

Te Whanganui-a-Orotu Report 1995

8 The Disposal and Utilisation of Reclaimed Land

8.1 The evidence

15 Figure 15: Plans showing Ahuriri Lagoon, Scinde Island, and surroundings in 1865 and the same area in 1965

The Tribunal was given brief evidence on the disposal and utilisation of land reclaimed from the inner harbour after the earthquake by Mr Parsons (A12:172-177).

As well, four volumes of 'Supporting Papers to the Evidence of David Alexander' on the physical changes to Te Whanganui-a-Orotu were filed by Crown counsel. These papers (D6(a)) and an index to them (D6(a): vol v) contained detailed, undigested material, taken mainly from official sources and newspapers, on the disposal and utilisation of lagoon lands under the Napier Harbour Board and Napier Borough Enabling Act 1945 and the Public Works Act 1928. No evidence from Mr Alexander was filed; nor was he called as a witness.

For the purposes of this report, we have briefly examined this evidence under four headings: suburban expansion, industrial development, the Hawke's Bay Airport, and the Ahuriri farm settlement. The physical changes to Te Whanganui-a-Orotu that followed are clearly illustrated in the twin plans of the Ahuriri Lagoon and its surroundings that are reproduced here (see fig 15). Evidence on the environmental impact of the changes was presented by David Young (E5) and Gary Williams (F3). Transcripts of Mr Brown's cross-examination of these two witnesses were prepared by the Crown Law Office (H3).

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8.2 The greater Napier scheme

8.2.1 The harbour board agreement with the borough council

We have seen how, before the earthquake, when the inner harbour party was dominant, the harbour board was reluctant to part with large areas of its endowment to meet Napier's need for more land. Reclamation and leases, nevertheless, were a very profitable source of revenue for the financing of harbour development. After the earthquake, with the breakwater party in power, the board was more ready to come to terms with the Napier Borough Council over its land requirements.¹

A measure of this readiness was the 1936 lease to the borough council of the 475-acre Marewa block and a 40-acre plantation at the southern end of the lagoon adjoining Napier South (D6(a):1404-1406). None the less, the borough council still found itself in the position of being entirely dependent upon the harbour board for the land it needed for 'natural growth and development' (D6(a):1408-1409). Furthermore, harbour leases of land within the borough were unpopular with tenants, and freehold land was increasingly sought for residential and business purposes. With the return to prosperity in the late 1930s, the pressure increased for more harbour board land adjacent to the borough boundaries. In 1943 the borough council started to give serious consideration to a Greater Napier scheme. In 1945 it petitioned Parliament in connection with lands needed for State housing and the rehabilitation of ex-servicemen, pointing out that the existing position was 'unfair and inequitable' (D6(a):1409).

On 29 May 1945, the *Daily Telegraph* reported that 'complete agreement had been reached between the Borough and the Napier Harbour Board on the development of a large area of land adjoining the present borough boundary'. This was a 'major step in the progress of the Greater Napier Scheme', which would assure the future expansion of Napier (D6(a):1410).

8.2.2 Napier Harbour Board and Napier Borough Enabling Act 1945

The Napier Harbour Board and Napier Borough Enabling Act 1945 provided for certain areas of land belonging to the harbour board to be sold and leased to the borough council for urban expansion. Special borrowing powers were conferred on the council for this purpose. The land included 278 acres that were required for immediate inclusion in the borough and 787 acres of the Ahuriri Lagoon reserve and the Te Whare o Maraenui block that were to be included as needed for development and subdivision (A7(a); A8(h)). The principal Act was extended in its application by the 1949 and 1958 amendment Acts (A8(i), (k)).

