

# The Pouakani Report 1993

## 18 Summary of Findings and Recommendations

### 18.1 The Claim and the Proceedings (Chapter 1)

The Pouakani claim was lodged by John Hanita Paki on behalf of himself, the trustees and beneficial owners of the Pouakani B9B Trust and Titiraupenga Trust, which administer the Pouakani B9B block and Pouakani C1B1 and C1B2 blocks respectively. In the mid 1980s a dispute arose between the owners of Pouakani B9B block and the Crown over the boundaries with the adjacent Pureora State Forest Park. The dispute over logging on the boundaries led to proceedings in the High Court and the Maori Land Court and the lodging of this claim with the Waitangi Tribunal. During these proceedings, claims were made that boundaries had been shifted, surveys not done, that there were discrepancies in the areas of several Pouakani blocks, and an alleged loss of a large area of land to the adjacent Maraeroa block. These lands straddle the "border" between tribes descended from Tainui and Te Arawa in the region extending from the Waikato river in the Mangakino district to Titiraupenga and Pureora mountains, north west of Lake Taupo.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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### 18.2 Historical Overview (Chapters 2-6)

The tribunal has considered this boundary dispute and a number of other matters raised in the amended statements of claim (appendix 2) which need to be set in historical context. This section of the report is divided into several chapters, covering traditional Maori relationships with the region (chapter 2), historical review of the period 1840 to 1886, covering Maori and Pakeha perceptions of the land (chapter 3), the impact of the wars of the 1860s (chapter 4), operation of the Native Land Court and Crown land purchases in the Taupo district 1867-1883 (chapter 5) and proposed routes for the North Island main trunk line (chapter 6). In these chapters the scene is set for a narrative of events that affected land transactions in the central North Island in the 1880s and 1890s.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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### 18.3 The Rohe Potae and the Native Land Court (Chapters 7-8)

Following various government attempts to negotiate with the tribes, to "open-up" the King Country for construction of a railway line and Pakeha settlement, an agreement for survey of the Rohe Potae was reached on 19 December 1883, described by the claimants as the "Aotea Agreement". In response to a petition by the tribes of Ngati Maniapoto, Ngati Raukawa, Ngati Tuwharetoa and Whanganui in 1883, parliament passed the Native Land Alienation Restriction Act 1884 which reimposed the Crown right of pre-emption on lands described in a schedule to the Act and known as the Rohe Potae. There were various interpretations among the tribes of the nature of this "Aotea Agreement", but the effect of it was to instigate, under the direction of the Auckland office of the Survey Department, a survey of the boundary of Ngati Maniapoto lands known as the Aotea (Rohepotae) block (see maps [7.1](#) and [7.2](#)). In 1885 Te Heuheu and others lodged an application to the Native Land Court for investigation of title of Ngati Tuwharetoa lands known as the Tauponuiatia block, to the east of the Aotea block. This application was disputed by Ngati Maniapoto as a breach of the "Aotea Agreement". During 1886 the Native Land Court proceeded to hear applications for investigation of title of the Tauponuiatia block, in Taupo, and the Aotea (Rohepotae) block in Kihikihi and then Otorohanga.

The dispute focused on the boundary between Aotea and Tauponuiatia, in particular the boundary line between the Pouakani and Maraeroa blocks from Taporaroa (two different locations were given) to Pureora mountain, and south to the Hurakia range, and whether the Maraeroa block, claimed by Ngati Maniapoto, should be heard by the Taupo court (see [map 9.4](#)). The adjudication on the Pouakani and Maraeroa blocks by the Native Land Court at Taupo was not accepted by all. There was an application to the Native Land Court for rehearing (which was dismissed), litigation in the Supreme Court, and petitions to parliament, and in 1889 the Tauponuiatia Royal Commission was appointed to investigate.

As a result of the report of the Tauponuiatia Royal Commission, the Native Land Court orders in respect of the Pouakani blocks (except Pouakani No 1 which had been conveyed to the Crown in payment of survey and other costs) and all of the Maraeroa block, were cancelled in s29 of the Native Land Court Acts Amendment Act 1889. The investigation of title for these blocks was heard anew by the Native Land Court in 1890 and 1891. There were significant differences in the boundaries and areas of the various blocks as ordered in 1891, which has caused confusion for descendants of owners. We emphasise at this stage that, with the exception of Pouakani No 1 block surveyed in 1890, none of the earlier surveyed boundaries or Native Land Court title orders issued in respect of Maraeroa and Pouakani blocks has any legal standing.

