

OFFICIAL

Wai 60

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An Exploratory Report
Commissioned by the
WAITANGI TRIBUNAL

Takapuwahia C2A3

Paul Kennett

June 1992

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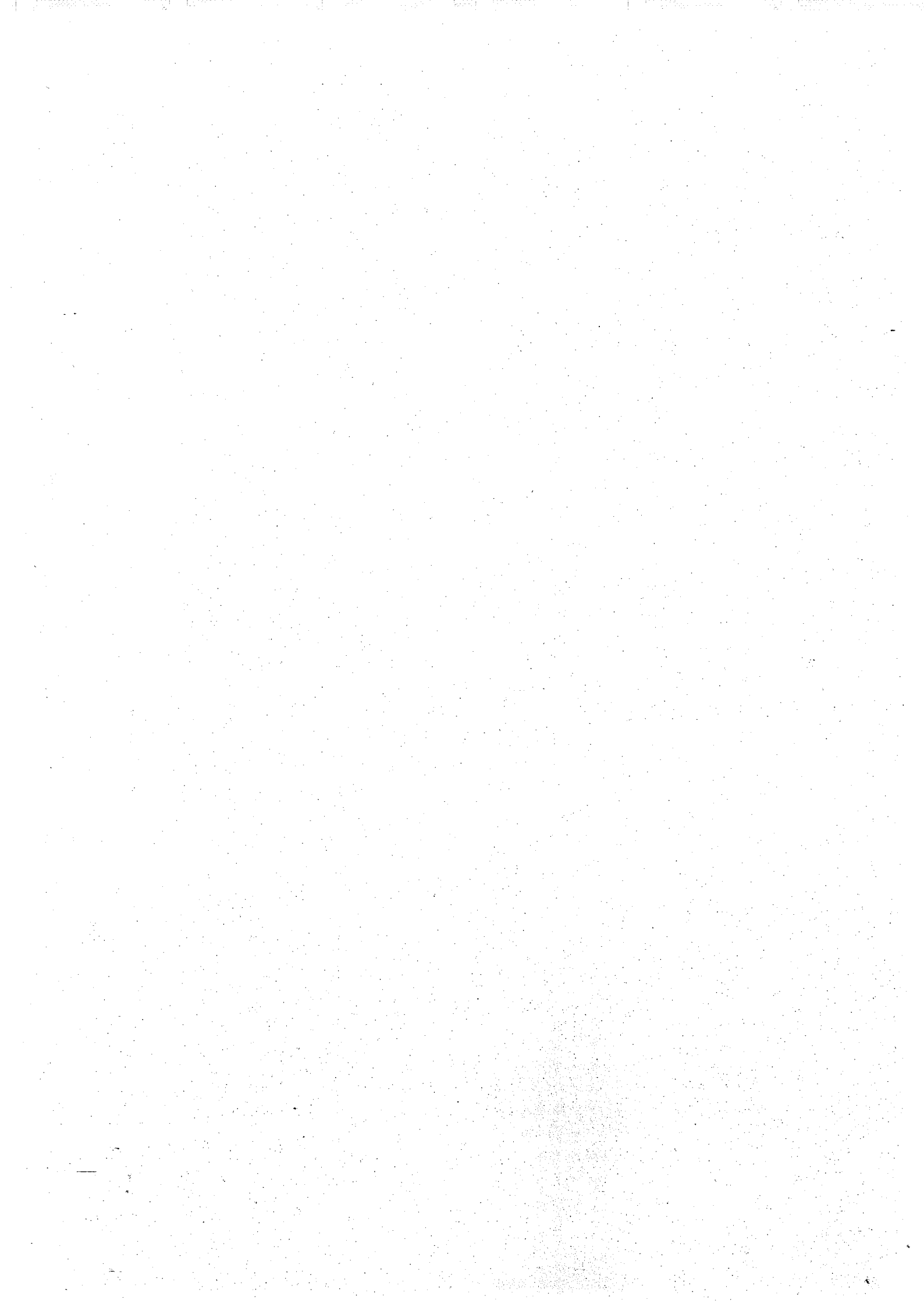
The following report is an exploratory investigation of the claim from Mrs. K. Maurice concerning land in the Takapuwahia township area of Porirua, known as Takapuwahia C2A3.

A direction requesting this Appraisal Report was given by the Chief Judge on the 25 February 1992.

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Abbreviations used:

MOW	Ministry of Works
AJHR	Appendices to the Journal of the House of Representatives
Housing Corp	Housing Corporation of New Zealand



1 An overview of the claim

This claim was lodged by Mrs K. Maurice on behalf of the Parai family, Porirua and was received in the Tribunal on 17 September 1987¹. A direction dated 29 May 1989 recommended the claim be dealt with by mediation or short hearing.²

The claimants allege:

- That a block of land known as Takapuwahia C2A3 was formerly in the ownership of Mr Piri Parai
- That this block of land was taken by the Crown for housing purposes in September 1960 under the Public Works Act 1928
- That despite Mr Parai receiving compensation of £4,000 the 'forced' nature of the sale is in breach of Article Two of the Treaty of Waitangi
- That the acquisition of the land by the Crown prevented Mr Parai from vesting that land in his children.

The claimants seek the return of the land.³

1 A full transcript is printed in section ten of this report, dated 1987 September 10. The Wai 60 Document Bank contains copies of all footnoted documents, unless otherwise stated.

2 See section ten; 1989 May 25.

3 See section ten; 1987 September 17.

2

Physical description

Takapuwahia C2A3 is a 4:3:39'3 acre (about 2 hectares) block located 1.5 kilometres north of the Porirua city centre.⁴ The land faces approximately north-east and is elevated with a direct view across the eastern arm of the Porirua Harbour towards Porirua East. The ground varies in contour from a gentle slope on the upper half to a more steeper slope on the lower half. The soil appears to be clay. On the upper half of C2A3, where housing has not been erected, the land is presently covered with grass and gorse and is used for horse grazing. The land may be accessed from Chapel Street or from the end of Takapuwahia Drive. On its northern boundary C2A3 is bounded by the local urupa.

A visit on 16 January 1992 established that a 21 section extension to Chapel Street, known as Akiaki Grove, had been completed and houses erected on all sections.⁵ Takapuwahia Drive had been extended about 100m north from the Te Hiko Street intersection. The neighbouring urupa had also been extended to include some of C2A3 and was covered by a grass lawn and fenced off. Half a dozen graves were located within the C2A3 portion.

A second visit on 26 February 1992 revealed renewed bulldozer activity with a new firebreak cut up the hill.

