

CHAPTER 11

CONCLUSIONS ON THE SOUTHERN KAIPARA CLAIMS

11.1 INTRODUCTION

In this chapter, we sum up each of the claims relating to southern Kaipara that were heard by the Tribunal but not included in the Te Uri o Hau settlement: Wai 121, Wai 279, Wai 312, Wai 470, Wai 508, Wai 733, and Wai 756. Many aspects of these claims have been discussed in preceding chapters, and here we present our overall conclusions and recommendations. The most comprehensive claim is Wai 312 (Ngāti Whātua), which we address first. Many of the other claims raise the same or similar issues, and in several instances we recommend that claimant groups be joined with the Wai 312 claimants to negotiate a single comprehensive settlement of the southern Kaipara claims with the Crown. There are also some outstanding issues in individual claims, and these are dealt with below.

Four claims – Wai 121, Wai 312, Wai 508, and Wai 733 – also raise more general constitutional issues to do with Māori governance and representation. These are addressed in the next chapter.

11.2 WAI 312

11.2.1 The claim and the issues

The Wai 312 claim was made on behalf of the marae communities of Ngāti Whātua o Kaipara ki te Tonga, the five marae of southern Kaipara – Te Haranui, Puatahi, Araparera, Kakanui, and Reweti. Theirs is the major claim in southern Kaipara, and all their specific grievances have been addressed in the preceding five chapters. Here, we comment on the issues that underlie the whole claim and present our findings and recommendations on them.

11.2.2 Interpretations of the historical evidence

As noted at the end of chapter 10, both the claimants and the Crown agree that since 1840 most of the Ngāti Whātua land in southern Kaipara has been alienated and that Ngāti Whātua in the twentieth century have suffered from poverty and deprivation. The differences between the claimants and the Crown lie in their interpretation of the historical evidence.

In concluding submissions for the Crown, counsel referred to ‘the complexity of the task of reconstructing history and of judging values and actions of the past’. Crown counsel rejected as ‘unsustainable’ the claimants’ views of Kaipara Māori history as an ‘account of “consistent betrayal” by the Crown’ which breached the Treaty and of ‘the Native Land Court regime’ as ‘the equivalent of land confiscation’. Counsel summed up:

What is apparent is that Kaipara Māori have not retained tribal control of their lands. There are complex causes behind that outcome. Some contribution was certainly made by the actions of Government; however it is rejected that any conduct on the Crown’s part was a breach of the Treaty principle of good faith. Any conclusions by the Tribunal about the Crown’s failure to actively protect Maori interests must bear in mind historical context which has been elaborated in the evidence before it, and needs to be tempered by an assessment of the actions and choices made by Kaipara Maori.¹

In reply, Wai 312 claimant counsel began by suggesting that ‘Crown counsel has avoided any meaningful engagement’ with the issues raised. Counsel criticised Crown counsel’s emphasis on historical context and failure to have any regard for ‘the cultural imperatives which underlay Ngati Whatua’s actions throughout the period covered by the claim’, and contended that Crown counsel ‘throughout holds Ngati Whatua responsible for the loss of their lands and the resulting socio-economic predicament.’² The Crown was accused of rejecting any responsibility under the Treaty for its actions since 1840, without providing ‘any explanation for the resulting detriment suffered by Ngati Whatua in the south Kaipara.’³

In chapter 6, we addressed the claimants’ concept of a Ngāti Whātua ‘alliance’ with the Crown, which coloured the Wai 312 research reports of Philippa Wyatt, Bruce Stirling, Fiona Small, and others. We have not accepted this ‘alliance’ concept, which postulates some relationship over and above the Treaty of Waitangi. The Tribunal’s task is to investigate claims against the Crown and determine whether there has been a breach of the principles of the Treaty. In doing this, we must take into account not only those principles but also the historical context of the Crown action or inaction complained of. One test is reasonableness: Was the Crown’s action or inaction toward Māori reasonable or unreasonable in the circumstances of the time? Was there significant Māori protest or other relevant evidence?

We are concerned that the claimant researchers have let themselves be constrained by their view of an ‘alliance’ and their preconceived view of the expectations of Ngāti Whātua. For example, in the socio-economic evidence from the 1840s on, we were not given any comparison with the rest of New Zealand, Māori or non-Māori, or even with comparable services available for Pākehā settlers in Kaipara in the nineteenth and twentieth centuries.

1. Document Q16, pp 129–130

2. Document Q27, p 2

3. Ibid, p 3

Nor was there any hint of the broader outside influences, such as economic recession or urbanisation, which the Crown could not control. As a result, we were faced with a massive amount of evidence about Ngāti Whātua and their land since 1840 but little comparative data by which we might assess the Crown's role. Our reading of other local histories quoted in chapter 2, for instance, indicates that, in the early years of Pākehā colonisation, the Pākehā settlers were often as poor as their Māori neighbours and that all their children had equal access to public school education.

11.2.3 Reasons for selling land

There is no doubt that Ngāti Whātua were willing sellers of land and eagerly participated in trade and the cash economy created by the establishment of the colonial capital at Auckland in 1840. Certainly, while Auckland was the capital, Ngāti Whātua prospered. There was a ready market for their surplus produce and they had the ear of Government officials, cooperated willingly with the colonial administration, and remained 'loyal' during the troubled years of military campaigns in Taranaki, Waikato, and elsewhere.

The 1860s saw not only the departure of the colonial administration to a new capital in Wellington but also the introduction of a new institution, the Native Land Court, and a revolution in the tenure of Māori land. In Kaipara, the 1860s also saw the beginning of systematic Pākehā settlement. However, in a short time the settlers became competitors with Māori in the sale of surplus produce and for employment as farm labourers and in road and railway construction, timber extraction, and gum-digging. Ngāti Whātua welcomed Pākehā settlers and sold extensive areas of land to them in the 1870s, and went on selling into the early decades of the twentieth century. But, by the end of the nineteenth century, most of the employment had gone, and Ngāti Whātua either largely subsisted in small communities on their remaining lands, cultivating their gardens and living on the food resources of waterways and the sea coast in Kaipara, or migrated to the growing city of Auckland.

We do not know precisely why Ngāti Whātua went on selling land. Claimant researchers have speculated – often with scant evidence – on reasons which included indebtedness, the Native Land Court system, survey costs, unscrupulous lawyers, and land purchasers. We have no Māori records of the full range of factors influencing the minds of Māori sellers of their shares in ancestral lands. A revolutionary system of land tenure was imposed on Māori by the Native Lands Acts of 1862 and 1865 with little consultation. This was a massive intervention by the Crown, the effects of which greatly disrupted Māori society. The operation of the Native Land Court created a means of identifying individual, undivided interests in land, a property right that an individual owner could dispose of without reference to his or her whānau or hapū or other collective. Many blocks were purchased in the twentieth century by the piecemeal acquisition of individual interests over a period of years.

Perhaps the short answer to why Ngāti Whātua sold their land is because they could. An individual Māori owner in need of cash did not have to consult anyone else. The net result of all these individual transactions was the loss of the land. There was no mechanism to ensure the long-term protection of papakainga for the benefit of hapū.

11.2.4 Crown responsibility for land loss

Should the Crown have intervened to ensure that Ngāti Whātua retained sufficient land and resources for their present and foreseeable needs? Crown counsel has suggested that Crown intervention would have been problematic; it would have been resented and opposed by Māori and could have been a breach of their article 3 rights as British citizens. So what could the Crown have done to prevent this loss of land without infringing individual Māori rights to deal with their land as they wished? Complaints against the Crown include the taking away of Māori rights by vesting land in the Tokerau District Māori Land Board. The prime example was the Ōtakanini block, but there were others too. The nineteenth-century Māori land legislation had no effective mechanism which provided for a corporate management structure for Māori to administer their own lands. There was no provision for setting up a form of trust whereby the proceeds of sales could be preserved as capital for the development of other land by Ngāti Whātua. In 1891, for instance, James Carroll identified a need to educate Māori in commercial agriculture and to provide access to capital to support farm development on the same basis as Pākehā settlement schemes in the 1880s.

There seems to have been an implicit assumption in the nineteenth century that, in the process of Pākehā settlement, local Māori would somehow become ‘civilised’ and learn the necessary skills from their settler neighbours. From our twenty-first century viewpoint, we now know that it was unlikely that people who had lived in a traditional, communal, subsistence economy would, by some process of osmosis, shift their customs and attitudes and immediately embrace an individualised, modern, industrial economy. However, we cannot simply impose our contemporary views in judgement of the past. There is ample evidence that most Pākehā officials and settlers genuinely believed that Māori would benefit from the influence of British culture that was being opened up for them through colonisation. This ‘civilising’ mission failed because the Crown neither consulted Māori effectively in working out a future in which both peoples participated nor established a policy that would ensure that Kaipara Māori retained a sufficient land base, as well as access to capital and appropriate education to participate fully in a modern industrial economy. Ngāti Whātua sought to retain their own identity and to embrace British colonisation on their own terms. Instead, by the end of the nineteenth century they were almost landless and subsisting on the margins of the Kaipara economy or had migrated out of the region, thus weakening their ties with their ancestral land, language, and culture.

11.2.5 Te Uri o Hau settlement

In our discussion of the Wai 312 claims in our *Kaipara Interim Report*, we stated: ‘The generic historical issues raised in this claim are the same as those breaches of the Treaty of Waitangi and its principles already acknowledged in clause 8 of the Te Uri o Hau Claims Settlement Bill.’⁴ This Bill is now law, having been passed in October 2002. In chapter 3 of the present report, we discussed these generic issues in relation to the Act. In chapters 6 to 10, we outlined in some detail the land transactions of Ngāti Whātua in southern Kaipara. As a result of this investigation, we reiterate our earlier statement that the issues which the Crown has already recognised as breaches of the Treaty of Waitangi and its principles in the Te Uri o Hau claims in northern Kaipara are the same as those claimed by Ngāti Whātua in southern Kaipara. We think that this should be acknowledged by the Crown in the Wai 312 claim.

