adverse effect on the coastal marine area and for which therefore the Minister of Conservation will decide resource consent applications are those defined in Schedule 1.

Schedule 1 identifies reclamations has having a significant and irreversible adverse effect on the coastal marine area. Reclamations are divided into two groups; restricted and not-restricted activities.

Reclamations that are not a restricted activity

1. Reclamations that are less than 1 hectare or extends less than 100 metres in all directions
2. Reclamations that are less than 2 hectares or extend less than 300 meters in all directions and which are provided for as a discretionary activity in a regional coastal plan and the plan contains criteria for permissible locations of reclamations and permissible adverse effects and usages.

Reclamations that are a restricted coastal activity

1. Except for the above provisions, any reclamation that exceeds 1 hectare and extends 100 meters in any direction.

Restricted Coastal Activities

Reclamations that are deemed to be a restricted coastal activity follow the consent process as provided for in sections 117-119 of the Act. Generally the process is similar to any standard notified consent except a recommendation is served to the Minister of Conservation who makes the decision.

Wellington Regional Policy Statement

Regional Councils have a number of functions in the coastal marine area in conjunction with the Minister of Conservation. These functions include the control of land, occupation of space of Crown land, extraction of sand, shingle, shells, etc, taking, use, damming and diversion of water, discharges, mitigation of natural hazards, noise, and activities on the surface of the water.

The operative Regional Policy Statement for Wellington was published in May 1995 for the purpose of providing an overview of resource management issues and to achieve integrated management of the natural and physical resources in the Wellington Region.

Relevant Objectives and Policies are as follows:

7.3 Objective 1

The natural character of the coastal environment is preserved through:

1. The protection of nationally and regionally significant areas and values;
2. The protection of the integrity, functioning and resilience of physical and ecological processes in the coastal environment.
3. The restoration and rehabilitation of degraded areas; and
4. The management of subdivision, use and development, and the allocation of resources in the coastal environment so that adverse effects are avoided, remedied or mitigated.

In a commentary after this objective it is said that as such "natural character is not an absolute concept...in places where the natural character is largely intact the emphasis of management should be on avoiding adverse effects. Where human activities have already modified the natural character, a more flexible approach may be appropriate."

Objective 2

Existing provisions for public access to and along the coastal marine area remain and appropriate opportunities are taken to enhance public access.

Objective 3

Coastal water quality is of a high standard.

Objective 4

There are increased opportunities for the aspirations of the tangata whenua for the coastal environment to be met.

7.4 Policies

Policy 1

To give effect to the following matters when planning for and making decisions on subdivision, use and development in the coastal environment:

1. Protection from all actual or potential adverse effects, of areas of nationally or regionally significant indigenous vegetation and significant habitats for indigenous fauna including those listed in table 8.
2. Protection of the values associated with nationally or regionally outstanding landscapes, seascapes, geological features, landforms, sand dunes, and beach systems and sites of historical or cultural significance, including those listed in tables 9 and 10.
3. Protection of sensitive, rare or unusual natural and physical resources, habitats, amenity values and ecosystems which are unique to the coastal environment (including estuaries, coastal wetlands...
4. Protection of the integrity, functioning and resilience of the coastal environment...

Table 8. Sites of National or Regional Significance for Indigenous Vegetation or Significant Habitats for Indigenous Fauna includes:

Taputeranga, Somes, Mokopuna, Ward and smaller islands and rocks

Red Rocks and Sinclair Head

Kohangapiripiri and Kohangatera Lakes

Table 9. Landscapes and Seascapes of National or Regional Significance includes:

Taputeranga, Somes, Ward and all smaller islands and rocks as viewed from the sea and the mainland

Baring Head, Turakirae Head

Table 10. Geological Features and Landforms includes:

Taputeranga, Somes, Ward and all other smaller islands and rocks.

Red Rocks, Island Bay lawsonite, Lakes Kohangapiripiri and Kohangatera.

