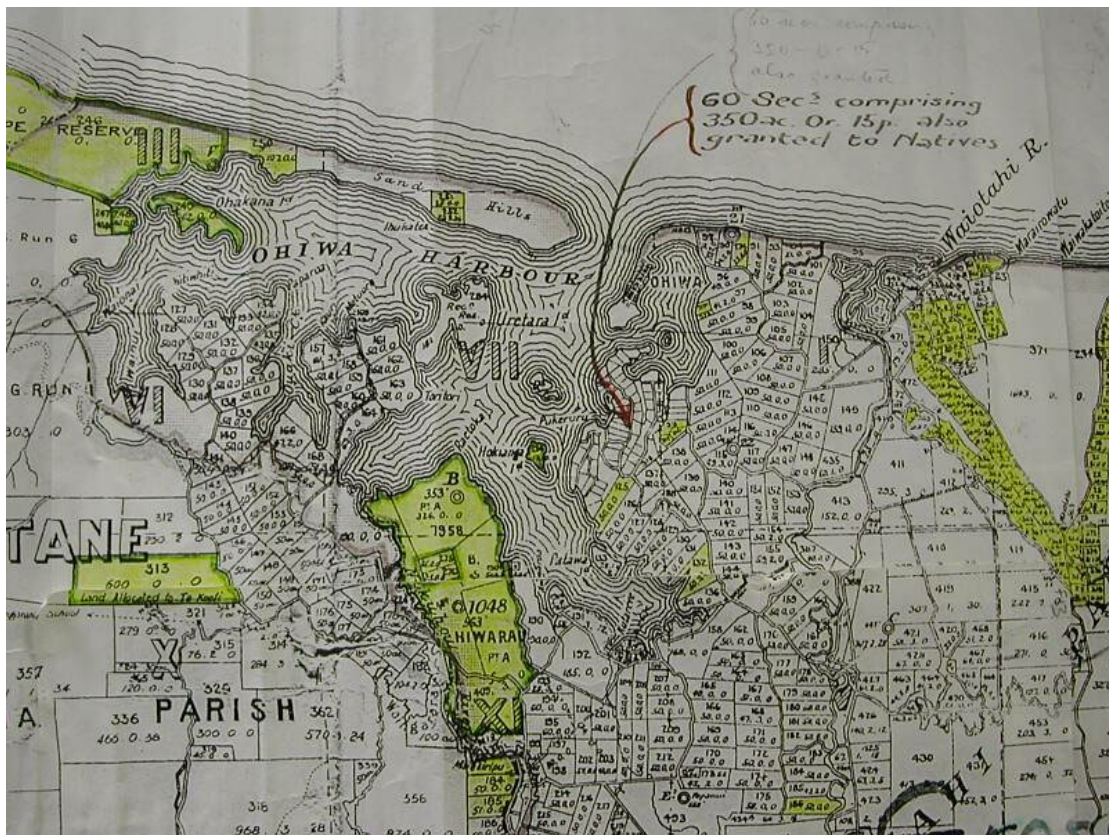


Ohiwa Harbour

A Report Commissioned by the Waitangi Tribunal



Ewan Johnston

March 2003

As they journey the land the experience becomes visionary. The land comes alive with stories, with both personal and public history. At the climax of the story, the boy and his grandmother are looking across Ohiwa Harbour to Hokianga Island. The old lady says to him:
“E Moko, e oho whakarongo mai. A tona wa ano, ko koe hei kaiako, hei ro ia ranei mo tenei whenua. Be a teacher and a lawyer for this bit of land. Get to know it well, Cherish it. Work it. You might have to fight for it one day.”¹

¹ Witi Ihimaera (referring to Haare Williams’ story, ‘Karakā’), ‘KA PU TE RUHA, KA HAO TE RANGATAHI: Capturing Knowledge for the Future - The Impact of Contemporary Maori Writing on New Zealand Society’, Paper presented at the Library and Information Association of New Zealand Aotearoa Conference, Auckland, 9-12 November 1999, <http://www.lianza.org.nz/conference_99/ihimaera.htm>, quoted with permission of the author. See also Haare Williams, ‘Karakā’, in Witi Ihimaera, ed, *Te Ao Marama volume five, Contemporary Maori Writing*, Reed, 1996, pp 23-24

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Abbreviations

AD	Army Department files, NA
AIM	Auckland Institute and Museum Library
AJHR	<i>Appendices to the Journal of the House of Representatives</i>
ATL	Alexander Turnbull Library
BPP	<i>British Parliamentary Papers: Colonies of New Zealand</i> (17 vols, Shannon: Irish University Press, 1968-69)
CMS	Church Missionary Society
DNZB	<i>The Dictionary of New Zealand Biography</i> , 5 vols (Wellington: Department of Internal Affairs, 1990-2000)
DOC	Department of Conservation
IA	Internal Affairs Department files, NA
LE	Legislative Department files, NA
LINZ	Land Information New Zealand
MA	Maori Affairs Department files, NA
MA-MLP	Maori Affairs, Maori Land Purchases Department, NA
NA	Archives New Zealand, Wellington
RDB	<i>Raupatu Document Bank</i> , 139 vols, Wellington, Waitangi Tribunal, 1990
RMA	Resource Management Act 1991
ROI	record of inquiry
Wai	Waitangi Tribunal claim prefix

1. Introduction

1.1 The Author

My name is Ewan Johnston and I am a research officer at the Waitangi Tribunal. I am a Pakeha of predominantly Scottish descent and I live in Wellington. I was born and raised in Gisborne and have a PhD in history from the University of Auckland. I have worked for the Waitangi Tribunal since July 2001 and have completed a report on the Wai 203 (Mokomoko whanau) and Wai 339 (Hiwarau C Block) claims.

I would like to acknowledge and thank the following past and present staff of the Waitangi Tribunal for their assistance in the writing of this report: Anita Miles, Ralph Johnson, Ben White, Robert McClean, Rachel Kerr and Noel Harris. Thanks also to Judith Binney and Tama Nikora for their comments, and to Matt Te Pou and Hohepa Kereopa. All views expressed in this report, unless otherwise stated, are my own.

1.2 Background to this Commission

In February 2002, the Waitangi Tribunal commissioned the author to research and write a report investigating the Treaty claims concerning Ohiwa harbour, located on the eastern Bay of Plenty coast.¹ (See figure 1). Anita Miles completed a scoping report for this project for the Waitangi Tribunal in June 2001.² In this scoping report, Miles sets out the process by which the need for a report looking at all claim issues relating to Ohiwa Harbour was identified within the context of the Waitangi Tribunal's planning for the Urewera district inquiry. She notes that at a meeting of the Tuhoe Waikaremoana Maori Trust Board, Crown Forestry Rental Trust and Waitangi Tribunal representatives held in Rotorua in October 1997, Tuhoe claimants identified Ohiwa as an important issue within their umbrella claim that they wished to be researched as a matter of priority. All those present at that meeting agreed that a scoping exercise be undertaken on Ohiwa Harbour.³

¹ See direction commissioning this research report, appendix 1

² Anita Miles, 'Ohiwa Harbour Scoping Report', report commissioned by the Waitangi Tribunal, June 2001, (Wai 894 ROI, doc A5)

³ Ibid., p 4

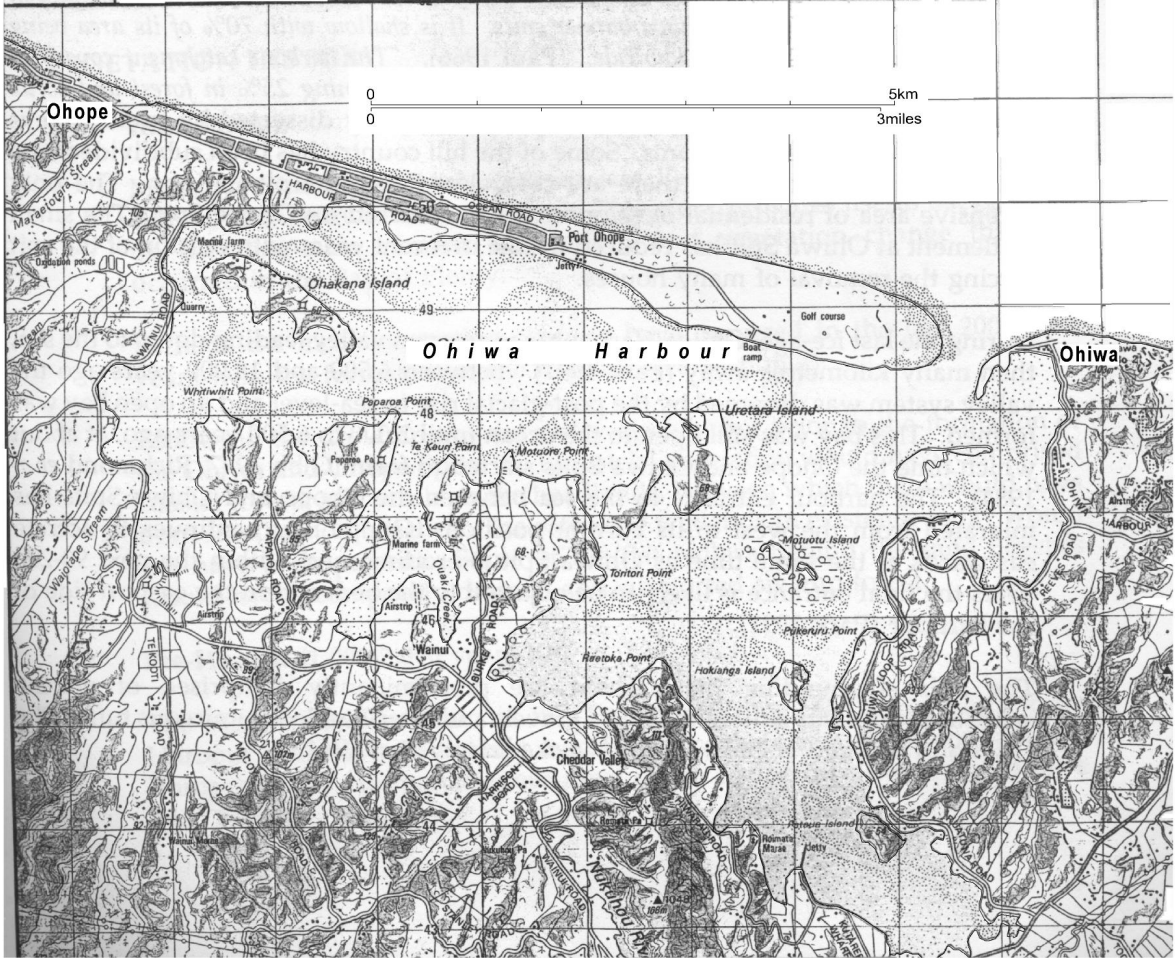
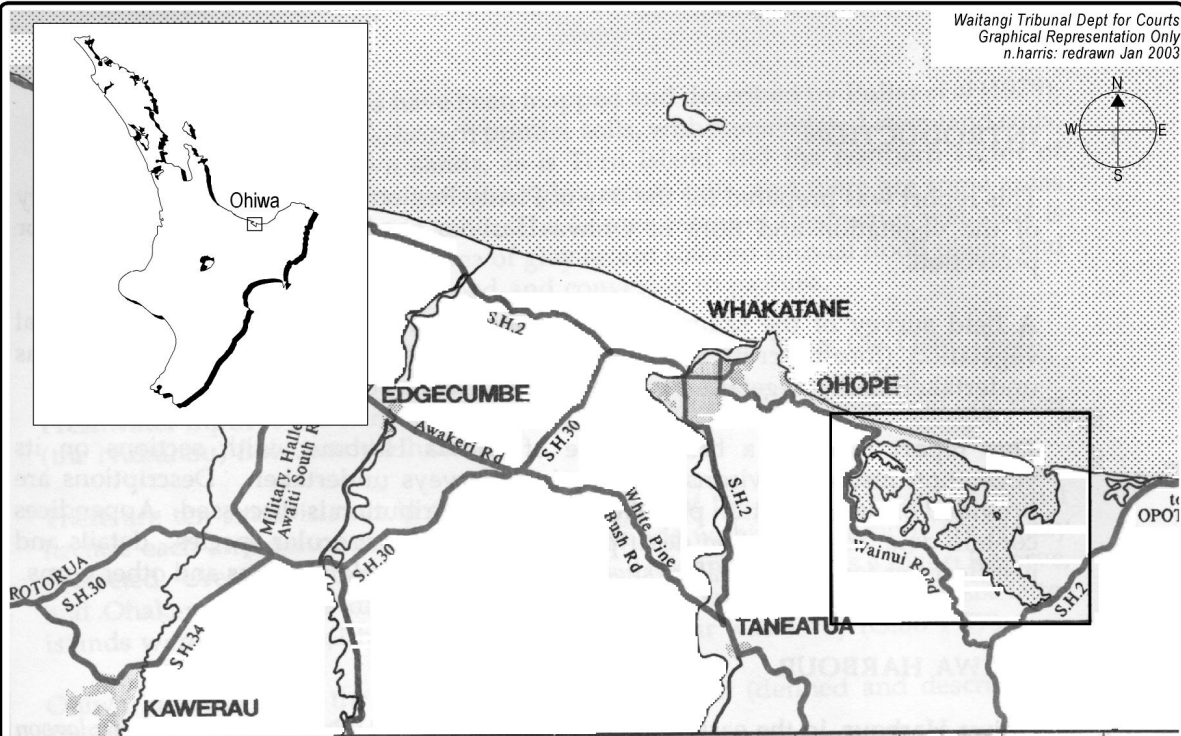


FIGURE 1: LOCATION MAP OF OHIWA HARBOUR

Source: Sarah Beadel, 'Ohiwa Harbour Indigenous Vegetation', 1993, p1.

Evidence suggests that Ohiwa Harbour was one of the most densely settled areas in pre-European Aotearoa.⁴ As such, the harbour was, and remains, both a valued and contested resource.

Evidence and submissions relating to claims concerning Ohiwa harbour were presented to the Waitangi Tribunal's eastern Bay of Plenty inquiry (Wai 46 and others) during the course of 1994 and 1995. While the Tribunal's *Ngati Awa Raupatu Report* (October 1999) does not specifically cover claims relating to Ohiwa harbour, the issues of confiscation and the return of land to Maori are addressed. As the harbour fell within the eastern Bay of Plenty confiscation boundary, and as several reserves upon its shore were returned to Maori, certain historical events relating to the harbour were covered in that report. The report focused on the Ngati Awa and Tuwharetoa claims, and among the claims listed as not being covered by the report are those of Upokorehe, and the issue of the pollution of Ohiwa harbour.⁵

In the Memorandum and Directions regarding the first Judicial Conference on the 26-27 March 2002 for the Urewera District Inquiry, dated 14 March 2002, the Tribunal set out its proposed inquiry boundary for the Urewera inquiry. The Tribunal stated that the boundary entered into the Bay of Plenty confiscation district to include the 'outstanding claim issues in respect of Ohiwa harbour and the confiscated territories that were not heard and reported on in the Tribunal's *Ngati Awa Raupatu Report* (1999)'.⁶ (See figure 2).

At least five iwi and hapu claims relating to Ohiwa Harbour have been submitted to the Waitangi Tribunal:

- Wai 36 (James Wharehuia Milroy and T R Nikora, on behalf of the Tuhoe tribe);
- Wai 46 (Hirini Moko Mead, for Ngati Awa);
- Wai 87 (Claude Augustin Edwards, for the Whakatohea Maori Trust Board);
- Wai 339 (Turinga Mokomoko, for Hiwarau C block beneficiaries, who are of the Upokorehe hapu of Te Whakatohea iwi); and

⁴ Anita Miles, *Te Urewera*, Waitangi Tribunal Rangahaua Whanui Series, March 1999, p 41; Te Roopu Whakaemi Korero o Ngati Awa, 'Ohiwa', report commissioned by Te Runanga o Ngati Awa, Whakatane, November 1995 (Wai 46 ROI, doc L10), p 5

⁵ Waitangi Tribunal, *The Ngati Awa Raupatu Report*, Wellington, GP Publications, 1999, p 10

⁶ Memorandum and Directions of the Tribunal regarding the first Judicial Conference on the 26-27 March 2002 for the Urewera District Inquiry, 14 March 2002 (Wai 894 ROI, doc 2.15)

- Wai 1012 (Hohepa Joseph Kereopa and others, on behalf of Ngati Raka, Te Hapu Oneone and Tamakaimoana - within the Nga Rauru o Nga Potiki grouping of claimants).

While the *Ngati Awa Raupatu Report* does not directly address claims to Ohiwa harbour, it does raise the issue of boundaries. In the context of both the historical and contemporary claims to Ohiwa and its surrounds, the concept of ‘boundary’ is problematic, implying – as Miles points out – ‘that it is possible to represent iwi interests by definitive lines drawn on a map’. It might, as Miles suggests in reference to Tuhoe, ‘be more useful not to discuss boundaries per se, but dominant areas of influence’.⁷ This is relevant for all claimants to the Ohiwa harbour area. With regard to boundaries, in the *Ngati Awa Raupatu Report* the Waitangi Tribunal reached the general conclusion that:

Taking a European view of matters, it is considered that the boundaries between Ngati Awa, Whakatohea, Tuhoe, and Te Arawa are indistinct. To insist that the groups should define the boundary lines between them is to ask them to do that which is culturally impossible, or that which is an affront to cultural values. The relationships between the groups have been such that each can point to sites of ancestral significance to it well within the territories of the others, and each can whakapapa to persons who lived in the kainga of another group.

Referring more specifically to the Ohiwa harbour area, the report continues as follows:

Taking a broad view, however, it may be seen that, to the east of the Ngati Awa heartlands, Ngati Awa merged with Whakatohea and Tuhoe at Ohiwa Harbour, and that the harbour itself was shared by all three. It may also have been shared with other groups as well, Te Whanau-a-Apanui being mentioned in that context. Similarly, on a broad view, while the lands between the coast and the southern confiscation line were predominantly held by hapu of Ngati Awa, Tuhoe had substantial interests in places on either side of the border, just as Ngati Awa had interests beyond the border. This is not to deny that, in addition, Tuhoe can claim historical associations with sites much closer to the coast.⁸

⁷ Miles, *Te Urewera*, p 482

⁸ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 134

The report goes on to conclude ‘that Ngati Awa had by far the predominant interest in the confiscated land as far as the Ohiwa Harbour’,⁹ that is, to the west of the harbour.

As Judith Binney has noted in her Urewera overview report, ‘Encircled Lands’, ‘Ohiwa harbour is not usually included in most “modern” definitions of the “Urewera”.’ However, Binney continues, the ancient ancestral boundary of Potiki I, as described by the Tuhoe elder John Ru Tahuri, as he heard it from his elders, ‘insists on the inclusion of the eastern Ohiwa harbour’ in the Ngai Tuhoe rohe:

He mentions the mountain Pukenui-o-Raho, to the east of the Waiotaha River [which lies to the east of Ohiwa harbour], which nineteenth-century Tuhoe elders consistently referred to as being theirs. He depicts the famous grove of pohutukawa trees on the end of the Waiotaha spit, and he sees Te Wainui, close to the southern shore of the central Ohiwa harbour, as the point where the ancestral boundary turned inland.¹⁰

Regarding the northern extent of the Urewera boundary, Binney writes:

To the north of the Urewera mountains lie the coastal lands of the eastern Bay of Plenty claimed by Ngati Awa, Te Whakatane, Te Upokorehe and Te Whakatohea – as well as by several Tuhoe hapu, who by the 1830s occupied parts of the region bisected by those three great rivers, Whakatane, Tauranga (Waimana) and Waiotaha.¹¹

Binney also points out that Te Urewera is not a single tribal territory, and as such, its borders have been, and continue to be contested:

In the ‘transition zones’, particularly at the borders where the mountains descend towards the river valleys on the west and on the east, and towards the Bay of Plenty, the communities who lived there fought each other frequently, but they were also intertwined by multiple kinship links, forged through politically arranged marriages. These marriages established peace and enabled the territorial extensions of the pre-eminent hapu.¹²

⁹ Ibid., p 134

¹⁰ Judith Binney, ‘Encircled Lands, Part One: A History of the Urewera from European Contact until 1878, An Overview Report on the Urewera’, report commissioned by CFRT, April 2002, pp 4-5; Binney cites Oral Source: John Ru Tahuri (adopted son of Rua Kenana Hepetipa), Rotorua, 23-24 March 1998, tape 2b

¹¹ Ibid., p 7

¹² Ibid., p 4

In anticipation of the initialling of a Deed of Settlement between the Crown and Ngati Awa in August 2002, the Waitangi Tribunal held an urgent hearing to hear the objections of Tuhoe and other claimants to aspects of this proposed settlement. A significant area of redress contested by Tuhoe claimants (Wai 36 and Wai 975 Nga Rauru o Nga Potiki) was with regard to Ohiwa harbour.¹³ Prior to the Tribunal's hearing of these issues, the Crown had initially offered Ngati Awa several items of 'exclusive cultural redress' to the north and west of the harbour, recognising Ngati Awa's customary interests in this area. These included offers relating to the Port Ohope recreation reserve and Tauwhare Pa scenic reserve. In making these offers, the Crown identified other Crown land around the eastern and southern shores of the harbour as being potentially available for future settlements. Following objections from the Tuhoe-Waikaremoana Maori Trust Board, 'the Crown acknowledged that there is evidence of "fluctuating fortunes" of different iwi in this area'. While the Crown proceeded with the offers relating to the Port Ohope recreation reserve, it adjusted its offer relating to Tauwhare Pa scenic reserve from 'exclusive' to 'non-exclusive redress' – allowing for representatives of other iwi to be included in its management. Ngai Tuhoe claimants also objected to the offer to grant Ngati Awa 'a preferential right to purchase up to 5 per cent of any authorisations within the Ohiwa Harbour that the Minister of Conservation may offer by public tender in accordance with part VII of the Resource Management Act 1991'. This would include, for example, the granting of marine farming authorisations. The Tribunal reported that, '[w]hile this offer is exclusive to the extent of this 5 per cent, the Crown argues that it is effectively non-exclusive as similar redress may be offered to other claimant groups as part of future settlements if appropriate. This recognises that the Crown did not consider that Ngāti Awa had exclusive rights to the Harbour'.¹⁴

As Miles points out in the Ohiwa Harbour scoping report, while 'it must be borne in mind that claims to the Waitangi Tribunal are made against the Crown':

it seems implicit in the claims concerning Ohiwa, that one grievance is the Crown's failure to appreciate the complexity of Maori iwi and hapu relations at Ohiwa. This has, some claimants argue, resulted in the Crown dealing with the wrong people, returning

¹³ Waitangi Tribunal *Ngāti Awa Settlement Cross-claims Report*, Wellington, Legislation Direct, 2002

¹⁴ *Ibid.*, pp 82-83

‘outsiders’ to land rightfully belonging to tangata whenua, and failing to recognise who were, or are, the appropriate iwi authorities to deal with in regard to the harbour.¹⁵

Miles also states that it is important to note that this research report is being undertaken on behalf of the Waitangi Tribunal to assist its inquiry into the Urewera district claims, and therefore does not advocate on behalf of any particular claimant group or groups in support of any particular claim. It is not the function of this report to come to any conclusions regarding customary title to Ohiwa Harbour. However, as a number of overlapping claims have been made regarding the harbour, attempts will be made to clarify the different positions advocated by each group in this matter. This report describes and analyses the Crown’s administration of Ohiwa, and the devolvement of its power to local authorities, whose policies and actions are also discussed. It examines the actions or omissions of the Crown or its agents in the management of the harbour, in order that the Tribunal might determine whether there have been breaches of the principles of the Treaty of Waitangi.

For the purpose of this report, the definition of Ohiwa Harbour is not solely confined to its harbour-bed, waters, islands and foreshores. Instead, a broader view is taken; defining Ohiwa as a district centred around the harbour itself, including the lands and resources that surround it. Understanding the associations and histories of the hapu and iwi inhabiting the Ohiwa hinterland provides a context for understanding the various relationships with the harbour itself.

1.3 Claims made to the Waitangi Tribunal Concerning Ohiwa Harbour

As mentioned above, five iwi and hapu claims concerning Ohiwa Harbour have been submitted to the Waitangi Tribunal.

Wai 36: James Wharehuia Milroy for the Tuhoe tribe

This claim alleges that Tuhoe have been denied the ownership and control of lands and fisheries in Ohiwa Harbour by the Crown, or that Tuhoe ownership of such lands and resources are not recognised by the Crown: ‘the mana of that harbour is denied to Tuhoe’. These claimants further allege that, by Crown action and omission, Ohiwa Harbour has been

¹⁵ Miles, ‘Ohiwa Harbour Scoping Report’, pp 4, 9-10
[8]

polluted and desecrated, and the Tuhoe fisheries in that harbour have been depleted. These claimants seek the following relief:

That exclusive right to possession, use and control of Ohiwa Harbour ... (including foreshores) and the fisheries in that harbour be granted to Tuhoe and that to the extent that they have not been given effect to and are now depleted, that compensation be provided to the Claimant.

A consolidated statement of Tuhoe claims, filed by James Wharehuia Milroy and Tamaroa Raymond Nikora on behalf of the Tuhoe Waikaremoana Maori Trust Board and the Tuhoe tribe, was received by the Waitangi Tribunal in February 2000. Section 1.1.9 of this claim notes that Tuhoe tribal land at Ohiwa was confiscated by the Crown in 1866, but does not further particularise Tuhoe's claim to Ohiwa. However, in respect of rivers, waterways and fisheries, the consolidated statement of Tuhoe claims, says that:

Tuhoe has retained and exercised its tino rangatiratanga over the rivers, waterways and fisheries within the Tuhoe rohe. The Crown has consistently failed to recognise and provide for Tuhoe's rights in respect of the said rivers, waterways and fisheries.

The claimants assert that Tuhoe still maintain tino rangatiratanga over all rivers, waterways and fisheries situated in the Tuhoe rohe, and that the Crown has failed to recognise and protect Tuhoe's rights in respect of these resources. The claimants make specific mention of legislation such as the Water and Soil Conservation Act 1967, the Public Works Acts and the Resource Management Act 1991, as having failed to recognise and protect Tuhoe interests and having failed to provide for Tuhoe's rightful role in managing their waterways and fisheries.

Wai 46: A Claim by Hirini Moko Mead, for Ngati Awa

This claim refers to te tino rangatiratanga that Ngati Awa held over its rohe, including Ohakana and Uretara islands, 'and the seas from Waihi (near Maketu) to Ohiwa Harbour'. The harbour at Ohiwa is noted by these claimants as having been a feature and resource of special significance to their iwi. The claimants note that Ohiwa fell within the 1866 confiscation district boundary, and that an Arawa military settlement was established at Ohiwa, leaving Ngati Awa with an impression that they were 'under military rule and observation'. Of Ngati Awa's Ohiwa interests, only the Ohope reserve (1,575 acres), which partially abuts the western arm of the harbour, was returned to them. Ngati Awa claimants

allege that since the raupatu, the Crown has permitted the Ohiwa Harbour, among other waterways, to become polluted as a result of industrial and agricultural waste discharge into the harbour. While the Wai 46 amended statement of claim does not seek specific redress with respect to Ohiwa, it should be noted that the claimants seek, amongst other things, restoration of their tino rangatiratanga and the return of lands and resources held by the Crown within their rohe. Conceivably, this might include the harbour itself, and those of its islands under Department of Conservation administration, and certain reserves dotting the harbour. On 8 July 2002, the Crown and Ngati Awa initialled a Deed of Settlement which included a number items of redress objected to by other iwi (Tuhoe in particular), including parts of Ohiwa Harbour. These 'cross-claim' issues were considered by the Waitangi Tribunal and reported on in the *Ngāti Awa Settlement Cross-claims Report (2002)*.¹⁶

On 24 February 1999, Ngati Awa counsel wrote to the Registrar of the Waitangi Tribunal to inform it that they had been instructed by their clients to file further claims and an amendment to Wai 46 in respect of the seabed and foreshore at Ohiwa Harbour.¹⁷

Wai 87: Claude Augustin Edwards, for the Whakatohea Maori Trust Board

In paragraph 19 of this statement of claim, Ohiwa is described as 'a traditional food source and cultural repository of the Mauri of the Whakatohea'. Whakatohea claim the harbour as well as the islands within the harbour. In an amendment to the Wai 87 statement of claim, received by the Waitangi Tribunal on 8 January 1999, the Whakatohea claimants stated that they believed their customary title to an area of foreshore and seabed, including Ohiwa Harbour, had not been extinguished. If the Maori Land Court determined that this title had indeed been extinguished, the claimants state that this would have been without their consent and therefore a breach of the Treaty. The claimants seek the vesting of the defined foreshore and seabed in the Whakatohea raupatu claim beneficiaries.

The Whakatohea (including Upokorehe) claimants decided to prosecute their claim via direct negotiations with the Office of Treaty Settlements and so did not table any research on Ohiwa before the Ngati Awa and Eastern Bay of Plenty Tribunal. Following the Crown's offer of a

¹⁶ Waitangi Tribunal *Ngāti Awa Settlement Cross-claims Report*; Ngati Awa and Her Majesty the Queen, Deed of Settlement to Settle Ngati Awa Historical Claims, initialled 8 July 2002

¹⁷ L R Harvey, Walters Williams & Co to the Registrar, Waitangi Tribunal, 24 February 1999; cited in Miles, 'Ohiwa Harbour Scoping Report', p 6, fn 6

Deed of Settlement to Whakatohea on 1 October 1996, negotiations stalled between the two parties. Thus far Whakatohea have not sought to be heard in the Tribunal's Urewera inquiry.

Wai 339: Tuiringa Mokomoko, for Hiwarau C block beneficiaries, who are of the Upokorehe hapu of Te Whakatohea iwi

The claimants state that prior to confiscation, Upokorehe owned approximately 1,321 acres of land at Ohiwa and four islands of Ohiwa Harbour. Following the 1866 confiscation, 1200 acres and one island were returned, according to the statement of claim, to '30 women who were blamed with Mokomoko for the murder of Volkner'. It is further claimed that from 1867 to 1962, the 1200 acres was reduced to 800 acres, and that due to alleged mismanagement by the Land Court and the Maori Trustee, the owners were 'left with [a] much run down block of land, no finance, and arrears of rates and rent'.

In 1995 counsel for the Wai 339 claim made a submission to the Waitangi Tribunal's Wai 46 Ngati Awa and Eastern Bay of Plenty inquiry, identifying the following claim issues: 'the confiscation of land'; 'the actions of the Compensation Court in 1874 in vesting traditional Upokorehe lands in persons not entitled to them'; 'the inaction by the Maori Land Court in 1898 and 1939 in failing to right the actions of the Compensation Court'; 'insufficient compensation being allowed by the Sim Commission'; 'mismanagement by the Maori Trustee, an agent of the Crown, since 1969'; and 'the treatment of Mokomoko'.

In an amendment to the statement of claim, Mr Mokomoko states that the original boundary between Ngati Awa and Te Whakatohea was at the Maraetotara stream on the western side of Ohiwa Harbour. The claimants state that they were deprived of land at Ohiwa due to the confiscation of 1866.

In April 2002, the present author completed a research report for the Tribunal looking into the Wai 339 claims.¹⁸ It became evident that the Wai 339 claim, together with the Wai 203 claim (both lodged by Tuiringa Mokomoko) were in fact Mokomoko whanau claims rather than claims on behalf of Upokorehe. Upokorehe's position is that they are a hapu of Whakatohea and support that iwi's claims and endeavours to reach settlement.

¹⁸ Ewan Johnston, 'Wai 203/339 Research Report', report commissioned by the Waitangi Tribunal, June 2002 (Wai 894, A14)

Wai 1012: Hohepa Joseph Kereopa, Leonard Apanui Brown and Turuki Te Maungarongo Tiopira, on behalf of Ngati Raka, Te Hapu Oneone and Tamakaimoana

This claim is ‘in respect of the general economic losses suffered by Ngati Raka, Te Hapu Oneone and Tamakaimoana of Te Waimana’. With regard to Ohiwa harbour, it is alleged that the Crown failed to actively protect the rangatiratanga and the mana moana of Ngati Raka, Te Hapu Oneone and Tamakaimoana by permitting the establishment and operation of a waste treatment plant at Ohiwa. They claim that legislation passed by the Crown enabled local bodies and other administrative organisations responsible for the management of industrial development and sewage treatment to make decisions that would severely detrimentally effect the sea resources of Ngati Raka, Te Hapu Oneone and Tamakaimoana. They claim that their fisheries have been severely affected by the sewage out-fall into the Ohiwa Coastal Marine Area, and that ‘as a result Ngati Raka and Te Hapu Oneone, also known as a coastal people, have been deprived of their customary resources’.

1.4 The Focus and Structure of this Report

While each of the statements of claim differ in both scope and emphasis, the claims against the Crown can be grouped into several broad categories:

1. Claims that the Crown has failed to adequately recognise the Maori customary ownership of Ohiwa Harbour, including its islands, foreshore and waters, while assuming ownership and control of the harbour itself;
2. Claims that Maori customary rights at Ohiwa (including fishing rights) have been adversely affected by actions and omissions of the Crown;
3. Claims relating to the limited amount of land returned to Maori at Ohiwa following the confiscation of 1866, and the issue of whether the reserves were returned to the right people; and
4. Claims that the management of Ohiwa Harbour by the Crown and local authorities has resulted in serious pollution and desecration of the harbour, and its flora and fauna.

This report will focus primarily on these matters, and will provide an overview of Maori customary occupation prior to the confiscation of the harbour as part of the eastern Bay of Plenty confiscation district; an analysis of the military occupation and confiscation and the effects of this on local Maori; the partial return of land to Maori (particularly the actions of

Wilson, the Government agent, and the Compensation Court); and the central and local government's administration of the harbour from 1840.

In order to provide a necessary context within which to analyse these issues, sections of this report will provide a physical description of Ohiwa Harbour and the surrounding area; accounts of Ohiwa during the contact period; and a history of Maori and Pakeha co-habitation of the area from the time of the first Pakeha settlers to the present.

1.5 Methodology

In addition to Anita Miles' 'Ohiwa Harbour Scoping Report', I have drawn upon a number of other reports in writing this research report, notably Miles' *Te Urewera* Rangahaua Whanui district overview report, reports by Judith Binney, Jeffrey Sissons, Bryan Gilling, and others, along with the 'Wai 203/339 Research Report'.¹⁹ I have also made use of a number of research reports and submissions presented to the Waitangi Tribunal during the Wai 46 Ngati Awa and Eastern Bay of Plenty inquiry, and the Tribunal's *Ngati Awa Raupatu Report*. I have also used secondary sources such as Elsdon Best's *Tuhoe: Children of the Mist*, and material published in the *Historical Review* – the Journal of the Bay of Plenty Historical Society.²⁰

Published official documents from the *Appendices to the Journal of the House of Representatives*, the *New Zealand Gazette*, and the Waitangi Tribunal's Raupatu Document Bank were consulted, as was material from the Alexander Turnbull Library, Archives New Zealand, Land Information New Zealand, the Maori Land Court (Waiariki district), the Department of Conservation Resource Centre (Wellington), Environment Bay of Plenty, Whakatane District Council; Opotiki District Council, Department of Conservation Bay of Plenty Conservancy, the H D London Memorial Library, and the Opotiki Heritage and Agricultural Society Museum.

During the course of writing this report I have met with various claimants and counsel, presented a work-in-progress seminar at an Urewera research hui in December 2002, made

¹⁹ Binney, 'Encircled Lands'; Bryan D Gilling, 'Te Raupatu o Te Whakatohea: The Confiscation of Whakatohea Land 1865-1866', 1994 (Wai 87 ROI, doc A3); Johnston, 'Wai 203/339 Report'; Miles, *Te Urewera*; Miles, 'Ohiwa Harbour Scoping Report'; Jeffrey Sissons, 'Waimana Kaaku: A History of the Waimana Block', report commissioned by the Crown Forestry Rental Trust, June 2002 (Wai 894 ROI, doc A24).

²⁰ Elsdon Best, *Tuhoe: The Children of the Mist*, 2 vol, 2nd ed, Wellington, Reed, 1972. Best's work (in particular) is used with an awareness of the caution required in doing so.

available a first draft of this report, and received comments on this draft from a number of claimants, counsel and historians.

2. Physical Description of Ohiwa Harbour

2.1 The Harbour

Ohiwa Harbour is located in the eastern Bay of Plenty, and falls within the Taneatua Ecological District, as defined by the Department of Conservation. The harbour is an approximately 26.4 square kilometre tidal lagoon, almost enclosed by the Ohope sand spit to the west and the Ohiwa sand spit to the east. The Ohope Spit is approximately 6 kilometres long and varies between 300 and 1000 metres in width, while the much smaller Ohiwa Spit is approximately 500 metres long and 200 metres wide. These spits are described as ‘geologically dynamic environments with unstable frontal dunes’, and the Ohope spit is growing steadily longer as the Ohiwa spit erodes.¹

Ohiwa is a relatively shallow harbour, with most of its area exposed as mudflats and sand at low tide. The harbour’s 85-kilometre coastline includes two intruding peninsulas and the prominent Hiwarau ridge, which, due to its elevation and its central location on the southern shore, contains a high concentration of pa sites.²

The harbour catchment covers an area of some 171 square kilometres, with about three-quarters of the land in pasture and the remainder forested and in scrub cover.³ Four distinct valleys of small catchment size feed into the harbour. These flowed directly into the sea prior to the formation of the harbour, with its two spits, between 2000 and 6,500 years ago. The main source of fresh water is the Nukuhou River. Twelve streams flow into the harbour, the largest being the Awaraputuna, Pukehoko, Waiotane, Wainui, Te Awawairoa, Kutarere, and Te Kakaha streams. In addition, four very small streams drain fresh water swamps into the harbour. Nevertheless, the freshwater flow into the harbour is limited.⁴

¹ Ken Phillips, ‘The Archaeology of the Eastern Bay of Plenty’, MA thesis, University of Auckland, 1996, p 21

² Ibid., p 22; B N Hughes, *Draft Ohiwa Harbour and Catchment Scoping Report*, Environment B-O-P, Resource Policy Publication 2002/01, 2002, p 1

³ S G Park, *Bay of Plenty Regional Council Coastal Overview Report*, Technical Publication No 3, Bay of Plenty Regional Council, Whakatane, 1991, cited in Sarah M Beadel, *Ohiwa Harbour Indigenous Vegetation*, Wildland Consultants Ltd for the Bay of Plenty Regional Council, 1993, p 1

⁴ Phillips, p 21; he cites L J Daniel, *Mangroves and Salt Marshes of Ohiwa Harbour*, Department of Lands and Survey, Gisborne, 1984, p 11

The surrounding hill country is of a moderate gradient and is dissected by small valleys, some of which have been developed into small life-style blocks. There are also several radiata pine plantations that now comprise approximately 20 per cent of the Ohiwa catchment area.⁵ The only substantial residential development has occurred on the Ohope spit, while the erosion of the Ohiwa spit meant that the burgeoning township once established there fell prey to the sea.

Within the harbour itself, there are ten small islands. Four of these comprise less than 1 hectare each and, according to Sarah Beadel, are unnamed (by Europeans, at least). Five of the islands are legally protected: Uretara island (which became locally known as 'Ducker's Island') is a scenic reserve; Motuotu is a nature reserve; Pataua is a scientific reserve; and Whangakopikopiko (Tern) Island is a wildlife refuge. Hokianga Island remains in Maori ownership as a Maori reserve. Ohakana Island is divided into lifestyle blocks.⁶ The islands form a combined area of approximately 2.6 square kilometres.⁷

2.2 Flora and Fauna

The indigenous flora and fauna of the harbour and catchment has been greatly modified since the arrival of humans in the area (generally held by archaeologists to have been about 700-1000 years ago, while Maori tradition supports a more distant date of arrival). In pre-human times, most of the Ohiwa district would have been forested.⁸ Additionally, there were more extensive areas of coastal sand dunes, saline and freshwater wetlands. According to Beadel, only 11 per cent of the original indigenous vegetation cover of the Taneatua Ecological District remains today.⁹ Remnants of the original forest cover suggest a combination of podocarp forest, shrublands and fernlands, including such species as pohutukawa, puriri, kahikatea and totara. According to Phillips, while these remnants provide some clues to the historical vegetation coverage, 'the chronological sequence of firing and clearance of this forest is largely unknown'. He adds that:

⁵ John McIntosh, Stephen Park, *Environmental Quality of Ohiwa Harbour*, Environment Bay of Plenty, Environmental Report 97/17, August 1997, pp iii, 1

⁶ Beadel, p 3; McIntosh and Park, p 2

⁷ Phillips, p 21. According to Hohepa Kereopa, the name 'Hokianga' is a mis-transliteration of 'Okianga'. Conversation with Hohepa Kereopa, Ohiwa Harbour, 12 December 2002

⁸ Beadel, p 3

⁹ *Ibid.*, p 5

Traditional information indicates that considerable trade was conducted between inland and coastal populations in prehistory, the commodities exchanged being forest and harbour produce. This may suggest coastal populations did not have access to plentiful forest resources due to relatively early and extensive deforestation.¹⁰

Another feature of the Ohiwa Harbour are its mangroves (manawa), which are thought to be more abundant now than in the pre-human period. Ohiwa harbour forms the most southerly limit of this species in New Zealand. The mangroves have partially replaced a saline wetland environment: 'searush ... tussockland would have been abundant with oioi (*Leptocarpus similis*) common [or 'jointed rush'] and *Baumea juncea* local'. There would also have been marsh ribbonwood sedgelands and shrublands, and manuka, ti kouka (cabbage tree), harakeke (flax), toetoe and raupo.¹¹ The extent of the mangroves has increased markedly, particularly in the Nukuhou estuary, at Kutarere, and around Uretara, Pataua and Motuotu islands. Freshwater wetlands would also have once been more extensive, and would have included swamp forest dominated by kahikatea and pukatea, and non-forest wetlands dominated by raupo, sedges, harakeke, swamp millet and ti kouka. Only a few, small, examples remain, most notably that found on the Hiwarau block, which Beadel has described as 'the best remaining examples in the Taneatua ecological district'.¹² Little of the original vegetation cover remains in the harbour's dunes.

As Beadel has concluded, 'the present-day vegetation has evolved in response to the geological, climatic and cultural influences that have effected the area'. In her 1993 survey of indigenous vegetation of the harbour, she identified fifty-nine vegetation types and habitats, and within these, 247 indigenous and 123 introduced vascular taxa.¹³

The harbour area would have supported abundant birdlife, including what are now extinct or rare species: moa, kokako, kiwi and kereru. At night, the Ohiwa forests were home to sheltering seabirds. Deforestation, the increase in mangroves, and the decrease in wetland

¹⁰ Phillips, p 29

¹¹ Beadel, p 5

¹² Ibid., pp 5, 10, 19

¹³ Ibid., pp 9, 14

environments has altered the diversity of bird species. A 1994 survey identified 35 marshland species within the freshwater wetlands of the harbour.¹⁴

The harbour has traditionally been a site of extensive marine life. Snapper, kahawai, yellow-eyed mullet and flounder are among those marine vertebrate fish identified within the harbour. The western side of the harbour was, until recent times, a breeding ground for sharks, and sharks can still be caught in the harbour. The salt marsh area at the mouth of the Nukuhou River provides a spawning habitat for whitebait. The recent depletion of both fish and shellfish stocks has been blamed on both over-fishing and the increased sedimentation of the harbour caused by deforestation.¹⁵

2.3 The Impact of People

Extensive Maori settlement of the Ohiwa district had a notable impact on the harbour environment. Forests were cleared by fire for cultivations, villages and along travelling routes. Maori introduced the kiore and kuri. Dense settlement meant considerable modification of surrounding vegetation and the arrival of Europeans resulted in an intensification of these processes. Further land was cleared, initially in the flatter river valleys, and then in much of the hill country. Europeans brought with them cats, rats, possums, goats and invasive plants, all of which had a detrimental impact on flora and fauna at Ohiwa. The introduction of domestic stock has also had a huge impact on the area. More recently, pinus radiata plantations have been established at several points around the harbour, and the hill country has also been developed for horticulture and lifestyle blocks. The residential development at Ohope and Ohiwa, mentioned above, has resulted in severe destruction and modification of dunelands and harbour margin vegetation, and the loss of, or damage to, numerous sites of importance to Maori and to their waahi tapu.¹⁶

The harbour's wetland vegetation has suffered considerably as a result of human modification following the arrival of European settlers:

¹⁴ Phillips, p 162; he cites K L Owen, *Marshbird Habitat of Ohiwa Harbour*, Technical Support Series No. 22, Department of Conservation, Rotorua, 1994, p 9

¹⁵ *Ibid.*, p 30

¹⁶ Beadel, pp5-6; Department of Conservation, Rotorua, *Te Kete Kai a Tairongo*, video, 1995

with evidence of grazing, draining, infilling (both contemporary and historic) and clearance throughout the harbour. Road construction (across estuaries) and farming activities (including reclamation) around the margins of the harbour have had perhaps the largest impact on the wetlands in recent times, altering drainage patterns and reducing their size.¹⁷

According to Ken Phillips' archaeological study 'deforestation of the catchment by both Maori and European has caused sedimentary infilling of the harbour'. This has resulted in an estimated one-third reduction in the tidal capacity of the harbour over the past 100 years. Furthermore, 'significant areas of flat low-lying land within the harbour catchment have been reclaimed since World War I for grazing stock, which, in prehistoric times, would have been intertidal wetlands rich in food resources'.¹⁸

According to a 1996 archaeological study of the eastern Bay of Plenty, the harbour can be viewed 'as an inverse island environment characterised by a settlement strip hugging the coast line with a considerably smaller scattering of sites in the hinterland'. The economic focus, therefore, was on the resources of the harbour and coast, 'with horticulture playing an important but less conspicuous role in the subsistence of the harbour populations'.¹⁹ The presence of storage pits testifies to the cultivation of kumara in the area, as does the suitability of both the climate and soil for this purpose, particularly on Ohakana Island. The remnants of two large pa site have been located on Uretara Island, the larger of which is estimated to have been capable of supporting as many as 500 people.

Discussion of these environmental impacts is important in this research because one of the major grievances that Maori have in regard to Ohiwa Harbour, is the Crown's management of the harbour environment.

¹⁷ Beadel, p 10

¹⁸ Phillips, p 23

¹⁹ Ibid., p 16

3. Customary Occupation of Ohiwa Harbour

3.1 Introduction

As noted in the introduction, Ohiwa Harbour has long been a valued and contested resource and its control and utilisation continues to be the subject of debate between Ngati Awa, Whakatohea and Tuhoe iwi. As Miles has stated, Ohiwa Harbour, according to the work of Milroy and Melbourne, 'had the status of the seafood basket of the Mataatua tribes, owing to the rich resources of the area and its convenience as a harbour'.¹ There are several names for the harbour that refer both to this status and to the significance of the tipuna, Tairongo, to the history of Ohiwa: Te Moana o Tairongo; Te Moananui a Tairongo; Te Kete Kai a Tairongo; and Te Umu Taoroa a Tairongo. Archaeologists have identified a total of 91 pa sites in the Ohiwa area, and it has been argued that all of these were constructed during the period AD 1500 to AD 1769.² One site at Ohiwa, the 'Tokitoki midden', is estimated to be between 600 and 700 years old, and is considered to be 'by far the most historic site in the Bay of Plenty' and one of the only sites sitting on ash from Kaharoa – a volcano that erupted in 1360.³

As proposed in the Tribunal's 'Ohiwa Harbour Scoping Report', this chapter draws largely upon claimant evidence submitted to the Waitangi Tribunal, and published secondary sources written in English. It is not intended to be a comprehensive study of the traditional histories of those people with interests in Ohiwa harbour; nor is it any substitute for traditional history that claimants may wish to present in the course of the Urewera district inquiry. As Miles argued in her scoping report 'this section is necessary in order to understand the genesis of the present claims before the Tribunal, to introduce the claimants to the readers of this report, and to understand the context of the Crown's complex dealings at Ohiwa'.⁴ It is hoped that this approach will complement the traditional history reports commissioned for this inquiry,

¹ Miles, *Te Urewera*, p 41; Te Ropu Whakaemi Korero o Ngati Awa, 'Ohiwa', p 5

² Phillips, p 30; he cites M Schmidt, "'Few Have Been Tested by the Spade . . .': Pa Excavation and Radiocarbon Dating in New Zealand Archaeology,' MA Research Essay, Department of Anthropology, University of Auckland, 1993

³ 'Wall Protects Ancient Dump', *New Zealand Herald*, 22 May 2000. The midden which contains shells, dog and moa bones, stones, and bone fish hooks, was discovered by DOC in 1995, and granted historic reserve status in 1999.

⁴ Miles, 'Ohiwa Harbour Scoping Report', p 10

as well as claimant evidence presented at hearings. These will provide a Maori perspective on the claims to Ohiwa.

This chapter concentrates on the key relationships and matters of dispute between the various claimant groups. It begins with a survey of Ngati Awa's traditional connections with the harbour, as claimed by the Wai 46 Ngati Awa claimants and heard by the Waitangi Tribunal's eastern Bay of Plenty inquiry in 1994 and 1995. This is followed by a discussion of the connections with the harbour claimed by Whakatohea, and in particular, the place of the Upokorehe hapu of Whakatohea. Then Tuhoe's historical connections to Ohiwa harbour are examined, drawing largely upon information found in the reports on the Wai 894 (Urewera) record of inquiry, as well as other sources. The connections and conflicts between Tuhoe and Whakatohea are then examined, with a focus on the relationships and connections between Te Upokorehe and the people of Waimana.

This chapter, in particular, is written with no illusions that these are not contested histories. It is not the purpose of this chapter to give preference to a particular history, or to be divisive, but rather to demonstrate that the pre-1840 histories of Ohiwa are complex and dynamic, and that all of the claimant groups concerned are able to demonstrate historical associations with the harbour. It should also be borne in mind that as much of the material presented in this chapter is taken from reports written from particular tribal perspectives, some of the views and positions expressed run contrary to those expressed by other claimants.

3.2 Ngati Awa

At the core of the Ngati Awa evidence regarding the issue of boundaries that was presented to the Tribunal's eastern Bay of Plenty inquiry lies the concept of whenua tautohetohe (or 'contested land'). The concept is outlined in the Ngati Awa research report 'Whenua Tautohetohe: Testing the Tribal Boundary', written by Hirini Moko Mead. In brief, Mead argues that rather than the boundary between tribal territories being a fixed line, there is a 'zone' or band of land 'which might be likened to a zone of no-man's land':

The zone is bounded on the inside with an inner boundary which marks the effective defensive ring of the owning iwi ... It also marks the line of heightened collective political

concern. A challenger who comes as far as the inner boundary triggers an iwi wide response and a serious territorial battle occurs.⁵

However, the argument continues, rather than the zone being like a ‘no man’s land’, ‘at any one time some iwi has political and military control over some or all of the land’.⁶ Such a zone, Mead contends, encircled the borders of the Ngati Awa rohe, passing through and including the whole of Ohiwa Harbour to the east.

The concept of whenua tautohetohe was further explored and applied in a series of reports produced by Ngati Awa concentrating on specific localities including Ohiwa Harbour. According to Ngati Awa’s Ohiwa report:

Ngati Awa identified areas of land that were the subject of often protracted disputes between competing iwi. Ngati Awa shares its boundaries with many neighbouring iwi and in all cases there are differences of opinion about the definition of the border. The disputes concerned ribbons of land around the borders and sometimes as in the case of Ohiwa Harbour, over a valuable asset.⁷

In response to the Ngati Awa submissions and evidence regarding the concept of whenua tautohetohe, the Tribunal commented that:

The question of where boundaries lie between contending iwi assumed such boundaries existed. The Tribunal is not entirely convinced that iwi were arranged as state-like institutions with borders of approximate definition fuzzed only by contestable zones.

It appears that in several districts, the overlaps were extensive. This district [the eastern Bay of Plenty] may not be an exception. It further appears that there are many instances of discrete tribal enclaves within larger compacts and also, of the maintenance of resource rights in local areas by distant hapu, holding such access of their own authority and not as clients of local regimes.⁸

⁵ Hirini Mead and Te Roopu Whakaemi Korero o Ngati Awa, ‘Whenua Tautohetohe: Testing the Tribal Boundaries’, Te Runanga o Ngati Awa, Whakatane, 1994 (Wai 46 ROI, doc C7), p 13

⁶ Ibid., p 14

⁷ Te Roopu Whakaemi Korero o Ngati Awa, ‘Ohiwa’, p 3

⁸ Directions, memoranda, on procedure, evidence, issues, review of Ngati Awa claims, 11 November 1994 (Wai 46 ROI, doc 2.59), para 5.2; cited in Miles, *Te Urewera*, p 482

As already noted, the *Ngati Awa Raupatu Report* stated that, ‘taking a broad view ... it may be seen that, to the east of the Ngati Awa heartlands, Ngati Awa merged with Whakatohea and Tuhoe at Ohiwa Harbour, and that the harbour itself was shared by all three’.⁹

In ‘Whenua Tautohetohe’, Mead notes that ‘Ohiwa is a historic landmark, an area rich in history, a harbour of great beauty and great abundance of food’. He describes the harbour as ‘a valuable food basket for many hapu over a long period of time’.¹⁰

According to Mead, ‘many hapu lived for a time on the shores of Ohiwa’, including ‘the original people known as Te Hapuoneone who occupied the land from the coast to Waimana and Ruatoki’, and the early hapu Nga Ariki who, according to Lyall came out of Te Hapuoneone’, and a section of whom ultimately became Ngati Hokopu. Mead identifies (with references) other hapu associated with Ohiwa, as follows:

- (a) Te Upoko-rehe (Lyall 1979:68) who are also a branch of Te Hapuoneone;
- (b) Ngati Irawharo, who derived from Te Tururu-mauku and Te Rarauhe-turukiruki but is connected both to Mataatua and Takitimu through the common ancestor Whaene (Best 1972:282-3);
- (c) Ngati Hamua, who are related to Ngai Te Kapo, and Ngai Tama all of whom appear to have settled at Tuararangaia near Te Mahoe (Best 1972:171). Their ancestors were Te Kapo-o-te-rangi and his brother Te Hoka-o-te-rangi;
- (d) Ngai Te Kapu, who were descendants of Hape and Toi. Their ancestor was Te Kapo-o-te-rangi. This hapu was eventually driven out of Ohiwa by Ngai Te Hapu which caused them to migrate to Ruatoki and Waimana (Best 1972:82).
- (e) Ngai Te Hapu set out for Motiti because the Ohiwa area had become uncomfortable for them. While at sea they were pursued and attacked by Ngai Te Kapu who succeeded in killing many members of Ngai Te Hapu. From that time onwards the hapu changed its name to Te Patuwai (Best 1972:82).¹¹

It is acknowledged that there was a long history of conflict between Ngati Awa and Tuhoe spanning some 200 years, stretching from Ohiwa to Matahina, and which was brought to an end by a ‘tatau pounamu’, or peace agreement, in about 1834. This border between Ngati Awa

⁹ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 134

¹⁰ Mead, ‘Whenua Tautohetohe’, pp 16, 18

and Tuhoe, Mead states, 'provides one of the best examples as to what is meant by *whenua tautohetohe*'.¹² While Ngati Awa research acknowledges that this contested 'zone' between Ngati Awa and Tuhoe stretched as far as Ohiwa in the east,¹³ the emphasis of the Ngati Awa research regarding traditional occupation and access to Ohiwa Harbour is on the conflicts between Ngati Awa and Whakatohea. Tuhoe, they argue, 'has not been a part of these disputes until recently'.¹⁴ The nature of Tuhoe's claims to Ohiwa have been criticised by Ngati Awa claimants who state:

That Tuhoe had access to Ohiwa is not disputed by Ngati Awa. They would have had access through their connections with Upokorehe. Access, however, is not the same as having rights of occupation and ownership over the land.¹⁵

According to Ngati Awa research, the Ngati Hokopu and Ngati Wharepaia hapu of Ngati Awa had spread out from Wairaka at Whakatane to settle along the coast and inland.¹⁶ Ngati Hokopu and Ngati Wharepaia were 'originally from the Whanau a Apanui region, and people of these hapu were instrumental in conquering and controlling the Ohope/Ohiwa coastland and inland areas'. Ngati Awa researchers claim that these people were known by the name Nga Ariki, and that their occupation is recounted in Best and Lyall.¹⁷ Lyall describes 'Ngariki' as ancestors of Whakatohea, stating that 'whether they maintained a strong and separate identity for a significant period is a matter of conjecture', and that there are 'conflicting claims about their origin and dispersal'. According to Lyall Ngariki are recorded as dwelling around Ohiwa, at Opotiki, Tunapahore (Hawai) and Poverty Bay. He notes the connection with Te Whanau a Apanui and with Ngariki living at Whakatane in the late nineteenth century. He also recorded that, when located at Tunapahore, Ngariki came into conflict with Ngai-Tai who eventually drove them to Onekawa at Ohiwa before defeating them so that they 'were dispersed, ceased to be a tribal entity, and the survivors scattered and spread along the coastal belt towards Whakatane'.¹⁸

¹¹ Ibid., p 16

¹² Ibid., p 24; see also Brief of Evidence of Dr Hirini Moko Mead, 20 June 2002 (Wai 958 ROI, doc A8), pp 9-10

¹³ Ibid., 'Whenua Tautohetohe', p 26

¹⁴ Te Roopu Whakaemi Korero o Ngati Awa, 'Ohiwa', p 3

¹⁵ Ibid.

¹⁶ Ibid., p 6

¹⁷ Te Roopu Whakaemi Korero o Ngati Awa, 'Ohope Reserve', June 1995 (Wai 46 ROI, doc G7(f)), p 2

¹⁸ A C Lyall, *Whakatohea of Opotiki*, Wellington, Reed, 1979, pp 12-19

Ngati Awa claimants acknowledge that other iwi, and 'in particular Whakatohea', occupied Ohiwa, and that there were frequent disputes, particularly during the 1820s.¹⁹ Hirini Moko Mead states that in the early 1800s the two main contending parties for Ohiwa were Whakatohea on the eastern side and Ngati Awa on the western side, with Ngati Hokopu being 'the dominant hapu' 'on the Ngati Awa side'. Ohiwa, he claims, provides 'a good example of a valuable resource on the boundary between two powerful iwi'.

Through time the borders of the *whenua tautohetohe* zone moved back and forth as one side tested the other. Occasionally the border might be pushed back more than usual but this was more likely to be a temporary phase. There was a measure of constancy about where the *whenua tautohetohe* was located. At one time Whakatohea attacked Ngati Awa and Tuhoe at Marae-totara and so came past the Ngati Awa side of the harbour and penetrated some distance towards Whakatane ... At another time Ngati Awa assembled an allied offensive and counterattacked as far as Te Papa which is situated at the mouth of the Waioweka Gorge.²⁰

The battles fought over Ohiwa, Mead states, 'were as intensive as those fought between Ngati Awa and Tuhoe'.²¹

Mead also makes the point that there were times when Ohiwa was uninhabited. 'Tiwai Piahana of Whakatohea stated this before the Compensation Court on 26th March 1867, and [it] was mentioned by several witnesses. This state of affairs,' he continues, 'is a characteristic of *whenua tautohetohe*. The land is cleared in order to separate the combatants and bring peace to the area'. Sometimes, he adds 'there is so much fighting that the place becomes unsafe for habitation'.²² An early Pakeha missionary account of the harbour appears to corroborate this, stating that in 1828 Ohiwa was 'debatable ground' and therefore 'uninhabited'.²³

The Ngati Awa reports emphasise those events that support their claim to ascendancy and dominance over the Ohiwa area over this period, particularly the defeat and subjugation of Whakatohea in about 1830, with the assistance of Ngati Maru of Thames. Among the conflicts

¹⁹ Te Roopu Whakaemi Korero o Ngati Awa, 'Ohiwa', p 7; Te Roopu Whakaemi o Ngati Awa, 'Ohope Reserve', p 4

²⁰ Mead, 'Whenua Tautohetohe', pp 18-19

²¹ Ibid., p 18

²² Ibid., p 21

²³ John Alexander Wilson, *The Story of Te Waharoa: A Chapter in Early New Zealand History*, reprint, Christchurch, Capper Press, 1984 (first published 1866), p 25

described in the Ngati Awa reports is a battle between Tuhoe and Whakatohea at Ohope, on the eastern side of the Maraetotara stream.²⁴ According to Best, Ngati Awa had asked Tuhoe's assistance against Whakatohea. He recounted that Tuhoe captured several of the Whakatohea, but did not slay them. Te Rupe, a Whakatohea chief, began to chant a haka, which Tuhoe joined in, whereupon the Whakatohea attacked Tuhoe and defeated them.²⁵ According to Ngati Awa researchers, Te Rupe purposely mistimed the beat of the haka, which was considered to be an ill omen, and so 'confounded' Tuhoe, accounting for their surprise.²⁶ Best also states that 'there are a few isolated fights which took place between Tuhoe and Ngati Awa'. One of these, which he suggests probably took place in 1821, occurred when a party of Ngati Awa and Ngati Pukeko attacked a section of Ngati Rongo living at Raroa, Te Waimana, having mistaken them for Te Whakatohea.²⁷

The Ngati Awa research also emphasises the defeat Tuhoe suffered at the hands of Whakatohea at Maraetotara around 1823. As a result of this defeat, Ngati Awa claimants assert that Tuhoe were no longer considered a threat to the security of Ngati Awa at Ohiwa.²⁸ Whakatohea, on the other hand, as Miles points out, 'were clearly still engaged in bloody disputes with Ngati Awa for control of the harbour'.²⁹ The most obvious example is the Pakeha accounts of the aftermath of the encounter between Ngati Awa and Whakatohea at Onekawa, on the eastern side of the harbour, in 1828. This was witnessed by the passengers aboard the CMS schooner *Herald*, Henry Williams among them. Ngati Awa were the victors, inviting the visitors to visit the pa of their chief at Whakatane.³⁰

The Tuhoe historians Wharehuia Milroy and Hirini Melbourne have questioned the extent to which the evidence presented by Ngati Awa 'testif[ies] to Ngati Awa's rise in the 1820s to be a force to be reckoned with'. 'Retracing the significant events involving Ngati Awa and Whakatohea in the 1820s,' they claim, 'revealed very little of what could be conceived as conclusive statements to Ngati Awa's greatness over Whakatohea'. They argue that in 1822 both groups suffered Nga Puhi attacks (but that Ngati Awa had fared well against a Nga Puhi force at Okahukura in 1818), that Whakatohea twice disposed of Tuhoe – at Otairoa in

²⁴ Te Roopu Whakaemi o Ngati Awa, 'Ohope Reserve', p 4

²⁵ Best, vol 1, p 385

²⁶ Te Roopu Whakaemi o Ngati Awa, 'Ohope Reserve', p 4

²⁷ Best, vol 1, p 386

²⁸ Te Roopu Whakaemi o Ngati Awa, 'Ohope Reserve', p 4

²⁹ Miles, 'Ohiwa Harbour Scoping Report', p 14

Ruatoki in 1822 and then at Maraetotara in Ohiwa in 1823, and that a Nga Puhi attack in 1825 further depleted Whakatohea ranks. They claim that at Onekawa in 1828, rather than Ngati Awa being outright victors, both sides sustained heavy losses and agreed to a mutual withdrawal.³¹

The decades of the 1820s and 1830s were obviously a very disrupted period in the history of Ohiwa and saw the displacement of people of all iwi from its margins for varying lengths of time. In the 1820s, Nga Puhi raiders, armed with muskets, triggered the periodic evacuation of coastal lands, including Ohiwa.³²

‘Violence at Ohiwa,’ Miles has pointed out, ‘escalated in the late 1820s, perhaps as a result of the introduction of muskets to the eastern Bay of Plenty tribes, and culminated in a successful Ngati Awa and Ngati Maru rout of the Whakatohea stronghold of Te Papa’:

This was a very significant event in the balance of power between the two iwi, and it resulted in the majority of Whakatohea being forced from their rohe. Some Whakatohea were taken as prisoners to Hauraki and Whakatane, while others escaped and fled to Tauranga. Ngati Awa say that following Whakatohea’s exile from the area, Ngati Awa hapu occupied the whole of Ohiwa.³³

Ngati Awa research states that they continued to assert mana whenua over Ohiwa after the exodus of Whakatohea following their defeat at Te Papa:

This event became a significant turning point in Ngati Awa’s endeavours to gain control of the [Ohiwa] area. Whakatohea were never able to recover fully from this defeat despite later protests and claims of ownership to some parts of Ohiwa ... Ngati Awa had acquired the land by conquest, maintained occupation of that area since that time and the mana whenua of the area has since remained with them.³⁴

³⁰ Te Roopu Whakaemi Korero o Ngati Awa, ‘Ohiwa’, p 7

³¹ Te Wharehuia Milroy and Hirini Melbourne, ‘Te Roi o te Whenua: Tuhoe claims under the Treaty before the Waitangi Tribunal’, Wai 36 Tuhoe claim report, 1995 (Wai 36 ROI, doc A4), pp 49-50; they cite Lyall, pp 141-143, 150, and Best, vol 1, pp 338, 385, 527

³² Miles, ‘Ohiwa Harbour Scoping Report’, p 14

³³ Ibid. Miles cites Te Roopu Whakaemi Korero o Ngati Awa, ‘Ohiwa’, p 10

³⁴ Miles, ‘Ohiwa Harbour Scoping Report’, p 14; Te Roopu Whakaemi o Ngati Awa, ‘Ohope Reserve’, p 4

According to Milroy and Melbourne, the battle at Te Papa (which Lyall places in the year 1830),³⁵ ‘appears to be the only pretext which Ngati Awa could possibly use to base their claims of take raupatu (rights of war and conquest) and take noho (rights of occupation) to areas once held by Whakatohea in Ohiwa and Opotiki’. They argue that it is difficult to point to any other engagements in which Ngati Awa and Ngati Muru could have totally subdued Whakatohea, and that oral histories provide no further information on the subject.³⁶ Milroy and Melbourne demonstrate that the evidence presented by Ngati Awa claimants before the Compensation Court in 1867 stressed Ngati Awa’s ‘mana tangata’ and ‘mana whenua’ in the Whakatane and Opotiki districts, and intimated their undisputed possession of Ohiwa and Opotiki from 1830 until the land was confiscated in 1866. On the other hand, they argue that while Whakatohea accounts acknowledge the defeat and heavy losses sustained at Te Papa, they stress that Ngati Awa made up only a small part of the invading force that also included Ngati Maru, Nga Puhi, Ngai Tai, Te Whanau a Apanui and Ngati Porou.³⁷

According to Ngati Awa researchers, following the defeat of Whakatohea at Te Papa, ‘Ngati Awa hapu occupied the whole of the Ohiwa area’ as well as Opotiki, and Keepa Toihau, a Ngati Hokopu chief, and his people settled on either Hokianga or Uretara Island.³⁸ In 1867, Kepa Toihau informed the Compensation Court that while there had been a great deal of fighting with Whakatohea over Ohiwa, ‘it has never been taken from us’. He also stated that ‘at the time the Europeans came, Ngati Hokopu held Ohiwa’.³⁹

Ngati Awa researchers state that following their flight after Te Papa, Whakatohea returned to Opotiki in the 1840s, led by the chief Titoko and aided by Ngai Te Rangi of Tauranga. They state that ‘although Ngati Awa did not consent to their return, neither did they attempt to prevent Titoko and his people from settling back at Opotiki’.⁴⁰ According to Lyall, Titoko became a chief of great mana and ‘there was a gradual recovery of Whakatohea in strength and numbers with Titoko assuming a prominent leadership role’. Lyall states that Titoko brought a substantial group of liberated Whakatohea home from Tauranga as early as 1831,

³⁵ Lyall, p 144

³⁶ Milroy and Melbourne, pp 50-51

³⁷ Ibid., pp 52-53

³⁸ Te Roopu Whakaemi Korero o Ngati Awa, ‘Ohiwa’, pp 10-11; Mead, ‘Whenua Tautohetohe’, p 19

³⁹ Mead, ‘Whenua Tautohetohe’, pp 19-20

⁴⁰ Te Roopu Whakaemi Korero o Ngati Awa, ‘Ohiwa’, p 12

and that most of the displaced Whakatohea had returned to their ancestral home and re-established themselves under the leadership of Titoko by 1840.⁴¹

According to Ngati Awa researchers, in 1840, upon the return of Whakatohea to Opotiki, ‘Titoko approached Keepa regarding access to the resources of Ohiwa harbour, and an agreement was apparently reached whereby Ngati Awa would retain the use of the western side of the harbour, while Whakatohea had the eastern side reserved for them.⁴² The exact boundary of this agreement is unclear. The Ngati Awa researchers state that ‘what is clear, is that Ngati Awa did not then consider that it [the boundary] was at the Nukuhou river. Whakatohea consider that Hokianga Island fell within their boundary’.⁴³ According to the testimony of Tiopira of Ngati Awa before the Compensation Court in 1867 (from which this material is drawn), Ngati Awa went to Uretara during the shark fishing season. He also stated that ‘from the time Papa fell up to the present the Whakatohea have never crossed the Ohiwa for the purpose of cultivating food’.⁴⁴ This would appear to indicate that Whakatohea had cultivated food on the western shores of the harbour prior to their defeat at Te Papa. Tiopira also stated that ‘when the war began Ohiwa was deserted by the Whakatoheas who went to fight against the Europeans’.⁴⁵ This would also appear to indicate that Whakatohea occupied Ohiwa prior to this.

The peace agreement at Hokianga lasted for only two years, when Whakatohea learned that Kepa Toihau of Ngati Awa had apparently sold Hokianga Island to a Pakeha named Mackey for a mare called Peti. He had also sold Uretara Island to a Pakeha trader named Nicholas. Whakatohea retaliated by burning Ngati Awa houses on Hokianga, and re-establishing themselves there. In return, Kepa and Kawakura of Ngati Awa burned the Whakatohea pa, Onekawa, situated on the eastern head of Ohiwa, and destroyed Whakatohea crops. Whakatohea appealed to Edward Shortland, Sub-protector of Aborigines for the Eastern District, H T Clarke, and Civil Commissioner Smith, all of whom attempted to mediate an agreement on the boundary between Whakatohea and Ngati Awa. Ngati Awa were willing to

⁴¹ Lyall, p 145-147. In *The Story of Te Waharoa* (1866) John Alexander Wilson stated that ‘by 1840 the bulk of the Wakatohea tribe had returned to Opotiki’; Wilson, *The Story of Te Waharoa*, p 18

⁴² Te Roopu Whakaemi o Ngati Awa, ‘Ohiwa’, pp 12, 15; Miles, ‘Ohiwa Harbour Scoping Report’, p 14; Compensation Court minutes, Opotiki sitting, 7 March – 8 April 1867, p 57 (RDB, vol 119, p 46112)

⁴³ Te Roopu Whakaemi o Ngati Awa, ‘Ohiwa’, p 12

⁴⁴ Compensation Court Minutes, Opotiki sitting, 7 March – 8 April 1867, p 58 (RDB, vol 119, p 46112)

⁴⁵ *Ibid.*, p 59 (RDB, vol 119, p 46113)

agree to a boundary at Hokianga but Whakatohea wished to have it removed west to Nukuhou.⁴⁶

According to Ngati Awa research, in about 1845, a further ‘disagreement’ between the two iwi was apparently sparked off when both Whakatohea and Ngati Awa went to Ohiwa to catch sharks:

Ngati Awa and Whakatohea then agreed to meet at Hokianga in order to resolve the boundary question. Whether as a result of these negotiations or not, Whakatohea then crossed to the western side of Ohiwa and constructed a pa. Further negotiations were unsuccessful. Whakatohea refused to leave. Finally however, Wiremu Tamihana Tarapipi “The Kingmaker” was called in to adjudicate. He agreed that the boundary between Whakatohea and Ngati Awa be the river at Hokianga.⁴⁷

In 1847, a peace agreement was made at Tauwhare pa, on the western side of the harbour. According to an account published in the *Rotorua Daily Post* in January 1964, and paraphrased in Ngati Awa’s ‘Ohiwa’ report as follows:

It was here that Mere Aira Rangihoea of Ngati Awa and Kape Tautini of Whakatohea lived together as husband and wife. Not long after the birth of their first child, and son, whom they named Te Pirini Tautini, Kape staged his own disappearance at sea. In reality he had returned to his people, the Whakatohea. The next time his wife saw him was when he returned amongst a number of battle ready warriors as they rowed their war canoes toward Tauwhare.

According to tradition, Mere Aira thwarted their plans to drive Ngati Awa from the area by appealing for peace. In doing so she threatened to kill her infant son by hurling him down onto the rocks between the two groups. As she declared her intent from the hilltop above, she also made it clear that his blood would be on the hands of all those who would fight.

⁴⁶ Letter of Mr Tom Woods, in Te Roopu Whakaemi o Ngati Awa, ‘Ohiwa’, appendix B, p 28; Te Roopu Whakaemi o Ngati Awa, ‘Ohiwa’, p 15; Miles, ‘Ohiwa Harbour Scoping Report’, pp 15-17

⁴⁷ Te Roopu Whakaemi o Ngati Awa, ‘Ohiwa’, p 16

Deeply moved by both her actions and her words, the chiefs of Whakatohea and Ngati Awa negotiated peace.⁴⁸

The Tauwhare peace agreement did not spell the end of territorial disputes at Ohiwa in the period leading up to the invasion and confiscation. This is best illustrated in the responses of both Whakatohea and Ngati Awa to the presence of the Pakeha, Thomas Black, who had purchased Uretara Island with Nicholas, in 1839, and placed cattle on the island in 1848. Black and the arrival of other Pakeha are discussed in chapter 4. Whakatohea disputed the ownership of the island with both Black and Ngati Awa who had sold it to him. In 1856 they demanded that Black remove his livestock, which he did, and in 1857 formal peace negotiations were conducted between Ngati Awa and Whakatohea. In 1860, Ngati Awa researchers claim, 'Titoko of Whakatohea and Keepa of Ngati Awa agreed that Ngati Awa would retain the western side of Ohiwa, while Whakatohea would keep to the east'.⁴⁹ Again, the boundary is unclear, and the question of who owned Uretara Island, in particular, remained a sore point.

In 1862, Whakatohea reoccupied Uretara Island and re-established their pa there. Thomas Black described the dispute in a letter to the editor of the *Daily Southern Cross*:

September 30th, 1862 – I went to Ohiwa this morning. The Wakatohes have taken possession of an island of mine in the harbour, containing near 400 acres purchased by me in 1839. On asking the cause of their coming to build pas on my land after holding it twenty-two years without their raising any claim, they replied that it was true it was taken from them when they were carried into slavery by the Ngatiawas, but now they were recruited and increased in number, and had now seized and taken back their land as far back as Wakatane; that I had better come next day and hear the whole case.⁵⁰

The occupation of Uretara Island by Whakatohea had provoked Ngati Awa to again seek arbitration through the Pakeha authorities. Black described the situation, from his perspective, as follows:

⁴⁸ Ibid., pp 13-14

⁴⁹ Te Roopu Whakaemi o Ngati Awa, 'Ohiwa', p 17

⁵⁰ 'Ohiwa Native Land Dispute between the Wakatohes of Opotiki, and the Ngatiawas of Wakatane Matata and Rangitaikē', *Daily Southern Cross*, 13 December 1862, p 4

October 1. Mr H. T. Clarke, R.M., Bay of Plenty, Mr Smith, civil commissioner, accompanied by all the Native assessors of Tauranga – Maketu, Rotorua, Natata [Matata], Rangitaike and Wakatane, with their runangas, amounting to some forty men, including native police.

The Ngatiawas, about 400 men, now honoured us with their presence. They were well armed, and naked save a shawl or shirt tied round their loins, which must not do more than cover the knee. The case was opened by selecting twenty men on each side, to state their claims. They showed that in their wars some thirty or forty years ago, the Wakatohes had been subdued and carried away into slavery by the Ngatiawas, who also occupied and cultivated Opotiki, as well as Ohiwa; that a small remnant of the Wakatohes fled to Tauranga; that through time others were redeemed and liberated, when at length Apanne, chief of Wakatane and Tohau, Cape's father, invited them back, placed them in Opotiki, giving them seed potatoes and kumeras; the Ngatiawas ever since residing in, and holding Ohiwa.

After a patient and orderly hearing, Mr Smith asked the Wakatohes if they would submit their case to the court's decision, viz., magistrates, assessors, and runanga?

They referred him first to the Ngatiawas, who sent for him to come. On his appeal to them, Theophilus, their spokesman, an assessor, threw him his walking stick, in the most off-handed manner, saying, "there is the Pokanga." I here objected to Mr Smith's way of putting the question, stating it was not definite or correct. This caused some sharp words between us. Mr Clarke explaining that they had tried them on that point the night before, (viz,) to hand over the land and dispute together, and that they had refused.

The Wakatohes refused to submit either land or dispute to this, or any other court. Busby was their speaker, one of the oldest assessors on the coast, and I believe the greatest rebel on it. Unpromising as things were, we informed them we should visit them in the morning. They told us we were not invited.

October 2nd. Met the Wakatohes at their own pa, about 450 men, who danced their war dance. They were addressed by Messrs. Smith and Clarke, who spoke earnestly on the peace side of the case, supported by the assessors and runanga, without apparent effect. On our rising to go away, they appeared confused, desiring us not to be in such a hurry. We had then been sitting there ten hours.

Busby came forward with a rod in his hand, and threw it to Mr Smith, adding, “there is the pokanga: take it with you. I shall never return to Opotike, but plant and establish ourselves here.” I then pressed on Messrs. Smith and Clarke the folly of carrying away the stick, under such a view of the case; that the land was alone the dispute; and that it was unfair to tie up the hands of the Ngatiawas, and let the Wakatohes establish themselves here. In this I was supported by Mr Clarke and all the assessors. At length we were agreed on this head.

Mr Smith said if they refused to place the land dispute in the hands of the court, he should be compelled to return their stick symbol. This they decidedly refused to do; and Busby coming forward, snatched the stick out of Mr Smith’s hand, and threw it into the pa, branding magistrates, assessors, and runanga, all as a set of Ngatiawas.

Two of the king-party who were in our mob ran up, clamouring to let them have the rejected stick for the king. Busby asked them why they had not separated from the Queen mob at first, if they had it would have been all over in a moment the first day; that the king was the true thing that all should submit to. Taking a bone Mere called Ohiwa, and a stick he said, “this is the Pokanga; take land dispute and all to the king; we shall wait his decision quietly.”

My companions now returned crest fallen to the Ngatiawas and returned the symbol of the Pokenga when they were soon greeted by the king-party flourishing their tokens of triumph. After some discussion, Mr Smith proposed omitting the name of king and Queen and appointing any new arbitrator. The king’s men then named William Thompson Tarapipipi,⁵¹ and Mr Smith said he had no objection to any person who could settle the matter to save bloodshed.

I objected, stating that in appointing Thompson they were really thrusting not only this case, but the whole of the Bay of Plenty into the king’s mouth; that Thompson was in reality king; that such a precedent would be shameful and ruinous; that the Ngatiawas would not consent; and that as government officers they should hold the Ngatiawas in the hands of government. Mr Smith replied, “that, Mr Black is just what the government wants to avoid.” I asked him what he came here for then if that was the case? After consulting with Mr Clarke, who was of my opinion, taking Rawira king, of Tauranga, a kingite over whom I had influence, aside, and directed him to address the Ngatiawas,

⁵¹ Wiremu Tamihana Tarapipipi Te Waharoa

calling on them to hand their lands and dispute to the Queen and Runanga as their enemies had done to the king. While the ice was thus breaking, I instructed the Hura and Petera of the Matata to rise and hand over the land and dispute to the Queen and Runanga. While this engaged, Theophilus led astray by Mr Smith's remarks, was in the act of striking the ground, handing all over to Thompson. Pushing him aside and pulling out the stick, I handed it to the Hura, coming forward and in a voice of thunder calling out, "I hand over both land and dispute to the Queen and Runanga," striking the stick into the ground. Petera came forward and repeated the same, as did also the Hura which closed the affair.