8.2.3 Suburban expansion

The post-earthquake expansion of Napier began with the development of the Marewa block. A bridge was built over the old bed of the Tutaekuri River and Kennedy and Taradale Roads. By May 1935 nearly 50 sections had been reserved for housing and 18 acres for a park, and three acres had been leased by the borough council for the Kennedy Park camping ground. In 1936, 456 acres were taken into the borough, and the new suburb of Marewa was developed as a pioneer State housing scheme. More land was taken under the Public Works Act 1945. The harbour board was paid £11,000 in compensation, which was £10,000 less than it claimed (A13:152; D6(a):1404-1406).2

To provide a recreation ground at Port Ahuriri, in 1935 the borough council entered into negotiations with the harbour board to preserve the south pond, which had been raised in the earthquake and was being used as a dump. In 1939 the board applied to hold over 10 of the 20 acres in consideration for a council undertaking to fill the whole pond and maintain it. On 30 July 1943, 3.8907 hectares were transferred to the council for the Ahuriri Park sportsground (D6(a):805-814).

After the Second World War, suburban Napier expanded southwards to Onekawa in 1947, Maraenui in 1957, and Pirimai in 1961. By May 1968, when the Pirimai subdivision was completed, planning by the harbour board, in association with the city council, was well underway for a 600-acre subdivision on lagoon land, mostly on the north side of Wharerangi Road. From 1969 to 1973 the suburb of Tamatea was developed in three stages.

The Napier Harbour Board Empowering Act 1974 enabled the board, under certain conditions, to sell endowment land that was leased for residential use and use the proceeds for purchases and development of other endowment lands (A13:155). But it did not bring the expected response. Harbour board leases, it seemed, were no longer as unpopular as they had been in the 1930s.

In 1976 the board leased 88 acres of land to the Hawke's Bay Hospital Board (A13:155). In 1978 the board agreed to the Napier City Council taking 40 hectares of farm land at Park Island for a recreational and sports centre (A12:177).

8.2.4 Industrial development

At the same time that Napier acquired new suburbs and parks it enlarged its acreage of industrial land. Urgent action was taken by the Public Works Department in 1946 to secure a 16-acre site in the Ahuriri Lagoon area adjacent to the Taradale Road railway crossing. It was owned by the harbour board and was being leased by the Commissioner of Crown Lands in conjunction with the Ahuriri farm settlement scheme. It was required by the Public Works and State Hydro Departments in Napier for a plant depot, store, and yard. But because it was practically the only suitable vacant land available, the harbour board could dispose of it only by special legislation. After the council had approved the estimated cost of the acquisition and development of the site (which included £800 for the purchase of the land itself), it was taken under the Public Works Act 1928 on 23 May 1949 (D6(a):594-598).

By the late 1940s the Napier Borough Council urgently required the Crown to surrender the lease of 35 acres on the west side of Taradale Road that were included

in the small farms scheme for the purpose of establishing a light industrial area. All the land was in permanent pasture. An agreement was made with the Crown and the harbour board, and the area was referred to the council for the immediate establishment of the Onekawa light industrial area. A further 74 acres were included in the agreement for future development, with a total area of 116 acres being envisaged (D6(a):600-613).

By May 1957 almost all the sites, which had increased in area to a total of 284 acres, were occupied, and the area was taken into the city in 1958. To cope with the demand, the council subdivided an 80-acre block west of the disabled servicemen's centre on Taradale Road, and reserved 300 acres of a 664-acre block between Hyderabad Road and Westshore Embankment Road. This block became part of the city in 1960.³

The demand for industrial sites increased and the area expanded steadily (A12:177). On 15 February 1962, the *Daily Telegraph* requested that a 350-acre block of land be raised, serviced, and developed by the harbour board for industrial sites. The block included land between Meeanee Quay, Westshore, and Embankment Road, as well as the site of the embankment aerodrome (Napier's first airport), which had been reclaimed and developed in 1935-37. In 1969 the harbour board, in agreement with the city council, sliced off another 350 acres of its Ahuriri Lagoon farm and most of the embankment for industrial development. The area was included in the city in 1973 (A12:176-177) and later became the Pandora heavy-industry area.

