

CHAPTER 1

SCOPE

1.1 INTRODUCTION

This report concerns the hapu or tribes of the Rangitaiki district, the raupatu or confiscation of some 245,000 acres of their lands from the hills beyond the original course of the Tarawera River to Ohiwa Harbour, and consequential land reorganisation and relocations.

For the reasons that follow, the report is not a full report on all aspects of the claims that were filed. First, Crown and claimant counsel considered that the main claims – relating to the raupatu and contemporary land allocations – were capable of settlement. In order not to prolong the prospect of a settlement, the Crown did not conclude its evidence on those matters. None the less, the Tribunal was asked to complete a report on the main issues. Also, it was considered that certain claims relating to particular twentieth-century events, which we will enumerate, should be dealt with separately.

Secondly, the Tribunal was unable to investigate two matters arising out of the nineteenth century. These were claims relating to the Native Land Court's award of lands outside the confiscation boundary and the acquisition of some of those lands by the Crown. None the less, since an exact equivalence cannot be expected for historical losses beyond living memory, the Tribunal considers that these matters should be included in a lump-sum settlement of the raupatu.

For its part, the Tribunal had hoped that the claims would be settled with the Government without the need for a report at all. However, the claimants have asked that a report be issued before a final settlement is entered into.

The structure of this opening chapter is as follows. It begins by describing the two main claimant groups, the nature of their claims, and how each claim might be disposed of. It considers secondly the problem of overlapping tribal claims and how the question of tribal overlaps should be managed for settlement purposes. Our principal conclusions on the raupatu and the matters to be included in a settlement are then summarised. Next, the matters to be kept out of a settlement or separately dealt with are set out.

Each of the above subjects is explored in more detail in the subsequent chapters.

Finally, this chapter provides a record of the Tribunal's hearings.

The claim contends also that Ngati Awa people, being branded as rebels, were wrongly excluded from the award of lands outside the confiscation boundary and that, contrary to their wishes, the lands left to Ngati Awa, inside and outside of the confiscation area, were converted from tribal to individual ownership. This is said to have resulted in land alienation and the destruction of traditional organisation.

It is then claimed that, in returning land, the Crown often purchased it at the same time. It is argued that at this time the people were powerless to do anything other than comply with any Crown proposals.

A claim is also made in respect of present-day scenic reserves. These include significant ancestral sites and wahi tapu. It is argued that there was no proper basis for confiscating these lands in the first instance, and it is asked that Ngati Awa be involved in their future administration.

There were similar contentions in a claim on behalf of Tuwharetoa ki Kawerau. As their name implies, these people are located in the Kawerau district. In their perspective, if it was proper that any land at all was confiscated, it should not have been confiscated from them, because they remained neutral in the events to which the confiscation referred. They are adamant that they were not involved in rebellion.

Ngati Awa claim that the Tuwharetoa hapu are part of Ngati Awa and that the Tuwharetoa hapu should be included in the Ngati Awa settlement. That issue is dealt with in chapters 2 and 11. We conclude that there should be a separate settlement with Tuwharetoa ki Kawerau on account of their distinctive lines. However, we consider that the point that Tuwharetoa was certainly not involved in rebellion has little bearing, since, in our opinion, it was not appropriate for anyone's land to have been taken on the ground of rebellion. We also consider that Tuwharetoa were impacted less by enforced relocations and the like. We would also estimate, on the basis of the number of functioning marae today, and attendance at the hearings, that Tuwharetoa ki Kawerau would be about one-tenth the size of the combined Ngati Awa hapu.

1.3 TRIBAL OVERLAPS

In chapter 11, the nature of tribal structures is considered. The essential point is that, at the time, the nearest equivalent to 'tribe' was 'hapu', and that these, and the wider descent groups to which they adhered from time to time, had no settled political boundaries of the kind associated with Western states. The hapu were more concerned with the maintenance of connections with other groups, mainly through whakapapa, or genealogy, than with establishing areas of exclusivity. They had also been mobile over the years. The result today is that many hapu may have customary interests in a particular area or, at least, have ancestral associations with it.