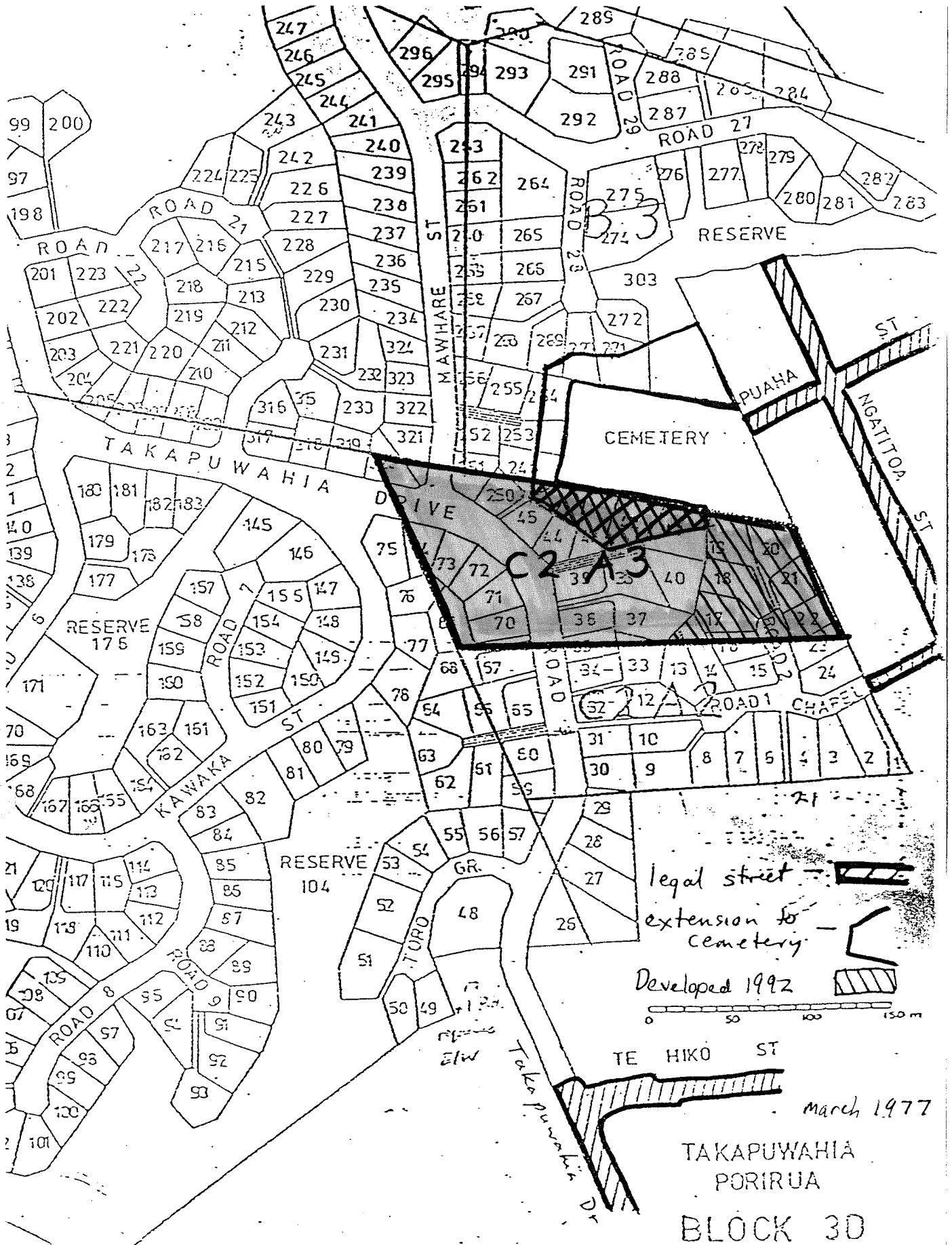
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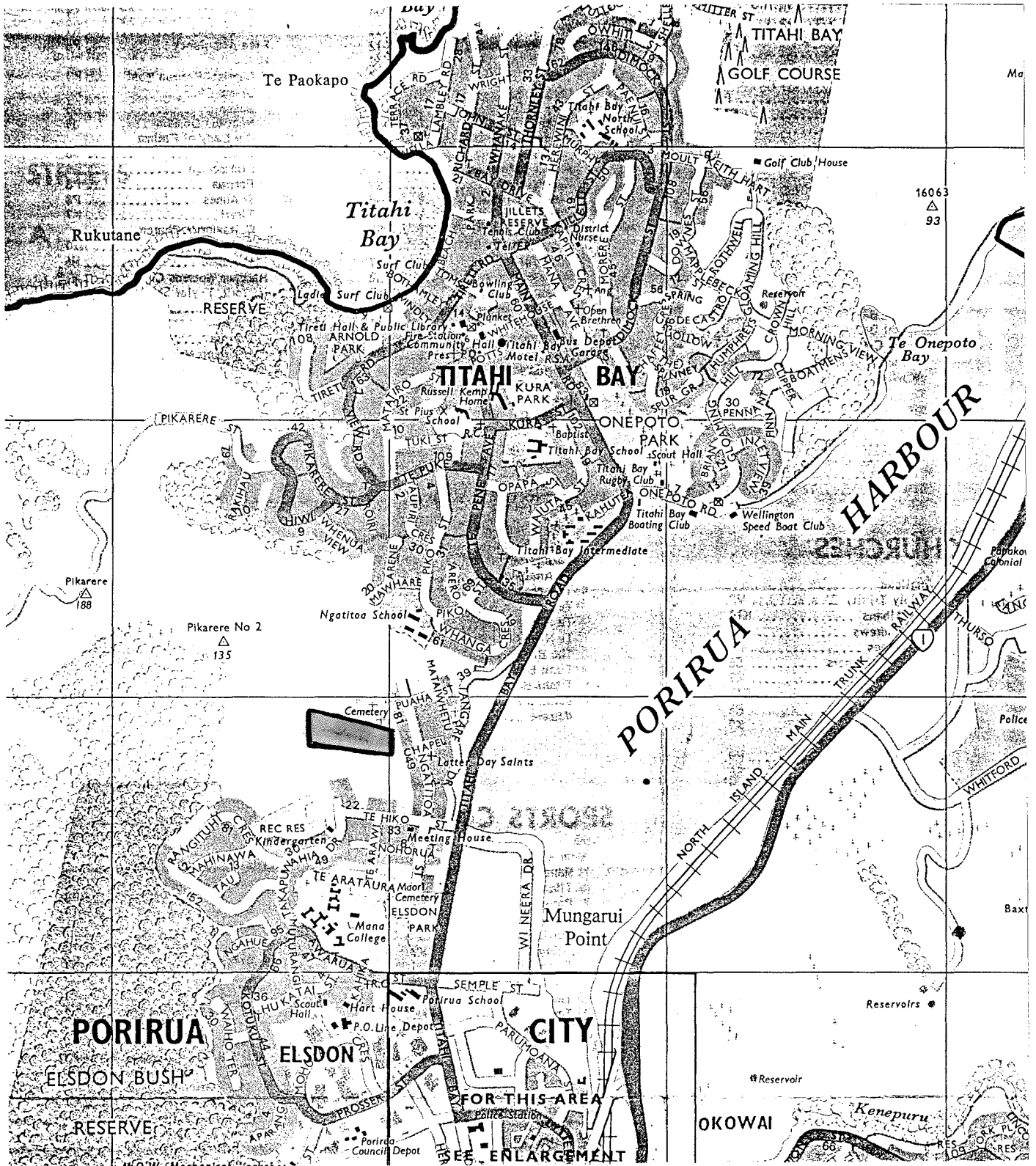
See pages five, six and seven - scheme plan of Takapuwahia area, street map of Porirua and excerpt from DOSLI Topomap R27.

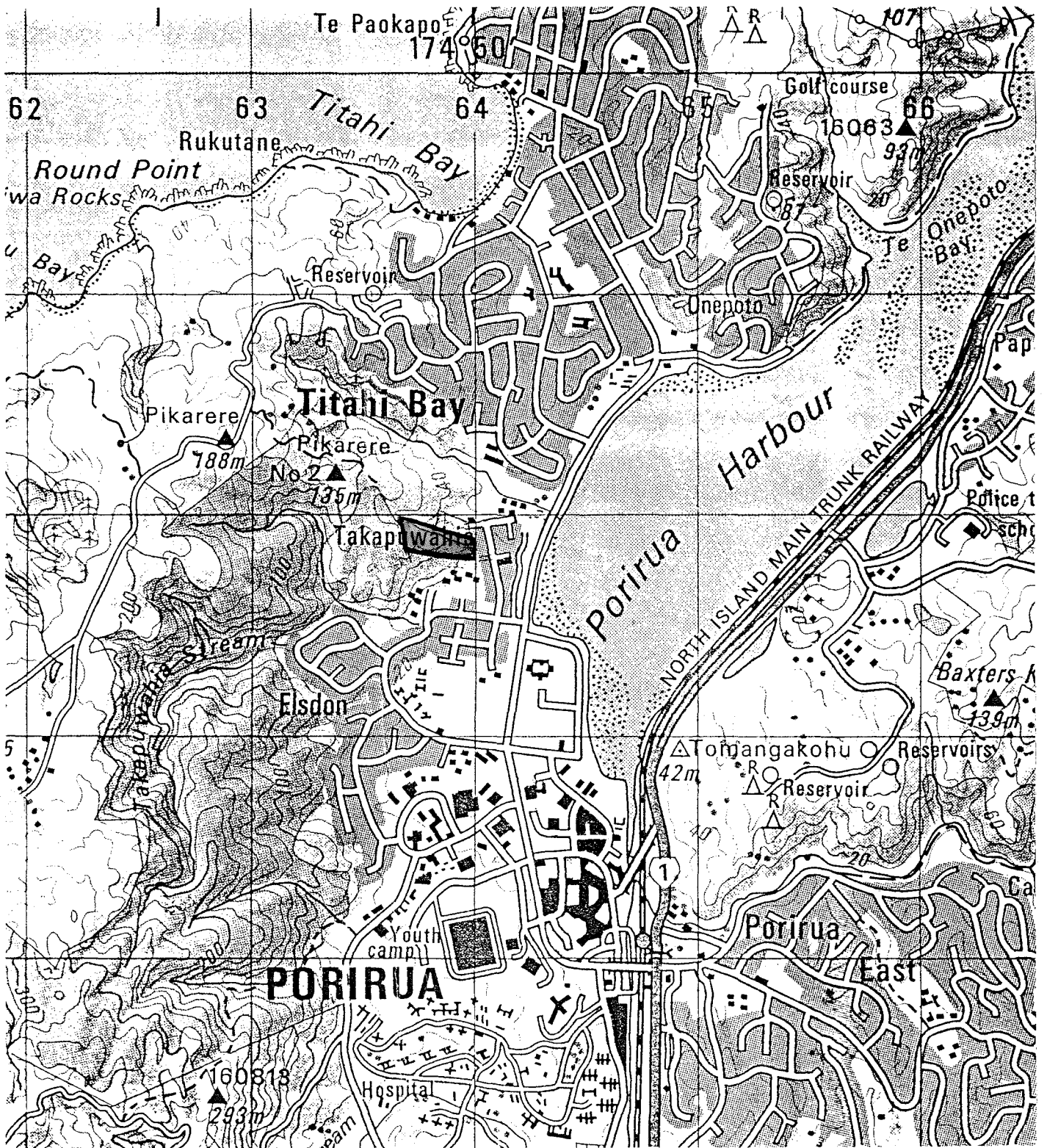
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See page five - scheme plan of the Takapuwahia area development plans with C2A3 block boundaries marked.

Scheme plan of Takapuwahia C2A3







Traditional associations

The land at Takapuwhia is associated with Toa Rangatira marae and the Ngati Toa people who have been in continuous occupation of the immediate area since they migrated from Kawhia with a number of other tribes in the 1820's. Takapuwhia was the main settlement area on the south-west side of the Porirua Harbour and has continued in that role up until the present day.

In the early 1840's the New Zealand Company began "buying" land in the lower North Island including Porirua. They then sold sections to emigrants from England who attempted to settle on the land.

The Ngati Toa people of Porirua denied the validity of those sales and prevented settlers, by intimidation and force, from 'possessing themselves of the soil'. In 1842 William Spain was commissioned to open a Land Court in Wellington to investigate the New Zealand Companies land deals. He found that the Company was not entitled to any land at Porirua.⁶

There appears to be no other current tribal interest in the Takapuwhia area. In 1979 [Sir] Makere Ralph Love of Te Ati Awa, and 158 others sent a petition to the Select Committee for Maori Affairs "praying for the return for Urupa extensions to the Ngati-Toa tribe a small portion of what was Maori Land..." Ngati-Toa are the only tribe mentioned in the seven page petition⁷ and it is presumed that Sir Ralph was acting on their behalf and not in a tribal representative role.

⁶ Burns, P.; Fatal Success, Auckland 1989; p271. A copy is held in the Waitangi Tribunal Library.

⁷ See section ten; 1979.

4 Background

4.1 C2A3 Ownership

On 28 October 1914 a Partition Order named Waitaoro Raniera as sole owner of Takapuwahia C2A a partition of land comprising 14:3:39 acres.⁸ A year later, one third of C2A was transferred to Ngawaina Hanikamu⁹ which was further partitioned to become Takapuwahia C2A3 of 4:3:39.5 acres on 21 Oct 1920.¹⁰

Then on 17 August 1937 a Memorandum of Transfer states that Takapuwahia C2A3 is owned by Pirikawau Parai. The ownership of C2A3 by the Parai family does not appear to be a matter for dispute.

