

Te Whanganui-a-Orotu Report 1995

7 The Loss of All That Remained

7.1 The impact of the 1931 earthquake

7.1.1 Introduction

For the seven claimant hapu, the 1931 earthquake was the beginning of the end to 'the rights which they had formerly had and which they were always so anxious to preserve in Te Whanganui-a-Orotu' (A6(j):2). During the next four decades, through actions, policies, and omissions of the Government and local authorities, they lost all that remained to them. As Gary Williams, the project engineer, then chief design engineer for the Hawke's Bay Catchment and Regional Water Board from 1984 to 1987, explained in his evidence, the earthquake 'radically altered' the pattern of harbour development, reclamation, and flood control in the Napier area:

The uplift decided both the site of the Napier port and the method of flood control for the lower reaches of the Tutaekuri River. The headland site became the Port of Napier, and the Tutaekuri River was completely diverted to a common mouth with the Ngaruroro River. The Ahuriri Lagoon itself was nearly all reclaimed, with nothing more than a narrow channel, designed to dispose of hill runoff and drainage outflows, remaining. . . . the lagoon was destroyed by reclamation and drainage, not by the earthquake. (F3:19-20)

What the claimants lost, the Napier Harbour Board and Napier Borough Council gained. In the words of Geoff Conly, a newspaper editor and historian, the earthquake provided the board and council with an unexpected and welcome 'gift from the sea' (E8:190); that is, a large area of dry land for housing, industry, farm settlement, an airport, and a wildlife reserve. Undoubtedly, as Kay Mooney wrote in her *History of the County of Hawke's Bay*:

The Harbour Board was the favoured daughter of disaster and reaped the benefit of the bounty although a claim is still pressed that part of this should have been deemed Maori land when the Treaty of Waitangi had granted to the tribes of Ahuriri possession of their fishing grounds.¹

This chapter examines 'the benefit of the bounty' to Napier and the loss by local Maori of all that remained of the lagoon.

7.1.2 The transformation of the lagoon

The tide at Port Ahuriri had begun to turn when the first two shocks, lasting 2½ minutes with about half a minute in between, struck at 10.46 am on 3 February 1931. They measured 7.9 on the Richter scale.² Conly summed up the after effects on Te Whanganui-a-Orotu as follows:

The water began to run out of the lagoon through the narrow channel from the inner harbour to the sea, the islands were joined by new shingle banks and new beaches round the edges of the lagoon. Small or low beaches were gradually extended . . . the water crept gradually away from the Poraiti aspect and it was some days before a third or half of the lagoon bed reflected the sun. The earthquake of 13 February shook out a lot of what water was left. (E8:191-193)

Where there had previously been water between the two leading beacons at Petane was now dry land (D6(a):357). The total area of the lagoon within the Napier urban area that was raised above the high-water mark was approximately 1406 acres (D6(a):354).

Shortly after the main shake, Commander H W Morgan of HMS *Veronica*, which was berthed at the wharf, observed that water commenced to pour out of the harbour like a mill-race. At the channel entrance it rushed away 'with a force that denied small ships entry'. Its peak flow of about 13 knots was caused by the outer margin of the lagoon being raised by two metres and the inner margin by one metre. This high rate of outflow continued past the next high tide (E8:193). Soundings taken later at Pania's rock showed a rise of four to five feet (D6(a):199).

The Westshore Bridge collapsed and the causeway over the mudflats on either side spread. The roadway split and collapsed, the railway line buckled, and telegraph and fence posts were displaced. Communications northwards were cut off. The banks of the main tidal channel closed and the shingle beach slumped towards the sea (or enclosed lagoon), lessening the size of river channels. Fissures formed in the alluvium and recently filled ground, and large quantities of water, sand, and silt issued from fissures in the ground.³

Although the tides soon became regular again, high tide was slightly earlier, probably because of the reduced lagoon area (D6(a):193). Before the earthquake there was a discernible tide in Te Whanganui-a-Orotu; after the earthquake it was confined to the entrance, where the water was brackish. But the remaining water in the lagoon soon became fresh because the banking up of the tide was not sufficient to stem the inflow from rivers and streams. At the southern end the tilting up of the raised area caused some backing up of and overflow from the Tutaekuri River (D6(a):323). At the northern end the water that the Waiohinganga (Esk) River discharged into the lagoon near Te Ihu o Te Rei was reduced to a trickle and went directly out to sea at Petane (D4:59-60).

At the beginning of 1932 the field superintendent of the Department of Agriculture reported that 'from appearance one third to one half of the lagoon area was still more or less under water' (E8:193). But apart from the main channel from the Westshore Bridge to Tapu Te Ranga, the remaining water was only one to two feet deep (D6(a):364, 470). As the claimants said, the earthquake 'didn't entirely drain Te Whanganui-a-Orotu but left it highly reclaimable' (A12:165).

