

Te Roroa Claim

06 Taonga (Sacred Treasures)

6.1 The Claim

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TAONGA (SACTED TREASURES)

6.1. The Claim

Many aspects of the Te Roroa claim concern the Crown's undertaking to recognise their tino rangatiratanga or mana over their taonga in accordance with article 2 of the Treaty of Waitangi. The words, "other taonga", in the Maori text, are a much more all-embracing concept than "properties" in the English text. Other taonga particularised in this claim, are: wahi tapu (defined by counsel for the claimants as "spiritual places of special significance to tangata whenua"), {FNREF:0-86472-088-2:6.1:1} and wakatupapaku (burial chests deposited in ana (caves and crevices)). The claimants allege that the Crown has omitted actively and adequately to protect their wahi tapu and wakatupapaku and to recognise the tino rangatiratanga of Te Roroa in respect of their physical and spiritual heritage (A1(i):7,9,11,12). This allegation is made with respect to the whole claim area, but more particularly, concerns Waimamaku wakatupapaku and Waipoua wahi tapu.

In respect of Waimamaku, the claimants state that acts and omissions of the Crown resulted in the continuing desecration of their taonga, including the koiwi of their tupuna, in gross disregard of human sensibilities and the tapu with which those taonga are imbued. These actions, they say, were an affront to the mana of nga hapu o Waimamaku and caused them much pain, suffering and humiliation (A1(i):12-14).

In respect of Waipoua they state that the Crown failed to recognise and give effect to their special spiritual, cultural and historical relationship with the kauri forest and the river and their traditional resource rights in them (A1(i):9).

As counsel for claimants said:

The concept of wahi tapu is at the centre of the Te Roroa claim The issue of ... protection ... is ... much broader than the question of reservation of certain of them from sale tangata whenua claim a continuing interest in wahi tapu situated upon property which they no longer own. They say that the Te Roroa are the Kaitiaki of their wahi tapu. (I1(e):47-48)

He submitted that the rights tangata whenua retain with respect to those wahi tapu were not extinguished by land sales. There were three different categories of unextinguished rights. First:

Where land containing a wahi tapu has been acquired without the agreement of tangata whenua it is clear that, at least in terms of the Treaty of Waitangi, the Maori interest in the wahi tapu ... remains unextinguished [because] the iwi has ... indicated a wish to retain that wahi tapu and the land upon which it is situated. [Manuwhetai, Kaharau and Te Taraire are examples of this]. (ibid:59-60)

Secondly, where land was alienated by individual iwi members holding interests in various subdivisions and iwi were not consulted or involved in the decision to cede land, the rangatiratanga of the iwi in respect of the wahi tapu is retained (ibid:60-62), for example, in Waipoua No 2 and Taharoa.

Thirdly, where the whole iwi consented to cession, it can still not be said that rangatiratanga in respect of wahi tapu upon the ceded land has been extinguished. In such cases the basis upon which Te Roroa claimed "a separate and unextinguished right to protection of wahi tapu" was the concept of mana whenua (ibid:62). {FNREF:0-86472-088-2:6.1:2}

At the roots of this "wahi tapu claim" are the fundamentally different views of Maori and Europeans about the natural world and its resources and the place in it of human beings and the taonga they produce; also about how these taonga should be cared for and controlled (B24).

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

06 Taonga (Sacred Treasures)

6.2 Te Roroa Perspective

6.2. TE ROROA PERSPECTIVE

Taonga is an umbrella term, inclusive of a wide range of things upon which Maori in general and the whatu-ora (claimants) of this claim place great value and regard as treasures. Among them are intangibles like spiritual values as well as tangible objects. {FNREF:0-86472-088-2:6.2:3} They include the land, sea fronts, forests, lakes and rivers; also places and things associated with life and death. Although the degree of tapu varies, all these taonga touch the "heart", the manawa pa (desires) and ngakau pa (ends) of the people (B24:15).

Specific to this claim are taonga that are wahi tapu like Manuwhetai, Whangaiariki, Kaharau, Te Taraire and Kawerua which have been desecrated, damaged or destroyed through land alienation, settlement and development; the removal and loss of control over material objects like the wakatupapaku of Piwakawaka and Kohekohe; and the loss of mahinga kai in the traditional resource areas of Waimamaku, Waipoua and Kaihu.

The sufferings of the whatu-ora over the loss of their taonga and kaitiakitanga can only be understood if we appreciate their world view of the environment and their physical and spiritual relationship (D27:2-3).

Emily Paniora provided a very clear view of the all inclusiveness of taonga and of the Te Roroa perspective with respect to them when she said:

This is all ancient ancestral land, rich in our history, of the lives of our Tupuna. It is land which, like Pakeha history books, tells us where we came from and where we belong in the Ao-Marama. It defines us as a people. It is land which vividly brings history to life for us. The location and stories of the Wahitapu, kainga, mahinga and pa remain known to this day. These places form an essential part of tangata whenua, part of the landscape of our hearts and minds, and remain part of our very existence to this day. (D12:2)

Daniel Ambler expressed a similar view when he referred specifically to Kaharau:

Our Tupuna knew exactly why they wanted that land [Kaharau] left as a reserve. I can see the sense of the petitioning for the land knowing full well that as far as Maori is concerned, Land, Urupa, Wahi tapu, Koiwi, taonga are all one, and cannot be separated. Part of the grief must be the alienation of the people from their land and those things connected with it, the things they loved. (D21:2)

Counsel for the claimants explained:

The physical presence recalls the name. The name recalls the event. The event recalls the whakapapa. The whakapapa recalls the connection between things past and things present. The connection between things past and things present is the element which gives Te Roroa its pride and identity. (I1(e):69-70)

The claimants believe that their mana whenua over areas which contain taonga like wahi tapu, requires the fulfilment of certain obligations. There is the right as well as the duty to "keep warm" the taonga within the rohe. Claimant Tutenganahau Paniora was emphatic about this:

If they [the wahi tapu] are not cared for and protected they will start to lose their mauri and their tapu. Then they will die, and a part of Te Roroa will die with them. (C2:4){FNREF:0-86472-088-2:6.2:4}

Te Roroa believed it imperative that their taonga are protected and restored to their care. Only in this way will taonga come to be respected and valued for the treasures that they are (D27:6). And since wahi tapu were and are taonga belonging collectively to the whole iwi (or to which the whole iwi belong) the benefits would be that:

the whole iwi ... gains spiritual identity and well being from these places, it is the iwi which attracts the duty of Kaitiakitanga or stewardship. (I1(e):61)

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

06 Taonga (Sacred Treasures)

6.3 The European Perspective

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Modern European views of the natural world and natural resources are essentially scientific. For the purposes of study and research scientists divide the whole into its component parts and classify the parts. In other words, they do not share the Maori view of the unity of people and the treasures they produce, with the land and the cosmos. Nor do they share the Maori view that "Names, knowledge, ancestors, treasures, and land are so closely intertwined ... that they should never be separated". {FNREF:0-86472-088-2:6.3:5}

From the time of Cook's first voyage, and out of a spirit of scientific curiosity, Europeans have collected natural history specimens and Maori artifacts by gift exchange, barter, trade or fossicking. These things have been stored in private houses and museums. Like the Elgin marbles, in the words of Lord Byron, they could be called "Poor plunder from a bleeding land".

Until recently, few questioned the rights of museums to collect and hold natural and cultural treasures of other people. Indeed the prevailing view was (and still is in some quarters) that treasures should be preserved, protected and controlled by museums, in the interests of science and enlightenment. At the turn of the century, this view was encouraged by the general belief that the Maori were a dying race who had neglected to preserve their own treasures because of their religious ceremonies, tribal wars, migratory habits and custom of allowing these things to "perish by decay or by time" (H4(b)(i):36).

Simultaneously a Pakeha vision of Maori culture as an important ingredient of a distinctly home-grown New Zealand culture was beginning to emerge. {FNREF:0-86472-088-2:6.3:6} The Polynesian Society, founded in 1892, amassed a treasure-trove of information on Maori history. Museums, established in the four main centres to house specimens collected during geological surveys, began to acquire and display large research collections rich in Maori ethnology. Curio hunting was an exciting pastime; dealing in curios a lucrative occupation.

In 1901 a parliamentary bill was introduced to prevent the loss of Maori "relics" from New Zealand's shores. In tandem with the bill, was the suggestion that a national museum be built to house a collection of objects of old Maori "art". This was the beginning of a succession of statutes designed to preserve and protect taonga for European purposes.

"Relics" at this time were generally considered to belong to the owner of the land on which they were found. If they were "found" on Crown land they belonged to the

State (H4(b)(i):14-15,17). If they were offered for sale by the finder or land owner, the government should have a preemptive right to purchase them.

The Maori Antiquities Act 1901 sought to prevent the removal of Maori antiquities from the colony, except with the consent of the colonial secretary. {FNREF:0-86472-088-2:6.3:7} This was the first of a succession of statutes providing for the preservation and protection of taonga. Underlying this legislation was the official and public view that Maori taonga were part of the national heritage which should be preserved for scientific research, art appreciation and public interest. This meant the separation of taonga from the people and land to which they were related for safe storage in museums. It also meant they would be managed and controlled by public bodies and that the public would have access to them. These appropriating tendencies of an emerging "One New Zealand" continued until challenged, first by the efforts of Ngata and the Young Maori Party to hold fast to their Maoritanga, and secondly by Maori protest of the 1970s.

This legislation dealt separately with different types of taonga in accordance with the way Europeans divide and classify the world. From Maori antiquities, it moved on to historic places and buildings, then to archaeological and traditional sites. As we come to deal with the taonga particularised in this claim we shall examine the relevant provisions in this legislation. In effect they serve to indicate changing European perspectives relating to the preservation, protection and control of taonga.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

06 Taonga (Sacred Treasures)

6.4 Wakatupapaku

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THE DESECRATION OF KOHEKOHE

6.4.1 On 6 April 1902, James Morrell Jnr and his friend, Bougen accidentally came across the caves at Kohekohe containing carved chests and human remains (H4(a):116-117; H4(a):104-5). James's older brother, Lou, later visited the caves several times and discovered that the largest contained about 60 skeletons, six enlarged images and one wooden box with a lizard carved on it and that altogether there were about twelve caves or crevices containing one or more skeletons. He removed the lizard carving and an image to his home "to prevent possible vandalism" (H4(a):105).

Ngakuru Pana, Iehu Moetara and other local Maori visited Lou Morrell and demanded that he give the "tiki" to them for burial in the local cemetery. Morrell promised he would do this. John Klaricich suggested that the law of tapu may well have deterred them from physically attacking Morrell (D17:25). Afterwards Morrell had doubts that he would be doing the right thing by complying with local Maori wishes. He felt that "such good specimens of Maori carvings" should not be destroyed and sought advice from the commissioner of Crown lands, Mueller (D3:420). Mueller advised that as he had known the caves were on Crown land he should have reported his discovery to the government and "not have touched any of these things about which Maories as a rule are very jealous" (H4(a):13). Mueller also asked the local government road inspector, G G Menzies, to take charge of "the carvings" and remove them to Rawene until it had been decided what should be done with them (H4(a):12).

On 6 May, Menzies reported to Mueller that he had "taken possession" of the carvings and the Maori had requested delaying their removal to Rawene until they had held a meeting (H4(a):19).

The tribe of Natives who are at present living in the Waimamaku Valley did not appear to know where the Caves were situated, but had some traditional knowledge of there [sic] whereabouts the bones and relics did not belong to their tribe but to the tribe which at present reside Chiefly at Otaua.... The tribal name is Ngaitu a Section of the great Ngapuhi tribe. (H4(a):24)

This statement is borne out by evidence later given by Heremaia Kauere to the magistrate, E Blomfield:

Ngaitu made all these things. Kohuru was the man that made them; he was a chief, and was skilled in carving, and an instructor to the tribe. He lived at Otatau... (H4(b)(ii):291)

Menzies was further instructed to take charge of the carvings in Morrell's possession and take what steps he thought necessary to prevent the removal of anything out of the caves (H4(a):20).

A day later W C Kensington, undersecretary of the Department of Lands and Survey, wrote to Mueller:

before asking you to send up these carvings to be placed at the disposal of the Hon. the Native Minister, it seems only right to inform the Maori claimants that as these curios were in the caves before the Government bought the land, it would not be fair to deprive them of them without their consent.

You might kindly have it explained to these Maories who are interested, that it is proposed to hand over the carvings to the Hon. Mr Carroll to place in the Museum for the Collection of Maori Curios ... and that they should help forward this good work by allowing these valuable specimens ... to be sent to the Native Minister. (H4(a):21)

In the event, Mueller failed to require Menzies to obtain Maori consent for the removal of the carvings and Menzies appears to have ignored Mueller's instructions, for a month later Lou Morrell stated that acting on instructions from the Crown's land department, he himself had "removed all the carvings and curios" to his home (H4(a):105).

Iehu Moetara wrote to Mueller to remind him of their deep grief concerning the sacred resting place of their ancestors that had been desecrated by the pakeha:

The bone chests containing our ancestors were uplifted by the pakeha from land that has been illegally taken by the Government

... We are in deep grief of your misunderstanding:-i.e. that you own our Wahitapu

This letter really pleads to you to leave with us the right of our Tupunas bone chests of which you have given G. G. Menzies the right to take to Rawene

... we plead to you to heed our prayers to our rights of sacred ground (Wahitapu) of our noble ancestors and that they be returned with all its possessions as those places are very dear to us. (D14:3)

Meanwhile, articles about the discovery of the carvings were published in the newspapers and the Native Minister instructed the lands and survey department to allow Menzies to allow photographs to be taken of all the carvings lately found (H4(a):49). An item in an Auckland paper expressed the view that Maori in the neighbourhood had no right to the carvings as they were "not even the descendants of the men who executed" them (H4(a):44). T F Cheeseman, curator of the Auckland Institute and Museum, and others asked the Native Minister to hand the carvings over

to the museum, which the acting premier, Sir Joseph Ward, promised to do (ibid; H4:24).

On 20 May, Carroll wired Mueller:

I have instructed the Sm of the district to investigate the claim ... in any case I intend to get them [the carvings] eventually & I think probably hand them over to the Auckland museum as I find that my colleague Sir Joseph Ward has made some promise in that direction. (H4(a):56-57)

The Crown researcher stressed that up to the time of this promise, government officials acted in a "considered and careful manner", consistently taking into account that Maori people had "an interest in the carvings" (H4:21). He suggested that this decision was made summarily, without very much information and that Sir Joseph Ward, "did not know that there were Maori interests involved, nor did he know that the antiquities were associated with human burial" (H4:22-24, 64; see also I2:(b)(vii):13). Crown counsel based her final submissions on his views. Crown officials had severely reprimanded Morrell and appreciated the unfairness of depriving the claimants' tupuna of their taonga without their consent. Cabinet's decision to remove the taonga to the Auckland Institute and Museum was made without the knowledge of tangata whenua concern (I2:(b)(vii):13, 26-27).