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### 18.4 The Maraeroa and Pouakani Blocks (Chapters 9-12)

In these chapters we set out in detail the various transactions on these blocks, and illustrate with maps, the various boundary changes which were made in the new title orders issued by the Native Land Court in 1891, and subsequent partitions as a result of Crown purchases. In chapter 10 we focus on a narrative of the survey of the boundary recommended by the Taupouiatia Royal Commission. We found that the boundary along the watershed of the Hurakia range was surveyed as far as Pureora mountain, with consequent changes to the boundaries of the Waihaha and Tihoi blocks, the creation of the Hurakia and Ketemaringi blocks, and a revised Maraeroa block. A triangle of land named Tahorakarewarewa, or Punakerikeri block, was also surveyed but subsequently included in the Maraeroa A block by the Native Land Court in 1891 with no apparent dispute at the time (see [map 10.1](#)). There have been subsequent petitions to parliament and a report by Judge MacCormick of the Native Land Court in 1935 which we reproduce in appendix 8. We make no finding on this aspect of the claim, referring it, like the 20,000 acres of Pouakani No 1 block that went in payment of survey and other costs in 1887, to the Wai 48 etc group of claims in the Rohe Potae.

We studied in detail the boundary between the Maraeroa and Pouakani blocks, which the claimants allege had been shifted. We reviewed the order of 24 September 1887 that determined the ownership of a Maraeroa block of 41,245 acres, the legislation and Native Land Court Rules under which it was made, the evidence given to the Taupouiatia Royal Commission and the report of that commission. The claimants believed that the boundaries of a Maraeroa block surveyed by Cussen in 1886 were the boundaries of the Maraeroa block in the 1887 order. Consequently, they believed that the north-eastern boundary of the block surveyed by Cussen in 1886 was the boundary determined by the Taupouiatia Royal Commission which was declared by s29 of the Native Land Courts Act Amendment Act 1889 to be the boundary of the Taupouiatia block. In 1891 the Native Land Court fixed the boundary between the Maraeroa and Pouakani blocks in a position to the east of a line surveyed by Cussen. The claimants believed that in doing so the court shifted a boundary fixed by statute and that as a consequence 4831 acres were lost from Pouakani block.

But we found that in 1889 the boundaries of the 1887 Maraeroa block had not been fixed by the Native Land Court because the requirements of the Native Land Court Act 1880, under which the order had been made, had not been complied with. The Act provided that notice was to be given that a plan was available for inspection. People had the right to object to the boundaries shown on the plan and the court was required to consider any such objections. The boundary surveyed by Cussen in 1886, and shown on plans ML6036 and ML6036 etc approved by the chief surveyor in 1887, had not been approved by the Native Land Court and had, therefore, no legal standing.

The western boundary of the Tauponuiatia block was found by the Tauoponuiatia Royal Commission to run along the watershed of the Hurakia range and then along the north-eastern boundary of the Maraeroa block. In 1889 there was a Hurakia range which would have a watershed, and there was a Maraeroa block created by the Native Land Court order of 24 September 1887 which would have a boundary. But the boundary of the 1887 Maraeroa block had not been fixed by the Native Land Court, just as the watershed of the Hurakia range had still to be fixed by survey.

The boundary between the Maraeroa and Pouakani blocks surveyed by Cussen in 1886 and shown on the plans approved by the chief surveyor in 1887 was a straight line from the western Taporaroa to Pureroa. We analysed carefully Cussen's instructions, the boundary descriptions in Native Land Court orders and in Maori evidence given to the court in both the 1886-1887 and 1890-1891 hearings of Maraeroa and Pouakani blocks, and in evidence given to the Tauponuiatia Royal Commission. We conclude that all the descriptions of this boundary, including place names on the plan GM180, were consistent in placing the boundary line through a point at the junction of the Ohahau and Waipapa rivers. This point was not located by survey on the ground until 1892, by Stubbing, and it is at this point that the angle in the line occurs. It is not mathematically possible to maintain a straight line between Pureora and either Taporaroa, and be consistent with a boundary description that includes the junction of Ohahau and Waipapa rivers (see [map 10.2](#)). We conclude therefore that the boundary between Maraeroa and Pouakani blocks, as surveyed by Stubbing in 1892, drawn on ML 6406 etc and on subsequent plans, is correct.