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8.3 The Hawke's Bay Airport

8.3.1 The choice of the site

On 13 December 1928, the harbour board granted the Napier Harbour Aero Club the use of an area of land east of Riverbend Road for an airfield. After the earthquake it was decided to make 100 acres available to the aero club for an aerodrome on the seaward side of the embankment between Taradale Road and the bridge. Then, in 1934, it offered to lease an area of 160 acres on the corner of Hyderabad Road and Embankment Road for a peppercorn rent as the first step towards the creation of a modern airport, on the understanding that an air board was to be set up in Napier. In 1935, at the request of the aero club, an Act of Parliament constituted the Napier Airport Board, and the East Coast Airways service to Gisborne began (A12:169-170).⁴

Prior to embarking on improvement work, the possibility of obtaining a large, more open site at Westshore (commonly known as the Beacons) that was free of obstructions and fogs and had a better natural surface, was investigated; but this was ruled out by the intensive draining scheme being undertaken by the Small Farms Board. Nevertheless, permission was given for the Beacons to be used and licensed as a public aerodrome for a limited period while the embankment aerodrome was developed.

From an operating viewpoint, the Beacons definitely came to be preferred by commercial aircraft. Its main disadvantages were that it was 2½ miles further out of town and understood to be part of the small farms scheme. Moreover, a considerable sum of money had been spent on the improvement of the embankment aerodrome (D6(a):703-743).

The levelling and fencing of the embankment site was completed in 1937, but the Beacons was still in use when war broke out in 1939 and East Coast Airways ceased to function. The Air Department retained the right to use the Beacons and the custodian continued to report on local weather conditions to the Meteorological Office and carry out maintenance and improvement work. On 23 September 1940, a piece of lagoon land totalling 9 acres 2 roods 16 perches was taken under the Public Works Act 1928 for a radio receiving station, which was maintained by the Government. A compensation payment of £192 was used by the harbour board to reduce its liability to the Small Farms Board (D6(a):768-770).

Following the compulsory acquisition of the six former islands in the lagoon, the way was open for the harbour board to lease the Beacons aerodrome to the borough council for the Airport Board (D6(a):754-761). The council, however, decided not to acquire the lease until the war ended. Meanwhile, the Government decided to set up a

special committee to consider the future air transport requirements of the Napier-Hastings district. The Air Department favoured one central airport but the newly established Hastings Regional Planning Council sought a more central and convenient site at Karamu.

In February 1944, two Public Works engineers pronounced the Beacons site the best option (D6(a):779-784). The Napier Borough Council decided to proceed with the acquisition of the land under the Public Works Act 1928 and settle the amount of compensation by arbitration. By a proclamation issued on 11 June 1945, a total of 499 acres 2 roods 6 perches was taken for the aerodrome from the Ahuriri Lagoon reserve and the islands of Tuteranuku, Tirowhangahe, Awa a Waka, and Matawhero and vested in the mayor, councillors, and burgesses of the borough of Napier (D6(a):793).

Controversy between Hastings and Napier over where the Hawke's Bay Airport should be developed re-erupted in 1961, when a sealed runway and better facilities were needed at the Beacons for new National Airways aircraft. Pressure from interested parties forced the Government to set up a commission of inquiry, which heard submissions locally and recommended the Beacons (D6(a):1128-1146).⁵

8.3.2 The Hawke's Bay Airport Authority is constituted

The Hawke's Bay Airport Authority was constituted to establish, maintain, operate, and manage the aerodrome. It consisted of nine members: three appointed by the Napier City Council, two by the Hastings City Council, two by the Hawke's Bay County Council, and one each by the borough councils of Taradale and Havelock North. On 30 July 1962, agreement was reached that the Corporation of Napier would transfer to itself and the four others as joint tenants the land vested in it for the airport in 1945, except for an area comprising 34 acres that was reserved at the south-east corner (D6(a):1167-1168).

In the deed that the five local authorities executed with the Crown on 30 January 1963, it was agreed that, while retaining ownership of the land, they should make it available for the aerodrome free of charge (D6(a):1150). On 8 April 1965, a certificate of title for 467 acres 3 roods 27.5 perches (189.3612 ha) in fee simple was issued to them (D6(a):1213).

8.3.3 The proposed motorway

The Hastings City Council had agreed to these arrangements on condition that a motorway linking the two cities be commenced in three years. This, however, became a major regional issue, and, after a delay of over four years, a short section bypassing Taradale was constructed.⁶ As we shall see, the motorway issue lived on to become part of the present claim (see para 9.12.4).