Counsel for the claimants found this a "staggering conclusion", the crux of the matter being that:

the carvings were Maori carvings and the Government made its decision summarily without regard to the wishes of the Maori owners. (I1(b):116-117)

We share the claimants' view that the Crown was more deeply implicated in the removal of wakatupapaku and koiwi from the Kohekohe caves than Crown counsel was prepared to admit.

The facts of the matter are first, that under s147(2) Criminal Code Act 1893, anyone who "Improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not" was liable to two years' imprisonment with hard labour. Secondly, the Crown failed to enforce the Criminal Code Act in respect of the removal of koiwi from the Kohekohe caves. The Crown's failure breached its Treaty obligations both to protect the actual physical remains of the ancestors of nga hapu o Waimamaku and to treat all its citizens equally before the law. Thirdly, in deciding to hand the carvings over to the Auckland Institute and Museum, ministers failed to consider the wishes of tangata whenua.

The stipendiary magistrate, E C Blomfield, mistook the date set for a meeting at Rawene, and it was left to Menzies to tell local Maori what Cabinet had decided. Much incensed, they said that Ward had no right to dispose of their property and that they would await Blomfield's arrival to discuss the matter.

The claimants interpreted this as "amazing loyalty to and reliance by ... Maori people of that time, upon the Pakeha judicial process" (D17:34), showing that they "were

prepared to submit to the Law probably ... because they trusted the system and believed their rights would be vindicated" (I1(b):117).

But these people included Ngakuru Pana, and relatives of "friendly chiefs" such as Hapakuku Moetara, who four years earlier had intervened in the dog tax rebellion at nearby Waima in an attempt to reach a peaceful solution. It seems more likely, therefore, that they had a realistic appreciation of the consequences of opposing the law than trust in British justice. {FNREF:0-86472-088-2:6.4:8}

The Rawene meeting regarding the future of the Kohekohe wakatupapaku was held on 21 May 1902. Menzies represented the Crown, which claimed the articles as being found on Crown lands. Blomfield represented the Native Minister, who wished to act as a mediator. Blomfield's first step was to obtain from the Maori a list of the sacred things which had been left in the cave by their ancestors. This list practically tallied with the settler's description of the articles discovered (D3:315).

Blomfield's second step was to discover whether the local Maori were the "owners" of the wahi tapu. From the evidence he was given, he concluded that they were. As he did not think the Crown's right of treasure trove or otherwise extended to the bones of an ancestor, or the receptacle of such bones, he considered it advisable to temporize and agree to concessions. Eventually he persuaded the chiefs to show their mana by handing over the articles to the Native Minister on the terms set out in a petition, provided a final hui (poroporoaki) was held before the articles were removed (ibid). {FNREF:0-86472-088-2:6.4:9}

The principal chiefs concerned were Ngakuru Pana and Iehu Moetara of Waimamaku, and Hoterene Wi Pou and Heremaia Kauere of Otatau (ibid).

The petitioners prayed that the "ornaments" be taken out of the hands of the Crown and be vested in the Native Minister as trustee on their behalf. The following "trusts" were sought from him:

- (a) that the "ornaments" be deposited in the Auckland museum where they would not be touched or removed;
- (b) that they remain there forever without disturbance;
- (c) that a printed account of their celebrated ancestors who made and were connected with the carvings be lodged with the "ornaments"; and
- (d) that they be re-granted a portion of land including the wahi tapu taken by mistake, that is Kaharau. (H4(a):75-76)

Blomfield reported to Carroll that feeling was very strong against the desecration of a "wahi tapu", and he had feared there would be serious trouble if the Crown persisted in its determination to remove the sacred articles (D3:315).

Yet the plain truth was that before Blomfield negotiated the trade off with the chiefs, the wakatupapaku containing the koiwi, under Menzies' instructions, had been

itemised and carefully packed up by Morrell ready for shipment to the Auckland museum (H4(a):61-63, 116-117).

Counsel for the claimants thought Iehu Moetara and Ngakuru Pana had been "bulldozed into submission". Furthermore, it seemed very likely that they thought the petition would provide them with "a lever to convince the Government to give the land back" (I1(b):120-1).

When Blomfield received the inventory, he was very sorry to see that it included "a number of portions of human skeletons". He had "no idea that all these things had been taken by Morrell". He told Menzies that if the Maori knew that they had been taken, there was bound to be trouble:

Unless you have had direct instructions from head quarters to take these things, the best course is to instruct Morrell to get these back to the Wahi-Tapu secretly and as quickly as possible. We must keep good faith with the Natives, and must not do more than we can help to infringe on their sacred customs and traditions, which have already been trampled upon. (H4(a):103)

On 8 August, under Menzies' instructions, all eight wakatupapaku were taken from Morrell's house to Opononi and held there by the storekeeper. They were delivered to Rawene in five cases by 16 Maori on 13 August and taken to Menzies' house where they were unpacked and exhibited (H4(a):130, 132-135). The claimants say that the wakatupapaku were despatched before the tapu was lifted.

The final hui, referred to as a tangi by Menzies, was delayed until the arrival of Ngakuru Pana on 20 August. Details of the hui are sketchy. Blomfield did not attend despite his earlier promise (I1(b):124). Photographs were taken of 12 Maori in close proximity to eight carvings (H4:44). Six cases containing the wakatupapaku, arrived from Rawene in Onehunga on 29 August and were safely received by the museum (H4:45-46).

The witness for the Crown assumed that:

A ceremony must have been performed to temporarily lift the tapu so that when the carvings were unpacked and displayed for view they were not dangerous in any way. (H4:43)

Counsel for the claimants stated that:

The taonga were transported to Rawene where Tangata Whenua bid them a last farewell. (I1(b):124)

Whilst the tapu had been formally lifted, nevertheless the tapu of the taonga themselves was never lost and still remained.

WERE THE PRAYERS OF THE PETITIONERS TO THE NATIVE MINISTER ANSWERED?

6.4.2 The claimants allege that the Crown failed to ensure the strict adherence to the trusts vested by the chiefs in the Native Minister for the "ornaments" from the Kohekohe caves (A1(i):50). As the claimants' witness, John Klaricich saw it, the petition:

would have been a founding document upon which the Auckland Museum would receive the taonga into their care

The first responsibility of the Museum ... should have been to respect the terms of the Trust....

The museum no doubt felt justified, that handling the articles for the sake of scientific study, did not breach the petition. (D17:37)

John Klaricich wondered how many hands of scientific people had handled the taonga, and, in retrospect, how this could be justified by them. He did not believe that the trust conditions had been given adequate recognition by previous museum staff and Native Ministers (D17:45):

the will of scientific people, Crown and agents of the Crown were too strong to be challenged... (D17:52)

The curator of the Auckland Institute and Museum, T F Cheeseman, was prepared to accept "the guardianship of the carvings" and understood that the carvings were to remain for ever in the museum, with a printed account of each (H4(a):161-162, 166-167; G7:2).

Roger Neich, ethnologist at the Auckland Institute and Museum, explained that it was:

physically impossible for museum objects to be literally "not touched". They had to be brought into the Museum, preserved and then placed in their display case they were then protected ... and ... certainly [have] never been able to be touched by Museum visitors

Several of the chests were on public display for many years, with printed labels stating their history In the storerooms, the museum has allowed handling for the sake of study and research at various times under the strict supervision of museum staff

Finally, in the mid 1980s, the boxes ... were removed from display and placed in storage because the Museum was undertaking a major renovation of its displays of taonga Maori [They had] not incorporated the boxes in the new display ... because ... [they] knew that discussion over the trusteeship of the boxes and their appropriate repository were being initiated in Te Tai Tokerau. (G7:5-6)

Crown counsel submitted that the petitioners agreed to display the chests. There is no evidence that printed accounts of the ancestors were ever obtained from nga hapu o Waimamaku to be lodged with the wakatupapaku. The kaitiaki, who knew their history, would not have divulged this to strangers. Claimants' counsel submitted that public display:

would have been contrary to the whole concept of tapu the signatories to the petition intended the Taonga to be stored out of human sight and touch, as they had been at Kohekohe. That would have been consistent with everything their culture required of them. (I1(b):122)

The Crown's failure to return the portion of land containing the wahi tapu known as Kaharau will be examined in a later section of this report. Suffice it to say that the claimants regard this as "a promise" by the Native Minister and the Crown, as a request by petitioners (D17(a):1; I2:(b)(vii):27). In point of fact the Native Minister promised to talk to the government and ask them to give back the wahi tapu to be in reserve for ever (H4(a):113-114). The evidence shows that they were willing to reserve the specific sites of the caves but not Kaharau as a whole. Officials saw the wahi tapu as being the caves themselves, not the whole area.

In response to Reupena Tuoro's request for a further inquiry into the wakatupapaku, Blomfield advised that it would never do to reopen the question (H4(a):163, 188-189; I1(b):126).

By accepting the trust the Native Minister was surely implying his acceptance of the conditions in the petition. In John Klaricich's opinion, the minister erred:

in that he should have insisted on adherence by the museum to the trust, then consulted with Hokianga kaumatua for a variation to the terms. No respect was ever paid at all to this factor.

It was also incumbent on the Crown to respond to the signatories of the petition, and state their position

Silence on their part, can be construed by people as an artifice of the Crown to retain control over the Kohekohe taonga. (D17:37)

The Crown researcher concluded that a "sequence of subterfuge and deceit" led ultimately "to the human remains being deposited in the Auckland Museum, without the knowledge of Government authorities" (H4:34). Counsel for the claimants considered that "inadequate steps" were taken to have the koiwi returned (I1(b):154).

The evidence is that Blomfield instructed Menzies to return the human remains secretly to the caves. But either through choice or negligence, Blomfield failed to see that his instructions were carried out. Clearly the Crown acted in bad faith in arranging for the wakatupapaku and koiwi to be removed from the caves and deposited in the Auckland museum, contrary to the express wishes of tangata whenua and in violation of their tapu.

THE RETURN OF THE KOIWI

6.4.3 By the late 1980s attitudes to the appropriateness of the museum as a repository for wakatupapaku and koiwi were being questioned. As Wiritai Toi, a Kokohuia kaumatua, wrote:

At long last, positive moves were being instigated to rectify some of the injustices of the past. The doors were now open for the iwi to formulate a kaupapa for the fate of the taonga and in particular, the procedure for the return of the ko-iwi for burial. (D17(a):15)

In November 1987 the Minister of Maori Affairs, Koro Wetere, attended a hui at which he transferred the trusteeship of the Kohekohe wakatupapaku and koiwi to three interim trustees: Sir James Henare, Reverend Piri Kingi Iraia and John Klaricich. In doing so he was aware there were competing claims to ownership, but he did not propose to adjudicate on these claims, as he regarded them as domestic matters. The trust he held was not intended to weigh these matters, but simply to keep custody on behalf of the Hokianga people (D17:61). The people of Otatau did not attend the hui; nor were they represented or consulted. The reason for this is expressed in the whakatauki:

E kore te miro e rere ki te kukupa e ngari ko te kukupa ka rere ki te miro. {FNREF:0-86472-088-2:6.4.3:10}

The formal return of the koiwi to Waimamaku took place on 13 May 1988. Reverend Piri Kingi Iraia, Taurau Reuben Paniora, Hone Toi Marsden, Lou Goff Rawiri, Wiritai Toi, Howard Paniora and John Klaricich went to the Auckland Institute and Museum to collect them (D17(a):17). The Otatau kaumatua, Rapata Whiu did not go to Auckland although he was among those selected to go (D17(a):16-17). According to John Klaricich "Piri Iraia ... took all the heat and sting out of what could have been a very sensitive and divisive situation" (D17(a):2).

Three of the group went to the top floor room of the museum where the koiwi were held and carefully packed them in boxes. They returned with the others of their group to the museum at 2.30 the next morning to be greeted by Tainui waka, representing the Maori Queen, who had brought the boxes containing the koiwi down to the Hotunui marae on the ground floor, the first leg of the journey home. Following a mihi, tangi and the "handing over" of the taonga, the koiwi were transported by the group to Waimamaku, where they were buried at Te Ahuriri. Wiritai Toi found this kaupapa to be "very sad, thought provoking, inspirational, spiritually uplifting and culturally fulfilling" (D17(a):1).

To John Klaricich, "The overriding emotion was the utter desolation". "To pick up and fondle the remains ... was to realise how many other hands" had done the same (D17(a):9). The koiwi "were beautiful. The strength of character even after all these years clearly depicted local characteristics" (ibid:3). He had visited the cliffs and caves and they were "beautiful places[,] secluded, having the dignity of everything endowed by God's hand, places eminently suited to the purpose". He was sorry to have been present to see the koiwi reinterred for he could imagine them in their waka, or in the cave where they rightfully belonged. Part of this heritage had been lost forever (D17(a):9). The Otatau people did not attend the burial at Te Ahuriri.

Following two more hui, 12 trustees of the Kohekohe wakatupapaku were selected to replace the interim trustees, but as yet they have not been formally appointed by the minister (D17:61), who in January 1990 expressed his reservations, as trustee, about the destiny of the wakatupapaku. He felt obliged "not to abandon the principle that

they should be preserved for posterity". He was "of the view that this is best carried out in a modern museum, staffed and equipped for the task" but "If a suitable alternative could be built in the Hokianga then ... repatriation would take on a practical, more positive, aspect". He thought that the findings of the tribunal might "interfere" with his proposals to transfer the trust, and its recommendations might supersede any decisions that he and nga hapu o Waimamaku might make beforehand (D17:att). The minister's reservations make it abundantly clear that the handing back of the guardianship of the wakatupapaku was not unconditional.

We cannot wholly accept counsel for the Crown's view that individuals "insensitive to Maori custom" desecrated the Waimamaku caves not the Crown. Nor can we wholly share her view that the Crown initially made a "real effort" to protect Maori interests and sensibilities "when it became appraised of the situation" (I2:(b)(vii):40).

A cynic could well say that the Crown tried to persuade tangata whenua to consent to the preservation of these taonga in museums to prevent a breach of the peace, not the Treaty. Undoubtedly the Crown and its agents rode roughshod over their Treaty obligations in failing to uphold the traditional rights of nga hapu o Waimamaku to preserve, protect and control these taonga.

It is not for us to adjudicate on the claim as to traditional rights of kaitiakitanga over the wakatupapaku in the Auckland Institute and Museum, nor to express our views on whether they should remain there for all time or be returned to the Kohekohe cave or re-housed in a special place on ancestral lands where they belong. Tangata whenua need to resolve these issues among themselves.

THE DANNEFAERD CARVINGS AND OTHER SMALL ARTIFACTS

6.4.4 The claimants allege that two further purchases of wakatupapaku from Piwakawaka were made by Hamilton in 1906-7 from Dannefaerd, one for the Colonial Museum, the other for Hamilton's private collection. They also claim that the Crown has failed to prevent the removal of Waimamaku taonga from New Zealand; that one wakatupapaku is now in Melbourne, Australia and the other is believed to be in Austria (A1(i):51).

Three burial chests now held at the National Museum are known to have passed through Dannefaerd's hands. Two of these were sold by Dannefaerd in 1888 and one in 1906.

