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**Rata, the Effect of Māori Land Law on Ahikāroa.**

A thesis

submitted in fulfilment

of the requirements for the degree

of

**Doctor of Philosophy**

at

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by

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## ABSTRACT

*Rata, the effect of Māori land law on ahikāroa* is an examination of the special relationship a whānau of Ngāi Tahu (ki Wairoa) has had since 1868 with their ancestral land Tutuotekaha. The effects of Māori land law on traditional concepts of land tenure are analysed from the advent of the Native Land Court in the 1860s through to a modern shareholding in the Anewa Trust. An analysis of Te Ture Whenua Māori Act 1993 looks at the basis for the current legislation and how the principles are applied in the case study central to this thesis, an application to have Rata farm returned to the Whaanga whānau.

The research and writing is multi-disciplinary, combining history, Māori land law (ture) and Māori land lore (tikanga and traditional ecological knowledge). An auto-ethnographic approach is balanced by the commentary and judgements of the Māori Land Court and the Māori Appellate Court which are documented in the final section of the thesis.

This thesis questions the canons of Māori land ownership and management – consolidation, amalgamation and incorporation – and posits whether these forms of land holding have become yet another type of alienation.

The three main areas are

### 1) *Ahikāroa*

Chapters 2 and 3 examine traditional Māori land tenure; definitions of mana whenua, the obligations as well as the authority; and traditional ecological knowledge, agriculture and Māori land lore. The latter illustrates ways of knowing the land, how, why and when its resources were used. Members of the community of Iwitea were interviewed to provide accounts of usage of some of the traditional resources known to remain on the Tutuotekaha blocks.

## II) *From gardeners and gatherers to agricultural shareholders*

Chapters 4, 5 and 6 examine the shift from traditional tenure and land usage to large-scale agricultural shareholdings. The changes as land passed through the Native Land Court from 1868 are contextualised within the upheaval and radical reconfiguring of Māori society in the Mahia and Wairoa areas as Pākehā settlement increased, and the region was engulfed by the Hauhau and Te Kooti conflicts. This section contains an overview of Māori land law from 1862 to 1987 and the ideological conflict between the colonisers and the colonised. As well, it looks at the influence of Sir James Carroll and Sir Āpirana Ngata, the reasons that Māori went into large-scale farming and how Ngata's 1931 policies set the model for the incorporations and trusts that still hold most of the district's Māori land today.

## III) *Te Ture Whenua Māori Act 1993, philosophy versus implementation*

Chapters 7 through to 11 centre on Te Ture Whenua Māori Act 1993 and the application to the Māori Land Court to partition Rata farm from the Anewa Trust. The philosophy of the Act is examined, aided by Deputy Chief Judge Fox's commentary. This section documents the processes of filing the application to partition, the discussions and outcomes of a judicial hearing, two Māori Land Court hearings and subsequent appeals to the Māori Appellate Court.

## PREFACE AND ACKNOWLEDGEMENTS

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## GLOSSARY

Most of the following translations are from Williams, H.W M.A. A Dictionary of the Maori Language Seventh Edition) and are translations for the words as they are used in this thesis.

- Akatea: the aerial roots of the rātā vine *metrosideros albiflora* and *metrosideros perforata*
- Aruhe: root of *Pteridium aquilinum*, edible fern root
- Hapū: a tribal group based on kinship, shared histories and use of resources.
- Haka: translated by A.T. Ngata (1988, p.xxv) as a *posture dance*. It is noticeably challenging in style, more often performed by men, but Te Tairāwhiti has haka that are traditionally women's.
- Harakeke: *Phormium tenax*, commonly called flax
- Hīnaki: wicker eel-pot. Now more commonly made from wire and netting.
- Hīnau: *Elaeocarpus detatus*, a native tree growing up to 18m tall.
- Hōrirerire or riroriro: Also known as the grey warbler.
- Houheria: *Hoheria populnea*, a tree more commonly known as lacebark.
- Inanga: Whitebait
- Kahikatea: *Dacrycarpus dacrydioides* or white pine, the tallest New Zealand native tree.
- Kaikōmako: *Pennantia corymbosa* a native tree, the fruit of which is much favoured by the kōmako (*Anthornis melanura*) bellbird.
- Kaitiaki: guardian, used here in the context of a representative of the tribal group with responsibilities for looking after the land.
- Kakahi: a freshwater bivalve mollusc
- Kānuka: *Leptospermum ericoides* a native tree or shrub
- Kaoho: *Solanum aviculare*, a shrub, also known as poroporo
- Karengo: *Porphyra columbina* an edible seaweed.

Kareao:	<i>Rhipogonum scandens</i> or supplejack
Kāretu:	<i>Hierochloe antarctica</i> a sweet-scented native grass
Kereru:	<i>Hemiphaga novaeseelandiae</i> , the native wood pigeon
Kete:	woven basket
Kiekie:	<i>Freycinetia banksii</i> an epiphyte, climbing plant; the leaves are used for weaving
Kōwhai:	<i>Sophora tetraptera</i> , a tree covered in yellow blooms in Spring.
Kōura:	<i>freshwater crayfish</i> (also saltwater crayfish).
Maehe:	1. <i>Galaxis</i> sp; a small fresh-water fish. = raumahehe. 2. <i>Paranephrops planifrons</i> , fresh-water crayfish. = kēwai.
Māhoe:	<i>Melicytus ramiflorus</i> also known as whiteywood, a small native tree growing up to 10m tall.
Mākoi:	a mussel shell used to extract muka
Mana whenuatanga:	the mana that derives from ancestral land; commonly defined as authority over land.
Mānuka:	<i>Leptospermum scoparium</i> a native tree or shrub
Māra:	cultivation or garden
Matai:	<i>Prumnopitys taxifolia</i> or black pine, a native tree growing up to 25m high.
Mātauranga:	knowledge.
Maunga tapu:	sacred mountain
Miro:	<i>Prumnopitys ferruginea</i> , brown pine
Mōkihi:	a type of waka constructed of bundles of raupō
Muka:	the fibre of harakeke
Ngakinga kai:	a clearing, plot of cultivated land where food was grown
Nīkau:	<i>Rhopalostylis sapida</i> native palm tree
Ōhākī = oha a kī:	dying speech.
Pā harakeke:	flax plantation
Patiki:	flounder, flat fish
Pā tuna:	eel weirs, places where eels were caught
Pepeha:	a proverb, an aphorism.
Pikopiko:	the new shoots of various ferns, cooked and eaten in a similar manner to asparagus.

- Pingao: *Desmoschoenus spiralis*, a highly-prized golden coloured weaving plant that grows on sand dunes
- Porokaiwhiri: *Hedycarya arborea* a small native tree also known as pigeonwood
- Pou whenua: a post to mark a boundary or other significant site
- Puarere: down of raupō
- Pūhā: *Sonchus oleraceus*, sow-thistle
- Pungapunga: pollen of raupō
- Rāhui: A prohibition against harvest to allow the resource to replenish.
- Rātā: *Metrosideros robusta*, a native tree that usually begins as an epiphyte on another tree
- Raupō: *Typha angustifolia*, bulrush
- Rimu: *Dacrydium cupressinum* or red pine, a very tall forest canopy native tree.
- Rīrīwaka: *Scirpus maritimus*, a tall sedge
- Rohe: territory
- Rongoā: medicines, generally made from native plants
- Take: Origin or type of right to land.
- Tangata: man or person
- Taniwha: a fabulous monster, a prodigy; can be used figuratively for a chief.
- Tauparapara: Incantation, also a type of chant used to accompany oratory.
- Tauranga: Resting place, anchorage for canoes, fishing ground.
- Tawa: *Beilschmiedia tawa* a native tree
- Tāwhara: the flower bracts of kiekie
- Teina: younger sibling
- Tī kouka: *Cordyline australis*, commonly known as the cabbage tree.
- Tipuna: ancestor, forbear. (plural: Tīpuna)
- Tui: *prothemadera novaeseelandia*, a native bird with a tuft of white feathers at its throat. Sometimes called the parson bird.
- Tuna: eel
- Tutu: *Coriaria arborea*, a shrub common in regrowth areas.

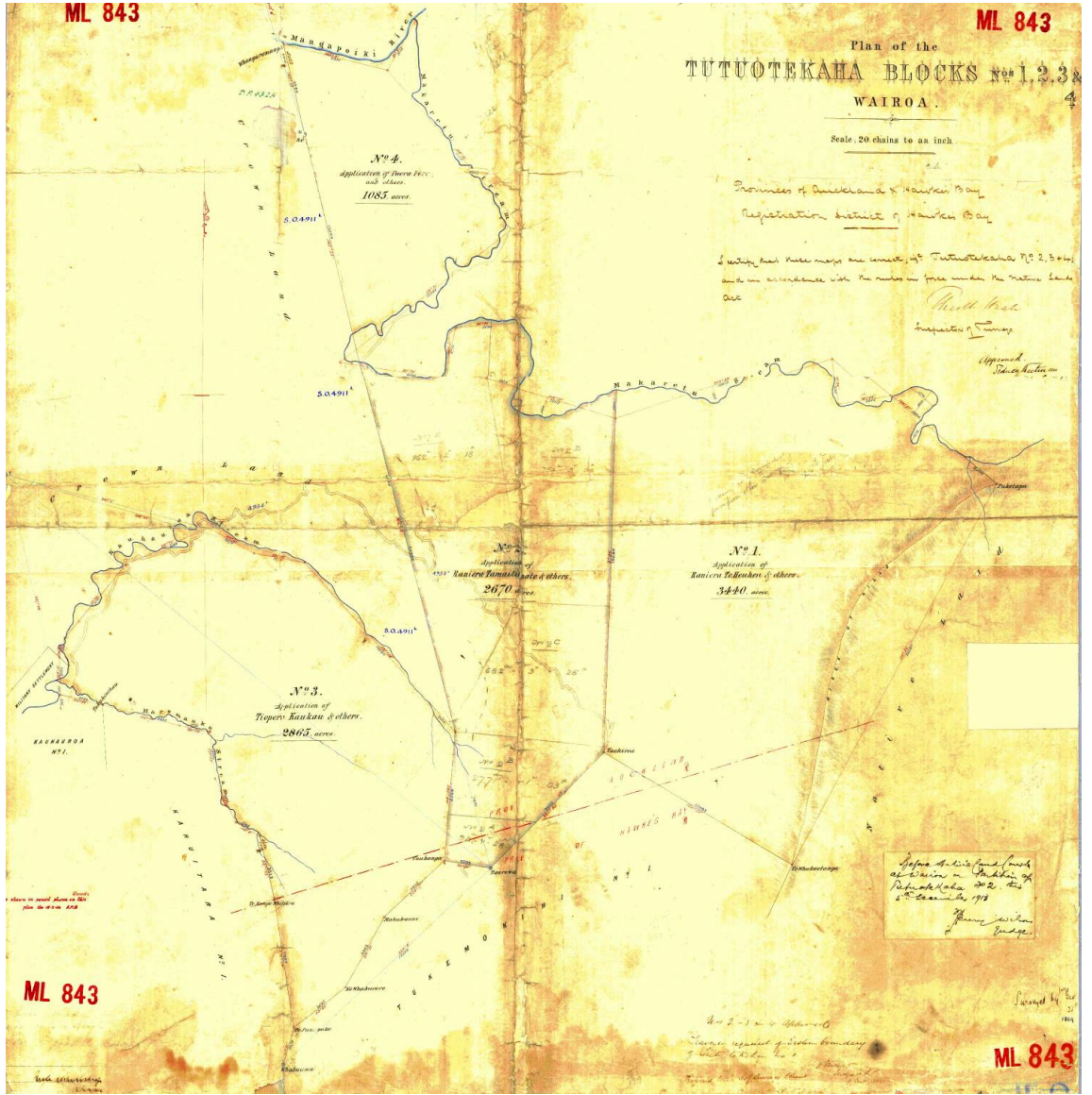
Upoko karoro:	a freshwater fish
Ureure:	fruit of the kiekie plant
Urupā:	cemetery
Waiata:	songs
Waiū:	milk from the breast
Waka:	canoe
Whakapapa:	genealogy
Wharenui:	meeting house
Whāriki:	woven mat
Whata:	elevated stage for storing food and for other purposes.
Whenua:	land, and also the placenta.
Wīwī:	rushes, <i>Juncus polyanthemos</i> and other

## SECTION I

AHIKĀROA

I belong to Ngati Tahumatua & reside at Tutu o te Kaha. I recognise the land shown on the plan before the court. The land belongs to me and to some others of my tribe. We derive our title from our ancestor Matuwahanga. (Genealogy given). These ancestors I have named have occupied the land from the time of Matuwahanga. Some of our tribe are living on it now.

(Ahipene Tamaitimate, 17 September 1868, Tairawhiti Māori Land Court, Wairoa MB No. 1, p.36).



Plan of the Tutuotekaha Blocks.  
NEW ZEALAND  
Surveyed by Geo Burton 1869.

LAND INFORMATION



Close-up of text box on plan.

## CHAPTER ONE

### INTRODUCTION and METHODOLOGY

*Rata: The Impact of Māori Land Law on Ahikāroa* is the documentation of an applied research project that combines history, Māori land law (ture) and Māori land lore (tikanga and traditional ecological knowledge) to examine and support an application currently before the institution that so affects and influences Māori life, the Māori Land Court.

The impetus to undertake this PhD research was my desire to have our father's farm Rata returned to our ownership and management. Since 1967 those 300 acres have been part of an amalgamation of several Māori land blocks formerly known as the Tutuotekaha No. 1 blocks. Rata had originally had a separate title, therefore I was surprised to learn from the experienced Māori Land Court staff in the Tairāwhiti office that removal of our ancestral land from the Anewa Trust which has farmed it since 1986 was highly unlikely. After approaches to the trustees culminated in a refusal to support the partitioning of Rata from Anewa, I contacted some lawyers who were recommended as very knowledgeable in Māori Land Court matters. Those enquiries can be summed up by the advice of one of them that our bid to have Rata returned would likely be as successful as "pushing water uphill with a rake".

I believed that it was fundamentally wrong that our ancestral land, still in Māori title and never sold or completely relinquished, could be withheld from us. This drove my application to conduct doctoral research that would allow me to develop an understanding of Te Ture Whenua Māori Act 1993, with the aim of finding a way through the complexities of this legislation that has as its main principle the retention of Māori land in the hands of its owners.

The research started out as a broad examination of the relationship between Ngāi Tahu of the Wairoa Hawke's Bay region and their ancestral lands of Tutuotekaha. For parts of the thesis, I adopted an autoethnographic approach which allows for research that is grounded in personal experience ... and accommodates subjectivity, emotionality, and the researcher's influence on research. (Ellis, Adams & Bochner, 2011, p.1).

This approach also recognises that there are "a multitude of ways of speaking, writing, valuing and believing" (Ellis, Adams & Bochner, 2011, p.1). It is thus entirely suitable for looking at a Māori viewpoint of land and for explaining terms such as mana whenua beyond the often limiting definition that is encompassed in legislation such as the Resource Management Act 1991 (Part 1, section 2).

As the case study is an application filed by my sister Riwia Whaanga and I to partition Rata from Anewa Trust, the autoethnographic approach accommodated the intense personal quest at the heart of this research. Balance to the personal story is necessarily to be found in the judgments of the Māori Land Court and the Māori Appellate Court which are documented in the final section of the thesis.

Research has been conducted in a range of archival repositories, prime amongst them the NZ National Archives and the Māori Land Court. I have also participated in wānanga, annual general meetings of the shareholders of Anewa, Māori Land Court-directed shareholders' meetings and a judicial conference and, to date, two hearings of the Māori Land Court and one of the Māori Appellate Court. Interviews with members of the hapū affiliated to Iwitea Marae and the Tutuotekaha blocks and the interview with Judge Fox were conducted in accordance with the University of Waikato Human Research Ethics regulations. My life experience as a rural Māori woman raised in the ethics of land guardianship and productive farming has also informed this research.

There are three main areas covered in this thesis:

- 1) Chapters 2 and 3 examine traditional Māori land tenure; definitions of mana whenua and its implications, the obligations as well as the authority; and traditional Māori agriculture and ecological knowledge. The latter is the lore of the land and illustrates ways of knowing the land, how, why and when its resources were used. I interviewed members of the community of Iwitea, one of the marae of Ngāi Tahu ki Tutuotekaha, to provide accounts of usage of some of the traditional resources known to remain on the Tutuotekaha blocks.
- 2) Chapters 4, 5 and 6 examine the shift from traditional tenure and land usage to large-scale agricultural shareholdings. The changes to traditional tenure as land claims passed through the Native Land Court from 1868 are contextualised within the upheaval and radical reconfiguring of Māori society in the Mahia and Wairoa areas as Pākehā settlement increased, and the region was engulfed by the Hauhau and Te Kooti conflicts. This section contains an overview of Māori land law from 1862 to 1987 and the ideological conflict between the colonisers and the colonised. As well, it looks at the influence of Sir James Carroll and Sir Āpirana Ngata, the reasons that Māori went into large-scale farming and how Ngata's 1931 policies set the model for the incorporations and trusts that still hold most of the district's Māori land today.
- 3) Chapters 7 through to 11 centre on Te Ture Whenua Māori Act 1993 and the application to the Māori Land Court to partition Rata farm from the Anewa Trust. The philosophy of the Act is examined, aided by Deputy Chief Judge Fox's commentary on this. This section documents the processes of applying for the application to partition, and the discussions and outcomes of a judicial hearing, two Māori Land Court hearings and the subsequent appeals to the Māori Appellate Court.

There is a general acceptance that Māori have a special relationship with their ancestral lands; this thesis examines how, or even whether, those concepts can be maintained once the tenure of the lands has changed from whānau farms to a shareholding in a large block.

It will question whether a movement intended to retain land in hapū ownership has indeed fulfilled the vision of men such as Sir Āpirana Ngata, and posit whether this form of land holding has become yet another type of alienation. In particular, the pressure on Māori landowners to amalgamate their holdings for the purposes of a development scheme run by the Department of Māori Affairs provides a sobering insight into the coercion that was deployed. Concerns grow at evidence of misleading information given to the Māori Land Court and the consequences that compound with each succeeding generation. These are further exacerbated by a change in legislation and an apparent conflict between the principles of Te Ture Whenua Māori Act 1993 and the implementation of the Act by the Māori Land Court.

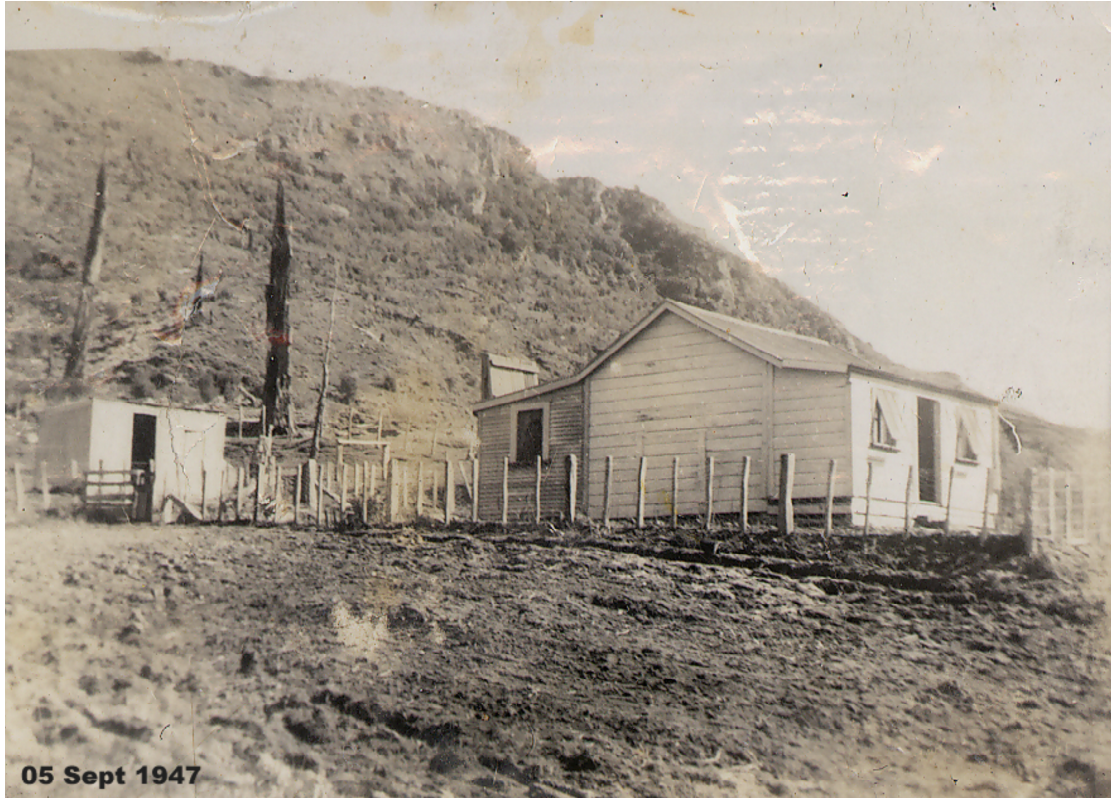
This thesis combines history, law, and traditional and contemporary ecological knowledge to provide a unique view of one whānau's relationship with a division of the Tutuotekaha No. 1 block. It also examines the complexities of Te Ture Whenua Māori Act 1993 in relation to the case study application for partition, and raises the question of whether the legislation is effective in its stated intention to

recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapu, ... and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapu (Te Ture Whenua Māori Act 1993 Preamble).



Riwia & Mere Whaanga at Rata

NOREEN WHAANGA 1956



Rata 1947

NOREEN WHAANGA 1947



Te Hore Epanaia Whaanga in the Rata yards

NOREEN WHAANGA 1949

## CHAPTER TWO

### MANA WHENUA

#### AHIKĀROA

I don't remember hearing the term mana whenua until I was forty and a student at Tairāwhiti Polytechnic. In that instance, it was used simply to denote those who owned land – the land in question being ancestral land, expected to be still in Māori title – and mana whenua was one of several forms of mana attributed to a person.

It wasn't until I was appointed to a senior management position at the Auckland War Memorial Museum that mana whenua became something that I heard frequently, and something that I was asked to explain to non-Māori. By 1995, it was a term that had appeared in Waitangi Tribunal reports, among them the reports on the Manukau Claim (1985, S.15), the Orakei Claim (1987, S. 14.4.2), and the Muriwhenua Fishing Claim (1988, p.176). In the Auckland context mana whenua was being used to refer to an ethic of guardianship, a concept of rights over land that did not necessarily have to be in Māori ownership, let alone in Māori title.

I puzzled over the fact that I had never heard my father use the term. His life's work had been on ancestral land, and all his teachings were connected to our hapū land. I discussed the matter with a Tuhoe kaumatua (personal communication, John Turei, 1995) who said it was a new construction, something that his old people had not used. Eventually I realised that my father and most of our people of the Wairoa region hadn't any need to assert the authority that is most often associated with the concept of mana whenua. After all, if you are living on ancestral land, working ancestral land, planting your gardens in soil that had been cropped by your ancestors time out of memory, then you didn't need to assert your mana whenua status. *Everyone knew*. We were and are rural

Māori. People in the Wairoa region still live in houses built by their great-grandparents; occupation of land has been unbroken for many generations. Mana whenua, until recent years, wasn't discussed, simply because there was no contention about who the land belonged to, who had rights, authorities, or obligations.

Considering the matter now, and having stated that we knew who had mana whenua in regard to a piece of land, how was that status known and what confirmed and secured that knowing?

My answer to this is based on two separate pieces of land that are my kāinga tūturu. The first, originally known as Tutuotekaha 1B5B, was a 300-acre block of land that belonged to my father's maternal grandfather, Puhara Timo.

It is thought that the block name originated from an incident concerning Kau-kohea, son of Rakaipaaka, and another well-known local warrior called Kahu-tauranga. Kau-kohea and Kahu-tauranga were on their way to Wairoa to join Rakaipaaka<sup>1</sup> in a battle.

While climbing the hill Pukaakaa, overlooking Frasertown, Kahu-tauranga surprised a hawk at close range, which was flying low over the hill, and brought it down with one sweep of his maipi, or long club. He said "Te Kaahu a Kahu-tauranga" ("The Hawk of Kahu-tauranga"). Kau-kohea, not to be outdone, made a vicious slash at two tutu shrubs growing nearby. Off went the leafy heads in one stroke. So the spot bears the name today, Nga tutu mahanga a Kau-kohea (the twin tutu heads of Kau-kohea). (Mitchell, 1972, pp.102 - 103).

The first Māori Land Court hearings for the Tutuotekaha blocks are recorded in 1868. After a series of subdivisions, seven whānau owned

---

<sup>1</sup> Eponymous ancestor of Ngāti Rakaipaaka of Nuhaka.

blocks of land, each approximately 300 acres in area, along the Makaretu River.

My father's father farmed our block, named Rata for the large Rata tree that stood at the back of the block, in conjunction with a block of Whaanga land on the Mahia peninsula. Today, it takes an hour and a half to drive from the coastal Mahia property inland to Rata. When my grandfather farmed Rata the family travelled between the two by horse and buggy, a trip that had to be timed to coincide with the tides. Grandfather Matakainga i te Tihi Whaanga felled and split tōtara on Rata to make posts for Taiporutu, the Mahia land. My Dad said this was a cause for disagreement between his parents, taking the posts from my father's mother's land for my father's father's land. Some of those posts are still standing on Taiporutu. As they were cut in the first quarter of the 20th century, it is a testament to the durability of tōtara.

The name of the land at Mahia is a link to our voyaging waka ancestors. Taiporutu is an ancient name brought from Hawaiki and given to the land, stream and bay. Tai is the sea, pōrutu refers to the booming sound the sea makes as it breaks on the rocks in the bay, particularly when the swell is from the South-East.

My father also told a story of pestering his older brothers to take him out the back of Rata when they went to cut posts. He thought he was about 5 (the year then would have been 1916) and, too little to help with the work and it being a sunny day, he curled up in a comfortable spot and went to sleep. The older brothers arrived home, to be berated by their mother for not bringing her youngest son home. The brothers had an arduous trek back to the post-splitting site to find their teina still fast asleep.

The memories of my childhood in the 1950s associated with that land are the ever-present sound of the river, the smell of shady areas near its swift-flowing waters, the lonely sound of the hōrirerire (known elsewhere as riroriro) calling from high on the steep face of Rata. I remember my

mother doing the washing in the river while we swam in the relatively shallow water nearby; the larger, deeper pool further downstream at the foot of a waterfall which older cousins, uncles and aunts plunged down with reckless laughter.

My first memory of going eeling was at Rata - helping to dig for large bush worms under clumps of wīwī, trying to thread them onto the sharp strand of wīwī to form a clump which was then tied to a length of bale twine 'borrowed' from the Anewa Station woolshed. A good strong length of mānuka made a rod. We went to a lake on a neighbouring property, sat along the bank and dangled the worm mass in the water. A tug meant an eel had bitten into the bait, the rod was jerked sharply up and backwards so that the eel, its teeth enmeshed in the worm and wīwī mass, was sent flying up onto the land behind, to be swiftly dispatched by one of the cousins.

The little cottage on Rata was home (photograph p.8). My parents had a vegetable garden, fruit trees including a highly-prized Black Boy peach, a well near the house for drinking water and where the butter was kept cool. My father supplemented the income from his 300 acres with mustering wages from a nearby sheep station. When he moved to manage Ohuia Station near Wairoa, we returned to Rata each Summer for holidays.

In January 1961, our family moved to Papatatu Station, a 14,000 acre sheep and cattle station with its own school. The station was part of the Mangapoike blocks which later came to be known as Te Whakaari Māori Incorporation. My father was the first Māori manager on this land in which he had shares. He was one of the original committee of management, and after the death of Sir Turi Carroll in 1975 he became chairman of the incorporation.

Within months of us moving to Papatatu, my father took me to see the site of the 1868 battle between Te Kooti Arikirangi and the militia from Gisborne, the first battle after Te Kooti and his followers landed at

Whareongaonga. I was nine years old. He told me the story of Te Kooti's diamond, said to have been hidden in or under Lake Mangatahi, the outfall of which is directly across the Mangapoike River from the battle site.

Occasionally I accompanied my father when he went duckshooting on Lake Mangatahi. In my teenage years I speared eels there, shot turkeys in the hills surrounding it. I set the hīnaki in the Mangapoike River, fished with a handline for eels and once caught a trout.

My father pointed out Mount Whakapunake, told me there were caves up there where the old people were buried. The river that runs at the foot of the mountain is the Mangarangiora River. He taught me the names of paddocks that in recent years I have found correspond to the names of cultivations and areas that were cited as proof of occupation when the land came before the Native Land Court in 1893.

He pointed out the ducks nesting away from the river – a sign that we could expect a wet season with the river running high. An uncle's worry about a dry Spring was soothed with the advice "Don't worry Boy, the kōwhai rains haven't come yet." The kōwhai rains could be relied on to produce steady, often heavy, rain. If the tī kouka was laden with aromatic blooms, we could anticipate a good, productive year. The hōrirerire flew high and warbled continuously, scolding people to turn the soil, plant the garden, tend it, work the land.

My father's sister took me into the bush across the river to pick pikopiko. She and my mother boiled the tutu leaves I gathered (from the sunny side of the bush) to bath my sister's leg, twisted by polio. They steeped bandages in the mixture and wrapped her leg after the massage. By the time she was in the fourth form at High School, her leg was straight and strong enough for her to play in the school netball representative team.

We gathered pūhā, watercress and blackberries as we grew; climbed the cabbage trees to pick the heart of the new shoots to chew as we played alongside the river. I was living on Paparatu Station when my own daughters were born, and over the years we have returned to the station on numerous occasions to maintain our connections with that land.

After my father retired to Wairoa, he told the stories of the land to groups of schoolchildren who visited Takitimu and Iwitea Marae. For Iwitea he composed tauparapara and waiata that encapsulated all the important information about our lands. He died in 1986 and I became one of the committee of management for both Te Whakaari and Anewa Trust, positions I held for eight years which incorporated both traditional kaitiaki and contemporary farming management roles.

In 1988 I published *The Legend of the Seven Whales, He Pakiwaitara a Ngai Tahu Matawhaiti* an ancient legend of our hapū that tells the story of our seven maunga tapu near Iwitea Marae. In 1991, the story my father had related to me in 1961 was also published as a children's picture book, *Te Kooti's Diamond: Te Taimana a Te Kooti*. The hapū history *A Carved Cloak for Tahu* is a compilation of the histories and stories given to me by my father, as well as the results of several years of research which enabled me to expand on what he'd told me. These three books are my way of recording and passing on to new generations the mātauranga that is part of the responsibilities of a kaitiaki of our land. The hapū history is structured on the carvings that adorn the Iwitea whareni Te Poho O Tahu and includes waiata as examples of how we proclaim our identity and our mana whenuatanga.

The Native/Māori Land Court records show that our tīpuna demonstrated that a block of land was properly theirs by naming landmarks, rivers, pou whenua, cultivation areas, pā harakeke, pā tuna, battle sites, urupā, pā sites, places where houses had stood and who occupied them, as well as giving their whakapapa and hapū names. Their claims were based on te ahikāroa, long occupation, and the usage of the land and waters and their

resources. In some instances waiata were sung that encompassed their tribal history and landmarks, whakapapa and cosmogonies.

In claiming one of the Mangapoike blocks for Ngāi Tahu and Ngāti Ruapani, Raniera Turoa said “No 13 is Mangatahi a lake near Mangapoike Stream. My hapu caught eels & maehe there. My hapu has a “haka” about that lake”(Tairāwhiti Māori Land Court, 1893, Wairoa Minute Book No. 7, pp. 212-220). Unfortunately the haka was not recorded.

Although Māori land tenure had changed drastically by the 1960s, thanks to the imposition of title begun a hundred years earlier, much of my ‘knowing’ of the land has similarities with that of our tīpuna. I too can name rivers and mountains, say that our family had a garden there, caught eels from that lake, that Te Kooti’s battle site was on that knob above the Mangapoike River. There are waiata and tauparapara composed by my father in the 1980s that encapsulate the histories and stories of our land and hapū. (For an in-depth explanation of how our histories are told through various art forms see *A Carved Cloak for Tahu*, Whaanga, M. 2004. Two of the waiata appear on p.203 & p.211).

We still identify with our land in many of the ways our ancestors did.

What then does the term mana whenua mean to me? It encapsulates all the ways of knowing the land – the names of landscape features; the places to site a garden, to set the hīnaki; where and how to gather rongoā and food, weaving and building materials; who lived where; the important events of our history and where they happened. It is about knowing and exercising traditional and modern rights to the land; but more importantly, it is about the obligation to the land, the requirement that the land must be passed on in good heart, and with it the histories and knowledge that will allow succeeding generations to properly exercise their mana whenua.

## TRADITIONAL LAND TENURE

It has been well documented that Māori understandings of land tenure and rights were very different to the concept of ownership that Pākehā settlers brought with them. (See Smith 1942, Kawharu I.H. 1977, Asher & Naulls 1987, Erueti 2004).

A well-known whakapapa of origin has Papatūānuku, the female earth entity, and Ranginui, the male sky entity, as the primal parents. How then, if we are descended from Papatūānuku, could one own the mother of all?

Maori saw themselves not as masters of the environment but as members of it. The environment owed its origins to the union of Rangi, the sky, and Papatuaanuku, the earth mother, and the activities of their descendant deities who control all natural resources and phenomena. The Maori forebears are siblings to these deities. Maori thus relate by whakapapa (genealogy) to all life forms and natural resources. There are whakapapa for fish and animal species just as there are for people.

....Land, or whenua, is represented in the whenua, or placenta, of women. Maori are born out of the whenua. There are whakapapa today that trace living persons from Papatuaanuku,

....The whenua, or land, thus passes through the whenua, or placenta. The right to the land in an area is by descent from the gods and the original ancestors of that place. Tangata whenua were thus the descendants of the original people of a particular locality. (Durie, E.T. 1994, pp. 328-329).

The significance of land as a female entity that provides the necessities of life is further reinforced in the proverb,

‘Ko te whenua te waiū mō ngā uri whakatipu (The land provides the sustenance for the coming generation). Waiū literally means milk from the breast. (Kupenga, Vapi; Rata, Rina; & Nepe Tuki, 1993, p.307).

By contrast, consider that Christian missionaries were amongst the earliest and arguably the most influential settlers to come to Aotearoa.

With them they brought the Bible, which has this passage

And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth. (Genesis 1:26 King James Version)

The idea of dominion over all things, including the earth, is quite different from that of the earth being the mother who provides sustenance, and being connected by whakapapa to all life forms and natural resources. Being part of a cosmological family invokes an ethic of respect and guardianship quite different to that of dominion, which the Oxford dictionary defines as “sovereignty, control”.

The difference between the Māori viewpoint of land, and that of the Pākehā who colonised New Zealand revolved around what E.T. Durie explained as the “Maori law of relationships”. Fundamental to Māori custom was

that life depended on mana, generosity and the relationships between all things, the relationship between people and gods, between people and everything in the universe from land to life forms, and between different groups of peoples. The essential difference between Maori and Europeans on the settlement of New Zealand was that one sought ownership and centralised control, the other sought local control and relationships. Each was simply acting according to their own customs. (Durie, E.T. 1999, pp.6-7).

While the concept of ownership as we now understand it was not part of traditional Māori practice, a system of dealing with land usage and establishing who had rights to particular areas was well-established and

understood amongst the tribes who became known collectively as Māori. This system is commonly referred to as customary land tenure.

Customary land tenure was the subject of F.O.V. Acheson's 1913 thesis. He wrote about six aspects of customary law by which land rights were recognised. Four principal rights or take were listed by Smith (1942, pp.48-49) – discovery or take taunaha, ancestry or take tupuna, conquest or take raupatu, and gift or take tuku. Kawharu I.H. in 1977 (pp.55-57) identified the same general structure of land tenure. Asher and Naulls (1987, p.6) and Erueti (2004, p.48) added take ahikā (keeping the home fires burning) to those previously identified. Mead (2003, p.280) adds whenua muru as distinct from “land taken by the blade of a patu. Whenua muru is land sacrificed by a group in order to compensate others for a wrong done to them”; as well as take ōhākī as a distinct form of gifting of land, occasioned as the last testament of a dying chief.

The Waitangi Tribunal has dealt with many claims pertaining to land tenure. Their explanation in the report on the Turanganui a Kiwa claims is that

The control and management of a group's rohe was expressed through the distribution of finely differentiated rights of access to resources rather than through 'ownership', as it would be understood in English law. Through its leaders, the kin group exercised a right of management or trusteeship, sometimes termed kaitiakitanga. The control of resources was intertwined with ancestral deeds and cemented in whakapapa. Rights in land were sourced in a number of ways: ancestral inheritance, the discovery and naming of places by ancestors, victory in battle (commonly followed by marriage into the defeated group), and inter-group transfers (although these often carried reciprocal obligations). These are commonly called the four take: take tupuna, take taunaha, take raupatu, and take tuku. All take had to be consummated by the regular exercise of rights held. The term according to tikanga is 'ahikaroa' or 'kauruki turoa'. (2004, p.16).

Although the Tribunal did not list ahikāroa as a separate right, its importance is such that it has been included as one of five main principles by which land rights were established:

*Take taunaha*

The right by discovery of land that was neither occupied nor claimed by anyone else. The right of discovery can be attributed to the people who travelled to this country in the ancestral voyaging waka that are an important part of Māori history.

However, it should not be assumed that all of Aotearoa/New Zealand was unpeopled at the time of arrival of the more well-known voyaging waka. There are histories in Te Tairāwhiti that speak of people who were already established here, known as the tangata whenua, when waka such as the Kurahaupo and Takitimu arrived. Many land claims became established through intermarriage with these earlier people. (See Mitchell 1972, pp. 19-20; Ngata & Te Hurinui 1990, Part III p.135; also Ngata & Te Hurinui 1988, Part I pp.125 &129 for references to the tangata whenua.)

*Take tupuna*

The right by whakapapa, based upon descent from an ancestor whose rights to the land were recognised. The example mentioned above where waka voyagers intermarried with the tangata whenua would establish a right of take tupuna.

Migrants, conquerors and strangers came into the land by marrying into the local people. The seed was thus sown in the whenua. It is not part of Maori tradition that canoe voyagers arrived in 1350 to wipe out the earlier inhabitants. The consistent evidence to the Waitangi Tribunal is that mana whenua derived from the original people. The Tribunal has genealogies of 23 generations of antecedents before the main canoes. From the canoes, it is said, came mana tangata, or political power and authority. The incorporation of migrants into pre-existing

communities has been seen as a Pacific trait. (Durie, E.T. 1994, p.329).

### *Take tuku*

Land was occasionally gifted to people who were not members of the hapū, generally to acknowledge a service to the hapū (such as assistance in battle) or perhaps to cement an alliance. This gifting would normally be done with the agreement and approval of the hapū. The recipient then had to establish ahikā. Take ohākī, a gift made by a person close to death, was a form of take tuku.

An instance of take tuku occurred in the case of land at Mahia, part of Taiporutu farm. When Te Hore Epanaia Whaanga (my father) and I were negotiating for the purchase of a block adjacent to our whānau land, my father asked one of the owners how their family came to be shareholders in that land, as they were not descendants of Ihaka Whaanga. The reply was that their ancestor had assisted Ihaka Whaanga at a time of conflict, hence the inclusion of the family in the land holding.

### *Take raupatu*

A right to land by conquest of existing occupiers, only properly established if ahikāroa, long occupation, occurred. If some of the original occupiers remained upon the land, despite having been defeated, their claim to the land remained.

### *Te ahikāroa*

Along with take tupuna, this was possibly the most important method of establishing land rights. Literally, it translates as the long-burning fire i.e. this right was one of long occupation. 'Occupation' included use of the land by cultivation or gathering food, timber, harakeke and other resources from it. This right could be considered to be extinguished only after three generations or more had passed during which no member of the hapū had maintained ahikā.

If a Native left his tribe and went to live in another district either through marriage or otherwise, and he and his descendants remained away for three generations, they would forfeit all rights to the land so abandoned; their claims would become *ahi-mataotao*. The meaning of this term is *cold* or *extinguished fire* and, as applied to the instance just given, would signify that the rights of the claimants had become cold and their claims extinguished.

*Ahi-mataotao* applies to cases where the descendants of the territorial ancestor voluntarily abandon the land and none of the progeny return to keep their rights alive for a period of three generations. Absence for one generation would not materially affect the rights of the absent parties. Absence for two generations would diminish their claim, and absence for three generations would entirely obliterate it. (Smith, 1942, pp.57-58).

The aphorism ‘The price of freedom is eternal vigilance’ with a change of subject, could also be applied to the retention of land. Toro Waaka, a claimant in the Whanganui a Orutu case before the Waitangi Tribunal explained how his hapū had established their rights to that lagoon and wetland area, in the area where the Napier airport now is, and how their tenure on that land was maintained:

It was through ringa kaha [strong-arm] marriage and different compacts between hapu that the ownership and use rights to lands and water has been established. This became important to the maintenance of Ahi Kaa [long burning fires]. No hapu could bind themselves to the land without ‘take Tupuna’ [ancestral rights] and they could not hold it without ‘ringa kaha’. (E14:4) (Waitangi Tribunal, 1995, 2.5.3)

Note also that Waaka’s phraseology was that the hapū bound themselves to the land, rather than that they took control of it. The inference is one of creating ties by whakapapa, rather than taking ownership of a commodity.

When the Tutu o te Kaha blocks first came before the Native Land Court, Ahipene Tamaitimate (1868, Wairoa Minute Book No. 1, p.36) of the Ngāti Tahumatua hapū supported his claim of ahikāroa, long occupation, with a whakapapa to the ancestor Matuwahanga. Claim to land by whakapapa (genealogical connection) is termed take tupuna.

Greater detail of the ways that Māori of the nineteenth century and allied hapū regarded land tenure can be gleaned from the Native Land Court minutes of the hearings for the Whakaki block. Te Kepa Hoepo claimed take tupuna by descent from Tapiri, and provided the Court with whakapapa to substantiate this. Ahikāroa and the rights to land and fishing rights were established by the naming of pā, tauranga waka, pā tuna, house and cultivation sites.

Te Waikarawai. That place belonged to Te Paea Kaipuke it is a tauranga waka. Hauwaru belongs to the descendants of Te Kakari. It is on the firm land and is not a pa tuna. Puharakekenui does not belong to Paora but to Miriama Whakahira. She is an owner in the block. I know of no Rae a Te Koaru. Aowhero belongs to Miriama & Te Paea Kaipuke. They have a whare and cultivations there. The teinas of Miriama & matuas of Te Paea are there now. Patokitoki belongs to the same two people. It is a pa we built during the Hauhau troubles.

Tahutoria belongs to Rapaia Te Apu & teinas.

Te Ekeparuparu belongs to same. It is an old pa.

Raeroa pa tuna belongs to Rapaia.

Iwitea belongs to I and Horomona & to Te Wāka Piere.

Kohurupo is a pa tuna of mine & Tutaenui also. Tapauae is a pa tuna of mine & Paerua. Ngaawa a Tauira was a pa tuna now it is cultivated by Horomona. Te Whare o te Haramau is a mara we have a church there. Te Poho o Tahu is a large whare of ours on land & cultivations also. Horomona & Matua own that place.

Kohimuhimu is a plantation of mine. .... Te Paraoa is a tauranga waka. Te Akeake is an urupa of all of us. Takitaki an urupa. .... Paora has no right here and never has had. Neither he nor his people have even worked on the land. I and Wi Te Rama put him in the grant out of aroha. (Tairāwhiti Māori Land Court, 1894, Wairoa Minute Book No.8, pp. 192-193).

It can be seen that ahikāroa was demonstrated by an intimate knowledge of the land, articulated in the names of natural features, the names of places and structures where food was caught (the pā tuna or eel weirs), names of cultivations, names and sites of pā including any battles fought there (Patokitoki, built during the Hauhau troubles), names of important buildings (Te Whare o te Haramau church and Te Poho o Tahu whareniui) and, importantly, names of urupā where antecedents are buried. Hoepo also made reference to the fact that another claimant had never worked on the land, and therefore had no claim to it.

The judge at the sitting was also provided with a plan of the block, and claimants would mark and number the important places on the plan and refer to it at the Native Land Court hearing.

A third take by which rights to land were gifted - take tuku - was also mentioned in this case.

Miriama is from Te Rangihawini not from the ancestors set up on this land. She has a small claim to this land. Te Kakari gave Te Rangihawini a piece of land. Hence Miriama's claim. Paora was put in out of aroha or rather Te Otimi was. ... Miriama had a gift made to her ancestor & was entitled to be in grant. It was a ngakinga kai given to her. (Tairāwhiti Māori Land Court, 1894, Wairoa Minute Book No.8, p.193).

In the Land Court minutes cited above, Miriama Whakahira and Te Paea Kaipuke are both women whose rights were acknowledged and provided for.

Take tupuna, the right to land by whakapapa to a forebear, was sometimes strengthened by naming a female forebear of note. In the Whakaki blocks that woman was Whakirangi.

When Tauria and Tahu intermarried the result was Whakirangi a very great chieftainess. That woman could stop fighting anywhere. Her whakatauki was He waha Whakirangi he waha o te hukarere. (Tairāwhiti Māori Land Court, 1894, Wairoa Minute Book No. 8. p.196).

The translation of the whakatauki is ‘Whakirangi spoke as a god from the heavens’ – hukarere translates as snow, therefore the allusion is that the words from Whakirangi were as cooling to inflamed tempers as snow, or she had the power to freeze/paralyse enemies with a glance.

Another notable female ancestor of the claimants to the Mangapoike blocks was Ruataumata, the second wife of the renowned warrior chief Tapuwae. When the Mangapoike boundaries were named, amongst them was “a post stone called Te Pou-o-te-Ruataumata”. (1893, Wairoa Minute Book No. 7, p.213). Ruataumata in her own right was of high rank, and their first child, a daughter, was named Te Matakainga-ite-tihi which means “ a face to be gazed at as the highest pinnacle”. She was accorded the highest rank of Tapuwae’s children. (Mitchell, 1972, p.121).

The rights of women to the land were also an issue that became contentious in the clash of Māori concepts of land with Pākehā ideas of ownership. In an 1881 debate in the Legislative Council on the Married Women’s Property Protection Bill, George Waterhouse told the Council that

Every Maori woman held property in her own right, without being in any way subject to her husband. ....when a Maori passed land through the Land Court, and obtained a Crown Grant for it, all

subsequent dealings with it followed the European law, and under the European law the property, though belonging to the woman, would become the property of the husband upon her marriage. Upon this subject he was told not many months ago that the effect of that law in Hawke's Bay had been that large numbers of Maori women absolutely refused to enter into the marriage state, because by doing so the land, which was under Crown grant, became subject to European law, and they were deprived of it. (New Zealand Parliamentary Debates, 1881, Vol 38, pp.135-137).

By contrast, in the 19<sup>th</sup> century the settler woman who came to New Zealand could not own property in her own right. English common law, which New Zealand inherited, recognised only one partner in a marriage – the husband.

... a wife 'could not enjoy property apart from her husband, her very existence being deemed merged by the marriage in that of her lord and master. (Devaliant, 1993, p.188).

The history of women owning land, maintaining ahikāroa, and exercising their rights to its management is strong on both my mother's and father's side of my own family, and within our hapū of the Wairoa area. Although it is rare now to see a woman on the land management committees of our hapū land, when I became a member of the Te Whakaari Māori Incorporation committee in 1986, Te Hei Algie and Lena Manuel were also committee members and had been so for many years.

A further difference between traditional land tenure and ownership of land title is that the kinship group were not restricted to only their place of permanent residence.

Hapu territories usually ranged over a number of different environments, including fertile flat lands, wooded hills, wetlands, lakes, inland waterways, estuaries and the coast. People moved

between different areas as the seasons shifted. (Waitangi Tribunal, 2004, p.17.)

Within the Mahia region, gathering rights to seasonal foods are still exercised by the gathering of karengo in certain places around the peninsula as well as on Waikawa (Portland Island). When the tuatua were unusually plentiful and easy to gather due to very low tides in March 2010, there were hundreds of people gathering this highly-prized shellfish. Both these activities are only remnants of ancestral practices, but nevertheless, they endure.

Loss of habitat, regulations affecting fishing that do not take into account traditional practices, and plain loss of access to harvest areas through changes in land ownership and use all contribute to the demise of traditional seasonal harvest activities. Reference to the loss of knowledge and ability to engage in these practices in the wider Ngāti Kahungunu area was made in submissions to the Waitangi Tribunal on the WAI 262 (Flora and Fauna) claim (see Chapter 2 for more discussion).

The Wairoa Treaty claims have yet to be addressed and may include more specific claims based on seasonal gathering rights, but an existing example of where the Crown has recognised such practice is in Taranaki.

In the Deed of Settlement for Ngāti Ruanui of Taranaki, formal provision has been made for their people to exercise seasonal gathering rights, termed ūkaipō entitlements, for up to 210 days in a calendar year. Members of Ngāti Ruanui may also erect camping shelters or temporary dwellings while exercising their rights.

An Ukaipo entitlement is granted to the governance entity for the purpose of permitting members of Ngati Ruanui to occupy land, temporarily, exclusively, and on a non-commercial basis,—  
(a) so as to have access to a waterway for lawful fishing; and

(b) for the lawful gathering of other natural resources in the vicinity of the Ukaipo site. (Ngāti Ruanui Claims Settlement Act 2003, S.49).

Another major difference between traditional concepts of land and resource rights is that the rights did not cease at the place where land met water. The land continues under the sea, under the river or stream and in estuaries and wetlands. All are part of the whenua, and the rights exercised in regard to the areas covered by water were part of the traditional system of land and resource tenure.

In the earlier cited Māori Land Court minutes for the Whakaki blocks, pā tuna – eel weirs located in rivers, wetlands and lakes - were named as belonging to various people. Toro Waaka's evidence to the Waitangi Tribunal concerning Ngāti Kahungunu claims to indigenous flora and fauna included this explanation of the importance to Māori of the waters:

The rivers, streams, lakes swamps and springs were “Nga waiu o ta tatou tipuna”. The milk of our ancestors. These areas provided fresh water for drinking, washing, fishing, agricultural or religious reasons. The mouths of rivers and streams offered sheltered landing places for waka. Here were the tauranga waka and ihu o nga waka that were the signs of our occupational use. He piko he taniwha, He piko he taniwha. The freshwater fisheries of Ngati Pahauwera were extensive and diverse. The patiki, inanga, native trout, upoko karoro, herring, freshwater koura, kakahi and tuna were important food resources. (Waaka, 2001, p.18).

Ihu o ngā waka means the prows of the canoes. Te Ihu o te waka is also used figuratively to refer to that part of a tribal area that can be said to be at the prow of the entire tribal area. The pepeha “He piko, he taniwha” translates as “At every bend, a taniwha.” The taniwha alludes to a chief, and therefore the reference is to the number of tribal groups that a major river can support. This pepeha is most often associated with the Waikato

River, although here Waaka is referring to the Mohaka River which is within the traditional area of Ngāti Pahauwera.

Usage rights of differing tribal groups could also overlap, or be shared by arrangement.

Another pact was between Ngati Hinepare and Pahauwera, the whakatauki is: Manahou ki uta. Pahauwera ki te moana.

This pact illustrates an agreement regarding uses in relation to the coastal areas and the hinterland. Ngati Hineuru also had an agreement which allowed them to fish at the river mouth at certain times when the kahawai was running. In return, Pahauwera had access to hinterland areas when food on the coast was scarce. Hence the Ngati Pahauwera whakatauki:

Tangitu ki te moana, maungaharuru ki uta. (Waitangi Tribunal, 1992, S.2.10)

With the coming of Pākehā to this country and the attendant acquisition of land by the settlers, centuries-old practices of stewardship and traditional occupation were threatened and actively undermined, and a completely different system of land tenure and usage imposed on the tangata whenua. Te Wakaputanga o te Rangatiratanga o Nu Tireni, more commonly referred to as the Declaration of Independance of 1835; the signing of the Treaty of Waitangi, the establishment of an English-based system of law in Aotearoa New Zealand, and the advent and effect of the Māori Land Court – all major signposts and agencies of the changes that took place - are covered in Chapter 5 of this thesis.

The traditional land tenure system Māori had in place, with its natural boundaries, fluid occupation of territories based on the particular food or resource that was ready to be drawn upon, and its shared or overlapping areas of usage was replaced with one that limited the people to a strictly defined area bounded by straight surveyed lines. Whakapapa, histories, the flow of life as the seasons dictated, the relationship Māori had with their lands and peoples became the subject of intense scrutiny. Māori

were forced to prove that ancestral territory belonged to their kinship group, to put their claims to the Native Land Court in order to obtain a Crown Grant of their own land.

The real intent of the process was to make more land available for purchase and settlement. Put this imposition of the colonisers' view of land alongside the invasions of tribal lands, the concomitant wars and subsequent confiscations, and the concerted attacks upon the entire fabric of the indigenous society, and it is no surprise that so many claims have been lodged with the Waitangi Tribunal. In the process of making claims, new terminologies, or at least new ways of using old words, have come into being. Two prominent ones are *mana whenua* and *mana moana*.

## MANA WHENUA

Although the term *mana whenua* was not part of the discussions that I heard as I grew into the role of “the one who looks after the land”, in the last two decades I have heard it used frequently in the context of who exercises authority over land. Often the debate of who is or who holds *mana whenua* is in response to the actions and enquiries of a government agency or the District Council.

The term appeared in the Resource Management Act 1991, where the definition of *mana whenua* is “customary authority exercised by an *iwi* or *hapu* in an identified area”. (Part 1, section 2).

Ngahuia Te Awekotuku (1996, p.27) set the concept of *mana* within a wider context.

*Mana*, like *tapu*, is a pan-Pacific concept. It has layers and levels of meaning: primarily it is about power and empowerment, about authority and the right to authorise. Charisma, personal force, social status, princely charm, leadership inherited or achieved are all forms of *mana*; it is a subjective human quality, measured by

various means. Two of the most important were *mana whenua* and *mana tangata*. *Mana whenua* implies stewardship of vast acreages of land in which one controls the economic resources – fisheries, horticulture, rat runs, bird snaring and related activities.

Michael Shirres (1997, p.53) explained that

A Maori way of expressing this worth of the human person is to speak of a person's mana or power. ...Where *tapu* is the potentiality for power, *mana* is the actual power, the power itself. The *mana* which is the actualization, the realization, of the *tapu* of the person is threefold, *mana tangata*, power from the people, *mana whenua* power from the land and *mana atua*, power from our link with the spiritual powers.

Shirres' interpretation then is that the mana of *mana whenua* comes from the land. Hirini Moko Mead (2003, p.7) considers the term *mana whenua* along with *mana moana* as “political ideas which are used especially in laying claims to resources”. In their report on the Muriwhenua fishing claim, the Waitangi Tribunal has used both terms in discussing concepts of ownership, noting as they did so the difference between Western ideas of ownership of a commodity, and Māori concepts of important properties which were considered more than mere commodities.

Though Maori had no concept of ownership as Westerners understand it, in understanding the Maori text in Western terms, full ownership is necessarily implied. They excluded from their important properties, all those outside the kinship group.

Maori ranked those properties much higher than mere commodities, holding them with profound spiritual regard for a vast family, of which many are dead, few are living, and countless are still unborn. That cultural peculiarity cannot be used to deny ownership, however, or to imply that because of it, the resources must be shared.

In more simplistic terms it can be said that, ‘mana moana’ (authority over the seas) applied in the same idiomatic form to land – mana whenua – and yet it has never been suggested that Maori land rights amounted to less than ownership when expressed in English terms. (Waitangi Tribunal, 1988, p.176)

In any living culture and language, new words and expressions are created to express a new idea or to encapsulate a cultural perspective that may not hitherto have needed explaining. This is especially so when another culture arrives and becomes the dominant one, not only imposing an entirely different type of land tenure, but also designing an entire legal and litigation system to go with it. The indigenous people then find themselves trying to explain the very basis of their culture to a people whose customs and laws are quite different.

Moana Jackson, a lawyer of Ngāti Kahungunu descent, considered mana whenua in terms of values and ideals. His viewpoint was that many of the necessary values which Maori often conceptualise in phrases such as mana atua, mana whenua, mana tangata, manaakitanga, and kaitiakitanga were once the cornerstones of the sovereign authority exercised by Iwi and Hapu. They were ideals that society aspired to, and they were realities that determined behaviour and ordered political activity. (Quoted in Wickliffe & Dickson, 2001, p.12)

A kaumatua of both Ngāti Kahungunu and Ngāti Porou ancestry referred to Polynesian origins of the term mana whenua, writing that in Tahiti the Mana Whenua was female, and the Mana Moana was male. Women made the decisions regarding the use of all the land except for the Marae reserves. Cooking was a male preserve, part of their role as Te Ahi Kā Roa. Gardening and the gathering of wild food crops was done by the women, while fishing hunting and warfare were for men only, unless necessity deemed otherwise. (Kaa, 2004, p.10).

Hirini Matunga (2002, p.7) uses mana whenua to refer to the people of the land, i.e those who exercised the customary rights and authority over the land. An eloquent encapsulation of the concept of mana whenua was expressed by Mason Durie (2005, p.11):

Fundamentally, Māori land tenure was based on relationships, and rights to land were an expression of the relationships of people to their environment, as well as to each other. Land interests could not be held without reciprocal obligations to contribute to a common (community) good. The term 'mana whenua' has been applied to indicate the authority exercised by a tribal group over defined lands. It is not identical to ownership, and reflects customary tenure and use more than deed of title.

From the time of arrival of missionaries and the spreading of their influence, Māori culture and traditional ways came under attack. By 1860, the Pākehā population had grown to 79,000, surpassing the declining Māori population. (Asher & Naulls, 1987, Appendix). The New Zealand wars also started in 1860, leading to large-scale confiscation of land. The nadir for Māori came in 1896, when the population dropped to 42,113. (Asher & Naulls, 1987, Appendix).

Since that time, when they were thought to be a dying race, Māori have endured attempts at detribalisation, assimilation and concerted attacks on the land base that is at the very core of their existence. Māori have adapted and survived. Generations have taken to heart the famous words of Te Kooti:

Ko te waka hei hoehoenga mo koutou i muri i ahau, ko te Ture,  
ma te Ture ano te Ture e aki.

The canoe for you to paddle after me is the Law. Only the Law  
can be pitched against the Law. (Binney, 1995, p.329).

By the 1970s the movement of Māori away from their traditional areas and into the cities meant that rural Māori became the minority. But despite the fact that they were no longer living in their traditional tribal areas, Māori still organised into groups, and the younger generation in particular became very vocal about their concerns. Tama Poata established the Maori Organisation on Human Rights in Wellington, initially as a reaction to the 1967 Maori Affairs Amendment Act which “gave the Maori Trustee additional powers to take control of Maori land”. (King, 2003, p.482).

By 1976, according to Mason Durie (2005, p.21), there were in excess of 80 per cent of the Māori population living in urban areas, one quarter of whom were in the greater Auckland area. Amongst these was the group Ngā Tamatoa, who grew out of the Auckland University Māori Club.

They

led the way for a widening Maori protest movement that sought the protection of remaining Māori lands, and restoration of and respect for Māoritanga (particularly te reo Māori). Major protests such as the 1975 Māori land march, the occupations of Takaparawha/Bastion Point and of the Raglan golf course, and protests against the 1981 Springbok tour, galvanised and divided the country, and raised awareness of Māori issues. ... The establishment of the Waitangi Tribunal and the revival of te reo Māori were as controversial as the protests that preceded them, but they emerged as turning points in what was only later perceived to be a Maori renaissance. (O’Malley, Stirling & Penetito, 2010, p.291).

1975 was a watershed year, with the land march led by Dame Whina Cooper from Te Hapua in Tai Tokerau<sup>2</sup> to Wellington, to present to Parliament a petition signed by 60,000 people entitled “Memorial of Right” (Keane 2012, p.3) to cease further alienation of Māori land. The

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<sup>2</sup> The Far North region of New Zealand.

Treaty of Waitangi Act was passed in 1975, and the Waitangi Tribunal established to receive and adjudicate upon claims brought by Māori regarding breaches by the Crown of the Treaty of Waitangi. Initially the Tribunal could only receive claims pertaining to Crown actions from 1975, but in 1985 the Treaty of Waitangi Act was amended to allow claims relating to historical grievances to be heard.

Since then hundreds of claims have been lodged with the Tribunal and a huge amount of material has been amassed relating to them. The process of actual descendants researching tribal histories, recovering traditional knowledge and evidence of ancestral practices, of revitalising Māori language and practices is invaluable.

#### RESOURCE MANAGEMENT ACT 1991

One of the most important developments is that, finally, the principles of the Treaty of Waitangi and some Māori concepts are being incorporated into New Zealand legislation. The landmark decisions that have led to this are examined more fully in Chapter 3. For this chapter on traditional land tenure and the modern use of the term *mana whenua*, I shall look at where that term has been incorporated in a statute that affects every aspect of our physical world, and give an example of a case that particularly impacted upon the *tangata whenua* of the Mahia region.

The Resource Management Act received assent on 22 July 1991. Its purpose is to “restate and reform the law relating to the use of land, air, and water”. In this act the definition given for *mana whenua* is “customary authority exercised by an *iwi* or *hapu* in an identified area”. The Act also defines *tangata whenua* in relation to a defined area as “the *iwi*, or *hapu*, that holds *mana whenua* over that area”, *kaitiakitanga* as “the exercise of guardianship by the *tangata whenua* of an area in accordance with *tikanga Maori* in relation to natural and physical

resources”, and tikanga Māori as “Māori customary values and practices”. (Part 1, s.2).

In the local government arena, the Resource Management Act (RMA) affects how local authorities plan for their community’s future, and how it regulates building, development, and all activities that substantially impact upon the environment. The Act’s purpose is to “promote the sustainable management of natural and physical resources” (Part 2 s.5). It defines sustainable management as

managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment. (Resource Management Act 1991, Part 2, s.5).

At a glance, those ideals of management fit very well with the ethics of kaitiakitanga as defined in part 1 of the Act. They are part of the authority and obligations, the relationships between people, land and the natural world that are encapsulated in the term mana whenua.

The Act specifically includes directions that

all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –

- (a) kaitiakitanga (Resource Management Act 1991 s.7)

and

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) (Resource Management Act 1991 s.8)

The principles of the Treaty of Waitangi are not yet finite, but they include:

- (1) The acquisition of sovereignty in exchange for the protection of rangatiratanga
- (2) The Treaty established a partnership, and imposes on the partners the duty to act reasonably and in good faith
- (3) The freedom of the Crown to govern
- (4) The Crown's duty of active protection
- (5) Crown duty to remedy past breaches
- (6) Maori to retain rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship
- (7) Duty to consult (Hayward, 1997. pp.477-479).

In Mahia in recent years, tangata whenua have attempted to halt undesirable development through the processes available under the Resource Management Act 1991. A case that was widely covered by media and vigorously challenged by the tangata whenua of the area was that of the Blue Bay motor camp situated at Opoutama.

The land had originally been part of the Kopuawhara block, most of which was sold in 1868. Of the 167 acres reserved from the sale, part was taken under the Public Works Act in 1964 when the road was realigned to cut out the loop through Opoutama village. An area of approximately 10 acres was kept by the Crown for a park for the people of Opoutama and Mahia. It was leased by the Lands and Survey department at a very low rental to the proprietors of the Blue Bay motor camp until 1996.

Landcorp, the successors of the Lands and Survey Department, sold the land to the camp lessee in that year, and claims were then registered with

the Waitangi Tribunal that the iwi had not been informed of the sale, consulted, or offered the chance to purchase it. (Ngāti Kahungunu Wairoa Taiwhenua, 23 November 1996). There is a memorial on the title that the land is

Subject to Section 27B State-Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties, such as the owner of the land, to be heard in relation to the making of any such recommendation). (Computer Freehold Register Under Land Transfer Act 1952 HBP2/893).

In 2004 the campground was sold to developers who closed the camp, and applied for resource consents to subdivide the land into forty-four sections for up-market holiday homes. By then five claims had been registered with the Waitangi Tribunal.

Despite the outcry from tangata whenua and campers, the numerous submissions, petitions and very vocal opposition to the development, Wairoa District Council approved the developers' plans and work went ahead. Wāhi tapu were destroyed and bitter divisions created in the community. Without the 10,000 visitors each year and their injection of money into the local economy, around 28 jobs disappeared and several businesses were lost.

At the hearing of oral submissions, it became apparent that the Wairoa Councillors had very little knowledge of the Treaty of Waitangi and its principles. Listed above at number 3 of the Treaty principles is that the government has the right to govern and to make laws. In the Mangonui Sewerage Report of 1988, the Waitangi Tribunal

found that the principle that the Crown could not confer an inconsistent jurisdiction on others extended to the laying down of rules for local authorities and the Planning Tribunal. The principle that the Crown cannot divest itself of its Treaty obligations by conferring authority on other bodies reappeared in the Te Roroa

Report in 1992. The report stated that the duty of the Crown extends to agents of the Crown in their official capacities, as well as individuals (which included the Native Land Court). (Hayward, 1997, p.491)

Local authorities therefore have the same duty as the Crown to observe the principles of the Treaty. Principles 1 and 2, sovereignty in exchange for the protection of rangatiratanga, and the duty to act reasonably and in good faith should significantly influence any exercise of authority by local government bodies.

Although written submissions against the proposed development were received from four of the five marae in Mahia and the iwi authority, the Wairoa District Council - despite the fact that their constituent population is 60% Māori – demonstrably had no idea who were tangata whenua for the area under development, nor who held the mana whenua.

A number of the submissions against the development identified lack of proper or even adequate consultation as a major problem. In the Manukau Report of 1985, the Waitangi Tribunal had advised that

Industrial development and Maori interests need not conflict. The cardinal cause of complaint is twofold, that the tribes have not been adequately consulted on developments that affect their interests in the lands and fisheries of an area, and that they receive no benefit from the utilisation of those resources of the lands and waters that they have not freely alienated. Consultation can cure a number of problems. A failure to consult may be seen as an affront to the standing of the indigenous tribes and lead to a confrontational stance. Admittedly some values and traditions are not negotiable but the areas for compromise remain wide.

(Waitangi Tribunal, 1985, s.9.2.12)

The failure to consult, and the futility of the submissions process did lead to a confrontational stance. The occupation by the tangata whenua of the

foreshore area in front of the development (photograph p.41) was well-documented. What was less well-known was that a small group of women stood in front of the diggers when they went to level a rare sacred women's site, known as Ngā Tuahine. This site had been a place of gathering, teaching and learning specifically for women and in earlier times was on a mound amidst pingao (*Desmoschoenus spiralis*, a highly-prized golden coloured weaving plant) gardens. Seeing the women defying the machine operators, the developers called the police out. The women, mothers all, were forced to move or face arrest. They moved. Months later, as a result of a separate incident, a charge of assault was laid against one of the women who led the protest. From all of this, there was lasting, deep-seated damage to the community.

Where do the development of Blue Bay and the resultant occupation, unrest and protest fit with the concept of mana whenua? The RMA defined mana whenua as customary authority exercised by an iwi or hapu in an identified area. Durie's definition that it is about relationships and reflects customary tenure and use more than deed of title, is very pertinent to this case. The deed of title for the block of land was no longer in the name of the tangata whenua, but their exercise of aspects of customary tenure and mana whenua was still maintained.

