

Te Whanganui-a-Orotu Report 1995

10 Petitioning for the Investigation of Title of Te Whanguni-a-Orotu

10.1 The principle of redress

In the second amended statement of claim, dated 14 July 1993, the claimants said that the Crown has breached its duty to provide effective redress for past claims in respect of Te Whanganui-a-Orotu (1.2(d):4). They also said that no compensation of any kind for the loss of any rights had ever been paid in respect of Te Whanganui-a-Orotu to them or to their forebears (1.2(d):6).

The history of petitions to Parliament for redress and the investigation of title to Te Whanganui-a-Orotu bears out these claims.

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10.2 The beginnings of protest and petitions

Maori concern over the Crown's gradual encroachment on Te Whanganui-a-Orotu can be traced back to Tareha's 1861 assertion that he had sold land only as far as the high-water mark. Whereas Mr Brown was inclined to the view that the apparent lack of protest after the Ahuriri purchase was an indication that the sellers accepted that Te Whanganui-a-Orotu had been included, Mr Hirschfeld pointed out that:

Maori believed they had retained ownership of the lagoon, and despite the growth of settlement at Napier, were undisturbed in their use of the area.

European use of the lagoon (but not ownership) was offered by Maori as one of the terms of the transaction. At the first indication that Europeans were acting inappropriately . . . by reclaiming some land off for Napier township, there is also record of Maori protest. (I8(a):29)

After the establishment of the Native Land Court and the four main seats in Parliament, Maori signatories to the deed of sale and their descendants tried to adapt to British law and to 'work the system' in order to gain redress.¹ This was a continuation of the kupapa tactics that they had adopted in setting up a runanga system rather than joining the King movement or the Hauhau and then having their complaints investigated by the Hawke's Bay Native Lands Alienation Commission, rather than repudiating all fraudulent or unfair land sales. Hence the 1866 and 1867 applications by Paora Torotoro and others to the Native Land Court to investigate the title to islands at the northern end of the lagoon and the 1875 petition to Parliament concerning islands in Te Whanganui-a-Orotu (see paras 5.9, 5.10). As Keith Sinclair observed in *Kinds of Peace*:

In the years 1872-8 Hawke's Bay Maori began bombarding Parliament with petitions . . . generally about land rights. Most received unfavourable recommendations or no recommendations from the Select Committee, but they were a great nuisance to politicians.²

'Our tipuna,' Heitia Hiha observed, 'have put in claims ever since in 1907, 1916, 1920, 1932, and since then much correspondence has been sent and hui called to consider ways of presenting the claim' (D21:10). Simultaneously, they continued to use and occupy all that remained to them at Te Whanganui-a-Orotu and to exercise their tino rangatiratanga, mana, and kaitiakitanga over it, until it was 'usurped' by others (D21:11).

None of the petitions concerning Te Whanganui-a-Orotu can be fully understood in isolation. Each represented the continuation of a take (cause) that goes back to Tareha, Paora Torotoro, Karaitiana Takamoana, Henare Tomoana, and others and that has passed down from generation to generation to the present claimants.

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10.3 The 1875 Petition

In 1875, following a petition signed by Henare Tomoana and 37 others, a meeting of the Native Affairs Committee was held in Wellington on 17 August 1875 to hear sworn testimony from Henare, Kariatiana Takamoana, Donald McLean, and Wi Tako Ngatata.

Henare Tomoana told the committee that Maori were not aware that Te Pakake was not theirs until development was already well underway:

We saw that houses were erected on it, and that vessels were lying alongside. That is why we have sent in our petition. We want to ascertain whether the Govt have really taken it; if they have we want it returned to us. (F9: app II, p 888)

Karaitiana Takamoana added that 'All the chiefs urged that Whanganui O Roto should be reserved', and they asked 'for the islands on that sea, because they were Pa which were occupied' (F9: app II, pp 899-900).

Wi Tako Ngatata confirmed that the Ahuriri chiefs did ask for Te Pakake and the other islands to be reserved, but he could not recall if McLean agreed or not (F9: app II, p 903). McLean defended his handling of the purchase negotiations but, when questioned, said that he had not reserved Te Whanganui-a-Orotu, nor was he requested to do so (F9: app II, p 920). His influence prevailed, and the petition went no further.