We also note that the Ohahau stream is named Omahau on some current DOSLI maps (for example NZMS 260 sheet T17) and recommend that this be corrected when the maps are reprinted.

A detailed narrative of Crown purchases and subdivisions of Pouakani and Maraeroa blocks is provided in chapter 11. We note some discrepancies between plans shown on deeds of sale and Native Land Court title orders. We analyse in detail Stubbing's 1892 plan ML 6406 etc and deed plans in appendix 13. We also describe the process of obtaining individual signatures on deeds by government land purchase officers.

In chapter 12 we focus on surveys and the matter of survey and other charges against the land incurred as a result of the process of investigation of title by the Native Land Court. We note the various recalculations of amounts of money to be charged against the land in the form of survey liens, and the practice of calculating boundaries in the Survey Office-"scaling and protracting" - rather than survey on the ground in areas where the Crown was actively purchasing individual interests. In mitigation, the intention was to prevent unnecessary and costly surveys which would be a further charge on Maori owners. We conclude that significant areas of land were acquired by the Crown in payment of survey costs, in addition to the purchase of individual interests, but Maori did not always receive in return a properly surveyed title.

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### 18.5 The Native Land Court and Crown Land Acquisition in the Late Nineteenth Century (Chapter 13)

In our review of the large amount of archival material that has survived covering the Native Land Court operations, surveys and Crown land purchase on Maraeroa and Pouakani blocks in the 1880s and 1890s, we began to understand why Maori people are frustrated in finding out how the Crown obtained title to their land. We also reviewed the massive amount of legislation (see appendix 10), survey regulations (appendix 11), numerous DOSLI plans (appendix 12), and searched other contemporary sources to understand the practices and procedures of the Native Land Court, surveyors and land purchase officers in the 1880s and 1890s. We identified what could be described as sloppy procedures in the Survey Office in Auckland in not preparing separate plans for each block as required by the survey regulations, allowing the addition of survey data to existing plans, and relying on "scaling and protracting" of boundaries in the preparation of some title plans.

We reviewed the report and evidence given to the 1891 Commission on Native Land Laws, which set out very clearly Maori grievances created by the operation of the Native Land Court, the requirements for survey and the high costs involved. The only way for Maori to establish title to their lands was to embark on this costly process, or be caught up in it by other kin who had lodged an application for investigation of title. Tribal leaders who signed the 1883 petition to parliament tried to keep the Native Land Court out of the Rohe Potae, and to establish "Native Committees" which would undertake the task of identifying lands to be made available for Pakeha settlement. The Native Committees Act 1883 gave Maori no effective power to administer their lands. Under the Native Land Alienation Restriction Act 1884 a Crown right of pre-emption was reimposed in the Rohe Potae. Maniapoto and Tuwharetoa leaders argued that this depressed prices paid by the Crown for their lands.

Government land purchase officers reached agreements with Maori and various arrangements were made outside the Native Land Court and confirmed by the court in the absence of any objection. We investigated the Crown purchase deeds and sought other information about land purchase practices. We found no evidence to suggest that the land purchase officers or surveyors acted illegally, fraudulently or used methods that were not accepted practice for the times. The Native Land Court likewise acted within the legislative provisions of the time.

In reaching the conclusion that we find nothing illegal or unacceptable in contemporary practice in the transactions on the Maraeroa and Pouakani blocks in the 1880s and 1890s, we are still left with a strong sense of Maori grievance and frustration. The 1891 Commission on Native Land Laws identified the problems of confusion in law and practice in the Native Land Court, the high costs in fees and other expenses to attend court sittings in distant towns, the excessive costs of surveys,

and costs of litigation in the Supreme Court or rehearing in the Native Land Court. All these factors contributed to mounting debts. A system of administration of Maori lands was imposed by parliament and the machinery of the Native Land Court rolled inexorably across the land. There is plenty of evidence that tribal leaders wanted to avoid the worst problems created by land dealing by keeping the Native Land Court out of the Rohe Potae and administering their own lands. There is also plenty of evidence that the government intentions were that Crown sovereignty would be imposed, government institutions extended into the region and the lands of the Rohe Potae "opened up" for Pakeha settlement. Parliament also sought to protect its investment in the construction of the North Island main trunk line by imposing a Crown right of pre-emption in the hope of paying off its substantial debts by profits from the sale of land.

