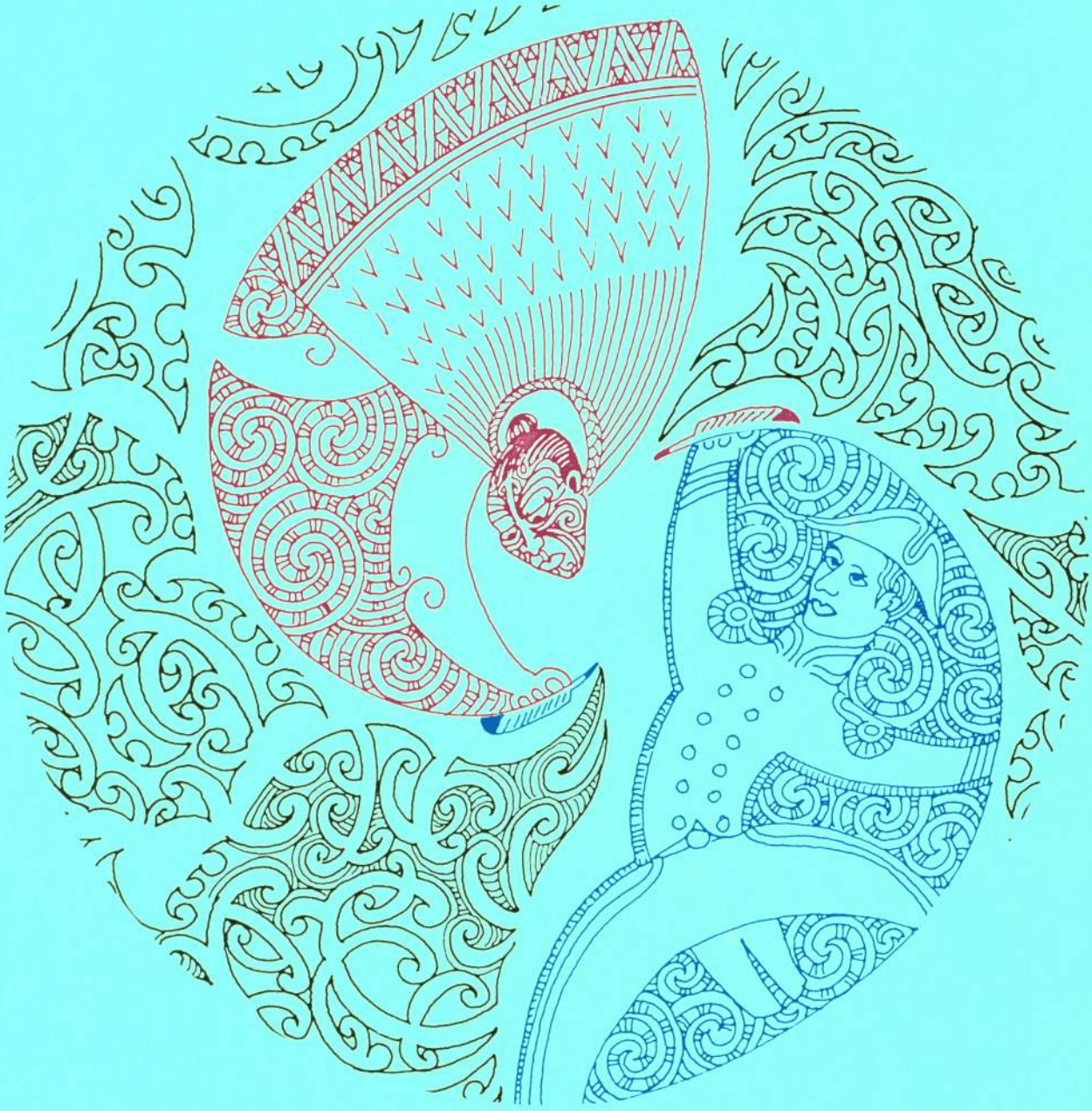
TE ROROA REPORT



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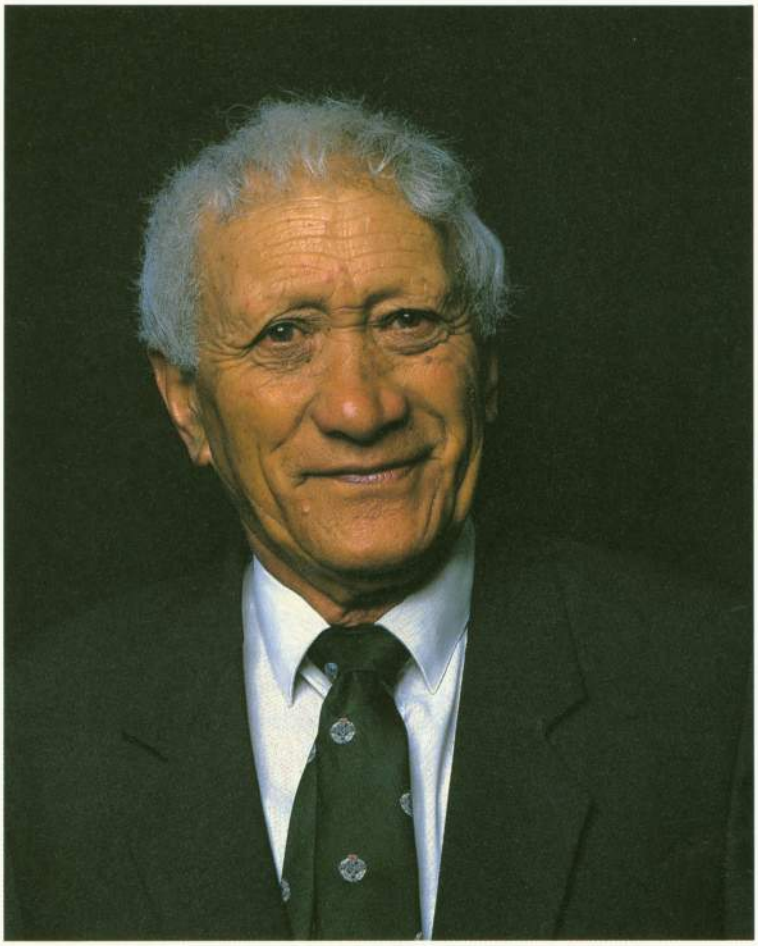

Turirangi Te Kani (3 June 1913 –4 June 1990)
He mea miharo tau hanganga i te rangi me te whenua tau hanganga i te tangata me tau homaitanga i te kai.

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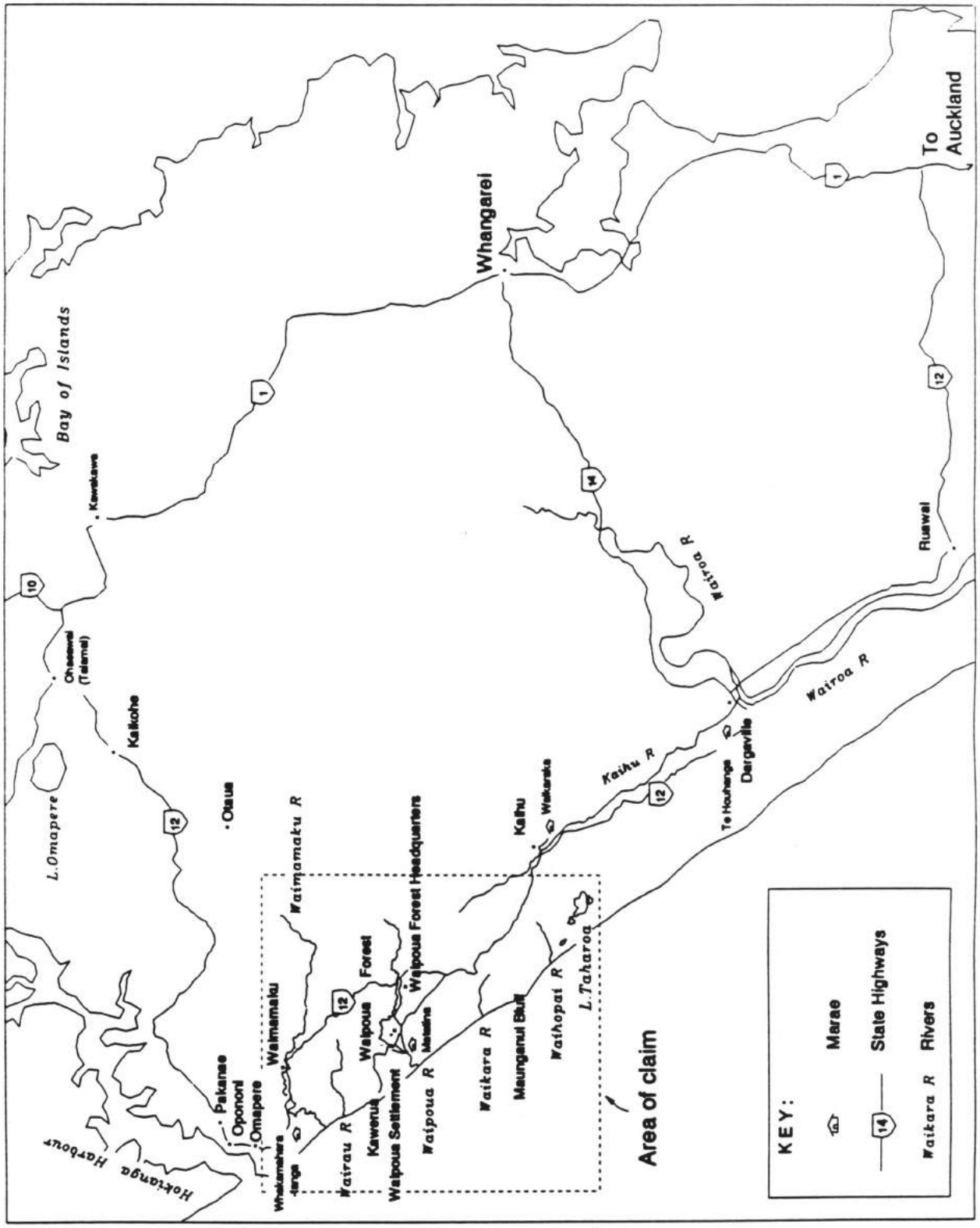
Preface

The Te Roroa claim against the Crown, concerning Maunganui, Waipoua, Taharoa and Waimamaku, was first filed with the Waitangi Tribunal in November 1986. There have been nine sittings of the tribunal in the period June 1989 to May 1991 held at Kaihu, Waipoua, Waimamaku and Dargaville. In addition to the evidence at the hearings, we received evidence at site inspections in the claim area and at the Auckland Institute and Museum. Our report is an analysis of the documentary and oral evidence presented to us and the issues raised by the claim. We have completed our findings and have made recommendations in respect of those matters wbich were beyond dispute by the time the hearings were concluded.

There are other matters, however, which need further consideration by the parties. For these, we have put forward proposals as to remedies to assist the parties in their discussions.

Following the hearing on 3 April 1992 at Te Waikaraka marae, Kaihu, when we shall present the report to the claimants and the Minister of Maori Affairs, the Honourable Douglas Kidd, a final hearing will be held to receive submissions from the parties to complete our recommendations.

The report adopts the structure of whaikorero (oratory) as the framework for discussing both the oral and documentary evidence in this claim.


Bay of Islands
Whangarei
To Auckland
Kawakawa
Ohaeawai (Taiamai)
Kaikohe
Otaua
L.Omapere
Waimamaku R
Waimamaku
Forest
Waipoua
Kawerua
Waipoua Settlement
Waipoua Forest Headquarters
Waipoua R
Waitara R
Maungaru Bluff
Kaihu
Waikaraka
Kaihu R
Wairau R
Pakanae
Opononi
Omapere
Whakamahere-tanga
Hokianga Harbour
Wathopai R
L.Taharoa
Area of claim
Te Houhanga
Dargaville
Wairoa R
Ruawai
KEY:
Marae
State Highways
Waikara R Rivers

Te Tau (Introduction)

Tau

Hiko hiko te uira
Papa te whatitiri
Whakahekeheke ana mai i runga o
Maunganui ra e
Hei aha tera

Ko te mana o Kuini pea
E awhi ana Te Tiriti

Ka korikori te ture whakarunga i aue
Ui atu ki a Makarini me ona pononga
No wai tera ture?
Hei aha tera ture kore

Kei te kimi tonu ake te oranga mo te iwi Maori

Kei runga ranei, kei raro ranei, kei ko ranei
E aue! Hi

The lightning streaks the heavens
The thunder rolls
Descending upon Maunganui
For what purpose?
Perhaps it is the mana of the Queen
Lending support for the Treaty
And the law is spurred into action

Ask McLean and his underlings
Whose law is that?
It is a law not worthy of attention
A livelihood for the Maori continues to be sought
Is it south, is it north?
Is it yonder or is it here?

Mihi

He toroa whakakoko e a nui atu ra. Rarunga o Waipoua. Kaore ia ra ko te tohu o te mate. Koutou kua taka atu ki tua o te arai e tama Hugh, whaia atu te ara whanui. Te tonui e kukume tonu nei. Te mutunga kore.

Na Te Tiriti o Waitangi ko te ope tuatahi. Te Hoko-Whitu-a-Tu 1914-18. Rua tekau ma tahi tau i muri mai ka whakahau a Apirana kia mau to

tatou tino rangatiratanga. Tautokotia te karanga a Ingarangi. Riro ai te iti, te rahi. Te ope Tuarua. Te Hoko-Whitu-A-Tu Tuarua 28 Bn 2 NZ EF.

Eruera, nau ra i whakaohooho a Te Roroa, o hapu o Ngati Whatua me Ngapuhi, Ngati Te Ra, Ngati Korokoro, Ngai Tu, Ngati Pou, Ngati Ue.

Na kua riro koe, korua ko Turirangi me nga tama toa kei te rangi e haere ana.

E kore ratou e tai koroheketia penei me tatou e ora nei. E kore te wa e whakaruhi nga tau ranei whakakahore i a ratou. Mai te urunga mai o te ra, tae noa ki tona toremitanga. Ka mahara tonu tatou ki a ratou, Ka mahara tonu tatou ki a ratou.

A soaring albatross hovers over Waipoua. It is a symbol of sorrow. You who have gone beyond the vale, Hugh, our son, pursue the broad pathway.

There still continues to be a force drawing us—it is never ending.

As a consequence of the Treaty of Waitangi we had the first Maori war party. The Maori pioneers of 1914-18.

Twenty one years later Apirana encouraged us to retain our tino rangatiratanga. Lend support to England's call. And so the great and the small volunteered. The second Maori war party. The 28th Maori Battalion, 2 NZ Expeditionary Force.

Eruera, it was you who alerted Te Roroa, your subtribes within Ngati Whatua, and Ngapuhi, Ngati Te Ra, Ngati Korokoro, Ngai Tu, Ngati Pou, Ngati Ue.

Now you are gone, you and Turirangi and together with the brave young men of the race you now stride the heavens.

They shall not grow old as we who are left grow old.

Age shall not weary them nor the years condemn.

At the going down of the sun and in the morning,

We will remember them. We will remember them.

Waiata

Tu mai Tane Mahuta, tu mai koe no nehera ano koe
Te uri whakahirahira. No tua whakarere iho koe

Korerotia mai nga taonga nga whakatapuranga i piki ai koutou

Ki te teiteitanga o te rangi hei whakaruruhau ... te ngahere e

Kapohia atu ra nga kapua e rere whakarunga ra pou uriuri nui
Te putanga mai o te pu o te kino te ture kore e

Te tangitanga o te kani me te pakotanga o te toki i oe ai te tangata.

Tima! Whio te hau haruru ... te whenua e

I pango ai te auahi te murara raratanga o te ahi
Whakarunga, whakararo
Kai atu, kai mai i papaki kau ai ...
Te parirau o te manu e

Aue ... te ahi wera ki atu titi hiwaiwaka e oma kiwi tangipo
Weka whakataretare
Pukeko ngutu whero me oma pewhea ... te nohinohi e

Whakatika ... mai te tini, te mano
Mano nga rangatira
Patupaiarehe pupuritia ra
Te tino rangatiratanga o ... Te Roroa e

Maringinoa ... nga wai i aku kamo
Wahitapu au e tu nei
Tanemahuta.

Stand tall, Tane Mahuta, stand tall as you have done for aeons of time

You the impressive descendant from the beginning of Aotearoa
Tell us of the treasures and the blessing upon you all

Why you climbed up high to the sky to shelter the forest

Lay hold of the clouds scudding by
Great is the sadness

At the emergence of the rifle, of evil and lawlessness

The sound of the cross-saw and the chopping sound of the axe
Giving man reason to yell. Timber!

The roaring wind whistles, the land trembles.

Black smoke arises, the flames reach high, down, inward outwards, the birds flap their wings anxiously

Alas the burning fire. Ti! Ti! Ti!

Twittering fantail, run, tell

Kiwi night caller, inquisitive weka, red billed pukeko, run
Where can the little ones run?

Arise the multitudes of chiefs,
The forest little folk
Retain your authority and autonomy
That of Te Roroa

My tears flow unrestrained
On this sacred place where I now stand
Tane Mahuta.

Nga whatu-ora (the living, seeing eyes): who the claimants are

At the first hearing of this claim, kaumatua Maori Marsden declared that:

> We the living are the ... 'Whatu-ora', the living seeing eyes of our sleeping ancestors.
>
> ... we are the [']tukutuku-nga iho'—literally, those that 'follow on'. (A21(a):9-10)

For the purposes of this claim the whatu-ora (claimants) have identified themselves as Te Roroa (A1(i):1, 3). They represent the northern most hapu of Ngati Whatua although their name derives from their common Ngai Tamatea tupuna (ancestor) Manumanu I. To his son, Manumanu II is special recognition given. Traditions describe him as an enormous person and "as brave as a lion".[1]

A toa (warrior) of repute he repelled all attempts by invaders to conquer Waipoua, the ancestral "heartland" of the hapu and place to which his father Manumanu I had brought the people when they left the far north. The late E D Nathan, in whose name this claim was first made, said that Manumanu I came back to Waipoua about 400 years ago.[2]

At the time of his death Manumanu II earned the admiration of his enemies. When he was killed at Kawakawa in the Bay of Islands fighting the Ngai Tahuhu, his enemies exclaimed, "Te Hei! Te Roroa o te tangata, rite tonui ki te kahikatea! (Behold! How tall the man that resembles the Kahikatea (white pine))".[3]

This is how the name Te Roroa came to replace the old one of Ngai-te-Rangi or Ngati Rangi, a practice also consistent with custom where special attributes, events or circumstances were frequently commemorated by a change in hapu name. Despite the passage of many generations, the name Te Roroa has survived.

Te whare tupuna o Te Roroa (the ancestral house of Te Roroa)

Although Manumanu 1 and his teina (younger brother) Rangitauwawaro could be regarded as the more immediate of distant forebears, the whare tupuna (ancestral house) of Te Roroa extends beyond them to embrace tupuna remote in time like Whakatau and several generations beyond him to include the mythical figure of Tawhaki (I1(a):98-106).

Whakatau is however the pou herenga (tying post). All the claimants descend from him and acknowledge that he captained their waka tupuna Mahuhu-ki-te-Rangi when it brought the ancestors of Te Roroa to Kawerua from the far north. Both Hawaiiki and Whakatau are immortalised in the Te Roroa whakatauki (proverb), "Kotahi tangata

ki Hawaaiki, ko Whakatau anake (there was but one man in Hawaaiki, Whakatau)" (C12:1).

Hawaiiki may be the distant homeland of tradition or may refer to Te Kapo Wairua.

Whakapapa and tradition show that the whare tupuna of Te Roroa is also connected to the descent lines of other waka tupuna. Some pre-dated the Mahuhu. Others came about the same time and later.

Stories about these canoes suggest that virtually all of them landed first in the far north depositing some of their crew at various places before voyaging on.[4]

Among the many other waka tupuna to be influential in Te Roroa history were Matahourua, Ngatokimatahourua, Mamari, Mataatua and Takitimu. In the course of time their uri (descendants) came to produce a great mix of semi-nomadic hapu who moved about and beyond their rohe (territory). Through intermarriage, chiefly pursuit of mana (power, reputation), warfare, migration and shifting alliances, traditional society was continuously splintering, re-grouping and re-naming. A common outcome of this process was composite groups made up of several hapu each retaining their individual identities. The life of these communities was often very precarious depending for their stability upon the capacity of the chief (or chiefs) to provide protection and, material sustenance. Under such circumstances the community was expected to reciprocate in the form of tributes or services which allowed the chief to assume mana tangata over the group. As far as it is possible to reconstruct, the traditional history of Te Roroa concerns these processes.[5]

Te Roroa traditions state that Manumanu came first to the composite Waimamaku community, where his Ngai Tamatea relatives were living alongside Ngati Miru and Ngati Ririki. The latter were of tangata whenua stock. In that community too was a branch of Ngati Kahu, some of whom were apparently living at Maunganui Bluff among Te Roroa.[6]

How Waimamaku came to be a mixed community is suggested in the story referring to bands of Ngai Tamatea, Ngati Miru and Ngati Ririki who had earlier come down from the far north to do battle with Ngati Kahu of Waimamaku, the *take* (reason) being the death at the hands of Ngati Kahu of the northerner's tupuna Taureka. And consistent with custom whereby land was acquired through conquest, migration or marriage, the conquerors stayed on.

They may have been part of the frequently referred to movement of Ngati Whatua to the Kaipara. Manumanu chose to retire to Waipoua among his wife's relatives, the Ngati Rangi, one of the many lineages of the tangata whenua, Ngai Tuputupuwhenua. Waipoua must therefore have been a community of Ngati Rangi and Ngai Tamatea who Manumanu and his son were obligated to protect and provision. Traditions record that Manumanu had mana whenua over Waipoua,

meaning that he neither owned the land nor had authority appropriate to existing rights of usufruct. Waipoua had been occupied long before his arrival and the rights of usufruct established by the early inhabitants remained intact. Such rights would have been transmitted to their descendants, among them Manumanu's wife, Maeroa.

In general, chiefs held relatively small rights of usufruct over land. Their leadership roles and the informal tributes of food they received, reduced the need for them to labour directly on the land and hold rights of usufruct in it. This is not to say that they did not or could not cultivate their own plots. Manumanu is said to have established a kainga on Whenuahou (new land) along with cultivations which he called Te Wai-o-Rua. He would have done so while acknowledging the right by occupation of every individual or family to an equal share of the community's resources. The protection of these rights and access to resources depended on his leadership, which in turn demanded the community's support. A system of mutual obligation and dependency was the result. To defend his mana whenua Manumanu built the pa Kaitieke. From this pa Manumanu and his son launched assaults against contenders.

In time more pa were built by their descendants. The brothers Ikataora and Taramainuku built Wairarapa. Toa inherited Wairarapa and built Pahinui, Te Rurunga, Kiwinui and Pananawe. The increase of pa over generations was testimony to the richness of the resources in the valley and reinforced the mana whenua of successive chiefs.

Manumanu's brother Rangitauwawaro, and teina in terms of descent, remained at Waimamaku among relatives and neighbours. He married Taurangi of Ngati Kabu and became well known for his extraordinary powers as a tohunga (priest, specialist). To his son Rongotaumua fell the task of defending Waimamaku against Uetaoroa of Ngati Ue, a small Ngapuhi hapu closely related to Ngai Tu (see whakapapa, appendix 6, pp 1, 4). Together with his teina Te Puni, Rongotaumua ensured the consolidation and identity of Ngai Tamatea by marrying women of their own hapu (see appendix 6, p 4). Through their children the first direct linkages with Ngapuhi were forged (ibid). In the next generation a number of marriages between Te Roroa of Waimamaku and Ngati Pou of Taiamai occurred involving succession through women (ibid).

At Waipoua a similar pattern of consolidation over three to four generations followed Manumanu (see appendix 6, p 2). Linkages between Te Roroa and Ngati Rangi were established through the marriage to Ngati Rangi women of his grandsons Rangiwhatuma and Matohi and great grandson Pinea, the noted Te Roroa tohunga. While these marriages may have been influenced by Waipoua's isolation, they nonetheless stressed the Maori preference for marriage to close relatives. It is summed up in the whakatauki;

> E moe i to tuahine, kia kino, e kino ana ki a koe ano

> Marry your cousin, so that if evil comes it will be kept to yourself.[7]

The marriage rule changed little over succeeding generations. Notable among them in respect of the rule and this claim was the marriage of Toa to his cousin and first wife Waitarehu. This marriage strengthened the ties between Waimamaku and Waipoua. Through her he could claim interests at Hunoke, Waiwhatawhata and even further afield, at Wairau and the northern Wairoa. His second and third marriages were to women of an old enemy, Ngati Ruanui of Whangape. His third wife, Te Hei is said to have been captured during one of the battles. She was the ancestress through whom Parore Te Awha, Tirarau and others claimed rights in Maunganui and Waipoua. The descendants of Toa's first and senior wife, Waitarehu, included Te Taua, Tiopira Kinaki's mother who married her cousin Te Rurunga. Tiopira himself married his second cousin Marara Mahuhu from Waimamaku. As we shall see, Parore Te Awha and Tiopira Kinaki were the main contestants to mana whenua over land with which this claim is concerned.

In the senior line of descent no direct links with Ngapuhi occur until Taoho's niece, Te Hana, married Rangatira Moetara, father of Hapakuku Moetara who also features in this claim.

These realities persisted in mixed communities of hapu which sometimes included closely related people.

At the present time, there are more hapu than one in the Kaihu area, and five or six in Waimamaku, as well as Te Roroa of Waipoua. Strong links exist between all these hapu so that we need to think of Te Roroa as a composite group rather than one hapu. In the north they have strong links with Ngapuhi, in the south, with Ngati Whatua (D5:1-2). Te Roroa is essentially a borderlands community of closely related hapu, each retaining their separate identities.

The Te Roroa tupuna whaea (female elder), the late Raiha Paniora described the situation as "resembling the mange-mange vine"; she said "we are all inextricably tied together, both by tupuna and intermarriage" (D17:6).

This point was pressed home by Dr Pat Hohepa when he spoke of his own ancestry and connections at one of the Waimamaku hearings:

> From the Hokianga shoreline to Whiria, I am Ngati Korokoro. When I enter Waimamaku, Ngati Korokoro merges into Ngati Pou. When I go towards Waipoua or up to Waimamaku Block 2, I become more Te Roroa. If I go too far towards the Waoku Plateau I become Te Mahurehure. Those whanaunga still residing here in Waimamaku can belong to some or all hapu without leaving their community. (D11:8)

There are four groups of claimants to this "four legged" claim: the descendants of Parore Te Awha, Tiopira Kinaki and Te Rore Taoho and Te Roroa hapu of Kaihu; Te Roroa of Waipoua; the descendants of Parore Te Awha and the hapu of Kaihu and the Waimamaku Maori Komiti and nga hapu o Waimamaku (A1(i):1).

All the whatu-ora (claimants) accord the mana over the claim to Te Roroa. There are no counter-claimants.

The claimants are descendants of Te Rore Taoho, Tiopira Kinaki, Parore Te Awha and Hapakuku Moetara, the nineteenth century vendors in the sale of Maunganui, Waipoua and Waimamaku lands which gave rise to this claim.

Te tahuhu o te whare (the ridgepole of the house)

At the first hearing the claimants established their right to make their claim, by introducing their oral evidence with whakapapa, the tahuhu of their whare tupuna and backbone of their history (A21(a):9-10). The appended whakapapa tables were provided by them. Some claimants like Garry Hooker (C12), Turi Birch (B50) and Kaiwhatu Sowter (B46) followed in the footsteps of their tupuna Tiopira Kinaki by introducing their evidence with whakapapa beginning with Manumanu.[8]

Other claimants like Kerehi Paati (B47), Te Mamae Tane (B44) and Turo Raneira (Lovey) Te Rore (B40) took descendants of Manumanu as their starting points. Te Mamae commenced with Te Waiata, Lovey with Tiro and Kerehi with Toa, the tupuna whom Tiopira and Parore had in common. Still other claimants like Emily Paniora (D12) and Tutenganahau Paniora (B43) began with their Ngapuhi tupuna. Emily stressed her whakaheke (descent) from Rahiri, Tutenganahau from Taitua, through whom the earliest of direct links between Te Roroa and Ngapuhi were established.

These and the names of other key tupuna or poupou (uprights) on the main descent and connecting lines between Te Roroa and Ngapuhi are highlighted in order to help focus on the ancestral moorings of the nineteenth century vendors. Stories about the main figures provide some tukutuku (decorative panels) for the whare tupuna, while the open whariki (mat) begun in ancient times by the tangata whenua (original inhabitants) hints at the many aho (threads) added over generations. Today the whatu-ora take up the damaged and frayed aho in order to repair the whariki and add their own motifs.

Te whariki

Te Roroa traditions state that when Whakatau landed at Kawerua to the north of Waipoua, the land was already occupied by a tangata whenua group called Ngai Tuputupuwhenua, a name interchangeable with Ngai Tumutumuwhenua (I1(a):100).

They were an ancient people whose origins are attributed to the tupuna Tuputupuwhenua, a seminal figure who today is commemorated in the pou aro figure part of the carved house on Matatina marae at Waipoua and in the name and carvings of the whare whakairo (carved house) at Orakei.

Tupu was the son or relative whom the legendary Kupe left behind after departing the Hokianga for his homeland. He is described

metaphorically as a "spring gushing from the earth" or as the "puna" (spring) from which all the life giving waters of the land were sourced. He married Kui and from this union came Te Tini o Kui (the myriads of Kui). [9] They were widespread in the land holding mana whenua over the territory from Hokianga to the Kaipara. In time they came to encounter the Nuku people, descendants of Nukutawhiti who, upon Kupe's instructions brought the waka Ngatokimatawhaorua to the Hokianga. Ngai Tupu had also to defend themselves against Ngati Ruanui, whose tupuna Ruanui accompanied Nuku, but sailed the Mamari.

At Waimamaku, Ngai Tupu were successful in fending off Ngati Ruanui, but capitulated when Ngati Ruanui joined forces with some of their Ngati Kahu relatives, the uri of Tumoana of the Tinana canoe. At that time the shining, yellow rock, Motuhuru became the boundary between Ngati Kahu of Waimamaku and Ngai Tuputupuwhenua of Waipoua and Maunganui. This rock has retained that significance to this day.

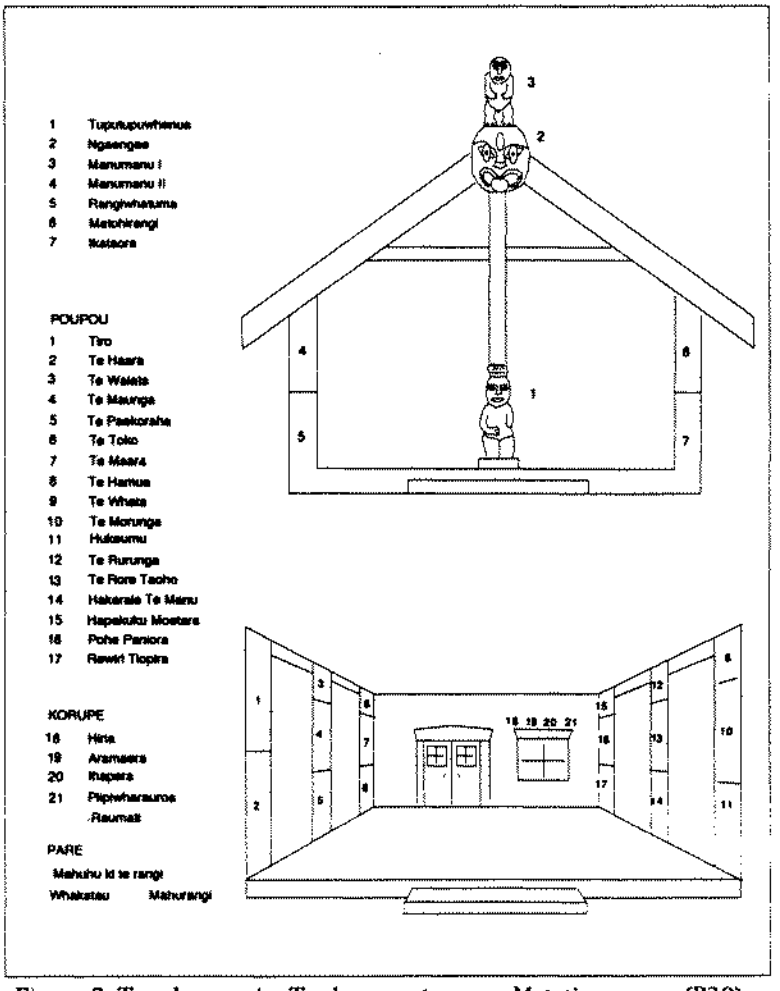


Figure 2: Te whare nui o Tuoho—nga tupuna, Matatina marae (B30)

When Mahuhu did arrive, Ngai Tuputupu were not only at Waipoua, Waikara and Maunganui, but had also extended their influence beyond the Hokianga and the Kaipara.

Their occupancy of the area could date back 27 generations to 1000 years ago. There are strong Te Roroa traditions which tell of ancient settlements in places like Waipoua and Waikara (B2:4; C8:44-45).[10]

It is not certain that Ngai Tupu were the occupants of these ancient sites, but it is known that they intermarried with the Mahuhu new-comers, living in co-existence in some cases but otherwise retaining their autonomy and individual identities.

As will become evident, down to Manumanu's time and three to four generations beyond, this still remained true. As late as the 1890s the tupuna Tumutumuwhenua would be announced as being the tupuna tututu (primary ancestor) for one individual making a claim before the Native Land Court (E2(a):166).

At Kawerua, Rongomai, Whakatau's son, married a tangata whenua woman, Takarita. They set up their kainga beside the stream which was later called Waiaraara. Their pa called Puke-nui-o-Rongo overlooked the tauranga (landing place) of Mahuhu and the rich fishing resource of Kawerua below. The passage of time has not diminished the significance nor the tapu of these sites once occupied by tupuna. They are among the many featured in this claim and whose protection is sought.

To Rongomai and Takarita's son Po, is owed the connection of Mahuhu with the Kurahaupo canoe which he captained, while the name of Ngati Whatua is said to be attributed to his granddaughter Whatuakaimarie, well known for her hospitality and generosity.

Two generations later, the Mahuhu line of descent was linked to the Takitimu canoe when Te Kura married its captain (or his grandson) Tamatea-pokai-whenua, circumnavigator of land and sea. The name Ngai Tamatea comes from him and applies to many bands of his descendants. Manumanu and his people were but one. They, together with their uri, came in time to occupy the valleys of Waimamaku, Waipoua and Kaihu.

Nga toa

The exploits of Te Roroa warrior chiefs is testimony of the state of relationships among groups occupying the territory from south Hokianga to the Kaipara. The chief, Toa, who lived at Waipoua and built there a line of fortifications, extended his influence by conquering Kaihu and parts of the northern Wairoa, capturing the pa of Waihopai, Maungaraho, Waira and Tokatoka (C12:1).

To his legacy must be added the accomplishments of his grandsons, the children of his eldest son Tiro. They numbered five. Te Waiata was tuakana to his teina, Te Maunga, Te Toko, Te Maara and Paekoraha. Their undertakings exemplify the distinctions that can be drawn

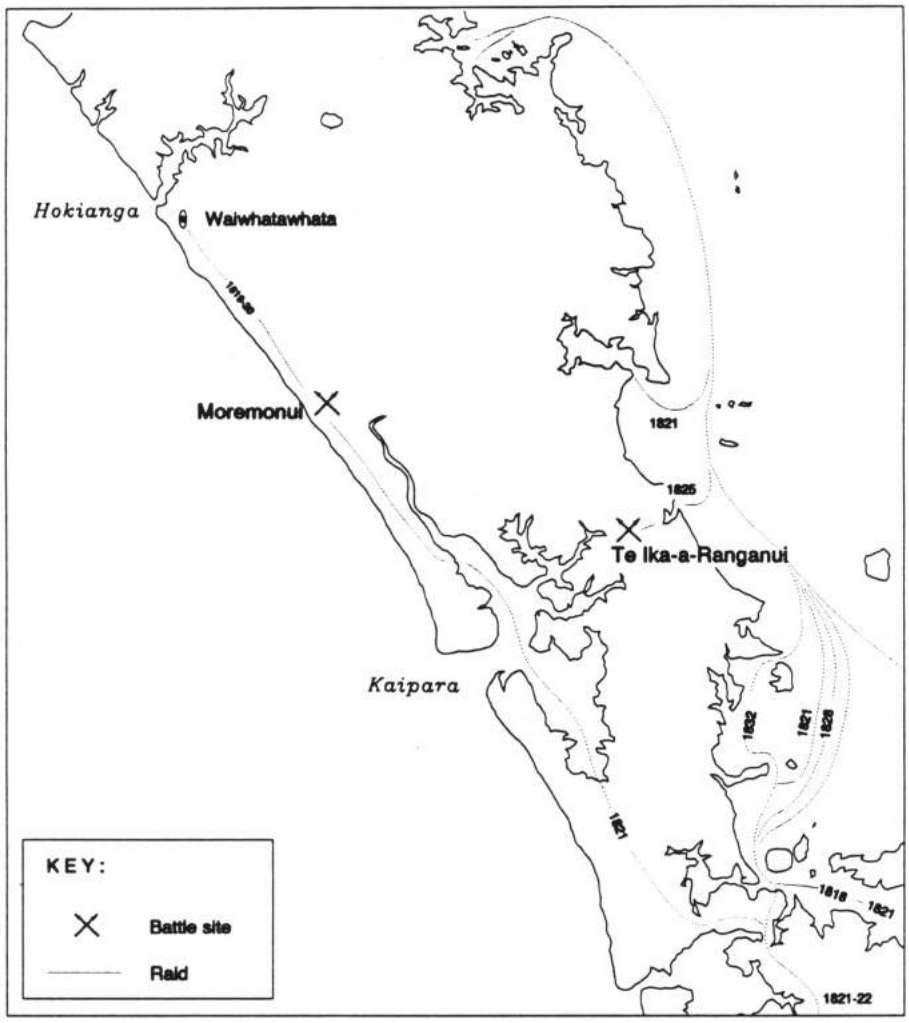


Figure 3: Battle sites and raids. *Source:* Centennial historical atlas map collection, Cartographic collection, Alexander Turnbull Library, Wellington

between ascribed or inherited mana and mana achieved by excellence in war or economic activity.

None of this generation of Te Roroa chiefs married Te Roroa women, but as noted by whakapapa, the important links with Ngati Pou established in their father's time continued. To each fell the task of upholding the mana whenua of Te Roroa in particular localities of the rohe. At this time Te Roroa were living principally in the Waipoua and Kaihu valleys, constantly moving between them.

Traditions state that Te Waiata assumed mana whenua over Kaihu and Maunganui Bluff, Te Maunga over Waipoua, Te Toko over Taiamai (Ohaeawai), Te Maara over Waimamaku and Paekoraha over Waiwhatawhata and Hunoke (C12:2).

Te Waiata and his son Taoho came to settle in Kaihu following a dispute with Taramainuku, Parore Te Awha's grandfather, who was living at Waipoua at the time. Taramainuku sought refuge among some

of his relations in Kaihu, but was pursued there by Te Waiata and his brother Te Maunga. Several battles ensued which sent Taramainuku fleeing to the northern Wairoa. The consequences were later to bear on the claims of Tiopira and Parore to interests in the Kaihu block.

Physical separation was not a barrier to support when the occasion required. This is illustrated during years of conflict between Taoho and the Ngapuhi chief, Pokaia (uncle of Hone Heke). According to Te Roroa traditions, the object of his almost relentless pursuit of Taoho "was that the prolific sea food of the west coast should become his (Pokaia's) as well as all the land".[11] Taoho was living at Opanake, in the Kaihu valley at first, escaping Pokaia by seeking refuge along the Wairoa river ending up at his pa of Tokatoka. In the numerous fights that occurred, Pokaia mobilised his Ngapuhi relations from Hokianga, the Ngati Korokoro, Ngati Manu and Ngati Hikutu to his aid. Under his leadership too, Hongi Hika came to the fore. Both later led the Ngapuhi contingent against the combined forces of Ngati Whatua, Te-Uri-o-Hau and Te Roroa at Moremonui some 12 miles south of Maunganui Bluff. The battle, called Te Kai a te Karoro (the sea-gulls feast) wherein Taoho, who was foremost among the leaders, saw Ngapuhi roundly defeated. Hongi Hika, it is said, barely escaped with his life.

Moremonui left a legacy of grievance which could only be redressed by war. Some time elapsed before Ngapuhi under Hongi Hika took revenge. In 1825 although both sides suffered great loss, Ngati Whatua was defeated at Te Ika-a-Ranganui leaving yet another legacy of grievance that influenced later debates over land rights in the Native Land Court.

Te toa Taoho (the warrior Taoho)

Of the chiefs involved at Moremonui, the high chief and warrior Taoho deserves special mention. Taoho was the quintessential leader for he combined the mana inherited through seniority of descent with the mana achieved through the exercise of his skill as a warrior, seer and poet.[12]

As was customary, such leaders were acknowledged in waiata, korero pakiwaitara (legend, folklore) and whakatauki. Taoho was no exception.

> Ko Tokatoka te maunga,
> Ko Te Wairoa te awa,
> Ko Taoho te tangata,
> te puru o Kaipara ...
>
> Tokatoka is the mountain
> Wairoa is the river
> Taoho the pre-eminent person,
> the blockade of Kaipara. (A21:4)

From his wives descended two of the main contestants whose grievances before the Native Land Court in the 1870s gave rise to this claim, Tiopira Kinaki and Te Rore Taoho.

Mahinga kai (traditional resource areas)

In *The Peopling of the North* Percy Smith, discussing the Ngati Whatua conquest of the coastal area from the Hokianga to Kaipara, mentioned that population clusters were focused in the fertile river valleys.[13] Both tradition and archaeological research confirm this.

Some indication of the territory over which the tupuna of Tiopira, Te Rore Taoho and Parore Te Awha held mana whenua has been given. The concept of mana whenua needs revisiting for the purpose of understanding the exploitation of the land and its resources.

Mana whenua was not equated with "ownership", nor with rights to use or have access to the resources on it. Rights of use only belonged to individuals or to individual families. Such rights were inherited from ancestors or acquired through enterprise. And, as the feud between Te Whata and Moetara over fishing rights on the Waimamaku river demonstrated, were jealously guarded (D19:5). Individuals claimed specific rights to eel weirs, bird trees, rat runs and cultivations and could protect these from poachers by erecting rahui (posts) which declared the resource tapu. Its violation could lead to some supernatural penalty.[14] Such rights were handed on from generation to generation, with the chief providing control and overall protection, in exchange for which he could expect tributes and services of various kinds. Mana whenua thus differed greatly from the idea of "ownership" in the European sense. Even when this notion was introduced with colonisation and its agency, the Native Land Court, it remained alien to Maori people.

The rohe of Te Roroa took in the river valleys of Waimamaku, Waipoua and Kaihu, the latter being drained by the upper Wairoa river and fed by the lake system of Taharoa, Waikere and Kai Iwi.

From earliest times, these valleys and their waterways, providing access to the forest hinterland and ocean, determined settlement patterns and the economic cycle of resource use.

Traditions attest to the location of open kainga on the alluvial flats where the Waimamaku and Waipoua rivers widened to the sea. Here there were intensive cultivations of a variety of crops likely to include several types of kumara like the taputini and tukou which also had good storage qualities and could be turned into kao (dried kumara). Varieties of potato like the uhi and peruperu were also cultivated while the warm climate permitted the cultivation of taro. The Waimamaku river provided eels and herrings. In season inanga (whitebait) was caught at the mouth of the river where mullet, kahawai, parore (mangrove fish) and patiki (flounder) were also netted. King tides yielded a rich harvest of snapper and kingfish. Along the coast a variety of shellfish were collected from the rocky

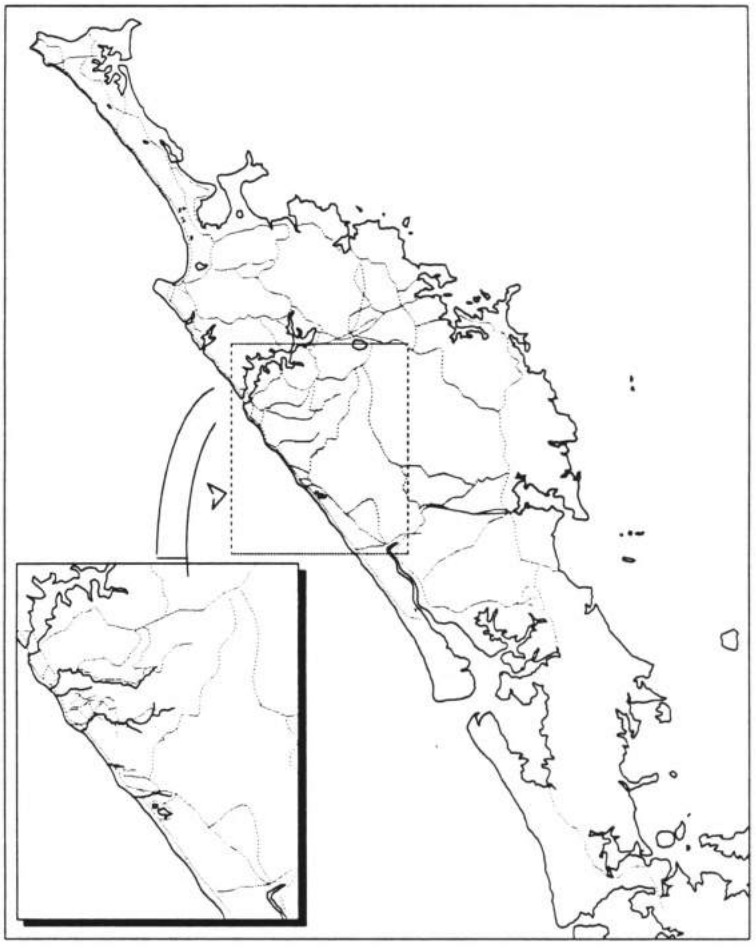


Figure 4: Maori tracks and waterways. *Source:* Centennial historical atlas map collection, Cartographic CollectionAlexander Turnbull Library, Wellington

reefs (D19:4). From here to Maunganui Bluff these rocky reefs were all named (D31:6; D19:4).

Because the lower flats were enclosed in dense bush, the danger of attack without warning led to the construction for defence, of pa and lookout points on ridges and prominent hills. Kaiatewhetu on the north side and Whangaparaoa on the south side of the Waimamaku river were lookout points providing a wide view of the coast (D9:2). The ridge pa of Pahiakai, Kaiatewhetu, Kukutaepa and Kaiparaheke were defensive settlements, the latter pa being the residence of the Ngati Pou brothers Tarahape and Te Whareumu who had married Te Roroa women from Waimamaku (see appendix 6, p 4) . In addition to being defensive locations, these pa appear to have been permanently occupied because of their ready access to fresh water and coastal resources. The exploitation of the fishing resource is indicated by the number of camps created along the open coast.

In Waipoua as we have seen, many pa were built for defence and refuge. Among them the ancient upstream pa of Kaitieke, located on a ridge above the river commanding the northern approaches. Op-

posite was Whetumakurukuru as defence against the enemy coming downstream. The main pa in this defense system was Pahinui, located downstream at the end of the river flats on the south side of the stream. On the northern side and opposite Pahinui was another sentinel pa named Tirikohu. Both sites defended the approach to the river flats from the coast. Throughout the year all the pa were manned, as were the lookout points like Tekateka and Pawakatutu, which commanded a view of the coast line and region north. Tradition has it that Pawakatutu also served the purpose of protecting from poachers, the wharekiri or "landing" areas where kiwi were hunted and the eggs collected (B18:57).

The effectiveness of this system of defence is suggested by Polack's visits to Waipoua (B18:194-6).[15] On both occasions he was greeted by shouts and gun-shots long before they reached the main settlement (ibid:195). At that time the settlement was likely to have been Pananawe.

Inland from the flats and lying between the pa, the lower slopes of ridges and river terraces were intensely cultivated and the produce stored in rua (storage pits). The settlement pattern thus encompassed three zones; the pa on high ridges along the valley edge with their commanding views protecting the settlement against surprise attack; the lower slopes and river terraces with their storage pits; and the river flats on the coast. The people moved between these resource areas and those afforded by the forest and sea.

The intensity of gardening was recorded by Polack when travelling by canoe from the coast to the settlement (ibid:209-210). He observed the neatness and regularity of the garden plots and the great variety of crops including the indigenous kumara and taro and introduced vegetables like Indian corn, melon, pumpkin and turnip. He took note of the karaka groves, the steamed fruit of which were served at a feast given by his host Parore. His description of the provisions is a good indication of the extent of mahinga kai resources:

> The provisions consisted of about three thousand baskets of potatoes, kumeras [sic], water melons, steamed kernels of the karaka maori, tarro [sic], preserved kou, or turnips; tawa, or dried codfish, and shell-fish: the baked roots of the Ti [cabbage tree] palm ... (ibid: 213)

The shellfish mentioned may have included the poua, a large sized pipi with the flavour of toheroa. After harvesting on the coast it was brought back to be washed in a spring before consumption. The name Waipoua is derived from this treatment. On another occasion Polack was fed three different kinds of shellfish, "the large muscle, or uru roa; cockles, or the toi; and iwi rou" (ibid:205). The Waipoua river entrance with its rock formations was navigable and abounded in paua, kutae (mussel), kina (sea egg), pipi, poua, pupu, koura (crayfish) and many species of fish.

While the beach provided a natural highway, journeys to the coast for kai moana followed some well worn tracks such as that which passed by the wahi tapu of Haohaonui and others indicated on figure 4 (see above, p 14). Kawerua, overlooked by the pa Puke-nui-o-Rongo, was a favourite fishing location, where people camped for short periods of time. From this rocky foreshore was harvested paua, kina, and karengo (seaweed).

As Polack observed, the forested mountains inland were intersected by winding paths which were discernible at a great distance, "though only a foot broad" (ibid:195). Some no doubt led to pigeon landings like Kohuroa where the birds were trapped during the season of the miro and where varieties of fern like the pohue and tasty korau were harvested. In addition to delicacies like the forest rat, the forest could be harvested for the fruit of the kiekie (climbing plant), the patangatanga.

South to Maunganui Bluff with its panoramic views past Hokianga in the north and Kaipara in the south, lay the rocky reef of Patapata, famous for the richness of its mussel beds and as a food and resting place for war parties. Some camped there for two or three days feasting on mussels and the succulent toheroa. At a short distance south lay Manuwhetai, part of it a burial ground of ancient times and part given to seasonal fishing camps where the toheroa grew in abundance. This and other shell fish gathered along the coast complemented the ubiquitous kumara and other tubers grown in the cultivations surrounding the inland pa of Patenga and Whangaiariki. Inland the rich alluvial soils of Kaihu were similarly cultivated while from the lakes of Taharoa, Kai Iwi and Waikere a rich harvest of eel provided for a balanced diet.

On the basis of the evidence, the river valleys provided a rich and varied food source which the inhabitants exploited according to the season or period of optimum growth. Although, as Polack observed, the boundaries of cultivations were clearly defined by fences, feuding frequently occurred over less well defined mahinga kai, like rat runs or birding trees. Beyond the kainga, pouwhenua and rahui were erected at various points on the boundaries between competing groups. Tiopira and Te Whata, for example, clashed over the rahui erected by Ngai Tu at Motuhuru. The rahui put up by Taoho at Maunganui was contested by Parore, Tirarau, and others (D27:3). On a grander scale, the resources of an entire community were the hidden agenda of full scale wars, waged across well marked topographical boundaries defined in place names.

Taunga tarawahi

The late E D Nathan said that the rohe potae (territorial umbrella) over which Te Roroa held mana whenua ranged from Waimamaku to Tuawai and Pouto.[16] Within these boundaries the land was marked by named topographical features, made more indelible by stories of

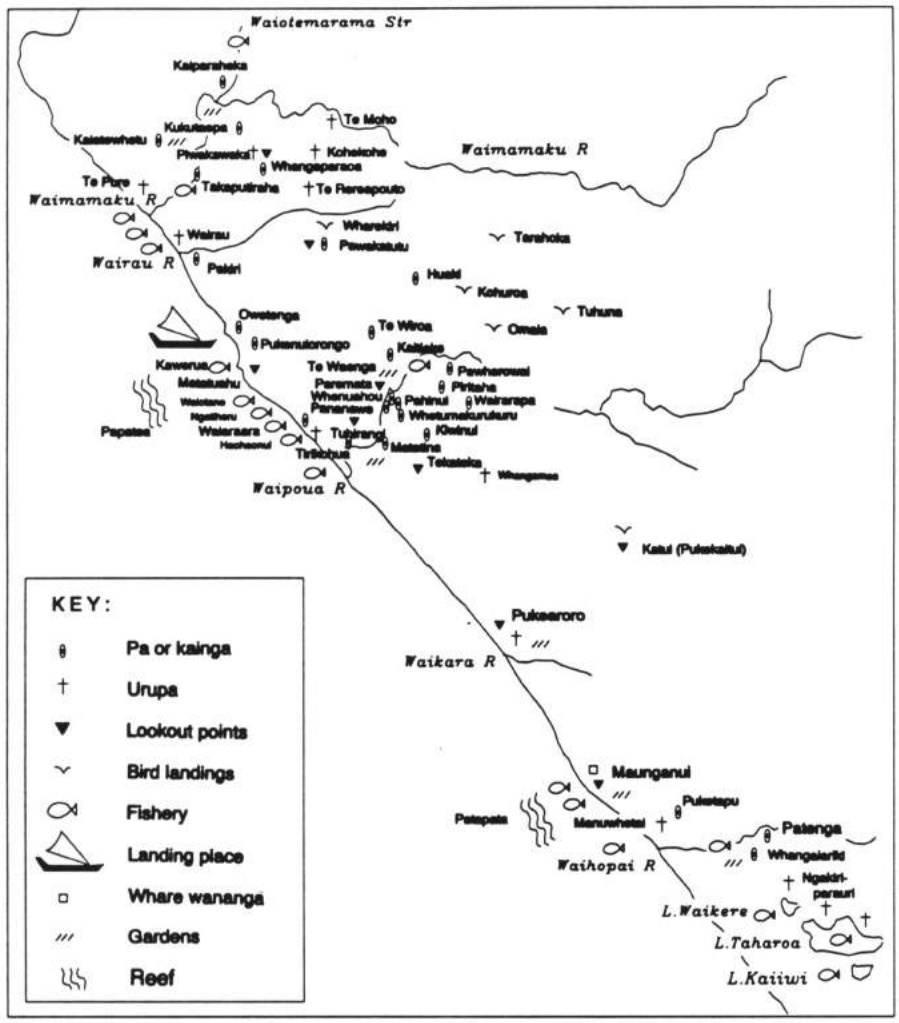


Figure 5: Maori place names

tupuna involved in the naming process.[17] From north to south the "signalling" points Piwakawaka, Pawakatutu, Pukekaitui, Maunganui, Pouto-o-te-Rangi, Maunga raho and Tokatoka were prominences on the "oral map" which served to keep the history of the people alive.

Tohe, Manumanu's tupuna, is credited with the naming of many place names not only in Te Roroa territory, but also in Tai Tokerau. Traditions say that Tohe, an old man, pined to see his daughter Raninikura before his death and determined to make the journey to the northern Wairoa to see her. His people attempted to dissuade him only to be rebuffed by:

> Whakarua i te hau e taea te karo
> Whakarua i taku tamahine
> Taea Hokianga, a hea, a hea.
> Ko ta koutou e kapo ake ai ko taku Wairua.
>
> It is possible to seek shelter to avoid the wind.
> But to repress my longing to see my daughter is not possible.
> And, I am prepared to venture to Hokianga or wherever.

> All I can offer you in consolation is that you catch my spirit when it returns. (A21(a):1)

Leaving Reinga, Tohe, accompanied by his servant Ariki, journeyed down the Ninety Mile Beach named for its length Te Oneroa a Tohe. On reaching Waimamaku, he thought the river resembled another in the far north called Waimamaku-nui-a-Rua and so conferred the name. Further south he gave the name Wairau to the stream which he found dammed by fallen leaves. Maunganui Bluff was named after the Maunganui along the Ninety Mile beach. Before reaching Maunganui itself he ascended a neighbouring peak which he called Maringinoa after shedding tears in the knowledge that he would never see his homeland again. Both Manuwhetai and Whangaiariki, subjects of this claim, were also named by Tohe.

In whaikorero (oratory), whakatauki (proverb) and waiata, the "oral map" of Te Roroa has continued to make meaningful the boundaries of the rohe whenua and domain of tupuna like Tiopira Kinaki:

> Ko Maunganui te maunga
> Ko Kawerua te moana
> Ko Waipoua te awa
> Ko Tiopira te tangata
>
> Maunganui is the mountain
> Kawerua is the ocean
> Waipoua is the river
> Tiopira is the man.

In his evidence, Craven Tane, great grandson of Hapakuku Moetara, further emphasized the point. Following his comment that "Maunganui to me is the centre of a whole compass that goes to the house of Ngapuhi and goes to the house of Ngatiwhatua", he recited:

> Maunganui looks towards Pihanga Tohora.
> Pihanga Tohora look towards Ramaroa.
> Ramaroa look towards Whiria, Ki te paiaka o te Riri,
> Te Kawa o Rahiri. (To the impregnable pa of Rahiri)
> Whiria look towards Panguru, to the spotted tree which stands on the West Coast.
> Panguru look towards Rakau Mangamanga
> Rakau Mangamanga, look towards Tokerau
> Tokerau, look towards Manaia
> Manaia, look towards Tutamoe
> Tutamoe, look towards Maunganui
> Maunganui, look towards Tokatoka
> Tokatoka look back to Maunganui
> You continue on and you will reach Tamaki Makaurau.
> The speaking mountains of the elders are there. (A33:1-2)

All these mountains take on a special significance because of their association with tupuna of yore. On some mountains or the ridges below where tupuna built their defences, spilled blood in battle and fought to the death, lie the koiwi (bones) of some. The remains of

other tupuna lie buried in caves obscured from view and difficult of access (D17:4-5). The mana of death, and its spiritual complement tapu, had their own independent reality which were passed on to remnants of the body, places, persons and things. This remained true for areas where tupuna once resided, cultivated land, developed resources and buried the dead. This reality is conveyed in the Te Roroa whakatauki:

> Kei raro i te tarutaru, te tuhi o nga tupuna ...
>
> ... the signs or marks of the ancestors are embedded below the roots of the grass and herbs. (D27:5)

In the valleys, between the hilltops, beside the rivers and along the coast, the tapuwae (footprints) of the ancestors remain poignant reminders that time past is time present is time future.

He whakaoriori (a lullaby)

(Ngati Whatua–no Taoho)

E Rae tangi kino i roto te wharekino,
Me kohanga taua, e i,
Ki te kohanga Taputapuatea
Hei pa tu hau, e,
Hei whakarongo tai e tangi haere ana
I raro Maunganui, e i.
Kia marama te titiro pukohu whenua, e i,
Kia whakarongo ake taua, e,
Nga patu e taka i te nui Ati Puhi,
Ka kai putunga taua, e,
ki te riri.
Kei hea ra, e, a Te Huki
Te tangata i whakamaua ai, e
i te whakowhai,
Koko atu a Puriri.
Me aha koe, a tama, e i,
He hurihanga waka taua, e i,
Ko Mahuhu ki te wai?
Pokaia i te tuanui o te whare o Nukutawhiti, e i,
Ka marama te ata.
Kei runga Te Koikoi i a Rona, e i,
Kei te marama nui,
Kei te marama hua ki te pae ra,
Ehara ko matua hautere tena
Kei te ra e mau ana, e i.
Ko tou mata tena, ko te mata o
Tawhaki
I tuhia ai, rapa ana i te rangi
Tukutuku wai karere, e i.
Kia whaia atu te reo kirikiri,
Whakarei te whatu, e,

To tapuanui ka haruru ki raroa na i

Ko wai rawa he tangata hei noho mo te whenua, e i?
Ko Tuturiwhatu, ko Torea
Ko nga manu matai whanga o te uru, e i.
Me puhata koe te ngaru moana nui
E ngunguru mai nei
Me aha, e tama e, he turanga riri,
He turanga pahekeheke;
Ka pa taua, e i,
Ko te toa whenua i to matua i a Tuoho,
E kore e taea e taua
Mahi atu taua ki te tukou no kai, e,
E nohoia mai ana e te muharu;
Mahi atu taua ki te tukou no Rongo, e,
E nohoia mai ana e te hotete.
Kahore ia nei, e, ko te tohu o te mate.
Whakapiri noa ake taua, e,
Nga rakau tuhaha i a Karawi ra, e,
Hei hunanga atu mo Reremura
Ki reira nei, na i.
E kore koe e ora, e i,
I nga hua o te tiu e aia nei
Te puputara ki uta, na i.

O Rae', crying so fretfully within the house,
Let us two nestle closer,
As if in the haven of Taputapuatea,
A shelter against the wind,
While we listen to the roar of the sea
Below Maunganui,
We might then see clearly the land mist,
As we listen, we two,
To the rattling weapons of the many of Ati Puhi
As chiefs rally their forces, for battle.
Where is he, Te Huki,
The man who was destined for the blood-like kowhai waters
As multitudes gather within Puriri.
What to do about you, O son,
In the overturning of war canoes
Of Mahuhu itself, in the deep waters?
Hurry enter the doorway of the house of Nukutawhiti,
In the light of dawn.
Te Koikoi has now risen to vie with Rona
There is light all about,
There is a bright light o'er yonder horizon
that (you see) is but a lightsome cloud
Fastened there by the sun.
Your face is that of Tawhaki

Which shines forth and sets the heavens alight
As the call to war goes forth,
Let your gritting voice be heard and obeyed
In the glorious slaying (of men)
As your renowned footsteps resound in the North

What man will survive live in your land?

There will be Tuturiwhatu and Torea,
The sentinel birds of the Western inlet,
There you may be set adrift
on the great ocean wave
That roars close by
There is nothing else, O son, in times of war,
It is indeed a slippery trail,
If we two only had
The warrior of the land, your uncle Tuoho
Alas, we are denied (his help)
If we were to grow the tukou for food,
The muharu will bide his time;
If we were to grow the tukou for Rongo,
The hotete will bide his time.
There is naught else but omens of death,
Let us in our plight seek refuge
Among the giant trees with Karawai yonder,
The hiding place of Reremura
When he is thereabouts
You will not otherwise survive
The swirling winds that blow
The puputara aground upon the shore.[18]

References

1 E D Nathan in Michael Taylor and Annetta Sutton "Waipoua State forest 13 archaeological project, stage one report submitted at the completion of archaeological contract no 13", unpublished New Zealand Forest Service report, October 1985, p 4.

2 ibid

3 ibid

4 *Report of the Waitangi Tribunal on the Orakei Claim* (Wai 9) (Wellington, 1987) p 11

5 When Manumanu and his kinfolk left Muriwhenua, he may well have been following in the path of some splinter groups of Mahuhu origin, who from defeat, loss of mana or other circumstances sought to escape the instability of the north. There the Ngati Awa of Maatatua had become formidable foes of Mahuhu groups, Te Aupouri and Te Rarawa–Ruanui's people–and the descendants of Nukutawhiti (D11:5). Disputes and warfare arose from competition over the best living spaces, accumulated rivalries following affronts by one group to another and the demand for utu to equalise relationships. At some time during this turbulence, the Nukutawhiti line was joined to Puhimoanaariki of Maatatua sowing the

first seeds of the Ngapuhi confederation (Jack Lee *Hokianga* (Auckland, 1987) pp 18-19).

6 Called Ngati Patu at the time, they were the uri of Tumoana who had captained the Tinana canoe to the Bay of Islands many generations earlier.

7 A E Brougham and A W Reed, revised by T S Karetu *Maori Proverbs* (Auckland, 1987) p 33. The authors comment: "In this saying, tuahine means female cousin rather than sister. The thought behind it is that if there is a quarrel between man and wife it is far better that they should belong to the same family, for if they came from different whanau there was always a danger of intertribal warfare resulting".

8 Garry Hooker, Te Roroa historian, and descendant of Tiopira did the most comprehensive research on Te Roroa whakapapa and supporting stories.

9 Nathan, see n 1, p 4

10 ibid: app 1

11 S Percy Smith *Maori Wars of the Nineteenth Century* (Christchurch, 1910) pp 24, 46. Smith's account of Moremonui fails to indicate that this was a battle for Te Roroa land on the west coast.

12 As a seer and poet, Taoho's skills are evident in the lullaby which he composed for his son Raeroa from the sanctuary of Taputapuatea on Maunganui Bluff. Using powerful and poignant imagery the lullaby encapsulates Te Roroa history down to recent conflicts with Ngapuhi, but leaves the audience to ponder future relationships.

13 S Percy Smith *The Peopling of the North* (Wellington, 1898) pp 58-59

14 Raymond Firth *Primitive Economics of the New Zealand Maori* (London, 1929) p 374.

15 J S Polack *New Zealand Being a Narrative of Travels and Adventures* ... (London, 1838) 2 vols

16 Nathan, see n 1, app 1

17 cf *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim* (Wai 17) (Wellington, 1988) p 55

18 *Nga Moteatea* (The songs: scattered pieces from many canoe areas) collected by A T Ngata and translated by Pei Te Hurinui Jones (Auckland, 1985) part 2, #158, pp 194-197. See also 11(a):96-97.

Kaupapa (Subject)

Te Tiriti o Waitangi—hei whariki (the Treaty as the mat)

The claim that Te Roroa have brought before us is made under the Treaty of Waitangi Act 1975 and its amendments. The Treaty is the whariki on which the claim lies. Our brief is to decide whether the various acts, policies and omissions by the Crown and its agents enumerated under the four heads of the claim are inconsistent with the spirit of the Treaty, not just its literal terms.

The Treaty is a living document not a fossil, "a blueprint for the future" rather than "a finite contract".[1] As our kaumatua, Sir Monita Delamere says, "what matters is the tapu of the Treaty".

A number of Treaty principles have emerged from previous Waitangi Tribunal reports and court decisions.[2] The *Principles for Crown Action on the Treaty of Waitangi* were set out by the Labour Government in 1989. Various principles have been distilled by the New Zealand Maori Council[3] and by the claimants in the final statement of claim (A1(i):4-6).

Bearing in mind the principles of the Treaty suggested by the courts and government, a claim by claim approach has been adopted by the tribunal in ascertaining Treaty principles relevant to each claim. Before we explain our own approach in dealing with Te Roroa's claims concerning breaches of the Treaty, we need to look at the Treaty itself and the circumstances surrounding it. To understand the Treaty it must be seen in both its historical and its cultural context.

Circumstances leading to the Treaty of Waitangi

The circumstances which led to the Treaty are well documented and will only be briefly summarised here. By 1840 about 2000 British subjects had settled in New Zealand, mainly around the Bay of Islands and the Hokianga. Most of them were traders and shore-whalers from New South Wales, evangelical missionaries from Britain and Roman Catholic missionaries from France. All of them needed more peace and security than the protection of friendly chiefs could provide.

The Maori population was declining due mainly to lack of resistance to diseases introduced by Europeans. The "musket wars" of the 1820s and 1830s took their toll. Tribes in contact with commercial shipping and missionary and trading establishments were eagerly responding to the opportunities of the local and Australian markets and producing provisions to exchange for European goods. Once the southern tribes as well as the northern tribes had acquired muskets, the arms trade

and musket warfare gradually subsided. Chiefs and people turned to peace and Christianity and learnt to read and write in their own language and acquired new knowledge and skills. Maori agriculture, trade and coastal shipping flourished. Maori were employed in the timber trade and whaling.

Chiefs were generally friendly and hospitable towards European visitors and settlers, selling them pieces of land to use and occupy in return for goods and services. Relationships between Maori and Pakeha were essentially equal and reciprocal.

In Maori terms this meant that both parties had a continuing obligation to give, return and receive. The obligation existed not only between individuals and groups but between human beings and the natural world. The idea of utu (reciprocity or making a return for anything given) was fundamental in Maori social life.[4] The hau (spirit of the gift) assured its return to maintain social prestige and for fear of supernatural punishment. Maori expectations of continuing obligations of both parties in business transactions conflicted with European expectations of bettering themselves and profit-making. Exploitative trades and industries conflicted with the continuing obligations felt by Maori to the natural world.

Conflicts and misunderstandings in cross cultural relationships as well as the lawlessness of men living beyond the control of their own government in a tribal society, led to incidents involving violence and bloodshed. In 1835 the first British resident, James Busby, persuaded some northern chiefs to sign a Declaration of Independence, form a Confederation of United Tribes and seek British protection. Britain recognised New Zealand as a sovereign independent state and the Queen promised her protection, but the population was too thinly dispersed and tribal differences were too strong for the confederation to develop into a settled form of government. Chiefly authority, occasional naval visits, a British resident and missionary influence were inadequate substitutes. More formal methods of political control were clearly needed.

When Sydney "land sharks" began to lay claim to extensive areas of land for speculation and the New Zealand Company despatched an agent to purchase large areas for systematic colonisation, the British government took steps to establish "a settled form of Civil Government" "to secure peace and good order". The Queen "disclaimed every pretension to seize the Islands of New Zealand" or govern them without first obtaining "the free and intelligent consent of the Natives". Captain Hobson was sent "to treat with the Maori for the recognition as Her Majesty's sovereign authority over the whole or any parts of their islands which they may be willing to place under Her Majesty's dominion".[5]

The Treaty and different understandings of it

Busby wrote the official English draft of the Treaty from "notes" supplied by Hobson and Freeman "in the treaty language of their day".[6] Henry Williams, with help from his son Edward, translated the English draft into missionary Maori, avoiding "all expressions of the English for which there was no expressive term in the Maori, preserving entire the spirit and tenor of tbe treaty".[7] Consequently there were two texts of the Treaty, the Maori text signed by about 200 chiefs at Waitangi on 6 February 1840, and the English text signed by 39 chiefs at Manukau and Waikato Heads which became the official version. About 540 chiefs signed altogether. Non-signers included powerful chiefs of inland tribes.[8]

Hokianga and Kaipara chiefs with whom Te Roroa had strong connections, such as Parore Te Awha, had signed the earlier Declaration of Independence. Accordingly there was already some familiarity with both signing a document proposing a formal relationship with the newcomers to their land and with the people, such as Busby, promoting it. Ngapuhi and Ngati Whatua, to whom Te Roroa were closely related, signed the Treaty at Waitangi on 6 February 1840; at Mangungu mission station on the Hokianga on 12 February 1840; and at Karaka Bay, Tamaki, on 4 March 1840. Te Roroa chiefs Te Pana, Wiremu Whangaroa and Hamiora Paikoraha signed at Mangungu[9] whilst Parore Te Awha's son, Te Ahu, was among the Ngapuhi signatories at the Bay of Islands.

Before describing the differences between the Maori and English texts of the Treaty, it is important to identify these Te Roroa chiefs. An outline was provided us by the claimants' tribal historian, Garry Hooker.

Te Pana, alias Te Pana Ruka, was the son of Te Whitu of Te Roroa ki Waipoua and Ngati Pou ki Waimamaku (C12:35). His mother, Taharua, was of the Ngapuhi hapu, Ngati Hineira ki Taiamai, being the daughter of Kaitara of Ngati Hineira by his Ngati Pou wife, Inu. Although Maori Land Court records indicate Te Pana still retained mana to land at Taiamai (Ohaeawai), he lived principally at Waimamaku and Waipoua and primarily identified with Ngati Pou and Te Roroa, as did his sons Peneti Pana and Ngakuru Pana. The mother of Peneti and Ngakuru was Inatauke, a woman probably of Te Rarawa descent. Although usually shown in Maori Land Court records as Te Pana, his descendants prefer to refer to him as Te Pana Ruka (Luke).

Wiremu Whangaroa was the son of Hukeumu of Te Roroa ki Waimamaku (C12:2-3; A4:431) and the principal chief of Te Roroa and Ngati Pou ki Waimamaku in the early nineteenth century (D3:100). The name Whangaroa was adopted by Wiremu to impress upon his people the necessity for revenge following the expulsion by Hongi Hika of Ngati Pou from Whangaroa in 1827. His father was a famous toa of Te Roroa. His mother's name is unknown.

Hamiora Paikoraha is said by some members of Te Roroa to have been a descendant of Taoho's uncle, Paekoraha (C12:2). The pou standing in the foyer of the Waitangi Tribunal offices, Seabridge House, Wellington, carved by Manos Nathan, represents Hamiora Paikoraha of Te Roroa.

The descendants of these signatories to the Treaty, and Parore Te Awha, were involved in the later transactions with the Crown, the subject of this claim. They therefore had an understanding of the Treaty and the "guarantees" for the Maori which it contained.

There were significant differences in meaning in the two texts of the Treaty.[10] In the first article of the Maori text the chiefs gave up entirely to the Queen forever all the government (kawanatanga) of their land. Kawanatanga was a missionary-coined word, probably associated with Governor Pontius Pilate in the New Testament, seen exercised by governors of New South Wales when some northern chiefs visited Sydney. In the English text the chiefs gave up to the Queen "all the rights and powers of Sovereignty ... over *their* respective Territories". The Maori word closest in meaning to sovereignty is mana. This was used in the 1835 Declaration of Independence but not in the Treaty.

In article 2 of the Maori text, the Queen agreed to give to the chiefs, the hapu and all the people, the full chieftainship (te tino rangatiratanga) of their lands, their settlements and all their property (taonga). In the English text, the Queen confirmed and guaranteed to the chiefs and people "exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties". To the Maori te tino rangatiratanga was absolute control according to Maori custom, a different concept from the possession of lands and properties guaranteed in the English version. Taonga included intangible as well as tangible treasures, a much more all-encompassing concept than the English concept of property. In the words of our kaumatua, the late Turi Te Kani:

> taonga is a part of rangatiratanga. To give rangatiratanga to a person it must come and develop from the people—it applies to all rights, conduct, whakapapa; how they have held treasures, all those things and relative to a tribe being rangatira. There cannot be rangatira without people. There are levels of rangatiratanga—you get to *top rangatiratanga*.

Again in article 2 of the Maori text the chiefs gave to the Queen the right to purchase those pieces of land which the proprietors might be willing to sell for such payment as might be agreed upon by the proprietors and the Queen's purchase agent. In the English text the chiefs yielded to the Queen the exclusive right of pre-emption over such lands as the owners were willing to sell at agreed prices. The omission of the word "exclusive" from the Maori text meant that it did not specifically rule out sales to private agents.

Article 3 of the Maori text was "an arrangement for the consent to the government of the Queen". The Queen would protect all the Maori

people of New Zealand and give to them the rights "the same as her doings" to the people of England. In the English text the Queen extended to the Maori her royal protection and imparted to them all the rights and privileges of British subjects. Maori and English ideas of racial equality embodied in this clause were different. The British believed the Maori would be equal when they became British. The Maori believed they would be equal but different.

The different meanings of the two texts led to different understandings of the Treaty by the two parties who signed it. The Maori understanding was strongly influenced by what was said by the missionaries and officials when the Treaty was being negotiated, namely, that the Queen desired to protect them and establish a government that would regulate the relationships of Maori and European. Seen in biblical terms the Treaty was a sacred covenant and, in traditional terms, a kind of gift exchange, a bargain or a contract. In return for giving up to the Queen the governorship (kawanatanga) of their lands, they would receive royal protection. The Queen "in her kind thoughtfulness to the chiefs and hapus" wished "to preserve to them their chieftainship [te tino rangatiratanga] and their land". To maintain peace with them and quietness she thought it right to send a chief as a negotiator that they might consent to her government. She desired to establish government that evil might not come to Maori and Europeans who were living without law. One of the consequences of the Treaty would be, in F E Maning's words:

> that great numbers of *pakeha* would come to this country to trade with us, that we should have abundance of valuable goods, and that before long there would be great towns, as large as Kororareka, in every harbour in the whole island.[11]

The official British understanding of the Treaty was complex and at first unclear. On 21 May 1840 Hobson had proclaimed the "full sovereignty of the Queen over the whole of the North Island" on the grounds of cession by the Treaty of Waitangi, and the South Island and Stewart Island on the grounds of discovery, and again on 5 June on the grounds of cession by treaty. The May proclamations were gazetted in London on 2 October 1840.[12] Thus legally British officials argued, New Zealand became a British colony by proclamation (an act of state) not treaty (cession). British sovereignty applied to all Maori, non-signers as well as signers of the Treaty. The Treaty itself was the means by which Hobson obtained the political consent of confederated and independent chiefs to cede the whole country to the Crown.

Tbe Treaty was further seen by humanitarian British officials as a blueprint for a policy of protecting Maori from the inevitable consequences of British settlement, loss of land and depopulation. It recognised that all the land rightly belonged to the Maori, that there was no waste land for the Crown to appropriate but that the Crown had the exclusive right to purchase any land the Maori were willing to sell. It

conferred on the Maori the rights and privileges of 8ritish subjects. But for an interim period, it recognised the necessity to protect tino rangatiratanga and Maori customs as long as they did not infringe the laws of humanity.

Changing circumstances after 1840

As one historian has observed[13], the chiefs were only told one side of the story, that the 8ritish intervened mainly to protect them. The other side of the story was that the British were safeguarding their own interests, trade, settlement and investment. The Crown's exclusive right of pre-emption would raise revenue by re-selling land purchased cheaply more dearly. The Maori would be brought under British law and British institutions. Indirect rule through Maori chiefs and in accordance with Maori customs was a temporary measure. When the Maori had been assimilated New Zealand would become self-governing. One people would be under one system of parliamentary government.

The early governors, 1840-1845, were assisted by a protector of aborigines, but in 1847 Governor Grey took over personal control of native affairs and stood between Maori and settler. Like other Europeans of his day, he believed in the superiority of British Christianity, commerce and civilisation. In his view, the Maori were intelligent "semi-barbarians" who were being assimilated at a rate unexampled by other native races in history.[14] Therefore New Zealand should be granted self-government. Under the 1852 Constitution Act, political power and responsibility were transferred to the settlers. As most Maori did not individually possess the required property qualifications to enrol as voters they were virtually disenfranchised.

Many Maori still lived beyond the reaches of effective government and law enforcement in Maori districts. 8eginning with organised resistance to land-selling in the late 1840s and the raising up of King Potatau I in 1858, Maori began to establish their own forms of self-government and self-administration:

> Listen all men, the house of New Zealand is one; the rafters on one side are the Pakehas, those on the other, the Maori, the ridge pole on which both rest is God; let therefore the house be one. This is all.[15]

At the Kohimarama conference of friendly chiefs in 1860, Governor Gore Browne's assertions that treaty promises had been faithfully observed initiated lengthy debate over the Treaty. Donald McLean, the native secretary and chief land purchase commissioner, emphasised its protective nature. He avoided any reference to the settler government's growing desire to assert 8ritish sovereignty once and for all over all Maori. The conference unanimously resolved to recognise the Queen's sovereignty and union of the two races and uphold the Treaty as a solemn covenant.[16]

Leading settlers, missionaries and judges continued to debate the Treaty in the 1860s. In the prevailing climate most Europeans rejected the Maori view that under the Treaty they retained their rangatiratanga and mana. The wars of the sixties were fought in Taranaki, the Waikato and the East Coast to assert British sovereignty and settler dominance.

The chief instrument of the settlers' policy of assimilation was the Native Land Court, established in 1865 to ascertain ownership, grant certificates of title and regulate the disposal of Maori land. Under this system, Maori customary rights to land guaranteed in the Treaty were replaced by legal titles derived from the Crown (A19:annex 1). Other instruments of assimilation were native schools, to provide education in English, four Maori seats in Parliament and resident magistrates to enforce the law in Maori districts. These measures would "smooth down their dying pillow" (A19:66). Only a few philo-Maori upheld Maori treaty rights and the government's duty to protect them.

In 1877 the chief justice, Sir James Prendergast, judged the Treaty of Waitangi to be "a simple nullity" as an instrument of cession.[17] For almost a century, with few exceptions, only Maori rights deriving from acts of state, not from the Treaty, were legally enforced by the courts. Treaty rights and duties were not binding on the Crown because the Treaty was not recognised by statute. Throughout these years it was the Maori who continued to believe in the Treaty as a sacred covenant which the Crown was bound by honour and good faith to uphold.

In the aftermath of the wars of the sixties and the assertions of British sovereignty and parliamentary supremacy, the kotahitanga movement emerged, seeking recognition for Maori parliaments based on the Treaty of Waitangi and s71 Constitution Act 1852 which empowered the Crown to set aside Maori districts where Maori law, customs and usage should be observed insofar as they were not repugnant to the principles of humanity.

Strong support for Maori parliaments came from Ngati Whatua and Ngapuhi chiefs with whom Te Roroa were closely associated. Among them was Paora Tuhaere who (as we shall see) represented Tiopira Kinaki in the Native Land Court when the title to Maunganui-Waipoua was investigated in January 1876. His parliaments at Kohimarama in 1879, 1880 and 1881 examined the Treaty to keep it in "living remembrance" and to understand "the real intent and meaning of the terms". The Treaty was seen as "a covenant of peace and unity, satisfying man's temporal welfare" and an "essential bond of unity between the races".[18] Some of the concerns of speakers were the same as those stated in the Te Roroa claim, a good illustration of how Maori understanding of the Treaty as a sacred covenant, solemnly binding on both parties to it, has endured for almost 150 years.

Te tunga o te roopu whakamana i te Tiriti o Waitangi (our stance)

Our approach to reaching conclusions and making recommendations on the Te Roroa claim in keeping with the tapu of the Treaty is hased on the recognition of the interface of two different cultures, Maori and Pakeha. Maori custom is flexible and changing; the Pakeha law is relatively inflexible and entrenched. Conflict between the two systems impedes adaptation and synthesis.

To reach a common understanding of the Treaty itself, having regard to the Maori text and the English text and the need to reconcile the differences between them in a present-day setting, we have looked at the Treaty as a whole and let it speak. We have used the vital essence of the Treaty as our yardstick.

Our stance is that:

(1) The Treaty is an agreement made between two parties, one of which had an oral culture, the other a literate culture. To understand the meaning of the Treaty, we have to consider what was said and agreed to as well as what was written down. We further have to consider whether subsequently it was acted on or acquiesced in and by whom. The Treaty, as an oral arrangement, can only be understood in the context of the debate among Maori that preceded its signing. The Treaty as a written document can only be understood in the context of other sources and documents, such as Lord Normanby's instructions to Hobson.

(2) The Treaty is essentially a contract or reciprocal arrangement between two parties, the Crown and Maori, a ratification of the terms and conditions on which Europeans were allowed to settle in the country. It sets down the terms on which the Queen was to establish a government to maintain peace and deal with lawlessness. In return for ceding sovereignty to the Queen, the chiefs, the hapu and all the people were guaranteed their tino rangatiratanga. It involves continuing obligations to give, receive and return.

(3) The Treaty is a sacred covenant entered into by the Crown and Maori "based on the promises of two people to take the best possible care they can of each other" (to quote Bishop Manuhuia Bennett, a tribunal member). Both parties have a common moral duty to abide by the Christian and traditional Maori values it embodies.

In examining the actions, omissions, policies and practices of the Crown and their outcomes, we have not related each specifically to relevant principles of the Treaty as the claimants have done (A1(i):56-57). Rather we have asked ourselves: were the actions of the Crown fair, reasonable and proper bearing in mind the tapu of the Treaty and the Crown's fiduciary duty to act honourably and in good faith to the community as a whole, Maori and Pakeha.[19]

The fiduciary duty of the Crown extends to agents of the Crown in their official capacities, as well as to individuals. For purposes of this claim, we regard the Native Land Court as an agency of the Crown by reason of the court's powers and authority being conferred by statute. Notwithstanding the separation of powers in administration, it is an arm of the Crown and of the State. We also regard the New Zealand Historic Places Trust as an agency of the Crown, given its statutory purposes and functions.

Our task has been to inquire into the actions and policies of the Crown and its agents in accordance with the tapu of the Treaty not the public mores of the time. Whakamana te Tiriti e (now is the time to give strength to the Treaty).

References

1 "The Ngai Tahu Report 1991" (Wai 27) 3 *WTR* (Wellington) pp 414-415

2 See discussion of these principles in the tribunal's report "The Ngai Tahu Report 1991" (Wai 27) 3 *WTR* (Wellington) chapter 4

3 Claudia Orange *An Illustrated History of the Treaty of Waitangi* (Wellington, 1990) p 122

4 Raymond Firth *Economics of the New Zealand Maori* (Wellington, 1959) p 421. For a discussion of reciprocity and its relevance to treaty obligations see Martin O'Connor "Honour the Treaty? Property Right and Symbolic Exchange" (Department of Economics Discussion Papers, University of Auckland) no 11, March 1991

5 M P K Sorrenson "Treaties in British Colonial Policy: Precedents for Waitangi" in *Sovereignty and Indigenous Rights: The Treaty of Waitangi in International Contexts* ed W Renwick (Wellington, 1991) p 29

6 *Report of the Waitangi Tribunal on the Orakei Claim* (Wai 9) (Wellington, 1987) pp 138-139

7 R M Ross "Te Tiriti of Waitangi: Texts and Translations" *The New Zealand Journal of History*, vol 6, no 2, October 1972, pp 138-139

8 Claudia Orange *The Treaty of Waitangi* (Wellington, 1987) chapters 3 & 4

9 The three signatures are identified as Ngapuhi in Orange, *An Illustrated History*. They are numbers 89, 132 and 147

10 See Orange *The Treaty of Waitangi* pp 265-266, for the translation from the original Maori cited in the following paragraphs. This was done by T E Young, Native Department, 1869. There is a new translation by I H Kawharu in *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi* edited by I H Kawharu (Auckland, 1989) pp 319-321. For the English text and the Maori text see the first schedule of the Treaty of Waitangi Act 1975. The Maori text was revised by s4 of the Treaty of Waitangi Amendment Act 1985.

11 F E Maning *Old New Zealand .. and a History of the War in the North... by a Pakeha Maori* (Auckland, 1948) p 217

12 "The Ngai Tahu Report 1991" (Wai 27) 3 *WTR* (Wellington) pp 412, 421; Ian Wards *The Shadow of the Land* (Wellington, 1968) p 48

13 Peter Adams *Fatal Necessity, British Intervention in New Zealand 1830-1847* (Auckland, 1977) p 14 and p 238 ff

14 James Rutherford *Sir George Grey KCB 1812-1898: A Study of Colonial Government* (London, 1961) chapter 15

15 L S Rickard *Tamihana the Kingmaker* (Wellington, 1963) p 73

16 see Orange *The Treaty of Waitangi* p 148

17 Wayne Attrill "Aspects of the Treaty of Waitangi in the Law and Constitution of New Zealand" unpublished LLM thesis, Harvard Law School, 1989, p 41

18 see Orange *The Treaty of Waitangi* pp 192-193

19 The functions of the tribunal are described in the long title, preamble and s5 Treaty of Waitangi Act 1975. The intentions of the Act are expressed in its long title as "to make recommendations on claims relating to the practical application of the Treaty", and in the preamble:

> to make recommendations on claims relating to the practical application of the principles of the Treaty and, for that purpose, to determine its meaning and effect and whether certain matters are inconsistent with those principles.

The tribunal's functions are more specifically described in s5: "the Tribunal shall bave regard to the two texts of tbe Treaty" (English and Maori) and shall "determine the meaning and effect of the Treaty as embodied in the two texts".

The jurisdiction of the tribunal in s6 of tbe Act is to hear claims by Maori that Crown policy, practices, acts and ommissions have been or are "inconsistent with the principles of the Treaty".

We have applied the Treaty in its entirety to the evidence in the claim. We have taken the word "principles" in the preamble to mean "fundamental source" or "fundamental truth as basis for reasoning" (*Concise Oxford Dictionary*, 7th ed). We have not isolated "Principles". To assist us, we have kept in mind what was fair, having regard to tbe continuing obligations under the Treaty; what was reasonable, having regard to the actions of the respective parties; and what was proper, having regard to the outcome between both parties.

Take 1

Te Ao Hou (The New World)

1.1. Tauiwi (Newcomers)

The Te Roroa claim is a direct outcome of the responses of four leading rangatira to the expansion of European trade, settlement and Christianity in their areas in the nineteenth century. Their names are Parore Te Awha, Te Rore Taoho, Tiopira Kinaki and Hapakuku Moetara. Brief stories of their lives up to 1875 are included here as they illustrate the movement of people from community to community in pursuit of European trade as well as mahinga kai. Furthermore they illustrate early Te Roroa initiatives in selling land and the extent to which they were willing to sell. By the 1870s, each of these chiefs was based in the respective kainga from which he exercised his mana over the territory of this claim.

Te Roroa occupied the hinterland of two of the northern harbours visited by commercial shipping from the late 1820s, the Hokianga and the Kaipara. A lively shore-based trade in kauri timber, pork and potatoes and ship building developed in the Hokianga in the 1830s and was expanding into the Kaipara by 1840. Wesleyan mission stations were established in the Hokianga at Mangungu in 1828, at Pakanae in 1837 and at Tangiteroria in the Kaipara in 1836. French Roman Catholic missionaries arrived in the Hokianga in 1838.[1] As Te Roroa had familial connections to both areas, contact with Europeans prior to the 1870s "would have been unavoidable, though in general contact tended to be restricted to those of rank in Te Roroa" (B34:att 1).

The most devastating development in the early years of European contact was the intensification of rivalry, shifting alliances and warfare between Ngapuhi and Ngati Whatua and their hapu, not only for traditional purposes but for the lion's share of the European trade. The greatest defeat, inflicted on Ngapuhi, was at Moremonui in 1807. Among those who escaped was Hongi Hika. He became the leading musket trading chief in the Bay of Islands, and embarked on a number of successful war expeditions against the southern tribes. In 1819 a group of Te Roroa led by Tuwhare, son of the warrior chief, Taoho, joined an expedition south to Te Whanganui-a-Tara and the Wairarapa. In 1825 Hongi avenged Ngapuhi's defeat in the battle of Te Ika-a-Ranganui. Both sides suffered heavy losses, but Hongi's party was victorious. Ngati Whatua were captured or fled.

Although only two Te Roroa chiefs were at Te Ika-a-Ranganui and there were no Te Roroa casualties, "Te Roroa and N'Whatua were one"

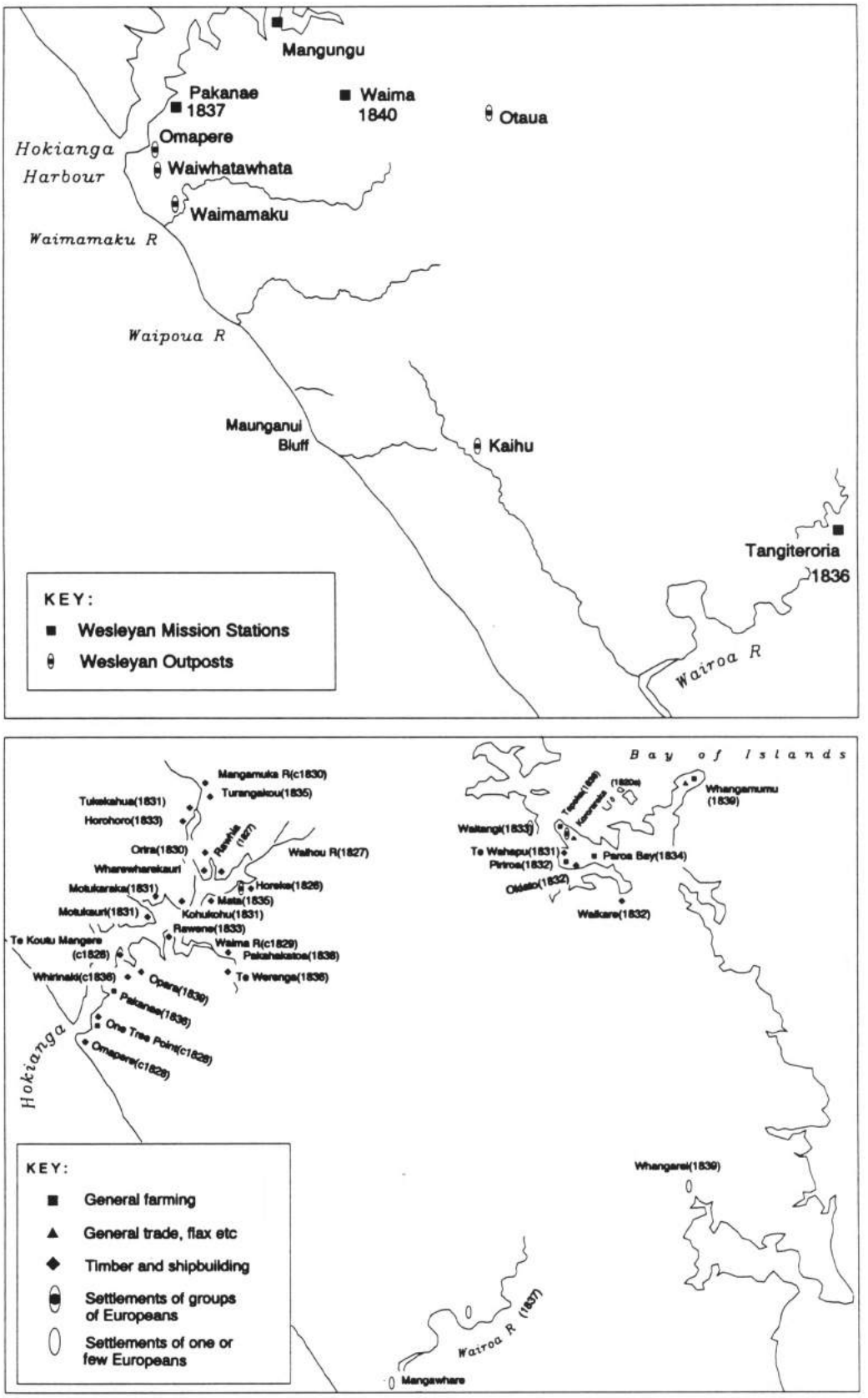


Figure 6: Wesleyan missions and European trade and settlement. *Source:* Centennial historical atlas map collection, Cartographic collection Alexander Turnbull Library, Wellington; A H McLintock ed *An Encyclopaedia of New Zealand* (Wellington, 1966) vol 2 p 44

(A4:433). Following the defeat of Ngati Whatua, Parore Te Awha, a Ngapuhi relative of Te Roroa, later claimed that he protected a party of 70 Te Roroa men, women and children at Kaihu and they all went to live at Waipoua (E2(a):14). The main body of Te Roroa under Taoho went to their kainga at Waimamaku and stayed there for many years. With them was Taoho's son, Te Rore Taoho, and grandson, Tiopira Kinaki.

Parore Te Awha was born at Mangakahia about 1795.[2] On his father's side he was descended from Te Ponaharakeke, of Ngati Rua-Ngaio hapu ki Whangarei, a renowned Ngapuhi chief. His mother, Pehirangi, was a granddaughter of Whakakaaria of the Ngai Tawake and Ngati Tautahi hapu of Kaikohe and Ngapuhi, and was a second cousin of Hongi Hika. As a consequence of disputes between the descendants of Toa's first wife, Waitarehu, and his third wife, Te Hei, Parore's grandfather had been driven out of Waipoua and had gone to live at Mangakahia. His reduced circumstances gave rise to the pepeha, "Te Kuihi kai raupo" (the pukeko eating raupo) and his people became known as Te Kuihi.

In childhood, Parore was taken to Kaihu, and later, for safety, to Kaikohe. By 1821 he was living in Whangarei with bis wahine matua, Tawera, daughter of the warrior chief, Kukupe of Te Kuihi, and half-sister of the toa, Te Tirarau and Te Ihi who supported Hongi Hika, and sister of Taurau Kukupa. After participating in the 1821 Ngapuhi taua to Tamaki and Thames which led to retaliation, Parore, with his wife and father-in-law, moved to the Waipoua valley. But they were not welcomed by Te Roroa who were then living principally at Maunganui Bluff and Opanake. Indeed their chief, Taoho, set up a rahui at Maunganui Bluff as a boundary mark between the two groups.

In 1825, Parore was warned of a pending attack by a Ngapuhi taua on Ngati Whatua ki Kaipara and went along the beach to Te Kopuru where a hui was held and Ngapuhi were dissuaded from invading Te Roroa territory. Whether Parore was at Te Ika-a-Ranganui is unclear. But after Ngati Whatua were defeated in 1825, he is said to have remained at Waipoua "principally on account of Hongi's mana".[3]

Although Parore participated in Pomare's ill-fated raid in Waikato in 1826 and the Girls' War in the Bay of Islands, he was more a trader than a warrior. J S Polack who visited his pa, Te Kauri, at Waipoua in 1832, found him "in the prime of life, possessing a countenance remarkably pleasing; his stature was tall ... he had an air at once noble and dignified, from the habitual exercise of authority".[4] He was engaged in the flax trade at Kaihu and the spar trade in Hokianga and keenly desired to have Pakeha residing in his settlements for trading purposes. Although the people at Waipoua had acquired iron, cloth, tobacco and muskets and were growing introduced crops which they desired to exchange for trade goods, Waipoua was too isolated to become a trading centre. One reason Parore moved to Kaihu and tbe

northern Wairoa may well have been to grow crops and participate in the Kaipara provision and timber trade.

Parore's move to Kaihu is said to have been a consequence of his being involved in a fight with Te Roroa at Waiwhatawhata over a woman about 1835, during which Maratea was killed. It was Maratea who had shot Hongi Hika in 1827 causing his eventual death at Whangaroa on 3 March 1828. Maratea had been living at Pakanae under the protection of the leading chief of the south Hokianga, Moetara Motu Tangaporutu, of Ngati Korokoro. Parore withdrew to his pa at Waipoua which was attacked in retaliation, but after one day's fighting Moetara made peace. About a year later, in 1836, Parore left Waipoua never to return (A4:422-434).

With the spread of peace and Christianity, Ngati Whatua, who had fled or been captured after Te Ika-a-Ranganui, gradually returned home. Waimamaku was regularly visited as an outpost by Wesleyan missionaries from Pakanae. Baptised Maori teachers converted people in the Kaipara before a mission station was opened. Outposts such as Kaihu were visited regularly. Parore and 200 others were converted in 1839.

Te Roroa living in the south Hokianga and Waimamaku returned unmolested to Waipoua and Kaihu. Among those who returned to Kaihu was Te Rore Taoho, uncle of Tiopira Kinaki. Both uncle and nephew became contestants against Parore Te Awha in future land deals in the area.

Te Rore Taoho, son of Taoho and his second wife, Koata, was born about 1810 at Pokapu, Taoho's pa on the upper Kaihu stream, from which his mahinga (places where food is produced) were worked (E2(a):157). "A wanderer very much given to war" (B4:37), he was at Kaihu when Te Ika-a-Ranganui was fought, then for some years at Waimamaku and Waipoua. But he returned to Kaihu several times to hold it against Parore's attempts "to get it" (E2(a):157-159, 163). Opanake became his permanent base and he became the leading chief in the upper part of the Kaihu valley. He dug gum at Maunganui, and before the time of the Waikato war, put 200 gum diggers from the Hokianga on the land (834:att 1; E2(a):159).

Tiopira Kinaki was the son of Te Rurunga and Te Rore Taoho's half sister, Te Taua (A4:431). He was born about 1819-1820 at Tarawapoaka, Kaihu, a kainga of his maternal grandfather, Taoho. His father was killed at Poneke (Wellington) on Tuwhare's expedition (E2(a):157) and his early education was undertaken by his grandfather, Taoho, as befitted a child of high rank. After they moved to Waimamaku he almost certainly came under the influence of the Wesleyan missionaries, learnt to read and write in his own language and was baptised "Tiopira" (Theophilus).

As a youth he was present at Waiwhatawhata when his maternal uncle was slain (A4:432-433). After Parore Te Awha left Waipoua his mother

returned to Waipoua to live. Three years later Tiopira Kinaki and Te Roroa from Waimamaku followed. The first potatoes they planted at Waikara were pulled up by Parore. They then planted kumara which he did not pull up (A4:434-435).

After this, Governor Hobson came and Tiopira went to the Hokianga to see him. He was also at Waikara when the governor's emissary, Captain Symonds, passed through (A4:435). He was probably too young to sign the Treaty but he supported the kaupapa. During Hone Heke's war, he fought alongside his cousin, Hakaraia. According to tradition, he and F E Maning, the Pakeha-Maori who became a Native Land Court judge, were comrades in arms (C12(a):8).

During the war he went to Waimamaku and married a woman of rank and great beauty, his second cousin, Marara Mahuhu. Their marriage merged three blood lines from Toa and provided a symbolic link between the three Te Roroa kainga, Kaihu, Waipoua and Waimamaku. Their eldest children were born at Waipoua.

In 1850 Tiopira moved to lower Waihou on the Hokianga to assist his wife's Te Rarawa relatives in the timber trade and became known as Tiopira Rehi (expert). By the close of the 1860s he was based at Whenuahou, Waipoua, but he continued to live and work at Waimamaku, Kaihu, Kawerua, and Maunganui Bluff, the latter two being summer residences where canoes were built and fish caught and dried. Te Roroa engaged in gum digging and small-scale trading at Kawerua under Tiopira's chiefly management. His cousin, Hapakuku Moetara, directed economic activities at Waimamaku, and his uncle, Te Rore Taoho, at Kaihu and Maunganui Bluff (E2(a):156 passim).

Hapakuku Moetara was a son of Rangatira, who took over the mana of his brother, Moetara Motu Tongaporutu, assumed his name, and signed the Treaty of Waitangi as Rangatira Moetara (C12(b):1; D11:2). In the 1820s and 1830s, Moetara Motu Tongaporutu resided at Pakanae, a strong, strategic position from which to control the south Hokianga European trade. After Te Ika-a-Ranganui, he had Ngati Whatua refugees living under him producing pork and potatoes; also access to land as far south as Maunganui Bluff, including Waimamaku and Waipoua. Realising the advantages of peace and Christianity, he was baptised before his death in 1838.[5] Hapakuku inherited his uncle's and his father's mana.

Through his mother, Te Hana, Hapakuku was connected to tbe senior line of Te Roroa (see appendix 6), and claimed interests in Te Roroa land. Both his uncle and his father were involved in a number of land transactions with Europeans before the Treaty. He and his relatives continued to sell and lease land between 1840 and 1875.

Accordingly, by 1870, the chiefs Tiopira, Hapakuku Moetara and Te Rore Taoho exercised the mana of the hapu in the areas where they lived—Waipoua, Waimamaku and Kaihu respectively. Although

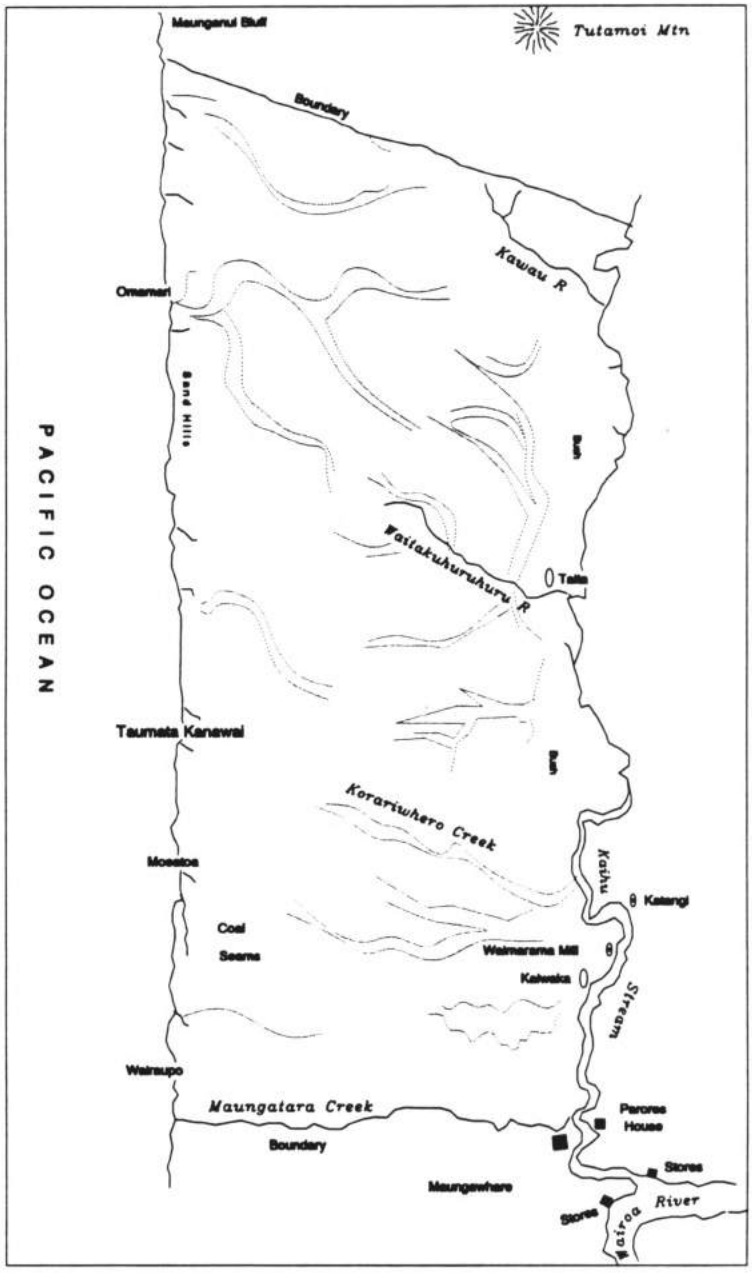


Figure 7: Tinne's "Plan of the Kaihu Estate". *Source:* J Ernest Tinne *The Wonderland of the Antipodes* (London, 1873) p 70

"their" areas can be separately identified, they nevertheless saw their interests as being collectively Te Roroa, as subsequent dealings with the Crown and Native Land Court will show. And it will be recalled that Parore Te Awha had moved to Kaihu in 1836. By 1864, when visited by the colonial secretary, he had established many acres of maize, kumara and potatoes, with several weather board houses, stock yards, granaries, barns and several iron ploughs and horse drays.[6] He was on Te Roroa's southern boundary, in the area also occupied by Te Rore Taoho.

At this time then, the kainga at Waimamaku, Waipoua and Kaihu were well established. Christianity had been accepted first as a result of Wesleyan missionaries and later through visits from Church of England clergy. On 11 January 1875, Saint Mary's church at Te Taita was opened on land set aside by Te Rore Taoho. The service was conducted in Maori and attended by all the community, including settlers from Wairoa.[7] The chiefs who later dealt with the Crown in respect of the lands, the subject of this claim, were accordingly familiar with the intentions of the Treaty and the guarantees by the Crown which it contained, and the Christian principles upon which the Treaty was founded.

1.2. Tuku Whenua (Pre-1875 Land Sales)

Prior to the 1870s, Te Roroa land was too rugged and isolated to attract Crown or private purchasers but in the Hokianga and the Kaipara extensive areas were purchased. Three phases can be distinguished in pre-1870 land sales.

Before 1840 the land was "sold" to Europeans for trading depots and mission stations or speculation. Among the pre-1840 European land claims were 88 from the Hokianga and 43 from the Kaipara. Parore Te Awha was involved in about half a dozen of the Kaipara transactions[8], including the sale of 1000 acres at Kaihu for English settlers who were shipwrecked. Commissioners appointed to investigate the old land claims invalidated many of the larger speculative claims, including the Kaihu claim.

From 1840 to 1862 the Crown exercised its exclusive right of pre-emption under the Treaty to purchase extensive blocks of Maori land. Governor Grey adopted a policy of buying land cheaply well in advance of the requirements of settlers, and before Maori realised its market value. His chief land purchase commissioner was Donald McLean, "a shrewd and strong-willed Scot".[9] He had been a sub-protector of aborigines and learnt Maori in the early 1840s. He later combined the office of chief land purchase commissioner with that of native secretary. A man with infinite patience and innate shrewdness, McLean excelled in negotiating purchases of large blocks of tribal land from chiefs, giving them presents, and exciting and taking advantage of their cupidity.

Initially Grey and McLean were concerned to preserve the peace and get the consent of the hapu in open dealings. But as the anti-land selling movement developed, and after Grey departed, McLean and his agents increasingly resorted to unscrupulous tactics to buy particular areas of land that settlers and land speculators wanted. Land in dispute was purchased from part owners and weak claimants willing to sell. Pre-purchase payments were made to some hapu leaders, who were promised Crown grants if the purchase was completed, in the hope they would persuade the majority of right holders to sell.[10] The

purchase of the Waitara block by one of McLean's agents with his connivance led directly to the first Taranaki war in 1860.

Throughout the period of British imperial responsibility for Maori affairs, 1840-1862, Hokianga and Kaipara chiefs, with whom Te Roroa were closely connected, continued the strategies of friendship and hospitality they had adopted towards the pre-1840 settlers. They willingly sold land to the Crown in the hope that more Europeans would come and live among them and provide an abundance of goods and services. During the war in the north and the Waikato war, they remained at peace. In 1864 the Kaipara chiefs refused to shelter 200 Waikato prisoners who had escaped from Kawau Island.

After the war in the north, government policy was to place a buffer zone of European settlement between Ngapuhi and Auckland. This matched Ngati Whatua's desire to have more settlers and townships, a greater abundance of trade goods and protection from Ngapuhi, their traditional foe. In the Kaipara area, John Rogan, the district land purchase commissioner, assisted by the Wesleyan missionary Reverend William Gittos, did not need to resort to pressure tactics. Between 1854 and 1861 over a quarter of a million acres were purchased. Among the local land sellers were Parore (A18:18) and Tirarau.[11] Tiopira participated in the sale of the Arapohue block, northern Wairoa, in February 1859 (H59; I8:1 & appendix 1). Tiopira, Hapakuku Moetara and Te Rore Taoho participated in the sale of the Tunatahi block by Parore to J M Dargaville (E2(a):150-151).

After control of native affairs and land purchase policy were taken over by ministers representing settler interests, the 1862 and 1865 Native Lands Acts were passed, initiating a new phase of direct purchasing by private individuals as the Crown abandoned its right of pre-emption. A Native Land Court, presided over by a European judge, was set up to ascertain Maori rights to land and to issue certificates of title to those whose ownership was ascertained. Purchases were made from those named on the certificates, which could then be exchanged for Crown grants. The object was two-fold: colonisation and land individualisation. The Native Land Court became the chief instrument of the policy of assimilation, and greatly facilitated the purchase of the bulk of Maori land in the North Island (A19:23, 52).

Any Maori, regardless of rank, could apply to the court to investigate his or her title to a block of land. All other Maori with claims in the same block were then forced to come to court to defend their interests. Anyone absent from court was simply disinherited.

Under the 1865 Act, the court was supposed to establish the ownership of the blocks and to issue titles. In practice, to avoid the cost of divisional surveys, Judge Fenton awarded whole blocks to ten "owners", whose names were selected by arrangement out of court. In law, the ten were absolute owners with individual property rights,

not tribal trustees. They could mortgage and sell the ancestral land of their tribe and hapu without reference to them (A19:33-35).

Amending legislation in 1867 required the court to determine all owners of a block regardless of whether or not they put forward a claim, and to enter all owners' names, not just the ten on the certificate, in the court records (E2:22). The assent of the majority of owners in value was required to a sale. In practice, the court treated the shares of owners as equal because it could not do anything else (A19:38-39).

If one or more of the owners died before a sale was completed, any person claiming an interest in the deceased's estate could apply to the court for a succession order. There was a high death rate among owners in the late nineteenth century and most died intestate. Furthermore, the court adopted the New Zealand practice of giving all the children equal shares in an estate. In other words, in determining succession, the court disregarded Maori custom and failed to take rank, sex or place of residence into account. The eventual result of succession orders was extreme fragmentation of ownership rights (A19:40-45). As we shall see, this was what happened in the Waipoua No 2 block after it was reserved for Te Roroa. There was little protection for a hapu's land base under Fenton's ten-owner system.

John Rogan organised and presided over the first sitting of the Native Land Court in the Kaipara in 1864. F E Maning was appointed to and based at the Hokianga in 1865. In the late 1860s neither the government nor private individuals were greatly interested in investing in large blocks of rugged, isolated Te Roroa land. Provincial economies were severely depressed and Auckland speculating interests looked to the Waikato, where land had been confiscated for military settlement.