The iwi authority of the area was Te Whanau o Rongomaiwahine Trust. The Trust opposed the development, clearly stating in their submission that they were "the iwi authority with mana whenua at Mahia". (Te Whanau o Rongomaiwahine Trust, 4 October 2004 p.1.) The bodies set up by the tangata whenua, those appointed by the people to speak on their behalf, considered that the development would be detrimental to their people and their relationships with the land.

The Trustees of Ruawharo Marae and hapū of Ngai Tama at Opoutama opposed the development because

Those of us who live here, the ahika of our whanau, are here to take care of the welfare of our whanau whanui and our lands. ...

There are many of us who are and will be affected by this development for generations to come. .... The land was taken from us, and rightfully, should have been returned to us as the descendants of the original owners. It is unjust under the Treaty of Waitangi.

(Trustees of Ruawharo Marae, 17 December 2004, p.1.)

The main reasons for objecting to the development were

- i. tangata whenua do not approve of the subdivision, and no consultation has taken place
- ii. the original Ruawharawhara urupa is not accounted for
- iii. the proposal does not deal with its impact on the social environment and character of the existing community
- iv. the socio-economic impacts on the neighbouring reserves and natural landscape quality is not recognised
- v. the proposal does not address its impact on the environmental heritage of the tangata whenua
- vi. the proposal does not address its Treaty impacts. (Ropiha, 17 December 2004, p.1)

During the time they were in occupation of the dune area on the foreshore by the Blue Bay development, tangata whenua demonstrated elements of traditional tenure. They referred to the occupation as a noho, preferring the Māori term for their temporary living on the land rather than the sometimes polarising ‘occupation’. The noho echoed earlier practices of seasonal occupation of an area while food such as pipi or tuatua were harvested. A waharoa, a contemporary entranceway structure made by local artist Mahea Tomoana, was erected on the site, with the original name Te Upoko O Tataramoa on it (photograph p.41). Waiata belonging to the area were revived and practised each night. The people supported Te Mana Taiao O Rongomaiwahine (a group set up to deal with environmental issues in Mahia) erecting a rāhui post to signify the rāhui placed on the gathering of mussels in that area. Sessions in contemporary and traditional art were held. Visitors from supporting iwi were received

at the campsite in traditional pattern. The wider community donated food and expertise.



Occupation site Blue Bay protest 2005

PAGAN LEWIS 2005

All of these are consistent with the ways the ancestors established their rights to land – they united under the aegis of common forebears (Ruawharo and Rongomaiwahine) and through whakapapa had established that ahikāroa had been maintained at Opoutama for centuries; they were able to name the area; visitors were received in traditional manner and those representatives of other iwi recognised their right to be there; and they revived waiata that told of the history of their ancestors so that younger members might have access to that knowledge.

A social impact assessment was carried out at Ruawharo Marae where all of the concerns raised in the submissions were reiterated as well as commentary made about the manipulation of tikanga around the development (a kaumatua saying karakia to keep workers on the site safe, while ignoring the tangata whenua) and the neglect of the whenua (piles of rubbish from tree-felling left on the dunes).

Participants in the hui spoke of the loss of jobs, emotional damage, fear and suffering they were undergoing because of the development. The Social Impact assessment report concluded

The long-lasting and deep-seated hurt has already crystallised into anger. The corrosive effects of such anger both within the community and in how they react to a stranger community in their midst can be seen worldwide. The appalling health and welfare statistics of ghetto-ised communities, of people who have been dispossessed, silenced, and marginalised are well known. We *do know* that where injustices have occurred regarding ancestral land, the memory and hurt becomes intergenerational – i.e. it passes from generation to generation. It does not simply disappear. (Whaanga, M, 2005, p.10).<sup>3</sup>

The reaction of the tangata whenua of Mahia to the development is an example of how Māori today try to maintain their kaitiakitanga and

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<sup>3</sup> Mere Whaanga, author of this thesis.

express mana whenua. Their concerns were for the environment, the people, the whenua and the relationships between them. They came from an undeniably strong historical base, assessed the impacts on the present, and looked to what it would mean for the future. They followed every legal avenue that was open to them, worked within the boundaries of the statute that governed the whole exercise, and **still they did not prevail**. The Wairoa District Council granted the resource consents, and the development was approved and work commenced.

The feeling against the subdivision remained and the development was not the success the developers had planned. A media campaign by the protestors and Abi King-Jones and Errol Wright's acclaimed documentary "The Last Resort" (2006) undoubtedly contributed to slow sales of the sections. But it is likely that the most discouraging event for potential buyers was when the first bach to be built there was burnt in a suspected arson in 2008. Wilding pines and weeds are now growing throughout the area and rubbish has been dumped there. Stone carvings commissioned and erected by the developers have had graffiti sprayed on them, a mark of the contempt in which some locals hold the development. The fate of the subdivision and its developers were the subject of an article in the Dominion Post in 2010.

Mr Nisbet, bankrupted in 2008, sold the section to developer Alistair Austin, whose company Gateway Mahia owns all but seven of the sections, which were being sold for up to \$650,000 in 2005.

Gateway Mahia was financed by Lombard Finance, which was put into receivership in 2008. Mr Austin said his debt to Lombard, including interest, stood at about \$17m. (Sharpe, 2010, 13 November).

The Ministry of Justice published a paper in 2001 defining mana whenua as "the collective's right to exercise guardianship over the land". (Ministry of Justice, 2001, p.3). In the Blue Bay case, the tangata whenua collective tried to exercise that ethic of guardianship, but they were

denied. Despite the provisions in sections 7 and 8 of the Resource Management Act 1991, there is no real power to them. Although Māori concepts are included in legislation, it is still the case that those who exercise authority are not required to do more than include references to the tangata whenua, kaitiakitanga and mana whenua in their annual plans.

Since the boom in prices for coastal property, the Mahia area has been under intense attack by developers seeking to profit from the escalation in real estate values. The Wairoa District Council, very aware that the population of their area is in decline, see development at Mahia as a way of increasing their rates take, as Mahia property generally is of a higher value than Wairoa town values.

The tangata whenua of Mahia are mostly opposed to indiscriminate development. If the Blue Bay development had proceeded as the developers envisaged, it is highly unlikely that any tangata whenua could have afforded to buy a section there, but the value of the properties would have led to a rise in values of the Opoutama village homes, and an associated rise in rates. The people whose ancestors had exercised mana whenua over the area for centuries would have been pushed back to the less-desirable areas to live.

Tangata whenua were amongst the twenty-eight who lost jobs at the motor camp. Access to the beach would have been restricted had the developers gained consent to redesign the foreshore area; the entire environment, including underground aquifers, would have been affected. Sites of significance were destroyed to put a sealed road into the development.

This was a clear example of the difference in perspectives between the Pākehā and Māori involved. The developers saw the land as a commodity to be bought at as low a price as possible, and after development to be sold to a privileged few. Tangata whenua saw the land as part of their relationship with their ancestors, all of their environment, their people

whether they lived in Mahia or elsewhere, the health of both people and environment, and, importantly, their obligations to keep such relationships alive and available for future generations.

That is the part of the definition that is missing from legislation – that mana whenua is not just about authority over the land, it is also about responsibility to the land and future generations.



Blue Bay development 2012

MERE WHAANGA 2012

Graffiti has been sprayed on most of the stone carvings



Blue Bay development 2012

MERE WHAANGA 2012

Wilding pines & gorse growing in the development area

## CHAPTER THREE

TRADITIONAL MĀORI AGRICULTURE and ECOLOGICAL  
KNOWLEDGE

## FROM HAWAIKI TO AOTEAROA

The earliest voyagers to settle in Aotearoa are believed to have come from East Polynesia, which includes Tahiti (Society Islands), the Marquesas and Rarotonga (Cook Islands). (Morton & Johnston, 1988, p.9)

Archaeological and linguistic research has proven that there was travel back and forth between the Americas and Polynesia prior to the arrival of Europeans in the South Pacific. The presence in Polynesian archaeological sites of South American Sweet potato (*Ipomoea batatas*) and the bottle gourd (*Lagenaria siceraria*); and some Polynesian-type fishhook forms and sewn plank canoes found in southern California supported this. However it was the relatively recent discovery of pre-Columbian chicken remains in an archaeological site on the Arauco Peninsula in south central Chile that, as far as archaeologists were concerned, provided the “unequivocal archaeological evidence for Polynesian contact with the Americas”. (Storey et al, 2007, p10335). Māori know *Ipomoea batatas* as kūmara which, along with gourds, were brought aboard the ancestral voyaging waka to Aotearoa.

Māori tradition names the homeland as Hawaiki, which may have been “Ra’iatea, near Tahiti, as its old name was Havai’i”. (Morton & Johnston, 1988, p3). However, Hawaiki is unlikely to have been only one island, as DNA studies suggest that

several canoes came from a number of sources. They may have come over several generations, or even centuries. A study of human DNA also suggests that there was a minimum of 70-100

women as founding ancestors. Several canoes, possibly coming from several locations, would be needed to bring this number of people. (Irwin, 2006, p.18)

The Polynesian voyagers whose descendants became Māori came from a tropical climate to the much cooler sub-tropical and temperate climate of these islands. The immediate challenge then would have been to successfully grow the food crops they brought with them. Their adaptations of the land included the use of sheltering walls and fences, and mixing charcoal, ash and sand with the soil to make it warmer and better draining. (Waitangi Tribunal, 2011, p.567). However, the most important innovation to ensure the successful growing of the highly-prized kūmara

was the development of a successful, climate-controlled storage technique that allowed a sufficient quantity of kūmara seed stock to be preserved for the next spring's planting. In sum, underground pits were constructed with sumps, drains, bracken lining, raised ridges, and so on, and these housed the precious tubers safely in dry and warm conditions. The development of this complex technique – almost certainly in Northland – allowed kūmara cultivation to spread as far south as Banks Peninsula, an incredible extremity of latitude for such a delicate tropical vegetable. (Waitangi Tribunal, 2011, p.567).

Traditions in relation to ancestral waka and settlement patterns upon reaching Aotearoa differ from iwi to iwi, as do the traditions relating to which seeds, animals and plants were brought here, and by whom. Because the land central to this thesis is situated in the Tairāwhiti area, the following accounts of horticultural practices and the introduction of kūmara are those that belong to this region.

## EARLY ACCOUNTS OF MĀORI AGRICULTURE

*Kūmara*

References to the bringing to this land of the highly-prized kūmara are to be found in some of the earliest narratives written by our ancestors. Ihaka Whaanga (who was the paramount leader of the Māhia area in the mid 19<sup>th</sup> century) wrote

Tetahi korero tipua ko te haerenga o to matou nei tipuna o Pou ki Hawaiki ki te tiki i te kumara. Tona waka i haere ai he pakake. Te ingoa o taua pakake ko ruanuku. (Ms Papers 1187-093, n.d.)

(One of our ancient stories is that of the journey of our ancestor Pou to Hawaiki to fetch the kumara. His transport was a whale. The name of that whale was Ruanuku.)

Upon his arrival in Hawaiki, Pou told Tāne-nui-a-Rangi of his quest to obtain kūmara to take back to Aotearoa. Tāne gave him two large kete of kūmara called Hau-takere-nuku and Hau-takere-rangi, two kārehu (spades) of maire called Mamahi-nuku and Mamahi-rangi. As well, he gave him two great birds to carry him home. These were named Tawhaitara and Rua-kapanga. Pou brought the kūmara to Turanga, and planted them at Manawaru. (Ms Papers 1187-093, n.d.)

Whaanga noted that the kārehu were made of maire, a “dense, elastic and durable” wood (Clarke, 2007, p.219) highly suitable for tools and implements. It should not be assumed that maire is found only in New Zealand, as black maire (*Nestegis cunninghamii*) is one of a Pacific region genus “with species in New Zealand, Norfolk Island and possibly the Hawaiian Islands”. (Salmon, 1990, p.286).

A very similar narrative is encapsulated in the mōteatea “Po! Po!” (Ngata A.T & Te Hurinui, 1961, p.153) attributed to Te Aitanga-a-Mahaki whose traditional area is also in Te Tairāwhiti. There is a reference in the mōteatea to Hine-hakirirangi, who Ngāti Porou say came aboard the Horouta waka and brought the kūmara with her. Hine-hakirirangi “with

the flowering *kōwhai*, emptied the kit at Manawaru and Araiteuru”. (Ngata A.T & Te Hurinui, 1961, p.159). Manawaru and Araiteuru are remembered as ancestral cultivations, the first for the kūmara.

Elsdon Best collected and published much information about the cultivation of the kūmara, the times of planting by the moon, the karakia and practices associated with its cultivation and harvest, and the implements used for cultivation. In his manuscript on the subject (Ms-papers-0072-23, n.d.), he named twenty-seven varieties; but in *Maori Agriculture* he lists 97 names (1976, pp.112-113), although he adds that as they were collected from several districts and sources, some may refer to the same variety of kūmara.

The earliest European accounts of Māori gardens were those of William Monkhouse, surgeon on the *Endeavour*. In October 1769, he wrote of extensive gardens at Anaura Bay which he estimated to be a hundred acres in extent:

The ground is completely cleared of all weeds – the mold broke with as much care as that of our best gardens. The Sweet potatoes are set in distinct little molehills which are ranged some in straight lines, in others in quincunx. In one Plott I observed these hillocks, at their base, surrounded with dried grass. The Arum [taro] is planted in little circular concaves, exactly in the manner our Gard’ners plant melons as Mr – informs me. The Yams are planted in like manner with the sweet potatoes: these Cultivated spots are enclosed with a perfectly close pailing of reeds about twenty inches high ... We saw a snare or two set upon the ground for some small animal, probably of the Mus Tribe [the *kiore maori* or Polynesian rat]. The radical leaves or seed leaves of some of these plants are just above ground. We therefore suppose their seed time to be about the beginning of this month. ... the soil is light and sandy in some parts – on the sides of the hills it is a black good mold. We saw some of their houses ornamented with gourd plants in flower. These, with the Yams, sweet Potatoes and Arum

are, so far as we yet know, the whole of what they Cultivate.  
(Beaglehole, 1955. pp.583-584).

Further reference is made to gardens and food to be traded when the *Endeavour* hove to off the Māhia Peninsula. An ariki (unfortunately, his name was not recorded) was persuaded to come aboard by three men who had boarded at Tūranganui. Monkhouse was impressed by this man who wore a large “extremely light flaxen” coloured cloak which reached from his shoulders to below his knees. As well as noting that it appeared “very stout and quite new”, Monkhouse added that it

was lined at the lower corners with dogs skin. His face was most compleatly tattaoued<sup>4</sup> with the deepest carving I have yet seen. ... He had a bone pattoo<sup>5</sup> which he told us was the bone of a grampus or whale. In the Canoe were two women & a girl besides three or four men, one of whom had a bracelet round his ankle which seemed to be a kind of cylindric white shells strung upon thread – the Womens lips were tattaoued. ...some of the Men in the Canoe along side had the perfume ball hanging around their necks.  
(Beaglehole, 1955. p.575).

Three men from the Tūranga area who were aboard the *Endeavour* left with the people of this canoe, assuring the English that they would return and bring “Sweet potatoes, Arum roots and Yams”. (Beaglehole, 1955. p.575). Joseph Banks, a botanist, noted

several spots of Land cultivated, some fresh turnd up & laying in furrows like ploughd Land, others with Plants growing upon them some Younger & some Older. (Morrell, 1958, p51.)

There is a noticeable difference between ancestral accounts and references to food plants and gardening, and the detailed notes of the observers on board the *Endeavour*. Monkhouse and others like him came to document strange and new peoples and their practices, while our

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<sup>4</sup> spelling is reproduced as it appears in Monkhouse’s journal entries.

<sup>5</sup> patu

ancestors encoded their knowledge in mōteatea, whakapapa, and origin narratives. After all, their children and descendants would learn about preparing soil, planting, tending the crops and harvesting them by participating in the doing of all the tasks necessary for their very existence; whereas important knowledge such as where the kūmara came from and who first brought it to Aotearoa needed to be passed on in the media that they used to record their cosmogonies – the whakapapa and mōteatea.

Despite the variations in the Pou narratives mentioned above, the underlying fact that the mōteatea and the written narrative contain is that the kūmara was not native to this country, and more, that early crops failed and necessitated a return to Hawaiki to gather more seed tubers.

Traces of storage pits for kūmara remain on the landscape – at Taiporutu, our whānau farm on the Māhia Peninsula, several hollows are all that remain of kūmara pits on the flattened hilltops that are surrounded by the narrow terracing that marks what were once pā defences. There is also one remnant of a kūmara pit at the base of the pā site, with a drain around the edge to divert water runoff from the hill.

#### *Yams, Taro, Gourds*

The other main plants in the gardens noted by Monkhouse were yams, taro and gourds. In 1894, Leonard Williams, then living in Tūranga and one of the family who influenced and recorded so much of Māori life in Te Tairāwhiti, wrote that the

tradition in this district is that the different varieties of kumara were fetched from Hawaiki in the canoe Horouta under the direction of Kahukura, and that with them were brought the *taro*, the *hue* or calabash gourd, and the *uwhikaho* or yam. The *uwhikaho* has disappeared altogether from this district. (1894, p.144).

A Ngati Porou lullaby composed for a granddaughter of ariki descent mentions one type of taro:

Ana, e koro! Auaka e whangaia ki te umu nui, wha-  
 Ngaia iho ra ki te umu ki tahaki, hai  
 Te pongi matapo hei katamu mahana, ki-  
 A ora ai hine

Do not, O sir, give her food from the common earth-oven,  
 But feed her from the oven reserved for her kind,  
 With the dark-fleshed taro, that she may chew with relish,  
 And be sustained (Ngata & Te Hurinui, 1988, Part I pp. 4-5)

A proverb mentioning the taro was included in an 1879 edition of *The Transactions of the N.Z. Institute*:

He puia taro nui, he ngata taniwha rau, ekore e ngaro.

A cluster of flourishing Taro plants (*Colocasia antiquorum*), a hundred devouring slugs, or leeches, cannot be extirpated = It is difficult to destroy them all. So with a large tribe. (Colenso, Vol XII, p.140).

It can be deduced from this proverb that the taro was a plant that flourished in New Zealand. The following year, Colenso wrote that the taro

being a perennial, and always “in season”, its tubers were not taken up and stored away for future use, but were generally dug up when wanted for cooking, etc. Hence it was doubly useful to them, in some respects more so than the *kumara*. (1880, Vol XIII.15)

He noted twenty species of taro, and Best (2005, pp.239-240) added another twenty from various sources.

Monkhouse noted that gourd plants grew over the houses in Anaura Bay. Colenso wrote that the gourd was the only plant raised annually from seed, and that there appeared to be only one species.

Its seeds, before sowing, were wrapped up in a few dry fronds, (*Pteris esculenta*), and steeped in running water for a few days. It was to them of great service, furnishing not only a prized and wholesome vegetable food (or rather fruit) during the whole of the hot summer days while it lasted, and before their kumara were ready for use, but was also of great use in many other ways. ... As an article of food it was only used when young, and always cooked – baked like the *kumara* and *taro*, in their common earth-oven – and eaten, like them, both hot and cold. (1880, Vol XIII pp.15-16)

He also described the variety of uses of vessels made from gourds, which ranged from small cricket-ball sized containers, possibly used to store perfumed oil or ground ochre, to capacious large ones used for storing quantities of food such as birds. In his 1875 manuscript, Mohi Ruatapu listed some of the men who had come aboard the waka Horouta, and what they had with them when they went ashore at Ohiwa. Among the men was Awapāka, who had strings of gourds. (Reedy, 1993, p.181).

A few museums have examples of the large gourds with carved wooden mouthpieces used for storing birds preserved in fat. Amongst their collections, the British Museum lists three gourds: a small round one 9cm long suspended from a woven cord, an oval one 32cm long thought to be from Te Tairāwhiti, both carved over all their surfaces; and a plain 35cm tall one with a carved wooden mouthpiece from the Whanganui River area which was originally encased in a woven fibre covering. (Starzecka, Neich & Pendergrast, 2010, p42.) Monkhouse, in Hawke's Bay in October 1769, observed the use of a gourd as a bailer for one of the canoes that came near the *Endeavour*. (Beaglehole, 1955. p.578).

*Tī Kōuka (Cordyline australis) and Karaka (Corynocarpus laevigatus)*

In the Wairoa and Māhia areas, a lone cabbage tree growing on a ridgeline will often mark an old occupation or pā site. Several varieties of cabbage or tī tree (*Cordyline*) were useful to our ancestors for food and weaving materials. Early European settlers made chimneys for their huts from the hollowed-out trunks of this tree, having found that they would not catch fire. (Salmon, 1990, p.349).

Colenso (1880, p16.) wrote of the species called tiipara being cultivated as an article of food, although in 1880 it had already become very rare in Hawke's Bay. This is probably the same as the tī pore (*Cordyline fruticosa*)

said to have been brought to Aotearoa on the *Nukutere* by Tama-tea-nuku-roa's son Roua, who also introduced karaka and taro. This waka landed at Waiaua, near Opotiki, and tī pore was first cultivated nearby, at Pokerekere. (Simpson, 2000, p.144).

There were several types of tī, with Māori names that could vary from tribe to tribe. A common name was tī kōuka, which I remember gathering as a child, eating raw, or taking to an aunt who cooked it with fatty meat which she said sweetened it.

Simpson (2000, p.150) noted that kōuka

contains carbohydrate (starch and sugar) and a bitter agent, saponin, a soap-like chemical capable of breaking down fat. Hence kōuka is valued as an accompaniment to fatty food such as tuna (eel), tītī (mutton bird), kererū and other birds, kiore (polynesian rat) and, in modern times, pork, mutton and beef.

Simpson also referred to pā tī, groves either especially planted or occurring naturally that attracted kererū, and that when the trees flower very early, "it foretells a long summer" and an early harvest. This accords with memories of my father saying that early and heavily-flowering cabbage trees indicated a good year with plentiful food.

As well, there are numerous groves of karaka trees closer to the coast, most near old pā sites. Both karaka and tī kōuka trees were part of the larger gardening complex of our ancestors. Ruawharo, the senior tohunga aboard the waka Takitimu, is said to have landed at Māhia with a pet kokako and some karaka seed. (Halbert, 1999, p.44.). The orange flesh of the karaka berry can be eaten when ripe, but the kernel needs lengthy processing before it can be consumed, as it contains “a deadly poison ... called karakin, which is the only one of its kind so far isolated in nature”. (Salmon, 1990, p.227). Karaka berry kernels need to be cooked in the hāngi (at least 3 hours) or boiled for a similar length of time, then immersed (in a kete) in running water for one or two days.

Karaka leaves were also known to have anti-inflammatory properties

Small crescent-shaped fingernail cuts are made on the leaf's glossy side, which is applied directly to the afflicted area. The calming, cooling effect is immediate, hastening healing. (Te Awekotuku & Nikora, 2007, p.39).

On the side of the old pā at Taiporutu, there is a grove of cabbage trees with a few karaka nearby. Within the area that would have been protected by pallisades are the hollows that indicate earlier kūmara pits.

### *Commercial Production*

As European settlers came, bringing with them different food plants and dietary requirements, Māori adapted their horticultural practices to the new food crops such as potatoes, wheat and fruits with great success.

The Waikato, Bay of Plenty and Poverty Bay capitalised upon the traditional Maori skills in gardening to make the 1840s to 1860s a golden age in Maori agriculture and economic growth. The feats of Maori farming in the early days of European settlement have not always received the historical recognition they deserve.

Certainly the advances made have never been repeated in Maori history. While today Maori farmers are predominantly pastoralists, Maori agriculturalists were then in the business of growing crops

and it was as croppers that they made a tremendous impact on the early New Zealand scene.

... In the late 1850s the Maori people of the Bay of Plenty, Taupo and Rotorua districts had more than 9000 acres of wheat, potatoes, maize and kumara under cultivation and there are reports of similar developments throughout the Poverty Bay, East Coast and Waikato areas. At that time the Maori people also built and operated several flour mills. In 1857, one observer recorded 43 small coastal vessels averaging 20 tons each as belonging to the Bay of Plenty Maori, while at the Port of Auckland in 1858, 53 small vessels were registered as being in native ownership and the annual total of canoes entering the harbour was more than 1,700.

....but it must be noted that success was easier for the Maori people last century. They owned most of the good land then, they farmed communally, and they had no labour costs. (Durie, E.T.J. 1981, pp. 4-5).

By the time of the establishment of the Native Land Court in 1862, the New Zealand Wars had already begun. These conflicts were to lead to the confiscation of vast areas of the best croppable land, and the destruction of the economic base of Māori throughout the country.

The agency to effect the transfer of Māori lands into the hands of Pākehā settlers was the Native Land Court. To obtain a Crown Grant to their ancestral land, it was necessary for our ancestors to give evidence attesting to their rights to various areas. Prime amongst the rights to land were those of take tipuna and ahikāroa (more fully discussed in Chapter 1). A critical part of proving ahikāroa, the long occupation of the land, was knowing where its resources were, how to use, capture or grow them, and when the resources could be harvested.

LAND AND FOOD RESOURCES OF NGĀI TAHU KI  
TUTUOTEKAHA

The Tutuotekaha blocks are central to this thesis, and the descendants of the original owners of the blocks affiliate to both the Whakakāi and Iwitea Marae. The minutes of the first Māori Land Court hearings in 1868 refer to whakapapa and long occupation as primary evidence in establishing rights to the land (see Chapter 3). They were claimed for one branch of the descendants of Matuahanga, other branches of whom lived at Mohaka, Wairoa, Māhia and Nūhaka.

His descendants, that is to say the hapu Ngaitahu are the persons who reside on Tutuotekaha block. This was originally surveyed as one block, but has been subdivided into four blocks. It was in Partition No 3 that other tribes than Ngaitahu were declared owners, as that was where their interest lay. Some of Ngaitahu as well were entered as owners. Tutuotekaha Nos 1. 2. & 4 were awarded solely to Ngaitahu. (Tairāwhiti Māori Land Court Wairoa Minute Book No. 3A, 24 February 1889, p.346)

In considering how our ancestors lived on and with the land, some information can be gleaned from the Land Court minute books in regard to the food resources that were available to them. The important places – cultivations, bird-snaring places, eel weirs or trapping places - were often named.

In the 1893 Land Court minutes for the Mangapoike blocks (neighbouring the Tutuotekaha blocks), claimed for Ngāi Tahu and Ngāti Ruapani, Raniera Turoa explained the places he had marked on the plan of the land.

No 2 is also called Hurukino and a cultivation & cultivated flax and houses and whatas stood there also apple trees. ... No 13 is Mangatahi a lake near Mangapoike Stream My hapus caught eels & maehe there. ... No 17 is Pounuiarauru a kaka snaring place. The snares were set on a manuka tree which still stands. No 18 is Wekanui a cultivation belonging to Henare Turangi.

(Tairāwhiti Māori Land Court, 14 February 1893, Wairoa Minute Book No 7, pp.214-215).

*Kākā and Tuna*

Kākā were a food item as well as being valued as a weaving resource, especially the red feathers that are found on the underside of the wings. Their continuing abundance into the late 19<sup>th</sup> century can be deduced by a report in *The Wairoa Free Press* from their correspondent based at Te Awanui in the Waiapu area:

On the 26<sup>th</sup> ult. a large “Hakari” (feast) was held at Tapuaeroa, Upper Waiapu; for some months previously the natives of that locality had been busily engaged preparing for the auspicious event. Great numbers of pigeons, kakas, &c; had been killed and preserved in calabashes and an abundance of other food provided. ...the ostensible object of the meeting was the discussion of certain important matters affecting the welfare of the Ngatiporou. (Wednesday, October 24, 1877).

The claimants for the Whakakī block, which covered a large area of wetlands and lakes, named several places where eels were trapped:

Raeroa pa tuna belongs to Rapaia. ...Kohurupo is a pa tuna of mine & Tutaenui also. Tapauae is a pa tuna of mine & Paerua. Ngaawa a Taura was a pa tuna now it is cultivated by Horomona. ...Oteka is an eel fishing place. (Tairāwhiti Māori Land Court, 10 October 1894, Wairoa Minute Book No.8, p.192).

Eels were an extremely important food for our ancestors, and the people of the Whakakī and Iwitea areas continue to trap them and provide eels at hākari. A nick-name for the people of the area was kirituna, meaning the people or close relatives of the eel.

In the above-mentioned minutes of the 1893 hearing for the Mangapoike blocks, reference was made to Lake Mangatahi as a place where eels and maehe (the name for both a small freshwater fish and freshwater crayfish)

were caught. Best (2005, pp.95-100) provides an extensive list of names of eels, different types and different stages of growth, as well as describing the many methods and traps used to catch eels.

An article about the abundance of eels in the Whakakāi area appeared in *The Wairoa Guardian* in January 1911:

The Whakaki natives state that it is 45 years since the Whakaki lagoon has been in its present dried up state. During the last five days the natives have dug out with potato forks over ten tons of eels, which are being preserved in the native fashion for winter use.

In modern times however, Ngahiwi Tomoana of Ngāti Kahungunu gave evidence to the Waitangi Tribunal hearing on the WAI 262 claim that, because of degradation of waterways, overfishing and loss of habitat

In the past 20 years longfin eel stocks have diminished by 75% and ... could disappear altogether with in 10-20 years.

... If it were say a dolphin, whale or kiwi, that had lost 75% of its population in 20 years it would trigger a national crisis. Being only an eel it has no cuddly warm fuzzy appeal. As a cultural icon, it is second to none in my understanding. It was the operation control and management of the eel weirs and eel catchments that determined ownership or mana over tracts or blocks of land. Eels were one of the greatest sources of protein and as a result the command of the eel fishery was of the utmost importance.

... With the loss of management and control over the eel fishery, over 75 names for eels have been lost to us in terms of scientific knowledge and in language loss... Today all we know is tuna, tunaheke and ngoiro hao. (2001, pp.6-7).

The creeks and rivers on the Tutuotekaha blocks had plentiful supplies of eels, but the people who lived there also made the journey to their tribe's

coastal areas to gather eels at the appropriate time for harvest. Whakakī Lake, the largest coastal lake in Te Tairāwhiti, is part of those traditional areas and

comprises the last significant wetland of a system that ran for 32 kilometers between the Wairoa and Nuhaka rivermouths. (Palmer, 2008, p.1.)

Eels still appear in quantity in the Autumn months as they cross from the Whakakī Lake outlet to the sea. The Whakakī Lake owners have an extensive and very significant restoration and conservation programme for their lake which began in 1996. Two vital aspects of the restoration are that farm stock are excluded from the margins of the lake, and commercial fishing is forbidden. In 2007 the Whakakī Lake Trustees initiated a research project to record the mātauranga and tikanga (knowledge and customary practices) pertaining to the lake. Five names were given for eels:

- Pakangaua (shortfin; sexually immature; maybe either male or female)
  - Pakarara (shortfin; sexually mature ie migratory female)
  - Hao (shortfin; sexually mature ie migratory male)
  - Tangaehe (longfin; sexually immature; maybe either male or female)
  - Whakaahua (longfin; sexually mature migratory female).
- (Palmer, 2008, p.9).

### *Resources of the Forest*

Very brief references are often made in the recorded histories to other resources of the area. On Tutuotekaha No. 4 block, on a cliff at the junction of the Makaretu Stream and the Mangapoike River was a fortified pā of the Ngati Ruapani hapū (Lambert, 1977, p.209). Te Kawiti, chief of Te Uhi pā near Wairoa told of the death of one of his men, Koroiho, who

had been killed by the Ngati Ruapani tribe who lived at their *pa*, Whakapau-karakia, on the Tutu-o-te-kaha block. ...his servant had gone to gather bush berries when he was caught by the people of the land and killed by bashing his head on top of the root of a tree. It was on this occurrence that the tribal name Ngati-Kuru-Pakiaka (bashed on the root) was bestowed by Te Kawiti on his people, and is carried on to the present day. (Mitchell, 1972, p.137).

This region was covered in the forest that provided so much food and other resources for the people of Ngāi Tahu and its associated hapū. In 1990 a report was prepared on the remnant 202 hectares of primary forest that remained after generations of clearing and pastoral use of the rest of the Tutuotekaha blocks. The assessment by the Department of Conservation was to establish its biological conservation value as part of the process of setting this area aside under the Ngā Whenua Rāhui scheme. The native forest reserve covers parts of the Tutuotekaha A, 1B4, 1B5, 1B6 and 1B7 blocks. It consists mainly of either rimu/tawa forest or kānuka forest. The report notes that the sparse shrub and ground tiers “display low species diversity”, and that the rarity of epiphytes indicates a drier forest. In the rimu/tawa type, the minor canopy species include kōwhai and ngaio in the eastern part, and

mamaku in the damp, southern gullies; rewarewa on the higher ridges; and pukatea, hinau and porokaiwhiri on the alluvial terraces and lower slopes alongside the stream.

Of particular note are the emergent podocarps, mainly rimu but with occasional matai, kahikatea and totara. Emergent rimu is scattered throughout the forest but the other podocarps are restricted to the low terrace and adjacent sites. Many of these trees rise to over 30m tall, and have a diameter at breast height (dbh) exceeding 1m. (Department of Conservation, 1990, pp.2-10).

The report also noted the presence of New Zealand falcon and North Island weka in the area.

Discussions took place between the Department of Conservation (DOC) staff and the Anewa trustees about a Whenua Rāhui covenant. The trustees did not want to lock the land into the term preferred by DOC – ‘in perpetuity’ – as they felt this was inconsistent with their role as kaitiaki. They were determined not to relinquish control yet again over ancestral land, particularly not ‘for ever’. Eventually agreement was reached to create a Māori Reservation, which satisfied the conservation imperative while still allowing DOC to provide the funding for fencing and a pest control regime.

An area of 202 hectares of forest on Anewa was set aside as a Māori Reservation pursuant to sections 439(1) and (3) of the Māori Affairs Act 1953 in 1992

for the purposes of a place of historical, scenic and cultural interest and use, for the common use and benefit of the owners.  
(Tairāwhiti Māori Land Court, 3 December 1992, Wairoa Minute Book No. 90, p.38)

A corrigendum appeared in the *N.Z. Gazette* in 1995 stating that the correct area was 295 hectares. (23 November 1995, No. 137, p.4474).

The phrase ‘cultural interest and use’ is consistent with traditional land management. As this overview of land, water and forest resources shows, it was not the practice of our ancestors to lock the forest away, but rather to husband an area so that the resources would sustain the people. Kaitiakitanga is not synonymous with a conservation ethic that merely preserves an area and forbids use of its resources.

Tōtara (*Podocarpus totara*) was once plentiful in the area, and as well as that in the Anewa reserve, scattered younger tōtara are to be found along the margins of the Makaretu Stream. My father spoke of his brothers and father cutting tōtara trees for posts, and when we replaced some posts on Taiporutu in the early 1980s, he said they were undoubtedly from Rata

farm (Tutuotekaha 1B5B). Amongst the carvings of Te Poho O Tahu, the wharenuī at Iwitea marae, is a representation of the waka taua Te Toki a Tapiri. This huge waka was hewn by Ngāti Matawhaiti (a descendant hapū of Ngāi Tahu) from one tōtara tree, said to have grown on land close to the Tutuotekaha blocks. It is now exhibited in the Auckland War Memorial Museum after a long and complicated journey. (see Whaanga, M, 2004, pp.219-233). Lying on Korito Beach near Iwitea are the twelve tōtara tapu intended for the tabernacle envisioned by Te Matenga Tamati, prophet and founder of Te Kohititanga Marama, which was also known as the Church of the New World. (see Whaanga, M, 2004, pp.203-210). These huge logs, each of which is approximately 40 feet in length, were felled in the Ohuka area, part of the greater Wairoa region. They were carried down the Wairoa River in a flood in 1904.

Māori carved wharenuī, pātaka, waka huia and waka taua from tōtara, the wood being

most suited to carving. It is easy to work, whether you are sculpturing or applying the surface decoration. ...First-class totara heart cuts like cheese and is a delight to work with. (Mead, 1986, pp.212-213).

While northern tribes refer to the death of a leader as the fall of a kauri tree (*Agathus australis*), in the Tairāwhiti area the allusion is more often “Kua hinga te tōtara nui” (A mighty tōtara has fallen). There are a wealth of pēpeha that refer to the strength and value of the tōtara (see Mead & Grove, 2001). The colour of the timber, being deep red when cut, was also a valuable characteristic of this tree.

In his notes on cultivation, Best wrote that

When taro were stored in rua, totara bark, mahoe and tupakihi were used to cover them to prevent decay. (Ms-papers-0072-23, n.d. p.11)

Tōtara was extensively used into more recent times, because it is

straight-grained and easy to work; although rather brittle, it is one of the most durable timbers known. In the early days of European settlement totara was extensively used for house piles, house frames and for fence posts, telegraph poles, railway sleepers and bridges. Being resistant to teredo worm, it was also used in the piling of many early wharves. (Salmon, 1990, p. 65).

The species remaining in the Anewa covenanted forest area are indicative of what once grew and lived over much of the Tutuotekaha blocks. The larger trees – rimu (*Dacrydium cupressinum*), kahikatea (*Dacrycarpus dacrydioides*), and matai (*Prumnopitys taxifolia*) – are all valued timber trees, and all were occasionally used for making waka (Clarke, 2007, p.244). Rimu was considered too heavy, therefore was not as popular as tōtara for waka; and kahikatea, although lighter, was not as long-lasting. (Barstow, 1878, p.71). Best also notes that the people of Wairoa called their short paddle-shaped digging tools wauwau, and these “were often fashioned from *mapara*”. (2005, p. 67). Māpara is the hard, resinous heartwood of kahikatea.

Kahikatea resin was also highly prized as a colour base for facial moko. The resin was burnt in a small kiln, carefully collected, and blended with sap from the hīnau (*Elaeocarpus detatus*), māhoe (*Melicytus ramiflorus*), tī kōuka (*Cordyline australis*), kāretu grass (*Hierochloe antarctica*) or the kaoho shrub (*Solanum aviculare*), also known as poroporo, the blue-black berries of which made a dark juice. ...The generic name for this fluid was wai whakataerangi. Mixing the soot with the liquid resulted in a sticky black substance which was carefully kneaded into small palm-sized balls. These were lovingly wrapped in dried tūi (bird) or kiore (rat) skins and buried in a secret place. (Te Awekotuku & Nikora, 2007, p.34).

The fruit of rimu, kahikatea, and matai are also edible. Richard Taylor (1848, p.95) noted that the fruit of rimu was produced in abundance and

highly prized by early Māori; that of matai was “of an agreeable flavour”; and that of kahikatea was similar to the fruit of rimu. The resin of kahikatea and rimu was “both sweet and bitter”. Kererū (*Hemiphaga novaeseelandiae*, native wood pigeon) also enjoyed the fruit of kahikatea, thus the tree in early Winter was a favoured site for waka-kererū (bird-snaring troughs) (Clarke, 2007, p.222).

Tawa (*Beilschmiedia tawa*), hīnau, porokaiwhiri (*Hedycarya arborea*), nīkau (*Rhopalostylis sapida*) and māhoe are also present in this forest. Tawa drupes “were soaked in water, dried and pulped for food” (Salmon, 1990, p.106). Hīnau fruit

is a purple, ovoid drupe, up to 18mm long; it has a kernel like an olive which was used by the Maori people to make a floury meal which was baked and eaten as a bread. (Salmon, 1990, p.176).

The fruit of hīnau and porokaiwhiri are amongst those favoured by kererū, and the latter has the same effect on them as the fruits of the miro (*Prumnopitys ferruginea*) tree – they become sleepy and slow-moving. (Salmon, 1990, p.108). The heart of the nīkau tree was sometimes taken and blanched for food, but as this killed the tree, it was not commonly used. Colenso describes it as juicy, succulent and nutty.” (1880, p. 28).

The ancestors used māhoe with kaikōmako (*Pennantia corymbosa*) to make fire. In the early days of colonisation, māhoe was found to be suitable for charcoal “for the making of gunpowder.” (Salmon, 1990, p. 118).

From the time the Tutuotekaha blocks passed through the Land Court, Ngāi Tahu increasingly worked towards agricultural and pastoral uses for their land, and in some areas sold the native timber milling rights. (These areas will be covered in more detail in the next chapter).

The native species that grew most rapidly where land had been cleared of primary forest was mānuka (*Leptospermum scoparium*) and kānuka

(*Leptospermum ericoides*), both of which were considered nuisance species by pastoral farmers. Our ancestors used the wood of both for bird spears and waka paddles (Clarke, 2007, p.222). Small mānuka sticks were used as gratings in waka (Clarke, 2007, p.251), and leafy branches to construct windbreaks around the gardens. As well, old photographs show mānuka poles as transverse beams across the top of raupo and bark roofs, and as fencing around kāinga and gardens. (King, 1989, pp.55, 79).

In my childhood I remember using mānuka poles when bobbing for eels; the twigs were used to hold boned eels open as they dried, a process called pāwhara; and mānuka and kānuka were good hot-burning firewood. There were many uses for a strong, flexible and easily-obtained wood that, in its early stages of recolonising a patch of ground, grew as slender stems with few branches. In recent years this plant's value for medicinal purposes, particularly as the source flower for the highly-prized mānuka honey, has become well known. Mānuka bark is also used as a mordant by Iwitea Marae fibre artists and weavers, who use the bark in a pre-dye bath to help the final colours take better to the harakeke. (How, 2008, p.1).

*Raupō (Typha angustifolia) and Aruhe (root of Pteridium aquilinum)*

There are two other plants that grow on the Tutuotekaha blocks that need to be mentioned in the historical context – the raupō and the aruhe. Aruhe is fern root. Colenso (1880, p. 21) records that burning the fern in August improved the roots; that only kareao (*Rhipogonum scandens* or supplejack) and māhoe were used for firing the fern; and that the harvest was dug in spring and early summer. The roots were dried under shade, graded by size and quality, and carefully stored. When it was to be eaten, aruhe was

slightly soaked in water, roasted a little on the embers, and beaten soft with a stone pestle, or short hard-wood club, or one made from the bone of a whale (each properly made for the purpose), on another large smooth waterworn stone. ...In the roasting and

beating the black outer bark, or skin, peeled off. The better quality root so prepared was as soft as a bit of tough dough; it soon, however, became stiff and hard, when it snapped like glass or good biscuit.... In the spring of each year the succulent young roots (*monehu*), which rose out of the ground like asparagus, were also eaten fresh. ...They also used it in the summer season soaked, after pounding, in the sweet luscious juice of the berry-like petals of the *tutu* (*Coriaria ruscifolia*). (Colenso, 1880, pp.21-22).

Raupō had many uses as building materials for whare, both as thatching and walls. A raupō whare (photograph p.68) which stood on Tutuotekaha 1B3 until the late 1970s/early 1980s was believed to have been

built in the late 1800s by the Ringatu Church as a school-house. All the timber frames were made by hand, the walls and ceiling lined with raupo bundles and manuka poles and the floor was clay. (How, 2008, p.3).

It was also used to make mōkihi – a type of waka constructed of bundles of raupō. With wooden waka, the down of raupō, puarere, was used to caulk the holes where the lashings went through the waka, and some sails were made of raupō leaves. (Barstow, 1878, p. 75). Its pollen, pungapunga, was gathered in Summer, mixed with water into cakes and baked. Colenso (1880, p. 29) likened its taste to that of gingerbread. The white roots of raupō were also eaten.

A plant that was known to grow close to Iwitea Marae (but which has disappeared, probably because the area where it grew has been drained and converted to pasture) was rīrīwaka (*Scirpus maritimus*), a tall sedge which grows in the littoral region of wetlands and lakes. It has “globular nut-like roots” (Colenso, 1880, p.31) the kernels of which were gathered for food.



Raupo whare on Tutuotekaha 1B3

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Weavers with harakeke & whāriki  
at Manutai Marae, Nuhaka.

WAIROA MUSEUM  
KOPUTUTANGA O TE WAIROA

## CONTEMPORARY RESOURCES OF THE LAND

Today, with this land being the Anewa beef and cattle station, Ngāi Tahu very rarely visit their ancestral lands to gather its resources. However, there is a very vibrant and dedicated group of traditional and contemporary artists based at Iwitea Marae (all descendants of the original owners of the Tutuotekaha blocks) who use plants for weaving and plaiting that are known to grow on Anewa (although their location is too remote, therefore the artists use easier-to-access sources).

Foremost amongst these is the epiphyte kiekie (*Freycinetia banksii*), which is highly-prized for making fine kete and whāriki. It generally grows in the forks of tree branches, but can also be found growing along the ground.

Kiekie growing in the darkest parts of the forest produces a blade with no spots or blemishes. Kiekie is harvested by placing your hand below the growing crown of leaves then gently bending the stem until it breaks. This traditional form of harvest allows the plant to branch naturally at the break point. If cut with a blade the stem rots. Kiekie is a favoured item for special kete, fine whariki, hats and other items. Its soft, pliable and easily controlled form makes it popular with plaiters. ...Kiekie is a favoured material...as it is able to be split very fine while retaining its strength. (How, 2008, p.6).

Tāwhara, the flower bracts of kiekie, were gathered in Summer in large calabashes, and Colenso records that they were fleshy, sugary and delicious when fresh. (1880, pp.31-32). The actual fruit of the kiekie plant was known as ureure and ripened in Winter, thus the plant yields edible fruits twice in the year. The fruit of kiekie is still relished, although it needs to be gathered as soon as it is ripe, otherwise rats will eat the fruit on the plant. (Walker-Robinson, 2011).

For our ancestors, probably the single most important and versatile plant was harakeke (*Phormium tenax* commonly called flax) from which they made clothing, whāriki to cover the floors of dwellings, kete to carry goods, the lashings for buildings and waka, rongoā to treat many ailments, fishing lines, nets and sails. Examples of whāriki and kete can be seen in the photograph of weavers at Manutai marae on page 68. They have bunches of prepared harakeke on the line behind them.

Harakeke grows wild along the banks of the Makaretu River which forms one of the boundaries of the Tutuotekaha blocks. However, our weavers have favoured named varieties of harakeke which they grow around their homes or in the pā harakeke next to Iwitea marae. These plants have been grown thus for generations, and different varieties are used for different purposes. Raniera Turoa, in putting the claim for Ngai Tahu and Ruapani for the Mangapoike blocks in 1893, marked on the plan a place called Hurukino where there was “a cultivation & cultivated flax”. (Tairāwhiti Māori Land Court, Wairoa Minute Book No. 7, 14 February 1893, p.214). The cultivated flax spoken of was a pā harakeke.

Harakeke was also one of the earliest trade goods, its strong fibre (muka) much sought-after particularly for marine cordage. The government in 1870 appointed eight commissioners to gather information on the growth and culture of flax, manufacturing processes and machinery, and the cost of establishing a mill and producing exportable product. Hawkes Bay was named as one of the best areas to procure seed. The land purchase agent Samuel Locke recorded that the people of the East Coast identified a flax with scarlet margins, known as Tapoto, Takirikau, Tihore or Takiri, as the variety producing the highest quality of fibre. The flax known as Oue and Wharanui he rated as next in value. (AJHR, 1870, Vol III D-No 14. p.9).

A flax mill was established near Iwitea Marae in 1881 by Hunter Brown, who was the owner and lessee until 1918. The steam boilers were fired with the matai being cleared from the hill country to make way for grass for pastoral farming.

Harakeke leaves were processed through a machine which tore the muka out of the leaf. The muka was then washed and scutched, which was a beating process to soften the fibres. Then the muka was dried in open fields, baled and pressed before loading on to boats on the Wairoa River for transporting to Napier. (How, 2008, p. 2).

Pita Walker-Robinson, one of the Iwitea weavers, chooses his harakeke plants for their muka content. Walker-Robinson's experience has been that the same harakeke bush can vary in the amount of muka it produces depending on the situation and type of earth in which it is grown. (Interview, 31 May 2011).

Muka produced by experts is far superior to that produced by machines. A mussel shell, called a mākoī, is used to extract the muka, which is then twisted into hanks, soaked in water and beaten with a patu-muka.

Once all the water has been beaten out, the muka bundle is unwound, hand-rubbed till almost dry then re-wound with the process repeated twice. Once this is done the muka becomes soft, silky and wavy. (How, 2008, p.4).

In the exhibition 'Raranga... Whatu... Whiri...' at Wairoa Museum Kopututanga O Te Wairoa in 2008, a tū-karetu was exhibited

made from braided muka, incorporating leaves of karetu – a sweet smelling indigenous grass. Worn around the waist by women, bunches of karetu would be threaded through the many plaits at the front of the garment and left to hang over their privates. This was the minimal form of dress for women before the arrival of European apparel. (How, 2008, p.7)

Nigel How is one of the fibre artists from Iwitea who works extensively with harakeke. His favoured varieties are Te Rauhina and Kauhangaroa, which he uses for fine kete; Makaweroa, which has really long straight fibres for the aho (wefts) of cloaks, and Tāpoto for the whenu (warps) of

cloaks; Tākirikau for its long fibre which is easy to strip from the leaves; and Arawa and Ruawai. He also uses a variety named Paoa because it dries to a golden colour like pingao (*Desmoschoenus spiralis*). (Interview, 1 June 2011).

Arawa and Ruawai are also excellent muka harakeke; Arawa is “especially good for ladies piupiu because of the length” and Ruawai is “prized for its long, white silky fibres of superior quality”. (Scheele, 2005, pp.10, 20).

Pingao is a plant that grows close to the sea, and is being replanted on the dunes as part of the Whakakī Lake and wetlands restoration project. It is prized by our artists for its golden colour, and “is the only material whose colour cannot be improved by dyeing and is thus never altered”. (How, 2008, p.3).

Other weaving materials that are known to grow on the Tutuotekaha blocks are lichen – used for dyeing fibre - and the bark of houheria (*Hoheria populnea*), more commonly known as lacebark.

It is ready to harvest when the bark starts to peel, and is gathered in the Summer. The bark strips are then soaked in water until the layers separate. (Walker-Robinson, 31 May 2011).

The farm at the centre of the application to the Māori Land Court (see Chapter 7) was known as Rata Farm, so named for a large rātā (*Metrosideros robusta*) tree that grew in the area now included in Anewa Forest Reserve. Rātā timber is close-grained, hard and strong, and in the past was sometimes used in ship-building. (Salmon, 1990, p.156)).

The aerial roots of the rātā vine (*metrosideros albiflora* and *metrosideros perforata*) were called akatea, and the 2008 Wairoa Museum exhibition of weaving, plaiting and braiding included a hīnaki made from akatea (photograph on page 73 and 74), woven by men from Iwitea. (How, 2008, p.3). The aerial roots of kiekie were used in a similar manner. (Walker-

Robinson, 31 May 2011). Another plant that grows in the Anewa reserve is supplejack, which also was used to manufacture hīnaki and crayfish pots.



Hīnaki made by Manuka Toataua from akatea  
Acquisitioned 1978

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KOPUTUTANGA O TE WAIROA

## SUMMARY

This exploration of the resources that grew on the Tutuotekaha blocks is far from exhaustive. The range of birds that were once abundant in the area has not been examined, nor the other fauna that our tīpuna would have harvested or had knowledge of. Neither have the uses of the plants for rongoā been explored. Each of these bodies of knowledge are so extensive as to merit entire theses in themselves.

The intent of this chapter was to provide an overview of some of the resources that would have been used in earlier times, based on what is known to remain in the small area of primary forest now on the land. It can be seen that the changing of the landscape from dense forest to mostly

pasture and scrub has dramatically reduced the resources – whether food, timber, building or artists’ materials – available to the descendants of the original inhabitants of this land. And for those of Ngāi Tahu ki Tutuotekaha who have maintained the knowledge of traditional fibre arts and practice, the resources that do remain on this ancestral land are far too remote and difficult to access.



Hīnaki of akatea made by Haturu Puhara & Johnson Robinson  
under the tutelage of Manuka Toataua.

Acquisitioned 1978

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KOPUTUTANGA O TE WAIROA

## SECTION II

FROM GARDENERS AND GATHERERS TO AGRICULTURAL  
SHAREHOLDERS

ko tana i pai ai kia riro te raorao katoa i a ia, kia tere matou ki runga i nga maunga; heoi ka mea atu matou me waiho ma te Kooti Whakawa e whakaora i a matou, katahi ka puta mai tana ki ki a matou, ka mauria mai e ia te Kooti Tango whenua.

What he wanted was, to get all the level country, and we might perch ourselves on the mountains. Thereupon we told him it must be left for the Land Court to give us relief; then he replied, he would bring the land-taking Court. (Kohere, AJHR, 1867, G-1 pp.9-10)

The economic conditions compelled the Maori to regard the cultivation of land as the prime factor in his maintenance. They forced him to take stock of his land resources and to consider ways and means of re-establishing himself thereon.

(AJHR, 1931 Vol II G9 p.viii)

## CHAPTER FOUR

### FROM TRADITIONAL TENURE TO AGRICULTURAL SHAREHOLDING

#### WHENUA, WAR and SOCIETAL CONTEXT

The area of land central to this thesis is situated in the Wairoa, northern Hawke's Bay area, bounded by the Makaretu Stream and accessible by the Hereheretau Road. The original name of the block was Tutu o Te Kaha, shown on most records as Tutuotekaha. Two of the affiliated marae are Iwitea and Whakaki, and the hapū cited for the claim was Ngāi Tahumatua, also known as Ngāi Tahu.

The Tutuotekaha blocks came before the Native Land Court in 1868, towards the end of a decade that had been tumultuous for Māori throughout the country. On the national scene, 1860 saw the outbreak of the wars that were to result in extensive confiscation of some of the most fertile and easy-contoured Māori land in the country.

The desire for more land for Pākehā settlement in the Taranaki region and Māori resistance to Government attempts to purchase the same, came to a head in 1859 when local chief Te Teira sold land at Waitara. The sale was opposed by senior rangatira Wiremu Kingi Te Rangitake and other owners. Governor Browne claimed,

contrary to all evidence, that Kingi had not asserted a customary interest in the land and was merely attempting to assert a chiefly veto as part of a wider 'land league' and in defiance of the Queen's sovereignty. His decision to push through with the survey of the block under armed guard raised fundamental issues around whose will would prevail, helping to ensure the dispute did indeed become a question of sovereignty. Browne's successor, George Grey, eventually admitted in 1863 that the Crown had been in

error in persisting with the purchase in the face of opposition from many owners but not before the purchase had provoked the first Taranaki War. (O'Malley et al, 2010, p.94).

The proximity of the Waikato region to Auckland and its geography made it an irresistible target for the settlers. The appeal of the Waikato land was noted by Governor Grey in 1849, when he wrote to Earl Grey of the “extensive and fertile districts of the Waikato and Waipa” (quoted in O'Malley et al, 2010, p.81) noting the extent of wheat crops, orchards, corn and potato cultivations and the numbers of horses and cattle. Māori entrepreneurial initiatives were flourishing in these areas.

Grey returned to New Zealand and a second term as Governor in 1861. He sought to break the strength of the Kingitanga movement set up in 1856, and issued a notice to all Māori living north of the Mangatawhiri, “the Waikato frontier”, to take an oath of allegiance to Queen Victoria, or leave the district. (Pugsley, Barber, Mikaere, Prickett & Young, 1996, p.33). Most declined to take the oath and moved to be with their relatives south of the Mangatawhiri. Government troops invaded the Waikato in July 1863. Seven months later, a settler wrote

The Ihumatau natives ...were good neighbours and very much respected by the settlers around; nearly all their houses and fences have been destroyed; their church gutted, the bell, sashes, door and Communion Tables stolen and the floor even torn up and taken away; and their land is to be occupied by Mr. Russell's brother-in-law. (Pugsley et. al, 1996, p.33).

Te Tairāwhiti was much further from the pressure centres of settler population, but Māori there were very aware of events in other parts of the country. They had not joined in with the Waikato King movement, although they had discussed appointing a king of their own but did not reach any agreement on the subject. The situation in the Taranaki area was also widely discussed.

Herbert Wardell, Resident Magistrate appointed to the Turanga area (now known as Poverty Bay) in 1855, found upon his arrival in the district that Turanga Māori

denied the right of the Government to send a Magistrate among them, on the ground that, as they had not sold their land to the Queen, the Government had no authority over them. “We,” they said, “can be our own Magistrates; we do not want any sent by the Queen or the Governor; they have nothing to do with us; let them attend to their own people.” In fact, they regarded the Queen as the head of a people occupying isolated portions of territory in the Island; with whom they had occasional intercourse; but as possessing – as of right – no authority over them. (AJHR, 1862, Session I, E-7 pp.30-31).

Wardell quoted some of the speeches made at a hui on 21 May 1858, attended by representatives of all “the Tribes of this neighbourhood ... and by their principal men. there were about five hundred present.” (Wardell, 12 June 1858). Among them were two Native Assessors, rangatira who Wardell had appointed “to assist him in cases in which Maori were involved”. (Waitangi Tribunal, 2004, p.48).

Paratene Poroti said; “We are not the remnant of a people left by the Pakeha; we have not been conquered: the Queen has her island, we have ours; the same language is not spoken in both: ...”  
Kahutia said: “Let the Magistrate be under the Queen if he likes; we will not consent to Her authority; we will exercise our own authority in our own country.” (AJHR, 1862, Session I, E-7 p.31).

The Native Land Court, established in 1862, had not yet reached the greater Tairāwhiti area, but in time the workings of this court were to completely change the way Māori throughout the country held their land and exercised their rights to tribal resources, and concomitantly to have an equally devastating effect on Māori society and tribal economies. (The Native/Māori Land Court is examined more fully in Chapter 3).

1865 saw the arrival in the Wairoa and Tairāwhiti regions of the Pai Marire faith, so called because Te Ua Haumene, the prophet from Taranaki, gave instructions to his followers to be “good and peaceful”. (Elsmore, 1985, p.110). It was often referred to at the time as Hauhauism. Te Ua’s message of peace was eroded as conflict between Māori and Pākehā, particularly that over land, escalated. Following the killing in March 1865 of the Rev Carl Volkner at Opotiki at the instigation of Te Ua’s disciples Hepanaia, Patara, Raukatauri and Kereopa Te Rau, Te Ua became more of a figurehead, and the disciples the effective leaders. (Elsmore, 1985, p.110). When the Pai Marire followers came to the Wairoa region, they received a very mixed welcome.

The feelings of many Wairoa and Mahia Māori are illustrated in a letter from John Campbell, a whaler who turned to storekeeping at Kinikini on the Mahia Peninsula (Lambert, 1977, p.371). The letter was to Samuel Locke (a land purchase officer), dated 11<sup>th</sup> April 1865.<sup>6</sup>

Dear Locke,

We had a great meeting at Oraka yesterday the Hauhau on the one side and Ngatihikairo & Naitu on the other side, the first thing that the Hauhaus done was to run round a stick with 2 pieces of calaco on it No 1 [illustration of flag] No 2 [illustration of flag] the X in No 1 is red No 2 X is black, they got a very cool reception from Te Naitus old toiroa is a staunch friend of the Government he told his people not to have anything to do with them to give them a few kits potatoes and send them on the road. the party that took the most manly part was Ihaka Makahui and Hone te wai nohu from Mohaka they really deserve great praise for the part that they took Ihaka told them that there atua was an imposter and if the said atua was maroro to come and beat him for he called him (the atua) a pou tutae as for Hone of Mohaka he told them to go quietly home by the Wakaki in land if they went to Te Wairoa and crossed the

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<sup>6</sup> The letter has been transcribed with original spelling, grammar and punctuation.

river that they would be shot for the land belonged to the Queen and the men to the Government and that he (Hone) would one of the party to do it. I think very little of Te Teira Toheriri in this affair – today they start for Nuhaka and all our Natives from here will follow them to join Ihaka Whanga they have a white man with them and I hear that Ihaka Whanga intends taking him away from them either by fair or foul means if so there will be a row at Nuhaka

I remain Dear Sir

yours truly

John Campbell

ps please to give his Honour the Superintendent the news.

Ngāti Hikairo and Ngāti Tu are two hapū of the Mahia area. Te Toiroa was a well-known seer of Mahia who saved the infant Whaanga (later Ihaka Whaanga) from the massacre in which his father Te Rataau, all his older brothers and many of his whānau were killed. Ihaka Makahue was from Mahia, and Hone Te Wainohu from the Mohaka area. The reference to Whakaki was because of Pā Tokitoki, a musket pā built on the Whakaki block during this time, specifically in response to conflict with the Hauhau. Donald McLean was the Hawke's Bay Provincial Superintendent referred to.

The Pai Marire faith was however much better received in the Turanga area.

A majority of Turanga Maori converted to the new faith, promising as it did to protect their lands and independence against an apparently aggressive Crown. This caused tension in the local community – which numbered around 1500 Maori and somewhere between 60 and 70 settlers – and some initial panic among settlers. .... The tension was exacerbated by sustained conflict, which broke out between Crown and Pai Marire-aligned Ngati Porou hapu, further up the coast. (Waitangi Tribunal, 2004, pp xv – xvi).

The Pai Marire converts included Te Aitanga-a-Mahaki and most of Ngāti Maru. (Binney, 1995, pp.41-45).

It was not the Pai Marire adherents, nor the Ngāti Porou Crown force (which arrived in Turanga in October 1865) that brought war to the Turanga area, but the actions of the Napier-based Crown agent Donald McLean. McLean

decided to grasp the opportunity to use the Ngati Porou and colonial forces then in the district to destroy the Pai Marire influence along the East Coast and, in the process, break the independence of the Turanga tribes.

McLean arrived in Turanga on 9 November with additional Ngati Porou and colonial troops. He immediately issued a set of 'terms' to Turanga Maori. They were to surrender all of their arms, take an oath of allegiance, and give up all non-Turanga Pai Marire among them. In a letter prepared in the name of Raharuhi Rukupo, a leading Turanga rangatira, and signed by him and 15 other chiefs, the terms were accepted. The only proviso was a request that McLean personally visit them to 'make final arrangements' and that they be given an opportunity to respond to the allegations of wrongdoing contained in the Crown's terms. McLean refused to meet and talk. Rukupo relented and came to McLean to plead his case. He failed. On 16 November, McLean left it to the field commander to commence the attack.

On 17 November 1865, Crown forces attacked and besieged the Pai Marire defensive position at Waerenga-a-Hika, just inland from modern-day Gisborne. Around 800 Maori, including 300 women and older children, were in the pa at the time of the attack – almost the entire population of Turanga at the time. The pa fell after five days with those inside either escaping or surrendering to Crown forces. Seventy-one defenders were killed during the seige. Crown forces suffered about 11 casualties. (Waitangi Tribunal, 2004, p. xvi).

Anaru Matete and a large group of the Waerenga a Hika defenders managed to escape and went to the Wairoa area. In December 1865, McLean ordered Major James Fraser to Wairoa, where, with the co-operation of friendly natives, he was ordered to reduce “the Hauhaus of upper Wairoa together with those from Poverty Bay to submission.” (McLean to Colonial Secretary, 16 December 1865).

On Christmas Day 1865, a Pai Marire camp at Omaruhakeke, about 12 miles up the Wairoa River, was attacked by government forces and their Maori allies, mostly consisting of lower Wairoa ‘loyalists’ and members of Ngati Porou. (O’Malley, 2009, pp. 209-210)

Amongst those loyalists was Ihaka Whaanga of Te Mahia, and people of the Iwitea and Whakaki areas. In the Māori Land Court minutes for the Whakaki blocks (which had many owners in common with the Tutuotekaha blocks) the claimants refer to Patokitoki, a musket-fighting fortification that was built “during the Hauhau troubles”. (Tairāwhiti Maori Land Court, 1894, Wairoa Minute Book No. 8 p. 192).

The loyalist faction who fought against the Pai Marire at Te Kopane on 13 January 1866 included Ihaka Whaanga and Kopu Parapara. They led a force of 200 Ngāti Kahungunu alongside Major Fraser and his men, and Ropata Wahawaha with his 150 Ngati Porou. Whaanga was shot in the hip, and his wife Te Paea Rerekaipuke picked up his carbine and continued the charge.

One of those arrested supposedly because of his presence at Waerenga-a-Hika in 1865 was Te Kooti Arikirangi Te Turuki, who, with 112 other men, was transported to Wharekauri (the Chatham Islands).

There were clearly a number of settlers and Turanga Maori leaders who were happy to see him kicked onto the boat. But he himself always protested his innocence. There seems no question that he was not a convert to the Pai Marire religion. That he acted out of kinship loyalties and a growing commitment to the cause of the

land of Turanga, together with a concern for his younger chief, Anaru, seems very likely. It is certain, however, that he was never brought to trial for any of the charges made. It was abuse of power which finally engendered Te Kooti's imprisonment – and his subsequent actions. (Binney, 1995, p.57).

Within a year another 73 men were imprisoned and exiled after conflict in Hawke's Bay. Some of the prisoners' wives and children were allowed to join them, and the numbers at Wharekauri increased to 300. None of the prisoners were ever charged or given a trial in relation to the battle at Waerenga a Hika. (Waitangi Tribunal, 2004, pp xvi - xvii)

Te Kooti became a hugely important historical figure – prophet, visionary, martyr, freedom fighter, composer, artist, ruthless Māori leader are all epithets that have been appended to his name. He was a complex figure, living in extraordinarily turbulent times. As the author of his biography wrote “There can be no single truth about such a man” (Binney, 1995, p.1).

On July 9 1868 Te Kooti and his people, having captured the *Rifleman* and escaped from Wharekauri, landed at Whareongaonga just South of Muriwai. Te Kooti avowed that he wished only to lead his people peacefully through to the Waikato to resettle. Reginald Biggs, resident magistrate at Turanga and commanding militia officer, and Captain Charles Westrupp lead a party of volunteers against Te Kooti and his people. Te Kooti observed the militia from the top of Taumutu (photo p.84), the prominent maunga immediately behind the Paparatu Station homestead.

On July 20<sup>th</sup> 1868, the first engagement in what was to become a bitter four-year long war took place at Paparatu.



Paparatu woolshed 1967.

MERE WHAANGA

Te Kooti's lookout on top of Taumutu was on the highest point on left.



Site of battle 20 July 1868.

LIZ GREENSLADE

The pursuit of Te Kooti ranged over a vast area of the North Island of New Zealand. Te Kooti's followers were called the Whakarau, translated as "exiles or unhomed". (Waitangi Tribunal, 2004, pp xviii).

Throughout the period of military action against the Whakarau, the Crown continued to pursue the cession of land in Turanga in order to punish Turanga Maori for their rebellion. Immediately after the attack at Matawhero, in November 1868, the Government Minister JC Richmond warned Turanga Maori that unless land was given up the Crown would withdraw its military protection, leaving the area to be invaded by either Te Kooti or Ngati Porou. This threat convinced 279 of those Maori who remained (and who were not either with Te Kooti or his prisoner) to sign a deed of cession.

By the deed, the signatories declared their loyalty to the Crown and transferred to it some 1.195 million acres of land. (Waitangi Tribunal, 2004, pxx).

The societal context in which Māori were having to prove their claims to their ancestral lands is critical to the way that evidence was sometimes presented in the Native Land Court. In the case of the Mangapoike blocks (now Te Whakaari Māori Incorporation), of which Papatatu Station is a part, the main claimant Raniera Turoa said:

At Hurukino in a hollow tree there is a case of pipes and shot left there by Hoani Haraki, and Otene Pitau used to get shot there, being told to do so by Henare Turangi. All the time my hapus were on this land no one from Wairoa ever went to disturb them. In 1868 Henare Turangi lead the European soldiers against Te Kooti's people to Hurukino. (Tairawhiti Māori Land Court Wairoa Minute Book No 7, 1893, p 215.)

