

Te Whanganui-a-Orotu Report 1995

6 The Expropriation of Te Whanganui-a-Orotu by Statute

6.1 Te Whanganui-a-Orotu is vested in the Napier Harbour Board

6.1.1 The Napier Harbour Board Act 1874

In 1874 Ormond, who was the member of Parliament for Clive as well as the provincial superintendent, prompted the passage of a Bill through the General Assembly to reserve land for the future endowment of a board for the harbour of Napier (A4(a); A21(a):206-208). Under the Public Reserves Act 1854, the land would be vested in the superintendent. Under the Harbour Boards Act 1870, the provincial council would be authorised to constitute a harbour trust to raise money for works and improvements by mortgaging such land.

The Bill went to the Legislative Council for a second reading, in the course of which several speakers criticised the provincial council for its earlier reckless expenditure. According to the Honourable Mr Stokes, they had spent about £100,000 improving the Iron Pot, and 'after they had done so they found that the last state of the Pot was worse than the first'.

The land reserved for the endowment, described in a schedule to the Bill, comprised the three blocks already set aside by the provincial council and 11 additional small parcels of Crown granted land in the Town of Napier. In respect of the inclusion of the Ahuriri Lagoon, Richard Boast remarked:

It is perhaps significant that even at this comparatively late stage the area is being referred to either as a lagoon or lake, not as a harbour or estuary. (D1:42)

6.1.2 Questions of title

Although questions of title to harbours and reclamations had constantly been cropping up in Parliament in respect of other harbours and reclamations, none were raised in respect of Ahuriri.

Mr Brown, in cross-examining claimant witnesses, drew the Tribunal's attention to the lack of any opposition to or protest over the harbour board endowment and, more particularly, to the silence of the member for Eastern Maori, Karaitiana Takamoana. This, we consider, is hardly surprising, because the second reading debate was in the Legislative Council. Moreover, at this time, Karaitiana and other Heretaunga chiefs were deeply engaged in the politics of repudiation, not provincial and Parliamentary politics.

In the same parliamentary session, the following question directly pertinent to the statutory reservation of Te Whanganui-a-Orotu for a harbour board endowment was

put to the Native Minister, Donald McLean, by the member for Southern Maori, H K Tairaroa:

By what authority any land below high water mark has been reclaimed for public purposes in the North Island and whether such reclamations are not in contravention of the rights reserved as to fisheries to the Native Race by the Treaty of Waitangi; and if infringement of the Treaty has taken place, how the Maori people can obtain compensation?

McLean responded:

For the information of the House, that land below high water mark was granted to the Superintendents under the Public Reserves Act of 1854, and was also leased under the authority of the Act. In regard to all territories ceded by Maoris to the Crown, it had been held when the lands were ceded, all the rights connected with them were also ceded such as rivers, streams, and whatever was on the surface of the land or under the surface. Almost all the deeds of cession contained a clause to that effect, and all the conditions of the deeds had been adhered to strictly by the colony. There had been no breach of the Treaty of Waitangi and every Government of New Zealand had carefully preserved the rights of the Natives.¹

In a later debate on the Wanganui Foreshore Government Bill, when McLean sought an assurance from the local member that a canoe landing place would be provided, Karaitiana gave his approval and wanted similar provisions for Napier and Wairoa.²

From the claimants' perspective and in Treaty terms, the harbour endowment amounted to a statutory expropriation of a traditional resource that their tipuna used, occupied, and controlled and, in respect of the harbour proper, were knowingly and willingly shared with the settlers. The Tribunal concurs with this view.

6.1.3 The Napier Harbour Board Act 1875

In 1875, after the House had determined that the provincial councils should not sit again, Ormond prompted the passage of a second Bill through the General Assembly to constitute the Napier Harbour Board and name 12 members to sit on it. Those named were prominent businessmen and sheep farmers of the district and included Ormond himself and the mayor of Napier. None were Maori. Lands that were to have been vested in the superintendent for the endowment of a harbour trust were now vested in the Napier Harbour Board (A21(a):262; D1:61). Once again, there was no immediate opposition or protest.

6.1.4 The Napier Harbour Board Act 1876

Another 260 acres of partly water-covered land that lay between the western spit and the eastern spit on the western side of Te Pakake (Maori Island) and Te Koau (Gough Island), together with more small parcels comprising town sections and public

reserves in the harbour area, were vested in the Napier Harbour Board by the Napier Harbour Board Act 1876 (A8©).