7.1.3 A serious public nuisance

The inner harbour opposite Port Ahuriri, having been emptied of its water within a few hours, remained elevated, and large quantities of fish were entrapped in the shallow pools that dotted its surface. Claimant witness Selina Sullivan remembered collecting fish (flounder and kahawai) as the tide went out:

That was a luxury straight after the 1931 quake. We had two big trucks in Omahu . . . They were used to get logs from Taupo. They took a crowd to the port . . . at that time the sea went out a mile and a half I think and things were all in puddles, the fish, kina, everything. They couldn't get away. We all had a feast . . . Peter Nuku and Jim Wilson were the ones who had these trucks and distributed the catch right through the paa.

Not long after that the water started coming back slowly. We never got all those luxuries again. (D14:4)

Nevertheless, she added, it was possible to get kaimoana at Ahuriri for some time after the earthquake.

Rangiaho Brown said that when she came back to Napier the lagoon was dry and that there were 'a lot of dead fish and all sorts lying about . . . We went straight through town to Waimarama, we didn't spend much time sightseeing there' (D29: para 13).

As a precaution against disease, workers were engaged to rake the dead fish into large heaps for burning (D41: photo), but the horrible and persistent stench of dead fish and shellfish, stale water, and decomposing organic matter remained a serious public nuisance that taxed the harbour board's manpower resources.⁴

7.1.4 Te Whanganui-a-Orotu laid waste

From the claimants' perspective, 'one dramatic upheaval' laid waste a locality with special ancestral and life-sustaining qualities for the tangata whenua (A12:152). But to claim that the earthquake destroyed their 'exceptional and reliable food source' is only partly true and is evasive of responsibility (D4:57). Oral evidence given by witnesses for the claimants indicated that they continued to use the remaining shellfish beds and fishing grounds in Te Whanganui-a-Orotu, particularly in the Ahuriri Estuary, until as late as 1971-77, by which time they had become so polluted as to be a serious health risk (See para 2.5.8).

Emma Kaukau, who grew up at Omahu and was an eight-year-old at Puketapu School on the day of the earthquake, remembered her elders talking about Te Whanganui-a-Orotu drying up: 'They said, there will be a time when the water will return, to its resting place' (D17:3). Had it been left to natural forces this might well have happened. In Mr Williams's opinion, 'The lagoon would have reverted to a largely fresh water body' had no reclamation or drainage work been undertaken (F9:20). But with the raising of the inner harbour, a reclamation scheme on a scale not dreamt of in the 1900s entered the realm of practical politics, and was begun three years later. For the tangata whenua:

The loss of Te Whanganui-a-Orotu went well beyond its recreational pleasures. Apart from being the destruction of an exceptional and reliable food source there was a great sense of spiritual loss. Places of long ancestral association breed a security, a sense of belonging hard to define. This was the other loss experienced by the Maori. (A12:165)

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

7 The Loss of All That Remained

7.2 Relief and reconstruction

7.2.1 Maori assist in rescue work

In Napier shore parties from the HMS *Veronica* took a leading part in early rescue work. In Hastings the *Auckland Weekly News* reported:

Maoris have been prominent in relief work. The earthquake was scarcely over when a large party of properly organised Maori formed into a working gang, appeared in the town and immediately set about sharing the work of clearing the debris, digging out the dead and tending the injured. Women joined with men in this splendid service. The Maori organisation was under the control of the Maori Welfare League and its members set an example which impressed everybody. They were imbued with the spirit of cheerfulness and self sacrifice and their help in this time of need is not likely to be forgotten readily.
(D41; D44(15):7)

7.2.2 Relief provided for Maori

Special provisions for Maori relief were made by citizens' committees, which drew upon a central relief fund provided by a nationwide appeal. In Napier the central committee requisitioned Carl Pfeifer of the Department of Lands and Survey to control relief work in the northern Maori area, which comprised 12 pa from Moteo to Te Haroto. He immediately established communications with them and arranged for them to get regular supplies of food and other necessities. He found that emergency provisions had been made at every pa that he visited, and he was asked by young men if he could find work for them because they wanted to pay for their food if they could. He paid tribute to the magnificent practical, as well as spiritual, work that the Bishop of Aotearoa performed amongst his people at this time.⁵ In Hastings a special Maori relief fund was set up.

7.2.3 Government assistance

Despite general agreement that in disaster New Zealand was one community, and despite promises from Ministers that they would do everything in their power 'to reinstate Napier and the district surrounding it' (E8:27), Government assistance, in the context of the deepening depression, unemployment, and retrenchment, was utterly insufficient. The Hawke's Bay Earthquake Act, passed on 28 April 1931, established both the Hawke's Bay Adjustment Court to deal with applications for relief from obligations and encumbrances and a rehabilitation committee to deal with applications for relief from hardship. The Minister of Finance was authorised to make payments not exceeding £250,000 from the reserve fund to assist private persons and to transfer

amounts not exceeding £250,000 from the State advances account for loans to local bodies (A4(m)). The total amount provided was about one-fifth of the estimated losses in Napier and Hastings alone.

