

Report of the Waitangi Tribunal on the Orakei Claim

07 Cleaning Up 1930-1952

7.1 The Acheson Inquiry 1930

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Despite all that was happening around them, life carried on at the papakainga much as it had before. People continued to live and die there and 'the dying race' produced another generation more numerous than the last. (Indeed the Maori population as a whole was on the increase, nearly doubling from some 42,113 in 1896 when it reached its lowest recorded point, to 82,326 in 1936). Photographs of the 1930's depict a large number of homes still existing and numbers of people still gathering there. The Council's Chief Sanitary Inspector reported in 1935

The settlement as now constituted consists of one main village with two adjuncts in Korari Crescent and on the Church Reserve, Coates Avenue, respectively. Altogether there are 32 buildings composed of 24 dwellings, 5 tents, 2 halls and a Church, and of these, 17 dwellings, 4 tents, 2 halls and the Church are in the main village.

Some homes were not as good as they might have been but people could not get renovation permits and there were of course doubts about security of tenure. Certainly no one would lend on such tenuous titles. The author Iris Wilkinson (pen name Robyn Hyde), visited the area in 1937. She wrote (New Zealand Observer 8.7.37)

Most of what is said against the Maori dwelling places, at present constituted, is true enough - except that they are the dwelling places of very decent people, who, given a chance, would probably keep their premises as creditably as anyone could expect, and who have hung on to their long threatened shacks at Orakei with the courage of despair.

Nia Hira, one of the Orakei leaders expressed himself with quiet dignity in saying that one could not expect the Maori people to put much heart into their homes until they knew that those shacks were their homes ... it is impossible for them (their titles to land or dwellings having been under dispute for years) to obtain facilities for proper sanitation, drainage or lighting. They also point out that the old Maori system of drainage wasn't bad of its kind. But every winter, loose metal washed down from the motor-road around their flat blocks up their drainage, such as it is, with results that can be imagined. It is awkward, but the road is not their road, and the motor cars are most certainly not their motor cars.

Pateoro's first petition (No 156) was

That the Orakei papakainga be returned to the Natives as a home for themselves and their descendants as this was the understanding at the time the solicitor representing the Crown went to see the Native owners.

His second (No 165) was for the return of the Church site.

The Native Affairs Act 1909 provided (as the current Act still provides) that such questions may be referred to the Chief Judge of the Maori Land Court for inquiry and report by the Court. That was done. Chief Judge Jones referred the inquiry to the District Judge for the area. It so happened that the District Judge, Judge Acheson, had a good knowledge of the procedures adopted by Government Land Purchase Officers for he was a former Secretary of the Native Land Purchase Board.

At the hearing of the Petition Otene Paora insisted that the claim was merely symptomatic of the wider topic he had raised before. If the trusteeship issue was settled, the Crown purchases would be invalid. As he put it

If the roots of a tree are cut, the fruit on it will soon die. So it will be with the Crown claim if the basis of the Crown's purchase of Trust land is destroyed.

But it was Otene Paora who was to die. He passed away in 1930 before the Court of Inquiry had completed its report. He was not to know that the Court would uphold his view that the land ought to have been held as a perpetual trust for the whole tribe. But he was not to know either that that finding would not make a jot of difference.

Te Hira Pateoro also died in 1933, before the report was made known.

Judge Acheson saw the first petition as posing two questions

(a) Should the papakainga have been reserved as a home for the Natives' and

(b) Had the Crown bought the farm land on an understanding that the papakainga would not be bought.

To answer the first he embarked on a wide ranging review of events, beginning, as one might expect, in 1869, with the issue that started it all, of whether the first owners should have been trustees. To answer the second, he sought to consider the farm purchases.

At first V R S Meredith for the Crown accepted that course agreeing "this contention that the whole or part of Orakei was trust land should be dealt with at the same time as other issues". He changed his mind when Judge Acheson sought to examine the farm sales and when J T Sullivan for certain owners contended the farm transfer documents were incomplete or executed in escrow, that some had not had full payment and that the Crown had refused to allow him to inspect documents.

Meredith submitted the Court was ranging beyond the prayer of the petition. The Court decided to proceed on the basis of an interim decision that Counsel was entitled to inspect all records if only to ascertain whether there was an implied promise in them not to buy the papakainga. The Crown chose not to seek a direction from a higher Court authority but withdrew from the inquiry altogether withdrawing as well its witnesses and the records and documents of the Native Land Purchase Board whereby the second question might have been determined. In the result the Court dealt at length with the first question and very little with the second, admitting in that regard, the important evidence was not before it.

Judge Acheson, angered by Meredith's action was moved to remark

This is the most regrettable incident that has come to the notice of this Court during the ten years experience of Judge Acheson on the Bench. A most unfortunate impression will be left on the minds of the natives interested. They will feel that the Crown has placed a blanket over the matters at issue. The natives are not likely to be put off in this manner. The Maoris are most persistent if they feel that they have not been fairly treated.

The sale of the farm lands was never subsequently investigated.

In broad terms Judge Acheson made findings on just about all that he could find on the first question, and only an inconclusive statement on the second for the vital evidence was missing.

On the question of trusteeship, Judge Acheson concluded the Orakei block should have been a tribal reserve protected from sales. The papakainga purchases were particularly inappropriate in his view and several owners were made landless as a result. In the absence of contrary evidence from the Crown he accepted the testimony of Ngapipi Reweti of an undertaking, in securing the purchase of the farm lands, that the papakainga would not be touched. To set matters right he recommended a conference between the Orakei people and Ministers of the Crown, excluding, he was at pains to stress, "officials, Departmental or Judicial."