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10.4 The Petition of 1894

Settlement on the Meeanee Spit led to another petition in 1894. This time the petitioners were Marara Nukai, a sister of Paora Torotoro,³ and six others, who claimed that when their parents sold the Ahuriri block to McLean a piece of land was reserved to them, and they and their parents had resided on it for years. The boundaries were delineated by place names: Purekenai, Te Taha, Okahu, Awamauku, Ruatangahanga, Matahorea, and Te Karaka.⁴ They asked the House to confirm that a reserve was made by the purchasers and the vendors (A6(d)). The Native Affairs Committee referred the petition for departmental reports and the chief surveyor in Napier responded as follows:

I have at last got one of the principal Natives concerned in the petition & from him I learn that the land they claim is the Western Spit Township including Freezing works, Hotels, churches dwelling houses &c. However he was not desirous of embarrassing the Government & said that notwithstanding the promise of the whole they would be satisfied with an acre or two of the unalienated crown land.

I pointed out that three sections (one with a water frontage at the former village) had been set apart as native Reserves and am inclined to think that they would be content with them . . . (A6(d))

We note that this description of the location of the claimed reserve completely overlooks its proximity to traditional shellfish beds, fishing places, and the only freshwater spring on the spit, Ruatangahanga, which was discovered by Mahu.⁵ On 5 January 1895, the Land Purchase Department informed the committee that no reserve was stipulated in the deed of purchase, although Maori did perhaps occupy the land for a time after the purchase. 'Reasonable reserves' appeared 'to have been set aside for them' (A6(d)). This ended the investigation.

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10.5 The 1907 Petition

One of the signatories to the 1894 petition was Raihania Kahui, who married the daughter of Marara Nukai.⁶ According to evidence given by Hiha Ngarangioue at a Native Land Court hearing in Hastings on 15 February 1916, Raihania Kahui petitioned Parliament to have an investigation held into the title of Te Whanganui-a-Orotu, but did not follow the matter up. Neither this petition nor any official correspondence relating to it have been located.

According to Mr Parsons, the damaging encroachment of the Napier South reclamation led to Raihania's petition 'as early as 1907'. Raihania Kahui died on 16 March 1909 and the petition lapsed (A12:135).

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10.6 Applications to the Native Land Court 1916-19

10.6.1 The 1916 hearing

On 15 February 1916, an application from Hiha Ngarangioue and Oriwia Porou for an investigation into Te Whanganui-a-Orotu was heard by Judge M Gilfedder in the Native Land Court.

Hiha Ngarangioue's whakapapa shows that he was Ngati Hinepare (A12:135).

Evidence was given by Oriwia Porou that the descendants of Tawhao lived on the shores around Te Whanganui-a-Orotu. A prima facie case was established, and the case was adjourned until the applicants had an opportunity to get the advice of a leading solicitor. They chose Alfred Levavasour Durrell Fraser, a prominent Hastings land agent, and, from 1899 to 1908, the local member of Parliament. Fraser had helped Maori with flood relief in 1897 and was considered 'an authority on Maori law'.⁷

The case resumed on 13 April 1916 with Fraser appearing for the claimants and W T Prentice for the harbour board. Any hopes that the claimants may have had were soon dashed. Fraser told the court that he would not lead any evidence for them because he had made careful inquiry and come to the conclusion that they had no title.

Prentice said that land below the high-water mark was vested in the Napier Harbour Board by statute. It was not native (customary) land and the Court had no jurisdiction (A5(m):26). As Mr Boast said:

Confronted with this unanimity of approach . . . the Court unhesitatingly agreed that it had no jurisdiction to deal with the matter. (D1:69)

As Judge Harvey later noted, both Judge Gilfedder and Fraser 'assumed that the Whanganui-o-Roto had been sold to the Crown' (A5(m):27).

