

# Te Roroa Claim

## 05 Te Manakore (Loss of Mana)

### 5.1 Nga Morehu (The Survivors)

Take 5

TE MANAKORE (LOSS OF MANA)

#### 5.1. Nga Morehu (The Survivors)

The mana of Te Roroa chiefs and people depended upon their ability to control their main economic resource which was the land. Hand in hand with the dwindling of the tribal estate from the late 1870s, the mana of the chiefs and people declined. By the 1920s, they were coming to resemble "the sea-birds which perch upon a rock" because they have no other resting place. Through the loss of land they had become morehu, that is, mere survivors who were no longer able to control their own lives.

The greater part of Te Roroa's ancestral land was now owned by the Crown and being managed as state forest or developed for farm settlement. In consequence, their traditional rights to mahinga kai (places where food was produced, procured or processed) were under threat. Moreover they were denied various kinds of state assistance being extended to other rural communities to promote their development and welfare. More particularly this was the case in the Waipoua Settlement where the forest service increasingly ruled their lives.

In this section of our report we shall first examine the claim that the Crown omitted actively and adequately to protect traditional rights to mahinga kai and cultural resource materials and to recognise Te Roroa's rangatiratanga over them (A1(i):7-13){FNREF:0-86472-088-2:5.1:1}; and, secondly, the claim that the Crown omitted to provide adequate public services and utilities for Te Roroa in the Waipoua valley (A1(i):10).

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*Waitangi Tribunal, Department of Justice, Wellington.*

# Te Roroa Claim

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### 5.2 Traditional Rights to Mahinga Kai

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##### WHAT ARE MAHINGA KAI?

5.2.1 Mahinga kai have been defined as "places where food was produced or procured". {FNREF:0-86472-088-2:5.2.1:2} In Te Roroa territory and elsewhere, they were places where food was also "processed". Some claimants made this clear when they described what their mahinga kai involved. Several, recounting their childhood and youth, described seasonal excursions to the mahinga kai "camp grounds" of tupuna where food was gathered and sometimes processed according to traditional methods and the conservation ethic (A27:1-2; A28:2; A29:1-3; A30:1-2; A31:6-7; A34:1,7-8; B41:7-8; B42:11).

The traditional hunting and food gathering areas of Te Roroa are the Waimamaku, Waipoua and Kaihu valleys. Linked by the magnificence of ocean and sweep of coastline from north Kaipara to south Hokianga, each valley is distinguished by its own unique mix of natural elements, of land, forest, waterways, seashore and ocean. For countless generations, these natural endowments have provided mahinga kai for Te Roroa tupuna and their uri down to the claimants.

In the Kaihu area, key mahinga kai were (and still are) Manuwhetai and Maunganui Bluff, where toheroa, mussels and various species of ocean fish used to be found in abundance; the eel fishery of the Waihopai river opening to the sea, and the inland lakes of Taharoa, Waikere and Kai Iwi that were rich in eels, kawai (fresh water crayfish) and inanga (white bait).

In Waipoua mahinga kai include the Waipoua forest itself, the river, and the ocean with its known off-shore fishing grounds and kai moana beds, like Kawerua and Wairau.

In the Waimamaku valley, the banks of the Waiotemarama provide inanga "possies", while the Waimamaku river itself was a mahinga kai for eels, fresh water shrimps and herrings. At its mouth, mullet, kahawai and flounder were plentiful, while the beachlands were a rich source of kai moana including pipi, karahu and tio (oysters).

Kuia and kaumatua evidence graphically demonstrate first, how after land was sold to the Crown, tangata whenua continued to exercise their traditional rights to mahinga kai in their respective resource areas; and secondly, how their rights were gradually eroded as the Crown opened up the land for development. We shall now examine this evidence in each of the three traditional resources areas.

## KAIHU: MAHINGA KAI

5.2.2 Kitty Netana, recalling her childhood in Kaihu, described visits to Maunganui Bluff, when "the karaka berries were ripe and when the toheroa were in season". There "Hangis were prepared for the cooking of the toheroa for preservation" and children were taught how to "pick and preserve the mussels" (A27:1). Fishing the abundance of the ocean involved several tasks:

There were times when some would go fishing and netting, some of the fish would be dried to bring home.... The fish that were caught were cooked in a hangi or dried. (ibid:2)

Looking back with some nostalgia she pointed out that "Nowadays there is not much of that type of living. As a matter of fact that type of life does not exist any more" (ibid).

Kerehi Rahui related how she used to accompany her father to gather mussels at Maunganui Bluff where:

the kai were prepared... and the karaka berries were cooked, put into bags and put into running water, left there for sometime, then taken out. (A28:2)

A number of claimants spoke of the abundance of fish, toheroa and mussels at the Bluff and the eel harvests from the Waihopai stream to the south (A30:1; A31:7; A32:4; A34:3,9).

Monika Toko remembered selling fish which she and her husband had netted, to tourists. At that time tourists had no taste for mussels but as Monika exclaimed "Look at the situation today! Where are our food? We can't get at them any more" (A30:5).

In Kitty's youth many big families lived on both sides of the Waihopai stream and different families were chosen "to make the hangis, catch the eels... [and] bring them home" (A27:1).

According to Lovey Te Rore, Kaihu people used to go overland to eel at the Kai Iwi lakes returning to Waihopai and Whangaiariki. The three areas were close together and in those days people "could walk one night or half of the night, through all those lakes" (A34:9). He told us that "Use of the fishing resource has always been an important part of our relationship with the Kaiwi lakes." (C16:4).

Eruera Makoare talked about eeling at the Kai Iwi lakes "in the way that our ancestors have done for generations" when the eels were running between February and April (C17:1).

Although they fished all the lakes, Kai Iwi was the main source. The eels would swim from Lake Taharoa into Lake Kai Iwi via a drain (now a culvert). Lovey Te Rore and companions cut down cabbage trees which were then split and placed white side up in the drain in order to see the eels and to catch them en route (C16:4). He recalled furthermore, that one of the fishing gangs he and three others were part of, caught 124

eels in one night and needed a pack horse to take them back to Kaihu, although usually a gang would take only a third or half of that in an evening (C16:5; C17:3).

Eruera summed up the custom practised for generations of sharing the catch:

We provide eels for the Kaihu people generally and also supply hui and tangi held at Kaihu. I see it as part of my obligation to the community and I am happy to fulfil it. When the eels are running we can feed the whole of Kaihu. (C17:1)

Both claimant and Crown evidence indicated that the Kai Iwi fishery was well understood and managed by those resident in the area around Kaihu to provide sustenance and mana (H9:12; C17:1-3). Claimant evidence further indicated that the Taharoa lakes were (and to some degree still are) part of the network linking inland with coastal mahinga kai which was worked at optimal times and seasons according to traditional rules and practices.

## KAI IWI FISHERY

5.2.3 After the Taharoa Native Reserve was sold to the Crown in 1952 Te Roroa continued to use this dune lake area for traditional purposes. They believed that the sale had not extinguished their mana whenua or traditional mahinga kai rights.

In the decades to follow, these rights became severely restricted by the Hobson County Council, the local body responsible for implementing the Crown's policy of developing a public domain around the lakes. Te Roroa did not participate in this development; nor were they represented or consulted by the Taharoa Domain Board. Rather they became increasingly concerned over what they saw happening to the lake surrounds and the dwindling supply of eels (C17:3-5; H32:10-11).

On a site visit to the area, Lovey Te Rore pointed out the erosion that had occurred along the foreshore of Lake Taharoa since his youth and how the lake level had dropped alarmingly. While attributing this to the long drought of the 1940s, he felt that the pine belt planted in the 1950s to provide "a backdrop to the lakes" was also responsible {FNREF:0-86472-088-2:5.2.3:3}

Claimant concerns over damage to the ecological integrity of the lakes system as a whole, range from the introduction of exotic species of fish, to pollution of the lake waters by power boat use and petrol spillage, production forestry and fertiliser and pesticide run-off from surrounding farmlands. They are also concerned over the summer influx of visitors and the use by campers of the lake waters for both bathing and domestic purposes, practices which they find culturally offensive (C16:7; C17:4-5; I1(d):43; see also H8(a):238). In particular they are concerned about the detrimental effects of the rainbow trout on indigenous fish (H20:2-3).

Witness for the Crown, R D Cooper, stated that rainbow trout were released into Lake Taharoa by the Hobson Acclimatization Society in 1968 and thereafter maintained by annual fingerling releases not only in Taharoa but also Kai Iwi. This programme had created the "most important trout fishery in Northland" which could not be sustained without regular restocking (H9:16; H40:8).

Cooper tentatively suggested that trout and eels compete for the same food, that is inanga and kawai. While trout had reduced inanga to a critical level, possibly this was not the only reason for the decline in eels. The lack of access to the sea essential for breeding had been cut off for at least 20 years (H40:6-7). Research on this subject was not exhaustive.

Crown counsel conceded that the introduction of trout to the Taharoa Domain appeared to have affected indigenous fish stocks for various reasons (I2:(b)(x):5). The impact of environmental factors like the modification of the lake by land use patterns and recreational use may have played a part, but such factors had not been adequately researched (I2:(b)(x):5; H9:6). She overlooked the fact that Te Roroa evidence of the decline in indigenous fish was based on years of observation and experience. Hence their concern to protect and maintain the fishery and exercise their tino rangatiratanga (control and management) over it.

## COASTAL FISHERIES

5.2.4 Similarly other fisheries utilised by Kaihu people were lost through land alienation. When Kitty Netana bemoaned the loss of the life style associated with the mahinga kai activities of her childhood at Manuwetai, she was being prophetic. So too was Monika Toko, who remembered her father saying "Now we are done for!... This place will soon be crawling with people. It will be to our disadvantage" (A30:6).

Since then the toheroa and shell fish stocks for which the area was once renowned, have been alarmingly depleted, confirming the claimants' worst fears that one day they might be "starved of ... [their] food sources" (ibid).

Such fears came close to being realised in the loss of the Waihopai river eel fishery. Lovey Te Rore attributed the loss to the deepening of the river bed with a drain digger in 1939 (A18:95). Crown evidence indicated that the Hanson brothers attempted to deepen the river channel and open the bar in 1937. No reference was made to a diversion (E3:26-33).

Maps drawn in 1875 and 1881, sketched in the Waihopai river mouth adjacent to the southern boundary of Manuwetai. A 1960 survey fixed the river mouth some 450 metres south of its earlier surveyed position (E3:31-32).

