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05 The Erosion of Ngati Pahauwera Rights Over the River

5.1 Sharing the River With the Settlers

5.1. Sharing the River With the Settlers

After their return from Mahia in the 1840s, Ngati Pahauwera concentrated their settlement on the north side of the river and Pakeha settled on the south side. These two sides came to be known as the Maori and Pakeha sides respectively. As long as the Mohaka remained a frontier settlement Ngati Pahauwera shared the use of the river with their neighbours. Far from relinquishing any of their mana or control over the river, they were using their mana or control to invest in the future development of a resource and for the benefit of a people. With settlement and development on the river, there had to be, and indeed was, collaboration and co-operation.

One of the first Pakeha settlers at Mohaka was A F Henrici, a shipwright by trade who appears to have built a schooner for a whaler called Joseph Carroll. The advent of whaling at Mahia and Waikokopu brought others to the area. McLean in December 1852 noted the desire of whalers from Wairoa and Table Cape to purchase small blocks of land on the south bank of the Mohaka river (A29:22; C4:51; C5:16).

By mid 1853 a whaling station was operating out of Mohaka and boats were being manned by Maori from Mohaka (C4:53). While many Mohaka families are descended from whalers, whaling was not nearly as economically important at Mohaka as it was at Mahia (A29:22). John Snodgrass in 1854 advised McLean that the owner of the whaling station would not be continuing that year, "owing to the Maoris being unwilling to go after whales any longer". They found cultivating their land paid much better (C4:54).

The missionary James Hamlin noted in 1855 that a "few whites are located on the southern bank of the Mohaka". Two large sheepruns were taken up on the south side of the river: the Mohaka run of 9000 acres near the mouth of the river, by Robert Riddell in 1855; and the Springhill run of 11160 acres, some five or six miles up river, being farmed in 1859 by Alexander Allen in partnership with Robert Riddell. Francis and Ann Bell took over the Mohaka station in 1866. By the late 1860s John Lavin was farming 9028 acres of Springhill and John Sim a small part of it. By 1869 Mohaka consisted of a large Maori population and a few white settlers.

Robert Park, in his 1851 report, commented on "a regular traffic between Mohaka and Ahuriri carried on by the natives when they have produce for sale", and noted the commercial value of these crops to the Maori.

The production of crops, such as potatoes, pumpkins, melons, corn and fruit, enabled Ngati Pahauwera to participate in the cash economy. Advertisements for John Sim's Mohaka store in 1877 ventured the words, "Native Produce bought for cash". By the

last quarter of the nineteenth century many of Ngati Pahauwera were turning to sheep farming (C5:77-81).

Pakeha settlement on the south side saw the establishment of a ferry service for crossing the river at Mohaka. The southern landing was located close to the local hotel and the license to run the ferry was originally held by the local publican and storekeeper, John Sim, until the contract was won by A F Henrici in 1867 (C5:25-26).

Settlement also saw the establishment, from at least 1859, of a Napier to Wairoa coastal shipping service for the coastal settlements of Hawke's Bay, with Mohaka one of the landing places.

Ngati Pahauwera participated in this coastal service. In 1864 James Grindell described how, on leaving Mohaka, he, Donald McLean and their party:

took passage for Napier in the 'Sailors Bride', a small decked boat belonging to the natives. [Hawkes Bay Herald 26 November 1864; A24:31]

Ngati Pahauwera also provided river transport for the Pakeha settlers with "all produce having to be sent in canoes down and all supplies in the same precarious way up the river" (A24:31). Canoes were used to bring down bales of wool from farms upriver to Mohaka, where wool stores had been established, to meet the shipping service (B8:6; A25(b):46).

The evidence we heard on coastal shipping and river transport is relevant to the provision in section 14 of the Coal Mines Amendment Act 1903, that the bed of a navigable river has always been vested in the Crown, presumably with the intention of ensuring that the Crown had control of the bed for mining purposes. This provision was re-enacted in s261 of the Coal Mines Act 1979 and incorporated in s354 of the Resource Management Act 1991. In s261 of the 1979 Act a navigable river is defined as:

a river of sufficient width and depth (whether at all times or not) to be used for the purpose of navigation by boats, barges, punts or rafts.

In his opening submissions, Mr Brown referred to the divergence of judicial opinion on the meaning of 'navigable' and suggested that it might be necessary for the tribunal to refer the question to the High Court for determination. In his closing submissions he submitted that four factors were relevant:

- whether the river was navigable for commercial and economic purposes or only for recreation;

- whether the river was once more navigable than it is now; and

- whether it was necessary for the river to be navigable for its whole or a greater part of its length; and

- in both directions (C17:55-56).

In his submission:

one only needs to have the opportunity to fly over the river to see that it was not in any real sense a commercially navigable river, at least not for significant distances. (C17:55)

Evidence had been given that a canoe could only go up as far as Rotokakarangu and that the river was much impeded with rapids and large blocks of stone (C4:24); also that schooners could only enter the mouth of the river prior to the 1931 earthquake (B8:6).

Ms Elias contended that it was unclear whether or not the Mohaka came within the legal definition of a navigable river. If the provisions in the Coal Mines Act 1979 did apply, then Ngati Pahauwera could claim against the Crown for its failure to carry out its fiduciary duty to protect their interests in the river. The Coal Mines Act provision was "expropriatory and inconsistent with the principles of the Treaty". The "failure to provide an effective system in which possible legal rights can be recognised" was also a breach of Treaty principles (C14:42).

On the evidence, it appears to us that the Mohaka is not a navigable river in terms of the legislation. If, however, it were argued that the Mohaka is a navigable river deemed to have always been vested in the Crown, this would we think be a clear breach of article 2 of the Treaty, because ownership would have been appropriated without the consent of Ngati Pahauwera and without compensation.

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5.2 Co-operating With Government in the Exercise of Rangatiratanga

5.2. Co-operating With Government in the Exercise of Rangatiratanga

George Thomson, a claimant researcher, stated that the Pakeha who settled on the south side of the Mohaka river having paid for Crown titles to land "tended to assume that British law would prevail there". It appeared, however, that Ngati Pahauwera "had no such assumption". Rather there was some evidence to show that Ngati Pahauwera "continued to assume that their mana would remain on both banks of the Mohaka, no matter what changes there were to some aspects of land tenure there" (A29:appendix A: 9).

A letter from the Maungaharuru sheep farmer, Philip Dolbel, to the Hawke's Bay Herald in 1862 described a series of runanga or council meetings to adjudicate on matters arising on the south bank between Maori and Pakeha (ibid). Significantly, about this time other Ngati Kahungunu communities were setting up their own runanga rather than accepting the new institutions being introduced by the government.