There is no record of any special consideration being given as to how to recompense local hapu, who had sustained serious losses of traditional resources in the Ahuriri Lagoon, as well as a 'great sense of spiritual loss.'

7.2.4 Commission control

On 11 March, the Napier Borough Council's functions and duties were delegated to a Government commission of two men: J S Barton, a magistrate, and L B Campbell, an inspecting engineer for the Public Works Department. Its powers were confirmed in section 24 of the Hawke's Bay Earthquake Act 1931. The local body elections were postponed until the first Wednesday in May 1933 (s 62). With supporting committees, the commissioners were responsible for the reconstruction in Napier until then.

At Port Ahuriri, reconstruction centred on factories, warehouses, wool stores, and wharves. For Westshore residents, a motor launch service from the Iron Pot to Meeanee Quay was provided until the collapsed footbridge was repaired in 1965.⁶

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

7 The Loss of All That Remained

7.3 Renewed harbour development

7.3.1 Breakwater party in the ascendancy

The earthquake settled the fate of the inner harbour, but not the long-standing controversy between the inner harbour and breakwater parties. The Napier Harbour Board continued to function and, through Order in Council, was able to use its loan moneys for purposes other than those for which they had been raised.⁷

In 1932, following the retirement of the anti-breakwater chairman, A E Jull MP, after 20 years in office, T M Geddes was elected and immediately moved that:

The Chairman be asked to approach the Government at once with a view to obtaining a report from the Government Engineer-in-Chief, F W Furkert, and Drummond Holderness, chief engineer and general manager of the Auckland Harbour Board, on the altered condition following the earthquake and advice on the policy of development to be adopted to keep the Port of Napier operating and as to the Board's future policy of general harbour development. (E9:194)

7.3.2 The Furkert and Holderness report

The substance of the Furkert and Holderness report was a 'straight-out unequivocal recommendation for immediate development of the Breakwater harbour to be followed by the complete abandonment of the Inner Harbour as a commercial port'. A complete scheme, necessary for immediate prosecution, was outlined (E9:195). The harbour board unanimously adopted this report. Even though it now had a clear mandate and up-to-date engineering advice, it moved that the commissioners control and execute the work. This, the Prime Minister refused. With Geddes in the chair, it then proceeded to implement the report with energy and decision.

7.3.3 The loan for the breakwater extension is approved

The requisite approval of the Local Government Loans Board and 60 percent of ratepayers was sought for a loan of £350,000 for the breakwater extension. In the run up to election day (19 July 1934), a battle raged between the breakwater party and Jull and his supporters. In an 80 percent poll, 67 percent in the borough of Napier and the townships were for the loan and 63 percent in Hastings and the country districts against it. The earthquake had 'finally convinced voters that harbour development depended on the breakwater alone'.⁸ The development of a breakwater port as an all-weather, deep-water harbour commenced.

Te Whanganui-a-Orotu Report 1995

7 The Loss of All That Remained

7.4 The reclamation of the lagoon

7.4.1 Title to the upraised land

As Conly said, the Napier Harbour Board coveted the sprawling, smelly mudflat that had been thrust up in the lagoon and claimed it 'with an alertness which anticipated any other claimant' (E8:190, 194). On 29 February 1931, W E Barnard, a lawyer and the member of Parliament for Napier, raised with the Minister of Marine, the Honourable J G Cobbe, the question of whether or not the large areas in the lagoon lifted above sea level were vested in the Napier Harbour Board. He pointed out that there was considerable dissatisfaction in Napier South with harbour board leases and that many would prefer a Crown tenure. A thorough investigation of the matter might show that the areas of new land being claimed by the harbour board were the property of the Crown (D6(a):373).

Prompt advice was provided by the Assistant Secretary of the Marine Department that there appeared to be no doubt that the land (the bed of the lagoon), excepting certain small islets, was vested in the board for its use, benefit, and endowment by section 2 of the Napier Harbour Board Act 1874 and described in the First Schedule. Doubts over boundaries had been met by the substitution of a new schedule in the Napier Harbour Board Amendment and Endowment Improvement Act 1887. Apparently, however, the title would not be for an estate in fee simple. As regards Barnard's question, he pointed out that:

A gradual and imperceptive accretion from the sea belongs to the owner of the edging terra firma, and where the increase is sudden or perceptible, the land gained belongs to the Crown.