Maori used the Hokianga and Kaipara courts to settle disputes and decide ownership for their own purposes. These included defining areas of land for leasing rights to cut timber and flax and dig gum for sale to Europeans, a welcome source of annual income; also, for leasing or selling small blocks to European traders for depots, stores and residences. We sball now look briefly at the various blocks of land which came before the court in these circumstances. These will indicate the nature and extent of Te Roroa's experience in land deals before the 1875-1876 hearings, out of which this claim arose.

In 1870, S Campbell surveyed land at Waimamaku, Wairau, and Koutu at Kawerua for local chiefs. On 10 October 1870 Judge Maning investigated titles for the Waimamaku (2650 acres) and Wairau (2539 acres) blocks. Wahi tapu were cut out on the survey plans (D2:1-3). The court made the land inalienable except by lease for 21 years (D1:8). A certificate of title for Waimamaku was awarded to Tiopira Rehi (Kinaki) and nine others. A list of 120 persons interested as owners was registered, as required by s17 Native Lands Act 1867 (D2:16-22).

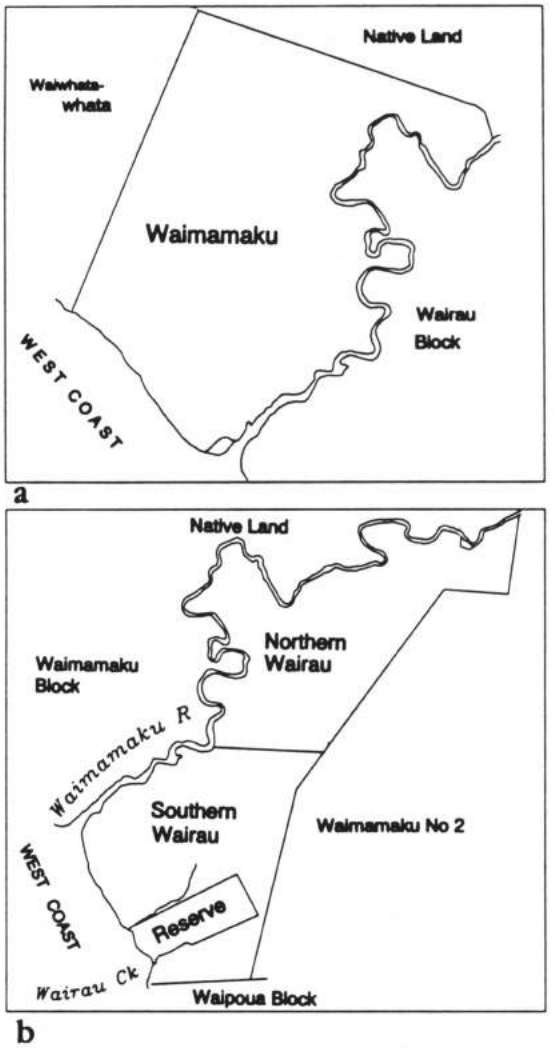


Figure 8: Diagrams of Campbell's survey plans of Waimamaku and Wairau blocks, September 1870 (a) from Campbell's survey plan of Waimamaku block, ML 2014 (b) from Campbell's survey plan of Wairau block, ML 2012. *Source:* Department of Survey and Land Information, Auckland

In respect of the Wairau, a certificate of title was issued to Hapakuku Moetara and nine others and a list of 54 owners was registered (D2:10-15). The Wairau block was said to have been put through the court to determine title for a flax lease (D1:42).

On 28 June 1871, Maning adjudicated on the Koutu block, consisting of 3 acres 3 roods and 20 perches (B16:1; C12(a):9; H60:8-9). The Koutu hearing was in fact a trial run to the contest between Tiopira and Parore for the title to Maunganui-Waipoua, which Te Roroa lost but Parore failed to win. Maning signed court orders recommending to the governor that the land be inalienable by sale, that Tiopira Rehi and Peneti Pana be appointed trustees, with power to lease for a period not exceeding 21 years, and that the right to make and maintain a public road be reserved to the Crown (H60:2-3).

Maning later noted "Te Koutu was only taken into Court to test ... the right to a large tract of country ..." (B16:16; C12(a):9; H60:8-9).

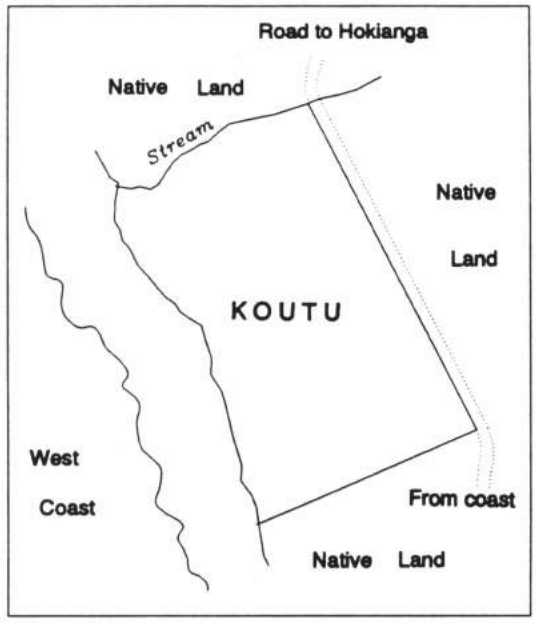


Figure 9: From Campbell's survey plan of Koutu, ML 2193, December 1870. *Source:* Department of Survey and Land Information, Auckland

The claimants identified the larger tract as the Waipoua block (C7:9). In their view, Tiopira almost certainly was indebted to Maning for the strategy of taking Te Koutu into court to test the right to Waipoua (C12(a):9).

What Maning and Te Roroa clearly wanted was a tribal trust, not absolute title for ten owners, but the attorney-general ruled that the issue of a certificate of title to a tribe contravened the law (B16:37-38). Presumably his ruling was made under s23 Native Lands Act 1865, where a title could only be issued to a tribe or iwi for areas in excess of 5000 acres (C12(a):9), and regardless of s17 Native Lands Act 1867, which authorised the court to award titles to trustees for the whole tribe, provided all its members were named in the court records (I1(c):40). Chief Judge Fenton therefore cancelled the court order but pointed out it was "very advisable that a certificate, of some sort, should issue" (B16:34-36).

The attorney-general then suggested a new certificate of title be issued to Tiopira and Peneti under s17 of the 1867 Act and that they afterwards make a declaration of trust (B16:32-33). Fenton signed a new certificate of title in favour of Tiopira Rehi (Kinaki) and Peneti Pana on 26 July 1872 and requested the Native Minister to furnish him with a form of declaration of trust (B16:16, 29-30; C7:att 2.3-2.4; C12(a):10). The undersecretary of native affairs procured a skeleton draft but presumed the persons interested in the land would settle among themselves how and when it would be executed (B16:24; C12(a):9). Consequently the matter was left in abeyance. No Crown grant for Te Koutu was issued and no declaration of trust was executed (C12(a):9; H60:8-9).

Te Roroa were to be doubly disadvantaged when they put the larger Waipoua block through the court. First, they had no Crown grant to support their claim against Parore (C12(a):9). Secondly, they had no tribal trust to serve as a model for reserving Waipoua No 2 block for the hapu. Having failed to accommodate a trust structure in the Native Land Court system, Te Roroa rangatira had perforce to fall into line with the court's ten-owner system and try to use it to their own advantage.

We shall now look briefly at their attempts to get legal titles to the Kaihu, Opanake and Waimata blocks, as in effect these were trial runs for Waipoua which is part of the area involved in this claim.

In February 1871, a claim for a 43,700 acre block of land in the Kaihu valley, was brought in the Kaipara court by Parore Te Awha, and contested by Tiopira Kinaki. There was no doubt in the mind of the court that the land belonged to the descendants of Toa, and a certificate of title was awarded to Tiopira Kinaki, Te Rore Taoho, Parore Te Awha and seven others, and a list of 66 names registered under the Native Lands Act 1867 (E2(a):2-20). In 1873 the Opanake block of 14,457 acres was investigated and Te Rore Taoho and Parore Te Awha were named as owners to represent the hapu. They then leased timber rights to a sash and door company for £2000 for a period of 50 years (E2(a):111-112 passim). Tiopira also contested Parore's claim to the Waimata block, which the court awarded to Parore in 1875 (B34:att 2).

These early contests between Parore Te Awha and Tiopira and/or Te Rore Taoho in the Native Land Court were a continuation of traditional rivalries and warfare between Ngapuhi and Te Roroa. They were fought to establish mana and to share in a valuable source of new wealth in the market economy, rather than to sell the land to Europeans. Although only ten or fewer people were named on the titles, from a Te Roroa perspective they were representatives of the hapu, not absolute owners. As yet Te Roroa did not fully appreciate that the ten owner system would disinherit all those whose names were not included.

Until the government resumed large scale purchasing in the 1870s, most Te Roroa land remained in customary title. Te Roroa were thus spared the worst of the frauds and unfair practices experienced by the tribes who sold extensive areas of land directly to private purchasers under the ten owner system and later supported a movement to repudiate these sales. Before extensive areas of Te Roroa land were sold to the Crown, lingering European concern for Maori interests had produced some amendments to the native land legislation.

The Native Lands Frauds Prevention Act 1870 made provision for trust commissioners, authorised to disallow any Maori land transactions contrary to equity or in contravention of any trusts, or if liquor or arms formed any part of the consideration (E2:23).

The Native Land Act 1873 required the names of every single person found to have rights in a block of land to be named on memorials of ownership. If the majority requested it, their proportionate shares were to be determined. This enabled the court to partition the interests of owners (A19:52-53; E2:5-11). As we shall see in the cases of Waipoua No 2 and Taharoa, this was a major step along the road to individualisation of title and the destruction of tribal organisation, which led to piecemeal purchasing of individual interests and facilitated Crown purchasing of native reserves.

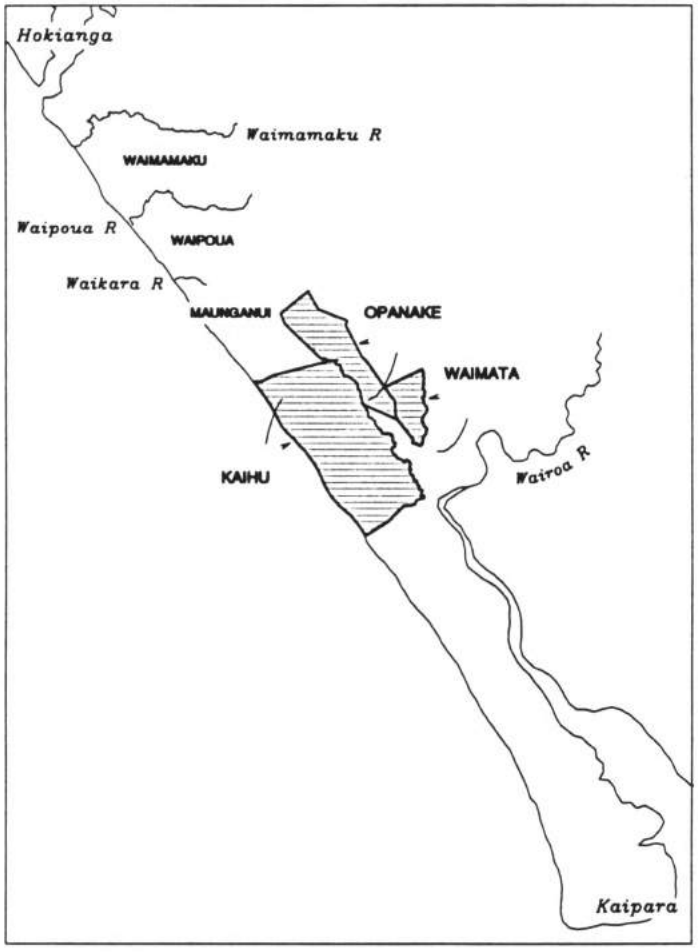


Figure 10: Diagram of Kaihu, Opanake and Waimata blocks.
Source: Department of Survey and Land Information, Wellington

To bring some order into the prevailing system of amateurish and uncoordinated surveys, the office of inspectorate of surveys had been established in 1867 (E2:22-23; A13;22). Under the Native Land Act 1873 surveys became the responsibility of government surveyors acting under the Native Department and had to be officially authorised and approved. The liability for survey charges was against the land to be secured. If those named on memorials of ownership were unable to pay cash, payments would be deducted from the proceeds of sale.

The 1873 Act further provided for district officers to be appointed, to make preliminary inquiries into the good faith of claimants and arrangements for setting apart inalienable reserves, at a ratio of no less than 50 acres each, for every man, woman and child. They were also to compile genealogies and maps of tribal boundaries.

The Crown land purchases out of which this claim has arisen, were made under the 1873 Act, but, as we shall see, most of the safeguards it provided against fraud and unfair practices broke down.

1.3. Nga Taukumekumetanga (Points at Issue Between Crown and Claimants)

Three points of issue arose between Crown and claimants with respect to the evidence on pre-1875 contacts between Te Roroa and Europeans; first, the extent to which the claimants' tupuna were involved in the market economy; secondly, the extent to which they were involved in land deals; and thirdly, whether there was any indication they wanted to sell land prior to the arrival of Crown land purchase agents (B34:att 1-3; H28:20-21; H48:1-7).

All the rangatira who later sold extensive areas of Te Roroa land to the Crown were involved peripherally in commercial and land transactions before 1875, particularly Parore Te Awha and Hapakuku Moetara who lived in close proximity to harbours and European trading establishments. Tiopira Kinaki and Te Rore Taoho were based well away from European settlements and mixed districts, in Maori districts only occasionally visited by Europeans. They moved seasonally to work their mahinga and periodically to engage in the timber and gum trade. All these rangatira were generally well-disposed to European settlers and to the government. Hapakuku Moetara, like his father Rangatira Moetara, was an assessor in the resident magistrate's court and presumably understood English. Tiopira Kinaki's son, Rewiri, was literate in English and transacted business for his father. Parore Te Awha employed a scribe.

The Crown submitted that Parore Te Awha and Tiopira Kinaki:

> were very likely to have been aware of the market value of their lands in 1874, the meaning of land alienation in a European context, the value of kauri gum and timber, and the difference between a partial and a total [land] alienation. (H48:7)

Counsel for claimants dismissed this submission as "simplistic and baseless". Involvement in one or two land transactions did not mean that they understood the English law concept of fee simple and the Native Land Court system. Nor did it mean that they understood that when land and appurtenances were purchased by the Crown, all Te Roroa links with the land were severed (I6(a):3-4).

In our view, the Crown simply failed to understand the nature and extent of change and development and land sales that occurred in the early years of western contact.[12] In the mid 1870s Te Roroa was still

essentially an independent Maori hapu occupying and using ancestral land mainly for traditional purposes, but also to extract or produce products to exchange for European trade goods. Te Roroa rangatira, like the old chief in Maning's *Old New Zealand*, were willing to sell or lease small portions of land to Europeans in the expectation that they would obtain a continuing supply of goods and services; also to lease flax and timber cutting rights to Europeans for cash. Land was under the mana of rangatira who managed the use of its resources and distributed the proceeds from any commercial or land transactions. Money did not become a major medium of exchange until the 1870s, when the Crown purchased extensive areas of land, and when the gum industry was boosted by the discovery of the use of gum in varnish manufacturing and people began to buy rather than produce foodstuffs.[13]

Although Te Roroa rangatira had considerable experience of bartering their products and exchanging their labour to acquire European goods and services, they would hardly have appreciated the potential market value of their kauri timber and gum, which were becoming major exports of the Auckland province. Nor would they have appreciated that extensive overseas public and private borrowing in the Vogel period would lead to a land boom. Their tribal economy was changing and developing but it had not been submerged by settler capitalism. The province of Auckland was still a dual economy and society.

By 1875 Parore Te Awha, Hapakuku Moetara, Tiopira Kinaki and Te Rore Taoho had had some experience of putting land through the Native Land Court. But the court system had failed to accommodate the kind of tribal trust structure they wanted and they had had to fall into line with the court's arrangements to award titles to ten or fewer owners, and try to work this system to their own advantage. But they would hardly have realised at this time that those named on certificates of title and memorials of ownership were not hapu trustees or representatives but absolute owners. Only Parore Te Awha and Hapakuku Moetara had had much experience in land selling.

The claimants were of the opinion that when the possibility of future large scale land transactions was raised by Crown land purchase agents, the hapu itself was unwilling to sell. They cited a statement made by one agent that, in the Kaipara district:

> It had been with great difficulty that the natives had been induced to sell their land. No tribe wished to be the first to break the tapu of the land by selling. (B34:att 3)

There is strong evidence that the rangatira who negotiated with the Crown land purchase agents in 1874-1875 were willing to sell land. They were not only establishing their mana over the land by selling it but were also tempted by cash payments and the prospect that more Europeans would settle among them and that the government would provide them with roads and schools. Their concept of land selling was essentially reciprocal in nature, a new form of traditional gift

exchange and hospitality. In return for letting land go they would receive goods or cash, but the transaction did not end there. In Maori terms there was a continuing obligation to give, to return and to receive:

> Ko maru kai atu, ko maru kai mai, ka ngohe ngohe. (Giving in abundance, receiving in abundance everything is going well.)[14]

They expected that the government would provide works and services, and the settlers would bring an abundance of trade goods. Small mixed communities would develop, and friendly co-operative relationships between Maori and settler would prevail.

Despite the persistence of traditional notions of reciprocity in Te Roroa's concept of land sales, there is little doubt that they appreciated that Europeans regarded land as private, conveyable property and land-selling as permanent alienation. The public investigations of pre-1840 land claims, the award of title to 2560 acres to bona fide purchasers and the Crown's appropriation of any surplus had amply demonstrated the meaning and consequences of selling land to Europeans. Discussions on land matters at treaty signing meetings and anti-land selling meetings had indicated a painful awareness that after they had eaten the tobacco and worn out the blankets they received for their land, they had nothing left. The erection of fences and cases in the resident magistrate's court against Maori for wandering stock and trespass drove this home.

A clause in the original deeds for McLean's early purchases, which were written in Maori and translated into English, spelt this out. It expressed the sorrow of the chiefs at bidding farewell to land inherited from their forefathers, with its rivers, lakes, streams, stones, grass, plains, forests, good and bad places, and everything above and below the surface of the land and connected with the land. The deed for the 9500 acre Arapohue block, signed on 2 February 1859 by Tiopira Taoho (Kinaki) and 20 others, described the land in this fashion, but omitted the earlier expression of sorrow in assigning it to the Crown "as a lasting possession absolutely for ever and ever" (I8:app 1).

No such clause was included in the standard form of deed written in English for the sale of a block of "land with appurtenances" by those named on certificates of title and later memorials of ownership ordered by tbe Native Land Court. In the simplified Maori version, land and appurtenances were translated into "whenua". The claimants, as we shall see later, submitted that Te Roroa chiefs with limited experience, like Tiopira Kinaki, would have expected kauri to be specifically referred to in certificates of title and memorials of ownership if it was being transferred with the land.

It seems to us that there is no way of knowing for certain exactly what Te Roroa understood they were selling when they first encountered the Crown land purchase agents at Waimamaku in 1874. As one of the claimants, Alex Nathan, explained in a statement he made after

consultation with his kaumatua, where the title to land is lost, the spiritual dimension to mana whenua (prestige and authority over land), which transcends simple ownership, is retained:

> If that were not the case, the territorial pepeha and the traditional stories about those places would not be maintained. The tupuna would have considered that the fires in respect of these lands had gone out. (D27:5)

He also pointed out another aspect to mana whenua which is a central issue in this claim and is illustrated by a lot of evidence we were given about how Te Roroa used and still use the natural resources of the forest, the lakes, the rivers and the seacoast for food, medicine, building supplies and other purposes, even though they are on Crown land:

> Our people have always claimed the right to do these things even though the land was in Crown title. Our manawhenua gives us this right. The Waipoua forest [sold to the Crown in 1876] is as much a taonga, and as much a link with our past, as are our wahitapu. It is important to our mana as forest people and it is important to the maintenance of our way of life. We have always used the forest for physical and spiritual sustenance, even after the so called sale of 1876.
>
> ... The natural resources that our people have harvested for centuries are also contained within the area encompassed by these places. We claim the right to protect and manage our wahitapu and to harvest those resources because of our manawhenua. (D27:7-8)

These concepts of mana whenua and mahinga kai are basic to this claim. Underlying them is the concept of people belonging to the land, rather than the land belonging to people:

> no individual or group "owns" the land, but rather ... the land "owns" them .....
>
> ... The concept of belonging to the land rather than the land belonging to the individual is demonstrated by ... pepeha [proverbs], typical of the method used by Maori speakers to identify themselves. Their identity stems not simply from their tupuna by descent, but from the land to which tbe individual and his people belonged ....
>
> ... The history of a people is denoted both by reference to the land, and the successive generations indicated by whakapapa. Ancestral land is the place where our tupuna were born, lived, died and left their marks. The proverb indicating this is:
>
> "Kei raro i te tarutaru, te tuhi o nga tupuna"
>
> "the signs or marks of the ancestors are embedded below the roots of the grass and herbs"
>
> ... It follows that the link between the person and the land by virtue of their history can never be erased .....
>
> ... "nga tapuwae o nga tupuna" ["footsteps of our ancestors"] .... remain on the land forever. The fires never go out.

> ... Our manawhenua depends upon our maintaining and keeping warm these taonga within our tribal rohe. Our manawhenua survives because, we maintain them and keep them warm. (D27:4-6)

The claimants' evidence showed that their tupuna continued to exercise their manawhenua and work their mahinga on Crown owned land and land it had disposed of to Europeans.

When their access to and control over mahinga kai and wahi tapu were curtailed by the enforcement of laws designed to protect public and private property, they protested under article 2 of the Treaty. It seems to us that Te Roroa's concept of land sales in the mid-1870s was a mixture of Maori traditional and European capitalist notions. The Crown's submission that Te Roroa in selling land to the Crown in 1876 exercised their right under article 3 of the Treaty in accordance with the principle of options is far removed from Te Roroa's concept of land-selling, which embodies the traditional notion of gift exchange.

1.4. Rohe Potae (Boundaries)

We have already seen how Te Roroa used place names as boundary markers on "oral maps" (see above, p 17). Particulars of this claim allege that agents of the Crown failed to carry out arrangements made by vendors with land purchase agents and surveyors with respect to external boundaries of land sold or reserved from sale. Such failures stemmed from the different ways used by Maori and European to delineate boundaries, which will be briefly examined here.

One of the claimants explained the Maori way of doing this in his evidence:

> Throughout our history, territories were defined by naming various landscape features and in this way the general boundaries were established. The features which define the border are referred to as "rohe potae" .....
>
> ... Subdivision within these general boundaries ... established the rohe of the various hapu/iwi. In "borderlands" such as Waimamaku-Waipoua-Maunganui, disputes between competing groups were frequent. Pouwhenua and Rahui were often erected at various places on the boundaries ... (D27:3)

The Maori concept of "an oral map" is based on "the survey pegs of memory", that is, the place names and stories told and re-told about them.[15] In the pre-1840 period of land selling, chiefs pointed out or walked over the boundaries of the land they were willing to sell and which they had probably discussed and settled among themselves. Pre-1840 deeds were usually drawn up in simple English and interpreted and transacted at open meetings. This made them "easily memorable" and improved their "chances of survival in the oral record".[16]

Boundaries were described in great detail in the evidence given to the old land claims commissioners by reference to natural features of the

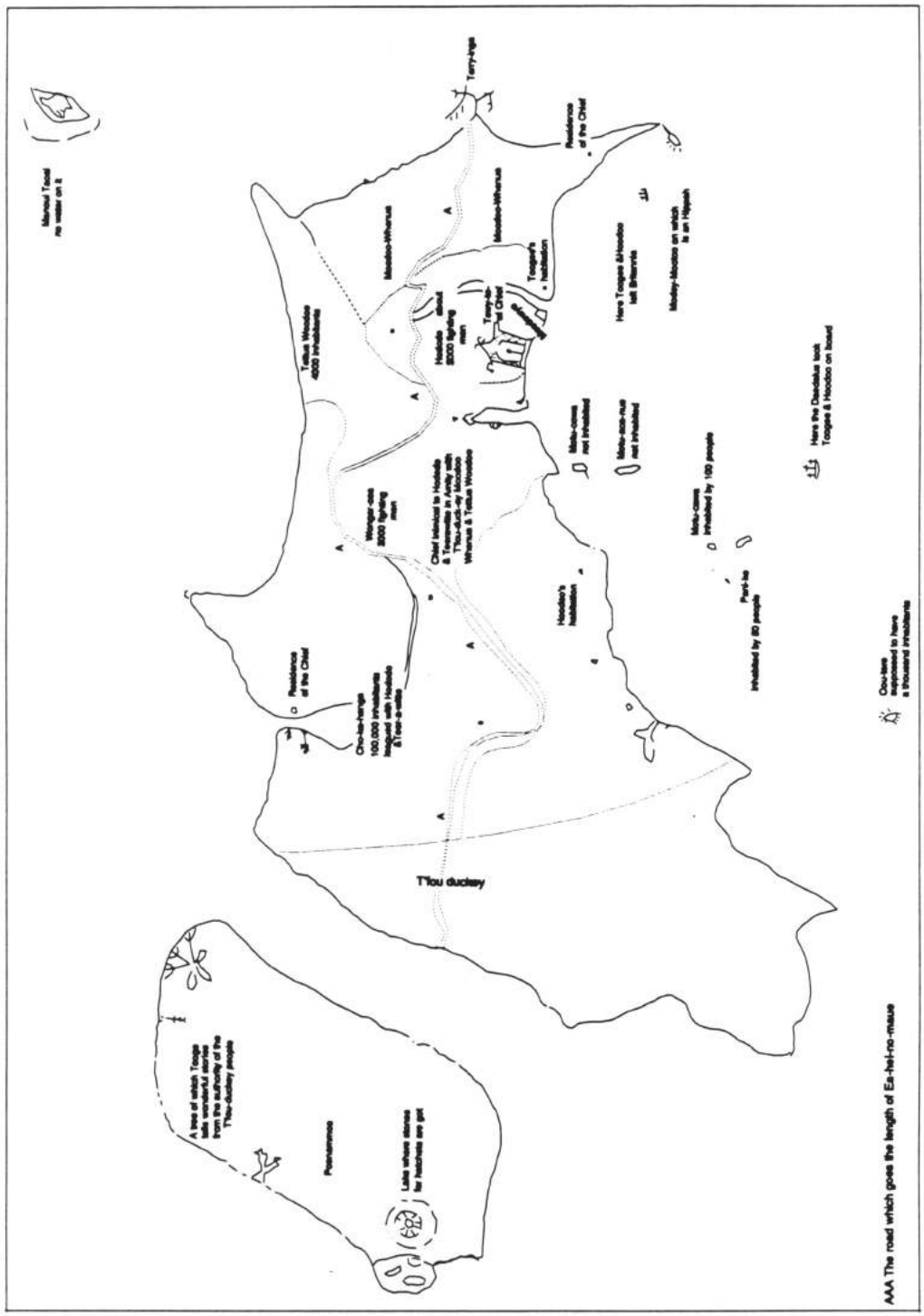


Figure 11: Tuki Tahua's map of New Zealand, 1793. *Source*: Cartographic collection, Alexander Turnbull Library, Wellington

landscape. In the 1840s and early 1850s, McLean and his land purchase agents continued to negotiate land purchases with the chiefs on the ground and in open tribal meetings, but employed surveyors to draw rough sketch maps which were annexed to deeds of sale. Though care was taken, at least initially, to show these maps to chiefs and to explain

the boundaries described in the deeds to them, they were only rough indications of the area being sold.[17] They either ran along rivers and the sea coast, or were straight lines drawn between named places.

Under the Native Land Court system, survey plans had to be produced in court and annexed to certificates of title and deeds of sale. External boundaries of blocks and reserves were also described in schedules. Vendors pointed out traditional boundary markers to land purchase agents and surveyors on the ground and observed surveying parties cutting lines through the bush. If the survey plans produced in court and placed on land deeds had delineated boundaries by Maori place names they would have understood exactly what areas of land they were selling. But straight lines, chained links, co-ordinates and acreages shown on survey plans had little meaning to them. Their understanding of boundaries was based on detailed topographical knowledge not trigonometrical data.

On site visits and at tribunal hearings, we found that Te Roroa still delineate boundaries by oral boundary markers, that is, by pointing out Maori place names on the ground or a map, and relating stories about them. From the evidence we have been given, both oral and written, it seems to us most unlikely that Te Roroa land sellers in the 1870s could read maps. Rather, they depended on oral arrangements they made with surveyors and land purchase agents and the lines they saw being cut through the bush (D12:5).

1.5. He Whakarapopoto (The Conclusion)

Te Roroa's way of life was little changed by the early 1870s despite their participation in the south Hokianga and northern Wairoa timber and kauri gum trade and their acceptance of Christianity and the Treaty. Being isolated and distant from European settlements and mixed districts, they were willing to lease and sell land they did not need for their own purposes to acquire more trade goods, Pakeha neighbours and government works and services. Before the Crown land purchase agents began to close in on their territory, it seemed that Te Roroa would continue to change and develop peacefully and progressively. But they lacked any awareness that there was a fundamental conflict between their desire to sell land and participate in the market economy and their retention of traditional concepts of mana whenua and mahinga kai. They believed that:

> Whatungarongaro te tangata toitu te whenua
>
> (People come and go but the land endures)

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3 Memorandum on site inspections, Waitangi Tribunal, 17 July 1989.

4 J S Polack *New Zealand being a narrative of travels and adventures ...* (London, 1838) vol 1, p 77. See pp 59-92, 140-141 for Polack's description of his visit.

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7 *Church Gazette*, February 1875, p 17.

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10 Alan Ward "McLean, Donald" DNZB, 1, M 11.

11 Dick Scott *Seven Lives on Salt River* (Auckland, 1987) p 13 ff; *Centennial of Kaiwaka: Rautau o Kaiwaka 1859-1959* (Welsford, 1959) pp 19-20; see n 1, folder 215

12 See C Lesley Andrew "Aspects of Development, 1870-1890" *Conflict and Compromise* ed I H Kawharu (Wellington, 1975) pp 81-82

13 B W Marshall, "Kauri Gum Digging, 1885-1920: A Study of Sectional and Ethnic Tensions", MA thesis, University of Auckland, 1968, pp 26-27 passim cf Pat Hohepa, *A Maori Community in Northland* (Auckland, 1964) pp 40-41. For a general view of how little Maori life changed in the nineteenth century see Ann Parsonson "The Expansion of a Competitive Society: A Study in Nineteenth Century Maori Social History" *New Zealand Journal of History*, vol 14, no 1, April 1980, pp 45-60

14 A Maori pepeha quoted by Martin O'Connor, op cit, pp 19-21

15 On the Maori concept of an "Oral Map" see *He Korero Purakau Mo Nga Taunahanahatanga A Nga Tupuna: Place Names of the Ancestors, A Maori Oral History Atlas* (Wellington, 1990) p xiii; see also D12:2.

16 Ann Parsonson, "The Pursuit of Mana" in *The Oxford History of New Zealand* ed W H Oliver with B R Williams (Wellington, 1981) p 148

17 James Cowan *Sir Donald McLean: The Story of a New Zealand Statesman* (Dunedin, 1940) pp 36-37 passim

Take 2

Nga Whenua i Hokona (Land Sales)

2.1. The Crown Resumes Land Purchasing

Pressure on northern tribes to sell large blocks of land built up rapidly after Vogel launched his bold ten year programme of government borrowing for assisted immigration and public works in 1870. His purpose was two-fold: to develop the national economy, and to gain control over remaining Maori districts in tbe North Island by opening up communications, introducing settlers and employing Maori on public works (B34:att 6-9; E2:6; H28:3-4).[1]

An essential requirement for the implementation of this programme was the purchase of North Island Maori land. Under the Immigration and Public Works Act 1870, the government was authorised to spend £200,000 on purchasing land in the North Island. A further £500,000 was authorised by the Immigration and Public Works Act 1873. In the years 1870-76, £415,634, that is, 4.3 per cent of total government expenditure of £9,660,151, was spent on the purchase of Maori land (H28:1-2).

In 1873, a special land purchase branch of the Native Department was established under Sir Donald McLean, Native Minister, 1869-76. Land purchase officers were then appointed, some of whom had worked under McLean in the old Native Land Purchase Office (H48:8 & addendum). In effect, the pre-1865 system of Crown purchasing was resurrected, but in competition with private purchasers. Moreover before Maori could sell land they had to establish their title to it in the Native Land Court. In the aftermath of the wars of the sixties following the Waitara purchase, McLean was more circumspect than he had been in the late 1850s. His primary concern was to keep the peace and risk no further disturbances and to extend British law and institutions to Maori districts. He cautioned his land purchase officers not to purchase land if the title was in dispute. But at the same time he was under pressure from his ministerial colleagues to push ahead with the purchase of Maori land so that Vogel's programme could be implemented.

In 1872 Lieutenant-Colonel Thomas McDonnell, Crown land purchase agent in Wanganui, was transferred to North Auckland. He had served with, and commanded, kupapa (Maori who fought on the British side) and colonial forces in the wars of the sixties, and was reputed to be ruthless and unscrupulous. He prided himself on his ability to speak

Maori and was convinced that ultimately, force was the only argument Maori respected.[2] From the instructions he had been given in November 1871, he was well aware of McLean's concern that in his transactions he should not incur the risk of any trouble, disagreement, disturbance or revival of Maori land feuding. Transactions were only to be carried out if Maori were favourably disposed to European settlement. A clear idea of what reserves would be necessary and their acreage was to be provided (E2:30-31).

McDonnell proceeded to make inquiries and negotiate purchases of blocks of land north, south and inland from Te Roroa territory (E2:36-49; H3:2-3 & app 2). Parore Te Awha had interests adjoining one of these blocks, Totarapoka, which he wished to protect (see E2:47). McDonnell "seems to have taken cognisance of McLean's instructions" not to risk trouble, attempting to identify owners correctly and not acting too hastily (E2:48-49). His reports conveyed the view that much valuable forest and open land was available, well suited for immigrants. They made no specific mention of reserves. They also illustrated the problems that could be caused by private agents and showed that McDonnell was in the habit of taking large sums of money with him, and giving advance payments or deposits to prospective sellers, on land which had not passed through the Native Land Court (E2:49).

The Maori name for advance payments was "tamana". The claimants have translated "ta" to mean sprinkle, and "mana", prestige. Under s75 Native Lands Act 1865 advance payments were "absolutely void" (A19:26; E2:14-15).[3] Even so s59 Native Land Act 1873 provided for:

> the payment of the whole amount of the purchase money stipulated upon, without any deduction whatever except for advances of money made to the Native owners by way of earnest money to bind the agreement for such sale ... (A3:11; I16:25)

Armed with half the £500,000 authorised in 1873 and earmarked for the Auckland Province (A13:18; E2:54), the Land Purchase Department increased the tempo of its operations in areas surrounding Te Roroa before training their big guns on Te Roroa territory. In 1874, E T Brissenden was appointed an additional Crown land purchase officer and instructed to proceed to Auckland "with as little delay as possible" and endeavour to negotiate the purchase of several considerable blocks of forest land in the North "and any open lands which it may be thought expedient" (A3:180-181). He was authorised to engage, through Captain Heale, any surveyors required to map the land he purchased, and told to submit completed plans to the inspector of surveys for examination and approval. In Auckland, Brissenden arranged for C E Nelson, who had resided for some years in the Kaipara district, had a Maori wife, and spoke Maori fluently, to assist him.

Brissenden and Nelson proceeded to negotiate for land in the Kaipara district. Brissenden's reports convey the impression that large tracts

of kauri forest and open land were available for settlement, that he was doing his best to purchase them as rapidly and cheaply as possible, and that prompt action was needed from McLean and his department to make purchase money available, particularly in view of competition he was encountering from private individuals with money in hand (E2:76 ff). Two deeds he sent the undersecretary in May were returned for correction with a specimen deed, and he was instructed to refer to the 1873 Act regarding their proper execution. By harping on competition he faced from private purchasers, he strengthened the belief of McLean and his department that private individuals and speculating interests were acquiring land and could thwart the execution of Crown policy. They assured him his requisitions would be met with necessary speed (E2:75).

It was not long before Brissenden's frenetic scramble for "all useful Native lands, be the blocks small or large" in the Kaipara district (B34:att 4) was extended to Te Roroa land. On 27 April 1874, McDonnell, who was completing arrangements to purchase Waoku, reported that:

> the Waimamaku Natives at Hokianga have offered me a large block of land to the South of Waimamaku on the Coast .... there is some Kauri timber on it not very available, but a large portion of the land is good. There will be ... from 15,000; to 20,000 acres. (E2(a):392).

On 27 July Brissenden reported that he and McDonnell, working together "with considerable success", had secured, "by purchase", over 350,000 acres, for rates varying from 3d per acre for "poor open ridges" at Tautoro south, to 4s for flat, undulating and splendid land at Owe. Included were Maunganui, comprising 20,000 acres, and Waipoua of 40,000 acres, both for 1s 6d per acre (A3:286-289). His very general description of the blocks suggests that he was not as yet familiar with the area (E2:86).

The same day, Tiopira Kinaki and Peneti Pana informed Chief Judge Fenton that there was "a difficulty" with Wi Pou of Ngai Tu, concerning the boundaries of their land on the west coast, namely, Wairau, Ohemowaiotaane, Waipoua, Te Muriwai, Waikara and part of Maunganui. They requested Fenton to retain the money until after this was adjudicated, but indicated their willingness to sell Waipoua and Maunganui after they were surveyed (H3:6-7). A week later, McLean belatedly replied to McDonnell's despatch of 27 April that, "as Mr Brissenden and yourself are associated together, it will be as well that you should consider the blocks in your future operations" (E2(a):391).

From the end of July to early in the New Year, Brissenden extended his negotiations for the 40,000 acre Waipoua block to Kaihu to make it 100,000 acres, that is, he included the whole of the Maunganui block (E2:86; H3:11). He also negotiated the purchase of Waimamaku land at 1s 1d per acre and Kahumaku (properly called Raeroa and later incorporated in Waimamaku No 2 block) at 1s 6d, while McDonnell was negotiating Kahumaku for 1s 5d. Thus by early 1875, three

different sets of negotiations were in progress at three different acreage rates, for what was to become Waimamaku No 2 block (H3:11-13).

Both Brissenden and McDonnell paid tamana while these negotiations proceeded. On 28 August 1874, the first payment of £100 for Waipoua was made to Hapakuku Moetara and two others. The same week Moetara was paid £50, being the first payment for Waimamaku. A further payment of £10 for expenses allowed during negotiations for Waipoua and two other blocks, was made to Moetara on 4 September. A £40 deposit on Waipoua land was made to Heta Te Haara on the 15th and Moetara received another £50 on the 29th. Te Hemara Tauhai received £100 on 11 September; Kikokiko £200 on 26 October and Te Rore Taoho and another received £100 on 12 December. Tiopira Kinaki received his first payment of £30 for Waipoua on 17 March 1875 (E2:83-84). These sums, less £10 for negotiating expenses, totalled £670.

Clearly these payments were intended to commit the recipients to sell at an early stage in the negotiations. Maning cynically wrote in 1874, that at one of his courts "a report came that a government land purchase agent had arrived at Waimamaku with lots of money and at once half the claimants shuttled off to see what they could do him out of to raise a spree" (D1:10; H3:8 fn 2). Brissenden reported to McLean in 1874, that the Maori thought the small deposit paid by government agents was "a trick to tie up their lands" (E2(a):336-337). Brissenden himself looked upon these payments as an essential means of countering the great delays in completing government purchases and strengthening the hand of Crown agents versus private agents (E2:87-89). To accelerate the negotiation process, he ventured to submit that surveys proceed almost contemporaneously with negotiations and judges be asked to facilitate the passage of government blocks through the court. Neither the Native Department nor Judge Maning were willing to act on his submissions, but an extra judge, J J Symonds, was appointed in February 1875.[4]

The first sign that McLean was beginning to feel uneasy about the activities of his agents in the far north was his concern to hear that McDonnell had attempted to proceed with the survey of disputed land in the Whangaroa district before the court investigated the title. Fearing a disturbance of the peace, he directed the district officer to take up his responsibilities under the 1873 Act and make preliminary inquiries into ownership (E2(a):349; E2:99-104). Sometime in March or April, J W Preece, son of a Church Missionary Society catechist and an experienced, Maori speaking land purchase agent employed by the government in the northern districts (H3:app 5), took over McDonnell's work, despite McDonnell's express wish to be allowed to finish his negotiations (E2(a):349-351; E2:106).

Brissenden, meanwhile, continued to complain that want of funds and competition from private parties were delaying his progress, and that

Maori grumbled if they heard that others got more from private agents than they did from government. He also raised the issue of his commission payments. After some initial reservations, McLean agreed he should receive 2d for every acre upon which the government secured "a clear and undisputed title". In December 1874, Brissenden reported that he had purchased 15 blocks comprising 50,000 acres, but the Maori showed "considerable disinclination to sell owing to opposition offered to the Government by private parties". He would attempt to acquire another 200,000 acres in very many blocks, as holdings were small in Ngapuhi country. In fact, few large areas in the north remained unpurchased (E2(a):338-345; E2:109-112).

McLean's letters to Brissenden about this time reveal his growing concern that all was not well in the north. He told Brissenden he had received complaints about McDonnell's attempt to survey disputed land; also rumours that reserves were being made by Maori with agreements to dispose of them to private individuals when all the arrangements were completed. The pick of the lands would be reserved first, and then pass into private hands; the refuse would become property of the government (E2(a):345; E2:113). He reminded Brissenden of the need to consult the district officer and requested him not to proceed with any purchase where complications or difficulties were likely to arise between contending parties. Beyond the blocks under negotiation, he wrote on 23 January 1875, "there is little land which the Government at present desire to acquire" (E2(a):340; E2:115).

Brissenden's commission terminated five or six months later. By this time he had completed his land purchase negotiations. He went on to purchase land for the Crown in the Thames area, but was dismissed in October 1875 for the part he took in the issue of fraudulent miners' rights (E2(c):1-2).

A main point at issue between claimants and the Crown was the nature and purpose of tamana. The claimants allege that tamana was paid in respect of land under negotiation for sale, prior to any judicial determination of who owned it, and whether or not the recipients were owners. Tamana effectively committed the recipients to sell land before the title had been investigated by the Native Land Court. Its function was "to substantially guarantee the completion of land transactions once the recipient had been approved as an owner of the land by the Native Land Court" (B34:att 12-13).

The claimants submitted that tamana was essentially a pressure tactic, if not a bribe, to solicit sales and take advantage of Te Roroa's need for ready cash. It denied the sellers a competitive price for their land on the open market and tied them to low acreage rates. It assisted agents to purchase extensive areas of land quickly, cheaply and with scant regard for the requirements laid down in the Native Land Act 1873. By allowing Brissenden a commission as well as a salary, McLean further encouraged the practice.

The Crown submitted that the payment of tamana was necessary and reasonable in the circumstances occasioned by private competition and delays in completing land transactions and there was no evidence that the acreage rates of payment were unfair.

The Crown accepted McLean's letters and the Crown land purchase agents' letters at their face value. Yet there is substantial historical evidence that McLean had used pre-purchase payments to exert pressure on chiefs to sell in the 1850s, when a strong anti-land selling movement was emerging and sellers and non sellers were feuding over land. The native land purchase agents in his department continued the practice in the 1870s to execute the government's land purchase policy as quickly and cheaply as possible, overcome any Maori reluctance to sell, and get in ahead of private agents and speculators who could thwart the execution of government policy. McLean and others in his department were receptive to complaints from their agents about private competition and the urgent need for money and haste in completing land transactions.

In a later inquiry before R C Barstow, RM, Brissenden and Nelson were criticised by their successor, J W Preece, for making "very excessive deposits" and by Commissioner Kemp for "the reckless manner" in which they "paid money by way of advance to Natives having small or no interest in [the] lands" (A6:1017-1018). Yet Barstow found nothing irregular in these transactions.

In our view, the payment of tamana was undoubtedly an established pressure tactic, an unfair practice designed to purchase land as quickly and cheaply as possible,[5] and incompatible with the Crown's fiduciary duty under the Treaty. Tamana was a sprat to catch the mackerel.

2.2. The Survey of Te Roroa Land

Waimamaku, Waipoua and Maunganui lands were surveyed under the survey provisions in ss69-74 Native Land Act 1873. The survey was under the control of the inspector of surveys. He or his deputy were required to authorise the survey in writing. They were further required to approve and deposit survey plans in court before the issue of memorials of ownership. In other words the land had to be properly surveyed before it could be put through the Native Land Court and sold (s33).

An understanding of how the survey was carried out and how the survey plans were done is fundamental to this claim. To follow these events readers of this report should refer to the maps we have included in the text. The blocks of land that we are primarily concerned to identify by survey are:

Waimamaku No 2	27,200 acres
Maunganui	37,592 acres
Waipoua No 1	35,300 acres

We are further concerned to identify certain areas in these blocks which Te Roroa wished to reserve from sale. These are:

Kaharau and Te Taraire in Waimamaku No 2
Manuwhetai Whangaiariki and Maunganui Bluff in Maunganui
Waipoua No 2 (Waipoua Native Reserve) in Waipoua No 1

Surveys were necessarily slow, costly undertakings and the acceleration of government purchasing and increased control over survey procedures gradually built up a backlog of uncompleted transactions. Although Brissenden was not allowed to appoint his own surveyors, the inspector of surveys, Theophilus Heale, arranged for S Percy Smith, his deputy in the Auckland office, to oversee and organise survey operations in the north. In September, October and November 1874, Percy Smith had discussions with McDonnell, Brissenden and Nelson to arrange the Hokianga survey. From December 1874 to June 1875, he was based at and around the Hokianga. He had 12 men under him, including his brother, Frank (F S) Smith (G10:3-4).

In January and early February, he began negotiations with local chiefs about block boundaries: Hapakuku Moetara on the Pakanae boundary; Peneti and Hapakuku Moetara about the boundaries of Raeroa, Waimamaku and Pakanae; and Te Whata and Akatiti about the Waimamaku boundary. A difference of opinion existed between Te Whata and Peneti about the Waimamaku/Kahumaku boundary, but this did not impede the survey.

H and D Wilson from Whangarei were contracted to carry out work on the Waimamaku, Waipoua and Maunganui blocks. By December 1874, Dan Wilson was in Waimamaku but he did not receive written instructions from Percy Smith to proceed with the survey until it was nearing completion in early February.[6]

The survey of Kahumaku was completed in March and Davis's plan (ML 3221), for an area totalling 8517 acres (D18(a)) was submitted to the inspector of surveys in April although the boundary between Kahumaku and Waimamaku still had to be supplied.

Wilson completed his work at Waimamaku and proceeded to Kawerua on 17 February. That same day Percy Smith connected the boundaries of the Waipoua and Waimamaku blocks.

The Wilsons' plan of Waimamaku No 2 was not submitted in time for a court hearing scheduled for 14 May 1875 and postponed until 31 May. To meet this deadline Smith compiled a sketch plan of Waimamaku No 2, (ML 3268) from adjoining surveys[7] and approved his own plan subject to a proper plan being furnished. Smith's sketch plan was produced in court on 19 June. The claimants attributed Percy Smith's corner cutting to his haste to secure Waimamaku land for the Crown. The Crown submitted that vendors would also have been eager to settle the matter and that Smith's sketch plan was adequate for court purposes even if technically it contravened the Native Land Act 1873 (I2:(b)(iii):6-7).

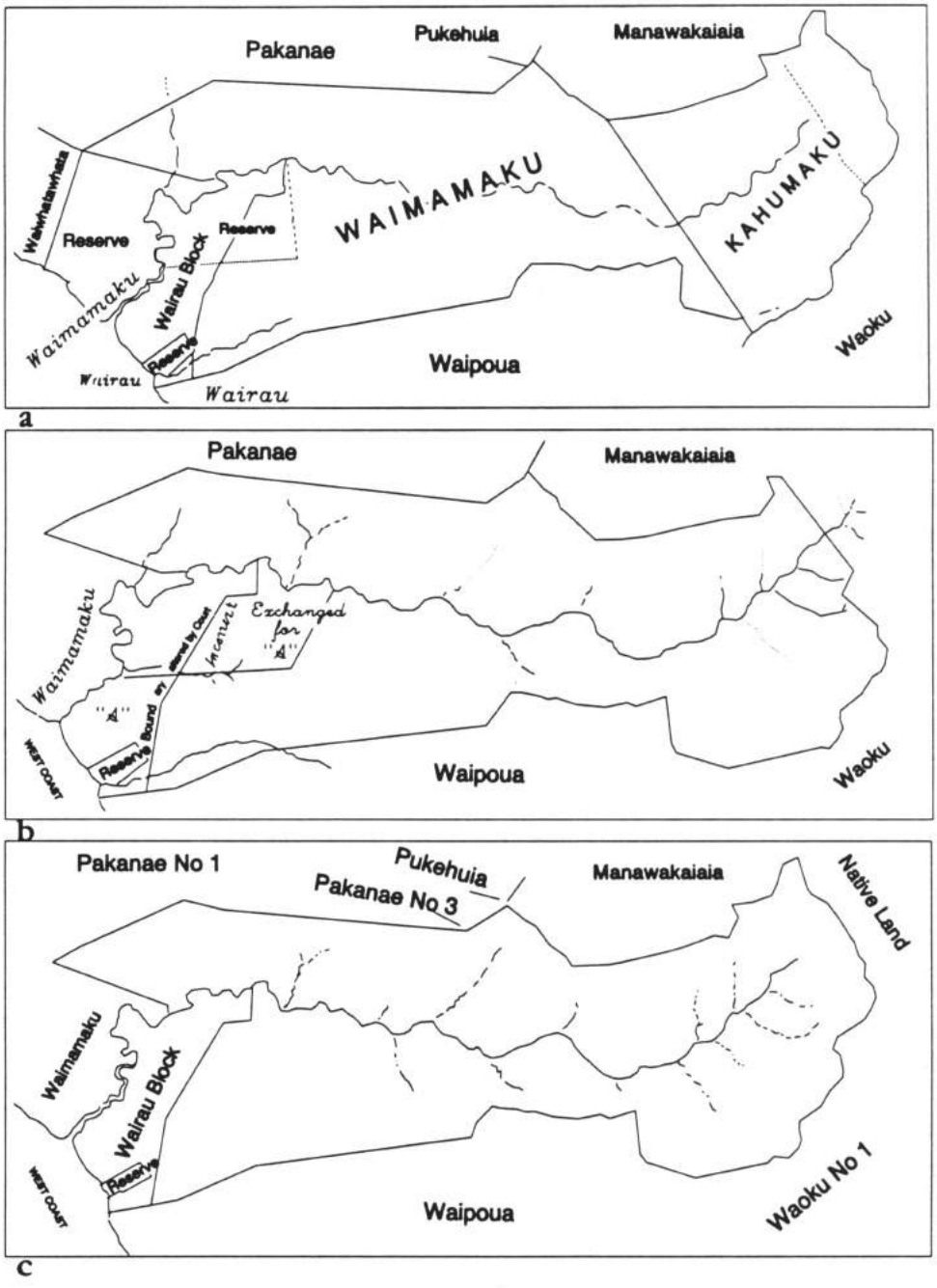

Figure 12: Diagrams of compiled and survey plans of Waimamaku 2 block, 1875 (a) from Smith's compiled plan of Waimamaku 2, ML 3268, 11 June 1875 (b) from H & D Wilsons' survey plan of Waimamaku 2, ML 3278, 14 July 1875 (c) from Kensington's compiled plan of Waimamaku 2, ML 3278A, 21 December 1875. *Source*: Department of Survey and Land Information, Auckland

Smith's plan included the whole of the Waimamaku, Kahumaku and Wairau blocks. It drew in the external boundaries of the Wairau wahi tapu reserve, and it clearly marked as "reserve" an area known as Kaharau straddling the northern portion of the Wairau block and part of Waimamaku No 2 block.

The tribunal researcher considered that Smith's plan clearly showed that Kaharau was outside the area being sold (D1:13). The Crown

considered the lines round Kaharau were too indeterminate to reach any such conclusion (H3:27) but conceded that Smith was attempting to convey what the vendors required (H3:33). Obviously Smith lacked the information he needed to define the internal boundaries of areas Te Roroa wished to exclude from the sale. This could only be procured on the ground. His confusion and doubts over boundaries, total acreages and what areas were to be included in the sale are plainly evident from the indeterminate lines and different styles of lettering on his generally deficient sketch plan.

The Wilsons' plan of Waimamaku No 2 block (ML 3278), was produced over a month after the court hearing.[8] It was notified to the provincial surveyor on 27 July and returned to the Wilsons on 2 August. Neither Percy Smith's report nor the inspector of surveys' memorandum on the Wilsons' plan have been located but it is referred to in a report on Judge Acheson's 1932 inquiry as being "imperfect" (D3:12-14). The Wilsons' plan was drawn after consultation between the vendors, the land purchase agents, Brissenden and C E Nelson, and the surveyors. Peneti Pana pointed out the boundaries to the Wilsons. As the Crown stated, the plan "clearly shows Kaharau and Te Taraire as being outside the Waimamaku 2 Block" (H30:2) and "sbould ... be viewed as the definitive record of the vendors intentions in respect of this sale" (H3:56-57). Having pointed out these boundaries and having seen the surveyors' cutting lines, the vendors would have felt quite satisfied that their wishes were being met.

The rejection of the Wilsons' plan necessitated a replacement to attach to the memorial of ownership for Waimamaku No 2 ordered by the court on 18 June 1875. It was also needed for a court hearing of an application for a partition from the named owners, and for the deed of sale. Plan ML 3278A, 21 December 1875, was compiled in the survey office by the chief draughtsman, W C Kensington, from adjoining surveys, approved by Heale and sent to the court on 14 January 1875 for the partition hearing.

Only the external boundaries of Waimamaku No 2 block were shown on Kensington's plan. These took in Kaharau which did not have any common boundaries with the adjoining blocks, Te Taraire and about 1200-1500 acres being Kahumaku, all of which had been excluded by the Wilsons.[9] Kensington excluded the Wairau block presumably because it was no longer in the sale. The total acreage contained within Kensington's boundaries was 27,200 acres (H3:63-69). Waimamaku No 2 block was sold on 10 January 1876, that is before the partition application came before the court. Kensington's plan was placed on the deed of sale. Thus Kaharau and Te Taraire were included in the sale contrary to the intentions of the vendors and the arrangements they had made with the Crown land purchase agents and surveyors.

On 25 January 1875, Sidney Weetman completed a check survey of part of the Waimamaku and Waipoua blocks. It was submitted to the

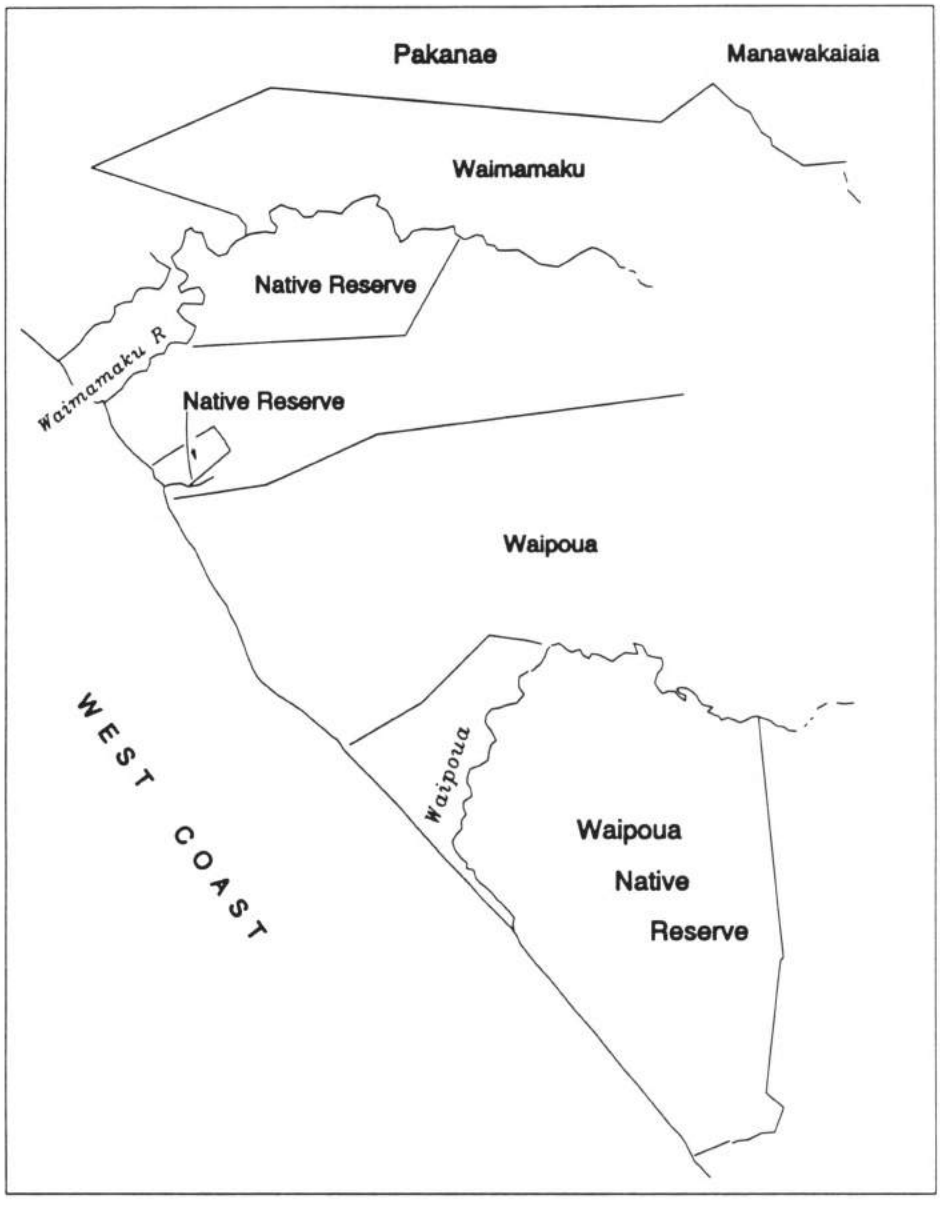

Figure 13: From Weetman's check survey of native reserves, ML 3435, 25 January 1878. *Source*: Department of Survey and Land Information, Auckland

survey office on 1 February, numbered ML 3435, and indexed in the Maori Land Plan Register as "Reserve, Waimamaku", a clear indication that it was a plan of reserves which local people had already pointed out on the ground to the surveyors. These were Kaharau, the Wairau wahi tapu, and Waipoua No 2 but not Te Taraire.

Although Weetman must have been commissioned by a Crown agent to make his check survey, and was mapping the Kaharau reserve about the time Kensington began compiling his plan, his plan was not used to amend the deed of sale by excluding Kaharau nor to grant back Kaharau to the vendors. Nevertheless it indicates:

> that at least someone in the survey office, and possibly other Crown agents, possessed an awareness that Kaharau had been sought as a reserve and at least initially took steps to ensure its reservation. (H30:5)

The survey of Maunganui-Waipoua by the Wilsons under Percy Smith's supervision began in February 1875. In evidence to the Native Land Court, 28 January 1875, Tiopira Kinaki said:

> I procured the Survey of the land. I did not first speak to Parore about it. Parore did not attempt to obstruct the Survey but he was going to Shoot me. He intended to be in wait and Shoot me. I applied to have the land brought before the Court. The owners of the land are Roroa, Te Uriohau, N'Whatua, N'Rongo, Te Taou. Men of these tribes are now living on Kaihu. Enoho mana ana–I say so because Parore does not attempt to drive them away. (A4:432)

McLean had already been informed by Hapakuku Moetara on 7 December, that Parore had said that the survey should not be carried through. Moetara thought that Parore was wrong:

> let the survey be proceeded with and the objections raised when it is brought before [the] Court, that would be the right course because all of us namely the tribes of te Roroa, Ngatiwhatua and te Uri-o-Hau have consented to hand this land over to Taare ... (Mr Nelson.) .... Parore alone is obdurate - if he intends to carry out his threat of sending the surveyors back by guns these tribes will rise to carry the Maunganui (survey) line through. (A4:393-394)

Nelson later recalled that when Wilson was surveying Waipoua he received a letter warning him to leave the land otherwise Parore would send a party to drive him off. The letter was in English and subsigned "Preece and Graham, agents for Parore" (A3:91).

On 24 February, J W Preece informed McLean that Parore had spoken to him and afterwards seemed to have withdrawn his opposition to the survey and sale and acknowledged it would be settled in the Native Land Court. He enclosed a letter Parore had written him, saying, "My idea of settlement is that the line should end at Waikara" (A4:398-399; E2:116-117). He recommended that instructions be sent to Wilson not to carry on the survey to the south of Waikara at the Maunganui end; further, that the agent be instructed to suspend negotiations for the purchase of that portion of the block until the matter was satisfactorily arranged among the disputants (A4:385).

In an undated letter to McLean, Parore explained his actions and interests at more length:

> my land has all been surveyed my word was that the land be divided at Waikara .... If my land is divided by the law it will be right–If it is not divided I shall be forced into the ways of the ancestors and fathers. (A4:390-391)

McLean sought to reassure him:

> You should leave the matter with me .... To say that the survey has been completed, is not a guarantee that the matter ends there—all the matters pertaining to the land have to be carefully debated. (E2:117)

On 11 March, McLean approved Preece's recommendation. Meanwhile, as a result of his own appreciation of the situation, Percy Smith had requested the Wilsons on 4 March to discontinue the survey and informed Heale:

> a serious dispute arose as to boundaries, between Tiopira & party on the one side and Parore of Kaihu on the other. The disputed portion lies at Maunganui Bluff .... The whole of the boundaries are surveyed with the exception of that portion of the coast lying between the north boundary of Kaihu Block and a little stream immediately to the north of the Bluff .... it is quite possible to sketch in the intermediate coast line from the Trig stns as with the exception of the Bluff itself the coast is a perfecily straight line .....
>
> As it is important to get the question of the title to Maunganui settled, seeing that it has been in dispute between these two hapus for many years past and is a matter that is always liable to crop up again, I submit that such a sketch survey, should be accepted and if not deemed sufficiently accurate for further purposes, that the remaining piece of coast line should be surveyed when the title has been definitely settled ....
>
> I should add that this arrangement about the survey of Waipoua seems to have given satisfaction to the natives concerned in the matter. (A6:894-895)

Hapakuku Moetara's evidence in the Native Land Court in January 1897 bears out Percy Smith's account of the situation, that Nelson:

> was buying land for the Gov't. I had a lot to do with the Surveys. Rewiri Tiopira [Tiopira Kinaki's son who spoke English and acted as his agent] and another had charge of the Waipoua Survey. Parore interfered with some of our lines so Te Roroa came around, we saw Mr Smith, and I succeeded in getting the trouble smoothed over. (E2(a):151)

During the negotiations and survey, Te Rore Taoho, who lived at Opanake, seems to have conceded his authority to his nephew Tiopira in a rangatira way, expressed in the old saying: "You obtain the mana for all of us". Although Te Rore had received a payment of tamana, it is said he was against the sale.

As stated in this claim, the Crown agents and officials, from the outset omitted to recognise the mana and rangatiratanga of Te Rore Taoho and to negotiate with him (A1(i):17). The Crown researcher expressed the view that some kind of understanding may have been reached prior to mid-1874 by Te Rore and Parore as to the area over which each was to exercise predominant rights of ownership, with the only area of dispute seemingly centred in the Waikara-Maunganui Bluff area. In his view Te Roroa possibly began to promote a strong claim over the whole of Maunganui soon after July 1874 (E2:134-135).

Neither of these views fits in very well with what we know about the disposition of the two rangatira and their people in the Kaihu valley and the use and occupation of Maunganui at this time. Te Roroa had kept their fires burning on this ancestral land. As Tiopira said in the Native Land Court, "Parore never fought us about the land between Waikare and Maunganui", meaning presumably the whole coastline from the Kaihu block to Maunganui Bluff (A4:434).

It seems more likely to us that Parore asserted a counterclaim to Maunganui in 1875 because he was affronted that Tiopira had agreed to sell and procured the survey without speaking to him about it and that he had not received any tamana. Parore had some rights in the land but not a clear title and the Crown must (or should) have known this. But it had ignored him until he spoke to Preece. Preece may very well have been appointed to replace Brissenden because McLean was anxious to ensure that Parore did not further delay or upset the sale.

There is substantial evidence that the survey of Maunganui-Waipoua was conducted under considerable pressure, as Preece and others manipulated the opposing chiefs, Tiopira Kinaki and Parore Te Awha, in the Crown's interest in accordance with the well-established tactics of divide and rule. Maunganui-Waipoua was partitioned into two blocks by survey inviting the later attempt by the court to solve the dispute between the two chiefs by awarding them one block each (C12:5). Preece undoubtedly influenced Parore into giving up his opposition to the survey and leaving it to the court to settle the matter on this basis.

Percy Smith meanwhile was again under heavy pressure to complete survey plans in time for a court sitting. When the survey was stopped, the Wilsons had done enough to submit a technically unfinished survey plan of the Maunganui block, 10 May 1875 (ML 3242) and a plan of the Waipoua block (ML 3232), which is no longer extant (E2(a):399). No reserves had been cut out of the Maunganui block and the area round the Bluff had not been surveyed. The boundaries of the Waipoua Native Reserve which Te Roroa had arranged to retain as papakainga land were drawn on the plan of the Waipoua block.

Between 10 May and 15 May, a map of Maunganui block (ML 3253) was compiled by Percy Smith in the Auckland office from adjoining surveys and trigonometrical data and sent to the court. After the May sitting was adjourned, the plan was returned to the survey office and "notified to the Provincial Surveyor". Although an "approval" was not specifically recorded, its subsequent use implied its acceptance. A tracing was sent to the Native Land Purchase Department on 20 August. The map was returned to the court on 14 January 1876, produced at the hearing and annexed to the memorial of ownership and deed of sale (A4:452-458; A5:718-721; H28:9; E2:148).

In August-September 1875, Frank Smith returned to Maunganui to survey two reserves, Manuwhetai and Whangaiariki (A5:709-717;

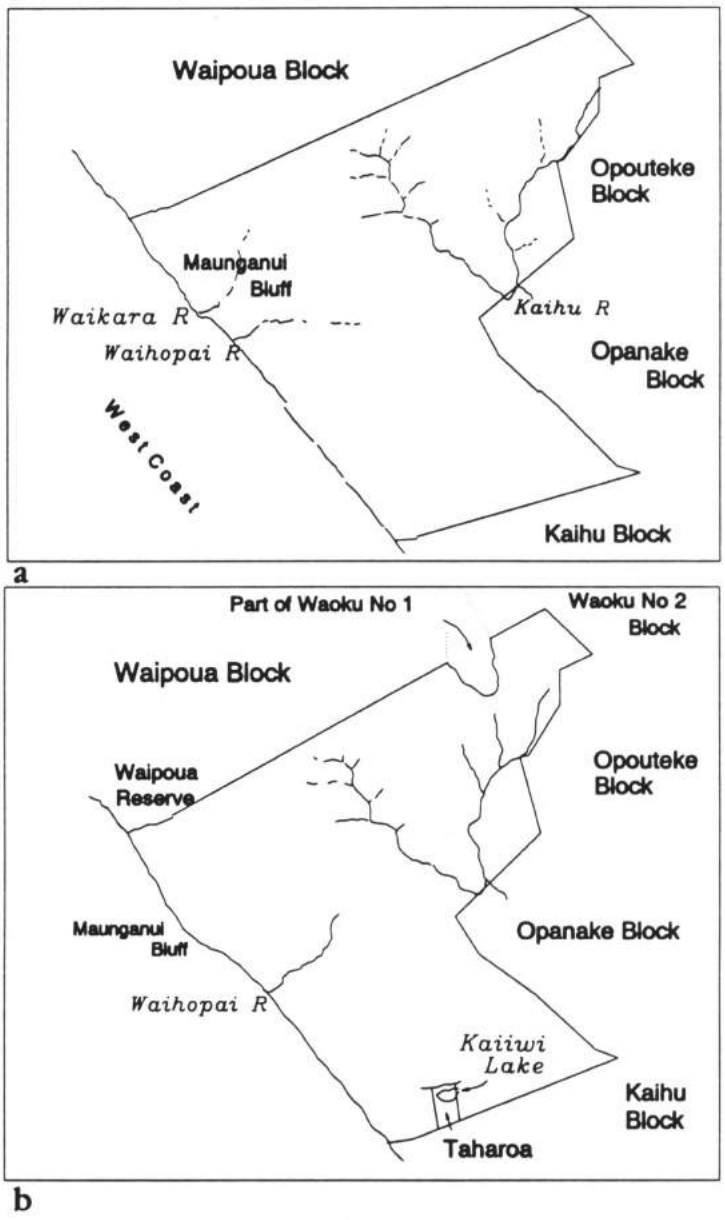

Figure 14: Diagrams of compiled and survey plans of Maunganui block (a) from H & D Wilsons' survey plan of Maunganui block, ML 3242, 10 May 1875 (b) from Smith's compiled plan of Maunganui block, ML 3253, 15 May 1875. *Source*: Department of Survey and Land Information, Auckland

G10:1; E2:125). Almost certainly he was completing "the arrangement" to which Percy Smith had referred on 4 March after he suspended the Waipoua survey. This would account for Percy Smith's remark that "this arrangement about the survey of Waipoua seems to have given satisfaction to the natives concerned" (A6:895). There is no conclusive evidence of who pointed out boundary markers for these reserves. Probably it was Rewiri Tiopira who had instructed the surveyors in Waipoua, but Te Rore Taoho who lived in the area must have known about the Maunganui survey.

Frank Smith's "Plan of Native Reserves", 14 September 1875 (ML 3297-8) was notified to the provincial surveyor on 15 September 1875

and entered in the Maori Land Plan Register under Manuwhetai and Whangaiariki. Registration under these names did not indicate that they were linked to the survey plan for Maunganui (ML 3253) although this number is on the plan of native reserves. The plan of native reserves was not sent to the inspector of surveys for approval. The native reserves were not marked on the map of Maunganui before it was sent to the court on 14 January 1876. Consequently they were not shown on the memorial of ownership or deed of sale. Once again the use of a compiled plan led to the loss of areas Te Roroa had arranged to reserve.[10]

Frank Smith had camped at Maunganui Bluff until his tents were both burnt down in January 1875 (E2(a):397). On his return to the area in August-September he did not attempt to complete the unfinished portion of the survey. Presumably Percy Smith did not want to risk any further dispute and was anyway satisfied that the straight line he had drawn on his map would suffice. Maunganui Bluff was left in the sale of the Maunganui block by reason of its not having been surveyed.

The Wilsons' plan of the Waipoua block (ML 3232) was replaced by an amended plan (ML 3277A) which could not be approved because it overlapped an adjoining block, Waoku No 1 which had already been surveyed and adjudicated upon by the Native Land Court. A new plan (ML 3277) was compiled in the office eliminating the overlap for a court hearing scheduled for August but subsequently cancelled. The Waipoua Native Reserve consisting of 12,153 acres, cut out of the Waipoua block and surveyed by the Wilsons, was recalculated and shown as 12,220 acres on the compiled plan (ML 3277).

The compiled plan (ML 3277) was approved by Heale and used to define the boundaries of Waipoua No 1 block when it was adjudicated by the court and sold to the Crown. The Waipoua Native Reserve was excluded from the sale and designated Waipoua No 2 block. The Wilsons' plan (ML 3277A) appears to have been used on the memorial of ownership for Waipoua No 2 to define the external boundaries, but the recalculated total acreage was substituted for the Wilsons' (I7:2-3).[11] The claim that the Crown omitted to ensure that Waipoua No 2 was fully and properly surveyed prior to the sale of Waipoua No 1 block (A1(i):24) is thus well-founded (see C12:5-6; H28:14-15; H29:4-6).

The errors and discrepancies concerning the boundaries and total acreages of Waipoua No 2, particularised in the claim and elaborated on in claimants' evidence (C12:6-8; H28:14-15; H29:4-6) raised issues relating to boundaries running along rivers and the coast which were not addressed by the Crown.[12]

The particular claim that needs to be dealt with here is that the Crown failed to correctly record traditional boundary markers, particularly for the north-east boundary which is some 40 chains short of the sacred hill Puketurehu and at variance with that shown on Weetman's

check survey plan (A1(i):24). The north-east boundary on the Wilsons' plan was a straight line drawn from the original river traverse to Pukekaitui. The claimants were of the opinion that a fixed point, Puketurehu, should have been the boundary marker, not the river, which has subsequently changed its course (C12:7-8). Puketurehu was excluded from Waipoua No 2 because it was by-passed by the straight line. It seems to us that the particular claims concerning the boundaries and total acreage of Waipoua No 2 arose more from the different ways Te Roroa and European surveyors delineated boundaries than from the use of the Wilsons' unapproved plan and the compiled plan.

The evidence we have examined on how Te Roroa land was surveyed and how survey plans were furnished reveals a number of infringements of the survey provisions of the Native Land Act 1873. Even if they were minor in themselves their main purpose and cumulative effect was to accelerate the survey, the court's adjudication on title and the completion of the purchase negotiations. The use of compiled plans for court and sale purposes resulted in a failure to abide by the oral arrangements made with vendors to exclude certain wahi tapu areas from the sale or, in other words, the terms and conditions of sale agreed to by both parties. The failure to use Frank Smith's plan of native reserves cannot be simply excused as an oversight. Like the failure to use Weetman's check survey for the purposes it was intended, it reflects the prevailing attitude in official circles to native reserves. The Crown and its agents clearly failed to control the survey and furnish approved survey plans that defined boundaries for purposes of title and sale in accordance with the vendors' wishes and intentions. Its dealings with Te Roroa in respect of the survey were unfair and dishonourable and breached articles 2 and 3 of the Treaty.

2.3. The Native Land Court Investigation of Title to Maunganui-Waipoua

Beginning in March 1875, a series of Native Land Court sittings was held to cope with the outstanding cases from the area. Tiopira Kinaki applied for a Hokianga hearing into the Waipoua No 1 and Maunganui blocks "in the expectation that there he was more likely to receive justice" (C12:5). Having obtained an order from Judge Maning for the Koutu reserve he had confidence in him. Possibly he also had some inkling of Maning's hostility to the Crown land purchase agents (Preece in particular) who wanted him "to rob hundreds of owners of land", and of Maning's concern that Judge Monro, who was clearing most of the backlog of cases in the north, was "allowing himself to be led by the nose by the Government agents" (A6:1009-1012). But Maunganui was scheduled for a May hearing under Judge Symonds at Kaihu and Waipoua was advertised for a later hearing at Hokianga.

At the May hearing tension ran high. Tiopira's party arrived armed and camped down stream demanding the court be held there. But eventually

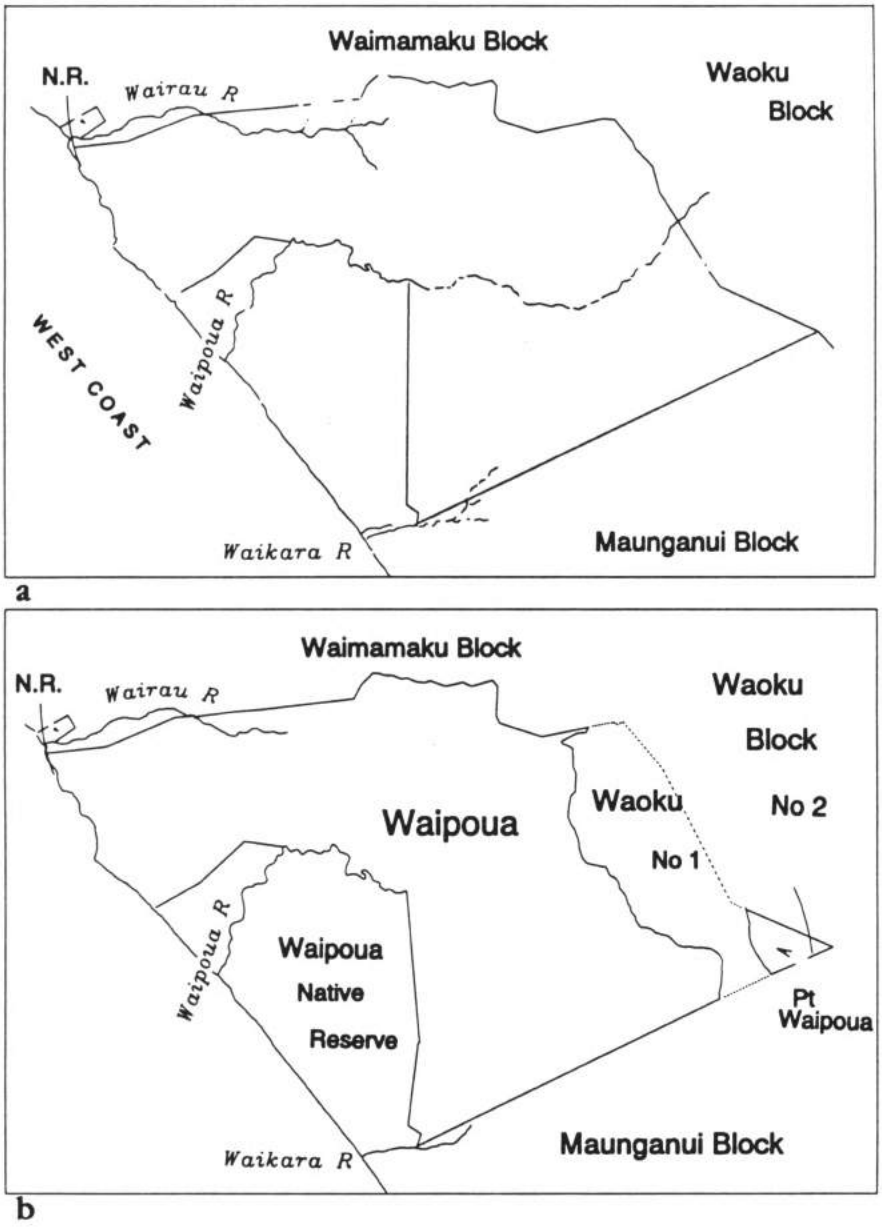

Figure 15: Diagrams of compiled and survey plans of Waipoua block, May 1875 (a) from H & D Wilsons' survey plan of Waipoua block, ML 3277A, 15 May 1875 (b) from Smith's compiled plan of Waipoua block, ML 3277, May 1875. *Source*: Department of Survey and Land Information, Auckland

they handed over their guns to the court clerk and attended at Kaihu. Before Maunganui was called, Tiopira and Parore contested the ownership of the Waimata block. After arguments over descent and the outcome of Te Ika-a-Ranganui, Waimata was awarded to Parore. Preece tried to get a settlement of Maunganui but failed. Torrential rain broke up an open air meeting and Parore was "very unwell and utterly unable to advocate his own case". Although Tiopira offered him what Preece considered very fair terms, he was on his dignity and determined not to be talked down. In court, Tiopira's case was read. Smith's compiled map of Maunganui, ML 3253, was produced, and Tiopira requested the hearing be adjourned to the next court (A3:189; A13:28; E2:126-130).

Two days later, Parore wrote to Judge Monro, stating that an arrangement had been reached (presumably between him and Preece) that he should have Maunganui and Tiopira should have Waipoua. As both blocks were part of the same tribal estate, he asked the judge to adjourn the Waipoua hearing and have the two cases heard together in Kaihu the next summer. Though Preece regretted the delay, he supported Parore's request. It would be impossible, he wrote, for Parore and Tirarau to attend the Hokianga hearing, and complications would arise unless the two blocks were heard at the same time (A13:28-29; E2:129-130).

Monro had the reputation of passing cases quickly through the court and awarding title to chiefs only (A13:29; E2:132-133). He was also known to favour the sale of large tracts of Maori land to colonists:

> the wide extent of the uncultivated holdings of the Maori ... [were] a curse to them rather than a blessing ... every legitimate encouragement should be held out to them to part with their surplus lands to those who can make the use of them for which they were intended, care being taken that each Native has ample land secured to him for his own maintenance.[13]

As Dr D V Williams in his evidence for the claimants pointed out, Monro "was an ideal Judge to suit the interests of the Crown's land purchase agents" (A19:6).

On 3 July, Preece informed McLean that matters with regard to Waipoua and Maunganui were "as good as settled". He had seen both parties and arranged to have a court sitting early in August. He had persuaded Parore to agree as the court was near his own place. He also told McLean that both Te Roroa and Parore's people had requested him to ask that Judge Monro hear the cases (A3:206-208; A4:481-482 passim). Preece was meddling in matters that were normally arranged by the court itself, picking out his judge and determining where he should sit. McLean overruled Preece's arrangements. Although he had received applications from other parties for sittings "at the more seasonable part of the year", his intervention was unusual.

The court sat at Kaihu, 27 January-3 February 1876, under Judges Monro and Symonds, with Hori Te Whetuki as native assessor. The Maunganui claim was heard first. Proceedings on behalf of the claimants, Tiopira Kinaki and Te Roroa, supported by Te Uriohau, Ngati Rongo and Te Taou, all hapu of Ngati Whatua, were conducted by Paora Tuhaere. Tuhaere was a Ngati Whatua leader who had been involved in the sales of Orakei, Manukau and other Waitemata blocks in the 1840s and 1850s and as an adviser to governments for over 30 years. Tuhaere was:

> both pragmatist and visionary wanting tribal ownership of lands but aware that neither Government nor the Court favoured it, opposed to the sale of lands but alert to the reality that as the Crown could not be restrained from buying he could only urge his people not to sell.[14]

Te Rore Taoho, a major claimant from his father's side , did not attend the court. The counter claimant was Parore Te Awha of Ngai Tawake hapu of Ngapuhi. His case was conducted by Taurau Kukupa of Whangarei, a brother of Te Tirarau (A3:97).

Tiopira claimed the land from ancestry; Parore counter claimed first from ancestry, but also from conquest and occupation. Common ground between them was descent from Toa. Disagreement centred on what happened after the battle of Te Ika-a-Ranganui in 1825. Te Roroa claimed they had never been driven off the land and were still living on it. Ngapuhi conceded that Te Ika-a-Ranganui was not fought for the purpose of taking land, but afterwards Parore had gone to live at Waipoua and the land from Wairau to Wairoa was under his mana. Te Roroa living on it were under his protection. Te Roroa responded that only two of their people had fought at Te Ika-a-Ranganui, neither of whom were killed, and that after the fight at Waiwhatawhata, Parore fled to Kaihu. Furthermore, Parore's grandfather had been driven from Waipoua by Te Roroa rangatira and he was descended from Toa through his slave wife, Te Hei, not from the senior line. Judgment was deferred until after the Waipoua case was heard.

On 31 January, Paora Tuhaere said that Waipoua and Maunganui were one, and the evidence for Maunganui would do for Waipoua. Taurau Kukupa said the same (A4:420-448; A11:2; A13:29-31; C12(a):2; E2:133-135). The Native Land Court minute book contains no record of wbat followed.

According to Preece, the two judges found that Ngati Whatua, Uriohau and Te Roroa were subjugated by Ngapuhi, that Ngati Whatua and Uriohau were completely driven out, and that a portion of Roroa lived at Maunganui and Waipoua under Parore's protection and had remained there ever since. Neither Ngati Whatua nor Te Uriohau had any claim to the land. Those who had continued with Tiopira to live and exercise rights of ownership on the land were entitled together with Parore and his people. Both blocks being about the same size, the court awarded Maunganui, 37,592 acres, to Parore's party, and Waipoua, 35,300 acres, to Tiopira's party (A3:98).

Tiopira said he would go and take possession of the land; let the court suspend judgment. Hori Te Whetuki said he thougbt that Te Roroa had been badly treated. The presiding judge, Monro admitted that the assessor's expression of opinion was so contrary to the judgment itself that it could hardly be taken as concurrence. According to the law, the assessor had to concur in the judgment. The judgment could only become valid by both parties accepting it.

Hori Te Whetuki, later excused his "shouting so much for the natives at Kaihu" when he "spoke to all the assembled tribes about Maunganui on to Waipoua" to Chief Judge Fenton "my difference of opinion about Maunganui, and I was aware that we should choose different persons (as owners of that piece)" (A4:459-460).

The court adjourned to enable claimants to talk the matter over. That evening Te Roroa made plans to take up arms and occupy Maunganui (A3:92). Taurau Kukupa later ascribed the death of his two children to the arts of the tohunga, Otene Kikokiko, who was incensed by the evidence he had given in support of Parore's counterclaim and the court's majority decision.[15]

Preece, considerably strengthened by the tact, skill and standing of H T Kemp, civil commissioner for the Kaipara, attempted to mediate between claimants and counter claimants. The outcome was the arrangement announced in court on 3 February. Parore wrote to Tiopira and chiefs of the other side:

> I consent that you should have Maunganui, and that I have Waipoua. The piece outside Waipoua [Waipoua No 2 block] to be for you only; and I also consent to the £100 at Waimata. (A3:92)

Tiopira wrote:

> I consent to your having Waipoua and my having Maunganui. (A3:92)

Memorials of ownership for Maunganui, 37,592 acres, and Waipoua, 35,300 acres, were awarded on 3 February 1876 and both Tiopira Kinaki and Parore Te Awha were named on each (A4:452-458; A4:458(g)-458(j)). A memorial of ownership for Waipoua No 2, totalling 12,220 acres was then awarded to Tiopira Kinaki and nine others, Hapakuku Moetara, Wiremu Moetara, Rewiri Tiopira, Puka, Wiremu Tuwhare, Naera, Marara, Te Rore Taoho and Peneti (A4:458(a)-458(f)). Until then Preece had been under the impression that the block contained only 6000 acres not 12,220 acres (A3:92), an indication that he knew little about the arrangements made by Brissenden, Nelson and the Wilsons with the vendors. The block was entered as Waipoua Native Reserve in the minute book and on the deed of sale for Waipoua No 1 block. The names on the memorial of ownership had been given to the court by Tiopira Kinaki. Survey plans were drawn in the office and later annexed to these memorials of ownership.

2.4. The Sale of Maunganui-Waipoua

Preece now proceeded to complete the purchase of Waipoua and Maunganui dealing with each of the named owners separately. There was nothing unusual about this divide and rule tactic. It had been used, for example, in the notorious Heretaunga purchase by private agents (A19:30-31). First Preece sent for Tiopira Kinaki and Paora Tuhaere. On 8 February, in the presence of Judge Symonds, Kemp and J S Clendon (native interpreter), an agreement was completed to purchase Waipoua and Maunganui at 1s 1d per acre. An extra £56 13s 8d was added to make an even amount of £4000 for the 72,892 acres. From Tiopira's half share of £2000, £620 paid out in tamana was deducted and £100 was added on account of Parore for Waimata. Tiopira wanted 1s 6d per acre, but Preece stuck to the 1s 1d offered by

Brissenden. The two deeds were read by the interpreter and signed by Tiopira, but at this time the respective sums had not been filled in.

As Preece carefully explained in his report on the whole set-up to the native office, he was now faced with the "difficulty" of Parore, who had not agreed to sell or to name a price. At first Parore insisted on 5s and 2s 6d per acre. After a day or two of patient waiting, during which Preece received guidance from Kemp "as to conceding to a higher price", agreement was reached with Parore, "with the concurrence of his people" to purchase his interest in the whole of the two blocks for the sum of £2500, that is, at a fraction over 1s 2¼d per acre. Preece also agreed to let Parore have a reserve of about 250 acres in Maunganui, being an eel fishery at Taharoa. Parore signed the deeds and was paid £2400. The sum of £100 was deducted for the Waimata payment to Tiopira (A3:98-99).

For each purchase, a standard form of deed in English was used conveying land and appurtenances to the Crown. The Maori version, read out to the people by Clendon, simply stated that all the land described had passed to Queen Victoria, her heirs and successors for ever. After the purchase was completed, the deeds were referred to the trust commissioner, T M Haultain, an ex-soldier and minister of defence, for inquiry under the Native Lands Frauds Prevention Act 1870. On 25 February he affirmed on each deed that he was satisfied that none of the provisions of the Act had been breached.

There is no evidence that the local district officer carried out his functions under s24 Native Land Act 1873 of setting apart inalienable reserves of at least 50 acres per person, and under s21 of compiling genealogies and maps but these provisions of the Act were not usually carried out by the court (A19:54). The memorials of ownership had been issued under s46 of the 1873 Act which recognised voluntary arrangements come to by claimants and counter claimants amongst themselves. Whether the court complied with the requirements of the Act will be considered later in the report.

2.5. Grievances Over the Sale and the Crown's Response

When Tiopira discovered that Preece had let Parore have an extra £500, he "was troubled at the deceitful conduct of ... [the] European Land Purchase Agents" and the "tricky manner" in which they had acted. He had been "derided by the Ngapuhi" and was "overcome with shame". He said to Paora Tuhaere, you must urge Preece and Kemp to divide the £500 (A3:92-93). Paora complained to Kemp (A6:1010) and Tiopira went back to his place, where he remained "in great trouble of mind". On 5 May 1876 he wrote to McLean about what had happened. He had given Kemp Parore's letter and his letter to read out in court so that the whole of the tribes present might hear Parore's word consenting to pay him £100 for Waimata, but Kemp had not read them. He then knew that they might say that the £100 was from the sale of Maunganui. He was further troubled that Parore was given

£2500 and a 250 acre piece of land, whereas they should have received £2000 each. By not entering the price of £2200 on the Waipoua deed and £2300 on the Maunganui deed until after he had signed them, the European land agents had made it look as if he had signed his name for these sums (A3:92-93).

On 6 March, an Auckland lawyer, J A Tole, on Tiopira's behalf drew the attention of the Auckland provincial superintendent, Sir George Grey, to the manner in which the deeds had been executed. Grey asked the colonial secretary at once to institute an inquiry. The matter was referred to Kemp and Preece. Kemp was of the opinion that Tiopira was more than compensated for the extra £500 received by Parore with the 6000 acre reserve that had turned out to be 12,000 acres. Preece submitted that Tiopira received for himself alone over 12,000 acres to which Parore was as much entitled by the court's verdict. Furthermore the purchase of their respective interests were two entirely different negotiations. One deed was made to cover both transactions simply as a matter of convenience. Both Kemp and Preece ignored the fact that the vendors had excluded Waipoua No 2 from the sale at the outset and that it was not part of the final settlement (A3:87-88).

Grey again asked the government to institute an inquiry and McLean requested R C Barstow, resident magistrate, Auckland, to investigate the matter and report to him. Barstow reported on 30 June. In his opinion there were two charges against Preece. First he had induced Tiopira to complete the sale by a representation that Parore would not receive a greater amount for his share. Secondly, the consideration money was not expressed on the deed when Tiopira signed it. The fact of the matter was that the figures were merely pencilled in. Then, should Parore be induced to sell, the sums paid to him might be added to those given to Tiopira, and one conveyance to the Queen be taken from both vendors. He could find no irregularities in these transactions. Rather he drew attention to Nelson's dishonourable behaviour in keeping a diary in which he made notes which seemed to throw discredit on his superior, Preece, whilst in receipt of government pay as his clerk and assistant. He considered that Tiopira had received his due and that he and Paora were only begging for more money so that Tiopira's chiefs might not be put on a lower scale than Parore's (A3:100-107; see also A6:1013-1031).

Barstow's findings were essentially an endorsement of the views of the Crown officials and agents who had participated in the sale transactions and insisted that Tiopira had been excessively paid because he was granted a 12,220 acres "reserve". As we have seen, this was a misrepresentation of the facts. Waipoua No 2 was defined by survey so that the vendors could retain it as papakainga. Barstow ignored the question of whether Tiopira had been cheated and cast doubts on Nelson's evidence by suggesting he was a mischief maker. Yet Nelson was the only person from whom he obtained a statement

who had been involved in the early negotiation and survey arrangements with Tiopira.

Tiopira persisted in his protest over the extra payment and the 250 acre reserve granted to Parore for some years (see below, pp 110-111). Two letters (no longer extant) from other Maori hint at some post-sale discontent, for example over not receiving a share of the proceeds (H43:1-4). The lack of any other evidence of protest before 1899 is due to the fact that Te Roroa did not realise that the areas they had intended to reserve from the sale had been sold until the Crown opened them up for settlement. The cries that followed will be discussed in *Take* 7 of this report. The areas concerned were Manuwhetai, and Whangaiariki which were not shown as reserves on Smith's compiled plan of Maunganui, and Maunganui Bluff which was not properly surveyed.

We now need to consider why these omissions by the survey office were not detected in court. One reason was that the rangatira who had kept Te Roroa's fires burning in Maunganui and was managing this resource area, was Te Rore Taoho. He was permanently based at Opanake. His absence from court needs to be considered in its cultural context and against the background of earlier land quarrels with Parore and possible disagreement with Tiopira over the sale of Maunganui land. At the Native Land Court hearing of the Kaihu block in 1871 requested by Parore, Te Rore Taoho had initially stopped the survey and along with Tiopira opposed Parore's claim in court (A13:26; A26:17). But Tiopira had known nothing about Parore getting the case of Opanake heard at Helensville in 1873 and saying that the land belonged to both Te Rore Taoho and himself (to the exclusion of Tiopira and Hapakuku Moetara) until after the court had dealt with it (E2(a):162).

The claimants implied from Te Rore Taoho's absence from the court hearings on Maunganui that he was against the sale. In their view, only selected Te Roroa were present (A26:18). They further pointed out that at a Native Land Court sitting in January 1897 Te Rore stated:

> I did not associate myself with the *hapu* at the hearing of the Maunganui case .....
>
> I stood alone when Maunganui went through the Court .... I did not touch the money .....
>
> It was Tiopira who distributed the purchase money of Maunganui among the *hapu* .... Tiopira and Hapakuku did, I was averse to it. (E2(a):162-169; B34:att 14)

Yet the applicants for title on the Wilsons' survey plan of Waipoua block (ML 3277A) were Tiopira, Hapakuku Moetara, and Te Rore Taoho.

According to the claimants:

> It is obvious that some arrangement had been made between all three.

> The original Waipoua survey map is of both the block to be sold and the reserve. Te Rore was admitted to the reserve but would have nothing to do with the sale ....
>
> Furthermore, as the Court was presumed to be investigating lands for sale, and not for "reserves", Te Rore probably felt his presence was unnecessary. It may also be that this indicated Tiopira's sensitivity. Te Rore did not actively dissent in the sale and this raises the issue of obligations owed by Tiopira to Te Rore and whether they were met. It is said that Te Rore's absence was a Maori matter and yet the Court adjudicated the block without hearing his evidence. (B34:att 15)

The Reverend Maori Marsden gave evidence that cultural considerations would have prevented both Parore and Tiopira from selling Manuwhetai and Whangaiariki and would explain Te Rore's opposition to the sale and absence from the second and third court sittings:

> (a) Parore had two children buried there.
>
> (b) Waiata was buried there. His brother Maunga and his son Taoho were also buried there. These were the high chiefs of Te Roroa and Tiopira Kinaki's grandfather and great-grandfather .....
>
> We know that Te Rore Taoho certainly was against the sale. His boycotting of the second and third court sittings was a clear indication.
>
> Te Rore was being culturally consistent. Now the normal method of decision making was by consensus.
>
> If the matter was not critically important ... [then] a whanau or tribe would not worry too much about achieving unanimity. To allow others to proceed, the chief of the dissenting group would simply say,
>
> "Waiho mai matou ki waho." "Leave us out"
>
> with the unspoken understanding that the others could proceed. Sometimes they would make this explicit with the words,
>
> "Mahia mai e koutou." "You carry on"
>
> If that matter was a weighty one as this certainly was; and consensus was essential, as in this case, then a chief would boycott the process. This, in Pre-Pakeha times, was an effective veto. (A21(a):4-5)

Tiopira, it seems, had taken over and Te Rore Taoho felt excluded:

> Ka pu te ruha
> Ka hao te rangatahi.
> (The old net is cast aside
> The new goes a fishing).

Another reason for the failure to detect the inclusion of Manuwhetai, Whangaiariki and Maunganui Bluff in the sale was that the court did not address the questions of exactly what areas of land were being sold and reserved, only the dispute over ownership. The survey plans for Maunganui and Waipoua No 1 produced in court were taken as read.

A point at issue between the Crown and the claimants was whether Tiopira actually saw plan ML 3253 for the Maunganui block and plan ML 3277 for Waipoua No 1 block before he signed the deed of sale.

We have considered their evidence (I15:1-4; I16:1-14)[16] and are of the opinion that Tiopira did not look at the plans. Nor did Paora Tuhaere. Tiopira almost certainly could not read maps or follow the descriptions of boundaries based on survey data not Maori place names. He would not have known that the plans produced in court and placed on the memorials of ownership and deed of sale were compiled plans that showed external boundaries only, not internal boundaries of reserves. He would have felt confident that the oral arrangements he and others made with the surveyors had been carried out. Paora Tuhaere in a statement taken from him in Barstow's inquiry declared that he was present at the sale and heard the deed interpreted by Mr Clendon to Tiopira "I did not see the writing; I only listened to the interpretation" (A3:102).

Another point at issue between the Crown and the claimants was exactly what the claimants understood they were selling. Did the vendors, for example, understand they were selling growing timber? Oral tradition among Te Roroa is that the trees on Waipoua No 1 were not sold (A1(i):22). As we have seen, the standard form of land deed no longer spelt out what chiefs were selling as McLean's earlier deeds had done. It simply referred to "land and appurtenances" (translated as "whenua"). In law Te Roroa did not retain any rights to timber after the Maunganui and Waipoua No 1 blocks were sold. Far from being concerned actively to protect Te Roroa interests, the Crown was out to get as good a deal as possible. It ignored the value of the timber or gave it none at all. By purchasing large blocks of land well ahead of need for public works and settlement it was able to negotiate very low acreage rates. The underlying assumption of the Crown was that Te Roroa's present and future needs, including timber, would be met from lands reserved from the sale. Yet in respect of the Maunganui-Waipoua purchase, the Crown not only omitted to implement the no less than 50 acre per head rule; it also omitted to reserve Manuwhetai, Whangaiariki and Maunganui Bluff. Clearly it failed to carry out its treaty obligations to protect Te Roroa's existing resource base and to provide for Te Roroa's future needs.

Parore's counterclaim was based on conquest and occupation, and the court seemingly applied "the 1840 rule" laid down in 1869 by Chief Judge Fenton, by which Maori customary titles to land were deemed to have been stabilised in the year of the Treaty of Waitangi and "the coming of the law". While conquest was seen as a legitimate claim prior to 1840, it had to be supported by evidence of occupation.[17] As we have seen, Parore only resided at Waipoua for a short period. By 1840 he was based at Kaihu and Te Roroa were returning to Waipoua-Maunganui and exercising their rights to cultivate. Trade, Christianity, and more settled government enabled them to live at

peace. It seems likely that the conquest *take* was asserted in court to strengthen Parore's interest in the land based on descent. In awarding Maunganui to Parore and Waipoua to Tiopira, the court applied the 1840 rule in a way that was so favourable to Parore that Hori Te Whetuki objected, Tiopira planned armed resistance and Taurau Kukupa believed he had been bewitched by an incensed tohunga.

The claimants submitted that the voluntary arrangement subsequently made by Parore and Tiopira "clearly sought an equality of interest between the opposing parties in the Waipoua No 1 and Maunganui Blocks and was the sole legal basis of the subsequent order of Court" (C12(a):3). The evidence on this is conclusive. Preece's payment of an additional £500 and the reservation of about 250 acres at Taharoa for Parore, breached the principle of equality of interests, and was an insult to Tiopira's mana as was failure to read Kemp's letter in court which made it clear that Tiopira received £100 for Waimata and that this was not part of the payment for Maunganui-Waipoua. Preece and Kemp acted in bad faith towards Tiopira, and resorted to unfair practices dishonourable to the Crown.

The way in which the land purchase system operated was clearly to the disadvantage of the sellers. Place names chiefs used as boundary markers were not shown on the survey plans. Survey plans based on compiled plans were drawn in the office and attached to deeds of sale after they were confirmed by the court. Although Maori versions of the deeds were read out and explained, they did not describe boundaries in the only way the vendors would have clearly understood, that is, by naming traditional boundary markers. Sellers did not realise that the oral arrangements they had made about boundaries and reserves were not adhered to in the deed of sale.

There is substantial evidence that neither the trust commissioner, Haultain, nor the resident magistrate, Barstow, carried out their inquiries properly. The trust commissioner signed the deeds notwithstanding Preece's and Kemp's unfair practices. Trust commissioners were, anyway, part-time officials who could hardly be expected to investigate all transactions thoroughly (A13:32).[18] Barstow's exoneration of Preece's activities and conclusion that there were no irregularities in the purchase is contrary to evidence we have received and respect. Preece's argument that Tiopira gained more than his fair share because he and others were awarded Waipoua No 2 block is "highly irrelevant", as that block was a separate adjudication and not for sale. As for Preece's statement that he thought the block was only 6000 acres until later, it was shown as 12,220 acres on the plan produced in court. Barstow treated the evidence of the Crown officials as more reliable than that of Paora Tuhaere and had no regard for Tiopira's statement that he understood he and Parore were to receive equal payments. He held Nelson, the only European who appeared to support Tiopira's case, in low regard and suspected his motives (A13:34; E2:182-204). Clearly this was not a fair inquiry.

In conclusion we need to consider whether the manner in which the investigation of title and the sale were conducted was fair and reasonable in Treaty terms to Te Roroa.

Maning's private sentiments about how the Native Land Court system operated under Judge Monro are pertinent here:

> the whole affair [he wrote to J Webster] is just a pretty little kettle of fish .... he [Monro] wittingly and deliberately ignored the rights of nine tenths of the owners of almost every case he had to do with and left them at the mercy of a few Rangatira sharks and the consequence is that as the right owners have not signed the Transfers or been named in the grants the Govt [Government] have not got a single valid title in the North ... (A6:1011)

Under the Native Land Court system, Tiopira and Parore became absolute owners of Maunganui and Waipoua No 1, not trustees for their hapu. Every other person with rights in these blocks was legally disinherited although some of them concurred in the sale and shared in the proceeds. There were some undercurrents of post-sale discontent (A13:33) but no sustained protest until the Crown began to open up the land for settlement. Te Rore Taoho and his people did not immediately mention that they had lost Manuwhetai and Whangaiariki which they understood had been cut out of the sale, nor Maunganui Bluff.

The Crown's title to Maunganui and Waipoua No 1 block was blighted by the failure of its agents to properly complete the survey and further to investigate title. In completing the purchases, Crown agents were unfair to Tiopira and breached the voluntary agreement between Tiopira and Parore which was explicit in the terms of sale. In investigating title and purchasing the Maunganui and Waipoua No 1 blocks, the Crown failed to actively protect Te Roroa interests under article 2 of the Treaty and properly to recognise the rights of its subjects under article 3.

2.6. The Investigation of Title and the Sale of Waimamaku No 2

An application for the title of Waimamaku No 2 was lodged on 4 February 1875 by Tiopira Kinaki, Hapakuku Moetara and Te Rore Taoho for Te Roroa (D3:32). An application for the title of Raeroa and Kahumaku was lodged on 4 February by Te Whata, Nopera, Hone Tautahi, Komene Poakatahi for Ngati Ue (D3:28). A hearing scheduled for the March sitting of the Hokianga court was adjourned as no plans were produced. Brissenden attributed this to Smith's serious illness and Nelson's absence (A3:231-232; D1:12; H3:19).

The court began its adjudication on 12 June 1875. Judge Monro presided with Wiremu Hikairo as assessor. Percy Smith, Brissenden, Nelson and Preece were all present. The district officer, William Webster, had no objection to the case proceeding. As Waimamaku

overlapped Kahumaku it was agreed that the two claims should be heard together. A "tracing" of Waimamaku was produced in court, which was obviously the sketch plan 3268 compiled and approved by Smith the day before. Te Whata affirmed that the boundaries on the map were correct. Tiopira and Peneti said that they knew the land on the map. Clearly they were all referring to the "tracing produced of Waimamaku". Hokianga stated he knew the land described on the plan of Kahumaku, clearly a reference to Davis's plan which was also produced. Komene Poakatahi subsequently pointed out that "the line shown on the map as the East boundary of Kahumaku is not a pakeha line.... It is an old Ancestral boundary" (D3:75-87; H3:30-32; D1:13).

Most of the evidence concerned old rivalries between Te Roroa, Ngati Ue, Ngati Pou and Ngaitu and the Waimamaku-Kahumaku boundary. Judgment was delivered on 18 June in favour of the descendants of Tarahape (from whom Te Roroa claimed descent), Taitua and Te Whareumu and Uetaoroa (D3:106). In other words the claims of all the hapu were recognised (D1:14). The court then adjourned to allow the claimants to decide on names that should be on the memorial of ownership.

On 19 June, Hapakuku Moetara stated they could not agree; Heta Te Haara then stated that Tiopira had gone back to his place and commissioned him to act on his behalf; further, that Tiopira had agreed Heta Te Haara's name should be on the memorial instead of his. Hapakuku Moetara then said they had had a meeting of all parties and agreed on the persons to be considered owners. Fifteen others assented and there were no objections. Judge Monro ordered a memorial of ownership naming Heta Te Haara of Te Roroa, Hone Mohi Tawhai of Mahurehure, Ngakuru Pana of Ngati Pou, Te Whata of Ngaitu and Hetoro Waipapa of Ngati Ue for the whole block including Kahumaku, to be called Waimamaku No 2 be inscribed on the court rolls (D3:108-109). Having accepted the list of owners supplied by the claimants themselves under s46 Native Land Act 1873, the court was not legally required to list the names of all the owners on the memorial (H3:39). Yet the identification of all the owners should have been a pre-condition of all land sales.

An application for the partition of Waimamaku No 2 was made on 25 June 1875 by Heta Te Haara, Ngakura Pana and Te Whata (D3:22). Hakaraia Te Manu had also applied for a subdivision on 16 August 1875 (H3:39). These applications, together with a request for a rehearing which had been refused and a complaint of unfair dealing, signified some dissatisfaction with the court's order (H3:39-41). As Preece wrote to McLean, 8 July 1875, the purchase of Waimamaku was "as good as finished", but the interests of "two dissentients" had yet to be defined (A3:199-203; H3:42).

The deed of sale for Waimamaku No 2 block was dated 10 January 1876. It was signed by the five Maori owners in the presence of the resident magistrate in Hokianga, Spencer von Sturmer. The block sold

contained 27,200 acres which was the total acreage on Kensington's plan. The payment price was £1203 6s 6d. The description of the boundaries in the schedule refers to Kensington's plan ML 3278A and includes Kensington's links. The plan attached to the deed of sale is a copy of Kensington's plan ML 3278A, renumbered 3278, signed by von Sturmer and the sellers. No reserves were cut out of this plan.

We do not know whether Kensington's plan was approved in time to be attached to the deed for the signing or, if not, an unapproved plan or tracing was produced at the sale. In raising these latter possibilities counsel for the Crown was merely speculating (I2:(b)(iii):22). All we know is that Kensington's plan was approved by Theophilus Heale, inspector of surveys, in his Auckland office and entered in the Maori Land Plan Register. No dates were recorded in either case. The remarks beside the entry indicate that the plan was approved and entered sometime between 21 December 1875 and 14 January 1876. The remarks were as follows "'approved' to N.L.C. for subdivision 14 Jan/76. Returned 16 Feb/76. Placed on memorial of ownership 12 Apr/76" (E2(a):403).

The application from Maori owners to partition Waimamaku No 2 block came before the Kaihu Native Land Court on 31 January 1876. Kensington's plan had arrived because it was stamped with the court seal. It was not minuted as having been produced in court because the block had already been sold to the Crown and Kemp successfully applied to have the case dismissed (H3:64; D1:16).

Trust Commissioner T H Haultain certified on 25 February 1876 that he was satisfied with the results of his inquiries that the sale of Waimamaku No 2 block was valid (D2:28-31). This was probably little more than a formality. Certainly there is no evidence he carried out any kind of investigation.

On 17 January 1876, Preece submitted a report on the Waimamaku purchase to the Native Department, noting that he had completed the purchase of Waimamaku and that the Kahumaku block had been included in the same deed (H3:74-5). We know little about its contents. The Native Land Purchase Department had been merged with the Native Department from August 1875 and the report was in the department's records destroyed in the Parliament Buildings fire of 1907 (H48:8).

On 10 April 1876, Preece despatched the deed for Waimamaku No 2 block to the Native Department. On 8 June 1876 he submitted the boundaries of the Waimamaku block, "as they appear on the Certificate of Title issued by the Native Land Court". The native under-secretary replied on 17 June, pointing out that it would facilitate the work of his office "if in every instance a copy of the Court Order was forwarded at the time of sending the deed" (H3:75). On 13 July 1876 Waimamaku No 2 block, including Kaharau and Te Taraire as shown

on Kensington's plan, was proclaimed waste land of the Crown (D3:1-3).

Meanwhile, on 12 April 1876, Kensington's compiled plan was placed on the memorial of ownership and renumbered 3278 (D3:12-14; H3:77). The total acreage of 27,200 acres on the memorial was the same as Kensington's. The links, giving a detailed description of the boundaries, were annotated as being examined by Kensington on 19 April 1876. In fact they are Kensington's links. This evidence indicates that the plan annexed to the memorial and the total acreage and links were added about three months after the block was sold. The memorial of ownership was "certified as a true copy" and inscribed on the court rolls by Judge Monro on 1 September 1876 (D2:23-27), that is, almost eight months after the block was sold.

In the final stages the purchase proceeded notwithstanding a letter from Peneti Pana and others to the Native Department dated 5 June 1876 stating they were "in great trouble over their lands". Preece's reply, dated 14 July, stated that Ngakuru Pana had signed the deed and received his share of the money. H T Clarke subsequently wrote to them that it was now too late to reconsider the matter. Peneti Pana's letter has been lost so the precise cause of "the great trouble" is unknown (H3:77-8).

Dr Patrick Hohepa's translation of a letter written by Hapakuku Moetara, Peneti Pana and others to the Native Minister, 27 January 1892, indicates the probable cause:

> When Pirihi (Preece) and Taare (Charles "Nelson") purchased the big block of Waimamaku No 2 a message was written clearly in the deed that a portion of the land will be sectioned off (teakina) for the Maori. Our sellers, on the other hand, only signed the sale of the big block. Charles (Nelson) wrote in his books his separating that other block outside of the sale of the big block. We think that his books are with the Department.
>
> That is why we say that we still have possession of that portion of that block right from the distant past up to today. (D11:13)

The letter clearly indicates that the reserves arranged by the vendors with Nelson were included in the sale. Nelson's books have not been found. Again reserves were lost through the use of a compiled plan and lack of identification by traditional features. Vendors depended on oral arrangements and did not look at the documents.

In her final submissions on the sale and purchase of Waimamaku, counsel for the Crown conceded that the vendors of Waimamaku land intended to reserve Kaharau and Te Taraire, albeit with some dissembling on Kaharau when she should have accepted the facts:

> only ... a full enquiry and piecing together of circumstantial evidence ... has allowed the Crown to accept reasonably firmly that there is sufficient doubt about whether the vendors did or did not intend to sell "Kaharau"....

> ... in respect of Te Taraire the evidence is not so clear .... The lack of protest in respect of Te Taraire in the intervening years is ... a telling indicator, especially when compared to the profusion of petition and complaint in respect of "Kaharau". (I2:(b)(iii):27-28).

She wholly rejected the allegations of the claimants that the Crown somehow knowingly included Kaharau in the purchase and deliberately breached negotiated agreements with the chiefs. Virtually she was admitting the Native Land Court system caused the problem. She tried to pass off Kaharau by suggesting that possibly the Crown believed that Wairau North was the extent of the reserve asked for. She submitted:

> that delays, changes of personnel, disputes among vendors and a mistaken assumption that the vendors would have been alerted to any difficulties by a reading of the deed or the information contained on the map led the agents of the Crown into a misunderstanding of the terms of the sale. Counsel for the Claimants has stated that the Chiefs would have relied on oral undertakings rather than the written words. Perhaps he is right, but by 1876 the Chiefs and their advisors, experienced land sellers, were surely aware of the nature and meaning of these documents. (ibid:27)

As to the irregularities and short cuts resorted to by Crown agents to purchase Waimamaku No 2 block, she submitted that surveys were costly and time consuming and vendors, as well as Crown agents, were anxious to complete the sale. The court proceeded to investigate the title and order a memorial of ownership before a proper survey plan was completed and approved. Smith's sketch map was sufficient for immediate purposes and everybody who took part in the hearing knew it was provisional (ibid:9-10).