Policy 2

To consider, where relevant and to the appropriate extent, the following matters when planning for and making decisions about subdivision, use or development in the coastal environment:

1. The degree to which the proposed activity will impose effects additional to those resulting from existing subdivision, use and development, and the extent to which such cumulative adverse effects on natural character may be avoided, remedied or mitigated.
2. The extent to which natural character has already been compromised in an area and the need to avoid sprawling or sporadic subdivision, use or development.

3. The efficient use of finite resources in the coastal environment and the viability of alternative sites outside the coastal marine area and outside of the coastal environment for the proposed activity.
4. The potential impact of projected sea level rise.
5. The actual or potential adverse effects of subdivision, use or development on areas of cultural or spiritual significance, heritage resources and on scenic, scientific, recreation, open space or amenity values; and
6. The adequacy of provision of infrastructure services (particularly for the disposal of waste).

Policy 3.

To restore and rehabilitate the natural character of the coastal environment where appropriate.

Policy 4.

To ensure, in planning for or making decisions about new subdivision, use or development, that there is no reduction in the quality of existing legal access to and along the coastal marine area; and that opportunities are taken other than in exceptional circumstances, to enhance the amount and variety of public access to and along the coastal marine area.

Policy 7

To protect, where appropriate, the characteristics of the coastal environment of special value to the tangata whenua including waahi tapu, tauranga waka, mahinga maataitai and taonga raranga.

Proposed Regional Coastal Plan. November 1996

This Plan includes changes made since the publication of the Proposed Regional Coastal Plan in 1994.

Relevant definitions include:

Declamation -- is the removal of land in a district to a level below mean high water springs which results in enlargement, in horizontal dimension, of the coastal marine area (i.e., the opposite of reclamation).

Reclamation and reclaiming -- means the permanent infilling of the foreshore or seabed with sand, rock, quarry material, concrete or other similar material, where such infilling results in a surface (usable for any purpose) which is greater than 2 metres in width above the level of MHWS, and includes any embankment, but does not include any structure above water where that structure is supported by piles, or any infilling where the purpose of that infilling is to provide beach nourishment.

Relevant general Objectives and policies

3.2.1 Environmental

3.2.1.1 The intrinsic values of the coastal marine area and its components are preserved and protected from inappropriate use and development.

3.2.1.2 People and communities are able to undertake appropriate uses and developments in the coastal marine area....

3.2.1.5 The natural character of the coastal marine area is preserved and protected from inappropriate use and development.

3.2.1.6 Important ecosystems and other natural and physical resources in and adjacent to the coastal marine area are protected from inappropriate use and development.

3.2.1.8 Public access along and within the coastal marine area is maintained and enhanced.

3.2.1.10 Important views to and from the coastal marine area are retained.

3.2.2 Tangata Whenua

3.2.2.1 Characteristics of special spiritual, historical or cultural significance to tangata whenua, including waahi tapu, tauranga waka, mahinga maataitai and taonga raranga, are protected.

3.2.2.2 The values of the tangata whenua, as well as their traditional uses, are, where practicable, recognised and provided for.

3.2.2.3 Opportunities for iwi and hapu to exercise Kaitiakitanga in coastal marine area are increased.

3.2.2.4 Tangata whenua are consulted on resource consent applications which may affect their interests and values.

3.2.2.5 Tangata whenua are able to initiate appropriate uses and developments in the coastal marine area.

Policies

3.3.1 Environmental. There are a large number of relevant environmental policies and these reflect the objectives above. There is no need to restate all of these policies for the purposes of this report. a brief summary will thus suffice. Matters included in the policies include:

