

CHAPTER 14

THE NGAI TANE CLAIM (WAI 436)

14.1 INTRODUCTION

Claim Wai 436 was lodged in October 1998 by Wi Te Tau Huata on behalf of the Ngai Tane hapu. It is a cross-claim against the Ngati Pahauwera claim (Wai 119). The lands claimed extend across the inland area of Ngati Pahauwera's claims (map 51). The claimants are described in the statement of claim as 'the whanau and hapu who traditionally had mana whenua over significant portions of the land' extending in a band north from Lake Tutira to Lake Waikaremoana (and including the current Mohaka Forest). The issues concerned are similar to those raised in Wai 119: the Crown purchase of Mohaka in 1851, the loss of the Te Heru o Tureia reserve, the 'confiscation and other wrongful disposition of their lands from 1867 to the present century'.¹

The Wai 436 claim was a challenge to the status of Ngati Pahauwera as the umbrella group to negotiate claims in the Mohaka district. Counsel for Ngati Pahauwera applied to the Tribunal to have the Ngai Tane claim dismissed under section 7 of the Treaty of Waitangi Act 1975 on the ground that it was frivolous, vexatious, or not made in good faith (or that it was a combination of some or all of these). The Tribunal decided it would be necessary to hear the Wai 436 claim before being able to judge whether or not it was vexatious or frivolous. In this chapter, therefore, we consider in some detail the meaning and the use of the name 'Ngati Pahauwera' for both a confederation and a hapu, the events leading up to the lodging of the Wai 436 claim, and the nature of the evidence produced, as well as the responses of other parties, in order to assist in the resolution and settlement of the claims in the Mohaka district.

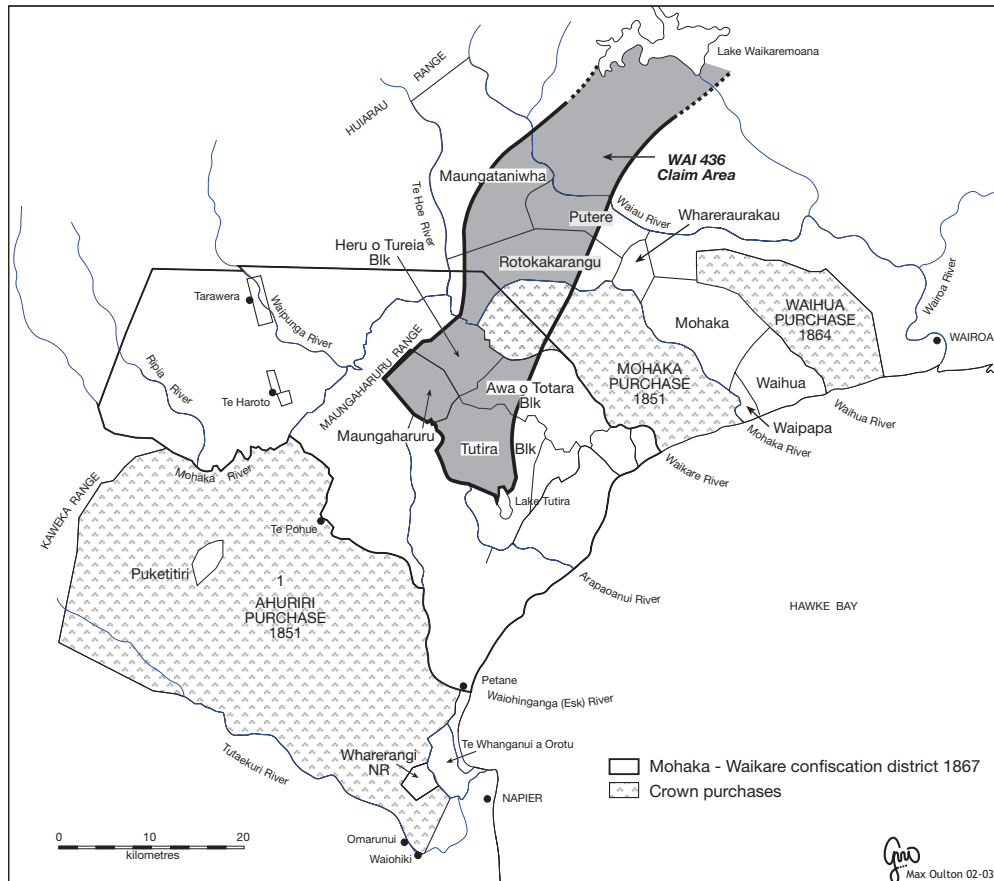
14.2 THE USE OF THE NAME 'NGATI PAHAUWERA'

In this report, we have generally used 'Ngati Pahauwera' to refer to a confederation of hapu associated most particularly with the Mohaka River area. As we related in chapter 11, the name 'Pahauwera' (burnt beard) commemorates the singeing of Te Kahu o Te Rangi's whiskers in about 1824. From that time on, his descendants came to be known as Ngati Pahauwera. Since Paora Rerepu was of this hapu, and was a chief of great authority in the Mohaka area in

1. Claim 1.31(a)

THE MOHAKA KI AHURIRI REPORT

14.2



Map 51: Lands claimed by Ngai Tane

the nineteenth century, the confederation of hapu around him seem also to have increasingly become known as Ngati Pahauwera. However, the notion of Ngati Pahauwera as a single hapu within the confederation has continued to exist amongst those knowledgeable in such matters. Cordry Huata, for example, told the Planning Tribunal in 1991 that the 'hapu of Ngati Pahauwera' he belonged to included 'Ngati Pahauwera'.² For many decades now, the confederation has been known simply as Ngati Pahauwera. David Alexander, the witness before our inquiry who viewed most of the primary historical documents relating to Ngati Pahauwera's lands, said that references to Ngati Pahauwera in the collective sense were already being made during the nineteenth century. The 1903 Mohaka Native Land Court case, he said, 'rejuvenated' the use of the term to apply to a single hapu, but after that it 'faded away again', at least in the written record.³

In 1992, the Mohaka River Tribunal described Ngati Pahauwera as the 'main hapu' of the Mohaka people, with other hapu living or having lived under its mana. Kaumatua Charlie King noted that the other principal hapu within the confederation had included Ngati Kura,

2. Document T56, p 2

3. Transcript 4.23, p18

Ngati Kurahikakawa, Ngati Kapekape, Ngati Paikea, and Ngaiterau. However, he said, ‘Now, when we go anywhere, there is only one hapu, Ngati Pahauwera.’ Cordry Huata described Ngati Pahauwera as an ‘umbrella group’, and explained: ‘Hapu under the umbrella include Ngati Purua, Ngati Paikea, Ngati Tuhemata, Ngati Huki, Ngati Rauiri, Ngati Kaihaere, Ngati Tangopu, Ngati Kapekape, Ngai Taane, Ngati Kura, Ngati Paroa, Ngati Hineku and others.’⁴ During the course of our hearing of Ngati Pahauwera’s evidence in 1997, Ruku Wainohu dated the adoption of ‘Pahauwera’ as a collective name to more recent times. He told us that the loss of so many people in the musket wars of the 1820s, Te Kooti’s raid of 1869, the influenza epidemic of 1918, and two world wars had meant that some hapu had disappeared completely:

This became a great worry to our kaumatua so a move was put into place that all the hapu in our rohe come under the umbrella of Ngati Pahauwera. People like Paul Lemuel, Canon Wi Huata and Ozzie Huata took the initiative and whenever or wherever we travelled we became known as Ngati Pahauwera. This has never been disputed, so today irrespective of which hapu we belonged to in the past, we are now known as Ngati Pahauwera.⁵

There is evidence of the long-standing use of ‘Ngati Pahauwera’ for the wider kin group of confederated hapu, but less certainty about the extent to which the separate hapu names within the Ngati Pahauwera confederation retain particular currency today. We observed enough at our hearing at Mohaka, however, to confirm that ‘Ngati Pahauwera’ is the accepted and well-supported name for the people of that district. However, the compass of this appellation for the confederation was challenged by the Ngai Tane claim.

14.3 REPRESENTATION FOR NGATI PAHAUWERA

After the *Mohaka River Report* was issued in 1992, there was some debate about who were the most appropriate persons to represent of all Ngati Pahauwera in negotiations with the Crown. The matter was referred to the Maori Land Court upon the application of George Hawkins of the Ngati Pahauwera claims negotiating committee pursuant to section 30(1) of the Te Ture Whenua Maori Act 1993. On 13 June 1994, the court, under Judge Ken Hingston, sat at Mohaka.⁶ Specifically, the court was requested to select representatives who, inter alia, would:

- ▶ negotiate the settlement of the Mohaka River claim with the Crown;
- ▶ receive funding from the Waitangi Tribunal, the Crown Forestry Rental Trust, or any other agency; and
- ▶ represent Ngati Pahauwera in any future claims before the Tribunal.

4. See Waitangi Tribunal, *The Mohaka River Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 8

5. Document P6, p 2

6. Wairoa Maori Land Court minute book 92, fols 66–102 (paper 2.295, attachment A)

Over 80 people attended the court sitting. Kathy Ertel and Shaan Stevens appeared as counsel for the Ngati Pahauwera Incorporated Society, George Hawkins represented the negotiating committee (a subcommittee of the incorporated society), and Wi Te Tau Huata represented Te Runanganui o Ngati Pahauwera. Judge Hingston noted that the court had been asked to rule because of ongoing disputes over the mandate of those prosecuting the Mohaka River claim.

Wi Huata's representation of the runanga was immediately disputed by Toro Waaka, and the court adjourned so that the matter could be resolved. But it was not, and Hingston declared that the court was neither in the position nor had the time to decide who represented the runanga, since it was obviously not united. In the circumstances, he said, the runanga could not therefore be accepted as a party in the proceedings. Ms Ertel then suggested a further adjournment so that the parties could meet out of court and come to an agreement. This was acceded to, and, following this meeting, the deputy registrar reported that a majority vote had accepted that the Ngati Pahauwera Incorporated Society was 'the appropriate body to carry out Ngati Pahauwera aspirations'.

However, Hingston pointed out that the membership of the incorporated society could be overturned at an annual general meeting and that it would therefore be wise to have a 'section 30 committee' appointed by the Maori Land Court and comprised of members who did not face the annual hurdle of re-election. Otherwise, the Crown might lose confidence in the negotiators if they were regularly changed. Section 30 of the Te Ture Whenua Maori Act 1993 was designed to give certainty, he said, rather than allow negotiators to be changed 'at the whim of an AGM'. He also noted that the Ngati Pahauwera Incorporated Society's constitutional requirement for a majority of the executive to live locally was at odds with the necessity for the section 30 committee to represent all Ngati Pahauwera people, regardless of where they lived. Wi Huata, for his part, argued for the involvement of Te Runanganui o Ngati Pahauwera in the committee. Later he commented that 'one thing I'm sure Pahauwera can unanimously agree to and that's that the funding should be completed. As far as we're concerned, it doesn't really matter who negotiates as long as you get the resources [from the Crown Forestry Rental Trust]. That is the issue.' In the end, because of the clear preference of the majority for the involvement of the incorporated society, Judge Hingston agreed to the section 30 committee comprising four nominees of the society's executive and four nominees taken from the floor of the meeting.

The incorporated society's four nominees were Tom Gemmell, Kuki Green, Guy Taylor, and Ruku Wainohu. The court then had the task of choosing four nominees from the floor, and a number of names were put forward. Wi Huata and Rana (Ranapia) Huata (of the Wai 436 claimant group) were also nominated from the floor, but they declined to be considered. The court first sought an assurance from the incorporated society that it could work with all of the nominees. This affirmation was given by Ms Ertel. The court then decided the other four members – George Hawkins, Toro Waaka, Reay Paku, and Charlie Hirini (the latter as

a kaumatua member) – and ordered the eight names to be registered as representatives of Ngati Pahauwera under section 30(1) of the Te Ture Whenua Maori Act.