Of the two sold in 1888, one was initially held at the Museum of Victoria in Melbourne and was repatriated in August 1990; the other went to Hamilton (H4:98-99), who kept it in his collection in Napier. The Melbourne chest was described as having been found in a cave, from "Hau Haus, Uh Sect" or "Hau Hauhau tribe" (H4(b)(ii):352); Hamilton's chest as having been found in a cave near Auckland "together with another specimen in better preservation, now in Melbourne" (H4(b)(ii):412). The third chest was purchased in 1906 by Hamilton for the Colonial (later National) Museum. Dannefaerd's correspondence with Hamilton suggests it may have been found on private European property in a very dry limestone cave, somewhere around Taheke, a small village close to Otua.

Following professional geological advice, the Crown researcher suggested that this wakatupapaku possibly came from near the Mangamuka river (H4:102, 105).

Once again the oral evidence conflicts with the scientific evidence and is insufficient to support the claim. The wakatupapaku once held in Melbourne appears to have been exported before the passing of the Maori Antiquities Act 1901. There is no evidence that the wakatupapaku believed to be in Austria passed through Dannefaerd's hands.

THE MORRELL CANOE

6.4.5 A further item which the claimants say came from Kaharau and was taken to the Auckland Institute and Museum is a canoe, donated by Morrell. Roy Ambler, a local farmer, said that in his youth he had seen the canoe displayed there.

Museum officials could find no record of any such canoe and concluded that they could "only reach the conclusion that there is [not] now and has never been any such canoe in [the] Auckland Museum" (I9:2).

Blomfield in his reports used the word "waka" on two separate occasions to distinguish the wakatupapaku with the tuatara nui on it from the other wakatupapaku, which he called "tiki".

Hypatia Morrell noted her brother Lou "brought a canoe" home after visiting the "Maori Caves" in April 1902 (H4(a):4). Lou Morrell described this chest as a "lizard in bas relief, on what is much like an inverted section of a Maori canoe or washing trough" (H4(a):105).

The evidence suggests that the canoe Roy Ambler remembers seeing may well have been this wakatupapaku.

The claimants' witness, John Klaricich, has asked why greenstone and other such artifacts known to have been discovered and removed from Kohekohe cannot be identified in the Auckland museum (D17:32). Could this be attributed to confusion over the origins of some fine ornaments said to have been contained in the "Kohukohu" wakatupapaku, which was offered to T F Cheeseman, director of the Auckland museum, by Percy Blundell of Kohukohu, who described it as being "similar to those sent by Menzies" (H4(a):270)? Blundell was acting on behalf of a young man named W R Welsford. Welsford stated he had found it with other artifacts in a cliff of limestone rocks while grading a road on the ranges at Mangakahia. Blundell believed Welsford had never been to Mangakahia (H4(a):273-276, 281).

An independent geological expert consulted by the Crown thought the cliff was most probably on the main road from highway one to Kohukohu, one to three kilometres south-west of Mangamuka bridge alongside the Mangamuka river, as there were no limestone bluffs or cliffs in the Mangakahia valley (H4(b)(ii):468-469).

Roger Neich of the Auckland Institute and Museum stated that greenstone items from the Kohukohu chest were properly identified and registered in so far as it was known what was originally in the chest. The documentation for this chest did not explain the apparent absence of greenstone artifacts from Kohekohe. If it could be demonstrated

that the Kohukohu chest did come from Kohekohe, this would account for five greenstone items (G7:4). Clearly further research is needed before any claim can be made.

WERE URUPA AT PIWAKAWAKA DESECRATED?

6.4.6 The claimants allege that there was a second incident of desecration of urupa at Piwakawaka (A1(i):46-47, 51).

According to Simon Reuben, Piwakawaka was at one end of Kaharau and Kohekohe at the other. The elders never mentioned Kohekohe or Piwakawaka to the young ones in order to keep the existence of the caves a secret. In his day, only his Uncle Pera and one or two of the leading rangatira knew of their whereabouts. This secrecy ensured that the resting places of their tupuna would not be desecrated and worked well until the ana were "discovered" by Morrell (D7:3).

Prince Reuben remembered collecting bones from around Piwakawaka with his father, Aperahama Reupena Tuoro when he was only 10 or 12 years old but he did not recall seeing the caves or crevices themselves. Nor did he recall his father entering any of them. He was told not to go on to Piwakawaka because it was tapu (D30:1).

John Klaricich remembered his uncle, Taurau Thompson and brother-in-law, Piri Iraia, speaking of Piwakawaka and another wahi tapu known as Te Rereapouto which contained the bones of Te Roroa and Ngati Pou. Piri Iraia, having had the mana of kaitiakitanga bestowed upon him by his kaumatua, recounted stories about the removal of items from Piwakawaka and Te Rereapouto and how powerless they felt to do anything about it (D17:1, 40).

The location Piri Iraia and Taurau Thompson knew as Piwakawaka, was the same as that given by Bill Naera, a respected elder, to Aileen Fox in 1978. It also corresponded with the trigonometrical point named on Weetman's 1876 check survey plan and with another unexplored urupa Menzies had been told about in 1902 (H4(a):23-26). By that time, John Klaricich thought the desecration had already begun (D17:40). Items ostensibly "found" elsewhere could be traced back to Piwakawaka and other nearby caves; two local settlers were linked to the incident and "Both showed signs of tapu" (D17:47). The tuturu kaumatua, Piri Iraia and Taurau Thompson had spoken of the Piwakawaka incident many times in his presence:

not with a sense of outrage but with sadness that a trust had been breached

.... They most certainly knew that Kohekohe and Piwakawaka were different places, and that they were looted in separate incidents. (H44:7-8)

Oral traditional evidence given by the claimants shows irrefutably that there were caves or crevices containing the dead at a place named Piwakawaka, separate and different from those at Kohekohe. Nonetheless the Crown researcher, after carefully sifting through the evidence, submitted it was inconclusive (H4:92). Before the Crown was prepared to concede that burial caves or crevices at Piwakawaka existed and had been looted in a second incident, it required corroborative scientific and documentary evidence (I2:(b)(vii):31). Such rigid requirements clearly reflected the

unwillingness of a professional archaeologist to adopt an interdisciplinary approach to the study of tribal society.

DID THE SEVEN CARVINGS KNOWN AS THE SPENCER COLLECTION IN THE NATIONAL MUSEUM COME FROM PIWAKAWAKA?

6.4.7 On the basis of oral tradition supplemented by some documentary evidence, the claimants identified the seven wakatupapaku known as the Spencer collection in the National Museum, Wellington, as items taken from the ana at Piwakawaka (D17:52). Two local carvers who are inheritors of the unique Kohuru tradition of carving supported this view. They are Benjamin Te Wake, who at the age of 16 years was taught Maori carving and its principles by the tohunga whakairo, Eramiha Te Kapua of Tuhoe, and Manos Nathan, Benjamin Te Wake's pupil. Te Wake said, that of the eight "tiki" (wrongly described as wakatupapaku) taken from Kohekohe and Piwakawaka, six were much older than the rest and could date from 1385 to 1500 or to mid seventeenth century (D14:1). Manos Nathan said that when he saw the wakatupapaku in the National Museum in 1968:

Something deep within me recognised these taonga and I knew in my bones that I was in the presence of the sacred work of my tupuna. (D13:1-2){FNREF:0-86472-088-2:6.4.7:11}

The Crown researcher concluded that the wakatupapaku had been damaged before 1983. Lady Fox had observed that the head was broken. Possibly it had been broken before 1913, as museum staff claimed that a photograph taken prior to that date showed the break (H4:95). He also concluded, from information he had received from the executive director of the board of trustees, "that temperature and illumination conditions are satisfactory, but that relative humidity is slightly above the ideal range". Overall therefore it was "satisfactory" (H4:96).

On the basis of exhaustive documentary research, the Crown researcher concluded that while it was possible that some or all of the carvings known as the Spencer collection did indeed come from the Kaharau area, he did not think this origin was very likely. A number of origins were possible but the available evidence did not enable him to ascribe collective or individual origins for the collection "beyond the general designation of North Auckland" (H4:97). He later suggested there were strong indications of their being provenanced to the Omanaia area (H51:71-72).

In the final analysis the Crown could not be comfortable attributing any one wakatupapaku to a specific area without carrying out scientific tests of wood and soil samples (D25). Such tests were culturally offensive to the claimants who quite understandably would not authorise them to do so. Nor was the Crown comfortable with the evidence of the local carvers and obtained an opinion from an outside Pakeha expert (H51:34, 59-60).

In his closing statement, counsel for the claimants pointed out that no other iwi had claimed the taonga:

Ultimately the Tribunal must decide on the balance of probabilities that is whether it is more probable than not whether the Spencer collection is provenanced from Piiwakawaka. (I1(b):109-110)

Crown counsel responded that it was "not appropriate to brush off possible cross-claims in such a perfunctory manner" (I2:(b)(vii):39).

The purchase of the carvings from the Queen Street, Auckland, dealer in antiquities, E H Spencer for the Dominion Museum by the director, Augustus Hamilton, for £235 with Cabinet's approval (H4(a):235-236, 239) raised other issues. Did Spencer and Hamilton know where the carvings came from? And did Hamilton tell Cabinet all he knew when he sought its approval for the purchase?

The claimants contended that Hamilton knew they were from the same area as the Kohekohe carvings and deliberately withheld the information from the colonial secretary (D17:56). The Crown contended that Hamilton did not know, was not able to find out and had no reason to think that any of them were actually from Waimamaku (H4:81).

The main point at issue between the Crown and claimants boils down to the credibility of the documentary evidence, in particular the correspondence between Hamilton and Spencer and Hamilton's correspondence with Cabinet. As Manos Nathan said, this "requires careful scrutiny" (D13:3).

Undoubtedly Hamilton must have appreciated that had Cabinet known the Spencer collection came from the same area as the Kohekohe wakatupapaku, it would not have been prepared to part with £235 and risk a repetition of local outrage. Furthermore Hamilton had "considerable difficulty getting Cabinet to part with so much money" (H4:78). Even so, the Crown researcher did not believe that the museum people would have withheld information from their masters. Hamilton himself "could not have lied" when he informed the colonial secretary that he had "just received word from Mr Spencer that there is no indication on the coffins as to where they came from" and that Spencer had "no personal knowledge as to where they were found" (H4:82 passim; H4(a):233).

Yet the fact remains that some months later (in 1908) Hamilton registered the seven wakatupapaku, first "from a cave N. Auckland" and secondly "from a cave Hokianga" (H4:80). Then in 1911, he noted in a Dominion Museum Bulletin that the museum had eight chests "from the same neighbourhood" as the Auckland museum ones (ibid). Seven of these constituted the Spencer collection, the eighth was one of the Dannefaerd collection. As the Crown researcher said, whether Hamilton had some concrete information or inference "cannot now be determined with certainty" (H4:81). But, this is no reason not to think, as he did, that any of the wakatupapaku were actually from Waimamaku. In the aftermath of local outrage over the taking of the Kohekohe taonga and in the prevailing climate of concern to build up a national museum collection, it is difficult to believe a Queen Street dealer and the director of the Dominion Museum would have dared to admit to Cabinet all they knew about the provenance of such rare valuable items. Clearly Hamilton's letter to the colonial secretary was, as counsel for the claimants said, carefully worded (I1(b):146). Furthermore his letters to Spencer suggest that he was soliciting further information

about where the wakatupapaku came from. Anyway, it seems most unlikely that a scholarly scientist and keen collector like Hamilton would not have deduced that they came from the same area as the Kohekohe wakatupapaku. Similarly it seems most unlikely that a Queen Street dealer like Spencer would not have had at least a fair idea of where and from whom they originated.

While we respect the oral evidence and evidence we have been given by local carvers that the wakatupapaku in the Spencer collection came from Piwakawaka, it seems to us insufficient to support this particular claim. More research is clearly needed, particularly with respect to the network of contacts Spencer was working and to his source of supply.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

06 Taonga (Sacred Treasures)

6.5 Wahi Tapu

6.5. Wahi Tapu

WHAT IS A WAHI TAPU?

6.5.1 The claimant, Alex Nathan stated that:

According to our kaumatua, kuia and tupuna the whole of Waipoua is tapu. All the valleys leading down into the main valley, all the streams feeding into the main river, these are all tapu because of the mauri and mana attendant to and imbued in them.

The majority of the wahi tapu, wahi rahui and wahi kai identified are within the boundaries of what was the original Waipoua Native Reserve

... The present situation is that most of the original Reserve is now either private farmland (ex-Lands and Survey Department, Waipoua Land Development Scheme) or State Forest planted with exotic tree species. A lesser portion remains in native bush and scrub and only a remnant of the original land mass is still Maori freehold land. (B19:2)

The question we need to address at the outset is what is a wahi tapu? In s27 State-owned Enterprise Act 1986 a wahi tapu is defined as being "land of special spiritual, cultural, or historical tribal significance". Alex Nathan said that:

Any place or feature that has special significance to a particular iwi, hapu or whanau can be wahi tapu but such places may not necessarily be significant to any other group. Hence a narrow definition is not possible. Wahi tapu cannot be forced into preconceived categories of importance and one group cannot determine what is wahi tapu to another. (C7:48)

For Maori, wahi tapu like taonga is an "umbrella term" that applies not only to urupa (burial grounds) but other places that are set apart both permanently and temporarily. These include places associated in some way with birth or death, with chiefly persons and with traditional canoe landing and building places. Temporary tapu are usually imposed and removed on hunting or fishing grounds or cultivations to conserve and protect the resource. They also include places associated with particular tupuna and events associated with them, set in order by whakapapa (B19:3-4).

To quote Alex Nathan again:

They provide cultural and tribal markers which together with whakapapa mesh the people with the traditional landscape, providing both physical, historical and

emotional links to the tupuna. Hence gross changes in the physical landscape, as are apparent here at Waipoua, can be compared in the Pakeha world, to the destruction of national treasures such as whole museums or art galleries.