Further evidence of the continued exercise of authority by Ngati Pahauwera was an incident in 1862 when two Pakeha on their way through Mohaka were stopped, as the local runanga had stipulated that there be no Sunday travelling. The runanga also prohibited alcohol on the north side of the river (ibid).

A report dated 9 June 1862 from the civil commissioner, Lieutenant Colonel A H Russell of Napier, indicated that northern Hawke's Bay still lay largely beyond the reaches of government. The Maori, it appeared to him, were "anxious to receive European law", though it would deprive them of power which they had "hitherto used without control, but not without discretion". He found the district "little known and much neglected":

The conduct of some of the Europeans who have located themselves in the Mohaka and Wairoa Districts, would almost lead one to suppose that that they were the barbarous, and the Maoris the more civilized, people-scenes of drunkenness and outrage are described in which men have taken part whose education and position should have led to a very different line of conduct and bring the moderation and forbearance of the Natives into very strong contrast. The evils have now been greatly lessened by the Natives, who have interdicted the introduction of spirits to their own side of the Mohaka where there is no European land .... Several Europeans are located upon the banks of the Mohaka, on land purchased from Government, who take no part in the excesses of which I have spoken, but are anxious they should cease.

To bring about better control, Russell looked to the introduction of the new government institutions, namely resident magistrates and district and village runanga. Among the chiefs he desired as assessors was Paora Rerepu of Mohaka, "whom they stated to be the greatest man upon the Coast by birth and whom they are unwilling to lose even temporarily from among them" (C5A:771).

Mr Sinclair had difficulties with Mr Thomson's evidence about Ngati Pahauwera's continued authority. In response to the problems of the comparatively lawless state of Pakeha society at Mohaka and alcohol, Paora Rerepu "cast the onus of maintaining civil order upon the government" (C5:19). The correspondence on alcohol illustrated "the chiefs' respect for the rule of law and their desire that the Government should assume responsibility for its enforcement, at least when Europeans were involved" (C5:21). Mr Thomson, in the opinion of Mr Sinclair, went too far in stating that there was some evidence to show that Ngati Pahauwera continued to assume their mana would remain on both banks of the river.

A request from Paora Rerepu for permission to run a ferry on the river was seen by Mr Sinclair as "a tacit acknowledgement of the government's authority over the river" (C5:26). Claimant counsel suggested that it could have been merely an application for government subsidy and not because Paora Rerepu believed he needed permission from the government to run the ferry himself.

Similarly a request from Toha of Wairoa for a ferryman on the Waihua river, which the superintendent of Hawke's Bay referred to Paora, was explained by Mr Sinclair as having been prompted by a wish on the part of the superintendent to diplomatically "avoid any friction between the two chiefs" (C5:24). Ms Elias suggested that the tenor of the correspondence was more in accordance with Crown concern to defer to Paora Rerepu in an area where he had authority. The government recognised his rangatiratanga by seeking his permission. His response was to assent to the ferry (C14:15).

As further evidence against Mr Thomson's view that Ngati Pahauwera continued to exercise authority over the river Mr Sinclair pointed to the "absence of any record of protest" over any European uses of the river which seemed surprising given the immense spiritual importance of the river and Mr Thomson's suggestion that Maori "rangatiratanga" prevailed on either side of it (C5:15-16). But, as we have seen, Ngati Pahauwera were willing to share the use of the river and use should not be confused with control. As Mr Sinclair himself conceded the control of the river does not seem to have been tested in the nineteenth century (C5:15).

Ms Elias pointed out that the resources of the river were bountiful and sharing was consistent with Maori cultural precepts and with the exercise of rangatiratanga (C14:12). Sharing the river was beneficial to both parties and Ngati Pahauwera felt no need to protest at the use of the river by Pakeha. It was:

important to recognise that Maori cultural precepts of hospitality and sharing are not to be seen as a relinquishment of 'ownership' but as an exercise of rangatiratanga. (C14:16)

In our view the different stances adopted by the Crown and the claimants over the introduction of British law and law enforcement in the Mohaka district and over the continuation of Ngati Pahauwera's authority need to be considered in their historical framework. Before the East Coast wars, Mohaka was what the historian James Belich has described as a "Maori zone" and Ngati Pahauwera were predominantly independent. A government official or magistrate visiting Mohaka was, to use Dr Belich's words, "an invited guest whose attributes supplemented, but did not replace, those of its host". The introduction of British law was far from comprehensive, lacked coercive backing and "worked only when the Maoris let it-a discretion they exercised very selectively". A "fascinating syncretic system of social constraint" was emerging, "but it did not indicate real British control".

After Te Kooti's April 1869 raid on Mohaka and the massacre of over 60 Maori and seven settlers, and the destruction of Te Huki pa while Paora Rerepu and other warriors were on an expedition to Waikaremoana, "the tide of Maori autonomy" began to turn. Through land alienation in the early twentieth century, it gradually ran out.

Mr Thomson's evidence fits nicely into Dr Belich's framework. "With the end of open fighting", Mr Thomson said:

Ngati Pahauwera found that the rules had been changed and the goal posts shifted.

However, local authority over much of the community remained. The very real power of kaumatua (elders), and rangatira, (chiefs) over the Ngati Pahauwera community was reflected more by the absence of a Pakeha policeman stationed at Mohaka from 1865 to 1910, than in positive evidence. (A29: appendix A: 9)

Mr Thomson further stated:

There is no evidence to suggest that Ngati Pahauwera would have agreed to give up authority over the river ... in the 1850's, Ngati Pahauwera's values and beliefs were those of Maori custom. Those norms may have been modified for some, ... from the 1850's to the 1920's by such things as the introduction of the British legal system. However, I have seen no evidence to suggest that by 1930 such modification ... was general, to the point of a change of stance on rangatiratanga.

Ngati Pahauwera had positive reasons to think that they retained the mana, due to them being ... the definite numerical majority within the lower valley, able to pursue a lifestyle primarily founded on their own values. Because of this majority and lifestyle, the use and control of the river was an unquestioned part of the way of life. (A49:3-4)

In reference to the erosion of Ngati Pahauwera tino rangatiratanga since the 1850s, Mr Thomson pointed out that:

Much of the erosion was piecemeal and indirect ... [and] may have been aided by the declining economic base of Ngati Pahauwera and its leadership, and the diminishing of customary resources. (A49:5)

Notwithstanding this, it seems clear to us that the sale of land on both sides of the river was not understood by Ngati Pahauwera to be a relinquishment of rangatiratanga over the river.