In this case, the Ngati Awa claimants made a claim for the Rotoehu Forest within and adjoining the western edge of the confiscation boundary. So also did the claimants for Tuwharetoa ki Kawerau. In addition, however, Ngati Pikiāo and Ngati Makino of the Te Arawa confederation of hapu (as seen today) also claimed customary interests in the forest.

Having heard each group, the Tribunal is satisfied that all can properly claim customary interests in the forest. That puts each over the first hurdle. The second hurdle is whether each also has a valid Treaty claim; that is, a claim in respect of past Crown actions contrary to the Treaty of Waitangi for which compensation by an award of Rotoehu Forest land would be appropriate.

We are satisfied that Ngati Awa and Tuwharetoa have valid Treaty claims based upon the confiscation. We also heard Ngati Makino. We are satisfied that Ngati Makino have a prima facie claim based upon the record of Crown involvement in the management or alienation of Ngati Makino land. We can say no further about the Ngati Makino claim because the Crown has yet to respond.

We have not investigated the validity of the Ngati Pikiāo Treaty claim since, at the time, Ngati Pikiāo were not ready to proceed.

We consider that Ngati Awa and Tuwharetoa should be able to claim a share in the Rotoehu Forest for the purposes of negotiating a settlement, provided at least half the land is held back pending the outcome of the Ngati Makino and Ngati Pikiāo claims.

There were also claims from Tuhoe and Whakatohea that they had interests in parts of the lands that Ngati Awa claimed as traditional Ngati Awa territory. For the reasons given above on the nature of tribal structures (more particularly considered in chapter 11), we have no doubt that Tuhoe and Whakatohea could establish close customary associations with parts of the land affected by the Ngati Awa claim. But we also consider that the great bulk of the confiscated area as far as Ohiwa Harbour was possessed at the time by hapu now aligning with Ngati Awa. Again, since no exact equivalence is appropriate on historical claims, we do not think it necessary or desirable to attempt to define boundary lines.

1.4 SUMMARY OF MAIN FINDINGS

Undoubtedly, Ngati Awa and Tuwharetoa have valid claims in respect of the confiscation of lands as far east as Ohiwa Harbour. Those claims are relatively unique in certain respects.

A unique feature of the events that led to land confiscation in this district is that, unlike the events in Taranaki, Waikato, and Tauranga, there was barely any war here. In terms, the land was confiscated on account of war and rebellion, but it is doubtful that there was a war or rebellion in fact.

More particularly, James Te Mautaranui Fulloon, an officer of the Crown, was murdered at Whakatane in July 1865. The murder was attributed to persons of distant hapu at the west of Ngati Awa territory, close to the old course of the Tarawera River. It was not attributed to persons around Whakatane. Amongst other things, Fulloon was half-Maori and was, on his Maori side, a close relative of the leading rangatira of that place, Wepiha Te Mautaranui Apanui.

For that act of murder, warrants issued against some 36 persons, all belonging to those distant hapu. A Government official leading a party of Te Arawa then arrested

them. Those arrested were tried, two were hanged for murder, and several others were sentenced to life or other terms of imprisonment for complicity.

However, contrary to popular beliefs, the land was not confiscated on account of that murder. Some contemporary politicians observed that the land was confiscated on that ground, but in fact it never was. The punishment for that murder was visited exclusively upon named individuals, who were apprehended, tried, and sentenced. The record is clear that, instead, the land was confiscated for rebellion, or organised resistance to the Government. The record is equally clear that the acts of alleged rebellion referred to the resistance given to those attempting to effect the arrests. In any event, the land was confiscated under the New Zealand Settlements Act 1863, where the necessary criterion was rebellion – not murder.