The Napier Harbour Board endowment was now about eight to nine times larger than the 1000 acre block that was reserved for the Town of Napier in 1855, and in 1882 estimated to be worth £100,790. The main beneficiary was Napier, which greatly increased its area of flat land for port development and urban expansion through reclamations. Indeed, the 1874, 1875, and 1876 Acts were Napier's first 'gift from the sea', but, as the claimants have stated, these three Acts were passed 'without reference to or consultation with their forebears' (1.2(d):5-6).

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6.2 The loss of Pukemokimoki

An early loss through port development was Pukemokimoki, described in the English translation of the Ahuriri deed as being the 'only portion of Mataruahou reserved for ourselves'. In Mr Boast's opinion, the English text was poorly drafted, leaving it unclear whether the somewhat 'mean-spirited proviso' that Te Pakake was reserved 'during such time as it remained unoccupied by Europeans' was intended to apply to Pukemokimoki as well (D1:66). Whatever may have been the Maori understanding, the provincial government treated them both as public reserves and appropriated them for harbour works and reclamations as required.

According to Taape Tareha, the island's name came from the mokimoki fern that grew there. The women used to wear the fern in a locket around their necks as perfume. The following lullaby, sung by women while nursing their children, has survived its association with the place name:

Taku hei Piripiri,
Taku hei Mokimoki,
Taku hei Tawhiri,
Taku Kate - taramea.

The translation is:

My little neck satchel of sweet scented moss,
My little satchel of sweet scented fern,
My little neck satchel of odoriferous gum,
My little neck locket of sharp pointed taramea. (D24:3-4)3

This island or hill (puke), washed on three sides by waters of the inner harbour, was reserved because the fern (*Doodia fragrans*) was very difficult to find in any part of Hawke's Bay, and for many generations people had come from near and far to gather it and the piripiri moss used by mothers for baby napkins (D24:6).

In Domett's 1854 town plan, Pukemokimoki became part of the town hall reserve between Thackeray and Emerson Streets. In 1855 Domett suggested that it 'might be laid out in ornamental walks as a place of recreation' (A12:130; A21(b):403, 412; E1:16).

According to the historian J G Wilson, Pukemokimoki Hill was removed during railway construction in 1872 and provided spoil to fill in the hollow in Dickens and Munroe Streets.⁴ Kay Mooney partly confirmed this. The hill near the junction of

Carlyle Street and Chaucer Road, she wrote, was removed for the railway and the spoil used to reclaim Owen and Thackeray Streets.⁵

In 1947 the superintendent of parks and reserves, C W Corner, wrote that further fill from the hill was used for the recreation ground at Carlyle Street, which became the sports centre of the district. There was 'a great outcry when, in 1872, the hill was removed to make way for the railway' (E12:4, 6).

The Napier Borough Endowments Act 1876 declared Pukemokimoki to be 'an endowment for the borough of Napier'. Mr Boast regarded this as 'roughly equivalent to a change in status from a government purpose to a local reserve' (D1:66). When it reached its second hearing, the Napier Borough Endowments Amendment Bill 1993 would have empowered the Napier City Council to sell or lease land vested in it under the principal Act, but it was deferred (see para 9.12.5).

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6.3 The dredging and reclaiming of Te Whanganui-a-Orotu before the earthquake

6.3.1 Harbour board politics

At its first meeting, on 15 February 1876, the Napier Harbour Board elected Ormond as chairman. Except for the years 1877 to 1879, when he was a Minister, he filled this office until 1901.

The main issue before the board was whether to proceed with the inner harbour at the entrance or to construct an outer breakwater harbour at the Bluff.⁶ In the event, it remained the dominant issue in local body politics until it was finally settled by the 1931 earthquake. Carruthers' plan (see para 5.11) was adopted as a stopgap until 1884, when a board with a breakwater majority was elected. The Napier Harbour Board Empowering and Loan Act 1884 was passed, enabling work to begin on the breakwater scheme. After its completion in 1906, the wind changed and a board with an inner harbour majority was elected. The Napier Harbour Board Empowering and Loan Act 1914 was passed, enabling the board to carry out work on the inner harbour.