Mr Smith, like an officer defending his colours, now showed mettle. One of the king fellows pulled up our stick, saying "we shall bundle king and Queen together", when Mr Smith flew at him, and tore it from him, saying "no you shan't."

The excitement was very great at this moment. Several of the Ngatiawa chiefs became indignant that they were compelled to follow in the trail of their enemy, and abide the decision of the Waikatos, not knowing how the case had ended. Let no person think the Ngatiawas were actuated by loyalty – with one or two exceptions; they did not like to throw their claim along with the Wakatohes, the latter having the lead, otherwise they are all red-hot kingites, to a man, I may say.⁵²

Thus, as Miles has noted, 'the meeting supported the assertion that Ngati Awa had taken the island by conquest, but Whakatohea refused to have the matter settled in Court'. Whakatohea did, however, agree to the Kingitanga leader Wiremu Tamihana Tarapipi considering the matter. According to Ngati Awa researchers:

Tamihana eventually decided in favour of Ngati Awa. They told the Whakatohea that they must go back to their own place at Opotiki and give up the land in dispute as it belongs to the Ngati Awa. Tamihana and all were unanimous. The Whakatohea treated the decision with contempt and immediately hoisted their flag.⁵³

This action, Miles comments, sparked fears of renewed warfare but it is unclear what happened immediately following this point until 1866. 'It is likely that events in connection

⁵² 'Ohiwa Native Land Dispute between the Wakatohes of Opotiki, and the Ngatiawas of Wakatane Matata and Rangitaikē', *Daily Southern Cross*, 13 December 1862, p 4

⁵³ Te Roopu Whakaemi Korero O Ngati Awa, 'Te Uretara Island', 1992 (Wai 46 ROI, doc A5), p 5; Miles, 'Ohiwa Harbour Scoping Report', pp 16-17

with the coming of the New Zealand Wars to the eastern Bay of Plenty overtook the Ohiwa disputes'.⁵⁴

This, however, did not mark the end of the boundary dispute. Far from it. The battles would be repeated and, significantly, recorded in the Compensation Court, and would continue into the present. According to Ngati Awa's 'Whenua Tautohetohe' report, a meeting occurred between the Whakatohea and Ngati Awa trust boards to discuss the boundary on 4 April 1991.

The solution was to follow the spirit of the Titoko-Toihau accord and maintain good relations between the two parties. While there is some doubt as to where they set the boundary the meeting decided that the Nukuhou River was seen today as a fair dividing line. This requires Ngati Awa to give some ground as a measure of goodwill and to accommodate changes such as the settlement of Upokorehe at Hiwarau. It was also clear at the meeting that Whakatohea and Ngati Awa needed to agree between themselves where the boundary between them should be so that each side is satisfied. The decision is a political one which now must be negotiated as part of a peace settlement, a **tatau pounamu**, between the two.⁵⁵

In 1922 Te Hurinui Apanui had petitioned the Government on behalf of 605 members of Ngati Awa, calling for the return of their confiscated lands. He described the 'boundary of our ancestors land which was confiscated by the Government in payment for the crime committed' as follows:

Starting from the mouth of the Ohiwa river that is from Tuarae-o-Kanawa it runs in a southerly direction in the stream to Kutarere, Tirotirowhetu Te Puaroa Pa thence to Arapopo, thence to Te Roto at Matamoe, Weraakihi, Te Akamutu thence meeting the boundary of the lands taken by conquest thence in a Westerly direction to the Waimana River, Rangitihi Pa, Kaimatahi, Te Whakatane River, Rewarau Stream, Owhakatoro Stream, Onekokio Pa, Tapapakiekie Maatera, Rangitaiki River, Otipa Pa, Kaiwaka, Putauaki, Tarawera Stream, Maunga Whakamana thence in a northerly direction along

⁵⁴ Miles, 'Ohiwa Harbour Scoping Report', p 17

⁵⁵ Mead, 'Whenua Tautohetohe', p 22

the boundary of the lands taken by conquest Tahunaroa, Ohauani thence to the sea coast, thence along the sea coast to the mouth of the Ohiwa River that is to Tuarae o Kanawa.⁵⁶

As Ngati Awa researchers have shown, this description closely follows the line of the confiscation boundary, as far east as the mouth of Ohiwa harbour. However in the brief report, 'The Tuhoe Tribal Boundary: an interim Ngati Awa response' (1995), Ngati Awa claimants describe Te Hurinui Apanui's boundary as 'the boundary of Ngati Awa'.⁵⁷ In this report, the Ngati Awa claimants also state that 'the overlapping claims of Upokorehe and Tuhoe do not alter the position adopted by Ngati Awa concerning claims to Ohiwa Harbour', and that the 1991 agreement between Te Runanga o Ngati Awa and the Whakatohea Maori Trust Board 'is still relevant and Ngati Awa regards this as an honourable and sensible agreement'.⁵⁸

With regard to Tuhoe, the Ngati Awa claimants stated that 'the two iwi authorities also agreed to allow Tuhoe to participate in any future arrangements to manage Ohiwa Harbour'. They also claim that

Arguments about the border at Ohiwa have traditionally been between Ngati Awa and Whakatohea. Tuhoe has not featured in these disputes to any great degree. If Tuhoe has a claim to Ohiwa it would most likely arise through their relationship and connection with Upokorehe.

Furthermore, they state that the 200 year war between Tuhoe and Ngati Awa 'does not support the claim of Tuhoe that their people enjoyed unrestricted access to the sea', in that the 'principal cause' of this conflict 'related directly to the attempts by Tuhoe to establish a corridor to the coast and the resources of the sea as Tuhoe has traditionally been a land locked tribe'.⁵⁹

⁵⁶ Petition no. 142/22 – Te Hurinui Apanui and 605 others – praying for inquiry as to the lands in the Whakatane District confiscated by the Government, LE 1/1922/12 NA (RDB vol 4, pp 1315-1342). It is interesting to note that the following was struck out of the boundary description in the original Maori version of the petition: 'Ko te rohe i te Pitihana a te Whakatohea i tae mai nei ki te taha Hauauru o Ohiwa, e whakahe ana matou. Na ke te rohe i roto i te Pitihana a Tuhoe i tae mai nei ki Ohineteraraku me te Rewatu, o whakahe ana ano matou. Ko te Pitihana a Ngati Pukeko, hapu o Ngatiawa, e whakahe ana ano hoki matou' (RDB, vol 4, p 1320)

⁵⁷ Te Roopu Whakaemi Korero o Ngati Awa, 'The Tuhoe Tribal Boundary: an interim Ngati Awa response' Whakatane, 20 September 1995 (Wai 46 ROI, doc H17), para 7. See also 'Map of Ngati Awa boundaries based on the petition of Te Hurinui Apanui in 1922', np

⁵⁸ Ibid., paras 10-11

⁵⁹ Ibid., 'The Tuhoe Tribal Boundary', paras 12-14

At the Waitangi Tribunal's hearing of the Ngati Haka Matahina Lands claim in June 2002, Ngati Awa's claims regarding Ohiwa Harbour were challenged by Tuhoe claimants. Samuel Te Hau Tutua presented oral evidence regarding Ngati Awa's historical association with the harbour, stating that 'the important ancestor for Ohiwa Harbour was Tairongo', and that 'Ngati Awa, along with all of Mataatua, have whakapapa links with Tairongo'. He stated that 'all Ngati Awa hapu have close links with Ohiwa Harbour'. Mr Tutua focused his attention on the 1820s, claiming that 'the forces of Ngāti Awa and Ngāti Maru devastated the Ohiwa area and defeated the Upokorehe people', and that 'most of the Ohiwa residents were taken away as slaves by Ngāti Maru and Ohiwa was left under the control of Ngāti Awa'.⁶⁰

Mr Tutua claimed that Whakatohea were absent from Ohiwa Harbour for over forty years, and that by the time they returned, Ngati Awa had sold Hokianga and Uretara islands to Pakeha buyers. He claimed that with the return of Whakatohea and their removal of Black from Uretara Island, 'Ohiwa Harbour was from that time on an area of contention between Ngāti Awa and Whakatohea'. He also claimed that when Upokorehe returned to Ohiwa they settled at Waiotahe rather than at Ohiwa itself.⁶¹

Mr Tutua claimed that Tuhoe had no part in the conflict between Ngati Awa and Whakatohea and had no fighting pa in the Ohiwa area, and that Tuhoe 'had no fires lit at Ohiwa'. He did, however, acknowledge 'that Tuhoe, like all Mataatua, had rights of access to Ohiwa', stating that 'Ohiwa Harbour was open to everyone, but that Ngāti Awa alone had mana over the islands in the harbour until the confiscation in the 1860s'. He described the Ngati Awa territorial boundaries as laid down by Hurinui Apanui, which included Ohiwa Harbour within Ngāti Awa's rohe.⁶²

3.3 Whakatohea

Much of the preceding narrative concerning Ngati Awa's connections with Ohiwa harbour has focused on Ngati Awa's view of their long-standing conflict with Whakatohea over control of the harbour. This section will focus on Whakatohea's traditional connections with Ohiwa harbour (and the place of Te Upokorehe in particular), and the Whakatohea view of

⁶⁰ Oral evidence of Sael Te Hau Tutua, Waitangi Tribunal, *Ngāti Awa Settlement Cross-claims Report*, p 60

⁶¹ *Ibid.*, p 60

⁶² *Ibid.*, pp 60-61

the conflict with Ngati Awa. Having opted to go into direct negotiation with the Government before the Waitangi Tribunal had heard their claims, Whakatohea do not have the same level of historical research done, either by themselves or others, with regard to their claim issues. There are, however, a number of sources that can be used to illustrate Whakatohea's customary interests in Ohiwa and to give a Whakatohea version of the events documented in the Ngati Awa research.

The origins of Whakatohea, which are significant with regard to Ohiwa Harbour, are briefly set out in the introduction to the 'Whakatohea Case Commentary in Preparation for Final Report to the Waitangi Tribunal', prepared by claimants for the Wai 87 Whakatohea Raupatu Claims in 1992.

Te Whakatohea trace their roots to the ancient people of the Nukutere canoe, who made landfall in the mid thirteenth century at Opape. Among them were Tauturangi and his wife Tauaterangi who formed the tribe Te Wakanui. This name persisted for some eight generations until the time of Tutamure, when the name Panenehu appears. The incident provoking this change occurs just after the arrival of the Matatua canoe, which Whakatohea share with several of their neighbours, namely Tuhoe and Ngatiawa. Their ancestor of this canoe, Muriwai, stands an equal beside her high-ranking brothers Toroa (captain), Taneatua (tohunga) and Puhī-Ariki, who gives his name to Nga Puhī of the north. She settled with her husband, Tamatea Matangi at Ohiwa where she founded the tribe that became Whakatohea. In her old age she returned to Whakatane to inhabit the cave there that still bears her name at the foot of Kohi Pt, where she was consulted for her wisdom by priests and tohunga. It was from this cave that the name Whakatohea arose. The story goes that two of Muriwai's sons were fishing from a canoe that capsized off shore from the cave and got into difficulties. "Muriwai, o Muriwai, save us," they called. But steadfastly Muriwai failed to heed their cries. Hence the term "Whakatohea", which is "to be stubborn".⁶³

Another account can be found in AC Lyall's *Whakatohea of Opotiki* (1979). Lyall, who was a local amateur historian/ethnographer, claimed that this work was:

⁶³ 'Whakatohea Case Commentary in Preparation for final report to the Waitangi Tribunal', presented to a hui of all the hapu of Whakatohea at Omarumutu marae on the 7th November 1992, draft report (Wai 87 ROI, doc A2), p 2

founded, firstly, on the traditional stories handed down from generation to generation supported by whakapapa, karakia, haka and the other cultural forms used to give expression to them; [and] secondly, on the historical records which are available for reference to events which post-dated the European arrival.⁶⁴

Lyll emphasises the point that ‘contrary to long held opinion’, Whakatohea’s Mataatua origin ‘is neither their most ancient nor necessarily the most significant. Hapu-Oneone and Ngariki antecedents,’ he argues, ‘must take pride of place’:

Ranginui-a-te-Kohu of Ngati-Rua, and Tauwharenuui the father of Tarawa’s wife, are both described as tangata whenua, ancient people of the land. Taritoronga, Marupapanui and Tauturangi traditionally came in the canoes Tainui, Taurira and Nukutere respectively. All the foregoing antedated Muriwai, who introduced the Mataatua strain.⁶⁵

Lyll also notes that much of Whakatohea’s ‘ancestral activities’ initially occurred inland and ‘as population increased and the various hapu splintered off, migration was from the interior to the coast’. He notes that ‘substantial areas of the former tribal lands in the interior have passed out of their hands’.⁶⁶ ‘The hapu of Whakatohea,’ Lyll states, ‘were ever active’:

On their western flank Tuhoe and Ngati-Awa; to the east Ngai-Tai and Whanau-a-Apanui; from the sea to the north it could be anyone; and to the south, Ngati-Kahungunu, Aitanaga-a-Mahaki and Whanau-a-Kai were the allies of one foray and the adversaries of another – but more frequently the latter.⁶⁷

Lyll recounts the history of conflict between Tuhoe and Whakatohea, relying heavily on the work of Best. ‘Between Whakatohea and their Tuhoe neighbours of the Urewera country,’ Lyll wrote, ‘we have the usual saga of mayhem and misunderstanding, mainly from the Ngati-Ira and Upoko-Rehe hapu of the former, who lived closest to Tuhoe’.⁶⁸ The major nineteenth-century conflicts between Tuhoe and Whakatohea (particularly Te Upokorehe), as recorded by Best and Lyll, were at Whitiwhiti, Kahikatea, and Maraetotara. These conflicts are summarised by Miles, in some detail, as follows:

⁶⁴ Lyll, p x

⁶⁵ Ibid., pp x-xi

⁶⁶ Ibid., pp xi-xii

⁶⁷ Ibid., p 113

⁶⁸ Ibid., p 129

One day just prior to 1818, an Upokorehe taua roaming hills east of the Whakatane River came across a Tuhoe party and attacked them. Unfortunately for Upokorehe, one of the Tuhoe killed on this occasion was Tamahore, an esteemed orator and warrior, and brother of Te Purewa. Te Purewa set out to avenge his brother and attacked Upokorehe at Whitiwhiti Pa at Ohiwa, consolidating his position with a further battle at Te Papa on the Waiioeka River, where Upokorehe were defeated.⁶⁹ Melbourne says Te Purewa then decided to establish 'permanent hold' over the Waiotahe valley.⁷⁰ He achieved this, it is claimed (with the help of Tamakaimoana) by attacking Upokorehe and Ngati Raumoa at Kahikatea, killing about 50 of them and driving them away.⁷¹ Lyall claims that Upokorehe fled to Motuotu Island in Ohiwa Harbour:

After the Upokorehe were driven away from Wai-o-tahe, the upper part of the valley of that stream was occupied by the Whakatane tribe, many of whom were also members of the Tuhoe tribe. Hence we see descendants of Tuhoe now living at Waka-taua. Tama-i-koha and Netana Whakaari are two leading men of that part. Te Upokorehe were formerly the principal people at O-hiwa, but their star of empire set in the gloomy days of 90 years ago.⁷²

Another significant battle between Tuhoe and Whakatohea occurred at Otairoa in the Ruatoki area in 1822. This happened after Pomare and his Nga Puhi followers had returned north, and Tuhoe hapu had resettled at Ruatoki. Apparently, Tuhoe then killed some members of Whakatohea who were in the area, in retaliation for a previous incident at Ohiwa, when Rua Hikihiki of Tuhoe was killed by Tohi te Ururangi of Whakatohea. This vengeance, in turn, prompted Whakatohea, aided by Ngati Raka, to raid Ruatoki. Battles took place at Te Koau and Patutahuna, with the main engagement at Otairoa. Tuhoe suffered severe losses in defeat. Not only did they lose men in battle, but many high ranking women captured by Whakatohea were taken to Opotiki.⁷³ The next encounter occurred at Whakaari. A Tuhoe taua marched to Opotiki, but then turned back to Waiotahe with Whakatohea in pursuit. Tuhoe made their stand at Whakaari, where they were attacked by the Whakatohea and Ngati Raka forces and again suffered defeat.⁷⁴

⁶⁹ Miles, *Te Urewera*, p 43; she cites Lyall, p 74

⁷⁰ Miles, *Te Urewera*, p 43; she cites Hirini Melbourne, 'Te Purewa', DNZB, vol 1, pp 484-6, p 485

⁷¹ Miles notes that Best identified some of the Upokorehe pa at Waiotahe as Puhirake, Orona, Tuhua, and Tokorangi

⁷² Miles, *Te Urewera*, p 44; she cites Best, vol 1, p 403; Lyall, p 74

⁷³ *Ibid.*; Miles cites Lyall, pp 135-136; see also Best, vol 1, pp 337-338

⁷⁴ *Ibid.*; Miles cites Best, vol 1, p 347

To avenge Whakaari, Tuhoe attacked Whakatohea and Ngati Raka at Uretaia, and this time, Tuhoe were the victors.⁷⁵

However, Miles continues, ‘the control that Tuhoe was able to exert over portions of the southern and eastern harbour was upset by a defeat they suffered at the hands of Whakatohea at Maraetotara, circa 1823’. She also notes that ‘according to Upokorehe submissions to the Waitangi Tribunal, the chief Te Rupe ‘took control of the Ohiwa Harbour from Tuhoe’ following the battle’.⁷⁶ In a report written for and on behalf of the Mokomoko whanau, ‘Kevin Were has written that this battle cost Tuhoe their access to the harbour, which was restored only through permission from Whakatohea to pass over their land to Ohiwa itself’.⁷⁷

There is some confusion in the published accounts as to both the exact date and the significance of the fight at Maraetotara, and no conclusive evidence is cited. Tuhoe claimants reject the notion that the fight cost Tuhoe their access to the harbour, and that they were forced to seek the permission of Whakatohea to visit its shores, as stated in Were’s report for and on behalf of the Mokomoko whanau.⁷⁸

Lyll states that the last battle between Whakatohea and Tuhoe was fought on the Ohope shore of Ohiwa harbour, where Tuhoe were defeated. He provides two accounts for the cause of the conflict. A Tuhoe version, taken from Best, claims that a party of Tuhoe, on their way to Tauranga, were intercepted by Ngati Awa and ‘inveigled’ into joining them in an attack against Whakatohea. Lyll also provides the following Whakatohea version:

Whakatohea say that the direct cause lay in a Tuhoe claim, for its food potential, to a part of Ohiwa which Whakatohea had always maintained to be theirs. A Whakatohea party consisting mainly of Upoko-Rehe and led by Te Rupe, was attacked by Tuhoe. Others of Whakatohea who were netting at Ohiwa were called upon for support in the following chant which Te Rupe delivered before the fight.

Te Kotiritiri te kotaratara o huki Ohope e.

Haere ti taha ana te kaha o te kupenga ki uta ra e.

Hurahia te tangata mate.

⁷⁵ Ibid.; Miles cites Lyll, pp 136–137

⁷⁶ Ibid.; Miles cites Evidence of T Mokomoko, p 1 (Wai 46 ROI, doc F3)

⁷⁷ Ibid.; Miles cites Kevin Were, ‘Mokomoko – Our Tipuna’, research report (Wai 46 ROI, doc F3), p 1

⁷⁸ Tama Nikora, Personal Correspondence, 23 January 2003

Hurahia te tangata mate.
Houhoua e te ure.
Houhoua e te ure.
Ki roto ki te onepu.
Kei motu ti kariri i te tupere ha!

According to Lyall, 'in the ensuing battle it is said that Tuhoe were slaughtered to the last man and that hundreds were killed altogether'. He notes that even if the casualties are exaggerated, which appears to be the case, 'such a disaster may well have been regarded as climactic within the Mataatua area. For after this the people of the area became increasingly involved in resisting the northern raiders and the spreading European influence, in that order'.⁷⁹

Lyall also records an occasion where Whanau-a-Apanui 'raised an ope' led by Taaku, that travelled to Ohiwa and laid siege to Hokianga Island. The besieged Upokorehe, led by Paihau, were forced to attempt escape by using ropes to scale down a cliff-face under cover of night. According to Lyall, 'Paihau's rope broke and the resulting noise raised the alarm. Paihau himself was killed, and his tongue was cut out and taken to a latrine where it was suspended. And that place was consequently known as Te Arero-o-Paihau'.⁸⁰

In its discussion of Whakatohea's traditional rohe, the 'Whakatohea Case Commentary' states that:

Over the centuries Whakatohea ranged far and wide in their battles and in the musket era found new strains placed upon their rohe. It could be argued that before the signing of the Treaty, the boundaries were fluid, organic, deliberately ill-defined and often tested. After the Treaty they were made fixed, rigid and immovable by colonial instruments.⁸¹

In 1920, Te Hoeroa Horokai and Heremia Hoera provided a description of the Whakatohea traditional tribal boundary to the Native Land Claims Commission. Te Hoeroa Horokai (Whakatohea) provided the following description of part of Whakatohea's ancestral tribal boundaries:

⁷⁹ Lyall, pp 139-140

⁸⁰ Lyall, pp 127-128; he cites 'Opotiki Minutes; Whanau-a-Apanui witness'

⁸¹ 'Whakatohea Case Commentary', p 3

Commencing at Pakihi at the mouth of the river, along sea coast to mouth of Waiotaha stream, to mouth of Ohiwa stream, to Te Horo (a hill), thence striking inland southwards to Puhikoko (a hill), by straight line to Pukemoremore (a hill), thence to Mapouriki (a hill) (at one time a fighting pa), then descending into Waimana stream Mapouriki being on the bank, following the Waimana stream towards its source at Tautautahi (a hill along the banks), to the mouth of the Parau stream, then following Parau stream to Tangata-e-roha (a hill), to Kaharoa (an old settlement).

These boundaries, Horokai continued:

are for the lands of Upokorehe, Ngatingahere, Ngatirua and the other three hapus. The hapu who occupied within the boundaries I described were the Upokorehe. From this onwards belonged to Ngatiira.

The tribes on Whakatane side of boundary are Ngatiawa from Te Horo inland; Ngatipukeko further inland at Poroporo; further inland there were the Tuhoe tribe.

The remainder of the Whakatohea boundary, from where Te Hoeroa Horokai finished at Kaharoa to where he began at Pakihi, was provided by Heremia Hoera.⁸² Buddy Mikaere estimated the total area to be roughly 490,000 acres, and has sketched these boundaries in his report on the confiscation of land in the Opotiki District.⁸³ The 'Whakatohea claim area' as set out in the Deed of Settlement offered by the Crown to Whakatohea on 1 October 1996 differs from the 1920 boundary, above, with respect to the western border. The 1996 boundary likewise goes from Pakihi along the coast past Ohiwa Harbour, but then passes Tehoro, before turning inland at Maraetotara and heading for Puhikoko, and on to Pukemoremore, and so on. The Deed of Settlement stated that 'the Crown and Whakatohea acknowledge the existence of Overlapping Claims in relation to certain parts of the Whakatohea Claim Area'.⁸⁴

⁸² Minutes of the Native Land Claims Commission, Whakatohea Confiscation, Opotiki, 12-14 July 1920, fols 69-114, 14 July 1920, pp 21-22, MA1 5/13/164 Confiscated Lands 1920-1948 (Whakatohea Claims), (RDB, vol 64, pp 24635-6)

⁸³ Buddy Mikaere, 'Exploratory Report to the Waitangi Tribunal being an Historical Account of the confiscation of land in the Opotiki District', 1991 (Wai 87 ROI, doc A1) p 6, fn 4; Map 1, 'Whakatohea Rohe'

⁸⁴ Her Majesty the Queen in right of New Zealand and Whakatohea, Deed of Settlement, 1 October 1996 (Wai 87 ROI, doc A4), pp 12, 13

Dave White, a local historian and archaeologist, described 'the traditional Whakatohea land' as including 'the whole of Ohiwa harbour, [and] the river systems of the Waiotahi,⁸⁵ Waioeka, Otara and the Waiaua', adding that 'few of the people in the area lived more than an hour's walk from the sea'.⁸⁶ This, according to Bryan Gilling, 'was for agricultural reasons and also because of the great importance of the coastal area as a food source, both in terms of fishing in the open ocean and for the varieties of seafood that could be acquired on the coastal rocks, in river estuaries and in the large almost lagoon areas, especially the Ohiwa harbour'.⁸⁷

The 'Whakatohea Case Commentary' notes that while Whakatohea have 'strong ancestral links, shared by other Matatua iwi, with Whakatane', they 'are not pursuing [their] customary rights there'. The document emphasises Whakatohea's association, through Upokorehe in particular, 'with the bountiful food source of Ohiwa Harbour', but notes that 'this too has traditionally been shared and fought over with tribal neighbours'. The western shore of Ohiwa, before the signing of the Treaty of Waitangi, is described as 'essentially disputed lands', and this is also applied to 'the southern reaches of [the Whakatohea] boundary in regard to Tuhoe. Certain branches of Tuhoe intermarried closely with Upokorehe people'.⁸⁸ Whakatohea claimants contend that 'there are many ancestral Whakatohea names in and around the harbour', some of which are based on Whakatohea's relationship with Te Whakatane. In contrast, they allege that while Ngati Awa have 'in recent times ... claimed much of Ohiwa for themselves, there are no traditional Ngatiawa names there'.⁸⁹

In the 'Whakatohea Case Commentary', the Whakatohea claimants downplay the extent of inter-iwi conflict prior to 'the Nga Puhi musket raids of the 1820s and 1830s', suggesting that many of the battles that are recalled 'are thought to have been frequently at whanau level'. This, however, changed with 'the Nga Puhi invasions and the defeat suffered at Te Papa'. Many Whakatohea, they state, were taken into slavery 'or otherwise fled as refugees to other

⁸⁵ I have used the spelling 'Waiotahe' rather than 'Waiotahi' in this report. 'Waiotahi' is as the name appears on modern maps, in official documents, and in many accounts, and where used in this way, this spelling has been followed.

⁸⁶ HGD White, 'Site Recording and Surveying in the Opotiki District', *Historical Review*, vol 19, no 2, November 1971, pp 133-134, p 133

⁸⁷ Gilling, 'Te Raupatu o Te Whakatohea', p 4

⁸⁸ 'Whakatohea Case Commentary', p 4

⁸⁹ *Ibid.*, pp 4-5; the evidence cited for these claims is attributed to David White, 'local historian oral evidence Opotiki October 23, 1992'.

parts’, and ‘in the late 1830s, the Whakatohea were scattered, occupying such places as Whakatane, Hauraki, Thames, Tauranga and the Bay of Islands’.⁹⁰

Lyall describes the Nga Puhi and Ngati Maru raids and the period that followed as ‘a series of disasters’ for Whakatohea.

The toll exacted on Whakatohea in these campaigns had a crippling effect on what was once a large, feared and powerful clan, and it is doubtful whether they ever regained their former peaks of military strength.⁹¹

Lyall also describes the successive waves of ‘sea-born invasion’ beginning with the Nga Puhi force under Hongi Hika, Pomare, Te Wera Hauraki, Korokoro and others that swept through the Bay of Plenty in 1823. Having raided Mokoia Island in Lake Rotorua, the taua divided. ‘Te Morenga ... scoured the Waiotahi Valley and Titore ... went up the Waioeka “driving Whakatohea before him to the mountains”’. The original force then reassembled, and a large part of the expedition led by Marino, nephew of Te Wera, went up the Otara River from Opotiki. Lyall states that ‘Whakatohea resisted as best they could, but the fortresses of Te Ika-a-te-Kite, Te Tairoa, Te Horomanga and Pa-inanga all fell. Grievous were the losses in both dead and prisoners’.⁹² Another Nga Puhi raid took place in 1825, but this was to be overshadowed by a series of Ngati Maru raids culminating, with the assistance of Ngati Awa, in the sacking of Te Papa in 1830. Lyall notes that it was mainly Ngati Ira who suffered from this attack, but that members of Upokorehe were also taken into captivity.⁹³ Gilling likewise notes that Ngati Ira and Upokorehe suffered the most, and that the conflicts of the 1820s and 1830s ‘apparently left the coastal fringe centred on Opotiki virtually deserted by Whakatohea’.⁹⁴

Regarding the return of Whakatohea to their rohe, the ‘Whakatohea Case Commentary’ notes that ‘Tauranga became the focal point for the re-unification of Whakatohea in preparation for their return to Opotiki’:

⁹⁰ ‘Whakatohea Case Commentary’, pp 6-7

⁹¹ Lyall, p 141

⁹² Ibid., p 142

⁹³ Ibid., pp 144-145

⁹⁴ Gilling, ‘Te Raupatu o Te Whakatohea’, p 5

The reunification of Whakatohea became possible through the strong affection Ngai Te Rangi had towards Whakatohea and as a consequence of peace-making between Ngai Te Rangi and Nga Puhi. The fact that both Ngatiawa and Whakatohea had a close bond with Ngai Te Rangi enabled Whakatohea to advance in relative security with Ngatiawa their desire to return to Opotiki.⁹⁵

According to the 'Whakatohea Case Commentary', when Whakatohea returned to Opotiki, 'Taneka of Ngai Te Rangi reached Whakatane and cautioned Toihau that if the Ngatiawa attacked Whakatohea he would be against it'.⁹⁶

Milroy and Melbourne argue that Whakatohea accounts directly challenge Ngati Awa statements relating to the conditions imposed on their return to Ohiwa and Opotiki. They cite the testimony of W. Tiriatauhi before the Compensation Court in 1867:

They (Whakatohea) came from Waikato, that is, from there they, Ti Toki and others fled. Those who had been taken by Ngā Puhi came back with the Ngā Puhi fighting party to Tauranga. There were some Whakatohea living with Tomika at Otūmoetai and they drew away the others from Ngā Puhi and other tribes ... Peace was made and Ngā Puhi returned to the north leaving guns, powder and canoes for the Whakatohea to whom some of the canoes had belonged. Their guns and powder were purchased with dressed flax. They were soldiers for the Ngaiterangi. They joined in the fight at Taumatawīwī, also at Tauranga against Ngā Puhi and at Mōtītī. They fought against the Arawa. Tohehau (Toihau?) and other chiefs of Ngāti Awa came from Whakatane to Tauranga. Tī Toko asked them to give up a piece of the land at Opotiki. The chiefs replied, 'Strive for some of the land at Tauranga and Maketu where you have been fighting.' The Whakatohea then went to Opotiki in their own canoes with their own guns and powder. They landed near Whakatane intending to fight with the Ngāti Awa. After stopping there 10 days they proceeded to Ohiwa ... 5 days after this, they reached Opotiki.⁹⁷

According to the 'Whakatohea Case Commentary', Whakatohea resided at Opotiki until the time of the confiscation.⁹⁸

⁹⁵ 'Whakatohea Case Commentary', p 7

⁹⁶ Ibid., p 9

⁹⁷ Milroy and Melbourne, pp 53-54; they cite Old Claim Files, Box 1; Opotiki sitting, p 18

⁹⁸ 'Whakatohea Case Commentary', p 9

The Whakatohea accounts, Milroy and Melbourne argue, stress the point that the returning members of Whakatohea expected to be challenged by Ngati Awa, and when this did not occur they reclaimed their lands as they proceeded from Ohiwa to Opotiki.⁹⁹ They point out that ‘Best made the observation that Whakatohea were not attacked by Ngati Awa because the latter had been severely defeated by Tuhoe at Te Kaunga in [about] 1832’.¹⁰⁰ They also note that Lyall is of the opinion that Whakatohea may have only vacated the coastal fringes of their rohe following the defeat at Te Papa.¹⁰¹

Milroy and Melbourne make the following comment with regard to the boundary disputes between Ngati Awa and Whakatohea and the outcomes of the land claims that followed:

In matters of land claims there have always been and will always be contradictions. This case is no exception. In the past Ngati Awa have had on their side the favourable interventions of Pakeha Government officials as well as the Maori leader, Wiremu Tamihana, to back up their historical perceptions of the events between them and Whakatohea. Yet it is difficult to ascertain from available information as to what historical evidence could have been referred to, to produce a judgement that was totally favourable to Ngati Awa. Other explanations would have to be sought. At the time of Pakeha judicial involvement in the Ngati Awa and Whakatohea dispute over Ohiwa [in 1862], there was not only the matter of customary title to be considered but also the matter of land sales to white settlers favoured by Ngati Awa.¹⁰²

Upon their return to their ancestral land, Whakatohea, it is claimed, ‘made a prodigious recovery’. According to the ‘Whakatohea Case Commentary’:

A hidden benefit of enslavement for Whakatohea was that these people were shortly thereafter liberated by missionaries. They were taught skills in horticulture, agriculture, animal husbandry, building and of course reading which they brought back to their own people.¹⁰³

⁹⁹ Milroy and Melbourne, p 54

¹⁰⁰ Ibid., p 54; Best, vol 1, pp 377, 1145

¹⁰¹ Ibid., p 54

¹⁰² Ibid., p 55

¹⁰³ ‘Whakatohea Case Commentary’, p 9

In late 1861, Henry T Clarke, the Resident Magistrate at Tauranga, reported that, 'from what I can gather, the Wakatohea are in a better state now with regard to themselves than they have been since I have been appointed to the district'.¹⁰⁴

3.4 Te Upokorehe

Te Upokorehe are a hapu of Whakatohea. They claim descent from Te Hapuoneone groups and have strong associations with the Ohiwa and Waimana districts (discussed further in chapter 3.5). Lyall states that Upokorehe's whakapapa, for the most part, runs back to the important ancestors Tamatea, Raumoa, Haeora, Tairongo and Hape:

There is an element of Mataatua origin, but also much tangata whenua from Te Hapu-
Oneone, the early inhabitants of the Ohiwa area. Tamatea is shared with Ngati-Ira as an
ancestor and there is a connection with the Poverty Bay tribes from their eponymous
forbear Rongo Whakaata. Although there is much emphasis on Haeora and Raumoa as
important ancestors, it is evident from the various whakapapa that Tairongo holds a
position of great importance in determining their origins.¹⁰⁵

Lyall recorded that over a period of several hundred years, Upokorehe 'and their forefathers had at varying times occupied an extremely extensive area from western Ohiwa to the Waioeka River; from Ohiwa and Waiotahi headlands, up the Waiotahi Valley to the interior at Kaharoa.' He described the 'inland domains of Upoko-Rehe in later times', as 'including the whole valley of the Waiotahi stretching south to Kaharoa and bounded by the high ridge lines to east and west. An extension of these lines to the north,' he concluded, 'would approximately encompass their coastal preserves.'¹⁰⁶

Best likewise stated that Upokorehe resided in the Waiotahe valley and at Ohiwa, and that they are descended from Raumoa and Haeora, and are thus related to Ngati Raumoa and Te Whakatane, amongst other groups. However, he noted that this did not mean that Upokorehe were a Tuhoe 'clan', and that while Upokorehe had been defeated by Te Whakatane 'they were not incorporated with that people, but moved away to O-potiki'. Best also noted that

¹⁰⁴ Henry T Clarke, Resident Magistrate, Report, 'Further Papers Relative to Governor Sir George Grey's Plan of Native Government, Reports of Officers, Section 4: Bay of Plenty', AJHR 1862, E-9, p 7

¹⁰⁵ Lyall, p 68

Upokorehe 'are also descended from Tamatea, an ancestor of Te Whakatohea, who came from Hawaiki in the Tu-whenua canoe'. He commented that 'their numbers are very small now, a few are living at O-hiwa, etc' and that 'Puhi-rake, Orona, Tuhua and Toko-rangi were some of the Upoko-rehe *pa* at Wai-o-tahe':

Tuhua is situated on a hill peak on the left bank of the Wai-o-tahi stream, near the Waka-taua native village. It is now planted with pines.¹⁰⁷ Orona *pa* is on a spur just south of, and near Tuhua. The Waiwhero creek runs between them. These two forts are mentioned in an old watch song (*whakaaraara pa*), sung by sentinels when on night watch on the fighting stages of these primitive strongholds –

“Kai Tuhua pea
Kai Orona pea
He kore tangata ki tua
Ki te kope o Tama-tea
Te hurua, te rawea
Te tau mai-e-e-e-i-a.”

The Toko-rangi *pa* stands on a hill just above the Waka-taua *kainga*, on the right bank of the Wai-o-tahe, opposite Orona. The Puhi-rake *pa* is situated on Mr. Chapman's farm at Wai-o-tahi. At the time when Tama-wera and Paihau were the principal chiefs of these forts, they were attacked and defeated by a strong force of enemies, whereupon they fled to Te Motu, at O-hiwa, where they were again attacked and almost annihilated. Some escaped down the cliff by means of ropes.

When Te Upoko-rehe were living at Wai-o-eka among Te Whakatohea, to whom they were related, they slew some of their neighbours, upon which they were attacked and driven away by Te Whakatohea. They fled to Wai-o-tahe, or O-hiwa. They were also attacked by the same tribe when living at the Puhi-rake *pa*, and again defeated. Of a verity the stars in their courses seem to have fought against Te Upoko-rehe. They were scattered to the four winds.

When Ngati-Maru, of Hauraki, armed with guns, raided the Whakatohea coast, they took many of those people as captives to Hau-raki, including some of Te Upoko-rehe. When

¹⁰⁶ Lyall, pp 74-75; Lyall adds that 'Residents of Opotiki are familiar with Taketakerau, the giant Upoko-Rehe burial puriri which grows in the Hikutaia domain, sixty-seven feet in circumference and an estimated 1000 years old'.

released they came down to Tauranga (on coast, Bay of Plenty north). Titoko, of Te Whakatohea, went there and brought them home by sea, or at least as far as Te Ara-whaiti, near Whakatane.¹⁰⁸

Best also recorded the following information regarding Ngati Raumoa and their relationship with Te Upokorehe:

The descendants of Rau-moa ... originally lived at Te Wai-mana, their principal *pa* being Orupe ... Rau-moa, the ancestor, lived at that place. Te Pawa seems also to have been a Ngati-Rau-moa *pa* ...

Rau-moa, from whom the clan derived its name had rights to lands at O-hiwa and the Wai-mana. Ngati-Rau-moa were descended from Te Hapu-oneone tribe, and also from Rongo-whakaata of Turanga (Poverty Bay)

Ngati-Rau-moa were also connected with the Ngai-Tama, Whakatohea and Upoko-rehe clans. They are not a portion of the Tuhoe tribe, having been driven from the Wai-mana before Tuhoe gained possession of that place. Ngati Rau-moa were awarded shares in the Wai-mana Block, for Turangapikitoi and Rau-moa were the true ancestors for that land....

Several small clans of the Wai-mana district, connected with Ngati-Rau-moa, were defeated by Tuhoe at that place, and on the Tahora No. 2 Block. It is also recorded that Ngati-Rau-moa and Te Upoko-rehe (clan) were defeated by Ngati-Awa, which probably refers to an incident in the expelling of Te Kareke and Ngati-Raka from the Whakatane valley ... Probably the most crushing defeat sustained by Ngati-Rau-moa was on the field of Te Kahikatea, at Wai-o-tahe, where Tuhoe harassed them and Te Upoko-rehe with much vigour.¹⁰⁹

Best also provides an account of 'the circumstances which led to the fight at Te Kahikatea':

A party of Tuhoe, including Tama-hore, brother of Te Purewa I., were on their way to Whakatane to visit Ngati-Pukeko. They had with them some presents for Kihi, a chief of

¹⁰⁷ Best notes that 'Tahua pa is on Mr. Gordon's farm'

¹⁰⁸ Best, vol 1, pp 89-90

¹⁰⁹ Ibid., pp 87-88

that tribe. On their way down the Whakatane valley they camped at Pukahu-nui,¹¹⁰ situated on the road-side about 30 chains north of the Whakatane Butter Factory at Te Hurepo. At the same time a party of Te Whakatohea happened to be descending the range east of Mr. Crapp's homestead when they espied the party of Tuhoe in camp. The result was a surprise attack, in which Tuhoe were defeated, losing Tama-hore, and others killed. The survivors scattered and fled. The victors regaled themselves upon the bodies of the slain, and certain stores of preserved birds which were being taken by Tuhoe as presents for Kihī.

Te Purewa I., brother of Tama-hore, raised a *taua a toto*, or blood-vengeance party, and followed the Whakatohea. He found them at Whitiwhiti, at O-hiwa, where he attacked them, slaying several. This party then returned home. But Te Purewa still grieved over the death of his brother. He enlisted the services of Te Ahuru and others, and a force of Tuhoe marched against the Whakatohea. They assaulted and took the Whakatohea *pa* of Te Papa, which stood on the left bank of the Wai-o-eka River, near the blue gum trees opposite the Wai-o-eka bridge, and close to the western end of the bridge.

Te Kahikatea is a place situated in the valley of the Wai-o-tahe stream, some miles up stream from the Waka-taua native settlement, where the descendants of Mura-hioi live.¹¹¹ Te Upoko-rehe and Ngati-Rau-moa were living there and, as we have seen, had several fortified places about Waka-taua. They were attacked at Te Kahikatea by a force of the Tama-kai-moana clan of Maunga-pohatu, and were defeated, losing the chiefs Tamamutu and Kawhata slain. About 48 others of Te Upoko-rehe were killed . . . After the Upoko-rehe were driven away from Wai-o-tahe, the upper part of the valley of that stream was occupied by the Whakatane tribe, many of whom were also members of the Tuhoe tribe. Hence we see descendants of Tuhoe now living at Waka-taua. Tama-i-koha and Netana Te Whakaari are two leading men of that part. Te Upoko-rehe were formerly the principal people of O-hiwa, but their star of empire set in the gloomy days of 90 years ago.¹¹²

As a result of the inter-tribal conflicts Upokorehe were left in a weakened state relative to those around them. However, following the period of temporary displacement during the

¹¹⁰ Best notes that Pukahu-nui was also known as 'Te Pukahu'

¹¹¹ Best notes that 'Te Kahikatea is south of O-Kahu-nui stream, east of Wai-o-tahe River'

¹¹² Best, vol 1, pp 400-403; Best adds that 'A war party of Te Whakatohea, under Hine-auahi, killed Te Paenga and many others of Tuhoe at a settlement at the mouth of the Wai-iti tributary of the Tauranga River, but I have no particulars anent that raid. A pit was dug to mark the spot where Te Paenga was slain' (p 403).

1830s, Upokorehe claim to have continued to occupy their ancestral lands at Ohiwa under the Whakatohea chief Mokomoko.¹¹³ According to Kevin Were, Mokomoko was a significant Whakatohea fighting chief in the 1860s, and had the responsibility of protecting Whakatohea's western boundary. This included the land claimed to have been won from Tuhoe at Maraetotara in the early 1820s. Mokomoko had pa at Paerata and Maraerohutu, and had three wives, Kimohia, Horiana and Horotipa, who were of Upokorehe. In addition, Were claims that 'Mokomoko had a number of Pas in the vicinity of Ohope beach and the western portions of the Ohiwa Harbour'. As a fighting chief, Were continues, Mokomoko was aware of the conflict and confiscations elsewhere in the North Island, particularly as he had travelled with others from Whakatohea, 'to support the people at Orakau'.¹¹⁴ Mokomoko had been a member of a party of Whakatohea who, along with people of Ngati Porou and other East Coast tribes, had been repulsed by a Te Arawa force at Matata, on their way to Waikato. The Whakatohea high chief Te Aporotanga had been captured and executed, and Whakatohea considered his death to be murder, and this caused further resentment towards the Government as well as Te Arawa.¹¹⁵

In his report 'Waimana Kaaku', Jeffrey Sissons has provided something of an overview of the connections between Waimana and the coast – particularly Ohiwa Harbour.¹¹⁶ Miles has suggested that in later times Tuhoe's connections with Ohiwa were mediated through the relationship that Te Whakatane had with Te Upokorehe.¹¹⁷ Lyall notes that while in earlier times there had been a strong affinity between Upokorehe and Te Whakatane, this was eroded through conflict between Upokorehe and Tuhoe. This had the effect of drawing Te Whakatane closer to Tuhoe generally, and strengthening the relationship between Upokorehe and Whakatohea 'to whom they frequently looked for shelter':

In those very early times when Haeora and Irapuae set up their boundaries there would presumably have been family groups springing from different sources, some occupying the bush-clad hinterland and others the harbour and coastal areas of Ohiwa and Waiotahi.

¹¹³ Submissions of Counsel for Upokorehe (Wai 46 ROI, doc F3), p 5

¹¹⁴ Were, pp 1-2, 9

¹¹⁵ Johnston, 'Wai 203/339 Research Report', pp 28-29

¹¹⁶ Sissons, 'Waimana Kaaku', pp 4-30

¹¹⁷ Miles, 'Ohiwa Harbour Scoping Report', p 11. According to Tama Nikora, Rua-hikihiki who was at Ohiwa does not appear to have any connections with either Te Whakatane or Upokorehe. Tama Nikora, Personal Correspondence, 23 January 2003.

These people who had come to be related through Tamatea gradually fused into an identifiable unit when the population pressures brought disharmony with neighbouring tribes. It was their custom when attacked on the coast to melt into the concealment of their inland domains and, no doubt, vice versa from inland to coast.¹¹⁸

‘These conflicts,’ Miles writes, ‘continued well into the nineteenth century and coloured the relationship between Te Whakatane and Te Upokorehe in the aftermath of the eastern Bay of Plenty confiscation of 1866’.¹¹⁹

As already noted, Upokorehe claimants have stated that the encroaching control exerted by Tuhoe over portions of the southern and eastern Ohiwa Harbour was upset by their defeat at Maraetotara at the hands of Whakatohea, in about 1823. They claim that, following this battle, the chief Te Rupe ‘took control of the Ohiwa Harbour from Tuhoe’,¹²⁰ and that, according to Were’s report, ‘Whakatohea and Tuhoe from then had an understanding which permitted access by the Tuhoe people to the Ohiwa Harbour over the Whakatohea land’.¹²¹ Tuiringa Mokomoko’s evidence to the Waitangi Tribunal suggests that Whakatohea and Tuhoe came to an understanding concerning use of the harbour, but does not mention adjacent land rights:

Full control of Te Moana o Tairongo [Ohiwa] lay with Te Upokorehe after the battle of Te Maraetotara, and was never relinquished. Tuhoe’s mana was not diminished after that battle – Upokorehe/Whakatohea allowed Tuhoe full access to Te Moana o Tairongo and the sea through Wainui, Tewaingarara and the Matakerepu rivers or streams and the Waiotahe river. Tuhoe still have that access to this day, and happily share the mana moana with Whakatohea, and this is also reflected in their right of access to fish quota. Ruamoko a chief of Whakatohea made sure that the control of Ohiwa remained with Upokorehe. He had numerous skirmishes with Tuhoe.¹²²

According to Mr Mokomoko’s evidence, Ruamoko’s grandson, Mokomoko, ‘continued this legacy until his death at the Crown’s hands’.¹²³

¹¹⁸ Lyall, p 70

¹¹⁹ Miles, ‘Ohiwa Harbour Scoping Report’, p 11

¹²⁰ Evidence of T Mokomoko, p 1

¹²¹ Were, p 1

¹²² Evidence of T Mokomoko, p 2

¹²³ Ibid.

As Miles has suggested, Tuhoe claimants 'are likely to rebut the Upokorehe assertions that their access to Ohiwa Harbour was negotiated with the express permission of Te Upokorehe and Whakatohea':¹²⁴

At the time of confiscation, it is evident that there were Tuhoe communities living in the vicinity of Ohiwa Harbour. Hemi Kakitu and other Tuhoe lived and cultivated on Hiwarau lands with Upokorehe kin, and the Tuhoe chief Rakuraku had a pa near the southern shore of Ohiwa called Whakarae, and his people occupied adjacent southern lands. Additionally, both these men seem to have returned and lived at Waimana at certain times, underlining this relationship and movement between the coastal and inland hapu.¹²⁵

This relationship will be discussed further in chapter five.

One of the principal concerns of the Wai 339 claim is the eastern boundary claimed by Ngati Awa in the Waitangi Tribunal's Wai 46 Ngati Awa and eastern Bay of Plenty inquiry. This boundary follows 'the confiscation line [to] where it intercepts the Nukuhou River. From there it travels north along the west bank of the Nukuhou River to its mouth in the Ohiwa Harbour. From there the line travels to a point midway between the heads of the Ohiwa Harbour'.¹²⁶ According to the evidence of Mr Mokokoko, 'Ngatiawa have never had Occupation Rights [to Ohiwa Harbour] prior to 1840 – apart from their treacherous siding with Ngati Maru and Nga Puhi in the 1830s, which was only temporary'.¹²⁷

The Wai 339 claimants reject the 'purported' boundary line agreed to by Ngati Awa and Whakatohea in April 1991, mentioned above. This agreement, they claim, was based on an agreement signed by an individual member of Whakatohea without the consultation of Whakatohea or Upokorehe. Furthermore, they argue that this was not the boundary claimed by Whakatohea as stated in the Whakatohea Raupatu claim (Wai 87), and that 'it does not accord with what Upokorehe understand to be their historical western boundary line'.¹²⁸

¹²⁴ Miles, 'Ohiwa Harbour Scoping Report', p 12

¹²⁵ Miles, *Te Urewera*, pp 45-46; she cites Milroy and Melbourne, p 66

¹²⁶ Submissions of Counsel for Upokorehe, p 2; 'Ngati Awa Boundary', dated 21 February 1995 (Wai 46 ROI, doc F3). See also 'Map 2: The claimants' views of their boundaries', Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 9

¹²⁷ Evidence of T Mokokoko, p 2

¹²⁸ Submissions of Counsel for Upokorehe, p 4

Establishing this boundary, particularly with regard to the eastern boundary claimed by Ngati Awa, is of paramount concern to the Wai 339 claimants, who state that oral kaumatua evidence describing whakapapa, waahi tapu, place names, battle sites and incidents, pa sites, places of cultivation, fishing grounds, seafood beds, and other resource areas, will confirm that ‘these places exist within the area of land up to and including what Upokorehe say is their western boundary line at the Maraetotara Stream’.¹²⁹

In addition to the Whakatohea traditional tribal boundary given by Te Hoeroa Horokai and Heremia Hoera to the Native Land Claims Commission in 1920, the following description of the ‘boundary of Upokorehe Hapu of Te Whakatohea’, is included in the Upokorehe submission:

Commences from the Ohiwa River Mouth known as Te rae O Kanawa, the[n] west to the Maraetotara Stream. (This was the place where Te Rupe o Te Whakatohea defeated Tuhoe). The south to Puhikoko, then by a straight line to Pukemoremore – thence to Mapouriki, then descending into the Waimana Stream, Mapouriki being on the back, following the Waimana Stream.

To its source at Tautautahi to the mouth of the Parau stream then follows the Parau stream to Tangata e Roha thence to Kaharoa (a place where Kahuki resided) then North east to Pukenui o Raho, then due north, [to] the mouth of the Waiotahe river known as Te Karihi Potai (where Kahuki’s father met his demise). Then due west to the mouth of Ohiwa Harbour known as Te Moana o Tairongo.¹³⁰

Furthermore, an amendment to the Wai 339 claim was made as follows:

That the Maraetotara Stream which is situated to the West of the Ohiwa Harbour and along the Ohope Beach be recognised as the traditional boundary between Ngatiawa/Ngatipukeko and Te Whakatohea Iwi.¹³¹

A sketch map depicting the contested boundaries discussed in this chapter was included in the Wai 339 submissions to the Waitangi Tribunal.¹³²

¹²⁹ Ibid., p 3

¹³⁰ ‘The Boundary of Upokorehe Hapu of Te Whakatohea’, 31 August 1993 (Wai 46 ROI, doc F3). It was also noted that ‘Puhikoko to Pukenui o Raho was the boundary given by Te Hoeroa Horoka[i] in the Sims Report at

3.5 Tuhoe

As Judith Binney has stated, ‘crucial to the Tuhoe claim concerning the confiscated land in the eastern Bay of Plenty is their occupation of the lower valley lands of the Whakatane, Waimana, Nukuhou, and Waiotaha rivers in the early nineteenth century’.¹³³ While Tuhoe are often considered to be an inland or ‘landlocked’ people, they had links to the coast, primarily through Ohiwa harbour. As Miles has stated:

Te ngahere, or the forest, was an essential part of Tuhoe existence, providing resources for food, medicine, clothing, and shelter. Surrounded by maunga, the hapu of Te Urewera was largely cut off from the sea and marine resources. However, Tuhoe expansion and close whakapapa links with more coastal hapu – Upokorehe, for example – would have provided some Tuhoe hapu with a means of access to the bounty of Ohiwa Harbour.¹³⁴

Tuhoe claimants to the Waitangi Tribunal, Miles has noted, ‘state that their relationship with Ohiwa can be described in terms of historical associations, occupation, and use-rights’.¹³⁵

In the Wai 36 Tuhoe claims report, ‘Te Roi o te Whenua’, Wharehuia Milroy and Hirini Melbourne argue that traditional rights of occupation and usufruct were based on the demonstration of ‘whenua kite hou, prior discovery; whenua tipuna, ancestral land; whenua raupatu, land by conquest; or whenua tuku, gifted land’:

The first two were often linked, and whenua tipuna was usually more important, particularly if continuous occupation by several descent lines could be demonstrated. Whenua raupatu had to be backed by continuous occupation – ahi kā, keeping the fires burning on the land. Occupation signs such as dwelling places and burial sites had to be enumerated. The ownership and location of pigeon troughs, for example, was accepted as

Opotiki on the 14th July 1920’; and that ‘[t]he boundary to Kaharoa then to the Waiotaha river mouth was related by Mr W Rewiri, a Kaumatua of Upokorehe, Te Whakatohea whanui.’

¹³¹ T Mokomoko to Waitangi Tribunal, 2 June 1993 (Wai 46 ROI, doc F3)

¹³² ‘Ngati Awa, Upokorehe map’ (Wai 46 ROI, doc F3). The Waitangi Tribunal, at the sixth hearing of the Wai 46 Ngati Awa and Other Eastern Bay of Plenty Claims inquiry, conducted a tour of Upokorehe sites, on 30 June 1995. According to the itinerary, the sites visited were: Maraetotara; Te Horo; Whitiwhiti; Wainui; Wainui Pa; Paparaoa; Hiwarau; Nukuhou; Waingarara; Matekerepu; Kutarere; Roimata – view Hokianga Island; Oparaoa; Karaka; Ruatuna Road; Pataua; Hokianga; Te Ana Rutaia; and Onekawa Pa. ‘Site visit itinerary, 30 June 1995 (Upokorehe)’ (Wai 46 ROI, doc F4); ‘Place names for site visit by Mira Taitapanui (Upokorehe)’ (Wai 46 ROI, doc F5)

¹³³ Binney, ‘Encircled Lands’, part one, p 10

¹³⁴ Miles, *Te Urewera*, p 7

¹³⁵ *Ibid.*, p 41

a sign of occupation if the place was visited periodically for snaring birds. In cases where several generations had frequented a place to obtain food, it is regarded as occupation.¹³⁶

Milroy and Melbourne state that in the early to mid-nineteenth century Tuhoe claims to lands on the Ohope-Ohiwa coastline were kept alive through the occupation of Te Whakatane, Ngati Raka and Ngai Turanga, amongst other Tuhoe groups. Te Whakatane also defended interests that they held on the eastern and southern shores of Ohiwa Harbour.¹³⁷

According to Milroy and Melbourne, Tuhoe have very strong connections with Ohiwa based upon descent from ancestral figures such as Haeora, Hape and his descendants, Te Hapuoneone (the earth-born people), as well as by occupation.¹³⁸ The early tribes of Ngai Turanga and Ngai Te Kapo, who developed close associations with Ohiwa and who were eventually 'absorbed' into the wider Tuhoe iwi, were descended from Hape (and other ancestors).¹³⁹

Milroy and Melbourne identify three ancestors 'who linked legend, land and the people of Ngāi Tūhoe': Pōtiki, Toi-kai-rākau and Hape. Pōtiki, they write, 'was the son of Hinepūkohurangi, the mist woman, and Te Maunga, the mountain man. Pōtiki, in turn, gave rise to the forest nomads of Ngā Pōtiki, the children of the land, who occupied the forests of what is now called Te Urewera'.¹⁴⁰ Toi-ai-ākau, or Toi, whose pa, Kaputerangi, stood on the bluff above the entrance to Whakatāne harbour,

was the progenitor of many sub-tribes, of whom the principal ones were Te Tini o Awa, Te Marangaranga, Te Tini o Tuoi, Te Tini o Taunga and Ngāi Tūranga. Collectively, these sub-tribes were known as Te Tini o Toi, the multitude of Toi. Te Tini o Toi occupied the valley of the Ōhinemataroa Valley from its mouth at Whakatāne to a point below Ngā Māhanga to the south. Intermarriages between Ngā Pōtiki and Te Tini o Toi gave rise to new sub-tribes with dual identities and allegiances.¹⁴¹

Hape-ki-tūma-nui-o-te-rangi, or Hape, 'whose descendants came to assume the name of Te Hapuoneone (people conceived of the land) ... settled at Ōhiwa Harbour':

¹³⁶ Milroy and Melbourne, p 83

¹³⁷ Ibid., p 64

¹³⁸ Ibid., pp 15-16

¹³⁹ Best, vol 1, p 59

As time elapsed, Hapūoneone established their own identity and territories further inland in the Waimana Valley and adjacent districts. As with Ngā Pōtiki and Te Tini o Toi, Te Hapūoneone also became connected with later immigrants of the Mātaatua canoe through Tūhoe Pōtiki and other ancestors of Ngāti Awa and its associated hapu of the coastal lands.¹⁴²

Elsewhere, Melbourne has stated that ‘although Hape was a later settler, his landing at Ōhiwa Harbour brought him into close association with Te Tini o Toi. These ties were important in establishing settlements around that vicinity’.¹⁴³ Miles points out that:

According to Best, some people said that Hape was a descendant of Toi but could not provide genealogies to prove it. Best favoured the view that Te Hapuoneone and Te Tini o Toi were two separate and distinct peoples. He states that the tribes Ngati Raumoana, Ngai Te Kapo, and Ngai Turanga are descended from Hape, as are Tuwharetoa.¹⁴⁴ The main Ngai Te Kapo settlements were at Ruatoki, Taneatua, and Te Waimana.¹⁴⁵

Milroy and Melbourne state that ‘where the boundaries of the three divisions of tribes met, inevitable inter-marriages set up new alliances and groups with new identities. However:

politically and economically, each tribe was an autonomous unit whose authority and jurisdiction extended to the limits of their own territories. Group security was furthered through close co-operation with other groups sharing the same environment. Co-operation was easily solicited through shared lineages that extended back to one or more of the original ancestors Pōtiki, Toi and/or Hape.¹⁴⁶

These boundaries are depicted in Miles’ *Te Urewera*.¹⁴⁷

Binney briefly describes the origins of Tuhoe as follows:

Tuhoe, the people of the mountains at the heart of the Urewera, are the descendants of Potiki I, who was their founding ancestor (born of Hine-pukohurangi, the Mist-Maid and

¹⁴⁰ Milroy and Melbourne, p 14

¹⁴¹ Milroy and Melbourne, p 15; they cite Best, vol 1, pp 12, 61, 62

¹⁴² Ibid., pp 15-16; they cite Best, vol 1, pp 15, 59, 60

¹⁴³ Sydney Melbourne, ‘Te Manamanerau a Te Kāwanatanga. A History of the Confiscation of Tūhoe Lands in the Bay of Plenty’, MA thesis, University of Waikato, 1987, p 2

¹⁴⁴ Best, vol 1, pp 59–60

¹⁴⁵ Miles, *Te Urewera*, pp 12-13

¹⁴⁶ Milroy and Melbourne, p 16

Maungapohatu), and of Toi-kai-rakau, an early inhabitant of the Urewera; but they take their tribal name from Tuhoe-potiki, the great-grandson of Toroa, captain of the Mataatua canoe, which made its landfall at Whakatane in the eastern Bay of Plenty. Thus there is the proud saying, which Best quoted, '*Na Toi raua ko Potiki te whenua, na Tuhoe te mana me te rangatiratanga*'¹⁴⁸ – the land is from Toi and Potiki, the prestige and authority is from Tuhoe.¹⁴⁹

Binney summarises Best's view of 'the lines of descent other than those from Tuhoe-potiki which were traced, or emphasised, among people of the Urewera country', as outlined in his 1897 article 'Tuhoe Land. The Urewera Country and Its People', as follows:

He mentioned those whom he called, in 1897, 'aborigines' of Polynesian descent, who had reached the eastern Bay of Plenty prior to the arrival of the Mataatua canoe immigrants. Best suggested there were four main lines of descent for these earliest 'aboriginal' tribes, but he placed them all under the general name Te Tini o Toi (The Multitude of Toi). These tribes, whose names were in common use in the nineteenth century, included Te Hapu-oneone (who traced themselves from the early settler Hape), Te Whakatane (who traced themselves from the early settler Haeora), and Te Upokorehe (who traced themselves from Haeora and Raumoa). According to Best, these tribes included Ngai Turanga and Ngai Tama, although of the latter he particularly stressed they were inseparable from Tuhoe. Indeed he observed that, in practice, all these early clans of 'the multitude of Toi' could not be separated from Tuhoe.¹⁵⁰

'These several hapu,' Binney states, 'coexisted and overlapped territorially in the lower Waimana and the Waioatahe river valleys on the northern borders of Urewera'.¹⁵¹ Speaking generally, she suggests that:

It would probably be correct to suggest that the Urewera hapu lived in a series of relationships with the land, the rivers, the sea and their neighbours; and that, for most of the nineteenth century at least, they did not conceive of themselves as owning these varied resources, nor of wishing to partition the land (nor indeed the sea) into portions, pieces, and allotments. Rather, they lived in varying relationships of harmony and discord with

¹⁴⁷ Miles, *Te Urewera*, p 14. This map is taken from Melbourne, 'Te Manemanerau a Te Kāwanatanga', p 3

¹⁴⁸ Best, vol 1, p 13

¹⁴⁹ Binney, 'Encircled Lands', part one, p 10

¹⁵⁰ *Ibid.*, pp 11-12; she cites *New Zealand Herald*, Supplement, 17 April 1897; Best, vol 1, pp 79, 86-87

¹⁵¹ Binney, 'Encircled Lands', part one, p 12

the land as with each other, both nurturing and using the many resources of people, land and water.¹⁵²

According to Milroy and Melbourne, ‘the history of the hapu of Ngati Raka, Kareke and Takiri contains important information to assist in resolving the conflicting tribal claims between Tuhoe and their neighbours Ngati Awa and Pukeko to the lands of Owhakatoro, Te Poroa, Opouriao, and Ohiwa.’¹⁵³ Best describes Ngati Kareke, Ngai Takiri, Ngai Te Kapo, and Ngati Raka (who were descended from Te Hapuoneone and Te Tini o Toi) as being ‘practically one people’. They occupied a large portion of the Whakatane valley and the Waimana River catchment area, cultivating the plains of Opouriao. According to Miles, ‘Opouriao appears to have been an epicentre of the territorial disputes between Tuhoe, Ngati Awa, and Ngati Pukeko hapu’.¹⁵⁴ Milroy and Melbourne state that, ‘by reason of descent, Ngati Raka occupied the lands previously held by Ruapūrupuru, although under Raka these boundaries were extended further north into Paparoa in Ohiwa, east into Waimana and south into Ruatoki’.¹⁵⁵ Later, they state that ‘Tuhoe mana was established over Owhakatoro, Waiohau, to the west, and Opouriao and Waimana to the east. To the north were the lands of Ngai Te Kapo at Te Hurepo and Ngati Raka at Paparoa, Te Wainui, Matakerepu and Whakarae at Ohiwa’.¹⁵⁶ However, they also note that ‘while some of Ngati Raka moved to Waimana and Paparoa in Ohiwa [following their defeat at the hands of Ngati Rongo and Tamakaimoana at Otenuku in 1819] others remained and lived with their kin of Tuhoe’.¹⁵⁷ The conflict between Ngati Raka and Tuhoe is related in some detail in Miles’s *Te Urewera* report.¹⁵⁸

Ngati Raka claimants have emphasised that in the period before and after the confiscation in the 1860s, their tipuna Rakuraku resided at Ohiwa at several pa including Whakarae, and that Ngati Raka had and retain interests from Waimana to both Ohiwa and Waiotahe. As such, while Ngati Raka have close connections with Upokorehe, their connection with Ohiwa

¹⁵² Ibid., p 19

¹⁵³ Milroy and Melbourne, p 18

¹⁵⁴ Miles, *Te Urewera*, p 31

¹⁵⁵ Milroy and Melbourne, p 29

¹⁵⁶ Ibid., p 39

¹⁵⁷ Ibid., p 41

¹⁵⁸ Miles, *Te Urewera*, pp 31-36

harbour remains independent of their relationship with this hapu.¹⁵⁹ They make the point that prior to the confiscation they, along with Ngai Turanga and Te Whakatane hapu, resided at Ohiwa, and that it was only following this dislocation from the harbour and their lands that they settled at Waimana. To illustrate this history, they refer to the central place of Tairongo in the whakairo at Tataiahape marae at Waimana. This marae faces towards Ohiwa, and Ngati Raka claimants state that:

Ngati Raka don't look towards Maungapohatu. Ngati Raka don't look towards Te Urewera. Ngati Raka looks to Ohiwa. Ngati Raka also looks to Ruatoki and Opouriao because we lived in Opouriao for a long period of time. But Ngati Raka clearly looks to Ohiwa. Through whakapapa and marriage we are now Tuhoe and we look to Maungapohatu. But our beginnings [were at Ohiwa] and [in] time of strife we always went back to Ohiwa.¹⁶⁰

Ngati Raka claimants have also identified a number of nohanga in the Ohiwa area where they lived under the rangatira Tapoto: at Paparoa where they lived with Te Kareke; at Te Mauku (or O Heu) – at Kutarere – which was the nohunga of Ngati Raka and Karatehe; and at Te Kahikatea at Waiotahe. The Ngati Raka maunga, Pukenui-o-Raho, is in the Waiotahe area and is included in the Tuhoe boundary, as discussed below. Ngati Raka still own some land at Waiotahe.¹⁶¹ A narrative of Ngati Raka's presence in the Ohiwa area can be pieced together from Best's accounts in *Tuhoe*.

According to Milroy and Melbourne, 'one tribal tradition cannot provide sufficient evidence to prove exclusive and undisturbed possession of ... Ohiwa to one group alone'.¹⁶² Tuhoe, they state, 'had a saying about Ohiwa that characterised their outlook' towards the harbour:

Of Ohiwa they said, "No pikipiki mai, no hekeheke atu." Ohiwa was never owned. Tribes exercised rights to the bounty of Ohiwa. These rights were established over time by successive generations. The saying highlight[s] the point that in spite of the coming and

¹⁵⁹ Conversation with Ngati Raka claimants, Urewera Research Hui, Whakatane, 17 November 2002. According to Binney, 'Rakuraku's descent within Ngati Raka is well established'. Binney, 'Encircled Lands', part one, p 24; she cites Best, vol 2, Tables 15, 31

¹⁶⁰ Conversation with Ngati Raka claimants, Ohiwa Harbour, 12 December 2002

¹⁶¹ Ibid.

¹⁶² Milroy and Melbourne, p 61

going of generations, the resources of Ohiwa remained plentiful. Ohiwa held more than just memories of arguments and wars for the tribes concerned.¹⁶³

Milroy and Melbourne discuss the significance of Ohiwa harbour as a rich resource for Ngati Awa, Whakatohea, Upokorehe and Tuhoe as follows:

Ohiwa drew the tangata whenua and later Mataatua canoe descendants from along the coast and inland hill country for practical reasons. It made the process of living less arduous. There was food in its waters, in its mud and banks – shark, fish of all kinds, eels, water fowl, and most shellfish. While a few food types were seasonal, most was available in large quantities throughout the year in all types of weather. The harbour was also an inexhaustible source of cleansing and recreation. The surrounding low hills created easily fortifiable positions and extensive cultivations. Thus “Te umu taoroa a Tairongo”. This pepeha or saying is a testimony to the abundance of food in the harbour. So much so that the ancestor Tairongo could afford to keep his ovens burning and cooking continuously. It was also the tipuna Tairongo who dug out the harbour with his large ko (digging stick) which now lies in the form of the Ohiwa spit. The harbour was referred to as Te Kokonga, the dugout.¹⁶⁴

‘These associations with the Ohiwa harbour,’ they state, ‘grew with the history of the tribes’.¹⁶⁵ They provide accounts of taniwha and other guardians who populated the harbour:

Here and there were the population of guardians called taniwha who showed themselves and sometimes intervened in the affairs of humans. There was the taniwha Parewarewa who resided in the Waioatahe River and patrolled the area from the mouth of the river at Ahiaua to the bridge further up. The urupa across from the pipi and tuangi beds at Ahiaua is protected by guardian insects which would attack intruders that damage any part of it or trees that grow there.

On the Nukuhou River lived Tārua who still parade its lower reaches. Guardian in the form of totara and rata guard the entrance of the Ohiwa Harbour. Te Muka is another guardian that travels the harbours many channels. Aniwaho is another guardian that ensured the flow of food to and from the harbour.

¹⁶³ Ibid., p 62

¹⁶⁴ Ibid., p 62; they cite Hohepa Kereopa tape transcripts, Nga Rauru hui, July 1989

¹⁶⁵ Ibid., p 62

As such, Milroy and Melbourne argue that the harbour ‘held special historical and spiritual significance for all the Mataatua tribes of Whakatohea, Ngāti Awa, Upokorehe, Tuhoe and even Te Whanau-A-Apanui’.¹⁶⁶ They describe Ohiwa as ‘the seafood basket of the Mataatua’:

Under Mataatua tribes’ lore, the ancestral rights entrusted to the Mataatua people as a whole carry specific obligations, expectations and responsibilities toward Ohiwa Harbour as the nest and food basket of their people.¹⁶⁷

Milroy and Melbourne argue that Tuhoe was the only Mataatua tribe whose links to Ohiwa were ‘severed completely’ when eastern Bay of Plenty lands were confiscated in 1866. Up until this time, they claim, Tuhoe’s ‘long association with Ohiwa [was] kept alive by historic associations and occupation’. They provide ‘a selection of Tuhoe stories and place names’ as evidence of these historical associations:

Tūhoe’s claim to the estates along the sea beaches at Ohope were kept by Te Whakatāne, Ngāti Raka among other Tūhoe hapū. Tūhoe occupied the pa and kāinga of Maraetotara. Te Whakatane of Tūhoe, lost one fight here to Whakatohea about 1820. Te Whakatane also held interests along the eastern and southern shore of Ohiwa harbour. Here we find the many places associated with the memory of Panekaha, Kahuki, Hākopūrākau and the Hokowhita a Whakatāne. Between Tauwhare and Ohakana Island is Te Kōpūao. This is a pool frequented by sharks. The Island of Ohakana was settled by Ngāti Raka when they moved from Opouriao and Te Hurepo. At Te Wainui on a small hill near the Wainui stream is the pā of Panekaha. Below this pā is the tidal inlet of Te Tauranga Waka. This was where canoes were kept. This site lies at the end of the Wainui valley which acts as a corridor into the interiors of Te Rāroa in Waimana. The Wainui valley is guarded by the old pā sites of Hauauru to the west and Te Poka, Hauhau and Te Pātapu to the east.

To the east of Te Taungawaka is the Paparoa peninsular. On the headland is the pā of Whitiwhiti which belonged originally to Panekaha. Kahuki met Panekaha here to discuss how he could defeat Tuamutu.¹⁶⁸ Hundreds of years later, in [the] last decades of the 1820s a Whakatohea force, who were responsible for killing Tamahore, were intercepted and defeated near Te Whitiwhiti by his brother Te Purewa. During the 18th and 19th century Paparoa seems to have been occupied by Te Whakatāne and Ngāti Raka. The

¹⁶⁶ Ibid., pp 62-63; they cite tape transcripts, Nga Rauru hui, July 1989

¹⁶⁷ Ibid., p 63

¹⁶⁸ Ibid., p 64; they cite Best, vol 1, pp 100-108

name Paparua is associated with the seals which once gathered here to mate and raise their young. Ngāti Raka buried their dead in tomo along the Paparua headland. These have been filled in to conceal and protect the contents within. On this headland is the pā of Mouturei.¹⁶⁹

To the east of Te Paparua is another headland on which stands the prominent features of Te Waikirikiri pā. To the north is the island of Uretara ... Further around is the kāinga of Toretore. Across the mud flats outside the mouth of the Nukuhou river is Raetoka which sits at the top of the Hiwarau block. Around further is Te Hou, Te Onerau, and Te Karaka where Te Kooti Rikirangi died. Roimata is close by. This was named after an incident when some locals failed to return from a fishing trip out at sea. The women would gather on a knoll and gaze out to sea in hope of seeing their men return. The vigil was eventually rewarded with the return of all the fishermen. The name commemorates the women's tearful vigil. Near by is Oparua known for its tomo urupā. Awaarua, as with Roimata were places where hapū from the interior would camp to gather and prepare the abundance of seafood.

Across from Awaarua is the island of Pātāua. The houses "Te Poho o Tūhoe" and "Te Here o te Rā" once stood here. South of Kutarere is the pā of Matakerepū. This belonged to Hapekituarangi, the founder of Te Hapūoneone. Below the pā is a thermal mud pool called Te Pā Kaukau o Te Ruahine, named after Hapekituarangi's wife. Further up from the mud pool is a hill called Tirotirowhetu which was an ancient gathering place for astronomers. Overlooking Tirotirowhetū is the majestic landmark on which was built the pā Whakarae which belonged to Rakuraku. Near Pātāua on the mainland, is the pā of Oheu. Ngāti Raka lived here into the late 1820s. At the time of the Ngāti Awa Whakatohea fight at Onekawa about 1828, Ngāti Raka under the leadership of Hoani Papaka moved to Kahikatea in the Waiotaha valley. They stayed here until the fight of Te Purewa in the late 1820s when Ngāti Raka moved to Waimana.¹⁷⁰

"Rakuraku's pā, Whakarae ... is situated on a commanding hill, about a mile and a half from the headwaters of Ohiwa. The pa is visible from all parts of Ohiwa and is about five miles from the sea ... but the approaches for several miles are such as to render it very doubtful whether an adequate force could surround the pa by surprise..."¹⁷¹ Tamaikohā

¹⁶⁹ Ibid., p 65; they cite Best, vol 1, p 40; tape transcripts, Nga Rauru hui, July 1989; Hori Te Pou MS February, 1995

¹⁷⁰ Ibid., p 66; they cite Hohepa Kereopa, Nga Rauru transcripts, July 1989; Hori Te Pou MS February 1995

¹⁷¹ Ibid.; they cite AJHR, A-No. 12, 1869, p 39

reoccupied Whakarae in 1870 and was attacked by Lt-Col. St. John after he had already made peace with Major Kemp at Tauwharemānuka. During this incident Tamaikoha's uncle, Tepine was killed. The pā was then deserted.¹⁷²

Milroy and Melbourne emphasise that 'Ngāti Raka and Ngai Tauranga hapū of Waimana and Ohiwa held steady occupation of the lands from the confiscation line to Ohiwa. They were in permanent occupation and they possessed extensive cultivations and cemeteries through these lands'.¹⁷³

Rakuraku had represented Tuhoe's interests before the Compensation Court in 1867. His claims were dismissed despite the fact that he occupied the pa at Whakarae and held the surrounding lands on the southern shores of Ohiwa at that time.¹⁷⁴

In the neighbouring valley of Waiotahe Tūhoe also held land more particularly in the Wakataua and Kahikatea flats. Tūhoe interests were cemented in these parts after the defeat of Upokorehe and Raumoa by the forces of Te Purewa and Tamakaimoana. After Upokorehe and Raumoa were defeated their lands were occupied by the hapū of Te Whakatane. Tamaikoha and Netana Te Whakaari were the two leading men of those parts.¹⁷⁵

Many of these locations can be seen in figure 3, the map 'Ohiwa Harbour Shellfish Beds and Place Names' taken from Milroy and Melbourne's report.

Binney states that at the Native Land Court hearings for the Waimana block, held in 1878 and 1880, Judge Monro 'awarded Te Waimana (that is, the area immediately south of the confiscation line) to Tuhoe and Ngati Raka'. In doing so, Monro included Ngati Raka and Ngai Turanga (two 'pre-eminent' hapu living in the Waimana area) as hapu of Tuhoe.¹⁷⁶ According to Binney:

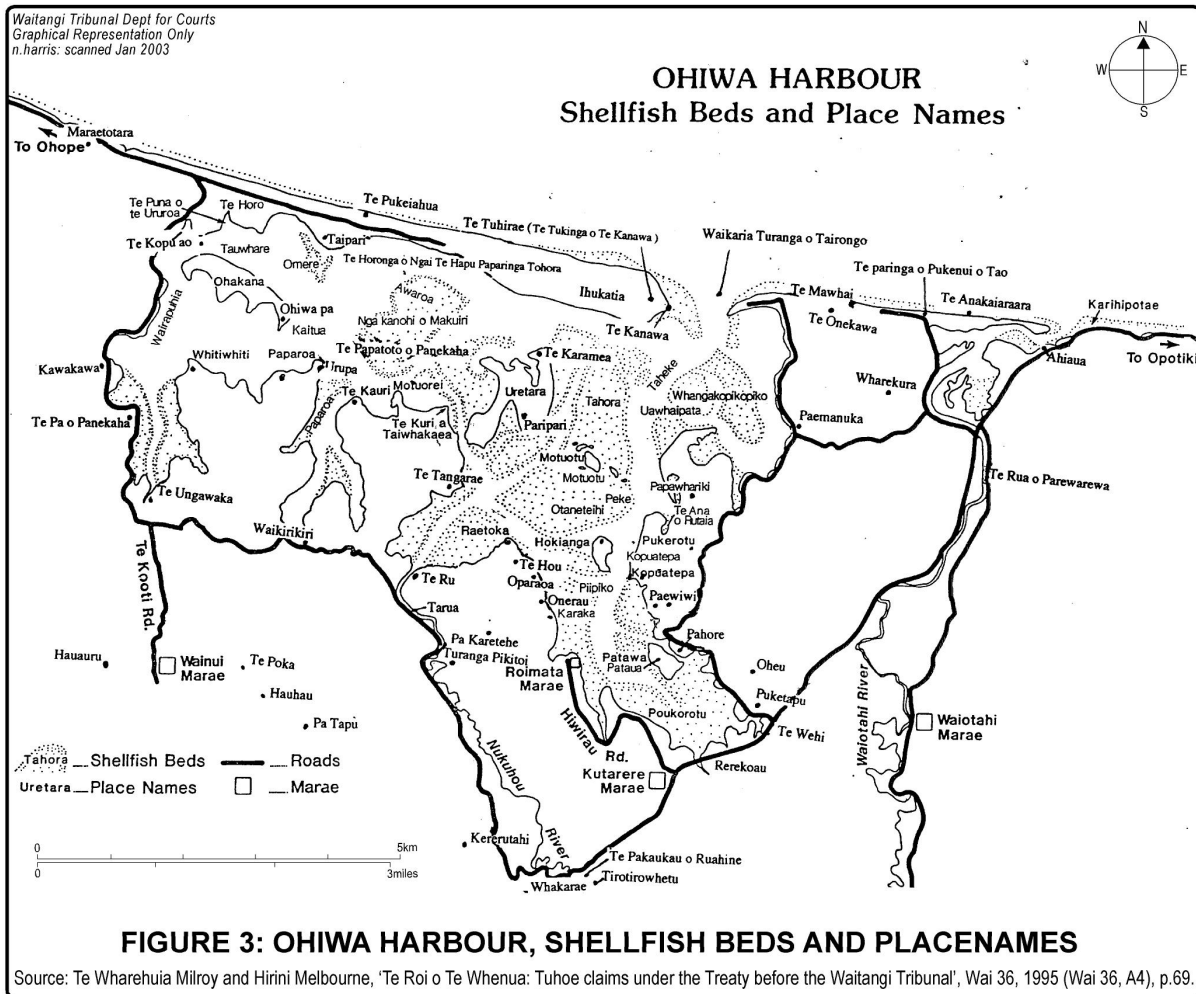
By this time, Ngai Turanga, and closely associated with them, Ngai Tama, were generally considered to be hapu of Tuhoe. But Ngati Raka were more visibly a semi-independent hapu. They had strong connections with Te Upokorehe, the coastal people, and with Te

¹⁷² Ibid.; they cite AJHR, A-No. 8b, 1870, p 39

¹⁷³ Ibid.; they cite Opotiki MB, Waimana Rehearing, 8 March 1880, pp 311, 316, 343

¹⁷⁴ Ibid.; they cite Compensation Court Minutes, Box 1, Claim 83, p 9

¹⁷⁵ Ibid., p 67; they cite Best, vol 1, pp 401, 408



Hapuoneone, who were also descendants of the earliest settlers in the region before the arrival [of] the Mataatua canoe immigrants from the north.