11.2.6 Tribunal findings

In this section, we summarise our findings on the various aspects of the Wai 312 claim to do with the loss of land, as detailed in chapters 6 to 10, before presenting our overall finding on the socio-economic impact of the loss of land.

(1) Crown purchases, 1840–65

We make the following findings in respect of Crown purchases between 1840 and 1865:

- ▶ The Crown land acquisitions in southern Kaipara before 1865 were not excessive, in that the areas purchased were largely determined by the rangatira involved, who were actively encouraging Pākehā settlement.
- ▶ We have no evidence that specific promises were made in southern Kaipara about the expected benefit to Māori of Pākehā settlement on lands purchased from Māori.
- ▶ The Crown failed to establish an effective mechanism whereby lands reserved for Māori were protected and remained in Māori control. By vesting title to reserves in individual rangatira, the Crown failed to provide protection of land resources for all members of whānau or hapū with rights in such land.
- ▶ In section 8(d) of the Te Uri o Hau Claims Settlement Act 2002, the Crown acknowledged that:

it did not ensure that there was sufficient protection from alienation for the few reserves that were provided. This failure by the Crown to set aside reserves and protect lands for the future use of Te Uri o Hau was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

We find that Ngāti Whātua were similarly prejudiced.

4. Waitangi Tribunal, *The Kaipara Interim Report* (Wellington: Legislation Direct, 2002), p 15

(2) *The Native Land Court and land sales*

We make the following findings in respect of the Native Land Court and land sales:

- ▶ The Native Land Acts of 1862 and 1865, which established the Native Land Court, imposed a tenurial revolution on Kaipara Māori, without consultation or their consent, and had a profound effect on the relationship that Ngāti Whātua had with all their lands. One serious effect of this was the loss of control of the management of Māori lands to the title investigation and other functions of the Native Land Court judge.
- ▶ The allocation by the court of individual, undivided interests in Māori land created individual, disposable, property rights, quite foreign to customary Māori tenure based on collective rights of use and occupation of land. Furthermore, the 10-owner system of allocating interests disinherited an unknown number of Kaipara Māori.
- ▶ Section 24 of the Native Land Act 1873 provided for reserves of 50 acres per person, but the legislation governing Native Land Court operations generally failed to prevent the loss of communally held land (including that subject to restrictions on alienation), which might have provided a base for the future benefit of Kaipara Māori communities.
- ▶ The legislation governing Native Land Court operations also allowed for the direct private purchasing of individual interests in Māori land, and thus Māori were subjected to considerable market pressures to sell their interests. However, we have insufficient information about the costs of land court processes, surveys, and other expenses to determine the extent and significance of debt as a factor in sales of land interests, although anecdotal evidence suggests that debt was a factor in some transactions.
- ▶ Given all the pressures to sell interests in land, we find that it is not reasonable to assume that all the individual transactions in Kaipara were made by willing sellers. A free market in Māori land was created without arming Māori with the knowledge, independent legal advice, and expertise to participate effectively in the developing colonial economy in Kaipara.
- ▶ By imposing the legislative regime which governed Māori land tenure and the Native Land Court, the Crown failed in its fiduciary duty, set out by Lord Normanby in his instructions to Lieutenant-Governor Hobson and in the guarantees in the Treaty of Waitangi, to protect Māori interests and to ensure that a sufficient land base was reserved for the present and future needs of Kaipara Māori communities.
- ▶ In section 8(e) of the Te Uri o Hau Claims Settlement Act 2002, the Crown acknowledged 'that the operation and impact of the Native land laws . . . had a prejudicial effect on those of Te Uri o Hau who wished to retain their land and that this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles'. The Crown also acknowledged that 'the awarding of reserves exclusively to individual Te Uri o Hau made those reserves subject to partition, succession and fragmentation, which had a prejudicial effect on Te Uri o Hau'. In section 8(f), the Crown acknowledged that:

this loss of control over land has prejudiced Te Uri o Hau and hindered the economic, social, and cultural development of Te Uri o Hau. It has also impeded their ability to exercise control over their taonga and wahi tapu and maintain and foster spiritual connections to their ancestral lands.

We find that Ngāti Whātua in southern Kaipara were similarly prejudiced by the effects of these generic issues as set out in the above acknowledgements to Te Uri o Hau of northern Kaipara.

(3) *The Helensville courthouse reserve*

We make the following findings in respect of the Helensville courthouse reserve:

- ▶ In 1864, Ngāti Whātua donated to the Crown 10 acres of land in the future township of Helensville for use for public purposes.
- ▶ Within this area, one acre was gazetted as a native reserve for Māori use, but this reserve, the only area remaining for Māori use in Helensville, was transferred to the Helensville Town Board in spite of Māori protest. This was a breach by the Crown of its Treaty duty to act reasonably and in good faith toward Māori.
- ▶ While most of the 10 acres was used for public purposes, and some remains so used, other areas were subsequently transferred to private purchasers. This was a breach of the original terms of the gifting and a breach by the Crown to act reasonably and in good faith toward Māori.

(4) *The Kaipara railway*

We make the following findings in respect of the Kaipara railway:

- ▶ In 1871, Ngāti Whātua donated most of the land taken up by the Kaipara railway and its railway stations south of Helensville to Riverhead.
- ▶ A promise was made on behalf of the Crown to create reserves and to provide accommodation for Māori at each terminus of the line. A one-acre reserve was set aside within land already donated by Ngāti Whātua in the courthouse reserve in Helensville, and no reserve was created in Riverhead. The Crown failed to fulfil this promise, and it thereby failed to act reasonably and in good faith towards Ngāti Whātua.
- ▶ No compensation was paid for the Woodhill deviation land taken in 1888.

(5) *Taking of Māori land for roads*

On the question of the taking of Māori land for public roads, we find that the legislative provision allowing up to 5 per cent of a block of Māori land to be set aside without compensation for public roads meant that an undefined area of land was donated by Ngāti Whātua for public use.

(6) Woodhill Forest

We make the following findings in respect of Woodhill Forest:

- ▶ In the 1920s, the Crown instigated a sand-dune reclamation scheme for the western Kaipara coast between Muriwai and South Head. It is not in dispute that some form of reclamation of the drifting sand was needed to protect farms, roads, the railway, and the Kaipara River, and only the Crown had the resources to implement such a scheme.
- ▶ The Crown began purchasing individual interests in the over 9000 acres of Māori-owned Puketapu lands. In 1934, after acquiring over 95 per cent of the interests in those blocks, the balance of the interests was taken under the Public Works Act for sand-dune reclamation purposes. The Crown failed to consider alternative tenure arrangements which would have both allowed reclamation and retained Māori title.
- ▶ Within the land acquired by the Crown, four urupa reserves (75 acres in total) were identified, surveyed, and acquired by the Crown under section 11 of the Reserves and Other Lands Disposal Act 1934, instead of gazetting these lands as Māori reserves. It was not necessary for the management of the sand-reclamation scheme for the Crown to acquire title, and this was a breach of the Crown's duty of protection and the guarantees set out in article 2 of the Treaty. Furthermore, parts, but not all, of the reserves were planted in pine trees, which represented a further failure of the duty of protection of Māori interest.
- ▶ By the Crown's acquiring of title to the Puketapu lands and its attempting to deny access across them, local Māori were denied their traditional access routes to the western coast for kaimoana. Although there was some informal access, there was no legal right of access for local Māori.
- ▶ In the restructuring of the Forest Service in the 1980s, the Crown failed to assess the social and economic impacts of corporatisation, the sale of forestry rights, and, more specifically, the effects of closing down the Woodhill forestry village, and it did not consult with Ngāti Whātua.

(7) The socio-economic impact of land loss

We make the following findings in respect of the socio-economic impact of land loss:

- ▶ Ngāti Whātua participated enthusiastically in the emerging colonial economy following the establishment of Auckland as the capital in 1840, and they willingly sold land to the Crown to encourage Pākehā settlement in southern Kaipara.
- ▶ The Crown's imposition in the 1860s of new Māori land laws and the Native Land Court replaced a system of customary tenure based on ancestral, collective, kin-based rights with a system of individual and undivided, but disposable, interests in land, and undermined the traditional social and economic structure of Māori communities.
- ▶ By the 1890s, a substantial proportion of Ngāti Whātua land had been alienated, mainly to private purchasers after 1865, while economic opportunities for Kaipara

Māori dwindled. This situation continued into the twentieth century, leaving Kaipara Māori communities eking out a subsistence living on the margins of the Kaipara and Auckland economies. Kaipara Māori did not benefit from the Māori land development schemes of the 1930s because there was not enough land left.

- ▶ By the mid-twentieth century, many Ngāti Whātua, now virtually landless, had moved to Auckland and elsewhere in search of education and jobs, a process accelerated by Crown policies implemented by the Department of Māori Affairs in the 1960s. The Government's subsequent restructuring and sale of State enterprises in the 1980s and 1990s caused a further loss of employment in southern Kaipara.

The legacy to Ngāti Whātua of over 150 years of Pākehā settlement in southern Kaipara is a number of small Māori communities struggling to survive on remnant scraps of land with limited resources. Many families are living in poverty, with low levels of educational attainment, poor health status, and few economic opportunities. The Crown must take some responsibility for this state of affairs. The communities themselves are struggling to retain their language, culture, and identity, and to strengthen the attenuated kinship ties with migrants who were forced to leave, particularly among the younger generation brought up away from their home marae.