4.2 Acquisition of the land by the Crown

On 8 June 1949, the Registrar of the Maori Land Court P. H. Dudson wrote to the Commissioner of Works, Ministry of Works, Wellington:

Following certain discussions which I have had with your District Land Purchase Officer and District Housing Construction Division, it would appear that certain areas of Maori land adjoining the Maori Pa at Porirua could be developed for Maori housing purposes in conjunction with the general scheme of development of the Porirua district which your Department now has in mind.

I understand that the Under-Secretary of this Department will shortly be discussing the general position with the Maoris at Porirua and I should appreciate any assistance which your officers could give in formulating suitable proposals for the development of the Maori area for housing purposes. I understand that some improvements could be affected to the general outlay of the present Takapuwahia Township and I should appreciate any suggestions which could be made in this respect.¹¹

4.3 In a report to the Minister of Maori Affairs dated 5 December 1958, the Secretary of Housing Construction, Ministry of Works wrote concerning "Maori Land for Housing Purposes at Porirua":

1. For a number of years, proposals in one form or another have been under consideration by the Housing Construction Division for the use, for housing purposes, of the Maori land lying at the back of the Porirua Pa.

4. Attention is again being focused on the area. The land lies immediately behind the Maori village overlooking the Porirua Harbour

8 See section ten; 1895 September 21.

9 See section ten; 1915 October 16.

10 See section ten; 28 October 1914.

11 Held in Housing Corporation files, Porirua Office; HC 6/244/3, 8 June 1948.

and runs into the hills. The District Valuer, who earlier reported on the area, stated that the situation was excellent. The front portion consisted of easy foothills suitable for building purposes and the areas at the rear were steep hillsides in bush suitable for adding to the Crown Reserve situated at the back of the Prosser Block. Apart from a small number of sections on which the owners have built houses, the area is little used, being mostly in scrub.

Pa Area

13. There has been a suggestion that the owners of the land at Porirua may wish to retain it so that it can be available for Maoris wanting sections for housing. It is questionable whether this proposition has much to commend it. The Pa area (Takapuwahia Township), where most of the Maori houses are, is not a striking example of planned subdivision. The aggregation of further Maori families in or about the Pa area is really against policy. It is much better that sections should be available to Maoris throughout the various state housing...

15. The application of a remedy to the existing state in the Pa is something which will take a deal of working out. While that can proceed independently of the development of the back area, it is not wholly unrelated to the latter. In these circumstances, it is suggested that you approve the adoption of a policy under which no further applications for advances for Maori houses in the Pa should be entertained until final utilisation plans for the area have been settled.

Recommendations

16. It is recommended that you approve :-

- (a) The taking, under Public Works Act, 1928, of the properties... [includes C2A3]
- (b) ... [negotiate for some blocks]
- (c) The adoption of a policy under which no further application for advances for Maori houses in the Pa should be entertained.¹²

4.4

Mr Simpson of Morison, Spratt, Taylor & Co., Solicitors wrote to Piri Parai on 26 January 1960;

As instructed by you, we made inquiries of the Maori Land Court in regard your application to vest your interest in this block in your ten children in order to provide them with housing sites.

The position appears to be that the area of the block is five acres but that it has no road frontage, the access being by right-of-way to No. 8 Street. On the plan attached to the application, it is shown that you propose to subdivide the property by extending this right-of-way along the southern boundary of the block and presumably cut the remaining area into ten equal sections by lines drawn north and south. We attach a plan showing the position. [Plan enclosed]

The Court objects to this scheme on the following grounds:

1. There is no evidence to show whether the proposed scheme of partition is practicable having regard to the contour of the land. Further, there is nothing to indicate whether the sections, as shown on the scheme plan, will provide practicable housing sites.
2. None of the sections has a road frontage and it is more than possible that the Makara County Council would not approve the issue of building permits until it was satisfied that practicable access to the sections was available.
3. There is nothing on the file to indicate how the sections are to be allocated among your children; that is which child takes which section.
4. In discussing the matter with the Judge, we gained the impression that he felt that your application was premature in regard to a great majority of your children, although there would not be the same objection if you confined the application to say one child who proposed to build within the near future.

Our own feeling is that because developments in the Porirua Pa area in regard to subdivision and roading are pending, it would be advisable to wait before making any definite provision for your children. If, however, one of them wishes to erect a house immediately, then we think that the Court would make a vesting order in respect of one section, but the Judge would insist on the scheme plan being prepared by a surveyor after the latter had inspected the property and satisfied himself that a practicable scheme was possible.

This letter seems to suggest that Mr Parai's lawyers discussed his application for partition with a Judge of the Maori Land Court and that he expressed a view on it. In most other courts this would be considered highly improper. However, informal comments on proposed applications were common in the Maori Land Court, and still are. This practice highlights one of the differences between the adversarial function of the general courts and the quasi-administrative and inquisitorial jurisdiction of the Maori Land Court.

4.5

A Notice of Intention to Take Land for State Housing Purposes, under Public Works Act 1928 by H.Watt, Ministry of Works was published in the New Zealand Gazette, No.16, 22 February 1960: p326

Notice is hereby given that it is proposed, under the provisions of the Public Works Act 1928, to take the land described in the Schedule hereto for State housing purposes...

Public Works Act 1928, as amended by s.20 1945 No.45 reads:

30. (1) The Governor-General is hereby empowered to take any land under the provisions of the principal Act for any of the following purposes: (a) Subdivision, development, improvement regrouping, or better utilization...

Under present law the Minister of Lands is empowered to acquire any land, building, or structure required for any Government work; which includes any

work that is to be managed by the Crown for any public purpose.¹³
Acquiring land for subdivision is not specifically mentioned, or excluded.

- 4.6 Pirikawau Parai, through legal counsel Morison, Spratt, Taylor & Company, lodged an objection to the acquisition of C2A3. The objection was based on the following grounds:
- (a) In the Prime Minister's memorandum to the Minister of Works dated 12 June 1959 reference is made to a joint inspection which was carried out during the meeting held at the Pa at Porirua on the 23 April 1960. The meeting was convened by the Department of Maori Affairs but that Department has advised that an invitation to attend was not extended to Maori owners although several Maori residents were present. Complaints that they were unaware of the meeting have been voiced by several objecting owners.
 - (b) It is expected that 125 sections will emerge from the land proposed to be taken and that a like number of sections in other State sub-divisions will go to Maoris. Complaints have also been voiced that these 125 sections will not necessarily benefit the dispossessed owners or their relatives or descendants as it is proposed to make the sections available to any member of the Maori race irrespective of his family ties or place of origin.
 - (c) The District Supervisor considers that with the exception of Takapuwahia C1C5 (paragraph 4) none of the lands set out in the Notice of Intention could be excluded from the Proclamation without serious interference to the proposed scheme of development; all are required in connection with the general re-shaping of the land.¹⁴
- 4.7 The land, Takapuwahia C2A3, was taken under Public Works Act 1928, Section 104, for the purposes of state housing by a Proclamation dated 13 September 1960.¹⁵
- 4.8 Three years later a sitting of the Maori Land Court on 8 May 1963 under Judge Gillanders Scott, ordered that compensation of £4,538.07.05 ought to be paid by the Crown for the land taken. A sum of £54.08.01 was deducted for rates due, leaving a net compensation sum of £4,483.19.04. Payment was delayed pending confirmation of boundaries.¹⁶
- 4.9 On 13 September 1963 an Order Assessing Compensation for Land Taken required that all moneys owed to the owners of Takapuwahia C2A3 be paid by the Ministry of Works to the Maori Trustee on behalf of Pirikawau Parai.
- 4.10 The claimant has confirmed that full compensation was received by Mr Parai.

¹³ Public Works Amendment Act 1981, s.2, No.67.

¹⁴ See section ten; 1960 May 25.

¹⁵ See section ten; 1960 September 15.

¹⁶ See section ten; 1963 May 8.

5 Subsequent events

- 5.1 During the early-mid 1970's the local Riding Club used part of the land for grazing.
- 5.2 In January 1974 a new investigation was begun by the Ministry of Works to develop the area 'as soon as possible'.¹⁷ The Historic Places Trust was consulted and reported no sites of importance. An elder of Takapuwhia was consulted via the Department of Maori and Island Affairs and reported nothing of significance. However, it was asked if some land could be added to the urupa, located on the northern boundary of C2A3.¹⁸
- 5.3 In 1975 the entire 90 acre (36.6 ha) Takapuwhia development area was transferred to the Housing Corporation from the Ministry of Works for \$330,000.¹⁹
- 5.4 In April 1979 a Petition of Makere Ralph Love and 158 others was sent to the Chairman of the Select Committee for Maori Affairs; "for the return for Urupa extensions to the Ngati-Toa tribe a small portion of what was Maori Land"²⁰.

The Select Committee considered the petition and on 13 December 1979 recommended "that it be referred to the Government for favourable consideration."²¹

On 14 December 1981 an area of 6101 m² or 1.5 acres was added to the urupa.²² This extra land came out of block C2A3 and B3.²³ Payment of \$38,500 was made by the Department of Maori Affairs, under the Maori Housing Act 1955 from the Maori Housing Revenue Account to Housing Corporation.²⁴

- 5.5 On 26 October 1984 the claimant Mrs K. Maurice, daughter of Piri Parai, wrote to the Minister of Maori Affairs concerning Takapuwhia C2A3. This letter was forwarded to the Wellington District Planner, Housing Corporation.

There is no copy of her letter, but memoranda written by Housing Corporation

17 See section ten; 1974 January 17.

18 See section ten; 1974 March 18.

19 See section ten; 1986/7.

20 See section ten; 1979 April. favourable consideration."

21 See section ten; 1979 December 13.

22 See section ten; 1981 December 14.

23 See page five; scheme plan of urupa extensions.

24 See section ten; 1986/7.

officials²⁵ seem to be in reply to the question:

You took the land for housing and haven't put houses on it, so can I have my fathers land back please? The question of accessibility is also discussed.