But was there a war and was there a rebellion? The plain fact is that, to effect the arrests, the Government deployed a force of several hundred of Te Arawa, known enemies of the Ngati Awa, from whom a terrible vengeance or retribution could be expected on account of the loss of lives in previous tribal battles. In response, the affected hapu of the western extremity of the Ngati Awa lands took defensive positions. The Ngati Awa hapu made no attacks but sought to resist that which they saw as an Arawa invasion.

We do not think it is at all established that there was a war in the usual sense. More particularly, we consider that there was no rebellion. The affected hapu took only those steps that were necessary to protect their own lives from those appearing as hostile invaders. In the circumstances (more particularly described in chapter 6), their anxieties were well founded and the action that they took was reasonable and could not amount to rebellion.

In terms, the confiscation was clearly contrary to the Treaty of Waitangi. Under the Treaty, no land could be taken without consent. However, there remains the question of whether the Treaty could have been suspended on account of war and rebellion. We are of the view that, even if it could have been, there was no sufficient war or rebellion to justify the suspension of the Treaty in this instance.

A further feature of the Ngati Awa case, in comparison with those of Taranaki, Waikato, and possibly Tauranga, is that the hapu involved in the acts that the Crown complained of were only two or three out of some 30, and that the Crown ought properly to have been aware of that. In other districts, war was waged for a considerable period, and there are consequential doubts as to who was or was not involved. However, in this case the relevant events occurred over a very short time-frame, and the ‘offending’ hapu could be readily identified.

Those known as Tuwharetoa, or more recently as Tuwharetoa ki Kawerau, claim to have been neutral. Apart from the fact that some joined the defenders when the Arawa forces came in, there is no compelling evidence that Tuwharetoa ki Kawerau were in opposition to the Crown. None the less, their land was taken too. Likewise, Rangitukehu was probably the most prominent rangatira for the hapu in the Te Teko area. He was known to officials as ‘loyal’. At least, he was regularly so described. Again, however, the lands of his hapu were also taken.

The Maori above referred to covered only part of the territory of the Ngati Awa hapu. Another part, which appears to have been the larger, was actually further east, beyond the Rangitaiki Swamp and extending to Ohiwa Harbour. For convenience, we will refer to the hapu there as the Whakatane hapu. The leading rangatira at the time was Wepiha Apanui, to whom we referred earlier.

It is quite apparent that the many Whakatane hapu were not involved in the murder or the arrests. Not only had these hapu a record of cooperation with the Government, but as we have said, Fulloon was part of Wepiha's family, and a high-born Maori in his own right. Wepiha also protested the murder. He welcomed moves to arrest those responsible and later gave evidence against each of them at their trials. Again, however, all this land was confiscated, even to Ohiwa Harbour.

The main trouble in this case was the blanket labelling of all Ngati Awa as rebels on account of the action of a few, and the failure to make any inquiry as to their complicity before actually taking the land. The result was the next outstanding feature of this case: the amount of land taken was out of all proportion to the level of 'offending' and out of all proportion to the numbers actually involved.

The Government reaction may be seen as understandable, given public reaction to the news of Fulloon's death at the hands of Pai Marire adherents, a faith that was abhorred in the Pakeha community. But none of that can excuse the punishment of the innocent. Nor can it be overlooked that Whakatane Maori also protested Fulloon's death.

We have then considered the justness of the confiscation in the context of the Governor's own law. In terms of the New Zealand Settlements Act 1863, land could be taken for the purpose of establishing military settlements to prevent future insurrection. The object was to keep the peace by having military settlers installed upon the land. However, in this case it was no longer necessary to take land to keep the peace at the time that the land was taken. Those accused of murder had been arrested and were on trial for their lives. All resistance was at an end, and the leading rangatira had been required to take, and had taken, oaths of allegiance.