10.6.2 Application to the Native Appellate Court

An appeal was lodged on 9 May 1916 by Hiha Ngarangioue, Te Wahapango, Aporo Te Huiki, and others. A literal translation of the grounds of appeal, as Judge Harvey later observed, showed 'the bewilderment caused by Judge Gilfedder's dictum that the Whanganui-o-Roto has been purchased by the Crown in 1851'. According to the record:

Mr Fraser stood up and told the Court that this lake was sold by the elders to the Crown in the year 1851. Mr Fraser asked Judge Gilfedder to dismiss their application. Judge Gilfedder dismissed it. The Maoris told him that the lake was not sold and that the deed of sale of Ahuriri was here, and the lake was not set out in the deed. Here is the deed - we have it. Mr Fraser said that the whole of the lake was included in the said sale and that the Court was not to listen to the Maoris. We said that the Chief Surveyor at Napier had made a map, and that he said that the land under the water had not yet been before the Court. The Judge then decided that the lake was included in the sale. (A5(m):27)

Dispensing with Fraser's services, the claimants approached C B Morison KC to represent them in the Native Appellate Court. He contacted the Department of Lands and Survey, asking to be shown the Ahuriri deed and plan. The under-secretary raised the matter with the Solicitor General, John Salmond, and Morison was allowed to see the deed, but was not allowed to take a copy (A8(d):164). No documentation of any advice that he may have given the claimants has been found.

The case was not heard until 11 April 1919, whereupon Te Wahapango and Aporo Te Huki, on behalf of the claimants, withdrew the appeal (A5(m):27). They had been advised that the Ahuriri purchase would be investigated only through a commission appointed by Parliament (A12:136).

10.6.3 The Solicitor General's opinion

In a memorandum to the Solicitor General dated 25 August 1916, the Under-Secretary of Lands and Survey stated that the plan attached to the deed showed:

the Inner Harbour as being included in the purchase, but from the description in the deed, it would appear that the Inner Harbour is not so included. (A8(d):165)

This was the first official acknowledgement that the boundary description in the 1851 Ahuriri deed excluded Te Whanganui-a-Orotu. It was qualified, however, by the under-secretary's conclusion that, because 'the waters of the inner harbour are unquestionably tidal, the inconsistency does not seem to be of much importance' (A8(d):165).

On 28 August 1916, the Solicitor General replied:

On examining the Deed of Purchase . . . it would seem clear that the purchase does not include the inner harbour. The description in the body of the deed shows the boundary as following the interior of the harbour. It is true that the plan attached to the deed would, by its colouring, indicate the inclusion of the inner harbour. This, however, I take to be an error and the exterior red line on the plan must be taken to refer merely to the spit of land lying between the inner harbour and the sea. I agree however that the question is of no practical importance. The inner harbour . . . is tidal water and the limits of Native customary title are high water mark. (A8(d):164)

The Solicitor General assumed that Te Whanganui-a-Orotu was and had always been tidal. He did not consider whether Maori had been informed in 1851 that their customary title ended at the high-water mark; nor did he consider whether this common law assumption was a breach of the Treaty.

10.6.4 The 1918 hearing on the islands of Te Whanganui-a-Orotu

Pera Hohepa, of Puketapu, applied to the Native Land Court in 1917 to investigate the title to Te Whanganui-a-Orotu and 12 lagoon islands bounded by it (Taputeranga, Whare o Hineuru, Kouriuri, Poroporo, Tirohangake, Tuteranuku, Tewa a Waka, Kotauwanui, Matawhero, Te Mara, Ngamuku, and Awamauku) (A8(d):158). Correspondence from the Under-Secretary of Lands and Survey in Wellington shows that the Commissioner of Crown Lands in Napier was informed that six of the islands, namely Urewiri, Poroporo, Tirowhangahe, Tuteranuku, Awa a Waka, and Matawhero were able to be investigated (A8(d):157). These were the islands that were excluded from the Napier Harbour Board's endowment in the Napier Harbour Act 1874 and its amendments and that had not been Crown granted, and were therefore still considered to be native (customary) land. They were also the same islands that appeared on the 1867 survey plan that was procured by Paora Torotoro for an application to the Native Land Court, but was deemed incomplete for the purpose (see para 5.9).

At the hearing, on 12 February 1918, Judge Jones ruled that 'at present' his hands were tied when it came to dealing with Te Whanganui-a-Orotu, but that he was prepared to investigate the title to the islands as soon as plans were obtained from and certified by the chief surveyor in Napier.

Six days later, Pera Hohepa called in to see the Native Minister, W H Herries, and complained to his private secretary, H R H Balneavis, that he was unable to get the chief surveyor to certify such a plan or plans (A8(d):158). He also said that he was anxious to proceed with his application concerning the islands as soon as possible, although he was prepared to leave the question of title to the harbour in abeyance.