She was unwilling to concede a possibility that Kensington's plan was not seen by vendors before they signed the deed of sale and before the plan was sent to Kaihu. Possibly an unapproved copy or tracing was sent to Herd's Point. The claimants' allegation that vendors signed the deed without seeing Kensington's plan and that the description of boundaries and total acreage in the schedule were added later was serious, particularly as the deed was signed in the presence of the resident magistrate and the Maori version was certified by the interpreter. In her view it seemed to have arisen because the plan did not include the reserves which it is claimed the vendors wished to have made (ibid:22). She did not scrutinise the claimants' evidence on this point. Rather she cited the opinion of the Crown researcher that the vendors, on signing the deed, would have been convinced their wishes in respect of "Kaharau" were being met and that possibly they were told the reserves would be added to the map and deed later (ibid:22-23). She conceded the possibility that Weetman's plan showing the Waimamaku reserve was intended to be added to Kensington's plan later, noting that data from Kensington's plan was added retrospectively to the memorial of ownership (ibid:23-25).

Her submissions relied mainly on the evidence of the Crown researcher, based on detailed material from official records, accepted at its face value. She was clearly reluctant to accept oral evidence of what was said, agreed to and acted upon at the time, unless it was supported by maps and documents. She failed to interpret written evidence in a wider historical and cultural context. She played down the irregular acts and sharp practices of the agents of the Crown. She assumed that because other hands worked on survey plans and the eastern boundary was disputed, there was confusion about what land was to be included in the sale and what was being reserved.

We have respected the oral evidence that vendors intended to exclude Kaharau and Te Taraire from the sale and understood they were excluded when they signed the deed of sale. It matches cultural imperatives to protect greatly respected and treasured taonga. We consider that irregularities occurred partly because of the anxiety of agents of the Crown to purchase large areas of land as quickly and cheaply as possible. We believe that the prevailing reluctance to set aside reserves may have contributed to failure to reserve Kaharau and Te Taraire. We attribute their loss directly to the use of Kensington's compiled plan on the deed of sale and failure to reconsider the sale in the light of Weetman's check survey and letters from the vendors. As Daniel Ambler, a descendant of Te Whata observed:

> It was the written word that mattered, no longer the spoken. In this the Maori was totally reliant on the honesty of the Pakeha, his pen, his papers and his maps. But the people had great confidence in the Crown and its agents and trusted them to treat them equally and with justice. We would not be here addressing this issue if the Crown had been honourable instead of breaching the Treaty. The Crown did not give the protection promised to the Maori. (D21:2)

We agree with the claimants' counsel that, in the sale of Waimamaku No 2, the written word triumphed over the spoken word and the agreement made by agents of the Crown with the vendors was never honoured (I1(b):55).

From what we have been told about the spiritual and historical significance of Kaharau and Te Taraire we find it inconceivable that the tupuna of Waimamaku would have sold either place to the Crown.

2.7. The Cession of Wairau South

Initially, Wairau South had been included in the negotiations to purchase Waimamaku and Kahumaku. Brissenden, on 29 September 1874, made a down payment of £66 on the block, to Wiremu Ponga Rangatira Moetara (brother to Hapakuku). This was the amount apparently still owing on Campbell's 1870 survey. Both Smith and the vendors thought the block was being sold and the Wilsons surveyed Wairau South (H3:82-83). Annotations on the Wilsons' plan (ML 3278)

led to the suggestion that it was proposed to exchange Wairau South for an area adjoining Wairau where the burial caves were, thus forming the Kaharau reserve (D1:15, 17 cf D12:7). But other evidence conclusively showed that "the exchange scenario" simply did not fit the facts (D18:14-15; H3:58-61). Kensington's plan excluded the Wairau block, as defined in Campbell's survey (ML 2012), from the area for sale. This necessitated the completion of the purchase of this block by the Crown.

Further payments were made by land purchase agents of £19 to Hapakuku Moetara and others on 23 November 1876, £4 15s to Hori Karaka Tawhai and others on 15 January, and 9s 6d to Tane Pokaia on 1 March. Te Rore Taoho and another were paid 19s on 5 December and Te Rore Taoho a final payment of 17s on 12 July 1877. Total payments are reckoned by the Crown researcher to amount to £92 6d (H3:83-84).

A deed of sale for the block was signed on 9 November 1876 and 12 July 1877 by Hapakuku Moetara, Rewiri Tiopira, Te Rore Taoho, Heta Te Haara and 51 others (D2:32-39). It was witnessed by von Sturmer and the district officer. The plan on both copies of the deed was Campbell's plan ML 2012 of Wairau, incorporating some information from the Wilsons' plan of Waimamaku No 2, ML 3278. Campbell's external boundaries and boundaries of the wahi tapu reserve are used, but the boundary between Wairau North and Wairau South seems to correspond to the line shown on the Wilsons' plan. The total acreage given for Wairau South was 1239 acres, arrived at by subtracting 1300 acres (Wairau North) from Campbell's 2539 acres. Due to confusion and bungling, the figure arrived at was 110 acres more than the actual area of the block. The wahi tapu reserve was 171 acres (D2:32-36; H3:84-85; D18:12). The deed was signed by Tane Pokaia on 1 March, the day he received a final payment, having succeeded to the interests of a deceased owner. The consideration for 1239 acres was £92. All the vendors received from Preece was a small balance over and above the survey money, to make the payment equal to 1s 6d per acre, the rate agreed upon by the former land purchase agents (H3:87).

The deed was endorsed by the trust commissioner, Haultain, on 22 October 1877 (D1:17; H3:85), but remained in his hands because when the court awarded a certificate of title in 1870 it had made the land inalienable, except by lease, with the governor's consent, for 21 years. Preece had not been aware of this restriction when he completed the purchase. On 28 November 1877, he respectfully suggested that the restriction be removed as the portion had been marked off from the reserve by the owners themselves to pay the government for the survey. To get over the problem of purchasing the southern portion of the original block only, the undersecretary of the Native Department approved that application be made to the court for a partition (H3:87-88). On 16 September 1878, Tiopira, Ngakuru Pana and six others asked Fenton to adjudicate upon what land had gone

to the governor and referred him to the Wilsons' map (H3:app 1, pp 19-20).

In the resident magistrate's court on 28 January 1879, von Sturmer, on the government's behalf, applied to have "that portion which the Natives have agreed to give up to the Government" vested in Her Majesty. The district officer, Webster, told the court that the government had paid for the survey of the whole block and arrangements had been made for the owners to make a portion over to the government for repayment. Rewiri Tiopira informed the court that the portion was at the south end and amounted to 1129 acres, and they were retaining 1410 acres at the north end. The portion marked off as tapu was not included. The dividing line was shown on the map. Peni Kahi said they all agreed and the owners of Wairau North would like to have their interests defined at some future sitting. Von Sturmer said he had a deed for 1129 acres but it was not fully completed. He therefore applied to have the south part containing 1129 acres vested in Her Majesty. The court ordered that the southern portion of the block, containing 1300 acres, had been duly ceded to Her Majesty (D2:37-38; D3:111-112). The wahi tapu area had been inadvertently added to the 1129 acres, not having been brought to the court's notice by vendors on account of there not being a fully completed plan.

Campbell's plan ML 2012 was produced in court. Later a plan of Wairau south drawn from it and incorporating the boundary between Wairau north and Wairau south from the Wilsons' plan, was appended to the deed and numbered 2012B (D2:39). The total acreage was shown as 1129 acres, excluding the wahi tapu reserve (D2:36). As a result of the utilisation of Campbell's plan, the area of the wahi tapu reserve was reduced from 210 acres on the Wilsons' plan to the original 171 acres. We shall examine Te Roroa's claim relating to this reduction in the next section of the report.

Wairau south was ceded to the Crown under s107 Native Land Act 1873, which dealt with "Inchoate agreements by Land Purchase Commissioners". No evidence has been found that the prohibition on alienation was removed by the governor. Nevertheless this seems to have been envisaged by the undersecretary of native affairs when he approved applying for a partition as the only course of action open to them (A3:20; H3:88, 92).

References

1 See also Raewyn Dalziel, *Julius Vogel, Business Politician* (Auckland, 1986) p 105

2 See James Belich "McDonnell, Thomas" DNZB, 1, M 4

3 When the Act was being drafted, Chief Judge Fenton had proposed that private dealings with the Maori prior to the court's award should not be merely void but illegal. The Chief Justice, Sir William Martin, urged that land having passed through the court should be sold under public auction. The government, dominated by land speculating interests, rejected both these proposals and waived the Crown's right of pre-emption,

which had provided some measure of protection for the Maori from land speculators. When Crown and private purchasers competed for Maori land on the market, they could and did, risk their money, by paying tamana to those with whom they were negotiating. If the court then awarded a certificate of title to the recipients and they completed the sale, the amount advanced was deducted from the final payment. If the title was awarded to other claimants, the purchasers lost their deposits (B34:att 12-14; E2:12-15).

4 About this time, Brissenden, McDonnell and Nelson were actively engaged in negotiations for both new and partly acquired blocks in the north. These included negotiations with Parore Te Awha at Kaihu for the Mangakahia block. There was a lot of haggling over acreage rates, which reflected a number of variables such as situation, quality of the soil, kauri forests, access to waterways and suitability for settlement (E2:96-97). On 13 January, McDonnell submitted a list of 30 blocks he had negotiated. They ranged in price from 1s to 3s per acre. Deposits had been paid in 27 cases (E2(a):348).

5 cf the several uses and payment of takoha in Taranaki discussed by Keith Sinclair *Kinds of Peace: Maori People After the Wars, 1870-85* (Auckland, 1991) pp 67-68. He regards takoha as "a simple bribe".

6 At this time R C Davis was surveying Kahumaku lying to the west of Waimamaku. By the end of February his survey was well advanced and Percy Smith was under great pressure to produce the plans needed for a court sitting on Kahumaku and Raeroa scheduled for 14 March. But due to his bad attack of measles and Nelson's absence, the sitting was rescheduled for 31 March.

The survey of Kahumaku was completed in March and Davis's plan (ML 3221), for an area totalling 8517 acres (D18(a)), was submitted to the inspector of surveys in April although the boundary between Kahumaku and Waimamaku still had to be supplied.

7 He incorporated Davis's plan of Kahumaku (ML 3221).

8 The Wilsons' plan indicates the total acreage of Waimamaku No 2 block as 24,500 acres, Kaharau as 1471 acres, Wairau North as 1300 acres, or alternatively 1410 acres, and Wairau South as 1345 acres. The 1300 acres is written in a different style from the other acreages (I7:2). From the total of 1345 acres of Wairau South, 210 acres have been subtracted, that is, the acreage of the Wairau wahi tapu native reserve, leaving a total of 1135 acres. The acreage of the native reserve is larger than on Campbell's plan (175 acres, later 171 acres). The different acreages for Wairau North and different writing systems indicate some confusion regarding acreages and suggest that after its completion other hands worked on the Wilsons' plan. There are different lines and shading on the red external boundaries of Waimamaku No 2 block, that is, the Waimamaku No 2/Kahumaku boundary, the northern river boundary between Waimamaku and Waimamaku No 2 blocks, the eastern and southern boundaries between Kaharau and Waimamaku No 2, and the southern boundary between Wairau North and Wairau South and the Wairau wahi tapu boundary. Consequently tbe integrity of these boundaries must be questioned.

Probably the reason for the court's rejection of the Wilsons' plan was the serious error they made in placing the eastern boundary of Waimamaku No 2 to the east of the Davis line which Smith had incorporated in his sketch plan. This would have excluded from possible sale of what the Wilsons' understood to be Kahumaku, an area estimated to be about 1200 to 1500 acres (H3:65). The confusion among the surveyors over the

Waimamaku/Kahumaku boundary reflected differing views of ownership held by Te Roroa, Ngati Ue and Ngaitu in respect of Kahumaku.

The alterations and annexations on the Wilsons' plan were examined in detail in the Crown's evidence (see H3:51-66; cf D18:11 passim & D1:15). Despite the questions they pose, "a great deal of unambiguous information can be gleaned from the Wilsons' map" (H3:53). First, the western boundary of Waimamaku No 2 block was closed in a way that excluded Waimamaku, Wairau North and Kaharau. Secondly, Te Taraire was included within the boundaries of Waimamaku No 2. Thirdly, the area of Wairau South was clearly defined, and the Wairau wahi tapu was cut out as a native reserve.

9 Part of Kahumaku was included because Kensington followed Davis's Waimamaku-Kahumaku boundary not the Wilsons'. The reason he included Te Taraire remains a mystery. He could have followed one fork of a two forked indeterminate line on Smith's sketch plan.

10 Garry Hooker expressed the view that the loss of Manuwhetai and Whangaiariki was triggered by the early despatch of the tracing of the Maunganui plan to the Native Land Purchase Department, over three weeks before Frank Smith's plan of native reserves was registered. The Crown thought it more likely that the loss was triggered by the failure to ensure that the plan of Maunganui sent to the court was properly amended (I16:12 cf I15:3).

11 I7:2-3 is an amended version of E2:149. See also C12:5-6; H28:13-15; H29:4-6.

12 The claimants stated that it was never the intention of their tupuna to extend the western boundary of Waipoua No 2 to mean high water mark. They pointed out that Smith's plan included certain areas of sand excluded on the Wilsons' plan which would explain the discrepancy in total acreages (C12:7). The claimants further stated that the Waipoua river was a taonga of the people which should have been protected under article 2 of the Treaty by the Crown. In their view both Wilson and Smith understated the total acreage of Waipoua No 2 because they excluded the area of the Waipoua river (C12:6-8).

13 AJHR, 1873, G-7, p 45. See also A19:38

14 *Report of the Waitangi Tribunal on the Orakei Claim* (Wai 9) (Wellington, 1987) p 40. See also Stephen Oliver "Tuhaere, Paora" DNZ8, I, T109.

15 Te Waka Maori, 18 November 1876.

16 Plan ML 3253 was produced in court but the court minutes do not record that Tiopira said he knew the land shown on it and that the boundaries were correct as he did in the case of Waimamaku No 2. Plan ML 3277 was annotated by Judge Monro on 2 February 1876, the day the court stood adjourned, not on 31 January when it decided the evidence for Maunganui would do for Waipoua No 1. The court made the order for Waipoua No 2 without hearing any evidence. Plan ML 3277A which was used to define its boundaries, was not sent to the court.

17 Norman Smith *Maori Land Law* (Wellington, 1960) pp 8-9, 88-117.

18 Alan Ward *A Show of Justice* (Auckland, 1974) p 252

Take 3

Nga Whenua Rahui (Reserves)

3.1. Official Attitudes and Policies

Under each of the four heads of claim, Te Roroa have stated that they are prejudicially affected by the failure of the Crown to ensure that particular areas of land defined by their tupuna were reserved from sale. These areas are particularised in the claim.

Right from the beginning of British intervention in New Zealand official attitudes and policies on reserves reflected the conflicting objectives of protection and assimilation.

Clearly the Crown's intention was that the Maori should retain sufficient land for their present and future needs. Furthermore "a sufficient land base" would enable Maori to enjoy some of the added value to land accruing from British settlement. This would be some compensation for the Crown's practice of purchasing Maori land as cheaply as possible and re-selling the same land to settlers at a much higher price (I1(c):11).

In practice there was a general reluctance on the Crown's part to set aside native reserves.[1] Rather, Maori were to participate in the market economy, be brought directly under British law and institutions and become part and parcel of colonial society.[2]

Under the native land legislation 1865-1909, various kinds of native reserves were created by the Native Land Court. By the 1866 amending Act, all judges were required to take account of the needs of Maori claimants with regard to land for their present and future use. But, as the Waitangi Tribunal noted in its report on the Orakei claim:

> In fact the Crown had no policy favouring reservations in any manner akin to those secured for North American Indians. Restrictions on alienation were regarded as temporary aberrations to maintain a status quo until things had settled down. They could be removed by the Court or the Crown at any time! Orders in Council were regularly used to remove existing restrictions on particular blocks when owners wished to sell and the Crown wished to buy.[3]

In response to a question from the Crown about the status of reserves created by the court pertinent to the Maunganui-Waipoua claim, Dr D V Williams stated:

> There was no consistent legal usage with respect to the term "reserves" ..... one should not read back into the 19th Century the current meanings of "Maori reserve" ... or "Maori reservation". (B34:att 20-21)

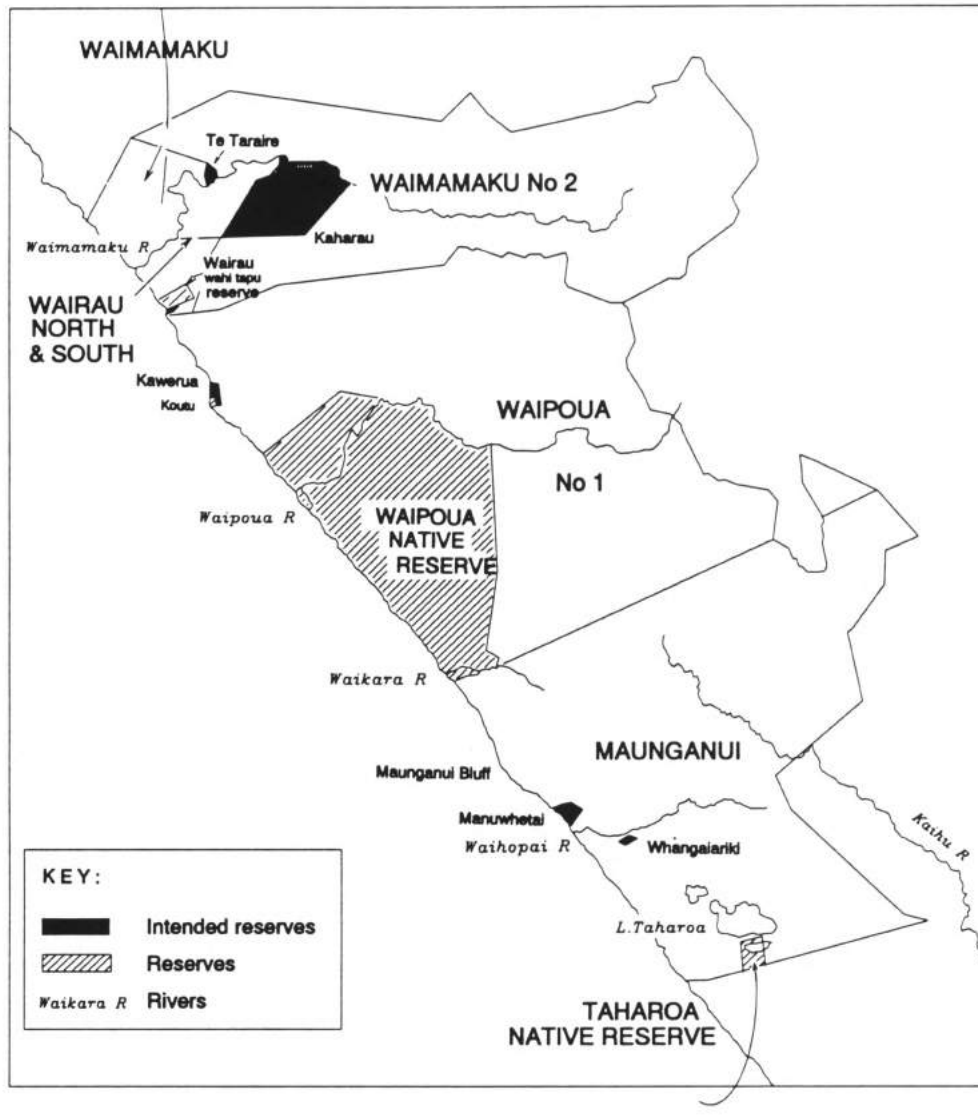

Figure 16: Blocks and reserves within the claim area

Dr Williams attributed the lack of any consistency to the number of Acts and amendments concerning native land passed between 1865 and 1909, which he described as "the legislative morass" created by "law making bedlam". Sometimes:

> The term "reserve" ... referred to Tribal land which had been reserved from a sale by the owners, i.e. it continued to be Maori customary land. It could refer to Wahi Tapu, Papakainga and other areas within a block going through the Court with a view to alienation, but the Wahi Tapu etc were reserved and vested in up to 10 owners.
>
> It could refer in the mid-1870s to land set apart not by the Crown but by the District Officer and the Governor in Council pursuant to Section 24, Native Land Act 1873 ("The 50 acres per head" Rule). The reserves might for a time have been vested not in Maori owners but in the Native Reserves Commissioner established by the Native Reserves Act 1873.

> ... Each particular piece of land must be considered in accordance with the laws then in force at the time it came before the Land Court. (B34:att 21)

The 50 acre per head rule, Dr Williams concluded:

> would indicate a desire to ensure that there was a rural land base for Maori subsistence. By the time of the Native Land Court Act 1894 the 50 acre guideline had been watered down to a requirement that "the owners have sufficient other land left for their maintenance" (Section 131(2)). It was, of course, entirely up to Government Officials to decide how much land would be "sufficient". (B34:att 23)

Various restrictions were placed on the alienation of reserves in law but between 1867 and 1909 they were gradually whittled away and finally removed.[4] Orders-in-council were regularly used to remove existing restrictions on particular blocks when owners wished to sell and the Crown wished to buy (B34:att 22). As the native office explained in a press release to local papers in 1886:

> It is not meant to restrict permanently the alienation of any native land, but only to retard the alienation of some small portion till the Maori race have taken their ultimate position in the colony, and can be relied on to provide for themselves as the European does.[5]

3.2. What Land was Reserved from Sale

Koutu (at Kawerua)

3.2.1 Koutu was the traditional canoe landing place in the vicinity of the tauranga (channel) which comes ashore on the southern end of Kawerua. Literally Koutu means promontory or point of land (C7:att 2.11).

The claimants have stated that the Crown omitted to ensure that an approximately four acre area was in fact reserved and remained under the unrestricted control of Te Roroa; further, that the Crown omitted to provide legal mechanisms capable of recognising Te Roroa tribal title to the Koutu reserve (A1(i):41). We have already seen how early attempts to have Koutu reserved as a trust for Te Roroa and possible model for preserving mana whenua over a larger area of land foundered in 1872 and how no further action was taken to execute a declaration of trust before the sale of Waipoua No 1 block (see above, pp 42-43).[6]

The next round of activity by Crown officials was provoked by an inquiry from an Auckland solicitor, Peter Oliphant, on behalf of a client, George Wyatt, storekeeper of Kawerua, to the under-secretary, native office, 8 July 1884 (H60:13). Wyatt had taken an eight year lease from the trustees, but, on making inquiries at the registrar's office in Auckland, could find no trace of a certificate of title. The

certificate was in the Crown Law Office and was assigned to the chief judge to report upon the case and advise "what action if any should be taken" (H60:13).

On 21 August 1884, Chief Judge Macdonald recommended that either a fresh application for investigation of title be sent in or the case be taken up from the moment Judge Maning verbally declared "Te Roroa" tribe to be owners (B16:15-18).[7]

Ballance approved a fresh application but thought it would be better if the chief judge disclosed the situation to Oliphant in person rather than by letter (B16:12, 14).

An application to the court from Tiopira Rehi and another for an investigation of title was notified for hearing at Rawene on 12 March 1885. The court sat but as nobody appeared the application was dismissed (B16:4, 8-9). These initial delays may have been a result of plans to establish a township to service the gum industry in the area, for in 1888, a surveyor, J I Philips, was sent to Kawerua to survey a series of sections on Crown land surrounding the Koutu reserve. His instructions from the chief surveyor have not been located. The Crown researcher suspected that "he was required to make sure that the sections he surveyed did not encroach on the Koutu Reserve, thus requiring him to carry out sufficient survey measurements to define the reserve" (E12:1). Philips's survey plan (ML 2193A) was on a larger scale than Campbell's 1871 plan. The south-eastern corner of 28 perches was cut off and marked "taken for road". The total acreage was therefore shown as 3 acres 2 roods 32 perches (E12:doc 1). Yet in the Maori Land Court register Koutu was still entered as 3 acres 3 roods 20 perches (B16:50).

The fourth statement of claim particularises the action of the Crown in 1887 in compulsorily taking without compensation, under s96 Native Land Court Act 1886, 28 perches of the Koutu reserve for roading purposes (A1(i):41). The Crown researcher believed that the most likely explanation was that the area was already occupied by a road and that the land was defined as legal road to acknowledge an existing use. He pointed out that the status of such land at the time was covered by s96 Native Land Court Act 1886, which did not provide for any compensation to be payable. The grounds for this, he believed, were "that the owners of the Native land would receive the benefits of having a road over their land, and the value of their remaining lands would increase accordingly" (E12:2-3).

The claimants objected to this compulsory taking of land on the grounds that:

(a) The land has been used for private not public purposes;

(b) Te Roroa gardens on the area were taken in breach of s94 Native Land Court Act 1886 under which maara, urupa, etc were excluded; and

(c) The compulsory taking of the land was in clear breach of the claimants' rights under article 2 of the Treaty, that is, the principle of tino rangatiratanga (C12(a):11).

The Crown found no evidence that the road reserve was occupied by maara (food gardens) (E12:3).

The claimants believed that the old Kawerua hotel was located on the Koutu reserve. The Crown researcher was unable to provide a definitive answer from the historical evidence and recommended that the boundaries be resurveyed. The surveyor located two of Philips' 1887 survey pegs. Department of Survey and Land Information Whangarei, plan 844-A2, 10 April 1990, showed that the hotel building was not located on the reserve (E12:doc 6). Nevertheless the Crown and tbe claimants were unable to agree on the original location of the boundaries.

Tiopira Rehi (Kinaki) died in 1887 and on 28 February 1894 Rewiri Tiopira applied to the Native Land Court to be appointed as "new trustee to Tiopira in Koutu Reserve" (C7:att 2.5; C12(a):10). Apparently he was advised to make another application to ascertain who the proper owners were under s14(10) of the 1894 Native Land Court Act conferring jurisdiction over native trusts on the Native Land Court.[8]

In accordance with the chief judge's recommendations, an order-in-council conferring jurisdiction on the Native Land Court in respect of the Koutu block was approved and gazetted on 16 July 1895 (B16:5-7; C7:att 2.6). Rewiri Tiopira, Tiopira Rehi (deceased) and Peneti Pana were notified on 22 July (B16:5).

A court sitting was held at Rawene on 6 April 1897 before Judge J A Wilson and assessor Karaka Kereru Tarawhiti (B16:42). Hapakuku Moetara was sworn and asked that he and others of Te Roroa might be included in the title. The trustees, Tiopira Rehi and Peneti Pana were of Te Roroa and "owners of this land with the rest of us". Tiopira Rehi was dead. Rewiri Tiopira was his successor. The case was adjourned "to enable the interests to produce a list of the persons interested and the shares of the same" (B16:46).

When the hearing resumed the following day, Hapakuku Moetara handed in a list of 12 persons entitled to the land which was read and, as there was no objection, passed. The court ordered the certificate of title for the land, dated 28 June 1871, be excised and a Crown grant be issued to 12 persons sharing the land equally. These were Hapakuku Moetara, Wiremu Rangatira (Moetara), Iehu (Moetara) Hapakuku, Raniora Te Rore, Peneti Pana, Rewiri Tiopira, Hone Tuoro, Hohaia Paniora, Matene Naera, Ahenata Rewiri, Te Rore Taoho, Wiremu Tuwhare. As Rewiri Tiopira had died on 7 August 1896 (D1:25), Hapakuku Moetara claimed for his sister Hiria Tiopira. There being no objections an order was made (B16:46-48).

The certificate of title was dated 26 July 1872 (B16:42).[9] A clause was added stating "that the land be inalienable by sale only" (ibid).

The claimants alleged that there was an apparent discrepancy between the assumption underlying the 1897 court order that a trust existed, and the registrar's report to the chief judge, 17 June 1895, that "there is no information in this office to show that the declaration of Trust was ever executed". From this it was concluded that: "Consequent upon this hearing twelve individuals were named as beneficial owners under the said non-existent Trust" (C7:att 2.6).

The court order was worded as follows:

> Upon enquiry made into ... the existence (if any) of an intended trust it appearing such a trust do exist. (B16:42)

The claimants further argued that a number of objections could be taken to the court order. In his original application Rewiri Tiopira merely sought to be appointed as "a new trustee", but in his letter of 18 June 1895, he specifically asked for a s14(10) Native Land Court Act 1894 inquiry which clearly were not his "own unprompted words" (C12(a):10). After his death, his application was taken over by Hapakuku Moetara who simply asked that he and others be included in the title. It seemed self-evident to the claimants that the application was for new trustees, whereas under the Act they were absolute owners.

It was submitted that "Maori failed to understand the Pakeha distinction between trustee and beneficial ownership and did not perceive a grievance" and that this was further evidenced by the 1904 and 1911 applications for succession in Koutu reserve (C31:3).

In our view, the claim that Koutu reserve had always been recognised as a hapu communal estate held under kaitiaki (trustee) ownership (C31:3) needs to be re-assessed in the light of Waipoua No 2 alienations which are examined in the next section of this report. These indicate that by 1895, Rewiri Tiopira and Hapakuku Moetara were well aware that those named on the title were in law absolute owners; as do subsequent applications for succession orders to those named on the title for Koutu which were not heard.[10]

The claimants claim that administrative and legal confusion and irregularities occurred in the Crown's dealings from the outset also needs some re-assessment. The question of title to Koutu had been left in abeyance for some years when Rewiri Tiopira applied to the court to succeed his father. It seems to us that he was clearing up his father's affairs and was rather nervous about Koutu. Leaving successions in abeyance was a means of preventing its alienation by absolute owners entered on the title by the court.

It was further claimed that the Crown's prime motive for bringing the matter to court was to "facilitate the alienation of the Waipoua block" (C7:att 2.6). We found no evidence of this. Rather it was the court system of awarding the title to ten persons who in law became absolute owners, that was to generally facilitate the purchase of Waipoua No 2 (see below, *Take* 4).

More administrative and legal confusion with respect to the Koutu reserve resulted from Ata Paniora's requests of 21 November 1944 to the registrar of the Native Department for a tracing of the Rahui Tauranga o Kawerua showing the boundaries and the area, and if there were trustees appointed, for a list of their names. He was advised that a 6s search fee was required and sent off a 10s note as he did not have access to a post office. On 17 January 1945 he was sent a list of the 12 names set out in the 1897 court order as beneficial owners and the three who succeeded Hone Tuoro, plus a receipt for 10s (B16:60-64; C12(a):10). The list was headed, "Trustees appointed by a meeting held in the Waimamaku hui house for the Kawerua Landing Reserve" (C12(a):10).

On 16 April 1945, Daniel Mackie, on behalf of Piipi Tiopira, requested from the registrar full details on the ownership of Kawerua Landing Reserve, known as Koutu, and whether Tiopira Kinaki (Rehi) had any rights in the said block, and was requested to send the 6s fee. On 15 May 1945, he was advised that:

> it may be wise now for the descendents [sic] of the owners appointed by the Court on the 6th April, 1897, to make application under Section 5 of the Native Purposes Act, 1937 to have this land set apart as a Native Reservation. (B16:57)[11]

At a meeting held in the "Waimamaku hui house", trustees were appointed. Dan Mackie handed in the list to the court on 28 June 1945 (B16:55). The claimants identified the appointees as "representatives of the families of the several deceased individuals" whose names were listed in the same order that had been set in 1897. This, they said, would seem "to indicate the importance of Koutu to the people" (C7:att 2.8). Nearly two years elapsed before the registrar recommended that the "Best course seems to file and await further action to be initiated".[12]

In this regard, one of the claimants, Alex Nathan, stated:

> It may [be] argued that due process was not adhered to by our people .... However, nothing that would indicate that this was communicated to our people has been found .... The tone of the appendments conveys a sense of at best ineptness and at worst conspiracy or cover up .... [As a result of the] failure to register Trustees appointed by the people; the convoluted manner in which officials conducted the Crown[']s actions and the responses given .... Koutu does not have any Trustees to this day and its status is unclear. (C7:att 2.9)

We do not accept the conspiracy claim. Rather it was for the descendants of the deceased to bring the matter back to court. Had they really wanted to do something about Koutu they could have.

On 24 June 1949, the conservator of forests wrote to the director of forestry recommending that section one, Koutu be purchased. The forest service had already acquired sections two to four from the

Trounson estate, and the director-general of lands and survey was promptly requested to arrange the purchase of Koutu on its behalf.

The commissioner of Crown lands discussed the proposed purchase with the deputy undersecretary of Maori affairs who stated:

> the land is held in trustee ownership under Order No. 6497 which was made under the provisions of subsection 10 of Section 14 of the Native Land [Court] Act, 1894 .... this land is regarded as a Wahi-tapu area ... [he was] extremely doubtful if it would be possible to acquire the land .... if the Maoris were prepared to sell, the cost of taking the necessary action to purchase would prove much too expensive and far beyond the true value of the area. (B16:65; C12(a):10-11)

On 1 February 1950, the director-general of lands and survey recommended that no further action be taken to purchase the 3 acres 2 roods 32 perches, apparently overlooking the existence of the road reserve of 28 perches.

The Kawerua area was gazetted permanent state forest in 1950. The claimants alleged that "from this point on it would appear that the NZFS assumed control of Koutu and the surrounding area" (C7:att 2.9). The boundaries of Koutu reserve were demarcated by forest service staff in 1952 and the conservator of forests in Auckland sought approval from his head office to lease the old Kawerua hotel buildings to the Auckland University Field Club in 1966. After confirmation that the building was within state forest, it was leased at a pepper corn rent for a full term of 33 years, should the lessee so desire. The lessee was to be responsible for maintenance (E12:3-4 & docs 3-5).

> Of the original Hotel, gum store, and post office that stood here [at Kawerua] only the hotel building remains. Today the coastal area is administered by DoC and the pines by Timberlands. (B26:2)

In response to a question raised at the tribunal hearing, a witness for the Department of Conservation admitted that the coastal walkway from the Hokianga harbour to the Kai Iwi lakes, opened after the passing of the New Zealand Walkways Act 1975, passed over the Koutu reserve near Kawerua. The formal line of the walkway was between the mean low and high water marks on adjoining Crown land. The area adjacent to the mean high water mark, where the walkway would pass at high tide in this area, was a rocky outcrop that was not ideal for a walkway. For this reason walkway marker posts were placed along a previously formed path or roadway to provide an alternative more pleasant route for walkway users. When the Department of Conservation placed the walkway markers across the Koutu reserve, the precise location of the reserve was not known. It had not been taken into consideration that this alternative (unofficial) route was passing over private or Maori land. No consultation or permission was sought from the trustee responsible for the management or administration of the reserve. In closing their evidence, the Department of Conservation witness gave an undertaking that if the exist-

ence of the walkway within the reserve was unacceptable to the claimants, then the department would have the walkway markers removed and the alternative route relocated outside the reserve (E25).

Waipoua No 2 (Waipoua Native Reserve)

3.2.2 (a) Waipoua as it was.

According to the late E D Nathan:

> Waipoua is so named after the poua, a large sized pipi that tastes like a toheroa. The Waipoua River entrance had rock formations, was navigable, and abounded with paua, kutae, kina, poua, pipi, and all the popular species of fish.
>
> In early times the river flowed directly out to sea along the northern foothills of the valley ....
>
> Pahinui pa was the main fortification for the people of the Waipoua River valley defending them from attacks from the eastern and seaward approaches. Tirakohua, the high point opposite Pahinui, was the sentinel for the western and south-western approaches .... [it] was not strategically defendable and became a permanent look-out point, and on occasions a semi-permanent kainga .....
>
> Manumanu .... settled in Waipoua, in a place named Whenuahou (new land) .... It is from [his son] Manumanu (II) that the name Te Roroa originates.[13]

According to an archaeologist, Michael Taylor:

> Traditional Maori accounts place occupation of the Waipoua area back 27 generations or about 1000 years ... and archaeological evidence supports these traditional accounts of a long Maori presence in the forest .... There are strong Te Roroa traditions of settlement in the Waipoua valley, at Waikara and elsewhere on the No. 2 Block and there is widespread evidence of this including the remains of kainga, pa, gardens and a variety of less frequent sites, many of which have known Maori histories ....
>
> During the more recent history of Waipoua, settlement has been located at what was generally known as Tiopira's settlement .... The centre of this settlement is the location of the modern Pahinui Marae. (B2:4)

Along the Waipoua river on either side were fertile river flats of varying width, suitable for cultivation. South of the river and inland was a kauri gum field. People living at Waipoua were isolated from European contact but highly mobile. They camped seasonally at the beach and moved to Waimamaku and the Kaihu valley to participate in the timber and gum trades. The 1878 census recorded only 11 Te Roroa living at Waipoua but 97 at Waimamaku (B1:5).

According to tribal historian, Garry Hooker, Te Roroa oral tradition is "fairly clear" that the original intention of the tupuna was that this ancient, ancestral land:

> with its myriad of pas, kaingas, urupas, wahitapu, food gathering places and paths, be set aside as a papa kainga, a village settlement, for the people. (C12:9)

The landscape was "encrusted with the wahitapu, deeds and mana of generation after generation of tupuna" and formed "an inextricable part of the very fibre of existence of the tangata whenua" (A12:1). "Tradition records that Te Roroa's tupuna have resided there for a millenium .... Archaeological evidence ... supports this tradition ..." (I1(c):20).

In a personal communication to Garry Hooker, the late Piipi Tiopira (Cummins) said:

> Te Roroa wished to have the Crown as a buffer against their Nga Puhi enemies and for that reason were encouraged by the Crown's Land Purchase Officers to sell to the Crown all the land surrounding their settlement, Waipoua 2 Block... (C12:5)

This block was, in fact, "an enclave completely surrounded on three sides by Waipoua 1 Block and on the fourth side by the Tasman Sea" (C12:5).

(b) The identification of Waipoua No 2.

We have seen how Waipoua No 2 block first came into existence when it was surveyed by the Wilsons, who were commissioned and instructed by Tiopira Kinaki. We have also seen how it was designated Waipoua Native Reserve on the Wilsons' plan of Waipoua block, ML 3277A, in May 1875, and on Smith's compiled plan, ML 3277. The total acreage shown on the Wilsons' plan was 12,153 acres and on Smith's plan, 12,220 acres. Yet Waipoua No 2 was not a native reserve in terms of the 1873 Native Land Act and 1873 Native Reserves Act. Rather it was Maori land outside the blocks that Tiopira Kinaki and Parore Te Awha sold to the Crown.

Neither the memorial of ownership for Waipoua No 2 nor the memorials of ownership for Waipoua No 1 and Maunganui showed Waipoua No 2 as a native reserve (A4:452-458(j)). However it was designated Waipoua Native Reserve on Weetman's check survey of part of Waimamaku and Waipoua blocks, 25 January 1876 (D2:7); also on the deed of sale, 5 February 1876, for Waipoua No 1 (A5:721(a)-721(d)). In the Kaipara minute book it was referred to as a native reserve (A12:1).

The claimants argued that at no time did the Native Land Court investigate the title to Waipoua No 2 block (C12:9). The only reason Waipoua No 2 block came before the Kaipara court and was the subject of a court order for a memorial of ownership was that it was part of the voluntary agreement of 2 February 1876 between Tiopira Kinaki and Parore Te Awha concerning the ownership of Maunganui-Waipoua. It was "the piece outside Waipoua" which Parore Te Awha wrote to Tiopira Kinaki was "to be for you only". Thereafter it was

commonly spoken of as "Tiopira's reserve". "It was on that basis—and on that basis alone", the claimants submitted, "that the Roroa kaumatua in 1876 collectively consented to the sale to the Crown of the adjoining Waipoua 1 Block, the Waipoua Forest" (A12:1). In the opinion of counsel for the claimants, this voluntary agreement was the legal condition of the Maunganui-Waipoua sale.

We have seen that the memorial of ownership for Waipoua No 2 listed the ten names given to the court by Tiopira Kinaki. With regard to the ten names, Garry Hooker stated in his evidence:

> The claimants say ... that they clearly were trustees .....
>
> ... The Maori Land Court order of 3/2/1876 respecting the Reserve was "in favour of Tiopira Kinaki's party." (Kaipara Minute Book 3 p 174). The claimants say that this amounted to an order in favour of Te Roroa, it already having been agreed by the other Ngati Whatua hapus that they would share in the proceeds of sale of Waipoua 1 and Maunganui Blocks, but not the Reserve. The claimants also say that it is ridiculous to suppose that such a famous fighting hapu as Te Roroa ever consisted of only ten persons and that the inescapable conclusion is that those ten held as trustees. (C12:10)

In clarification of this submission, the claimants further stated:

> The Order of the Court is misleading in referring to three of the 10 owners, viz Hapakuku Moetara, Wiremu Moetara and Peneti Pana as being other than Te Roroa .... the Moetaras and Peneti Pana were entitled to be on the Order because they were of Te Roroa.
>
> ...neither Hapakuku Moetara nor Peneti Pana claimed other than as Te Roroa in the Maunganui/Waipoua 1 minutes of evidence ... and ... Waipoua 2 Block was part of the same tribal estate ....
>
> ... The 10 trustees were not of equal standing nor did they have equal rights through ancestral occupation ....
>
> It is not possible to think of the 10 as heads of whanau as this was a concept only applied by the Maori Land Court in the defining of relative beneficial interests .... the Order was concerned only to establish trustees for customary land, all reference to relative beneficial interests being deleted in the Order and the land being declared by the Order inalienable by sale.
>
> The absence of relative beneficial interests coupled with the absolute prohibition against sale ... display all the hallmarks of a communal estate held under trustee ownership—which marks are reinforced by numerous designations of the land as a Reserve and the magical number of 10 owners, i.e. the 10 trustees of communal estates authorised to be appointed by the Native Lands Act 1865. (C31:1-3)

In his summing up, associate counsel for the claimants endorsed these earlier submissions concerning the ten "owners":

> Although the tribal affiliations of Hapakuku Moetara and his brother Wiremu were identified on the title as Ngati Korokoro and that of Peneti Pana as Ngati Pou, their entitlement in Waipoua came through their Te Roroa lines. (I1(c):47)

The claimants say the ten were trustees for the hapu (I1(c):49).

It was further submitted that the title to the Waipoua Native Reserve was issued in breach of the 1873 Act. Under s46 the court was permitted to adopt and record any arrangement claimants and counter claimants came to amongst themselves; but it had to enter the names of anybody who consented to any such arrangement or whose claim was settled by any such arrangement in the record (I1(c):45).

In the case of Waipoua Native Reserve:

> there is no evidence that the Memorial or the Court's records reflected a "voluntary arrangement" reached between claimants and counterclaimants that was in accordance with section 46. There is no evidence at all that the Court recorded the names of anybody who consented to an arrangement over the title to Waipoua No. 2.
>
> However, it is unlikely that even if Te Roroa had been aware of the 1873 requirements the hapu could have done anything about it. The Court of Appeal, in an important test case in 1902 on the validity of Land Court titles, refused to go behind the Land Court's certification that a 10-owner title was in fact in accordance with Maori custom: *Timu Kerehi* v. *Duff* (1902) 21 NZLR 416.
>
> Accordingly, the question of the precise capacity in which the 10 owners took title to the land became of the utmost importance. (I1(c):48-49)

Clearly the ten persons were perceived by Te Roroa to be kaitiaki who:

> were expected to '... act together as tribal representatives in any dealings with the land', especially in sales and leases where the nominal owners were to act only with the full knowledge and consent of the entire body of owners, i.e. the tribe or sub-tribe.[14]

The continued reference to Waipoua No 2 as a native reserve and the restriction on alienation in the memorial of ownership, it was submitted, would surely have served to confirm Te Roroa's perception that the land was permanently reserved to the hapu (I1(c):55-56). Yet in law the ten named were absolute owners as tenants in common, not trustees (B34:att 9). All other members of Te Roroa were disadvantaged and eventually disinherited. Under a restrictive clause in the memorial of ownership, the ten might not sell or in any other way dispose of the land except by lease for a period not exceeding 21 years. But, as we have already pointed out, such a restriction was easily removed. Under the ten-owner rule adopted by the Native Land Court any one of them or their successors could apply to the court for a partition or subdivision of his or her interests and then sell. In the event, partitions and subdivisions were to prepare the way for piecemeal alienations which eventually reduced the 12,000 or more

acres Te Roroa intended to retain as papakainga, to about 690 acres (see below, p 165).

In the claimants' view, Waipoua Native Reserve is a further example of the ten owner rule creating individual interests in land transferrable as property rights, and eliminating the trusteeship of rangatira and hapu or whanau (B34:9). Once again the Crown had failed to ensure that land deliberately set aside by Te Roroa from the Maunganui-Waipoua sale through the Native Land Court was permanently reserved in tribal ownership and under tribal control.

(c) The outcome.

In order to consider these arguments by the claimants, it is necessary to examine in greater detail just how a title to Waipoua No 2 block was issued, the practices of the Native Land Court at that time, and the legislation under which the court acted.

On 3 February 1876, the Native Land Court concluded its hearing into the ownership of the Maunganui and Waipoua Blocks, the latter comprising Waipoua No 1 which was subsequently sold to the Crown by deed of sale dated 8 February 1876, and Waipoua No 2, having an area of 12,220 acres, which was described as "Native Reserve". The memorial of ownership for Waipoua No 2 listed ten people as "the owners according to Native custom" and further provided that the owners "may not sell or make any other disposition of the said land except that they may lease the said land for any term not exceeding twenty one years ..." (A4:458(g)).

The hearing before Judges Monro and Symonds concerning the Waipoua block came at the conclusion of lengthy hearings into the Maunganui block. It was brief. The minutes record:

> Mr District Officer Kemp announced that a Voluntary arrangement had been Entered into between the Claimants and Counter Claimants in respect of these two blocks [Maunganui and Waipoua]. Two letters read—one from Parore and one from Tiopira.
>
> Tiopira said the matter had been arranged. Parore said the same. (A4:451)

The minute concludes by referring to the "owners of the Reserve (Waipoua No 2)" and orders a memorial accordingly.

The court's jurisdiction was by virtue of the Native Land Act 1873. We can only suppose from Kemp's reference to "Voluntary arrangement", that the court was relying on s46 of the Act, which associate counsel for claimants submitted was breached.

If this supposition is correct it is most important to remember that the issue of a title under s46 did not mean that the court was not required to carry out other provisions in the Act.

It is unnecessary to dissect the 1873 Act in order to identify all these provisions. We need only to refer to the intention of the Act and some specific provisions.

The preamble to the Act expresses that it is of the "highest importance" that record be made of the ownership of native land "with a view of assuring to the Natives without any doubt whatever a sufficiency of their land for their support and maintenance". A "Local Reference Book" for each district was to be prepared and made available to the court during its proceedings. Section 24 required that reserves be set apart "for the support and maintenance of the Natives ... to an aggregate amount of not less than fifty acres per head for every Native man woman and child resident in the district". Section 28 required that a memorial of ownership be prepared following an investigation of the title providing "the names of all the owners" which were to be entered individually. Section 47 required the court to inscribe on the court rolls a memorial of ownership:

> giving the name and description of the land adjudicated upon, and declaring the names of all the persons who have been found to be the owners thereof, or who are thenceforward to be regarded as the owners thereof under any voluntary arrangement as above mentioned, and of their respective hapu, and in each case (when so required by the majority in number of the owners), the amount of the proportionate share of each owner. Every such Memorial shall have drawn thereon or annexed thereto a plan of the land comprised therein, founded on the map approved as hereinafter mentioned, and shall be signed by the Judge and sealed with the seal of the Court.

At the February 1876 hearing, it was accepted that the evidence given in respect of the Maunganui block applied equally to the Waipoua block. This was incorrect. The court was aware that Maunganui and Waipoua No 1 were being sold to the Crown. Waipoua No 2, however, was being set apart as a "native reserve". The intentions of the owners of Waipoua No 2 differed from those of the other blocks and different provisions in the Act were applicable.

The Act provides first for an "inquiry", and secondly, a "determination" by the court. In respect of Waipoua No 2, there was neither. There was no inquiry as to the "sufficiency" of the reserve in terms of the intention expressed in the preamble to the Act and in s24; there was no "investigation of the title" pursuant to s28 by which a "Voluntary arrangement" pursuant to s46 could be adjudged. Furthermore s44 provided that "the investigation of title shall be carried on by the presiding Judge without the intervention of any counsel or other agent". In fact, in respect of all the hearings, there was considerable intervention by other agents. In the "hearing" of Waipoua No 2 block, the court did not make any inquiry with the parties themselves but simply accepted the letters produced by Kemp.

In addition to ignoring these other provisions of the Act, the court ignored the requirement in s46 itself that the names of the people consenting to the arrangement be recorded. The provision unambiguously draws a distinction between the persons who consent and "the persons by whom any claim shall have been settled". It was

Tiopira and Parore who settled the claim. The ten people whose names were entered on the memorial of ownership were determined to be the "owners", but they were *not* necessarily those who consented to the arrangement and the court did not record them as such.

Finally, under s47, the majority of owners may require the court to determine the proportionate share of each owner. The court neither inquired nor gave an opportunity to the "owners" to record any agreement as to the allocation of shares in tbe land among them.

In accepting the voluntary arrangement and entering the names of the ten people on the memorial of ownership as absolute owners without an "inquiry" and a "determination", the court was adopting a practice described by Judge Monro in 1871:

> where the Natives agreed that certain persons should be the owners of certain portions of the land, that was in accordance with Native custom, and the Court did not inquire into the arrangement, but accepted it. (A19:56)

Not having inquired into the arrangement, awarding absolute ownership was an assumption by the court unsupported by any evidence. If the arrangement was that these people stood as owners in a representative capacity for others of their hapu, by declaring them absolute owners, the court failed to give effect to the arrangement.

The claimants allege that the arrangement was that the ten people entered on the memorial of ownership were trustees for their respective hapu, in accordance with "native custom". There is ample evidence to support the view that others not included in the ownersbip of Waipoua No 2 had understood that either they were or should have been included, as for example, the subsequent applications to the court for succession.

Nonetheless in our view, those named on the memorial of ownership regarded themselves as representatives of tbeir people.

The order for the memorial of ownership made on 3 February 1876 for Waipoua No 2 lists ten people as "the owners according to Native custom" (A4:458(g)-(i)). "Native custom" as to land tenure is described by Professor I H Kawharu whereby "The chief naturally *represents* and defends the rights of his people" (emphasis added).[15] But the court's order vested the interests as tenants-in-common which conferred absolute title upon the named individuals. By ordering a memorial of ownership to ten persons in this manner the court released them from the necessity to perform their chiefly obligations. Yet in custom, these obligations were still recognised. The chief's customary obligations to his people were finally extinguished when the court made succession orders vesting his land interests in all his children equally. The social structure of the hapu was buried with the chief.[16] As Dr David Williams said, the court "was in the business of eradicating Maori customary land title rather than ascertaining it" (A19:19).

There is no doubt that this was understood by the court, and by the Crown who were aware of the court's practices. Judge Monro made no secret of this practice—that the memorial of ownership was falsely represented as being in accordance with "native custom" (A19:36).

The claimants allege that the owners of Waipoua No 2 never extinguished "the customary title" to the block. In other words the owners themselves never applied for Crown grants that would have extinguished customary (Maori) title and replaced it with a general title (known as title in fee simple).

Whilst there was no application to the court to partition the Waipoua block in 1875-1876, it nevertheless occurred as a consequence of the voluntary agreement between Tiopira and Parore. Waipoua No 2 was the residue of the partition of the Waipoua block for the purposes of selling Waipoua no 1 to the Crown.

(d) Why did the Maori owners themselves not try to rectify the situation?

The answer can be inferred from what happened over the Opanake block at Kaihu, awarded to Te Rore Taoho and Parore Te Awha in 1873.

Subsequently Tiopira claimed an interest, and according to his son Rewiri, applied several times to the court prior to his death in 1887 to be included on the title. Rewiri took up tbe matter after his father's death and sought to obtain rectification in the court on 16 February 1889. Failing, he wrote to "the Government of New Zealand" on 2 April 1889, alleging that the "land was secretly adjudicated upon" in 1873 and Parore and Te Rore Taoho's names only were entered on the title (I14).

Hapakuku Moetara also claimed an interest in Opanake and sought to have his name included when the court had heard Te Rore Taoho's application to partition the block in 1885. Because Te Rore Taoho would not consent to Moetara's name being included on the title, the application was declined. Moetara felt "much aggrieved that the land belonging to the whole tribe should have been awarded to one man Te Rore".

In 1890 the matter was referred to the chief judge of the Native Land Court, Seth-Smith, who after receiving a report from Judge Scannell, recommended that legislation would be required for the court to rehear the matter. In 1892 a Bill was duly prepared[17] and was "introduced but dropped by the House". Rewiri Tiopira's efforts to have the case reheard were unsuccessful.

On 5 July 1893, Hapakuku Moetara wrote to the speaker of the House of Representatives saying that, at the 1873 hearing:

> the Europeans said it would be better to have only two persons names entered as owners to the block so as to prevent any trouble arising in the sale of the timber and to wait and insert the names of the other owners

> when the block was subdivided. In 1895 a further application was lodged with the Chief Judge of the Native Land Court by the solicitors for the complainants. In a memorandum to the chief judge the court registrar stated:
>
> You will see by the evidence on the investigation (Kaipara MB no.3 pp 51-53 [ie the hearing in 1873]) which I forward herewith that these persons [Parore Te Awha and Te Rore Taoho] were clearly put in as representatives of the tribes to which the land belonged.

By order in council, 3 February 1896, jurisdiction was conferred on the Native Land Court to further investigate the title to Opanake No 1 block. The court duly investigated the title and made five orders awarding various portions of the block to 355 people.

That, however, was not the end of the matter. Before the orders were enforceable, they had to be presented to Parliament under s14 Native Land Court Act 1894. They were "laid on the table of the Legislative Council" on 29 June 1900, and that is where they stayed. Tiopira Kinaki, Hapakuku Moetara and their descendants had failed to obtain redress for mistakes which the Native Land Court itself had acknowledged.

(e) Conclusion.

Undoubtedly, in respect of the title to Waipoua No 2, there was neither an inquiry nor a determination by the Native Land Court as required by the 1873 Act. The court did not inquire whether all the interested parties had been consulted. The court did not explore the different intentions of the parties for Waipoua No 2, Maunganui and Waipoua No 1. The court directed its mind to the settlement of the dispute between Tiopira and Parore to enable the sale of Maunganui and Waipoua No 1 to proceed, rather than to the ownership of Waipoua No 2. In effect, the court failed to determine the ownership of Waipoua No 2 block.

Tiopira had tried previously with the Koutu reserve to establish a precedent for representative ownership. Not being successful, he apparently gave way to the pressure of the Crown purchase agents and the accommodating court, and handed in a list of ten names, intending, as Hapakuku Moetara pointed out, that each "owner" would make provision for his respective hapu. What in fact happened, however, was quite different, as we shall see in the next section of this report. Succession and partition orders resulted in extreme fragmentation which facilitated Crown purchasing.

As the New Zealand Herald in 1883 observed:

> The working of the Native Land Court has been a scandal ... for many years past, but as the chief sufferers were the Maoris, nobody troubled themselves very much. (A19:67)

The Crown did nothing to remedy the situation, and indeed continued to take advantage of the problems it had itself created.

Taharoa Native Reserve

3.2.3 The claimants have stated that the Crown failed to protect the Taharoa Native Reserve by omitting to give effect to Parore's intention that it be inalienable by sale or long term lease and be retained by tangata whenua forever (A1(i):42). The Taharoa Native Reserve was provided for in the deed of sale for Maunganui, 8 February 1876. A clause appended to the deed made the sale subject to a Crown grant being issued to Parore Te Awha for 250 acres, shown on the plan attached to the deed. The grant was to be made inalienable except by lease for a term not exceeding 21 years (A10:1(a)). A translation of the Maori version of the deed, reads: "To Parore Te Awha some acres, that is 250 acres, set out in the map attached" (C18:5).

Why did Parore Te Awha insist on this reservation? In the fourth statement of claim, it is assumed that Parore Te Awha wanted to ensure that the area he defined for the Taharoa Native Reserve "be reserved, in perpetuity" to his descendants "as wahi tapu, papakainga and mahinga kai for tangata whenua" (A1(i):11). The evidence we were given by claimants on a site visit to the Taharoa lakes, 20 June 1989, and at the first and third hearing supported such an assumption.

The claimant Robert Parore described Lake Kai Iwi as:

> a mahinga kai of some renown .... a wahi tapu .... used by tangata whenua from time immemorial down to the present day as an important seasonal source of tuna, and also of inanga [whitebait] and kewai [fresh water crayfish]. (C18:3)

The reserve in 1876 was "surrounded by Crown Kauri Gum Reserves and was used as a base by Maori gum-diggers". Graham's survey plan showed five huts labelled "gum kainga" on the land and a track from the kainga and lake to Kaihu. The reserve was "a gateway to the lake system". There was "an old pa site overlooking the lake in the reserve and on the shores of Lake Taharoa there are two urupa". In Robert Parore's view the boundaries of the reserve were "quite arbitrary as in Maori terms the entire lake and surrounds are an essential ancestral food source and wahi tapu" (C18:3).

The kaumatua, Lovey Te Rore shared with us his recollections of the lakes from the time he first went there with his father about 1922-23. He remembered Johnson's swamp, where over 100 people lived in the 1920s, mostly digging gum:

> It was a real papakainga.
>
> ... The people living there were from Kaihu. Some were Te Roroa. Others were Waiariki and Hokianga. Those families eventually settled around Kaihu and live there till this day.
>
> ... access to the lakes was by way of the Ngakiriparauri track .... used to transport gum from the settlement to meet the train at Kaihu. There was an 18 horse pack train which carried it over the track.

> ... others of our people settled around the fringes of both Lakes Kai Iwi and Taharoa.
>
> ... partly because of access to gum, but also because of proximity to both the eel fishery in the Lakes and the coastal Toheroa and Mussel beds.... plentiful around Pahekeheke Rock. The Lakes and coastal fisheries provided a plentiful food supply for the settlement .....
>
> ... I know there are wahi tapu around the Kai Iwi Lakes. There are both urupa and pa .... two urupa ... on the lake shore. One ... at the Promenade point on Lake Taharoa. The other ... on the north eastern shore of Lake Waikeri .... they must be very old urupa ....
>
> Ngakiriparauri is an urupa .... to the east of the Lakes Taharoa and Waikeri .... outside the Domain, but ... fenced off from the surrounding farmland.....
>
> ... not far from where the old track to Kaihu went. As far as I know, the area was named by the Waiariki people [of Ngawha] who moved down into the area under Parore. I feel that part of the reason for reserving the lake estate was to make provision for these people as well as for Te Roroa.....
>
> ... There is another lake in the area called Shag Lake.... important to us because this is the lake which feeds the spring at Whangaiariki .....
>
> Use of the fishing resource has always been an important part of our relationship with the Kaiiwi lakes.(C16:1-4)

Lovey Te Rore believed in his heart that Parore "sought the reserve in order to preserve this valuable source of food for the hapu living in and around the lakes". He had "never heard of him [Parore] or his descendants ever seeking to stop Te Roroa, Te Hokakeha, Waiariki or any of the other hapu from this area taking eels from the lake". He believed Parore "saw himself as a trustee over the resource in favour of all the hapu who used it". That was why Parore "wanted the land reserved and made inalienable". He thought Parore "intended to protect access to all of the lakes for tangata whenua. The reserve provided a sort of gateway into all of the lakes" (C16:6-7).

Eruera Makoare told us about eeling at the Kai Iwi lakes "in the way that our ancestors have done for generations" when the eels are running between February and April (C17:1).

Why Parore's reserve only encompassed most but not all of Lake Kai Iwi remains "a mystery" to the claimants (11(d):4).

The boundaries of a 250 acre reserve and outline of Lake Kai Iwi were roughly drawn on plan ML 3253 of the Maunganui block probably "at or around the time of the agreement reached between Parore and Preece" (H7:5). Compiled by Percy Smith from adjoining block boundaries, it did not show the Taharoa lakes system.

The copy of plan ML 3253 attached to the deed of sale for Maunganui, incorporated plan ML 3457 showing the Taharoa reserve of 250 acres and the lakes system in the Maunganui block. The reserve was

bounded to the north-east by Lake Taharoa and to the south-west by the Kaihu block. The boundary line cut off the north-east corner of Lake Kai Iwi, excluding it from the reserve (A10:1(d)). Plan ML 3457 was produced by W A Graham, a private surveyor, on 22 March 1876 and was submitted to the survey office on 3 April 1876 (A10:1; H7:5-6).

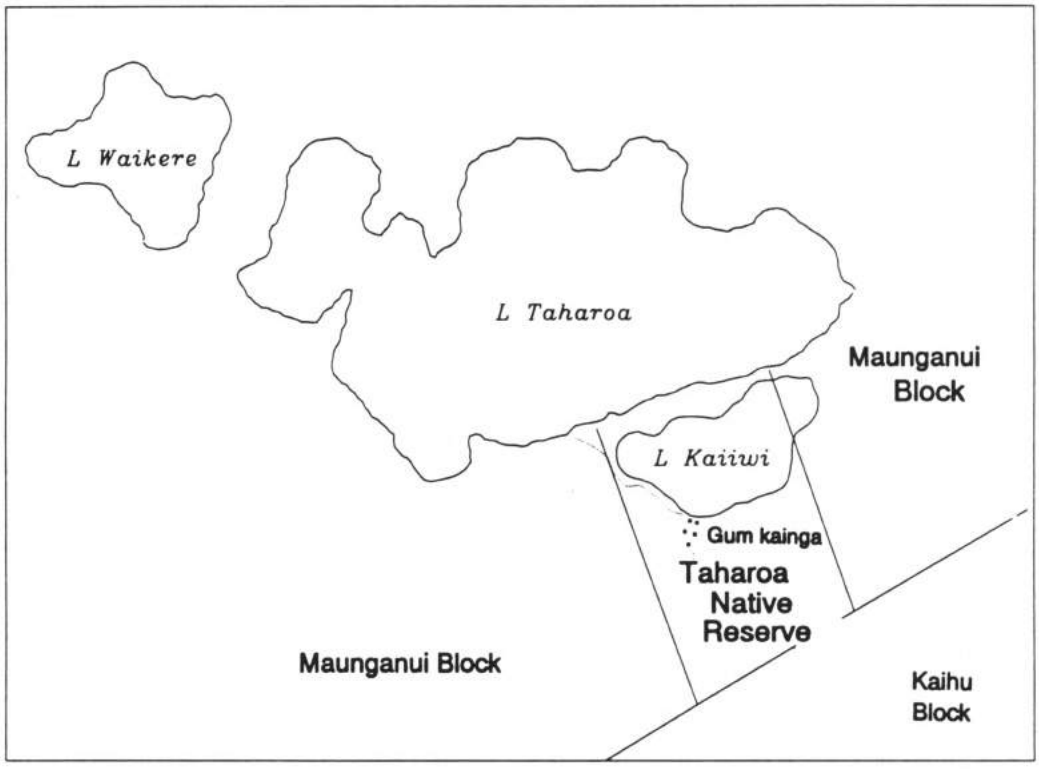

Figure 17: Fron Graham's survey plan of the Taharoa Native Reserve, ML 3457, 22 March 1878. *Source*: Department of Survey and Land Information, Auckland

On plan ML 3457 it was noted that: "portion of the Kaiiwi Lake has been included in the area at request of Parore Te Awha" (A10:1). Graham had previously done survey work for Parore, and presumably Parore instructed him to reserve the area traditionally used for eeling, estimated by Preece to be *about* 250 acres, and he turned this into exactly 250 acres on the map (H7:16). The shoreline of Lake Taharoa was shown as the north-eastern boundary. Consequently the owners of the reserve were to enjoy riparian rights over part of Lake Taharoa (I1(d):4). The other three boundaries were shown as straight lines, regardless of natural features.

The claimant Robert Parore believed that Tiopira Kinaki possibly knew of Parore Te Awha's claim to Taharoa well before the sale and that, as a result, did not protest the subsequent Crown grant (C18:6).

Tiopira's reaction to the grant clearly indicates that he had no prior knowledge of Parore's claim. In a letter to McLean, 5 May 1876, stating that he should have received a like sum to Parore's, that is, £2500 not

£2000, Tiopira referred to "a piece of land containing 250 acres out of the Maunganui Block, which was given back to him [Parore] by the Government... out of Maunganui" (A10:6-8; C18:6). On 22 April 1877, he applied to the colonial secretary, Dr Pollen for £500 and 150 acres "to make the quantity equal to that given to Parore" (A4:352). Again on 3 April 1878 he wrote to John Sheehan, McLean's successor as Native Minister, asking the Grey government to "rectify the wrongful actions of the late Government" and:

> give me five hundred pounds and one hundred acres of land and fifty acres that is the half of Maunganui which was lost (with held) by the late Government. (A4:344-345)[18]

Finally, on 14 September 1885, he wrote to Chief Judge J C Macdonald:

> with respect to the half of my land, of Maunganui. Let it be considered hy you the Chiefs managing the lands procured by the Government....
>
> Parore got £200500 [sic] and 100 acres of land, and I got £2000.... Why was more given to Parore and less to me? (A4:341)

The different acreages referred to in these letters and errors in the translations led to some confusion and speculation in both the Crown and the claimants' evidence on the size of the reserve and exactly what land Tiopira sought (H7:14-16); I1(d):4-5). As we have seen he did not define blocks of land by English square measure. The claimants were inclined to think that the Taharoa Native Reserve should have included the whole of Lake Kai Iwi and a total of 300 acres, but, in the end, they accepted that there was "no evidence that the Reserve was intended to be anything other than 250 acres". Nevertheless, doubts arising from the failure completely to include the lake remained (I1(d):5).

Although Tiopira's letters are ambiguous, they clearly indicate he did not object to the reservation as such. Nor did he object to the Crown granting land to Parore that the court had vested in both of them jointly. This does not mean that he had any prior knowledge of Parore's claim as Robert Parore suggested. But he may have appreciated that the land was being (as Preece said) *returned* by the Crown to Parore, not set aside from the sale. Probably Tiopira understood, as the claimant does, that Parore was asking for a reserve that was a wahi tapu, papakainga and mahinga kai for all the local hapu including Te Roroa, Te Hokakeha and Waiariki as well as Te Kuihi (I1(d):3). The crux of Tiopira's objections was the insult to his mana implicit in the extra payment and the grant of the reserve to Parore. As he saw it, the Crown had breached the principle of equality of interests embodied in the voluntary agreement of 2 February 1876 with Parore and in the court award of a memorial of ownersbip for Maunganui to both of them. His objections were in vain.

On 15 March 1881, the Native Minister, William Rolleston, directed that a Crown grant for Parore be prepared under s5 Volunteers and Others Land Act 1877. According to Robert Parore "tradition main-

tains that Parore had to persist with the authorities to finally obtain his grant" (C18:7).

Section 5 of the 1877 Act legally enabled the governor, with respect to any lands acquired under the provisions of the Immigration and Public Works Act 1870 and its amendments, to reserve or grant any portion of land stipulated in a sale "in [a] manner required by the Natives" (A8:11-12). The purpose of this provision was to enable the government to carry out any promises it had made in respect of reserves when it revested any such land (H7:9; I2:(b)(ii):41-42).

A Crown grant and land transfer title were signed by the governor, Sir Arthur Gordon, on 25 August 1881 (A10:33). The grant was registered on 27 August (A10:29) and the land transfer title entered on 7 September 1881 (A10:34). The grant, as from 8 February 1876, was made to Parore Te Awha, his heirs and assignees for ever. In law Parore Te Awha became the absolute owner, not the trustee, of the Taharoa Native Reserve. This was clearly contrary to the Crown's understanding of Parore's interest in the land at the time of the Maunganui-Waipoua purchase. In this report of 12 February 1876, Preece stated:

> concluded with Parore, *with the concurrence of his people*, to purchase *his interest* in the whole of the two blocks... (A3:99) (emphasis added)

The restrictions on the standard form for a Crown grant applied. The land was made inalienable except with the consent of the governor, by sale or mortgage or by lease for a longer period than 21 years. The right to take roads through the land was reserved on the land transfer title (A10:32-33).

A point at issue between claimants and the Crown is whether these restrictions were contrary to the clause appended to the deed of sale making the grant inalienable except by lease for a term not exceeding 21 years (C18:7-8). Had the governor failed to reserve the land "in [a] manner required by the... Natives" under s5 of the Act?

Robert Parore told us he firmly believed that Parore Te Awha intended the land to be inalienable and remain a native reserve forever (C18:1). His belief was borne out by the oral evidence we were given on the continued use of the land for traditional purposes by tangata whenua. The claimants were aggrieved that the grant effected a partial "watering down" of the restrictions on alienation (I1(d):17).

The Crown researcher was of the opinion that the restriction on alienation was a reflection of statutory requirements going back to the 1866 and 1867 Native Lands Acts, rather than a wish by Parore for the reserve to be retained by tangata wbenua forever (H7:9). Crown counsel, on the evidence available, submitted, that it did not appear that the alienation clause was inserted in the deed of sale at the request of Parore. Preece was following the letter of the legislation by adding the inalienation clause to it. The claimants had not shown that Parore expressed this intention to the Crown land purchase agents. There was no express clause restricting alienation in the Maori version of

the deed which was read to Parore. In her opinion, ss48-49 Native Land Act 1873 (which was not repealed until 1886) applied to the transaction. Section 48 denied all owners named on a memorial or nominated as owners by voluntary agreement the power to sell or dispose of their land except by lease for a period not exceeding 21 years. Section 49 provided that nothing in s48 precluded any sale of the land "where all the owners of such land agree to the sale" (H7:9-14).

Associate counsel for claimants pointed out that the restriction on alienation in the 1866 Act was repealed by the 1867 provision which was in turn repealed by the 1873 provision which did not accurately reflect the limitation contained in the 1881 grant (I1(d):21-23). "The Crown was certainly not empowered" by s5 Volunteers and Others Land Act 1877 "to vary the terms of its agreement with Parore ex poste facto in any manner that it chose" (I1(d):22).

> A perusal of the Maori language version of the Deed... reveals... there was simply no room for any reference to the restriction on alienation. The English language version... states that Parore signed the Deed "after the contents had been explained to [him] by an Interpreter of the Court and [he] appearing clearly to understand the meaning of the same".
>
> It must be assumed that the honour of the Crown was upheld in this respect and the Deed was fully and truthfully explained to Parore. Furthermore, as the Crown's agents had drafted the Deed the contra proferentum rule... applies: the Deed must be interpreted in favour of the non-drafting (Maori) party. That is, the Crown should be held to the bargain its agents had recorded.
>
> ...it is more likely than not that the restriction on alienation was a specific negotiated term of the agreement between Parore and the Crown rather than just Preece's sloppy attempt to mimic repealed legislation. The restriction on alienation is also consistent with Parore's cultural understanding of the transaction, that is that he took the land as a kaitiaki. (I6(c):11-12)

As to Crown counsel's rhetorical question:

> that if Parore Te Awha's agreement with the Crown was that the Taharoa Native Reserve be made inalienable by sale or long-term lease... to what degree could the rangatiratanga of one generation be fettered by the rangatiratanga of an earlier later generation? (I6(c):12)

Associate counsel for claimants submitted that it was misguided:

> The restriction on alienation was an essential quid pro quo for the fact that the title was to be individualised.... [It] would have been likely to have eased any concern Parore may have had about the individualisation and effectively nullified (at least for [the] time the restriction remained in force), the effects of that individualisation. (I6(c):12-13)

The evidence we were given clearly demonstrates that the Taharoa Native Reserve was never used exclusively by Parore's tupuna, nor was there any effort to exclude any Maori from exercising traditional

methods of fishing there or living there or using the reserve for a base for gum-digging:

> Parore was a trustee of this land, if not in law, then in fact and Maori tradition, for all tangata whenua who had connection with that place. (C18:4)

Parore Te Awha died on 27 September 1887 and on 14 September 1891 his grandson, Pouaka (Waata) Te Awha applied to the court for a succession order and was advised to send for the will (A10:36). A granddaughter, Te Pouritanga Waata, asked for a succession order for herself and her brother in January 1892 (A10:38-39). The will, dated 30 November 1885, was produced in court and on 21 January 1892 ten succession orders were made in favour of the persons mentioned in it (A10:41, 46). This was amended to eight persons after a deed dated 3 December 1887 was produced, signed by two persons making over their interests in Parore's estate to Pouaka Waata. Thus Pouaka Waata received three shares and the other seven one share each (A10:47-48). Although in law they were beneficial owners of the Taharoa block, tangata whenua continued to exercise their traditional fishing rights and to protect their wahi tapu.

Meanwhile, on 14 March 1888, a governor's warrant had been obtained to take land for a road (A10:34) which was surveyed through the Kai Iwi gumfield in 1889. The road line through Taharoa, area 4 acres 0 roods 20 perches, is noted on the survey plan as being "taken by consent of owners" (H8(a):1; H8:4). The Crown researcher was unable to locate any information about the agreement with the owners. A number of tracks ran through the Taharoa block at this time and it seemed to him that there was a strong possiblity the road was in existence before it was surveyed as a public road; which might explain the apparent willingness of owners to consent (H8:4-5). As Parore had died and succession orders had not been made, the identity of those who consented remains a mystery. The commissioner of Crown lands was to comment in 1950, "it is most unlikely that the Maori owners were compensated for this loss" (H8(a):69-70; H8:19).

The land surrounding the Taharoa Native Reserve was declared a kauri gum reserve at the turn of the century. In accordance with a recommendation from the Auckland Scenery Preservation 8oard, 1908, the Department of Lands and Survey recorded that a wide strip around Lakes Taharoa and Waikere was suitable for a scenic reserve (H8(a):12-14; H8:6). In 1909 the way was cleared for future land purchasing activities with the removal of all prohibitions or restrictions on alienation of native land.

Crown interest in purchasing the Taharoa Native Reserve was aroused in 1920-1921 by a subdivision scheme for soldier settlers, a request from the Hobson County Council for the reservation of the whole catchment area and the continuing intention to make the Kai Iwi lakes a scenic reserve. But the land was too poor to bear the cost of roading and no funds to purchase it were available. Part of it was let for short

term grazing and part was set aside for systematic gum recovery 1921-1924 (H8:7-9).

Between 1921 and 1950 several offers and counter offers were made. First a European who seems to have been an advocate of scenic preservation, provisionally bought the reserve at £1 per acre but one Maori owner refused to sign. The European's solicitor then offered the land to the Crown at double the price he had paid to the Maori owners but the Crown declined to purchase it at that price (H8:10-12). In 1925 an inquiry from the chairman of the Hobson County Council about forming a road to service both farmland and the lakes revived proposals for a scenic reserve. Two European sections fronting Lake Taharoa were purchased but a further attempt to acquire the reserve foundered because it was now leased for 25 years and the owners wanted at least £2 per acre (H8:14-15). Contrary to the oral evidence we were given, government officers of the day believed the land was of no value to the owners. Presumably they failed to realise it was used by local hapu seasonally as an eel fishery and spasmodically for gum digging.

An inquiry about the lakes in 1948 from the Department of Internal Affairs, renewed interest in purchasing, this time "in connection with the conservation of game" (A10:119; H8:17). An offer of £75 (a 25 per cent premium on government valuation) was offered to a meeting of owners in January 1950. Five of nine owners holding 36 per cent of the shares unanimously voted against the proposal but intimated they would support a resolution to sell at £1 per acre (H8:18-19). As the area now formed "an isolated wedge into Crown land" which the Department of Lands and Survey "were scheming for development" and there was some doubt that the owners had ever been compensated for the road reserve taken in 1888, approval was granted to increase the Crown's offer to £1 per acre (H8(a):69-70; A10:101; H8:19).

At another meeting in August 1950, six owners representing 50.8 per cent of the shares agreed to sell for £250 nett and the Crown met unpaid rates (£9 6s 0d) and survey charges (£1 18s 0d). The sale was confirmed by the Maori Land Court on 23 January 1951, adopted by the Board of Maori Affairs on 26 June 1951 and gazetted on 28 February 1952 (A10:76, 93; C18:10-11). As a straight majority of owners present at the meeting had agreed to the sale, it complied with the requirements in ss417-418 Native Land Act 1931 (H8:21).

The largest single shareholder in the reserve was Parore Te Awha's great great grandson, Te Puma Louis Wellington Parore who, in 1949, held 34.8 per cent of the shares. A counsel for Maori in land transactions who for many years had worked as a licensed, first grade interpreter[19], he was not present at either of the owners' meetings; nor did he participate in the sale (H8:21). The Crown researcher conceded that it was unclear if he knew about the meeting in August 1950 that led to the eventual sale. Only two weeks' notice was given

of the meeting which was held in Dargaville. The only contact address the Maori Land Court had for Lou Parore was care of the member for northern Maori. The Crown researcher went on to point out that no record had been found of any subsequent protest from Lou Parore although he would have been well aware of the avenues of protest open to him (H8:21-22).

Robert Parore explained that his grandfather spent the greater part of the years 1948 to 1953 in Auckland, and for a lot of the time was in and out of hospital. Clearly he was not fit enough to attend the meeting. Nor was there any evidence that he was aware that the block was in any way under threat. He died in March 1953, aged 65 years (C33:1-2). In an exchange of views with associate counsel for the claimants, the Crown researcher questioned whether Lou Parore's absence was coincidence. In his opinion the Crown only succeeded in purchasing the reserve because Lou Parore was not present. Robert Parore found it incredible that the largest shareholder:

> a respected Rangatira opposed to the further alienation of ancestral land and by far the most able member of the hapu concerning dealings with the Maori Land Court... did not participate in the sale.... [and] was sold out without his consent. (C18:11)

In our view the Maori Land Court should have informed and consulted the owner with the largest share, namely Lou Parore. The Crown purchase of the Taharoa Native Reserve breached the agreement between Preece and Parore that the reserve be made inalienable, that is, the terms on which Parore agreed to sell the Maunganui block to the Crown. Furthermore it seems unlikely that any officer of the Crown explained to Parore Te Awha that reserves made under the Volunteers and Others Land Act 1877 could be alienated with the governor's consent. We share the claimants' view that Parore singled out this reserve to keep for tangata whenua and that it "was only lost after the Crown changed the rules" (I1(d):14). Even after the Crown's purchase in 1950 tangata whenua continued to use the land and eel fishery in traditional ways.

Wairau Native Reserve

3.2.4 The 171 acre Wairau Native Reserve was cut out of Wairau south when it was ceded to the Crown on 28 January 1879 to preserve and protect the Wairau he wahi tapu and a traditional fishing area. The external boundaries of the reserve were those delineated on Campbell's 1870 survey plan (ML 2012).

Oral evidence by Waimamaku witnesses at the fourth hearing and on a site visit demonstrated the continuing value and importance of the reserve to tangata whenua.

Simon Reuben talked about burial caves in and around the Wairau wahi tapu. When the time was ripe for his father and his Uncle Pera to show him the caves, the bones had already been collected and buried next to the church. He had been in one of the caves and seen

where their tupuna had been laid to rest in a sitting position opposite each other—you could see the black marks left by the head and shoulders on the sandstone. He had counted 45 bodies. The entrance to the cave was well hidden. There were markers at the entrance but you had to know what you were looking for in order to see them. To find those caves you had to be the right person, the right descendant (D7:6-7). At Te Pure a lot of people were buried in the sand, for the last time during the influenza epidemic of 1918. The sand was easier to dig and the graves were braced with ti trees. But the river changed its course and took Te Pure with it (D7:9)

Reihana Paniora told us the coastal area south from the Waimamaku river to Motuhuru was a traditional place for kai moana (Motuhuru, the yellow rock, marked the traditional boundary between Waipoua and Waimamaku (D12:7)). Meri Wihongi, a descendant of Moetara, still remembered the days they camped at the Wairau and Reihana's mum would get crayfish with grandmother Ria Paniora. The kai they lived off at the beach were kina, paua and pupu (D19:3-4).

In 1897 an application to the Native Land Court for an investigation of title to Wairau he wahi tapu was made by Reupena Tuoro and six others and dismissed (D3:54-55). A further application was made in 1902, this time from Ngakuru Pana and Peneti Pana. Plan 2012B was produced in court. Three separate orders were made by the court on 9 June 1905 for Wairau wahi tapu No 1 (153 acres 7 roods), No 2 (12 acres) and No 3 (5 acres 7 roods). Seventeen names of owners with equal shares were listed for No 1, four for No 2 and four for No 3. The standard restriction making the share of each owner "inalienable, *or inalienable except by lease for a period not exceeding twenty-one years*" was crossed out on the court order for Wairau wahi tapu No 1. The shares of each owner for No 2 and No 3 were declared to be "absolutely inalienable" (D3:43-48).

Wairau wahi tapu No 1 was included in a scheme of consolidation under s161 Native Land Act 1931 known as the Hokianga Consolidation Scheme (D3:49) and was utilised for Maori land development.

The beneficial owners of Wairau wahi tapu No 2 and No 3 were in effect "trustees" as their shares were absolutely inalienable.

3.3. What Areas Te Roroa Believed Should Have Been Reserved.

Additional land at Kawerua

3.3.1 The claimants have stated that the Crown should have reserved to Te Roroa the whole of the area known as Kawerua (including Koutu) in view of its significance as a wahi tapu, a kai moana resource, and a hapu estate (A1(i):10).

Turi Birch's evidence demonstrated that Kawerua is one of the places by which Te Roroa identify themselves:

> Maunganui is the mountain.
> Kawerua is the sea.
> Waipoua is the river.
> Tiopira is the man.
>
> This is the person that we are going to talk about for most of the day.
> We descended from Tiopira, from Tiopira Kinaki.
> We are the descendants here in Waipoua.
> We, the descendants of Te Roroa, the direct descendants that were left behind by that ancestor. (B50:2)

Kawerua (two straps) is where Tohe on his last journey south broke the strap (kawe) on his sandal (I1(a):102; see also A33:3).[20]

We have already distinguished the Kawerua area as the traditional site of Whakatau's home and the final resting place of Rongomai.

It is also the place where Kaikino composed a lament for her friend, Ngahuia referring to Kawerua and Rongomai (C7:7). The claimants' evidence demonstrated how rich it is in oral history of particular significance not only for Te Roroa but for other hapu of the Hokianga and Kaihu districts (C7:7-9).

When the tribunal visited Kawerua and Koutu on 17 July 1989, the claimants pointed out wahi tapu and other culturally important features of the land and seascape.[21] Kawerua was described as "an area known for its kaimoana", "a site of early Maori settlement", "the centre of extensive gum digging" and "a shipping point served by the Hokianga-Onehunga steamer and the original coastal road" (B26).

Claimant Alex Nathan asserted:

> Our oral traditions maintain that the people were cheated over the land and that their intention was that 30 acres encompassing the whole of Kawerua would be reserved to them. (C7:att 2.3)

Tribal historian, Garry Hooker amplified this:

> The claimants say that upon the original survey of Te Koutu it was pointed out by Tiopira to the surveyor that the total area for wahitapu at Kawerua, including urupa, was 30 acres, that Tiopira pointed out the boundaries of the whole 30 acres to the surveyor and that it was arranged that an amended survey plan would be made once a Crown Grant for Te Koutu issued. The claimants believe that this arrangement was proposed by Judge Maning who may have suggested that only the tauranga initially be brought into Court to avoid objections.
>
> The claimants also say that although that arrangement was repeated by Tiopira to the Land Purchase Officers and to the Messrs Wilson in 1875, a survey plan for the additional 26 acres never appears to have been done. As a consequence urupa at Kawerua remain on Crown land.
>
> In the absence of official documentation, the claimants are only able to rely on tradition and on notes made by the late Ata Paniora.... They do however draw the attention of the tribunal to remarks made by Judge

> Acheson during the Manuwhetai and ... Whangaiariki hearing respecting the Crown permitting arrangements for wahitapu to sink into oblivion and the evidence of Mr Darby for the Crown: "It was often the case that reserves were arranged for but not excluded from the deed and later the reserves were Crown granted back to the Natives". (C12(a):11-12)

On 5 June 1950, Te Atarangi Paniora of the Waipoua Settlement recorded in his diary (translated by K Souter):

> Today I spoke with the Head Officer [Waipoua Forest Headquarters] about the Rahui for the Tauranga of Koutu and the Wahitapu.
>
> (1870) The year Tiopira pointed out the areas for Rahui.
> 30 acres—4 acres were taken out of the 30 leaving 26 acres. This acreage is at Kawerua 4 acres have been marked for Wahitapu and Tauranga Whapuku. (C7:att 2.10).

An entry made in the Waipoua forest journal on 28 September 1952 recorded a discussion with Mr Paniora at Kawerua on the possibility of setting aside certain coastal land at Kawerua as a wahi tapu:

> According to Mr. Paniora important ancestors of the present people at Waipoua, first landed at a certain point on the Coast.
>
> In addition Mr. Paniora pointed out places where there had been some settlement by very early Maoris and also the position of burial caves now blocked up [with] sand.
>
> The land in question... would be of nil value to the Forest Service.
>
> It was pointed out to Mr. Paniora that his proposal would be put forward through the correct channels....
>
> Mr Paniora favoured an idea of handing over to the Forest Service all Section 1, Block 1, Waipoua S.D. (Koutu Maori Fishing Reserve of 31/2 acres) excepting the coastal margin of approximately 1 acre. This action would benefit the Forest Service as a road and/or firebreak could then be readily constructed from the Kawerua building to an area of land approximately 60 chains to the south west....
>
> It was left to Mr. Paniora to interview his people on these proposals. (825:1-4)

This entry reflects the very typical attitude of a paternalistic officer in position of authority, trying to buy off an inexperienced person subservient to him. A discussion occurred without commitment. The officer did not look into the justice of the matter. The proposals merely served to keep the issue alive.

Alex Nathan considered that Mr Paniora was obviously concerned that the area (Koutu) demonstrated by the original survey, excluded features it was intended to reserve from the sale of Waipoua No 1 (C7:att 2.11). Probably Mr Paniora was also concerned about the on-going use of the Kawerua area by the forest service.

In view of the lack of any further documentary evidence, the tribunal requested that a second site inspection be arranged to record the oral evidence more fully.[22] This visit provided a substantial amount of

detailed evidence that the area of occupation at Kawerua was much more extensive than that included within the Koutu landing reserve and in all probability exceeded 30 acres.

To the south of Koutu reserve on the spur running out to sea named Matatuahu was Whakatau's pa site and tapu marae overlooking a fresh water spring and sand covered burial caves in which Tutenganahau Paniora remembered seeing koiwi (bones). Higher up the ridge was a large garden area with a northerly aspect and open spring where kumara and potatoes were grown and another pa site, Puke-nui-o-Rongo (Rongomai's pa). Tai Tokerau people lived at Kawerua seasonally and the area provided plenty of mamakai (nurture) for visitors.

Kawerua was the only safe landing place between the Hokianga and the Kaipara. A small mixed beach community developed there in the nineteenth and twentieth centuries to service the gum diggers on the Waipoua kauri gum reserve and the Wairau, and the coastal trade. In 1887 land was purchased and subdivided and a township was laid out to the north of Matatuahu. In the 1890s and 1900s Kawerua was a flourishing little community with a hotel, a gum store, a post office and a hall. Outside the subdivision was a race course, a marae, living places and gardens. The land was owned by Trounson who grazed sheep and cattle but was open to everyone. No rent was charged and the Maori apparently thought that they still owned the land. A wide coastal strip was reserved from the subdivision for a road but the road was never surveyed and people used the old fishing tracks.

Dawson Birch's recollections of the gum fields at Kawerua in the 1920s were recorded by Peter Mathews in 1979-80. All along the coast there were camps, permanent for Dalmatians, and short term for local Maori when they needed cash. Kauri climbing gangs of three or four worked in the forest for wages. Every three months Nick Yakas and his brother packed the gum out to Kawerua by horse to sell, and packed food back.[23] Philip Matich had the hotel and gum buying license and packed by boat to Omapere. People got annoyed with the store as everything took too long to come through. Trounson had the place after Matich went. Jarby ran merino sheep at Kawerua, local Maori knocking them off.[24]

By 1939, when the Crown bought the hotel land and buildings, Kawerua was "well and truly dead" as a gum digging centre and the inland road through the Waipoua forest had supplanted the old coastal route (E12:10). The land was acquired by the forest service who wished to keep people out because of the fire risk. Nonetheless Kawerua bas remained an essential source of kaimoana for Te Roroa of Waipoua.

The oral evidence we have been given of the traditional and continuing importance of this area clearly supports the claimants' view that their tupuna intended to exclude the Kawerua area as well as the

Koutu landing place from the sale of Waipoua No 2 block. It also supports the view we have already considered that the vendors themselves did not detect the Crown's failure to reserve it in the deed of sale. Clearly the Crown had a duty adequately to protect this food resource and wahi tapu for tangata whenua.

As this particular claim is based almost wholly on oral evidence observations, one from Crown counsel, the other from Garry Hooker, seem pertinent. Crown counsel said there was much truth in Chief Judge Seth-Smith's comment:

> A tradition generally accepted and acted on, and of which the several accounts do not materially differ from one another, may, with considerable confidence, be regarded as an authentic record of actual fact.[25]

With respect to submissions of claimants on wahi tapu and urupa, Garry Hooker invited the tribunal to:

> focus on Te Roroa tradition as to the original arrangement and Maori custom relating to wahitapu and urupa, rather than the absence of early contemporary pakeha documentation.
>
> ...[namely] the spoken word of Tiopira as established by tradition.
>
> In terms of Maoritanga... the sanctity and protection of wahitapu which is of overriding concern. (C12(a):15)

Manuwhetai and Whangaiariki

3.3.2 A question of overwhelming significance to Te Roroa in respect of the Maunganui-Waipoua sale is whether or not Manuwhetai and Whangaiariki should have been reserved (I1(b):31; A1(i):7, 19).

Manuwhetai and Whangaiariki are famous places named by Tohe of Kapowairua (Spirit's Bay) on his last journey south with his slave, Ariki, to see his daughter who had married into Ngati Whatua and migrated to the northern Wairoa, before he died.

> At Whangaiaariki, Ariki prematurely unwrapped the food intended for the completion of their journey and offered it to Tohe. That sacrilegious act, it is said immediately destroyed the tapu of their spirit forms and killed them both. Whangaiariki [feeding by Ariki] commemorates that event. (I1(a):103)

On the last leg of his journey Tohe descended Maunganui Bluff and died on the beach. Ariki hastened on to summon his daughter and her people. On arrival they found that the sea birds had pecked his eyes; hence the place name Manuwhetai (A21(a):1-2).

Manuwhetai was one of the most tapu urupa of Tai Tokerau. The powerful tohunga, Pinea asked his children and the tribe to take him there and directed his son to bury him alive with his head above ground so he could look upon Maunganui and fix the area in his spirit. The great fighting chief, Taoho, also died there (A21(a):3-4). A grove of pohutukawa mark the entrance to one of many burial grounds in the small dunes. The Waikino stream was used as a cleansing place

for the bones of important tupuna taken out of the burial places before they were removed to caves on higher ground (A18:4). Manuwhetai was also a training ground for battle and a resting place after battle where warriors would wash their wounds (A34:3-4, 6)

Both Manuwhetai and Whangaiariki were places where people lived, gathered food and cultivated. The adjoining beach at Maunganui Bluff was noted for its fishing and a rich source of kai moana. Pa sites included Patenga on Whangaiariki, Onetahi on Manuwhetai and Tirohanga-ki-te Rangi on the Bluff. The Bluff itself was a lookout point and signal station, its strategic significance to Te Roroa being recognised in the old Ngati Whatua saying:

> Ka titiro a Maunganui,
> Ka titiro ki Kaipara,
> Ka titiro a Kaipara,
> Ka titiro ki Maunganui. (A18:5)

The late E D Nathan said that one of their ancestors was "reputed and known to have been a seer" who used to go to the top of the Bluff to meditate and to write and recite patere (songs) there. Mr Nathan had two of his patere and the names of 29 or 30 sites "which have some historical significance if we knew where they were" (B22:92-93).

It seemed obvious to tribal researchers, T H Te Rore and Sharon Murray:

> that land with so much history, tradition and Tapu would not have willingly been sold by anyone who had connection with it. (A18:5)

We have seen that Manuwhetai and Whangaiariki were surveyed as two reserves by Frank Smith in August-September 1875 and that his plan ML 3297-8 was entered in the Maori Land Plan Register. But it was not sent to the inspector of surveys for approval nor was it sent to the January 1876 court hearing. The reserves were not shown on Smith's plan ML 3253 of Maunganui which was produced in court, nor were they on the tracing sent to the Native Department on 20 August, that is, before the plan was entered in the register. They were not cut out of the 1876 sale of the Maunganui block.

In May 1990, following the presentation of claimant and Crown evidence, the Crown and Te Roroa prepared and executed an agreed statement that Manuwhetai and Whangaiariki should have been reserved from the sale (see below, appendix 4).

In his final address, claimants' counsel said that this statement disclosed:

> at the very least a breach of Article 2 of the Treaty. That is of the guarantee of exclusive possession of Te Roroa's lands "which they may collectively or individually possess so long as it is the wish and desire to retain the same in their possession..." (11(b):37)

The claimants accepted that the failure to reserve was "due to human error rather than malice", but all these errors could be:

> attributed to the pressure placed upon the Maori Land Purchase system and those... who administered it to cut corners and bend or even break rules in order to acquire sufficient land at sufficient speed to meet settler demand (I1(b):38)

In her final submission Crown counsel said:

> that by a combination of factors, including human error, the intention of all parties to the sale and purchase of the Maunganui Block that the lands known as Manuwhetai and Whangaiariki be reserved from sale was not given effect to.
>
> ... In the circumstances of the case which include pressure on land purchase agents and surveyors ... and the concern of the main chiefs involved in the transaction to have their own rights upheld the matter was overlooked.
>
> ... It is unfortunate that when the land was still in Crown hands the mistake was not rectified.
>
> ... Counsel for the Claimants has stated that "by the time Crown Agents got to Te Roroa the rhetoric of protection had been completely dispensed with ["]. Nevertheless the Crown agents did take cognisance of the requests for reserves, even if in some cases these were not ultimately actioned. (I2:(b)(ii):36-37)

The agreed statement of facts related only to the issue of the reservation of Manuwhetai and Whangaiariki. It was implied that the failure to reserve Manuwhetai and Whangaiariki was overlooked at the court hearing partly because the rangatira in court were preoccupied with the contest over titles. It seems unlikely to us that any of the rangatira would have overlooked such an important matter. There is no doubt in our minds that they understood that Manuwhetai and Whangaiariki were to be reserved from the sale.

The fact that all the local bapu went on using and occupying the reserves for many years after the sale provides strong additional evidence that they understood that the intentions to reserve Manuwhetai and Whangaiariki from sale had been carried out.

"Papaki"

3.3.3 This is a cautionary tale about the need for care in research based on English translations of Maori documents and of how a mistake can bring up fascinating arguments to create something that does not exist. "Papaki" was alleged by claimants to be a 3000 acre area in the vicinity of Maunganui Bluff which should also have been reserved from the Maunganui-Waipoua sale (A18:58).

The claimants considered that two factors should be looked at in support of this claim. First, the acreage of the area named forest reserve lying between the boundaries of Manuwhetai and Waipoua No 2 which would be close to 3000 acres; secondly the name Papaki which is translated in Williams *A Dictionary of Maori Language* as

"Cliff against which the waves beat", is an apt description of Maunganui Bluff (A18:58; A39:5).

The claimants found an area marked reserve on plan 1457 approved 5 June 1895, in the Auckland survey office and wondered if this could be Papaki. The area was in the vicinity of Maunganui Bluff. The plan was slightly torn. Above 1457 was a higher number "2338" ruled out. This suggested to them that the plan might have been drawn in the 1870s and might be the Wilsons' original plan (A18:58; A39:2-3).

Subsequent Crown research established that the plan number "2338a" did not relate to the Maori Land Plan Register but was a provisional number assigned to a departmental plan which was subsequently re-numbered 1457. The plan was drawn by A L Foster. The reserve marked on it was Crown forest reserve on block 12 of the Waipoua survey district (E2:150-151).

The only written evidence to substantiate the "Papaki" claim was a Native Department translation of a statement made by Tiopira Taoho when he was writing to Dr Pollen, the colonial secretary, 22 April 1877:

> I also consider one of our pieces of land called Papaki was not included in that block which contains three thousand acres hence we apply to you for re-hearing of the same. Should this not be granted then I say let the land be subdivided giving twelve hundred acres to Parore. (A4:352-353)

Further Crown research revealed that:

> On May 5, 1877 the Native Department requested Preece's opinion on the matter of Papaki.... Preece, on May 14, replied that he was "not acquainted" with this land "or the circumstances connected with it"... Captain Symonds "would probably know."....
>
> On May 23, 1877 H. T. Clarke, of the Native Department, replied to Tiopira's letter of April 22.... [informing him] that his request was denied as the land had been sold to the Crown and would not be readjudicated upon. It is not known whether or not Symonds was consulted. (E2(d):1-2)

From this reply, it was concluded that:

> The Crown clearly felt that as the land in question had been dealt with by the Court and subsequently purchased by the Crown, there was therefore not sufficient justification for reopening the proceedings. (E2(d):2)

In response to questions from Crown counsel with regard to Papaki, claimants stated that Tiopira did not define the locality in his letter but they were sure it was the area between Manuwhetai and Waipoua, that is, the eastern most part ending at Waikara. As to its significance to Te Roroa:

> It is most unlikely that the coastline [and main track north-south] would be reserved, minus this area. It consists of the Maunganui Bluff, an

> important Tribal landmark; the site of the Whare Wananga used in the days of warfare by Chief Taoho, the favoured mussel rocks, a resting place for war parties and the source of spring water for lower areas. Also the word Papaki refers to the slapping of the water against the rocks, as it does in this area.
>
> Te Rore Taoho and Tiopira were related closely to each other. To have sold this area would cut off the easiest access to each other's kaingas.
>
> It was unnecessary for Te Rore to ask for this area as a reserve. It was their right to retain any lands they chose not to sell. In Tiopira's case, the 12,000 acres he kept proved to be detrimental during later financial negotiations with the Crown. That in itself would have deterred him from mentioning Papaki. Also, it was his opinion the Court was only for the purpose of adjudicating on blocks to be sold, not on lands excluded from sale. (B34:19-20)

Initially tbe Crown agreed that Papaki probably did consist of the Bluff/Waikara area, as this was the area of most disputes between Tiopira and Parore. Tiopira's offer to share the area with Parore was:

> a last ditch effort to secure at least part of the area.... Te Roroa based at Waipoua may well have initially intended to reserve this area, and this intention may have been subsumed by the bitter dispute over boundaries and Te Roroa's insistence on exercising of their rights over the whole of Maunganui.... There is no evidence to suggest that any discussion took place between Te Roroa and the land purchase agents with respect to this area... [nor] of any complaint by Te Roroa with respect to its non-reservation during the next 112 years. (E2:201-202)

In her closing submissions, Crown counsel acknowledged that Te Roroa based at Waipoua might well have initially intended to reserve Papaki but this intention was possibly subsumed by the dispute over boundaries. In the absence of any evidence to show that this intention was ever communicated to Crown land purchase agents or that such a reserve was sought at the time of the purchase negotiations and sale, she submitted that no breach of Treaty principle could be found against the Crown. Furthermore, she wondered at there being no further documentary record of protest (I2:(b)(ii):38-39).

At no stage in the argument was any particular significance attached to the fact that there were no oral traditions concerning Papaki. Rather the Crown's re-examination of the one piece of documentary evidence on Papaki arose in response to a question from the tribunal's request for a new translation of the Maori original of Tiopira's letter to Pollen, 22 April 1877, which referred to "Whenua ko Panaki" and to "Whenua Ki Opanaki" (I14:att A), not Papaki. H T Clarke's reply to Tiopira, 23 May 1877, made it clear that Tiopira had requested a re-hearing about the "Opanaki" block, which the court had awarded to Parore Te Awha and Te Rore Taoho in 1874 (I14:att B). In an application for a re-hearing dated 2 April 1889, Tiopira's son, Rewiri stated that his father had made several applications to the Native Land Court for "Opanaki", to which he had a very strong claim (I14:att C).

In response to this irrefutable evidence that "Opanaki" was incorrectly translated into "Papaki", the claimants pointed out that only whenua (land) was sold to the Crown in the Bluff area; no mention was made in the deed of sale of wahi tapu:

> Papaki is sacred to Te Roroa.... an area of great spiritual and tribal significance.... unless there was an express provision allowing for the extinguishment of "wahi tapu", the spiritual relationship between Te Roroa and Papaki was never severed. (118:2)

This clearly indicates to us that the claimants are deeply concerned that the wrong identification of Papaki may prejudice their valid claim with respect to Maunganui Bluff.

We conclude that there is no place name "Papaki" in the Maunganui Bluff area. Nor is there any documentary evidence that Tiopira arranged to reserve 3000 acres of land in this area from the 1876 sale. Nonetheless the claimants do have a valid claim to Maunganui Bluff. The footnote to this case is that here we have a case where documentary evidence and theorising is not supported by any oral evidence. Clearly this should have alerted all of us much earlier to the probability that the documentary evidence was wrong. In short, documents are not necessarily any more reliable than oral traditions. Both kinds of evidence need to be carefully considered and scrutinised.

Maunganui Bluff

3.3.4 We are left with two related questions, first, did Te Roroa wish "to retain a wahi tapu of great significance to them", namely, Maunganui Bluff itself. Secondly did any of the vendors indicate "that they wished it reserved from sale". We agree with counsel for the claimants that:

> Such a finding is important in terms of the obligation upon the Crown in more modern circumstances to protect the sacred mountain of Te Roroa and to involve the iwi directly in its administration. (11(b):50)

From what we know of Te Roroa's cultural heritage it is most unlikely that the vendors wished to include the Bluff in the sale to resolve the dispute over title and to ensure its protection by the Crown.

In our view, there are two sets of circumstances which help explain the loss of Maunganui Bluff. The first is that it is situated in the area that had not been surveyed by Wilson when the survey was discontinued; nor was it surveyed when Frank Smith returned to the district to survey Manuwhetai and Whangaiariki. It was simply sketched on S P Smith's compiled plan ML 3253 of Maunganui. Consequently, there was no occasion when Tiopira or any other person could have instructed the surveyor on the ground to cut out or reserve Maunganui Bluff. Possibly no one ever conveyed the wishes of Tiopira and others concerning Maunganui Bluff to the surveyors and Crown land purchase agents.

If, by any chance, their wishes were known to Brissenden and Nelson and/or Smith and the Wilsons, none of them were present at the court

hearing or the sale. The dispute with Parore over title was only settled four days before the sale. During the sale negotiations, Tiopira was preoccupied with securing his "equality of interests" with Parore. He may have assumed that Maunganui Bluff was excluded from the sale along with Manuwhetai and Whangaiariki or he may have been confused by the pressures being exerted on him by the native land purchase system and not realised that Maunganui Bluff was included in the sale. The absence of Te Rore Taoho from court was probably another reason for the failure to reserve the Bluff. The oral evidence transmitted to us on site visits to the Bluff and at the first hearing in Kaihu clearly indicated that tangata whenua have kept their fires burning at the Bluff ever since the sale.

The second set of circumstances relates specifically to the lack of any documentary record of protest. In fact Te Roroa had no particular reason to protest until the construction of a radar station on or near the site of a whare wananga on the Bluff during the second world war, and the subsequent installation of telecommunications equipment there without the consent of Te Roroa Ngati Whatua.

Prior to the sale of the Maunganui block to the Crown in 1876, the Bluff was used as a trigonometrical station and observation point. When the block was surveyed and subdivided in 1881, the Bluff area was delineated as a reserve (A5:724). The following year the Crown reserved 754 acres "for growth and preservation of timber" which were declared state forest in 1906. Acting on a submission from the Hobson City Council, the state forest area and an additional 469 acres of adjacent forest were proclaimed a scenic reserve in 1911 (H2:2-4). There is no evidence that tangata whenua were informed or consulted about any of these developments. Nor is there any evidence that they objected. For the time being they simply continued to exercise their traditional rights to kaitiakitanga and mahinga kai. Furthermore they expected the government to initiate public works in the area which would increase their opportunities to participate in the market economy in return for the land they had sold.

On 7 February 1876 Tiopira Kinaki and Te Rore Taoho wrote to Sir George Grey, superintendent of the province of Auckland, asking that a road might be made through the 100,000 acres of the land between Hokianga and Kaihu they had recently sold to the government. Such a road would facilitate their "egress to the European settlement" and their sale of kauri gum, cattle and pigs to Europeans. "Should this line of Road be constructed a very great number of the Northern people would come this way to Auckland, because the route via the Bay of Islands is a circuitous one" (E2(a):362). They had heard that a sum of £60,000 was voted by the Parliament the session before last for the construction of roads but "none of the money was spent on Roads in this District.... Let a Surveyor be sent to examine the line" (E2(a):363).

W A Tole, the commissioner of Crown lands, thought that "application deserving the strongest recommendation which can be made in its

favour to the General Government" (E2(a):361). Sir George Grey concurred and asked the Minister of Public Works favourably to consider it (E2(a):358). A good bridle or "cantering" road was constituted from the Wairoa river to Waikara beach round the inland side of the Bluff, 1881-1884 (E8:3-5). From Waikara to just south of Kawerua, travellers continued to use the beach. A 20 mile coastal strip south of Kawerua remained unalienated Crown land.

From all the evidence we have been given on the traditional history of Maunganui Bluff and its material and spiritual importance to Te Roroa Ngati Whatua we believe that it would have been Te Roroa's wish to retain it forever. The Crown had absolutely no business to purchase a place of such significance.

Kaharau, Te Taraire and other Waimamaku wahi tapu

3.3.5 The claimants allege that the Crown failed to reserve from the Waimamaku No 2 purchase certain places of great spiritual and historical significance to the people of nga hapu o Waimamaku (A1(i):12). Most of these places were situated on 1472 acres of land which was included in the Waimamaku No 2 sale and are known as the Kaharau reserve. This extends from Te Moho in the east through to Tutaepiro in the west, encompassing Te Rereapouto, Kohekohe, Piwakawaka and Kukutaepa. These places are of great spiritual and historical significance to the hapu of Waimamaku. Te Roroa are the acknowledged guardians of these places (I1(b):56). Another of these places is Te Taraire which consists of 60 acres and was also involved in the sale (A1(i):14, 54-55).

From the evidence we were given by Emily Paniora (D12:2) and Dr Patrick Hohepa (D11:12) it seems likely that the name is connected to Kaharau, son of Rahiri and the tupuna of the area. The Kaharau reserve contained "ancestors of Te Roroa, Ngati Korokoro, Ngai Tu, Ngati Pou and others" (D11:13). There were burial caves in the bush which contained the bones of their ancestors and were extremely important wahi tapu (D31:4-5; D5:6; D11:12-13). According to Emily Paniora, their tupuna:

> always intended to protect Kaharau and the other Wahitapu as Maori reserves, and it was on that basis that Tiopira and the other Rangatira agreed to sell Waimamaku No. 2 block to the Crown.....
>
> ... at the time of [the] sale the Tupuna believed that Kaharau had been cut out of Waimamaku No. 2. block. (D12:2)

Te Taraire, an area of approximately 60 acres was an ana tupapaku, a special place where the dead were prepared for burial. Simon Reuben explained how the tupapaku (body) would be left for a year in the trees to decompose. The bones would then be washed and taken to the caves. If the tupapaku was a person of particular mana the bones would be put in a carved waka tupapaku or burial chest (D7:4-5).

Simon Reuben told us he knew about and had been told about the burial sites of their tupuna from Waimamaku right back to Maunganui. There were two lots of burial caves: at Kohekohe and Piwakawaka situated at the two ends of a cliff face on the ridge known as Kaharau. There were many other caves in between. Until the land fell into the hands of James Morrell, the existence of the caves was a secret to all but their kaitiaki, who handed down information on them by word of mouth (D7:3).

On the eastern corner of Kaharau there is a rocky hill, Te Moho, which contained burial caves. His grandfather, hearing that Pakeha were trying to get into them, camped there, and on the third night heard rocks giving way or crumbling. He came down the next day and told his grandson nobody would find the tupuna now. Te Moho had caved in (D7:4).

Tutenganahau Paniora also told us that there were koiwi at Te Moho which was "a very tapu place" to him. He said "Te Moho is a sound, my dad said, a kissing sound. He said to me if you walk past that place and hear that kissing sound you're in trouble" (D10:3).

Simon Reuben and his brother Prince Reuben had roamed all over Kaiparaheka where there were still bodies (D7:8) and Simon had been to Te Niinihi where he had heard there were urupa but didn't know for sure (D7:8).

Prince Reuben's father, Aperahama Reupena Tuoro was the person designated to pick up the koiwi of their ancestors from traditional burial grounds in the area of Waimamaku and Wairau for reburial in Ahuriri cemetery. His uncle, Te Ngoiere Tuoro, would help him and on occasions he went with his father who taught him not to be afraid of his ancestors (D9:1). Kaiparaheka had been a pa site and became a burial ground after people there were massacred (D9:3). He had stood outside Piwakawaka when his father had been there to collect bones (D9:3). His father had also removed bones unearthed by the wind from Te Moho to the cemetery (D9:3-4).

Tutenganahau Paniora was told about the burial caves at Kaharau by his father and the tohu or signs to mark where they were and protect them. He had heard about wahi tapu at Te Rereapouto, an ana koiwi, the Wairau wahi tapu where many tupuna rested and some but not all had been taken out for reburial; Te Moho where there were koiwi and Kaiparaheka where there were many koiwi from a big battle. In Waimamaku he concluded:

> our ancestors.... left behind more than just their footsteps. They left their last earthly remains into our care (D10:3-4).

In her closing address Crown counsel partially conceded the claim that the full area known as Kaharau should have been reserved:

> It appears... there was an agreement with the vendors of Waimamaku 2 to either reserve "Kaharau" from sale or to grant "Kaharau" back to the

> vendors after sale. The evidence tends to point towards the first option as "Kaharau" is likely to have been treated as being an extension of Wairau North which was excluded from the sale. (I2:(b)(iii):26)

Nonetheless Crown counsel was reluctant to admit that agents of the Crown acted for any reasons other than "misunderstanding" of the extent of the reserve asked for and of the terms of the sale. Perhaps chiefs did rely on oral undertakings rather than written word but, by 1876, they and their advisors were "experienced land sellers ... surely aware of the nature and meaning of these documents" (ibid:27).

In respect of Te Taraire, the Crown submitted that the evidence was not so clear. Moreover lack of protest in the intervening years was also a telling indicator, especially when compared to the profusion of petitions and complaints in respect of Kaharau (ibid:28).

It is as inconceivable to us, as it is to claimants (I1(b):83), that the vendors, having expressly excluded Te Taraire from the sale, would have changed their minds and agreed to sell it. We consider that the apparent lack of protest is understandable in that there was no incident comparable to the desecration of Maori burial caves that sparked off the petitions and protests over Kaharau (see below, pp 264ff).

The oral evidence we were given on the great spiritual significance of Kaharau, considerably strengthens the circumstantial and documentary evidence on which the Crown largely relied in partially conceding that the Maori vendors intended to exclude the full area of Kaharau from the sale. It also clearly indicates that they intended to exclude Te Taraire. The reason Te Taraire was not shown as a reserve on Weetman's check survey can be traced back to the confusion created by the forked boundary on Smith's sketch plan.

Sharon Murray's belief "that the dealings concerning Manuwhetai and Whangaiariki are mirrored in Kaharau, with each case supporting and substantiating the other" (D15:1) contains grains of truth.

There are striking parallels and similarities in the survey, the negotiations and the purchase by the same Crown agents; also in the failure to mention reserves at the court hearings and in the deeds. Moreover in both the Maunganui and Waimamaku No 2 sales, the chiefs relied on oral undertakings of Nelson, Smith and the Wilsons.

Viewed in historical perspective the failure to reserve Kaharau and Te Taraire arose not only from the omission of Crown agents to ensure an approved and proper survey plan was produced at the Native Land Court investigation of title and was attached to the deed of sale. It also arose from the methods used by agents of the Crown at that time to purchase Maori land and from prevailing attitudes to reserves.