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8.4 The Ahuriri Farm Settlement

8.4.1 The small farms scheme

A small farms scheme for unemployed workers was established on harbour board leases after the earthquake, but the tenants generally complained that the rents were too high. A Government-planned project for 300 families on lagoon land leased from the harbour board was abandoned when it was realised that 10- to 15-acre allotments were uneconomic.

By the end of the Second World War, farmland was sorely needed for the rehabilitation of ex-servicemen.⁷ Local members of Parliament made public statements indicating that the time had come to subdivide lagoon land. The 'unique physical constraints of flooding, soil salinity, poor drainage and fresh water supply' (D6(a):1037, 1051-1059), and droughts, rabbits, and a lack of shelter for stock made it generally unsuitable for one-man units and rehabilitation purposes. Nevertheless, in 1946 and 1947, a 90-acre subdivision of 10 allotments, with a house on each, was made available to ex-servicemen for market gardens in the Onehunga farm settlement (D6(a):203-204).

8.4.2 The partition of lagoon land

In the late 1940s discussions began between the Commissioner of Crown Lands in Napier and the harbour board with a view to separating out the respective interests of the Crown and the board in the 7500-acre harbour endowment. One reason for this move was that under the existing arrangements the Crown could sub-lease only with the board's consent (D6(a):615-617).

A valuation report was procured, negotiations for separation were entered into, and agreement was eventually reached that 4790 acres were to become Crown land under the Land Act 1948. The harbour board retained 2200 acres south of the Ahuriri Estuary and paid £60,000 to the Minister of Lands to recompense the Crown in full for its net liability (D6(a):650-660). Detailed provisions for partition were made in section 31 of the Reserves and Other Lands Disposal Act 1950 (A8(j)).

The Napier Harbour Board now had a farm south of the estuary and the main outfall channel, and the Department of Lands and Survey had a farm north of the outfall channel, west of the Beacons aerodrome, and south of the Onehunga farm settlement. No evidence was given to us on the harbour board farm.

8.4.3 The Lands and Survey farm

Most of the Lands and Survey farm was utilised as a sheep and cattle fattening unit. A dairy unit was closed down in 1962 and a small deer farming enterprise was established in its place (D6(a):967, 1041; E5:66).

8.4.4 Leases for other purposes

The physical constraints already noted continued to place limitations on land use and subdivision. From 1952 to 1955 the Land Settlement Board leased a few small areas to individuals for 33 years, with rights of renewal, and a few small areas were subleased for five years (D6(a):1284-1311). From 1969 to 1978 a few licences to occupy for five years were issued by the Commissioner of Crown Lands (D6(a):1312-1324). We are unsure if the material that the Crown filed on leases from 1950 until restructuring in 1987 is complete. Twenty-five acres 10 perches were reserved for the Petane War Memorial Domain in 1952 (D6(a):921-923).

An application by the Napier City Council for 494 acres for a sewage farm and rubbish disposal on the State highway between Westshore and Bay View on the north side of the airport was approved by the Minister of Lands on 14 July 1960 at a price of £160,850 (approximately £34 an acre) (D6(a):924-926, 935-936). Because of the bird hazard to the airport, the sewage farm was not established. In 1967 the Crown resumed 86.5 acres for flood control purposes and leased back the remaining 403 acres 3 roods 20 perches for grazing. When the lease expired, the Napier City Council agreed to sell at the current market value of \$46,800. The Minister sanctioned the purchase after being informed that a leasehold tenure would not qualify for the two-to-one subsidy needed for the proposed flood control scheme, which had already been approved by the Soil Conservation and Rivers Control Council (D6(a):947-952).

