

# Te Roroa Claim

## 07 Whakahoki Mana (Attempts at Redress and Restoration)

### 7.1 Nga Aureretanga (Continuous Crying): Me Nga Whakautu (Response)

#### 7.1. NGA AURERETANGA (CONTINUOUS CRYING): ME NGA WHAKAUTU (RESPONSE)

The claimants have defined the fiduciary duty of the Crown created by its Treaty undertakings to include the remedy of past breaches:

where grievances under the Treaty are established by tangata whenua the Crown is required to take positive steps to remedy those breaches. (A1(i):5)

Te Roroa's attempts to establish their grievances were interlaced with wider movements in Maori society and politics to control their own affairs. In the last quarter of the nineteenth century the tribes who had fought the imperial troops and had their lands confiscated followed the Maori King and prophets. The tribes who had remained loyal, friendly or neutral and sold land through the Native Land Court, established Maori komiti (committees) and Maori parliaments. Te Roroa and Ngati Whatua aligned themselves with the kotahitanga (unity) movement for Maori parliaments.

In 1879 Paora Tuhaere and Ngati Whatua called together the Orakei Maori parliament to consider carefully the words of Governor Browne at the 1860 Kohimarama conference and the spirit of the Treaty of Waitangi, and to talk over their grievances and wishes. Over 300 representatives of various tribes and hapu attended, including Tiopira Kinaki. Although the Orakei parliament unanimously resolved always to remain friendly to the Europeans and, with one dissenting vote, adhere to the terms of the Treaty, it freely made known a number of grievances stated in this claim. Basic to these was the establishment of the Native Land Court, which, as Paora Tuhaere said, "took away the authority over the land from the owners, and put the authority in a Crown grant". {FNREF:0-86472-088-2:7.1:1} Tiopira's grievances illustrated one of the consequences for Te Roroa:

I say that justice came from it [the Treaty], and that misfortune came from the Crown grants and the County Councils. The work of these Councils is to make carriage roads, and I find fault with them because I have to pay for those roads .... I do not blame the Government for taking the land; the blame rests with the people who sold the lands .... The only fault I find with the Government is the establishment of these Road Boards-the Road Board on the West Coast, from Wairoa to Hokianga. I was always in the habit of using the road that has been there, but now the Road Board want to make me pay for using that road.... Perhaps Sir George Grey and Mr. Sheehan will remove this wrong, and carry out this road out of the Government funds without asking the Maoris to pay rates. {FNREF:0-86472-088-2:7.1:2}

Paora Tuhaere explained that he "got up" the Orakei parliament for his own tribes (Te Taou, Uriohau, Te Roroa and Ngati Whatua), who would not go to a Ngapuhi parliament because of some very "bad words" mentioned by Ngapuhi in the Kaihu Native Land Court. {FNREF:0-86472-088-2:7.1:3} He was referring to Parore Te Awha's claim to Maunganui by rights of conquest. But, in future, Ngati Whatua and Ngapuhi worked together to remedy common grievances.

In 1882 Parore Te Awha petitioned the Queen on behalf of the kotahitanga movement for Maori parliaments:

These things [the disappearance of native reserves] and many of the laws which are being carried into effect are, according to Maori ideas, very unjust, creating disorder amongst us, giving heart pangs and sadness of spirit to your Maori children who are ever looking towards you, Most Gracious Queen; and it is averred by men of wisdom that these matters, which weigh so heavily upon us, are in opposition to the great and excellent principles of the Treaty of Waitangi. {FNREF:0-86472-088-2:7.1:4}

Parore is said to have provided £300 for Hirini Taiwhanga to take the petition to the Queen. {FNREF:0-86472-088-2:7.1:5} Possibly he used part of the proceeds from the sale of Maunganui and Waipoua lands.

Before Parore Te Awha died on 24 September 1887 and Tiopira Kinaki on 12 November 1887, the Rahiri house was built at Te Houhanga marae, Dargaville, to commemorate the peace made between them. Nga aureretanga united parties who had been traditional foes on the battlefield and in the Native Land Court. From 1892-1902, Te Roroa together with the other hapu of Ngati Whatua and Ngapuhi looked for redress to annual Maori parliaments; thereafter to the Young Maori Party leaders and men of two worlds such as Apirana Ngata, who worked through their tribal elders in association with the New Zealand Parliament.

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### 7.2 Grievances Over the Failure to Reserve Kaharau and Te Taraire

#### 7.2. Grievances Over the Failure to Reserve Kaharau and Te Taraire

The seeds of Te Roroa grievances were sown by the Crown's failure to set aside Kaharau, Te Taraire, Manuwhetai and Whangaiariki from the lands they purchased in 1875-1876. But they did not begin to germinate until the land was opened up for settlement and public works. In the meantime, tangata whenua continued to use and occupy their traditional resource areas and to protect their wahi tapu, presuming that they were still Maori land.

Protest over the inclusion of Kaharau, Te Taraire and other smaller Waimamaku wahi tapu began in 1887, when a surveyor, Baber, began cutting up a portion of Waimamaku No 2 block for the Canterbury settlement (D1:20; H3:96). Ngakuru Pana wanted to stop the survey but younger people did not wish to take such extreme measures. In the event, the surviving vendors, Ngakuru Pana, Hapakuku Moetara, Ihaka Pana, Rewiri Tiopira and others adopted legitimate methods of protest, writing letters, making personal representations to ministers and government officials and petitioning Parliament.

Persistently and continually they insisted that they had arranged with the Crown native land purchase agents and surveyors to reserve Kaharau, Te Taraire and other small wahi tapu from the sale of Waimamaku No 2, that Daniel Wilson had marked the reserved area on his survey plan and that Preece and Nelson "perfectly understand" this area had never been sold (D3:356-357, 360-361, 366-370, 372-379).

In a letter dated 27 January 1892, Hapakuku Moetara, Peneti Pana and others further explained that:

a message was written clearly in the deed that a portion of the land will be sectioned off (teakina) for the Maori. Our sellers, on the other hand, only signed the sale of the big block. Charles (Nelson) wrote in his books his separating that other block outside of the sale of the big block. We think that his books are with the Department.

That is why we say that we still have possession of that portion of that block right from the distant past up to today. (D11:13){FNREF:0-86472-088-2:7.2:6}

In the 1894 petition, Hapakuku Moetara, Rewiri Tiopira and others prayed that this portion be returned to them because they were "quite sure that the land was never sold" (D3:356-357, 360-361).