- 5.6 Sometime prior to 21 December 1984 the Hon. Koro Wetere, the Minister of Maori Affairs made a personal representation to the Minister of Housing on behalf of Mrs Maurice concerning her claim.²⁶

On 21 December 1984 the Minister of Housing replied, explaining the inaccessible nature of C2A3 which required that the Housing Corporation buy sections to extend Takapuwahia Drive and Chapel Street.²⁷

- 5.7 On 22 February 1985 Mrs Maurice again wrote to the Minister of Housing asking "is it possible we could get our dad's land back". She said the Parai family was interested in buying some sections.²⁸

- 5.8 Concerning the above letter the Wellington District Planner, Housing Corporation wrote to the Housing Manager at Head Office, Housing Corporation, on 7 March 1985:

... construction of this area to commence late 1985 to early 1986. It is therefore not possible for C2A3 to be returned to the previous owners.

... For years we have had complaints and criticisms from those people because of the way the owners never knew that the land had been taken and had thought until even recently that they were still the owners and that the land was available for their children to occupy.²⁹

- 5.9 On 12 March 1985 the Wellington Branch Manager wrote to the Director-General, Housing Corporation:

At this stage Branch expects that the 21 sites being developed in the Chapel Street area will be available for sale towards the end of this year or early next year. It was our intention to use 5 - 10 of these sites in our 1986/87 construction programme with the balance to be made available for private sale.

... the Corporation would be rather foolish to disregard or dismiss their claims to the land altogether. As the district planner points out the local Maori population could make life very difficult for our tenants if the Corporation builds rental properties in the area and also for the purchasers of sections offered for private sale. Obviously, however, it

25 See section ten; 1984 November 27.

26 Not found.

27 See section ten; 1984 December 21.

28 See Wai 60 Document Bank; a copy is included within an Housing Corporation inter-office memorandum dated 12 March 1985.

29 Same as above.

would be neither economic nor practical to simply develop the land to pass on to the former owners or their descendants and consequently a solution must be found that is equitable to both the Corporation and the local Maori people.

Although the district planner feels that a commitment may have been given to the local Maori people, this would have been given over 20 years ago so obviously [sic] it will now be very difficult to find. Nevertheless we have searched all our older files and while locating nothing definite, the indications all appear to be that the Government at the time was looking to give some guarantee to the Local Maori people about the availability of sections to them in this block or throughout the Wellington area...

To have another "Bastion Point" situation would be most undesirable...³⁰

5.10 On 27 March 1985 the Minister of Housing replied to Mrs Maurice, saying:

... I am prepared to consider a preferential allocation of sites to local people... at current market value...³¹

5.11 Sometime before 16 July 1986 a petition was sent by K. Arthur and nine others on behalf of the Ngatitōia Iwi of Takapuwhāia to the House of Representatives Maori Affairs Committee asking for an opportunity to repurchase former tribal land in the Takapuwhāia area.

5.12 A report on the petition by the Assistant Director-General, Housing Corporation was given to the Maori Affairs Committee on 16 July 1986:

... the Corporation is making 21 sections at its Chapel Street extension subdivision in Porirua available on a preferential basis, to families nominated by the local Maori Committee and approved by the Department of Maori Affairs.

In addition to the petitioners, descendants of the late Piri Kawau Parai are interested in purchasing part of the Chapel Street extension land which was formally owned by the late Parai.³²

5.13 On 12 March 1987 March the Acting Branch Manager, Porirua reported to the Director General, Housing Corporation concerning Mrs Parai's case:

We have been sympathetic towards their wish for the direct descendants to acquire the ex family land and have agreed to the preferential sale of these 6 lots [on the C2A3 part of Chapel Street] to Parai descendants.

Mrs Maurice has discussed amongst her family the allocation of those 6 sites with the result they will be offered to 3 of Mrs Parai's daughters, 1

30 See section ten; 1987 March 12.

31 See section ten; 1985 March 27.

32 A copy is held in the Wai 60 Document Bank.

son and 2 grandchildren.

We have agreed to provide 90% vendor finance to assist sale. Our second stage of development will result in possibly a further 8-9 sections of the probable 49 lots being created on "ex Parai" land.

It is likely that having established the precedent we will again accommodate the Parai family request for preferential allocation of those lots.³³

5.14 On 10 September 1987, Mrs Maurice was still not happy with the situation and sent her claim to the Waitangi Tribunal.

5.15 On 9 May 1989 Robin Hapi, Porirua Branch Manager, Housing Corporation wrote to Mrs Maurice, concerning C2A3:

The Corporation will continue to offer your family preferential option on any section that may be developed which includes a significant proportion of your ancestral land.

At this point in time, we have made no decisions on whether the balance of the land at Takapuwahia will, in fact, be developed for residential purposes.³⁴

³³ A copy is held in the Wai 60 Document Bank.

³⁴ See section ten; 1989 May 9.

6

Further information required

- The Memorandum of Transfer dated 17 August 1937 naming Pirikawau Parai as sole owner of Takapuwahia C2A3
- Objections lodged in 1960 to the Taking of the land from Parai, via his lawyers
- Information on the Prime Ministers visit to the Porirua Pa on 23 April 1960
- The legal background to the transferring of the Takapuwahia development area land to Housing Corp in 1975 for \$300,000
- Information on the Maori Housing Revenue Account, and the circumstances which led to it being used to buy land for the urupa extension.
- Information on the Petition for rights to buy back land lodged in 1986.

7 Summary

7.1 **The claimants assert that Takapuwahia was owned by Piri Parai and taken for housing purposes under the Public Works Act 1928.**

Mr Piri Parai was named as the sole owner of Takapuwahia C2A3 on a Memorandum of Transfer dated 17 August 1937.³⁵

N.Z. Gazette, No 59, p1433 proclaims the land was taken by Public Works Act 1928 for State Housing Purposes on 13 September 1960.³⁶

On 26 January 1960 prior to the Crown's gazetted notice of intention to take the land³⁷ Mr Parai instructed his solicitors to apply to the Maori Land Court to vest the land in his ten children.³⁸

Not long after the gazetted notice of intention, Mr Parai had his solicitors lodge an objection to the taking of his land.³⁹

Nevertheless the land was acquired under the Public Works Act.

7.2 **The claimants maintain that the acquisition of the land by the Crown prevented Mr Parai from vesting that land in his children.**

The claimants also say, of Mr Parai's intentions:

...even after sale had been affected, he was looking towards using some of his compensation moneys to buy residential sections for his children.

Mr Parai was prevented from doing so till 1986 when six sections on Takapuwahia C2A3 land were made available to his descendants at current market value with 90% vendor finance to assist sale.⁴⁰

Efforts to have the balance of C2A3 not yet used for housing or urupa purposes returned to the Parai family have not yet been successful.

As a result this claim has been lodged with the Tribunal.

7.3 **The claimants allege that despite Mr Parai receiving compensation of £4000, the 'forced' nature of the sale is in breach of article 2 of the Treaty.**

35 See section ten; 1937 August 17.

36 See section ten; 1960 September 15.

37 New Zealand Gazette, No. 16, p326.

38 See section ten; 1960 January 26.

39 See section ten; 1960 May 25.

40 See section ten; 1987 March.

Article Two of the Treaty of Waitangi⁴¹ states:

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of England and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession...

In considering the questions of a breach of Article Two of the Treaty, the Tribunal may wish to consider its observations in its report on the Ngati Rangiteaorere Claim 1990, Wai 32, p47:

The question at issue goes to the very heart of the Treaty: it is whether the Crown's exercise of sovereignty (kawanatanga) guaranteed to it in article one can override the chiefs' exercise of rangatiratanga guaranteed to them in the second article. That question is insoluble, unless we are prepared to assume that one article can override the other, or find a compromise. Where the Treaty is contradictory, as it is in this case, we must try to find a compromise if it is to work at all.

The Muriwhenua Report (1988) p 195 spoke of a need to reconcile the concepts of kawanatanga and rangatiratanga: "neither partner in our view can demand their own benefits if there is not also an adherence to reasonable State objectives of common benefit". The Mangonui Report spoke of a need for a priority of Maori interests in some cases and "a careful balancing of interests" in others, with the Mangonui sewerage scheme in the latter category. The Crown's exercise of kawanatanga was to be constrained by the need of the two Treaty partners to behave towards one another reasonably and in good faith. This requires proper consultation.

In exercising our statutory function, we note that in any claim before us we have an exclusive authority to decide issues raised by differences between the two texts of the Treaty. We are also aware of the well known principle in international law, cited by the Tribunal in its Motunui Report pp 53-58, that ambiguities in a Treaty should be construed against the party writing the document.

If we apply these principles to the claim before us, we must express doubt whether the Crown could properly assert its kawanatanga over Ngati Rangiteaorere's rangatiratanga -- by compulsorily acquiring their land for roads. In any case, the Crown failed to carry out the necessary pre-requisites. It failed to consult Ngati Rangiteaorere in the first instance about the need for a public road; and it failed to negotiate genuinely with them to purchase the land. The Crown therefore had no right to proceed to compulsory acquisition. It was clearly in breach of article two of the Treaty, which provided no sanction for compulsory purchase of land, either in the English or the Maori text. And it infringed Ngati Rangiteaorere's rangatiratanga which included the right to control entry to as well as ownership of their land.

41

Treaty of Waitangi Act 1975.

A 1991 report from the director of the Office of Crown Lands, concerning the current land purchasing policy and practice of the Crown expresses the following opinion:

4.3 Acquisition under a Public Works Act

However it is clear that in the past Maori land was sometimes acquired under the Public Works Act where owners were unaware that the Maori Trustee or the Crown acted in its statutory capacity to finalise disposal on their behalf.

7(a) Compulsory purchases

The writer believes that the facility for compulsory acquisition of land for essential public works is a vital requirement in any society and that when universally applied is inherently fair (or more likely - equally unfair to all). Maori by ceding sovereignty to the Crown and accepting full rights of British citizens, when signing the Treaty of Waitangi, also accepted exposure to the concepts of "Resumption" (of land by the Monarch) and that "The individual's rights should give way to the public good" when his or her land is taken for a public work. To this extent, then the writer does not believe that compulsory acquisitions for an essential public work are contrary to the Treaty of Waitangi, provided that the law is applied on the basis of genuine need and not on ethnicity of the owner of the land. I believe however, that the process of negotiation and actual transfer has certainly left something to be desired in some instances.