The failure to exclude Kaharau and Te Taraire from the sale of Waimamaku No 2 block clearly breached the terms on which vendors agreed to the sale.

The survey lien

A survey lien of £162 10s 8d was registered in October 1875 in respect of the Wilsons' plan ML 3278. The area given in the lien was 27,200 acres, which was 2700 acres more than the total acreage on the plan (D1:15; D18:10). According to Emily Paniora:

> It is unclear why a lien was charged as the plan was never completed, nor was it recognised by the Inspectorate of Surveys or the Court, nor were the boundaries as surveyed by Wilson used. (D12:5)

According to Emily Paniora, the charge of a lien for the survey demonstrated that the survey was intended to define the boundaries of Kaharau and Te Taraire (D12:6). The amount of the lien normally would have been deducted from the monies paid to the owners on the signing of the deed of sale (D12:5).

In his evidence Garry Hooker pointed out that surveys were usually charged on an acreage basis and the Wilsons' lien amounted to almost one and a half pennies per acre on 27,200 acres. This area must have been made up of the 24,500 acres shown on the Wilsons' plan, ML 3278, plus Kaharau 1471 acres, plus Wairau south 1229 acres. He questioned the propriety of charging on an acreage basis "for merely cutting a line across the already surveyed boundaries of Wairau" and of charging the owners of Waimamaku No 2, who were different from the owners of Wairau, for the costs of the Wairau survey; also of charging them for a survey of the eastern portion of Kaharau when the Crown took that land without payment. He also raised the question:

> as to general Crown responsibility and propriety in approving payment to Wilson of such a high survey cost out of the pittance that the Crown usually paid Maori for their lands. (D18:10)

The evidence clearly supports the claim that a survey lien of £162 10s 8d was charged against Waimamaku No 2 block for the Wilsons' unapproved plan, ML 3278. As Preece's report on the sale has been destroyed there is no documentary evidence to show that the normal procedure of deducting the amount from the monies paid to the owners of Waimamaku No 2 block on the signing of the deed of sale was carried out.

Did the Crown pay for Kaharau?

The claimants allege that the Crown expropriated without compensation of payment, the 1472 acres of Kaharau that was not reserved from the sale contrary to the terms of sale. On the deed of sale the sum of £1203 6s 6d is filled in for 27,200 acres (D2:28). Both Garry Hooker and David Armstrong calculated that the Maori were paid £1318 6s 6d for the whole block which worked out as 11.6d and 11.5d per acre (D18:6; H3:47-50). According to Hooker, the £115 in excess

of £1203 6s 6d was an old advance by Brissenden of which Preece was not advised in time.

Both Hooker and Armstrong are agreed that this acreage rate was significantly lower than the various rates negotiated with vendors and at which they received down payments, namely, 1s 5d - 1s 6d per acre for Kahumaku and 1s 1d per acre for Waimamaku land (D1:11).

Hooker calculated that even if the Wairau south purchase money of £92 was taken into account (originally the intention was to include Wairau south in the Waimamaku purchase), the total sum was £1410 6s 6d and the average acreage rate 12.44d, still less than the lowest rate negotiated for Waimamaku land.

Hooker also calculated the deficits which would have occurred in three different scenarios of acreages in Kahumaku at 1s 6d per acre and Waimamaku at 1s 1d per acre if the Crown had paid separately for 1192 acres of Wairau south at 1s 6d per acre and had not paid for the 1471 or 1472 acres of Kaharau which should have been reserved (D18:6-8).

The deficits were £191 11s 10d, £97 9s 9d and £274 16s 11d. These were equivalent to 3537.07 acres, 1799.76 acres and 8806.15 acres respectively at 1s 1d per acre.

Hooker then endeavoured to establish whether the Crown paid for Waimamaku No 2 block at the various rates agreed on if 1471 acres of Kaharau and 1129 acres of Wairau south were excluded. Progress reports on the purchase of Kahumaku and Waimamaku land seemed to indicate three possible ways in which the remaining 24,600 acres could have been apportioned between Kahumaku at 1s 6d per acre and Waimamaku land at 1s 1d per acre. His calculations in each case revealed a deficit which was greater than what would have been the price of 1471 acres of Kaharau if it had been purchased at 1s 1d per acre. From this he concluded the Crown could not possibly have paid for the 1471 acres of Kaharau reserve (D18:9).

David Armstrong was of the opinion that the figures did not seem to add up to any definite indication that Kabarau and Te Taraire were not paid for. However, he accepted that whatever acreage was paid it was below that agreed to which:

> may indicate that the sale of 27,200 acres did in fact represent a provisional transaction, with the areas reserved to be subtracted later. Hence, Preece would not include payment for the area consisting of 'Kaharau' and any other reserves in his total. (H3:50)

Without Preece's report, destroyed in the Parliament buildings fire, the exact basis of sale cannot be determined. Either 1471-1472 acres of Kaharau were expropriated without payment and the rest of the block was purchased at a slightly lower rate than 1s 1d per acre or the whole block was purchased at an even lower acreage rate.

Additional land in the Wairau Native Reserve

3.3.6 The claimants state that a small piece of land south of the Wairau river should have been included in the Wairau Native Reserve. As Emily Paniora explained, Te Roroa always understood that the southern boundary of the reserve ran to Motuhuru in a straight line, without any "doglegs", and did not start from the river mouth or some hundreds of metres up the river, and wanted the Crown to recognise this boundary. The small piece of land contained important wahi tapu including burial grounds and also the pa Pakiri:

> For as long as we can remember this flat area of land has been used by some of the whanau of Waimamaku as a place where families moved to and lived for most of the summer taking their whole household and stock with them....
>
> In 1935 John Paniora, Bill Iti, and Terry Brady fenced the boundary line from Motuhuru under the direction of Jim Brown the forest fire guard who lived at Kawerua. (D12:8)

Paekoraha Paniora confirmed this in an oral statement following his evidence and on a site visit, 1 March 1990 (D28:4). He had worked for Bill Trounson, and had come to Kawerua to run the fence line for cattle up to the wahi tapu and the bend in the river. He pointed out the fence line which runs along a straight line from Motuhuru to the Wairau river.

Prince Reuben remembered his father pointing out the boundaries of the Wairau wahi tapu. The fence was built there because it was the boundary and not the creek. The boundary went straight up to the skyline on the south side of Motuhuru, because that is also a wahi tapu, to a peak or stand of totara. In 1988, when he and his relatives were camping at Wairau a chap from the forest service had come along and told him he should be on the north side. Almost two months later a letter came from Rod Young of the forest service containing a fairly recent map with the boundaries he had pointed out, admitting their mistake (D9:2).

Inland along the southern bank of the Wairau river, which claimants say is part of the reserve, we were shown the camp site used until recently. Alex Nathan and others pointed out the wahi tapu and pa site.

The failure to include the small piece of land south of the Wairau river in the reserve arose from the choice of Campbell's southern boundary for purposes of sale and cession in preference to the boundary arranged by local chiefs and S P Smith in 1875 which ran from Motuhuru, a traditional boundary marker. This renegotiated southern boundary was shown on Smith's sketch map of Waimamaku (ML 3268) as far as the river. The line was cut and surveyed by the Wilsons and checked by Weetman and is shown on their survey plans (ML 3278 and ML 3435 respectively). Why Wilson did not close it in from the river to Motuhuru is not known.

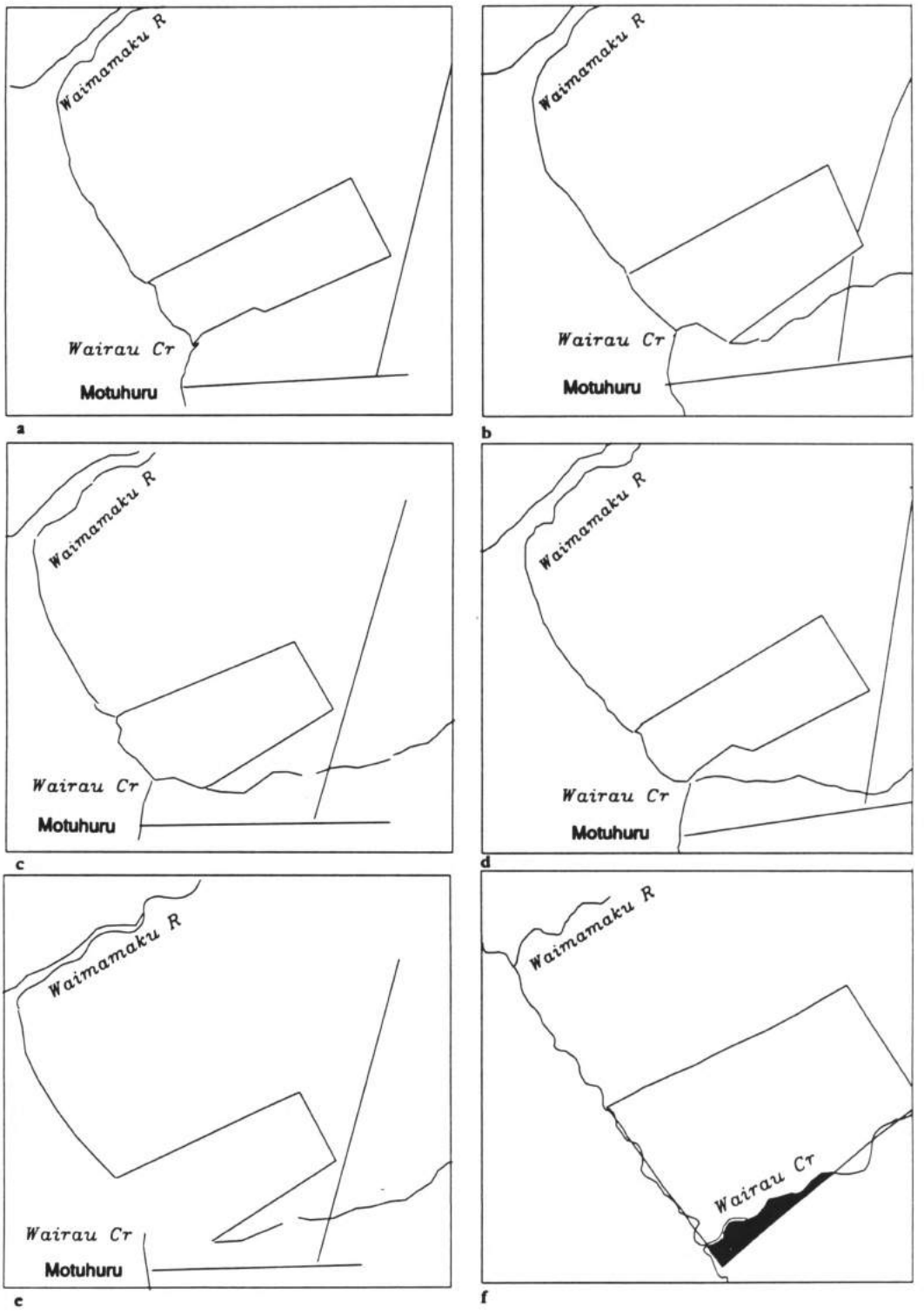

Figure 18: Diagrams of the Wairau wahi tapu reserve illustrating different southern boundaries (a) Campbell's plan, ML 2012, September 1870 (b) Smith's compiled plan, ML 3268, 11 June 1875 (c) The Wilsons' plan, ML 3278, 14 July 1875 (d) Kensington's plan ML 3278A, 21 December 1875 (e) Weetman's check survey, ML 3435, 25 January 1878 (f) Reupena Tuoro's sketch map, 1897. *Source:* Department of Survey and Land Information, Auckland

When Kensington compiled his plan of Waimamaku No 2 (ML 3278A) he incorporated Campbell's southern boundary of the Wairau Native Reserve. The plan of Wairau south, which was placed on the deed of cession (ML 2012B), did the same. Nevertheless the chiefs who signed the deed of cession believed that the change they had negotiated concerning the southern boundary had been accepted. Even if they saw and read the map and document in court, which seems unlikely, they would hardly have detected that Campbell's southern boundary had been preferred to theirs. No traditional boundary marker or place names were included. Moreover no judicial oversight or advice was provided in court to ensure that they understood exactly what area of land they were ceding to the Crown.

Tbeir understanding that the oral arrangements they had made with the surveyor had been accepted is borne out by a sketch plan and a written description of the reserve included in a request from Reupena Tuoro and others in 1897 for a survey of the block so that the title of the Wairau wahi tapu could be investigated (D3:524-525). The southern boundary on the sketch plan is a straight line running to Motuhuru which is named as the traditional boundary marker. It is consistent with the boundary shown by Smith, Wilson and Weetman except that it is extended from the river to the coast. On the sketch plan, Reupena had written in Maori: E tono ana ahau kia koe hanga te mapi irunga i te ruri tawhitu (I am sending you the map made (based) on the old survey).

Kensington informed Reupena that a survey plan (Campbell's) already existed, but did not point out that the southern boundary shown on it was different from the one Reupena had sketched and described (the Wilsons') (D3:525-528). Possibly Reupena was aware of this, for on his application to the court the southern boundary ends at the river not Motuhuru (D3:55).

When Ngakuru Pana and Peneti Pana made a further application in 1902, Campbell's plan 2012 was produced in court and no complaint was made about boundaries. Possibly the applicants still did not appreciate the difference between the boundary they had pointed out to the surveyors in 1875 and Campbell's boundary on plan ML 2012.

The lack of any further protest probably indicates the absence of any European encroachment on the traditional camp site rather than acceptance of Campbell's boundary (H3:96). Oral evidence given by the claimants demonstrated that tangata whenua continued to act as if the southern boundary ran straight from the south east corner of the reserve across the river to Motuhuru and as if the piece of coastal land between the lower reaches of the river and this boundary was reserve.

Counsel for the Crown submitted "that another boundary altogether is what was sought by the vendors" (I2:(b)(iv):7). The evidence does not substantiate this. Having pointed out the traditional boundary marker, Motuhuru, to the surveyors, the vendors naturally expected

that Campbell's boundary would be altered to run in a straight line to Motuhuru. Moreover they would not have understood Pakeha notions about water rights which may well have been the reason the boundary between the river and Motuhuru was not closed in by the surveyors they instructed.

It would seem fair and reasonable for the Crown, in the circumstances, to have extended the Wilsons' southern boundary from the point where it reached the river to Motuhuru or to have cut a line and surveyed this section before Wairau south was ceded. Its failure to do this was later compounded by its failure to investigate the accuracy of the southern boundary described and sketched by Reupena Tuoro, and to inform him of the difference between his southern boundary and the boundary shown on the plan attached to the deed of cession. The lack of protection for and access to wahi tapu and allegations of trespass complained of by the claimants, were the outcome of these failures.

References

1 In the New Zealand Company settlements, native reserves were promised and to some extent provided, but fell well short of Maori needs. In Port Nicholson they were scattered among sections selected by land purchasers "with an almost total disregard of the natural wishes of the Natives" to retain their pa sites, cultivations and burial grounds, and with the deliberate intention of encouraging the spread of civilization and Europeanisation (John Miller *Early Victorian New Zealand* (London, 1958) p 49). In the southern settlements "there was a deliberate determination on the part of some officials" to keep reserves small "so that Ngai Tahu should not persist with a traditional lifestyle" "The Ngai Tahu Report" (Wai 27) 3 *WTR* (Wellington) p 467. Under the Native Reserves Act 1865, existing native reserves were placed under the control of commissioners and leased at low rents for long periods to settlers (Alan Ward *A Show of Justice* (Auckland, 1973) p 93)

2 J Rutherford *Sir George Grey KCB, 1812-1898: A Study in Colonial Government* (London, 1961) pp 206-207; see also "The Ngai Tahu Report" 3 *WTR* pp 274-275.

3 *Report of the Waitangi Tribunal on the Orakei Claim* (Wai 9) (Wellington, 1988) p 39

4 Under s5 Native Lands Act 1866, native reserves were inalienable by sale or mortgage or by lease for a longer period than 21 years except with the assent of the Governor in Council (H7:10). This provision was slightly amended in the Natives Lands Act 1967, s13, to "except with the consent of the Governor". "All prohibitions or restrictions on the alienation of land by a Native, or on the alienation of Native land ... imposed by any Crown grant" were removed by the s207(1) Native Land Act 1909 (I1(d):25).

5 cited in *Report of the Waitangi Tribunal on the Orakei Claim* (Wai 9) (Wellington, 1988) p 39

6 Furthermore, as associate counsel for the claimants pointed out, the Crown's failure to act continued after the repeal in 1873 of the Native Lands Act 1865 which provided under s23 that the court could only issue title to iwi and hapu if the area was over 5000 acres (I1(c):39).

7 It appeared to him that the form of declaration of trust in favour of the tribe had been before Judge Maning "for some purpose" because of the

note Maning had written on it (B16:16). Macdonald believed that both Maning's certificate in favour of the tribe and Fenton's in favour of Tiopira and Peneti were bad at law. A certificate of title should have been ordered under s17 Native Lands Act 1867 then in force, that is, to not more than ten persons with the consent of interested members of the tribe.

8 Departmental action on his second application commenced before it was filed. The application was dated 18 June 1895, yet the Justice Department's date of receipt was 10 June 1895. On 11 June 1895, the department referred the application to the chief judge to ascertain whether it was a proper case for inquiry. On 26 June 1895, the chief judge replied that it was and recommended that an order-in-council be issued accordingly (B16:7, 10-11).

9 This was the date on which Fenton had notified the governor that Koutu was not affected by s36 Native Lands Act 1867 (s36 made provision for the issue of a Crown grant, not a certificate of title, where land was charged with moneys borrowed for costs of survey etc).

10 An application for a succession order from Reupena Tuoro, Hori Tuoro and Hana Tuoro for Hone Tuoro's share, was made to the court on 26 December 1902 and awarded on 7 April 1904 (B16:52). An application from Piipi Tiopira for Hiria's share, August 1911 was advertised six times for court hearings, between 15 November 1911 and 18 August 1914, but not heard (B16:51). The knowledge that if they suceeded to shares in the title they were beneficial owners not trustees restrained applicants from proceeding to have their applications heard in court.

11 Section 5 empowered the governor-general acting upon a recommendation of the Native Land Court or Maori Land Board, by order-in-council to reserve any "native" freehold land or land owned by "natives" as a native reservation for common use, such as a landing place or fishing ground. Following the issue of such an order-in-council, the registrar explained, a list of trustees could be submitted to the court and appointed (B16:57).

12 On 21 April 1947 it was noted that trustees had already been appointed by the court. On 3 May 1947 it was further noted that the list appeared to relate to their letter of 15 May 1945, but it did not appear that an application had been made under s5 of the 1937 Act. A request to file was dated 5 May 1947 (B16:56; C7:att 2.8).

13 E D Nathan in M Taylor & A Sutton "Waipoua State forest 13 archaeological project stage one report submitted at the completion of archaeological contract no. 13", unpublished New Zealand Forest Service report, October 1985, app 1

14 I H Kawharu *Maori Land Tenure* (Oxford, 1977) pp 76-77, cited in A12:2

In the application for succession vesting orders to Wiremu Tuwhare (deceased) in respect of Waipoua 2A and 2C the court sat on 2 February 1900 and the minutes record the following:

> Hohi Paniora—on former oath I claim to be included with the gr-children in this share. The reason: these shares in this block Waipoua were apportioned between 10 ancestors—the Kawhakahaere for this land when it passed the Court was Tiopira and Wi Tuwhare was put in that share—they were put in this way. Hapakuku knows—Tiopira put him in and he said this was my ancestor[']s share in Wi Tuwhare's hands. Wi Tuwhare's share was given to his "child" Naera Te Ngaru (a nephew). This was Wi Tuwhare's share that he gave to his child. The share he got for himself belonged to my ancestor. (The original block Waipoua No 2 consisted of 12,220 acres and was awarded in the name of ten owners of whom

> Wiremu Tuwhare was one (Feby 1876)—has been since partitioned in July 1886. Waipoua No 2A 3819 acres awarded to four owners and Wiremu got about a tenth of the original area between A & C). As Wiremu is the representative of my ancestor I ask to be included in the order. (B4:11)

The application was dismissed as Hohi Paniora was not a person entitled to succeed pursuant to s14(10) Native Land Court Act 1894.

In the application to succeed to the interests of Ruka Heremaia (deceased) in Waipoua 283 the minutes of the hearing on 8 April 1904 record:

> This is a large block (over 5000 acres) only ... ten names could be admitted at that time deceased was the only member of his family admitted. The matua of Kora Kora [the deceased's son] claims that other members should now be admitted. (B4:25)

The minute then records the names of the children of the deceased's three sisters etc.

There are other examples of disputed succession applications and cases where an application had been lodged to succeed to interests in Waipoua No 2 by applicants believing a deceased had an interest only to have it dismissed.

15 "An extract from a Pamphlet by Sir William Martin, in 1861" in *Opinions of Various Authorities on Native Tenure* (Wellington, 1890). See also n 13, p 58, cited in A19:9.

16 The vesting of absolute ownership in this manner was recognised as being contrary to "native custom" by the 1873 Hawkes 8ay Native Lands Alienation Commission. Where "native owners" were omitted from a certificate of title, C W Richmond said:

> The Court is thus put in the false position of certifying, that the natives chosen by the whole body are "*owners according to native custom*" of the land in question—this plainly importing that they are exclusive owners. Such a certificate is necessarily false... (AJHR, 1873, G-7, p 7. See also A19:33)

17 "An Act to Confer Jurisdiction on the Native Land Court to Determine the Title to Opanaki 8lock"

18 The English translation is cited here. The original in Maori is addressed to Honehini Makarini (A4:379-381) suggesting Tiopira may have thought Sheehan and McLean were one person. A new translation procured for the tribunal puts the last sentence cited here in the present tense: "are being withheld" (Wai 38/0, vol 9, L Head to S Woodley, 20 May 1991)

19 New Zealand 8iographies file, 1953, vol 1, p 103, Alexander Turnbull Library, Wellington

20 For another version of this story see *He Korero Purakau Mo Nga Taunahanahatanga A Nga Tupuna: Place Names of the Ancestors, A Maori Oral History Atlas* (Wellington, 1990) pp 22-23

21 These included Ngakuratore, Owetenga, Opeperu, Papatea, Te Awa Mango, Maihirua, Matatuahu, Whawhanunui, Okuratore, Pukenuiorongo, Mahuhu o te Rangi, Waiotane, Taunganui, Nga Tiheru, Okotare and Koutu (C7:7)

22 Transcript of site visit, Kawerua, 26 May 1991

23 Peter Mathews collection, interview with Dawson 8irch, LC 479, Oral history collection, Alexander Turnbull Library, Wellington

24 ibid LC 480

25 Norman Smith *Maori Land Law* (Wellington, 1960) p 90. See also E1:16.

Take 4

Te Wawahitanga o te Whenua (Fragmentation of the Land): Waipoua No 2

4.1. The Cost of Succession and Partition

Before we examine the succession and partition orders which fragmented Waipoua No 2 and greatly facilitated Crown purchasing from 1917 to 1973, we need to appreciate the high esteem in which the Native Land Court was held by the Maori people. The Native Land Court dealt solely with Maori land, and the Maori identified with it as "their" court. Its mana was the mana of their friend Her Majesty the Queen with whom they had entered into the Treaty. At the Acheson inquiry, Lou Parore, representing the petitioners, said:

> the native people have always regarded the duty of the Native Land Court... as the father of the Maori people—a father in the protection of the interests against others, and also against themselves.... not only as the father, but as the agent for their general welfare affecting the land. (B7:221)[1]

We also need to appreciate that survey and other costs involved in Native Land Court proceedings frequently forced people to sell interests in land that the court had determined.

The first application to the Native Land Court to partition Waipoua No 2 was made by Hapakuku Moetara and three others in 1886. The minutes of the hearing of the partition application are extremely brief (B4:7-8). Indeed, on the face of it, one is left wondering whether the court made an order at all! There was no record that a survey lien for £62 13s 4d was brought to his attention. It had been registered against the title to Waipoua No 2 in 1883, that is, seven years after tbe work was completed, and apparently without Hapakuku's knowledge. Indeed it was not until 1892 that Hapakuku complained that Waipoua No 2 should have been surveyed free of charge (E5:3; E4:3). This would suggest that he became aware of the charge some 16 years after the work had been done, and in the meantime he was being charged five per cent per annum interest on the fee secured by a lien over the title to the block.

The question of survey costs is important as they became a charge on the land by the registration of a lien against the title. The Native Land Act 1873 provided by s33, and subsequent legislation, that the land had to be surveyed before its ownership could be investigated.

Moreover, the Crown appointed the surveyor but the Maori paid the fee. Hence, in the partition of Waipoua No 2, Hapakuku wished to employ a surveyor named Baker but the Crown refused and employed another surveyor, Ingham Stephens (E5:12; E4:5). And if the Maori were unable to pay in money, land to that value could be taken in payment (s73 Native Land Act 1873). The Act acknowledged in s109 that, especially in the Bay of Islands and Hokianga districts, there were difficulties in obtaining proper surveys "owing to the claimants [Maori] themselves not having the means to defray the cost of such surveys".

The problem is well illustrated by a complaint from Cheal, the surveyor of the neighbouring Opanake block, to the Native Minister on 5 October 1891, that he had been waiting for two years for payment of his fees:

> I wrote some months since to ask what action the Government were going to take re Opanake subdivision and if they were illegal whether the Crown was not responsible to pay me £169 for said subdivision being ordered by Native Judge and authorised by the Surveyor General, but to this question I had no reply. I would respectfully ask now the opinion of the Crown Law Officer what my position with regard to accepting more money for liens on the Opanake No 2 subdivision [is]. A Native has been offering to pay me for 2 subdivisions but what is my position? If the subdivision is illegal I am not justified in taking money for illegally performed work? My humble opinion is that the responsibility for payment rests with the Government.

On 29 October 1891, Cheal wrote again noting he had not had an answer, "that an illegal act had been committed is evident", and that the cost should "be borne by the Government of the Country". It should not be thought, however, that it was merely the surveyors who had cause for complaint. Without payment of the surveyor's fees the plans were not certified and the Maori owners, who had paid substantial court costs, were unable to obtain title.

To further illustrate the prevalence of delays in the registration of survey liens, in 1909 five liens were registered over partitioned areas of Waipoua No 2 in respect of orders made five years previously. By s73 of the 1873 Act, land could be taken in payment of survey costs. Such was the case in Waipoua 2B2 where the Crown applied to "cut off" a portion of the block (2B2A) in satisfaction of survey charges amounting to £28 10s. When the application was first called on 18 October 1906, Iehu Moetara asked that the hearing be adjourned "to see if money can be raised" (B4:43). Later in the day an order was made cutting off 95 acres in satisfaction of the survey charges which had been incurred 23 years previously (F1:5-6). The area taken was at the rate of 3s an acre, whereas, by government valuation the land was valued at 10s an acre five years later (F1:7). The Department of Lands and Survey had at that time also made application to the court to have land cut off in payment of survey charges for 2A1, 2A2, 2A3, 2B1 and

2B3. The owners paid these charges under the threat of losing their land. In some cases, such as 2A1 and 2B3, survey charges were apportioned against blocks in a partition when they were not in fact surveyed (E4:10, 55, 62, 83, 124). These survey costs were a statutory charge against the land which the Maori owners were unable to challenge in court.

Turning now to other costs, in giving evidence to the 1891 Royal Commission on Native Land Laws, Wi Katene complained:

> the law of the Court is that for each day that I stand up and give evidence I have to pay £1. That is at the rate of £5 a week.... That is the regular weekly cost, even though the case may have been going on for two months. It might be a case in which I appear merely as an objector, and not as an applicant, before the Court.[2]

Native Land Court fees were set periodically by notice in the *Gazette* (s112 Native Land Act 1873). In addition to the fees for appearing in court, there was a 2s fee for being sworn in by the court before giving evidence. For example, when Hohi Paniora appeared in court on 2 February 1900 as an objector to the succession application to Wiremu Tuwhare (deceased) he was required to pay 22s, that is £1 for his appearance and 2s for being sworn on the Bible to give his evidence in opposing the application before the court (B4:11).

In addition to these charges 5s was charged for each order. In the case of succession applications, if the deceased had interests in more than one block (which was usually the case), the applicant paid 5s for an order in respect of *each block*. By 1904 the cost for the court making a partition order (quite apart from all the other court costs) was 20s per order (B4:41).

If the assistance of an interpreter was required there were set fees. The court's interpreter was attached to the court or judge during the hearing and any other interpretation was at the party's own cost.

Other costs involved in attending court were for travel, accommodation and employing solicitors. For example, the court frequently sat in Auckland or Russell, as in the case of the hearing scheduled for 15 January 1919 in respect of Waipoua 2B3A, which was adjourned on account of the Crown not being ready to proceed (B6:253). The journey from Waipoua to Russell return took two days and was to no avail for the Maori involved. If one remembers that the daily wage for an agricultural labourer in the Auckland area was 5s-6s in 1901,[3] these costs of appearing in the Native Land Court were substantial.

Undoubtedly the prohibitive costs must have deterred those with interests in Waipoua No 2 who were not among the ten named on the memorial of ownership from subsequently applying to the court to have their names added. If they attempted to do so, they were forced to sell land in order to meet the costs. This was clearly contrary to the wish they expressed to the Stout-Ngata Commission at Pakanae in

1908, namely to lease their land rather than sell it and thereby obtain an income without losing title (B1:7).

We shall now consider the alienation of Waipoua No 2 block, first in the period 1913-1923, secondly 1939-1945 and finally, 1960-1973.

4.2. Sales in Waipoua No 2 1913-1923

The table below sets out the sales of Waipoua 2 blocks in the period 1913-1923.

Sales in Waipoua 2: 1913-1923

Block	Area	Date of Order	Date of Sale (S)/ partition (P)	Owner/ Land Status	Reference
2A1A	608a (614a)@	28/04/1914	04/09/1917 & 09/09/1919 (S)	Marriner	85:1; E4:13-16
2A1C	202a2r27p (210a)@	28/04/1914	02/02/1917 (S) 31/05/1978 (P)	Trounson 109a	85:1; E4:34-40 85:1; E4:34
2A1D	202a2r26p (205a2r20p)@	28/04/1914	18/12/1919 (S)	Kerr 82a3r19p Maori land 48.7165h	85:1; E4:43-54 85:1; E4:43
2A2	1216a	09/02/1900	17/10/1913 (S) 04/09/1917 (S)	Eddowes 400a Marriner 816a	85:1; E4:55-61 85:1; E4:55
2A3A	405a1r12p (402a)@	25/05/1910	04/09/1917 (S)	Marriner	B5:1; E4:68-72
2A3B	980a2r28p (985a)@	25/05/1910	08/10/1917 (S)	Marriner	85:1; E4:73-80
282B4	224a3r20p (224a3r)@	28/08/1914	08/10/1917 (S)	Marriner	85:1; E4:113-116
28285	224a3r20p (224a3r)@	28/08/1914	08/10/1917 (S)	Marriner	B5:1; E4:117-119
282B6	337a1r10p (337a)@	28/08/1914	08/10/1917 (S)	Marriner	85:1; E4:120-123
2B3B2	900a	27/08/1914	09/11/1921 (S)	Crown	B5:2; E4:191-193
283D1	202a2r20p	15/05/1916	05/08/191B (S)	Crown	B5:2; E4:213-214
283E	816a	06/07/1904	09/05/1923 (S)	Crown	85:2; E4:244-248

Total area acquired 1913-1923: 6113a 3r 39p

@ = area when surveyed, a = acres, r = roods, p = perches, h = hectares

In every case, a survey lien was registered against the title. Moreover in July 1917 the Crown issued a proclamation prohibiting the sale of any of these blocks to anyone except the Crown (B3:7). In fact as agreements to sell had been entered into before the proclamation came into effect the majority were sold privately.

Before we discuss each block sale, it is important to understand that timber and gum were regarded either as "improvements" or as commodities to be dealt with separately. By 1914, timber, flax and gum were frequently sold to one person (eg Trounson) and the land to someone else (eg Marriner). Once sold to Europeans (eg Eddowes),

they often leased the land to others (usually "Austrians") enabling them to extract the timber and gum. The Maori owners themselves in several cases attempted to lease the land, but were unable to do so because of a prohibition imposed by the Native Land Court when title was issued.

Waipoua 2A1A

4.2.1 Prior to the partition in 1915, the parent block, 2A1, was the subject of an application by the Department of Lands and Survey in 1906 to have land awarded in lieu of unpaid survey charges. The owners paid £6 4s 9d but interest charges of £1 11s 2d remained unpaid. *In fact 2A1 had not been surveyed*, being the unsurveyed residue area at the southern end of Waipoua No 2 (E4:10).

The survey of 2A1 was carried out in 1915 and a further lien was registered against 2A1A on 17 May 1916 securing £39 8s 0d which was discharged upon sale to L B Marriner. From the sale price of £307 7s 6d was deducted the amount owing for survey charges (£43 2s 5d, inclusive of interest) and outstanding rates (£21 2s 2d) (E4:13-14; E5:54).

The sale to Marriner was complicated by the absence and subsequent death overseas at the First World War of one of the owners, Iehu Raniera Taoho (Te Rore). Iehu left a three year old son, Hune, for whom the court appointed a trustee in order that the interest could be sold to Marriner. The Crown lifted the proclamation as it applied to Iehu's interest enabling the sale to be completed. The solicitor for the purchaser informed the Native Minister that Iehu had been killed in action "and a succession order has been granted to his son" (B6:320-321). Unfortunately, we have not had any evidence as to who applied to the court for the succession to Iehu's interests.

Waipoua 2A1C

4.2.2 A charging order securing £20 2s 6d was registered on 17 May 1916. Part of the block, 110 acres, was sold to Gladys Trounson in 1917, whereupon the survey charges were paid. The Crown has, since 1917 and up until 1972, persistently attempted to purchase the balance of this block (now known as 2A1C1 and 2A1C2), amounting to approximately 94 acres, which remains in Maori ownership (E4:34-40).

In 1915 and 1921, the Crown took a total of approximately seven and a half acres for road from the Maori-owned part of the block. No compensation was paid to the owners (E4:37).

Waipoua 2A1D

4.2.3 On 17 May 1916 a survey lien for £15 16s 4d was registered (E5:43-44). This coincided with the sale of part of the block to R C Kerr which was concluded in 1919. The sale was not without its difficulties. One of the key figures, Te Tane Hohaia, died before the transaction was completed. There followed a series of "short-cuts" by the court, which, in effect

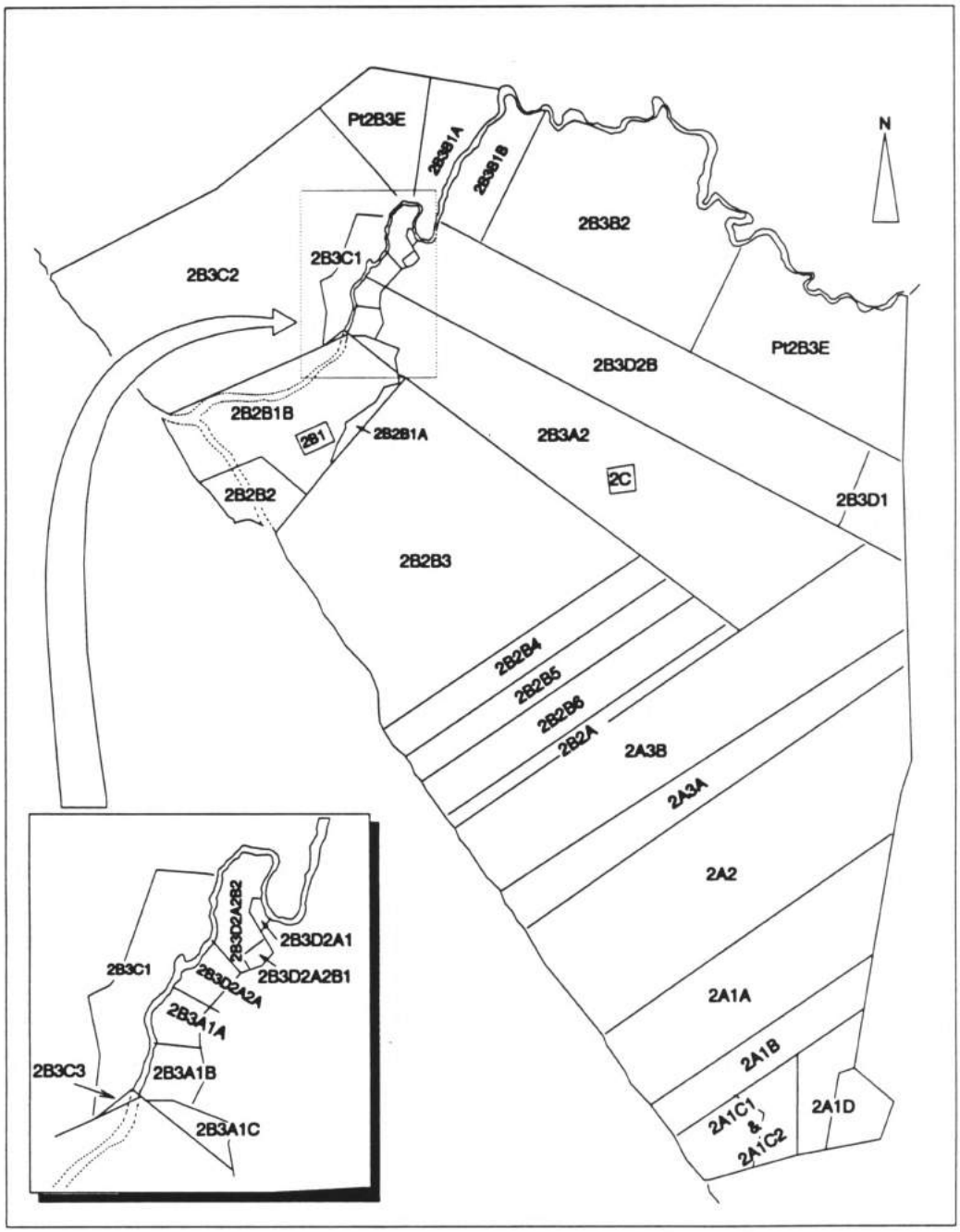

Figure 19: Subdivisions of Waipoua 2

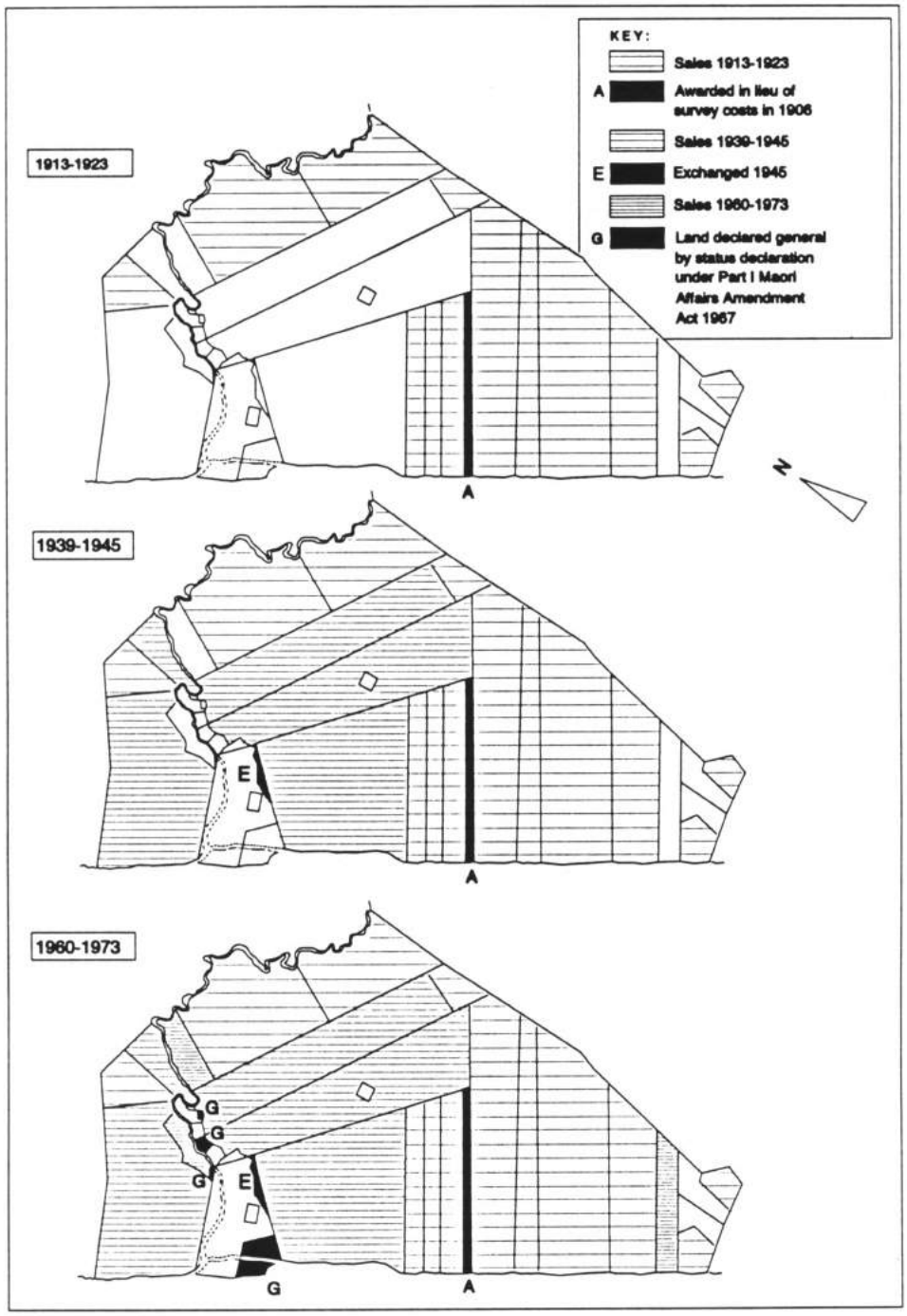

Figure 20: Land alienations in Waipoua 2 block

doctored the documentation. Tane Hohaia's family was by-passed to overcome what the Crown has described as "a particularly difficult set of overlapping circumstances" (E4:43-46, F1:37-38). Although the transaction was settled in 1919, the balance of the proceeds of sale was not paid out to Tane Hohaia's family for another ten years. Clearly the procedure adopted by the court was completely irregular. The survey lien, together with interest of £3 8s 6d was paid by the Maori owners from the proceeds of sale (E4:43-49; C12:47).

In 1915, approximately one and a half acres was taken for road without compensation. A further half acre was taken for road in 1966 with payment of £1 8s 4d in compensation. The balance of the area amounting to 121 acres, remains in Maori ownership. The Crown vigorously attempted to purchase the block making applications to the Maori Land Court and calling meetings of owners as late as 1972. This block, too, was subject to tbe Crown's proclamation of 1917. Subsequently, in 1923 the part sold to Kerr was excluded from the proclamation (E4:49-54).

Waipoua 2A2

4.2.4 A survey lien was registered on 24 June 1909 (B4:45). A previous lien for survey charges had been paid under threat of taking land in lieu of payment. An agreement was entered into in 1911, to sell 400 acres of the block to Margaret Eddowes. The sale was completed in 1913 and survey charges of £119 12s 8d were paid from the sale price of £400 (which included £100 for timber). The balance of the block, having an area of 816 acres, was sold in 1917 to L B Marriner (E4:55-60).

This block illustrates irregularities in the valuation evidence which were glossed over by the court. The price agreed for the sale of 400 acres to Eddowes was alleged to be 10s an acre. The current government valuation in 1911 was 15s an acre (E4:60). But the Maori owner wished to sell the timber separately which he valued at approximately £500 (F1:34-35). The Tokerau Maori Land Board confirmed the sale at 10s an acre. The purchaser paid £400 which was subsequently apportioned as £300 for the land and £100 for the timber (E5:314-316a).

The Crown has suggested there was confusion over the valuation, but conceded that the valuation at which the sale was confirmed was not current (E4:58; F1:35). We find that there was no reason for confusion. The vendor, Naera Te Ngaru, agreed to sell the 400 acres to Eddowes for £400 ie £1 per acre for the *land*. He sought a valuation of the timber which Eddowes had agreed to obtain. Naera estimated there to be at least a million superfeet of kauri ("a Konga Kauri i runga, kotahi Miriona nuku atu ranei" (E5:321; F1:35; cf C13:10)) which at 1s per 100 superfeet amounted to £500. The court confirmed the sale in October 1913 *after* Naera had objected (E4:58).

Waipoua 2A3A

4.2.5 The same particulars as to survey liens and the threat by the Crown to take land in lieu of payment apply as in the previous block. In this case, however, in 1907 Reupena Tuoro disputed the correctness of the survey of 2A3, which was, in effect, acknowledged by the chief surveyor. Although Tuoro had even offered to pay to have the surveyor's mistake corrected, it was never attended to (E4:64). The court, in 1911, dismissed his application to have the matter rectified.

Negotiations for sale commenced in 1911 and foundered on account of arguments as to whether timber had been included in the sale price and discrepancies in the survey. The land was finally sold in 1917 to L B Marriner and the balance of survey liens paid (E4:68-71).

Waipoua 2A3B

4.2.6 A survey lien for £27 12s 1d was obtained by the Department of Lands and Survey in 1912. Negotiations for sale commenced that year, followed by attempts to lease the land in 1914 and its final sale to C D Marriner in 1917 (E4:73-76).

This block illustrates many of the problems faced by all the Waipoua No 2 blocks at this time. It was subject to a survey lien and the Crown was threatening to take land in lieu of payment. Timber and kauri gum was being removed by "Austrians" one of whom had leased adjoining land (2A2) from Eddowes. The owners had to apply to the court for an injunction in an attempt to stop the theft, first, against Kumevich in 1912 and secondly, against Anich in 1916. Despite this being a simple matter of theft, the Maori had to go to the expense of obtaining Native Land Court injunctions (E4:74-75).

In an attempt to obtain an income from the land in order to meet the outstanding survey charges, the owners sought to lease it but were unable to do so because of a prohibition imposed by the Native Land Court when title issued. Subsequently a lease was entered into for gum digging purposes at a rental of £30 per annum.

In the meantime, the owners were endeavouring to sell both the timber and the land. An agreement was initially entered into with Trounson to purchase the timber and the land was sold to Marriner. Waipoua Ltd took over the agreement to purchase the timber for £325. By this time, however, the sale of timber was subject to wartime regulations. Before issuing the licence, the Crown itself considered purchasing the timber. Upon finding that its true value was £4800, it decided it could not afford it and permitted its sale for £325 to proceed (E4:77-80).

As in the other purchases by Marriner, settlement was made some months after the deadline imposed by the court had expired. The sale was nevertheless confirmed (E4:75-76).

Waipoua 2B2B4, 2B2B5 and 2B2B6

4.2.7 Survey liens had been registered over each of these blocks in 1916 which were discharged upon sale to Marriner. As with the other blocks sold to Marriner, settlement of the purchase was some months late, yet the court confirmed them. In the case of 2B2B6, despite the court being informed that the Maori vendor did not have sufficient lands, the sale was confirmed. By permitting the sale in these circumstances, the court disregarded s220(1) Native Land Act 1909, amended in s91 Native Land Amendment Act 1913, which required that the owner, being "landless", had adequate means of support (F1:32).

Waipoua 2B3B2

4.2.8 Waipoua 2B3B was partitioned by Atareta Morunga in 1914 into 2B3B1 and 2B3B2 so that she could gift 2B3B1 to her daughters Te Riwhi Yakas and Te Hunga Kakawiki, retaining 2B3B2 in her own name (E7:4-6; E4:162-163).

A survey lien for £42 15s 6d was registered against 2B3B2 in 1916 (E5:43-44). Atareta died that year. Her family did not apply to the court for succession. This was done by tbe native land purchase officer, W E Goffe, in 1920 (E7:15).

The owners had no intention of selling this block; hence no previous attempts to sell to the Europeans who had been purchasing other blocks had been made. The 1917 proclamation, however, was in force. After Goffe had put through the succession order on 5 May 1921, following evidence apparently given by a relative (not one of the successors), he immediately arranged the purchase of the interests of tbe respective members of the deceased's family. The purchase was completed by the end of the year and in January 1922 the land was declared state forest (B3:20-21; E4:191-192).

When confirming the sale, the court relied upon a 1917 valuation, whereas a more recent valuation was available. Mr Goffe was apparently aware of this but, in contravention of s372 Native Land Act 1909, the purchase by the Crown was completed at a lower value (B6:173). No attempt was made by the Crown to redress its mistake.

Waipoua 2B3D1

4.2.9 This was the first block within Waipoua 2 purchased by the Crown. Interestingly, it was the only block over which a survey lien had not been registered; yet there were outstanding survey charges of £8 7s 4d. The value of the timber was not included in the valuation for the purpose of purchasing. The Crown estimated that there was 126,000 super feet valued, at 1.6d per 100 super feet (B6:288; E4:213). On those figures, the Maori vendor was short-changed by £94 10s 0d. The Crown called it quits by writing off the survey charges of £8 7s 4d, leaving a short-fall in value, on the Crown's figures, of £86 2s 8d. We emphasise "the Crown's figures" because the going rate was 1s 6d per

100 super feet in 1913 (B6:378) and 8s per 100 super feet by 1921 (E4:79). By 1918 one would have expected the price to have been substantially more than the amount admitted by the Crown.

Waipoua 2B3E

4.2.10 A survey lien for £53 18s 0d was ordered by the court in 1916 (E5:43-44). Authority for the survey was not given by the owners. Nevertheless the block was surveyed and they were ordered to pay the costs (E4:245).

The block, like all the others, was subject to the 1917 proclamation. As late as June 1921, the owners did not want to sell (E4:245-246). A short time later, however, the Crown commenced purchasing individual interests. The documentation reveals the prevailing practice of the native land purchase officer at the time, W E Goffe. He signed the certificate on the memorandum of transfer on 11 November 1921 that he, as a licensed interpreter, had explained the document to the vendors. He also witnessed some of the signatures in his capacity as a Justice of the Peace. Other signatures he witnessed in the capacity of a licensed interpreter, as late as 9 May 1923. But his certificate on the memorandum of transfer was given on 11 November 1921. Regardless, the transfer was confirmed by the court (E7:251-257).

That change in heart by the vendors may have been due to threats of the land being taken under the Public Works Act, as this was being discussed by Crown officials at that time (B6:149). At least the Crown's determination to procure the block must have been conveyed to the vendors, for by this time it was official policy, with respect to all the Waipoua blocks, that purchases "be vigorously proceeded with" (B6:202) and in the case of 2B3B1 "purchased at almost any cost" (B6:161). The pressure was such that the vendors agreed to sell at the land's unimproved value, whereas the value of the improvements was £100. Goffe cleverly completed the purchase at less than its 1918 value in 1923 and obtained confirmation by the court. After the purchase had been completed by the Crown and confirmed by the court, the undersecretary of native affairs discovered what Goffe had done and directed that the balance that should have been paid upon purchase, be distributed among the owners (B6:162). It took Goffe almost eight years finally to carry out the directive (E4:246-247).

In addition to not including improvements in the price, the Crown neglected to pay for the timber. This was estimated at 50,000 super feet, which, at the 1921 price of 8s per 100 super feet amounted to £200 (E4:248).

4.3. Crown Attempts to Purchase Other Interests

The blocks we have discussed above are only those sold in their entirety in the period 1913-1923. But the Crown was attempting to purchase all the blocks and obtained part ownership of many more. One of the reasons it was unable to acquire these in their entirety was

that some of the owners were overseas fighting for King and country. In the case of Iehu Raniera Taoho, the Crown obtained the appointment of a trustee when he had died in action, in order to purchase his interest. To take just one example of part purchases, by 1923 the Crown had acquired 66.68 per cent of the shares in Waipoua 2B3C, that is 811 acres of its total area of 1217 acres (E4:197). The native land purchase officer, Goffe, reported:

> The remaining owners are dead. It is hard to get a succession order made. No one seems to know who the next of kin are. The matter has been before the Court on three occasions. (C12:29)

Those owners foolish enough to tell the native land purchase officer who the next of kin were, ran the risk of his lodging an application for succession to the deceased's interests in the block. Such was the case in Waipoua 2B3B1 where Goffe on 9 December 1920 signed and filed a succession application to the interests of Atareta Morunga. The court made the order on 9 May 1921. Judge Holland's minutes record that Iehu Moetara (a relative but not the next of kin or a successor to Atareta) gave evidence. In fact, Moetara may not have been present in the court.[4] Regardless, the succession order should not have been made as the block had been gifted to two of Atareta Morunga's daughters in 1914. Although this transfer was confirmed by the Tokerau Maori Land Board, it was not endorsed with a certificate of confirmation. Goffe's initiative sparked a controversy which continued for over 20 years involving a petition to Parliament and further hearings in the Native Land Court. This block further illustrates the Crown's determination and the methods it adopted to acquire interests in Waipoua No 2.

In other cases where the Crown had acquired part interests, it applied to the court for a partition of the block. In the case of Waipoua 2B3A, the Crown had purchased five sixths of the shares by 1918 and made application to the court to partition. The vendors stipulated an area of 200 acres to be retained by them but the Crown obtained a valuation which finally resulted in their receiving only 60 acres (E4:127-130). The valuation was prepared by a Crown employee and sowed the seeds of controversy resulting in a petition to Parliament (B7:318-320), further Native Land Court hearings and reports. It is important to record that the undersecretary of native affairs noted in 1938 that the owner, Enoka Te Rore had not been present in the court when the partition was originally discussed (B7:289), and that the other owner, Iehu Raniera Te Rore had died in action in the First World War and his three year old son was represented by a court–appointed trustee. Native Land Court Commissioner Bell later commented that "the basing of the partition on the new particularised valuation does not appear to have been just" (B7:51). As in all the other sales of the Waipoua No 2 blocks, there were irregularities in the valuation of the timber.

The Crown's partition of 867 acres from 2B3D2 follows a very similar pattern (E4:215-225). New valuation methods were adopted which were not agreed to by the Maori vendors, and resulted in their buildings being included in the Crown's partitioned portion, contrary to the express understanding between the parties. The Crown demolished the buildings. Following a petition to Parliament the land was repartitioned in 1943. But the outcome still did not return the areas originally intended to be excluded from the partition or compensate the Maori for the loss of their dwellings.

At this point it is useful to remember that when the Maori owners appeared in court they incurred costs. In the cases we have just been discussing, it was not just one or two court hearings involved, but many, spanning 20 years.

4.4. Injustices in the Native Land Court System

In every case where the Crown purchased interests in Waipoua No 2, we have found injustices. To spell out all the injustices for each block, such as inadequate valuation of the land and little or no consideration of the value of timber, would be too repetitious. In our view the consistency of these injustices is explained by the role of the native land purchase officers and by the Native Land Court being principally the vehicle for identifying Maori land and facilitating its alienation, at the expense of Maori. The two principal native land purchase officers during this period, W H Bowler and W E Goffe, deserve a brief mention.

Bowler completed the first purchase of a block for the Crown, Waipoua 2B3D1 in 1918. By his own admission (E4:213), timber had not been taken into account in the purchase price, resulting in the Maori owners being short-paid by £86 2s 6d. In the memorandum of transfer of the block dated 5 August 1918, signing as a witness to the signature of the vendor, he described himself as "Commissioner, Native Land Court Auckland", not as native land purchase officer (E7:181-183). By s7 Native Land Act 1909, the governor could appoint commissioners to exercise the powers of a judge of the Native Land Court. In respect of this Crown purchase, Bowler sat effectively as the judge of the court. Owing to illness in his family, Judge Holland had asked him to do so. At the same time, Bowler hoped to be able to get in touch with some of the owners of the Waipoua blocks (B6:290).

Acting as the Crown native land purchase officer he purchased Waipoua 2B3D1 on the Crown's bebalf. At the same time, acting in the capacity of the judge of the Native Land Court, he witnessed the Maori vendor's signature in *that capacity*, and knowingly cheated the vendor of at least £86 2s 6d. The Crown submitted that Bowler acquired this and other interests without "any undue pressure on the owners"! (F1:70)

Evidence abounds as to the Crown's relentless determination to purchase the remaining Maori-owned areas of Waipoua No 2. Bowler

reported to head office in May 1918 that he was endeavouring "to push on with the Waipoua purchases" (B6:297). He was continually told that these blocks "should be acquired with as little delay as possible" (B6:248). This pressure on Bowler continued throughout 1919 and 1920 and his reports convey a tone of desperation. Ingratiatingly he commented on 20 August 1920 to the undersecretary of native affairs that "the Crown has acquired more than is shown in the returns" (B6:229). He was aware that the Crown had acquired in fact a greater area of land than was represented in the records. Six days later he reported:

> I am afraid that it will not be able to buy much more by direct transfer. Some of the owners are living on the block, and are not inclined to sell.
>
> The land is very difficult of access, and the owners can only be hunted up on horseback. I would have done this earlier if I had thought it worth while. (B6:227)

Bowler's fears that he was not performing to head office's expectations were justified. Shortly afterwards, Goffe was sent into the district. Soon after his arrival, with a distinct note of triumph, Goffe sent a telegram to head office: "Have Secured about 700 acres Waipoua. more will follow" (B6:213).

About six months after Goffe took over Bowler conceded that the purchase of the Waipoua blocks was in his hands (B6:211). Goffe pursued the purchase of the remaining Maori interests in Waipoua No 2 with unscrupulous diligence playing every trick he could turn his hand to. They were aplenty, he being a justice of the peace and licensed Maori interpreter, first grade. We have seen how he put in succession applications (for example Waipoua 2B3B2) purchased at unimproved government valuation blocks with substantial improvements, purchased at out-dated valuations and purchased land with timber without paying the Maori for it. Whilst being the Crown's representative as purchaser, Goffe witnessed the signatures of vendors as a justice of the peace and completed the certificate that he had explained the transaction to the vendors in Maori and that they had understood what they had agreed to as a licensed interpreter. There was a *prima facie* conflict of interest unacceptable in a court of law. After examining the documentary evidence thoroughly, we find the Crown's statement that it had "stayed one stage removed from involvement in the affairs of the owners", incredible (F1:71).

When he was unable to acquire all the interests, he applied to the court to partition the Crown's interest, often leaving the residue area owned by Maori land-locked (for example 2B3D2A). The arguments over access to the small area remaining in Maori ownership at Waipoua settlement which persist to this day are a legacy of Goffe's purchase methods in the early 1920s.

In the evidence presented to us by the Crown, we were repeatedly told "the Crown showed an interest in purchasing" such and such a

block. We find the expression quaint in the circumstances. Examples of the Crown's determination to purchase abound, ranging from expressions that "this section should be purchased at almost any cost" (B6:161) to "It is not desirable that a high value should be attached to the land in case at any time it is found necessary to acquire any portion of the land under the Public Works Act" (B6:149). Clearly the Crown's overriding concern was to extend its control over Maori land in the neighbourhood of the Waipoua kauri forest (C12:12). To achieve this it fenced off, by proclamation in 1917, the areas it wished to acquire. When it was found, however, that these included areas already acquired by Europeans, the proclamation was amended to exclude them. The policy giving rise to the proclamation was not directed to the *land* the Crown wished to acquire for kauri forest but rather to land in Maori ownership.

This discriminatory practice persisted until 1972 when the proclamation was finally lifted.

The Crown, from 1917 onwards, perceived the Maori to be a "menace" to the security of the forest (B6:377). Throughout the evidence there is repeated reference to the actions of "Austrians" who were trespassing on both Maori land and Crown land to steal timber and kauri gum (B6:161 passim). There is little evidence of Maori removing timber or kauri gum. The sad irony is that it was the land purchased by Europeans (Waipoua 2A2 owned by Eddowes), excluded from the proclamation, which was leased to the "Austrians", who were the acknowledged "menace" to the kauri forest in both Maori and Crown ownership. The discriminatory proclamation wrought a grave injustice upon the Maori who have lived in and conserved the forest for centuries.

Having fenced off the Maori-owned land in Waipoua No 2 with the proclamation, the Crown enforced survey liens and sent out its native land purchase officers so that doubtless the Maori owners in the end were "hunted up on horseback" (B6:227). They then appeared before the Native Land Court.

We have previously seen how the Native Land Court in 1876 failed to exercise a judicial function in determining the ownership of Waipoua No 2 and implementing "the arrangement" of its owners. The role of the native land purchase officer and the judge of the Native Land Court in the Crown's subsequent purchases of the Maori interests in Waipoua No 2, were indistinguishable. In hearing applications where Maori land was being sold to Europeans, the court was almost equally unquestioning, rarely ensuring that the land was being sold for value or that the value of timber had been taken into account in the price. For the Crown to hold out the Native Land Court as a court of law was a deceit.

The Crown, in its submissions, argued that the Native Land Court, being an arm of the judiciary, was independent of the State and not

an agency of the Crown. We do not accept that argument.[5] By s7 Native Land Act 1909 the governor could appoint any person a judge or commissioner of the court without requiring the person to have any relevant qualifications. The evidence consistently shows a lack of judicial expertise that could reasonably be expected of a judge presiding in a court of law.

In reaching this conclusion, we have not assumed the role of a court with jurisdiction for judicial review. We have examined the evidence in relation to the performance by the Crown of its obligations under the Treaty. The Crown failed to extend to Maori the same rights and privileges as were enjoyed by British subjects generally. By s9 Magistrates' Courts Act 1908, only persons with the qualifications of a barrister or solicitor, or who had previously exercised the jurisdiction "in a competent manner" for a period of five years under the 1893 Act, could be appointed a stipendiary magistrate. By failing to require in the Native Land Court legislation that only appropriately qualified and competent judges and commissioners could be appointed, the Crown was in breach of its obligations under the Treaty.

In the course of reviewing the evidence in this claim, we have found references in official documents and correspondence which suggest that the Crown's policies and practices were not confined to Waipoua, but applied to many other areas in Tai Tokerau. Indeed, they may have applied nationally. The Land Titles Protection Act 1908 was passed out of the Crown's concern at the number of cases being brought in the Supreme Court challenging the actions and decisions of Native Land Court judges and other public servants. The preamble to the Act records that "considerable alarm has been caused amongst the European landholders at such attacks upon their titles". The Crown barred any proceedings which could review the actions of its servants in Maori land matters.

The Crown's policy in purchasing the Maori-owned land at Waipoua continued unabated until 1928, when preparations commenced for the consolidation schemes which would enable the Crown "to obtain a sufficient area of Native lands to liquidate the payment for rates made by the Crown under Section 25/1927". Accordingly, Goffe was directed to "discontinue all purchases immediately" (B6:92).

4.5. Maori Complaints and Official Inquiries

When the Native Department stopped purchasing for the Crown in 1928, it was left with part interests in numerous blocks. All were administered, however, by the state forest service, and it was not long before the Crown resumed its efforts to purchase the balance of the blocks. Hence, in respect of Waipoua 2B3B1, the native land purchase officer reported that he was having difficulty contacting the two owners as they were "living in the bush" and it would be "very difficult to get to them in the winter" (B6:56). Three months later he reported that, although he had contacted these owners (Atareta Morunga's

daughters) and they refused to sell, he would call on them again within the next two months (B6:52). Obviously, these kuia were not as charitable as the young lady who owned the last Maori interest in Waipoua 2B2B3 valued at £4 13s 4d, and signed the transfer out of sympathy for the consolidation officer who had gone to a similar amount of trouble (B7:148).[6] Atareta's daughters still refused to sell.

The Native Department being unsuccessful in its efforts to purchase, sought the assistance of the Native Land Court's consolidation officers who were preparing schemes to facilitate the utilisation of Maori land. A report by consolidation officer William Cooper on 29 August 1931, suggested the repartitioning of the Crown-owned interests, awarding about 1000 acres to the Maori owners by way of kainga (B6:44). The repartition suggestion was eventually acted upon, but without benefit to the Maori owners.

Maori discontent lived on after the Native Department ceased purchasing in 1928. The state forest service was having trouble as Maori insisted upon continuing to occupy what they claimed was theirs. The principal resisters were Himiona (Pohe) and Te Aramaira Paniora on Waipoua 2B3D2A and 2B3D2B and Enoka Te Rore on Waipoua 2B3A1 and 2B3A2. The state forest service moreover was being embarrassed by reports claiming the Crown had treated the Paniora's and the Te Rore's unjustly (B6:63; B6:41).

After renewed attempts at purchasing the interests, the Crown received a report from consolidation officers, Cooper and Mills, on all the outstanding Maori interests in Waipoua No 2, advising that there was no prospect of further purchases (B7:410). A consolidation of these interests was suggested. The state forest service again rejected any aspect of the recommendations which would benefit the Maori owners (B7:395). Its reply, however, was referred to the registrar of the Native Land Court. His memorandum of 17 December 1935 is a milestone in the evidence on the workings of the Native Land Court. The registrar's memorandum concludes:

> A perusal of this report [by the Consolidation Officers] will show that the Natives are entitled to a full inquiry by the Native Land Court into the matter of the purchases by the Crown in these blocks before any action is taken to have their interests located either by consolidation or Partition.
>
> As far as the Natives are concerned the matter is far deeper than merely a consolidation or partition of their present legal interests and it would now appear necessary for the Natives to Petition Parliament in order that the Court may be authorised to make full inquiry into the position. (B7:389-390)

Only at this point did the Native Land Court accept its responsibilities as a court of law.

In co-operation with the Department of Lands and Survey and the Native Department, the state forest service lodged a partition application in the

court. The Crown was anxious to have the application set down for hearing but was informed by Judge Acheson that the Maori owners had expressed an intention to petition Parliament. The court considered the petition should be disposed of before it heard the partition application (B7:328; B7:330). The director of forestry, however, considered that this delay "would be embarrassing" and endeavoured to obtain an early hearing to get the partition underway (B7:326). The court adjourned the application as the petition had been filed (B7:317).

The Crown was clearly uneasy at what a full inquiry into the transactions by which it obtained its interests in Waipoua No 2, and elsewhere, might reveal. The chief surveyor of the Department of Lands and Survey, R G Macmorran, wrote:

> To disturb the decisions of the Native Land Court at this period would invite complaints and representations from all sources in regard to other transactions in which the Crown is involved. (B7:310)

He was, of course, and is, absolutely right.

The petition to Parliament from Ata Paniora and Toa Maihi Paati concerned Waipoua 2B3B1, Waipoua 2B3D2 and Waipoua 2B3A (B7:317-320). Their complaints were, briefly:

(a) Waipoua 2B3B1—Atareta Morunga had gifted the block to two of her daughters in 1914. Whilst the transfer had been confirmed the certificate had not been endorsed on the document itself. Goffe applied for succession to her interests and the block was awarded to the deceased's ten children. The Crown purchased the interests of eight children, but the daughters to whom the deceased had previously gifted the whole block, refused to sell.

(b) Waipoua 2B3D2 and Waipoua 2B3A—the Maori owners had sold a part of each block to the Crown and the remaining owners had agreed to partition on an area basis. The Crown subsequently adopted a new method of valuation which resulted in the partition being made on a value rather than area basis. Both intended to retain 200 acres of their respective blocks whereas the different valuation method resulted in one retaining 30 acres and the other, finally, 60 acres.

In its submissions to the Native Affairs Committee of the House of Representatives, the Crown argued that in the case of Waipoua 2B3B1, the court, at the time of making the succession order, was unaware of the earlier gift to the daughters and that the Crown's actions in purchasing the interests of the other eight children "appear to be quite bona fide" (B7:303). In respect of the other two blocks it alleged either that there was no understanding that there was a specific area reserved by the Maori owners or that they agreed to the valuation basis of the partition.

The House of Representatives ordered an inquiry and this was heard by Judge Acheson 6-7 July 1939 (B4:76-96; B7:194-227). The Crown solicitor argued the Crown's case along the lines of its submissions to the Native Affairs Committee. The court was not required to make a decision as the parties entered into an agreement in settlement out of court.

The assumption that the Crown had acted in good faith in respect of Atareta's daughters' Waipoua 2B3B1 block was not challenged in the court. There is evidence, however, that the Crown was aware of the gift by Atareta to her daughters prior to Goffe's purchase of the other interests in the block. In a memorandum to Goffe, 22 August 1929, the undersecretary of native affairs had written:

> The particulars of title on our file obtained in 1917 seem to show that the interest of Atareta Mourunga [sic] was transferred by way of gift to Te Riwhi Jakas [sic] and Te Hunga Kakawiki who are presumed to be the same as Te Riwhi Morunga and Te, [sic] Hunga Morunga, but that the confirmation was not then signed.
>
> Please look into the matter and advise whether the confirmation certificate was ever completed and if so whether any registration of the transfer took place. (B6:84)

The evidence establishes beyond any doubt that the Crown knew that the block was no longer in the estate of Atareta Morunga when it purchased the interests in 1921.[7] Nor do we accept that Goffe was unaware that this was Te Riwhi and Te Hunga's block before he purchased the other interests. Both sisters were living on the land, had cultivations there, and he would have met and spoken to them as he did with all the other Maori in the district whose interests he was attempting to purchase for the Crown.

Concerning the other two blocks partitioned by the Crown, the argument that the Maori owners understood or agreed to the terms of the partitions does not bear examination. Elderly Maori owners in isolated Waipoua, were not English speakers. They understood only as much as Goffe explained to them in Maori.

On account of the out-of-court settlement, these issues were not put to Judge Acheson. The agreement entered into by the parties was no more than a consolidation of both the Maori and Crown interests at Waipoua (B7:190-192).

Following Acheson's inquiry it was left to the parties and the Native Land Court to implement the terms of the agreement. The matter finally came before Commissioner Bell exercising the jurisdiction of a judge of the Native Land Court. In a confidential memorandum to the undersecretary of the Native Department he described the agreement entered into in respect of the partitioned blocks Waipoua 2B3D2 and 2B3A, and other blocks, as unjust. Setting out his reasons fully, he estimated that the owners of 2B3D2 lost 157 acres to the Crown for which they were not paid and for 2B3A, 133 acres (B7:50-52). He suggested:

> it is possible that (the original vendors having died) the Natives interested being their representatives by succession probably had not the sound knowledge of the past that their deceased elders had and made the agreement in an endeavour to get something back of what in an uncertain manner they understood their parents had lost. (B7:51)

We should add that this was war time. The men, as was the case when the Crown commenced purchasing in 1917, had gone overseas to fight for their country.

The undersecretary of the Native Department referred Commissioner Bell's memorandum to the undersecretary of the Department for Lands and Survey for comment. The chief surveyor in Auckland responded:

> The report is a potential source for further petition, and I am strongly of the opinion that it should be expunged from the records of the Department, and I would recommend that action be taken in that direction. (B7:47)

Macmorran, now undersecretary of the Department of Lands and Survey, cautiously supported the chief surveyor's view, and the undersecretary of the Native Department concurred. He wrote to the registrar ("himself") in Auckland, saying "If you see no objection, would you please act on the Chief Surveyor's suggestion" (B7:44).

The implementation of the agreement was finalised by proclamation on 15 February 1946 (B7:11).

4.6. Crown Purchases 1939-1945

The land obtained by the Crown in the period 1939-1945, which was all the subject of the out-of-court settlement, is set out in the table below:

Crown Purhases within Waipoua 2 1939-1945

Block	Area	Date of Order	Date of Sale (S)/ Exchange (E)	Reference
28281A	31.3a (30a3r5p)@	23/01/43	—/07/1945 (E)	E4:97
283A2	1155a (114Ba2r30p)@	09/07/45	09/07/1945 (S)	B5:2; E4:161
28381A	166a2r (173a0r20p)@	23/04/41	—/—/1941 (S)	85:2; E4:182
283C2	1140a (1131a2r)@	23/01/43	—/—/1943 (S)	B5:2; E4:206-208
2B3D28	B55a (845a1r)@	09/07/45	11/07/1945 (S)	B5:2; E4:243
28283	1405a1r35p (1405a)@	28/0B/14	—/08/1941 (S)	85:1; E4:106-112

Total area acquired by the Crown 1939-1945: 4734a 1r 15p

@ = area when surveyed, a = acres, r = roods, p = perches

The acquisition of all these interests had been initiated by Native Land Purchase Officers Bowler and Goffe and in effect it was a tidying up exercise for the Crown.

There is one other transaction at this time which we should mention. The Maori at Waipoua made representations to the Department of Education in 1940 for the establishment of a school at the settlement. The department acknowledged the need and suggested an area of four acres would be required. A suitable site was identified on Crown land, but the forestry department declined, pleading that they would need the area for a sawmill and administration. The Maori community gave the land for the school from the small area it still owned. The forestry headquarters had already been established elsewhere and the sawmill was never built (E4:229-233).

4.7. Crown Purchases 1960-1973

The table below sets out the final purchases by the Crown in Waipoua No 2:

Crown Purchases within Waipoua 2 1960-1973

Block	Area	Date of Order	Date of Sale	Reference
2B3B1B	139a2r (13Ba0r10p)@	23/04/1941	15/02/1961	B5:2; E4:1B3-190
2B3A1B	29a (30a1r10p)@	11/07/1945	11/02/1966	B5:1; E4:150-159
2B3C1	76a (76a1r)@	23/01/1943	16/04/1973	B5:2; E4:201-205
2A1B	202a2r26p (204a1r30p)@	2B/04/1914	13/06/1973	B5:1; E4:17-33

Total area acquired by the Crown 1960-1973: 449a 0r 10p

@ = area when surveyed, a = arcres, r = roods, p = perches

Waipoua 2B3B1B

4.7.1 A survey lien securing a total of £24 15s 11d was written off by the Crown in 1950 following implementation of the settlement agreed to at the Acheson inquiry in 1939. The Crown purchased the property at government valuation in 1961 (E4:183-190).

This block was the area Atareta Morunga's daughters had previously refused to sell to the Crown. The claimants in our hearings produced evidence identifying a number of wahi tapu on this block, but this evidence was not presented to the Maori Land Court at the time of the sale. The Minister of Forests apparently suspected there might have been a burial ground on the block, but on inquiry with the Department of Maori Affairs it was assumed that, because a meeting of owners had agreed first to lease and later to sell to family members, there were no wahi tapu (E4:189). Being a family transaction, we do not consider that concern for wahi tapu would have then been an issue. Accord-

ingly, the question was not properly addressed before the land was sold to the Crown.

The restraints on the owners in the use of their land imposed by the Crown's proclamation, and the Crown's willingness to use it to purchase the land cheaply, are illustrated in this block. After one of the owners, Wiremu Yakas, returned from the war, he attempted to lease the property. Subsequently the owners wished to sell to their father. The Crown refused to lift the proclamation prohibiting its alienation. The owners then granted the Crown an option to purchase for £2500. The Crown refused to purchase at that price, offering only its government valuation of £1930 (E4:189). The conservator of forests recommended in 1959 that "the section and house be purchased if it can be obtained for a nominal sum" (E7:82). As to the suggestion that the proclamation be lifted, the director of forestry said:

> As we are under a duty to pay the lowest reasonable price for the land it seems necessary that consent to the revocations of the Order in Council be withheld until a settlement has been reached. (E7:92)

The relevance of the proclamation to price is unmistakable.

Waipoua 2B3A1B

4.7.2 This was Enoka Te Rore's share of 2B3A1 which was sold by his son John Te Rore to enable him to purchase a house. When the Crown partitioned its interest, Enoka understood he would have 200 acres. In 1966, the Crown purchased at government valuation which took into account its being uneconomic for farming purposes (30 acres), its being isolated and having uncertain access. Attempts by adjoining Maori owners to purchase both prior to the sale to the Crown and subsequently, were unsuccessful.[8]

The claimants justifiably challenge the valuation. Enoka was entitled to 200 acres on the partition of the block. The Crown benefited both from its being an uneconomic unit in terms of its valuation and from its proclamation by which it excluded others from purchasing in a situation where the owner needed to sell on account of his financial circumstances.

Waipoua 2B3C1

4.7.3 The object of the exchange between the Crown and the owners leading to the partition of 2B3C in 1943 was, for the owners of 2B3C1, to "make the holding a usable and economic farm holding" (B7:64). The Crown retained shares in the block, however, and agreed that the Maori owners should have an option to purchase (C12:51). In 1962 the chief surveyor proposed to partition out its interest (E7:133). The deputy registrar noted:

> that the area of this block is 76¼ acres only and it is therefore less than economic in size without being cut up further.

> ...If any use is being made of the land a better solution would be for the Crown to offer its interest therein to the occupier, particularly if he is one of the owners. (E7:134)

The land was occupied by one of the owners, Barney Pumipi, who was also an employee of the forest service.[9] There is no evidence that the Crown offered its interest to Pumipi. Rather the forest service considered the block a valuable addition to the adjoining state forest No 13 and proceeded to purchase the outstanding Maori interests in it (E7:135).

A special government valuation was obtained putting the value in 1963 at £380 ($760). Lack of access was taken into account in the valuation (E7:136). Negotiations for the purchase were inconclusive and resumed in earnest in 1971. Another valuation was obtained from the Valuation Department which took into account both its restricted access and its being an uneconomic farming unit, and recommended that the "block would best be incorporated within the Waipoua Forest" (E7:148). The value was $560, that is $200 less than the previous valuation.

The Crown proceeded with its intention to purchase. The commissioner of Crown lands stated "The four Maori owners have no intention of obtaining the Crown's interest or of using the land in any way" (E7:151).

Although 30 years previously the Crown had agreed to offer its interest to the Maori owners, there is no evidence that the Crown made an offer to them. Nonetheless the land was being used by one of the Maori owners, who was also an employee of the forestry department (E4:201, 203).

By September 1972 the Maori owners agreed to sell to the Crown, but one of the owners, Tukuhuia Toi, had died. To obtain his interest, the Crown filed an application in the Maori Land Court for a succession order. The minutes of the hearing are informative:

> M. Phillips in support—Crown now permitted to negotiate.
>
> Kotehunga Saunders sworn—Deceased my brother—died about 1966 or 1967 at New Plymouth—I was informed of his death. My foster mother attended the funeral. No will. Had one child.
>
> Teresa Dal Huia Toi f.c. Gisborne or Opotiki
>
> (her mother is Kathy Toi).
>
> M. Phillips - The Crown has purchased all shares but these in Waipoua 2B3C1 and wishes to acquire them.
>
> Witness proceeds. Full name is Tukuhuia Hohaia Toi.
>
> *Order 136/53.*
>
> Waipoua 2B3C1 $B7.93 to Teresa Dal Huia Toi f.c.
>
> *Order 93/53* appointing Maori Trustee and empowering him to sell to H.M. the Queen at proper figure. (E7:158-159)

The intention of the application is unambiguous: the purchase by the Crown of the outstanding interest. To achieve that end, the application for succession was secondary. The evidence presented to the court was at best second-hand. The witness was uncertain as to when her brother died and where his child lived. How could she be certain he did not leave a will? There was no evidence as to the age of the child. Was she in fact still a minor? But it would appear the deceased was survived by his wife. The Crown, as purchaser, had a direct conflict of interest in filing and prosecuting the succession application. The court effectively made the succession order in favour of the Crown in disregard of the interests of the Maori owner. The purchase was completed in April 1973 (E4:205).

Waipoua 2A1B

4.7.4 The sale to the Crown, by way of resolution of assembled owners pursuant to Part XXIII Maori Affairs Act 1953, was confirmed by the Maori Land Court on 13 June 1973.

The court minutes show that the Tane family on 2A1D were interested in acquiring the land and were also concerned as to water which derived from 2A1B. The court recorded that a resolution of owners having 0.917 of a total of 1.000 share agreed to sell, and that the purchaser was "*to take the title as it is*" (E5:168-170).

The court itself underlined this last sentence. Minutes of the meeting of owners on 8 May 1973 were not produced to us in evidence. The resolution confirmed by the court has no particulars as to who attended the meeting or how they voted (E5:168). Harding Leaf gave strong evidence that he was an owner and was not aware of any intention to sell the land or of the meeting being held.

Following settlement of the purchase by the Crown, the Maori Trustee paid $48.12 from the proceeds for outstanding survey and rates charges, that is the *vendor* was clearing the title of the charges whereas the court ordered the *purchaser* "to take the title 'as is'" (E5:172). Subsequently the chief surveyor said there was no record of the Crown consenting "to the condition" (E5:173-174) which had been imposed by the court, not the Maori vendors. The Crown refused to refund the amount paid by the Maori Trustee on the vendors behalf, to discharge the outstanding liens. By repudiating the court's authority to impose conditions in making its order, the Crown was, in effect, denying its own title to the block.

The Tane family, represented by their solicitor, L Cannon, had been attempting to purchase the block from their cousins in order to provide access to their adjoining 2A1D block and to secure their water supply taken from a spring on 2A1B (E5:177). Immediately following the court hearing they commenced negotiations with the Crown to purchase an area of 9.22 ha for this purpose. The commissioner of Crown lands obtained a number of reports from within his department:

> Waikara Road... has not been maintained by the Hobson County Council and is at present impractical for access purposes. Any other access would be expensive to form leaving the existing track (formed by the Tanes) on the area applied for, the only practical solution. (E5:202)

Most of the area sought by the Tanes was "steep" (E5:192); "this portion of land is not necessary to our needs" (E5:176).

Four years after the Crown's purchase, the sale of this 9.22 ha area to the Tane family was completed. None of the delay was attributable to the purchasers. The price paid by the Tane family was $1260, being the "current market value" (E5:207; E4:30-31).[10] The price paid by the Crown for *the whole block* (82.7 ha) was the government valuation plus a loading of 15 per cent. The unimproved portion of the price for the whole block amounted to $1955.

These figures are very important. The Crown's negotiations for its purchase commenced well before the lifting of its proclamation in 1972, and were concluded within that climate without reference to market values. When it sold a part of the block to the Tane family, however, it was at current market values. This was the first sale since 1917 to establish the *market* price. The comparison is:

1. Crown purchase (G V + 15%) 82.7ha $1955

2. Crown sale (market value) 9.22ha $1260

Market value for 82.7ha $11,214

Crown profit on purchase of 2A1B 573%

The part sold to the Tane family at the current market value was not the best part of 2A1B—it was principally steep, not considered of value for inclusion in the Waipoua Farm Settlement then being established under the government's civilian settlement scheme.

4.8. The Prices Paid by the Crown for Waipoua No 2 Land

The price for all the sales of Waipoua No 2 were at government valuation (most being out of date), excepting the last two sales which added a "loading" of 15 per cent to the valuation. None of the sales, from the very first in 1918[11], related to a "market" price. The Crown was aware, at the time, that all these valuations were "somewhat lower" than a realistic value by reports it had received from the Crown ranger (B6:327). All the Crown purchases, from the first in 1918, until June 1922, were at out-dated government valuations, none of which the Crown rectified. Even on those values, the Crown calculated that the vendors were underpaid by 18 per cent (F1:89-90).

Claimant researcher Garry Hooker, has calculated the shortfall in value paid on all the sales, by adding 15 per cent to the government valuations current at the time of the sales[12], and adding the value of the timber on the blocks for which the vendors did not receive payment. He then calculated the acreage which that shortfall in price

would have purchased at the rate paid for the land in respect of each sale. The shortfall in value translated into acres amounted to 14,058 acres (C12:53). This result is surprising when one considers that the area sold amounted to 11,553 acres, that is, the amount they were not paid by way of current government valuations (+15 per cent loading) and the value of timber, would have purchased a greater area than was sold. The failure of the Crown to pay for timber would account for a substantial proportion of the shortfall.

The use of government valuations was unjust. Market place criteria were applied in circumstances where the Crown itself had eliminated the market by issuing its proclamation in 1917. Moreover, lack of access and services, and the uneconomic size and shape of the blocks, were all taken into account, whereas it was the Crown itself which, in its partition applications, had brought about these factors detracting from the land's value.

The initial pressure to sell arose from the survey liens which were in almost all cases registered against the titles without the knowledge of the owners. In 1908, the owners of Waipoua No 2 were unanimous in their evidence to the Stout-Ngata Commission that they did not wish to sell their land (B1:7). Initially, timber was sold to meet the survey costs until in 1910 they started to negotiate sales of their land to European purchasers. By 1917, £377 16s 0d was still secured by survey and rates liens despite many having been paid previously. The average wage at the time was approximately £1 15s 0d per week. Liens were registered over 14 blocks during the first world war when many of Te Roroa ki Waipoua were overseas. In their absence, the Crown's native land purchase officers purchased interests in these blocks which were under threat of being taken in lieu of payment of outstanding survey charges, at out-dated values in a market smothered by the blanket 1917 proclamation. For the interests of the servicemen, the purchase officers awaited their "return from the Front" (B6:261). For those who died in action, they filed applications in the court enabling them to be acquired. The Crown's acquisition of the Maori interests, described as being "acquired under Native lien", was systematic and relentless (F1:att 19).

Until 1936, the role of the Native Land Court was clerical only, to record the dealings of the purchaser or the Crown's native land purchase officers, even assisting them in the case of one judge by recording evidence from people who bad not attended court! When the rules did not suit, they were bent (eg the Hohaia succession in 2A1D), or broken (eg sales to Marriner) or ignored (eg valuations under s372 Native Land Act 1909). If the judge was unavailable to perform these functions, a Crown purchasing officer could sit as judge in his place. Apart from outward appearances, the Native Land Court bore no resemblance to a court of law.

The Waipoua No 2 blocks were firmly within the Crown's grasp by 1936. In every sale, both to Europeans in the early stages and to the Crown after the proclamation issued in 1917, there are undeniable injustices—out of date and incomplete valuations; incorrect surveys; land taken for roads without compensation; arbitrary partitions; Crown partitions leaving the residue without access and so on. The Acheson inquiry in 1939 which resulted from the Paniora and Paati petition to Parliament, was a tidying up exercise for the Crown in consolidating its part interests acquired principally during the period of the first world war.

Following the inquiry in 1939, Commissioner Bell of the Native Land Court was concerned that the out of court settlement reached between the Crown and Maori owners was unjust. The agreement, again, was negotiated in wartime, when Te Roroa ki Waipoua men were overseas. Everything had been completed by the time they returned.

The final purchases illustrate the use of the 1917 proclamation by the Crown to prevent the alienation of the remaining Waipoua No 2 blocks to family members and other Maori at Waipoua, and to deny the vendors market prices. When the death of an owner came between it and purchasing an interest in 1972, the Crown filed and prosecuted a succession application in the Maori Land Court, obtaining an order vesting the interest in the Maori Trustee, thereby enabling it to purchase, to the complete ignorance of the beneficiary and her immediate family.

Negotiations by the Crown for its last purchase at Waipoua commenced in 1970, were well-advanced by the time the proclamation was lifted in April 1972, and completed the following year. The Crown's acquisition policy at Waipoua had subsisted for 55 years. A short time later it sold a small unwanted portion of this last block to Maori neighbours at market value, at a profit of 573 per cent.

Of the 12,220 acres originally set aside as a native reserve, only 691a 0r 30p remains Maori freehold land.

The titles to the remaining Maori land at Waipoua are all in multiple ownership. The evidence in this claim explains how multiple ownership came about—by the Native Land Court's inclusion, against the wishes of the Maori, of the few as absolute owners (and the exclusion of the many whose interests they were supposed to represent) and the succession orders made in most cases to all the children equally of a deceased "owner", down through the generations. No evidence has been presented as to the consequences of multiple ownership, and accordingly we have not considered these in the report. We have, however, considered it appropriate to provide some discussion, especially its resource management implications, which is in appendix 5.

4.9. The Reasons for the Crown's Proclamation

The Crown had issued its first proclamation, pursuant to s363 Native Land Act 1909, prohibiting the sale of all the Waipoua No 2 blocks to anyone except the Crown, on 2 July 1917. It was the mother of all the proclamations which remained in force until 1972 (B1:12). The origins of the Crown's policy of acquiring Waipoua No 2 for state forest apparently arose from Hutchin's "Report on the Demarcation and Management of the Waipoua Kauri Forest" in 1916, which identified Waipoua No 2 on a map as being an area "To be acquired for reforesting" (B2:14; F1:48). It has been assumed that the purpose of the proclamation was to implement that policy by acquiring the land from its Maori owners, for the reason that they represented a "menace" to the security of the adjoining kauri forest.

That assumption is incorrect. Rather, the opposite is true. Whilst the land remained in Maori ownership the forest was safe. Only if the land was alienated to others would there would be a threat.

The action to issue the proclamation was in response to a letter from the undersecretary of the Department of Lands and Survey to the undersecretary of the Native Department on 7 June 1917 requesting that steps be taken:

> to proclaim these lands as prohibited from private alienation, as it is understood that Austrian gumdiggers are now negotiating for the purchase of some of the blocks and they should not be allowed to acquire the land, whilst if the Native land is alienated there would be great danger to the kauri forest adjoining, and it is very important that such danger should be reduced to minimum. (B6:375)

The letter was referred to the Native Minister who endorsed his approval for "alienation to be prohibited" (B6:375). The proclamation was duly issued a little over three weeks later.

The myth that "the presence of the Maoris in the immediate vicinity of the Forest constitutes a standing menace to the security" originated with the commissioner of Crown lands at Auckland[13] and conveyed by the undersecretary of the Department of Lands and Survey on 1 September 1917 to his counterpart in the Native Department (B6:333). A short time later the Native Land Purchase Board, on 15 September 1917, decided "to acquire all the unalienated subdivisions" of the Waipoua No 2 block (B6:332).

The original letter, however, which gave rise to the proclamation only anticipated a danger to the forest if the Maori owners were allowed to alienate it to others. In our view, it was only intended to prevent sales to outsiders and not among themselves.[14] It definitely did not perceive the Maori owners themselves to be a danger to the forest.[15]

The mytb of the Maori "menace" has persisted to the present day in the Crown's administration of the Waipoua forest. But as we have seen, there is no evidence of Maori removing timber or bleeding kauri for gum in

the forest. There have been cases of Maori being prosecuted for trespassing to gather mahinga kai, including native pigeons. The only evidence in relation to the forest itself, however, has exclusively involved "Austrians" and other European settlers such as Ross, a settler at Katui in September 1917, and Davenport in October 1917, who were both prosecuted for stealing gum (B8:9). Indeed, the Maori owners themselves had to take out injunctions to stop the theft of timber and gum from their own lands by "Austrians" to whom Europeans had leased land in the neighbourhood.[16]

The respect by Maori for native forest is best corroborated within the forest service's own records. On 3 February 1920, the inspector of forests at Auckland, H S Whitehorn furnished a full report to head office following an inspection of areas of Waipoua No 2 block owned both by Maori and those areas alienated to Europeans. It reveals that on European-owned land the kauri had been bled, whereas on the Maori land good stands of kauri remained (B8:72-76).

The purpose of the forestry inspector's inspection was to determine what areas adjoining the state forest would yield millable timber and be suited for reforesting. The Crown's policy was not motivated by the Maori "menace" but rather to acquire for the purposes of sale the native timber the Maori had conserved, and to incorporate the area in its planting programme. Although very little evidence has been produced as to the sale by the Crown of timber from the land it acquired in Waipoua No 2, there is evidence that it was the Crown's desire to acquire timber when it was aggressively pursuing the Maori land interests. In 1920 it sought to purchase Trounson's timber-cutting rights over some of the Maori land for £1000. After completing purchases, and declaring the land state forest, it carried out detailed surveys in the period 1920-1924 as to the number and variety of millable trees and the timber they would yield, and let out contracts to millers, such as V Trounson and the Morningside Timber Company, returning as well a supply to its own public works mill (F1:att 107-133; B8:104). The extent of the Crown's timber sales aroused concern in the European community that the kauri forest was under threat (B2:35). Substantial quantities of timber were being extracted until at least 1944 (B8:100).

Whilst the original intention of the proclamation was not to *acquire* the Maori interests in Waipoua No 2, it immediately became the tool by which the Crown dispossessed Te Roroa ki Waipoua of their land and heritage. The myth of the Maori "menace" to the kauri forest became the justification of its policy whereby the Crown obtained valuable timber for sale and acquired the land cheaply for reforesting. The areas already alienated to Europeans were subsequently withdrawn from the proclamation making it plain that it was not so much the security of the forest that was of concern, but rather a desire to acquire the Maori land for economic considerations.

The proclamation fenced off the Maori land, eliminated the market, and after an intensive campaign by Crown employees, enabled the Crown to purchase at outdated valuations. The Native Land Court, clothed in the respectability of a court, formalised these acquisitions at the Crown's bidding.

Not only has the Crown's policy dispossessed Te Roroa ki Waipoua of its land and heritage; it has also dealt them a grave cultural insult. The nation has Te Roroa to thank for conserving the kauri forest for centuries.

References

1 In 1900, the Maori Lands Administration Act established Maori Land Councils which subsequently became the Maori Land Boards for each court district. In the Native Land Act 1909 the board comprised three people, one of whom was to be a European who was also the president of the board; in the Native Land Act 1931 (s77) the board comprised two people, the judge and registrar of the court of that district. It was the board which checked transactions to ensure they were "a fair deal for the landowners" (E1:27). By its composition and the considerations it was required to take into account, it was the alter ego of the Native Land Court, constituted within its legislation, and we have dealt with its functions, and those of the court, as being synonymous.

2 AJHR, 1891, G-1, p 21. See also A19:48

3 *Official New Zealand Yearbook* (Wellington, 1901) p 241

4 At the inquiry on 6 July 1939, Judge Acheson, after querying whether Moetara was present in court, commented that "Judge Holland had a habit of entering up the name of the person who gave evidence on some previous hearing. It does not follow that because he made the entry the person was there" (B7:210).

5 That judges of the Native Land Court were public servants, rather than members of an independent judiciary, is plain from the preamble to the Land Titles Protection Act 1908: the actions of Native Land Court judges "and other responsible officers of the public service" were barred from being challenged in the courts.

6 As with the other interests purchased at this time, the price paid in 1941 was at the 1918 valuation (E4:108; C12:30)

7 The "particulars of title" showing the transfer by Atareta to her two daughters were forwarded to the registrar of the Tokerau Native Land Court by the undersecretary of native affairs on 26 June 1917 (B6:362).

8 The Crown has acknowledged that the reasons given at the time to justify its refusal to sell to adjoining owners were not in fact justified (E1:130-131).

9 The claimants describe Mr Pumipi in their evidence as being the husband of Kahuru Hone Toi. He was her son to whom she transferred her interest in 1959.

10 Crown evidence that this figure comprised $950 for the land and $310 for improvements (fencing) (E4:30-31; E5:197) was incorrect. It was found that the boundary fence between 2A1D and 2A1B was in the wrong place and the purchasers paid an *additional* $407.16 for fencing (E5:208).

11 Although the Crown's first purchase in Waipoua No 2 was in 1918, it had acquired 95 acres (2B2A) in 1906 in satisfaction of a survey lien (E4:87).

12 A "loading" of 15 per cent to government valuation as a minimum value on alienation was enacted by s100 Maori Affairs Amendment Act 1967.

13 The commissioner subsequently referred to the proclamation as the "Native lien" (F1:att 19).

14 The view that the Maori were a "menace" to the security of the forest and therefore the Crown should purchase their land, was personal to the commissioner of Crown lands is borne out by correspondence with the undersecretary who disagreed with that view (B9:42-43; F1:58).

15 Perhaps the letter also reflects a prejudice prevailing at the time against "Austrians" who were the enemy in the first world war.

16 On 30 June 1923, Rewiri Kingi wrote to the Minister of Forests, on behalf of "low class" Maori and Pakeha seeking permission to dig for gum in "Ngaruki Swamp in Waipoua" (B8:52)

Take 5

Te Manakore (Loss of Mana)

5.1. Nga Morehu (The Survivors)

The mana of Te Roroa chiefs and people depended upon their ability to control their main economic resource which was the land. Hand in hand with the dwindling of the tribal estate from the late 1870s, the mana of the chiefs and people declined. By the 1920s, they were coming to resemble "the sea-birds which perch upon a rock" because tbey have no other resting place. Through the loss of land they had become morehu, that is, mere survivors who were no longer able to control their own lives.

The greater part of Te Roroa's ancestral land was now owned by the Crown and being managed as state forest or developed for farm settlement. In consequence, their traditional rights to mahinga kai (places where food was produced, procured or processed) were under threat. Moreover they were denied various kinds of state assistance being extended to other rural communities to promote their development and welfare. More particularly this was the case in the Waipoua Settlement where the forest service increasingly ruled their lives.

In this section of our report we shall first examine the claim that the Crown omitted actively and adequately to protect traditional rights to mahinga kai and cultural resource materials and to recognise Te Roroa's rangatiratanga over them (A1(i):7-13)[1]; and, secondly, the claim that the Crown omitted to provide adequate public services and utilities for Te Roroa in the Waipoua valley (A1(i):10).

5.2. Traditional Rights to Mahinga Kai

What are Mahinga Kai?

5.2.1 Mahinga kai have been defined as "places where food was produced or procured".[2] In Te Roroa territory and elsewhere, they were places where food was also "processed". Some claimants made this clear when they described what their mahinga kai involved. Several, recounting their childhood and youth, described seasonal excursions to the mahinga kai "camp grounds" of tupuna where food was gathered and sometimes processed according to traditional methods and the conservation ethic (A27:1-2; A28:2; A29:1-3; A30:1-2; A31:6-7; A34:1,7-8; B41:7-8; B42:11).

The traditional hunting and food gathering areas of Te Roroa are the Waimamaku, Waipoua and Kaihu valleys. Linked by the magnificence

of ocean and sweep of coastline from north Kaipara to south Hokianga, each valley is distinguished by its own unique mix of natural elements, of land, forest, waterways, seashore and ocean. For countless generations, these natural endowments have provided mahinga kai for Te Roroa tupuna and their uri down to the claimants.

In the Kaihu area, key mahinga kai were (and still are) Manuwhetai and Maunganui Bluff, where toheroa, mussels and various species of ocean fish used to be found in abundance; the eel fishery of the Waihopai river opening to the sea, and the inland lakes of Taharoa, Waikere and Kai Iwi that were rich in eels, kewai (fresh water crayfish) and inanga (white bait).

In Waipoua mahinga kai include the Waipoua forest itself, the river, and the ocean with its known off-shore fishing grounds and kai moana beds, like Kawerua and Wairau.

In the Waimamaku valley, the banks of the Waiotemarama provide inanga "possies", while the Waimamaku river itself was a mahinga kai for eels, fresh water shrimps and herrings. At its mouth, mullet, kahawai and flounder were plentiful, while the beachlands were a rich source of kai moana including pipi, karahu and tio (oysters).

Kuia and kaumatua evidence graphically demonstrate first, how after land was sold to the Crown, tangata whenua continued to exercise their traditional rights to mahinga kai in their respective resource areas; and secondly, how their rights were gradually eroded as the Crown opened up the land for development. We shall now examine this evidence in each of the three traditional resources areas.

Kaihu: mahinga kai

5.2.2 Kitty Netana, recalling her childhood in Kaihu, described visits to Maunganui Bluff, when "the karaka berries were ripe and when the toheroa were in season". There "Hangis were prepared for the cooking of the toheroa for preservation" and children were taught how to "pick and preserve the mussels" (A27:1). Fishing the abundance of the ocean involved several tasks:

> There were times when some would go fishing and netting, some of the fish would be dried to bring home.... The fish that were caught were cooked in a hangi or dried. (ibid:2)

Looking back with some nostalgia she pointed out that "Nowadays there is not much of that type of living. As a matter of fact that type of life does not exist any more" (ibid).

Kerehi Rahui related how she used to accompany her father to gather mussels at Maunganui Bluff where:

> the kai were prepared... and the karaka berries were cooked, put into bags and put into running water, left there for sometime, then taken out. (A28:2)

A number of claimants spoke of the abundance of fish, toheroa and mussels at the Bluff and the eel harvests from the Waihopai stream to the south (A30:1; A31:7; A32:4; A34:3,9).

Monika Toko remembered selling fish which she and her husband had netted, to tourists. At that time tourists had no taste for mussels but as Monika exclaimed "Look at the situation today! Where are our food? We can't get at them any more" (A30:5).

In Kitty's youth many big families lived on both sides of the Waihopai stream and different families were chosen "to make the hangis, catch the eels... [and] bring them home" (A27:1).

According to Lovey Te Rore, Kaihu people used to go overland to eel at the Kai Iwi lakes returning to Waihopai and Whangaiariki. The three areas were close together and in those days people "could walk one night or half of the night, through all those lakes" (A34:9). He told us that "Use of the fishing resource has always been an important part of our relationship with the Kaiiwi lakes." (C16:4).

Eruera Makoare talked about eeling at the Kai Iwi lakes "in the way that our ancestors have done for generations" when the eels were running between February and April (C17:1).

Although they fished all the lakes, Kai Iwi was the main source. The eels would swim from Lake Taharoa into Lake Kai Iwi via a drain (now a culvert). Lovey Te Rore and companions cut down cabbage trees which were then split and placed white side up in the drain in order to see the eels and to catch them en route (C16:4). He recalled furthermore, that one of the fishing gangs he and three others were part of, caught 124 eels in one night and needed a pack horse to take them back to Kaihu, although usually a gang would take only a third or half of that in an evening (C16:5; C17:3).

Eruera summed up the custom practised for generations of sharing tbe catch:

> We provide eels for the Kaihu people generally and also supply hui and tangi held at Kaihu. I see it as part of my obligation to the community and I am happy to fulfil it. When the eels are running we can feed the whole of Kaihu. (C17:1)

Both claimant and Crown evidence indicated that the Kai Iwi fishery was well understood and managed by those resident in the area around Kaihu to provide sustenance and mana (H9:12; C17:1-3). Claimant evidence further indicated that the Taharoa lakes were (and to some degree still are) part of the network linking inland with coastal mahinga kai which was worked at optimal times and seasons according to traditional rules and practices.

Kai Iwi fishery

5.2.3 After the Taharoa Native Reserve was sold to the Crown in 1952 Te Roroa continued to use this dune lake area for traditional purposes.

They believed that the sale had not extinguished their mana whenua or traditional mahinga kai rights.

In the decades to follow, these rights became severely restricted by the Hobson County Council, the local body responsible for implementing the Crown's policy of developing a public domain around the lakes. Te Roroa did not participate in this development; nor were they represented or consulted by the Taharoa Domain Board. Rather they became increasingly concerned over what they saw happening to the lake surrounds and the dwindling supply of eels (C17:3-5; H32:10-11).

On a site visit to the area, Lovey Te Rore pointed out the erosion that had occurred along the foreshore of Lake Taharoa since his youth and how the lake level had dropped alarmingly. While attributing this to the long drought of the 1940s, he felt that the pine belt planted in the 1950s to provide "a backdrop to the lakes" was also responsible.[3]

Claimant concerns over damage to the ecological integrity of the lakes system as a whole, range from the introduction of exotic species of fish, to pollution of the lake waters by power boat use and petrol spillage, production forestry and fertiliser and pesticide run-off from surrounding farmlands. They are also concerned over the summer influx of visitors and the use by campers of the lake waters for both bathing and domestic purposes, practices which they find culturally offensive (C16:7; C17:4-5; I1(d):43; see also H8(a):238). In particular they are concerned about the detrimental effects of the rainbow trout on indigenous fish (H20:2-3).

Witness for the Crown, R D Cooper, stated that rainbow trout were released into Lake Taharoa by the Hobson Acclimatization Society in 1968 and thereafter maintained by annual fingerling releases not only in Taharoa but also Kai Iwi. This programme had created the "most important trout fishery in Northland" which could not be sustained without regular restocking (H9:16; H40:8).

Cooper tentatively suggested that trout and eels compete for the same food, that is inanga and kewai. While trout had reduced inanga to a critical level, possibly this was not the only reason for the decline in eels. The lack of access to the sea essential for breeding had been cut off for at least 20 years (H40:6-7). Research on this subject was not exhaustive.

Crown counsel conceded that the introduction of trout to the Taharoa Domain appeared to have affected indigenous fish stocks for various reasons (I2:(b)(x):5). The impact of environmental factors like the modification of the lake by land use patterns and recreational use may have played a part, but such factors had not been adequately researched (I2:(b)(x):5; H9:6). She overlooked the fact that Te Roroa evidence of the decline in indigenous fish was based on years of observation and experience. Hence their concern to protect and

maintain the fishery and exercise their tino rangatiratanga (control and management) over it.

Coastal fisheries

5.2.4 Similarly other fisheries utilised by Kaihu people were lost through land alienation. When Kitty Netana bemoaned the loss of the life style associated with the mahinga kai activities of her childhood at Manuwhetai, she was being prophetic. So too was Monika Toko, who remembered her father saying "Now we are done for!... This place will soon be crawling with people. It will be to our disadvantage" (A30:6).

Since then the toheroa and shell fish stocks for which the area was once renowned, have been alarmingly depleted, confirming the claimants' worst fears that one day they might be "starved of ... [their] food sources" (ibid).

Such fears came close to being realised in the loss of the Waihopai river eel fishery. Lovey Te Rore attributed the loss to the deepening of the river bed with a drain digger in 1939 (A18:95). Crown evidence indicated that the Hanson brothers attempted to deepen the river channel and open the bar in 1937. No reference was made to a diversion (E3:26-33).

Maps drawn in 1875 and 1881, sketched in the Waihopai river mouth adjacent to the southern boundary of Manuwhetai. A 1960 survey fixed the river mouth some 450 metres south of its earlier surveyed position (E3:31-32).

A site inspection of the river mouth demonstrated that there was considerable scope for it to meander. Alignment of the river channel adjacent to the southern boundary of Manuwhetai was deeply incised into the terrain at the point where it breached the sand dune formation on the southern side of the river. There was, however, a discernible former river bed which ran parallel with the shoreline through the sand dunes above high water mark. We are unsure whether the old course of the river was diverted by natural causes or human interference. The evidence attributing the loss of the eel fishery and a fresh water supply at Manuwhetai to the diversion of the Waihopai river is, in our view, inconclusive. The draining of adjoining farm land would also have contributed.

Waimamaku fisheries

5.2.5 Reihana Paniora recalled in his childhood, "rama tuna" expeditions along the Waiotemarama stream; his mother fishing for white bait at the mouth, and fishing for herrings and eels in the Waimamaku. He also recalled the paspalum technique of fishing and the netting of an assortment of inshore fish. On king tides, snapper and kingfish were caught a quarter of a mile up from the river's mouth. There too, pipi, karahu and oysters were gathered (D19:1-2). The coastal area south

from the Waimamaku river to Motuhuru was a traditional place for kai moana (D12:8).

Meri Wihongi, a descendant of Moetara remembered the days they camped every year at Wairau mostly to make kits and mats but also to get crayfish. The kai they lived off at the beach were kina, paua and pupu (D19:3-4).

From reading the signs, the old people could determine whether or not the conditions for fishing were right. They observed and taught the rules about how kai moana should be gathered such as never gutting fish on the beach or shelling kaimoana below high water mark; tbe first fish of a catch had to be given to a kaumatua to ensure successful catches in the future; any stone turned over on the beach had to be replaced; women were not allowed on the beach while they had their "mate" and so on (ibid:5).

Reihana noted other rules like the rahui to protect Toheroa at the Waimamaku river mouth. This demonstrated that:

> from very early times our people not only looked to the river and the sea as a source of food, but also tendered and conserved it to this day. The placing of a rahui on the gathering of seafood following the loss of life at sea, or to guard against over exploitation of our reefs is still practised today. (ibid)

The Waimamaku fisheries are under threat. The paua, kina and pupu are still there but "in much smaller size and quantity". Shellfish have been removed by the sack full, breeding beds shattered by vehicles, and offshore fishing grounds exploited by commercial trawlers. The Ministry of Agriculture and Fisheries has lacked the funds to control the fisheries. Honorary fisheries officer warrants have been granted for the Waimamaku, Kokohuia and Waipoua areas to the Waimamaku Maori Komiti (D19:4-5).

Reihana said:

> This coast needs to be monitored by people specialised in this field. Persistent patrolling of seasonal gathering would enable the shellfish beds to regenerate.
>
> ... If we don't look after our resources today there will not be any shellfish left for our mokopunas. (ibid:6)

Waipoua Valley: mahinga kai

5.2.6 Reihana's view would be supported by all the people of the Waipoua valley, now living on a remnant of what used to be the "heartland" of Te Roroa estate.

In August 1931, W Cooper, consolidation officer for the Native Land Court found:

> an abundance of growth in this river valley, and the native settlers here have no intention of leaving it. They have an abundance of fish and

> shell-fish on the coast together with very fine mullet in the river. It is altogether an ideal locality for... occupation. (B6:44)

Since time immemorial the mahinga kai involving the sea has been a significant part of the community's "lifestyle". Edward Birch put it this way:

> When I think back to the resources that used to abound in Waipoua I have to also think of the sea. It was a major part of our life style back then.....
>
> ...We were living right beside the river in those days the river would boil with mullet and kahawai....
>
> ...These resources to us were essential we could gather our paua, kina, mussels, toheroa which were very common from Ngati Tiiheru to Waikara approximately 10 miles of beach. There was enough Kaimoana in this rich and beautiful coastline to feed all the other local settlements as well as our own. (C4:2)

Rewiri Paniora recalled fishing for snapper, collecting seaweed and shell fish. The best catch he could remember was a night's fishing of 102 snapper caught by him and two of his brothers:

> Me and my brothers were regarded as the so called gun fishermen and are still called that today. The only thing is there isn't any fish left to be caught as the trawlers come right in to the last line of breakers, drag their nets and are out to the fishing limit as day breaks. Hence no more fish left for the people of this valley. (C6:4)

Much of this mahinga kai activity involved Kawerua which since ancient times has been an essential source of kaimoana for Te Roroa at Waipoua. This was graphically illustrated in claimant evidence at the second hearing.

Turi Birch recalled the richness of the resources along the coast:

> When the tide goes down... you can see the head of this rock sticking out and it's very much like a dog. It's a good fishing ground for snapper.... a few hundred yards further down, there's another famous snapper fishing ground-its called Te Awa Tamuri, a snapper creek.... down south, there's a rock.... surrounding that rock is always grit.... And from there we used to get... sacks of that grit and throw it in the fowl house.... down a few hundred yards, we'd be right in Brown's Bay... a very good fishing... spot.... At night time you gei snapper there, shark, conger eel, ... stingray.... a few hundred yards down and we come up to Waiotane.... the most famous rock for fishing snapper.... that's where I caught my first snapper... (B50:10-11)

Rere Pumipi told us that he was taught to take:

> only enough kai to feed the family and not too much so that it is sometimes wasted. To go out for kaimoana now, we must seek permission from the authorities. (C30:2)

Claimant evidence thus demonstrated the vital importance of Kawerua as a basic source of subsistence for families living at Waipoua

even as Rewiri Paniora noted, in affluent years of full employment and social security:

> I think the hardest part of my life here for me was when my late father spent about eighteen months in the Te Kopuru Hospital with tuberculosis about 1952-54 leaving our mother and us all to survive as best we could. The family benefit paid for the basics and we used the skills we were taught to catch fish, gather shell fish and make sure that the acre and a half garden that we had was planted in enough corn, kumara, and potatoes to last until the next growing season came around. (C6:4)

That the Waipoua river was another rich food resource is evident from the comments of people like Craven Tane who recalled how his:

> Dad used to go nening up.... Waipoua creek, put the net across... and about a hundred yards from the net you'd just see the white splash right across the net and there's about 500 fish in the net. (B48:8)

Te Mamae Tane also remembered how "fish was always plentiful. The mullet would come up the river... to a place we call Puke Karuhiruhi" (Shag Point) to spawn, and that:

> [Then the water] was beautiful and clean. Aata told us about the mullet going up the river.... We were told not to catch the mullet while they were swimming up river, but we could catch them when swimming downstream. There were plenty of whitebait, fish and eels in that river before they violated it. (B44:6)

The Waipoua kauri forest was also a rich larder where tangata whenua hunted pigeon, kaka, kiwi and other native birds; also pigs and kiore (rats). They took native trees and kauri gum and collected karaka, karaeao, miro, pikopiko, tawhara and nikau as well as medicinal plants and decorative material for traditional cultural purposes (C7:13-14; C4:3; A1(i):22-23). Certainly they went on using the forest after the sale of Waipoua No 1 to the Crown in 1876.