Only the kaitiaki or guardians of the tribal lore and history, in consultation with the iwi, hapu or whanau can bring together the different elements which must be considered, before the importance of particular places can be evaluated. (C7:48)

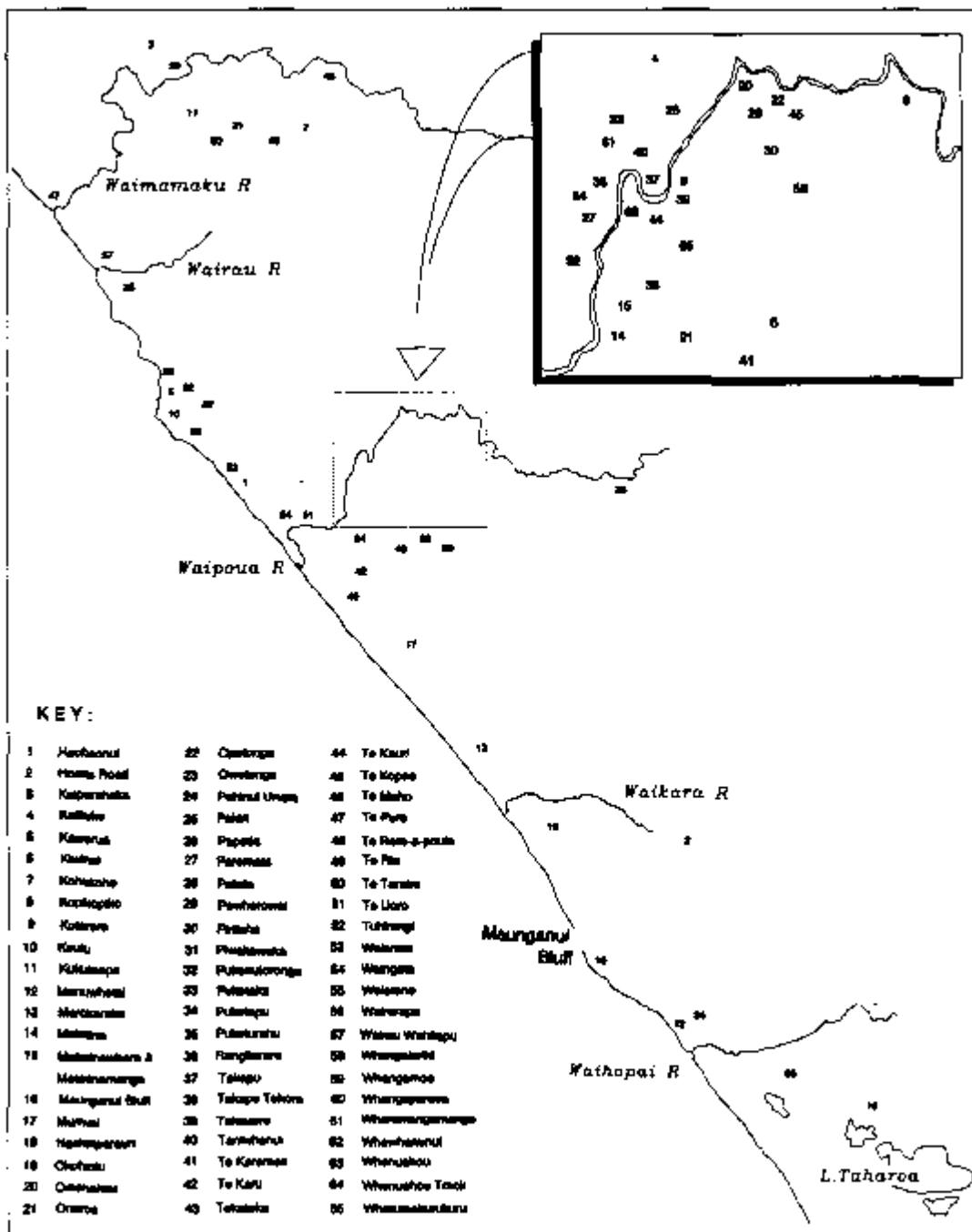


Figure 23: Wahi tapu cited in the statement of claim

A map indicating generalised locations of Te Roroa wahi tapu named in the claim is included in this section of our report. The exact location of wahi tapu is confidential information which is closely guarded by Te Roroa to preserve and protect these places from desecration, damage and destruction.

THE BEGINNINGS OF DESECRATION AND ATTEMPTS TO PROTECT WAHI TAPU IN WAIPOUA

6.5.2 The desecration and destruction of wahi tapu in Waipoua began largely as a result of the forest service's kauri logging and pine replanting operations on Crown land (that is, the Waipoua Native Reserve) and of the building of the main highway north through the forest 1925-1929.

Since 1906 when an area of 9173 ha of Waipoua No 1 was set aside as state forest, Te Roroa's traditional rights of kaitiakitanga over their wahi tapu have been relentlessly eroded by the Crown's management policies and practices. Mainly responsible were the commissioner of state forests in the lands department, 1906-1919, and the state forest service, 1919-1987.

Conflicting Crown interests in logging kauri, replanting in exotics, opening up land for settlement and conserving the kauri forest as a national park were resolved in 1952 by the setting aside of a 9113 ha kauri forest sanctuary (B2:12). By this time the Crown had acquired a substantial part of Waipoua No 2 (B2:145-147) and extensive damage to and destruction of wahi tapu had been done (C7:49-50). Furthermore, Te Roroa's access to their wahi tapu was being severely restricted or prohibited ostensibly to protect the kauri forest and pine plantations from fire and trespass (B2:22-34).

The late E D Nathan graphically described Te Roroa aureretanga (continuous crying):

When they (the FS) first started here in 1924, I can remember my grandmother and her two sisters begging that these places not be planted. I can remember them crying because it hurt them. They thought that it was part of the system; it was hoisted upon them and they had to accept it. (B22:5)

To protect their wahi tapu from desecration, damage and destruction, Te Roroa kaitiaki exhumed the koiwi (bones) from caves in the forest and sand hills and buried them in urupa at Pahinui, Waimamaku and Pakanae. On a site visit, 7 July 1989 we saw one of the ancient burial caves formed by underground rivers beside the track off Tekateka road within the Whangamoā urupa which is now a 22 acre reserve (Waipoua 2C block), although traditions among tangata whenua are that it should have been 80 acres (I1(e):94). In the Pahinui urupa, we saw a stone under which was buried koiwi of 76 tupuna from Whangamoā brought there by Te Rore Taoho in 1896. We were told that koiwi from Manuwetai and Haohaonui had also been brought to Pahinui.

After experimental planting of pines began on Crown land in Waipoua No 2 in 1924, Te Roroa tried other methods of protecting their wahi tapu as the need arose, such as making representations to the forest service, the Native Land Court and ministers and pulling out pine tree seedlings. In 1939, Tanoara Enoka Te Rore appealed to the acting Native Minister over the completion of state forest service works including firebreaks in readiness for firing which intruded on their tupuna's wahi tapu (B7:247-248). Arrangements were made to take workmen off the area in dispute until it was settled by the Native Land Court (B7:249).

In 1947 Te Atarangi Paniora wrote to the court registrar objecting to the sale of the 55 acre Waiarara wahi tapu (B25:337-338). He was told it had been Crown land for many years and was included in the provisional state forest reserve. Two years later

he told the head man planting pines at Haohaonui and Waiarara to stop because the bones of his ancestors were still there. The head man agreed not to plant the wahi tapu (B25:340). Ata had asked the court registrar to send him a map and list of trustees which would have indicated that the wahi tapu were Maori reserves, but no such evidence was found (B25:341).

An entry in the Waipoua forest journal shows that in 1951, discussions were held with Ata regarding a proposed 6.3 acre wahi tapu reserve along the Haohaonui stream. A further entry in 1952, regards the possibility of setting aside about ten acres of coastal land at Kawerua as a wahi tapu. The area would have been of "nil value" to the forest service (B25:1-3).

Early attempts by Te Roroa to protect their wahi tapu from damage and destruction were largely unsuccessful. Occasionally however, wahi tapu were excluded from replanting. Although the Crown was undoubtedly responsible for most of the damage and destruction, claimants acknowledged that their own people and other workers in the forest caused it. But they point out that the forest service "provided the only avenue of paid employment in the area and were run in an almost military fashion" (C7:50). Ronald Sowter remembered how during the planting time at Teka Teka, Panapa Paniora and Dawson Birch "knew it was Wahi Tapu and they didn't want to be the ones who would desecrate those places" so they left it to him and he fell down into a cave (C3:1). Others of the forest service ex-employees, told us stories about how they took avoidance action whenever they were told to work in tapu places (B40:3-4).

Until the 1970s, it was only the existence of the kauri forest sanctuary and traditional kaitiakitanga that protected Te Roroa wahi tapu on Crown land. "You talk about conservation groups and all that" Joe Paniora said, "We Maoris are the greatest conservationists of all time." (B22:136). On private property there was no protection for wahi tapu other than the owners' goodwill.

THE BEGINNINGS OF STATUTORY PROTECTION

6.5.3 The Forests Act 1949 and the 1973 and 1976 amendments provided for protection of areas of scientific, historical, cultural, educational, recreational, scenic and aesthetic interest in state forests (B18:2). Perhaps the best known and most preferred mechanism by Maori to protect their wahi tapu is s439 Maori Affairs Act 1953 (C7:56). Upon a recommendation by the Native Land Court the governor-general may by order-in-council "set apart any Maori freehold land or any European land owned by Maoris ... to be held for the common use or benefit of the owners or of Maoris of the class or classes specified in the Order in Council". {FNREF:0-86472-088-2:6.5.3:12}

This mechanism has the advantage that the owner only has to identify not survey the land. Furthermore "It requires only limited public disclosure of information through the MLC hearings and gazettal of the reservation" (C7:56).

More recent provisions for statutory protection of wahi tapu largely originated in the desire of Pakeha to preserve historic places as part of the nation's heritage and to carry out scientific investigation of archaeological sites. Two organisations in particular have fostered these objectives since 1954, namely the National (from 1963 New

Zealand) Historic Places Trust {FNREF:0-86472-088-2:6.5.3:13} and the New Zealand Archaeological Association. {FNREF:0-86472-088-2:6.5.3:14}

The trust's functions included the recording and marking of places of national or local historic interest (such as wahi tapu) and the promotion and supervision of archaeological excavations (G3:3).

The New Zealand Archaeological Association in 1958 established a site recording scheme aimed at finding and recording archaeological sites throughout the country (H5:6).

Community concern at the destruction of archaeological sites for public works culminated in a major amendment to the historic places legislation in 1975 (G3:4). Specific provisions were made for the protection of archaeological sites from modification, damage or destruction, except with the trust's consent. {FNREF:0-86472-088-2:6.5.3:15} Under the Historic Places Act 1980, developers and others were required to obtain permits to investigate (s44) and authorities to modify or destroy (s46) an archaeological site. Investigations of archaeological sites could only be undertaken with the permission of the trust and concurrence of the owner and occupier of the land on which the site was situated. Where necessary and appropriate, concurrence from a "Maori Association" defined in the Maori Welfare Act 1962 could be sought. {FNREF:0-86472-088-2:6.5.3:16} The trust incurred a statutory responsibility to maintain a register of archaeological sites. Subsequently it undertook to maintain the central file of the New Zealand Archaeological Association site recording scheme.

From 1975 wahi tapu on both Crown and general land, which were identified as archaeological sites, could be legally protected but not other kinds of wahi tapu.

When the Town and Country Planning Act 1977 came into force, the trust sought to strengthen its powers of protection over property through their inclusion in district planning schemes (G3:4-5). Under the Historic Places Act 1980, an application might be made to the trust to have a place or a site declared a traditional site. {FNREF:0-86472-088-2:6.5.3:17} The trust might, after considering its importance in traditional terms, proceed to have it set aside as a s439a Maori reservation or refer the application to an appropriate Maori authority to consider the site and what action if any should be taken (s50). In Tipene O'Regan's opinion, this implied that the trust had a third alternative of acting "under its own mana to declare a site after someone had made application" (G2:5(a)). Under s50(4) it might make recommendations about boundary definition of traditional sites. Under s50(5), local authorities in whose district the traditional site was situated were required to take into account the desirability of protecting or preserving it (G6:9).

In effect the trust did not have the power to give legal protection to traditional sites. Protection only came about through agreements with interested parties (B22:136). An archaeologist who worked with the trust, Dr Ian Smith, was of the opinion that:

the strongest protection ... has to do with the people who are involved and live there.

The way in which you generate that kind of protection is by making things known.
(B22:136)

Tipene O'Regan, who had been associated with the Maori involvement in the trust since February 1977, gave background evidence on changing concern with traditional site protection. About 1980, he said, those:

concerned with ... heritage maintenance issues amongst the Iwi were few and far between. The rights of private property owners were fiercely protected and there was huge resistance to any steps to protect anything Maori that could be seen to interfere with those rights. (G2:3)

Within the trust:

The archaeological dimension was greatly strengthened in debate ... by the aura of mana and authority drawn from its connections with universities and establishment values the Maori Land Court was unsupportive of heritage site protection also. It invariably supported what it saw to be the private property rights of individual owners against the tribe

The hostility towards site protection based on Maori values in the larger community was matched by considerable apathy within most Iwi although some few concerned kaumatua around the country gave powerful personal support

It was in the hui associated with Meeting House restoration projects that we promoted interest in traditional site protection and assisted hapu and Iwi to begin their own traditional site identification, recording and protection However, the general marae community attitude was shifting towards a concern with heritage and history and traditional sites began to be seen as taonga worth fighting for by a greater number.
(G2:3-4)

During the whole of his association with the trust:

The Maori membership of the Trust's committees have ... been concerned and, at times, distressed by the difficulty of securing protection for a huge range of sites of great importance to Maori on grounds of historic, traditional or spiritual association. We have felt that there was well entrenched legislative protection for sites on a grounds of essentially Pakeha academic interest but a gross lack of ability to protect sites on Maori grounds. Put simply it has been easier to protect an ancestral rubbish dump than a tuahu or a waka landing site or a maunga whakatauaki. In the 1970's and early 1980's we also experienced considerable resistance from professional archaeologists, including those on the staff of the Trust at the time, to our attempts to secure a similar standard of protection for sites of Maori value to that enjoyed by sites deemed to have archaeological value.

Despite such resistance there was strong support within the Trust community for the advocacy led by a then Board Member and Maori Committee Chairman, Apirana Mahuika of Ngati Porou for statutory protection of what we had begun to call "Traditional Sites". (G2:2)

The advisory officer to the archaeology section of the trust and secretary to the trusts' archaeology committee, Anne Geelan, told us that policies and procedures with regard to managing archaeological and traditional sites under the 1975 and 1980 Acts were developed by respective standing committees, the archaeology committee and the Maori buildings and advisory committee (since 1984 the Maori advisory committee).

The approval of authorities to modify, damage or destroy archaeological sites and permits to investigate them was delegated to the archaeology committee with authority to delegate to the senior archaeologist. As many applications were urgent, this was common practice from 1982 to 1987. Since then decisions have been made by the director only, on the advice and recommendations of the senior archaeologist (G6:11-14). Consultation with tangata whenua over authorities and permits was done by archaeologists working throughout New Zealand. The trust itself did not consult with tangata whenua until recently when a proper consultative process was established (G6:13).

The deputy director of the trust, Carol Quirk, told us that in the early stages of site registration:

there was no built-in mechanism for discussing the appropriateness of registration with tangata whenua. If the site was on Maori land, notice would be served on the Registrar of the Maori Land Court but no formal consultation with tangata whenua or indeed any landowner was ever provided for or carried out. (G4:9)

Concern about current procedures was evident in a file note from the director to the senior archaeologist in January 1984 which read "Every effort needs to be made to establish the identity of any owners, trustees, etc, and then to make a personal contact with them" (G4(a):III). "This directive", the deputy director explained, "was then to be followed by trust archaeologists" (G4:10). Initially decisions on site registration were made by the archaeology committee then delegated to the senior archaeologist (G4:11).

Applications to have a place declared a traditional site were considered by the Maori advisory committee on the basis of criteria and procedures set out by one of its members, Tipene O'Regan (G6:3, app 2). He argued that the recognition of Maori values and perspectives were valuable, and that the prime reference of the trust decisions should be that of traditional tribal association, but that ultimately the trust should rely on the assertion of an appropriate tribal group.