SUMMARY

In the instance of compulsory sales, Maori owners are merely being asked to fulfil their obligations as New Zealand citizens. Provided that the decision to take the land is not based on the ethnicity of its owner, then I do not believe that reasonable takings of land for a public work, breach the principles of the Treaty of Waitangi.⁴²

In this case:

- the Crown consulted with some Maori owners, but there is a complaint that others were not made aware of the Crown's intentions
- the Crown does not appear to have consulted on sale
- arguably, the taking of the land occurred because of a Crown policy to integrate Maori into Pakeha society - a policy based on race - which required preventing Maori people from concentrating in particular areas, on land which they then owned
- the Crown made a promise to Maori whose land would be taken provide some preference in housing, which does not seem to have happened
- having taken the land, the Crown did not use the land for the purpose for which it was taken - the land remains largely unused.

42

See section ten; 1991 May 20.

8 Issues

8.1 This claim raises a large number of related issues in respect of Crown Housing policies during the 1950's and 1960's and the Tribunal may wish to investigate these matters further.

In that event these issues are listed in section nine of the report.

8.2 However the resolution of this claim appears to centre on the following points:

- (1) The circumstances surrounding the acquisition of C2A3 under the Public Works Act
- (2) The fact that not all the land has been used for the purpose for which it was taken
- (3) The desire of the Parai family to have the unused portion returned to them at no cost

It is noted that in 1987 the Housing Corporation were willing to accord the Parai family preferential allocation of section with 90% vendor finance but whether such an arrangement remains available is not known.

8.3 It is recommended that the Tribunal consider sending this claim to mediation between the Parai family and the Housing Corporation.

9 Ancillary Issues

9.1 **Where did the idea to develop the land come from? Where did the idea to take the land come from?**

In the Submission in support of Petition of Makere Ralph Love and 158 others, April 1979:

...it is clear that the Housing Division Ministry of Works initiated the move to acquire the bulk of Maori Land in the Porirua area early in the 1940's and actual direction to proceed with purchase negotiation issued in January 1954.

No reference is made to the source material used. It is not clear, from the material available, whether the initiative came from the Ministry of Works or Department of Maori Affairs. However, memoranda between these two organisations dating back to 1955 suggest a common desire to develop the Porirua area including Takapuwahia.⁴³

Certainly the Department of Maori Affairs would desire more and better housing in the Takapuwahia Pa area which is described as "not a striking example of planned subdivision" in a report of the Secretary of Housing Construction, Ministry of Works to the Minister of Maori Affairs dated 5 December 1958.⁴⁴

9.2 **What was the 1950's Government policy concerning "the aggregation of further Maori families"?**⁴⁵

Integration of Maori and Pakeha cultures was a consistent theme of the Government during the 1950's and 60's. In the Minister of Maori Affairs' foreword in the 1960 annual report to the House of Representatives, the work of the Department of Maori Affairs is described as being:

...aimed at helping Maoris to cope with the problems of a minority people trying to adjust themselves to a society with traditions and culture vastly different from their own.⁴⁶

In the Hunn Report on Maori Affairs it is suggested that:

To achieve an integrated community, some of the sections in Maori

43 See section ten; 1955 June 15 and 1958 December 5.

44 See section ten; 1958 December 5.

45 See section ten; 1958 December 5, para 13.

46 AJHR 1960, G.9, p5. Note: Walter Nash, Minister of Maori Affairs was also Prime Minister at this time.

subdivisions should, if possible, be sold to Europeans.⁴⁷

The Government policy was to avoid large clusters of Maori housing which might slow the "integration" process.

This policy would help to explain why the expected 125 new sections were not allocated to local Maori. Instead, 125 sections throughout the Wellington area were to be allocated to local Maori.

9.3 **What happened to the plan to give 125 houses in the Wellington area to Porirua Maori?⁴⁸**

The plan appears to have been forgotten, until 1985 when the issue was raised by the claimant, by which time there was "nothing definite" about it according to K N Bellamore who wrote for the Wellington Branch Manager of the Housing Corporation.⁴⁹

9.4 **Why was it necessary to take the land instead of buying it?**

When some of the owners of the Takapuwahia area were notified of the Crown's desire to acquire land in 1954 there were several objections.

J. A. Mills, District Officer of the Department of Maori Affairs 1955, concludes that meetings with the owners would not get any greater result than that achieved by the previous notices.⁵⁰

The belief that taking the land by Public Works Act was the only practical way of acquiring the land is reiterated in official reports since then.⁵¹

It would appear that it was necessary to take the land because the owners would not sell.

9.5 **How did the development plan change from being "for Maori housing purposes" in 1949⁵² to "for housing purposes" in 1958,⁵³ then "for State Housing Purposes" in the 1960 Gazetted Proclamation - to eventually "be sold**

47 AJHR 1961, G.10, Hunn Report on the Department of Maori Affairs - Summary of Conclusions, p7.

48 See section ten; 1960 May 25, para 16(b) and 1985 March 12.

49 See section ten; 1985 March 12.

50 See section ten; 1955 June 15.

51 See section ten; 1985 December, also 1960 March 16, 1960 May 25, 1979 June 22, and 1985 March 7.

52 See section ten; 1949 June 8 June 1949, and section 4.5.

53 See section ten; 1958 December 5.

at the current market price"⁵⁴

In 1949 it was desirable that living conditions at the Pa be improved. The Maori Land Court Registrar was keen to ensure that the Pa benefitted from Ministry of Works developments in the area.

The Ministry of Works, who were in charge of developing the whole Porirua basin, would have been mindful of the governments "integration" policy.

The Housing Corporation, who took over the development in 1975, has in recent years been required to operate more like a State Owned Enterprise, in keeping with the general government trend away from the grand social engineering schemes of the past.

The change results from, and reflects, the gradual change in government policies on; Maoris in New Zealand society, and the purpose and scope of state housing.

9.6

Why did it take so long for the land to be developed?

According to the Minister of Housing, 27 March 1985:

I understand that the block was completely landlocked and could only, therefore be developed in conjunction with other adjoining properties.⁵⁵

Whilst it is true that C2A3 is landlocked, this does not explain why those blocks which do have road access⁵⁶ have not been developed.

The issue of accessibility was earlier debated in a Maori Land Court sitting to assess the Crown compensation for C2A3. Mr Parai's solicitors explain:

Our valuer valued the land at £3,900 while the Crown valuation was £500. The matter hinges to a great extent on the accessibility of the block. The Crown valuers claim that it is impossible to subdivide the land for housing purposes except with the expenditure of a very considerable sum on roading and earthworks. This expenditure would make subdivision uneconomic. Our valuer and engineer on the other hand say that the development involves nothing of an unusual nature.⁵⁷

The Crown later modified its valuation. Maori Land Court ordered that £4000 plus interest be awarded to Mr Parai in 1963.⁵⁸

54 See section ten; 1986 July 16.

55 See section ten; 1985 March 27.

56 For example; C2B at the end of Takapuwahia Drive and C2A2 at the end of Chapel Street.

57 See section ten; 1962 October 15.

58 Maori Land Court Wellington Minute Book No. 43, folios 149-156 and 174-177.

9.7 How long may the Crown hold a piece of land for Housing without using it, before it is compelled to offer it back to the previous owners?

In the case of Takapuwahia C2A3 the Crown has fully developed sections on the lower third and laid storm water drains under the rest. It has periodically shown interest in the land by having new scheme plans drawn up.

Presumably this interest was proportional to demand and more recently, proportional to real estate values. In that case the slow development over the last thirty years would seem to cast doubt on the need for the Crown to have compulsorily taken the land by Public Works Act.

9.8 How does the Urupa extension affect the claim?

The Urupa extension was made in response to a 1979 petition to the Maori Affairs Committee. The petition is based on; (a) part of the Takapuwahia development area was intended to be used for community reserved and amenities, and (b) the compulsory taking of the land was "a deviation from the... principles of Natural Justice."

Since the Committee recommended the case be referred to the Government "for favourable consideration", one could infer that the Petition contained some validity.

From a telephone conversation with the Mrs Maurice, it appear that she was not involved in the Urupa petition and is perhaps a little annoyed that it was her land that was used. She now believes that nothing can be done to retrieve the Urupa portion of C2A3.⁵⁹

9.9 If the land was taken for "State Housing Purposes" by the Crown in 1960, will the Housing Corporation, which is to become a State Owned Enterprise on 1 July 1992, be legally entitled to sell the land?

Yes, but first it must offer back the land to the previous owners, or successors - the Parai family.

59

Telephone conversation between Mrs K Maurice and Paul Kennett on the morning of 27 February 1992.

10 Chronological summaries of documents held

Summary of relevant documents in chronological order, held in Wai 60 master file at the offices of the Waitangi Tribunal .

1914 October 28

Partition Order states that Takapuwahia C2A 14:3:39 acres is owned by Waitaoro Raniera.

1915 October 16

Order of Exchange whereby interest of sole owner Waitaora Raniera in Takapuwahia C2A is vested to:

Ngawaina Hanikamu	1/3
Wo Katene Tipo	1/3
Turama Mohi Nopera	1/12
Te Kaha Mohi Nopera	1/12
Wikitoria Mohi Nopera	1/12
Karawa Mohi Nopera	1/12

1920 October 21

Partition Order divides block into three sub-sections:

Takapuwahia C2A1 (4:3:39) to Wi Katene Tipo solely
 Takapuwahia C2A2 (4:3:39.5) to Nopera family (4)
 Takapuwahia C2A3 (4:3:39.3) to Ngawaina Hanikamu solely

The order also provides a right of way 15 links wide along the eastern boundary of C2A2 to give access to Northern and Southern Subdivisions from No.8 Street.

1921 April 29

Plan of Takapuwahia C2A3, block 1 Belmont S.D.

1937 August 17

Memorandum of Transfer; sole owner Ngawaina Hanikamu gives land to Pirikawau Parai

1949 October 3

Memo from Registrar MLC to Director Housing Construction, Ministry of Works; owners of Takapuwahia D, Sec.2 have expressed a desire that it should be subdivided for housing sites.

...this land comes within the proposed Porirua development area...
 expect the Court will deal with the application early January 1950.