14.4 THE FILING OF THE WAI 436 CLAIM

The Wai 436 claim, written on Te Runanganui o Ngati Pahauwera letterhead, was lodged with the Tribunal by Wi Huata on 16 June 1994, three days after the section 30 hearing in Mohaka.⁷ The claim was made on behalf of Mr Huata's 'whanau and hapu Ngai Tane' and had specific regard to the area of land encompassing the Mohaka Forest. Mr Huata stated that 'this claim is a cross claim to the Ngaati Pahauwera Incorporated Societies [*sic*] current claim. But because the mana of Ngai Tane uri and hapu has been takahi'ed [trampled on] we the people of Ngai Tane must look after itself.' While the exact meaning of Mr Huata's words is unclear, they could be interpreted as indicating that he had a grievance against the incorporated society on behalf of Ngai Tane. Given the timing of the filing of Mr Huata's claim, it seems logical to infer that it arose out of his dissatisfaction with the Maori Land Court proceedings and the appointment of the section 30 committee.

In directing that the claim be registered, the Tribunal chairperson noted that it was a 'cross-claim to that already registered with the tribunal by the Ngati Pahauwera Incorporated Society [ie, Wai 119]'.⁸

14.5 THE PATH TO HEARING THE WAI 436 CLAIM

The Wai 436 claim was subsequently included in the Mohaka ki Ahuriri district inquiry. Tribunal staff met with Mr Huata on 21 November 1996 to ascertain what involvement he wished to have in the forthcoming hearings, particularly given the impending hearing of the Wai 119 claim.⁹ According to the record of the meeting made by Tribunal staff, Mr Huata sought a Tribunal-facilitated or Tribunal-endorsed meeting of Wai 119 and Wai 436 representatives to try to gain an assurance from the section 30 representatives that the interests of Ngai Tane would be protected. If that assurance were forthcoming, Mr Huata said, then he would withdraw his claim. If it were not, Mr Huata advised that he would reserve the option of pursuing his interests at a later date. Tribunal staff informed Mr Huata that he would have the opportunity to be heard.¹⁰ Tribunal staff then wrote to him on 22 January 1997 stating that

7. Claim 1.31

8. Paper 2.113

9. This hearing was originally due to take place in March (and then April) 1997, but did not in fact take place until November 1997.

10. Georgina Roberts to Judge Isaac, 25 November 1996, Waitangi Tribunal file Wai 436/0

the Mohaka ki Ahuriri presiding officer (Judge Isaac) was favourable to the idea of facilitating or endorsing a meeting of the representatives for the two claims.¹¹

Judge Isaac wrote to counsel for Wai 119 on 7 February 1997:

Mr Huata's main concern is that the interests of Ngai Tane, on whose behalf he has made the claim, are represented.

As the Wai 119 claim is due to be heard in April this year, the Tribunal wishes to obtain from your clients an assurance that the Ngati Pahauwera Section 30 representatives will represent the interests of all hapu under Ngati Pahauwera. If this assurance can be given, then we have been advised by Mr Huata that the Wai 436 claim would be withdrawn.¹²

On 14 February 1997, before the Tribunal received a reply to this request, a letter was received from Mr Huata disputing the record of the 21 November 1996 meeting made by Tribunal staff. Mr Huata denied that he had said the claim would be withdrawn 'if the Section 30 Committee in Mohaka were prepared to also represent Ngai Tane'. He maintained that he had suggested only that a Tribunal-facilitated meeting take place:

Ngai Tane's view is that the evidence and research that has been done to date, which will be used by the Section 30 Ngaati Pahauwera Committee (while we agree with most of what's been written and compiled) it is not evidence relevant to all the hapu of Ngaati Pahauwera.¹³

In a subsequent letter to the Tribunal on 3 March, Mr Huata reiterated that a meeting facilitated by Judge Isaac was required and that 'until that happens under no circumstances will Ngai Tane be withdrawing its claim'.¹⁴

In the meantime, however, the Ngati Pahauwera Section 30 Representatives Co-Operative Society Limited had received Judge Isaac's letter of 7 February and, on 26 March, Guy Taylor advised the Tribunal that the section 30 committee members represented 'the interests of all hapu that come under the umbrella of Ngati Pahauwera whanau/hapu. We assure the Tribunal that Ngai Taane, being one of those hapu, will be represented by our group at the hearing of Claim Wai 119'.¹⁵

A judicial conference was held on 7 April 1997, two weeks prior to the scheduled 21 April start of the Wai 119 hearing (the hearing was subsequently deferred until later in the year). Matters remained sufficiently open after the conference for the Tribunal to direct on 9 April: 'Claimants for Wai 436 are to discuss further whether they wish to be heard as part of the Wai 119 claim, or whether they will be heard separately'.¹⁶ No response was received, and staff

11. Georgina Roberts to Wi Huata, 22 January 1997, Waitangi Tribunal file Wai 436/o

12. Judge Isaac to Grant Powell, 7 February 1997 (doc 2.295, attachment)

13. Wi Huata to Georgina Roberts, undated, Waitangi Tribunal file Wai 436/o

14. Wi Huata to Morris Te W Love, Tribunal Director, 3 March 1997, Waitangi Tribunal file Wai 436/o

15. Guy Taylor, secretary, Ngati Pahauwera Section 30 Representatives Co Operative Society Limited, to LG Powell, 26 March 1997. This letter was forwarded to the Tribunal on 3 April 1997 by counsel for Wai 119. LG Powell to registrar, Waitangi Tribunal, 3 April 1997 (doc 2.295, attachments).

16. Paper 2.212

followed the matter up with a further query to Mr Huata on 7 July.¹⁷ But Mr Huata did not reply to this letter either, so staff wrote again on 3 December, noting that the original direction had asked whether Mr Huata wished Wai 436 to be heard as part of the Wai 119 claim. Since the Wai 119 claim had been heard in November 1997, staff noted that any hearing of Wai 436 would have to be separate. Mr Huata was advised that, if no response to the letter were received, 'the Tribunal will consider your claim on the information it has before it'.¹⁸ The Tribunal took this position because the hearing of claimant evidence was drawing to a close, and it wished to proceed to hear the case for the Crown.

Again, Mr Huata did not reply to the Tribunal's letter. Rather than close off the possibility of the Wai 436 claim being heard, however, and since there had been delays in the completion of other claimant evidence, on 28 April 1998 staff once more wrote to Mr Huata seeking confirmation that he wished to proceed to a hearing. Mr Huata finally responded on 4 May 1998, this time on 'Te Runanga o Ngai Tane' letterhead. He advised that he had not responded up until that time since Ngai Tane had not been in a position to present their case owing to a lack of research funding. 'It is certainly our desire to take our own claim to the Waitangi Tribunal. It is certainly our desire to research our own claim. We are certainly keen to get help from you to get funding to research our claim.' He added that 'It should be noted that while we are today all known as Pahauwera and are descended from the eponymous [*sic*] ancestor Te Kahu o Te Rangi during the pre war days and certainly up to about the 1970's we were known by our hapu like Ngai Tane'.¹⁹ In another letter dated 19 May 1998, Mr Huata said that he hoped that the Tribunal would help the Wai 436 claimants obtain funding from the Crown Forestry Rental Trust, something they had up to then been unable to do.²⁰

On 15 June 1998, the Tribunal made a formal offer to Mr Huata of research funding for the Wai 436 claim. It was stated that the research commission on offer would provide a report that:

1. Identifies the hapu Ngai Taane, and comments on its relationship with other hapu/iwi groups;
2. Describes Ngai Taane's occupation of the Maungataniwha and Crown-purchased Mohaka block area; [and]
3. Provides oral testimony from members of Ngai Taane about their knowledge of living in the Maungataniwha and Mohaka Forest area.²¹

At a conference on 26 June, Mr Huata indicated that he would be ready to proceed to hearing by October. He was directed by Judge Isaac to appoint counsel within two weeks and to

17. Dean Cowie to Wi Huata, 7 July 1997, Waitangi Tribunal file Wai 436/o

18. Dean Cowie to Wi Huata, 3 December 1997, Waitangi Tribunal file Wai 436/o

19. Wi Huata to Dean Cowie, 4 May 1998, Waitangi Tribunal file Wai 436/o

20. Wi Huata to Dean Cowie, 19 May 1998, Waitangi Tribunal file Wai 436/o. Since the trust had put significant resources into funding the Ngati Pahauwera claim, it was presumably not in a position to fund counter-claimants such as Ngai Tane.

21. Dean Cowie to Wi Huata, 15 June 1998, Waitangi Tribunal file Wai 436/o

amend his statement of claim. For his part, counsel for Wai 119, Mr Powell, stated that he would be assessing whether the Wai 436 claim was covered by the section 30 order.²² On 19 August, the Tribunal received notification from Carrie Wainwright that she had just been instructed to act for Ngai Tane. Counsel informed the Tribunal that an amended statement of claim would shortly be forthcoming and that an attempt would be made to have the claim ready for a November 1998 hearing. Further, counsel said that she had been instructed that Ngai Tane was ‘not a hapu of Ngati Pahauwera, and that Ngai Taane’s founding ancestor was senior to, and not junior to, the founding ancestor of Ngati Pahauwera’. She added that Ngai Tane was not, therefore, included in the Maori Land Court’s section 30 order.²³

On 1 September, the Tribunal commissioned Dr Richard Hill to complete a research report for the claimants reviewing the historical evidence relevant to Ngai Tane’s claims.²⁴ The deadline for this project was 30 September, although this was later extended to 7 October.²⁵ In conjunction with this work, on 17 September the Tribunal commissioned Maria Mareroa (who had been nominated by the Wai 436 claimants) to ‘develop a methodology for collecting oral historical information from Ngai Tane informants’, and to conduct, transcribe, and analyse interviews with Ngai Tane informants.²⁶

14.6 THE WAI 119 REQUEST FOR A TRIBUNAL RULING

The issue of the section 30 committee’s representation of the Wai 436 claimants was placed on the agenda for a conference planned to precede the November 1998 hearing. In a written submission to that conference, counsel for Wai 119, Mr Powell, argued that the Tribunal should exercise its discretion under section 7 of the Treaty of Waitangi Act 1975 not to inquire further into the Wai 436 claim on the grounds that the claim was frivolous, vexatious, or not made in good faith. Furthermore, counsel added that, by participating in the Wai 119 claim, an adequate remedy was available for the redress of the Wai 436 claim. Alternatively, he said, if Mr Huata was unhappy with the composition of the section 30 committee, he could avail himself of processes under the Te Ture Whenua Maori Act 1993.²⁷

Mr Powell also stated that Mr Huata took full part in the 1994 section 30 hearing and did not appeal the judge’s decision as to the committee’s membership. In the absence of compelling reasons to the contrary, he said, ‘the section 30 order is determinative of the representatives of Ngati Pahauwera for Waitangi Tribunal claims within the rohe of Ngati Pahauwera

22. Paper 2.280

23. Paper 2.289

24. Direction 3.38

25. Direction 3.41

26. Direction 3.42

27. Paper 2.295, p 2

including Ngai Tane'. He said that, at the 7 April 1997 conference, Mr Huata had indicated that he wished his claim to be heard as part of Wai 119:

as long as he had representation of his choice within the Wai 119 claim, received funding from Wai 119 and was allowed to make decisions affecting Wai 119. Mr Huata took exception to the section 30 order but otherwise saw Ngai Tane as part of Ngati Pahauwera.

Mr Powell argued that Mr Huata did not advance any claim that Ngai Tane was distinct from Ngati Pahauwera at the 26 June 1998 judicial conference, and it was not until he had instructed counsel in August 1998 that this claim was made.²⁸

In her submissions, counsel for Wai 436, Ms Wainwright, reiterated that Ngai Tane were not a hapu of Ngati Pahauwera and therefore not covered by the section 30 order. She said she would adduce evidence establishing:

the separate identity and seniority of the Ngai Tane line. This will show that in no sense can Ngai Tane properly be described as a hapu of Ngati Pahauwera. This is not to deny that Ngai Tane and Ngati Pahauwera have in many respects similar aspirations for their claims against the Crown, nor that their pasts have in many respects been interrelated.²⁹

In directions following the conference, Judge Isaac ruled: 'To enable the Tribunal to fully consider the matters raised by Wai 436 and Wai 119 counsel, the Tribunal will need to hear all evidence and submissions in support of and in opposition to the Wai 436 claim.' The Tribunal thus deferred commenting on the compass of the section 30 order or making a ruling pursuant to section 7 of the Treaty of Waitangi Act until after the November hearing of Wai 436, at which the Wai 119 claimants were to be given the opportunity to respond. Counsel for Wai 436 was directed to file an amended statement of claim forthwith.³⁰

14.7 THE WAI 436 AMENDED STATEMENT OF CLAIM

The Wai 436 amended statement of claim was received by the Tribunal on 23 October 1998. In it, the claimants alleged that:

- ▶ Ngai Tane held 'mana whenua' over various lands, including that portion of the 1851 Mohaka purchase today comprising the Mohaka Forest.
- ▶ Crown officials treated primarily with Paora Rerepu for the purchase of the Mohaka block, despite him having no rangatiratanga over those areas belonging to Ngai Tane.
- ▶ Ngai Tane did not consent to the sale of the Mohaka block, as evidenced by their on-going use of it in the years that followed.