This evidence of course was given more than twenty years after the Crown had begun their processes of acquiring land by 'deed of cession' (Williams, David V, 1999, p.46) – which amounted to confiscation - of

land belonging to ‘rebels’ in the Turanga district. (See Waitangi Tribunal, 2004, Vol 1, p. 256).

But there is no doubt that in 1868 Māori were very aware that being labelled a rebel would mean their land, and often that of hapū members who had not been ‘rebels’, could be taken by the Crown. Only one year earlier an estimated 1,500 to 2,000 (Lambert, 1977, p.408) Wairoa Māori had met with Government officials at Te Hatepe in Wairoa in April 1867 to

discuss issues concerning land arising from the Pai Marire war. .... Some Wairoa chiefs ... challenged the government’s motivation to confiscate to punish Pai Marire, as their punishment had already been exacted within the tribe. Kopu ... stated that the military conquest of the Pai Marire was sufficient punishment. And Tamihana noted that since Maori did most of the fighting against the Pai Marire, the government’s reasons for confiscation were not justified. Tamihana Huata, Hapimana, Kohea, Mere Karaka and others were also concerned that the land to be taken was not solely that of Pai Marire adherents, but included their interests as well. .... Although the government had a policy of voluntary cession and apparently went to Te Wairoa in April 1867 to negotiate one, once Maori opposition to aspects of McLean’s proposal was voiced the government made it clear that the decision to confiscate was not negotiable. (Gillingham, 2004, pp.196-197).

An example of arrangements being made between loyalists and those who would have been excluded from land owner lists, or worse, had their hapū land confiscated, was given in 1899 in regard to a block of land in the Mahia area. Wi Paetarewa was putting forward his evidence that the grantees in the Kaiwaitau block were trustees, and that some of the original people who should have been included were not because of being members of the Pai Marire or Hauhau.

I was in Wairoa when this land was before the Court in 1868. I asked that my name should be included in the title. Ihaka said you have been in rebellion your name had better not appear he said the same to my brother. My brother and I consented. Judge Munro told us it did not matter so long as we were represented in the Grant. Several of the grantees were nearly<sup>7</sup> related to us.

Judge Munro said that the persons in the title were holding the land for their hapus. (Tairāwhiti Māori Land Court, 8 September 1899, Wairoa Minute Book 11, p.307).

When cross-examined by Ihaka Whaanga (son of the Ihaka Whaanga earlier referred to), Paetarewa said

Your father told my brother and I that he would hold the land for us as we were hauhau. Ihaka was nearly related to me. (Tairāwhiti Māori Land Court, 8 September 1899, Wairoa Minute Book 11, p.308).

This statement was disputed by Te Rina Whaanga (a daughter of the original Ihaka Whaanga) who told the Court that “I did not hear Ihaka say what Wi Paetarewa has stated he said” (Tairāwhiti Māori Land Court, 8 September 1899, Wairoa Minute Book 11, pp.309 -310). The Court later concluded that

The persons objected to by Ihaka Whaanga, on behalf of the nominal owners, have not proved their right to be included in the title to Kaiwaitau. (Tairāwhiti Māori Land Court, 8 September 1899, Wairoa Minute Book 11, p.??)

A map of the conflict in the Wairoa and Poverty Bay districts (page 89) shows that the Tutuotekaha blocks were surrounded by areas of war that would have involved whānau members of the claimants and closely related hapū. The Court sitting for Tutuotekaha took place only two

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<sup>7</sup> ‘nearly’ in this case means ‘closely’.

months after Te Kooti and his followers had landed at Whareongaonga and had fought the militia at Papatu.

Ahipene Tamaitimate, who put the claim for the Tutuotekaha blocks through the Land Court, was also a claimant in September 1870 for Tukemokihi No 2, one of the areas of land close to Iwitea Marae (the marae to which many of the owners of Tutuotekaha affiliate). Evidence of involvement in the fighting in the Wairoa district was given by Te Kune.

I know that Pera Tataramoa's name was in the Grant. I know for certain that he is dead. He died at te Wairoa, at te Marumaru he was shot by the Hau haus in fight he was my brother by the same father and mother.

(Wairoa Minute Book No. 1, 28 September 1870, p.143)

His statement was corroborated by another witness who said Pera's death occurred in March 1870. (Wairoa Minute Book No. 1, 28 September 1870, p.144)

Therefore, when the people of Ngai Tahumatua came before the Māori Land Court in 1868 to put their claims for the Tutuotekaha blocks, they were beset not only by the changes in tribal tenure of land occasioned by the laws relating to Māori land and the processes of the Land Court, but also by the wars surrounding them, at the heart of which was conflict over land and the very structure of Māori society.



Sites of conflict in Wairoa to Turanga area. GOOGLE EARTH 2012

Adapted from GOOGLE EARTH (2012). Image downloaded 21 October 2012

- 10 April 1865: Hauhau met with Ngāti Hikairo & Ngāi Tu at Oraka.
- 17 November 1865: Crown forces attacked Pai Marire at Waerenga a Hika.
- 12 December 1865: Crown forces & Māori allies attacked Pai Marire at Omaruhakeke, now known as Marumaru.
- 9 July 1868: Te Kooti & his people landed at Whareongaonga.
- 20 July 1868: Militia fought Te Kooti & his people at Paparatu.
- 17 September 1868: Claim for the Tutuotekaha blocks (outlined in red) before the Native Land Court.
- Pā Tokitoki: A musket pā on the Whakaki block built “during Hau Hau troubles.”

## HISTORICAL OWNERSHIP OF THE LAND

In September 1868, the Tutuotekaha block of 10,060 acres was subdivided into four. The main ancestor of the block was named as Matuwahanga, also spelt Matuahanga. Ahipene Tamaitimate put the claim, naming those who should appear as owners on the Crown Grants for each of the blocks.

Ahipene Tamaitimate (sworn). I belong to Ngati Tahumatua & reside at Tutu o te Kaha. I recognise the land shown on the plan before the court. The land belongs to me and to some others of my tribe. We derive our title from our ancestor Matuwahanga.

(Genealogy given) These ancestors I have named have occupied the land from the time of Matuwahanga. Some of our tribe are living on it now. The descendants of these ancestors are the persons now claiming. Our desire is to have four Crown Grants from this piece. (Tairawhiti Māori Land Court Wairoa Minute Book No 1, 17 September 1868. p.36)

For each of Tutuotekaha numbers 1, 2, and 3, Tamaitimate named ten owners. For Tutuotekaha No. 4, he named eight. (Full minutes in Appendix I). The surveyor, Mr Geo Burton, attested that “ a great many natives” accompanied him to point out the boundaries – all, he thought, of the claimants. (Tairawhiti Māori Land Court Wairoa Minute Book No 1, 17 September 1868. p.37.) Burton’s name appears on the plan of the blocks (ML 843), along with the names of the principal applicants. The Tutuotekaha block was divided thus: Tutuotekaha No 1, Raniera Te Heuheu and others 3440 acres; No 2, Raniera Tamaitimate and others 2670 acres; No 3, Tiopera Kaukau and others 2865 acres; and No 4 Paora Pere and others 1085 acres.

Of the sites named on the plan, Puketapu is the only one to appear on a recent map (Department of Survey and Land Information, 1996, Infomaps 260-X18 and 260-X19). Other boundary points named are Te Whakaetanga, Taekeroa, Taerewa, Mahukanui, Ko Whakaroro, Te

Pukepuke and Whakaumu. There is a point marked on the 1996 map as Whakaumu, but it is North-East of the Kauhauroa stream, whereas Whakaumu on the 1869 plan is South of both the Kauhauroa and Maromauku Streams which are natural boundaries of Tutuotekaha No 3.

The Makaretu Stream forms a natural boundary to the North of the Tutuotekaha 1 and 2 blocks. It also forms a large part of the boundary of Tutuotekaha Number 4 to the point it joins the Mangapoike River.

Tutuotekaha No 4 was farmed from 1897 to 1912 by Porikapa Taepa. Having reached the age of 72, Taepa felt unable to continue farming and wished to dispose of his improvements before they deteriorated and lost value. Other owners were unable to purchase his interests in the block, so Taepa applied to the Tairāwhiti District Māori Land Board to transfer his lease to Henry Storey Hutchinson. Hutchinson was granted a lease of 23 years at a rental of £109.7.6 per annum. (Berghan, 2000, p.445).

Tutuotekaha No. 4 was farmed for many years as Te Rere Farm, but is now part of the Te Whakaari Māori Incorporation (formerly Mangapoike A & B blocks). On this block was Whakapau-karakia, the fortified pā of Hukinga of Ngāti Ruapani, sited on a cliff at the junction of the Makaretu Stream (identified earlier as the Northern boundary of the Tutuotekaha blocks) and the Mangapoike River. (Lambert, 1977, p.209).

In the *Hawke's Bay Herald* on 17 July 1893 Baker & Tabuteau land agents advertised several blocks of land in the Wairoa district for sale by auction. Among these was Tutuotekaha No 3, described as

Very good hill Sheep Country, with sufficient flats for a homestead. About 1000 acres of bush land have been cleared and grassed. The rest of the block is partly improved, but is chiefly fern and swamp land. (p.3)

Thus Tutuotekaha No 3 passed out of Māori ownership. Tutuotekaha No 4 became part of the 30,000-acre Te Whakaari Māori Incorporation, the principal lands of which were originally the Mangapoike A & B blocks.

Mangapoike A block (24,858 acres) was claimed on behalf of the hapū Ngāi Tahu and Ngāti Ruapani. When the 1893 Māori Land Court hearing concluded, Mangapoike A had 186 owners listed. Although the size of the block was reduced to 16,377 acres in 1896 when 8,293 acres was defined as Crown interest, Mangapoike A has remained in a form approaching hapū ownership – i.e the individuals listed as owners were all descendants of the eponymous ancestors of the named hapū, and since the 1893 Māori Land Court hearing the land itself was never physically divided into small blocks of land that could be considered whānau holdings<sup>8</sup>, unlike Tutuotekaha No. 1. The case study for this thesis is centred on a subdivision of Tutuotekaha No. 1 and its later amalgamation with the Tutuotekaha No. 2 block.

## TUTUOTEKAHA NO 1

The owners Ahipene Tamaitimate named for Tutuotekaha No.1 were Raniera Te Heuheu, Rawhira Timo, Kepa Hoepo, Pera Pere, Enoka Taiepa, Wikitoria te Nehu, Harata Mariko, Te Teira Tinirau, Nhipora Te Waka, and Raiha te Koha.

Rawhira Timo was the maternal great-grandfather of my father Te Hore Epanaia Whaanga. Rawhira Timo's son Puhara Timo succeeded to his interests in Tutuotekaha No. 1 in 1886. In November 1890, Tutuotekaha No.1 was subdivided into Tutuotekaha 1A and 1B.

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<sup>8</sup> The term whānau holding is here used for a block of land in which all the shareholders are members of a whānau, and which is occupied, managed and farmed by one or more of the whānau members.

1A was 777 acres 1 rood<sup>9</sup> in area, and sold to Europeans in December 1890. Fanny Rose Porter bought the shares of Pera Pere (310 acres 3 roods 24 perches<sup>10</sup>); James Henry Coleman purchased the shares of Hoani Ngarara and Anaru Patea, successors to Te Teira Tinirau (155 acres 1 rood 32 perches), and J.H. Brown bought the shares of Raniera Turoa alias Heuheu which totalled 310 acres 3 roods and 24 perches. (Tairāwhiti Maori Land Court, Gisborne Minute Book No. 21, 25 November 1890, p.165).

In 1894 Tutuotekaha 1B was further subdivided into four blocks.

Mere Horomoana and others petitioned the Native Land Court in 1911 to look into the ownership of Tutuotekaha No.1. Judge Jones reported to Jackson Palmer, then Chief Judge of the Native Land Court, on the orders made for the four subdivisions of the block in 1868. At that time, ten grantees were named for Tutuotekaha No. 1. Judge Jones noted that

... the tendency of the Native Land Court has been to hold that where other blocks were similarly dealt with at the same Court the ten grantees really held as trustees for the rightful owners.

4. According to the records, applications were made under the Equitable Owners Act, 1886, in respect of Tutuotekaha No. 1 Block, but were dismissed in May, 1891, probably because of the then Chief Judge's opinion that this class of title did not come within the province of the Equitable Owners Act. The fact that there had been a sale of a share in the block would have likewise prevented the Court from dealing with it.

5. An application was likewise made under subsection (10) of section 14 of the Native Land Court Act, 1894, in the year 1896, and is noted by the Chief Judge, "Not sufficient reason for enquiry under subsection (10); no action to be taken." The matter could, of course, not be proceeded with in the absence of the

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<sup>9</sup> 1 rood = one quarter of an acre

<sup>10</sup> 40 perches = 1 rood, 160 perches = 1 acre.

necessary Order in Council authorizing the Court to exercise the jurisdiction.

6. Before the Court on this inquiry it appears that a list of some fifty persons to come into the title had been agreed to by the representation of some of the grantees; others of the grantees, by their representations, objected to the matter being reopened. It was apparent, however, from the discussion that the ten were not the only owners of the block according to Native custom.

(AJHR, Session I, 1912 G.14, pp.1-2.)

At a meeting of the owners of Tutuotekaha 1B1, 1B2, 1B3 and 1B4 on 10 May 1915, a licence was granted to George Johnson to cut and remove all millable timber.

Native owners asked that no posts, battens or house blocks were to be cut or worked and taken off the land – which was agreed to.

Also asked that royalties to be paid every three months failing that and the amount becomes overdue, the whole milling plant is not to be removed or touched until such overdue royalties with interest thereon at five per cent has been paid – which was also agreed to.

Native owners asked to have the right to reserve fifty per cent of the totara on the land for their own use. Agreed to. Also desire that royalties be paid direct to them which was also agreed to.

(Berghan, 2000, p.447).

Between the four subdivisions of Tutuotekaha 1B, timber rights to more than 2,400 acres were leased to George Johnson and W Stacey. In July 1915, Horiana Maraki and some other owners objected to Tutuotekaha No. 1B being vested in the Tairāwhiti Land Board because they were ready to farm it themselves, and they wanted the timber royalties to be paid to them directly rather than being vested in the Land Board.

However, as the agreement of the owners had been obtained at the meeting of owners held two months earlier, the leasing arrangement stood. (Berghan, 2000, p.447).

The area is known for its huge tōtara trees, as explained in the previous chapter. In 2010, there are still many examples of this highly-prized timber tree growing alongside the Makaretu Stream.

On 19 November 1915 Tutuotekaha 1B was further partitioned into eight blocks, designated Tutuotekaha 1B1 to 1B8.

In July of the following year, Maraki again wrote to the President of the Tairāwhiti Land Board to remove restrictions over Tutuotekaha 1B6. Puhara Timo, major owner of the neighbouring block Tutuotekaha 1B5, objected to the Board's recommendations to do as Maraki asked. Timo wrote that Tutuotekaha 1B6 was specially reserved for occupation by Natives only, and that

Horiana Maraki (or Kohea) as owner of the said land in her own right and as Trustee for certain minors verbally agreed to grant a lease to me of the said block containing about 300 acres.

By virtue of such verbal promise to grant a lease to me I effected improvements on the said land and paid County rates thereon.

She declines to grant such lease to me so previously agreed to. I am willing to accept a lease from the Board of the said land.

(Berghan, 2000, p.448)

In September 1916, Tutuotekaha 1B8, just over 77 acres in size, was sold to Henry C. Robjohns for £234. (Berghan, 2000, p.449).

The seven remaining subdivisions of Tutuotekaha 1B were adjusted in 1924 and again in 1927. Tutuotekaha 1B1 to 1B7, all around 300 acres in area, were farmed for many years as whānau blocks. In 1927, my father's maternal grandfather Puhara Timo was the major shareholder in Tutuotekaha 1B5.

As at 1927, the major owners in each of the whānau blocks were:

1B1) Eraithia te Rei; and Haromi, Tiamana and Pani Tipu.

Most of the boundary of this block lies with the Makaretu Stream. It includes a small area of flat land used for hay paddocks. This block was incorporated into the Tutuotekaha 2A2 Incorporation in 1940.

1B2) Raiha te Koha, Haturu Taite, Whare Karaihe and the Horomona whānau.

Of the seven divisions of Tutuotekaha 1B, this probably has the best topography for pastoral farming, being easy rolling country. This block was leased to Tutuotekaha A & B Incorporated for a term of 21 years from 1<sup>st</sup> July 1959. (Tairāwhiti Māori Land Court, 24 Oct. 1967, Wairoa Minute Book No. 27, p. 24).

Upon the amalgamation of all the whānau blocks into Anewa Station in 1967, one of the major owners opposed the inclusion of Tutuotekaha 1B2, as she wished to keep the land for her sons who were then too young to take over the farm. She was outvoted by other shareholders in the block. In 2010, the ruins of the Horomona house and the corrugated iron tank and stand remain on the block.

1B3) Wikitoria, Makere, Mere and Raiha te Nehu, also Henare Te Kooti.

This block was farmed by Moronai Te Kooti. There was a raupo whare puni which stood, although in poor condition, until the 1980s. The whare puni was not fenced off, and stock had access to it. Like the cottage on 1B5, it was lost to fire when a worker burnt a nearby blackberry bush. Old fruit trees and hydrangea bushes grow in the paddock where Te Kooti's homestead stood. His woolshed is still in use by Anewa Station.

1B4) Rai Hoepo; Eraithia te Ree; and Ropiha and Peta Uaha.

The Gemmell whānau had a sawmill beside the Makaretu Stream on this block, in an area severed from the main block by the Hereheretau Road. The Tangiwai School, a one room building, was across the road from the

sawmill in the appropriately-named School paddock. A battle site is on the summit of the hill above the creek that is close to the boundary between 1B4 and 1B5. Although the name of the site has been lost, generations of descendants have been forbidden to gather food such as watercress from this place because it is considered a tapu area on account of the blood that flowed into the creek during the battle.

1B5) Puhara Timo owned 308.968 out of a total of 318.718 shares. The block was farmed as Rata farm, so named for the huge Rata tree growing in the native bush that covered much of the property. There were plentiful tōtara trees on the Tutuotekaha blocks which were felled and split for posts, battens and rails for the fences and yards on each whānau farm, and also for fencing around the homes of Iwitea village.

Puhara Timo's daughter Mako Raiha married Tihi Whaanga, and during the time they farmed Rata, Tihi took posts and battens from the Tutuotekaha farm to the property he was also farming at Taiporutu on the Mahia peninsula. The Tutuotekaha property had come from his wife's ancestors, the Taiporutu property from his father's, and using the resources of one to aid the farming of another was at the time cause for dissent. The durability of tōtara was well known to our ancestors and prized for carvings and waka. Some of the tōtara posts on Taiporutu have only recently been replaced.

By the time the seven grandchildren of Puhara Timo succeeded to his interest in 1931, Tutuotekaha 1B5 had been further separated into Tutuotekaha 1B5A (28 acres 1 rood 16 perches) and 1B5B (309 acres 2 roods 37.6 perches). 1B5B was the block in which Puhara Timo was the major shareholder. The land would have passed to Puhara Timo's daughter, but she died in the 1918 influenza epidemic that took so many lives in New Zealand.

In 1950, when Te Hore Epanaia Whaanga had been farming the land for several years, he exchanged other land interests with his six brothers and

sisters so that he was the sole owner of their grandfather's share. He had a cottage and yards upon his 300 acre farm. He did his shearing at his neighbour Tom Te Kooti's woolshed. Although the farm was too small to be economically viable in that steep hill country, he augmented his income with mustering work on nearby Tangiwai Station.

In the 1950s, wool returns in New Zealand became as high as £1 for 1lb.

The Korean War had a dramatic indirect economic impact in New Zealand. The sense of crisis precipitated by the outbreak in 1950 encouraged the United States to seek to buy large quantities of wool not for uniform for use in Korea as many supposed at the time (and since), but to complete its strategic stockpiles. This demand led to the greatest wool boom in New Zealand's history, with prices tripling overnight. (MacGibbon, 2000 p.1.)

In 1952 Whaanga applied to the Māori Land Court to have a 1 acre section divided from the Tutuotekaha 1B5B block. This section (Tutuotekaha 1B5B Sec. 1) was the site of the Rata homestead. Tutuotekaha 1B5B Sec. 2 was 308a. 3r. 25p. in area, and had at the time 25 owners. Whaanga owned 308.968 shares out of a total of 318.718 shares in this block. (Tairāwhiti Māori Land Court Wairoa Minute Book 54, 19 September 1952, p.16).

By 1954, Whaanga had cleared the last steep paddock of scrub, burnt it and was ready to sow it into grass. Despite the high wool prices of the time and good farm returns, when he approached the stock and station agent in Wairoa for credit for the necessary grass seed Whaanga's request was declined. The reason given for the refusal was that the company did not extend credit to Māori. In modern society, a farmer who owned 300 acres, had steady off-farm income, no debts and who had attended both Te Aute College and Lincoln College – institutions renowned respectively for training Māori and agricultural leaders - would have few problems obtaining such credit. Neither would such blatant discrimination be tolerated today.

At the suggestion of Sir Turi Carroll, Whaanga soon after left his farm to become manager of Ohuia Station where his family were also shareholders. He leased his block to Davis Reweti Mihaere for 10 years from 21<sup>st</sup> March 1955. Whaanga and his family returned every year to Rata for holidays until 1961, when Whaanga was appointed manager of Paparatu Station. It was during his tenure at Paparatu (1961 to 1976) that he learnt that the cottage on Rata had been burnt down when a farm worker had thrown a match into a nearby blackberry bush.

In October 1959 Mihaere surrendered the lease and Anewa Station then utilised the land under an informal grazing arrangement until all the Tutuotekaha whānau blocks were amalgamated into Anewa Station.

This transaction and its aftermath are the focus of this doctoral enquiry.

1B6) Horiana te Hina Ariki (alias Horiana Maraki Kohea).

In the latter part of 1916 through to February 1917 Horiana Maraki Kohea and Puhara Timo had a disagreement about the lease of this block by Timo. Timo had worked the land and paid rates under a verbal lease, but Kohea wrote to the President of the Royal Commission complaining that Timo had paid no rent for eight years and she

was forced to go short of food and raiment. Therefore I offered to sell the land but when I asked the Board to agree to a sale Puhara was allowed to take up his lease and to pay the rent. Early in December he told me the rent was paid. I asked my lawyer to get me my share of the rent of eight years. Now he tells me the Board will pay in April. This is of no use to a person short of money. Surely you do not want four months or one hundred and twenty days to make up your book. I am poor: I have waited eight years. You have the money ... I am old and alone and have no one to care for me the children for whom I am trustee. Please make haste and send me one hundred pounds in money.

(Berghan, 2000, p.449).

1B7) Hemaima, Kaiwai and Rangi Hopaka, also the Ataria and Rewi whānau.

This block was farmed as Kairakau Farm, and had a homestead, small worker's cottage and woolshed. The woolshed was used by Anewa Station up to 1978 when a new one was built near the original Anewa Station homestead.

A creek that cascades to the roadside from a bush-covered gully near Kairakau was named Te Mimi o Mihi. It has good sweet water and has always been a reliable source of water even in severe droughts. Closer to 1B5 in the Makaretu Stream is a waterfall with a large swimming hole at its foot, popular with the locals. Above the waterfall is a huge rock standing in the middle of the river. This is a place that has always been avoided as the pool surrounding the rock is said to be the home of a very large eel which is the guardian of the place.

There are many tomo (tunnels formed by water) on Anewa. Two form huge natural culverts under the road, one near Tutuotekaha 1B5 and one close to the waterfall and swimming hole below the manager's house and new woolshed. There are also many fossilised scallop shells in the rocks alongside this waterfall, testifying to the antiquity of the landscape.

#### TUTUOTEKAHA NO 2 and INCORPORATION

Early records show that Māori in the Wairoa region were keen participants in the agriculture industry. Initially, Māori participation was in the area of cropping, rather than livestock. This is not surprising, considering the type of land in the Wairoa district, the history of Māori gardening, and the fact that prior to the arrival of the Europeans there were no large animals suitable for farming in the country.

G.S. Cooper, Hawke's Bay District Land Purchase Commissioner, in 1861 commented on the type of agriculture around the Napier and Heretaunga areas:

The Aborigines of this Province have made considerable advances in civilization, in agriculture, and material prosperity. They have erected two large and powerful water mills, with the most recent improvements in machinery; weather-board cottages are frequently to be seen at their kaingas; drays with teams of from ten to twenty bullocks, horse carts, ploughs and other agricultural implements, post and rail fences and substantial stockyards, are now common amongst them. ... They own immense numbers of horses and several cattle, but there are few sheep-owners amongst them ... the reason has been the dislike of the young men to the monotony of a shepherd's life. (AJHR, 1862, E-7, pp.39-40).

Cooper did also note that the expense of setting up a sheep farm was a major factor in Māori not entering into that type of agriculture. The shipping notices for the Port of Napier in 1865 show that Wairoa was sending considerable quantities of maize and other produce to Napier. Three vessels (the *Mahia*, *Vivid*, and *Lady Bird*) were listed as carrying maize, and the *Hero* carried "native produce". (*Hawke's Bay Herald* Vol 8 Issue 671, 5 August 1865, p.2).

By 1874, the Crown Land Purchase Officer Samuel Locke reported a declining industry amongst Māori in the Wairoa area. He noted that

Although a few years back these people were owners of three sailing vessels navigated by themselves, and exported large quantities of wheat and other produce, at the present time they grow barely sufficient potatoes for themselves. (AJHR, 1874, G-2, p.19).

Although he remarked that a general deterioration in attitudes was common in areas where extensive alienation of land had occurred, in the Hawke's Bay (in this case Napier, Hastings, central Hawke's Bay) Māori

are in that position where they find the balance of power turned in favour of the European. They feel that their old *mana* and customs and power of their chiefs are gone; at the same time they have only acquired that amount of knowledge that makes them jealous of the change going on around them, without having, for the altered position in which they are placed, learnt those habits of steady industry and application of general principles for their guidance, to allow of their participating freely in the general progress. (AJHR, 1874, G-2, p.18),

Despite admitting the extremely debilitating changes to both their economic and cultural foundations – extensive land alienation, shift of the balance of power to Pākehā, and loss of mana and customs – Locke here is expressing the view that if only Māori would work hard and accept Pākehā guidance, they could participate freely in the general progress. He exhibits the attitude that then pervaded all dealings with Māori (noticeable particularly in reports to Government) – that Pākehā culture and ways of using the land were superior to anything Māori had in place. As can be seen in the earlier discussion about the context of land tenure changes, it was disastrous for Māori.

In the year that Locke wrote his report, immigration peaked at 34,000.

As a consequence of the immigration influx, the non-Maori population of New Zealand had soared to more than 470,000 by 1881. By that year too, the Maori population had dropped to 46,000, and it would continue to decline as a result of disease and low fertility for most of the next two decades. Immigration peaked in 1874, when there were 34,000 assisted immigrants, a number that has never since been exceeded. (King, 2003, p.230)

By 1881, Māori were outnumbered by more than 10 to 1. These statistics are possibly the best illustration of how the shift in the balance of power that Locke mentioned had been secured. With traditional Māori land tenure, land rights were secured by ahikāroa, long occupation, and to

ensure that a stable population on the land is necessary. Pākehā not only changed the land tenure system, they secured that change, their power and their control over law and the culture of New Zealand by massive immigration. Our landscape was irrevocably changed.

In 1877, Dr. Ormond, the Resident Magistrate, reported that heavy floods in January and February had destroyed the early crops of potatoes which had already been dug, and washed the newly-planted seed potatoes for the late crop clean out of the ground (note that two crops of potatoes were being grown in a season). Consequently Māori became heavily indebted to Pākehā store keepers in Wairoa and Gisborne, who extended credit because, Ormond surmised, they were “tempted by the prospect of land sales to the Government”. (AJHR, 1877 Session I, G-01, p.11). Two years later, many Wairoa Māori had turned to growing wheat, and had built a flour mill. (AJHR, 1879 Session I, G-01, p.8).

The ascent of sheep farming in the Wairoa district was noticeable in the last two decades of the 19<sup>th</sup> century. Of the 299,766 sheep listed by Lambert (1977, p.757) in the sheep returns for 1887, around 14,687 were owned by Māori. When Tutuotekaha No. 3 (referred to earlier in this chapter) was advertised for sale, the agents Baker & Tabuteau noted both the “growing demand for moderate-sized sheep farms”, and the existence on one property of a flax mill. (Hawke’s Bay Herald, 17 July 1893, p.3).

1887 was also the year that James Carroll, of Kahungunu ki te Wairoa descent, was elected to Parliament in the Eastern Māori seat. (More details about Carroll’s influence and advocacy for Māori equality and A.T. Ngata’s land policies are provided in Chapter 6).

Carroll and Ngata worked assiduously during their terms in Parliament to develop policy for Māori land, and Ngata was very effective in finding a way to enable Māori to farm their own land.

Sir Robert Stout and Apirana Turapa Ngata were appointed Commissioners in 1907 to inquire into several aspects of Māori land ownership, occupation and utilisation, specifically:

1. What areas of Native lands there are which are unoccupied or not profitably occupied, the owners thereof, and, if in your opinion necessary, the nature of such owners' titles and the interests affecting the same.
2. How such lands can best be utilised and settled in the interests of the Native owners and the public good.
3. What areas (if any) of such lands could or should be set apart –
  - (a) For the individual occupation of the Native owners, and for the purposes of cultivation and farming.
  - (b) As communal lands for the purposes of the Native owners as a body, tribe, or village.
  - (c) For future occupation by the descendants or successors of the Native owners, and how such land can in the meantime be properly and profitably used.
  - (d) For settlement by other Natives than the Native owners, and on what terms and conditions, and by what modes of disposition.
  - (e) For settlement by Europeans, on what terms and conditions, by what modes of disposition, in what areas, and with what safeguards to prevent the subsequent aggregation of such areas in European hands.

And further to report as to –

4. How the existing institutions established among Natives and the existing systems of dealing with Native lands can be best utilised or adapted for the purposes aforesaid, and to what extent or in what manner they should be modified.

And you are hereby enjoined to make such suggestions and recommendations as you may consider desirable or necessary with respect to the foregoing matters, and generally with respect to the necessity of legislation in the premises. (AJHR, 1907, Vol III G1 pp.i-ii)

At the turn of the century, it seemed that the direction of the entire country was to convert land to pastoral farming purposes. The breakthrough for New Zealand agricultural exports had occurred in 1882, when the steamship *Dunedin* sailed from Port Chalmers to London with a cargo of frozen mutton and lamb which arrived in perfect condition. Refrigeration meant this country could add meat to wool and grain as its major export commodities. By 1910, the value of meat exports was £3.8 million, almost half the value of wool exports. (King, 2003, p.236).

The owners of the Tutuotekaha blocks were also keen to be part of this industry. Unlike Tutuotekaha No. 1, Tutuotekaha No. 2 had not been subdivided into whānau holdings.

The block designated Tutuotekaha No 2 was 2670 acres in area. Ownership of this block was contested in February 1889 by Petera Whakahora, Raniera Turoa and Hoani Ngarara, with the judgment being made that Raniera Turoa and his list of names were to be awarded 90% of the block. This judgment was overturned by the Chief Judge of the Māori Land Court in February of the following year because

The land was not within the jurisdiction of the Court to be dealt with under the Equitable Owners Act. (Berghan, 2000, p. 444).

The Native Equitable Owners Act 1886 made provision for those who had customary rights in land, but had been excluded from ownership because of the 1865 ‘ten-owner rule’, to apply to the Native Land Court

to investigate any intended trusts affecting land investigated under the Native Lands Act 1865 and to declare the beneficial owners.

(Williams, David, 1999, p.341).

In July 1896, Tutuotekaha No. 2 was again before the Court, the applicant this time being Wiremu Kaimoana. Kaimoana had successfully applied for the case to be heard under s.14 of the Native Land Court Act 1894 which provided for vesting of land in persons beneficially entitled, as

opposed to vesting in a limited number of trustees. A Crown Grant was issued for Tutuotekaha No 2 on 15 July 1896 with 222 people listed as owners. (Berghan, 2000, p. 445).

In December 1913 Tutuotekaha No. 2 was divided into five blocks, with the agreement of the owners and consent of the Tairāwhiti Land Board, in order to facilitate the leasing of the land.

These subdivisions and the major owners were:

Tutuotekaha No. 2A (98a. 1r. 28p.) was granted in equal shares to Aporo Parareka and five others listed by Maraea Waaka Kereru.

Tutuotekaha No. 2B. (277 a. 1r. 03p.) was granted to Eraihia Tipene and seventeen others, as listed by Pamariki Kaiora, in equal shares

Tutuotekaha 2C (682a. 3r. 25p.) was split into two “geographically undefined” acres of

1. 415a. 3r. 25p, granted to Atareta Te O and twenty-six others as listed by J.H. Mitchell; and
2. 267 acres, granted to Ateraita Whakahoro and sixty-six others in equal shares.

Tutuotekaha No. 2D (754 a. 3r. 06p) was granted to Apirana Kaimoana and forty-eight others in equal shares.

Tutuotekaha No. 2E (862a. 2r. 18p), the residue of the block, was granted to Ataria Rangī and fifty-five others in equal shares. (Tairāwhiti Māori Land Court Wairoa Minute Book No.22, 5 December 1913, pp.108-110).

The surveyor was instructed to fix the boundary lines of each of the subdivisions with a regard to the fencing of each. This is a feature of farming not restricted to Māori land. Often a boundary line will fall on an area that is difficult or impossible to fence. The practicable solution is for the farmers concerned to agree to a fenceline that is not strictly on the

survey line, and usually involves a more or less equal give and take of land.

It can be seen from the correspondence to the Tairāwhiti Land Board and the above listed names that Māori women were very active land owners. One of the owners of Tutuotekaha 1B who also represented some of the claimants in the Tutuotekaha No 2 Māori Land Court hearing was Maraea Waaka. Waaka also owned land in one of the nearby Hereheretau blocks, which she evidently farmed in her own right. A dispute over her use of an area of land came before the Māori Land Court in 1913. It is summarised below.

Tuku Munro had applied for an order restraining or prohibiting Maraea Waaka of Wairoa from interfering with and destroying applicants' cultivations and improvements in or upon part of the Hereheretau B W4 block.

Mr. Foote, for the applicants, stated that

After hearing the parties who had for the time being agreed to come to some settlement Court decided to hold over and suspend the applications for six months. If relations are still amiable then, the application will thereupon be dismissed.

Maraea Waaka Kereru admits trespass and that she has sown oats since the boundary was laid down by surveyor. She has made no attempt to come to a settlement, wants her crops and fences without offering any compensation for the use of land. Applicants claim the fences and crops. They are willing to let Maraea reap the crop if she leaves the fences on the land. She declines offer.  
(Tairāwhiti Māori Land Court Wairoa Minute Book No. 22, 5 December 1913, p.112)

A similar application was made by Raniera Tawhiri and others regarding a portion of Hereheretau B W6, also concerning Maraea Waaka. She

declined to settle as suggested, whereupon the Court granted the order that the applicants requested, that Waaka be prohibited from trespassing “by ploughing, sowing, fencing and depasturing horses and other stock” upon the applicants’ land. (Tairawhiti Māori Land Court Wairoa Minute Book No. 22, 5 December 1913, pp.111-112)

Ancestral boundaries were marked by natural features such as prominent hills, rocks or streams. When surveyors became involved in delineating land areas under the English-based system of land tenure, the boundaries were straight lines that often traversed older boundaries or left part of an ancestral area within someone else’s block. As the above dispute arose subsequent to boundaries being determined by a surveyor, it is possible that the new surveyed boundary may not have accorded with earlier areas of land usage or older boundaries that followed natural features.

In 1930, Tihi Whaanga and nine others of Wairoa sent a petition to Parliament asking that the title to Tutuotekaha No. 2 be reinvestigated. (AJHR, 1930, Vol.3, I-3, p.5) The Native Affairs Committee made no recommendation. Whaanga was then farming his wife’s whānau block, Tutuotekaha 1B5B.

It was apparent by the 1930s that the “communal” (Ngata, 1931, p.ii) nature of Māori land title, whilst in some cases preventing its alienation, was a severe hindrance where the owners wished to develop their land for farming purposes.

In the interests of settlement drastic methods were adopted by Parliament from time to time – namely the vesting of large areas in the Public Trustee or special Boards, such as the East Coast Trust Lands Board, or, later, in Maori Land Boards or the Native Trustee, for administration. In none of these was the settlement of the Maori upon land a feature of the schemes, and they were not supported by the good will of the communities interested. (Ngata, 1931, p.ii)

In plain terms, Government efforts at land settlement were directed at putting Pākehā settlers on Māori land, and it had not applied State funds to Māori development of their own lands. Nearly 40 years earlier, the Native Land Commission of 1907 (consisting of Sir Robert Stout, New Zealand's Chief Justice, and Apirana Ngata who had but recently been elected member of the House of Representatives for Eastern Māori) had written of the "supreme difficulties" faced by Māori trying to make productive use of their land.

The spectacle is presented to us of a people starving in the midst of plenty. If it is difficult for the European settler to acquire Maori land owing to complications of title, it is more difficult for the individual Maori owner to acquire his own land, be he ever so ambitious and capable of using it. His energy is dissipated in the Land Courts in a protracted struggle, first, to establish his own right to it, and, secondly, to detach himself from the numerous other owners to whom he is genealogically bound in the title. And when he has succeeded he is handicapped by want of capital, by lack of training – he is under the ban as one of a spendthrift, easy-going, improvident people. (AJHR, 1907, G-1c, p.15).

The farming community were feeling the effects of the Great Depression from early 1930, when catastrophic falls in returns for farm products led to increasing unemployment, and droughts in the 1930-31 and 1931-32 seasons meant potato crops failed. (AJHR, 1932, Vol II G-10, p.43).

It was against this background that Apirana Ngata in 1931 presented his "Native Land Development" report to Parliament. One of the devices he proposed to facilitate pastoral farming for Māori on multiple-ownership lands was that of incorporation.

Briefly, this meant that the owners of any area or contiguous areas, subsequently extended to areas not necessarily contiguous but having elements of common ownership, were, with the consent of a majority in value, incorporated. A body corporate was created, which acted through a committee of management, having

complete power to raise funds on the security of the land and to carry out farming operations.

It was deemed to be a temporary measure to overcome the handicaps of communal title, to organize the land resources of the community, and to secure the selection of its best and most efficient members to conduct the work and business of farming. ... It had the valuable features of assuring finance and the good will of the community, which was in personal touch with the administration of the land. (Ngata, A.T., 1931, p.ii).

For much of the Māori land in Te Tairāwhiti, incorporation was not the temporary measure envisaged by Ngata, but has in fact become the dominant structure for Māori farming throughout the Wairoa area.

It was also in 1931 that Te Hore Epanaia Whaanga spent a year at Lincoln College in Canterbury to build upon farming skills practised at home and studied at Te Aute College. In later years he consolidated his land interests by exchanging shares in other blocks with his siblings so that he was the major shareholder in Tutuotekaha 1B5B, become a member and chairman of two of the land incorporation management committees of his hapū and the manager of Paparatu Station (part of the Mangapoike blocks), one of the tribal group's largest land holdings. Consolidation of land interests was also one of the devices to overcome the difficulties of communal title outlined in Ngata's 1931 report.

#### TUTUOTEKAHA A & B INCORPORATION and ANEWA AMALGAMATION

In 1939, Tutuotekaha 2A2, 2B, 2C and 2E were incorporated under the name of the Proprietors of Tutuotekaha 2A2 and adjoining blocks. The following year, Tutuotekaha 1B1 - the major owners of which were Eraithia te Rei and three members of the Tipu whānau - was included in the incorporation. The members of the first committee of management

were Kingi Winiata, Johnnie Robinson, Tihi Whaanga, Tuhe Christie, Manapouri Shaw, Hugh Ewan McGregor and Areke Mete.

On 18<sup>th</sup> February 1959 the existing partition orders and orders of title for the blocks included in the 1939 incorporation were cancelled and all of those lands combined in a single area named Tutuotekaha A & B. There were 942 people listed as owners in the 2148 acre block, holding a total of 14,085 shares. (Tairāwhiti Māori Land Court, 18 February 1959, Wairoa Minute Book No. 62, p.203). The land was then being farmed as Anewa Station, and most of the neighbouring Tutuotekaha 1B blocks were still being run as whānau farms.

The Tutuotekaha A & B incorporation was in financial straits by 1966. (Department of Māori Affairs, 1968, File 14/3/74 Vol I p.61). The Committee of Management, realising that they needed to develop the land further to enable them to farm their way out of trouble, approached the Department of Maori Affairs

to seek financial assistance. The Department's officers inspected the property and also other blocks which lie between Tutuotekaha A and Tutuotekaha B and which are either leased or informally grazed by the Incorporation. (Tairawhiti Māori Land Court Wairoa Minute Book No. 72, p27).

Following an inspection of the blocks, the Department of Māori Affairs Field Officers

recommended their amalgamation and subsequent development under the provisions of Part XXIV of the Maori Affairs Act 1953. One of the conditions upon which the Board of Maori Affairs will approve the establishment of such development schemes is that the property comprises one single Maori Land Court Title. This requirement of the Board of Maori Affairs is the reason behind the present application to the Court for the amalgamation of several Tutuotekaha titles.

On the 26<sup>th</sup> May 1966 the department called a general meeting of owners in all the blocks ... This meeting was held at Taihoa Marae, Wairoa, and in the absence of the Chairman of the A & B Incorporation, Mr H.E. McGregor through ill health, Sir Turi Carroll acted as Chairman. .... At this meeting there were present 38 owners in A & B plus owners in adjoining blocks. Some of the owners in A & B are also in these adjoining blocks. At the meeting there was a unanimous decision to set up a development scheme on the lines mentioned above.

When the notices calling this meeting were sent out provision was made to enable those unable to attend to record their views in writing. Over 100 written consents were received from owners in A & B plus consents from many owners in the adjoining blocks. (Tairāwhiti Māori Land Court, 24 Oct. 1967, Wairoa Minute Book No. 72, p. 23).

It is notable that a translator, Mr. P. Kaua, was at the meeting to translate the Field Officer's remarks and explanations into Māori, this still being normal and necessary practice in 1966 when discussing ancestral land.

However P.J. Brewster, the Department of Māori Affairs District Officer, in his report to the Māori Land Court dated 18 October 1967, failed to disclose some very pertinent information. He wrote to the Wairoa Welfare Officer on 11 July 1967 that it was proposed to include the Anewa Development project in the 1968/69 development programme, but, although unanimous approval to the scheme was given by the assembled owners on 26 May 1966, the list of owners who voted either in person or by proxy did not "represent a very good proportion of the total shares". (Department of Māori Affairs, 1967, File 14/3/74 Vol I).

He requested that the Welfare Officer contact the major owners around Wairoa who had not signed, and obtain their signatures. He attached forms for this purpose. The files for the Anewa Development Scheme show that the Welfare Officers for Wairoa acceded to this request and

went out and collected and witnessed dozens of signatures of owners to support the scheme. (Department of Māori Affairs, 1967, File 14/3/74 Vol I).

In regards to the whānau block central to this thesis, Brewster wrote on 7 June 1966 that Epanaia Whaanga was the sole owner of Tutuotekaha 1B5B Section 1 (1 acre in size), and that he was neither present nor represented at the meeting of owners. Brewster suggested a personal approach might be made. He did not remark that in the consents for Tutuotekaha 1B5B Section 2 – the bulk of the whānau block, some 308 acres in size – only one consent was received, that of Rei Paku who held only .608 shares out of a total shareholding of 318.718. Therefore, at the time Brewster wrote his memorandum to Judge Haughey, the only consenting owner to the amalgamation of Tutuotekaha 1B5B Section 2 held only 0.19% of the shares for that block.

Yet when he wrote the memorandum to Judge Haughey for the Māori Land Court sitting that approved the amalgamation, Brewster said that the sole owner of Tutuotekaha 1B5B Section 1 “has consented in writing” and that he had two written consents “with 309.576 shares” out of a total of 318.718 for Tutuotekaha 1B5B Section 2. His memorandum was dated 18 October 1967. However, the owner referred to - Epanaia Whaanga, my father – did not sign the consent until 19 October 1967. (Department of Māori Affairs, 1967, File 14/3/74 Vol I).

It could be argued that Whaanga did sign before the matter came before the Māori Land Court on 24 October 1967, (Tairāwhiti Māori Land Court, 24 Oct. 1967, Wairoa Minute Book No. 72, p. 22) but the context of this case has considerable bearing on why Whaanga was persuaded to sign his agreement more than a year after the meeting of owners was held in Wairoa.

His older brother was a member of the committee of management of the troubled Tutuotekaha A & B incorporation, and by 1967 Whaanga was

not only a member of the management committee for the Mangapoike A & B Incorporation, but also the manager of one of the incorporation's stations, Paparatu. Whaanga then was very familiar with the need for development on the Tutuotekaha A & B incorporation lands, and the implications of the land remaining in its undeveloped state.

The meeting of owners in 1966 was chaired by Sir Turi Carroll, who was the chairman of the Mangapoike A & B incorporation, i.e. he was Whaanga's employer. In 1967, all three of Whaanga's daughters were at boarding school, and secure employment was vital so that we could have the education that our parents considered extremely important. Carroll was an advocate for the land development scheme. (Department of Māori Affairs, 1966, File 14/3/74 Vol I p.20).

Brewster had made it clear that the land development scheme would not be implemented unless all the blocks comprised one title. With several of the whānau blocks having been subdivided over the years, Tutuotekaha A & B, and the defunct incorporation Tutuotekaha 2D2, there were a total of fourteen blocks that were amalgamated.

It must have seemed to our father that there was no other avenue but to sign agreement. I do not know who actually persuaded him to sign, as there is no witness signature on the consent form, but I do know that he always believed we could have Rata farm back if we paid for any improvements made to the farm by Anewa Station.

The neighbour who farmed Tutuotekaha 1B4 and owned 25 out of 100 shares in Tutuotekaha 1B3A, Tom Te Kooti, continued to occupy his house on his land. On 7 October 1968, the District Field Supervisor wrote to his District Officer that there had been trouble with Te Kooti

who claims that he still owns 100 acres of hill and 15 acres of flat carrying his house and woolshed. ...Tom ...told me that he had never agreed to include these two areas which he claims he owns solely. ...He has paid the current rates and also insurance on the

house and wool-shed. (Department of Māori Affairs, 1968, File 14/3/74 Vol I, p.89).

Brewster wrote to Te Kooti on 10 October 1968, reminding him of his visit a year earlier, when he had explained the development scheme proposal and obtained Te Kooti's signature in agreement to the amalgamation. Without Te Kooti's signature, there would have been only 14.88% of the shareholding in Tutuotekaha 1B3A in support of the amalgamation. (Calculated on figures in Brewster's report to the Māori Land Court, Department of Māori Affairs, 1966-1969, File 14/3/74 Vol I p.53).

Te Kooti was further advised by Brewster that, as he was still living in the house, it was not valued for the purpose of the amalgamation, but the fences, buildings and woolshed were all now part of the amalgamation. The Department of Māori Affairs would reimburse Te Kooti for the rates. (Department of Māori Affairs, 1968, File 14/3/74 Vol I, p.90).

In November 1968, a letter was sent to Messrs Blair, Parker & Co, Barristers & Solicitors in Gisborne (acting for Te Kooti), to advise that Te Kooti could retain approximately 7 acres of flat land to keep his three horses and a few sheep for killers, subject to the conditions that he fence off the area (with materials to be supplied by Anewa Station), keep the area free of all noxious weeds at his own expense, dip his sheep so that lice could not be transmitted to station sheep, and not permit his dogs to wander over station land. The District Officer emphasised that the arrangement was a privilege that would be withdrawn if Te Kooti did not comply with the terms.

By March 1973, Te Kooti had not lived in the house for two years. A month later Brewster wrote to Messrs Walker and Heron (accountants in Wairoa who had written on Te Kooti's behalf) that Te Kooti should remove his sheep so that the Anewa Development Scheme could bring all of his land into active development. (Department of Māori Affairs, 1969-

1982, File 14/3/74 Vol 2). The Department agreed that the meeting house on his property could be moved, but that never eventuated and it was burnt some years later.

On 5<sup>th</sup> October 1967 the Board of Māori Affairs approved expenditure of \$170,020 over a period of five years for the development scheme, subject to the amalgamation of the various Tutuotekaha titles. This meant that all the Tutuotekaha 1B whānau blocks were amalgamated with Tutuotekaha 2A1, 2D1, 2D2 and the incorporation Tutuotekaha A & B.

The shareholdings for each block were based upon Special Government Valuations as at 26<sup>th</sup> August 1966. The reporting officer noted that

buildings in very poor order on 1B3A [Te Kooti's block], valued at £500<sup>11</sup> would be surplus to requirements and the amalgamated Capital Value of £39,725 for land and buildings would be reduced accordingly. Other buildings of only nominal value, not entirely necessary are the old school building on 1B4 and a cottage in poor repair on 1B2 [the Horomona block], but would be left in as they have a possible use as accommodation for casual fence or scrub-cutting gangs. (Tairāwhiti Māori Land Court Wairoa Minute Book No. 72, 24 Oct. 1967, p. 30).

Tutuotekaha 1B7 had also been leased out. The Maori Trust Office's statement of receipts and payments for the period 16 September 1947 to 20 October 1967 recorded lease payments by Mrs J.G. Redmond (2 years), F.B. Bousfield (1 year) and Mrs. V.M. Brownlie (17 years) successively at £120.0.0 per annum. Edward Walter Magee was paid £952 (less the Maori Trustee's commission of 2.5%) compensation for improvements made upon the block.

Leases on Tutuotekaha 1B3 and 1B7 (although the latter was leased by Brownlie, an arrangement existed whereby the Tutuotekaha A & B

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<sup>11</sup> New Zealand changed from £sd to decimal currency on 10 July 1967, hence the use of the £ symbol in some sections of the Māori Affairs report and the \$ in others.

Incorporation already grazed the block in 1967) were surrendered by Tutuotekaha A & B to facilitate the establishment of the development scheme.

#### EFFECT of AMALGAMATION

It was at this stage in 1967 that the whānau who had owned their Tutuotekaha 1B blocks became shareholders in the 4766-acre block now known as Anewa Trust. Māori Affairs was to manage Anewa for the next nineteen years, until a meeting of owners held at Taihoa Marae established a trust under section 438 of the Māori Affairs Act 1953, and a new committee of owners were set up as trustees.

The importance of this change in status from owners of whānau blocks to shareholders in a large amalgamation can be seen by comparing the way the blocks were and are run.

The seven whānau blocks, the Tutuotekaha 1B subdivisions, had homes, orchards, gardens upon them, and some of them were leased to other farmers. The whānau lived on their ancestral land, ran stock upon it, earned a living or at least part of a living, raised their families knowing the boundaries, eeling places, where the best timber grew, the pā sites and wāhi tapu, knowing the land and its waters. There were at least six homes, one whare puni, two woolsheds, a sawmill and a school on the seven blocks. As well, there was a homestead and a cottage on the Tutuotekaha A & B Incorporation land.

The purpose of the development scheme that forced amalgamation of all the blocks was to set up a sheep and cattle farm now known as the Anewa Station. The land was to be cleared of scrub, fenced, sown into pasture, and a commercial farming entity put in place. While some of the homes upon the whānau blocks were found useful for several years, eventually they were demolished, burnt, or fell into complete disrepair.

As at 2012, there are three homes upon Anewa Station, a woolshed built in 1978, and Tom Te Kooti's old woolshed on Tutuotekaha 1B3 is still in use. The homes are for the farm workers. None of the shareholders can build a home upon their ancestral land for their own use, nor can they plant orchards or gardens or otherwise productively use the land for their private purposes. Some of the land that was once in pasture has reverted to scrub, and it is now uneconomic for farmers to clear such steep land and put it back into pasture.

The shareholders have not received any dividends from Anewa in over 40 years. Many of the shareholders have no idea where Anewa is, let alone where their whānau farms once were. For many, the four decades that have passed since the Tutuotekaha blocks were amalgamated have been years of disconnection from their ancestral land that has resulted in complete alienation.

Many factors have contributed to this state of affairs. People moved into the towns and cities in search of regular paid work, schooling for their families, or as part of the Māori urban shift that took place after the Second World War, when

small-time whānau farming ventures, often in remote parts of the country, could no longer offer sufficient income for Māori families. Thousands of young and old set out to find work in towns and cities, and within twenty years whānau had been virtually relocated in urban situations. (Durie, Mason, 2005, p.21).

The agricultural sector has been through many changes, but overall the trend is towards larger farms supporting fewer and fewer people, especially in sheep and cattle farming. The sheer ruggedness of Anewa also makes it a difficult piece of land from which to make high returns.

The economic climate is such that a return to small whānau holdings in this region is extremely unlikely. For our people to be able to live once

more upon smallholdings of ancestral land, new uses would need to be found for the land, or a way found to combine residence upon ancestral land (with all the spiritual and physical benefits that would bring) whilst having sufficient off-farm income to enable one to live in an isolated area.

Today's system of shareholding in large Māori trusts and incorporations whose primary purpose is agricultural commerce is a far cry from the traditional land tenure practised only fifty years ago.

## CHAPTER FIVE

MĀORI LAND LAW AND THE MĀORI LAND COURT 1862-1987

## TE WAKAPUTANGA O TE RANGATIRATANGA O NU TIRENI

In considering the laws that have been enacted in New Zealand in regard to Māori land, we need first to have an overview of how Pākehā law came to be established here. Prior to the signing of the Treaty of Waitangi in 1840, there was the very significant Wakaputanga o te Rangatiratanga o Nu Tirenī, more commonly referred to as the Declaration of Independence, which was formalised in 1835.

Tribal custom and law continued to regulate society for several decades after Europeans first came to our shores. From 1769, when Captain James Cook first visited Aotearoa New Zealand, there had been an influx of sealers, whalers, deserting seamen, escaped convicts and missionaries who had been welcomed by the tangata whenua and assisted to settle here. Tangata whenua saw the value of having a Pākehā in their community

as sources of trade, as armourers and ironworkers, as advisers in the cultivation of crops, as symbols of prestige and, in the 1830s, as teachers of reading and writing. As they acquired new skills the chiefs and their communities launched their own commercial enterprises. (Ward, 1974, p.13)

The immigration brought problems as well as benefits: diseases such as measles, influenza and whooping cough to which Māori had no immunity and which decimated the population; the introduction of the musket which meant more devastating warfare; and an erosion of the beliefs, traditional law and social structures because of missionary teachings. The establishment of commercial enterprises also resulted in changes to social

patterns of food growing and gathering to enable communities to provide trade goods such as flax and timber.

As Pākehā numbers grew, so did tangata whenua concerns about the lawlessness of many of the Europeans living in New Zealand and the insatiable European demand for land. Foremost among the concerns of the hapū leadership

... was the well being of their people, particularly the children. The ethics of whānaungatanga, manaaki, kotahitanga and mana are at work. The responsibilities of Māori leadership, expressed as rangatiratanga and tohungatanga, demands that the kinship group provide for the necessities of life, namely food, shelter, security, peace and stability in society. (Henare, 2003, p.190)

There was concern also among the prospering Pākehā traders and colonists, some of whom “actively sought some level of British intervention” (Cox, 1993, p.40). As well, there was rivalry between various sectors of the missionaries, the Anglicans attempting to forestall the Catholics who were led by Bishop Pompallier.

The arrival of the French warship *La Favourite* in 1831 inspired the first formal request for British protection in the form of a petition to King William IV drafted by the Church Mission Society on behalf of some thirteen northern chiefs. It seems that the affair was less in the hearts of Frenchmen and more in the minds of the missionaries. (Cox, 1993, p.40)

James Busby, appointed in 1831 as British Resident in the Bay of Islands, proposed a confederation – “te wakaminenga o ngā Hapū o Nu Tireni” - to make a declaration of independence that was based on traditional philosophical and religious thought (tikanga and ritenga) and Scottish philosophy and jurisprudence. (Henare, 2003, pp.188-189).

Te Wakaputanga o te Rangatiratanga o Nu Tireni was signed at Waitangi on 28 October 1835 by thirty-four rangatira from hapū to the north of

Hauraki and a copy of the declaration sent to King William IV of England. The Colonial Office acknowledged the Declaration and gave an assurance of protection for Māori. A further eighteen rangatira signed later, amongst them Te Hapuku of Ngāti Te Whatuiapiti and Ngāti Kahungunu, who signed in 1839, and Te Wherowhero of Waikato. A legislative congress of the wakaminenga o ngā Hapū o Nu Tireni was established to pass laws that would apply to all Māori. Their Executive Council, with Busby as an adviser, met at Waitangi in the autumn of each year until 1840.

This congress of rangatira is indicative of how tribal society had changed and was continuing to change from earlier discrete tribes and tribal groupings fiercely protective of their own areas and tribal authorities. Although there are examples of coalitions of whānau and hapū before the arrival of Pākehā in this country – one such was centred in the Waihua/Mohaka area and known as Te Kupenga a Te Huki, the Net of Te Huki; it was effected by Te Huki's marriages to influential women and then his children's marriages into leading families; thus creating a peaceful alliance from Uawa to the Wairarapa (Mitchell, 1972, pp. 143-145) – it should be remembered that only thirteen years prior to the Declaration of Independence Ngā Puhi and other Northern tribes had visited devastation upon the tribal areas of Ngāti Te Whatuiapiti, Ngāti Kahungunu and the Tairāwhiti region during what has become known as the Musket Wars. (Ministry for Culture & Heritage, 2009).

By 1835, the Māori population was in decline through disease and inter-tribal warfare, and the influence of the missionaries was in the ascent. Māori customary law and societal structures were consequently breaking down, and as more settlers arrived, the demand for land resulted in some highly questionable land transactions. In 1838, the Church Missionary Society committee sought the protection, backed with military force, of the British Government and the appointment of a Resident Governor in New Zealand. (Ward, 1974, pp 26-28).

These are some of the circumstances that led to the drafting and signing of the Treaty of Waitangi in 1840.

## THE TREATY OF WAITANGI

In February 1839 Captain William Hobson accepted the position of British Consul in New Zealand and in July of the same year he was appointed Lieutenant-Governor “of such part of the colony as may be acquired”. (Palmer,2008, p.51). Hobson was sent here to secure for Britain a cession of sovereignty by Māori and to establish a civil government.

Hobson’s instructions from Lord Normanby, the Colonial Secretary, make it clear that Normanby at least was very aware of the impact upon Māori of the proposed acquisition of sovereignty by Britain. Normanby considered that

...the increase of national wealth and power promised by the acquisition of New Zealand, would be a most inadequate compensation for the injury which must be inflicted on this Kingdom itself, by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the Sovereignty of New Zealand is indisputable, and has been solemnly recognised by the British Government. (Normanby quoted in Waitangi Tribunal, 1987 Sec 11.9.2.)

Normanby also expressed concerns about the lawlessness of some of the reportedly two thousand British subjects permanently living in the country in 1838 and about the land acquisition and plans of Wakefield and the New Zealand Association, colonists who were already on their way to New Zealand. Knowing well that other indigenous peoples had been devastated by British colonisation, Normanby wrote:

... to avert these disasters, and to rescue the Emigrants themselves from the evils of a lawless state of Society, it has been resolved to adopt the most effective measures for establishing amongst them a settled form of Civil Government. (Normanby quoted in Waitangi Tribunal, 1987 Sec 11.9.2).

A prime objective of Hobson's mission was to obtain land for settlement, but the price paid would be a fraction of that at which the Crown would then on-sell the land to the settlers. The land so purchased was supposed to be land which was surplus to Māori requirements, so-called "Waste Lands." (Normanby quoted in Waitangi Tribunal, 1987 Sec 11.9.2 para. 10). The term 'waste land' referred to all land that was not "actually occupied and cultivated". (Boast, 2008, p.24).

Hobson knew that the British government required

a cession of sovereignty, absolute control over all land matters, and authority to impose law and order on both Maori and non-Maori. (Orange, 1987, p. 36).

He and his secretary J.S. Freeman drafted some preliminary notes, but it was Busby, the ex British Resident, who was largely responsible for the text of the Treaty of Waitangi. The

treaty in its final English form, comprised Hobson's preamble, the articles developed by Busby from Freeman's skeletal versions, with the most important addition of the guarantee of land and other possessions, and finally, Busby's amended postscript. (Orange, 1987, p.37).

A Māori version, not a direct translation, was drafted by the missionary Henry Williams, assisted by his son Edward, and James Busby. On February 6 1840, 46 chiefs signed Te Tiriti at Waitangi. By the end of the year more than 500 Māori signatures were appended to the copies of the Māori version that were taken to various places in New Zealand. Only 39

Māori signed an English language version at the Waikato Heads.  
(Ministry for Culture & Heritage, 2007).

The missionaries were very active in promoting the Treaty of Waitangi. William Williams, brother to Henry, was responsible for obtaining signatures in the area from the East Cape to Ahuriri (Napier). Among these signatories was Matenga Tukareaho of Wairoa, and two others who are possibly of Ngāti Kahungunu ki Wairoa – Turoa, suggested as perhaps Raniera Turoa, and Tutapaturangi who is also listed as Tu-te-patahi-rangi of Ngāti Kahungunu or Te Aitanga-a-whare from Mahia. (See [www.nzhistory.net.nz/media/interactive/turanga-gisborne-treaty-copy](http://www.nzhistory.net.nz/media/interactive/turanga-gisborne-treaty-copy)). Raniera Turoa in 1893 was the principal claimant for Ngai Tahu to the Mangapoike blocks, now known as Te Whakaari Māori Incorporation.

The content of the Treaty of Waitangi was summarised by the then Chief Judge of the Māori Land Court and Chairperson of the Waitangi Tribunal:

The preamble may serve to remind a lawyer that even today one cannot occupy the territory of another without a prior arrangement ...

...the lawyer may see in Article 1 the authority for the government to govern, in Article 2, a declaration of the natural rights of indigenous peoples, and in Article 3, a declaration of the civil and political entitlements of all people. (Durie, E.T.J. 1991, p.162)

Over the last two decades the differences between the two texts have been explained in numerous publications (See Orange, 1987; Kawharu, 1989; Ward, 1995). Since the establishment of the Waitangi Tribunal in 1975, and particularly the enactment of the Treaty of Waitangi Amendment Act 1985 which allowed historical claims, the Waitangi Tribunal has generated a considerable body of published knowledge about the intent and substance of the Treaty/Te Tiriti.

Article II of the Treaty of Waitangi/Te Tiriti o Waitangi is the one most often quoted in relation to Māori land, at the heart of which is the

guarantee of “full, exclusive and undisturbed possession of their Lands and estates, Forests, Fisheries and other properties” (in the English version) and “te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa” (in the Māori version). (both texts available on the Waitangi Tribunal website). In their 1988 report on the Muriwhenua Fisheries and State Owned Enterprises claim the Tribunal gave a comprehensive explanation of this article, noting that in the Māori version

It is at once apparent that estates, forest and fisheries are not specifically mentioned, but ‘taonga’ covers them all. Exclusivity is not expressed but is inherent in both ‘taonga’ and ‘rangatiratanga’.

The qualification “...so long as it is their wish and desire to retain the same in their possession” is implied.

‘Kainga’ is new and stresses that occupancy continues. It derives from ‘ahi kaa’, the fire that is always alight, for by use of the right wood, though burnt and buried it is used to rekindle flame.

Mainly we are introduced to a concept of full chieftainship over lands and all things important or highly prized.

We prefer “full authority” to the literal full chieftainship. Essentially, Maori authority is personified in chiefs but derives from the people. Maori understood ‘rangatiratanga’ to mean ‘authority. Accordingly, when discussing the Treaty, Maori often substituted mana which includes authority but has also a more powerful meaning. (Waitangi Tribunal, 1988, Sec.10.2.2)

The historical record and ongoing claims to the Waitangi Tribunal amply demonstrate that the promises and agreements made in the Treaty of Waitangi have not been honoured. Put succinctly:

The Crown’s assertion of power over New Zealand ... took from the chiefs who signed the Treaty of Waitangi more than they

ceded and took from the non-signatories (who had ceded nothing). (Brookfield, 2006, p.12).

Although it has been acknowledged in recent decades that the Treaty is “a core New Zealand constitutional text”, nevertheless it is “unenforceable of itself in the New Zealand Courts except to the extent that it had been given effect by statute”. (Boast, 2004, pp.3-4).

This was a finding of the Privy Council in 1941, when Hoani Te Heuheu, then chairman of the Tuwharetoa Māori Trust Board, sued the Aotea District Māori Land Board (*Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] NZLR 590). The Aotea District Māori Land Board (see Chapter 5 for discussion on Māori Land Boards), a Native Land Court–appointed agent for Ngāti Tuwharetoa, was taken to court by the Egmont Box timber company, and damages of £23,500 awarded against them.

Te Heuheu then sued the Land Board for negligence, but his case failed in the Supreme Court.

He then focussed on the Treaty of Waitangi as the tribe’s last defence. He claimed that the legislation under which the Land Board operated went against the Treaty and was therefore invalid. In 1941 the Privy Council heard his case – *Te Heuheu Tukino v Aotea District Maori Land Board*. The Law Lords ruled that unless it was incorporated into New Zealand statutes the Treaty was not legally binding. (Ministry for Culture & Heritage, 2009).

*Hoani Te Heuheu Tukino v Aotea District Maori Land Board* remains as the “most recent judgment by New Zealand’s highest court to consider directly the legal status of the Treaty of Waitangi”. (Palmer, 2008, p.174).

Paul McHugh, in analysing the role of the Treaty, argues that it should have been given judicial recognition. He considers that article II contained a “promise relating to the two rules of extinguishment and pre-

emption” (1983, p.16) and that the Treaty established the regime for the continuance of Māori rights.

The appropriate view is thus to consider the Treaty as a restriction on the Crown’s executive capacity – as a “contract” made by the Crown in furtherance of the policy contained in letters patent issued under the Royal Seal. (McHugh, 1983, p.16).

‘Extinguishment’ is an apt description of the outcome of all transactions in regard to Māori land, when we consider that one of our most fundamental claims to land was that of ahikāroa, the ‘long-burning fires’ of occupation. The imposition of Pākehā law and removal of land from Māori control and ownership has very effectively extinguished ahikā over most of our ancestral lands throughout the country.

#### THE FIRST NEW ZEALAND LEGISLATION

On 16 November 1840 the British Crown issued a charter creating a Legislative Council with the authority to make laws for New Zealand. This Council came into being in 1841, and between then and 1853 made close to 200 laws called ordinances. (Burrows, 2003, p.1).

New Zealand’s first Parliament came about through the enactment by the Parliament of the United Kingdom (UK) of the New Zealand Constitution Act 1852. The General assembly so enacted

consisted of the Governor, a House of Representatives (Lower House), and a Legislative Council (Upper House). It had competence to make laws for the peace, order and good government of New Zealand. (Burrows, 2003, p.2).

Section 72 of this Act stated that

all lands wherein the title of Natives shall be extinguished ... shall be deemed and taken to be waste lands of the Crown.

The term 'waste lands' referred to uncultivated lands. (See Williams, 1999 pp.353-354 for discussions on the term).