The next point is that land could be taken only for the purpose of laying out military settlements. It had to be suitable for that purpose. In this case, the Governor simply prescribed a huge confiscation district (including, of course, the land of Whakatohea to the east) and then took everything in it. At the time, the vast majority of the land was clearly unsuitable for settlement, military or otherwise, being hill country, swampland, or covered in thick bush. The area taken was also of such large extent that it was impossible for more than a small fraction of the land to have been converted to military settlements in time to keep the peace.

In brief, far more land was taken than the Act allowed. The facts support that which some politicians of the day freely admitted – that, in reality, it was taken for the general purposes of European settlement over time. But, in terms of the confiscation legislation, that was not a purpose for which land could be taken. Much of the confiscated land has not been settled to this day. Further, before 1890, part of the land was given over as an endowment to Auckland University College. This, clearly, was not intended for military settlement.

Further, no proper inquiry was made, as the Act required, as to what land was suitable for military settlement. The confiscation boundary was simply a series of straight lines on a map, running mainly across mountainous terrain. Nor was there an inquiry as to which hapu were involved, when it ought to have been apparent that those involved were on one perimeter.

The result was a number of ironies, but the most unconscionable was that the main part of the land in fact used for a military settlement was at Whakatane, on the land of the most innocent. It was also on the land of the Whakatane hapu that the hapu of the west were relocated, where they could be kept under military supervision. Further, whole blocks were awarded to Te Arawa, and as sections were cut out in the proposed new towns, at Matata, Edgumbe, and Whakatane, several of these were awarded to Te Arawa individuals as well.

The confiscation legislation established the Compensation Court to provide land for those whose lands were wrongly taken. In addition, arrangements were made to restore land to 'rebel' hapu, which would otherwise be landless. However, the arrangements were in fact effected by a Crown agent acting administratively and then rubber-stamped by the Compensation Court, which failed to act impartially. (The court was comprised of Government officials who had organised or led the campaign to effect arrests.) Moreover, in the process Crown officials purchased lands from some intended awardees to the effect that, as land was awarded to Maori, it often passed immediately or soon after to the Crown. Since Maori were dependent on the agent to get anything, they were in no position to protest.

Te Arawa and Europeans came to occupy many of the traditional plantations, eel weirs, other food gathering places, and sacred sites of the Ngati Awa people. They took possession of flour mills and cultivations by which the local hapu had sought to enter the developing colonial economy. For the greater part, the Ngati Awa hapu were forced to relocate away from their ancestral homes. They were aggregated on land liable to flooding, between the Rangitaiki Swamp and the Whakatane River. It was not their customary land, and soon there were disputes amongst them, and between them and the custom holders. These lands were insufficient for Ngati Awa to be involved in the developing farming economy that accompanied European settlement. Most of Ngati Awa would be obliged to join the labouring class once public works were also introduced to the area.

Some 77,870 acres of confiscated land were returned to Ngati Awa, but over time the larger portion of that land has been alienated to the Crown and private purchasers. Moreover, none of the confiscated land was returned in the condition in which it was taken. It was returned not in the tribal title that Maori preferred but in individual shareholdings.

The effect of individual shareholdings was to facilitate the alienation of the land by individual dealings without the benefit of tribal control. Such shareholdings also undermined traditional social structures. Statements from contemporary politicians show that these results were intended and foreseen. Not only was the title to land that was returned from confiscation altered, but the Native Land Court was used to likewise convert the title to the remaining land outside the confiscation boundary.

A special feature of this case was the removal of, and failure to return, the carved house known as Mataatua. To bring some unity to the hapu relocated along the Whakatane River, Wepiha Apanui engaged them in the construction of a magnificently carved house, symbolic of the unity of all the hapu from the Mataatua canoe. Indeed, carvers from throughout the Mataatua region were engaged. However, no sooner was the house completed than it too passed to the Government. It was to be used for display at colonial exhibitions in Australia and England.

There have been suggestions that Mataatua was gifted to the Government, but in reality the people were powerless to refuse any Government request. At the time, they were pleading with the Governor for the return of land and for the release of certain of their number still held in Mount Eden Prison.

