Report of the Waitangi Tribunal on the Orakei Claim

06 The Inundation of Orakei 1913-1930

6.1 Sewers and Swamps

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Okahu Bay today is a sweeping carpet of green park peppered with exotic trees - a pleasant stage for the gallery of homes on encircling hills. Only an old cemetery hints of the former Maori presence - of the people who sought the alliance that led to Auckland, of the first Maori Parliament where 200 chiefs affirmed loyalty to the Crown and faith in the Treaty when war threatened the country, or of the village that once bent along a pristine beach.

The park is prone to flooding. The cemetery was flooded when the Tribunal was first there. It started when the city intruded on this former Maori enclave, once distanced from it by a circumference of hills and waters.

Before 1912 the Orakei block was intact. Such intrusions as existed posed no threat to the security of the village, the farms at its backdoor or the harbour at its front. Access was still by water. The Orakei bridge built in 1862 serviced only the southern perimeter of the block and was mainly a through route to other places. By 1900 the bridge was in disrepair. There was no practical road access to Okahu Bay before 1926 and the papakainga was serviced by a wharf and steamer. Four acres had been given for a church in 1858 but in the Maori mind the Church had no further interest once the buildings were gone. The same could be said of thirteen acres taken for defence in 1886 for although it was taken and paid for, the villagers thought it was part of the original gift and in accordance with customary thinking, understood it was returned when no longer used. Thirteen acres was taken for roads in 1858 under an old law enabling the Crown to take 5% of Native Lands for that purpose but that was a mere paper thing for no roads were formed on the ground.

It was not until 1911 that the first physical intrusion warned of the inundation to follow. Work began on the Auckland and Suburbs Drainage Scheme in October 1909. Auckland's sewerage was to be discharged at Orakei, the only sizeable Maori land block in the district, and only one year after the Stout-Ngata Commission had recommended that the block be permanently retained in Maori hands. A sewer pipe was to pass across Hobson Bay and the fun length of the papakainga foreshore to an outfall at the head of Okahu Bay. Work started at the latter end in 1910 and by January 19ll a concrete sewer arose out of the sand 8 ft 6 in high by 5 ft 8 in wide (inside measurement). A reinforced concrete retaining wall rose above it on the seaward side in contemplation of a raised road one day skirting the bay above the level of the papakainga flats. Photographs evidence the unsightly view from the papakainga.

The harbour aspect was lost along with ready access to craft. The drainage was insufficient and in heavy rain the papakainga turned to a swampy quagmire.

The Orakei works began, with Public Works Act reinforcement, the same year the press carried news of Government's intention to consider acquisition of the whole Orakei block. Soon after the flooding started.

That was Auckland's introduction to the turangawaewae (standing place) of Ngati Whatua. The people were opposed to the sewer outlet from the moment it was first mooted (by civil engineer R L Mestayer) in 1905. Hone Heke notified the Council and Government of the people's opposition as early as 1907. He was advised the work was a public work and the Maoris could only dispute the taking if they could prove it was not a public work. In any event, the works were secured by special legislation - the Auckland and Suburban Drainage Act 1908 - the Crown approving the Okahu Bay discharge without requiring Auckland Harbour Board consent, and constituting the Auckland Drainage Board to include Auckland's Mayor and Councillors.

In 1914, when the works were operational, Auckland's crude sewage was discharged to the shellfish beds of Ngati Whatua, opposite their ancestral village. There could have been no greater insult to a Maori tribe even if one were intended. The disposal of human waste to water, especially in such great volumes offends all sensibilities of Maori people, particularly in proximity to the main habitation place, profaning that which is sacred. It would have indicated to Ngati Whatua what Auckland thought of them even without the spiritual connotations of Maoridom. It may also have indicated that Auckland expected they would soon no longer be there.

Neither the loss of the shellfish beds, nor the insult was compensated, and nor was the consequential flooding. On 9 December 1912 when £125 compensation was awarded for land loss, land severed, lost access and depreciation it was stated in the Compensation Court's Award

With respect to that portion of the claim wherein a sum of £125 is claimed for depreciation for building sites through the sewer backing up and collecting stagnant water on land and in creek the Drainage Board have undertaken through its Counsel that it will in completing the construction of the sewer across the seaward end of the said Block leave and keep a sufficient opening under the said sewer where it crosses the said creek at the North East end of the said Block to allow the waters of the said creek to pass thereunder and will keep open the storm water syphon overflow channel now provided in and under the said sewer for storm or flood water to pass through the same provided that the owners or occupiers of the said land do not throw or deposit in the said creek any debris or articles of any kind which block up or impede the free flow of the water through either of the said exits.

And said it was but the flooding continued. As a further irony, the compensation award actually returned to the Crown. When later the Crown bought from the Maori the adjoining papakainga, £125 was deducted from the Government valuation - a keen Purchase Officer noting that the value would

have dropped by the compensation paid (transcript of proceedings of the Kennedy Commission p 35).

All this was but a beginning. The sewer pipe was merely herald to the tempest that was to inundate and desecrate the whole of Ngati Whatua's last ancestral land. In the space of one year the Crown bought the bulk of the Orakei block.

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6.2 The Pot of Gold - the Farm Lands

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Cabinet approved negotiations for the purchase of Orakei in August 1913. The Crown's position was secured by an Order in Council in May 1912 preventing sales to other than the Crown and was maintained by almost annual Orders in Council thereafter.

The Native Land Purchase Board was constituted by section 361 of the Native Land Act 1909 to undertake, control, and carry out all negotiations for the purchase of Native land by the Crown and ensure the performance and completion of all contracts. It consisted of the Native Minister, the Under-Secretary of Crowns Lands, the Under-Secretary of the Native Department, and the Valuer-General. On 25 October 1913 the Native Land Purchase Board resolved that

purchase [of Orakei] as authorised by Cabinet resolution be completed subject to certificate of Crown Law Office as to interests proposed to be acquired being in order.