Monro's judgement, Binney states, 'recognised the close, finally inseparable, connections between these hapu of the Waimana region. Best', Binney continues, 'correctly described the Land Court awards in the Waimana block as *'taha rua'*, dual-sided, by their recognition of the continued existence of Ngati Raka with Tuhoē in an inseparable relationship'.¹⁷⁷

At the 1880 hearing of the Waimana block, Rakuraku Rehua (speaking as belonging to Ngati Raka and to Ngai Turanga) gave a brief history of the Waimana area, paraphrased by Binney as follows:

¹⁷⁶ Binney, 'Encircled Lands', part one, p 20; she cites Waimana rehearing, pp 96-97, HAH Monro papers, Waimana rehearing, MSS 366:12, AIM

¹⁷⁷ Ibid., p 20; she cites Best, vol 1, p 349

how all the people were devastated by the invasion of Nga Puhi from the Bay of Islands armed with muskets in the early 1820s, and how, in the early 1830s, the Tuhoe chief Maungaharuru, 'On the introduction of Christianity . . . brought back the remnants of Ngatiraka and Ngaituranga, and replaced them on the Waimana. There they resided uninterruptedly until the rebellion of Kereopa [in 1865]'.¹⁷⁸

As will be discussed in a later chapter, following the confiscation, Rakuraku and his people occupied Whakarae pa, above the Nukuhou River. According to Binney:

Whakarae had long been a guardian of Tuhoe's access route from inland to gather kaimoana from the Ohiwa harbour. Tuhoe elder Hohepa Kereopa states that 'Whakarae' pa was the commanding, inland hill-pa that stands on the eastern side of the Nukuhou river valley.¹⁷⁹ There was, however, also a series of ridge pa, extending over four kilometres, with five major tihi (platforms or central fortifications) on the north side of the Nukuhou River. This complex is called 'Whakarae' on archaeological site reports. The ridge-pa complex dates from the sixteenth century, and it also has an identifiable archaeological history of occupation in the first half of the nineteenth century.¹⁸⁰

While by 1866, the Nukuhou river was considered little more than a stream, this complex of pa, Binney states, 'had clearly protected one frequently used route from Waimana down to the Ohiwa harbour. In this way 'Tuhoe and Ngati Raka regularly obtained their shellfish supplies'.¹⁸¹ Best describes, for example, 'a party of Maru-iwi, principally women, [who] went from Te Wai-mana to O-hiwa, in order to obtain shellfish, for which that place was ever famed'.¹⁸² Both the pa, Whakarae, and the route between Waimana and Ohiwa, are marked on a military map made about 1869. The pa is labelled as Rakuraku's on this map.¹⁸³ Of the 'clustering of defensive sites', Binney writes:

The gunfighter pa itself commands a particularly fine view over Wainui valley to the west, over Hokianga island and the heads of the Ohiwa harbour, the coastal route to Opotiki in the east, and the overland route south up the Nukuhou river to Waimana. It is manifestly

¹⁷⁸ Ibid., p 21; she cites Opotiki MB 1, 9 March 1880, p 316

¹⁷⁹ Ibid., p 22; she cites Oral Source: H Kereopa, at the site [Whakarae], 21 April 2002

¹⁸⁰ Ibid.; she cites Phillips, pp 17, 31, 47-48

¹⁸¹ Ibid., p 23; she cites J A Wilson to Superintendent, Auckland, 1 May 1866, IA 1/1867/2771, (RDB, vol 123, p 47463)

¹⁸² Best, vol 1, p 68

¹⁸³ Binney, 'Encircled Lands', part one, pp 21, 22, 23; see also GT Chapman, Map of the Bay of Plenty and Lake District, 832.16cba, ATL, reproduced in Binney, p 75

a controlling site. Equally so is the isolated hill-pa, whose height would give a clear view of the harbour. Nineteenth century evidence suggests that the Whakarae complex guarded Tuhoe and Ngati Raka's access to the sea.¹⁸⁴

As will be discussed in chapter 6.4, the southern portion of Whakarae – Lot 183 Parish of Waimana – along with the adjacent Lot 184, was set-aside for Rakuraku and his immediate hapu in 1874. While this was challenged by Upokorehe, to whom the adjacent Hiwarau block (including the remainder of the pa complex) had been granted, there is little doubt, according to Binney, 'that Rakuraku Rehua and his people had held Whakarae for Ngati Raka and Tuhoe'.¹⁸⁵

According to Binney, Rakuraku's descent within both Ngati Raka and Tuhoe is unquestioned;¹⁸⁶ and so too, she suggests, is his connection with Waimana. In his testimony before the Land Court in 1880, Rakuraku stated that 'his parents had returned with Maungaharuru to reoccupy Te Waimana, after the Nga Puhī attacks in the 1820s, and he himself had lived there since he was a child'.¹⁸⁷ Binney also states that:

Rakuraku's mana was accepted as extending over Waimana from the head of the Ohiwa harbour up to Tawhana, for he was the recognised leader of Nga Maihi and Ngai Tamaroki hapu.¹⁸⁸ He was one of the senior Tuhoe chiefs with whom the military officers dealt throughout the entire tortured period of the wars from 1865 in the eastern Bay of Plenty.¹⁸⁹

Milroy and Melbourne record that between 1800 and 1840 Tuhoe were variously in conflict with the 'neighbouring tribes of Ngāti Awa, Ngāti Pūkeko, Whakatōhea, Te Arawa, Ngāti Tūwharetoa, Ngāti Whare, Ngāti Manawa, Ngāti Kahungunu, and Te Whānaupani'. These hostilities served to forge 'new internal hapū relationships with a new sense of political association and mission – collective survival'.¹⁹⁰ Over this period, Tuhoe were in seemingly

¹⁸⁴ Binney, 'Encircled Lands', part one, p 23

¹⁸⁵ Ibid.

¹⁸⁶ Ibid., p 24; she cites Best, vol 2, Tables 15, 31; 'Genealogies of the Tuhoe as of 1898', Best qMS[172], pp 98-99; whakapapa, item 23, OSB Cornell Papers, MSS 1071, AIM; Jeffrey Sissons, *Te Waimana, The Spring of Mana: Tuhoe History and the Colonial Encounter*, Dunedin, University of Otago Press, 1991, p 150

¹⁸⁷ Binney, 'Encircled Lands', part one, p 24; she cites Opotiki MB 1, p 316

¹⁸⁸ Ibid.; she cites OS: John Ru Tahuri, 23-24 March 1998, tapes 2b, 3b; and Best, vol 2, Table 12 (Nga Maihi)

¹⁸⁹ Ibid.

¹⁹⁰ Milroy and Melbourne, p 70

perpetual conflict with Ngāti Pukeko, Ngāti Awa and Whakatohea to the north.¹⁹¹ Milroy and Melbourne outline a series of conflicts, based on both the oral testimony of Te Mākarini Waiari and the work of Best, as follows:

The next sequence of battles resulted from a murder committed by Whakatohea. The victim was Whakatau of Ngāti Pukeko who also had very close Tūhoe links. However, Whakatohea blamed Ngāti Awa. Te Nohu and Tauwhitu were killed. Taurua, not satisfied that these two lives were enough, went on the rampage. The battle that eventuated took place at Waimaneo where Taurua was the first to fall. This same battle is also known as Waikōhua.¹⁹² His death was followed by those of Ngāwhare, Kamoahiahi and Pārera at Ōmataroa.

Tokopounamu of Tūhoe was killed by Ngāti Pukeko at Pukareao in Ōhāua-o-te-rangi. Hoi, Huriaroaro and Te Āraiwaerea were also killed. This marked the beginning of the souring of Tūhoe and Ngāti Awa relations. Te Pōtae, Te Kāpiti and the family of Hokimuri of Tūhoe were killed.¹⁹³

This episode was followed by the battle at Te Kaunga,¹⁹⁴ which was followed by the death of Pui and the battle at Te Tāhana and Mimihanui Pā. Te Kāretu marked the end of the wars between Tūhoe and Ngāti Awa, after which a permanent peace was established by Te Piki of Tūhoe and Tikitū of Ngāti Awa.¹⁹⁵

The Tūhoe/Whakatohea wars ranged from Ōhiwa, Te Wainui, Waiōhau and Rūātoki, and ended with a battle at Tātāhoata in Ruatāhuna.¹⁹⁶

As indicated above, Miles has outlined the period of Tuhoe-Whakatohea conflict in some detail in her *Te Urewera* report.¹⁹⁷ She notes that, due to their location at Ohiwa Harbour, the Upokorehe hapu of Whakatohea, in particular, came into conflict with Tuhoe. Ohiwa Harbour, Miles continues, was a major source of conflict, not only between Tuhoe and Whakatohea, but also with Ngāti Awa. Miles examines the conflict between Tuhoe and

¹⁹¹ Ibid., p 74

¹⁹² Best, vol 1, p 176

¹⁹³ Ibid., pp 359,362

¹⁹⁴ Ibid., p 363

¹⁹⁵ Ibid., pp 380, 386-387

¹⁹⁶ Ibid., pp 174, 207-209, 302; Milroy and Melbourne, pp 77-78

¹⁹⁷ Miles, *Te Urewera*, pp 40-46

Whakatohea ‘within the context of Tuhoe’s relationship with Te Upokorehe hapu, and of Tuhoe’s defence of their access to Ohiwa and its hinterland’.¹⁹⁸

Miles states that ‘it was largely Te Whakatane tribe and their connections with the Upokorehe people, which would define the relationship Tuhoe enjoyed with Ohiwa’.¹⁹⁹ These connections, largely through the story of Kahuki, are outlined by Sissons in *Te Waimana*.²⁰⁰ As Miles points out, ‘the historical record suggests that an understanding of the genealogical and geographical links between the Ohiwa and Waimana communities is important to an understanding of Tuhoe claims to Ohiwa Harbour’:

Te Hapuoneone were the original inhabitants of both the Ohiwa and Waimana districts, and the various hapu descended from these ‘tangata whenua’ occupiers appear to maintained this close relationship between coastal and inland communities. Thus, Tuhoe claimants to the Waimana block have asserted that Tuhoe hapu occupied, extensively cultivated and buried their dead on the land from Waimana to Ohiwa, and have named Tuhoe pa and special places which demonstrate their associations at Ohiwa.²⁰¹

As noted above, the historically close relationship between Te Whakatane and Upokorehe ‘seems to have gradually broken down under the onslaught of Tuhoe tribes’.²⁰² In practical terms, as Miles suggests, ‘this had the effect of strengthening the ties Upokorehe had with Whakatohea, and Ngati Ira in particular, while Te Whakatane drew closer to Tuhoe’. Miles notes that ‘Best wrote that extensive intermarriage between Te Whakatane and Tuhoe and “various divisions” of Te Whakatohea had all but erased the old name of Te Whakatane’.²⁰³ In response to a similar statement made at the Tahora block investigation in the Native Land Court in 1889, Tamaikoha denied ‘the assertion [that his] mana was absorbed by Tuhoe’.²⁰⁴

Sissons, in his 2002 report ‘Waimana Kaaku: A History of the Waimana Block’, emphasises the role of Te Waimana as ‘a strategic link between inland communities and coastal resources’. ‘Crown actions that impacted on these links,’ he argues, ‘had broad political and economic implications for Tuhoe and its relationships with other tribes, especially coastal

¹⁹⁸ Ibid., p 41

¹⁹⁹ Ibid.

²⁰⁰ Sissons, *Te Waimana*, pp 58-86

²⁰¹ Miles, ‘Ohiwa Harbour Scoping Report’, p 11

²⁰² Miles, *Te Urewera*, p 43; Lyall, p 70

²⁰³ Miles, *Te Urewera*, p 43

Upokorehe. This,' he continues, 'applies especially to the confiscation of Tuhoe's Bay of Plenty lands and the actions of the Native Land Court with respect to Te Waimana'.²⁰⁵ Because of their location, he writes, 'Te Waimana people were able to directly utilise resources from three major zones: the inland forest; the valley itself; and the coast at Ohiwa Harbour, some 20 kilometres from Te Waimana'. Furthermore, as a result of the kinship ties between Waimana hapu and inland and other neighbouring hapu, 'the wider Tuhoe tribe also benefited indirectly from Te Waimana's strategic location'.²⁰⁶ (see figure 4)

There were very close associations between hapu of Te Waimana and those at Ohiwa.²⁰⁷ The Te Hapuoneone people, from whom many of the Waimana hapu are descended, traditionally resided at both Ohiwa and Te Waimana.²⁰⁸ These ties meant that Waimana people had access to coastal cultivations and marine resources. Another Tuhoe saying records the tribe's continuous use of these resources: No pikipiki mai, no hekeheke atu (despite the passing generations, the bounty of Ohiwa remained plentiful).²⁰⁹ Te Waimana hapu, especially Ngai Turanga, Te Whakatane and Ngati Raka, played an important role in ensuring Tuhoe access to the coast and maintaining rights to coastal land and resources. Particularly important in this regard were ties between Tuhoe hapu of Te Waimana and their Te Upokorehe relatives.²¹⁰

Sissons states that a section of Te Upokorehe, Ngati Raumoia (who traced their descent from Raumoia) contested Tuhoe's claims to Te Waimana at the Native Land Court hearings held in 1878 and 1880.

Best wrote that Ngati Raumoia were, like Ngai Turanga, descended from Hape, ancestor of Te Hapu-oneone. Moreover, they were closely related to other Waimana hapu, Ngai Tama and Te Whakatane. However, Best did not consider them to be 'a portion of the Tuhoe tribe' because they were driven from Te Waimana before Tuhoe gained possession.²¹¹

²⁰⁴ Sissons, *Te Waimana*, p 86

²⁰⁵ Sissons, 'Waimana Kaaku', p 4

²⁰⁶ *Ibid.*, p 7

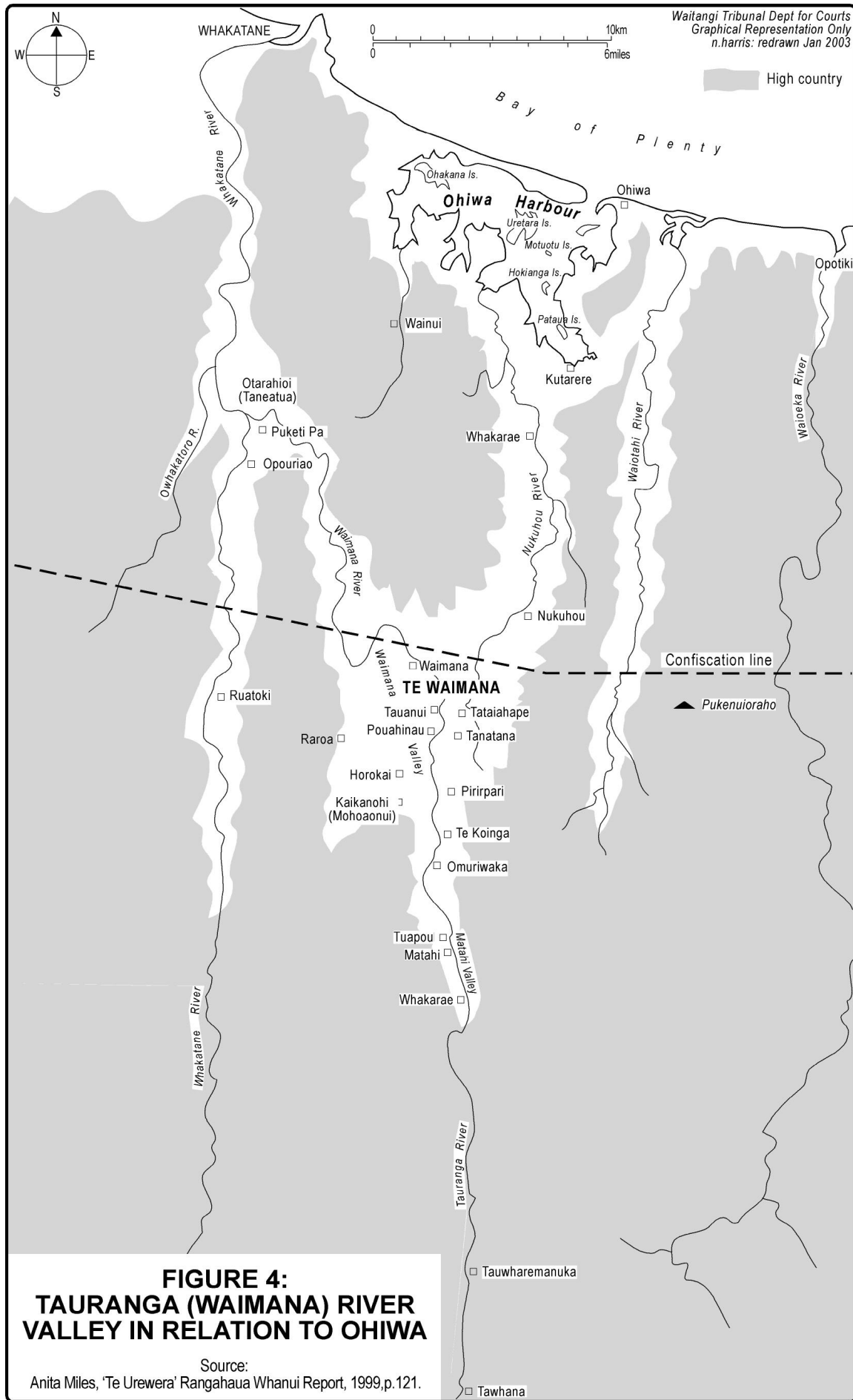
²⁰⁷ *Ibid.*, p 8; he cites Miles, *Te Urewera*, pp 43-46

²⁰⁸ *Ibid.*; he cites Best, vol 1, pp 59, 88

²⁰⁹ *Ibid.*; he cites Miles, *Te Urewera*, p 45

²¹⁰ *Ibid.*

²¹¹ *Ibid.*, pp 9-10; he cites Best, vol 1, pp 59, 88



**FIGURE 4:
TAURANGA (WAIMANA) RIVER
VALLEY IN RELATION TO OHIWA**

Source:
Anita Miles, 'Te Urewera' Rangahaua Whanui Report, 1999,p.121.

‘According to Tuhoe historians,’ Sissons continues, ‘Ngati Raumoa were driven from Te Waimana by Ngai Turanga under the leadership of Tuhuki (or Tuhukia) in the mid-to-late 17th century’.²¹² Nevertheless, Sissons notes, despite these differences, strong ties remained between Tuhoe, Te Whakatane and Upokorehe.²¹³

It appears evident, as discussed above, that the impact of the Nga Puhi and Ngati Maru raids on Whakatohea was more severe than on the neighbouring iwi. This, Miles suggests, ‘may have been a situation that Tuhoe were able to take advantage of on the ground. Certainly, Tuhoe historians have maintained that Tuhoe retained possession of some of the land around the south and east of the harbour.’²¹⁴ According to Sissons, who cites Tuhoe oral traditions, the people of Waimana retreated inland during the Nga Puhi raids, before the valley was re-occupied by Tuhoe soon after they ceased. He states that the lower Tauranga valley was ‘re-occupied by Tuhoe forces led by Maungaharuru and Taua, probably in the mid-to-late 1820s’. Descended from these two leaders, he continues, were Rakuraku and Tamaikoha who became leading Te Waimana rangatira (along with Numia Kereru, a prominent Ruatoki leader).²¹⁵ Sissons provides various versions of the return of Maungaharuru and Taua to Waimana, including accounts of members of Upokorehe being captured and killed, of a raid on Ohiwa, and a conquest of Ngati Awa.²¹⁶ One account, attributed to Mohi Tai, ‘an elder who claimed both Tuhoe and Te Upokorehe descent’, told of ‘Maungaharuru return[ing] to Te Waimana in order that Tuhoe might be in a better position to trade via Ohiwa’. Sissons notes that a trader named Scott came to Ohiwa some time in the mid-1830s and Tuhoe traded their pigs with him’.²¹⁷

At the Native Land Court hearing for the partition of the Waimana 1C block in 1905, Numia Kereru informed the court that Taua and Maugaharuru ‘were the real great chiefs who had the mana over this land. It was they who placed the people upon it and their descendents

²¹² Ibid., p 10; Sissons states that ‘genealogies presented during the court cases suggest that the main adversaries lived 7 or 8 generations before 1830’ (p 10, fn 20)

²¹³ Ibid.

²¹⁴ Miles, *Te Urewera*, p 45

²¹⁵ Sissons, ‘Waimana Kaaku’, pp 11-12

²¹⁶ Ibid., pp 12-14

²¹⁷ Ibid., p 14

occupied it permanently'.²¹⁸ At the 1880 hearing for the Waimana Block, Numia Kereru had stated that:

After Maungaharuru came to Waimana we slew some of Upokorehe and captured them. Some of the Urewera wished to slay the captives but my ancestor protected them. Those persons are now living at Ohiwa under Kakitu. Rangiihu wished to slay the Upokorehe. It was Taua who saved them. There are about 50 of Tuhoe in Waimana now – their fathers went here then in Maungaharuru's time and they have been on the land ever since.²¹⁹

Sissons records that 'after the return of Tuhoe to Te Waimana and Ohiwa marriage alliances between them and Te Upokorehe at Ohiwa were re-established':

The leaders and the majority of the inhabitants of Te Waimana were Tuhoe, but there were also Te Upokorehe who lived among them as spouses. When Tamaikoha grew to manhood he married Titia, who ... was of both Tuhoe and Te Upokorehe descent. This marriage may well have been arranged and was a reinforcing of earlier marriage alliances forged after Taua's conquest.²²⁰

Sissons provides the following account given by Te Makarini, of Tuhoe:

When the wars about this land ceased the people who have been spoken of were taken to Maungapohatu where peace was made and they, [i.e. Te Upokorehe] took Urewera women to wife... The Upokorehe got some of our women to wife but some of our men even married Upokorehe women. When the Upokorehe went to Maungapohatu to make peace some Urewera women were given to them to wife, no other intermarriages took place.²²¹

Sissons interprets this to mean that 'the marriages between Tuhoe and Te Upokorehe at this time were entirely for political purposes rather than freely entered into. It is likely,' he continues, 'that a number of Te Upokorehe living at Te Waimana at the time of Taua's conquest were also of Tuhoe descent.'²²² Sissons concludes that 'Taua's conquest, including the killing of Houturangi, and the marriage alliances between Tuhoe and Te Upokorehe

²¹⁸ Ibid., p 12; he cites WMB 8, p 193

²¹⁹ Ibid., p 13; he cites Judge HAH Monro, Notes on the Native Land Court hearing for the Waimana Block, 1880, AIM, p 93

²²⁰ Ibid., p 14; he cites Judge Monro notes, p 37

²²¹ Judge Monro notes, pp 85, 87, cited in Sissons, 'Waimana Kaaku', p 14

ensured that Waimana people could continue to move freely between Te Waimana to the Ohiwa harbour. Indeed, this appears to have been the main object of Taua's conquest.²²³

With the conclusion of the inter-tribal wars between 1800 and 1840, Milroy and Melbourne state that, the 'civil wars between hapū factions in Rūātoki, Ōpōuriao and Ōwhakatoro' also came to an end 'when Ngāti Raka were forced out of Rūātoki and Ōpōuriao to Waimana and Ōhiwa.'²²⁴ Tuhoe's northern borders were extended north of Taneatua to Paparoa and Kutarere on the shore of Ohiwa harbour. As Milroy and Melbourne have argued, the extension of the boundary transformed Tuhoe resources. Aside from the harbour's resources, the fertile alluvial flats of Ōpōuriao and Waimana enabled Tuhoe 'to take advantage of new introduced crops such as potato and maize as well as to acquire new agricultural knowledge to increase kumara production'. Furthermore, 'the desire for closer contact with Pakeha goods and trade brought many of the people from inland into Opouriao and Waimana'.²²⁵

In response to Ngati Awa claims that Tuhoe have limited claims to Ohiwa Harbour, Tuhoe claimants have stated simply that 'Tuhoe occupied lands at Ohiwa', and that 'evidence of occupation about Ohiwa and of a number [of] battles and tit for tat fights that took place may be described'. They state that 'given the historical continuing use of Ohiwa by Whakatohea, Ngati Awa and Tuhoe... it is our respectful opinion that no one tribe can claim Ohiwa for itself alone'.²²⁶

One of the conclusions made by Binney at the end of volume one of 'Encircled Lands' is that:

Tuhoe and certain hapu who had been long intermarried with them rightly claim to have been cultivating land in the eastern Bay of Plenty before 1840. They planted gardens and gathered kaimoana at the south-eastern rim of the Ohiwa harbour, at the mouth of the Waiotahe river, in Te Waimana, and at Opouriao.

She refutes the opinion 'that there was no long-standing relationship between Tuhoe and the Ohiwa harbour', instead demonstrating that 'there was an old relationship, partly due to the

²²² Sissons, 'Waimana Kaaku', p 14

²²³ Ibid., p 15

²²⁴ Milroy and Melbourne, p 78

²²⁵ Ibid., p 80

²²⁶ JW Milroy, S Melbourne and TR Nikora, 'The Bay of Plenty Confiscation and the Tuhoe Tribal Boundary', Wai 36, Tuhoe-Waikaremoana Maori Trust Board, Rotorua, 11 August 1995 (Wai 46 ROI, doc H2), p 7

close genealogical interconnections woven over time between the several hapu of the eastern Bay of Plenty living at Ohiwa and Waiotaha'. She states that:

Some of the most senior Tuhoe chiefs were recognized leaders of the several hapu living around the eastern Ohiwa harbour, as well as also being the leaders of major inland hapu of Tuhoe. These men lived in more than one place. They would emphasise their appropriate hapu affiliation(s) according to the context and the place where they were speaking or staying. But it has been clearly documented that these same leaders were involved in all the major collective decisions of Tuhoe taken in the early and mid-nineteenth century, including the entire war period. They could not properly be excluded from their collective decision-making, as Tuhoe knew.²²⁷

Sissons likewise stresses the connections between Ohiwa and Te Waimana and the interior:

Many of the Te Waimana residents, and especially the leaders, also had kainga in communities further inland. Mobility between Te Waimana and these places and between Te Waimana and Ohiwa was essential, not only for trade, but also for maintaining rights to land and resources and sustaining political and personal ties.²²⁸

3.6 Conclusion

Ohiwa Harbour, as Miles has stated, 'was the subject of ongoing disruption and conflict, mainly between Ngati Awa and Whakatohea, intersected with Ngati Maru and Nga Puhi raids'. This, she continues, implies that it was very difficult for any one iwi to claim control of the harbour in the period prior to the signing of the Treaty.²²⁹ What is apparent, is that Tuhoe, Whakatohea, Upokorehe, and Ngati Awa can all demonstrate histories of occupation at, and use of Ohiwa harbour – at different times and sometimes together. The harbour was, and remains, a shared resource – important to a great many people. Any attempt to determine competing levels of 'interest' as demonstrated by each group would be both difficult and divisive. This is certainly not the purpose of this report.

As noted in the introduction to this chapter, I have endeavoured to present the positions of the various claimant groups with regard to their customary interests in the harbour, and in

²²⁷ Binney, 'Encircled Lands', part one, p 386

²²⁸ Sissons, 'Waimana Kaaku', p 18

²²⁹ Miles, *Te Urewera*, p 45

doing so will have presented some views that other claimants will disagree with. Such is the nature of this undertaking. For example, while Whakatohea, Upokorehe, and Ngati Awa claimants and historians all cite the defeat of Tuhoe at Maraetotara as a key event in the history of the occupation of Ohiwa, Tuhoe claimants question the significance placed on this battle, and call into question the evidence used to support the claims that Tuhoe suffered a serious defeat that affected their access to the harbour.²³⁰

One area of research that is of particular significance for Tuhoe is the connections and links between Ohiwa and Waimana. As Miles has noted:

Surveying the literature and sources on Tuhoe's relationship with Ohiwa, it becomes evident that there were and are very strong associations between Waimana hapu and those at Ohiwa, between coastal and inland people, and an investigation of customary interests at Ohiwa would benefit greatly from an examination of the whakapapa links between these groups. Those who claim to hold interests in this area would need to provide oral evidence to the Waitangi Tribunal on these matters.²³¹

It is expected that the customary histories that have been commissioned for this inquiry, together with oral evidence, will provide the Tribunal with a level of detail beyond the limits of this report and its author.

Lyall has suggested that the end to the fighting between Whakatohea and Tuhoe was due firstly to the arrival of invading tribes from the north and later to the arrival of Europeans. The musket appears to have played a significant role in altering the nature of inter-tribal power relationships around Ohiwa in the early decades of the nineteenth century. The impact of the arrival of Pakeha – people, goods, ideas, and conflict – and the response of Maori to these new arrivals is addressed in the following chapter.

²³⁰ Tama Nikora, Personal Correspondence, 23 January 2003

²³¹ Miles, *Te Urewera*, p 43

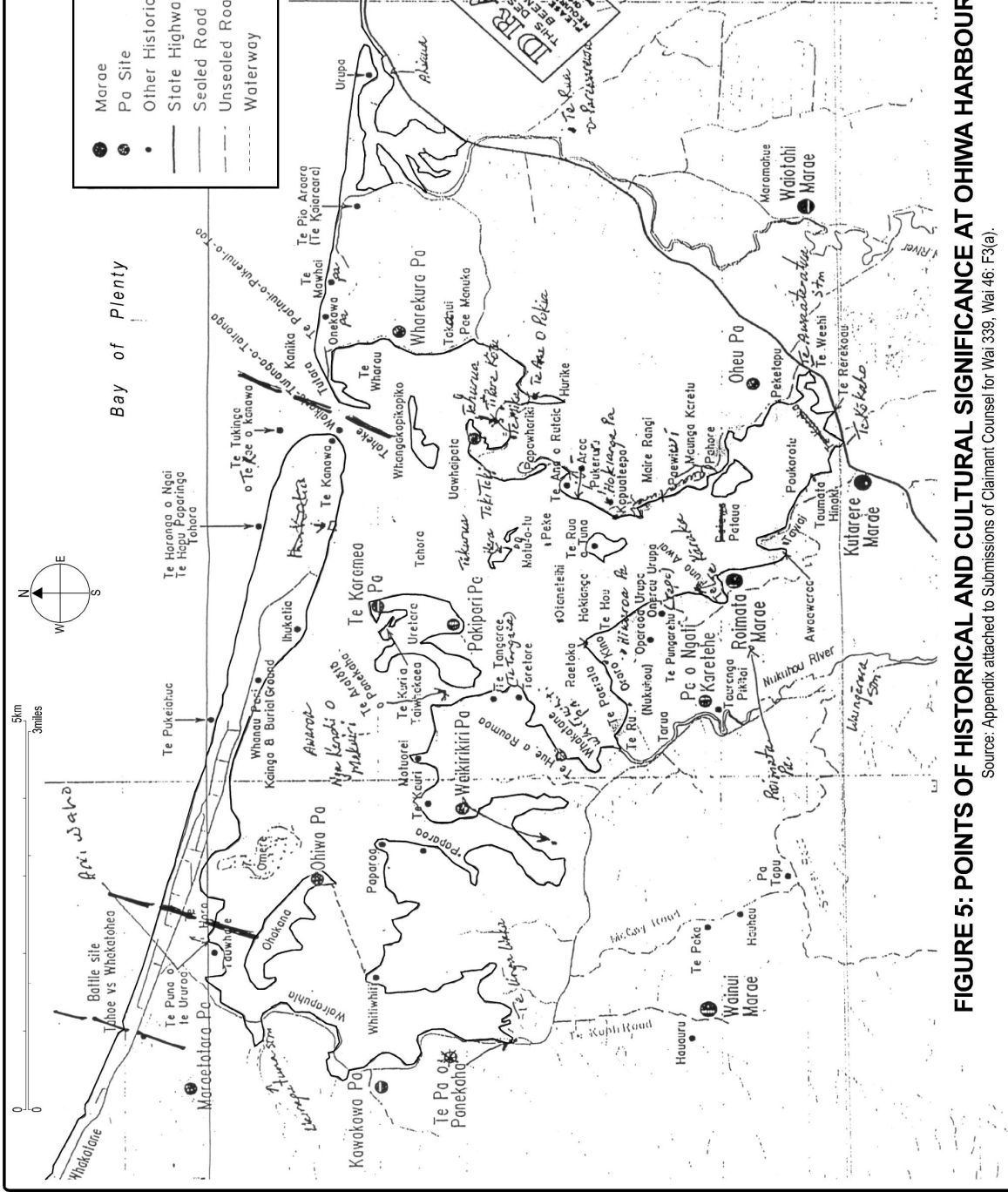


FIGURE 5: POINTS OF HISTORICAL AND CULTURAL SIGNIFICANCE AT OHIWA HARBOUR

Source: Appendix attached to Submissions of Claimant Counsel for Wai 339, Wai 46; F3(a).

4. Ohiwa Harbour in the Contact Period

4.1 The Arrival of Pakeha

In the chapter ‘The Coming of the White Man’ in *Tuhoe: Children of the Mist*, Best provides an account of the earliest visit of a European ship to the Whakatane district that he came across. The account was from Hamiora Pio of Ngati Awa, and describes the arrival of a ship off the Whakatane River. Best was of the opinion that this visit took place in the 1820s, and that the vessel in question was a whaling boat. Best provides the following account:

In former times much work was done with the native spade, made of *maire* or *mapara* wood. Observe the forts of olden days, the earthworks and ditches. They still are seen on range and ridge, plain and valley. They are the signs of ancient occupation by Toi and the tribes under him. A saying of old was: ‘Let there be many forts of Toi-te-huatahi (*Kia huhua nga pa o Toi-te-hua-tahi*).’ But when the white men came they brought hither axes to fell the forests, then the fern spread and the fern fires bit further into the forest. Then grass and clover, and other plants took possession of the soil. Then came ploughs and the land became clear. It is a saying that the white man is the person who possesses great knowledge and wisdom in seeking for important things of this life. It was Cook who brought the first tokens of the white man’s knowledge to this island. After his visits, then the ships of white men were seen on the ocean.¹

The arrival of Pakeha added a further dimension to the complex and shifting relationships between different hapu and iwi groups at Ohiwa. The influence and impact of missionary activity, and perhaps more significantly, of muskets, preceded the arrival of Europeans themselves to the area in any numbers. The escalating intensity of inter-tribal conflict in the 1820s and 1830s was the most obvious result of this. However there were other factors. While competing Pakeha missionary organisations sought new recruits, indigenous spiritual movements adopted aspects of Christianity, and likewise sought converts. The importance of Pakeha literacy as a method of accessing new technologies, and the imposition and application of a new economy, likewise effected societal dynamics.

¹ Best, vol 1, p 553-554

Accompanying these innovations, was the recognition of the importance of constructing harmonious (and often possessive) relationships with any Pakeha (missionary, trader, colonial administrator, or other) as, often, malleable cross-cultural intermediaries. When isolated from the both moral and legitimating support of the colonial outpost and, when required (if not forced) by necessity to transgress the threshold into what might be described as another world, such Pakeha individuals (regardless of their position and disposition) enacted the role of what has been described in Pacific historiography as ‘the beachcomber’.²

First encounters between eastern Bay of Plenty Maori and Pakeha occurred when Cook’s *Endeavour* sailed around East Cape several weeks after his first landfall at Turanga-nui-a-kiwa in October 1769. While Cook’s experiences at Turanga led him to name that place Poverty Bay, he was more generous when he reached the Bay of Plenty. He and his crew witnessed a large number of canoes and settlements in this area. On the morning of 1 November 1769, near the mouth of the Motu River, both Cook and Joseph Banks recorded some 45 canoes coming towards them from different parts of the shore. Crayfish, mussels and conger eels were traded for European goods, including cloth. When the local peoples’ supplies ran low, they began taking goods from the ship without exchange. One man cut down some linen that was hanging over the side of the vessel to dry. He was fired upon but, although hit, managed to paddle away. Shots were fired at the other vessels, which retreated. The *Endeavour* then travelled westwards along the coast line, keeping a regular safe distance from the shore, as far as Moutohora Island. No mention is made of Ohiwa Harbour, but a number of fortified villages are marked on Cook’s chart, along with the general description ‘Much Cultivated Land’.³ According Whakatohea claimants ‘as a navigator who frequently named what he saw, it was no accident that Captain James Cook called the area “the Bay of Plenty”.’⁴ According to John Alexander Wilson’s *Story of Te Waharoa*, when Nga Puhi raided the Opotiki area in 1823, amongst the spoils taken at Te Ika-a-te-Kite was a piece of blue cloth that was said to have been a relic of Cook’s visit.⁵

² Greg Denning, for example, defines beachcombers as ‘those who crossed beaches alone ... without the supports that made their own world real into other worlds that were well-established and self-sufficient.’ Greg Denning, *Islands and Beaches: Discourses on a Silent Land, Marquesas 1774-1880*, Melbourne, Melbourne University Press, 1980, p 129

³ Anne Salmond, *Two Worlds: First Meetings Between Maori and Europeans 1642-1772*, Auckland, Viking, 1991, pp 186-188

⁴ ‘Whakatohea Case Commentary’, pp 2-3

⁵ Wilson, *The Story of Te Waharoa*, pp 16-17; Lyall, pp 142, 149

With regard to Tuhoe, Miles has pointed out that:

It would be impossible to guess when Tuhoe first encountered, or even heard of, Europeans, but it seems likely that Maori-generated stories would have abounded of Cook's landing at Turanga in 1769 and of his subsequent voyage through the Bay of Plenty. It might be assumed that the telling and retelling of this momentous event would have permeated even the interior Urewera, where some communities had regular contact with their coastal neighbours, though Tuhoe were to wait many years before a European penetrated the heartland of their rohe.⁶

Similarly, with regard to Whakatohea, Lyall notes that he was not aware of any evidence of contact with Europeans until the visit of the *Herald* to the Bay of Plenty in 1828, but he does suggest that:

With the peopling of the north by Europeans from the early nineteenth century it is probable that the odd whaler, adventurer, or runaway made his appearance in the eastern Bay of Plenty and had contact with Whakatohea.⁷

4.2 Missionaries

In 1828, the Church Missionary Society's schooner, the *Herald*, captained by Gilbert Mair, senior, visited Ohiwa on a trip to the Bay of Plenty. Among those on board were Richard Davis, James Hamlin, and Henry Williams (head of the Church Missionary Society in New Zealand). According to an account written by Gilbert Mair, junior, this was 'the first English vessel to communicate with the natives since Captain Cook'.⁸ On reaching Ohiwa, Mair and his missionary party witnessed the aftermath of a battle between Ngati Awa and Whakatohea, in which Ngati Awa were the victors.⁹ According to Mair's account, his father 'landed on the beach at One-kawa Bluff, and was horrified to find a large number of freshly slain dead lying on the beach'.¹⁰ The following day, having been unsuccessful in procuring two large hogs at

⁶ Miles, *Te Urewera*, p 59

⁷ Lyall, p 149

⁸ S Percy Smith, *Maori Wars of the Nineteenth Century*, 2nd ed, Christchurch, Whitcombe and Tombs, 1910, p 481

⁹ Miles, 'Ohiwa Harbour Scoping Report', p 14; Te Roopu Whakaemi o Ngati Awa, 'Ohiwa', p 7

¹⁰ Smith, p 482; Lawrence M Rogers argues that while Williams was trading at Whakatane, Mair and Davis had gone by dinghy to Ohope beach, and then walked to Ohiwa, where they had 'found the remains of a cannibal feast'. Lawrence M Rogers, ed., *The Early Journals of Henry Williams*, Christchurch, Pegasus Press, 1961, p 119, fn 15, p 120; Gilling, 'Te Raupatu o Te Whakatohea', p 5

Whakatane (the missionaries would not trade in gunpowder), the *Herald* sailed to ‘the mouth of the Hiwa’, and the next day Williams, Mair, and Davis sought to explore the harbour in a small boat. Their object, Williams recorded, was ‘to find an opening where the vessel might enter in the event of a settlement being formed here in some future period’. Despite having trouble negotiating the sand bar at the entrance to the harbour, Williams described the harbour as ‘a fine river extending far and wide [with] deep water’, and declared it to be ‘an important discovery’.¹¹ There is no mention in Williams’ account of either people or signs of settlement at Ohiwa. Sailing on to Opotiki, Williams found the people there to be ‘ill-behaved’, and ‘not disposed to trade’. As at Whakatane, the people encountered at Opotiki wanted gunpowder.¹²

The first prolonged Christian contact with the Opotiki district came in 1834, with the return of Piripi Taumatakura of Whakatohea, a former slave of Ngapuhi, who had been converted while in exile. According to Mikaere, it is estimated that there were as many as 1500 Maori Christians in the East Coast area prior to the arrival of a Pakeha missionary, with prayer books being a popular item of trade.¹³ By the late 1830s, there was enough perceived demand for John Alexander Wilson, a Church Missionary Society lay catechist, to be sent to Opotiki in December 1839. The decision to establish a CMS mission at Opotiki was not formally made until January 1840, and while Wilson visited Opotiki from Tauranga during 1840, it was not until March 1841 that he took up permanent residence there.¹⁴ It has been suggested that the reason behind the CMS decision to send Wilson to Opotiki was news that the Catholics were about to establish a mission there.¹⁵

According to Lyall, when Wilson visited Opotiki on 30 December 1839:

Much to his surprise he encountered at Pakowhai ... a group of people who were just finishing a prayer service. Of these, half a dozen could read due to the efforts of Maori

¹¹ Rogers, *The Early Journals of Henry Williams*, pp 121-2; Lawrence M Rogers, ‘Henry Williams in the Bay of Plenty in 1826 and 1828’, *Historical Review*, vol 15, no 1, pp 28-30

¹² Rogers, *The Early Journals of Henry Williams*, p 122

¹³ Mikaere, p 11; he cites *A Short History of St Stephen the Martyr – Opotiki, New Zealand*, Gisborne, nd, p 3

¹⁴ Frances Porter, ed, *The Turanga Journals, 1840-1850: Letters and Journals of William and Jane Williams, Missionaries to Poverty Bay*, Wellington, Price Milburn for Victoria University Press, 1974, p 71, fn 4, pp 156-157; J Irwin, ‘John Alexander Wilson: First Resident Missionary in Opotiki-Whakatane 1840-1851’, *Historical Review*, vol 15, no 3, December 1967, pp 160-6

¹⁵ Father Pierce, ‘Beginnings of the Catholic Church in the Bay of Plenty’, *Journal of the Tauranga Historical Society*, 29, 1966, pp 14-20, pp 14-15. According to Father Pierce, William Marsh, ‘a native teacher’, was already at Opotiki when Wilson arrived.

teachers who had returned to the East Cape area in 1834 under the auspices of Rev William Williams.¹⁶

In January 1840, Wilson and his companions, James Stack and Rev Alfred Brown, purchased land both for the Church Missionary Society, and, it appears, for themselves.¹⁷ On 28 January 1840, Wilson purchased 2,500 acres of the Ngaio Block near Opotiki for the Church Missionary Society. The previous day, Wilson, Stack and Brown purchased 3,840 acres of the Pakihi block.¹⁸ According to the deed, the Pakihi Block was sold to the three missionaries, 'to their heirs and assigns also for ever, to locate sell or appropriate for their use and benefit: the land with whatever may be growing upon it or deposited beneath'. The block lay between Opotiki and Waioatahe, and was described as 'Beginning at Pakihi, you go on to the Native river called Waioeka, and from thence to Tamatatamahewa, Matiti, Puhirahi, Waihoutahi, and Taraitu to the sea and along the sea shore to Pakihi'.¹⁹ The Ngaio purchase was adjacent and to the east of the Pakihi block. Payment for both blocks was made partly in money ('400 dollars' for Pakihi and '300 dollars' for Ngaio) and partly in goods. Gilling points out that:

The whole Ngaio site cannot have been maintained by the Church of England for the whole of the period after Wilson's arrival and through to the Volkner era and Maori had continued to cultivate on it. In 1854 it was thought necessary to write a separate deed there for a site for a mission station for the 'Committee of the Church of England'. The 1840 transaction was repudiated and £280 of the \$300 [paid for it] returned.²⁰

The smaller block (the acreage was not given) was presumably 'the site, now in the centre of the Opotiki township, upon which Volkner's Peria was located'.²¹

In December 1840, Archdeacon William Williams visited Wilson at Opotiki on his way to Turanga. He visited the site for the station, which was still under construction, and held two 'native' and one English service on Sunday 20 December. 'The native congregation,' he wrote,

¹⁶ Lyall, pp 150-151

¹⁷ Gilling, 'Te Raupatu o Te Whakatohea', pp 7-8

¹⁸ Turton's Deeds, No 414 Pakihi Block and No 415 Ngaio Block; Private Land Purchases, Bay of Plenty, Etc, Districts, pp 381-383; RDB vol 119, pp 45837-45840

¹⁹ Ibid., pp 45837-45838

²⁰ Gilling, 'Te Raupatu o Te Whakatohea', p 7. Gilling notes that 'a mixture of currencies were in use in early colonial New Zealand. The word 'dollar' may have referred to the American currency or may have been taken in 1840 as equivalent to 'pound' (p 8, fn 17)

²¹ Gilling, 'Te Raupatu o Te Whakatohea', p 8; Turton's Deeds, p 393 (RDB, vol 19, p 45841)

‘amounts to about 200 and many who have called themselves papists are among the number.’²²

While Wilson, as a non-ordained catechist, was unable to fulfil all the functions of a minister, he was active in winning converts and preparing them for baptism. When Bishop Selwyn passed through Opotiki on his travels on 13 December 1842, he recorded that he had administered baptism. The following day Selwyn crossed the ‘Oheira river’ [Ohiwa Harbour], recording that his party had been ‘detained three hours for want of a canoe’, before reaching ‘a good sandy beach’ – presumably Ohope.²³ According to Frances Porter, Selwyn found Wilson to be ‘lacking in missionary zeal’ and, despite his successful fulfilment of all but the priestly missionary duties denied to him, Wilson was not ordained until 1852.²⁴

According to Best, it was in 1839 or 1840 that ‘the Tuhoe tribe seem to have first discussed the subject of accepting Christianity’, at a meeting held at Te Waimana, known as ‘Taua’s Feast, the chief Taua being the principal organiser thereof.’ Best states that it was arranged that Tuhoe assist in the building of a church at Opotiki, and that ‘most of those living at Te Waimana and Rua-toki went there for that purpose’. He notes that a meeting was held by Wilson at Opotiki ‘at which Piki, son of Te Ngahuru, and others of Tuhoe, were baptised and took new names’.²⁵ Best suggests that this meeting may not have occurred until 1842,²⁶ which might mean that it was Selwyn who baptised these Tuhoe converts rather than Wilson who was not yet ordained.

When Wilson left Opotiki in 1852 to do his final preparatory study for deacon’s orders at St John’s College, Auckland, he was replaced by Christopher P Davies, thus maintaining an Anglican presence to offset the growing Catholic presence in the district.²⁷ In 1856, Davies was forced to leave the CMS mission at Opotiki, and the station remained vacant until the appointment of Rev Carl Sylvius Völkner in August 1861. Völkner’s part in this tale will be picked up again later. The first CMS missionary at Whakatane, James Preece, was not stationed there until 1853. The CMS report for Opotiki for 1850 lists the following breakdown

²² Porter, pp 141-142

²³ George Augustus Selwyn, ‘Letters from Bishop Selwyn, October 1842 to January 1843’, in Nancy Taylor, ed, *Early Travellers in New Zealand*, Oxford, Clarendon, 1959, pp 58-91, p 80

²⁴ Porter, p 157; Gilling, ‘Te Raupatu o Te Whakatohea’, p 7, fn 13

²⁵ Best, vol 1, p 562

²⁶ Ibid.

²⁷ Gilling, ‘Te Raupatu o Te Whakatohea’, p 9

of the local Maori population: Church of England, 1804; Roman Catholic, 288, Heathen, 457; Total population, 2550.²⁸

Catholic missionary priests had arrived in the eastern Bay of Plenty shortly after the Anglicans. Bishop Pompellier visited Ohiwa in March 1840, and from there walked to Opotiki, a journey of five hours. There he was apparently greeted by the Catholic Ngapuhi chief, Moka, who had married a Whakatohea woman. Moka had introduced Catholicism to his wife's hapu, Ngati Rua, and had built a raupo chapel at Opotiki. Pompallier held mass and baptised a child.²⁹ According to Hirini Mead and Jeremy Gardiner:

Pompallier was asked to draw up a 'deed', agreed to by the Opotiki people, which formalised an unwritten Maori law that their lands were common to the whole tribe. The deed made it unlawful for any individual to sell any of the 'common' land.

On his return to Ohiwa, Mead and Gardiner continue, 'a number of chiefs from surrounding areas gathered to meet Pompallier'. These chiefs and 'messengers', he claims, 'came from many areas including Taupo and Rotorua'. The missionary boat's rudder was damaged leaving the harbour, resulting in Pompallier and his party spending an extra fortnight there.³⁰

In 1841, Pompellier returned to the Bay of Plenty, establishing Father Louis Rozet at the new Opotiki mission of the Annunciation on one and a half acres of land called Pukuknoa.³¹ Meanwhile, another priest, Baty, walked from Whakatane to Opotiki, 'visiting tribes along the way',³² including, it is presumed, those at Ohiwa. According to one source, following his visit Pompellier reported that from Opotiki, 'the missionary served the district along the Waioeka River which reached into the Tuhoe area, Whakatane with its three tribes, Ohiwa and Maraenui'.³³

²⁸ JAM Chouvet, *A Marist Missionary in New Zealand 1843-1846*, ed. Jinty Rorke, trans. Patrick Barry, Whakatane, Whakatane and District Historical Society, Monograph 13, 1985, p 93, fn 30

²⁹ Gilling, 'Te Raupatu o Te Whakatohea', p 8

³⁰ Hirini Mead and Jeremy Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa: Ethnography of the Ngati Awa Experience of Raupatu', Te Runanga o Ngati Awa, Whakatane, 1994 (Wai 46 ROI, doc A18), pp 15-16; Pierce, p 17

³¹ Gilling, 'Te Raupatu o Te Whakatohea', p 8; Bruce C Brosnahan, 'The Catholic Parish of Whakatane, 1840-1990 - Some Features of its History', *Historical Review*, vol 41, no 1, May 1993, pp 1-23, p 1

³² Walter Gibbons, 'Jean Lampila, SM, at Whakatane', *Historical Review*, vol 38, no 1, May 1990, pp 1-6, p 1

³³ Pierce, p 18

While Rozet's parish had included the Whakatane district, when Fathers Comte and Reignier SM replaced him in June 1842, they moved their headquarters to Whakatane, perhaps to distance themselves from the CMS mission station at Opotiki. In July 1843, another priest, Chouvet, was installed at Opotiki, where he remained for three years.³⁴ In 1844, Pompellier again visited the district, landing at Whakatane, and walking by way of Ohiwa Harbour to Opotiki.³⁵ In February 1844, Father Jean Lampila (known as Pa Rapira) became resident priest at Whakatane, until his departure in 1850.³⁶ A survey taken in 1854 found 600 Catholic converts in the Whakatane district.³⁷

It is impossible to gauge the level of support among the people of the Ohiwa area for the two missionary organisations, but it is obvious that they were certainly exposed to the competing doctrines from early on. In 1841, Wilson reported 30 converts at Ohiwa.³⁸ When Ohiwa harbour is mentioned in the accounts of missionaries it is often in its role as a physical barrier on the journey between Opotiki and Whakatane. Both Catholic and Anglican missionaries speak of waiting for transport over the harbour, and of the hazards involved in such an undertaking. Chouvet, for example, described crossing 'Ohiwa Bay' in an old and dilapidated canoe, accompanied by another priest and a single Maori paddler, when a storm blew up. Chouvet claims he came close to dying, and that 'to make the danger worse, Ohiwa Bay swarms with sharks, and there was therefore great danger if we capsized, we would be attacked by the voracious animals'. He and his companion prepared for absolution, before the storm cleared and they could limp to shore.³⁹ On another occasion, Chouvet spoke of stopping to sleep at Ohiwa when travelling towards Whakatane: 'We found no one there: the inhabitants of the few houses we saw had been in the fields for several days. It was the time to plant potatoes, koumara [sic] and taro'.⁴⁰ On arriving at Ohiwa on the return trip, Chouvet continued, 'we called out to the natives who lived on the little island in the middle of the bay, and asked them to bring us a canoe for crossing. They replied that they did not have one just then', and Chouvet and his party were forced to wait for another means of crossing the

³⁴ Brosnahan, p 1; Pierce, p 19. Joseph Auguste Marie Chouvet later wrote of his experiences in *Un tour du monde: voyage a la Nouvelle-Zelande et retour en France par l'île Sainte-Helene*, Avignon, F. Seguin Aine, 1855. The section on New Zealand has been published as Chouvet, *A Marist Missionary in New Zealand 1843-1846*

³⁵ Mead and Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa', p 16

³⁶ Brosnahan, p 2

³⁷ Walter Gibbons, *One Hundred Years of Mill Hill at Matata*, 1986, p 4

³⁸ Sissons, 'Waimana Kaaku', p 18; he cites Wilson to CMS, 5 July 1841, the Letters of Reverend John A Wilson, MS 339, Auckland Institute and Museum Library

³⁹ Chouvet, p 26

harbour to turn up.⁴¹ Could this inability to assist the priest on the part of the island dwellers be read as defiance?

While it is difficult to assess the impact of the missionaries on the people of the Ohiwa area, it appears that it was certainly greater than that of Government officials in the years surrounding and immediately following the signing of the Treaty of Waitangi.

Among Whakatohea, in particular it seems, there was a high degree of rivalry between the two faiths. According to the 'Whakatohea Case Commentary':

Whakatohea was a tribe divided into hapu – Protestants and Catholics. There were sections of Whakatohea who didn't belong to either and some individuals who played up political differences between the two ...

There was constant and bitter rivalry between Wilson and the Catholics within Whakatohea and frequent debates between the two groups.⁴²

According to Mead and Gardiner, 'the conflict between the two religions was transferred to the new converts'.⁴³

In May 1844, William Williams recorded holding a service at Opotiki, 'in the Pa with a good congregation', but added that 'it is a subject of grief that an assemblage nearly as large met at the house of the Popish priest'.⁴⁴ Several days later, he reported ill-feeling between Catholics and Anglicans at Matata.⁴⁵ Of the situation at Whakatane, Williams reported in August 1847 that 'there are two evil influences to struggle against, a strong party attached to the Romish Priests, and a body of Englishmen who are building small vessels for the natives'.⁴⁶ In January 1850, Williams recorded that he had heard that, as a result of a public doctrinal argument between himself and Father Lampila who was visiting Turanga, 'the R. Catholics [of Opotiki] are in a great rage ... & they propose to shoot me as a payment when I go that way'.⁴⁷

⁴⁰ Ibid., p 28

⁴¹ Ibid., p 32

⁴² 'Whakatohea Case Commentary', p 11

⁴³ Mead and Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa', p 18

⁴⁴ William Williams' Journal to the CMS, 5 May 1844; reproduced in Porter, pp 281

⁴⁵ Ibid., 7 and 8 May 1844; reproduced in Porter, p 282

⁴⁶ Ibid., 18 August 1847; reproduced in Porter, p 440

⁴⁷ William Williams' Diary, 18 January 1850, reproduced in Porter, p 556

Chouvet, Marist missionary at Opotiki between 1843 and 1846, later wrote that the Protestant missionaries were ‘the main obstacle to the conversion of the natives to Christianity’: they ‘manage to inspire in most of their converts the hatred, or rather the rage they bear towards Catholics’.⁴⁸ Chouvet was critical of the amount of land and wealth owned by the CMS missionaries, and of the means by which they attracted converts. Of Wilson, Chouvet stated:

I did not, like him, have flocks of sheep and cattle to look after, nor three or four leagues of land to develop, nor children to feed, etc ... the care of these things takes up almost all of his time. Free of all these chains, the Catholic missionary can fulfil his mission better.⁴⁹

According to the ‘Whakatohea Case Commentary’, by the time of the signing of the Treaty of Waitangi, ‘a lot of Whakatohea were converted to either one or the other’.⁵⁰ The arrival of the Treaty in the district in May 1840 (discussed below), coincided with the establishment of the competing missions, and appears to have led to escalation in the conflict and competition between the two. As will be discussed in chapter 4.5, Rev Grace who was at Opotiki when Völkner was killed, later stated that he was of the opinion that ‘Popery has without doubt had far more to do with it than the Pai Marire delusion’, and that ‘the really guilty men ... were Romanists’.⁵¹

4.3 Traders and Trade

From the time of the first encounters with Europeans, trade was an important aspect of cross-cultural exchanges. As mentioned above, trading was a feature of Cook and his companions’ descriptions of the visit to the eastern Bay of Plenty of the *Endeavour* in 1769. Hamiora Pio’s account of the visit of the whaling vessel to Whakatane in the 1820s refers to the ‘white men [giving] the native people tobacco and *poniu*, pipes, iron pots and *tahu-whenua* (red blankets)’.⁵² While there is no specific mention of an *exchange* of goods in this account, this is likely to have occurred.

⁴⁸ Chouvet, p 56

⁴⁹ Ibid., p 61

⁵⁰ ‘Whakatohea Case Commentary’, p 14

⁵¹ TS Grace to Henry Venn, Auckland, 15 June 1866, CMS Papers, AJCP Reel 223, ATL

⁵² Best, vol 1, p 554. Best suggests that *poniu* was ‘perhaps a vegetable (*kora*), or *poni* (*pongi*) a brand of tobacco. [90]

In late 1828 and early 1829, the brig *Haweis* – on a trading voyage out of Sydney – visited the Bay of Plenty a number of times seeking flax and other produce.⁵³ Informed that they would find ‘an abundance of provisions’ there, the *Haweis* called at Whakatane, where they encountered ‘numerous’ Maori at a pa that lay a quarter of a mile up the river. Here they met the chief ‘Enarraro (or “the lizard” in their tongue)’, who informed them that he was currently ‘at war with several ... tribes’. Inland, John F Atkins, second officer of the *Haweis*, observed flax ‘growing in great abundance, and many small patches ... under cultivation, producing cabbages, potatoes, parsnips, carrots, and a small sort of turnip’. He also noticed watermelons, peaches, and orange trees.⁵⁴ A ‘plentiful supply of hogs’ was purchased from ‘Enarraro’ and his people – enough to fill the decks ‘as thickly as convenient’. Having killed and salted these animals at Tauranga, and finding that they still had room for more cargo, the *Haweis* returned to Whakatane and procured an additional twenty hogs. While the crew of the *Haweis* were processing the fresh hogs at a hot spring on Motouhora Island, the brig was seized by ‘Enarraro’ and his men who were armed with muskets (possibly traded for the hogs) as well as mere. Those crew members that remained aboard were killed, with the exception of Atkins, who was captured and ransomed for a quantity of muskets.⁵⁵

In 1830 Hans Tapsell established a trading post at Maketu with the patronage of Te Arawa. A Sydney firm, Jones and Walker, who had a Government contract for as much dressed flax (*Phormium tenax*; harakeke) as it could procure, provided Tapsell with ‘a large quantity of muskets, powder and other items suitable for trade’.⁵⁶ Tapsell had agents stationed elsewhere including George White at Matata and, it has been suggested, Albert John Nicholas (or Nikorehe) at Uretara Island, Ohiwa.⁵⁷ Tapsell later established himself at Whakatane, along with other traders such as George Simpkins, Bennett White and James Melbourne. As Miles has stated, these early Pakeha traders often married into local hapu and lived ‘under Maori

⁵³ Various spelt ‘Haws’ or ‘Hawes’, but being originally a missionary vessel, built at Moorea, Tahiti in 1817, the *Haweis* was named after Dr Thomas Haweis, one of the founders of the London Missionary Society

⁵⁴ John F Atkins, ‘A Narrative of the Sufferings and Most Miraculous Escape of Mr John F Atkins, Second Officer of the Brig *Haweis*, which was Treacherously Captured by the Natives of New Zealand, on the 2nd of March, 1829, and a Part of the Crew Massacred, Interspersed With Some Description of the Island and the Manners of the Inhabitants’, reproduced in Robert McNab, ed, *Historical Records of New Zealand*, vol 1, Wellington, 1908, pp 687-698, pp 688-691

⁵⁵ Atkins, pp 691-693

⁵⁶ D M Stafford, *Te Arawa: A History of the Arawa People*, Auckland, Reed, 1967, p 193

⁵⁷ Miles, *Te Urewera*, p 60. The relationship between Nicholas and Tapsell is unclear. For example, Nicholas is mentioned in James Cowan’s *A Trader in Cannibal Lands: the Life and Adventures of Captain Tapsell* (Dunedin, Reed, 1935, p 128), only as a trader (‘Nicholson’) at Ohiwa.

law and at the sufferance of local rangatira, on whom they relied for protection. For his part ‘it was a matter of enhanced prestige for a chief to sponsor a trader in his locality’.⁵⁸

According to Miles, ‘the appearance of these traders in the Bay of Plenty had a great impact on both the economy and the occupation patterns of local hapu’.⁵⁹ As noted above, by the time of the visit of the *Haweis* in 1829, wheat, potatoes, and other European fruit and vegetables were being grown alongside the existing taro, kumara, and gourds. Miles notes that ‘the potato and the pig were among the first items acquired by Tuhoe from Europeans, along with maize’ (which according to Best was obtained from the Bay of Islands in around 1820). ‘Despite having a limited area suitable for growing crops,’ Miles continues, ‘by the 1860s the cultivation of wheat and maize had become generally widespread in the Urewera’.⁶⁰ According to Best, while Tuhoe lacked direct access to trading vessels and stations, they instead traded with Ngati Awa and others for European goods. This, Miles comments, ‘was merely an extension of the trade relationships between iwi that had existed prior to European contact, where Tuhoe traded their prized timber and potted birds for seafood and other resources available to more coastal hapu’.⁶¹ As late as 1862, C Hunter Brown reported that:

A little pig trading with Whakatane and Opotiki is almost the only way they have found to get European goods ... But in the month of June the Maoris kill immense numbers of birds ... pot them down in their own fat, and sometimes sell these huahuas for perfectly astounding quantities of blankets, axes, pots, etc., to Natives whose open country debars them from such luxury.⁶²

From around 1840 Tuhoe communities moved from Ruatoki to the Waimana valley to prepare flax for Scott and McLeod at Ohiwa.⁶³ At the Native Land Court hearing of the Waimana Block in 1880, Rakuraku said that it was one of his ancestors, Hua, who brought the traders to Ohiwa. He added that it was at the request of the traders that his father had moved to Waimana, probably from Ruatoki: ‘It was Scott who asked my father to come and live at

⁵⁸ Miles, *Te Urewera*, p 60; she cites Mead and Gardiner, ‘Te Kaupapa o te Raupatu i te Rohe o Ngati Awa’, p 20

⁵⁹ Ibid.

⁶⁰ Ibid., pp 60-61; she cites Best, vol 1, pp 556, 561

⁶¹ Ibid., *Te Urewera*, p 61

⁶² ‘Report from C Hunter Brown, Esq, of an Official Visit to the Urewera Tribes’, June 1862, AJHR, 1862, E-9, p 27; Miles, *Te Urewera*, p 62

⁶³ Miles, *Te Urewera*, p 61

Waimana'.⁶⁴ Sissons also records that 'Numia Kereru said that Maungaharuru initially came to Waimana "to scrape flax to sell to Europeans" and Mohi Tai said that living in Te Waimana enabled Maungaharuru to "take his pigs to Scott for sale".' Sissons suggests that it was possibly the 'subsequent conflict arising from access to Ohiwa and the traders that precipitated Taua's conquest [of Waimana]'.⁶⁵

Generally speaking, as Miles has stated:

Bay of Plenty iwi established barter relationships with the traders, dealing mainly in pigs, potatoes, and scraped flax, motivated by a desire for European goods as well as for muskets, deemed a necessity after the Nga Puhi raids. This relationship often resulted in the (temporary) relocation of whole hapu to areas close to the traders and sources of flax, which the entire community would scrape and dress. In the early years of trade with Europeans, iron spikes, nails, and gridirons were much sought after by Maori, who transformed these articles into chisels, knives, bird spears, and other implements, including weapons. The trade system was one of barter, and tools such as axes, hatchets, spades, and hoes were among the items most sought after.⁶⁶

According to local historian Anton van der Wouden, the traders Scott and McLeod were calling at Ohiwa in the 1830s and by 1839 Nicholas had established a trading post on Uretara Island, where he traded flax, potatoes and pigs for European goods.⁶⁷ Nicholas was living on Uretara Island in December 1839, when another trader, Thomas Black, arrived at Ohiwa, and in so doing wrecked his small schooner, *Susan*. A decision was made between the two men to purchase the island, and while it was Nicholas's name that appeared alone on the deeds that were drawn up (and probably he who negotiated the sale), it was Black who funded the purchase.⁶⁸ In 1875, at a hearing of Black's 'Old Land Claim' to the island, Nicholas stated that he had come to Ohiwa in 1839 and settled on Uretara Island 'with the permission of Toihau Te Kepa's and Hokimoana's father'. Nicholas claimed that it was they who 'wished me to purchase it which I consented to do':

⁶⁴ Sissons, 'Waimana Kaaku', p 15; he cites Judge Monro notes, p 16

⁶⁵ Ibid., pp 14, 15; he cites Judge Monro notes, pp 22-23

⁶⁶ Miles, *Te Urewera*, p 61; she cites Best, vol 1, pp 556, 559

⁶⁷ A van der Wouden, *Ohiwa: A Short History and Guide*, Whakatane and District Historical Society, Whakatane, 1993, p 5

⁶⁸ L W Melvin, 'Thomas Black: Early Trader and Settler in the Bay of Plenty', *Historical Review*, vol 12, no 3, September 1964, pp 105-111

They named a day and the whole of Toihau's tribe came over from Whakatane and I paid them their satisfaction. After I had given them the property Toihau Hokimoana and Te Kepa signed the Deed of Conveyance over to me. The deed was witnessed by John Middlemass who resided at Whakatane who is now living at Mercury Bay and Charles Falloon who is now in Queensland. Everything passed off amicably and they all seemed perfectly satisfied, and from then till now I never heard any opposition to my claim.

Nicholas added that he 'did not mention the matter to the natives at the time that Mr Black was conjointly the purchaser with me'. He also stated that he considered 'Toihau and his two children Hokimoana and Te Kepa ... to be the real owners at the time'.⁶⁹ Black later stated that his motivation for purchasing the island was so that he would not have to rebuild his wrecked schooner on 'Native land'. Black also referred to Nicholas as his trader at Ohiwa, and named John Middlemas as his trader at 'Wakatane'.⁷⁰

Nicholas was not the first Pakeha settler at Ohiwa. According to the testimony of Tiopira of Ngati Awa before the Compensation Court in 1867:

The first European who lived at Ohiwa was Te Kati. Kepa [Toihau, of Ngati Awa] settled him at Hokianga. Kepa at the same time brought Upokorehe from Waiotaha and settled them at Hokianga to raise food for Te Kati. Titokoa principal chief of Whakatohea went to Hokianga and likewise planted food.⁷¹

It was here that the purported agreement was made between Ngati Awa and Whakatohea, dividing the harbour between them at Hokianga Island (see chapter 3.2). Tiopira went on to say that two years after this agreement, Kepa sold the island to a Pakeha named Mackey in return for a mare called Peti. Whakatohea retaliated by destroying Mackey's house, to which Kepa responded by burning the Whakatohea pa at Onekawa, on the eastern side of the entrance to the harbour, and destroying their crops. According to Tiopira's testimony,

⁶⁹ Old Lands Claim file no. 921-4, Thomas Black, cited in Richard L H Waugh, 'Albert John Nicholas: Early New Zealand Settler and Trader', *Historical Review*, vol 15, no 1, April 1967, pp 60-73, pp 65-66. Waugh identified himself as a descendant of Nicholas.

⁷⁰ Thomas Black to Herbert W Brabant, Opotiki, 1 May 1886, Opotiki Confiscation Box 2/8; Opotiki Confiscated Lands – Miscellaneous Correspondence with HW Brabant and others 1876-1886, DOSLI Hamilton (RDB, vol 123, pp 47320-47321). In this letter, Black claims that the 'Shusan' was wrecked leaving the harbour, at a loss of £1200.

⁷¹ Compensation Court minutes, Opotiki sitting, 7 March – 8 April 1867, p 57 (RDB, vol 119, p 46112)

Nicholas was the third Pakeha to arrive at Ohiwa, purchasing Uretara Island from Kepa for ten shirts. Whakatohea were against the sale.⁷²

In ‘Te Roi o te Whenua’, Milroy and Melbourne question the role of Keepa Toihau in the sale of both Uretara and Hokianga islands to Pakeha, given that ‘his father Parata and older brother Hokimoana were still alive’:

His dealings with Pakeha settlers in Ohiwa not only embittered Ngati Awa and Whakatohea relations, they also raised the important issue of customary title. If Ngati Awa claims to Hokianga, Uretara and other areas of Ohiwa were in doubt, whose rights was Keepa Toihau exercising to sell Hokianga and Uretara? Did he simply take advantage of the situation to sell, as the opportunity arose?⁷³

Black’s claim to Uretara Island was first heard in 1863 (Old Land Claim 924). He claimed the loss of 300 acres and £50 ‘payment to natives’. The claim was ‘disallowed’ and was ‘brought forward, but not admitted for investigation’.⁷⁴ When the claim was reheard at Opotiki in 1875, it was again dismissed, and in 1881 it was reported that the claim had been ‘investigated under the New Zealand Settlements Acts, but claimant failed to make out his case. Declared to have lapsed’.⁷⁵ In 1905, Lucy Symonds Waugh (or Maka Nikorahi), the daughter of Nicholas and a woman named Maka of Ngati Haua descent, petitioned the government for the title of Uretara (or ‘Nicholas’) Island. She claimed that they had lived on the island with the consent of the ‘native owners’, and that the island had been gifted to her mother in recognition of her and Nicholas’s services to the owners.⁷⁶ In 1922, following the reapplication of the petition, the Native Department reported to the Native Affairs Committee that Nicholas had surrendered any claim he might have had to the island to Black, and that neither claim was upheld.⁷⁷ The Department of Lands and Survey reported that the island ‘forms part of the area confiscated by proclamation of the 18th January, 1866, and was part of the land originally belonging to the Whakatohea Tribe’. The island was not returned by the Compensation Court and ‘has

⁷² Ibid.

⁷³ Milroy and Melbourne, p 56

⁷⁴ ‘Appendix to the Report of the Land Claims Commissioner’, AJHR 1863, D-14, p 68

⁷⁵ ‘Final Return of Land Claims Definitely Settled since 20 August 1878’, AJHR 1881, C-1, p 5; D Moore, B Rigby, M Russell, *Old Land Claims*, Waitangi Tribunal Rangahaua Whanui Series, July 1997, p 329

⁷⁶ Petition no. 22/172 – Lucy S Waugh – praying for inquiry into the claim of the petitioner to Uretara Island, Bay of Plenty, Le 1/1922/12, box 567c, 1922-24 (RDB, vol 4, p 1430-1432)

⁷⁷ Under Secretary, Native Department, to Clerk, Native Affairs Committee, 15 August 1922, re Petition 172/22 re Nicholas Island (RDB, vol 4, p 1425-1426)

remained in the Government's hands ever since the date of the proclamation'. The report also noted that:

In 1898 the island was permanently reserved under the provisions of the Land Act for public recreation (Gazette 1898 page 1467) and by Order in Council dated 13th September, 1909, was declared to be a public domain subject to Part II of the Public Reserves and Domains Act, 1906.⁷⁸

The petition was heard in 1924 and no recommendation was made.⁷⁹

While at Uretara Island, Nicholas built a sailing vessel, in partnership with Richard and Robert Waddy, both master mariners.⁸⁰ It is likely that this was the *Nimrod*, a 19-ton cutter, built in 1842 and wrecked at Tolaga Bay in 1845.⁸¹ As noted in chapter 3, Black introduced cattle to Uretara Island in 1848, before removing them in 1856, following the objections of Whakatohea, and in 1862, Whakatohea reoccupied the island.

There are accounts of other traders visiting the area surrounding Ohiwa around this time. In 1839 the schooner *John Dunscombe*, owned by a family of Scottish traders, the McLeans, was stranded near Opotiki. The schooner was seized by local Maori and the crew were apparently kept prisoner for nine months before being released and their schooner returned, having 'won the confidence and affection of the Maori chief'.⁸² Chouvet, the Catholic missionary at Opotiki from 1843 to 1846, refers to the presence of an Irishman residing at Opotiki at this time.⁸³ He also recalled an Englishman who had adopted the 'native custom' living in his neighbourhood:

He is covered in *moko*, and lives like a real New Zealander. It is possible that he is some convict or a sailor escaped from his ship, who wished by this method to remove himself from the cognizance and persecution of English justice.⁸⁴

⁷⁸ Under Secretary, Department of Lands and Survey, to Clerk, Native Affairs Committee, 16 October 1922, re Petition 172/22 – Lucy S Waugh Uretara or Nicholas Island (RDB, vol 4, p 1423)

⁷⁹ Reports of the Native Affairs Committee, AJHR 1924, 13, p 11. See also David A Armstrong and Brent Parker, 'Te Uretara Island', March 1996 (Wai 46 ROI, doc M14)

⁸⁰ 'Te Uretara Island – Notes of BV Cottrell', unpublished papers, HD London Library, Whakatane

⁸¹ Waugh, 'Albert John Nicholas', pp 66, 71-72

⁸² C G White, 'The Schooner *John Dunscombe*', *Historical Review*, June 1964, pp 137-138, p 138

⁸³ Chouvet, p 35

⁸⁴ *Ibid.*, p 14

In his account of his experience in New Zealand, Chouvet provides the following general description of ‘the trade of the New Zealanders’:

These islanders have business dealings with European and American whalers who frequent the bays of New Zealand, as well as with the English colony which has established itself on the shores of this land and already includes several small towns. They sell mainly potatoes, pigs, fish, *phormium tenax* [flax], *kaouri* [sic] gum, etc.

In general, when they are trading, the natives prefer to barter their goods rather than to sell them for money; they will most often only hand them over in exchange for guns, powder, tobacco, clothes and for food in the form of sugar and flour. The reason they give is that these goods are very useful to them, whereas money is of no value ... If they try to cheat the white man in trade today, it must be admitted that the latter was the first to give them an example of fraud.

Chouvet also stated that Maori were ‘anxious to have schooners’ and that ‘they sometimes buy them, and sell goods to the towns of the colony and bring back goods for their tribe’. He recalled that:

At the Opotiki station, I acted as a lawyer one day on behalf of the natives who were dealing with a Jew called Russel. This Englishman was selling them a schooner of twenty tons for the price of two hundred pigs, which, according to a clause inserted in the contract, had to weigh an average of one hundred kilograms. The contract, drawn up in the Maori language, was read out loud and signed by two or three leading chiefs and the seller.⁸⁵

Chouvet, who levelled vehement criticism at the CMS missionaries for their participation in trading activities, wrote that at his mission station at Opotiki he ‘never bought anything from the natives for money’. His ‘usual currency’ was twist tobacco which he used to buy ‘potatoes, sweet potatoes, poultry, game, fish, etc.’, and also to pay Maori who carried out work for him. For larger purchases such as pigs for food, he traded items of clothing, cloth and blankets.⁸⁶

⁸⁵ Ibid., pp 38-39. He added that ‘in recognition for this small service, the Jew made me a present of three kilograms of coffee and a dozen bottles of excellent beer’.

⁸⁶ Ibid., p 39

A further indication of the extent and range of produce cultivated and caught by the people of the Opotiki area can be seen in Chouvet's description of a 'akari' (hakari) for his congregation and Catholics 'from neighbouring tribes' that took place at Opotiki. Chouvet claimed to have counted 1250 baskets of potatoes and kumara, each weighing an average of 25 kilograms. 'Then came dried fish and fernroot, in startling quantity. Finally they brought twenty-five fat pigs'. In addition, there were three or four sacks of flour and two cases of brown sugar brought from a ship. This quantity, he claimed, fed 700 people (not including children) in 'six big meals in three days'.⁸⁷

By 1840, Maori in the Bay of Plenty were actively engaging in trade with Europeans, not just as suppliers of raw materials, but as traders in their own right. As noted above, from an early stage Maori were acquiring schooners and carrying out their own trading ventures. According to Van der Wouden, by the mid-1830s when Pakeha traders were visiting more regularly and setting up trading stores, Maori began working as crew aboard the European vessels. In 1843, Wilson reported that Whakatohea owned two small ships and Ngati Awa had one. In 1849, he reported that there were 22 ships owned by Maori between Whakatane and Maraenui.⁸⁸ In 1847, 45 vessels, ranging from 9 to 25 tons, were reported as belonging to Maori in 'the northern part of the colony'. Of these, some 22 were from the Bay of Plenty, including the 14-ton schooner *Tepana*, listed as belonging to Whakatohea at Ohiwa. Seven other vessels were listed as belonging to Whakatohea at Opotiki or Whakatane, and six were listed as belonging to Ngati Awa at Whakatane or Matata.⁸⁹ Van der Wouden points out that, being tribally owned, these vessels were usually registered in the name of one or more chiefs of the tribe, and that the number of unregistered ships 'was probably several times higher than those appearing in the official records'.⁹⁰ According to Miles, Tuhoe owned neither a flour mill or a ship, indicating that there was limited Tuhoe participation in coastal trading in comparison to their

⁸⁷ Ibid., pp 23-24

⁸⁸ A van der Wouden, 'Maori Shipowners and Pakeha Shipbuilders in the Bay of Plenty 1840-1860', *Historical Review*, vol 33, no 2, November 1985, pp 90-100, p 90; Van der Wouden cites JA Wilson, Letter and Journal, report 1843 and JA Wilson, Missionary Register, report 1849. When Selwyn passed through the Bay of Plenty in December 1842 he encountered at Whakatane 'a schooner belonging to the natives', by which he sent mail to the Waimate mission station in the Bay of Islands. Selwyn's 'Visitation Journals', Wednesday 14 December 1842, cited in Cyril R Coates, 'Selwyn's First 'Visitation' to the Bay of Plenty', *Historical Review*, vol 12, no 2, June 1964, p 59

⁸⁹ 'Return of vessels, the property of natives belonging to the northern part of the colony, as far as can be ascertained', 25 August 1847, Governor Grey to Earl Grey, 3 September 1847, Further Papers Relative to the Affairs of New Zealand. Correspondence with Governor Grey 1847-1848, no 8, enclosure 1, BPP, vol 6

⁹⁰ Van der Wouden, 'Maori Shipowners and Pakeha Shipbuilders in the Bay of Plenty 1840-1860', p 95

coastal neighbours.⁹¹ It is likely, however, that Tuhoe living near the coast would have participated to some extent in coastal trading. The economic impact of such trade and of the Pakeha presence in the Bay of Plenty prior to the confiscation would obviously have been felt most by those Tuhoe hapu living at or near the coast, and by those who had most contact with coastal iwi.