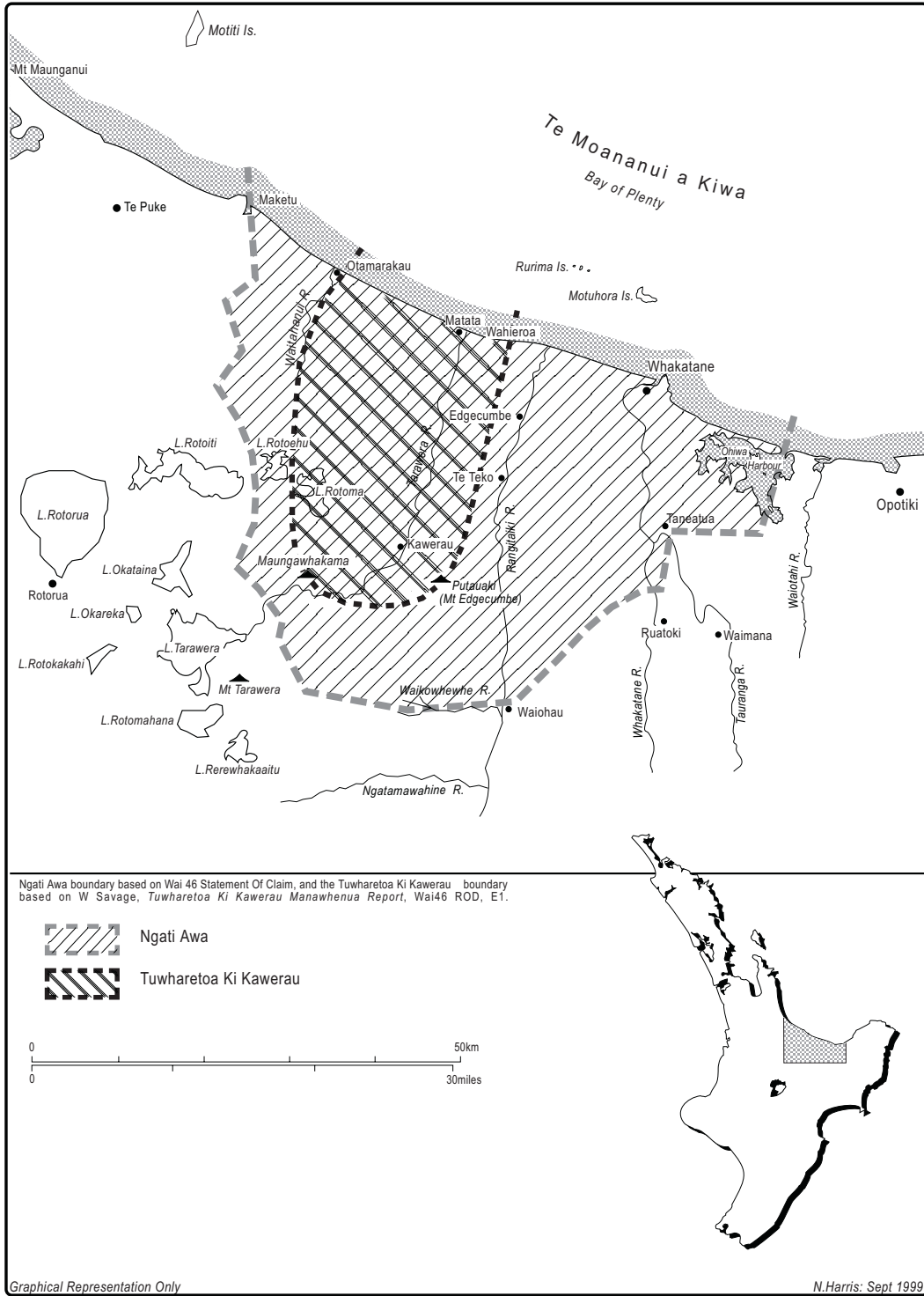
The prisoners were not released and neither was the house returned after it had gone to the exhibitions. Upon its recovery from overseas, it was placed in a New Zealand museum. However, we are now pleased to note that, since our hearings, and with the cooperation of the Otago Museum Trust Board, this matter has been resolved and the house has been returned to the Ngati Awa people.