The Maori deed of sale for Waipoua No 1 mentioned whenua only. The Crown conceded that possibly Te Roroa thought they would retain some residual food gathering rights in the forest after the sale (E2:213). Claimant evidence indicated that this perception has continued over the years down to the present day. Eruera Paati recalled at eight years old gathering "kai... from the native bush that covered the greatest part of Waipoua", also accompanying his father on a pigeon hunting expedition and being taught the lore of the forest including the locations of camps and bird "landings" like Pawakatutu (C4:3; C7:15). Names of other landings had been given by Ata Paniora to the officer in charge of Waipoua in 1953 (B18:57). Eruera Paati remembered how Ata Paniora made home brew by fermenting tawhara gathered in the forest and sweetened with wild honey (C4:4).

Rewiri Paniora talked of the bush lore and skills he learned at the side of his father and Nick Yakas while hunting feral cattle, pigs and gathering kauri gum (C6:2).

The Waipoua forest was not only "a vast storehouse providing a diverse range of resources" but was also "held in reverence" for its "great spiritual, cultural and economic significance" (C7:13). Eruera Paati stated "The whole of Waipoua was once used by our people freely as a way of life..." (C4:4) and Alex Nathan that:

> Our mana whenua gives us this right. The Waipoua forest is as much a taonga... as are our wahi tapu. It is important to our mana as forest people and it is important to the maintenance of our way of life. We have always used the forest for physical and spiritual sustenance, even after the so called sale of 1876. (D27:7)

Restrictions on access to Kawerua

5.2.7 By the 1950s, the scene was changing dramatically for the people of the settlement, isolated by inadequate roads and services and "dependant on the 150 km. journey once a week to town" to buy food, a fact considered "A great injustice for a people who were once so self sufficient" (C4:4).

As the hapu estate was alienated and planted in pines, the forest service imposed constraints on traditional food gathering activities. Conservationist policies brought further restrictions.

Until the 1950s, it was general practice for the forest service to require permits for visiting the Waipoua Settlement but not Kawerua. In fact, visitors to the settlement visited Kawerua as well. Some may have used their permits to go directly to Kawerua (E9:304). In 1957 a fire at Kawerua was reported which led to a court case and the locking of a gate across the river crossing at the settlement. Thereafter, keys were only available to forest service employees some of whom were Te Roroa living at the settlement (E9:309).

In the 1970s restricted access was relaxed a little. Permits were granted to the public "on such days when there was no high fire hazard" and also when weather conditions were reasonable and the road was safe. Access was limited to two vehicles per party, and only a limited number of keys were available on a first come, first serve basis (E9:349, 355-356; C7:35).

Crown counsel assumed that there was little practical difficulty in settlement families obtaining a key and gaining access by forest service roads to Kawerua. Besides there was an alternative route at the Waipoua river mouth (I2:(b)(ix):71). For those not employed by the forest service, getting a key involved a ten kilometre round trip by car. Moreover, this could prove unfruitful as the number of keys were limited and members of the public could book keys by telephone to which residents of Waipoua did not have access (C5:5).

When Richard Paniora raised the possibility of issuing keys to each resident family to enable them to travel freely to and from Kawerua, he was told that this was contrary to forest service policy. He then wrote to the Minister of Forests, Koro Wetere:

> My Forebears have lived in this area for many years and had, in past times unrestricted access to the Kawerua beach, which carries a very useful and much required assortment of fish and shellfish, and is considered by the local maori people to be a supplement to their diets as the nearest stores are some 40 kms away, half of the distance being on metal roads.
>
> At the present time, to go to the beach involves a very long and tedious process... (E9:378-379)

Richard Paniora's letter was timely because of the forest service recreation policy, established in 1983, of allowing open access to all state forests. The practice of locking the gate to Kawerua was reviewed and full access to mahinga kai was granted to settlement families. But to their dismay access was extended to the general public once adequate fire safeguards had been made (E9:389; C5:5). At about the same time the Ministry of Agriculture and Fisheries removed its two Dargaville based fisheries officers from the area. The combination of uncontrolled vehicular access and no policing of resource use was disastrous. "Sack and trailer loads" of kaimoana were said to have been taken and the beds severely depleted (C7:35; C5:5).

To prevent such ruthless exploitation, Te Roroa moved to protect their mahinga kai and in response to urgent requests, the Department of Conservation and Timberlands agreed to re-lock the gate on 5 December 1987 for an initial period of three years in order to conserve what was left and facilitate re-generation. The gate now remains locked, and by agreement between Te Roroa and the Crown agencies, public thoroughfare past this point is restricted (C7:36).

Claimant evidence has made it abundantly clear that continuing access to Kawerua and the conservation of its fish and shell fish is essential for the present and future needs of the people of the Waipoua Settlement.

River pollution

5.2.8 The claimants state that the Crown has failed to recognise their tino rangatiratanga over the Waipoua river. In particular they instance the extraction of gravel by the forest service for the building of all weather forestry roads and the pollution which extraction and sewage has wrought upon the mahinga kai of the river.

Since the beginning of gravel extraction in the 1940s residents have seen the river deteriorate, resulting in the loss and depletion of its fresh and ocean fish. Over this period too, some families were humiliated and their property rights abused by the manner in which gravel extraction was undertaken. In the legislative and consultative climate of the 1990s, these methods can only be described as crass and cavalier.

Historically, a convention prevailed that gravel in a river bed or pit was regarded as a community asset. The acquisition of an all weather

road was regarded as a legitimate transfer of a resource for the public good.

Only in recent times, and certainly not throughout New Zealand, catchment authorities have been interested in controlling gravel extraction or charging royalties. Most landowners, anxious to improve the quality of their own access, were persuaded to cooperate by the benefits of increased property values and improved community services.

So entrenched had this convention become that former county councils and the Ministry of Works and Development, right up until the 1970s, simply issued proclamations, and proceeded to extract spoil from private property for roading and other public works development. Litigation, mostly resolved in out of court settlements, and the modification of the Public Works Act, brought this cavalier practice to a halt. The fact that most major civil works were by that stage complete, simply adds irony to the Crown's power to intrude.

In Waipoua, both claimant and Crown evidence indicate that large volumes of gravel were removed without the consent of tangata whenua. Moreover they were not paid even a small royalty. The Crown tried to condone this on the grounds that there was no formal protest (E10:62). Yet as late as 1980 forest service officials were not certain about their authority to remove metal from the river or their obligation (if any) to pay royalties to Maori owners (E11:228-229; E10:45; I1(e):21-23).

Gravel extraction operations were conducted from land on both sides of the river, which the Crown believed it owned. Neither Crown nor claimants explored the issue of riparian rights. The claimants complained bitterly about the obnoxious behaviour of forest service officials using their property to gain access to the river even after being asked to stop. Te Mamae Tane, who was living at Whenuahou with her father, graphically described how the forest service built roads through the middle of their land to get gravel:

> They stirred the water which caused it to become dirty. We had to go up to our home in Whenuahou to fetch water....
>
> ...They told us that the place was not ours, but my father told them that the place was his.....
>
> He planted apple trees on the roadway and built a fence across the road. That was the beginning of those apple trees. He planted the trees there to stop them going down to get the gravel from the river. (Their truck couldn't get through the fence.). (B44:2-3)

Consequently they took another road to get to the river, still on her father's land. On our site visits we were shown the apple trees where the trucks drove across the family land and the large pits left by the extraction of gravel (I1(e):23-25).

Even if the Maori land owners had succeeded in blocking access, the forest service could have, less conveniently, completed the entire operation without leaving its own land. The Northland Catchment Commission of which the Hobson County Council was a constituent member, took no interest, if it was in fact aware that extraction was taking place.

Gravel extraction produced a dramatic deterioration in water quality, leading to bouts of sickness in the settlement, recorded in the forest service log book, and a decline in fish life.

The Crown gained land on the north bank. The claimants lost fertile river flats on the south bank through erosion. Te Mamae pointed to an island in the middle of the river which had once been part of her family's land.

This whole saga of gravel extraction is a damning indictment of forest service management and a gross violation of Te Roroa's Treaty rights. Those responsible were active participants in the Soil Conservation and Rivers Control Council from its inception in 1941 and were well informed on the spirit and intent of all the relevant legislation. To compound this paradox, the forest service was an active participant in surveys and trials to demonstrate the benefits of soil and water conservation practices.

The pollution of the Waipoua river was compounded by the establishment of a sewerage disposal system at forest headquarters. Crown evidence confirmed that sewerage has been flowing from the singlemen's camp into the river (I1(e):26-28). More recently fears of further pollution were aroused by an airdrop of poison pellets to exterminate opposums in the kauri forest.

River pollution is not only a health hazard and a threat to a traditional fishery; it is culturally objectionable. It ignores Te Roroa's spiritual and cultural values relating to water and to the mauri of the river by which they identify themselves. Te Mamae Tane's words "All these things they did to us" are a sad indictment of forest service operations at Waipoua (B44:2).

Forest conservation

5.2.9 The main constraint on the traditional rights to the resources of the Waipoua forest was (and still is) legislation making provision for control and conservation and imposing penalties for offences.[4]

Although the special interests of tangata whenua in forest resources and access to them were to some extent recognised, it was at the Crown's pleasure. Prosecutions for exercising traditional hunting and food gathering rights did occur. Fines and costs were imposed by the court (C7:14-15).

Counsel for the claimants submitted that:

> Te Roroa retain an unextinguished right to gather cultural resource materials from the Waipoua Forest, so long as the forest itself exists.... The right vests in Te Roroa alone though they acknowledge that the Waipoua Forest is a taonga in which there are wider interests both Maori and Pakeha than their own. (I1(e):44-45)

He added one qualification:

> The Te Roroa right is subject only to the reasonable needs of conservation of the resource itself.... To that extent, it is conceded that the Crown, in [the] exercise of its kawanatanga, is entitled to move to conserve the resource. But that power is not completely unfettered and the Crown, must give priority to the Maori interest where the needs of conservation are satisfied. (I1(e):45)

Crown counsel submitted that generations of Te Roroa have been under a misapprehension that they retained resource gathering rights under article 2 of the Treaty. In her view, when Te Roroa sold Waipoua 1, they relinquished their rangatiratanga over the Waipoua forest. Since no change had occurred on the ground, Te Roroa went on exercising their traditional rights believing that these had been retained. There was no evidence that they thought this right exclusive to themselves. Rather it fell into the category of rights provided under article 3 of the Treaty, to be exercised in accordance with national laws (I2:(b)(ix):8-9).

These submissions seem to us to ride roughshod over article 2 of the Treaty and the underlying idea of reciprocity (giving, taking and receiving) in the Treaty itself and in land sales. The issues between the Crown and the claimants in respect of continuing rights to mahinga kai on Crown land seem to us to be the inevitable outcome of changing and developing relationships between a tribal economy and a market economy. In practical terms they can only be resolved fairly, reasonably and equitably if both parties yield some ground.

The Crown must appreciate that the only way the morehu have survived the loss of the greater part of their tribal estate and weathered periods of depression and unemployment is through the continuing exercise of their traditional rights to mahinga kai. The claimants must appreciate that the Crown has the right to manage the land it owns. In keeping with "the meaning and effect" of the Treaty[5], we believe that tangata whenua should share in the control and management of natural and cultural resources on Crown land and their traditional resource areas.

This could be achieved in a number of ways under the existing and pending legislation such as the National Parks Act 1980, the Conservation Act 1987, the Resource Management Act 1991, and the proposed moveable cultural property legislation.

5.3. Failure to Provide Adequate Public Utilities and Services in the Waipoua Settlement

5.3.1 Public utilities and services provided generally

In order to measure the extent to which Te Roroa ki Waipoua have suffered in this respect we need to consider first what public utilities and services have been provided for all other New Zealanders and secondly for tangata whenua under articles 2 and 3 of the Treaty.

Although private enterprise and self-reliance have been largely responsible for making New Zealand, "New Zealanders have never hesitated to use the machinery of government for economic purposes".[6] Indeed they have had little alternative due to force of circumstances: their smallness, limited resources and distance from Britain, which was traditionally their main source of capital and labour and the main market for their exports.

During 1852-1876, provincial governments and superintendents assisted immigrants and laid the foundations of national public works and services with revenue derived from the disposal of Crown land to settlers and from public loans. In 1870 Vogel adopted his bold policy of overseas borrowing for national development which provided the country with the finance for a network of roads and railways and post and telegraph services. Encouraged by government subsidies the local authorities which in 1877 replaced the provincial governments, struck rates and raised loans to form roads from farmers' gates to the nearest railroad, town or port and to provide other local improvements. The foundations of a free secular system of primary education were laid in the Education Act 1877. A public health and welfare service was based on the Hospitals and Charitable Institutions Act 1885. Between 1890-1935 the government continued overseas borrowing to expand public works and services and provide state advances to settlers, workers housing, old age pensions, hydro-electricity and afforestation. Labour governments 1935-1949 established a welfare state financed mainly from internal loans and taxes. National governments continued the welfare state in post war years.

Generally speaking the main beneficiaries of state assistance were those sections of the community that exerted the strongest pressure on "roads and bridges" politics in Parliament and local bodies. Nevertheless universal suffrage and the abolition of the country quota encouraged "the politics of equality". Inevitably, the more closely settled parts of the country gained the lion's share of state assistance while outlying rural districts were neglected. As three quarters of the Maori population lived in remote communities separate from European towns and districts, until migration and urbanisation accelerated in the 1960s, they benefitted least of all from public works and utilities. Moreover, with only four seats in Parliament and few if any representatives on local authorities, they could exert little influence on "roads and bridges" politics. Rather they

depended on special services provided by the Department of Maori Affairs.

In the 1840s and 1850s, governors and officials encouraged Maori agriculture and subsidised denominational boarding schools that provided education for Maori children in English, and European doctors who treated Maori patients. Under the Native Schools Act 1867 and the Native Schools Act Amendment Act 1871, village schools staffed by European teachers and Maori assistants were established in communities willing to provide a site and contribute to the costs (E13:3-5). Resident magistrates responsible for law enforcement in Maori districts, also encouraged agriculture and industry and assisted the aged and destitute. As long as McLean was Native Minister special Maori needs and values were taken into account. Maori leaders were employed as assessors in resident magistrates' courts and sat on school committees. During the long depression McLean's system was retrenched and finally dismantled.[7] Although Maori paid rates and taxes Maori communities received very little in return, except teachers salaries, until the turn of the century when Young Maori Party leaders encouraged the economic and social amelioration of their people in association with Sir James Carroll and the Liberal government. A programme of health reform was initiated by Maori doctors, nurses and sanitary inspectors through Maori councils under the Department of Health. State assistance was belatedly provided for Maori land development after Sir Apirana Ngata became Native Minister in 1928. After 1935 Labour, in alliance with Ratana, expanded both general and special services for Maori communities.

In the war years the Maori members of Parliament set up the Maori War Effort Organisation, a model for the future kind of self management Maori wanted to restore their mana. But the tribal and district committees and executives, established under the Maori Social and Economic Advancement Act 1945, functioned more as a welfare organisation under the Department of Maori Affairs. The New Zealand Maori Council, superimposed on this organisation in 1962, was merely a consultative body.

By the 1960s the main rationale for special institutional services for the Maori had shifted from assimilation to the elimination of inequalities in living standards, health, education, housing and employment. In 1971 the Race Relations Act was passed to affirm and promote racial equality in New Zealand and to implement the international convention on the elimination of all forms of racial discrimination. As Sir Kenneth Keith pointed out, special government institutions and services were justified until such time as this objective was achieved:

> Maoris, like other New Zealand residents, are entitled to benefit, without distinction, from the general state welfare and social services.
>
> ... extra provision is made in part in recognition of the need of the Maori, especially the younger generation, to adapt to the new culture and to

take advantage of opportunities for better living conditions, educational advancement, and employment, and in part to help develop in the Maori an appreciation of the content of his own culture.[8]

From a Maori perspective the problem is that special institutions and services administered and controlled by bureaucratic government agencies are essentially paternalistic and fail to recognise their rangatiratanga and mana under article 2 of the Treaty. Management and control from above is not sufficiently responsive to local felt needs.

Legal and practical access

5.3.2 We have seen that in return for selling Maunganui-Waipoua land to the Crown Te Roroa hoped and expected roads, schools and greater opportunities to participate in the market economy. In the event they had to wait until the land was opened up for development and closer settlement before any public utilities and services were provided. Even then they only gained fringe benefits because of their remoteness, isolation and powerlessness.

The first major public works in the district was 17 miles of railway built by an Auckland company in the Kaihu valley to service the timber trade. It was taken over by the government and extended as far as Donnelly's Crossing by 1921.[9] For many years access to the Waimamaku and

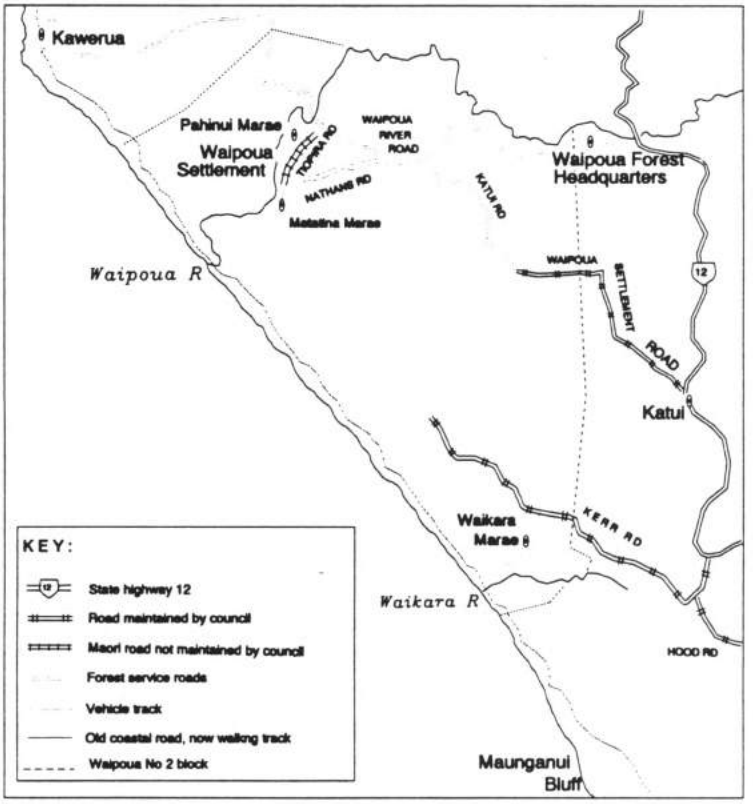

Figure 21: Road access to Waipoua Settlement and Kawerua

Waipoua valleys was along the coast and up the rivers, which were traditional Maori tracks and waterways. The government's "most ambitious undertaking" in the late nineteenth century was the Kaihu to Waima road through 100,000 acres of Crown land. This provided access from the south to the Canterbury settlement at Waimamaku and eventually made the old track from Kaihu to the north of Maunganui Bluff, then along the beach, redundant.[10] The section up the Kaihu valley, through the forest behind the Bluff and along the beach to Waikara was formed in 1881-1884. The rise of dairy farming and the opening of the Northern Wairoa Dairy Company in 1902 and the Waimamaku Co-operative Cheese factory in 1903 made better roads essential.

Waimamaku settlers preferred an inland route to the old coastal route because it would provide them with a direct link with the railhead at Donnelly's Crossing. Katui settlers, at the southern end of the Waipoua forest, were eager to open up the forest for logging. The Hobson County Council also supported an inland route. A number of representations from settlers to ministers for a public works department study of the various route options were made between 1923-1926 (E9:67-79).

The forest service was opposed to the inland route largely because it was feared the opening of the forest would lead to unlawful trespass, gum digging and exposure to fire. The coastal route, on the other hand, would provide access to Waipoua and other settlements and be beneficial to themselves in years to come (E9:43-50; E8:14-15). In August 1923, 43 Maori residents of the Waimamaku and Waipoua valleys sent a petition supporting the Hokianga County Council's choice of the coastal route because they felt that it would serve them better than the forest route (E9:111-114).

In October 1923, the Minister of Public Works, Gordon Coates, directed his department to conduct a survey of the central route to determine its feasibility. The district engineer in the Dargaville office who had surveyed the route options favoured the coastal route which would be more speedily constructed and would cost less in maintenance. The district engineer in the Whangarei office favoured the forest route which would better serve the timber trade and railway. The coastal route, he reported, was "unoccupied except for a few Natives" and the remainder of the land was not likely to be farmed to any extent (E9:86, 90, 98).

Coates, like his fellow dairy farmers, favoured the forest route, as did the Department of Public Works who operated the railhead and a sawmill at Donnelly's Crossing. In June 1926, he finally sought and received the agreement of the commissioner of state forests to the inland route (E9:107-9). This decision clearly favoured the interests of Pakeha settlers at the expense of Te Roroa.

In July 1926, Hau Te Wake telegraphed the member for northern Maori and the prime minister, expressing his disapproval of the forest

route. In his opinion the proper road should be "by way of the Tiopira Settlement Waipoua". A second, more strongly worded message stated that the road would not be allowed through the forest and anyone forming a road along that route would be prosecuted (E9:115-7).

Twenty years later, when Lou Parore petitioned Parliament for the preservation of the Waipoua forest, he recalled that Coates had been reminded, when the road through Waipoua was being constructed, "about the Rahui as made in 1876". In response an assurance had been given that the forest would not be "interfered" with (E9:119-120).

On the completion of the new inland route, the coastal road was literally abandoned, including the linkages to internal roads connecting to the general roading network. In effect the Crown had land locked Te Roroa living at the Waipoua Settlement and stymied their attempts to participate in the market economy. This was the beginning of Te Roroa ki Waipoua's isolation from the roading network and their consequent inability to obtain public services.

In the early 1920s, the Waipoua Settlement road as far as the eastern boundary of Waipoua 2, then a clay road, was maintained by Hobson County Council. The land between the eastern boundary and the settlement was purchased by the Crown and planted in pine. Tracks to service these operations were then constructed. Access to and from the settlement became subject to a ruling for all state forests in July 1931. Roads through state plantations, unless public roads, were not to be used by the public without permission in writing by a forest officer (E8:26). Since then residents have been dependent upon the sufferance of the forest service staff for access.

After the opening of the state highway through the forest, new access routes to the forest headquarters were constructed to replace the route from the end of the Waipoua Settlement road. From the forest headquarters, existing forestry tracks provided access to the settlement. In the early thirties, the development of commercial dairy farming in the Waipoua valley under the Kaipara Development Scheme necessitated regular access to enable cream to be transported to Katui to meet the cream lorry. Residents of the settlement formed the Waipoua Settlement road on forest service land with a horse drawn grader and several horse scoops borrowed from the Hobson County Council (E9:135-137). Waipoua Nathan recalled this event. His father was the "foreman" and he rode on the back of the horse behind his dad. He remembered the settlement families and Ahikiwi families joining forces to complete the road (B42:7).

The officer in charge at forest headquarters suggested surveying and legalising the road but nothing was done (E9:135; E8:30).

From the mid 1930s, Waipoua families expanded their "house cow" dairy herds to provide themselves with a regular cash income. Ngamako Mete remembered four to five families hand milking cows

twice daily. Cream was separated and carried out to the cream stand on the main road at Katui for collection by horse. Milking and delivering cream were jobs for the children. Ngamako Mete remembered that the road up to Katui was just a track (B41:3, 5). Waipoua Nathan vividly recalled taking up the cans:

> I was so young I couldn't even lift the can onto the cream stand, so I used to put it under the stand. And when I got back the next day the cream was still there.... we did two milkings. The night milking and the morning milk and that cream did not go up until that day. So that was the difficulty. We had no show of catching the cream lorry which picked up at 7 o'clock in the morning.... by the time they got it up there it would be stale. And they would send it back. (B42:9-10)

He also remembered taking the cream up at night (B42:11).

Tutenganahau Paniora remembered carting the cream by horse-drawn sledge or by panuku (sledge without runners) (B43:1). Eruera Paati explained that life for his family:

> and the whole of the Waipoua community was based around being self sufficient. Farming was a major industry at this time and a big part of my life was tending to animals of all descriptions. Waipoua was renowned for the fact that our cattle grazed all over the settlement, and in my memories this is a way of life that the whole community shared and knew well. (C4:1)

Experiences of Waipoua Settlement residents were matched by those living at neighbouring Waikara. Harding Leaf remembered accompanying his brother on horseback from Waikara up to the main road. The two boys would balance a can of cream on the horse's shoulders in front of them:

> I'd hold the can... and he'd dip my bread in and eat it. All the way up.... By the time we got there I suppose there was more bread in the cream than... breadcrumbs and all sorts, bread crusts. But the cream never... came back. That reminds me of a story, I heard about ... a lady there... [who] was sending cream to the factory, old Peka Barnes. She sent her cream in and she didn't know there was a rat in it. Got to the factory at Kohukohu. Yeah they opened it up there was a rat in it, so we put the lid back on and put a note on—rat in. They sent it back to her, she got it back, saw the note and read it ... she reckons, so she... took the rat out with the note on and said rat out! (B49:3-4)

One herd in Waipoua contained 42 cows sent by the Native Department. Waipoua Nathan remembered this herd arriving at Donnelly's Crossing at six in the evening, from which point they were herded through the bush to the settlement (B42:8-9).

Settlement residents were unable to take advantage of technological advances that required good roading and electric power. One intended improvement was the introduction of artificial fertilizer to Waipoua. Waipoua Nathan recalled:

> being the Native landlord... they sent you manure even if you didn't want it.... Now our problem... was getting it from ... point A to B.... Now, usually they'd get that mile and then the truck would get stuck so instead of getting two ton, we'd get one—the other ton was on the road getting the truck out. Now we still had to pay for that.... by this time the road was getting wider, because [people had begun] driving you know—they started to do a bit more work so we got a gig. (B42:10-11)

In 1939, as part of the negotiations leading up to the settlement of grievances over unsold lands of Enoka Te Rore and Pohe Paniora, access was again discussed. Although the forest service and the Department of Lands and Survey agreed in principle to formalise legal access via the Waipoua river road nothing appears to have been done (E8:31-32).

In the early 1940s settlement residents petitioned the Native Department for legal access because they were finding it difficult to market their dairy produce (E9:221). A report from the commissioner of the Native Land Court recommended that as part of the Hokianga Consolidation Scheme, the Waipoua river road be formed as a legal road through to the Waipoua Settlement road. The road line (Tiopira or Birch road) which had been laid in accordance with the 1939 settlement, connected practically all the Maori holdings in Waipoua to the Waipoua river road. Tiopira road was, and still remains, a Maori roadway. Consequently the Hobson County Council has no responsibility for its formation or maintenance. This is left to the settlement residents. Although a number of other attempts were made by settlement and forest service employees to have the route through to Katui surveyed and legalised in the 1940s, they were thwarted, among other things, by the inability or reluctance of any party to accept the responsibility or to pay.

In 1944, 20 residents petitioned the Hobson County Council to re-form and maintain the access road to and through the settlement. As the county council did not then receive rates from the settlement, it passed the buck to the Department of Public Works who passed it on to the Native Department, who claimed it had no funds to pay the cost of road construction.

In 1945 Ross Nathan and Ata Paniora sought assistance from the Native Department to form Tiopira road to enable them to resume milking. The forest service was willing to form "their share of the road" (E9:144-5). Mistakenly the registrar thought the request was to form the road out to the public road and the application was refused due to the anticipated cost. Waipoua Nathan recalled his family finished milking and went to dry stock in 1946. In 1947-1948 his brother sold all the cattle and paid off the Native Department loan (B42:15-16).

In 1945 the settlement's general carrier, Mick Milich, who was transporting the children to school in his truck, complained to the secretary of the Education Board:

> The road is in a very bad state, and I have a creek to cross that is the Waipoua River if there is a flood on [the road from the main highway was initially on the northern side of the river with a ford crossing immediately upstream from forest headquarters]. I either lose a day or tackle another route which has two miles of clay road, which means chains on the truck and push from the children it has taken me two hours to travel the eleven miles on this road....
>
> ... The road is full of pot holes and broken through the metal, and the chassis of my truck dragging on the centre of the road. I also paid £45/-/- for tyres four months ago and the two back ones are all to pieces through striking these clay patches, skidding and then striking the metal. (E9:142)

When construction of the Waipoua Native School commenced in 1946, neither the Tiopira road nor the right of way from it to the school site had been formed and metalled. Permission was sought from the forest service for the building contractor to use forest service roads and given, on condition that any damage to roads be repaired. Access was also allowed by a more straightforward route across what is known as "the horse paddock" along the riverbank through forest service land (E9:246-252).[11]

Following one delivery, settlement residents and the contractor were denied use of the state forest road by being refused a permit and a locked gate barred access to the school site until the road was sufficiently dry to prevent "cutting up" (E9:246; E11:1). This caused considerable concern to residents about what could be done in case of sickness (E9:150).

In 1946 Katui storekeepers Mills and Schroeder, competing with the Donnelly's Crossing store which paid Mick Milich to take supplies to families at the settlement, also had difficulties obtaining a permit (E8:39-42).

That year residents made further approaches to the council and the school teacher, Mr Stevens, wrote on their behalf:

> The only access we have to the main road, a distance of six miles, is by private road maintained and controlled by the State Forestry Dept. This we may use only at their discretion. Whereas, there is formed another road to Katui from here which only requires grading and metalling to make a very useful road.
>
> This settlement I might stress is a very fertile valley and in the past a large number of cows have been milked, but as the cream had to [be] packed out by horse a distance of seven miles to the main road before the delivery of the cream, the resultant grade of cream was so poor and rejections so frequent that it became unprofitable. Thus herds have now been turned out and practically nothing comes out this valley. The settlers assure me that with an access road they are willing and desire to start production again. One settler still has his milking machine plant.
>
> The completion of the road for use, would also enable us to have a much needed regular grocery delivery, without the grocer having to depend

> on the State Forestry road, entrance through which is sometimes refused. (E9:198)

The registrar of the Native Department at Auckland thought that the forest service might cooperate in forming and metalling an access route. He agreed with recommendations made by the resident engineer of the Department of Public Works, that with the cost and the desirability of forest service having some control over traffic throughout the plantation areas, access via the road past forest headquarters should be maintained. He thought:

> This causes no hardship to the settlement people or visitors, beyond the formality of asking permission to use the road. In the case of the regular users, this permission does not need to be re-newed. (E9:204)

The registrar also suggested that a more formal arrangement be made with the forest service but no further action was taken. As a result, when the forest service officials did see the resident engineer's report, they were influenced by his remarks and did not take any steps to legalise the road.

In 1949 when Waipoua Nathan returned to the valley and worked as a bulldozer driver for the forest service, the road had developed as far as the settlement and settlement residents were able to drive right down or alternatively walk down from the top of Nathan's road (B42:13-14).

Throughout the 1950s a number of meetings were held between forest service officials and settlement residents at which it was ultimately decided to seek the legalisation of the road via the headquarters in place of the Waipoua Settlement road which was in a poor state of repair and impassable during wet periods. The route past forest headquarters was then being realigned, widened and metalled (E8:60). Between forest headquarters and the settlement, roads were being upgraded to service work in the exotic plantation. At this time Waipoua Nathan pushed through a number of the roads including the road out to Kawerua and Nathan's road as a fire precaution.

In 1981 E D Nathan sought permission in writing from the officer in charge at Waipoua for his family to use the access route through tbe Katui road. He had planned a horticultural development at the settlement. The Hobson County Council, from whom he sought a number of approvals for the scheme, required an access permit (E9:137). The Katui road was the more economic, convenient and direct route. Permission was granted subject to a number of conditions.

In October 1982, two of the owners of Waipoua 2B3D2A2B block sought to partition out their interests in order to obtain freehold title to the land to further develop it (E9:410), and to use it as security for borrowing money for this purpose (E9:414). The Hobson County Council were unwilling to give their approval to the subdivision until the Minister of Forests had ensured that access through the forest would at all times be available to the owners of the land (ibid;

E8:99-105). The Maori Land Court eventually made a provisional roadway order. This was the first time the right, as opposed to a privilege, to use forest service roads was recognised.

In February 1989 Alex Nathan applied to have a Maori roadway ordered by the court to provide legal access through the Waipoua Settlement road to the settlement under ss415 and 418 Maori Affairs Act 1953 in favour of the Nathan family properties. His application was for the Waipoua Settlement road route rather than the Waipoua river road route ordered for the Paniora and Birch family properties. Problems of proving Crown title led to the abandonment of this application (C7:33-34).

In May of that year, tangata whenua, the Department of Conservation and Timberlands agreed that access through the Katui route would be given to settlement residents and their invitees. The Forestry Corporation held no responsibility for maintenance over and above their normal level. Moreover it retained the right to erect and lock gates on the road in the interest of general safety. It would then provide keys to "the owners of the Waipoua Settlement". As yet the agreement has not been approved by the minister (ibid).

These recent attempts to deal with the problem of access were described by the Crown researcher as "piecemeal and uncoordinated" (E8:117). He noted there were various options which could be considered, including a roadway order, an easement, a landlocked access right, and a public road. With reference to the roadway order granted he concluded:

> The approach adopted does not address the question of the provision of access rights to other sections of Maori Land and Maori Reservations at the Settlement, resulting in Alex Nathan having to lodge a further application with the Maori Land Court for some of these other sections. It does not address the question of the provision of access rights to sections at the Settlement which have become General (European) Land by virtue of the 1967 Maori Affairs Amendment Act. It does not address the question of the provision of access rights to 2C (Whangamoa) and the Koutu reserve at Kawerua. It does not address the question of access rights over the Waipoua Settlement Road extension (Katui Road). And it does not address the question of the responsibility for and standards of maintenance of the roads. (ibid)

Waipoua Nathan concluded:

> I have two children. I worked hard to put them through education and for them to be where they are and I'm sure that was what my mother wanted. And I would not like to see my family come back to see this. This is a modern world. It has changed, I agree. But surely, with government support, or something to that effect. We must realise that nobody can borrow down here to put up... a home, because we have not got access. (B42:22-23)

Settlement residents still have no legal access to their homes. For over 60 years they have been required to seek permission from the forest headquarters each time they have wanted to use the road between the settlement and the main highway, as have any visitors, be they the district nurse, relatives or strangers. Inevitably friction and resentment have occurred. As Ngamako Mete stated:

> until just two years, three years ago, we used to have to get a permit to come down here.....
>
> ... You couldn't come down here unless you had a permit. And the... top road there,—it was only when Uncle Ned... came back... that they opened that out during the weekends. We weren't allowed to come through there. (B41:11-12)

Crown evidence brushed off the grievances of claimants in regard to access to the Waipoua Settlement. The government's choice of the forest route was "justifiable on economic grounds, as perceived at the time" (E8:109). The Hobson County Council:

> has been reluctant to spend its money providing access to an area from which many (possibly all) rates are not being paid, while the landowners have been reluctant to pay rates when they do not feel that they receive any of the services which those rates pay for. (E8:110)

The matter has been further complicated by the involvement of the Crown in the form of the forest service and by a belief by both the county council and the Maori owners that "the Crown had a part to play" in view of all its Waipoua No 2 landholdings (ibid). It was clear that the forest service made a commitment in 1950 to the residents to allow the legalisation of the road past forest headquarters, it was less clear whether active steps were taken to have the road legalised; probably not, because the petitioners had asked the Hobson County Council to take them (E8:115). No written evidence of access being a cause of friction between Maori residents and the forest service had been found (ibid). It was unfortunate "that there has been no round the table discussion by all the affected parties to consider all the issues and all the options" (E8:118).

Nonetheless, looking at the whole access question, the Crown researcher concluded that the:

> Forest Service did not operate in as open and receptive a fashion as it could have done.... It was not as good a neighbour over access as it could have been. Equally for most of the time it was not a bad neighbour... it failed to acknowledge the special circumstances of the Waipoua Settlement, and the influence it had on the Settlement... (E8:120-121)

On the wider question of whether the Crown has ever accepted any obligation to provide a legal public road access to the Waipoua Settlement, in his opinion, it had not. It never had "a blanket policy" of requiring that every section without exception should have legal road access but it had provided enabling legislation to overcome a

lack of road access by court order after a section had been created (E8:122).

The private forestry road has been the only link for residents of the settlement with the outside world and this has had an enormous impact on their ability to participate in the market economy. For local forestry management the situation has been most unsatisfactory. As agents of the Crown, whose actions had created this vexatious situation, they were, in human terms, obliged to give access to their neighbours. But this compromised the rigid trespass and fire control security requirements laid down in head office directives. It also compromised their land purchasing and road maintenance programmes and relations with locally recruited staff. These intolerable impediments to good neighbour relations became a perpetual irritant.

Reference to a map of Waipoua No 2 at the time the Crown imposed the sales' moratorium reveals neatly ruled, close, parallel lines, more like a cartographer's shading than a rural subdivision (see above, p 144). It shamelessly satisfied Maori Land Court requirements of the day by providing legal title with access to the coastal road. From any practical land use or land development point of view, it provided its owners with an impossible and quite disgraceful legal trap from which they had no escape, especially when the only possible avenue available to them to realign boundaries was the Crown who had imposed the proclamations on the area 1917-1972.

The subdivision of long narrow parcels of land with boundaries showing no sympathy with contour, swamp, gully or stream, made practical fencing and practical farm development an absurdity for any individual allotment.

The physical nature of the subdivision imposed a very negative element on property values. The emasculation of the allotments from the communications network, at the very time motor transport and practical vehicle access were impacting significantly on land values, reflects little credit on the agencies responsible. To have the Crown prohibit property owners access to a free market, and then suggest that any professional valuer could assess a "fair market value" for the Crown's purchase price, stretches to the limit the time honoured dictum that a fair market price is that which a willing buyer will pay to a willing seller. The imposition of almost every conceivable impediment between these properties and the free market, which is the data base from which all valuers must proceed, goes beyond the limit.

Physical Services: telephone; mail delivery; electric power; water and sewerage

5.3.3 The Waipoua Settlement has always suffered from all the disadvantages of being rural, geographically isolated, and sparsely populated when it comes to getting public utilities and social services

which most New Zealanders take for granted. Moreover, poverty and unemployment has ruled out the possibility of residents themselves contributing to the costs of extending the utilities and services available at forest headquarters to the settlement. Thus they have had to depend on forest headquarters as the "all provider". Currently they have to travel to the headquarters to collect their mail and use the telephone.

Crown counsel stated that:

> Policy on whether to assist isolated Maori communities acquire a telephone was determined by the late 1930s when it was decided that it was not the role of Government Departments such as Health, Native or Education, to subsidise the work of the Post and Telegraph Department which considered the supplying of telephones solely on an economic basis....
>
> The Crown policy has been that the subsidised supply of telephone services was not a Crown responsibility. (12:(b)(xi):8-9)

The need to provide telephone services to the valley was emphasised when the first sole teacher of the Waipoua Native School took up residence in 1946. In asking the Director of Education for permission to place a telephone in the school house he said:

> The settlers have agreed upon the necessity for one for the community and that it should be centrally located here. They have also agreed to do the work of erecting poles and wire a distance of approximately seven miles. Would the department consider making a contribution towards the cost of material? (E14:82-83)

Although the department agreed to the installation of a telephone in the school, it was not its policy to contribute towards the cost of the materials required for its installation (E14:521).

In 1948 Dawson Birch, the chairman of the Waipoua Forest Maori School Committee wrote to the Minister of Education explaining:

> A telephone is a commodity required very much in this district. In emergency cases and accidents we find it very hard to contact nurses and doctors. The previous Headmaster made some inquiries about having a telephone put in with the reply that telephones were unprocurable. (E14:218-9)

The minister was pleased to support an application by the school committee to the Post and Telegraph Department, but failed to offer any financial assistance (E14:217). In April 1953, the Department of Education introduced a policy whereby it was prepared to pay half the cost of rentals for telephones installed in Maori schools or head teachers' residences (E14:532), but re-affirmed its policy that no assistance be provided for installation costs (E14:531).

Alex Nathan recalled that one house in the Waipoua Settlement was connected to the private line running from Forest Service Headquarters to Kawerua. Although it did not provide a line "to the outside

world", messages could be relayed through headquarters staff. The line and equipment were removed in the 1960s (C7:42).

Recent requests that Telecom consider running a line to the Waipoua Settlement when it upgraded the lines to the headquarters complex, were refused on the grounds of cost.

Currently the Department of Conservation allows Waipoua Settlement residents to use their telephone.

Counsel for the claimants concluded:

> Telecommunications are clearly needed in the valley. The Waipoua residents do not have the money to install the service themselves. The Crown has gone to the expense of providing a telephone at the Forest Service Headquarters but seemingly could not justify extending that service to the settlement. The telephone at the headquarters (now the DOC Headquarters) is still the only instant connection residents have with emergency services. (I1(e):9)

According to Crown counsel "policy was developed towards the problem of supplying isolated Maori and European communities with electrical power" similiar to that of supplying telephone services:

> The supply authorities looked at the matter solely on an economic basis — the cost of setting up reticulation and the return which could be expected. Although in the case of Maori development schemes, the Crown would assist, subsidise and even pay for the installation of power, for private individuals it saw its role merely as an intermediary whereby requests would be investigated but intervention was not recommended. However from 1945 the Crown endeavoured to ensure that the rural back blocks did receive electricity. The Rural Reticulation Council existed for this purpose. The responsibility of bringing forth cases which needed subsidising belonged to the local Power Board. It seems likely that Departments such as Maori Affairs felt the Council and the Power Boards between them were the authorities to achieve reticulation for Maori areas. (I2:(b)(xi):9-10)

She therefore suhmitted that the central question was why Waipoua did not receive reticulation. Was application made to the local power board?

In 1955 power was supplied to the forest headquarters. In the early 1980s, Ned and Alex Nathan inquired into the possibility of bringing a reticulated power supply to Waipoua Settlement. Two alternatives were considered. First, the continuation of a line overhead from forest headquarters, and secondly, an extension along the coast from Waikara Farm Development blocks. These were rejected on the grounds that they would create a fire hazard and would be a nuisance in logging operations (C7:43). At present, only one household in the settlement community has an electricity generator.

Until large scale gravel extraction from the Waipoua river occurred, the Waipoua Settlement enjoyed a plentiful supply of fresh water.

The stagnation of river water through gravel extraction forced the people to become totally dependent upon rain water. The installation of a water reticulation system and sewage treatment plant in such a relatively dispersed rural community would cost each household much more than a septic tank and separate water supply system.

Educational services

5.3.4 Soon after the passing of the Native Schools Act Amendment Act 1871, Te Rore Taoho and 22 others petitioned the Crown to establish schools in Te Taita, Opanake, Waimamaku and Waipoua (E14:11). Presumably they were willing to provide a school site and contribute to the costs of the teacher's salary and school maintenance which were necessary prerequisites. In 1876 a native school was started at Kaihu but attendance was very variable because people were so mobile.[12]

Perseverance and determination earned the Maori community a village school at Waimamaku in 1886, that is before the arrival of the Canterbury settlement settlers.[13] Travelling from Waipoua along the coast on foot or horseback proved impossible because of the distance. Families anxious to have their children educated, boarded them with

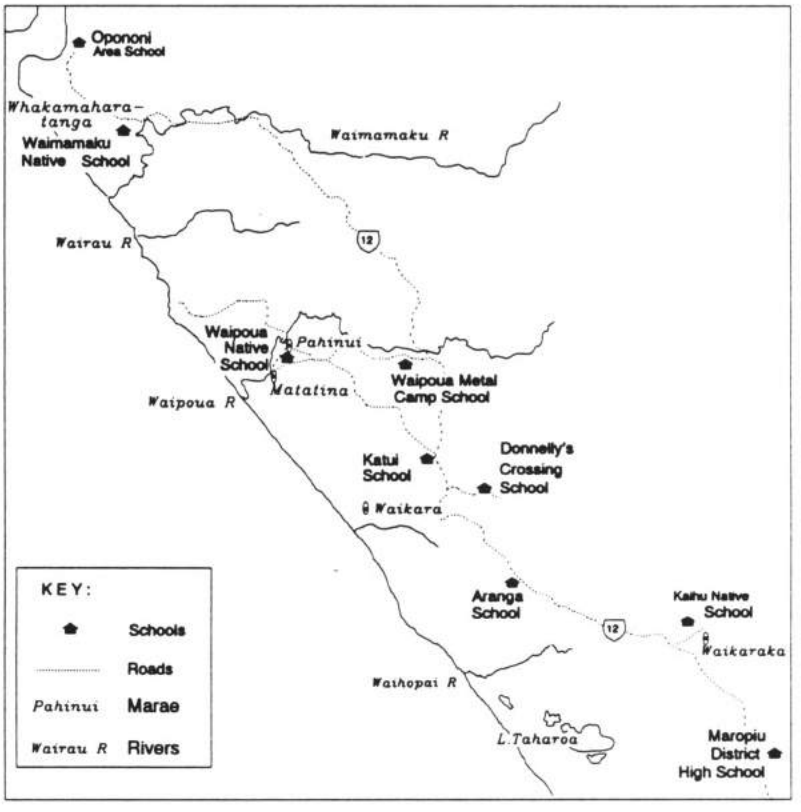

Figure 22: School sites

relatives and friends in Waimamaku. Others stayed at home and worked. Numbers of Waipoua children attending the school varied from year to year, reflecting the practical difficulties of such an arrangement. Rural children boarding away from home added to the family's workload. Largely because of irregular attendance, most of the children known to have attended Waimamaku Native School failed to pass any grades. But Maori parents persisted, demonstrating their determination to have their children educated (H54:3-4).

State schools were built at Katui in 1897 and Aranga in 1905. Subsequently, to provide primary schooling for the children of construction workers brought in to build a new inland highway linking the Hokianga with the Kaipara, the Waipoua Metal Camp School was established and functioned from 1926 to 1929. Children of permanent residents fortunate enough to have horses then transferred to the Katui School, necessitating a ten kilometre ride at the beginning and end of each day. There is no evidence of any settlement children attending these schools.

Waipoua Nathan told us that he began his schooling in 1934. He went to Maropiu School and lived with his father at their farm at Ahikiwi and came back to Waipoua with his father and sister in the weekends by horse or gig. He recalled that "travelling back from Kaihu was not on gig because we couldn't get a gig down" (B42:6).

After his father died and his brother Ned went to war, Waipoua went from sister to sister until his schooling ended following standard five (B42:8). His mother, he explained:

> had a family to educate. And this is how we did it. They [his parents] had to live apart because of that. (B42:22)

In 1936 the Department of Education promised the Maori people of Waipoua a school but nothing was done. Toa Maihi Paati (Dawson Birch) protested to the Tokerau District Maori Land Board in October 1944: "I'm darn sick of it" (E14:105).

Letters from residents chronicle their efforts to obtain a school. Piipi Cummins offered three acres of her land for a school site in 1940 at which time there there were 15 children of school age (E14:179-181). The native school inspector visited the site but preferred a more central location. A request for a central site of four acres was made by the Education Board to the then Department of Forestry who by this time was the largest land owner and employer in Waipoua. The forest service replied that it was impossible to release the portion of the area referred to, as it was reserved for their administration and a sawmill site (E14:151 passim; see above, p 159).

Ata Paniora, offered to donate land from his already depleted holdings. Disagreement among officials about the suitability of the site, wartime exigencies and problems of access delayed approval and construction. Meanwhile, Mick Milich, greatly frustrated by the lack of schooling for his and other Waipoua children, transported them over the rough

roads to Katui School (E14:146-7). Turi Birch was one of these children. Starting school at the age of 13 (E14:85-87, 103), he recalled with vivid detail his early experiences at Kaihu. The teacher, a Pakeha, could not speak Maori. To help overcome the language barrier a Maori woman from Waipoua, Kahuru Pumipi, was employed as the "interpreter". She could understand a little English to translate to the children, but she could not speak English, and so could not converse with the teacher or clarify technical detail.

The children, though fearful of this new foreign experience, made slow patient progress as they were taught the alphabet letter by letter. Stalemates resulted when the teacher produced a picture of an object unknown to either pupil or interpreter. None of the children from Waipoua knew what a snake was. The picture looked a bit like a tuna (eel) so after urgent conference between the pupils, they took a calculated guess and suggested that the letter "s" stood for "tuna"! (B50:19-21)

At last, in September 1946, the Waipoua Native School opened with a roll of 24. The roll fluctuated year by year. In 1957, the school teacher supervised three students who were taking their secondary schooling by correspondence. They were the first children from Waipoua to reach this level (H54:6). That year the roll fell to eight pupils. Therefore the contributing district, in accordance with Department of Education policy, decided to close the school in 1958 (E14:232-233, 226-227).

At this time the pros and cons of rural school consolidation were being widely debated and Waipoua Settlement parents believed that their children would benefit from attending a consolidated school even if this involved long bus journeys each day to and from Aranga School 20 kilometres away. An assistant teacher, appointed to Aranga School to cater for the increasing numbers of pupils, lived in the former school house at Waipoua and drove the school bus (E14:227, 230). The bus would leave the old school site at 7.45 am and return at 5 pm.

Bertha Sowter remembered times when the road was too muddy for the bus to come to the settlement. She then had to walk to the saddle on the Waipoua river road to catch the bus, often poorly clothed and without adequate footwear because they were a large, poor family. She remembered not reaching home until 7 pm (H54:7-8).

Richard Paniora remembered the long tiring bus rides to and from Aranga School (C5:1). By the time he went to high school at Maropiu, 40 kilometres distant, the bus only came as far as forest headquarters. He would catch the 6.30 am forest workers truck to the headquarters before catching the three other buses he needed to get to school (C5:2).

The alternatives to long walks or rides to pick up points for buses and the ten to 11 hour school days, were boarding away from home or Correspondence School. But the latter was only a realistic option for

English speaking households where an adult was available to assist the pupils and which had regular mail services. The school had been established since 1926 but no special correspondence courses for rural, Maori speaking children had ever been provided.

For post-primary education, Waipoua children could attend Maropiu District High School until it closed in 1973. Since then, they have had to attend Dargaville High School and board on a weekly basis at the school hostel. Waipoua families generally have been and are unable to afford the alternative of sending their children to denominational boarding schools, such as Te Aute College and Queen Victoria College.

When Alex and Alison Nathan moved to Waipoua in 1983 to take part in the construction of Matatina marae, they decided to enrol their two school age children with the Correspondence School rather than send them by bus to Aranga. A Correspondence School unit, Te Whare Kura o Waipoua, was established in August 1986 and Alison Nathan, a trained teacher, was appointed supervisor. No assistance was given the unit other than a minimal supervisor's salary. The unit struggled to survive without adequate accommodation and equipment. In 1990 the numbers attending the unit dropped to below the required five primary pupils and it ceased to exist (H54:14-19). In a special report the visiting teacher expressed his concern over "the equity of the total situation" at Waipoua in comparison with "other similar sized remote communities throughout New Zealand". He was impressed by the "dedication & caring shown by the adults in the community towards the education of their children", and did not think the people of Waipoua were getting a comparable deal (ibid:18-19).

In 1984 a kohanga reo was established. The community desperately wanted their children to learn Maori and several of the kuia could have assisted had the Correspondence School been able to provide courses opening up the possibility of total immersion in Maori language until ten years of age. The inability of the present state system of education to provide such courses has meant that none of the children growing up in Waipoua have become fluent Maori speakers despite the hopes and aspirations of their parents. In view of recent Department of Education initiatives to open up the opportunities for bilingual schools, it seems to us that ways and means should be found of making the correspondence school system more sensitive to the needs and aspirations of rural Maori communities like Waipoua.

Basic requirements under the present correspondence school system are not only regular postal services but also good radio reception and ready access to a telephone. None of these requirements exist at Waipoua. For this reason, the opportunity to participate in a pilot scheme conducted by Chatterlink Community Communications in association with Telecom in 1990 was a welcome shot in the arm for Waipoua residents. The purpose of the scheme was to assist in assessing the educational value and cost effectiveness of telecommunications technology in distance education (H54:33-35). Clearly

the technology now exists to make better provision for the education of Waipoua children. Costs notwithstanding, we are convinced that the government has a duty to provide Waipoua children with educational opportunities more comparable with those enjoyed by Pakeha children in rural areas who have benefited from the correspondence school system since 1926. Furthermore they have a duty to provide rural Maori children with Maori language courses. As Alison Nathan stated:

> The deliberate suppression of the Maori language in education, the economic squeeze imposed on the local tangata whenua by their loss of land and enforced migration in order to obtain work, has resulted in the almost total loss of te reo Maori. English dominates all strata of our community. The young are unable to learn the language. What will be the future of our marae? Will N.Z. be the richer for the loss of these taonga? (H54:42-43)

In Alison Nathan's opinion there is a need for a whanau community centre focusing on education in its broadest sense, including a whanau community school. The school would cater for preschool, primary and secondary school children and interested adults. It would provide a programme of total immersion in Maoritanga to an age professionally considered appropriate. Qualified teachers able to draw upon the talents and knowledge of adults in the valley would be employed. The complex would house a library equipped with audio-video teaching aids, it would contain fax, telephone and computer–modem links with the outside world. It would include a teacher's residence and indoor and outdoor recreational activities (H54:50).

Health and dental services

5.3.5 Little evidence was given on health and dental services available to Te Roroa, but we do know that in the nineteenth and early twentieth centuries they lived beyond the reach of government doctors, that rudimentary medical services were provided by native school teachers, that sickness was prevalent and that many died from measles and, in 1918, influenza.

The Waimamaku Native School records indicate successive teachers administered to Maori children attending the school. One of these teachers, Charles Winkelmann, who developed a considerable reputation as a dispenser of medical services, often ran short of medical supplies provided by the Native Department. In 1890 he informed the department that:

> *There is no medical man residing in the Hokianga district* and now that I have become known, the Natives all around this settlement come to me for assistance and medicines. I gladly do all I can, and have been able to give great relief to large numbers;–during the 'La Grippe' Epidemic many natives would without doubt have died had it not been for the timely aid which I gave them, sacrificing the whole of my spare time to visiting and dispensing medicines.

> The number of sick children and adults is considerable and hardly a day passes without my being called out. The Natives quite look upon this work of dispensing as part of my work amongst them... (E14:311-312)

While the department recognised that Winkelmann undoubtedly rendered a "useful service", it was concerned that this would lead to like applications from other teachers. He was told to use medicine for pupils only and more sparingly (E14:310).

A meeting was held by the local people who asked the government to increase the quantity of medicine sent for general use. They further requested that the school master be appointed as dispenser of medicines for people living at Waipoua, Waimamaku, Waiwhatawhata, Roharoha, Pakanae and Motutoa.

In conveying these requests to the Native Minister, Iraia Toi pointed out that 300 or more people lived in these places but for years they had had no medical practitioner. Probably this was why they went to the tohunga. In past years a large number of persons had been ill (and died) through want of medical aid (E14:272-276).

Nothing came of these requests. The Native Department continued to supply medicines to Winkelmann and his successors, but at times the supply was less than that requested. Notwithstanding the department's instructions, the use of schools as dispensaries for the whole community was the only practical way of providing medical assistance in areas without government doctors or nurses.

In the late 1920s, the district nurse regularly visited Waipoua on horseback. After she was provided with a Department of Health car in about 1930, her visits became more spasmodic. Mick Milich's evidence shows why:

> To give you an idea of what the road is like, we have not had the District Nurse in the settlement for four months, because she could not get down in a small car. Last week a nurse from Whangarei came to inspect the road and she told me that she did more damage to her car that day than she has done for the last twelve months' travelling. (E14:93)

According to the Waipoua Native School records, between two and six visits were made per year until 1956. Regular medical care ceased after the closure of the school. Regular nursing services were available to the children attending Aranga School. In recent times, the northern part of Te Roroa territory has been part of the Special Hokianga Health District providing free medical services and access to the hospital at Rawene. The southern part has had access to medical services in Dargaville and the former hospital at Te Kopuru. A doctor has regular consultations at Kaihu. A district nurse from Dargaville has visited Waipoua Settlement fortnightly. Today there are four to six weekly visits by a general practitioner and nurse, but facilities are still poor. Alison Nathan told us that:

> Medical emergencies are difficult to deal with. Without telephones people rely on their not-always reliable vehicles (the sub-standard conditions of

> the roads impact particularly heavily on vehicles) to travel to a phone for a doctor's advice or to call an ambulance. At night in particular it is necessary to provide a guide to meet and direct an ambulance. Alternatively the sick are transported by private vehicle to Dargaville. This is often a quicker alternative. (H54:46-47)

Any curtailment of hospital services in the Hokianga and Dargaville will compound these problems. A community health centre is urgently needed to treat minor injuries and illnesses.

The advent of the school dental service again saw Waipoua Settlement left out. In 1948, Dawson Birch, the chairman of the local school committee, wrote to the Education Board requesting dental service visits, the nearest dentist being 30 miles away (E14:218). The mobile dental clinic eventually began visits in 1949, a tractor being required to tow the caravan clinic in and out. The following year the children were transported to Katui by forestry trucks for treatment.

The mobile dentist again visited the school in 1951, and from 1954. The closing of the school in 1958 brought an end to those visits. Dental care for Aranga School children was provided by the mobile clinic once a year at Maropiu School. Free dental services for Correspondence School children at six monthly intervals are provided by a dental clinic in Dargaville.

The lack of health and dental services at Waipoua today is related directly to distance from major population centres, poor access and lack of telephone and radio communication, as well as to the high incidence of unemployment and dependence on benefits.

Counsel for the claimants concluded that:

> poor health services available to the Waipoua people is another deterrent to the resettlement of the valley and the strengthening of the tribal base. (I1(e):8)

Fire control

5.3.6 Fire control has been a source of contention in Waipoua ever since the decision was taken to establish a state forest in 1906. It was the kauri forest not the exotic plantation, which was the original focus of forest service operations at Waipoua. In 1923 the forest and surrounding sections were proclaimed a fire district and two guards, provided with houses linked by telephone, were employed continuously patrolling and safeguarding the area (B8:48). Pine planting began in 1924.

Fire was a very real concern to forest managers, especially in dry summer conditions. Prior to the advent of fire fighting with helicopters and monsoon buckets exotic forest fires had proved to be uncontrollable. Fire risk was used to justify a policy of total exclusion of people.

The 1965 amendment to the Forests Act allowing for recreation areas to be established in state forests together with the advent of new fire fighting techniques led to a significant move away from this exclusion policy. The national forest service recreation policy, established in 1983, of allowing open access to all state forests, except during periods of severe fire risk in mid summer, prompted the unlocking of the gate to Kawerua until 1987. The effects of unrestricted access on the stocks of kai moana and "the potential of a wild fire on the coast enhanced by the presence of open fires lit by recreational users" led to the relocking of the gate at the end of 1987 (F9:16).

Claimant evidence summed up the disadvantage to Te Roroa in having an exotic forest as a neighbour as follows:

> The main reason for the Crown's policy to acquire Waipoua 2 was the protection of the Kauri forest and the primary danger was frequently cited as fire. Concern over the risk of fire destroying the forest is evident in official correspondence from 1912.
>
> From the 1930's until recently the Forest Service has viewed the presence of our people in the valley not only as a threat to the Kauri forest but also as a danger to the exotic plantations on alienated Maori land.
>
> The risk of fire was also the main reason stated for controlling access through the forest to the Waipoua Settlement....
>
> Today the major risk to the Kauri forest is from the pine forest and particularly from those areas that have been thinned, pruned or logged. As there is usually dense indigenous undergrowth and only sawlogs are removed, Waipoua logging operations leave large quantities of highly flammable material on the ground. This danger is heightened near the coast where it is windy and generally much drier. (C7:15-16)

The witness went on to mention the debate which has ensued over the planting of an exotic plantation, and the fire hazard that it creates adjacent to the kauri reserve. He also listed the personnel and equipment the forest service based at forest headquarters had readily available for fighting forest fires until 1 April 1987, when the Department of Conservation and Timberlands took control of the indigenous and exotic forests respectively. Since then much of the fire fighting equipment, including the fire engine, has been removed from the forest, along with the personnel. The Crown's ability quickly and effectively to deal with an emergency has been seriously compromised. By 1989 only two forest managers remained in residence and they were dependent on tangata whenua and help from outside for fire control. Te Roroa living in the settlement thus view:

> with serious concern the menace the exotic plantation poses not only to the Kauri forest, but more importantly to our people, homes and papakainga which are totally surrounded by this aberration and which have been planted right up to the boundaries of our remaining lands. (C7:17)

The concern deepened in 1989 when Timberlands erected signs at both entrances to the exotic plantations advising that the roads were now open for public use (C7:17).

The Forest and Rural Fires Act 1977 and previous Acts enabled fire authorities to preserve fire safety margins and conditions in forest areas which, at times, could be particularly irksome and frustrating. Waipoua Settlement has been, and still is, doubly disadvantaged by the poor state of forest access roads, no telephone, little radio contact and too few people to fight fires. Moreover the economic status of the residents precludes them from providing their own fire fighting equipment. These deficiencies would compound dramatically any fire emergency, domestic or otherwise. The forest owners' principal concern is the protection of the kauri forest. Neighbours who have been put at additional risk by the forest establishment, have little option but to live with the ever present hazard.

Limited fire fighting equipment is available at forest headquarters some 15-20 minutes away by motor transport, with no telephone, that time must be more than doubled to allow the messenger to raise the alarm, assemble helpers and return. In the event of a serious domestic fire, households in the Waipoua Settlement would be totally destroyed. What has been and still is unacceptable in the settlement is the total absence of any effort by forest managers to provide and maintain fire breaks, contribute to a communciations system and have any evacuation plan in place and explained, or show any tangible evidence of any measures taken to protect or compensate immediate neighbours for greatly increasing the fire risk by exotic forest plantings.

Following the evidence given by the claimants at the second hearing at Matatina marae (B47:14-19), the claimants and Crown agreed on urgent measures to be taken in respect of the risk of fire. The claimants would commission an independent forestry expert of their choosing (at the Crown's expense) who would investigate and report upon the present fire fisk and recommend any measures necessary to minimise that risk (C21(a):2).

In the fire risk assessment report (H12) provided to the tribunal, the possibility of fire risk was assessed on historical statistical data and measured on a graduated scale (H12:app 3). For Waipoua the graduation is scaled as low (H12:app 2(a)). While this may be an acceptable commercial risk to the forest owner, it gives little reassurance to residents.

The transfer of management responsibilities in Waipoua to the Department of Conservation and the Forestry Corporation and its subsidiary Timberlands, in no way diminishes the Crown's fundamental responsibility to its immediate neighbours, the Waipoua Settlement residents. The very minimum the Crown should do is ensure that the consultants' recommendations, detailed in the fire risk assessment

report, be implemented. We understand that nothing has occurred since the report was released in May 1990.

5.4. Did the Crown Have a Duty to Provide Legal Access and Services for the Waipoua Settlement?

The Crown submitted that the people of Waipoua did receive and benefit from aspects of policies in respect of Maori education and Maori health. The Correspondence School could not cater for all the needs of the Waipoua community. Waipoua's problems were not easily solved because of its isolation (I2:(b)(xi):10-11). Counsel for the claimants pointed out that the lack of services had contributed to the undermining of the Waipoua community and was a deterrant to the resettlement of the valley and the strengthening of the rural base. He drew our attention to the differences in services between the Waipoua Settlement and Forest Service Headquarters. Within 15 minutes of headquarters you would appear to be in the third world. People were living in caravans and garages without amenities. The differences were stark (I1(e):9 and interpolations). He asked us to take Alison Nathan's proposals seriously and make recommendations accordingly (I1(e):6). He also pointed out that the whole question of rates needed to be addressed. Although the settlement received no social services its landowners were expected to pay rates (ibid:18).[14]

He considered that Te Roroa ki Waipoua people had clearly been prejudiced by the Crown's failure to take reasonable steps to provide services (ibid:19).

This raises the question of whether the Crown had any special duty over and above its duty to all its citizens to provide services and legal access for Te Roroa ki Waipoua. In our view the answer is yes.

We have seen how the Waipoua Settlement was greatly disadvantaged economically and socially by the Crown's decision to close the coastal road, taking away access to surveyed allotments for which it had granted title and should therefore have provided legal access. We have also seen how the lack of legal and adequate access to the settlement impeded the delivery of social services. Lack of access and lack of services in turn contributed to the general exodus of people from the settlement and discouraged people from returning home. Te Roroa ki Waipoua, in other words, were (and still are) caught in a vicious circle. We have also seen how their lives were largely conditioned by the Crown's deliberate policy of land acquisition and by forest service operations, and how increasingly they have become forest service dependents. For all these reasons the Crown should have accepted more responsibility for the well-being of those it dispossessed. As well as its special treaty obligations, it surely has a special duty to be a good neighbour. We shall refer to this later in the concluding section of the report.

References

1 According to counsel for the claimants, traditional hunting and fishing rights have been acknowledged and protected despite the sale of land to the Crown in *R* v *Taylor and Williams* (I1(e):35-36)

2 "The Ngai Tahu Report 1991" (Wai 27) 4 WTR (Wellington) p 317

3 A recent article on "wetlands" and pine afforestation by Hugh Creasy in *The Sunday Times*, 12 January 1992 appears to confirm his view.

4 Statutory controls were imposed by s51 Wildlife Act 1953 and ss30, 31 and 38 Conservation Act 1987, which vest ownership or control of cultural resource materials in the Crown and give the director-general discretion to authorise the taking of plants from a conservation area to be used for traditional Maori purposes. Sections 63 and 67 Wildlife Act and ss38 and 45 Conservation Act relate to offenses and penalties. Other statutory controls are effected by the Conservation Law Reform Act 1990, Wild Animal Control Act 1977, Fisheries Act 1983, Reserves Act 1977 (I1(e):40).

5 Section 5(2) The Treaty of Waitangi Act 1975

6 J B Condliffe *The Welfare State in New Zealand* (London, 1959) p 119. See also Andre Siegfried *Democracy in New Zealand*, ed David Hamer (Wellington, 1982) p 54 passim

7 Alan Ward *A Show of Justice* (Auckland, 1973) p 303

8 Ken Keith *International Implications of Race Relations in New Zealand* (Wellington, 1972) p 44

9 E K Bradley *The Great Northern Wairoa* (Auckland, 1982) p 91

10 Jack Lee *Hokianga* (Auckland, 1987) p 228 passim

11 The forest service had no objection to this route being used and upgraded in 1947. Hobson County Council staff provided some assistance but the council considered the work did not come under its control.

12 AJHR, 1879, Session II, G-2, p 10

13 According to Janine McVeagh *Waimamaku A Very Special Settlement* ([], 1988) p 7, the school was opened by I M Munce in January 1885 with 31 pupils. The official opening date is a year later (E13:7; H54:3).

14 Proceedings in the District Court brought by the Kaipara District Council to recover outstanding rates presently stand adjourned pending the completion of this report. We shall refer to this matter in our conclusions.

Take 6

Taonga (Sacred Treasures)

6.1. The Claim

Many aspects of the Te Roroa claim concern the Crown's undertaking to recognise their tino rangatiratanga or mana over their taonga in accordance with article 2 of the Treaty of Waitangi. The words, "other taonga", in the Maori text, are a much more all-embracing concept than "properties" in the English text. Other taonga particularised in this claim, are: wahi tapu (defined by counsel for the claimants as "spiritual places of special significance to tangata whenua"),[1] and wakatupapaku (burial chests deposited in ana (caves and crevices)). The claimants allege that the Crown has omitted actively and adequately to protect their wahi tapu and wakatupapaku and to recognise the tino rangatiratanga of Te Roroa in respect of their physical and spiritual heritage (A1(i):7,9,11,12). This allegation is made with respect to the whole claim area, but more particularly, concerns Waimamaku wakatupapaku and Waipoua wahi tapu.

In respect of Waimamaku, the claimants state that acts and omissions of the Crown resulted in the continuing desecration of their taonga, including the koiwi of their tupuna, in gross disregard of human sensibilities and the tapu with which those taonga are imbued. These actions, they say, were an affront to the mana of nga hapu o Waimamaku and caused them much pain, suffering and humiliation (A1(i):12-14).

In respect of Waipoua they state that the Crown failed to recognise and give effect to their special spiritual, cultural and historical relationship with the kauri forest and the river and their traditional resource rights in them (A1(i):9).

As counsel for claimants said:

> The concept of wahi tapu is at the centre of the Te Roroa claim .... The issue of ... protection ... is ... much broader than the question of reservation of certain of them from sale .... tangata whenua claim a continuing interest in wahi tapu situated upon property which they no longer own. They say that the Te Roroa are the Kaitiaki of their wahi tapu. (I1(e):47-48)

He submitted that the rights tangata whenua retain with respect to those wahi tapu were not extinguished by land sales. There were three different categories of unextinguished rights. First:

> Where land containing a wahi tapu has been acquired without the agreement of tangata whenua it is clear that, at least in terms of the

> Treaty of Waitangi, the Maori interest in the wahi tapu ... remains unextinguished .... [because] the iwi has ... indicated a wish to retain that wahi tapu and the land upon which it is situated. [Manuwhetai, Kaharau and Te Taraire are examples of this]. (ibid:59-60)

Secondly, where land was alienated by individual iwi members holding interests in various subdivisions and iwi were not consulted or involved in the decision to cede land, the rangatiratanga of the iwi in respect of the wahi tapu is retained (ibid:60-62), for example, in Waipoua No 2 and Taharoa.

Thirdly, where the whole iwi consented to cession, it can still not be said that rangatiratanga in respect of wahi tapu upon the ceded land has been extinguished. In such cases the basis upon which Te Roroa claimed "a separate and unextinguished right to protection of wahi tapu" was the concept of mana whenua (ibid:62).[2]

At the roots of this "wahi tapu claim" are the fundamentally different views of Maori and Europeans about the natural world and its resources and the place in it of human beings and the taonga they produce; also about how these taonga should be cared for and controlled (B24).

6.2. Te Roroa Perspective

Taonga is an umbrella term, inclusive of a wide range of things upon which Maori in general and the whatu-ora (claimants) of this claim place great value and regard as treasures. Among them are intangibles like spiritual values as well as tangible objects.[3] They include the land, sea fronts, forests, lakes and rivers; also places and things associated with life and death. Although the degree of tapu varies, all these taonga touch the "heart", the manawa pa (desires) and ngakau pa (ends) of the people (B24:15).

Specific to this claim are taonga that are wahi tapu like Manuwhetai, Whangaiariki, Kabarau, Te Taraire and Kawerua which have been desecrated, damaged or destroyed through land alienation, settlement and development; the removal and loss of control over material objects like the wakatupapaku of Piwakawaka and Kohekohe; and the loss of mahinga kai in the traditional resource areas of Waimamaku, Waipoua and Kaihu.

The sufferings of the whatu-ora over the loss of their taonga and kaitiakitanga can only be understood if we appreciate their world view of the environment and their physical and spiritual relationship (D27:2-3).

Emily Paniora provided a very clear view of the all inclusiveness of taonga and of the Te Roroa perspective with respect to them when she said:

> This is all ancient ancestral land, rich in our history, of the lives of our Tupuna. It is land which, like Pakeha history books, tells us where we came from and where we belong in the Ao-Marama. It defines us as a people. It is land which vividly brings history to life for us. The location

> and stories of the Wahitapu, kainga, mahinga and pa remain known to this day. These places form an essential part of tangata whenua, part of the landscape of our hearts and minds, and remain part of our very existence to this day. (D12:2)

Daniel Ambler expressed a similar view when he referred specifically to Kaharau:

> Our Tupuna knew exactly why they wanted that land [Kaharau] left as a reserve. I can see the sense of the petitioning for the land knowing full well that as far as Maori is concerned, Land, Urupa, Wahi tapu, Koiwi, taonga are all one, and cannot be separated. Part of the grief must be the alienation of the people from their land and those things connected with it, the things they loved. (D21:2)

Counsel for the claimants explained:

> The physical presence recalls the name. The name recalls the event. The event recalls the whakapapa. The whakapapa recalls the connection between things past and things present. The connection between things past and things present is the element which gives Te Roroa its pride and identity. (I1(e):69-70)

The claimants believe that their mana whenua over areas which contain taonga like wahi tapu, requires the fulfilment of certain obligations. There is the right as well as the duty to "keep warm" the taonga within the rohe. Claimant Tutenganahau Paniora was emphatic about this:

> If they [the wahi tapu] are not cared for and protected they will start to lose their mauri and their tapu. Then they will die, and a part of Te Roroa will die with them. (C2:4)[4]

Te Roroa believed it imperative that their taonga are protected and restored to their care. Only in this way will taonga come to be respected and valued for the treasures that they are (D27:6). And since wahi tapu were and are taonga belonging collectively to the whole iwi (or to which the whole iwi belong) the benefits would be that:

> the whole iwi ... gains spiritual identity and well being from these places, it is the iwi which attracts the duty of Kaitiakitanga or stewardship. (I1(e):61)

6.3. The European Perspective

Modern European views of the natural world and natural resources are essentially scientific. For the purposes of study and research scientists divide the whole into its component parts and classify the parts. In other words, they do not share the Maori view of the unity of people and the treasures they produce, with the land and the cosmos. Nor do they share the Maori view that "Names, knowledge, ancestors, treasures, and land are so closely intertwined ... that they should never be separated".[5]

From the time of Cook's first voyage, and out of a spirit of scientific curiosity, Europeans have collected natural history specimens and Maori artifacts by gift exchange, barter, trade or fossicking. These things have been stored in private houses and museums. Like the Elgin marbles, in the words of Lord Byron, they could be called "Poor plunder from a bleeding land".

Until recently, few questioned the rights of museums to collect and hold natural and cultural treasures of other people. Indeed the prevailing view was (and still is in some quarters) that treasures should be preserved, protected and controlled by museums, in the interests of science and enlightenment. At the turn of the century, this view was encouraged by the general belief that the Maori were a dying race who had neglected to preserve their own treasures because of their religious ceremonies, tribal wars, migratory habits and custom of allowing these things to "perish by decay or by time" (H4(b)(i):36).

Simultaneously a Pakeha vision of Maori culture as an important ingredient of a distinctly home-grown New Zealand culture was beginning to emerge.[6] The Polynesian Society, founded in 1892, amassed a treasure-trove of information on Maori history. Museums, established in the four main centres to house specimens collected during geological surveys, began to acquire and display large research collections rich in Maori ethnology. Curio hunting was an exciting pastime; dealing in curios a lucrative occupation.

In 1901 a parliamentary bill was introduced to prevent the loss of Maori "relics" from New Zealand's shores. In tandem with the bill, was the suggestion that a national museum be built to house a collection of objects of old Maori "art". This was the beginning of a succession of statutes designed to preserve and protect taonga for European purposes.

"Relics" at this time were generally considered to belong to the owner of the land on which they were found. If they were "found" on Crown land they belonged to the State (H4(b)(i):14-15,17). If they were offered for sale by the finder or land owner, the government should have a preemptive right to purchase them.

The Maori Antiquities Act 1901 sought to prevent the removal of Maori antiquities from the colony, except with the consent of the colonial secretary.[7] This was the first of a succession of statutes providing for the preservation and protection of taonga. Underlying this legislation was the official and public view that Maori taonga were part of the national heritage which should be preserved for scientific research, art appreciation and public interest. This meant the separation of taonga from the people and land to which they were related for safe storage in museums. It also meant they would be managed and controlled by public bodies and that the public would have access to

them. These appropriating tendencies of an emerging "One New Zealand" continued until challenged, first by the efforts of Ngata and the Young Maori Party to hold fast to their Maoritanga, and secondly by Maori protest of the 1970s.

This legislation dealt separately with different types of taonga in accordance witb the way Europeans divide and classify the world. From Maori antiquities, it moved on to historic places and buildings, then to archaeological and traditional sites. As we come to deal with the taonga particularised in this claim we shall examine the relevant provisions in this legislation. In effect they serve to indicate changing European perspectives relating to the preservation, protection and control of taonga.

6.4. Wakatupapaku

The desecration of Kohekohe

6.4.1 On 6 April 1902, James Morrell Jnr and his friend, Bougen accidentally came across the caves at Kohekohe containing carved chests and human remains (H4(a):116-117; H4(a):104-5). James's older brother, Lou, later visited the caves several times and discovered that the largest contained about 60 skeletons, six enlarged images and one wooden box with a lizard carved on it and that altogether there were about twelve caves or crevices containing one or more skeletons. He removed the lizard carving and an image to his home "to prevent possible vandalism" (H4(a):105).

Ngakuru Pana, Iehu Moetara and other local Maori visited Lou Morrell and demanded that he give the "tiki" to them for burial in the local cemetery. Morrell promised he would do this. John Klaricich suggested that the law of tapu may well have deterred them from physically attacking Morrell (D17:25). Afterwards Morrell had doubts that he would be doing the right thing by complying with local Maori wishes. He felt that "such good specimens of Maori carvings" should not be destroyed and sought advice from the commissioner of Crown lands, Mueller (D3:420). Mueller advised that as he had known the caves were on Crown land he should have reported his discovery to the government and "not have touched any of these things about which Maories as a rule are very jealous" (H4(a):13). Mueller also asked the local government road inspector, G G Menzies, to take charge of "the carvings" and remove them to Rawene until it had been decided what should be done with them (H4(a):12).

On 6 May, Menzies reported to Mueller that he had "taken possession" of the carvings and the Maori had requested delaying their removal to Rawene until they had held a meeting (H4(a):19).

> The tribe of Natives who are at present living in the Waimamaku Valley did not appear to know where the Caves were situated, but had some traditional knowledge of there [sic] whereabouts .... the bones and relics did not belong to their tribe but to the tribe which at present reside

> Chiefly at Otaua.... The tribal name is Ngaitu a Section of the great Ngapuhi tribe. (H4(a):24)

This statement is borne out by evidence later given by Heremaia Kauere to the magistrate, E Blomfield:

> Ngaitu made all these things. Kohuru was the man that made them; he was a chief, and was skilled in carving, and an instructor to the tribe. He lived at Otaua... (H4(b)(ii):291)

Menzies was further instructed to take charge of the carvings in Morrell's possession and take what steps he thought necessary to prevent the removal of anything out of the caves (H4(a):20).

A day later W C Kensington, undersecretary of the Department of Lands and Survey, wrote to Mueller:

> before asking you to send up these carvings to be placed at the disposal of the Hon. the Native Minister, it seems only right to inform the Maori claimants that as these curios were in the caves before the Government bought the land, it would not be fair to deprive them of them without their consent.
>
> You might kindly have it explained to these Maories who are interested, that it is proposed to hand over the carvings to the Hon. Mr Carroll to place in the Museum for the Collection of Maori Curios ... and that they should help forward this good work by allowing these valuable specimens ... to be sent to the Native Minister. (H4(a):21)

In the event, Mueller failed to require Menzies to obtain Maori consent for the removal of the carvings and Menzies appears to have ignored Mueller's instructions, for a month later Lou Morrell stated that acting on instructions from the Crown's land department, he himself had "removed all the carvings and curios" to his home (H4(a):105).

Iehu Moetara wrote to Mueller to remind him of their deep grief concerning the sacred resting place of their ancestors that had been desecrated by the pakeha:

> The bone chests containing our ancestors were uplifted by the pakeha from land that has been illegally taken by the Government .....
>
> ... We are in deep grief of your misunderstanding:—i.e. that you own our Wahitapu .....
>
> This letter really pleads to you to leave with us the right of our Tupunas bone chests of which you have given G. G. Menzies the right to take to Rawene .....
>
> ... we plead to you to heed our prayers to our rights of sacred ground (Wahitapu) of our noble ancestors and that they be returned with all its possessions as those places are very dear to us. (D14:3)

Meanwhile, articles about the discovery of the carvings were published in the newspapers and the Native Minister instructed the lands and survey department to allow Menzies to allow photographs to be taken of all the carvings lately found (H4(a):49). An item in an

Auckland paper expressed the view that Maori in the neighbourhood had no right to the carvings as they were "not even the descendants of the men who executed" them (H4(a):44). T F Cheeseman, curator of the Auckland Institute and Museum, and others asked the Native Minister to hand the carvings over to the museum, which the acting premier, Sir Joseph Ward, promised to do (ibid; H4:24).

On 20 May, Carroll wired Mueller:

> I have instructed the Sm of the district to investigate the claim ... in any case I intend to get them [the carvings] eventually & I think probably hand them over to the Auckland museum as I find that my colleague Sir Joseph Ward has made some promise in that direction. (H4(a):56-57)

The Crown researcher stressed that up to the time of this promise, government officials acted in a "considered and careful manner", consistently taking into account that Maori people had "an interest in the carvings" (H4:21). He suggested that this decision was made summarily, without very much information and that Sir Joseph Ward, "did not know that there were Maori interests involved, nor did he know that the antiquities were associated with human burial" (H4:22-24, 64; see also I2:(b)(vii):13). Crown counsel based her final submissions on his views. Crown officials had severely reprimanded Morrell and appreciated the unfairness of depriving the claimants' tupuna of their taonga without their consent. Cabinet's decision to remove the taonga to the Auckland Institute and Museum was made without the knowledge of tangata whenua concern (I2:(b)(vii):13, 26-27).

Counsel for the claimants found this a "staggering conclusion", the crux of the matter being that:

> the carvings were Maori carvings and the Government made its decision summarily without regard to the wishes of the Maori owners. (I1(b):116-117)

We share the claimants' view that the Crown was more deeply implicated in the removal of wakatupapaku and koiwi from the Kohekohe caves than Crown counsel was prepared to admit.

The facts of the matter are first, that under s147(2) Criminal Code Act 1893, anyone who "Improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not" was liable to two years' imprisonment with hard labour. Secondly, the Crown failed to enforce the Criminal Code Act in respect of the removal of koiwi from the Kohekohe caves. The Crown's failure breached its Treaty obligations both to protect the actual physical remains of the ancestors of nga hapu o Waimamaku and to treat all its citizens equally before the law. Thirdly, in deciding to hand the carvings over to the Auckland Institute and Museum, ministers failed to consider the wishes of tangata whenua.

The stipendiary magistrate, E C Blomfield, mistook the date set for a meeting at Rawene, and it was left to Menzies to tell local Maori what

Cabinet had decided. Much incensed, they said that Ward had no right to dispose of their property and that they would await Blomfield's arrival to discuss the matter.

The claimants interpreted this as "amazing loyalty to and reliance by ... Maori people of that time, upon the Pakeha judicial process" (D17:34), showing that they "were prepared to submit to the Law probably ... because they trusted the system and believed their rights would be vindicated" (I1(b):117).

But these people included Ngakuru Pana, and relatives of "friendly chiefs" such as Hapakuku Moetara, who four years earlier had intervened in the dog tax rebellion at nearby Waima in an attempt to reach a peaceful solution. It seems more likely, therefore, that they had a realistic appreciation of the consequences of opposing the law than trust in British justice.[8]

The Rawene meeting regarding the future of the Kohekohe wakatupapaku was held on 21 May 1902. Menzies represented the Crown, which claimed the articles as being found on Crown lands. Blomfield represented the Native Minister, who wished to act as a mediator. Blomfield's first step was to obtain from the Maori a list of the sacred things which had been left in the cave by their ancestors. This list practically tallied with the settler's description of the articles discovered (D3:315).

Blomfield's second step was to discover whether the local Maori were the "owners" of the wahi tapu. From the evidence he was given, he concluded that they were. As he did not think the Crown's right of treasure trove or otherwise extended to the bones of an ancestor, or the receptacle of such bones, he considered it advisable to temporize and agree to concessions. Eventually he persuaded the chiefs to show their mana by handing over the articles to the Native Minister on the terms set out in a petition, provided a final hui (poroporoaki) was held before the articles were removed (ibid).[9]

The principal chiefs concerned were Ngakuru Pana and Iehu Moetara of Waimamaku, and Hoterene Wi Pou and Heremaia Kauere of Otaua (ibid).

The petitioners prayed that the "ornaments" be taken out of the hands of the Crown and be vested in the Native Minister as trustee on their behalf. The following "trusts" were sought from him:

(a) that the "ornaments" be deposited in the Auckland museum where they would not be touched or removed;

(b) that they remain there forever without disturbance;

(c) that a printed account of their celebrated ancestors who made and were connected with the carvings be lodged with the "ornaments"; and

(d) that they be re-granted a portion of land including the wahi tapu taken by mistake, that is Kaharau. (H4(a):75-76)

Blomfield reported to Carroll that feeling was very strong against the desecration of a "wahi tapu", and he had feared there would be serious trouble if the Crown persisted in its determination to remove the sacred articles (D3:315).

Yet the plain truth was that before Blomfield negotiated the trade off with the chiefs, the wakatupapaku containing the koiwi, under Menzies' instructions, had been itemised and carefully packed up by Morrell ready for shipment to the Auckland museum (H4(a):61-63, 116-117).

Counsel for the claimants thought Iehu Moetara and Ngakuru Pana had been "bulldozed into submission". Furthermore, it seemed very likely that they thought the petition would provide them with "a lever to convince the Government to give the land back" (I1(b):120-1).

When Blomfield received the inventory, he was very sorry to see that it included "a number of portions of human skeletons". He had "no idea that all these things had been taken by Morrell". He told Menzies that if the Maori knew that they had been taken, there was bound to be trouble:

> Unless you have had direct instructions from head quarters to take these things, the best course is to instruct Morrell to get these back to the Wahi-Tapu secretly and as quickly as possible. We must keep good faith with the Natives, and must not do more than we can help to infringe on their sacred customs and traditions, which have already been trampled upon. (H4(a):103)

On 8 August, under Menzies' instructions, all eight wakatupapaku were taken from Morrell's house to Opononi and held there by the storekeeper. They were delivered to Rawene in five cases by 16 Maori on 13 August and taken to Menzies' house where they were unpacked and exhibited (H4(a):130, 132-135). The claimants say that tbe wakatupapaku were despatched before the tapu was lifted.

The final hui, referred to as a tangi by Menzies, was delayed until the arrival of Ngakuru Pana on 20 August. Details of the hui are sketchy. Blomfield did not attend despite his earlier promise (I1(b):124). Pbotographs were taken of 12 Maori in close proximity to eight carvings (H4:44). Six cases containing the wakatupapaku, arrived from Rawene in Onehunga on 29 August and were safely received by the museum (H4:45-46).

The witness for the Crown assumed that:

> A ceremony must have been performed to temporarily lift the tapu so that when the carvings were unpacked and displayed for view they were not dangerous in any way. (H4:43)

Counsel for the claimants stated that:

> The taonga were transported to Rawene where Tangata Whenua bid them a last farewell. (I1(b):124)

Whilst the tapu had been formally lifted, nevertheless the tapu of the taonga themselves was never lost and still remained.

Were the prayers of the petitioners to the Native Minister answered?

6.4.2 The claimants allege that the Crown failed to ensure the strict adherence to the trusts vested by the chiefs in the Native Minister for the "ornaments" from the Kohekohe caves (A1(i):50). As the claimants' witness, John Klaricich saw it, the petition:

> would have been a founding document upon which the Auckland Museum would receive the taonga into their care .....
>
> The first responsibility of the Museum ... should have been to respect the terms of the Trust....
>
> The museum no doubt felt justified, that handling the articles for the sake of scientific study, did not breach the petition. (D17:37)

John Klaricich wondered how many hands of scientific people had handled the taonga, and, in retrospect, how this could be justified by them. He did not believe that the trust conditions had been given adequate recognition by previous museum staff and Native Ministers (D17:45):

> the will of scientific people, Crown and agents of the Crown were too strong to be challenged... (D17:52)

The curator of the Auckland Institute and Museum, T F Cheeseman, was prepared to accept "the guardianship of the carvings" and understood that the carvings were to remain for ever in the museum, with a printed account of each (H4(a):161-162, 166-167; G7:2).

Roger Neich, ethnologist at the Auckland Institute and Museum, explained that it was:

> physically impossible for museum objects to be literally "not touched". They had to be brought into the Museum, preserved and then placed in their display case .... they were then protected ... and ... certainly [have] never been able to be touched by Museum visitors .....
>
> Several of the chests were on public display for many years, with printed labels stating their history .... In the storerooms, the museum has allowed handling for the sake of study and research at various times .... under the strict supervision of museum staff .....
>
> Finally, in the mid 1980s, the boxes ... were removed from display and placed in storage .... because the Museum was undertaking a major renovation of its displays of taonga Maori .... [They had] not incorporated the boxes in the new display ... because ... [they] knew that discussion over the trusteeship of the boxes and their appropriate repository were being initiated in Te Tai Tokerau. (G7:5-6)

Crown counsel submitted that the petitioners agreed to display the chests. There is no evidence that printed accounts of the ancestors were ever obtained from nga hapu o Waimamaku to be lodged with the wakatupapaku. The kaitiaki, who knew their history, would not have divulged this to strangers. Claimants' counsel submitted that public display:

> would have been contrary to the whole concept of tapu .... the signatories to the petition intended the Taonga to be stored out of human sight and touch, as they had been at Kohekohe. That would have been consistent with everything their culture required of them. (I1(b):122)

The Crown's failure to return the portion of land containing the wahi tapu known as Kaharau will be examined in a later section of this report. Suffice it to say that the claimants regard this as "a promise" by the Native Minister and the Crown, as a request by petitioners (D17(a):1; I2:(b)(vii):27). In point of fact the Native Minister promised to talk to the government and ask them to give back the wahi tapu to be in reserve for ever (H4(a):113-114). The evidence shows that they were willing to reserve the specific sites of the caves but not Kaharau as a whole. Officials saw the wahi tapu as being the caves themselves, not the whole area.

In response to Reupena Tuoro's request for a further inquiry into the wakatupapaku, Blomfield advised that it would never do to reopen the question (H4(a):163, 188-189; 11(b):126).

By accepting the trust the Native Minister was surely implying his acceptance of the conditions in the petition. In John Klaricicb's opinion, the minister erred:

> in that he should have insisted on adherence by the museum to the trust, then consulted with Hokianga kaumatua for a variation to the terms. No respect was ever paid at all to this factor.
>
> It was also incumbent on the Crown to respond to the signatories of the petition, and state their position ....
>
> Silence on their part, can be construed by people as an artifice of the Crown to retain control over the Kohekohe taonga. (D17:37)

The Crown researcher concluded that a "sequence of subterfuge and deceit" led ultimately "to the human remains being deposited in the Auckland Museum, without the knowledge of Government authorities" (H4:34). Counsel for the claimants considered that "inadequate steps" were taken to have the koiwi returned (I1(b):154).

The evidence is that Blomfield instructed Menzies to return the human remains secretly to the caves. But either through choice or negligence, Blomfield failed to see that his instructions were carried out. Clearly the Crown acted in bad faith in arranging for the wakatupapaku and koiwi to be removed from the caves and deposited in the Auckland museum, contrary to the express wishes of tangata whenua and in violation of their tapu.

The return of the koiwi

6.4.3 By the late 1980s attitudes to the appropriateness of the museum as a repository for wakatupapaku and koiwi were being questioned. As Wiritai Toi, a Kokohuia kaumatua, wrote:

> At long last, positive moves were being instigated to rectify some of the injustices of the past. The doors were now open for the iwi to formulate a kaupapa for the fate of the taonga and in particular, the procedure for the return of the ko-iwi for burial. (D17(a):15)

In November 1987 the Minister of Maori Affairs, Koro Wetere, attended a hui at which he transferred the trusteeship of the Kohekohe wakatupapaku and koiwi to three interim trustees: Sir James Henare, Reverend Piri Kingi Iraia and John Klaricich. In doing so he was aware there were competing claims to ownership, but he did not propose to adjudicate on these claims, as he regarded them as domestic matters. The trust he held was not intended to weigh these matters, but simply to keep custody on behalf of the Hokianga people (D17:61). The people of Otaua did not attend the hui; nor were they represented or consulted. The reason for this is expressed in the whakatauki:

> E kore te miro e rere ki te kukupa e ngari ko te kukupa ka rere ki te miro.[10]

The formal return of the koiwi to Waimamaku took place on 13 May 1988. Reverend Piri Kingi Iraia, Taurau Reuben Paniora, Hone Toi Marsden, Lou Goff Rawiri, Wiritai Toi, Howard Paniora and John Klaricich went to the Auckland Institute and Museum to collect them (D17(a):17). The Otaua kaumatua, Rapata Whiu did not go to Auckland although he was among those selected to go (D17(a):16-17). According to John Klaricich "Piri Iraia ... took all the heat and sting out of what could have been a very sensitive and divisive situation" (D17(a):2).

Three of the group went to the top floor room of the museum where the koiwi were held and carefully packed them in boxes. They returned with the others of their group to the museum at 2.30 the next morning to be greeted by Tainui waka, representing the Maori Queen, who had brought the boxes containing the koiwi down to the Hotunui marae on the ground floor, the first leg of the journey home. Following a mihi, tangi and the "handing over" of the taonga, the koiwi were transported by the group to Waimamaku, where they were buried at Te Ahuriri. Wiritai Toi found this kaupapa to be "very sad, thought provoking, inspirational, spiritually uplifting and culturally fulfilling" (D17(a):1).

To John Klaricich, "The overriding emotion was the utter desolation". "To pick up and fondle the remains ... was to realise how many other hands" had done the same (D17(a):9). The koiwi "were beautiful. The strength of character even after all these years clearly depicted local characteristics" (ibid:3). He had visited the cliffs and caves and they were "beautiful places[,] secluded, having the dignity of everything

endowed by God's hand, places eminently suited to the purpose". He was sorry to have been present to see the koiwi reinterred for he could imagine them in their waka, or in the cave where they rightfully belonged. Part of this heritage had been lost forever (D17(a):9). The Otaua people did not attend the burial at Te Ahuriri.

Following two more hui, 12 trustees of the Kohekohe wakatupapaku were selected to replace the interim trustees, but as yet they have not been formally appointed by the minister (D17:61), who in January 1990 expressed his reservations, as trustee, about the destiny of the wakatupapaku. He felt obliged "not to abandon the principle that they should be preserved for posterity". He was "of the view that this is best carried out in a modern museum, staffed and equipped for the task" but "If a suitable alternative could be built in the Hokianga then ... repatriation would take on a practical, more positive, aspect". He thought that the findings of the tribunal might "interfere" with his proposals to transfer the trust, and its recommendations might supersede any decisions that he and nga hapu o Waimamaku might make beforehand (D17:att). The minister's reservations make it abundantly clear that the handing back of the guardianship of the wakatupapaku was not unconditional.

We cannot wholly accept counsel for the Crown's view that individuals "insensitive to Maori custom" desecrated the Waimamaku caves not the Crown. Nor can we wholly share her view that the Crown initially made a "real effort" to protect Maori interests and sensibilities "when it became appraised of the situation" (I2:(b)(vii):40).

A cynic could well say that the Crown tried to persuade tangata whenua to consent to the preservation of these taonga in museums to prevent a breach of the peace, not the Treaty. Undoubtedly the Crown and its agents rode roughshod over their Treaty obligations in failing to uphold the traditional rights of nga hapu o Waimamaku to preserve, protect and control these taonga.

It is not for us to adjudicate on the claim as to traditional rights of kaitiakitanga over the wakatupapaku in the Auckland Institute and Museum, nor to express our views on whether they should remain there for all time or be returned to the Kohekohe cave or re-housed in a special place on ancestral lands where they belong. Tangata whenua need to resolve these issues among themselves.

The Dannefaerd carvings and other small artifacts

6.4.4 The claimants allege that two further purchases of wakatupapaku from Piwakawaka were made by Hamilton in 1906-7 from Dannefaerd, one for the Colonial Museum, the other for Hamilton's private collection. They also claim that the Crown has failed to prevent the removal of Waimamaku taonga from New Zealand; that one wakatupapaku is

now in Melbourne, Australia and the other is believed to be in Austria (A1(i):51).

Three burial chests now held at the National Museum are known to have passed through Dannefaerd's hands. Two of these were sold by Dannefaerd in 1888 and one in 1906.

Of the two sold in 1888, one was initially held at the Museum of Victoria in Melbourne and was repatriated in August 1990; the other went to Hamilton (H4:98-99), who kept it in his collection in Napier. The Melbourne chest was described as having been found in a cave, from "Hau Haus, Uh Sect" or "Hau Hauhau tribe" (H4(b)(ii):352); Hamilton's chest as having been found in a cave near Auckland "together with another specimen in better preservation, now in Melbourne" (H4(b)(ii):412). The third chest was purchased in 1906 by Hamilton for the Colonial (later National) Museum. Dannefaerd's correspondence with Hamilton suggests it may have been found on private European property in a very dry limestone cave, somewhere around Taheke, a small village close to Otaua.

Following professional geological advice, the Crown researcher suggested that this wakatupapaku possibly came from near the Mangamuka river (H4:102, 105).

Once again the oral evidence conflicts with the scientific evidence and is insufficient to support the claim. The wakatupapaku once held in Melbourne appears to have been exported before the passing of the Maori Antiquities Act 1901. There is no evidence that the wakatupapaku believed to be in Austria passed through Dannefaerd's hands.

The Morrell canoe

6.4.5 A further item which the claimants say came from Kaharau and was taken to the Auckland Institute and Museum is a canoe, donated by Morrell. Roy Ambler, a local farmer, said that in his youth he had seen the canoe displayed there.

Museum officials could find no record of any such canoe and concluded that they could "only reach the conclusion that there is [not] now and has never been any such canoe in [the] Auckland Museum" (I9:2).

Blomfield in his reports used the word "waka" on two separate occasions to distinguish the wakatupapaku with the tuatara nui on it from the other wakatupapaku, which he called "tiki".

Hypatia Morrell noted her brother Lou "brought a canoe" home after visiting the "Maori Caves" in April 1902 (H4(a):4). Lou Morrell described this chest as a "lizard in bas relief, on what is much like an inverted section of a Maori canoe or washing trough" (H4(a):105).

The evidence suggests that the canoe Roy Ambler remembers seeing may well have been this wakatupapaku.

The claimants' witness, John Klaricich, has asked why greenstone and other such artifacts known to have been discovered and removed from Kohekohe cannot be identified in the Auckland museum (D17:32). Could this be attributed to confusion over the origins of some fine ornaments said to have been contained in the "Kohukohu" wakatupapaku, which was offered to T F Cheeseman, director of the Auckland museum, by Percy Blundell of Kohukohu, who described it as being "similar to those sent by Menzies" (H4(a):270)? Blundell was acting on behalf of a young man named W R Welsford. Welsford stated he had found it with other artifacts in a cliff of limestone rocks while grading a road on the ranges at Mangakahia. Blundell believed Welsford had never been to Mangakahia (H4(a):273-276, 281).

An independent geological expert consulted by the Crown thought the cliff was most probably on the main road from highway one to Kohukohu, one to three kilometres south-west of Mangamuka bridge alongside the Mangamuka river, as there were no limestone bluffs or cliffs in the Mangakahia valley (H4(b)(ii):468-469).

Roger Neich of the Auckland Institute and Museum stated that greenstone items from the Kohukohu chest were properly identified and registered in so far as it was known what was originally in the chest. The documentation for this chest did not explain the apparent absence of greenstone artifacts from Kohekohe. If it could be demonstrated that the Kohukohu chest did come from Kohekohe, this would account for five greenstone items (G7:4). Clearly further research is needed before any claim can be made.

Were urupa at Piwakawaka desecrated?

6.4.6 The claimants allege that there was a second incident of desecration of urupa at Piwakawaka (A1(i):46-47, 51).

According to Simon Reuhen, Piwakawaka was at one end of Kaharau and Kohekohe at the other. The elders never mentioned Kohekohe or Piwakawaka to the young ones in order to keep the existence of the caves a secret. In his day, only his Uncle Pera and one or two of the leading rangatira knew of their whereabouts. This secrecy ensured that the resting places of their tupuna would not be desecrated and worked well until the ana were "discovered" by Morrell (D7:3).

Prince Reuben remembered collecting bones from around Piwakawaka with his father, Aperahama Reupena Tuoro when he was only 10 or 12 years old but he did not recall seeing the caves or crevices themselves. Nor did he recall his father entering any of them. He was told not to go on to Piwakawaka because it was tapu (D30:1).

John Klaricich remembered his uncle, Taurau Thompson and brother-in-law, Piri Iraia, speaking of Piwakawaka and another wahi tapu known as Te Rereapouto which contained the bones of Te Roroa and Ngati Pou. Piri Iraia, having had the mana of kaitiakitanga bestowed upon him by his kaumatua, recounted stories about the removal of

items from Piwakawaka and Te Rereapouto and how powerless they felt to do anything about it (D17:1, 40).

The location Piri Iraia and Taurau Thompson knew as Piwakawaka, was the same as that given by Bill Naera, a respected elder, to Aileen Fox in 1978. It also corresponded with the trigonometrical point named on Weetman's 1876 check survey plan and with another unexplored urupa Menzies had been told about in 1902 (H4(a):23-26). By that time, John Klaricich thought the desecration had already begun (D17:40). Items ostensibly "found" elsewhere could be traced back to Piwakawaka and other nearby caves; two local settlers were linked to the incident and "Both showed signs of tapu" (D17:47). The tuturu kaumatua, Piri Iraia and Taurau Thompson had spoken of the Piwakawaka incident many times in his presence:

> not with a sense of outrage but with sadness that a trust had been breached ....
>
> .... They most certainly knew that Kohekohe and Piwakawaka were different places, and that they were looted in separate incidents. (H44:7-8)

Oral traditional evidence given by the claimants shows irrefutably that there were caves or crevices containing the dead at a place named Piwakawaka, separate and different from those at Kohekohe. Nonetheless the Crown researcher, after carefully sifting through the evidence, submitted it was inconclusive (H4:92). Before the Crown was prepared to concede that burial caves or crevices at Piwakawaka existed and had been looted in a second incident, it required corroborative scientific and documentary evidence (I2:(b)(vii):31). Such rigid requirements clearly reflected the unwillingness of a professional archaeologist to adopt an interdisciplinary approach to the study of tribal society.

Did the seven carvings known as the Spencer collection in the National Museum come from Piwakawaka?

6.4.7 On the basis of oral tradition supplemented by some documentary evidence, the claimants identified the seven wakatupapaku known as the Spencer collection in the National Museum, Wellington, as items taken from the ana at Piwakawaka (D17:52). Two local carvers who are inheritors of the unique Kohuru tradition of carving supported this view. They are Benjamin Te Wake, who at the age of 16 years was taught Maori carving and its principles by the tohunga whakairo, Eramiha Te Kapua of Tuhoe, and Manos Nathan, Benjamin Te Wake's pupil. Te Wake said, that of the eight "tiki" (wrongly described as wakatupapaku) taken from Kohekohe and Piwakawaka, six were much older than the rest and could date from 1385 to 1500 or to mid

seventeenth century (D14:1). Manos Nathan said that when he saw the wakatupapaku in the National Museum in 1968:

> Something deep within me recognised these taonga and I knew in my bones that I was in the presence of the sacred work of my tupuna. (D13:1-2)[11]

The Crown researcher concluded that the wakatupapaku had been damaged before 1983. Lady Fox had ohserved that the head was broken. Possibly it had been broken before 1913, as museum staff claimed that a photograph taken prior to that date showed the break (H4:95). He also concluded, from information he had received from the executive director of the board of trustees, "that temperature and illumination conditions are satisfactory, but that relative humidity is slightly above the ideal range". Overall therefore it was "satisfactory" (H4:96).

On the basis of exhaustive documentary research, the Crown researcher concluded that while it was possible that some or all of the carvings known as the Spencer collection did indeed come from the Kaharau area, he did not think this origin was very likely. A number of origins were possible but the available evidence did not enable him to ascribe collective or individual origins for the collection "beyond the general designation of *North Auckland*" (H4:97). He later suggested there were strong indications of their being provenanced to the Omanaia area (H51:71-72).

In the final analysis the Crown could not be comfortable attributing any one wakatupapaku to a specific area without carrying out scientific tests of wood and soil samples (D25). Such tests were culturally offensive to the claimants who quite understandably would not authorise them to do so. Nor was the Crown comfortable with the evidence of the local carvers and obtained an opinion from an outside Pakeha expert (H51:34, 59-60).

In his closing statement, counsel for the claimants pointed out that no other iwi had claimed the taonga:

> Ultimately the Tribunal must decide on the balance of probabilities that is whether it is more probable than not whether the Spencer collection is provenanced from Piiwakawaka. (I1(b):109-110)

Crown counsel responded that it was "not appropriate to brush off possible cross-claims in such a perfunctory manner" (I2:(b)(vii):39).

The purchase of the carvings from the Queen Street, Auckland, dealer in antiquities, E H Spencer for the Dominion Museum by the director, Augustus Hamilton, for £235 with Cabinet's approval (H4(a):235-236, 239) raised other issues. Did Spencer and Hamilton know where the carvings came from? And did Hamilton tell Cabinet all he knew when he sought its approval for the purchase?

The claimants contended that Hamilton knew they were from the same area as the Kohekohe carvings and deliberately withheld the

information from the colonial secretary (D17:56). The Crown contended that Hamilton did not know, was not able to find out and had no reason to think that any of them were actually from Waimamaku (H4:81).

The main point at issue between the Crown and claimants boils down to the credibility of the documentary evidence, in particular the correspondence between Hamilton and Spencer and Hamilton's correspondence with Cabinet. As Manos Nathan said, this "requires careful scrutiny" (D13:3).

Undoubtedly Hamilton must have appreciated that had Cabinet known the Spencer collection came from the same area as the Kohekohe wakatupapaku, it would not have been prepared to part with £235 and risk a repetition of local outrage. Furthermore Hamilton had "considerable difficulty getting Cabinet to part with so much money" (H4:78). Even so, the Crown researcher did not believe that the museum people would have withheld information from their masters. Hamilton himself "could not have lied" when he informed the colonial secretary that he had "just received word from Mr Spencer that there is no indication on the coffins as to where they came from" and that Spencer had "no personal knowledge as to where they were found" (H4:82 passim; H4(a):233).

Yet the fact remains that some months later (in 1908) Hamilton registered the seven wakatupapaku, first "from a cave N. Auckland" and secondly "from a cave Hokianga" (H4:80). Then in 1911, he noted in a Dominion Museum Bulletin that the museum had eight chests "from the same neighbourhood" as the Auckland museum ones (ibid). Seven of these constituted the Spencer collection, the eighth was one of the Dannefaerd collection. As the Crown researcher said, whether Hamilton had some concrete information "cannot now be determined with certainty" (H4:81). But, this is no reason not to think, as he did, that any of the wakatupapaku were actually from Waimamaku. In the aftermath of local outrage over the taking of the Kohekohe taonga and in the prevailing climate of concern to build up a national museum collection, it is difficult to believe a Queen Street dealer and the director of the Dominion Museum would have dared to admit to Cabinet all they knew about the provenance of such rare valuable items. Clearly Hamilton's letter to the colonial secretary was, as counsel for the claimants said, carefully worded (I1(b):146). Furthermore his letters to Spencer suggest that he was soliciting further information about where the wakatupapaku came from. Anyway, it seems most unlikely that a scholarly scientist and keen collector like Hamilton would not have deduced that they came from the same area as the Kohekohe wakatupapaku. Similarly it seems most unlikely that a Queen Street dealer like Spencer would not have had at least a fair idea of where and from whom they originated.

While we respect the oral evidence and evidence we have been given by local carvers that the wakatupapaku in the Spencer collection came

from Piwakawaka, it seems to us insufficient to support this particular claim. More research is clearly needed, particularly with respect to the network of contacts Spencer was working and to his source of supply.

6.5. Wahi Tapu

What is a wahi tapu?

6.5.1 The claimant, Alex Nathan stated that:

> According to our kaumatua, kuia and tupuna the whole of Waipoua is tapu. All the valleys leading down into the main valley, all the streams feeding into tbe main river, these are all tapu because of the mauri and mana attendant to and imbued in them.
>
> The majority of the wahitapu, wahi rahui and wahi kai identified are within the boundaries of what was the original Waipoua Native Reserve ....
>
> ... The present situation is that most of the original Reserve is now either private farmland (ex-Lands and Survey Department, Waipoua Land Development Scheme) or State Forest planted with exotic tree species. A lesser portion remains in native bush and scrub and only a remnant of the original land mass is still Maori freehold land. (B19:2)

The question we need to address at the outset is what is a wahi tapu? In s27 State-owned Enterprise Act 1986 a wahi tapu is defined as being "land of special spiritual, cultural, or historical tribal significance". Alex Nathan said that:

> Any place or feature that has special significance to a particular iwi, hapu or whanau can be wahi tapu but such places may not necessarily be significant to any other group. Hence a narrow definition is not possible. Wahi tapu cannot be forced into preconceived categories of importance and one group cannot determine what is wahi tapu to another. (C7:48)

For Maori, wahi tapu like taonga is an "umbrella term" that applies not only to urupa (burial grounds) but other places that are set apart both permanently and temporarily. These include places associated in some way with birth or death, with chiefly persons and with traditional canoe landing and building places. Temporary tapu are usually imposed and removed on hunting or fishing grounds or cultivations to conserve and protect the resource. They also include places associated with particular tupuna and events associated with them, set in order by whakapapa (B19:3-4).

To quote Alex Nathan again:

> They provide cultural and tribal markers wbich together with whakapapa mesh the people with the traditional landscape, providing both physical, historical and emotional links to the tupuna. Hence gross changes in the physical landscape, as are apparent here at Waipoua, can be compared in the Pakeha world, to the destruction of national treasures such as whole museums or art galleries.

> Only the kaitiaki or guardians of the tribal lore and history, in consultation with the iwi, hapu or whanau can bring together the different elements which must be considered, before the importance of particular places can be evaluated. (C7:48)

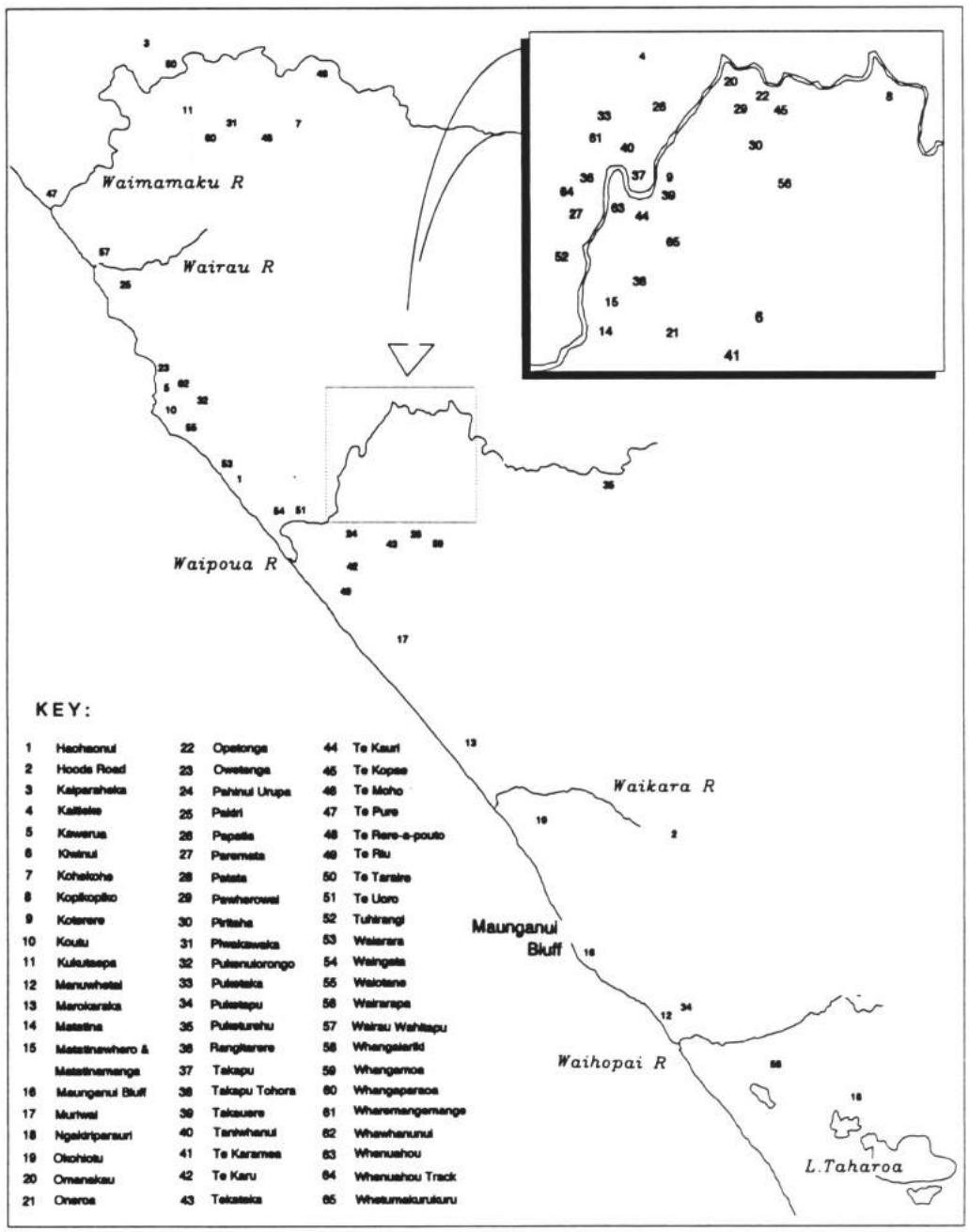

Figure 23: Wahi tapu cited in the statement of claim

A map indicating generalised locations of Te Roroa wahi tapu named in the claim is included in this section of our report. The exact location of wahi tapu is confidential information which is closely guarded by Te Roroa to preserve and protect these places from desecration, damage and destruction.