28. Paper 2.295, pp 3–5

29. Paper 2.296

30. Paper 2.298

14.8

- ▶ In due course, Pakeha occupation of the surrounding areas increasingly caused Ngai Tane to be confined to the Te Heru a Tureia reserve, which was itself soon purchased by the Crown without any consultation with Ngai Tane.
- ▶ Overall, the Crown failed to identify the correct owners from whom to purchase land and failed to ensure that those owners were paid.

The claimants sought recommendations from the Tribunal for the return of Crown forests and State-owned enterprise land, along with other forms of compensation.³¹

14.8 THE HEARING OF THE NGAI TANE CLAIM

The Ngai Tane claim was heard in Napier from 16 to 18 November 1998. At the outset, Ms Wainwright submitted that the Tribunal should immediately exercise its discretion to rule under section 7, otherwise it would be too late. The power to rule under that section, she said, was ‘the Tribunal equivalent of strike-out proceedings in the Courts, and this is a matter which is inherently an issue to be decided *before* a claim proceeds. Once a claim has been heard, the Tribunal has already inquired into it.’ (Emphasis in original.)³² Mr Powell disagreed, responding that such submissions should properly have been raised at the judicial conference preceding the hearing. He submitted that the Tribunal should maintain the course it stated in its 23 October direction of hearing the evidence and making its ruling on the section 7 matter thereafter. The Tribunal agreed with Mr Powell and proceeded to hear the evidence in accordance with its intended course.

The evidence for the Ngai Tane claimants was of two kinds: traditional and historical perspectives, with a focus on whakapapa, and contemporary perspectives of Ngai Tane as a hapu group. We review each of these in turn.

14.8.1 Traditional and historical perspectives

Cordry Huata’s brief of evidence provided the fundamental basis for Ngai Tane’s claims for a status separate from Ngati Pahauwera. Cordry (as we shall call him to distinguish him from his brother Wi) professed expertise in whakapapa. He stated that Ngai Tane descend from Kotore, whose descent was on ‘the senior line from Kahungunu’. ‘Kotore’, he explained, meant ‘vagina’, and Kotore had been so-named because he had once been spared death as a child through his mother ‘concealing his maleness’. His descendants were known as Ngai Tane to emphasise that he had indeed been a man.³³ Cordry also explained that the principal

31. Claim 1.31(a)

32. Document T33, p8

33. Document T29, p3

source of his information was the whakapapa book handed down to him that had been compiled by Hemi Huata, his great grandfather.

Cordry said Kahu o Te Rangi was a great-grandchild of Kotore. Thus, 'Ngai Tane cannot be seen in any sense to be "under" Ngati Pahauwera, because the parent cannot come under the child.' Kahu o Te Rangi's descent from Kahungunu, he said, was on a teina (younger sibling or cousin) line, while Kotore's was on a tuakana (elder) line. Today, he related, 'as events have unfolded . . . Pahauwera has come to be treated as the senior line. I believe this came about because Kahu o te Rangi was the man of his day.'³⁴ Cordry said that 'Pahauwera' was used to describe a tribal grouping rather than one single hapu as early as the 1840s and 1850s. The double meaning of 'Pahauwera', he said, carried right through until the 1960s. After that, however, the 'other groupings have tended to give way to the influence of Ngati Pahauwera in Mohaka'.³⁵ Today, he said, 'many people probably don't know that they are Ngai Tane'.³⁶

Cordry described Ngai Tane as an inland people who travelled through the mountains from Tutira to Maungaharuru, and on to Waikaremoana, but 'would not have had exclusive rights' to such a large area, although their influence would have been stronger in some areas.³⁷ He said that Ngai Tane had a 'major landholding' in the 1851 Mohaka purchase area and were left landless after the transaction. He contrasted their situation with Ngati Pahauwera, who he said retained land. 'This is because', he claimed, 'those who were encouraging the sale of land ended up being looked after by the Crown.'³⁸ Cordry then related that Ngai Tane became confined to the Te Heru a Tureia reserve but that the reserve was in turn sold by the 'people at Mohaka'. As a result, some Ngai Tane joined with Te Kooti in his attack on Mohaka in 1869 in order to 'exact utu against Paora Rerepu' and the other sellers of the land:

This and other incidents in which Ngai Tane people were involved along with Te Kooti led to their having land confiscated in the area south of the Waikare. That was ancestral land in which Ngai Tane had a substantial interest. As enemies of the government, they stood to lose everything, and substantially that is what happened.

As 'friendlies', Ngati Pahauwera gained in power and influence. This was to the detriment of other groups, including Ngai Tane.³⁹

Cordry was closely cross-examined by Mr Powell, who referred to Cordry's statements to the Planning Tribunal in 1991 and the Mohaka River Tribunal in 1992 that he was Ngati Pahauwera, and that Ngai Tane were a hapu of Ngati Pahauwera. Cordry said he had not been

34. Ibid, p 4

35. Ibid, pp 7-8

36. Ibid, p 12

37. Ibid, p 8

38. Ibid, pp 10-11

39. Ibid, pp 11-12

happy with writing that, since 'Ngai Tane has a separate identity'. He reiterated that Ngai Tane were in fact a distinct group, and senior in whakapapa terms to Ngati Pahauwera. Mr Powell asked, since all the section 30 representatives could whakapapa to Kotore, whether that made them in fact Ngai Tane rather than Ngati Pahauwera. Cordry said that it did, and that it was 'not my problem' if they had not heard of Ngai Tane. Mr Powell then put it to Cordry that Ngati Pahauwera witnesses would assert that Huata whanau members who had now passed away, such as Canon Wi Huata, Ozzie Huata, and Hemi Huata, had never publicly described themselves as Ngai Tane. Cordry said that that may have been so, but neither had they denied that they were Ngai Tane.⁴⁰

With respect to Te Kooti's raid on Mohaka, Mr Powell asked why the published sources such as Judith Binney's study were silent on any involvement by Ngai Tane. Cordry said that he did not know. Cordry specified that members of the Huata family were not involved in the attack on Te Huki Pa but that some Ngai Tane definitely were. On further questioning, Cordry agreed with Mr Powell that 'basically it was Ngai Tane attacking Ngai Tane', explaining that 'we ate ourselves'. Mr Powell put it to Cordry that it was odd that no one told Ngati Pahauwera that there were Ngai Tane involved, since, as Cordry had earlier explained, Ngai Tane were avenging Ngati Pahauwera's selling of their land. Cordry had no explanation for this.

Tribunal members also questioned Cordry Huata and pointed out that the Mohaka-Waikare district could not have been confiscated in response to the support shown for Te Kooti in 1869, since the confiscation was proclaimed in 1867. The Tribunal also pointed to the error in his evidence that the Te Heru o Tureia reserve was sold in 1868 (and thus motivated Ngai Tane's participation in Te Kooti's raid the following year). The reserve was actually sold to the Crown a decade earlier, in 1859. In response to further Tribunal questions, and on a different matter, Cordry agreed to our suggestion that Ngai Tane and Ngati Pahauwera might be able to resolve their differences through discussions. Cordry responded: 'We should not be fighting each other; we are up against the Crown.'⁴¹

In his evidence, Hill stated that he had experienced some difficulty in carrying out the terms of his commission from the Tribunal. The commission's timeframe was:

premised on the possibility of the existence of a significant body of documented information, regarding both Ngai Tane's tribal history and its relationship with the Crown, in previous research generated by Waitangi Tribunal processes and in the tribal memory. While these are not unreasonable assumptions, an extensive search of research reports and other records, and an examination of whakapapa evidence to hand from the claimants, has proven them incorrect.

40. Cross-examination of Cordry Huata by Grant Powell, ninth hearing, 16 November 1998, tape 4

41. Ibid, tape 5

In other words, Hill could find little or no mention of Ngai Tane in either historical reports and documents or recorded oral tradition. In the circumstances, he explained, some of his report was 'of necessity speculative reconstruction'.⁴² In conclusion, Hill stated:

given our lacuna of written documentation on Ngai Tane, our quest for the history of post-Treaty Ngai Tane might well need to come primarily from within the hapu itself . . .

Mr [Cordry] Huata acknowledges that the history of his own hapu has been so subsumed by that of Pahauwera and other groupings that people with 'specialised knowledge' (including the Huatas, who 'have been brought up with it') tend to be the only ones who 'know much about Ngai Tane'.⁴³

Despite these concerns, Hill did in fact make frequent historical mention of Ngai Tane in his report. His sources for such references were the subject of some scrutiny from counsel. In his preface, Hill explained that he had often 'block footnoted' references to reflect the way in which many of his statements were 'based on composited impressions from the referenced works and other general readings'.⁴⁴ In other words, his footnotes would often relate to the information contained in a number of paragraphs and would refer to a range of sources without specifying which statements had relied on which sources. Frequently listed among the sources was 'information from Huata/Wainwright/Taylor', which Hill explained referred to conversations he had held with Cordry Huata and senior and junior counsel acting for the Ngai Tane claimants. Indeed, almost all of the specific information in his report, he conceded, came from Huata family sources. He acknowledged his particular reliance upon Cordry Huata for information, agreeing under questioning from Mr Powell, for example, that his references to 'recent tribal memory', 'the tribal genealogist', 'the whakapapa expert', 'Ngai Tane testimony', and so on, were mainly to Cordry Huata, whose main source was Hemi Huata's whakapapa book.⁴⁵

Hill was questioned by Crown counsel as to whether the absence of references to Ngai Tane in historical works – such as Mitchell's *Takitimu*, Lambert's *Old Wairoa*, Guthrie-Smith's *Tutira*, and Binney's *Redemption Songs* – meant that Ngai Tane were probably not present in the nineteenth century. In reply, he was equivocal, saying that it was 'not totally insignificant'. He added, however, that it was not unusual for tribal names to emerge, disappear, and then re-emerge in the historical record. Crown counsel suggested that he had been able to locate only a reference or two to Ngai Tane. In Dr Angela Ballara's *Iwi*, for example, the author cited proceedings of the Native Land Court in 1877 at Makaraka, near Gisborne, which related to another group known as Ngai Tane well outside the Mohaka ki Ahuriri inquiry boundary.⁴⁶

42. Document T14, p 2

43. Ibid, p 44

44. Ibid, p 2

45. Cross-examination of Richard Hill by Grant Powell, ninth hearing, 16 November 1998, tape 3

46. Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), p 163

14.8.2

But Hill thought that these references could indeed have been to Huata's Ngai Tane, since the hapu was 'peripatetic'.⁴⁷

In this and other statements, it was clear that Hill had chosen to present a speculative view of Ngai Tane's history, as he himself acknowledged. At all times, however, he was careful to ascribe unsubstantiated scenarios to the Ngai Tane perspective, which had recently been imparted to him by the claimants. His report and summary were characterised by phrases such as 'Ngai Tane may have been', 'It is quite possible that', 'probably including Ngai Tane', and so on. Because of this vagueness, and the absence of any solid, corroborative account of Ngai Tane's existence as a distinct entity in the nineteenth century, the questions were left open. Hill acknowledged that he had not provided any answers and described his results as 'preliminary and provisional'.⁴⁸ In conclusion, Hill suggested that an exhaustive search of National Archives files, local newspapers, and Native Land Court minute books might yield something more concrete, but he added that such an outcome was 'possible rather than probable'.