The produce grown by Maori for European traders could now be shipped and traded directly with the growing settlement of Auckland in particular. According to Van der Wouden, 'it was not unknown for a full cargo to realise \$1000'.⁹² Van der Wouden also states that many of the local traders were forced to adapt to the changing situation by supplying Maori with ships, employing Pakeha shipwrights to do the actual building.⁹³ As Paul Monin has stated in his work on Hauraki, 'a schooner was a potent display of hapu wealth, as well as a useful means of transportation. No large hapu or high-ranking chief could afford to be without one'.⁹⁴ According to Van der Wouden, in 1849 most of the male population of Opotiki had travelled to Auckland or the Bay of Islands as crewmembers on a trading voyage.⁹⁵

While waiting to cross Ohiwa harbour (from the Opotiki side) on 21 February 1850, William Williams observed 'a party belonging to a native cutter' that was lying at anchor having been shark fishing: 'They had taken a goodly number and were securing the oil which they obtain in great abundance'. Williams also recorded that there was 'an encampment about a mile off of natives who were taking up potatoes to ship for the Auckland market'. Forced to stay overnight, at evening prayers Williams reportedly addressed about forty local Maori.⁹⁶ Returning to Opotiki due to an attack of lumbago, Williams noted that on 26 February, John Wilson left Opotiki for Auckland with a cargo of sheep and wool.⁹⁷

In 1861, Henry Clarke, Resident Magistrate at Tauranga, reported that when visiting 'Pakoriri – "Te Whanau o Opanui" Pa', to the east of Opotiki, he was informed by 'Ngatawa (the probationary Assessor)', that:

⁹¹ Miles, *Te Urewera*, p 64. Miles notes that Tuhoe did attempt to build a flour mill at Oromairoa in 1863.

⁹² Van der Wouden, 'Maori Shipowners and Pakeha Shipbuilders in the Bay of Plenty 1840-1860', p 90. Van der Wouden does not provide any evidence or explanation for this figure.

⁹³ Van der Wouden, 'Maori Shipowners and Pakeha Shipbuilders in the Bay of Plenty 1840-1860', p 91

⁹⁴ Paul Monin, *This Is My Place: Hauraki Contested 1769-1875*, Wellington, Bridget Williams Books, 2001, p 125

⁹⁵ Van der Wouden, 'Maori Shipowners and Pakeha Shipbuilders in the Bay of Plenty 1840-1860', p 92

⁹⁶ William Williams' Diary, 21 February 1850; reproduced in Porter, pp 558-559

The traders ... for the most part supply goods in exchange for Native produce – consequently they have very little money in circulation amongst them; and he had been in the habit of receiving articles of wearing apparel in lieu of cash; that he had accumulated a quantity of these.

Clarke had advised Ngatawa ‘in future to take such produce as could easily be convertible into money’. At Te Kaha, Clarke discovered ‘bad feeling’ between Maori and Pakeha residents, who, he claimed, ‘do not appear to live on the best of terms’. ‘The great cause of this bad feeling, Clarke reported:

is the outstanding debts; in fact this is the difficulty along the coast between Europeans and Natives. Traders have let their goods out, and often passed them upon the Natives, in consideration of their standing crops, to such an extent sometimes that it requires nearly the whole of the following year’s crop also to clear the debt. Other Europeans, in the face of all this, have stepped in and offered an advanced price, and have generally obtained what has virtually been sold, to the great loss of the other party. These dishonorable acts on the part of the Europeans have tended greatly to injure the Natives. They believe now that they have been the victims of the traders, and are determined to look after their own interests by combining to ask an exorbitant price for their produce, at the same time fully acknowledging their debts ... I blame the Europeans for this state of things; their anxiety to monopolize the trade has overcome the dictates of common prudence.⁹⁸

Clarke reported that, on his return trip to Tauranga, at a meeting held at Whitianga, at the mouth of the Motu River, an application was made to him ‘to fix the price of European trade, and the price that ought to be given for Native produce’. He reported that ‘they were surprised when I told them that I could not interfere in the matter, - that the European could ask what price he pleased for his goods, and it was optional with the Natives whether they took them or not. Their idea has been that the Magistrate’s power was absolute, and that the Europeans were obliged to obey. I explained the duties of a Magistrate’. At Whitianga, Clarke was also asked:

⁹⁷ Ibid., 26 February 1850, reproduced in Porter, p 559; Porter notes that 53 sheep and 100lbs of wool were sent on the schooner *Dove* (*New Zealander*, 6 March 1850).

⁹⁸ Henry T Clarke, Resident Magistrate, Report, ‘Further Papers Relative to Governor Sir George Grey’s Plan of Native Government, Reports of Officers, Section 4: Bay of Plenty’, AJHR 1862, E-9, sec 4, pp 8-9

how it came about that spirits were not allowed to be landed along the coast, and at whose instigation. I told them at their own, and that I had strongly recommended it; however much they might regret it now, they would thank the Governor for it hereafter, or, at least, their wives and children would. The amount of money thrown away in spirits would now go to provide them with clothes and other necessaries.

Clarke noted that the men he argued with ‘good temperedly’, were ‘young men belonging to a whaling party’.⁹⁹

Clarke also reported ‘trouble’ caused by ‘the supply of spirits ... obtain[ed] from the European vessels visiting Whakatane’. Clarke informed those concerned that ‘the Governor had prohibited the sending of spirits along the East Coast as far as Ohiwa, and that [he] believed it would be extended if it were the general wish of the people.’¹⁰⁰

C Hunter Brown, in his June 1862 ‘Report ... of an Official Visit to the Urewera Tribes’, commented that:

The condition of the Coast tribes from Ohiwa to Te Kaha, is in some respects better than that of the Urewera; having more ready communication with Auckland, all European goods are more plentiful amongst them; they dress better, have more horses, ploughs, sledges, and even drays at Opotiki; they have more tools and utensils; each place has several fine large canoes, perhaps two or three whale boats, and Opotiki has three or four schooners owned by Maoris, besides two or three more unseaworthy for want of repairs.

Hunter Brown referred to a number of Pakeha traders along the coast: two or three at Opotiki; one at Tunapahore; two at Whitianga; one (‘half-caste’) at Omaio; and two at Te Kaha. Like Clarke in his report, Hunter Brown reported problems between Maori and the traders:

All along the coast, and also at Ruatoki and Whaimana [sic], the Maoris are long and loud in their complaints of the white man’s trade. This is *the* grievance of the tribe; say they – Let the Governor send us a trader to buy and sell cheap; then indeed for the first time will we believe in his love for us!

⁹⁹ Ibid., pp 9-10

¹⁰⁰ Ibid., p 7

Hunter Brown stated that the Maori response to the ‘certain shortcomings on the part of individual traders’ was revenge. ‘All along the coast,’ he reported, ‘the traders complain long and loud of the growing insolence and dishonesty of the Maori – especially of a resolute avoidance to pay their debts, which amounts virtually to repudiation’.¹⁰¹

According to Hunter Brown’s report, the coast from Ohiwa ‘to a point called Tirohanga, about halfway between Opotiki Heads and Opape’ was occupied by Whakatohea. Hunter Brown held meetings at various places as he progressed, including two at Ohiwa. He met with about twenty men who he identified as Whakatohea at ‘Punawai, on Ohiwa Harbour’, who, he claimed, said that they would follow the lead of those at Opotiki regarding their response to ‘the new tikangas’ of the governor. A similar response was elicited from an individual identified as ‘Te Teira, of Ohiwa’ and ‘the men of the little “kianga” [sic] of Onekawa, Ohiwa heads’ [to the east of the harbour]. Hunter Brown’s ‘summary of local public opinion’ based on his trip included the rather cryptic entry regarding Ohiwa: ‘Chief Ohiwa; approval; consent left to depend on men of Opotiki’.¹⁰²

In November 1859, Arthur S Thomson, MD, Surgeon-Major to the 58th Regiment, visited the area, reporting that:

At Opotiki and Ohiwa, in the Bay of Plenty, live the Whakatohea nation, an industrious people numbering 2,600 souls, and possessing twenty vessels, each upwards of twenty tons burden, in which they convey their produce to the Auckland Markets.¹⁰³

In November 1861, Hanson Turton, Resident Magistrate at Auckland, travelled to the Bay of Plenty as part of a tour to report on the state of Maori runanga. He described the situation of Whakatohea at this time as follows:

The people of this place had thirteen vessels, ten of which were in the river; they had upwards of fifty ploughs, 26 drays and carts, and other implements in proportion. They have miles of good roads, leading to a water mill in the centre, which cost them £800; and some of the bridges, entirely of Maori workmanship, are equal to many on the South

¹⁰¹ ‘Report from C Hunter Brown, Esq, of an Official Visit to the Urewera Tribes’, June 1862, ‘Further Papers Relative to Governor Sir George Grey’s Plan of Native Government, Reports of Officers, Section 4: Bay of Plenty’, AJHR 1862, E-9, p 30

¹⁰² Ibid., pp 31, 32, 34

Road. The fact of this having been formerly the station of the Rev. Messrs. Wilson and Davies, will partly account for this advancement; in addition to which they receive counsel and encouragement from the Europeans living amongst them, and especially from the Roman Catholic Priest (Rev. J. Alletage), who seems to advise them in their worldly affairs with great zeal and judgement. And yet for want of a few mechanics, their agricultural implements and coasting vessels were falling into a sad state of unrepair; and the Government could do no better service to these industrious but isolated people ... than by encouraging a few tradesmen, such as a miller, a wheelright, a baker, a carpenter, a blacksmith, and a shoemaker (partly for repairing their harness), to go down and settle amongst them.¹⁰⁴

As Buddy Mikaere has stated, at the beginning of the 1860s, Whakatohea society was facing the same transitional changes as the rest of the country'. Official reports, he writes, 'depict a changing society facing difficult times, but there is some evidence that Whakatohea were adapting successfully.' In March 1866, George Graham reported to the Governor that:

The East Coast Natives had become noted for their industry and hospitality. They were growing and exporting prior to the Waikato War, large quantities of wheat, maize and other grain, as also flax, potatoes, kauri gum etc. They owned many European built vessels and were making rapid strides in civilization.¹⁰⁵

Völkner himself had recognised the range and quality of Whakatohea raw produce and manufactured goods. He sent an exhibit of 'mats and baskets, and a collection of native manufactures of New Zealand flax, chiefly native dresses' to the 1862 Great Exhibition in London as part of New Zealand's display. Displayed alongside manufactured goods from throughout Europe, the United States and the colonised world, the exhibit was awarded a medal.¹⁰⁶

4.4 The arrival of the Treaty of Waitangi and the imposition of British law

A copy of the Treaty of Waitangi arrived in the Eastern Bay of Plenty in May 1840, carried by a former CMS missionary turned trader, James W Fedarb, on the schooner *Mercury*. Landing

¹⁰³ Cited in letter from Matiu Ranapia and nine others, 'and all of the Whakatohea', to the Hon Mr Herries, Native Minister, 25 April 1916, MA1 5/13/157 NA (Wai 87 ROI, docA1(a))

¹⁰⁴ Report by Mr Hanson Turton on the subject of the Maori Runanga, AJHR 1862, E-5A, No. 1, p 8

¹⁰⁵ George Graham to Governor, 24 March 1866, J22/3A NA; cited in Mikaere, p 6

¹⁰⁶ J G Knight, *The Australasian Colonies at the International Exhibition*, London, 1862, p 75

at Ohiwa on 25 May, Fedarb travelled overland to Opotiki where he collected signatures from seven Whakatohea chiefs on 27 and 28 May.¹⁰⁷ These have been identified by Claudia Orange as Tauatoro of Ngai Tama and Ngati Ngahere; Takahi of Te Upokorehe; Aporotanga of Ngati Rua; Rangimatanuku of Ngati Rua; Rangihaerepo of Te Upokorehe and Ngai Tama; Ake of Te Upokorehe; and Te Whakia of Te Whakatohea.¹⁰⁸ From Opotiki, Fedarb sailed to Whakatane on the whaling schooner *Black Joke* on 31 May where he distributed tracts regarding the Treaty, but did not at this stage gather signatures. He returned to Ohiwa, and stayed at Waiotahe while awaiting the return of the *Mercury*, before sailing east on 6 June to Te Kaha and Torere where he collected signatures (four at Te Kaha and three at Torere) between 11 and 14 June. He then returned to Whakatane on 16 June where he collected twelve signatures. Ngati Awa researchers claim that he collected 17 signatures at Whakatane, and that all but one from chiefs of the Ngati Pukeko hapu of Ngati Awa taken at Pupuaruhe Pa. Fedarb sailed from Whakatane the following day, and submitted his copy of the treaty to Colenso at Paihia.¹⁰⁹

Ngati Awa researchers have made the point that while Fedarb spent some five weeks in the area he only managed to collect 17 (or 12) signatures at Whakatane, seven at Opotiki, four at Te Kaha and three at Torere. They suggest that Fedarb might have only been able to acquire token acceptance from this area, and that inland travel in this area took time. They also suggest that at this time of year Maori may have been busy collecting winter food, and that hapu politics and rivalries between Catholic converts at Whakatane and Anglican converts at Rangitaiki may have impeded Fedarb's ability to travel or Ngati Awa's ability to come together to sign the treaty.¹¹⁰

Orange, however, states that Fedarb did have some success with his copy of the Treaty, 'secur[ing] the adherence of twenty-six chiefs in spite of recent visits to the same coastal settlements by Pompallier'. She also notes that Fedarb was in the area pursuing his trading interests as well as collecting signatures, and that being 'accustomed to moving among the Maori people, was no doubt aware of the need to allow time for consultation and ... was in no

¹⁰⁷ Mead and Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa', p 29

¹⁰⁸ Gilling, 'Te Raupatu o Te Whakatohea', p 8; he cites Claudia Orange, *An Illustrated History of the Treaty of Waitangi*, Allen and Unwin/Port Nicholson Press, Wellington, 1990, p 144. See also Mikaere, p 7

¹⁰⁹ Mead and Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa', p 29; Miles, *Te Urewera*, p 71; Claudia Orange, *The Treaty of Waitangi*, Wellington, Bridget Williams Books, 1995, pp 62, 76; <http://www.nzhistory.net.nz/Gallery/treaty-sigs/fedarb-image.htm>

hurry'. She adds that at Opotiki and Te Kaha, at least, Fedarb had the support of the local Maori teachers.¹¹¹

At Opotiki, three of the signatories (Tauatoro, Rangimatanuku and Rangihaerepo) are identified on the Treaty sheet as being Catholic. According to Lyall, the three Catholic signatories instructed Fedarb to append his copy of the treaty as follows:

The chief at Opotiki expressed a wish to have it signed who were Pikopos (i.e. Roman Catholics) and who were not, which I did by placing a crucifix preceding the names of those who are, as above and at which they seemed perfectly satisfied.¹¹²

Orange, on the other hand, states that it was the CMS chiefs who requested that the Catholic chiefs be identified on the Treaty sheet.¹¹³

As Miles has stated, 'Belich has noted that there is a strong correlation between the distribution of European settlement and Treaty signatories, suggesting that the motivation for signing the Treaty, at least in part for some of the chiefs, was to get British help in 'policing the Pakeha-Maori interface'.¹¹⁴ In light of this argument, Miles has noted that 'the small numbers of Europeans on the Bay of Plenty coast, and their total absence from the Urewera, would not have provided much impetus for Bay of Plenty Maori to sign the Treaty'.¹¹⁵

Between 1840 and the conflict of the 1860s, there was little official contact with Maori living in the eastern Bay of Plenty. As Bryan Gilling has put it 'contact with Government officials actually exercising governmental power was very limited and sporadic prior to 1865':

It is clear that the Queen's writ ran only notionally in the eastern Bay of Plenty in the early-mid 1860s, and even less in Whakatohea than in Ngati Awa. There seems, therefore, to have been scant opportunity for Whakatohea or Ngati Awa within their own rohe to

¹¹⁰ Mead and Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa', p 31

¹¹¹ Orange, *The Treaty of Waitangi*, pp 76-77

¹¹² Lyall, pp 151-152

¹¹³ Orange, *The Treaty of Waitangi*, p 76; Orange cites Colenso to Hobson, 27 June 1840, 'Official correspondence . . . Treaty', q MS 1840, ATL

¹¹⁴ Miles, *Te Urewera*, p 72; James Belich, *Making Peoples*, Auckland, Penguin, 1996, p 200

¹¹⁵ Miles, *Te Urewera*, p 72

develop any meaningful or effective relationship with the forms or officers of colonial Government.¹¹⁶

There was even less opportunity for Tuhoe to develop such relationships with the colonial government. Miles has identified only limited Tuhoe participation in these runanga.¹¹⁷ She states that in the eastern Bay of Plenty (and in Te Urewera especially), ‘Maori law and custom prevailed, albeit punctuated by infrequent visits by Government officials stationed outside of the eastern Bay of Plenty’:

Edward Shortland, sub-protector of Aborigines, was stationed at Maketu from 1842 to April 1843, being replaced by T H Smith until the post was abolished in 1846. Subsequently, Governor Grey established resident magistrates under the Resident Magistrates’ Courts Ordinance 1846 but this system was not extended to the Bay of Plenty until 1852, when T H Smith was sent to Rotorua as resident magistrate for Rotorua and the Bay of Plenty. He remained in this post until 1856 but was not immediately replaced, although some appointed Maori assessors continued to operate from Maketu at this time. Eventually, H T Clarke was appointed resident magistrate for the Bay of Plenty in 1859. He was stationed at Tauranga and made occasional visits to coastal Ngati Awa territory but the Urewera was apparently not included in his circuit.¹¹⁸

The resident magistrates, Miles has stated, ‘were an important component of a general assimilation policy which was promoted by the Native Districts Regulation Act 1858 and Native Circuit Courts Act 1858’. Miles notes that:

The preamble to the former Act states that it was passed ‘in order to promote the civilisation of the Native race’ and, in providing for the limited introduction of British law into what were termed ‘native districts’, the Act implicitly acknowledged that these districts operated under their own, customary, laws. The resident magistrates were to operate in conjunction with locally established Maori runanga, on whom they would rely

¹¹⁶ Bryan Gilling, ‘The Policy and Practice of Raupatu in New Zealand, Part B: The Practice of Raupatu – the five confiscations’, January 1997 (Wai 201 ROI, doc M9; Wai 299 ROI, doc B1), pp 64, 65

¹¹⁷ Miles, *Te Urewera*, p 73. According to Miles: ‘Himiona of Waikare, a young chief whom Tuhoe held, according to Hunter Brown, to be ‘the cleverest and most influential man of Whakatane’, ‘spoke with great weariness of his work in the purely Native Runanga.’ ‘Report from C Hunter Brown, Esq, of an Official Visit to the Urewera Tribes’, p 30

¹¹⁸ Miles, *Te Urewera*, p 72

for this system to operate effectively. These Maori runanga, modelled on traditional runanga, were largely involved in dispute resolution and maintenance of civil order.¹¹⁹

In 1861, Governor Grey, upon his return to New Zealand, instituted a series of reforms in an attempt to gain control over a country that appeared to be slipping further into conflict. In late 1861, officials were sent out to report on the state of the runanga system. With regard to the Bay of Plenty and Waikato districts, generally, Hanson Turton reported that the Maori ‘desire for law is at the present time very great’, and that in the Bay of Plenty, ‘a good working staff has been secured for carrying out the provisions of the Native Districts Regulation and Native Circuit Courts Acts’. Turton reported the success or otherwise of the runanga at administering law and order at each settlement. At Ohiwa, he reported:

they had certainly gone stark mad on the subject. One man was fined a foal for carrying a pistol with him on the beach. Another was fined £5 for stating his opinion that the runanga of the place had in a certain instance acted improperly ... Another man, at Ohiwa, was informed by his wife that a youth of the village had taken the liberty of tickling her on the arm; on which he instantly called the runanga, and demanded £150 damages. Not having many friends on the bench, he lost his case, which he then removed to Opotiki, whose Council adjudged him £20, and the offence was at last compounded for by the present of a young horse.¹²⁰

At Whakatane, Turton reported that the runanga had suspended operations until fighting between Ngati Awa and Ngati Pukeko over the site of a mill had been resolved.¹²¹ At Opotiki, Turton found ‘a very extensive Runanga – indeed there were two, one for the young men, and the other for the adults, this latter comprising 70 members’. He reported that he met with both runanga, ‘and made provisional arrangements with them to accept our better system in lieu of this objectionable and unwieldy one’:

They chose a very intelligent Chief called Poihipi as Assessor (subject to the Governor’s approval), and two sets of 12 each, to act as Runanga for corporate purposes; and I took care that the Protestants and Catholics should be well intermixed in each set. At first they

¹¹⁹ Ibid., p 73

¹²⁰ Report by Mr Hanson Turton on the subject of the Maori Runanga, AJHR 1862, E-5A, No. 1, pp 7-8

¹²¹ Ibid., p 7

wished for an Assessor to be appointed for each church, but finally agreed to unite in choosing Poihipi, which they would not have done for any other man in the tribe.¹²²

Turton contended that if Whakatohea were 'allowed to run, as they are at present, in the mischievous work of "Runanga whakawas" all their other and more important affairs will be neglected, and the whole of the Whakatohea and Urewera tribes thrown into a state of internal discord'. He added that 'their great council of 70 members actually sat during five long nights, in adjudicating a case which ended after all in a verdict of 8s.'¹²³

In 1861, Civil Commissioners were appointed in addition to the resident magistrates, and 'were instructed to establish a system of local administration based on the runanga, and which would comprise the resident magistrates, chiefs, police, assessors, and messengers (karere), under the direction of the commissioner'.¹²⁴ The first Civil Commissioner for the Bay of Plenty was T H Smith, who was based at Maketu.¹²⁵ Smith was instructed by the Attorney-General, Henry Sewell, that:

The Natives of the district of the Bay of Plenty appear from recent accounts to be in an unsettled temper of mind, hanging between submission to the Queen's authority and adherence to the King movement. It is of importance that no time should be lost in tranquillizing their minds, and securing their allegiance to the Government.

Smith was also instructed to explain to the 'Natives' that:

It is generally the desire and intention of the Government to aid them in the establishment of schools, hospitals, and other institutions for the social advancement of their race; and you will lose no opportunity of assuring them of the hearty sympathy which His Excellency [the Governor] feels in all which concerns their welfare and progress.¹²⁶

Under the 'Runanga system' or 'the new institutions' as these schemes came to be called:

¹²² Ibid., p 8

¹²³ Ibid.

¹²⁴ Miles, *Te Urewera*, p 73

¹²⁵ Gilling, 'The Policy and Practice of Raupatu', Part B, p 64

¹²⁶ Attorney-General to T H Smith, 'Preliminary Instructions', 14 December 1861, AJHR, 1862, e-9, sec 4, p 3; Miles, *Te Urewera*, p 73

Village Runanga under the direction of Resident Magistrates, and District Runanga under [the] Civil Commissioners would make by-laws; the Pakeha officers, commissioned as Circuit Court Judges, and Maori Assessors would enforce the laws, the Assessors having independent jurisdiction up to £5; in a new effort to grapple with the problem of enforcement, it was planned to appoint paid Maori police – a Warden and several constables – in each ‘hundred’ of a District; there was to be a British-style separation of powers – members of the Runanga, the legislative bodies, were not supposed to be Assessors (judicial officers) as well.¹²⁷

As Miles has stated, Governor Grey and the other architects of the scheme hoped that ‘these salaries and the provision of schools, hospitals, and other infrastructure would encourage leading tribal men, who might themselves benefit under the system, to persuade their hapu to accept Grey’s offer and, implicitly, the rule of British law’.¹²⁸

Gilling notes that while tribal runanga were established in the eastern Bay of Plenty ‘under some Government sponsorship, with the intention of establishing a form of self-regulation in the district’, they operated as ‘largely autonomous tribal bodies, problematic in themselves and with little relation to any European judicial body’. In 1862, Henry T Clarke described the Whakatohea runanga as ‘a curse; instead of being dispensers of justice they have become a systematized substitute for their old pernicious customs of ‘taua’.¹²⁹ Also in 1862, Hunter Brown, who was Resident Magistrate at Wairoa, reported that the assessor Poihipi had become a leader in anti-government sentiment. ‘The main complaints they had against the Government were with regard to the relative prices they were paid compared with traders in Auckland and the way in which an embargo had been imposed on the sale and distribution of liquor in the region’.¹³⁰

¹²⁷ Alan Ward, *A Show of Justice: Racial ‘Amalgamation’ in Nineteenth Century New Zealand*, Auckland, Auckland University Press/Oxford University Press, 1974, p 125

¹²⁸ Miles, *Te Urewera*, pp 73-74

¹²⁹ Gilling, ‘The Policy and Practice of Raupatu’, Part B, pp 64-65; Gilling cites AJHR, 1862, E7, p 42; E9, Sec 4 (RDB vol 15, pp 5555, 5637)

¹³⁰ Gilling, ‘The Policy and Practice of Raupatu’; ‘Report from C Hunter Brown, Esq, of an Official Visit to the Urewera Tribes’, June 1862, pp 23-24; *New Zealand Gazette*, 22 March 1862, p 125; *New Zealand Gazette* 23 November 1864, pp 435-437

4.5 Resistance, Pai Marire, and the killing of Völkner

Gilling has noted that 'by 1862, Whakatohea, despite their relative isolation, had already identified and reacted negatively to the apparent Government attempts to acquire Maori land from other tribes even by force and to the conflicts developing in Taranaki and elsewhere'. C Hunter Brown reported being greeted in Opotiki with 'violent speeches ... against the Governor and the Pakeha generally, repudiating the Treaty of Waitangi ... saying that the whole country must yet fight the Pakeha ... and that the Maori's only remedy was to get all their land back from the Pakeha'.¹³¹ In February 1862, James Fulloon reported that 'Native feeling' from Whakatane 'to Te Kaha and inland' had deteriorated, and that there was 'a state of prejudice and excitement against the Government'.¹³² In late 1861, Henry Clarke reported of Whakatohea that:

The Natives have within the last two or three months been making a great number of cartouch [cartridge] boxes, but for what purpose these warlike preparations are being made it is impossible to say. It is generally supposed that these people hold a larger quantity of gunpowder than any other tribe in New Zealand.¹³³

In March 1864, Governor Grey received a letter from 'the chief of the Wakatohea tribe on the east coast of this Island'. This letter, he stated 'is, in point of fact, a declaration of war against us'. Grey reported that 'the main reason alleged for this hitherto friendly tribe engaging in hostilities against us (if they really persist in doing so) is that orders have been issued from England that all the natives of New Zealand should be destroyed, whether faithful subjects of the Queen or not.' This 'false statement', Grey surmised, had been spread by 'the rebels' to draw into the conflict 'distant tribes, not acquainted with the true state of things'. Such a 'delusion' he added 'would certainly prove fatal to [Whakatohea's] interests'.¹³⁴

While some individual Whakatohea did go to the Waikato to assist in the fight against the colonial forces, as an iwi, Whakatohea's 'active assistance in the "rebellion" was limited to participation in two multi-tribal taua in early 1864'. The first of these taua, Gilling has noted,

¹³¹ 'Report from C Hunter Brown, Esq, of an Official Visit to the Urewera Tribes', June 1862, AJHR, 1862, E-9, pp 31-32; Gilling, 'The Policy and Practice of Raupatu', p 65

¹³² James Fulloon to the Chief Commissioner, Land Purchase Department, Whakatane, 13 February 1862, 'Papers Relative to Native Affairs', AJHR 1863, E4, pp 51-52

¹³³ Henry T Clarke, Resident Magistrate, Report, 'Further Papers Relative to Governor Sir George Grey's Plan of Native Government, Reports of Officers, Section 4: Bay of Plenty', AJHR 1862, E-9, p 7

‘rapidly came to nothing, dissolving in days when refused permission by Arawa to pass from Te Awa o Te Atua to Maketu to attack Tauranga’.¹³⁵ On 8 February 1864, Völkner had taken it upon himself to report to Grey that:

on the evening of the 4th of February 100 natives arrived here on their way to Waikato, 80 from Ngatiporou and 20 from different places this side of the East Cape. They were received by the people here in great style a la Maori. On the 5th they proceeded in company with all the Whakatohea to Ohiwa. There it was decided that all men of the Whakatohea should join them, excepting those left to guard this place during their absence, and that they together would attack the troops at Tauranga, drive them into the sea, and afterwards go to the Waikato. They expect Ngatiawa to join them as they go along About 250 went from here and about 70 remain to guard the place.¹³⁶

A week later, Völkner reported that the majority of the Whakatohea party had returned ‘from their intended campaign’, having been stopped at Matata:

200 of the Whakatohea have returned. 30 of them have joined the Ngatiporou, who went by way of Rotorua to Waikato. The head men of the 30 who went to the Waikato are: Hori te Tamaki of Ngatihoroai; Mokomoko of Ngatipatu; Te Iki of Ngatirua; Hakaraia of Ngatitai.¹³⁷

On 26 February 1864, Völkner informed Grey that ‘All the people here, except two, have now declared themselves in favour of the war against Government, profess great sympathy with Waikato, and hatred against Europeans.’¹³⁸

The second taua, named Tai Rawhiti, was to a large extent, a continuation of the first. Having been halted at Matata, the combined force turned inland, reaching Rotoiti on 7 March, where they were turned back by Te Arawa. The Tai Rawhiti forces retired to the coast at Otamarakau, where they were joined by reinforcements from the Bay of Plenty as well as more

¹³⁴ Copy of a Despatch from Governor Sir George Grey, KCB, to His Grace the Duke of Newcastle, KG, Auckland, 8 March 1864, Further Papers Relative to the Native Insurrection, AJHR 1864, E-3, No 31, p 40

¹³⁵ Gilling, ‘The Policy and Practice of Raupatu’, p 66

¹³⁶ Völkner to Grey, 8 February 1864, ‘Rev CS Volkner and the Tai Rawhiti Expedition 1864’, *Historical Review*, vol 7, no 2, June 1959, pp 24-36, p 27. As Gilling has pointed out, the title of this article is incorrect, as Völkner’s letters predate the Tai Rawhiti expedition by some two months. Gilling, ‘The Policy and Practice of Raupatu’, p 66, fn 185

¹³⁷ Völkner to Grey, 15 February 1864, ‘Rev C. S. Volkner and the Tai Rawhiti Expedition, 1864’, p 27

¹³⁸ Völkner to Grey, 26 February 1864, ‘Rev C. S. Volkner and the Tai Rawhiti Expedition, 1864’, p 28. See also D M Stafford, ‘The Tai Rawhiti Expedition’, *Historical Review*, vol 15, no 1, April 1967, pp 75-86

Ngati Porou. At the end of April, the Tai Rawhiti force, which was estimated to be some 800 strong, met with a combined Arawa, militia and naval force at the battle of Te Kaokaoroa, between Matata and Maketu.¹³⁹ The Tai Rawhiti party were again defeated, and Whakatohea's senior chief, Aporotanga, was executed, while a prisoner of war, by the widow of the Arawa chief, Tohi Te Ururangi, who was mortally wounded in battle.¹⁴⁰ According to Gilling:

Since Arawa were now British allies in a combined force, Whakatohea looked in vain for some form of retribution to come from the Governor against the apparent murderer. That inaction was definitely a grievance subsequently held against the colonial authorities and may have been a motive for the killing of Volkner. But no other 'rebellious' action was taken by Whakatohea.¹⁴¹

Among the Whakatohea slain were 'some well known chiefs whom the re-emergent Whakatohea could ill-afford to lose at that time'. These included Te Rangimatorou, Pene, Takahi and Petera.¹⁴² Another prominent member of Whakatohea killed at Kaokaoroa, was Te Poihipi, the 'Assessor' appointed at Opotiki in 1862. According to the 'Whakatohea Case Commentary', Te Poihipi had been the only 'native officer' in the district, and it appears that he was not replaced, thus cutting Whakatohea's official relations with the Crown.¹⁴³ Völkner reported to Grey on 15 February 1864, that among the Whakatohea leaders who continued on to Waikato following the initial confrontation with Te Arawa at Matata, was the chief Mokokoko.

It was apparently widely known that Völkner was in correspondence with, and had visited, Grey, and that he had informed the Governor of local involvement in, and attitudes towards, the spreading conflict. Furthermore, Völkner was seen as having failed to condemn the killing of Te Aporotanga, as was expected by his congregation.¹⁴⁴ There was also concern among local Maori as to the fate of the popular local Catholic priest Father Garavel, who had been transferred from the district upon Grey's insistence, after Völkner had accused him of having

¹³⁹ Gilling, 'The Policy and Practice of Raupatu', p 66; Stafford, 'The Tai Rawhiti Expedition'; Nicholas Boyack, 'The Battle of Kaokaoroa, Matata', *Historical Review*, vol 35, no 1, May 1987, pp 16-24

¹⁴⁰ Stafford, 'The Tai Rawhiti Expedition', p 82; Boyack, p 22; Boyack cites Thomas McDonnell, 'Maketu, and the Battle of Matata', *The Monthly Review*, vol 2, 1890, p 129

¹⁴¹ Gilling, 'The Policy and Practice of Raupatu', p 66

¹⁴² 'Whakatohea Case Commentary', p 22; NZJV 1045 G7 1862-64, p 62

¹⁴³ 'Whakatohea Case Commentary', p 20

¹⁴⁴ Tairongo Amoamo, 'Mokokoko', DNZB, vol 1, pp 291-2

been sympathetic towards the ‘rebels’ and having acted as their courier. It was rumoured that, as a result of Völkner’s actions, Garavel had been executed.¹⁴⁵

It was within this context that the Pai Marire missionaries Kereopa Te Rau of Ngati Rangiwewehi (a segment of Te Arawa) and Patara Te Raukatauri from Taranaki,¹⁴⁶ accompanied by some thirty or forty followers, arrived in the eastern Bay of Plenty. They followed the largely peaceful teachings of the Taranaki prophet Te Ua Haumene (or Horopapera Tuwhakararo), who had received a visitation from the archangel Gabriel in 1862, and had acquired a growing following.¹⁴⁷ Kereopa and Patara had been sent on a mission to Ngati Porou, by way of Taupo, Te Urewera and the eastern Bay of Plenty, to unite the tribes, Binney suggests, in a broad unity, and to offer Hirini Te Kani political leadership of the new faith (which he refused).¹⁴⁸ Kereopa and Patara and their followers arrived in the eastern Bay of Plenty, by way of the upper Rangitaiki River, in February 1865. At Tauaroa, the message of the Pai Marire party (who were accompanied by two soldiers as prisoners and the dried head of a third which was being ceremoniously conveyed to Hirini Te Kani) was for the most part resisted. Although Binney notes ‘that it seems certain that Kereopa gained a following among Patuheuheu from this gathering at their pa’. However, she adds, ‘acceptance of Pai Marire religious teachings was not, in itself, a commitment to war’.¹⁴⁹

Kereopa and Patara reached Whakatane on 18 February 1865, and placed an ‘aukati’ on all shipping in and out of the port.¹⁵⁰ Apparently, despite Te Ua’s instructions that no one should be killed, Kereopa had attempted, without success, to have the Europeans at Whakatane killed.¹⁵¹ From Whakatane, the party, accompanied by a Ngati Awa contingent of about 150,

¹⁴⁵ Gilling, ‘Te Raupatu o Te Whakatohea’, p 39

¹⁴⁶ Binney, ‘Encircled Lands’, part one, p 85

¹⁴⁷ Evelyn Stokes, *Pai Marire and the Niu at Kuranui*, Occasional Paper No. 6, Centre for Maori Studies and Research, University of Waikato, April 1980, p 4

¹⁴⁸ Binney, ‘Encircled Lands’, part one, p 85; Binney cites Te Ua’s instructions to Kereopa and Patara, dated 8 December 1864, at Matakaha, Taranaki; copy in Williams Family Papers, MS Papers 0069:0077B, ATL. Trans: William Williams.

¹⁴⁹ Binney, ‘Encircled Lands’, part one, pp 85-86

¹⁵⁰ *Ibid.*, p 86. The practise and significance of aukati is discussed in some detail in *The Ngati Awa Raupatu Report*. An aukati is described as ‘a line that no one may cross with any intention that may be judged as hostile to those on the other side. It was a most common custom in Maori law ... Pakeha called it a ‘cut’ or ‘cutty’, which is how it sounded to their ears, especially because it was sometimes abbreviated in the Maori vernacular to ‘kati.’ According to the Report, an autaki was neither a declaration of war nor the delineation of a tribal boundary; instead it was ‘usually a declaration in a time of crisis that war was not sought’, and the site chosen might have symbolic significance, represent a usual point of entry, or might simply be close to a defensible position.

¹⁵¹ Gilling, ‘The Policy and Practice of Raupatu’, p 67; Gilling cites Eruera Tutawhia, Deposition, 9 May 1865. IA 1/1865/1339. According to Mead and Gardiner, when Kereopa arrived at Whakatane he demanded that Ngati

including Wepiha Apanui, travelled towards Opotiki. According to evidence presented at the trial of those accused of killing Völkner, they were joined by about ten members of Whakatohea at Ohiwa Harbour.¹⁵² Upon their arrival at Opotiki on 25 February 1865, an 'aukati' was placed on the harbour, the main objective of which was to prevent the return of Völkner, who was visiting Auckland at the time. Over the next few days his house was sacked and his belongings auctioned, and the people of Whakatohea were allegedly largely initiated into Pai Marire.¹⁵³

According to Allan Davidson, 'the emergence in the context of conflict of Pai Marire which combined political, military and religious motivation, and objectives, provided many Maori with an alternative to missionary Christianity'. Davidson refers to a report written by William Williams to the CMS following Völkner's death, in which he recounted the words of a 'Maori messenger' from Opotiki, who said: 'We received our Christianity from you formerly, and now we give it back again, having found some better way, by which we may be able to keep possession of our country'.¹⁵⁴ Binney has noted that the Pai Marire religious teachings were not, in themselves, intended to provoke violence against European settlers:

The religion was essentially scriptural: it looked to a deliverance of the people from oppression (as they saw it), and the followers of the new faith prayed for that deliverance, communicating with the Holy Spirit through rituals constructed by Te Ua and conveyed by the emissaries. Unquestionably, there was an atmosphere of excitement generated by its arrival in new areas; and possibly a sense of an immediacy of divine intervention. These ideas derived from the biblical texts of Daniel and Revelation, where the Archangels Gabriel and Michael acted as the messengers of God to the people. But Te Ua did not preach or incite a war at the end of the world. He offered a theology of liberation, and a new generation of different Maori missionaries.¹⁵⁵

Placing, Pai Marire within the context of millenarian movements, Jean E Rosenfeld states that:

Awa hand over the Catholic priest there, but that this was refused by the Whakatane chiefs, who also declared a *kati* (autaki) on the Whakatane port. Mead and Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa', p 64

¹⁵² Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 41; The report cites evidence of Wepiha Te Pono Apanui and Joseph Jahus, minutes of proceedings and trial of *R v Mokomoko and Others*, JC22-3B AG66/789, NA

¹⁵³ Gilling, 'The Policy and Practice of Raupatu', p 67

¹⁵⁴ Allen K Davidson, 'Völkner and Mokomoko: 'Symbols for Reconciliation' in Aotearoa, New Zealand', unpublished paper, cited with permission of the author, p 4; Davidson cites *Church Missionary Record*, X.9, September 1865, p 262

¹⁵⁵ Binney, 'Encircled Lands', part one, p 86

Millenarian movements arise out of a context of despair, and they promise salvation through the direct intervention of a deity, who reveals to an elect community that he will create a disordered world anew. Maori millenarians combined Jewish apocalyptic expectations of an imminent transformation of the world with the Austronesian “myth of the eternal realm” that envisions a golden age of peace and plenty. Te Ua’s movement expected the future to restore a wholeness that the children of Shem had lost when they had forgotten or forsaken Jehovah in many generations of wandering.¹⁵⁶

As Davidson has stated, Pai Marire, ‘like all new religious movements, had its own internal logic and rationality which made sense to its followers and gave them hope and means, albeit false ones, of deliverance from Pakeha oppression’.¹⁵⁷ Paul Clark has suggested that the decline in prosperity for Whakatohea in the 1860s, together with the impact of European-introduced diseases such as typhoid and measles, resulting in deaths, in late 1864 and early 1865, further contributed to the context of social dislocation and instability in which Völkner was killed. He also suggests that in general, in the years leading up to the events of 1865, the ‘attitude’ of Whakatohea was changing, and that, according to Völkner’s reports, they ascribed their recent defeats at the hands of Arawa and their Pakeha allies, to ‘carelessness in their religious devotions. God was punishing them for bearing arms against their Queen’, and further punishment had come in the form of disease. Taking his figures from Völkner’s reports, Clark states that at the end of 1864, eighty out of 500 Maori had died in two months, and by January, 200 out of 600 or 700 had died from the spreading fever. According to Clark, Völkner ‘recorded with some satisfaction the subdued amenable spirit at Opotiki as a result of the depredations of the sickness and the consequences of the military defeat’.¹⁵⁸ Such epidemics were not only recent occurrences in this region. Binney notes that the annual reports of the CMS missionaries Preece at Whakatane and Davies at Opotiki ‘reveal one harsh reality: diseases were occurring in epidemic waves amongst the Maori population living between Whakatane and Opotiki, and were also spreading into the interior’.¹⁵⁹

¹⁵⁶ Jean E. Rosenfeld, *The Island Broken in Two Halves. Land and Renewal Movements Among the Maori of New Zealand*, Pennsylvania, Pennsylvania State University Press, 1999, p 145

¹⁵⁷ Davidson, p 5

¹⁵⁸ Paul Clark, *‘Hauhau’ The Pai Marire Search for Maori Identity*, Auckland, Auckland University Press, 1975, pp 32-33; Davidson, p 5. Clark cites Völkner, 1864 Annual Report, Völkner letters, CMS Microfilm, CN/091; 30 January 1865, Church of England Papers, folder 94; Völkner to [Bishop?], 22 January 1865, McLean Papers TS, v 23, p 160

¹⁵⁹ Binney, ‘Encircled Lands’, part one, p 60

Despite the aukati and apparent warnings from Whakatohea to stay away, Völkner returned to Opotiki aboard the schooner *Eclipse* (belonging to the Opotiki trader Samuel Levy) on 1 March. Another CMS missionary, Thomas S Grace accompanied him. Völkner's return, Davidson argues, given the warning that his life was in danger and that 'Te Ua's emissaries were stirring up anti-missionary and anti-European sentiments, can be seen ... as either an indication of his devotion to duty, or his lack of appreciation of the unstable situation'.¹⁶⁰ Upon their arrival at Opotiki, the hostile welcome was made apparent, however the schooner was unable to turn back across the treacherous harbour bar. Völkner and Grace, along with other Pakeha aboard the schooner were ordered ashore and apparently placed under house arrest.¹⁶¹ Binney, however, suggests that they were not prisoners – either then, or the following day when Völkner was called out for what he presumed to be a meeting, but was in fact his execution.¹⁶² The Levy brothers, being traders at Opotiki and granted special status as Jews, were released, but not without their ship being plundered. Davidson has noted that it is significant that while Grace's life was in serious danger, Völkner alone was killed. Grace, he states, had 'distanced himself from the war and chaplaincy and was seen as a champion of Maori self-government'.¹⁶³

That night a runanga (council) of chiefs was held in the church, and it appears that, led by Kereopa, a collective decision was made to execute Völkner the following day. The decision was not unanimous, and the actual level of involvement of Whakatohea (and the other parties) in both the decision its application is uncertain. As Gilling has noted,

Some tribal members – perhaps even some dozens of them – certainly were [involved]. However, at least the two major hapu, Ngati Rua and Ngati Ira, may not have been involved at all and may even have opposed the killing altogether. There is a wide variation in the reports of the numbers involved and ... in the actions of the Pakeha concerned.¹⁶⁴

The events of Völkner's death are outlined in the Waitangi Tribunal's *Ngati Awa Raupatu Report*, as derived from 'accounts that may not be reliable as to all particulars':

¹⁶⁰ Davidson, p 7

¹⁶¹ Gilling, 'The Policy and Practice of Raupatu', p 67

¹⁶² Binney, 'Encircled Lands', part one, p 87

¹⁶³ Davidson, p 7

¹⁶⁴ Gilling, 'The Policy and Practice of Raupatu', p 67

Kereopa sentenced Völkner to death in his church. He was escorted outside by a party of about 30, taken to a tree, where he was hanged, and in one account his body was then shot. Afterwards, the body was decapitated and various people drank his blood from a church chalice. Taking the head inside the church, Kereopa gouged out the eyes. Naming one for the Parliament of England and the other for the Queen and English law, he then swallowed them.¹⁶⁵

While Kereopa singled out Völkner for execution, the final decision to execute him was made collectively. Ascertaining exactly who participated in both the decision-making and the execution is difficult, given that we have to rely primarily on second-hand accounts, with the exception of the problematic accounts of those tried for Völkner's murder. Gilling's view, based on his reading of the various accounts, is that at about 2 pm on 2 March:

a group of twenty men, led by Heremita Kahupaea and probably comprised from the Taranaki group, took Volkner away. He was hanged, perhaps with Pokeno, Aporotanga's son, placing the rope around his neck in a very specific act of revenge for his father's death. After what appears to have been a lingering death, Volkner was cut down, perhaps shot, then beheaded (probably by Heremita), there was some communal participation in the body's ritual mutilation and Kereopa performed his notorious act of eating the eyes, describing one as Parliament and the other as the Queen and English law.¹⁶⁶

On 5 March, Völkner was posthumously tried by Patara Te Raukatauri (who had apparently been absent when the killing took place) before, Grace claims, 'the Taranaki Hauhau' and an assembly of some 300 Whakatohea. The charges brought against Völkner might be seen as serving to justify his death: that he had gone to Auckland as a spy; that he was actually a Romanist (because a cross had been found in his house); and that he had returned to Opotiki although ordered to stay away. Grace was also charged with more general 'crimes'.¹⁶⁷

Following the 'trial', a letter dated 6 March 1865, written in the name of 'the committee of Ngatiawa, Whakatohea, Urewera, and Taranaki' and sent from 'Opitiki, place of Canaan',

¹⁶⁵ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 41

¹⁶⁶ Gilling, 'The Policy and Practice of Raupatu', pp 67-68; Gilling cites Thomas Samuel Grace, *A Pioneer Missionary among the Maoris 1850-1879*, ed. SJ Brittan, GFCW and AV Grace, Palmerston North, GH Bennett, nd, p 192. Gilling notes that later, Major Stapp was without doubt that it was Heremita Kahupaea who placed the rope around Völkner's neck, and that it was Heremita who was executed for it.

informed the government that Völkner 'has been crucified according to the laws of the New Canaan, in the same manner as it has been ordained by the Parliament of England, that the guilty men be crucified', that is, by hanging. It also stated that Grace was their prisoner, guilty of the following general charges levelled against the government: 'the deception practised upon our Island by the Church'; 'the sin of the Governor at Rangiriri, his cruelty; the women are dead'; and at Rangiaowhia, where 'women were shot'.¹⁶⁸ This, it was stated, 'is a sacred law of the Governor's':

We are aware, with regard to those laws that they were made by the authority-suppressing Committee (Parliament) of England. Why is not the Governor ashamed at the great number of his authority-suppressing laws, land-seizing (laws), (laws) practising deception upon our bodies ...

Friends, our Island now is aware of your doings. Listen. You catch the Maoris; I also kill the Pakehas. You crucify the Maoris, and I also crucify the Pakehas.¹⁶⁹

Grace's release was made conditional on the release of a number of Maori prisoners, however the cleric was able to escape with the aid of Samuel Levy.

Gilling has pointed out that the reasons for Whakatohea participation in Völkner's death are not clear. He suggests that the arrival of Kereopa and his followers was the only significant change during Völkner's absence, 'which rather suggests the responsibility lies more with him and Wepiha Apanui of Ngati Awa'. He also notes that the death of Aporotanga 'is a recurring motive in several sources', but discounts as irrelevant the justification given that Völkner was a Government spy, stating that 'Whakatohea did not know for sure of that in March 1865'.¹⁷⁰

¹⁶⁷ Gilling, 'The Policy and Practice of Raupatu', p 68; TS Grace, 'Mr Grace's Imprisonment at Opotiki', Further Papers Relative to the Affairs of New Zealand, Despatches from the Governor, February 1866, No. 14, enclosure, p 75, BPP, vol 14, p 391 (also AJHR 1865, A-5, p 24)

¹⁶⁸ Two of Kereopa's daughters were killed at Rangiaowhia during the attack there on 21 February 1864.

¹⁶⁹ The Committee of Ngatiawa, Whakatohea, Urewera, and Taranaki to the Office of the Government, Auckland, Opotiki, place of Canaan, 6 March 1865, Further Papers Relative to the Affairs of New Zealand, Despatches from the Governor, February 1866, No. 6, enclosure no 2, p 21, BPP, vol 14, p 337 (also in AJHR 1865, E-5, p 9). It is not known if this letter was signed by particular individuals, and whether those who wrote it actually represented 'Ngatiawa, Whakatohea, Urewera, and Taranaki'.

¹⁷⁰ Gilling, 'The Policy and Practice of Raupatu', pp 68-69

Binney, on the other hand, argues that Whakatohea were aware of Völkner's role as a government informant, stating that Kereopa spoke of it to Völkner's congregation.¹⁷¹

While the capture and trial of those accused of the murders or killings of Völkner and Fulloon is outlined in the following chapter, it is worth noting here the reported views of those condemned to death for their alleged role in Völkner's death, with regard to who was responsible. On the eve of his execution, Mokomoko, who 'solemnly protested his innocence' until the end, provided a narrative of events at Opotiki which placed Wepiha Apanui at the centre of things. Mokomoko's account was reported in the *Daily Southern Cross* as follows:

Wepiha, Kereopa, and Patara we heard were coming to Opotiki at the head of a war party. I lived at some distance from Opotiki, and never raised my hand or voice against any European. We were afraid of the war party, and left our settlement, which was on the road by which they were to pass, and came to Opotiki. When Wepiha and Kereopa came to Opotiki, they destroyed Mr Volkner's house, and stole his property. Wepiha took six horses, and the greater part of the money realised by the sale of the effects. I was present at the meeting held in the church to consult as to the hanging of Mr Volkner. That was on the same day he was killed. I was standing by the door of the church, looking in. Kereopa said, "Give up all the European prisoners to me.' The Whakatohea did not consent. Kereopa said, 'Let there be no chiefs over the tribes; but listen to me; listen to the words of the god.' The Whakatohea wished to save all the Europeans. Wepiha then stood up with his taiaha in his hand, and said, 'Volkner must be given over to Kereopa, as an offering to his god.' They then called for their armed parties. That was all I heard, as I went away to my settlement. I did not see Mr Volkner hung. I did not see the person who hung him.

The report noted that Mokomoko's statement 'was said by Heremita and Hakaraia [the others hanged for Völkner's death] to be correct'. It was also noted that 'Wepiha was the principal witness against Mokomoko, and it is said that for years past there had been disputes between them as to land'. On the morning of his death, Mokomoko reportedly told Mr George Graham 'that he hoped the Ngatiawas would not profit by his death, by getting possession of his land'.¹⁷² During the actual trial, Mokomoko had stated that 'Wepiha was the commander of the war party that went to Opotiki. He took the Hauhaus there ... He was the partner of

¹⁷¹ Binney, 'Encircled Lands', part one, p 87; Binney cites an unsourced, annotated newspaper clipping, Thomas McDonnell papers, NZ MSS 406, APL

¹⁷² 'Execution of Five Maoris for the Murders of Fulloon and Volkner', *Daily Southern Cross*, 18 May 1866, p 3

Kereopa. He was the man who brought me to prison'. He added that 'All the people are afraid; that is why they will not say anything about that crime, because he is the chief of all the tribes, commencing from the Awa-o-te-Atua to Pikirau. There was no person to question his agreeing [with Kereopa].'¹⁷³ Mokomoko claimed that he 'had nothing to do with the crime – I ran away', and that the reason why he ran away 'was on account of Wepiha agreeing. [Wepiha] agreed and gave into the hands of Kereopa and his God'. He claimed to have assisted in saving the vessel (presumably the *Eclipse*) from being burned, before he 'returned to my place to Te Wai o taki [Waiotaha] near Ohiwai [Ohiwa]'.¹⁷⁴ During the trial, Heremita likewise identified Wepiha as one of the instigators of the events, saying 'Kereopa was the chief from Taranaki, but when they got to Whakatane Wepiha took the command, and he brought the Hauhaus to Opotiki'. Hakaraia, evidently, provided a similar statement.¹⁷⁵ These statements were made after the jury had found both men (among others) guilty, when the prisoners were 'called upon to say why judgement of death should not pass upon them'.¹⁷⁶ This was the only time that the accused were invited or allowed to speak during the trial, and at no time was evidence called on behalf of the defence. The *Ngati Awa Raupatu Report* suggests that, as these statements were given at the sentencing and not during the trial, and as they were not cross-examined, 'they may well have acted in retaliation, since their convictions had depended on Wepiha's evidence, and similarities in the respective statements suggest a common design'.¹⁷⁷

It has been suggested that the Catholic members of Whakatohea did not take part in the killing, having been ordered to remain in their pa by the Chief Werapoaka.¹⁷⁸ Some time after the conclusion of the trial, Grace, whose various accounts of the events and of his own dramatic role in them shifted over time, suggested a strong element of sectarian difference among those involved in Völkner's death, that was not picked up elsewhere. In a letter to Henry Venn (CMS Secretary, 1841-1872), dated 15 June 1866 – a month or so after the trial and executions – Grace emphasised the role of Catholic converts in the killing of Völkner and in Pai Marire, generally. He also expressed his dissatisfaction with the manner in which the

¹⁷³ 'Supreme Court – Wednesday. The Murders of Volkner and Fulloon. The Prisoners Brought up for Judgement', *Daily Southern Cross*, 5 April 1866, p 5

¹⁷⁴ R. v Mokomoko & Others, Minutes of Proceedings and Trial to Judgements of Death, AG 66/789

¹⁷⁵ *Daily Southern Cross*, 5 April 1866, p 5

¹⁷⁶ R. v Mokomoko & Others, Minutes of Proceedings and Trial to Judgements of Death, AG 66/789

¹⁷⁷ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 43

¹⁷⁸ Mead and Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa', p 64

accused were dealt with by the legal system, stating that 'the counsel for the defence was far worse than no counsel'. He also claimed that there was every reason to believe that Mokomoko was innocent. Grace wrote:

I have thought it wise not to forward this reply until after the trial of the Natives for the murder of dear Volkner thinking that perhaps more of the truth would come to light as to the real cause of his death. Popery has without doubt had far more to do with it than the Pai Marire delusion. I was, however, sorry to find that counsel had been desired not to elicit [sic] anything of this kind.

The murderers of Fulloon were tried at the same time and all together the trials were most unsatisfactory. The juries were composed of Europeans only and brought all in guilty alike with very few exceptions while the counsel for the defence was far worse than no counsel at all. Upwards of twenty were condemned, but the Governor has been more merciful not allowing more than 5 to be executed three for Volkner and two for Fulloon one of whom Mokomoko, who was hung for Mr Volkner there is every reason to believe was innocent.

It must be remembered that all the horrible doings said to have been done to the dear remains of poor Volkner rest on no better testimony than the hearsay of the Jews. I have always believed they were exaggerated. One small piece of information dropped from one witness, who said, that after the murder Henry Mr Volkners old teacher went to the house and got a white counterpane in which he wrapped the body and had a watch placed over it during the night. It also appears that Kereopa wished Henry to bury the body. Why it was not buried and who caused it to be put into the closet the day after yet remains to be known. The swallowing of the eyes go to show that Volkner was looked upon by them as an enemy and point to the Priest who told them that Volkner would be the cause of their all being killed. The people without doubt supposed he had been the cause of Father Garavel being hung and the manner of their killing Volkner was evidently an imitation of what they supposed had been done to the priest. The whole truth ought to be brought out but unless steps are taken at once there is little prospect of it being done by anyone here. Representative institutions in small communities like this are most corrupt. No ministry is strong enough to risk the loss of even a very few votes and ministers cannot afford to lose their places.

So far as we know the really guilty men in Mr Volkners case were Romanists. Mokomoko was a heathen but I conclude that if he attended any service it was ours. He was

condemned on the testimony of two Romanists. I trust something will be done at home to provide legal advisers for the Natives and not allow them to be left to the tender mercies of European Juries and colonial courts.

...English people see and wonder at the inconsistency of Natives when they profess to believe in God and yet turn aside to what they suppose to be idolatry, but the Pai Marire delusion is not idolatry, it is an adaptative of popery to their circumstances. Natives who have stood firm in the faith are greatly astonished and cannot understand how we can believe in God and yet break his laws by constantly disregarding the Sabbath and teaching them to be drunkards.

Of 'his' people in Taupo, Grace reported that:

All the Protestants with only a very few exceptions have retained their faith while all the Romanist natives without any exception that I have [?] heard of have been Pai Marire. The Romanist villages all engage in the war, while only a few of the Protestants went to it and the greater portion have been fighting on our side.

Grace also noted that: 'I fully believe that the blood of dear Volkner will be the seed of the church here & cannot tell you how deeply I was impressed with this at the time of my detention at Opotiki'.¹⁷⁹

As Miles has pointed out, 'there is little direct evidence of Tuhoe participation in the killings of either Volkner or Fulloon. Indeed, Tuhoe point out that Fulloon was their kinsman'.¹⁸⁰ Binney points to two 'scraps' of evidence: the collective letter of 6 March 1865 signed by 'the committee of Ngatiawa, Whakatohea, Urewera, and Taranaki'. As Binney notes, the identity of this committee can only be deduced, but 'it was, presumably, the same runanga which both determined Volkner's death and hanged him on 2 March', and who would have, in all likelihood, attended, if not played an active role in, the 'trial' of Grace and Völkner on 5 March.¹⁸¹ Binney (as has Miles) has also noted that:

Of those identified as playing a direct role in Volkner's death, and who were brought to trial in Auckland for it, only one man can marginally be associated with the Urewera. He

¹⁷⁹ TS Grace to Henry Venn, Auckland, 15 June 1866, CMS Papers – AJCP Reel 223 – Microfilm 014 Reel 51

¹⁸⁰ Miles, *Te Urewera*, p 103

¹⁸¹ Binney, 'Encircled Lands', part one, pp 88-89

was Heremita Kahupaea, who has been identified as belonging to Patuheuheu and Ngati Awa,¹⁸² and to Te Upokorehe,¹⁸³ although he was named at the time as belonging to Whakatohea.¹⁸⁴

Heremita appears to have accepted his sentence of death, being quoted as saying: 'It is right that I should die'.¹⁸⁵ Binney notes that 'Heremita may have joined with Kereopa at Tauaroa pa and come with him to the coast. Or he may have joined him at Whakatane, with other Ngati Awa, including Wepiha Te Apanui'. Binney also notes that 'there is no doubt that there was a significant Ngati Awa presence during these events' and that Wepiha 'had the capacity to speak for Ngati Awa, as their active chief. But he quickly moved to dissociate himself from Volkner's death'.¹⁸⁶ On 17 March, Wepiha Apanui, Te Kepa Toihau and Apanui Te Hamaiwaho (for 'The Runanga of Te Horo near Ohiwa') wrote to TH Smith at Tauranga, informing him that a meeting of Ngati Awa, together with 'Te Urewera', had condemned the killing of Völkner. The letter stressed that Ngati Awa's boundary stretched as far as Ohiwa, and that 'Ngatiawa has become estranged from the Whakatohea, and if the Governor and his soldiers come let them go by sea, that they may go direct to Opotiki'. The letter further stated that 'if the Governor goes to Opotiki, Ngatiawa will not go to aid the murderers'.¹⁸⁷ Hohaia Mata Te Hokia, an assessor at Whakatane, likewise wrote to Smith, informing him that 300 men had attended the meeting. He listed the names of 29 chiefs who had collectively condemned the killing, including Wepiha Apanui, Te Kepa and Apanui. Binney has noted that 'it is not possible to identify individual Urewera chiefs from this list, which consists mostly of Christian names'.¹⁸⁸ According to Milroy and Melbourne, Tuhoe did not sign the letter. They also claim that 'there was no Tuhoe presence ever recorded in Opotiki or Whakatane before or during the killing of Volkner or Fulloon'.¹⁸⁹ In addition to these two letters, Wepiha sent a personal letter to Smith, stating that if Völkner was to be avenged 'come

¹⁸² Ibid., p 89; she cites Hirini Moko Mead me Te Roopu Kohikohi Korero o Ngati Awa, 'Te Murunga Hara: The Pardon', Research Report No 1, Whakatane, 1989 (Wai 46 ROI, doc C15), p 43

¹⁸³ Ibid., p 89; she cites Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 42

¹⁸⁴ Ibid., p 89; she cites evidence of the Whakatohea chief Tiwai Piahana, R. v Mokomoko & Others, Minutes of Proceedings and Trial, p 43, 1866/789, J 22/3b. She also notes that Tiwai also identified the Ngati Awa youth Penetito Hawea as belonging to Whakatohea.

¹⁸⁵ Ibid., p 89; she cites DSC, 15 May 1866, p 4

¹⁸⁶ Ibid., p 90

¹⁸⁷ Wepiha Apanui, Te Kepa [Toihau], Apanui [Te Hamaiwaho], to TH Smith at Tauranga, Whakatane, no te Horo wahi Ohiwa, 17 March 1865, AJHR 1865, E-5, Papers Relative to the Murder of the Rev Carl Sylvius Volkner by the Hau Hau Fanatics, No. 6, enclosure 8, pp 15-16

¹⁸⁸ Binney, 'Encircled Lands', part one, p 90; Hohaia Mata Te Hokia to TH Smith, Whakatane, 18 March 1865, AJHR 1865, E-5, No. 6, enclosure 6, p14

not to Te Awa o Te Atua nor to Whakatane nor to Ohiwa, go straight to Opotiki to the place which is blood guilty'. Smith noted, in passing the letter on, that Wepiha 'is an intelligent Ngatiawa chief but I am informed that he was present at Opotiki when Mr Volkner was murdered, and that he gave a deliberate assent to what was done. [The Whakatohea chief] Tiwai of Opotiki, who came up with Mr Grace in the "Eclipse", assured me positively that such is the case.'¹⁹⁰ Binney notes that:

Wepiha was certainly working hard and fast to try to deflect any government response from falling on Ngati Awa and himself. If he was party to the decision to kill Volkner, and while there is some evidence pointing this way it is not conclusive, Wepiha had the chiefly rank sufficient to pen Ngati Awa's name to the letter sent from the 'Place of Canaan' on 6 March. Heremita did not possess such stature. That collective letter, however, became one of the factors which linked the Urewera people with these events in the mind of government. The other crucial factor was that Kereopa would seek his refuge amongst them.¹⁹¹

With regard to the role of Pai Marire in the killing of Völkner, Paul Clark has argued that the arrival of Patara and Kereopa and their followers served as a 'catalyst on Whakatohea attitudes at a time of great hardship'. The events that transpired, he claims, were a 'local initiative', and 'it appears that Volkner would have died anyway. Pai Marire teachings, or rather Kereopa's own version of Te Ua's creed, provided religious endorsement for [what he describes as] the Whakatohea decision'. As elsewhere, Clark continues, 'local circumstances created the preconditions for the acceptance of Te Ua's gospel, and its interpretation'.¹⁹²

4.6 Conclusion

It is difficult to assess the exact extent of contact in the Ohiwa harbour area, but what we can see is that from the time of the first European arrivals to the events of 1865, significant shifts were taking place. Existing conflicts and challenges, and indeed ways of life, continued, however the extra dimension of European visitors and settlers tended to exacerbate such conflicts. The sale of what was seen to be disputed land to Pakeha led, in the case of Uretara

¹⁸⁹ Milroy and Melbourne, p 117

¹⁹⁰ Wepiha Apanui to TH Smith, Te Horo, near Ohiwa, 18 March 1865, AJHR 1865, E-5, No. 6, enclosure 7, pp 14-15

¹⁹¹ Binney, 'Encircled Lands', part one, p 91

¹⁹² Clark, pp 40-41

Island, to a continuation of the conflict between Whakatohea and Ngati Awa. The presence of traders led to changes in social economy, and an increasing level of Maori participation in trade, in production of raw materials, and as schooner owners. The impact of British law and authority, while slowly growing from 1840, was sporadic and infrequent until the events of 1865 changed everything. The arrival of Christian missionaries – both Catholic and Anglican – also served to bring Maori into the world of the Pakeha. Missionaries were often useful for more than their religious teachings. The competing faiths appear to have had a divisive impact on communities in this area, and these divisions were further strained by the arrival of Pai Marire in 1865. Local Maori were also fully aware of the conflict unfolding elsewhere in the island. Situated as it is between Whakatane and Opotiki – that is between the Ngati Awa and Whakatohea centres – Ohiwa Harbour was very much caught up in the continuing disputes between the two iwi, and to a less obvious extent at this stage, with Tuhoe. It is significant that claims to Ohiwa, and acknowledgement of the disputed boundary came to the fore during the trial of those convicted of killing Völkner. The Government's response to the situation, as will be addressed in the following chapter, was the blanket confiscation of a significant portion of the coastal eastern Bay of Plenty, and Ohiwa Harbour lay at the centre of this confiscated area. This had serious consequences for Whakatohea, Ngati Awa and Tuhoe. It is for this reason that, while the killing of Völkner and the events that immediately followed, took place in Opotiki, these events have been covered in some detail in this (and the next) chapter. The response of the government impacted not only on Ohiwa and the confiscated lands but also on the interior and its inhabitants. These events brought war to Te Urewera.

5. Military Control and Confiscation

5.1 The Proclamation of Peace and the assault on the eastern Bay of Plenty

As Gilling has stated, ‘a single event brought the full wrath of the colonial government down on Whakatohea’.¹ The reaction of the colonial government to the killing of Völkner, and that of James Fulloon a few months later on 22 July, was an armed invasion of the eastern Bay of Plenty and subsequent blanket confiscation by the Crown of a large proportion of the eastern Bay of Plenty, including Ohiwa Harbour and its surrounds. According to the *Ngati Awa Raupatu Report*:

When Völkner was killed, it ought to have been apparent to Maori that the Governor would seek retribution, as would be normal in Maori law, or the apprehension of the offenders, in terms of English law. From whichever perspective, it could not have been expected that the Governor would sit idly by. Moreover, as a matter of practice, the Governor had intervened in the past to arrest and put to trial Maori suspected of murdering Pakeha.²

The government did not respond immediately to the death of Völkner with military force. But when the government interpreter and agent James Te Mautaranui Fulloon was killed along with members of the crew of the *Kate*, at Whakatane on 22 July 1865, the military campaign (which Fulloon had been helping to plan) commenced. The killing of Fulloon, and the trial of those thought to be responsible, has been discussed in a number of reports produced by Ngati Awa researchers for the Waitangi Tribunal’s eastern Bay of Plenty inquiry.³ As noted in chapter 4, there is little or no evidence of Tuhoe participation in the killing of Fulloon. There is likewise no apparent indication of Whakatohea involvement.

Fulloon had travelled with Hunter Brown as interpreter in the Urewera in 1862 and he was personal interpreter to the governor, George Grey, for whom he had been a regular informant

¹ Gilling, ‘The Policy and Practice of Raupatu’, p 67

² Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 45

³ See, for example, Te Runanga o Ngati Awa, ‘The Trials’, 2 vols, November 1994 (Wai 46 ROI, C10); Mead and Gardiner, ‘Te Kaupapa o te Raupatu i te Rohe o Ngati Awa: Ethnography of the Ngati Awa Experience of Raupatu’; see also Waitangi Tribunal, *Ngati Awa Raupatu Report*, pp 44ff; W T Parham, *James Francis Fulloon. A Man of Two Cultures*, Monograph 14, Whakatane and District Historical Society, Whakatane, 1985; Gilling, ‘The Policy and Practice of Raupatu’, pp 69-70

and acted as messenger from as early as 1863. He was also the cousin of Wepiha.⁴ Following the killing of Völkner, Fulloon had asked Grey for the authority to raise a force of Ngati Awa to capture those responsible for the killing, adding that this would provide an opportunity to settle the boundary between Ngati Awa and Whakatohea, which had been ‘for a great number of years in a very unsatisfactory state’.⁵ Instead, Fulloon was seconded to ‘special services’ on 8 June 1865, and promoted to the rank of captain on 6 July.⁶ This followed his return from an official information-gathering trip to Whakatane and Opotiki in May 1865. Binney notes that ‘Fulloon’s visit achieved little, but he came back to Auckland with new and more ambitious military plans for his return to the Bay of Plenty. He also suggested a trade ban on the area’. These plans, Binney has stated, ‘would lead to his death, and the subsequent imposition of martial law and military invasion of the eastern Bay of Plenty’.⁷

On 22 July 1865, despite the imposition of a Pai Marire aukati on Whakatane Harbour, Fulloon returned to Whakatane aboard the *Kate*, a cutter owned by the trader Bennett White who was also on board. Fulloon and three members of the crew (Captain Pringle, seaman Ned, and first mate Robinson) were killed, and the *Kate* burned. The *Ngati Awa Raupatu Report* notes that ‘as with Völkner, the killing of Fulloon was not done in a moment of frenzied, religious fervour but was selective’. White and his son, along with the cook, were allowed to go free.⁸ Gilling has noted that those allowed to leave the vessel had connections with Ngati Awa.⁹

The *Ngati Awa Raupatu Report* concludes that:

Rightly or wrongly, Völkner was seen as a Government spy, and Fulloon was seen as attempting to associate Ngati Awa with the Government and as likely to embroil Ngati Awa in action against Whakatohea. In both cases, Völkner and Fulloon were liable to die in terms of Maori law. In both cases also, the lives of ‘innocent’ Europeans were spared, despite the reports of a murderous and fanatical euphoria.¹⁰

⁴ Binney, ‘Encircled Lands’, part one, p 91

⁵ Fulloon to Grey, MSS 1655, AIM; cited in Binney, ‘Encircled Lands’, part one, p 91

⁶ Binney, ‘Encircled Lands’, part one, p 91; she cites AD 1/1865/1772,1914 and 2119, in ADICR, NA

⁷ *Ibid.*, p 92

⁸ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 49

⁹ Gilling, ‘The Policy and Practice of Raupatu’, p 70

¹⁰ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 50

The Report also notes that while there was no war in the district at the time, 'there was a climate of war in Whakatane and Opotiki ... One of those later convicted of the murder of Fulloon said at his sentencing that he saw the killing not as murder but as an act of war'.¹¹

The Government retribution against Ngati Awa and Whakatohea, as Gilling has noted, 'took the form of two separate military campaigns treating the individual murders as major acts of rebellion by the entire tribal groups – a dubious interpretation'.¹² William G Mair's predominantly Te Arawa force 'was detailed to attack Ngati Awa and seek Fulloon's murderers, in addition to those of Volkner who were supposed to have taken refuge in the Rangitaiki Swamp with their fellow fugitives from justice'. Two columns advanced along the coast and down the Tarawera River to Matata (Te Awa o Te Atua), and proceeded through the Rangitaiki Swamp, before moving against the major fortification Te Kupenga at Te Teko and forcing its surrender. With many of those wanted for the killing of Fulloon captured, the Arawa troops 'ranged the Whakatane valley at will, looting the Hauhau villages and destroying crops'.¹³

While this campaign against Ngati Awa was in progress, the Governor issued a so-called 'Proclamation of Peace', dated 2 September 1865 and published in the *New Zealand Gazette* of 5 September 1865. It proclaimed that:

The Governor announces to the Natives of New Zealand that the War which commenced at Oakura is at an end.

The Governor took up arms to protect the European settlements from destruction, and to punish those who refused to settle by peaceful means the difficulties which had arisen, but resorted to violence and plunged the country into war.

Upon those Tribes sufficient punishment has been inflicted. Their war parties have been beaten; their strongholds captured; and so much of their lands confiscated as was thought necessary to deter them from again appealing to arms.

The Governor has therefore shewn that he will not permit the peace of the Colony to be disturbed without inflicting severe chastisement on those who resist his authority.

¹¹ Ibid.; see statement of Kirimangu, *Daily Southern Cross*, 5 April 1866 (cited in Wai 46, doc I1, p 39)

¹² Gilling, 'The Policy and Practice of Raupatu', p 71

¹³ Ibid., pp 71-72; see also JC Anderson and GC Peterson, *The Mair Family*, Wellington, Reed, 1956, p 140

The Governor hopes that the Natives will now have seen that resistance to the law is hopeless: he proclaims on behalf of the Queen, that all who up to the present time have been in arms against Her Majesty's authority will never be prosecuted for past offences, excepting only those who have been concerned in the murders of the following persons because those persons were barbarously and treacherously murdered ...

A number of victims were then listed, including 'The Rev. Mr Volkner, killed at Opotiki, on the 2nd March, 1865', and 'Mr James Fulloon, and his companions, killed at Whakatane, on the 27th July, 1865'. The proclamation then stated that 'the murderers of those persons will be brought to trial as soon as they are arrested', and that 'All others are forgiven'.

While the proclamation stated that 'The Governor will take no more lands on account of the present War', it went on to announce that:

The Governor is sending an expedition to the Bay of Plenty to arrest the murderers of Mr Volkner and Mr Fulloon. If they are given up to justice the Governor will be satisfied; if not, the Governor will seize a part of the lands of the Tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and of providing for the widows and relatives of the murdered people.¹⁴

In the same *Gazette*, martial law was proclaimed 'throughout the Districts of Opotiki and Whakatane' (presumably including Ohiwa between them) and, as such, 'persons suspected of the said Murders, or of aiding and abetting therein' were to be tried by courts-martial.¹⁵ As Gilling has pointed out:

This action was predicated in the proclamation of the fact that military force had already been deployed to capture Volkner's and Fulloon's murderers. This would seem to be rather late in the piece, as Mair's expedition had been in the field against Ngati Awa for nearly a month and the other against Whakatohea was already mobilised.¹⁶

¹⁴ Proclamation of Peace, 2 September 1865, *New Zealand Gazette*, no 35, 5 September 1865, p 267

¹⁵ Proclamation Proclaiming Martial Law throughout the Districts of Opotiki and Whakatane, 4 September 1865, *New Zealand Gazette*, no 35, 5 September 1865, pp 267-8

¹⁶ Gilling, 'The Policy and Practice of Raupatu', p 75

Martial law was not revoked until 26 January 1867 – ten months, Gilling points out, ‘after the Governor had personally visited in March 1866 and pronounced the region “entirely subdued”’.¹⁷

It is most unlikely that anyone at Opotiki and the surrounding district was aware of these proclamations prior to, and even at the time of, the arrival of government troops at Opotiki under Major Willoughby Brassey on 8 September 1865. According to the *Ngati Awa Raupatu Report*, ‘the force was aggressive from the outset, bombarding the village and shooting at Maori indiscriminately, with no attempt made to ascertain who was involved in the missionary’s murder and who was not.’¹⁸ Gilling notes that the declaration of martial law prior to the troops’ arrival indicates that the government anticipated significant resistance to the arrival of this 500-strong expedition, and significantly, that this was more than an act of mere policing.¹⁹ As Gilling has stated:

The invasion Whakatohea suffered was more substantial and apparently more devastating than that which Ngati Awa had to endure. The troops for quite some time, perhaps ten days, made no attempt to explain what they were there for, nor to give Whakatohea a chance to comply with the Proclamation’s provisions. The soldiers proceeded instead with a regular invasion. There was really little Whakatohea resistance until after the troops had shot one harmless Maori for target practice and shelled the village indiscriminately over several days. Such resistance as was offered resulted in virtually no casualties amongst the soldiers (only 4 were wounded and 1 was killed), a strange thing in combat with a large and ‘fanatic’ group which was supposed to be so well armed. At no time were offensive operations mounted by Whakatohea against the troops. Any fighting that took place during the invasion was entirely at the troops’ initiative. Technically, the fighting was of course ‘armed resistance’, but it is difficult to characterise it as ‘rebellion’.²⁰

The 1928 Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives found that:

The murder of Mr. Volkner and the murder of Mr. Fulloon were not in themselves acts of rebellion, and if the Natives of Opotiki and Whakatane had not resisted the armed forces

¹⁷ Ibid.; Proclamation, *New Zealand Gazette*, no 4, 15 January 1867, p 37

¹⁸ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 60

¹⁹ Gilling, ‘Te Raupatu o Te Whakatohea’, p 121

²⁰ Gilling, ‘The Policy and Practice of Raupatu’, pp 75-76

sent to capture the murderers there would not have been any excuse for confiscating their lands.²¹

In 1873, Lieutenant-Colonel J H H St John, who had played an active role in the conflict of the 1860s, published an account of his military and other travels in New Zealand, titled *Pakeha Rambles through Maori Lands*. In response to the ‘barbarous’ murder of ‘poor Völckner’ [sic], who he described as ‘one of the very best friends of the Maori race’, St John recalled that ‘vengeance was taken; an expedition of colonial forces was sent to attack the murdering tribe; and, after losing heavily in men, the Whakatohea were driven off their ancestral patrimony, which was given over to military colonists’. ‘It was my fate’, he wrote,

to be concerned with Opotiki in its dark times, when the most violent sentiments in favour of a ‘wiping-out policy’ were naturally expressed by men who saw that their lives and those of their families, and the safety of their houses and crops, were daily in peril at the hands of savages inhabiting the back ranges.²²

Gilling observes that none of the government troops were regulars from the imperial forces; rather ‘they were all volunteer irregular units comprised of military settlers’. This, he argues, ‘may have affected the manner of occupation and fighting, many knowing that they would be settling there once the fighting was over. This may have inspired a greater enthusiasm to clear out as much Maori opposition and competition as possible.’²³

The instructions given to Major Brassey by Harry Atkinson, the Colonial Defence Minister, stated that:

in the first place it is necessary that I should inform you that the object the Government have in view is, the apprehension of the murderers of the Revd Mr Volkner, Mr Fulloon and other persons; and their desire that this should if possible be accomplished without bloodshed ...

²¹ ‘Report of the Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives’, AJHR, 1928, G-7, p 20

²² J H H St John, ‘Pakeha Rambles Through Maori Lands’, in Nancy Taylor, ed., *Early Travellers in New Zealand*, Oxford, Clarendon, 1959, pp 507-579, pp 558, 560

²³ Gilling, ‘Te Raupatu o Te Whakatohea’, pp 66-67. The force, under Brassey, consisted of Companies 8 and 10 Taranaki Military Settlers; one company each of the Wanganui and Patea Rangers; one Troop of Wanganui Yeomanry Cavalry; one company 1st Waikato Militia under Major St John; and the Wanganui Native Contingent comprised of Ngati Hau under Major Thomas McDonnell and Captain Keepa Te Rangihiwiniui.

If you should be attacked either upon landing or afterwards, you will act according to the best of your judgement, but no opportunity should in that case be lost of inflicting summary and effectual punishment upon the attacking force.