Tom Bennion (2009, p.6) explained the colonisers' belief that "English doctrines of tenure and estates applied" in New Zealand. He cited the Supreme Court findings in the 1847 case of *R v Symonds*, which held that

It is a fundamental maxim of our laws, springing no doubt from the feudal origin and nature of our tenures, that the King was the original proprietor of all lands in the kingdom, and consequently the only source of private title. ...This principle has been imported, with the mass of common law, into all colonies settled by Great Britain; it pervades and animates the whole of our jurisprudence in relation to tenure of land. (NZPCC 387).

The New Zealand Constitution Act was amended in 1947 at the time of the country's adoption of the Statute of Westminster 1931. This effectively removed the constraint that New Zealand's General assembly could not make laws "repugnant to the laws of England". (Burrows, 2003, p.2).

The Legislative Council Abolition Act 1950 abolished the Upper House, leaving a General Assembly consisting of the House of Representatives and the Governor-General. (Burrows, 2003, p.3).

With the New Zealand Constitution Amendment Act 1973, the reference to peace, order and good government was removed and the General Assembly then had full power to make laws having effect in, or in respect of, New Zealand. Following a review in 1986, the Constitution Act 1986 came into being, and this is the "current law that that confers authority on the New Zealand Parliament to enact laws". (Burrows, 2003, p.3).

The four sets of key constitutional institutions that are responsible for the government, law-making and scrutiny of the actions of the law-makers are:

- The Sovereign: the Queen and her representative the Governor-General;
- The executive: ministers of the Crown and parliamentary under-secretaries and public servants;
- The legislature: the House of Representatives, Parliament;
- The judiciary: judges. (Palmer, Geoffrey & Palmer, Matthew, 1997, p.5).

## NATIVE LANDS LEGISLATION

When Pākehā came to Aotearoa New Zealand, all of the land here belonged to the people who came to be known collectively as Māori. It followed that, before settlement could proceed as Pākehā desired, Māori title

had to be extinguished in some manner before the land could be owned by the Crown in dominium. Once acquired it could then be Crown-granted to settlers. In accordance with British imperial law, the Native title was seen as a burden or gloss on the Crown's sovereign title (imperium); such land was not freehold but was governed by the rules of Māori customary law and alienable only to the Crown. (Boast, 2004, p. 66)

At the time of the signing of the Treaty of Waitangi, the acreage owned by Māori was 66.4 million acres (Asher & Naulls, 1987, Appendix).

Article the second of the English version of the Treaty of Waitangi gave the Crown the right of pre-emption on all purchases of Māori land. While Boast (2004, p.11) says that "Preemption is a standard feature of Imperial constitutional law", Williams wrote that preemption as it was applied in New Zealand was a concept unique to New Zealand law.

The Crown's right here was not merely a right to make or receive the 'first offer' to purchase Maori-owned land but was an

exclusive, monopoly right to be the only purchaser of such land. The Land Claims Ordinance 1841 declared any purchases, gifts, conveyances, leases or agreements from Maori persons to be absolutely null and void, and the Native Land Purchase Ordinance 1846 provided that any person who purported to enter into the purchase of an estate or interest in land – including depasturing leases – from ‘any person of the Native race’ should be liable to conviction and criminal law penalties. (Williams, 1999, pp.104-105).

By the time of the New Zealand Constitution Act 1852, the amount of land remaining to Māori had decreased to 34 million acres, and by 1860 to 21.4 million acres. 1860 was also the year the New Zealand land wars began, and subsequently, the confiscation of 3.25 million acres of Māori land in the North Island. (Asher & Naulls, 1987, Appendix).

The principal method used by the Crown to extinguish the Māori customary title before 1862 was preemptive purchase by deed. By means of such deeds roughly two-thirds of the country, including virtually the whole of the South Island, had passed out of Māori ownership by 1862. The deeds were seen by the Crown as recording payment of compensation for the extinguishment of an inchoate Native title rather than the purchase of a freehold, and in fact the New Zealand Courts have seen these deeds as “Acts of State” rather than as ordinary contracts. (Boast, 2004, pp.66-67).

Following the preemptive purchase by deed, there were two Acts that enabled confiscation of Māori land. They were the New Zealand Settlements Act 1863 under which land was confiscated from “rebel natives” for the purposes of establishing settlements in so-called rebel areas, and the Public Works Lands Act 1864 which “provided for Native Lands required for public purposes being dealt with in the same manner” (Waitangi Tribunal, 1993 Appendix 10(b)). The acquisition of Māori land, as Dr Pollen stated to the Legislative Council in 1863, would be

done “*recte si possimus; si non, quocunque modo*. [legally, if possible; if not, by whatever means].” (N.Z. Hansard, 1863, p. 872)

## THE NATIVE LAND COURT

Between 1840 and 1862, there were a number of attempts to remove the Crown right of pre-emption. (See Williams, 1999, pp 64 -69). The primary push came from settlers wishing to acquire Māori land, and the methodology to facilitate that was the individualisation of title. The vehicle to enable the individualisation of Māori title was the Native Land Court, which was established by the enactment of The Native Lands Act 1862. Section IV states that the Court would be

for the purpose of ascertaining and declaring who according to Native Custom are the proprietors of any Native Lands and the estate or interest held by them therein, and for the purpose of granting to such proprietors Certificates of their title to such Lands.

The Court was to consist of a committee of local chiefs presided over by a Pākehā magistrate, and to “have and exercise such powers as the Governor may from time to time appoint.” (Native Lands Act 1862. s.V). Assent for the Native Lands Act 1862 was confirmed in June 1863 and brought into force in 1864.

The other stated goal of the 1862 legislation was “the advancement and civilization of the Natives”. By this, the legislators and officials of the day meant that Maori (if they did not become extinct first, as some expected) would in time be drawn into the mainstream of colonial life. (Loveridge, 2000, 7.1.2)

The Court conducted some hearings in the Kaipara region and Te Tai Tokerau in 1864, but the 1862 Act was then replaced by the Native Lands Act 1865. This legislation

transformed the Court into a permanent and formal Court of Record, with all the judicial trappings of the Supreme Court. The 1865 legislation was not merely drafted but was designed by Francis Dart Fenton who became the first chief judge. ... The Act also stipulated that ‘there shall be no decision or judgment on any question judicially unless the Judge presiding and two Assessors concur therein. This meant that the judge needed the concurrence of the assessors, but it meant also that the two Maori assessors could not outvote the judge, a possibility under the 1862 Act. The assessors were such ‘aboriginal Natives of New Zealand as the Governor shall from time to time appoint by warrant’. (Boast, 2008, p.66)

These two Acts then were the foundation of what became known as the Māori Land Court. The predominantly British settlers, officials and lawmakers of the time held the view that

colonization meant bringing ‘civilization’ to a new country; land was essential for colonization; and civilization was a gift to the ‘semi-barbaric’ occupants of that country – the real price paid for lands which Maori, in any case, did not and could not actually make use of themselves. (Loveridge, 2000, 7.1.3)

The fallacy of this belief (that Māori did not make use of their lands) was demonstrated in Chapter 3 of this thesis. Māori in fact made extensive use of what was growing and living on their land; land use was simply very different to the settlers’ practice of clearing everything and planting grass, the system of agriculture that has become so dominant in New Zealand.

These views were articulated more baldly in 1870, when at the second reading of the Native Lands Fraud Prevention Bill, Henry Sewell (p. 361), then minister of justice, stated

The object of the Native Lands Act was two-fold: to bring the great bulk of the lands in the Northern Island which belonged to the Maoris, and which, before the passing of that Act, were *extra*

*commercium* – except through the means of the old purchase system, which had entirely broken down – within the reach of colonisation. The other great object was the detribalisation of the Maori – to destroy, if it were possible, the principle of communism which ran through the whole of their institutions, upon which their social system was based, and which stood as a barrier in the way of all attempts to amalgamate the Maori race into our social and political system. It was hoped by the individualisation of titles to land, giving them the same individual ownership which we ourselves possessed, they would lose their communistic character, and that their social status would become assimilated to our own.

Williams (1999 pp.33-50) called the Native Land Court “An Obliging Instrument of Government Policy”, and from Pollen’s and Sewell’s comments it is apparent that the policy of the 1860s was not only to acquire as much Māori land as possible, by whatever means, but also to completely destroy the existing social system.

The “land-taking court”, the colloquial name for the Native Land Court that resonates because it so aptly describes the activities of that body for many decades, was coined by Major Reginald Biggs, a Crown agent working in the Tairāwhiti area at the time of the Pai Marire wars. Biggs was attempting to force before the Court “ a vast block extending from Lottin Point, on the Northern tip of East Cape, to the upper Wairoa” (Binney, 1995, p.106). In his attempts to get the land before the Land Court and therefore facilitate confiscation and military settlement of it, he in 1867 threatened Māori of the Tairawhiti region with the “land-taking court”. (Williams, 1999, p. 48)

A petition to Parliament organised by Te Mokena Kohere and signed by 256 Māori in July 1867 noted not only the name Biggs had given the Native Land Court, but also the propensity of Crown agents to take only

the best land and leave the steep and rugged country to Māori. The petition says:

ko tana i pai ai kia riro te raorao katoa i a ia, kia tere matou ki runga i nga maunga; heoi ka mea atu matou me waiho ma te Kooti Whakawa e whakaora i a matou, katahi ka puta mai tana ki a matou, ka mauria mai e ia te Kooti Tango whenua, katahi ano matou ka rongu i tenei ingoa mo te Kooti, miharo ana matou.

What he wanted was, to get all the level country, and we might perch ourselves on the mountains. Thereupon we told him it must be left for the Land Court to give us relief; then he replied, he would bring the land-taking Court. This was the first time we had heard such a name for the Court, and we were surprised. (AJHR, 1867, G-1, pp.9-10).

The Native Lands Act 1865 Act provided for only ten owners to be listed on the title. This restriction upon the number of owners per certificate of title remained in force until 1873. Although there was a provision for land to be vested in a tribe, this was only possible if the block was larger than 5,000 acres. (Boast, 2004, p.75).

As detailed in the previous chapter, Tutuotekaha No.2 had only ten owners listed on the title when it first went through the Land Court in 1868 and this was changed in 1896 to a list of 222 owners.

The decision made by Chief Judge Fenton in the *Papakura* case in 1867 became the standard by which succession orders have since been made in the Māori Land Court. Ihaaka Takaanini, a rangatira of Papakura, had died intestate in 1864. The case brought before Fenton was

a dispute between Ihaaka's three children on the one hand and tribal representatives on the other. Fenton interpreted the Native Lands Act 1865 as requiring the Court to adopt English, rather than Māori, rules of succession ....

The case established the key principle that in cases of intestacy an undivided share in Māori freehold land would pass to the grantee's children in equal shares. (Boast, 2004, p. 89).

The involvement of the Native Land Court in confiscation of land was set out by the Waitangi Tribunal in their report *Turanga Tangata Turanga Whenua*.

From the end of 1865, the Crown had contemplated confiscating land from Turanga Maori as punishment both for failing to comply with the Crown's terms, presented to them in November 1865, and for subsequently fighting at Waerenga a Hika. It seems that Turanga Maori had been prepared to offer some lands to McLean after the hostilities, but McLean ... had not urged confiscation on the Government during 1866. Only later in the year did the Government proceed to the implementation of confiscation in Turanga. It passed new legislation, the East Coast Land Titles Investigation Act 1866, which bestowed specific powers on the Native Land Court within a defined district to investigate claims of both 'rebels' and 'non-rebels'. Land certified by the court to be 'rebel-owned' was deemed to be Crown land. It is important to note that this confiscation was to be effected through the medium of the land court. (Waitangi Tribunal, 2004, Vol 1, p. 256).

One of the indirect effects of this legislation can be seen in the evidence given to the Native Land Court. When the Mangapoike blocks came before the land court in 1893, Raniera Turoa, the claimant for Ngai Tahu and Ngati Ruapani referred to the 1868 battle at Paparatu between Te Kooti and the militia. He named Henare Turangi as the owner of the Wekanui cultivation and further stated that

In 1868 Henare Turangi lead the European soldiers against Te Kooti's people to Hurukino. (Tairawhiti Māori Land Court Wairoa Minute Book No 7, p.215).

One interpretation of this evidence is that the claimant thought to clarify that his people were ‘loyalists’. Another is that he was merely stating the history of the land and his people’s occupation of it; the reference is but a small part of the overall evidence given and there is much more detail about ancestral rights, names of streams, cultivations and pā sites in Turoa’s recitation.

### ***Native Lands Act 1873***

Following a commission of enquiry into land sales and forced sales to settle debts with various storekeepers in the Hawke’s Bay area, the Native Lands Act 1873 came into being.

The 1873 Act abolished the ten-owner system but retained the Native Land Court. Instead of vesting blocks in ten owners, the Court was now required to list all the owners in a “memorial of title”. They then all became tenants in common holding such shares in the block as the Court thought it appropriate to specify. ... the 1873 Act ushered in further departures from Māori customary law. By vesting blocks in many individuals, all of whom were tenants in common whose shares passed to their successors, a situation was created by which titles could easily become impossibly crowded and very unwieldy. (Boast, 2004, pp. 81-82).

The passage of land through the Native Land Court continued apace, but the constrictions imposed by the larger number of owners listed on a title made it

a difficult and expensive exercise to purchase Māori land. All the individual owners had to be found and unclaimed successions tidied up. It was necessary to split the block into sellers’ and non-sellers’ portions; this was done by re-surveying the block and then having it partitioned between sellers’ and non-sellers’ shares in the Native Land Court. This meant that few private individuals could afford the demands and expenses of Māori land-purchasing, and

the chief purchaser became, once again, the Crown. (Boast, 2004, p.82).

Consider the context in which these legislative changes were made: the Māori population was still declining, Te Kooti was living in the King Country and trying to obtain a pardon or a high court trial in England (Binney, 1995, p.281), and the process of obtaining Crown titles to land was affecting the way Māori lived.

After 1873 the Court functioned in the main by identifying the dominant hapū and then leaving the successful group or groups the task of drawing up the list of names ... This may have had the effect of giving an artificial permanence to some hapū, and may also have artificially frozen hapū membership. Another possibility is that as children continued to succeed equally to their parents' shares, ownership lists may have come to increasingly diverge from the primary hapū affiliation recognised by the Native Land Court. Shareholders who lacked a sense of affiliation with the dominant landowning hapū may have been more likely to sell their shares for that reason. (Boast, 2004, p.88)

More than a century later, ownership of shares in large Māori holdings such as the Mangapoike blocks may be the only connection a person has with land their ancestors occupied, and that can be a very tenuous connection in that many shareholders do not know where the land is or anything about its history. The hapū membership of the shareholders is also much more varied, with people being able to name several hapū to which they whakapapa, in contrast to the original claim for only two hapū – Ngāi Tahu and Ngāti Ruapani.

### **1877 *Wi Parata v The Bishop of Wellington***

James Prendergast was appointed as New Zealand's third Chief Justice in 1875. Two years later he and Justice Richmond heard the case of *Wi Parata v Bishop of Wellington*.

In 1848 Ngāti Toa had agreed with the Anglican Bishop of New Zealand to place land in Porirua aside for the purposes of a school. In 1850 Governor George Grey, without consulting Ngāti Toa, issued a Crown Grant to the Bishop. When, after nearly three decades, no school had been established upon the land, the Ngāti Toa chief Wi Parata took the case for the return of the land to his people to the Supreme Court. (Morris, 2004. p.3)

Although there were two judges presiding, it is Prendergast's name that is most associated with the notorious statement that

So far indeed as that instrument [the Treaty] purported to cede the sovereignty – a matter which we are not here directly concerned – it must be regarded as a simple nullity. No body politic existed capable of making cession of sovereignty, nor could the thing itself exist.

....The effect of the judgment was to minimize the role of the Treaty and emphasise that the Treaty in itself had no binding force. (Morris, 2004. p.7)

Those two words “simple nullity” in regard to the Treaty of Waitangi have resounded for decades.

Morris (2004, p. 1) said the decision had a “devastating effect ... in supporting the alienation of Maori land”. Brookfield cites the research of John Hookey, Paul McHugh and Frederika Hackshaw in concluding that since the late 1870s successive New Zealand judges have misunderstood the law. ....Earlier New Zealand judges, beginning in 1847 with Martin CJ and H.S. Chapman J in *R v Symonds*, got it right, correctly (at least in essentials) interpreting and following a persuasive line of authority from the United States Supreme Court, that recognized aboriginal land rights as in effect a legal encumbrance on the title of the Crown or State as ultimate

landowner; an encumbrance lasting until those rights were legally extinguished either by purchase by the Crown or legislative action. But in *Wi Parata v Bishop of Wellington* Prendergast CJ and C. W. Richmond J misunderstood the judgments of their predecessors in the *Symonds* case and misunderstood the American authorities, to conclude in effect that those rights existed (to use the phrase adopted by North J ninety years later) only by 'grace and favour' of the Crown and were not cognizable by the Courts. Notwithstanding correction by the Privy Council around the turn of the century ... this view has prevailed into our own time. (Brookfield, 1994. pp. 10-11).

### **1891 Native Land Laws Commission**

In a concerted attempt to entrench the system of individual title, the New Zealand Legislature altered, amended, repealed and passed a staggering number of laws pertaining to Māori land and the Native Land Court; eight Acts in 1888, nine in 1889, and many others that indirectly affected the land. The extent of the alarm and unrest surrounding this determined assault can be judged by the fact that Māori wrote more than a thousand petitions that were presented to the House of Representatives between 1880 and 1890.

The law became so complex, and dealings in land so confused and fraught with claims of impropriety and dishonesty, that in 1891 a Commission of Enquiry was set up with William Lee Rees, James Carroll and Thomas Mackay as commissioners. Mackay dissented from many parts of the report and drew up an independent one, hence the commission became known as the Rees-Carroll Commission.

The Government proposed five questions which the commissioners condensed into two:

1. What are the origin, nature and extent of the present defects  
(*a*) in the Native-land laws, (*b*) in the alienation of interests in Native land, and (*c*) the Native Land Courts?
2. What are the principles on which Native lands should henceforth be administered, so as to benefit both Natives and Europeans and promote settlement? (Rees-Carroll, 1891, p.v)

The Commissioners travelled extensively throughout the North Island, visiting 19 towns and speaking to representatives of 22 tribes, as well as a large number of Pākehā. Their report records the complaints and frustrations of both Māori and Pākehā at the operations of the Native Land Court, the actions of Government, the Native Department and its officers, and instances of fraud, shady dealings and generally a system that was not working adequately.

One of the people spoken to in Gisborne, the commissioners' first port of call, was Raniera Turoa who two years later was the principal claimant for the Mangapoike blocks. Turoa, then chairman of the Native District Committee, gave evidence of heavy debts incurred in having Māori land surveyed, and threats and intimidation by the Land Court in relation to a claim for survey fees for the Mangapoike block. He proposed that the Chief Judge and some of the judges of the Native Land Court should act in concert with the Native Committees; he also suggested a committee of people chosen by the tribe should be able to manage large blocks of land in which there were more than 100 owners, so that the land could be properly utilised. (Rees-Carroll, 1891, p. 17).

As part of their justification for new legislation, the commissioners included this opinion of Māori:

We are advising legislation affecting the lands of great multitudes of a semi-savage race of whom the majority, including women and children, and old and ignorant people, are incapable of prudent management; yet this race comprises not a few intelligent and

industrious persons, competent to act in all things upon their own responsibility. (Rees-Carroll, 1891, p. xviii).

Carroll disagreed with the Commission's findings that the Crown resume the right of pre-emption, and appended his reasons for opposition.

The Commission found that the Māori who gave evidence were unanimous not only in their condemnation of the past and present dealings with their land, but also in their desires for the future.

They are averse to selling, but willing and anxious to lease their lands. They desire in some localities liberal reserves for the education of their children and the establishment of industrial schools. They wish that, where any of their numbers are able and willing to manage for themselves, then they should by friendly arrangement receive a fair share of the tribal land in severalty for farming or other purposes ... They are unanimous in desiring a competent Commission to settle all existing disputes. ... They wish in certain cases to effect improvements upon their lands. . (Rees-Carroll, 1891, p. xix).

The main remedies recommended by the Commission were: a) the establishment of a Native Land Titles Court to enquire into incomplete Māori land transactions, arbitrate and validate those that were fair and proper. This court was to be able to issue titles, except in cases where fraud or illegality was alleged; b) that the Native Land Court should be remodelled, and would consist of a Chief Judge, five District Judges and five District Commissioners. The District Committee and the Commissioner were to prepare reports containing tribal and hapū boundaries and lists of owners for each block prior to the block going before the Native Land Court; and c) the creation of a Native Land Board with absolute powers in regard to Native land matters (except where the rights of Europeans arose), and the full power to act as trustee of the land for the Māori owners. The owners of each block were to appoint a

committee to choose sufficient reserves for the people, and instruct the Native Land Board to lease or sell the balance as the case may be.

... In this Board should be vested all the Maori reserves of this Island ... It should have the sole power of leasing all Maori tribal lands, under directions from the Native Committees of the various blocks. ... It should have sole power and authority over Native lands the title to which may not have been determined in the Native Land Court. ... The Maori real-estate management would practically devolve on the Board. (Rees-Carroll, 1891, pp. xxiii-xxiv).

The benefit of establishing the Native Land Board would be that more Māori land, with perfect titles, would be speedily made available to the public. The Commission also urged the Government to finance the Board.

Māori of the Wairoa area contributed significantly to the findings of the commission, no doubt because that was where Carroll was from, but also because Wairoa Māori still owned large areas of land, were determined to maintain their control of it and eager to extend their farming enterprises. The earlier references to the “semi-savage race ... incapable of prudent management” were countered in the concluding paragraphs of the report, where the commissioners wrote

If it should be urged that the Maoris have not sufficient intellectual power to bear so large a part of the management of their own affairs, we should point to the evidence of mental capacity contained in all the statements and speeches made before us by members of the Native race. Especially is this the case in the long and logical list of resolutions passed by the large meeting at Wairoa, where for eight days the assembled Natives debated, and, without any assistance, arrived at conclusions eminently practical and wise. ... it will be a tardy act of justice to a noble race if at last it is aided in developing its capacities for the proper administration of its own estates and the guidance of its own destiny. In short, the

Natives need advice and assistance for management – not useless litigation. (Rees-Carroll, 1891, pp. xxiv - xxv).

At the time that the report was presented to Parliament, there were only two Māori members in the Legislative Council – the Hon. Hori Kerei Taiaroa and the Hon. Major Ropata Wahawaha - and the commissioners noted that greater representation was needed. The reasons given were that the proposed Bill would completely reverse almost thirty years' policy, and probably change entirely the laws that affected Māori land. They recognised that the import of the Bill was that “the whole destiny of the Maori race for good or ill is to be determined” and therefore, at the request of Māori, they suggested that “two Maori chiefs, selected specially for their knowledge and experience in relation to the Courts and land-laws ... be called to the Upper House”. (Rees-Carroll, 1891, p. xxv).

Carroll's appended report vehemently opposed the resumption of Crown pre-emptive rights to Māori land, and emphasised the desire of Māori to engage in agriculture and profitable stock-rearing. He dismissed as “sentimental nonsense” the idea that Māori were rapidly becoming extinct and lamented the lack of Government encouragement and assistance for Māori to become “useful settlers”. He concluded that, if Parliament would meet with Māori

in the same spirit of frankness that the Natives have come before the Commissioners, much may be done to redeem the bitter recollection of the past, and a harmonious system be brought about whereby true settlement and genuine progress of the North Island, as well as the colony as a whole, may be largely promoted, to the advantage and lasting prosperity alike of the European and Maori races. (Rees-Carroll, 1891, p. xxv).

Rees and Carroll were members of the Liberals government. Their report seems to have made little difference to Government policy, as the Liberals poured more money into purchasing Māori land, and restored

Government pre-emption throughout the country with the Native Lands Act 1894.

**East Coast Native Lands Trust and Validation Court.**

Leading up to the time he became chairman of the Native Land Laws Commission, Rees and Wi Pere of Te Aitanga-a-Mahaki were involved in a number of Māori land trusts in the Tairāwhiti area. They set up the East Coast Native Land and Settlement Company in 1880 to promote settlement in the area. Māori contributed land in return for shares, and Pākehā contributed capital for management and all the requirements of survey and subdivision to provide the titles necessary for sale and leasing of the land. In 1881 the company changed its name to the New Zealand Native Land Settlement Company. (Orr-Nimmo, 1997. pp.1-2)

This initiative unfortunately coincided with the recession which came to be known as

the ‘Long Depression’. It began with falling wool prices in 1877 and merged into a period of worldwide recession in which the New Zealand economy did not grow for around sixteen years. (King,2003, p.233)

By 1884 the company was in financial strife, and in 1888 liquidators were appointed. More than thirty thousand acres of the company’s land was sold in October 1891. In February 1892 Wi Pere and Carroll as trustees mortgaged a further 66,331 acres of the land to the Bank of New Zealand Estates Company. These blocks “were liable for the whole debt of the New Zealand Native Land Settlement Company to the Estates Company”. (Orr-Nimmo, 1997. p. 4)

One of the major recommendations of the Rees-Carroll report was followed through with the Native Land (Validation of Titles) Act 1893, which provided for the establishment in 1894 of a separate court to enquire into purchases and leases of Māori land. The judge of the

Validation Court was vested with all the jurisdiction, powers and authorities of both a Supreme Court and a Native Land Court Judge.

Titles that were technically flawed, including hundreds of thousands of acres on the East Coast, were ‘validated’ by a special Validation Court. The Court was supposed to approve only transactions made in good faith. But since the technical breaches had often arisen from failure to comply with safeguards enacted specifically to prevent fraud, the validation proceedings came close to legitimating dishonest dealings. (Ward, Alan. 1999, p.153)

The Mangapoike block, then approximately 40,000 acres, was one of thirteen (totalling 170,000 acres) added to the trust estate of Wi Pere and Carroll during the tenure of the first two Gisborne judges of the Validation Court, George Barton and Walter Edward Gudgeon. (Orr-Nimmo, 1997. pp 5-6). In April 1896, when Mangapoike A and B came before the Validation Court a share of the block was allocated to the Crown and the balance was added to the the New Zealand Native Land Settlement Company. (Validation Court Minute Book No. 4, pp. 173 – 190).

Despite the significant increase in the trust’s holdings, the trustees were unable to reverse the downward spiral of debt accumulation on the New Zealand Native Land Settlement Company. But for the intervention of Āpirana Ngata and Judge James Meachem Batham (who succeeded Gudgeon), in excess of 270,000 acres of East Coast land would have been added to the trust. Batham had “developed considerable reservations about the extent of the jurisdiction given by the 1893 Act. (Orr-Nimmo, 1997, p.6).

Finally, to avert mortgagee sales of all the trust lands, the East Coast Native Trust Lands Act was passed in 1902. A board of three Pākehā were appointed in 1903 to administer the lands and they sold part or all of ten blocks of Māori land around Poverty Bay as well as two in Mahia.

(Orr-Nimmo, 1997, p.8). The trust's debt to the Bank of New Zealand was cleared by mid 1905.

The failure of the New Zealand Native Land Settlement Company has been attributed to a mixture of bad business decisions, the economic climate of the time, the derailment of the company's London promotion by Premier Atkinson, and the cost of obtaining land titles through the "complicated, inefficient and contradictory system of individual share transfer" that the Crown had created at the time. (Waitangi Tribunal, 2004, pp.564-568).

### **Maori Land Administration Act 1900**

At the turn of the century, there were a few years when "Carroll's 'taihoa' (wait a while) policy and the Maori Land Administration Act 1900 provided a brief respite" (Williams, 1999, p. 61) from the rampant alienation of Māori land.

Between 1870 and 1900 the Crown had acquired 7,582,705 acres, more than what was estimated to remain to Māori. The Maori Land Administration Act and the Maori Council Act of the same year are attributed to Carroll, who had become Native Minister in 1899. (Boast, 2008, pp. 213-214).

The preamble to the Maori Land Administration Act 1900 had several key phrases;

the chiefs and other leading Maoris of New Zealand, by petition ... urged that the residue (about five million acres) of the Maori land now remaining in the possession of the Maori owners should be for their use and benefit in such wise as to protect them from being left landless ... it is expedient, in the interests both of the Maoris and Europeans of the colony, that provision should be made for the better settlement and utilisation of large areas of Maori land at present lying unoccupied and unproductive, and for

the encouragement and protection of the Maoris in efforts of industry and self-help:

The Act provided for the establishment of seven Māori Land Councils, one in each of the newly-created Māori Land Districts – Aotea, Te-Ikaroa, Tai-Rawhiti, Waiariki, Tokerau (as at December 1900), Hikairo-Maniapoto-Tuwharetoa (1901) and Waikato (defined July 1902). (Loveridge, 1996, p.29).

Over a period of two years Patrick Sheridan, the Superintendent of Māori Land Administration and head of the new Māori Land Administration Department, were responsible for setting up the land councils. Each council consisted of a Crown-appointed president and two or three other Crown-appointed members, and three elected Māori members. Ten candidates were nominated in three of the districts, six in Tokerau, and in Te Ikaroa only three. (Loveridge, 1996. pp. 32- 35).

Epanaia Whaanga, son of Ihaka Whaanga and Te Paea Rerekaipuke, and grandfather of my father Te Hore Epanaia Whaanga, was one of the elected members for the Tairāwhiti Maori Land Council.

Because the Crown appointees included a Māori member, each of the Councils ended up with a majority of Māori members.

Several sections of the Māori Land Administration Act 1900 assigned significant roles to the Māori Land Councils, among them taking over some of the functions of the Native Land Court, although only under direction from the Chief Judge of that body; to create absolutely inalienable papakainga blocks; to exercise general regulatory and supervisory powers in regard to all Māori land - the approval of a Land Council and the Governor in Council was needed before Māori freehold land with more than two owners could be alienated; and the Councils could also manage lands vested in them by any Māori or Māori group. (Boast, 2008, pp.218-219).

Although Māori members were the majority on the Councils, the fact that one of four was a Crown appointee and the other three were District representatives created a problem. Rights to Māori land were established by whakapapa/ancestral connections and occupation, therefore the Māori members of a Māori Land Council might not have any direct connection with a block of land, and, from a Māori point of view, any rights to determine how it should be managed.

For a number of reasons – lack of financial resources, Māori proving unwilling to commit their land, and “settler impatience generally, compounded by the manoeuvrings by politicians of both races” (Loveridge, 1996, p. 38) - the project failed within five years.

This view that the Act was a failure is qualified by Williams, who wrote that it

would only be true if one is imbued with the perspective that ‘success’ meant promotion of colonisation at the expense of tribally managed lands. From the perspective of Treaty of Waitangi principles, the 1886 and 1900 Acts may perhaps be seen as outstanding, albeit rare, examples of ‘success’ in slowing down the extinction of Maori custom by the Land Court and subsequent alienation of lands to the Crown or settlers. ... the brief two and five years that they were in force are the only periods of time in the entire Land Court era from 1864 up to 1909 when the voracious appetite of settlers for more and yet more land to be made available for settlement was frustrated just a little. (Williams, 1999, pp.224-225).

The period 1900-1905 is known as the ‘taihoa’ period because Carroll’s policy did have the impact of slowing down land alienations. The marae close to where Carroll was born is called Taihoa (wait, or slow down) for that reason.

### **Māori Land Settlement Act 1905, Māori Land Boards.**

The Māori Land Councils were replaced by the Māori Land Boards, as provided for in the Māori Land Settlement Act 1905. These consisted of a President and two other members, one of whom was to be Māori, all Crown appointed. There were no elected Māori members.

This Act moved away from the voluntary provisions of the Māori Land Administration Act 1900 to compulsory vesting of Māori lands considered by the Native Minister to be surplus, i.e. not required or suitable for occupation by the owners, in the Māori Land Boards. The Boards were to administer the lands on behalf of the owners, and could lease blocks for up to 50 years, but could not sell the land. Compulsory vesting was to be tested in the Tokerau and Tairāwhiti Māori Land districts. The Māori Land Administration Act 1900 and the Māori Land Settlement Act 1905

and their various amendments formed a single body of legislation which would govern the administration of Maori freehold land from 1900 until the end of March 1910, when the Native Land Act 1909 came into force. (Loveridge, 1996, p.47)

With the 1905 Act came the return to large-scale Crown purchasing in all but the Tokerau and Tairāwhiti Districts, and as the Boards were usually the judge and registrar of the Native Land Court, the Native Land Court then took on administrative functions as well as its judicial one in regard to Māori land.

The Land Boards, which over the years were to evolve into an administrative arm of the Native Land Court, stayed in existence until 1952, when their functions were transferred to the Maori Trustee. (Boast, 2008, p. 223).

### **The Native Land Act 1909**

Between 1865 and 1909, some 559 “Acts affecting Maori land to a greater or lesser extent were passed by the central government and provinces” (Loveridge, 1996, pp.75-76). The Statutes Compilation

Commission chaired by Sir Robert Stout attempted, and failed, to consolidate the legislation.

In January 1909 Apirana Ngata, who had been a member of the Royal Commission on Native Lands and Native-Land Tenure, was appointed as the Native Minister's (Carroll's) Parliamentary Under-Secretary.

Ngata and John Salmond (then counsel to the Law Drafting Office) drafted the Native Land Act 1909, which

brought together into one comprehensive and relatively comprehensible enactment the appallingly complex legislative jungle that had grown up after 1865. It has been calculated that the 1909 act brought together 69 statutes, or parts of statutes. ... The 1909 act was recodified in 1931, 1953, and most recently, of course in 1993 with the current Act. The TTWMA still owes a great deal to the 1909 consolidating Act. (Boast, 2004, p100).

The Land Boards continued in the administration of the almost three-quarters of a million acres of land vested in them since 1900. The systems put in place with the Native Land Act 1909 “simplified and expedited the alienation of both vested and non-vested Maori lands” (Loveridge, 1996, p. 75) enabling the sale of more than 2.3 million acres, overseen by the Māori Land Boards, in the following twenty years.

### **The Native Lands Amendment Act 1913**

The Reform Government took over from the Liberal Government in 1912, and William Herries became the Native Minister. They established a Native Land Purchase Board and undertook the purchase of close to one million acres of Māori land in the following decade.

With the Native Lands Amendment Act 1913, Māori representation on the Māori Land Boards was removed – they were to consist only of two officers of the Native Land Court; the Crown was enabled to buy

whatever Māori freehold, trust and reserve land it wanted; and the Crown could resume the purchase of undivided shares. Although

all Crown purchases had to be first approved by the Native Land Purchase Board and then had to be put to a meeting of owners, if the meeting rejected the Crown offer the path was then clear for the purchase to proceed by way of piecemeal acquisition of undivided shares. (Boast, 2004, p.234)

In essence this meant that the Crown could override the stated wishes of the owners, whether their refusal to sell to the Crown was because the majority simply did not wish to sell or the price offered by the Crown was too low.

The Reform Government passed the Discharged Soldiers Settlement Act 1915 and settled approximately 22,000 returned servicemen on farms. Although the Māori who participated in World War I were not as numerous as the second World War, they were

fully entitled to participate in the ballots for resettlement blocks ... Māori returned servicemen received land surveyed out of Māori-owned blocks and were eligible for direct state assistance for land development and settlement. (Boast, 2004, p.102).

An allied initiative was Hereheretau Station, close to Anewa Station, and originally belonging to whānau or hapū who were either closely related to or the same as those who owned the Tutuotekaha blocks now farmed as Anewa Trust. In 1917 Sir Apirana Ngata established a Māori Soldiers' Fund committee, chaired by Lady Heni Materoa Carroll, which raised £42,000 from Māori of Te Tairāwhiti. This was used to purchase three stations – Hoata Station near Tikitiki, Hoia Station in Hicks Bay and Hereheretau Station in the Wairoa area, and the returns were used to supplement soldiers' pensions. (Walker, 2001, pp. 190-191). The fund and running of Hereheretau Station eventually came under the administration of the Māori Trustee.

A claim on Hereheretau Station has been filed under the Treaty of Waitangi Act 1975 on behalf of Ngāti Hinepua, Ngāti Hine and Ngāi Te Ipu of the Whakaki Nui-a-Rua and Wairoa region. The Wairoa enquiry district claimants are currently proceeding to direct negotiation with the Crown for settlement of their claims.

### **Native Trustee Act 1920**

By 1920, only 4,787,686 acres of their ancestral land remained in the ownership of Māori of the North Island.

Discounting marginal and leased lands, this represented an area of approximately 900,000 acres for a population of 47,000 or 19 acres per head. In reviewing this situation, the permanent head of the Native Department came to the singular conclusion that it might not be ‘unreasonable’ to allow Maori owners to retain the lands now left to them. (Kawharu, I.H. 1977, pp. 26-27).

There were a number of factors that contributed to the change in government thinking from outright pursuit of Māori land for Pākehā settlement to, finally, serious attempts to see Māori retain what was left for their own economic survival and engagement in farming. Kawharu (1977, p.27) cites possible factors as Māori service and contribution to World War I, the publicity about unsettled land grievances, the increasing Māori population and under-privileged economic position, and the fact that Māori leadership was making its presence felt both within and outside Parliament. In 1921 Gordon Coates became the Native Minister within the Reform Government, and he was noticeably pro-Māori.

The Native Trustee Act 1920 established the Native Trustee, later to become the Māori Trustee, to administer the Māori reserves that had previously been administered by the Public Trust Office. One of the provisions of the Act was that income from various funds would be pooled and lent to Māori farmers, but the Native Trustee was at first hampered by inadequate cash reserves.

From 1923 to 1926, however, it was able to lend a substantial amount of money. This was the first successful government effort to make credit available for Maori land development, but the money was, of course, all Maori money in the first place, being accumulated rents on Maori reserved lands and various kinds of assets in estates. After 1926 the amount of money available to the Native Trustee for lending fell sharply. (Boast,2008, p.239).

### **Native Lands Amendment and Native Land Claims Adjustment Act 1929**

In 1928 the Liberal Government came to power, and Apirana Ngata was appointed Native Minister. With the Native Lands Amendment and Native Land Claims Adjustment Act 1929, there was for the first time real Government support for Māori to farm their own lands. As he told Parliament two years later, when debating the Native Purposes Bill, the best way to ensure Māori progress was “by assisting him to utilize the land which he has inherited from his ancestors”. (NZ Parliamentary Debates, 1931 Vol 230, p.560). Ngata’s contribution to Māori land development is covered more fully in Chapter 6 of this thesis.

Sections 23 through 27 of the Act contained the legislative authority for state assistance, the salient parts of which were:

- s23: To facilitate the development and settlement of Native land the Native Minister shall have the following powers
- (2) Native Minister may appoint advisory committees
  - (3) Minister may cause to be undertaken survey, drainage, reclamation, roading, bridging, fencing, clearing, grassing, planting, top-dressing, manuring, construction of buildings, purchase of equipment, and livestock. All moneys expended will be a charge on the land.
  - (7) To assist Natives to farm lands the minister may authorise advances out of the Native Land Settlement Account.

s24: Authorising Maori Land Boards to guarantee accounts of Native dairy farmers

s25: Establishment of Investment Guarantee Fund for Maori Land Boards

s26: Authorising Maori Land Boards to purchase and farm lands.

s27: Lands vested in a Maori Land Board may be awarded to Crown on consolidation proceedings.

The Native Department changed and expanded as a result of this Act into the Department of Māori Affairs, with land development becoming one of its major functions. (Boast, 2008, p.109).

### **Māori Affairs Act 1953**

Much of the Māori land legislation of the previous twenty years was consolidated in the Māori Affairs Act 1953. Ernest Bowyer Corbett was then Minister of Māori Affairs in a National Government. Corbett argued that

the sight of Maori land unused and covered in weeds was causing unwarranted criticism of Maori as land holders, whereas the cause of idle lands lay in multiple ownership. Therefore ... improving the state of Maori land use would improve race relations in New Zealand. (Williams, 2003, p.7)

The Act defined three types of Māori land in s2: Māori customary, Māori freehold and Māori reserve land. In s3 provision was made for the establishment of the Department of Māori Affairs. Part V provided for the constitution of the Māori Appellate Court.

The most contentious part of the legislation was that relating to uneconomic interests; s137: The Māori Land Court shall not vest in the beneficiary any interest which would constitute an uneconomic interest (under the sum of £25). The Māori Trustee was given the right to compulsorily purchase these uneconomic interests from intestate estates. Tiaki Omana, then Eastern Māori MP, objected strongly, saying that any Māori whose land interests were thus taken would lose his right to speak on the marae.

He loses the mana which he held, and which was the only way he was connected with his tribe. He loses his affiliation with his tribe. His land is gone and he has no further standing among his people. He is nobody. (Quoted in Williams, 2003, p. 7).

Part XXIV related to Māori Land Development, s327 stating that the main purpose of this part was to promote the occupation of Māori freehold land by Māori and the use of such land by Māori for farming purposes. The Development Schemes were subject to the Māori Land Board established in s5 of the Act, and that Board could delegate its powers to

any committee it may appoint under section 11, or to any Maori Land advisory Committee or finally, and most significantly, to any specified officer(s) of the Department of Maori Affairs. (McHugh, 1983, p.63)

The Anewa Development Scheme, the focus of this study, was one of those established under this Act.

### **New Zealand Māori Council v Attorney-General 1987**

One hundred and forty-seven years after the signing of the Treaty of Waitangi, the Court of Appeal of New Zealand made a judgment that finally broke free of the view espoused by Chief Justice Prendergast in 1877 that the Treaty was a simple nullity.

The case was *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641. It arose when the Labour Government was about to enact the State-Owned Enterprises Act 1986 which provided for the establishment of 14 State enterprises. At the time, the Department of Lands and Survey and the New Zealand Forest Service administered approximately 14 million hectares (34,594,000 acres), or about 52% of the country's land surface. After the introduction of the State-Owned Enterprises Bill into the House of Representatives in September 1986, an interim report by the Waitangi Tribunal

expressed the fear held by actual and potential claimants to the Tribunal that by enabling a transfer of Crown land to enterprises such as the Forestry Corporation and the Land Corporation, with the result that the land would cease to be Crown land, the Bill would forever put it out of the power of the Crown to return the land to Maoris in accordance with a Tribunal recommendation. (*New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641)

The Tribunal questioned whether the State-Owned Enterprises Bill was “contrary to the principles of the Treaty of Waitangi”. The result of the case was that the Bill was amended. The Court held that

Section 9 of the State-Owned Enterprises Act 1986 is a firm declaration by Parliament that nothing in that Act shall permit the Crown to act inconsistently with the principles of the Treaty of Waitangi and overrides the rest of the Act.

(*New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 642)

The Court of Appeal considered that Section 27 of the Act was inadequate to protect land claims filed after 18 December 1986, and gave directions that a system of safeguards be prepared in relation to Māori claims on lands or waters made after December 1986. Section 27 (1) of the State-Owned Enterprises Act 1986 now states that

Where any land or interest in land is transferred to a State enterprise under section 23 of this Act or vested in a State enterprise by a notice in the *Gazette* under section 24 of this Act or by an Order in Council made under section 28 of this Act, the District Land Registrar shall, without fee, note on the certificate of title the words ““Subject to section 27B of the State-Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties, such as the owner of the land, to be

heard in relation to the making of any such recommendation)'''.

The significance of these changes was expressed by Justice Cooke:

This case is perhaps as important for the future of our country as any that has come before a New Zealand court. .... The decision of this Court ... was in effect that the State-Owned Enterprises Act had to be administered in such a way that Maori land claims were safeguarded. (*New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 651 and 719)

This memorial was appended to the title of that part of the Kopuawhara block that became the Blue Bay Camping Ground, as detailed in Chapter 2. As Justice David Baragwanath (2008, p.29) explained

Any claim to the Waitangi Tribunal is dealt with without consideration of any purchaser's interest. A recommendation by the Waitangi Tribunal that the land be restored to the claimant has the force of law.

There are Treaty claims over the Kopuawhara/Blue Bay land, and the Wairoa claimant cluster known as Te Tira Whakaemi o Te Wairoa is now moving towards a direct negotiation process with the Crown.

## SUMMARY

At the time of arrival of the Pākehā in New Zealand, and for some decades after, the peoples who came to be collectively known as Māori had their own custom and law. As Pākehā numbers increased and the tangata whenua population declined, the established tribal law and social structures began to break down. It became evident that new arrangements to cope with occupation of a country by two peoples were needed. In 1835 rangatira from mainly Northern hapū, with the encouragement of the British Resident James Busby, drew up Te Wakaputanga o te

Rangatiratanga o Nu Tirenī. This was followed in 1840 by the British initiative, the Treaty of Waitangi.

The Treaty of Waitangi contained ideals of justice, equality, acknowledgment of the natural rights of tangata whenua, their properties and taonga, and promises to protect and honour those rights. Such a compact should have been given judicial recognition.

At the heart of tangata whenua culture, the Treaty, and the Pākehā settlement that quickly overwhelmed and displaced tangata whenua, was the land. A system of Crown pre-emption, unique to New Zealand, was established so the Crown could purchase land cheaply and then on-sell it at vast profit to fund settlement.

A British law based government was established in New Zealand in 1852. Since then, a staggering amount of legislation has been enacted, the vast majority of which was aimed at acquiring Māori land by whatever means possible. Aggressive land acquisition policies in many cases led to war, which in turn provided an excuse for the Government to confiscate land upon which to establish military settlements. The confiscated land was notably some of the finest farming country in New Zealand.

A Native Land Court was set up in 1862, aptly dubbed the Land-taking Court, to enable individualisation of Māori title. The objectives of the Government were to acquire Māori land and to destroy the tribal social system. In 1867 the Chief Judge of the Native Land Court made a decision that all children of a Māori who died intestate should inherit his or her shares equally. This led to the clutter of shareholders in multiple-ownership land that became such a barrier to land development for many decades. It also contributed to the modern Māori land tenure ethos where rights to land are no longer based on ahikāroa, but often solely on inheritance.

Colonial society considered Māori to be a semi-savage race, the majority of whom were incapable of prudent management of their lands. This attitude, combined with the 1877 statement by Chief Justice Prendergast that the Treaty was a simple nullity, tainted all legislation and dealings with Māori land well into the 20<sup>th</sup> Century.

Throughout the determined assault on their lands, Māori were not silent. The conflict of the 1860s and the injustices of the confiscations as well as ongoing instances of fraud, shady dealings, ill-advised investment and intimidation by Government departments gave rise to more than a thousand petitions between 1880 and 1890.

Māori constantly and consciously appealed for the right to be involved in the management of their own lands. They had centuries of horticultural expertise and experience. By the mid 19<sup>th</sup> century they recognised the need for new skills and new technology and asked to be trained in agriculture, and to have education for their children..

Leaders such as Carroll urged Parliament to meet with Māori, but such requests went unheeded. Although it was recognised in 1900 that Māori were in danger of becoming a landless people, still the alienation of land continued.

Māori Land Councils (later Land Boards) were created in 1900, but even though they initially had a majority of Māori members, the Government still got it wrong. The Crown-appointed Māori members were not necessarily directly connected to the lands they were expected to regulate and supervise, and therefore, from a Māori point of view did not have the right to determine how the land should be managed. By 1913 Māori representation on the Land Boards was removed.

Overall, Government policy from 1862 to 1929 was that as much Māori land as possible should be made available for Pākehā settlement and farming. Where land was left in Māori ownership, it should be managed

by Pākehā. Land needed to be put to productive use such as pastoral farming. Uncultivated land was considered waste land, and no allowance was made for the fact that areas of native forest or wetlands were highly productive to Māori.

With Ngata as Native Minister, in 1929 the Government finally made provision for real support for Māori to farm their own lands. Māori land development became a major function of the Department of Māori Affairs; that role was further entrenched with the Māori Affairs Act 1953, with the schemes subject to the Māori Land Boards. Thus, the State still exercised its paternalism over the land.

It wasn't until 1987 that New Zealand's Court of Appeal made the decision that finally overturned the long-standing notion that the Treaty was a simple nullity. The State-Owned Enterprises Act 1986 was the first statute to enjoin "those with statutory power to have some level of regard to the Treaty of Waitangi." (Ruru, 2008, p.2.) Section 9 of the Act states that "Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi".

The five justices who heard the case *New Zealand Maori Council v Attorney-General* [1987] reached a unanimous decision that the State-Owned Enterprises Act had to be administered in such a way that Māori land claims were safeguarded. They all concurred that "partnership, reasonableness and good faith are the hallmarks of the expression "the principles of the Treaty of Waitangi". (Ruru, 2008, p.3).

Such principles had been sadly absent in the actions of New Zealand's legislators for close to one and a half centuries.

## CHAPTER SIX

MĀORI LAND DEVELOPMENT

## SIR JAMES CARROLL

An influential advocate for Māori farming in the 19<sup>th</sup> and early 20<sup>th</sup> centuries was James Carroll, He was the son of Joseph Carroll and Tapuke of Ngāti Kahungunu. Joseph was of Irish descent and named in a 1966 encyclopedia (McLintock, para. 1) as the first Pākehā farmer in the Wairoa area. Tapuke was a woman of mana and as with so many Pākehā families in the Wairoa and Mahia areas, it was through his wife who was a rangatira of high status that Joseph Carroll acquired land in the area.

James Carroll's life experience included fighting against Te Kooti in 1870, a cadetship in the Native Department in Hawke's Bay under Samuel Locke, and time with the Native Department in Wellington under Donald McLean. In 1875 he returned to farming in Hawke's Bay and Poverty Bay, but then in 1879 went back to Wellington as interpreter to the House of Representatives for four years. In 1881 James Carroll married Heni Materoa and settled in Gisborne.

James Carroll's marriage was, like his father's, to a high-ranking woman.

Heni Materoa inherited great wealth and high rank from her mother, Riperata Kahutia of Te Aitanga-a-Mahaki, a chiefly woman and land court advocate. Her father was Mikaere Turangi of Rongowhakaata. She backed her husband James Carroll financially, built a large home in Gisborne and, with her brother, gave a number of pieces of land for public buildings and churches in Gisborne, including land on which was built the Heni Materoa Creche (an orphanage). (Gisborne Museum quoted in Coney, 1993, p.189).

Both Heni and her mother-in-law Tapuke would have had considerable influence on the political standing of their husbands, being from Te Tairāwhiti, an area that counts among its outstanding progenitors women such as Rongomaiwahine of Te Mahia, from whom Tapuke and Heni both claimed descent (Kahungunu was Rongomaiwahine's husband, and Mahaki was a grandson of this union).

Carroll was elected to Parliament in 1887 in the Eastern Maori seat. Land issues had dominated the election, and Carroll had been the voice of Māori objections to the Native Land Administration Act 1886. He firmly believed that Māori could succeed, as he had, in Pākehā society and campaigned for Māori equality in laws of property and rights of citizenship. (Ward, 2007, para.8).

When a Liberal government came to power in 1891, Carroll was recognised for his expertise on land issues and appointed along with William Lee Rees and Thomas Mackey to a commission of inquiry into native land laws. The commission reported on the chaos created by the imposition of a system of land tenure previously unknown to Māori – that of individual title:

The continual attempts to force upon the tribal ownership of Maori lands a more pronounced and exact system of individual and personal title than ever obtained under the feudal system among all English-speaking peoples has been the evil of Native-land dealings in New Zealand. ... in August and September, 1873, Parliament deliberately passed a Native Land Act which established as the law of the land the individual system which Chief Judge Fenton had declared to be unknown and illegal... (Carroll, Rees & Mackey, 1891, pp viii-ix.)

The commissioners noted that Māori leadership was completely undermined through the practice of giving those who appeared on the titles equality with others regardless of authority and obligations in regard to land and people. The land became a marketable commodity. The

activities of the Native Land Court and its officers were described as fraudulent, evil, confusing, demoralising, unjust, ruinous and disastrous. The commissioners warned that “A few more years of the Native Land Court under the present system, and a few amended laws for free-trade in Native lands, and the Maoris will be a landless people.” (Carroll et al, 1891, p.x)

The commissioners gave as an example the Mohaka-Waikari blocks near Wairoa, where:

Lists of owners and boundaries were prepared by the agent of the Government, without reference to the residential owners. As a natural consequence, grave errors were made. Lands belonging to one hapu were awarded to another; names which should have been inserted were omitted. In one block of 31,000 acres only one name was inserted, and large numbers of owners excluded. (Carroll et al, 1891, p.xiii)

Much of the land remaining to Māori in the greater Wairoa area was then, and is now, steep and rugged; unsuitable for subdivision and close settlement. For this type of land, the commission favoured a hapū title.

They

proposed a remodelling of the Native Land Court to make it more locally based, with a role for Maori block and district committees in settling title. It also favoured alienation of the land only through land boards with 50 per cent Maori representation, and restoration of Crown pre-emption. Carroll dissented from this last recommendation and strongly criticised the lack of training and other support given to assist Maori to become farmers.

The Rees-Carroll approach was delayed by the appointment as native minister of Alfred Cadman, who favoured the purchase rather than leasing of Maori land. As a backbencher still, Carroll launched a flow of awkward questions about the government's actions, sometimes citing the Treaty of Waitangi in support of

Maori rights. Carroll's personal skills and his knowledge of the complex area of Maori land tenure nevertheless led to his appointment in March 1892 as member of the Executive Council representing the native race. (Ward, 2007, para. 11-12).

Throughout his tenure in Parliament, Carroll was often in a position where he had to support government policy such as Crown pre-emption of Māori land and the Native Land Purchase and Acquisition Act 1893, despite any reservations he may have had. His work with Paratene Ngata and Rapata Wahawaha in the 1880s in the development of management committees for blocks was the beginning of the Māori land incorporation system that is such a feature of farming in Te Tairāwhiti today.

Carroll in 1893

collaborated with Rees and Wi Pere to introduce a private member's bill to constitute the owners of the 100,000-acre Mangatu No 1 block, north-east of Gisborne, as a body corporate, empowered to manage the land through an elected committee. (Ward, 2007, p.3).

The Mangatu No 1 Empowering Act 1893 (Private) included a schedule of 180 names who were held by the Native Land Court to be owners of Mangatu No 1 in 1881, although only 12 were named as owners on the Certificate of Title. These 12 agreed to administer the block through the incorporation established by the 1893 Act. (Williams & University of Auckland Library, 2003, commentary).

Carroll supported the retention of Māori land and its development by Māori until his death in 1926. He paved the way for the next Māori leader who left a huge legacy of governance and empowerment in Māori agriculture – Āpirana Ngata.

## SIR ĀPIRANA TURAPA NGATA

Āpirana Ngata of Ngāti Porou – the resonance of the name is inescapable for one who grew up in Te Tairāwhiti. Āpirana (1874-1950) was the son of Paratene Ngata and Katerina Naki (or Enoka). His education began at the age of five at Waiomatatini Native School where he spent four years before being sent to Te Aute College. After eight years there he went on to study arts and law at Canterbury College, then on to Auckland where he completed his LLB in 1896, the first Māori to complete a degree at a New Zealand university. (Sorenson, 1996, p1.)

Ngata's very conception is attributed to the intervention of a tohunga who died shortly after his birth, hence there was an early expectation that he would be a significant figure amongst Māori. (Walker, 2001, p.54). He was raised in a family of leaders and within a tribal area that had maintained ownership and control of most of its traditional land. Leaving aside his huge achievements in the area of Māori arts and language recording and revival (for instance, Ngata and Te Hurinui's volumes of *Nga Moteatea*), let us consider the traditions of management and utilisation of tribal land in the wider East Coast region.

Te Tairāwhiti area has a long history of cultivation of the land. The introduction of the kumara to the area is recorded in the mōteatea "Po! Po!", one of the ancient waiata in which Māori encapsulated their history and cosmologies. Ngata appended the following to his record of this waiata

...Pourangahua brought the *kumara* from Parinuitera (The Beetling Cliff of the Sun) in Hawaiki. When Pourangahua was left by his brothers-in-law at Turanga, they returned to Hawaiki to fetch the *kumara*, and he, Pou', mounted upon a whale, and by incantations to Tangaroa (God of the Sea), he was able to reach Hawaiki before them. He obtained *kumara* from the Beetling Cliff of the Sun, and he brought them over on the bird known as Manunui-a-Ruakapanga (the Great Bird of Ruakapanga), and the *kumara* was

planted at Manawaru and Araiteuru. This was during the period when the district of Turanga (now Gisborne) was being settled by the people of the Horouta canoe. (Ngata A.T & Te Hurinui, 1961, p.153).

William Monkhouse, surgeon on the *Endeavour*, gave a detailed description of kūmara, taro and yam cultivations, a hundred acres in extent, in Anaura in 1769 (see Salmond, 1991, pp.163-164). By the time Āpirana's father Paratene Ngata was a child, the people of Te Tairāwhiti were

...growing wheat and corn at Waiapu, Tūpāroa, Waipiro, Tokomaru, Uawa, Whāngārā and Tūranga. Every arable acre on undulating country, even steep hillsides, was under cultivation. The profits from wheat were invested in coastal vessels to convey the produce, including pigs, to the Auckland market. (Walker, 2001, p.41).

By the 1890s, concern was rising among Ngāti Porou and other tribes of Te Tairāwhiti at the amount of good coastal land being purchased by government agents and the hapū held a number of hui to consider the issue. The attendees agreed that they wanted their remaining land reserved from sale to the Crown, and an invitation was extended to Richard Seddon, Prime Minister, to the opening of Hinētāpora whareniui at Mangahānea Marae in February 1896. Āpirana was appointed clerk for the hui. As neither Seddon nor James Carroll were able to attend, Āpirana presented their submissions to Wī Pere, the Māori member for the East Coast. They included Ngāti Porou's condemnation of:

the Crown purchases in their territory as illegal if they were conducted under the provisions of the Native Land Purchase Act 1893. The purchase of land that included habitation sites, pā and garden lands contradicted Section 14 of the Act. The sales also breached Section 15 because few of the sellers had other lands for their sustenance. They were rendered landless because it was not possible to reserve to them twenty-five acres of fertile land, fifty

acres of less fertile land and 100 acres of poor land as recommended by law.

Ngāti Porou expressed disappointment that the Government had not adhered to its proposal that Māori should engage in the development of their lands. The rationale that the Crown was purchasing ‘waste land’ or ‘idle Māori land’ was not applicable to land in Ngāti Porou: the tribe was engaging in sheep-farming and was improving its lands each year. The smaller remnants of land were used for house sites and cultivations. Some people had no livelihood beyond these small plots of land. (Walker, 2001, p. 71.)

A year after this hui, the Te Aute College Students Association was established, instigated by the Te Aute headmaster John Thornton and supported by Archdeacon Samuel Williams, Anglican missionary, farmer and philanthropist. Among the several aims of this association to “arrest the social, economic, cultural and spiritual decline of the Māori people” (Walker, 2001, p.74) was one that specifically referred to an extension of Māori engagement in pastoral farming and agriculture.

The Association was also known as Te Aute Old Boys’ Association, and later as the Young Māori Party, a change of name that was made “in order to include all who had the interests and welfare of the Maori people at heart”. (Buck, 1951, p.22) The members of the party who became most prominent were

Apirana Ngata of Ngati Porou, Te Rangi Hiroa (Peter Buck) and Maui Pomare of Ngati Mutunga, Reweti Kohere and Tutere Wi Repa of Ngati Porou, Edward Pohua Ellison of Ngai Tahu and Frederick Bennett of Te Arawa (though Bennett went to St Stephen’s Native Boys’ School in Auckland, a brother college to Te Aute). (King, 2003, p.330).

At the first working conference of the association, Ngata, then only twenty-three years old, presaged his later political advocacy for development of Māori land by Māori in a paper on employment. He:

advocated that Māori become producers of wealth by developing their own land. He knew very well that land classified by Pākehā politicians as ‘waste land’ or ‘idle Māori land’ was coveted for settlement of Pākehā farmers. The native land laws, which Parliament passed by the score in the preceding thirty years, were a minefield designed to separate Māori from that so-called wasteland and transfer it into Pākehā ownership. Āpirana saw development of land by Māori themselves as the best safeguard against alienation. ... He warned that standing in the way of development was the difficulty of determining native title brought about by the confusing and chaotic state of the land laws. (Walker, 2001, p.76)

Thirty-one years after this conference, in December 1928, Ngata was appointed to Minister of Native Affairs, third-ranking in the Cabinet of the United Government. His major work on Māori land development soon followed.

## MĀORI LAND DEVELOPMENT

Whilst government assistance in the form of low-interest loans had been made available to Pākehā farmers from the enactment of the Government Advances to Settlers Act 1894, the same arrangements were not available to Māori. Although they had been engaged in farming since the late 1860s (Asher & Naulls, 1987, p.39), the nature of the land to which Māori still retained ownership in the Tairāwhiti region was such that development was a costly exercise. Theoretically, the resources of the 1894 Advances to Settlers Act were available to Māori farmers, but in reality neither Government agencies nor other lending institutions were willing to lend

money against land under Native title. (Banks today are still unwilling to lend money against land in Māori title).

In a 1928 letter to Peter Buck about a demand from 38 local body delegates for Government to allow local bodies to sell Māori land to recoup unpaid rates, Ngata identified three main “Native Land” problems:

If a colony of European settlers had titles such as 7/8ths of the Maoris have and were harassed as the Maoris were by local bodies there would be a rebellion threatening the life of the Government! The state was not onside in this game because (1) it had not provided a penny of state money towards assisting Maori farmers – who had only their own money administered by the Native Trustee and M.L. Boards to assist them; (2) it had failed with the Native Land Court & Boards as at present administered to modernise Native land titles and align them with the needs of today; and (3) its education system as applied to Maoris was out of date. The local bodies were asking for their pound of flesh on the theoretical basis of racial equality, whereas in practice the Maori was not regarded or treated as an equal and in the road services for which the unpaid rates were demanded large areas of Native lands were shamefully treated. Charging orders had been obtained against poor lands quite unfit for settlement, because the pakeha had picked the eyes out of the country, leaving much of the rubbish... (Sorrenson, 1986, p.68).

Three years later Ngata outlined some means of resolving these problems in his report to Parliament titled “Native Land Development”. The opening remarks stress that the report does not discuss making more Māori land available for Pākehā settlement, but is focussed on the efficient occupation of Māori land by its owners. He explained that the system of communal Native title was based upon the findings of the Native Land Court:

...which was constituted to give effect to the guarantee given by the Crown in the Treaty of Waitangi to respect the customs and

usages of the Maori in regard to his land – a guarantee safeguarded by the Native Rights Act 1862, which declared not only his right to British citizenship, but also his right to have the titles to his lands determined according to his customs and usages. (Ngata, 1931, pi).

Establishing whakapapa links to ancestors who had occupied and exercised usage rights was a vital part of Māori land custom, but, Ngata explained, this was subject to the custom of te ahikāroa i.e. the fires of occupation being warm. Here then is the heart of Māori land tenure: the owners must be able to ensure continuing occupation and usage of the land that has come to them from their ancestors.

In the preceding decades, Parliament had devised several land settlement methods that Ngata termed ‘drastic’. These included vesting large areas of Māori land in the Public Trustee or special Boards such as the East Coast Trust Lands Board, the Māori Land Boards, or the Native Trustee. But the settlement of Māori upon their own land was not a feature of any of these schemes, and consequently they did not have the support of the affected communities.

Much effort had been put into acquiring Māori land for Pākehā settlement, but:

the necessity of assisting the Maori to settle his own lands was never properly recognized. It was assumed that because he was the owner according to custom and usage, and because the law had affirmed his right of ownership, he was at once in a position to use the land. (AJHR, 1907, G-1c, p.15).

Ngata's three solutions to communal title had been developed and already put into practice in Te Tairāwhiti. They were:

a) *Incorporation of owners*

Incorporation was a means of bringing together into one farming entity the land interests of a community. Initially incorporation was of contiguous areas, but this was later extended to areas which were not adjoining but had elements of common ownership. Incorporation of land required the consent of the majority (in terms of value) of the owners. The separate entity thus formed – the body corporate – had a committee of management who could raise finance on the security of the land and carry out farming operations. At the time of the report, incorporation was mainly in the area between Gisborne and Hicks Bay. Ngata considered incorporation to be the “readiest means of organizing a communal title for purposes of finance and effective farm management” (1931, p.ii), a means that ensured the goodwill of the community because they were involved in the administration of their land.

b) *Consolidation of Interests*

Consolidation of land interests was about bringing the interests of individuals and whānau together in one location. Because of whakapapa links, individuals could have land interests in blocks in differing counties. By a system of exchange, they could consolidate their interests into one block which then facilitated boundary fencing, access, water supply and roading. Consolidation began in 1911 with the Waipiro Blocks and by 1931 the consolidation of titles included land in five counties<sup>12</sup> on the East Coast and in the Bay of Plenty, five in the King Country and practically all the land north of Auckland. It was a way of organizing title so that the owners could use their land more effectively and was “the most comprehensive method of approximating the goal of individual or, at least, compact family ownership.” (1931, p.ii).

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<sup>12</sup> New Zealand was divided into provinces until 1876, when borough and county councils were set up to administer local matters. (King, 2003, p.232) Local government is now divided among regional, district and city councils.

c) *Vesting in Statutory Bodies to administer as Farms*

This option was the least desirable of the three methods of overcoming the difficulties of communal title. Communally-held lands were vested in statutory bodies to administer as farms on behalf of the Māori owners. While it did bring valuable land under cultivation, it neither educated nor empowered Māori to farm their own land.

The main thrust of the above devices was to settle Māori upon their own lands as farmers and enable them to access the necessary finance for that industry. There was fear amongst Māori that mortgages were yet another means of taking their land, so many made arrangements with private individuals, stock agents and storekeepers to obtain the necessary supplies for farming rather than mortgage the land. The incorporation farm management committee could obtain finance by way of a mortgage: in 1903 over stock and chattels; in 1906 over land but only from a lending Department of Government; and then, following on from the 1909 revision and extension of provisions for farming incorporated lands, from private lenders as well as State lenders.

Although Ngata considered the incorporation of owners to be a temporary measure, it still dominates Māori farming in the East Coast and Wairoa area almost eighty years after his report.

The reasons that Ngata believed the Māori incorporation system would work were outlined in one of his letters to Peter Buck in 1930 :

... Briefly they are

- (a) the use of Maori leadership – hereditary preferred – in the organisation, control and efficient working of a group.
- (b) The use of the Maori standard of living, cheap housing, a bare sustenance allowance (made possible by the nature of the leadership), exploitation of natural food supplies &c.
- (c) The application of the communal system, which defers individual housing, reduces requirements in internal equipment of

same, saves expense in items like vegetable growing and maintains the spirit of the group under camp conditions.

(d) The dependence upon the qualities of adventure (physical and mental) of the race, which confidently approaches the details of land development, tackles any job, building, fencing, the handling of strange implements &c; in the spirit of “give-it-a-go”; and the intelligence and resourcefulness engendered by centuries of roving in all sorts of lands and under varying climes, now concentrated on the problem of using land in order to live and

(e) The humorous philosophy of the people now pathetically called upon to stay it in the grim task of keeping up with the pakeha. The paraphernalia of department, Board and pakeha supervision are imposed by the conditions of State assistance and reveal the pakeha attitude of hesitation and distrust. I am having more trouble fitting these pakeha features into the machine, than hitching on Maori folk to the new job. (Sorrenson, 1988, pp. 43-44).

The main aims of Ngata’s proposed solutions to the problem of multiple owners in a block of land were to ensure that the land remained in Māori ownership, and to enable the owners to participate in the pastoral and agricultural industry that was then and is still the backbone of this country’s economy.