14.8.2 Contemporary perspectives of Ngai Tane

(1) Oral history interview project

As noted above, Maria Mareroa was commissioned at the request of the claimants to conduct oral history interviews with members of Ngai Tane, to transcribe the interviews, and to analyse the 'priority topics' that became apparent. In her report, she stated that the 'principal theme running through the oral data . . . is the recognition of Ngai Tane as an autonomous group'. The interviewees' vision for the outcome of their claim, she said, was 'the ability for Ngai Tane to exercise mana over their resources, and to be recognised as tangata whenua within their rohe'.⁴⁹ She related Ngai Tane's view of their senior status in whakapapa terms to Ngati Pahauwera, their mana over their tribal lands, the rift between them and Ngati Pahauwera (a rift born of the Ngati Pahauwera land sales to the Crown in the 1850s), and the socio-economic effects that landlessness had had on the hapu.

It seems to us that, rather than dispassionately step back and analyse the statements made to her, Mareroa tended in her report to accept at face value selected assertions of the interviewees, without employing any of the caution shown by Hill. She accepted the view that Ngati Pahauwera had 'usurped' Ngai Tane's status as 'tuakana' (older sibling or cousin) and had sold Ngai Tane land to the Crown without consultation. She also accepted Derek Huata's assertion that Ngai Tane joined with Te Kooti in raiding Mohaka as a result of Ngati Pahauwera's land sales (Derek Huata's evidence is reviewed below).⁵⁰ Her advocacy for the Wai 436

47. Cross-examination of Richard Hill by Craig Linkhorn and Fergus Sinclair, ninth hearing, 16 November 1998, tape 2

48. Document T14, p 2

49. Document T18, p 1

50. Ibid, p 9

case is made clear in comments such as Ngai Tane having ‘usually managed to triumph over adversity’.⁵¹ She did not mention that many of the interviewees knew very little of Ngai Tane but were willing to support the claim because of their personal support for the main claimants. Also, she did not touch upon the fact that a number of the interviewees in their transcripts expressed allegiance to Ngati Pahauwera or even support for the section 30 committee. Several of those who voiced concerns about the committee seemed to do so on the basis that it needed only to be made more representative of all the hapu of Ngati Pahauwera.

Mareroa’s report was objected to at the outset by counsel for both Wai 119 and the Crown on the ground that her ‘analysis’ amounted to little more than the paraphrased assertions of her interviewees. In the circumstances, said Mr Powell, the weight placed on Mareroa’s analysis would have to be less than that placed on the actual transcribed statements of the informants. Fergus Sinclair, for the Crown, agreed and noted furthermore that an incomplete set of transcripts of the interviews had only just been received.

Under cross-examination and in the fullness of the inquiry, Mareroa acknowledged that:

- ▶ The Ngai Tane claimants had drawn up the list of persons for her to interview.
- ▶ The transcripts in some cases doubled as the briefs of evidence presented to the Tribunal by Ngai Tane witnesses and counsel for Ngai Tane had been present during a number of the interviews.
- ▶ At the sessions where counsel was present (namely, those of Maraea Aranui, Rana Huata, Cordry Huata, and Te Hira Huata), counsel had in fact led the interviewing, and recorded and edited what the informants said, reading back the resulting text for the interviewees to confirm. In these cases, the interview texts were not transcripts but agreed statements.⁵²
- ▶ Counsel was also present at several of the pre-interview briefings, as was Wi Huata. These sessions were effectively designed to coach the interviewees on the intended focus of the interviews.
- ▶ Although the transcripts were largely verbatim, the grammar had been changed in places for the sake of sense.
- ▶ The transcripts did not contain her own questions, so it was not clear when an interviewee was prompted by a question.
- ▶ In order to save money, most of the recordings of the interviews had been taped over for subsequent interviews.
- ▶ She was not present during the interview of Neville Baker, and the ‘transcript’ of this interview was in fact a ‘*précis*’, not a proper transcript.
- ▶ She had personal connections to the Wai 436 claimants through a long-term business partnership with the named claimant’s wife.⁵³

51. Ibid, p12

52. Document T18(g), p1

53. Cross-examination of Maria Mareroa, ninth hearing, 17 November 1998, tape 6

14.8.2(2)

In sum, as an independent analysis of oral testimony, the report had significant shortcomings, not the least being its methodological weaknesses. In Mareroa's favour, we can say that she was not helped by the small amount of historical information that was provided by the interviewees, most of whose comments were focused on contemporary matters. As she acknowledged in her introduction, 'The essential historical and whakapapa knowledge came from Cordry Tawa Huata.'⁵⁴

Mareroa was directed to file with the Tribunal the missing transcript of her interview with Tom Spooner junior, the surviving audio tapes of her interviews, and her notes of those interviews for which tapes were no longer available.⁵⁵ She duly filed the additional material in December 1998, along with some of her own summary comments about the interviews that had not previously been presented. We now review each statement or interview transcript, and in doing so we note that most of the interviewees were closely related to the named claimant, Wi Huata.

(2) Mareroa's interviewees who did not appear in person

Roger Aranui said in the transcript of his interview with Mareroa that he was both Ngai Tane and Ngati Pahauwera, and the nephew of Maraea Aranui's late husband, Ariel Aranui. At the outset, he made two comments:

1. We support the section 30 committee, as they were duly elected at a hui a iwi.
2. I do not have a great knowledge of the hapu Ngai Tane, however I do know that we have links to it.

Mr Aranui supported the Wai 436 claim, he said, 'so that more knowledge can come forward about Ngai Tane'. He did not know his Ngai Tane whakapapa, he said, but despite this, he thought it important that 'the mana of Ngai Tane be recognised and that the Crown does not reinforce our assimilation into Pahauwera. . . . some factions of Pahauwera would like not to recognise this mana'.⁵⁶

In her notes, Mareroa commented that Mr Aranui did not see the recognition of Ngai Tane as challenging Ngati Pahauwera in any way. She added the, in our view, somewhat subjective comment that the fact that the Aranui whanau had 'little knowledge' of their Ngai Tane whakapapa and rohe was 'unimportant', since 'the mana from their whakapapa links supersedes this'.⁵⁷ We note that Mr Aranui accepted his nomination for membership of the section 30 committee at the June 1994 hearing but that he was not appointed.

Neville Baker, a former Maori Trustee, was interviewed in Wellington by Hinemoa Awatere, who made a 'précis' of the interview. He was asked, generally, why hapu chose to

54. Document T18, p1

55. Paper 2.310

56. Document T18(g), p4

57. Ibid, p5

collectivise under various confederations and, specifically, about the views that the late Te Okanga (Ozzie) Huata and Canon Wi Huata had about ‘umbrella set-ups’ such as Ngati Pahauwera in Mohaka. Probably because Mareroa was not conducting the interview, Mr Baker’s answers were not focused on the issues set out in her research commission. He spoke of the three sub-districts that the Department of Maori Affairs broke Ngati Kahungunu into for administrative purposes and discussed the operation of whanau trusts. He did not mention Ngati Pahauwera. With respect to Te Okanga and Canon Wi, he merely said that they ‘ensured their turangawaewae was clearly identified and recognised’ and that the Huata family ‘strongly supported the retention of hapu and whanau lands in the area’.⁵⁸ There was no mention of Ngai Tane in this statement.

Derek Huata began his interview by describing Ngai Tane as part of Ngati Pahauwera, but then he abruptly changed tack and made statements such as ‘We are as different from them as Tainui is from Ngati Porou’. He described Ngati Pahauwera (or, alternatively, the ‘other families’ or the ‘other side’) as ‘devious’, ‘opportunists’, and liars. The views expressed in the rest of the lengthy transcript of his interview can be summarised as follows:

- ▶ He, Cordry Huata, and his uncle, Ariel Aranui, were the driving force behind Ngati Pahauwera’s opposition to the proposed water conservation order over the Mohaka River. His uncle was not supported in this by other Ngati Pahauwera, both because they were not concerned about the situation and because his uncle was Ngai Tane.
- ▶ The opposition to Ariel Aranui because he was Ngai Tane stemmed from the fact that Ngai Tane had joined with Te Kooti to attack Te Huki Pa (although this reason was never openly discussed). Ngai Tane had done this because they saw the people at Te Huki as ‘traitors’ who had sold Ngai Tane land. The incorporated society and the section 30 committee are descendants of the land-sellers.
- ▶ Ngai Tane have ‘two enemies’ – the Crown and ‘the hapu of Ngati Pahauwera’.⁵⁹

Paraire Huata, the eldest son of the late Canon Wi Huata, told Mareroa that he was backing the Wai 436 claim to support Wi Huata because of the assistance that Wi had given him in the past. He seemed surprised by the claim, however, saying, ‘Now Wi always comes up with angles that absolutely surprise me, I didn’t even know about Ngai Tane in that sense.’ Overall, he seemed to have no particularly strong views about Ngai Tane.⁶⁰

Tama Huata, the younger brother of Paraire Huata, gave roughly half of his comments in his interview in Maori. Apart for one small section, these were not translated in the transcript. In the one part that was translated, Mareroa reported Tama Huata to have said that Te Okanga and Canon Wi felt that Ngai Tane should align with Ngati Pahauwera, ‘even though Ngai Tane was the tuakana’.⁶¹

58. Ibid, p7

59. Ibid, pp 8–17

60. Ibid, pp 26–27

61. Document T18, p 8

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We have to disagree with this translation. At no point in the Maori transcript of the interview is there mention of Ngai Tane or the word 'tuakana'. The relevant passage Mareroa translated is:

Ko te mea nui ki ahau mo tenei kaupapa kia whakawhaiti mai na whakaro me te hau oranga mo te hapu, te hapu kei roto i te poho o Ngati Pahauwera. No te mea, na te amorangi o Wi Te Tau, na Te Okanga. I whawhai raua ia nga wa katoa. Ko te whakahuia pai te hapu, te whanau, te iwi. Otira, ko te tirohanga mo Te Okanga raua ko taku Papa kia whakapiri mai kei raro i te mahu o Ngati Pahauwera.⁶²

This section was later translated for us by Piripi Walker:

The main priority in my view on this matter was to concentrate the focus on the well-being of the hapu, as a part of Ngati Pahauwera. Because my father Wi Te Tau and Te Okanga fought for this often, to unify the family, the hapu and the iwi. And at the same time Te Okanga and my father sought to remain united as a family under the auspices with Ngati Pahauwera.

Mr Walker believed that the transcription of the word 'mahu' (healed), should probably be 'maru' (auspices).

Speaking in English, Tama Huata told Mareroa that Ngai Tane should be 'given their recognition' under the Ngati Pahauwera umbrella. He said that 'whoever the section 30 [committee] is, they have to be broad enough to represent everybody and they have to be together'.⁶³

Tom Spooner junior was the brother of Maraea Aranui. Their father, Tom Spooner senior, had died two months before the Ngai Tane hearing. Mr Spooner junior told Mareroa that 'We were brought up as Pahauwera, and I never knew anything else', although he said that he later learned that he was Ngai Tane. Like Derek Huata, Mr Spooner junior seemed to bear a lot of resentment towards what he described as a 'take-over' of the running of the Mohaka River claim by those connected to the Ngati Pahauwera Incorporated Society. His father, he said, lost faith in the section 30 committee members and 'thought they were a bunch of no-hopers'. Mr Spooner junior blamed the committee members for the 'endless fighting' and said that 'as far as I believe they were not elected by the people, they were put there by the Crown'. He said that his father had been committed to ensuring the recognition of Ngai Tane.⁶⁴

Despite this, Mareroa recorded Mr Spooner junior as saying (in her additional notes of her 'preliminary interview' with him):

62. Document T18(g), p 31

63. Ibid, pp 32-33

64. Ibid, pp 43-44

I do not know very much about Ngai Tane, I have lived most of my life away from that area. I have never gotten on well with my father and for the past three years we haven't spoken to one another. So it is hard to represent him and to try and tell you what he might have thought about this claim.