On being advised of this, the Under-Secretary of Lands and Survey said that the Commissioner of Crown Lands in Napier had been informed some months earlier that there was no objection to a plan of six islands being supplied to the court, but he was unable to make any statement about the others listed until further information was obtained. A copy of the under-secretary's memo was sent to Pera Hohepa (A7(a):180).

Because no hearing took place, we can only conclude that the 1867 survey plan was still considered 'incomplete' for court purposes. Indeed, this may well have been the reason why the chief surveyor had been unable to provide a certified plan to Judge Jones in the first place.

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10.7 The 1919 Petition and 1920 Native Land Claims Commission

10.7.1 The 1919 petition of Mohi Te Atahikoia

In 1919 Mohi Te Atahikoia, a senior chief of Ngati Kahungunu living at Pakipaki, took over the leadership of the campaign for title to Te Whanganui-a-Orotu. His principal hapu was Ngati Whakaiti of Waimarama and, although he did not descend from the seven hapu of Te Whanganui-a-Orotu, his wife had Ngati Matepu connections. Born in the early 1840s, Mohi Te Atahikoia had fought against Te Kooti and had been actively involved in Native Land Court proceedings and the Kotahitanga Maori parliaments.⁸ With Tareha and Te Wahapango, he gave evidence before the Native Affairs Committee in 1918 and carried out its suggestion to confer with the Napier Harbour Board and, if they got no satisfaction, to go back to Parliament (A7(a):41).

As Mohi Te Atahikoia explained to the Native Land Claims Commission in 1920:

An answer from the Harbour Board, did not come for sometime, and it was then in the shape of a copy of the deed. The Board's representatives [a clerk and Mr Prentice] did not object to or question our claim . . . I wrote for a more definite reply but I got no answer, and I then placed another petition before Parliament. (A7(a):41)

A 1919 petition signed by Mohi Te Atahikoia and 47 others claimed 'a portion of the sea called Te Whanganui-a-Orotu and land known as the Puketitiri Reserve' (A6(f)). The petitioners' main grievance was the 'taking' of Te Whanganui-a-Orotu by the harbour board, even though Maori owning the Ahuriri block had arranged with McLean on 17 November 1851 that it should not be taken. The reason for this arrangement was that:

the foods in the sea were . . . the main foods of our ancestors and our forefathers, and are today with us, and will be handed down to our children after us. (A6(f))

As the petitioners recounted, the Native Land Court had refused to hear their case until the Government instructed it to do so. Therefore, the petitioners had made an application to the Government to issue that instruction, and had been told by the Native Minister's private secretary to meet with the Napier Harbour Board. The reply that they had received from the harbour board, which they attached to the petition, apparently stated that the board did 'not disagree with that deed of arrangement [made] with Mr McLean' (A6(f)).

Although we have not seen the harbour board's reply, the evidence in Mohi Te Atahikoia's petition seems plausible to us, considering that both the Department of Lands and the Solicitor General in 1916 had expressed the opinion that Te Whanganui-a-Orotu was, according to the description of boundaries in the deed, excluded (see para 10.6.3). Subsequently, according to the 1924 petition, the chairman of the Napier Harbour Board 'admitted that the Lake belonged to the Maories' (see para 10.9).

10.7.2 The 1920 Native Land Claims Commission

The Native Affairs Department felt that the petition warranted consideration by the Government, despite the objection of the Department of Lands and Survey (A8(d):153). Accordingly, it was referred to a commission of inquiry that was constituted on 8 June 1920 to report upon a number of petitions concerning Maori land. Judge Robert Noble Jones was appointed chairman and John Strauchon and John Ormsby members (A5(l)). Evidence from witnesses with interests in Te Whanganui-a-Orotu and submissions on their behalf and on behalf of the Crown and the harbour board were heard in Napier on 13 and 14 August 1920.

Evidence given by Maori residing in the area suggested that Te Whanganui-a-Orotu was essentially a freshwater lake that was opened from time to time to allow it to flow into the sea to prevent flooding cultivations along the shore. Once dredging and harbour works commenced and the Ahuriri opening became permanent, saltwater fish were increasingly caught. When Napier South was reclaimed, freshwater fish were no longer caught. Nepata Puhara said that the reclamation work was destroying some of the pipi beds (A7(a):37). Henry Hill, a school inspector, on the other hand, put forward his theory that geologically the area was once part of the sea (A7(a):44).