- The need to distinguish between places of natural character and those that do not. Development will be encouraged in those areas where the natural character has already been compromised.
- Significance of effects of activities will be measured on degree of permanent occupancy, irreversible effects, and long term effects.
- Cumulative adverse effects are recognised.
- Precautionary approach be adopted
- Importance of navigation of ships is recognised
- Port and harbour activities are appropriate within the environmental guidelines set by

the RCP

- Protect rare, sensitive or unusual habitats, natural and physical resources and ecosystems
- Protect habitats important for traditional or cultural purposes from adverse effects of use and development.
- Protect significant cultural and historic features
- Recognise the importance of Ward Island, Somes Island, Mokopuna Island
- Ensure no net reduction in quality of public access in the coastal marine area and support initiatives that may improve public access. Also recognising some circumstances that public access is not appropriate.
- Recognise the coastal marine area is an extensive area of public open space

3.3.2 Policies regarding Tangata Whenua

3.3.2.1 To record the location of areas of special spiritual, historical or cultural value to tangata whenua in a manner to be negotiated between the iwi of the Region and the WRC. Tangata whenua have the right to choose not to identify all or any areas of special significance to them.

3.3.2.2 Where a resource consent application is for any activity in or immediately adjacent to a site of significance to tangata whenua, to require the applicant to notify and consult directly with the tangata whenua group in order to ascertain:

whether the granting of the resource consent would have any adverse effects on the values that cause the site to be significant to the tangata whenua; and

how any actual or potential adverse effects which might result from the activity could, from the tangata whenua viewpoint, be avoided, remedied or mitigated.

3.3.2.3 In those situations where tangata whenua with mana whenua or mana moana consider that unrestricted public access is having adverse effects on characteristics of special spiritual, historical or cultural significance, to investigate jointly with the tangata whenua whether it is possible and appropriate to restrict public access to the characteristic, and the degree of restriction required.

3.3.2.4 To not allow the use and development which would restrict the access of tangata whenua to sites of cultural significance on land of the Crown, unless that access can specifically be provided for, or the loss can be adequately remedied.

3.3.2.5 To liaise with agencies which have management responsibilities in the coastal marine area, including the Minister of Conservation and the Minister of Fisheries, in order to promote a consistent approach to matters of concern to iwi in the coastal marine area.

3.3.2.6 Subject to the provisions of the Act and this Plan, to not restrict iwi development initiatives in the coastal marine area.

Reclamation and draining of foreshore and seabed

Issues. Summary of relevant issues outlined in the RCP

- Reclamations can have both positive and negative effects. Many past reclamations provide significant benefits to people and communities in the Wellington Region.
- Reclamation removes the foreshore; permanent loss of habitat and can restrict flushing.
- Reclamation alters shoreline shape with effects on coastal processes
- Reclamation may result in alienation of the foreshore and loss of public access.

- Reclamation may adversely affect natural character by introducing an 'engineered appearance' to the new shoreline, poor choice of facing material, hardening of the shoreline, and introduction of new land uses.
- Poorly designed reclamations may suffer significant adverse effects during a major earthquake.
- Contaminants may be contained in the reclamation and these may leach into the coastal marine area.
- Reclamation may compromise the safe navigation of ships
- Reclamations may have short term construction effects on habitat and in terms of construction works.
- Reclamation may have adverse effects on spiritual and cultural values, and result in the loss of traditional resources. Examples of sites which could have their values adversely affected through reclamation are tauranga waka, mahinga maataitai, waahi tapu and taonga raranga (4.1.1.11)

Objectives

4.2.1 Environmental

4.2.1.1 The area of foreshore and seabed reclaimed from the coastal marine area is minimised.

4.2.1.2 All reclamations are fully justified having regard to available alternatives, properly designed, use appropriate material, and are constructed only for activities consistent with the sustainable management of natural and physical resources.

4.2.1.3 Areas of foreshore or seabed with particularly high conservation values are not

reclaimed. These include but are not limited to:

areas containing particularly sensitive, rare, or unusual habitats, natural and physical resources, and ecosystems;

areas possessing particularly high cultural, or spiritual or historic values or features; and

all those areas identified by this plan as an Area of Significant Conservation Value or an Area of Important Conservation Value

Management

4.2.2.1 All proposals for reclamations, other than small reclamations likely to cause only minor adverse effects, are subject to input from the public and from territorial authorities.