A site inspection of the river mouth demonstrated that there was considerable scope for it to meander. Alignment of the river channel adjacent to the southern boundary of Manuwetai was deeply incised into the terrain at the point where it breached the sand dune formation on the southern side of the river. There was, however, a discernible former river bed which ran parallel with the shoreline through the sand dunes above high water mark. We are unsure whether the old course of the river was diverted by natural causes or human interference. The evidence attributing the loss of the eel fishery and a fresh water supply at Manuwetai to the diversion of the Waihopai river is, in our view, inconclusive. The draining of adjoining farm land would also have contributed.

## WAIMAMAKU FISHERIES

5.2.5 Reihana Paniora recalled in his childhood, "rama tuna" expeditions along the Waiotemarama stream; his mother fishing for white bait at the mouth, and fishing for herrings and eels in the Waimamaku. He also recalled the paspalum technique of fishing and the netting of an assortment of inshore fish. On king tides, snapper and kingfish were caught a quarter of a mile up from the river's mouth. There too, pipi, karahu and oysters were gathered (D19:1-2). The coastal area south from the Waimamaku river to Motuhuru was a traditional place for kai moana (D12:8).

Meri Wihongi, a descendant of Moetara remembered the days they camped every year at Wairau mostly to make kits and mats but also to get crayfish. The kai they lived off at the beach were kina, paua and pupu (D19:3-4).

From reading the signs, the old people could determine whether or not the conditions for fishing were right. They observed and taught the rules about how kai moana should be gathered such as never gutting fish on the beach or shelling kaimoana below high water mark; the first fish of a catch had to be given to a kaumatua to ensure successful catches in the future; any stone turned over on the beach had to be replaced; women were not allowed on the beach while they had their "mate" and so on (ibid:5).

Reihana noted other rules like the rahui to protect Toheroa at the Waimamaku river mouth. This demonstrated that:

from very early times our people not only looked to the river and the sea as a source of food, but also tendered and conserved it to this day. The placing of a rahui on the gathering of seafood following the loss of life at sea, or to guard against over exploitation of our reefs is still practised today. (ibid)

The Waimamaku fisheries are under threat. The paua, kina and pupu are still there but "in much smaller size and quantity". Shellfish have been removed by the sack full, breeding beds shattered by vehicles, and offshore fishing grounds exploited by commercial trawlers. The Ministry of Agriculture and Fisheries has lacked the funds to control the fisheries. Honorary fisheries officer warrants have been granted for the Waimamaku, Kokohuia and Waipoua areas to the Waimamaku Maori Komiti (D19:4-5).

Reihana said:

This coast needs to be monitored by people specialised in this field. Persistent patrolling of seasonal gathering would enable the shellfish beds to regenerate.

... If we don't look after our resources today there will not be any shellfish left for our mokopunas. (ibid:6)

#### WAIPOUA VALLEY: MAHINGA KAI

5.2.6 Reihana's view would be supported by all the people of the Waipoua valley, now living on a remnant of what used to be the "heartland" of Te Roroa estate.

In August 1931, W Cooper, consolidation officer for the Native Land Court found:

an abundance of growth in this river valley, and the native settlers here have no intention of leaving it. They have an abundance of fish and shell-fish on the coast together with very fine mullet in the river. It is altogether an ideal locality for... occupation. (B6:44)

Since time immemorial the mahinga kai involving the sea has been a significant part of the community's "lifestyle". Edward Birch put it this way:

When I think back to the resources that used to abound in Waipoua I have to also think of the sea. It was a major part of our life style back then.....

...We were living right beside the river in those days the river would boil with mullet and kahawai....

...These resources to us were essential we could gather our paua, kina, mussels, toheroa which were very common from Ngati Tiiheru to Waikara approximately 10 miles of beach. There was enough Kaimoana in this rich and beautiful coastline to feed all the other local settlements as well as our own. (C4:2)

Rewiri Paniora recalled fishing for snapper, collecting seaweed and shell fish. The best catch he could remember was a night's fishing of 102 snapper caught by him and two of his brothers:

Me and my brothers were regarded as the so called gun fishermen and are still called that today. The only thing is there isn't any fish left to be caught as the trawlers come right in to the last line of breakers, drag their nets and are out to the fishing limit as day breaks. Hence no more fish left for the people of this valley. (C6:4)

Much of this mahinga kai activity involved Kawerua which since ancient times has been an essential source of kaimoana for Te Roroa at Waipoua. This was graphically illustrated in claimant evidence at the second hearing.

Turi Birch recalled the richness of the resources along the coast:

When the tide goes down... you can see the head of this rock sticking out and it's very much like a dog. It's a good fishing ground for snapper.... a few hundred yards further down, there's another famous snapper fishing ground-its called Te Awa Tamuri, a snapper creek.... down south, there's a rock.... surrounding that rock is always grit.... And from there we used to get... sacks of that grit and throw it in the fowl house... down a few hundred yards, we'd be right in Brown's Bay... a very good fishing... spot.... At night time you get snapper there, shark, conger eel, ... stingray.... a few hundred yards down and we come up to Waiotane.... the most famous rock for fishing snapper.... that's where I caught my first snapper... (B50:10-11)

Rere Pumipi told us that he was taught to take:

only enough kai to feed the family and not too much so that it is sometimes wasted. To go out for kaimoana now, we must seek permission from the authorities. (C30:2)

Claimant evidence thus demonstrated the vital importance of Kawerua as a basic source of subsistence for families living at Waipoua even as Rewiri Paniora noted, in affluent years of full employment and social security:

I think the hardest part of my life here for me was when my late father spent about eighteen months in the Te Kopuru Hospital with tuberculosis about 1952-54 leaving our mother and us all to survive as best we could. The family benefit paid for the basics and we used the skills we were taught to catch fish, gather shell fish and make sure that the acre and a half garden that we had was planted in enough corn, kumara, and potatoes to last until the next growing season came around. (C6:4)

That the Waipoua river was another rich food resource is evident from the comments of people like Craven Tane who recalled how his:

Dad used to go netting up.... Waipoua creek, put the net across... and about a hundred yards from the net you'd just see the white splash right across the net and there's about 500 fish in the net. (B48:8)

Te Mamae Tane also remembered how "fish was always plentiful. The mullet would come up the river... to a place we call Puke Karuhiruhi" (Shag Point) to spawn, and that:

[When the water] was beautiful and clean. Aata told us about the mullet going up the river.... We were told not to catch the mullet while they were swimming up river, but we could catch them when swimming downstream. There were plenty of whitebait, fish and eels in that river before they violated it. (B44:6)

The Waipoua kauri forest was also a rich larder where tangata whenua hunted pigeon, kaka, kiwi and other native birds; also pigs and kiore (rats). They took native trees and kauri gum and collected karaka, karaeao, miro, pikopiko, tawhara and nikau as well as medicinal plants and decorative material for traditional cultural purposes (C7:13-14; C4:3; A1(i):22-23). Certainly they went on using the forest after the sale of Waipoua No 1 to the Crown in 1876.

The Maori deed of sale for Waipoua No 1 mentioned whenua only. The Crown conceded that possibly Te Roroa thought they would retain some residual food gathering rights in the forest after the sale (E2:213). Claimant evidence indicated that this perception has continued over the years down to the present day. Eruera Paati recalled at eight years old gathering "kai... from the native bush that covered the greatest part of Waipoua", also accompanying his father on a pigeon hunting expedition and being taught the lore of the forest including the locations of camps and bird "landings" like Pawakatutu (C4:3; C7:15). Names of other landings had been given by Ata Paniora to the officer in charge of Waipoua in 1953 (B18:57). Eruera Paati remembered how Ata Paniora made home brew by fermenting tawhara gathered in the forest and sweetened with wild honey (C4:4).

Rewiri Paniora talked of the bush lore and skills he learned at the side of his father and Nick Yakas while hunting feral cattle, pigs and gathering kauri gum (C6:2).

The Waipoua forest was not only "a vast storehouse providing a diverse range of resources" but was also "held in reverence" for its "great spiritual, cultural and economic significance" (C7:13). Eruera Paati stated "The whole of Waipoua was once used by our people freely as a way of life..." (C4:4) and Alex Nathan that:

Our mana whenua gives us this right. The Waipoua forest is as much a taonga... as are our wahi tapu. It is important to our mana as forest people and it is important to the maintenance of our way of life. We have always used the forest for physical and spiritual sustenance, even after the so called sale of 1876. (D27:7)

Restrictions on access to Kawerua

5.2.7 By the 1950s, the scene was changing dramatically for the people of the settlement, isolated by inadequate roads and services and "dependant on the 150 km. journey once a week to town" to buy food, a fact considered "A great injustice for a people who were once so self sufficient" (C4:4).

As the hapu estate was alienated and planted in pines, the forest service imposed constraints on traditional food gathering activities. Conservationist policies brought further restrictions.

Until the 1950s, it was general practice for the forest service to require permits for visiting the Waipoua Settlement but not Kawerua. In fact, visitors to the settlement visited Kawerua as well. Some may have used their permits to go directly to Kawerua (E9:304). In 1957 a fire at Kawerua was reported which led to a court case and the locking of a gate across the river crossing at the settlement. Thereafter, keys were only available to forest service employees some of whom were Te Roroa living at the settlement (E9:309).

In the 1970s restricted access was relaxed a little. Permits were granted to the public "on such days when there was no high fire hazard" and also when weather conditions were reasonable and the road was safe. Access was limited to two vehicles per party, and only a limited number of keys were available on a first come, first serve basis (E9:349, 355-356; C7:35).

Crown counsel assumed that there was little practical difficulty in settlement families obtaining a key and gaining access by forest service roads to Kawerua. Besides there was an alternative route at the Waipoua river mouth (I2:(b)(ix):71). For those not employed by the forest service, getting a key involved a ten kilometre round trip by car. Moreover, this could prove unfruitful as the number of keys were limited and members of the public could book keys by telephone to which residents of Waipoua did not have access (C5:5).

When Richard Paniora raised the possibility of issuing keys to each resident family to enable them to travel freely to and from Kawerua, he was told that this was contrary to forest service policy. He then wrote to the Minister of Forests, Koro Wetere:

My Forebears have lived in this area for many years and had, in past times unrestricted access to the Kawerua beach, which carries a very useful and much required assortment of fish and shellfish, and is considered by the local maori people

to be a supplement to their diets as the nearest stores are some 40 kms away, half of the distance being on metal roads.