We conclude that Maori paid a disproportionate cost for Pakeha settlement, but little provision was made for Maori participation in the suggested benefits of the introduction of capital and settlers. Indeed, the system of Native Land Court investigation of title and individualisation of interests in land, which could be sold piecemeal, contributed largely to social disruption, dissension over issues of mana and territory, massive debts, costly mistakes in survey boundaries in some cases, and failure to survey in others, and costly litigation.

We have a particular concern about the way large areas of land were acquired by the Crown in payment of survey costs. We accept the need for survey to identify boundaries for title purposes. We question why Maori were required to pay so substantially for the whole cost of surveys, including minor triangulation, in the Rohe Potae. If the Crown had accepted Maori proposals to work out the areas to be sold or leased for Pakeha settlement, and administer their lands themselves, there would not have been the need for so many surveys of subdivisions of blocks. Perhaps there would have been fewer disputes and certainly less expense in prolonged litigation. The Crown also charged interest on unpaid survey liens, even when the Crown was sole purchaser and it had been agreed that survey costs would be paid in land.

There is nothing in the Treaty of Waitangi which required the transmuting of traditional Maori forms of land tenure into titles cognisable in British law. By imposing requirements for survey and associated costs, fees for investigation of title in the Native Land Court, and other costs such as food and accommodation - while attending lengthy court sittings, many Maori were forced into debt. That there had to be a fair system of establishing ownership when a sale was contemplated is accepted. The legislation under which the Native Land Court operated went much further than that and required that all Maori land be passed through the court with all the attendant costs of that process. When the debts were called in, Maori paid in land.

We consider that a prima facie case has been presented that the Crown acquired excessive amounts of land in payment of survey costs and other charges in the Rohe Potae. We also acknowledge that further investigation is required. We are aware that the Waitangi Tribunal has begun proceedings to hear 12 other claims on similar matters in the Rohe Potae (Wai 48 etc). The Pouakani claimants have raised issues that are of concern to all the tribes of the Rohe Potae and the tribunal will need to hear from them before reaching specific conclusions on matters of appropriate redress. We

also consider that such matters should be addressed on an iwi or hapu basis, and that the Crown should begin considering appropriate ways of doing this.

Accordingly, we make a general recommendation that no Crown land, or land transferred to state-owned enterprises such as Land Corporation or Forestry Corporation, in the Rohe Potae be transferred to a third party without either investigation by the Waitangi Tribunal or agreement with the tribal authorities within whose territories such lands may lie. We do not consider that in the case of the Rohe Potae lands, the memorial on title provided for in the amendments to the State-Owned Enterprises Act 1986 made by the Treaty of Waitangi (State Enterprises) Act 1988 is adequate protection. We are mindful of the considerable cost to the taxpayer that may be incurred if such lands are alienated, but on subsequent investigation the Waitangi Tribunal sees fit to recommend Crown resumption of title.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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### 18.6 The Boundary Problems of the Titiraupenga and Pouakani B9B Trusts (Chapter 14)

It is common ground that during the 1890s the Crown purchased a large number of individual interests of Maori owners in the Pouakani B9 (Pureora) and C1 (Kaiwha) blocks. In 1899 the Crown applications to partition out those interests were heard by the Native Land Court. The lands acquired by the Crown included 140 acres on Pouakani B9 block and 203 acres on Pouakani C1 block transferred by Maori owners in payment of survey charges. Title orders were issued by the Native Land Court but surveys were not completed by the Auckland Survey Office in a manner which complied with the 1897 survey regulations. Some boundaries remain unsurveyed on Pouakani B9B block. Surveys of Pouakani C1B block in 1947 revealed a problem in that a survey based on boundary descriptions in the Native Land Court title orders of 1899 and subsequent partitions could not be made to close and remain faithful to those descriptions.