According to Carlson and Forbes's *Law of Waters* (4th ed, p 39), he explained:

The reason for assigning lands gained suddenly from the sea, and islands, to the Crown is stated by most writers to be that the King is owner of the soil of the sea, and the universal occupant of what was unclaimed. (D6(a):375)

In the case in question, the board, having been granted the area in question by the King, 'is fully entitled to continue its right in any Title which has been issued to it in respect of that area', and 'their Title would be subject to reservations set out in Section 2 of the 1874 Act'.

As the question was deemed to be of some importance, an authoritative opinion was obtained from the Crown solicitor, C H Taylor. He agreed that the lagoon, excepting the small islands, was vested in the Napier Harbour Board for its use, benefit, and endowment. He did not think that the sudden raising of the land of the lagoon above

the surface of the water by an earthquake gave the Crown any rights over the raised land or took away from the board any of the rights that it already held. The generally accepted view, to the effect that lands suddenly gained from the sea belong to the Crown, did not apply in this case because the Crown had already parted with its title.

On 15 March, 2½ weeks before Parliament began debating the Hawke's Bay Earthquake Bill, the Minister of Marine informed Barnard that the Crown Law Office confirmed the views of his department (D6(a):376-377). There is no reference in the above correspondence of any past Maori claim for an investigation of title to Te Whanganui-a-Orotu or any hint that this was a continuing claim.

7.4.2 Rochfort's scheme

In October 1931, Guy Rochfort, a Napier surveyor and the harbour board's consulting engineer, proposed a reclamation scheme that involved the diversion to the sea at Waitangi of all the water that the Tutaekuri River discharged into the southern end of the lagoon, the construction of a gravity outfall channel to collect all other water running off the hills into the inner harbour, and the digging of a rectilinear network of subsidiary drains at right angles to the outfall channel (D6(a):359, 361). 'The Harbour Board decided the scheme was too big for it to tackle' and, in 1932-34, made arrangements with the Government to undertake the work.⁹

7.4.3 The Napier Harbour Board Empowering Act 1932-33

The Napier Harbour Board Empowering Act 1932-33 was passed to enable the board:

to sell certain Areas of Land and to adjust the Boundaries and Contours, both External and Internal of the Ahuriri Lagoon . . . in order to provide funds to improve and render saleable . . . and revenue producing land reclaimed from the lagoon. (A4(k))

Section 4 of the Act gave the board power to sell two parcels of land comprising portions of its Te Whare O Maraenui and Ahuriri Lagoon reserves and containing 28 acres and 92 acres respectively.

Section 5 of the Act gave the board power:

- (a) to purchase any areas of land adjacent to the Ahuriri Lagoon or within its outside boundaries, including the islands of the lagoon;
- (b) to sell any areas of land lying on or adjacent to the outside boundary lines that were its property;
- (c) to exchange any areas of land, being parts of the Ahuriri Lagoon endowment, for any other areas of land lying adjacent to the lagoon or being within the outside boundaries, including the islands; and
- (d)

to take or purchase under the provisions of the Public Works Act 1928 any areas of land lying adjacent to the lagoon or being within the outside boundaries, including the islands.

Nine islands were named in the preamble to the Act: Roro o Kuri, Parapara, Te Ihuotikei [Te Ihu o Te Rei], Uruwiri, Poroporo, Tirowhangahe, Tuteranuku, Awa a Waka, and Matawhero. All except for the European-owned Roro o Kuri and Te Ihuotikei, a quarantine station under the joint administration of the Napier Borough Council, the Hastings Borough Council, and the Hawke's Bay County Council, were described as of little or no value, being mostly shingle beds and 'Native Land the title to which has never been investigated, ascertained or determined'. In fact, Parapara, too, was European-owned.

The Act empowered the Native Land Court to issue an order or orders vesting any island that was native land and for which the title had not been investigated in persons or trustees, who should have the power to sell, mortgage, lease, exchange, or otherwise deal with the land as fully as if they were beneficial owners (ss 61, 62).

7.4.4 Reclamation and preliminary development

On 8 November 1933, the Minister of Finance approved capital expenditure up to a maximum of £50,000 on the reclamation and preliminary development of the Ahuriri Lagoon (D6(a):439). On 3 May 1934, the Napier Harbour Board agreed to lease the lagoon area, consisting of 7595 acres (3074 ha), to the Crown for 21 years from 31 March 1934 for the peppercorn rent of one shilling per acre and with a right of renewal for a further 21 years if required (D6(a):445-447). The harbour board and the Crown, through the Ministry of Lands, reached an agreement that the Crown would carry out Rochfort's scheme of works, as amended by the Public Works Department, with all reasonable speed. Unemployed labourers in the board's rating area would be employed wherever practicable. The costs would constitute a debt payable (with interest) by the board to the Crown. All income would be applied to the reduction of the debt (A6(a):450-459).