The proviso to the resolution effected a delegation of purchase responsibilities to the Crown Law office or in effect the Crown Solicitor at Auckland. Under his supervision the work of purchase was carried out by Mr S Mays, Chief Clerk in the Crown Solicitor's office. He in turn consulted with the Auckland lawyers who had acted for the lessees and were familiar with the Orakei situation. The lawyers had in turn engaged Ngapipi Reweti to assist them in the original proposed purchases. Mr Reweti was in turn to concern himself with the sales to the Crown, introducing to Mr Mays those who wished to sell.

Ngapipi Reweti, or Hawke (for he was the son of Tuhi Reweti and Tame Hawke), was only twenty-two when negotiations to buy began. He was a person on whom some relied because of his education. He was born at Orakei and educated at West Tamaki Primary School and St Stephen's College, a secondary boarding school for Maoris. At 18 he was an engineering apprentice in Auckland. He was engaged by the legal firm in 1911 to translate the Maori discussions at Reweti and Orakei to consider the sale of the land, and expressing a desire to learn more of the law and become a Maori agent, was retained to act in that capacity. Ngapipi assisted the syndicate's purchases and it was he who filed and led the counter-petition in opposition to Otene Paora in 1911.

Much later he regretted his actions, protesting the syndicate paid him double value for his own shares. In the end he stood in support of Otene Paora in an inquiry in 1930, claiming the people sold the farm lands on a promise the papakainga would be protected. After Otene's death, he was one of those who

led a petition challenging the purchases. He was a principal witness at the inquiry that resulted when he was aged 54.

All seemed set for the purchase operations to begin but for one thing. It was a matter of record that several Orakei owners were opposed to sales. At that time where any partition was owned by more than ten the Crown could not buy it except by calling a meeting of the owners and securing a resolution to sell by the majority vote of those attending. The next development was the enactment of section 109 of the Native Land Amendment Act 1913 enabling the Crown (alone) to buy the individual interests of owners in any blocks, no matter how many on the title, and without the necessity for a meeting. Ngata, opposed to the buying of individual interests, fought Herries bitterly over the 1913 amendment but to no avail. Most of Orakei was purchased by this method. Still, the meeting of owners procedure was occasionally used. If sellers held most of the shares in a partition the shares of non-sellers were acquired by this alternative.

The Crown Solicitor received instructions in October 1913. The lawyers and Ngapipi visited Orakei before buying began but Ngapipi kept contact between the owners and Mr Mays thereafter.

The sales began with the farm blocks. For the Crown it was an enormous success. Some 460 acres, or most of the farm area was acquired by December 1914.

Those who had 'sold' to the lessees had now to sell to the Crown or refund the money paid. A close contact between the Crown office and syndicate lawyers ensured the syndicate was repaid in full. Separate cheques issued, one for the syndicate another for the owner. But obviously many others joined the sellers for the original transfers had aggregated only 387 acres. That is not surprising. The effect of individual buying amongst Maori owners is that once some sell, and the buyer's interest increases, others lose heart and sell too, especially once the buyer has a preponderant or controlling share. What is surprising is there were not more. Throughout the country there was a rash of land selling following individualisation of titles and the right to sell individual shares.

It was a far cry from the customary preference for collective decision making. The Maori Land Court experience is that Maori group decisions are a far cry from the private decisions of individual members of the group. Even private European companies impose restrictions on the sale of shares.

Later there were many complaints about the propriety of the farm sales by people of Orakei, and many inquiries were held, but since by then most of the papakainga had been sold too, the complaints and inquiries were directed to the papakainga alone and there was never an investigation of the farm sales. Complaints that transfers were not executed as prescribed by law were never tested. In a Maori Land Court inquiry in 1930 there was an attempt to have the transfers and associated records examined but the Crown refused to produce them, and withdrew from the inquiry on the ground that the Court

was stepping outside its terms of reference. They have not been seen since for there was no need for the Crown to register them. It merely announced by proclamation what it claimed to have acquired and that was enough to convey title. It is possible however that allegations of irregularities in execution were merely symptomatic of an overall grievance.

Another complaint related to the meeting of owners procedure, earlier described. By this system the shares of non sellers are acquired if a majority in shareholding agree to a sale. When Orakei No 5 partition was sold eleven owners favoured a sale and fourteen were opposed but the vote to sell was carried because the sellers held bigger shares. This explains how some of the interests of two leading non sellers became sold - Otene Paora and Te Hira Pateoro. They did not sell but were outvoted. Otene had fewer shares than he would have held had Uruamo not been excluded in 1869. He had shares from his father (Paora Kawharu) but none from the Uruamo line of his mother. Had Uruamo not been excluded the vote would have been different and the sale would not have happened.

Others claimed they did not know what was happening. Merea Kingi applied to partition her shares in 1913. Her application was dismissed in 1915 because in the interim the Crown had acquired the block. Otene Paora also sought a partition in 1915 in respect of another block in which he had shares. His application was not considered for even before it was filed the Crown had bought the block by the meeting of owners procedure. He did not even know he had been bought out. It is possible he was not given notice of the meeting.

Rotena Reihana claimed he had executed his transfer in escrow pending an arrangement to give him some land in some more convenient location on the block. In the 1930 inquiry the Court attempted to see the document but it was not produced because this complaint the Crown considered outside the Court's terms of reference.

Wiremu Watene had a similar concern, one specifically referred to in the 1930 terms of reference and accordingly it was considered by the Court; but since the Crown had withdrawn from the proceedings by then the documentation was not produced. Wiremu said owners sold on a promise that the Crown would allocate them a block when everything had been sorted out. He claimed that immediately after one sale he insisted on and obtained a document signed by Mr Mays promising to reserve him six acres. Ngapipi Reweti recalled the event saying

It was arranged that an extra six acres in addition to the flat, was to be reserved for Wiremu Watene Tautari. Wiremu asked for it at Mr Blomfield's office. He told Mr Mays he wanted this six acres reserved for his sons before he would sell his interest in the land on the hill. Mr Mays agreed on behalf of the Crown to reserve this 6 acres, and an agreement was drawn up and signed by Mr Selwyn Mays. Then Wiremu Watene Tautari signed the transfer. He would not sign the transfer until the agreement to reserve the 6 acres was signed by Mr Mays.