The matter remained unresolved and a dispute over the boundary of Pouakani B9B block developed in the 1980s between the Maori owners and the New Zealand Forest Service, and after 1986 the Department of Conservation, which administered the Pureora Forest Park. There is no dispute over the nature of the survey problem which was acknowledged in 1947 by the Department of Lands and Survey and later by its successor the Department of Survey and Land Information. The survey problems arose over the failure of the Survey Office in Auckland in the 1890s to meet the requirements of the survey regulations. The consequence of that failure was that the 1891 Native Land Court orders, that were supposed to have converted land rights collectively possessed by Maori into titles recognised by British law, failed to do so. Those collective land rights were guaranteed by the Treaty. The justification for the nineteenth century native land legislation, as set out in the preamble to the Native Lands Act 1862, was that such collective rights would be converted into titles recognised by British law.

Because not all the boundaries of the lands in the 1891 title orders creating Pouakani B9 (Pureora) and Pouakani C1 (Kaiwha) had been surveyed, those orders would not have been registrable in the Land Transfer Office and registered rifles could not have been issued for them. The Native Land Court created fresh boundaries in 1899 when, on the application of the Crown, the court divided the lands between the Crown and the Maori owners who had not sold. Because not all the boundaries were surveyed, with the passage of time the survey work, for which the owners had paid 343 acres of their land in 1899, became almost valueless. Some of those boundaries had to be resurveyed in 1972. The rest will have to be resurveyed before the present owners of Pouakani B9B can get a title to their land under the Land Transfer Act. The Crown had an obligation to ensure that the boundary between the Crown and the nonsellers was adequately surveyed.

Almost a century after the Crown purchases there was litigation in the High Court, but the Maori Land Court and the chief judge of that court have jurisdiction in boundary matters concerning Maori land so the dispute was referred there. Because of other issues raised, the Maori Land Court proceedings were adjourned while the present claim was made to the Waitangi Tribunal. In due course, when negotiations suggested in our recommendations are complete, the matter of boundary survey will return to the Maori Land Court for final confirmation of boundaries and any adjustment of title orders required.

We find that the Department of Survey and Land Information is not a party to the dispute but has endeavoured to cooperate and facilitate resolution. The Crown in general does have an obligation to ensure the completion of survey of agreed boundaries, and to compensate Maori owners for the deficiencies of the Auckland Survey Office in the 1890s which has led the Maori owners of Pouakani B9B block into costly litigation.

Accordingly, we recommend:

1. That the Crown refund the reasonable legal, survey and other expenses incurred by the trusts in researching the question of the boundaries of Pouakani B9B block, the boundaries of the former Maraeroa and Horaaruhe Pouakani blocks, and the various subdivisions of those blocks, and in litigation over the boundaries, and the interest paid on the money borrowed for such purposes. The refund is to be made to the trust or trusts that made the payments.
2. That an area of 140 acres of Crown land taken in payment of survey charges be returned to the beneficial owners of Pouakani B9B block. This recommendation is to be considered in relation to further recommendations set out in chapter 15.
3. That the Crown return to the beneficial owners of Pouakani C1B1 and C1B2 blocks an area of 203 acres of Crown land taken in payment of survey charges. The location of this land is to be determined in negotiation with the Titiraupenga Trust or such other representatives of the beneficial owners as may be determined by the Maori Land Court.

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### 18.7 The Claim Relating to Forests (Chapter 15)

The disputed lands in the Pouakani and Maraeroa blocks include a part of the Pureora Forest Park. We acknowledge that this is an ecological area of national significance and that there is a good deal of general public interest in the future management of the park. However, in past Crown administration of this forest there has been inadequate concern for Maori perspectives in the management of a forest which is regarded as a taonga by local tribes. The mountains Pureora and Titiraupenga are tribal landmarks, maunga tapu, sacred mountains, for the substantial number of Maori people identifying with Tainui and Te Arawa. We consider that the Crown, through the Department of Conservation and other agencies, has an obligation to acknowledge this mana in the administration of Pureora Forest Park.