Three areas totalling 54 acres on the Lands and Survey farm were gazetted on 25 July 1968 for extensions to the existing airport, thus increasing its total area to 524 acres. The Department of Lands and Survey further agreed that other areas required in future for such things as runway extensions would be 'earmarked' for aviation purposes. This would entail some 94 acres at the southern end of the main runway and would involve the progressive phasing out of departmental facilities in the area (D6(a):1017). In its 1982 Ahuriri farm settlement land utilisation study, the department noted that the airport crash tender used the farm 'frequently for access in emergencies and for familiarization purposes'. Should the farm settlement be disposed of, the report said, provision would have to be made for ensuring such access at all times (D6(a):1041).

8.4.5 The failure to protect Te Ihu o Te Rei

In 1978 and 1979 the Assistant Commissioner of Crown Lands approved the disposal of 582 square metres of the farm to the Napier City Council for \$220, subject to the land being incorporated into the adjoining Quarantine Island (Te Ihu o Te Rei), which the council owned as a reserve and had used for a quarry. He also approved the issue of a licence to the Hawke's Bay Pistol Club to use this piece of land as a car park for five years from 1 January 1980 at an annual rent of \$10. In August 1985, the licence was renewed for a further five years (D6(a):996-998).

The facts of the matter were that the piece of land was already within the boundary fences of the island and the city council had already given the pistol club permission to build a pistol range encroaching on it, subject to the approval of the Historic Places Trust and the Hawke's Bay County Council. The trust did not object, even though Te Ihu o Te Rei was a wahi tapu and had old midden sites. Indeed, Te Hata (Mick) Brown remembered when pipi shells and human bones were discovered amongst metal taken from Te Ihu o te Rei (D28: para 13). The county council, however, was unable to give planning approval until the city council either obtained the Crown's permission for the pistol club to occupy the piece of land or incorporated it into the reserve (D6(a):958-960). Apparently no one involved in these planning procedures took Maori traditional relationships with Te Ihu o Te Rei into account.

8.4.6 The failure to protect Roro o Kuri

The failure to protect Te Ihu o Te Rei was matched by the failure to protect Roro o Kuri, which had been purchased from A P White in 1940 and became part of the Lands and Survey farm (A12:180). In this instance, however, the Historic Places Trust did warn the Department of Lands and Survey that the area was part of a substantial archaeological site and that the trust would be unlikely to authorise its destruction. In 1978 a new quarry was opened to provide fill for a Housing Corporation development in Napier, clearly damaging archaeological remains. The director of the trust deplored the department's failure to have the area checked for archaeological sites before extending quarrying operations and pointed out that the incident could lead to action under section 9H of the Historic Places Act 1954. Instead, he asked the department to fund an archaeological survey of the area to obtain information for future farm management. The department agreed to make up to \$500 available (D6(a):977-989).

8.4.7 The archaeological survey of the area

The archaeological survey was carried out by M Jeal and A Walton in September 1979. They reported that, as much of the farm was uplifted lagoon bed, the area of archaeological interest was restricted to the former islands of Roro o Kuri and Tapu Te Ranga, which, together with Te Ihu o Te Rei, were the only survivors of the former lagoon islands. Seven recorded sites, including Otire Pa, were protected by the Historic Places Act 1954 (as amended by the Historic Places Amendment Act 1975). There was no evidence of any archaeological features on Tapu Te Ranga, but Roro o Kuri 'had a great deal of interest archaeologically'. Given the record of damage to and destruction of archaeological sites at the former islands, the survey report concluded, it would be unfortunate if continuing demand for borrow material, in particular, resulted in further changes (D6(a):982-983).

8.4.8 The 1982 land utilisation study

The Department of Lands and Survey's *Ahuriri Farm Settlement Utilisation Study* of September 1982 indicated that there were other non-agricultural uses on the farm settlement that were 'so well entrenched that the public concerned have expectations of continued free use'. It described them under the broad headings of 'services', 'community', 'recreation', 'education', 'archaeological research', 'conservation', and

`outfall channel', pointing out that many relied on the farm settlement being under Crown control.

Committed uses that could not be relocated and that must remain were:

- (a) airport crash tender access and crash gates;
- (b) airport extensions;
- (c) the catchment ponding area;
- (d) the outfall channel;
- (e) marine and airport navigation lights;
- (f) the United States' satellite monitoring station;
- (g) various users' water supply;
- (h) access for duck shooters and fishermen; and
- (i) the fuel pipeline and telephone cable along the western side of State Highway 2.