Without the documentation the Court could do little but the issue was put to another inquiry in 1938. By then Wiremu Watene was dead and the document could not be found. Mr Mays contended that the document was an option to buy up to six acres within two or three years and since the option was not taken up, it lapsed. In the absence of any contrary evidence Mr Mays' contention was accepted.
Counsel for various Maori in the 1938 inquiry drew attention to another anomaly. Mr Mays stated Wiremu was counselled to retain part of the purchase price so that he would be able to buy back the six acres and so exercise the option, but still he failed to do anything. Counsel pointed out (and the Crown admitted) Wiremu was paid by instalments, as it lacked sufficient funds to pay him a lump sum, and the Crown still held the greater part of the purchase price when the option would have been due.

In fact there was provision in law to reserve land from sales or return land in fact sold. Section 19 of the Native Land Amendment Act 1912 enabled the Governor to reserve land purchased from natives for the exclusive use of any or all of the former owners instead of vesting the land in the Crown by proclamation.

And land was in fact reserved - but for lessees, not the natives. In the settlement with T Coates, a major lessee, on 22 October 1914, it was arranged that he would be awarded the section where his house stood. When by July 1917 he had still not received it, he wrote to his local Member of Parliament complaining

... On 22 October 1914 I had a final settlement with Mr Mays, and since that time my solicitor and I have done all possible to induce Mr Mays to give us the necessary Title to this small section of land, but so far with no result, except promises, with a request to call again next week and so on, and as such treatment is most unfair to me and most unbusinesslike, I must again appeal to you as my representative to once again take the matter in hand and make a strong appeal to Mr Herries (the Minister of Native Affairs) and ask that the Title be completed and handed over without further delay ...

The Government called for a response. Mr Mays produced the agreement in August, showing the undertaking to transfer ten acres to Mr Coates when the whole partition for that area had been bought but Mays warned against achieving that end by special legislation, citing three reasons -

(1) It will probably awaken the Auckland City Council's desire to control Orakei.

(2) It will certainly revive Otene Paul's (Paora) worthless petition for redistribution of Orakei interests and

(3) It will ... encourage non sellers to hold out.

The matter was complicated by the discovery that the agreement did not comply with section 110 of the Native Land Amendment Act 1913 but Mr

Coates obtained title by a Governor's Warrant, authorised on 6 December 1917.

By the same device, another lessee, Mr Biddick, was awarded 2.5 acres in two separate sections on Bastion Point in 1920 (see area No 7 on the map at Appendix III).

We think the main reason why lands were not reserved for the Maori vendors was that given by Mr Mays in evidence in 1938 with reference to Watene's claim

I told him very clearly that I would not purchase 2B with [provision to reserve a part of the land] in the transfer. Of course there was a reason for that. Once I did that with one piece each vendor would want a similar concession and it would be useless for subdivision.

He did not want a patchwork quilt but a clean sheet.

The main Maori complaint was that the farm lands were sold on a promise that if the Crown took the bulk of the land it would be satisfied and the people would be allowed to keep the papakainga. The Government in public statements had made clear its desire to acquire the farm lands, and had entertained use of the Public Works Act (in its support of the Council's proposals). There seemed little hope to the Maori that they could keep the farm lands. They were in any event subject to long term leases on which the lessees had put substantial improvements that would need to be compensated at the expiry of the lease. The right of actual occupation had already gone, and although the right to the reversion was still held, it was tenuous for the lessees were urging the Government to protect their improvements with the right to buy the freehold. (In fact, it later transpired, while not one Maori was able to keep the land on which his house stood the lessees lands were leased back to them until the Crown was ready to subdivide. Later, as we have earlier said, they were then given the freehold of their house sites).

But the papakainga was in a different position. It had always been separately regarded both by the people and official bodies. The Native Land Court in partitioning the land in 1898, and the Stout-Ngata Commission in 1908 had drawn a distinction between the farm and papakainga lands regarding the latter as a particular reserve. The Crown respected the distinction too, when it first started buying for it is a fact that it bought first in the farms.

In December 1914 the Crown began buying into the papakainga.

In the 1930 inquiry Ngapipi Reweti said his instructions were to advise the people

that the papakainga flat was not to be sold but was to be retained by the natives for all time.

In the 1938 inquiry Mr Mays disputed this saying

several of the small owners wanted to sell their papakainga land. I would not buy them and told them so. I said 'I am not buying the papakainga just now'.

The finding, in 1938, was that if Mr Reweti did say what he purported to have said, which was doubted, he had no authority to say it.

From all this Ngati Whatua inherited the label of 'willing sellers'. The accusation has diverted attention from the propriety of the Crown's buying in the face of the Stout-Ngata report on Orakei and the Native Affairs Committee recommendations for an inquiry into the vexed question of title. It served also to denigrate later petitions for the return of land and to restrict later claimants in negotiations, for the label 'willing sellers' has stuck and has affected the people's perception of themselves. Given the circumstances they should have borne no other label than that of a loyal tribe that sought to keep its main ancestral home as a place to stand.

The Crown has promoted the view that it moved to buy only when some moved to sell. The facts militate against that opinion too. Orakei was courted before the turn of the century and the intention of the Crown was not to buy the interests of just the willing sellers but to buy the block. That became even more obvious as time progressed but that will be considered later.