On the second petition Judge Acheson considered that instead of passing legislation to enable the sale of the Church site, Parliament should have enacted its return to the donors.

It was for Chief Judge Jones, not Judge Acheson to report to Parliament. The Chief Judge considered, on the first petition, that Judge Acheson had wrongly extended the inquiry. That would have disposed of 'the trustee only' question for in his view, that was outside the Court's purview. Chief Judge Jones nonetheless went on to consider that which he thought Judge Acheson should not have. He thought Judge Acheson was wrong in considering there was, or should have been a trust in favour of the tribe because the Court of Appeal had settled the issue, deciding there was no tribal trust. We consider the Court of Appeal had not (see 5. 10), and indeed, the legal technicality decided there was not relevant to the Acheson inquiry. On the question of the purchases

the Chief Judge noted Judge Acheson had only one side before him and the Chief Judge could make no recommendation. As to the Church site the Chief Judge could "hardly recommend that it be returned to them as a free gift" having regard to the Crown's purchase. Presumably to consider that the site had been 'a free gift' to the Church could not be considered because that would be to extend the inquiry.

The Chief Judge nonetheless annexed to his findings (of December 1932) the report of Judge Acheson. Needless to say, the Government took no action as in terms of the Chief Judge's report, which was the official report, none was needed. But nor did the Government make the reports public, until many years later.

We are indebted to P M Barnett's research essay (Barnett 1976) for a great deal of resource material on this inquiry. She describes the subsequent efforts of members of Ngati Whatua, aided by the lawyer who represented them at the Acheson inquiry, to obtain approval for improvements to the papakainga and for the conference that Acheson had recommended. They supported the Walnut plan. The City Council rejected it but agreed to promote a conference of interested parties, the Mayor writing to the Minister of Native Affairs and Prime Minister Forbes for that purpose in March and April 1934. Forbes replied in October that as the matter directly concerned the Lands Department he had conferred with E A Ransom, Minister of Lands, who advised "that if a representative of his department were appointed (to attend the conference) ... such representative could only oppose the suggestion that the lands or any portion of them be returned to the Natives. In view of the position, therefore it does not appear that any good purpose would be served by arranging such a conference."

Thereafter, the prospect of Ngati Whatua obtaining support from the Council was once again blighted by health concerns as set out in a sanitary report made to the Council in 1935. Once again the swampy conditions and inadequate drainage were referred to, and yet again the Maori occupiers complained the insanitary conditions were not of their making - there was also no adequate water supply and permits to improve living conditions had been repeatedly refused.

Judge Acheson came back to the scene to assess compensation for these buildings on Crown land. In response to criticism that the place was just a slum, he minuted the other point of view

These buildings at Orakei have a special value to the Maori owners and occupiers. It is true they are not palatial. They are not painted. They are not modern in design. They lack many of the things that please a pakeha but make modern residences so expensive. Nevertheless these Maori homes are comfortable. Inside they are remarkably clean. In these homes the Orakei people reared their children. The homes are close to the beach where their forefathers welcomed ... Captain Hobson. The people are close to their customary fishing grounds. By netting fish and gathering pipis they keep down the cost of living, a most important consideration for Maoris with big families. They are close to the City where many of the people work. The

houses certainly look poor, but at any rate they are free from debt, unlike the palatial residences frowning down upon them from the hill (22 Kaitaia MB 64).

Barnett continues (Part III p6)

European public opinion had divided into two opposing camps. There were those led by Graham, Acheson and Sullivan who believed that the drainage difficulties could be overcome and a model marae should be established on the site of the ancestral marae and there were those who believed resettlement on another site was the solution ...

...the Auckland Chamber of Commerce wrote to Government indicating that in their view the only solution was resettlement as 'there were serious objections to the establishment of a native village in any other part of the block'.

The Council had recommended demolition of the papakainga as early as 1932 and relocation of the people on Brown's island but there were hopes of a change of direction when the first Labour Government was elected at the end of 1935 with an alliance with the Ratana Church. Many of Orakei had joined the Ratana movement and on his election the new Prime Minister Michael Joseph Savage, received a traditional Maori welcome at Orakei (Metge, 1972) The people placed great faith in Savage, and fittingly, on his death in March 1940, he was interred at Bastion Point, some 200,000 Aucklanders lining the route to Orakei (Gustafson, 1986:271).

On 24 August 1936 Savage received a deputation of Orakei Maori complaining that Acheson's report had not been made public and seeking the restoration of the papakainga and church site. The Commissioner of Crown Lands referred to the extent of the Crown's purchases saying

the return of the land would, in effect, be a gift of about £30,000 to the Maoris.

The Lands Department argued

...with all the best heart for the Natives in the world was that the place for a Native settlement at the front door of what must become a thickly populated European settlement? Was it in their interests?

The stenographic minutes of the meeting show the Prime Minister as saying

...frankly, he was rather fogged - the Native question had a happy knack of coming back at one. He wished the government could get two or three men who know the Native question from beginning to end - who would settle the issue. (Nash Papers, National Archives file 1158).

Waitangi Tribunal, Department of Justice, Wellington.