The beginnings of desecration and attempts to protect wahi tapu in Waipoua

6.5.2 The desecration and destruction of wahi tapu in Waipoua began largely as a result of the forest service's kauri logging and pine replanting operations on Crown land (that is, the Waipoua Native Reserve) and of the building of the main highway north through the forest 1925–1929.

Since 1906 when an area of 9173 ha of Waipoua No 1 was set aside as state forest, Te Roroa's traditional rights of kaitiakitanga over their wahi tapu have been relentlessly eroded by the Crown's management policies and practices. Mainly responsible were the commissioner of state forests in the lands department, 1906–1919, and the state forest service, 1919–1987.

Conflicting Crown interests in logging kauri, replanting in exotics, opening up land for settlement and conserving the kauri forest as a national park were resolved in 1952 by the setting aside of a 9113 ha kauri forest sanctuary (B2:12). By this time the Crown had acquired a substantial part of Waipoua No 2 (B2:145-147) and extensive damage to and destruction of wahi tapu had been done (C7:49-50). Furthermore, Te Roroa's access to their wahi tapu was being severely restricted or prohibited ostensibly to protect the kauri forest and pine plantations from fire and trespass (B2:22-34).

The late E D Nathan graphically described Te Roroa aureretanga (continuous crying):

> When they (the FS) first started here in 1924, I can remember my grandmother and her two sisters begging that these places not be planted. I can remember them crying because it hurt them. They thought that it was part of the system; it was hoisted upon them and they had to accept it. (B22:5)

To protect their wahi tapu from desecration, damage and destruction, Te Roroa kaitiaki exhumed the koiwi (bones) from caves in the forest and sand hills and buried them in urupa at Pahinui, Waimamaku and Pakanae. On a site visit, 7 July 1989 we saw one of the ancient burial caves formed by underground rivers beside the track off Teka Teka road within the Whangamoa urupa which is now a 22 acre reserve (Waipoua 2C block), although traditions among tangata whenua are that it should have been 80 acres (I1(e):94). In the Pahinui urupa, we saw a stone under which was buried koiwi of 76 tupuna from Whangamoa brought there by Te Rore Taoho in 1896. We were told that koiwi from Manuwhetai and Haohaonui had also been brought to Pahinui.

After experimental planting of pines began on Crown land in Waipoua No 2 in 1924, Te Roroa tried other methods of protecting their wahi tapu as the need arose, such as making representations to the forest service, the Native Land Court and ministers and pulling out pine tree seedlings. In 1939, Tanoora Enoka Te Rore appealed to the acting Native Minister over the completion of state forest service works including firebreaks in readiness for firing which intruded on their tupuna's wahi tapu (B7:247-248). Arrangements were made to take workmen off the area in dispute until it was settled by the Native Land Court (B7:249).

In 1947 Te Atarangi Paniora wrote to the court registrar objecting to the sale of the 55 acre Waiarara wahi tapu (B25:337-338). He was told it had been Crown land for many years and was included in the provisional state forest reserve. Two years later he told the head man planting pines at Haohaonui and Waiarara to stop because the bones of his ancestors were still there. The head man agreed not to plant the wahi tapu (B25:340). Ata had asked the court registrar to send him a map and list of trustees which would have indicated that the wahi tapu were Maori reserves, but no such evidence was found (B25:341).

An entry in the Waipoua forest journal shows that in 1951, discussions were held with Ata regarding a proposed 6.3 acre wahi tapu reserve along the Haohaonui stream. A further entry in 1952, regards the possibility of setting aside about ten acres of coastal land at Kawerua as a wahi tapu. The area would have been of "nil value" to the forest service (B25:1-3).

Early attempts by Te Roroa to protect their wahi tapu from damage and destruction were largely unsuccessful. Occasionally however, wahi tapu were excluded from replanting. Although the Crown was undoubtedly responsible for most of the damage and destruction, claimants acknowledged that their own people and other workers in the forest caused it. But they point out that the forest service "provided the only avenue of paid employment in the area and were run in an almost military fashion" (C7:50). Ronald Sowter remembered how during the planting time at Teka Teka, Panapa Paniora and Dawson Birch "knew it was Wahi Tapu and they didn't want to be the ones who would desecrate those places" so they left it to him and he fell down into a cave (C3:1). Others of the forest service ex-employees, told us stories about how they took avoidance action whenever they were told to work in tapu places (B40:3-4).

Until the 1970s, it was only the existence of the kauri forest sanctuary and traditional kaitiakitanga that protected Te Roroa wahi tapu on Crown land. "You talk about conservation groups and all that" Joe Paniora said, "We Maoris are the greatest conservationists of all time." (B22:136). On private property there was no protection for wahi tapu other than the owners' goodwill.

The beginnings of statutory protection

6.5.3 The Forests Act 1949 and the 1973 and 1976 amendments provided for protection of areas of scientific, historical, cultural, educational, recreational, scenic and aesthetic interest in state forests (B18:2). Perhaps the best known and most preferred mechanism by Maori to protect their wahi tapu is s439 Maori Affairs Act 1953 (C7:56). Upon a recommendation by the Native Land Court the governor-general may by order-in-council "set apart any Maori freehold land or any European land owned by Maoris ... to be held for the common use or benefit of the owners or of Maoris of the class or classes specified in the Order in Council".[12]

This mechanism has the advantage that the owner only has to identify not survey the land. Furthermore "It requires only limited public disclosure of information througb the MLC hearings and gazettal of the reservation" (C7:56).

More recent provisions for statutory protection of wahi tapu largely originated in the desire of Pakeha to preserve historic places as part of the nation's heritage and to carry out scientific investigation of archaeological sites. Two organisations in particular have fostered these objectives since 1954, namely the National (from 1963 New Zealand) Historic Places Trust[13] and the New Zealand Archaeological Association.[14]

The trust's functions included the recording and marking of places of national or local historic interest (such as wahi tapu) and the promotion and supervision of archaeological excavations (G3:3).

The New Zealand Archaeological Association in 1958 established a site recording scheme aimed at finding and recording archaeological sites throughout the country (H5:6).

Community concern at the destruction of archaeological sites for public works culminated in a major amendment to the historic places legislation in 1975 (G3:4). Specific provisions were made for the protection of archaeological sites from modification, damage or destruction, except with the trust's consent.[15] Under the Historic Places Act 1980, developers and others were required to obtain permits to investigate (s44) and authorities to modify or destroy (s46) an archaeological site. Investigations of archaeological sites could only be undertaken with the permission of the trust and concurrence of the owner and occupier of the land on which the site was situated. Where necessary and appropriate, concurrence from a "Maori Association" defined in the Maori Welfare Act 1962 could be sought.[16] The trust incurred a statutory responsibility to maintain a register of archaeological sites. Subsequently it undertook to maintain the central file of the New Zealand Archaeological Association site recording scheme.

From 1975 wahi tapu on both Crown and general land, which were identified as archaeological sites, could be legally protected but not other kinds of wahi tapu.

When the Town and Country Planning Act 1977 came into force, the trust sought to strengthen its powers of protection over property through their inclusion in district planning schemes (G3:4-5). Under the Historic Places Act 1980, an application might be made to the trust to have a place or a site declared a traditional site.[17] The trust might, after considering its importance in traditional terms, proceed to have it set aside as a s439a Maori reservation or refer the application to an appropriate Maori authority to consider the site and what action if any should be taken (s50). In Tipene O'Regan's opinion, this implied that the trust had a third alternative of acting "under its own mana to declare a site after *someone* had made application" (G2:5(a)). Under s50(4) it might make recommendations about boundary definition of traditional sites. Under s50(5), local authorities in whose district the traditional site was situated were required to take into account the desirability of protecting or preserving it (G6:9).

In effect the trust did not have the power to give legal protection to traditional sites. Protection only came about through agreements with interested parties (B22:136). An archaeologist who worked with the trust, Dr Ian Smith, was of the opinion that:

> the strongest protection ... has to do with the people who are involved and live there.
>
> The way in which you generate that kind of protection is by making things known. (B22:136)

Tipene O'Regan, who had been associated with the Maori involvement in tbe trust since February 1977, gave background evidence on changing concern with traditional site protection. About 1980, he said, those:

> concerned with ... heritage maintenance issues amongst the Iwi were few and far between. The rights of private property owners were fiercely protected and there was huge resistance to any steps to protect anything Maori that could be seen to interfere with those rights. (G2:3)

Within the trust:

> The archaeological dimension was greatly strengthened in debate ... by the aura of mana and authority drawn from its connections with universities and establishment values .... the Maori Land Court was unsupportive of heritage site protection also. It invariably supported what it saw to be the private property rights of individual owners against the tribe ....
>
> The hostility towards site protection based on Maori values in the larger community was matched by considerable apathy within most Iwi although some few concerned kaumatua around the country gave powerful personal support .....

> It was in the hui associated with Meeting House restoration projects that we promoted interest in traditional site protection and assisted hapu and Iwi to begin their own traditional site identification, recording and protection .... However, the general marae community attitude was shifting towards a concern with heritage and history and traditional sites began to be seen as taonga worth fighting for by a greater number. (G2:3-4)

During the whole of his association with the trust:

> The Maori membership of the Trust's committees have ... been concerned and, at times, distressed by the difficulty of securing protection for a huge range of sites of great importance to Maori on grounds of historic, traditional or spiritual association. We have felt that there was well entrenched legislative protection for sites on a grounds of essentially Pakeha academic interest but a gross lack of ability to protect sites on Maori grounds. Put simply it has been easier to protect an ancestral rubbish dump than a tuahu or a waka landing site or a maunga whakatauaki. In the 1970's and early 1980's we also experienced considerable resistance from professional archaeologists, including those on the staff of the Trust at the time, to our attempts to secure a similar standard of protection for sites of Maori value to that enjoyed by sites deemed to have archaeological value.
>
> Despite such resistance there was strong support within the Trust community for the advocacy led by a then Board Member and Maori Committee Chairman, Apirana Mahuika of Ngati Porou for statutory protection of what we had begun to call "Traditional Sites". (G2:2)

The advisory officer to the archaeology section of the trust and secretary to the trusts' archaeology committee, Anne Geelan, told us that policies and procedures with regard to managing archaeological and traditional sites under the 1975 and 1980 Acts were developed by respective standing committees, the archaeology committee and the Maori buildings and advisory committee (since 1984 the Maori advisory committee).

The approval of authorities to modify, damage or destroy archaeological sites and permits to investigate them was delegated to the archaeology committee with authority to delegate to the senior archaeologist. As many applications were urgent, this was common practice from 1982 to 1987. Since then decisions have been made by the director only, on the advice and recommendations of the senior archaeologist (G6:11-14). Consultation with tangata whenua over authorities and permits was done by archaeologists working throughout New Zealand. The trust itself did not consult with tangata whenua until recently when a proper consultative process was established (G6:13).

The deputy director of the trust, Carol Quirk, told us that in the early stages of site registration:

> there was no built-in mechanism for discussing the appropriateness of registration with tangata whenua. If the site was on Maori land, notice

> would be served on the Registrar of the Maori Land Court but no formal consultation with tangata whenua or indeed any landowner was ever provided for or carried out. (G4:9)

Concern about current procedures was evident in a file note from the director to the senior archaeologist in January 1984 which read "Every effort needs to be made to establish the identity of any owners, trustees, etc, and then to make a personal contact with them" (G4(a):III). "This directive", the deputy director explained, "was then to be followed by trust archaeologists" (G4:10). Initially decisions on site registration were made by the archaeology committee then delegated to the senior archaeologist (G4:11).

Applications to have a place declared a traditional site were considered by the Maori advisory committee on the basis of criteria and procedures set out by one of its members, Tipene O'Regan (G6:3, app 2). He argued that the recognition of Maori values and perspectives were valuable, and that the prime reference of the trust decisions should be that of traditional tribal association, but that ultimately the trust should rely on the assertion of an appropriate tribal group.

Further papers on traditional site policy were prepared and discussions continued throughout the 1980s. Changes proposed in a document called "Historic Places Legislation Review—Issues for Public Comment" 1988 included reliance upon tangata whenua to discuss site significance and making the trust subject to the principles of the Treaty of Waitangi (G6:4).

Forest service conservancy

6.5.4 There is no evidence of any Te Roroa wahi tapu being gazetted under the Forest Act 1949. In 1964 the forest service made formal provision for preserving archaeological sites and marking their location on working plans in response to a request from the New Zealand Archaeological Association (C8:7). To meet its legal responsibilities in Waipoua under the Historic Places Amendment Act 1975, the forest service embarked on a policy of preserving archaeological sites. "Preservation of archaeological sites" the conservator of forests reminded Waipoua staff after a bulldozer damaged pa sites in 1979, "is just as important as any other management operation and must be treated as such" (B25:9).

Henceforth authorities and permits had to be obtained from the Historic Places Trust before logging, clearing, planting and other forestry operations on Waipoua archaeological sites could proceed. Two archaeologists were employed by the forest service's Auckland conservancy to cope with supervisory and conservation work (C8:8-9). It became their responsibility to recommend to both the forest service and the Historic Places Trust preservation, investigation or destruction of sites after adequate site recording.

In response to the forest services's coastal planting programme which had exposed burials and modified pa and midden sites, an archaeological

field survey was conducted in Waipoua in 1977–1978 (B25:6-8, C8:20). By this time the forest service was beginning to realise that there were extensive stone and earth works in compartments 5 and 15 in the Waipoua river valley, which they planned to log. In 1979 these areas were systematically surveyed (C8:20). The forest service also realised it had a management problem and proposed reserving an area of sites.[18]

An archaeologist was employed in 1983 to review past site survey and management in the valley. His recommendations included a proposal to extend permanent protection in the form of a reserve to almost all the known sites in the upper river valley and investigate a sample of the remainder. "The information thus gained about prehistoric horticulture and settlement would amply compensate for the eventual loss of half the known sites " (B20:1). These recommendations were evaluated by the forest service and Historic Places Trust and a four year programme of progressive site survey, mapping and management was proposed, which was to become the Waipoua Archaeological Project (C8:20-21).

Forest service commitments in the project and the Historic Places Trust's understanding of these, included first, the reservation of the main areas of archaeological sites as defined by the archaeologist; secondly, logging under day to day direction of an archaeologist in a manner designed to cause least damage to sites; thirdly, employment of an archaeologist in Waipoua after discussions with the Historic Places Trust; fourthly, consideration of future site management including appropriate revegetation, site investigation, public access and interpretation in consultation with the Te Roroa-Waipoua Archaeological Advisory Committee; and fifthly carrying out investigations and planning for future management on a priority basis (C8:21-22).

In 1984 archaeological reconnaissance inspections were carried out on proposed clear-felling areas which revealed:

> a complex of 'villages' with a unique and extensive range of archaeological evidence for occupation, ceremonial structures, gardening and kumara storage ... [It was proposed] to include some sites within the FS 1985 summer public 'Interpretation programme'. (C8:21)

Since no excavation could be undertaken without the concurrence of tangata whenua, discussions were held with Te Roroa kaumatua. While proposals for a reserve were viewed favourably, E D Nathan opposed all public access to sites until such time as they were blessed and restored to their original state. He knew in his bones they were "*Tuahu of our Tupuna*" (C7:44). "Above all else, if the historic places were to be presented it was to be done with dignity" (C8:21). His views were respected and the proposal to include sites in the summer programme was dropped.

On 3 April 1985, Te Roroa whanau and forest service staff and archaeologists participated in a whakanoa (to make ordinary) ceremony conducted by the Reverend Maori Marsden. Prayers were said and compartments 5 and 15 (where logging was planned) were visited and blessed (C8:14, 21).

Te Roroa-Waipoua Archaeological Advisory Committee (TRWAAC) and the Waipoua Archaeological Project

6.5.5 In January 1985, E D Nathan, prompted by his concern by what he had seen and heard whilst on a tour of sites conducted by forest service archaeologists and the proposal to open them to the public, had written to the Minister of Forests, Koro Wetere, with his own kaupapa for Te Roroa involvement in the management and protection of wahi tapu. He proposed that Te Roroa should form a trust, that sacred sites be declared reserves, and administered jointly by Te Roroa and the forest service or handed back to Te Roroa for administration.

He reiterated the firm stand he had taken with the archaeologist on a tour of inspection of two sites, that they were tapu, and before they were restored as near as possible to their original state, they would have to be blessed. "In the past", he continued:

> they [agents of the Crown] encouraged our tupuna to part with their lands with little regard to ethics or moralities, so the present ownership of the land is irrelevant.... I am sure we are best qualified to do our own thing and we've endured the superficialities for too long.
>
> With Lawlor's [the conservancy archaeologist's] concurrence, I've asked that when restorative explorations commence, that Te Roroa uri [descendants] be employed ... not only in the menial labour, but also upon the technological aspects where initiative and educational standards are appropriately adequate. (B25:13)

In response, the minister indicated that the forest service supported the proposal to form a trust to administer the archaeological and the sacred sites of Te Roroa at Waipoua. He suggested that the Historic Places Trust, in addition to the forest service, be party to the trust, as it was the statutory agency through which the forest service managed its historic places. He further suggested that Te Roroa should make sacred sites known to the forest service archaeologists so that they could be included in the existing reserve proposal. Both archaeologists and Te Roroa could learn from each other. The minister also outlined proposals to extend permanent protection by creating a reserve on both sides of the Waipoua river (B25:17-18).

On 28 June 1985, E D Nathan, supported by his two sons, Alex and Manos and other tangata whenua, convened a meeting with local forest service staff and Historic Places Trust representatives at Matatina marae to discuss the formation of the trust. It was agreed that it should include three elements: tangata whenua, the forest service and the Historic Places Trust. Ian Lawlor in his evidence stated that

"Of major concern to tangata whenua was to have the advisory body set up in *a Maori way*" (C8:14).

Professor Atholl Anderson, then chairman of the archaeology committee told us that he was asked by the trust's senior archaeologist, Dr Susan Bulmer, to secure, if possible, an agreement with the other parties about the proposed reserve and a policy for the future of archaeological sites in the area (G5:3). En route to Matatina he and Lawlor, met David Black (assistant conservator of forests, Auckland) and agreed the basic needs were:

> (a) To establish that the sites warranted protection and management,
>
> (b) To set up a body which could oversee the operation of an investigation and management project, and
>
> (c) To arrange the prompt production of a map showing the proposed reserve boundaries together with a management plan which would outline investigations for establishing the nature of the sites and set future management priorities. (G5:3)

It was the view of the trust and, as far as Anderson knew, of the assistant conservator of forests:

> that no reserve was to be created, nor any long-term archaeological project take place within it, until the initial management plan and map was produced by the Conservancy Archaeologist .... we all agreed that it was a time to strike while the iron was hot and get a substantial archaeological reserve in place while the forest service remained in existence (its demise was thought imminent at that stage). (G5:5)

On 12 July 1985, Black confirmed that he would reserve the main areas of archaeological sites "as defined by the conservancy archaeologist" and proceed with the other proposals Anderson had set out in his letter (G5:5).

On 15 October 1985, the interim Te Roroa-Waipoua trust advisory committee held its inaugural meeting. A few months later it changed its name to the Te Roroa-Waipoua Archaeological Advisory Committee, TRWAAC (B22:1 ff, 59; C7:44-45).

The kaupapa of the group, Lawlor suggested, was "best exemplified by the logo given to the committee by Manos Nathan:

> the design contains 3 elements which go to make up the whole.... They are taken from the titi or moko of Tuputupuwhenua, the pou aro figure which ... [is] part of the carved house on Matatina Marae. One of each of the 3 elements represents tangata whenua, the F.S. and HPT, the enclosing circle represents the togetherness and the manner in which we should conduct ourselves. (B22:32)

The early change of name and minutes of discussion on the appropriateness of a trust as a "vehicle" however (B22:27-28; 48-53), indicate that right from the start, the three "elements" had different kaupapa (C7:44-45).

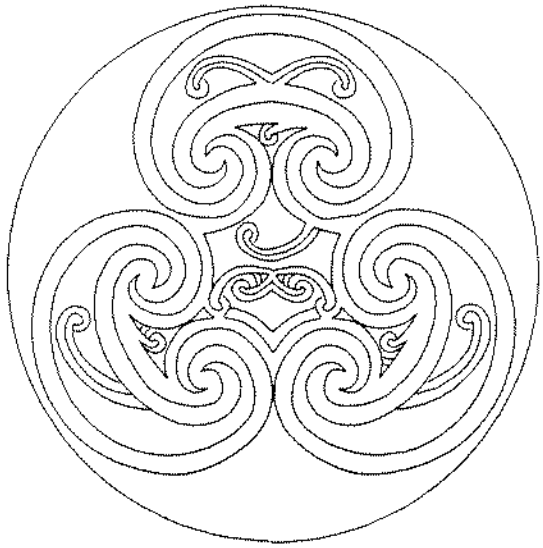

Figure 24: Logo of TRWAAC

E D Nathan wanted to ensure that tangata whenua had "at least an equal authority to make decisions" (B22:48). He felt that "decisions should be made in Waipoua, be passed down the line, and then something returned that we can all agree with" (B22:78). Te Aue Davis (Historic Places Trust Maori Advisory Committee) said she "would like to see the overall management given the mana of Maoridom". She thought "the area of sites should come back to the mana of the Maori people as a Maori reserve" (B22:10). The forest service representative, Cecil Hood, said that to have a trust required title to the land: "you cannot have a Trust over Crown land". The practical options were first, survey the land out and return it to the owners; secondly, the Crown retains the land and transfers it to the proposed Department of Conservation; thirdly, the Crown retains land and a statutory committee is set up; in which case he questioned whether the government would give tangata whenua the majority vote (B22:49). Dr Susan Bulmer thought the area of concern would be best served "if it was put into the DOC" (B22:51). The Historic Places Trust would be involved because it was their job to look after historic places (B22:78).

E D Nathan would not be satisfied until a constitution was drawn up for TRWAAC:

> You people, the archaeologists, know what you are going to do, the HPT, you also have your ideas about what is going to happen, and then we, tangata whenua, would want our interests included ... The compromises are made at the beginning so that we proceed as a body with one mind and one purpose. (B22:78)

"I must tell you all my thoughts", he added later:

> I am looking further ahead when these sites are preserved, when tourists come. That is going to happen. There is the economic side of it ... tourists are going to pay. I want things lined up for that eventuality as well ... I am thinking ... [in] terms that this body will control any finance that will come into it, so that it can get fired back into whatever we are doing, rather than let some other government department use it for some other purpose.
>
> I am thinking in the long term for that reason. That is going to happen ... whatever finances are forthcoming, then we have control of it.
>
> My last point is that we train our Maori tangata whenua to be the ... guides, and of course they have to be proficient with their historical background and all the ... [recitation] of it. This is the whole picture. (B22:79)

In the event E D Nathan's original kaupapa was not carried out. The trust was not formed; and the archaeological reserve was not created.

What went wrong with the Waipoua Archaeological Project and TRWAAC?

6.5.6 TRWAAC met 18 times over a period of five years before it went into recess during the hearing of this claim. While it was primarily concerned with the on-going programme of archaeological site management and investigations connected with logging, it was also concerned with "The definition of an area of significant historic places, to be reserved under the trust, and traditional and historic research" which were important aspects of the Waipoua Archaeological Project (C8:15-16).

As counsel for claimants pointed out "Waipoua and archaeology in the 1980s ... generated more paper evidence than any other issue in this claim" (I1(e):93). Much of this evidence was detailed, academic and not strictly relevant. Some of it was personal and recriminatory; some of it signified the conflicting interests of the "three elements" involved in TRWAAC. It is not our task to adjudicate upon these matters. These now need to be resolved by Te Roroa, the Department of Conservation and the Historic Places Trust themselves.

Sifting the wheat from the chaff, the basic facts are these: from the tangata whenua point of view some aspects of the project were a success. Much was achieved in the field of traditional research undertaken by tangata whenua, who tape-recorded and transcribed oral traditions given by kaumatua and kuia. Over 100 wahi tapu were identified, defined and located on a map and a summary list of their names and traditional history was produced. These included some on private farm land because, as Alex Nathan said, "they are still part of us and we of them". Oral traditions were thus retained for Te Roroa tamariki and future generations. Tangata whenua, including older

children of the correspondence school acquired some basic archaeological skills. Information was presented to government on Te Roroa wahi tapu for the pending reorganisation of Crown land management (B19:4-6, 12-13).

The forest service acknowledged its responsibility to protect, investigate and manage sites at Waipoua (B25:55). Forest service archaeologists implemented the first two stages of the Waipoua Archaeological Project in 1985 and 1986. Sites at risk were resurveyed and mapped and detailed studies were developed for the removal of pines from each in cooperation with other forest service staff. When sites were logged, compromises had to be made between protection and commercial gain.

The completion of the first stage of the project revealed to the forest service that there were more sites and more complex management problems than had been previously recognised and that a substantial research and management programme would need to be undertaken over a number of years.

The Historic Places Trust controlled the excavation, modification and destruction of Waipoua sites through its authorities and permits system (B23:22-23). In 1986 the trust decided to register sites within the Waipoua forest prior to the imminent disestablishment of the forest service. But due to a breakdown in communications this was done before the list was updated and TRWAAC was consulted (G4:10-12). Over 100 sites were registered including five to which Te Roroa subsequently objected because they were either Maori reserves on Maori land or burial reserves on Crown land. Local people were "greatly disturbed", in fact more so than by all the previous activities of the archaeologists (C7:52). Their anger was conveyed to the trust with a request that the five sites be removed from the register (G4:12). Alex Nathan alleged that repeated written requests and objections made through TRWAAC to have these sites removed, "elicited patronising, insensitive, irrelevant and inaccurate responses and resulted in a three year marathon" (C7:52). In his opinion:

> The bureaucratic obstinacy demonstrated over the site register also showed that TRWAAC had little standing in the eyes of the bureaucracy in Wellington and Auckland. (C7:52)

The trust's deputy director, Carol Quirk, gave evidence on the registration process and what happened in the registration of sites at Waipoua. Obviously a mistake was made as the trust intended only to register sites on forest service land. Certainly there was an unacceptable delay on the part of the trust in considering the request for the removal of the sites. However "It was acting in good faith" and "did recognise the sensitivity of the issue". These sites were all eventually removed from the register. The trust conceded there were inadequacies in its procedures which did not provide for consultation with tangata whenua. Its procedures and policies had been revised. She

expressed her regret to Te Roroa that the trust's actions caused such distress and noted that future decisions on such matters would be treated in a different manner (G4:13-15).

Counsel for the trust submitted that the tribunal should note the events, not make a finding on this particular aspect of the claim. In Treaty terms, it was more important that deficiencies be owned up to and rectified and this had been done (I3:41). Counsel for the claimants responded that in view of the trust's frank manner, the claimants did not want to take this matter any further (I1(e):121).

The clash over site registration revealed differences in TRWAAC's original kaupapa. This kaupapa included traditional research and forest service short term, management archaeology, and the Historic Places Trust concern with long term, scientific archaeology. These differences were clearly revealed in discussions on future directions for archaeological research in Waipoua.

In 1986, the trust obtained from Dr Ian Smith, Department of Anthropology, University of Auckland, a report on site significance which served to emphasise that logging of trees in exotic plantations should be undertaken only after archaeological investigation and that logging activities should be planned in conjunction with TRWAAC and monitored by archaeologists (B25:48-58). It futher obtained from Dr Smith a long term research programme for the Waipoua project (B25:66-98), which in Alex Nathan's view, was concerned solely with archaeological research and as one commentator observed was a "*dig and run*" job (C7:61).

Dr Bulmer's views and recommendations on the boundaries of the proposed arcbaeological reserve and management and conservation work were more far-reaching and anticipated government re-structuring and the establishment of the Department of Conservation and the Forestry Corporation. The whole valley seemed to her "a scientifically and historically valid unit" which should be set aside "as a park as an entire archaeological landscape" although private and Maori land would not be included (B25:59).

The argument that site preservation and protection during logging negated the need for excavation should be opposed: "it would be vandalism not to investigate sites now being damaged or destroyed by forestry operations" (B25:60).

The Forestry Corporation should be asked to present a three-year logging plan that could be revised at regular intervals. A future programme of planting and logging in the rest of the valley would also be needed. The management work should be under the Department of Conservation science unit rather than the Forestry Corporation. This would safeguard the interests of conservation rather than serve commercial enterprise. The trust should retain a strong presence in the valley in TRWAAC and in site management (B25:58-60). All

Waipoua land controlled by the forest service should be a historic reserve with a Maori trust in charge of it (B25:61-62).

Te Roroa and forest conservancy archaeologists believed that the trust was losing sight of the original kaupapa.

Tangata whenua concerns about the trust's agenda surfaced at a TRWAAC meeting 18 March 1987 (B22:158-168). Manos Nathan said:

> It seems to me that the university will come here and do what they want for three years and then disappear. We will not see them again. (B22:162)

Gracie Kereopa said:

> we (the Tangata Whenua) do not agree with the proposal. There are many places in Waipoua that are very sacred to the Maori. (ibid)

When she was asked by a forest service official if she did not want the areas logged she replied:

> You are already here now. You are doing a job. My feelings are very strong and I do not want you to do it. (ibid)

Rose Paniora said:

> When we first started, it sounded really good to Tangata Whenua; we were all behind you, but now some of these promises are being forgotten—like the sites, they have to be cared for. As I was saying, there is a lot of research going into it but it is going to other people. (B22:163)

Manos Nathan added:

> We can go back to what dad (Ned) said about 'presenting the sites with dignity' and all that. Nothing of this has been addressed by Ian Smith's proposal .....
>
> ... We have a good relationship with [the] Forest Service (FS)—and ... with the transfer to the Department of Conservation (DOC)—we want to carry this on. (B22:164)

Professor Anderson, chairman of the Maori advisory committee of the trust, concluded that "the shoal on which the [Waipoua Archaeological] Project first grounded" was the initial management plan (G5:5). This took approximately 15 months longer to produce than expected and increased the proposed reserve to about 645 ha. The objectives of the three parties differed, the differences were not resolved and the project could not proceed with a unified vision. Furthermore the emphasis gradually shifted from the investigation and management of the archaeological sites to concern for traditional sites.

Government re-structuring led to:

> a period of settling in which was marked by disagreement over administrative arrangements and lines of command, by conflicts of professional views about archaeological objectives and methods and by the expression of personal anxieties. (G5:13)

As these conflicts were, "to some extent, worked out in meetings of the TRWAAC", the progress of the Waipoua project inevitably suffered.

Tangata whenua found this behaviour "undignified and distasteful" (ibid).

He did not think the difficulties and lack of progress were caused by particular actions or failures to act by the trust's board or archaeology committee. Some decisions (for example site registrations) were ill-advised. There were similar failures by forest service archaeologists. Within TRWAAC there was the failure to set an agreed course at the beginning, misunderstanding of Ian Smith's research proposals and:

> the demand for a level of autonomy in decision-making which no government body charged with statutory responsibilities, such as the HPT, could concede...(G5:13)

In our view this is the heart of the matter; therein lies the rub. Because of the Crown's reluctance to enter into a true Treaty partnership with Te Roroa in TRWAAC, the Waipoua archaeological project foundered.

"The Destruction of Heritage"

6.5.7 Throughout the years of uneasy experiments in partnership between the Crown and Te Roroa in TRWAAC, wahi tapu on Crown land and general land in Maunganui and Waimamaku as well as Waipoua were being damaged and destroyed through public works, farming operations and general public access to scenic reserves. Names of these places and other particulars were summarised in the closing submissions of counsel for the claimants (I1(e):80-102).

Foremost among those at Maunganui was Maunganui Bluff, a historical and archaeological site of great importance to Te Roroa. Te Roroa claim that the top of the Bluff was once the site of a whare wananga and that the Crown constructed a radar station and subsequently installed telecommunications equipment on or near the site without their consent thus desecrating the wahi tapu. They further claim that the Hobson County Council created a public scenic reserve on the Bluff which gave all people unrestricted access to the wahi tapu (A1(i):20-21; I1(e):80-85). They have also expressed their concern about the Lands and Survey Department leasing the Maunganui Bluff scenic reserve for grazing purposes and the impact this has had on their ancestral lands and sites (C8:47-48, since then grazing licenses have not been reissued).

Crown evidence showed that since Maunganui Bluff was declared a scenic reserve in 1911, it has been public land open to the public for their use and enjoyment (H2:4). Under the 1941 Emergency Regulations giving draconian powers to the Crown for defence purposes, an airforce radar station was installed in 1942 and manned by up to 60 servicemen between 1942 and 1945. Under the regulations the land had to be restored to its former condition as soon as practicable after its use for defence purposes had ceased. In 1949, however, the Air Department decided to continue occupying the summit.

In 1955 the department changed its mind and the land set aside for defence purposes was restored to the Maunganui Bluff Scenic Reserve, giving it vehicular access and the right to lay a water pipe line from a creek on adjoining farm land, which was not taken up. The radar station buildings were removed but the concrete foundations and timber platform remained. The latter was declared unsafe and was eventually demolished in 1979 (H2:8-15).

Crown evidence further showed that in 1969 the North Auckland Power board applied for permission to lease a sufficient area of land on the summit for a VHF radio base. The Nature Conservation Council consented. In 1971 the Minister of Lands granted permission and a telecommunications station was subsequently constructed to the east of the summit (H2:16-18). Only the protection of nature, flora and scenery were taken into consideration. There is no evidence that either of the Crown agencies concerned or the power board were aware that the summit of the Bluff was a wahi tapu; nor was the summit officially recorded as an archaeological site (H2:18). For purposes of protection and preservation of existing intrinsic qualities, however, it was classified scenic reserve under the 1977 Reserves Act in 1979 (H2:2-7; 12:(b)(viii):2-3).

In 1982, the New Zealand Police sought and gained approval to establish a VHF radio station by raising the height of the power board's aerial pole. The post office took over the power board's site and replaced the transmitter with a telecommunication station the following year. Again approval was obtained from the Nature Conservation Council. The Crown researcher said that an attempt was made to seek Maori reaction (H2:20-26). Counsel for claimants said that there was no evidence of tangata whenua being consulted (11(e):82). No consideration was given to protecting an archaeological site in accordance with the Historic Places Amendment Act 1975.

After construction started, an archaeologist and reserves ranger recorded their concerns about the approval process and lack of consideration of archaeological values (H2:22-23). The Crown's omission seems to have been based on the premise that an already occupied site was being reused (H2:25), and no further destruction would occur (12:(b)(viii):11):

> Prior to 1942 there had been no substantial disturbance of the summit of the Bluff, so there had been no occasion for Te Roroa to feel particularly aggrieved ....
>
> ... [but] the presence of an ablutions block may have been objectionable to Maori spiritual beliefs. (H2:24)

Counsel for the Crown pointed out that there was no officially recorded protest (12:(b)(viii):7) without mentioning that at the time local men were absent fighting overseas. In respect to complaints about unrestricted access to wahi tapu in the area, the Crown emphasised that none of the exceptions to the general right provided for

in the legislation had been invoked (ibid:3). As these more particularly concerned Maori burial grounds, this is hardly surprising.

The Crown submissions did not address the nub of Te Roroa's claim covering the Bluff, namely the lack of any input into the management of the scenic reserve. Our site inspection visit served to demonstrate the derelict state of the summit and the damage caused by opposums. Clearly the Crown and its agencies had failed to carry out their Treaty obligations to protect what is a very special wahi tapu and consult with Te Roroa over its management.

Among the other wahi tapu in Maunganui which claimants allege the Crown has failed to protect, regardless of their archaeological and traditional importance, are urupa and a lake on Manuwhetai, Puketapu pa and Hood's Road pa (A1(i):20-21; 11(e):85-88). The two former wahi tapu are on private land. Modification, damage and destruction of these wahi tapu by developers and land owners highlighted the inadequacies in the historic places management system (C8:46-49).

Puketapu pa had unique visible features and local tangata whenua understandably felt its scarring by the bulldozing of tracks was "a deliberate and direct attack on this site" and on them (B22:251). We understand that it may have been originally known as Kahikatoa.

The scarring of Puketapu occurred in the course of departmental restructuring and the re-defining of the trust's responsibilities. Dr Bulmer conceded that the delay over the landowners application "was caused by a series of errors and failures" by certain individuals (H15:103). Counsel for claimants submitted that the Crown must bear the ultimate responsibility for its scarring having Treaty and statutory obligations to protect taonga and archaeological sites respectively (11(e):88).

At Manuwhetai the landowner bulldozed tracks, destroyed recorded sites, modified traditional burial places and constructed a track through the lake without Historic Places Trust authorities.

Hood's Road pa on Ministry of Works land was completely destroyed for rock quarrying. The engineer who obtained the necessary authority from the trust is a member of the regional committee of the trust (C8:45-46; 11(e):86).

In Waimamaku, the named wahi tapu that claimants allege the Crown failed to protect in accordance with its treaty and statutory obligations were Te Moho, Kohekohe, Piwakawaka, Kukutaepa and Te Rereapouto within Kaharau and Kaiparaheka, Whangaparaoa and Te Pure outside Kaharau (A1(i):46-48).

In addition to the desecration of burial caves at Kohekohe and Piwakawaka the following actions were particularised:

> The recent proposal of the Crown to exchange Te Moho [which is privately owned land] for other Crown land in the area for the purpose of using Te Moho as a public picnic area contrary to the wishes of nga hapu o Waimamaku. (ibid:47)

The proposed straightening of state highway 12 is to run alongside Te Moho.

The Crown permitted Piwakawaka to be used as a site for a television transmitter (I1(e):90). A portion was being used by the landowner as a quarry (ibid–interpolation). Part of Kaiparaheka, an old pa site and burial ground, was dedicated by the Crown as the Waiotemarama scenic reserve and subsequently administered by a local authority without the consent or involvement of the tangata whenua. The Crown had reduced the area of the reserve for use as compensation to the adjoining landowner for land taken for roading. The rest of Kaiparaheka was sold to private owners. Only two of the three peaks in the old pa site were reserved.

The Historic Places Trust gave retrospective permission to the Department of Conservation to bulldoze part of the area (for fencing) which damaged the pa site (A1(i):48; I1(e):89-90). To these wahi tapu counsel for claimants added Pakiri (I1(e):91). This was an old and registered pa site above Wairau river damaged by bulldozing during the 1980s. No evidence was given of the Crown's failure to protect Kukutaepa (not part of the claim area), Te Rereapouto, or Whangapaoroa. As we have seen Te Pure was buried by shifting sand.

The claimants listed 42 wahi tapu, most of which are in Waipoua, where acts by or on behalf of the Crown in forestry development were responsible for their partial or complete destruction (A1(i):35-36). Counsel for the claimants instanced desecration and destruction of Whangamoa, Waiaraara and Haohaonui caused by pine plantings (I1(e):94-97). Crown evidence from Dr Foss Leach confirmed that the forest service did a great deal of damage to important archaeological resources by planting pines on them (H5:77). Dr Susan Bulmer, an Historic Places Trust and more recently Department of Conservation Archaeologist, said that the forest service and private forestry companies were even larger destroyers of archaeological sites than the Ministry of Works or other developers (H15:41). Claimants' counsel submitted that we were entitled to find that significant changes had been done to wahi tapu in Waipoua as a result of forestry activities over the years (I1(e):101-102). We do so find.

He further submitted that legislative structures currently in place have not actively or adequately protected the wahi tapu of Te Roroa (ibid). We shall now examine these structures.

Government restructuring: Te Papa Atawhai (Department of Conservation)

6.5.8 The State-owned Enterprises Act 1986 objective "to promote improved performance in respect of Government trading activities" led to major government administrative reforms in 1987. The Department of Conservation (Te Papa Atawhai) was established to integrate the environmental functions of the forest service, lands and survey, the

wildlife service and other departments (G8:2). The commercial activities of the forest service and lands and survey were corporatised. Forest service members of TRWAAC were replaced by members from the Department of Conservation and the Forestry Corporation, later its subsidiary Timberlands.

In Waipoua, Crown lands planted in exotic forests were allocated to the Forestry Corporation and Timberlands. Conservation lands were allocated to the Department of Conservation.[19]

Following Te Roroa representations that the Waipoua exotic forest should not be included in the government's programme of forest asset sales, the Minister of State-owned Enterprises, on 9 March 1989, advised that the forest would be withdrawn from the current assets sales programme. This decision, however, would be reviewed after the Waitangi Tribunal had made its deliberations, or during 1991 if the tribunal had not by then considered the issues (B14).[20]

Under s6 Conservation Act 1987, the administration of the Historic Places Act 1980 was transferred from the Department of Internal Affairs to the Department of Conservation. Under s43 Historic Places Act, the department became responsible for maintaining the archaeological site register. Following a cabinet directive, forest service and trust archaeologists were transferred to the science and research directorate of the Department of Conservation but continued to service the trust. The department was given representation on the trust board (G3:12; F3:2-3).

The Department of Conservation initially operated through eight regions. The claim area was in the northern region which was divided into four districts, each with a district officer and field station. Waipoua forest was a field station in the Kaikohe district. The regional archaeologist and archaeology unit was housed in Auckland and one of its archaeologists was stationed in Whangarei (F3:2-4). Following a review of the department, by independent consultants in mid-1988 "to optimise management efficiency and to increase conservation outputs", substantial restructuring occurred (G8:2). Fourteen conservancy offices were established from the eight regions and 34 districts. The claim area was now in the Northland Conservancy with its headquarters in Whangarei (G8:3). The regional archaeology unit was also restructured, three positions being created to service the Northland Conservancy (F3:4; F7:16).

To incorporate Maori perspectives into departmental policies, Tipene O'Regan of Ngai Tahu was retained as a consultant until March 1988. In October 1989, Piri Sciascia of Ngati Kahungungu was appointed assistant director-general (Maori perspectives and iwi liaison). To develop "a robust means of responding to Waitangi Tribunal Claims, developing policies and dealing with other issues with a Maori dimension", additional staff were appointed to the department's kaupapa unit. Ihi Consultants were engaged to run concentrated training

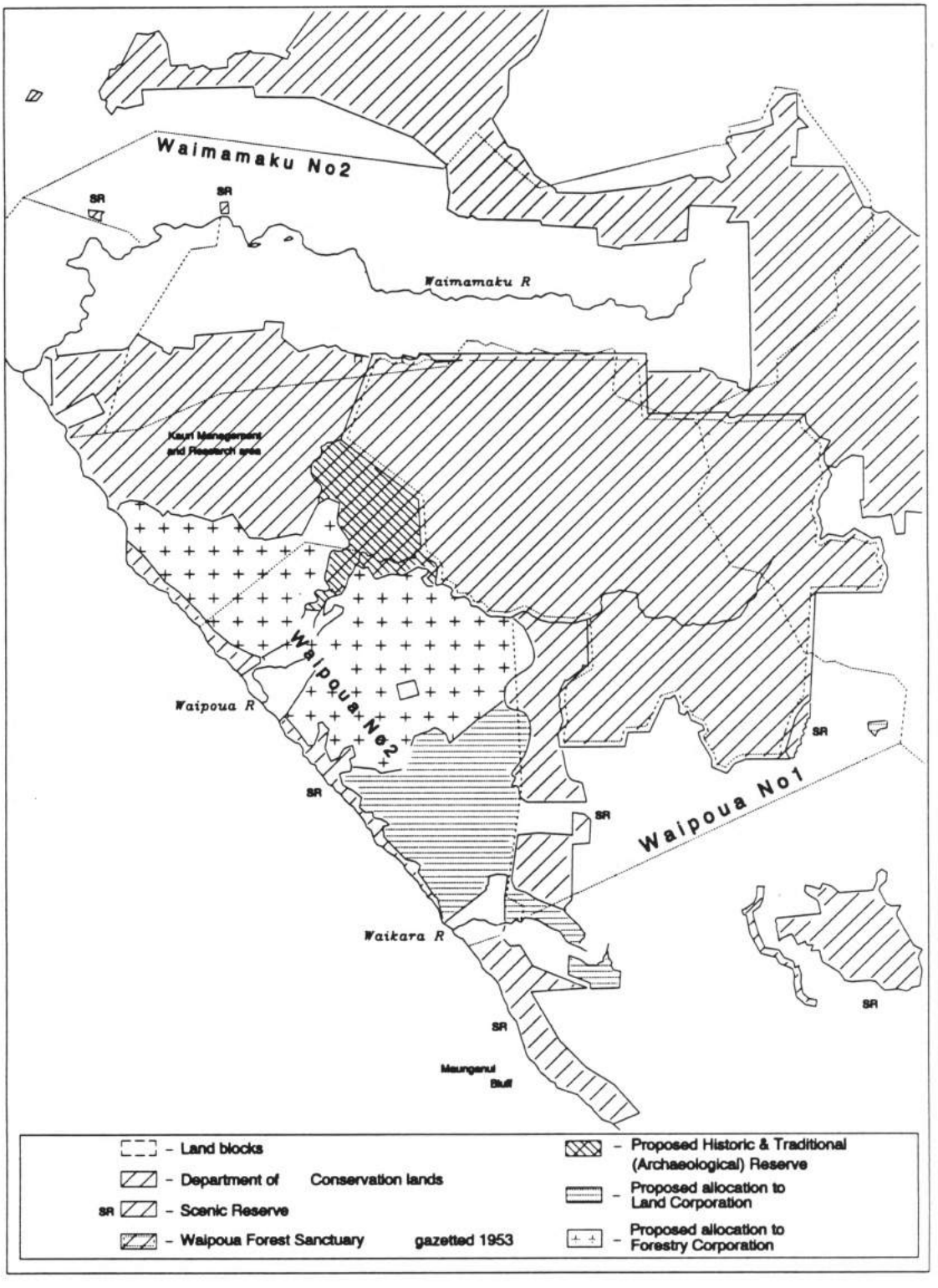

Figure 25: Crown land allocations, 1953-1987

courses in Maori protocol and perspectives for departmental senior managers (G8:4-6). An iwi liaison position was established in each conservancy to assist conservators and staff in consulting iwi and to facilitate the incorporation of Maori cultural perspectives into management strategies, plans and decisions. In the Northland Conservancy, the position was filled on an interim basis to give the regional conservator some time to consult with Tai Tokerau iwi about making a suitable appointment (G8:6-9).

The Conservation Law Reform Act 1990 disestablished a number of parks and reserves boards, advisory committees and the like and replaced them with the New Zealand Conservation Authority and local conservation boards. Two of the members of the authority were to be appointed by the Minister of Conservation after consultation with the Minister of Maori Affairs (F3:24-25).[21]

In Tai Tokerau, the Waipoua Forest Sanctuary Advisory Committee was among the quangos disestablished (F3:24). The regional conservator, John Halkett pointed out that the future role of TRWAAC, and its successor, would need to be debated between the Northland Conservation Board and Te Roroa (G8:11).

Following restructuring, conservation management strategies and plans were prepared "to implement general policies and establish objectives for the integrated management of natural and historic resources ... managed by the Department" (G8:20). Initial work commenced in Northland and Halkett anticipated that a more detailed plan for all or part of Waipoua might be prescribed (G8:25-26).

The deputy regional manager, Ross Hodder, explained that a draft Northland state forest park management plan including the Waipoua Forest Sanctuary, which had been prepared before restructuring, had made no further progress because resources were limited and deflected. Day to day management of the Waipoua State Forest continued without a plan. A consequence of this was the establishment of a shop, a camping ground and rental housing for tourists at Waipoua Forest Headquarters without management approval being required. This nipped in the bud Te Roroa ideas of using the camp as a health centre (F3:26-31). The Conservation Law Reform Act 1990 required a plan to be produced within five years.

Piri Sciascia pointed out that the Department of Conservation does not have a defined policy for protection and management of wahi tapu on the conservation estate. Each conservator had to develop local remedies to most local situations. A general policy would enable the department better to meet its commitment to "give effect to the principles of the Treaty of Waitangi". An acceptable policy could only be achieved by including iwi in existing mechanisms which would be acceptable to both iwi and the Crown. That was the path the department proposed to follow (H14:6).

He further pointed out that options were available to the department upon which wahi tapu policy provisions could be based. These were the Historic Places Bill, the Resource Management Bill in preparation and s17B of the 1990 Conservation Law Reform Act. A preferable course of action would be one which incorporated a combination of options (H14:7-9).

"Waahi Tapu", he said "is a Maori concept, and the knowledge held at whanau or hapu level, [and] the identification of such places is a Maori responsibility" (H14:7).

Towards new legislation for Pouhere Taonga (New Zealand Historic Places Trust)

6.5.9 In December 1988 the Minister of Conservation issued a document called "Historic Places Legislation Review—Issues for Public Comment" which raised a number of questions with regard to "the Maori dimension". These referred specifically to the Historic Places Act 1980 and the extent to which new legislation should give recognition to Maori values in historic places.

One of the first priorities for the new trust director, Geoffrey Whitehead, was to help develop a statement of policy on behalf of the board. The section referring to Maori concerns was considered and approved by the Maori advisory committee (G3:5-6).

The board said the new legislation should:

> — incorporate recognition of the Treaty of Waitangi;
>
> — acknowledge the principle of the tangata whenua, and the Trust's developing role as bi-cultural kaitiaki (guardian) of the nation's historic heritage;
>
> — recognise the cultural diversity within New Zealand;
>
> — be more relevant to the present and future needs of the whole nation; ...
>
> —... continue to bind the Crown. (G3(a):app 2)

Furthermore the board believed that "the Maori people should feel that the Act is as relevant to their needs as it is to Pakeha needs" (ibid).

Trust evidence clearly showed that changes in these directions are under way (G3:8-15). For example, it has a Maori name, Pouhere Taonga. It is identifying, recording and protecting Maori archaeological sites, and is helping Maori protect their traditional sites.

Two additional Maori members have been appointed to the board. Standing committees have been disestablished and the Maori heritage committee has been set up. Provision has been made for Maori tribal authorities to appoint one member on each regional committee of the trust. Staff positions now include a Maori programmes officer, a Maori sites officer, and a Maori buildings conservator. The principle of consultation with tangata whenua was re-affirmed in a board resolution on

19 April 1990. The director concluded that the trust now has "the machinery to consult widely with the tangata whenua as it develops its policies" (G3:7-15).

Effects on the Ground

6.5.10 Two issues were uppermost in Te Roroa's mind when the new director-general of the Department of Conservation, Ken Piddington attended a TRWAAC meeting on 5 November 1986 to learn about and discuss the Waipoua Archaeological Project; first, would TRWAAC become a statutory body or not (B22:127-128)[22]; secondly, how were sites on land being transferred from the forest service to the Forestry Corporation going to be protected (B22:134)?

Piddington gave TRWAAC an undertaking that the project would not be lost sight of during government re-organisation (B22:129). The most pressing thing was to get a commitment from the Forestry Corporation to carry on existing arrangements on its part of the proposed archaeological reserve. The legislation was designed "to set commercial operations free from constraints", but in practice, constraints did operate (B22:132). TRWAAC could have his immediate assurance that the area of the proposed reserve allocated to his department would be treated "as if it were an archaeological reserve" until the reserve was established (B22:130). The department was concerned with the obvious things like national parks and historic places; also "with the texture, the feel and the identity of the land" they all lived in. The problem was this would "turn out to be a very big fish, and to pull in a big fish you need a strong line". Whoever was responsible for Waipoua would be told his duties were to relate to TRWAAC and to tangata whenua. The question of a statutory base for TRWAAC was one he could not answer. It would be sorted out when they looked at the whole range of advisory and management committees around the country (B22:132-133).

Beginning in 1990, a number of boards and advisory committees were dis-established and local conservation boards set up (F3:53-55). The future of TRWAAC still remains in limbo. Perhaps one of the reasons is that Te Roroa is only a little fish on a weak line!

Since June 1988, when the resident Waipoua archaeologist, Michael Taylor was transferred to Kaikohe, Timberlands has employed Ngatio (Joe) Kereopa for site surveying and mapping, the supervision of logging, and site restoration and clean-up. He was assisted by a specialised logging team (F8:2-7). This work has been funded on a cost recovery basis. Joe Kereopa had had 21 years of experience in exotic logging and assisted Michael Taylor. Technical supervision was provided by Joan Maingay, the department's district archaeologist from Whangarei (F10:1-2, 8).

A site visit to the recently logged site of Te Kopae, a wahi tapu of great importance to Te Roroa, demonstrated to us that sites can be logged

without damage to stone features, and that earlier surveys and maps can be much improved for this purpose. To quote Joan Maingay:

> the essential pre-requisite for site management is adequate site survey and mapping. Recent work has shown that this was not fully achieved during the Forestry Service regime. (F8:7)

Joe Kereopa concluded from his experiences,

> Archaeological priorities in the Waipoua have to be the logging of the sites to clear them of trees before they reach maturity, especially in compartments ... which contain steep slopes with many stone features ....
>
> ... next ... to teach some of the younger Tangata Whenua the practical logging skills needed to be able to fully participate in the planning and methods adapted to each archaeological situation. (F10:9-10)

Joe Kereopa's work indicated that the extent of sites in the valley is much greater than originally realised. The Department of Conservation stated that:

> Until a more complete survey is carried out it is premature to go through the lengthy and expensive process of surveying a reserve, which is likely to be larger than originally proposed. (H46:8)

Te Roroa's concern over problems and uncertainties about TRWAAC and the Waipoua Archaeological Project was reflected in questions raised by counsel for claimants with respect to Department of Conservation evidence (F21-F25). Foremost amongst these questions are, will the Department of Conservation maintain its commitment to establish the proposed trust and archaeological reserve, and will there be greater consultation and power-sharing and adequate funding?

In response the Department of Conservation indicated that it was aware that s439 Maori Affairs Act 1953 could be utilised to create an archaeological reserve. It was, however, "not confined to any specific requirement to retain Crown ownership of the land". Once it was clear on the extent of the proposed reserve, all the available options could be assessed. A reserve could not proceed until land allocations between it and Timberlands had been resolved. The government was reluctant to establish more statutory authorities. The claim itself created uncertainty over land management and it was awaiting the Waitangi Tribunal's report before assessing all the options (H46:7-8).

The department acknowledged that "mere consultation" was not acceptable. It was "only the first stage toward the path of full and active involvement in the management of archaeological and traditional sites". The department anticipated moving on from consultation and accepting that Te Roroa were the appropriate kaitiaki of traditional and archaeological sites at Waipoua. It anticipated that the Waitangi Tribunal recommendations would provide fuller direction for the development of a partnership model and joint management processes. Nonetheless it acknowledged that these recommendations would be subject to the

government's decisions and that a political commitment would still be required to implement them (H46:25-26).

It accepted that specific funds were required to meet its Treaty obligations and had already provided for a Treaty issues unit within its head office. It has also developed processes through funding at a conservancy level for a Maori dimension to its conservation work and for utilising Maori expertise and knowledge. Associated with this process was the development of the kaupapa atawhai unit and employment of iwi liaison officers (H46:24). "Funding limitations and other Departmental priorities continue to exist however." Its present objective was "to consolidate and evaluate current initiatives before considering an expansion of the Treaty Issues Unit" (H46:25).

While these responses seem fair and reasonable on paper, they still have to be translated into effective action. The claimants allege that the Department of Conservation and the Historic Places Trust have omitted to establish and state a formal archaeology policy in accordance with the terms and principles of the Treaty. They also allege that they have failed to implement systems of accountability to Te Roroa in their archaeological practices. Tikanga Maori and Te Roroa control of its physical and spiritual heritage should prevail (A1(l):38).

The assistant director-general of the Department of Conservation admitted his department did not have a defined policy for the protection and management of wahi tapu on the conservation estate. Each conservator had to develop local remedies to meet local situations (H14:6). The regional conservator, on the other hand, said the department was working towards such policies and that it was not appropriate for each region to develop its own policy (H39:2). Counsel for the Crown emphasised the magnitude of change the department had to accommodate (12:(b)(viii):41).[23]

The district conservator proposed a planning structure based on ecological districts, which meant that planning for Waipoua forest would be encompassed within a Tutamoe ecological district management plan (F6:app 8). This was overtaken by the Northland National Parks and Reserves Board proposal for a preliminary investigation of a kauri national park for Northland (F5:50-52). While it was:

> well recognised at all levels that a considerable amount of consultation would be required with the tangata whenua as well as other interested people and organisations in Northland if the park proposal was to proceed with any certainty. (F5:52)

it was unclear what form consultation would take. At a TRWAAC meeting:

> M[aori] Marsden said there were obvious economic benefits but he felt very cynical about the proposal as tangata whenua concerns were usually overwhelmed. He doubted the credibility in terms of consultation and thought that tangata whenua should have much more say in the proposal. The people involved must have an understanding of Maori ways, consultation and representation if it is to succeed. (B22:285)

In the event the lack of consultative procedures, denying tangata whenua any real input, justified his criticism. Nga taonga o Te Roroa Kore rawa i arohia ma e te Karauna (the Crown shows no sympathy).

The early relationships between Te Roroa and the Department of Conservation indicate that the difficulties in TRWAAC which counsel for the claimants attributed to the failure of the parties to deal with the real power issues at the outset are being repeated. For Te Roroa it is not enough simply to be informed and consulted. They want real decision-making power over their own taonga.

There are a number of contradictions in the Department of Conservation's and Historic Places Trust's evidence which point to their simply not knowing what to do. On the one hand it is acknowledged that wahi tapu are "a Maori concept" and that Te Roroa are the appropriate kaitiaki of traditional and archaeological sites at Waipoua. On the other hand, they are looking to the development of a partnership model and joint management processes. They are awaiting our report before assessing all their options.

Wahi tapu are taonga of Maori, acknowledged as such in article 2 of the Treaty. The role of the department and Historic Places Trust in the "partnership" is not a decision making role or being "included" in what is not theirs. Rather, it is to assist Te Roroa by the provision of services and advice when they are sought, to enable them to protect and care for the wahi tapu. The department seems reluctant to establish TRWAAC as a statutory body. Whilst it has acknowledged that an archaeological reserve could be created under s439 Maori Affairs Act 1953, there was no evidence that it has investigated this proceedure as a suitable means for administering wahi tapu. We commend this option to both the department and the trust. Maori reservations can be set aside on both general (European) and Maori land under s439, and, upon application by the Minister of Maori Affairs, on Crown land under s439a. After hearing an application the Maori Land Court recommends to the chief executive of the Ministry of Maori Development that the land be set aside as a Maori reservation and when gazetted, the court appoints trustees to administer it. The trustees may, for example, be the same trustees who administer the marae to which the place is of significance. By s11 Resource Management Act 1991, setting aside a Maori reservation does not constitute a subdivision. The Minister of Maori Affairs may also apply under s439a to have any land, including Crown land, set aside as a Maori reservation.

The benefits of the procedure under the Maori Affairs Act 1953 are numerous. First, the reservation can be achieved inexpensively, and for the purposes of the court, does not require survey. If so desired, it does not need to be identified by any plan at all. There are no specific requirements in either the Maori Affairs Act 1953 or Maori Land Court Rules as to how a Maori reservation should be described. Moreover, since the Maori Language Act 1987, the gazette notice may

be in Maori, setting out, within the community's own traditions, where the wahi tapu is located by reference perhaps, to a journey in going to the place, and traditional landmarks such as rocks and trees, which may be known to them by name. Should access be required, the court may grant an easement with equal informality.

For owners of general land, compensation may be discussed during the court hearing. For people dealing with the land, for example, if it is on the market, the Maori reservation's existence will be noted by the registration on the title of the gazette notice and order creating the easement.

The most important benefit to Maori in this procedure is that the whereabouts of the wahi tapu need only be a matter between the landowner and themselves. In the relative privacy of the Maori Land Court, without fanfare to the public to whom the matter is of no particular interest, places of significance to Maori can be protected in accordance with their traditions and with a minimum of expense.

There is only one problem with this procedure. Some, but not all, district land registrars require the deposit of a survey plan before registering the gazette notice. We see no necessity for this as a Maori reservation is not a subdivision. With the removal of this bureaucratic obstacle, we consider the procedure provided in the Maori Affairs Act 1953 is well suited to the administration of wahi tapu.

To provide the services necessary for Te Roroa to administer and protect the wahi tapu, liasion officers of the Department of Conservation and the kaupapa atawhai unit already exist without the need for an additional statutory authority.[24] We agree with the department that "mere consultation" is not enough, but rather *participation* by Maori is essential. We have heard evidence that in the past, appointments have been made to Department of Conservation organisations by casual, informal contact within a network of friendly advisers in the Maori community. We consider this unsatisfactory. Such appointments lack the support and confidence of the community whose perspective the appointee supposedly represents, leaving the community in ignorance both as to the functions of the organisation and whether their perspective is in fact being represented. We are in no doubt that this lack of representation has been the principal cause of the antagonism towards the Department of Conservation and the Historic Places Trust which was apparent at the hearings.

For the Maori community's representatives to be able to participate, these organisations must be hospitable to Maori organisational concepts. Flow charts were produced in evidence illustrating hierarchical structures (F7:app D). The vertical lines of authority as represented in the flow charts resemble brittle stick insects. The inflexibility of structures which isolate individual authority conflict with Maori concepts of fluidity between interacting groups, accepting collective responsiblity.

The Department of Conservation, Historic Places Trust and Te Roroa should reopen their discussions in a spirit of goodwill and cooperation.

6.6. The Resource Management Act 1991 and the Protection of Wahi Tapu

Shortly before the conclusion of the hearing of the claim, the Resource Management Bill was referred to a parliamentary select committee. In the evidence of the assistant director-general of the Department of Conservation, the Act was suggested as an option available to the department for the protection of wahi tapu on the conservation estate. The claimants put the Bill in issue in the claim, alleging that, with particular reference to wahi tapu, it would result in further violations of their rangatiratanga. After the hearing they filed further written submissions (I6(d)). Subsequently, on 1 October 1991, the Resource Management Act 1991 came into force. Part VIII of the Act provides for the establishment of heritage protection authorities. These authorities must be bodies corporate which have an interest in any "place" requiring protection. Notice is given by an heritage protection authority to a territorial authority of its requirement for a heritage order. Information describing the place and surrounding area is to be provided. Public notice of the requirement is then given and a hearing held at which submissions are presented. The territorial authority may then confirm the requirement with such conditions as it thinks fit. The owner of the land on which the "place" sought to be protected is located, may apply to the Planning Tribunal for it to be purchased and the costs incurred by the Crown are recoverable from the heritage protection authority.

There are a number of issues to be considered. First, the requirement that a heritage protection authority be a body corporate, is contrary to traditional Maori concepts. A "place" requiring protection for Maori is likely to relate to a community or hapu rather than an iwi. The cultural focus of such a community will be a marae or a number of marae which will be administered by trustees appointed by the Maori Land Court under s439 Maori Affairs Act 1953. Whilst the trustees have authority by way of an order of the court, they do not constitute a body corporate.

Secondly, the information to be given to the territorial authority is likely, by disclosing its whereabouts and significance, to violate its tapu. Whilst s42 of the Resource Management Act 1991 provides for the protection of sensitive information and refers specifically to wahi tapu, the disclosure to the territorial authority alone, and publicity given to seeking its protection, would cause serious offence to Maori values. Subsequent scrutiny at a public hearing would be a further indignity to a wahi tapu.

Thirdly, the hearing of an application for compensation by the landowner would cause yet further offence to Maori.

It is important to remember that wahi tapu are very personal to the people to whom they are significant. Any exposure takes the tapu out of the wahi tapu. Privacy is an ingredient in the "undisturbed possession" of taonga and any intrusion is a trespass.

The only reference to Maori of heritage orders may be situations where a place is of significance to both Maori and Pakeha. As previously discussed, the Maori reservation procedure under the Maori Affairs Act has found general acceptance among Maori in respect of their own land.

To fulfil its obligations under the Treaty, we do not consider that the procedure under the Resource Management Act for the creation of heritage protection authorities is an option to be adopted by the Department of Conservation. We accept the claimants' submission that it would be a violation of their rangatiratanga. As outlined above, the administration by a corporate body of wahi tapu, which are at the very heart of Maori culture, conflicts with Maori tradition. Whilst the Act refers to "iwi authorities", a concept assumed to be a traditional Maori concept, they are not necessarily accepted by Maoridom as such. Following the repeal of the Runanga Iwi Act 1990, just what is meant by "iwi authority" is uncertain.

Heritage orders are essentially instruments of local government and the resource management process. In the past, Maori, especially in Northland, have had only minimal involvement in town planning and local government generally. Whatever the reason, there is undoubtedly a fear by Maori that under the new Act their concerns will not be met, giving rise to the submission:

> Legislation must also provide an assurance that wahitapu will be positively protected where land use proposals relate to land in or around a wahitapu. (I6(d):2)

This submission raised issues beyond the administration of wahi tapu only, but also the use of neighbouring land in a manner which may conflict with Maori cultural values. It begs the question of Maori involvement in the resource management process and whether Maori cultural values are recognised and provided for in the Act. On account of the Act not having been passed into law prior to the conclusion of the hearings, we have not received evidence on this issue. Accordingly, we have not dealt with the matter in the report itself, although we have provided a discussion in appendix 5 in relation to the fragmentation of Waipoua No 2 block.

Finally, the claimants also raised questions concerning the Historic Places Bill. At the time of writing our report, this Bill had not been available for us to consider.

References

1 Section 27D of the State-owned Enterprises Act 1986 defines wahi tapu as "land of special spiritual, cultural, or historical tribal significance". Tutenganahau Paniora indicated the different kinds of wahi tapu at Waipoua (I1(e):53-58).

2 On the claimants' concept of mana whenua see above, pp 49-50. In s2 Resource Management Act 1991, mana whenua has been defined as "customary authority exercised by an iwi or hapu in an identified area". The special relationship of the Maori to this land has already been recognised in the decision of the Court of Appeal in *EDS* v *Mangonui County* (1989) 13 NZTPA 197 regarding section 3(1)g of the Town and Country Planning Act 1977. This section provided that regard should be had in the administration of the Act to the relationship of the Maori people and their culture and traditions with their ancestral land. The court held unanimously that the term "ancestral land" was not restricted to land in Maori freebold title but included land which had been alienated to non-Maori.

3 That taonga have both a tangible and intangible mauri has been recognised by the Waitangi Tribunal in several reports. See for example the *Report of the Waitangi Tribunal on the Manukau Claim* (Wai 8) (Wellington, 1985) pp 38, 57, 95

4 The Maori view of the power of taonga is not unique. For example, it parallels in many ways the anguish of the Aymara community of Coroma, Bolivia, who seek the return of sacred textiles which have been "removed" (stolen) from their community since the 1970s. These objects link the ayllus (lineages) of the Aymara to the cosmology, sacred geography and powerful guiding spirits of their ancestors. Through their ayllus, the Aymara are linked conceptually to the past and to specific geographic features that mark Coroma territory; to a sense of history, as well as to a sense of future continuity (Susan Lobo "The Fabric of Life - Repatriating the Sacred Coroma Tiles" in *Cultural Survival Quarterly*, summer 1991, Cambridge, Massachusetts, p 40)

5 Ann Salmond "Nga Huarahi o Te Ao Maori: Pathways in the Maori World" *Te Maori: Maori Art from New Zealand Collections* ed S M Mead (Auckland, 1984) p 137

6 J O C Phillips "Musings in Maoriland--or Was There a *Bulletin* school in New Zealand", Historical Studies, vol 20, no 81, University of Melbourne, October 1983, pp 527-534

7 Maori antiquities were defined in the Act as "Maori relics, articles manufactured with ancient Maori tools and according to Maori methods, and all other articles or things of historical or scientific value or interest and relating to New Zealand".

8 For information on the dog tax rebellion we are indebted to the historian Angela 8allara, Dictionary of New Zealand 8iography Unit, Department of Internal Affairs. One hundred and twenty armed troops had marched from Rawene to Waima, a 8ritish warship had anchored off Rawene, and Hone Toia and 15 others had been tried and imprisoned for conspiring "to levy war against the Queen in order to force her to change her measures".

9 8lomfield's subsequent career as a solicitor in the 8ay of Islands and purchaser of thousands of acres of Maori land for considerably less than the government valuations, suggests that he acted out of expediency rather than out of genuine sympathy for Maori feelings about their taonga (see Tokerau District Maori Land 8oard files 1912/744 and 1912/745).

10 This whakatauki can be literally translated as: *The miro berry cannot fly to pigeon but the pigeon flies to the miro berry.* Its symbolic meaning is: *The man requiring knowledge must go to the source of that knowledge. The source cannot go seeking the man.*

11 Manos Nathan "was not impressed with the manner in which they were stored. Each waka was on a tray with a thin hardboard base which lay in a damp concrete floor beneath a large two tier rack covered with wooden weapons." He found it difficult to examine the taonga as it was necessary to get on his knees to slide the trays out from beneath the racks. He found that some time between 1985 and 1987 at least one of the waka had been damaged. "The head of ME 1794 had been broken off the body of the waka." He made these observations because he had heard Pakeha officials comment that Maori did not have the skills or resources to adequately care for tbeir taonga. Whilst seemingly officials did have the facilities, resources and personnel to do the job, they obviously did not always succeed (D13:2).

The Crown researcher concluded that the wakatupapaku had been damaged before 1983. Lady Fox had observed that the head was broken. Possibly it had been broken before 1913, as Museum staff claimed that a photograph taken prior to that date showed the break (H4:95). He also concluded, from information he had received from the executive director of the board of trustees, "that temperature and illumination conditions are satisfactoty, but tbat relative humidity is slightly above the ideal range" and was therefore "satisfactory" (H4:96).

12 Norman Smith *Maori Land Law* (Wellington, 1960) p 195

13 The Historic Places Act 1954 established the trust as an independent statutory body with its own board of trustees. It is serviced by a government department (the Department of Internal Affairs then the Department of Conservation) and is partly funded by government, currently about one third from the Department of Conservation, one third from members' subscriptions and admissions to properties, and one third from the Lottery Grants Board. Its chairperson and some of its board members are appointed by the minister and it reports annually to Parliament (G3:7, 9, 13). Counsel for the New Zealand Historic Places Trust submitted that it is "not the Crown but a separate legal entity" (G1:6). For the purposes of this claim, we regard it as an agent of the Crown.

14 The New Zealand Archaeological Association is a voluntaty organisation whose members are professional archaeologists and enthusiastic amateurs.

15 An archaeological site is defined in the act as:

> any place in New Zealand ...
>
> (a) Which was associated with human activity more than 100 years ago; or
>
> (b) Which is the site of a wreck of any ship, boat or aircraft where that wreck occurred more than 100 years ago,—
>
> and which is or may be able, through investigation by archaeological techniques, to provide evidence as to the exploration, occupation, settlement, or development of New Zealand, being evidence which could not otherwise be made available for scientific, cultural, or historical studies.

16 Maori Association is defined in the act as including "a Maori Committee, a Maori Executive Committee, a District Maori Council, and the New Zealand Maori Council".

17 Section 2 of the Act defines a traditional site as "a place or site that is important by reason of its historical significance or spiritual or emotional association with the Maori people or to any group or section thereof". The wording was taken from s439a of the Maori Affairs Act 1953 (inserted by s60 Maori Affairs Amendment Act 1974 as suggested by the Department of Maori Affairs staff) (G6:3).

18 Alex Nathan evidenced several examples in the early 1980s of the Crown's failure to abide by or enforce the provisions of the 1980 Historic Places Act. An area across the river from Matatina was cleared and most of the 19 or more archaeological sites were modified or destroyed. Planting in that area, which included the ancient track between Waipoua and Haohaonui, was carried out without authorities required by s46 (C7:49).

19 These included the Waipoua Forest Sanctuary, the proposed archaeological reserve, the six acre Haohaonui wahi tapu historical area gazetted in 1984 and the kauri management and research area of the Waipoua forest set apart and gazetted in 1986 (F3:7-20). For more detailed Crown evidence from the Department of Conservation on land allocation, see F11.

20 This decision was in accordance with s9 State-owned Enterprises Act which states that nothing in the Act shall permit the Crown to act in a manner which is inconsistent with Treaty principles. Following the decision of the Court of Appeal in *New Zealand Maori Council* v *Attorney General* [1987] and an agreement reached between the Government and the New Zealand Maori Council in 1987, the Treaty of Waitangi (State Enterprises) Act 1988 was passed empowering the tribunal to make binding recommendations on land grievance claims which relate in whole or part to land or interest in land vested in a state-owned enterprise.

21 Mandatory Maori representation was provided on local conservation boards encompassing Tongariro, Whanganui and Egmont national parks but not explicitly on other boards. Nevertheless the Minister of Conservation had a statutory obligation to consult the Minister of Maori Affairs before making any appointment representing the interests of tangata whenua of an area (F3:25). Piri Sciascia gave evidence that further Maori involvement in conservation policy development had been increased with recent appointments of three Maori to the New Zealand Conservation Authority and 68 variously appointed to 17 conservation boards. Together with iwi liaison work this gave the Department "the potential to increase the degree of responsiveness which it can bring into effect in its work with iwi" (H14:5).

22 Under s56 Conservation Act 1987, the minister could appoint advisory committees, members of which were entitled to receive remuneration for their services and travelling expenses. The claimants say they requested formal status for TRWAAC under this section but the need for the committee was queried and never acted upon (C8:16). Documentary evidence confirms this. On 20 July 1987, the Kaikohe conservator suggested TRWAAC's position be formalised. "Its value", he wrote, "has been in building bridges between Tangata Whenua and the other organisations". Archaeological protection work within the historic reserve would need an overview for at least three years and a good deal longer if the department and tangata whenua decided on the "restoration/interpretation of sites". A minute from the regional manager, Auckland reads: "Should not this wait for the 1988 Quango review? I agree the Committee is needed, but does it have to be formalised" (B25:137).

23 Options for the department in developing a wahi tapu policy were the proposed Historic Places Bill, s17B of the Conservation Law Reform Act 1990 and provisions of the Resource Management Act 1991 (see H14:7-9).

24 The claimants in their submissions (I6(d):7) have suggested that the Maori Heritage Protection Committee within the Historic Places Trust "should be elevated to carry out its own protection functions in its own right with its own budget". This may be a suitable means for co-ordinating the provision of services by the department for the protection of wahi tapu on a nation-wide basis. It is a matter for discussion between the department, the trust and Maoridom.

Take 7

Whakahoki Mana (Attempts at Redress and Restoration)

7.1. Nga Aureretanga (Continuous Crying): Me Nga Whakautu (Response)

The claimants have defined the fiduciary duty of the Crown created by its Treaty undertakings to include the remedy of past breaches:

> where grievances under the Treaty are established by tangata whenua the Crown is required to take positive steps to remedy those breaches. (A1(i):5)

Te Roroa's attempts to establish their grievances were interlaced with wider movements in Maori society and politics to control their own affairs. In the last quarter of the nineteenth century the tribes who had fought the imperial troops and had their lands confiscated followed the Maori King and prophets. The tribes who had remained loyal, friendly or neutral and sold land through the Native Land Court, established Maori komiti (committees) and Maori parliaments. Te Roroa and Ngati Whatua aligned themselves with the kotahitanga (unity) movement for Maori parliaments.

In 1879 Paora Tuhaere and Ngati Whatua called together the Orakei Maori parliament to consider carefully the words of Governor Browne at the 1860 Kohimarama conference and the spirit of the Treaty of Waitangi, and to talk over their grievances and wishes. Over 300 representatives of various tribes and hapu attended, including Tiopira Kinaki. Although the Orakei parliament unanimously resolved always to remain friendly to the Europeans and, with one dissenting vote, adhere to the terms of the Treaty, it freely made known a number of grievances stated in this claim. Basic to these was the establishment of the Native Land Court, which, as Paora Tuhaere said, "took away the authority over the land from the owners, and put the authority in a Crown grant".[1] Tiopira's grievances illustrated one of the consequences for Te Roroa:

> I say that justice came from it [the Treaty], and that misfortune came from the Crown grants and the County Councils. The work of these Councils is to make carriage roads, and I find fault with them because I have to pay for those roads .... I do not blame the Government for taking the land; the blame rests with the people who sold the lands .... The only fault I find with the Government is the establishment of these Road Boards—the Road Board on the West Coast, from Wairoa to Hokianga. I was always in the habit of using the road that has been there, but now

> the Road Board want to make me pay for using that road.... Perhaps Sir George Grey and Mr. Sheehan will remove this wrong, and carry out this road out of the Government funds without asking the Maoris to pay rates.[2]

Paora Tuhaere explained that he "got up" the Orakei parliament for his own tribes (Te Taou, Uriohau, Te Roroa and Ngati Whatua), who would not go to a Ngapuhi parliament because of some very "bad words" mentioned by Ngapuhi in the Kaihu Native Land Court.[3] He was referring to Parore Te Awha's claim to Maunganui by rights of conquest. But, in future, Ngati Whatua and Ngapuhi worked together to remedy common grievances.

In 1882 Parore Te Awha petitioned the Queen on behalf of the kotahitanga movement for Maori parliaments:

> These things [the disappearance of native reserves] and many of the laws which are being carried into effect are, according to Maori ideas, very unjust, creating disorder amongst us, giving heart pangs and sadness of spirit to your Maori children who are ever looking towards you, Most Gracious Queen; and it is averred by men of wisdom that these matters, which weigh so heavily upon us, are in opposition to the great and excellent principles of the Treaty of Waitangi.[4]

Parore is said to have provided £300 for Hirini Taiwhanga to take the petition to the Queen.[5] Possibly he used part of the proceeds from the sale of Maunganui and Waipoua lands.

Before Parore Te Awha died on 24 September 1887 and Tiopira Kinaki on 12 November 1887, the Rahiri house was built at Te Houhanga marae, Dargaville, to commemorate the peace made between them. Nga aureretanga united parties who had been traditional foes on the battlefield and in the Native Land Court. From 1892-1902, Te Roroa together with the other hapu of Ngati Whatua and Ngapuhi looked for redress to annual Maori parliaments; thereafter to the Young Maori Party leaders and men of two worlds such as Apirana Ngata, who worked through their tribal elders in association with the New Zealand Parliament.

7.2. Grievances Over the Failure to Reserve Kaharau and Te Taraire

The seeds of Te Roroa grievances were sown hy the Crown's failure to set aside Kaharau, Te Taraire, Manuwhetai and Whangaiariki from the lands they purchased in 1875-1876. But they did not begin to germinate until the land was opened up for settlement and public works. In the meantime, tangata whenua continued to use and occupy their traditional resource areas and to protect their wahi tapu, presuming that they were still Maori land.

Protest over the inclusion of Kaharau, Te Taraire and other smaller Waimamaku wahi tapu began in 1887, when a surveyor, Baber, began cutting up a portion of Waimamaku No 2 block for the Canterbury

settlement (D1:20; H3:96). Ngakuru Pana wanted to stop the survey but younger people did not wish to take such extreme measures. In the event, the surviving vendors, Ngakuru Pana, Hapakuku Moetara, Ihaka Pana, Rewiri Tiopira and others adopted legitimate methods of protest, writing letters, making personal representations to ministers and government officials and petitioning Parliament.

Persistently and continually they insisted that they had arranged with the Crown native land purchase agents and surveyors to reserve Kaharau, Te Taraire and other small wahi tapu from the sale of Waimamaku No 2, that Daniel Wilson had marked the reserved area on his survey plan and that Preece and Nelson "perfectly understand" this area had never been sold (D3:356-357, 360-361, 366-370, 372-379).

In a letter dated 27 January 1892, Hapakuku Moetara, Peneti Pana and others further explained that:

> a message was written clearly in the deed that a portion of the land will be sectioned off (teakina) for the Maori. Our sellers, on the other hand, only signed the sale of the big block. Charles (Nelson) wrote in his books his separating that other block outside of the sale of the big block. We think that his books are with the Department.
>
> That is why we say that we still have possession of that portion of that block right from the distant past up to today. (D11:13)[6]

In the 1894 petition, Hapakuku Moetara, Rewiri Tiopira and others prayed that this portion be returned to them because they were "quite sure that the land was never sold" (D3:356-357, 360-361).

The Crown's denial of these claims was equally persistent and continuous. It was based on the unequivocal conclusions reached by P Sheridan of the Native Land Purchase Department in Wellington who had investigated complaints of Baber's activities (H31:13-15), and examined the deed of sale, the map attached to the deed and Preece's "very full" report (D3:385). Preece could not be consulted as he died on 10 August 1878 (H3:app 5).[7]

Despite such denials, more sympathetic individual ministers and officials were willing to make concessions. In 1889, the surveyor-general was instructed that if there were:

> any old graves on the block a few acres surrounding them could perhaps be reserved under the provisions of The Land Act without causing any inconvenience. (D3:382)

The title however would remain vested in the Crown. Action by survey officers was delayed, then foundered. The chief surveyor, W C Kensington, said that Maori must pay the survey costs and that reserves were not to exceed two or three acres. The Maori refused to disclose the location of the wahi tapu for survey purposes and insisted that the whole area surveyed and reserved by Daniel Wilson, be returned to them. Kensington regarded this as "preposterous", particularly

as the area included two sections laid off by Baber in possession of Canterbury settlers. It was no use, he reported to the surveyor-general, to attempt to make the surveys (D3:390).

When the 1894 petition came before the Native Affairs Committee, it recommended a royal commission appointed by itself. The petition and the committee's recommendation were referred to the government but no further action was taken, presumably because the government agreed with Sheridan that "There is no going behind the deed of sale" (D3:351).

At no stage in the lifetime of the vendors did the Crown fully and carefully investigate their claims.[8] Neither Wilson nor Nelson were ever consulted. Percy Smith appears to have accepted Sheridan's conclusions without comment. Kensington gave no hint that he had compiled the plan appended to the deed of sale; nor did he ever mention Weetman's check survey. Various explanations suggested by the Crown researcher for these omissions do not excuse the Crown's failure to carry out a proper investigation while those involved were still alive (H30:5-10, 19-21; H31:14-24).

In 1902 protest over the taking of the land was re-fuelled by the discovery of the Kohekohe caves and the removal of wakatupapaku and other taonga from them. At the Rawene meeting, 21 May 1902, the magistrate, Blomfield, promised the people to ask that the portion of Crown land containing the wahi tapu be returned to their hapu (D3:315-317). Ngakuru Pana informed the Native Minister that he was taking action and that he had been to the surveyor (Wilson) about the land which had been set apart as a burial place (D3:305-306). The minister was strongly of the opinion that Maori wishes should be met (D3:404, 494), but when Kensington was consulted, he noted on the file "Answer not reqd as yet—let it go away" (D3:402). Apparently the "whole of this land" had already "been withdrawn on account of Kauri" (D3:493).

On behalf of one of the original owners of the land (presumably Ngakuru Pana), an Auckland law firm made some inquiries. When this was reported to Kensington he repeated his stock answer pointing out that he was "well acquainted with the whole transaction" (D3:288).

Ngakuru Pana assisted by Mrs M A Bryers (see appendix 6 pp 2, 9), continued to protest. In 1907 his son and lehu Moetara gave evidence before the North Auckland Surplus Lands Commission and he himself again petitioned Parliament. Again Kensington denied that any land had been reserved. This time the petition was referred to the government for "favourable consideration with a view of making provision for a Reserve" (D3:155-156), but nothing was done. Mrs Bryers wrote several more letters to the Native Minister, James Carroll, before

Ngakuru Pana died on 8 July 1914 leaving a new generation to continue the *take*.

On 9 June 1925 they petitioned Parliament to empower the Native Land Court to hold an inquiry without avail (D3:127-134). Another petition, 10 June 1930, resulted in Chief Judge R N Jones ordering an inquiry (D3:257-260, 204-205).

7.3. The Acheson Inquiry 1932

Judge F O V Acheson presided over court hearings at Opononi on 28 January 1932 and, following an adjournment for a staff inquiry, in Auckland on 4 July 1932. Evidence was given by Iehu Moetara, Aperahana Reupena Tuoro and Matene Naera. The position was then fully discussed with the assembled people who concurred with the statements given in evidence and provided further information (D3:118-121; H3:129-130).

Acheson in his report of 5 August 1932 concluded that (D3:13):

> (a) the Natives themselves believed the urupa (now the subject of the inquiry) to be excluded from Waimamaku No 2 Block.
>
> (b) the five chiefs who signed the deed of sale thought they were selling the land shown on Smith's sketch map (ML 3268); and
>
> (c) the sketch drawn on the deed, (that is Kensington's compiled plan) would have been quite insufficient to warn them that the land being sold included the area of the urupa.

It was "perfectly clear to the Court", he added:

> that under no circumstances would five such prominent chiefs have sold to the Crown, for a mere pittance (less than 1s. per acre), the burial-places of their ancestors. The Court is satisfied also that the urupas in question were purposely cut out as a reserve before the negotiations with the Crown took place, and that the vendors understood the reserve had been cut out before they signed the conveyance to the Queen. (D3:13; H3:133)

The burial places in question were (a) Te Moho; (b) Kohekohe, Te Rereapouto and Te Akaterere in the whole area known as Kaharau; (c) Te Taraire. Three areas sold to European farmers and one area held by a European storekeeper under an ORP (occupation with right of purchase) licence were affected.

The court was of the opinion:

> that the Native vendors, when signing the conveyance... thought the 1,472–acre reserve (including the urupas) was excluded from the sale. The fact that the old records have been destroyed by fire makes it impossible for the Court to come to a more definite finding on this point.
>
> ....The Court is sure that the urupas in question were not intended to be sold to the Crown.... the inclusion would be due to a mistake in the Court plans for which the Native vendors were not to blame. (D3:13)

The court therefore recommended that action be taken under s472 Native Land Act 1931, or under special legislation to return the burial grounds in question and, possibly, a portion of the old reserve if still vested in the Crown and unalienated (D3:14).

In forwarding Acheson's report to the minister, Chief Judge R N Jones noted that unfortunately, most of the land had been disposed of, and could not now be recovered. It might be possible to have part of a section with the burial caves on it reserved, but the natives probably would be averse to paying for it. If the government paid, they would not be satisfied but look upon it as an admission entitling them to compensation for the larger reserve. He could not at the present stage recommend legislation. His own views on the subject of the inquiry clearly relied on the deed of sale and the stance maintained by the Crown since 1887 (D3:12).

Crown research on this part of the claim supported Acheson's conclusion, not that of the chief judge (H3:135; H30:21-23).

Acheson's report was referred to the government for consideration but as the chief judge did not recommend legislation nothing eventuated (D3:185-187). At Opononi, Acheson explained to the people that the Native Land Court was unable to take any further action (D3:125(a)).

In May 1933 Piipi Cummins (Tiopira) and 67 others again petitioned Parliament seeking either compensation "in land or money" or a re-vesting of the burial places under s472 Native Land Act 1931 in persons or authorities the court might determine. The acting Native Minister took up the question with the Minister of Lands (D3:430). By then the only burial place on Crown land was Kohekohe which was held by James Morrell under an ORP licence.

Morrell declined to agree to have the area reserved with an easement for access purposes to the nearest road. In his view the local Maori entertained "no sentiments in regard to these things"; the human bones had been removed and reburied in the cemetery 33 years before and were not their ancestors; the wood carvings and burial chests were in the Auckland Institute and Museum with Maori consent (D3:168, 529, 533). Piipi Cummins was therefore informed that if they wished to recover the burial places, they would have to raise the money to pay the present owners of the land and to compensate Morrell (D3:166).

The claimants considered "the key reason" for the rejection of Acheson's recommendations was that most of the land had been disposed of. The Crown researcher admitted that was a consideration but would not comment further (H30:23).

Various opinions were expressed to the tribunal about why the protest over Kaharau and Te Taraire then subsided (H3:140-141). After 48 years the Waimamaku people must have felt defeated and exhausted. Furthermore they had no experienced advocate to act for

them as did Te Rore Taoho's descendants in respect of Manuwbetai and Whangaiariki. Nonetheless, as Daniel Ambler said, "a continual cry and heartache of our ancestors... carried on through each generation up to the present day". Petition and protest in respect of this claim were not in his view "of monetary value but of a highly spiritual value and therefore should be addressed in a like manner". It was "not a case of Crown versus Maori but right versus wrong" (D21:1-2).

7.4. Grievances Over the Failure to Reserve Manuwhetai and Whangaiariki

A parallel claim arose over the Crown's failure to reserve Manuwhetai and Whangaiariki. In this case, official confusion over their post-sale status initially helped to sustain the protest. Manuwhetai and Whangaiariki were shown as native reserves on cadastral maps and plans prepared by the lands and survey department and as late as 1927 on Hobson County Council maps. Most probably this was because Frank Smith's survey plan (ML 3297-8) was part of the official survey record and the department did not adequately check tbe information on ownership at its disposal.[9] Manuwhetai and Whangaiariki were listed as whenua rahui on the 1886 Hobson County Maori rate roll (A6:1063). Manuwhetai was reclassified as Crown land on the 1902 valuation roll, but Whangaiariki was still Maori land on the 1913 valuation roll (A6:1064-1069). A schedule of native reserves ordered by the Legislative Council in 1899 and published in 1900 listed Whangaiariki but not Manuwhetai.[10]

On 15 July 1897, Manuwhetai was leased in perpetuity under Part II of the Land Act 1892 to John Downey, whose family was already farming adjacent Maunganui land (A6:1086-1088; A13:44; E3:3, 9).

On 21 November 1899, John Snowden of Maropiu, who was married to a Te Roroa woman, wrote to Percy Smith:

> I am instructed by Terore [sic] Taoho to write to you about his land at the Bluff. It was sold by the Government to Mr Downey. He told me that Netana Patuawa had seen you about the Land. Hi [sic] Netana Patuawa gave him to understand The Government might give him Land... in the Place of it... Terore [sic] says there is no Land near this place good enough to take in the place of it. He would take a £1 an Acre for the Land....
>
> You will oblige by seeing to it as the Old Man is getting old and shaky. (A5:728-729)

Kensington replied on 30 December 1899:

> Te Rore Taoho is in error in supposing that the reserve was made for him at Manuwhetai. It was cut out at first, but afterwards it was found that the Deed of Sale did not exclude it, so the land was opened for selection as Crown Land. (A5:603)

Kensington's reply became the stock official answer to future complaints.

After Te Rore Taoho's death on 27 December 1903 (B4:88), his *take* was continued by his sons, Raniera and Enoka Te Rore Taoho and others. Raniera believed that Manuwhetai had been awarded solely to his father and objected to Europeans occupying it. When Downey built a house on the wahi tapu, strong protests were made to the member for northern Maori, Hone Heke, and his successors, Te Rangihiroa and Tau Henare (A13:49). In 1912, Raniera Te Rore complained to the local member, J G Coates, that Downey had fenced land they had "never leased or treated with in court". Coates's inquiry ascertained the land was part of the original Crown purchase (A14:1-9).

7.5. The Stout-Ngata Commission

By the 1900s a new generation of educated, young Maori leaders was emerging who believed that if the Maori wished to survive as a people they must not only have better health, education, housing and employment, but develop and farm their own lands. Their slogan was "Only those lands, which the Maoris themselves will usefully occupy, will remain or be allowed to remain to them".[11] But owners of Maori land received no assistance under the advances to settlers legislation.

To overcome the problem of scattered interests of individuals in different blocks of land that, like Waipoua No 2, were being partitioned by the Native Land Court, Ngata and the Young Maori Party advocated the consolidation of interests. Carroll's policy encouraged leasing, not selling to ward off mounting European demand for Maori land. In 1907-1908, the Stout-Ngata Commission was appointed to find a middle way between continued government purchases for settlement and Maori needs and aspirations. To determine what areas Maori required for themselves and what areas they were willing to lease or sell, the commission travelled around the country hearing evidence from Maori owners.

In parts of the Kaipara district, the commissioners found:

> Signs are not wanting that... the Natives are realising the necessity of utilising their lands in a proper manner.... but their energy... has been expended in other directions, gum-digging, bush-felling, and other employment... with the timber industry.... About ten years ago the kauri-gum began to give out, while the available supply of kauri timber rapidly dwindled.... In Hobson County there are *many* Natives with very little land, who may be termed almost landless.... there is need for the proper adjustment of titles... above all, there is need for proper instruction and direction, that...energy... may be diverted to the more difficult task of cultivating land. (A3:167, emphasis added).

The commission listed Manuwhetai and Whangaiariki as lands in the Hobson County "recommended to be reserved for Maori Occupation under Part II of the Native Land Settlement Act 1907" (A3:173). Crown researchers gave two conflicting reasons for this mistake; either the information came from the perusal of survey maps and official documents

(F2:19-20), or it came from local Maori, in which case it could not be taken as an official acknowledgement that Manuwhetai and Whangaiariki were in fact native reserves (E3:41). The latter reason is supported by evidence in the commission's minute book and what is known about how the commission operated (A13:44; E3:41).[12]

When the commission sat at Dargaville in March 1908, it heard brief statements on Manuwhetai and Whangaiariki from a Kaihu kaumatua, Wiremu Rikihana. The entry in the minute book on "Whangaiariki NR" stated:

> This is not utilised–but being a reserve out of a sale it sh[ould] still be reserved. (A6:1053)

The entry on Manuwhetai stated:

> This is a "wahi tapu". Bener make sure that it is a Reserve. Surrounding land all sold to Crown. (ibid)

Beside Manuwhetai in the commission's interim report is the remark: "Reserved from sale to Crown as *wahi tapu*" (A3:173).

In the event, the Stout-Ngata Commission recommendations were not carried out. An opportunity to investigate and redress the *take* before the land was transferred to private individuals was lost.

7.6. Continuing Complaints

On 18 May 1914, Downey purchased a freehold title for Manuwhetai which he transferred to D Sutherland of Waimate. The land changed hands several times before a new title was issued to W W R Pryce, an Aranga farmer, on 14 April 1930 (A6:1089-1091). During the intervening years, the Te Rore family and other tangata whenua continued to live, farm and dig gum at Whangaiariki, and to camp at Manuwhetai to get shellfish and fish and protect their wahi tapu (A13:46-48; A4:555-557).

In 1928, Paiwiko Ananaia complained to the Native Minister and the court registrar that Pryce was claiming ownership to high water mark and trying to eject Maori campers at the beach. He also complained that a European, Mr Somers, was breaking down fences around Maori homes and gardens at Whangaiariki. He was informed that there was a strip of public road reserve between high water mark and Pryce's land and that an annual grazing licence had been granted to Mrs K Somers at Whangaiariki (A5:609-621; E3:4,17). The public road reserve consisted of almost four and a half acres and dated back to some time after Downey's lease (A13:44).

Ngata became Native Minister and initiated his state-assisted Maori land development schemes in 1928. Officers were appointed to consolidate scattered interests in different blocks for purposes of development. In 1930, Paiwiko Ananaia wrote on behalf of Raniera and Enoka Te Rore to the consolidation officer about Pryce's attempt to prevent them building a house at Manuwhetai for Maori use and

threatening to get a policeman to eject them. The original owners, he said, had no existing knowledge of its sale to Europeans. "Who ever made this sale"? (A5:622-624).

Paiwiko Ananaia also met two consolidation officers visiting the district. As Manuwhetai was included in the consolidation scheme for Waipoua, they had brought Frank Smith's plan of native reserves with them. Presumably Paiwiko Ananaia now learnt that only Taharoa had been reserved from the Maunganui sale, that Whangaiariki had been "repurchased" by the Crown and that a survey plan existed to corroborate oral tradition (A5:624-626). Meanwhile Coates, on Colonel Pryce's behalf, ascertained from Ngata that the Maori claim to Manuwhetai was based on the 1875 survey plan and that the only reserved area was Taharoa (E3:9-10).

In the early 1930s Paiwiko Ananaia continued to complain about what was happening at Manuwhetai. The road under construction from Kaihu would enable Pakeha to go to the beach in motor cars and "do harm to ... [their] shell fish" (A5:632-635). The European who had purchased land from Pryce was preventing them from grazing their horses and threatening to take legal action to eject those with houses on Manuwhetai (A3:179; A4:526-527). With Raniera Te Rore and others, he sought the help of the Native Land Court to secure the return of Whangaiariki and Manuwhetai.

Applications for investigation of title came up in the Kaipara court on 11 June 1931, 28 August 1934 and 13 August 1936 and were opposed by the Crown. Judge F O V Acheson began to take an interest in the case. Counsel for the applicants was L W Parore, who asked for an adjournment as he was petitioning Parliament (A4:523-527).

A petition from L W Parore and J Parore was presented to Parliament in 1937 praying that it "provide legislation fully enabling the Tokerau District Native Land Court to investigate all aspects respecting this matter and give judgment in the return of the above-mentioned lands" (A5:856-857). Despite a report from the assistant chief surveyor "that if there was the slightest claim raised, effect would have been given to it" (A6:1036-1038), the Native Affairs Committee recommended the petition be referred to the government for inquiry. Provisions for this were included in the Native Purposes Act 1938.[13]

7.7. The Acheson Inquiry 1939

An inquiry was held in Kaihu on 7 July 1939 by Judge Acheson. V R Meredith appeared for the Crown; L W Parore for the petitioners (A4:528).[14] Parore argued that the native titles to Manuwhetai and Whangaiariki were never extinguished. Plan ML 3297-8 and later official documents indicated they were reserves. Paiwiko Ananaia and Huhuna Topia gave evidence of the early history of Maori occupation going back nine generations and of the continuing use of the land they considered theirs and emerging conflict with European occupiers (A4:530-538).

Meredith argued that plan ML 3297-8 was done without official sanction by a private surveyor, that the land was not mentioned at the 1876 Native Land Court hearing or at the Barstow inquiry and was not excluded from the deed of sale and notice gazetting the Maunganui block as Crown land (A4:539-544). Owen Darby, officer in charge of the Maori branch of lands and survey, and William Henry Rossiter, lands and survey field inspector, gave evidence on the status of plan ML 3297-8, the poor quality of the land and its "uninhabited" appearance (A4:544-547). In cross examination, Meredith tried to establish that the urupa was on beach frontage not freehold land (A4:538).

In conclusion, the court explained "to assembled Natives that its functions are limited to Inquiry and Report to [the] Chief Judge for submission to Parliament." Its report would be available in time for consideration by Parliament that year (1939) (A4:552). In the event the report was sent to the chief judge on 28 April 1941 and to the minister on or after 2 July 1942 (A3:175). This was an unconscionable delay, even in wartime, which ignored s23 of the 1938 Act which provided that the report and recommendations should be laid before Parliament on as early a date as possible.

Acheson's report emphasised, as a point of considerable importance to the petitioner's claim, that plan ML 3297-8 "was in evidence *prior* to the date of deed of sale of the Maunganui Block to the Crown". It questioned the Crown's view that it had no status whatever as a survey plan. Was not the Hobson County Council map as late as 1927 "in reality an unwitting acknowledgement by the Survey authorities that these two areas were set aside as Native reserves" (A3:176)?

A memorandum, 15 September 1875, from the deputy inspecting surveyor to the provincial surveyor stated the plan had been sent to him for approval. No answer was on record. Up to at least this point the plan was regarded as official. At this stage it was held up by officers of a government department. There was nothing on record that the natives were told. Could the Crown "take advantage of the incompleteness of the official records and say now the two reserves were not really set aside for the Natives?" (ibid).

Plan 3253 of Maunganui, used for the sale, was a *compiled* plan, accurate as to outside boundaries, but no guide as to what lay *inside*. In between the date of the compiled plan and the date of the investigation of title and deed of sale, there was a regular survey which showed the exact boundaries of Manuwhetai and Whangaiariki as native reserves. Moreover, plan 3253 was cross-referenced with plan 3297-8 and showed the boundaries of these reserves in pencil, but no date for the pencilling (A3:177).

Manuwhetai and Whangaiariki were not shown on the deed of sale, 8 February 1876, whereas the Taharoa Native Reserve depicted on

ML 3457, dated 22 March 1876, was. The Taharoa reserve was also shown on plan 3253 for Maunganui, dated 17 May 1875, whereas only pencilled notes were shown for Manuwhetai and Whangaiariki (ibid).

Whangaiariki was exempted from lands sold on the Legislative Council return of native reserves in 1900, although the Crown had contended it was not. There should be clear evidence in the land department's records to prove it was "repurchased". It had been held by the Privy Council that the Crown could be required to *prove* a purchase (ibid).

Kensington's "remarkable admission" that Manuwhetai "*was cut out at first*, but *afterwards* it was found that the deed of sale did not exclude it, so the land was opened for selection as Crown land" went to the root of the petitioners' claim. By inadvertence or otherwise, the reserve was not excluded from the deed of sale. In effect, Kensington held the Crown had the right to take advantage of the omission. As the two sellers were dead, the claim of their kinsman, Te Rore Taoho, should have been investigated by a judicial tribunal. Apparently he was too old and frail to stand up for his rights. The court refused to believe he attempted to sell Manuwhetai for £1 an acre. Snowden's offer was merely an attempt to do something for the aged Te Rore or gain some advantage for himself (ibid).

The Stout-Ngata Commission showed that as late as 1908 the two areas were regarded as native reserves. The Crown had expressed surprise that Downey's lease had been overlooked but the lease was described as section 19, block XII Waipoua Survey District, not Manuwhetai (A3:178).

The judge taking the inquiry regretted to have to say that, in all his 21 years' experience on the Native Land Court bench, he had come across quite a number of cases where:

> Native reserves originally arranged for have apparently without reason and without the knowledge or consent of the Natives been allowed to sink into oblivion. (ibid)

Only a petition could resurrect them:

> The Court, from its wide knowledge of Maori life and customs, says it is preposterous to think that so long a stretch of coast-line, lying close to the big inland Maori settlement at Kaihu, would have been without areas in regular occupation by Natives for fishing, cultivation, kainga, and burial purposes.... the Natives of the Kaihu district regularly used both reserves as bases for the collection of shell-fish and other sea-foods, a practice as old as the Maori race itself. (ibid)

The court was:

> quite satisfied from the evidence that the Kaihu Natives must have been in regular occupation of these two reserves... in 1876. That would be the ordinary and natural reason for the two areas being surveyed off as reserves.... The surveyor.... would not have been allowed to survey

> reserves at all except with the knowledge and approval of the leading Maori chiefs of the district.
>
> It cannot be supposed that two high chiefs like Parore te Awha and Tiopira Kinaki would deliberately sell to the Crown two reserves, both occupied and in regular use for important food and residential needs, and one of them containing big and tapu burial-grounds. The clear presumption is that they carried out their chieftain duties and protected the occupation rights of their tribesmen within the area to be sold (1876) by first arranging (in 1875) for the two areas to be surveyed off and marked on the plan as reserves. It would hardly dawn on them that a sale deed signed so soon afterwards would include in the sale the two reserves so recently surveyed out.... [It was] highly probable that Plan 3297-3298 showing the two reserves was before their eyes as they signed the deed of sale. They would not suspect that, by an oversight on the part of the official who drew up the deed, the two reserves were not protected by the deed. (ibid)

Finally, there was nothing to show that plan 3297-3298 was not before the court in 1876:

> It should have been before the Court. It was the bounden duty of the Crown's officers to produce it.... the Natives... must have felt they were investigating the Maunganui Block *less the reserves*. In that case, the order on investigation of title should also have excluded the reserves as not investigated. The reserves would remain "papatupu" or "customary" land. (A3:179)

In the opinion of the Court:

> the essential need is to uphold at all times the King's honour and the standard of British justice in dealings between the two races in New Zealand. The circumstances of this case... cry aloud for redress for the Natives. The two reserves are theirs and should be returned to them, no matter what cost to the Crown this may involve. (ibid)

Chief Judge G P Shepherd was unmoved by these strong words. He could not help but think that, whatever the purpose of the survey "it was not done with the express or... immutable purpose of having the areas reserved from the sale to the Crown". If that had been intended, the "vigilance with which the two contending chiefs... watched over events leading to, and surrounding, the investigation of title... and the cession... to the Crown, must inevitably have been rewarded...". The sale was the subject of magisterial inquiry. It appeared to him "unthinkable" that if there had been any suggestion touching other reserves than Taharoa, "it would not have been the subject of notice before the tribunal" (A3:175).

Set over against any inference which was to be drawn from the existence of the plan were the facts and statements of record; no provision for the reserves in the deed of conveyance; no mention of them on the proceedings for the investigation of title; certification by a judge on the deed of conveyance that the two chiefs signed after the contents had been explained to them and they appeared fully to

understand its meaning; a clear certificate on the deed by a trust commissioner; Preece's memorandum, 12 February 1876, mentioning that under the terms of the compromise between Tiopira and Parore, Parore was getting no reserve until he had agreed to let him have about 250 acres.

The chief judge went on to note that the survey of the reserves was apparently made without the sanction and authority of the inspector of surveys as required in s74 Native Land Act 1873. He was unable to attach any significance to maps or to references to them in the 1900 return and the Stout-Ngata Commission report. They were "merely perpetuations of an original mistake as to the real status of the lands" (A3:176). The use of part of Manuwhetai as a burial ground did not necessarily impart an intention to reserve.

He found himself unable to make any recommendation to the effect that the areas should be revested in the Maori but suggested officers of the Crown endeavour to conclude an arrangement whereby any burial place on Manuwhetai or Whangaiariki might be reserved from desecration and perhaps permit Maori to exhume and reinter any human remains (ibid).

The report and recommendations was transmitted by the chief judge to the Native Minister, 2 July 1942, for presentation to Parliament and was referred by the Native Affairs Committee to the government, 17 October 1942. Acting on the advice of his undersecretary, the Native Minister approved action along the lines indicated by the chief judge, 5 January 1943 (E3:doc 5). The surveyor-general was requested to arrange with L W Parore to identify any burial grounds (A5:793).

A copy of the report and recommendations was sent to L W Parore on 18 December 1942, the same day the undersecretary advised the minister to approve the chief judge's recommendation. On 9 February 1943, Parore wrote to the minister making known his objections to the recommendation because it was "wrong in fact and law" (E3:doc 17). If given the opportunity, he would quote cases where the Crown had made similar mistakes before. Otherwise he would lodge a further petition. The Auckland commissioner of Crown lands wrote seeking to arrange a visit with a field inspector to ascertain "the position and quantities of remains in the burial grounds" (A5:810). Parore saw no useful purpose in identifying wahi tapu as he intended petitioning Parliament (A5:808-809). In 1945 the chief surveyor reported that little or no interest had been shown by the petitioners' representatives in the matter, so nothing could be done (A5:793).

L W Parore again petitioned Parliament in 1943 and 1944. He submitted that the dictum of the chief judge that the reserves be not revested in the natives was erroneous and humbly prayed that the matter be referred to a royal commission for investigation (A6:1042-1045). No recommendation on either of the petitions was made (A5:793). "That line of protest had met a dead end" (A13:55).

The Crown alleged that "a number of the reasons and grounds relied upon by both Judge Acheson and Chief Judge Shepherd" were "either irrelevant or wrong" (I2:(b)(ii):66). The search for historical information in 1939 was "mostly confined to published documents, and was not sufficiently comprehensive that it was able to bring to light some of the documents which have now been presented to this Tribunal" (E3:38).

Such allegations, in Acheson's case, are one-sided and unfair. His report was based on the oral evidence presented to the court as well as official records. Furthermore, he evaluated the evidence with cultural sensitivity. Indeed he stands out as a lone voice in the government establishment of his day. He had an empathy with the people, and he listened to their grievances. He saw it as being essential that the honour of the Crown and the standard of British justice should be upheld.

Counsel for Crown directed her final submissions to excusing the Crown's failure to redress the petitioners' grievances after the Acheson inquiry:

> Although our current view might be different from that of the Chief Judge, the Crown was entitled at the time to accept and rely upon the recommendation of the Chief Judge.... The Crown had set up the inquiry and as far as the Crown was concerned at the time an honest effort had been made to ascertain the facts. The Crown would have been subject to criticism if it had preferred the opinion of a junior judge to that of a senior judge. (I2:(b)(ii):71)

Such prevarication cannot conceal the facts.

7.8. Beach Subdivision and Farm Settlement

By 1945 developments at Manuwhetai were already under way that were to heighten tensions on the spot and produce more widely organised and sustained protest. They can be traced back to decisions made by the Hobson County Council eight or nine months before Acheson's inquiry commenced. On 20 September 1938, the council authorised the executive to purchase land required for a parking area and access to the forest reserve at Pryce's camp, Maunganui Bluff, for approximately £50 (A6:1070). Then, on 15 November 1938, it approved a subdivision plan for Maunganui Bluff camp (A6:1071). By March 1939, a scheme plan had been prepared and a survey of the proposed twenty section subdivision deposited with the Department of Lands and Survey (A13:45). On 18 July 1939, the council accepted the dedication of land along the sea front for road widening (A6:1072), and following this it approved a plan for five additional sections at the Bluff (A6:1073).

In 1940 the Hobson County Council purchased section 1 from W Pryce (A18:95). Some half dozen sections on the Kaihu–Bluff road backing on to the scenic reserve were sold in 1940, and a few more

in 1941 (A6:1092-1093). In 1941 the county erected public conveniences at Manuwhetai (A18:104). Clearly the Hobson County Council and other persons involved in this beach subdivision were in contravention of s23(3) of the Native Purposes Act 1938. This made it unlawful, except with the leave of the Native Land Court, for any person to alienate or otherwise deal with any land subject to a petition to the Native Land Court for inquiry and report, until the report and recommendations had been considered by the Native Affairs Committee of the House of Representatives. The Crown did not enforce s23(3) of the Act.

Sales resumed in 1945 and in the next six years more sections were sold, mostly to local farmers or their wives, and tradesmen, and a few to local Maori (A6:1101-1156). By 1986 there were 38 surveyed sections along the beach and on the beach road, all freehold. Twenty-six had baches or houses on them. About two thirds were occupied on a regular basis, in three cases by permanent residents. Most of them had been used and owned by the same families for many years. A few changed hands at regular intervals. Two sections had, until recently, been owned by a Maori (A5:747-752 cf A13:45). The present owner of Manuwhetai, Alan Titford, took over the unsubdivided part of Manuwhetai in 1986 and on 18 September 1987 obtained approval from the Hobson County Council for a subdivision plan to finance farm development (A6:1161; A13:45).

Whangaiariki had been included in a survey subdivision in 1921 (E3:doc 30) but was not considered sufficiently attractive farming land to be opened up for selection. Lovey Te Rore remembered people living there when he was young, their houses being on Whangaiariki, their cultivations on the flat land between Whangaiariki and the sea (A13:47). He also remembered a really successful Scottish farmer at Manuwhetai with whom he was out mustering during one of the worst droughts they ever had in the area, wanting him to look at Whangaiariki and tell him what he could see. And when he looked down he couldn't help but see that all was green. "Christ man", the farmer said, "your parents, your ancestors know how to pick a ground" (A34:7-8).

In the late 1920s Maori gum digging activity in the Taharoa Lake area increased and some of the Maori living at Whangaiariki may have been gum diggers (A13:47-48). Traditional subsistence and gum-digging were typical of periods of depression and unemployment in Tai Tokerau. By 1939 there had not been any cultivations there for four years (A4:563). In March 1941 some Maori offered to buy the Whangaiariki block for 5s an acre. No response to this request has been found. The department recommended disposal at 10s an acre (A5:731(a)-(e)).

After the war, land was urgently needed initially for farm settlement under the rebabilitation scheme and then for development of farm settlement blocks under the Department of Lands and Survey.

Whangaiariki was included in the Omamari farm settlement scheme (E3:doc 31(a)). In a farm ballot in 1965 the successful applicant for the block was M J Simmonds of Te Awamutu. The block was leased for 33 years, the lease being perpetually renewable at a new valuation for similar terms, with the right to buy the freehold (E3:doc 49-50). Crown improvements consisted of buildings, sheepyards, fencing, water supply, grassing and farm tracks (A6:1162). In 1979 the lease was transferred to D J Harrison who transferred one half share to his wife in 1981 (A6:1163-1164). On 24 August 1981 they were granted a deferred payment licence, with the balance after deposit to be paid over 25 years (A6:1165).