While the farm lands on the ridges were being bought, the Auckland and Suburban Drainage Board was completing the Okahu Bay sewage storage tanks on the flats. On 17 June 1914 the Board wrote to Government seeking an acre for working men's cottages. Native Minister Herries' reply of 19 June "that nothing can be done until the whole block is purchased" discloses the ultimate intent.

On 27 July 1914 the City Council requested some 200 acres in "the back portion" of the block for "some hundreds of worker's homes". Cabinet directed a report but according to the Auckland Star (22.8.1914), the City Council resolved instead to negotiate to buy the whole block from the Government by paying what the Government paid the Maori plus 5% to cover expenses.

Otene Paora, presumably believing the Crown did not intend to buy everyone's interest, or the papakainga, responded with a letter of 26 August to the Prime Minister, warning off the City Council "because of the title in dispute and still now in dispute". He added that the Council and Government were well aware that "the vendors were outclassed in all shapes of form as to the right to the land" and that his position had been "adopted by the House for inquiry in 1912 [with] four recommendations of the Upper House Committee for favourable consideration. I am pointing out these facts" he said "so as to save the Government, Country, and the City Council some embarrassment. "

The Government considered the Council's plea, the Commissioner of Lands, Auckland, reporting favourably to Cabinet, on 30 September, on the creation of a model suburb with provision for such amenities as a University. A

hotchpotch of popular opinion did nothing to ensure protection for the Ngati Whatua interest. The 'dying race' syndrome was still prevalent in 1913, despite evidence that the Maori population was increasing, but the belief was sustained by the continuance of drunkenness, disorder and disarray in many small Maori communities and the constant barbs delivered at the state of their affairs. Auckland's District Health Officer was particularly hostile, feeding opinion that Orakei was a source of typhoid and other infectious diseases, abetted by a smallpox scare in 1913 when Maori were forbidden to travel. The opinion that Maori were better off in the country 'to live the free life they prefer' did not help in the Orakei case either. But the popular demand that Maori land should be available for European needs and the antagonism to 'Maori landlordism' were the motivating causes for the acquisition of Maori lands at that time, and the official policy for the assimilation of the Maori people was the rationale - in order they might live the life the Europeans prefer.

Waitangi Tribunal, Department of Justice, Wellington.

06 The Inundation of Orakei 1913-1930

6.3 Pieces of Silver - the Papakainga

6.3 Pieces of Silver - the Papakainga

The Crown began buying in the papakainga in December 1914.

It is convenient to summarise what happened before events are more closely examined in historical sequence. The papakainga was about 40 acres, the exact area being fixed at 38 acres, 3 rods, 16 perches in 1904, after parts of the papakainga were taken for road. Progress was slow for it was hindered by considerable owner opposition.

In the first year of purchasing the Crown acquired interests representing 14.5 acres. Things moved more slowly after that and in 1916 the responsibility for buying passed back to the Native Land Purchase Board.

The Crown was buying not defined parcels but undivided interests or shares in one papakainga block and it did so over 14 years. Each interest represented a certain acreage. On an area basis the land acquired in each year was

1914 0 0 25.34
1915 14 1 00.17
1916 5 3 02.17
1917 2 1 19.62
1918 1 0 20.80
1919 0 1 06.17
1920 0 0 11.32
1921 nil
1922 0 1 39.06
1923 8 0 39.83
1924 0 1 14.31
1925 1 2 13.33
1926 0 2 36.61
1927 0 1 18.73
1928 0 1 26.55 by exchange

____

36 0 34.01
less 0 13.00 returned for church cemetery

____

35a 3r 21.01p

Mr Mays dropped from the scene after 1916 as Government Land Purchase Officers took over. Though it took a long time, eventually most owners gave in. In addition to buying in the papakainga the Crown Officers maintained pressure to gradually buy into those farm blocks not sold in the original farm

sales with result that the Crown had acquired by 1927, all but some 12.5 acres of the Orakei block.

The agents by then were dealing with a hard core of non sellers but successfully split them in 1928, when one group agreed to combine their shares with other Maori land held on the side aspect of Bastion Point ridge, leaving the balance owners in the papakainga with only 2.5 acres and a ten acre 'exchange' block on the ridge. With the exception of the 2.5 acres, the Crown had acquired the papakainga for a total of about £12,500 and with 120 Maori then living in cramped conditions on 2.5 acres around the marae, without sewerage or adequate water supply, and some only in tents, it seemed merely a matter of time before they would give in. They in fact held on until 1950 when the Crown used the Public Works Act to take it, taking with it the 10 acre exchange block, and so it was not until then that the objective was achieved - and Ngati Whatua of Orakei was landless.

When the buying began in the papakainga Otene Paora and others had more petitions with the House of Representatives and Legislative Council. Petitions were filed from 1913 to 1916 but they were not considered. Substantially the same petition had had a full hearing in 1912 and the Native Affairs Committee had allowed that to lapse when its recommendation was disregarded. But Otene himself does not appear to have realised that the Crown was buying papakainga interests until well after the buying began, for individuals dealt behind the doors of Mr Mays' office. It was not until 3 February 1915 that he wrote to the Minister of Lands. He complained

The officers of the Crown are now urging the natives to sell their interests in (the papakainga) ... this action of the Crown must not proceed further.

He promised another petition and added

Although a caveat has been entered forbidding the sequestration of the above land the negotiations with the natives still continue.

Judges of the Maori Land Court, and later historians, have recorded their views of the operations of the Native Land Purchase officers. In 1936 Judge Acheson described a time, in 1914 when he was Secretary to the Board, saying:

I felt ashamed at purchase happenings but was helpless to intervene.

G V Butterworth (1985:242) has written, with reference to acquisitions on the East Coast

The Native Land Purchase Officers, using the power of ready Government money, bought their way into numerous blocks including even those in which the kainga (villages) stood. The money so gained was used to slake the owners' thirst and provide stakes for gambling. The outbursts of drunkenness in particular shocked Ngata.