Mr Myers, for the Maori, said that they were originally entitled to the bed of the harbour but, since statutory title had been issued to the harbour board, they were entitled to compensation. They also had fishing rights under the Treaty, irrespective of the deed, and the harbour board might be liable to compensate them for any injury to these.

Mr R J Knight (a native lands draughtsman), for the Crown, said that at the date of purchase the inside waters were tidal. Therefore, the Maori must fail in this claim. Mr Grant, for the harbour board, said that the board had had statutory title since 1874 and 1877 and there were no reservations of fishing rights. Maori anyway were only granted equal rights with Europeans in 1851.

The commission found that the boundaries of the land sold to the Government by deed on 17 November 1851 skirted 'along the interior line of the harbour', but did not include it. Park's 7 June 1851 report stated that at the mouth of the lagoon there was a harbour proper, which was tidal. It was 'undeniable' that Ahuriri Maori had customary inshore fishing rights in the harbour, which they sought to retain for themselves. But the deed clause, as the commissioners understood it, merely reiterated:

the ordinary common law that all the King's subjects, whether European or Maori, have a right of passage over the sea, a common

right of fishing and a common (though perhaps restricted) right of landing on the foreshore; . . . (A5(l):13)

It was scarcely to be expected, the commissioners continued, that Maori 'would fully realize, or anticipate, how even this right would be affected in the future by harbour, drainage, and other public works' (A5(l):13). But whether they appreciated the full effect of the dealing (of which there is some doubt) or not, it was made clear to them:

that the Crown was buying the land and their interests in the harbour, and when in the sale of the land they included, according to the deed, 'the sea [moana], and the rivers, and the waters, and the trees, and everything else appertaining to the said land', they intended to give over the use of the harbour, although perhaps in doing so they were not fully conscious of the effect it would have on those fishing-rights that they were so anxious to retain. (A5(l):14)

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10.8 The application for seven islands

On 20 February 1922, application was made to the Native Land Court to investigate the title to seven islands of Te Whanganui-a-Orotu, namely Matawhero, Tuteranuku, Te Awawaka, Te Roro o Kuri, Poroporo, Tirohangahe, and Urewiri (A9:11). The application came before Judge Gilfedder on 5 August 1924 and was recorded in the Napier minute book as follows:

Investigation of title to some islands or rather sandbanks in the Whanganui o Roto lagoon. One of these Te Roro o Kiru is owned by David Milne under CT 38/550 (on Deeds title). The other islands are useless and there is no plan of any of them. It will be necessary to have surveys made if it is decided to go on with the investigations. (D1:74)

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10.9 The 1925 petition of Te Wahapango

Unperturbed by the ruling of the 1920 commission, Te Wahapango and 18 others petitioned Parliament in 1924. Te Wahapango was a Ngai Te Ruruku chief who had fought against Te Kooti with Mohi Te Atahikoia and could remember the signing of the Ahuriri deed in 1851.⁹

The petitioners claimed that Te Whanganui-a-Orotu was 'inaccurately included' in the sale of the Ahuriri block. Application was made to McLean for its return and he agreed. At the conference that was held with the Napier Harbour Board, they said the chairman had 'admitted that the Lake belonged to the Maories' (A6(i):2). They also referred to the protection of Maori rights afforded by the Treaty of Waitangi and the Crown's obligation to honour those rights:

We are aware that on the 30th March 1922 King George V commanded the Government of New Zealand to pronounce the validity of the Treaty of Waitangi. Inasmuch as the Treaty of Waitangi reserves to the Maori the fishing rights in Lakes, we hereby admit for your consideration our petition in connection with Lake Whanganui-o-Rotu . . . (A6(i):2-3)

The petition was forwarded by the Native Affairs Committee to the Native Department. The under-secretary, Judge Jones, on 6 July 1925 merely reiterated what the 1920 commission that he had chaired said: 'according to the deed, "the sea (moana) and the rivers and the waters and the trees and everything else pertaining to the said land" were included in the sale'. This, the commission had thought, was intended to include the natives' interests in the harbour (A7(a):166). Although the Native Affairs Committee requested that the petition be investigated by Parliament, this was not carried through. Clearly, the petitioners' appeal to the Treaty of Waitangi had not helped their quest to have Te Whanganui-a-Orotu returned to their control or even to have the extent of their fishing rights investigated.