We have no evidence of any local Maori ex-servicemen being successful applicants for farms on Crown lands opened up on settlements in the Kai Iwi lakes area; nor of any attempt to redress their long standing grievances over reserves by encouraging and assisting them to participate in the Omamari farm settlement scheme.[15]

7.9. Wero (Challenge)

Beach settlement at the Bluff renewed complaints from local Maori who visited the Bluff frequently for kai moana and camped at Manuwhetai over Christmas. On 21 January 1940, Paiwiko Ananaia advised Judge Acheson that a European claiming ownership had ordered him, through his lawyer, to vacate a house he built at Manuwhetai and tried to lock the house (A5:664-667). In 1941 Rirena Kingi advised the court that he too had been ordered out of his house on Manuwhetai which he had always thought was Maori land (A5:668-669). In October 1941 Paiwiko Ananaia expressed concern to the member for northern Maori that nothing further had been heard of Acheson's inquiry since the Native Land Court sitting in July 1939 (E3:doc 14). This solicited the information that the court's report had been received by the chief judge but had not yet been laid before Parliament (E3:doc 15).

In January 1943, Paiwiko Ananaia complained that European occupiers were demolishing Maori houses. In 1944 he refused to leave one of the properties and was charged with trespass and damage (A5:812, 686-687). In 1945 Piipi Cummins, daughter of Tiopira Kinaki, applied for succession to Manuwhetai and Whangaiariki. This was set aside as informal, the land being still regarded as Crown land (A4:521-522).

In 1948, Wiremu Tahere Maui maintained Manuwhetai was a native reserve when he was summoned for gathering toheroa. He asked the Native Land Court for documentary proof and was told the court did not recognise it as a reserve (A5:697-699).

More organised protest began in 1954 when a group of local Maori was formed as guardians of Manuwhetai and Whangaiariki (A18:104). The following year a group of local Maori met and decided to apply, on behalf of the descendants of Pinea, to have Maunganui Bluff

declared a Maori reserve under s439 Maori Affairs Act 1953. A formal application to the court from Tui Mahi for Manuwhetai and Whangaiariki to be so reserved was struck out (A5:701-706 cf A18:104).

An apparent lull in active protest after the mid-1950s did not necessarily mean that Te Roroa had given up its belief that Manuwhetai and Whangaiariki were Maori land. People were moving from rural areas to towns and cities in search of jobs and times were more affluent. Government and Maori organisations were involved in efforts to eliminate racial discrimination, and gaps in living standards, housing, health and education and to turn from a policy of assimilation to one of integration.

Renewed protest from the mid-1970s coincided with a Maori cultural awakening and later with growing unemployment. New activist organisations were formed. When the Minister of Maori Affairs visited Otiria in 1974, Mohi Tito, on behalf of the Maori people of Kaihu through their representatives Tuhaere Harry Te Rore and Te Tihinga Netana, pleaded for the return of Manuwhetai and Whangaiariki. Later he was told that the only recourse was to petition Parliament (A5:706(a)-(j); A18:108).

In 1975 the Waitangi Tribunal was set up to hear claims against the Crown relating to the practical application of the Treaty of Waitangi, but only in respect of actions taken after 10 October 1975. In September-October Dame Whina Cooper led the Maori Land March from the far north to the steps of Parliament buildings and presented a petition signed by 60,000 people to the government, asking that Maori land be protected from sale. The claimants saw this as "a symbolic reclaiming of Maori mana over the North Island" (A18:108).

On 31 July 1976 Mr Te Rore addressed a meeting of the Maunganui Maori Committee about the reserves issue and they agreed to support it. It was decided to take the issue to the Tai Tokerau District Council (A18:108).

In 1977-78, Bastion Point, a long-standing Ngati Whatua claim, was occupied for 506 days before it was cleared by a massive police and army operation. In 1978 at a public meeting at Te Houhanga marae, Dargaville, the Maunganui Reserves Trust Committee was formed to make further attempts to get redress. Tai Netana (Tuck Nathan), through his solicitors, asked the Ministers of Lands and Maori Affairs for redress in accordance with Acheson's recommendations (A5:797-798).

The ministers looked into the matter and the records of their departments were searched without uncovering any significantly new information (A5:771-796). The director-general of lands and survey specifically requested the commissioner of Crown lands in Auckland to advise Netana's solicitor what action was taken after 1945 to identify burial areas (A5:773). The commissioner's response was telling:

> I have researched this case and am of the opinion that it could be to the Department's ultimate disadvantage if the Solicitor, Mr Karaitiana, is kept informed and thus continues to reactivate this well aired issue.....
>
> I consider there has been ample investigation into the Blocks. They were considered to be Crown land many years ago and permanent alienation has since taken place. If the matter is kept alive by this Department, providing further information to the Solicitor, we could find ourselves in an awkward position if any Maori claims are ever substantiated, as both Blocks are no longer Crown land. (A5:771)

With respect to the purported use of part of Manuwhetai as a burial ground he said:

> we have no evidence to support use of the area for this purpose. The Field Inspector commented on 16 January 1939 that there was no evidence of a burial ground present at that time, 'the bodies having been removed to Mitimiti Cemetery many years ago'. (A5:771)

Although the request got nowhere, the firm of solicitors was retained with a view to carrying on investigations for the purposes of an application to appropriate statutory tribunals or possibly a petition to Parliament (E3:doc 18).

In 1980 Dame Whina Cooper telegraphed the Minister of Maori Affairs, Ben Couch, asking him on "a matter of great importance to the Kaihu Maoris... to remedy the injustice done to these people as an emergency matter which in my view would enhance aspirations for change" (A5:770). Mr Couch asked the Minister of Lands if he would review his department's stance on the matter "in the light of recent changes of Government attitude to Maori land grievances". "I must say", he added, "that it appears to me unlikely that the people Dame Whina represents will accept the suggestion that no more need be done than protect defined burial grounds from desecration" (A5:768). The Minister of Lands found no grounds for the Crown to alter its stance (A5:766). Accordingly Dame Whina was informed that unless the Maori people were willing to discuss the matter on the basis suggested by Chief Judge Shepherd, a settlement might be difficult to reach (A5:769).

On 12 October 1984, Bill Welsh on behalf of the Northern Federation of Maori Trusts and Incorporations asked the member for northern Maori, Dr Bruce Gregory, to convene a meeting to discuss their long-standing grievances with the interested party to assess and up-date the situation and their needs (E3:doc 20-21). But this request was overtaken by the Treaty of Waitangi Amendment Act 1985 which extended the tribunal's jurisdiction back to the signing of the Treaty.

In June 1986 Dr Gregory asked the Minister of Maori Affairs, Koro Wetere, who was also Minister of Lands, for an up-date. He was advised that a new Maunganui Reserves Trustees Committee, witb Huia White as secretary, had replaced the Kaihu Action Committee,

he was corresponding with her and no final decision had been made (E3:doc 22-24). In fact more than this had happened.

Te Roroa Ngati Whatua held a public meeting at Waikaraka marae Kaihu on 29 September 1985, at which 11 trustees were nominated. After much research they thought they had enough evidence to make further submissions to the Minister of Maori Affairs. At a public meeting at Te Houhanga marae on 26 January 1986 their findings were presented to the people who unanimously approved of their intentions. They believed their case for the return of the reserves bad already been proved. It was not reasonable, they argued, to expect them to lay a claim before the Waitangi Tribunal (A5:756-758).

The minister however could not see any grounds for the Crown to change its stance (A5:760-761). His comments on Acheson's report suggest he was thoroughly confused over the whole question.

Meanwhile, a group of landowners at Maunganui Bluff had written to their local member, Lockwood Smith, expressing their concern over the implications of the Native Purposes Act 1938 (copies of which had been distributed at the meeting at Te Houhanga marae, 26 January 1986), and their fear they might be asked to return their land (A5:747-752). This letter was followed by a statement of owners of residential freehold sections at the Bluff submitting that justice for any wrong which may have occurred a century ago could not be achieved by committing "a far greater and more blatant wrong", namely, any move to interfere with the 38 existing freehold titles, on the security of which owners had undertaken capital development to the value of some half million dollars. They felt that "no responsible Government could overturn the present long-standing Freehold Titles" and they "would welcome a reassurance from the appropriate Government Office that this is indeed the case" (A5:743-744).

These representations, together with a further personal one made through the member for Glenfield, Judy Keall, were referred to the minister (A5:741-742), who reassured his colleagues that he could not see any grounds for the Crown to change its stance (A5:738-740).

Huia White wrote to the minister again on 9 July 1986, expressing the passionate and deep disappointment of the Maunganui Reserves Trustees Committee over his reply. She pointed out that they did not have access to the written records of the Department of Lands and Survey which had been looked at to find reasons for the government to continue to reject their claim and were unable to comment on them. Yet, the documents "could well have information, which, if interpreted with sensitivity" to their claim "could be helpful in substantiating the justice of it". As a Maori, he would be well aware:

> that the oral traditions of our Kaumatua are reliable in passing down the history of our people from one generation to the next. Yet, whenever we deal with the Government we find that written records which were

> collected by Pakeha officials, who had a clear interest in fostering the interests of Pakeha settlers, are preferred to our oral traditions. (A5:736)

With regard to his comment that there was considerable doubt as to the final intentions to create two Maori reserves, Mrs White asked:

> Whose "final intentions?" are being referred to? Our history is quite clear that our people always believed that there were two (2) reservations. We dispute that ownership would have been a significant issue at the Court hearing. The reserves had been cut out of the Survey Plan for retention by the people as Urupa and Papakainga, and ownership of these would not have been an issue.... It was this oral history of ours as well as deficiencies in the written record that convinced Judge Acheson of the justice of our cause. (A5:736-737)

They were asked to find new evidence and they assumed he meant new "written" material. Their "big disappointment" was that the onus was put back on them to prove the chief judge was wrong (A5:737).

The minister's response, 24 April 1987, reflected the entrenched views of the Department of Lands and Survey. They had advised him that they held no written records which had not already been published. Furthermore it seemed unlikely that they had further information which would advance the claim (A5:733-735).

Clearly both parties were "talking past each other". The Crown took its stance on Chief Judge Shepherd's recommendation and the advice it received from the Departments of Lands and Survey and Maori Affairs, who searched their own official records. The Maunganui Reserves Trustees Committee upheld Acheson's findings and oral traditions.

Whangaiariki and Manuwhetai were listed by the Department of Maori Affairs, Whangarei, in "Nga korero me nga wawata mo te Tiriti o Waitangi—Waitangi 1985", with the remarks that research was to be carried out for a new claim and they would do it (E3:14-15, doc 26). Possibly as a result of this undertaking, a short report was prepared by their regional development unit, 24 October 1985. This stated that the Maori land advisory committee "should make a submission to the Waitangi Tribunal in support of the owners to have Manuwhetai and Whangaiariki returned to the owners" (E3:doc 27-27(a)).

The Department of Lands and Survey district field officer, L G Fraser, who was a member of the committee, reported to his Auckland office that the leading local person pursuing the claim seemed to be E D Nathan, who sat on the Waitangi Tribunal in place of Sir Graham Latimer when he was an interested party. The majority of the committee verbally supported the claim to have the land returned to Maori owners. Whangaiariki was of particular concern to the department as it was held under a deferred payment licence. The holder, D J Harrison should be advised. Fraser had pointed out to the committee that the department had already investigated the claim and was of the opinion it could not be sustained (E3:doc 28).

The same opinion still prevailed in the Department of Maori Affairs (E3:doc 85-86). As far as the Crown was concerned the investigation was complete and the case was closed.

Undoubtedly the cries of Te Roroa concerning the failure of the Crown to reserve the whole of Kaharau, Te Taraire, Manuwhetai and Whangaiariki were and still are reasonably justified. Through the past failures to take any positive steps to remedy these grievances before disposing of these lands to private individuals, the Crown has greatly compounded them. Yet as Judge Acheson said in 1942, the circumstances of the case "cry aloud for redress... no matter what cost to the Crown this may involve" (A3:179). The honour and good faith of the Crown as a Treaty partner are at stake.

References

1 AJHR, session II, 1879, G-8, p 30
2 ibid, pp 22-23
3 ibid, pp 44-45
4 G W Rusden *Aureretanga: Groans of the Maori* (London, 1888) p 84
5 Claudia Orange *The Treaty of Waitangi* (Wellington, 1987) p 206
6 This extract is from a new translation by Dr Patrick Hohepa, who considered the 1892 translation (D3:366-367) contained important errors and omissions. For the original in Maori see D3:367-370.
7 Crown evidence established that some of Sheridan's statements were either incorrect or questionable (H3:97-98; H31:13-19). Sheridan did not realise that Preece only took over the negotiations to purchase Waimamaku No 2 in the final stages, months after the agreements were made to reserve Kaharau and Te Taraire. Sheridan further mistook Preece's statement, that at one time he was prepared to cut out interests of non-sellers, to refer to Kaharau, whereas it referred to the subdivision application for Waimamaku No 2. Sheridan's view that the whole of the 27,200 acres was paid for, was not supported by either Crown or claimant evidence.
8 Rewiri Tiopira died on 7 August 1896; Hapakuku Moetara on 1 January 1902 (D1:25).
9 In 1917 it admitted its "somewhat careless use" of the terms "Native Land" and "Native Reserves" in a circular instruction to its officers to refer to Head Office for advice (E3:doc 83). Some months later a further instruction was circulated that no areas whatever were to be shown as reserves on any lithograph unless such areas had been set aside as reserves under some statutory authority (E3:doc 84).
10 Whangaiariki was "exempted from lands sold" and "repurchased as Crown land". This description was based on information available to the Auckland survey office at that time (A6:1037; E3:39-40). In 1895, W C Kensington, the chief surveyor, had asked the Native Department if a native reserve called Manuwhetai should be granted under s52 Land Act 1892, to any particular native. He was told that only one reserve (Taharoa) was stipulated for the conveyance of the block (A4:333-334). As this information did not match Smith's survey plan, it must have been assumed that the Crown had "repurchased" Whangaiariki. No evidence of a repurchase was ever found (A6:1035, 1037; E3:39). Soon

after Kensington had ascertained that only Taharoa was reserved from the Maunganui purchase, Manuwhetai was opened up for selection.

11 A T Ngata "Maori Land Settlement" in *The Maori People Today* ed I L G Sutherland (Christchurch, 1940) p 138

12 John A Williams *Politics of the New Zealand Maori: Protest and Cooperation, 1891-1909* (Auckland, 1969) p 128

13 Section 23 Native Purposes Act 1938 authorised the chief judge to refer such petitions to the Native Land Court for inquiry and report. The chief judge might then make such recommendations to the Native Minister as "appears to him just and equitable".

14 For proceedings of inquiry from Kaipara minute book pp 92-116 see A4:528-552; for a transcript see A4:553-593.

15 Under the Servicemen's Settlement Act 1950, 9502 ex-servicemen had settled on farms by 1951, 6242 had been assisted by "rehab" loans in private purchase, and 1102 were without such loans. The rest, including 178 Maori, were under various development schemes (*New Zealand Official Yearbook* (Wellington, 1951-52) pp 906-910).

Take 8

He Whakamutunga (The Ending)

8.1. Findings

Findings	*Take*	*Page*
In accordance with: (a) s5(2) of the Treatyof Waitangi Act 1975 authorising us "to determine the meaning and effect of the Treaty, as embodied in the two texts", and (b) s6(1) which confers jurisdiction to hear claims by Maori that they have been prejudiced by Crown policies, practices or omissions which have been or are "inconsistent with the principles of the Treaty", we find that the Crown was or is in breach of the Treaty as follows:	Preface Kaupapa	vii 23 ff
8.1.1 ***The denial to Te Roroa of the benefits of the Crown's policy of borrowing for development***		
The implementation of Vogel's policy in the claim area to the disadvantage of tangata whenua by directing public works to the development of extractive industries and farming without corresponding state assistance to existing Maori communities.	2.1 3.3.4 5.3.2	55 ff 126 ff 186 ff
8.1.2 ***The unfair methods employed by the Crown in the purchase of Te Roroa lands (1876)***		
(a) The undue pressures exerted by the Crown on tangata whenua to sell **Maunganui-Waipoua-Waimamaku** lands, for example, by paying tamana and exploiting traditional rivalries.	2	55 ff
(b) The Crown's misrepresentation of total acreages and boundaries of **Maunganui-Waipoua-Waimamaku** lands negotiated for sale by incorrect and undisclosed survey plans and deeds of sale.	2.2-7	60 ff

(c) The Crown's failure to ensure that vendors understood the deeds of sale in respect of the **Maunganui, Waipoua No 1** and **Waimamaku No 2** blocks before they signed.	2.4-6	74 ff
(d) The Crown's failure to reserve **Manuwhetai** and **Whangaiariki** as agreed with tangata whenua from the sale of the Maunganui block.	2.2-4 3.3.2 Appendix 4	60 ff 121 ff
(e) The Crown's failure to set aside **Maunganui Bluff** as a reserve for tangata whenua through its failure to complete the survey prior to sale.	2.2-4 3.3.3-4	60 ff 123 ff 351 ff
(f) The Crown's failure to reserve **Kaharau** and **Te Taraire** as agreed with tangata whenua from the sale of Waimamaku No 2 block.	2.2 2.6 3.3.5	60 ff 81 ff 128 ff
(g) The Crown's failure to include an additional piece of land on the southern boundary of the **Wairau** Native Reserve through the unilateral use of an earlier survey plan not agreed to by tangata whenua.	2.7 3.2.4 3.3.6	86 ff 116 ff 133 ff
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(j) The issue by the Crown of titles to individuals in absolute ownership contrary to the intentions of tangata whenua that land be held in customary title.	3.2.2-3	99 ff

8.1.3 ***The Crown's failure to make proper provision for Native Reserves***

(a) The failure of the Crown to set aside sufficient land for the present and future needs of tangata	2.4 2.6 3.1-3	74 ff 81 ff 91 ff

whenua in breach of its Treaty and statutory obligations.	5	171 ff
(b) The Crown's failure to exclude wahi tapu from sale contrary to the intentions of tangata whenua.	3.3.1-2 3.3.4-6 4.6 6.5.2	117 ff 126 ff 158 ff 229 ff
(c) The actions of the Crown in purchasing land in **Waipoua No 2** (Waipoua Native Reserve) and in denying tangata whenua the means to support themselves.	4	139 ff
(d) The actions of the Crown in purchasing the **Taharoa Native Reserve** and denying tangata whenua possession of a traditional food resource.	3.2.3 5.2.3	108 ff 173 ff
(e) The failure by the Crown to reserve the traditional and complementary kai moana source for tangata whenua at Kawerua.	3.3.1 5.2.6-7	117 ff 176 ff

8.1.4 ***The fragmentation and purchase of Waipoua No 2 by the Crown***

(a) The Crown's adoption of unprincipled land purchase methods and abuse of statutory power in the acquisition of land in **Waipoua No 2** block.	4	139 ff
(b) The Crown's failure to extend to tangata whenua the same rights as were enjoyed by British subjects generally, by the establishment and the administration of the Native Land Court without ensuring that the legislation required that persons appointed as judges and commissioners had proper qualifications for the competent performance of their functions.	4.2.8 4.2.10 4.3-5 4.7.3 4.8	148 ff 149 ff 149 ff 160 ff 163 ff
(c) The Crown's imposition of excessive charges and court costs enforced by survey liens for the investigation and issue of title denying to tangata whenua the access to justice enjoyed by British subjects generally.	4.1 4.2-4 4.7.4 4.8	139 ff 142 ff 162 ff 163 ff

(d) The Crown's purchase from tangata whenua of land and timber at unconscionable prices.	4.2-5 4.7-8	142 ff 159 ff
(e) The Crown's abuse of its power to issue proclamations denying to tangata whenua the rights of ownership enjoyed by British subjects generally.	4.2 4.2.2-3, 8-10 4.3-9	142 ff 143 ff 148 ff 149 ff
(f) The Crown's attempts to justify its policy of acquiring interests in **Waipoua No 2** by creating and perpetuating the myth that tangata whenua were a menace to the Waipoua Forest Sanctuary.	4.4 4.9	151 ff 166 ff

8.1.5 ***Loss of mana and the destruction of a community***

(a) The Crown's denial to tangata whenua of their traditional garden area by the acquisition and retention of the alluvial flats adjacent to the **Waipoua river** for forestry operations.	4.2.3 4.5-7 5.1	143 ff 154 ff 171 ff
(b) The Crown's trespass on tangata whenua property for the purpose of extracting gravel from the **Waipoua river**.	5.2.8	180 ff
(c) The Crown's progressive depletion of sources of traditional food and fresh water at **Waipoua** by the excessive removal of gravel from the **river**.	5.2.6,8	176 ff
(d) The Crown's persistent harassment of residents of the **Waipoua Settlement** by the withdrawal of practical and legal access to their homes and properties.	4.4 5.3.2,7	151 ff 186 ff
(e) The Crown's restrictive management of the **Waipoua kauri and state forests** denying tangata whenua access to natural and cultural resources.	5.2.6,7,9	176 ff
(f) The Crown's failure to prevent the depletion of Te Roroa's traditional coastal fisheries by the public generally and commercial fishing.	5.2.1-2 5.2.4-7	171 ff 175 ff

(g) The Crown's denial of access, public utilities and social services to tangata whenua in the **Waipoua Settlement** provided to the community generally.	5.3.1-6 5.4	184 ff 207 ff
(h) The Crown's subjection of the Waipoua settlement to dependency on the New Zealand Forest Service.	5.3.2-6	186 ff
(i) The Crown's failure to make provision for tangata whenua participation in the administration of the **Waipoua Forest Sanctuary**, the **Maunganui Bluff Scenic Reserve**, the **Taharoa Public Recreation Reserve** and the **Waiotemarama Scenic Reserve**.	5.2.3 6.5.2 6.5.7-8	173 ff 229 ff 243 ff
(j) The Crown's failure to protect the traditional fishery for tangata whenua in the **Taharoa Public Recreation Reserve**.	5.2.3	173 ff

8.1.6 ***The violation of taonga***

(a) The Crown's failure to enforce the law in respect of acts of desecration of wahi tapu and indignities to human remains.	6.4	213 ff
(b) The Crown's actions in depriving tangata whenua of their moveable cultural artifacts.	6.4	213 ff
(c) The Crown's use and management of its land in such a manner as to deprive tangata whenua of their kaitiakitanga over taonga.	6.5	227 ff
(d) The Crown's failure adequately to protect and care for wahi tapu in the use and management of its land for exotic forests and farm settlement.	6.5.2-10	229 ff
(e) The Crown's denial of the rights of tangata whenua to control and protect wahi tapu.	6.5.2-10	229 ff

(f) The failure of the Crown sufficiently to respect the spiritual and cultural values of tangata whenua in the use and management of its land, forests, and fisheries.	5.2 6.5-9	171 ff 227 ff
(g) The Crown's failure to provide adequate means for the effective participation of tangata whenua in the administration of its conservation estate.	6.5.3-10 6.6	231 ff 256 ff 351 ff

8.1.7 ***The failure by the Crown to listen to Te Roroa grievances***

The failure of the Crown to provide a prompt, effective system of redress for legitimate grievances of tangata whenua, sensitive to Maori cultural values.	2.5-6 3.3.1 3.3.6 4.4 4.5 7	75 ff 117 ff 133 ff 151 ff 154 ff 263 ff

8.2. Recommendations

On the basis of our findings we recommend the return to tangata whenua of all the land which should have been set aside from Crown purchases of Maunganui, Waipoua, Waimamaku and Wairau lands (see findings 8.1.2 and 8.1.3). The particulars are as follows:

(a) ***Manuwhetai and Whangaiariki***

We adopt Judge Acheson's findings in 1942 when he said that the "circumstances of this case ... cry aloud for redress for the Natives. The two reserves are theirs and should be returned to them, no matter what cost to the Crown this may involve" (see findings 8.1.2(d); 8.1.6(d); 8.1.7).

(b) ***Kaharau and Te Taraire***

We apply Judge Acheson's findings referred to above to Kaharau and Te Taraire (see findings 8.1.2(f); 8.1.6(a) and (b); 8.1.7).

We recommend that the Crown take all steps to acquire these lands in (a) and (b) above, which should not have been included in its purchases, and to return the same to tangata whenua as hapu estates.

(c) ***Maunganui Bluff***

We recommend that Maunganui Bluff Scenic Reserve cease to be Crown land and be vested in tangata whenua in accordance with precedents set by the return of Hikurangi to Ngati Porou and Taupiri to Tainui (see findings 8.1.2(e); 8.1.5(i); 8.1.6 (c)-(g)).

(d) ***Taharoa***

We recommend that the 250 acre Taharoa Native Reserve, granted as from 8 February 1876 to Parore Te Awha, be restored "as wahi tapu, papakainga and mahinga kai for tangata whenua" as originally intended (see findings 8.1.2(h) and (j); 8.1.3 (d); 8.1.5(i); 8.1.6(c) and (e)-(g)).

(e) ***Wairau Wahi Tapu Reserve***

We recommend that the Crown return to tangata whenua that area of land omitted from the Wairau Native Reserve by survey on its southern boundary (see findings 8.1.2(g); 8.1.6(e) and (f); 8.1.7).

(f) ***Kawerua***

We recommend that approximately 30 acres of land at Kawerua cease to be Crown land and, together with access, be vested in tangata whenua as a Maori reservation (see findings 8.1.3(a) and (e); 8.1.5(f); 8.1.6(f); 8.1.7).

8.3. Our Proposals to Assist Parties in Formulating Submissions on Remedies

Having reviewed all the evidence, there are findings upon which we are unable to make informed recommendations. There will be a further hearing to receive submissions from the Crown and claimants on these findings. These submissions will assist us in completing our recommendations.

Our proposals are directed to taking into account the present social and economic climate and, in particular, the need to resource and promote the development and welfare of Te Roroa.

(a) ***Return of Waipoua No 2***

That the Crown enter into negotiations with the claimants for the return of lands alienated in Waipoua No 2 block in its entirety to provide an economic base for the re-building of the Waipoua Settlement (see findings 8.1.2(a)-(b), (h)-(j); 8.1.3(c); 8.1.4; 8.1.5(a)-(h)).

(b) ***Waipoua Forest Headquarters***

That the Waipoua Forest Headquarters be vested in tangata whenua as compensation for the purposes of promoting Te Roroa economic and social development (see findings 8.1.1; 8.1.4; 8.1.5(a)-(h); 8.1.6(a)-(g)).

(c) ***Requirements for Development***

We propose that the Crown provide financial resources for the following purposes:

i To provide legal and adequate access from Katui to the Waipoua Settlement and Kawerua. The question of whether it

should be private or public access should be a matter for tangata whenua to decide (see finding 8.1.5(d))

ii To install a reliable method of radio telephone communications for the residents of the Waipoua valley (see finding 8.1.5(g))

iii To meet the special educational needs of children in the Waipoua valley (see finding 8.1.5(g))

iv To meet the special needs of the people in the Waipoua valley for community health services (see finding 8.1.5(g))

v To reactivate the Waipoua Archaeological Project (see finding 8.1.6(d)-(g))

vi To initiate an environmental training scheme for young tangata whenua that enables them to acquire skills in environmental and conservation management (see finding 8.1.5(g))

vii To train and employ tangata whenua in fisheries protection work (see finding 8.1.5(f) and (j))

viii To provide resources for the labour required for community-based employment schemes (see findings 8.1.3(a), (c)-(e); 8.1.4; 8.1.5)

ix To settle all unpaid rates of Te Roroa within the claim area. To obtain remission by the Kaipara District Council until access by private or public road is provided to the Waipoua Settlement (see findings 8.1.3(c); 8.1.4; 8.1.5(a)-(h))

(d) ***Control and Protection of Wahi Tapu***

That the Crown re-affirms the traditional and Treaty rights of tangata whenua to control and protect their own wahi tapu and requires the Department of Conservation and other of its agents concerned in the management of national and cultural resources to give practical effect to this commitment (see finding 8.1.6).

(e) ***Resource Management***

i That the Crown take urgent action to amend the procedural provisions of the Resource Management Act 1991 to ensure that all Maori with interests in multiply-owned Maori land have the right to be informed on all matters affecting their land

ii That the Crown resource an advocacy service to represent all Maori with interests in multiply-owned Maori land and provide advice to Maori in relation to resource management and conservation issues

iii That the Historic Places Trust Bill 1992 should not be proceeded with until we have had the opportunity to study it in accordance with s9 of the Treaty of Waitangi Act 1975 and in

the light of our findings and recommendations in respect of this claim (see findings 8.1.6(c)-(g))

(f) ***Management of Public Reserves***

i That the Crown direct the Kaipara and Far North District Councils to ensure that proper provisions are made for effective participation of tangata whenua in the management of any reserves in its district (see findings 8.1.5(i); 8.1.6(c)-(g))

ii That the Crown direct the Department of Conservation to ensure the effective participation of tangata whenua in the management of the Waipoua Forest Sanctuary and other conservation estates (see findings 8.1.5(e) and (i)).

Dated at Wellington this 3rd day of April 1992

Mary Boyd, member

Monita Delamere, member

Ngapare Hopa, member

John Kneebone, member

Andrew Spencer, presiding officer

Appendix 1

The Claim

The first formal intimation of the claim was in a letter of 10 November 1986 from Alex and Manos Nathan on behalf of their father, E D Nathan JP, asking the Waitangi Tribunal to investigate the improper sale of the Maunganui block to the Crown in 1876 and the failure to make proper native reserves, contrary to the principles of the Treaty of Waitangi (A1(a)). This letter was followed by an additional statement of claim, 15 April 1987, from E D Nathan and ten others on behalf of the descendants of the chiefs, Parore Te Awha and Tiopira Kinaki to sucb lands which they had lost by acts and omissions of the Crown, namely Manuwhetai and Whangaiariki (A1(b)).

On 26 January 1988, a further claim was submitted by Ropata Parore concerning a portion of the Taharoa block granted to his grandfather, Parore Te Awha (A1(c)). This claim was reformulated in a letter of 10 November 1988 (A1(d)).

These claims concerned the terms of sale of the Maunganui block and, for purposes of inquiry, research and hearing, were combined and extended into a statement of claim of 15 December 1988. This was from Alex and Manos Nathan and others in the matter of Waipoua Forest, E D Nathan (now deceased), Turo (Lovey) Te Rore and others in the matter of the Maunganui block and Ropata Parore in the matter of Taharoa lands and lakes (A1(e)).

On 1 February 1989, the secretary of the Waimamaku Maori Komiti, Mabel Paniora, lodged a further related claim in a letter of intent. It concerned Maori reserves, burial grounds, wahi tapu and taonga and was made on behalf of Te Roroa of Ngati Whatua, also the hapu of Ngati Korokoro, Ngati Wharara, Pouka, and Ngati Pou of Nga Puhi (A1(f)).

Shortly before the first hearing commenced, the Waimamaku claim was consolidated with the Waipoua, Maunganui and Taharoa claim into a statement of claim, 5 May 1989, under four main heads (A1(g)). The claimants specifically reserved the right to seek leave to amend it or to provide further particulars. In the course of hearings, one particular claim concerning Opanake (A1(g)3(ii)) was dropped but without prejudice to the rights of claimants to submit a separate claim at a later date. Working copy of the finally amended statement of claim was filed before the eighth hearing. It is this last statement of claim which is reproduced below.

BEFORE THE WAITANGI TRIBUNAL Te Roroa Claim—WAI 38

(Incorporating PC 71, PC 30, PC 138 and PC 182)

IN THE MATTER of the Treaty of Waitangi Act 1975 (as amended)

AND

IN THE MATTER of Claims to the Waitangi Tribunal by *E.D. NATHAN* (now deceased) and *TURORO RANIERA (LOVEY) TE RORE* and others for themselves and on behalf of the descendants of the Rangatira Parore Te Awha, Tiopira Kinaki and Te Rore Taoho and on behalf of the Te Roroa Hapu of Kaihu in the matter of the Maunganui Block

AND *MANOS NATHAN* and *ALEX NATHAN* and others for themselves and on behalf of Te Roroa o Waipoua, of which they are members, in the matter of the Waipoua Blocks and Forest

AND *ROPATA PARORE* for himself and on behalf of the descendants of the Rangatira Parore Te Awha and on behalf of the Hapu of Kaihu in the matter of the Taharoa lands, lakes and surrounds

AND *EMILY PANIORA* for herself and for the Waimamaku Maori Komiti on behalf of nga hapu o Waimamaku in the matter of the Kaharau Reserve and certain Wahi Tapu and Taonga and other reserves in the Waimamaku Valley and surrounds

FOURTH STATEMENT OF CLAIMS

DATED THE 17th DAY OF Sept 1990

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1. **RECITALS**

WHEREAS We, the abovenamed claimants being members of Te Roroa, have filed claims with the Waitangi Tribunal dated 22 April 1987, 10 November 1986, 2 February 1988, 1 February 1989 and 15 June 1989 respectively which concern related grievances of Te Roroa and others under the Treaty of Waitangi against the Crown and which claims have been subsequently consolidated for enquiry, research and hearing by the Waitangi Tribunal;

AND WHEREAS we desire to amend and to provide further particulars of our claims in substitution for the amended statement of claim filed herein;

NOW THEREFORE WE CLAIM under the Treaty of Waitangi Act 1975 and its amendments that we are Maori and that we and Te Roroa and others have been and are prejudicially affected by the various ordinances, acts, regulations, orders, proclamations, notices and other laws and by the various policies, practices and omissions by or on behalf of the Crown which were or are inconsistent with the terms and principles of the Treaty of Waitangi as particularised below.

2. **DEFINITIONS**

Principles of the Treaty of Waitangi

2.1 In this Statement of Claim, unless the context otherwise requires, the following principles of the Treaty of Waitangi are defined:

"Active protection" means the Crown's duty, in accordance with the Preamble and Articles II and III of the Treaty, to recognise and actively protect the Maori interests specified in the Treaty including:

a) The duty to ensure that tangata whenua always retain a sufficient share of their resources for their sustenance and prosperity and that tangata whenua be provided with the means to exploit such resources in a manner consistent with their own cultural preferences; and

b) The duty to protect Te Roroa's physical, cultural and spiritual heritage including wahi tapu and other taonga.

"Fiduciary duty" means the duty of the Crown, created by its undertakings to tangata whenua as expressed in the Treaty and founded upon the consent of tangata whenua, to act for the benefit of tangata whenua in all matters connected with or arising out of its undertakings, and, without limiting the generality of the above, includes the following duties:

a) Active protection;
b) Honour of the Crown;
c) Remedy of past breaches;
d) Sharp practices;
e) Utmost good faith;
f) Tribal endowment.

"Honour of the Crown" means the principle that all transactions by or on behalf of the Crown with tangata whenua uphold and assert the honour of the Crown.

"Non-Derogation" means the principle that all the principles of the Treaty expressed herein do not detract from one another and the operation of any principle cannot limit, restrict or prejudice the operation of any other principle.

"Remedy of past breaches" means the principle that, in accordance with the guarantees in Article II of the Treaty, where grievances under the Treaty are established by tangata whenua the Crown is required to take positive steps to remedy those breaches.

"Sharp practices" means the principle that in all its dealings with tangata whenua, the Crown take no unfair advantage including avoiding the use, or any suggestion of the use, of duress, unconscionable dealing, undue influence, improper pressure, exploitation of inequality of bargaining power, inadequacy of consideration in any transaction between the Crown and tangata whenua, exploitation of the needs and desires of tangata whenua leading to grievous impairment of bargaining power on their part and further that the Crown ensure in all its dealings that tangata whenua receive informed and independent advice.

"Tino Rangatiratanga" means the principle that, in accordance with mana atua, mana tupuna and mana whenua, tangata whenua are entitled to possess, manage and control all their own taonga (including whenua and wahi tapu) in accordance with their own cultural preferences and customs including the right of tangata whenua to have the communal title to their lands, forests, fisheries, wahi tapu and all other taonga expressly recognised and protected by the Crown.

"Treaty Process" means the duty of the Crown to procure the express and informed consent of tangata whenua in respect of any interference contemplated by or on behalf of the Crown in the rights and privileges of tangata whenua protected by the Treaty.

"Tribal endowment" means the Crown's duty, reciprocal to its right of pre-emption under Article II of the Treaty, to ensure that tangata whenua always retain a sufficient endowment of their tribal estate for their foreseen needs and that in any case the Crown scrupulously protect those areas settled and cultivated by tangata whenua.

"Utmost good faith" means the principle that the parties to the Treaty act towards each other reasonably and in utmost good faith.

2.2 In this statement of claim:

2.2.1 All particulars of heads of claim are provided without prejudice to the generality of the heads of claim and all heads of claim are without prejudice to all other heads of claim;

2.2.2 "Nga hapu o Waimamaku" and, in the Waimamaku sections of the statement of claim, "tangata whenua" includes Te Roroa, Ngaitu, Ngati Pou, Ngati Ue, Ngati Te Ra and Ngati Korokoro.

3. **HEADS OF CLAIM**

CLAIMS, under the Treaty of Waitangi Act 1975 and amendments, that we, the claimants and Te Roroa of which we are members and others, are prejudicially affected by the following which have diminished the mana of Te Roroa and caused us and, over the generations, Te Roroa, pain, suffering and humiliation.

3.1 **MAUNGANUI**

3.1.1 The Purchase of the Maunganui Block
The various acts, policies and omissions by or on behalf of the Crown that promoted and resulted in the purchase by the Crown of the Maunganui Block in 1876, which purchase led to the loss of the reserves of Manuwhetai and Whangaiariki and the sacred mountain known as Maunganui Bluff, and directly contributed to the subsequent loss of the Waipoua Native Reserve and other surrounding areas of Te Roroa Ngati Whatua land.

3.1.2 Failure to Protect Manuwhetai and Whangaiariki
The omission of the Crown in failing to ensure that those wahitapu known as Manuwhetai and Whangaiariki be reserved, in perpetuity, to Te Roroa and the further failure to recognise the tino rangatiratanga of Te Roroa Ngati Whatua over those wahi tapu and to actively and adequately protect them.

3.1.3 Failure to Protect Other Wahi Tapu in Maunganui
The omission of the Crown to adequately and actively protect those places (eg. Papaki and Puketapu) in the Maunganui Block (other than Manuwhetai and Whangaiariki) regarded by Te Roroa Ngati Whatua as wahi tapu and the further omission to recognise the tino rangatiratanga of Te Roroa Ngati Whatua over those places.

3.1.4 Diversion of the Waihopai River
The omission of the Crown in failing to take reasonable steps to prevent the diversion of the Waihopai River so that a fresh water supply is no

longer available adjacent to Manuwhetai for the use of Te Roroa Ngati Whatua and to the detriment of Te Roroa Ngati Whatua's traditional tuna fishery in the River.

3.1.5 Failure to protect traditional fisheries at Maunganui Beach
The omission of the Crown and its agents to actively protect Te Roroa traditional fisheries at Maunganui Beach and in particular the failure to prevent motor vehicles from using the beach to the detriment of the traditional fishery there.

3.2 **WAIPOUA**

3.2.1 Failure to pay fair price for Waipoua No. 1
The omission of the Crown in failing to pay a fair price for Waipoua No. 1.

3.2.2 Failure to recognise equality of interest
The omission of the Crown in failing to give practical effect to the equality of interest of the Rangatira Parore Te Awha and Tiopira Kinaki in the Maunganui and Waipoua No. 1 Blocks.

3.2.3 Failure to recognise traditional resource rights
The omission of the Crown to recognise and protect traditional resource gathering and hunting rights in the Waipoua Kauri Forest.

3.2.4 Failure to recognise special relationship with Waipoua Kauri Forest
The omission of the Crown to recognise and give effect to the special relationship of Te Roroa with the Waipoua Kauri Forest in spiritual, cultural and historical terms.

3.2.5 Failure to protect the Waipoua Native Reserve
The omission of the Crown to ensure that all the area of land defined by our tupuna, Tiopira Kinaki, in 1876 and subsequently known as the Waipoua Native Reserve or Waipoua No. 2 Block be reserved, in perpetuity, to Te Roroa as a papakainga for the Iwi.

3.2.6 Failure to Protect Wahitapu in Waipoua
The omission of the Crown to actively and adequately protect those places in and around the land regarded by Te Roroa as wahi tapu, and the further omission to recognise the tino rangatiratanga of Te Roroa in respect of its physical and spiritual heritage in Waipoua.

3.2.7 Failure to recognise Te Roroa Tino Rangatiratanga over the Waipoua River
The omission of the Crown to recognise the tino rangatiratanga of Te Roroa over the Waipoua River and to ensure that the bed of the Waipoua River remain vested in Te Roroa as an integral part of the ancestral estate of the Iwi.

3.2.8 Failure to provide services to Te Roroa in the Waipoua Valley
The omission of the Crown to provide adequate public services and utilities to Te Roroa in the Waipoua Valley.

3.2.9 Failure to Provide Legal Access to the Waipoua Settlement
The omission of the Crown to provide legal and practical access to the Waipoua settlement and to Te Roroa wahi tapu within the Waipoua Native Reserve and Waipoua No. 1 Block.

3.2.10 Failure to Protect Koutu and Kawerua
The omission of the Crown to reserve to Te Roroa the whole of the area known as Kawerua (including that area known as Koutu) in view of its significance as:

i) A wahi tapu of particular spiritual importance to tangata whenua;
ii) A place having particular economic and cultural significance as a kaimoana resource;
iii) A hapu estate.

3.3 **TAHAROA**

3.3.1 Failure to protect the Taharoa Native Reserve
The omission of the Crown or its agents to ensure that the area of 250 acres bordering and including part of Lake Kai Iwi defined by our tupuna Parore Te Awha in 1875 and 1876 and subsequently known as the Taharoa Native Reserve be reserved, in perpetuity, to the descendants of Parore Te Awha as wahi tapu, papakainga and mahinga kai for tangata whenua.

3.3.2 Failure to protect Wahi Tapu in Taharoa
The omission of the Crown or its agents to actively and adequately protect those places in and around the Taharoa Native Reserve regarded by tangata whenua as wahi tapu and the further omission to recognise the tino rangatiratanga of tangata whenua in respect of its physical and spiritual heritage in Taharoa.

3.3.3 Failure to protect Maori traditional fisheries in Taharoa
The omission of the Crown or its agents to actively protect Maori interests in their traditional fisheries in and around the Taharoa Native Reserve, which fisheries continue to be utilised by tangata whenua to this day.

3.4 **WAIMAMAKU**

3.4.1 Failure to protect Kaharau
The omission of the Crown to ensure as agreed that the full area of 2,500 acres more or less as defined as by our tupuna in 1874-1875 and known as Kaharau, which contains many wahi tapu of great spiritual significance to tangata whenua be reserved, in its entirety and in perpetuity to nga hapu o Waimamaku as wahi tapu, papakainga and mahinga kai.

3.4.2 Subsequent failure to protect Wahi Tapu in Kaharau
Without prejudice to the Head of Claim 3.4.1 above, the omission of the Crown in failing to actively and adequately protect as required by tangata whenua all those places regarded by tangata whenua as wahi tapu within Kaharau, including those wahi tapu referred to above, once those wahi tapu had passed out of tangata whenua ownership and control and the further

failure of the Crown to recognise and uphold the tino rangatiratanga and mana of nga hapu o Waimamaku over those wahi tapu.

3.4.3 Failure to protect Wahi Tapu outside Kaharau
The omission of the Crown to adequately and actively protect as required by tangata whenua those places in the Waimamaku region (other than those included in Kaharau) regarded by tangata whenua as wahi tapu including all of Kaiparaheka, Te Pure and Whangaparaoa, and the further failure of the Crown to recognise and uphold the tino rangatiratanga and mana of nga hapu o Waimamaku over those wahi tapu.

3.4.4 Desecration of Taonga
The acts or omissions of the Crown that have resulted in the continuing desecration of taonga of nga hapu o Waimamaku, including wakatupapaku, which were placed by our tupuna at Piwakawaka and Kohekohe (the "Waimamaku taonga") including:

a) Participating in the looting of Kohekohe by Pakeha in the early part of this century;

b) Purchasing further Waimamaku taonga from private parties either

i) in the knowledge that the vendor(s) did not have the right to sell the taonga, or

ii) failing to take reasonable steps to ascertain whether the vendor(s) had such right;

c) Refusing or failing to ensure the return of the Waimamaku taonga to nga hapu o Waimamaku;

d) Allowing the taonga to be dealt with, or dealing with the taonga, in a manner utterly inconsistent with the tapu of those things and repugnant to the mana of nga hapu o Waimamaku;

e) Failing to punish in accordance with the wishes of nga hapu o Waimamaku all those individuals who participated in any way in the desecration of the Waimamaku taonga; and

f) The other matters particularised in the First Schedule hereto;

all of which acts or omissions were in gross disregard of basic human sensibilities and the tapu with which those taonga are imbued and have caused much pain, suffering and humiliation to nga hapu o Waimamaku over the generations.

3.4.5 Failure to reserve all of the Wairau wahi tapu
The omission of the Crown to ensure as agreed that all of that area of land known to nga hapu o Waimamaku as the Wairau wahi tapu be reserved in perpetuity, as a wahi tapu.

3.4.6 Failure to protect Maori traditional fishery at Waimamaku
The omission of the Crown to actively and adequately protect the Maori traditional fishery at Waimamaku including the fresh water and coastal fisheries there to the detriment of all traditional users of that fishery.

3.4.7 Desecration of Koiwi
The acts or omissions of the Crown that have resulted in the desecration of the koiwi of our tupuna, including those koiwi interred at Piwakawaka, Kohekohe, Te Moho, Te Pure and other urupa, which acts or omissions were in gross disregard of basic human sensibilities and the tapu of those koiwi, an affront to the mana of nga hapu o Waimamaku and have caused much pain, suffering and humiliation to nga hapu o Waimamaku over the generations.

3.4.8 Failure to Reserve Te Taraire wahi tapu
The omission of the Crown to ensure that the full area of 60 acres more or less as defined by our tupuna in 1874-1875 and known to nga hapu o Waimamaku as Te Taraire wahi tapu be reserved, in perpetuity, as a wahi tapu.

AND, for the avoidance of doubt, we claim to the fullest extent rights to surface and sub-surface minerals guaranteed by the Treaty of Waitangi in respect of all Te Roroa ancestral land and we claim to the fullest extent rights to fisheries guaranteed by the Treaty of Waitangi in relation to lakes, inland waterways, the shore line, the in-shore fisheries and the off-shore fisheries within or adjacent to all Te Roroa ancestral land on behalf of all traditional users of those places and fisheries;

AND, for the further avoidance of doubt we note that this statement of claim does not specify any particular relief claimed in respect of any of the breaches of the Treaty of Waitangi set out therein as such claims to relief will be the subject of a separate hearing by the Waitangi Tribunal and will be particularised in memoranda to be filed at that time;

NOW THEREFORE we ask the Waitangi Tribunal to continue to assist us with the necessary research into historical and legal issues raised by these claims so that these issues and the relief sought may be presented in an orderly fashion at hearings before the Tribunal AND we ask the Waitangi Tribunal to make findings of fact and recommendations as to future action which in the opinion of the Tribunal should be undertaken by the Crown and other persons so as to recognise our rights under the Treaty of Waitangi and to recognise our mana tangata, mana wairua and mana whenua.

DATED at Auckland this 17th day of Sept 1990.

SIGNED for and on behalf of the)
claimants whose signatures appear)
in the Statement of Claim dated 15)
December 1988 by their duly)
appointed Counsel:

J.V. Williams

THIS statement of claim is filed by JOSEPH VICTOR WILLIAMS, Counsel for the claimants, whose address for service is at the offices of Kensington Swan, 22 Fanshawe Street, Auckland 1.

FIRST SCHEDULE

Particulars of Heads of Claim

Without prejudice to the generality of the foregoing Heads of Claim and in particular, we the claimants Te Roroa of which we are members and others have been prejudicially affected by the following ordinances, Acts, regulations, orders, proclamations, notices and other statutory instruments, policies and practices, acts and omissions by or on behalf of the Crown:

3.1 **MAUNGANUI**

3.1.1 The Purchase of the Maunganui Block

a) The various practices, acts and omissions on behalf of the Crown of the Native Land Purchase Officers and their agents or employees in promoting and orchestrating the purchase of the Maunganui Block in 1876 and in particular:

i) The payment of tamana of £620 to Te Roroa prior to the sale, survey and determination of the ownership of the Block by the Native Land Court; and

ii) The omission of the Crown to negotiate from the outset with the Rangatira Parore Te Awha and Te Rore Taoho, which failure violated the guarantee of rangatiratanga in Article 2 of the Treaty.

b) The omission of the Crown to ensure that the mana and rangatiratanga of Te Rore Taoho was upheld on, and reflected in, the terms of the sale;

c) The omission of the Crown in ensuring that the Block was fully and correctly surveyed prior to sale and in particular:

i) The Crown's omission to ensure an approved and properly surveyed plan of the Block (including its interior boundaries) was before the Native Land Court on the hearing of the Crown's application;

ii) The utilisation by the Crown or its agents of a compiled plan ML 3253 in the Deed of Sale, which plan failed to show the reserves of Manuwhetai and Whangaiariki and which subsequently resulted in the Crown claiming ownership of those reserves; and

iii) The Crown's omission in failing to obtain all necessary consents from Tangata Whenua to the complete survey of the Maunganui Block.

d) The acts of the Crown or its agents in having Tiopira Kinaki sign an uncompleted Deed of Sale;

e) The confirmation of the sale by the Native Land Court prior to the production of an approved survey map;

f) The Crown's omission to pay Tiopira Kinaki and Parore Te Awha an equal share of the sale price;

g) The Crown's omission to properly enquire into the manner of the purchase and/or act upon recommendations or requests for remedial

action despite the numerous petitions and protests of tangata whenua post-sale and in particular:

i) The omission of Crown agencies to co-operate fully with the 1876 Inquiry into Alleged Improper Sale of Land North of Auckland.

ii) The Crown's omission to implement any of the findings and recommendations of the Stout-Ngata Commission in 1908 which Commission reported to Parliament that both Manuwhetai and Whangaiariki were native reserves and recommended they be reserved for permanent Maori use under the Native Lands Settlement Act 1907; and

iii) The Crown's omission to implement the 1939 decision of Judge F.O.V. Acheson upon the petitions of L.W. & J. Parore.

h) The Crown's promotion of, reliance upon and enforcement of the provisions of the Native Land Acts and other statutes, ordinances and laws relating to Maori land in order to facilitate and complete the alienation of the Maunganui Block including:

i) Native Land Act 1865;
ii) Native Land Act 1867;
iii) Native Land Act 1873;
iv) Immigration & Public Works Acts 1870 and 1873 (and their amendments).

3.1.2 Failure to Protect Manuwhetai and Whangaiariki

a) The Crown's violation of the terms of sale of the Maunganui Block in 1876 as agreed between the Crown's agents on the one hand and Tiopira Kinaki and Parore Te Awha on the other which terms stipulated the reservation of Manuwhetai and Whangaiariki;

b) The Crown's omission to ensure that the correct boundaries of Manuwhetai and Whangaiariki were noted on the Deed of Sale and were confirmed by the Native Land Court;

c) The Crown's subsequent alienation of Manuwhetai and Whangaiariki to private purchasers to the prejudice of the Te Roroa claim to those reserves;

d) The Crown's omission to actively and adequately protect urupa and the Pa Patenga on Manuwhetai and Whangaiariki after the loss of those areas to Te Roroa; and

e) The Crown's omission to implement the findings and recommendations of the Stout-Ngata Commission in 1908 as already referred to in 3.1.1(g)(ii) above;

f) The action of the Crown in prosecuting Paewiko Anania for trespass upon Manuwhetai.

g) The Crown's omission to implement the 1939 decision of Judge F.O.V. Acheson as already referred to 3.1.1(g)(iii) above;

h) The Crown's omission to enforce the provisions of s.23(3) of the Native Purposes Act 1938 in that while the petition of L.W. Parore was pending certain areas of Manuwhetai were subdivided for sale.

i) The Crown's omission in failing to adequately and actively enforce the provisions of the Antiquities Act 1975 and Historic Places Act 1980 (and its statutory predecessors) in order to protect archaeological and traditional sites within Manuwhetai, Whangaiariki and adjacent areas (including Puketapu), to prevent the removal of taonga from swamp areas and to ensure the swift return to tangata whenua of any taonga found in these areas;

j) The Crown's omission to provide access for Te Roroa Ngati Whatua to their wahi tapu in the Maunganui Block.

3.1.3 Failure to Protect Other Wahi Tapu in Maunganui

a) The construction by the Crown or its agents of a radar station on or near the site of a whare wananga on Maunganui Bluff and the subsequent installation of telecommunications equipment there, both developments being without the consent or permission of Te Roroa Ngati Whatua and which developments have desecrated the wahi tapu there; and

b) The creation by the Hobson County Council of a public scenic reserve on Maunganui Bluff by which all people have unrestricted access to Te Roroa Ngati Whatua wahi tapu.

c) The omission of the Crown in failing to enforce the provisions of the Historic Places Act 1980 in order to protect the Hoods Road and Puketapu Pa from modification or destruction by private landowners and developers.

3.1.4 Diversion of the Waihopai River

a) The Waihopai River is a traditional tuna fishery of great renown, which fishery has been maintained until recent times;

b) The diversion has had a serious detrimental effect on the tuna fishery in the river to the extent that few tuna can be caught there now.

3.2 WAIPOUA

3.2.1 Failure to pay a fair price for Waipoua No. 1

a) The action of the Crown in treating growing timber on Waipoua No. 1 as having passed on sale when -

i) The price paid was too low to reasonably include growing timber;

ii) The map ML 3277 made no reference to timber;

iii) The deed of sale in English made no express reference to timber;

iv) The deed of sale in Maori made reference only to the land passing;

v) Oral tradition among Te Roroa is that the trees were not sold.

3.2.2 Failure to recognise equality of interest

a) The omission of the Crown in failing to pay to Tiopira Kinaki an amount equal to that paid to Parore Te Awha on the sale of the Maunganui and Waipoua No. 1 Blocks (and granting Parore Te Awha the reserve known as Taharoa without making a comparable grant to Tiopira or otherwise adjusting the price paid to Tiopira).

3.2.3 Failure to recognise traditional resource rights

a) The action of the Crown in prosecuting for trespass and the taking of protected birds, tangata whenua engaged in traditional resource gathering activities in the Waipoua Kauri Forest.

b) The enactment of laws prohibiting the hunting of pigeon and other native birds.

c) The omission of the Crown in failing to implement laws and policies to protect and enhance the rights of Te Roroa to gather or procure traditional resources in the Waipoua Kauri Forest including:

i) the hunting of pigeon and other indigenous bird life for food and feathers;

ii) the taking of native timber and Kauri gum for traditional purposes;

iii) the collection of forest plant life for traditional food, medicinal, decorative or other cultural purposes.

3.2.4 Failure to recognise special relationship with Waipoua Kauri Forest

a) The omission of the Crown in failing to formally require Te Roroa membership on the Waipoua Forest Sanctuary Advisory Committee established pursuant to the Waipoua Forest Sanctuary Advisory Committee Regulations 1952.

b) The omission of the Crown through its agents NZ Forest Service, Forest Corporation (Timberlands) and the Department of Conservation in failing to formally involve Te Roroa in the administration and management of the Waipoua Forest Sanctuary and Kauri management area.

c) The proposal to establish a regionally based Northland Kauri National Park (which will include the Waipoua Kauri Forest) in a manner which will further distance Te Roroa from involvement in the administration and management of the Waipoua Forest.

3.2.5 Failure to Protect the Waipoua Native Reserve

a) The omission of the Crown to give effect to the intention of Tiopira Kinaki known to the Crown in 1876 that the Waipoua Native Reserve be reserved, in perpetuity, as a Papakainga for Te Roroa.

b) The omission of the Crown in consistently failing to recognise and give legal effect to the communal tribal ownership of the Waipoua Native Reserve.

c) The omission of the Crown to ensure that the Waipoua Native Reserve was fully and correctly surveyed prior to sale and in particular:

i) The act of the Crown in employing the surveyor Wilson who had a history of being involved with unapproved plans;

ii) The act of the Crown in utilising Wilson's unapproved plan ML 3277A for the boundaries of the Reserve as set out in the Crown's compiled in office plan ML 3277;

iii) The act of the Crown and the Native Land Court in utilising plan ML 3277 in 1876 which plan is inaccurate and fails to correctly record the boundaries of the Reserve including that it fails to correctly record the traditional boundary markers of the Reserve and, in particular, the north-eastern boundary of the Reserve is some 40 chains short of the Wahi Tapu Puketurehu which is both a natural and traditional marker.

iv) The act of the Crown and the Native Land Court in utilising plan ML 3277 when Crown agents doubted whether it correctly stated the boundaries of the Waipoua Native Reserve and when Weetman's check survey plan ML 3435 completed before commencement of the Native Land Court's investigation into the customary title of Maunganui and Waipoua Blocks embodied a north-eastern boundary of the Reserve which was at variance with ML 3277.

d) The Crown's promotion of, reliance upon and enforcement of the provisions of the Native Land Acts and other statutes, ordinances and laws relating to Maori land in order to facilitate and complete the substantial alienation of the Waipoua Native Reserve including:

i) Native Land Acts 1862, 1865 and 1873 and all amendments;
ii) Maori Real Estate Management Act 1867;
iii) Native Land Act 1909 and amendments;
iv) Immigration and Public Works Acts 1870 and 1873;
v) Immigration and Public Works Amendment Act 1871;
vi) Native Reserves Act 1873;
vii) Historic Places Act 1980 (and its statutory predecessors);
viii) Forest and Rural Fires Act 1977;
ix) Forests Act 1949;
x) Public Works Act 1981;
xi) State-Owned Enterprises Act 1986;
xii) Legislation relating to the Rating of Maori Land;
xiii) Maori Affairs Act 1931, 1953 and their amendments;
xiv) Antiquities Act 1975 (and its statutory predecessors).

e) The Crown's omission to implement any of the findings and recommendations of the Stout-Ngata Commission which sat at Pakanae in 1908, investigated the Waipoua Native Reserve and subsequently recommended that:

i) Of Block 2B3A, 100 acres on which were two houses and 10 acres of clearing be reserved for the owners, the balance to be leased;

ii) Of Block 2B3B, 350 acres be reserved to the owners and the balance leased;

iii) All of Block 2B3C be leased;

iv) Of Block 2B3D, 400 acres be reserved for the owners, the balance be leased;

v) Of Block 2B3E, 100 acres adjoining the Waipoua River be reserved to the owners, the balance be leased;

vi) All of Block 2B2B3 be leased;

vii) All of Block 2A1 be leased;

viii) Of Block 2A2, 400 acres be reserved for the owners with the balance made available for general settlement;

ix) Of Block 2A3 400 acres be reserved for the owners with the balance made available for general settlement.

f) The policies of the Crown that resulted in the vigorous acquisition of the bulk of the Waipoua Native Reserve by the Crown or by private owners, which policies are reflected in the legislation referred to at 3.2.5(d) and include:

i) The 1B70's Immigration and Public Works programme of the Minister of the Crown, Sir Julius Vogel, that promoted and resulted in a huge upsurge in Pakeha settlement of New Zealand during the 1870's and subsequently, which settlement placed enormous pressure on Maori land holdings then remaining including the Waipoua Native Reserve;

ii) The policy of privatisation and individualisation of Maori traditional land holdings under the auspices of the Native and Maori Land Courts for the purpose of facilitating the alienation of Maori Land to non-Maori interests (including the Crown) notwithstanding the agreement between the Crown and Te Roroa on the sale of the Waipoua 1 and Maunganui Blocks that the Waipoua Native Reserve be held as an inalienable Hapu Estate, which arrangement was later confirmed by the 1B76 order of ownership of the Reserve issued by the Native Land Court.

iii) The Crown policy expressed in the 1916 Report on the demarcation and management of the Waipoua Kauri Forest, also known as the Hutchins Report, that such of the Waipoua Native Reserve then in Maori hands, including urupa, be acquired for forestry purposes;

iv) The Crown policy of vigorous acquisition of Maori land in the Waipoua Native Reserve in the period following the publication of the Hutchins Report for forestry purposes and/or to protect the Waipoua Kauri Forest from alleged fire and trespassing risks.

g) The policy and acts of the Crown and its agents in establishing and maintaining the Waipoua Exotic Forest on a significant portion of the Waipoua Native Reserve which forest, among other things, poses a serious fire risk to the lives and property of tangata whenua.

h) The policy and acts of the Crown in transferring much of its landholdings in the Waipoua Native Reserve (including land, trees growing thereon and cut timber), to state-owned enterprises under the

State-Owned Enterprises Act 1986 and the further proposal of the Crown to transfer to third parties timber cutting rights to trees growing on parts of the Waipoua Native Reserve, all of which policies have been to the detriment of Te Roroa.

i) The practices, acts and omissions by or on behalf of the Crown in implementing the policies referred to in 3.2.5(f) above and in promoting and orchestrating the progressive alienation of substantially all of the Waipoua Native Reserve to the Crown and private owners and in particular:

i) The vesting of the title to the Waipoua Native Reserve absolutely in 10 named owners by the Native Land Court in 1876;

ii) The charging of a survey lien against the Waipoua Native Reserve for Wilsons' unapproved plan 3277A which plan was never certified as correct by the surveyors and which charge was contrary to the Crown's agreement with Te Roroa on the sale of the Waipoua 1 and Maunganui Blocks that the Reserve be free of survey costs;

iii) The subsequent partitioning and progressive fragmentation of Maori land holdings in the Waipoua Native Reserve under the auspices of the Native and Maori Land Courts and the Native and Maori Land Boards at below fair open market prices for the purpose of facilitating the alienation of the land and which eventually made those holdings still in Maori ownership uneconomic and susceptible to alienation;

iv) The confirmation of alienations to the Crown or private third parties by the Native and Maori Land Courts;

v) The employment of professional land purchase agents by the Crown;

vi) The payment of tamana contrary to the provisions of the Native Land Acts;

vii) The failure to pay fair open market prices for the land purchased by the Crown and in particular:

A. the utilisation by the Crown of special or roll valuations that were outdated and well below fair open market values and that, contrary to the provisions of the Valuation of Land Act, generally did not reflect the value of improvements and growing timber on the land;

B. the fixing by the Crown of low values for the land that reflected the Crown's own failure to provide proper access and adequate services to tangata whenua in the Waipoua Native Reserve and that reflected the prohibition against private alienations issued by the Crown against the land;

C. the failure of the Crown to pay for kauri timber growing on Blocks 2B3A, 2B3D, 2B3E and 2B3B purchased by it;

D. the fixing by the Crown of low values for the land in the expectation that it may be necessary for the Crown to take the land under the Public Works Act.

viii) The acts of the Crown in 1906 in applying to have land in the Reserve, in particular Blocks 2A1, 2A2, 2A3, 2B1, 2B2 and 2B3, awarded to it in lieu of unpaid survey liens;

ix) The confiscation of Block 2B2A for unpaid survey liens under the Public Works Act or the Forests Act and the threat of such confiscation made in respect of Blocks 2B2B4 and 2B3E and the practice of deducting survey charges on the sale of each Block thereby further reducing the already unfair price paid by the Crown for those Blocks;

x) The threat of forced sales of land, in particular Blocks 2A1B and other 2A Blocks, for unpaid rates even though Te Roroa derived no benefit from the rates so charged;

xi) The manipulation of valuations to unjustly and illegally deprive Maori owners of their land, homes and gardens on Blocks 2B3A and 2B3D in the Waipoua Native Reserve;

xii) The breach by the Crown of its agreement with Enoka Te Rore the remaining owner of 2B3A Block and Pohe and Aramaera, the owners of 2B3D, that they retain certain areas of their land adjoining the Waipoua River as their papakainga on the sale of the remainder of their land to the Crown;

xiii) The practice of the Crown agents in increasing prices offered for land to place further pressure on the whanau who did not want to sell the 2B3B and 2B3E Blocks;

xiv) The creation by the Crown of an extremely complex institutionalised system of Maori land ownership that is completely contrary to Maori traditional concepts of land and was conceived for the purpose of facilitating rapid alienation to Crown or settlers.

xv) The omission of the Crown to protect wahi tapu on the land purchased by it including the wahi tapu Whangamoa, Kiwinui, Te Karamea, Matatina and Takapu Tohora on 2B3A; Kaitieke, Wairarapa, Omanakau, Opatonga, Papatia, Te Kopae, Pawherowai and Kopikopiko on 2B3B; Haohaonui, Waiarara, Te Uoro, Waingata, on 2B3C; Whenuahou, Te Kauri, Whetumakurukuru and Takauere on 2B3D; Wharemangemange, Rangitarere and Puketaka on 2B3E, Te Riu, Muriwai and Te Karu on 2B2B3;

xvi) The acts of the Crown in promulgating and enforcing a series of Orders in Council from 1917 to 1973 which precluded the sale of land in tbe Waipoua Native Reserve to anyone other than the Crown and which legally prevented internal hapu gifts and exchanges and which permitted the Crown to utilise its right of pre-emption in a predatory manner in order to facilitate the alienation of the Waipoua Native Reserve to the Crown;

xvii) The compromises effected in the late 1930's in respect of Block 2B3B1 which left only some 139 acres for the sustenance of the Yakas family out of an original block of 317 acres, the balance being taken by the Crown and in respect of Block 2B3A which abrogated the original agreement between the Crown and Enoka Te Rore that he retain a further approximately 133 acres from sale and in respect of Block 2B3D which

abrogated the original agreement between the Crown and Pohe and Aramaera Paniora that they retain approximately a further 157 acres from sale, thus leading to the descendants of Enoka, Pohe and Aramaera having insufficient land at Waipoua for their needs, and the manner of the compromises in particular the omission of the Crown to ensure tangata whenua received independent legal advice on their rights;

xviii) The continued purchases at gross undervalues by the Crown of Blocks 2B3A1B, 2B3B1B and 2B3C1 between 1960 and 1973 when it was clear that the Crown held ample land in the area for forestry purposes yet Te Roroa was suffering from a grievous land shortage;

xix) The acts of the Crown in designating pursuant to the Maori Affairs Amendment Act 1967 Blocks 2B2B2, 2B3C3 and 2B3D2A2B1 as General land, thus removing any protective role the Maori Land Court could exercise with respect to those Blocks and consequently promoting assimilationist policies of the Crown.

xx) The acts of the Maori Trustee on behalf of the Crown in consenting to the sale of Blocks 2B2B3 and 2B3C in respect of the shares in those Blocks owned by minor children, which acts resulted in those minors being disinherited from their share of their ancestral Papakainga.

xxi) The refusals of the Crown to permit Te Roroa to ameliorate the hapu's grievous land shortage by purchasing from the Crown certain areas of the Waipoua Native Reserve earlier acquired by the Crown.

j) The omission of the Crown to protect the landholdings of Te Roroa in the Waipoua Native Reserve at Waikara and to prevent alienations of that land to private interests so that today the bulk of the land there is in non-Maori ownership and Te Roroa is bereft of land essential to its survival and prosperity and in particular:

i) The imposition of substantial survey and rate liens against Blocks 2A1A, 2A2, 2A3A and 2A3B that placed pressure on the Maori owners of those Blocks to sell them in order to satisfy the liens;

ii) The omission of the Crown to ensure that the vendors of part Block 2A2, Blocks 2A1C, 2A1A, 2A2, 2A3A, 2A3B, 2B2B4, 2B2B5, 2B2B6 and part Block 2A1D received the fair open market value for their land from the private purchasers of it;

iii) The omission of the Crown to utilise its right of pre-emption in Article 2 of the Treaty in a manner to ensure that those whanau of Te Roroa living at Waikara always retained a sufficient endowment of Te Roroa's tribal estate for their foreseen needs and the act of the Crown in 1918 in waiving its right of pre-emption in respect of Block 2A1A to permit the sale of the outstanding one-sixth share held by a minor, Hune Te Rore, in that Block to Mr L.B. Marriner;

iv) The disinheritance of the Tane children in respect of part Block 2A1D, the transfer of which in 1919 was not consented to by those minor children, no Trustee for them having been appointed;

v) The actions of the Maori Land Board on behalf of the Crown in confirming the alienations to private third parties of the Waikara Blocks at below fair open market value;

vi) The acts of the Crown in compulsorily taking, without adequate compensation parts of Blocks 2A1B, 2A1C and 2A1D for public road and extending the Waikara Road to the coast, which acts put pressure on Te Roroa kaimoana and Wahi Tapu at Waikara;

vii) The omissions of the Crown in ensuring that Maori obtained a fair price for Kauri alienated on Blocks 2A2 and 2A3.

3.2.6 Failure to Protect Wahitapu in Waipoua

Whangamoa

a) The desecration of burial caves in and around the Whangamoa reserve by the Forest Service on behalf of the Crown through discing and pine planting;

b) The Crown's omission to provide a full 80 acre reserve at Whangamoa as requested by tangata whenua in order to include all burial caves within the reserve area;

c) The actions of the Crown in trespassing upon and planting in pine the lesser area of 22 acres that was actually reserved so that the area was effectively reduced to 10 acres;

Waiarara and Haohaonui

d) The omission of the Crown in failing to set aside 55 acres at Waiarara as a Wahi tapu reserve;

e) The omission of the Forest Service on behalf of the Crown to set aside these areas as urupa reserves and to implement agreements reached with tangata whenua as to protection of burial sites;

f) The actions of the Forest Service on behalf of the Crown in logging, bulldozing and replanting pines in and around the burial places at Waiarara and Haohaonui;

g) The failure of the Forest Service on behalf of the Crown to implement internal recommendations made in 1980 as to the protection of Haohaonui following disturbance by bulldozers;

h) The actions of the Crown in forcing tangata whenua to exhume the sacred remains of their tupuna Rongomai from Haohaonui for removal to a safer place;

i) The actions of the Crown in purchasing Block 2B3C including the ancient track of Te Roroa to Haohaonui and the coast, without ensuring Te Roroa retain access to Haohaonui, and planting that track in pines to discourage its further use by Te Roroa.

Waingata and Te Uoro

j) Forestry development on behalf of the Crown of the area surrounding the sacred Waingata and Te Uoro Lakes leading to their despoilation and desecration and causing the drying up of Te Uoro Lake;

Other Wahitapu

k) Acts by or on behalf of the Crown in forestry development resulting in the partial or complete destruction through logging, bulldozing, planting, burning, discing or excavation of the following Wahitapu:

Kaitieke
Kiwinui
Koterere
Omanakau
Opatonga
Owetenga
Pahinui
Pakiri
Piritaha
Pukenuiorongo
Papatia
ParemataRTakauere
Tuhirangi
Wairarapa
Whenuahou Track
Whetumakurukuru
Kopikopiko
Marokaraka
Matatina (including Matatinawhero and Matatinamanga)
Muriwai
Oneroa
Patata
Puketaka
Rangitarere
Taniwhanui
Takapu Tohora
Te Karu
Te Karamea
Te Kauri
Te Riu
Waiotane
Whawhanunui
Pawherowai
Wharemangemange
Patata
Maunganui
Takapu
Okohiotu
Te Kopae

Tekateka
Whangamoa

l) The omission of the Crown in certain cases (including those of Tuhirangi and Paremata) to obtain appropriate authorities under the Historic Places legislation before proceeding to modify or destroy Wahitapu.

m) The actions of the Historic Places Trust in granting authorities for modification and/or destruction of Wahitapu, excluding Te Kopae, without reference to Te Roroa;

Te Roroa-Waipoua Archaeology Advisory Committee

n) The omission of the Crown to meet its undertakings to Te Roroa and others as to the constitution of the Te Roroa Waipoua Archaeology Advisory Committee as a formal trust;

o) The omission of the Crown to meet its undertakings to Te Roroa and others as to establishment of the proposed Waipoua Traditional/Historic Reserve as a reserve under Section 439, Maori Affairs Act 1953;

p) The omission of the Crown to meet its undertakings to Te Roroa and others to vest wahi tapu site administration and management in Waipoua in the Te Roroa Waipoua Archaeology Advisory Committee;

q) The omission of the Crown to meet its undertakings to Te Roroa and others as to completion of the Waipoua Archaeological Project;

r) The omission of the Crown to provide adequate resources to carry out management protection, preservation, restoration and presentation of Te Roroa Wahitapu.

Site Register

s) The omission of the Historic Places Trust on behalf of the Crown to consult with Te Roroa before recording Pahinui Urupa, Pahinui Marae, Whangamoa, Takauere and Haohaonui on the archaeological site register;

t) The omission and/or refusal by the Historic Places Trust despite repeated Te Roroa requests, to remove those sites from the Register so as to avoid giving public notice of their existence;

Archaeological Policies

u) The omission of the Department of Conservation and the Historic Places Trust both on behalf of the Crown to establish and state a formal archaeology policy as to the implementation of the terms and principles of the Treaty of Waitangi in their archaeological work in Waipoua;

v) The omission of the Department of Conservation and the Historic Places Trust to implement systems of accountability to Te Roroa in their respective archaeological practices so as to ensure that wahi tapu site protection and management would not be compromised by personal and/or professional differences between archaeologists involved;

w) The omission of the Crown to ensure that, in the administration and protection of wahi tapu sites in Waipoua, tikanga Maori should prevail;

x) The omission of the Crown to ensure, in the administration and protection of sites, Te Roroa control of its physical and spiritual heritage.

National Laws, Institutions and Policies

y) The failure to establish laws, institutions, policies and practices at a national level capable of protecting and enhancing the tino rangatiratanga of Te Roroa in respect of their wahi tapu.

3.2.7 Failure to Recognise Te Roroa Tino Rangatiratanga over the Waipoua River

a) The acts of the Crown or its agents in removing gravel from the Waipoua River without the consent of, or payment to, Te Roroa leading to changes in the River's flow and water quality and having resulting adverse effects on Te Roroa;

b) The acts of the Crown or its agents in removing gravel from land owned by tangata whenua without obtaining or seeking to obtain tangata whenua consent;

c) The acts of the Crown or its agents in gaining access to shingle quarries referred to in (a) and (b) above across tangata whenua land without obtaining or seeking to obtain tangata whenua consent; and

d) The acts of the Crown or its agents in polluting the Waipoua River with human and other waste whereby the health of Te Roroa and the traditional fishery in the River have been adversely affected;

3.2.8 Failure to Provide Services to Te Roroa in the Waipoua Valley

a) The omission of the Crown or its agents to provide Te Roroa with basic electricity, water, sewerage, telephone and mail services in the Waipoua Valley to the extent and in accordance with the preferences of Te Roroa;

b) The omission of the Crown or its agents to provide adequate educational and health services to Te Roroa in the Waipoua Valley until the 1940's including requiring Te Roroa to provide a school site out of their meagre land remnants which failures placed further undue pressure on members of Te Roroa to alienate their land to the Crown or private parties; and

c) The continuing failure of the Crown since the closure of the Waipoua Native School in 1949, to provide any or any adequate educational and health services to Te Roroa in the Waipoua Valley.

3.2.9 Failure to Provide Legal Access to the Waipoua Settlement

a) The omission of the Crown and its agents to provide legal and practical access to the Waipoua settlement and to Te Roroa wahi tapu within the Waipoua Native Reserve and Waipoua 1 and surrounding

lands, necessitating the construction of a road linking the settlement with Forest Service roadways by Te Roroa at the iwi's own expense;

b) The omission of the Crown or the relevant local authority or State Agency to properly maintain and upkeep all roads over and through the Waipoua Native Reserve utilised by Te Roroa;

c) The rating of Maori land in the Waipoua Native Reserve by relevant local authorities despite the failure of those authorities or the Crown to provide practical and legal access to the Waipoua settlement and wahi tapu.

d) The acts of the Forest Service and other Crown agencies on behalf of the Crown in locking gates over Forest Service roads in the Waipoua Native Reserve thereby denying access by tangata whenua to the settlement and the Kawerua fishery.

3.2.10 **Failure to Protect Koutu and Kawerua**

a) The omission of the Crown in failing to ensure that tangata whenua enjoyed and continue to enjoy unrestricted and uninterrupted access to their wahi tapu and fishing grounds at Kawerua;

b) The omission of the Crown in failing to ensure that the Te Roroa reserve known as Koutu and located at Kawerua be reserved in perpetuity to Te Roroa and in particular:

i) The Crown's omission to ensure that title to the full reserve area of 30 acres incorporating the traditional boundaries of Koutu which include urupa was reserved to Te Roroa;

ii) The Crown's further omission to ensure that the approximately 4 acre area which was in fact reserved, maintained the original boundaries as surveyed by Campbell, and remained under the unrestricted control of Te Roroa;

iii) The Crown's omission to provide legal mechanisms capable of recognising Te Roroa tribal title to the Koutu reserve;

iv) The action of the Crown in 1887 in compulsorily taking without compensation, under Section 96 Native Land Act 1886, 28 perches of the Koutu Reserve for roading purposes; and

v) The act of the Crown in designating a 30 metre coastal strip of Te Koutu Reserve as Crown land without the knowledge or consent of Te Roroa.

c) The omission of the Crown in failing to actively protect the Te Roroa fishery at Kawerua by preventing over-exploitation of the fishery by non-Te Roroa members.

3.3 TAHAROA

3.3.1 Failure to Protect the Taharoa Native Reserve

a) The entire Kai Iwi Lake system, including the Taharoa Native Reserve, is a wahitapu and mahinga kai of great renown being a traditional fishery providing tuna, inanga and kewai;

b) The omission of the Crown to give effect to Parore's intention that the Taharoa Native Reserve be inalienable by sale or long-term lease and be retained by tangata whenua forever;

c) The omission of the Crown to observe and enforce the terms of the Deed of Sale of the Maunganui Block which provided that the Taharoa Native Reserve be made inalienable except by lease for a term not exceeding 21 years;

d) The issue in 1881 by the Crown of a Crown Grant to Parore Te Awha for the Taharoa Native Reserve that permitted the alienation of the Reserve by sale or by mortgage or by long term lease with the consent of the Governor, which Grant was contrary to Parore's expressed intention and to the terms of the said Deed of Sale;

e) The violation by the Crown or its agents of Section 5 of the Volunteers and Other Lands Act 1877 which empowered the Governor to reserve Maori land "accordingly in [the] manner required by the ... natives";

f) The subsequent removal by the Crown of all restrictions on alienation contained in the Crown Grant of the Taharoa Native Reserve;

g) The purchase by the Crown in 1952 of the Taharoa Native Reserve from Parore's successors and the manner of such purchase, in particular the fact that the law required the consent only of a bare majority of owners to the sale by all;

h) The dedication by the Crown in 1962 of the Taharoa Native Reserve and surrounds as a public recreation reserve under the administration of the Taharoa Domain Board without giving proper regard to the interests of tangata whenua in the Taharoa Native Reserve and wahi tapu therein;

i) The Crown's omission to ensure that the administration of the Taharoa Native Reserve by the Domain Board be consistent with the terms and principles of the Treaty and in particular:

i) The omission of the Crown or its agents to ensure that the descendants of Parore were and are appropriately consulted by the Board and the Kaipara District Council in the management of the Taharoa Domain;

ii) The omission of the Crown or its agents to provide in the Taharoa Domain Management Plan an appropriate role for tangata whenua in the management of the Domain in accordance with the principles and terms of the Treaty, to adequately protect wahi tapu in the Domain, to actively protect and foster the traditional Maori fishery there, and to recognise tangata whenua tino rangatiratanga over such wahi tapu and fishery;

j) The encouragement by the Hobson County Council and the Kaipara District Council of production forestry around the Domain with consequent adverse effects on the quality of the waters, the traditional fisheries within the lakes and the protection of wahi tapu;

k) The omission by the Crown or its agents to include Shag Lake, which lake and surrounding land is presently owned and controlled by the Crown or its agents and which is part of the Kai Iwi lake system and the water source for Whangaiariki, in the Domain.

3.3.2 Failure to Protect Wahi Tapu in Taharoa

a) The claimants repeat paragraph 3.3.1 hereof (including all particulars);

b) The Taharoa Native Reserve contains a pa site overlooking Lake Kai Iwi and there are also at least two urupa in the vicinity of the Taharoa Domain one of which is known as Ngakiriparauri, which the Crown has omitted to protect or to ensure that tangata whenua tino rangatiratanga over those areas is recognised and, in particular, the Crown or its agents have planted pines on one of the urupa and have established a camping ground and boat launching ramp on one of the urupa.

3.3.3 Failure to Protect Maori Traditional Fisheries in Taharoa

a) The omission by the Crown or its agents to recognise tangata whenua tino rangatiratanga over the said traditional fishery;

b) The omission by the Crown or its agents to reserve to tangata whenua the Taharoa Native Reserve as essential access to the said fisheries and the further failure to ensure that tangata whenua retained unimpeded access to their traditional fisheries after 1952;

c) The introduction by the Crown or its agents of exotic fish species such as trout into the lake systems to the detriment of indigenous fish species;

d) The omission by the Crown or its agents to control power boating on the lakes, fertiliser and pesticide run-offs from surrounding farms and pollution and littering from campers using the Domain and the act of the Crown or its agents in granting grazing leases over part of the Domain, all to the further detriment of the traditional fishery;

e) The imposition on tangata whenua by the Crown or its agents of the requirement to obtain fishing permits contrary to the Treaty guarantees of protection of traditional fisheries.

3.4 WAIMAMAKU

3.4.1 Failure to Protect Kaharau

a) The act of the Crown in violating the terms of sale of the Waimamaku No. 2 Block in 1875 as agreed between the Crown's agents and our tupuna that stipulated the reservation to nga hapu o Waimamaku of all of Kaharau and the Te Taraire and Wairau wahi tapu;

b) The Crown's omission to ensure that the correct boundaries of Kaharau were noted on the Deed of Sale and Memorial of Ownership of Waimamaku No. 2 Block and were duly confirmed by the Native Land Court and in particular:

i) The Crown's omission to ensure an approved and properly surveyed plan of Kaharau was before the Native Land Court on the hearing of the Crown's application in respect of Waimamaku No. 2 Block on 19 June 1875;

ii) The utilisation by the Crown of Kensington's compiled plan ML 3278A in the Deed of Sale which plan failed to show the reserve of Kaharau in its entirety and which subsequently resulted in the Crown and private persons claiming ownership of part of Kaharau.

c) The expropriation by the Crown without compensation or payment to nga hapu o Waimamaku of that part of Kaharau that was not reserved from the sale contrary to the terms of sale.

d) The Crown's subsequent alienation of that part of Kaharau to private purchasers to the prejudice of the claim of nga hapu o Waimamaku to the return of all of Kaharau.

e) The charging of a survey lien of £162.10.8 against Waimamaku No. 2 Block for Wilsons' unapproved plan ML 3278.

f) The omission of the Crown in permitting the desecration of wahi tapu at Piwakawaka and Kohekohe by removing wakatupapaku and koiwi from those places in violation of the tapu on those taonga, contrary to the wishes of nga hapu o Waimamaku and/or contrary to the law.

g) The Crown's omission to grant any of the various petitions or requests made from time to time by Hapakuku Moetara, Ngakuru Pana, Ihaka Pana, Peneti Pana, Rewiri Tiopira, Heremaia Kauere, Iehu Moetara, Wiremu Ngakuru, Charles Bryers, Mary Bryers, Ruepena Tuoro, Matene Naera, Hoani Iraia, Piipi Cummins and more than one hundred others that Kaharau or wahi tapu on Kaharau be returned to nga hapu o Waimamaku.

h) The Crown's omission to implement the findings and recommendations in respect of Kaharau made by Judge Acheson in 1932 and the act of the Crown in implementing the contrary decision of Chief Judge Jones.

3.4.2 **Subsequent failure to protect Wahi Tapu in**

Kaharau
Te Moho
Kohekohe
Piwakawaka
Kukutaepa
Te Rere-a-pouto

a) Without prejudice to Head of Claim 3.4.1 and its particulars, the omission of the Crown to ensure that all the Wahi Tapu listed above that are within Kaharau be reserved from the sale of the Waimamaku No. 2

Block in 1875 and the subsequent alienation of these Wahi Tapu to private purchasers to the further prejudice of nga hapu o Waimamaku.

b) The further and consequent omission of the Crown to recognise the tino rangatiratanga and mana of nga hapu o Waimamaku over all those Wahi Tapu.

c) The general omission of the Crown to adequately and actively protect all those Wahi Tapu in accordance with the wishes of nga hapu o Waimamaku and, in particular, the omission of the Crown to adequately and actively enforce the provisions of the Historic Places Act 1980 (and its statutory predecessors), to protect archaeological and traditional sites on Kaharau.

Te Moho

d) The recent proposal of the Crown to exchange Te Moho for other Crown land in the area for the purpose of using Te Moho as a public picnic area contrary to the wishes of nga hapu o Waimamaku and the tapu on that place.

Kohekohe and Piwakawaka

e) The omission of the Crown to actively and absolutely protect Kohekohe and Piwakawaka and to prevent the desecration of those places by private individuals.

f) The act of the Crown by its agents, in desecrating Kohekohe by removing Wakatupapaku and koiwi from that place in violation of the tapu on those taonga and contrary to the law and the wishes of nga hapu o Waimamaku.

g) The act of the Crown in authorising the construction of a television transmitter on Piwakawaka.

3.4.3 Failure to Protect Wahi Tapu outside

Kaharau
Kaiparaheka
Whangaparaoa
Te Pure

a) The omission of the Crown to ensure that all the Wahi Tapu listed above, that are within the Waimamaku region, be reserved from the sale of the Waimamaku No. 2 Block in 1875 and the subsequent alienation of these Wahi Tapu to private purchasers to the further prejudice of nga hapu o Waimamaku.

b) The on-going omission of the Crown to recognise the tino rangatiratanga and mana of nga hapu o Waimamaku over all those Wahi Tapu.

c) The general omission of the Crown to adequately and actively protect all those Wahi Tapu in accordance with the wishes of nga hapu o Waimamaku and, in particular, the omission of the Crown to adequately and actively enforce the provisions of the Historic Places Act 1980 (and

its statutory predecessors), to protect archaeological and traditional sites on those Wahi Tapu.

Kaiparaheka

d) The dedication and subsequent administration of part of Kaiparaheka by or on behalf of the Crown as the Waiotemarama Scenic Reserve without the consent or involvement of tangata whenua.

e) The further reduction in the area of the Scenic Reserve by the Crown for use as compensation to the adjoining land owner for land taken for roading.

f) The act of the Historic Places Trust in 1988 on behalf of the Crown in giving retrospective permission to the Department of Conservation to bulldoze part of the reserve thereby damaging a pa site on Kaiparaheka.

3.4.4 **Desecration of Taonga**

a) The omission of the Crown since 1840 to take steps to absolutely and actively protect the Waimamaku taonga including the failure to:

i) Make illegal the buying and selling of the taonga by private persons and public bodies;

ii) Prohibit absolutely the export of such taonga;

iii) Make illegal and punish in accordance with the wishes of tangata whenua those responsible for desecration of wahi tapu at Kohekohe and Piwakawaka and the Waimamaku taonga and otherwise generally to recognise and uphold te tino rangatiratanga and mana of tangata whenua over those places and taonga.

b) The further acts and omissions of the Crown in relation to the Waimamaku taonga in violation of the ownership of those taonga by tangata whenua and the tapu on them, including:

i) Initially claiming outright ownership of the Kohekohe taonga as an incident of the Crown's alleged ownership of Kohekohe;

ii) Acquiring in 1902 from one Morrell two of the wakatupapaku from Kohekohe and subsequently other taonga which Morrell donated to the Auckland Museum;

iii) The acts of its agents in removing at least five further wakatupapaku from Kohekohe;

iv) Refusing to unreservedly return all the Kohekohe taonga to tangata whenua despite repeated demands to do so;

v) Cabinet's decision, on behalf of the Crown, prior to the hearing at Rawene on 21 May 1902 and in full knowledge of tangata whenua demands for the return of all Kohekohe taonga, that the Kohekohe taonga ultimately be placed on permanent display in tbe Auckland Museum, which includes public display without the consent of tangata whenua;

vi) Removing the Kohekohe taonga to Rawene before a hui could be held at Waimamaku to discuss the matter;

vii) Failing to ensure that all ko-iwi removed from Waimamaku wahi tapu be immediately returned to the wahi tapu concerned or into the safe custody of tangata whenua;

viii) The continued exercise through the Crown's agents of control over the Kohekohe taonga notwithstanding the vesting of the taonga in the Native Minister on trust, the terms of which are set out in a petition of certain Rangatira to the Native Minister;

ix) Failure to ensure strict adherence to the terms of the said trust;

A. That the taonga be deposited in the Auckland Museum where they not be touched or removed;

B. That the taonga remain there forever without disturbance;

C. That a printed account of the tupuna who made the taonga and of those connected with them be lodged with the taonga;

D. That all of Kaharau be returned to tangata whenua.

x) Failing to obtain tangata whenua consent to any variation to the terms of the trust or its execution to authorise any of the said breaches of trust;

xi) Permitting Morrell to retain at least twenty-six other taonga taken from Kobekohe and permitting him to donate them to the Auckland Museum;

xii) Further purchases by the Dominion Museum on behalf of and with the approval of the Crown in 1906 and 1907 from dealers including Messrs Dannefaerd and Spencer of Wakatupapaku belonging to tangata whenua and which originated from wahi tapu at Piwakawaka, such taonga being now found in the National and Otago Museums;

xiii) Permitting the purchase of another wakatupapaku from Piwakawaka wahi tapu by Hamilton, the curator of the Dominion Museum, from Dannefaerd for Hamilton's private collection, which wakatupapaku is now believed to be in the National Museum;

xiv) Disputing tangata whenua's ownership of the Piwakawaka wakatupapaku and/or failing to acknowledge the origin of those wakatupapaku;

xv) Failure to unreservedly return the Piwakawaka taonga to tangata whenua;

xvi) Failure to prevent the removal of Waimamaku taonga from New Zealand such that one wakatupapaku is now to be found in Melbourne, Australia and another is believed to be in Austria;

xvii) Permitting scientific examinations, photographs, drawings, studies and public displays of the Waimamaku taonga without the express consent of tangata whenua and in breach of the trust over the Kohekohe wakatupapaku.

3.4.5 Failure to reserve all of the Wairau wahi tapu

a) The omission of the Crown to ensure that area known as the Wairau wahi tapu which was to be reserved in its entirety from the sale of the surrounding Waimamaku No. 2 Block, was fully and correctly surveyed prior to the sale and in particular:

i) The act of the Crown in utilising Kensington's compiled plan ML 3278A on the Deed of Sale and Memorial of Ownership of Waimamaku No. 2, which plan does not record the correct southern boundary of the Wairau wahi tapu which is a straight line from the south east corner of the reserve to the traditional boundary marker on the coast known as Motuhuru.

b) The omission of the Crown to actively and adequately protect those wahitapu on the land mistakenly omitted from the Wairau reserve including urupa and the pa Pakiri.

c) The acts of the Crown or its agents in obstructing or preventing access to the land omitted from the Wairau reserve by Waimamaku whanau whose tupuna have used that land for centuries and the further incorrect allegations that tangata whenua have been trespassing on that land.

d) The omission of the Crown in failing to fully investigate the accuracy of the legal southern boundary of the Wairau reserve when provided by Reupena Tuoro in 1897 with a complete description of the correct boundaries of the reserve.

e) The continued omission of the Crown in failing to return to Te Roroa the land mistakenly omitted from the Wairau reserve.

3.4.6 Failure to protect Maori traditional fishery at Waimamaku

a) The omission of the Crown or its agents to recognise tangata whenua tino rangatiratanga over the traditional fresh water fisheries at Waimamaku including the Waiotemarama stream, the Waimamaku river, the Wairau stream and over the traditional coastal fisheries including Kawerua, Opeperu, Taunganui, Waihikeke, Te Mowhiti, Panahe, Jacko's Point, Kaikai, Pukorokoro, and Wharewera.

b) The omission by the Crown or its agents to control fertilizer, pesticide, herbicide and effluent run-off from surrounding farms into the Waiotemarama and Waimamaku rivers and the taking of water and gravel from the said rivers, all to the detriment of the traditional fisheries there.

c) The imposition on tangata whenua by the Crown or its agents of the requirement to obtain fishing permits in breach of the Treaty guarantees of protection of traditional fisheries.

3.4.7 Desecration of Koiwi

a) Participating in the looting of Kohekohe koiwi by Pakeha in the early part of this century;

b) Purchasing or receiving further Waimamaku koiwi from private parties either;

i) in the knowledge that the vendor(s) or donor(s) did not have the right to sell or to dispose of the koiwi; or

ii) failing to take reasonable steps to ascertain whether the vendor(s) or donor(s) had such right;

c) Refusing or failing to ensure the immediate return to tangata whenua of all Waimamaku koiwi that were at any time wrongfully taken by the Crown or third parties;

d) Allowing the koiwi to be dealt with, or dealing with the koiwi, in a manner utterly inconsistent with the tapu of those koiwi and repugnant to the mana of tangata whenua;

e) Failing to punish, in accordance with the wishes of tangata whenua, all those individuals who participated in any way and at any time in the desecration of the koiwi;

f) The omission of the Crown in failing to immediately and unreservedly implement the direction of Magistrate Blomfield that those koiwi unlawfully taken from Kohekohe be returned to that wahi tapu;

g) Generally the omission of the Crown since 1840 to actively and absolutely protect all the koiwi, which are a great taonga of tangata whenua ki Waimamaku;

h) And the further particulars set out above at 3.4.4 insofar as the taonga referred to there contained, at the relevant time, koiwi.

3.4.8 **Failure to reserve Te Taraire wahi tapu**

a) The claimants repeat the particulars 3.4.1(a) above.

b) The Crown's omission to ensure that the Deed of Sale and Memorial of Ownership of Waimamaku No. 2 Block, which were duly confirmed by the Native Land Court, accurately recorded the correct boundaries of Te Taraire and excluded that wahi tapu from sale to the Crown and in particular:

i) the Crown's omission to ensure an approved and properly surveyed plan of Te Taraire was before the Native Land Court on the hearing of the Crown's application in respect of the Waimamaku No. 2 Block on 19 June 1875;

ii) the utilisation by the Crown of Kensington's compiled plan ML 3278A in the Deed of Sale which plan failed to show the reserve of Te Taraire and which subsequently resulted in the Crown and private persons claiming ownership of Te Taraire.

c) The expropriation by the Crown without compensation or payment to nga hapu o Waimamaku of Te Taraire contrary to the terms of sale;

d) The subsequent alienation by the Crown of Te Taraire to private parties to the further prejudice of nga hapu o Waimamaku;

e) The omission of the Crown to grant the relief sought by the petitions of Wiremu Ngakuru and others dated 9 June 1925; Matene Naera and 42 others (petition number 82 of 1930) and Piipi Cummins and 67 others in 1934, all of which sought the return of Te Taraire to nga hapu o Waimamaku.

f) The omission of the Crown to implement the findings and recommendations in respect of Te Taraire made by Judge Acheson in 1932 and the act of the Crown in implementing the contrary decision of Chief Judge Jones.

g) The on-going omission of the Crown to recognise the tino rangatiratanga and mana of nga hapu o Waimamaku over Te Taraire.

SECOND SCHEDULE

Particulars of Breaches of the Terms and Principles of the Treaty of Waitangi

WE, the claimants and Te Roroa of which we are members and others, have been prejudicially affected by the matters set out in the Heads of Claim herein and as specified in the second column below, and that those matters were or are inconsistent with the principles and terms of the Treaty of Waitangi as specified in the first column below.

Principle or Term of the Treaty of Waitangi		Heads of Claim
1.	Active Protection	All Heads of Claim except 3.2.2.
2.	Fiduciary Duty	All Heads of Claim.
3.	Honour of the Crown	All Heads of Claim.
4.	Non-Derogation	All Heads of Claim.
5.	Remedy of Past Breaches	All Heads of Claim.
6.	Sharp Practices	All Heads of Claim except 3.1.3-3.1.5, 3.2.4 and 3.2.7.
7.	Tino Rangatiratanga	All Heads of Claim except 3.2.8 and 3.2.9.
8.	Treaty Process	All Heads of Claim except 3.1.4, 3.2.8, 3.2.9 and 3.3.1.
9.	Tribal Endowment	All Heads of Claim except 3.1.4, 3.2.1 and 3.2.2.
10.	Utmost Good Faith	Heads of Claim 3.1.1-3.1.3, 3.2.1, 3.2.2, 3.2.5, 3.2.6, 3.2.8-3.2.10, 3.3.1-3.3.3.

Appendix 2

Record of Inquiry

2.1. Notice of Claim

Notice of the claim was sent in March 1989 to the following:

Solicitor General, Alex Nathan, Manos Nathan, Hobson County, Joe Williams, Secretary of Ngati Whatua Te Roroa Central Committee, B T Duke, Don Harrison, Alan Titford, Department of Conservation, Minister of Maori Affairs, Ropata Parore, Land Corporation Ltd, NZ Forestry Corporation Ltd, Department of Maori Affairs, Department of Conservation Northern Regional Office, G J & J E Morfett, M A Smith, G W Erceg, D E & N L Smith, J & L M Te Awhitu, N W Hogg, R E Downey, C E Downey, J R & C J C Houniet, G M Downey, D & J L Oliver, A P Kingstone, D R & E M J Rennie, E L M Welsh, R F & J D Emms, E F Tennent, R C & D N Teller, Estate W I & P M Davison, E A & M N Jones, B M & V C R Bracey, P A & M A Sergent-Shadbolt, J I James, H L & N L Van Veen, T M Mikahere, L E Sergent, G 1 James, Z E Kitson, D M Yakas.

Public notice of the claim was given in the:

New Zealand Herald on 31 May, 7 and 17 June 1989, *Northern Advocate* on 31 May, 7 and 17 June 1989 and *Northland Age* on 6 and 15 June 1989.

2.2. Appointments

The tribunal was constituted on 14 March 1989 to comprise:

Mary Boyd
Ngapare Hopa
Turirangi Te Kani
John Kneebone
Judge Andrew Spencer (Presiding Officer)

Sir Monita Delamere was appointed to the tribunal after the death of Mr Te Kani.

Joseph Williams and Wayne Attrill were appointed as counsel to assist the claimants.

Christopher Toogood was appointed as counsel to assist the Tribunal.

David Colquhoun, Rosemary Daamen and Michael Taylor were commissioned to prepare preliminary reports on the claim.

Mrs Bella Tohu assisted the tribunal as an interpreter.

2.3. Hearings and Appearances

1 Kaihu Memorial Hall, 20-23 June 1989

For the Claimants: Joseph Williams
For the Crown: Shonagh Kenderdine and Annsley Kerr

Submissions and evidence were received from the claimants relating to the Maunganui aspects of the claim.

A site visit to Taharoa Domain, Aranga 8each, Whangaiariki, Manuwhetai and Maunganui Bluff was held on 20 June 1989.

Documents A1 to A39 were admitted to the record

2 Matatina Marae Waipoua Forest, 17-21 July 1989

For the Claimants: Joseph Williams
For the Crown: Shonagh Kenderdine and Annsley Kerr

Submissions and evidence were received from the claimants relating to the Waipoua aspects of the claim.

A site visit to Waipoua 1 and 2 Blocks was held on 17 July 1989.

Documents B1 to 851 were admitted to the record

3 Matatina Marae, Waipoua Forest, 16-20 and 24 October 1989

For the Claimants: Joseph Williams
For the Crown: Annsley Kerr

Submissions and evidence were received from the claimants relating to the Waipoua aspects of the claim and from interested parties.

Documents C1 to C34 were admitted to the record

4 Whakamaharatanga Marae, Waimamaku, 26 February-2 March 1990

For the Claimants: Joseph Williams and Wayne Attrill
For the Crown: Shonagh Kenderdine and Annsley Kerr

Submissions and evidence were received by claimants relating to the Waimamaku aspects of the claim.

A site visit to the Auckland Institute and Museum was held on 3 March 1990.

Documents D1 to D33 were admitted to the record

5 Kaihu Memorial Hall, Kaihu, 23-24 April and 26-27 April 1990

For the Claimants: Joseph Williams and Wayne Attrill
For the Crown: Shonagh Kenderdine

Also Appearing:

Denese Henare: New Zealand Historic Places Trust

Christopher Toogood: Counsel to assist Tribunal with interested party evidence.

Submissions and evidence were received from the Crown regarding the Maunganui and Waipoua aspects of the claim and interested parties.

Documents E1 to E31 were admitted to the record

6 Matatina Marae, Waipoua, 21-25 May 1990

For the Claimants: Joseph Williams and Wayne Attrill
For the Crown: Shonagh Kenderdine

Also Appearing:

Denese Henare - New Zealand Historic Places Trust

Submissions and evidence were received by the Crown regarding the Waipoua and the Taharoa aspects of the claim.

Documents F1 to F25 were admitted to the record

7 Matatina Marae, Waipoua, 4-6 September 1990.

For the Claimants: Joseph Williams
For the Crown: Annsley Kerr and Justin Te Rangüta

Also Appearing:

Denese Henare - New Zealand Historic Places Trust

Submissions and evidence were received by the Historic Places Trust regarding the Waipoua aspects of the claim.

Documents G1 to G10 were admitted to the record

8 Whakamaharatanga Marae, Waimamaku, 19-21 November 1991 and Te Houhanga Marae, Dargaville, 22-23 November 1991.

For the Claimants: Joseph Williams and Wayne Attrill
For the Crown: Annsley Kerr and Justin Te Rangiita

Also appearing:

Denese Henare - New Zealand Historic Places Trust

Submissions and evidence were received from the Crown regarding Waipoua archaeology, Waimamaku and Taharoa aspects of the claim as well as a submission from the New Zealand Historic Places Trust.

Documents H1 to H62 were admitted to the record

9 Kaihu Memorial Hall, Kaihu, 27-31 May 1991.

For the Claimants: Joseph Williams and Wayne Attrill
For the Crown: Annsley Kerr and Justin Te Rangiita

Also appearing:

Denese Henare-New Zealand Historic Places Trust

Final submissions and evidence were received from the Claimants, Crown and New Zealand Historic Places Trust.

A site visit to Kawerua was held on 26 May 1991.

Document I1 to I21 were admitted to the record

2.4. Notification of Hearings

Public notice of the first hearing held at Kaihu Memorial Hall, Kaihu from 20-23 June 19B9 was given in the:

New Zealand Herald on 31 May, 7 and 17 June 19B9, *Northern Advocate* on 31 May, 7 and 17 June 19B9 and *Northland Age* on 6 and 15 June 19B9.

Notice was given prior to all subsequent hearings in the New Zealand Herald, Northern Advocate and Northland Age.

Notice of each hearing was also sent to those on the notification and others with an interest list.

2.5. Notification List

Members of the Te Roroa Tribunal, Judge A Spencer, Crown Law Office, Joseph Williams, Denese Henare, Te Roroa-Ngati Whatua Central Claims Committee, Hobson County Council, R J Warne, L H Parlane, A Iraia, C and J Cook, John Paniora, May Rawiri, Ngamako Brown, B Iraia, Whetu Naera, June Taylor, Bulla Paniora, L Rollo, W T Te Haara, Bunny Ngakuru, G Ngakuru, Mr Smith, Land Corporation (Whangarei), Peter Mold, C and W Blair, Keith Frecklington, Waimamaku Bowling Club, N Hogg, J and L M Te Awhitu, Kura Ensor, Department of Conservation, Minister of Maori Affairs, Ropata Parore, Land Corporation, N Z Forestry Corporation Ltd, Department of Maori Affairs, Alex and Manos Nathan, Department of Conservation (Northern Regional Office), David Williams, C J and J E Morfett, M A Smith, Hokianga County Council, D R and E M Rennie, E L M Welsh, R F and J D Emms, Tai Tokerau District Maori Council,E F Tennent, R D and D N Teller, Maori Land Information Office, Estate W I Davidson, Estate P M Davidson, B M and V C R Bracey, P A and M A Sergent-Shadbolt, J I James, T M Mikahere, L E Sergent, G I James, Z E Kitson, D M Yakas, Heather Aryton (New Zealand Herald) Judy Hoani (Tautoko F M) and Treaty of Waitangi Policy Unit.

Others with an interest:

Roy Ambler, H L and N L Van Veen, Don Harrison, Allan Titford, J G Bibby, J R and C J C Houniet, B K L and A P Peebles, R F Duder, W O T Te Rangi, E A and M N Jones, D and J L Oliver, Yvonne Sumby, R E Downey, G M Downey, C E Downey, B T Duke, Waipoua Forest Sanctuary Advisory Committee, Auckland Institute and Museum, P S Coulter, J H and V M Cherrington, Athol and Gail Parlane, A Barratt, J and M Rumsey and L L Hook.

Appendix 3

Record of Documents

NOTE: Documents marked by an * are ruled confidential and are available only to counsel. Copies cannot be made.

The reference in brackets after each document refers to the person or party producing the document in evidence.