At the present time, to go to the beach involves a very long and tedious process... (E9:378-379)

Richard Paniora's letter was timely because of the forest service recreation policy, established in 1983, of allowing open access to all state forests. The practice of locking the gate to Kawerua was reviewed and full access to mahinga kai was granted to settlement families. But to their dismay access was extended to the general public once adequate fire safeguards had been made (E9:389; C5:5). At about the same time the Ministry of Agriculture and Fisheries removed its two Dargaville based fisheries officers from the area. The combination of uncontrolled vehicular access and no policing of resource use was disastrous. "Sack and trailer loads" of kaimoana were said to have been taken and the beds severely depleted (C7:35; C5:5).

To prevent such ruthless exploitation, Te Roroa moved to protect their mahinga kai and in response to urgent requests, the Department of Conservation and Timberlands agreed to re-lock the gate on 5 December 1987 for an initial period of three years in order to conserve what was left and facilitate re-generation. The gate now remains locked, and by agreement between Te Roroa and the Crown agencies, public thoroughfare past this point is restricted (C7:36).

Claimant evidence has made it abundantly clear that continuing access to Kawerua and the conservation of its fish and shell fish is essential for the present and future needs of the people of the Waipoua Settlement.

## RIVER POLLUTION

5.2.8 The claimants state that the Crown has failed to recognise their tino rangatiratanga over the Waipoua river. In particular they instance the extraction of gravel by the forest service for the building of all weather forestry roads and the pollution which extraction and sewage has wrought upon the mahinga kai of the river.

Since the beginning of gravel extraction in the 1940s residents have seen the river deteriorate, resulting in the loss and depletion of its fresh and ocean fish. Over this period too, some families were humiliated and their property rights abused by the manner in which gravel extraction was undertaken. In the legislative and consultative climate of the 1990s, these methods can only be described as crass and cavalier.

Historically, a convention prevailed that gravel in a river bed or pit was regarded as a community asset. The acquisition of an all weather road was regarded as a legitimate transfer of a resource for the public good.

Only in recent times, and certainly not throughout New Zealand, catchment authorities have been interested in controlling gravel extraction or charging royalties. Most landowners, anxious to improve the quality of their own access, were persuaded to cooperate by the benefits of increased property values and improved community services.

So entrenched had this convention become that former county councils and the Ministry of Works and Development, right up until the 1970s, simply issued proclamations, and proceeded to extract spoil from private property for roading and other public works development. Litigation, mostly resolved in out of court settlements, and the modification of the Public Works Act, brought this cavalier practice to a halt. The fact that most major civil works were by that stage complete, simply adds irony to the Crown's power to intrude.

In Waipoua, both claimant and Crown evidence indicate that large volumes of gravel were removed without the consent of tangata whenua. Moreover they were not paid even a small royalty. The Crown tried to condone this on the grounds that there was no formal protest (E10:62). Yet as late as 1980 forest service officials were not certain about their authority to remove metal from the river or their obligation (if any) to pay royalties to Maori owners (E11:228-229; E10:45; I1(e):21-23).

Gravel extraction operations were conducted from land on both sides of the river, which the Crown believed it owned. Neither Crown nor claimants explored the issue of riparian rights. The claimants complained bitterly about the obnoxious behaviour of forest service officials using their property to gain access to the river even after being asked to stop. Te Mamae Tane, who was living at Whenuahou with her father, graphically described how the forest service built roads through the middle of their land to get gravel:

They stirred the water which caused it to become dirty. We had to go up to our home in Whenuahou to fetch water....

...They told us that the place was not ours, but my father told them that the place was his.....

He planted apple trees on the roadway and built a fence across the road. That was the beginning of those apple trees. He planted the trees there to stop them going down to get the gravel from the river. (Their truck couldn't get through the fence.). (B44:2-3)

Consequently they took another road to get to the river, still on her father's land. On our site visits we were shown the apple trees where the trucks drove across the family land and the large pits left by the extraction of gravel (I1(e):23-25).

Even if the Maori land owners had succeeded in blocking access, the forest service could have, less conveniently, completed the entire operation without leaving its own land. The Northland Catchment Commission of which the Hobson County Council was a constituent member, took no interest, if it was in fact aware that extraction was taking place.

Gravel extraction produced a dramatic deterioration in water quality, leading to bouts of sickness in the settlement, recorded in the forest service log book, and a decline in fish life.

The Crown gained land on the north bank. The claimants lost fertile river flats on the south bank through erosion. Te Mamae pointed to an island in the middle of the river which had once been part of her family's land.

This whole saga of gravel extraction is a damning indictment of forest service management and a gross violation of Te Roroa's Treaty rights. Those responsible were active participants in the Soil Conservation and Rivers Control Council from its inception in 1941 and were well informed on the spirit and intent of all the relevant legislation. To compound this paradox, the forest service was an active participant in surveys and trials to demonstrate the benefits of soil and water conservation practices.

The pollution of the Waipoua river was compounded by the establishment of a sewerage disposal system at forest headquarters. Crown evidence confirmed that sewerage has been flowing from the singlemen's camp into the river (I1(e):26-28). More recently fears of further pollution were aroused by an airdrop of poison pellets to exterminate opossums in the kauri forest.

River pollution is not only a health hazard and a threat to a traditional fishery; it is culturally objectionable. It ignores Te Roroa's spiritual and cultural values relating to water and to the mauri of the river by which they identify themselves. Te Mamae Tane's words "All these things they did to us" are a sad indictment of forest service operations at Waipoua (B44:2).

## FOREST CONSERVATION

5.2.9 The main constraint on the traditional rights to the resources of the Waipoua forest was (and still is) legislation making provision for control and conservation and imposing penalties for offences. {FNREF:0-86472-088-2:5.2.9:4}

Although the special interests of tangata whenua in forest resources and access to them were to some extent recognised, it was at the Crown's pleasure. Prosecutions for exercising traditional hunting and food gathering rights did occur. Fines and costs were imposed by the court (C7:14-15).

Counsel for the claimants submitted that:

Te Roroa retain an unextinguished right to gather cultural resource materials from the Waipoua Forest, so long as the forest itself exists.... The right vests in Te Roroa alone though they acknowledge that the Waipoua Forest is a taonga in which there are wider interests both Maori and Pakeha than their own. (I1(e):44-45)

He added one qualification:

The Te Roroa right is subject only to the reasonable needs of conservation of the resource itself.... To that extent, it is conceded that the Crown, in [the] exercise of its kawanatanga, is entitled to move to conserve the resource. But that power is not completely unfettered and the Crown, must give priority to the Maori interest where the needs of conservation are satisfied. (I1(e):45)

Crown counsel submitted that generations of Te Roroa have been under a misapprehension that they retained resource gathering rights under article 2 of the Treaty. In her view, when Te Roroa sold Waipoua 1, they relinquished their rangatiratanga over the Waipoua forest. Since no change had occurred on the ground, Te Roroa went on exercising their traditional rights believing that these had been

retained. There was no evidence that they thought this right exclusive to themselves. Rather it fell into the category of rights provided under article 3 of the Treaty, to be exercised in accordance with national laws (I2:(b)(ix):8-9).

These submissions seem to us to ride roughshod over article 2 of the Treaty and the underlying idea of reciprocity (giving, taking and receiving) in the Treaty itself and in land sales. The issues between the Crown and the claimants in respect of continuing rights to mahinga kai on Crown land seem to us to be the inevitable outcome of changing and developing relationships between a tribal economy and a market economy. In practical terms they can only be resolved fairly, reasonably and equitably if both parties yield some ground.

The Crown must appreciate that the only way the morehu have survived the loss of the greater part of their tribal estate and weathered periods of depression and unemployment is through the continuing exercise of their traditional rights to mahinga kai. The claimants must appreciate that the Crown has the right to manage the land it owns. In keeping with "the meaning and effect" of the Treaty {FNREF:0-86472-088-2:5.2.9:5}, we believe that tangata whenua should share in the control and management of natural and cultural resources on Crown land and their traditional resource areas.

This could be achieved in a number of ways under the existing and pending legislation such as the National Parks Act 1980, the Conservation Act 1987, the Resource Management Act 1991, and the proposed moveable cultural property legislation.

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*Waitangi Tribunal, Department of Justice, Wellington.*

# Te Roroa Claim

## 05 Te Manakore (Loss of Mana)

### 5.3 Failure to Provide Adequate Public Utilities and Services in the Waipoua Settlement

#### 5.3. Failure to Provide Adequate Public Utilities and Services in the Waipoua Settlement

##### 5.3.1 Public utilities and services provided generally

In order to measure the extent to which Te Roroa ki Waipoua have suffered in this respect we need to consider first what public utilities and services have been provided for all other New Zealanders and secondly for tangata whenua under articles 2 and 3 of the Treaty.

Although private enterprise and self-reliance have been largely responsible for making New Zealand, "New Zealanders have never hesitated to use the machinery of government for economic purposes". {FNREF:0-86472-088-2:5.3.1:6} Indeed they have had little alternative due to force of circumstances: their smallness, limited resources and distance from Britain, which was traditionally their main source of capital and labour and the main market for their exports.

During 1852-1876, provincial governments and superintendents assisted immigrants and laid the foundations of national public works and services with revenue derived from the disposal of Crown land to settlers and from public loans. In 1870 Vogel adopted his bold policy of overseas borrowing for national development which provided the country with the finance for a network of roads and railways and post and telegraph services. Encouraged by government subsidies the local authorities which in 1877 replaced the provincial governments, struck rates and raised loans to form roads from farmers' gates to the nearest railroad, town or port and to provide other local improvements. The foundations of a free secular system of primary education were laid in the Education Act 1877. A public health and welfare service was based on the Hospitals and Charitable Institutions Act 1885. Between 1890-1935 the government continued overseas borrowing to expand public works and services and provide state advances to settlers, workers housing, old age pensions, hydro-electricity and afforestation. Labour governments 1935-1949 established a welfare state financed mainly from internal loans and taxes. National governments continued the welfare state in post war years.

Generally speaking the main beneficiaries of state assistance were those sections of the community that exerted the strongest pressure on "roads and bridges" politics in Parliament and local bodies. Nevertheless universal suffrage and the abolition of the country quota encouraged "the politics of equality". Inevitably, the more closely settled parts of the country gained the lion's share of state assistance while outlying rural districts were neglected. As three quarters of the Maori population lived in

remote communities separate from European towns and districts, until migration and urbanisation accelerated in the 1960s, they benefitted least of all from public works and utilities. Moreover, with only four seats in Parliament and few if any representatives on local authorities, they could exert little influence on "roads and bridges" politics. Rather they depended on special services provided by the Department of Maori Affairs.