Further papers on traditional site policy were prepared and discussions continued throughout the 1980s. Changes proposed in a document called "Historic Places Legislation Review-Issues for Public Comment" 1988 included reliance upon tangata whenua to discuss site significance and making the trust subject to the principles of the Treaty of Waitangi (G6:4).

FOREST SERVICE CONSERVANCY

6.5.4 There is no evidence of any Te Roroa wahi tapu being gazetted under the Forest Act 1949. In 1964 the forest service made formal provision for preserving archaeological sites and marking their location on working plans in response to a

request from the New Zealand Archaeological Association (C8:7). To meet its legal responsibilities in Waipoua under the Historic Places Amendment Act 1975, the forest service embarked on a policy of preserving archaeological sites. "Preservation of archaeological sites" the conservator of forests reminded Waipoua staff after a bulldozer damaged pa sites in 1979, "is just as important as any other management operation and must be treated as such" (B25:9).

Henceforth authorities and permits had to be obtained from the Historic Places Trust before logging, clearing, planting and other forestry operations on Waipoua archaeological sites could proceed. Two archaeologists were employed by the forest service's Auckland conservancy to cope with supervisory and conservation work (C8:8-9). It became their responsibility to recommend to both the forest service and the Historic Places Trust preservation, investigation or destruction of sites after adequate site recording.

In response to the forest services's coastal planting programme which had exposed burials and modified pa and midden sites, an archaeological field survey was conducted in Waipoua in 1977-1978 (B25:6-8, C8:20). By this time the forest service was beginning to realise that there were extensive stone and earth works in compartments 5 and 15 in the Waipoua river valley, which they planned to log. In 1979 these areas were systematically surveyed (C8:20). The forest service also realised it had a management problem and proposed reserving an area of sites. {FNREF:0-86472-088-2:6.5.4:18}

An archaeologist was employed in 1983 to review past site survey and management in the valley. His recommendations included a proposal to extend permanent protection in the form of a reserve to almost all the known sites in the upper river valley and investigate a sample of the remainder. "The information thus gained about prehistoric horticulture and settlement would amply compensate for the eventual loss of half the known sites " (B20:1). These recommendations were evaluated by the forest service and Historic Places Trust and a four year programme of progressive site survey, mapping and management was proposed, which was to become the Waipoua Archaeological Project (C8:20-21).

Forest service commitments in the project and the Historic Places Trust's understanding of these, included first, the reservation of the main areas of archaeological sites as defined by the archaeologist; secondly, logging under day to day direction of an archaeologist in a manner designed to cause least damage to sites; thirdly, employment of an archaeologist in Waipoua after discussions with the Historic Places Trust; fourthly, consideration of future site management including appropriate revegetation, site investigation, public access and interpretation in consultation with the Te Roroa-Waipoua Archaeological Advisory Committee; and fifthly carrying out investigations and planning for future management on a priority basis (C8:21-22).

In 1984 archaeological reconnaissance inspections were carried out on proposed clear-felling areas which revealed:

a complex of 'villages' with a unique and extensive range of archaeological evidence for occupation, ceremonial structures, gardening and kumara storage ... [It was

proposed] to include some sites within the FS 1985 summer public 'Interpretation programme'. (C8:21)

Since no excavation could be undertaken without the concurrence of tangata whenua, discussions were held with Te Roroa kaumatua. While proposals for a reserve were viewed favourably, E D Nathan opposed all public access to sites until such time as they were blessed and restored to their original state. He knew in his bones they were "TUAHU OF OUR TUPUNA" (C7:44). "Above all else, if the historic places were to be presented it was to be done with dignity" (C8:21). His views were respected and the proposal to include sites in the summer programme was dropped.

On 3 April 1985, Te Roroa whanau and forest service staff and archaeologists participated in a whakanoa (to make ordinary) ceremony conducted by the Reverend Maori Marsden. Prayers were said and compartments 5 and 15 (where logging was planned) were visited and blessed (C8:14, 21).

TE ROROA-WAIPOUA ARCHAEOLOGICAL ADVISORY COMMITTEE (TRWAAC) AND THE WAIPOUA ARCHAEOLOGICAL PROJECT

6.5.5 In January 1985, E D Nathan, prompted by his concern by what he had seen and heard whilst on a tour of sites conducted by forest service archaeologists and the proposal to open them to the public, had written to the Minister of Forests, Koro Wetere, with his own kaupapa for Te Roroa involvement in the management and protection of wahi tapu. He proposed that Te Roroa should form a trust, that sacred sites be declared reserves, and administered jointly by Te Roroa and the forest service or handed back to Te Roroa for administration.

He reiterated the firm stand he had taken with the archaeologist on a tour of inspection of two sites, that they were tapu, and before they were restored as near as possible to their original state, they would have to be blessed. "In the past", he continued:

they [agents of the Crown] encouraged our tupuna to part with their lands with little regard to ethics or moralities, so the present ownership of the land is irrelevant.... I am sure we are best qualified to do our own thing and we've endured the superficialities for too long.

With Lawlor's [the conservancy archaeologist's] concurrence, I've asked that when restorative explorations commence, that Te Roroa uri [descendants] be employed ... not only in the menial labour, but also upon the technological aspects where initiative and educational standards are appropriately adequate. (B25:13)

In response, the minister indicated that the forest service supported the proposal to form a trust to administer the archaeological and the sacred sites of Te Roroa at Waipoua. He suggested that the Historic Places Trust, in addition to the forest service, be party to the trust, as it was the statutory agency through which the forest service managed its historic places. He further suggested that Te Roroa should make sacred sites known to the forest service archaeologists so that they could be included in the existing reserve proposal. Both archaeologists and Te Roroa could learn from each

other. The minister also outlined proposals to extend permanent protection by creating a reserve on both sides of the Waipoua river (B25:17-18).

On 28 June 1985, E D Nathan, supported by his two sons, Alex and Manos and other tangata whenua, convened a meeting with local forest service staff and Historic Places Trust representatives at Matatina marae to discuss the formation of the trust. It was agreed that it should include three elements: tangata whenua, the forest service and the Historic Places Trust. Ian Lawlor in his evidence stated that "Of major concern to tangata whenua was to have the advisory body set up in A MAORI WAY" (C8:14).

Professor Atholl Anderson, then chairman of the archaeology committee told us that he was asked by the trust's senior archaeologist, Dr Susan Bulmer, to secure, if possible, an agreement with the other parties about the proposed reserve and a policy for the future of archaeological sites in the area (G5:3). En route to Matatina he and Lawlor, met David Black (assistant conservator of forests, Auckland) and agreed the basic needs were:

- (a) To establish that the sites warranted protection and management,
- (b) To set up a body which could oversee the operation of an investigation and management project, and
- (c) To arrange the prompt production of a map showing the proposed reserve boundaries together with a management plan which would outline investigations for establishing the nature of the sites and set future management priorities. (G5:3)

It was the view of the trust and, as far as Anderson knew, of the assistant conservator of forests:

that no reserve was to be created, nor any long-term archaeological project take place within it, until the initial management plan and map was produced by the Conservancy Archaeologist we all agreed that it was a time to strike while the iron was hot and get a substantial archaeological reserve in place while the forest service remained in existence (its demise was thought imminent at that stage). (G5:5)

On 12 July 1985, Black confirmed that he would reserve the main areas of archaeological sites "as defined by the conservancy archaeologist" and proceed with the other proposals Anderson had set out in his letter (G5:5).

On 15 October 1985, the interim Te Roroa-Waipoua trust advisory committee held its inaugural meeting. A few months later it changed its name to the Te Roroa-Waipoua Archaeological Advisory Committee, TRWAAC (B22:1 ff, 59; C7:44-45).

The kaupapa of the group, Lawlor suggested, was "best exemplified by the logo given to the committee by Manos Nathan:

the design contains 3 elements which go to make up the whole.... They are taken from the titi or moko of Tuputupuwhenua, the pou aro figure which ... [is] part of the carved house on Matatina Marae. One of each of the 3 elements represents tangata

whenua, the F.S. and HPT, the enclosing circle represents the togetherness and the manner in which we should conduct ourselves. (B22:32)

The early change of name and minutes of discussion on the appropriateness of a trust as a "vehicle" however (B22:27-28; 48-53), indicate that right from the start, the three "elements" had different kaupapa (C7:44-45).

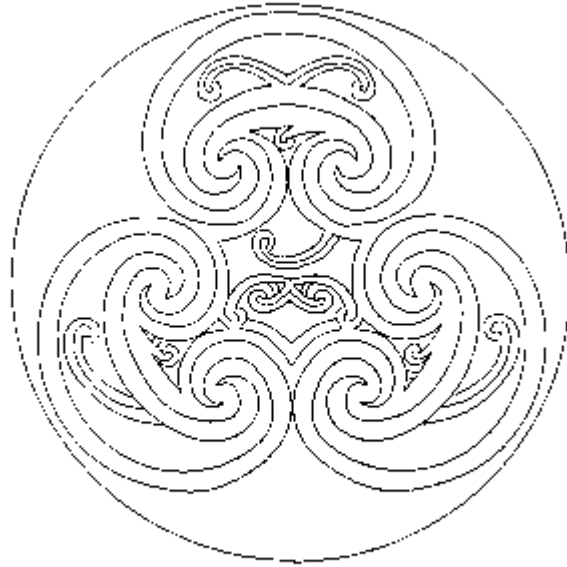


Figure 24: Logo of TRWAAC

E D Nathan wanted to ensure that tangata whenua had "at least an equal authority to make decisions" (B22:48). He felt that "decisions should be made in Waipoua, be passed down the line, and then something returned that we can all agree with" (B22:78). Te Aue Davis (Historic Places Trust Maori Advisory Committee) said she "would like to see the overall management given the mana of Maoridom". She thought "the area of sites should come back to the mana of the Maori people as a Maori reserve" (B22:10). The forest service representative, Cecil Hood, said that to have a trust required title to the land: "you cannot have a Trust over Crown land". The practical options were first, survey the land out and return it to the owners; secondly, the Crown retains the land and transfers it to the proposed Department of Conservation; thirdly, the Crown retains land and a statutory committee is set up; in which case he questioned whether the government would give tangata whenua the majority vote (B22:49). Dr Susan Bulmer thought the area of concern would be best served "if it was put into the DOC" (B22:51). The Historic Places Trust would be involved because it was their job to look after historic places (B22:78).

E D Nathan would not be satisfied until a constitution was drawn up for TRWAAC:

You people, the archaeologists, know what you are going to do, the HPT, you also have your ideas about what is going to happen, and then we, tangata whenua, would want our interests included ... The compromises are made at the beginning so that we proceed as a body with one mind and one purpose. (B22:78)

"I must tell you all my thoughts", he added later:

I am looking further ahead when these sites are preserved, when tourists come. That is going to happen. There is the economic side of it ... tourists are going to pay. I want things lined up for that eventuality as well ... I am thinking ... [in] terms that this body will control any finance that will come into it, so that it can get fired back into whatever we are doing, rather than let some other government department use it for some other purpose.

I am thinking in the long term for that reason. That is going to happen ... whatever finances are forthcoming, then we have control of it.

My last point is that we train our Maori tangata whenua to be the ... guides, and of course they have to be proficient with their historical background and all the ... [recitation] of it. This is the whole picture. (B22:79)

In the event E D Nathan's original kaupapa was not carried out. The trust was not formed; and the archaeological reserve was not created.

WHAT WENT WRONG WITH THE WAIPOUA ARCHAEOLOGICAL PROJECT AND TRWAAC?

6.5.6 TRWAAC met 18 times over a period of five years before it went into recess during the hearing of this claim. While it was primarily concerned with the on-going programme of archaeological site management and investigations connected with logging, it was also concerned with "The definition of an area of significant historic places, to be reserved under the trust, and traditional and historic research" which were important aspects of the Waipoua Archaeological Project (C8:15-16).

As counsel for claimants pointed out "Waipoua and archaeology in the 1980s ... generated more paper evidence than any other issue in this claim" (I1(e):93). Much of this evidence was detailed, academic and not strictly relevant. Some of it was personal and recriminatory; some of it signified the conflicting interests of the "three elements" involved in TRWAAC. It is not our task to adjudicate upon these matters. These now need to be resolved by Te Roroa, the Department of Conservation and the Historic Places Trust themselves.

Sifting the wheat from the chaff, the basic facts are these: from the tangata whenua point of view some aspects of the project were a success. Much was achieved in the field of traditional research undertaken by tangata whenua, who tape-recorded and transcribed oral traditions given by kaumatua and kuia. Over 100 wahi tapu were identified, defined and located on a map and a summary list of their names and traditional history was produced. These included some on private farm land because, as Alex Nathan said, "they are still part of us and we of them". Oral traditions were thus retained for Te Roroa tamariki and future generations. Tangata whenua, including older children of the correspondence school acquired some basic archaeological skills. Information was presented to government on Te Roroa wahi tapu for the pending reorganisation of Crown land management (B19:4-6, 12-13).

The forest service acknowledged its responsibility to protect, investigate and manage sites at Waipoua (B25:55). Forest service archaeologists implemented the first two stages of the Waipoua Archaeological Project in 1985 and 1986. Sites at risk were

resurveyed and mapped and detailed studies were developed for the removal of pines from each in cooperation with other forest service staff. When sites were logged, compromises had to be made between protection and commercial gain.

The completion of the first stage of the project revealed to the forest service that there were more sites and more complex management problems than had been previously recognised and that a substantial research and management programme would need to be undertaken over a number of years.

The Historic Places Trust controlled the excavation, modification and destruction of Waipoua sites through its authorities and permits system (B23:22-23). In 1986 the trust decided to register sites within the Waipoua forest prior to the imminent disestablishment of the forest service. But due to a breakdown in communications this was done before the list was updated and TRWAAC was consulted (G4:10-12). Over 100 sites were registered including five to which Te Roroa subsequently objected because they were either Maori reserves on Maori land or burial reserves on Crown land. Local people were "greatly disturbed", in fact more so than by all the previous activities of the archaeologists (C7:52). Their anger was conveyed to the trust with a request that the five sites be removed from the register (G4:12). Alex Nathan alleged that repeated written requests and objections made through TRWAAC to have these sites removed, "elicited patronising, insensitive, irrelevant and inaccurate responses and resulted in a three year marathon" (C7:52). In his opinion:

The bureaucratic obstinacy demonstrated over the site register also showed that TRWAAC had little standing in the eyes of the bureaucracy in Wellington and Auckland. (C7:52)

The trust's deputy director, Carol Quirk, gave evidence on the registration process and what happened in the registration of sites at Waipoua. Obviously a mistake was made as the trust intended only to register sites on forest service land. Certainly there was an unacceptable delay on the part of the trust in considering the request for the removal of the sites. However "It was acting in good faith" and "did recognise the sensitivity of the issue". These sites were all eventually removed from the register. The trust conceded there were inadequacies in its procedures which did not provide for consultation with tangata whenua. Its procedures and policies had been revised. She expressed her regret to Te Roroa that the trust's actions caused such distress and noted that future decisions on such matters would be treated in a different manner (G4:13-15).