Ngati Pahauwera cooperated extensively with central and local government, including great sacrifice in war from 1864 on:

Whether this co-operation can be construed as agreement to diminish their rangatiratanga and whether kawanatanga can be seen by Ngati Pahauwera as legitimately overruling tino rangatiratanga over the river in any way, are open questions. They must remain open questions while there is little evidence available to answer them. (A49:5)

Not only did Ngati Pahauwera serve with government forces in the east coast wars from 1864 to 1872, but when the First World War broke out in 1914 they resolved to gather funds and send men to the front. Five men from Mohaka served in the first Maori contingent of 1914, three local men were decorated and mentioned in despatches for their war services, and at least four were killed or died of wounds or disease. There are 38 other names of Maori on the Mohaka world war memorial. In the Second World War at least 21 Ngati Pahauwera served overseas and at least five were killed.

Perhaps however a greater insight to this particular dimension can be gained from the now classic exhortation by the Reverend Henry Wainohu (a member of Ngati Pahauwera who served as chaplain) to his Maori soldiers prior to the night attack on Gallipoli:

Whatever you do, remember you have the mana, the honour and good name of the Maori people in your keeping this night. Remember our people far away in our native land are watching you, waiting eagerly, anxiously to hear how you have behaved yourselves in battle. In a few minutes perhaps many of us may be dead. But go forward fearlessly, with but one thought. Do your duty to the last and whatever comes never turn your backs to the enemy. Go through with what you have to do, to the very utmost of your powers. (A29:28)

From the evidence we have heard on Ngati Pahauwera's attitude and contribution to central government and the war effort, the following things become obvious. During nearly all of the last century, Ngati Pahauwera had an implicit trust in the word of the Crown and believed their rights and property would be protected. That trust was not seriously questioned by them until now. There are many signs and symbols that testify to the high regard that the people and for the Crown's word. These things are dotted around the perimeter of their marae and testify to loyal service and commitment made in the past by the Pahauwera iwi to the Crown and nation.

For the tribe, co-operation between Ngati Pahauwera and the government was the politics of reciprocity and partnership, not the politics of assimilation and subjection. As the Waitangi Tribunal has stated in the Ngai Tahu Report 1991:

The cession by Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga.

This concept is fundamental to the compact or accord embodied in the Treaty. Inherent in it is the notion of reciprocity ....

In this context we accept the claimants' view that Ngati Pahauwera did not relinquish any of their tino rangatiratanga over the Mohaka river (A49:7). Ngati Pahauwera is entitled to and must rely on the honour of the Crown to act reasonably and in good faith as a Treaty partner and respect their rangatiratanga.

Supporting evidence for this view is to be found in the lack of any reference to river rights in the long history of Ngati Pahauwera complaints and petitions to the Crown. Most of these concerned the alleged inadequacy of the payment for the Mohaka block, the lack and loss of reserves, and exclusion from titles, leases and sales. These grievances are the subject of another claim and only concern us here in so far as they show that the issue of control over the river did not come up until the Crown imposed the water use regime and assumed authority to take land for public works and gravel extraction (C14:12).

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5.3 Soil Erosion, River Pollution and the Imposition of a River-Use Regime

5.3. Soil Erosion, River Pollution and the Imposition of a River-Use Regime

Professor Ritchie's evidence indicated that Ngati Pahauwera set great store on the purity of fresh water (B28:2). The first serious threat to the quality of the water in the river came with the removal of large tracts of lowland forest for timber and pastoral development.

The main method of land clearance for farming was bush and scrub cutting, followed by fire (A29:111). The Maori in pre-European times burnt large areas of lowland and upper catchment forest adjacent to their settlements, either accidentally or for cultivations, and for hunting and ease of communication. In the second half of the nineteenth century, European settlers removed much of the remaining lowland forest for timber and pastoral development (B17:13). Some areas of the cleared land proved too erosion prone and/or too infertile for farming and were left to rejuvenate into scrub. Toro Waaka said that:

Indiscriminate clearing contributed to problems of erosion which affected water quality. This impacted on fish and eel stocks as well as being detrimental to our ocean kaimoana. (B8:6)

Ramon Joe said that one effect of the erosion caused by Pakeha land clearance was scouring which came down the river and caused the mouth of the river to become narrower, contributing to making it no longer navigable. He claimed if the mouth of the river had remained navigable, Mohaka would be what Wairoa is today.

As early as 1906 government geologists warned that unabated clearfelling, exacerbated by high rainfall, would result in major erosion (A29:111). Major floods on the Mohaka were recorded in 1897, 1910, 1914, 1924, 1935, 1936, 1938, 1985(2) and 1988 (Cyclone Bola) (ibid). In 1924 a government forest adviser and the local farmers union recommended tree planting on "poor land between Waikare and Mohaka" (A29:112).

No evidence was found of any action by settlers or local authorities or government to prevent or control soil erosion or flooding prior to the passing of the Soil Conservation and Rivers Control Act 1941. Presumably the Mohaka river lay outside of river control schemes initiated by the Hawke's Bay County Council between 1877 and 1910 and the Hawke's Bay River Controls Board between 1910 and 1950. In 1950 responsibility for soil conservation and rivers control was taken over by the Hawke's Bay Catchment Board, established in 1944 under the 1941 Act.

In the Mohaka area no government action was taken to start forest planting until 1950. Moreover large areas of the Mohaka catchment in scrub or bush were cleared for grass or forestry as late as the 1960-1985 period.

Catchment board grants for soil conservation were available to all land owners and within the Mohaka catchment several property owners undertook soil conservation works under the grant scheme.

In 1987 the government announced a five year phase out of these grants. Mr I C Brown, special projects officer for the Hawke's Bay Regional Council, told us:

There is no doubt that a lot of good soil conservation work was carried out under the grant scheme. The scheme, however, also had many deficiencies. Many landowners, including many within the Mohaka, were not enticed by the grants. Secondly, the provision of grants came at a time when there were other often conflicting government policies (ie Land Development Encouragment Loans). (B18:1)

The Water and Soil Conservation Act

5.3.1 In 1967 the Water and Soil Conservation Act was passed and introduced wide-ranging controls over the use a land owner could make of his or her land by vesting all rights to natural water in the Crown. Section 21 of the Act gave the Crown the sole right, with limited exceptions, to dam rivers or streams, to use natural water, to divert natural water, or to discharge natural water or waste. Any person or organisation wishing to use or control water, other than for domestic or fire fighting purposes, had to apply to a regional water board for a water use right.