We make the following recommendations:

1. We have outlined in chapter 2 some exploration traditions of Tainui and Te Arawa, and specifically the associations of the ancestors Kahu with Pureora and Tia with Titiraupenga. The mana of the tribes of Tainui and Te Arawa in the sacred mountains, Pureora and Titiraupenga respectively, should be recognised by the Crown by revesting the title in these ancestors on terms set out in recommendations below.
2. The Pouakani B9B block, which includes part of Titiraupenga and is covered in forest, should become whenua rahui, protected land. The preservation order imposed by the High Court should be maintained until appropriate protection measures are put in place. In the national interest, the Crown should take over responsibility for rates and any other liabilities on this block.
3. In exchange for the preservation of the forests of Pouakani B9B block in the national interest, the Crown should investigate the transfer of equivalent land in exotic forest (Forestry Corporation) or other Crown lands to the owners of Pouakani B9B block. Funding of research and expert legal, financial and scientific advice should be provided to the owners by the Crown. The area of 140 acres acquired for survey costs on Pouakani B9 and recommended in chapter 14 for return to Maori owners may be added to any lands offered in exchange.
4. The provisions of s439 of the Maori Affairs Act 1953 and other appropriate legislation should be explored to enable the following objectives to be achieved:
  - the title to the mountain Pureora to be vested in Kahu; and to Titiraupenga in Tia; and trustees over these mountains to be appointed by the Maori Land Court;
  - Pouakani B9B block to be added to the area surrounding Pureora and Titiraupenga already within Pureora Forest Park and the whole block to be made a Maori Reservation under s439 of the Maori Affairs Act

- 1953 or other appropriate legislative provision; the block to be managed as part of the Pureora Forest Park;
- trustees under s439 Maori Affairs Act 1953 to be nominated by the Maniapoto and Tuwharetoa Maori Trust Boards and Ngati Raukawa Trust Board for the above lands;
  - public access to the Pureora Forest Park and day-to-day management to continue under the provisions of the Conservation Act 1987 and Conservation Law Reform Act 1990;
  - the Department of Conservation should initiate consultation with Maori interests for the purposes of producing a management plan for Pureora Forest Park that does give effect to the principles of the Treaty of Waitangi.
5. In its administration of Pureora Forest Park the Department of Conservation should be guided by the trust made up of nominees from Maniapoto and Tuwharetoa Maori Trust Boards, and Ngati Raukawa Trust Board. The trustees' role should include participation in preparation of a management plan for the Pureora Forest Park, and on-going advice on Maori cultural, spiritual and other relevant matters. These may include use of Pureora Forest Park for Maori purposes such as felling of totara or other timber for use in carvings for a meeting house or other appropriate structure, taking of fibre plants such as kiekie for weaving, or other plant material required for Maori purposes. The taking of such forest resources is to be allowed by the Department of Conservation only with the permission and at the discretion of the trustees, guided by any relevant scientific information available.
6. Until these negotiations are completed, neither the Crown nor any stateowned enterprise should seek to alienate lands or forests in or adjacent to Pureora Forest Park. We also note that there are other claims lodged with the Waitangi Tribunal which may affect blocks within or adjacent to Pureora Forest Park and in this recommendation we seek to protect those interests also.
7. In the preservation of indigenous forest resources and wildlife habitats, a valued taonga, the Crown has an obligation not only to preserve the remaining forest but also actively to seek to replant suitable adjacent lands in indigenous species and incorporate these in Pureora Forest Park in due course.

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### 18.8 The Claim Relating to the Waikato River (Chapter 16)

This claim related only to that portion of the Waikato river adjacent to the Pouakani block on its northern boundary. We do not make any specific recommendations on the grounds that issues relating to rivers and the Waikato river in particular should be investigated as a whole, as there are other claims relating to rivers before the Waitangi Tribunal. However, we do make some comments on the evidence that was put before us which has general relevance on the matter of the status of the river as taonga, the impact of hydro-electric power schemes and the "ownership" of the bed of the river and its fisheries.

The Waikato river is regarded as a taonga of the tribes of Tainui and Ngati Tuwharetoa. By various actions of the Crown, or worse, the failure of the Crown to acknowledge and protect Maori interests and concerns for wahi tapu, taha wairua (spiritual qualities), mahinga kai, fisheries, and other traditional uses of the river, the mana of these tribes has been devalued. An agreement was reached with Ngati Tuwharetoa which acknowledged Maori interests in respect of Lake Taupo and the Waikato river to Huka Falls. Maori claims to the river downstream and its fisheries remain unresolved.