We conclude that Ngāti Whātua have been prejudiced by Crown actions and inaction in southern Kaipara and by the Crown's failure to meet the fiduciary obligations and guarantees of protection of lands and resources made in the Treaty of Waitangi. We therefore find that the Wai 312 claim of Ngāti Whātua ki Kaipara ki te Tonga is well founded.

11.2.7 Tribunal recommendation

We recommend that the Crown and mandated representatives of Ngāti Whātua proceed to negotiate a comprehensive settlement of Ngāti Whātua claims in southern Kaipara.

11.3 WAI 733

11.3.1 The claim and the issues

The Wai 733 claim was lodged by the late Tauhia Hill on behalf of himself, the Ōtakanini Tōpū Māori incorporation, and the interests of Ngāti Whātua Tuturu at Ōtakanini.⁵ The land involved in the claim is the Ōtakanini block, which straddles South Head Peninsula. Also raised in the claim are issues related to the foreshore and seabed on the Tasman Sea and Kaipara Harbour boundaries of the block and more general issues concerning sand-mining and the health of Kaipara Harbour. We make no comment on these aspects of the claim in

5. Claims 1.29(a),(b)

11.3.2

this report. The claim also concerns the question of Māori representation, and we comment separately on that in chapter 12.

We consider here matters relating to the land and the people of the Ōtakanini block. Major issues for the claimants are the 1906 compulsory vesting of the whole block in the Tokerau District Māori Land Board under the Māori Land Settlement Act 1905, the alienation of most of the block by lease for 50 years from 1908, and the consequent loss of control of the land and access to traditional resources over that period. We have reviewed these matters in chapter 10.

The Wai 733 claim also raises issues about the lease of the western sand dunes by the New Zealand Forest Service in 1969, the planting of trees and the construction of service roads as part of Woodhill Forest, and the 1990 transfer of management and timber rights to Carter Holt Harvey without consultation with the Ōtakanini Tōpū and the owners of the land. We have reviewed these matters in chapter 9.

11.3.2 Claimant submissions

Claimant counsel stated that Wai 733 concerned the grievances, not of an iwi but of ‘the members of an incorporation whose administration and benefits are directly connected to the Ngati Whatua Tuturu people’. The Ōtakanini Tōpū ‘does not include all descendants of Ngati Whatua Tuturu but it does include some who are not Ngati Whatua Tuturu’.

The vesting of the Ōtakanini block in the Tokerau District Māori Land Board and the alienation by lease of most of it to Pākehā farmers for 50 years meant that ‘Ngati Whatua Tuturu were not able to retain the mana to control their lands in accordance with tikanga, their own customs, and having regard to their own cultural preferences’. Furthermore, Ōtakanini Māori had to ‘stand by as non Maori changed the land of gardens to their cultural preference of pastoral grazing’. Counsel submitted that, not only had Ngāti Whātua Tuturu lost access to kaimoana of the western coast and to resources of the land and waterways, but the land itself, particularly the western portions, had been ‘ruined by uncontrolled grazing’ by pastoral farmers.⁶ By taking away the freedom of the Māori owners of the Ōtakanini block to control the use and management of their lands, the Crown had failed to provide the protection guaranteed in article 2 of the Treaty of Waitangi and had also denied the owners the rights of citizenship set out in article 3.

As for the lease of the western dunes to the Forest Service, ‘In summary as regards the forest issue the Topu complains that there was an almost total lack of consultation with the tangata whenua over the forest sale, over royalties and over road access.’⁷

6. Document Q3, pp3, 7

7. Ibid, p58

11.3.3 Crown submissions

Crown counsel submitted that, because many of the issues raised by the Wai 733 claimants related to matters occurring before the establishment of the Ōtakanini Tōpū, the question arose whether the tōpū was a sufficiently representative body to be the subject of any recommendations. Counsel also noted that some of the allegations ranged beyond the Ōtakanini Tōpū and the Ōtakanini block.⁸

On the early history of the Ōtakanini block, counsel submitted that the compulsory vesting of the block in the Tokerau District Māori Land Board in 1906 was done 'at least partly to prevent further alienation of the land' as well as being 'a response to the pressure from settlers that "idle" Maori land be put to productive use'. Counsel acknowledged that there was 'no evidence to indicate whether any consultation took place between the Native Department and the owners of the block before the land was vested in the Land Board'.⁹

Counsel acknowledged that the effect of the vesting and subsequent leasing was to deny the owners any control over their land for 50 years. 'However, it is submitted that little prejudice has been suffered by the Wai 733 claimants and that ultimately this action was of benefit to the claimants.' Counsel noted that lease income had risen from virtually nil to £400 per annum and that by 1915 lessees had made improvements worth some £4000. 'More significantly, the principal benefit of the vesting of Ōtakanini in the Maori Land Board under the 1905 Act was that the land was available for return to the control of its owners fifty years later.' Counsel referred to sales of parts of the papakainga area and, citing Dr Loveridge's opinion, suggested that, if the Ōtakanini block had not been vested in the board in 1906, 'much of it would have been sold over the following years'.¹⁰

The Crown's submissions on the terms of the forestry lease of the western sand dunes and the access and other issues arising out of the purchase of the Woodhill Crown forestry licence by Carter Holt Harvey in 1990 have been summarised in section 9.11. Crown counsel also noted that the ownership of the land had not been transferred and remained with the Ōtakanini Tōpū.

11.3.4 Tribunal comment

The Crown has correctly raised the question of the representativeness of the Ōtakanini Tōpū, a Māori incorporation set up and bound by the provisions of the Māori Affairs Act 1953. The Wai 733 claim concerns matters that occurred before the establishment of the tōpū and that extend beyond the land it administers and the people who are its shareholders. The tōpū's shareholders are eligible to become beneficiaries in any comprehensive settlement of

8. Document Q16, p 69

9. Ibid, pp 70–71

10. Ibid, pp 71–72; doc P4, pp 55–56

Ngāti Whātua claims, and many of the issues raised in Wai 733 are the same as those already reviewed in our discussion of Wai 312.

In considering whether the claimants were prejudiced by the vesting of the Ōtakanini block in the Tokerau District Māori Land Board in 1906, and the alienation of most of this land by lease for 50 years, we must weigh up both the costs and the benefits. On the one hand, compulsory vesting can be seen as a form of temporary confiscation, and there is no evidence of consultation with the owners in 1906. On the other hand, the land was preserved in Māori ownership. The board resisted attempts by Pākehā lessees, and the Crown in the case of the western sand-dune area, to purchase parts of the block. In contrast, other blocks vested in the board were sold, and even in Ōtakanini papakainga some blocks were sold before 1930. We question, however, the wisdom of leasing the sand-dune areas for grazing against the advice of the Auckland district surveyor in 1906. Considerable damage to vegetative cover and acceleration of sand drift probably resulted. Certainly, the owners' access was limited (although there was a paper road across the block to the western coast), and it depended to some extent on the goodwill of the Pākehā lessees.

The administration of the leases may have been inadequate, particularly in later years when breaches of covenant were not followed up and resulted in costly litigation after the leases expired in 1958. However, the initial subdivision of the block and establishment of the leases did comply with the 1905 Act. On balance, we consider that the Ōtakanini owners were no more prejudiced by the leasing of their lands than the owners of many other leasehold blocks in southern Kaipara. The Ōtakanini owners got their land back, whereas in so many other blocks, the leasehold, and the piecemeal purchase of individual interests by the lessee, ended in total alienation by sale. Furthermore, when the Ōtakanini owners did resume control of their land in 1958, they inherited a substantial asset – developed farm land – in the largest contiguous piece of Māori land in southern Kaipara.

We have already commented in section 9.11.3 on the long-term leasing of the western sand dunes to the Forest Service in the late 1960s, and on the later transfer of the forest management and timber rights to a private company. Although we criticised some aspects of these arrangements, we consider that an asset has been created for the shareholders of the Ōtakanini Tōpū that will yield a substantial income in the long term with little effort from the tōpū itself.

11.3.5 Tribunal findings

On balance, we have not been persuaded that the Ōtakanini Tōpū and its shareholders have been specifically prejudiced by Crown action or inaction concerning the Ōtakanini block. The claimants do, however, share with the rest of Ngāti Whātua in southern Kaipara in the prejudicial effects of land loss and social disruption identified in our findings on the Wai 312 claim.

11.3.6 Tribunal recommendation

We recommend that the Wai 733 claimants should be joined with Wai 312 and others in the southern Kaipara inquiry district in the negotiation of a comprehensive settlement of their claims with the Crown.

11.4 WAI 279

11.4.1 The claim and the issues

The Wai 279 claim was lodged by Eriapa Maru Uruamo on behalf of himself and other descendants of Paora Kawharu and Aperahama Te Karu Uruamo of Te Taoū. The claim concerns the alleged failure of the Crown, through the operation of the Native Land Court, to protect Māori interests in lands collectively called Hiore Kata, which include the Puketapu, Puketapu South, Pariraunui, Pukekauere, Tua Te Tua, and Te Kēti blocks (all lying between the sea and the Kaipara River) and the Waipapa block (east of the river).

Further grievances concern the lands taken by the Crown for public works and, in some cases, the Crown's failure to pay compensation or to return lands no longer required. These takings include land for the Woodhill deviation of the Kaipara railway in the 1880s; the Puketapu and Puketapu South blocks for sand-dune reclamation in 1934; land on the Te Kēti block for a sand-stop in 1920 and for a sewage-treatment station for the Woodhill forestry village in 1968; and, more recently, land used for the realignment of State Highway 16. All these matters except the last have been dealt with in chapters 9 and 10.