A further feature of the Ngati Awa claim is that they have not previously had any recompense for the confiscations. Nor have they had much benefit from Government land development funding, provided for Maori throughout a large part of the twentieth century, since most of their developable land had been confiscated. Some relief was given to others similarly affected by large land losses. This took effect from the 1940s in the cases of Taranaki, Waikato, Whakatohea, and Ngai Tahu, and much later in the case of Tauranga. In those places, some generations of young Maori received educational grants and other assistance as a result. Ngati Awa had nothing and have some catching up to do.

Other aspects of the claims dealt with in this report relate to the arrests and trials of those implicated in the death of James Fulloon, the long-term impact of the confiscations and of the label that Ngati Awa have had to bear, as tangata hara or a people of sin. The drainage of the Rangitaiki Swamp is also considered.

We recommend that all these matters should be covered in a lump-sum settlement. We recommend that the settlement include as well the claims in respect of lands outside the confiscation boundary, even though these have not been fully investigated. These claims relate mainly to the districts of Rotoehu, Matahina, and the Tarawera valley. It is claimed that, on account of their perceived status as rebels, Ngati Awa were not given a proper share in these lands by the Native Land Court. It is also claimed that the court's awards were overly affected by the advice of Crown agents who were seeking to buy land at the same time and were favouring sellers. Some of the concerns are touched on in the context of the wide-ranging impact of the confiscations. However, a full examination of the extent to which the local hapu were disinherited would require an exhaustive analysis of Native Land Court records, which the Tribunal has been unable to make. We none the less consider that a settlement should be sought in respect of all historical matters, deferring only those specific claims, referred to below, arising from recent events.

A basis for settlement is considered in chapter 11.



Map 2: The claimants' views of their boundaries

1.5 CLAIMS NOT COVERED IN THIS REPORT

This report does not cover the claims of Tuhoe, Ngati Whare, or Te Ika Whenua with regard to the Matahina district, or of Ngati Makino and Ngati Pikiāo with regard to the Rotoehu district and beyond. Although these were heard on the status of certain lands, it has been necessary to focus on the Ngati Awa and Tuwharetoa claims. We reserve the rights of those other groups. The finalisation of their claims, if proven, will be proposed in other inquiries still to be undertaken. A further claim for Te Upokorehe around Ohiwa Harbour was not pursued. We were advised that they were involved in direct negotiations with the Crown alongside other groups of Whakatohea. We have also not inquired into issues surrounding the pollution of the Whakatane, Rangitaiki, and Tarawera Rivers, or the pollution of Ohiwa Harbour.

However, some particular claims within Ngati Awa and Tuwharetoa territory, even if it is not their exclusive territory, should be reserved from any settlement with Ngati Awa or Tuwharetoa. If not independently settled with the Crown as a separate matter, they will be separately inquired into by the Tribunal. These include the incorporation of Maori lands in the Tarawera valley in a Crown forestry scheme in exchange for shares in Tarawera Forests Limited, for which legislation was passed in 1967. That claim has not been heard at this stage. Allied to the Tarawera Forest claim is a claim that Mount Putauaki, the most significant mountain for the hapu of the area and the site of a number of sacred burial caves, was wrongly included in the Tarawera Forest scheme.

The Ngati Awa claimants seek the excision of Putauaki from the Tarawera Forest scheme and its reservation for all Ngati Awa. They face the difficulty that the land is in the ownership of a private company. This Tribunal is unable to recommend the acquisition of private land. The Tuwharetoa claimants appeared comfortable with the present position. This may be because members of Tuwharetoa have been able to maintain some dominance of the board that holds the Maori shareholding in the forest. We expect this matter to resurface when the Tribunal hears the Tarawera Forest claim.