The Land Purchase Officers knew well enough that the restoration of tribal authority was the only bulwark to their schemes, one officer writing in 1896

. . . they must be dealt with individually, as the majority of them, if assembled in public meeting, would be filled with righteous indignation of the thought of parting with their birth right for a mess of pottage; but within 24 hours the same persons would gladly sell if they could do so unobserved by their fellows. (Wheeler to Sheridan 1896 Letterbook 19, NLP, NA).

From that time individual dealing became the standard tool of trade for the Purchase Officers, and remained so well into the 1960's. Their operations in Orakei were referred to in the submissions of J P Hawke and others in proceedings before the Supreme Court in 1978 (Attorney-General v Hawke and Others)

First, the officers of the Crown made regular and detailed reports on their progress in purchasing the land, and named the main 'oppositionists'. Then these same officers exchanged information which they thought might be of use in their dealings with these people. This information included who was in debt, who owed rates, and in one case even referred to the fact that Te Hira was 'failing physically'. Mr Phillips (a witness for the Crown) endeavoured to place no importance on the inclusion of this information in official correspondence, but the Crown's representatives thought it important enough to include it in letters which dealt with how to approach the various non-sellers. In fact there is every reason to believe, on the balance of evidence, that the Crown's officers used this information in their discussions with non-sellers. Indeed, as the evidence of Mrs Tumanako Reweti indicated this morning even the willing sellers-so-called - were pestered and pressured by Officers of the Crown.

Before this Tribunal J P Hawke claimed people were stopped by Native Land Purchase Officers' with cheque books in one hand and sale agreements in the other in city streets, or in hotels or other public places. Tumanako Reweti, he alleged, was approached while still a pupil at Queen Victoria School.

Confusion was compounded by the fact that the Crown was buying not defined parcels of land but undivided interests in a single block, peppered with homes without separate titles, and by extraordinarily complicated conveyancing techniques. The overall scheme was that the Crown continued buying until it had enough shares to partition a block, partitions being effected in 1918, 1920, 1927 and 1928. The overall hope of the occupants was that the Crown would do for them what it in fact did for the lessees, namely that on the division of the land it would furnish a secure title to those parts on which they had their houses, in a proper and orderly manner.

To that end the conveyancing techniques took various forms, similar to those alleged to have been employed in the purchase of the farm lands. One was to execute a transfer of all an owner's interests with collateral agreements to pass back a title for his or her home in due course. Under this system only part of the purchase price was paid. Later, if it appeared too much was to be kept back, the Crown would renegotiate the agreement and pay out a bit

more. A collateral agreement might be renegotiated three or four times and monies paid out, a bit at a time, on each occasion, until in all but one case, nothing or too little for a house site was left.

An alternative was to buy land interests on an agreement to pay more to cover the house, when the Crown through its other acquisitions had enough to partition an area that included that house. On this system part payment was made first and another payment later.

Yet another technique involved the acquisition of shares actually held, and those to which the owner had a right to succeed, although a succession had not been done.

Of course, non-owners who were mere occupants were relieved from understanding these procedures for they had nothing to sell.

Now although it was the obvious intention of some to secure their homes, somehow the whole of their interests came to be acquired so that there was later nothing left to secure them with. Collateral agreements were modified, a bit at a time, until the inchoate right to a later share of the land was totally extinguished. Many claimed not to have understood what was happening, and that is not surprising for the circumstances were even more confused.

Part of the difficulty was that owners held or were entitled to shares from several sources. We illustrate the point by reference once more to the position of Otene Paora. He held shares of varying sizes from separate successions to each Paora Kawharu, Paora Reweti and Rahera Paora alias Rahera Uruamo who in turn held separate shares under both those names. (He would have had many more shares again had his grandfather Uruamo not been excluded from the original list). It is common, even today, that Maori owners do not know the extent of their total shareholding in a block. They relate not to figures but to genealogical lines and hold, not a total shareholding, but as part holders of their fathers' share or grandmothers' share for example. To perpetuate the lines they may hold different shares under different names, those from the mother being held under her maiden name or first name, for example. It also happened that where an owner occupied a house built by his father, and therefore under his father's mana, the owner may be disposed to alienate the shares from the mother without considering whether the shares of the father provided a sufficient curtillage for partition.

From later evidence it seems some owners thought they were selling some only of their shares, those inherited from their father or uncle for example, not realising that the shares given in the agreement had been combined and represented all they had. Some thought collateral agreements to pay for their homes, later, were agreements to secure their homes on a later division of the land. Some appear to have thought that if the Crown took all their interests and combined them, then at the end of the day they would have enough for a home with a lot left over. The Crown could keep the part left over if they got a house site.

Complicating matters was the compulsory acquisition of the water-front land for a roadway that included lands on which houses stood. Otene Paora endeavoured to partition 0.75 acres surrounding his house to learn that that land had been taken for the works. Again Otene seemed to have had no idea that that had happened and did not know that he had lost his shares.

Others were confused by rate demands not knowing that rate demands issue to occupiers, not owners. Merea Kingi received a summons for arrears in 1916 after being earlier informed by the Court, when she sought a partition, that her shares had been sold. In 1922 the people, believing rate demands evidenced their continuing ownership, collected and paid £301 towards arrears.

Added to all this were the usual difficulties that go with fragmentation of shares of varying sizes. To accommodate everyone there were some 3,564,000 shares spread over some 70 owners (numbers vary through intervening successions). There were 36 sales in the papakainga, eleven by persons owning less than 0.12 acres and another thirteen by persons owning less than half an acre. Smaller shareholders were not afforded an opportunity to pool their shares in the name of one, or owing to the Crown's exclusive right of purchase, to buy out others to increase their holdings and so acquire house sites by that system.