11.4.2 Claimant submissions

Claimant counsel presented the Wai 279 claim of the Uruamo whānau as a 'case study for wider grievances in the South Kaipara.'¹¹ Counsel submitted that the Native Land Court investigation of titles had failed to acknowledge the traditional custom of *tuku whenua* in awarding title to the Hiore Kata lands. In particular, the claimants allege that, because the court did not recognise the gift by Paora Kawharu to Tahana of land in the Waipapa block, the land gifted by Paora to Aperahama Uruamo in the Te Kēti block had to be shared with his brother, Tahana. Te Kēti was partitioned between the descendants of the two brothers. In 1917, Te Kēti B was leased through the Tokerau District Māori Land Board, then sold to the lessee in 1924 by descendants of Tahana, while the Uruamo whānau remained in occupation of Te Kēti A. By this time, the Pariraunui, Pukekauere, and Tua Te Tua blocks west of the river had been leased or sold to private purchasers, and Waipapa had been sold to the Crown and a private purchaser. In 1934, the Puketapu and Puketapu South blocks, including four

11. Document H12, p 2

THE KAIPARA REPORT

11.4.3

urupa, were taken by the Crown for sand-dune reclamation in land which was subsequently developed into Woodhill Forest.

Counsel concluded that the Uruamo whānau, through the impact of Native Land Court operations and subsequent public works takings, had suffered from the ‘erosion of their ancestral base at Hiore Kata’, reducing them to ‘a marginal foothold’ on the Te Kēti A block.¹²

11.4.3 Crown submissions

Crown counsel referred to earlier comments on generic issues relating to Native Land Court operations and the sale of lands. The evidence in regard to the Hiore Kata lands indicates that ‘in almost all respects the Native Land Court acted in accordance with the wishes of the owners’. Furthermore, the evidence indicates that ‘the various owners willingly sold these lands’, and there was ‘no evidence of any contemporary complaint or objection’. In relation to the sale of Te Kēti B and the role of the Tokerau District Māori Land Board, counsel noted that the lease and subsequent sale approved by the board was ‘at the request of the owners.’¹³

11.4.4 Tribunal comment

The issues in this claim in respect of the alienation of the Hiore Kata lands are similar to those addressed in our discussion of Wai 312. We make no comment on the alleged failure of the Native Land Court to acknowledge the tuku whenua of Paora Kawharu to Tahana on the Waipapa block, and to Aperahama Uruamo on the Te Kēti block, because we have no specific evidence to support this assertion by the claimant, Eriapa Uruamo. Nor can we comment on the sale of the Te Kēti B block in 1924 by descendants of Tahana because we have no evidence that they were not willing sellers, as recorded by the Tokerau District Māori Land Board at the time, or that the board acted inappropriately in this transaction.

The matters raised by the Wai 279 claimants in respect of the taking of Puketapu lands under the Public Works Act for sand-dune reclamation have been addressed in chapter 9. The issues concerning the loss of land and resources, access to the sea coast, and the protection of wāhi tapu are similar to those in Wai 312, and we make no further comment here.

Most of the issues specific to the Te Kēti block have been dealt with in chapters 8 and 9. But one grievance has not yet been addressed: the small pieces of land used for the realignment of State Highway 16 in 1975 and 1983. On the evidence presented to us, it is not clear whether these areas were already Crown land or part of the Māori land in the Te Kēti A block.

12. Document Q10, pp 35–36

13. Document Q16, pp 107–108

We have previously suggested that, if there is any Crown land remaining on the Te Kēti A block that is not required for public works, it should be returned to the Māori owners of the block at no cost to them. We repeat that suggestion here.

The Uruamo whānau still occupy the Te Kēti A block. They perceive their efforts to retain their hold on this small pocket of Māori land, which is all that is left of the Hiore Kata lands, as a continuing struggle against the Crown and its bureaucracy. The claimants feel strongly about the seeming failure of Crown officials to acknowledge their view of their world. Wai 279 was heard in a tent in Woodhill Forest, on the site of the former Forest Service village rubbish-tip. This is just below the site of the ancestral Hiore Kata Pā, which had been planted in pines. The choice of site was deliberate, despite the difficult access, the wind, and the rain, because the claimant, Eriapa Uruamo, wanted to express his feelings that the mana and identity of his whānau as tangata whenua had been eroded, that their ancestral pā had been desecrated, and that so little remained of their ancestral lands of Hiore Kata.

11.4.5 Tribunal findings

We make the following findings in the Wai 279 claim concerning the Hiore Kata lands and the Te Kēti block:

- ▶ The operation of the Native Land Court and the subsequent sales of the Hiore Kata lands were similar to those identified in the Wai 312 claim as breaches of the principles of the Treaty of Waitangi. In this respect, the Wai 279 claim is well founded.
- ▶ On the only remaining Māori-owned land in Hiore Kata, the Te Kēti A block, takings of land under the Public Works Act further eroded the holding of the Uruamo whānau. Most of these takings were for public works: the railway, the highway, the sand-dune reclamation, and the sewage-treatment plant. However, there remain in Crown ownership some pieces of this land that are no longer needed for any public purpose and these should have been returned to the Māori owners. In respect of public works takings, therefore, the Wai 279 claim is well founded.

11.4.6 Tribunal recommendations

We make the following recommendations in the Wai 279 claim concerning the Hiore Kata lands and the Te Kēti block:

- ▶ The Wai 279 claim should be included in the negotiation of a comprehensive settlement of Ngāti Whātua land claims.
- ▶ On the Te Kēti A block, the land taken for the sewage-treatment plant and any other Crown land taken under the Public Works Act that is no longer required for any public purpose should be revested in the owners of the block.

11.5 WAI 756

11.5.1 The claim and the issues

The Wai 756 claim, lodged by Lou Paul of Te Taoū, is concerned with the loss of lands and resources in the Reweti area, including Woodhill Forest. These issues are the same as those already considered in our discussion of the Wai 312 claim and will not be repeated here. The distinguishing feature of the Wai 756 claim is its concern with tribal identity and the mana of Te Taoū. The claimant alleges that ‘actions of the Crown have resulted in an erosion of the tribal identity of Te Taoū’, because it has been treated as a hapū of Ngāti Whātua rather than a tribe with its own mana and identity. The alienation of land has exacerbated Te Taoū’s sense of dislocation from its tribal rohe, heritage, and taonga.¹⁴

11.5.2 Claimant submissions

Claimant counsel stated that Lou Paul ‘represents’ Te Taoū in the Wai 756 claim and that a ‘mandate’ was given to him at a hui at Reweti Marae on 6 December 1999. Counsel acknowledged that it was not the role of the Tribunal to settle disputes between Māori but observed that Lou Paul ‘disputes Wai 312’s claim to represent Te Taoū before this Tribunal.’¹⁵ We note that, during the hearing of the Wai 756 claim, counsel for Wai 312 and Wai 279 stated that there were many people who identified as Te Taoū in both claimant groups, and that the Wai 312 and Wai 279 claimants saw Te Taoū as an integral part of the Ngāti Whātua claims in southern Kaipara. Counsel for Wai 756 also submitted that the evidence in this claim ‘largely mirrors evidence brought by other claimants including Wai 312.’¹⁶

Counsel for Wai 756 submitted that the claim had three parts. The first was concerned with Crown actions or inactions which ‘caused or contributed to’ the loss of tribal identity and rangatiratanga of Te Taoū. The second was concerned with the alienation of land, and the third with specific issues, including those relating to the courthouse reserve in Helensville, the Kaipara railway, and Woodhill Forest, including the taking of land for sand-dune reclamation, loss of access to kaimoana, and the protection of wāhi tapu. Counsel acknowledged that the research reports compiled for Wai 756 relied heavily on the work of Wai 312 historians, but the focus of Wai 756 was on Te Taoū lands.¹⁷

In submissions concerning the loss of tribal identity, counsel suggested that since the nineteenth century, when they were acknowledged as a separate tribe, Te Taoū had gradually ‘become characterised as a “subtribe” of Ngāti Whatua.’ In the process, ‘Te Taoū’s distinct identity became obscured.’ The reason for this, counsel argued, was that ‘the Crown

14. Claim 1.30(c)

15. Document Q14, p 2

16. Ibid, p 6

17. Documents N1, N2, N3, N4, N5

classified Maori society according to a rigidly defined “tribe” and “subtribe” hierarchy’. Thus, Te Taoū became submerged in Ngāti Whātua, which led to ‘the loss of independence and control over the tribe’s destiny’. Therefore, it was argued, the Crown had failed to ‘protect the mana of Te Taou as a tribe separate to and independent of others with rangatiratanga over its land’. This was demonstrated in the evidence of Te Taoū feeling ‘a profound dislocation from their history, culture and their land’.¹⁸

11.5.3 Crown submissions

Crown counsel rejected the allegation that ‘the Crown had a duty to protect tribal structures and that it failed to do so’.¹⁹ Māori society has always been fluid and dynamic, and in the nineteenth-century it underwent economic and social changes in response to factors such as environmental and population change. Changes in political structures, including the need to form larger political units, were one likely response. Counsel argued that the evidence did not support the charge that the Crown had caused or contributed to the erosion of Te Taoū’s tribal identity:

Te Taou themselves often used different affiliations, referring to either Te Taou or Ngati Whatua as they saw fit in the circumstances. It is also clear that both the Crown (through the compilation of official lists) and the Native Land Court (through title investigations) recognised the existence of Te Taou as a separate identity in both the 19th and 20th centuries. There is no evidence to suggest that the Crown in any way forced a tribal identity onto Maori or removed their ability to affiliate with a particular tribal grouping. Maori themselves identified their affiliations for the purposes of the Native Land Court or other official lists.²⁰

11.5.4 Claimant response to Crown submissions

In response to the Crown’s submissions, counsel for the Wai 756 claimants acknowledged that the Crown was ‘not the sole cause of loss of tribal identity, mana and rangatiratanga’. However, this ‘in no way resiles from the main thrust of the [Wai 756] submissions, that is that the Crown nevertheless had a substantial responsibility for this, and that this amounts to a breach of the Treaty obligations to preserve mana and the rangatiratanga’.²¹

18. Document Q14, pp 3–5, 7

19. Document Q16, p 99

20. Ibid, p 100

21. Document Q17, p 4

11.5.5 Tribunal comment

In chapter 2, we made it clear that we have used the name ‘Ngāti Whātua’ when referring collectively to a number of hapū of southern Kaipara and Tamaki Makaurau, including Te Taoū. There is also a hapū which we have distinguished by the name ‘Ngāti Whātua Tūturu’. We have also used the term ‘Ngāti Whātua confederation’, which includes hapū of Ngāti Whātua and the related tribes of Te Uri o Hau, Ngāi Tahu, and Te Rōroa in northern Kaipara and Te Kawerau a Maki of west Auckland. The Wai 756 claimants have challenged the categorisation of Te Taoū as a hapū of Ngāti Whātua, but we do not believe that this contradicts our inclusion of Te Taoū in our collective definition of Ngāti Whātua.