Policies (summary only)

- recognise all reclamations have adverse effects
- reclamations for the purpose of disposal of wastes are not to be allowed
- Prefer alternatives to reclamations
- To allow reclamation, unless in exceptional circumstances, if it is required for:
 - activities which must be located immediately adjacent to the coastal marine area
 - airport or seaport
 - river management
 - enhancement of public access
 - restoration of amenity values
 - provision for road or rail link
 - an activity carried out on land in the coastal marine area held in private title provided that net beneficial effects can be demonstrated.

- To not allow reclamations with Area of Significant Conservation Value or Area of Important Conservation Value, reef or significant habitat or ecosystem.
- Ensure all reclamation are minimum necessary
- Ensure external appearance has regard to the existing character of the area.
- Ensure allowance is made for rising sea levels, waves, currents, storm surge and major earthquakes.
- Ensure reclamations are designed to prevent leaching of condiments.
- Ensure public input is sought except for minor reclamations.

Rules

1. Large reclamations (exceeding 1 hectare) outside the Commercial Port Area and Area of Significant Conservation Value are deemed Discretionary and Restricted Coastal Activity
2. Large reclamations (exceeding 2 hectares) within the Commercial Port Area are deemed Discretionary and Restricted Coastal Activity.
3. Reclamations (exceeding 1 hectare) in Areas of Significant Conservation Value are deemed Non-complying and Restricted Coastal Activity.
4. Other reclamations are discretionary activities
5. Other reclamations with an Area of Significant Conservation Value are Non-complying activities.

No areas within Wellington Harbour are deemed to be
Areas of Significant Conservation Value (Appendix 2)

Areas of Important Conservation Value (Appendix 3) include Toka-haere (Thoms Rock), Red Rocks, Taputeranga Island, Te Aroaroa Kupe, Tarakena Bay, and Turakirae Head.

Commercial Port Areas include Seaview Wharf, area around Miramar Wharf and Burnham Wharf, and the foreshore from the Rail-Road Ferry Terminal and along the Thorndon Container Wharf, Kings Wharf, Glasgow Wharf, Inter-Island Wharf and Waterloo Wharf.

Principal Reasons for objectives, policies and rules.

The following comments reflect the basic intent of the RCP:

The principal reasons for adopting most of the objectives and policies on reclamation is to minimise adverse effects and to promote the efficient use of the coastal marine area. The objectives and policies do not seek to prohibit further reclamation. Some past reclamations have provided substantial benefits to the people and communities of the Wellington Region, and not all reclamations are necessarily contrary to sustainable management.

It is important that the public is provided with an opportunity to make submissions on all proposals to reclaim or drain the coastal marine area, other than for small reclamations likely to cause only minor adverse effects.

Because all reclamation and draining of the coastal marine area will have adverse effects, it is appropriate that they require resource consents in all cases, and that there is an opportunity for the application to be declined.

Submissions to the RCP

Since the publication of the proposed RCP plan in 1994 submissions were called for. One submission from Te Runanga O Toa Rangatira Inc included a comment on reclamation policy in the proposed RCP:

The Runanga feels that there are a number of contradictions contained within Objective 4.2.1.1. Firstly, the process of reclamation is incompatible with the notion of sustainable management regardless of whether or not the activities for which it has been constructed are in harmony with the environment. Secondly, we do not support the statement that reclamations can be fully justified. The damage caused to the natural environment by this kind of construction which requires at minimum some loss of the marine habitat; is in our view contrary to the purpose of the Act and the principles of Kaitiakitanga.

Objective 4.2.1.3 discourages the reclamation of areas of foreshore with high conservation values. The Runanga is concerned that this is only one important aspect of the coastal marine area - others just as important are those of a cultural and/or spiritual nature.

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