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10.10 The 1932 Petition

Mohi Te Atahikoia died in 1928, Te Wahapango in 1932. That same year, the proposed Napier Harbour Board Empowering Bill, giving the board the power to buy the former islands (see para 7.7.2), served as a catalyst for the 1932 petition that was signed by Hori Tupaea and four others, one being N P Hakiwai. Hori Tupaea traced his descent from Ngati Parau and Ngati Hinepare.¹⁰

The 1932 petitioners seemed more aware of the documented history of the lagoon and the Ahuriri purchase than their forebears:

It was considered at the time [of the Ahuriri purchase] by Government officials that this harbour was the most valuable part of the block then under negotiation, and Mr McLean, who conducted the negotiations for the Government, admitted that he was most desirous to secure the harbour for the Crown. (A6(j):1)

Those who signed the deed, the petitioners wrote, 'never intended to include the lagoon'. It was taken 'by the wrongful exercise of the general rights of the Crown over tidal waters'. The small islands that dotted the lagoon 'had always been considered as reserved' and the nine named in the Napier Harbour Board Act 1874 were specifically excluded from the 7900 acres vested in the board as an endowment (A6(j):1).

The 'disastrous earthquake of February 1931', they continued:

has wholly changed the conditions: the lagoon has now become mostly dry land; the Harbour Board, on the one hand has its big prize, the Inner Harbour, and as to the rest of the lagoon the Board must benefit largely by the exchange of a waste of water, which was worth nothing to them, for an extensive piece of territory, which has a great prospective value; the Maoris, on the other hand, have lost all that remained to them, and have nothing to represent the rights which they formerly had and which they were always so anxious to preserve. (A6(j):2)

The petitioners appealed to a sense of partnership between the Government, the local authority, and Maori. To make up for the losses of the past, they wanted to share in the benefits of the future:

Your petitioners are aware that any claim for compensation for loss to them through works and reclamations designed and made at the cost of the Harbour Board would have small chance of success, but it is clear

that a vast upheaval by the operation of the forces of nature is in a different category; your petitioners, like the rest of the community, suffered from the ill-effects of the earthquakes, and they submit that they are justified in asserting a right to share in any benefits which may have arisen, so far as relates to this lagoon, in which, while it remained water, they had rights still subsisting. (A6(j):3)

In light of the earthquake, they were prepared to move forward with the local authorities and share in what remained, and they asked that their claims be considered 'according to equity and good conscience' (A6(j):3).

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10.12 The aftermath of the Harvey Report

10.12.1 Peter Fraser's 1949 offer

Claimant evidence indicated that Fraser took the report seriously enough to make the Ngati Kahungunu people an offer in 1949. In a sworn affidavit dated 16 June 1977, Anthony Davis stated that he was present in 1949 when the Honourable Eruera T Tirakatene, the Minister representing Maori on the Executive Council, brought Fraser to a private meeting with elders at the Masonic Hotel in Napier to discuss Te Whanganui-a-Orotu. Tirakatene had discussed the matter thoroughly with Fraser, and he came specifically to make the offer. Tipi Ropiha, the Under-Secretary of Maori Affairs, and John Te H Grace from the Prime Minister's office were present. Fraser offered a piece of land totalling 4500 acres as compensation for the land raised up during the earthquake. He said that he could give it back because it was farmed by the Government. As to the other 4000 acres, they would have to deal with the Napier City Council and the harbour board, and it would cost them a great deal of money.

Their spokesmen, Paneta Otene and Ahera Hohepa, declined Fraser's offer. 'If we own the northern end,' they said, 'then we must own the southern end too.' Since then, there had never been another offer (A13:130).

This evidence seems plausible, given that Fraser must have been well aware that discussions between the Commissioner of Crown Lands and the Napier Harbour Board were underway with a view to separating out the respective interests of the Crown and the board in the 7500-acre harbour board endowment (see para 8.4.2).