The Wai 756 claimants are not the sole representatives of Te Taoū, because Te Taoū are also well represented among the Wai 312 claimants. The Wai 279 claimants are also Te Taoū. It seems that there are differences within Te Taoū about whether or not they are part of Ngāti Whātua. The objection of the Wai 756 claimants appears to be to the classification of Te Taoū as a subtribe, or subordinate group, within Ngāti Whātua. The claimants consider Te Taoū to be an autonomous tribe in its own right, albeit having connections through marriage and otherwise with Ngāti Whātua. This contention is supported not only by the evidence of Te Taoū claimant historian Dr Geoff Watson but also by Garry Hooker’s historical report for Te Rōroa, which states that ‘historically Te Taoū, Ngāti Whātua, Ngāti Rongo, Te Uri o Hau and Te Roroa were regarded by the tupuna as tribes.’²²

We do not disagree with Hooker’s statement, since we follow previous Tribunals in regarding the hapū as the ‘tribe’ – that is, ‘the unit exercising corporate functions on a daily basis.’²³ As the Law Commission has pointed out in a report on *Māori Custom and Values in New Zealand Law*, ‘Hapū is often incorrectly translated as sub-tribe with the connotation that the hapū is politically inferior to an iwi. The relationships between hapū and iwi are complex and are not in a vertical hierarchy of authority.’²⁴ Historian Angela Ballara has shown that the hierarchical notion of hapū as subtribes which were ‘dependent parts’ of larger tribes was a creation of Pākehā commentators and officials in the nineteenth century.²⁵

We therefore accept that a group such as Te Taoū, often considered to be a hapū, had its own mana and autonomy. However, we do not go so far as to deny that, over time, a Ngāti

22. Document L2, p 51; see also doc N1, ch 2

23. Waitangi Tribunal, *The Ngāti Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 13 (see also pp 132–133); Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 1 fn 2; Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 14; Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: GP Publications, 1998), pp 17–18; Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, pp 4–10

24. Law Commission, *Māori Custom and Values in New Zealand Law*, Study Paper 9 (Wellington: Law Commission, 2001), p 42

25. Angela Ballara, *Iwi: The Dynamics of Māori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), esp p 70

Whātua entity larger than a hapū but smaller than a confederation has come to exist. The emergence of this Ngāti Whātua grouping, which can be described as an iwi, is probably a relatively modern development. It seems likely that, as Wai 756 researchers Shane Paul and Lily George suggested, the formation of a multi-hapū Ngāti Whātua iwi began after Te Ika ā Ranganui, when various related peoples decimated by the battle coalesced under the leadership of rangatira such as Te Kawau.²⁶ This process was consolidated during the colonial period. It is therefore inaccurate to take this modern meaning of Ngāti Whātua and project it back to the seventeenth century or earlier, as the ethnographer Stephenson Percy Smith and others following him have done.²⁷ Nevertheless, this meaning of Ngāti Whātua existed in the historical period with which we are concerned, and it is one with which many claimants in this inquiry (including people of Te Taoū whakapapa) identify.

We emphasise that our use of the name Ngāti Whātua should not be taken as indicating that Te Taoū or any other hapū was subordinate to a larger Ngāti Whātua ‘tribe’. Nor do we wish to impose an identity on anyone. Wai 756 claimant Lou Paul indicated that he wanted to be identified as Te Taoū, not Ngāti Whātua. Others of Te Taoū whakapapa have identified with Ngāti Whātua. We recognise that kin groups have the right to decide which iwi or hapū names they want to identify themselves with. We acknowledge that some Pākehā scholars in the past, such as Smith, may have imposed interpretations that are not acceptable today. We also warn that, while the identification of Māori kin groups is the result of the dynamics of social and economic change over time, today’s categories should not be imposed on the past. These social processes cannot be blamed on the Crown, although Crown actions may well be a significant factor in the dynamics of social change. We consider that any dispute over identity and nomenclature is a matter for Māori to resolve among themselves.

11.5.6 Tribunal findings

We make the following findings in respect of the Wai 756 claim:

- ▶ The first part of the claim, that the Crown caused or contributed to the erosion of Te Taoū identity, is not well founded, because Te Taoū continues to exist as a recognised kin group, even though some of its members may be unaware of all their kin connections.
- ▶ The second and third parts of the claim, concerning the loss of land and resources, and specific issues relating to the courthouse reserve, Kaipara railway, and Woodhill Forest, are similar to those that we have reported on in Wai 312 and are therefore well founded.

26. Document N5, p 43

27. For a discussion of Smith’s account of ‘Ngāti Whātua’ history, see Ballara, pp 100–101.

11.5.7

11.5.7 Tribunal recommendation

We recommend that the Wai 756 claim be included in a comprehensive settlement by the Crown of Ngāti Whātua claims in southern Kaipara.

11.6 WAI 121

11.6.1 The claim and the issues

The Wai 121 claim was lodged by Mohi Wiremu Manukau on his own behalf and that of his whānau, as beneficiaries of the Manukau Māori Trust Board. The Manukau whānau are descendants of the Kaipara chiefs Rewharewha Manukau, Te Ōtene Kikokiko, and Paraone Ngaweke. Their land interests extended throughout Kaipara, including Te Uri o Hau lands, and, by descent, members of the whānau may be beneficiaries of the settlement between Te Uri o Hau and the Crown. We are concerned here with their interests in Ngāti Whātua lands of southern Kaipara. The claim concerns the loss of lands in the nineteenth century through Crown purchases and the operation of the Native Land Court, the consequent loss of the resources of the land, and the loss of mana directly attributed to the loss of land.

A further issue in the Wai 121 claim concerns section 71 of the Constitution Act 1852. We comment on this in our discussion of constitutional issues in chapter 12.

11.6.2 Claimant submissions

Claimant counsel stated that the Wai 121 claim is ‘about mana’. The claimants have ‘shared in the injustices suffered by the people of Kaipara. But in addition they have lost their mana.’ The Manukau whānau ‘claim rights in Kaipara as tupu tupu whenua – people of the land’. Their traditions date from before the present tribes of Te Uri o Hau and Ngāti Whātua in Kaipara. ‘They do not claim to be a waka people, or descendant from a waka.’²⁸ Counsel cited the evidence of anthropologist and claimant researcher Larisa Webb about the lands of the three rangatira, Rewharewha Manukau, Te Ōtene Kikokiko, and Paraone Ngaweke.²⁹ Te Ōtene had no children, and the connections of the Manukau whānau are to his sister, Tarewa Kiwara. Counsel stated that the principal asset of these rangatira was the land and its resources. For a time after the arrival of Pākehā settlers, prosperity from trade in foodstuffs, timber, kauri gum, and other commodities, and from land sales, ‘enhanced the mana of established rangatira’. But, counsel submitted, this process was ‘sowing the seeds of destruction of wealth and reduction of mana’ and the end result of land sales was ‘poverty and

28. Document Q11, p1

29. Document K5

dependency'. By the 1880s, all three rangatira were heavily in debt, 'and this debt played a significant role in forcing the permanent alienation of the land'.³⁰

11.6.3 Crown submissions

Crown counsel submitted that the 'essence' of the Wai 121 allegations is 'that the Crown had a duty to protect tribal structures and that it failed to do so'. The evidence given by Wai 121 claimants on the operation of the Native Land Court, in particular, made 'little reference' to the late nineteenth-century context and the changes in society that would 'necessarily have impacted upon tribal structures, and the relationship of rangatira to their communities'.³¹ Counsel then noted that the Kaipara Māori population was declining until the end of the nineteenth century; that there was a dramatic increase in the Pākehā settler population; that there was an increasing Māori focus on commercial activity and economic change; and that by 1885 about half of the southern Kaipara lands had been sold. By the end of the century, several significant rangatira had died, and this was another factor in the dynamics of the Māori political and social system.

Crown counsel submitted that the Wai 121 claimants 'essentially allege that the Crown, through its actions and particularly its participation in land sales, caused the destruction of rangatira'. Counsel suggested that, while some other claims accuse the Crown of failing to recognise rangatira, 'the Wai 121 claim is that the Crown gave too much recognition to rangatira'. The evidence suggested that rangatira did act with the consent of kin, that 'Maori leadership was always fluid', and that Māori determined the form of leadership and who should take this role. Counsel concluded that 'it is a gross-oversimplification to allege that the breakdown of tribal structure was caused by Crown actions and omissions'. Changes in tribal structure were responses by Māori to the changing social, political, and economic context brought about by the arrival of settlers and the introduction of government.³²

11.6.4 Tribunal comment

We agree with Crown counsel that the role of rangatira in the changing political, social, and economic environment of the late nineteenth century was complex. It is too simple to blame the Crown for the debt and poverty that occurred after lands were sold. The rangatira were active participants in the sale process. We have not been persuaded that the Manukau whānau have been any more prejudiced by land sales than many other whānau in southern Kaipara whose ancestral leaders sold their lands. We have addressed the loss of land in the

30. Document Q11, pp 1–7

31. Document Q16, p 99

32. Ibid, pp 100–101

THE KAIPARA REPORT

11.6.5

nineteenth century in some detail in chapter 3 and in the discussion of the Wai 312 claim. We conclude that the issues raised in Wai 121 are similar to those in Wai 312.