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7.2 The Lee Committee 1936

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Savage established a Committee of Government and Council representatives to report on the Church site, unsold interests and other concerns to do with roads, the defence reserves, the Maori preference for a 'model pa', health concerns and the Government Housing Scheme. (the Committee was not to report until after Savage had sailed for England early in 1937). The Committee comprised

Mr J A Lee Parliamentary Under-Secretary for Finance

Judge F O V Acheson Native Land Court

Mr J S Brigham Town Clerk, City of Auckland

Mr W D Armit Commissioner of Crown Lands, Auckland

Mr A Tyndall Director of Housing Construction

Dr T J Hughes District Public Health Officer

Acheson failed to move the Committee from issues of housing and hygiene to the broader issues of trusteeship and the rights of tangata whenua.

The majority view of five to one was briefly

- That the Church site was necessary for the scheme, had been properly sold and purchased, and the natives on it ought to get off.
- That interests unsold ought to be purchased as all were necessary for the scheme; alternatively the non-sellers should be offered an exchange.
- The natives had no legal or moral claim to land taken for roads not formed as new roads had been formed and more were needed.
- The natives had no legal or moral claim to the defence reserve - it could still be needed for defence.
- The natives' proposal for a 40 acre native village was impracticable.
- The model pa proposal was unrealistic and not in the villagers' best interest.

- The papakainga was a health hazard 'a disease centre' in the City Council's submissions.
- Housing was not the best use of the papakainga because of drainage problems, and
- The Government Housing Scheme was necessary for Auckland's expansion

Judge Acheson's minority opinion contested each conclusion. He reckoned as well that 42.5 acres had been taken for roads and not paid for. Acheson ended by saying

The story of the purchases will remain an inglorious page in New Zealand history.

Judge Acheson considered also the Treaty of Waitangi

The rights of the Maoris, their land rights under the Treaty of Waitangi, their moral and legal rights as set out in the Court's Report of 1930, their right to equality of treatment as promised by the Government, their pathetic clinging to the remnant of tribal lands, their right as fellow citizens to be treated with respect and consideration, their law-abiding habits, their past willingness to share in the defence of the Empire, their ability to retain dignity and cleanliness under conditions of direst poverty, their right to have one small portion of Auckland which they can call their own and where they can re-build their ancient culture and maintain their tribal existence and honour the memory of their ancestors.

With Savage overseas the Government accepted the majority recommendations and in June 1937 resolved 'the Maoris must go' especially those living on land partitioned to the Crown. The decision was taken to evict them - 79 native adults and 48 children occupying twenty buildings and four tents - and to transport them to other parts of Auckland or to more distant places like Helensville. (One witness claimed Bulls was one place proposed!)

Ironically in the same year, 218 state homes were completed on the Orakei block and the first non-Maori dwellers moved in. A new mood then settled on many of Auckland's citizens. Meetings of the Auckland Clergy Association headed by Archbishop Avert and the Association of Friends of Orakei (formed on 10 August 1937), urged Government "to grant a full inquiry before moving the Maoris from their homes". Social workers, writers and ordinary citizens joined with the clergy and the Communist Party in protest meetings or prayer campaigns. Ngati Whatua, true to its preference for the settlement of disputes through 'the necessary laws and institutions' met separately. 'Let iron clash only with iron', they resolved 'Let the Pakeha settle with the Pakeha'.

Author Iris Wilkinson (pseudonym Robin Hyde) took up that challenge writing with obvious emotion in the New Zealand Observer (19.8.37).

Now, though apparently in the interests of a garden suburb and a view, the white residents of Orakei are perfectly willing to hunt the living natives from lands which

have been their ancestral right and property for so many years, surely the Maori dead will be allowed to lie in peace. Or will tombstones also clash with the rainbow visions and the town-planning schemes? ... (for there were suggestions that the cemeteries be removed too). This proposal of bulk transportation of a community of people, numbering over a hundred, without any regard to their will, is the most dictatorial suggestion, and would be the most dangerous precedent any Government could adopt ... No other 40 acres would be the same as the papakainga at Orakei ... their heart is with their land and they believe that if the Prime Minister and his Government know all the facts it will be proved the 40 acres was reserved to them.

She pleaded for

...a little security and a chance to exercise the racial pride and self-respect which is never dead in the Maori ... As for disease ... putting garden suburb and other Pakeha considerations out of the way ... there is probably not a competent engineer or doctor in Auckland who wouldn't laugh at the idea that the difficulties are insuperable.

Surely it is better to remedy those conditions and to give the Orakei people a chance to establish themselves on the land they have fought for so hard as a community (not as a showcase or tourist pa) than to transport them to parts unknown ...

She also wrote to J A Lee, in an open letter

"I thought that in 'Children of the Poor' you showed a better understanding of lollipop methods, and a better contempt for them than any other writer who has yet appeared in our bright little New Zealand ... When a little brightness is offered to the restricted, the poor and the handicapped, of course they are going to fall for it, even if in the end they get the worst of the bargain ...

But the really interesting thing is not whether a hundred or so Maoris, hard up and living under conditions disgraceful to us and not to them, would take more lollipops if they were offered; it is whether it is a part of our advanced modern technique to offer them."

The Auckland City Council protested the public was not aware of its position

Our only concern has been to ensure that the settlement conforms to the hygienic requirements of the community. There has been no attempt to dictate or dogmatise on issues which are far removed from the interests of health and sanitation, and which are confined exclusively to legal and Governmental interpretation. (New Zealand Herald 26.8.37 p14).