The Crown's denial of these claims was equally persistent and continuous. It was based on the unequivocal conclusions reached by P Sheridan of the Native Land Purchase Department in Wellington who had investigated complaints of Baber's activities (H31:13-15), and examined the deed of sale, the map attached to the deed and Preece's "very full" report (D3:385). Preece could not be consulted as he died on 10 August 1878 (H3:app 5). {FNREF:0-86472-088-2:7.2:7}

Despite such denials, more sympathetic individual ministers and officials were willing to make concessions. In 1889, the surveyor-general was instructed that if there were:

any old graves on the block a few acres surrounding them could perhaps be reserved under the provisions of The Land Act without causing any inconvenience. (D3:382)

The title however would remain vested in the Crown. Action by survey officers was delayed, then foundered. The chief surveyor, W C Kensington, said that Maori must pay the survey costs and that reserves were not to exceed two or three acres. The Maori refused to disclose the location of the wahi tapu for survey purposes and insisted that the whole area surveyed and reserved by Daniel Wilson, be returned to them. Kensington regarded this as "preposterous", particularly as the area included two sections laid off by Baber in possession of Canterbury settlers. It was no use, he reported to the surveyor-general, to attempt to make the surveys (D3:390).

When the 1894 petition came before the Native Affairs Committee, it recommended a royal commission appointed by itself. The petition and the committee's recommendation were referred to the government but no further action was taken, presumably because the government agreed with Sheridan that "There is no going behind the deed of sale" (D3:351).

At no stage in the lifetime of the vendors did the Crown fully and carefully investigate their claims. {FNREF:0-86472-088-2:7.2:8} Neither Wilson nor Nelson were ever consulted. Percy Smith appears to have accepted Sheridan's conclusions without comment. Kensington gave no hint that he had compiled the plan appended to the deed of sale; nor did he ever mention Weetman's check survey. Various explanations suggested by the Crown researcher for these omissions do not excuse the Crown's failure to carry out a proper investigation while those involved were still alive (H30:5-10, 19-21; H31:14-24).

In 1902 protest over the taking of the land was re-fuelled by the discovery of the Kohekohe caves and the removal of wakatupapaku and other taonga from them. At the Rawene meeting, 21 May 1902, the magistrate, Blomfield, promised the people to ask that the portion of Crown land containing the wahi tapu be returned to their hapu (D3:315-317). Ngakuru Pana informed the Native Minister that he was taking action and that he had been to the surveyor (Wilson) about the land which had been set apart as a burial place (D3:305-306). The minister was strongly of the opinion that Maori wishes should be met (D3:404, 494), but when Kensington was consulted, he noted on the file "Answer not reqd as yet-let it go away" (D3:402). Apparently the "whole of this land" had already "been withdrawn on account of Kauri" (D3:493).

On behalf of one of the original owners of the land (presumably Ngakuru Pana), an Auckland law firm made some inquiries. When this was reported to Kensington he

repeated his stock answer pointing out that he was "well acquainted with the whole transaction" (D3:288).

Ngakuru Pana assisted by Mrs M A Bryers (see appendix 6 pp 2, 9), continued to protest. In 1907 his son and Iehu Moetara gave evidence before the North Auckland Surplus Lands Commission and he himself again petitioned Parliament. Again Kensington denied that any land had been reserved. This time the petition was referred to the government for "favourable consideration with a view of making provision for a Reserve" (D3:155-156), but nothing was done. Mrs Bryers wrote several more letters to the Native Minister, James Carroll, before Ngakuru Pana died on 8 July 1914 leaving a new generation to continue the take.

On 9 June 1925 they petitioned Parliament to empower the Native Land Court to hold an inquiry without avail (D3:127-134). Another petition, 10 June 1930, resulted in Chief Judge R N Jones ordering an inquiry (D3:257-260, 204-205).

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### 7.3 The Acheson Inquiry 1932

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Judge F O V Acheson presided over court hearings at Opononi on 28 January 1932 and, following an adjournment for a staff inquiry, in Auckland on 4 July 1932. Evidence was given by Iehu Moetara, Aperahana Reupena Tuoro and Matene Naera. The position was then fully discussed with the assembled people who concurred with the statements given in evidence and provided further information (D3:118-121; H3:129-130).

Acheson in his report of 5 August 1932 concluded that (D3:13):

(a) the Natives themselves believed the urupa (now the subject of the inquiry) to be excluded from Waimamaku No 2 Block.

(b) the five chiefs who signed the deed of sale thought they were selling the land shown on Smith's sketch map (ML 3268); and

(c) the sketch drawn on the deed, (that is Kensington's compiled plan) would have been quite insufficient to warn them that the land being sold included the area of the urupa.

It was "perfectly clear to the Court", he added:

that under no circumstances would five such prominent chiefs have sold to the Crown, for a mere pittance (less than 1s. per acre), the burial-places of their ancestors. The Court is satisfied also that the urupas in question were purposely cut out as a reserve before the negotiations with the Crown took place, and that the vendors understood the reserve had been cut out before they signed the conveyance to the Queen. (D3:13; H3:133)

The burial places in question were (a) Te Moho; (b) Kohekohe, Te Rereapouto and Te Akaterere in the whole area known as Kaharau; (c) Te Taraire. Three areas sold to European farmers and one area held by a European storekeeper under an ORP (occupation with right of purchase) licence were affected.

The court was of the opinion:

that the Native vendors, when signing the conveyance... thought the 1,472-acre reserve (including the urupas) was excluded from the sale. The fact that the old

records have been destroyed by fire makes it impossible for the Court to come to a more definite finding on this point.

....The Court is sure that the urupas in question were not intended to be sold to the Crown.... the inclusion would be due to a mistake in the Court plans for which the Native vendors were not to blame. (D3:13)

The court therefore recommended that action be taken under s472 Native Land Act 1931, or under special legislation to return the burial grounds in question and, possibly, a portion of the old reserve if still vested in the Crown and unalienated (D3:14).

In forwarding Acheson's report to the minister, Chief Judge R N Jones noted that unfortunately, most of the land had been disposed of, and could not now be recovered. It might be possible to have part of a section with the burial caves on it reserved, but the natives probably would be averse to paying for it. If the government paid, they would not be satisfied but look upon it as an admission entitling them to compensation for the larger reserve. He could not at the present stage recommend legislation. His own views on the subject of the inquiry clearly relied on the deed of sale and the stance maintained by the Crown since 1887 (D3:12).

Crown research on this part of the claim supported Acheson's conclusion, not that of the chief judge (H3:135; H30:21-23).

Acheson's report was referred to the government for consideration but as the chief judge did not recommend legislation nothing eventuated (D3:185-187). At Opononi, Acheson explained to the people that the Native Land Court was unable to take any further action (D3:125(a)).

In May 1933 Piipi Cummins (Tiopira) and 67 others again petitioned Parliament seeking either compensation "in land or money" or a re-vesting of the burial places under s472 Native Land Act 1931 in persons or authorities the court might determine. The acting Native Minister took up the question with the Minister of Lands (D3:430). By then the only burial place on Crown land was Kohekohe which was held by James Morrell under an ORP licence.

Morrell declined to agree to have the area reserved with an easement for access purposes to the nearest road. In his view the local Maori entertained "no sentiments in regard to these things"; the human bones had been removed and reburied in the cemetery 33 years before and were not their ancestors; the wood carvings and burial chests were in the Auckland Institute and Museum with Maori consent (D3:168, 529, 533). Piipi Cummins was therefore informed that if they wished to recover the burial places, they would have to raise the money to pay the present owners of the land and to compensate Morrell (D3:166).