Mr Parsons presumed that the meeting occurred on 21 June 1949, when Fraser was visiting the district and was reported in the *Daily Telegraph* to have said that 'it was the intention of the Government to get all long-standing Maori land claims settled in the near future' (A12:147). Several other claimant witnesses recalled hearing about Fraser's offer and its being refused because they wanted all, not half, the land. Eruti Pene, a Waiohiki elder, said:

In 1948 a gathering of the Executive of the sub-tribes was held at Ahuriri, to petition the Crown to return our land. While I did not hear the Premier Peter Fraser announce his argument to return 50% of the land his report of that hui arrived back at the Ahuriri Executive. I was there at that meeting. (D18:5; D43(d))

Wini Te Reo Spooner heard about it from her grand-uncle, Ahera Hohepa, who had said no because he wanted all Te Whanganui-a-Orotu back (D35:1).

Heitia Hiha said that when Fraser was having a meeting to deal with Omaranui's compensation Tongia Davis again put the claim concerning Te Whanganui-a-Orotu to him. There was more than one take (cause) in relation to Fraser's visit, he added (D21:11; D44(a):17, 19).

Claimant witnesses and associate counsel pointed out that the matter was dealt with simply by word of mouth. In response to a request from the Tribunal, the Crown searched for documentary evidence of the meeting in relevant Maori Affairs and Lands and Survey department files, but to no avail. It did, however, discover that a search in 1972 had failed to find any reference to the matter (E13:1-2).

Entries in Fraser's official engagements book and his smaller appointment book established that he did visit the district and that he stayed overnight in Hastings and Napier on five occasions between June and November 1949. Tirakatene was with him on 20 July and he stayed at the Masonic Hotel on 24 August. The Crown researcher suggested a more thorough investigation but this was not carried out.

To the Tribunal, it seems likely that Fraser did discuss Te Whanganui-a-Orotu privately with tribal elders in 1949 and did offer to return that half of the lagoon land that the Crown acquired the following year. The Fraser Government was defeated in the 1949 general election and Fraser died in December 1950. The new National Government did not consider the Harvey report or offer land or monetary compensation in settlement (F1:3).

10.12.2 Tuiri Tareha's letter

The hapu of Ngati Kahungunu continued raising questions about the Harvey report and the ownership of Te Whanganui-a-Orotu. In April 1951, Tuiri Tareha asked the Minister of Maori Affairs, Mr E B Corbett, what the Government intended to do about Te Whanganui-a-Orotu. On 12 September 1951, Corbett replied that:

Failing specific and convincing evidence on this point [the arm of the sea], the claim of the people is not made out, and there is no ground for any action on the matter by the Government. (F1:4)

In short, the Crown continued to adhere to the common law presumption, which, as Judge Harvey had pointed out, had not been tested in court. The claimants' Treaty rights were ignored.

10.12.3 Riddiford's 1955 inquiry

On 13 December 1955, a Wellington solicitor, D J Riddiford, wrote to Chief Judge Morison on behalf of clients in Hawke's Bay to inquire whether Parliament had reached a final decision on Hori Tupaea's 1932 petition and whether the court was still willing to receive further evidence (A13:131). Noting that Judge Harvey's report was incomplete, the chief judge replied:

Another seven years has now elapsed with nothing done by the Maoris to produce this further evidence. . . . the Petitioners were under an obligation to prosecute their claim with due diligence. I consider that

owing to the length of time which has now elapsed, this enquiry must be regarded as closed. (A13:132)

Waitangi Tribunal, Department of Justice, Wellington.

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10.13 Further attempts to seek redress from the Government

10.13.1 The petition of Ihakara Rapana

On 30 September 1965, another petition praying for an investigation into the ownership of Te Whanganui-a-Orotu was presented to Parliament by Ihakara Rapana MBE of Kohupatiki, a prominent Ngati Raukawa elder, James Waitaringa Mapu, and 120 others. They listed four points: Te Whanganui-a-Orotu was Maori land, reserved from the sale of Ahuriri; the Crown and the Napier Harbour Board had taken possession of land that was not theirs; their ground for protest was the Treaty of Waitangi, which gave them a guarantee of rights and the undisturbed possession of their land; and further grounds for protest were Judge Harvey's report and the decision and recommendation of the late Peter Fraser (A6(m)).