There are, in 2009, many Māori land incorporations and trusts in the Wairoa area. They include Te Whakaari (11,864 hectares run as two sheep and cattle stations, Paparatu and Tukemokihi), Whakaki 2N (474.757 hectares, currently leased to Te Whakaari) and the block that is central to this thesis, Anewa Trust (1911.4026 hectares). As these are the three main landholdings of the hapū who are the major shareholders in the Tutuotekaha blocks central to this study, examples will be drawn from them that illustrate Ngata’s ideas in practice.

*(a) the use of Maori leadership – hereditary preferred – in the organisation, control and efficient working of a group.*

Each of the blocks is run by a farm management committee. When they were first set up, Ngata's intent that the management committee would be representative of the hereditary leaders of the shareholding community was apparent. The early committees had representatives of seven of the prominent families of the hapū to whom the land belonged. In the case of Te Whakaari (then still under the block names of Mangapoike A and B) the first committee members in December 1953 were A.T. Carroll (later Sir Turi Carroll), Rangi Rikirangi, Hira Paenga, Tiaki Pomana, Horace Whaanga, Kingi Winiata and Peter Smith. They were elected at a meeting of owners under the one person one vote system. For Whakaki 2N, the first committee members in February 1933 were Tihi Whaanga, Pare Memero, Mere Uaha, Turei Ataria, Wiha te Hira, Kooti Henare and Te Paea Toataua.

Anewa Trust was slightly different in that the original incorporation was known as the Proprietors of Tutuotekaha 2A2 and adjoining blocks, and consisted of approximately 870 hectares. The first committee of management members for this incorporation were Kingi Winiata, Johnnie Robinson, Tihi Whaanga, Tuhe Christie, Manapouri Shaw, Hugh Ewan McGregor and Areke Mete.

It is not recorded how the committee members for Whakaki 2N and Tutuotekaha 2A2 were chosen, but it is likely that nominations were taken from the floor of the meeting of owners who agreed to the incorporation, and, as with the voting in of members for the Mangapoike blocks, the voting system would have been one person (shareholder) one vote. Te Hore Epanaia Whaanga, one of the original committee members of the Mangapoike blocks and son of Tihi Whaanga (member of original committees for Whakaki 2N and Tutuotekaha 2A2) said that the intent when the land management committees were first established was that the seven members should each come from a different family within the shareholders. (Whaanga, Te H, personal comment, 1974).

In current times, the secretary for the incorporation holds and maintains a register of owners, with their shareholding recorded, as required by Te Ture Whenua Māori Act 1993 s.263. Upon five shareholders requesting a vote-by-shares election at a meeting to elect committee members, a ballot is held and the highest-polling candidate/s become committee members. This is quite different to the putting forward of names by the community of shareholders who are present, and who, in the times of the first farm committees, were more likely to be people who lived and worked and provided leadership in the community. Under the vote-by-shares system, the shareholders with the larger number of shares can substantially influence the outcome of the election. As well, candidates lobby shareholders and lodge proxy votes for the meeting with the secretary. Thus the management committees of today may have two or more members from the same family, and the wider representation of families is not as evident.

A farm management committee also fulfils the other functions that Ngata envisaged: the organisation, control and efficient working of the group – here it can be assumed that the group he refers to is the community of Māori landowners, or in the case of the incorporation, the shareholders. Seven shareholders' representatives are certainly more effective in management terms than the large number of shareholders they represent. In Te Whakaari's case for instance, there are currently around 3,600 shareholders. When the Mangapoike A & B blocks that now form the majority of the Te Whakaari Incorporation went through the Native Land Court process in 1893, they had a combined 327 owners.

The organisation of the farming of the land is that the management committee is the governance body. They employ a secretary/accountant who handles all the business aspects such as maintaining financial records, the shareholders list, and the minutes of the committee of management's meetings. They may, as has been the case since Te

Whakaari and Anewa engaged Agfirst Consultants, also provide farm advisory services.

The management committee oversees the engagement of a farm manager, but it is the accountant/secretary who deals with the operational necessities such as payroll, insurances and rates, payment of stock and station agent accounts, mortgages and the many financial transactions of a farm enterprise. The management committee meets as they deem necessary – sometimes every two months, or in the case of Whakaki 2N which is leased to Te Whakaari, only twice a year.

The appointment of a farm supervisor has varied over time. In the 1960s and intermittently since the 1970s, Te Whakaari had one of the management committee members as the farm supervisor. The supervisor would visit the farm and stay with the manager, discuss stock management practices, ride over the farm and generally be the eyes of the committee, able to report first-hand how the farm was being run. Since the engagement of Agfirst Consultants in 1993, the supervisory role has been filled by one of the consultants.

The farm manager is the one who is responsible for the day-to-day operations of the farm, including the shepherds and other staff who work on the farm.

*(b) The use of the Maori standard of living, cheap housing, a bare sustenance allowance (made possible by the nature of the leadership), exploitation of natural food supplies &c.*

These aspects of farming Māori land were more evident in the smaller blocks such as Whakaki 2N which is adjacent to Iwitea Marae, the main marae of its shareholders. Those who worked the land were generally from the papakainga, so a separate dwelling on the farm was unnecessary. Whakaki 2N was first incorporated in 1933, and further contiguous blocks were added in 1955. The land was leased to two shareholding brothers, and it wasn't until 1960 that a farm manager was

employed for one day a week, and further on a daily basis as the need for extra stock work arose.

At the time, Iwitea was a thriving marae-centred community, and every home had a large vegetable garden and numerous fruit trees. The wetlands and lakes were abundant in eels, carp and birdlife, and the beach that bounds one side of the land is a favoured fishing area.

In the 1950s the Tutuotekaha blocks being farmed as Anewa Station also provided a low standard of housing. It wasn't until the station came under the auspices of the Department of Māori Affairs that a more substantial home was provided for the manager.

At Anewa, and also at Paparatu station (part of the Mangapoike A & B Incorporation, now Te Whakaari Incorporation) the staff supplemented their diet with eels, wild pigs, ducks, deer, pikopiko etc – the natural food supplies to which Ngata referred. By the 1960s this was less to do with necessity and more to do with recreational pursuits and favoured traditional foods.

*(c) The application of the communal system, which defers individual housing, reduces requirements in internal equipment of same, saves expense in items like vegetable growing and maintains the spirit of the group under camp conditions.*

The deferment of individual housing would have been more common on smaller Māori blocks where several members of the household might work the land. Certainly in the instance given in the previous section of a low standard of housing at Anewa, it was the case that whānau members lived in the same house and worked on the station. It was also common practice on farms throughout New Zealand, not only Māori farms, that children and spouses would work alongside the farmer; indeed this is often still the case with family farms.

On Paparatu Station in the 1960s a communal garden of potatoes for the staff was put in every year. The farm staff did this as part of their work, and the crop was tended and harvested not only by the men but also their families. The crop was stored in specially-constructed bins at the rear of the night pens<sup>13</sup> in the woolshed. There was a large orchard by the homestead, the produce from which was shared with the staff and much of it bottled by the manager's wife for the cookhouse (which housed six single men plus the cook and her husband). The cook's husband also was expected to maintain a large vegetable garden, which included berry fruits and herbs, next to the cookhouse for the use of the cook. As well, Paparatu had a milking herd to supply the six families and six single men that comprised its permanent staff. It was common practice for farms at this time to provide staples such as meat, milk, and bread, as well as pay for power for their employees.

Being such a large station with so many staff, Paparatu was a small community on its own. Although the permanent staff didn't live under camp conditions, the spirit of the group was very evident. It was an isolated station and employees had only one pay day a month when they went into town. Socialisation tended to be within the group, the children all attended the small station school, and the very large woolshed was the venue for social events such as school end-of-year functions.

*(d) The dependence upon the qualities of adventure (physical and mental) of the race, which confidently approaches the details of land development, tackles any job, building, fencing, the handling of strange implements &c; in the spirit of "give-it-a-go"; and the intelligence and resourcefulness engendered by centuries of roving in all sorts of lands and under varying climes, now concentrated on the problem of using land in order to live.*

Māori at this time were determined to engage in the farming industry.

Ngata's own Ngāti Porou people provided examples of this spirit.

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<sup>13</sup> Night pens are small yards under the cover of the extended roof of the shearing shed, where the sheep are held overnight when shearing is about to commence.

Pioneering farmers in the Waiapu Valley would earn money in the shearing season to buy food and tools for late autumn, when they pitched camp on the land to begin effective occupation. Up to a hundred acres of bush could be cleared before work was suspended for planting food crops of potatoes and kūmara in spring and the commencement of the shearing season. After the summer burn-off, the land was grassed with local supplies of rye grass and cocksfoot. Other crop seeds for clover, rape and turnip had to be purchased. (Walker, 2001, p.103)

Not only did they bring the above qualities to the many and varied tasks required in land development, they actively pursued educational courses in farming. Te Aute College had an agricultural course, attended by generations of young Māori men who would then return to put what they had learned into practice on their family land.

One such was Te Hore Whaanga, major owner in Tutuotekaha 1B5B, the block central to this thesis. Upon finishing at Te Aute, he then went on to Lincoln College in Canterbury in 1931 where he completed one year of a two-year Certificate in Agriculture. The College records his return home as being due to health problems. Whaanga's life was one of farming his people's land, and teaching succeeding generations the skills that he had acquired through education and working the land.

*(e) The humorous philosophy of the people now pathetically called upon to stay it in the grim task of keeping up with the pakeha. The paraphernalia of department, Board and pakeha supervision are imposed by the conditions of State assistance and reveal the pakeha attitude of hesitation and distrust. I am having more trouble fitting these pakeha features into the machine, than hitching on Maori folk to the new job.*

The paraphernalia and conditions imposed by the State had always been obstacles to Māori farming their own land. In the previous chapter, the disastrous dealings of the East Coast Native Lands Company were covered up until the debt to the Bank of New Zealand was settled in 1905.

The Mangapoike blocks neighbouring the Tutuotekaha blocks, and with many owners in common, were also enmeshed in the East Coast Native Lands Trust and its successor, the East Coast Commissioner.

In 1906 the East Coast Commissioner replaced the East Coast Native Lands Trust Board. The Commissioner was to administer these Māori lands for 47 years and hold in trust more land than any other contemporary authority such as the Native Trustee or any Māori Land Board. (Ward, 1958, p. 105). Orr-Nimmo summed up the entire saga thus:

The history of the operations of the East Coast Native Trust Lands Board and its successor, the East Coast Commissioner, is essentially a story of pakeha paternalism. The initiative lay firmly with pakeha. Pakeha board members and pakeha commissioners made decisions with scant reference to Maori opinion. ... despite the existence of block committees, beneficial owners still had very little influence over the way in which their lands were handled. Even the East Coast Maori Trust Council was very largely an advisory body. (1997, p.353).

Throughout these years, Māori sought to manage and farm their own lands. Kingi Winiata, who was later to become farm supervisor of the Mangapoike A & B incorporation told the committee of inquiry into the East Coast Trust Lands that

I have come to the conclusion that after 39 years of operation under the East Coast Commissioner, the Maoris have reaped no benefit from these lands. There have been benefits paid, but small and not consistent. Sometimes they are not paid at all. I have heard, and I know that the incorporation system as applied in the Whangara block has been successful, and I advocate that that system be applied to these lands. (Orr-Nimmo, 1997, p.255)

The shareholders of the Mangapoike blocks were passionate advocates of their rights to be involved in the decision-making and management of

their land, and eventually, in December 1953 a committee of owners was set up to do just that.

A clearer example of the “paraphernalia of department, Board and pakeha supervision” imposed by the conditions of State assistance to which Ngata referred, came about in 1966/67 for the Tutuotekaha blocks when the management committee for Tutuotekaha A & B made enquiries with the Department of Māori Affairs about finance for development of the incorporation land.

The Department of Māori Affairs called a meeting of owners which was held at Taihoa Marae in Wairoa on 26 May 1966. The District Officer explained that this hui was to ascertain whether the owners in the various blocks (fourteen were eventually amalgamated for the scheme, totalling some 4770 acres) really wanted financial help through the Department to develop their land. He explained the

methods of administration, control, etc when land comes under Part XXIV for development purposes – land comes under control of the Board of Maori Affairs during whole period of actual development and subsequently until advances reduced out of sufficient revenue to a reasonable figure when control is handed back to a Committee of Management under Incorporation. The Committee is then required to clear the remaining advance by way of fixed repayments spread over a certain number of years.

(Department of Māori Affairs, 1966-69, File 14/3/74 Vol I p.20).

Wiki Christie (Lambert), one of the owners present, remarked that it seemed somewhat foolish to go into the amalgamation while they were getting rent for their block. Api Whaanga, who was one of the Committee of Management of Tutuotekaha A & B, said that the committee had

thought we could do wonders but found we could do no real development because of lack of money. Banks are most difficult to get money from and here we have people coming to offer us

money to do the work at a lower rate of interest. (Department of Māori Affairs, 1966-69, File 14/3/74 Vol I p.19).

The minutes record that the owners present were unanimous in their support for the development scheme.

Section XXIV of the Māori Affairs Act 1953 was titled “Māori Land Development”. Its main purpose was “to promote the occupation of Maori freehold land by Maoris and the use of such land by Maoris for farming purposes.”

The Department of Māori Affairs expended a lot of time and resources to have the Anewa Development scheme set up, and some of their actions and omissions do not withstand close scrutiny. The District Officer reported to the meeting of owners and the Māori Land Court that the impetus for the scheme came from the request of the management committee of the Tutuotekaha A & B incorporation. But the files contain a letter from Harker, Trewby and Campbell, Public Accountants in Wairoa, dated 3 October 1966.

The writer is secretary to the A & B Block ... He was rather surprised, therefore, that he did not receive notice of any kind regarding the meeting, and nothing, either, that could have been put before the Committee of Management for consideration prior to the meeting. At the conclusion of the meeting, though, the Body was presented with the bill for the supper (?) served to those at the meeting! And so far, too, neither the writer nor the Body Corporate has received any minutes of the meeting or anything to advise the Committee officially as to what happened thereat.

(Department of Māori Affairs, 1966-69, File 14/3/74 Vol I p.37).

The secretary also requested a copy of the minutes for the chairman of Tutuotekaha A & B.

For nineteen years thereafter, the Department of Māori Affairs ran Anewa Station, appointed managers and supervisors and were responsible for the operation of the farm. It wasn't until late 1986 that the owners were advised that the department was handing the land back to the owners to manage, and a committee of owner trustees was appointed. But the fundamental change was that where once there had been several family blocks owned by various whānau, thanks to the insistence of the officers of the Department of Māori Affairs, now there was one approximately 5,000-acre block with a very large number of shareholders.

There is no doubt that the changes Ngata wrought to the farming of Māori land in Te Tairāwhiti served the purposes that he intended – to keep Māori land in Māori ownership and to enable Māori to participate in the agricultural industry. Māori wanted to manage their own land, to be more than just farm labourers, and the incorporation and trust systems gave them that opportunity. They brought to the task of land development all the attributes and abilities that Ngata had outlined in his 1930 letter to Buck. The financial arrangements facilitated by incorporation of owners and consolidation of titles were workable.

But what has been the cost?

Consider the Tutuotekaha blocks: in 1940 five of the Tutuotekaha blocks (2A2, 2B, 2C, 2E and 1B1) were being farmed as an incorporation under the name of the Proprietors of Tutuotekaha 2A2 and adjoining blocks. Seven owners formed the committee of management.

In February 1959 the existing partition orders and orders of title for the blocks included in the 1939 incorporation were cancelled and all of those lands combined in a single area named Tutuotekaha A & B. There were 942 people listed as owners in the 2147 acre block. This was Anewa Station.

Anewa Station by the 1960s also had the lease of most of the whānau blocks numbered Tutuotekaha 1B2 - 1B7 and their subdivisions.

The committee of owners wanted to better utilise their land, and approached the Board of Māori Affairs about development finance in 1966. The Board made it clear that this would only be approved if all the Tutuotekaha blocks that were being farmed by Anewa Station were amalgamated into one title. Those owners who objected to the amalgamation were outvoted by others.

The Department of Māori Affairs ensured that the amalgamation would be given Māori Land Court approval, and they financed and controlled the development scheme for almost two decades thereafter.

At least one owner was forced off his land – although the District Officer said he had personally obtained his signature and agreement, the written record shows that Tom Te Kooti believed he still owned his land and its improvements and was entitled to live there. The Department's response was that Te Kooti's right to continue occupying 7 acres of the 98 acre block in which he had been the major shareholder was a "concession ...subject to conditions". (Department of Māori Affairs, 1966-69, File 14/3/74 Vol I). Five years after the development scheme started, Te Kooti's remaining few acres were brought "into active development" by the Department. (Department of Māori Affairs, 1969-82, File 14/3/74 Vol II).

Wiki Christie, an owner in Tutuotekaha 1B3B enquired in May 1968 whether she and other owners in that block could remove kānuka (for firewood) and rimu (for fence battens) from her block. The District Officer replied that 1B3B had been amalgamated into the Anewa block and that Christie now had an undivided interest in the whole Anewa block, not just that formerly known as Tutuotekaha 1B3B. This meant that all "Kanuka and other timber etc. on the property now belongs to the

Anewa Development Scheme (i.e. to all the Maori owners thereof)” but there would be no objection to Christie removing

say two or three cords of Kanuka each year for her own use as firewood provided she first contacted the Manager and the area cut was left in a tidy condition with all tops and brush put in heaps for burning. Cutting of Kanuka by owners for selling as firewood on a commercial basis would not be permitted nor can the Rimu trees be removed since this would require the approval of the Board of Maori Affairs with any royalties being payable to all owners in the Anewa Block. (Department of Māori Affairs, 1966-69, File 14/3/74 Vol I p.83).

These two examples clearly demonstrate how the amalgamation of the Tutuotekaha lands impacted on some of the owners. No longer did they own land, buildings, kānuka or rimu – the development scheme owned them. Although everyone who had been owners in the various Tutuotekaha blocks were now shareholders in Anewa, all proceeds from something as valuable as rimu - regardless of whether it grew on land that had belonged to your whānau – now had to be divided amongst all the shareholders; if indeed it was distributed to the shareholders at all.

This then was the true cost of the Anewa development scheme: people who had maintained ahikāroa, lived on their land, worked it, shared it and its produce and resources with their whānau and hapū – these people became shareholders in an amorphous whole controlled by the Department of Māori Affairs. Their actual presence and physical effort exerted over decades of sustaining and husbanding the land became a meaningless exercise.

Everybody owned everything, and physically, nothing.

The development schemes were successful in establishing large farms, but they took away rights of occupation and usage of all the resources of that land.

Eight decades after the development of systems to retain our ownership of ancestral land, those systems have become, for the vast majority of the descendants of the original owners, just another system of alienation.

## SECTION III

TE TURE WHENUA MĀORI ACT 1993,  
PHILOSOPHY VERSUS IMPLEMENTATION

If it is difficult for the European settler to acquire Maori land owing to complications of title it is more difficult for the individual Maori owner to acquire his own land, be he ever so ambitious and capable of using it. His energy is dissipated in the Land Courts in a protracted struggle, first to establish his own right to it, and, secondly, to detach himself from the numerous other owners to whom he is genealogically bound in the title.

(AJHR, 1907, Vol III G-1c p.15)

## CHAPTER SEVEN

TE TURE WHENUA MĀORI ACT 1993ROYAL COMMISSION OF INQUIRY INTO THE MĀORI LAND  
COURTS

In a decade that was significant for Māori protest about the Treaty of Waitangi and Māori land, the Māori Land March of 1975 was a pivotal event.

The organisers of the 1975 Māori Land March were Te Roopu o te Matakite. Te Roopu included Māori from many areas and backgrounds, young and old, urban and rural. In their manifesto, they set out these aims:

1. To unite the Maori people in their desire to retain Maori Land.
2. To press for the abolition of mono-cultural laws pertaining to Maori Land.
3. To establish new laws for Maori Land based on Maori cultural attitudes to land.
4. To establish communal ownership of land within the tribe as a legitimate title equal in status to individual title.
5. To press for the recognition of Maori cultural factors in general legislation pertaining to land ....
6. To use all the legal remedies available in pursuit of these aims[;] failing that, to resort to direct tactics of confrontation, demonstration, and marching on Parliament. (Hutchinson, 1975, MS-papers-2316-12).

In 1972, Matiu Rata was appointed Minister of Māori Affairs when Labour became the Government.

As Carroll and Ngata had done before him when they were Ministers of Māori (Native) Affairs, Rata demonstrated a capacity to influence Cabinet and to successfully promote legislation for

Māori advancement. The Māori Affairs Amendment Act 1974, for example, extended the definition of a Māori to include anyone who was descended from a Māori, and the Treaty of Waitangi Act 1975, probably his most significant contribution, saw the establishment of the Waitangi Tribunal. (Durie, M. 2005, pp213-214).

The greater awareness of the agreements embodied in both the English and Māori versions of the Treaty of Waitangi also influenced the reformation of laws relating to Māori land, eventually resulting in reference to the Treaty in Te Ture Whenua Māori Act 1993.

For more than a century, there had been a plethora of legislation designed to wrest land from Māori ownership through the agency of the Native and Māori Land Courts. (see Chapter 5 of this thesis). The published history of Māori land law (see for example Acheson, 1913; Erueti, 2004; Kawharu, 1977; Smith, 1960) records that the British system of land tenure that is the basis of the existing law is very different from the communal concept of land ownership previously known to Māori. In a lecture to the New Zealand Geographical Society, Chief Judge E.T.J Durie commented that

The defined but fractionated and absentee ownership of today accords neither Maori tradition nor British legal preferences and modern Maori titles are as much an impediment to Maori communal enterprise as they are to individual enterprise. It is timely that Maori land legislation should be extended to accommodate legal alternatives in land ownership concepts, by providing for such things as tribal, hapu or whanau titles. (1981, p.5)

In the latter part of the 1970s the Government decided to re-examine the role of the Māori Land Court, and to that end a Royal Commission on the Māori Courts was set up on 7 August 1978, consisting of Thaddeus McCarthy (Chairman), W Te R. Mete-Kingi and Marcus Poole. Their

report was published in May 1980. In the preface, it was noted that the report was submitted

at a time when issues affecting the Maori people are receiving more attention than at any time in our history excepting, perhaps, the troubled days of the land wars. Maoris themselves, increasingly conscious of their racial heritage, are asserting the values of their ways of life with a frequency and intensity certainly not experienced in the lifetimes of people living today.

Although the Commission stated clearly that its province was the “Court and its form and activities, and not the laws governing ownership, possession, inheritance or alienation of Maori land” (1980, p.1), nevertheless they found that they could not conduct such an enquiry without being inundated with submissions on the latter. Their enquiry was also complicated by the introduction to the House of Representatives of the Māori Affairs Bill 1978, which was a consolidation of the Māori Affairs Act 1953 and the numerous amendments to that Act. As the Bill included consideration of the jurisdiction of the Māori Land Court, a great deal of confusion ensued, resulting in delayed submissions to the Commission on the Māori Courts.

The Commission felt compelled to comment on the matter.

While we have no doubt that a consolidation of the 1953 Act and its different amendments will have advantage, we must say that in our view this legislation is unduly complex and difficult. Even professional people have the greatest difficulty in understanding it. What is needed more than consolidation is a much simpler and more understandable legislative treatment of this most important and troublesome area. We urge that this alternative be favourably considered. (Royal Commission on the Māori Courts, 1980, p. 3).

The Report of the Commission of enquiry consisted of three main parts: the preface, which set out the objectives and methodology of the enquiry; Part II which contained discussion on matters such as the evolution of the

Māori land courts, the changing definition of who was a Māori, what was Māori land and other material the Commission considered necessary to understand the issues into which they were enquiring; and Part III which was an explanation of the questions posed by their warrant and the recommendations of the Commission.

One of the questions considered by the Commission was whether the Court's jurisdiction should be enlarged, and whether the earlier jurisdiction of the Court in regard to granting probate and letters of administration (transferred to the Supreme Court by the Māori Affairs Amendment Act 1967), and adoptions (transferred to the Magistrate's Court by the 1955 Adoption Act) should be restored. In answering this, the Commission referred to the implications of the change in the definition of "Māori" that was made in the Māori Affairs Amendment Act 1974. Earlier legislation had defined a Māori as "a person belonging to the aboriginal race of New Zealand; and includes a half-caste and a person intermediate in blood between half-castes and persons of pure descent from that race" (1980, p.74). The Commission commented that, as the current definition in 1980 was

"a person of the Maori race of New Zealand; and includes any descendant of such a person". That would give the Maori Land Court jurisdiction in those particular areas over people who are of predominantly European descent, some of whom would have had little or no association with Maori life or with Maori land, and might wish to live as Europeans free from tribal associations. We put this question objectively to witnesses from time to time, but nearly always the question seemed to be resented by Maori witnesses, and the answer given was that a person, no matter how small his proportion of Maori blood, should be entitled to declare himself a Maori if he wished to. (Royal Commission on the Māori Courts, 1980, p. 74).

This widening of the definition of Māori, along with social changes such as urban migration and the greater growth of the Māori population in comparison to non-Māori would

have implications for the working of the Maori Land Court. The rapid growth of the Maori population will inevitably bring about great increases in the ownership lists of multiply-owned land. The depopulation of rural areas means that large numbers of owners are remote from tribal lands. Many do not know that they have interests in land and have only tenuous ties with their tribal background. The spread of Maoris throughout New Zealand makes the convening of meetings of owners of land a difficult and expensive task. (Royal Commission on the Māori Courts, 1980, p.21).

Crowded ownership lists continue to be a problem, and three decades more of successions and urbanisation of the Māori population have compounded the issues noted by the Commission. These issues are further discussed in Chapters 8 and 9 of this thesis.

The question central to the enquiry was about the continuing existence of the Māori Land Court as a separate entity. The Commission concluded that the Māori Land Court and the Māori Appellate Court should continue to operate until the existence and ownership of Māori land were adequately recorded in the land transfer register, at which time their judicial functions should be absorbed by the main courts.

#### KAUPAPA TE WAHANGA TUATAHI

Over the same period of time as the Commission enquiry into the Māori Land Courts, the New Zealand Māori Council, the Māori Women's Welfare League and the Bishopric of Aotearoa were conducting seminars and discussions on the Māori Affairs Bill 1978. The Government decided

not to proceed with the 1978 Bill, but asked the New Zealand Māori Council to make recommendations on new legislation.

The Māori Women's Welfare League was established in 1951, Its first general conference was attended by delegates from 187 branches "drawn from women's welfare committees established by Rangi Royal after World War II by Māori Welfare Officers operating under the Māori Welfare Act 1945". (Cox, 1993, p.127).

The New Zealand Māori Council is a statutory body established by the Māori Welfare Act 1962, when it was composed of a "series of district Māori councils based upon the seven Land Court areas, and a national body comprised of delegates from each district council". (Cox, 1993, p.106). In 2012, there are ten districts listed on the Council's website (<http://www.newzealandmaoricouncil.com/>). Both the Māori Women's Welfare League and the New Zealand Māori Council are national pan-tribal organisations that have been effective in the political arena.

The Council completed their review of Māori land legislation five years later, in February 1983, and published their findings as *Kaupapa Te Wahanga Tuatahi*. In the foreword Sir Graham Latimer wrote

We have therefore spent more than two years conferring with representatives of the Maori people and with experts on the subject of Maori land in order to design a set of principles that will serve as a guide for laws determining our use of land in accordance with our customs and traditions. Legislation based on these principles will clarify and simplify the present system of ownership and administration of Maori land, and above all will ensure that this land will forever remain part of the heritage of the Maori people. Such legislation will provide machinery for greater freedom for owners to use their land, while at the same time reaffirming the validity and legality of the traditional Maori view that land is held in trust for the collective benefit of the owners and their descendants rather than as a personal material possession. (p.2).

The Māori Council's discussion paper began with an interpretation of the Treaty of Waitangi and the concept of rangatiratanga. They defined rangatiratanga as

the working out of a moral contract between a leader, his people, and his god. It is a dynamic not static concept, emphasizing the reciprocity between the human, material and non-material worlds. In pragmatic terms, it means the wise administration of all the assets possessed by a group for that group's benefit: in a word, trusteeship. (New Zealand Māori Council, 1983, p. 5).

Examples were given of rangatiratanga at work in marae, welfare committees, the Māori Women's Welfare League, trusts, incorporations and political leadership.

The bulk of the discussion paper concerned Māori land. The Council outlined its cultural connotations; its value as the link between ancestors, present generations and future generations; and its potential as a resource capable of providing employment and an income to maintain marae and tribal assets. They discussed the disposition of land interests; surveys, title improvement and registration; incorporations and trusts; meetings of owners and voting by proxy; leases; financial assistance to encourage Māori to occupy and use their land; planning both urban and rural and Māori housing; and the acquisition of Māori land for public works. The last chapter of the Council's report concerned the servicing organisations – the Department of Māori Affairs, the Board of Māori Affairs and Māori land advisory committees; the Māori Land Court; the Māori Trustee; and the Waitangi Tribunal and its functions.

The New Zealand Māori Council wrote that their objective was

to keep Maori land in the undisturbed possession of its owners; and its occupation, use and administration by them or for their benefit. Laws and policies must emphasise and consolidate Maori

land ownership and use by the whanau or kin group. (New Zealand Māori Council, 1983, p.10).

The Department of Māori Affairs, which had for so long provided administrative services to the Māori Land Court, was abolished in 1989, and the functions it had performed for the Court were transferred to the Department of Justice. (Boast, 2004, p. 117).

Contrary to the expectations of the Royal Commission on the Māori Courts that the need for the Māori Land Court “as a separate institution should soon pass” (1980, p.6), the New Zealand Māori Council reiterated what many Māori submitters to the Royal Commission had urged – that the Land Court should remain. Although they admitted that in the past the Court was an instrument of the Crown used to separate Māori and their land, with the change in role that had been taking place, the Council considered the Court as

*the only forum* [italics added] with the experience and understanding to properly facilitate Maoridom’s aspirations for its land. ...as we see the Court’s future through the eighties and beyond, its primary role must be to ensure that all Maori land has effective administrative bodies charged with the dual responsibility of retention of Maori land in Maori ownership and its proper utilization. Trust and Incorporation legislation must be adapted to further these purposes. The Court must continue to be the forum wherein disputes and misunderstandings between Maoris over their lands are resolved and agreements effected. (New Zealand Māori Council, 1983, p.34).

Furthermore, the Council believed the Court must have exclusive jurisdiction especially in regard to sales of Māori land, and that it “must be an innovator and catalyst in respect of administration and utilization of that land”. (New Zealand Māori Council, 1983, p.34).

It was ten years after the publication of their report before the new Māori land legislation was enacted, but the influence of the New Zealand Māori Council's discussions are very evident in Te Ture Whenua Māori Act 1993.

#### TE TURE WHENUA MĀORI ACT 1993.

Te Ture Whenua Māori Act 1993 came into force on 1 July 1993. The Act is to reform the laws relating to Māori land in accordance with the principles set out in the Preamble, which appears first in te reo Māori then:

Whereas the Treaty of Waitangi established the special relationship between the Maori people and the Crown: And whereas it is desirable that the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be reaffirmed: And whereas it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapu, and to protect wahi tapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapu: And whereas it is desirable to maintain a Court and to establish mechanisms to assist the Maori people to achieve the implementation of these principles.

Section 2 directs that Parliament intended that the provisions of the Act “shall be interpreted in a manner that best furthers the principles set out in the Preamble”, with further emphasis on retention and use of Māori land by Māori.

The New Zealand Māori Council had articulated just those objectives, as had submitters to the Royal Commission on the Māori Courts, the protestors in the 1970s, and generations of Māori before them.

Part 1 of the Act provides for the continuation of the Māori Land Court, how the judges may be appointed, the number, and their qualifications, skills and experience. While in the past there had been judges without formal qualifications, the last such was appointed in 1933. The Royal Commission noted however that with the large-scale enterprises run by many Māori tribal groups, it was now necessary for judges to have the same broad general knowledge of statutory law as does a competent lawyer. While this legal knowledge comprises the basic technical expertise needed in a judge, unless he has a sympathy with Maori aspirations, some knowledge of Maori lore and custom, and is acceptable to Maoris, he will not be an effective judge of the Maori Land Court. (1980, p.85).

Section 2A of Te Ture Whenua Māori Act 1993 is more specific, stating that

A person must not be appointed a Judge unless the person is suitable, having regard to the person's knowledge and experience of te reo Maori, tikanga Maori, and the Treaty of Waitangi.

Of the eleven Māori Land Court judges listed on the Court website in 2011, eight include their tribal affiliations. ([www.justice.govt.nz/courts/maori-land-court/about-us/our-judges-1](http://www.justice.govt.nz/courts/maori-land-court/about-us/our-judges-1)).

Parts 2 and 3 are to do with the Māori Appellate Court and the provisions relating to both Courts. The administration of estates, recording of the ownership of Māori land, and the status of land are covered in Parts 4, 5, and 6. Part 7 sets out which Māori land is inalienable, and the regulations regarding alienation. The duties and powers of the Court in relation to alienations of Māori land are set out in Part 8. Parts 9 and 10 deal with the powers of the assembled owners and representation of owners of Māori land. Part 11 contains the regulations regarding leases; Part 12 and 13 those pertaining to trusts and incorporations. Part 14 covers title reconstruction and improvement and Part 15 is about occupation orders.

Part 16 sets out the regulations in regard to surveys, and Part 17 those to do with Māori reservations. Part 18 contains the miscellaneous provisions such as protection against execution for debt and bankruptcy.

#### INTERVIEW WITH JUDGE CAREN FOX

To assist in my examination of the philosophy and impact of Te Ture Whenua Māori Act 1993, Judge Caren Fox, Deputy Chief Judge of the Māori Land Court, agreed to be interviewed on the matter.

Question 1. Is there one single aspect of Te Ture Whenua Māori Act 1993 that stands out as being a major improvement over previous Māori land legislation?

Judge Fox: The principles of the Act, which are retention and development. The Act reverses the previous presumption that Māori land was to be assimilated into the General Land tenure system in New Zealand. Now Te Ture Whenua Māori Act requires that the Court and everyone exercising powers under the Act exercise their role/s having regard to the need to ensure the retention of Māori land in the hands of the owners, their whānau and hapū.

Question 2. What do you consider to be the philosophy of the Act?

Judge Fox: That's in the Preamble and section 2. There is a need to balance retention with the need to utilise the land. That's the single most important aspect of the Act and it is to be found in the preamble. Māori land needs to be recognised as taonga tuku iho. The Act also refers to rangatiratanga and the Treaty – even though only in the preamble. That's where the philosophy comes from – the preamble and section 2.

Question 3. Is it serving Māori well in terms of the principles of the Act as set out in the preamble?

Judge Fox: Ostensibly yes, the Act is certainly better than previous legislation. For full comparison, it would be important to get statistics on how many partitions, confirmations of alienations and status orders have been confirmed in the last few years.

Question 4. Are there any aspects of the Act that need to be revisited or revised?

Judge Fox: The tenurial system needs to be revisited generally. There is the difficulty of getting owners to meetings – but so long as the requirements of the Act have all been complied with, you can't require any more than that, and you can't prevent people from progressing development of their land. It can't be the case for most Māori people that the land is critical to their economic well-being – most are just too removed. The asset is still connection and it's very important still to maintain that connection.

There is a need to change the tenurial system. We need to revisit the way we think about Māori land – why the larger shareholders have so much more say. There's an issue about how we've allowed the system to be manipulated; how an individualised system has been elevated over tribal ownership.

Question 5. Any further comments you'd like to make, or observations?

Judge Fox: The Court needs to transition into an institution that works more with iwi. As the Treaty settlements come, we should be better able to work with iwi on tenurial reform. Title maintenance is a core function of the Court, but it would be good to have tribal mediators. Some of the issues we are hearing in the Court – do we

want some of the squabbles there for our descendants to see? The evidence given is recorded forever, and if we had mediation a lot could be settled before it gets to the Court and becomes a matter of record.

Any discussion of change needs to start with wānanga on the core principles, the core Māori principles. We need to re-educate ourselves on how we hold property, because we've forgotten. We hold the land, but we don't own it.

In the next section, elements of the interview with Judge Fox inform my analysis of the Te Ture Whenua Māori Act 1993.

#### ANALYSIS OF TE TURE WHENUA MĀORI ACT 1993

Chief Judge E.T.J. Durie and the New Zealand Māori Council strongly advocated for changes to be made to the law governing Māori land and the Māori Land Courts. The breadth of matters that come under the Court's jurisdiction, the accompanying impact on the lives of Māori, and the way the Court works make the Māori Land Court quite different from other New Zealand courts. In his submission to the Royal Commission on the Māori Land Courts, Judge Durie said:

But as distinct from most courts of law, it could be said that the main function of the Māori Land Court is not to find for one side or the other, but to find social solutions for the problems that come before it: to settle differences of opinion so that co-owners might exist with a degree of harmony, to seek a consensus viewpoint rather than to find in favour of one, to pinpoint areas of accord, and to reconcile family groups. The social purpose appears to require that the Court should strive always to achieve some practical result that will advance the interests of the owners and the better use of the land in a manner compatible with both Māori aspirations as well as the national endeavour. (Quoted in Clark, Coxhead, Harvey, Milroy and Neverman, 2009, p.1).

Comparing the aspirations expressed by the New Zealand Māori Council and Judge Durie with Te Ture Whenua Māori Act 1993, and keeping in mind Deputy Chief Judge Fox's comments, is the Act sufficiently improved from what went before?

The New Zealand Māori Council did not attempt to draft the new legislation, rather they saw their task as drawing up "a set of principles that will serve as a guide for laws determining our use of land in accordance with our customs and traditions". (1983, p. 2). These principles were:

1. control over Māori land should be in Māori hands
2. Māori land would forever remain part of the heritage of Māori people
3. that Māori land is held in trust for the collective benefit of the owners and their descendants.

As well, the Council articulated the need for laws that would determine Māori use of the land in accordance with Māori customs and traditions; clarification and simplification of ownership systems and administration of those; and the machinery for greater freedom for owners to use their land.

*1. Control over Māori land should be in Māori hands.*

First and foremost among these, which as the Council stated was upheld by the Treaty of Waitangi, was that Māori should control their own lands. The Preamble of Te Ture Whenua Māori Act 1993 affirms the exchange of kawanatanga for the protection of rangatiratanga. One of the clearest definitions of rangatiratanga as used in the Treaty was that provided by the Waitangi Tribunal in the Ngāi Tahu Land Report:

rangatiratanga denotes the mana not only to possess what one owns, but, and we emphasise this, to manage and control it in accordance with the preferences of the owner. (1991, 4.6.6).

In reaffirming the Treaty principle of protection of rangatiratanga in its Preamble, the 1993 Act then echoes the first of the Council's principles. The philosophy of the Act is set in the Preamble, and reinforced by section 2 (2)

it is the intention of Parliament that powers, duties, and discretions conferred by this Act shall be exercised, as far as possible, in a manner that facilitates and promotes the retention, use, development and control of Maori land as taonga tuku iho by Maori owners, their whanau, their hapu, and their descendants, and that protects wahi tapu.

“Retention, use, development and control” is a phrase that appears repeatedly in the Act, therefore the first of the Māori Council's principles has been well incorporated into Te Ture Whenua Māori Act 1993.

*2. Māori land would forever remain part of the heritage of Māori people*

The Preamble to the 1993 Act states that “it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people”.

This statement alone carries many connotations, and notably those who drafted the Act have chosen not to translate it, nor provide a definition in section 4. It could be baldly translated as “a treasure handed down from the ancestors”, but that doesn't adequately describe its meaning to Māori. One of the main means by which rights to land were established was take tupuna - the right by whakapapa, based upon descent from an ancestor whose rights to the land were recognised (see Chapter 2).

The New Zealand Māori Council explained the inviolability of the Treaty to Māori; that while it may appear to others to be irrelevant or “little more than a quaint anachronism”, it should be understood that

ancestral initiative is tapu to the Maori and that it lies at the heart of their mana and self respect as Maori New Zealanders. None but their ancestors gave it to them and none will take it from them. Hence the Treaty – in part their ancestors' Treaty – is to this

extent, their heritage and their trust, a charter which they ignore at their peril. The present generation, then, has a duty to make it work for their children and their children's children, and a duty to keep faith with their people through seeking redress for past injustices. (1983, p. 5).

Their fuller explanation of the importance of ancestral land was that:

Maori land has several cultural connotations for us. It provides us with a sense of identity, belonging and continuity. It is proof of our continued existence not only as a people, but as the tangatawhenua of this country. It is proof of our tribal and kin group ties. Maori land represents turangawaewae.

It is proof of our link with the ancestors of our past, and with the generations yet to come. It is an assurance that we shall forever exist as a people, for as long as the land shall last. (1983, p.10).

Add to that the well-known whakataukī

Whatungarongaro he tangata, toitū he whenua hoki

People disappear, the land remains. (Mead & Grove, 2001, p.425)

and the import of "taonga tuku iho" becomes apparent.

The principles of retention and development of Māori land by Māori were for Judge Fox the outstanding aspect of the 1993 Act. The Act is to promote the retention of that land in the hands of its owners, their whānau, and their hapū, and to protect wāhi tapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whānau, and their hapū (Preamble) and this intent is repeated in section 2.

The classifications of Māori land and restrictions placed on alienations also ensure that Māori land will remain part of the heritage of Māori people.

Part 6 of the Act deals with the status of land. Section 129 says

- (1) For the purposes of this Act, all land in New Zealand shall have 1 of the following statuses:
  - (a) Maori customary land:
  - (b) Maori freehold land:
  - (c) General land owned by Maori:
  - (d) General land:
  - (e) Crown land;
  - (f) Crown land reserved for Maori.

Māori customary land is land “held by Māori in accordance with tikanga Māori” and Māori freehold land is land “the beneficial ownership of which has been determined by the Māori Land Court by freehold order”. (Te Ture Whenua Māori Act 1993, s.129(2)).

Tikanga Māori is defined in section 4 of the Act as “Maori customary values and practices”. (For a more detailed explanation of tikanga and customary practices see Chapters 2 and 3 of this thesis).

Part 7 of the Act contains the provisions that will ensure that Māori land will forever remain part of the Māori heritage. Section 145 states that Māori customary land is inalienable:

No person has the capacity to alienate any interest in Maori customary land or dispose by will of any such interest.

In regard to Māori freehold land, section 146 states that

No person has the capacity to alienate any interest in Maori freehold land otherwise than in accordance with this Act.

The remaining sections of Part 7 then outline how alienation of whole blocks, or parts of blocks may be achieved.

Alienation is a comprehensive term that means, in relation to Māori land:  
 every form of disposition of Maori land or of any legal or equitable interest in Maori land, whether divided or undivided.  
 (s.4 (a)(i).

Alienation includes leasing, granting of licences and easements; the making of profit from; the granting of mortgages, charges, encumbrances or trusts over or in respect of Māori land; any contracts or arrangements to dispose of any interest in the land; transfers or variations of leases; family arrangements relating to succession to land on the death of an owner; the taking of land under the Public Works Act 1981; the granting, renewal, variation, transfer, assignment or mortgage of forestry rights over Māori land; and any disposition of Māori land by the Māori Trustee or any other trustee. All of the above are subject to paragraph (c) of section 4, which sets out those matters that are not considered to be alienation. These are:

- (i) a disposition by will of Maori land or of any interest in Maori land; or
- (ii) a disposition of a kind described in paragraph (a) that is effected by order of the Court; or
- (iii) a surrender of a lease or licence over or in respect of Maori land or any interest in Maori land; or
- (iv) the granting, for a term of not more than 3 years (including any term or terms of renewal), of a lease or licence over or in respect of Maori land or any interest in Maori land; or
- (v) a contract or arrangement for the granting of a lease or licence of a kind described in subparagraph (iv); or
- (vi) the transfer or variation of a lease or licence of a kind described in subparagraph (iv) (other than a variation extending the term of such a lease or licence); or

- (vii) a disposition by way of sale by a mortgagee pursuant to a power expressed or implied in any instrument of mortgage.

In summary, any disposition of an interest in Māori land is an alienation except that effected by a will, any disposition of land effected by order of the Māori Land Court, surrender of a lease or licence over Māori land, a lease or such arrangement for a term of less than 3 years, the transfer or variation of a lease for a term of less than 3 years, and a mortgagee sale.

The last may seem surprising, if not for the fact that lending institutions are notoriously reluctant to agree to a mortgage over Māori land. Māori land trusts and incorporations are more easily able to use their assets, including the land, to secure a mortgage, subject to the relevant provisions of the Act (see Parts 12 and 13 of Te Ture Whenua Māori Act 1993). Should Māori land come to the extreme of a mortgagee sale, as noted above this does not

constitute an alienation and is therefore exempt from the strict confirmation requirements and the need to offer the land first to the preferred class of alienees as provided in s 147 of TTWMA. It is important to note, however, that the purchaser of any land sold by a mortgagee in pursuance of these powers will acquire land with the status of Māori freehold land which will remain until such time as an order is made changing the status. (Smith, 2004, pp. 204-205).

The preferred class of alienees means

- (a) children and remoter issue of the alienating owner:
- (b) whanaunga of the alienating owner who are associated in accordance with tikanga Maori with the land:
- (c) other beneficial owners of the land who are members of the hapu associated with the land:
- (d) trustees of persons referred to in any of paragraphs (a) to (c):

- (e) descendants of any former owner who is or was a member of the hapu associated with the land. (Te Ture Whenua Māori Act 1993, s.4.)

For alienation of shares in a Māori incorporation, there is one additional preferred class of alienee, and that is:

- (f) the Maori incorporation, in any case where no person, who is, by virtue of paragraphs (a) to (e), a member of a preferred class of alienees in relation to the alienation, accepts the owner's offer of an alienation of the shares to that member. (s.4).

Alienation of Māori land is possible, subject to the stringent requirements of Part 7 of the Act. These include the right of first refusal being given to prospective purchasers or donees who belong to 1 or more of the preferred classes of alienees, ahead of those who do not belong to any of those classes. (s.147A)

and, a sale or gift of Māori freehold land in multiple ownership cannot proceed unless the alienation has the consent of

- (i) at least three-quarters of the owners, if no owner has a defined share in the land; or
- (ii) the persons who together own at least 75% of the beneficial interest in the land. (s.150C).

Long-term leases require the consent of 50% of the owners. All other alienations under section 150C need the agreement of all the owners or a resolution carried at a properly-constituted meeting of assembled owners, as prescribed in Part 9 of the Act.

Even if the owners agree to an alienation, the Māori Land Court still has the final say. As the primary objective of the Act is the retention and control of Māori land by Māori, the

machinery provisions allowing for alienation of land are directed and restricted to that end. Preferred classes of alienees have

priority. Significant conditions and restrictions limit free alienability. There is no question of majority decisions of owners necessarily carrying the day. Any agreement of the owners is subject to the contingency that the Maori Land Court may in the exercise of its powers and responsibilities refuse to confirm the alienation or to change the status of the land. (*Valuer-General v Mangatu Inc.* [1997] 3 NZLR 641).

It can be seen then that Te Ture Whenua Māori Act 1993 is very effective in ensuring that Māori land would forever remain part of the heritage of Māori people.

*3. that Māori land is held in trust for the collective benefit of the owners and their descendants.*

The third principle that the New Zealand Māori Council sought to have guide the legislation was based on the traditional land tenure model, where land was understood to be a communal asset held in trust for future generations. Judge Fox expressed concerns about “how an individualised system has been elevated over tribal ownership” and said that there is a need “to re-educate ourselves on how we hold property, because we’ve forgotten. We hold the land, but we don’t own it”.

The provisions of the Act relating to Māori customary land would appear to conform to this principle. Customary land

remains, in legal terms, in its 1840 state. The original Maori customary interests have not been altered by Crown purchase, Native Land Court conversion, or any other process. As the Court of Appeal has said, Maori customary land “is not the creation of the Treaty of Waitangi or of statute, although it was confirmed by both. It was the property in existence at the time Crown colony government was established in 1840. (Bennion, 2009, pp.353-354).

Most Māori land however has been through the Native/Māori Land Court processes, and very little customary land remains. Until 2003, and the case of *Ngati Apa v Attorney-General*

it was thought that, apart from perhaps a few rocky outcrops on the coast missed by the Land Court when investigating titles in previous years or a few hectares in rugged country where survey lines have failed to meet, very little, if any, Maori customary land remained. (Bennion, 2009, p.354).

The background to the Ngati Apa case was that, in 1997, eight iwi in the Marlborough Sounds region had applied to the Māori Land Court to have the land in their traditional area, from below mean high-water mark out to the limits of the territorial sea, declared to be Māori customary land. The Attorney-General (for the Crown) and others objected, arguing that the foreshore and seabed was vested in the Crown, and therefore any Māori customary rights in those areas had been extinguished.

The case eventually ended up in front of five judges of the Court of Appeal, who unanimously decided, in June 2003, that, “contrary to the Crown’s view of the matter, the Māori Land Court has jurisdiction to determine the status of the foreshore and Seabed”. (Waitangi Tribunal, 2004a, pp.42-43). The Government immediately stepped in, releasing their foreshore and seabed policy in August 2003.

In excess of 20,000 Māori marched on Parliament in May 2004 to show their opposition to the Government’s intended legislation. The Government enacted the Foreshore and Seabed Act in November 2004. Two senior university lecturers in indigenous rights condemned the Government’s actions as yet another confiscation of “any remaining robust property interests Māori had in New Zealand’s outer boundaries”. (Charters & Erueti, 2007, p.1). The Foreshore and Seabed Act was repealed, and the Marine and Coastal Area (Takutai Moana) Bill passed into law on 29 March 2011. The legislation is still contentious.

The trusts and incorporations that hold most of the Māori land in the greater Wairoa area are also seen as a way to hold land in a communal manner, for the collective benefit of the owners and their descendants. Although the idea of amalgamation of land interests into an incorporation or similar body initially came about as a way for Māori to obtain finance to develop their land (see A.T. Ngata's initiatives in Chapter 6), nowadays the

extreme fragmentation in many blocks of Maori freehold land has reduced the economic value of individual owners' shares to the point where they have no real option but to have land administered on their behalf by a trustee or other body representing the owning group as a whole. However, what was once viewed as a curse is now viewed by some as an opportunity to rebuild the communal interest in the land. (Bennion, 2009, p.360)

Bennion's statement echoes that of the Royal Commission on the Māori Courts almost thirty years earlier:

We have no doubt that once title matters are rectified, with contemporary ownership identified and land transfer titles available, the work of the Court in respect of Maori land will contract markedly. This contraction will be speeded by the growth of trusts and incorporations which, as we have observed, are increasingly seen by Maoris as a means of achieving something akin to the tribal occupation of land as it was before European colonisation. (1980, p. 74)

The provisions of Te Ture Whenua Māori Act in relation to Māori trusts (Part 12) and incorporations (Part 13) are extensive. However, the trust that is the subject of the case study application for partition (see next chapter), is an example of how current large farming trusts and incorporations are very different from traditional tribally-occupied land. Bennion is correct in that shareholders mostly have little option other than to have their land administered by trustees or a management committee.

While submissions and commentary from Māori may have led the Royal Commission on the Māori Courts to the opinion that these entities are “achieving something akin to the tribal occupation of land” (1980, p.74), in fact that is not the case in 2012. The large trusts and Māori incorporations of the Wairoa area are predominantly set up as farming entities, and few if any of the owners of the land are able to occupy any part of it. They can, however, still conform with the principle that Māori land is held in trust for the collective benefit of the owners and their descendants, as, even when they do not pay dividends to the owners, most farming trusts and entities make donations to marae and have small funeral or education grants for their shareholders.

Part 17 of the Act contains provisions for Māori reservations, and it is the land set apart as a reservation that most closely reflects the concept of communal title as it was before the advent of the Māori Land Court and individualisation of title. A Māori reservation is any land set apart

- (a) for the purposes of a village site, marae, meeting place, recreation ground, sports ground, bathing place, church site, building site, burial ground, landing place, fishing ground, spring, well, timber reserve, catchment area or other source of water supply, or place of cultural, historical, or scenic interest, or for any other specified purpose: or
- (b) that is a wahi tapu, being a place of special significance according to tikanga Maori. (Te Ture Whenua Māori Act 1993, s.338).

The land in a Māori reservation is inalienable, except that its trustees may, with the consent of the Court, grant a lease or occupation for up to 14 years. (ss.338 (11)-(12).

Māori reservations then most closely align with the principle that land is held in trust for the collective benefit. Section 338(3) affirms this:

Except as provided in section 340, every Maori reservation under this section shall be held for the common use or benefit of the owners or of Maori of the class or classes specified in the notice.

The exception at section 340 is that land (that is not a wāhi tapu) may be held for the common use and benefit of the people of New Zealand.

Deputy Chief Judge Caren Fox, bringing to bear her eleven years as a Māori Land Court judge, has concluded that there is still a need to revisit the tenurial system and change the way the Court works with iwi.

## USE OF MĀORI LAND BY MĀORI

### *Occupation orders*

The New Zealand Māori Council emphasised their principle that while retention of Maori land is of prime concern its use and occupation by the Maori owners is of equal importance. .... It is essential that our strategies are aimed at the use of the land by one or more of the owners and not by some other person. (1983, p.21).

The Preamble, section 2, and section 17 of Te Ture Whenua Māori Act 1993 emphasise that the objective of the legislation is to facilitate the occupation, development, and utilisation of Māori land for the benefit of its owners, their whānau, and their hapū.

Part 15 of the Act contains provisions to facilitate occupation of the land, by means of an occupation order.

Section 328 of Te Ture Whenua Māori Act 1993 explains the concept of occupation orders.

- (1) The Maori Land Court may, in its discretion, make, in relation to any Maori freehold land or any General land owned by Maori, an order vesting in –

- (a) the owner of any beneficial interest in that land; or
  - (b) any person who is entitled to succeed to the beneficial interests of any deceased person, in that land, -
- exclusive use and occupation of the whole or any part of that land as a site for a house (including a house that has already been built and is located on that land when the order is made).

There are numerous matters that the Court must take into account when making an occupation order, among them the opinions of the owners as a whole, the effect of the proposal on the interests of the owners, and the best overall use and development of the land. Occupation orders can be for a limited period of time, such as the lifetime of the owner to whom it is granted, or they can be an occupation order that may pass by succession to the grantee's descendants.

This section would appear to be a direct response to the concerns expressed by the New Zealand Māori Council in their 1983 paper in regard to the effects of town planning and legislation on Māori housing.

Fourteen years ago the Maori Land Court lost the power that it had had for some 100 years to partition land to provide for the housing and settlement of our people. The control of our traditional rights of occupation and shared use became vested in local authorities.

....Town Planning has been with us for 29 years. It has inhibited the development of rural settlement on Maori lands, and continues to do so. This may be because town plans do not adequately cater for Maori circumstances. It may also be that the cost of planning consents and appeals, serves only the interests of those who can afford to speculate on the outcome of them. But in the case of Maori land it is also because Maori land laws themselves do not adequately cater for our needs. (p. 24).

Under the Te Ture Whenua Māori Act 1993, many people in the Mahia area have returned to live on whānau land, and it would appear to be a

good solution to the problem of facilitating Māori occupation of multiply-owned land where no one owner has sufficient shares to partition out a section upon which they can build. Occupation orders are generally limited to house sites.

### *Partitions*

In their discourse on group ownership (p.17) and title improvement (p.18) the Council did acknowledge that, while the idea of tribal ownership was important, there were also instances where subdividing the land or partitioning out a piece might be preferable. They explained the concept of ahikā:

To keep alive association with ones ancestral land is today as important to a Maori's sense of identity and self respect as keeping the fires of occupation alight in former days.

To belong to land, but to be deprived by regulation from living on it, makes nonsense of our traditional conception of iwi and whenua. (1983, p.24)

Partition orders come under Part 14 of the Act, dealing with title reconstruction and improvement. The main purpose of Part 14 is to facilitate the use and occupation by the owners of land owned by Maori by rationalising particular landholdings and providing access or additional or improved access to the land. (s.286(1)).

The means of rationalising the landholdings include partition orders, amalgamation orders and aggregation orders. Providing access can be done by way of easements and laying out roadways. The jurisdiction of the Māori Land Court in regard to these provisions is discretionary.

The case study for this thesis is an application to partition out shares from Anewa Trust (formerly the Tutuotekaha blocks), which was dismissed by the Court in December 2010. If an owner is attempting to return to live on ancestral land and owns sufficient shares in a block to make partition a

seemingly viable option, what provisions are in the Act to enable that to happen?

Section 288 sets out the matters to be considered in regard to partition, amalgamation or aggregation orders. These include the opinion of the owners or shareholders as a whole; the effect of the proposal on the interests of the landowners; and the best overall use and development of the land. The owners must have had sufficient notice of the application, and enough time to discuss and consider it. Importantly, the Court shall not make any partition order, unless it is satisfied that there is a sufficient degree of support among the owners for the application. What constitutes ‘sufficient support’ is not defined. Section 288 (4) states that the Court

must not make a partition order unless it is satisfied that the partition order –

(a) is necessary to facilitate the effective operation, development, and utilisation of the land.

A partition order is defined in section 289 as

(a) an order for the partition of any land into 2 or more defined separate parcels; or

(b) an order creating or evidencing the title to any 1 or more of such defined parcels.

Sections 290 to 295 set out the ways that the Court may determine ownership arrangements (e.g. whether joint tenants or tenants in common); whether shareholdings are to be varied or not; whether compensation should be paid, and if so whether that is in money or land; and the apportioning of rights and obligations such as leases or mortgages.

Section 296 deals with dwelling sites for Māori. Under section 297, the Court may partition land held in a trust.

Partitions are certainly not a new feature of Māori land law – but the emphasis with the 1993 Act has changed from a history of partitions being made to effect sales of Māori land, to one where partition for the purpose of sale is almost impossible.

Interpretation of the Act in regard to partition was thoroughly debated by several Māori Land Court judges in *Brown v Owners of Part Kairakau 2C5B Block* (1997, 12 Takitimu ACMB 1). The applicants for partition were Pākehā who owned the majority shares in a block of Māori land at Kairakau, a coastal settlement in Hawke's Bay. Their intent was to sell the land. The minority Māori owners opposed the application.

The application to partition had been to the Māori Land Court, then before the Māori Appellate Court, who referred it again to the Māori Land Court in Hastings. The application to partition was declined by Judge Isaac on 6 December 1996. In considering the nature and importance of the matter as part of determining whether there was sufficient support for the application, Judge Isaac concluded that the retention of the land was seen as more important to the owners as a whole, than the partition and sale of the land. (12 Takitimu ACMB 5).

The Browns again filed an appeal, alleging that Judge Isaac's decision was made in error of law. The appeal was heard by five judges in Hastings on 12 August 1997. Judge Spencer issued a separate judgment which concluded that Judge Isaac had applied the law correctly, and dismissed the second Appeal on 22 August 1997.

Judges HK Hingston, HB Marumaru and PJ Savage issued a joint decision dated 16 December 1997, which concurred with Judge Spencer's. They held that

as a condition precedent to the Court exercising its jurisdiction to partition it must first satisfy itself that the proposal would be a rationalisation of the share-holding that facilitates the use and occupation of the land by its owners.

These are clear and unambiguous requirements ... “Retention, use, development and control” all denote a continuing relationship owners/land, thus we interpret “facilitate the use and occupation” in this manner, and “use” to mean enjoy, exploit and/or occupy. It could be to reside on the land or have the right to enjoy the fruits thereof. (12 Takitimu ACMB 8).

Further in this decision, the Court referred to the applicants’ desire to sell the land because of financial problems. The Court considered that although the Browns’

personal financial circumstances were irrelevant their indication that the purpose of the partition was to sell could properly be considered. When told this, the court below should have, in our view, dismissed the application upon the grounds that the purpose of the application could in no way be said to facilitate the “use and occupation” of the land by the owners. ... In light of our discussion of “use” and “utilisation” whereby we say a continued relationship land/owner is predicated by the legislation we go so far as to say that any suggestion of partition with a view to sale is a doomed application. (12 Takitimu ACMB 11).

They also dismissed the application.

Chief Judge Durie (as he then was) disagreed with the other judges. He stated that

the restrictions in Te Ture Whenua Maori Act do not appear to me to change the underlying function of partition to sever co-owners where, through some differences between them, partition is necessary to advance the operation, development and use of the land. (12 Takitimu ACMB 13).

In his decision, Chief Judge Durie explained that, as a matter of general law,

partition is a remedy to end the unity of possession by dividing jointly-held land into separate holdings reflecting the individual owner's shares. ... Partition is not primarily to divide land, but people. (12 Takitimu ACMB 26).

Under section 288(4) of Te Ture Whenua Māori Act,

partition is not to be given merely because one or other owner wishes to sell, or one or other owner might gain in some personal way. However the position is different where there is a fundamental disagreement on the operation, development and utilisation of the land, where the conflicting views are honestly, sincerely and reasonably held by both sides, where the share distribution is such that one can effectively stymie the aspirations of the other, and where, if partition were granted, an effective use can be made of the consequential land divisions. Such a combination of circumstances, each of which applies in this case in my view, makes the severance of the owners by partition an appropriate mechanism for achieving better land use and management, and is necessary for that purpose, as the section requires. (12 Takitimu ACMB 34).

Chief Judge Durie stated that he would therefore allow the appeal, but would not make an order for partition as the appellants requested. Noting that Chief Judge Durie dissented, the appeal was dismissed.

In a somewhat different scenario, a majority of owners in Karu O Te Whenua B2B5B1 block had agreed to sell to Robert Beaumont Robertson, a neighbouring farmer who had leased the land. Mrs Barbara Marsh filed an application to partition off the land of those owners who did not wish to sell.

The Māori Land Court in December 1994 adjourned the confirmation of proceedings for the sale, to allow the non-sellers time to make an application to partition their interests. In March 1995, an interim decision was made that there was sufficient degree of support for the partition to proceed. However, when it came before the Court on 26 June 1995, the resident Judge was on leave, and the Judge who heard the application dismissed it on 21 July 1995.

Marsh and the non-sellers appealed the decision.

The appeal was heard by Judge HK Hingston, Judge HB Marumaru and Judge W Isaac. The Court concluded that

having regard to the nature and importance of the matter, that there is sufficient support in terms of Section 288(2)(b) for the partition application to be successful and on these grounds also this appeal succeeds. (19 Waikato Maniapoto ACMB 48).

As this was the first appeal under Te Ture Whenua Māori Act 1993 dealing with such issues, the Court also suggested that

because retention of Maori land in the hands of the owners is a primary objective of this Court and reading this with the preamble and S 2 of the Act, a Judge of first instance would be expected to lean towards accommodating non sellers.

We go so far as to suggest that where there are owners who have not voted for a sale (including the shares of deceased owners) the Court has an obligation to avoid compulsorily divesting these owners of their land. This approach would accord with the kaupapa of the act. (19 Waikato Maniapoto ACMB 49).

Any application for partition must be considered on its own merits, but it is apparent from the above cases that a partition to effect a sale out of the hapū or whānau is against the principles and purposes of Te Ture Whenua Māori Act 1993, whereas a partition to allow a minority of Māori owners

to retain their portion of a block where a sale has been agreed to is more likely to succeed.

## SUMMARY

The principles espoused by the New Zealand Māori Council in 1983 - that control over Māori land should be in Māori hands, Māori land would forever remain part of the heritage of Māori people and Māori land would be held in trust for the collective benefit of the owners and their descendants – are comprehensively covered by the provisions of Te Ture Whenua Māori Act 1993. The interpretations of the Act by the Māori Land Court, as demonstrated in *Brown v Owners of Part Kairakau 2C5B Block* (1997, 12 Takitimu ACMB 1), *Marsh v Robertson – Karu o te whenua B2B5B1* (1996, 19 APWM 40), and the commentary of Deputy Chief Judge Fox also confirm that the philosophy of the Act is being upheld.

Both the Royal Commission on the Māori Courts (1980, p.74) and Bennion (2009, p.360) likened Māori land trusts and incorporations to a form of communal title or tribal ownership of land which allowed the increasingly-dispersed shareholders to maintain some sense of turangawaewae and connection to their ancestral land. While I acknowledge that, for the majority of owners in such blocks, the trust or incorporation is the best way of managing their land, my opinion is that holding land in this manner is quite unlike the ahikāroa that our tīpuna maintained, and can instead be very alienating (in the sense of disconnection, loss of contact with, the very antithesis of ahikāroa).

This theory will be further extrapolated in the following chapters of this thesis, which examine the case of an application to partition whānau land out of a Māori trust in the Wairoa area. It will be seen that the process is incredibly difficult, and raises the question that, if the Māori Land Court

disallows the partition, is it then acting against the philosophy and intent of its governing legislation?

## CHAPTER EIGHT

### APPLICATION TO PARTITION

#### FIRST APPROACHES TO THE MĀORI LAND COURT

Having grown up on family land, initially as a very young child on my father's 300-acre farm Rata, then later as the daughter of the manager of two large Māori incorporations, it is perhaps inevitable that I would want to raise my own children on ancestral land. I remember asking my father whether we could have Rata returned to us – what it would require to be able to again farm this land separate from Anewa Station. That was in the early 1970s, and his answer was that we would probably have to pay for the improvements on the land, but otherwise he was unaware of any major obstructions.

For a number of family reasons, I did not pursue the matter any further. When I was gifted some land at Mahia in 1977 my focus turned to buying the rest of the whānau shares in that block and purchasing the neighbouring one. We built a house and moved onto the purchased block in 1982. The whānau land at that time had 3 years left to run on a 42-year lease. The farmer would not consider relinquishing the lease, so it was 1 January 1985 before we could again farm the block, Taiporutu, that my grandfather had farmed in conjunction with Rata. Our lives were then consumed with surviving on a block of 250 acres (plus a 46-acre adjoining leasehold block) that was considered to be uneconomic in sheep farming parameters.

At the beginning of 1986, my father told me that Māori Affairs, who had been running the Anewa development scheme, were going to hand control of the station back to the owners. He wanted me to become one of the committee of management. He gifted the majority of his shares in Anewa to my sister and me. This was what we all still considered to be Rata

farm. He kept a very small shareholding in his own name so that he could still participate in Anewa meetings in his own right.

To gift shares in Māori land it is necessary to apply to the Māori Land Court for a vesting order. The operative legislation in 1986 was the Māori Affairs Act 1953, section 213 of which deals with vesting orders. The minutes record that the donor, Epanaia Whaanga, owned 1923.038 shares out of a total shareholding of 104240.000 shares in Anewa. He stated on oath

I want to gift part (1800 shs) to both my daughters Mere Joslyn Schollum and Riwia Whaanga. They are to get 900 shares each. Still want to gift whether shares worth \$20,000 or \$40,000.  
(Tairāwhiti Māori Land Court, 6 May 1986, Wairoa Minute Book Volume 84 – Folio 182).

A special valuation was not necessary, and conveyance duty of \$10.00 was payable on each gift. Unfortunately our father died before the Anewa Trust was established.

## ANEWA TRUST

The first meeting of owners to consider forming an incorporation of the Anewa Development scheme (see Chapter 4) was held on 26 November 1982, but there were insufficient owners represented to form a quorum. A second meeting of the owners was held at Taihoa Marae in Wairoa on 23 July 1986 and again there were insufficient owners and shares represented to make up the necessary quorum to consider the proposal to incorporate. The percentage of shares required to pass a resolution to incorporate the land was 40%.