11.6.5 Tribunal finding

We find that the issues raised by the Wai 121 claimants in respect of loss of land have much in common with the findings in the Wai 312 claim, and to that extent are well founded.

11.6.6 Tribunal recommendation

We recommend that the Wai 121 claim be included in a comprehensive settlement by the Crown of Ngāti Whātua claims in southern Kaipara.

11.7 WAI 470

11.7.1 The claim and the issues

Wai 470 was brought by Hariata Ewe and Te Warena Taua on behalf of themselves, Te Kawerau a Maki iwi, and the Kawerau a Maki Trust. They state that in 1840, through ‘inter-marriage, peace agreements and continued occupation’, Te Kawerau a Maki remained in southern Kaipara, where they ‘continued to exercise some exclusive interests’ in the south-west and shared interests in the rest. The issues in this claim relate to loss of land and resources, old land claims, pre-emption waiver claims, Crown purchases, the operation of the Native Land Court, and public works takings, especially the Crown acquisition of land for Woodhill Forest. Apart from the assertion of exclusive rights for Te Kawerau a Maki, the issues in this claim are identical with those in the Wai 312 claim, which we have already addressed.³³

11.7.2 Claimant submissions

Counsel for the Wai 470 claimants submitted that Te Kawerau a Maki are today landless except for a few remaining acres. ‘They have no functioning marae, no traditional kainga and no urupa within which to bury their dead.’ They have lost access to ancestral lands and resources and to sites of cultural and historical significance, and most now live ‘at a distance from their ancestral lands’. The Crown is blamed for this ‘sad state of affairs’, by failing to ensure that Te Kawerau a Maki retained ‘a land and resource base sufficient for their present and future needs’ and by failing to protect sites of significance to Te Kawerau a Maki.³⁴

33. Claim 1.13(b)

34. Document Q8, p3

While acknowledging that the processes of land alienation were similar to those experienced by Ngāti Whātua, counsel stated that ‘the Te Kawerau a Maki experience is in many respects, different.’³⁵ To explain this difference, a great deal of evidence concerning the origins of Te Kawerau a Maki and ‘their ancient ties and emergence in southern Kaipara’ was put before the Tribunal. The claimants wished to ‘dispel incorrect assumptions and myths that surround the existence of Te Kawerau a Maki’. Counsel emphasised that ‘Te Kawerau a Maki are not a hapu of Ngati Whatua. Their whakapapa alone differentiates them from Ngati Whatua.’ They were ‘greatly pained’ that, during the Kaipara inquiry, they had been ‘continually lumped in under the generic heading of Ngati Whatua.’³⁶

The claimants also objected to historical accounts by ‘non-Maori historians’ who have ‘poorly served Te Kawerau a Maki’ by quoting from the victors, Ngāti Whātua, by ignoring or misunderstanding the identity of Te Kawerau a Maki, and by implying that they had been vanquished and disappeared. Apart from the historical evidence of Graeme Murdoch that was submitted to the Tribunal for this inquiry, there was no published account from ‘a Te Kawerau a Maki perspective’. Counsel referred to the Native Land Court minutes of the investigation of title to the Ōtakanini block in 1910, which ‘details the whakapapa links between Ngati Whatua and Te Kawerau a Maki and subsequent marriages between the two iwi which allowed them to co-exist in peace.’³⁷ Counsel then summed up the claimants’ view of Te Kawerau a Maki history:

- ▶ It cannot be denied that there was a Ngati Whatua invasion of southwest Kaipara in the early 17th century and that a long period of conflict ensued between Ngati Whatua and Te Kawerau a Maki.
- ▶ Te Kawerau a Maki do not deny that Ngati Whatua and Te Taou came to settle in much of southwestern Kaipara.
- ▶ There is no traditional Te Kawerau a Maki account of a Ngati Whatua conquest of all southern Kaipara or of an exclusive occupation of all of the district by Ngati Whatua alone.
- ▶ Traditional Te Kawerau a Maki accounts describe an attack by a combined Ngati Whatua force on the specific hapu of Te Kawerau a Maki who had been responsible for the death of Haumoewharangi. Some Kawerau hapu in occupation of the eastern Kaipara, namely Ngati Manuhiri and Ngati Rongo were not involved in the conflict. As such Te Kawerau a Maki bore the brunt of the Ngati Whatua invasion however they emphatically reject the contention that they were completely driven out of the Kaipara.³⁸

35. Ibid

36. Ibid, p 5

37. Ibid, p 7

38. Ibid, p 8

11.7.3

Te Kawerau a Maki 'continued to have shared associations over specific parts of south western Kaipara between Kopironui and Motutara', as well as 'wider ancestral associations throughout the wider Kaipara which were not removed by the Ngati Whatua invasion'.³⁹

Much of claimant counsel's submission traversed the same issues as those in the Wai 312 claim: old land claims, pre-emption waivers, Crown purchases, Native Land Court operations, and public works takings (in particular, the lands taken for sand-dune reclamation). The underlying theme of these submissions was that the Crown had consistently failed to recognise Te Kawerau a Maki's identity, whakapapa, and associations with the lands of southern Kaipara, so that by the end of the nineteenth century they were effectively marginalised. The result today is the dislocation and fragmentation of Te Kawerau a Maki. 'Although they meet regularly in wananga and have a small body of kaitiaki holding strong to their traditions and origins, a reality for many of them is that they know little of Te Kawerau a Maki history, origins, identity and land rights.'⁴⁰

11.7.3 Crown submissions

Crown counsel submitted that the Wai 470 claimants are 'attempting to establish the existence of their rights and interests within the boundaries of the Kaipara regional inquiry, and then subsequently claiming that any such rights and interests were effectively ignored' by the Crown in the various processes of land alienation. Counsel also noted that the claimants 'rely almost entirely on oral history' and that 'very little documentary evidence' was produced by researcher Graeme Murdoch, making it 'difficult for the Crown to test or verify these claims'.

Crown counsel questioned 'the nature and extent of the rights claimed' in the blocks with 'shared' interests, asking whether this meant a right of veto or merely a right to share in the proceeds of sale. Although Te Kawerau a Maki were apparently not involved in sales of lands in which they claimed interests, 'it does not necessarily follow that any interests were ignored'. While the evidence on such rights was insufficient, there was evidence that Te Kawerau a Maki received distributions of the sale proceeds and were therefore aware that such transactions were occurring. Counsel suggested that this indicated 'some level of agency whereby other rangatira were representing the interests of Te Kawerau a Maki, a small hapu with limited interests in the Kaipara region'. Counsel further submitted that 'the protests by Te Kawerau a Maki were few' and concluded that 'the implication is that the claimants acquiesced to the transactions, on the basis either that their interests were not sufficient to warrant involvement, or that they were being represented by other rangatira involved in the transactions'.⁴¹

39. Document Q8, p 8

40. Ibid, p 63

41. Document Q16, pp105-106

11.7.4 Claimant response to Crown submissions

In responding to the Crown's submissions, claimant counsel cited the cases where the evidence indicated that Te Kawerau a Maki were involved in transactions: four Te Kawerau a Maki rangatira were signatories to the Crown purchase of the Mangatoetoe block and Te Watarauhi received a share of the payments for the purchases of the Okaka, Mairetahi, and Hoteo blocks and was one of the grantees in the Taupaki block.⁴² Counsel accepted that there was a lack of documentary evidence of Te Kawerau a Maki interests in southern Kaipara but submitted that this is 'the crux of their case'; that is, 'their interests have not been well served by the documentary record'. Counsel warned against viewing 'oral history of Maori traditions, rights and associations' as being 'inferior or second-rate to that of the documentary record'. Counsel also commented:

Just as the Crown has urged upon all concerned to take into account the relevant historical context of the 19th century in which the Crown and Maori were operating, it is urged upon the Crown to try and understand the nature of Maori customary land rights by looking not through today's lens as we understand land rights, but as Maori traditionally understood them to be.⁴³

11.7.5 Tribunal comment

We heard a great deal of detailed evidence about various ancestors of Te Kawerau a Maki and places associated with them in southern Kaipara. There is no dispute that people called Kawerau were in occupation before Ngāti Whātua began moving south. Te Warena Taua stated that the ancestral interests of Te Kawerau a Maki extended north into Kaipara Harbour to include all of South Head Peninsula, east across the harbour to the Hoteo River and to the coast around Te Arai, and south to include Omaha, Mahurangi, the upper reaches of Waitemata Harbour, the northern shores of Manukau Harbour, and the Waitakere Ranges.⁴⁴

The ancestor Maki came originally from Kāwhia and travelled north with a band of his people, settling for a time near Manurewa, among Waikato relatives, on the southern shores of Manukau Harbour. He then became involved in fighting in southern Kaipara and Tamaki Makaurau against the occupants, Ngā Oho. Maki and his wife settled for a while in the Kaipara, near Parakai, where one of his sons, Tāwhiakiterangi (also known as Kawerau a Maki), was born. It is from this son that Te Kawerau a Maki are descended. Other sons were Manuhiri, who was an ancestor of Ngāti Wai, and Ngāwhetu and Maraeariki, ancestors of Ngāti Rongo and others on the eastern coast south of Ōmaha. Maki himself eventually

42. Document Q24, p 12; doc J2, p 115

43. Document Q24, p 13

44. Document J6, p 11

returned to Kāwhia and died there.⁴⁵ Tāwhiakiterangi is said to have lived at Kopironui, at Korekore Pā, and at other places, and he was buried at Hautu on the Kopironui block. He had a son, Taimaro, and his son was Te Hawiti, later known as Te Au o te Whenua, who was based at Korekore Pā and was involved in the peacemaking at Taupaki, described below.