In June 1934, the Public Works Department commenced drainage and reclamation work. Efforts were at once concentrated upon the construction of 11 miles of stopbanks needed to control the water draining from the hill country behind the lagoon. Two pumping stations were installed to drain the flat land enclosed by the stopbanks. To bring this land to a state of productivity, the first and most essential step was to rid it of excessive salt left by the sea. This was done by digging small drains three feet deep and 12 inches wide at the bottom in parallel lines two chains apart over the whole area.¹⁰

A progress report for the year ending 30 June 1937 stated that 207 miles of drains had been completed, a section of the block comprising 2000 acres had been completely drained, and the drainage of a further 2000 acres was well advanced (D6(a):270-273). Through draining, Te Whanganui-a-Orotu was eventually reduced to the tidal channels we see today (D24:58).

Te Whanganui-a-Orotu Report 1995

7 The Loss of All That Remained

7.5 The diversion of the Tutaekuri River

A vital part of Rochfort's reclamation scheme was the diversion of the Tutaekuri River away from the lagoon and straight out to the sea at Waitangi. For many years prior to the earthquake, this had been a highly contentious issue in Hawke's Bay county council and rivers board politics. In 1929 Rochfort and Hay, another engineer, produced a scheme that not only provided for the complete diversion of the river to Waitangi but also would take surplus flood water from the Ngaruroro River (D6(a) 276-280).

When the 1929-30 empowering legislation went before the House, the opposition to this scheme from settlers at Clive, from the Whakatu freezing works, and from Maori landowners was sufficiently strong to have the scheme amended to allow for flood waters only to go down the overflow channel to Waitangi, leaving the main river to continue to the lagoon (D6(a):382).¹¹

Hay's investigation of the damage done to river protection works immediately after the earthquake revealed that the district was wide open to the menace of flooding. As the matter was urgent, the Government agreed to advance £10,000 to the Hawke's Bay Rivers Board to undertake urgent repairs before the summer drought broke. Two hundred horses and 300 men completed the work in four weeks (D6(a):382).

Following the upthrust of land by the earthquake, the Tutaekuri River became more sluggish and meandering in its lower reaches. These changes worsened the flood menace in the Meeanee area between Powdrell's Bend and Napier, which hitherto had escaped or suffered only lightly.

Initially, the board adhered to the 1930 policy of allowing only flood waters to go down the overflow channel to Waitangi, but post-earthquake changes in the lower reaches of the river and several floods made it increasingly obvious that complete diversion was the only way to provide adequate flood control. Despite continuing and very strong opposition from one section of the district, and several alternative proposals, in 1932 the Hawke's Bay Rivers Board finally accepted the complete diversion scheme, with a stopbank to be built at Moteo to prevent overflow.¹²

On 4 November 1932, Cabinet decided that the work should be carried out by the local bodies concerned, that the Unemployment Board should contribute to the labour costs, and that the Government should subsidise the remaining cost of 40 percent (D6(a):386-387). The Hawke's Bay Rivers Amendment Act 1932-33 allowed the diversion to go ahead as part of the Ngaruroro River flood control works (D6(a):401-402).

Under the control of the Hawke's Bay Rivers Board and the supervision of the Public Works Department, work started on 12 March 1934. The Tutaekuri River was quickly

and completely diverted into the overflow channel to discharge into the sea about three miles south of Napier and to the north of the mouth of the Ngaruroro River. The overflow channel between the two was improved as an additional safeguard against the Tutaekuri in flood, and the old channel was stopbanked (D6(a):407). The diversion channel was finally enclosed in May and June 1936. The total expenditure on the diversion was well over £100,000 (D4:59).

The complete diversion of the Tutaekuri River allowed Napier South to be extended and developed 'without fear of inundation and destruction' (D4:59). It also benefited land reclamation in the Ahuriri Lagoon, particularly at the southern end (D6(a):638). The claimants, however, viewed the development differently. The sealing off of the Tutaekuri from Te Whanganui-a-Orotu severed the link between the two, which had been preserved since ancient times (D4:59). Through drainage and river diversion they had lost not only a traditional food resource but a taonga over which they still claimed tino rangatiratanga. Furthermore, the scheme had been carried out without any consultation or compensation.

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

7 The Loss of All That Remained

7.6 Land development for farm settlement

Under the 3 May 1934 agreement, the development of reclaimed lagoon land for farm settlement was supervised by the Commissioner of Crown Lands in Napier and carried out through the Small Farms Board under the Small Farms (Relief of Unemployment) Amendment Act 1932-33 (A8(f)). Section 2 this act allowed the Napier Harbour Board to enter into an agreement with the Minister, whereby any of its endowment lands might be made available for small farms (A9:16; A8(f)).