Counsel for the trust submitted that the tribunal should note the events, not make a finding on this particular aspect of the claim. In Treaty terms, it was more important that deficiencies be owned up to and rectified and this had been done (I3:41). Counsel for the claimants responded that in view of the trust's frank manner, the claimants did not want to take this matter any further (I1(e):121).

The clash over site registration revealed differences in TRWAAC's original kaupapa. This kaupapa included traditional research and forest service short term, management archaeology, and the Historic Places Trust concern with long term, scientific archaeology. These differences were clearly revealed in discussions on future directions for archaeological research in Waipoua.

In 1986, the trust obtained from Dr Ian Smith, Department of Anthropology, University of Auckland, a report on site significance which served to emphasise that logging of trees in exotic plantations should be undertaken only after archaeological investigation and that logging activities should be planned in conjunction with TRWAAC and monitored by archaeologists (B25:48-58). It further obtained from Dr Smith a long term research programme for the Waipoua project (B25:66-98), which in Alex Nathan's view, was concerned solely with archaeological research and as one commentator observed was a "DIG AND RUN" job (C7:61).

Dr Bulmer's views and recommendations on the boundaries of the proposed archaeological reserve and management and conservation work were more far-reaching and anticipated government re-structuring and the establishment of the Department of Conservation and the Forestry Corporation. The whole valley seemed to her "a scientifically and historically valid unit" which should be set aside "as a park as an entire archaeological landscape" although private and Maori land would not be included (B25:59).

The argument that site preservation and protection during logging negated the need for excavation should be opposed: "it would be vandalism not to investigate sites now being damaged or destroyed by forestry operations" (B25:60).

The Forestry Corporation should be asked to present a three-year logging plan that could be revised at regular intervals. A future programme of planting and logging in the rest of the valley would also be needed. The management work should be under the Department of Conservation science unit rather than the Forestry Corporation. This would safeguard the interests of conservation rather than serve commercial enterprise. The trust should retain a strong presence in the valley in TRWAAC and in site management (B25:58-60). All Waipoua land controlled by the forest service should be a historic reserve with a Maori trust in charge of it (B25:61-62).

Te Roroa and forest conservancy archaeologists believed that the trust was losing sight of the original kaupapa.

Tangata whenua concerns about the trust's agenda surfaced at a TRWAAC meeting 18 March 1987 (B22:158-168). Manos Nathan said:

It seems to me that the university will come here and do what they want for three years and then disappear. We will not see them again. (B22:162)

Gracie Kereopa said:

we (the Tangata Whenua) do not agree with the proposal. There are many places in Waipoua that are very sacred to the Maori. (ibid)

When she was asked by a forest service official if she did not want the areas logged she replied:

You are already here now. You are doing a job. My feelings are very strong and I do not want you to do it. (ibid)

Rose Paniora said:

When we first started, it sounded really good to Tangata Whenua; we were all behind you, but now some of these promises are being forgotten-like the sites, they have to be cared for. As I was saying, there is a lot of research going into it but it is going to other people. (B22:163)

Manos Nathan added:

We can go back to what dad (Ned) said about 'presenting the sites with dignity' and all that. Nothing of this has been addressed by Ian Smith's proposal

... We have a good relationship with [the] Forest Service (FS)-and ... with the transfer to the Department of Conservation (DOC)-we want to carry this on. (B22:164)

Professor Anderson, chairman of the Maori advisory committee of the trust, concluded that "the shoal on which the [Waipoua Archaeological] Project first grounded" was the initial management plan (G5:5). This took approximately 15 months longer to produce than expected and increased the proposed reserve to about 645 ha. The objectives of the three parties differed, the differences were not resolved and the project could not proceed with a unified vision. Furthermore the emphasis gradually shifted from the investigation and management of the archaeological sites to concern for traditional sites.

Government re-structuring led to:

a period of settling in which was marked by disagreement over administrative arrangements and lines of command, by conflicts of professional views about archaeological objectives and methods and by the expression of personal anxieties. (G5:13)

As these conflicts were, "to some extent, worked out in meetings of the TRWAAC", the progress of the Waipoua project inevitably suffered. Tangata whenua found this behaviour "undignified and distasteful" (ibid).

He did not think the difficulties and lack of progress were caused by particular actions or failures to act by the trust's board or archaeology committee. Some decisions (for example site registrations) were ill-advised. There were similar failures by forest service archaeologists. Within TRWAAC there was the failure to set an agreed course at the beginning, misunderstanding of Ian Smith's research proposals and:

the demand for a level of autonomy in decision-making which no government body charged with statutory responsibilities, such as the HPT, could concede...(G5:13)

In our view this is the heart of the matter; therein lies the rub. Because of the Crown's reluctance to enter into a true Treaty partnership with Te Roroa in TRWAAC, the Waipoua archaeological project foundered.

"THE DESTRUCTION OF HERITAGE"

6.5.7 Throughout the years of uneasy experiments in partnership between the Crown and Te Roroa in TRWAAC, wahi tapu on Crown land and general land in Maunganui and Waimamaku as well as Waipoua were being damaged and destroyed through public works, farming operations and general public access to scenic reserves. Names of these places and other particulars were summarised in the closing submissions of counsel for the claimants (I1(e):80-102).

Foremost among those at Maunganui was Maunganui Bluff, a historical and archaeological site of great importance to Te Roroa. Te Roroa claim that the top of the Bluff was once the site of a whare wananga and that the Crown constructed a radar station and subsequently installed telecommunications equipment on or near the site without their consent thus desecrating the wahi tapu. They further claim that the Hobson County Council created a public scenic reserve on the Bluff which gave all people unrestricted access to the wahi tapu (A1(i):20-21; I1(e):80-85). They have also expressed their concern about the Lands and Survey Department leasing the Maunganui Bluff scenic reserve for grazing purposes and the impact this has had on their ancestral lands and sites (C8:47-48, since then grazing licenses have not been reissued).

Crown evidence showed that since Maunganui Bluff was declared a scenic reserve in 1911, it has been public land open to the public for their use and enjoyment (H2:4). Under the 1941 Emergency Regulations giving draconian powers to the Crown for defence purposes, an airforce radar station was installed in 1942 and manned by up to 60 servicemen between 1942 and 1945. Under the regulations the land had to be restored to its former condition as soon as practicable after its use for defence purposes had ceased. In 1949, however, the Air Department decided to continue occupying the summit.

In 1955 the department changed its mind and the land set aside for defence purposes was restored to the Maunganui Bluff Scenic Reserve, giving it vehicular access and the right to lay a water pipe line from a creek on adjoining farm land, which was not taken up. The radar station buildings were removed but the concrete foundations and timber platform remained. The latter was declared unsafe and was eventually demolished in 1979 (H2:8-15).

Crown evidence further showed that in 1969 the North Auckland Power board applied for permission to lease a sufficient area of land on the summit for a VHF radio base. The Nature Conservation Council consented. In 1971 the Minister of Lands granted permission and a telecommunications station was subsequently constructed to the east of the summit (H2:16-18). Only the protection of nature, flora and scenery were taken into consideration. There is no evidence that either of the Crown agencies concerned or the power board were aware that the summit of the Bluff was a wahi tapu; nor was the summit officially recorded as an archaeological site (H2:18). For purposes of protection and preservation of existing intrinsic qualities, however, it was classified scenic reserve under the 1977 Reserves Act in 1979 (H2:2-7; I2:(b)(viii):2-3).

In 1982, the New Zealand Police sought and gained approval to establish a VHF radio station by raising the height of the power board's aerial pole. The post office took over the power board's site and replaced the transmitter with a telecommunication station the following year. Again approval was obtained from the Nature Conservation

Council. The Crown researcher said that an attempt was made to seek Maori reaction (H2:20-26). Counsel for claimants said that there was no evidence of tangata whenua being consulted (I1(e):82). No consideration was given to protecting an archaeological site in accordance with the Historic Places Amendment Act 1975.

After construction started, an archaeologist and reserves ranger recorded their concerns about the approval process and lack of consideration of archaeological values (H2:22-23). The Crown's omission seems to have been based on the premise that an already occupied site was being reused (H2:25), and no further destruction would occur (I2:(b)(viii):11):

Prior to 1942 there had been no substantial disturbance of the summit of the Bluff, so there had been no occasion for Te Roroa to feel particularly aggrieved

... [but] the presence of an ablutions block may have been objectionable to Maori spiritual beliefs. (H2:24)

Counsel for the Crown pointed out that there was no officially recorded protest (I2:(b)(viii):7) without mentioning that at the time local men were absent fighting overseas. In respect to complaints about unrestricted access to wahi tapu in the area, the Crown emphasised that none of the exceptions to the general right provided for in the legislation had been invoked (ibid:3). As these more particularly concerned Maori burial grounds, this is hardly surprising.

The Crown submissions did not address the nub of Te Roroa's claim covering the Bluff, namely the lack of any input into the management of the scenic reserve. Our site inspection visit served to demonstrate the derelict state of the summit and the damage caused by opossums. Clearly the Crown and its agencies had failed to carry out their Treaty obligations to protect what is a very special wahi tapu and consult with Te Roroa over its management.

Among the other wahi tapu in Maunganui which claimants allege the Crown has failed to protect, regardless of their archaeological and traditional importance, are urupa and a lake on Manuwhetai, Puketapu pa and Hood's Road pa (A1(i):20-21; I1(e):85-88). The two former wahi tapu are on private land. Modification, damage and destruction of these wahi tapu by developers and land owners highlighted the inadequacies in the historic places management system (C8:46-49).

Puketapu pa had unique visible features and local tangata whenua understandably felt its scarring by the bulldozing of tracks was "a deliberate and direct attack on this site" and on them (B22:251). We understand that it may have been originally known as Kahikatoa.

The scarring of Puketapu occurred in the course of departmental restructuring and the re-defining of the trust's responsibilities. Dr Bulmer conceded that the delay over the landowners application "was caused by a series of errors and failures" by certain individuals (H15:103). Counsel for claimants submitted that the Crown must bear the ultimate responsibility for its scarring having Treaty and statutory obligations to protect taonga and archaeological sites respectively (I1(e):88).

At Manuwetai the landowner bulldozed tracks, destroyed recorded sites, modified traditional burial places and constructed a track through the lake without Historic Places Trust authorities.

Hood's Road pa on Ministry of Works land was completely destroyed for rock quarrying. The engineer who obtained the necessary authority from the trust is a member of the regional committee of the trust (C8:45-46; I1(e):86).

In Waimamaku, the named wahi tapu that claimants allege the Crown failed to protect in accordance with its treaty and statutory obligations were Te Moho, Kohekohe, Piwakawaka, Kukutaepa and Te Rereapouto within Kaharau and Kaiparaheka, Whangaparoa and Te Pure outside Kaharau (A1(i):46-48).

In addition to the desecration of burial caves at Kohekohe and Piwakawaka the following actions were particularised:

The recent proposal of the Crown to exchange Te Moho [which is privately owned land] for other Crown land in the area for the purpose of using Te Moho as a public picnic area contrary to the wishes of nga hapu o Waimamaku. (ibid:47)

The proposed straightening of state highway 12 is to run alongside Te Moho.

The Crown permitted Piwakawaka to be used as a site for a television transmitter (I1(e):90). A portion was being used by the landowner as a quarry (ibid-interpolation). Part of Kaiparaheka, an old pa site and burial ground, was dedicated by the Crown as the Waiotemarama scenic reserve and subsequently administered by a local authority without the consent or involvement of the tangata whenua. The Crown had reduced the area of the reserve for use as compensation to the adjoining landowner for land taken for roading. The rest of Kaiparaheka was sold to private owners. Only two of the three peaks in the old pa site were reserved.

The Historic Places Trust gave retrospective permission to the Department of Conservation to bulldoze part of the area (for fencing) which damaged the pa site (A1(i):48; I1(e):89-90). To these wahi tapu counsel for claimants added Pakiri (I1(e):91). This was an old and registered pa site above Wairau river damaged by bulldozing during the 1980s. No evidence was given of the Crown's failure to protect Kukutaepa (not part of the claim area), Te Rereapouto, or Whangaparoa. As we have seen Te Pure was buried by shifting sand.

The claimants listed 42 wahi tapu, most of which are in Waipoua, where acts by or on behalf of the Crown in forestry development were responsible for their partial or complete destruction (A1(i):35-36). Counsel for the claimants instanced desecration and destruction of Whangamoia, Waiaraara and Haohaonui caused by pine plantings (I1(e):94-97). Crown evidence from Dr Foss Leach confirmed that the forest service did a great deal of damage to important archaeological resources by planting pines on them (H5:77). Dr Susan Bulmer, an Historic Places Trust and more recently Department of Conservation Archaeologist, said that the forest service and private forestry companies were even larger destroyers of archaeological sites than the Ministry of Works or other developers (H15:41). Claimants' counsel submitted that we were entitled to find that significant changes had been done to wahi tapu in

Waipoua as a result of forestry activities over the years (I1(e):101-102). We do so find.

He further submitted that legislative structures currently in place have not actively or adequately protected the wahi tapu of Te Roroa (ibid). We shall now examine these structures.

GOVERNMENT RESTRUCTURING: TE PAPA ATAWHAI (DEPARTMENT OF CONSERVATION)

6.5.8 The State-owned Enterprises Act 1986 objective "to promote improved performance in respect of Government trading activities" led to major government administrative reforms in 1987. The Department of Conservation (Te Papa Atawhai) was established to integrate the environmental functions of the forest service, lands and survey, the wildlife service and other departments (G8:2). The commercial activities of the forest service and lands and survey were corporatised. Forest service members of TRWAAC were replaced by members from the Department of Conservation and the Forestry Corporation, later its subsidiary Timberlands.

In Waipoua, Crown lands planted in exotic forests were allocated to the Forestry Corporation and Timberlands. Conservation lands were allocated to the Department of Conservation. {FNREF:0-86472-088-2:6.5.8:19}

Following Te Roroa representations that the Waipoua exotic forest should not be included in the government's programme of forest asset sales, the Minister of State-owned Enterprises, on 9 March 1989, advised that the forest would be withdrawn from the current assets sales programme. This decision, however, would be reviewed after the Waitangi Tribunal had made its deliberations, or during 1991 if the tribunal had not by then considered the issues (B14). {FNREF:0-86472-088-2:6.5.8:20}

Under s6 Conservation Act 1987, the administration of the Historic Places Act 1980 was transferred from the Department of Internal Affairs to the Department of Conservation. Under s43 Historic Places Act, the department became responsible for maintaining the archaeological site register. Following a cabinet directive, forest service and trust archaeologists were transferred to the science and research directorate of the Department of Conservation but continued to service the trust. The department was given representation on the trust board (G3:12; F3:2-3).

The Department of Conservation initially operated through eight regions. The claim area was in the northern region which was divided into four districts, each with a district officer and field station. Waipoua forest was a field station in the Kaikohe district. The regional archaeologist and archaeology unit was housed in Auckland and one of its archaeologists was stationed in Whangarei (F3:2-4). Following a review of the department, by independent consultants in mid-1988 "to optimise management efficiency and to increase conservation outputs", substantial restructuring occurred (G8:2). Fourteen conservancy offices were established from the eight regions and 34 districts. The claim area was now in the Northland Conservancy with its headquarters in Whangarei (G8:3). The regional archaeology unit was also restructured, three positions being created to service the Northland Conservancy (F3:4; F7:16).