Sir Ernest Davis, then Mayor of Auckland, called for an immediate solution

If the Maoris are to remain, then let the necessary steps to re-house, drain and clean up the area be taken at once ... If, on the other hand, they are to be removed to another site, then let the transfer take place without further delay." (New Zealand Herald 25.8.39).

Prime Minister Savage had meanwhile returned from abroad. He was met by representatives of the incensed Orakei Maori.

In what was certainly a rebuke to his colleagues and a move not popular with many non-Maori residents of Auckland, who saw the Orakei Maori settlement as a disgrace to the district, Savage immediately reversed the decision made by Lee and Langstone. The Maoris remained at Orakei and 'what might well have been a major political crisis had it not been for Savage's good sense and sensitivity' was averted "(Gustafson, 1986:191 with quote from Olssen John A Lee p 106).

The Government immediately arranged a further inquiry into the purchase of the papakainga, but the terms of reference related to just that - the papakainga. They did not relate to the initial purchases of the 'farm blocks' or the issue of whether the legal owners should have been trustees only.

Waitangi Tribunal, Department of Justice, Wellington.

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7.3 The Kennedy Commission 1938-1939

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The Government appointed Supreme Court Judge Justice Kennedy a Royal Commission of one to consider specific questions.

Mr V S Meredith opened for the Crown. The sales he said were voluntary, without pressure brought to bear as evidenced by the fact that "the sellers went into the negotiating office in Auckland and did not want to be visited themselves. " They knew what they were doing he claimed, and received hard cash. They sold the papakainga voluntarily, for a total of nearly £12,000 and now wanted it back. It had been sold for an average 30 per acre but some £232,000 state money had been spent on the Orakei block (as a whole and which included State housing) and the Council had spent £2,000,000 in providing a bridge and waterfront drive to Orakei, internal roading and sewage, an embellishment cost equal to £980 per acre. Although the Stout-Ngata Commission had recommended the retention of the land by the natives, the land was then rural land, it was argued, but with new roading it had become suburban. J T Sullivan in reply pointed to the Stout-Ngata Commission's specific reference to the suburban development around Orakei at that time including the more distant St Heliers. The real problem he said was the unease over a 'Maori Island' within a European city. He expressed the native's disappointment the farm blocks were not included in the inquiry and added there had already been two inquiries in 1908 and 1928 and the reports of each were satisfactory to his clients. He contended the natives did not understand the unusual and complicated conveyancing and settlement methods employed which presumed that eventually all their interests would pass to the Crown. They clearly wanted reserves but no one ended up with a reserve even for their own homes. This was particularly so in the case of Wiremu Watene, in his 90's at the time of the sales but deceased at the time of the inquiry. The Crown's purchases were not subject to the scrutiny of the Native Land Court and there were no revaluations from 1911 to 1918. There had been a land boom in Auckland in 1914 and the Court normally required fresh valuations. Other properties sold on the open market were well above Government valuation. But most of all the natives were induced to sell with promises that parts would be reserved for them, promises that were gradually whittled away, he claimed.

In evidence Mr Mays contended he made no arrangement to reserve land for Wiremu Watene "because other natives would have asked for the same concession". He thought, and Mr Meredith strongly argued, no one was left landless in the papakainga because everyone's shares were so trifling they were already landless in terms of the Native Affairs Act.

The latter point compelled an enquiry of the farm sales, Mr Sullivan contended. If the Maori owners were technically landless after the farms sales, the farm sales must have been contrary to the Act by making them landless.

The latter point was not considered for the inquiry was limited to the papakainga. In any event, Mr Mays contended, the papakainga was unfit for dwellings.

The Commission's jurisdiction was limited to specific questions. The questions put and the answers given were, in paraphrase, these

1. Had the Crown acquired a good title to the lands it had purchased in the papakainga? The Commission's answer was 'yes'.
2. Was there anything in law to prevent the Native Land Purchase Board buying the land or any interests therein or to make any purchases invalid?

This was an important question. The Native Land Amendment Act 1913, section 109(10) provided

It shall be the duty of the Native Land Purchase Board, before completing a purchase of the interest of any Native owner in any land, to ascertain that such purchase will not render the selling Native landless within the meaning of the principal Act. The Native Land Purchase Board shall in each case obtain from the Registrar of the Native land district or districts in which any lands owned by the selling Native are situated particulars of all land in which such native is beneficially interested.

According to the Act the term 'landless Native' meant

a Native whose total beneficial interests in Native freehold land ... are insufficient for his adequate maintenance.

It was also provided that even if the duty was not discharged and the prohibition ignored, a purchase was not invalidated thereby.

Ngapipi Reweti in the 1930 review claimed enquiries had not been made and added

I know all the Natives who were interested in the 40 acres. About 15 owners did not sell their interest in the flats. Those who sold had insufficient other lands for their support - all except Hariata Whareiti who has over 100 acres of unimproved land in the Makarau district.

I know Rotena Ropiha Reihana - he was a seller but has not a bit of land left.

My uncle Hira Pateoro also sold, and has only one acre left. It is at Orakei. He is an Old Age Pensioner. I myself only have interests in Tauranga - and I only get 34/- a year rent from them. I have no other land.

No enquiries were made by the Government Officers as to what other lands I have left.