The claimants considered "the key reason" for the rejection of Acheson's recommendations was that most of the land had been disposed of. The Crown researcher admitted that was a consideration but would not comment further (H30:23).

Various opinions were expressed to the tribunal about why the protest over Kaharau and Te Taraire then subsided (H3:140-141). After 48 years the Waimamaku people must have felt defeated and exhausted. Furthermore they had no experienced advocate to act for them as did Te Rore Taoho's descendants in respect of Manuwhetai and Whangaiariki. Nonetheless, as Daniel Ambler said, "a continual cry and heartache of our ancestors... carried on through each generation up to the present day". Petition and protest in respect of this claim were not in his view "of monetary value but of a highly spiritual value and therefore should be addressed in a like manner". It was "not a case of Crown versus Maori but right versus wrong" (D21:1-2).

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### 7.4 Grievances Over the Failure to Reserve Manuwhetai and Whangaiariki

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A parallel claim arose over the Crown's failure to reserve Manuwhetai and Whangaiariki. In this case, official confusion over their post-sale status initially helped to sustain the protest. Manuwhetai and Whangaiariki were shown as native reserves on cadastral maps and plans prepared by the lands and survey department and as late as 1927 on Hobson County Council maps. Most probably this was because Frank Smith's survey plan (ML 3297-8) was part of the official survey record and the department did not adequately check the information on ownership at its disposal. {FNREF:0-86472-088-2:7.4:9} Manuwhetai and Whangaiariki were listed as whenua rahui on the 1886 Hobson County Maori rate roll (A6:1063). Manuwhetai was reclassified as Crown land on the 1902 valuation roll, but Whangaiariki was still Maori land on the 1913 valuation roll (A6:1064-1069). A schedule of native reserves ordered by the Legislative Council in 1899 and published in 1900 listed Whangaiariki but not Manuwhetai. {FNREF:0-86472-088-2:7.4:10}

On 15 July 1897, Manuwhetai was leased in perpetuity under Part II of the Land Act 1892 to John Downey, whose family was already farming adjacent Maunganui land (A6:1086-1088; A13:44; E3:3, 9).

On 21 November 1899, John Snowden of Maropiu, who was married to a Te Roroa woman, wrote to Percy Smith:

I am instructed by Terore [sic] Taoho to write to you about his land at the Bluff. It was sold by the Government to Mr Downey. He told me that Netana Patuawa had seen you about the Land. Hi [sic] Netana Patuawa gave him to understand The Government might give him Land... in the Place of it... Terore [sic] says there is no Land near this place good enough to take in the place of it. He would take a £1 an Acre for the Land....

You will oblige by seeing to it as the Old Man is getting old and shaky. (A5:728-729)

Kensington replied on 30 December 1899:

Te Rore Taoho is in error in supposing that the reserve was made for him at Manuwhetai. It was cut out at first, but afterwards it was found that the Deed of Sale did not exclude it, so the land was opened for selection as Crown Land. (A5:603)

Kensington's reply became the stock official answer to future complaints.

After Te Rore Taoho's death on 27 December 1903 (B4:88), his take was continued by his sons, Raniera and Enoka Te Rore Taoho and others. Raniera believed that Manuwetai had been awarded solely to his father and objected to Europeans occupying it. When Downey built a house on the wahi tapu, strong protests were made to the member for northern Maori, Hone Heke, and his successors, Te Rangihiroa and Tau Henare (A13:49). In 1912, Raniera Te Rore complained to the local member, J G Coates, that Downey had fenced land they had "never leased or treated with in court". Coates's inquiry ascertained the land was part of the original Crown purchase (A14:1-9).

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### 7.5 The Stout-Ngata Commission

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By the 1900s a new generation of educated, young Maori leaders was emerging who believed that if the Maori wished to survive as a people they must not only have better health, education, housing and employment, but develop and farm their own lands. Their slogan was "Only those lands, which the Maoris themselves will usefully occupy, will remain or be allowed to remain to them". {FNREF:0-86472-088-2:7.5:11} But owners of Maori land received no assistance under the advances to settlers legislation.

To overcome the problem of scattered interests of individuals in different blocks of land that, like Waipoua No 2, were being partitioned by the Native Land Court, Ngata and the Young Maori Party advocated the consolidation of interests. Carroll's policy encouraged leasing, not selling to ward off mounting European demand for Maori land. In 1907-1908, the Stout-Ngata Commission was appointed to find a middle way between continued government purchases for settlement and Maori needs and aspirations. To determine what areas Maori required for themselves and what areas they were willing to lease or sell, the commission travelled around the country hearing evidence from Maori owners.

In parts of the Kaipara district, the commissioners found:

Signs are not wanting that... the Natives are realising the necessity of utilising their lands in a proper manner.... but their energy... has been expended in other directions, gum-digging, bush-felling, and other employment... with the timber industry.... About ten years ago the kauri-gum began to give out, while the available supply of kauri timber rapidly dwindled.... In Hobson County there are MANY Natives with very little land, who may be termed almost landless.... there is need for the proper adjustment of titles... above all, there is need for proper instruction and direction, that...energy... may be diverted to the more difficult task of cultivating land. (A3:167, emphasis added).

The commission listed Manuwhetai and Whangaiariki as lands in the Hobson County "recommended to be reserved for Maori Occupation under Part II of the Native Land Settlement Act 1907" (A3:173). Crown researchers gave two conflicting reasons for this mistake; either the information came from the perusal of survey maps and official documents (F2:19-20), or it came from local Maori, in which case it could not be taken as an official acknowledgement that Manuwhetai and Whangaiariki were in fact native reserves (E3:41). The latter reason is supported by evidence in the

commission's minute book and what is known about how the commission operated (A13:44; E3:41). {FNREF:0-86472-088-2:7.5:12}

When the commission sat at Dargaville in March 1908, it heard brief statements on Manuwhetai and Whangaiariki from a Kaihu kaumatua, Wiremu Rikihana. The entry in the minute book on "Whangaiariki NR" stated:

This is not utilised-but being a reserve out of a sale it sh[ould] still be reserved. (A6:1053)

The entry on Manuwhetai stated:

This is a "wahi tapu". Better make sure that it is a Reserve. Surrounding land all sold to Crown. (ibid)

Beside Manuwhetai in the commission's interim report is the remark: "Reserved from sale to Crown as wahi tapu" (A3:173).

In the event, the Stout-Ngata Commission recommendations were not carried out. An opportunity to investigate and redress the take before the land was transferred to private individuals was lost.

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### 7.6 Continuing Complaints

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On 18 May 1914, Downey purchased a freehold title for Manuwhetai which he transferred to D Sutherland of Waimate. The land changed hands several times before a new title was issued to W W R Pryce, an Aranga farmer, on 14 April 1930 (A6:1089-1091). During the intervening years, the Te Rore family and other tangata whenua continued to live, farm and dig gum at Whangaiariki, and to camp at Manuwhetai to get shellfish and fish and protect their wahi tapu (A13:46-48; A4:555-557).