In April 1934, the Small Farms Board of the Department of Lands and Survey commenced farming operations. By 30 June 1937, 13 miles of fencing had been erected at the south end of the block, approximately 400 acres had been sown in pasture, and 1000 breeding sheep had been drafted on to the block, with 100 head of cattle to follow shortly. An average of 177 married men, all recruited from the unemployed of Napier and the surrounding district, had been employed the previous year (D6(a):473, 529-537). The whole block was farmed as one unit, pending a decision on its ultimate subdivision (A12:169).

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

7 The Loss of All That Remained

7.7 The compulsory acquisition of the islands

7.7.1 Empowering legislation drafted

One of the effects of the raising up of the bed of the Ahuriri Lagoon was the transformation of the islands into hills surrounded by dry land, which resulted in confusion over the external boundaries of the Napier Harbour Board's endowment. To enable it to reclaim, develop, subdivide, lease, or sell portions of upraised land, the board requested its solicitors, Sainsbury, Logan, and Williams, to draft the Napier Harbour Board Empowering Bill 1932, which would allow it to acquire the former islands.

Neither the board nor its solicitors seem to have been fully conversant with the number and status of the former islands, or with applications already made to the Native Land Court for investigation of title. The nine islands named in the proposed Bill were simply copied from the Napier Harbour Board Amendment and Endowment Improvement Act 1887. Except for `Roro o Kuri (now owned by Europeans) and Te Ihuotikei (now a Quarantine station under the . . . joint administration of the Napier Borough Council, the Hastings Borough Council, and the Hawkes Bay County Council), all were described as `of little or no value, being mostly shingle beds and . . . Native Land the title to which has never been investigated, ascertained or determined' (A7(a):110-18). Hence the provision in the Napier Harbour Board Empowering Act 1932-33 enabling the Native Land Court to issue orders vesting the islands in trustees, who should have the power to deal with the land as if they were beneficial owners (see para 7.4.3).

7.7.2 Native Department informed

On 10 October 1932, the solicitors referred a copy of the Bill and related plans to the Native Department. The under-secretary, Robert Jones, referred these to the Minister, Sir Apirana Ngata, who minuted them as follows:

By the proposed Bill the Napier Harbour Board proposes to assume control of what were formerly islands in the lagoon and allow compensation. (A7(a):148)

On 28 October, Jones advised Bob Tutaki, secretary of the Heretaunga Welfare Association in Fernhill, that the proposed Bill mentioned `several little islets formerly in the lagoon' that were native land. The Bill, he explained, gave the board the power to buy the islands, but this was impracticable because no titles were issued. Alternatively, the islands could be taken under the Public Works Act 1928 and compensation could be assessed by the Native Land Court (A7(a):147).

About 10 days later Jones received a telegram from Hastings that was signed by Hakiwai informing him that a deputation on the Ahuriri Lagoon was on its way. Some three weeks later he received a copy of a petition seeking redress in respect of Te Whanganui-a-Orotu from the Native Affairs Committee. The petition was addressed to Ngata and the House of Representatives and was signed by Hori Tupaea and four others, one of whom was N P Hakiwai (see para 10.10).

7.7.3 Submissions on the islands

The petitioners submitted, among other things, that:

The small islands which dotted the lagoon have always been considered as reserved for the Maoris, and nine such islands were named in the Napier Harbour Board Act 1874 and were specifically excluded by that Act from the provisions which vested the lagoon in the Harbour Board. (A6(j):2)

They were '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'. They therefore submitted that they have:

- (a) a claim as of right to the territory represented by the islands, now lost or left undefined in the general emergence of land;
 - (b) a claim according to equity and good conscience, with a large measure of right, to share in the benefits which may accrue from the added territory.
- (A6(j):3)

The petition appears to have had no effect whatever on the passage of the Bill through Parliament.

7.7.4 An official inquiry into the status of the islands

On receipt of the minuted copy of the draft Bill from Jones, Ngata promptly obtained an assurance by the chairman of the local Bills committee that it would be referred to the Native Affairs Committee. He also asked Jones for particulars relating to the small islands. Jones had already suggested that the preamble to the draft Bill should be amended both to exclude Parapara from the list of islands that were still native land and to correct the statement that they were mostly shingle banks of little or no value (A4(b); A7(a):140).

In response to Ngata's request for particulars, Jones and the chief surveyor in the Napier office of the Department of Lands and Survey procured the documents required to establish the current status of the nine islands, namely, the Crown grant for the Te Pahou block and the land transfer deeds for Te Ihu o Te Rei and Parapara, from the registrar of the Native Land Court and the Napier town clerk respectively. The chief surveyor also discovered that Roro o Kuri had apparently been sold by the grantees to David Milne, who then sold it to the North British Freezing Works (which was in liquidation), which resold it to Pat White, the son of Kinross White, the principal director. The land transfer deed was being handled by Sainsbury, Logan, and Williams, who had agreed to produce the deed if necessary (A13:142, 167).