If you succeed in landing and establishing yourself without opposition, you will at once summon the tribe to surrender the murderers within a given time. If they do this you will abstain from all active operations and await further orders from me.²⁴

Brassey's orders regarding the murderers themselves came directly from Governor Grey, as follows:

I have determined in order to inflict immediate and signal punishment on the Natives concerned in the late barbarous murders and acts of cannibalism on the East Coast that any of the offenders who may be taken prisoner should be tried forthwith by Court Martial. If therefore any Native should fall into your hands, against whom there is reasonable ground for believing that he has been concerned in any of these crimes, you will at once assemble a Court Martial for his trial. If he be found guilty of murder and you see no reason to doubt the justice of the sentence, you will confirm and carry it into execution without referring to me for approval.²⁵

Before the force had even left Wellington, Brassey's second-in-command, Major Charles Stapp, made his (and the expedition's) position known in a letter to his wife, as follows:

We shall have full power to try them by Court Martial and Hang all we Catch or all who have taken part in Murders. I shall be the President [of the Court Martial bench], and you may rest assured I will do my duty.²⁶

As noted above, upon the expedition's arrival at Opotiki, and in their attempts to take the village, it appears that there was no attempt to announce the Proclamation of Peace, or to explain the purpose of their assault, that is, the apprehension of those involved in Völkner's murder.²⁷ It took four days for the landing to be completed, during which time at least thirteen Maori were killed (including one man identified as 'Pito', a 'Hauhau prophet' and 'policeman'

²⁴ H A Atkinson to Brassey, 4 September 1865. AD 6/7, 1865/222 NA; Gilling, 'Te Raupatu o Te Whakatohea', pp 67-68

²⁵ Grey to Brassey, 4 September 1865. AD 6/7, 1865/221 NA; Gilling, 'Te Raupatu o Te Whakatohea', p 68

²⁶ Stapp to wife, 4 September 1865, Taranaki Museum; Gilling, 'Te Raupatu o Te Whakatohea', p 69

²⁷ Gilling, 'Te Raupatu o Te Whakatohea', p 70

of the village), and the village was subjected to bombardment from the sea.²⁸ Once the village had been ‘taken’, the colonial forces established their headquarters in Völkner’s church, which they converted into a redoubt. Gilling has noted that the expedition was inadequately supplied, and were therefore ‘obliged to loot Whakatohea’s property, rebels or not’.²⁹ Lieutenant G H Stoate, of HMS *Brisk*, recorded that:

Now we lived on the fat of the land, – during the remaining five days I was onshore I think I had six meals a day, pork chops beef steaks fowls and everything was good, In the village we found potatoes enough to feed an army – pigs and cattle were swarming round – I remained on shore for five days after the village was taken, during which time I had glorious fun, We had only one more public touch with the Maoris but Bell and I with some of our blues went out nearly every night on a private search after Hau Hau pigs. We were successful in getting the latter and also in clearing the former and I wish you could have seen the tent of the Naval squad after dinner time ...³⁰

According to James Cowan’s *The New Zealand Wars*:

For some weeks thereafter the expedition remained in Opotiki, skirmishing occasionally, and revelling in the abundance of food in the captured settlements ... The force was plentifully rationed out of the abundance of meat and poultry, and the kumara and potatoes and other vegetables which the fields and gardens of the Whakatane [sic] produced.³¹

As Gilling has stated, during this period of purely military occupation, which lasted for several months, ‘the economic base built up by Whakatohea was destroyed as the troops pursued what can have been little different from a scorched-earth policy designed to do nothing more than be destructive and intimidatory’.³² The wholesale government-sanctioned looting and destruction of property, in and around Opotiki, devastated the once thriving Whakatohea economy. As Judith Binney has noted, ‘the troops acted as an alien occupying force, looting

²⁸ Ibid., pp 69-72

²⁹ Ibid., p 67

³⁰ Lt G H Stoate to ‘Dick’, HMS *Brisk*, Napier, 20 September 1865, ‘Copy of Letter, 20 September 1865’, *Historical Review*, vol 20, no 2, pp 111-114, p 113

³¹ James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 2 vols, Wellington, Government Printer, 1923, vol 2, p 109

³² Gilling, ‘Te Raupatu o Te Whakatohea’, p 74

the land'.³³ Writing to his wife, just four days after the force's arrival at Opotiki, Stapp commented that they had already 'got thousands worth of property'.³⁴ Gilling comments that:

not only did the soldiers on site benefit from looting Whakatohea possessions, but the Colonial Government actually gained some income from the deliberate capture and sale of Whakatohea livestock and other property a year after nearly all of the iwi had surrendered and were on Opape reserve.³⁵

From the first, Gilling writes, 'there was a systematic programme of destruction of Whakatohea property'.³⁶

It was to be more than a week after the arrival of the force at Opotiki that the first recorded attempt was made to convey the occupying force's demands. Major Brassey reported that, in response to a letter from Apanui and Kapa Toihau inquiring what would happen 'if Kereopa and the murderers of Mr Volkner are given up', he replied that:

all not actually concerned in the murder would no doubt be pardoned & well treated but that if hereafter any of them were proved to have taken an active part in the murder they would be arrested and dealt with for it, that their land would at any rate be confiscated, and that the only chance of their having any of it would be at once to throw themselves on the mercy of the Governor.

Brassey added that '[t]he Woman remarked of course the land went as utu for the murder and seemed to think the tribe expected no less.'³⁷

By 2 October, 57 Maori had come in to Opotiki and taken the oath of allegiance, and a further 100 were expected.³⁸ A letter attributed to Isaac Smith, a private in Captain Ross's company of

³³ Binney, 'Encircled Lands', part one, p 99

³⁴ Stapp to wife, 12 September 1865; Binney, 'Encircled Lands', part one, p 99

³⁵ Gilling, 'Te Raupatu o Te Whakatohea', p 82

³⁶ Gilling, 'The Policy and Practice of Raupatu', p 76. Gilling notes that it was not just crops and livestock that were destroyed. 'Whakatohea also possessed other valuable items. Soldiers reported pillaging all manner of cultural artefacts such as canoe figureheads, spears, paddles, and items of greenstone, which were not, of course, local and therefore correspondingly more valuable. There is clear evidence of extensive literacy, with 'any amount of Maori books' available and copies even of the *Illustrated London News*, about which there is no suggestion that Volkner or other Europeans had owned them' (Stoate, letter; Stapp to wife, 3 November 1865); Gilling, pp 76-77.

³⁷ Brassey to Colonial Defence Minister, 16 September 1865, AD 1/1865/2838 (RDB vol 135, pp 52063-52064); Gilling, 'Te Raupatu o Te Whakatohea', pp 74-75

³⁸ Stapp to wife, 2 October 1865; Gilling, 'Te Raupatu o Te Whakatohea', pp 76-77

Rangers, states that Maori were 'Laying down their arms and taken the oath of ilegions. They say that they are fairly beat and are willing to give all rite and title to their land and horses. We have taken one hundred and thirty horses from them.'³⁹

By this time, the colonial troops completely controlled the Opotiki plains, and on 4 October Brassey sent Stapp up to Paerata ridge, between Opotiki and Ohiwa, to take the chief Mokomoko's two pa, Paerata and Maraerohutu. Both pa were abandoned, but were, nevertheless, destroyed, together with a large quantity of potatoes, kumara, wheat, and other produce. Brassey boasted of keeping the force in meat (beef and pork) 'at the expense of the enemy'.⁴⁰

The assaults on these pa were a prelude to one of the major battles of the eastern Bay of Plenty offensive, which took place the following day, 5 October 1865, and included one of the few cavalry charges of the New Zealand wars. The colonial forces moved inland, attacking Te Tarata, about four miles from Opotiki on the eastern bank of the Waioeka river, and three pa 'situated on a very high ridge'. Stapp reported destroying 'a large village on the flat, ... burning immense quantities of grain, potatoes and kumaras'. He also reported that orders were given to 'destroy the three pas'. Twenty-two 'Hau Haus' were killed.⁴¹

Stapp reported that, after heavy fire had been exchanged, the occupants of Te Tarata had 'asked the terms on which they could surrender':

I told them they must lay down their arms, and the surrender to be unconditional. They then asked for time. I gave them one hour, when we had another parley ... They said they were afraid they would be all killed whether they gave in or not, but they were assured they would not be hurt, but the murderers or anyone connected with the murder of the Rev. Mr. Volkner, Mr. Fulloon and others, would be tried.

He reported that the occupants had shouted that they would surrender, and had promptly attempted to escape through the back of the pa, into the fire of waiting troops. Stapp ordered

³⁹ Isaac Smith to his mother and sister, 5 October 1865, MS Papers 388/1 Smith Family Correspondence, ATL; Gilling, 'Te Raupatu o Te Whakatohea', p 77.

⁴⁰ Brassey to Colonial Defence Minister, 4 October 1865. AD 1/26, 1865/3219 NA; Gilling, 'Te Raupatu o Te Whakatohea', p 77

⁴¹ Stapp to Colonial Defence Minister, 6 October 1865, *New Zealand Gazette*, 18 November 1865, 40, pp 343-344 (RDB, vol 11, pp 4056-4057)

the destruction of the pa.⁴² Gilling suggests that most of the defenders of Te Tarata were able to escape into the bush.⁴³

The following morning, 6 October, Stapp reported, 'a Native came in [from one of the pa on the ridge] with a flag of truce'.⁴⁴ Nevertheless, an assault was made on the three hill pa, which were taken without a shot being fired.⁴⁵ As noted above, all of the captured pa, and their contents, were destroyed, with Stapp describing these actions as 'a tremendous blow to them'.⁴⁶ According to Cowan, 35 Maori who he identified as 'Whakatohea, Ngai Tama and other Hauhaus', were killed and at least as many wounded at Te Tarata.⁴⁷

Gilling has estimated that in the weeks immediately after the invasion some 50 Whakatohea were killed.⁴⁸ He makes the following remarks with regard to the invading force's 'systematic destruction and looting':

It is ... clear that, even if the Government did not initially instruct the soldiers to act in this way, once they had done so the Government ratified that destruction, pillaging and 'confiscation' of property both directly and by failing to reprimand those concerned when the devastation was described in official reports. It was either a matter of supreme indifference to the Government just how the orders were carried out, or they were quite happy with the scorched earth policy which perhaps for political reasons they would not advocate publicly.

The actions of the expeditionary force in their landing, pillaging and fighting methods contravened their instructions to apprehend specific individual murderers in a police action, and, in that respect, their activities can be regarded as extra-legal. The allegations of rebellion to Her Majesty's authority upon which the confiscation was based are substantially undermined. Whakatohea can clearly be seen as simply defending their own homes from a dubiously-authorized attack rather than as being in active rebellion.⁴⁹

⁴² Stapp to Brassey, 6 October 1865, *New Zealand Gazette*, 18 November 1865, 40, p 344 (RDB, vol 11, p 4057)

⁴³ Gilling, 'Te Raupatu o Te Whakatohea', p 79

⁴⁴ Stapp to Brassey, 6 October 1865

⁴⁵ Gilling, 'Te Raupatu o Te Whakatohea', p 80

⁴⁶ Stapp to wife, 6 October 1865; Gilling, 'Te Raupatu o Te Whakatohea', p 80

⁴⁷ Cowan, *The New Zealand Wars*, vol 2, p 110

⁴⁸ Gilling, 'The Policy and Practice of Raupatu', p 77

⁴⁹ *Ibid.*, pp 77-78

On the night of 6 October, Stapp placed Major Brassey, his commanding officer, under arrest for drunkenness, and assumed command of the force. Gilling notes that Stapp 'commented to his wife that he had effectively been doing the job anyway, which may suggest that Brassey had openly displayed a chronic problem with drink which had materially interfered with his command.'⁵⁰

On 21 October, Stapp sent a force of 240 men, under the command of Major McDonnell, on an expedition into the Waimana Valley in search of Kereopa. According to the account of Captain J R Rushton, the expedition 'marched along the coast to Ohiwa Harbour, and there branched off from the beach and went up through Kutarere. Thence we crossed over the range into the valley of the Waimana.'⁵¹

James Belich has argued that the military campaigns of the period 1864-68 witnessed 'the emergence of a new British system of war', which 'reduced the effectiveness of Maori resistance':

At its fullest, the 'bush-scouring' theory entailed a 'flying column' of a few hundred men, untrammelled by a large supply train, hunting down the Maoris in the bush, and forcing them to fight by attacking their villages and cultivations. The columns might include some picked Imperial regulars, selected for their fitness and adaptability, but they would largely consist of settler-frontiersmen, supposedly natural 'Indian-fighters'. These 'irregulars' were to be supported by native auxiliaries, preferably under European officers, and they were to be led by vigorous and unorthodox commanders, unimpressed by the rules of conventional warfare. They were also to be appropriately armed for bush-fighting, which ideally required weapons which could be loaded and handled in a restricted space, and which produced high short-range firepower.⁵²

This new system was an essential response to the often-unforgiving geography of the eastern Bay of Plenty/Urewera interior.

⁵⁰ Gilling, 'Te Raupatu o Te Whakatohea', p 81; Clem Earp, 'The Rise and fall of Major Brassey', *Historical Review*, vol 39, no 2, November 1991, pp 95-101

⁵¹ Cowan, *The New Zealand Wars*, vol 2, p 115

⁵² James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland, Auckland University Press, 1986, p 213

McDonnell's expedition was guided by two men supplied by Rakuraku, who had fought against the government forces on 5 October, and who had come in to take the oath of allegiance to the Crown, despite Rakuraku not yet having taken the oath himself. The force chased Kereopa up the Waimana through Te Ihu O Te Atu and Muriwaka to Koingo, where fighting broke out. Four of Kereopa's followers were killed, but Kereopa, although seriously wounded in the chest, managed to escape.⁵³

On 30 October, Stapp reported that the only Whakatohea 'Hauhau' yet to surrender, consisted of fifty men plus women and children of Ngati Ira, but these had promised to 'come in' to take the oath. Among those who had already 'come in' was Mokomoko, who was accompanied by twenty followers, and who offered to assist in fighting those remaining rebels, if they did not immediately surrender.⁵⁴ As Gilling has pointed out, 'there was no hint by Stapp at this time that Mokomoko was considered a murderer, or that his military assistance was less welcome than that of anyone else.'⁵⁵ It appears as if Stapp was unsure as to whom, exactly, was suspected of the murder, and that it was the problematic testimony of Jeans and Agassiz that brought Mokomoko's name to his attention. 'In this scenario,' Gilling argues, 'perhaps Mokomoko was seized upon as a substitute for all those who had eluded capture.'⁵⁶

The trials of those charged with the killing of Völkner and Fulloon, and the executions or other punishment of those found guilty, are covered in some detail in other reports and will not be addressed here in any detail.⁵⁷ The Waitangi Tribunal's *Ngati Awa Raupatu Report* provides a useful overview of the trials.⁵⁸

In March and early April 1866, 36 prisoners were charged in the Supreme Court in Auckland with various offences relating to the killings of Völkner and Fulloon. The main charges had already been the subject of courts-martial in Opotiki from 6 to 27 November 1865 on the basis that the arrests had been effected during the proclamation of martial law...

⁵³ Gilling, 'Te Raupatu o Te Whakatohea', p 83

⁵⁴ Stapp to Colonial Defence Minister, 30 October 1865, AD 1/27, 1865/3695 NA; Gilling, 'Te Raupatu o Te Whakatohea', pp 83-84

⁵⁵ Gilling, 'Te Raupatu o Te Whakatohea', p 84

⁵⁶ Ibid.; Stapp to Colonial Defence Minister, 31 October 1865, AD 1/27, 1865/3698 NA; Holt to Officer Commanding Opotiki, 13 November 1865, AD 6/7, 1865/678 NA

⁵⁷ See Te Runanga o Ngati Awa, 'The Trials'; Mead and Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa'; Johnston, 'Wai 203/339 Report'; Gilling, 'Te Raupatu o Te Whakatohea'.

⁵⁸ Waitangi Tribunal, *Ngati Awa Raupatu Report*, pp 71-76

In the Supreme Court, five were charged with the murder of Völkner. One, Paora Taia, was acquitted. The remainder were sentenced to death, but with a recommendation to the Governor for clemency in respect of Penitito, who was 19 years old. Three – Hakaraia, Mokomoko, and Heremita Kahupaea – were hanged, and the penalty for Penitito was commuted to one year's penal servitude.

Sixteen were charged with the murders of Fulloon and seaman Ned (and also with piracy). All were found guilty of murder and sentenced to death. The judge recommended clemency in all but one case...

Accordingly, five in all were hanged, three for Völkner and two for Fulloon (in 1872, after his later capture, Kereopa Te Rau was also executed for Völkner's murder). One was acquitted. Eleven received life imprisonment and 19 were imprisoned for terms of between one and 14 years.⁵⁹

According to Milroy and Melbourne, while Tuhoe and other Mataatua tribes participated in the conflict in Waikato in 1864, they were pardoned by the Proclamation of Peace of 2 September 1865.⁶⁰ They state that:

Tūhoe did not appear to have assisted any of its neighbours in defending their territories. Te Mākarini Waiari, in his evidence before the Compensation Court at Whakatāne in 1867, maintained that he with other Tūhoe, remained in Ōpōuriao, when the expeditionary forces landed at Matatā and Ōpōtiki and that there was no attempt at general mobilisation of Tūhoe forces.⁶¹

Furthermore, they argue that:

Tūhoe knew of Volkner's death and like Ngāti Awa suspected troops would be sent as a result. Tūhoe however took no defensive measures nor were they in any state of alert. What caused them to take up arms was a result of indiscriminate attacks of punitive expeditions into Te Rohe Pōtae under the pretence of capturing Kereopa, who was

⁵⁹ Ibid., pp 71-72. The Tribunal draws most of this information from the Ngati Awa research report by Mead and Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa: Ethnography of the Ngati Awa Experience of Raupatu', pp 92-99

⁶⁰ Milroy and Melbourne, p 103; they cite 1928 Report of the Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives (Sim Commission) (AJHR 1928 G-7, p 20)

⁶¹ Ibid., p 117; they cite Melbourne, 'Te Manemanerau a Te Kāwanatanga', p 57

suspected of involvement in Volkner's death, and who was still at large, and the confiscation of their lands.⁶²

5.2 Raupatu

On 17 January 1866, the Government proclaimed the eastern Bay of Plenty confiscation district under the provisions of the New Zealand Settlements Act 1863, 'for the purposes of settlements'.⁶³ The Government's policy of confiscation of Maori land was 'originally advocated as a way of punishing rebellion, of ensuring peace and security by military settlement, and of paying for the war by selling off surplus confiscated land.'⁶⁴ The legislation was first used in Waikato and Taranaki before being applied to the Bay of Plenty. While the legislation itself is considered to have been 'a lawful exercise of the powers of the Crown', the actual confiscations based on the legislation 'appear in many respects to have been unlawful, in that they did not conform to the requirements set out in the legislation.'⁶⁵

Regarding the confiscation of Ngati Awa land following the murder of Fulloon, the Waitangi Tribunal, in its *Ngati Awa Raupatu Report*, found that:

Contrary to popular beliefs, the land was not confiscated on account of the murder. Some contemporary politicians observed that the land was confiscated on that ground, but in fact it never was. The punishment for that murder was visited exclusively upon named individuals, who were apprehended, tried, and sentenced. The record is clear that, instead, the land was confiscated for rebellion, or organised resistance to the Government. The record is equally clear that the acts of alleged rebellion referred to the resistance given to those attempting to effect the arrests. In any event, the land was confiscated under the New Zealand Settlements Act 1863, where the necessary criterion was rebellion – not murder.⁶⁶

Furthermore, the Tribunal reported,

We do not think it is at all established that there was a war in the usual sense. More particularly, we consider that there was no rebellion. The affected hapu took only those

⁶² Ibid., pp 116-117

⁶³ Order in Council, Land taken under NZ Settlements Act 1863, Bay of Plenty District, *New Zealand Gazette*, 18 January 1866, p 17

⁶⁴ Alan Ward, *National Overview*, Waitangi Tribunal Rangahaua Whanui Series, vol 1, 1997, p 60

⁶⁵ Ibid.

steps that were necessary to protect their own lives from those appearing as hostile invaders. In the circumstances... their anxieties were well founded and the action that they took was reasonable and could not amount to rebellion.

In terms, the confiscation was clearly contrary to the Treaty of Waitangi. Under the Treaty, no land could be taken without consent.⁶⁷

While there were certainly differences in the circumstances surrounding the murder of Völkner, the government's response to the two murders was more-or-less uniform.

Under the New Zealand Settlements Act 1863, Maori were divided into either 'rebel' or 'loyal' categories, at the discretion of the Government. It was then up to the 'rebels' to prove their loyalty to the Crown's satisfaction. Those who had simply resisted the Crown's aggressive and illegal acts, along with their relatives, were often declared 'rebel', and sometimes so too were those who owned land that the Government wanted. From the beginning it was understood that the lands of innocent or 'loyal' Maori would be included in the blanket confiscations.⁶⁸ As Alan Ward has stated, 'since the focus of the legislation was on territorial districts, Maori within a district who had not fought against the Crown, and even those who had fought on behalf of the Crown, had their land confiscated as well.'⁶⁹ In the eastern Bay of Plenty, the blanket labelling of Ngati Awa, Whakatohea, and later Tuhoe as rebels, on account of the actions of a minority, 'and the failure to make any inquiry as to their complicity before actually taking the land', led to the blanket confiscation of a disproportionately large area.⁷⁰

Under the New Zealand Settlements Act 1863, land could only be taken for the purpose of laying out military settlements and, as the Waitangi Tribunal has noted, 'it had to be suitable for that purpose':

In this case, the Governor simply prescribed a huge confiscation district ... and then took everything in it. At the time, the vast majority of the land was clearly unsuitable for settlement, military or otherwise, being hill country, swampland, or covered in thick bush. The area taken was also of such large extent that it was impossible for more than a small

⁶⁶ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 5

⁶⁷ *Ibid.*

⁶⁸ Ward, *National Overview*, vol 1, pp 61-62

⁶⁹ *Ibid.*, vol 2, p 173

⁷⁰ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 6

fraction of the land to have been converted to military settlements in time to keep the peace.⁷¹

Thus, as the report states, 'far more land was taken than the Act allowed'. Furthermore, the Tribunal reported that 'no proper inquiry was made, as the Act required, as to what land was suitable for military settlement. The confiscation boundary was simply a series of straight lines on a map, running mainly across mountainous terrain.'⁷²

Under the confiscation legislation, Compensation Courts were established to hear applications by Maori whose lands had been wrongfully taken. Land was to be given to those whose own had been taken, including those hapu who had been declared 'rebel', so as not to leave them landless.⁷³

Having established, by proclamation, the eastern Bay of Plenty confiscation district on 17 January 1866, it was discovered that the original boundaries of the confiscation area had been 'incorrectly stated' in the original proclamation. New boundaries were described and gazetted as follows on 1 September 1866:

All that land bounded by a line commencing at the mouth of the Waitahanui River, Bay of Plenty, and running due south for a distance of twenty miles, thence to the summit of (Mount Edgecomb) Putanaki [sic]; thence by a straight line in an easterly direction to a point eleven miles due south from the entrance to the Ohiwa Harbour, thence by a line running due east for twenty miles, thence by a line to the mouth of the Aparapara [Haparapara] River, and thence following the coast line to the point of commencement at Waitahanui.⁷⁴

The lands surrounding Ohiwa Harbour were well and truly incorporated into this revised boundary (see figure 6).⁷⁵ However, the question remains, was the harbour itself – its islands, waters, and the fish and shellfish contained in the harbour – included in the coastal marine boundary of the eastern Bay of Plenty confiscation?

⁷¹ Ibid.

⁷² Ibid., p 7

⁷³ Ibid.

⁷⁴ Order in Council, Boundaries of Bay of Plenty district altered, *New Zealand Gazette*, 1 September 1866, no 51, pp 347-81

⁷⁵ A map depicting both the original and revised confiscation boundary can be seen in Binney, 'Encircled Lands', part one, map IX, p 124

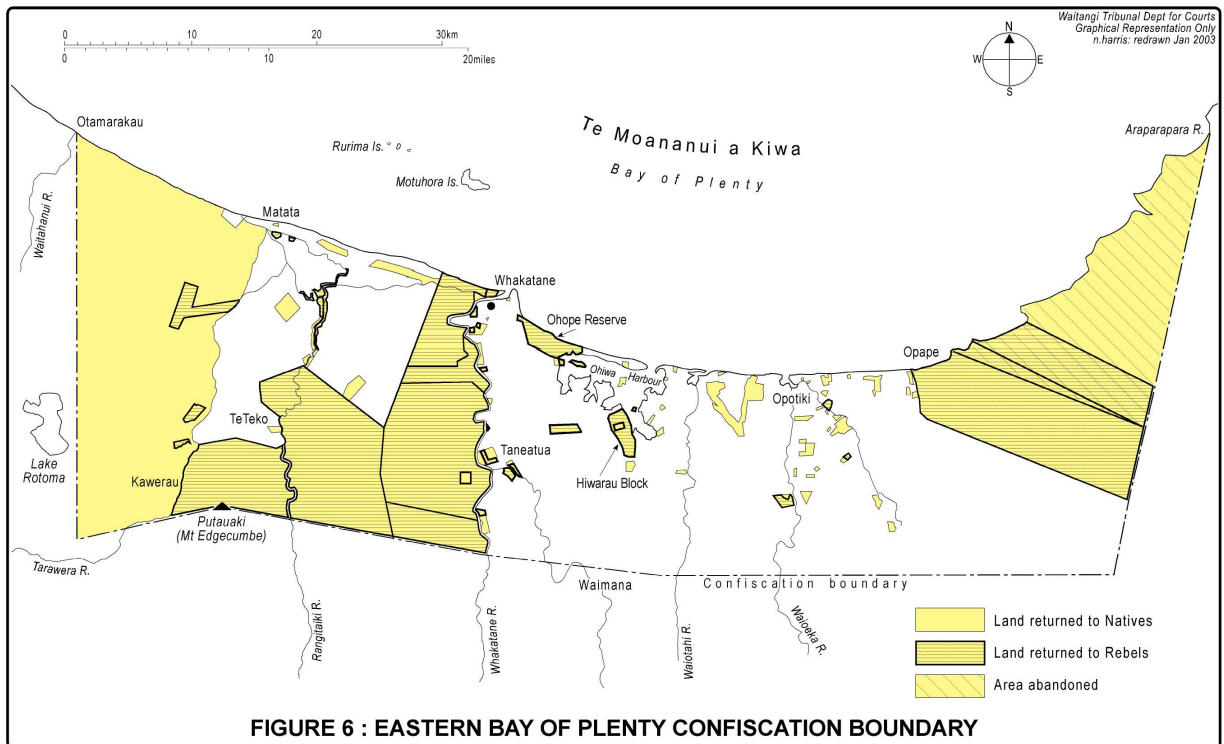


FIGURE 6 : EASTERN BAY OF PLENTY CONFISCATION BOUNDARY

According to Gilling, 'it is clear that at best such a boundary is only a very rough approximation of what can have been the land belonging to any tribe':

Tribal lands were defined by natural landmarks, such as the sea, rivers, mountain ranges and the like. The drawing of straight lines to different points of the compass is a very artificial way of defining any area, particularly one such as this, which is comprised of broken country, with rugged, bush-clad gorges and ranges of hills and mountains. Defined in such a way, it can hardly have been intended as a sophisticated and accurate method of determining the lands of the two iwi concerned. Rather, it looks like a method of extracting from Maori ownership the fertile and cultivable coastal plains of the eastern Bay of Plenty, suitable for Pakeha settlement and valuable for future sale, leaving Maori with the difficult inland hills, gorges and valleys.⁷⁶

Similarly, Miles has noted that it is apparent from the evidence presented to the Waitangi Tribunal in its eastern Bay of Plenty inquiry, 'it is apparent that tribal boundaries within the confiscated area were overlapping and not easily determined in an area with a rich and complicated customary tenure'.⁷⁷

⁷⁶ Gilling, 'The Policy and Practice of Raupatu', pp 83-84

⁷⁷ Miles, *Te Urewera*, p 114

Miles has pointed out that in the case of the eastern Bay of Plenty raupatu,

it has been argued by claimants that the Crown acted illegally in the course of the confiscations because the 1866 raupatu proclamations contravened the provisions of the 1863 Settlements Act. That Act anticipated the Governor setting aside portions of land ('eligible sites') *within* a proclaimed district, for the purpose of settlement, and then defining the boundaries of the land so taken. In the eastern Bay of Plenty, the proclamations of 17 January and 1 September 1866 declared that *all* the land of the district was required for the purposes of the Act, without the setting apart of military settlements within the area. From the very first, then, the misinterpretation and misapplication of the provisions of the confiscatory Act, in combination with officials' lack of knowledge of the land and people of the eastern Bay of Plenty ... produced a very confused picture.⁷⁸

As stated in the confiscation proclamation, and as legislated in the New Zealand Settlements Act 1863, lands were confiscated for the purpose of settlement. The preamble to the Settlements Act,

declared that the intention of the Act was to provide for the permanent protection and security of the well-disposed inhabitants of both races. This was to be achieved by the introduction of a sufficient number of settlers able to protect themselves and preserve the peace of the country. What this meant in effect was the establishment of military settlements in rebel districts to enable the Pakeha settlement of frontier territory.⁷⁹

Referring to the military settlement at Opotiki within ten years of its establishment, St John commented that:

This is one of the few places of the kind which have proved a success, though even here in only a small way. In riding over the flat lying between the two rivers [the Waioeka and the Otara] which, issuing from the mountainous region at the back, enclose the plain, one does see pleasant looking fenced fields, cultivations, and a goodly lot of stock, all belonging to original settlers: sights of prosperity, these, but too rare in military settlements in other parts of the country.⁸⁰

⁷⁸ Ibid., p 112

⁷⁹ Ibid., p 111

⁸⁰ St John, p 558

Of the land ‘apportioned out to military settlers’ in the inland valleys, St John observed that due to ‘the then disturbed state of the country’:

it was impossible for the allottees to actually settle upon any of the lands thus set apart, ... and there are consequently many thousand acres of good land which some day will be turned to profitable account; but, as in other cases, it will be necessary to get them out of the hands of speculators who have picked them up at a cheap rate.

Meanwhile, he wrote,

The wrecks of schooners still hampering the Opotiki river testify to the former wealth of the natives who so stupidly changed their faith for a whim; but the memory of their past comforts and the exhortations of Europeans are inducing them to pick up some of their old energy, and all along the coast, south of Opotiki, and in the valleys inland, the Maories [sic] are planting very extensively.⁸¹

The ‘former wealth of the natives’ is also testified to in the descriptions of the plunder engaged in by the occupying force in 1865 and 1866. Furthermore, in November 1859, Arthur S Thomson, Surgeon-Major to the 58th Regiment, had visited the area, reporting that:

At Opotiki and Ohiwa, in the Bay of Plenty, live the Whakatohea nation, an industrious people numbering 2,600 souls, and possessing twenty vessels, each upwards of twenty tons burden, in which they convey their produce to the Auckland Markets.⁸²

Likewise, in March 1866, George Graham reported to the Governor that:

The East Coast Natives had become noted for their industry and hospitality. They were growing and exporting prior to the Waikato War, large quantities of wheat, maize and other grain, as also flax, potatoes, kauri gum etc. They owned many European built vessels and were making rapid strides in civilization.⁸³

The 1928 Report of the Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives (Sim Commission) stated that the total area of the eastern Bay of Plenty confiscation district was 448,000 acres. Of this, 118,000 acres were

⁸¹ Ibid., pp 560-561

⁸² Cited in letter from Matiu Ranapia and nine others, ‘and all of the Whakatohea’, to the Hon Mr Herries, Native Minister, 25 April 1916, MA1 5/13/157 NA (Wai 87 ROI, docA1(a))

restored to 'loyal Natives' and 112,300 acres to 'rebel Natives', while 6340 acres had been sold privately prior to the confiscation. This meant that the area finally confiscated was 211,060 acres. Whakatohea, the report continued, originally had 491,000 acres and were left with 347,130 acres. The report quoted the findings of the 1920 Native Land Claims Commission, which had 'no hesitation . . . in affirming that, judged by the light of subsequent events, the penalty paid by the Whakatohea, great as was their offence, was heavier than their deserts.' The Sim Commission found that, in the case of Whakatohea, confiscation was 'excessive', but recommended compensation of only £300 per annum, 'for the purpose of providing higher education for the children of members of that tribe.'⁸⁴ In 1946 the Government paid Whakatohea £20,000 in compensation for the settlement of confiscation grievances. One of the claims identified in the Wai 309 statement of claim is that 'insufficient compensation [was] allowed by the Sim Commission'.⁸⁵

According to Tuhoe, the confiscation line did not follow tribal boundaries and included land belonging to Tuhoe. They cite the boundaries of the Tuhoe tribal estate forwarded to the Government by a hui of Tuhoe leaders, Te Whitu Tekau, in 1872 to support this, as follows:

The meeting of the Tuhoe (Urewera) has taken place at Ruatahuna on the 9th June. The first thing we decided were the boundaries of the land. My district commences at Pukenui, to Pupirake [Puhirake], to Ahirau, to Huorangi, Tokitoki, Motuotu, Toretore, Haumiaroa, Taurukotare, Taumatapatiti, Tipare Kawakawa, Te Karaka, Ohine-te-rakau, Kiwinui, Te Terina [Te Tiringa-o-te-kupu-a-Tamarau], Omata-roa, Te Mapara, thence following the Rangitaiki River to Otipa, Whakangutu-toroa, Tuku-toromiro, Te Hokowhitu, Te Whakamatau, Okahu, Oniwarima [Aniwaniwa], Te Houhi, Te Taupaki, Te Rautahuri [Te Rau-tawhiri], Ngahuinga, Te Arawata [Te Arawhata], Pohotea [Pokotea], Makihoi, Te Ahianatane [Te Ahi-a-nga-tane], Ngatapa, Te Haraungamoia, Kahotea, Tukurangi, Te Koarere [Te Koareare], Te Ahu-o-te-Atua, Arewa [Anewa?], Ruakituri, Puketoromiro, Mekomirarangi [Mokonui-a-rangi], Maungatapere, Oterangi-pu, and on to Puke-nui-o-raho, where this ends.⁸⁶

⁸³ George Graham to Governor, 24 March 1866, J22/3A NA; cited in Mikaere, p 6

⁸⁴ 'Report of the Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives', AJHR, 1928, G-7, pp 21-22

⁸⁵ Submissions of Counsel for Upokorehe, p 2

⁸⁶ The letter from Te Whitu Tekau to the Native Minister, McLean was signed by the chiefs Te Whenuanui, Paerau, Haunui, Erueti Tamaikoha Tu, Hetaraka, Te Pukenui, Te Makarini, and Ahikaiaata for 'all of the tribe'.

According to Milroy and Melbourne, inaccurate government estimates of the tribal boundaries at the time of confiscation led to the loss of more Tuhoe land than was acknowledged. They argue that, according to their reading of Heaphy's Plan (referred to by the 1922 Sim Commission), Tuhoe had 57,344 acres confiscated (rather than the approximately 15,000 acres referred to by the Commission), and that 'practically all the land shown in [Heaphy's] Plan as being confiscated from Tuhoe was actually given to Ngati Awa by the Compensation Court'.⁸⁷ In addition Milroy and Melbourne state that:

The uncertainty which prevailed over the exact location of tribal boundaries created confusion and conflict concerning land claims among some of the tribes concerned. Incidents took place between Ngāti Awa and Whakatohea over Ōhiwa lands, as well as with Te Arawa over lands west of the Tarawera River and among Tūhoe, Ngāti Awa and Ngāti Pukeko over lands in Ōpōuriāo and Ōwhakatoro. The issue of tribal boundaries was to become a burning question for Government and tribal groups alike to resolve.⁸⁸

Milroy and Melbourne cite Tuhoe 'traditional boundaries to the lands under their mana at the time of the confiscation', starting at Te Pukenui-o-raho, as follows:

Te Pukenui-o-raho
Tārua-mauku
Te Waiputa-a-tawa
Te Wai-a-te-atua
Te Tūturitanga o Rangipāroro
Ngā Pi-o-werewere
Te Taumata-o-Hākōpūrākau
Waipahihi
kia puta ki te ngutu awa o Waiotahe
to emerge at the river mouth of Waiotahe
Te Karihi-pōtae
ka huri ki te rā tō ka haere i te ākau
turning to the setting sun along the coast

'Te Whenuanui, Paerau . . . and All the Tribe to the Government', 9 June 1872, AJHR, 1872, F-3a , p 29; Miles, *Te Urewera*, p 116

⁸⁷ Milroy and Melbourne, pp 124-125

⁸⁸ *Ibid.*, p 127

Te Kōhai-o-Tama-puta-ana
Wainui-tohorā
Te Ana-kai-a-rara
Waikaria tūranga-o-Tairongo
Ohiwa
Ihukatia
Te Parinui-o-te-Pukenui-o-Tao
Te Horonga-o-Ngai-Te-Hapū-Paparinga-tohorā
Te Puke-i-ahua Marae Tōtara
ka whiti ki te tonga
turning south...

This area was part of what, according to Milroy and Melbourne, ‘was known as the district of Tūhoe lands contained within the confiscated area proclaimed by the government’ (Ko te rohe o te whenua i murua e te Kāwanatanga, arā ko te rohe raupatu (1866)).⁸⁹ With regard to the question of the extent of land confiscated from Tuhoe, Miles states that ‘part of the problem is that there is little substantial research available on Tuhoe customary interests in the eastern Bay of Plenty prior to confiscation’. But, she continues ‘quite apart from anything else, it might be difficult to explain the degree of Tuhoe resistance to the confiscation and military activity, if it was perceived that their territory had *not* been confiscated.’⁹⁰

With regard to the issue of whether or not the Government was justified in confiscating Tuhoe lands, Milroy and Melbourne have stated that ‘Tuhoe representations to Government since 1866 ... have consistently maintained their innocence against Crown accusations, and indignation at imposed guilt and blame’.⁹¹

5.3 Resistance and Cooperation: Tamaikoha, Rakuraku and Te Kooti

Conflict between government forces and Maori continued ‘in the hinterland of Opotiki’ through 1866 and 1867. According to Cowan, during this period ‘several settlers were killed, and there were numerous expeditions up the Waioeka and Waimana valleys’.⁹² This was the period in which the land was confiscated, Mokomoko and the others were executed in

⁸⁹ Milroy and Melbourne, pp 131-135; they cite Kūpai McGarvey 1970; Raupatu Committee Minute Book, p 20

⁹⁰ Miles, *Te Urewera*, pp 159-160

⁹¹ Milroy and Melbourne, p 121

⁹² Cowan, *The New Zealand Wars*, vol 2, p 116

Auckland, and in which the Compensation Court was operating. The operation and decisions of the Compensation Court with regard to Ohiwa, together with the 'out-of-court arrangements' negotiated by the Crown agent, Wilson, are discussed in chapter 6.

As noted above, martial law was not officially lifted from the eastern Bay of Plenty until January 1867. As Binney has commented, 'no one noticed for a while, not even the local settlers at Opotiki, which indicates that there was no visible difference in troop behaviour'. The 'significant difference for Maori,' Binney continues, 'was that, in 1867, land confiscation was in the air and was taking place on the ground'. Binney notes that it was only after the lifting of martial law that 'resistance of the Urewera hapu to the seizure of their northern lands first became visible', that is, from February 1867. Binney argues that until this time:

there is no evidence of guerrilla tactics on their part in this region. A few individuals had given fighting support to Whakatohea in the Waioeka gorge late in 1865, but it was not until 1867 that segments of Tuhoe under their own leaders developed strategies of defensive resistance.⁹³

In February 1867, Tuhoe leaders met at Tawhana, and established an aukati between themselves and Whakatohea and between themselves and the government. According to a report by St John of 26 June 1867, the boundary between themselves and Whakatohea was the Waiotaha river, 'thus driving the rebels into the settlements on the Waioeka', and that between Tuhoe and the government, 'along the upper part of the Waimana and Whakatane valleys'. They 'declare', he continued, 'that to this they will confine themselves, and remain quiet within their boundaries till attacked'.⁹⁴ As Binney has noted:

This was Tuhoe's aukati, a defensive line that none could cross with a hostile purpose without reprisal. As drawn, it implied an acceptance of the confiscation line as being the northern line of self-defence. Tuhoe had retreated beyond the confiscation border, although they would (of course) contest the confiscations in the Compensation Court ... an imposition of an aukati was firmly based on customary Maori codes (tikanga): it

⁹³ Binney, 'Encircled Lands', part one, p 139

⁹⁴ St John to Under Secretary, Colonial Defence Office, 26 June 1867, Le 1/1867/121 (RDB 2583-4); cited in Binney, 'Encircled Lands', part one, p 140

marked their area, or the zone of their autonomous self-defence. It was *not* a declaration of war, as St John himself recognised.⁹⁵

Binney also explains that ‘the resistance to land confiscation, which started in 1867, has ... to be put in the context of the fact that the Opotiki Compensation Court started its process on 7 March 1867’.⁹⁶ This will be discussed in chapter 6. Binney argues that ‘after placing the aukati around their lands, some Tuhoe leaders – from mid-1867 – also chose guerrilla strategies to *defend their claims to the confiscated land*. This,’ she continues, ‘was the beginning of a war of defensive resistance’.⁹⁷ A further factor in this shift towards armed resistance (and a subsequent target) was the presence and actions of surveyors in the confiscated block, and the presence of military settlers.

Following the confiscation, a military settlement was established at Opotiki under the leadership of St John. Miles notes that ‘the Government encouraged settlement by offering free ammunition, free provisions and free passage in an effort to secure the frontier’.⁹⁸ The military settlers in the area were very vulnerable to guerrilla attacks, and formed a small volunteer corps known as the Opotiki Volunteer Rangers, with Henry Mair as captain, David White as lieutenant, and JR Rushton as ensign. The corps, who were armed with breech-loading carbines and revolvers, took an active part in the continuing conflict. Cowan refers to their being in the advance of an expedition organised by St John ‘to follow the Maori raiding-parties into the Urewera Country’ in May 1867.⁹⁹ According to Cowan:

The period 1866-68 was a time of intermittent skirmishing and bush-marching for the military forces and the settlers in the Opotiki district, which was particularly exposed to forays from the gorges and ranges of the Urewera borders. The principal trouble-makers were the Ngati-Ira *hapu* of the Whakatohea Tribe, under Hira Te Popo, and the Ngai-Tama and Urewera, led by the savage warrior Tamaikoha, of Waimana ... Tamaikoha, when not engaged in raiding the Opotiki frontier, was strongly posted in his ancestral

⁹⁵ Binney, ‘Encircled Lands’, part one, pp 140-141

⁹⁶ *Ibid.*, p 142

⁹⁷ *Ibid.*, part one, p 142; emphasis in original.

⁹⁸ Miles, *Te Urewera*, p 141

⁹⁹ Cowan, *The New Zealand Wars*, vol 2, p 176

fighting-ground, the narrow valley of the Waimana, the principal tributary of the Whakatane River.¹⁰⁰

While, as Belich notes, ‘the government forces never seem to have suffered more than two casualties in any engagement with Tamaikowha, he gained a considerable reputation for ferocity and guerilla skills’.¹⁰¹

In May 1867, two military settlers, John Beggs and Walter Moore, who had both served with the 1st Waikato regiment stationed at Opotiki, were captured while clearing land east of Opotiki, and later executed. While this was apparently largely the work of Ngati Ira hapu of Whakatohea, living at Maraetahi, it was generally believed that they had been supported by men from Te Urewera. Furthermore, as Binney states, there was much confusion in the local reports (particularly the muddling of Eru Tamaikoha and Eru Te Whatiuru Te Ike – ‘one of the key leaders of Whakatohea resistance’) and the attack was blamed on ‘Te Urewera’.¹⁰² Then, on 27 June the bodies of the Opotiki trader, Bennett White, and an Arawa mailman, Wi Popata, were found at Waiotahe beach, and a survey party was attacked near Ohiwa harbour. According to Binney:

These events intersected in the minds of the military men, and when the bodies of the two settlers were also found, the deaths were seen as unlawful ‘murders’. They were in fact political acts of protest against the survey and settlement of the confiscated land. They were acts of resistance.¹⁰³

As well as having recognised status within Ngai Tama, Tamaikoha, Binney writes, was also ‘the recognised chief of Te Whakatane hapu in the mid-nineteenth century. Thus,’ she continues, ‘his area of mana also included the coastal lands between Te Waimana and Ohiwa’:

Te Whakatane was an old semi-independent hapu that traced its ancestry to Haeora, grandson of Tamatea, and they were early occupiers of the headwaters of the Ohiwa and the eastern Waimana lands extending into the Waiotahe valley. The fortified ridge pa at Ahirau, clearly visible on the coastal cliffs immediately above the eastern end of the

¹⁰⁰ Ibid., p 174

¹⁰¹ Belich, *New Zealand Wars*, p 211

¹⁰² Binney, ‘Encircled Lands’, part one, pp 151-152

¹⁰³ Ibid.

Waiotaha spit, controlled the old beach route to Whakatane; this pa is still remembered locally as being Tamaikoha's.¹⁰⁴

According to Binney, while 'Cowan argued that Tamaikoha was responsible for all the attacks, beginning with the killing of Beggs and Moore in May 1867 and extending to the killing of Wi Popata in June 1867', the raids led by Tamaikoha did not begin until after January 1868. Then, as Sissons has put it 'Tamaikoha and the people of Te Waimana initiated a brief campaign of resistance' to the confiscation and surveying of their land.¹⁰⁵ An Arawa monument on the site where Wi Popata was killed at Waiotaha, along with some nearby unfinished military huts, were destroyed; survey pegs were 'taken up' around Waimana; and cattle and horses were seized from military settlers.¹⁰⁶ According to Binney:

A raid down the Waimana valley on 8 February 1868, seizing horses, led to the first major reprisal, St John's attack on Nukutahuahua, a new kainga near Rakuraku's former pa on the Waimana river, on 10 February. According to St John's several (somewhat confused) reports, there were about 25 men in this 'Poti' (post), who were under the command of Te Puehu. St John stated that he found letters there indicating that 'the whole of the Urewera from Ruatahuna and Ma[u]ngapo[h]atu' were in arms.¹⁰⁷

In May 1867, William Mair had reported that following the dismissal of Rakuraku's claim to Ohiwa in the Compensation Court (discussed in chapter 6.2), he and his people had left Te Waimana and occupied Hokianga Island in Ohiwa Harbour, where they commenced to build a settlement.¹⁰⁸ According to Miles, 'Rakuraku's people had moved back to Ohiwa after Tamaikoha had occupied Rakuraku's pa at Te Waimana'. She argues that Rakuraku's occupation of Hokianga Island, and later Whakarae, 'could be seen as a last-ditch attempt to assert ownership of confiscated lands'.¹⁰⁹ Mair commented that he was 'of the opinion that Rakuraku knows far more of the intentions of the Hauhaus than he ever imparts to me'.¹¹⁰ Despite such suspicion, when Tuhoē under Tamaikoha, challenged a party surveying in the

¹⁰⁴ Ibid., p 25; she cites W15/91. OS: HGD White, at the site, 28 March 1999

¹⁰⁵ Sissons, 'Waimana Kaaku', pp 21-22

¹⁰⁶ Binney, 'Encircled Lands', part one, p 159; Sissons, 'Waimana Kaaku', p 22

¹⁰⁷ Binney, 'Encircled Lands', part one, p 163; she cites 11 February 1868, AD 1/1868/655 (AJHR 1868, A-8A, p 13)

¹⁰⁸ Miles, *Te Urewera*, p 141; she cites WG Mair to Clarke, 27 May 1867, AJHR, 1867, A-20, p 67; Binney, 'Encircled Lands', part one, p 154

¹⁰⁹ Miles, *Te Urewera*, p 164

¹¹⁰ Ibid., p 141; WG Mair to Clarke, 27 May 1867

Waimana area in August 1867, seizing their equipment and ammunition, it was to Hokianga Island that the surveyors fled, seeking the protection of Rakuraku.¹¹¹

In February 1868, Mair informed H T Clarke, Civil Commissioner, Tauranga, that the letters found at Nukutahuahua ‘prove the complicity of the Ohiwa people in the late movements of the Hauhaus’.¹¹² One letter, dated 15 January 1868, at Otara, ‘from Te Poti, of Tamatuhira, at Te Ku’, was translated as follows:

Go, my letter, to Tauwharemanuka, to Tawhana, to Tanahi, to Maungapohatu, to Rahitiroa. Friends, listen. Our sentry (scout) has returned from Ohiwa. The boundaries of Ohiwa have been given up to us. Their speech is “Let them have this month for their occupation; the following month hasten hither at this time.”¹¹³

The letters, as Binney states, ‘clearly suggest complicity from Ohiwa. In other words, they suggest that a raid there would not be unsupported. Given,’ she continues, ‘that the Tuhoe attack, when it came, in the early hours of Sunday 8 March 1868, was on Hokianga island, and that Rakuraku’s recently vacated settlement there, Te Punawai, was burnt down, it suggests an exchange of information, or a degree of co-operation from Rakuraku’.¹¹⁴ This attack, according to Sissons, was Tamaikoha’s response to St John’s attack on Te Waimana the previous month.¹¹⁵ Of the attack on Hokianga, St John reported that ‘two friendly Natives of Rakuraku tribe had been murdered at Ohiwa ... by the Hauhaus.’ One body, he reported, was found ‘dreadfully mutilated’ on Hokianga Island.¹¹⁶ Clarke likewise reported that ‘the Hauhaus came in great force to Ohiwa. A party of ten crossed over to the Island of Hokianga, in Ohiwa, and murdered an old man of the Upokorehe hapu named Kororahi. The unfortunate man was partly mutilated’. He added that ‘[t]he Hauhaus, after burning down the huts at Te Punawai Rakuraku’s settlement retired’.¹¹⁷ While at least one person had been killed, and some damage had been done, as Binney states ‘no-one else there was hurt.

¹¹¹ Binney, ‘Encircled Lands’, part one, pp 154-155

¹¹² Mair to H T Clarke, 10 February 1868, AJHR, 1868, A-8A, Papers Relative to the Defence and Occupation of Opotiki District, p 24

¹¹³ ‘Te Poti, of Tamatuhira, at Te Ku’, to ‘Tauwharemanuka, Tawhana, Tanahi, Maungapohatu, Rahitiroa’, 15 January 1868, enclosure to Mair to H T Clarke, 10 February 1868, AJHR, 1868, A-8A, Papers Relative to the Defence and Occupation of Opotiki District, p 24

¹¹⁴ Binney, ‘Encircled Lands’, part one, p 165

¹¹⁵ Sissons, ‘Waimana Kaaku’, p 22

¹¹⁶ St. John to Captain Holt, 17 March 1868, AJHR, 1868, A-8A, Papers Relative to the Defence and Occupation of Opotiki District, pp 16-17

Rakuraku's people had already moved "over to the other side of the bay".¹¹⁸ With the support of Mair, based on the evidence of the letters, Rakuraku and his people re-occupied the extremely strategic Whakarae pa, with its commanding view of both the harbour and the coastal track.

According to Gilling, 'Two groups of Whakatohea were continually under suspicion of supporting the Hauhau', one of whom he identifies as 'Rakuraku's hapu of Upokorehe in the Waimana/Ohiwa area'.¹¹⁹ In a letter to Captain Holt, Under-Secretary of the Colonial Defence Office, dated 19 September 1867, St John referred to the 'doublefacedness' of 'Raku Raku and his people', who, he claimed, 'correspond directly up the Waimana with the Hauhaus'. There is no mention of Upokorehe in the letter, and it is not clear whether or not Upokorehe were actually considered to be Rakuraku's 'people'. St John reported that:

The Ohope Natives have offered to Raku Raku's party land at their place (where they would be under the surveillance of the Ngatiawas), and the Whakatoheas, with Taylor (who live on the mainland opposite Hokianga), could be moved to Opape, or, as Mr Wilson suggested, to the Native Reserves near Tiwhanga. Major Mair approved of the offer, but Raku Raku declined it.

'However,' he added, 'he and the whole of his mob ought to be got out of that place'.¹²⁰

At the 1880 hearings of the Waimana block, Rakuraku described 'the arrival of the military forces in 1865, when he was residing in the inland Waimana district with his people. He supplied the troops with food 'and they gave us ammunition to protect ourselves'.¹²¹ As Binney points out, Rakuraku's testimony is supported by the government military records.¹²² Rakuraku, who, like Eru Tamaikoha, 'was one of the crucial Tuhoe leaders living in Waimana in the mid-nineteenth century',¹²³ also stated at the 1880 hearing that 'When the confiscation line was run, I forbad them to include Waimana: they respected my residence there, and fixed

¹¹⁷ Clarke to the Under Secretary, Native Department, 14 March 1868, AJHR, 1868, A-8A, Papers Relative to the Defence and Occupation of Opotiki District, p 27

¹¹⁸ Binney, 'Encircled Lands', part one, p 165; she cites Mair, Diary, 19 February 1868, MSS AND, ATL

¹¹⁹ Gilling, 'Te Raupatu o Te Whakatohea', p 100

¹²⁰ St John to Captain Holt, Under Secretary of the Colonial Defence Office, 19 September 1867, AJHR, 1868, A-8A, Papers Relative to the Defence and Occupation of Opotiki District, pp 3-4

¹²¹ Binney, 'Encircled Lands', part one, p 21; she cites Opotiki MB 1, 9 March 1880, p 316

¹²² Ibid.

¹²³ Ibid., pp 20-21

the line in its position, outside this Block'.¹²⁴ However, as Binney has pointed out, in addition to his inland pa, situated by the Waimana River, south of the confiscation line, 'Rakuraku also lived in one, and probably two, pa *within* the confiscated block. In 1868, Rakuraku and his people were encouraged by the military to move down to Whakarae pa on the Nukuhou river, near to the head of the Ohiwa harbour within the confiscated block'. Gilbert Mair recalled in 1907 that this was done so that Rakuraku, who he described as 'the principal Waimana chief', would 'protect the beach road to Opotiki and Ferry'. Rakuraku, Mair recalled, erected a strong pa 'and he and his people remained loyal, or at least neutral'.¹²⁵ Military records show that the government employed Rakuraku as the Ohiwa harbour ferryman from 1868.¹²⁶

In response to the Tuhoe attack on Hokianga Island, and possibly contravening instructions not to venture beyond the confiscation line, St John led an expedition 'up the Waimana, intending to go right up to Maungapohatu', but was, he reported, deserted by his Arawa guides, a few miles beyond Otara. He 'retired, destroying all cultivations on the road, so that between Tawhana and Ohiwa any attacking force must now carry its own provisions'.¹²⁷ As Binney has stated, 'St John had learnt that starvation was his best ally in this war'.¹²⁸ She also notes that 'the destruction of all the crops in Te Waimana was the last military strike against Tamaikoha', and that 'the tactics meant that Rakuraku's crops at Whakarae were also destroyed'.¹²⁹

As the army returned down the river, a volunteer contingent under the command of the surveyor, Gwynneth, stopped at Whakarae overnight on 13 March 1868. There, they took the stored food, turned their horses out into a large field of corn, broke calabashes of oil, and stole property and clothing from the houses. A section of the company also destroyed corn growing on Hokianga island. A military Board of Inquiry subsequently found Gwynneth responsible.¹³⁰

¹²⁴ Ibid., p 21; she cites Opotiki MB 1, 9 March 1880, p 316

¹²⁵ Ibid., pp 21-22; she cites Mair to ND, 4 March 1907, MA 1 1907/183 (SP, p 1)

¹²⁶ Ibid., p 22; she cites letters of payment to Rakuraku for ferry services, 11 April 1868, 19 May 1868, AD 1/1868/1825

¹²⁷ St. John to Captain Holt, 17 March 1868, AJHR, 1868, A-8A, Papers Relative to the Defence and Occupation of Opotiki District, pp 16-17

¹²⁸ Binney, 'Encircled Lands', part one, p 166; she cites 12 February 1868, AD 1/1868/630 (AJHR 1868, A-8A, p 14)

¹²⁹ Ibid.

¹³⁰ Ibid., pp 166-167; she cites 31 March 1868, AD 1/1868/1836

Binney suggests that ‘the destruction may not have been random: it may well have indicated a distrust of Rakuraku. Nevertheless, the military officers decided that Rakuraku was an essential ally: on 23 March 1868, he and his people were given arms’.¹³¹

According to Binney:

Rakuraku had become trapped between powerful opposing forces. As a crucial guardian of Tuhoe’s frontier at Waimana, he was placed in an impossible position. He was the direct victim of the confiscation of most of Te Waimana: the lands lying between the Waimana river and the eastern Ohiwa harbour. His innermost pa, behind the confiscation line ... stood near the entrance of the Waimana gorge and it watched over the route up the river to Maungapohatu. But he had co-operated with the military, bringing them information of value. He also undoubtedly withheld information from them. But his only chance of retaining land within the Waimana confiscated block was to be seen to be reasonably co-operative. In this manner, Rakuraku held Whakarae for Tuhoe.

Rakuraku almost certainly knew in advance about Tamaikoha’s raid on Hokianga island. He may have been complicit in it. Rakuraku had had his inland Waimana settlement turned over by Lyon in 1866. He had vainly contested the Waimana confiscation in the Compensation Court in 1867. In 1869, he would support Te Kooti Arikirangi, when the latter fled to Te Urewera. Like all those who joined Te Kooti after his escape from Chatham Island, Rakuraku was the victim of arbitrary land confiscation. He had worked hard to be co-operative with the occupying forces during 1866–68, as even Wilson acknowledged obliquely when he commented that it was not surprising that Rakuraku joined Te Kooti, given ‘the treatment’ he had received.¹³² If Rakuraku seems an ambiguous figure, it is because he was trying to survive in Waimana.¹³³

Sissons has noted that:

With Rakuraku, Maungaharuru’s grandson, absent, Erueti Tamaikoha took on the mantle of Taua to become the major leader in Te Waimana. However, Rakuraku and his Nga Maihi hapu, which probably numbered about thirty, were by no means abandoning their

¹³¹ Ibid., p 167; she cites Mair, Diary, 23 March 1868, MSS AND, ATL.

¹³² Ibid.; she cites Wilson, Memo dated 7 May 1870, GS Whitmore Correspondence 1868–1870, types, MS Papers 2392, ATL.

¹³³ Ibid.

community and the majority of the Te Waimana people who chose to remain in the valley. Based now at Ohiwa, they would provide information to those living further inland about troop movements and Government intentions, and pass messages and information, which was sometimes intended to mislead, on to the Government'.¹³⁴

By mid-1868, Binney writes, 'Tuhoe had largely withdrawn behind their self-imposed aukati', with the sole exception of Rakuraku, at Whakarae.¹³⁵ In order to further enforce this 'undeclared war', a 'party of the Arawa Tribe' was engaged in June 1868, 'to occupy a post at Ohiwa'. The force was to number sixty in total, with no less than forty to be in occupation, and would be engaged for a period of two years. Each man was to receive a grant not exceeding twenty-five acres of land on completion of the term, and it was noted that 'all the surplus land at Ohiwa will be available for the purpose'.¹³⁶ The garrison, under the command of Wi Maihi (William Marsh) Te Rangikaheke, was established on the north-eastern edge of the Ohiwa harbour ('Marsh's Pa' or Wi Maihi's pa). Their function, according to Binney, was to watch over Tuhoe's access route to Ohiwa harbour, and to keep an eye on Rakuraku. 'Their redoubt was built on a high hill on the north-eastern entrance to the harbour, from where Whakarae pa could be observed'.¹³⁷ The Arawa contingent remained in occupation for longer than the proposed two years, being 'formally signed off' on 28 February 1871. However, Binney has noted that a small party of Arawa were still there as late as mid-1875.¹³⁸ In May 1873, Herbert Brabant, Resident Magistrate at Opotiki, reported that a school had been started at Ohiwa 'by a competent European for the children of the Arawa militia stationed there. The scholars', he continued, 'average from 15 to 20, and have made very good progress in the English language'.¹³⁹ Grants of land were made to these Arawa troops in the area surrounding their redoubt, on the shore of the harbour.

Binney argues that the state of military tension in the Ohiwa area, 'had been created by the policy of confiscation'. Tamaikoha's attacks, she states, 'were limited and precise in their targets: surveying parties; the new redoubts; possibly the mailcarrier for Te Arawa, who had

¹³⁴ Sissons, 'Waimana Kaaku', p 21; he cites St John to McLean [Holt?], AJHR [1868], A-8A, p 4

¹³⁵ Binney, 'Encircled Lands', part one, p 168

¹³⁶ J C Richmond to H T Clarke, 29 June 1868, AJHR, 1868, A-8A, Papers Relative to the Defence and Occupation of Opotiki District, pp 20-21

¹³⁷ Binney, 'Encircled Lands', part one, p 169

¹³⁸ Ibid., p 181

¹³⁹ H W Brabant to Under Secretary, Native Department, Opotiki, 23 May 1873, AJHR 1873, G-1, p 13. This first Ohiwa school is discussed in chapter 7.

been brought in as a military force to support the policy of confiscation; the monument that Te Arawa erected for him.¹⁴⁰ Tamaikoha again attacked Rakuraku at Whakarae on 6 September 1868, withdrawing as quickly as he had arrived, after firing harmlessly on the pa, but not without leaving behind a contingent of some 70 men from Ruatahuna. As Binney has stated:

Whatever the strategy being applied here, Rakuraku's apparent alignment with the government forces was consolidated by the raid. This fact possibly suited Tamaikoha; his 'show' of force may have been a blind. Whether or no, from September 1868 Rakuraku maintained Whakarae as the Tuhoe outpost *inside* the confiscated block.¹⁴¹

In November 1868, Tamaikoha was allegedly 'specially invited' to join Te Kooti. However, as Binney has stated, 'while Tamaikoha would still act to disrupt the occupation of Waiotaha and Ohiwa by the Arawa military settlers (which is what they were) [he] would not give his support to Te Kooti'.¹⁴² However, as Miles has noted, this did not prevent the government from presuming that the two were allies.¹⁴³ At a hui at Ruatahuna in January 1869, Tuhoe debated whether or not to give active support to Te Kooti, and the outcome 'appears to have been an invitation to Te Kooti to come to Maungapohatu'.¹⁴⁴ This decision, Binney states, was not taken lightly. The alliance, she writes, 'was forged on the back of the land confiscations'.¹⁴⁵ On 26 February, Rakuraku informed Wepiha Apanui who, in turn informed Mair, that Te Kooti would invade the Ohiwa area, and that it could not be prevented.¹⁴⁶ In March, a pact was forged between Te Kooti and the Tuhoe leaders at Tawhana in the Waimana gorge which Miles states was Tamaikoha's settlement. While Tamaikoha was strongly opposed to Te Kooti's religious teachings and refused to fight with him, he consented to his passing through Tawhana.¹⁴⁷ According to Binney, 'the Tuhoe accounts of this pact indicate that the agreement made there was seminal to their spiritual history'. The pact, she continues, 'was a binding covenant; Te Kooti took Tuhoe as his people; they gave him their loyalty'.¹⁴⁸ On 2 March 1869, Te Kooti and a party of some 130 to 140 men down from Tawhana to Ohiwa, where they

¹⁴⁰ Binney, 'Encircled Lands', part one, p 169

¹⁴¹ *Ibid.*, p 170

¹⁴² *Ibid.*, p 191

¹⁴³ Miles, *Te Urewera*, p 173

¹⁴⁴ Binney, 'Encircled Lands', part one, p 191

¹⁴⁵ *Ibid.*, p 192

¹⁴⁶ *Ibid.*, p 191; she cites trans WG Mair, MSS 1077, p 134, ML (English text in AJHR 1869, A-10, p 15)

¹⁴⁷ Miles, *Te Urewera*, p 173

occupied Whakarae pa. Binney states that ‘the pact forged at Tawhana ... preceded the campaign, whose primary aim ... was to recover Tuhoe’s land into their own authority, under God’.¹⁴⁹

According to Binney, the attack on Ohiwa was carefully planned:

The kokiri struck first at Whakarae. From there, a group went across to Hokianga island, looking for the surveyor Pitcairn. Among various tasks Pitcairn had performed for the military, one was to cut a track from Ruatoki into Te Urewera ... and another was to survey the Puketi block for settlement. Starting in mid-September 1866, he had been variously engaged on the Ohiwa harbour.¹⁵⁰ The kokiri captured the island and took prisoner the Upokorehe people living there, removing them to Whakarae. A smaller group crossed from Te Punawai (the old stockade on Hokianga island) to Te Uretara island, where they found Pitcairn at a temporary camp. There, they killed him.¹⁵¹

Hemi Kakitu, a leader of Upokorehe as well as of Tuhoe, apparently led the party that went to Uretara Island from Ruatoki.¹⁵² Hemi Kakitu would later be rewarded by the government for his efforts in pursuing Te Kooti, and included along with members of Upokorehe in the schedule of owners for both Hokianga Island and the Hiwarau block (see chapter 6.1).¹⁵³ The party included Netana Rangiihu, who had worked for Pitcairn, surveying in the Waimana area. According to Binney, ‘Pitcairn was killed as a political statement by men who had previously been co-operative’.¹⁵⁴

At Whakarae, Rakuraku had offered no resistance to Te Kooti, and indeed it appears that he was an accomplice in the attack, apparently freely handing over all his guns and ammunition. As Binney has stated, ‘the visible “occupation” and patrol of Whakarae were intended, it

¹⁴⁸ Binney, ‘Encircled Lands’, part one, pp 192-3

¹⁴⁹ Ibid.

¹⁵⁰ Ibid., p 194; she cites Pitcairn, Field Book, 1866, p 9 (Ohiwa); p 25 (confiscation line at Waimana); pp 37-43 (Puketi)

¹⁵¹ Ibid. According to Cowan (*The New Zealand Wars*, vol 2, p 315), Pitcairn was on Uretara to shoot *kuaka* (godwit).

¹⁵² Binney, ‘Encircled Lands’, part one, p 195

¹⁵³ According to Judith Binney, and based on her reading of the Waimana hearings, Hemi Kakitu was the son of the Tuhoe chief Rangiihu, and probably the half-brother of Netana Rangiihu, although she notes that there is some dispute whether Te Rangiihu had lineal descendants, or whether Netana Rangiihu and Hemi Kakitu were his whangai. Binney also states that he was also known as Kiripaka or Kiripaka Kahu, and that his mother was Te Unupo, who, it is presumed, was Upokorehe. Binney cites Opotiki MB 1, 44, 299, and whakapapa at the end of OMB 1. This might therefore explain Hemi Kakitu’s inclusion in the schedule of owners for the Hiwarau block and Hokianga Island. Judith Binney, personal communication, February 2003

seems, to disguise Rakuraku's support [for Te Kooti], for Whakarae was situated on a high hill "in full view" of the Arawa redoubt at the harbour mouth'.¹⁵⁵ The members of Upokorehe 'captured' on Hokianga Island, were taken to Whakarae. According to Binney, the prisoners were taken for two reasons:

Rakuraku and other Tuhoe contested their *sole* claim to Hokianga island. Hokianga had always been a favoured fishing place of Tuhoe, and its flat southern end was frequently used for drying flax in the sun.¹⁵⁶ But in 1867, Hokianga had been set aside by Wilson as a reserve for the '*surrendered Rebels and loyal Natives*' of Upokorehe.¹⁵⁷ Rakuraku had always claimed a hearth on that island; and this Te Kooti knew.¹⁵⁸ The second reason was the strategy which Te Kooti adopted throughout his fighting: taking Maori prisoners and hoping to convert them to his cause and to his religion.¹⁵⁹

With the addition of the Upokorehe prisoners, the occupying force at Whakarae now numbered some 200 people, and from here on 9 March 1869, an attack was made on Rauporoa pa, the Ngati Pukeko settlement on the western bank of the Whakatane River. The party then headed inland, 'to consolidate their control of the borders of the Urewera'.¹⁶⁰ Shortly after this, in May 1869, came the first full-scale military 'invasion of the Urewera'.¹⁶¹ 'This three-pronged attack', Binney states, 'was an attack on an unparalleled scale: 1300 men in the three forces, more than the entire population of the Urewera, men, women and children'.¹⁶²

Milroy and Melbourne describe what they refer to as 'the scorched earth policy of the military campaign in Te Urewera', to which Tuhoe were subjected from the middle of 1868 until 1872. This campaign, they claim, 'caused enormous destruction and deprivation among to Tuhoe people. The loss of life and damage to settlements, animals and cultivations were great'.¹⁶³ Milroy and Melbourne refer to Sir George S Whitmore's account of the May 1869 'Urewera

¹⁵⁴ Binney, 'Encircled Lands', part one, p 195

¹⁵⁵ *Ibid.*, pp 194-5

¹⁵⁶ *Ibid.*, p 195; Binney cites Oral Source: John Ru Tahuri, 23-24 March 1998, tape 2b

¹⁵⁷ *Ibid.*; Binney cites 'Return of Reserves', 9 June 1867, AJHR 1867, A-18, p 3; the emphasis is hers

¹⁵⁸ *Ibid.*; According to Binney, Te Kooti stated it in his dying speech to Rakuraku and Hemi Kakitu, uttered on Hokianga island in April 1893; she cites Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi te Turuki*, Auckland, Auckland University Press, 1995, p 493

¹⁵⁹ Binney, 'Encircled Lands', part one, p 195

¹⁶⁰ *Ibid.*, p 196

¹⁶¹ *Ibid.*, pp 201

¹⁶² *Ibid.*, pp 201-202; she cites Belich, *New Zealand Wars*, p 278

Campaign', described in his 1902 book, *The Last Maori War in New Zealand under the Self-reliant Policy*. Whitmore recalled that:

I came to the conclusion that we could do nothing by awaiting Te Kooti outside the mountains, because to do so we must have divided our forces in several settlements and left him to choose the most favourable point of attack. True strategical policy demanded our entering the mountains by the best known paths, and destroying all the food that might be growing or stored at the several native settlements.¹⁶⁴

'The main object of the expedition,' he stated, 'was the destruction of the food supply in the mountains'. The people, he recalled, 'scattered in small groups, occupied the hill tops, and made the mountains resound with their sorrowful lamentations'.¹⁶⁵ This, Binney alleges, 'was a war of cruel devastation, a war to kill by starvation. It was calculated genocide, too, in that the women prisoners were handed over to Te Arawa in order to 'exterminate' their hapu.¹⁶⁶ Tuhoe, Milroy and Melbourne state, 'were finally starved into submission'.¹⁶⁷

When Te Kooti was forced to quit the Urewera, among the Urewera fighters who accompanied him to Taupo was Rakuraku who had fought at Te Ponanga on 25 September 1869.¹⁶⁸ Rakuraku was also with Te Kooti when he returned to Te Urewera in February 1870. With Te Kooti's return to the Urewera, the government set in motion a three-pronged 'pincer movement' against its people, 'with separate expeditions coming from Napier, from Poverty Bay, and from the eastern Bay of Plenty, each force operating under independent Maori command'.¹⁶⁹ According to Binney:

Their purpose was to drive the people into starvation and force them out of the Urewera mountains. The chiefs and their hapu were to be brought down to the coasts, one by one, as they were pressured into surrendering. It was to be an absolute war of attrition. Of necessity, Tuhoe had again to turn their backs on Te Kooti.¹⁷⁰

¹⁶³ Milroy and Melbourne, p 165

¹⁶⁴ Major-General Sir George S Whitmore, *The Last Maori War in New Zealand under the self-reliant policy*, London, 1902 (facsimile edition, Christchurch, Kiwi Publishers, 1995), p 152

¹⁶⁵ Whitmore, pp 165-6

¹⁶⁶ Binney, 'Encircled Lands', part one, pp 203-4

¹⁶⁷ Milroy and Melbourne, p 168

¹⁶⁸ Binney, 'Encircled Lands', part one, pp 206-7

¹⁶⁹ *Ibid.*, p 209

¹⁷⁰ *Ibid.*

On 5 March 1869, a contingent of predominantly Whanganui troops, led by Te Keepa Te Rangihiwini, and accompanied by soldiers from Ngati Awa, Ngai Tai and Whakatohea, pushed up the Waimana valley. At Tamaikoha's settlement of Tauwharemanuka, Tamaikoha and Keepa 'forged a peace that, as soon became clear, extended to the whole of Tuhoe in *both* their understandings'.¹⁷¹ According to Binney:

Tamaikoha undertook to cease resistance to the government forces; in return, there was to be no settlement on nor surveying of his remaining lands. Tamaikoha's neutrality in the war against Te Kooti had been accepted. Moreover, Tamaikoha also insisted that Ropata's expedition to Maungapohatu must immediately withdraw and all his Tuhoe prisoners be released. This was a peace negotiated between men of great rank within the Maori world, and Tamaikoha's mana enabled him to insist that this peace be extended to the whole of the Urewera.¹⁷²

Despite reluctance on the part of Ropata Wahawaha in particular, to accepting the peace, the Maori leaders of the government forces respected the agreement made between Tamaikoha and Keepa. According to Binney, 'it becomes clear that, within the Maori world, there were huge efforts being made to curb and contain this spiralling war'.¹⁷³ Urewera leaders also appear to have begun distancing themselves from Te Kooti. Rakuraku was one of the few Urewera man who had assisted Te Kooti when he sustained what Binney refers to as 'his most serious military collapse' at Maraetahi, in the Waioeka gorge, on 25 March 1870. But by this time, Rakuraku's relationship with Te Kooti 'was becoming ever more uncertain – certainly in the latter's eyes. Te Kooti came to distrust him, and he called him 'te Ngarara', 'the Lizard' of ambiguity, in his diary written at the time'.¹⁷⁴

Binney states that, 'from 1870 the government policy was to force Tuhoe out of the mountains and down to the coasts into a subject relationship with Ngati Awa to the north and Ngati Kahungunu to the east. They were told to surrender'.¹⁷⁵ According to Milroy and Melbourne:

The levers were being exercised against all the Tuhoe chiefs and their hapu to leave their 'mountain fastness' and come down to camp on a government reservation near Matata, or

¹⁷¹ Ibid.; the italics are hers.

¹⁷² Ibid., p 210

¹⁷³ Ibid.

¹⁷⁴ Ibid., p 211

¹⁷⁵ Ibid., pp 212-13

to live with nominated Kawanatanga chiefs of Te Arawa or Ngati Awa tribes. Those who surrendered voluntarily would be protected. Those who refused to surrender would not be given clemency.

However, Milroy and Melbourne continue, ‘the choice to surrender was made more difficult by St John’s violation of the peace which Tamaikoha had made with Te Keepa’.¹⁷⁶ Tamaikoha, Binney writes, ‘had personally observed the terms of the agreement with Keepa (Kemp) in that he himself had “come in” and was staying at Whakarae ... with about ten men. Whakarae pa was understood (at least by the Crown’s agent, Wilson) as being land which he had set aside “for the use of surrendered rebels”’.¹⁷⁷ Consequently:

When St John attacked Tamaikoha at Whakarae, although the peace had not been formally sanctioned by the government, its local agents understood that the Urewera hapu assumed that it was. The attack was a betrayal, a ‘Kohuru’, as both Clarke and Wilson stated immediately.¹⁷⁸

St John struck at Tamaikoha ‘and his mob’ (as he crudely put it) at Whakarae on 25 April 1870. All Tamaikoha’s property, which he had brought with him from Tauwharemanuka, was seized. Tamaikoha himself escaped (forewarned by a dream, it is said), but his old uncle Tipene was killed. Whakarae was renamed Matakerepu after this attack: it refers to the chilling numbness (matakerekere) which overcame Tamaikoha when the premonitory dream alerted him that government forces intended to shoot him (pu).¹⁷⁹

According to Milroy and Melbourne:

The bitter memory of this treachery was kept alive with the retention of the old pā name Whakarae for the newer settlement where it still stands in the Waimana valley today. Tamaikōhā also named his new meeting house at Tauwharemānui ‘Tipene’ after his uncle.¹⁸⁰ The importance of keeping this bitter memory alive would have been further

¹⁷⁶ Milroy and Melbourne, p 169; they cite AJHR 1870, A-8B, p 65

¹⁷⁷ Binney, ‘Encirled Lands’, part one, p 215; she cites Wilson, Memo, 7 May 1870, Whitmore Correspondence, MS Papers 2392, ATL

¹⁷⁸ Ibid.; she cites Clarke to ND, 2 May 1870, AJHR 1870, A-8B, p 39; Wilson, Memo, 7 May 1870, Whitmore Correspondence, MS Papers 2392, ATL

¹⁷⁹ Ibid.; she cites Sissons, *Te Waimana*, pp 144-5

¹⁸⁰ According to both Binney and Sissons, Tamaikoha’s new meeting-house, ‘Tipene’, was at Tauwharemanuka. Binney states that the house was opened ‘as a statement of binding peace (‘rongo taketake’) and that the first guests to stay in it had been Wi Maihi’s Arawa force occupying Ohiwa harbour to watch over Tuhoe’. She cites G Mair, Diary, 22 June 1871, AD 1/1871/901 (AJHR 1871, F-1, p 44); Preece, Diary, 22 June 1871, MSS 249, AIM; Binney, *Redemption Songs*, p 238

enhanced when, in 1874, the Resident Magistrate of Ōpōtiki, Herbert Brabant, agreed to seek from the Government compensation for the Whakarae kōhuru (treachery). Mr Brabant promised that land should be given, and that there is no doubt that he thought it would be given at once. The promise remains to be carried out.¹⁸¹

Cowan provides an account of St John's attack on Whakarae pa written by Captain J R Rushton, who was a member of the expedition. According to Rushton, who later settled at Ohiwa, St John 'was induced by the chief Tamehana Tahawera, of Ngati Pukeko, and Wi Maihi Te Rangikaheke, of the Arawa, to organise an expedition against Whakarae, the pa of the Urewera chief Rakuraku'. Rushton said that it was Tamehana Tahawera who killed Tipene as he came down the hill to fetch water. In Rushton's view, 'it was a deliberate murder; it was Tahawera's way of obtaining revenge for the murder of his niece Ripeka on the Whakatane in 1869'. He stated that the expedition was 'a mistake': 'simply a scheme by the two friendly chiefs to make use of the Government forces and secure revenge for their family losses'.¹⁸²

Following the attack on Whakarae, St John was dismissed from his command. However, the damage had been done – seriously undermining what little trust there was in the government's negotiations, and hardening 'Tuhoe's reluctance to be dragged from their mountains'. Nevertheless, Binney states, by April 1870, 'Tuhoe were already being squeezed by combined military forces'.¹⁸³ Another factor that Binney claims had 'seriously undercut Tuhoe's faith in the good intentions of the government', was the capture of Rakuraku's wife Hiria by Te Arawa on the road to Whakatane in early April. The episode, Binney writes, 'was certainly seen as a kohuru, a betrayal, by Tuhoe'. She also suggests that 'it may well be that Hiria was being held ransom for Rakuraku's surrender and sustained 'good' behaviour: certainly, from late July 1870, he was again actively co-operating with the government's military men'.¹⁸⁴

While Tamaikoha (and Tuhoe generally) had made the careful decision not to avenge Tipene's death at Whakarae, this 'passed without notice by the government, which maintained its obsessive insistence that Tuhoe must quit their lands'. The government's policies, Binney writes, 'were forcing Tuhoe to the edge of despair; they were demands exercised without

¹⁸¹ Milroy and Melbourne, p 170; they cite Sissons, *Te Waimana*, p146

¹⁸² Cowan, *The New Zealand Wars*, vol 2, pp 420-421

¹⁸³ Binney, 'Encircled Lands', part one, p 216

reason, and without justice'. 'One by one,' Binney continues, 'from mid-1870 small groups of Urewera people trickled in and submitted'.¹⁸⁵

By October 1871, Tuhoe were assisting in the capture of Te Kooti. On 17 October 1871, 'a Tuhoe contingent surrounded and attacked Te Kooti at Pukehinau on Okahu stream, near Ahikereru'. One of the leaders of the contingent (that included 'men belonging to Tamaikoha') was Hemi Kakitu, who had formerly fought for Te Kooti.¹⁸⁶ Binney notes that 'no casualties occurred on either side, ... and the only prisoner taken was a woman', suggesting that the commitment of this contingent to capturing Te Kooti was not altogether to be trusted.¹⁸⁷

Until May 1872, when he reached the sanctuary of the King Country, Tuhoe had mounted a series of searches for Te Kooti within and beyond Te Urewera. According to Binney, by the end of April 1872, 'the Urewera chiefs had established a working partnership with government'.¹⁸⁸ One of the features of this relationship was the employment of Maori in roadmaking. Binney has stated that:

Using Maori labour to make roads was the standard panacea of the military-colonists and the government in the early 1870s. Not only was it a pragmatic solution to the colonists' own needs and desires; it was seen as the best means of 'pacification' of potential trouble spots by making them more readily accessible for troop movements. It was a notion shared widely among European colonists everywhere in the later nineteenth century. It was somehow assumed that Maori employment on public works would teach them the 'moral benefits' of European living styles and so end their 'restless' ways.¹⁸⁹

As Philip Cleaver has stated in his report on Urewera roading, 'the Government proceeded to build two roads that passed through confiscated lands up to the boundary of the Urewera'.¹⁹⁰ One such road was to be built to the north – from Ohiwa to Waimana. While Tamaikoha had

¹⁸⁴ Ibid., pp 217-218

¹⁸⁵ Ibid., p 218

¹⁸⁶ Ibid., p 253. According to Binney: 'For these militia services both Tamaikoha's and Hemi Kakitu's forces were paid: £137.8s for the former; £167.12s for the latter (a total of £305): HT Clarke to AD, 12 March 1872, McLean to AD, 13 April 1872, AD 1/1872/297, 401, ADICR. Hemi Kakitu used this money to recover some of his confiscated tribal land in lieu of payment' (p 253, fn 63)

¹⁸⁷ Ibid., p 254

¹⁸⁸ Ibid., pp 265, 266

¹⁸⁹ Ibid., p 266

made it clear that he would not allow the road to extend beyond the confiscation line 'at present', in June 1873, civil commissioner Henry Clarke reported that Tamaikoha, 'once the scourge of the district', had consented to the construction of the road to Waimana.¹⁹¹ Miles argues that 'Tamaikoha had been coerced into road-making because the Government insisted upon its right to make roads in the confiscated territory and plainly warned the chief that if he would not do it, they would employ someone else to do so'. Tamaikoha, Miles continues, along with Rakuraku and Hemi Kakitu, only reluctantly began the work, having first exacted a pledge that the road would stop at the confiscation line.¹⁹² The three chiefs were all allotted portions of responsibility on the road contract: 4½ miles to Tamaikoha, two miles to Rakuraku, and 2½ miles to Hemi Kakitu.¹⁹³ As Binney has stated, 'this tactic of allocating authority ... gained the chiefs' involvement in the government's work within the confiscated block'.¹⁹⁴ According to Milroy and Melbourne:

The first section of the road, under Hēmi Kakitu and Rakuraku, was completed in a short time. When Tamaikoha became involved, he was less accommodating and delayed the completion of the road. This unwillingness was prompted by the realisation that the road would induce Pākehā settlers to live on confiscated lands. Mr Brabant, however, managed to convince Tamaikoha that the road could be completed without his assistance. Tamaikoha gave in, but issued notice that he would take the road only as far as the confiscation line.¹⁹⁵

In May 1873, Brabant reported that:

Now they have begun they are working well (the bridges put up by Tamaikowha being especially noticeable from their substantial construction); and if they had not had to leave off to get in their crops, the road would have been finished before now.