In 1928, Paiwiko Ananaia complained to the Native Minister and the court registrar that Pryce was claiming ownership to high water mark and trying to eject Maori campers at the beach. He also complained that a European, Mr Somers, was breaking down fences around Maori homes and gardens at Whangaiariki. He was informed that there was a strip of public road reserve between high water mark and Pryce's land and that an annual grazing licence had been granted to Mrs K Somers at Whangaiariki (A5:609-621; E3:4,17). The public road reserve consisted of almost four and a half acres and dated back to some time after Downey's lease (A13:44).

Ngata became Native Minister and initiated his state-assisted Maori land development schemes in 1928. Officers were appointed to consolidate scattered interests in different blocks for purposes of development. In 1930, Paiwiko Ananaia wrote on behalf of Raniera and Enoka Te Rore to the consolidation officer about Pryce's attempt to prevent them building a house at Manuwhetai for Maori use and threatening to get a policeman to eject them. The original owners, he said, had no existing knowledge of its sale to Europeans. "Who ever made this sale"? (A5:622-624).

Paiwiko Ananaia also met two consolidation officers visiting the district. As Manuwhetai was included in the consolidation scheme for Waipoua, they had brought Frank Smith's plan of native reserves with them. Presumably Paiwiko Ananaia now learnt that only Taharoa had been reserved from the Maunganui sale, that Whangaiariki had been "repurchased" by the Crown and that a survey plan existed to corroborate oral tradition (A5:624-626). Meanwhile Coates, on Colonel Pryce's behalf, ascertained from Ngata that the Maori claim to Manuwhetai was based on the 1875 survey plan and that the only reserved area was Taharoa (E3:9-10).

In the early 1930s Paiwiko Ananaia continued to complain about what was happening at Manuwhetai. The road under construction from Kaihu would enable Pakeha to go to the beach in motor cars and "do harm to ... [their] shell fish" (A5:632-635). The

European who had purchased land from Pryce was preventing them from grazing their horses and threatening to take legal action to eject those with houses on Manuwhetai (A3:179; A4:526-527). With Raniera Te Rore and others, he sought the help of the Native Land Court to secure the return of Whangaiariki and Manuwhetai.

Applications for investigation of title came up in the Kaipara court on 11 June 1931, 28 August 1934 and 13 August 1936 and were opposed by the Crown. Judge F O V Acheson began to take an interest in the case. Counsel for the applicants was L W Parore, who asked for an adjournment as he was petitioning Parliament (A4:523-527).

A petition from L W Parore and J Parore was presented to Parliament in 1937 praying that it "provide legislation fully enabling the Tokerau District Native Land Court to investigate all aspects respecting this matter and give judgment in the return of the above-mentioned lands" (A5:856-857). Despite a report from the assistant chief surveyor "that if there was the slightest claim raised, effect would have been given to it" (A6:1036-1038), the Native Affairs Committee recommended the petition be referred to the government for inquiry. Provisions for this were included in the Native Purposes Act 1938. {FNREF:0-86472-088-2:7.6:13}

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### 7.7 The Acheson Inquiry 1939

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An inquiry was held in Kaihu on 7 July 1939 by Judge Acheson. V R Meredith appeared for the Crown; L W Parore for the petitioners (A4:528). {FNREF:0-86472-088-2:7.7:14} Parore argued that the native titles to Manuwhetai and Whangaiariki were never extinguished. Plan ML 3297-8 and later official documents indicated they were reserves. Paiwiko Ananaia and Huhuna Topia gave evidence of the early history of Maori occupation going back nine generations and of the continuing use of the land they considered theirs and emerging conflict with European occupiers (A4:530-538).

Meredith argued that plan ML 3297-8 was done without official sanction by a private surveyor, that the land was not mentioned at the 1876 Native Land Court hearing or at the Barstow inquiry and was not excluded from the deed of sale and notice gazetting the Maunganui block as Crown land (A4:539-544). Owen Darby, officer in charge of the Maori branch of lands and survey, and William Henry Rossiter, lands and survey field inspector, gave evidence on the status of plan ML 3297-8, the poor quality of the land and its "uninhabited" appearance (A4:544-547). In cross examination, Meredith tried to establish that the urupa was on beach frontage not freehold land (A4:538).

In conclusion, the court explained "to assembled Natives that its functions are limited to Inquiry and Report to [the] Chief Judge for submission to Parliament." Its report would be available in time for consideration by Parliament that year (1939) (A4:552). In the event the report was sent to the chief judge on 28 April 1941 and to the minister on or after 2 July 1942 (A3:175). This was an unconscionable delay, even in wartime, which ignored s23 of the 1938 Act which provided that the report and recommendations should be laid before Parliament on as early a date as possible.

Acheson's report emphasised, as a point of considerable importance to the petitioner's claim, that plan ML 3297-8 "was in evidence PRIOR to the date of deed of sale of the Maunganui Block to the Crown". It questioned the Crown's view that it had no status whatever as a survey plan. Was not the Hobson County Council map as late as 1927 "in reality an unwitting acknowledgement by the Survey authorities that these two areas were set aside as Native reserves" (A3:176)?

A memorandum, 15 September 1875, from the deputy inspecting surveyor to the provincial surveyor stated the plan had been sent to him for approval. No answer was on record. Up to at least this point the plan was regarded as official. At this stage it was held up by officers of a government department. There was nothing on record that the natives were told. Could the Crown "take advantage of the incompleteness of

the official records and say now the two reserves were not really set aside for the Natives?" (ibid).

Plan 3253 of Maunganui, used for the sale, was a COMPILED plan, accurate as to outside boundaries, but no guide as to what lay INSIDE. In between the date of the compiled plan and the date of the investigation of title and deed of sale, there was a regular survey which showed the exact boundaries of Manuwhetai and Whangaiariki as native reserves. Moreover, plan 3253 was cross-referenced with plan 3297-8 and showed the boundaries of these reserves in pencil, but no date for the pencilling (A3:177).

Manuwhetai and Whangaiariki were not shown on the deed of sale, 8 February 1876, whereas the Taharoa Native Reserve depicted on ML 3457, dated 22 March 1876, was. The Taharoa reserve was also shown on plan 3253 for Maunganui, dated 17 May 1875, whereas only pencilled notes were shown for Manuwhetai and Whangaiariki (ibid).

Whangaiariki was exempted from lands sold on the Legislative Council return of native reserves in 1900, although the Crown had contended it was not. There should be clear evidence in the land department's records to prove it was "repurchased". It had been held by the Privy Council that the Crown could be required to PROVE a purchase (ibid).

Kensington's "remarkable admission" that Manuwhetai "WAS CUT OUT AT FIRST, but AFTERWARDS it was found that the deed of sale did not exclude it, so the land was opened for selection as Crown land" went to the root of the petitioners' claim. By inadvertence or otherwise, the reserve was not excluded from the deed of sale. In effect, Kensington held the Crown had the right to take advantage of the omission. As the two sellers were dead, the claim of their kinsman, Te Rore Taoho, should have been investigated by a judicial tribunal. Apparently he was too old and frail to stand up for his rights. The court refused to believe he attempted to sell Manuwhetai for £1 an acre. Snowden's offer was merely an attempt to do something for the aged Te Rore or gain some advantage for himself (ibid).