A **First hearing at Kaihu Memorial Hall, Kaihu, 20-23 June 1989**
Document

A1 Statement of claim Wai-38:
(a) 10 November 1986
(b) 15 April 1987
(c) 26 January 1988
(d) 10 November 1988
(e) 15 December 1989
(f) 1 February 1989 (letter of intent)
(g) 5 May 1989
(h) 16 June 1989
(i) 17 September 1990

(A full copy of the final statement of claim is included in appendix 1)
(registrar)

A2 Preliminary research report of David Colquhoun on Crown purchase of Waipoua and Maunganui blocks in 1876, and the claim that Manuwhetai and Whangaiariki should have remained Maori land, 31 January 1989, commissioned by the Waitangi Tribunal (see A13)
(registrar)

A3 Supporting papers to A2 (pp 1-330): official publications, Native Land Purchase Department archives
(registrar)

A4 Supporting papers to A2 (pp 331-593): Native Land Purchase Department archives, Maori Land Court records and archives
(registrar)

A5 Supporting papers to A2 (pp 594-879): Maori Land Court records and archives, Department of Lands and Survey/Department of Survey and Land Information records and archives
(registrar)

A6 Supporting papers to A2 (pp 880-1173): private papers, Legislative Department archives, Stout-Ngata Commission archives, Hobson County Council archives and records, Land Transfer Office records, miscellaneous papers
(registrar)

A7 Research on Waipoua by the Maori Land Information Office: research summary, copy of Maori Land Court record sheet showing Crown land and general land, plan showing general land and Crown land, map showing Crown land gazetted at different years, map showing land held by State forest, maps of areas to come under proposed State-owned Enterprises gazette notices
(registrar)

A8 Research on Maunganui block from the Maori Land Information Office, research summary
Maunganui Block: deeds book conveyance 8225B, 8 February 1876, gazette 1876 pp 621-623, Volunteers and Others Land Act 1877

Taharoa land and lake: Crown grant, 25 August 1881, gazette 1952 p 303, 1972 p 916, 1976 p 2865, 1980 p 2563, lease 1 July 1988
Manuwhetai Block: lease 15 July 1897, certificate of title, gazette 1947 p 643, 1970 p 2428
Whangaiariki Block: certificate of title, map of Maunganui block
(registrar)

A9 Preliminary report of David Colquhoun on the Taharoa aspects of the Waipoua-Maunganui claim, May 1987, commissioned by the Waitangi Tribunal
(registrar)

A10 Supporting papers to A9
(registrar)

A11 Garry Gordon Hooker on "Waipoua State Forest 13 (excluding Waipoua 2 block)", undated
(registrar)

A12 Garry Gordon Hooker on "Waipoua 2 block", undated
(registrar)

A13 Preliminary research report of David Colquhoun on Crown purchase of Waipoua and Maunganui blocks in 1876; the claim that Manuwhetai and Whangaiariki should have remained Maori land; and other Maunganui aspects of the claim, 12 June 1989, commissioned by the Waitangi Tribunal (amended version of A2)
(registrar)

A14 File of Department of Maori Affairs on land near Maunganui Bluff (Manuwhetai), 1912, MA 1 1912/1202, National Archives
(registrar)

A15 New Zealand Archaeological Association site record forms for Maunganui Bluff
(registrar)

A16 Local register entries of Maori Land Court for Waipoua and Waipoua No 2; Hokianga local register No 1 p 86, MLC-A A52 1/3; Hokianga local register No 2 p 10, MLC-A A52 1/4, National Archives, Auckland
(registrar)

A17 Observations of E A and M N Jones of Maunganui Bluff on Manuwhetai
(registrar)

A18 Evidence of T H (Hugh) Te Rore and Sharon Moengaroa Murray on Ngati Whatua/Te Roroa report on Maunganui aspects of the claim
(counsel for claimants)

A19 Evidence of David Vernon Williams, senior lecturer in law, University of Auckland, on legal historical material relating to the laws, policies and practices of the Crown relevant to this action
(counsel for claimants)

A20 Synopsis of opening submissions of counsel for claimants on the claim as a whole, J V Williams

A21 Evidence of Reverend M Marsden on te kehi mo Manuwhetai me Whangaiariki kaupapa (a) Part 2 on Manuwhetai-Whangaiariki
(counsel for claimants)

A22 Fax expressing support for the claim, received from Tom Parore, dated 20 June 1989
(registrar)

A23 Photos of Manuwhetai taken by Dr N W Hogg
(registrar)

A24* Map compiled by T H (Hugh) Te Rore showing Manuwhetai, Whangaiariki, and other wahi tapu at Maunganui
(counsel for claimants)

A25* Tribal register supplied by T H (Hugh) Te Rore
(registrar)

A26 Response of Ms N Ngawati to the preliminary research report on the Waipoua-Maunganui aspects of the claim (see A13)
(counsel for claimants)

A27 English translation of oral evidence of Kitty Netana on Maunganui aspects of the claim, given 22 June 1989
(registrar)

A28 English translation of oral evidence of Kerehi Rahui on Maunganui aspects of the claim, given 22 June 1989
(registrar)

A29 English translation of oral evidence of Tira Te Rore on Maunganui aspects of the claim, given 22 June 1989
(registrar)

A30 English translation of oral evidence of Monika Toko on Maunganui aspects of the claim, given 22 June 1989
(registrar)

A31 Transcript of oral evidence of Keita Pickering on Maunganui aspects of the claim, given 22 June 1989
(registrar)

A32 Transcript of oral evidence of Sydney Morunga on Maunganui aspects of the claim, given 22 June 1989
(registrar)

A33 Transcript of oral evidence of Craven Denny Tane Hohaia on Maunganui aspects of the claim, given 22 June 1989
(registrar)

A34 Transcript of oral evidence of Turo Raniera (Lovey) Te Rore on Maunganui aspects of the claim, given 23 June 1989
(registrar)

A35 Transcript of oral evidence of Tai Nathan on Maunganui aspects of the claim, given 23 June 1989
(registrar)

A36 Transcript of oral evidence of Mac Taylor on Maunganui aspects of the claim, given 23 June 1989
(registrar)

A37 Transcript of oral evidence of Perehina (Huia) White on Maunganui aspects of the claim, given 23 June 1989
(registrar)

A38 Transcript of oral evidence of T H (Hugh) Te Rore on Maunganui aspects of the claim, given 23 June 1989 (see A18)
(registrar)

A39 Transcript of oral evidence of Sharon Moengaroa Murray on Maunganui aspects of the claim, given 23 June 1989 (see A18)
(registrar)

B Second hearing at Matatina Marae, Waipoua Settlement, 17-21 July 1989
Document:

B1 Preliminary report by David Colquhoun and Rosemary Daamen on the Waipoua aspects of the Waipoua/Maunganui claim
(registrar)

B2 Preliminary, unedited draft by Michael Taylor on Crown policy and practice at Waipoua No 2
(registrar)

83 Schedule and photocopies of gazette notices relating to Waipoua, compiled by Waitangi Tribunal staff
(registrar)

B4 Schedule and photocopies of Maori Land Court minute book references on Waipoua, 1886-1950, Tai Tokerau Maori Land Court, compiled by Waitangi Tribunal staff (indexed and paginated pp 1-149)
(registrar)

85 Extracts from Maori Land Court title register; being record sheets, Maori Land Court orders, partition orders, schedule of ownership orders, and memorial schedules on Waipoua No 2 Maori lands, as at July 1988 (pp 1-64)
(registrar)

B6 Maori Affairs land purchase section file on the purchase of Waipoua No 2 blocks, 1934-46, 1911/150 vol 1, MA-MLP 1, National Archives (complete file, pp 1-393)
(registrar)

87 Maori Affairs land purchase section file on the purchase of Waipoua No 2 blocks, 1934-46, 1911/150 vol 2, MA-MLP 1, National Archives (complete file, pp 1-425)
(registrar)

88 Extracts from New Zealand Forest Service files relating to forest service policy and practice in Waipoua No 2 block, compiled by Waitangi Tribunal staff (with schedule)
(registrar)

89 Extracts from Department of Lands and Survey files relating to Waipoua No 2 blocks, compiled by Waitangi Tribunal staff (with schedule)
(registrar)

810 Plan showing Waipoua forest demarcation, December 1916
(registrar)

811 Interim report of Native Land Commission on "Native Land in the Counties of Hokianga and 8ay of Islands" (Stout-Ngata Commission), AJHR, 1908, G-1J, pp 1-29
(registrar)

812 Minutes of Stout-Ngata Commission hearing at Pakanae, 22 April 1908, MA 78/5, National Archives, pp 170-88
(registrar)

813 Department of Survey and Land Information, Maori land (ML) series maps showing Maori land at Waipoua, 1875-1944
(registrar)

814 Letter from Minister of State-owned Enterprises to Alex Nathan, 9 March 1989, notifying temporary withdrawal of Waipoua forest from the Crown forest asset sales programme
(registrar)

815 "Northland Kauri National Park: A Preliminary Investigation", Department of Conservation, Kaikohe, December 1988
(registrar)

816 Documents relating to the history of the Koutu block at Kawerua, compiled by Waitangi Tribunal staff (with schedule and research note)
(registrar)

B17 Copies of:
(a) the Historic Places Act 1980
(b) the Antiquities Act 1975
(registrar)

818 Ian Lawlor (compiler) "Waipoua State Forest Archaeological Resource Book", New Zealand Forest Service, Auckland, 1984
(registrar)

819 Alex Nathan "Waipoua Wahitapu", draft, Department of Conservation, Kaikohe, 1988
(registrar)

820 John Coster "Archaelogical Site Management in The Waipoua River Valley—A Review and Proposals", New Zealand Forest Service, Auckland, 1983
(registrar)

821 Michael Taylor "Report on the proposed historic and traditional (archaeological) Reserve in Waipoua State Forest 13", New Zealand Forest Service, Auckland, 1986
(registrar)

822 Minutes of the interim Te Roroa-Waipoua Trust Advisory Committee, dated 15 October 1985 to 8 February 1989, obtained from Michael Taylor
(registrar)

B23 Ian Lawlor and Michael Taylor "Future Directions for the Waipoua Archaeological Project in the Department of Conservation", draft, Department of Conservation, 19B7
(registrar)

B24 Reverend M Marsden "Resource Management Law Reform. The Natural World and Natural Resources: Maori Value Systems and Perspectives", Working Paper No 29 Part A, Ministry for the Environment, Wellington, 1988
(registrar)

B25 Extracts of reports and correspondence on wahi tapu and archaeology management at Waipoua (with schedule), compiled by Waitangi Tribunal staff
(registrar)

B26 Itinerary for Waipoua site visit including map and notes on places to be visited, 16 July 19B9
(counsel for claimants)

B27 Precis of oral witnesses of counsel for claimants on Waipoua aspects of the claim

B2B Synopsis of opening submissions of counsel for the claimants on Waipoua aspects of the claim

B29* List of Waipoua wahi tapu
(counsel for claimants)

B30 Te whare nui o Tuohu-nga tupuna, Matatina marae, presented by Alex Nathan
(counsel for claimants)

B31 Preface by Reverend M Marsden and translation of Waka Huia interview with the late E D Nathan
(counsel for claimants)

B32* Whakapapa of Piri Kingi Iraia presented by John Klaricich
(registrar)

B33 Roger Green "Suggestions Towards a System for Integrating Maori Perspectives with those of Archaeologists interested in site protection", Archaeology in New Zealand, 19B9, vol 32 no 2 pp 97-100
(registrar)

B34 Response of counsel for claimants to B3B on matters at issue on Maunganui, Manuwhetai and Whangaiariki, dated 2B August 19B9

B35 Memorandum of counsel for claimants on matters at issue, Maunganui bluff, Manuwhetai and Whangaiariki, dated 30 August 19B9

B36 Second memorandum of counsel for claimants on matters at issue, Maunganui bluff, Manuwhetai and Whangaiariki, dated 1B September 19B9

B37 Memorandum of counsel for claimants on matters at issue, Waipoua, dated 1B September 19B9

B3B Memorandum of counsel for Crown on matters at issue, Maunganui, Manuwhetai and Whangaiariki, dated 10 July 19B9 (see B34)

B39 Transcript of oral evidence of Reuben Taurau Paniora on Waipoua aspects of the claim, given 19 July 19B9
(registrar)

B40 Transcript of oral evidence of Turo Raniera (Lovey) Te Rore on Waipoua aspects of the claim, given 19 July 19B9
(registrar)

B41 Transcript of oral evidence of Ngamako Mete on Waipoua aspects of the claim, given 19 July 19B9
(registrar)

B42 Transcript of oral evidence of Waipoua Nathan on Waipoua aspects of the claim, given 19 July 19B9
(registrar)

B43 English translation of oral evidence of Tutenganahau Paniora on Waipoua aspects of the claim, given 19 and 20 July 19B9
(registrar)

B44 English translation of oral evidence of Te Mamae Tane on Waipoua aspects of the claim, given 20 July 1989
(registrar)

B45* Transcript of oral evidence of Turi 8irch on Waipoua aspects of the claim, given in chambers, 20 July 1989
(registrar)

B46* Transcript of oral evidence of Kaiwhatu Aramoera Freda Sowter (nee Paniora) on Waipoua aspects of the claim, given in chambers, 20 July 1989
(registrar)

B47* Transcript of oral evidence of Grace Paati (Kereopa) on Waipoua aspects of the claim, given in chambers, 20 July 1989
(registrar)

B4B Transcript of oral evidence of Craven Denny Tane Hohaia on Waipoua aspects of the claim, given 20 July 1989
(registrar)

B49 Transcript of oral evidence of Harding Leaf on Waipoua aspects of the claim, given 20 July 1989
(registrar)

850 Transcript of oral evidence of Turi 8irch on Waipoua aspects of the claim, given 21 July 1989
(registrar)

851 Information from the Hobson County Council regarding road access to Waipoua Settlement including map of roading
(registrar)

C **Third hearing at Matatina Marae, Waipoua Settlement, 16-20 October 1989**
Document:

C1 Evidence of Reverend M Marsden on the Treaty of Waitangi, Maori philosophy and world view and on wahi tapu
(counsel for claimants)

C2 Supplementary evidence of Tutenganahau Paniora on Waipoua wahi tapu, dated 13 October 1989
(counsel for claimants)

C3 8rief of evidence of Ronald David Sowter on Waipoua aspects of the claim, dated 13 October 1989
(counsel for claimants)

C4 Brief of evidence of Eruera Paati on Waipoua aspects of the claim, dated 13 October 1989
(counsel for claimants)

C5 Brief of evidence of Richard Paniora on Waipoua aspects of the claim, dated 13 October 1989
(counsel for claimants)

C6 8rief of evidence of Rewiri Paniora on Waipoua aspects of the claim, dated 13 October 1989
(counsel for claimants)

C7 Evidence of Alex Nathan on Waipoua aspects of the claim, dated 11 October 1989
(a) Attachments (1*,2-7.9)
(counsel for claimants)

C8 Evidence of Ian Lawlor on archaeology at Waipoua, dated 27 November 1989 (corrected from 12 October 1989)
(a) Curriculum vitae of Ian Lawlor
(b) Chronological reference list
(c) List of New Zealand Historic Places Trust authorities & permits
(d) Institute of New Zealand Archaeologists (Inc) constitution and code of ethics
(e) Schedule of corrections to original archaeology statement of 11 October 1989 as integrated in final archaeology statement of 27 November 1989
(counsel for claimants)

C9 Evidence of Hirini Paerangi Matunga, planner, on who "owns" or guards the past and who has the right to make decisions about how the past is protected, managed, presented, documented, guarded and controlled, with regard to wahi tapu, the New Zealand planning system and comment on the Resource Management Law Reform
(counsel for claimants)

C10 Transcript and translation of the evidence of Te Aue Davis (recorded 13 October 1989)
(counsel for claimants)

C11 Base map of general claim area
(a) Overlay to C11, block boundaries at 1876
(b) Overlay to C11, present day cadastral pattern
(c) Overlay to C11, general and Maori freehold land
(d) Overlay to C11, Crown lands prior to April 1987
(e) Overlay to C11, Lands allocated to State-owned Enterprises and the Department of Conservation
(counsel for Crown)

C12 Evidence of Garry Gordon Hooker on Waipoua 2 block - the Waipoua Native Reserve
(a) Evidence of Garry Gordon Hooker on Waipoua 1, (including the Waipoua State Forest and Maunganui blocks)
(b) Additional ex tempore evidence of Garry Gordon Hooker on C12, (i) Schedule and copies of replacement pages for C12
(c) Schedule to C12(b) of the bases of Te Roroa land deficits
(counsel for claimants)

C13 Evidence of Craven Denny Tane Hohaia on Waikara
(counsel for claimants)

C14 Evidence of Heather Worth on the socio-economic disadvantages suffered by Maori people in the Te Roroa area
(counsel for claimants)

C15 Overview study on "The Potential for Waipoua Forest Headquarters Complex as a Tourist Base", dated October 1989
(counsel for claimants)

C16 Evidence of Turo Raniera (Lovey) Te Rore on Taharoa aspects of the claim (see H9)
(counsel for claimants)

C17 Evidence of Eruera Makoare on Taharoa aspects of the claim (see H9)
(counsel for claimants)

C18 Evidence of Robert Parore on Taharoa aspects of the claim
(a) Attachments to C18
(b) (i) Map of Shag Lake area, (ii) Map of Shag Lake area, (iii) Extract from Claudia Orange The Treaty of Waitangi (Wellington, 1987) pp 206-207
(counsel for claimants)

C19 Evidence of Peter Adds on the interface between archaeology and Maori tradition
(counsel for claimants)

C20 Memorandum of presiding officer to counsel and registrar on timetabling, dated 3 November 1989
(registrar)

C21 (a) Memorandum of counsel for claimants on claimant liability for rates at Waipoua, fire risk at Waipoua and measures for relief (see F9 and H12)
(b) Memorandum of counsel for claimants seeking urgent interim recommendations in relation to rating liability, Waipoua, dated 6 November 1989 (see C22 and C27)

C22 Memorandum of presiding officer to counsel for claimants in response to C21(b), undated (see C27)
(registrar)

C23 Memorandum of counsel for Crown on timetabling of further hearings, dated 29 November 1989

C24 Memorandum of counsel for Crown seeking clarification of the evidence of Garry Gordon Hooker on Waipoua 2 block (C12) and Waipoua 1 block (C12(a)), dated 29 November 1989 (see C31 and C32)

C25 Memorandum of presiding officer to counsel on timetabling and particulars of claim, undated
(registrar)

C26 Memorandum of counsel for claimants on appointment of associate counsel, dated 18 December 1989

C27 Memorandum of counsel for claimants on timetabling (including withdrawal of the Opanake claim), further particulars of claim, extent of claim and funding requirements, rating issues and Waimamaku matters (site visits, tribunal jurisdiction and Antiquities Act 1975), dated 18 December 1989 (see C28, C21(b) and C22)

C28 Memorandum of presiding officer to counsel accepting withdrawal of the Opanake claim, dated 22 December 1989
(registrar)

C29 Memorandum of presiding officer to tribunal and counsel on timetabling, dated 17 January 1990
(registrar)

C30 Evidence of Rere Tupou (Ted) Pumipi on Waipoua aspects of the claim
(counsel for claimants)

C31 Response of Garry Gordon Hooker on points of clarification of C12, dated 29 November 1989 (see C24)
(counsel for claimants)

C32 Response of Garry Gordon Hooker on points of clarification of C12(a), dated 29 November 1989 (see C24)
(counsel for claimants)

C33 Supplementary evidence of Robert Parore on Taharoa aspects of the claim, dated 23 April 1990 (see C18)
(counsel for claimants)

C34 Memorandum of counsel for Crown suggesting the need for memoranda of questions in place of cross-examination in hearing, dated 20 February 1990

D Fourth hearing held at Whakamaharatanga Marae, Waimamaku, 26 February—2 March 1990
Document:

D1 Preliminary research report by Michael Taylor on Waimamaku wahi tapu aspects of the claim, 2 December 1989, commissioned by the Waitangi Tribunal
(registrar)

D2 Supporting maps and deeds to D1
(registrar)

D3 Supporting documents to D1
(registrar)

D4 Map of wahi tapu within Waimamaku provided for site visit, 26 February 1990
(counsel for claimants)

D5 Opening submissions of counsel for claimants on Waimamaku aspects of the claim

D6 Evidence of Reuben Taurau Paniora on Waimamaku wahi tapu and Waipoua aspects of the claim
(counsel for claimants)

D7 Brief of evidence of Simon Reuben on Waimamaku and Maunganui wahi tapu
(counsel for claimants)

D8 Photograph of church taken 1946, provided by Simon Reuben
(counsel for claimants)

D9 Evidence of Prince Reuben on the Waimamaku aspects of the claim
(a) Letter from R T Young, officer in charge, New Zealand Forest Service to Mr Reuben, dated 15 February 1985
(b) Topographical map showing Wairau wahi tapu
(counsel for claimants)

D10 Evidence of Tutenganahau Paniora on Waimamaku aspects of the claim
(counsel for claimants)

D11 Evidence of Dr Patrick Wahanga Hohepa on Waimamaku aspects of the claim
(a) Extempore submission of Dr Hohepa
(b) Amendments (paragraphs 8.2-9.2) and addendum to D11 (paragraph 10, on the viewing of the waka koiwi at the Auckland Institute and Museum, 3 March 1990)
(counsel for claimants)

D12 Evidence of Emily Paniora on the Kaharau reserve in Waimamaku
(counsel for claimants)

D13 Evidence of Manos Nathan on the wakakoiwi sold by Spencer to the Dominion (National) Museum
(counsel for claimants)

D14 Evidence of Benjamin Te Wake on the Waimamaku tiki
(counsel for claimants)

D15 Evidence of Sharon Moengaroa Murray on parallels between the Waimamaku and Maunganui claims
(counsel for claimants)

D16 Evidence of the Reverend Paekoraha (John) Paniora on the Waimamaku wahi tapu and the church
(counsel for claimants)

D17 Evidence of John Klaricich on the Kohekohe wakatupapaku and the Spencer collection
(a)* Further submission on Waimamaku koiwi
(b) Attachments
(counsel for claimants)

D18 Evidence of Garry Gordon Hooker on Waimamaku part of the claim
(a) Plan ML 3221, Kahumaku, March 1875, R Davis
(counsel for claimants)

D19 Evidence of Reihana Paniora on fisheries at Waimamaku
(counsel for claimants)

D20 Whakapapa and history of grandfather, Ngakuru Pana, produced by Apirana Ngakuru on behalf of Ere Ngakuru
(counsel for claimants)

D21 Evidence of Daniel Ambler on Waimamaku aspects of the claim
(counsel for claimants)

D22 Evidence of Ian Lawlor on wahi tapu protection, manawhenua and archaeology, dated 28 February 1990
(counsel for claimants)

D23 Evidence of Kenneth Maddock on protection of sacred sites in Australia
(counsel for claimants)

D24 Evidence of Hirini Paerangi Matunga, planner, on the concept of manawhenua and mechanisms for the protection of wahi tapu which will give effect to manawhenua within the context of the Resource Management Law Reform and Resource Management Bill, dated February 1990
(counsel for claimants)

D25 Memorandum of counsel for Crown to tribunal and counsel for claimants on permission for scientific examination of the Kohekohe tiki, the Waiomio tiki, and the Spencer collection, dated 9 March 1990

D26 Memorandum of counsel for Crown to the tribunal on possible employment of Michael Taylor to assist the Crown and transcripts of evidence, dated 30 March 1990

D27 Supplementary evidence of Alex Nathan on manawhenua
(counsel for claimants)

D28 Memorandum of counsel for claimants on site visits at Waimamaku, dated 20 April 1990

D29 Memorandum of counsel for Crown seeking clarification of evidence given by Prince Reuben on the nature of the caves at Piwakawaka, dated 20 April 1990 (see D30)

D30 Supplementary evidence of Prince Reuben in response to D29
(counsel for claimants)

D31 Translation of oral evidence of Ere Ngakuru on Waimamaku aspects of the claim, given 2 March 1990
(registrar)

D32 Memorandum of counsel for Crown seeking clarification from Garry Gordon Hooker regarding theft of tiki from the Piwakawaka urupa, Waimamaku, and from Alex Nathan on evidence given during the Waimamaku site visit of wahi tapu south of the Wairau river, dated 12 July 1990 (see D33, H37, H38)

D33 Statement of Garry Gordon Hooker providing clarification sought in D32 (see also H37)
(counsel for claimants)

E Fifth hearing at Kaihu Memorial Hall, Kaihu, 23-27 April 1990
Document:

E1 Opening submissions of counsel for Crown

E2 Evidence of David Anderson Armstrong on Crown actions in respect of Waipoua-Maunganui, 1874-1876
(a) Supporting papers to E2
(b) Maori Land plan register, Department of Survey Land Information, Auckland
(c) Memorandum of Crown on E T Brissenden and attachments
(d) Further submission of David Armstrong on Papaki
(counsel for claimants)

E3 Evidence of David James Alexander on Manuwhetai and Whangaiariki since 1876 with supporting papers
(counsel for Crown)

E4 Evidence of David James Alexander on land dealings in Waipoua 2
(counsel for Crown)

E5 Supporting papers to E4
(counsel for Crown)

E6 Further supporting papers to E4
(counsel for Crown)

E7 Further supporting papers to E4
(counsel for Crown)

E8 Evidence of David James Alexander on access to Waipoua Settlement
(a) Base
(b) Overlay to E8(a), Waipoua No 2 block
(c) Overlay to E8(a), Maori subdivisional pattern
(d) Overlay to E8(a), lands allocated to State-owned Enterprises and the Department of Conservation
(e) Overlay to E8(a), Maori freehold land
(f) Overlay to E8(a), Crown lands prior to 1987
(g) Overlay to E8(a), block boundaries at 1876
(h) Overlay to E8(a), present day cadastral pattern
(counsel for Crown)

E9 Supporting papers to E8
(counsel for Crown)

E10 Evidence of David James Alexander on gravel extraction from Waipoua river
(counsel for Crown)

E11 Supporting papers to E10
(counsel for Crown)

E12 Evidence of David James Alexander on Koutu Maori Reserve
(counsel for Crown)

E13 Evidence of Tony Walzl on Waipoua: provisional services (see H54)
(counsel for Crown)

E14 Supporting papers to E13
(counsel for Crown)

E15 Opening remarks of Christopher Toogood, counsel appointed to assist the Tribunal
(registrar)

E16 Statement of Paul Martin Ambler of Waimamaku
(registrar)

E17 Statement of John Graeme Hook of Waimamaku
(registrar)

E18 Statement of Lindsay Harold Parlane of Waimamaku
(registrar)

E19 Statement of Paul Coulter of Waimamaku
(registrar)

E20 Statement of Peter William Mold of Waikara
(registrar)

E21 Statement of John Graeme Bibby of Waikara
(registrar)

E22 Statement of David and Joan Oliver of Maunganui Bluff
(registrar)

E23 Statement of Dr N W Hogg of Maunganui Bluff
(registrar)

E24 Statement of Barry and Audrey Peebles formerly of Maunganui Bluff
(registrar)

E25 Evidence of Reg Kemper, field centre manager, Waipoua, Department of Conservation.
(counsel for Crown)

E26 Memorandum of counsel for Crown to the Tribunal on site visit and fire report, dated 4 May 1990 (see H12)

E27 Correspondence of Mr and Mrs H L Van Veen, Opua, Bay of Islands on land at Maunganui Bluff
(registrar)

E28 Joint memorandum of counsel for claimants and counsel for Crown on an agreed statement of facts with respect to the lands known as Manuwhetai and Whangaiariki, and agreed statement of facts with respect to those lands, dated 15 May 1990 (see E31 and F17)

E29 Statements of A J Titford and D Harrison of Maunganui
(registrar)

E30 Memorandum of questions of counsel for claimants on the evidence of David Anderson Armstrong on Crown actions in respect of Waipoua-Maunganui, 1874-1876 (E2), dated 1 November 1990 (see H28)

E31 Memorandum of presiding officer on joint statement of claimants and Crown on Manuwhetai and Whangaiariki, the report on fire risk at Waipoua, Michael Taylor's employment, transcripts, intended site visits, intended meeting to discuss whakapapa and date of next hearing, undated (see E28, H12, D26)
(registrar)

F Sixth hearing held at Matatina Marae, Waipoua, 21-25 May 1990
Document:

F1 Evidence of David James Alexander on the land dealings in Waipoua 2, with supporting papers
(counsel for Crown)

F2 Supplementary evidence of David Anderson Armstrong on Manuwhetai and Whangaiariki (see E2)
(counsel for Crown)

F3 Evidence of Ross Allan Charles Hodder (formerly deputy regional manager (management and advocacy), northern region, Department of Conservation) on the Department of Conservation's role in the Waipoua region in relation to its statutory duties, concentrating on allegations made in C7
(a) Large map of "Conservation Lands Waipoua Claim 38"
(counsel for Crown)

F4 Supporting papers to F3
(counsel for Crown)

F5 Evidence of Pieter Raymond Nieuwland, senior conservation officer (management planning), Whangarei, Department of Conservation, on management planning in the Department of Conservation management planning of Waipoua, Northland Kauri National Park proposal, Kaikohe District Initiative, s4 Conservation Act 1987
(counsel for Crown)

F6 Supporting papers to F5
(counsel for Crown)

F7 Evidence and supporting papers of Kaye Chandler Green, protection manager, Auckland conservancy, Department of Conservation, on the formation of archaeological services within the New Zealand Forest Service and Department of Survey and Land Information and New Zealand Historic Places Trust, the differences in outlook and archaeological management of the Waipoua project from 1988 to 1990
(counsel for Crown)

F8 Evidence and supporting papers of Joan Maty Maingay, archaeologist, Northland conservancy, Department of Conservation, on archaeological work at Waipoua from 1988 to the present
(counsel for Crown)

F9 Evidence and supporting papers of Reg Kemper, field centre manager, Waipoua, Department of Conservation, on archaeology at Waipoua and fire safety precautions at Kawerua
(counsel for Crown)

F10 Evidence of Ngatio (Joe) Kereopa, archaeological section, Department of Conservation, on the archaeology at Waipoua, giving details of the process of logging archaeology sites at Waipoua
(counsel for Crown)

F11 Evidence and supporting papers of 8yrdie Ayres, manager of the strategic policy section, Auckland, Department of Conservation, on the role of the northern regional office of the Department of Conservation in the land allocation process, and the contentious and complex case of Waipoua
(counsel for Crown)

F12 List of documents relevant to Wai 38, being held by Regional Archaeology Unit
(counsel for Crown)

F13 Large base map of archaeological features in compartment 66, Waipoua forest, from New Zealand Archaeological Association site record form drawings by Annetta Sutton and Michael Taylor, 1975-1986
(a) Overlay to F13 of archaeological features in compartment 66, Waipoua Forest, identified by Ngatio (Joe) Kereopa, 1989
(counsel for Crown)

F14 Large map of wahi tapu and archaeological features of site N18/114 in compartment 66, by Ngatio (Joe) Kereopa
(counsel for Crown)

F15 Large map of archaeological features in part of compartment 14
(counsel for Crown)

F16 Large base map of archaeological sites within compartments 5, 14, 15 and 66, Waipoua forest
(a) Overlay to F16, Waipoua sanctuary
(b) Overlay to F16, proposed archaeological reserve
(counsel for Crown)

F17 Memorandum of presiding officer to tribunal members and counsel, on a number of timetable and venue matters, agreed statement of facts by counsel on Manuwhetai and Whangaiariki, Alison Nathan to conduct research into education and health in Waipoua valley and current status of the report on fire risk at Waipoua, dated 11 June 1990 (see E28, H54 and H12)
(registrar)

F18 Direction of the chairperson of the Waitangi Tribunal on reconstitution of the Te Roroa tribunal, dated 29 June 1990
(registrar)

F19 Memorandum of presiding officer and counsel for Crown on further information sought from Alison Nathan on education for Maori, Waipoua, dated 25 May 1990 (see H54)
(registrar)

F20 Memorandum of questions of counsel for claimants on the evidence of David James Alexander on land dealings in Waipoua 2 (F1), dated 1 November 1990 (see H29)

F21 Memorandum of questions of counsel for claimants on the evidence of Ross Allan Charles Hodder (F3), dated 31 October 1990 (see H46)

F22 Memorandum of questions of counsel for claimants on the evidence of John Claude Halkett (G8), dated 31 October 1990 (see H39)

F23 Memorandum of questions of counsel for claimants on the evidence of Kaye Chandler Green (F7), dated 31 October 1990 (see H47)

F24 Memorandum of questions of counsel for claimants on the evidence of Joan Mary Maingay (F8), dated 31 October 1990 (see H34)

F25 Memorandum of questions of counsel for claimants on the evidence of Reg Kemper (F9), dated 31 October 1990 (see H35)

G **Seventh hearing held at Matatina Marae, Waipoua, 4-6 September 1990**
Document:

G1 Opening submissions of counsel for the New Zealand Historic Places Trust, Denese L Henare

G2 Evidence of Tipene (Steven) O'Regan (formerly member of the Maori Buildings and Advisory Committee, New Zealand Historic Places Trust)
(a) Curriculum vitae of Tipene (Steven) O'Regan
(counsel for New Zealand Historic Places Trust)

G3 Evidence of Geoffrey Frederick Whitehead, director, New Zealand Historic Places Trust (see volume of evidence G3-G6)
(a) Appendices to G3 (see volume appendices G3-G6)
(counsel for New Zealand Historic Places Trust)

G4 Evidence of Carol Linda Quirk, deputy director, New Zealand Historic Places Trust (see volume of evidence G3-G6)
(a) Appendices to G4 (see volume appendices G3-G6)
(b) Historic places inventory
(counsel for New Zealand Historic Places Trust)

G5 Evidence of Atholl John Anderson, member, Maori Advisory Committee, New Zealand Historic Places Trust (see volume of evidence G3-G6)
(a) Appendices to G5 (see volume appendices G3-G6)
(counsel for New Zealand Historic Places Trust)

G6 Evidence of Anne Geelan, manager, Maori programmes officer, New Zealand Historic Places Trust (see volume of evidence G3-G6)
(a) Appendices to G6 (see separate amended volume appendices G6)
(counsel for New Zealand Historic Places Trust)

G7 Submission and supporting papers of the Auckland Institute and Museum, presented by Roger Neich, ethnologist, Auckland Institute and Museum
(registrar)

G8 Evidence and supporting papers of John Claude Halkett, regional conservator, Northland conservancy, Department of Conservation, on Department of Conservation restructuring, Maori perspectives and iwi liaison, conservation quango reorganisation, Crown land allocation and associated issues and future direction of management planning
(counsel for Crown)

G9 Memorandum of counsel for Crown on timetabling, dated 30 October 1990

G10 Evidence and supporting papers of David Anderson Armstrong on the status of F S Smith at the time of his survey of Manuwhetai and Whangaiariki, August/September 1875, dated 25 October 1990
(counsel for Crown)

H Eighth hearing held at Te Whakamaharatanga Marae, Waimamaku and Te Houhanga Marae, Dargaville, 19-24 November 1990
Document:

H1 Introductory comments of counsel for Crown

H2 Evidence and supporting papers of David James Alexander on radio and telecommunications installations at Maunganui Bluff
(counsel for Crown)

H3 Evidence of David Anderson Armstrong on the Crown purchase of Waimamaku
(counsel for Crown)

H4 Evidence of Dr Bryan Foss Leach on the wakatupapaku from Waimamaku
(a) Chronological document bank accompanying H4
(b) I Additional document bank accompanying H4 II Additional document bank accompanying H4
(c) Aileen Fox *Carved Maori Burial Chests—A commentary and a catalogue* (Bulletin No 13, Auckland Institute and Museum, 1983)
(counsel for Crown)

H5* Evidence of Dr Bryan Foss Leach on cultural resource management at Waipoua forest
(a) I Supporting papers to H5 II Supporting papers to H5
(b) Series of maps in support of H5
(counsel for Crown)

H6 Evidence of Dr Janet Marjorie Davidson, ethnologist, National Museum of New Zealand, on Maori oral traditions and archaeology
(counsel for Crown)

H7 Evidence of David Anderson Armstrong on Taharoa reserve, 1876-1881
(counsel for Crown)

H8 Evidence of David James Alexander on Taharoa, Maunganui block and Taharoa domain
(a) Supporting papers to H8
(counsel for Crown)

H9 Evidence and supporting papers of Robert Dowding Cooper, consultant of Tai Perspectives, on fisheries and impacts on fisheries for Kai Iwi lakes, Waihopai stream and Whangaiariki stream (see C16 and C17)
(counsel for Crown)

H10 Evidence of Jeffery (Jeff) Phillip Griggs, advocacy manager, Whangarei, Department of Conservation, on sewerage disposal and rubbish dump at Waipoua forest headquarters
(counsel for Crown)

H11 Evidence and supporting papers of Lisa Jane Forester, conservation officer, Whangarei conservancy, Department of Conservation, on land allocation at Waipoua with particular reference to local consultation
(counsel for Crown)

H12 Report of Forme Consulting Services on assessment of fire risk at Waipoua
(counsel for Crown)

H13 Evidence of the National Museum of New Zealand presented by Sir Graham Latimer
(counsel for Crown)

H14 Evidence and supporting papers of Piri John Sciascia, assistant director-general, Department of Conservation, on the processes Department of Conservation is following in order to fulfil its obligations to the iwi and the present position with regard to forming a policy on wahi tapu (the Historic Places Bill, Conservation Law Reform and Resource Management Bill)
(counsel for Crown)

H15 Evidence of Dr Susan Evelyn Bulmer, archaeologist, science and research division, Department of Conservation
(counsel for New Zealand Historic Places Trust)

H16 Memorandum of notes taken of questions of counsel for claimants on the evidence of David Anderson Armstrong on the Crown purchase of Waimamaku (H3) asked on 20 November 1990 and the responses given to them, dated 27 November 1990 (see H30)
(counsel for claimants)

H17 Memorandum of presiding officer on amended statement of claim (A1(i)), dated 26 September 1990
(registrar)

H18 Memorandum of counsel for New Zealand Historic Places Trust on the consultation policies and procedures of the New Zealand Historic Places Trust, dated 14 December 1990

H19 Memorandum of questions of counsel for claimants on the evidence of David Anderson Alexander on Taharoa, Maunganui block and the Taharoa Domain (H8), dated 14 December 1990 (see H32)

H20 Memorandum of questions of counsel for claimants on the evidence of Robert Dowding Cooper (H9), dated 14 December 1990 (see H40)

H21 Memorandum of questions of counsel for claimants on the evidence of Jeffery (Jeff) Phillip Griggs (H10), dated 14 December 1990 (see H36)

H22 Memorandum of counsel for claimants to the tribunal and the Crown seeking leave to file further evidence on the submission of Dr 8ryan Foss Leach on the wakatupapaku of Waimamaku (H4) and cultural resource management at Waipoua (H5), dated 20 December 1990

H23 Memorandum of questions of counsel for claimants on the evidence of the New Zealand Historic Places Trust (G3, G4 and G6), dated 20 December 1990 (see H41)

H24 Memorandum of questions of counsel for claimants on the evidence of Dr Susan Evelyn 8ulmer (H15), dated 20 December 1990 (see H49)

H25 Memorandum of questions of counsel for claimants on the evidence of David Anderson Armstrong on the Crown purchase of Waimamaku (H3), dated 20 December 1990 (see H31 and H48)

H26 Memorandum of questions of counsel for claimants on the evidence of Dr 8ryan Foss Leach concerning the wakatupapaku from Waimamaku (H4), dated 20 December 1990 (see H51)

H27 Memorandum of questions of counsel for claimants on the evidence of Dr 8ryan Foss Leach on cultural resource management of Waipoua (H5), dated 20 December 1990 (see H52)

H28 Responses to questions of counsel for claimants on the evidence of David Anderson Armstrong on Crown actions in respect of Waipoua-Maunganui 1874-1876 (E2), dated 10 January 1991 (see E30)

H29 Responses to questions of counsel for claimants on the evidence of David James Alexander on land dealings in Waipoua 2 (F1), dated 17 January 1991 (see F20)
(counsel for Crown)

H30 Responses of David Anderson Armstrong on the memorandum of notes of counsel for the claimants concerning his responses to questions put to him in cross-examination on 20 November 1990 on the Crown purchase of Waimamaku (H3), dated 16 January 1991 (see H16)
(counsel for Crown)

H31 Responses to questions of counsel for claimants (H25) on the evidence of David Anderson Armstrong on the Crown purchase of Waimamaku (H3), dated 16 January 1991
(counsel for Crown)

H32 Responses to questions of counsel for claimants (H19) on the evidence of David James Alexander on Taharoa, Maunganui block and Taharoa Domain (H8), dated 17 January 1991
(counsel for Crown)

H33 Additional information regarding G P Shepherd and W C Kensington compiled by David Anderson Armstrong, dated 10 January 1991
(counsel for Crown)

H34 Responses to questions of counsel for claimants (F24) on the evidence of Joan Mary Maingay (F8), dated 18 January 1991
(counsel for Crown)

H35 Responses to questions of counsel for claimants (F25) on the evidence of Reg Kemper (F9), undated
(counsel for Crown)

H36 Responses to questions of counsel for claimants (H21) on the evidence of Jeffery (Jeff) Phillip Griggs (H10), dated 18 January 1991
(counsel for Crown)

H37 Further statement of Garry Gordon Hooker on the theft of tiki from the Piwakawaka urupa at Waimamaku (see D32 and D33) in response to comments made in H4 page 92 and statement of John Klaricich on the evidence of Dr Bryan Foss Leach on the wakatupapaku at Waimamaku (H4)(see H44)
(counsel for claimants)

H38 Statement of Alex Nathan in response to Crown request of 12 July 1990 that he provide clarification of evidence given regarding the wahi tapu south of the Wairau river, dated 31 January 1991 (see D32)
(counsel for claimants)

H39 Responses to questions of counsel for claimants (F22) on the evidence of John Claude Halkett (G8), received 11 February 1991
(counsel for Crown)

H40 Responses to questions of counsel for claimants (H20) on the evidence of Robert Dowding Cooper (H9), received 18 February 1991
(counsel for Crown)

H41 Responses to questions of counsel for claimants (H23) on the evidence of the New Zealand Historic Places Trust, dated 31 January 1991
(counsel for the New Zealand Historic Places Trust)

H42 Memorandum of counsel for claimants on further information from Ian Lawlor on certain archaeological matters in Waipoua, dated 12 February 1991, including a copy of a letter from counsel for Crown requesting the information from Ian Lawlor and Ian Lawlor's reply

H43 Supplementary evidence of David Anderson Armstrong on Waipoua/ Maunganui post sale discontent
(counsel for Crown)

H44 Further statement of John Klaricich on the evidence of Dr 8ryan Foss Leach on the wakatupapaku at Waimamaku (H4), dated 31 January 1991 (see H37)
(counsel for claimants)

H45 Statement of Ian Lawlor on the evidence of Dr 8ryan Foss Leach on cultural resource management at Waipoua (H5) and related Crown evidence (G5 and H15), dated 19 January 1991
(counsel for claimants)

H46 Responses to questions of counsel for claimants (F21) on the evidence of Ross Allan Charles Hodder (F3), received 11 March 1991
(counsel for Crown)

H47 Responses to questions of counsel for claimants (F23) on the evidence of Kaye Chandler Green (F7), received 11 March 1991
(counsel for Crown)

H48 Supplementary evidence of David Anderson Armstrong on the experience of the vendors and/or their advisors in land transactions prior to 1874, the native land purchase department and clarification of the answer to question 19 of H25 memorandum of questions of counsel for claimants (answer to this question originally given in H31), dated 4 March 1991
(counsel for Crown)

H49 Responses to questions of counsel for the claimants (H24) on the evidence of Dr Susan Evelyn 8ulmer (H15), dated 13 March 1991
(counsel for New Zealand Historic Places Trust)

H50 Correspondence of counsel for Crown regarding request for rescheduling of hearing, dated 12 March 1990
(registrar)

H51 Responses to questions of counsel for claimants (H26) on and supplementary evidence to the evidence of Dr Bryan Foss Leach on the wakatupapaku from Waimamaku (H4), dated 30 March 1991
(counsel for Crown)

H52 Responses to questions of counsel for claimants (H27) on and supplementary evidence to the evidence of Dr Bryan Foss Leach on cultural resource management at Waipoua forest (H5), dated 30 March 1991
(counsel for Crown)

H53 Supplementary evidence of Dr Janet Marjorie Davidson, ethnologist, National Museum of New Zealand, on the publication of archaeological research
(counsel for Crown)

H54 Evidence of Alison Nathan on further information concerning education for Maori, Waipoua (see E13)
(a) to (k) supporting documents
(registrar)

H55 Statement of Michael Taylor on allegations made before the Tribunal concerning himself and aspects of the claim
(a) appendix
(registrar)

H56 John Coster, Auckland Institute and Museum, to registrar, Waitangi Tribunal, on evidence of Dr Susan Bulmer (H15), dated 17 December 1990
(registrar)

H57 Memorandum of Mary Boyd to counsel for Crown on evidence and responses made by David Armstrong (E2, H3, H7, H28, H48), dated 2 May 1991 (see H61 and I7)
(registrar)

H58 Memorandum of Mary Boyd to counsel for claimants on various submissions, dated 2 May 1991
(registrar)

H59 Supplementary evidence of Garry Gordon Hooker on Tiopira Kinaki and the sale of Maunganui and Waipoua 1, dated 3 May 1991 (see C31 and I8)
(counsel for claimants)

H60 Evidence relating to Koutu at Kawerua
(registrar)

H61 Part response of David Anderson Armstrong to H57, dated 23 May 1991 (see I7)
(counsel for Crown)

H62 Map prepared by the Department of Survey and Land Information of the part of Kaharau (as shown on ML 3278) included in the purchase of Waimamaku 2 superimposed on a present day cadastral plan, with a schedule of the current status and area of sections within it, commissioned by the Waitangi Tribunal
(registrar)

I Ninth hearing held at Kaihu Memorial Hall, Kaihu, 27-31 May 1991

Document:

I1 (a) Closing submission of counsel for claimants, volume 1, on the claim, the functions and jurisdiction of the Tribunal, principles of the Treaty, interpretation of treaties, burden of proof, extent of Crown's responsibilities for its agents, weight of oral traditional evidence, Te Ao Tawhito—the ways of the ancestors, Te Ao Hou—the new way.
(b) Closing submission of counsel for claimants, volume 2, on the sale of Maunganui and Waipoua 1, the reservation of Manuwhetai and Whangaiariki, Waimamaku—introduction, Waimamaku land, Waimamaku taonga
(c) Closing submission of associate counsel for claimants on Waipoua land alienation aspects of the claim
(d) Closing submission of associate counsel for claimants on Taharoa aspects of the claim
(e) Closing submission of counsel for claimants, volume 4, on services at Waipoua, river issues, fisheries, traditional resource rights, wahi tapu
(f) Authorities for I1(d)
(g) Authorities for I1(c)
(h) Further submissions of counsel for claimants on national policy issues

I2 Closing submission of counsel for Crown
(a) Further evidence regarding education at Waipoua Settlement (see H54)

I3 Closing submission of counsel for the New Zealand Historic Places Trust
(a) Additional comments of counsel for the New Zealand Historic Places Trust

I4 Memorandum of presiding officer on counsel for Crown's application for adjournment of her closing submission on wahi tapu issues, dated 31 May 1991 (registrar)

I5 Memorandum of counsel for Crown on proposed sale of Crown land within Kaharau by Transit New Zealand, dated 11 June 1991 (see I6(d), I10, I11)

I6 (a) Response of counsel for claimants to I2, dated 14 June 1991
(b) Response of counsel for claimants to I5, dated 14 June 1991
(c) Response of associate counsel for claimants to I2, dated 14 June 1991
(d) Further submissions by counsel for claimants with respect to national policy issues, received 17 June 1991 (see I1(h), I5, I10-I13, I17, I20))

I7 Response of David Anderson Armstrong to H57, dated 10 June 1991 (see H61) (counsel for Crown)

I8 Response of David Anderson Armstrong to H59, dated 14 June 1991 (counsel for Crown)

I9 Memorandum of counsel for Crown on alleged Morrell waka, including covering letter and attached correspondence between Roger Neich of the Auckland Institute and Museum and Dr 8ryan Foss Leach, dated 17 July 1991

I10 Memorandum of counsel for Crown on sale of Crown land within Kaharau, dated 18 July 1991 (see I5, I6(d), I12, I13, I17)

I11 Memorandum of presiding officer on counsel for claimants request regarding the Historic Places Bill and Resource Management Bill, I6(d), dated 30 August 1991 (see I20)
(registrar)

I12 Memorandum of presiding officer on proposed sale of Crown land within Kaharau and other areas of Crown and State-owned Enterprises land within the claim area, dated 30 August 1991 (see B14, I5, I6(d), I10, I13, I17)
(registrar)

I13 Memorandum of counsel for claimants on sales of Crown and State-owned Enterprises lands within the claim area, received 27 August 1991 (see 814, I5, I6(d), I10, I12, I17)

I14 Correspondence on clarification of evidence (given in D9 and E2) sought by Mary Boyd, including additional evidence of David Anderson Armstrong on Papaki (counsel for Crown)

I15 Further statement of Garry Gordon Hooker on the sale of Waipoua No 1, undated (see I16)
(registrar)

I16 Response of counsel for Crown to I15 and some further comments in respect of tamana, dated 19 September 1991

I17 Memorandum of presiding officer on possible sale of Crown forest assets at Waipoua, dated 6 November 1991 (see B14, I5, I6(d), I10, I12, I13)
(registrar)

I18 Response of counsel for claimants on I14 on Papaki, dated 13 November 1991

I19 Response of counsel for Crown on I18 on Papaki, dated 15 November 1991 (see I14)

I20 Response of counsel for Crown to I11

I21 Additional information on gravel extraction from the Waipoua river, 1972-1985 (registrar)

Appendix 4

Agreed Statement on Manuwhetai and Whangaiariki

JOINT MEMORANDUM BY COUNSEL FOR THE CLAIMANTS AND THE CROWN IN RELATION TO AN AGREED STATEMENT OF FACTS WITH RESPECT TO THE LANDS KNOWN AS MANUWHETAI AND WHANGAIARIKI

1. Attached hereto is an Agreed Statement of Facts as to the question of whether the areas known as Manuwhetai and Whangaiariki should have been reserved from the 1876 sale of the Maunganui Block.

2. This Agreed Statement of Facts follows the presentation of claimant and Crown evidence with respect to that matter.

3. As a result of the presentation of this evidence, the Crown and Te Roroa are now able to agree as to certain historical facts surrounding the 1876 sale of the Maunganui Block and the question of whether the lands known as Manuwhetai and Whangaiariki should have been reserved from sale. The Crown and Te Roroa are agreed also as to certain inferences of fact which may reasonably be drawn from the primary historical evidence which the parties accept as proved. These points of agreement are set out at paragraphs (9) to (19) of the memorandum.

4. The Crown accepts the evidence of Te Roroa kaumatua as to the spiritual, cultural and economic significance of Manuwhetai and Whangaiariki to the extent set out in paragraphs (3) to (8) of the memorandum.

5. It is to be noted that the Agreed Statement of Facts relates only to:

- the issue of the reservation of Manuwhetai and Whangaiariki
- the historical period up to and including the date of the sale of the Waipoua 1 and Maunganui Blocks.

In particular the Agreed Statement of Facts does not relate to:

(a) any issue in relation to the Maunganui Bluff itself and the related question of the Papaki Reserve

(b) the question of other wahitapu in the Maunganui area

(c) matters relating to the Taharoa Reserve in the Maunganui Block

(d) the acts or omissions of the Crown in relation to protests by Te Roroa with respect to Manuwhetai and Whangaiariki which occurred after 1876

(e) the question of adequacy of consideration paid to each of Parore Te Awha and Tiopira Kinaki in the sale of the Maunganui and Waipoua I Blocks.

These are matters which, it is the view of counsel, should be dealt with by way of the normal Tribunal process of findings and recommendations.

6. It is intended that the Agreed Statement of Facts should be presented to the Tribunal as the factual basis upon which the Crown and Te Roroa are agreed. We understand from the Judge's directions in Chambers that the Tribunal will then issue a memorandum to the parties giving further directions as to mediation.

DATED this 15th day of May 1990

J.V. Williams	S.E. Kenderdine
Counsel for the Claimants	Counsel for the Crown

AGREED STATEMENT OF FACTS

THE LAND

(1) The lands the subject of this Agreed Statement of Facts are those commonly known as Manuwhetai and Whangaiariki.

(2) The legal description of the respective lands are as follows:

Manuwhetai That parcel of land contained in CT 1893/57 being Section 19 Block XII Waipoua Survey District containing 110 acres 1 rood 12 perches more or less

Whangaiariki That parcel of land contained in CT 13C/709 being part Section 64 Block 1 Kaiiwi Survey District containing 22 acres 1 rood 28 perches more or less

THE SPIRITUAL, CULTURAL AND ECONOMIC SIGNIFICANCE OF MANUWHETAI AND WHANGAIARIKI

(3) The lands known as Manuwhetai and Whangaiariki are wahitapu of great spiritual significance to the Te Roroa people.

(4) They contain urupa in which were interred at the time of the Waipoua 1/Maunganui sale, the ancestors of Te Roroa.

(5) They contain ancient Pa and habitation sites of the Tupuna of Te Roroa.

(6) They include areas in which the famous taua of Taoho was trained and drilled.

(7) They contained areas of garden for the cultivation of Te Roroa.

(8) They provided access to the significant coastal fishery at the Maunganui Bluff for Te Roroa.

THE RESERVATION OF WHANGAIARIKI AND MANUWHETAI

(9) The rangatira Tiopira Kinaki, Parore Te Awha and Te Rore Taoho all had legitimate interests in the Waipoua 1 and Maunganui Blocks at the time of investigation into title in February 1876.

(10) The interests of the rangatira Te Rore Taoho were centred in and around the areas known as Manuwhetai and Whangaiariki.

(11) It is likely that land purchase officer Brissenden agreed with the rangatira concerned that Manuwhetai and Whangaiariki, being areas within the direct influence of Te Rore Taoho, should be excluded from the sale.

(12) It is likely that Te Rore Taoho took no further part in the Native Land Court Inquiry and the sale of the Maunganui and Waipoua I because he believed that the areas in respect of which he claimed a direct interest had been excluded from the sale.

(13) A dispute developed between Parore Te Awha and Tiopira Kinaki over boundaries between the land claimed by each.

(14) The disagreement also concerned the general area within which Manuwhetai and Whangaiariki are situated.

(15) The survey of the Blocks by Messrs. H. & D. Wilson was halted in February/March 1875 as a result of the disagreement. The area which remained unsurveyed as a consequence contained Manuwhetai and Whangaiariki.

(16) Chief Surveyor S.P. Smith subsequently agreed that the uncompleted portion of the survey, being an area of straight coastline, could, for the purposes of the Native Land Court inquiry into title, be completed by way of a simple sketched line.

(17) Chief Surveyor S.P. Smith agreed to arrange for surveyors to return to complete any internal surveys at a later date.

(18) This was done with respect to Manuwhetai and Whangaiariki by F.P. Smith in September 1875. Smith completed a plan (ML3297/8) of the reserves and forwarded this to the Inspector of Surveys of Auckland on September 15.

(19) Through a combination of factors, the agreement to reserve Manuwhetai and Whangaiariki from sale was never given positive effect to in the formal order of the Court as to title dated 3 February 1876 or in the Deed of Sale dated 8 February 1876. These factors included

– The belief of Te Rore Taoho that Manuwhetai and Whangaiariki had been excluded from the deliberations of the Court and the sale negotiations with the Crown.

– His subsequent non-appearance in Court.

– All of the parties were preoccupied with the more immediate dispute between Parore Te Awha and Tiopira Kinaki as to entitlements and later as to the consideration each received.

– The fact that Brissenden who had negotiated the sale, and who was likely
to have agreed to the reservation of Manuwhetai and Whangaiariki, was replaced by Preece in March/April 1875.

– The pressure under which Native Land Purchase Officers generally were put to purchase land.

– A likely clerical error which lead to the maps ML3297/8 not being despatched from Auckland to Kaihu so as to be before the Native Land Court when it sat in Kaihu on 27 January 1876.

(20) The Crown and the claimants are therefore agreed that the lands known as Manuwhetai and Whangaiariki were intended by all parties to be reserved from sale. By a combination of factors including human error, that intention was not given effect to.

DATED this 15th day of May 1990.

J.V. Williams
Counsel for the Claimants

S.E. Kenderdine
Counsel for the Crown

Appendix 5

Multiple Ownership—Some Resource Management Implications

Following the Crown's purchases of the Waipoua No 2 blocks, 691a 0r 30p remain Maori land in multiple ownership. Before considering the implications of the Resource Management Act 1991, it is important to understand how multiple ownership came about.

In 1876 the Native Land Court awarded the whole of Waipoua No 2 block to ten people, who were entered on the title as individual, absolute owners. The court deliberately misrepresented their status on the title. The land was intended to be a native reserve held by these ten people, by agreement among those beneficially entitled, in a representative capacity only. Subsequently, some of the "owners" exercised their *legal* rights as individual owners, partitioning and selling their interests. For those who did not sell, upon the death of an "owner", the family could apply to the Native Land Court for succession orders, which in most cases resulted in the deceased's interests being passed on to the children. In some cases, however, the deceased owner's family did not wish to succeed to the interest, preferring to leave it in their tupuna's name in order to avoid further fragmentation of the interest in the land and to prevent its possible sale. This intentional omission to succeed to interests, however, was in some instances thwarted by the Crown intervening, applying to the Native Land Court for succession orders, and once vested in those found to be beneficially entitled, purchasing the interests from them.

Our examination of the evidence in relation to Waipoua No 2 has revealed a reluctance on the part of descendants of owners to succeed to their tupuna's interests for these reasons. We are aware that this is a common practice throughout Tai Tokerau, which explains the prevalence of the names of deceased owners being left on titles.

This prevalence of multiple ownership and lack of succession to interests, presents difficulties for those, such as local authorities and neighbours, who are required to notify landowners in respect of resource management matters. By s353 Resource Management Act, *notice or consent*:

> shall be deemed to have been served or obtained ... on or from all the owners of Maori land if it has been served on or obtained from such owner or owners as have been nominated for the purpose ... by the secretary of the appropriate iwi authority or ... the Registrar of the Maori Land Court.

This provision denies the right of an owner of Maori land to be informed of resource management matters which may affect the land or the owner's enjoyment of it. The owner will only be informed if nominated as being a person who should be informed, either by "the appropriate iwi authority" or the registrar of the Maori Land Court.

Disregarding for a moment the denial of a right of ownership, there are some practical difficulties with this provision. First, an owner may be living some distance from the land, which is very common with Maori owners on account of there being few employment opportunities in places like Waipoua. For this reason the owner is unlikely to be known to "the appropriate iwi authority". Secondly, it is unlikely, unless the owner has had reason to appear in the Maori Land Court and still be at the address given at that time, that the registrar will have information as to an owner's whereabouts. Thirdly, if an owner is deceased without a succession order having been obtained, the registrar will not be aware of this fact and nor will anyone know who the beneficiaries of the interest would be.

These are just some of the practical difficulties, although by s37 of the Act there is a very practical solution: the local authority may waive compliance with the notice requirement!

We are most concerned that the Crown should pass into law such a discriminatory provision, especially when it is the Crown itself which is the author of the problem it is attempting to address. Having denied the Maori customary title to their land and imposed individual ownership, it now denies the rights of individual ownership by reposing in "the appropriate iwi authority" or registrar of the Maori Land Court the primary right of ownership, that is, the owner (who could indeed reside on the land) has no prima facie right to be informed of matters affecting the land or the owner's enjoyment of it.

The Crown has identified a problem with multiply-owned Maori land in relation to resource management matters and has provided a solution, the "iwi authority", which is assumed to be a traditional concept.

To provide what is thought to be a "Maori" solution suggests an assumption that it is a Maori problem. It is not. It is a Crown problem.

The multiple ownership of Maori land, and its on-going fragmentation, is the direct result of the individualisation of title. The Crown has submitted that, as was their right under article 3 of the Treaty, the Maori chose to have titles to their land issued in individual names. It was argued that it was a "voluntary arrangement" whereby ten names were entered on the title to Waipoua No 2. We have examined previously the Native Land Court's "determination" in 1876. The evidence is conclusive that it was not intended by the Maori that the named individuals should have absolute ownership but should be in a representative capacity only. There were many more than these ten people entitled to "ownership". Had they

chosen individual title, with the absolute rights that conferred, then they all would have been included on the title. The court awarded the block to these ten "owners" in order to facilitate its alienation. As undersecretary for native affairs, Lewis, said in 1891:

> the whole object of appointing a court for the ascertainment of Native title was to enable alienation for settlement. Unless this object is attained the court serves no good purpose, and the Natives would be better without it, as, in my opinion, fairer Native occupation would be had under the Maoris' own customs and usages without any intervention whatever from outside. (A19:64)

This statement accurately summarises the position. Waipoua No 2 was intended, and recorded by the court, as a "native reserve". There was no intention to alienate this block, but rather to retain it for the benefit of the hapu as a whole. By conferring absolute ownership on the few, the court excluded the many, and ensured its alienation. The descendants of the few, through successions in the court, comprise the multiple ownership of the little of the now fragmented block that remains in Maori ownership.

The problems which have arisen through multiple ownership are many, including difficulties in the land's utilisation. In town planning terms, it also explains lack of past Maori involvement. In the context of the Resource Management Act, we have demonstrated that the problem remains unresolved in relation to notice of applications under s353. There are other problems under the Act which we have not considered, such as time constraints for lodging objections, the costs involved in consulting numerous owners etc. They all serve to continue to exclude Maori from the resource management process, as it affects their land specifically, as was the case in previous legislation. The problem was brought about in the first place by the Crown's denial to Maori of their customary land tenure. The Crown's "Maori" solution in s353 as to notice to owners of Maori land withholds rights from Maori which are enjoyed by Her Majesty's other subjects in New Zealand.

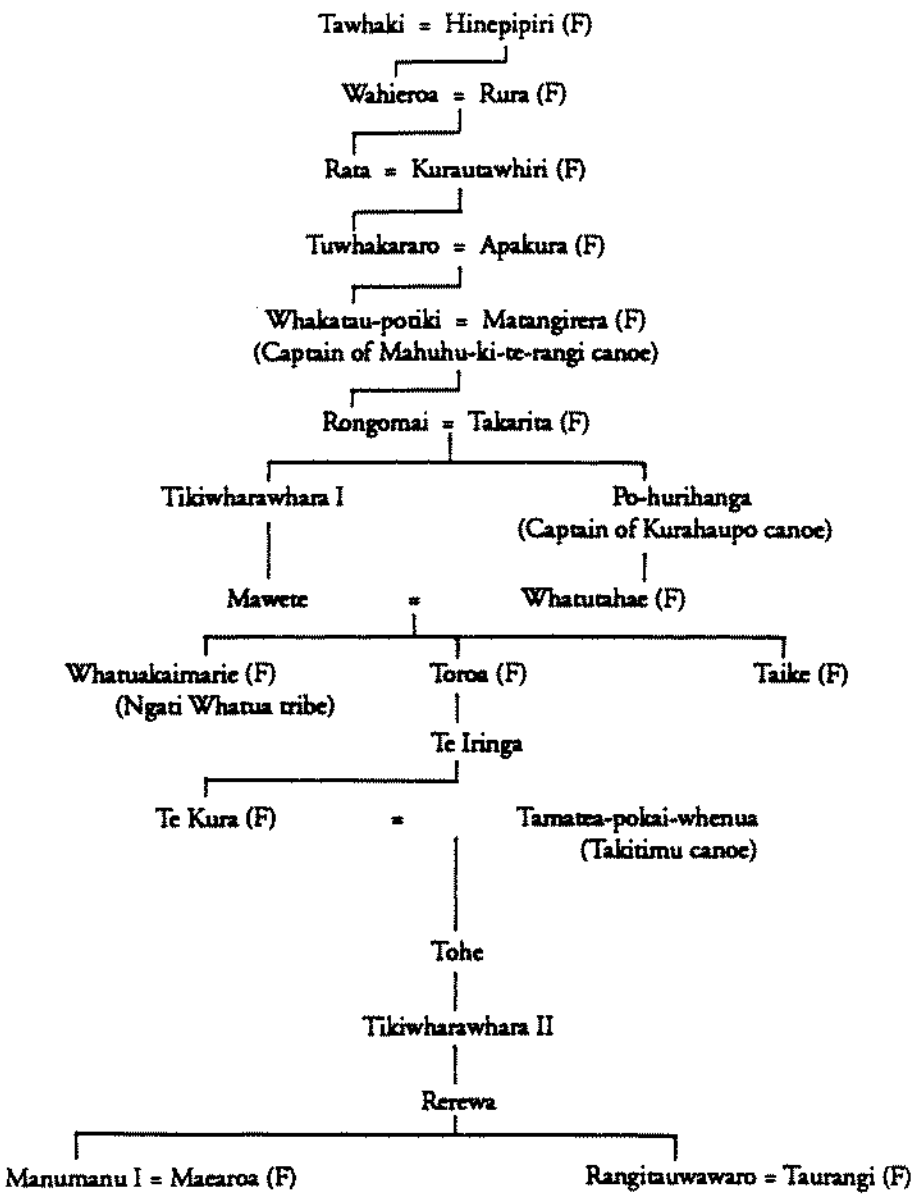
We emphasise that the problems arising from the multiple ownership of Maori land are not the responsibility of Maori. The procedural provisions of the Resource Management Act require amendment so that Maori are not disadvantaged and effectively excluded from the resource management process.

In our review of s353 of the Act we have touched upon a problem which has not only been at the root of the lack of Maori involvement in town planning in the past on account of the multiple ownership of land, but has also been the cause of many other problems to Maori through the destruction of their social structure. The reference to "iwi authorities" in the Act is a road to nowhere, as, since the repeal of the Runanga Iwi Act 1990, there is uncertainty as to what constitutes an "iwi authority".

In our view there is an urgent need for amendment to the Resource Management Act 1991 in order to overcome problems such as those in relation to s353 "iwi authorities" and the time limits throughout the Act. Whilst there are discretions on territorial authorities such as waiving or extending time limits in s37, we consider there is an obligation upon the Crown to accept responsibility for the problem it has itself brought about.

Appendix 6

WHAKAPAPA OF TE ROROA



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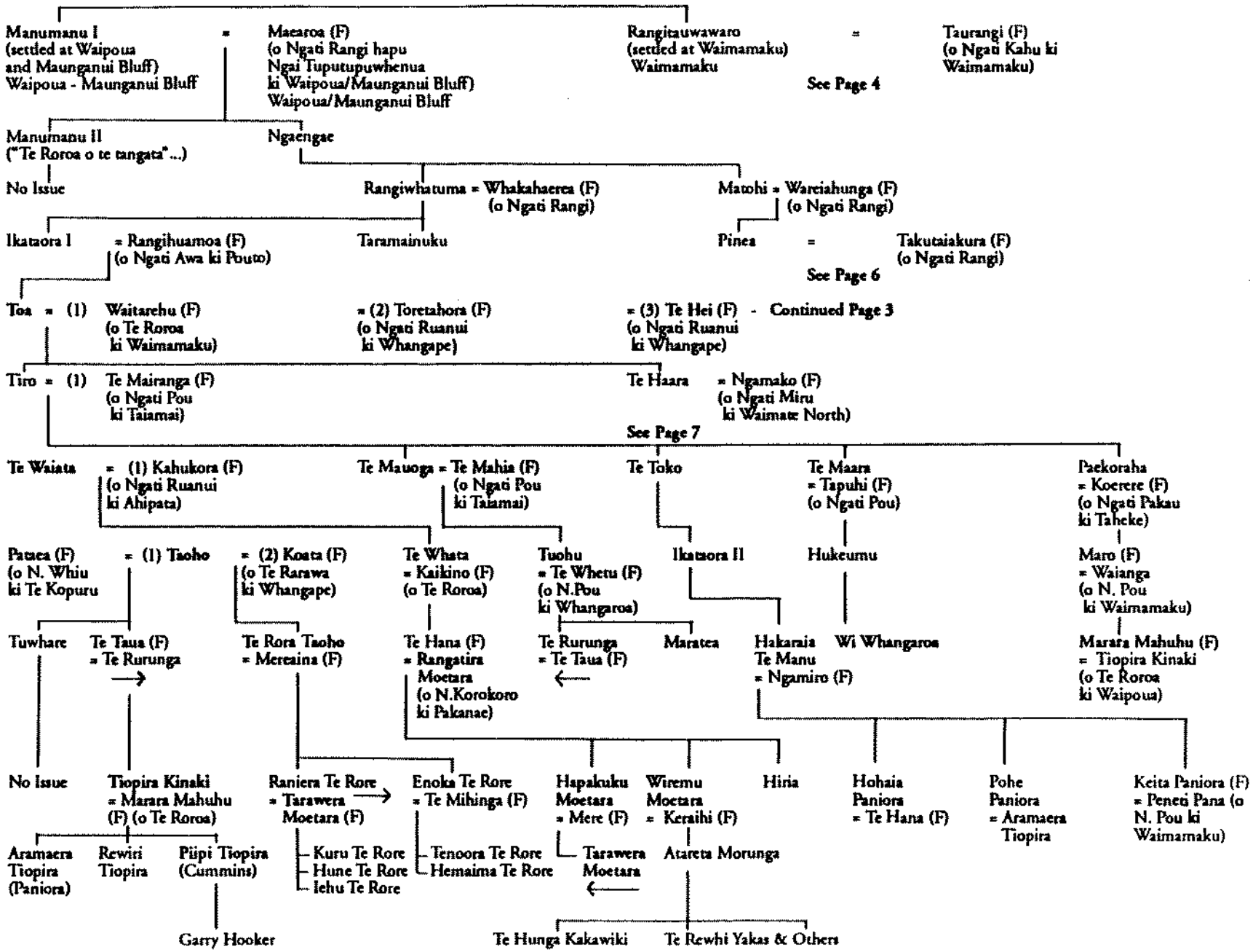
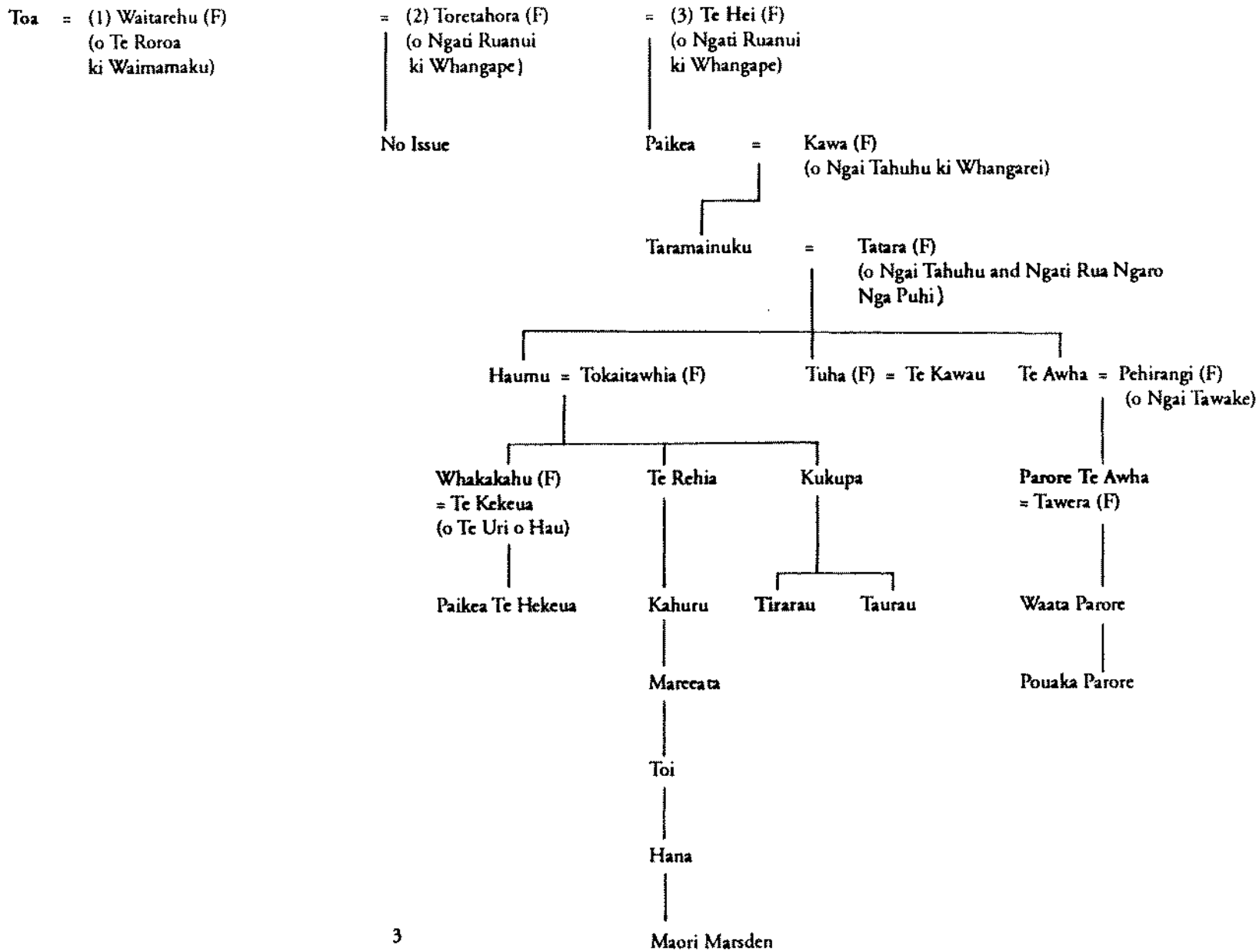
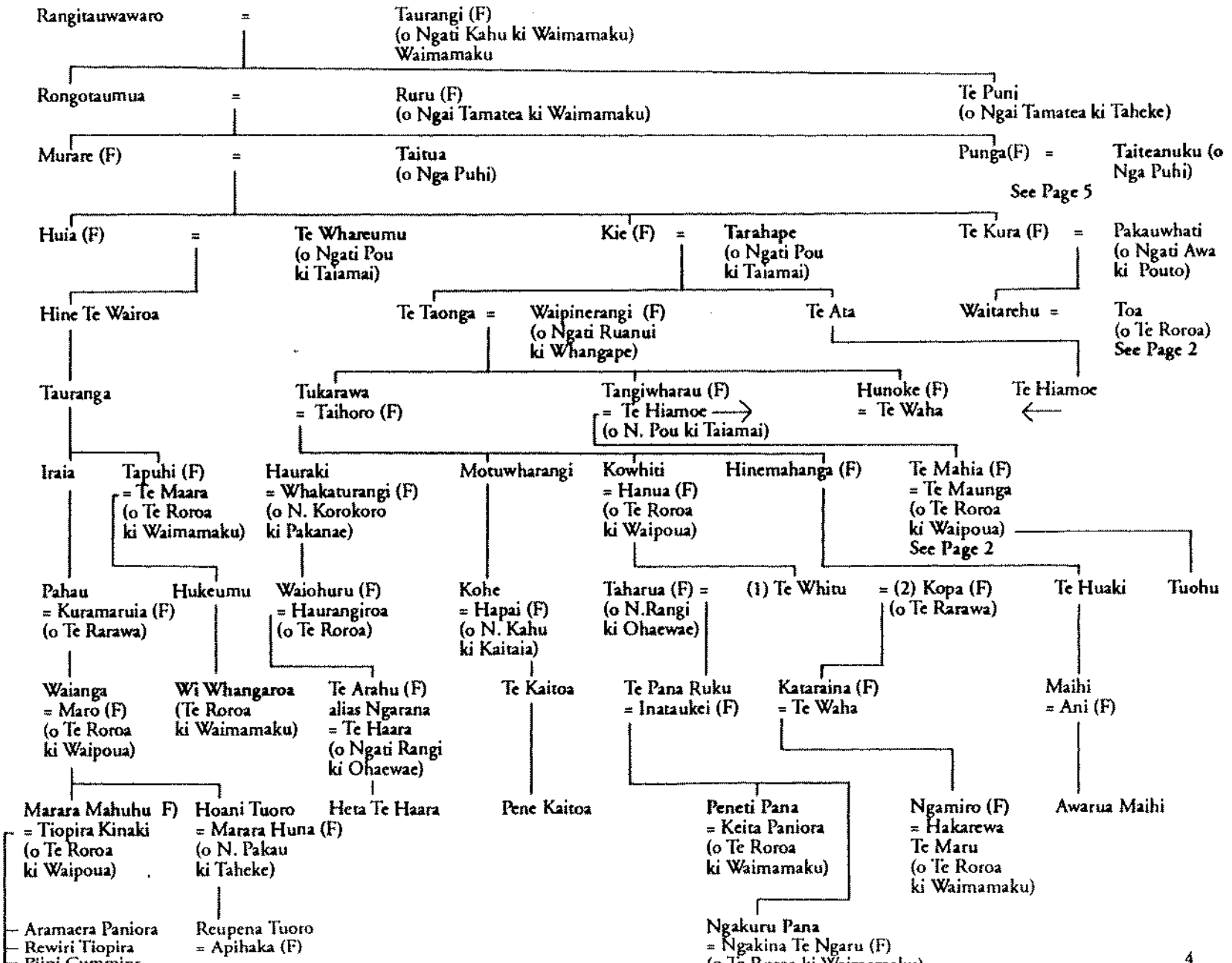
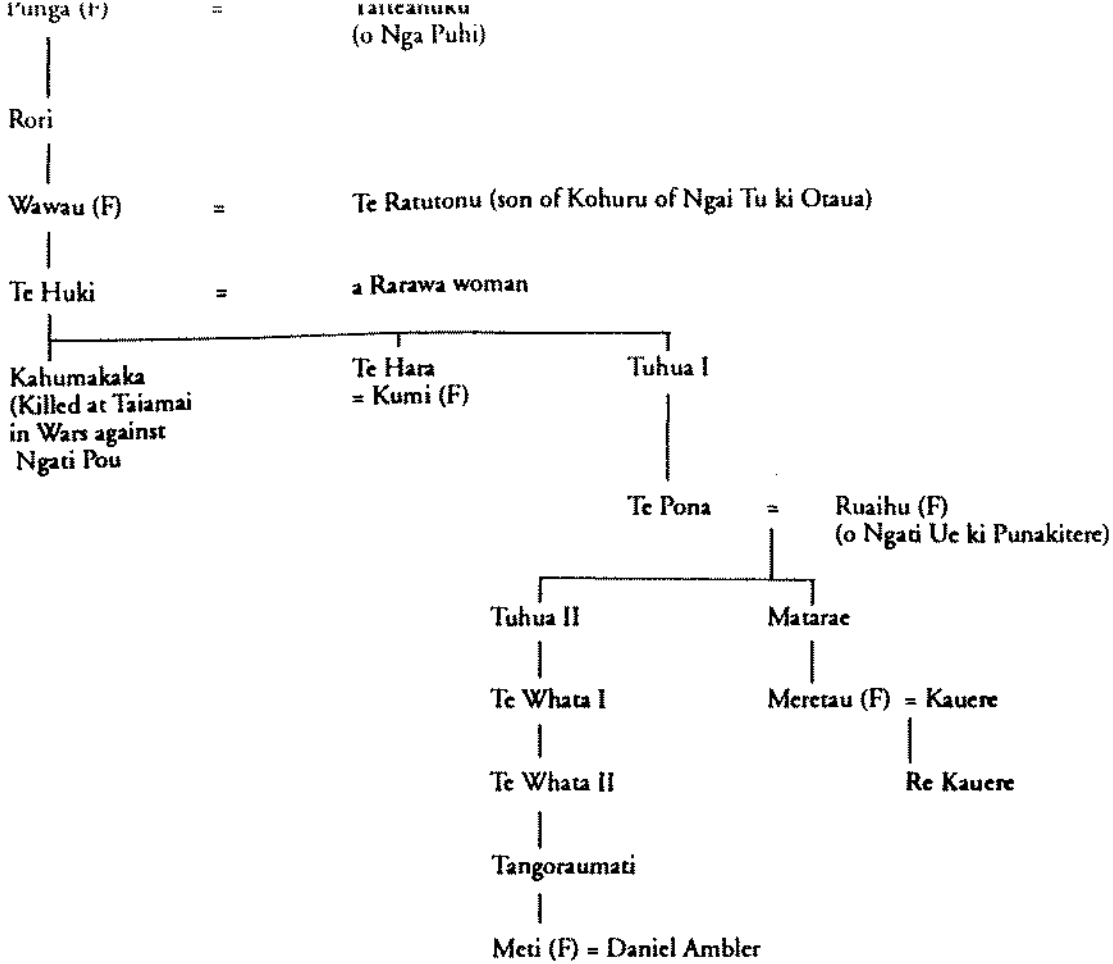
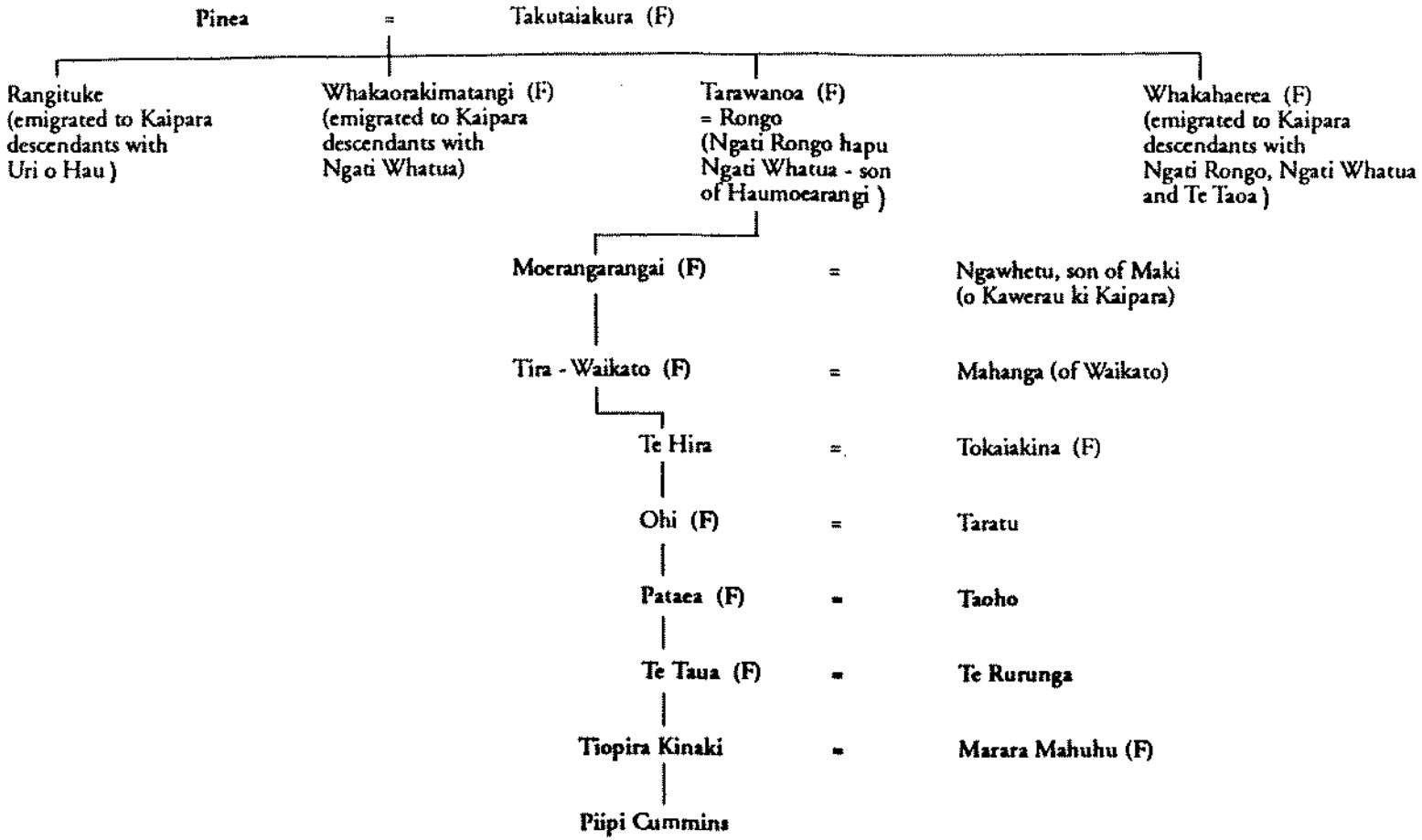
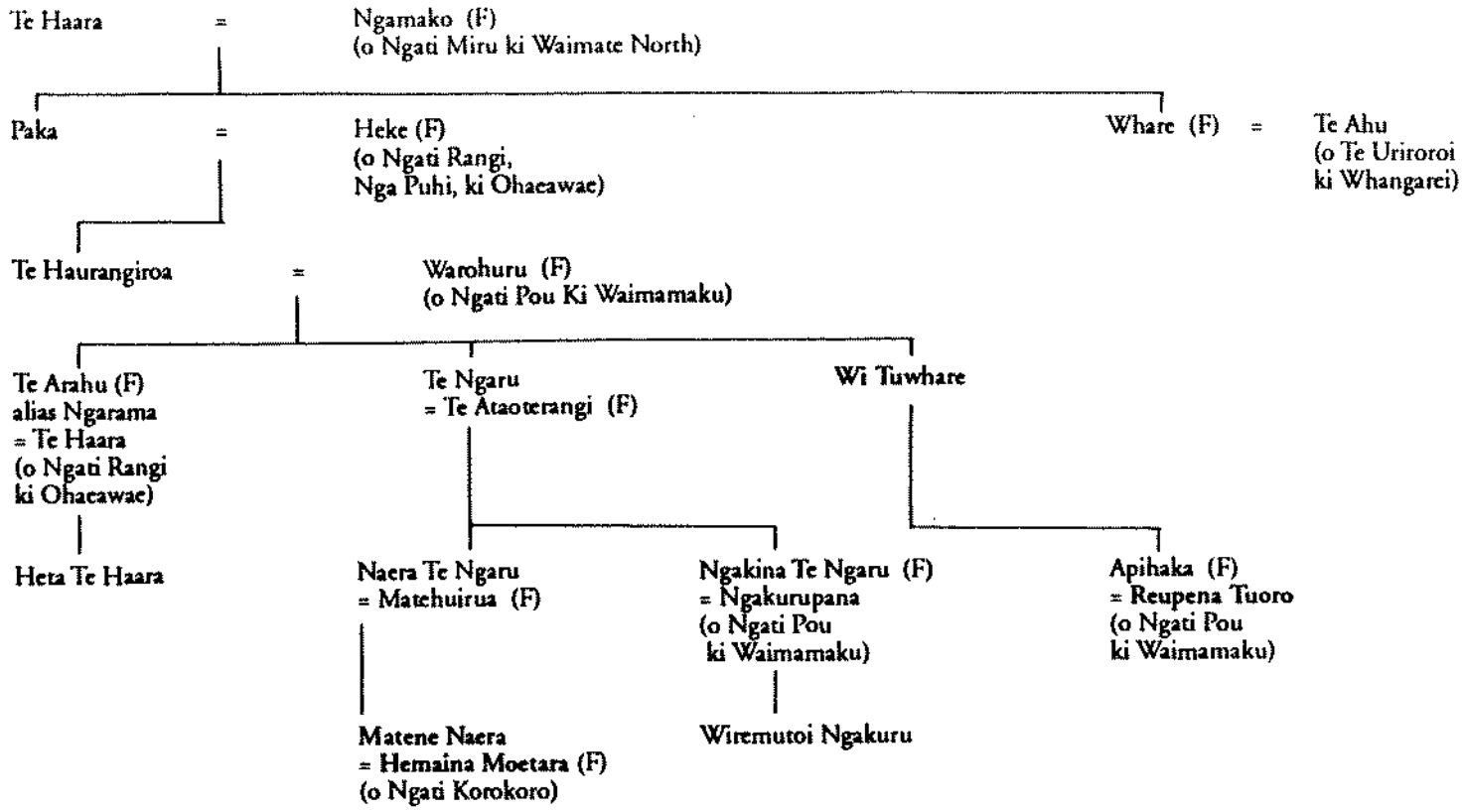

Manumanu I (settled at Waipoua and Maunganui Bluff) Waipoua - Maunganui Bluff
Maearoa (F) (o Ngati Rangi hapu Ngai Tupututupuwhenua ki Waipoua/Maunganui Bluff) Waipoua/Maunganui Bluff
Rangitauwawaro (settled at Waimamaku) Waimamaku
Taurangi (F) (o Ngati Kahu ki Waimamaku)
See Page 4
Manumanu II ("Te Roroa o te tangata"...)
Ngaengae
No Issue
Rangiwhatuma = Whakahaerea (F) (o Ngati Rangi)
Matohi = Warciahunga (F) (o Ngati Rangi)
Ikataora I = Rangihuamoa (F) (o Ngati Awa ki Pouto)
Taramainuku
Pinea = Takutaiakura (F) (o Ngati Rangi)
See Page 6
Toa = (1) Waitarehu (F) (o Te Roroa ki Waimamaku)
= (2) Toretahora (F) (o Ngati Ruanui ki Whangape)
= (3) Te Hei (F) (o Ngati Ruanui ki Whangape)
- Continued Page 3
Tiro = (1) Te Mairanga (F) (o Ngati Pou ki Taiamai)
Te Haara = Ngamako (F) (o Ngati Miru ki Waimate North)
See Page 7
Te Waiata = (1) Kahukora (F) (o Ngati Ruanui ki Ahipata)
Te Mauoga = Te Mahia (F) (o Ngati Pou ki Taiamai)
Te Toko
Te Maara = Tapuhi (F) (o Ngati Pou)
Paekoraha = Koerere (F) (o Ngati Pakau ki Taheke)
Patuea (F) (o N. Whiu ki Te Kopuru
= (1) Taoho
= (2) Koata (F) (o Te Rarawa ki Whangape)
Te Whata = Kaikino (F) (o Te Roroa)
Tuohu = Te Whetu (F) (o N.Pou ki Whangaroa)
Ikatsora II
Hukeumu
Maro (F) = Waianga (o N. Pou ki Waimamaku)
Tuwhare
Te Taua (F) = Te Rurunga
Te Rora Taoho = Mereaina (F)
Te Hana (F) = Rangatira Moetara (o N.Korokoro ki Pakanae)
Te Rurunga = Te Taua (F)
Maratea
Hakaraia Te Manu = Ngamiro (F)
Wi Whangaroa
Marara Mahuhu (F) = Tiopira Kinaki (o Te Roroa ki Waipoua)
No Issue
Tiopira Kinaki = Marara Mahuhu (F) (o Te Roroa)
Raniera Te Rore = Tarawera Moetara (F)
Enoka Te Rore = Te Mihinga (F)
Hapakuku Moetara = Mere (F)
Wiremu Moetara = Keraihi (F)
Hiria
Hohaia Paniora = Te Hana (F)
Pohe Paniora = Aramaera Tiopira
Keita Paniora (F) = Peneti Pana (o N. Pou ki Waimamaku)
Aramaera Tiopira (Paniora)
Rewiri Tiopira
Piipi Tiopira (Cummins)
Kuru Te Rore
Hune Te Rore
Iehu Te Rore
Tenoora Te Rore
Hemaima Te Rore
Tarawera Moetara
Atareta Morunga
Garry Hooker
Te Hunga Kakawiki
Te Rewhi Yakas & Others


Toa = (1) Waitarehu (F)
(o Te Roroa
ki Waimamaku)
= (2) Toretahora (F)
(o Ngati Ruanui
ki Whangape)
= (3) Te Hei (F)
(o Ngati Ruanui
ki Whangape)
No Issue
Paikea = Kawa (F)
(o Ngai Tahuhu ki Whangarei)
Taramainuku = Tatara (F)
(o Ngai Tahuhu and Ngati Rua Ngaro
Nga Puhi)
Haumu = Tokaitawhia (F)
Tuha (F) = Te Kawau
Te Awha = Pehirangi (F)
(o Ngai Tawake)
Whakakahu (F)
= Te Kekeua
(o Te Uri o Hau)
Te Rehia
Kukupa
Parore Te Awha
= Tawera (F)
Paikea Te Hekeua
Kahuru
Tirarau
Taurau
Waata Parore
Mareeata
Pouaka Parore
Toi
Hana
Maori Marsden

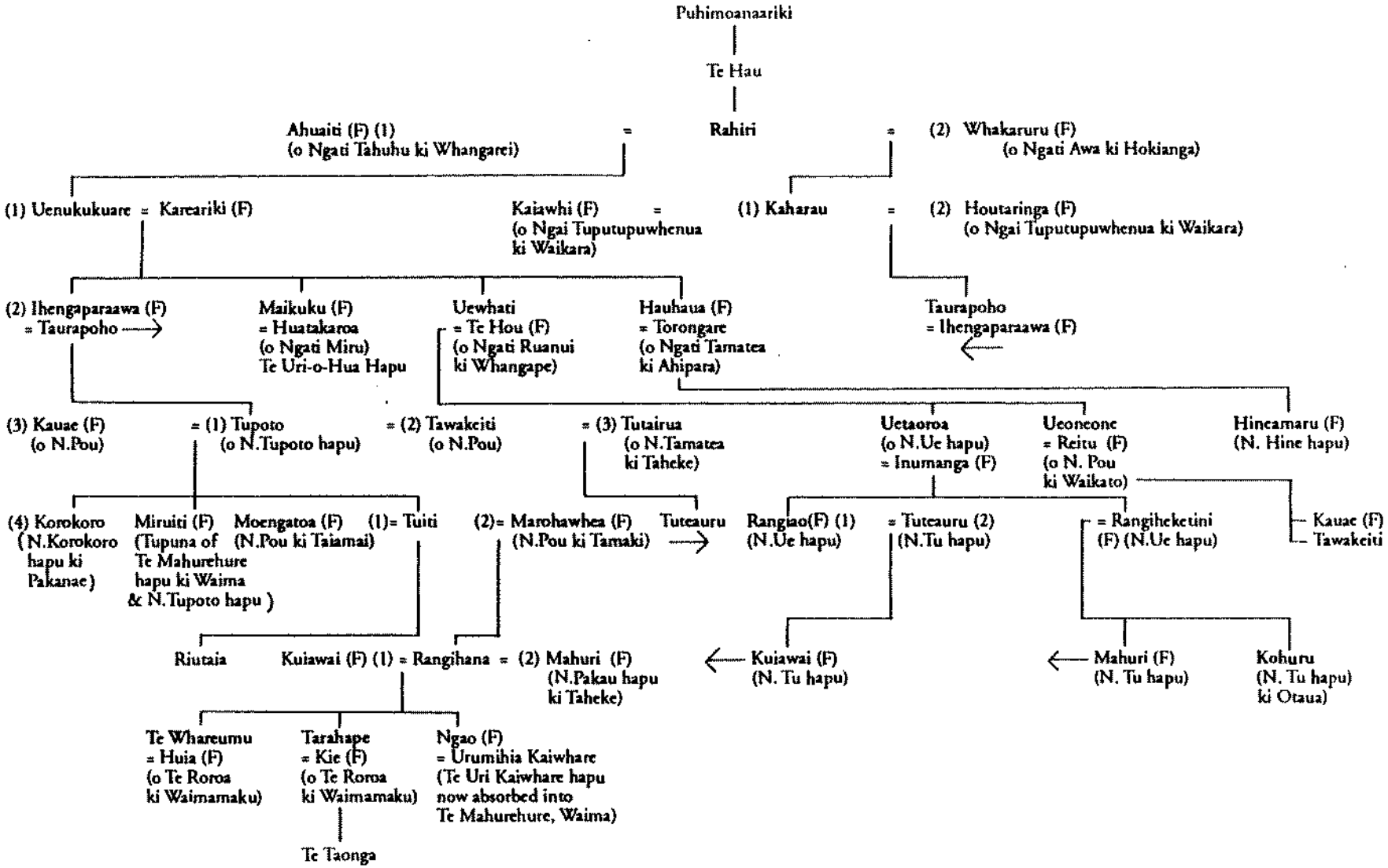

Rangitauwawaro = Taurangi (F) (o Ngati Kahu ki Waimamaku) Waimamaku
Rongotaumua = Ruru (F) (o Ngai Tamatea ki Waimamaku)
Te Puni (o Ngai Tamatea ki Taheke)
Murare (F) = Taitua (o Nga Puhi)
Punga(F) = Taiteanuku (o Nga Puhi)
See Page 5
Huia (F) =
Te Whareumu (o Ngati Pou ki Taiamai)
Kie (F) = Tarahape (o Ngati Pou ki Taiamai)
Te Kura (F) = Pakauwhati (o Ngati Awa ki Pouto)
Hine Te Wairoa
Te Taonga = Waipinerangi (F) (o Ngati Ruanui ki Whangape)
Te Ata
Waitarehu = Toa (o Te Roroa)
See Page 2
Tauranga
Tukarawa = Taihoro (F)
Tangiwharau (F) = Te Hiamoe (o N. Pou ki Taiamai)
Hunoke (F) = Te Waha
Te Hiamoe
Iraia
Tapuhi (F) = Te Maara (o Te Roroa ki Waimamaku)
Hauraki = Whakaturangi (F) (o N. Korokoro ki Pakanae)
Motuwharangi
Kowhiti = Hanua (F) (o Te Roroa ki Waipoua)
Hinemahanga (F)
Te Mahia (F) = Te Maunga (o Te Roroa ki Waipoua)
See Page 2
Pahau = Kuramaruia (F) (o Te Rarawa)
Hukeumu
Waiohuru (F) = Haurangiroa (o Te Roroa)
Kohe = Hapai (F) (o N. Kahu ki Kaitaia)
Taharua (F) = (o N.Rangi ki Ohaewae)
(1) Te Whitu
= (2) Kopa (F) (o Te Rarawa)
Te Huaki
Tuohu
Waianga = Maro (F) (o Te Roroa ki Waipoua)
Wi Whangaroa (Te Roroa ki Waimamaku)
Te Arahu (F) alias Ngarana = Te Haara (o Ngati Rangi ki Ohaewae)
Te Kaitoa
Te Pana Ruku = Inataukei (F)
Kataraina (F) = Te Waha
Maihi = Ani (F)
Marara Mahuhu F) = Tiopira Kinaki (o Te Roroa ki Waipoua)
Hoani Tuoro = Marara Huna (F) (o N. Pakau ki Taheke)
Heta Te Haara
Pene Kaitoa
Peneti Pana = Keita Paniora (o Te Roroa ki Waimamaku)
Ngamiro (F) = Hakarewa Te Maru (o Te Roroa ki Waimamaku)
Awarua Maihi
Aramaera Paniora
Rewiri Tiopira
Piipi Cummins
Reupena Tuoro = Apihaka (F)
Ngakuru Pana = Ngakina Te Ngaru (F) (o Te Roroa ki Waimamaku)


Punga (F) = Taiteanuku
(o Nga Puhi)
Rori
Wawau (F) = Te Ratutonu (son of Kohuru of Ngai Tu ki Otaua)
Te Huki = a Rarawa woman
Kahumakaka
(Killed at Taiamai
in Wars against
Ngati Pou
Te Hara
= Kumi (F)
Tuhua I
Te Pona = Ruaihu (F)
(o Ngati Ue ki Punakitere)
Tuhua II
Matarae
Te Whata I
Meretau (F) = Kauere
Te Whata II
Re Kauere
Tangoraumati
Meti (F) = Daniel Ambler

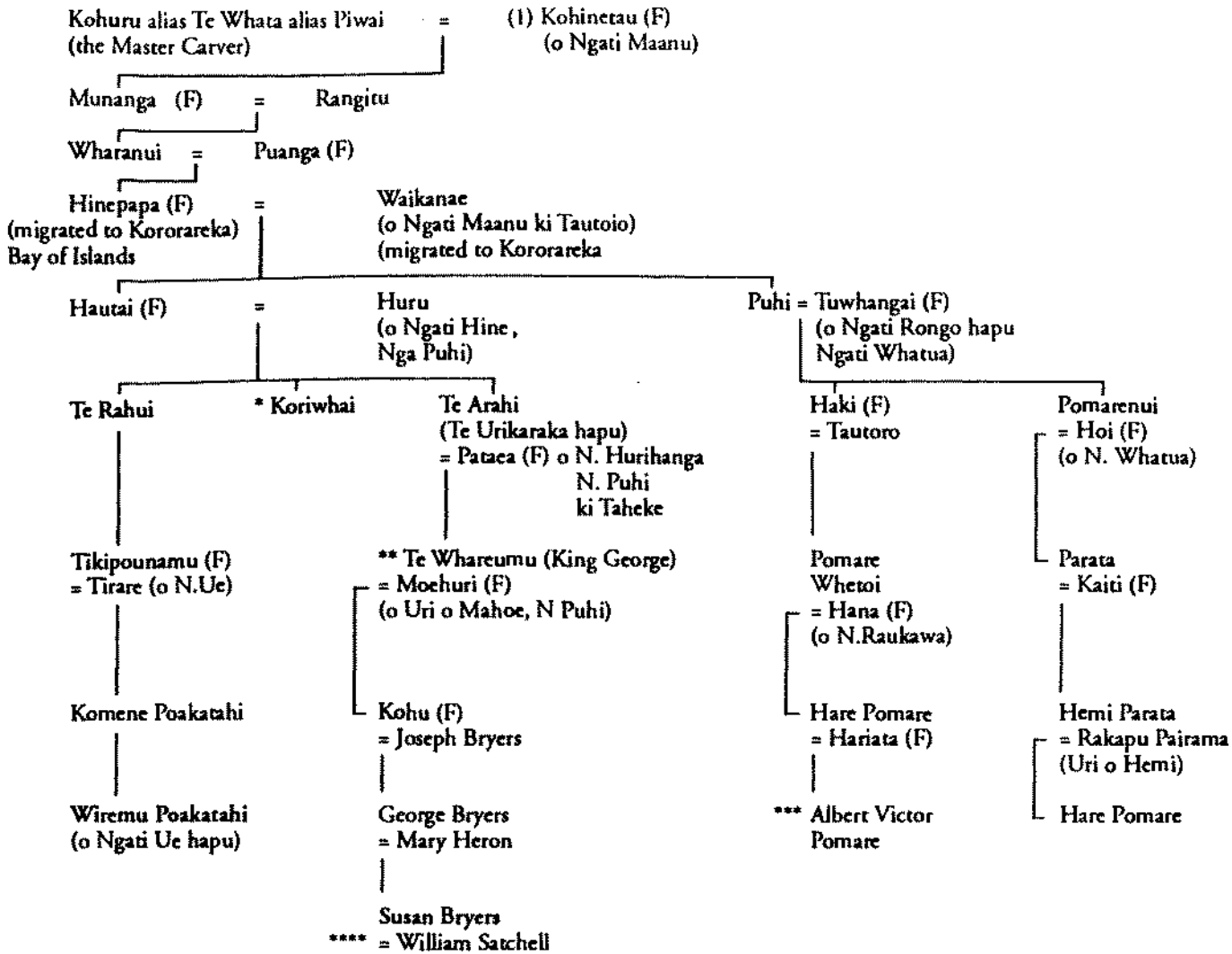

Pinea = Takutaiakura (F)
Rangituke (emigrated to Kaipara descendants with Uri o Hau)
Whakaorakimatangi (F) (emigrated to Kaipara descendants with Ngati Whatua)
Tarawanoa (F) = Rongo (Ngati Rongo hapu Ngati Whatua - son of Haumoearangi)
Whakahaerea (F) (emigrated to Kaipara descendants with Ngati Rongo, Ngati Whatua and Te Taoa)
Moerangarangai (F) = Ngawhetu, son of Maki (o Kawerau ki Kaipara)
Tira - Waikato (F) = Mahanga (of Waikato)
Te Hira = Tokaiakina (F)
Ohi (F) = Taratu
Pataea (F) = Taoho
Te Taua (F) = Te Rurunga
Tiopira Kinaki = Marara Mahuhu (F)
Piipi Cummins


Te Haara = Ngamako (F) (o Ngati Miru ki Waimate North)
Paka = Heke (F) (o Ngati Rangi, Nga Puhi, ki Ohaeawae)
Whare (F) = Te Ahu (o Te Uriroroi ki Whangarei)
Te Haurangiroa = Warohuru (F) (o Ngati Pou Ki Waimamaku)
Te Arahu (F) alias Ngarama = Te Haara (o Ngati Rangi ki Ohaeawae)
Te Ngaru = Te Ataoterangi (F)
Wi Tuwhare
Heta Te Haara
Naera Te Ngaru = Matehuirua (F)
Ngakina Te Ngaru (F) = Ngakurupana (o Ngati Pou ki Waimamaku)
Apihaka (F) = Reupena Tuoro (o Ngati Pou ki Waimamaku)
Matene Naera = Hemaina Moetara (F) (o Ngati Korokoro)
Wiremutoi Ngakuru

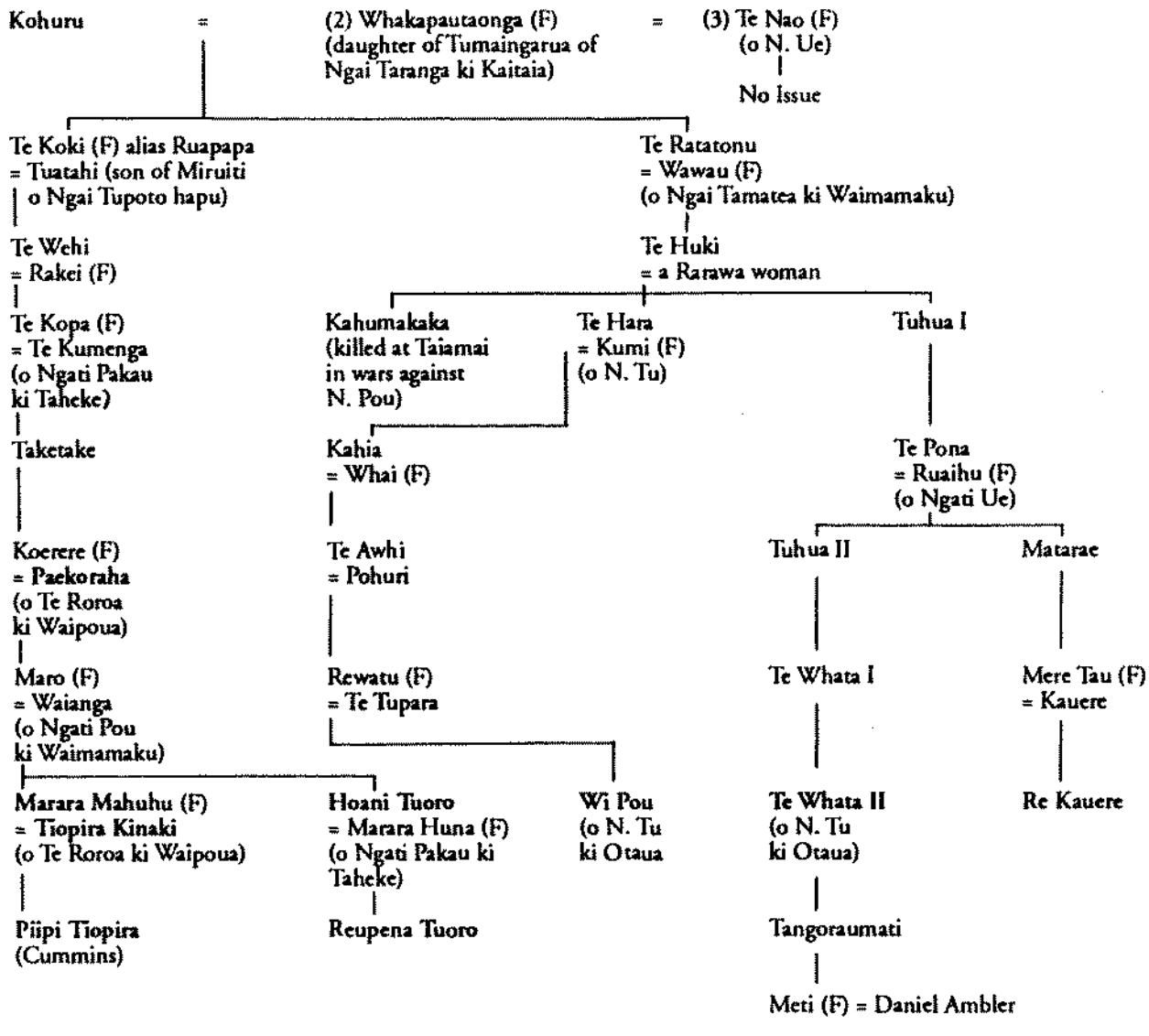
NGA PUHI CONNECTIONS WITH TE ROROA



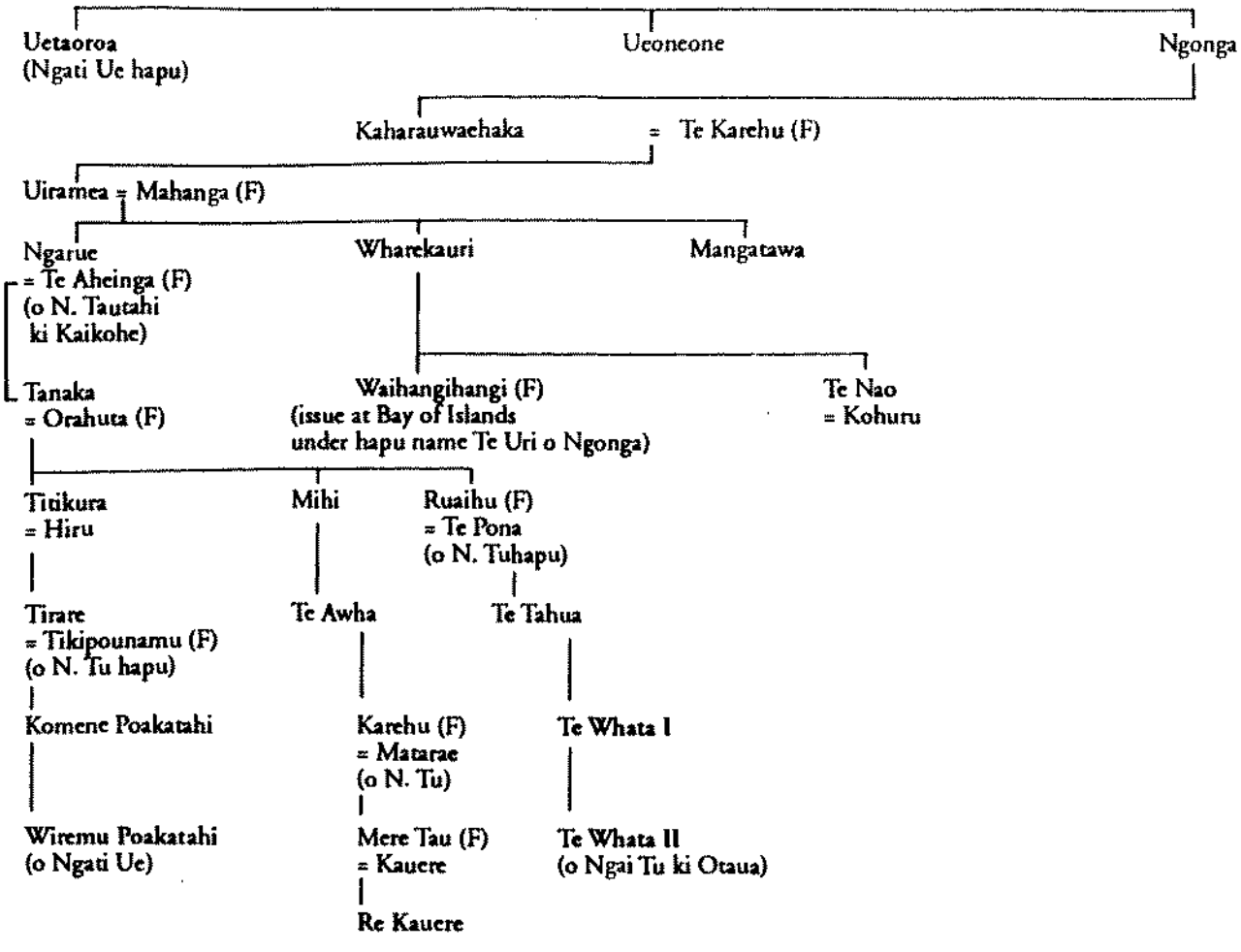
NGAI TU HAPU



* Koriwhai - whose death caused the Battle of Te Ika-a-Ranganui in 1825
** Te Whareumu - visited by Earle in 1827, killed Waima 14/3/1828
*** Albert Victor Pomare
B 1863 - Godson of Queen Victoria
**** William Satchell - author "The Greenstone Door"
"The Toll of the Bush"


Kohuru
=
(2) Whakapautaonga (F)
(daughter of Tumaingarua of
Ngai Taranga ki Kaitaia)
=
(3) Te Nao (F)
(o N. Ue)
No Issue
Te Koki (F) alias Ruapapa
= Tuatahi (son of Miruiti
o Ngai Tupoto hapu)
Te Ratatonu
= Wawau (F)
(o Ngai Tamatea ki Waimamaku)
Te Wehi
= Rakei (F)
Te Huki
= a Rarawa woman
Te Kopa (F)
= Te Kumenga
(o Ngati Pakau
ki Taheke)
Kahumakaka
(killed at Taiamai
in wars against
N. Pou)
Te Hara
= Kumi (F)
(o N. Tu)
Tuhua I
Taketake
Kahia
= Whai (F)
Te Pona
= Ruaihu (F)
(o Ngati Ue)
Koerere (F)
= Paekoraha
(o Te Roroa
ki Waipoua)
Te Awhi
= Pohuri
Tuhua II
Matarae
Maro (F)
= Waianga
(o Ngati Pou
ki Waimamaku)
Rewatu (F)
= Te Tupara
Te Whata I
Mere Tau (F)
= Kauere
Marara Mahuhu (F)
= Tiopira Kinaki
(o Te Roroa ki Waipoua)
Hoani Tuoro
= Marara Huna (F)
(o Ngati Pakau ki
Taheke)
Wi Pou
(o N. Tu
ki Otaua
Te Whata II
(o N. Tu
ki Otaua)
Re Kauere
Piipi Tiopira
(Cummins)
Reupena Tuoro
Tangoraumati
Meti (F) = Daniel Ambler

NGATI UE HAPU



Appendix 7

The Members

Mary Boyd

Historian. Former reader in History at Victoria University of Wellington. Lives in Wellington.

Monita Delamere

Whanau-a-Apanui, Whakatohea, Ngai Tahu and Ngati Mamoe.
Ringatu spiritual leader and minister since the early 1950s. Lives in Opotiki.

Ngapare Kaihina Hopa

Tainui and Ngati Tuwharetoa.
Senior Research Fellow for the Centre of Maori Studies and Research at Waikato University. Lives in Hamilton.

John Kneebone

Farmer. Member of National Research Advisory Council, Waikato Regional Council, Director of Affco NZ Ltd, Silicon Supplies Ltd, Chairperson of Crown Research Establishment Board: Land & Environment. Lives in Tirau, Waikato.

Andrew Spencer

Judge of the Maori Land Court since 1987, Tai Tokerau District. Lives in Whangarei. Judge Spencer was the presiding officer for the tribunal in this claim.

Turirangi Te Kani

Born 3 June 1913 at Maraenui, died 4 June 1990.
Ngaiterangi, Ngatiranginui, Whanau-a-Apanui and Whakatohea.
Farmed at Tauranga after serving in the Maori Battalion. Founder of the Matapihi-Ohuki Trust, Tauranga, one of the largest Maori horticultural ventures. Member of the Tauranga-Moana Maori Trust Board and numerous other trusts.

Glossary

A	
aho	thread
ana	cave
ana tupapaku	burial caves or crevices
Ao—Marama	world of life and light
atua	god, supernatural being
aureretanga	continuous crying
H	
hapu	band, sub-tribe
hau	spirit
hoko	to sell (land)
hui	meeting, gathering
I	
inanga	whitebait
iwi	tribe, people
K	
kai	food
kai moana	seafood
kainga	village, settlement
kaitiaki	steward, guardian
kaitiakitanga	stewardship, guardianship
karaka	*Corynocarpus laevigatus*, coastal tree valued for its berries
karakia	prayer, spiritual incantation
karengo	seaweed
kaumatua	elder
kaupapa	subject
kauri	*Agathis australis*, a forest tree valued for its timber and gum
kawa	protocol, custom
kawanatanga	governorship, government
kete	basket
kiekie	*Freycinetia banksii*, a climbing plant
kina	sea egg
kiore	native rat
kiwi	flightless bird
koha	present, gift
koiwi	bones
komiti	committee
korau	wild vegetable
korero	discussion, speech
kotahitanga	unity (movement)
koura	crayfish
kuia	woman elder
kumara	*Ipomoea batatas*, sweet potato
kupapa	Maori who fought on the British side
kutae	mussel

M

maara	food gardens
mahinga kai	places where food is procured or produced, traditional resource area
makutu	supernatural power to harm a person
mana	power, reputation
manakore	loss of power
mana tangata	customary rights and prestige and authority over people
mana whenua	customary rights and prestige and authoriry over land
marae	community meeting place
mauri	life principle
mihi	acknowledgement, greeting
moko	tattoo
morehu	survivors
motu	island
muru	plunder

P

pa	fortified place
Pakeha	person of non-Maori descent
pakiwaitara	legend, folklore
papakainga	hapu estate
parore	mangrove fish
patangata	fruit of the kiekie (climbing plant)
patiki	flounder
paua	shell-fish
pepeha	proverb, tribal saying
pipi	shell-fish
pohue	fern
poroporoaki	farewell
pou	post
poua	large sized pipi
pou aro	front main post
pou herenga	tying post
poupou	uprights
pou whenua	boundary post
pukeko	swamp hen
pupu	shell-fish

R

rahui	a reserve, restriction on access, prohibition
rama	torch
rangatira	chief
rangatiratanga	authority of a chief, chieftainship
raupo	bullrush
rohe	territory
rohe potae	territorial umbrella or boundaries
rua	storage pit
runanga	assembly, council

T

tahuhu	ridgepole
take	issues, specific topic
tamana	to sprinkle prestige (lit), advance payments
tangata whenua	people of the land
tangi	mourning

taonga	sacred treasure
tapu	sacred
tapuwae	footprint
tau	introduction
taua	war party
tauiwi	newcomers
taukumekumetanga	factional rivalry
taunga tarawahi	naming places
Te Ao Hou	the new world
teina	younger sibling of the same sex
tikanga	custom
"tiki"	burial chests (see also wakatupapaku)
tino rangatiratanga	chiefly authority, chieftainship
tio	oysters
titi	mutton bird
toa	warrior
toheroa	shellfish
tohunga	priest, specialist
tuahu	sacred place
tuakana	older sibling of the same sex
tuatara nui	lizard
tuku	to let go of, to hand on (eg land)
tukutuku	decorative panel
tuna	eel
tupuna	ancestor
tupuna tuturu	primary ancestor
tupuna whaea	female elder

U

uri	descendant
urupa	burial ground
utu	payment, revenge, reciprocity, making a return for anything given

W

wahine matua	senior wife
wahi tapu	sacred place
waiata	song
wairua	spirit
waka	canoe
wakatupapaku	burial chest
wakatupuna	ancestral canoe
wawahitanga	fragmentation
wero	challenge
whaikorero	oratory
whakaheke	descent
whakanoa	to make ordinary
whakaoriori	lullaby
whakapapa	genealogy
whakarapopoto	conclude
whakatauki	proverb
whakautu	response
whanau	family
whare	house, building
whare kiri	kiwi landing area
whare tupuna	ancestral house

whare wananga	house of learning
whare whakairo	carved house
whariki	mat
whenua	land
whenua rahui	reserve

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