As a result of these inquiries into the status of the islands, the Bill was amended, as Jones had suggested, to exclude Parapara and the reference to their being mostly shingle beds and of little or no value.

7.7.5 Survey plans of the islands

We do not know what plans the board's solicitors sent to the Native Department with the copy of the draft Bill, other than one of Tapu Te Ranga, which is not mentioned in the Bill. We do know, however, that the six islands that were still customary land had been surveyed by William Ellison in November 1867 (see paras 5.5.8-9). We also know that Ellison's plan was transmitted to the provincial chief surveyor on 6 March 1868 and certified on 31 March 1925 as being identical to a plan in the Napier Survey Office, which was presumably destroyed in the fire after the earthquake. It is unlikely, therefore, that either the harbour board or its solicitors were aware of the existence of Ellison's plan in 1932 and 1933.

In January 1932, the board engaged Guy Rochfort to survey the native (customary) lands within the boundaries of the Ahuriri Lagoon reserve as well as part of the reserve and parts of the adjoining Te Pahou and Puketapu blocks. Rochfort's plan (DOSLI deposited plan 6227) comprised a total area of 124 acres 1 rood 27 perches. Included in it are Roro o Kuri (67 acres 1 rood 10 perches), Te Ihuotikei (3 acres 3 roods 10 perches), and Parapara (1 acre 2 roods), incorrectly described as 'Native lands within the boundaries of the Ahuriri lagoon reserve', as well as plans of the six other islands in the reserve, correctly described as native (customary) lands (D6(a):509). The names and acreages are the same as those listed in the schedule to a proclamation that was issued on 6 October 1939 (see para 7.7.7).

Because Rochfort's plan was not declared before a justice of the peace until 16 October 1933 and was not received by the Department of Lands and Survey until 27 June 1934, it was presumably not among the 'related plans' referred to the Native Department on 10 October 1932 by the board's solicitors.

7.7.6 Legal options

The Napier Harbour Board's correspondence with its solicitors indicates that some six months after the whole lagoon area was leased to the Crown the 'procedural machinery' in section 6 of the Napier Harbour Board Empowering Act 1932-33 to acquire the islands was set in motion (A13:143-149). On 4 December 1935, the solicitors advised the board of its options. While acquisition under the Public Works Act 1928 might be quicker, they thought that where Maori claimants were concerned there was no way of knowing what kinds of claim or how many claims might be advanced. Moreover, the claimants 'might become more clamorous through political mouthpieces'. As title to the islands had never been investigated, ascertained, or determined, the board would readily grasp the advantage of an order being obtained that vested the land in trustees in the same manner as if the land had been granted to those persons by the Crown (A13:144).

An application under section 6 of the 1932-33 Act was accordingly lodged for the appointment of trustees and came before the Native Land Court in Hastings. W T Prentice, of Sainsbury, Logan, and Williams and a licensed interpreter, appeared in

support of it. After being postponed three times it was heard on 20 March 1936, when an order was issued for the appointment of the following trustees: Te Roera Tareha (male adult, Taradale), Pukepuke Tangiora (female adult, Paki Paki), Mepera Makuiterangi Erihana (female adult, Opapa), Paora Kurupo (male adult, Puketapu), Hori Tupaea (male adult, Opapa).

According to Mr Prentice, 'a more stubborn set of Trustees could not have been found, and they were not likely to come to terms of sale that would be satisfactory to the Board' (A13:145). The matter, he explained to the board, had been complicated by the judge's view that there was no authority under which title could be given to land lying under channel waters. This had 'had the effect of making the Natives very jubilant as to their claim for the raised Inner Harbour', which was to be duly heard some weeks later (A13:145-146). He was referring to Hori Tupaea's petition, the hearing of which commenced on 19 April 1934 (see para 10.11).

The court order was made on 8 June and matured six weeks later, with a sixth name being added to the list of trustees, that of Keita Pahi (female adult, Westshore) (A13:147).

As the board had been instrumental in having trustees appointed, the solicitors thought that it should now make the trustees an offer for the land or propose an exchange (A13:148). If the trustees stood out for terms in excess of what it was prepared to consider, resort could be had to the Public Works Act. The circumstances relating to the islands were of such an exceptional character that there could be considerable difficulty in fixing a basis of values if resort was had to that Act. The earthquake had the effect of raising the bed of the lagoon to such an extent that the islands, or some of them, probably merged, physically speaking, with the surrounding land. The Maori owners could fairly claim that their property had appreciated in value commensurably, at least, with that of the board's.