In the 1840s and 1850s, governors and officials encouraged Maori agriculture and subsidised denominational boarding schools that provided education for Maori children in English, and European doctors who treated Maori patients. Under the Native Schools Act 1867 and the Native Schools Act Amendment Act 1871, village schools staffed by European teachers and Maori assistants were established in communities willing to provide a site and contribute to the costs (E13:3-5). Resident magistrates responsible for law enforcement in Maori districts, also encouraged agriculture and industry and assisted the aged and destitute. As long as McLean was Native Minister special Maori needs and values were taken into account. Maori leaders were employed as assessors in resident magistrates' courts and sat on school committees. During the long depression McLean's system was retrenched and finally dismantled. {FNREF:0-86472-088-2:5.3.1:7} Although Maori paid rates and taxes Maori communities received very little in return, except teachers salaries, until the turn of the century when Young Maori Party leaders encouraged the economic and social amelioration of their people in association with Sir James Carroll and the Liberal government. A programme of health reform was initiated by Maori doctors, nurses and sanitary inspectors through Maori councils under the Department of Health. State assistance was belatedly provided for Maori land development after Sir Apirana Ngata became Native Minister in 1928. After 1935 Labour, in alliance with Ratana, expanded both general and special services for Maori communities.

In the war years the Maori members of Parliament set up the Maori War Effort Organisation, a model for the future kind of self management Maori wanted to restore their mana. But the tribal and district committees and executives, established under the Maori Social and Economic Advancement Act 1945, functioned more as a welfare organisation under the Department of Maori Affairs. The New Zealand Maori Council, superimposed on this organisation in 1962, was merely a consultative body.

By the 1960s the main rationale for special institutional services for the Maori had shifted from assimilation to the elimination of inequalities in living standards, health, education, housing and employment. In 1971 the Race Relations Act was passed to affirm and promote racial equality in New Zealand and to implement the international convention on the elimination of all forms of racial discrimination. As Sir Kenneth Keith pointed out, special government institutions and services were justified until such time as this objective was achieved:

Maoris, like other New Zealand residents, are entitled to benefit, without distinction, from the general state welfare and social services.

... extra provision is made in part in recognition of the need of the Maori, especially the younger generation, to adapt to the new culture and to take advantage of opportunities for better living conditions, educational advancement, and employment,

and in part to help develop in the Maori an appreciation of the content of his own culture. {FNREF:0-86472-088-2:5.3.1:8}

From a Maori perspective the problem is that special institutions and services administered and controlled by bureaucratic government agencies are essentially paternalistic and fail to recognise their rangatiratanga and mana under article 2 of the Treaty. Management and control from above is not sufficiently responsive to local felt needs.

## LEGAL AND PRACTICAL ACCESS

5.3.2 We have seen that in return for selling Maunganui-Waipoua land to the Crown Te Roroa hoped and expected roads, schools and greater opportunities to participate in the market economy. In the event they had to wait until the land was opened up for development and closer settlement before any public utilities and services were provided. Even then they only gained fringe benefits because of their remoteness, isolation and powerlessness.

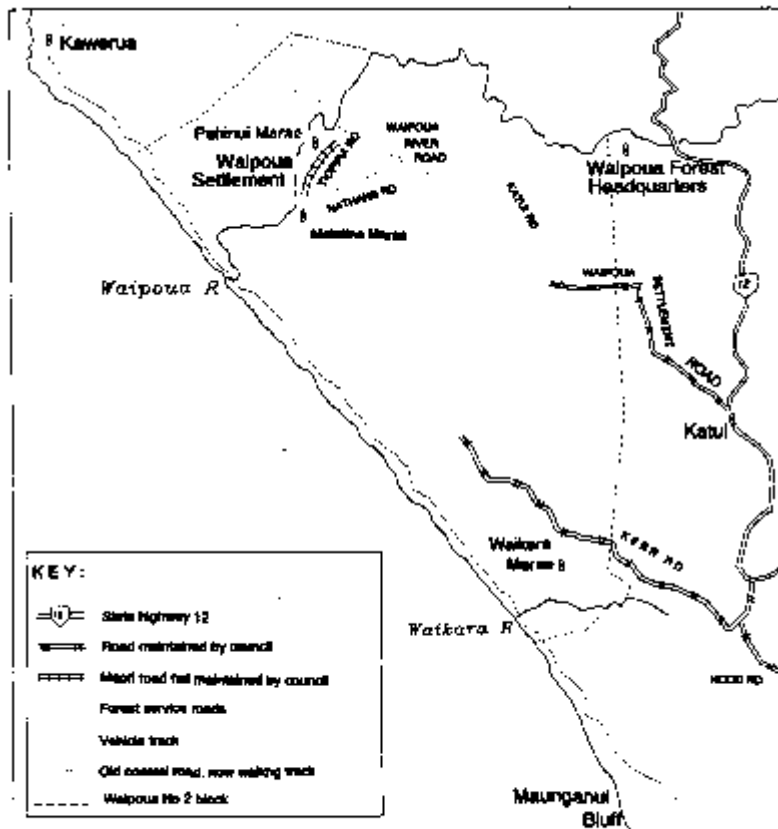


Figure 21: Road access to Waipoua Settlement and Kawerua

The first major public works in the district was 17 miles of railway built by an Auckland company in the Kaihu valley to service the timber trade. It was taken over by the government and extended as far as Donnelly's Crossing by 1921. {FNREF:0-86472-088-2:5.3.2:9} For many years access to the Waimamaku and Waipoua valleys was along the coast and up the rivers, which were traditional Maori tracks and waterways. The government's "most ambitious undertaking" in the late nineteenth

century was the Kaihu to Waima road through 100,000 acres of Crown land. This provided access from the south to the Canterbury settlement at Waimamaku and eventually made the old track from Kaihu to the north of Maunganui Bluff, then along the beach, redundant. {FNREF:0-86472-088-2:5.3.2:10} The section up the Kaihu valley, through the forest behind the Bluff and along the beach to Waikara was formed in 1881-1884. The rise of dairy farming and the opening of the Northern Wairoa Dairy Company in 1902 and the Waimamaku Co-operative Cheese factory in 1903 made better roads essential.

Waimamaku settlers preferred an inland route to the old coastal route because it would provide them with a direct link with the railhead at Donnelly's Crossing. Katui settlers, at the southern end of the Waipoua forest, were eager to open up the forest for logging. The Hobson County Council also supported an inland route. A number of representations from settlers to ministers for a Department of Public Works study of the various route options were made between 1923-1926 (E9:67-79).

The forest service was opposed to the inland route largely because it was feared the opening of the forest would lead to unlawful trespass, gum digging and exposure to fire. The coastal route, on the other hand, would provide access to Waipoua and other settlements and be beneficial to themselves in years to come (E9:43-50; E8:14-15). In August 1923, 43 Maori residents of the Waimamaku and Waipoua valleys sent a petition supporting the Hokianga County Council's choice of the coastal route because they felt that it would serve them better than the forest route (E9:111-114).

In October 1923, the Minister of Public Works, Gordon Coates, directed his department to conduct a survey of the central route to determine its feasibility. The district engineer in the Dargaville office who had surveyed the route options favoured the coastal route which would be more speedily constructed and would cost less in maintenance. The district engineer in the Whangarei office favoured the forest route which would better serve the timber trade and railway. The coastal route, he reported, was "unoccupied except for a few Natives" and the remainder of the land was not likely to be farmed to any extent (E9:86, 90, 98).

Coates, like his fellow dairy farmers, favoured the forest route, as did the Department of Public Works who operated the railhead and a sawmill at Donnelly's Crossing. In June 1926, he finally sought and received the agreement of the commissioner of state forests to the inland route (E9:107-9). This decision clearly favoured the interests of Pakeha settlers at the expense of Te Roroa.

In July 1926, Hau Te Wake telegraphed the member for northern Maori and the prime minister, expressing his disapproval of the forest route. In his opinion the proper road should be "by way of the Tiopira Settlement Waipoua". A second, more strongly worded message stated that the road would not be allowed through the forest and anyone forming a road along that route would be prosecuted (E9:115-7).

Twenty years later, when Lou Parore petitioned Parliament for the preservation of the Waipoua forest, he recalled that Coates had been reminded, when the road through Waipoua was being constructed, "about the Rahui as made in 1876". In response an assurance had been given that the forest would not be "interfered" with (E9:119-120).

On the completion of the new inland route, the coastal road was literally abandoned, including the linkages to internal roads connecting to the general roading network. In effect the Crown had land locked Te Roroa living at the Waipoua Settlement and stymied their attempts to participate in the market economy. This was the beginning of Te Roroa ki Waipoua's isolation from the roading network and their consequent inability to obtain public services.

In the early 1920s, the Waipoua Settlement road as far as the eastern boundary of Waipoua 2, then a clay road, was maintained by Hobson County Council. The land between the eastern boundary and the settlement was purchased by the Crown and planted in pine. Tracks to service these operations were then constructed. Access to and from the settlement became subject to a ruling for all state forests in July 1931. Roads through state plantations, unless public roads, were not to be used by the public without permission in writing by a forest officer (E8:26). Since then residents have been dependent upon the sufferance of the forest service staff for access.

After the opening of the state highway through the forest, new access routes to the forest headquarters were constructed to replace the route from the end of the Waipoua Settlement road. From the forest headquarters, existing forestry tracks provided access to the settlement. In the early thirties, the development of commercial dairy farming in the Waipoua valley under the Kaipara Development Scheme necessitated regular access to enable cream to be transported to Katui to meet the cream lorry. Residents of the settlement formed the Waipoua Settlement road on forest service land with a horse drawn grader and several horse scoops borrowed from the Hobson County Council (E9:135-137). Waipoua Nathan recalled this event. His father was the "foreman" and he rode on the back of the horse behind his dad. He remembered the settlement families and Ahikiwi families joining forces to complete the road (B42:7).

The officer in charge at forest headquarters suggested surveying and legalising the road but nothing was done (E9:135; E8:30).

From the mid 1930s, Waipoua families expanded their "house cow" dairy herds to provide themselves with a regular cash income. Ngamako Mete remembered four to five families hand milking cows twice daily. Cream was separated and carried out to the cream stand on the main road at Katui for collection by horse. Milking and delivering cream were jobs for the children. Ngamako Mete remembered that the road up to Katui was just a track (B41:3, 5). Waipoua Nathan vividly recalled taking up the cans:

I was so young I couldn't even lift the can onto the cream stand, so I used to put it under the stand. And when I got back the next day the cream was still there.... we did two milkings. The night milking and the morning milk and that cream did not go up until that day. So that was the difficulty. We had no show of catching the cream lorry which picked up at 7 o'clock in the morning.... by the time they got it up there it would be stale. And they would send it back. (B42:9-10)

He also remembered taking the cream up at night (B42:11).