Wiremu Watene Tautari is an old age pensioner and has only a couple of acres of land left - in the Kaipara District. He is the sole survivor of the original 13 trustees.

The Commission considered that in many cases the duty to inquire had not been discharged, and in many cases people were certainly left landless, but also in many cases the owners had other land interests (in distant places like Kaipara, Rewiti, or in Ngapipi's case Tauranga). In 24 of the 36 sales the sellers held less than half an acre in shares. They were not rendered landless as technically they were already landless. It answered formally

The Native Land Purchase Board, by the Native Land Purchase Officer, did not in certain cases fully discharge the duty imposed by section 109(10) of the Native Land Amendment Act 1913, and purchased when, pursuant to section 373, a purchase should not have been made. No purchase was, however, rendered invalid thereby (for it was said in the Act that sales were not invalidated through any failure to discharge the statutory obligations).

3. Were there any valid reasons why the Crown should have abstained from purchasing the interests of such of the owners as were willing to sell, and did sell to the Crown?

The Commission considered the papakainga, if not purchased, would soon become an isolated Native settlement adjacent to a closely settled residential area.

Most of the papakainga land is only four feet above the high-water mark. The Native occupiers must, in the interests of health, have been subject to the pressure of the requirements of the city in sanitation and in housing, and they could no longer, in such a locality, live the free life which they prefer.

Its formal answer was that in certain instances the purchase would render the Native landless and that was the reason why, in individual cases, as the law stood, the Crown should have abstained from purchasing the interests of certain Native sellers. There were, in its view, no other valid reasons. (The Stout-Ngata recommendations made before buying began, were not considered.)

4. Were fair and reasonable prices paid to the Native vendors?

The Commission replied that no answer without qualification was possible. Of 36 Natives who sold interests in the land, 13, in its view, did not receive fair and reasonable prices, considering the value of the land at the time of purchase. In one case the underpayment was mainly due to an omission or error to pay for all that had been acquired. In each of the remaining 12 cases the deficiency did not exceed £30. In one instance where a building was separately purchased the price paid was not fair and reasonable. In six cases structures on land awarded to the Crown had not been paid for.

5. Was the purchase-money paid to the Native vendors?

The Commission answered "Yes".

6. Have the Natives occupying purchased land any right or justification for their continued occupation?

The Commission observed that the practice of buying the land but not always the houses on them, had resulted in Natives owning houses on Crown land. Except those persons, no Native had any right or justification for continuing to occupy the papakainga, and the others were entitled to remain only until they were paid for the homes.

7. Were promises made that the papakainga would not be purchased?

This raised a major contention. The evidence was somewhat confused and conflicting but on balance the Commission concluded in the negative. It stated

The broad conclusions, then, to which I have come are as follows

(a) Mr Mays did not give any instructions for a promise to be held out to the Natives that the papakainga land would not be purchased by the Crown.

(b) He made a statement, and it might properly have been passed on, that the Crown was not just then purchasing the papakainga. This was a mere statement of intention and in no way a promise.

(c) It is not proved that any promise was made by Ngapipi Reweti to any Native other than Wiremu Watene Tautari. The probabilities and other circumstances negative a promise to any other Native.

(d) If a promise was made to Wiremu Watene Tautari, then it was unauthorised. Ngapipi Reweti had no authority to give a promise pledging the Crown not to purchase the papakainga land.

(e) In my view, if such a promise was made to Wiremu Watene Tautari, or to others, which is not proved, the Crown was not in the circumstances legally or morally bound thereby.

8. The next question concerned a particular claim that one person had been given the right to repurchase six or seven acres. The Commission concluded that an option had been given but no attempt was made to exercise the option until well after the stipulated time.

There followed a series of questions about the Church site. The questions and answers are paraphrased as follows

(a) Should the Crown have abstained from buying? No, because the land had not been needed for a church or school for some time and was not

needed for that purpose when the Crown bought it. (Whether it should have returned to the tribe was not considered).

(b) Was the price paid fair and reasonable? Yes.

(c) Was the purchase money applied as by law required? Yes, it was applied as required by the special Act.

(d) Have the Natives occupying the church site any valid reason for refusing to vacate?

The answer is, subject to alternative accommodation being available, 'No justification at all.' If alternative accommodation is not available, then their justification is necessity. That justification will cease as soon as accommodation can be found.

By then there had been more sales of farm land interests. The then remaining shares had been added to the exchange area and at 1940 the people held

- one acre in the papakainga with one owner
- 1.5 acres in the papakainga in multiple ownership (which included the marae)
- the one acre church cemetery, a Maori reservation for all, and
- a ten acre block on the eastern hills, in multiple ownership.

The Report gave the Crown a clean slate for its past operations and justification for continuing its eviction proposals, provided some more money was paid out (as it was) and other accommodation was found, but a war intervened to shift the battle elsewhere and the eviction proposals were dropped.

Waitangi Tribunal, Department of Justice, Wellington.

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7.4 The War Years 1940-1945

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If Ngati Whatua adherence to the Treaty was not apparent in their continual recourse to the necessary laws and institutions and their loyalty in the New Zealand Wars, it ought to have been apparent when the next war came. Although there was no compulsory conscription for Maori, twelve of the Orakei able bodied enlisted with A Company of the 28th Maori Battalion to fight the tyranny and oppression of an invader who threatened the turangawaewae of the Europeans. (The names were supplied by Ned Netana). Five were killed in action.