1955 June 15

Wgtn District Officer, Dept Maori Affairs to Wgtn District Comm. of Works, Ministry of Works; Re: Takapuwahia B1, B2, B3 and Popoteruru Blocks. Meetings of owners not called. Those that could be located were advised by special notice (16/3/54) of the Crowns desire to buy the land. Several objections were noted to you by memo 29/4/54. If the Crown wanted to take the land regardless of objections, it should inform the known owners and gazette the intentions.

1955 June 26

From ? to Minister of Housing; Re: Takapuwahia B.1, B.2, B.3 and Popoteruru.
Recommend Crown acquires land for subdivision.

1958 December 5

Report from Secretary, Housing Construction, Ministry of Works to Minister of
Maori Affairs; Re: Maori Land for Housing Purposes at Porirua.

1. For a number of years, proposals in one form or another have been under consideration by the Housing Construction Division for the use, for housing purposes, of the Maori land lying at the back of the Porirua Pa.

4. Attention is again being focused on the area. The land lies immediately behind the Maori village overlooking the Porirua Harbour and runs into the hills. The District Valuer, who earlier reported on the area, stated that the situation was excellent. The front

Pa Area

13. There has been a suggestion that the owners of the land at Porirua may wish to retain it so that it can be available for Maoris wanting sections for housing. It is questionable whether this proposition has much to commend it. The Pa area (Takapuwahia Township), where most of the Maori houses are, is not a striking example of planned subdivision. The aggregation of further Maori families in or about the Pa area is really against policy. It is much better that sections should be available to Maoris throughout the various state housing...

15. The application of a remedy to the existing state in the Pa is something which will take a deal of working out. While that can proceed independently of the development of the back area, it is not wholly unrelated to the latter. In these circumstances, it is suggested that you approve the adoption of a policy under which no further applications for advances for Maori houses in the Pa should be entertained until final utilisation plans for the area have been settled.

Recommendations

16. It is recommended that you approve :-

- (a) The taking, under Public Works Act, 1928, of the properties... [includes C2A3]
- (b) ... [negotiate for some blocks]
- (c) The adoption of a policy under which no further application for advances for Maori houses in the Pa should be entertained.

1959 September 17

District Comm. of Works to Chief Surveyor, Lands and Survey Dept.; Re: Land for Housing: Maori Blocks Behind Porirua Pa. Ministerial approval has been obtained to acquisition [and taking] of certain Maori-owned land [plan W.D.o. 27694 (H.D.W. 31429)]. Please arrange for the plan needed to initiate

legalisation action...

1960 January 26

Mr Simpson, Morison, Spratt, Taylor & Co., Barristers & Solicitors to Piri Parai;

As instructed by you, we made inquiries of the Maori Land Court in regard your application to vest your interest in this block in your ten children in order to provide them with housing sites.

The position appears to be that the area of the block is five acres but that it has no road frontage, the access being by right-of-way to No. 8 Street. On the plan attached to the application, it is shown that you propose to subdivide the property by extending this right-of-way along the southern boundary of the block and presumably cut the remaining area into ten equal sections by lines drawn north and south. We attach a plan showing the position. [Plan enclosed]

The Court objects to this scheme on the following grounds:

1. There is no evidence to show whether the proposed scheme of partition is practicable having regard to the contour of the land. Further, there is nothing to indicate whether the sections, as shown on the scheme plan, will provide practicable housing sites.
2. None of the sections has a road frontage and it is more than possible that the Makara County Council would not approve the issue of building permits until it was satisfied that practicable access to the sections was available.
3. There is nothing on the file to indicate how the sections are to be allocated among your children; that is which child takes which section.
4. In discussing the matter with the Judge, we gained the impression that he felt that your application was premature in regard to a great majority of your children, although there would not be the same objection if you confined the application to say one child who proposed to build within the near future.

Our own feeling is that because developments in the Porirua Pa area in regard to subdivision and roading are pending, it would be advisable to wait before making any definite provision for your children. If, however, one of them wishes to erect a house immediately, then we think that the Court would make a vesting order in respect of one section, but the Judge would insist on the scheme plan being prepared by a surveyor after the latter had inspected the property and satisfied himself that a practicable scheme was possible.

1960 March 10

Extract from N.Z. Gazette, No 16, page 326; Notice of Intention to Take Land for State Housing Purposes, under PW Act 1928. H.Watt, Minister of Works, 22/2/1960.

1960 March 16

District Supervisor [?Ministry of Works?] to Director of Housing; Re:Proposed Development.

It is fairly steep and scrub-covered and, at present, only a small portion of it is used for housing, access mainly being obtained by rights of way off the ends of existing roads in the Pa.

For some years Maori Affairs Department has been investigating an overall scheme designed to put the area to full use.

Because of the multiple ownerships there are considerable difficulties in opening up the area; and following a meeting between the owners' representative and the Ministers of Maori Affairs and Works, it was agreed that the land should be acquired for general housing purposes and that an appropriate number of sections be made available each year in this and other parts of the Wellington District for Maori Housing purposes.

The proposals for the area include extensive earthworks to provide about 350 house sites, playing fields and other usual neighbourhood amenities.

1960 May 25

L.C.E. Malt District Commissioner of Works to The Commissioner of Works (Ministry of Works, WGTN) 22/1/3/11 or 6-244/3, Housing Division; Memo re Land for Housing - Porirua - Maori Blocks - Takapuwhia

Your H.C. [Housing Construction, MOW] 2/175B of 22/4/1960 and 13/5/1950 and minuted copy dated 29/4/1960 to Mr Takiari refers to this topic.

Notice of Intention to take 18 blocks of land was posted in NZ Gazette. Objections to 13 blocks being taken were received including one from Morison, Spratt, Taylor & Co, solicitors for Piri Parai.

(16) GENERAL COMMENTS

(a) In the Prime Minister's memorandum to the Minister of Works dated 12 June 1959 reference is made to a joint inspection which was carried out during the meeting held at the Pa at Porirua on the 23 April 1960. The meeting was convened by the Department of Maori Affairs but that Department has advised that an invitation to attend was not extended to Maori owners although several Maori residents were present. Complaints that they were unaware of the meeting have been voiced by several objecting owners.

(b) It is expected that 125 sections will emerge from the land proposed to be taken and that a like number of sections in other State sub-divisions will go to Maoris. Complaints have also been voiced that these 125 sections will not necessarily benefit the dispossessed owners or their relatives or descendants as it is proposed to make the sections available to any member of the Maori race irrespective of his family ties or place of origin.

(c) The District Supervisor considers that with the exception of Takapuwhia C1C5 (paragraph 4) none of the lands set out in the Notice of Intention could be excluded from the Proclamation without serious interference to the proposed scheme of development; all are required in connection with the general re-shaping of the land.

1960 July 6

Acting Sec., Maori Affairs to District Supervisor, Housing Construction Division, Ministry of Works; Land for Housing at Porirua.

Refers to a memo for Minister of Maori Affairs to Minister of Works dated 12 June 1959, saying that it expects the development on the acquired land will result in improvements to the Pa area too e.g., drainage and sewage.

2. I should be pleased to receive your confirmation that when the Takapuawahia [sic] land has been acquired, the development work be undertaken by your Department in respect of the area will in fact benefit residents of the Porirua Pa in the way envisaged by the Minister of Maori Affairs.

1960 July 14

District Supervisor, Ministry of Works to Acting Sec., Maori Affairs; Reply to memo of 6 July 1960.

To develop the land sanitary sewage and storm water drains must pass through the Pa area. Water mains may pass through the Pa. Roads in the Pa area may be improved.

"All of these factors would, in my opinion, result in adventitious improvements to the Pa area..."

1960 September 15

Extract from N.Z. Gazette, No. 59, page 1433; Land Taken for State Housing Purposes in Block 1, Belmont Survey District, H. Watt, Minister of Works. Includes Takapuawahia C2A4 4:3:39.3 acres.

1962 October 15

Mr Simpson of Morison, Taylor & Co., Solicitors to Piri Parai; the application to assess compensation for C2A3.

Our valuer valued the land at £3,900 while the Crown valuation was £500.

The matter hinges to a great extent on the accessibility of the block. The Crown valuers claim that it is impossible to subdivide the land for housing purposes except with the expenditure of a very considerable sum on roading and earthworks. This expenditure would make subdivision uneconomic. Our valuer and engineer on the other hand say that the development involves nothing of an unusual nature.

Settlement could not be reached, your block will be held over till 22nd January next.

1963 May 8

Extract from 43 Wellington Minute Book Folios 149-156 and 174-177; Application 17 Takapuawahia C2A2 and others Section 104 Public Works Act 1928. The balance of compensation £4483.19.4 will be held undistributed pending clarification of title - there are variations in area as between the Proclamation and the two sets of searches before the Court. The Deputy Registrar MLC is required to reconcile the files, then send copies to the solicitors to check.

1963 June 13

District Supervisor, Housing Division, Ministry of Works to Maori Trustee, Palmerston North; copy of receipt for full payment of compensation. Takapuwahia C2A3 £4483.19.4.

1963 September 4

Maori Land Court at Whangarei, Minute Book page 203-205; Takapuwahia Compensation: Parai owned this land in severalty, he asks for payment. His solicitor has filed a full declaration in support and complied with the requirements of the Court at Wgtn MB 43/149-156 and 174-177. All title charges have been extinguished and the applicant's Maori Housing Loan has been repaid.

There is an order under Section 32 for the payment of all money's held by the Maori Trustee for Pirikawau Parai to his credit in the Law Trust account of Morison Taylor & Co. Order Section 34 (10) for immediate release.

1963 September 13

MLC Order Assessing Compensation for Land Taken, Wn.M.B.43/149-156, Wn.N.B.43/174-177; Orders that £4000 (plus interest, minus rates and solicitors fees) be payed by the Ministry of Works to the Maori Trustee on behalf of the owners of Takapuwahia C2A3.

1972 September 14

Extract from N.Z. Gazette, No. 75, p. 1957; Setting Apart Maori Freehold Land as a Maori Reservation for a burial ground for the common use or benefit of members of the Ngatitua tribe. This is next door, over the northern boundary of C2A3.

1972 September 27

District Community Planner, Housing District Office, Wgtn, Housing Corp to District Land Purchaser Officer, Wgtn; Land for Riding Club: Titahi Bay. Concerns the clubs need for grazing land. "... please prepare a lease for the area on the copies of plan GA 3029 attached."