Tutenganahau Paniora remembered carting the cream by horse-drawn sledge or by panuku (sledge without runners) (B43:1). Eruera Paati explained that life for his family:

and the whole of the Waipoua community was based around being self sufficient. Farming was a major industry at this time and a big part of my life was tending to animals of all descriptions. Waipoua was renowned for the fact that our cattle grazed all over the settlement, and in my memories this is a way of life that the whole community shared and knew well. (C4:1)

Experiences of Waipoua Settlement residents were matched by those living at neighbouring Waikara. Harding Leaf remembered accompanying his brother on horseback from Waikara up to the main road. The two boys would balance a can of cream on the horse's shoulders in front of them:

I'd hold the can... and he'd dip my bread in and eat it. All the way up.... By the time we got there I suppose there was more bread in the cream than... breadcrumbs and all sorts, bread crusts. But the cream never... came back. That reminds me of a story, I heard about ... a lady there... [who] was sending cream to the factory, old Peka Barnes. She sent her cream in and she didn't know there was a rat in it. Got to the factory at Kohukohu. Yeah they opened it up there was a rat in it, so we put the lid back on and put a note on-rat in. They sent it back to her, she got it back, saw the note and read it ... she reckons, so she... took the rat out with the note on and said rat out! (B49:3-4)

One herd in Waipoua contained 42 cows sent by the Native Department. Waipoua Nathan remembered this herd arriving at Donnelly's Crossing at six in the evening, from which point they were herded through the bush to the settlement (B42:8-9).

Settlement residents were unable to take advantage of technological advances that required good roading and electric power. One intended improvement was the introduction of artificial fertilizer to Waipoua. Waipoua Nathan recalled:

being the Native landlord... they sent you manure even if you didn't want it... Now our problem... was getting it from ... point A to B.... Now, usually they'd get that mile and then the truck would get stuck so instead of getting two ton, we'd get one-the other ton was on the road getting the truck out. Now we still had to pay for that.... by this time the road was getting wider, because [people had begun] driving you know-they started to do a bit more work so we got a gig. (B42:10-11)

In 1939, as part of the negotiations leading up to the settlement of grievances over unsold lands of Enoka Te Rore and Pohe Paniora, access was again discussed. Although the forest service and the Department of Lands and Survey agreed in principle to formalise legal access via the Waipoua river road nothing appears to have been done (E8:31-32).

In the early 1940s settlement residents petitioned the Native Department for legal access because they were finding it difficult to market their dairy produce (E9:221). A report from the commissioner of the Native Land Court recommended that as part of the Hokianga Consolidation Scheme, the Waipoua river road be formed as a legal

road through to the Waipoua Settlement road. The road line (Tiopira or Birch road) which had been laid in accordance with the 1939 settlement, connected practically all the Maori holdings in Waipoua to the Waipoua river road. Tiopira road was, and still remains, a Maori roadway. Consequently the Hobson County Council has no responsibility for its formation or maintenance. This is left to the settlement residents. Although a number of other attempts were made by settlement and forest service employees to have the route through to Katui surveyed and legalised in the 1940s, they were thwarted, among other things, by the inability or reluctance of any party to accept the responsibility or to pay.

In 1944, 20 residents petitioned the Hobson County Council to re-form and maintain the access road to and through the settlement. As the county council did not then receive rates from the settlement, it passed the buck to the Department of Public Works who passed it on to the Native Department, who claimed it had no funds to pay the cost of road construction.

In 1945 Ross Nathan and Ata Paniora sought assistance from the Native Department to form Tiopira road to enable them to resume milking. The forest service was willing to form "their share of the road" (E9:144-5). Mistakenly the registrar thought the request was to form the road out to the public road and the application was refused due to the anticipated cost. Waipoua Nathan recalled his family finished milking and went to dry stock in 1946. In 1947-1948 his brother sold all the cattle and paid off the Native Department loan (B42:15-16).

In 1945 the settlement's general carrier, Mick Milich, who was transporting the children to school in his truck, complained to the secretary of the Education Board:

The road is in a very bad state, and I have a creek to cross that is the Waipoua River if there is a flood on [the road from the main highway was initially on the northern side of the river with a ford crossing immediately upstream from forest headquarters]. I either lose a day or tackle another route which has two miles of clay road, which means chains on the truck and push from the children it has taken me two hours to travel the eleven miles on this road....

... The road is full of pot holes and broken through the metal, and the chassis of my truck dragging on the centre of the road. I also paid £45/- for tyres four months ago and the two back ones are all to pieces through striking these clay patches, skidding and then striking the metal. (E9:142)

When construction of the Waipoua Native School commenced in 1946, neither the Tiopira road nor the right of way from it to the school site had been formed and metalled. Permission was sought from the forest service for the building contractor to use forest service roads and given, on condition that any damage to roads be repaired. Access was also allowed by a more straightforward route across what is known as "the horse paddock" along the riverbank through forest service land (E9:246-252). {FNREF:0-86472-088-2:5.3.2:11}

Following one delivery, settlement residents and the contractor were denied use of the state forest road by being refused a permit and a locked gate barred access to the school site until the road was sufficiently dry to prevent "cutting up" (E9:246; E11:1).

This caused considerable concern to residents about what could be done in case of sickness (E9:150).

In 1946 Katui storekeepers Mills and Schroeder, competing with the Donnelly's Crossing store which paid Mick Milich to take supplies to families at the settlement, also had difficulties obtaining a permit (E8:39-42).

That year residents made further approaches to the council and the school teacher, Mr Stevens, wrote on their behalf:

The only access we have to the main road, a distance of six miles, is by private road maintained and controlled by the State Forestry Dept. This we may use only at their discretion. Whereas, there is formed another road to Katui from here which only requires grading and metalling to make a very useful road.

This settlement I might stress is a very fertile valley and in the past a large number of cows have been milked, but as the cream had to [be] packed out by horse a distance of seven miles to the main road before the delivery of the cream, the resultant grade of cream was so poor and rejections so frequent that it became unprofitable. Thus herds have now been turned out and practically nothing comes out this valley. The settlers assure me that with an access road they are willing and desire to start production again. One settler still has his milking machine plant.

The completion of the road for use, would also enable us to have a much needed regular grocery delivery, without the grocer having to depend on the State Forestry road, entrance through which is sometimes refused. (E9:198)

The registrar of the Native Department at Auckland thought that the forest service might cooperate in forming and metalling an access route. He agreed with recommendations made by the resident engineer of the Department of Public Works, that with the cost and the desirability of forest service having some control over traffic throughout the plantation areas, access via the road past forest headquarters should be maintained. He thought:

This causes no hardship to the settlement people or visitors, beyond the formality of asking permission to use the road. In the case of the regular users, this permission does not need to be re-newed. (E9:204)

The registrar also suggested that a more formal arrangement be made with the forest service but no further action was taken. As a result, when the forest service officials did see the resident engineer's report, they were influenced by his remarks and did not take any steps to legalise the road.

In 1949 when Waipoua Nathan returned to the valley and worked as a bulldozer driver for the forest service, the road had developed as far as the settlement and settlement residents were able to drive right down or alternatively walk down from the top of Nathan's road (B42:13-14).

Throughout the 1950s a number of meetings were held between forest service officials and settlement residents at which it was ultimately decided to seek the

legalisation of the road via the headquarters in place of the Waipoua Settlement road which was in a poor state of repair and impassable during wet periods. The route past forest headquarters was then being realigned, widened and metalled (E8:60). Between forest headquarters and the settlement, roads were being upgraded to service work in the exotic plantation. At this time Waipoua Nathan pushed through a number of the roads including the road out to Kawerua and Nathan's road as a fire precaution.

In 1981 E D Nathan sought permission in writing from the officer in charge at Waipoua for his family to use the access route through the Katui road. He had planned a horticultural development at the settlement. The Hobson County Council, from whom he sought a number of approvals for the scheme, required an access permit (E9:137). The Katui road was the more economic, convenient and direct route. Permission was granted subject to a number of conditions.

In October 1982, two of the owners of Waipoua 2B3D2A2B block sought to partition out their interests in order to obtain freehold title to the land to further develop it (E9:410), and to use it as security for borrowing money for this purpose (E9:414). The Hobson County Council were unwilling to give their approval to the subdivision until the Minister of Forests had ensured that access through the forest would at all times be available to the owners of the land (ibid; E8:99-105). The Maori Land Court eventually made a provisional roadway order. This was the first time the right, as opposed to a privilege, to use forest service roads was recognised.

In February 1989 Alex Nathan applied to have a Maori roadway ordered by the court to provide legal access through the Waipoua Settlement road to the settlement under ss415 and 418 Maori Affairs Act 1953 in favour of the Nathan family properties. His application was for the Waipoua Settlement road route rather than the Waipoua river road route ordered for the Paniora and Birch family properties. Problems of proving Crown title led to the abandonment of this application (C7:33-34).

In May of that year, tangata whenua, the Department of Conservation and Timberlands agreed that access through the Katui route would be given to settlement residents and their invitees. The Forestry Corporation held no responsibility for maintenance over and above their normal level. Moreover it retained the right to erect and lock gates on the road in the interest of general safety. It would then provide keys to "the owners of the Waipoua Settlement". As yet the agreement has not been approved by the minister (ibid).

These recent attempts to deal with the problem of access were described by the Crown researcher as "piecemeal and uncoordinated" (E8:117). He noted there were various options which could be considered, including a roadway order, an easement, a landlocked access right, and a public road. With reference to the roadway order granted he concluded:

The approach adopted does not address the question of the provision of access rights to other sections of Maori Land and Maori Reservations at the Settlement, resulting in Alex Nathan having to lodge a further application with the Maori Land Court for some of these other sections. It does not address the question of the provision of access rights to sections at the Settlement which have become General (European) Land by virtue of the 1967 Maori Affairs Amendment Act. It does not address the

question of the provision of access rights to 2C (Whangamoia) and the Koutu reserve at Kawerua. It does not address the question of access rights over the Waipoua Settlement Road extension (Katui Road). And it does not address the question of the responsibility for and standards of maintenance of the roads. (ibid)

Waipoua Nathan concluded:

I have two children. I worked hard to put them through education and for them to be where they are and I'm sure that was what my mother wanted. And I would not like to see my family come back to see this. This is a modern world. It has changed, I agree. But surely, with government support, or something to that effect. We must realise that nobody can borrow down here to put up... a home, because we have not got access. (B42:22-23)

Settlement residents still have no legal access to their homes. For over 60 years they have been required to seek permission from the forest headquarters each time they have wanted to use the road between the settlement and the main highway, as have any visitors, be they the district nurse, relatives or strangers. Inevitably friction and resentment have occurred. As Ngamako Mete stated:

until just two years, three years ago, we used to have to get a permit to come down here.....