The departmental study listed and examined convenience uses, which could be relocated but preferably should remain, and easily relocated uses (D6(a):1057-1058). `The extensive use of the Farm Settlement for such activities,' the department concluded, `justifies its existence as public land' (D6(a):1059).

8.4.9 Maori interest

The only use by the local Maori community mentioned in the study was the gathering of puha (watercress) from the banks of drains (D6(a):1044). The only regular fishing noted in the outfall channel since 1971 was that of a commercial eeler who had a departmental permit. It was understood that good catches were still being obtained (D6(a):1042).

The question of `the unresolved claim by Maoris to the Bed of the Old Inner Harbour' was seen as an additional constraint on privatisation, which `should be the subject of a separate study' (D6(a):1058). To the best of our knowledge, this was not undertaken before the passing of the State-Owned Enterprises Act 1986.

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8.5 The division of Crown land

Figure 16: Ownership of lagoon land circa 1990. Based on the Department of Survey and Land Information map of June 1990.

The State-Owned Enterprises Act 1986 led to major reforms of Government departments that combined trading and administrative functions. The commercial activities of the Department of Lands and Survey were corporatised. In 1987 the Lands and Survey farm settlement was divided up between Landcorp Farming Ltd and the Department of Conservation (Te Papa Atawhai). The Landcorp farm in 1993 consisted of 1421 hectares and was being used largely for finishing cattle, sheep, and deer raised on other corporation properties.

Crown leases in the marginal strips of the upper estuary were divided. Where leases allocated to the Department of Conservation were a mix of productive land and marine wetland, the lessees were offered the right to freehold farming land. The remainder were to revert to the department's control. In respect of the pending Wai 55 claim, the district conservator was reported in the *Daily Telegraph* of 17 May 1988 to have said that the department did not see itself as 'an active objector . . . as it would be holding the land as guardian of the people of New Zealand'. It was a 'neutral participant in the whole exercise' (D6(a):1395).

Through restructuring, the department acquired 488.7099 hectares of land in the Te Whanganui-a-Orotu area in three ways.

Firstly, it was allocated 408.8620 hectares of land (based on conservation or public access values) that had been formerly managed by the Department of Lands and Survey.

Secondly, on 16 July 1991, it was gifted 12.3519 hectares of land adjacent to the southern side of the area known as 'Pandora Pond' by the Port of Napier.

Thirdly, under the Harbour Boards Dry Land Endowment Revesting Act 1991, 67.6960 hectares of land held by the Napier City Council were revested in the Crown to be managed for conservation purposes under the Conservation Act 1987 (H12:2-3).

In 1987 the Department of Conservation inherited a wildlife refuge over parts of the lower estuary from the Wildlife Service of the Department of Internal Affairs, which became part of the Department of Conservation. This refuge was and is managed subject to the Wildlife Act 1953.⁸

In 1987 the administrative responsibility for the Whakamahatanga walkway, which consisted of a circular three-kilometre track and a 2.5-kilometre summit track on Roro

o Kuri, was transferred from the Department of Lands and Survey. The land is now owned, controlled, and grazed by Landcorp Farming Ltd.⁹

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8.6 The demise of the harbour board and the division of the remaining endowment

The major reformation of the State sector was followed by a complete and comprehensive review of local government and the amendment of the Local Government Act 1974 to require the Local Government Commission to give priority to the preparation of reorganisation schemes.