1974 January 17

District Supervisor, Ministry of Works to District Officer, Maori and Island Affairs, Wgtn; Housing Development: Takapuwahia: Porirua.

... It is now intended that this area be developed as soon as possible based upon more modern policies involving environmental planning and higher standards.

The Historic Places trust has reported no known sites of importance. Are there any sites important to Maori?

1974 January 31

District Supervisor [Works?] to A.G.Davis, 57 Ngati Toa Street, Porirua; re: a new fence at the back of his section.

1974 March 18

District Officer, Maori and Island Affairs, Wgtn to District Supervisor, Ministry of Works; Housing Development: Takapuwahia.

Replying to memo of 17 January 1974 - discussed memo with one Takapuwahia elder who advised there is nothing of importance. However, it is asked if a

little land could be made available to enlarge the cemetery.

Housing sections are at a premium at Takapuwahia and locals have to move elsewhere. It would be helpful if some of the new sections could be made available to this Dept. An appropriate area would be the area south of the Cemetery, between it and the Pa.

1974 March 25

District Supervisor, Ministry of Works to District Officer, Maori Affairs; replying to 18 March 1974 - land could be made available for enlarging the cemetery.

It seems logical that the twenty new Chapel Street sections should be made available to your department.

1977 March

Plan of Takapuwahia area showing road and section boundaries. Also marked are block boundaries including C2A3. From Housing Corp file 6'244'3.

1979 April

Submission in support of Petition of Makere Ralph Love and 158 others to Chairman of the Select Committee for Maori Affairs; for the return for Urupa extensions to the Ngati-Toa tribe a small portion of what was Maori Land...

2. We have petitioned Parliament because although the Housing Corporation is agreeable to transfer an area back to us for Urupa purposes, it is conditional upon the payment of a sum of \$37,000.

8. From researched material available to us it is clear that the Housing Division Ministry of Works initiated the move to acquire the bulk of Maori Land in the Porirua area early in the 1940's and actual direction to proceed with purchase negotiation issued in January 1954.

14. We quote from a memo dated 9th July, 1958 from the District Commissioner of Works to the District Supervisor Housing Construction Division.

It is understood that the attitude of the Maoris is that they should keep the land available for the growing population of Maori Settlement at Porirua. Their concern is for the future say 30 or 40 years hence and not for the immediate needs of today.

... It is thought that much of the Maori's objection to their ancestral lands [being taken] might be met if they were allowed to acquire sections in the proposed housing subdivisions.

31. We believe that from our submission and details of the transactions leading up to the compulsory taking of the land there was clearly a deviation from the two principles of Natural Justice.

"That the adjudicator [sic] (the Ministers) is disinterested and unbiased"

"That the parties were given adequate notice and opportunity to be heard"

1979 June 22

Director-General Housing Corporation to Secretary, Maori Affairs Committee, House of Representatives. Re: petition of Makere Ralph Love and 158 others.

Summarizes lands history in para 2, 3, and 4.

The Housing Corporation acquired the land from the Ministry of Works upon its formation in 1974.

The Housing Corp is fully sympathetic... willingly co-operate... do our best... we are prepared to enter into negotiations with the Committee over price and terms of sale.

1979 August 15

Manager [Wgtn District Office, Housing Corp] to Director General, Head Office [Housing Corp]; re petition for Urupa extension.

1. At the meeting held in the meeting house on 21 March 1978 this question of extra land was discussed. At this meeting there were representatives of the Department of Maori Affairs, Porirua City Corporation, the Housing Corporation and the Maori committee and the local people. Questions concerning the original purchase were raised as apparently many of the owners were not aware that the land had been sold. They also raised the matter of the loss of the beach adjoining Tangane Drive.

2. The committee stated then that they would be happy with about 1-2 acres but that as they had no money, it should be given as compensation. I told them that we had no objection to negotiating a sale of land..., but that there was no hope of any disposal being considered under those terms.

6. The total area purchased by the gazette notices in 1956 and 1960 covered 205 acres or 83 hectares. Part of this has already been developed for housing, reserve, shop and kindergarten sites. The remainder has lain unused and idle since its purchase because of the high cost of its development due to the steep, broken type of topography and the difficulty of access. This required the purchase of land from three Maori owners to enable access to be gained to Takapuwahia Drive.

7. The total development work for this block has been estimated only approximately, to cost about \$2 million. To date about \$650,000 has already been spent...

9. Any land sold at this stage would not only be fully earthworked, topsoiled, grassed and having a main stormwater system to serve it, but would ultimately have roading, water, power, gas if available, and be surveyed at our own cost.

14. ... the development of this total area has provided considerable benefit to the local people.

1979 December 13

AJHR Vol IX, I3 Maori Affairs Committee 1979, p4:

79/4 - Petition of Makere Ralph Love and 158 Others

Praying for land to enlarge the Takapuwahia K Urupa and to use as a memorial park.

I am directed to report that the Maori Affairs Committee has carefully considered this petition and recommends that it be referred to the Government for favourable consideration.

13 December 1979.

W.R. Austin, Chairman.

1980 October 24

Manager [Wgtn District, Housing Corp] to City Planner, Porirua City Council; Land for extensions to Takapuwahia Cemetery.

... Following discussions between Maori people and your Council officers some time ago and representations which were made to Cabinet, agreement has been reached on the amount of land to be sold to the local Ngati Toa Maori Committee.

1980 October

Plan of Takapuwahia Maori Cemetery area. Housing Corp 6/9207/3/55.

"Rescheme of Lots 35 to 45 scheme plan 6'9207'3'2 and lots 249 to 259, 267 to 272 scheme plan 6'9207'3'4 to provide for cemetery extensions. Takapuwahia, Porirua.

1981 October 8

Takapuwahia Marae Committee to Manager Housing Corp Porirua; "...our people have accepted the Scheme Plan for the extension to the Cemetery..." also "...Committee is very interested in the two sections numbered 6 & 7..."

1981 December 14

Register Sole Copy 22A/233; Certificate of Title Under Land Transfer Act showing that the Queen has seised for Housing purposes Lot 22 on Deposited Plan 52812 (6101 meters squared) being extension to Takapuwahia Maori Cemetery. Transfer 517125.1 to her Majesty the Queen for the purposes of the Maori Housing Act 1955 - 20.9.1982 at 2.09 p.m.

1984 November 27

District Planner [Wgtn, Housing Corp] to The Housing Manager [Head] Office; Ministerial Re Takapuwahia Block C2A3.

I refer to the letter from Mrs K. Maurice to the Minister of Maori Affairs on 26 October 1984 and forwarded to us from our Head Office on 23 November 1984.

I would suggest that the reply to the Minister be along the following lines:

"... C2A3 does not have any legal frontage to a street and any access to it must come from the chapel Street extension by crossing block C2A2. The Housing Corporation now owns all this land so is able to proceed with a subdivision.

... the land is only capable of being developed for housing if access is obtained first across other land. By itself it cannot be developed. The crown had to not only purchase C2A2 and other adjoining blocks first

but also it had to acquire land at the end of Takapuwahia Drive so as to get access to the land at a higher level.

1984 December 4

Housing Manager [Housing Corp] to Mrs K. Maurice; acknowledging her 'application' of 26 November 1984.

1984 December 21

Minister of Housing to Hon. K T Wetere, Parliament Buildings; re: personal representations on behalf of Mrs K Maurice of Titahi Bay.

He comments on inaccessibility of C2A3. Then goes on:

The Director-General also advises me that Mrs Maurice has recently lodged a claim with the corporation for the return of the block. However, I am satisfied that the corporation did not mislead Mr Parai concerning the land's accessibility and, in the circumstances, I do not consider that her claim can be substantiated.

1985 February 22

Mrs K. Maurice to Minister of Housing; is it possible we could get our dad's land back. We are interested in buying some sections.

1985 March 7

District Planner, Wgtn Housing Corp to Housing Manager [Head] Office Housing Corp; Ministerial re C2A3.

... construction of this area to commence late 1985 to early 1986. It is therefore not possible for C2A3 to be returned to the previous owners.

... For years we have had complaints and criticisms from those people [the Takapuwahia Maori's] because of the way the owners never knew that the land had been taken and had thought until even recently that they were still the owners and that the land was available for their children to occupy.

1985 March 12

Branch Manager, Wgtn to Director-General Head Office [Housing Corp];

At this stage Branch expects that the 21 sites being developed in the Chapel Street area will be available for sale towards the end of this year or early next year. It was our intention to use 5 - 10 of these sites in our 1986/87 construction programme with the balance to be made available for private sale.

... the Corporation would be rather foolish to disregard or dismiss their claims to the land altogether. As the district planner points out the local Maori population could make life very difficult for our tenants if the Corporation builds rental properties in the area and also for the purchasers of sections offered for private sale. Obviously, however, it would be neither economic nor practical to simply develop the land to pass on to the former owners or their descendants and consequently a solution must be found that is equitable to both the Corporation and the local Maori people.

Although the district planner feels that a commitment may have been

given to the local Maori people, this would have been given over 20 years ago so obviously [sic] it will now be very difficult to find. Nevertheless we have searched all our older files and while locating nothing definite, the indications all appear to be that the Government at the time was looking to give some guarantee to the Local Maori people about the availability of sections to them in this block or throughout the Wellington area...

To have another "Bastion Point" situation would be most undesirable...

1985 March 27

Minister of Housing to Mrs K. Maurice; re her letter

.. I am prepared to consider a preferential allocation of sites to local people...

... would be at current market value...

1985 April 10

Housing Manager [Housing Corp] to Registered Surveyors; please prepare a schemer plan for C1C, C2A2, C2A3, C2A1B2 and C2B subdivision. Includes planning brief.

1985 June

Plan 59078, Porirua City Council survey of Lots 1-24 being subdivision of Takapuwahia C2A2 & part C2A3. Approved as to survey 11/6/86.

1986 July 16

Report from Assistant Director-General Housing Corp to House of Representatives Maori Affairs Committee; Petition by K. Arthur and nine others on behalf of the Ngatitua Iwi of Takapuwahia, Porirua.