Other claims that should be reserved from any settlement, in our view, are those relating to the extraction of gravel for public works from the Waiohau c26 and Omataroa–Rangitaiki c60 blocks, and the acquisition of Pukaahu Domain (also known as the Awakeri hot springs). These are referred to in chapter 11. Like the Tarawera Forest claim, we see these claims as being of recent origin, and as being made on behalf of prescribed individuals for particular shares. It would be wrong to subsume them in a general tribal settlement.

1.6 HEARINGS

The Tribunal heard the Ngati Awa and other claims over almost a year and a half during the course of 1994 and 1995. The first three hearings were given over to the submissions of the Ngati Awa claimants. The first hearing was held at Wairaka Marae

in Whakatane from 4 to 8 July 1994; the second at Kokohinau Marae north of Te Teko from 12 to 16 September 1994; and the third again at Wairaka Marae from 21 to 25 November 1994. The third hearing also included submissions from the Otago Museum in relation to the Mataatua whareniui.

The fourth hearing, where submissions regarding the gravel extraction and from Te Ika Whenua concerning Matahina were presented, was held at the Ohope Beach Resort in Ohope from 13 to 15 February 1995; the fifth, hearing submissions from Tuwharetoa ki Kawerau, was at Hahuru Marae north of Kawerau from 27 to 31 March 1995; the sixth, dealing with the submissions of the Upokorehe hapu of Whakatohea, Whanau-a-Te-Ehutu with regard to Whakaari (White Island), and Tuhoe with regard to Matahina, was held at Waiaua Marae near Opotiki from 29 to 31 May 1995; the seventh, hearing submissions of Ngati Makino, was at Otamarakau Marae in Otamarakau from 19 to 22 June 1995; the eighth, hearing submissions of Ngati Pikiāo and Tuhoe, took place at Tapuaeharuru Marae at Rotoiti from 18 to 20 September 1995; and the ninth, hearing further submissions from Tuwharetoa ki Kawerau, was held at Hahuru Marae from 16 to 19 October 1995.

The tenth hearing, held for the sole purpose of cross-examining a research witness for Ngati Awa, took place at the Waitangi Tribunal's offices in Wellington on 3 November 1995; the eleventh, to hear the closing submissions of Ngati Pikiāo, Ngati Makino, and Tuwharetoa ki Kawerau, took place at the Rotorua District Council's chambers in Rotorua from 20 to 22 November 1995; and, finally, the twelfth, to hear the closing submissions of Ngati Awa, was held at Umutahi Marae in Matata on 27 and 28 November 1995 and at Wairaka Marae in Whakatane from 29 November to 1 December 1995.

Many sites of historical and spiritual significance were pointed out to us by kaumatua during site visits made in the course of the hearings. These began with a tour arranged by Ngati Awa claimants on 23 November 1994 and continued with tours organised by other claimant groups: Tuwharetoa ki Kawerau on 28 and 30 March 1995; Upokorehe in respect of Ohiwa Harbour on 30 June 1995; and Ngati Makino on 21 June 1995.

Though most of the sites visited are now in private ownership, their ancient history is still preserved in the memory of kaumatua, even though some of the sites are in a fragile condition and access to them is limited.

In addition to the hearings, in 1995 the Tribunal organised a mediation between Ngati Pikiāo and Ngati Makino claimants concerning the Rotoehu Forest. This was facilitated by David Hurley and John Turei. The mediation attempted to bring the two claimant groups to an agreed position on how both had been affected by Crown actions, and how any relief might be adjusted between them. These attempts at mediation were largely unsuccessful.¹ The Tribunal also held a meeting in Auckland, which most of the claimants attended, and afterwards issued a statement as to the probable content of this report.²

1. Paper 2.156

2. Paper 2.111