The Water and Soil Conservation Amendment Act 1981 made provision for national water conservation orders for the protection or preservation of outstanding rivers, lakes and streams. The relevant criteria to be taken into account when considering an application for a water conservation order are contained in s20B(6) which refers to:

(a) All forms of water-based recreation, fisheries, and wildlife habitats;
(b) The wild, scenic, or other characteristices of the river, stream or lake;
(c) The needs of primary and secondary industry, and of the community; and
(d) The provisions of any relevant regional planning scheme and district scheme.

In the context of the Ngati Pahauwera claim to exercise tino rangatiratanga over the river, the role of the 1967 Act and its 1981 amendment is twofold: on the one hand it governs the granting of water conservation orders; and on the other it controls the granting of water use rights. There may well be occasions when these two functions are in conflict, reflecting the multiple and potentially contradictory purposes of the Act.

The Act makes no reference to the principles of the Treaty of Waitangi or to Maori interests and judicial response on their relevance has been variable. The present position is that, as a result of decisions in the High Court and the Planning Tribunal, the Treaty is relevant to one of its purposes, the granting of water use rights, but not to another, the granting of water conservation orders. The High Court held in Huakina Development Trust v Waikato Valley Authority [1987] 2 NZLR 188 that evidence

concerning the Treaty and an iwi's traditional relationship with natural water was admissible in relation to the granting of a water use right. Conversely, recognition of the Treaty or its principles in the context of water conservation orders was clearly considered by the Planning Tribunal to be outside the ambit of the Act:

the Planning Tribunal has no authority to give effect to the Treaty of Waitangi or any other treaty except to the extent that it has been incorporated into the laws of New Zealand; ... the Treaty of Waitangi has not been incorporated into the Water Act ....

The Planning Tribunal certainly has no authority now to grant or refuse Ngati Pahauwera iwi rangatiratanga of the river; nor to recognise that they have that status in respect of it.(A36:31)

The claimants advanced two arguments in relation to the Act: first, to the proposed conservation order itself, and secondly, to the statutory process under which it was made.

While several claimant witnesses acknowledged that the order would protect the river's natural features, the claimants were unanimous in opposing it on the ground that it represented a denial of Ngati Pahauwera rangatiratanga over the river (C14:63-64). In their view Ngati Pahauwera, not the Planning Tribunal or the Minister for the Environment, should make the decisions affecting the river's use and protection. The problem was that the Act made no provision for the exercise of any authority by Maori or for their participation in decision-making. Ms Elias submitted that there was no imminent threat to the river which would justify such an order in Treaty terms and that it would have the effect of substantially compromising the future exercise of Ngati Pahauwera rangatiratanga (C14:63-64). The making of a conservation order on the basis of a recommendation which fails to take account of the Treaty or Ngati Pahauwera's relationship with the river would, she submitted, constitute a fresh Treaty breach (A38:2).

In addition, Ms Elias claimed that the manner in which the Planning Tribunal had conducted its inquiry and made its recommendation was in breach of the Treaty. In particular she submitted that:

- Ngati Pahauwera's interests were not taken into account;

- the matter was dealt with under the Water and Soil Conservation Act 1967 despite the imminent implementation of the Resource Management Act 1991 which, she claimed, would have permitted some consideration of Ngati Pahauwera concerns;

- the claimants were denied the opportunity to participate properly in the Planning Tribunal inquiry because legal aid was not available to them (ibid).

The Crown's defence of the Act was based on the relationship between kawanatanga and rangatiratanga in the Treaty and the argument that the cession of kawanatanga gave the Crown a "higher authority".

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5.4 Rangatiratanga and Kawanatanga and the Mohaka River

5.4. Rangatiratanga and Kawanatanga and the Mohaka River

The claimants' stance

5.4.1 In her opening submissions, Ms Elias cited a number of statements in Waitangi Tribunal reports and court decisions to establish that the Treaty was a guarantee of protection "of a distinctive Maori identity and authority within the New Zealand enterprise". The Crown had an obligation to protect rangatiratanga, a concept "inextricably linked with mana" which conveyed "protection not only in possession but in the mana to control in accordance with Maori customs and preferences".

The Crown's power of kawanatanga must not be exercised to impinge upon the Maori interest beyond any extent justifiable in Treaty terms. That extent would "vary according to the taonga in issue". The Crown was obliged to protect taonga to the fullest extent reasonably practicable. The Crown's freedom to govern, in accordance with the kawanatanga ceded to it, was "not to be fettered unreasonably" but what was "reasonable must be assessed against the background of Treaty seriousness, other community interests and options for compromise" (A38:32-35 and interpolation).

The Crown's stance

5.4.2 Mr Brown submitted that the concepts of rangatiratanga and kawanatanga in the Treaty were linked and the Treaty must be read as a whole in order to understand what was contemplated by the parties. Sir Robin Cooke, President of the Court of Appeal, had referred to the difficulties in interpretation arising from the differences in the Maori and English versions of the Treaty, and summarised their relationship in this way:

In brief the basic terms of the bargain were that the Queen was to govern and Maoris were to be her subjects; in return their chieftainships and possessions were to be protected but sales of land could be negotiated.

Mr Brown further submitted that:

The cession of kawanatanga gave the Crown a 'higher authority' and the right to make laws for peace and good order. Whatever rights were guaranteed to Maori under Article II are therefore subject to the rights of the Crown under Article I ....

The Crown has a duty and a right not only to control and manage natural resources in the national interest, but to govern for the whole of New Zealand. The powers of the

Crown to make a water conservation order are consistent with that duty. The exercise of those powers is within the authority implicit in kawanatanga. (A54:8-11)

The tribunal's jurisdiction under s6 of the Treaty of Waitangi Act was not to look at rangatiratanga in isolation but rather at the Treaty as a whole, the language in both texts, the circumstances at the time of its signing and how those factors apply today (A54:12).

Addressing the question of kawanatanga, Mr Brown said:

On the question of natural resources kawanatanga includes the rights to make laws for conservation control, and in the wider public interest. (C17:26)

He submitted that the Waitangi Tribunal in the Muriwhenua Fishing Report had subscribed to the propositions that in pre-Treaty times, tino rangatiratanga was held:

only for as long as the tribe could maintain it against the ambitions of others. The Queen promised peace and ... the Queen's authority had to be supreme.(C17:28)

And, in the Ngai Tahu Report 1991:

The concept of a national controlling authority with kawanatanga ... or the power to govern or make laws, was new to Maori .... But the supremacy of this new form of control was clear. The Queen as guarantor and protector of the Maori interests ... had perforce an overriding power. (ibid)

Mr Brown concluded that:

The imposition of a water conservation order over the Mohaka River, should one be made, will not be a breach of the Principles of the Treaty. The power, and perhaps duty, of the government to make such an order for the conservation and preservation of the river is in the interests of all persons and is therefore in keeping with 'kawanatanga'. (C17:28-29)

In the Crown's view it was not a legitimate response to assert that the tribe's mana or rangatiratanga was being diminished or ignored by a water conservation order:

Because that action is taken in the national interest, regardless of the personal or tribal interests of Maori or Pakeha or any other race. It is a necessary incident of kawanatanga ....