Brabant noted that:

¹⁹⁰ Philip Cleaver, 'Urewera Roothing', report for the Crown Forestry Rental Trust, June 2002 (Wai 894 ROI, doc A25), p 11

¹⁹¹ Brabant to Minister of Native Affairs, 4 July 1872, AJHR, 1872, F-3A, p 28; 'Reports from Officers in Native Districts', Clarke to Under-Secretary, Native Department, 9 June 1873, AJHR, 1873, G-1, p 8; Miles, *Te Urewera*, p 201

¹⁹² Miles, *Te Urewera*, p 201; 'Reports from Officers in Native Districts, Herbert Brabant to Under-Secretary, Native Department, 23 May 1873, AJHR, 1873, G-1, p 12

¹⁹³ Brabant to Native Minister, 21 April 1873, AJHR, 1873, G-1, p 10

¹⁹⁴ Binney, 'Encircled Lands', part one, p 301

¹⁹⁵ Milroy and Melbourne, pp 173-174

In all works done by Natives, it must be remembered that they are done in addition to, and are greatly interrupted by, their ordinary avocations, and are never entered on, as by Europeans, as a means of earning a livelihood.¹⁹⁶

While the road stopped at the confiscation line, Brabant, the Resident Magistrate at Opotiki, observed that it greatly improved access between the Urewera and the coast, at ‘an arm of the Ohiwa’. This, Miles states was a fact not lost on ‘the “hardline” Tuhoe chiefs, who greatly resented the pressure exerted by the Government on their iwi’. Paerau, Miles notes, was so angered that he wrote a letter suggesting that if the road passed the confiscation line, he might attack. As Miles concludes, ‘by using road contracts in this way, it might be seen that McLean was undertaking a divide and rule strategy with the Urewera hapu, and testing Te Whitu Tekau’s ability to maintain its authority.’¹⁹⁷

Te Whitu Tekau, or the Union of Seventy, had formed in June 1872 out of a gathering of the hapu of Te Urewera at Ruatahuna. This, Binney states, was a conspicuous re-assertion of their authority and an expression of ‘confidence in their own capacity to govern their lands collectively’.¹⁹⁸ The first thing that the hui decided were the boundaries of their lands, and in setting out these boundaries, they included all of their confiscated lands, including lands at Ohiwa harbour.¹⁹⁹ (See chapter 5.2) Binney has described and mapped the boundaries in ‘Encircled Lands’, as much as it is possible to do so. Binney states that:

In setting these eastern and northern boundaries in 1872, Tuhoe were consciously reclaiming their confiscated lands. When Tamaikoha met Brabant shortly after the meeting, he agreed that that was what they had done. He commented that they did not intend to reclaim their lands by force but that they had heard that the government intended to give them back, so they planned to probe its intentions (‘tono i te whakaaro o te Kawanatanga’). Nevertheless, at this moment, given what Tuhoe had recently endured, the Urewera hapu would not make a fight about it if the government refused to return them (‘kaore e kawea ki te kino’).²⁰⁰

¹⁹⁶ H W Brabant to Under Secretary, Native Department, Opotiki, 23 May 1873, AJHR 1873, G-1, p 12

¹⁹⁷ Miles, *Te Urewera*, p 201

¹⁹⁸ Binney, ‘Encircled Lands’, part one, p 271

¹⁹⁹ *Ibid.*, p 273

²⁰⁰ *Ibid.*, p 276; she cites Brabant, 4 July 1872, AJHR 1872, F-3A, p 28

Binney also notes that these ‘were not new boundaries and they were not presented by Tuhoe as an attempt at new definitions’. As well as reflecting ‘long-standing ancestral claims reaching back to Potiki I’, they ‘reflected mid-nineteenth-century realities’. This, Binney states, was:

the period when Rakuraku and Tamaikoha inherited their chiefly leadership roles for Tuhoe, Ngai Turanga and Te Whakatane on the eastern Ohiwa harbour. Their ‘boundaries’ overlapped with those claimed by Te Upokorehe and Te Whakatohea (as Tiwai said), but these leaders were the pre-eminent chiefs for the Waimana and Waiotaha coastlands before their lands were invaded by troops in 1865.²⁰¹

Following the Urewera District Native Reserve Act 1896, among the five Tuhoe commissioners appointed to the first Urewera Commission was Te Pou Papaka who, Binney writes, was elected but not listed, before being restored as commissioner representing the Waimana area as the result of local protest: ‘Rakuraku and Tamaikoha put it plainly enough to ... Seddon: ‘We will not agree to Te Pou being disallowed’ (‘Kaore matou e pai kia kore a Te Pou’), as he was the man elected for Waimana, Tawhana and Ohiwa, they said.’²⁰² As Binney goes on to note, ‘this was a significant statement of Tuhoe’s close association with Ngati Raka by the senior Waimana families who held mana in that region’.²⁰³

5.4 Conclusion

The deaths of Völkner and Fulloon, the trials of those accused, and the military occupation and confiscations which followed, occurred within an uneasy colonial climate enflamed by fears of ‘Hauhau fanaticism’. Contemporary newspaper accounts of the event, in New Zealand, Britain, and elsewhere, made much of this ‘fanaticism’, Völkner’s ‘martyrdom’, and the descriptions of seemingly cannibalistic acts.²⁰⁴ It is clear that rather than constituting an act of political ‘rebellion’, Völkner’s execution was seen as a matter for the criminal courts, with those charged with Völkner’s death standing trial in the Supreme Court for murder. This, as Judith Binney has pointed out, calls into question ‘the legal basis for the confiscation of lands in the eastern Bay of Plenty’:

²⁰¹ Ibid., p 277

²⁰² Ibid., part two, p 231; Binney cites Rakuraku and Tamaikoha, 13 January 1898, MA 1/1907/152 part 2

²⁰³ Ibid.

²⁰⁴ See Paul Clark’s discussion of the exaggerated accounts of the killing of Völkner. Clark, pp 38-39

It derived initially from the death of Volkner; but once it was recognised that his execution was a criminal act, land could not be confiscated on account of this murder. This unsustainable legal basis has been acknowledged by the Crown. It has been acknowledged in respect to the confiscation of Whakatohea's lands. It has already been agreed, along with the pardon of the Whakatohea chief Mokomoko in 1992, that Whakatohea were 'wrongfully declared rebels'.²⁰⁵ It has been acknowledged in respect to Ngati Awa: that the confiscation of their land could not legally rest on Volkner's death.²⁰⁶ The same argument holds for the Urewera hapu.²⁰⁷

While individuals from the eastern Bay of Plenty had assisted Waikato to some extent in 1864, Grey's 1865 Proclamation of Peace would have pardoned this prior involvement in what was considered to be an act of 'rebellion'. As the later Native Land Claims Commission confirmed, 'these actions could not legally have been considered in January 1866 in justifying the confiscations'.²⁰⁸

The Deed of Settlement offered to Whakatohea by the Office of Treaty Settlements on 1 October 1996, acknowledged that:

Whakatohea suffered extensive and enduring hardship as a result of the war waged against them. The loss of life, the destruction of their possessions and taonga, the confiscation of their lands, and the consequent effects of Raupatu have lasted until the present day.

The Whakatohea Deed of Settlement went on to state that:

The Crown now acknowledges that grave injustice was done to Whakatohea when the Crown, in breach of the principles of the Treaty of Waitangi, sent its forces into the Whakatohea rohe, occupied and subsequently confiscated Whakatohea land, and wrongly labelled Whakatohea as rebels.²⁰⁹

Similarly, as part of the apology contained in the Ngati Awa Deed of Settlement, initialled by the Crown and Ngati Awa in July 2002, it was acknowledged that 'the Crown profoundly

²⁰⁵ Binney, 'Encircled Lands', part one, p 88; she cites the *New Zealand Herald*, 1 July 1997

²⁰⁶ Ibid.; she cites Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 53

²⁰⁷ Ibid.

²⁰⁸ Gilling, 'Te Raupatu o Te Whakatohea', p 177

regrets and unreservedly apologises for the confiscation of Ngāti Awa lands which was unconscionable'. The Crown's apology to Ngati Awa goes on to say:

The Crown profoundly regrets and unreservedly apologises for the cumulative effect of its actions over the generations which has left Ngāti Awa virtually landless, and which has undermined the social and traditional structures and autonomy of Ngāti Awa hapu.

The Crown regrets that Ngāti Awa as an iwi have borne the century old stigma of being labelled "rebels" and "tangata hara" and that this has damaged the self-esteem of the people.

The Crown profoundly regrets and unreservedly apologises for the destructive impact and demoralising effects of its actions which have caused significant damage to the welfare, economy and development of Ngāti Awa as an iwi.

The Crown profoundly regrets its failure to acknowledge the mana and rangatiratanga of Ngāti Awa.²¹⁰

Elsewhere in the Ngati Awa Deed of Settlement, the Crown acknowledged that 'its confiscation of Ngāti Awa land was unjust, unconscionable and a breach of the Treaty of Waitangi and its principles, and was described by Ngāti Awa as "he mahi pokanoa – an act without reason".²¹¹

That Tuhoe were included in this blanket identification of 'rebels', and that some of their lands should be included in the confiscation, fits with Binney's thesis that over the course of the 1860s, Tuhoe were 'manufactured into a threat'. Following Belich, Binney argues that 'the government's pursuit of an unequivocal or substantive sovereignty from the mid-1860s, turned the Urewera mountain 'fastness' into a terrain that needed to be subdued and colonised'.²¹²

The fighting that took place in the eastern Bay of Plenty (and in the Waikaremoana districts), as Binney has shown, was not initiated by the Urewera hapu who lived there. 'The proclamation of martial law and the landing of troops in September 1865,' she states, 'created

²⁰⁹ Her Majesty the Queen in right of New Zealand and Whakatohea, Deed of Settlement, 1 October 1996 (Wai 87 ROI, doc A4), pp 5, 6

²¹⁰ Ngati Awa and Her Majesty the Queen, Deed of Settlement to Settle Ngati Awa Historical Claims, initialed 8 July 2002, p 70

²¹¹ Ibid., p 67

²¹² Binney, Encircled Lands, part one, pp 36-37; she cites Belich, *The New Zealand Wars*, p 21

a war situation where none existed'. Furthermore, much of the land that was confiscated 'was at the time, and had been in the earlier nineteenth century, occupied by descendants of Tuhoe-potiki, the eponymous ancestor of Tuhoe'.²¹³ In addition to losing land north of the confiscation boundary, Tuhoe's access to Ohiwa harbour was severely effected. As Binney has stated:

By 1896, when the Urewera Reserve was established, the majority of the people were planting extremely marginal lands: mostly small clearances in the river valleys. This was because they had lost almost all their good lands by confiscation or forced alienation. Their paths to the sea and their summer camping sites by Ohiwa harbour were gone; these had been important components of their pre-European economy.

Tuhoe, Binney continues, 'had nowhere "to procure the products of the sea" ("i nga haere ki te mahi i nga kaimoana")'.²¹⁴ Losing some of their best farming land and access to the kaimoana of Ohiwa, Tuhoe 'were visibly deprived of most possibilities for sharing in the economic development of the eastern Bay of Plenty after the wars'.²¹⁵

The Compensation Court and the return of selected lands in the Ohiwa area are discussed in the following chapter.

²¹³ Ibid., p 386

²¹⁴ Ibid., part two, pp 34-35; she quotes Numia Kereru to Native Minister, 18 May 1906, MA 1/1906/19 (contemporary translation)

²¹⁵ Ibid., part one, p 363

6. The Compensation Court and the partial return of lands

6.1 The Compensation Court and Wilson's Out-of-Court 'Arrangements'

Acknowledging that blanket confiscation would necessarily result in the alienation of land from all Maori in the confiscated area, 'rebel' or not, the New Zealand Settlement Act 1863 provided for the establishment of Compensation Courts to hear claims for compensation, and to issue certificates entitling eligible persons to land 'according to the nature of the[ir] title interest and claim'.¹

Section 5 [of the Act] provided for compensation to be granted to those persons with an interest in land taken under the Act, except for those rebels who had taken up arms against the Crown; or anyone who had aided or induced any individual to do so; or anyone who had acted as a principal or accessory in any outrage against person or property; or those who had failed to comply with Government proclamations demanding the surrender of arms. The Act empowered the Governor to call upon any tribe or individual who had engaged in any of the offences outlined in section 5 to come in and submit to trial on or before a named date. Those who refused to come in would not be eligible for compensation under section 5 (but as O'Malley notes, this section did not in any way entitle those who *did* come in to receive compensation).²

Those owners who were to be compensated were 'defined negatively, that is to say those with rights were to be compensated, as exceptions from those considered to be in rebellion'.³ Maori, therefore, 'had to prove that they had *not* engaged in rebellion in order to win their lands back in the Compensation Court'.⁴

The Compensation Courts were not only responsible for determining compensation for the non-rebel land owners whose lands had been taken under proclamation, but also for 'the laying-out of towns and farms for military settlement and for the sale and disposal of both

¹ Ward, *National Overview*, vol 2, pp 173-174

² Miles, *Te Urewera*, p 111; Vincent O'Malley, 'The East Coast Confiscation Legislation and its Implementation', report commissioned by the Crown Forestry Rental Trust, February 1994 (Wai 144 ROI, doc A2), p 38

³ Gilling, 'Te Raupatu o Te Whakatohea', p 114

⁴ Miles, *Te Urewera*, p 132; O'Malley, p 57

suburban and rural allotments'.⁵ Upon confiscation, all customary tenure was extinguished, and any land returned to Maori by the Compensation Court was done so under Crown title.

Notification was made, by means of the *Gazette*, that potential claimants had six months from the date of 17 January 1866 in which to lodge claims to confiscated lands. However, this deadline was not gazetted until 3 April 1866, which, as Gilling notes, would have 'surely disadvantaged potential claimants in their quest for compensation'.⁶

The Compensation Court was to have convened at Opotiki on 1 October 1866, under Lieutenant-Colonel Lyons, however, when it was discovered that the boundaries had been incorrectly stated, the period for the submission of claims was redefined (three months from 1 September 1866), and a new date for the hearing was set for 7 March 1867.⁷ In the end, it was Major William Mair who presided at Opotiki, and he was assisted in this by Judge T H Smith. As Miles has noted,

Whatever pretence to impartiality may have been assumed by the court, the fact that Mair ... was a military officer [who had led the Arawa forces in the eastern Bay of Plenty] and that Smith had been the Civil Commissioner responsible for organising arresting warrants for the Opotiki invasion, must have rankled deeply with Maori. None of the Compensation Court Judges had a legal background but Mair, at least, had been a resident magistrate.⁸

H T Clarke, the Civil Commissioner at Tauranga, acted as counsel for Maori claimants.⁹ 'This Court,' Binney argues, 'had no interest in impartiality: its function was to exclude those whom it deemed to be 'rebels' from any of the titles it awarded. These people were also excluded from any compensation awards the Court made for lands of 'loyalists' that were claimed for military settlements.'¹⁰ 'The court was operational,' Miles notes, 'at a point when there was still general misinformation in official circles about the actual aggregate amount of land that had been confiscated, and when unsurveyed boundaries had not been investigated and

⁵ Miles, *Te Urewera*, p 111

⁶ Gilling, 'Te Raupatu o Te Whakatohea', p 125; Miles, *Te Urewera*, p 133; *New Zealand Gazette*, 3 April 1866

⁷ *New Zealand Gazette*, 11 January 1867; Miles, *Te Urewera*, p 134

⁸ Miles, *Te Urewera*, p 134

⁹ *Ibid.*

¹⁰ Binney, 'Encircled Lands', part one, p 144

corrected.¹¹ In April 1867, the government's agent in the Bay of Plenty, John A Wilson (son of the CMS missionary) was formally appointed Crown agent for the court sittings. He reported that the Court was adjourned on 6 April, 'in consequence of the absence of many claimants, who are engaged on our side in the war at Rotorua; and, because the other Natives are at this time of the year too occupied gathering in their crops to attend either as claimants or witnesses'. Wilson further reported that 'out of 235 cases 133 were disposed of involving compensation to the amount of 1006 acres, and no money has yet been awarded', adding that:

These lands are all however of good quality and generally well situated. It was only by conceding such lands that the difficulty could be escaped in which I found the Government placed, by what the Court affirmed to be the illegal settlement of the Opotiki district.¹²

Wilson had been 'appointed Special Commissioner for the confiscation district with the responsibility of arranging the settlement of the area' in November 1866. In this capacity he made a number of 'out-of-court arrangements' prior to the commencement of hearings before the Compensation Court.¹³ As Miles has stated:

In confidential instructions issued by the Native Minister to the general Government agent in Auckland, Daniel Pollen, Wilson's duties were held to include the return of land to rebel and friendly Maori, and the survey of these awards. Wilson was to persuade Maori who had lost lands to the Crown that the remainder of their lands would greatly improve in value with the onset of European settlement. Cooperation with the settlement plan would purportedly ensure an iwi's future prosperity.¹⁴ While commenting that 'it was no kindness' to give Maori more land than they could use, the Native Minister, Fitzgerald, wrote that Maori were to receive the areas they 'consent to occupy' as long as they accepted Crown Grants for their land under British law:

To attain this end, the Government would sanction a far more liberal disposition of land to Maori than would on other conditions be desirable. The one great thing which they desire to see done is to induce the Natives to accept their position as final and irrecoverable, and if by liberal concessions to

¹¹ Miles, *Te Urewera*, p 134

¹² Wilson to Pollen, 18 April 1867, IA 11867/1321 NA

¹³ Miles, *Te Urewera*, p 123

¹⁴ Miles cites C Marr, 'The Background to the Tuwharetoa ki Kawerau Raupatu Claim', report commissioned by the Waitangi Tribunal, 30 June 1991 (Wai 62 ROI, doc A2), p 38

them of blocks of land under Crown Grant you can bring about this result, the main object of the confiscations will have been achieved.¹⁵

Upon his arrival at Opotiki in November 1866, Wilson reported ‘that “it was not possible to compromise [i.e., settle out of court] the claims at this place” because out of the 38 claimants (presumably both individuals and groups) to Opotiki and Ohiwa, there were only four present at the township.’¹⁶ Furthermore, as a consequence of the ongoing skirmishing in the area, it is likely, as Miles has suggested, ‘that some claimants to Ohiwa would have found it impossible to have met and negotiated with Wilson in any case.’¹⁷ Nevertheless, Wilson made at least two arrangements for Ohiwa lands before the Compensation Court sat in March 1867: the Hiwarau block and Hokianga Island, and the Ohope Reserve (see figures 6 and 7).

The Hiwarau block and Hokianga Island

Wilson reported that, on 24 December 1866, with the approval of the Defence Minister (who was at Ohiwa at the time), he had settled the ‘rebellious’ Upokorehe hapu on a 1500-acre reserve known as the Hiwarau block, which he described as follows:

The boundaries of this Native reserve are on the East by the main road from Punawai towards Waimana, i.e. the surveyed road to the point where it first strikes the Nukuhou stream, as one goes from Punawai, on the south and west by the Nukuhou, and on the North by Ohiwa harbour from the mouth of the Nukuhou to Punawai. These limits enclose an area of about 1500 acres.

Upokorehe were also awarded Hokianga Island, which Wilson described as ‘a small island of, say, 30 acres near Hiwarau’.¹⁸

Wilson did not specify with whom among (or on behalf of) Upokorehe he had negotiated this ‘arrangement’, and this was to become a significant issue. The Upokorehe submission to the Waitangi Tribunal includes the claim that, as well as creating ‘insufficient reserves for the continued self-sufficiency of the hapu’, the Crown vested ‘lands in the Hiwarau block to persons who were not members of the Upokorehe Hapu, that is, they were loyalists and

¹⁵ Fitzgerald to D Pollen, 3 September 1865, AGG - A 1/1, NA (Wai 46 ROI, doc A2(1)(3)); Miles, *Te Urewera*, pp 123-124

¹⁶ J A Wilson to F Whitaker, AGG Auckland, 4 November 1866 (RDB vol 120, p 46353), cited in Miles, *Te Urewera*, p 129 (the annotation is hers)

¹⁷ Miles, *Te Urewera*, p 129

outsiders',¹⁹ notably Hemi Kakitu. In both the nineteenth and twentieth centuries, a number of petitions were made to the government regarding this issue. These are discussed in the 'Wai 203/339 Research Report'.²⁰

On 29 March 1872, Wilson informed the Native Minister, Donald McLean, that he had 'settled the Ohiwa Natives, who reverted to rebellion and again surrendered, on the land previously given to them at Hiwarau and Hokianga.' He added that 'Hemi Kakitu and followers have been included in this arrangement.'²¹

In November 1874, the grants of Hiwarau and Hokianga Island were gazetted. Both lots were granted under sections four and six of The Confiscated Lands Act 1867, which enabled the Government to make reserves for surrendered 'rebels', subject to any restrictions and limitations that the Governor saw fit to make. Hokianga Island was 'to be inalienably assured by a Grant trust to the Members of the Upokorehe *Hapu*', while Hiwarau was similarly 'to be inalienably assured by a Grant trust to the Members of the Upokorehe *Tribe*' (emphasis added). With Hiwarau, the Crown's 'right to take lines of road' was reserved. Both grants were accompanied by lists of names of members of Upokorehe for whom the land was granted. Relative interests were not defined at this time.

Hokianga Island (13 acres 2 roods 12 perches) was granted to forty-eight 'Members of the Upokorehe Hapu', with four trustees: Teira Haruru; Hemi Kakitu; Taituha Mokai; and Hemi Kuri. The Hiwarau block was granted to sixty-six 'Members of the Upokorehe Tribe', with seven trustees: Teira Haruru; Hemi Kakitu; Hoeroa; Hemi Hamu; Mita Tahanoke; Iraia Kaiponi; and Hoani Akeake. The Hiwarau block (1,073 acres) was described as:

Bounded on the North by high watermark in Ohiwa Harbour from the mouth of Nukuhou River to Punawai; on the East by a road surveyed from Punawai to the point where it first strikes Nukuhou River; on the South and West by Nukuhou River.²²

¹⁸ J A Wilson to Dr D Pollen, 18 April 1867, IA 11867/1321 NA; in Miles, *Te Urewera*, p 129

¹⁹ Submissions of Counsel for Upokorehe, p 6

²⁰ Johnston, 'Wai 203/339 Research Report', chapter 6

²¹ Wilson to McLean, Auckland, 29 March 1872, 'Reports on Settlement of Confiscated Lands: Bay of Plenty, No. 3', AJHR, 1872, C-4, p 6

²² 'Schedules of Awards made by Compensation Court and Crown Agent to Loyal Natives out of Confiscated Block, Bay of Plenty', 28 October 1874, *New Zealand Gazette*, no 60, pp 781-2

While Wilson did not specify with whom he had negotiated the settling of Upokorehe at Hiwarau and Hokianga, there is evidence to suggest that it was Rakuraku who arranged the deal. In 1939, during the hearing in the Native Land Court of an appeal concerning the relative interests in the Hiwarau block in 1939, one of the witnesses, an elderly woman named Mihirangi Houtu, stated that with the confiscation of their land, Upokorehe had taken refuge with their whanaunga at Waimana, and it was there that Wilson had discussed Upokorehe with Rakuraku, who told him that they were from Ohiwa and now had nowhere to live:

Wilson told Rakuraku he had better take these people back to Ohiwa where they came from.

Rakuraku replied 'yes' he would but he would ask Wilson to give back a small portion of the Upokorehe land that had been confiscated for them to live on. And Wilson told Rakuraku he would do this but that Rakuraku should meet him at Ohiwa ... on Christmas Day. On that Christmas Day Rakuraku met Wilson at Ohiwa and then Wilson kept to his promise and gave back Hiwarau. And Wilson also told Rakuraku that he should stay at Hiwarau and be the leader of the Upokorehe. I was at this Christmas day meeting as a small child with my mother. Then Rakuraku informed Wilson that he [Rakuraku] could not stay as he was not of Upokorehe but he pointed round and said to Wilson – These are the Upokorehe people.²³

According to Mihirangi, Hemi Kakitu had submitted a list for Hiwarau lands to Wilson at Whakatane, once he had 'returned from his wanderings with the Hauhau people'. It was this list, she claimed, that was adopted for the Hiwarau block. She described Hemi Kakitu as 'a Hauhau', and 'of Tuhoe – not even of Whakatohea. His hapu was Ngati-Kareti'. She also stated that he was 'not a rangatira of Upokorehe', although he lived and cultivated the land 'but not permanently', and that he 'lived at Hokianga with all the rest of his people'. She added that Upokorehe had also 'cultivated at Hokianga' and that 'Hiwarau has only been cultivated recently'. Upokorehe, she claimed, did not originally object to the inclusion of his name on the list because 'there were no men left in the hapu to represent it – only women were left.'²⁴

It was not until June 1886 that the Crown grant of Hiwarau was actually registered. The grant was made to those people listed in the schedule of owners gazetted in 1872, 'as from the 29th

²³ Opotiki minute book 30, 19 July 1939, fols 13-15; Johnston, 'Wai 203/339 Research Report', pp 59-60

day of March, 1872, their Heirs and Assigns for ever. Provided however that the said land hereby granted shall be inalienable by gift sale lease or mortgage or by lease for a longer period than fifteen years.²⁵ Thus, a restriction was clearly placed on the alienation of this land.

The subsequent history of the Hiwarau block is described in detail in the 'Wai 203/339 Research Report'.²⁶

The Ohope Reserve

On the western side of the harbour, Wilson reserved Ohope for Ngati Wharepaia and Ngati Hokopu hapu of Ngati Awa, and a grant of 1,575 acres along Ohope beach (described as Waimana Lot 246) was gazetted in November 1874.²⁷ The grant was entrusted to Apanui Hamaiwaho and seven other trustees: Kepa Toihau; Wepiha Pono; Hetaraka Tarawehe; Kohokohi Niha; Pirini Kepa; Karanama Tawhiao; and Hori Kawakura. Eighty-four 'members of the Ngatiawa Tribe' were listed in the schedule of owners.²⁸ As with the Hiwarau block, the Ohope grant was not formalised until 1886, and the grant likewise contained a restriction on alienation 'by gift sale lease or mortgage'.²⁹ An order defining relative interests was made in 1903.³⁰ Despite the restrictions on alienation, about half of the land was sold, and smaller amounts were taken under public works legislation. According to the Waitangi Tribunal's *Ngati Awa Raupatu Report*, 'the remaining 725 acres of mainly hill country were taken into the Ngati Awa land development scheme in the 1930s and finally returned to Ngati Awa administration in 1990'.³¹ The subsequent history of the Ohope reserve is outlined in a report prepared by Te Roopu Whakaemi Korero o Ngati Awa in support of the Wai 46 Ngati Awa Raupatu claim.³²

In addition to these two 'out-of-court arrangements', Wilson made a third deal with Ngati Pukeko, which was of great consequence to both Tuhoe and Whakatohea. In December 1866,

²⁴ Opotiki minute book 30, 19 July 1939, fols 13-15

²⁵ Grant to Teira Haruru, and others, 11 June 1886, Closed File Series 16, 'Hiwarau', Waiariki Maori Land Court, Rotorua

²⁶ Johnston, 'Wai 203/339 Research Report', pp 68-129

²⁷ Waitangi Tribunal, *The Ngati Awa Raupatu Report*, pp 116-117

²⁸ 'Schedules of Awards made by Compensation Court and Crown Agent to Loyal Natives out of Confiscated Block, Bay of Plenty', 28 October 1874, *New Zealand Gazette*, no 60, pp 778-779

²⁹ Grant to Apanui Hamaiwaho and others, 3 June 1886; Te Roopu Whakaemi Korero o Ngati Awa, 'Ohope Reserve' Supporting Documents, Ngati Awa Research Unit, Whakatane, 2 June 1995 (Wai 46, G7(g)), p 4

³⁰ Order Defining Relative Interests 1903, Te Roopu Whakaemi Korero o Ngati Awa, 'Ohope Reserve' Supporting Documents, pp 12-15

³¹ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 117

Wilson had held a meeting at the Ngati Pukeko pa, at Rauporoa, near Whakatane. At this meeting, Wilson reported that ‘it was arranged that the Government should take all the land on the eastern side of the Whakatane river for the rebellion of the people’. The western side was to be reserved for Maori, with awards to be made by the government to ‘loyal’ Maori.³³ Wilson reported that Apanui was present at the meeting ‘and consented to all that was done’, which included giving Ohope to Ngati Awa.³⁴ Binney notes that no Urewera people were present at the hui, and argues that ‘it was this “deal”, struck by Wilson with Ngati Pukeko, which excised Tuhoe lands’.³⁵

Milroy and Melbourne argue that ‘Wilson favoured Ngāti Pukeko, Ngāti Awa, Upokorehe and to some extent Whakatohea over Tūhoe in his dealings as Crown Agent. This action,’ they continue, ‘denied Tūhoe access to justice and fair representation in regards to their land interests before the Compensation Court’.³⁶ They also claim that ‘the results of Mr Wilson’s out of court activities confirmed that Tūhoe were largely treated as rebels and that later court hearing and finding for Tūhoe were already pre-empted by Mr Wilson’s activities’. Furthermore, they argue that Wilson ‘failed to take into consideration Tūhoe interests in lands within the confiscation district, and this undermined any Tūhoe claims to the Compensation Court before they could be heard’.³⁷ Wilson’s ‘out-of-court arrangements’, Milroy and Melbourne claim, ‘had harmful repercussions for Tuhoe hapu at Te Hurepo, Opouriao and Ohiwa’.³⁸ Wilson, they allege, ‘put upon himself the extra responsibility of being the sole disposer of Government privilege to whoever he may judge deserving’.³⁹

With regard to Wilson’s arrangements to re-settle Upokorehe at Hiwarau, Milroy and Melbourne refer to Wilson’s ‘double standards’ in including Hemi Kakitu in the list of owners. They argue that ‘it is difficult to determine how Wilson arrived at his decision about who was loyal or disloyal although his word seems to have been largely accepted by the Compensation

³² Te Roopu Whakaemi Koreo o Ngati Awa, ‘Ohope Reserve’, p 25

³³ Binney, ‘Encircled Lands’, part one, p 143; she cites Wilson, ‘Memorandum relative to boundary between Ngatipukeko and Ngatiawa on western side of Whakatane river ...’, for the Native Minister, 7 September 1874, MA 13/99a (included in her supporting papers, pp 26-31)

³⁴ Wilson, ‘Memorandum relative to boundary ...’, pp 27-28

³⁵ Binney, ‘Encircled Lands’, part one, p 143

³⁶ Milroy and Melbourne, p 120

³⁷ Ibid., p 142

³⁸ Ibid., p 143

³⁹ Ibid., p 144

Court and his superiors'.⁴⁰ They also allege that Wilson's arrangement with Upokorehe 'also cut across Tuhoe interests in the area of Punawai, Kutarere, Paparoa and Matekerepu and Waiotahe'.⁴¹ They argue that the exclusion of Tuhoe from Wilson's arrangements 'was an insult and a rebuttal of their mana and tino rangatiratanga', and that 'Wilson's out of court arrangements, opinions and bias continued into the proceedings and judgements of the Compensation Court'.⁴²

Miles has pointed out that:

the relationship between Wilson's out-of-court arrangements and the compensation process is not entirely clear. While Wilson was empowered to make these special arrangements with claimants, it seems these agreements still had to be validated by the court. None the less, in court, Wilson's evidence carried a considerable weight and his pre-sitting arrangements were often authorised without any independent inquiry as to whether these agreements were fair or satisfactory ... Many individual cases brought before the judges were dismissed where the Crown agent said they had been settled out of court.⁴³

Binney provides a useful analysis of Wilson's actions, the workings of the Compensation Court, and of the Confiscation generally. She states that 'the legality of the processes which Wilson, as Crown Commissioner, adopted in apportioning and allotting land was questioned from the beginning':

Initially, Wilson acted under the Friendly Natives' Contracts Confirmation Act of October 1866, which gave him the power, as Crown Commissioner, to negotiate and settle compensation claims to 'loyalists' outside the Compensation Court system.⁴⁴ But Francis Fenton, chief judge of the Native Land Court, and T H Smith, Civil Commissioner and judge, considered that the processes Wilson adopted – surveying, starting before the Compensation Court had made any decisions and, in particular, allotting blocks to military settlers regardless of the former ownership of the land – to be illegal. When Wilson went to Fenton, in October 1866, for general guidance as to the legal principles involved, the latter warned him then that he could not take the land of 'loyal

⁴⁰ Ibid., pp 144-145

⁴¹ Ibid., p 145

⁴² Ibid.

⁴³ Miles, *Te Urewera*, pp 134-135

persons' without financially compensating them. Nor could he make private 'arrangements' with the military settlers – as Wilson was doing – about what land they might have. The Compensation Court could not legally uphold such promises, Fenton said. When Wilson said that was not the government's view on the subject at all, as the whole purpose of setting aside native reserves was to meet the loyalists' claims through reserves, Fenton warned him that the government was not always correct, nor did it always act in a legal manner.⁴⁵

In Fenton's view, the law required the Court to award claimants their own land, if the Court upheld their claim. Judge Smith was also of the opinion that the processes Wilson had adopted were 'quite illegal'. He also made it clear to Wilson that the Court would find it impossible to believe that the *whole* of the eastern Bay of Plenty was 'required' for settlements of military defence.⁴⁶ The first session of the Court affirmed that Wilson had made an 'illegal settlement of the Opotiki district' but, Wilson claimed, he had managed to escape the difficulty in which the government had been placed by conceding some good lands for 'compensation' awards during the hearings. Thus, he said, 'I have been compelled to invade the Government reserves' of the better land so as to meet some of these claims.⁴⁷ His statements give a good indication of his activities, and most of the land that Wilson allotted to military settlers before the Court had met was not returned to the original claimants.⁴⁸

With regard to Tuhoe, Milroy and Melbourne argue that the Compensation Court failed 'to carry out their tasks in a fair and equitable manner', resulting in 'the transfer of Tūhoe confiscated lands into the hands of Pakeha and their Māori neighbours'.⁴⁹ They attest that while the Compensation Court was 'the official channel for confiscation procedures, ... the Court too often acted as an authorising agency for Mr Wilson's out of court arrangements'.⁵⁰ They have also critiqued the appointments of Lieutenant-Colonel Lyons and Major William Gilbert Mair as commissioners of the Compensation Court for the District of the Bay of Plenty, and question their impartiality. Both officers had actively participated in the preceding conflict in the Bay of Plenty, and William Rolleston, the Under-Secretary for Native Affairs,

⁴⁴ Binney, 'Encircled Lands', part one, p 172; she cites Gilling, 'Te Raupatu o Te Whakatohea', p 118

⁴⁵ Ibid., pp 172-3; she cites Wilson to Pollen, 25 July 1867, IA 1/1867/2771 (RDB 47432-3)

⁴⁶ Ibid., p 173; she cites Wilson to Pollen, 25 July 1867, IA 1/1867/2771 (RDB 47435-6)

⁴⁷ Ibid., p 173; she cites Wilson to Pollen, 18 April 1867, IA 1/1867/1321

⁴⁸ Ibid., pp 172-173; she cites Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 86

⁴⁹ Milroy and Melbourne, p 120

⁵⁰ Ibid., p 146

and Judge Fenton of the Native Land Court, had questioned their experience at the time of their appointments. Mair had led a force of Te Arawa into Matata and Te Teko, many of whom were settled near Matata 'on lands for which grants were issued by the Crown Agent and Compensation Court'. In February 1866, Lyons had commanded the expeditionary forces at Opotiki, and had led the punitive expeditions into Waioeka and Waimana. As Milroy and Melbourne point out, Lyon had 'raided the Pa of Te Anania Rakuraku, who later came before the court to make good his claim to Ohiwa'.⁵¹

6.2 Claims to Ohiwa heard by the Compensation Court

The Ohiwa area was strongly contested in the Compensation Court, further pitting Maori against Maori.⁵² On 7 March 1867, the Opotiki Compensation Court heard a claim brought by Rakuraku (on behalf of 'Ngaituhoe') regarding land at Ohiwa. Miles has provided an extensive account of the hearing of this claim, based primarily on the court minutes, in which she comments on the complex nature of the various claims to Ohiwa as well as on the court proceedings themselves. By way of preface Miles notes that:

If accounts of Rakuraku's meeting with Wilson are correct, then by the time the court opened in March 1867, Upokorehe had already been settled on Ohiwa lands. In spite of the role he played in this arrangement, Rakuraku would argue a claim to Ohiwa on the first day of hearings but, as it will be shown, the services this chief had shown the Government did not stand him in good stead before the Judges. Possibly by the time of his appearance, Rakuraku's reputation was sullied enough so that he no longer had leverage with Wilson.⁵³

Miles states that while 'the minutes of this court appearance are not full enough that the exact boundaries of Rakuraku's claim can be determined – it is a claim for 'Ohiwa'. She continues:

a cursory analysis of the minutes of competing claims for Ohiwa suggests that there was a very complicated relationship between the hapu who asserted rights there. Many of the Maori witnesses called by Wilson against claimants, were counterclaimants for land in the same general vicinity. In this case, and in a more general sense, the Compensation Court can be seen to have considered Maori customary tenure in a limited fashion only ...

⁵¹ Ibid., pp 147-149

The court had to balance claims based on ancestry, 'toa' claims or those deriving from conquest, claims by marriage or aroha, and occupational claims, and it clearly had a tendency to favour those claimants who could demonstrate recent occupation, unless of course they were otherwise disqualified as rebels.⁵⁴

According to the minutes, Rakuraku identified himself as 'chief of Ngaituhoe' and that his claim was on behalf of the 'Ngaituhoe tribe'. He also stated that his claim was through 'Tairona' (Tairongo) – 'an ancestor 12 generations back'. While admitting that 'the land has been lost several times', Rakuraku claimed that 'it has always been retaken by my people'. He stated that 'the whole of it belongs to the Ngaituhoe tribe – the descendants of 'Tairona'.' He said that Ngaituhoe 'have about 50 fighting men' and that 'the people live at Te Waimana', but also stated that 'Ngaituhoe and the Upokorehe are the tribes living on the land in question [that is, Ohiwa] now'. The two groups, he explained, 'are connected with each other. Neither of them are connected with the Whakatohea, Ngatihokopu and [Ngatihauipara? Or Ngatiwharepaia?] and Ngatiawa but [are] connected with the Urewera.'⁵⁵ It is then recorded that Rakuraku stated that 'They live within the claim but the whole of it belongs to my tribe'.⁵⁶ As the minutes do not record the questions asked of Rakuraku (by Wilson), it is difficult to decipher the meaning of this fragment. Miles suggests that:

Given that his claim was a tribal one for 'Ngaituhoe', possibly what he was saying was that he represented those people of Tuhoe and Upokorehe at Ohiwa who were very closely related. 'They', the Upokorehe, lived with Rakuraku who represented Tuhoe, the ultimate owners of the land in question. Alternatively, he could have been saying that some Whakatohea and Ngati Awa lived within the area he was claiming but that it really belonged to his tribe, the Ngai Tuhoe.⁵⁷

Rakuraku then appears to respond to questions relating to the movement of Pakeha troops in the area, stating that he has 'seen troops going to fight at the Waimana'. In response to an earlier question from Mair, it is recorded that Rakuraku did 'not believe that any of them ['Ngaituhoe'] have fought either against the government or the native allies'. He did, however,

⁵² Gilling, 'Te Raupatu o Te Whakatohea', p 140

⁵³ Miles, *Te Urewera*, p 135

⁵⁴ *Ibid.*, pp 135-136

⁵⁵ *Ibid.*, p 136; the annotations are hers

⁵⁶ Compensation Court minutes, Opotiki sitting, 7 March–8 April 1867 (RDB, vol 120, p 46061)

⁵⁷ Miles, *Te Urewera*, p 136

state in response to a question from Wilson, that he had been present at the battle of Te Tapiri ‘between the Arawas and Urewera’, two years previously. Rakuraku also stated, in response to another unidentified question that ‘there is a road up the Waimana valley to Mangapohatu’.⁵⁸ This could be seen to indicate that this line of questioning was as much about ascertaining whether or not Rakuraku was to be labeled a ‘rebel’, as it was about hearing claims to confiscated lands. As Miles has noted, the admission that Rakuraku had been present at Te Tapiri ought not to have mattered to the compensation court because the battle had taken place prior to the Governor’s Peace Proclamation of September 1865. Wilson, she states, ‘was undoubtedly trying to illustrate that “the Urewera” were still a rebellious tribe by focusing on the [perhaps questionable] “help” Rakuraku had given the Government troops’.⁵⁹ To support his case, Wilson called two witnesses who had accompanied Colonel Lyons’ expedition up the Waimana valley in February 1866: Jeffs, an officer in the 1st Waikato Regiment, and Edwards, who accompanied the expedition as an interpreter. As Miles states, ‘they were called to refute Rakuraku’s protestations that he had not been involved in rebellious activities’.⁶⁰ Both Jeffs and Edwards claimed that Rakuraku had deliberately misled Lyons’ party, informing them that ‘there was no road into the Urewera country’. Jeffs told the court that Rakuraku had admitted that ‘a number of his young men were among the Urewera rebels’, while Edwards stated that on another occasion, he had accompanied ‘the expedition when Rakuraku was disarmed’, and that Rakuraku ‘did not deny having arms in his possession’.⁶¹ Milroy and Melbourne have questioned the appropriateness of this evidence in the context of Rakuraku’s claim before the compensation court, as it ‘bore no relevance to Rakuraku’s ancestral associations and occupational claims to Ohiwa and Waimana’.⁶²

A witness named Hirini who, it was recorded, ‘claims through Tairona [Tairongo] to Upokorehe and Ngaituhoe’ spoke in support of Rakuraku’s claim. According to the minutes, Hirini stated that:

⁵⁸ Compensation Court minutes, Opotiki sitting, 7 March–8 April 1867 (RDB, vol 120, p 46061)

⁵⁹ Miles, *Te Urewera*, p 137

⁶⁰ *Ibid.*, p 137

⁶¹ Compensation Court minutes, Opotiki sitting, 7 March–8 April 1867 (RDB, vol 120, pp 46063-5)

⁶² Milroy and Melbourne, p 150

It [presumably Ohiwa] belongs to my tribe. I am the connexion between the two tribes. It has belonged to us for seven generations. No other tribe or individual can claim any of that land.⁶³

In response to questions from Wilson, Hirini stated that 'Upokorehe is my tribe', and that 'they are unable to bring any men into the field there are so few of them'. According to the minutes, Hirini 'mentions some 18 or 20 men who call themselves Upokorehe but says they do not belong to that tribe'. This may be in reference to the dispute over those people included as 'Upokorehe' in the list of owners of the Hiwarau block and Hokianga Island (as previously arranged by Wilson), but who, as it would continue to be claimed, were allegedly not Upokorehe. The minutes go on to record that 'if we reckon women and children there are about fifty' members of Upokorehe. 'Ngaituhoe at Waimana,' the minutes continue, 'number about fifty able men or sixty counting the whole'. It was also recorded that 'Upokorehe and Ngaituhoe are distinct hapus' and that 'once they fought against each other'. Hirini then appears to have stated that the land described (that is, Ohiwa) 'is not all Rakuraku's claim ... but it belongs to his tribe'. It was also acknowledged that 'Ngatihokopu and Ngatihauipara live on part of it, through their connections with both Urewera and Ngatiawa'. It was recorded that:

There has been fighting about that land. Ngatiawa against Whakatohea. There has been much fighting and numbers have been killed. When Christianity was introduced the fighting ceased but the land remained in dispute even until the present time.⁶⁴

Hirini concluded by reportedly stating that 'We have the proper claim but there are many other tribes claim our lands'.⁶⁵

Wilson called a number of Ngati Awa and Whakatohea counterclaimants against Rakuraku and Hirini's claim. Kepa Toihau of Ngati Awa, who stated that he lived at both Ohiwa and Ohope, claimed land at Ohiwa through the ancestor Tairona (Tairongo), 'and by right of conquest'. He described the boundaries of his land as being from Waimana to the sea and to Kaokaoroa. He stated that 'Ohope belongs solely to me – my tribe are the owners', and that 'Ohiwa is a disputed country'. He claimed not to be aware of 'the Urewera' ever having fought

⁶³ Compensation Court minutes, Opotiki sitting, 7 March–8 April 1867 (RDB, vol 120, p 46062)

⁶⁴ Ibid.

⁶⁵ Ibid. (RDB, vol 120, p 46063)

over Ohiwa, but did state that ‘the Urewera all fought against the Pakehas’.⁶⁶ Tiwai Piahana stated that ‘the Whakatohea have claims within the area claimed by Rakuraku’, and that ‘Upokorehe belong to the Whakatohea’. Rewiri Te Rangimatanuku likewise questioned Rakuraku’s boundaries, stating that the lands in question belong ‘to the Upokorehe and the rest of the tribes of the Whakatohea’. Both acknowledged that Upokorehe had taken up arms against the government.⁶⁷

There is no record in the Compensation Court minutes of a judgement for Rakuraku’s claim, merely an indication that the case was closed. However, the minutes for the sitting of the court in Whakatane on 1 October, record that Rakuraku’s claim ‘to land at Ohiwa’, that had been heard in the first sitting, had been dismissed, the ‘claimant having been in rebellion’.⁶⁸ It is not known if this was an attempt by Rakuraku to make another claim to Ohiwa as Miles has suggested,⁶⁹ or merely the recording of the dismissal of the initial claim. There is likewise a record in the minutes of the court’s decision regarding Te Kepa Toihau and others’ claim to Ohiwa that had also been heard in the first (Opotiki) sitting of the court. While two of Kepa’s co-claimants (Tukehu and Tiopira) were awarded 25 acres each ‘to be selected on the shores of Ohiwa’, the other claims were dismissed ‘in consequence of claimants having been in rebellion’.⁷⁰ Regardless, as a result of his perceived part in the failure of the military forces to capture Kereopa in Te Urewera, Rakuraku was labelled as ‘having been in rebellion’, and his claims to lands at Ohiwa was dismissed. In any case, the lands at Ohiwa had, Milroy and Melbourne claim, already been ‘set aside to Upokorehe and Ngati Awa and Te Arawa’.⁷¹

Milroy and Melbourne further allege that ‘the fate of all Tuhoe claims had already been decided before they arrived in court’, and that their claims ‘were met with frustration and remained unresolved’.⁷² With regard to the Compensation Court process in general, they argue that:

Evidence before the Court was brief and insubstantial. Counter claims by other tribes were equally brief and without proper evidence. It became largely a contest of the word of

⁶⁶ Ibid. (RDB, vol 120, p 46064)

⁶⁷ Ibid. (RDB, vol 120, pp 46065–46066)

⁶⁸ Opotiki minute book 2, 1 October 1867, fol 87 (RDB vol 121, p 46617)

⁶⁹ Miles, *Te Urewera*, p 138

⁷⁰ Opotiki minute book 2, 1 October 1867, fol 87 (RDB vol 121, p 46617)

⁷¹ Milroy and Melbourne, p 150; they cite AJHR 1872, C-4; 1874 C-3

⁷² Ibid., p 149

one chief against another. In the case of Rakuraku, Pākehā witnesses were used to discredit his integrity. In the evidence against Tūhoe claimants, Crown witnesses accused Tūhoe of possessing guns. While this did prejudice their claims, it should not have. To add to the personal disappointment of Tūhoe chiefs such as Rakuraku ... they were physically removed from their kāinga and taken captive. Rakuraku was held at Hokianga on the Ōhiwa harbour where he was put under the surveillance of Ngāti Awa ... Court officials tended to favour certain tribal groups over others.⁷³

Other claims before the Compensation Court made reference to Rakuraku's standing with regard to Ohiwa harbour. For example, Henare Whakarongohau and others claimed lands extending from Ohiwa south to Te Poroa, apparently on behalf of the Ngaitamahau hapu.⁷⁴ Henare described Rakuraku as 'the man who looked after my affairs', and stated that he was of the opinion that he and his co-claimants 'have a share in all those places Rakuraku and the tribe to which he belongs have a claim to the same land as have likewise the Upokorehe'.⁷⁵ Another claimant, Ritihia Ropiha, claimed 'the whole of the Upokorehe land' at Ohiwa, for herself and some 30 co-claimants. Miles suggests that this was a claim on behalf of the Upokorehe hapu.⁷⁶ Ritihia said that: 'It has been agreed upon by Rakuraku and myself that I should claim the whole of the land in dispute between the Upokore[he] and Whakatohea and the Ngatiawa.' She said that Upokorehe number only about ten, and explained that it was 'many years since [she] lived on the land. After Te Papa went to the Urewera. A short time afterwards a war party made me a slave and carried me away to Hokianga in the North. Previous to this we numbered about 100'. Ritihia acknowledged that 'all the tribe have sinned against the Government', except herself as she had been at Auckland, and stated that this was why she claimed the land – as the others were not in a position to do so. She asked for 300 acres in compensation, stating that she did not wish to be paid in money. Ritihia also stated that 'Rakuraku is of the Upokorehe too'. She was awarded 50 acres near the southernmost inlet on the eastern shore of the harbour – across from the Hiwarau block (Waiotahi Parish, Lot 132).⁷⁷ Miles notes that it is unclear as to whether this grant was for Ritihia alone, or

⁷³ Ibid., p 153

⁷⁴ Compensation Court minutes, Opotiki sitting, 7 March–8 April 1867 (RDB vol 120, p 46083); Miles, *Te Urewera*, p 138. Miles notes that it is not clear to which larger iwi affiliation Ngaitamahau belonged, but possibly Whakatohea.

⁷⁵ Compensation Court minutes, Opotiki sitting, 7 March–8 April 1867 (RDB vol 120, p 46083)

⁷⁶ Miles, *Te Urewera*, p 138

⁷⁷ Compensation Court minutes, Opotiki sitting, 7 March–8 April 1867 (RDB vol 120, pp 46151-2); Awards of the Compensation Court at Opotiki sitting, 7 March–8 April 1867 (RDB vol 120, pp 46265-272)

whether her 30 co-claimants would also be on the grant, and suggests that as Wilson had already settled Upokorehe at Hiwarau and Hokianga Island, this might explain why Ritihia was awarded this smaller lot.⁷⁸

According to Miles, 'Henare Whakarongohau's, Ritihia's and Hirini's evidence seems to uphold the proposition that the chief Rakuraku looked after the land and people of Te Upokorehe. At the same time, an evident distinction was made between Upokorehe 'proper' and those people represented by Rakuraku.' This distinction,' Miles continues, 'was made by Rakuraku himself, when Wilson was arranging the Hiwarau reserve for Upokorehe with him in December 1866' and when 'he claimed Ohiwa in the Compensation Court for 'Ngaituhoe'.' Gilling, Miles points out, 'considering the connection of Whakatohea to Upokorehe, notes that 'whether Upokorehe, especially those led by Rakuraku, could have been claimed as in any way part of Whakatohea was apparently a very moot point. They certainly seemed to have functioned independently'.⁷⁹ Furthermore, as already noted, Rakuraku's name does not appear on the ownership list for either Hiwarau or Hokianga Island.⁸⁰

In another case before the Compensation Court, Joseph L Kennedy claimed 1800 acres of land at 'Paiwiwi' at Ohiwa (between Ohiwa and Waiotaha) 'through his mother Rangirauwaka of the Upokorehe tribe'. He claimed she had exclusively 'occupied the land' before being taken into slavery in 1838. Kennedy stressed that he did 'not claim with Upokorehe'. One witness, Ihaia [?], stated that 'No other hapu had any claim to any of the land. All the land between Waiotahi and Ohiwa belonged to the Upokorehe.' Another witness, Hira, stated that Rangirauwaka had 'inherited it from her father [Te Rupirau]. It was hers solely. The hapu had no claim to it.' Kepa Toihau of Ngati Awa, who had his own claim to Ohiwa lands before the Court, stated that the land in question had belonged to Upokorehe, but that his claim (on the basis of both conquest and ancestry) was superior to theirs. Another witness stated that 'in accordance with the Maori idea no individual could claim so large a piece', and that 'the land between Ohiwa and Waiotahi could not belong to one man'. Wi Teria agreed with this, stating that 'the land in question belonged to the Upokorehe hapu', who 'numbered about 18 men'.

⁷⁸ Miles, *Te Urewera*, p 138

⁷⁹ *Ibid.*, pp 138-9; she cites Gilling, 'Te Raupatu o Te Whakatohea', p 110

⁸⁰ *Ibid.*, p 139

Rewiri Te Rangimatanuku likewise stated that ‘Upokorehe own all that land’. Kennedy was granted fifty acres of land at Paiwiwi.⁸¹

Following her analysis of Rakuraku’s claim in her *Te Urewera* report, Miles summarises ‘the remaining debate that took place between Tuhoē’s counterclaimants to Ohiwa in the court’, based on research presented in a report commissioned by the Waitangi Tribunal for the Ngati Awa and Eastern Bay of Plenty (Wai 46) inquiry.⁸² Rather than undertaking the same extensive project, I have reproduced Miles’ summary here:

Much of the subsequent debate concerning Ohiwa in the Compensation Court was between Ngati Awa and Whakatohea claimants. Kepa Toihau of Ngati Awa claimed on the basis of both conquest and ancestry, and he and his co-claimants cited a division of the Ohiwa harbour that had apparently been previously agreed to by Whakatohea. The boundary which had been established between the two iwi lay at Hokianga, and Ngati Awa seemed determined that the Whakatohea claimants in the court recognise this boundary. Hori Kerei Kawakura, however, challenged the Whakatohea right to Ohiwa on the basis of inadequate occupation, even of the eastern side of the harbour, and his comments suggest that he may have been claiming a large share of Ohiwa in anticipation of losing some to the Crown:

Had the Whakatoheas lived for any considerable length of time on the other side I would not dispute their claim. The river at Hokianga is the boundary. I desire to prove my claim to all beyond the river in order that a portion may be left to me after a portion has been taken for my crimes against the Government.⁸³

Whakatohea witnesses, while admitting having been driven from their lands by Ngati Maru (Hauraki) and Ngati Awa, denied having been returned to Opotiki by the agency of Kepa Toihau. Tiopira of Pahipoto had, for example, claimed that Whakatohea were brought back to Opotiki after obtaining firearms from Te Papa (Tauranga), and that Te Kepa had settled Upokorehe at Waitotahi.

⁸¹ Opotiki Compensation Court minute book, 7 March-8 April 1867, 12 March 1867, fols 14-16 (RDB vol 120, pp 46066-8); 14 March 1867, fols 25-26 (RDB 46078-9); Awards of the Opotiki Compensation Court 7 March-8 April 1867 (RDB vol 120, pp 46178-9)

⁸² T Bennion and A Miles, ‘Ngati Awa and other Claims’, report commissioned by the Waitangi Tribunal, September 1995 (Wai 46 ROI, doc II), pp 88–93

⁸³ Miles, *Te Urewera*, p 139; she cites Hori Kerei Kawakura (RDB, vol 120, p 46113)

The Whakatohea chiefs Rewiri Te Rangimatanuku, Wi Teria and Tiwai Piahana, seemed to argue that any Ngati Awa claim to the whole of the Ohiwa harbour was based on conquest alone, and they attacked the ancestral basis of Kepa's claim:

Those claiming Ohiwa have no right to it or Whakatane. They belong to me. My ancestors owned Whakatane. Ngatiawa ought to return to Rangitaiki where they would have been by this time but for the Europeans.⁸⁴

They said that they had acquired their own guns after Te Papa which allowed them to return to Opotiki. They said that they landed at Ohope expecting attack from Ngati Awa but this did not occur; they then occupied Uretara Island, in the Ohiwa harbour, without reference to anyone. Tiwai said that Upokorehe were the hapu left at Ohiwa, with the other Whakatohea moving to Opotiki. Tiwai asserted that it was Upokorehe who were living at Ohiwa when the Europeans came, not Kepa nor Hauauru Taipari (of Ngati Maru and Ngati Awa, who had himself lodged a claim for Ohiwa lands). Whatever they thought of the ancestral basis of the Ngati Awa claim to Ohiwa, some Whakatohea witnesses acknowledged the Ngati Awa occupation of the western side of the harbour. Wi Teria and Tiwai Piahana, for example, asserted that the boundary between themselves and Ngati Awa was at Pukenui, presumably further west than the aforementioned agreed boundary at Hokianga. Tiwai did admit, though, that the Ngati Awa claimants Wepiha, Hori Tunui, and Karanawa (?) had claims beyond Pukenui.

The sales of various parts of the harbour to European settlers were cited by both Ngati Awa and Whakatohea as evidence of the control they felt they rightfully exercised over Ohiwa, and as reasons for escalating conflict over their respective boundaries in the area.

Another interesting point about Kepa's claim is the fact that he admits to being a rebel as do his co-claimants. However, Hetaraka and Wepiha, while admitting they were rebels, made the distinction between themselves, as Kingites, and the Hauhau from whom they were quick to dissociate themselves. Rebels or not, the court decided to award Apanui and Wepiha lands at Ohiwa, while commenting that they had both compromised themselves, and they had to 'trust to the leniency of the Government'. Wilson indicated that he wanted to reserve the right of appeal in Wepiha's case. Presumably, the land awarded to Apanui and Wepiha was in addition to the Ngati Awa tribal reserve provided at Ohope and Orini, which Wilson had negotiated in an out-of-court arrangement with Ngati Awa. The judgment in favour of these well-known 'tangata hara' caused outrage among

⁸⁴ Ibid.; she cites Rewiri Rangimatanuku (RDB, vol 120, p 46116)

Whakatohea, whose own status as notorious ‘rebels’ in the eyes of the Government, had left them dispossessed of most of their lands, including their tribal interest at Ohiwa.⁸⁵

6.3 Discussion of the Compensation Court

Speaking of the hearing of Rakuraku’s claim, Binney makes the point, which can also be read in general terms, that the ‘contentious arguments’ presented by claimants and counterclaimants ‘were fomented by the structure of the Court and its requirements to exclude “rebels”’.⁸⁶ The Compensation Court can thus be seen as another site for the continuing conflict between iwi groups with regard to their access to resources such as Ohiwa Harbour. Binney also makes the point that only three Tuhoe chiefs presented their claims at the Court hearings: Rakuraku, with regard to Ohiwa and the lower Waimana, and Akuhata Te Hiko and Te Makarini Waeari who claimed Tuhoe land at Opouriao. This in itself, Binney argues, ‘is indicative of [the Compensation Court’s] crushing procedures’:

the chiefs had had to lodge a prior claim *in writing*. They had been given, in practice, after the publication of the gazette notice, only two months in which to lodge their claims: October–November 1866. It is probable that Tuhoe did not even realize that their lands had been taken until late November 1866, when Wilson and St John rode out to Waimana to meet with Rakuraku. Certainly, the prescriptions set made it virtually impossible for the inland Tuhoe leaders to meet the Court’s requirements. They were further required to appear personally before the Court to defend their claims. The records of the cross-examinations are terse, and the Court situation was visibly adversarial. The Crown’s witnesses were mainly the same men, appearing in case after case, indicating that it had organised informants to contest the opposing claims. The Court quickly dismissed all three of the Tuhoe claims.⁸⁷

As Miles has stated, in effect the Tuhoe claims were dismissed without the court making any investigation as to the validity of the assumption that all Tuhoe claimants were ‘rebels’, ‘or indeed, that the rest of the tribe were’. This was because, under the New Zealand Settlements Act 1863, the onus lay with claimants to prove that they had not been rebels’. Miles also makes the point that ‘the skirmishing between colonial forces and Tamaikoha’s men that continued

⁸⁵ Ibid., pp 139-140

⁸⁶ Binney, ‘Encircled Lands’, part one, p 146

⁸⁷ Ibid., p 145

throughout the Compensation Court sittings would hardly have helped Tuhoe's claim in the court'.⁸⁸

Where claims were found by the Compensation Court to be adequately proved, awards of land (and sometimes cash) were made. Claims not proved were dismissed. Before all the cases could be heard, the Bay of Plenty Compensation Court stopped its hearings in December 1867, due to the continuing hostilities in the area.

However, even while the hearings were in progress, the Crown was disposing of some of the land in the confiscated area. On 31 August 1867, a proclamation dated 12 August 1867, announced, under the New Zealand Settlements Act, 1863, the setting aside of a significant area of land within the eastern Bay of Plenty confiscation boundary, upon which would be 'laid out a sufficient number of towns and farms to give full effect to the provisions of the contracts which may be entered into by or on behalf of the Government of New Zealand with certain persons for the granting of land to them in return for military service'. The area, which included Ohiwa Harbour and its surrounds, was described as follows:

All lands within the Bay of Plenty District, bounded by a straight line running due South from Tirohanga [to the east of Opotiki] for seven miles, thence by a line bearing West which shall strike the Waiotahi River, thence ascending the course of the Waiotahi River until it reaches the southern boundary of the confiscated block, thence running westerly by the southern boundary of the confiscated block until it reaches the Whakatane River, thence by the course of Whakatane River to the sea, and thence from the mouth of Whakatane by the sea coast to Tirohanga.⁸⁹

In designating this land as available for the laying out of towns and farms for military settlers, prior to the completion of hearing all claims before the Compensation Court, the Crown appears to have denied claimants, and potential claimants, the full opportunity to have their claims heard, and to defend their lands from the claims of others. Added to this was the noticeable absence of many claimants, as noted by Wilson, above.

The 12 August 1867 proclamation was the result of continued concern by the Colonial Secretary's Department regarding both Wilson's activities, and the perception of the

⁸⁸ Miles, *Te Urewera*, p 161

Compensation Court judges, that 'the Crown was in wrongful possession of the Bay of Plenty'.⁹⁰ The legal opinion of Attorney-General James Prendergast was that the existing Order-in-Council of 1 September 1866, which had adjusted the boundary was legally sufficient, and that all land within those boundaries 'is to be deemed Crown Land'.⁹¹ Therefore, Binney states, 'the Crown controlled allocation of title; however, this allocation was still to be under the terms of the original Act of 1863. Despite Prendergast's legal opinion, 'Richmond advised the government that, in order to protect itself, a further governor's Order-in-Council should be issued, which stated that certain areas within the district taken were set apart for military settlements under the Act of 1863'.⁹² In October 1867 the Confiscated Lands Act was passed, which allowed for the awarding of lands to loyalists and 'surrendered rebels' independently of the Compensation Court. This, Gilling states, was the Act 'under which the Opotiki lands confiscated under the New Zealand Settlements Act were actually dealt with'.⁹³

Section 2 recognised implicitly that there were political and equity problems arising from the operations of the Compensation Court throughout the country. To circumvent them s2 empowered the Governor himself to make awards of land to those whom the Court had awarded 'less than may have been claimed or may appear to the Governor to be just and reasonable'. Section 3 allowed him to make reserves for Maori who appeared 'deserving' and who 'shall appear to him to have acted in the preservation of peace and order and in suppressing the rebellion'. Section 4 allowed him to make reserves for Maori who 'shall be proved to his satisfaction to have been in rebellion and have subsequently submitted to the Queen's authority'.⁹⁴

Under this legislation, as Binney has noted, 'the government could now make grants if the Compensation Court failed to compensate. It could also, if it chose, grant land reserves to Maori within the areas designated as available for military settlement'.⁹⁵ Such grants would

⁸⁹ *New Zealand Gazette*, 31 August 1867, 45, p 336

⁹⁰ Binney, 'Encircled Lands', part one, p 174; she cites W Gisborne, acting Colonial Secretary, to AGG-A, 9 July 1867, 1867/605, AGG-A 1/3

⁹¹ Attorney-General James Prendergast to Colonial Secretary, 7 June 1867, IA 1/1867/2771 (RDB 47443); cited in Binney, 'Encircled Lands', part one, p 174

⁹² Binney, 'Encircled Lands', part one, p 174; she cites J C Richmond, Memo dated 3 July 1867, 1867/605, AGG-A 1 /3

⁹³ Gilling, 'Te Raupatu o Te Whakatohea', p 118

⁹⁴ *Ibid.*, pp 118-119

⁹⁵ Binney, 'Encircled Lands', part one, p 175

inevitably be made to those Maori considered to be 'loyalist' and to those deemed to be 'surrendered rebels'.⁹⁶

Inconsistencies were noted in the findings of the Compensation Court regarding the granting of land to people, such as Wepiha and his father, Apanui, who Wilson recorded were 'tangata hara' or 'rebel', prior to the change in legislation. When the Court made awards to Wepiha and Apanui in March 1867, Whakatohea protested to Wilson, who reported to Daniel Pollen, Auckland Agent for the General Government, that:

They complained that the judge [Mair] was partial to Ngatiawa, and they accused me with deceiving them, by saying the lands of rebels were forfeited, which had prevented them from making claims; whereas now they saw the law made no distinction between rebels and loyal persons, and therefore they demanded to have another sitting of the court to which they might prefer [?] claims for Opotiki and the land at Ohiwa, which they of course asserted belonged to them – and not to Apanui and Wepiha, who were the very men they said that had brought them, the Whakatohea, into trouble, by conducting Kereopa and Patara to Opotiki, and using their influence to secure the success of those bad men's designs.⁹⁷

Wilson advised Pollen that he did not agree with the judgement, referring to 'the settlement of the Ngatiawa chiefs at Ohiwa' as 'a very unwise step'. He called for the case to be reheard, stating that he thought it 'not merely desirable, but necessary to show the natives of the Bay of Plenty district that the Agent for the Crown has not deceived them, and that the Government has not been politically inconsistent in taking confiscated lands'.⁹⁸

Pollen supported Wilson (referring to the decision as 'objectionable on principle and most unfortunate in substance'), and he in turn wrote to both the Chief Judge of the Native Land Court and the Colonial Secretary calling for a rehearing.⁹⁹ The Government approved a rehearing at Maketu on 20 June 1867, but it had to be abandoned when only one of the three

⁹⁶ Ibid., p 177

⁹⁷ J A Wilson to D Pollen, Auckland, 1 May 1867 (RDB vol 122, pp 47124-47125)

⁹⁸ Ibid.; see also J A Wilson to F Whitaker, Auckland Agent for the General Government, 14 March 1867, DOSLI Hamilton: Opotiki Compensation Court 2/3, Correspondence 1867-1868 (RDB vol 122, pp 47122-47123, 47124-47126)

⁹⁹ D Pollen, Memo for the Chief Judge of the Native Land Court, 7 May 1867; D Pollen to the Colonial Secretary, 11 May 1867, DOSLI Hamilton: Opotiki Compensation Court 2/3, Correspondence 1867-1868 (RDB vol 122, pp 47117-47121, 47127)

judges (Mair) was able to get to the venue.¹⁰⁰ It is not clear if the matter was ever reheard, or if Apanui or Wepiha ever actually received the Ohiwa land.

According to Binney the legality of the ‘seizure’ of Tuhoe [and this can be applied to other eastern Bay of Plenty iwi] land by the Crown ‘was pinned to the Order-in-Council of 1 September 1866’:

This decree rested on the ‘Proclamation of Peace’ published on 5 September 1865, which had stated that confiscations from the ‘present War’ had terminated, but which simultaneously pronounced the military occupation of the eastern Bay of Plenty. The legislation to provide for land confiscation from the existing war, the New Zealand Settlements Act 1863, was subsequently extended until 3 December 1867. From the moment of Wilson’s arrival in his capacity as the Crown’s Commissioner (and before that, too, as the provincial government’s agent) in 1866, he acted as if all the land was the Crown’s for him to allocate at will. He exercised an arbitrary power, independent of the Compensation Court, rewarding or punishing as he thought fit.¹⁰¹ The legislation of October 1866 gave him an authority to act independently of the Court in the matter of granting land in compensation, but his behaviour aroused concern in the minds of both Smith and Fenton. Prendergast’s ruling of 7 June 1867 was followed by further anxiety and yet another Order-in-Council on 12 August 1867, in order to designate the area that Wilson intended for military settlement. Both Fenton and Smith recognised the dubious legality of Wilson’s actions, but finally they capitulated to executive intervention.¹⁰²

‘On the ground,’ Binney states, ‘confiscation was largely carried out by the independent ‘arrangements’ of the Crown’s Commissioner’, with the Court merely rubber-stamping many of Wilson’s arrangements. As the label of ‘rebel’ was attached to all Tuhoe, Tuhoe claimants had little chance of success in the Court Process. Even the claims of Tuhoe leaders such as Rakuraku who, as Binney puts it ‘had visibly tried to be reasonably co-operative’, failed in the Compensation Court.¹⁰³ Binney argues that ‘the application of the 1863 statute to the eastern Bay of Plenty could *not* be described as following the *one* criterion that the Act set as the legal ground for confiscation: that the people who were dispossessed had taken up arms and were

¹⁰⁰ W G Mair to Chief Judge, Compensation Court, 5 October 1867; Wepiha Apanui to Te Penetana, 21 June 1867 DOSLI Hamilton: Opotiki Compensation Court 2/3, Correspondence 1867-1868 (RDB vol 122, pp 47147-47150, 47160); Gilling, ‘Te Raupatu o Te Whakatohea’, p 142

¹⁰¹ Binney, ‘Encircled Lands’, part one, p 176; she cites Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 81

¹⁰² Ibid.

in ‘rebellion’ in January 1866’. Instead, Binney continues, ‘the people of the eastern Bay of Plenty were subjected to an arbitrary confiscation of their low-lying lands; the local acts of resistance then spread as a *consequence* of confiscation’.¹⁰⁴

6.4 Other lands in the Ohiwa area

In addition to Wilson’s out-of-court arrangements regarding the Hiwarau block, Hokianga Island, and the Ohope Reserve, and those already discussed, a number of other grants to land at Ohiwa were awarded by the Compensation Court. Among those awarded land were Wiremu Pierieri (Lot 248, Parish of Waimana, 40 acres); Kepa Toihau (Lot 249, Parish of Waimana (Ohakana Island), 102 acres); and Huriana (Lot 276, Parish of Waimana (Lot 2, Pitcairn’s Survey (Hiwarau sections)), 25 acres). While other grants were made by the Compensation Court, it has not been possible to determine all the details. In the years following the Compensation Court sittings, other land was granted to Maori at Ohiwa, as follows.

Rakuraku and Whakarae

Despite his claim before the Compensation Court being disallowed, in 1874 land at Whakarae was set-aside for Rakuraku and his immediate hapu (some 38 people). The land (Lots 183 and 184, Parish of Waimana) comprised 142 acres.¹⁰⁵ However, ‘typical of the bureaucratic mess associated with the compensation processes, legal title was not formally granted until much later, and only after Rakuraku’s death’.¹⁰⁶ According to Binney:

The grant of Whakarae to Rakuraku and his small hapu was contested by Te Upokorehe, to whom Hiwarau, the adjacent land on the peninsula that includes the Matakerepu long ridge pa and gunfighter pa, had been reserved. But there seems little doubt that Rakuraku Rehua and his people had held Whakarae for Ngati Raka and Tuhoe.¹⁰⁷

The grant to Rakuraku was also to be contested by Tamaikoha, who Binney writes, ‘certainly understood that Whakarae (Matakerepu) would be returned to Te Whakatane and Tuhoe in

¹⁰³ Ibid., p 177

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., p 23; she cites H Brabant to ND, 10 August 1874, MA 1/1907/183

¹⁰⁶ Ibid. Binney notes that title was granted finally through the Native Land Court in 1905, Whakatane MB 8, pp 163, 167–8, 170–171. The land adjoined the small pa on the south-west side of the Nukuhou river

¹⁰⁷ Ibid., p 23

compensation for the death of Tipene in 1870'.¹⁰⁸ Tamaikoha claimed that William Mair had promised him as much.¹⁰⁹ As discussed above, Tipene, Tamaikoha's uncle, had been killed in St John's assault on Whakarae after the acceptance of a peace agreement.¹¹⁰ According to Binney, Tamaikoha first heard that Whakarae had been promised by Wilson to Hemi Kakitu and Upokorehe as part of the Hiwarau Block, and 'indeed, the long ridge pa and the gunfighter pa were both included in the grant'.¹¹¹ Binney writes:

Mair therefore told Tamaikoha that a different piece of land would be found for him. The Civil Commissioner, H T Clarke, had agreed, Tamaikoha said, and promised that some land should be given to him for the '*тино kohuru*' (the great treachery).¹¹² Brabant promised that he would look into the matter. He inquired when he returned home, writing to the Native Minister in May 1874 to say that the 'Urewera' claimed that they had been promised land at Ohiwa because of the attack by St John.¹¹³ But nothing happened about Tamaikoha's request until he re-activated the inquiry in 1876.¹¹⁴ His request led, finally, to the grant of the two small plots of town land at Opotiki: Lots 56 and 57 (totaling two roods) in 1877.¹¹⁵ This award of half an acre in Opotiki was Tamaikoha's sole compensation. If there was little for him, there was less for his hapu. In 1874, the justice of the grievance was scarcely admitted by the government, let alone addressed.¹¹⁶

As Binney has stated, 'Tuhoe's collective claim to Whakarae became a new site of contest between Rakuraku and Tamaikoha'.¹¹⁷

The grant of Whakarae to Rakuraku in August 1874 had been made in response to Rakuraku's request the previous year for land in the Waimana area of the confiscated block. At the time, Binney writes:

Brabant, who had given his support to Rakuraku's request, told McLean that Te Upokorehe were wanting to drive Rakuraku out of Hiwarau, where he was then living.

¹⁰⁸ Ibid., p 349

¹⁰⁹ Ibid., p 304

¹¹⁰ Ibid., pp 214-216

¹¹¹ Ibid., p 304; Johnston, 'Wai 203/339 Research Report', pp 123-126;

¹¹² Binney, 'Encircled Lands', part one, p 304; she cites AJHR 1874, G-1A, p 5

¹¹³ Ibid., pp 304-5; she cites Brabant to ND, 1 May 1874, MA 1/1874/2550, MAICR

¹¹⁴ Ibid., p 305; she cites Tamaikoha to ND, 19 August 1876, MA 1/1876/4577, MAICR

¹¹⁵ Ibid.; she cites Brabant to ND and Waikato Lands Office, 24 January 1877, OCC 2/8; she notes that Brabant's letters there are annotated that the land grants had been recorded. Brabant also stated that Tamaikoha had expressed his satisfaction with the sections: to ND, 13 February 1877, MA 1/1877/814, MAICR

¹¹⁶ Ibid.

Brabant added that Rakuraku complained that the government had given him permission to live there by the Ohiwa harbour, but had not granted him any land on which to live within the confiscated block.¹¹⁸

As discussed above, Rakuraku appears to have been instrumental in the negotiation of Wilson's out-of-court arrangement to settle 'Upokorehe' on the Hiwarau block and Hokianga Island. As noted, according to Mihirangi Houtu's 1939 account of these events, when Wilson had told Rakuraku that he should himself stay there 'and be the leader of the Upokorehe', Rakuraku had responded that 'he could not stay as he was not of Upokorehe'.¹¹⁹

In 1873, Brabant had urged that the land at Whakarae be formally granted to Rakuraku, otherwise he would be forced to return inland. As noted, the grant was not confirmed until 1905, after Rakuraku's death. The grant was therefore made out to his younger brother, Mihaera Rehua and 59 other members of his extended family.¹²⁰ Binney states that:

The presiding judge at the time, Gilbert Mair, stated that the land was to be inalienable (except for leasing). But soon after the title was granted, Tamaikoha contested it. He re-asserted his claim on the grounds that Whakarae had been promised as compensation for Tipene's death. Because of the tension, it was decided that Mair should advise the Rakuraku family to obtain a certificate of title as a Crown grant, in accordance with the 1905 Court order.¹²¹

Binney argues that Mair deliberately 'chose *not* to uphold Tamaikoha's claim' to Whakarae, and that his refusal 'to acknowledge the justice in Tamaikoha's case indicates that he did not wish to reopen the matter of Tuhoe and Te Whakatane's right to the compensation that Tamaikoha was promised for St John's attack'.¹²²

Land at Waiotahe for Hemi Kakitu

In addition to being included in the schedules of owners for both the Hiwarau block and Hokianga Island, as discussed above, Hemi Kakitu had bought a block of land at Waiotahe

¹¹⁷ Ibid., p 350

¹¹⁸ Ibid.; she cites Brabant to McLean, 2 September 1873, MA 1/1907/183

¹¹⁹ Opotiki minute book 30, 19 July 1939, fols 13-15; Johnston, 'Wai 203/339 Research Report', pp 59-60

¹²⁰ Binney, 'Encircled Lands', part one, p 351; Whakatane minute book 8, pp 163, 167-8, 170-171

¹²¹ Binney, 'Encircled Lands', part one, p 351; she cites Gilbert Mair annotations dated 30 April, 7, 14 May 1907, cover sheet MA 1/1907/183

¹²² Ibid., pp 351-2

from the government in 1872 that had apparently belonged to him and his people before it was confiscated. The grant of title for the block (Lot 389 Waiotahi Parish, 92 acres) was issued in 1881, but had been held by Hemi Kakitu since 16 August 1873.¹²³ The purchase had been arranged by Wilson, who described the land at the time as comprising some 400 to 500 acres. According to Wilson, the money paid for the land was 'due to Hemi Kakitu and his tribe for military service in pursuit of Te Kooti'.¹²⁴ According to Binney, once 'Hemi had re-acquired his own land ... he commented that he, not Te Whitu Tekau, would now control those lands'.¹²⁵

Land at Te Wainui for Te Kooti

In November 1891, land at Te Wainui, Ohiwa, was allocated to Te Kooti (600 acres, Lot 313, Parish of Waimana).¹²⁶ According to Binney, Tuhoe had asked Lord Onslow on his 1891 visit that land under consideration for Te Kooti at Te Wainui be given to Tuhoe, 'so that members of the tribe could live with him there and that it might be a residence 'where they would get a change of food' and 'the fish of the sea'.¹²⁷ As Binney has written:

The land at Wainui was ... earmarked, and the government's instructions to survey that 600-acre block were issued in December 1891.¹²⁸ Te Kooti subsequently met with the district surveyor at the beginning of March 1892.¹²⁹ Up to this point, all seemed well with regard to Te Kooti's land grant. It also appears that many of his Tuhoe followers were expecting to join him at Te Wainui; it was to be their new spiritual home ... and certainly, many of those who later moved to Wainui would be Tuhoe.¹³⁰ The site appeared to allow Tuhoe access to the Ohiwa harbour with its rich supply of seafood ...