... You couldn't come down here unless you had a permit. And the... top road there,-it was only when Uncle Ned... came back... that they opened that out during the weekends. We weren't allowed to come through there. (B41:11-12)

Crown evidence brushed off the grievances of claimants in regard to access to the Waipoua Settlement. The government's choice of the forest route was "justifiable on economic grounds, as perceived at the time" (E8:109). The Hobson County Council:

has been reluctant to spend its money providing access to an area from which many (possibly all) rates are not being paid, while the landowners have been reluctant to pay rates when they do not feel that they receive any of the services which those rates pay for. (E8:110)

The matter has been further complicated by the involvement of the Crown in the form of the forest service and by a belief by both the county council and the Maori owners that "the Crown had a part to play" in view of all its Waipoua No 2 landholdings (ibid). It was clear that the forest service made a commitment in 1950 to the residents to allow the legalisation of the road past forest headquarters, it was less clear whether active steps were taken to have the road legalised; probably not, because the petitioners had asked the Hobson County Council to take them (E8:115). No written evidence of access being a cause of friction between Maori residents and the forest service had been found (ibid). It was unfortunate "that there has been no round the table discussion by all the affected parties to consider all the issues and all the options" (E8:118).

Nonetheless, looking at the whole access question, the Crown researcher concluded that the:

Forest Service did not operate in as open and receptive a fashion as it could have done.... It was not as good a neighbour over access as it could have been. Equally for most of the time it was not a bad neighbour... it failed to acknowledge the special circumstances of the Waipoua Settlement, and the influence it had on the Settlement... (E8:120-121)

On the wider question of whether the Crown has ever accepted any obligation to provide a legal public road access to the Waipoua Settlement, in his opinion, it had not. It never had "a blanket policy" of requiring that every section without exception should have legal road access but it had provided enabling legislation to overcome a lack of road access by court order after a section had been created (E8:122).

The private forestry road has been the only link for residents of the settlement with the outside world and this has had an enormous impact on their ability to participate in the market economy. For local forestry management the situation has been most unsatisfactory. As agents of the Crown, whose actions had created this vexatious situation, they were, in human terms, obliged to give access to their neighbours. But this compromised the rigid trespass and fire control security requirements laid down in head office directives. It also compromised their land purchasing and road maintenance programmes and relations with locally recruited staff. These intolerable impediments to good neighbour relations became a perpetual irritant.

Reference to a map of Waipoua No 2 at the time the Crown imposed the sales' moratorium reveals neatly ruled, close, parallel lines, more like a cartographer's shading than a rural subdivision (see above, p 144). It shamelessly satisfied Maori Land Court requirements of the day by providing legal title with access to the coastal road. From any practical land use or land development point of view, it provided its owners with an impossible and quite disgraceful legal trap from which they had no escape, especially when the only possible avenue available to them to realign boundaries was the Crown who had imposed the proclamations on the area 1917-1972.

The subdivision of long narrow parcels of land with boundaries showing no sympathy with contour, swamp, gully or stream, made practical fencing and practical farm development an absurdity for any individual allotment.

The physical nature of the subdivision imposed a very negative element on property values. The emasculation of the allotments from the communications network, at the very time motor transport and practical vehicle access were impacting significantly on land values, reflects little credit on the agencies responsible. To have the Crown prohibit property owners access to a free market, and then suggest that any professional valuer could assess a "fair market value" for the Crown's purchase price, stretches to the limit the time honoured dictum that a fair market price is that which a willing buyer will pay to a willing seller. The imposition of almost every conceivable impediment between these properties and the free market, which is the data base from which all valuers must proceed, goes beyond the limit.

PHYSICAL SERVICES: TELEPHONE; MAIL DELIVERY; ELECTRIC POWER;  
WATER AND SEWERAGE

5.3.3 The Waipoua Settlement has always suffered from all the disadvantages of being rural, geographically isolated, and sparsely populated when it comes to getting public utilities and social services which most New Zealanders take for granted. Moreover, poverty and unemployment has ruled out the possibility of residents themselves contributing to the costs of extending the utilities and services available at forest headquarters to the settlement. Thus they have had to depend on forest headquarters as the "all provider". Currently they have to travel to the headquarters to collect their mail and use the telephone.

Crown counsel stated that:

Policy on whether to assist isolated Maori communities acquire a telephone was determined by the late 1930s when it was decided that it was not the role of Government Departments such as Health, Native or Education, to subsidise the work of the Post and Telegraph Department which considered the supplying of telephones solely on an economic basis....

The Crown policy has been that the subsidised supply of telephone services was not a Crown responsibility. (I2:(b)(xi):8-9)

The need to provide telephone services to the valley was emphasised when the first sole teacher of the Waipoua Native School took up residence in 1946. In asking the Director of Education for permission to place a telephone in the school house he said:

The settlers have agreed upon the necessity for one for the community and that it should be centrally located here. They have also agreed to do the work of erecting poles and wire a distance of approximately seven miles. Would the department consider making a contribution towards the cost of material? (E14:82-83)

Although the department agreed to the installation of a telephone in the school, it was not its policy to contribute towards the cost of the materials required for its installation (E14:521).

In 1948 Dawson Birch, the chairman of the Waipoua Forest Maori School Committee wrote to the Minister of Education explaining:

A telephone is a commodity required very much in this district. In emergency cases and accidents we find it very hard to contact nurses and doctors. The previous Headmaster made some inquiries about having a telephone put in with the reply that telephones were unprocurable. (E14:218-9)

The minister was pleased to support an application by the school committee to the Post and Telegraph Department, but failed to offer any financial assistance (E14:217). In April 1953, the Department of Education introduced a policy whereby it was prepared to pay half the cost of rentals for telephones installed in Maori schools or head teachers' residences (E14:532), but re-affirmed its policy that no assistance be provided for installation costs (E14:531).

Alex Nathan recalled that one house in the Waipoua Settlement was connected to the private line running from Forest Service Headquarters to Kawerua. Although it did

not provide a line "to the outside world", messages could be relayed through headquarters staff. The line and equipment were removed in the 1960s (C7:42).

Recent requests that Telecom consider running a line to the Waipoua Settlement when it upgraded the lines to the headquarters complex, were refused on the grounds of cost.

Currently the Department of Conservation allows Waipoua Settlement residents to use their telephone.

Counsel for the claimants concluded:

Telecommunications are clearly needed in the valley. The Waipoua residents do not have the money to install the service themselves. The Crown has gone to the expense of providing a telephone at the Forest Service Headquarters but seemingly could not justify extending that service to the settlement. The telephone at the headquarters (now the DOC Headquarters) is still the only instant connection residents have with emergency services. (I1(e):9)

According to Crown counsel "policy was developed towards the problem of supplying isolated Maori and European communities with electrical power" similar to that of supplying telephone services:

The supply authorities looked at the matter solely on an economic basis - the cost of setting up reticulation and the return which could be expected. Although in the case of Maori development schemes, the Crown would assist, subsidise and even pay for the installation of power, for private individuals it saw its role merely as an intermediary whereby requests would be investigated but intervention was not recommended. However from 1945 the Crown endeavoured to ensure that the rural back blocks did receive electricity. The Rural Reticulation Council existed for this purpose. The responsibility of bringing forth cases which needed subsidising belonged to the local Power Board. It seems likely that Departments such as Maori Affairs felt the Council and the Power Boards between them were the authorities to achieve reticulation for Maori areas. (I2:(b)(xi):9-10)

She therefore submitted that the central question was why Waipoua did not receive reticulation. Was application made to the local power board?

In 1955 power was supplied to the forest headquarters. In the early 1980s, Ned and Alex Nathan inquired into the possibility of bringing a reticulated power supply to Waipoua Settlement. Two alternatives were considered. First, the continuation of a line overhead from forest headquarters, and secondly, an extension along the coast from Waikara Farm Development blocks. These were rejected on the grounds that they would create a fire hazard and would be a nuisance in logging operations (C7:43). At present, only one household in the settlement community has an electricity generator.

Until large scale gravel extraction from the Waipoua river occurred, the Waipoua Settlement enjoyed a plentiful supply of fresh water. The stagnation of river water through gravel extraction forced the people to become totally dependent upon rain

water. The installation of a water reticulation system and sewage treatment plant in such a relatively dispersed rural community would cost each household much more than a septic tank and separate water supply system.

## EDUCATIONAL SERVICES

5.3.4 Soon after the passing of the Native Schools Act Amendment Act 1871, Te Rore Taoho and 22 others petitioned the Crown to establish schools in Te Taita, Opanake, Waimamaku and Waipoua (E14:11). Presumably they were willing to provide a school site and contribute to the costs of the teacher's salary and school maintenance which were necessary prerequisites. In 1876 a native school was started at Kaihu but attendance was very variable because people were so mobile. {FNREF:0-86472-088-2:5.3.4:12}

Perseverance and determination earned the Maori community a village school at Waimamaku in 1886, that is before the arrival of the Canterbury settlement settlers. {FNREF:0-86472-088-2:5.3.4:13} Travelling from Waipoua along the coast on foot or horseback proved impossible because of the distance. Families anxious to have their children educated, boarded them with relatives and friends in Waimamaku. Others stayed at home and worked. Numbers of Waipoua children attending the school varied from year to year, reflecting the practical difficulties of such an arrangement. Rural children boarding away from home added to the family's workload. Largely because of irregular attendance, most of the children known to have attended Waimamaku Native School failed to pass any grades. But Maori parents persisted, demonstrating their determination to have their children educated



In 1936 the Department of Education promised the Maori people of Waipoua a school but nothing was done. Toa Maihi Paati (Dawson Birch) protested to the Tokerau District Maori Land Board in October 1944: "I'm darn sick of it" (E14:105).

Letters from residents chronicle their efforts to obtain a school. Piipi Cummins offered three acres of her land for a school site in 1940 at which time there were 15 children of school age (E14:179-181). The native school inspector visited the site but preferred a more central location. A request for a central site of four acres was made by the Education Board to the then Department of Forestry who by this time was the largest land owner and employer in Waipoua. The forest service replied that it was impossible to release the portion of the area referred to, as it was reserved for their administration and a sawmill site (E14:151 *passim*; see above, p 159).

