

CHAPTER 3

**THE SALE OF WAIHEKE**

Waiheke has been home to many tribes over many periods but for some long time before Waitangi, it was the home of Ngati Paoa. That, as we have seen, was one of the earliest decisions of the Maori Land Court established in 1865 to determine who owned what in Maori land. Ngati Maru had lived there too, for a long time, but by 1840, according to the Court, and whether because they went or were sent, Ngati Maru had returned to their homes on mainland Coromandel. As we have also noted, that finding was propitious for the Crown, for the Crown had already bought most of the island before the Court had decided ownership, and it had bought exclusively from Ngati Paoa. In particular the Crown had bought Omaru and Opopo blocks in 1857 for \$400 and \$200 respectively (Turtons Deeds 237 and 242), some 10,900 acres in the north east (including the Waiheke Station now in dispute) in 1858 for \$1,600 (Turtons Deed 244) and an adjoining area some weeks later for \$20 (Turtons Deed 245). Those areas were bought for the Crown by Mr D McLean (later Sir Donald), he having earlier acquired almost the whole of the Ngati Paoa holdings around Auckland in massive land purchases. (His service to the Crown and colony has been documented in several histories.) There were other sales too, direct to settlers, and their subsequent land claims were ratified by Crown grants.

When the Maori Land Court investigated the titles to the remaining Maori lands in 1865, shortly after the Waikato wars, all that remained on Waiheke was some 2,100 acres in the west (Te Huruhi block), some 800 acres near Mawhitipana Bay (Hoporata, Opopoto and Mawhitipana blocks) and some 2,800 acres in the south (Kauakarau, Maunganui, Rangihoua, Awaawaroa, Whakanewha and Okoka blocks).

Those lands, and some 16,000 acres around Kaiaua on the Firth of Thames, were about all that remained of Ngati Paoa holdings. Even that land may have served to underwrite the continued existence of what was left of Ngati Paoa but a combination of factors ensured that that was not to be so. Those factors arose each from the legislative framework in which the new Maori Land Court of 1865 was bound to work.

Despite every tribal protestation from throughout New Zealand, the Court was not empowered to award land to tribes as distinct entities. The tribes had sought that arrangement in order that tribal authority might be continued and developed according to its own style. Instead the Maori Land Court was bound by the law of the Government to carve the tribal

REPORT ON THE WAIHEKE ISLAND CLAIM

estates so as to award lands only to defined individuals in defined shares, thus breaking up 'the beastly communism' that was said in the House of Representatives to afflict all native tribes. Of course the partitioning of lands and the individualisation of titles also assisted sales, bypassing the traditional tribal controls that had become the bulwark to continued land acquisition and which largely accounts for the land wars.

In addition the Court at that time could not award land to more than ten persons. Not unexpectedly, since the Court had then to choose, it chose mainly from those in actual occupation, ignoring, of necessity, the traditional politic that the individual licence to occupy was subject to the oversight of the wider hapu or tribal group, or that occupants were often those left behind when tribes gathered in times of need to embark upon tribal projects, as they had done only a short while before, in the war. To simplify the choice further, the rule was also that the share of a 'rebel' native, that is to say one who had fought against the Crown, was to be forfeited to the Crown. Maori claimants were astute in not including such persons when nominating owners and for the same reason did not always argue strongly against the entitlement of actual occupiers.

Nor were the Maori people successful in their attempts to have the general Courts declare that the few who were to take, took as representatives for the tribe. The Supreme Court was to hold that it could not go behind the Crown Grants that followed the Court decisions, and those named on titles must be deemed to be absolute owners (see *Ani Kanara v Mair* [1886] NZLR 216).

The lands at Waiheke were amongst the first to be investigated by the Maori Land Court (or the Native Land Court as it was then called) for the Court began its inquiries in those areas closest to the major settlements. In 1865, and in due accordance with the law, the ten remaining blocks on Waiheke were awarded to the few to the disinheritance of many. Not surprisingly nine of those ten blocks were sold before the turn of the century. Those nine blocks, averaging 400 acres each, had been awarded to an average of only two persons. The remaining larger block, Te Huruhi of 2,100 acres, though shown on earlier plans as intended for a Ngati Paoa Reserve was vested in five persons, but later, when the law changed, 65 were put in. In 1897 it was apportioned between the 65 by dividing the land into thirteen parts. After some further partitioning most of the divisions were sold but small parts survived to this century.

More of Ngati Paoa then left the island. Some of the land owning families remained until about 1915 when several of them moved too to join their kinsfolk at Waikato and Kaiaua. By 1940 there were about five families left. One witness, who named the five families, said all the men worked in Auckland, travelling by ferry because of a lack of work on the island. Princess Te Puea, of the kindred Waikato tribe, paid them annual visits to ensure the continued association of the tribe with their land. When she died in 1952, nearly all of them shifted to the mainland. Several witnesses before us recalled those times.