In 1924 the mayor of Napier and 1068 others petitioned Parliament for a commission of inquiry. Acrimonious debate between the parties peaked, and a royal commission chaired by J S Barton SM held an inquiry in 1927. It found that those responsible for 84 percent of the payment of any rates since 1911 were 'steadfast in their adherence to the Inner Harbour proposal . . . in spite of any recommendations of engineers to the contrary'. Furthermore, the board's energies were dissipated in 'partisan warfare'. The Napier Harbour Board Empowering Loan and Constitution Amendment Act 1927 severely restricted the board's borrowing powers, and there was 'almost complete inactivity' until the earthquake.⁷

6.3.2 Harbour works

Up to 1931, the harbour board continued dredging to maintain the harbour opening (F3:18). A training wall was constructed at the entrance in the 1870s (F3:16, 18). Between 1876 and 1879, spoil from Bluff Hill and the vicinity of Pandora Point was used for more harbour reclamation work around Te Koau, where the Ahuriri railway station was situated, and the Iron Pot, which was linked to Te Koau by a bridge. According to expert witness Gary Williams, the combination of these works would have encouraged the development of deeper tidal flows and increased tidal flux in Te Whanganui-a-Orotu (F3:18).

6.3.3 Impact on Maori fishing rights

The effects of harbour works on traditional shellfish beds and fishing grounds were described in evidence given before the 1920 Native Land Claims Commission. Nepata Puhara said:

The new opening (Ahuriri outlet), was in existence in 1851. It has been made deeper by dredging. In 1874 I saw workmen digging it. Before the dredging the fish would have been eels, whitebait, pipis and crayfish - all freshwater fish. Since the deepening salt water fish is caught - flounders and other fish. The natives fished for these after the deepening. The reclamation works are covering some of the pipi beds and killing the pipi in other beds. (A7(a):37; D4:50-51; D9:97; E5:42-43, 51-52)

Mohi Te Atahikoia said:

The training wall made Ahuriri always keep open, and salt water fish now enter the lake. Fish in the lake were flounders, eels, inanga and fresh water fish. After the opening became permanent salt water fish would enter. (A7(a):41-42)

In evidence at the hearing of Hori Tupaea's 1932 petition, Te Roera Tareha said that the Iron Pot was the place where they gathered pipis, which grew there because of the salt water that came into the inner harbour. He named the fish that were caught before and after dredging deepened the entrance:

The pauas were outside. The fish were there at high tide when the salt water was there. The fish found in the harbour were upokororo, tuna, inanga, kokopu, patiki, mohoa - these are all freshwater fish and were all that were caught there. At the present time patiki, mohoa and inanga. The kokopu and tipohororo have disappeared. Taniwe, Kahawai and mango have come into this since the salt water began to come in. Kahawai and Kanae are not plentiful now but were plentiful in old days. When a net was spread enough were caught to last a week. (D4:51)

Several claimant witnesses' recollections of what the old people had told them supported this evidence (D25; D26:4; D29:3; D30; D39; D40:6; D43©). The ultimate responsibility for the pre-earthquake operations by the harbour board and other local authorities in Te Whanganui-a-Orotu lay with the Crown. Despite its duty actively to protect the customary, Treaty, and contractual rights of local Maori in Te Whanganui-a-Orotu, the Crown had consented to empowering legislation that, the claimants submitted, completely abrogated their tino rangatiratanga over their taonga (D9:71). In particular, they said, all the legislation affecting Te Whanganui-a-Orotu after the passing of the Napier Harbour Board Act 1874 and the dredging of the Ahuriri entrance was carried out without reference to or consultation with their forebears (1.2.(d):6). We agree.

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6.4 Roads and bridges

6.4.1 The need for arterial roads

Work on roads and bridges around Napier progressed slowly in the provincial period, not only because of swamps, lagoons, and floods, but also because large runholders from country districts dominated the provincial council and wanted country access roads instead. To take advantage of Julius Vogel's Government-financed public works and immigration programme and promote closer settlement, however, Ormond, in the early 1870s, recognised the necessity of a network of arterial roads to the town and port.

6.4.2 The Napier to Taradale causeway blocks the tidal flow

The Napier to Taradale causeway across mudflats and lagoons and the bridging of Burton's tidal lagoon and the Tutaekuri River were begun in 1872 and completed in 1880. At once it became the main access route west. Even though bridged gaps were left to allow water to flow under the causeway, it blocked the free flow of the water and acted as a silt trap, filling up the Te Whare o Maraenui Lagoon area, behind which began to dry up (A21(b):586).⁸

6.4.3 The Westshore Bridge blocks access to the canoe reserve

The first Westshore Bridge linking the Ahuriri Heads was opened in August 1880. According to David Young, it had no physical effects on the estuary (E5:46), but it effectively blocked the access from the sea to the only landing place allocated for canoes after the 1851 purchase. A swinging section of the bridge was apparently opened only once. The bridge started to collapse in 1922 and was demolished in 1929 (E4:52), by which time it had been replaced by the Westshore Embankment Bridge. As Mr Parsons said:

The canoe reserve was reduced to a place name on a map. Before access had been cut off from below. Now access was cut off from above. (E4:53)

According to Heitia Hiha, the tribal canoe was unable to anchor at the reserve in 1990, not so much because the bridge itself inhibited their connection to the west but because of the size of the big waka. 'We have always wanted to park waka up on the reserve,' he said, 'and we have not been able to do that' (D21:9).