Graeme Murdoch criticised the ‘authorised version’ of Kaipara Māori history recounted by Stephenson Percy Smith and George Graham (and later by others), which refers to ‘a complete “conquest” of “southern Kaipara” by “Ngāti Whatua”’ and implies that ‘the earlier inhabitants were killed off or absorbed’. Murdoch suggested that these writers used mainly Ngāti Whātua sources, and therefore only the version of the victors was told. This led to ‘a trail of historical confusion’, because there was no published Te Kawerau a Maki account, although the traditional accounts had been preserved by kaumatua of Te Kawerau a Maki and passed on.⁴⁶ However, we consider this view to be somewhat exaggerated, since neither Smith nor Graham suggested that Te Kawerau a Maki had disappeared. Indeed, both writers emphasised the marriages that had been made between Ngāti Whātua and Te Kawerau a Maki ancestors from the beginning of Ngāti Whātua migration into southern Kaipara. There were many fights with Kawerau and Waiohua occupants, but most of these were followed by peacemaking and strategic marriages between the warring parties. This followed the traditional pattern of take raupatu.

The Ngāti Whātua ‘conquest’ of southern Kaipara and the establishment of a ‘boundary’ between Ngāti Whātua and Te Kawerau a Maki were described by Smith:

They [Ngāti Whātua] settled down in the country extending round the present town of Helensville and increased and multiplied. There must have been many of the women of the Wai-o-Hua tribe who were spared and became the mothers of many of the later generations of Ngāti Whatua, indeed it is very evident from the genealogies that this amalgamation with that tribe, with Kawerau, and other local divisions had been going on for many years previously; no doubt the 150 years or so that Ngāti Whatua had been their near neighbours was not spent in constant warfare. One branch of the Kawerau, soon after the conquest, were still occupying their ancestral lands about Manukau Heads, Wai-takere and Muriwai, as the following incident shows. It must have been soon after the conquest, say a little prior to 1740, that Pou-tapu-aka, one of the conquering Ngāti Whatua, started from Otaka-nini on a journey to the south to *takahi kainga*, or take possession of the country. At a place named Taupaki, he met Te-Au-o-te-whenua, a chief of the Kawerau, and an ancestor of Whatarauhi who lived at Muriwai in 1860. The two chiefs had a long discussion as to what should be their boundary; Pou-tapu-aka wishing to go as far as Hikurangi (in the Wai-takere district),

45. Document J6, pp 6–9; doc J2, pp 23–29. For a Tainui account of Maki’s activities compiled by Pei Te Hurinui Jones, see *Nga Iwi o Tainui: The Traditional History of the Tainui People – Nga Koorero Tuku Iho o nga Tuupuna*, ed Bruce Biggs (Auckland: Auckland University Press, 1995), pp 272–276.

46. Document J2, pp 33–34

the other insisting that he should return. To settle the dispute, Pou-tapu-aka dug a trench with his *hoeroa*, or whalebone baton, and sticking it upright therein, declared that should be the boundary between the two tribes.⁴⁷

Te Warena Taua provided an account of this incident in his evidence, explaining, as Smith had done, that the place was named Taupaki to mark the peace agreement made there between the two chiefs:

Poutapuaka was travelling south when he was stopped by Te Au o te Whenua. Te Au o te Whenua enquired as to where Poutapuaka was going. He replied, 'Ki Hikurangi', 'to Hikurangi'. Te Au o te Whenua was suspicious of the intentions of Poutapuaka and disallowed him to continue. Te Au o te Whenua drew his mere (stone club) and cut a line into the ground and stated that Poutapuaka should return from here. Tensions were high, but peace was finally made when Poutapuaka realised that he had not the strength to continue south. It was from this incident, that Te Hawiti was to receive his new name 'Au o te Whenua', or 'current of the land'. Taupaki became an Aukati, or a line, which one may not pass.⁴⁸

It matters little which of the two rangatira cut the line. The point of the story, told by both Ngāti Whātua and Te Kawerau a Maki, is that a line was made and agreed on.

Graham also referred to the peacemaking at Taupaki:

This peace lasted for some time until about AD 1760, when the Kawerau became involved in the warfare between the Ngāti-Whatua and Wai-o-Hua of Tamaki. This war was that in which the Tamaki Isthmus was conquered by Ngāti Whatua, who, however, do not appear to have claimed to have conquered the Kawerau *mana* to Waitakere. Hence we find remnants of that people, still recognised as the *iwi-whenua* (land tribe) of those parts . . .

In this warfare the Ngāti Whatua seemed to have contented themselves by sending punitive expeditions into the forest territories of the Kawerau. But by this time they had much inter-married with them. In fact the Kawerau were in the latter stages of the warfare against the Waiohua of Tamaki, allied with the Ngāti-Whatua.

In these times, [1920s] Kawerau still exist as a recognised tribe. Their numbers now reduced to some fifty or sixty people, they are resident at Mahurangi, Omaha and various other localities within their ancient tribal domain.⁴⁹

Graham cited as his sources 'several old men' of Kawerau, including Matekino of Opahi, Mahurangi, and Tutawhana of Awataha, Shoal Bay, Auckland.

47. Stephenson Percy Smith, *The Peopling of the North: Notes on the Ancient Māori History of the Northern Peninsula and Sketches of the History of the Ngāti-Whātua Tribe of Kaipara, New Zealand* (1897; reprint, Christchurch: Kiwi Publishers, 1998), p 76

48. Document 16, p 15

49. George Graham, 'History of the Kawerau Tribe of Waitakere', *Journal of the Polynesian Society*, vol 34, no 133 (March 1925), pp 22-23

Taupaki, where peace was arranged between Te Kawerau a Maki and Ngāti Whātua, is near the western coast on the southern boundary of the Taupaki block, which is the southern boundary of the Kaipara inquiry district. In 1853, Crown purchase agents began negotiating the purchase of blocks in west Auckland south of Taupaki. Kumeu, Mangatoetoe, and Hikurangi were all purchased that year, and Te Pae o te Rangi and Puatainga were bought the following year. Te Kawerau a Maki names appear in all these deeds except that for Kumeu. The 1853 deed for Hikurangi had 17 signatories, ‘the Chiefs of the Ngatiwhatua and the Akitai tribes and the Ngatiteata’. In 1856, another deed for Hikurangi was signed by ‘the Chiefs and People of a branch of the Ngatiwhatua’ – Watarauhi, Pera, Hamuera, Natanahira, Henare, Himiona, and Utika.⁵⁰ Significantly, this separate deed for Te Kawerau a Maki’s interests in Hikurangi refers to them as ‘a branch’ of Ngāti Whātua; the Māori version reads ‘nga rangatira me nga tangata o tetahi o nga manga o te Iwi o Ngatiwhatua’. None of the names on this deed was on the earlier deed. The Hikurangi deed, like the Mangawhai deed discussed in chapter 5, contained a ‘10 per cent clause’. Murdoch, citing a report by Heaphy, states that in 1874 the ‘tenths’ payments were ‘given to Te Kawerau a Maki, as the “original territorial owners of Hikurangi”’.⁵¹ In the Waitakere district, south of Taupaki, it seems that Te Kawerau interests were recognised by the Crown.

The Taupaki peacemaking was a factor in resolving the dissension over the sale of Puatainga, which lay between the Taupaki and Pae o te Rangi blocks, by Manihera and Ihaka Takanini, the two signatories to the deed. Murdoch suggested that Manihera, described in the deed as a chief of Ngāti Whātua, ‘may have had a partial right to the block through his Kawerau descent’, but the right of Ihaka of Te Akitai, a hapū of Waiohua, ‘was more ancient and obscure’. Murdoch commented that the sale was:

a clear ‘political’ statement which was bound to cause controversy as the transaction was accompanied by a physical occupation of the area. It would appear that Te Watarauhi and Te Kawerau a Maki backed the Te Waiohua initiative, possibly to reassert their land rights which had been so severely eroded by their Ngati Whatua relatives.

In 1854 Te Kawerau a Maki rebuilt the defences of Parawai Pa beside the lower Waitakere River, ready to host a large heavily armed Te Waiohua force, and to face the predicted reaction from Te Taou.

This force of about 300 had assembled at Mangere. Ihaka Takanini was one of its leaders, and it included people who had ‘suffered at the hands of Ngati Whatua several generations before.’⁵² Most were from around Manukau Harbour, including several Waikato hapū from the southern shore. The group arrived at Parawai and camped there with Te Kawerau a Maki.

50. Henry Hanson Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printer, 1877), vol 1, deeds 144–145, 270–272, 280 (pp 187–189, 326–329, 339)

51. Document J2, p 120

52. *Ibid*, p 122

The next day, they walked over the Taupaki block, set up boundary markers, and claimed the land north to Maukatia/Māori Bay at Muriwai. Murdoch cited Te Kawerau a Maki kaumatua as the source of this account.

The same incident was also referred to in the minutes of the Native Land Court's 1869 title investigation of the Ruarangihaerere block. An armed force, led by Te Ōtene Kikokiko, was quickly assembled and moved south. Paora Tuhaere told the court that 'we met at Taupaki, we met because the Waikato were taking our land away. Ihaka, Mohi and Te Kawerau was [*sic*] attempting to take it away, they said that it belonged to them.'⁵³ Te Ōtene Kikokiko told his version:

I recollect the quarrel at Taupaki that was my fight. It was a fight with Te Kawerau – Te Watarauhi – Natanahira – Hoani – Hapimana – Ihaka – Manakau – Te Pepene – Te Tihi. These people brought the quarrel to Waitakere. I went from Ongarahu and stopped at Taupaki. I fired at the boundary of the land and sent for Te Watarauhi and thus a fight was prevented.⁵⁴

The confrontation was resolved by both parties agreeing to put the dispute in the hands of Apihai Te Kawau, who arrived to mediate. Donald McLean agreed that there would be no Crown purchases of land north of Taupaki until the parties agreed to sell.