Those at home did not relinquish claims to a part of the home land. P M Barnett continues the story

...the Maoris at Orakei tried during the 1940s to consolidate their position by laying claim to all land of questionable ownership. Fearing that there was no hope of the Crown returning any land, they applied to the Maori Land Court for decisions on the ownership of land taken for roading and on which no roads had been formed; for the title to land acquired by foreshore accretion; for orders to make the remaining land an inalienable reserve ... The Court appeared sympathetic and the Government from 1943 to 1949 seemed genuinely concerned with finding a satisfactory compromise but the Maoris would not accept any solution other than the retention of the ancestral marae (Barnett, 1976: Pt IV p1).

On 30 September 1941 Judge Acheson awarded them an accretion at Okahu Bay on the basis that it had accrued before the sale.

What follows is largely a summary from P M Barnett's thesis. At first, following the Kennedy Report the Crown showed little sympathy Native Minister Langstone saying

The trouble is that the natives are adamant and will not shift and it seems that possibly forcible action will have to be taken to remove them (New Zealand Herald 31.5.43 p4).

There was, he is reported to have added, a duty and responsibility resting upon the Maoris to so live and conduct themselves that they would not cause any offence in the neighbourhood and the community in general.

The village was, in the opinion of Auckland's mayor

a dreadful eyesore and potential disease centre (The Observer 31.7.40 p5).

The Auckland City Council resolved in November 1940, though not unanimously, that Government should relocate the natives this time to West Tamaki.

Meanwhile from 1939 the State was proceeding with its low cost housing scheme on Takaparawha ridge along the current Kupe Street. Reserves beside the harbour front were a definite part of that project, including the reserve proposed for the papakainga (see letter, Council to Commissioner of Crown Lands 7.8.41). The Council was pleased to receive the reserves subject to a requirement, in the case of the papakainga, that all houses be demolished and the occupants removed before the Council as the Orakei Domain Board took over.

Still, greater interest focused at that time on the Crown's intention to reserve the hills that overlooked the harbour. An impressive memorial to Prime Minister Savage was being built with a proposed 18 acre garden surround. It was intended to add that to the Orakei Domain along with an area of about 12 acres at Takaparawha Point. The exigencies of war, and the presence of gun emplacements prevented the immediate handover of the latter but the M J Savage Memorial Park was added to the Orakei Domain by s 11 Reserves and Other Lands Disposal Act 1941.

No reserves were proposed for the protection of Ngati Whatua but attitudinal changes came when Princess Te Puea of Waikato took up the Orakei case on behalf of the people. Waikato and Ngati Whatua had frequently undertaken joint ventures as kinsmen. Ngati Whatua had also supported Te Puea's work and attended her hui at Mangatawhiri and Turangawaewae, and some of them had joined her community (King 1977:217).

Te Puea visited Orakei in 1940 and with local approval, approached the Mayor to inspect the area, and then to see what she had achieved at her own marae, Turangawaewae at Ngaruawahia. The Ngaruawahia marae had been confiscated after the New Zealand Wars. Te Puea had bought back the ancestral site from its former owners through money raised from concerts. She re-established her people there and had built an astounding village and marae complex from nothing. The Mayor was impressed "If Orakei could be made into something like Turangawaewae" he said "I would be pleased to help you".

With European support Te Puea formed the Orakei Petition Committee in 1942, solicited the help of the General Labourers' Union and Auckland Trades Council and presented to Government (in February 1943) four petitions with a total of 5039 signatures for the restoration of 25 acres of the papakainga (Petition Nos 6, 32, 33 and 39 of 1943. The Native Affairs Committee recommended that they be referred to Government for consideration). To establish the people's capabilities on 5 April 1943 Te Puea went to Orakei to organise working bees. Members of the Auckland Trades Council were moved to assist. In June the Orakei inhabitants and 200 unionists erected a 300 foot pallisade around the pa of manuka stakes with totara posts at eight foot intervals embedded in a two foot concrete base. A carved gateway completed the surround.

Te Puea had a close and friendly relationship with Prime Minister Fraser but it was about to be put to the test. The latter warned her that if she became involved with the Auckland Trades Council and tried to protect the pa, the police would be sent in and she could end up in prison. Te Puea advised, the day the pallisades went up she had put on two sets of underwear to keep her warm in jail (King 1977:129). Nor could Prime Minister Fraser ignore the political wing of the Trade Union. He announced in Parliament, in 1943, a proposal to build houses for the Maori on the eastern plateau, to retain the marae area on the flat, and, with help promised by the Auckland City Council, to build a new meeting house on the site of the old one.

The proposed resettlement could not be justified in Te Puea's eyes.

She saw it only as a further example of European rapaciousness. Pakehas had systematically deprived Ngati Whatua of everything that gave the tribe security and identity. They then abused these Maoris for poverty and lack of spirit and used their handicaps as an excuse to plunder them still further. It was also incomprehensible to her that an this should have taken place after the tribe had virtually given away 3000 acres of what became the most valuable real estate in the country. Was there no end to Pakeha greed? she asked. . . (King 1977:218).

Waitangi Tribunal, Department of Justice, Wellington.