He said that he supported the claim because his sister, Maraea Aranui, supported it, and he admitted that 'I don't know my Ngai Tane whakapapa'. He also said that, while he was 'not for or against the [section 30] committee', he thought that 'everyone should be represented, not just a certain section of Pahauwera'.⁶⁵

(3) Ngai Tane witnesses appearing at the hearing

Wi Huata denied that his claim had anything to do with his non-representation on the section 30 committee. He said that he and his father, Ranapia Huata, had been 'offered representation' on the committee but had not considered it an appropriate way forward for those they represented. He maintained that Ngai Tane had a 'history and destiny separate from Ngati Pahauwera'.⁶⁶ Under cross-examination from Mr Powell, Wi Huata did admit that he had told the Maori Land Court in 1994 that it did not matter who represented Ngati Pahauwera as long as funding was secured. However, he said that he now held a different view, and he explained that the section 30 representatives were not 'any good', since, for example, the Mohaka River had not yet been returned despite the Tribunal's 1992 recommendation to that effect.⁶⁷

In his separate interview with Mareroa, Mr Huata said that he had 'little faith' in the section 30 representatives, who he felt were trying to 'inflict oppression' on Ngai Tane. He said that 'Tane' was an uncle of Kahu o Te Rangi and that Ngai Tane could therefore not be a hapu of Ngati Pahauwera. Rather, they were separate tribes. He said that he wanted Ngai Tane to be recognised as an iwi. Referring to the river claim and, presumably, his own former identification with Ngati Pahauwera, he said, 'It was merely cosmetic and because of expediency that we came under Pahauwera'.⁶⁸

Te Hira Huata, Ranapia's daughter and Cordry's and Wi's sister, said that she had been taught Ngai Tane haka and waiata by her uncle, Ozzie Huata. She recited several of these haka and waiata to us, explaining that they expressed the opposition of the Ngai Tane people to the selling of land and detailed the areas where Ngai Tane were tangata whenua.⁶⁹

Mr Powell observed that the haka expressing opposition to land-selling made no specific mention of Ngai Tane. He also asked why the waiata, which Te Hira Huata said gave the names

65. Ibid, p 45

66. Document T24, pp 5-6

67. Cross-examination of Wi Huata by Grant Powell, ninth hearing, 17 November 1998, tape 7

68. Document T18(g), pp 39-41

69. Document T28

14.8.2(3)

of Ngai Tane tipuna (but which again did not actually refer to Ngai Tane), named Tureia and Rongomaipapa but did not mention Kotore. Te Hira did not know. In her pre-interview notes, Mareroa recorded that she had asked Ms Huata how she knew these were specifically Ngai Tane waiata. Ms Huata said that, in one, there were landmarks mentioned that were 'known' to be in the Ngai Tane rohe, 'so that substantiates it'. She also cited as verification her 'own knowledge' and 'korero . . . with others'.⁷⁰ In response to Mr Powell's final question as to whether Ms Huata also regarded herself as Ngati Pahauwera, the answer was 'Yes'.⁷¹

Maraea Aranui was the wife of the late Ariel Aranui, the original Wai 119 claimant, who had died in 1991. Mrs Aranui said that both her husband and her late father, Tom Spooner senior, who had died two months previously, were Ngai Tane as well as Ngati Pahauwera, and that her father 'saw his Ngai Tane descent as an important part of his Maori identity'. She said that she supported the Wai 436 claim and the assertion of Ngai Tane rangatiratanga.⁷² However, she conceded upon questioning that the first she had heard of Ngai Tane whakapapa had been three weeks previously; the Tribunal hearing was the first occasion on which she had publicly stated that she was Ngai Tane; when she referred to Ngai Tane's lands, she did not actually know 'precisely' where they were; and, when she said the Spooner family was one of the main Ngai Tane families, she had received that information from Cordry Huata.⁷³

In her bundle of notes and transcripts forwarded to the Tribunal after the hearing, Mareroa added that Mrs Aranui supported the Wai 436 claim because her husband (along with Cordry Huata) had toiled on the Mohaka River claim but had been given little support from Ngati Pahauwera. Mrs Aranui had apparently become upset with the section 30 committee for having been 'hostile' to her and her whanau and having 'trampled Ngai Tane and other hapu'.⁷⁴

We note that, after her husband's death, Mrs Aranui became the named Wai 119 claimant and appeared before the Mohaka River Tribunal in 1992, reading from her late husband's 1991 evidence to the Planning Tribunal. 'The basis of my husband's submission', she had explained at the time, 'was the Rangatiratanga of Ngati Pahauwera'.⁷⁵ Ariel Aranui did not mention Ngai Tane.

The last witness for Ngai Tane at the hearing was Ranapia Huata, the father of Cordry and Wi and the grandson of Hemi Huata. He began by relating how his great-grandmother Ruiha (on his 'Pahauwera side') was 'the only survivor of the massacre at Te Huki Pa'. He said that, when he was growing up, 'it was common knowledge . . . that the people at Te Huki Pa didn't know why the attack took place. They didn't realise that it was utu by Ngai Tane for the land

70. Document T18(g), p 35

71. Cross-examination of Te Hira Huata by Grant Powell, ninth hearing, 17 November 1998, tape 5

72. Document T23

73. Cross-examination of Maraera Aranui by Grant Powell, ninth hearing, 17 November 1998, tape 5

74. Document T18(g), pp 2-3

75. Document B1, p 1

sales that had taken place over their heads. People said that Te Kooti was there, but I have heard conflicting stories about that.⁷⁶

Ranapia Huata went on to describe this alleged conflict between Ngai Tane and Ngati Pahauwera as a 'war', explaining that, 'after the war', his Ngati Pahauwera grandmother, Ropine Aranui, had married his Ngai Tane grandfather, Hemi Huata, 'as a means of restoring peace between those tribes'. Following in those 'footsteps', he said, he now wanted Ngati Pahauwera and Ngai Tane to live peacefully together, but without Pahauwera coming 'over the top of Ngai Tane'.⁷⁷ When asked by Mr Powell whether Ngati Pahauwera knew they had been 'at war' with Ngai Tane, Mr Huata said that they had not known.

At the end of Ranapia Huata's presentation of his written brief, Ms Wainwright said that Ngai Tane had developed a proposal within the previous 24 hours that Mr Huata would explain to the Tribunal.⁷⁸ Mr Huata spoke in Maori and his korero was later translated for us by Piripi Walker. Addressing George Hawkins and Ruku Wainohu, he asked them to end the Tribunal hearing immediately so that the fighting could stop. He said that they were both descended from those who had sold the land and caused the 'argument and pain'. He told them that they should dismiss their lawyer and return with him to Mohaka to discuss the issue themselves.⁷⁹

Ms Wainwright summed up this korero to indicate that Ngai Tane proposed that the Tribunal hearing be suspended and discussions commenced between Ngai Tane and Ngati Pahauwera, with progress being reported to the Tribunal by January 1999. At that time, if no progress had been made, the hearing could recommence.

Mr Powell took instruction and informed the Tribunal that Ngati Pahauwera would be prepared to discuss matters at a hui, but, for the sake of balance, his clients still wished to put their own evidence to the Tribunal as scheduled. Ms Wainwright responded that the offer to enter discussions was conditional on Ngati Pahauwera refraining from giving its evidence there and then. If the 'dirty linen' was aired, she said, her clients believed that no settlement would be possible. She added that Ngati Pahauwera had already had a hearing in November 1997 and that the two parties were now 'even stevens'. Mr Powell disputed this, arguing that the Ngai Tane allegations had not been at issue at that time.⁸⁰

The Tribunal considered the matter and decided to hear from Ngati Pahauwera as intended, stating that it would then withhold its decision on the section 7 matter and direct the parties to enter discussions.

76. Document T25, p1

77. Ibid, p3

78. Ninth hearing, 17 November 1998, tape 7

79. Transcript 4.21, pp 2-4

80. Ninth hearing, 17 November 1998, tape 7

14.8.3 The case for Ngati Pahauwera**(1) Opening submissions**

In opening, Mr Powell said that, while Ngati Pahauwera did not deny that Ngai Tane was a hapu, they did dispute Ngai Tane's claim to stand outside the Ngati Pahauwera confederation and, therefore, the section 30 order. The cause of the claim, he submitted, was Wi Huata 'breaking with Ngati Pahauwera following the appointment of the section 30 committee'. No documentary evidence had been adduced to substantiate the claim, he said. Other Huata whanau witnesses had relied upon the research of Cordry Huata, but, he contended, Cordry Huata had made a 'fundamental error in his whakapapa', as the evidence of Patrick Parsons would show. In short, he contended, 'it is impossible to whakapapa from Kotore to Tamihana Huata in the manner suggested by Cordry Huata in his report'. Moreover, Mr Powell submitted, Cordry Huata was 'equivocal' about Ngai Tane's contemporary status, acknowledging that those apart from his whanau who may be Ngai Tane express their identity through other lines of ancestry.⁸¹

In conclusion, Mr Powell submitted that it was imperative for 'the integrity of [the] Treaty of Waitangi claims process' that a section 30 order facilitating the Treaty claims of a particular kin group be respected, unless there were substantive grounds why another group should be able to stand apart. Unless the Tribunal found such grounds in the case of Ngai Tane, he said, it should decline to inquire further into Wai 436. He reiterated that no evidence had been adduced that countered the notion of the Ngati Pahauwera confederation. It was apparent, he said, that the Wai 436 claim was 'frivolous, vexatious and an abuse of process'.⁸²

(2) Evidence

George Hawkins said that he had never heard of Ngai Tane other than through the Wai 436 claim, despite the fact that Hemi Huata was his uncle and Canon Wi, Ozzie, and Eddie Huata were his first cousins. None of them, he said, 'ever spoke of Ngai Tane'. Moreover, 'they always stated that they were Ngati Pahauwera', although, like himself, they could also whakapapa into Tamaterangi and thus had land interests near Frasertown in the Wairoa district. He said that he had also never heard that any one other than Te Kooti and some Tuhoe were involved in the 1869 raid on Mohaka, adding that he had spoken with his aforementioned Huata relations on the subject. He said that the first he had had heard that a group from within the Ngati Pahauwera rohe claimed responsibility for the raid was when the Wai 436 amended statement of claim was filed.

Mr Hawkins appended to his brief the evidence in Maori presented by Canon Wi Huata to the Planning Tribunal in 1991, which made no mention of Ngai Tane and set out 'clearly the same view of Ngati Pahauwera as I hold and which is held by the other Wai 119 claimants'. He disputed Cordry Huata's whakapapa explanation of the 'senior male line' of descent, arguing

81. Document T34, pp 2-6

82. Ibid, pp 6-7; see also opening submission of Grant Powell, ninth hearing, 17 November 1998, tape 7

instead that the 'direct male line is through Rakaipaaka to Te Kahu o Te Rangi whereas the line relied upon by Cordry Huata comes through Hinemanuhiri'. He also thought it impossible 'to link Kotore with Hemi Huata through Hikapii whose children gained their mana on their mother's side (Ngai Tahu)'. Furthermore, he found Cordry Huata's explanation of the meaning of Kotore 'hard to believe' (under later cross-examination, he said he understood Kotore to mean 'erection'). In sum, he concluded that he could not believe that a group 'of the size claimed by the Wai 436 claimants . . . left absolutely no evidence of its passing'.⁸³

In response to Mr Hawkins' lack of knowledge of Ngai Tane, Ms Wainwright made the point that Cordry Huata had mentioned Ngai Tane no fewer than six times in his Mohaka River evidence. Mr Hawkins said that he did not recall that detail. He said that he was relying on tribal memories, which never mentioned Ngai Tane.⁸⁴

Toro Waaka said that he was a member of the section 30 committee and a descendant of both Kotore and Te Kahu o Te Rangi. He outlined his breadth of experience as a representative of Ngati Pahauwera and as a tribal researcher, and he said that he had 'no knowledge of Ngai Taane having any take whenua in the Mohaka/Waikare area'.⁸⁵ He disputed the logic of the Ngai Tane claimants' assertion that, since Kotore is a tipuna of Ngati Pahauwera, then all Ngati Pahauwera are in fact Ngai Tane (he said in fact that most Ngati Kahungunu descend from Kotore). Ngati Pahauwera also descend, he said, from numerous other tipuna but did not call themselves by those names.⁸⁶

Mr Waaka said that neither of his parents (both members of hapu under the Ngati Pahauwera 'umbrella') had heard of Ngai Tane, which was 'very strange since both are very closely related to the Huata whanau'. He said that no kaumatua he had known had mentioned Ngai Tane, and cited Canon Wi Huata's statement to the Planning Tribunal: 'Ko Tureia he tino tipuna ki a matou o Ngati Pahauwera. . . . Ko Ngati Pahauwera matou.' ('Tureia is the important ancestor to us of Ngati Pahauwera. . . . We are Ngati Pahauwera'.⁸⁷) Mr Waaka concluded that the Ngai Tane testimony ignored the reality of the early 1800s, when Kahungunu territory was under constant siege by other tribes. In the circumstances, he said, 'If you did not have strength of numbers you were decimated. This was one reason related hapu rallied around the banner of Ngati Pahauwera.' He added that the Huata whanau 'have a legitimate claim to many of the lands in the Mohaka/Waikare area as part of the Ngati Pahauwera confederation and will benefit from the Ngati Pahauwera claim through these hapu'.⁸⁸