Draft organisation schemes for the Hawke's Bay region were published in December 1988. Local government authorities in the area were constituted as follows:

- (a) Napier city: the former authorities were the Napier City Council, the Hawke's Bay County Council, and the Petane Domain Board.
- (b) Hastings district: the former authorities were the Hastings City Council, the Hawke's Bay County Council, and the Havelock North Borough Council.
- (c) The Hawke's Bay Regional Council: the former authorities were the Hawke's Bay Catchment Board and the Hawke's Bay Harbour Board.¹⁰

On 1 October 1988, the Hawke's Bay Harbour Board went out of existence. It was replaced by the Port of Napier Company Ltd and the Hawke's Bay Regional Council, which held most of the shares in the company.¹¹

The regional council was originally named as the body that would inherit the harbour board leases in the city. But four Napier city councillors formed themselves into a land action group 'to stop the ownership of a substantial chunk of Napier' (ie, harbour board leases) being transferred to the regional council. 'At stake' was 'the control of 2670 sections most of them residential, industrial or commercial' (D40(b)). Petitions were circulated around the city to support the councillors' claim. As one councillor saw it, 'the issue boiled down to the fact that the land was Napier's rightful inheritance and the money from the leasehold sections should be used for the city's benefit'. The Napier Progressive Association pledged its full support 'to stop \$50 million worth of leasehold land in the city' being put in regional control. An editorial in the *Daily Telegraph* of 6 February 1989 alleged that the Local Government Commission had 'deprived Napier of a large part of its only compensation for the disastrous earthquake'. The income from the disputed territory was about \$1.7 million annually. Napier had been given the harbour board's foreshore reserves, and the rent from leasehold lands was needed to develop and maintain them. The chairman of the United Hawke's Bay Council believed that this was 'the worst case of petty parochial politics seen in Hawke's Bay'. The rights of the other 91,000 citizens were deliberately ignored. Also ignored was the filing of the Wai 55 claim of 16 March 1988, which asked the Tribunal to recommend that the title and rights of Te Whanganui-a-Orotu be restored to the hapu represented by Te Otane Reti and four others (1.2(a)).

According to Mr Parsons:

The Local Government Commission stepped in to decide a carve up of the Harbour Board assets. The Harbour Board farm went to the Napier City Council, the Port of Napier retained the Ahuriri Industrial area, the Onekawa Industrial area, and certain lease hold sections in Tamatea. (A12:178)

This, he added, was 'not a comprehensive breakdown of the dispersal of the Harbour Board's assets, only some of the major ones in areas under claim to the Waitangi Tribunal'. Neither the Crown nor the Napier City Council filed any detailed evidence on this subject (2.85).

Mr Parsons presumed that the Hawke's Bay Harbour Board Empowering Act 1989 (A4(i)) made reference to the board's assets under its new owners as the board went out of existence before the Act was passed. The stated purpose of this Act was to empower the board to sell land vested in it to lessees and their families, to apply the proceeds to the purchasing of land as an endowment, and the improving and developing of that land for the financing of harbour works. About the time of the second reading of the Bill, the board circularised lessees telling them that this was the time to freehold. Despite an assurance from the Prime Minister that the pending claim to the Waitangi Tribunal would not affect anyone's tenancy, there was no rush to do so (A12:178).

Viewing the 'carve up' of the southern section of Te Whanganui-a-Orotu (retained until 1988 by the Hawke's Bay Harbour Board) in the context of the environmental changes and the decline of their rights to traditional fisheries, the claimants stated:

Every one has profited from Te Whanganui-a-Orotu, it seems, except the traditional owners, the Maori, systematically deprived of rights and benefits. Where possible both Crown and Napier Harbour Board have chosen to ignore Maori rights. (D4:61)

We agree. Clearly, reclamation, land development, and urban expansion had dispossessed Maori 'owners' of everything except an inaccessible canoe reserve. Indeed, Maori had been denied any right to share in Napier's 'gift from the sea'.

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8.7 Environmental damage since the earthquake

On behalf of the claimants, Gary Williams, a consulting engineer specialising in the field of hydrology, water, and soil movement who worked for the Hawke's Bay Catchment and Regional Water Board from 1984 to 1987, gave evidence to show that the lagoon had been destroyed not by the earthquake but by reclamation and drainage:

if the Ahuriri Harbour had been simply abandoned as a port - but with a permanent opening being maintained for the outflow of flood waters - and no reclamation or drainage work had been undertaken.

The lagoon would have reverted to a largely fresh water body . . .