At the 1986 meeting there were 113 owners present with a total of 10,169.335 shares and proxies were held for a further 3,572.531 shares. The total number of shares represented at the meeting was therefore

13,741.866 or 13.18% of the total shareholding of Anewa. (Department of Māori Affairs, 1986, File 14/3/74 Vol 3b p.329/5)

Charlie Smith, Lena Manuel and George Pomana who were owner representatives during the period the land had been a development scheme run by the Board of Māori Affairs, spoke to the assembled owners. They explained that the improvements on Anewa then were three houses, two woolsheds and stockyards. They spoke about the development scheme, that some of the land had been incorporated prior to the establishment of the scheme and amalgamation of titles, and advocated for the owners to run the land themselves.

The minutes record that Māori Land Court staff explained

how a trust was set up under the provision of Section 438 and that a formal meeting was not necessary for such a resolution to be passed and neither was a quorum. (Department of Māori Affairs, 1986, File 14/3/74 Vol 3b p.329/5)

Varying opinions were expressed by the owners, some suggesting that the meeting be adjourned to a later date to allow owners to make further enquiries about trusts and incorporations, and others objecting to further delay.

Wheti Manuel stated that he did not want the meeting adjourned as there was adequate owners present to decide and it was also possible to set up a trust to carry out investigations on behalf of all of the owners and this could be to see whether the land should be incorporated or the types of farming that should be carried out.

.... Godfrey Pohatu said that he supported the statements made by Wheti and that a trust be set up from this meeting.

He added that the Board of Maori Affairs had indicated that they wished to withdraw and would want the land controlled in some form. He said that a “body” should be set up as soon as possible so

that the trustees could take over control of their own land when the Board was ready. (Department of Māori Affairs, 1986, File 14/3/74 Vol 3b p.329/6)

The actual motion to set up a trust was proposed by Charlie Cotter and seconded by Wheti Manuel. Manuel also asked that a vote on the matter be settled by a show of hands. The owners present unanimously supported the establishment of a trust.

The Anewa Trust was set up under section 438 of the Māori Affairs Act 1953:

Court may vest land in trustees---(1) For the purpose of facilitating the use, management, or alienation of any Maori freehold land, or any customary land or any [[General land]] owned by Maoris, the Court, upon being satisfied that the owners of the land have, as far as practicable, been given reasonable opportunity to express their opinion as to the person or persons to be appointed a trustee or trustees, may, in respect of that land, constitute a trust in accordance with the provisions of this section.

It was advisable, Court staff stated, to appoint trustees who were “competent in all fields of farming, budgeting and general administration of the whole trust property” (Department of Māori Affairs, 1986, File 14/3/74 Vol 3b p.329/6).

Nine people were nominated for the position of trustee at the meeting. Rather than holding a lengthy election process, it was decided to put in all the nominees, with the understanding that the number be reduced to the more usual seven by a process of attrition.

The Māori Land Court confirmed the appointment of nine trustees on 12 November 1986. They were Johnson Lim Robinson, farmer; Terei Michael Godfrey Pohatu, public servant; Wheti Ropata Manuel, farmer; George Pomana, farmer; Charles Haare Smith, retired; Charles Kohi

King, retired farm manager; Turi Carroll-Paku, farm manager; Mere Joslyn Whaanga-Schollum<sup>14</sup>, farmer; and Albert Walker, overseer.

The Anewa Trust Order was a standard one provided by the Māori Land Court, consistent with the Māori Affairs Act 1953 Section 438(5). The first clause states that

the Trustees shall hold the said land upon and subject to the following trusts:-

- (a) To use, exploit and manage the land vested in the Trustees and to that end to do all or any of the things which they would be entitled to do if they were the beneficial owners of the land.

Limits are placed on the Trustees in that they may not sell the land or any part of it; they cannot lease the land or any part of it for a term exceeding 5 years in total; and they cannot mortgage the land to anyone other than the Board of Māori Affairs unless a mortgage has been authorised by a resolution of a General Meeting of owners.

Anewa at that time was still subject to the Part XXIV Māori Affairs Act 1953 development scheme, hence the trust deed included at clause 2

the object of this trust is to enable the trustees to seek the release of the land from the said Part XXIV and for the trustees to assume responsibility for the use management and alienation of the land upon such release being effected.

This clause encapsulates a theme that has oft been repeated throughout the recorded history of Māori land – that the **owners** want to manage and control their own land.

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<sup>14</sup> Author of this thesis.

The main job of the trustees is laid out in section 3 of the Anewa Trust Order.

The trustees shall have such powers and authorities as are necessary for the effective performance of the trusts herein contained including power:-

- (a) To use, occupy and manage the land or any part thereof for agricultural pastoral forestry or horticultural purposes including the use of the land or any part thereof for the growing of permanent horticultural crops by the Trustees themselves or in conjunction with any other person or persons upon such terms for the growing utilisation or sale of the crop as the Trustees may consider appropriate.

The Anewa Trust Order thus made it very clear that the trustees were to continue managing Anewa as an agricultural enterprise. The trust order also sets out a three-year term for each trustee, and the process by which they may be either re-elected or replaced. The handing of the management of Anewa Station back to a shareholder-owned trust was marked with a hui and meeting of owners at Iwitea Marae.

When Te Ture Whenua Māori Act 1993 was enacted, the trust formerly known as a section 438 trust became an Ahu Whenua Trust. There is no material difference between the two, it was merely a change of name.

It can be seen that the focus of the changes to the Tutuotekaha blocks that became Anewa Trust was all about setting up a sheep and cattle farm so that the hapū associated with the land could participate in the agricultural industry that was then the major industry of New Zealand. Although the trust order includes explicit instructions on how the Anewa Trust is to run its affairs as a farming entity, nowhere is there any mention of actually settling the beneficial owners upon their ancestral land. Neither is there a clause that instructs the trustees on how any of the land can be returned to the whānau who originally owned the seven whānau blocks, Tutuotekaha 1B1 through to Tutuotekaha 1B7. This issue is pivotal to my argument

that the trust is an alienating form of ownership that does not allow ahikāroa to be properly maintained.

## TRUST VERSUS INCORPORATION

### *Trust*

The Māori land trust that was formerly known as a section 438 trust (now an Ahu Whenua Trust under Te Ture Whenua Māori Act 1993) is land held by trustees “in the interests of the persons who are beneficial owners of the land”. (Boast, 2004, p.163). The responsibilities and authorities that the trustees have are set out in the trust order, which covers matters such as mortgages, prohibition of sale of land, lease terms, amalgamation, contracts, the maintenance of the list of owners, and the financial and farming management of the land. The appointment of trustees, conduct of annual general meetings, voting for trustees and how polls are conducted are also detailed in the trust order.

There are provisions in Te Ture Whenua Māori Act 1993 for either termination of the trust or a part of it, or removing a section of the land from the trust.

#### **241 Termination of trust**

(1) The Court may at any time, in respect of any trust to which this Part applies, terminate the trust in respect of –

- (a) the whole or any part of the land; or
- (b) the whole or any part of any interest in land subject to the trust, -

by making an order vesting that land or that part of that interest in land in the persons entitled to it in their respective shares, whether at law or in equity, or in such other persons as the beneficial owners may direct.

**297 Partition orders may be made in respect of land held in trust**

(1) Any Maori freehold land may be partitioned by the Court, whether it is owned at law by the beneficial owners of it, or is vested in trust for them or any of them in the Maori Trustee or in any other person; but, where the land is so held in trust, a partition shall affect only the equitable estate of the beneficiaries.

The return of any part of the land to an owner or small group of owners is therefore within the power of the Māori Land Court.

*Incorporation*

At the time that an attempt was made to incorporate Anewa, part IV of the Māori Affairs Amendment Act 1967 governed the setting-up and running of Māori land incorporations. It differed from the Māori Affairs Amendment Act 1953, one of the main changes being

s 38(1), which provided that shares in a Māori incorporation “shall be personal property”. This was an attempt to make Māori incorporations more like ordinary companies. However, the shares could be transferred only to a restricted class of transferees (which included the Crown). (Boast, 2004, p.114)

However, Boast further notes that s.260 of Te Ture Whenua Māori Act 1993 has restored the pre-1967 status quo.

Whereas the owners were advised by Land Court staff in 1986 that 40% of the shareholding needed to agree before an incorporation could be established for Anewa, under Te Ture Whenua Māori Act 1993 the percentage of the shareholding is much lower. Section 247 of the Act says that the Court shall not make an order of incorporation unless the owners have passed a resolution in favour of incorporation at a properly constituted meeting as set out in Part 9 of the Act, or

the Court is satisfied that the owners of not less than 15% of the aggregate shares in each area of land (or their trustees in the case of disability) consent to the making of the order.

The effect of an order of incorporation of owners of land is that the owners shall become a body corporate, with perpetual succession and a common seal, under the name specified in the order, with power to do and suffer all that bodies corporate may lawfully do and suffer, and with all the powers expressly conferred upon it by or under this Act. (s.250 (1)).

These powers are wider than under previous Acts, as prior to the 1993 Act, Māori incorporations were “strictly limited to the objects specified in the order of incorporation”. (Smith, 2004, p.208).

Section 260 of the Act describes the nature of shares in a Māori incorporation:

The shares in a Maori incorporation shall be deemed for all purposes to be undivided interests in Maori freehold land; and, except as expressly provided, all provisions of this Act relating to the alienation of or succession to interests in Maori freehold land shall apply to the alienation of or succession to interests in such shares.

The provisions of the Act regarding the management and operation of incorporations are extensive. However, whilst the owners of other blocks of Māori land can be included in an incorporation (s. 247), there is no clause in Te Ture Whenua Māori Act 1993 that allows for the partitioning out of a shareholding. The only avenue under the Act for land to be returned to a shareholder is if the incorporation is wound up as provided for in s. 283.

The difference between a trust and an incorporation then, is that a trust must be managed in the interests of the owners, whereas an incorporation

must be managed in the interests of the body corporate that is the incorporation. The incorporation structure is “the most commercial of all Māori land management structures”. (Ministry of Justice, 2009, p.2)

In the case of what is now Anewa Trust, prior to the amalgamation in 1967 it consisted of an incorporation known as Tutuotekaha A & B plus several whānau blocks, each around 300 acres in extent. Whānau members had homes upon their land, knew the boundaries, used, occupied and managed their ancestral land. Once the Tutuotekaha blocks were amalgamated, these rights of usage and occupation, which can be encapsulated under the term ahikāroa, were taken away and replaced with a shareholding in the 5,000-acre development scheme run by the Board of Māori Affairs. In 1986, the Development Scheme became the Anewa Trust, and the ancestral ahikāroa rights were vested in a small group of trustees with the express direction to manage the land as a farming entity.

Although the land has not been made into a Māori incorporation, it is run very much along the same principles as neighbouring incorporations, i.e. managed as an agricultural enterprise that first and foremost should aim at turning a profit so that at some stage, dividends can be paid to the shareholders. As at the 2010 AGM, no dividends had yet been paid to shareholders from Anewa.

#### HOW DO WE GET OUR LAND BACK?

In 2003 my son asked me what had happened to his grandfather’s land, and whether it was possible to get it returned to our direct ownership and control. I discussed it with my sister, and it was agreed that I should take whatever steps were necessary to have Rata returned.

Once I had re-established myself at Mahia, I went to the Māori Land Court in Gisborne. There I was advised that I could make an application to have our family land partitioned out from Anewa Trust. However, the

Court staff advised, it was a very difficult process and highly unlikely that the application would succeed.

One of the Court staff provided guidelines of the 17 steps that need to be undertaken before a partition order, if it is approved, can be registered.

Step 2 on that list was to approach co-owners and trustees in the land, and obtain their consent, in writing if possible. I had resigned from Anewa Trust in late 1993, when I left the district. Three of the 1986 trustees - Johnson Lim Robinson, farmer; Wheti Ropata Manuel, farmer; George Pomana, farmer – were still trustees when I began to pursue the partition of Rata from Anewa Trust. A fourth from that first committee, Terei Michael Godfrey Pohatu, was one of the Māori Land Court staff I spoke to about the partition, although he was no longer a trustee for Anewa.

In November 2005, I spoke to Lim (Johnson) Robinson, who clearly remembered Rata farm and signed a letter of support for the partition.

In December 2005, I approached another trustee, George Pomana, who also remembered my father's farm and signed a letter of support. Sadly, George had passed on by the time I was able to meet with all the trustees together.

In late 2005 and 2006, I either telephoned or met with the remaining trustees of Anewa, the majority of whom expressed support for the return of the land to my sister and me. In most cases, I went to the homes of the trustees, discussed my request and plans with them, and the discussions were cordial and supportive.

After several phone calls requesting a date to appear at a meeting of the trustees to further discuss my intentions, I was telephoned by the Anewa farm consultant the night before the 2006 Annual General Meeting (AGM) to appear at the committee meeting at 9.00 a.m, immediately prior to the AGM. I prepared a presentation consisting of photographs and the

history of the Tutuotekaha 1B5B block. The trustees informed me that, while they might individually feel some sympathy for my application, as a committee they had decided not to support it. I asked for their decision in writing. This was never received.

One of the important aspects of any such application is that the owners must have time to consider the matter and they must be given the opportunity to attend a meeting of owners to discuss the application.

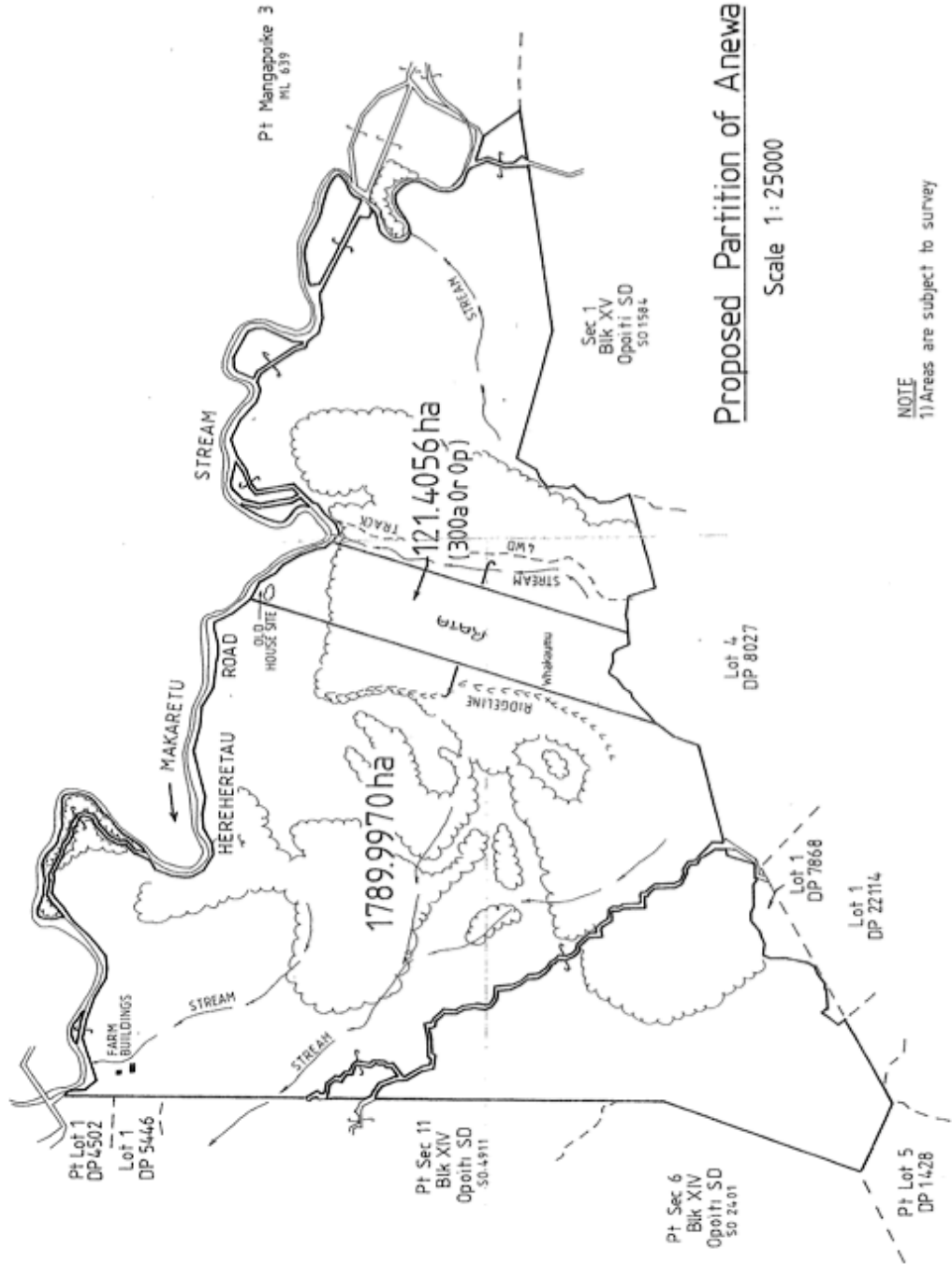
The only time every year that a large group of owners in Anewa gather is at the Annual General Meeting.

On 14<sup>th</sup> August 2007, I wrote to the Anewa Trustees to request the inclusion of a special agenda item for the Anewa Trust AGM 2007. I faxed the letter to their offices and hand-delivered a copy a day later. There was ample time for the Trustees to add the item to the agenda. I did not receive a formal reply to my request, and the notice of meeting that appeared in the Wairoa Star on 20 September 2007 did not include the special agenda item.

On 28 September 2007 I attended the Anewa Trust AGM at Whakaki Marae and raised the matter in General Business. I distributed a summary of the history of Rata Farm that included its original ownership; the tenure of my father, grandmother and grandfather and great grandfather; the amalgamation in 1967 and reason for it; brief information about the other whānau blocks Tutuotekaha 1B1 to 1B7; and the fact that our father had handed the shareholding that we still thought of as Rata to us in 1986.

The shareholders had read the information I handed out prior to the AGM starting, and many of them asked questions such as where the land was, whether it would affect the income of Anewa Station if it was removed from the Trust, and what were the intentions of my family for the block. I stressed that the land I was seeking was that which I could rightfully claim my father had owned and farmed, no more.





TGS 362

Prepared by Survey Gisborne Ltd

Scheme plan of Rata.

Note: Anewa is essentially run as two blocks, with woolsheds at both the eastern and western ends. Stock access has always been along the road; there is no possible way that stock can be taken across Rata because of its steep topography and the mature mānuka/kānuka forest that now covers most of it.

## THE APPLICATION PROCESS

Court staff will assist people in filling out the forms and ensuring all necessary material accompanies any application. Upon filing, a case manager is assigned to help the applicant/s and is primarily responsible for communications from the Court. One of the early steps in an application for partition is to have a scheme plan drawn up by a surveyor, and to approach a valuer about the cost of preparing a full valuation.

Having obtained both of these, the application for partition was filed on 2 April 2008. The application is for an order under section 289 of Te Ture Whenua Māori/Māori Land Act 1993 which states:

- (1) Where the Court is satisfied that it should partition any Maori freehold land in accordance with this Part, it shall make a partition order, being-
  - (a) an order for the partition of any land into 2 or more defined separate parcels; or
  - (b) an order creating or evidencing the title to any 1 or more of such defined parcels.

The purpose of the application was stated to be to return the farm previously known as Rata (most of Tutuotekaha 1B5B block) to its owners for the purposes of a whānau holding to facilitate the occupation and utilisation of that land by the owners Mere Joslyn Whaanga (Schollum) and Riwia Whaanga and their descendants. Attached to the application form were a scheme plan, photographs of the proposed partition, a quote from Lewis Wright valuers, copies of all the information given to the shareholders as well as a summary of the steps that had been taken to ensure the Trustees of Anewa and the shareholders were informed about the application, copies of the shareholders' signatures obtained to the date of filing, and summaries of the history of the block.

Copies of Māori Land Court documents included a succession order dated 2 February 1931, when the seven children of Mako Raiha Whaanga (nee Timo) succeeded to their grandfather Puhara Timo's interest in Tutuotekaha 1B5B; the order of exchange dated 24 February 1950 when Epanaia (Te Hore) Whaanga exchanged interests in other lands with his brothers and sisters; the record of the survey of the 1 acre house site from Tutuotekaha 1B5B; and a schedule of the owners of Tutuotekaha 1B5B as at 1952.

Attached to the application was a copy of the memorandum from the Māori Affairs District Officer regarding the amalgamation of the block into Anewa. He wrote

In March of 1966 I was approached by the Chairman of the Tutuotekaha A & B Incorporation, Mr H.E. McGregor, with the suggestion that this property be developed by the Department. In our discussions it was thought preferable to include in any such proposals additional Tutuotekaha blocks which lay between Tutuotekaha A and Tutuotekaha B. With two exceptions these blocks were being farmed by the A & B Incorporation on either a leasehold or informal grazing tenancy. The two exceptions were Tutuotekaha 1B3A and Tutuotekaha 1B5A which were being farmed to a very poor standard by one of the owners, Moronai Te Kooti.

The Department's Field Officers inspected the blocks and recommended their amalgamation and subsequent development under the provisions of Part XXIV of the Maori Affairs Act 1953. One of the conditions upon which the Board of Maori Affairs will approve the establishment of such development schemes is that the property comprises one single Maori Land Court title. (Brewster, 18 October 1967).

Both of these initiatives – the 1952 exchange of land interests and the 1967 amalgamation were devices to overcome the problems of communal title

promulgated by Apirana Ngata in his 1931 report to Parliament titled *Native Land Development*.

The exchange of land interests among family members is a consolidation of interests.

... this is a scheme to gather together into one location if possible, or into as few locations as possible, the interests of individuals or families scattered over counties or provinces by virtue of their genealogical relationships. .... While the incorporation of owners was deemed to be the readiest means of organizing a communal title for purposes of finance and effective farm-management, it does not satisfy the demand instilled into the individual Maori or family by close contact with the highly individualistic system of the pakeha. Consolidation is the most comprehensive method of approximating the goal of individual or, at least, compact family ownership. (Ngata, 1931, p.ii).

While Ngata was describing consolidation on a much larger scale, nevertheless it was a useful way of arranging family land ownership. In this case, Whaanga exchanged his shares in the Tawapata blocks and some of his Whangara shares with his siblings so that he became the sole owner of their grandfather's interest in Tutuotekaha 1B5B. Other considerations that made such an exchange practical is that he was then the only brother actively farming, the one whose education had been specifically to acquire farming knowledge, and he was living on the land.

The second, the amalgamation of all the whānau blocks with the larger Tutuotekaha A and B blocks, was essentially an incorporation of owners.

...this meant that the owners of any area or contiguous areas, subsequently extended to areas not necessarily contiguous but having elements of common ownership, were, with the consent of a majority in value, incorporated. A body corporate was created, which acted through a committee of management, having

complete power to raise funds on the security of the land and to carry out farming operations. (Ngata, 1931, p. ii).

The amalgamation of the Tutuotekaha blocks in 1967 was not however to establish a Māori incorporation managed by the owners. Tutuotekaha A & B had already been operating in such a manner. This amalgamation came about because the officers of the Department of Māori Affairs said they would not establish a development scheme for the Tutuotekaha A & B Incorporation unless all the whānau blocks were amalgamated under one title. There were elements of common ownership between the small blocks and Tutuotekaha A & B, and they were contiguous. But with the establishment of the development scheme, the control and management of the land went to the Department of Māori Affairs for the next nineteen years.

At the time an application is filed, and the fee of \$122 paid, a case manager is assigned to the applicants.

It was four months before advice was received from the case manager that a judge had read the application and required further information. The judge asked

- Is there sufficient degree of support for the application among the owners
  - there are 3677 owners. Approximately 50 owners have given support
  - is there any intention of getting more support
  - other than that you may have to rely on the historical ownership of that portion of land to satisfy the legislative requirements that the court has to consider when making a Partition Order
- We require addresses to match the names of the owners on the list and also any other names they may be known as
- Require a valuation of the block

- Based on valuation there needs to be sufficient shares to achieve your wishes
- Do the trustees agree
- Intention of calling a meeting of owners (Tairāwhiti Māori Land Court, 20 August 2008).

The issue of a sufficient degree of support was very important, and highlights the major problem with land in multiple ownership. Ngata noted in his 1931 report to Government that

If it is difficult for the European settler to acquire Maori land owing to complications of title, it is more difficult for the individual Maori owner to acquire his own land, be he ever so ambitious and capable of using it. His energy is dissipated in the Land Courts in a protracted struggle, first, to establish his own right to it, and, secondly, to detach himself from the numerous other owners to whom he is genealogically bound in the title. (Ngata, 1931. p.vii)

Whilst Ngata was writing about land that was in a tribally-based communal title, the very same problem was created when Tutuotekaha 1B5B was amalgamated with the other whānau blocks and Tutuotekaha A & B. With more than 3000 owners listed as shareholders in Anewa Trust, it is impossible to contact more than a small proportion of the owners. The Trust does not have many addresses, and when asked for those they did have, permission was refused for privacy reasons.

Pita Walker-Robinson, desk officer at Ngāti Kahungunu Iwi's Wairoa Taiwhenua office, was approached and he provided addresses for many owners. He also identified the names of close to one hundred deceased persons still listed as shareholders.

Te Ture Whenua Māori Act 1993 does not define the amount of support that is necessary for a partition order to be granted. It states that

The Court shall not make any partition order, amalgamation order, or aggregation order affecting any land, other than land vested in a Maori incorporation, unless it is satisfied –

...(b) that there is sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter. (Te Ture Whenua Māori Act 1993, s. 288 (2)).

While more owners were approached for support, the applicants also filed an application for assistance with the costs of obtaining a valuation of Anewa Trust as a whole, and the area to be partitioned. The requirements of the Māori Land Court Special Aid Fund appear in section 98 of Te Ture Whenua Māori Act. The Court's response to this application was to ask again whether the owners of Anewa had had sufficient notice of the application, sufficient opportunity to discuss and consider it, and whether there was a sufficient degree of support from the owners and the trustees. The letter from the Court dated 27 May 2009 was the first indication that the support of a majority of the trustees was required.

Further correspondence was sent to the Court officer reiterating the amount of discussions with owners that had taken place – which by August 2009 included personal approaches and discussions with all of the trustees in 2005 and 2006, a full presentation to the owners at the annual general meeting in 2007, an update on the application at the annual general meeting in 2008, and many phonecalls, several letters and many informal discussions whenever the opportunity arose, for instance at a marae meeting or other land meeting.

## JUDICIAL CONFERENCE

In August 2009, Judge Isaac suggested a judicial conference which took place in Wairoa on 2 September 2009. A judicial conference is less formal than an actual hearing; it enables the judge to discuss a number of issues with the applicants without making a formal decision on the

application. Judge Isaac suggested it because there had not been much progress with the application to partition.

Judge Isaac outlined the reasons why he considered the application a hard one, principal among them the requirements of section 288 of Te Ture Whenua Māori Act 1993

that the Court shall not make a partition order unless it is satisfied that there is a sufficient degree of support and shall not make a partition order unless it is satisfied that the partition will lead to more effective occupation, utilisation and development of the land.

Those are the areas and now this block is also in trust so that there are trustees who are now the legal owners and so their views are also vital. With those little hurdles tell me how you are going to make this work for you? Because from the Court's point of view, regardless of who the Judge is, the Act is clear, it says, "shall not make." In Anewa there are 3677 owners. You have got consent, from our records, of 52. The first question is, is that a sufficient degree of support? The simple answer to that is "no" from what is here unless the 52 own 99% of the land. That is certainly one of the areas that you have got to look at. The other aspect says that the trustees have to agree. Again we do not have that in front of us. (Tairāwhiti Māori Land Court, Wairoa Minute Book No 129, pp. 117-118).

I explained the history of the block and why my sister and I wanted to partition out our shares from Anewa Trust. I stressed that I believed our whānau were

forced into a situation that otherwise they may not have preferred. The reasons for doing it were probably right at the time. The whole idea of amalgamation came from Sir Apirana Ngata's solutions for the Māori land problems from 1931, where again for the same reason that my father was still striking in the 1950s,

Māori were unable to borrow money to develop the land, clear it of scrub, to sow it into pasture and fence it. To get stock, to build buildings on it, everything that is needed to participate in what then was our major industry in this country, which was agriculture. (Tairāwhiti Māori Land Court, Wairoa Minute Book No 129, p. 119).

I spoke also about how amalgamation had changed the way that Māori hold their land, and expressed the opinion that the intent of Te Ture Whenua Māori Act 1993 was that Māori would have the ability to utilise their land, live upon it, occupy and get their own benefit from their own land, as had happened when there were seven whānau blocks. Judge Isaac pointed out that

the difficulty though is that that all changed in 1967 and that is what we are faced with. Now this is not a number of separate blocks, this is all one and hence your application to partition. ... There was an amalgamation order done which brought these blocks together.

I guess looking at it from another angle is, was that amalgamation order done correctly or not? You said earlier that you may have or your family may have been forced in to this situation. If this were the case, one would assume that somewhere between 1967 and a few years later something may have been done. It did happen with some of those amalgamation schemes, they existed for a while and then they were split up. There were a number up the Coast, which were broken back to each of the original blocks or the original families but it happened reasonably soon after some of those amalgamations took place.

We are now talking a number of years down the track and you are not asking to reverse the amalgamation scheme, you are asking to pull out the shares. ... in relation to your application, what you have got to do, in its present form, is to deal with those provisions

of section 288 and essentially persuade the Court that your application should be granted.

The first thing is the support for the application. ... We can go through the statements of account and see the impact of this 300 acres on Anewa and the impact if you took it away, how that would affect the farming operations. (Tairāwhiti Māori Land Court, Wairoa Minute Book No 129, pp. 119-120).

When the judge asked about the views of the trustees, four of whom were present in the Court, I requested permission to address them individually. I spoke of the telephone conversation with Tom Te Kahu, who had said at the time that he would support our application; and my visit to George Pomana, who remembered our father's farm and signed a letter of support. Lim Robinson had also signed in support of the application. I reminded him that

We talked about the fact that your mother had wanted your block kept out of the amalgamation and that you said in terms of farming and the returns to the owners that we would have been better leasing the land to Anewa than amalgamating it. (Tairāwhiti Māori Land Court, Wairoa Minute Book No 129, p. 120).

Robinson agreed with that statement. Walter Wilson objected to what he saw as picking off the trustees one by one. Ray Crombie agreed that he had said he would remain neutral on the matter, but qualifying it with "until we have had a committee meeting". Wheti Manuel, the chairman of the Anewa trustees, had asked that I prove that our family could make the land work as a separate unit, and that he would not oppose the application but would remain neutral. The other committee member at the time was Rangi Ataria who had said he would support the application.

However, when finally I was granted a meeting with the Anewa trustees, the committee said they would not support our application, their primary

concern appearing to be that they thought it would affect the farming of the block.

I then referred to the 2008 Anewa Trust Annual Report and Financial Statements (the 2009 report was not available until 16 October 2009) which showed that Anewa had averaged a \$6/hectare economic farm loss over the five years 2004 to 2008; and further that

...the land went under one title so that the land could be developed, which says to me that over forty years there should be more pasture, better fencing and there should be returns to the shareholders. We have not received anything. In fact, the 300 acres where my father's farm was has regressed. I have photos from the 1940s that show a lot more pasture than what is there now. There is approximately 40 acres of pasture left. It is on the steepest face. It is dotted with scrub. The house is gone. The yards are gone. Such improvements that were there are gone. The land has regressed so the development scheme has failed. With my daughters and my son we have ideas of how we can make the land productive and we can go back to what it should be of maintaining ahikāroa. We can not do that while it is under a trust. (Tairāwhiti Māori Land Court, Wairoa Minute Book No 129, p.121).

Returning to the issue of support so far received from the owners, I outlined to the Court the numbers of shareholders who actually turn up at the AGMs.

In 2006, there were only 26 beneficiaries and guests. In 2005 there were 45. In 2004 there were 60. In 2003, there were 54 and 2002 there were 70, 2001 there were 87. My point being your Honour is that around about 50 shareholders is enough to give the committee the authority to carry on farming year after year. (Tairāwhiti Māori Land Court, Wairoa Minute Book No 129, p.122).

Judge Isaac returned to the mandatory nature of the need for sufficient support for the application. He also referred to the fact that "the trustees

have to bide majority consent” (Tairāwhiti Māori Land Court, Wairoa Minute Book No 129, p. 122). He then directed that the Anewa trustees meet and provide the Court with a resolution as to whether or not they supported the application, and that the Court call a meeting of owners of Anewa.

Judge Isaac did also express concerns about the impact should the application be successful.

As you have pointed out, there were eight blocks that came in to this. Seven of them were whanau blocks. What are these other people going to do? Are they going to want to pull their shares out as well? Where will that then put this station? There are all sorts of implications and impacts this will have, not only on the owners to this but also on the other owners who have put their shares into other blocks around the country.

...The Act does not make it any easier. Under the old Act you might have had a chance. I have to say it, with this Act you have little chance. We may as well be up front because those hurdles are high. They are high for a reason. They are high so that Māori land is not broken up. I know that you have given the history of it and why these blocks are brought in. A huge number of blocks around the country have been created in that same manner. Those are the issues that we have got to deal with. (Tairāwhiti Māori Land Court, Wairoa Minute Book No 129, pp.122-123).

Judge Isaac adjourned the matter with instructions that the trustees meet and provide the Court with a resolution on the application; and that the Court call a meeting of owners of Anewa.

## MEETING OF OWNERS

The meeting of owners directed by Judge Isaac was set for Friday 11 December 2009 at Iwitea Marae. At the Anewa AGM on 16 October 2009 I brought the shareholders up to date on the judicial conference, and announced the Court-directed meeting of owners scheduled for December. I also raised the matter at the Te Whakaari AGM on 6 November 2009, where many of the attendees were also shareholders in Anewa Trust. I placed advertisements in the Wairoa Star of November 24 2009 and December 3 2009; the notice was broadcast for a week with Radio Kahungunu, Radio Ngāti Porou and Radio Wairoa; a notice was placed on 25 November 2009 on the Iwitea Marae website and Māori Land Court staff placed a notice in the Gisborne Herald.

Two Deputy Registrars of the Māori Land Court, Keith Bacon and Diane Carter attended this meeting, along with four members of the Anewa Trust, my daughter Desna Whaanga-Schollum and I and 24 Anewa owners.

My daughter and I made an extensive presentation to the owners that included a power-point presentation of photographs and maps of the whānau blocks, and explanations about why we wanted to live on the land. We felt the land could be better utilised by whānau than by the Anewa Trust. In response to my question as to why the trustees refused to agree to the partition, Walter Wilson (Anewa Trustee) answered

... the trustees moved and passed a resolution to not support the application. The Trust was not put in place to break up the land. The trustees have no power or jurisdiction in terms of the trust order to partition. If owners do not support trustees then owners need to move a motion of no confidence in the trustees and have them removed. Rata no longer exists since it was part of the amalgamation. If the partition was granted the Court would have to cancel the amalgamation. Trustees feel it is not in the best interests of shareholders to partition. The application is to the

Court not the trustees. (Tairāwhiti Māori Land Court minutes of meeting 11 December 2009).

The Court Deputy Registrar Keith Bacon read out clause 3(b) of the Anewa Trust Order, where the powers and authorities of the Trustees are set out. One of the powers the trustees have is

To investigate whether the land could be more conveniently worked or dealt with in conjunction with any other land in the vicinity and to make and prosecute such applications to this Court for Orders of Aggregation of Ownership or Amalgamation of Title or otherwise as may seem appropriate to the Trustees in order to enable such lands to be worked or dealt with together. (Tairāwhiti Māori Land Court, 12 November 1986, Wairoa Minute Book Volume 85 – Folio 31-33.)

This clause was interpreted by both the Anewa trustees and Bacon to mean that the trustees cannot support a partition because it would be a subdivision of the land. While the clause actually refers to adding land to Anewa, it does not explicitly prohibit the partitioning-out of a section of the Anewa Trust. There is no clause in the trust order that does prohibit the trustees from supporting a partition application.

Another trustee, Tom Te Kahu said

... that as an owner he sympathises with Mere but as trustee he cannot support the application. Other families who owned blocks which were amalgamated are in the same situation. To allow a partition to progress would set a precedent throughout Aotearoa. (Tairāwhiti Māori Land Court minutes of meeting 11 December 2009).

Other owners present spoke in favour of the application, then I proposed the motion that the owners present supported our application to partition. It was seconded by Pauline Tangiora and passed with twenty of the owners supporting the resolution and two objecting.

Nigel How, the grandson of Madge Hema who is an Anewa owner (she was present at the meeting and voted in support of the application) asked whether the Court would consider how many owners actively support Anewa by attending AGMs etc. and whether this could be taken into account when the level of support is gauged as being sufficient or otherwise.

The support for the application for partition as recorded in the minutes of the meeting of 11 December – this included shareholders present and support by signed letters – was 9.97% of the total Anewa shareholding.

## SUMMARY

Any dealings with Māori land are fraught with problems, but the application my sister and I filed to have our father's land returned to us is a case study in just how difficult regaining the right to live on ancestral land can be. The processes of the Māori Land Court can move at a glacial pace and they can be very discouraging and often obstructive.

We provided incontrovertible proof that our ancestors, grandparents and parents lived on and worked Tutuotekaha 1B5B. This was well documented in both the Māori Land Court records and personal records of our whānau, and supported by kaumātua.

But what became very obvious in the time between the first approaches to the Anewa Trustees in November 2005 and the time of the meeting of owners in December 2009 was that the trustees were a major obstacle. Although individually sympathetic to the idea of the our whānau regaining our land, once they met as a farming committee, they completely reversed their stance. Their greatest expressed fear was that it was incompatible with their responsibilities as trustees to run Anewa as a farming entity, and that it would set a precedent for the return of land

from other amalgamated blocks. Judge Isaac expressed similar reservations at the judicial conference of 2 September 2009.

The preamble to Te Ture Whenua Māori Act 1993 states that

... it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people, and for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapu, and to protect wahi tapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapu:

Section 2 of the Act clearly states that the intention of Parliament is that the provisions of this Act shall be interpreted in a manner that best furthers the principles set out in the Preamble.

And that

... it is the intention of Parliament that powers, duties, and discretions conferred by this Act shall be exercised, as far as possible, in a manner that facilitates and promotes the retention, use, development, and control of Maori land as a taonga tuku iho by Maori owners, their whanau, their hapu, and their descendants.

The emphasis is on facilitating and promoting the retention of land, he taonga tuku iho, by the owners. Land, not shares. Land that can be lived on, worked, known intimately by the descendants of the original owners.

There are mechanisms in the Act that provide the Māori Land Court with the power to effect the principles of the Act; one of these mechanisms is to allow the partitioning of shares from a large block.

Yet priority has been given to maintaining the status quo of a block set up as a farming entity, to give preference to the body created to engage in farming over the interests of returning the land to real Māori ownership. The Anewa Trust has very effectively been an alienating device. Over

more than forty years no benefit has accrued to the owners, and our much-vaunted connection with our land has been actively discouraged in the interests of setting up and maintaining a trust that acts in the same manner as the body corporate that manages neighbouring hapū land.

The trustees have chosen to act in the interests of maintaining a non-productive status quo rather than listening to the clearly-expressed desires of the beneficial owners that they are supposed to represent. Quite simply, for reasons they have yet to articulate with conviction, they do not want the owners to have their land back.

But what of the Court? Is Judge Isaac's interpretation of Te Ture Whenua Māori Act 1993 and expressed fear of setting a precedent valid? Is it really the place of the Court to prevent owners from having their land returned to them?

## CHAPTER NINE

THE DECISION OF THE MĀORI LAND COURT

## HEARING OF APPLICATION TO PARTITION

The Court sent a letter to Mere and Riwia Whaanga, the applicants, in January 2010 giving them two options to proceed with the case:

1. Adjourn sine die<sup>15</sup> until sufficient support is obtained or
2. Set down for hearing where you can attempt to persuade the court that 2.17% (number of people in favour) and 9.97% (Number of shares in favour) is sufficient degree of support to your proposal. (Tairāwhiti Māori Land Court, Ref. A20080004148)

Almost two years had already passed since the application for partition was filed, and as Riwia's health was very poor, we decided to proceed to hearing. Other considerations we had were that the majority of the shareholders that attend Anewa Trust AGMs are over the age of 60 and any lengthy delay would mean that the numbers of those who had already signed in support would decrease, plus as successions went through the Land Court the actual numbers of shareholders in Anewa would increase.

The hearing of the application was set down for Friday March 5 2010 at the Old Court House in Wairoa. All the owners who had signed in support of the application and attended the December 2009 meeting of owners received notice of the hearing, and many of them came to the Court to show their support.

Upon receiving the notice, I sent a letter to the judge to set out the background to the application to partition out our shares from Anewa

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<sup>15</sup> adjourned indefinitely, with no appointed date.

Trust, and to explain the work we had done to satisfy the requirements of Te Ture Whenua Māori Act 1993, as pointed out to us in the judicial conference held in Wairoa on September 2 2009.

The presiding judge for the hearing was C Coxhead. The minutes record that eighteen shareholders and whānau members attended the hearing, and I tendered apologies for my sister and three other shareholders. Only two of the Anewa trustees were present.

Judge Coxhead questioned me about the area we wished to partition, asking why it was necessary for us to have 300 acres. I outlined ideas about honey and mānuka oil production and our intent to conduct research into sustainable uses of the land. I explained that the development scheme established in 1967 (see Chapter 4) had failed because Rata (the area that our father had farmed) had regressed and was now covered in mature kānuka and the improvements that had been upon the land were no longer there. Judge Coxhead asked whether we had considered an occupation order, but when I asked whether such an order was possible over the entire 300 acres, the judge admitted that they were usually only for a house site.

The Court then invited others to speak to the matter. Walter Wilson, a trustee of Anewa, was of the opinion that the amalgamation would need to be cancelled to allow the partition.

I would like to say that to sub-divide or to take a section of Anewa out then you would need to cancel the amalgamation. These are the mechanics of it. Once you cancel the amalgamation is it then open for all the shareholders to want their piece taken out. I don't think that it should be exclusive to one application. If the amalgamation is cancelled then everyone should be given the opportunity to withdraw their blocks.

...If it is the will of all the trustees and the shareholders to take all those shares out and do what they will then that is their right. We

do not and cannot support the application from a trustee's point of view. We weren't put there to divide the block we are there to protect the interests of the shareholders. That is my interpretation

...

.... Then I say to the Court, as a trustee and if the amalgamation is cancelled then my trusteeship has been cancelled and for what reason. (Tairāwhiti Māori Land Court, 5 March 2010, 4 Tairāwhiti Minute Book, p. 179).

Another shareholder, Madge Hema, spoke in support of the application.

I want to tell the Court that I fully support Mere and her sister.

The reason being is that particular block has not been improved since the day Anewa Trust has taken it. Why have they let this land go backwards? (Tairāwhiti Māori Land Court, 5 March 2010, 4 Tairāwhiti Minute Book, p. 179).

Judge Coxhead asked for concluding remarks. I thanked all those who had turned out to support us, and said to the trustees that the application was not a personal attack on them, neither was it an application to undo the amalgamation. I then went over the history of the block, the amalgamation of the seven whānau blocks with the original 2000-acre Anewa Station, and how even in the 1970s Anewa was essentially run almost as two farms, demonstrable by the way the station was mustered for shearing, when

everything from Kairakau went back to the new woolshed and everything from the other side of Rata – Dad's farm – went back to Tom Te Kooti's woolshed.

I can't answer for what the other shareholders want to do except that I have had so much support for this application. Every shareholder that I contacted, including initially the majority of the trustees, supported what I wanted to do. There is a long history of all of my ancestors upon that land...

I know the difference between living on family land that is part of an incorporation or part of a trust and living on family land that you actually own, that you have title to. I grew up on Papatatu Station which is part of the Te Whakaari Incorporation. My father was manager there for fifteen years and then I lived there for three years beyond that with my husband under the management of Kupa Renata. It was wonderful growing up on family land like that but we always knew that our ability to live on that land was only while my dad or husband had a job there. Once the job was gone the home, the ability to live on that land was gone.

Contrast that with back in the 70s when my second daughter, Raiha, was a baby I started to attempt to get back our land at Mahia. It took seven years. I was given some of the land from my aunts and one of my cousins. I bought out one of my aunt's shares and the rest of my cousins and we bought the neighbouring block. Now my children have grown up upon that land. They know it. They know the boundaries. They know where to go fishing on it. They know the bush and the pa sites. They know the land intimately.

I now have three mokopuna, the oldest of whom is three and a half and they are growing up knowing that land is home. We have put a house and two cottages on it as well. I am secure in the knowledge that my children, my mokopuna and all of my descendants will know that land and be able to live upon it and know it properly to maintain true ahikaroa.

The reason that we need Rata back is because, for me, it is my kainga tuturu, it is my true home. Though I have lived at Mahia for quite some time, yet when I think of my real home, it is that rocky hillside and that river that is really home to me. I would really like the chance, not only for my children but also my

mokopuna and descendants to have that same knowledge, to have that same knowing of the land.

Your Honour, we cannot do that as shareholders in a trust whose primary objective is to farm the land. As I said, I have known the difference. My father had a reasonable holding in Te Whakaari. He was on the first management committee of what was then the Mangapoike blocks and later came to Te Whakaari. He took over as manager in 1961. When Sir Turi Carroll died he took over as chairman of the incorporation. There was always a maintaining of contact with the land.

After his job as manager was finished he could no longer live upon the land. I think that is the difference between having a shareholding and actually having the land in your name as a separate title. It is about ahikaroa and whether or not we can maintain it when we only have shares. (Tairāwhiti Māori Land Court, 5 March 2010, 4 Tairāwhiti Minute Book, pp. 179-180).

I went on to reiterate that prior to the amalgamation the 5,000 acres that is now Anewa had supported between eight and ten families, whereas now there were only three families living there. I acknowledged that this was the way farming in New Zealand had changed, that greater areas of land were needed to support fewer people. Hence the desire to conduct research into ways that hill country like that farmed by Anewa and the neighbouring Te Whakaari Māori Incorporation could be better utilised. I stressed that it would not harm Anewa for the land to be returned to our family, rather it could be of benefit as we would be willing to share the results of any research with the Trust.

When the judge asked whether we had conducted feasibility studies, I replied that we aimed to do that in the future when we could be assured that we had the land to work with.

Judge Coxhead reserved his decision.

*The applicants' business proposals and meeting with Anewa Trustees*

I discussed the Court Hearing with my family, and asked the Court's leave to provide further material regarding our ideas for utilisation of Rata. Permission was granted on the proviso that we also made the information available to the Anewa trustees and gave them the opportunity to respond.

Accompanied by kaumatua and Anewa shareholder Pauline Tangiora, I met with the Anewa trustees on 23 March 2010. I provided each of the trustees with a copy of my letter to Judge Coxhead outlining the business ideas for Rata, and over the space of an hour went through the letter item by item. Every question the trustees asked was fully replied to and discussed. I asked for their response in writing.

The trustees' reply on 9 April 2010 was succinct. They thanked me for my attendance and presentation at their meeting in March, and said

The Trustees are well acquainted with your requests and vision for the land your father farmed.

Anewa is predominantly a sheep and beef farm. As well the Trustees have set aside land as a Nga Whenua Rahui and planted a small area of pine.

The Trustees confirm they do not support any partition or fragmentation of Anewa. (Anewa Trustees to Mere Whaanga, 9 April 2010).

I attached a copy of this reply to the letter I sent to Judge Coxhead. As well, I included letters from each of my three children which expressed their desire to have the land returned, some of their ideas for better use of

the land, and the business skills and acumen they brought to the project I was proposing. My second daughter wrote

We ask the court to recognise that as Maori, physical landscapes are inseparable from tupuna, events, occupations and cultural practices. Our Grandfather, his grandparents, their grandparents and so forth saw this land - Rata - as home, the land they lived and worked upon, the land they nurtured and cared for to hand to the next generation. We see this place as home, we wish to continue the practice of living and nurturing, of connection to whenua, flora and fauna, through whakapapa. This is a matter of ahi kaa to our whanau.

We seek reinstatement, the right to development and articulation of our physical and spiritual sense of place, for ourselves, our mokopuna, and future generations. (Whaanga-Schollum to Judge, 19 March 2010).

Our overall intent is to carry out an intensive research project that would result in a model of permaculture for land that is increasingly marginal for traditional sheep and beef farming – the type of land that is farmed by many Māori incorporations in the Wairoa area. Our suggestions encompassed production of mānuka honey, oil and other products; tree crops for timber and art purposes; a truffiere; gourmet products such as pikopiko and herbal products; restoration of wetlands, enhancement of streams to protect native bio-diversity; and eco-tourism. I explained that the project

will be based upon traditional tīpuna use of the resources of land, forest and waters, informed by scientific research, and meld current sustainable practice with the ethos of careful management of resources that ensures that future generations may also draw upon those same resources.

Permaculture requires careful analysis of the land and developing a plan for usage based on detailed knowledge of the topography,

soil types, aspect (whether North-facing etc), water and shelter availability, access and what grows best in each microclimate. Permaculture is also a long-term way of farming, that includes the planting of trees that may take generations to mature.

.... The difference in approach we take is that the type of farming currently practised by Anewa Trust is based on the idea of clearing the land and planting grass for sheep and cattle production, i.e. a pastoral farming model is imposed on the landscape. The state Rata is in now is ample evidence that our particular block is not suitable for that type of usage. While pastoral farming has been the backbone of New Zealand's economy for more than a century, the necessity of having increasingly larger areas under grass that support fewer and fewer people means that new ways of using the land must be explored.

A permaculture system looks at what is suitable for the land, and what the land grows best. It is my family's intention to see how we can work with the land we have, and to find out how we can make use of it in a sustainable manner. (Whaanga to Judge Coxhead, 12 April 2010).

The proposals were all medium to long-term investments. The truffiere would require at least ten years before there would be any return on investment, the high-value timber plantations had a 40-50 year rotation, and the tōtara plantation would need at least 60-80 years before harvest could begin.

Those projects were truly ones that our whānau would be establishing for the mokopuna and their mokopuna.

It is this long-term view and the goals of providing for future generations that necessitate a secure separate title. Our family are prepared to invest our time, expertise and money in family land projects that we may not see come to fruition. I know that if a

child helps you plant a tree, and that child is raised caring for that tree, then it is highly unlikely that they will cut it down indiscriminately.

The type of planning and management that will be needed for such long-term projects necessitates a secure title that is not subject to the vagaries of a changing committee of trustees. If it is necessary to borrow money to build a house, a separate title is necessary for that as well. (Whaanga to Judge Coxhead, 12 April 2010).

## COURT DECISION ON APPLICATION TO PARTITION

Ten months after the Court hearing, in a letter dated 10 January 2011, the Deputy Registrar advised us that Judge Coxhead had dismissed the application for partition. The judgment had been made on 14 December 2010, but with the intervening public holidays, and staff of the Tairāwhiti Māori Land Court office being on annual leave, the decision did not reach us until mid-January.

The Reserved Judgment of Judge CT Coxhead consisted of seven parts: an introduction that set out the matter before the Court; a summarised history of the block from 1927 to the present day; the applicants' case for partition; Section 288 of Te Ture Whenua Māori Act 1993 (the Act) and partitions; Section 288(2)(a) of the Act; Section 288(2)(b) of the Act; and the judge's conclusion.

The judgment noted three parts of Section 288 of the Act which sets out the matters to be considered before the Court can make an order for partition.

(1) In addition to the requirements of subsections (2) to (4), in deciding whether or not to exercise its jurisdiction to make any partition order, amalgamation order, or aggregation order, the Court shall have regard to-

- (a) the opinion of the owners or shareholders as a whole;  
and
- (b) the effect of the proposal on the interests of the owners of the land or the shareholders of the incorporation, as the case may be; and
- (c) the best overall use and development of the land.

(2) The Court shall not make any partition order, amalgamation order, or aggregation order affecting any land, other than land vested in a Maori incorporation, unless it is satisfied-

- (d) that the owners of the land to which the application relates have had sufficient notice of the application and sufficient opportunity to discuss and consider it; and
- (e) that there is a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter.

....

(4) The Court must not make a partition order unless it is satisfied that the partition order-

- (a) is necessary to facilitate the effective operation, development, and utilisation of the land; or
- (b) effects an alienation of land, by gift, to a member of the donor's whanau, being a member who is within the preferred classes of alienees.

The Court cited the Māori Appellate Court case of *Hammond-Whangawehi 1B3H1* which provided a summary of the principles applying to partitions.

[14] The leading decision on partition is that of the High Court in *Brown v Māori Appellate Court* [2001] 1 NZLR 87. We refer also to the decisions of this Court in *Re Port Levy – Wade Wereta Osborne*, *Re Kaiwaitau 1* (2005) 34 APGS 168 and *Re Matakana 1A7A Ngatai v Duvall & Ors* (2007) 21 Waikato Maniapoto Appellate MB 147.

[15] The Court has exclusive jurisdiction to grant partition orders in relation to Māori freehold land in accordance with Part 14 of the Act. That jurisdiction is discretionary. The Act directs the Court to exercise its discretion in three steps.

[16] First, the statutory prerequisites must be satisfied. The Court is expressly prohibited from granting partition if these prerequisites are not satisfied. There are, in essence, three (we do not look at the situation where the land is vested in an Incorporation):

....

[17] In *Brown v Māori Appellate Court* the High Court clarified (para 51) that “necessary” in section 288(4)(a) is properly to be construed as “reasonably necessary” and that it is “closer to that which is essential than that which is simply desirable or expedient.”

[18] Second, if the statutory prerequisites are satisfied, the Court must then address the mandatory considerations in section 288(1). That section requires the Court to have regard to the opinion of the owners as a whole, the effect of the proposal on the interests of the owners, and the best overall use and development of the land.

[19] Third, the Court is to exercise its general discretion mindful that it may refuse to exercise that discretion if it would not achieve the principal purpose of Part 14 of the Act: section 287(2). The principal purpose is expressed in section (286(1) to be “to facilitate the use and occupation by the owners of land owned by Māori by rationalising particular landholdings and providing access or additional or improved access to the land.”

[20] At all times the Court must have regard to the principles set out in the preamble of the Act, section 2 and section 17: *Brown v*

*Māori Appellate Court* (para 66). (Tairāwhiti Māori Land Court, 14 December 2010, 11 Tairāwhiti MB pp.50-51).

The judgment noted that section 288(1) were factors that the Court should 'have regard to', and sections 288(2) and 288(4) were requirements that had the greater emphasis of "shall not make ...unless" and "must not make...unless".

In regard to section 288(2)(a) of the Act, whether there had been sufficient notice and opportunity for the shareholders of Anewa to discuss the application, the judge placed greater importance on the meeting directed by the Chief Judge and held at Iwitea Marae on 11 December 2009, although the other meetings at which the application had been discussed were taken into consideration. He concluded that the requirements of section 288(2)(a) had been fulfilled.

*Te Ture Whenua Māori Act 1993 section 288(2)(b) sufficient degree of support*

But it was the requirements of section 288(2)(b), "a sufficient degree of support for the application among the owners" that Judge Coxhead considered the central issue of the case. He cited *Reid v Trustees of Kaiwaitau 1*, where the Māori Appellate Court

stated that there are a number of competing factors to be considered when assessing what level of support can be considered sufficient. Such factors can include the total number of owners affected, the proportion of owners who benefit from the proposal compared with the number of owners who suffer a detriment, and the nature and importance of the matter.

[19] I accept that the applicants have received support both by a vote at the owners meeting on 11 December 2009 and in writing. However, that support accounts for, as noted in the minutes of the

11 December meeting, 2.22% of the total owners and 10.28% of the total share interests in Anewa.

[20] The applicants have gone to extraordinary lengths to obtain support for this application. The applicants contend that the Court should focus on the support they have gained not in terms of overall owner numbers but in terms of those who are actively involved in the land issue pertaining to Anewa. As the applicants put it those “shareholders who actively took an interest in the land and attended meetings”.

[21] On this basis the applicants say that since 2000 the attendance at annual general meetings has been between 45 and 90 and by their calculations this is an average of “62 beneficiaries and guests over ten years.” The 84 owners in support of their application are in excess of the average number of owners who are active in Anewa matters. (Tairāwhiti Māori Land Court, 14 December 2010, 11 Tairāwhiti MB p.53).

Guidelines for adjudging “sufficient support” were given in *Marsh v Robertson – Karu o te Whenua B2B5B1* (1996, 19 Waikato Maniapoto Appellate MB p.40). This case was an appeal against the dismissal of an application to partition Karu o te Whenua B2B5B1. The majority of the owners had agreed to sell the Karu o te Whenua B2B5B1 block to neighbouring farmer and leasee Robert Beaumont Robertson. Mrs Barbara Marsh and more than seventy other shareholders did not wish to sell, and filed an application to partition their shares from the block. The application to partition was dismissed. Marsh and the other non-sellers appealed the decision, one of the three grounds for appeal being that the judge had erred in determining that the application for partition did not have a reasonable degree of support.

In their judgment, the Māori Appellate Court suggested guidelines as to what amounted to “sufficient support”. They divided section Te Ture Whenua Māori Act 1993 Section 288(2)(b) into three sections;

Firstly, there has to be “sufficient support”. That is, in all applications there must be such support and if there is opposition to the partition proposal, the Court must carefully balance the competing views and generally support would need to outweigh the opposition before the proposal can proceed.

Secondly, the support or opposition for the application must come from “among the owners”. The applicants as owners and any other owners can support the application. ... No owners are prohibited in the wording of Section 288(2)(b) from lending their support to an application.

Thirdly, and most importantly, the Court in each application must have “regard to the nature and importance of the matter”. Each case is to be considered on its own merits. The Court looking at the totality of the application with the preamble, Section 2 and Section 17 ever present in its consideration.

.... Without limiting the general discretion conferred upon the Court by section 288, the Court may decline an application for partition if the Court is satisfied that the partition would not be consistent with the objects of the Act having regard to the following matters:-

(a) In all cases-

- (i) The historical importance of the land to the partitioning owners or any of the owners and their historical connection with it
- (ii) The nature of the land including its location and zoning and its suitability for utilisation by the partitioning owners or any of the owners

....

- (b) In the case of a partition that is opposed by some of the owners
  - (i) The respective interests of the supporting and opposing owners including the applicants
  - (ii) The number of opposing owners compared to the number of supporting owners including the applicants. (19 Waikato Maniapoto Appellate Court Minute Book pp.46-47)

The nature of the land and its suitability for utilisation by the owners will be discussed later in this chapter, along with section 288(4) matters.

Considering part (b) above, in making his decision to dismiss the application to partition Anewa Judge Coxhead did not record any consideration of balancing the competing views. Although the shareholding of those supporting the application was recorded in the decision as 10.28% of the total share interests in Anewa, the Judge did not refer to the interests of the opposing owners, which amounted to only 2.18% of the shareholding. (Figures for those opposing trustees listed as owners on the Anewa list of owners available at Ministry of Justice (2011) Māori Land Online website).

Nor did he appear to take cognisance of the fact that 84 shareholders voted for the application versus the majority of the seven trustees against it.

Regarding the “majority of the trustees”, the kaumatua of the committee, Lim Robinson, had signed in support of the application, and he never withdrew that support. Neither did he vote against supporting the application at the meeting of owners held at Iwitea in December 2009.

The Appellate Court also said that “no owners are prohibited ... from lending their support to an application”. Although it is not recorded in the minutes of the meeting of owners, there was discussion about a trustee

voting for the application, while the resolution passed by the trustees at their meeting was that the trustees did not support the application.

Regardless of this latter comment, the Court has the evidence that the number of owners supporting the application outnumbers those opposing it by a ratio of 12:1.

One of the guidelines given by the Māori Appellate Court (19 Waikato Maniapoto Appellate Court Minute Book p.46) was that “the Court must carefully balance the competing views and generally support would need to outweigh the opposition”. As detailed above, the support for the application overwhelmingly outweighed the opposition, and there was no evidence that the Court did carefully consider the competing views.

In *Marsh v Robertson* the Appellate Court did also say that, in making decisions about the sufficiency of support, the Court should have regard for the historical importance of the land to the partitioning owners or any of the owners and their historical connection with it. Our whānau explained in detail (both in the application and letters to the Judge) the importance to us of the land that was the subject of the application to partition, our need to maintain ahikāroa

by keeping alive the fires of occupation, both physical and metaphorical. .... to be able to walk the land of your ancestors, to really know it, and for the land to know your footsteps upon it.

And, above all else

because it was our father’s, our grandmother’s, our great-grandfather’s land, and all the tīpuna before them. (Whaanga to Judge 24 February 2010).

Judge Isaac had previously made a comment that the applicants may have to rely on the historical ownership of that portion of the land to satisfy the legislative requirements that the Court has to consider when making a Partition Order. (Tairāwhiti Māori Land Court letter 20 August 2008).

We had made it clear that we were asking for only the land that had belonged to our direct ancestors, the land our father had farmed, not any other part of Anewa. The detailed history provided in the application and letters to the Judge was ample evidence of the importance to the Whaanga whānau of the land, and our emotional attachment to it. The historical importance was specific to our immediate whānau, not to any others among the shareholders of Anewa.

Judge Coxhead's comment at paragraph 23 that

“In the context of this block Anewa, with 3784 owners and over 100,000 shares the applicants are a long way from demonstrating sufficient support” (Tairāwhiti Maori Land Court, 14 December 2010, 11 Tairāwhiti MB p.54)

also ignores the historical ownership of what is now known as the Anewa Trust.

The history of titles prior to amalgamation has been covered in detail in previous chapters of this thesis. The Court had the summaries of that history before it, as well as copies of their own records regarding the ownership of the blocks prior to amalgamation.

It is clear that we were not asking for something entirely new in the historical context, merely a re-establishment of an earlier land holding.

Riwiā's and my shares together represent what was the majority shareholding in Tutuotekaha 1B5B section 2. Our father also had a small shareholding in Tutuotekaha A & B, and all together our shareholdings total 1923.038 shares, or 1.849% of the Anewa Trust shares. The support for the application is from shareholders representing 10.28% of the shareholding of Anewa, i.e. far in excess of our own shares.

Our father's shareholding in Anewa was calculated on a valuation basis in 1966 and reflects the type of land that Rata farm was. Judge Coxhead stated that

“the old Tutuotekaha 1B5B block represents around 6.5% of the total area of the amalgamation”. (Tairāwhiti Māori Land Court, 14 December 2010, 11 Tairāwhiti MB p.49).

He did his calculations solely on land area, whereas the shareholding at amalgamation was calculated on value, which should immediately point to the fact that the area that was once Rata Farm is not the choicest part of Anewa Station. The judge also made no reference to the fact that the area that was Rata farm is within the 47% of Anewa land that is considered non-effective because it is steep and covered in forest, most of which is regrowth scrub of such a size that it would now be considered mature mānuka/kānuka forest. The breakdown of effective/non-effective area can be found in the Anewa Trust Annual Reports, copies of which are supposed to be filed every year with the Māori Land Court. (Anewa Trust Order s.6(c)).

Whether support is sufficient is not a simple mathematical equation, nor a matter where a straight-out majority shareholding is always required. In the *Kaiwaitau* case, the Appellate Court said

“Just what amounts to ‘sufficient’ support for the proposal is in the end a matter for case by case analysis. In some cases, partition may be the only means of overcoming intractable differences between owners and their whānau even though those in support of the partition are only in the minority in number or shareholding. (Tairāwhiti Māori Appellate Court, 11 May 2005, 34 Gisborne Appellate MB p.172).

I believe Judge Coxhead wrongly exercised his discretion in deciding that we did not have a sufficient degree of support for the partition, because he did not take into account all the complexities of the land and the historical

context, nor did he appear to consider just how much support for the application is in excess of our own shareholding.

Judge Coxhead went on to express sympathy for the applicants, acknowledging that it was “not easy” getting owners along to meetings. Nowhere was any consideration given to the numbers of addresses of shareholders that are known to the Anewa Trust or the Māori Land Court. In response to a letter from the Māori Land Court case officer requesting owners’ addresses, I had written that

Although there are a large number of owners in Anewa, many are deceased, and the secretary for the Anewa Trust informs me that they have only about 30 - 40 addresses of shareholders, which they would not release. (Whaanga, 1 September 2008).

The term “sufficient support” is not defined in the Act. Judge Coxhead said at paragraph 20 of his judgment that the applicants had “gone to extraordinary lengths” in obtaining support, but it seems no cognisance has been given to the fact that we had obtained more owners’ signatures and addresses than either the Anewa Trust office or the Māori Land Court apparently had on their files.

Under the terms of their Trust Order, the Anewa Trustees

shall have power but no duty to investigate whether or not persons appearing in the records of the Court as equitable owners of the land are alive or dead

(Anewa Terms of Trust, 11 December 2006, Section 3).

The only mention of the list of owners appears among the matters that the auditor must report upon at each annual general meeting. The auditor’s report shall state:

Whether or not the Register of equitable owners has been duly and correctly kept. (Anewa Terms of Trust, 11 December 2006, Section 6 (e)(iv)).

The auditor's report consistently states that "The Register and Index of Equitable Owners required by the Trust Order is maintained by the Maori Land Court". (Anewa Trust, 30 June 2010, p.8).

In correspondence with the case officer, I also pointed out that

Fifty shareholders is about the number of shareholders who attend the AGM every year, and appears to be sufficient support for the election of trustees and the general running of the farm.

(Whaanga, 1 September 2008).

In February 2010, in a letter directly to the judge, I listed the number of shareholders and their guests who had attended the last ten annual general meetings for Anewa, and submitted that the number of shareholders who supported the application was above the average number who attended meetings. These figures, as recorded in the Anewa Trust AGM minutes from 2001 to 2010 are:

2000	90	2005	45
2001	87	2006	56
2002	70	2007	58
2003	54	2008	43
2004	60	2009	60

The 84 signatures gathered in support of the application therefore is highly likely to be a greater number than the highest listed attendance of 90 that was achieved in 2000. The reason being that the minutes generally record the numbers of "shareholders and guests" at a meeting, not the shareholders alone. Many shareholders bring whānau or spouses along who may not be shareholders, and as most are over the age of 60, there are several who no longer drive.

Every other shareholder I have approached has supported our wish to partition out our shares. At the meeting of shareholders on December 11 2009, only two of the 24 shareholders present voted against the application to partition. If this is extrapolated across the whole

shareholding, and taking into consideration the 84 signatures in favour to date, there is sufficient support for the application to partition.

An average of around 60 owners is enough to elect trustees every year and allow the Trust to keep operating; the Trustees have the addresses of perhaps 40 owners on their register; it would appear that the Māori Land Court do not have the addresses of more than those I supplied; and the Act itself does not define “sufficient support”. In fairness, if the “extraordinary” effort that we made to contact owners yielded support from twice the number of shareholders that are on the Trustees’ address files, shouldn’t that be weighed in our favour?

*The Anewa Trustees’ opinion*

Judge Coxhead also noted that

the Trustees of Anewa have been consistent in their opposition to the partition application. Their opposition is on two fronts, firstly on the basis that their Trust Deed does not allow them to partition and second that a partition goes against the intentions of the amalgamation.

[25] The Trustees have obvious concerns that a partition will be the first step to unravelling the whole amalgamation. (Tairāwhiti Māori Land Court, 14 December 2010, 11 Tairāwhiti MB p.54).

The trustees’ opinions would appear to have influenced the judge’s decision.

When I originally approached the trustees, five of the seven supported my wish to partition and the other two said they would remain neutral. They later changed their minds, saying that as a committee they could not support the partition. Although one of the Trustees stated that they do not support the application for partition for farming reasons, most

individually still reiterate that they have sympathy for our wish to have our father's land returned to us.