6.4.4 The western embankment and the bridge restrict the tidal flow

The need to replace the dilapidated old Westshore traffic bridge and provide a shorter route north across, rather than round, the inner harbour led the harbour board, the borough council, and the government to jointly fund and construct the 2-mile 61-chain long western embankment and a concrete bridge in 1915-22 (D4:53; E5:48).⁹ The *Waikawa* was bought to dredge the Ahuriri basin and build the embankment. Stones were used for the sides, beach gravel for the fill at the Westshore end, and sandy silt at the Napier end, which ran off as soon as it was placed. In the words of Mr Young, 'the estuary's subtle ecology was being "bombarded" sometimes to no constructive effect, with tonnes of fill' (E5:49).

Dredging let more tidal salt water into the inner harbour and introduced saltwater fish. Pipi, eels, and other freshwater fish were no longer to be found (D25: transcript of Pare Rakuraku tape, 5 May 1992). According to Mr Parsons, the Embankment Bridge restricted the tidal flow in and out of Te Whanganui-a-Orotu: 'Two miles of tidal influence was lost by this action' (E4:53).

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6.5 The reclamation of the lagoon

6.5.1 Beginnings

The reclamation of the lagoon by the action of the rivers and creeks flowing into it and by floods had been building up the plains for centuries (F3:7). Post-1840 Maori reclamations for crop cultivation were relatively small in scale, while early settlers drained some land on the outskirts of Napier for small farms and agriculture. To do away with 'that pestiferous nuisance, the Napier Swamp', and to force landowners to fill in their sections, the provincial council passed the Napier Swamp Act 1873. Some landowners, however, were unwilling to cooperate and others were absentees (A21(b):596).¹⁰ Fevers and dysentery were prevalent, and the prevailing belief was that they were caused by effluvia arising from stagnant water. The real health hazard, however, was the raw sewage that was being emptied into the swamp.¹¹ In 1874 the newly constituted Napier Borough Council inherited the problem.

6.5.2 Napier swamp reclamation

The Napier Swamp Nuisance Act 1875 (amended in 1877 and 1879) obliged owners of swamp sections 'to raise the surface of the land', and, if they failed to do so, empowered the council to reclaim the sections and recover the cost. Mounting attacks on owners of unfilled sections and demands for action in the *Daily Telegraph* produced results. A contract was completed in February 1878 for a swamp reclamation that provided the town with seven new streets. About 20 acres of swamp, 14 of which were held by private ownership, 'became fit for occupation'.¹² In November 1878, the borough boundaries were enlarged to include the lagoon, thus bringing it under council control. It continued, however, to serve as a drainage outfall, a rubbish dump, a cesspool, and a general health hazard until swamp reclamation and drainage projects were completed after the turn of the century.¹³

6.5.3 The diversion of the Tutaekuri River is proposed

From 1877 the Napier Harbour Board started seeking engineers' opinions on the best method of reclaiming the Te Whare o Maraenui Lagoon, which was situated at the southern end of Te Whanganui-a-Orotu.¹⁴ In 1886 the Napier Borough Council proposed diverting the Tutaekuri River into a new channel skirting the town boundary to deal with the problem of sewage (which was being discharged into the swamp) by providing a free-flowing sewer outlet. The harbour board, however, had other objectives; it wanted to save the £2500 a year it spent on dredging river silt out of the harbour, use the silt to reclaim the swamp, and profit from the sale of good grazing land.

6.5.4 The harbour board is empowered to reclaim Te Whare o Maraenui

The Napier Harbour Board Amendment and Endowment Improvement Act 1887 empowered the board to carry out certain works and improvements upon the reserve vested in it, and authorised it to fill up and reclaim Te Whare o Maraenui and part of the Ahuriri Lagoon. The Napier Harbour Board Amendment and Further Empowering Act 1889 increased the board's powers to provide for payment on any loans raised for improvements (A9:5).