Whatever may have been the understanding of the vendors it is clear that understanding was not reflected in the documentation. In 1938 a Commission examined the papakainga documents thoroughly. They had, for the most part, been properly executed, attested and translated to Maori. There were some irregularities of a non substantive nature and some owners had not been fully paid but these defects were comparatively minor, given the extensive documentation required, the complicated circumstances, and the piecemeal payments over a long period. Underpayments could be readily rectified. On that basis it was considered the purchases were in order. What the Commission had no need to consider, in other than a peripheral way was whether the purchases were proper, for the question before it was whether the interests had been acquired, "freed and discharged from all right title and interest of the native vendors" and not whether they ought to have been acquired and then in the way that they were. Yet the method of conveyancing was decidedly unusual. For the far greater part the method was that earlier described that an owner would execute a transfer of his whole interest even if he did not wish to sell his whole interest, the transfer being held in escrow with a collateral agreement to pass back part and only part payment being made. The technique also envisaged that sellers would eventually relent and agree to relinquish the collateral agreement, which they invariably did, whereupon the balance purchase price was paid and the original transfer was released as operative. It added greatly to confusion however, the more so since sellers were being paid on a drip feed system anyhow. It must have been difficult for owners to know whether what they were receiving was for a payment overdue or for a new sale of more shares. In the 1938 inquiry Mr Mays justified the technique on the ground it was necessary to acquire all interests before the Crown could divide the land and return parts, thereby

avoiding a patchy development. In fact the more usual system is that an owner wishing to sell part only of his shares, executes a transfer of those shares only and receives the stated purchase price in full. At the end of the day the Maori Land Court would partition the land between the Crown and non-sellers awarding to the non-sellers the parts on which their houses stood in satisfaction of their shares unsold in accordance with an overall scheme. Counsel for the Maoris, in 1938, challenged the propriety of the transfers and described the more usual alternative. "Such a system might have been adopted" the Commission decided "but it would have interposed delays". Just what delays might have interposed are difficult to determine unless the Commission assumed total acquisition the proper goal.

Also unusual, as a matter of conveyancing and settlement, was that sellers were not always promptly paid for that which they sold and for which they had executed transfers, but were paid by instalments. Mr Mays explained, with reference to the instalments paid to Wiremu Watene, "there was not enough money at that time to pay anybody any large sum".

The Commission considered "the case for the natives rested very largely on documents and papers in the possession of the Crown" and it was on the basis of that documentation, rather than the owners understanding of the Crown's intentions, that the issues were determined. The clearest evidence of a misunderstanding was not the documentation, but the later applications to the Maori Land Court to partition house sites by persons whose shares had in fact been sold, to succeed to interests when succession rights had also been sold, or to transfer interests that were no longer held. Indeed there may have been more partition applications but the understanding was that the Crown would attend to the partitions at a later stage. In other cases the Court itself appears confused. Successions were done and shares awarded to persons who had sold them before they inherited them, in at least six instances.

In fact the Crown never did partition land for house sites. There was never one partition to cut out a house site despite the clear wish for that to happen, and despite the award of house sites to lessees in the subsequent subdivision of the farm lands.

Because of the extraordinary complexities surrounding the ownership of Maori land, it is still necessary to have a Maori Land Court monitor transactions and assist and advise applicants. The Court knows well the difficulties facing applicants seeking merely a house site on their land, even without the hassles of a 'willing buyer' in their midst. What needs to be borne in mind is that none of the Orakei purchases was subject to the scrutiny of the Native Land Court for Crown purchases were exempt from all restrictions, prohibitions and requirements on the alienation of Native land - s.360 of the Native Land Act 1909. But nor were there applications to the Court to determine the ownership of improvements before buying began, to complete successions instead of buying interests in expectancy, or to use the facilities of the Court to consolidate interests or the interests of family groups and provide house sites the moment owners expressed a wish for that.

This Tribunal need not determine the validity or otherwise of the numerous claims made concerning the sales. It need only note that according to the documentation the shares of most owners had been acquired and where there were agreements to return a house site, or some shares were held back, eventually the agreements were extinguished or the shares held back were gradually bought up. Nor is it implied that no one wished to sell. Mr Mays deposed in 1938 that many owners came willingly to his office, or were brought there by Ngapipi Reweti. He said "They had had a taste of money before and they wanted some more."

Contemporaneous with the papakainga purchase were efforts to acquire the last of the farm lands. Interest focused on the interests of Te Hira Pateoro, great grandson of Apihai Te Kawau. Like Otene, he was opposed to sales but unlike Otene he was a major shareholder. In 1917 he was advanced in years. Te Hira had held back land in the farm sales. He was the major owner of 9 acres at Pokanoa Point on Orakei ridge and was sole owner of another block of 14 acres. Both blocks were subject to long term leases.

Land Purchase Officer Mr Bowler reported to the Native Department on 19 December 1917

(Hira Pateoro) has held out for a long time, but now seems inclined to deal. If the Crown could transfer to him the lease of the 14a. 1r. 19p I think it likely that he would sell his reversionary interest in the 9 acres (generally known as "The Point", and, to my mind, the pick of the Orakei Block).

He sought approval to such an arrangement. The opinion of the Commissioner of Lands, Auckland was rather that nothing should be offered to effect a deal. He reported, 20 April 1918, that the Crown "appears" to have acquired interests equating to 22ac 3r 33p in the papakainga (leaving a balance Maori owned of 15ac 3r 00p) and most of the interests in the farm lands but

I would bring before you the undesirability of the Natives retaining any of these lands. .. From my point of view, it is absolutely necessary that the Crown should acquire this entire Block, and therefore suggest that in the event of the Land Purchase Officer being unsuccessful in his negotiations, that special legislation should be introduced to enable the Crown to compulsorily acquire the balance of the Block.

On 8 May 1918 the Department of Lands reported on arrangements to secure titles for the lessees but warned against similar arrangements for the native owners.