From a practical point of view, too, there is no viable alternative to a water conservation order if an important natural [resource] such as the Mohaka River is to be effectively preserved....

in terms of the management and control of rivers as significant natural resources, there is no practical alternative to their being subject to governmental control and hence a necessary feature of the exercise of kawanatanga. (C17:31-32)

Mr Brown did however acknowledge that the Crown's Treaty obligations "may not have been adequately reflected" in the Act (C17:60). He did not elaborate on this deficiency but suggested that Ngati Pahauwera had not been prejudicially affected in any material way by the making of a water conservation order and that any former inadequacy in the Water and Soil Conservation Act 1967 regarding Crown recognition of its Treaty obligations had been remedied by the provisions of the Resource Management Act 1991.

Claimants' response

5.4.3 Ms Elias responded to the Crown's stance on article 1 of the Treaty and the principle of kawanatanga in respect of the draft conservation order by submitting that:

[it] has profound implications for the application of the Treaty. What the Crown seeks is the Tribunal's imprimatur to a substantial Treaty gloss: that the Treaty deprived Maori of authority over natural resources and over their own society ....

it is inconsistent with the Treaty language and contemporary understanding of it. It invites dissection of the political, legal and economic world into areas exclusively the concern of the Crown as a matter of responsibility ....

the Treaty itself does not identify any areas of exclusive concern ....

there is no area of Maori interest under the Treaty which as a topic is of no interest to New Zealand society generally. That is a consequence of the fact that the Treaty was entered into to secure a place for two peoples within one land: ... The Treaty did not set out to partition the country to separate the races physically and give Maori and non-Maori their own territories. The 'lands', 'forests' and 'fisheries' guaranteed to Maori are all natural resources in which the country as a whole has an ultimate residual interest in the sense that the common enterprise, New Zealand ... benefits from utilisation and conservation of these resources. On the Crown argument, therefore, the Treaty is a dishonest document on its face because despite the Article II promise of rangatiratanga and 'full exclusive and undisturbed possession' authority and control of those resources passed by Article I to the Crown on the signing of the Treaty, leaving only rights of ownership. (C14:20-21)

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5.5 Treaty Findings

5.5. Treaty Findings

The words of the Treaty

5.5.1 In applying the Treaty to the evidence in this claim we are required to have regard to the English and Maori texts set out in the first schedule to the Treaty of Waitangi Act 1975.

In the pre-amble to the English text, the Queen expressed her anxiety to protect the just rights and property of the chiefs and tribes and to secure to them the enjoyment of peace and good order. In the Maori text, which all but 39 of the approximately 540 chiefs signed, the Queen desired to preserve to them their chieftainship and their land and maintain peace and quiet living.

In article 1, the chiefs of the Confederation of the United Tribes and the separate and independent chiefs ceded to Her Majesty absolutely and without reservation the rights and powers of sovereignty. In the Maori text they gave absolutely to the Queen for ever the government of all their land. The Maori word used for government was a missionary coined word, kawanatanga. A closer Maori equivalent to the word sovereignty would have been mana, but no chief in 1840 would have relinquished his mana to the Queen.

In article 2 of the Treaty, the Queen confirmed and guaranteed to the chiefs and tribes and their respective families and individuals "the full exclusive and undisturbed possession of their Land and Estates Forests Fisheries and other properties". In the Maori text, the Queen agreed to protect the chiefs, the subtribes and all the people in the unqualified exercise of chieftainship (te tino rangatiratanga) over their lands, their villages and all their treasures (taonga).

In article 3, the Queen extended to "the Natives of New Zealand" her royal protection and imparted to them all the rights and privileges of British subjects. In the Maori version the Queen protected all the ordinary people of New Zealand and gave them the same rights and duties of citizenship as the people of England.

Rangatiratanga and kawanatanga

5.5.2 For assistance in determining the Treaty rights of Ngati Pahauwera to mana and rangatiratanga over the Mohaka river, we have reviewed references to the principle of te tino rangatiratanga in previous Waitangi Tribunal reports. These reports have established that the Crown does have a power and a duty to manage natural resources

in the interest of conservation but that these rights are qualified by the tribe's te tino rangatiratanga. The tribunal has noted in other reports that from the Maori viewpoint rangatiratanga is inseparable from mana. In the Motunui-Waitara Report (for Te Atiawa) for example, it was stressed that rangatiratanga denotes mana, not only to possess what one owns, but to manage and control it in accordance with the preference of the owner.

In the same report the tribunal thought the Maori text of the Treaty conveyed to Maori people that, amongst other things, they were to be protected not only in the possession of their fishing grounds (the subject matter of the Te Atiawa claim), but in the mana to control them in accordance with their own customs and having regard to their own cultural preferences. The same understanding would have applied to their taonga. It must be remembered that the Maori text guarantees to the Maori people the possession and control of all their taonga.

In the Ngai Tahu 1991 Report the tribunal followed the Muriwhenua Fishing Report, which considered that:

Maori understood the cession of sovereignty in terms of some distal relationship .... the Maori chiefs were trying to preserve a form of autonomy that did not amount to complete sovereignty but a kind of local self-government in Maori districts ....

Tino rangatiratanga ... refers not to a separate sovereignty but to tribal self management on lines similar to what we understand by local government.

In both the Muriwhenua Fishing Report and the Ngai Tahu Sea Fisheries Report, the tribunal referred to three main elements embodied in the Treaty guarantee of rangatiratanga:

First, authority or control, since without it the tribal base is threatened. Secondly, the exercise of that authority must recognise the spiritual source of the taonga; thirdly, the exercise of authority was not only over property but over persons within the kinship group and their access to tribal resources.

In addition the Ngai Tahu Sea Fisheries Report emphasised that an important element in rangatiratanga is trusteeship.

To use the words of the Ngai Tahu tribunal:

While rangatiratanga is best defined in its own context, there are some principles of general application .... Rangatiratanga includes management and control of the resource and reciprocal obligations between those who actually harvest the resource.

We think that rangatiratanga, applied to the Mohaka river, denotes something more than ownership or guardianship of the river but something less than the right of exclusive use. It means that the iwi and hapu of the rohe through which the river flows should retain an effective degree of control over the river and its resources as long as they wish to do so.