6.5.5 The diversion of the Tutaekuri River and the 1897 flood

In 1889 J T Carr put forward an extensive scheme that met the objectives of the borough council (to divert the river) and the harbour board (to reclaim land). Agreement was reached, and in 1891 work began. A new channel was cut, and for a short time the river flowed through it. However, the great flood of 1897, which covered three-fifths of the Heretaunga Plains, left massive silt deposits and filled the inner harbour - and the new channel. The Tutaekuri River returned to its old bed (E5:47).¹⁵

6.5.6 The syndicate scheme and harbour board lease

In 1899 a private syndicate proposed to undertake an ambitious, costly, and risky scheme to reclaim all of Te Whare o Maraenui and the southern-most part of Te Whanganui-a-Orotu for the new suburb of Napier South.¹⁶ The Napier Harbour Board Amendment and Endowment Improvement Act 1899 empowered the board to sell and lease parts of the reclamation (A4(d); A9:6; D9:74).

The harbour board accepted a tender from Langlands and Company to reclaim a 300-acre block. The county engineer, C D Kennedy, became a partner in 1900 and a 21-year lease of 1780 acres from the board was negotiated. In return for reclaiming the land, Kennedy and Langlands were to receive part of the land in fee simple, with the rest divided between the harbour board and the Town of Napier (D1:63). In 1901 the lease was transferred to C D Kennedy and Company.

6.5.7 Reclamation of Napier South

Work on the scheme was carried out on contract by teams of mostly Maori workers using horses and scoops to throw up embankments around areas to be reclaimed, forming settling basins into which the silt-bearing Tutaekuri River was turned. Local employment boomed, and in nine years £170,000 was paid out in wages.

The syndicate scheme reclaimed most of the land it leased, much of which was subdivided off into about 700 allotments. In April 1908, the first Napier South sections were auctioned, averaging about £650 per acre. The borough council bought 20 acres for Nelson Park and Sir R D McLean donated 10 acres for McLean Park, in memory of his father, Sir Donald.¹⁷ The swampy third of Nelson Park was filled for development in 1918. This scheme dramatically reduced the wetlands and affected water circulation in the lagoon itself (E5:47-48). According to Nepata Puhara:

it was when Napier South was reclaimed that they finished getting freshwater fish out of the lake . . . It was then we ceased to fish for our eels and other fish. (A7(a):37)

Arrangements for the surrender of the lease were authorised by the Napier Harbour Board Amendment and Endowment Improvement Act 1912, it being agreed that the harbour board would pay the syndicate the very large sum of £17,000. The Act gave the board further borrowing powers for more reclamations and improvements (A4(f); A9:6; D1:63; D9:7). The Napier Harbour Board and Napier High School Empowering Act 1918 allowed the Napier High School Board to acquire, by lease, a part of the Te Whare o Maraenui reserve for the Napier Boys' High School (D9:74).

6.5.8 Small reclamations for urban expansion

In 1925 the harbour board decided on a 28-acre reclamation of the old bed of the Tutaekuri River alongside Hyderabad Road. The river had been diverted along a new channel in 1921 to allow the western embankment to be completed, and the old bed was described as 'a stinking eyesore' (E5:49).¹⁸ After the Napier Borough Council threatened to seek legislation to force the harbour board to hand over 500 acres for reclamation and suburban settlement, the harbour board took action. In 1929 the south pond at Ahuriri, known as Mosquito Pit, was reclaimed.

Small reclamations were also made in an unsightly and malodorous area adjoining the Napier to Taradale Road. The Napier Harbour Board and Napier Borough Enabling Act 1926 authorised the borough council to purchase, reclaim, subdivide, and sell about seven acres. In 1927 the harbour board obtained legislative approval for its own reclamation projects, which included 28 acres between George's Drive and Taradale Road. These small reclamations 'did not satisfy Napier's appetite for expansion'.¹⁹ In 1928, after the harbour board released the Awatoto, Richmond, and McDonald blocks for rural settlement, the borough council obtained further legislative authority to raise a loan for a 92-acre reclamation at Marewa.

6.5.9 Extent of pre-earthquake reclamations

Figure 14: Reclamations in Te Whanganui-a-Orotu before the 1931 earthquake. Based on the sketch map in D4 following page 49.

Under enabling or empowering legislation, a total of 1000 acres of the harbour board's 9848-acre endowment had been reclaimed prior to the 1931 earthquake, providing a very profitable source of revenue for harbour development. Nevertheless the borough area of Napier in 1930 was only 1560 acres and the chronic problem of lack of land for urban expansion remained unsolved.²⁰ The borough council was still at the mercy of the harbour board.