The Conservation Law Reform Act 1990 disestablished a number of parks and reserves boards, advisory committees and the like and replaced them with the New Zealand Conservation Authority and local conservation boards. Two of the members of the authority were to be appointed by the Minister of Conservation after consultation with the Minister of Maori Affairs (F3:24-25). {FNREF:0-86472-088-2:6.5.8:21}

In Tai Tokerau, the Waipoua Forest Sanctuary Advisory Committee was among the quangos disestablished (F3:24). The regional conservator, John Halkett pointed out that the future role of TRWAAC, and its successor, would need to be debated between the Northland Conservation Board and Te Roroa (G8:11).

Following restructuring, conservation management strategies and plans were prepared "to implement general policies and establish objectives for the integrated management of natural and historic resources ... managed by the Department" (G8:20). Initial work commenced in Northland and Halkett anticipated that a more detailed plan for all or part of Waipoua might be prescribed (G8:25-26).

The deputy regional manager, Ross Hodder, explained that a draft Northland state forest park management plan including the Waipoua Forest Sanctuary, which had been prepared before restructuring, had made no further progress because resources were limited and deflected. Day to day management of the Waipoua State Forest continued without a plan. A consequence of this was the establishment of a shop, a camping ground and rental housing for tourists at Waipoua Forest Headquarters without management approval being required. This nipped in the bud Te Roroa ideas of using the camp as a health centre (F3:26-31). The Conservation Law Reform Act 1990 required a plan to be produced within five years.

Piri Sciascia pointed out that the Department of Conservation does not have a defined policy for protection and management of wahi tapu on the conservation estate. Each conservator had to develop local remedies to most local situations. A general policy would enable the department better to meet its commitment to "give effect to the principles of the Treaty of Waitangi". An acceptable policy could only be achieved by including iwi in existing mechanisms which would be acceptable to both iwi and the Crown. That was the path the department proposed to follow (H14:6).

He further pointed out that options were available to the department upon which wahi tapu policy provisions could be based. These were the Historic Places Bill, the Resource Management Bill in preparation and s17B of the 1990 Conservation Law Reform Act. A preferable course of action would be one which incorporated a combination of options (H14:7-9).

"Waahi Tapu", he said "is a Maori concept, and the knowledge held at whanau or hapu level, [and] the identification of such places is a Maori responsibility" (H14:7).

TOWARDS NEW LEGISLATION FOR POUHERE TAONGA (NEW ZEALAND HISTORIC PLACES TRUST)

6.5.9 In December 1988 the Minister of Conservation issued a document called "Historic Places Legislation Review-Issues for Public Comment" which raised a

number of questions with regard to "the Maori dimension". These referred specifically to the Historic Places Act 1980 and the extent to which new legislation should give recognition to Maori values in historic places.

One of the first priorities for the new trust director, Geoffrey Whitehead, was to help develop a statement of policy on behalf of the board. The section referring to Maori concerns was considered and approved by the Maori advisory committee (G3:5-6).

The board said the new legislation should:

- incorporate recognition of the Treaty of Waitangi;
- acknowledge the principle of the tangata whenua, and the Trust's developing role as bi-cultural kaitiaki (guardian) of the nation's historic heritage;
- recognise the cultural diversity within New Zealand;
- be more relevant to the present and future needs of the whole nation; ...
- ... continue to bind the Crown. (G3(a):app 2)

Furthermore the board believed that "the Maori people should feel that the Act is as relevant to their needs as it is to Pakeha needs" (ibid).

Trust evidence clearly showed that changes in these directions are under way (G3:8-15). For example, it has a Maori name, Pouhere Taonga. It is identifying, recording and protecting Maori archaeological sites, and is helping Maori protect their traditional sites.

Two additional Maori members have been appointed to the board. Standing committees have been disestablished and the Maori heritage committee has been set up. Provision has been made for Maori tribal authorities to appoint one member on each regional committee of the trust. Staff positions now include a Maori programmes officer, a Maori sites officer, and a Maori buildings conservator. The principle of consultation with tangata whenua was re-affirmed in a board resolution on 19 April 1990. The director concluded that the trust now has "the machinery to consult widely with the tangata whenua as it develops its policies" (G3:7-15).

EFFECTS ON THE GROUND

6.5.10 Two issues were uppermost in Te Roroa's mind when the new director-general of the Department of Conservation, Ken Piddington attended a TRWAAC meeting on 5 November 1986 to learn about and discuss the Waipoua Archaeological Project; first, would TRWAAC become a statutory body or not (B22:127-128){FNREF:0-86472-088-2:6.5.10:22}; secondly, how were sites on land being transferred from the forest service to the Forestry Corporation going to be protected (B22:134)?

Piddington gave TRWAAC an undertaking that the project would not be lost sight of during government re-organisation (B22:129). The most pressing thing was to get a commitment from the Forestry Corporation to carry on existing arrangements on its

part of the proposed archaeological reserve. The legislation was designed "to set commercial operations free from constraints", but in practice, constraints did operate (B22:132). TRWAAC could have his immediate assurance that the area of the proposed reserve allocated to his department would be treated "as if it were an archaeological reserve" until the reserve was established (B22:130). The department was concerned with the obvious things like national parks and historic places; also "with the texture, the feel and the identity of the land" they all lived in. The problem was this would "turn out to be a very big fish, and to pull in a big fish you need a strong line". Whoever was responsible for Waipoua would be told his duties were to relate to TRWAAC and to tangata whenua. The question of a statutory base for TRWAAC was one he could not answer. It would be sorted out when they looked at the whole range of advisory and management committees around the country (B22:132-133).

Beginning in 1990, a number of boards and advisory committees were dis-established and local conservation boards set up (F3:53-55). The future of TRWAAC still remains in limbo. Perhaps one of the reasons is that Te Roroa is only a little fish on a weak line!

Since June 1988, when the resident Waipoua archaeologist, Michael Taylor was transferred to Kaikohe, Timberlands has employed Ngatio (Joe) Kereopa for site surveying and mapping, the supervision of logging, and site restoration and clean-up. He was assisted by a specialised logging team (F8:2-7). This work has been funded on a cost recovery basis. Joe Kereopa had had 21 years of experience in exotic logging and assisted Michael Taylor. Technical supervision was provided by Joan Maingay, the department's district archaeologist from Whangarei (F10:1-2, 8).

A site visit to the recently logged site of Te Kopae, a wahi tapu of great importance to Te Roroa, demonstrated to us that sites can be logged without damage to stone features, and that earlier surveys and maps can be much improved for this purpose. To quote Joan Maingay:

the essential pre-requisite for site management is adequate site survey and mapping. Recent work has shown that this was not fully achieved during the Forestry Service regime. (F8:7)

Joe Kereopa concluded from his experiences,

Archaeological priorities in the Waipoua have to be the logging of the sites to clear them of trees before they reach maturity, especially in compartments ... which contain steep slopes with many stone features

... next ... to teach some of the younger Tangata Whenua the practical logging skills needed to be able to fully participate in the planning and methods adapted to each archaeological situation. (F10:9-10)

Joe Kereopa's work indicated that the extent of sites in the valley is much greater than originally realised. The Department of Conservation stated that:

Until a more complete survey is carried out it is premature to go through the lengthy and expensive process of surveying a reserve, which is likely to be larger than originally proposed. (H46:8)

Te Roroa's concern over problems and uncertainties about TRWAAC and the Waipoua Archaeological Project was reflected in questions raised by counsel for claimants with respect to Department of Conservation evidence (F21-F25). Foremost amongst these questions are, will the Department of Conservation maintain its commitment to establish the proposed trust and archaeological reserve, and will there be greater consultation and power-sharing and adequate funding?

In response the Department of Conservation indicated that it was aware that s439 Maori Affairs Act 1953 could be utilised to create an archaeological reserve. It was, however, "not confined to any specific requirement to retain Crown ownership of the land". Once it was clear on the extent of the proposed reserve, all the available options could be assessed. A reserve could not proceed until land allocations between it and Timberlands had been resolved. The government was reluctant to establish more statutory authorities. The claim itself created uncertainty over land management and it was awaiting the Waitangi Tribunal's report before assessing all the options (H46:7-8).

The department acknowledged that "mere consultation" was not acceptable. It was "only the first stage toward the path of full and active involvement in the management of archaeological and traditional sites". The department anticipated moving on from consultation and accepting that Te Roroa were the appropriate kaitiaki of traditional and archaeological sites at Waipoua. It anticipated that the Waitangi Tribunal recommendations would provide fuller direction for the development of a partnership model and joint management processes. Nonetheless it acknowledged that these recommendations would be subject to the government's decisions and that a political commitment would still be required to implement them (H46:25-26).

It accepted that specific funds were required to meet its Treaty obligations and had already provided for a Treaty issues unit within its head office. It has also developed processes through funding at a conservancy level for a Maori dimension to its conservation work and for utilising Maori expertise and knowledge. Associated with this process was the development of the kaupapa atawhai unit and employment of iwi liaison officers (H46:24). "Funding limitations and other Departmental priorities continue to exist however." Its present objective was "to consolidate and evaluate current initiatives before considering an expansion of the Treaty Issues Unit" (H46:25).

While these responses seem fair and reasonable on paper, they still have to be translated into effective action. The claimants allege that the Department of Conservation and the Historic Places Trust have omitted to establish and state a formal archaeology policy in accordance with the terms and principles of the Treaty. They also allege that they have failed to implement systems of accountability to Te Roroa in their archaeological practices. Tikanga Maori and Te Roroa control of its physical and spiritual heritage should prevail (A1(l):38).

The assistant director-general of the Department of Conservation admitted his department did not have a defined policy for the protection and management of wahi tapu on the conservation estate. Each conservator had to develop local remedies to meet local situations (H14:6). The regional conservator, on the other hand, said the department was working towards such policies and that it was not appropriate for each region to develop its own policy (H39:2). Counsel for the Crown emphasised the magnitude of change the department had to accommodate (I2:(b)(viii):41). {FNREF:0-86472-088-2:6.5.10:23}

The district conservator proposed a planning structure based on ecological districts, which meant that planning for Waipoua forest would be encompassed within a Tutamoe ecological district management plan (F6:app 8). This was overtaken by the Northland National Parks and Reserves Board proposal for a preliminary investigation of a kauri national park for Northland (F5:50-52). While it was:

well recognised at all levels that a considerable amount of consultation would be required with the tangata whenua as well as other interested people and organisations in Northland if the park proposal was to proceed with any certainty. (F5:52)

it was unclear what form consultation would take. At a TRWAAC meeting:

M[aori] Marsden said there were obvious economic benefits but he felt very cynical about the proposal as tangata whenua concerns were usually overwhelmed. He doubted the credibility in terms of consultation and thought that tangata whenua should have much more say in the proposal. The people involved must have an understanding of Maori ways, consultation and representation if it is to succeed. (B22:285)

In the event the lack of consultative procedures, denying tangata whenua any real input, justified his criticism. Nga taonga o Te Roroa Kore rawa i arohia ma e te Karauna (the Crown shows no sympathy).

The early relationships between Te Roroa and the Department of Conservation indicate that the difficulties in TRWAAC which counsel for the claimants attributed to the failure of the parties to deal with the real power issues at the outset are being repeated. For Te Roroa it is not enough simply to be informed and consulted. They want real decision-making power over their own taonga.

There are a number of contradictions in the Department of Conservation's and Historic Places Trust's evidence which point to their simply not knowing what to do. On the one hand it is acknowledged that wahi tapu are "a Maori concept" and that Te Roroa are the appropriate kaitiaki of traditional and archaeological sites at Waipoua. On the other hand, they are looking to the development of a partnership model and joint management processes. They are awaiting our report before assessing all their options.

Wahi tapu are taonga of Maori, acknowledged as such in article 2 of the Treaty. The role of the department and Historic Places Trust in the "partnership" is not a decision making role or being "included" in what is not theirs. Rather, it is to assist Te Roroa by the provision of services and advice when they are sought, to enable them to

protect and care for the wahi tapu. The department seems reluctant to establish TRWAAC as a statutory body. Whilst it has acknowledged that an archaeological reserve could be created under s439 Maori Affairs Act 1953, there was no evidence that it has investigated this procedure as a suitable means for administering wahi tapu. We commend this option to both the department and the trust. Maori reservations can be set aside on both general (European) and Maori land under s439, and, upon application by the Minister of Maori Affairs, on Crown land under s439a. After hearing an application the Maori Land Court recommends to the chief executive of the Ministry of Maori Development that the land be set aside as a Maori reservation and when gazetted, the court appoints trustees to administer it. The trustees may, for example, be the same trustees who administer the marae to which the place is of significance. By s11 Resource Management Act 1991, setting aside a Maori reservation does not constitute a subdivision. The Minister of Maori Affairs may also apply under s439a to have any land, including Crown land, set aside as a Maori reservation.

The benefits of the procedure under the Maori Affairs Act 1953 are numerous. First, the reservation can be achieved inexpensively, and for the purposes of the court, does not require survey. If so desired, it does not need to be identified by any plan at all. There are no specific requirements in either the Maori Affairs Act 1953 or Maori Land Court Rules as to how a Maori reservation should be described. Moreover, since the Maori Language Act 1987, the gazette notice may be in Maori, setting out, within the community's own traditions, where the wahi tapu is located by reference perhaps, to a journey in going to the place, and traditional landmarks such as rocks and trees, which may be known to them by name. Should access be required, the court may grant an easement with equal informality.

For owners of general land, compensation may be discussed during the court hearing. For people dealing with the land, for example, if it is on the market, the Maori reservation's existence will be noted by the registration on the title of the gazette notice and order creating the easement.

The most important benefit to Maori in this procedure is that the whereabouts of the wahi tapu need only be a matter between the landowner and themselves. In the relative privacy of the Maori Land Court, without fanfare to the public to whom the matter is of no particular interest, places of significance to Maori can be protected in accordance with their traditions and with a minimum of expense.

There is only one problem with this procedure. Some, but not all, district land registrars require the deposit of a survey plan before registering the gazette notice. We see no necessity for this as a Maori reservation is not a subdivision. With the removal of this bureaucratic obstacle, we consider the procedure provided in the Maori Affairs Act 1953 is well suited to the administration of wahi tapu.

To provide the services necessary for Te Roroa to administer and protect the wahi tapu, liaison officers of the Department of Conservation and the kaupapa atawhai unit already exist without the need for an additional statutory authority. {FNREF:0-86472-088-2:6.5.10:24} We agree with the department that "mere consultation" is not enough, but rather PARTICIPATION by Maori is essential. We have heard evidence that in the past, appointments have been made to Department of Conservation

organisations by casual, informal contact within a network of friendly advisers in the Maori community. We consider this unsatisfactory. Such appointments lack the support and confidence of the community whose perspective the appointee supposedly represents, leaving the community in ignorance both as to the functions of the organisation and whether their perspective is in fact being represented. We are in no doubt that this lack of representation has been the principal cause of the antagonism towards the Department of Conservation and the Historic Places Trust which was apparent at the hearings.