But what of Mr Brown's contention that the kawanatanga of the Crown implies a "higher authority" and a duty and a right to control and manage natural resources in the national interest?

Undoubtedly the Crown does have a right and duty to make laws for the conservation of natural resources. But this need not be inconsistent with the exercise of rangatiratanga.

In the Muriwhenua Fishing Report the tribunal said:

The cession of sovereignty or kawanatanga gives power to the Crown to legislate for all matters relating to 'peace and good order'; and that includes the right to make laws for conservation control. Resource protection is in the interests of all persons. Those laws may need to apply to all persons alike.

But the tribunal immediately went on to say:

The right so given however is not an authority to disregard or diminish the principles in article the second, or the authority of the tribes to exercise a control. Sovereignty is limited by the rights reserved in article the second.

We consider that this statement correctly describes the relationship between kawanatanga and rangatiratanga, particularly in this claim where it relates to a natural resource of undoubted significance to Ngati Pahauwera, and for so long regarded by them as a taonga over which they exercise rangatiratanga. In such a situation we consider that in Treaty terms the Crown cannot assert a "higher authority" to the exclusion of the tribal interest.

As we have said earlier, the exchange of sovereignty for the guarantee of rangatiratanga created a partnership between the parties requiring each to act in good faith toward the other. In the context of this claim we take that to mean that the parties are bound to recognise the interests of each other in the river.

In the public interest the Crown has a responsibility to ensure that proper arrangements for the conservation, control and management of the river are in place. That responsibility, however, must recognise the Treaty interest of Ngati Pahauwera by seeking arrangements which allow for the exercise of their tino rangatiratanga over the river. It is in the nature of the partnership that Crown and Maori seek arrangements which acknowledge the wider responsibility of the Crown but at the same time protect tribal tino rangatiratanga.

Accordingly, we think that the Crown's statements on kawanatanga must be qualified. As the tribunal has pointed out in the Ngai Tahu Sea Fisheries Report, "the right to govern" which the Crown acquired under the Treaty, "was a qualified right".

We cannot accept the suggestion made by Mr Brown that the issues raised by this claim are "novel or radical" (C17:3). Arguments about riparian ownership and separate ownership of the river bed have been raised in the courts before. Arguments about the application of the Treaty to water resources, and the rights of the Crown, have been addressed previously. As Ms Elias submitted, the Crown's arguments had

been considered and rejected in the Native Land Court, both by Chief Judge Fenton in the Kauwaeranga judgment and by Judge Acheson in the Lake Omapere decision. In the Lake Omapere case, the Crown's contention that the ownership of the bed of the lake passed by the Treaty of Waitangi to the Crown was rejected with the court emphasising that in 1840 it would have been impossible for the Crown to assume a right of ownership, dependent as the early settlers were on the Treaty of Waitangi. In view of the importance of the lake to Ngapuhi and the circumstances of the signing of the Treaty, it was held that:

it is unreasonable to suppose that the Natives at the time of the Treaty intended to give up Lake Omapere or its bed to the Crown, and that it is equally unreasonable to suppose that the Crown at the time of the Treaty intended to claim the lake or its bed in opposition to the Natives. (C14:21)

Equally we find that Ngati Pahauwera's acceptance of the Treaty cannot be seen as an intention on their part that any part of the Mohaka river should pass to the Crown; nor that this was what was intended by the Crown at the time of the Treaty. On the evidence before us it can reasonably be assumed that had Ngati Pahauwera been asked whether, by the Treaty, the control and authority of the Mohaka river would pass to the Crown, they would have emphatically replied in the negative.

Our conclusions

5.5.3 The Water and Soil Conservation Act 1967 was in breach of the letter and principles of the Treaty to the extent that it conferred on central government exclusive control over the waters of the Mohaka. We make this finding on the basis that Ngati Pahauwera rangatiratanga over the Mohaka river was never relinquished, either by sale of the adjacent land or by operation of a common law riparian presumption. The assumption by the Crown of exclusive rights of control, without Ngati Pahauwera's consent, constituted a Treaty breach.

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5.6 Recognition of Treaty Principles by the Planning Tribunal

5.6. Recognition of Treaty Principles by the Planning Tribunal

Under the 1967 legislation, the special tribunal which drafted the national water conservation order for the Mohaka river in 1990 recognised Maori spiritual and cultural values in a limited way (see above p 3).

The Planning Tribunal, in contrast, rejected all Ngati Pahauwera representations concerning the recognition of rangatiratanga and other Treaty prinicples. It also rejected the suggestion that Ngati Pahauwera be appointed kaitiaki of the Mohaka river on the ground that the 1967 Act gave regional water boards the exclusive authority to grant authorisations in respect of rivers. It concluded that it could not take into consideration spiritual and cultural values (A36:32-35).

Ms Elias was particularly critical of these conclusions. She asked us to assess whether the Planning Tribunal's recommendation was arrived at in accordance with the principles of the Treaty (C14:62).

Mr Brown submitted that, while the Waitangi Tribunal could properly consider the legislation under which the Planning Tribunal operated, it lacked jurisdiction to review the conduct of the Planning Tribunal's inquiry or the contents of its report. He disputed Ms Elias's contention that the Planning Tribunal was the Crown or its agent. Accordingly its decisions fell outside our jurisdiction, which under s6 of the Treaty of Waitangi Act 1975 is limited to a review of the actions of the Crown or its agents.

We agree with Mr Brown that the Planning Tribunal is neither the Crown nor the agent of the Crown. Therefore, although we have the power to review the legislation under which the Planning Tribunal operates, we do not have the power to review its actions under that legislation.

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5.7 The Role of the Hawke's Bay Regional Council and the Resource Management Act 1991

5.7. The Role of the Hawke's Bay Regional Council and the Resource Management Act 1991

In 1987 the functions, powers and duties of the Hawke's Bay Catchment Board and Regional Water Board under the 1941, 1967 and other related Acts were taken over by the Hawke's Bay Regional Council. In 1988 the regional council adopted a water and soil resource management plan for the Mohaka river catchment, prepared by the catchment board (see B18(a)). The plan concludes with a set of water and soil management objectives and policies concerned with soil conservation, water quality, river erosion and flooding, gravel extraction, fisheries, recreation, physical, historical and cultural values. In contrast to the 1941 and 1967 Acts and the 1981 Amendment, the regional planning scheme recognised the principles of the Treaty of Waitangi and provided for the relationship of iwi Maori and their culture and traditions with their ancestral land. It defined Maori issues as follows:

The need for greater recognition of the traditions, cultural values and physical requirements of the Maori people.

The need to foster the development of Maori land and resources according to the needs and aspirations of the people (B17:appendix D, p 41).