The Stout-Ngata Commission showed that as late as 1908 the two areas were regarded as native reserves. The Crown had expressed surprise that Downey's lease had been overlooked but the lease was described as section 19, block XII Waipoua Survey District, not Manuwhetai (A3:178).

The judge taking the inquiry regretted to have to say that, in all his 21 years' experience on the Native Land Court bench, he had come across quite a number of cases where:

Native reserves originally arranged for have apparently without reason and without the knowledge or consent of the Natives been allowed to sink into oblivion. (ibid)

Only a petition could resurrect them:

The Court, from its wide knowledge of Maori life and customs, says it is preposterous to think that so long a stretch of coast-line, lying close to the big inland Maori

settlement at Kaihu, would have been without areas in regular occupation by Natives for fishing, cultivation, kainga, and burial purposes.... the Natives of the Kaihu district regularly used both reserves as bases for the collection of shell-fish and other sea-foods, a practice as old as the Maori race itself. (ibid)

The court was:

quite satisfied from the evidence that the Kaihu Natives must have been in regular occupation of these two reserves... in 1876. That would be the ordinary and natural reason for the two areas being surveyed off as reserves.... The surveyor.... would not have been allowed to survey reserves at all except with the knowledge and approval of the leading Maori chiefs of the district.

It cannot be supposed that two high chiefs like Parore te Awha and Tiopira Kinaki would deliberately sell to the Crown two reserves, both occupied and in regular use for important food and residential needs, and one of them containing big and tapu burial-grounds. The clear presumption is that they carried out their chieftain duties and protected the occupation rights of their tribesmen within the area to be sold (1876) by first arranging (in 1875) for the two areas to be surveyed off and marked on the plan as reserves. It would hardly dawn on them that a sale deed signed so soon afterwards would include in the sale the two reserves so recently surveyed out.... [It was] highly probable that Plan 3297-3298 showing the two reserves was before their eyes as they signed the deed of sale. They would not suspect that, by an oversight on the part of the official who drew up the deed, the two reserves were not protected by the deed. (ibid)

Finally, there was nothing to show that plan 3297-3298 was not before the court in 1876:

It should have been before the Court. It was the bounden duty of the Crown's officers to produce it.... the Natives... must have felt they were investigating the Maunganui Block LESS THE RESERVES. In that case, the order on investigation of title should also have excluded the reserves as not investigated. The reserves would remain "papatupu" or "customary" land. (A3:179)

In the opinion of the Court:

the essential need is to uphold at all times the king's honour and the standard of british justice in dealings between the two races in new zealand. the circumstances of this case... cry aloud for redress for the natives. the two reserves are theirs and should be returned to them, no matter what cost to the crown this may involve. (ibid)

Chief Judge G P Shepherd was unmoved by these strong words. He could not help but think that, whatever the purpose of the survey "it was not done with the express or... immutable purpose of having the areas reserved from the sale to the Crown". If that had been intended, the "vigilance with which the two contending chiefs... watched over events leading to, and surrounding, the investigation of title... and the cession... to the Crown, must inevitably have been rewarded...". The sale was the subject of magisterial inquiry. It appeared to him "unthinkable" that if there had been any

suggestion touching other reserves than Taharoa, "it would not have been the subject of notice before the tribunal" (A3:175).

Set over against any inference which was to be drawn from the existence of the plan were the facts and statements of record; no provision for the reserves in the deed of conveyance; no mention of them on the proceedings for the investigation of title; certification by a judge on the deed of conveyance signed by the two chiefs after the contents had been explained to them and they appeared fully to understand its meaning; a clear certificate on the deed by a trust commissioner; Preece's memorandum, 12 February 1876, mentioning that under the terms of the compromise between Tiopira and Parore, Parore was getting no reserve until he had agreed to let him have about 250 acres.

The chief judge went on to note that the survey of the reserves was apparently made without the sanction and authority of the inspector of surveys as required in s74 Native Land Act 1873. He was unable to attach any significance to maps or to references to them in the 1900 return and the Stout-Ngata Commission report. They were "merely perpetuations of an original mistake as to the real status of the lands" (A3:176). The use of part of Manuwhetai as a burial ground did not necessarily impart an intention to reserve.

He found himself unable to make any recommendation to the effect that the areas should be re-vested in the Maori but suggested officers of the Crown endeavour to conclude an arrangement whereby any burial place on Manuwhetai or Whangaiariki might be reserved from desecration and perhaps permit Maori to exhume and reinter any human remains (ibid).

The report and recommendations was transmitted by the chief judge to the Native Minister, 2 July 1942, for presentation to Parliament and was referred by the Native Affairs Committee to the government, 17 October 1942. Acting on the advice of his undersecretary, the Native Minister approved action along the lines indicated by the chief judge, 5 January 1943 (E3:doc 5). The surveyor-general was requested to arrange with L W Parore to identify any burial grounds (A5:793).

A copy of the report and recommendations was sent to L W Parore on 18 December 1942, the same day the undersecretary advised the minister to approve the chief judge's recommendation. On 9 February 1943, Parore wrote to the minister making known his objections to the recommendation because it was "wrong in fact and law" (E3:doc 17). If given the opportunity, he would quote cases where the Crown had made similar mistakes before. Otherwise he would lodge a further petition. The Auckland commissioner of Crown lands wrote seeking to arrange a visit with a field inspector to ascertain "the position and quantities of remains in the burial grounds" (A5:810). Parore saw no useful purpose in identifying wahi tapu as he intended petitioning Parliament (A5:808-809). In 1945 the chief surveyor reported that little or no interest had been shown by the petitioners' representatives in the matter, so nothing could be done (A5:793).

L W Parore again petitioned Parliament in 1943 and 1944. He submitted that the dictum of the chief judge that the reserves be not re-vested in the natives was erroneous and humbly prayed that the matter be referred to a royal commission for

investigation (A6:1042-1045). No recommendation on either of the petitions was made (A5:793). "That line of protest had met a dead end" (A13:55).

The Crown alleged that "a number of the reasons and grounds relied upon by both Judge Acheson and Chief Judge Shepherd" were "either irrelevant or wrong" (I2:(b)(ii):66). The search for historical information in 1939 was "mostly confined to published documents, and was not sufficiently comprehensive that it was able to bring to light some of the documents which have now been presented to this Tribunal" (E3:38).

Such allegations, in Acheson's case, are one-sided and unfair. His report was based on the oral evidence presented to the court as well as official records. Furthermore, he evaluated the evidence with cultural sensitivity. Indeed he stands out as a lone voice in the government establishment of his day. He had an empathy with the people, and he listened to their grievances. He saw it as being essential that the honour of the Crown and the standard of British justice should be upheld.