But in March 1892 Te Kooti suddenly became aware that Wainui was land-locked. It had no navigable access to Ohiwa harbour. Rather, the site was virtually uninhabitable: it was

¹²³ Ibid.; she cites AJHR 1874, G-1A, p 4; Preece to Brabant, 5 July 1878, MA 13/100a; Auckland District Land Register, Copy of Grant, Vol 66, folio 294

¹²⁴ Ibid., pp 301-302; she cites Wilson to McLean, 29 March 1872, MA 13/99a (RDB 30008); Brabant, 24 June 1872, AJHR 1872, F-3, p 11

¹²⁵ Ibid., p 302; she cites AJHR 1874, G-1A, p 4

¹²⁶ Ibid., part two, p 118

¹²⁷ Ibid., pp 29-30, 118; she cites the *Auckland Star* and *New Zealand Herald*, 23 March 1891; Binney, *Redemption Songs*, p 447

¹²⁸ Binney, 'Encircled Lands', part two, p 119; she cites Chief Surveyor to Baber, 30 December 1891, Wainui 313 File, AAMK 869/67a, NA

¹²⁹ Ibid.; she cites *New Zealand Herald*, 4 March 1892; Binney, *Redemption Songs*, p 453

¹³⁰ Ibid.; she cites Te Pouwhare (of Tuhoe) and 14 others for the Ringatu Church to ND, 17 August 1919, AAMK 869/67a, NA

judged by Rakuraku as being ‘only fit for goats and crawly things. Not fit for human beings.’¹³¹ ... Te Kooti desperately tried to persuade the government to find an alternative site – either on the Ohiwa harbour shores, or at Ruatoki ...¹³²

In *Redemption Songs*, Binney writes that the ‘offer of Wainui in 1891 was made ... in exchange for the survey of Tuhoe land, and also for Te Kooti’s promise never to go home [to Gisborne]’.¹³³ While Te Kooti agreed to mediate to obtain Tuhoe agreement to the survey of Ruatoki, the land that he ‘finally came to accept as being the “land God has given to us”’ was not formally set apart until 1895 – after his death – and when done so, was gazetted not in his name, nor given to Tuhoe, but as a general Crown reserve for Maori.¹³⁴ In 1923 the land was transferred to the Haahi Ringatu (the Ringatu Church), following intervention from Apirana Ngata. As Binney has argued, ‘the government was clearly avoiding giving any of the confiscated land as a reserve for Tuhoe, and despite appearances of full negotiation, it also avoided giving the title of the reserve to Te Kooti or to his followers’.¹³⁵

New Zealand University Endowment

Among the remaining confiscated lands in the Ohiwa area was a 10,000-acre block reserved for the University of New Zealand. In January 1873, it was proclaimed in the *New Zealand Gazette* that 10,000 acres in the County of Opotiki, ‘being confiscated lands’, ‘are hereby reserved and set apart for the purpose of an endowment for the “University of New Zealand” ... under the provisions of “The New Zealand University Act, 1870”’. The proclamation stated that this was done under ‘the regulations for the sale and disposal of lands taken under the authority of “The New Zealand Settlements Act, 1863,” and “The New Zealand Settlements Amendment and Continuance Act, 1865,” contained in the Schedule to an Order in Council bearing date the eleventh day of May, 1871’. This legislation ‘provided that reserves for roads and all other public purposes whatsoever, and for education, may be made by Government out of any confiscated lands’.¹³⁶ A memorandum published in the *Journals of the Legislative*

¹³¹ *Ibid.*, p 120; she cites *Redemption Songs*, p 452

¹³² *Ibid.*

¹³³ Binney, *Redemption Songs*, p 450

¹³⁴ Binney, ‘Encircled Lands’, part two, p 120

¹³⁵ *Ibid.*, part one, p 365; part two, p 120, fn 43

¹³⁶ ‘Reserves for University of New Zealand’, *New Zealand Gazette*, 9 January 1873, no. 2, p 11

Council, 1873, describes the lands set apart as an endowment for the New Zealand University, comprising '70,354 acres of rural and 30 acres of town land'.¹³⁷

The 10,000-acre block (allotment 245, Parish of Waimana) encompassed much of the land between Whakatane and Ohiwa Harbour, being bounded, to the east, by the Ohope Reserve (Lot 246); Lots 247 and 248; by Ohiwa Harbour, and by allotment 130. The boundary then followed a road (now Paparoa and McCoy roads) south, before crossing west to meet the road south from Whakatane to Taneatua, encompassing the hill, Pukehoko (see figure 7).¹³⁸

With the creation of Auckland University College, Lot 245 Parish of Waimana, along with University of New Zealand reserves at Waikato, Raglan and Waitemata, were transferred to the new institution under The Auckland University College Reserves Act 1885, to be 'utilized for the purpose of adding more departments of learning to the college than can be at present maintained, and for increasing the staff of professors, and for generally extending the usefulness of the ... college'. The Act empowered the College Council to lease the land for this purpose.¹³⁹ Lot 245 was subdivided into six 'runs', Run Nos. 1-6 (respectively 1640, 2244, 1777, 1283, 1803, and 1171 acres in size), which appear to have been leased separately.¹⁴⁰ In 1914 legislation was passed enabling the Auckland University College Council to sell its leased land at Whakatane to its various lessees.¹⁴¹ According to a Ngati Awa report on 'The Ngati Awa Development Bank' prepared for the Waitangi Tribunal's Wai 46 inquiry, 'all of the lands remained in private ownership until 1931 when some of them were acquired for the Ngati Awa Development Scheme'.¹⁴²

¹³⁷ 'Memorandum by Mr [GS] Cooper', 2 September 1873, *Journals of the Legislative Council*, 1873, no. 12, p 56. The reserves were listed by province, with the acreage in brackets, as follows: Auckland: Tauranga (20,000); Opotiki (10,000); Waikato (two reserves of 10,000 acres each); Kaipara - Ararimu (354); Otago: Forest Hill District, Southland (10,000); Taranaki: Patea (10,000); Westland: Hokitika (10); Greymouth (10); Okarito (10)

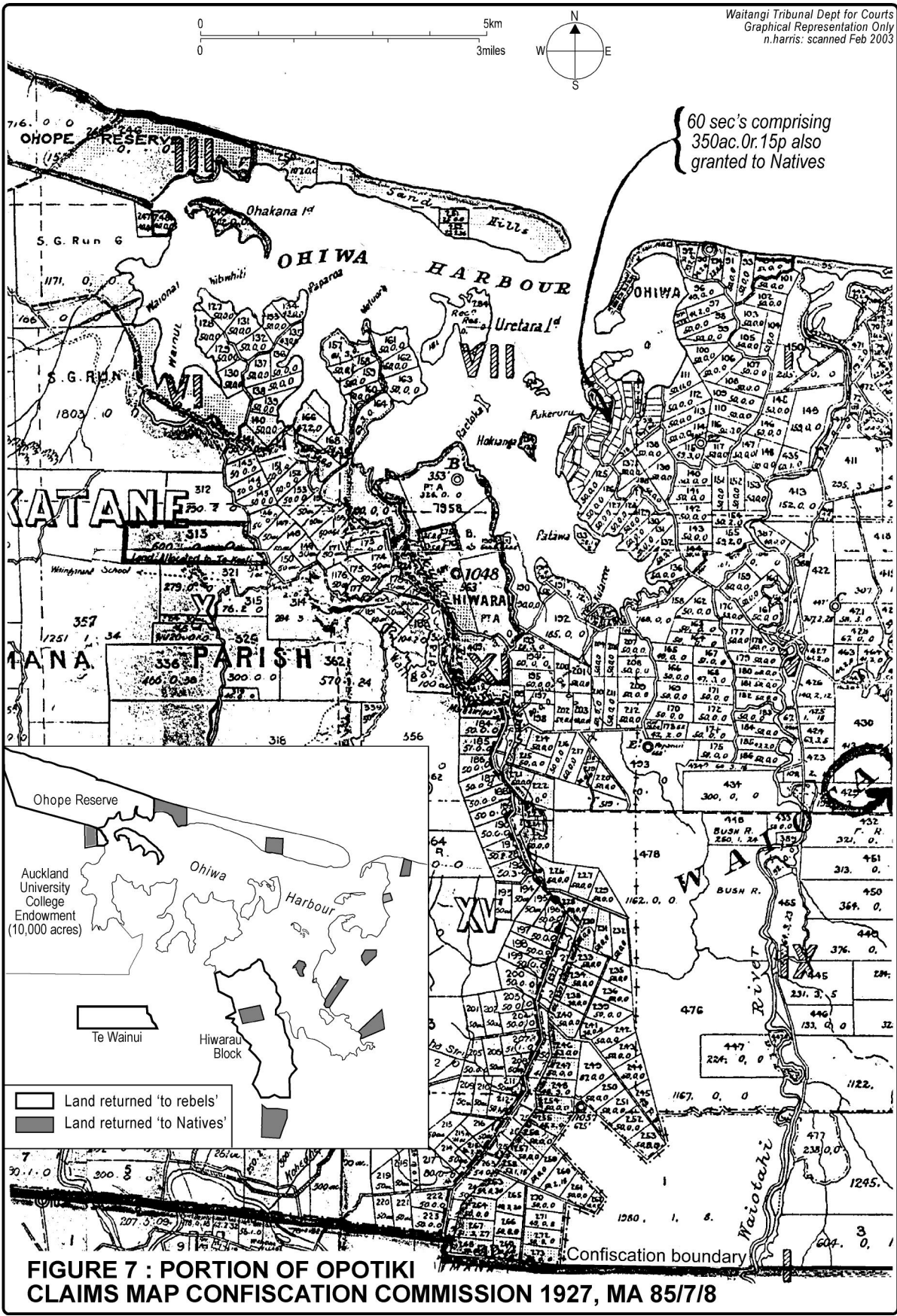
¹³⁸ 'Reserves for University of New Zealand', *New Zealand Gazette*, 9 January 1873, no. 2, p 11; Certificate of Title, Lot 245, Parish of Waimana, 1 January 1886, attachment 4, J T Gardiner and A G Macdonald, 'The Ngati Awa Development Scheme', nd (Wai 46 ROI, doc G7(j))

¹³⁹ Auckland University College Reserves Act 1885

¹⁴⁰ Reserves and other Lands Disposal and Public Bodies Empowering Act 1913, Section 126 (Validating certain leases of Auckland University College Endowment, and providing for renewal thereof)

¹⁴¹ Reserves and other Lands Disposal and Public Bodies Empowering Act 1914, Section 26 (Authorizing Auckland University College Council to sell certain endowments to lessees). In September 1915, G L Peacocke, Vice-Chairman of the Auckland University College Council, wrote to William Massey, stating that 'under the clause in the "Washing Up Act" ... the Council was enabled to dispose of the fee simple of the Whakatane Endowment lands for the sum of £10,246'. G L Peacocke, Vice-Chairman, Auckland University College Council, to William Massey, 23 September 1915.

¹⁴² Gardiner and Macdonald, p 2



Military Settlements

According to Gilling, some six months after the confiscation had been nominally carried out, the findings of a Parliamentary Select Committee formed to study the confiscated lands suggests that 'there was as yet no clear understanding, even on the Government side, of what was going on in the Opotiki District'. Reporting in August 1866, they estimated:

That there may be in the district 100,000 acres of useful land; that as about one-half the original Native owners have been friendly or neutral, one-half of the land must be restored to them; that of the other half, or 50,000 acres, 25,000 acres will be required for military settlement; and that the remaining 25,000 acres will be available for any other purpose.¹⁴³

By June 1867, Crown Agent Wilson reported on the arrangements he had made subsequent to the Compensation Court hearings.¹⁴⁴ Gilling has summarised Wilson's report as follows:

A total of 440,000 acres had been included in the confiscated block, of which 5,000 acres were allowed for error due to it not having been fully surveyed ... A segment of 87,000 acres at the western end of the block, east of the Te Awa o Te Atua and Tarawera Rivers, was given to Te Arawa ... At the eastern end of the block, the confiscation was not enforced over 57,000 acres east of Opape; the land was technically abandoned by the Crown. Given back to claimants by award, by arrangement or abandoned, were 5,442 acres, another 38,000 acres remained 'unarranged'. This all left 151,558 acres available to the Government for their military settlement, of which the excess of 75,000 could still be sold off, at an estimated value of £31,750. 90,000 acres were listed as 'given back to rebels', however in his note to this, Wilson said that 'now the surveys are advanced, I find that about 58,000 acres were thus obtained'. ... Only about 18,000 acres of the 'given back' and 'unarranged' lands were designated agricultural lands, the rest being swamp or mountainous, so of the 440,000 acres in the block the greatest area which could ever be available to Maori for cultivation and self-support was about 4% of the original lands.¹⁴⁵

As noted already, land at Ohiwa was being granted to military settlers from as early as 1867. The number of these 50-acre grants can be seen in the map reproduced in figure 7. Almost all

¹⁴³ Report of the Select Committee on Confiscated Lands, 14 August 1866, AJHR 1866, F-2, p 3; Gilling, 'Te Raupatu o Te Whakatohea', p 146

¹⁴⁴ 'Return of Reserves made for Friendly Natives and Returned Rebels', AJHR 1867, A-18, pp 3-6

¹⁴⁵ Gilling, 'Te Raupatu o Te Whakatohea', p 148

of the land surrounding the harbour, not returned or otherwise accounted for, is divided into 50-acre blocks. Binney notes that the land between Ohiwa and Te Waimana was to be allotted to men of the 1st Waikato regiment.¹⁴⁶

A rather grim account of the reality for many, it appears, of the military settlers in the Opotiki area can be found in the 1867 journal of Alfred Parkinson, a military settler at Opotiki:

People are leaving here very fast and if they continue to leave at the same rate there will be no white men left here in six months. The Government plan of settlement seems to be a failure for several reasons. The first was that the men were not located on their land when their time was expired and another cause was that the officers had nearly all the best land. The men had for the most part had land badly situated and in some instances the 50 acres are in such a position as to be of no use to anybody and allotments inaccessible. Then again men were murdered by the hauhaus or driven off their land and others were afraid to go out and cultivate theirs and some had no chance to go out on account of delay caused by unrest, while many never intended to settle at all, and these fully two thirds of the regiment composed. As soon as their pay and rations were done they sold up and left the country. We are now reduced in Opotiki to a very small number and two thirds of them want to leave and some are selling for what their goods will fetch. 50 acres for £5 and many who have put up good houses and cultivated their town acres are getting out at great loss. So that it appears that the place will be left in a short time to the natives who will find good houses built for them and find acres fenced in and cropped or fit to crop.¹⁴⁷

Miles notes that at Waimana in 1870, unoccupied lots were disposed of by ballot.¹⁴⁸

As noted above, land near their redoubt on the eastern shore of the harbour, near Hokianga Island, was awarded to the Arawa troops who were stationed at Ohiwa. These sections can be seen in figure 7, with the accompanying description from the original: '60 sec's comprising 350ac.0r.15p also granted to Natives'. Many of these sections are still owned by descendants of these grantees. According to the recollections of the carrier, A Abbot, who carted produce from Waiotaha and Waimana to the port at Ohiwa, 'as most of the local Maoris were Te Kooti

¹⁴⁶ Binney, 'Encircled Lands', part one, p 173; she cites Capt M Bower, 1st Waikato regiment, to St John, 24 January 1867; Gwynneth to Wilson, 24 January 1867, 1868/22, AGG-A 1/ 3

¹⁴⁷ HGD White, ed., 'The Diary of Alfred Parkinson, Opotiki, 1867', *Historical Review*, vol 20, no 1, May 1972, p 34; Miles, *Te Urewera*, pp 168-9

¹⁴⁸ Miles, *Te Urewera*, p 169

supporters, ... feelings ran high between the two groups and several minor incidents occurred.¹⁴⁹

¹⁴⁹ *Opotiki News*, 8 January 1963

7. Ohiwa Harbour in the late nineteenth and twentieth centuries

7.1 Introduction

It is the purpose of this chapter to provide both a narrative of European settlement and impact on the harbour, and to locate, as much as possible, the participation of Maori in this history. The chapter takes a broad sweep, tracing the significant issues from the period immediately following the confiscation and partial return of land and the arrival of military and other settlers, through the developments of the twentieth century and the effects of these on the harbour environment, to the present situation. This chapter is closely linked to chapter 8, which focuses directly on both local and central government administration of the harbour.

7.2 Accounts of Maori Population and Utilisation of the Harbour

In an 1873 account of an unscheduled stop at Ohiwa, due to the Opotiki harbour being impassable, the writer observed ‘a native pa or settlement ... situated on the top of a hill overlooking the harbour, said to contain about 150 natives of all ages, with some cultivations.’ The writer, identified only as D.G., informed the editor of the *Bay of Plenty Times*, and his readership, that ‘the country looks uninviting for Europeans, but I am told there are some fine rich plains a little way inland’. He also noted ‘one or two raupo whares for the accommodation of the Maori ferryman’, and observed ‘many natives travelling’.¹ Accounts of Maori at Ohiwa in the late nineteenth and early twentieth centuries have to be prised from texts referring primarily to other things – to European settlement, to farming and trade and transport, to public works, and so on. While Maori did continue to occupy and make use of the harbour, the majority of their traditional lands in the area were now in the possession of others and their access to the waters was therefore limited. Unfortunately the Pakeha accounts rarely distinguish between Maori, making it difficult, unless actually specified, to ascertain exactly who is being referred to when the term ‘Maori’ is used.

Leo Ducker, who claimed to be the first European born at Ohiwa (on 24 June 1906), later described the Maori communities of Ohiwa as he remembered them from his childhood in

the early decades of the twentieth century. He lived with his family at various locations around the harbour, including Uretara Island (which also became known as Ducker's Island) and at the township of Ohiwa, itself, where his parents ran a store and post office. According to his account, Maori had occupied Uretara Island until 1895 when they were attacked by an unidentified 'raiding force from the mainland', who had apparently tried to take the island several times previously, without success. From this time on, Ducker claimed, the island was tapu and no Maori returned to live there but only gathered shellfish from its shore.²

Ducker's father, Frank, had apparently managed to obtain a 'life-long lease' of the 181-acre island from the Crown at the rate of one shilling per annum, some years before the family moved to Uretara in 1912. The island was overrun by wild pigs, apparently abandoned by previous residents. Local Maori were very reluctant to come to the island to help the Duckers with their crops, and if they did assist they would not spend a night on the island.³ Ducker recalled that his father had returned from the Great War to find the government 'had deemed the island a reserve', however the family continued to farm on the island until 1919, when Frank Ducker won a ballot for a Returned Soldier's Farm at Woodlands, Opotiki.⁴

The family grazed cattle belonging to farmers from Opotiki on the island, supplementing their income with butter, eggs produced by a flock of 100 ducks, and cockles which were shipped to the Auckland fish market in the *Ngatiawa*. Potatoes, maize and corn were also grown for the Auckland market.⁵ The island also provided the family with peaches and wild honey.

According to Ducker more than 1000 Maori occupied the harbour in the early decades of the twentieth century, and were spread throughout the area. The population decreased dramatically with the arrival of the influenza pandemic in 1918. According to Ducker it 'wiped them out almost completely. I can remember coffins filled up with dead with no-one to bury them'. Hokianga Island, he claimed, had been 'occupied by a large tribe', but following the influenza pandemic, had been 'declared tapu' and abandoned. Ducker recalled having seen 'as many as eight dugout canoes drawn up on the beach at the one time, together with several

¹ D.G., 'A Trip to Ohiwa', letter to the editor, *Bay of Plenty Times*, 15 January 1873

² Leo Ducker, 'Early Days of Ohiwa', unpublished manuscript, 1994, p 18, H D London Research Library, Whakatane

³ Ibid., pp 18-19

⁴ Ibid., pp 7-8

⁵ Ibid., p 5

row boats'. He described observing 'many whares on the marae and the black dirt was pounded flat and hard by many pairs of bare feet'. Kumara were cultivated on all the available flat land and on some of the hill slopes where maize and sugarcane were grown'.⁶ Another account refers to 'heavy crops of kumara and maize with pumpkins grown on the flat', and states that 'at the side of the main channel there was an ancient canoe harbour, made by a grass and rush grown wall, enclosing a large space for the canoes, safe from storm waves in the channel'.⁷

Ducker describes Maori 'paddling down to Ohiwa in their canoes', and calling at the store his parents ran at the township for 'a supply of cabin biscuits (bread) and bully beef', before anchoring near the bar at low tide. There they would use long handled rakes to gather mussels from the seabed, about eight feet below the surface. Ducker recalls observing as many as six waka working the mussel beds at the same time, and the canoes being filled 'to almost sinking' with mussels.⁸ He recalled Maori 'coming down to the store almost every day. If the weather was right they would get mussels before returning to wherever they were living at the time'.⁹

Ducker describes Maori of Ohiwa Harbour running 'a barter system with the Maori of the interior. Trading dried shark and dried cockles for pork and pigeons. This', he claimed, 'was on a regular basis'. He described, while living on 'Ducker's Island', being:

invaded by Maori on horseback each with a Pikau (chaff sack) sewn up at the top and split in the centre on one side. These would be filled with cockles and taken home to be boiled, threaded on rushes and dried. At times the cockles would be cooked on the Island and the shells left in a great pile. Only the meat would be taken home on long rushes to dry.

He also describes the regular harvesting of sharks from the harbour:

When the Dogfish were running, the Maori would catch them by the ton, split them and dry them in the sun. The method for drying the shark; was to cut the top branches out of the interior of a large pohutukawa tree, run from branch to branch as many strands of

⁶ Ibid., pp 14-15

⁷ Unknown source, 'Notes on Ohiwa and Surroundings', Ohiwa Scrapbook, Opotiki Heritage and Agricultural Society Museum

⁸ Ducker, p 13

⁹ Ibid., p 15

number eight wire as possible and hang the shark over the wire by the tail. It would soon dry in the sun, albeit awful smelly for a time.¹⁰

Ducker recalled seeing 'piles of dried shark and cockles ready to barter when the tribe from the interior arrived'. Unfortunately he does not provide any additional information regarding the barter trade system, and as is so often the case with such accounts, does not identify the hapu involved, either from the coast or the interior.

Another account of 'the early days' of Ohiwa harbour, written by Dorothy Du Pontet, of Waiotaha, describes 'Inland tribes [coming] every summer to special places on the harbour shore to gather and dry samples of pipis, cockles and mussels for winter food'.

Great fires were built and when they had dried to red coals, the shellfish were heaped in rings a foot high round the coals to open with the heat, when the nimble fingers of women threaded them on fine flax or on the pointed salt rushes, festooning them on fence or rails to dry in the sun. Dogfish, shark, stingray and other fish were cut in large strips and dried on frames of split manuka.¹¹

According to Ducker, Maori at Ohiwa caught fish in the harbour using circular nets that were cleared twice a day at low tide. 'These traps,' he recalled, 'of which there were several, would keep all the families in that area in fresh fish'. This fish, he claimed, 'was their staple food, along with kumara, rewai and also pirau corn'. Maori at Ohiwa also kept kunikuni pigs, 'tied by one leg and so fat they could hardly see out of their eyes'.¹² Du Pontet describes 'crops of kumara, pumpkin and watermelon' being 'held in common' on Hokianga Island, for all to share. She also describes the over-harvesting of a good oyster bed in the rocky channel near Motuore Point (close to Uretara Island). 'When, in the early years of the century the Auckland oyster beds were closed on account of contamination, the good prices fetched caused this bed to be almost denuded'. She recalls one man being drowned while attempting to tow twenty sacks of oysters to the wharf.¹³

¹⁰ Ibid., p 13

¹¹ Dorothy Du Pontet, 'The Development of Ohiwa: Reminiscences of an Early Resident of the District', *Historical Review*, vol 11, no 3, pp 121-133, p 129

¹² Ducker, p 14

¹³ Du Pontet, 'The Development of Ohiwa', p 129

Ducker's family also made use of an abundant supply of fish: 'so plentiful in the early days, one could pick and choose'. Ducker recalled relying on seafood when their monthly groceries ran out, and described eating kerosene tins of cockles, and spearing flounder, which were so plentiful that they never had to go spearing at night.¹⁴ Du Pontet likewise recalled fishing for snapper, mullet and flounder, and 'digging for cockles in the apparently inexhaustible beds ... on both sides of the channel – gathering them by the bucketful for hungry visitors'. Du Pontet listed the 'amazing' 'variety of fish to be caught at Ohiwa years ago' as follows: 'snapper, gurnard, kahawai, mullet, piper, trevalli, yellow tail – even kingfish were sometimes to be had – and terakihi, with an occasional barracouta'. Stingrays and dogfish were also caught, and used for bait, as were cockles and mussels 'of which there [were] huge beds, apparently inexhaustible, on both sides of the main channel. These shellfish,' Du Pontet noted, 'were sent in large quantities to Gisborne and Rotorua for sale when road transport was available'.¹⁵

Ducker describes Maori being seasonally employed (in terms of monetary income) as agricultural and other labourers. Maori were contracted to pick corn, and individuals were employed in road construction and scrub cutting. Ducker recalled that:

If the Maori had a scrub cutting contract anywhere in the area surrounding the harbour, they would first build a whare and live in it until the job was cut out. Simply walking out and leaving the whare to be overgrown, and in time vanish.

In June 1904 the *Auckland Weekly News* reported that an 'enterprising settler', Mr J B Gow, who would later become chairman of the Opotiki County Council, had established 'an up-to-date sawmill ... about eight miles south of Kutarere'.¹⁶ According to Ducker, Gow's sawmill employed a 'good size working force, but [employed] more [Maori] from the interior as the mill was at Nukuhou'.¹⁷ The 1904 newspaper account noted that 'the timber, principally matai and rimu, is being turned out and sold at half the price of the imported.'¹⁸ Shortly after, in October 1904, the *Auckland Weekly News* reported that:

The Opotiki County Council have taken in hand the work of putting the Ohiwa to Waimana road in thorough repair. The heavy traffic to Waimana and the sawmill requires

¹⁴ Ducker, p 6

¹⁵ Du Pontet, 'The Development of Ohiwa', p 131-132

¹⁶ *Auckland Weekly News*, 30 June 1904

¹⁷ Ducker, p 14

a good road, and as there is plenty of good metal at several points the Council should begin putting some in the worst places.¹⁹

It was noted that this increased traffic was partly a result of 'the Waimana trade' being diverted from Whakatane to the wharf at Ohiwa.²⁰

The wagon carrier, A Abbot, recalled Maori bringing 'cocksfoot seed and dried fungus for shipment to Auckland', and stated that 'the inward cargo would consist of household goods, particularly flour'.²¹

Du Pontet describes the annual cycle of religious and tribal meetings held on Hokianga Island, which were attended by Maori from all around the harbour.²² Another Pakeha account likewise speaks of Hokianga as a 'place of tribal meetings, when large numbers would gather from inland places as well. The singing was often magnificent, in a minor key, as we sometimes heard it at sunset, when drifting down channel with the tide'.²³

According to Judith Binney, following his prophetic vision on Maungapohatu, Rua Kenana 'built for himself a meeting-house on the tapu island in the Ohiwa harbour, Hokianga, where Te Turuki had lived. He called this house Te Poho O Mataatua, the Bosom of the Mataatua people.'²⁴ A photograph of the island taken in about 1910 shows a number of wooden structures, and Binney states that at this time the island 'still had a substantial Maori population'.²⁵ According to the 'recollections' of the 'centenarian', Moerangi Ratihi, published in 1971, it was at Ohiwa that Rua said he would walk on water.²⁶

Something that does not appear to be mentioned in any of the early Pakeha settler accounts of the harbour, is the poverty and hardship experienced by Maori at times during this period. Binney refers to the effects of the potato blight of 1905 on the people of Te Urewera. Among those mentioned who missed out on the distribution of sacks of seed potatoes to alleviate the

¹⁸ *Auckland Weekly News*, 30 June 1904

¹⁹ *Auckland Weekly News*, 27 October 1904

²⁰ *Auckland Weekly News*, 20 October 1904

²¹ *Opotiki News*, 8 January 1963

²² Du Pontet, 'The Development of Ohiwa', p 129

²³ 'Notes on Ohiwa and Surroundings'

²⁴ J Binney, G Chaplin and C Wallace, *Mihaia: The Prophet Rua Kenana and his Community at Maungapohatu*, Auckland, Oxford University Press, 1979, p 20

²⁵ Binney, *Redemption Songs*, p 494

²⁶ 'Kotare', 'Recollections of a Centenarian', *Historical Review*, vol 20, no 1, May 1972, pp 19-27, p 26

situation were 'Urewera' living at Ohiwa harbour. This meant that they missed the planting season.²⁷ In December 1904, the *Auckland Weekly News* reported that in the Ohiwa area (possibly including Waimana and Opouriao), 'it is understood that the Government is to assist the natives in some of the settlements with food supplies'. It was also noted that 'in some of the country stores potatoes are selling as high as £8 per ton for eating sorts'.²⁸ Earlier in 1904, it was reported that 'some of the Maoris living inland are in rather strained circumstances just now owing to losing most of their crops during the March flood', and that 'a few of the aged people are in receipt of full pensions from the Government'. It was noted that 'the Maoris in the Bay of Plenty have many grievances in connection with the confiscation of all the low-lying country'.²⁹ The flood also caused other problems for Maori in the Ohiwa area. In August 1904 it was reported that:

Urgent applications have been made to the Opotiki County Council to have a bridge on one of the main roads south of Ohiwa replaced at once, it having been washed away in the March flood. So great is the amount of Maori traffic on the roads here compared with the European that it is estimated that out of every five pounds spent on roadwork four pounds eighteen shillings is for the benefit of the Maori.³⁰

In his report on Urewera roading, and speaking specifically of 'the Crown's obligation' with regard to the construction (or lack of construction) of roads beyond Waimana, Philip Cleaver argues that within the Lands and Survey and Public Works Department in the 1920s there existed 'an internal culture that consistently overlooked the interests of Maori'. He provides the example of the engineer in charge of the Waimana road, Furkert, reporting in 1922 to the under-secretary of the Department of Lands and Survey, with regard to a bridge that was required across the Waimana River that:

As long as the only users of bridge are likely to be Natives, its erection cannot be regarded as urgent, but if your Department proposes to open up the Urewera country with the result that there will probably be an influx of white settlers, I am of opinion that this

²⁷ Binney, 'Encircled Lands', part two, p 295

²⁸ *Auckland Weekly News*, 15 December 1904

²⁹ *Auckland Weekly News*, 27 October 1904

³⁰ *Auckland Weekly News*, 26 August 1904

bridge should be proceeded with at once, but if this district is not open to settlement, the position may be quite the opposite.³¹

The completion of the road from Ohiwa, beyond Waimana to Maungapohatu and on to connect with the Ruatahuna-Waikaremoana road,³² would have enabled ready access for the people living in this area to the port at Ohiwa.

7.3 Trade, Shipping and Transport

According to Van der Wouden, regular steamship services began in 1867 to Whakatane and Opotiki, but due to the difficulties regularly encountered in entering both these harbours, the steamer was often diverted to Ohiwa where there was deeper water and a better entrance channel. Goods were unloaded on the Ohiwa Spit and transported to Opotiki by horse and cart and to Whakatane by whaleboat, while passengers were forced to make their own way.³³ In D.G.'s account of one such unscheduled visit to Ohiwa in January 1873, mentioned above, he wrote that the steamer *Southern Cross*:

Landed passengers and goods during a mizzling rain upon what might well be termed a most inhospitable looking sand beach, having only one or two raupo whares for the accommodation of the Maori ferryman, this being the highway for travellers from Opotiki northwards towards Tauranga, the crossing here by water being about 800 yards wide.³⁴

Ducker described the shipping to Ohiwa as 'very regular as the bar could always be worked on the high tide'. He recalled regular weekly visits of the *Ngatiawa*, under Captain Keatley, bringing cargo and passengers to the eastern Bay of Plenty. According to Ducker:

Opotiki bar was rarely workable so most cargo was shipped through Ohiwa. The butter from the Opotiki Dairy Co. was shipped along with the cheese from Waiotahi Cheese

³¹ Philip Cleaver, 'Urewera Roding', report for the Crown Forestry Rental Trust, June 2002 (Wai 894 ROI, doc A25), p 82; Cleaver cites Engineer-in-chief, Public Works, to Under-Secretary, Lands and Survey, 2 November 1922, W1 35/59, part 1

³² Richard Boast, 'The Crown and Te Urewera in the 20th Century: A study of government policy', December 2002 (Wai 894 ROI, doc A109), p 217

³³ Van der Wouden, *Ohiwa*, p 6

³⁴ D.G., 'A Trip to Ohiwa'

Factory, and the Waimana Cheese Factory. Also Cheddar Valley butter, but that was much later. It was established in 1916.³⁵

Ducker recalled that, having an all-weather bar, the port of Ohiwa ‘was never without coastal ships or scows coming or going. There was much produce to be shipped out from the Eastern Bay of Plenty, mostly through Ohiwa’. During severe northerly storms as many as fifteen vessels would take shelter in the harbour, ‘the shallower draft scows anchored up harbour as far as Ducker’s Island’.³⁶ Du Pontet likewise stresses the importance of Ohiwa as a port; from as early as the 1880s and 1890s and into the early years of the twentieth century, she writes, ‘Ohiwa Harbour was the most used harbour in the Eastern Bay of Plenty’.³⁷ According to Du Pontet:

Lying between the river ports of Opotiki and Whakatane, which had bar depths of only six to eight feet at high tide involving constant difficulties for vessels trying to enter in stormy weather or in draught, Ohiwa was well open, having a constantly open bar channel with at least twelve feet of water. It was then no uncommon thing to see two or three coastal steamers lying in deep water or at the wharf, waiting until the other two ports should be workable.³⁸

The harbour, according to Du Pontet, was often busy:

Stock was loaded and unloaded; and maize, cheese and butter (much of it homemade and only realising 6d per pound in Auckland), pigs and other farm produce were brought to the wharf by dray or wagon, or even by rowboat from little farms bordering the harbour.³⁹

Du Pontet also noted that ‘with the advent of motor launches, a service to and from the various landings serving the farms and islands of the harbour was efficiently run by the Menges Brothers for some years’.⁴⁰

Ducker recalled Albert Mokomoko keeping ‘an experienced eye on both the Opotiki bar and Ohiwa bar to allow ships to enter and depart safely’, describing him as ‘a fine, well respected

³⁵ Ducker, p 8

³⁶ Ibid., p 17

³⁷ Du Pontet, ‘The Development of Ohiwa’, p 121

³⁸ Ibid.

³⁹ Ibid., p 122

⁴⁰ Ibid.

man', who 'would tackle a bar crossing in any weather'.⁴¹ He recounts Albert Mokomoko taking Frank Ducker out to White Island 'on his launch' following the 1912 eruption which killed thirteen people on the island.⁴²

Until about 1906, the only road access to either side of Ohiwa Harbour was along the beach.⁴³ In around 1900, the Northern Steam Ship Company had advocated the construction of a light railway link to Opotiki as this would allow the company to 'do away with the expense and delays of vessels bar bound or unable to enter either Opotiki or Whakatane and the necessity of keeping tenders at Opotiki to cope with the increasing bulk of cargo flowing through the port'. However, Du Pontet states, 'fears of a rival town springing up at Ohiwa barred the project'.⁴⁴

In a 'report on the state of the district', following a tour of the Bay of Plenty in late 1861, Henry T Clarke, the Resident Magistrate at Tauranga, stated that he had been 'detained' for four hours at Ohiwa on his way from Whakatane to Opotiki:

The want of a ferry across this place is very much felt; it is the greatest drawback in the whole route along the coast [from Tauranga to Te Kaha]. There are only two states of tide when horses can be crossed with safety, and added to this inconvenience travellers are often kept here a whole day for want of a canoe. It would be a great boon to both Natives and Europeans if the Government would make some provision for establishing a ferry across this place.⁴⁵

In June the following year, C Hunter Brown likewise reported trouble negotiating the harbour as part of his 'official visit to the Urewera Tribes'. He described 'the entrance to Ohiwa' as 'a very long swim, practicable only at or near slack water in nearly calm weather', and stated that '[t]here is often a great delay in getting a canoe at Opotiki, and still more at Ohiwa, and the natives are very disobliging and extortionate'. Hunter Brown described his crossing of the 'Ohiwa Heads' as follows:

⁴¹ Ducker, pp 13, 17

⁴² Ibid., p 6

⁴³ Du Pontet, 'The Development of Ohiwa', p 121

⁴⁴ Ibid., pp 121-122

⁴⁵ Henry T Clarke, Resident Magistrate, Report, 'Further Papers Relative to Governor Sir George Grey's Plan of Native Government, Reports of Officers, Section 4: Bay of Plenty', AJHR 1862, E-9, p 7

Near the Heads a Maori met us on the beach who offered to put us across and had a canoe all ready, he said. Arrived at the Heads at low water, and calm. Maori went for his canoe, was away nearly an hour, and returned with a very small leaky affair (a *kopapa*). Meantime a south-west breeze had sprung up and kicked up a bubble of a sea; the swim is fully a quarter of a mile long, and the canoe had to make three trips, one for each horse, and one for the saddles. When I crossed ... I had to hold my horse's rope with one hand, and bail out for dear life with a pannikin which luckily we had with us. Even then the canoe was half full between leak and spray before we got across, and but for that pannikin we could not have crossed. In this way that quarter of a mile of water cost us two hours' delay, although we arrived under the most favourable circumstances.

Hunter Brown reported that:

Te Kepa, an influential Chief of Ngatiawa, is willing to give a site for a ferryman's hut on the north-west head of Ohiwa. Other necessary improvements would be two or three posts to mark the way to the ford, and the position of the ford over the Waihou, a stream impassable on the beach at high tide but fordable a couple of miles higher up.⁴⁶

On 4 December 1875, a short article appeared in the *Bay of Plenty Times*, 'draw[ing] the attention of the authorities to the very unsatisfactory means at present provided for crossing the Ohiwa harbour':

We understand that until the end of the last month the ferry has been in the hands of the natives residing at Ohiwa, who provided for the ferry service a fine large canoe, capable of carrying passengers across in almost any weather with perfect security. On the 1st instant the ferry was taken from them and given to Mr Bell, the proprietor of the accommodation house at Ohiwa, and the canoe at present used for crossing travellers is totally unfit for the service, and positively dangerous to both life and property. By reason of the confluence at the Ohiwa crossing of the Nukoho [sic] and Waingarara Rivers a very swift current is encountered, and the natives are often afraid of being carried away over the bar, even when crossing in a large and safe canoe. We understand that a subsidy for this ferry is paid, and would therefore suggest that Mr Bell be compelled to keep a proper canoe, and a competent ferryman, or that the ferry be given back to the natives, which latter

⁴⁶ C Hunter Brown, 'Report ... of an Official Visit to the Urewera Tribes', June 1862, 'Further Papers Relative to Governor Sir George Grey's Plan of Native Government, Reports of Officers, Section 4: Bay of Plenty', AJHR 1862, E-9, p 25

arrangement would, we fancy, be found the best. In any case, we urge upon the authorities the absolute necessity of some radical change being made in the conduct of the Ohiwa ferry service, or we shall sooner or later have to chronicle the death by drowning of some unfortunate traveller.⁴⁷

According to Van der Wouden, Bell's response to the call for him to give the ferry 'back to the natives', was 'that the ferry had not been taken from Hemi Kakatu [sic] and his people, but that they had given up the contract'.⁴⁸ Binney notes that in 1876 Tamaikoha was employed as ferryman at Ohiwa.⁴⁹

When the Whakatane County Council was formed in 1876, the ferry became its responsibility.⁵⁰ In 1879 the Council let the ferry by tender to Captain Rushton for £10 per annum. Shortly after, the increased size and number of horse-drawn vehicles needing transportation across the harbour led to a call for a larger and improved ferry, and a pontoon was put into service with little success due to the strength and variability of the Ohiwa currents. Rushton continued with his apparently successful ferry service until the late 1880s, and other operators continued the service after him. One operator, Captain Alexander Campbell, won the contract in 1895 'on condition that he employed a bi-lingual boatman', suggesting that a significant proportion of passengers were Maori, and that previous operators were themselves bilingual and/or Maori. In 1898 the Council decided to employ its own staff to run the ferry, and constructed a ferryman's cottage at Ohiwa.⁵¹ When the Whakatane County Council was divided into the Whakatane and Opotiki County Councils in 1900, the latter became responsible for the management of the ferry. In 1904 former military volunteers, who had evidently until now expected to be ferried free of charge, were made to pay 'as there was a good road by which the ferry could be avoided'.⁵² According to Du Pontet's account, working as the Ohiwa ferryman was a dangerous occupation. She describes the deaths by drowning of two ferrymen: one in the late 1890s and the other, a Mr Warbrick, in the early twentieth century.⁵³ A motorised punt was installed about 1906, when the road was opened. The ferry service was stopped in 1915, by which time the road between Whakatane and

⁴⁷ *Bay of Plenty Times*, 4 December 1875, p 3

⁴⁸ A van der Wouden, 'The Ohiwa Ferry', *Historical Review*, vol 34, no 1, May 1986, pp 11-20, p 13

⁴⁹ Binney, 'Encircled Lands', part one, p 336

⁵⁰ Van der Wouden, *Ohiwa*, p 12

⁵¹ Van der Wouden, 'The Ohiwa Ferry', p 15

⁵² *Ibid.*, pp 15-16

⁵³ Du Pontet, 'The Development of Ohiwa', p 124

Opotiki had been completed.⁵⁴ The closure of the ferry service saw the decline of the Ohiwa township, which was to be compounded by the erosion of the spit on which it sat.

7.4 Ohiwa Township

With Ohiwa spit becoming increasingly utilised as a wharf, or at least as a site for the unloading of goods and passengers when the Opotiki and Whakatane harbours were unpassable, a need arose for some sort of accommodation or resting place. In 1873 Captain Rushton was granted a licence to open a hotel on Ohiwa Spit on the condition that he also supplied a 'substantial' ferryboat. Rushton also advertised ships timbers for sale, cut from Ohiwa pohutukawa trees.⁵⁵ According to Van der Wouden:

The hotel was built in the middle of the sand spit near what was probably the only fresh water spring in the vicinity. This hotel became the nucleus of the future Ohiwa township. When it was built the area had not yet been surveyed and a survey was not made till 1879 when sections were offered for sale. Further sections were advertised in 1892. As the district developed a few more buildings were erected but the number never exceeded seven or eight. Nevertheless the place played an important part as a secondary port for the district. ... A Post Office was opened in 1877 and continued until 1919 when it became a telegraph office which finally closed in 1923. There was also a store, a ferryman's cottage, and when in 1907 the Rotorua Motor Transport Company began regular services from Rotorua to Opotiki using horse-drawn coaches, stables for their horses were also built there. A much needed wharf was finally built in 1896 and a school operated from a private home for some years around 1906.⁵⁶

Despite pressure on the Education Department to have a proper school built at Ohiwa from about 1906, a public school was never built and local children had to make do with the private one.⁵⁷ Leo Ducker recalled attending 'the Ohiwa school' along with the children of families farming on the Waiotaha side of the harbour, and states that there was a roll of 18 to 19.⁵⁸

Increased erosion of the spit in the early years of the twentieth century spelt the doom of the settlement and one by one the houses were removed. The site of the original township is now

⁵⁴ Van der Wouden, *Ohiwa*, pp 8, 14

⁵⁵ *Ibid.*, p 7

⁵⁶ *Ibid.*, pp 7-8

⁵⁷ *Ibid.*, p 17

completely submerged and lies in the harbour channel.⁵⁹ The location of the township – with its surveyed blocks – to the east of the harbour mouth, can be seen in figure 7. Ducker described living at Ohiwa township in a house built on the sand that also served as a grocery store and post office:

Mother ran the store and Post Office while Papa, (who was a stevedore) was busy with shipping, as Ohiwa harbour could always be worked. All the Opotiki cargo would be brought to Ohiwa, along with cheese from the Waiotahi and Waimana factories, carted by Mr Alan Abbot in his big wagon drawn by four big Clydesdale horses.⁶⁰

Ducker recalled that the bar was always shifting, and that his father who acted as ‘Harbour Master’ often had to re-chart the main channel and shift the guiding beacons. He recalled that ‘the Ngatiawa only struck the bar on very few occasions and only if a big swell was running on the bar’.⁶¹

Du Pontet recalled the Ohiwa Hotel as ‘a focus of local life’, ‘combin[ing] post office and store with its other functions’, and providing ‘very necessary and ... good service to the district’.⁶²

An unidentified source described the settlement on Ohiwa Spit, as follows:

The long sandy spit on which the hotel, wharf, school and dwellings were built was largely washed away during the storms in the thirties, which made a new channel into the eastern mudflat. This spit had reached most of the way to Toke toke, now only a fragment remains. There were also coach stables and a large area of grass land for grazing for the horses. In 1904 there was a permanent ferry man, and the charge for rowing a man across, his horse swimming behind the boat was 1/- with a gig or buggy perched on the boat as well it cost 3/6. When a regular coach service began, about 1906, the horses were kept on each side, and only the coach taken across on a punt. Later a larger punt with an engine was used, so that coach and horses could drive on. When the inland road was made to Whakatane, there was not much use for the hotel, and the licence went elsewhere. The hotel itself was dismantled and taken to Whakatane by scow ... The wharf did good service in its day, and Ohiwa bar was workable when the others were not. Often three

⁵⁸ Ducker, p 4

⁵⁹ Van der Wouden, *Ohiwa*, p 8

⁶⁰ Ducker, p 3

⁶¹ *Ibid.*, p 16

⁶² Du Pontet, ‘The Development of Ohiwa’, p 125

N.S.S.Co's steamers were to be seen in the harbour at once. Thomas Bell, of Sunday Is. was an early licensee, and Thomas Avent, (Sergeant) taught the first Ohiwa School, afterwards going to Sunday Is. to teach the Bell children. The Northern Steamship Co. offered to take up half the shares in a light railway from Ohiwa to Opotiki, to avoid the nuisance of their twice weekly steamers being constantly held up by the Opotiki bar, but the offer was turned down. This was in 1901. Jerry Warbrick, a younger brother of the famous Rotorua guides, was drowned on the Ohiwa bar, when trying to rescue the mails, which a careless mailman had left in the boat while Warbrick controlled the horses which were playing up. An earlier ferryman, James Kelly also lost his life while taking a gig across in rough weather.⁶³

Another early resident of Ohiwa later recalled witnessing in about 1910, the removal by Maori of remains from an urupa located on the eroding land.⁶⁴ There is no information in this account as to who these people were.

In the 1950s, when the erosion appeared to be abating, people began to build holiday homes on the Ohiwa spit. In the late 1950s and early 1960s the Department of Lands and Survey subdivided the remaining land and offered the lots for lease.⁶⁵ However, by 1965 the rate of erosion from the eastern end of the spit had increased to 6 m per year, and this increased through the 1970s to 56m in 1978. Attempts to save the land failed and the spit was again abandoned.⁶⁶

7.5 Other settlements and schools at Ohiwa

The Wainui area was settled by Pakeha about 1906, and a school established there. The first Pakeha owner of Motuore Point was Paddy McGhee, followed by T Burke. An oyster reef which ran out some 500 feet into the channel is said to have been 'completely wrecked when [a] typhoid scare closed [the] Hauraki Gulf beds'. A number of landings were constructed around the harbour, including at Ruatuna (to the east of Kutarere), 'at the inlet past Kutarere, at Motuore Point, and further up that arm of the harbour'. A boatshed was build at Tokitoki (near Whangakopikopiko, or Tern Island) by the Chapman Brothers, who were farmers at

⁶³ 'Notes on Ohiwa and Surroundings'

⁶⁴ *Opotiki News*, 27 April 1976

⁶⁵ Whakatane Harbour Board Ohiwa Subdivisions, December 1956, Memorandum of Lease, showing 'residential sections for leasing, each approximately ¼ acre', HD London Research Library, Whakatane

⁶⁶ Van der Wouden, *Ohiwa*, pp 9-10

Waiotaha. This was allegedly a 'favourite camping place for families from Opotiki and Gisborne for many years'. A Mr RT Abbot 'owned practically all the land between Toke toke and Ruatuna', including Pukeruru point (also known as Billygoat point), near Hokianga Island.⁶⁷ Most of these localities can be seen in figure 9. The first Pakeha settler at Kutarere, F Drury, is said to have arrived in 1879, whereupon he set about draining low-lying land and farming cattle. As other settlers arrived and established farms, a butter factory was set up. Corn and maize (which 'when first sown on the reclaimed land reached extraordinary proportions') were grown. By 1900, Kutarere was apparently 'considered a more important town to the district than Opotiki'. It possessed 'a couple of stores, a billiard saloon, a bakehouse, butchery, boardinghouse and a thriving Maori settlement at its front door'.⁶⁸ The Kutarere Post Office (first known as the Waiotahi Post Office) was opened in 1885, Kutarere School (first known as Ohiwa School) opened in 1899 with 13 pupils, and a church was built in 1912.⁶⁹ The Kutarere Store, which opened in 1898, was closed along with the post service in 1995.⁷⁰ The assortment of names used indicates that there was a certain amount of fluidity when it came to describing locations in the Ohiwa area.

While it appears as if Ohakana Island may have been granted to Kepa Toihau of Ngati Awa by the Compensation Court, according to a 1972 story in the *Opotiki News*, 'soon after the Maori Wars a Benjamin Biddle (ex Armed Constabulary) took over the island and his relatives Bates (Te Pei) and Hall lived on there for some time growing vegetables and fruit for the Auckland market'. This account described Ohakana Island as 'an island gem with a well-founded reputation for producing food crops well in excess of the surrounding mainland'.⁷¹ Another source describes 'the first owner' of Ohakana Island was Stewart Bates, the first newspaper proprietor in the Bay of Plenty, who ran the *Opotiki Herald* and later a Tauranga newspaper. Bates let the island 'as home to several young couples out from England'.⁷² In the 1920s, the island was farmed by a group of Whakatane 'businessmen', who ran a small dairy herd. During this time much of the island was cleared. From about 1939, the island was farmed by E K Goodwin, who sold ten acres to B Cottrell in 1947 and the remainder to Theodorus van

⁶⁷ 'Notes on Ohiwa and Surroundings'

⁶⁸ *Whakatane Beacon*, 31 August 1963

⁶⁹ *Bay Weekend (Whakatane Beacon)*, 21 March 1998, p 4; see also 'Early Kutarere: Reminiscences of Mr A W Ruff', *Opotiki News*, 19 June 1959, Ohiwa Scrapbook, Opotiki Heritage and Agricultural Society Museum

⁷⁰ *Opotiki News*, 23 March 1995

⁷¹ *Opotiki News*, 18 January 1972, Ohiwa Scrapbook, Opotiki Heritage and Agricultural Society Museum

⁷² 'Notes on Ohiwa and Surroundings'

Boheemen in 1967. Van Boheemen applied to subdivide the island, but was turned down by the Whakatane County Council on the grounds that there was no access. Several months after selling his share of the island, The council changed its policy and granted the Rotorua-based Ohakana Development Company, permission to subdivide and sell the land in ten-acre blocks in 1971.⁷³ In 1997, the Whakatane District Council granted resource consent for the development of a 'residential community arts and retreat centre' on Ohakana Island.⁷⁴

As discussed in 5.3, a school had been established in 1873 for the children of the Arawa troops stationed at Onekawa. Van der Wouden quotes an 1874 account of the school as follows:

The school consists of about 20 children, all boys from 10 to 15 years of age, and is conducted by John Avent of Opotiki. The schoolhouse is a simple whare, badly lighted and an earthen floor. In spite of all the obstacles Mr Avent has brought the children to a state of proficiency which is almost marvellous and would put to shame many a European child of the same age. ... It is quite a pleasure and would be quite a useful lesson to many a European school, to see the boys filing out when dismissed, each cap in hand, turn respectfully towards the teacher and wishing him 'Good Morning'.⁷⁵

According to Van der Wouden, the school was closed a few years later when the Armed Constabulary were withdrawn.⁷⁶

In 1912, the owners of the Tuararangaia 1B block – located to the east of the Rangitaiki River and to the south of the confiscation line (see figure 2) – ceded 1000 acres of this block to the Crown to be set aside as an endowment for the building of a college for the children of Tuhoe, Ngati Awa and Te Arawa in the area of Ohiwa. The land was transferred to the Crown, but no college was built. In 1972 the land was returned to Tuhoe.⁷⁷

7.6 Wharves and Reclamations

As already noted, Ohiwa spit became an alternate landing place, when vessels were unable to unload goods and passengers at either Whakatane or Opotiki. According to Van der Wouden,

⁷³ Van der Wouden, *Ohiwa*, p 30; 'Historic Ohiwa Island is now being Subdivided', *Opotiki News*, 5 February 1971; *Whakatane Beacon*, 2 May 1979, 4 May 1979

⁷⁴ *Daily Post*, 26 November 1997

⁷⁵ Unknown source, quoted in Van der Wouden, *Ohiwa*, p 16

⁷⁶ Van der Wouden, *Ohiwa*, p 17

the Northern Steamship Company, which was formed in 1881 and was the main carrier of goods and passengers along the coast, had tried to persuade the Whakatane County Council to build a wharf at Ohiwa. In 1896, the Company decided to build its own wharf on the spit, just inside the entrance on the edge of the deep water channel:

It was constructed in the usual “T” form with a good sized wharf shed on the “T” and connected to the shore by a long wooden causeway. The wharf was appreciated by the local farmers as maize, the main crop at the time, could now be stockpiled awaiting the arrival of a steamer, and inward and outward goods could now be stored under cover. The Company also kept a small steamer (like the *Staffa*, *Katikati* or *Fingall*) at Ohiwa and these were used to tranship goods to Opotiki. Their smaller size enabled these small steamers to navigate the Opotiki bar when the bigger ships could not enter. The SS *Waiotahi* (278 tons) was on the Opotiki/Ohiwa run from 1893 until 1906 when she was replaced by the 450 ton *Ngati Awa* which ran until 1922.⁷⁸

The increased erosion of the spit around the turn of the century threatened the wharf, undermining the piles in 1911 and causing the shed to subside. The wharf was repaired and an extra 50 feet had to be added to the causeway, but it had to be abandoned in 1922.⁷⁹

Van der Wouden notes that while the wharf was in operation, the Northern Steamship Company kept a small barge for the use of local settlers for taking their produce from the many small jetties and landing places around the harbour to the wharf. Freight from further inland ‘was carried to the wharf either by the local farmers themselves or by the local carrier Allan Abbot who at first used horse drawn wagons and later motor trucks’.⁸⁰

Even before the Ohiwa spit wharf became unusable, the Opotiki and Whakatane County Councils had another wharf built at Kutarere at a cost of about £5000.⁸¹ Due to the shallow nature of the harbour, a long causeway was built across the mudflats towards the deeper water, near which the wharf and shed were situated. The Kutarere wharf was opened in April 1922 with great expectations, however it never really lived up to its promise. The *Ngati Awa*

⁷⁷ Peter Clayworth, ‘A History of the Tuararangaia Blocks’, report commissioned by the Waitangi Tribunal, May 2001, pp 97-104

⁷⁸ A van der Wouden, ‘Wharves on the Ohiwa Harbour’, *Historical Review*, vol 40, no 2, November 1992, pp 102-108, p 102

⁷⁹ *Ibid.*, p 102; Van der Wouden, *Ohiwa*, pp 22-23

⁸⁰ Van der Wouden, ‘Wharves on the Ohiwa Harbour’, p 102

⁸¹ *Opotiki News*, 18 April 1969

was unable to reach the wharf, as the channel was too narrow and shallow to navigate safely, and was replaced by smaller schooners.⁸² In addition, as land transport developed there was less need to send goods by sea from Ohiwa. Van der Wouden notes that at this time some dairy companies in the district were closing and amalgamating with the Opotiki factory, and in 1928, the East Coast Railway was extended to Taneatua. 'By the late 1920s revenue from cargo handling no longer covered the running and depreciation costs' of the wharf.⁸³ One of the wharf's heaviest users was the Public Works Department, bringing in roading material and equipment for use on the road 'into the Urewera country'.⁸⁴

In 1957 the Whakatane Harbour Board built a new wharf at Ohope, and the Kutarere wharf closed two years later, two years before the last payment was made on the loan raised to build it. As the new wharf was considered to be too far from Opotiki, the Opotiki Council began work on a wharf near Hokianga Island where there was deeper water, but abandoned the project in favour of sending goods from Opotiki by way of the Taneatua railhead.⁸⁵ While the Ohope wharf, like that at Kutarere before it, was opened with much optimism, by 1963 the changing nature of the harbour environment was becoming a problem, and in 1966 the Northern Steamship Company withdrew its service, claiming that their ships were sustaining too much damage on the shallow harbour bar. Van der Wouden notes that the first ship to use the port when it opened in 1957 was the *Waiotahi*, under the charge of Captain Mokomoko.⁸⁶

It was not just the immediate Ohiwa area that benefited from having a wharf prior to land transport being developed. Kutarere was known as the 'port of the Urewera' until the establishment of the Taneatua railhead.⁸⁷ When the wharf was opened in 1922, the Hon J B Gow, chairman of the Opotiki County Council, said 'the erection of the wharf was "one of the best things that had happened for the whole of the hinterland"'. K S Williams, MP, stated that the wharf would be 'a boon to the Urewera Country'. W Reid, chairman of the Whakatane County Council,

⁸² Of the Kutarere wharf, Ducker recalled that 'only scows would go up that far, and then only at high tide', Ducker, p 16

⁸³ Van der Wouden, 'Wharves on the Ohiwa Harbour', p 103

⁸⁴ *Opotiki News*, 18 April 1969; the article quotes the *East Coast Guardian*, Christmas Number, 1923

⁸⁵ Van der Wouden, 'Wharves on the Ohiwa Harbour', p 103

⁸⁶ *Ibid.*, pp 103-4

⁸⁷ *Opotiki News*, 18 April 1969

declared that the Kutarere Wharf was ‘the natural outlet for the whole of the country drained by the Waimana river. Large areas of this country have not yet been opened up, but the time is not far distant when the Urewera Valley and adjacent country will be dotted with homesteads. The settlers will undoubtedly despatch their products and receive their stores via Kutarere, - their natural outlet.’⁸⁸

In addition to those connected to the various wharves, there were a number of significant reclamations around the edge of the harbour, such as stopbanks and road causeways that impacted on the harbour, impeding the flow of water. Poorly located roads have also contributed to the increase in sedimentation in the harbour and its estuaries which is occurring faster than natural processes of dispersal allow for. Other contributing factors of this increased sedimentation include inadequately controlled earthworks, soil erosion through vegetation clearance, marine erosion as a result of the loss of salt marshes, and the channelling and strengthening of streams.⁸⁹ The *Ohiwa Harbour Multiple Use Recreation Plan administered jointly by the Opotiki District Council and the Whakatane District Council* (pre-1991), identified reclamation as a serious issue as the impact on the harbour is permanent, particularly the impact on plant communities such as saltmarshes and mangroves, destroying ‘essential habitat for estuarine dependent bird species’. The plan stated that:

all landholders who hold title to areas of tidal land, saltmarsh or mangrove adjoining the harbour must apply for Harbours Act 1950 approval before they can do any reclamation or drainage of their privately-owned tidal land. Landowners can be prosecuted for undertaking illegal drainage or reclamation without prior approval.⁹⁰

A 1994 Ministry of Agricultural and Fisheries report found that ‘although Ohiwa Harbour remains relatively close to its natural state, the harbour still remains vulnerable to potential threats. Among the threats identified was ‘stopbanking, drainage, infilling and fencing off of parts of the estuary in attempts to increase agricultural production,’ which it was reported, ‘can have serious effects on the ecosystem’. It was reported that ‘the estuary’s productivity is reduced by road causeways which restrict the flow of water, building up fine sediment,’ and

⁸⁸ Extract from *East Coast Guardian*, Opotiki, Christmas 1923, HD London Research Library, Whakatane

⁸⁹ Department of Conservation Rotorua, *Te Kete Kai a Tairongo*, video, 1995

⁹⁰ *Ohiwa Harbour Multiple Use Recreation Plan, administered jointly by the Opotiki District Council and the Whakatane District Council*, nd, first created in 1980 and revised, pp 38-39

that 'causeways alter the natural cycle of covering and uncovering the tidal flats, which can promote growth of undesirable species'.⁹¹

7.7 Farming, Aquaculture and Residential Development

The land granted to military settlers at Ohiwa, as elsewhere, was for the purpose of farming. As stated in chapter 2, much of the land in the area was cleared and farms established. Areas adjacent to the harbour were reclaimed, such as those at Kutarere mentioned above, to become farmland. The majority of the lands in the Ohiwa area continues to be farmed in a number of ways, including dry stock and dairy farms, as well as some forestry, orchards and lifestyle blocks.⁹²

Dairies were established in the Ohiwa area in the early twentieth century, at Waiotahe, Cheddar Valley and Nukuhou, as well as at Waimana. The cheese was shipped from Ohiwa, including that produced by the Waiotahe factory (established in 1905) which was hauled over the madflats, sandhills and beach, before a cutting was made through the hill and a causeway constructed over the mudflats in 1906. Later this was made a road.⁹³ As noted in the previous section, many of these dairies closed down or amalgamated with the Opotiki dairy factory in the 1920s. The Cheddar Valley factory, for example, operated from 1915 to 1927.⁹⁴ As noted above, maize and corn were grown at Kutarere, and in the early years of the twentieth century, sheep farming was also becoming more widespread.⁹⁵ From about the late 1970s forestry has been established over some 20% of the Ohiwa catchment area. The amount of land in the catchment covered in production forest (predominantly pine) increased from 293 hectares in 1975/76 to 3,318 hectares in 1995.⁹⁶ One recent example of forestry development in recent years is the 'Ohiwa Forest', a 364-hectare investment development established by Asset Forestry Limited, to the west of the harbour, with access from the Whakatane-Taneatua

⁹¹ *Whakatane Beacon*, 8 November 1994

⁹² Hughes, *Draft Ohiwa Harbour and Catchment Scoping Report*, p 2

⁹³ Du Pontet, 'Early Days in the Waiotahi Valley', p 71

⁹⁴ *Whakatane Beacon*, 8 February 1972

⁹⁵ *Auckland Weekly News*, 29 December 1904

⁹⁶ John McIntosh and Stephen Park, *Environmental Quality of Ohiwa Harbour*, Environment Bay of Plenty Environmental Report 97/17, August 1997, pp iii, 1-2

highway.⁹⁷ Three areas of *pinus radiata* plantations have been identified in the immediate harbour area: south of Paparoa pa, east of Whitiwhiti Point and in the Waiotane Stream.⁹⁸

In January 1994 a meeting was held to form a group to discuss the impact of the harvesting of part of the Taneatua Forest on the Wainui Stream catchment which drains into Ohiwa Harbour. The meeting was called by Tasman Forestry Ltd and attended by representatives of the company; neighbouring land owners (including a representative of the Ringatu Church Trust land); representatives from Ngati Awa, Tuhoe and Whakatohea; and interested Ohiwa residents. It was noted that part of the forest, established in the 1960s, was nearing maturity, and 480 hectares were planned for clearfelling between 1995 and 2000. Of this area, 320 hectares fell within the Wainui catchment – being 17% of the total catchment area. According to the minutes produced by Tasman Forestry, representatives of the company informed the meeting that it intended to undertake ‘studies on the catchment to understand the effect that harvesting may have on the catchment’. They suggested that forestry had improved the soil and water values of the catchment, and that ‘the farming activities in the lower catchment might not have endured and the sediment entering the harbour been much greater, had the forest not been established’. Tasman Forestry also informed the meeting that it planned to re-plant the clearfelled area in pine, and to attempt to reduce the impact of roading, which had the greatest potential for soil and water degradation. During the discussion that followed Tasman’s presentation, Dave Sayer, District Manager of Tasman Forestry Ltd, Bay of Plenty, ‘assured the group that the Resource Management Act placed a clear responsibility on Tasman Forestry Limited to control its activities and that this meeting was an example of Tasman Forestry Limited taking that responsibility seriously’. According to Tasman’s minutes, a number of attendees expressed concern over the increase in run-off and sedimentation.⁹⁹ In October 1994, Tasman Forestry Ltd informed the members of the group that studies were continuing and that Environment Bay of Plenty had been ‘assisting with the necessary consents’.¹⁰⁰

⁹⁷ Asset Forestry Limited, *Ohiwa Forest Prospectus*, 1993 (Environment B-O-P Library, Whakatane)

⁹⁸ *Ohiwa Harbour Multiple Use Recreation Plan*, p 19

⁹⁹ Dave Sayer, District Manager, Tasman Forestry Ltd, Bay of Plenty, Wainui Stream Catchment Study, Meeting held at the offices of Te Runanga O Ngati Awa, 20 January 1994, Environment B-O-P Archives, Whakatane, file 7100-01

¹⁰⁰ David Sayer, District Manager, Tasman Forestry Ltd, Bay of Plenty, Wainui Catchment Study – Update, 10 October 1994, Environment B-O-P Archives, Whakatane, file 7100-01

In both 1909 and 1915 Ohiwa Harbour was considered as a possible site for a freezing works but it was decided that there was not enough fresh water.¹⁰¹ According to one account, the Chapman Brothers sold about fifteen acres of land to be used for the establishment of a freezing works on the eastern side of the harbour. However it was decided to move the project to Motuore Point, but this scheme likewise fell through, and freezing works were eventually built at Whakatane.¹⁰²

From the end of the nineteenth century, oysters were harvested from the harbour and shipped to Auckland. According to Van der Wouden, as a result the oyster population declined 'perhaps through overfishing or silting of the harbour'. In 1967, the Marine Department started oyster-farming trials at Ohiwa as well as at Maketu and Tauranga. According to Van der Wouden, 'the first five acre lease at Ohiwa was taken up by Mr G V Flight who started out with 180 6 x 9 foot trays. The Department supplied oysters of different ages and also oyster spat'.¹⁰³ By 1971 two more leases had been taken up, and one of these 'rock oyster farmers', Herb Brebner, stated at about this time that he believed that 'with expertise the 6000 acres of Ohiwa Harbour are capable of producing a \$2 million shellfish industry for Whakatane'.¹⁰⁴ In 1988, there were three Ministry of Agriculture and Fisheries oyster farming leases (MAF leases 25, 43 and 52) in the harbour, all operated by Ohope Seafoods and Oyster Farm (Christopher Brian Hogan and Marion Van Delden of Ohope). Leases 25 and 43 are located near Ohope to the west of Ohakana Island, while lease 52 is located near Wainui between Paparoa and Motuore (see figure 8). A further lease was issued to Bruce Sargisson Baker of Whakatane to take cockles, pipi and tuatua from the harbour. At this time it was estimated that there were some 750,000 oysters divided between the three lease sites, and that approximately 120,000 oysters were harvested annually. The quantity of cockles and pipi in the harbour were unknown, and 120-180 kg cockles and 150-300 kg pipi were harvested each week.¹⁰⁵

¹⁰¹ Van der Wouden, *Ohiwa*, p 38

¹⁰² 'Notes on Ohiwa and Surroundings'

¹⁰³ Van der Wouden, *Ohiwa*, p 32; 'First Bay oyster growing licence for Ohiwa Harbour', *Bay of Plenty Times*, 11 May 1968, p 7

¹⁰⁴ *Weekly News*, 1 March 1971

¹⁰⁵ B M Roughan and R S Okell, *Sanitary Survey: Ohiwa Harbour Shellfish Leases 25, 43 and 52 and the Baker Lease*, Department of Health, Rotorua, April 1988, p 3-4, Environment B-O-P Archives, Whakatane, file 0760 01

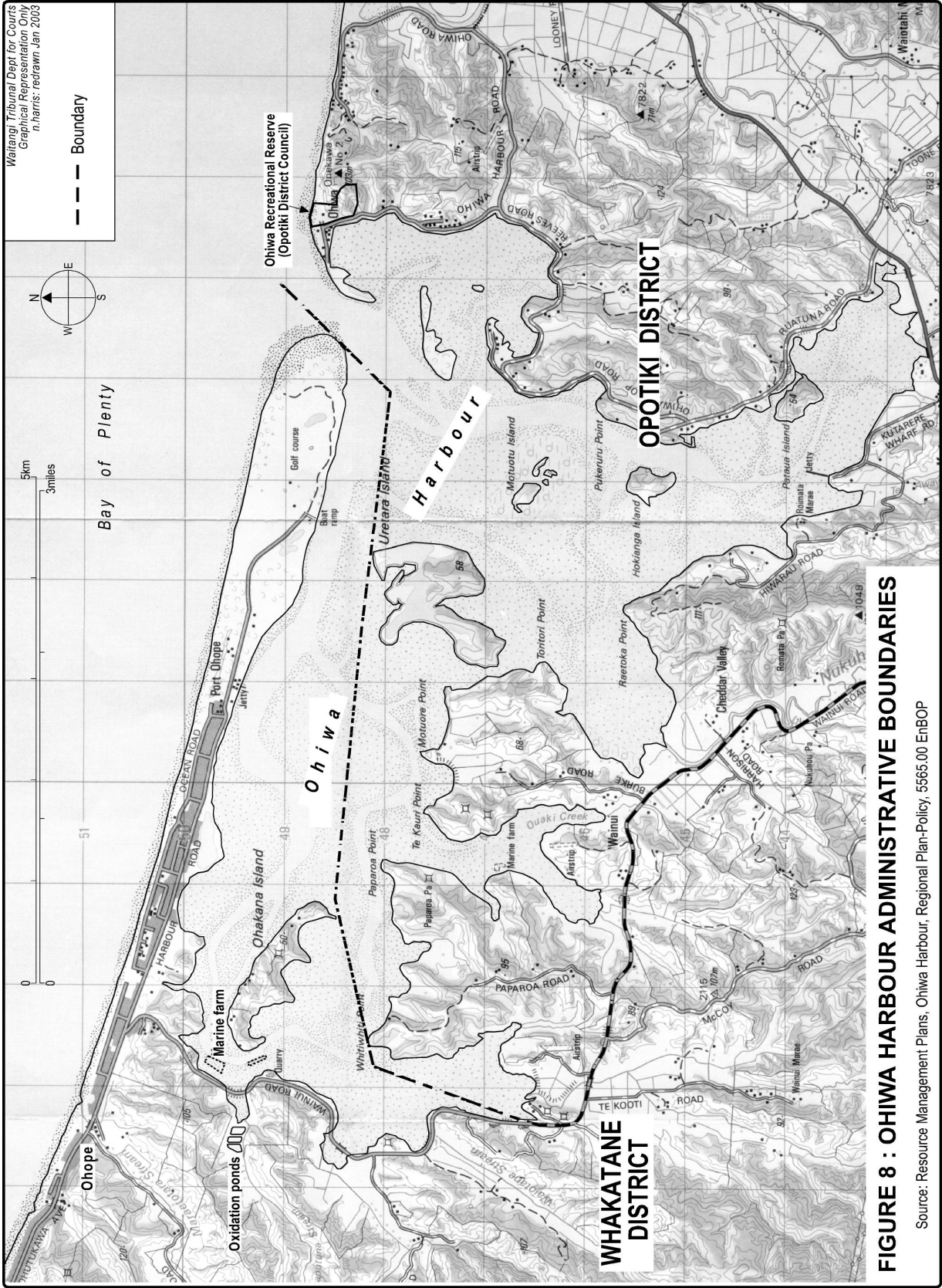


FIGURE 8 : OHIWA HARBOUR ADMINISTRATIVE BOUNDARIES

Source: Resource Management Plans, Ohia Harbour, Regional Plan-Policy, 5565.00 EnBOP

In March 1995, the Bay of Plenty Regional Council granted to Ohiwa Marine Oysters Limited (S&M and J&J Crawshaw) a permit to establish another oyster farm between Whitiwhiti Point and Paparoa Point (to the south of Ohakana island).¹⁰⁶ As of March 1997, the Crawshaws also held the leases for two of the existing three two-hectare oyster farm leases (MAF leases 25 and 43), while they had allowed the third lease (MAF lease 52) to expire in 1996.¹⁰⁷ In 1997 it was reported that 70,000 dozen oysters are harvested from Ohiwa Harbour each year. One third are transported to Auckland in the shell for export, one third goes to the wholesale market, ready opened, and the last third are sold through the fish and chip shop on the western edge of the harbour near Ohope, where the oyster farms are situated.¹⁰⁸

Residential development around Ohiwa Harbour has largely been confined to Ohope and Port Ohope. Such development has resulted in a number of environmental problems – notably water supply and sewerage treatment and other pollution. In 1962, when subdivision on the Ohiwa Peninsula (Ohope spit) was proposed, a Health Department assessment found that bore water was available, but of doubtful quality and possibly unsuitable for domestic use, while the fine sandy soil made septic tanks ‘generally unsuitable’ and to be avoided.¹⁰⁹ The development went ahead and a bore was installed in 1964. A sewerage treatment system for the Ohope end of the beach was installed in 1972, and is discussed further below.

In 1996 an application was made for resource consent by Ohope Waterways Limited for a canal housing project at Ohiwa Harbour. The company planned to develop ‘a high-class residential subdivision around a proposed L-shaped boat canal connected to Ohiwa Harbour’.¹¹⁰ The proposed 66-lot subdivision would have involved ‘dredging a channel across the inter-tidal area and digging a canal out on land to create a “private” coastal marine area’.¹¹¹ Some 500 submissions were received, ‘with strong opposition to the proposal from Ngati Awa, Whakatohea, Upokorehe and Ngai Tuhoe’. Among the submissions was a presentation made ‘by kaumatua on the cultural and historical significance of Ohiwa Harbour, including wahi

¹⁰⁶ Bay of Plenty Regional Council Resource Consent Number 04 0136, 29 March 1991, appendix to A L Lawrie, *Compliance Report – Marine Aquaculture in the Bay of Plenty*, Environment B-O-P Environmental Report 97/5, March 1997, np

¹⁰⁷ Lawrie, p 5

¹⁰⁸ ‘Oyster farming on Ohiwa Harbour’, *Whakatane Beacon*, 19 August 1997

¹⁰⁹ File note, Crown Subdivision, Ohiwa, 15 May 1962, A675/13b 53/14, Ohope and Ohiwa 1960-67, BAHT Department of Conservation, Rotorua, NA, Auckland

¹¹⁰ *Whakatane Beacon*, 26 June 1996

¹¹¹ *He Atinga*, Department of Conservation, July 1997, p 7

tapu and a vital food source for iwi'.¹¹² There was also opposition from other residents and users of the harbour, the Royal Forest and Bird Protection Society and the Department of Conservation.¹¹³ The Department of Conservation 'opposed the development on the basis that it was inappropriate and was contrary to the various planning documents relating to Ohiwa Harbour and would have adverse effects on the harbour's natural character and ecology'. The developers were given six months to further consult with iwi, at the end of which time they offered to provide 'a \$300,000 environmental fund for protection of the Ohiwa Harbour, to be spent at the discretion of Maori'. They 'also agreed to withdraw plans to locate a satellite dish in the vicinity of a small hill near historic sites'.¹¹⁴ The resource consent application was turned down by a special hearing committee established by the Whakatane District Council and Environment B.O.P 'on the grounds that the committee was not convinced that the canal would not have an adverse impact on the harbour.

A second application was submitted, this time for a more conventional 99 lot residential subdivision, without the canal, and with more attention paid to the local environment. The application received over 20 submissions, mostly in opposition.¹¹⁵ Representatives from Upokorehe, in particular, continued to voice their opposition to the development. On 18 May 1999, the Upokorehe Resource Management Committee informed the directors of Ohope Waterways Ltd that they were 'opposed to further development on the fringes of Ohiwa Harbour'. They stated that 'development to date has stressed the normal environment of the harbour', citing as proof 'the recent death of a large percentage' of the harbour's cockles. They also stated that employment and 'securing continued seafood for our people' were 'a major priority' and that as such, the hapu were 'planning to develop various aquaculture enterprises in the harbour'. They added that they 'fail[ed] to see how you can guarantee that Ohope Waterways Development will not create a further deterioration of quality of the Harbour's Environment'.¹¹⁶ On 16 July 1999, representatives of Upokorehe informed Waaka Vercoe, Maori Policy Advisor, Environment Bay of Plenty, that at an Upokorehe Hapu hui held at Roimata marae on 4 July 1999, a resolution was passed:

¹¹² Ibid.

¹¹³ *Whakatane Beacon*, 26 June 1996

¹¹⁴ *Whakatane Beacon*, 31 October 1997

¹¹⁵ *Whakatane Beacon*, 24 November 1998

¹¹⁶ Upokorehe Resource Management, Upokorehe Hapu, Waiotaha, Kutarere, Roimata, 18 May 1999, Environment B.O.P Archives, Whakatane, file 5564 05

That all those areas of land stretching West from the Ohiwa Harbour mouth, to and inclusive of Te Horo and its surrounds, has on this 4th day of July 1999 been declared Waahi Tapu to the Hapu of Upokorehe.¹¹⁷

The Kaitiaki Resource Management Roopu o Upokorehe produced a 'Kaitiaki Tangata Whenua Ecological Bionomics Waahi Tapu Report on Proposed Ohope Waterways Development' in which it was stated that 'We the Kaitiaki O Upokorehe oppose entirely the development known as Ohope Waterways, on the Ohiwa Harbour!' The report opposed the discharge of water into the harbour 'especially as a large proportion of this is to come from sewage', and noted that 'the area being discharged into is a fish and mussel breeding ground'. The report also alleged 'the misuse of Archaeological and Environmental reports designed to fast track development without correct consultation', and stated that these reports were 'irrelevant ... as is the authority of The Historic Places Trust!'

All of these reports are based on the erroneous concept that Waahi Tapu are solely determined by physical evidence of some archaeological find, such as shell middens etc. We as Kaitiaki state that Waahi Tapu definition is the sole domain of Kaitiaki Tangata Whenua and no other. The non-physical is just as relevant to the understanding of Waahi Tapu as any physical 'evidence'. We thoroughly disagree that any outside body has any authority to determine Waahi Tapu status, or has any authority to make decisions on the destruction of those areas.