Although the 1874 and 1887 Acts did not reserve any right of access to the islands (possibly this was thought to be unnecessary), under the existing conditions it seemed unlikely that the Maori owners would be allowed to remain without access. The want of access as an argument in reduction of value might not carry much weight. The necessity of providing access to any land purchased from the Crown under section 124 of the Public Works Act 1924 would not apply. Nevertheless, it was significant of the view of the Legislature that landowners should have facilities for acquiring access. It was also possible, given the exceptional circumstances, that a court or the Legislature might apply the common law principle known as 'the right of way of necessity' (A13:149).

Without presuming to take upon themselves the functions of valuation, the solicitors thought that the per acre value should at least be equal to the per acre value to the board of land surrounding the islands. If any reference was made in any offer to want of access, this might give rise to agitation for some remedial legislation. The solicitors warned that:

Natives are able to pull many strings through Sir Apirana Ngata, and possibly, other members of Parliament. Legislation of that character

might take such a form as to interfere seriously with the Board's operations with regard to its Lagoon Endowment area. (A13:149)

For themselves, the solicitors would be relieved if the board could arrange matters with the trustees by negotiation. Under the Act, the board had a free hand.

7.7.7 Taking the islands under the Public Works Act 1928

The board apparently considered it easier to take the islands under the Public Works Act 1928. A notice of intention to take land was published in the *Daily Telegraph* on 23 March 1939. Objections were to reach the board no later than 2 May 1939. In April, Hori Tupaea lodged an objection, and a hearing was fixed for 19 June 1939. No evidence of any such hearing was given to the Tribunal.

On 6 October 1939, a proclamation was issued, taking land described in the schedule 'for the purpose of adjusting boundaries both external and internal of the Ahuriri Lagoon Endowment' and vesting it in the Napier Harbour Board as from 16 October 1939 (A8(g)). The approximate areas and pieces of land taken were described as follows:

A	R	P	Being Island or Land known as
6	0	0	Uruwiri
5	1	20	Tuteranuku
0	3	10	Poroporo
0	2	30	Tirawhangahe
5	0	20	Awa-a-Waka
3	3	20	Matawhero

Section 45 of the Public Works Act 1928 provided that no claim for compensation was to be made after a period of five years from the vesting.

On 24 October 1944, the harbour board was advised by its solicitors that this period had expired on 16 October. The solicitors said that, although they had written two or three times to the solicitors of the Maori trustees in the matter since the date of the proclamation, no claim, as far as they knew, had been made for compensation. They understood from Maori who were going to Wellington to discuss general matters with the Maori members of Parliament that the question of the ownership of the inner harbour would be raised again; Judge Harvey had not yet presented his report of the enquiry held by him just over eight years before (A13:151).

In all probability, the Maori trustees were awaiting the outcome of Judge Harvey's report on Hori Tupaea's petition to settle all their outstanding claims to Te Whanganui-a-Orotu, rather than seeking compensation for approximately 20 acres (see para 10.11.6).

7.7.8 Tapu Te Ranga

One former lagoon island well above the high-water mark, Tapu Te Ranga, was not amongst those taken under the Public Works Act 1928 and should therefore have been recognised by the Crown as Maori customary land (A12:18). Presumably the Crown

mistakenly assumed it held the title in 1950, because at present it is part of the Ahuriri Landcorp farm (E3:16).

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

7 The Loss of All That Remained

7.8 Conclusion

In summary, we find that after the 1931 earthquake:

- (a) the Crown approved and implemented a scheme of works to drain and develop up-raised land in the Ahuriri Lagoon and to divert the Tutaekiri River without any reference to or consultation with local Maori or any consideration of their customary, Treaty, and contractual rights;
- (b) the Crown empowered the Native Land Court to issue an order vesting the six former lagoon islands that were still customary land in trustees, who would have the power to dispose of them as if they were beneficial owners;
- (c) the Crown empowered the Napier Harbour Board to take the six former lagoon islands under the Public Works Act 1928; and
- (d) the omission of Tapu Te Ranga appears to have been an oversight as it was assumed to be Crown land in 1950.

The Crown's actions enabled the harbour board to exercise the legal option of resorting to the Public Works Act to acquire the islands compulsorily rather than negotiate with the trustees to purchase or exchange the islands.

This was a clearly a blatant misuse of the Public Works Act to avoid having to offer the trustees a fair market price or exchange. Moreover, the islands were compulsorily acquired without any compensation being paid, apparently because the owners expected that the matter would be dealt with after Judge Harvey presented his report.

The taking of the six islands, like the taking of Te Maunga railways land, 'raises issues that are significant in the consideration of public works generally'. We agree with the Te Maunga railways land Tribunal's recommendation that all persons exercising functions under the Public Works Act should act in a manner that is consistent with the Treaty of Waitangi.¹³

Waitangi Tribunal, Department of Justice, Wellington.