Counsel for Crown directed her final submissions to excusing the Crown's failure to redress the petitioners' grievances after the Acheson inquiry:

Although our current view might be different from that of the Chief Judge, the Crown was entitled at the time to accept and rely upon the recommendation of the Chief Judge.... The Crown had set up the inquiry and as far as the Crown was concerned at the time an honest effort had been made to ascertain the facts. The Crown would have been subject to criticism if it had preferred the opinion of a junior judge to that of a senior judge. (I2:(b)(ii):71)

Such prevarication cannot conceal the facts.

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*Waitangi Tribunal, Department of Justice, Wellington.*

# Te Roroa Claim

## 07 Whakahoki Mana (Attempts at Redress and Restoration)

### 7.8 Beach Subdivision and Farm Settlement

#### 7.8. Beach Subdivision and Farm Settlement

By 1945 developments at Manuwhetai were already under way that were to heighten tensions on the spot and produce more widely organised and sustained protest. They can be traced back to decisions made by the Hobson County Council eight or nine months before Acheson's inquiry commenced. On 20 September 1938, the council authorised the executive to purchase land required for a parking area and access to the forest reserve at Pryce's camp, Maunganui Bluff, for approximately £50 (A6:1070). Then, on 15 November 1938, it approved a subdivision plan for Maunganui Bluff camp (A6:1071). By March 1939, a scheme plan had been prepared and a survey of the proposed twenty section subdivision deposited with the Department of Lands and Survey (A13:45). On 18 July 1939, the council accepted the dedication of land along the sea front for road widening (A6:1072), and following this it approved a plan for five additional sections at the Bluff (A6:1073).

In 1940 the Hobson County Council purchased section 1 from W Pryce (A18:95). Some half dozen sections on the Kaihu-Bluff road backing on to the scenic reserve were sold in 1940, and a few more in 1941 (A6:1092-1093). In 1941 the county erected public conveniences at Manuwhetai (A18:104). Clearly the Hobson County Council and other persons involved in this beach subdivision were in contravention of s23(3) of the Native Purposes Act 1938. This made it unlawful, except with the leave of the Native Land Court, for any person to alienate or otherwise deal with any land subject to a petition to the Native Land Court for inquiry and report, until the report and recommendations had been considered by the Native Affairs Committee of the House of Representatives. The Crown did not enforce s23(3) of the Act.

Sales resumed in 1945 and in the next six years more sections were sold, mostly to local farmers or their wives, and tradesmen, and a few to local Maori (A6:1101-1156). By 1986 there were 38 surveyed sections along the beach and on the beach road, all freehold. Twenty-six had baches or houses on them. About two thirds were occupied on a regular basis, in three cases by permanent residents. Most of them had been used and owned by the same families for many years. A few changed hands at regular intervals. Two sections had, until recently, been owned by a Maori (A5:747-752 cf A13:45). The present owner of Manuwhetai, Alan Titford, took over the unsubdivided part of Manuwhetai in 1986 and on 18 September 1987 obtained approval from the Hobson County Council for a subdivision plan to finance farm development (A6:1161; A13:45).

Whangaiariki had been included in a survey subdivision in 1921 (E3:doc 30) but was not considered sufficiently attractive farming land to be opened up for selection.

Lovey Te Rore remembered people living there when he was young, their houses being on Whangaiariki, their cultivations on the flat land between Whangaiariki and the sea (A13:47). He also remembered a really successful Scottish farmer at Manuwetai with whom he was out mustering during one of the worst droughts they ever had in the area, wanting him to look at Whangaiariki and tell him what he could see. And when he looked down he couldn't help but see that all was green. "Christ man", the farmer said, "your parents, your ancestors know how to pick a ground" (A34:7-8).

In the late 1920s Maori gum digging activity in the Taharoa Lake area increased and some of the Maori living at Whangaiariki may have been gum diggers (A13:47-48). Traditional subsistence and gum-digging were typical of periods of depression and unemployment in Tai Tokerau. By 1939 there had not been any cultivations there for four years (A4:563). In March 1941 some Maori offered to buy the Whangaiariki block for 5s an acre. No response to this request has been found. The department recommended disposal at 10s an acre (A5:731(a)-(e)).

After the war, land was urgently needed initially for farm settlement under the rehabilitation scheme and then for development of farm settlement blocks under the Department of Lands and Survey. Whangaiariki was included in the Omamari farm settlement scheme (E3:doc 31(a)). In a farm ballot in 1965 the successful applicant for the block was M J Simmonds of Te Awamutu. The block was leased for 33 years, the lease being perpetually renewable at a new valuation for similar terms, with the right to buy the freehold (E3:doc 49-50). Crown improvements consisted of buildings, sheepyards, fencing, water supply, grassing and farm tracks (A6:1162). In 1979 the lease was transferred to D J Harrison who transferred one half share to his wife in 1981 (A6:1163-1164). On 24 August 1981 they were granted a deferred payment licence, with the balance after deposit to be paid over 25 years (A6:1165).

We have no evidence of any local Maori ex-servicemen being successful applicants for farms on Crown lands opened up on settlements in the Kai Iwi lakes area; nor of any attempt to redress their long standing grievances over reserves by encouraging and assisting them to participate in the Omamari farm settlement scheme. {FNREF:0-86472-088-2:7.8:15}

# Te Roroa Claim

## 07 Whakahoki Mana (Attempts at Redress and Restoration)

### 7.9 Wero (Challenge)

#### 7.9. Wero (Challenge)

Beach settlement at the Bluff renewed complaints from local Maori who visited the Bluff frequently for kai moana and camped at Manuwhetai over Christmas. On 21 January 1940, Paiwiko Ananaia advised Judge Acheson that a European claiming ownership had ordered him, through his lawyer, to vacate a house he built at Manuwhetai and tried to lock the house (A5:664-667). In 1941 Rirena Kingi advised the court that he too had been ordered out of his house on Manuwhetai which he had always thought was Maori land (A5:668-669). In October 1941 Paiwiko Ananaia expressed concern to the member for northern Maori that nothing further had been heard of Acheson's inquiry since the Native Land Court sitting in July 1939 (E3:doc 14). This solicited the information that the court's report had been received by the chief judge but had not yet been laid before Parliament (E3:doc 15).

In January 1943, Paiwiko Ananaia complained that European occupiers were demolishing Maori houses. In 1944 he refused to leave one of the properties and was charged with trespass and damage (A5:812, 686-687). In 1945 Piipi Cummins, daughter of Tiopira Kinaki, applied for succession to Manuwhetai and Whangaiariki. This was set aside as informal, the land being still regarded as Crown land (A4:521-522).

In 1948, Wiremu Tahere Maui maintained Manuwhetai was a native reserve when he was summoned for gathering toheroa. He asked the Native Land Court for documentary proof and was told the court did not recognise it as a reserve (A5:697-699).

More organised protest began in 1954 when a group of local Maori was formed as guardians of Manuwhetai and Whangaiariki (A18:104). The following year a group of local Maori met and decided to apply, on behalf of the descendants of Pinea, to have Maunganui Bluff declared a Maori reserve under s439 Maori Affairs Act 1953. A formal application to the court from Tui Mahi for Manuwhetai and Whangaiariki to be so reserved was struck out (A5:701-706 cf A18:104).