If anything, the record shows that the Trustees have been inconsistent.

I also note that the High Court of New Zealand, in their May 2000 judgment on the Kairakau 2C5B block said that one of the objectives of section 17 of Te Ture Whenua Māori Act 1993 was to protect “majority and minority interests against unreasonable positions” (*Brown v Māori Appellate Court, Māori Land Court & J Broughton* (2000) CP 428/98 p.19 paragraph 66).

The Anewa trustees have not given any reasonable explanation for their about-face on the issue of support for the application. I have not seen or heard from them any evidence of consideration of the merits or otherwise of the application or future proposals; any consideration of the economic benefits or otherwise to the owners of Anewa; any indication that they have given either the application or the research and use proposals due consideration, nor have they given any evidence that the partition will affect their farming operations.

I have made every effort to provide them with information and to enter into discussions with them. Individual approaches were construed by one as “picking off” the trustees. (Tairāwhiti Māori Land Court, Wairoa Minute Book No 129, p.121).

A request to meet with the trustees as a committee was ignored for months, then I was given very short notice that I could put my case to them on the morning of the 2006 AGM.

I requested that the application for partition be advertised as a special agenda item for the 2007 Anewa AGM. The item was not included in the notice of meeting, nor was a response to that request ever received from the trustees.

At the Court sitting on 5 March 2010, Walter Wilson, one of the trustees, repeatedly referred to the effect of cancelling the amalgamation (Tairāwhiti Māori Land Court, 5 March 2010, 4 Tairāwhiti Minute Book, p.179) – he has misunderstood the application. It is not to cancel the amalgamation, it is for a partition.

Wilson also stated that the trustees believed the application was not in the interests of the shareholders – yet there is no evidence on file that the trustees have canvassed the shareholders' opinions. Neither are there minutes of the meeting they supposedly held to discuss the application.

The judge has not remarked on the fact that the trustees' assertion that their trust deed does not allow them to partition is erroneous. The Anewa trust order does not forbid partition, in fact it does not mention partition at all. The only prohibition is in regard to selling the land or any part of it.

Regardless of this misunderstanding by the trustees, the fact is that the application to partition is to the Māori Land Court, not to the Anewa trustees. It is the Court that has the power to partition land, not the trustees.

Therefore I believe that the trustees have taken an unreasonable stance, based on a misunderstanding of the application and an unwillingness or inability to properly consider the proposal to partition and what it could mean for our hapū and Anewa Trust. I also believe that Judge Coxhead gave undue weighting to the trustees' opinion when he considered support to be insufficient and dismissed the application for partition.

The further assertion that a partition goes against intentions of the amalgamation is also open to challenge. The amalgamation took place specifically to enable the establishment of a development scheme for the original Anewa Station, then under the Tutuotekaha A & B Incorporation. The Field Officers of the Department of Māori Affairs recommended the

amalgamation of the blocks and subsequent development, but only on the proviso that

One of the conditions upon which the Board of Maori Affairs will approve the establishment of such development schemes is that the property comprises one single Maori Land Court Title.  
(Brewster , 1967, p.23).

The emphasis here is that of development as a farming entity, not to protect Māori ownership of the land.

This information was included in the application for partition, and my letter to the judge of February 2010. The intentions of the amalgamation were development of the land, and in all the information put to the Court I showed conclusively that, for the area of land we were asking to be partitioned, the development had failed dismally. What had once been a working farm that supported a family has regressed from pastoral land to mānuka scrubland of no use to the Anewa farming entity.

The third concern of the trustees that the judge mentioned was that a partition would be the “first step to unravelling the whole amalgamation”. It should be noted here that the application is for a partition, not to undo the amalgamation.

In adjudging the support for the application, Judge Coxhead had noted that factors to be considered could include the total number of owners affected, and the proportion of owners who benefit from the proposal compared with the number of owners who suffer a detriment. He concluded that the support was

not sufficient support given that the partition will have implications for the overall amalgamation, will only benefit two shareholders – the applicants – and will require a reconfiguration of land. (Tairāwhiti Maori Land Court, 14 December 2010, 11 Tairāwhiti MB 46 p.54 para 22).

The Judge has erred in the weight given to this reasoning, because the partition does not “have implications for the overall amalgamation”. The land to be partitioned is non-productive, it does not produce an income for the trust, and the owners do not receive any benefit from it. Economically, the detriment to Anewa Trust is precisely nil. In fact, if the partition proceeds, all the owners benefit because my sister and I (who have a reasonably large shareholding) will not take any dividends from Anewa in the future and any distribution to the remaining owners in Anewa will be greater simply because it will be spread over fewer shares. Therefore, the Judge’s statement that the partition will “only benefit two shareholders” is also wrong.

In citing the opinion of the Anewa trustees, there is no apparent consideration given to their role as representatives of the owners, and the fact that the Anewa Trust order states that on any question submitted to a meeting of owners

the resolution shall be carried if the majority of the votes is in favour thereof

or

if the voting powers of the equitable owners who either personally or by proxy vote in favour of the resolution are greater than the voting powers of the equitable owners who vote either personally or by proxy against the resolution. (section (f) and (g)).

Chief Judge Isaac also said at the judicial conference of 2 September 2009 that the “the trustees have to bide majority consent” (Tairāwhiti Māori Land Court, Wairoa Minute Book No 129, p. 122). The trustees were very aware of the support of the owners given to us at the Anewa AGM in 2007. To ensure correct procedure, the Chief Judge directed that a meeting of owners be called specifically to consider the application for partition. Majority consent was given at that meeting held at Iwitea Marae on 11 December 2009, and chaired by the Deputy Registrar of the Tairāwhiti Māori Land Court. Yet the trustees chose to ignore that support and majority consent.

Their response has been based on a misunderstanding of the application, personal fears that somehow the removal of 300 acres of land that is not being farmed by Anewa Trust will diminish their role as trustees, and a misinterpretation of the Anewa Trust order. Yet Judge Coxhead gives weight to their fears, over the majority consent of the assembled owners.

Judge Coxhead therefore concluded that

Given the applicants have failed to show that there is a sufficient degree of support for their partition, the applicants have failed to satisfy one of the essential requirements required before a partition order can be made. Therefore the application is dismissed.

(Tairāwhiti Māori Land Court, 14 December 2010, 11 Tairāwhiti MB 46 p.54).

*Section 288(4) and 288 (1)*

Based on the decision to dismiss the application, Judge Coxhead stated that there was no need for him to consider section 288(4) and 288(1) matters.

On my preliminary assessment I think it is difficult to conclude that the partition satisfies section 288(4) in that it is necessary to facilitate the effective operation, development, and utilisation of the land. (Tairāwhiti Māori Land Court, 14 December 2010, 11 Tairāwhiti MB 46 p.54).

Judge Coxhead had provided the definition of necessary on which he based his judgment. *Brown v Māori Appellate Court* the High Court clarified (para 51) that “necessary” in section 288(4)(a) is properly to be construed as “reasonably necessary” and that it is “closer to that which is essential than that which is simply desirable or expedient.”

We had submitted several reasons why a separate title was necessary.

These were that

- a) the trustees are appointed on a 3-year rotational basis, and therefore even if they were supportive of the proposed projects, any agreement would always be subject to a change at the trustee level;
- b) the trustees continue to follow a conservative pattern of pastoral farming. With their marginal annual returns, they cannot afford to invest money in research that may not show a financial return for many years;
- c) our planned projects were all medium to long-term investments ranging from 10 to 80 years before a return on investment could be expected, and this type of investment required a secure title that was not subject to the vagaries of a changing committee of trustees;
- d) to borrow money to build a house on the land, a separate title is necessary.

The letters sent to the judge by our whānau outlined our business expertise, experience and qualifications. These included nominations for four Agriculture Industry Training Awards awards, ownership of an Agricultural contracting business, a Certificate in Agricultural Science from Massey University and a plethora of skills and knowledge gained from agricultural industry leaders (Schollum to the Māori Land Court, 18 March 2010); 10 years ownership and operation of a website and development company now employing 8 staff with particular skills in new business development, staff management, finances, planning and strategy, product marketing and online micro export or distribution, business systems and e-commerce in many industry sectors from research and development to production and distribution (Whaanga-Reid to the Judge, 8 March 2010); expertise in brand development and design with specialisation in Māori branding, and articulating effective visual strategies for the commercial, private, arts, tourism, education and health sectors (Whaanga-Schollum to Judge, 19 March 2010). My own

qualifications included eight years as a member of the committees of management of three Māori incorporations and Trusts (Anewa among them), ten years of actively farming my own land at Mahia, several years of senior management experience including financial planning, and years of research experience.

Had the judge considered the letters and submissions, he should have been in no doubt as to the collective ability of our whānau to plan and deliver the research project we proposed, and to know the requirements of long-term investment and the securities needed by financial institutions such as banks.

Also of relevance in regard to section 288(4) of the Act are consideration of

- (ii) The nature of the land including its location and zoning and its suitability for utilisation by the partitioning owners or any of the owners (*Marsh v Robertson* 19 Waikato Maniapoto Appellate Court Minute Book p.47)

The nature of the land is a prime factor that should be considered to weigh in favour of the application to partition. The land central to the case is arguably the worst land under the Anewa Trust. Its unsuitability for the type of farming in which Anewa is engaged is obvious from the fact that it has reverted to mānuka/kānuka scrub. Without the partition, there will be no effective operation, development and utilisation of the 300 acres. Conversely, we propose a research project that is tailored to the land, and to which the whānau bring the skills and expertise that are necessary to undertake such a project.

The concern voiced by Chief Judge Isaac in September 2009 that the area was right in the middle of Anewa Trust was allayed by showing that stock access has always been along the road; there is no possible way that stock can be taken across the land in question because of its steep topography and the mature mānuka/kānuka forest that now covers most of it. I

produced a Google Earth image of the block showing the extent of forest canopy, and colour photographs of the block were part of the application to the Court.

Judge Coxhead further made a suggestion in regard to the proposals put forward by our whānau:

[29] The applicants have some wonderful and innovative ideas for the potential development of the lands under the management of the Anewa Trust. I would certainly encourage both the applicants and the Trustees of the Anewa Trust to work together to see if the proposals that the applicants have could in some way be developed for the betterment of all the beneficiaries. (Tairāwhiti Māori Land Court, 14 December 2010, 11 Tairāwhiti MB p.55).

This comment that the applicants and trustees of Anewa work together ignores the statements we made about the vagaries of working with a committee whose membership could change on a regular basis, their entrenched conservatism in their land management practices, and although not explicitly articulated, the trustees' unreliability. I had written in the application that the majority of the trustees initially agreed to our application, but then went back on their word and opposed it. This information was repeated at the judicial conference of 2 September 2009, and again in my oral evidence given at the Court hearing on 5 March 2010. It would be foolish in the extreme to attempt to establish a business relationship with partners that had proven so untrustworthy and obstructive.

The problems facing the Whaanga whānau were articulated more than a hundred years ago in the Stout-Ngata report:

it is more difficult for the individual Maori owner to acquire his own land, be he ever so ambitious and capable of using it. His energy is dissipated in the Land Courts in a protracted struggle, first, to establish his own right to it, and, secondly, to detach

himself from the numerous other owners to whom he is genealogically bound in the title. (AJHR, 1907, G-1c, p.15).

The judge's suggestion that the applicants' proposals be developed for the betterment of all the beneficiaries resonates with the ideal that Māori with skills should turn them to the benefit of their people. I had stated in a letter to Judge Coxhead that

The research and development we intend for Rata would be of benefit to other Māori land owners. It is our intention to make the results available to others, and where possible to provide training in alternative methods of land usage and conservation and restoration of native flora and fauna. (12 April 2010).

Obviously, it is an ideal that our whānau also subscribe to, but is not a direction that should be imposed by the Court. The practicalities are that Māori, like anyone else, must be able to meet their own commitments before they can look to assist their people. After all, there can be neither research nor development unless we establish our project, which demonstrably requires significant investment of time, expertise and finance.

In view of the fact that the aim of our whānau is to establish the kind of research that the Anewa Trust cannot afford and does not have the expertise to establish; and that we have made it clear that the outcomes of our research will be made available to not only the shareholders of Anewa but also other Māori-owned land bodies in the Wairoa region, Judge Coxhead was wrong to state that the partition "will only benefit two shareholders". (Tairāwhiti Māori Land Court, 14 December 2010, 11 Tairāwhiti MB p.54 para 22).

As Judge ET Durie wrote

...where there is a fundamental disagreement on the operation, development and utilisation of the land, where the conflicting views are honestly, sincerely and reasonably held by both sides,

where the share distribution is such that one can effectively stymie the aspirations of the other, and where, if partition were granted, an effective use can be made of the consequential land divisions. Such a combination of circumstances, ... makes the severance of the owners by partition an appropriate mechanism for achieving better land use and management, and is necessary for that purpose. (*Part Kairakau 2C5B Block*, 16 December 1997, 12 Takitimu Appellate MB p.34).

There is a fundamental disagreement between the Anewa Trustees and our whānau about the way this land can be used. Current farming practices impose a pastoral system on land that has proven unsuitable for that purpose. Our whānau propose an intensive research project to find out what would best suit the land in question.

These very different approaches to the land therefore necessitate a partition which would achieve better land use and management, and facilitate the effective use of both the resulting land divisions.

#### *Principles of Te Ture Whenua Māori Act 1993*

The principles of Te Ture Whenua Māori Act 1993 are clearly set out in the preamble:

Whereas the Treaty of Waitangi established the special relationship between the Maori people and the Crown: And whereas it is desirable that the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be affirmed: And whereas it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapu, and to protect wahi tapu: and to facilitate the occupation, development,

and utilisation of that land for the benefit of its owners, their whanau, and their hapu:

Considering the application to partition and the judgment of the Court in light of the preamble, is either of them deficient in its observation of the principles?

The principles of the Act are repeated in Section 2(2), which sets out the way the Act should generally be interpreted:

it is the intention of Parliament that powers, duties, and discretions conferred by this Act shall be exercised, as far as possible, in a manner that facilitates and promotes the retention, use, development, and control of Maori land as taonga tuku iho by Maori owners, their whanau, their hapu, and their descendants

and section 17

the primary objective of the Court shall be to promote and assist in

- (a) the retention of Maori land and General land owned by Maori in the hands of the owners; and
- (b) the effective use, management, and development, by or on behalf of the owners, of Maori land and General land owned by Maori.

The emphasis throughout the Act is the retention of Māori land in the hands of the owners, that is **the people**, not an artificially-created entity that effectively alienates the land from its owners. In all the ways that our ancestors proved their rights to a block of land, occupation, usage and control were paramount among them. (See Chapter 2). Our application has provided conclusive proof that our whānau occupied the land, lived upon it, knew it as only those with ahikāroa can know land. That it was a taonga tuku iho – a treasure handed down from our ancestors – cannot be denied.

The amalgamation of all the whānau blocks with the Tutuotekaha A & B Incorporation removed the right of the owners to exercise their traditional

rights. Although ostensibly the Anewa Trust was a means of handing control and management back to the owners, it is effectively a continuation of an alienating structure. First the amalgamation, then the trust structure, converted a reasonable land ownership to a minority shareholding in a very large corporate structure. The subsuming of the majority shareholding in Tutuotekaha 1B5B into the 5,000-acre Anewa block has meant that it is virtually impossible to regain control of the whānau land, as evidenced by the difficulties that are being experienced by our whānau as we try to partition out the area of land that belonged to our father.

In *Brown v Owners Part Kairakau 2C5B* the Māori Appellate Court gave guidelines to the application of section 17(2) of the Act.

In applying subsection (1) of this section, the Court shall seek to achieve the following further objectives:

- (a) To ascertain and give effect to the wishes of the owners of any land to which the proceedings relate:
- (b) To provide a means whereby the owners may be kept informed of any proposals relating to the land, and in a forum in which the owners might discuss any such proposal:
- (c) To determine or facilitate the settlement of disputes and other matters among the owners of any land:
- (d) To protect minority interests in any land against an oppressive majority, and to protect majority interests in the land against an unreasonable minority:
- (e) To ensure fairness in dealings with the owners of any land in multiple ownership:
- (f) To promote practical solutions to problems arising in the use or management of any land. (13 Takitimu Appellate MB 198)

Paragraph (a) was partially fulfilled in that the Court ordered a meeting of owners of Anewa which was held at Iwitea Marae in December 2009, and there ascertained the wishes of the owners. However the second part - to “give effect to the wishes of the owners” – was not followed through.

Although they had clear evidence that the owners supported the application to partition, Judge Coxhead deemed this support insufficient.

Paragraph (b) was also fulfilled by the meeting of owners, and by the dissemination of the Court minutes to those shareholders whose addresses were known.

Paragraph (c) is covered by the Court hearing, at least in terms of determining the outcome of the application.

Paragraph (d) has not been satisfied by the Court hearing and decision. The “oppressive majority” in this case are all the shareholders who don’t attend meetings. In *Reid v Trustees Kaiwaitau I*, the Court noted that Individual owners wishing to utilise their land should not be unduly penalised by the fact that only a minority of owners are engaged in policy setting. It would, we think, in some cases be oppressive to require applicants for partition to show an absolute majority in shareholding in support of the application if a majority do not participate at all. (2005, 34 Gisborne Appellate MB p.173).

In the case of Anewa, the majority of the shareholders do not participate at all in the business of the Trust. I provided ten years of AGM attendance figures to demonstrate we had garnered the support of more shareholders for the application to partition than usually attended Anewa AGMs. In regard to the partition though, by deeming that support insufficient, the Court has decided that those absent owners influence the decision over and above the expressed wishes of the owners who attended the Court-directed meeting of owners.

On the question of fairness listed as paragraph (e), the decision has certainly not been fair. We have gone to extraordinary lengths to contact shareholders, discuss our plans with the Trustees, follow the guidelines provided by the Court, answer every question put to us. The vast majority

of the owners we have contacted have supported our application. For the Court therefore to decide that the application has insufficient support is manifestly unfair both to our whānau and those shareholders who have made an effort to attend the annual general meetings, the meeting of shareholders called by the Court, and the Court judicial conference and hearing. Their views and wishes have been ignored by the Court.

This is also inconsistent with the Court's own processes and practices. For instance, when the Anewa Trust was set up in 1986, the meeting was purportedly to establish an incorporation. As the required quorum was not reached, it was decided by the owners present to establish a trust – and the Court apparently were quite happy to abide by the wishes of those 13.1% of shareholders present at the meeting, without further canvassing the opinion of those who were neither present nor represented. At the time, the owners were advised that they needed 40% of the shareholding represented to establish an incorporation. Under Te Ture Whenua Māori Act 1993, only 15% of the shareholding is required – tacit acknowledgement of the impossibility of getting large numbers and shareholdings represented at any meeting of owners of a Māori block of the size of Anewa.

Paragraph (f), “to promote practical solutions to problems arising in the use or management of any land” has also not been satisfied by Judge Coxhead's decision. Anewa Trust has allowed the land formerly known as Rata to regress, so that only approximately 10% of it is in scrub-dotted pasture, and those few acres are so steep that they are ineffectively used. The improvements existing at the time of amalgamation have been destroyed. These are major problems in the management of this piece of land. The applicants for partition have proposed solutions that Judge Coxhead has termed “wonderful and innovative”. But, he has not taken cognisance of the practicalities of those solutions, i.e. that there will be a huge investment of time and money that is needed to make them happen, our whānau are the only ones who bring the set of skills needed to effect

the ideas, and we need a secure title to the land to do so. The Court in this instance has failed to promote eminently practical solutions.

The way the Anewa Trust operates no doubt suits many of the shareholders who have neither the skills nor the desire to return to a rural life, who have had no or minimal connection with the land. But in the case of the land we are seeking to partition, a connection has been maintained, the history is well-known and the whānau occupation of the land clearly demonstrated up to the time of the amalgamation of 1967.

The decision appears to be inconsistent with the overall principles of the Act, which are the retention of Māori land in the hands of its owners, not protection of an entity that was set up for agricultural business.

In *Brown v Owners Part Kairakau 2C5B* the Māori Appellate Court referred to Section 286 of the Act, saying that

the Court is obliged at all times to keep in mind the preamble and the directions of section 2/93.

.... We hold that as a condition precedent to the Court exercising its jurisdiction to partition it must first satisfy itself that the proposal would be a rationalisation of the share-holding that facilitates the use and occupation of the land by its owners.

These are clear and unambiguous requirements: “use in this context should be read with section (2)(2)/93, adverted to earlier. “Retention, use, development and control” all denote a continuing relationship owners/land, thus we interpret “facilitate the use and occupation” in this manner, and “use to mean enjoy, exploit and/or occupy. It could be to reside on the land or have the right to enjoy the fruits thereof.

.... We suggest a Judge of first instance using common sense should ask himself, would partition further the owners ability to

reside upon, farm, exploit the land bearing in mind the continued relationship owner/land. (12 Takitimu Appellate MB p.8).

The proposal would certainly fulfil those “clear and unambiguous requirements”; the partition would enable us to occupy the land, to use and manage it, to enjoy the fruits of it. More, it would restore to us our ancestral land and facilitate the continuation of real take whenua, the rights and relationships with our whānau land that is what we would expect Te Ture Whenua Māori Act 1993 to protect.

*Principles of the Act that are not mentioned*

One of the most important principles of the Act that has not been mentioned is that of rangatiratanga. The preamble states that “it is desirable that the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be affirmed”, but this principle is not mentioned in Judge Coxhead’s decision.

The New Zealand Māori Council in 1983 provided guidelines for Māori land legislation, and much of their report became the basis for Te Ture Whenua Māori Act 1993. Their definition of rangatiratanga was that

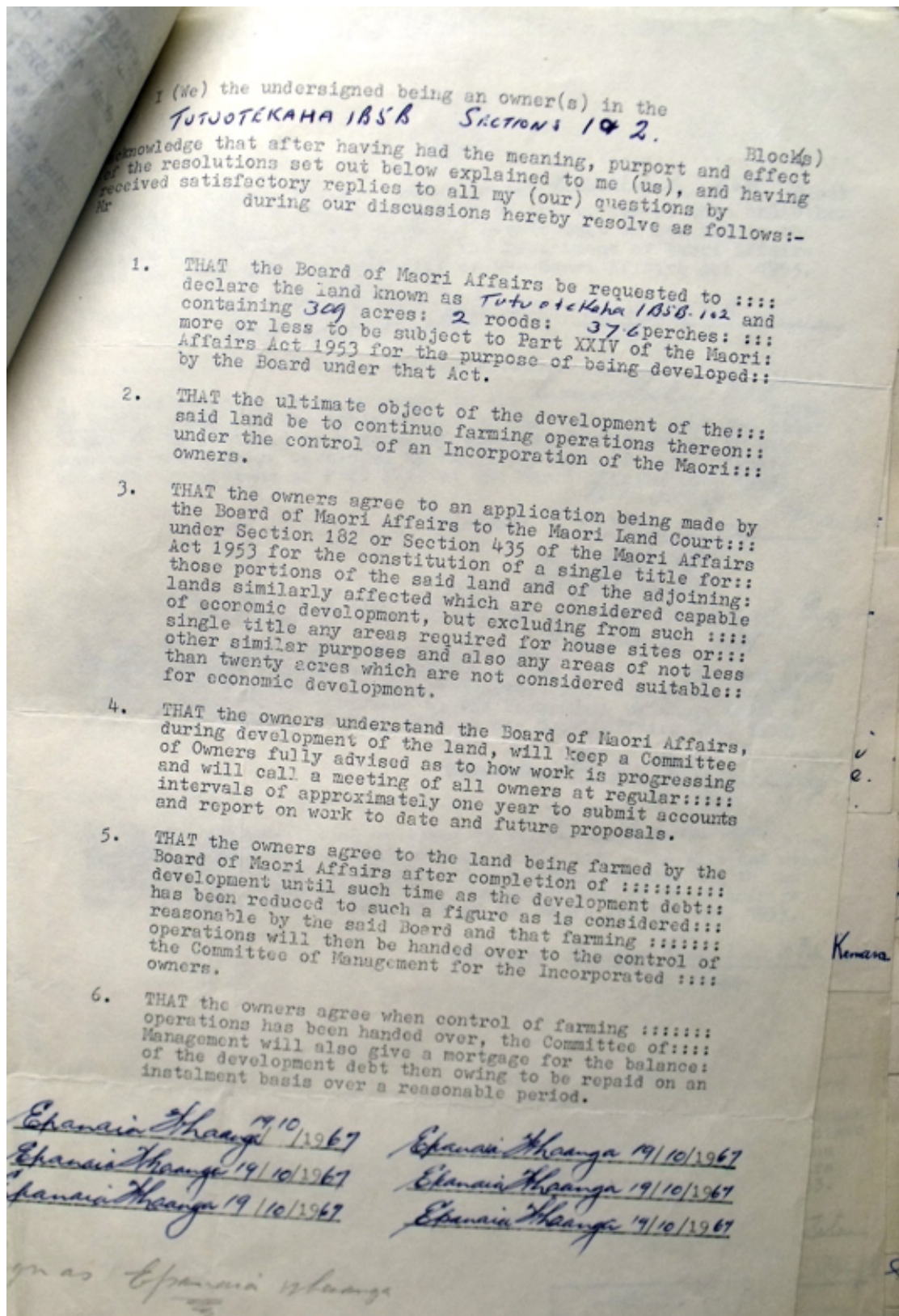
while rangatiratanga may indeed mean ‘possession’, it also means much more than that ... In its essence it is the working out of a moral contract between a leader, his people, and his god. It is a dynamic not static concept, emphasizing the reciprocity between the human, material and non-material worlds. (p.5)

The New Zealand Māori Council went on to explain that the rangatira – being the one who exercised rangatiratanga – was accorded that recognition only by “those who are to be served by that leadership. It is never determined by ballot”. (1985, p.6.)

Yet, in the exercise of rangatiratanga over the Anewa Trust lands, ballot is precisely the way that the Trustees are chosen. Furthermore, the Court decision to dismiss the application on the basis of insufficient support - as expressed by the numbers of shareholders who voted and the shareholding they represented calculated as a percentage of the whole - validates a system whereby the existence of an absent majority who do not participate in the operations of the Trust can deny the applicants their ancestral rights. A voting system then is given preference over rangatiratanga.

This system that gives such disproportionate power to absent owners was brought about with the 1967 amalgamation of all the whānau blocks with the Tutuotekaha A & B Incorporation. It was further entrenched with the establishment of the Anewa Trust in 1986. The Court gives preference to a farming business entity which does not allow the owners to properly connect with their land, rather than facilitating the return of ancestral land to the Whaanga whānau and thereby restoring our rangatiratanga over our land.

We appealed Judge Coxhead's decision.



DEPARTMENT OF MĀORI AFFAIRS, 1967, FILE 14/3/74 Vol I.

The agreement to amalgamation signed by Te Hore Epanaia Whaanga on  
19/10/1967

## CHAPTER TEN

THE MĀORI APPELLATE COURT

The appeal against Judge Coxhead's decision to dismiss the application for partition was filed on 23 February 2011. The grounds for this appeal were that

1. the Judge wrongly exercised his discretion in deciding that the applicants did not have a sufficient degree of support for the partition,
2. the Judge has erred in the weight given to the evidence presented,
3. the Judge made an incorrect assessment in regard to the matters to be considered under Section 288(1) of Te Ture Whenua Māori Act 1993,
4. the Judge made an incorrect assessment in regard to the matters to be considered under Section 288(4) of Te Ture Whenua Māori Act 1993,
5. the decision is inconsistent with the overall principles of Te Ture Whenua Māori Act 1993,
6. the decision does not reflect consideration of Te Ture Whenua Māori Act 1993 Section 17 matters,
7. the Judge has taken into account an irrelevant consideration at paragraph 25, in that the Anewa Trust Order has no relevance to the application to partition,
8. that an injustice would occur if the partition was not granted.

Numbers 1 to 7 have all been argued in the previous chapter. Number 8 was on the grounds that our whānau's rangatiratanga and ancestral connection with our land was unjustly interrupted with the 1967 amalgamation of the Tutuotekaha blocks, and that further injustice would be endured by our whānau if we were not granted the right to rebuild, reoccupy and use our land.

I also applied to the Māori Appellate Court to introduce evidence that the Court did not have before it at the hearing in March 2010. New evidence can be introduced which

1) could not have been obtained with reasonable diligence at the trial, 2) would have an important influence on the case, 3) was not controversial as to the belief which might be placed in it. (*In re Whareongaonga 5 and Skuse*, 1973, 30 Gisborne ACMB p. 158.)

The evidence concerns the amalgamation of Tutuotekaha 1B5B into the Anewa Block in 1967. A search of the Ministry of Māori Development files for the Anewa Development Scheme, held at the Auckland branch of the New Zealand Archives, revealed a serious anomaly in the report from the District Officer to the Māori Land Court Judge for the hearing in which the amalgamation was approved.

Brewster had listed the Tutuotekaha whānau blocks that were to be included with Tutuotekaha A & B Incorporated in the Anewa amalgamation. He stated in his memorandum for Judge Haughey that the sole owner of Tutuotekaha 1B5B Section 1 “has consented in writing” and that he had two written consents “with 309.576 shares” out of a total of 318.718 for Tutuotekaha 1B5B Section 2. His memorandum was dated 18/10/1967. (Brewster, 1967, p.4). However, the owner referred to - Epanaia Whaanga – did not sign the consent until 19/10/1967. (Department of Māori Affairs, 1967, File 14/3/74 Vol I). (photograph p.291).

The Māori Appellate Court discounted this on the grounds that nothing turns on this anomaly and there is no suggestion that Epanaia ever disputed that he had consented to the scheme and the amalgamation. (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.432).

Our father did not dispute his consent to the amalgamation, but he did believe that if we wanted Rata back, we would need only to pay Anewa for any improvements made to the property. He died in 1986, seven years before the enactment of Te Ture Whenua Māori Act 1993 made partition more difficult. As Chief Judge Isaac stated

Under the old Act you might have had a chance. I have to say it, with this Act you have little chance. We may as well be up front because those hurdles are high. ... They are high so that Māori Land is not broken up. (Tairāwhiti Māori Land Court 2009, Wairoa MB 129 p.123).

Although the Appellate Court judges did not consider this information about the anomaly in Brewster's report to be strictly pertinent to the grounds for our appeal, it could provide grounds for an application to undo the amalgamation. After all, Brewster's report was critical to the Māori Land Court Judge making the order to amalgamate all the Tutuotekaha blocks. It can be seen that it contained incorrect and misleading information. The pressure that was brought to bear on some of the owners to consent to the amalgamation was covered in Chapter 4 of this thesis.

It is also doubtful that the Land Court at the time scrutinised the percentages of owners represented in each block that was included in the amalgamation. Only three blocks had the consent of more than 50% of the shareholding. They were Tutuotekaha 1B3B (137 acres) for which 83.33% agreement had been obtained; Tutuotekaha 1B3C (68 acres) 66.49%; and Tutuotekaha 1B5A (28 acres) 56%. Tutuotekaha A & B Incorporated (2147 acres) only managed to accumulate 35.77% agreement after a concerted effort by Māori Affairs officers; Tutuotekaha 1B2 (300 acres) had 39.08% and Tutuotekaha 1B3A (98 acres) 39.88%, although Tom Te Kooti later disputed that he had agreed to the development scheme taking his land. Consents for Tutuotekaha 1B3D (2 acres) amounted to only 15.05%; Tutuotekaha 1B4 (333 acres) 26.15%; Tutuotekaha 1B7 (299 acres) 11.11%; Tutuotekaha 2A1 (18 acres) 9.3%;

Tutuotekaha 2D1 (221 acres) 17.38%; Tutuotekaha 2D2 (501 acres) 12.37%; and our farm Rata, Tutuotekaha 1B5B section 2 (308 acres), at the time Brewster wrote his report the consent of only one owner with 0.19% of the shareholding had been obtained. (Figures calculated from list in Department of Māori Affairs, 1967, File 14/3/74 Vol I).

The Māori Appellate Court hearing was held in Gisborne on 10 May 2011. My sister had passed away on 1 October 2010, before we heard that Judge Coxhead had dismissed our application.

My two daughters accompanied me to Court, and I had apologies from my son (who was unable to attend because of his work), and several of our Iwitea Marae whānau and staunch supporters. Kaumatua Pauline Tangiora and Nigel How, the grandson of a shareholder, both sent letters of support for our application and appeal against Judge Coxhead's decision.

None of the Anewa Trustees appeared, neither did they send apologies or any letter to the Court in time for the hearing. On 24 June 2011, the Court did receive a letter dated 15 May 2011 that "simply advised that the Trust's position remained that it does not support any attempt to partition". (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.441).

Judge Layne Harvey from the Aotea district of the Land Court presided, with Judge Stephen Clark from Waikato-Maniapoto and Judge David Ambler from Taitokerau also on the bench. Judge Harvey said they would review the extra evidence I had applied to have included in the case, and "accept it provisionally", then decide whether or not it would be relevant to their deliberation. (Māori Appellate Court Gisborne Minute Book 2011, 10 May 2011, Māori Appellate Court MB p.238).

The hearing lasted for three and a half hours, and there was lengthy discussion. Judge Clark raised the idea of a lease, but the Anewa Trust

Deed states that the trustees may not lease the land for a period longer than five years. (Anewa Terms of Trust s.1(b)). Judge Harvey asked whether a 51-year lease would be a reasonable alternative, but as one of the projects our whānau proposed was to plant tōtara which would have a minimum rotation of 80 years, we thought that would not be a workable solution. Neither would it give us the surety that the land would be there for my children's mokopuna. I explained that the research we were proposing for Rata was

not just an academic exercise ... we need the land and specifically we are tailoring our ideas to this land to say, all right, this is what we've got, no use complaining our hapū has only been left with the rough land ... It's a taonga tuku iho. It was given to us by our tīpuna, what can we best do with it as it is and how can we get benefits from it. (Māori Appellate Court Gisborne Minute Book 2011, 10 May 2011, Māori Appellate Court MB p.265).

Judge Clark said that one of the options the Appellate Court had was to send the case

back to the Lower Court to assess the partition application again as a whole and you would need to satisfy the Court that the partition is reasonably necessary, not desirable, but necessary. (Māori Appellate Court Gisborne Minute Book 2011, 10 May 2011, Māori Appellate Court MB p.266)

He suggested that one of the ways to approach the matter in that situation would be to emphasise the fact that over the past 40 years the block had reverted and a partition is necessary to enable proper utilisation of the block.

Judge Ambler added that they needed to decide that if

the Lower Court got something wrong in part of the decision whether the decision goes back to the Lower Court or whether the Appellate Court considers that it has sufficient information to then make the ultimate determination. (Māori Appellate Court

Gisborne Minute Book 2011, 10 May 2011, Māori Appellate Court MB p.267).

## THE MĀORI APPELLATE COURT DECISION

The Māori Appellate Court decision was dated 19 August 2011.

The Appellate Court upheld all but the last of the points of appeal and concluded that there was “sufficient support for partition having regard to the nature and importance of the matter”. (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.458).

### *Sufficient support*

The crux of Judge Coxhead’s December 2010 decision to dismiss the application was that the applicants did not have sufficient support for the partition to be granted. On that basis, he further concluded that he had no need to consider section 288(4) whether partition “is necessary to facilitate the effective operation, development, and utilisation of the land”; and section 288(1) the “opinion of the owners ... as a whole”, the “effect of the proposal on the interests of the owners of the land” and the “best overall use and development of the land”.

The sections of Te Ture Whenua Māori Act 1993 pertaining to partitions are sections 286 to 288, all parts of which were relevant to the appeal. The Appellate Court focussed particularly on section 288(2)(b), which states that the Court shall not make any partition order ... unless it is satisfied –

- (c) that there is a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter.

The Act does not specify what constitutes “ a sufficient degree of support”.

The Appellate Court cited the High Court in *Brown v Māori Appellate Court* [2001] 1 NZLR 87 as the leading decision on partition. The statutory prerequisites to granting a partition are set out in section 288(2)(a) which concerns sufficient notice and opportunity for the owners to discuss the application – Judge Coxhead found that this requirement had been well satisfied; section 288(2)(b) which is about sufficient support; and section 288(4)(a) and (b) regarding a partition being necessary to facilitate the effective operation, development, and utilisation of the land.

Once these statutory prerequisites are satisfied, the Court must then address the mandatory considerations contained in section 288(1)

- (a) the opinion of the owners or shareholders as a whole; and
- (b) the effect of the proposal on the interests of the owners of the land or shareholders of the incorporation, as the case may be; and
- (c) the best overall use and development of the land.

The third step to be considered before granting a partition is whether or not the partition would achieve the principal purpose of Part 14 of the Act; section 287(2), which is set out in section 286(1)

The principal purpose of this Part is to facilitate the use and occupation by the owners of land owned by Maori by rationalising particular landholdings and providing access or additional or improved access to the land.

The principles set out in the preamble to Te Ture Whenua Māori Act 1993, sections 2 and section 17 must at all times inform the Court’s decision-making.

The Appellate Court stated that the three steps overlapped in terms of the evidence that applied to each. All references in brackets are to the relevant section of Te Ture Whenua Māori Act 1993.

For example, the evidence of the “degree of support” (s 288(2)(b)) is largely the same evidence that goes to the assessment of “the opinion of the owners”. (s 288(1)(a)). Importantly, the evidence that goes to “the nature and importance of the matter” (s 288(2)(b)) for the purpose of s 288(2)(b) must, by definition, include the various evidence that relates to the application: that is, the evidence that goes to whether the partition is “necessary to facilitate the effective operation, development, and utilisation of the land”; (s 288(4)) “the effect of the proposal on the interests of the owners”; (s 288(1)(b)) “the best overall use and development of the land”; (s 288(1)(c)) and the Court’s ultimate exercise of discretion. (s 287(2)). Our point is that the assessment under s 288(2)(b) requires the Court to consider the evidence in its entirety. (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB pp.445).

An important factor identified by the Appellate Court in *Marsh v Robertson – Karu o te Whenua B2B5B1* (1996) 19 Waikato Maniapoto Appellate Court MB 40 (19 APWM 40) was

the historical importance of the land to the partitioning owners or any of the owners and their historical connection with it. (1996) 19 Waikato Maniapoto Appellate Court MB p.46 (19 APWM p.46)

Where there was some opposition from among the owners, then the Court should have regard to

- (i) The respective interests of the supporting and opposing owners including the applicants
- (ii) The number of opposing owners compared to the number of supporting owners including the applicants

(1996) 19 Waikato Maniapoto Appellate Court MB  
p.47 (19 APWM p.47)

Given that Māori land varies so much in its form of ownership and numbers of owners – Anewa for instance has 3,966 owners and is an amalgamation of 14 blocks totalling almost 5,000 acres, most of it very steep – then it is understandable that the Legislature chose not to “prescribe a formula, such as a percentage of owners or ownership” because “the Court needs to have the flexibility to measure sufficiency” against each individual set of circumstances. (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.450)

Despite my submissions that the Court take into account the opinions of those actively involved in the land, Judge Coxhead had concluded that

2.22% of the total owners and 10.28% of the total share interests in Anewa is not sufficient support given the partition will have implications for the overall amalgamation, will benefit only two shareholders – the applicants – and will require a reconfiguration of the land.

In the context of this block Anewa, with 3784 owners and over 100,000 shares the applicants are a long way from demonstrating sufficient support needed to satisfy the requirements of section 288(2). (Tairāwhiti Māori Land Court, 14 December 2010, 11 Tairāwhiti MB p.54).

The Māori Appellate Court disagreed with Judge Coxhead. The lower Court “gave too much emphasis to the numerically small owner turnout” (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.452), had not properly assessed the nature and importance of the matter, and had not set the support for the application in context.

The context, in broad terms, was

that owners with a longstanding association with part of Anewa wish to use and develop that area for themselves after more than 40 years of receiving no tangible benefits. More specifically: the applicants and their tupuna more or less exclusively used Rata between 1915 and 1967; the land was amalgamated in 1967 as that was a prerequisite to the development scheme; the development scheme did not develop Rata and, in fact, that area has regressed; the Trust does not actively use Rata in its farming operation; the applicants and their father before them have not received any tangible benefits from Anewa since amalgamation; the applicants' proposal will result in Rata being used; the proposal will not cause any detriment to the Trust; nevertheless, the application is significant in that it represents the first occasion on which any owners have sought to remove land from Anewa.

In not taking into account the applicants' historical association with Rata the lower Court failed to take into account a relevant consideration. As was emphasised in *Marsh v Robertson – Karu o te Whenua B2B5B1*, the historical importance of the land to the owners is an important factor. Here, that association was a key plank to the application for partition and yet the Court did not address it in its reasoning. (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.452)

Further, the Appellate Court found that the support of those owners actively taking an interest in the block was also a factor that the lower Court should have taken into consideration. I had provided figures taken from the annual reports of Anewa Trust to show that over ten years an average of 62 owners and guests had attended the annual general meetings. The Appellate Court found that, in that context

the applicants had gained the support of 82 owners with the only opposition coming from two of the trustees. This was following a

four year process of presentations at the 2007 AGM, the 2009 Court-directed meeting and the 2010 lower Court hearing. This is a high level of support among those actively involved in the land. In terms of s 17(2), the Court had to weigh the level of support against the interests of the silent majority of owners and ask: to what extent might the partition have a negative impact on the majority owners' interests? The Court did not do that. In our assessment, there is no cogent evidence that the partition will have a negative impact on the majority owners' interests. (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.455)

My application had included not only the factual information about our whānau's association with the land – most of it referenced directly back to the Māori Land Court's own records – but also a detailed explanation of the meaning of ahikāroa (See Chapter 2 this thesis). I submitted that our whānau could not properly maintain te ahikāroa while we hold only shares in a large trust.

The Appellate Court also addressed the lower Court's concerns regarding the reconfiguration of the land should the partition proceed, noting that partition always results in a reconfiguration, and that the

correct question to ask was, will the partition result in a *detrimental* reconfiguration of the land? There is no evidence that it will. (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.454)

The concerns expressed about the possibility of the Anewa amalgamation being unravelled – concerns raised repeatedly by the trustees - were also dismissed as irrelevant. There was no evidence that other owners were lining up to partition their shares from Anewa, and regardless, the Court must address and assess each case on its own merits.

Anewa is an ahu whenua trust, and as such, the trustees are the legal owners. But, the Appellate Court explained, when assessing the sufficiency of support of the “owners” of land in a trust

it means the *beneficial owners* and not the trustees as *legal owners*. The trustees’ *support or opposition* is irrelevant for the purposes of that subsection. ... in the context of Part XIV, “owners” in s 288(2)(b) means *beneficial owners* where land is under a trust. (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.456)

The Court went on to explain that the trustees have a duty to express their views on a proposed partition, but

their role is not as owners expressing support or opposition but rather as the administrators and managers of the trust (Te Ture Whenua Māori Act 1993, s 223) expressing views on whether the partition is necessary, (Te Ture Whenua Māori Act 1993, s 288(4)(a)) the effect of the partition on the interests of the owners, (Te Ture Whenua Māori Act 1993, s 288(1)(b)) the best overall use and development of the land (Te Ture Whenua Māori Act 1993, s 288(1)(c)) and whether the partition would be consistent with the principal purpose of Part XIV. (Te Ture Whenua Māori Act 1993, s 287(2)).

The Court concluded that there was indeed sufficient support for the partition having regard to the nature and importance of the matter.

However, because the Anewa trustees had had limited participation in the lower Court, and had neither turned up at the appeal hearing nor sent their apologies or any submissions to the Court, the Māori Appellate Court directed that the Anewa trustees address three questions which the Court felt they had a duty to respond to: whether the partition is necessary (s 288(4)); the opinion of the owners as a whole, the effect of the partition on the interests of the owners and the best overall use and development of the land (s 288(1)); and whether the granting of the partition in the

manner sought would facilitate the use and occupation by the owners of land owned by Māori by rationalising particular land holdings and providing access or additional improved access to the land (s 287(2)).

The partition application was referred back for rehearing in the lower Court.

*Summary of the Māori Appellate Court decision*

The decision of the Māori Appellate Court in *Whaanga v Niania - Anewa Block* (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.428) shows that the issue of what constitutes “sufficient support” for a partition is not a simple mathematical calculation. The key factors in this case - listed in the order they appeared in the 2011 decision – were:

1. the applicants’ historical association with Rata;

The Tutuotekaha block first came before the Native Land Court and was subdivided into four in 1868. The main ancestor of the block was named as Matuwahanga (Matuahanga). Ahipene Tamaitimate of Ngati Tahumatua put the claim. He lived on Tutuotekaha and advised the Court that “some of our tribe are living on it now”. (Wairoa Minute Book 1 pp.36-37). Rawhira Timo, ancestor of the Whaanga sisters, was one of the original owners named then. Between 1886 and 1915, Tutuotekaha 1 was subdivided and repartitioned. In 1927, the Whaanga sisters’ great-grandfather Puhara Timo was the major shareholder in Tutuotekaha 1B5.

2. the partition will effectively mean the return of a previous title to the owners;

Tutuotekaha 1B5 was subdivided into Tutuotekaha 1B5A and Tutuotekaha 1B5B. In 1931, the seven grandchildren of Puhara Timo succeeded to his interest in Tutuotekaha 1B5B. After exchanging other land interests with his brothers and sisters, Te Hore Whaanga (father of Mere and Riwia) owned 308.968 shares out of a total of 318.718 in

Tutuotekaha 1B5B Sec. 2 and one acre solely in his name which was Tutuotekaha 1B5B1 Sec. 1. The two blocks were his farm, Rata, and had their own titles.

3. the owners had not received any benefit from the land in 44 years; Te Hore Whaanga leased Rata farm to a relative when he became manager of the Ohuia Māori incorporation in 1955. From October 1959 the neighbouring Anewa Station (Tutuotekaha A & B Incorporation) utilised the land. Anewa also either leased or had an informal grazing tenancy for most of the seven whānau blocks (Tutuotekaha 1B1 to 1B7). The chairman of the Tutuotekaha A & B Incorporation (Anewa) approached the Māori Affairs Department regarding development of the incorporation, and in 1967 the field officers of the Department of Māori Affairs recommended the establishment of a development scheme, but only on the proviso that

One of the conditions upon which the Board of Maori Affairs will approve the establishment of such development schemes is that the property comprises one single Maori Land Court Title.  
(Brewster, 1967, Wairoa MB 27 p. 23).

Rata farm was amalgamated with the other whānau blocks and Tutuotekaha A & B Incorporation, and run by the Department of Māori Affairs. Anewa has never paid any dividends to its shareholders, although there have been kaumātua grants, funeral grants and koha to the marae where the annual general meeting is held. The purpose of the amalgamation was so that the land would be developed, but Rata farm, the majority of which had been cleared and grassed in the 1950s, has reverted to mostly mānuka and kānuka cover. There had been a cottage, yards and fencing when it was amalgamated in 1967; all of these have gone. In terms of the purpose of the amalgamation, the development has failed dismally.

4. the lack of objection from other owners associated with Rata;

The matter of the application for partition had been thoroughly discussed at the 2007, 2008 and 2009 Anewa annual general meetings, at least one Iwitea marae meeting, and the Court-directed Anewa shareholders' meeting in December 2009. At the meeting of shareholders on December 11 2009, only two of the 24 shareholders present voted against the application to partition.

5. Rata is virtually unused by the Trust;

Of the 300 acres that is Rata, perhaps 40 acres of steep scrub-dotted pasture is used by Anewa for grazing sheep and cattle.

6. the lack of detriment to other owners' interests or to the Trust;

Anewa Trust's primary objective is to farm the land. Rata falls into the 47% of the total area of Anewa that is listed in the 2010 annual report (Anewa Trust, 2010, p.9) as unproductive. The removal therefore of 300 acres from Anewa will have no real effect on the trust's income; rather it will mean a lesser rates bill and a smaller area on which to spend their scrub spraying and clearing budget.

7. the support reflecting the views of in excess of 95 percent of the owners and ownership actively engaged in the land;

The Appellate Court noted that the earlier figures quoted by the applicant and the lower Court were incorrect. After perusing the Court records, they stated that 82 of 84 owners supported partition, being 97.6 percent of the active owners, while 9.97 of the 10.28 percent of the ownership that expressed a view support partition, being 96.9 percent of the active ownership. (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.435).

8. the opposition being in principle only and not because of any tangible concerns;

The Anewa trustees had repeatedly said that they were afraid that this application would lead to the undoing of the amalgamation, but the application was for a partition order, not to cancel the amalgamation.

They also said that their trust order did not allow them to partition – this was deemed an irrelevant concern as it is the Court that partitions, not the trustees. At no time had they put forward any evidence of tangible effects on Anewa should the partition application succeed.

9. the proposal falling firmly within the objectives of the Preamble and ss 2 and 17 as it will give owners with the predominant association with Rata the opportunity to use, manage and develop and area that is currently unused. (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.458)

Our whānau had proposed to build a house on Rata and establish a research project that would eventually lead to a model of Māori permaculture (see previous chapter). The proposal was for intensive research into viable alternatives to the large-scale pastoral farming with which the Anewa trust is currently engaged. With their marginal annual returns, the trust cannot afford to invest money in research that may not show a financial return for many years.

In comparing the lower Court's approach to assessing sufficient support for partition to that of the Māori Appellate Court, it can be seen that the matter requires a broad view that takes into consideration all aspects of a case. There is no quick and simple way to decide sufficient support, and hence, each case must be considered individually.

With Māori land, the context is extremely important – the history of the land, whether it is being well-utilised, whether it is providing for those who whakapapa to it, and whether it will be handed on to the next generation in good heart along with the knowledge of how it came to them, and how they should look after it. Knowing the land and its history, sharing in its benefits but also ensuring that you fulfill your obligations to it – that is how ahikāroa is properly maintained.

The Māori Appellate Court's explanation of how sufficient support should be assessed more truly reflects the principles of Te Ture Whenua Māori Act 1993 – that “land is a taonga tuku iho of special significance” to its owners, and therefore it is desirable to “promote the retention of that land in the hands of its owners, their whānau, and their hapū” (Te Ture Whenua Māori Act 1993 Preamble).

Although there is provision in Te Ture Whenua Māori Act 1993 (Section 56) for the Māori Appellate Court to decide the application, the Court decided not to do so. They determined that Section 288(2)(b) was satisfied, and no further evidence was required in relation to the assessment of sufficiency of support.

But in regard to Sections 288(4), 288(1) and 287(2) they concluded that the appellant had

presented persuasive evidence and arguments in relation to the remaining steps for granting partition. However, we are significantly hindered by the trustees' limited participation in the lower Court and failure to participate in this Court. While respondents will ordinarily stand or fall by their lack of participation in proceedings, trustees are in a different category. They represent the interests of the beneficial owners. The Court must take a cautious approach in exercising its powers under Part XIV where trustees have not properly engaged with the relevant issues affecting an application. (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.459)

They remitted the application for partition to the lower Court for the trustees to address three questions:

1. Whether partition is “necessary to facilitate the effective operation, development, and utilisation of the land” (s 288(4));  
and

2. The “opinion of the owners ... as a whole”, the “effect of the proposal on the interests of the owners of the land” and the “best overall use and development of the land” (s 288(1)); and
3. Whether the granting of the partition “in the manner sought will achieve the principal purpose” of Part XIV, that is, to “facilitate the use and occupation by the owners of land owned by Māori by rationalising particular land holdings and providing access or additional improved access to the land’ (s 287(2)). (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB pp.459-460).



Sprayed mātuka & kānuka on Rata  
MERE WHAANGA 2012



Part of sprayed area with wetland in foreground  
MERE WHAANGA 2012



Houheria killed by spray  
MERE WHAANGA 2012

## CHAPTER ELEVEN

INJUNCTION AND REHEARING

## INJUNCTION

At the beginning of 2012 we found that mānuka, kānuka and other native trees on Rata had been sprayed and killed (photographs on pp.310-311). On 4 January 2012 I filed an application for injunction to prevent any further clearing of land and any works upon the land that is the subject of the application to partition, that injunction to prohibit the Anewa Trustees or their employees from dealing with or doing any injury to that area of Anewa that is the subject of my application for partition; and prohibiting any owner or other person or persons from cutting or removing, or authorising the cutting or removal, or otherwise making any disposition, of any timber trees, timber, or other wood, or any topsoil from that area of Anewa that is the subject of the application for partition. (Whaanga, M, 20 February 2012).

The trees killed by the Metsulphuron spray were more than 30 years old and included at least two fine specimens of houheria (lacebark) (Photograph p.311). The plans our whānau had for a regeneration programme for that part of Rata affected by the spray had been put back by a minimum of 30 years. Such treatment of the land would also impact on our plans to restore the wetland as it removed most of the native plants that are so necessary to filter run-off from the hillside.

In a submission to the Court in March 2012, the Anewa trustees stated that

All the land that was Rata Farm would be classified as Class VII on the New Zealand Landuse Classification Scheme. It is predominantly steep terrain. (March 2012, para. 29).

In the Land Use Capability system Class VII land is described as “Non-arable. Moderate to very severe limitations”. (Landcare Research, 2012). There is only one class of land on the scale for country steeper than that of Rata. In other words, the land is too steep to be clearing it for pasture.

At the hearing for the application for injunction on 1 March 2012, Judge Coxhead obtained agreement from the Anewa trustees that no more work would be undertaken on Rata until he had determined the outcome of the rehearing of the application for partition in April 2012. In view of the decision he made to dismiss the application for partition, he also dismissed the injunction application. (Tairāwhiti Māori Land Court 2012, Tairāwhiti MB 22 p.186).

The concerns our whānau have with the Anewa trustees’ management of our land and the very different approach we take to land use could not have been more obvious than the instance that led to me seeking an injunction. It is a clear example of intractable differences between owners, yet this did not appear to be considered by the judge when he concluded that

The trustees are not a prohibiting factor in the applicant’s proposals, and their actions do not necessitate partition.

(Tairāwhiti Māori Land Court 2012, Tairāwhiti MB 22 p.184).

## MĀORI LAND COURT REHEARING

Judge Coxhead again presided over the hearing of the application for partition in Wairoa on 12 April 2012. The Anewa trustees had employed a lawyer, Matthew Lawson, who opened with an aerial photograph of part of Anewa Station on which the supposed boundaries of Rata had been marked. Although a map of the Rata block had been given to the trustees at the 2007 Anewa annual general meeting; those trustees present had seen the maps in the power-point presentation at the shareholders’ meeting on 11 December 2009; I had explained where the boundaries

were at the meeting with the trustees in March 2010, citing a line of macrocarpa trees right next to the road as marking one boundary; and aerial photographs with the boundaries marked were presented at the Māori Appellate Court hearing (and therefore available to the trustees and their lawyer) still the map shown to the Court had the boundaries marked in the wrong place. This displayed an astounding degree of wilful ignorance on the part of the trustees.

For five years, the Anewa trustees have been arguing about the wrong piece of land.

The land that the trustees appeared to think was Rata was in fact a much better area for the purposes for Anewa's farming purposes, having been kept fairly clear of scrub and having a tractor track that traverses the northern face of the hill. The topography is not so steep and productivity is commensurately higher. I had corrected the then farm supervisor, Ray Crombie, about this area at the meeting with the trustees of March 2010, when he presented stock figures that were clearly untenable on the small area of Rata that remains in pasture.

As part of his argument that partition was not necessary, Lawson argued that the provisions of Te Ture Whenua Māori Act 1993 relating to Māori reservations did not appear to have been previously considered. He submitted that the

Reservation covering most of the subject land is expressly stated as being "*for the common use and benefit of all the owners of Anewa*". This would readily allow the Applicants to achieve most if not all of their objectives as stated in the application. (2012, p.4)

The Appellate Court at paragraph 15 of their decision, had raised the issue of the Anewa Māori reservation, which is an area of 295 hectares set aside "as a place of historical, scenic and cultural interest and use" for all the owners of Anewa (Tairāwhiti Māori Land Court, Wairoa MB 94 pp.69-74). Lawson intimated that the trustees established in 1993 remain the

trustees of this reservation. (Tairāwhiti Māori Land Court Tairāwhiti MB 22 p.90). The Memorial Schedule for Anewa shows that the reservation was in fact vested in the Anewa Trustees. (Tairāwhiti Māori Land Court Wairoa MB 91, p.64). The minutes for the hearing of the application for injunction also shows that the trustees for Anewa are the same as those for the Māori Reservation. (Tairāwhiti Māori Land Court Tairāwhiti MB 21 p.77).

At paragraph 44 of Judge Coxhead’s decision, he wrote that the strategic decision made by the trustees, including Mrs [*sic*] Whaanga in 1992 was to “rahui”, or reserve, an area and allow it to regenerate into native bush for the benefit and use of all owners”. (Tairāwhiti Māori Land Court Tairāwhiti MB 22 p.183)

The area I agreed to have protected was primary forest, approximately 500 acres (202 hectares) in area. It did not need to regenerate because it had never been cut. It went across the southernmost parts of “Tutuotekaha A, Pt 1B4, Pt 1B5, Pt 1B6 and Pt 1B7”. (Department of Conservation, 1990, p.2).

The trustees’ preference was that the area was to be covenanted for a limited period of 20 years, not “in perpetuity” as the Department of Conservation wanted. The Anewa consultant gave evidence on 12 April 2012 that “the objection at the time was the perpetual nature of the covenants”. (Tairāwhiti Māori Land Court Tairāwhiti MB 22 p.90). The reason for a finite term was so that the next generation of shareholders could decide whether or not to continue the covenant. That 20-year period would have expired in 2013.

As Te Ture Whenua Māori Act 1993 s338(5) allows for reservations to be either varied or cancelled, the forest was made a Māori reservation rather than the trustees entering into a Ngā Whenua Rāhui covenant with the Department of Conservation.

The area put into the Māori reservation in September 1993 was 202 hectares (500 acres). (Tairāwhiti Māori Land Court Tairāwhiti MB 91 p. 64)

The area of regeneration, another 229 acres (93 hectares) was added in 1995. I resigned from the Anewa Trust in late 1993 and moved to Raglan, so was not part of the decision-making that saw the area of the reserve extended. The added 229 acres (93 hectares) would be the regenerating mānuka/kānuka forest, most of which is on Rata.

In reply to Lawson's submissions that "no one owner should be able to monopolise that significance in whole or in part" (Lawson, 2012, p.5) I replied that the fact that approximately 240 acres (96 ha) of Rata is currently held in a Māori reserve is not sufficient reason to decline the application to partition; Te Ture Whenua Māori Act 1993 s338(5) and s338(10) allow for reservations to be either varied or cancelled; and that there are 737.5 acres (295 ha) of Māori reservation within Anewa Trust: the exemption of Rata land would still leave 492.5 acres (197ha) of reserve. If the partition is granted less than a third of the reserve is removed from the Anewa Trust, and that part is arguably the steepest and least accessible part of the reserve, which would imply that there would be minor impact on the remaining shareholders' ability to use the Māori reserve. However, the status of Māori reserve would not fully facilitate our whānau's utilization of our ancestral land.

No evidence was provided to substantiate the assertion that  
the best overall use and development of the land has been  
achieved by its protection and placement in a Māori Reservation.  
(Lawson, 2012 para.24).

Judge Coxhead did enquire whether "people go hunting up there"  
(Tairāwhiti Māori Land Court Tairāwhiti MB 22 p.92), but no answer is recorded.

Judge Coxhead appeared very interested in the use we had planned for Rata. We discussed our whānau proposals as had been sent to him in 2010 and which we had also discussed at length with the Māori Appellate Court. In response to whether we would need the whole 300 acres I explained the eco-tourism idea in relation to the land and its existing cover – that the roadside steep eroding face is an example of the land under a pastoral farming regime; the regrowth area shows what regrowth mānuka/kānuka forest looks like after 50 years; and the primary forest at the back of Rata, which has trees hundreds of years old, is a precious seed resource. These provided three distinct areas of interest and examples of land use.

Lawson made much of the fact that Anewa had a business plan, which the Anewa consultant said was developed in the previous four or five years. The trustees were asked to provide this to the Court the following Monday 16 April 2012. It was 24 April 2012 before the consultant finally emailed the “Anewa Trust Development Plan June 2007-June 2011” to accompany an earlier “A Statement for the Future” which the Anewa Trustees had written in 1993.

Anewa’s “A Statement for the Future” is a statement of values and aspirations rather than a detailed business plan. The “Anewa Trust Development Plan July 2007-June 2011” has as a primary aim “To lift the production and profitability of Anewa to the top 25% of the Maori Incorporations/Trust by 2012” (p.2), but only the first of 11 priorities is marked as “done”. This plan is also a statement of aspirations, with the introduction stating that “the analysis of production, in the absence of actual information, is based on assumptions” (p.2) and is a very general one for the farmable area of the Anewa Trust.

It makes no mention of Rata. Very little of the Anewa Trust business plan would be directly applicable to the specific land / nature of Rata. The clearing of scrub, listed as a low priority, we consider to be inappropriate for the steep terrain that is Rata.

Whereas the Māori Appellate Court found that our whānau proposal “will result in Rata being used” (Māori Appellate Court Gisborne Minute Book 2011, 19 August 2011, 2011 Māori Appellate Court MB p.452), neither of Anewa’s plans included a use or any provisions that were applicable to Rata.

On the question of use, Lawson observed that

the majority of the land is used as a reservation and there can be no criticism of the trustees for not “using”, and I use that term in inverted commas, the land because it was specifically set aside so as not to be used. (Tairāwhiti Māori Land Court 2012, Tairāwhiti MB 22 p.105).

This rather circular argument does not take into account the many sections of the Te Ture Whenua Māori Act 1993 that refer to effective use, occupation, and development, nor the overarching principles stated in the Preamble and section 17. The judge questioned Lawson about whether the reservation was being used at all, by anybody, and his reply was that the reserve was for “Basically visual enjoyment”. (Tairāwhiti Māori Land Court 2012, Tairāwhiti MB 22 p.90).

The idea of land being set aside only for scenic values is contrary to how our tīpuna used and husbanded the forest. (See Chapter 3 for detailed usage). I explained to the Court our whānau’s ideas for sustainable harvesting, the possibility that the regrowth area may be the best for the tōtara plantation, that while there may be the occasional hunter who crosses the land nobody seemed to know if any hunters did indeed go into the reserve and whether or not they were shareholders, and that the part of the reserve that is on Rata is the least accessible. Either side of Rata are large areas that are accessible by tractor or farm bikes. What we were intending would not affect the scenic values at all.

Evidence was provided to the Court of a research collaboration between Otago University, the Cawthron Institute, University of Waikato and our family's Taiporutu Trust which has already been granted funding. Desna Whaanga-Schollum explained the principles central to the project.

Agroecology applies ecological principles to agricultural systems. Indigenous agroecology is an opportunity for mātauranga to inform and generate innovation in farm practices. The project will be responsive to community concerns and record local knowledge that is rapidly disappearing, to create a low input farming model underpinned by indigenous knowledge as science and technology. (Tairāwhiti Māori Land Court 2012, Tairāwhiti MB 22 p.101).

Despite the evidence presented to him of our whānau capabilities in managing whānau land and successfully engaging in innovative research projects, Judge Coxhead concluded that

There are good intentions behind the proposals, but at this stage they are merely proposals and ideas which may be implemented following further investigation. (Tairāwhiti Māori Land Court 2012, Tairāwhiti MB 22 p.178).

The judge appears not to understand the working research model that we were at pains to explain to him; that research such as we have proposed would in itself be effective operation, development and utilisation of the land. The tangible benefits, listed for the Court on 28 April 2012 in response to the Anewa business plan, include (but will not be limited to) a survey of existing native species and habitat; detailed assessment of viable and sustainable land use; a comprehensive business plan informed by quality research; a cultural map of Rata that will document the historical and cultural significance of this block; research opportunities for post-graduate and post-doctoral students; and information that will be shared with other Māori landowners.

Although the lengthy term of some of our proposals was explained repeatedly, e.g. the tōtara plantation with a rotation of 80 years, Judge Coxhead decided that if

at the conclusion of the research, the applicant decides that the projects are viable, perhaps then the suggestion of a partition may be reasonable.

He further stated that

For the 80 per cent of the block which is in the reservation there is nothing to stop the application from undertaking the research and using the land as she proposes. (Tairāwhiti Māori Land Court 2012, Tairāwhiti MB 22, p.184).

It would appear that the judge completely discounted all the explanations and evidence of the unreliability and obstructiveness of the Anewa trustees; the potential for the trustees to change at each annual general meeting; and the submissions regarding the necessity of a secure title to the land to ensure as far as possible that our investment of time, money and expertise was safe for future generations. He also seems to have ignored the evidence that we had provided regarding the injunction that the Anewa trustees' farming practices could potentially destroy years of effort, and in fact had already killed native trees that are vital to the regeneration and restoration programme we plan to implement.

Lawson had submitted that an occupation order "supplemented, if necessary, with a licence to occupy or a licence to graze" (2012, p.3) was a reasonable alternative to partition.

The idea of an occupation order had been discussed at length with Judge Coxhead at the first hearing of the application in 2010 (Tairāwhiti Māori Land Court Tairāwhiti MB 4 p.178) and during the Māori Appellate Court hearing of 10 May 2011 (Māori Appellate Court 2011 MB p.257) and was discounted because occupation orders are generally only for a house site. It was explained to the Court and Mr Lawson that a truffiere, timber plantation, tōtara plantation, herbal and gourmet product harvesting area,

eco-tourism business, an extensive research project and a model of Māori permaculture will simply not fit on a house site.

A grazing lease was also not acceptable as the Anewa Trust order prohibits the trustees from leasing land for more than 5 years (Anewa Terms of Trust s.1(b)) and all our plans for Rata are for a much longer term. The discussion on leases is also part of the record of the Māori Appellate Court hearing (Māori Appellate Court 2011 MB p.258).

However Judge Coxhead appeared to concur with Lawson's suggestion, concluding that

the proposals the applicant seeks to undertake can proceed without the need for a partition. The partition is therefore in my assessment not reasonably necessary.

.... An occupation order is an obvious alternative to partition for this building project. While Mrs [*sic*] Whaanga is correct to doubt that an occupation order would give her exclusive use of the 300 acres, it is an alternative that would allow her and her whānau to build on the block. (Tairāwhiti Māori Land Court 2012 Tairāwhiti MB 22, p.185).

He therefore declined the application. In an echo of his earlier decision, having found a way to decline one aspect of the case, he added that, given his findings

with regard to s 284, it is not necessary to consider the other matters in relation to s 288(1) and s 287(2) as referred to by the Māori Appellate Court. (Tairāwhiti Māori Land Court 2012 Tairāwhiti MB 22, p.185).

As with his 2010 decision, the principles as set out in the preamble to Te Ture Whenua Māori Act 1993, sections 2 and section 17, which must at all times inform the Court's decision-making, do not appear to have been taken into account.

It is noted that Judge Coxhead has cited the incorrect section of the Act in this part of his decision. The relevant section of Te Ture Whenua Māori Act 1993 regarding whether partition is reasonably necessary is s 288(4), not s 284.

I have filed another appeal which is expected to be heard in November 2012.



Rata, from distant primary forest to nearer regrowth kānuka forest.  
MERE WHAANGA 2008.



Rata, steep grassed face above the road.  
MERE WHAANGA 2008.

## CHAPTER TWELVE

CONCLUSION

This thesis has considered the changes in Māori land tenure from 1868 to 2012 through close examination of the history of a block of land formerly known as Tutuotekaha 1B5B. The central focus of the research has been an application to partition out the majority shareholding of that block, which the Whaanga whānau knew as Rata Farm, from Anewa Trust.