Today the only remaining Maori land on Waiheke is

THE SALE OF WAIHEKE

- ▶ Te Huruhi urupa, 1 acre 0 roods 32 perches being a burial ground
- ▶ Te Huruhi 13A, 2 roods, solely owned but also a burial ground, and
- ▶ Te Huruhi 12B, 9 acres 3 roods, 5 perches, owned by 3 persons.

Apart from those small holdings only a lineage of headland pa sites on a convoluted coast bears testimony to the former Ngati Paoa presence.

On the mainland the tribal estates had been primarily reduced to lands near Kaiaua, some 6,430 acres being Wharekawa No 1 and 10,180 acres being Wharekawa No 2. The first block was vested in ten persons representative of four Ngati Paoa hapu but after numerous complaints, and a change in the law, the list was extended to 92 persons following further inquiry. The land was then divided amongst them and only a small part remains today. There were complaints too about the second block, vested in nine persons, but there was never a subsequent inquiry to extend the list and that too was sold.

There has been in New Zealand from time to time some criticism of the American policy that saw the creation of Indian reservations to be held in perpetuity for the tribes. Many may hold misgivings about such a policy but it is one that Ngati Paoa would gladly have received. They have in fact no tribal land – no lands were ever reserved for them in perpetuity, though some intention to do that is apparent in the markings on the early land sale map for Waiheke, of 1867.

Ironically in 1981, over a century after tribal ownership was denied and large areas vested in a token few, the Maori Land Court effectively awarded to the tribe as a whole two small remnant islands that escaped the attention of Government buyers in the 1850s. Gannet and Shag Rocks, called Horuhoru and Tarakihi by Ngati Paoa, were respectively one and five hectares offshore from Waiheke that the Wildlife Service of the Department of Lands and Survey wished to protect as Wildlife Reserves. The Court was asked to determine ownership so the owners could be consulted. It determined, with clear precedent to rely on, that Ngati Paoa was entitled and still in accordance with precedence, elected to vest the title to both in one person only. But in a radical departure from the past, and in reliance on a provision that the Court may award title to a deceased, the Court selected as owner, Paoa – eponymous ancestor of the tribe! (That did not make dealings impracticable for the Court then vested the title in trustees to represent Paoa's issue, and presumably, pending administration of his – and subsequent – estates.)

The irony is that the traditional objective was to be achieved only in respect of the crumbs that went unseen in Ngati Paoa's larder. The irony was not lost upon Ngati Paoa. Later, when the Board of Maori Affairs canvassed tribal trusts in the South Auckland–Waikato areas to administer the Waiheke Station, Ngati Paoa protested that they had been overlooked, and pointed to the Tarakihi–Horuhoru trust as evidencing their endowment, though founded upon two barely habitable rocks.

Accordingly while it is quite clear that the Waiheke Scheme was part of a large sale, in area if not in price, in 1858, it is not unreasonable in our view that Ngati Paoa should look to

REPORT ON THE WAIHEKE ISLAND CLAIM

every opportunity to recover a part of it that they might as one witness put it 'pass on to our children something more than the pain that was all that was passed on to us' (Miria Andrews, a young mother arrested at Waiheke in 1985). For the moment only the humble hamlet of Kaiaua on the Firth of Thames is home to the seeds of Ngati Paoa now scattered throughout Auckland and Waikato.

The second irony, from a Ngati Paoa point of view, is that the Board's assistance to those with land has no benefit for those whose needs may be greater through having no land at all. It highlights a complaint in this case that the historic function of the Board to develop Maori land for the betterment of Maoris, is not a sufficient criteria for the equitable development of the Maori tribes. For the Board had been in existence for a long time and its role in financing the Maori land owners through Development Schemes, Incorporations or Trusts was firmly established and well known. The owners of Development Schemes, the shareholders of Incorporations and the beneficiaries of Trusts might be few in number (where based on family membership) or many (when based upon broad tribal connections). It was natural to assume, in this case, as Ngati Paoa later did, that settlement, following development, would be by suitably qualified Ngati Paoa members.

Ngati Paoa were to find that the Board's range of options to assist is limited. While the Board has provided immense financial support to Maori land owners over the years, it cannot assist those without a land base or other assets that might provide an equity contribution.

It is from this background that we come to consider how the Board of Maori Affairs became involved in Waiheke, and why it disposed of the land it acquired without consultation with Ngati Paoa. It is helpful to consider first however, the history of the Board itself, and the policies that determine the management and disposal of its development schemes.