Under s261 of the Coal Mines Act 1979, the Crown claimed ownership of the beds of "navigable" rivers. The Waikato river was not navigable in the section bounding the Pouakani block, being broken by rapids at several places. When a river was not navigable, and formed a boundary between blocks of land, then the *ad medium filum aquae* rule applied, that is the boundary is the middle line of the river. It was not clear whether a river became navigable, as understood in s261 of the Coal Mines Act, when the river was dammed and a navigable hydro lake was formed. In 1991 s261 was repealed by s120 of the Crown Minerals Act. However, s354 of the Resource Management Act 1991 provides that this repeal shall not affect any title to land already acquired by the Crown under s261.

It would seem that the taking of river margin lands for hydro-electric power purposes by the Crown under the Public Works Act did not include rights in the river *ad medium filum aquae*. The plans referred to in proclamations under the Public Works Act (summarised in appendix 16) for the Waipapa, Maraetai and Whakamaru hydro-electric power schemes show boundaries that exclude the river bed. That the Crown may have assumed at the time of proclamation that it already owned the river bed, does not affect the central issue that ownership of the river bed and rights to the resources of the Waikato river remain unresolved. We note that the impact of these public works takings is the subject of a separate claim to the Waitangi Tribunal (Wai 85) lodged on behalf of Ngati Kahungunu ki Pouakani owners of Pouakani No 2 block granted to them by the Crown in exchange for the Wairarapa lakes (see chapter 17). We also note that not all lands taken under the Public Works Act for hydro-

electric power purposes have been transferred to the Electricity Corporation, and the future administration of some of these lands remains unclear.

The repeal of s261 of the Coal Mines Act 1979 has not resolved the issue of ownership of riverbeds. Furthermore, we consider the conflict between Maori rights, the Crown and the public interest in general, over the ownership and use of rivers, has implications far beyond the scope of claims before this tribunal.

We therefore recommend that the Crown give urgent attention to addressing these matters in the national interest.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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### 18.9 Ngati Kahungunu ki Pouakani (Chapter 17)

We have briefly reviewed events which led to an arrangement made in 1915 between the Crown and Ngati Kahungunu in which they were granted an area of 30,486 acres on Pouakani block, including the present site of the town of Mangakino, in exchange for the bed of the Wairarapa lakes. Although the matter of "repatriation" of Ngati Kahungunu was raised, we make no specific recommendation as this is an issue that will be before the tribunal hearing the Wairarapa Lands and Fisheries (Wai 97) and Mangakino Pouakani Lands (Wai 85) claims. We simply note that the "Wairarapa Exchange", by introducing people from another tribal area, added another dimension to an already complex history of transactions on the Pouakani block.

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*Waitangi Tribunal, Department of Justice, Wellington.*

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### 18.10 Conclusion

A large quantity of detailed archival material has been reviewed in preparation of this report. There is much that has been set out in laborious detail in the report itself in order to document the complexity of transactions on Pouakani and adjacent blocks. We have also endeavoured to provide a broader historical context for these transactions. We hope now that this report may provide the understanding of past transactions which creates the context for negotiation and settlement in a spirit of good will between claimants and the Crown. In accordance with s6(5) of the Treaty of Waitangi Act 1975 the director of the Waitangi Tribunal is requested to serve a sealed copy of this report on the:

(a) claimants, John Hanita Paki and the Pouakani B9B and Titiraupenga Trusts.

(b) Minister of Maori Affairs  
Minister of Justice  
Minister of Conservation  
Minister of Forests  
Minister for the Environment  
Minister for Surveys and Land Information  
Minister for State Owned Enterprises

(c) Solicitor General

(d) Electricity Corporation of New Zealand  
New Zealand Forestry Corporation  
Land Corporation of New Zealand

(e) Tuwharetoa Maori Trust Board  
Maniapoto Maori Trust Board  
Ngati Raukawa Trust Board

(f) Waikato Regional Council

Dated at Wellington this 26th day of February 1993 Judge Ross Maitland Russell,  
presiding officer  
Emarina Manuel, member  
Evelyn Stokes, member  
W M Wilson, member

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*Waitangi Tribunal, Department of Justice, Wellington.*