To comprehensively chart the movement from ahikāroa to agricultural shareholding, it was necessary to begin with definition of a term that is often used in relation to Māori land in modern times – that of mana whenua. Why had I not heard my father use this expression when all of his life was devoted to whānau land? The research showed that it is a relatively new expression, translated in the Resource Management Act 1991 (Part 1 s.2) as “customary authority exercised by an iwi or hapu in an identified area”. Māori who have written about our understandings of traditional land tenure speak more about descent from the land, ties to the land, and relationship not only with the land but all things and people connected with it. The disjunction between the Māori viewpoint and that of the Pākehā was to recur again and again throughout the research and writings.

It has been more than 170 years since the signing of the Treaty of Waitangi/Te Tiriti o Waitangi and the beginning of the full onslaught of colonisation. Māori adapted, embraced some new ideas and technologies, rejected others, fought hard to keep their culture and most of all, their land. For this was at the heart of immigration, colonisation, the Treaty, and the establishment of an English system of law in New Zealand/Aotearoa. Māori had the land, Pākehā wanted it. Given the history of invasion, war, confiscation, manipulation, and the sheer deluge of Māori land legislation, it is little wonder that many Māori views have

changed or taken on different nuances as we struggle to cling to the remnants of what we understand were the fundamental principles of our tīpuna.

Nowhere has this been more apparent than in the system of land tenure forced upon Māori by the establishment of the Māori Land Court in the 1860s. The intent of Māori land law was to not only remove as much land from Māori ownership and control as possible, but also to destroy Māori culture. In these goals the legislation was so spectacularly successful that today there is less than 5% of New Zealand land left in Māori ownership. The agency to effect this was the Māori Land Court, so aptly named in 1867 ‘Te Kooti Tango Whenua – the Land-taking Court’.

The societal and political context in which 19<sup>th</sup> century Māori Land Court hearings occurred is critical to an understanding of why some of our tīpuna sold land to Pākehā. The wars, at the heart of which was covetousness of some of the best farming land in this country; the threat of invasion inferred by Crown land purchase agents such as Donald McLean; the conflict surrounding new belief systems such as Pai Marire and prophetic leaders such as Te Kooti – all impacted on Māori and affected some of the evidence given to the Native Land Court. There are instances where a claimant made adjustments to the list of owners in a block, knowing that inclusion of a ‘Hauhau’ sympathiser, albeit he was a close relative, would result in confiscation of that hapū land.

Initially, Māori embraced new crops and technologies, and prospered greatly. They brought to bear a well-honed knowledge of gardening and resource management and the ability to work collectively for communal good, that saw them producing most of the food crops for the New Zealand towns where Pākehā congregated as well as exporting their produce to Australia. They owned several flour mills and coastal vessels, and hundreds of waka. At the time, the 1850s, they still owned most of the land.

The first Taranaki War in 1860 opened the decade that would see conflict across much of the North Island, as the Government sought to destroy Māori political and religious leadership and organisations. Among these was the Kingitanga movement in the Waikato, set up in 1856; the Pai Marire faith led by the Taranaki prophet Te Ua Haumene; the prophetic leader Te Kooti who was the founder of the Ringatu church; and the determined independence of the people of the Turanga, Wairoa and Mahia areas. The loss of life in all these areas, the razing of communities and pā, the imprisonment of those who the Government termed rebels; and worse, the confiscation of all the best, flat, fertile lands destroyed the economic base of most hapū. Those who did manage to retain some land found themselves, as so aptly described by Te Mokena Kohere (AJHR, 1867, G-1, p.10), perched upon the mountains.

Overriding everything was the Pākehā attitude that their language, laws, culture, land tenure systems, ways of using the land, were superior to anything that was Māori. As Loveridge wrote (2000, 7.1.3), as far as the colonizers were concerned, they brought the gift of civilization to Māori, a semi-barbaric people who did not and could not use their own lands.

It was the opening years of the 20<sup>th</sup> century before Government could finally be persuaded to make some finance available to Māori to farm the land that remained to them. First James Carroll, then Āpirana Ngata, had worked for decades to persuade their Parliamentary colleagues to invest in settling Māori on their own land. The land development schemes promulgated by Ngata were successful in achieving what Māori had always wanted – retention of their land, settlement of the same by their people, and the ability to use their ancestral estates to participate in the agricultural industry that was so important to this country.

In the 1950s and 1960s, the migration of Māori from their rural communities to the towns and cities was under way. By 1976, Mason Durie (2005, p.21) estimated that there were in excess of 80 per cent of the Māori population living in urban areas. It was young urban Māori who

began the protest movements that led to the signal event of the decade, the Māori Land March of 1975. Here were new generations saying the same thing that their tīpuna had – no more alienation of Māori land, Māori land for Māori use, Māori control of their own land and culture.

Many significant advances were made in the 1970s and 1980s: the establishment of the Waitangi Tribunal, and ten years later the extension of their jurisdiction to hear historic claims; the Commission of Enquiry into the Māori Land Courts; and the drafting by the New Zealand Māori Council of a set of guidelines for Māori land legislation.

These all influenced the drafting of Te Ture Whenua Māori Act 1993.

#### TUTUOTEKAHA 1B5B

With the majority of our people now living in towns and cities, what then happened to their hapū land? In the greater Wairoa area, it is held in Māori incorporations and land trusts, often with hundreds of owners (in the smaller blocks) and thousands in the larger incorporations. For most, this is an acceptable state of affairs – they maintain some ancestral land interests, they have elements of tūrangawaewae (the right to stand upon ancestral land and its associated marae), and the land is farmed by hapū members who live in the district. Occasionally there are education grants or kaumātua payouts or some financial help towards tangi. Rarely, there may be a small dividend.

My immediate whānau have mostly remained rural Māori. My tīpuna on both my father's and my mother's side have lived on and worked their own land. Some of us continue to do so. My paternal grandfather Tihi Whaanga, uncle Api Whaanga, my father Te Hore Epanaia Whaanga and I have all at various times been members of the committees of management of some of our Māori incorporations. We have a family

history of working within the systems developed and promoted by Ngata to enable Māori to participate in the agricultural industry.

We all have also lived on land to which we held title, and maintained our ahikāroa as our tīpuna had. We had our homes on the land, grew food upon it, gathered the resources of land and waters, knew our boundaries and the names of the natural features, and ensured our children would do likewise. We exercised our rangatiratanga in regard to our land – the trusteeship and obligations to the land and to the future generations that we believed would inherit this taonga tuku iho, as well as the control and management of that same land.

In the 1930s, Ngata relied on the willingness of Māori to work and live communally on their land to make the incorporation system work. He extolled their abilities to harvest food and resources from their ancestral land so that the costs of establishing a farm were kept to a minimum. The incorporation and amalgamation ideas worked then, as their primary aim was to get Māori working their own land and participating in the agriculture industry.

In 2012, however, the incorporation and trust systems actually distance our people from their land. Few, if any, of the shareholders are employed on Anewa. The main objective of the trust is to turn a profit so that, eventually, dividends can be distributed. The trustees of Anewa actively work against the return of any of the land to its original owner whānau, and while some benefits are returned to the community, they are but a small proportion of what is paid to advisors and managers who do not necessarily whakapapa to the land.

Ngata's 1931 land development policies and structures sought to actively involve Māori owners in agricultural enterprises made successful by their own hard work – development of Māori land by Māori, for Māori; but eighty years later, those large-scale farms have become just another means of alienating Māori from their ancestral land.

The case study for this doctoral research has been the block formerly known as Tutuotekaha 1B5B, which my grandparents and then my father farmed as Rata Farm. The block name was displaced when it and several other whānau blocks were amalgamated to establish the Anewa Development Scheme in 1967. Although I had not lived full time on the block since I was three, yet we had returned to this land for holidays for six years. Then I lived on Anewa Station for two years, 1978-1979, at which time my son was born. My father died in 1986, still believing that we could have Rata Farm returned to us, so long as we paid Anewa Station for any improvements made to the land. I served on the Anewa Trust management committee from late 1986 to 1994.

It came as a shock then when, following an enquiry from my son, I began to look into the return of this ancestral land to our whānau, and found just how convoluted and difficult the process is. It's ancestral land, our tenure of it until 1967 was incontrovertible, and I have maintained my links with it since. Te Ture Whenua Māori Act 1993 clearly states that the primary objective of the Māori Land Court is to promote and assist in

- (a) the retention of Maori land and general land owned by Maori in the hands of its owners: and
- (b) the effective use, management, and development, by or on behalf of the owners of Maori land and general land owned by Maori. (s.17).

Staff at the Māori Land Court told me Tutuotekaha 1B5B no longer existed since the 1967 amalgamation of titles, so we couldn't get the whole block back. As our father had owned 96.9% of the shares in the Tutuotekaha 1B5B block, my sister and I applied to partition this shareholding out of Anewa Trust. The Land Court staff and two lawyers I rang were very discouraging about the chances of success of our application to partition. The Anewa trustees initially supported us, then did a complete about-face, for reasons that still have not been properly explained.

Chief Judge Wilson Isaac told us that under the current Act, we had “little chance”. (Tairāwhiti Māori Land Court, 129 Wairoa MB p.123).

From among the shareholders themselves, we have had real and genuine support for the quest to have our father’s land returned to us. But the Māori Land Court has put obstacle after interminable wait before us. Throughout the Act the phrases “promote the retention” and “facilitate the occupation, development, and utilisation” of Māori land by the owners appear repeatedly. After seven years of trudging through Māori Land Court guidelines and processes, one judicial conference, two Māori Land Court hearings, an application for injunction and one Māori Appellate Court hearing, my conviction is that the Māori Land Court does everything but facilitate occupation, development and utilisation.

The main obstacle is the conviction of the Court that Māori land must remain in large blocks with innumerable owners. Chief Judge Isaac stated that the obstacles to partition were intentionally high “so that Maori land is not broken up”. (Tairāwhiti Māori Land Court, 129 Wairoa MB p.123).

What does the Court favour as the mechanism to hold our land? A trust structure set up to farm the land. It is a business structure, the seven trustees selected by ballot based on shareholding. The purpose of the Anewa Trust is to farm the land. No shareholder can live on the land unless they are employed by the Trust, nor can they gather any of its resources without the permission of the Trust.

The Anewa Trust, like the Māori Affairs Development Scheme that preceded it, is just another alienating structure. The trustees may change, but that artificial entity the Anewa Trust owns the land, and only the trustees may

use, exploit and manage the land vested in the Trustees and to that end to do all or any of the things which they would be entitled to do if they were the beneficial owners of the land. (Anewa Terms

of Trust, Tairāwhiti Māori Land Court, 4 April 2007, 113 Wairoa MB p.239).

The Royal Commission on the Māori Land Courts (1980, p.74) suggested that bodies such as the Anewa Trust and Māori incorporations achieve something akin to tribal occupation of land, as it was before the advent of the Pākehā. I disagree.

In all the evidence presented to the Native Land Court, and the writings by both Pākehā and Māori on the subject of traditional land tenure, the features of tribal occupation – ahikāroa – were characterised by actually residing on the land. Homes, cultivations, pā tuna, bird-snaring areas, battle sites, pā sites, landscape features – all of these were named in the evidence given to prove the claimants' connection to the land. The first statement of rights was that of ancestral connection, which ancestor had occupied the land and whose descendants were now entitled to lay claim to it. But ancestral connection was confirmed with ahikāroa.

No-one can whakapapa to the Anewa Trust.

Very few of the shareholders can demonstrate the knowledge of the land that our ancestors did. Without the right to live on that land; the historical knowledge, the knowing of the land and its waters; the knowledge of what, when, how and where to gather resources and how to use them, is also lost. We are alienated not only from our land but also the mātauranga, the traditional ecological knowledge that goes with occupation. If we cannot pass on the knowledge of our ancestors, if we cannot practice true guardianship and ensure that our ties to the land are maintained, then we have failed in our obligations to our tīpuna and our mokopuna. It is not enough to exercise an empty authority and convince ourselves that employing strangers to work the land is sufficient to maintain mana whenua.

The Māori Land Councils set up by the Maori Land Administration Act 1900 failed because the Māori council members were Government appointees who did not necessarily have rights to the land established by whakapapa or ahikāroa. Similarly, Anewa Trust is a structure set up by the Māori Land Court, with trustees elected by ballot. The trustees are shareholders, but under true tikanga, they would exercise authority only over the land to which they have whakapapa connections.

None of the current trustees have an ancestral connection to Tutuotekaha 1B5B, nor have they ever maintained ahikāroa on that land.

What of Te Ture Whenua Māori Act 1993 and the Māori Land Court that exercises authority over our land because of it?

Most of the judges of the Māori Land Court connected so far with the application for partition have expressed concerns that granting the partition may lead to a domino effect that will see other shareholders asking for their whānau land to be returned to them. We were questioned on our plans for the use of the land and had to prove that we would make better use of it than the Anewa Trust does. Judge Coxhead, in his first decision, praised our plans for the land, but still dismissed the application.

At the Māori Appellate Court hearing, we were again questioned about future plans. The Appellate Court did uphold the appeal, and commented that we had provided persuasive evidence and arguments in relation to the remaining steps for granting partition. But unfortunately they sent the case back to the lower Court because of the non-engagement of the Anewa trustees. At the rehearing of the application to partition, Judge Coxhead again dismissed the application for partition.

While the Māori Appellate Court's decision considered all aspects of the case and detailed their reasoning, in both of the lower Court decisions the judge has opted to make a decision on one section of the legislation, and then conclude that he does not need to consider any other. The second

such decision was particularly baffling when the Appellate Court had clearly set out the three questions that needed to be answered with the relevant sections of the Act outlined.

Throughout the history of the Māori Land Court and Māori land legislation, it is very apparent that Pākehā believed they could make better use of our land than we could. However, in 1979, Justice Mahon had this to say about the paternalistic nature of the Māori Land Court

I should think it no longer safe to rely upon the historical view that members of the Maori race are incapable of managing their own affairs without supervision. As I see it, there has been a shift in legislative policy directed toward liberating the Maori race from juridical control of their transactions in relation to Maori land. (1979, quoted in Williams, 1999, p.16).

The large-scale agriculture practised by the Anewa Trust is demonstrably not progressing our economic and social circumstances, yet the Court obviously has grave reservations about handing control of our ancestral land to the whānau to whom it rightfully belongs. Is this entrenched paternalism?

It is not as though partition is not allowed. There are provisions in Te Ture Whenua Māori Act 1993 for partition and for variation of a trust. The Court has the ability to grant the partition.

In the *Kairakau 2C5B* case, after years of struggle, and bouncing between the Māori Land Court, the Māori Appellate Court and the New Zealand High Court, the Browns (the Pākehā family who first applied to partition out their shares from the block) eventually sold their shares to Waiariki Davis and her siblings Hawea Tomoana and Waiora Rogers. Davis and her siblings had borrowed money from neighbouring landowners, the Pearses. Davis then approached the Court to partition out a smaller part of Kairakau 2C5B to sell to the Pearses, in order to repay the loan.

The Māori Land Court granted the partition because Davis and her siblings were

simply endeavouring to secure to their wider whānau as much as possible of the land in Part Kairakau 2C5B left to them by their tūpuna. (Takitimu Māori Land Court, 26 May 2003, 171 Napier MB p.184).

We have not, ever, considered selling our land. I was raised, as were my children, knowing that ancestral land was never to be sold. I have always made this clear to Land Court staff, and I have written of my views on ahikāroa and rangatiratanga in submissions to the Court. We are not asking for the finest land on Anewa – in fact our land is quite likely the worst land in the Trust. There is provision in Te Ture Whenua Māori Act 1993 for the Court to grant partitions. The New Zealand Māori Council said in 1983

To belong to land, but to be deprived by regulation from living on it, makes nonsense of our traditional conception of iwi and whenua. (p.24).

We have had a system of management of our ancestral land foisted upon us by successive governments. Māori Land Court judges are appointed by the Government. Anewa Trustees are appointed by a ballot system. It matters not that the judges are Māori, nor that the trustees are shareholders in the Anewa Trust. They both work within the rules that see us alienated from our land.

The several Tutuotekaha blocks now known as Anewa Trust are effectively trapped in a hīnaki woven of Māori Land legislation and Land Court processes that prevent any of the shareholders maintaining true take whenua.

For most of the shareholders, Anewa Trust has become like Hawaiki – a mythical homeland that they don't know and cannot find their way back to.

This doctoral research was undertaken because I met so many obstacles when I approached the Māori Land Court and I wanted to rationalise, interrogate and dismantle those obstacles. Just as the structures of the pā tuna force the eels to swim into the trap, so the policies of the Court constrain applicants to settle for the systems of land management preferred by the Court, or give up. I had hoped that by gaining a thorough understanding of Māori land law I might find a way through the incredibly disheartening tangle of legislation that awaits anyone trying to have their ancestral land returned to them.

I found that my ways of knowing the land, and those of my children in relation to our whānau land at Mahia, have much in common with the knowing of the land that our tīpuna attested to when first the hapū land blocks came before the Native Land Court. Te Ture Whenua Māori Act 1993 is solidly based on principles that our tīpuna held – Māori land for Māori, controlled and managed by its owners, for the occupation and use of its owners.

But the implementation of those principles is very dependant on the judges. The evidence to date is that the Māori Land Court favours the artificial structure that is the Anewa Trust over whānau ownership of land; illusive shareholding over true land ownership.

I want my children and mokopuna to exercise true ahikāroa on this land. I would have them know what it is to live on this taonga tuku iho, the names, boundaries, waters, the feel, the smell, the songs and silences of it. They have a right to know how to live on it and with it, as should their children and their mokopuna. Only by living on it can they really know their responsibilities to this land and how to practise them.

My father would never have signed that agreement to amalgamation in 1967 had he known that his descendants would be prevented from living on Rata.

## BIBLIOGRAPHY

Asher, George & Naulls, David. (1987). *Maori Land: Planning Paper No. 29*. Wellington, New Zealand: New Zealand Planning Council.

Bargh, Maria (Ed.) (2007). *Resistance: An Indigenous Response to Neoliberalism*. Wellington, New Zealand: Huia.

Barstow, R. C. (1878) The Maori Canoe. In *Transactions and Proceedings of the Royal Society of New Zealand 1868-1961 Volume 11*. pp.71-76. Wellington, New Zealand: The Board of Governors of the Institute.

Beaglehole, J.C. (Ed). (1955) *The Journals of Captain James Cook Vol 1 The Voyage of the Endeavour 1768-1771*. London, England: Cambridge University Press.

Bennion, Tom. (2009). Origins of New Zealand Land Law in Bennion, Tom; Brown David; Thomas, Rod & Toomey, Elizabeth. *New Zealand Land Law*. pp.2-9. Wellington, New Zealand: Brookers.

Bennion, Tom. (2009). Maori Land in Bennion, Tom; Brown David; Thomas, Rod & Toomey, Elizabeth. *New Zealand Land Law*. pp.343-389. Wellington, New Zealand: Brookers.

Berghan, Paula. (2000). *Block Research Narratives of the Wairoa (Rangahaua Whanui District 11C) 1865-1930*. Wellington, New Zealand: Waitangi Tribunal.

Best, Elsdon. (1976). *Maori Agriculture*. Wellington, New Zealand: A.R Shearer, Government Printer.

Best, Elsdon. (2005). *Fishing methods and Devices of the Maori*. Wellington, New Zealand: Te Papa Press.

Binney, Judith. (1995). *Redemption Songs A Life of Te Kooti Arikirangi te Turuki*. Auckland, New Zealand: Auckland University Press & Bridget Williams Books.

Boast, Richard; Erueti, Andrew; McPhail, Doug & Smith, Norman F. (2004). *Māori Land Law* (2<sup>nd</sup> ed.). Wellington, New Zealand: LexisNexis.

Boast, Richard. (2008). *Buying the Land, Selling the Land*. Wellington, New Zealand: Victoria University Press.

Brookfield, F.M. (1994) “The New Zealand Constitution the search for legitimacy” in Kawharu I.H. (Ed.) (1994). *Waitangi Maori & Pakeha Perspectives of the Treaty of Waitangi*. Auckland, New Zealand: Oxford University Press.

- Brookfield, F.M. (Jock). (2006). *Waitangi and Indigenous Rights: Revolution, Law and Legitimation*. Auckland, New Zealand: Auckland University Press.
- Buck, Te Rangihiroa Peter. (1951). He poroporoaki – a farewell message. In *The Journal of the Polynesian Society Vol. 60 No.1* pp.22-31. Auckland, New Zealand: The Polynesian Society.
- Burrows, JF. (2003). *Statute Law in New Zealand*. Wellington, New Zealand: LexisNexis.
- Charters, Claire & Erueti, Andrew. (Eds.) (2007) *Māori Property Rights and the Foreshore and Seabed*. Wellington, New Zealand: Victoria University Press.
- Clark, Judge Stephen; Coxhead, Judge Craig; Harvey, Judge Layne; Milroy, Judge Stephanie; and Neverman, John. (2009). *Māori Land Update*. New Zealand Law Society.
- Clarke, Alan. (2007). *The Great Sacred Forest of Tane*. Auckland, New Zealand: Reed.
- Colenso, W. (1879). Proverbs and Proverbial Sayings. In *Transactions and Proceedings of the Royal Society of New Zealand Vol XII*. pp.108-115. Wellington, New Zealand: The Board of Governors of the Institute.
- Colenso, W. (1880). On the Vegetable Food of the Ancient New Zealanders before Cook's Visit. In *Transactions and Proceedings of the Royal Society of New Zealand Vol XIII*. pp. 3-38. Wellington, New Zealand: The Board of Governors of the Institute.
- Coney, Sandra. (1993). *Standing in the Sunshine A History of New Zealand Women Since They Won the Vote*. Auckland, New Zealand: Penguin Books.
- Cox, Lindsay. 1993. *Kotahitanga The Search for Māori Political Unity*. Auckland, New Zealand: Oxford University Press.
- Devaliant, Judith. (1993). Sharing the Purse. In Coney, Sandra, (1993). *Standing in the Sunshine A History of New Zealand Women Since They Won the Vote*. Auckland, New Zealand: Penguin. p.188
- Durie, E.T.J. (1981). *New Approaches to Maori Land in the 1980's With Particular Reference to Its Settlement and Resettlement in the Northern Half of the North Island, Annual Lecture of the Auckland Branch New Zealand Geographical Society*. Auckland, New Zealand: New Zealand Geographical Society.

Durie, E.T.J. (1991) *The Treaty in Maori History* in Renwick, William (Ed.) (1991). *Sovereignty & Indigenous Rights: The Treaty of Waitangi in International Contexts*. Wellington, New Zealand: Victoria University Press.

Durie, E.T., (1994) Custom Law, *Victoria University of Wellington Law Review*, vol 24, no 4, 1994. Wellington, New Zealand: Victoria University Press.

Durie, E.T. (1999) Ethics and Values, *Indigenous Peoples and the Law An online institute of law affecting indigenous values*. Wellington, New Zealand: Victoria University.

Durie, Mason. (2005). *Ngā Tai Matatū: Tides of Māori Endurance*. Auckland, New Zealand: Oxford University Press.

Ellis, Carolyn; Adams, Tony E; & Bochner, Arthur P. (2011). Autoethnography: An Overview. In *Forum: Qualitative Social Research Volume 12, No. 1, Art. 10 – January 2011*. Retrieved 13 September 2012 from <http://www.qualitative-research.net/index.php/fqs/article/view/1589/3095>

Elsmore, Bronwyn. (1985). *Like Them That Dream The Maori and The Old Testament*. Tauranga, New Zealand: Tauranga Moana Press.

Erueti, Andrew. (2004) Māori Customary Law and Land Tenure: An Analysis. In Boast, Richard; Erueti, Andrew; McPhail, Doug & Smith, Norman F. (2004). *Māori Land Law* (2<sup>nd</sup> ed.). Wellington, New Zealand: LexisNexis. pp. 41-63.

Erueti, Andrew & Charters, Claire. (Eds.) (2007). *Māori property Rights and the Foreshore and Seabed The Last Frontier*. Wellington, New Zealand: Victoria University Press.

Erueti, Andrew. (2007). The Recognition of Indigenous Peoples' Rights to Traditional Lands: The Evaluation of States by International Treaty Bodies. In Erueti, Andrew & Charters, Claire. (Eds.) *Māori property Rights and the Foreshore and Seabed The Last Frontier*. Wellington, New Zealand: Victoria University Press. pp 175-205.

Gillingham, Mary. (2004). *Maori of the Wairoa District and the Crown 1840-1880*. Wellington, New Zealand: Crown Forestry Rental trust.

Halbert, Rongowhakaata. (1999). *Horouta: The History of the Horouta Canoe, Gisborne and East Coast*. Auckland, New Zealand: Reed Books.

Hayward, Dr Janine. (1997) The Principles of the Treaty of Waitangi in Ward, Professor Alan (1997) *National Overview Volume ii Waitangi Tribunal Rangahaua Whanui Series*. Wellington, New Zealand: Waitangi

Tribunal. Appendix.

Henare, Manuka. 2003. *The Changing Images of Nineteenth Century Maori Society - From Tribes to Nation*. PhD Thesis in Maori Studies, Wellington, New Zealand: Victoria University.

Ihimaera, Witi (ed.) (1993). *Te Ao Mārama Regaining Aotearoa: Māori Writers Speak Out. Volume 2 He Whakaatanga O Te Ao The Reality*. Auckland, New Zealand: Reed.

Irwin, Geoff. (2006). Pacific Migrations. In *Te Ara –the Encyclopedia of New Zealand*. (2006) *Māori People of New Zealand Ngā Iwi O Aotearoa*. Auckland, New Zealand: David Bateman. pp.10-18.

Kawharu, I.H. (1977). *Maori Land Tenure Studies of a changing institution*. Oxford, Great Britain: Clarendon Press.

Kaa, Wi Kuki. (2004). Women Manu Kōrero. In Whaanga, Mere. (2004) *A Carved Cloak for Tahu*. Auckland, New Zealand: Auckland University Press.

Kawharu, I.H. (Ed.) (1989). *Waitangi : Māori and Pākehā perspectives of the Treaty of Waitangi*. Auckland, New Zealand: Oxford University Press.

Kawharu I.H in Williams, David V. 1999. *Te Kooti tango whenua*, Wellington, New Zealand: Huia Publishers.

Keane, Basil 'Ngā rōpū tautohetohe – Māori protest movements - Land protests', *Te Ara - the Encyclopedia of New Zealand*, updated 13-Jul-12. Retrieved 13 July 2013 from <http://www.TeAra.govt.nz/en/nga-ropu-tautohetohe-maori-protest-movements/page-3>

King, Michael. (1989). *Maori A Photographic and Social History*. Auckland, New Zealand: Heinemann Reed.

King, Michael. (2003) *The Penguin History of New Zealand*. Auckland, New Zealand: Penguin Books.

Kupenga, Vapi; Rata, Rina; & Nepe Tuki. (1993) “Whaia te Iti Kahurangi: Māori Women Reclaiming Autonomy.” In Ihimaera, Witi (ed.) (1993). *Te Ao Mārama Regaining Aotearoa: Māori Writers Speak Out. Volume 2 He Whakaatanga O Te Ao The Reality*. Auckland, New Zealand: Reed.

Lambert, T. (1977). *The Story of Old Wairoa and the East Coast*. Christchurch, New Zealand: Capper Press.

Loveridge, Donald M. (1996). *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952*. Wellington, New Zealand: Waitangi Tribunal.

- Matunga, Hirini Paerangi. (2002). Foreword. In Kawharu, Merata. (ed.) *Whenua: Managing Our Resources*. Auckland, New Zealand: Reed.
- McCarthy, Sir Thaddeus Pearcey; Mete-Kingi, W. Te R; & Poole, M.J.Q. (1980) *The Māori Land Courts Report of the Royal Commission of Inquiry*, Wellington, New Zealand: Government Printer
- McGibbon, Ian. (2000). New Zealand in the Korean War adapted from Ian McGibbon (ed.) *Oxford Companion to New Zealand Military History*. Auckland, New Zealand: Oxford University Press. Retrieved 15 July 2010 from <http://www.diggerhistory.info/pages-nz/nz-korea.htm>.
- McHugh, Paul G. (1983). *Maori Land Laws of New Zealand, Studies in Aboriginal Rights No. 7*. Saskatoon, Saskatchewan, Canada: University of Saskatchewan.
- Mead, Hirini Moko & Grove, Neil. (2001). *Ngā Pēpeha a ngā Tīpuna*. Wellington, New Zealand: Victoria University Press.
- Mead, Hirini Moko. (2003). *Tikanga Māori : Living by Māori Values*. Wellington, New Zealand: Huia.
- Mead, Sidney Moko. (1986). *Te Toi Whakairo The Art of Maori Carving*. Auckland, New Zealand: Reed Methuen.
- Ministry of Justice. (2001) *He Hinatore ki te Ao Maori A Glimpse into the Maori World*. Wellington, New Zealand: Ministry of Justice.
- Ministry of Justice. (2009). *Māori Incorporations, Te Ture Whenua Māori Act 1993*. Wellington, New Zealand: Ministry of Justice.
- Mitchell, J.H. (1972). *Takitimu a History of the Ngati Kahungunu People*. Wellington, New Zealand: Reed.
- Morrell, W.P. (Ed). (1958). *Sir Joseph Banks in New Zealand from His Journal*. Wellington, New Zealand: AH & AW Reed.
- Morris, Grant. (2004). James Prendergast and the Treaty of Waitangi: Judicial Attitudes to the Treaty During the Latter Half of the Nineteenth Century in *Victoria University of Wellington Law Review* 117. Wellington, New Zealand: Victoria University.
- Morton, Harry and Johnston, Carol Morton. (1988). *The Farthest Corner New Zealand a Twice Discovered Land*. Auckland, New Zealand: Century Hutchinson.
- New Zealand Maori Council. (1983) *Kaupapa Te Wahanga Tuatahi*. Wellington, New Zealand : New Zealand Maori Council.

- Ngata, A.T and Te Hurinui, P. (1961). *Nga Moteatea Part II*. Wellington, New Zealand: The Polynesian Society.
- Ngata, A.T and Te Hurinui, P. (1988). *Nga Moteatea Part I*. Auckland, New Zealand: The Polynesian Society.
- Ngata, A.T and Te Hurinui, P. (1990). *Nga Moteatea Part III*. Auckland, New Zealand: The Polynesian Society.
- Norman, Waerete. (1993). Maori Women's Land Rights. In Coney, Sandra, (1993). *Standing in the Sunshine A History of New Zealand Women Since They Won the Vote*. Auckland, New Zealand: Penguin. p.189.
- Oliver, W H. (1991). *Claims to the Waitangi Tribunal*. Wellington, New Zealand: Department of Justice (Waitangi Tribunal Division).
- O'Malley, Vincent. (2009). 'A Mild Sort of Confiscation? War and Raupatu on the East Coast' in Boast, Richard and Hill, Richard S. *Raupatu: The Confiscation of Maori Land*. Wellington, New Zealand: Victoria University Press. (pp. 207-221).
- O'Malley, Vincent, Stirling, Bruce & Penetito, Wally. (2010). *The Treaty of Waitangi Companion Māori and Pākehā from Tasman to Today*. Auckland, New Zealand: Auckland University Press.
- Orange, Claudia, (1987). *The Treaty of Waitangi*. Wellington, New Zealand: Allen & Unwin.
- O'Regan, Tipene. (1993). Who Owns the Past? Change in Māori perceptions of the Past. In Ihimaera, Witi (ed.) (1993). *Te Ao Mārama Regaining Aotearoa: Māori Writers Speak Out. Volume 2 He Whakaatanga O Te Ao The Reality*. Auckland, New Zealand: Reed. (pp 337-340.)
- Orr-Nimmo, Katherine W. (1997). *Report for the Crown Forestry Rental Trust on the East Coast Maori Trust*. Wellington, New Zealand: Crown Forestry Rental Trust.
- Palmer, Geoffrey and Palmer, Matthew. (1997). *Bridled Power New Zealand Government under MMP*. Auckland, New Zealand: Oxford University Press.
- Palmer, Matthew S. (2008). *The Treaty of Waitangi In New Zealand's Law and Constitution*. Wellington, New Zealand:Victoria University Press.

Pere, Rangimarie Rose. (1993) . Taku Taha Māori: My Māoriness. In Ihimaera, Witi (ed.) (1993). *Te Ao Mārama Regaining Aotearoa: Māori Writers Speak Out. Volume 2 He Whakaatanga O Te Ao The Reality*. Auckland, New Zealand: Reed. (pp. 275-277).

Pugsley, Chris; Barber, Laurie; Mikaere, Buddy; Prickett, Nigel & Young, Rose. (1996). *Scars on the Heart: Two Centuries of New Zealand at War*. Auckland, New Zealand: David Bateman & Auckland Museum.

Reedy, Anaru. (1993). *Ngā Kōreo a Mohi Ruatapu*. Christchurch, New Zealand: Canterbury University Press.

Rees, William Lee and Carroll, James. (1891). "Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws" in *Appendix to the Journals of the House of Representatives (AJHR)*, 1891, G-1. Wellington, New Zealand: Government Printer.

Renwick, William (Ed.) (1991). *Sovereignty & Indigenous Rights: The Treaty of Waitangi in International Contexts*. Wellington, New Zealand: Victoria University Press.

Royal Commission of Inquiry. (1980). *The Māori Land Courts: Report of the Royal Commission of Inquiry*. Wellington, New Zealand: P.D. Hasselberg, Government Printer.

Ruru, Jacinta (Ed.). (2008). "*In Good Faith*" *Symposium proceedings marking the 20<sup>th</sup> anniversary of the Lands case*. Dunedin, New Zealand: New Zealand Law Foundation and University of Otago.

Salmon, J.T. (1990). *The Native Trees of New Zealand*. Auckland, New Zealand: Heinemann Reed.

Salmond, Anne. (1991). *Two Worlds First Meetings Between Maori and Europeans 1642-1772*. Auckland, New Zealand: Viking.

Scheele, Sue. (2005). *Harakeke The Rene Orchiston Collection*. Lincoln, New Zealand: Manaaki Whenua Press.

Shirres, Michael P OP. (1997). *Te Tangata the human person*. Auckland, New Zealand: Accent Publications.

Simpson, Philip. (2000). *Dancing Leaves The story of New Zealand's cabbage tree, tī kōuka*. Christchurch, New Zealand: Canterbury University Press.

Smith, Norman. (1942). *Native Custom Affecting Land*. Wellington, New Zealand: The Māori Purposes Fund Board.

Smith, Norman. (1960). *Maori Land Law*. Wellington, New Zealand: Reed

- Smith, Norman F. (2004). Land Utilisation and Development. In Boast, Richard; Erueti, Andrew; McPhail, Doug & Smith, Norman F. (2004). *Māori Land Law* (2<sup>nd</sup> ed.). Wellington, New Zealand: LexisNexis. pp. 201- 206.
- Smith, Norman F. (2004). Incorporation of Māori Owners. In Boast, Richard; Erueti, Andrew; McPhail, Doug & Smith, Norman F. (2004). *Māori Land Law* (2<sup>nd</sup> ed.). Wellington, New Zealand: LexisNexis. pp. 207- 215..
- Solomon, Maui (2007). A Long Wait for Justice. In Bargh, Maria (Ed.) *Resistance: An Indigenous Response to Neoliberalism*. Wellington, New Zealand: Huia. pp 75-84.
- Sorrenson, M.P.K. (Ed.) (1986). *Na To Hoa Aroha From Your Dear Friend, The Correspondence between Sir Apirana Ngata and Sir Peter Buck 1925-50 Volume One 1925-29*. Auckland, New Zealand: Auckland University Press.
- Starzecka, Dorota C; Neich, Roger, & Pendergrast, Mick. (2010). *Taonga Māori in the British Museum*. Wellington, New Zealand: Te Papa Press.
- Story, Alice A; Ramirez, Jose Miguel; Quiroz, Daniel; Burley, David V; Addison, David J; Walter, Richard; Anderson, Atholl J; Hunt, Terry L; Athens, Stephen; Huynen, Leon; & Matisoo-Smith, Elizabeth A. (2007) Radiocarbon and DNA evidence for a pre-Columbian introduction of Polynesian chickens to Chile. In *Proceedings of the National Academy of Sciences of the United States of America, Volume 104, Issue 25*. National Academy of Sciences of the United States of America. pp. 10335 – 10339
- Taylor, Richard. (1848) *A Leaf From the Natural History of New Zealand*. Wellington, New Zealand: Robert Stokes.  
URL: <http://www.nzetc.org/tm/scholarly/tei-TayALea-t1-body-d6.html>
- Te Awekotuku, Ngahuia. (1996). Maori: People and Culture. In Starzecka, D. (Ed.) *Maori: Art and Culture*. Auckland, New Zealand: David Bateman. pp.26-49.
- Te Awekotuku, Ngahuia, & Nikora, Linda Waimarie. (2007). *Mau Moko The World of Māori Tattoo*. Auckland, New Zealand: Penguin Group.
- Te Puni Kōkiri. (2001). *He Tirohanga ō Kawa ki te Tiriti o Waitangi*. Wellington, New Zealand: Te Puni Kōkiri.
- Walker, Ranginui. (2001). *He Tipua The Life and Times of Sir Āpirana Ngata*. Auckland, New Zealand: Viking.
- Ward, Alan Dudley. (1958). *The History of the East Coast Maori Trust*, MA Thesis. Wellington, New Zealand: Victoria University.

Ward, Alan. (1974). *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*. Auckland, New Zealand: Auckland University Press.

Ward, Alan. (1999). *An Unsettled History; Treaty Claims in New Zealand Today*. Wellington, New Zealand: Bridget Williams Books.

Wahaanga, Mere. (1988) *The Legend of the Seven Whales, He Pakiwaitara a Ngai Tahu Matawhaiti*. Mahia, New Zealand: Mahia Publishers.

Wahaanga, Mere. (1991) *Te Kooti's Diamond: Te Taimana a Te Kooti*. Auckland, New Zealand: Ashton Scholastic.

Wahaanga, Mere. (2004). *A Carved Cloak for Tahu*. Auckland, New Zealand: Auckland University Press.

Wickliffe, Caren & Dickson, Matiu. (2001, 15-16 October). *Toi Te Kupu, Toi Te Mana, Toi Te Whenua Maori Development in a Global Society Options for Constitutional Change*. Paper presented to the South Pacific Regional Expert Meeting, Indigenous Rights in the Commonwealth Project, Fiji Programme, Nadi, Fiji,

Williams, Leonard. (1894). Names of kumara (Ipomoea Batatas) cultivated in New Zealand before the arrival of Europeans. In *Journal of the Polynesian Society* Volume 3, No.3, September 1894, p.144. Auckland, New Zealand: The Polynesian Society.

Williams, David V. (1999) *Te Kooti tango whenua The Native Land Court 1864 – 1909*. Wellington, New Zealand: Huia Publishers.

Williams, David V. (2007). *Wi Parata is Dead, Long Live Wi Parata*. In Erueti, Andrew & Charters, Claire. (Eds.) *Māori property Rights and the Foreshore and Seabed The Last Frontier*. Wellington, New Zealand: Victoria University Press. pp 31 -58.

### **Dictionaries**

Williams, H.W M.A. (1985). *A Dictionary of the Maori Language Seventh Edition* Wellington: Government printer.

### **Waitangi Tribunal reports**

Waitangi Tribunal. (1985). *Report of the Waitangi Tribunal on the Manukau claim (Wai 8)*. 2nd ed. Wellington: Waitangi Tribunal.

Waitangi Tribunal, (1987) *Report on the Orakei Claim Wai-9* Wellington: Waitangi Tribunal

Waitangi Tribunal. (1988) *Muriwhenua Fisheries Claim/SOE Claim (WAI 22)*. Wellington: Waitangi Tribunal.

Waitangi Tribunal. (1991). *Ngai Tahu Land Report*. Wellington: Waitangi Tribunal.

Waitangi Tribunal. (1992) *Mohaka River Report 1992*. Wellington: Brooker & Friend.

Waitangi Tribunal, (1993). *The Pouakani Report (WAI 33)*. Wellington: Brooker & Friend.

Waitangi Tribunal. (1995). *Te Whanganui-a-Orutu Report*. Wellington: Waitangi Tribunal.

Waitangi Tribunal. (1997) *National Overview Volume ii Waitangi Tribunal Rangahaua Whanui Series*. Wellington, New Zealand: Waitangi Tribunal.

Waitangi Tribunal. (2004a) *Report on the Crown's Foreshore and Seabed Policy*. Wellington: Legislation Direct.

Waitangi Tribunal, (2004b). *Turanga Tangata Turanga Whenua The Report on the Turanganui A Kiwa Claims, Vol 1*. Wellington, New Zealand: Legislation Direct.

Waitangi Tribunal. (2007). *Te Tau Ihu O Te Waka A Maui Preliminary Report on Customary Rights in the Northern South Island*. Wellington NZ: Legislation Direct. Wellington, New Zealand: Legislation Direct

Waitangi Tribunal. (2011). *Ko Aotearoa Tēnei A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity Te Taumata Tuarua Volume 2*. Wellington, New Zealand: Legislation Direct.

### **Waitangi Tribunal unpublished material**

Waaka, Toro Edward. (2001). Brief of Evidence of Toro Edward Waaka on Behalf of Ngati Kahungunu *in the matter of a claim to indigenous flora and fauna me o ratou taonga katoa*. (WAI 262).

### **Māori Land Court Minute Books and records**

Tairāwhiti Māori Land Court, *Gisborne Minute Book No. 21, 25* November 1890.

Tairāwhiti Māori Land Court, *Tairāwhiti Minute Book No. 4, 5* March 2010.

Tairāwhiti Māori Land Court, *Tairāwhiti MB No. 11*, 14 December 2010.

Tairāwhiti Māori Land Court *Tairāwhiti Minute Book No. 21*, 1 March 2012.

Tairāwhiti Māori Land Court *Tairāwhiti Minute Book No. 22*, 12 April 2012.

Tairāwhiti Māori Land Court *Tairāwhiti Minute Book No. 22*, 5 June 2012.

Tairāwhiti Māori Land Court, *Validation Court Minute Book No. 4*, April 1896.

Tairāwhiti Māori Land Court, *Wairoa Minute Book No 1*, 17 September 1868.

Tairāwhiti Māori Land Court, *Wairoa Minute Book No. 3A*, 24 February 1889.

Tairāwhiti Māori Land Court *Wairoa Minute Book No 7*, 15 February 1893.

Tairāwhiti Māori Land Court *Wairoa Minute Book No 8*, 10 October 1894.

Tairāwhiti Māori Land Court, *Wairoa Minute Book No. 11*, 8 September 1899.

Tairāwhiti Māori Land Court *Wairoa Minute Book No. 22*, 5 December 1913.

Tairāwhiti Māori Land Court *Wairoa Minute Book No. 54*, 19 September 1952.

Tairāwhiti Māori Land Court *Wairoa Minute Book No. 62*, 18 February 1959.

Tairāwhiti Māori Land Court *Wairoa Minute Book No. 72*, 24 Oct. 1967.

Tairāwhiti Māori Land Court *Wairoa Minute Book Volume 84 – Folio 182*, 6 May 1986.

Tairāwhiti Māori Land Court. Anewa Trust Order in *Wairoa Minute Book Volume 85 – Folio 31-33*, 12 November 1986.

Tairāwhiti Māori Land Court, *Wairoa Minute Book No. 90*, 3 December 1992.

Tairāwhiti Māori Land Court, letter to Mere Whaanga 20 August 2008.  
Ref. A20080004148

Tairāwhiti Māori Land Court *Wairoa Minute Book No. 129*, 2 September 2009.

Tairāwhiti Māori Land Court minutes of meeting at Iwitea Marae 11 December 2009, reference A20080004148.

Tairāwhiti Māori Land Court, letter to Mere Whaanga 8 January 2010.  
Ref. A20080004148

Takitimu Māori Land Court, *171 Napier MB*, 26 May 2003.

### **Anewa Trust Documents**

Anewa Terms of Trust. Tairāwhiti Māori Land Court, *113 Wairoa MB 239-241*. 11 December 2006.

Anewa Trust *Annual Report and Financial Statements For the Year Ended 30<sup>th</sup> June 2010*.

### **CASES AND STATUTES**

*Brown v Owners of Part Kairakau 2C5B* (1997) 12 Takitimu Appellate MB 1 (12 ACTK 1)

*Brown v Owners of Part Kairakau 2C5B* (2001) 13 Takitimu Appellate MB (13 ACTK 198)

*Brown v Māori Appellate Court* (2001) 1NZLR 87

*Hammond-Whangawehi 1B3H1* (2007) 34 Gisborne Appellate MB 184 (34 APGS 185).

*Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] NZLR 590

*In re Whareongaonga 5 and Skuse* [1973] 30 Gisborne ACMB 158 (*Tai Whati* p167)

*Marsh v Robertson – Karu o te whenua B2B5B1* [1996] 19 Waikato Maniapoto Appellate MB 40 (19 APWM 40)

*New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (4, 5, 6, 8 May; 29 June 1987).

*Ngati Apa v Attorney-General* [2003] 3 NZLR 643

*Papakura – Claim of Succession* (12 April 1867).

*R v Symonds* (1847) NZPCC 387.

*Reid v Trustees of Kaiwaitau I* (2005) 34 Gisborne Appellate MB 168 (34 APGS 168)

*Re Matakana 1A7A Ngatai v Duvall & Ors* (2007) 21 Waikato Maniapoto Appellate MB 147.

*Re Port Levy – Wade Wereta Osborne, Re Kaiwaitau I* (2005) 34 APGS 168 .

*Re Whareongaonga 5 and Skuse*, 1973, 30 Gisborne ACMB 158.

*Valuer-General v Mangatu Inc.* [1997] 3 NZLR 641 Court of Appeal, Wellington. (8, 18 September 1997).

*Whaanga- Anewa Trust* (2010) 11 Tairawhiti MB 46 (11 TRW 46)

*Whaanga- Anewa Trust* (2012) 22 Tairawhiti MB 167 (22 TRW 167)

*Whaanga v Niania - Anewa Block* (2011) 2011 Māori Appellate Court MB 428 (2011 APPEAL 428)

*Wi Parata v The Bishop of Wellington* [1877] 3NZ Jur NS 72.

### **Statutes**

Adoption Act 1955.

Constitution Act 1986.

Discharged Soldiers Settlement Act 1915.

Equitable Owners Act 1886.

Foreshore and Seabed Act 2004.

Government Advances to Settlers Act 1894

Legislative Council Abolition Act 1950.

Mangatu No 1 Empowering Act 1893

Maori Affairs Act 1953

Maori Affairs Amendment Act 1953

Maori Affairs Amendment Act 1967

Maori Affairs Amendment Act 1974

Maori Affairs Bill 1978

Maori Council Act 1900.

Maori Land Administration Act 1900.

Maori Land Settlement Act 1905.

Maori Welfare Act 1945.

Maori Welfare Act 1962.

Marine and Coastal Area (Takutai Moana) Act 2011

Native Lands Act 1862.

Native Lands Act 1865.

Native Lands Act 1873.

Native Land Act 1909.

Native Lands Amendment Act 1913.

Native Lands Amendment and Native Land Claims Adjustment Act 1929.

Native Land Court Act 1894.

Native Lands Fraud Prevention Act 1870.

Native Land Purchase Act 1893

Native Land (Validation of Titles) Act 1893.

Native Rights Act 1862.

Native Trustee Act 1920.

New Zealand Constitution Act 1852.

New Zealand Constitution Amendment Act 1973.

New Zealand Settlements Act 1863.

Ngati Ruanui Claims Settlement Act 2003

Orakei Act 1991.

Public Works Lands Act 1864.

Public Works Lands Act 1981.

Resource Management Act 1991.

State-Owned Enterprises Act 1986.

Statute of Windsor Adoption Act 1947.

Te Ture Whenua Maori Act 1993.

Treaty of Waitangi Act 1975.

Treaty of Waitangi Amendment Act 1985.

## **OFFICIAL PUBLICATIONS**

### **Appendix to the Journals of the House of Representatives**

‘Reports on the State of the Natives in Various Districts, at the time of the Arrival of Sir George Grey’. *AJHR*, 1862, Session I, E-7. pp.31-42.

*AJHR*, 1867, G-1, pp.9-10.

*AJHR*, 1874, G-2, pp.18-19.

*AJHR*, 1877 Session I, G-01, p.11

*AJHR*, 1879 Session I, G-01, p.8.

‘Native Lands and Native Land Tenure’ *AJHR*, 1907, G-1c, p.15

*AJHR*, 1912, Session I, G.14, pp 1-2.

*AJHR*, 1930, Vol.3, I-3, p.5.

*AJHR*, 1932, Vol II G-10, p.43.

Ngata, A.T. (1931) “Native Land Development” *Appendix to the Journals of the House of Representatives* Vol II G9, p.2.

Ngata, Sir Apirana. ‘Native Land Development’, *Appendix to the Journals of the House of Representatives (AJHR)*, 1931, Vol II G-10.

'The Māori Land Courts: Report of the Royal Commission of Inquiry'  
*Appendix to the Journals of the House of Representatives (AJHR)*, 1980,  
H3, p.12.

#### **New Zealand Gazette**

*N.Z. Gazette No 137*. 3 December 1992

#### **New Zealand Parliamentary Debates**

Ngata, A.T. (1931). *New Zealand Parliamentary Debates, Vol. 230*.

Pollen, Dr. (1863) *New Zealand Parliamentary Debates, Hansard*.

Sewell, Henry, (1870), *New Zealand Parliamentary Debates, Vol. IX. Aug-Sept 1870*.

Waterhouse, George. (1881). Married Women's Property Protection Bill. In *New Zealand Parliamentary Debates, Vol 38*.

#### **NEWSPAPERS**

Hawke's Bay Herald, Volume 8, Issue 671, 5 August 1865. Retrieved 14 June 2011 from <http://paperspast.natlib.govt.nz/cgi-bin/paperspast?>

Hawke's Bay Herald, 17 Hongoingoi/July 1893. Retrieved 15 August 2010 from <http://paperspast.natlib.govt.nz/cgi-bin/paperspast?>

Shannon, Pat & Walker, Peter. (2006). Community development and control in a state-local partnership in Aotearoa New Zealand. *Community Development Journal Vol 41 No 4* 506- 520.

Sharpe, Marty. (2010) The Dominion Post 13 November 2010. Retrieved 29 October 2012 from <http://www.stuff.co.nz/dominion-post/news/4341106/Losers-all-round-as-popular-beach-camp-becomes-deserted-subdivision>.

The Wairoa Free Press, Wednesday, October 24, 1877.

The Wairoa Guardian, Friday, January 27, 1911.

#### **WEBSITES**

Ballara, Angela. 'Te Heuheu Tukino VI, Hoani - Te Heuheu Tukino VI, Hoani', from the Dictionary of New Zealand Biography. Te Ara - the Encyclopedia of New Zealand, updated 30-Oct-2012 URL: <http://www.TeAra.govt.nz/en/biographies/4t8/te-heuheu-tukino-vi-hoani>

Retrieved August 17, 2013.

Indigenous Peoples and the Law, An online institute of law affecting indigenous peoples. URL:

<http://www.kennett.co.nz/law/indigenous/1999/39.html>

Retrieved May 28 2010.

Landcare Research (2012) 'Visualising Māori Land'. URL:

<http://whenuaviz.landcareresearch.co.nz/Explanation> Retrieved

September 18, 2012.

McLintock, A.H. (Ed.) (1966). *An Encyclopedia of New Zealand*. URL:

<http://www.TeAra.govt.nz/1966/C/CarrollSirJamesKcmgMlc/en>

Retrieved February 18, 2009.

Ministry for Culture and Heritage (2007) 'Signing the Treaty', URL:

<http://www.nzhistory.net.nz/politics/treaty/making-the-treaty/signing-the-treaty>, updated 21-Nov-2007. Retrieved November 12, 2009.

Ministry for Culture & Heritage (2009) 'Hoani Te Heuheu Tukino VI',

URL: <http://www.nzhistory.net.nz/people/hoani-te-heuheu-tukino-vi>, updated 8-Jun-2009. Retrieved June 20, 2011.

Ministry for Culture and Heritage (2009) 'Musket Wars map', URL:

<http://www.nzhistory.net.nz/media/photo/musket-wars-map>, updated 5-Mar-2009. Retrieved November 12, 2009.

Ministry of Justice (2001) 'He Hinatore ki te Ao Maori A glimpse into the Maori World', URL:

<http://www.justice.govt.nz/publications/global-publications/h/he-hinatore-ki-te-ao-maori-a-glimpse-into-the-maori-world>, updated July 24 2009. Retrieved May 27 2010.

Ministry of Justice (2011) Māori Land Online, URL:

<http://www.maorilandonline.co.nz/mlol/blockowners.jsp?blockID=23285>,

updated 14.02.2011 - Version 2.06. Retrieved 19 February 2011.

Ministry of Justice (2011) Māori Land Court. URL:

<http://www.justice.govt.nz/courts/maori-land-court/about-us/our-judges-1>

New Zealand Māori Council (2012). URL:

<http://www.newzealandmaoricouncil.com/>

Sorrenson, M.P.K. (1996). 'Ngata, Apirana Turapa 1874-1950.'

*Dictionary of New Zealand Biography*, updated 22 June 2007. URL:

<http://www.dnzb.govt.nz>

Wairoa District Council Plan (2005) *Operative District Plan June 2005*.

Retrieved September 24 2009 from:

<http://www.wairoadc.govt.nz/documents/31defs>

Wairoa District Council (2006) *Special Meeting Of The Resource Management Committee (To Consider an Application for Land Use Consent For A Vegetation Clearance) Waikatea Station – Ruakituri Valley*. Retrieved September 24 2009 from:  
<http://www.wairoadc.govt.nz/documents/rmcbaylytrustapp.pdf>

Ward, Alan. (2007). 'Carroll, James 1857 - 1926'. in *Dictionary of New Zealand Biography*, updated 22 June 2007 URL:  
<http://www.dnzb.govt.nz/>

Waitangi Tribunal (2011) *The Treaty of Waitangi*. URL:  
<http://www.waitangi-tribunal.govt.nz/treaty/maori.asp> Retrieved 19 June 2011.

Williams, Dr. David & The University of Auckland. (2003). *Mangatu No I Empowering Act (Private) 1893*. Retrieved February 02, 2009 from:  
[www.library.auckland.ac.nz.ezproxy.waikato.ac.nz/databases/learn\\_database/public.asp?record=maoland](http://www.library.auckland.ac.nz.ezproxy.waikato.ac.nz/databases/learn_database/public.asp?record=maoland)

Williams, Dr David and University of Auckland Library. (2003). 'Maori Land Legislation', URL:  
[http://www.library.auckland.ac.nz.ezproxy.waikato.ac.nz/databases/learn\\_database/public.asp?record=maoland](http://www.library.auckland.ac.nz.ezproxy.waikato.ac.nz/databases/learn_database/public.asp?record=maoland), No 94. Retrieved April 15, 2010.

## UNPUBLISHED MATERIALS

### letters, manuscripts, reports, submissions, theses

Acheson, F. O. V. (1913). *The Ancient Maori System of Land Tenures (Some Few Aspects Of)*. Unpublished thesis written for the Jacob Joseph Scholarship, Victoria College University.

Anewa Trustees, (9 April 2010). *Letter to Mere Whaanga*.

Anewa Trustees, (March 2012). *Submission re Anewa Trust and Mere Whaanga Application to Partition*.

Best, Elsdon. (Ms-papers-0072-23, n.d.) *Cultivation Kumara etc*. Wellington: Alexander Turnbull Library.

Brewster, (18 October 1967). *Memorandum for his Honour Judge Haughey – Tutuotekaha A & B Incorporated and Adjoining Blocks*.

Campbell, John to Samuel Locke, 11 April 1865, Alexander Turnbull Library Object #1007952 from MS-Papers-0032-0202

Department of Conservation. (1990). *Biological Conservation Assessment of the Anewa Forest, Wairoa*. Gisborne: Department of Conservation.

Department of Māori Affairs (1966-1969) *Maori Land Development - Anewa Development Scheme File 14/3/74 Vol 1*. Auckland, NZ Archives.

Department of Māori Affairs (1969-1982) *Maori Land Development - Anewa Development Scheme File 14/3/74 Vol 2*. Auckland, NZ Archives.

Department of Māori Affairs (1983-1992) *Maori Land Development - Anewa Development Scheme File 14/3/74 Vol 3b*. Auckland, NZ Archives.

How, Nigel. (2008) *Raranga, Whatu, Whiri Exhibition*. Wairoa Museum Kopututanga Taonga O Te Wairoa.

Hutchinson, Vivian. (1975). *Te Roopu o te Matakite Manifesto*. MS-Papers-2316-12. Wellington: Alexander Turnbull Library.

Kawharu, Merata. (1998). *Dimensions of Kaitiakitanga An Investigation of a Customary Maori Principle of Resource Management*. Unpublished Ph.D. thesis, University of Oxford.

Lawson, Matthew. (2012). *Synopsis of Submissions on Behalf of the Trustees, in the Matter of appeal 2011/2- Mere Whaanga v Anewa Trust*.

Loveridge, Donald. (2000). *Evidence of Donald Loveridge Concerning the Origins of the Native Land Acts and Native Land Court in New Zealand*. Wellington: Crown Law Office.

Māori Land Court, 20 August 2008., Ref A20080004148.

McLean to Colonial Secretary, 16 December 1865, IA 1/1865/3492, Archives New Zealand.

Ngati Kahungunu Wairoa Taiwhenua. (23 November 1996). *Letter to the Registrar of Treaty of Waitangi Claims*.

Palmer, Murray. (2008). *Te Roto O Te Whakaki Nga Matauranga me Nga Tikanga Ecosystem Research Project*. Gisborne: Nga Mahi Te Taiao.

Ropiha, Joan. (17 December 2004). *Submission to Blue Bay Resort Subdivision Land Use Consent RM 040040*. Wairoa District Council

Schollum, Clem. (18 March 2010). *Letter to the Māori Land Court*.

Te Whanau o Rongomaiwahine Trust. (4 October 2004) *Submission to Blue Bay Resort Subdivision Land Use Consent RM 040040*. Wairoa District Council

Tomoana, Ngahiwi. (2001). *Brief of Evidence of Ngahiwi Tomoana on Behalf of Ngati Kahungunu*.

Trustees of Ruawharo Marae. (17 December 2004). *Submission to Blue Bay Resort Subdivision Land Use Consent RM 040040*. Wairoa District Council.

Wardell, Herbert. (12 June 1858). *Letter to Donald McLean*. Retrieved 11 June 2011 from <http://mp.natlib.govt.nz/image/?imageld=mclean-0535-095-0636&profile=hraccess>

Whaanga, Mere. (1 September 2008) *Letter to Leonie Faulkner, Tairāwhiti Māori Land Court*.

Whaanga, Mere. (12 April 2010). *Letter to Judge Coxhead, Tairāwhiti Māori Land Court*.

Whaanga-Reid, Miriama. (8 March 2010). *Letter to the Judge*.

Whaanga-Schollum, Desna Raiha. (19 March 2010). *Letter to Judge*.

Williams, David. (2013). *New Zealand Examiner Report*. p.4

#### **PICTORIAL MATERIAL**

Department of Survey and Land Information, 1996, Infomaps 260-X18 and 260-X19, Edition 1.

#### **INTERVIEWS**

Fox, Deputy Chief Judge Caren, 8 March 2011. *Principles of Te Ture Whenua Māori Act 1993*.

Walker-Robinson, Pita. 31 May 2011. *Weaving materials and resources*.

## APPENDIX I

TUTUOTEKAHA HEARING 18 SEPTEMBER 1868

WAIROA MINUTE BOOK NO.1 p.36

36

Tutu o te Kahou

Claim read.

Map perused

Aihipone Tamaiti mate (son) I belong to Ngati Tihemata & reside at Tutuotekaha. I recognize the land shown on the plan before the Court. The land belongs to me and to some other young men. We derive our title from our ancestor Maitimohanga.

(Genealogy given)

These ancestors I have named have occupied the land from the time of Maitimohanga till now. Some of our title are living or are now. The descendants of these ancestors are the persons now claiming. One desire is to have four town blocks for this piece that is one part on the map which we wish to be excluded. On the plan the boundary runs straight from the Whakaitanga to Puketapu; It should run along a spur and that would exclude a piece which is disputed.

(Boundary to be altered marked on map)

Division boundaries shown on plan and marked No 1 No 2 No 3 and No 4)

Court adjourned till tomorrow

Friday 18<sup>th</sup> September 1868.

Perused the same

Tutu o te Kahou continued

Aihipone Tamaiti mate (evidence continued). I stated yesterday that the land had been subdivided into four pieces. The owners of Tutu o te Kahou No 1 are, Raminu te Hara heu, Raminu Tama, Kapa Hoopi, Pera Pera, Tekeka Taroia, Whaitama te Kahou, Harata Maiti, te Tama Tamaru, Aihipone te Kahou, Harata te Kahou.

## WAIROA MINUTE BOOK NO.1 p.37

The owners of Tute-oti Kaha No 2 are, Rihipone Tamaia,  
 Le Paera Ruarua-puka, Takurua, Hori Pomana,  
 Karana Tahi, Honana Janpara, Erarua Epare,  
 Pehamahi Hanga, Paera Iki, Marama te Haki,

The owners of Tute-oti Kaha No 3  
 are Tiopira Kautaa, Maki Karitaka, Tomo Wairaka,  
 Le Oikane, Pera Tetarua, Houti Kaihara,  
 Le Kaiti Wihopango, Wi Maiti Kairua,  
 Hori Karaka, Haraia Kairua.

The owners of Tute-oti Kaha No 4 are  
 Paera Pere, Hori te Karaki, Hori Takamata,  
 Horepiti Kowakawa, Ema Tani, Marama te Haki,  
 Wi Tapani te Paera.

(Names read over and no one objected)

Mr Geo Beaton, Surveyor, I am a Licensed Surveyor. I  
 made the survey of the land plan on the plan before  
 the Court. The boundaries were laid out in accordance  
 with the Rules and the lines are all cut on the  
 ground except the disputed boundary (marked  
 on the map A.B.) The angles are all pegged.  
 There was no opposition to the Survey, a great  
 many natives accompanied me to point out the  
 boundaries. I think the whole of the Claimants  
 I have a claim of £100 for the survey of the whole  
 block, that is £25 for No 1; £25 for No 2;  
 £25 for No 3 - and £25 for No 4.

No objector appeared.

Ordered that the boundary of Tute-oti Kaha  
 No 1 be defined (marked A.B. on the plan)

18-9-68

Ordained that a Certificate of the title of  
 Rauiri Le Hau Lau  
 Rakira Tiro  
 Kapa Hoopo  
 Pau Pau  
 Eruka Taroa  
 Wikitoni Le Kahu  
 Harata Marika  
 Le Tera Tinirau  
 Nihipora Le Waka  
 Rakira Le Kahu to a piece of land called  
 Tute te Kahu No 1 containing acres be made  
 and issued to the Governor  
 without restriction  
 The Certificate to be issued when the map is approved

*701*

Then changed  
 Investigate of  
 Certificate of title  
 1  
 1  
 1

Ordained that a Certificate of the title of  
 Ahiwone  
 Rakira Tinirau  
 Te Pahi Rakiraipuka  
 Tutuana  
 Hori Pomana  
 Karema Taiti  
 Henara Taroa  
 Eratia Terepe  
 Rakaraka Hanga  
 Pahi Tahi  
 Maunara Le Kahu to a piece of land  
 called Tute te Kahu No 2 containing acres  
 be made and issued to the Governor  
 without restriction

*702*

Ordered that a Certificate of title of  
 Teopira Kai Kaa  
 Teatua Hari Kaka  
 Tomo Wharaka  
 Te Orakia  
 Pora Te Teuauau  
 Hoata Kai Kaa  
 Te Kerahi Weheparao  
 Wi Maiti Kaimama  
 Hori Karaka  
 Heremai a Kihirau to a piece of land called  
 Tatu o te Kaka containing acres to be made and  
 issued to the Crown

No 3

without restriction

Certificate to be issued when the map is approved  
 by the 4th July

Fees charged  
 Investigation £ 1  
 Certificate 1  
 Crown Grant 1

Ordered that a Certificate of title of  
 Paora Pora  
 Hoani Te Heraki  
 Hoani Te Kani  
 Hohepa Kerehira  
 Una Tari  
 Marara Te Roto  
 Wi Teape  
 Te Pora to a piece of land called

No 4

Tatu o te Kaka No 4, containing acres  
 to be made and issued to the Crown

Without restriction

Fees charged  
 Investigation £ 1  
 Certificate 1  
 Crown Grant 1

WAIROA MINUTE BOOK NO 1, 17 SEPTEMBER 1868.

pp.36-37

Ahipene Tamaitimate (sworn). I belong to Ngati Tahumatua & reside at Tutu o te Kaha. I recognise the land shown on the plan before the court. The land belongs to me and to some others of my tribe. We derive our title from our ancestor Matuwahanga.

(Genealogy given) These ancestors I have named have occupied the land from the time of Matuwahanga. Some of our tribe are living on it now. The descendants of these ancestors are the persons now claiming. Our desire is to have four Crown Grants from this piece. There is one part on the map which we wish to be excluded. On the plan the boundary runs straight from te Whakaitanga to Puketapu. It should run along a spur and that would exclude a piece which is disputed.

(Boundary to be altered marked on map)

Division boundaries shown on plan and marked No 1 No 2 No 3 and No 4).

Friday 18<sup>th</sup> September 1868.

Ahipene Tamaitimate (evidence continued). I stated yesterday that this land had been subdivided into four pieces. The owners of Tutu o te Kaha No 1 are Raniera Te Heuheu, Rawhira Timo, Kepa Hoepo, Pera Pere, Enoke Taiepa, Wikitoria te Nehu, Harata Mariko, Te Teira Tinirau, Nhipora Te Waka, Raiha te Koha.

The owners of Tutu o te Kaha No 2 are Ahipene Tamaitimate, Te Paea Rerekaipuke, Tukuaru, Hori Pomana, Karena Taite, Henare Taupara, Eraihia Tipene, Raharuhi Hunga, Paora Toki, Manuera Te Huki.

The owners of Tutu o te Kaha No 3 are Tiopira Kaukau, Matiu Harihuka, Tomo Wharekura, Te Orakore, Pera Tataramoa, Hoeta

Kaihue, Te Kerehi Wahapango, Wi Maihi Kaimoana, Hori Karaka & Heremaia Kihirau.

The owners of Tutu o te Kaha No 4 are Paora Pere, Hoani Te Haraki, Hone Tahameto, Hohapati Kewhakewha, Erua Tari, Maraea Te Roto, Wi Taepa & Te Para.

(Names read over and no one objected).

Mr Geo Burton (sworn). I am a Licensed Surveyor. I made the survey of the land shown on the plan before the Court. The survey is correct and in accordance with the Rules issued. The lines are all cut in the ground except the disputed boundary (marked on the map A B). The angles are all pegged. There was no opposition to the survey. A great many natives accompanied me to point out the boundaries, I think the whole of the claimants. I have a claim of £100 for the survey of the whole block, that is £25 for No 1, £25 for No2, £25 for No 3, and £25 for No 4.

No objector appeared.

Ordered that the boundary of Tutu o te Kaha No 1 be altered (marked A.B. on the plan).