There is no evidence before us, however, that any representatives of the iwi or hapu of the rohe through which the Mohaka river flows participated in the planning process or were effectively consulted by the regional council.

The Resource Management Act

5.7.1 The Resource Management Act, which came into force on 1 October 1991, restated and reformed the law relating to the use of land, air and water and made specific provisions for the protection of Maori interests. In contrast to the Water and Soil Conservation Act 1967, it requires "all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources," to "take into account the principles of the Treaty of Waitangi" (s8). It also recognises that the "relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga" is a matter of "national importance" (s6(c)) and that all persons exercising powers and functions under the Act shall have particular regard to "Kaitiakitanga" (s7(a)), meaning the exercise of guardianship (s2).

Issues in this claim concerning Ngati Pahauwera's rangatiratanga over the lower reaches of the Mohaka river clearly fall within the scope of these three provisions in the Act. So do the "provisions for making water conservation orders that recognise and sustain outstanding amenity or intrinsic values afforded by waters in their natural and other states". Such a water conservation order may provide for the protection of characteristics which any water body has or contributes to, and which are considered to be of outstanding significance in accordance with tikanga Maori (s199(2)(c)). It may also provide for the protection of characteristics which are considered to be outstanding for recreational, historical, spiritual, or cultural purposes (s199(2)(b)(v)).

Public notification of applications for water conservation orders is required to be served on the relevant iwi authorities (s204(c)(iv)).

Had the application for a water conservation order over the Mohaka river been heard under the Resource Management Act 1991, rather than the Water and Soil Conservation Act 1967, the Planning Tribunal would have been obliged to take the Treaty into account and Ngati Pahauwera's relationship with the river would have been relevant. In the event the Planning Tribunal hearing commenced one day before the Resource Managment Act came into effect.

Under the Resource Management Act, local authorities are responsible for the management of river and associated resources and for approving consents for uses in these areas. As noted above, these authorities are required to take into account the Treaty when exercising any functions or powers under the Act. We think that this is appropriate. The Crown is entitled to devolve its duties under the Treaty, through carefully worded legislation, to another authority. Nonetheless, it cannot divest itself of its Treaty obligation actively to protect rangatiratanga over taonga.

The question of whether the Act is consistent with the principles of the Treaty was not argued in detail before us. We therefore express no opinion on that question.

Waitangi Tribunal, Department of Justice, Wellington.

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5.8 Public Works, Gravel Extraction and the Crown Assumption of Control Over the River

5.8. Public Works, Gravel Extraction and the Crown Assumption of Control Over the River

Public works

5.8.1 The transition from Ngati Pahauwera sharing the river with European settlers to losing control over the river was initiated by the building of the first bridge in the Waipapa block by the Wairoa County Council in 1895. Up till then the river crossing had been by ferry. The crossing of the river by the old Mohaka coach road entailed the definition of a legal road on the riverbank. Perhaps because a ferry crossing subject to the vagaries of river conditions was involved, a substantial stretch of the riverbank (approximately 410 metres in length) had been defined as legal road. In 1918 approximately 150 metres of the road along the riverbank was stopped, as part of a series of road alignments through the Waipapa block. It appears that the stopped road was incorporated into the adjoining subdivisions, resulting in Waipapa 5, 6, 7 and 11 gaining a river frontage and Waipapa 4 having its frontage increased (C7:40).

In the 1920s the Department of Public Works began to construct the East Coast railway. Initially it thought that the new roading needed to provide access for railway line construction might also provide a new main route. Furthermore it was suggested that the railway viaduct across the river might serve as a road bridge. But as no date was fixed for the construction of the viaduct this idea was discarded. The Wairoa County Council, by arrangement with the department, undertook to form the road on the north side of the river.

To link this road with the proposed bridge the Public Works Department took a 20 metre length of riverbank frontage in August 1921. The bridge was completed and opened to traffic in December 1922.

In 1926 about 40 metres more of riverbank frontage was taken for the Mohaka viaduct. During 1927-28 test bores for the pier foundations were drilled in the riverbed. Foundation work was completed just before the great depression and the closing down of railway construction. After work commenced in 1936 the viaduct was completed and a goods service between Napier and Wairoa commenced in August 1937 (C7:30).

Before the Public Works Act was amended in 1928 there was no obligation to pay compensation for land taken. In the event compensation for the lengths of river frontage taken in 1921 and 1926 was incorporated into the calculations made when

land was exchanged and consolidated in the 1930s. Mr Alexander was unable to find any record of consultation between the Public Works Department and the Maori owners at the time the land was taken (C7:33).

In 1931 a further 460 metres of riverbank frontage was taken for a road deviation to avoid a double crossing of the railway. Mr Alexander was unable to discover if the compensation provided for in the Public Works Amendment Act 1928 was paid. If not, he was of the opinion that it would have been included in the calculations at the time of consolidation (C7:35).

In 1930 some 134 metres of riverbank frontage was taken to extract gravel downstream from the state highway bridge to form the bed of the railway and the Kotemaori and Raupunga station yards. Compensation of £33 was paid because the 1928 legislation had abolished the right to take land without compensation. Mr Alexander wondered why the department took the land instead of arranging a right of way or lease (C7:35).

As part of a deviation associated with a new bridge over the Mangaturanga stream, approximately 140 metres of state highway 2 fronting the Mohaka river was closed. In December 1961 the Maori Land Court vested the river frontage in the Maori owners of the adjoining land who paid the Crown £10 as compensation (C7:36).

In the 1970s when the Mohaka river road bridge was replaced by the present bridge, additional land (involving approximately 137 metres of riverbank frontage in addition to the 20 metres previously taken) was taken on the northern bank. This land was taken from Mohaka block A31B2. At the same time a portion of the old road (with some 13 metres of riverbank frontage) which had ceased to be used, was closed and vested in the Maori owners of adjoining land (Mohaka block A33B). It appears that this transaction was taken after sufficient agreement had been reached with the owners (C7:34).

Ngati Pahauwera clearly benefited from improvements in road and rail transport and communications. Nevertheless in taking land for these purposes under the Public Works Act and apparently without any negotiations with Ngati Pahauwera, the Crown was ignoring their rights of rangatiratanga.

Gravel extraction

5.8.2 A far more serious threat to Ngati Pahauwera's river rights was the extraction of gravel which appears to have commenced before 1930 (see C7(a):270). The Mohaka river has become the principal source of gravel for the Hawke's Bay, Gisborne and Taupo areas. Access to the riverbed was usually from the north bank, that is the Maori side. Records showing the quantities taken since 1963 are held by the Hawke's Bay Regional Council and show that the total extraction has been increasing.