07 Cleaning Up 1930-1952

7.5 The Last Years 1945-1952

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The Prime Minister's relocation proposal was unacceptable to Ngati Whatua too. They welcomed the Government's offer to rebuild the marae and themselves proposed to contribute. Compensation monies for foreshore losses and money paid for houses on Crown land was still held by the Maori Trustee untouched. It was resolved to apply it to a marae building fund. But Ngati Whatua could not accept their relocation to the eastern plateau. A meeting with the Prime Minister was held at Orakei in 1946 in an attempt to resolve the differences but the Orakei people were unable to compromise. The papakainga was their anchor. They could not shift their homes from sacred land.

For the time being the Prime Minister had to deal rather quickly with five families who had returned to cling to the old Orakei Church site. In 1944 the European residents petitioned the City Council to take action over the unsanitary shacks. The Health Committee of the Council declared them unfit for human habitation and called on Government to remove the occupants within 14 days. They were shifted to five State rental homes nearby.

The main relocation remained unresolved when the Labour Government lost the 1949 election. The new Government moved swiftly. The Department of Maori Affairs was instructed to negotiate the acquisition of the remaining blocks. When the owners refused to sell and instead formally petitioned for legislation to protect them the Minister of Maori Affairs announced Government's intention to compulsorily acquire all but the church and cemetery (1950 NZPD PP3885-6). And so

the instrument wielded by the Crown to achieve its end was the razor-sharp Public Works Act which needed no other justification for its use than the public interest (Kawharu 1979:7).

The ten acre exchange block was taken first by a proclamation published in New Zealand Gazette No 15 7.9.50 p 166 "for housing purposes". Compensation was assessed at £8,065 on 30 April 1951. Maki Waata's one acre and the 1.5 acres that included the marae were taken together by proclamation in New Zealand Gazette No 19 15.3.51 p 315 for the purposes of "a recreation ground". Compensation was fixed at £5,600 for the former on 4 May 1951, and £5,911 for the latter on 29 May 1951. The meeting house was separately valued at £675 on 29 May 1951.

Apart from the Okahu cemetery (for Orakei cemetery was included in the sale to the Crown), Ngati Whatua of Orakei was now totally landless. Acquisition of the cemetery, a Maori Reservation since 1928, would have required prior

cancellation of the Order in Council that reserved it. That would have needed the approval of the Maori Land Court and that approval was not likely to be given without prior re-interment of remains. That last step the Crown was not prepared to take.

The problem was to physically remove the living who also would not go. To aid that end thirty-five State rental units were built - twenty-seven together on Kitemoana Street above the former papakainga, three opposite the papakainga and five a mile or so away.

Certain formalities had also to be observed, the first to settle compensation. When the Maori Land Court sat in 1951 for that purpose, Te Puea appeared for the owners to protest. The Court explained it could not judge the Crown's action but only the monetary value of the land. The owners replied they would not touch the money (it was to remain with the Maori Trustee), and debated instead alternative courses of action.

Next day Te Puea and Dr Maharaia Winiata led a delegation to the Mayor of Auckland seeking Council's support for the restoration of the marae and its exclusion from the proposed public recreation ground. The Mayor replied

It might not be possible to reserve any portion of the land to the Maoris exclusively ... I think it must be open to all, but I am sure that arrangements could be made for the Maoris to have the sole use of it at certain times of the year or on certain occasions.

The Parks Committee chairman referred again to drainage, a matter consistently frustrating development of the papakainga, but he was otherwise sympathetic.

Then, as houses were completed on the new sites, action was taken to relocate the remnants of Ngati Whatua as tenants of the State. Not everyone went unwillingly. Some of the younger ones were keen to have new homes with sewerage and taps with running water even inside the house. They pressured their parents and elders to leave but the older ones left with resentment and despair, which turned in time to apathy.

In her evidence to this tribunal Ani Pihema described how her grandmother, Maki Waata lost the one acre block.

To persuade her to leave the Crown built three state rental homes across the road from her property and when completed offered them to her, for herself and her three children and their families. Her married grandchildren would be accommodated at Kitemoana Street. Furthermore her house would be freehold. If she did not accept the offer, her property would still be taken under the Public Works Act 1928, but the Crown would not accept responsibility for further housing for her.

Two of her children and their families moved but she refused to do so as she was in ill health and deeply concerned about the fate of her relations as well as the Marae and Urupa. She also felt that her philosophy of 'Riro whenua atu, hoki whenua mai'

was not being fulfilled. She needed a big house like her present villa to accommodate relatives from the country. There was a suitable home near the beach which her sister had sold to the Crown in the 1920's before she returned to Kaipara to live. Her lawyer advised her to make contingency plans despite her decision to stay on.

(By 'riro whenua atu, hoki whenua mai' I mean land given is land that returns. It is the way we think of land and gifts).

She passed away on 1 September 1950 and the Crown moved swiftly to carry out their own plans without any consultation with her family. The remaining member of her household was moved into the third state rental house and 35 years later they are still paying rent for the three old houses. Two years later in 1952, the family received compensation moneys to the value of £8,000 which was divided among her descendants - and that was that.

As relocation proceeded demolition went ahead. Buildings were pulled down, grounds levelled, timber stockpiled, and in the midst of it, the workers started demolishing the meeting-house, Te Puru-o-Tamaki. Still, some would not be moved. Technically they were trespassers against the Crown and since it had not been the Ngati Whatua way to step outside the law, they were trespassers against their own rule set in 1840.