An apparent lull in active protest after the mid-1950s did not necessarily mean that Te Roroa had given up its belief that Manuwhetai and Whangaiariki were Maori land. People were moving from rural areas to towns and cities in search of jobs and times were more affluent. Government and Maori organisations were involved in efforts to eliminate racial discrimination, and gaps in living standards, housing, health and education and to turn from a policy of assimilation to one of integration.

Renewed protest from the mid-1970s coincided with a Maori cultural awakening and later with growing unemployment. New activist organisations were formed. When the Minister of Maori Affairs visited Otiria in 1974, Mohi Tito, on behalf of the Maori people of Kaihu through their representatives Tuhaere Harry Te Rore and Te Tihinga Netana, pleaded for the return of Manuwhetai and Whangaiariki. Later he was told that the only recourse was to petition Parliament (A5:706(a)-(j); A18:108).

In 1975 the Waitangi Tribunal was set up to hear claims against the Crown relating to the practical application of the Treaty of Waitangi, but only in respect of actions taken after 10 October 1975. In September-October Dame Whina Cooper led the Maori Land March from the far north to the steps of Parliament buildings and presented a petition signed by 60,000 people to the government, asking that Maori land be protected from sale. The claimants saw this as "a symbolic reclaiming of Maori mana over the North Island" (A18:108).

On 31 July 1976 Mr Te Rore addressed a meeting of the Maunganui Maori Committee about the reserves issue and they agreed to support it. It was decided to take the issue to the Tai Tokerau District Council (A18:108).

In 1977-78, Bastion Point, a long-standing Ngati Whatua claim, was occupied for 506 days before it was cleared by a massive police and army operation. In 1978 at a public meeting at Te Houhanga marae, Dargaville, the Maunganui Reserves Trust Committee was formed to make further attempts to get redress. Tai Netana (Tuck Nathan), through his solicitors, asked the Ministers of Lands and Maori Affairs for redress in accordance with Acheson's recommendations (A5:797-798).

The ministers looked into the matter and the records of their departments were searched without uncovering any significantly new information (A5:771-796). The director-general of lands and survey specifically requested the commissioner of Crown lands in Auckland to advise Netana's solicitor what action was taken after 1945 to identify burial areas (A5:773). The commissioner's response was telling:

I have researched this case and am of the opinion that it could be to the Department's ultimate disadvantage if the Solicitor, Mr Karaitiana, is kept informed and thus continues to reactivate this well aired issue.....

I consider there has been ample investigation into the Blocks. They were considered to be Crown land many years ago and permanent alienation has since taken place. If the matter is kept alive by this Department, providing further information to the Solicitor, we could find ourselves in an awkward position if any Maori claims are ever substantiated, as both Blocks are no longer Crown land. (A5:771)

With respect to the purported use of part of Manuwhetai as a burial ground he said:

we have no evidence to support use of the area for this purpose. The Field Inspector commented on 16 January 1939 that there was no evidence of a burial ground present at that time, 'the bodies having been removed to Mitimiti Cemetery many years ago'. (A5:771)

Although the request got nowhere, the firm of solicitors was retained with a view to carrying on investigations for the purposes of an application to appropriate statutory tribunals or possibly a petition to Parliament (E3:doc 18).

In 1980 Dame Whina Cooper telegraphed the Minister of Maori Affairs, Ben Couch, asking him on "a matter of great importance to the Kaihu Maoris... to remedy the injustice done to these people as an emergency matter which in my view would enhance aspirations for change" (A5:770). Mr Couch asked the Minister of Lands if he would review his department's stance on the matter "in the light of recent changes of Government attitude to Maori land grievances". "I must say", he added, "that it appears to me unlikely that the people Dame Whina represents will accept the suggestion that no more need be done than protect defined burial grounds from desecration" (A5:768). The Minister of Lands found no grounds for the Crown to alter its stance (A5:766). Accordingly Dame Whina was informed that unless the Maori people were willing to discuss the matter on the basis suggested by Chief Judge Shepherd, a settlement might be difficult to reach (A5:769).

On 12 October 1984, Bill Welsh on behalf of the Northern Federation of Maori Trusts and Incorporations asked the member for northern Maori, Dr Bruce Gregory, to convene a meeting to discuss their long-standing grievances with the interested party to assess and up-date the situation and their needs (E3:doc 20-21). But this request was overtaken by the Treaty of Waitangi Amendment Act 1985 which extended the tribunal's jurisdiction back to the signing of the Treaty.

In June 1986 Dr Gregory asked the Minister of Maori Affairs, Koro Wetere, who was also Minister of Lands, for an up-date. He was advised that a new Maunganui Reserves Trustees Committee, with Huia White as secretary, had replaced the Kaihu Action Committee, he was corresponding with her and no final decision had been made (E3:doc 22-24). In fact more than this had happened.

Te Roroa Ngati Whatua held a public meeting at Waikaraka marae Kaihu on 29 September 1985, at which 11 trustees were nominated. After much research they thought they had enough evidence to make further submissions to the Minister of Maori Affairs. At a public meeting at Te Houhanga marae on 26 January 1986 their findings were presented to the people who unanimously approved of their intentions. They believed their case for the return of the reserves had already been proved. It was not reasonable, they argued, to expect them to lay a claim before the Waitangi Tribunal (A5:756-758).

The minister however could not see any grounds for the Crown to change its stance (A5:760-761). His comments on Acheson's report suggest he was thoroughly confused over the whole question.

Meanwhile, a group of landowners at Maunganui Bluff had written to their local member, Lockwood Smith, expressing their concern over the implications of the Native Purposes Act 1938 (copies of which had been distributed at the meeting at Te Houhanga marae, 26 January 1986), and their fear they might be asked to return their land (A5:747-752). This letter was followed by a statement of owners of residential freehold sections at the Bluff submitting that justice for any wrong which may have occurred a century ago could not be achieved by committing "a far greater and more

blatant wrong", namely, any move to interfere with the 38 existing freehold titles, on the security of which owners had undertaken capital development to the value of some half million dollars. They felt that "no responsible Government could overturn the present long-standing Freehold Titles" and they "would welcome a reassurance from the appropriate Government Office that this is indeed the case" (A5:743-744).

These representations, together with a further personal one made through the member for Glenfield, Judy Keall, were referred to the minister (A5:741-742), who reassured his colleagues that he could not see any grounds for the Crown to change its stance (A5:738-740).