Ata Paniora, offered to donate land from his already depleted holdings. Disagreement among officials about the suitability of the site, wartime exigencies and problems of access delayed approval and construction. Meanwhile, Mick Milich, greatly frustrated by the lack of schooling for his and other Waipoua children, transported them over the rough roads to Katui School (E14:146-7). Turi Birch was one of these children. Starting school at the age of 13 (E14:85-87, 103), he recalled with vivid detail his early experiences at Kaihu. The teacher, a Pakeha, could not speak Maori. To help overcome the language barrier a Maori woman from Waipoua, Kahuru Pumipi, was employed as the "interpreter". She could understand a little English to translate to the children, but she could not speak English, and so could not converse with the teacher or clarify technical detail.

The children, though fearful of this new foreign experience, made slow patient progress as they were taught the alphabet letter by letter. Stalemates resulted when the teacher produced a picture of an object unknown to either pupil or interpreter. None of the children from Waipoua knew what a snake was. The picture looked a bit like a tuna (eel) so after urgent conference between the pupils, they took a calculated guess and suggested that the letter "s" stood for "tuna"! (B50:19-21)

At last, in September 1946, the Waipoua Native School opened with a roll of 24. The roll fluctuated year by year. In 1957, the school teacher supervised three students who were taking their secondary schooling by correspondence. They were the first children from Waipoua to reach this level (H54:6). That year the roll fell to eight pupils. Therefore the contributing district, in accordance with Department of Education policy, decided to close the school in 1958 (E14:232-233, 226-227).

At this time the pros and cons of rural school consolidation were being widely debated and Waipoua Settlement parents believed that their children would benefit from attending a consolidated school even if this involved long bus journeys each day to and from Aranga School 20 kilometres away. An assistant teacher, appointed to Aranga School to cater for the increasing numbers of pupils, lived in the former school house at Waipoua and drove the school bus (E14:227, 230). The bus would leave the old school site at 7.45 am and return at 5 pm.

Bertha Sowter remembered times when the road was too muddy for the bus to come to the settlement. She then had to walk to the saddle on the Waipoua river road to

catch the bus, often poorly clothed and without adequate footwear because they were a large, poor family. She remembered not reaching home until 7 pm (H54:7-8).

Richard Paniora remembered the long tiring bus rides to and from Aranga School (C5:1). By the time he went to high school at Maropiu, 40 kilometres distant, the bus only came as far as forest headquarters. He would catch the 6.30 am forest workers truck to the headquarters before catching the three other buses he needed to get to school (C5:2).

The alternatives to long walks or rides to pick up points for buses and the ten to 11 hour school days, were boarding away from home or Correspondence School. But the latter was only a realistic option for English speaking households where an adult was available to assist the pupils and which had regular mail services. The school had been established since 1926 but no special correspondence courses for rural, Maori speaking children had ever been provided.

For post-primary education, Waipoua children could attend Maropiu District High School until it closed in 1973. Since then, they have had to attend Dargaville High School and board on a weekly basis at the school hostel. Waipoua families generally have been and are unable to afford the alternative of sending their children to denominational boarding schools, such as Te Aute College and Queen Victoria College.

When Alex and Alison Nathan moved to Waipoua in 1983 to take part in the construction of Matatina marae, they decided to enrol their two school age children with the Correspondence School rather than send them by bus to Aranga. A Correspondence School unit, Te Whare Kura o Waipoua, was established in August 1986 and Alison Nathan, a trained teacher, was appointed supervisor. No assistance was given the unit other than a minimal supervisor's salary. The unit struggled to survive without adequate accommodation and equipment. In 1990 the numbers attending the unit dropped to below the required five primary pupils and it ceased to exist (H54:14-19). In a special report the visiting teacher expressed his concern over "the equity of the total situation" at Waipoua in comparison with "other similar sized remote communities throughout New Zealand". He was impressed by the "dedication & caring shown by the adults in the community towards the education of their children", and did not think the people of Waipoua were getting a comparable deal (ibid:18-19).

In 1984 a kohanga reo was established. The community desperately wanted their children to learn Maori and several of the kuia could have assisted had the Correspondence School been able to provide courses opening up the possibility of total immersion in Maori language until ten years of age. The inability of the present state system of education to provide such courses has meant that none of the children growing up in Waipoua have become fluent Maori speakers despite the hopes and aspirations of their parents. In view of recent Department of Education initiatives to open up the opportunities for bilingual schools, it seems to us that ways and means should be found of making the correspondence school system more sensitive to the needs and aspirations of rural Maori communities like Waipoua.

Basic requirements under the present correspondence school system are not only regular postal services but also good radio reception and ready access to a telephone. None of these requirements exist at Waipoua. For this reason, the opportunity to participate in a pilot scheme conducted by Chatterlink Community Communications in association with Telecom in 1990 was a welcome shot in the arm for Waipoua residents. The purpose of the scheme was to assist in assessing the educational value and cost effectiveness of telecommunications technology in distance education (H54:33-35). Clearly the technology now exists to make better provision for the education of Waipoua children. Costs notwithstanding, we are convinced that the government has a duty to provide Waipoua children with educational opportunities more comparable with those enjoyed by Pakeha children in rural areas who have benefited from the correspondence school system since 1926. Furthermore they have a duty to provide rural Maori children with Maori language courses. As Alison Nathan stated:

The deliberate suppression of the Maori language in education, the economic squeeze imposed on the local tangata whenua by their loss of land and enforced migration in order to obtain work, has resulted in the almost total loss of te reo Maori. English dominates all strata of our community. The young are unable to learn the language. What will be the future of our marae? Will N.Z. be the richer for the loss of these taonga? (H54:42-43)

In Alison Nathan's opinion there is a need for a whanau community centre focusing on education in its broadest sense, including a whanau community school. The school would cater for preschool, primary and secondary school children and interested adults. It would provide a programme of total immersion in Maoritanga to an age professionally considered appropriate. Qualified teachers able to draw upon the talents and knowledge of adults in the valley would be employed. The complex would house a library equipped with audio-video teaching aids, it would contain fax, telephone and computer-modem links with the outside world. It would include a teacher's residence and indoor and outdoor recreational activities (H54:50).

## HEALTH AND DENTAL SERVICES

5.3.5 Little evidence was given on health and dental services available to Te Roroa, but we do know that in the nineteenth and early twentieth centuries they lived beyond the reach of government doctors, that rudimentary medical services were provided by native school teachers, that sickness was prevalent and that many died from measles and, in 1918, influenza.

The Waimamaku Native School records indicate successive teachers administered to Maori children attending the school. One of these teachers, Charles Winkelmann, who developed a considerable reputation as a dispenser of medical services, often ran short of medical supplies provided by the Native Department. In 1890 he informed the department that:

THERE IS NO MEDICAL MAN RESIDING IN THE HOKIANGA DISTRICT and now that I have become known, the Natives all around this settlement come to me for assistance and medicines. I gladly do all I can, and have been able to give great relief to large numbers;-during the 'La Grippe' Epidemic many natives would without doubt

have died had it not been for the timely aid which I gave them, sacrificing the whole of my spare time to visiting and dispensing medicines.

The number of sick children and adults is considerable and hardly a day passes without my being called out. The Natives quite look upon this work of dispensing as part of my work amongst them... (E14:311-312)

While the department recognised that Winkelmann undoubtedly rendered a "useful service", it was concerned that this would lead to like applications from other teachers. He was told to use medicine for pupils only and more sparingly (E14:310).

A meeting was held by the local people who asked the government to increase the quantity of medicine sent for general use. They further requested that the school master be appointed as dispenser of medicines for people living at Waipoua, Waimamaku, Waiwhatawhata, Roharoa, Pakanae and Motutoa.

In conveying these requests to the Native Minister, Iraia Toi pointed out that 300 or more people lived in these places but for years they had had no medical practitioner. Probably this was why they went to the tohunga. In past years a large number of persons had been ill (and died) through want of medical aid (E14:272-276).

Nothing came of these requests. The Native Department continued to supply medicines to Winkelmann and his successors, but at times the supply was less than that requested. Notwithstanding the department's instructions, the use of schools as dispensaries for the whole community was the only practical way of providing medical assistance in areas without government doctors or nurses.

In the late 1920s, the district nurse regularly visited Waipoua on horseback. After she was provided with a Department of Health car in about 1930, her visits became more spasmodic. Mick Milich's evidence shows why:

To give you an idea of what the road is like, we have not had the District Nurse in the settlement for four months, because she could not get down in a small car. Last week a nurse from Whangarei came to inspect the road and she told me that she did more damage to her car that day than she has done for the last twelve months' travelling. (E14:93)

According to the Waipoua Native School records, between two and six visits were made per year until 1956. Regular medical care ceased after the closure of the school. Regular nursing services were available to the children attending Aranga School. In recent times, the northern part of Te Roroa territory has been part of the Special Hokianga Health District providing free medical services and access to the hospital at Rawene. The southern part has had access to medical services in Dargaville and the former hospital at Te Kopuru. A doctor has regular consultations at Kaihu. A district nurse from Dargaville has visited Waipoua Settlement fortnightly. Today there are four to six weekly visits by a general practitioner and nurse, but facilities are still poor. Alison Nathan told us that:

Medical emergencies are difficult to deal with. Without telephones people rely on their not-always reliable vehicles (the sub-standard conditions of the roads impact

particularly heavily on vehicles) to travel to a phone for a doctor's advice or to call an ambulance. At night in particular it is necessary to provide a guide to meet and direct an ambulance. Alternatively the sick are transported by private vehicle to Dargaville. This is often a quicker alternative. (H54:46-47)

Any curtailment of hospital services in the Hokianga and Dargaville will compound these problems. A community health centre is urgently needed to treat minor injuries and illnesses.

The advent of the school dental service again saw Waipoua Settlement left out. In 1948, Dawson Birch, the chairman of the local school committee, wrote to the Education Board requesting dental service visits, the nearest dentist being 30 miles away (E14:218). The mobile dental clinic eventually began visits in 1949, a tractor being required to tow the caravan clinic in and out. The following year the children were transported to Katui by forestry trucks for treatment.

The mobile dentist again visited the school in 1951, and from 1954. The closing of the school in 1958 brought an end to those visits. Dental care for Aranga School children was provided by the mobile clinic once a year at Maropiu School. Free dental services for Correspondence School children at six monthly intervals are provided by a dental clinic in Dargaville.

The lack of health and dental services at Waipoua today is related directly to distance from major population centres, poor access and lack of telephone and radio communication, as well as to the high incidence of unemployment and dependence on benefits.