Shingle has been extracted from ten stretches of the river between its mouth and the Te Hoe river confluence:

Old Coach Road between Waipapa 2B and A19(approx)

Mohaka Hotel Waipapa 92A and A33

Kuru Joe's Mohaka A62B and A65

Wainohu's at Mohaka A23

Adsett's between Mohaka A39 and A42B

Waihapi's Mohaka A34 and A35

Patuwahine at Mohaka B28

Willowflat Rotokakarangu Crown Block

Haliburton's Rotokakarangu Crown Block

Te Hoe Confluence Rotokakarangu Crown Block

(B16; B18(a); C7:50).

We were given very helpful evidence about the extent of gravel extraction by Mr D J McBryde from the Hawke's Bay Regional Council. Mr McBryde produced details of the amount of gravel extracted since 1963. Over this time an average of approximately 32,500 cubic metres has been extracted each year.

Mr McBryde also told us that the royalty payable to his council on such gravel as was not required for central or local government purposes has been adjusted from time to time but has been constant in real terms at approximately $1 per cubic metre in 1992 dollar values.

In answer to our questions Mr McBryde also acknowledged, very fairly, that because only a small percentage of the gravel extracted is used for private purposes and the royalties received by his council are therefore only a few thousand dollars each year, the council would not be materially prejudiced by the loss of the royalty income.

We think it only reasonable that Ngati Pahauwera should be compensated for the loss of gravel from a river which, we have found, was never sold by them to the Crown, and in respect of which they have never relinquished their rights of rangatiratanga. This compensation should be quantified in terms of the amount of gravel extracted since 1963, being the period for which records are available. In addition, gravel should not be extracted from the river in the future without the approval of Ngati Pahauwera. It must be a matter for them whether they are prepared to agree to the continued extraction of gravel and, if so, on what terms.

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5.9 Recreational Activities and the Draft Water Conservation Order

5.9. Recreational Activities and the Draft Water Conservation Order

In 1979, as a result of extensive consultation and as a precursor to the Water and Soil Conservation Amendment Act 1981, the Minister of Works and Development and the Minister for the Environment adopted a set of policies to ensure the protection of rivers or sections of rivers which have outstanding wild, scenic or other natural characteristics. In 1982 a draft of the national inventory of wild and scenic rivers was prepared to give effect to the joint ministerial policy statement. This draft was released for public comment and finalised in 1984.

The Mohaka river from its source to the sea is listed in the National Inventory of Wild and Scenic Rivers (NWASCO 1984) as being of national importance with outstanding scenic and recreational characteristics (B17).

The river offers a wide variety of recreational experiences provided in a diverse landscape. It is accessible from state highways and local roads at some points but very isolated elsewhere.

The upper reaches are a popular starting point for canoeing and rafting trips, with stretches for novices and experts. From just above its confluence with the Waipunga river to Willow Flat, the river is of outstanding value for recreational canoeing. The river is considered to be one of the better whitewater rivers in the North Island, and six commercial companies operate rafting trips of one to two days duration. Parts of the river are also used by a rafting club of 200 to 300 members from the Hawke's Bay area. The lower reaches of the river are used for jetboating, although only on an informal basis.

Its headwaters and middle reaches have been assessed as being one of 23 nationally important recreational angling rivers in New Zealand. It is a nationally important trout fishery.

Swimming represents only a minor use of the river, and river tramping activities are not common in the catchment but are known to occur.

Recreational use has increased markedly since the 1950s. The relative value to recreational users of rivers in New Zealand was surveyed and analysed in 1981. The survey found the Mohaka river of be of "high" but not "exceptional" recreational value along with 93 other New Zealand rivers. The application for a national conservation order in 1987 (see above p 1) was first and foremost sought by recreational users without consultation with Ngati Pahauwera and to forestall any

attempt by Electricorp to site three dams on the lower Mohaka river for hydro-electric development early in the next century (cf C15).

References

1 MS Papers 32 McLean Folder 582; C4(a):121

2 Hamlin to Sec CMS 31 March 1855 at WTU Micro MS Coll 4, reel 52; C4:54

3 Miriam MacGregor, Early Stations of Hawke's Bay (Wellington, 1973)

4 AJHR 1862 C-1, p 314; A5(a)

5 Wairoa Free Press 14 July-19 December 1877; A29:22

6 S D Waters, Richardsons of Napier: A Century of Coastal Shipping 1859-1959, (Richardson and Company Ltd, Napier, 1959)

7 AJHR 1862 E-9; C5(a):770

8 Cross-examination on 12 May 1992

9 ibid

10 ibid

11 James Belich, The New Zealand Wars and the Victorian Interpretation of Racial Conflict (Auckland, 1986) p 303

12 ibid, p 302

13 The Ngai Tahu Report 1991 (Wai 27) (Brooker and Friend, Wellington, 1991) p 236

14 Oral evidence of Ramon Joe, 5 May 1992

15 Kay Mooney History of the County of Hawkes Bay part four, pp 6-94

16 ibid, p 86

17 New Zealand Maori Council v Attorney-General [1987] 1 NZLR 641 at 663

18 Report of the Waitangi Tribunal on the Orakei Claim (Wai 9) p 134 (Waitangi Tribunal Division, 1987) p 134

19 Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim (Wai 22) (Muriwhenua Fishing Report) (Waitangi Tribunal Division, Wellington, 1988) p 232

20 The Ngai Tahu Report 1991 (Wai 27) (Brooker and Friend Ltd, Wellington, 1991

21 For an interpretation of the Maori text we refer to that which appears in I H Kawharu (ed) Waitangi: Maori & Pakeha Perspectives of the Treaty of Waitangi Appendix, pp 319-321

22 Report of the Waitangi Tribunal on the Motunui-Waitara Claim (Wai 6) (Waitangi Tribunal Division, Wellington, 1983) p 51

23 ibid

24 The Ngai Tahu Report 1991 (Wai 27) (Brooker and Friend Ltd, Wellington, 1991) pp 232-233; see also The Ngai Tahu Sea Fisheries Report 1992 (Wai 27), "a form of limited self government" p 100)

25 Ngai Tahu Sea Fisheries Report p 111

26 ibid

27 ibid, p 100

28 Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim (Wai 22) (Waitangi Tribunal Division, Wellington, 1988) p 232

29 Ngai Tahu Sea Fisheries p 269

30 Native Land Court decision on Lake Omapere p 24

31 Ministry for the Environment, "The Resource Management Act, Kia Matiratira, A Guide for Maori" 1991, p 27

Waitangi Tribunal, Department of Justice, Wellington.