For the Maori community's representatives to be able to participate, these organisations must be hospitable to Maori organisational concepts. Flow charts were produced in evidence illustrating hierarchical structures (F7:app D). The vertical lines of authority as represented in the flow charts resemble brittle stick insects. The inflexibility of structures which isolate individual authority conflict with Maori concepts of fluidity between interacting groups, accepting collective responsibility.

The Department of Conservation, Historic Places Trust and Te Roroa should reopen their discussions in a spirit of goodwill and cooperation.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

06 Taonga (Sacred Treasures)

6.6 The Resource Management Act 1991 and the Protection of Wahi Tapu

6.6. The Resource Management Act 1991 and the Protection of Wahi Tapu

Shortly before the conclusion of the hearing of the claim, the Resource Management Bill was referred to a parliamentary select committee. In the evidence of the assistant director-general of the Department of Conservation, the Act was suggested as an option available to the department for the protection of wahi tapu on the conservation estate. The claimants put the Bill in issue in the claim, alleging that, with particular reference to wahi tapu, it would result in further violations of their rangatiratanga. After the hearing they filed further written submissions (I6(d)). Subsequently, on 1 October 1991, the Resource Management Act 1991 came into force. Part VIII of the Act provides for the establishment of heritage protection authorities. These authorities must be bodies corporate which have an interest in any "place" requiring protection. Notice is given by an heritage protection authority to a territorial authority of its requirement for a heritage order. Information describing the place and surrounding area is to be provided. Public notice of the requirement is then given and a hearing held at which submissions are presented. The territorial authority may then confirm the requirement with such conditions as it thinks fit. The owner of the land on which the "place" sought to be protected is located, may apply to the Planning Tribunal for it to be purchased and the costs incurred by the Crown are recoverable from the heritage protection authority.

There are a number of issues to be considered. First, the requirement that a heritage protection authority be a body corporate, is contrary to traditional Maori concepts. A "place" requiring protection for Maori is likely to relate to a community or hapu rather than an iwi. The cultural focus of such a community will be a marae or a number of marae which will be administered by trustees appointed by the Maori Land Court under s439 Maori Affairs Act 1953. Whilst the trustees have authority by way of an order of the court, they do not constitute a body corporate.

Secondly, the information to be given to the territorial authority is likely, by disclosing its whereabouts and significance, to violate its tapu. Whilst s42 of the Resource Management Act 1991 provides for the protection of sensitive information and refers specifically to wahi tapu, the disclosure to the territorial authority alone, and publicity given to seeking its protection, would cause serious offence to Maori values. Subsequent scrutiny at a public hearing would be a further indignity to a wahi tapu.

Thirdly, the hearing of an application for compensation by the landowner would cause yet further offence to Maori.

It is important to remember that wahi tapu are very personal to the people to whom they are significant. Any exposure takes the tapu out of the wahi tapu. Privacy is an ingredient in the "undisturbed possession" of taonga and any intrusion is a trespass.

The only reference to Maori of heritage orders may be situations where a place is of significance to both Maori and Pakeha. As previously discussed, the Maori reservation procedure under the Maori Affairs Act has found general acceptance among Maori in respect of their own land.

To fulfil its obligations under the Treaty, we do not consider that the procedure under the Resource Management Act for the creation of heritage protection authorities is an option to be adopted by the Department of Conservation. We accept the claimants' submission that it would be a violation of their rangatiratanga. As outlined above, the administration by a corporate body of wahi tapu, which are at the very heart of Maori culture, conflicts with Maori tradition. Whilst the Act refers to "iwi authorities", a concept assumed to be a traditional Maori concept, they are not necessarily accepted by Maoridom as such. Following the repeal of the Runanga Iwi Act 1990, just what is meant by "iwi authority" is uncertain.

Heritage orders are essentially instruments of local government and the resource management process. In the past, Maori, especially in Northland, have had only minimal involvement in town planning and local government generally. Whatever the reason, there is undoubtedly a fear by Maori that under the new Act their concerns will not be met, giving rise to the submission:

Legislation must also provide an assurance that wahi tapu will be positively protected where land use proposals relate to land in or around a wahi tapu. (I6(d):2)

This submission raised issues beyond the administration of wahi tapu only, but also the use of neighbouring land in a manner which may conflict with Maori cultural values. It begs the question of Maori involvement in the resource management process and whether Maori cultural values are recognised and provided for in the Act. On account of the Act not having been passed into law prior to the conclusion of the hearings, we have not received evidence on this issue. Accordingly, we have not dealt with the matter in the report itself, although we have provided a discussion in appendix 5 in relation to the fragmentation of Waipoua No 2 block.

Finally, the claimants also raised questions concerning the Historic Places Bill. At the time of writing our report, this Bill had not been available for us to consider.

REFERENCES

{FNTXT:0-86472-088-2:6.1:1} 1 Section 27D of the State-owned Enterprises Act 1986 defines wahi tapu as "land of special spiritual, cultural, or historical tribal significance". Tutenganahau Paniora indicated the different kinds of wahi tapu at Waipoua (I1(e):53-58).

{FNTXT:0-86472-088-2:6.1:2} 2 On the claimants' concept of mana whenua see above, pp 49-50. In s2 Resource Management Act 1991, mana whenua has been defined as "customary authority exercised by an iwi or hapu in an identified area".

The special relationship of the Maori to this land has already been recognised in the decision of the Court of Appeal in *EDS v Mangonui County* (1989) 13 NZTPA 197 regarding section 3(1)g of the Town and Country Planning Act 1977. This section provided that regard should be had in the administration of the Act to the relationship of the Maori people and their culture and traditions with their ancestral land. The court held unanimously that the term "ancestral land" was not restricted to land in Maori freehold title but included land which had been alienated to non-Maori.

{FNTXT:0-86472-088-2:6.2:3}3 That taonga have both a tangible and intangible mauri has been recognised by the Waitangi Tribunal in several reports. See for example the Report of the Waitangi Tribunal on the Manukau Claim (Wai 8) (Wellington, 1985) pp 38, 57, 95

{FNTXT:0-86472-088-2:6.2:4}4 The Maori view of the power of taonga is not unique. For example, it parallels in many ways the anguish of the Aymara community of Coroma, Bolivia, who seek the return of sacred textiles which have been "removed" (stolen) from their community since the 1970s. These objects link the ayllus (lineages) of the Aymara to the cosmology, sacred geography and powerful guiding spirits of their ancestors. Through their ayllus, the Aymara are linked conceptually to the past and to specific geographic features that mark Coroma territory; to a sense of history, as well as to a sense of future continuity (Susan Lobo "The Fabric of Life - Repatriating the Sacred Coroma Tiles" in *Cultural Survival Quarterly*, summer 1991, Cambridge, Massachusetts, p 40)

{FNTXT:0-86472-088-2:6.3:5}5 Ann Salmond "Nga Huarahi o Te Ao Maori: Pathways in the Maori World" *Te Maori: Maori Art from New Zealand Collections* ed S M Mead (Auckland, 1984) p 137

{FNTXT:0-86472-088-2:6.3:6}6 J O C Phillips "Musings in Maoriland-or Was There a Bulletin school in New Zealand", *Historical Studies*, vol 20, no 81, University of Melbourne, October 1983, pp 527-534

{FNTXT:0-86472-088-2:6.3:7}7 Maori antiquities were defined in the Act as "Maori relics, articles manufactured with ancient Maori tools and according to Maori methods, and all other articles or things of historical or scientific value or interest and relating to New Zealand".

{FNTXT:0-86472-088-2:6.4:8}8 For information on the dog tax rebellion we are indebted to the historian Angela Ballara, *Dictionary of New Zealand Biography* Unit, Department of Internal Affairs. One hundred and twenty armed troops had marched from Rawene to Waima, a British warship had anchored off Rawene, and Hone Toia and 15 others had been tried and imprisoned for conspiring "to levy war against the Queen in order to force her to change her measures".

{FNTXT:0-86472-088-2:6.4:9}9 Blomfield's subsequent career as a solicitor in the Bay of Islands and purchaser of thousands of acres of Maori land for considerably less than the government valuations, suggests that he acted out of expediency rather than out of genuine sympathy for Maori feelings about their taonga (see Tokerau District Maori Land Board files 1912/744 and 1912/745).

{FNTXT:0-86472-088-2:6.4.3:10} 10 This whakatauki can be literally translated as: The miro berry cannot fly to pigeon but the pigeon flies to the miro berry. Its symbolic meaning is: The man requiring knowledge must go to the source of that knowledge. The source cannot go seeking the man.

{FNTXT:0-86472-088-2:6.4.7:11} 11 Manos Nathan "was not impressed with the manner in which they were stored. Each waka was on a tray with a thin hardboard base which lay in a damp concrete floor beneath a large two tier rack covered with wooden weapons." He found it difficult to examine the taonga as it was necessary to get on his knees to slide the trays out from beneath the racks. He found that some time between 1985 and 1987 at least one of the waka had been damaged. "The head of ME 1794 had been broken off the body of the waka." He made these observations because he had heard Pakeha officials comment that Maori did not have the skills or resources to adequately care for their taonga. Whilst seemingly officials did have the facilities, resources and personnel to do the job, they obviously did not always succeed (D13:2).

The Crown researcher concluded that the wakatupapaku had been damaged before 1983. Lady Fox had observed that the head was broken. Possibly it had been broken before 1913, as Museum staff claimed that a photograph taken prior to that date showed the break (H4:95). He also concluded, from information he had received from the executive director of the board of trustees, "that temperature and illumination conditions are satisfactory, but that relative humidity is slightly above the ideal range" and was therefore "satisfactory" (H4:96).

{FNTXT:0-86472-088-2:6.5.3:12} 12 Norman Smith Maori Land Law (Wellington, 1960) p 195

{FNTXT:0-86472-088-2:6.5.3:13} 13 The Historic Places Act 1954 established the trust as an independent statutory body with its own board of trustees. It is serviced by a government department (the Department of Internal Affairs then the Department of Conservation) and is partly funded by government, currently about one third from the Department of Conservation, one third from members' subscriptions and admissions to properties, and one third from the Lottery Grants Board. Its chairperson and some of its board members are appointed by the minister and it reports annually to Parliament (G3:7, 9, 13). Counsel for the New Zealand Historic Places Trust submitted that it is "not the Crown but a separate legal entity" (G1:6). For the purposes of this claim, we regard it as an agent of the Crown.

{FNTXT:0-86472-088-2:6.5.3:14} 14 The New Zealand Archaeological Association is a voluntary organisation whose members are professional archaeologists and enthusiastic amateurs.

{FNTXT:0-86472-088-2:6.5.3:15} 15 An archaeological site is defined in the act as:
any place in New Zealand ...

(a) Which was associated with human activity more than 100 years ago; or

(b) Which is the site of a wreck of any ship, boat or aircraft where that wreck occurred more than 100 years ago,-

and which is or may be able, through investigation by archaeological techniques, to provide evidence as to the exploration, occupation, settlement, or development of New Zealand, being evidence which could not otherwise be made available for scientific, cultural, or historical studies.

{FNTXT:0-86472-088-2:6.5.3:16} 16 Maori Association is defined in the act as including "a Maori Committee, a Maori Executive Committee, a District Maori Council, and the New Zealand Maori Council".

{FNTXT:0-86472-088-2:6.5.3:17} 17 Section 2 of the Act defines a traditional site as "a place or site that is important by reason of its historical significance or spiritual or emotional association with the Maori people or to any group or section thereof". The wording was taken from s439a of the Maori Affairs Act 1953 (inserted by s60 Maori Affairs Amendment Act 1974 as suggested by the Department of Maori Affairs staff) (G6:3).

{FNTXT:0-86472-088-2:6.5.4:18} 18 Alex Nathan evidenced several examples in the early 1980s of the Crown's failure to abide by or enforce the provisions of the 1980 Historic Places Act. An area across the river from Matatina was cleared and most of the 19 or more archaeological sites were modified or destroyed. Planting in that area, which included the ancient track between Waipoua and Haohaonui, was carried out without authorities required by s46 (C7:49).

{FNTXT:0-86472-088-2:6.5.8:19} 19 These included the Waipoua Forest Sanctuary, the proposed archaeological reserve, the six acre Haohaonui wahi tapu historical area gazetted in 1984 and the kauri management and research area of the Waipoua forest set apart and gazetted in 1986 (F3:7-20). For more detailed Crown evidence from the Department of Conservation on land allocation, see F11.

{FNTXT:0-86472-088-2:6.5.8:20} 20 This decision was in accordance with s9 State-owned Enterprises Act which states that nothing in the Act shall permit the Crown to act in a manner which is inconsistent with Treaty principles. Following the decision of the Court of Appeal in *New Zealand Maori Council v Attorney General* [1987] and an agreement reached between the Government and the New Zealand Maori Council in 1987, the Treaty of Waitangi (State Enterprises) Act 1988 was passed empowering the tribunal to make binding recommendations on land grievance claims which relate in whole or part to land or interest in land vested in a state-owned enterprise.

{FNTXT:0-86472-088-2:6.5.8:21} 21 Mandatory Maori representation was provided on local conservation boards encompassing Tongariro, Whanganui and Egmont national parks but not explicitly on other boards. Nevertheless the Minister of Conservation had a statutory obligation to consult the Minister of Maori Affairs before making any appointment representing the interests of tangata whenua of an area (F3:25). Piri Sciascia gave evidence that further Maori involvement in conservation policy development had been increased with recent appointments of three Maori to the New Zealand Conservation Authority and 68 variously appointed to 17 conservation boards. Together with iwi liaison work this gave the Department "the potential to increase the degree of responsiveness which it can bring into effect in its work with iwi" (H14:5).

{FNTXT:0-86472-088-2:6.5.10:22}22 Under s56 Conservation Act 1987, the minister could appoint advisory committees, members of which were entitled to receive remuneration for their services and travelling expenses. The claimants say they requested formal status for TRWAAC under this section but the need for the committee was queried and never acted upon (C8:16). Documentary evidence confirms this. On 20 July 1987, the Kaikohe conservator suggested TRWAAC's position be formalised. "Its value", he wrote, "has been in building bridges between Tangata Whenua and the other organisations". Archaeological protection work within the historic reserve would need an overview for at least three years and a good deal longer if the department and tangata whenua decided on the "restoration/interpretation of sites". A minute from the regional manager, Auckland reads: "Should not this wait for the 1988 Quango review? I agree the Committee is needed, but does it have to be formalised" (B25:137).

{FNTXT:0-86472-088-2:6.5.10:23}23 Options for the department in developing a wahi tapu policy were the proposed Historic Places Bill, s17B of the Conservation Law Reform Act 1990 and provisions of the Resource Management Act 1991 (see H14:7-9).

{FNTXT:0-86472-088-2:6.5.10:24}24 The claimants in their submissions (I6(d):7) have suggested that the Maori Heritage Protection Committee within the Historic Places Trust "should be elevated to carry out its own protection functions in its own right with its own budget". This may be a suitable means for co-ordinating the provision of services by the department for the protection of wahi tapu on a nationwide basis. It is a matter for discussion between the department, the trust and Maoridom.

Waitangi Tribunal, Department of Justice, Wellington.