It is obvious that if some of the Native owners retain their interests in the reserve, any subdivisional scheme will be seriously affected. The Commissioner of Crown Lands, Auckland, has suggested that in the event of the Native Land Purchase Officer being unsuccessful in his negotiations, special legislation should be introduced to enable the Crown to compulsorily acquire the balance of the block. In this connection it appears that Mr Selwyn Mays of the Crown Solicitor's office, Auckland, has entered into some sort of verbal arrangement with the Native owners that they

are to be allowed to re-purchase from the Crown an area in the vicinity of the Okahu Bay frontage. Such an arrangement appears highly undesirable.

Meanwhile Te Hira Pateoro was still holding out, as at the end of 1918, the Lands Department reporting to the Under-Secretary of Lands on 24 September "so far the sole owner (Hira Pateoro) has shown little disposition to sell" and recommended an increased offer, or failing acceptance "to see whether Hira will accept a suitable piece of Crown land elsewhere in exchange."

Te Hira did not cooperate. Eventually on 2 August 1920 the Commissioner of Crown Lands Auckland telegraphed the Under-Secretary of Lands as follows
Your wire today re proposal exchange Orakei 1A 2. Recommend that exchange be gone on with as suggested unless Hira will agree to sell his interest in 1A 2. Better to get rid of native altogether if possible.

Te Hira sold. Was he threatened with compulsory acquisition? He did not live to give evidence before later inquiries but others claimed to have been told that the land would

be compulsorily acquired if they did not sell.

The position at the end of 1920, was that non sellers held undivided interests in the papakainga equating to roughly twelve acres. In the farm lands buying had slowly continued and the area held by non sellers equated about 24 acres. It was also a fact that by 1920 many had left Orakei and a loyal tribe seemed about to disintegrate. At least amongst those remaining there was, by then, total resistance to further sales.

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06 The Inundation of Orakei 1913-1930

6.4 Rainbow visions

6.4 Rainbow visions

The flooding of the papakainga worsened in 1921 when a raised roadway was built over the sewer pipeline along the beachfront. It added to the villager's discomfort turning the papakainga to a swamp in heavy rain. It was only 30 years later, after the people had left that more adequate drainage was installed. It was only after the last remaining Maori land had been acquired that Auckland took its sewerage elsewhere (to the Manukau Harbour where by an unhappy coincidence the outfall again adjoined an isolated pocket of Maori land near Makaurau marae).

Plans for Orakei as a model suburb, with a university, or to provide for workers dwellings were urged by the Auckland Members of Parliament throughout the 1920's, Government insisting however that the whole of the block had first to be acquired. Then in 1923 the Minister of Lands stated in the House, in response to a question

It has not yet been possible to open the Orakei block, as the Crown has not acquired all the Native interests therein, whilst arrangements have also to be made to acquire the property of the Church Trust Board in the block. So soon as a sufficient area is acquired it is proposed to invite competitive designs for the laying out of the land on the most suitable and modern town-planning lines ... (1923) Vol 200 NZPD 641.

In addition to acquiring the Church and native interests it was necessary to settle arrangements with the Auckland City Council which had been strongly protesting the delays. The Crown and Council reached an agreement in 1924 on the construction of the Tamaki waterfront drive and the Tamaki rail deviation which would provide easy access to the proposed new suburb. Meanwhile negotiations continued between the Government, Council and Orakei Roads Board as to the future administration of the area.

In the interim the papakainga was a model of abjection. By 1924 the majority had left the village but some remained and continued to occupy the houses on the land, for although the Crown had acquired most of the papakainga interests, and had partitioned out some of its holdings, the Crown was still buying only undivided interests in the land, with alleged promises to return parts and there was still the feeling that existing occupancies would be respected. Still there was no real security of tenure. No one was more than a mere part owner in the land, if one was an owner at all, and disintegrating homes were occupied by the remnants of a disintegrating tribe.

Then in 1924 there was some resurgence of hope. G P Newton, a clerk of the Maori Land Court, assessed the total of the remaining Maori interests in Orakei and proposed they be consolidated into one block of twelve acres on the

marae site. The people's attempts to obtain title to the twelve acres, and add to it the area taken for roads never formed, were to take them to the Supreme Court in 1929. They were unsuccessful, as it turned out, but in about 1924 there were some hopes and a large number returned to occupy the twelve acre area that was sought.

The hope continued although other action by the Crown indicated that its enthusiasm for the total acquisition of the block had not waned. In 1925 the Lands Department promoted a public design competition to plan 'the Orakei garden suburb'. The 42 entries reached a high standard and were displayed not just in Auckland, but in Wellington, Christchurch, and in the Dunedin exhibition. The winner, announced on 26 June 1925 was R B Hammond, an Auckland town planner, surveyor and architect soon to become the City's inaugural Director of Town Planning. Large playgrounds would service numerous projected homes. There was no provision for Ngati Whatua. The plan depicted tennis courts and playing fields on the area still occupied by Ngati Whatua residents taking in even their marae.

The villagers directed their energies to espousing the alternative 'Walnutt plan' which proposed a model Maori village on the papakainga. Ngata thought the plan degrading, intended for tourists to see Maoris being Maori in a model Maori village. The Orakei villagers were not impressed either but of all the plans submitted that was the only one that envisaged their continued occupation. They would sing if need be to keep a place in the land of their birth.

The Hammond plan prevailed and development for residential purposes started in 1926. Although the Maori still owned the land proposed for tennis courts, sections came to be sold on the basis that the park would soon exist at Okahu Bay.

Others of Ngati Whatua were unimpressed with either plan and placed their faith in the Church, the traditional provider of sanctuary to the oppressed.