It seems that the resolution of this dispute lay in recognising the old boundary at Taupaki. The Taupaki block (12,868 acres) was investigated by the Native Land Court in 1867. Paora Tuhaere referred to the dispute and stated that the land had been given over to Apihai Te Kawau. However, because he was now old and ill, Paora and Te Keene were acting for him on behalf of the many claimants, who included Ngāti Whātua Tuturu, Te Taoū, and Te Kawerau. Ōtene Kikokiko and Watarauhi both supported Paora's statement. The block was awarded to Te Keene Tangaroa, Paora Tuhaere, Te Wiremu Reweti Te Whenua, and Watarauhi, and between 1868 and 1882, it was subdivided and sold to private purchasers.⁵⁵ Thus, Te Kawerau a Maki interests at Taupaki were also recognised.

In concluding that a 'boundary' was established at Taupaki between Ngāti Whātua and Te Kawerau a Maki, we do not wish to imply that this was a strictly demarcated line. It was more like a zone where interests merged, and this was recognised by the inclusion of Watarauhi as one of the grantees in the Taupaki block to look after Te Kawerau a Maki interests alongside and in cooperation with Ngāti Whātua rangatira. We note here the comments on boundaries made by the Ngāti Awa Tribunal:

To insist that the groups should define the boundary lines between them is to ask them to do that which is culturally impossible, or that which is an affront to cultural values. The

53. Kaipara Native Land Court minute book 2, fol107 (doc J2, p124)

54. Ibid, fol128 (p124)

55. Document F5, pp 276–286

relationships between the groups have been such that each can point to sites of ancestral significance to it well within the territories of the others, and each can whakapapa to persons who lived in the kainga of another group.⁵⁶

It is to be expected that Te Kawerau a Maki identify places associated with their ancestors within the territory occupied by Ngāti Whātua in southern Kaipara. Te Kawerau a Maki leaders are to be commended for attempting to educate their younger members about their history and traditions. Some of the younger people admitted to the Tribunal that they knew little of their history, but since the 1980s, through wananga and site visits, they have been learning. We hope that this learning process will clarify for them the close relationships and shared whakapapa many of them have with Ngāti Whātua. In focusing on their Kawerau lines of descent, the claimants have played down their equally significant Ngāti Whātua descent, particularly their kin links with Te Taoū in south-west Kaipara.

The number of people identifying themselves as Te Kawerau in the late nineteenth century was small. Crown researcher Paul Goldstone analysed population figures and concluded that 'Te Kawerau in the last half of the nineteenth century numbered between 16 and 36 adults and children residing mainly at Waitakere'.⁵⁷ In contrast, in 1869 Rogan identified 112 people of 'Ngatiwhatua' living at Papurona, Kawau, and Mairerahi on South Head Peninsula and 118 'Taou' living at Ongarahu and Orakei, a total of 230 people who would be included in our definition of Ngāti Whātua. Rogan also recorded 15 Kawerau people at Waitakere and 10 at Muriwai, while the 1870 census listed a total of 25 people in both places and named the 'leading chiefs of Te Kawerau' as Nopera Murupaenga and Wātarauhi.⁵⁸ The 1877 Kaipara district tribal register listed Te Kawerau at Waitakere (seven), Muriwai (four), and Kōpiro-nui (five), a total of 16 people.⁵⁹ The 1874, 1878, and 1881 official censuses of the Māori population named Te Kawerau as a hapū of Ngāti Whātua and had them resident at Waitakere only. Their numbers were 27 in 1874, 26 in 1878, and 36 in 1881.⁶⁰ The later censuses did not identify Māori by hapū or by tribe.

We have commented above that the terms 'hapū' and 'iwi', 'subtribe' and 'tribe' were used flexibly in the nineteenth century, and still are. The name of Kawerau was not lost in nineteenth-century records, and there is enough evidence in official documents to indicate that a group called Kawerau still existed and was recognised in the Waitakere area. Their

56. Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p134

57. Document 05, p13

58. 'Return Giving the Names etc of the Tribes of the North Island', AJHR, 1870, A-11

59. Kaipara district tribal register, 1877, MS734, Auckland Institute and Museum Library (doc 05, pp 36-40)

60. 'Approximate Census of the Maori Population (Compiled by Officers in the Native Districts)', 1 June 1874, AJHR, 1874, G-7, p 4; 'Papers Relating to the Census of the Maori Population, 1878', AJHR, 1878, G-2, p 13; AJHR, 1881, G-3, pp 12-13

small numbers meant that they could have been perceived as part of the larger Ngāti Whātua group, but there is sufficient evidence to suggest that they were never deprived of their identity and recognition by name as Kawerau.

Te Kawerau a Maki stated that they ‘continued to exercise some exclusive interests’ in south-west Kaipara north of Taupaki; in particular, the ‘exclusive occupation of Kopironui, Paekawau, Te Korekore, Te Muriwai and Motutara’ in 1840.⁶¹ According to the claimants, Kopironui was occupied by a hapū called ‘Ngāti Te Kahupara, who were of both Te Taou and Te Kawerau descent.’⁶² Te Warena Taua explained that ‘Ngāti Kahupara’ were descendants of the marriage – arranged after battles with Ngāti Whātua – between Te Kahupara, a descendant of Tāwhiakiterangi, and Te Waitaheke of Te Taoū.⁶³ Of the other places referred to above, Korekore is an old pā, Paekawau a lake east of Korekore, and Motutara the name of the block at Muriwai. We have no evidence of the exclusive occupation of these places by Te Kawerau a Maki, and we prefer the phrase used by counsel for the Wai 470 claimants: ‘shared associations.’⁶⁴

11.7.6 Tribunal findings

We make the following findings in the Wai 470 claim:

- ▶ Te Kawerau a Maki are descended from the people called Kawerau, who occupied the land of southern Kaipara before the migration of Ngāti Whātua into the region. Ngāti Whātua exerted their rangatiratanga over the region through a series of battles. These were followed by peacemaking arrangements, reinforced by marriages between Kawerau and Ngāti Whātua, and their descendants can whakapapa to ancestors in both groups. Many Ngāti Whātua families acknowledge Maki as an important ancestor. The rights established by Ngāti Whātua follow the traditional Māori concept of take raupatu, strengthened by marriage and the long occupation of southern Kaipara.
- ▶ Traditional evidence – and the meaning of the name itself – acknowledges Taupaki as a place of peacemaking, a boundary of Ngāti Whātua influence. The region south of Taupaki, along the western coast and the Waitakere Ranges of west Auckland, has always been acknowledged as the area where Te Kawerau a Maki are tangata whenua.
- ▶ The southern boundary of the Kaipara inquiry district is at the traditional Taupaki and is the southern boundary of the Taupaki block. Te Kawerau a Maki lands are therefore outside our inquiry district, and we make no recommendations on the Wai 470 claim.

61. Claim 1.13(b), p 2

62. Document J2, p 158

63. Document J6, pp 9–10

64. Document Q8, p 8

11.8

11.8 WAI 508

11.8.1 The claim and the issues

The Wai 508 claim was lodged by Whitiara Kaihau on behalf of Ngāti Te Ata, whose interests lie principally in the Awhitu Peninsula, the Waiuku district, and around the shores of Manukau Harbour. The Tribunal received lengthy submissions from both Mr Kaihau and Roimata Minhinnick setting out Ngāti Te Ata whakapapa and traditional links with Kaipara lands.⁶⁵

The Wai 508 claim also referred to section 71 of the Constitution Act 1852. We discuss this issue in chapter 12.

11.8.2 Claimant submissions

Counsel for the Wai 508 claimants stated that Ngāti Te Ata claim ‘tangata whenua interests, particularly in the Hikurangi area.’⁶⁶ We referred to the Crown purchase of the Hikurangi block in section 11.7.5, and also in chapter 5, because the Hikurangi deed also contained a ‘10 per cent clause’. The Hikurangi land, however, is in west Auckland, well to the south of the southern boundary of the Kaipara inquiry district.

In his statement of claim, Mr Kaihau included all of southern Kaipara within the boundaries of the Wai 508 claim.⁶⁷ Mr Minhinnick stated that ‘Ngāti Te Ata do not perceive their claim as a claim to the extent that the iwi are making a claim against other Maori claimant groups in Kaipara or even to land in Kaipara proper’. He also made the point that boundaries are not precise and that Ngāti Te Ata ties to Kaipara and other areas are interrelated through tikanga, whakapapa, and manākitanga.⁶⁸ Claimant counsel also referred to the sanctuary provided by Ngāti Te Ata and other Waikato people to Ngāti Whātua who fled south after Te Ika ā Ranganui in 1825. Marriages between Ngāti Whātua and Waikato people established some whakapapa links, and the claimants also suggested much older links with the ancestral Ngāi Tahu and Waiohua.

11.8.3 Crown submissions

Crown counsel made no specific comment on the Ngāti Te Ata claim.

11.8.4 Tribunal comment

We accept that there are kin linkages between Ngāti Te Ata and Ngāti Whātua of southern Kaipara. However, the existence of whakapapa links, important as they are to the individual

65. Documents K11, K14

66. Document Q12, p 1

67. Claim 1.15, pp 4–5, 8, map

68. Document K14, p 3

families concerned, does not necessarily establish a basis for claims to land. We have not been persuaded that Ngāti Te Ata have established a claim to land within the southern Kaipara inquiry district.

11.8.5 Tribunal finding

We find that the Wai 508 claim concerning lands in the southern Kaipara inquiry district is not well founded.