The mudflats raised above the high tide level would have been quickly colonised by swamp land vegetation, giving rise to a very fecund wetland . . .

the lagoon, left to itself, would have had more marsh and swamp lands, but still a large body of open water. The water would have been much more fresh water, as it had been prior to the Ahuriri harbour developments . . .

The flood control, drainage and reclamation works certainly benefitted urban development, but this development was not contingent on drainage of virtually the whole lagoon. Given the difficulties of pastoral farming of the Harbour Board (now Napier City) and Crown farms due to the salinity of the soil and poor drainage, one would have to question the wisdom of reclaiming those areas . . .

On the debit side is the loss of a lagoon that was not only highly productive, but had many intrinsic and recreational benefits. On an area for area basis, the direct loss of human food alone was probably greater than the food produced off the two farms. (F3:20-21)

In Mr Williams's opinion:

By simply turning off the pumps draining the Napier City and Crown farms, these areas would quickly return to a lagoon status . . .
Incidentally parts of Napier would get a little wet and the airport would be inoperable!

A reversion of the farm areas could, though, be done in a purposeful manner, by the relocation of stopbanks and pump stations. (F3:23)

The present conditions, Mr Williams concluded, could be maintained only by continual drainage and river management (F3:24). This evidence lends credibility to Mr Young's statement that Te Whanganui-a-Orotu, despite nearly 150 years of environmental mismanagement, still represented:

a vital source for traditional food gathering to Ngati Kahungunu - a place where the bounty of mauri and the watchful presence of taniwha persist, miraculously. (E5:5)

First and foremost among the deleterious impacts that Mr Young identified were water loss and water quality levels. The water quality problems were such that instead of kaimoana there were signs posted warning would-be gatherers that the waters were unsafe for the taking of shellfish (E5:26). The pollution that affected low-lying land in the early Napier settlement, and what Mr Parsons had described as the failure to consider kaitiaki in the location of outfall and drainage pipes, persisted well into this century. The underlying problems still existed.

From the rainfall and farm catchment area it was estimated that 29.5 million cubic metres of fresh water were discharged annually through the estuary. Essentially the waters were affected in their quality by direct usage practices and by run-off, mainly from pastoral and agricultural practices, whose residues ultimately leached into the estuary, and also by the direct discharge of storm water, which carries pollutants, if not toxins. In times of heavy rain, the stormwater system could and did carry raw sewage into Te Whanganui-a-Orotu. Moreover, a number of pumping stations forced storm water into the estuary.

A number of water quality aspects that caused 'undue stress to the estuarine environment' had been identified; for example, quarrying in the upper reaches of the estuary. At least three reports had been produced on this subject over the past six or seven years and some improvements had been made, but it was difficult to change the industrial habits of 50 years and 'progress appeared modest. Indeed reporting might at times be considered a substitute for action' (E5:71). There was a clear need for the suitable planting of riparian strips on all streams and wetlands entering the estuary and, more importantly, there was a need for a change to land use practices within the catchment (E5:74).

The lower estuary had been adversely affected by run-off from the urban industrial area and apparently there had been little change in the amount of contaminants entering the estuary since 1976-78, despite adjustments to stormwater systems by the Napier City Council.

All the discharges ran 'totally counter to the interests of both the estuary environment and its kaitiaki whose remaining shellfish gathering sites have been highly vulnerable and patently affected by such pollution'. Because of what it saw as a difficulty in testing by any other authority, the Community Health Board's health protection unit had started monitoring shellfish. It found that kaimoana should not be taken from the lagoon and, in a number of places within the harbour, even swimming was hazardous to health. What was not possible to manage was the extent of the loss of plant and fish life between the 1850s and the 1970s. Better data collection was needed so that information on trends was available.

The claimants, Mr Young suggested, had produced the evidence necessary to prove damage to their taonga. It was now up to the Crown to do whatever was necessary to fully and openly acknowledge its responsibilities and cooperate with those who, their pleas for so long ignored, knew what was best for its management (E5:69-82). How well the Crown has undertaken such responsibilities is examined in our next chapter.

Waitangi Tribunal, Department of Justice, Wellington.