Ms Wainwright asked Mr Waaka if he regarded himself as Ngai Tane. He said that he did not.⁸⁹

83. Document T35

84. Cross-examination of George Hawkins by Carrie Wainwright, ninth hearing, 17 November 1998, tape 8

85. Document T36, p 2

86. Ibid

87. Document T57, pp 9, 10

88. Document T36, p 5

89. Cross-examination of Toro Waaka, ninth hearing, 18 November 1998, tape 9

14.8.3(2)

Ruku Wainohu said that he felt ‘qualified by whakapapa to represent probably all of the hapu within the 119 claim area’. He said that, if the Huata whanau wished to claim as Ngai Tane, ‘that is their business and has nothing to do with me [but] does not change the fact that they come within the Ngati Pahauwera confederation and the section 30 order’. Other than Cordry Huata’s reference to Ngai Tane in the Mohaka River claim, he said, he had not heard and did not know of Ngai Tane. He added that, if Ngai Tane’s founding ancestor was Kotore, the section 30 committee was very representative of his descendants, with six members being able to whakapapa to him.⁹⁰

Guy Taylor produced a letter dated November 1869 from Ngati Pahauwera to MacLean that had been published in *Te Waka Maori o Ahuriri* in December 1869. The letter was an account of the attack on Te Huki Pa by the survivors of the raid. It did not mention any involvement from persons identified as Ngai Tane, although various individuals of Te Kooti’s party were named. The attackers were generally described as ‘Hauhau’. Mr Taylor added that no thorough investigation had ever been undertaken as to the tribal origins of the attackers.⁹¹

Parsons had previously presented whakapapa and traditional history evidence to the Tribunal for other claimant groups in the inquiry. He was very conversant with the Native Land Court’s minutes for the Mohaka area, as well as the 1891 Te Kuta minutes, which seem to have been kept by a ‘Komiti Takiwa’, a Maori district committee investigating the ownership of the Te Kuta block. He related how, after the Ngati Kahungunu invasion, the mana over the Mohaka area was held by Tureia. From him it had passed in a direct male line to Te Kahu o Te Rangi and on to Paora Rerepu. He refuted the claim of Kotore’s ‘genealogical seniority’, and said that Ngai Tane were not mentioned in 400 pages of Te Kuta hearing minutes (which covered the environs of the entire length of the Waikare River).⁹²

Parsons acknowledged that Tamihana Huata, who had lived four generations before Cordry Huata, had rights to the district, but he explained that these came from his own ancestor, Hikapii, who had arrived from Wairoa several generations earlier and married a local woman. After presenting his evidence, Parsons added that Tamihana Huata had in fact participated in the Mohaka transaction. While he did not sign the deed, evidence recorded in the Te Kuta minutes indicated that Tamihana, who would have been about 30 years old in 1851, had been paid £10.⁹³ Parsons also said that Te Kahu o Te Rangi had been taken to Te Heru o Tureia for burial because it was ‘the maunga’ of Ngati Pahauwera, not because he had died there while visiting Ngai Tane, as Cordry Huata had asserted.

Ms Wainwright asked Parsons whether, if the ‘Kotore line’ did not hold the mana, this meant that it was not in fact the tuakana line. He said that the only relevant matter was Tureia’s conquest, which gave him acknowledged mana and overrode everything else, including any

90. Document T37

91. Evidence of Guy Taylor, ninth hearing, 18 November 1998, tape 9

92. Document T39, pp 1–3

93. Document T39(a); see also doc J20, p 7

argument about a 'tuakana' line. The mana would still descend by direct line to Te Kahu o Te Rangi.⁹⁴

When asked to give his own view of the meaning of 'Ngati Pahauwera', Parsons replied that that was for Ngati Pahauwera to define. He did comment that 'purists' said that Ngati Pahauwera comprised only the descendants of Te Kahu o Te Rangi. However, when interacting with the outside world, the Mohaka hapu would all come together under one umbrella and identify as Ngati Pahauwera, whether they were descended from Te Kahu o Te Rangi or not. Today, he said, they are seen as an iwi called Ngati Pahauwera.⁹⁵

Two kaumatua also made verbal statements. Charlie King spoke in Maori and indicated that he had spent a considerable amount of time travelling with Ozzie Huata and Canon Wi Huata and that neither had ever mentioned Ngai Tane. He said that the Ngai Tane claim was a great disappointment to him. Paora Whaanga demonstrated his extensive knowledge of whakapapa and explained the links of Te Kahu o Te Rangi to the Wai 436 claimants. He concluded by saying that he had never heard of Ngai Tane 'as a registered iwi or authority'.⁹⁶

14.8.4 Closing submissions

Closing submissions were received in writing shortly after the close of the hearing. Before the hearing adjourned, the Tribunal urged that discussions take place among the parties in a spirit of conciliation, not confrontation. The Tribunal's written directions noted that 'the evidence demonstrated that the claimants had close whakapapa links and that they had expressed a desire to attempt to resolve their difficulties by discussion among themselves'. The Tribunal also observed that 'any resolution effected between the parties would be stronger and more enduring than any decision imposed upon them by the Tribunal'. Discussions were to be arranged, with counsel filing memoranda reporting on progress by 31 January 1999. If there seemed no possibility of a settlement at that point, the Tribunal would then go on to rule on the Wai 119 application regarding section 7.⁹⁷

(1) *Submissions for Wai 436*

In closing, Ms Wainwright reiterated that Ngai Tane was not part of Ngati Pahauwera and was therefore not covered by the section 30 order. She said that Cordry Huata had demonstrated this. The fact that many Ngai Tane people could affiliate to Ngati Pahauwera if they chose, or that Ngai Tane for political and other reasons had chosen at times to align with Ngati Pahauwera, had no bearing on the matter. The section 30 order, she said, could cover only those who chose to identify as Ngati Pahauwera. If Ngai Tane chose to stand apart and

94. Cross-examination of Patrick Parsons by Carrie Wainwright, ninth hearing, 18 November 1998, tape 9

95. Ibid, tape 10

96. Oral submissions of Charlie King and Paora Whaanga, ninth hearing, 17 November 1998, tape 8

97. Paper 2.310

14.8.4(1)

identify as a separate group on the basis of certain lines of whakapapa, she asked, ‘who is to say that such a hapu does not exist? . . . surely it is the entitlement of those Maori people to affiliate to whichever of their legitimate lines of descent they choose.’⁹⁸

Ms Wainwright then attempted to rebut the various arguments made against the Wai 436 claim:

- ▶ She said that there was nothing inconsistent in the Huata whanau having previously supported the Wai 119 claim or having identified as Ngati Pahauwera, because they ‘did, and do, support the Ngati Pahauwera claim. However, the [Wai 436] claim is made on behalf of Ngai Tane which is a separate group with separate interests in the claim area.’
- ▶ She denied that Wi Huata’s opposition to the section 30 committee lay behind the claim, arguing that he and his father ‘were offered representation [*sic*] on the section 30 committee but turned it down’.
- ▶ She rejected the notion that the claim was essentially a Huata whanau claim, pointing to the support for it from members of the Spooner and Aranui whanau, for example.⁹⁹
- ▶ With respect to Hill’s failure to find much mention of Ngai Tane, she suggested that a search of primary sources might yield some information. She pointed to Parsons’ discovery of a reference to Tamihana Huata in the Te Kuta minute books as an example. She added that there was a reference to Ngai Tane in Hemi Huata’s whakapapa book, as well as references to Ngai Tane in works such as Ballara’s *Iwi*, ‘albeit in different areas’. In any event, said Ms Wainwright, the lack of reference to Ngai Tane in the sources examined was ‘inconclusive in and of itself as evidence of the significance or otherwise of Ngai Tane vis a vis other groups’.¹⁰⁰
- ▶ She said that the account produced from *Te Waka Maori o Ahuriri* in 1869 actually supported Ngai Tane’s involvement in Te Kooti’s raid on Mohaka, since two persons she described as Ngai Tane chiefs (Himiona and Pera Tipoki) were listed as participants. Furthermore, she reiterated the story given by Ranapia Huata that his grandmother Ropine (of Ngati Pahauwera) had married Hemi Huata in order to heal rifts between Ngati Pahauwera and Ngai Tane.
- ▶ She rejected the argument that the Ngai Tane witnesses had all relied upon Cordry Huata’s knowledge of whakapapa and that, if Cordry were wrong, then the claim would lack foundation. She said in fact that, not only had none of the Ngati Pahauwera witnesses challenged Cordry’s evidence, but some, such as Toro Waaka, had even remarked upon his expertise.¹⁰¹
- ▶ She said that it was of no issue that Ozzie Huata and Canon Wi Huata had never publicly identified themselves as Ngai Tane. ‘It would typically be only among Ngai Tane people that Ngai Tane would identify themselves principally in this way.’

98. Document U5, pp 2–4

99. *Ibid*, pp 4–5

100. *Ibid*, pp 5–7

101. *Ibid*, pp 7–8

- ▶ She argued that those who had led the conquest of the Mohaka district along with Tureia ‘could have included Kotore’, as illustrated by the ‘korero’ about Kotore giving his daughter to Whatuiapiti.¹⁰²

Ms Wainwright accepted that the paucity of information uncovered by Hill meant that there was ‘a lack of corroborative or documented, evidentiary support for the Ngai Tane claim’. However, she submitted, because of the Tribunal’s role as a commission of inquiry, it was entitled to rely ‘solely on the oral evidence of the Ngai Tane witnesses’ if it believed that the evidence presented was ‘more likely than not to be true’. Finally, she called upon the Tribunal to dismiss the section 7 application on the basis that the Wai 436 claim was not frivolous or vexatious, nor was it brought in bad faith.¹⁰³

(2) Submissions for Wai 119

Mr Powell made two main points in closing. First, ‘Ngai Tane were subject to the section 30 order when it was made and knew at the time that they were subject to it’ and, secondly, ‘In any event there is insufficient evidence to support an assertion that Ngai Tane were or continue to be an entity separate from Ngati Pahauwera within the Ngati Pahauwera rohe.’¹⁰⁴ He then expanded on each of these points in turn.