Huia White wrote to the minister again on 9 July 1986, expressing the passionate and deep disappointment of the Maunganui Reserves Trustees Committee over his reply. She pointed out that they did not have access to the written records of the Department of Lands and Survey which had been looked at to find reasons for the government to continue to reject their claim and were unable to comment on them. Yet, the documents "could well have information, which, if interpreted with sensitivity" to their claim "could be helpful in substantiating the justice of it". As a Maori, he would be well aware:

that the oral traditions of our Kaumatua are reliable in passing down the history of our people from one generation to the next. Yet, whenever we deal with the Government we find that written records which were collected by Pakeha officials, who had a clear interest in fostering the interests of Pakeha settlers, are preferred to our oral traditions. (A5:736)

With regard to his comment that there was considerable doubt as to the final intentions to create two Maori reserves, Mrs White asked:

Whose "final intentions?" are being referred to? Our history is quite clear that our people always believed that there were two (2) reservations. We dispute that ownership would have been a significant issue at the Court hearing. The reserves had been cut out of the Survey Plan for retention by the people as Urupa and Papakainga, and ownership of these would not have been an issue.... It was this oral history of ours as well as deficiencies in the written record that convinced Judge Acheson of the justice of our cause. (A5:736-737)

They were asked to find new evidence and they assumed he meant new "written" material. Their "big disappointment" was that the onus was put back on them to prove the chief judge was wrong (A5:737).

The minister's response, 24 April 1987, reflected the entrenched views of the Department of Lands and Survey. They had advised him that they held no written records which had not already been published. Furthermore it seemed unlikely that they had further information which would advance the claim (A5:733-735).

Clearly both parties were "talking past each other". The Crown took its stance on Chief Judge Shepherd's recommendation and the advice it received from the Departments of Lands and Survey and Maori Affairs, who searched their own official

records. The Maunganui Reserves Trustees Committee upheld Acheson's findings and oral traditions.

Whangaiariki and Manuwhetai were listed by the Department of Maori Affairs, Whangarei, in "Nga korero me nga wawata mo te Tiriti o Waitangi-Waitangi 1985", with the remarks that research was to be carried out for a new claim and they would do it (E3:14-15, doc 26). Possibly as a result of this undertaking, a short report was prepared by their regional development unit, 24 October 1985. This stated that the Maori land advisory committee "should make a submission to the Waitangi Tribunal in support of the owners to have Manuwhetai and Whangaiariki returned to the owners" (E3:doc 27-27(a)).

The Department of Lands and Survey district field officer, L G Fraser, who was a member of the committee, reported to his Auckland office that the leading local person pursuing the claim seemed to be E D Nathan, who sat on the Waitangi Tribunal in place of Sir Graham Latimer when he was an interested party. The majority of the committee verbally supported the claim to have the land returned to Maori owners. Whangaiariki was of particular concern to the department as it was held under a deferred payment licence. The holder, D J Harrison should be advised. Fraser had pointed out to the committee that the department had already investigated the claim and was of the opinion it could not be sustained (E3:doc 28).

The same opinion still prevailed in the Department of Maori Affairs (E3:doc 85-86). As far as the Crown was concerned the investigation was complete and the case was closed.

Undoubtedly the cries of Te Roroa concerning the failure of the Crown to reserve the whole of Kaharau, Te Taraire, Manuwhetai and Whangaiariki were and still are reasonably justified. Through the past failures to take any positive steps to remedy these grievances before disposing of these lands to private individuals, the Crown has greatly compounded them. Yet as Judge Acheson said in 1942, the circumstances of the case "cry aloud for redress... no matter what cost to the Crown this may involve" (A3:179). The honour and good faith of the Crown as a Treaty partner are at stake.

## REFERENCES

{FNTXT:0-86472-088-2:7.1:1} 1 AJHR, session II, 1879, G-8, p 30

{FNTXT:0-86472-088-2:7.1:2} 2 ibid, pp 22-23

{FNTXT:0-86472-088-2:7.1:3} 3 ibid, pp 44-45

{FNTXT:0-86472-088-2:7.1:4} 4 G W Rusden Aureretanga: Groans of the Maori (London, 1888) p 84

{FNTXT:0-86472-088-2:7.1:5} 5 Claudia Orange The Treaty of Waitangi (Wellington, 1987) p 206; Jack Lee Hokianga (Auckland, 1987) pp 286-292

{FNTXT:0-86472-088-2:7.2:6}6 This extract is from a new translation by Dr Patrick Hohepa, who considered the 1892 translation (D3:366-367) contained important errors and omissions. For the original in Maori see D3:367-370.

{FNTXT:0-86472-088-2:7.2:7}7 Crown evidence established that some of Sheridan's statements were either incorrect or questionable (H3:97-98; H31:13-19). Sheridan did not realise that Preece only took over the negotiations to purchase Waimamaku No 2 in the final stages, months after the agreements were made to reserve Kaharau and Te Taraire. Sheridan further mistook Preece's statement, that at one time he was prepared to cut out interests of non-sellers, to refer to Kaharau, whereas it referred to the subdivision application for Waimamaku No 2. Sheridan's view that the whole of the 27,200 acres was paid for, was not supported by either Crown or claimant evidence.

{FNTXT:0-86472-088-2:7.2:8}8 Rewiri Tiopira died on 7 August 1896; Hapakuku Moetara on 1 January 1902 (D1:25).

{FNTXT:0-86472-088-2:7.4:9}9 In 1917 it admitted its "somewhat careless use" of the terms "Native Land" and "Native Reserves" in a circular instruction to its officers to refer to Head Office for advice (E3:doc 83). Some months later a further instruction was circulated that no areas whatever were to be shown as reserves on any lithograph unless such areas had been set aside as reserves under some statutory authority (E3:doc 84).

{FNTXT:0-86472-088-2:7.4:10}10 Whangaiariki was "exempted from lands sold" and "repurchased as Crown land". This description was based on information available to the Auckland survey office at that time (A6:1037; E3:39-40). In 1895, W C Kensington, the chief surveyor, had asked the Native Department if a native reserve called Manuwetai should be granted under s52 Land Act 1892, to any particular native. He was told that only one reserve (Taharoa) was stipulated for the conveyance of the block (A4:333-334). As this information did not match Smith's survey plan, it must have been assumed that the Crown had "repurchased" Whangaiariki. No evidence of a repurchase was ever found (A6:1035, 1037; E3:39). Soon after Kensington had ascertained that only Taharoa was reserved from the Maunganui purchase, Manuwetai was opened up for selection.

{FNTXT:0-86472-088-2:7.5:11}11 A T Ngata "Maori Land Settlement" in *The Maori People Today* ed I L G Sutherland (Christchurch, 1940) p 138

{FNTXT:0-86472-088-2:7.5:12}12 John A Williams *Politics of the New Zealand Maori: Protest and Cooperation, 1891-1909* (Auckland, 1969) p 128

{FNTXT:0-86472-088-2:7.6:13}13 Section 23 Native Purposes Act 1938 authorised the chief judge to refer such petitions to the Native Land Court for inquiry and report. The chief judge might then make such recommendations to the Native Minister as "appears to him just and equitable".

{FNTXT:0-86472-088-2:7.7:14}14 For proceedings of inquiry from Kaipara minute book pp 92-116 see A4:528-552; for a transcript see A4:553-593.

{FNTXT:0-86472-088-2:7.8:15} 15 Under the Servicemen's Settlement Act 1950, 9502 ex-servicemen had settled on farms by 1951, 6242 had been assisted by "rehab" loans in private purchase, and 1102 were without such loans. The rest, including 178 Maori, were under various development schemes (New Zealand Official Yearbook (Wellington, 1951-52) pp 906-910).

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