Counsel for the claimants concluded that:

poor health services available to the Waipoua people is another deterrent to the resettlement of the valley and the strengthening of the tribal base. (I1(e):8)

## FIRE CONTROL

5.3.6 Fire control has been a source of contention in Waipoua ever since the decision was taken to establish a state forest in 1906. It was the kauri forest not the exotic plantation, which was the original focus of forest service operations at Waipoua. In 1923 the forest and surrounding sections were proclaimed a fire district and two guards, provided with houses linked by telephone, were employed continuously patrolling and safeguarding the area (B8:48). Pine planting began in 1924.

Fire was a very real concern to forest managers, especially in dry summer conditions. Prior to the advent of fire fighting with helicopters and monsoon buckets exotic forest fires had proved to be uncontrollable. Fire risk was used to justify a policy of total exclusion of people.

The 1965 amendment to the Forests Act allowing for recreation areas to be established in state forests together with the advent of new fire fighting techniques led to a significant move away from this exclusion policy. The national forest service recreation policy, established in 1983, of allowing open access to all state forests,

except during periods of severe fire risk in mid summer, prompted the unlocking of the gate to Kawerua until 1987. The effects of unrestricted access on the stocks of kai moana and "the potential of a wild fire on the coast enhanced by the presence of open fires lit by recreational users" led to the relocking of the gate at the end of 1987 (F9:16; E8:82-94).

Claimant evidence summed up the disadvantage to Te Roroa in having an exotic forest as a neighbour as follows:

The main reason for the Crown's policy to acquire Waipoua 2 was the protection of the Kauri forest and the primary danger was frequently cited as fire. Concern over the risk of fire destroying the forest is evident in official correspondence from 1912.

From the 1930's until recently the Forest Service has viewed the presence of our people in the valley not only as a threat to the Kauri forest but also as a danger to the exotic plantations on alienated Maori land.

The risk of fire was also the main reason stated for controlling access through the forest to the Waipoua Settlement....

Today the major risk to the Kauri forest is from the pine forest and particularly from those areas that have been thinned, pruned or logged. As there is usually dense indigenous undergrowth and only sawlogs are removed, Waipoua logging operations leave large quantities of highly flammable material on the ground. This danger is heightened near the coast where it is windy and generally much drier. (C7:15-16)

The witness went on to mention the debate which has ensued over the planting of an exotic plantation, and the fire hazard that it creates adjacent to the kauri reserve. He also listed the personnel and equipment the forest service based at forest headquarters had readily available for fighting forest fires until 1 April 1987, when the Department of Conservation and Timberlands took control of the indigenous and exotic forests respectively. Since then much of the fire fighting equipment, including the fire engine, has been removed from the forest, along with the personnel. The Crown's ability quickly and effectively to deal with an emergency has been seriously compromised. By 1989 only two forest managers remained in residence and they were dependent on tangata whenua and help from outside for fire control. Te Roroa living in the settlement thus view:

with serious concern the menace the exotic plantation poses not only to the Kauri forest, but more importantly to our people, homes and papakainga which are totally surrounded by this aberration and which have been planted right up to the boundaries of our remaining lands. (C7:17)

The concern deepened in 1989 when Timberlands erected signs at both entrances to the exotic plantations advising that the roads were now open for public use (C7:17).

The Forest and Rural Fires Act 1977 and previous Acts enabled fire authorities to preserve fire safety margins and conditions in forest areas which, at times, could be particularly irksome and frustrating. Waipoua Settlement has been, and still is, doubly disadvantaged by the poor state of forest access roads, no telephone, little radio

contact and too few people to fight fires. Moreover the economic status of the residents precludes them from providing their own fire fighting equipment. These deficiencies would compound dramatically any fire emergency, domestic or otherwise. The forest owners' principal concern is the protection of the kauri forest. Neighbours who have been put at additional risk by the forest establishment, have little option but to live with the ever present hazard.

Limited fire fighting equipment is available at forest headquarters some 15-20 minutes away by motor transport, with no telephone, that time must be more than doubled to allow the messenger to raise the alarm, assemble helpers and return. In the event of a serious domestic fire, households in the Waipoua Settlement would be totally destroyed. What has been and still is unacceptable in the settlement is the total absence of any effort by forest managers to provide and maintain fire breaks, contribute to a communications system and have any evacuation plan in place and explained, or show any tangible evidence of any measures taken to protect or compensate immediate neighbours for greatly increasing the fire risk by exotic forest plantings.

Following the evidence given by the claimants at the second hearing at Matatina marae (B47:14-19), the claimants and Crown agreed on urgent measures to be taken in respect of the risk of fire. The claimants would commission an independent forestry expert of their choosing (at the Crown's expense) who would investigate and report upon the present fire risk and recommend any measures necessary to minimise that risk (C21(a):2).

In the fire risk assessment report (H12) provided to the tribunal, the possibility of fire risk was assessed on historical statistical data and measured on a graduated scale (H12:app 3). For Waipoua the graduation is scaled as low (H12:app 2(a)). While this may be an acceptable commercial risk to the forest owner, it gives little reassurance to residents.

The transfer of management responsibilities in Waipoua to the Department of Conservation and the Forestry Corporation and its subsidiary Timberlands, in no way diminishes the Crown's fundamental responsibility to its immediate neighbours, the Waipoua Settlement residents. The very minimum the Crown should do is ensure that the consultants' recommendations, detailed in the fire risk assessment report, be implemented. We understand that nothing has occurred since the report was released in May 1990.

# Te Roroa Claim

## 05 Te Manakore (Loss of Mana)

### 5.4 Did the Crown Have a Duty to Provide Legal Access and Services for the Waipoua Settlement?

5.4. Did the Crown Have a Duty to Provide Legal Access and Services for the Waipoua Settlement?

The Crown submitted that the people of Waipoua did receive and benefit from aspects of policies in respect of Maori education and Maori health. The Correspondence School could not cater for all the needs of the Waipoua community. Waipoua's problems were not easily solved because of its isolation (I2:(b)(xi):10-11). Counsel for the claimants pointed out that the lack of services had contributed to the undermining of the Waipoua community and was a deterrant to the resettlement of the valley and the strengthening of the rural base. He drew our attention to the differences in services between the Waipoua Settlement and Forest Service Headquarters. Within 15 minutes of headquarters you would appear to be in the third world. People were living in caravans and garages without amenities. The differences were stark (I1(e):9 and interpolations). He asked us to take Alison Nathan's proposals seriously and make recommendations accordingly (I1(e):6). He also pointed out that the whole question of rates needed to be addressed. Although the settlement received no social services its landowners were expected to pay rates (ibid:18). {FNREF:0-86472-088-2:5.4:14}

He considered that Te Roroa ki Waipoua people had clearly been prejudiced by the Crown's failure to take reasonable steps to provide services (ibid:19).

This raises the question of whether the Crown had any special duty over and above its duty to all its citizens to provide services and legal access for Te Roroa ki Waipoua. In our view the answer is yes.

We have seen how the Waipoua Settlement was greatly disadvantaged economically and socially by the Crown's decision to close the coastal road, taking away access to surveyed allotments for which it had granted title and should therefore have provided legal access. We have also seen how the lack of legal and adequate access to the settlement impeded the delivery of social services. Lack of access and lack of services in turn contributed to the general exodus of people from the settlement and discouraged people from returning home. Te Roroa ki Waipoua, in other words, were (and still are) caught in a vicious circle. We have also seen how their lives were largely conditioned by the Crown's deliberate policy of land acquisition and by forest service operations, and how increasingly they have become forest service dependents. For all these reasons the Crown should have accepted more responsibility for the well-being of those it dispossessed. As well as its special treaty obligations, it surely has a special duty to be a good neighbour. We shall refer to this later in the concluding section of the report.

## REFERENCES

{FNTXT:0-86472-088-2:5.1:1}1 According to counsel for the claimants, traditional hunting and fishing rights have been acknowledged and protected despite the sale of land to the Crown in *R v Taylor and Williams* (I1(e):35-36)

{FNTXT:0-86472-088-2:5.2.1:2}2 "The Ngai Tahu Report 1991" (Wai 27) 4 WTR (Wellington) p 317

{FNTXT:0-86472-088-2:5.2.3:3}3 A recent article on "wetlands" and pine afforestation by Hugh Creasy in *The Sunday Times*, 12 January 1992 appears to confirm his view.

{FNTXT:0-86472-088-2:5.2.9:4}4 Statutory controls were imposed by s51 Wildlife Act 1953 and ss30, 31 and 38 Conservation Act 1987, which vest ownership or control of cultural resource materials in the Crown and give the director-general discretion to authorise the taking of plants from a conservation area to be used for traditional Maori purposes. Sections 63 and 67 Wildlife Act and ss38 and 45 Conservation Act regard offenses and penalties. Other statutory controls are effected by the Conservation Law Reform Act 1990, Wild Animal Control Act 1977, Fisheries Act 1983, Reserves Act 1977 (I1(e):40).

{FNTXT:0-86472-088-2:5.2.9:5}5 Section 5(2) The Treaty of Waitangi Act 1975

{FNTXT:0-86472-088-2:5.3.1:6}6 J B Condliffe *The Welfare State in New Zealand* (London, 1959) p 119. See also Andre Siegfried *Democracy in New Zealand*, ed David Hamer (Wellington, 1982) p 54 *passim*

{FNTXT:0-86472-088-2:5.3.1:7}7 Alan Ward *A Show of Justice* (Auckland, 1973) p 303

{FNTXT:0-86472-088-2:5.3.1:8}8 Ken Keith *International Implications of Race Relations in New Zealand* (Wellington, 1972) p 44

{FNTXT:0-86472-088-2:5.3.2:9}9 E K Bradley *The Great Northern Wairoa* (Auckland, 1982) p 91

{FNTXT:0-86472-088-2:5.3.2:10}10 Jack Lee *Hokianga* (Auckland, 1987) p 228 *passim*

{FNTXT:0-86472-088-2:5.3.2:11}11 The forest service had no objection to this route being used and upgraded in 1947. Hobson County Council staff provided some assistance but the council considered the work did not come under its control.

{FNTXT:0-86472-088-2:5.3.4:12}12 AJHR, 1879, Session II, G-2, p 10

{FNTXT:0-86472-088-2:5.3.4:13}13 According to Janine McVeagh *Waimamaku A Very Special Settlement* ([], 1988) p 7, the school was opened by I M Munce in January 1885 with 31 pupils. The official opening date is a year later (E13:7; H54:3).

{FNTXT:0-86472-088-2:5.4:14} 14 Proceedings in the District Court brought by the Kaipara District Council to recover outstanding rates presently stand adjourned pending the completion of this report. We shall refer to this matter in our conclusions.

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*Waitangi Tribunal, Department of Justice, Wellington.*