Nine of the petitioners were invited to sit in on the meeting of the Maori Affairs Committee, which discussed the petition on 20 October 1965. Ihakara Rapana presented supporting written material. He stated that Te Whanganui-a-Orotu had been reserved from sale in 1851 and the Treaty guarantee to Maori of rights to their lands, fisheries, and so on should not be overridden by the common law. Te Whanganui-a-Orotu was a rich and valuable gift, with its abundance of freshwater food, kakahi shellfish, and many other fishes. Owing to Pakeha river diversion and dredging, the Ahuriri Harbour fishing had been falsely taken by the Crown without payment and vested in the Napier Harbour Board. Peter Fraser had made a recommendation to Maori, who disagreed with the terms (A6(m)).

The Maori Affairs Committee, relying on Judge Harvey's uncompleted report, made no recommendation regarding the petition, but the member for Southern Maori, Sir Eruera Tirakatene, did not support the decision (A6(m)). The petitioners continued to chafe at the unfairness of the Crown's continual reliance on a report that had stopped only just short of answering most of their grievances favourably and its denial to them of the right to submit (or re-submit) the further evidence that Judge Harvey had required to complete it.

10.13.2 The letter of Anthony Davis

In January 1972, Anthony Davis wrote to the Minister of Maori Affairs, Duncan MacIntyre, expressing dissatisfaction with the Maori Affairs Committee's 1965 decision and complaining that 'It is useless petitioning parliament on anything to do with our Maori people' (A12:150).

In a further letter, Davis detailed his recollection of the offer made by Peter Fraser in 1949, and pointed to the effect of continued injustice on Maori in the area:

It is twenty years ago when our elders turned down the offer made by Mr Fraser. If the younger men were at the helm then, we would have accepted the offer. We find that we, the Maoris of Heretaunga are the poorest Maoris in New Zealand. Because of the fertility of our land the Pakeha bought or took nearly every acre he could lay hands on, leaving us almost landless and there is nothing worse than a landless Maori. (A12:150)

Predictably, MacIntyre was unaware of Fraser's offer. Once again, the Government shelved this unresolved claim, confirming Anthony Davis's cynicism about the worth of further protest.

10.13.3 The 1973 inquiry

After Labour became the Government in 1973, the member for Southern Maori, Mrs T W M Tirakatene, asked the Minister of Maori Affairs, Matiu Rata, to instigate a search of the Maori Land Court records for any reference to Te Whanganui-a-Orotu. Mr Rata replied that all the relevant records had been appended to the Harvey report (A12:151). On 26 June 1973, the Secretary of Maori Affairs, J M McEwan, reported that 'Successive Governments have taken the view when representations were subsequently made to them that the report was too vague to support any decision'.

This report sums up the Crown's consistent response to the grievances that have been raised by the hapu of Te Whanganui-a-Orotu for over a century. As long as some doubt remained over the complete validity of the claimants' case, the Crown continued to deny the need for any redress whatsoever.

In 1974 the late James Waitaringa Mapu, Bob Cottrell, and others met Mr Rata to initiate new proceedings, but Mr Rata resigned his portfolio, and Labour was defeated at the next election. The case lay in abeyance until the present claim was lodged with the Waitangi Tribunal (A12:151).

Waitangi Tribunal, Department of Justice, Wellington.

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10.14 Conclusion

As we have seen, the timing and content of the petitions usually related to what was happening on the foreshore of Te Whanganui-a-Orotu and particularly to reclamations and development undertaken by the Napier Harbour Board and the Napier Borough Council (later the Napier City Council), or undertaken on their behalf by various Government agencies, such as the Departments of Railways, Public Works, and Lands and Survey. The whole process was facilitated and speeded up by the 1931 earthquake, the river diversion, and the urbanisation of greater Napier. The ultimate responsibility lay with the Crown and with Parliament, which passed the empowering legislation. The Crown, therefore, had a Treaty duty and obligation to redress the grievances of the petitioners.

In the final analysis, the Crown's consistent response has always been that Te Whanganui-a-Orotu was included in the purchase or, alternatively, that it was an arm of the sea, and therefore owned by the Crown. The customary and Treaty rights of the petitioners received little, if any, attention from those who rejected the claims made by the chiefs and people of Ngati Kahungunu-ki-Heretaunga for over a century. From time to time, a limited right to some compensation was conceded but none was ever paid. Clearly, the Treaty principles of active protection and redress were breached.

Waitangi Tribunal, Department of Justice, Wellington.