Once more in 1952, Te Puea petitioned Parliament this time seeking three acres on the flat in exchange for the ten acres taken on the hillside. It was still her hope to build a model pa there pointing out "no other ground, without the necessary tribal and traditional background can substitute for the present sacred meeting house and marae site, no matter how large or how generously appointed." The Maori, she said, would build the house but she asked that the State, and City Council share with them the cost of drainage. In return, she proposed marae trustees comprising representatives of the State, Council and Maori people.

The Minister of Maori Affairs refused to hear anything more about Orakei but Te Puea was received by Prime Minister Holland. An assurance was given that the matter would be considered but it was again to no avail. Of greater concern was the fact that many still refused to leave, despite eviction orders that had issued from the Magistrate's Court and there was some vandalism. Someone had cut fences enclosing the Crown land, and someone, unknown, set fire to stocks of demolition timber and the meeting house.

The issue became one of law and order.

Some thought the Crown burnt the meeting house. Others suspected it was one of their own. The Crown proposed re-erection of the meeting house at Helensville but the people knew where the ancestral house belonged and there is a custom of burning such houses when threatened with desecration by a foe. It was not until 1977 that Prince Reweti announced his long deceased great grand-uncle did it so that the ashes would stay where the building was meant to be (New Zealand Herald 28.6.77).

Those left had to be burnt out and physically carried from their homes. It seemed necessary that that should not be delayed. Her Majesty Queen Elizabeth II was to visit Auckland in the coming summer 1952-1953. The procession route, it was first thought, would follow Tamaki Drive past the 'unsightly Orakei shacks' and since this was to be the first time a reigning Monarch would see Auckland, Auckland wished to be seen well. Ironically, the visit was almost 100 years to the day after Te Kawau had farewelled Governor Grey from Auckland, saying

Friend, when you arrive on the other side tell the Queen about the good arrangements you have made in regard to the formation of a township on our land and let this land (Orakei) be reserved for our own use forever...

One hundred years later it seemed important the Queen should not see any part of the arrangements made for her Treaty partners. Only months before she came the last of Te Kawau's descendants at Okahu were to be torched from their homes.

The end was graphically described by John Broadbent, a European Aucklander whose forebears came to New Zealand in 1839 and who attended before the tribunal of his own volition. He was age 22 at the time, repairing his yacht in Okahu Bay, a bay he said "the yachties regarded as belonging to Ngati Whatua". It so happened that in deciding to spend the night aboard he witnessed the final eviction.

It is 35 long years ago but it is still a wound in my side as I remember the smoke drifting across Tamaki Drive. The smoke was billowing and swirling and illuminated from all sides by the flames of collapsing buildings.

The burning, smouldering whares and the embers glowed through the night. (I would say the embers smoulder still.)

Reports of an old man being dragged from the fire are wrong. He actually cast himself into the holocaust of his home. I remember vividly the wading of the wahine and the confused shouts of the young. It could be clearly heard on the harbour.

I have never forgotten that infamy. It is time the injustices Ngati Whatua suffered were redressed.

Piupiu Rihi Hawke wept as she described how she forced her aunt to leave only to have her die two hours after she was placed in her new home. About two months later her mother died "and then all our old people started dying one after another and left us".

Thus were Ngati Whatua relocated at Kitemoana Street. The street name was not an apt one. Like other street names nearby it said nothing of Ngati Whatua history or of their great forebears, Tuperiri, Te Kawau, Tuhaere, Pateoro, or Otene. Translated, Kitemoana meant only the street had a view of the sea, recaging to mind the words of Otene in 1908

...it would be better that this Government should build a canoe and put on board that canoe those descendants of Tuperiri who are not included in this land, and let them drift away into the ocean ...

The children found another name for the block. They called it 'Boot Hill'.

The houses were new but not entirely apt either. The new State homes had only two or three bedrooms and small lounges. With one nuclear family to a house the extended whanau (families) were divided. Homes became over-crowded and many left. The Government promised more. Thirty-two sections were actually marked out on the adjoining exchange block taken for housing but it was never used for that purpose and the extra homes were not built.

Ani Pihema's evidence concluded a chapter in the history of Ngati Whatua

This was a traumatic period for the older people who had lived out most of their lives at Okahu and had fought desperately for years to continue living on their own piece of ancestral land, next to their beloved marae and urupa where their ancestors slept, no longer in peace. They knew that their kinswoman Princess Te Puea had done everything in her power to keep them on their papakainga and to strengthen their resolve never to give up hope for their marae at Okahu and not to accept any alternatives offered by the Government. The sense of defeat and the ultimate shock of eviction proved too much for the elderly kuias of Okahu and within a few months of each other Maki Waata, Te Mamae and Te Kareti Hira, the last three great grand daughters of Apihai Te Kawanui who welcomed the first Governor to Auckland, passed away.

Princess Te Puea was in poor health also and she too passed away in 1952 the following year, disappointed and disillusioned but still exhorting those who visited her to continue the fight for the marae and urupa at Okahu. (Te Puea remained resilient to the end. From hospital she sent a message to the Minister of Maori Affairs, through Hamilton MP Hilda Ross, advising she could still smell the smoke at Orakei. On the day before she died, she sent Te Heipounamu Utika to Orakei with a message urging another attempt to persuade the Government and the Council to reserve the old marae site).

By July 1952 the last remaining evidence of the papakainga had been cleared. The suburb of Orakei inherited a fine playground.

Ngati Whatua inherited a legacy of bitterness, division and defeat. In 1977 Auckland was to witness the result.

Waitangi Tribunal, Department of Justice, Wellington.