With respect to the section 30 order, Mr Powell argued that Wi Huata had attended the 1994 hearing as someone who identified as Ngati Pahauwera and had certainly made no mention of Ngai Tane. Mr Powell quoted the reason Mr Huata gave for taking such a different stance four years later as ‘things had changed since then’. According to Mr Powell, the simple explanation was that Mr Huata was in fact:

upset with being unable to control the Ngati Pahauwera claim, unhappy with the length of time taken to settle the claim, and unhappy with the performance of the Section 30 committee. Hence he looked for a new vehicle and lodged the Wai 436 claim on behalf of Ngai Tane.¹⁰⁵

Mr Powell disputed the helpfulness to the Wai 436 claim of the reference to Ngai Tane in Hemi Huata’s whakapapa book. He said that no whakapapa was provided in the book for the hapu, which was ‘in fact described in this reference as having been slain’. Overall, said Mr Powell, no actual whakapapa for Ngai Tane had been presented. ‘It is not enough’, he submitted, ‘to say that the descendants of Kotore are Ngai Tane. The evidence has been that most Ngati Kahungunu whakapapa to Kotore.’ He stressed that Cordry Huata was the only one who professed knowledge of Ngai Tane whakapapa, and Cordry had also said that not many people had much knowledge of Ngai Tane. As an example, he pointed to the fact that

102. Ibid, pp 8–10

103. Ibid, pp 10, 13, 14

104. Document u6, p 2

105. Ibid, p 3

one of the Wai 436 claimants' own witnesses, Maraea Aranui, had only just heard of Ngai Tane.¹⁰⁶

Mr Powell pointed to shortcomings in Hill's evidence, such as his failure to find references to Ngai Tane in historical texts, his 'block footnoting', and his reliance on Huata whanau sources for information on the existence of Ngai Tane. With respect to Mareroa's evidence, Mr Powell argued that 'The methodology employed by Ms Mareroa was such as to render this report worthless to the Tribunal'. We have already commented on this methodology and need not relate Mr Powell's criticisms here. But he did make the further point that 'No explanation was given as to why those interviewed and present at the hearing did not give evidence themselves rather than relying on Ms Mareroa.'¹⁰⁷

Mr Powell then summarised the Ngati Pahauwera evidence, and, in conclusion, he submitted that 'it would be contrary to all the evidence before the Tribunal to find that Ngai Tane is separate and distinct from Ngati Pahauwera, either historically or currently, within the claim area'. He also reiterated his earlier submission that the integrity of a section 30 order should not be undermined through the recognition of any group purporting, without foundation, to evade the order.¹⁰⁸

14.9 SUBSEQUENT DISCUSSIONS

Discussions between the parties were arranged, and counsel for both sets of claimants asked for additional time to report back on progress, which the Tribunal granted.¹⁰⁹ It seems that representatives of the Wai 436 and Wai 119 claimants met twice, in Napier, on 16 and 23 January 1999. Both meetings were facilitated by Te Puni Kokiri staff, but it seems that it was not possible for any common ground to be established. Counsel for Wai 436 informed the Tribunal of this on 16 February 1999 and asked the Tribunal to decide whether to appoint a mediator to take discussions the further; commission further research into the Wai 436 claim; or make findings and recommendations on the Ngai Tane claim, bearing in mind 'the scarcity of documentation in areas where the Crown chose to deal with one Maori group only'.¹¹⁰ In a letter to the Tribunal of 17 February 1999, counsel for Wai 119 confirmed the failure to reach an agreement and invited the Tribunal to rule on the evidence presented at the November 1998 hearing.¹¹¹

By way of direction of 27 May 1999, Judge Isaac stated that the Tribunal would not rule on the section 7 matter before hearing the Crown's evidence and closing submissions, along with

106. Document U6, pp 4-5

107. Ibid, pp 5-8

108. Ibid, pp 11-12

109. Paper 2.315; memorandum in relation to paper 2.316

110. Paper 2.318, p 6

111. Paper 2.319

any further closing submissions from the Wai 119 and Wai 436 claimants. The Tribunal thus deferred making a ruling on the section 7 application until it had issued its final report. The Tribunal commented that it was:

of the view that Wai 436 and Wai 119 should continue in their attempts to resolve their conflict by themselves. We do not consider that the Tribunal was established as a means to consider or settle inter hapu disputes but as a means to consider or settle claims made by Maori against the Crown.

In its final report this Tribunal will give its full consideration to the rights, interests and relationships of the Wai 436 & Wai 119 claimant groups and in this consideration, will exercise (if necessary) its mind to the Section 7 application of Wai 119.¹¹²

14.10 ADDITIONAL LEGAL SUBMISSIONS

In its closing submissions of November 1999, the Crown responded briefly to the Wai 436 claim. Crown counsel said that the Crown awaited the Tribunal's ruling on the section 7 application and submitted that:

the evidence before this Tribunal does not establish that it was more probable than not that a group called Ngai Tane, acting independently of the Ngati Pahauwera confederation or other tribal groups, was present but ignored by the Crown in Crown Maori dealings within the inquiry boundary.¹¹³

No final closing submissions were received from counsel for Wai 436. Counsel for Wai 119 did not address the Ngai Tane claim any further in his closing submissions or submissions in reply.

14.11 TRIBUNAL COMMENT

It is not within the Tribunal's jurisdiction to rule on disputes between Maori groups – that role lies with the Maori Land Court. The Tribunal's jurisdiction is concerned with Maori claims against the Crown. In order to meet that jurisdictional requirement, the Wai 436 claim was certainly lodged against the Crown, but it was apparent that it was also directed against the Ngati Pahauwera claimants. Another Tribunal reflected upon a similar matter in *The Pakakohi and Tangahoe Settlement Claims Report* of 2000, where it observed that there was

112. Paper 2.345, p 2

113. Document x55, p 9

‘an air of artificiality about claims of this nature being advanced in this Tribunal’.¹¹⁴ The issue of jurisdiction was not argued before us, but we raise it here in order to clarify that the Wai 436 claim was brought against the Crown and complied with section 6 of the Treaty of Waitangi Act 1975.

In its *Pakakohi and Tangahoe Settlement Claims Report*, the Tribunal reviewed the concerns of two sets of claimants who purported to represent the kin groups Pakakohi and Tangahoe. The claimants sought a recommendation from the Tribunal that their claims not be settled as part of the Ngati Ruanui settlement with the Crown. In assessing the merits of their claims, the Tribunal adopted a four-part test. Questions 1 and 2 were posed as threshold tests, which, if answered in the affirmative, would allow the Tribunal to proceed to answer questions 3 and 4. If the answer to either question one or two were ‘no’, the claims would fail:

1. Does tikanga or early colonial history (or both) recognise Pakakohi or Tangahoe (or both) as a cultural and political entity distinct from Ngati Ruanui?
2. Do Pakakohi or Tangahoe (or both) have claims which are distinct from those of Ngati Ruanui? From this question, we sought to discern whether there was a prima facie argument in favour of Pakakohi and Tangahoe each being entitled to a separate settlement.
3. Is there sufficient evidence of support for a separate settlement in favour of Pakakohi Inc or Tangahoe Inc (or both) to warrant the Tribunal taking a hard look at the Crown’s handling of the Ngati Ruanui working party mandating process?
4. If there is sufficient evidence to warrant a ‘hard look’ at the matter, were there flaws in the Crown’s handling of that matter of sufficient severity to warrant the Tribunal considering that the Crown’s acceptance of the working party’s mandate to settle on behalf of Pakakohi or Tangahoe (or both) is unsafe?¹¹⁵

We have adopted a similar approach to the Ngai Tane claim. We posed three test questions:

1. Does the written historical record and oral tradition recognise Ngai Tane as a cultural and political entity distinct from Ngati Pahauwera?
2. If it does, does Ngai Tane have claims that are distinct from those of Ngati Pahauwera?
3. If the answer to either question is ‘no’, is the claim frivolous, vexatious, or not made in good faith?

Questions 1 and 2 were hurdles. If they were both crossed in the affirmative, then, by definition, there could be no possibility of us considering the claim to be frivolous, vexatious, or made in bad faith.

114. Waitangi Tribunal, *The Pakakohi and Tangahoe Settlement Claims Report* (Wellington: Legislation Direct, 2000), p 56

115. *Ibid*, p 57

14.11.1 Ngai Tane in historical records and oral tradition

It seems that a hapu called Ngai Tane existed, but the limited historical evidence tends to indicate that they were present to the north of our inquiry boundary. We consider it is telling that Hill could locate no reference to a Ngai Tane in the Mohaka district in the written sources he consulted. Ms Wainwright argued that this was because Hill had not searched through primary sources such as Native Land Court minutes. However, Parsons, whom we consider a reliable and independent witness and who is thoroughly knowledgeable about the ancestral history of our inquiry district, gave evidence that he had never seen any reference to Ngai Tane in any Native Land Court minutes or other such sources. Ms Wainwright pointed to the fact that Parsons had found a reference to Tamihana Huata as indicating that references to Ngai Tane could indeed be found, but this reference was not to Ngai Tane per se and did not prove the existence of Ngai Tane as a separate entity.

In her doctoral thesis, 'The Origins of Ngati Kahungunu', Ballara made an exhaustive study of Native Land Court minute books and other sources from Wairoa to Wairarapa. Her long list of 'Iwi and Hapu of Hawke's Bay and Wairarapa' included a Ngai Tane at Patea, a Ngai Tane in the Wairarapa Valley, a Ngai Tane in the Wairoa district, and a Ngai Tanehimoa at Porangahau, but none at Mohaka.¹¹⁶

In a discussion of hapu formation in her book *Iwi*, Ballara commented that 'Ngai Tane' did not figure 'at all' in tribal lists of the nineteenth and twentieth centuries. By this, she was referring to the Ngai Tane who lived inland of Gisborne, who were not the same people as the Mohaka Ngai Tane and who, in 1840, 'existed only as the subjugated clients of other hapu'. In an endnote, Ballara commented that there was 'also another group of the same name living under Ngati Pahauwera at Mohaka' but provided no source for this.¹¹⁷

We disagree with Ms Wainwright's submission that Hill's lack of success in locating references to Ngai Tane was 'inconclusive in and of itself as evidence of the significance or otherwise of Ngai Tane vis à vis other groups'. All in all, in terms of written references, we were left only with a mention of a group called Ngai Tane to the north of our inquiry district and a reference in the late Hemi Huata's whakapapa book. While we were not provided with a copy of the whole whakapapa book, copies of the relevant pages were submitted. The reference they contained to Ngai Tane was in a list of hapu said to have occupied the Mohaka land that the Crown purchased in 1851.

In terms of oral tradition, we were confronted with an assertion of Ngai Tane's existence by Cordry Huata and others on the one hand, and a denial of knowledge of Ngai Tane by Ngati Pahauwera representatives on the other. We were also told by Ngati Pahauwera witnesses that Huata family members had always identified strongly as Ngati Pahauwera and had not previously mentioned Ngai Tane. Ms Wainwright acknowledged that the Ngai Tane claims were

116. Angela Ballara, 'The Origins of Ngati Kahungunu', PhD thesis, Victoria University of Wellington, 1991, p 572

117. Ballara, *Iwi*, pp 163, 347 n 5

not backed by corroborative written material and therefore invited us to decide the matter on the strength of the oral evidence. We do not wish to delve into matters of whakapapa too deeply because genealogies are a matter for the families concerned. However, we make the following observations:

- ▶ We agree that Tureia's conquest of the original inhabitants was the overriding matter determining rights in the Mohaka district. This view appears to be the established orthodoxy on the subject. Therefore, arguments as to whether the ancestor from whom descent is claimed lived earlier rather than later become irrelevant. Tureia's mana had been passed from him to Te Huki, to Puruaute, and to Te Kahu o Te Rangi, and at the time of the signing of the Treaty in 1840, was held by Paora Rerepu, a direct descendant of Te Kahu o Te Rangi.
- ▶ For the same reasons, we do not agree with the Wai 436 claim that Ngai Tane have superiority over Ngati Pahauwera owing to their descent along a 'tuakana line'.

In sum, therefore, the evidence for Ngai Tane having existed as a cultural and political entity distinct from Ngati Pahauwera in our inquiry district is slight. Ngati Pahauwera's witnesses did not deny that Ngai Tane may have been an old hapu name; they simply said that they did not know or recognise it now. A group called Ngai Tane clearly existed to the north of Mohaka, but the question remains as to whether they (or another Ngai Tane) were present in the Ngati Pahauwera claim area. Furthermore, the connection that the Wai 436 claimants have to this group was not made explicit to us. Thus, other than the oral information of the Huata whanau, there is little we can point to that will answer question 1 in the affirmative. We stress, however, that this does not mean that we question the Wai 436 claimants' right to identify as Ngai Tane now, if that is clearly their wish.

We conclude that there is insufficient evidence in the historical or oral record to recognise Ngai Tane as having been a cultural and political entity distinct from the Ngati Pahauwera confederation since 1840.

14.11.2 Are Ngai Tane claims distinct from Ngati Pahauwera?

The Wai 436 claimants said that Ngai Tane were non-sellers who lived in the interior and were not consulted about the Crown's purchasing of either the Mohaka land in 1851 or the Te Heru o Tureia reserve in 1859. We agree that there were Maori living at or near Te Heru o Tureia who objected to the Mohaka sale and who were quite possibly unaware of the sale of that land at the time. But there is no evidence that these people were the tipuna of the Wai 436 claimants. The best description we have of them is 'Maungaharuru Maori', and we cannot conclude from the available evidence that they were Ngai Tane. Moreover, as we noted in chapter 11, Donald McLean recorded in his diary on 4 December 1851 that Maori were 'gathering in considerable numbers from the interior of the Mohaka' for the signing of the Mohaka deed of sale. This statement undermines the Ngai Tane perspective that Paora Rerepu essentially sold

the land out from under their feet. And, despite the fact that several Ngai Tane claimants told us that Ngai Tane were of Waikare as well as the interior of the Mohaka, McLean also paid money directly to the 'Waikare natives'.