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06 The Inundation of Orakei 1913-1930

6.5 The Vision of the Church

6.5 The Vision of the Church

Te Kawau's gift to the Church, the four acres, was not owned by the Crown at the start of the 1920 decade but still by the Church. In Maori opinion, as described at 4.3, the land was no longer used for the purpose for which it was given and was 'returned'. Several people had moved to build homes and live in the sanctuary of the Church grounds. Some families had lived there from the time the land was first granted to the Church. The occupiers had paid the rates from when rates were first levied by the Orakei Town Board. It is not known how many were there in 1926, when this too was bought by the Crown, but it is known that much later, in 1935 when some had refused to vacate, there were 12 adults, ten children and five modest homes. It was reported in May 1939, when eviction notices were served, there were 14 adult occupiers with their families.

The Church sold the land to the Crown in 1926. There was nothing illegal in that. In law the Church owned it. Although in Te Kawau's Deed it was held in trust for the support of the chapel and the school that was there in his time, the Crown Grant changed this so that it was also held " . . . as an endowment for schools for the benefit of the aboriginal inhabitants of the Colony of New Zealand." Te Kawau had not agreed to that but as Bishop Gilberd said "the particular had become the general" and it was obvious not only had the Church and school ceased to exist, but the people whom they were meant to serve would soon cease to exist too. J E Towle, Chancellor of the Diocese, Auckland explained to us the Church had the option of keeping the land for what would have become "a Pakeha Church site" or selling it to advantage Maori schools generally and thus Maori education. The latter seemed the more important trust but there were doubts whether the Church had the legal power to dispose of the land to the Crown. The Crown overcame that doubt by enacting s.7 of the Reserves And Other Lands Disposal and Public Bodies Empowering Act 1925 to enable a sale. Accordingly with proper and necessary regard for the law the land was sold and the 1000 purchase monies applied to the Native Schools Trust now represented in St Stephen's and Queen Victoria Schools Trust Board.

All that was done was done according to law. Later a Royal Commission had no difficulty in answering the questions Government put to it with regard to this matter - should the Crown have abstained from buying? - No - was the purchase money applied as the law required? - Yes.

At least the burial ground was not developed (though it is claimed bulldozers tore away part of it). The people had to move to live but had still a place to die and there was another Church at Okahu Bay where they could still give thanks.

One of the people was minded to do none of those things. She petitioned the Supreme Court claiming to have acquired a title by prescription or long term occupation. The details of that case are not important for this inquiry. It is reported as Whaitiri v The King [1938] GLR 379. It is of more interest to note that in the course of her losing the case the Court accepted evidence that the Church grounds had been home to large numbers of the people for a long time.

The Tribunal cannot question the actions of the Church for its jurisdiction is restricted to actions of the Crown. But the Crown was very much involved. Te Kawau ceded the land to the Crown, not the Church, to entrust the land to the Church. The Crown grant was not correct in its delineation of the trust. In addition, for reasons given in chapter 11, the Reserves And Other Lands Disposal Act 1925 was contrary to the principles of the Treaty, for in 1925 the land should have formally returned to Ngati Whatua.

The inundation meanwhile continued. Negotiations with the Auckland City Council for the future administration of Orakei were settled in August 1927, Government agreeing to construct internal roads, to continue the Waterfront Drive to Mission Bay and to share the cost of the Orakei Bridge. The Council accepted a £200,000 liability on Government expenditure in developing the suburb and would exempt Orakei from all special rates until half the saleable land had been sold. In 1928 the Orakei Road District was dissolved and the City Council became the local body entrusted with Orakei's administration. It was the last step in the Council's territorial expansion. The Waterfront Drive to Orakei and the Westfield railway deviation were completed in 1929, and Orakei, and Okahu Bay, lost the geographic isolation of former years.

It was now clear that Orakei was to be developed as a Crown subdivision within Auckland city. Subdivisional works began on the Orakei ridge in 1926.

The first Orakei sections along Paritai Drive were auctioned in February 1928 introducing a new concern for Aucklanders for they were acquired not for low cost housing, but by prominent business persons including a Councillor and the son of one former Councillor who was later Mayor. Another Councillor acquired a section as agent for a bank manager. But the rest of Orakei was to pass for state housing, that policy being helped by a national collapse in land values.

It was inevitable and necessary that there was some co-operation between Crown and Council and some discussion and disclosure of plans between them. In 1939 the Auckland City Council was gazetted as the Orakei Domain Board. In the same year the first piece of Crown land was vested in the Board and the Orakei Domain was begun, with an area of cliff face and bush between Paritai Drive on Orakei Point, and Ngapipi Road and Tamaki Drive on the foreshore.

Meanwhile with Newton's support, owners were still endeavouring to consolidate their papakainga interests into one block of about twelve acres. Further interests had been sold in the farm lands but some still held shares in

blocks on the eastern hillside. The Crown partially relented. Owners would be allowed to consolidate their shares if they took them to the eastern slopes.

Some agreed. Others would not give up the papakainga and particularly those who were direct descendants of Te Kawau. For them no other place could do for Okahu symbolised the mana of Te Kawau's family.

Those who did agree were located on the eastern hill by an order of the Court of 1928. Those who did not agree were put in two separate blocks on the papakainga by partition orders also of 1928. One block of one acre was awarded to Maki Waata solely and included her two homes. The balance owners were put into a block of 1.5 acres taking in some homes and the marae. In addition, in 1928 the Court set aside about one acre as a Maori reservation taking in the Okahu Church and cemetery. It was vested in three of the Orakei people as trustees for the tribe. (Strange to say, the marae was not similarly protected).

Unity was impaired for the non-sellers were partitioned in more ways than one. A lasting division grew between those who thought the 'exchange owners' had compromised the papakainga, and the exchange owners who thought the move necessary if Ngati Whatua were to keep any ancestral land at all. (As it turned out they were both wrong anyhow. Though each held fast to their separate parts, in 1950 they were both taken under the Public Works Act and the Crown's true objective was publicly manifest).

Nonetheless Te Hira Pateoro and fifteen others now followed Otene with fresh petitions to save the papakainga. In 1928 they brought two petitions to the House of Representatives to stop sales and review the purchases and proposals.