The petition prayed that the House of Representatives recommend to the Government that an investigation be undertaken into the concerns of the Ngatitua people of the Takapuwahia Marae. One of the petitioners concerns is the future ownership of land purchased from the Maori owners by the Crown and gazetted as Housing land in 1956 and 1960. The petitioners seem to want the opportunity to repurchase former tribal land.

... the Corporation is making 21 sections at its Chapel Street extension subdivision in Porirua available on a preferential basis, to families nominated by the local Maori Committee and approved by the Department of Maori Affairs.

In addition to the petitioners, descendants of the late Piri Kawau Parai are interested in purchasing part of the Chapel Street extension land which was formally owned by the late Parai.

...

While the sections are to be allocated on a preferential basis, they will be sold at the current market price determined by Housing Corporation valuation.

1986 July 15

File Note Update: The H of Rep's Maori Affairs Committee is to meet on 17 July 1986 to review developments.

Mrs Maurice and the local Maori Committee were to meet last Friday to divy-up the 21 site on offer, but did not meet.

1986/7

Report from Housing Corp to House of Rep's Maori Affairs Committee; Petition by K. Arthur and Nine others on behalf of the Ngatitua Iwi of Takapuwahia, Porirua. Includes sketch map of the area.

2.2 In 1981 an area of 6100 m² or 1.5 acres was added to the urupa at the request of the local people who had petitioned Parliament in August 1979. This extra land came out of the underlying blocks C2A3 and B3 and the amount of \$38,500 in payment, was made from the Maori Housing Revenue Account.

3.2 Mrs Maurice and members of her family approached the Maori Affairs and a meeting with them was held in our office on 24 July of this year [1986 or 1987]. They sought assurances that the direct descendants of the original owner would have the opportunity to purchase... At this stage there are 6 sections which cover the original C2A3 but there could be a further 12 to 14 sites in there later development of this C2A3 block.

3.4 ... there could be up to 12 sections adjoining the cemetery. These would be another group which could be included in the same form of disposal.

3.5 There are 14 extra sections which could also be given similar treatment. These are the sections which are proposed to be developed to the east of Takapuwahia Drive

3.6 The disposal by preferential allocation of about 47 sections over a number of years is of course subject to the approval of the Minister of Housing. However, the principle has been accepted by him as can be seen from his reply to Mrs Maurice. It has also been discussed with the Maori Affairs officers and our senior management and in Head Office. It has received their concurrence subject to agreement being reached as to who should be given preferential allocation of which sections, and it being under our usual terms and conditions. These are 10% deposit of the current market value and payment of the balance over 10 years with interest being charged at the prime rate which at present is 15%.

3.8 ... sections which are set aside for preferential allocation and not having a purchaser, must be disposed of. It is our intention that they be offered to the Department of Maori Affairs for them to either hold or dispose of as they see fit. After that if there are still some left, we will offer them on the open market to the public. If we receive more applications than there are sections, then we ballot them according to the preferences stated by applicants. Any left after that are for sale over the counter to the first person who applies.

4.1 This land was transferred to the Housing Corporation from the Ministry of Works and Development in 1975. The transfer cost was

over \$330,000. Since then, the major earthworks, stormwater and holding charges have increased our book value up to \$1.4 million.

1987 March 12

Acting Branch Manager, Porirua Housing Corp to Director General, Head Office; Ministerial: 6-9007 - Mrs Parai

We have been sympathetic towards their wish for the direct descendants to acquire the ex family land and have agreed to the preferential sale of these 6 lots [on the C2A3 part of Chapel Street] to Parai descendants.

Mrs Maurice has discussed amongst her family the allocation of those 6 sites with the result they will be offered to 3 of Mrs Parai's daughters, 1 son and 2 grandchildren.

We have agreed to provide 90% vendor finance to assist sale. Our second stage of development will result in possibly a further 8-9 sections of the probable 49 lots being created on "ex Parai" land.

It is likely that having established the precedent we will again accommodate the Parai family request for preferential allocation of those lots.

1987 September 10

K. Maurice for the Parai Family to Secretary Waitangi Tribunal;

Dear Sir,

On behalf of the estate and family of our late family, Pirikawau Parai I hereby lodge a claim to the Waitangi Tribunal concerning at Takapuwahia, at Porirua. We contend that although our father sold his interests in Takapuwahia, he did so under the compulsion of the crown acting in terms of section 104 of the Public Works Act 1908. We consider this forced sale to be in breach of Article II of the Treaty of Waitangi as is the statute itself. Although our father was compensated for the loss of his land (Takapuwahia C2A3) block with a payment of £4000-0-0 had not the compulsion to sell been forced upon him by the crown, he would not have sold. It was always his intentions [sic] and desire to hold the land and divide it amongst his children for housing sites. Indeed, even after [the] sale had been affected, he was looking towards using some of his compensation moneys to buy residential sections for his children. We therefore present this letter, plus* [*not enclosed] information concerning sale of property for your investigation, hoping that your findings will be in our favour, and our rightful inheritance returned to us was intended by our favour. We anxiously wait for your acknowledgement.

Yours sincerely, K. Maurice
for the Parai Family.

[signed by K. Maurice and 9 others]

1987 September 20

K. Maurice claimant to The Secretary Waitangi Tribunal;

"pressure has been put onto us by the Housing Corp to purchase the land or otherwise sold on the open market, the family has gone to great

lengths to ??????? find finance to secure what we believe should be given back under the 2nd Article of the Treaty of Waitangi.

It should be mentioned also that your investigations will reveal that an extension of the Urupa out C2A3 has been carried out.

1987 September 23

Mihotich for Registrar Wai.Trib. to Mrs K. Maurice; acknowledge your letter of 10 Sept 87, copy has been forwarded to the Tribunal. Enclosed a copy of "A Guide to Completing a Form of Claim...".

1987 October 13

Mihotich for Registrar Wai. Trib. to Mrs K. Maurice; acknowledge receipt of your letter 20 Sept 87, a copy has been forwarded to Tribunal Chairman.

1988 May 5

From Kahui MauRice to Steve Gracie (Deputy Registrar Tribunals Division); asking when case will be heard. She notes that as time passes the Housing Corp could further develop the land which would increase the purchase price -- she wants to avoid incurring costs due to our delays. Asks "what can be done", e.g. an injunction? Asks for another copy of our last acknowledgement.

1988 June 20

Administration Officer Waitangi Tribunal to Mrs K. Maurice; regret I am not able to give an indication as to when your claim may be heard.

1988 June 28

From K. Maurice claimant to Mihotich Waitangi Tribunal; correcting spelling mistakes in his 13 Oct 1987 acknowledgement.

1989 May 9

Robin Hapi, Porirua Branch Manager, Housing Corporation to Kahui Maurice:

The Corporation will continue to offer your family preferential option on any section that may be developed which includes a significant proportion of your ancestral land.

At this point in time, we have made no decisions on whether the balance of the land at Takapuwhia will, in fact, be developed for residential purposes.

1989 May 25

Memo No1, form Legal Officer and Special Projects Officer to Deputy Chairman Waitangi Tribunal; about pending claim PC 99, it concerns Takapuwhia C2A3, it falls within our jurisdiction, can be recommended for mediation or a short hearing, we seek a direction to put claim into Ready Claim Register.

1989 May 29

Memo No1 (1989 May 25) is annotated "Directed accordingly, McHugh, Deputy Chairman, 29 May 1989"

1990 July 10

Note by Legal Advisor; concerning Arapine Walker Housing Corp. Porirua -- actively negotiating claim with clients. HC would see return of the land as the easiest solution. Told her of our mediation process. Interested, will keep us

informed.

1990 December 5

Director Waitangi Tribunal to Director-General Housing Corp; asking for access to their files.

1990 December 21

Porirua Branch Manager, Housing Corp to Director Waitangi Tribunal; informing that the research liaison person for this branch is Simon Minto. Access to our files is available.

1991 February 15

Director Waitangi Tribunal to MLC Wanganui; asking for info on Takapuwhia C2A3.

1991 February 19

Director Waitangi Tribunal to Mrs K.Maurice (claimant); to let her know what's happening -- waiting for MLC info, hope to have an appraisal report completed by early March, however I need to talk to you before then.

1991 February 19

Deputy Registrar Maori Land Court to Director Waitangi Tribunal, their ref 2/609; enclosing some title info. The Memorandum of transfer was confirmed by the Court at Wgtn Minute Book volume 30 folio 84.

1991 October 10

Oral judgement of J Barker in the High Court of New Zealand, Auckland Registry, M. 759/91; between Marjorie June Calvert (and three others) and the Housing Corporation of New Zealand;

This application for review under the Judicature Amendment Act 1972 concerns three "State Houses" at Castere Bay in North Shore City. The houses are run down, so Housing Corp gave the plaintiffs notice quit. They then planned to demolish the houses and sell the land, then use the money to buy more houses.

In 1988 the first of two claims on behalf of Maori interests was lodged with the Waitangi Tribunal concerning this and other land. This was "a significant factor... which should have been taken into account."

"It is common ground that the defendant is an agency of the Crown and that it should not and cannot dispose of the land until the Waitangi Tribunal has adjudicated upon two claims..."

"The effect of this factor is that, should the plaintiffs leave the land, then the defendant will receive no return on the land whatsoever; it will be unable to sell the land; it will presumably have to pay rates on it. It is not clear whether the defendant will be entitled to demolish the houses during the pendency of the Waitangi Tribunal claim."

After these proceedings were issued the defendant obtained an engineers report which states \$10,400 would be sufficient to bring the houses to an adequate standard for at least 5 years. It is likely the Waitangi Tribunal decision will be known within 5 years.

Judge Barker enquired if the person who made the decision to clear and sell the

land had sufficient delegated authority from the Director-General of the defendant as required by S.17 of the Housing Corp Act 1974.

The defendant is now prepared to consent to an order under S.4(5) of the Judicature Amendment Act 1972 requiring the defendant to reconsider the whole matter and in particular whether it should issue a notice to quit to the plaintiffs in all the circumstances as now known to the defendant.

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Document Bank

A collection of all documents relevant to this claim is held in the Waitangi Tribunal library, listed as WAI 60 Document Bank. All documents are summarized and listed chronological order in section ten of this report.