Furthermore, the evidence that Parsons located showing that Tamihana Huata was paid a share out of the Mohaka purchase money is a significant piece of information. Much was made by Ngai Tane witnesses of the distinction between themselves, as an overlooked and landless hapu, and Ngati Pahauwera, as the land sellers. That Tamihana Huata received money was not disputed by the Wai 436 claimants, even though it was obviously news to them. Ranapia Huata said merely that, if Tamihana Huata had received any money, 'it would have been as recognition of him being of Ngai Tane because he is not Pahauwera'.¹¹⁸ But that did not square with his earlier denial that Ngai Tane had played absolutely no part in the sale. Ms Wainwright did not address the issue in closing, instead attempting to turn Parsons' find into a positive for her clients by claiming it to have been a historical reference to Ngai Tane. Parsons did not find any reference to Ngai Tane in the Te Kuta minutes where he located the reference to Tamihana Huata.

We think that the denigration of the section 30 committee as land sellers has not been helpful. For a start, if Tamihana Huata did receive some of the payment money, the criticism would seem misplaced. Moreover, the evidence of Ruku Wainohu was that six of the eight members of the section 30 committee descended from Kotore, the ancestor claimed as tuakana by Ngai Tane, and only one descended from Te Kahu o Te Rangi.¹¹⁹ This indicates, at least, that those identifying as 'Ngati Pahauwera' do so under the 'umbrella' of Ngati Pahauwera rather than solely through descent from Te Kahu o Te Rangi (whose descendants are perceived by Ngai Tane as the arch land sellers). The Ngai Tane position is thus provocative and unlikely to settle the rift between such close relatives. The evidence indicates that, with 297 names on the Mohaka deed, the signatories were widely representative of local Maori and no one group deserves more than any other to be labelled land sellers.

Secondly, the argument was made that some Ngai Tane had joined Te Kooti in the attack on Mohaka in 1869 in order to exact revenge upon the Ngati Pahauwera land sellers. Rana Huata even suggested that Te Kooti may not have participated in the raid at all, it essentially being carried out by Ngai Tane alone. Again, however, there was no clear evidence for these assertions. Ms Wainwright pointed to a couple of names of those in Te Kooti's party as Ngai Tane chiefs. We believe that it was incumbent upon the claimants to establish their whakapapa connection to these individuals, but no evidence of such a connection was produced. Scholars of Te Kooti, such as Binney, have related that Te Kooti's men were principally Tuhoe or Ngati Hineuru. No reference to Ngai Tane participation in any of Te Kooti's other raids has been verified. There were serious chronological errors in the Wai 436 evidence attributing the Mohaka-Waikare confiscation to Te Kooti's actions, because the confiscation was proclaimed

118. Memorandum in relation to paper 2.318, app G, p 8

119. Ibid, p 11; doc T37

in 1867, before Te Kooti returned from the Chatham Islands. And the sale of the Te Heru o Tureia reserve was wrongly claimed to have occurred in 1868 and to have motivated Ngai Tane to join Te Kooti. In fact, this transaction took place in 1859.

Ranapia Huata said that the marriage of his grandparents, Hemi Huata and Ropine Aranui, had been designed to heal the breach between Ngai Tane and Ngati Pahauwera that had been caused by the land sales and the attack on Mohaka (or the ‘war’). However, we were not convinced that this was a healing marriage, when, according to Ngai Tane witnesses, Ngati Pahauwera were unaware that some Ngai Tane (but not Huata whanau ancestors) had attacked them. The evidence of Ngati Pahauwera witnesses was that, until the recent statements by the Wai 436 claimants, they had never heard of any involvement in Te Kooti’s attack in 1869 by a group known as Ngai Tane. If the Ngai Tane claimants’ explanation for the lack of evidence of Ngai Tane involvement in the raid is that the part played by their forebears was always kept quiet, it makes little sense to suggest that the raid was later followed by a healing marriage. In conclusion, we find that the Ngai Tane Wai 436 claimants have not provided convincing evidence that their claims are separate and distinct from those of Ngati Pahauwera.

14.11.3 Is section 7 of the Treaty of Waitangi Act 1975 relevant?

Given that our answers to the first two questions are in the negative, we are obliged to address the Wai 119 claimants’ request for a ruling under section 7 of the Treaty of Waitangi Act 1975, as envisaged in our third question. The Wai 436 claim could be seen on one level as a rejection of the trend towards the confederation of the Mohaka people under the banner of Ngati Pahauwera in favour of a return to the erstwhile arrangement of small, independent hapu groups. But the matter is unfortunately not so straightforward. Such a preference may be a legitimate choice for those such as Ngai Tane to take, but the obvious triggers for such an action – claim funding, hapu representation, settlement negotiations, and the like – amount not to a trend away from confederation so much as a political decision by a particular group to stand apart. Seen against this context, it is clear that we must proceed with the utmost caution. Counsel for Wai 119 was concerned that we not undermine the status of the section 30 committee by effectively finding that Ngai Tane are autonomous and not covered by it. We have considerable sympathy for his concern and believe that matters that could have been raised before the Maori Land Court in June 1994 should not be litigated years later before the Waitangi Tribunal.

We were also not altogether clear what status the Ngai Tane claimants were seeking in relation to Ngati Pahauwera. We were left unsure as to whether they:

- ▶ saw the situation as one in which Ngati Pahauwera and Ngai Tane (being the only two kin groups of any note in the Mohaka district) held equal status as ‘tribes’ or ‘iwi’, and thus should share resources and acknowledge each other in their respective rohe; or

- ▶ believed that Ngai Tane's senior status in whakapapa terms meant that the funding and recognition that had come to Ngati Pahauwera should in the future be directed more appropriately to them, and that those of Ngati Pahauwera who descended from Kotore should re-identify as Ngai Tane; or
- ▶ wanted the individual hapu groups under the Ngati Pahauwera umbrella (such as Ngai Tane) to be given more autonomous and independent status, while at the same time not challenging the confederation.

In reality, the various Ngai Tane claimants sought a mixture of all goals, which did not make our task of assessing the merits of the claim any easier. Ngai Tane are not a group of comparable size to Ngati Pahauwera. Ms Wainwright argued that the claimant community was wider than the Huata whanau, with other families such as the Aranuis and the Spooners also identifying as Ngai Tane. With respect, however, the support of the likes of Maraea Aranui (also a Wai 119 claimant) and Tom Spooner junior seemed to be uninformed, with neither having any real knowledge of Ngai Tane. Furthermore, as noted, Roger Aranui had expressed his support for the section 30 committee and had indeed once accepted nomination to stand for it. We are wary of endorsing the use of whakapapa to create virtual claimant communities; settlements should be conducted with actual communities on the ground. Traditionally, whakapapa has been used to establish relationships among scattered kin groups, and it was not intended to be used as a device to divide groups of relatives from each other.

To the extent, however, that the claim can be said to be essentially based upon the third goal, there is less for us to criticise. We are aware that it was not couched in this way in many of the claimants' statements, but we believe that it was so described in a number of them. In short, this is what convinces us that it is not appropriate for us to find the claim to be frivolous or vexatious or made in bad faith. For example, Tom Spooner junior said that he was 'not for or against the [section 30] committee but I think everyone should be represented, not just a certain section of Pahauwera'. Likewise, Tama Huata said:

Deep down one of their [Canon Wi and Ossie Huata's] main things was that Ngati Pahauwera remember it includes us and that's the main point . . . It requires all the families, the hapu, to make up that umbrella. . . whoever the section 30 is, they have to be broad enough to represent everybody and they have to be together.

Perhaps, therefore, there is a genuine concern amongst some of Ngati Pahauwera that traditional hapu names or identities within the confederation are being lost sight of to an unsatisfactory extent. Cordry Huata's evidence to the Mohaka River Tribunal in 1992 – which not only predated the 1994 section 30 hearing and the filing of Wai 436 but was also given in the context of him describing himself as part of Ngati Pahauwera – was that Ngai Tane was one of these hapu. In case this concern does exist, we draw the matter to the attention of the incorporated society and the section 30 representatives, although we fully acknowledge that the considerable number of traditional hapu names means that semi-autonomy for each of

those hapu is an unworkable concept. Beyond that, we do not believe that we can take the matter any further. It is properly an issue that should be resolved by the people of Ngati Pahauwera in their own internal discussions. Furthermore, if there is a genuine concern on the part of some with the composition of the section 30 committee, then we need only make the point that it is open to those persons to avail themselves of the appeal procedures under the Te Ture Whenua Maori Act 1993.

The Ngai Tane claimants are very closely related to their Ngati Pahauwera counterparts. Furthermore, the level of Huata whanau involvement in the Ngati Pahauwera claim for the Mohaka River, before both the Planning Tribunal in 1991 and the Waitangi Tribunal in 1992, was substantial. Video evidence was presented to the Mohaka River Tribunal by Derek Huata, for example, and it had been produced by himself, Ngatai Huata, and Huia Huata. Cordry Huata was, of course, a key Ngati Pahauwera witness before both inquiries, and the late Canon Wi Huata also gave evidence to the Planning Tribunal. It thus becomes clear how committed to the Ngati Pahauwera cause Huata whanau members have been in relatively recent times. We were not happy with Wi Huata's explanation that he and his whanau had only ever identified as Ngati Pahauwera for 'expedient' and 'cosmetic' reasons. Such an assertion contradicted the clear commitment shown by members of the Huata whanau to Ngati Pahauwera claims in the past and did not give us great confidence in their motives for now wishing to stand apart from Ngati Pahauwera and conduct separate settlement negotiations as Ngai Tane.

In sum, therefore, we are not convinced that the Wai 436 claimants have established that their claims are separate and distinct from those of their Ngati Pahauwera relatives in Wai 119. However, we do not dismiss the Wai 436 claim as being frivolous or vexatious for the reasons set out above. We think that the settlement of the Wai 119 claim should include all hapu of Ngati Pahauwera, including Ngai Tane, and that the Huata whanau should be encouraged to participate in the settlement process. If they do, however, this should not preclude the negotiation of a settlement. We note the endorsement by the Pakakohi and Tangahoe Tribunal of the Crown's policy to negotiate settlements with 'large natural groupings'.¹²⁰ The Ngati Pahauwera confederation is arguably such a grouping (see ch20), and Ngai Tane are a constituent part of that grouping. They are therefore covered by the section 30 order of the Maori Land Court.

We also endorse the position the Tribunal took in its *Whanganui River Report* in relation to the Tamahaki claimants. There, the Tribunal stated: 'While Maori custom generally favours hapu autonomy, it also recognises that, on occasion, the hapu must operate collectively. We consider that this [the tribe's Whanganui River claim] is one such occasion and that this is the generally held view.' The Tribunal went on to say that:

120. Waitangi Tribunal, *The Pakakohi and Tangahoe Settlement Claims Report*, p 65

on the evidence, it is not practicable, reasonable, or fair to the majority's point of view that the Government should treat separately for the resolution of this claim, or that one group that has not established a unique status outside of the general genealogical ties should weaken a united position by standing apart.¹²¹

We believe that the Whanganui River Tribunal's statements are relevant when assessing the claims of Ngai Tane and Ngati Pahauwera.

14.11.4 Conclusions

We conclude that:

- (a) The Wai 436 claimants have not established that Ngai Tane were a separate cultural and political entity distinct from those hapu contained within the umbrella of the Ngati Pahauwera confederation.
- (b) The claims of Ngai Tane in respect of the Crown's purchase of Mohaka in 1851 and the Te Heru o Tureia reserve in 1859, and those in respect of other matters since, are the same as the grievances against the Crown claimed by the Ngati Pahauwera confederation in the Wai 119 claims.
- (c) There is no basis for the negotiation of a separate settlement of the Ngai Tane claim. The representatives mandated to negotiate a settlement are the section 30 committee.

14.12 FINDINGS

Having regard to the foregoing conclusions, we find that there are no separate or distinct breaches of the principles of the Treaty by the Crown with regard to the Wai 436 claim. However, we are satisfied that Ngai Tane share the wider Ngati Pahauwera experience of Treaty breach and prejudice, as outlined in our other findings.

121. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 13