Throughout all these physical alterations to Te Whanganui-a-Orotu, and amidst all the vigorous and sometimes acrimonious debate and planning that preceded them, there was 'No where . . . even a hint of consultation with the Maori' (E5:45). No regard whatever was paid to Maori rights and interests, either in Parliament or in local councils and newspapers. Maori were being slowly and gradually dispossessed of their lake and increasingly marginalised in the district. The wetlands ecology had

been substantially changed, and the traditional resources of local hapu and their lagoon-based economy were being steadily diminished, damaged, or destroyed.

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6.6 The pollution of the Ahuriri estuary

6.6.1 Two main causes

A growing threat to the ecology of the lagoon, and to the traditional resources that it provided for the tangata whenua, was pollution. As Mr Parsons observed, to ascertain its full extent and effect would require a specialist study of its own. The evidence that we were given indicated that before the earthquake the pollution of the Ahuriri Estuary, which affected traditional fishing grounds, shellfish beds, and water quality, was caused mainly by effluent discharged from the Hawke's Bay and North British Freezing Company's works on the western spit and the discharge of raw sewage at Perfume Point.

6.6.2 The Hawke's Bay and North British Freezing Company

The Hawke's Bay and North British Freezing Company, formed by a group of Hawke's Bay farmers and Scottish and English investors, established a freezing and boiling-down works and fellmongery on a five-acre site on the western spit in 1888. The site was leased from the Napier Harbour Board until 1930, when the lease expired and the company was wound up.²¹ Effluent was discharged at high tide on the theory that it would be carried out to sea when the tide turned. However, there were reports of sharks being seen inside the Ahuriri Heads, and heavy seas may well have driven effluent further up the harbour and lagoon (D4:53-54). The effect on Maori food resources outside and inside the heads 'may never have been properly assessed' (D4:54).

6.6.3 Perfume Point

The discharging of raw sewage and the dumping of rubbish into the swamps around Napier led to recurrent outbreaks of typhoid fever. According to Clive Squire, Napier city engineer designate in 1987, by the turn of the century septic tanks on Bluff Hill were causing enough problems for the residents to get together and lay pipes to the sea to discharge their sewage, but, in spite of this, problems continued. An outbreak of bubonic plague in Sydney in 1900 and the establishment of the Health Department focused more public attention on sewage disposal, and the *Hawke's Bay Herald* regularly criticised Napier's disposal methods. Ratepayer unwillingness to sanction the borough council's loans programme, however, slowed down additional works for sanitary purposes. Until an improved system was introduced over the years 1910 to 1915, sewage was discharged from several outlets at Ahuriri without any attempt being made to time discharges with outgoing tides.

The improved system concentrated sewage at one outlet, the end of the eastern pier on the inner harbour, through the operation of ejector pumps and air pressure generated at a central pumping station. The pipe discharged the sewage 50 feet off the Ahuriri Heads, again on the theory that it would be taken out to sea by the tide. The failure of this theory is evident from the renaming of the area from Te Karaka to Perfume Point (D26:3). According to Mr Squire, a scheme to discharge sewage only on the outgoing tide was not put into place until the 1930s. The discharge of raw sewage at Perfume Point continued until 1974, when a new submarine sewer outfall was opened at Awatoto (D4:54-55).

6.6.4 The decline of the water quality

The pollution of the waters of Te Whanganui-a-Orotu through the discharge of industrial effluent and sewage can only be deplored as abominable behaviour by Pakeha and in enormous contrast to the ritual and customary practices of the tangata whenua, as instanced in oral evidence given by claimant witnesses on fishing and healing (see para 2.2.4). The response of local authorities to harbour pollution at the time was to attempt to protect humans from the directly harmful effects, not to prevent them occurring or to consider their impact on fisheries and water purity.

As Professor James Ritchie stated in his evidence on Maori attitudes to 'both fresh water and saltwater in both natural and contaminated state', 'rather than contaminate and then clean it up (the Western ethic) it should be as little polluted as possible in the first place' (E2:10).

The Maori view that 'water is the essential ingredient of life; a priceless treasure left by ancestors for the life-sustaining use of their descendants' is acknowledged and described by the Hawkes Bay Regional Council in its 1994 policy statement, as is Maori's 'strict etiquette' in the use of water to minimise both metaphysical and physical pollution (see para 9.11.3; app V).