The report also stated that the level of consultation undertaken in the production of the reports was 'unacceptable and basically non existent'. It also states that 'Ngati Awa Trust Board are not the appropriate authority to deal with this area. Upokorehe/Ngati Raumoana/Tuhoe Ngai Tama Tuhi Ra Ki Waimana are the appropriate bodies to be consulted with in conjunction with Ngati Awa Hapu.'¹¹⁸

¹¹⁷ Karen Moyer, Secretary, Upokorehe Hapu, to Waaka Vercoe, Maori Policy Advisor, Environment Bay of Plenty, 16 July 1999, Environment B-O-P Archives, Whakatane, file 5564 05

¹¹⁸ The Kaitiaki Resource Management Roopu o Upokorehe, 'Kaitiaki Tangata Whenua Ecological Bionomics Waahi Tapu Report on Proposed Ohope Waterways Development', nd, Environment B-O-P Archives, Whakatane, file 5564 05 (emphasis in original)

The Ohope Waterways subdivision was granted consent in October 1999. It was reported that 'a 98-section subdivision will be built in three stages, with the first stage underway towards the end of the year'.¹¹⁹

In a December 2002 *Listener* article, Ohope was included among a selection of New Zealand's most highly desirable residential beach locations.¹²⁰ Across the harbour from the residential development extending along the Ohope spit from the beachfront subdivisions of Ohope, lie some of the worst examples of poor quality housing in the country. In March 2000, the Labour Minister of Housing, Mark Gosche, visited the eastern Bay of Plenty and visited 'the homes of whanau from the Upokorehe hapu in Kutarere', where the average annual income was reportedly less than \$10,000. He described the housing conditions as 'substandard', citing 'overcrowding, drainage problems and dampness'.¹²¹

As early as 1904, Ohiwa harbour was being described as 'a tourist resort', mainly for the residents of Opotiki and Whakatane, and the surrounding area.¹²² As the numbers of visitors increased, the question of which authority should be responsible for camping sites and facilities became an issue. In 1962 calls were made for increased camping facilities at Port Ohope (known, somewhat controversially, as 'Port Ohiwa' from 1962 to 1966) as Ohope was 'crowded out every year'. There were calls for the Whakatane County Council and the Whakatane Harbour Board (who had assumed responsibility for the Ohope foreshore) to cooperate on this matter.¹²³ Other recreation activities at Ohiwa include fishing and a range of water activities – some of which are discussed in chapter 8.

7.8 Pollution and other environmental impacts

Deforestation and other vegetation clearance have added to the increased sedimentation in the harbour and estuaries. According to one account, 'millions of feet of native timber were milled by Gow's Mill operating in the magnificent stands of the Wainui and Waimana forests'.¹²⁴ Modern farming practices have also impacted on the environment through such things as

¹¹⁹ *Whakatane Beacon*, 12 October 1999

¹²⁰ Bruce Ansley, 'Where the sand turns to gold', *Listener*, 7 December 2002, pp 18-24

¹²¹ 'No excuses – Maori Housing', Press Release, New Zealand Government, 10 March 2000; 'Maori housing crisis – government to work with iwi', Press Release, New Zealand Government, 8 March 2000

¹²² *Auckland Weekly News*, 14 December 1904

¹²³ *Opotiki News*, 9 February 1962

¹²⁴ *Whakatane Beacon*, 31 August 1963

nutrient enrichment caused by the application of fertilisers and discharges from dairy sheds, and resulting in changing marine vegetation, such as algae blooms. Seepage from septic tanks further contributes to the level of extra nutrients, and pollution. Wandering stock and uncontrolled grazing have damaged native vegetation.¹²⁵

Data collected by the Bay of Plenty Catchment Commission over a 12-month period in 1973-1974 revealed that 'dairy effluent treatment does add significant nutrients to the Nukuhou River', and that 'at periods of high flow the river contains a very high suspended sediment concentration'.¹²⁶ The study found that of the approximately 29 dairy farms milking 4080 cows in the Nukuhou-Ohiwa area, 48% were categorised as causing 'heavy pollution', in that cowshed wastes were being discharged directly into waterways without any treatment. 38% were classified as causing 'light pollution', in that cowshed wastes received 'some' treatment before entering a waterway ('generally this would mean a length of farm drain or a small pond'). The remaining 14% of farms were classified as causing 'nil pollution' in that there was no evidence of untreated wastes entering waterways.¹²⁷ Farmers were given until June 1975 to cease discharging untreated shed wastes into natural water, so as to comply with the requirements of the Water and Soil Conservation Act Amendment No 2 1971. By October 1975, most had installed some form of treatment.¹²⁸ In 1984, the Bay of Plenty Catchment Commission undertook faecal coliform sampling of the Nukuhou River, and found that the river has 'a continual faecal coliform level and this is escalated by rain fall'.¹²⁹ In 1988 it was reported that 'stock have open access to the Nukuhou River and all other streams'.¹³⁰

In August 1997, a report on the environmental quality of Ohiwa Harbour produced by Environmental Bay of Plenty, found that 'from the study of the Nukuhou River it is apparent that land-use in the catchment of Ohiwa Harbour has the potential to cause environmental quality degradation'.¹³¹ The study, which analysed 56 samples from the Nukuhou from 3 July 1990 to 17 July 1997, found that there is 'considerable bacterial contamination' of the river and that it 'greatly exceeds the freshwater bathing guideline of the New Zealand Ministry of

¹²⁵ Department of Conservation Rotorua, *Te Kete Kai a Tairongo*, video, 1995

¹²⁶ Roughan and Okell, p 8

¹²⁷ McIntosh and Park, Appendix 1 Bay of Plenty Catchment Board Report, np

¹²⁸ Ibid.

¹²⁹ Roughan and Okell, p 11

¹³⁰ Ibid., p 7

¹³¹ McIntosh and Park, p iii

Health'.¹³² As the Nukuhou is the major inflow to the harbour, the report expressed concern that 'the receiving water of Ohiwa Harbour are used for swimming and shellfish gathering', and that 'flood flows of the Nukuhou can affect large areas of harbour'. The report found that 'the main source of nutrients and bacteria is from the principal agricultural activity in the catchment i.e. dairy farming'. In 1997, 25 dairy sheds had consent from Environment B.O.P to discharge in the Nukuhou catchment, with a total of 29 in the whole Ohiwa Harbour catchment.¹³³ In addition to the environmental impact on the harbour, whitebait is fished directly from the Nukuhou River.¹³⁴

Despite the high bacterial and nutrient levels found in the Nukuhou River, the environmental quality report found that 'the harbour has been largely free of water quality problems, which is testimony to the diluting effects of the coastal waters'. It was also reported that:

Ohiwa Harbour waters are of good quality and have been demonstrated to be suitable for contact recreation.

Shellfish are also of good quality with regard to bacterial levels in the flesh. But as with shellfish in any estuary, care needs to be exercised if they are taken after substantial rainfall events.

It was however noted that 'contamination of the harbour by metals and organics needs to be investigated more fully', and that the harbour 'should also be monitored to examine the effects of urban populations on the wider environment'.¹³⁵

In 2002, Rick Yorke, owner of the Ohiwa Oyster Farm was reported as saying that the farm is regularly forced to suspend harvesting due to the high levels of pollution, described as 'a cocktail of agricultural chemicals, along with seepage from domestic septic tanks'.¹³⁶ According to Yorke:

When it rains, fresh water enters the harbour, bringing with it diesel off the roads, superphosphates and pesticides from the farms and all manner of nasties which raise the

¹³² Ibid., pp 9-10

¹³³ Ibid., pp 10-11

¹³⁴ Peter James Quinn, 'Ohiwa. The Food Basket of Many Hands', *New Zealand Geographic*, 57, May-June 2002, pp 78-95, p 94

¹³⁵ McIntosh and Park, pp iii

¹³⁶ Quinn, p 93

bacteria count. I only have to get 10 mls of rain and it'll close me for two days. Twenty mls is four days and 70 shuts me down for seven.¹³⁷

A further, and closely related, area of environmental concern expressed by claimants is in regard to the establishment and operation of a waste treatment plant at Ohiwa. Due to increasing residential development at Ohope, in 1972 the Whakatane County Council installed a sewerage reticulation and treatment system in the form of an oxidation pond system, located at the western end of Ohiwa Harbour, near the oyster farms (see figure 8). From as early as 1962, local residents had objected to the proposal. In October 1962 the Port Ohope Ratepayers and Residents Association, which was formed to object to this proposal, informed the council that 'under no circumstances should the County Council use Ohiwa Harbour for the purpose of sewerage treatment'. Members argued that 'while such a scheme may comply with the Health Department regulations and, while the purity of the effluent might not be harmful in any way, accidents could happen, and any danger so caused could take years to clean up'.¹³⁸ In 1965, the Port Ohope Ratepayers Association made a submission to the Pollution Advisory Council – who were then undertaking the process of classifying waters according to their use – advising the Council that:

the outlet from the proposed treatment ponds, if directed into the harbour, would flow across the largest shellfish beds; that there was always a possibility of failure or partial failure of the plant; that a cloudburst could cause the proposed oxidation ponds, which would be situated in a valley, to overflow; that an earthquake could damage pipes; that tides and winds in the harbour caused debris to move up and down a channel within the harbour for several days before releasing it to the sea.¹³⁹

The Opotiki County Council likewise opposed the discharge of any sewage effluent into Ohiwa Harbour. In 1965 it was reported that the Whakatohea Tribal Executive had thanked the Opotiki County Council 'for the firm stand it has taken in regard to proposed pollution of the harbour. On its own behalf and that of "all allied Maori organisations", a promise of association with the council's actions was given'.¹⁴⁰ The Port Ohope ratepayers rejected the 1972 scheme, and it therefore serviced Ohope alone. In 1977 an application was made to

¹³⁷ Rick Yorke, quoted in Quinn, p 93

¹³⁸ *Whakatane Beacon*, 26 October 1962

¹³⁹ *Opotiki News*, 10 August 1965. The Pollution Advisory Council's zoning of Ohiwa Harbour is discussed in chapter 8.2 of this report

extend the sewerage treatment system to include Port Ohope, 'but was shelved indefinitely in favour of constructing a public water supply scheme to both Ohope and Port Ohope'. In 1981, the extension of the sewerage system to Port Ohope was again raised due to 'the rapid development of Port Ohope', but it was explained that it was unlikely that work on the sewerage scheme could begin until the water scheme was completed in 1984.¹⁴¹

In 1986 the Ministers of Lands and Transport declined an application from the Whakatane District Council for a reclamation of Crown land to extend the sewerage treatment scheme to accommodate increased capacity. This land comprised 2.59 hectares of the bed of the Awaraputuna Stream and estuary – all the land between the existing oxidation ponds and a road causeway across the mouth of the stream. Objections had been raised by the Commission for the Environment, the Department of Lands and Survey, the Ministry of Agriculture and Fisheries, the Nature Conservation Council, and the Wildlife Service of the Department of Internal Affairs. The Department of Lands and Survey reported that:

The proposed site is part of an arm of the harbour which is isolated from the rest of the harbour by a road causeway. The site is on the upper inter-tidal flats and is salt rushland surrounded by dense fringe of rush...

The main areas of concern related to the insufficient data depicting population growth, the failure to consider land based alternatives and the inadequate information provided in the environmental impact assessment particularly in regard to the environmental effects of the reclamation.

It was reported that 'a reclamation along the lines proposed could pose a serious threat to the surrounding environment and its inhabitants'. Among the issues of concern were that the road causeway across the mouth of the Awaraputuna Stream has created 'an unnatural flow' which if altered further could lead to a deterioration in the quality of the water, and that the

¹⁴⁰ *Opotiki News*, 10 August 1965

¹⁴¹ Chief Engineer, Whakatane District Council, to the Secretary, Ministry of Transport, 19 October 1981, 4122/56b 43/55/6 pt1Harbours: Ohiwa/Port Ohope Land Endowments Purchase and reclamations 1977-87, BAHT Department of Conservation, Rotorua, NA, Auckland

reclamation would result in an increased rate of sedimentation.¹⁴² Nevertheless, in 1986, an aeration lagoon was added to the existing sewerage treatment system.¹⁴³

A 1988 Department of Health sanitary survey of Ohiwa Harbour shellfish leases reported that the sewerage system had been extended to include Port Ohope, and that 'all new sections in the Port Ohope area have sewer connections and all except one of the present premises have connections available'. However while it was found that 'the majority of premises are connecting to the system', there were no figures available as to the exact numbers connected at that time.¹⁴⁴ The report found that the wave bands used in the Ohope oxidation and aeration ponds have 'proved unsatisfactory and significant slumping and weed growth into the ponds is now evident'. The report also noted that there was a 'reserve volume of approximately 23 days before ponds overflow from operational level' and that 'any spillage will be into the estuary', that is into Ohiwa Harbour. It also stated that there was 'the potential of overflow reaching the estuary' from the sewerage system's pumping stations, including one located on Wainui Road. The sewerage outfall itself, as reported in 1988, is located 610 metres offshore – in the Pacific Ocean. In addition to the threat of pollution from the sewerage treatment plant, and from overflows from septic tanks on the Ohiwa peninsula, the report noted that there were also ten domestic waste systems on nearby Ohakana Island.¹⁴⁵

With regard to the sanitary state of the oyster farms, the Department of Health's report stated that the leases had been established for some time before the department's involvement. The first extensive survey occurred in 1981, when it was recommended that 'an on-site laboratory be established so that meaningful results can be obtained'. It was further stated that:

It has always been the opinion of staff in this office [Department of Health, Rotorua] that due to the unpredictable quality of the oysters and the growing water no export certificate

¹⁴² Director-General, Department of Lands and Survey, to Minister of Lands, 4 December 1986, CL9/3/7, 4122/56b 43/55/6 pt1Harbours: Ohiwa/Port Ohope Land Endowments Purchase and reclamations 1977-87, BAHT Department of Conservation, Rotorua, NA, Auckland. A copy of the Whakatane County Council's Environmental Impact Assessment can be found in A1063/10b 54/4/499 Unauthorised reclamations, Ohiwa 1979-86, BAHT Department of Conservation, Rotorua, NA, Auckland

¹⁴³ Roughan and Okell, p 6

¹⁴⁴ Ibid., pp 5-6

¹⁴⁵ Ibid., p 5-7, 14

could be issued for oysters grown on the leases unless there was considerable bacteriological improvement.¹⁴⁶

The 1988 survey included the routine sampling of water from 12 locations within the three shellfish growing areas, and three other sites: 'the water flowing through the culvert under the road that dissects the estuary arm that extends up to the Ohope Oxidation ponds'; another road culvert that drains a land locked arm of the estuary; and the water off shore of the Ohope spit. The samples were tested for Coliform, E. coli and salinity.¹⁴⁷ Flesh (shellfish) samples were also collected and analysed from six locations.¹⁴⁸ The report found that the growing waters 'do not meet the criteria for an approved area in accordance with the US National Shellfish Sanitation Programme', and that on average approximately one third of the flesh samples exceeded the level of faecal coliform density for the wholesale market of shellfish as recommended by the NSSP.¹⁴⁹

The report identified two categories of pollution sources: potential and actual. The potential pollution sources comprised the risk of overflow from septic tanks and other sewage disposal systems, particularly from Ohakana Island; the discharge of sewage from commercial crafts contrary to local bylaws; the failure of sewerage pumping stations resulting in effluent flowing into the estuary; any accidental or intentional overflow from either oxidation of aeration ponds or pipelines flowing directly into the estuary and over the oyster beds; and the overflow from dairy farm oxidation ponds. The actual pollution sources comprised wildlife; surface runoff from Ohope peninsula, Ohakana Island and other island; and farm runoff, which was 'seen as the major contributor to bacteriological counts recorded in the growing waters'.¹⁵⁰ The report also noted that 'two flesh samples [from shellfish] in 1981 isolated Salmonella but none have been isolated since'.¹⁵¹ The 1988 report concluded that sampling has shown that 'the growing lease areas are affected by non-point pollution, primarily of a rural source, which causes the water quality to fluctuate of a sufficient frequency that is doubtful whether the area can be conditionally approved'.¹⁵² The report recommended that 'no shellfish be exported from the harbour' and that 'to ensure the shellfish are suitable for the local market, shellfish

¹⁴⁶ Ibid., p 3

¹⁴⁷ Ibid., p 11

¹⁴⁸ Ibid., pp 5, 13, map 2

¹⁴⁹ Ibid., pp 12-13

¹⁵⁰ Ibid., p 14

¹⁵¹ Ibid., p 15

offered for sale be routinely sampled for bacteriological analysis, with an occasional sample taken after periods of rain'.¹⁵³ In 1995, when consent was granted for the establishment of the Whitiwhiti-Paparoa lease, it was made subject to three standard water quality conditions:

The conditions state that there should be no effect on water quality as a result of the oyster farm. The consent holder currently carries out a number of water quality and flesh tests in accordance with requirements of MAF and Health authorities. There is no evidence to suggest that the oyster farm is having any effect on water quality in the area and as described by the consent holder, they depend on the quality of the water for the success of the business.¹⁵⁴

As discussed above, the Ohiwa Oyster Farm continues to operate, presumably under new ownership, but is regularly forced to suspend harvesting due to the high levels of pollution.

Septic tank seepage continues to be an issue for the harbour environment, with septic tanks being used where there is no alternative sewerage scheme. In April 1998, for example Environment Bay of Plenty informed a resident of Ohiwa Harbour Road on the eastern side of the harbour, that tests on a sample taken from discharge flowing from a pipe at the front of the property had revealed 'alarmingly high levels of bacterial contamination', suggesting that the septic tank and/or drainage field was not functioning satisfactorily.¹⁵⁵ Environment Bay of Plenty's *On-Site Effluent Treatment Regional Plan* (December 1996), describes Ohiwa as being 'unsewered'.¹⁵⁶

In *Nga Tikanga Tiaki i te Taiao: Maori Environmental Management in the Bay of Plenty*, a 1993 report on issues of significance to Maori for inclusion in the Bay of Plenty Regional Policy Statement, a number of specific resource issues of significance to the iwi/hapu of the Bay of Plenty are examined. Among these is the issue of pollution and water quality. According to this report:

Water provides Maori with food and spiritual resources. These resources are directly impacted on when subject to various degrees of pollution especially with regard to the

¹⁵² Ibid., p 15

¹⁵³ Ibid., p 16

¹⁵⁴ Lawrie, p 9

¹⁵⁵ Environment B-O-P Archives, Whakatane, file 7100-01/C980253

mauri of those resources. Any impact on the above resources [‘taiapure, kaimoana, waahi tapu etc’] seriously restricts Maori use of them, eg food (polluted) cannot be used for hui with respect to manaaki ki nga manuhiri, forcing tangata whenua to buy food for the marae, thus placing an economic burden on tangata whenua to purchase food. Any spiritual impact on the mauri of the water has an impact on waahi tapu, areas used for healing and cleansing, tohi and purification rites.¹⁵⁷

The report notes that those people consulted on this issue, ‘want the degradation of tribal waters to be stopped’, and anticipated that ‘Maori classification of waters may be much stronger than current water standards, thereby reducing the level of contaminants’.¹⁵⁸ With regard to the issue of waste to waterways, the report states that ‘in both traditional and contemporary Maori society all wastes were returned to Papatuanuku, who was the agent of purification. Maori in the Bay of Plenty do not accept that their waterways should continue to be used to transport or treat contaminant waste’.¹⁵⁹ With particular regard to the use of septic tanks, the report states that ‘the type of tanks used, land structure and permeability create problems for Maori. (The nature of human effluent has both cultural and spiritual abhorrence to Maori).’ The report also notes that:

A number of tank designs are not suited to the land’s capability to accommodate treatment of waste. The sewage from tanks could mix with ground water or discharge directly if in steep, sloping or undulating country, into lakes or rivers [or, it could be added, harbours]

The problem, the report continues, ‘is a public problem not just a Maori problem’.¹⁶⁰

As Robert McClean has noted with regard to the Matakana Island Sewerage Outfall, the most serious effect of such pollution and water degradation ‘is when the discharge occurs into mahinga mataitai or areas set aside for kaimoana (essentially sea gardens).’ McClean quotes Morrie Love: ‘these areas require the highest purity of water to ensure the filter feeding

¹⁵⁶ Environment B-O-P, *On-Site Effluent Treatment Regional Plan*, Resource Planning Publication 96/3, Environment B-O-P, Whakatane, December 1996

¹⁵⁷ Morris Te Whiti Love, Tikitu Tutua-Nathan, Mike Barns and Tamati Kruger, *Nгаа Tikanga Tiaki i te Taiao: Maori Environmental Management in the Bay of Plenty*, Consultants Report on Maori Environmental Management and issues of significance to Maori for inclusion in the Regional Policy Statement, May 1993, p 71

¹⁵⁸ *Ibid.*, pp 71-72

¹⁵⁹ *Ibid.*, p 76

¹⁶⁰ *Ibid.*, p 89

organisms are not damaged and to ensure that disease organisms are not transferred'.¹⁶¹ 'The consequence of taking shellfish from areas which are effected by human waste discharge,' McClean concludes, 'means both physical and spiritual sickness'.¹⁶²

In 1999 when protesters under the banner of 'Te Tatau Pounamu o Mataatua' occupied an Opotiki District Council reserve adjacent to the harbour, at the corner of Reeves Road and Ohiwa Harbour Road, near Ohiwa Spit, one of their main concerns was the pollution of the harbour. Another issue was the traditional role of Ohiwa as a bountiful source of kaimoana.¹⁶³

From as early as the 1940s concerns were raised about the impact of overfishing on the harbour environment. In 1944 Te Whakawae Rimaha 'and 114 Others, of Ohiwa', petitioned the Government, 'praying for legislation preserving the fishing rights at Ohiwa Harbour for members of the Maori race':

(1) That we your humble petitioners hereto are members of the Maori Race of New Zealand, residing on our own hands on the shores of the Ohiwa Harbour in the Bay of Plenty. (2) That we are desirous of preserving and reserving unto ourselves and our progeny and future generations of our Race to come, all fishing rights and Pipi, Tuangi, Mussel beds rights (marked plan hereto) within the boundary of the proposed reservation in the Ohiwa Harbour, Bay of Plenty. (3) That to ensure such preservation and reservation of these fishing and shellfish grounds and the native rights thereto, we humbly request and pray of your honourable house that legislation be immediately prompted by the legislature prohibiting any further taking of fish and shellfish from the reservation by unauthorised persons. (4) That we your petitioners hereto also humbly pray that legislation be enacted investing the reserve in a Committee of Trustees. The membership of the Committee not to exceed five, and not less than three. The personnel of the Committee must be appointed by the Native Land Court.¹⁶⁴

¹⁶¹ Robert McClean, 'Matakana Island Sewerage Outfall', report commissioned by the Waitangi Tribunal, 1998 (Wai 215 ROI, doc B4), p 179; McClean cites M Love, *Sustainable Management of Water and Kaupapa Maori*, 1992, p 18

¹⁶² *Ibid.*, p 179

¹⁶³ This protest is discussed in chapter 8.8

¹⁶⁴ Petition no 36/1944, 'Te Whakawae Rimaha and 114 Others, of Ohiwa, praying for legislation preserving the fishing rights at Ohiwa Harbour for members of the Maori race', AJHR 1944, I-3, p 11, cited in Geoff Park, 'Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912-1983', report commissioned by the Waitangi Tribunal, 2001 (Wai 262 ROI, doc K4), pp 157-8

On 10 April 1944, the Chief Inspector of Fisheries, A E Heffor, advised the Acting Secretary of Maori Affairs that:

There is a good stock of flounders in the harbour ... It appears that weekend and holiday visitors from this town as well as the residents on the shores of the harbour are especially interested in the flounder fishing. All these people would resent interference with their customary rights of fishing ... The local Inspector expressed surprise at the Maori petition for exclusive rights. He said that they could get all the pipis they required without difficulty, or all the fish they wanted if they would fish. Apparently they show little disposition to engage in fishing themselves but nowadays buy smoked fish from a pakeha professional fisherman ... If it is merely a question of preventing commercial exploitation of the pipis and flounders on the foreshore from their own lands, then I do not see any objection to granting the reservation, provided that it is a compact area comprising one portion of the harbour eg the upper portion of the Kutarere arm of the Harbour indicated on the rough sketch appended hereto ... However, I consider that the Department requires to know more about the details of what the petitioners are proposing to do before agreeing to any extensive surrender of the fishing rights of the general public. I gather that there is a probability that the Pakeha residents on the shores of this harbour will substantially increase after the war. When we know the location of the suggested reservation we might meet the case by a regulation prohibiting all commercial operations for fish or shellfish in that particular portion of the harbour.¹⁶⁵

The Native Affairs Committee referred the petition to the Government for favourable consideration.¹⁶⁶

In 1948, both the Whakatohea Tribal Executive and the Opotiki County Council raised concerns over the decrease in fish stocks in the Ohiwa Harbour. The council suggested that the main cause of the decline was commercial fishing within the harbour. In 1956 the Whakatane and Opotiki County Council together called for a ban on net fishing in the harbour.¹⁶⁷ One Whakatane councillor stated that 'he knew of a commercial fishing firm which sold fish netted at Ohiwa Harbour'. The nets, he continued, 'were set across the channels of the harbour at high tide. When the tide fell they had no chance of escaping the

¹⁶⁵ Memorandum from A E Heffor, Chief Inspector of Fisheries to the Acting Secretary of Maori Affairs, 10 April 1944, in petition file of LE 1 1944/17, NA Wellington, cited in Park, p 158

¹⁶⁶ AJHR 1944, I-3, p 11; Park, p 158

¹⁶⁷ *Opotiki News*, 30 November 1956

nets.¹⁶⁸ In 1958 the fining of two men for significantly exceeding the limit on the number of cockles to be taken from the harbour, indicates concern over shellfish supplies. The two men had 13 sacks when the limit was four gallons a day. They were fined £25 each. The *Opotiki News* reported that they had discovered a 'general ignorance of a law limiting the quantity any person may take in one day of cockles, pipis or mussels ... The members of the News staff all pleaded ignorant to the law'.¹⁶⁹

A 1980 survey of the mussel beds found that at least one of the harbour's mussel beds was 'severely depleted', but that the off-shore beds 'were in a healthy state, with good sized shellfish, and that there was no reason to close them for biological factors'. The report also found that in general the beds were 'far from being depleted with an estimated total of 21 million mussels'.¹⁷⁰ By 1981 the number of mussels had fallen to three million and the beds were closed for six years. When the beds were reopened in October 1986, approximately 10 million mussels were taken in five months and the Ministry of Agriculture and Fisheries were forced to close the beds once again.¹⁷¹ In 1994, following the introduction of a limit of 50 mussels per person per day, 'apart from those who have kaimoana permits to gather for specific events', Ohiwa residents warned that the mussel beds were still being 'stripped almost to extinction'.¹⁷² In May 2002, Hohepa Mason, Ngati Awa Trust Board's general manager, called for the Ministry of Fisheries to impose a temporary ban of up to two years on harvesting mussels in the harbour. He stated that a rahui on collecting mussels had been in place at Ohiwa Harbour since the end of 2001.¹⁷³

A further environmental impact of note in the Ohiwa area is the issue of introduced pests and their control. In 1996-1997, for example, a survey of rabbit and wasp infestation levels in the Ohiwa catchment was undertaken for Environment BOP. The survey found that rabbit numbers were not high, although there were five areas identified as requiring action to prevent infestation levels rising and the rabbits spreading. Wasps (particularly Paper wasps) were found to be prevalent throughout the catchment, and in need of monitoring. Other pests were also identified, including mustelids, rats, hares, possums, magpies, peacocks, turkeys,

¹⁶⁸ *Opotiki News*, 6 November 1956

¹⁶⁹ *Opotiki News*, 8 March 1958

¹⁷⁰ *Opotiki News*, 9 April 1980

¹⁷¹ *New Zealand Herald*, 7 March 1987; *Whakatane Beacon*, 3 March 1987

¹⁷² *Opotiki News*, 8 February 1994

¹⁷³ *New Zealand Herald*, 18 May 2002

goats and feral cats. It was found that of these, peacocks, possums and poorly managed farmed goats appeared to be a problem, with possums present over the whole catchment. The survey also found that of the 89 ratepayers surveyed, only 24 were aware of Environment Bay of Plenty's Pest Management Strategy.¹⁷⁴

7.9 The Present situation

The urban settlement of Port Ohope is situated on the Ohope Spit, with the sea on one side and the harbour on the other. The western end of the spit is almost entirely subdivided and built on, while the eastern end is largely reserve land. Some of this 'reserve land' has been developed into the Ohope Golf Course, and some into parking and recreational areas on the harbour side of the spit. The remaining land has remained largely in indigenous vegetation.¹⁷⁵ Both Port Ohope and Ohiwa Spit are popular holiday destinations. Increasing residential development and recreational use of the harbour has led to an increasing strain on the harbour environment. Contributing factors include seepage from septic tanks along with the sewage treatment system, the dumping of rubbish and garden waste, the ownership of pets, and inappropriate property and road maintenance. Recreational activities also affect the harbour and include fishing, boating, jet-skiing, swimming, food-gathering, camping and picnicking. What was once a significant fishery resource is becoming 'very depleted',¹⁷⁶ while farming (and particularly dairy farming) continues to have a significant impact on the harbour environment. According to Environment Bay of Plenty's *Draft Ohiwa Harbour and Catchment Scoping Report*, released in mid-2002:

The natural character and landscape of the Ohiwa Harbour is under pressure from a wide range of activities. These include:

- the loss of indigenous vegetation over time, particularly around the harbour margins,
- the demand for urban development on Ohope Spit,

¹⁷⁴ Memo, Stephen Hall to D S Moore, Regional Pest Coordinator, 'Rabbit and Wasp Survey – Ohiwa Harbour Catchment, Bay of Plenty', 17 March 1997 (Environment B-O-P Archives, Whakatane, file 0280 001)

¹⁷⁵ Hughes, *Draft Ohiwa Harbour and Catchment Scoping Report*, p 1

¹⁷⁶ Department of Conservation Rotorua, *Te Kete Kai a Tairongo*, video, 1995

- more intensive subdivision around the harbour margin,
- dumping of rubbish on the harbour edge.¹⁷⁷

¹⁷⁷ Hughes, *Draft Ohiwa Harbour and Catchment Scoping Report*, pp 2-3

8. Regulating the Harbour: the administration of Ohiwa

8.1 Overview

As Miles has stated in the Ohiwa Harbour scoping report, one of the major issues regarding the administrative control of Ohiwa Harbour is the Crown's devolvement of harbour management powers to local authorities. Prior to 1991, these powers were exercised within the legal framework provided by the Harbours Acts. The general purpose of the Harbour Act between 1878 and 1991 was to protect harbours against adverse effects on navigation and shipping. Any specific acknowledgement of Maori interests was generally excluded from harbours legislation. Bylaws governed the management of harbours at a local level. These could be promulgated by a harbour board, or a local body empowered to act as a harbour board, or by a local body which had been granted control of the foreshore, seabed and water surface by an order in council.¹

The Whakatane County Council was formed in 1876, and administered the whole of what would later be split between the Whakatane and Opotiki County Councils in 1900.² The (land) boundary between the two counties followed, in part, what was known as the Nukuhou road (now Wainui Road). Problems regarding the administration of the boundary were apparent from the beginning. In 1904, the *Auckland Weekly News* reported that:

The Nukuhou Road ... has been allowed to get into a disgraceful state lately, owing to a dispute as to who was to do the work of repair. The Opotiki Council has decided to put the road in order, and charge half of the cost to the Whakatane Council.³

Administratively speaking, then, for most of the twentieth century, Ohiwa Harbour was bisected by the territorial boundary between the Opotiki and Whakatane districts. Therefore, much of the control and administration of the Ohiwa Harbour was exercised jointly by the Opotiki County Council (as the Ohiwa Harbour Board) and the Whakatane County Council. The two councils each exercised control over the foreshore and seabed of that part of the

¹ D C Slaven, 'Ohiwa Harbour Management Regime', memorandum to Resource Planning Committee, Bay of Plenty Regional Council, 5 December 1991, p 1, 3780.02, vol 2, Environment B.O.P

² Van der Wouden, 'The Ohiwa Ferry', p 15

³ *Auckland Weekly News*, 20 October 1904

harbour within their territorial boundaries, while, in addition, the Opotiki Council (Ohiwa Harbour Board) had control over all the waters of the Harbour. For the most part, the two councils managed the harbour under the Harbours Act 1950, in addition to a number of other statutes and regulations. These included the Town and Country Planning Act 1977; the Wildlife Act 1953; Wildlife Regulations 1955; Fisheries Regulations; Water Recreation Regulations 1979; the Motor Launch Bylaw 1977; the Opotiki County Council Water Control and Foreshore Control Bylaws; the Whakatane District Council Foreshore and Seabed Control Order 1983; and the Whakatane District Council Foreshore Control Bylaws 1984.⁴

With the local government restructuring of 1989, the Ohiwa Harbour Board was abolished and its functions and powers were vested in the Opotiki District Council. This council, acting in its capacity as the Ohiwa Harbour Board, issued the Ohiwa Harbour Water Control Bylaws in 1989. These bylaws primarily regulated activities in connection with the water surface, but also affected the seabed. Aside from the harbour board bylaws, the Opotiki District Council and the Whakatane District Council had control of the foreshore and seabed granted to them in 1983 for a period of 21 years, pursuant to section 165 of the Harbours Act (that is, a grant of control).⁵

The Whakatane District Council drew up a set of bylaws to regulate activities within its grant of control area. The Foreshore Control Bylaws 1984 controlled activities relating to the foreshore and seabed of that part of Ohiwa Harbour within the Whakatane district. In order to co-ordinate the joint management of the harbour, an Ohiwa Harbour Advisory Committee was established in 1989 and met at quarterly intervals to make recommendations to both controlling authorities. That committee comprised two members each from the Whakatane and Opotiki District Councils, one Ohiwa citizens' representative, and representatives of the three iwi with interests in the harbour: Ngati Awa, Tuhoe and Whakatohea.⁶

The Advisory Committee were assisted with advice from the Department of Conservation and Ministry of Agriculture and Fisheries staff, as well as engineering services from the Whakatane District Council. In August 1990, both the Whakatane and Opotiki district councils delegated the functions, duties and powers they held under section 165 of the

⁴ Slaven, pp 2-3; cited in Miles, 'Ohiwa Harbour Scoping Report', pp 27-28

⁵ Miles, 'Ohiwa Harbour Scoping Report', pp 27-28

⁶ Hughes, *Draft Ohiwa Harbour and Catchment Scoping Report*, p 5

Harbours Act in respect of Ohiwa to the Committee.⁷ With the introduction of the Resource Management Act in 1991, the committee's powers were effectively transferred to the Bay of Plenty Regional Council (Environment B-O-P). An informal Ohiwa Working Group comprising staff from Environment B-O-P, DOC and the Opotiki and Whakatane District Councils endeavoured to facilitate a co-ordinated approach to management of the harbour and its catchment. This group is no longer functioning.⁸

In December 1992, the Whakatane and Opotiki District Councils both declined the transfer of the management of Ohiwa harbour to their control, as had been requested under the Resource Management Act, as they were 'unwilling to take on the associated liabilities'. Control of the harbour was placed in the hands of the Bay of Plenty Regional Council.⁹ Environment B-O-P was therefore required 'to establish appropriate mechanisms to implement the activity as part of its own functions and responsibilities'. This included 'the establishment of wardens, allocation of appropriate equipment to them, the printing of a significant range of information ... and an awareness campaign for the community'. Environment B-O-P negotiated the contracting of the Harbour Master duties (for both Ohiwa and Whakatane harbours) to Whakatane District Council.¹⁰

8.2 The Management of Harbours

Following the arrival of Europeans, and prior to the establishment of responsible government in New Zealand, 'the operation and management of harbours [as much as they existed in this sense] was undertaken by local traders engaged in supplying the needs of shipping merchants and crews'. Giselle Byrnes has noted that 'given the high volume of trade which passed through New Zealand ports in the first years of European settlement, it is not surprising that the Government of the day took a strong hand in harbour control'. With the establishment of the Colonial Government, Byrnes continues:

⁷ Miles, 'Ohiwa Harbour Scoping Report', pp 28-29

⁸ Hughes, 'Draft Ohiwa Harbour and Catchment Scoping Report', p 5

⁹ *Daily Post*, 18 December 1992

¹⁰ P M Dell, Director Environmental Monitoring, Environment B-O-P, to the Manager, Maritime Policy, Ministry of Transport, Re: Harbour Act Responsibilities – Bay of Plenty Region, 19 October 1994; Contract for Services Agreement between the Bay of Plenty Regional Council and the Whakatane District Council, 22 December 1992, Environment B-O-P Archives, Whakatane, file 4120 09

the prerogative of the Crown prevailed over shipping matters. Before the Constitution Act was brought into force in 1854, matters concerned with harbours and shipping were controlled by the Governor ... Legislation passed in the first decade of organised European settlement indicated that control of the shipping trade rested firmly with the Governor.¹¹

In his 'Tauranga Moana Fisheries, Reclamations, and Foreshores Report', Robert McClean provides a useful overview of harbours and foreshore management issues and statutes from 1840 to 1991, in which he traces the governmental regulation of harbours, fisheries, foreshore, and coastal water pollution.¹² The Legislative Council passed the first Harbour Regulations Ordinance in February 1842, establishing the Harbourmasters Department under the control of the Colonial Secretary. With the approval of the Governor, the Colonial Secretary was empowered to grant permission for the reclamation of parts of the foreshore and the building of wharves. Under this legislation, harbourmasters were appointed to control navigation. The Public Reserves Act 1854, extended the Governor's authority over the foreshore, with Section 2 of this Act, empowering the Governor to grant any land below the high-water mark to the Provincial Superintendent, who would act as a trustee over areas of foreshore designated for public purposes.¹³

The Marine Boards Act 1862 went some way toward easing this 'tendency towards centralised control':

Under this Act the control of lights and beacons were vested in the Chief Marine Board, the forerunner of the Marine Department. The control of individual harbours was vested in local Marine Boards. The Chief Marine Board was appointed by the Governor in Council, while local Boards were appointed by the Superintendent of the province.¹⁴

¹¹ Giselle Byrnes, 'A Preliminary Report on the Use, Control and Management of the Tauranga Harbour', report commissioned by the Waitangi Tribunal, December 1996 (Wai 215 ROI, doc A36), pp 7-8. Byrnes cites the Municipality Corporation Ordinance 1842, 'which gave municipal authorities the power to erect wharves and other harbour works including lighthouses and beacons', before being disallowed the following year 'as it was seen to conflict with the prerogative powers of the Crown'. She also cites the Merchant Shipping Act (Imperial) 1854, which 'clearly stated the powers of the Governor over both local and inter-colonial shipping activities'.

¹² Robert A McClean, 'Tauranga Moana. Fisheries, Reclamations, and Foreshores Report', April 1999 (Wai 215 ROI, doc D7), Appendix C, pp 177-189

¹³ Ibid., p 177

¹⁴ Byrnes, p 8

The local Boards controlled navigation and port related issues, with the maintenance of harbour works being the direct responsibility of the Superintendent of the Province. Despite this apparent move away from centralised control, when Grey was Governor 'he disallowed the ordinances passed by the Provincial Governments of Auckland, Canterbury and Otago which provided for the establishment of local Boards'.¹⁵ The 1866 Marine Act repealed the 1862 Act, in effect placing harbours back under the control of the Governor, although provincial superintendents did retain control over wharves and the berthing of vessels at wharves. In 1867 a new Marine Act 'set out in some detail the procedure for embarking on harbour works, stating that any plans had to be submitted to the Governor first for his approval'.¹⁶ In 1870, the Harbour Board Act 'enabled the powers vested in the Governor under the Marine Act to be transferred to the Harbour Boards'.¹⁷ The superintendents of each province, along with their provincial councils, could now make laws for the establishment of a Harbour Board within their province. These Boards were in turn 'vested with the authority to make by-laws or regulations, but again these had to be approved either by the Governor in Council or Superintendent'. With the abolition of the Provinces in 1876, the powers that had been exercised by Superintendents and their Provincial Councils reverted to the Governor in Council.¹⁸

In 1877, the Marine Department was established under the Shipping and Seamen Act. The Department had control over merchant shipping, marine safety, lighthouses, buoys, and beacons, and also administered fishing regulations issued under the Fish Protection Act 1877. According to McClean, the Secretary of the Department, W Seed successfully advocated for the establishment of a general harbours Act that 'would cover the whole [colony] and bring the growing numbers of Harbour Boards under some control'.¹⁹ Seed, McClean has noted, argued against the reclamation or vesting in local authorities of foreshores. In 1882 he opined that to do so:

would do permanent injury to harbours, or ... interpose impediments to free navigation
... The harbour[s] and navigable waters of the colony belong to the colony as a whole;

¹⁵ Ibid.

¹⁶ Ibid.; McClean, 'Tauranga Moana', p 177

¹⁷ McClean, 'Tauranga Moana', p 177

¹⁸ Byrnes, p 8

¹⁹ McClean, 'Tauranga Moana', p 178

they should therefore be subject to a certain amount of control on the part of the General Government.²⁰

In 1878, existing Harbour Boards were validated by the Harbours Act 1878, which set out their functions and responsibilities.²¹ The intention of the Act was to conserve harbours and protect navigable waterways from reclamations and other works.²² According to Byrnes, the Harbours Act 1878 ‘was the first statutory provision which impacted upon the ownership of the coastal area. Section 147 of this Act provided that “no part of the shore or sea” could be conveyed or granted in any way to any body or person ‘without the special sanction of an Act of the General Assembly’.²³ Subsequent grants to the foreshore could only be made by Acts of Parliament.²⁴ The Native Lands Act 1909 (in particular s84),

provided that Maori customary title was unenforceable against the Crown. As far as the foreshore was concerned, this meant that Maori were unable to bring proceedings in the civil courts for trespass to areas of foreshore purely on the basis of customary title. In order to obtain any kind of legal recognition, it was necessary to obtain a title in the Native Land Court.²⁵

Byrnes also notes that:

in accordance to the conditions set out in the Harbours Act that grants of the foreshore could only be made pursuant to statute, the government vested areas of land in Harbour Boards as endowments under special Acts. The purpose of vesting land in Harbour Boards was to ensure that these bodies had adequate control over land for the construction of harbour works and that they would also act as a general endowment for the Board ... The fact that many of the lands and waterways vested in Boards were of enormous significance to Maori communities was immaterial to successive governments.²⁶

²⁰ W Seed, memo regarding Te Aro reclamation, 14 April 1882, M 14/3084, NA, cited in McClean, ‘Tauranga Moana’, p 178

²¹ Byrnes, pp 8-9; Harbours Act 1878

²² McClean, ‘Tauranga Moana’, p 178

²³ Byrnes, p 22; Harbours Act 1878, s147. This, Byrnes notes, later became s150 of the Harbours Act 1950

²⁴ Ibid.

²⁵ Ibid.; Native Lands Act 1909, s84

²⁶ Ibid.

Byrnes has noted that ‘Legislative precedents for the acquisition of lands by public and local bodies originated with the Public Reserves Act 1854, and in particular s2 of that Act, which allowed the Governor to grant reclaimed areas and parcels of the foreshore to the provincial government’:

It shall be lawful for the Governor of the said Colony, with the advice of his Executive Council, to grant and dispose of any land reclaimed from the sea, and of any land below high-water mark in any harbour, arm, or creek of the sea, or in any navigable river or on the sea coast within the said Colony, either to the Superintendent of the Province and his successors, in or to which such land is situate or adjacent, or in such other manner to such other persons and upon such terms as shall be thought fit: Provided always that every such grant or disposition within any Province, other than that to the Superintendent thereof, shall be made in pursuance of a joint recommendation by the Superintendent of such Province and of the Provincial Council thereof: Provided also that nothing herein shall prejudice the rights of persons claiming water frontage.²⁷

Byrnes also notes that s12 of the Crown Grants Act 1866 stated that ‘Where in any grant the ocean, sea, or any sound, bay, or creek, or any part of thereof affected by the ebb or flow of the tide, is described as forming the whole or part thereof shall be deemed and taken to the line of high-water mark at ordinary tides’.²⁸

Byrnes cites the Waitangi Tribunal’s report on the claim regarding the Manukau Harbour, in which the Tribunal commented that ‘any loss of the use of the harbour is as much a loss as the loss of the land. The Maori presumption has always been that they own those harbours within their tribal territories which are essential to their spiritual and cultural needs’.²⁹ The report also commented that ‘to the Maori, the waters of the sea and river are as much roads and gardens as roads and gardens on land. The harbour was as much owned and apportioned to the care and use of different tribes as the land was.’ The Tribunal also pointed out that Maori

²⁷ Public Reserves Act 1854, s2; cited in Byrnes, p 22

²⁸ Crown Grants Act 1866, s12; Byrnes, p 22. Byrnes notes that this later became s35 of the Crown Grants Act 1908

²⁹ Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim (Wai 8)*, Wellington, 1985, p 33; Byrnes, p 38

Customary Law is the antithesis of English Common Law, which holds that harbours are owned by the Crown.³⁰

In the introduction to his Rangahaua Whanui national theme report on ‘The Foreshore’, Richard Boast has stated ‘the legal assumption on which governments, regional councils, and most individuals rely, consciously or unconsciously, is that beaches and the foreshore are public property – or that, putting it in legal terms, they belong to the Crown’. Boast argues that ‘the Crown’s supposed territorial claim to the foreshore rests at present on very shaky legal foundations’. He contends that ‘the highest and best formulation of the Crown’s title to the foreshore has been that of a kind of trustee – that it holds the foreshore for the benefit of all, Maori and non-Maori alike’, and suggests that ‘new life needs to be given to the conception of a trust, but the question as to who are trustees and who are beneficiaries needs to be reconsidered’. He continues:

In fact historically, access to the foreshore has never been much of an issue. Maori have not been concerned about people bathing in the sea or relaxing on the beach. At the local level, for the most part, there have been few real difficulties. What *has* caused problems are situations where governments have not acted in the least like a trustee but have behaved, rather, like absolute proprietors careless of the rights and interests of tangata whenua with an interest in the coast. Claiming to hold the foreshore in trust is one thing. Handing large areas of it over to harbour boards (as at Napier, the Manukau, Whangarei Harbour to name a few), allowing private individuals to build stop-banks so that shellfish gathering areas are ruined and Maori landowners lose access from the sea (as at Hokianga), permitting trucks and buses to use a beach as an unrestricted road (as on Ninety-Mile beach), and allowing reclamations, sewage disposal, marine pollution and so on (as just about everywhere), is quite another. It is in situations of the latter kind that tensions have reason, leading to inquiries, petitions and litigation.³¹

Boast notes that the ‘foreshore’ (defined in ‘English and New Zealand law [as] a piece of land, the intertidal zone, the area between high water and low water mark’), was to Maori ‘of vital importance, but it did not necessarily have any particular legal regime attached to it’.³²

³⁰ Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, p 33

³¹ Richard P Boast, *The Foreshore*, Waitangi Tribunal Rangahaua Whanui Report, November 1996, pp 4-5

³² *Ibid.*, p 6

Under the Harbours Act 1878, harbour works (which included small reclamations) could not be undertaken without the sanction of the Governor in Council. The Act also contained a list of offences regarding ‘the deposit of substances into the sea, tidal lands, harbour or shore below low-water mark, which may tend to the injury of navigation’.³³ Significantly for Ohiwa harbour, the Harbours Act 1878 included the provision that in cases where there was no existing Harbour Board, or where a Board had been dissolved, the Governor assumed all the powers of a Harbour Board.³⁴ McClean has noted that consequently, with the exception of those ports administered by a Harbour Board, ‘most of the foreshore was administered by the Post-Master General or Customs Department until 1877’.³⁵

The 1878 Harbours Act was amended in 1883 to allow for the approval of reclamations without enabling legislation if a number of conditions were met. These included submitting plans to the Minister of Marine, the notification of all affected persons, public notification in newspapers, and allowing for the lodging of objections, before the Minister made a final decision.³⁶ The Harbours Act was amended further in 1886,³⁷ but remained in force until it was effectively replaced by the Harbours Act 1908. This Act was in turn superseded by the Harbours Act 1923 and then the Harbours Act 1950, respectively.³⁸ McClean has noted that:

An amendment of the Harbours Act 1922 allowed the Harbour Board with the consent of the Governor-General, to lease areas of mudflats to persons for agricultural purposes. These mudflats could then be reclaimed with the permission of the Marine Department. The Harbours Act 1923 introduced the ability to reclaim areas not exceeding five acres in extent by the authority of an Order-in-Council. Larger reclamations required a Special Act.³⁹

Where it was considered that the size of a harbour and the scope of its activities did not warrant the appointment of a special local body, provision was made under the Counties Amendment Act 1885 to declare a county council a Harbour Board. Similar authority was later provided under section 8 of the Harbours Act 1950.⁴⁰ Byrnes has noted that ‘no provision

³³ McClean, ‘Tauranga Moana’, p 178

³⁴ Byrnes, p 9

³⁵ McClean, ‘Tauranga Moana’, p 177

³⁶ Ibid., p 179; Harbours Act 1878 Amendment Act 1883

³⁷ Harbours Act 1878 Amendment Act 1886

³⁸ Harbours Act 1908; Harbours Act 1923; Harbours Act 1950

³⁹ McClean, ‘Tauranga Moana’, 179

⁴⁰ Byrnes, p 9; Harbours Act 1950, s8

was made in the legislation for the interests and aspirations of local Maori to be represented on Harbour Boards'.⁴¹

In reference to the Harbours Amendment Act 1922 and the Harbours Act 1923, Geoff Park states that 'these Acts gave no legal status to prior Maori rights to the foreshore'. He does, however, note two instances where customary Maori fishing rights were given limited recognition in other legislation: section 9 of the Fisheries Amendment Act 1923; and the localised Whangarei Harbour Board Vesting and Empowering Act 1923.⁴² Park also notes that section 29 of the Statutes Amendment Act 1946, 'which provided for the appointment of honorary fisheries officers, was important as a recognition by the Crown of customary tidal fishing rights'.⁴³ According to Park, '[w]hilst not specifically apportioned to Maori, these provisions had the potential to allow, for the first time under Crown law, for the involvement of Maori in the management and control of their customary tribal fisheries'.⁴⁴ In 1950, provision was made under the Fisheries (General) Regulations 1950 'for Maori to gather shellfish in excess of the maximum generally permitted on special occasions'.⁴⁵ Park notes that while 'there was some limited recognition of customary Maori rights to coastal ecosystems and their indigenous flora and fauna' in the early 1950s, 'the existing limited statutory provisions that recognised customary Maori fishing rights began to be contracted'. The Whangarei Harbour Board Vesting and Empowering Act 1951, for example, 'repealed all the sections of previous legislation dealing with Maori land, fishing grounds and fisheries'.⁴⁶ Throughout the 1950s and 1960s, 'the Crown continued ... to base legislative amendments in relation to the coast upon its assumption of exclusive rights'.⁴⁷

In the 'Tauranga Moana Report', McClean also outlines the development of other government departments involved in harbour management. In 1968, the harbours functions of the Marine Department (established in 1877) were transferred to the Marine Division of the Ministry of Transport. Public opinion, which McClean states was influenced by Maori and environmental

⁴¹ Byrnes, p 10. Byrnes' analysis of the Tauranga Harbour Board, looking at issues of representation and finance as well as tracing the general history and activities (including the acquisition of land) of the Board, is an informative study of how such an organisation functioned.

⁴² Park, 'Effective Exclusion?', pp 101-102

⁴³ Ibid., p 106

⁴⁴ Ibid.

⁴⁵ Ibid., p 107

⁴⁶ Ibid., p 107-108

⁴⁷ Ibid., p 111-112

concerns, turned against reclamations, and consequently it became more difficult to get reclamation permission from the Government. By 1978, Marine Division policy opposed all reclamations for the purpose of waste disposal and private gain. Reclamations had to be justified and as small as possible.⁴⁸ The New Zealand Ports Authority also exercised some control over reclamations and harbour works after 1968. The New Zealand Ports Authority Act 1968 established the Port Authority, which prepared a National Plan for Ports. According to McClean 'the general aim of the National Plan and the Ports Authority was to promote the development and expansion of New Zealand ports and foster an efficient and integrated ports system'.⁴⁹

Under the Conservation Act 1987, the Department of Conservation (DOC) took over some Harbours Act responsibilities, particularly in relation to reclamations. Outside of port areas (where reclamations were controlled solely by the Ministry of Transport), reclamations were under the control of both the Ministry of Transport and the Department of Conservation. In effect, McClean states, DOC took over control of all reclamations outside the ports.⁵⁰ According to guidelines produced in 1988, DOC assessed proposed harbour work according to its impact on: visual amenity; existing facilities; wildlife values; public recreational use; public access; public use; surrounding area (compatibility); physical environment; sediment transport, wave action, erosion; historical or archaeological sites; and Maori cultural values.⁵¹

Under the Foreshore and Seabed Endowment Revesting Act 1991, all areas of foreshore formerly vested in Harbour Boards were revested in the Crown.⁵² The Resource Management Act 1991 (RMA) brought together the existing controls over the use and protection of the 'coastal marine area' into one Act. The Act defines the coastal marine area as 'that area of the foreshore and seabed:

- of which the seaward boundary is the outer limits of the territorial sea;

⁴⁸ McClean, 'Tauranga Moana', p 179; Ministry of Transport, *A Guide to Reclamation Procedures*, April 1978, p 11. Further to this, McClean notes that reclamation and harbour works approval procedure was also regulated by the Environmental Protection and Enhancement Procedures Act 1974, which enabled all large harbour works to be evaluated by the Commission for the Environment. Approvals under the Harbours Act were submitted with Environmental Impact Reports.

⁴⁹ *Ibid.*, p 180

⁵⁰ *Ibid.*

⁵¹ Jeremy Gibbs, Director of Coastal and Marine, DOC, 'Guidelines for section 178 Harbours Act approvals', 29 April 1988; McClean, 'Tauranga Moana', pp 180-181

⁵² Byrnes, p 40, fn 220

- of which the landward boundary is the line of mean high water springs, except that where the line crosses a river, the landward boundary at that point shall be which ever is the lesser of:
 - one kilometre upstream from the mouth of the river; or
 - the point upstream that is calculated by multiplying the width of the river mouth by five.⁵³

Under section 12 of the RMA, a range of activities including reclaiming, draining, encroaching, distributing, depositing or removing spoil, or damaging habitat are not to be undertaken in the coastal marine area unless permitted in the relevant regional coastal plan or if a resource consent has been granted. Such a resource consent, known as a 'coastal permit', is issued by the relevant regional council (who are responsible for controlling such activities) or, for restricted coastal activities, by the Minister of Conservation. Restricted coastal activities 'are likely to include most reclamations, large structures and retaining walls, mining, large-scale dredging and dumping, sewage discharges, and large-scale marine farming'.⁵⁴

Although the Ministry for the Environment has overall responsibility for administering the [Resource Management] Act, the Department of Conservation administers the controls over the coastal marine area. The Ministry of Agriculture and Fisheries controls aquaculture. Navigation and safety are the responsibility of the Ministry of Transport.⁵⁵

McClellan has also provided an overview of fisheries and coastal water pollution legislation. With regard to fisheries, he states:

National fisheries regulation was first introduced in the Fish Protection Act 1877. The aim of the Act was to encourage and regulate fisheries in New Zealand. The Act authorised the Governor to issue regulations regarding fishing districts, fishing reserves, propagation, and fishery closures. Section 8 included a clause stating that nothing in the Act would affect the provisions of the Treaty of Waitangi or affect aboriginal fishing

⁵³ Mark Bellingham, 'Coastal and Marine', in Christopher D A Milne, ed, *Handbook of Environmental Law*, Wellington, Royal Forest and Bird Protection Society of New Zealand, 1992, p 97; Resource Management Act 1991, section 2

⁵⁴ *Ibid.*, pp 99-100

⁵⁵ *Ibid.*, p 97. McClellan notes that under section 395 of the RMA, when an application is made for the construction of any harbour work or reclamation in the coastal marine area, 'a copy of these applications is forwarded to the Minister of Transport who assesses the application in terms of the effect on navigation and reports to the local authority involved'. McClellan, 'Matakana Island Sewerage Outfall', p 168

rights.⁵⁶ The Oyster Fisheries Act 1866 (and amendments) was integrated with the Fish Protection Act to become the Fisheries Conservation Act 1884. This Act provided for regulations to be made concerning:

- better protection of fish and management of waters;
- prescribing closed seasons for up to three years;
- prohibiting the buying, selling, or possession of fish;
- protecting propagation of fish by limiting net size or prohibiting nets;
- prohibiting of dredging and reserving natural oyster beds; and
- prohibiting or restricting fishing in any waters.⁵⁷

McClellan notes that as clause 8 of the 1877 Fish Protection Act remained in force, these regulations did not apply to Maori.⁵⁸ However, this provision was dropped in the Sea Fisheries Act 1894, under which the existing oyster and fisheries legislation was consolidated, thus expanding the wide regulatory power for the aim of protecting fish stocks. Under the Oyster Fisheries Act 1892, it had become ‘an exclusive right to take oysters’.⁵⁹ In 1908 fisheries legislation was consolidated under the Sea Fisheries Act, which dominated fisheries management in New Zealand until the Quota Management System and Fishery Management Plans were introduced under the Fisheries Act 1983.

The [1908] Act included provisions to control fishing boats, protected fish, export, rock-oysters, natural oyster beds, artificial oyster beds, oyster farms, oyster picking, seals, shellfish, fresh-water fisheries, and fishing towns. The Act included two main provisions relating to Maori. Firstly, the provision to make an oyster-fishery for Maori use only. This section was repealed in 1923. Secondly, section 76 did not allow any Maori person to be fined under the Act without the consent of the Native Minister.⁶⁰

⁵⁶ McClellan, ‘Tauranga Moana’, p 181; he cites Section 8, Fish Protection Act 1877. See Waitangi Tribunal, *Ngai Tahu Sea Fisheries Report*, 1992, for a fuller discussion on fisheries legislation between 1866 to 1908.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid., p 182

⁶⁰ Ibid., pp 182, 184

As McClean has stated, 'the main intention of fisheries policy was commercialisation of the resource. The resource was to be protected to enable better commercialisation. Maori interests were generally excluded from consideration within this general policy framework'.⁶¹

With regard to coastal water pollution, McClean has noted that there was limited action on this issue prior to 1953. Prior to the Harbours Act 1878, where coastal water pollution was regulated, it was done so by general port regulations.

The Harbours Act 1878 introduced the first nation-wide coastal water pollution regulation by making it illegal to deposit substances into the sea which tended to injury of navigation. The Fisheries Act 1908, introduced further anti-pollution measures making it illegal to cast any rubbish, refuse or material into any water. A 1948 amendment of this Act included any sawdust, sawmill refuse, lime, sheep dip, and other matter. Both the Fisheries Act and Harbours Act were administered by the Marine Department.⁶²

The Health Department also advocated for improvements in waste disposal. In 1901 the Chief Health Officer reported that New Zealand had 'considerable contamination of the rivers and streams', caused by disposal of waste from factories and towns who treated streams as open sewers. The Department introduced a policy of ensuring all drainage systems include treatment processes before the effluent is discharged.⁶³ Under the Health Act 1920, Health Boards 'could, on inquiry, require any local authority to install drainage works and maintain waters of a harbour in a 'state of reasonable purity'. This legislation focused on the need to protect water supply sources and watercourses.⁶⁴ The Municipal Corporations Act 1933 also aimed to protect water supply sources. Section 237 of this Act, authorised the seaward discharge of waste under the consent of the harbour board.⁶⁵

In 1933 a Harbours Act Amendment was introduced, that would prohibit any local authority from discharging any new drain into a harbour. However, the Bill was opposed by the Health Department, who argued that the provisions were unworkable, and that the current control

⁶¹ Ibid., p 184; McClean notes that 'there was no mention of Maori involvement in the fishing industry in a number of reports': Report on New Zealand's Fisheries - their present condition and future development', AJHR 1913, H-15b; Committee of Inquiry into State of New Zealand Fisheries, 1937

⁶² Ibid., p 185

⁶³ Ibid., p 186; he cites Report of Public Health Department, AJHR 1901, H-31

⁶⁴ Ibid.

⁶⁵ Ibid.

system operated by the Health Boards was adequate, and the Bill was dropped.⁶⁶ In 1948 an inter-departmental committee recommended to parliament that there was a need for general pollution control legislation, and that a permanent Pollution Control Council be established. While a Pollution Mitigation Bill was considered, but withdrawn, in 1949, an ad hoc Pollution Committee was established by the Minister of Marine. In 1952, the Pollution Committee produced a comprehensive report on the pollution of New Zealand waters and found that the existing legislation to be inadequate, in that:

- No single Act deals with all methods for introducing noxious matter into water;
- Most Acts have limited territorial application;
- Meaning of pollution not defined;
- Processes for authorization and consultation with enforcing authorities were lacking;
- Lack of co-ordination with a very large number of authorities involved;
- No adequate recognition of the community interest in the preservation of amenities;
- The general Acts do not embrace all objectionable types of pollution;
- No Act specifically provides for cleanliness of sea beaches.

The report also noted that there was no general co-ordinating administrative authority that could provide technical information and approvals, or enforce regulations.⁶⁷

In response to this report, the Water Pollution Act 1953 became New Zealand's first national anti-pollution legislation, containing a clause stating that it was an offence to pollute waters. Under the Act, the Pollution Advisory Council (PAC) was established to enquire into, report on, and make recommendations to the Minister of Marine on ways of reducing the pollution of water. The Water Pollution Regulations 1963 further empowered the PAC to classify waters according to their use, thus controlling water use by zoning. All discharges of pollutants to classified waters had to comply with permits obtained from the Council. In saline water, five main zones were proposed: SA, SB, SC, SD, and SE. It was envisaged that the SA zone would contain the highest water quality standard and provide for shellfish beds, while SE was the lowest water quality standard containing ocean waters remote from general public use.⁶⁸

⁶⁶ Ibid.; he cites Director-General of Health to Clerk of Lands Committee, 29 November 1933, H 1 126, NA

⁶⁷ Ibid., pp 186-187; Marine Department, *Report of the Inter-Departmental Committee on the Pollution of Waters in New Zealand*, New Zealand Government, 1952

⁶⁸ Ibid., p 187

When the preliminary PAC classifications for the waters of Ohiwa Harbour were announced in 1965, there was concern that the classifications did not reflect the actual use of the harbour, or adequately protect the harbour environment. It was reported in the *Opotiki News* that the Opotiki County Council was to object to the PAC, as there was evidence that shellfish were ‘frequently gathered outside waters shown as Class A in the preliminary plan’. While the PAC had classified 20% of the harbour as Class A, local estimates were that shellfish were collected from ‘a good 50% of the harbour’. The Council’s Chairperson, Mr C L Rau, was reported as saying: ‘We shall use all the powers we can to have the whole harbour given the highest possible classification’. The council was therefore to submit that ‘the classification of Ohiwa Harbour represents a unique opportunity to prevent further pollution and preserve the whole area as Class A waters so that shellfish will be safe wherever they are gathered in the harbour.’⁶⁹ In July 1965, the PAC responded with an amended map of the preliminary classification of the harbour, increasing the Class A classification from some 20% of the harbour to 70%. Nevertheless there continued to be opposition to the amended map, as the classification of the harbour as a whole still allowed for the discharge of sewerage (as discussed in chapter 7.7).⁷⁰ At a meeting held on 14 July at Ohope on this issue, a resident of Kutarere, Mr A B Murrell, placed ‘two jars of huge Ohiwa cockles on the table before officials of the Pollution Advisory Council’:

He explained that the cockles, still in sea water, were freshly gathered. He invited council members to help themselves, but warned them that, as a perfectly healthy man with no harmful bacteria in his mouth, he had spat in one jar.

“Your reaction to this is similar to the public reaction at the thought of sewerage effluent in the water. In either case the effect is the same although we are assured that the water is quite pure.”

‘This,’ Mr Murrell said, ‘is a demonstration of what the man-in-the-street would feel if any effluent, however highly treated, were allowed into the Ohiwa harbour’.⁷¹

In May 1966, it was reported that the Opotiki Borough Council were dissatisfied with the PAC’s final classification of the harbour, and ‘should continue to demand the highest

⁶⁹ *Opotiki News*, 9 February 1965

⁷⁰ *Opotiki News*, 16 July 1965; 10 August 1965

⁷¹ *Opotiki News* cutting, nd, [16 July 1965?]

classification'. However a motion that the council should prepare a case for an appeal was not seconded. Councillor A Lyall made the comment that 'People in Wellington are obviously devoid of knowledge of this area'.⁷²

The Water and Soil Conservation Act 1967 saw the creation of the National Water and Soil Conservation Authority (NWSCA). According to McClean:

This Act aimed to provide for the multiple uses of water by promoting a national policy for conservation, allocation, use, drainage fisheries, community water supplies, recreation, wildlife habitats and the natural characteristics of rivers, streams, and lakes. With this aim, the Act vested in the Crown the sole right to take, use, or discharge any natural water. To control these water rights, the Crown established Regional Water Boards under the Act. Within a Regional Catchment Area, the Regional Water Board controlled all proposed discharges and those for which no lawful authority existed, whether or not the water was classified. Generally, the Regional Water Board received all applications for discharges and made a recommendation to the PAC in the case of classified waters.⁷³

In 1970 control of the Water Pollution Act was transferred from the Marine Department to the Ministry of Works, and the Pollution Advisory Committee became the Water Pollution Control Council (WPCC). The WPCC became the Water Resources Council in 1974, and under its control Regional Water Boards were given full powers to grant discharge rights to classified waters. According to McClean, the process of classifying New Zealand's coastal waters was abandoned following the decision of the Supreme Court in the appeal of the *MAF v WRC*, Town Planning Appeal Board, 476/73:

The Court questioned the practice of the classification of large sections of coastal water into classes which may be lower than the existing quality. In principle, the Court stated that 'waters should not be classified below their existing quality unless it can be foreseen that in those waters there will probably be discharges that are likely to lower quality significantly'.⁷⁴

⁷² *Opotiki News*, 24 May 1966

⁷³ McClean, 'Tauranga Moana', pp 188-189

⁷⁴ *Ibid.*, p 189; he cites NWSC Report on Water Quality Control, October 1976, AATE, Acc A1002, NA

Until the introduction of the Resource Management Act 1991, McClean writes, ‘waters around New Zealand were unclassified with the exception of those waters covered by District and Maritime Plans prepared under the Town and Country Planning Act 1977’.⁷⁵ The Town and Country Planning Act was administered by the Ministry of Works, and gave significant planning responsibilities to City Councils, County Councils and Regional Councils established under the Local Government Act 1974. According to McClean, Regional, District and Maritime Planning schemes under the Town and Country Planning Act were for the purpose of:

The wise use and management of the resources, and the direction and control of development of a region, district or area in such a way as will most effectively promote and safeguard the health, safety, convenience, and the economic, cultural, social and general welfare of the people and the amenities, of every part of the region, district or area.⁷⁶

This purpose was subject to section 3: Matters of National Importance. These matters included:

- (a) the conservation, protection and enhancement of the physical, cultural and social environment;
- (b) the wise use and management of New Zealand’s resources;
- (c) the preservation of the natural character of the coastal environment and margins of lakes and rivers and the protection of them from unnecessary subdivision and development;
- (d) the relationship of the Maori people and their culture and traditions with their ancestral land.⁷⁷

McClean has noted that in those areas without a Maritime Plan, the District Scheme could include those matters of national importance outlined in section 3. These matters included the protection, conservation, and management of resources in the area, the preservation or conservation of flora and fauna, and coastlines of fishery importance. The 1987 amendment of the Town and Country Planning Act inserted the ‘provision for Maori traditional and cultural

⁷⁵ Ibid.

⁷⁶ McClean, ‘Matakana Island Sewerage Outfall’, p 161; he cites Section 4, Town and Country Planning Act 1977

⁷⁷ Ibid.; he cites Section 3, Town and Country Planning Act 1977

uses, including fishing grounds'. The Regional Planning Scheme could deal with the provision of public works (drainage and sewerage facilities), traditional Maori cultural uses and the preservation of natural resources.⁷⁸

McClellan discusses the introduction and impact of the Resource Management Act 1991 with regard to water quality in his 'Matakana Island Sewerage Outfall Report'. The RMA, he writes, 'accords the coastal environment special status with the preservation and protection of the natural character of the coast as a matter of national importance'.⁷⁹ McClellan notes that under section 15 of the Act, 'no person may discharge any contaminant into water unless the discharge is expressly allowed by a rule in a regional plan, resource consent or regulation'.⁸⁰ Section 69 of the RMA 'provides for the use of standards in respect to water classes specified in the Third Schedule and the ability for Regional Councils to plan new water classes'. McClellan notes that in the third schedule, two water classes are relevant:

4. Class SG Water; standard for water managed for the gathering or cultivating of shellfish for human consumption:

- (1) The natural temperature of the water shall not be changed by more than 3 degrees Celsius
- (2) The concentration of dissolved oxygen shall exceed 80% of saturation concentration.
- (3) Aquatic organisms shall not be rendered unsuitable for human consumption by the presence of contaminants.

11. Class C Water; standard for water managed for cultural purposes:

The quality of the water shall not be altered in those characteristics which have a direct bearing upon the specified cultural or spiritual values.⁸¹

Section 70 of the Act 'relates to rules about discharges when they are classed as permitted activities in a regional plan':

After reasonable mixing, these activities shall not cause adverse effects including; production of grease films, scums, foams, suspended materials, change in colour or visual clarity, objectionable odour, and adverse effects on aquatic life. When a rule requires the

⁷⁸ Ibid., p 162

⁷⁹ Ibid., p 163

⁸⁰ Ibid., p 165

best practical option to prevent adverse environmental effects, the Council will have regard to the nature of the discharge, the receiving environment, alternatives and is the most efficient and effective means of preventing or minimising those adverse effects.⁸²

Under the RMA, 'when a consent authority is considering an application for a discharge permit, the authority shall, in having regard to the actual and potential effects on the environment of allowing the activity, have regard to':

- (a) The nature of the discharge and the sensitivity of the proposed receiving environment to adverse effects and the applicant's reasons for making the proposed choice; and
- (b) Any possible alternative methods of discharge, including discharge into any other receiving environment.

Under section 107, which contains restrictions with regard to the granting of discharge and coastal consents, 'permits shall not be granted if, after reasonable mixing, the discharge is likely to give rise to':

- (a) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
- (b) Any conspicuous change in colour or visual clarity;
- (c) Any emission of objectionable odour;
- (d) The rendering of fresh water unsuitable or consumption by farm animals;
- (e) Any significant adverse effects on aquatic life.

However, McClean points out, 'under s 107(2) a discharge or coastal permit (that contravenes section 15) may be granted by the consent authority if it is satisfied':

- (a) That exceptional circumstances justify the granting of the permit; or
- (b) That the discharge is of a temporary nature; or
- (c) That the discharge is associated with necessary maintenance work.⁸³

In addition, section 108(1)(e) allows for the conditions of resource consents to adopt a 'best practical option relating to discharges of contaminants that contravene section 15 subject to having regard to':

- (a) The nature of the discharge and the receiving environment; and

⁸¹ Ibid., pp 165-166

⁸² Ibid., p 166

- (b) Other alternatives, including any condition requiring the observance of minimum standards of quality of the receiving environment.

The inclusion of the best practical option condition, McClean notes, 'is the most efficient and effective means for preventing or minimising any actual or likely adverse effect on the environment'.⁸⁴ The 'best practical option' is defined in section 2 of the RMA as:

In relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to:

- (a) The nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and
- (b) The financial implications, and the effects on the environment, of that option when compared with other options; and
- (c) The current state of technical knowledge and the likelihood that the option can be successfully applied.⁸⁵

The RMA as it applies to the administration of Ohiwa Harbour is discussed further in chapter 8.4.

8.3 The Management of Ohiwa Harbour

In October 1925, the Opotiki County Council was given the authority to 'exercise the Powers of a Harbour Board' over Ohiwa harbour.⁸⁶ The council had first expressed their interest in assuming control of both Ohiwa and Opotiki harbours in 1911,⁸⁷ but it was not until 1925 that a formal application was made. This application was made under section 11 of the Harbours Act 1923 on the grounds that the harbour 'is entirely within the County of Opotiki and no local body other than this Council can have any interest in it'.⁸⁸ Under Section 11 of the Harbours Act 1923 'On the request of the Council of a county bordering on any navigable river, estuary, or arm of the sea not under the control or management of any Harbour

⁸³ Ibid., pp 166-167

⁸⁴ Ibid., p 167; he cites H. Fyson, 'Making the Coast Clear', *Terra Nova*, no 13, February 1992, pp 15-19

⁸⁵ Ibid., p 168

⁸⁶ *New Zealand Gazette*, 15 October 1925, no. 71, p 2895

⁸⁷ The Clerk, Opotiki County Council, to Minister for Marine, 17 February 1911, MS 153: Ohiwa Harbour – Opotiki County Council, HD London Research Library, Whakatane

⁸⁸ The Clerk, Opotiki County Council, to Minister for Marine, 24 March 1925, MS 153: Ohiwa Harbour – Opotiki County Council, HD London Research Library, Whakatane

Board... the Governor-General may, by Order in Council gazetted, declare that such Council ... shall ... exercise all the powers of a Harbour Board within such limits ... as the Governor-General defines for that purpose'. In so doing, the Council would be deemed a Harbour Board 'as if so constituted by [a] special Act'.⁸⁹

In applying for such status, the Opotiki County Council argued that while the wharf at Kutarere was 'managed wholly by this Council, which keeps a man in charge of it and administers the wharf generally', 'the position of this Council is ... anomalous as it is found that it possesses no necessary enforceable powers in regard to the wharf or Harbour'. The application further stated that 'until the formation of a Harbour Board, it is felt that this Council should be invested with all the powers necessary to enable it to properly control the said wharf and Harbour'.⁹⁰ The wharf at Kutarere had been built with a loan raised by 'the settlers in portion of the Opotiki and Whakatane Counties ... over a special district', along with government grants.⁹¹

In response to a request by the Secretary of the Marine Department for more information regarding the real necessity for the change in the administration of the harbour, the Opotiki County Clerk reported that:

Council considers it would be a great benefit to all the settlers served by the Kutarere Wharf and the district generally if the Council were authorised to exercise all the powers of a Harbour Board within the limits of the Ohiwa Harbour. The present position is that the Council at the request of the settlers has spent a considerable sum of money on wharves at Kutarere and contemplates further expenditure in the near future. The wharf is proving a real blessing to all the settlers between the Waiotahi and Waimana, but it is necessary that all inward and outward cargo should pass over this wharf if the wharf is to be made a payable proposition. It is possible under present restricted conditions for vessels to land cargo in the Ohiwa Harbour a short distance from the Kutarere Wharf, and so evade payment of wharfage and berthage dues. As the position of the main channel leading from the Ohiwa entrance towards Kutarere constantly alters it is necessary that moveable beacons be erected to guide shipping through the deepest waterway and at

⁸⁹ Harbours Act 1923, s 11, County Council may be constituted a Board

⁹⁰ The Clerk, Opotiki County Council, to Minister for Marine, 24 March 1925, MS 153: Ohiwa Harbour – Opotiki County Council, HD London Research Library, Whakatane

⁹¹ The Clerk, Opotiki County Council, to Minister for Marine, 24 March 1925, MS 153: Ohiwa Harbour – Opotiki County Council, HD London Research Library, Whakatane

times it is necessary to remove obstructions to keep the channel clear. Vested with the powers of a Harbour Board the Council could properly deal with these matters and obviously it would greatly benefit shipping and all concerned.⁹²

While there is much talk of the benefit to ‘settlers’ and to shipping generally, there is no mention of any benefit or otherwise to Maori. Maori would have been expected to use the wharf at Kutarere and pay for doing so.

In granting the the Opotiki County Council authority to ‘exercise the Powers of a Harbour Board’ over Ohiwa harbour, the limits of the harbour were defined as follows:

All that area of tidal land and tidal water of Ohiwa Harbour, and inside the seaward arc of a circle having a radius of two and a half nautical miles from the eastern extreme of the western head at the entrance to the said harbour.⁹³

This definition of the harbour remained in effect until 1986 when it was redefined as follows:

All that area of tidal water of Ohiwa Harbour inside the seaward area of a circle having its centre inside the Ohiwa Harbour with a radius of 1.5 nautical miles and passing through trigonometrical station 6981 and trigonometrical station 21A [lying on either side of the harbour mouth].⁹⁴

Following the opening of the Whakatane Harbour Board’s new wharf at Port Ohope in 1957, the board (which was primarily responsible for the Whakatane Harbour but also had authority over Port Ohope) sought to increase its control over Ohiwa Harbour. In early 1966, they took steps to seek complete control of the harbour, writing to the Opotiki County Council (Ohiwa Harbour Board) and the Marine Department, objecting ‘that it could make no bylaws over the harbour as the Port Ohope authority’. In doing so, the Whakatane Harbour Board stated ‘that the port was its first consideration and the shellfish came second’. The Opotiki County Council objected to the proposal, saying that it was ‘concerned that the harbour should be kept free of pollution to preserve the very extensive shellfish beds, some of

⁹² The Clerk, Opotiki County Council, to the Secretary, Marine Department, 11 May 1925, MS 153: Ohiwa Harbour – Opotiki County Council, HD London Research Library, Whakatane

⁹³ *New Zealand Gazette*, 15 October 1925, no. 71, p 2895

⁹⁴ *New Zealand Gazette*, 9 October 1986, no. 159, p 4265

the best in New Zealand'.⁹⁵ However, in mid 1966 the Opotiki County Council did agree to hand over control of the harbour to the Whakatane Harbour Board, who in turn 'agreed to redelegate control of the eastern side of the harbour to the Opotiki County Council'.⁹⁶ As discussed in the previous chapter, with the development of Ohope and Port Ohope, the Opotiki District Council opposed potentially environmentally damaging developments such as the discharge of sewage into the harbour.

In 1980 the Opotiki and Whakatane District Councils jointly produced an 'Ohiwa Harbour Multiple Use Recreation Plan', the purpose of which was 'to effect the orderly management of the surface waters, salt marshes, mangroves, inter tidal flats and foreshore of the Harbour'. The plan was compiled from 'representations received from, and in consultation with various Government Departments, ad hoc agencies and interested parties and community organisations'.⁹⁷ The document was revised over the following years, but remained much the same.

A section on the 'History of the Ohiwa Harbour' incorporated into the Plan, provides an indication of contemporary understandings of and attitudes towards the harbour, and of the history of Maori occupation of the harbour in particular. The harbour is described as a bountiful, pristine environment prior to the arrival of 'Polynesian man', who, it was supposed, 'would have found a virtual paradise' with forests 'down to the waters [sic] edge'. According to this account, paradise appears to have been lost with the arrival of Maori:

Birds and fish that had never been hunted by man would have been very easy prey. As the population built up, the character of the harbour changed. The clearing of the forests meant that the streams running into the harbour would have carried more and more silt. The need for cleared land to satisfy the cropping methods, demanded a regular supply of new land. The increasing population would have demanded vast quantities of firewood and that meant even more forests destroyed.

Inter-iwi relationships and the arrival of Europeans are described as follows:

⁹⁵ *Opotiki News*, 18 February 1966

⁹⁶ *Opotiki News*, 13 May 1966

⁹⁷ *Ohiwa Harbour Multiple Use Recreation Plan*; Beverley Hughes, *Report on Ohiwa Harbour Multiple Use Recreation Plan: Possible Additional Areas for Water Recreation Activities*, report prepared for Environment B.O.P, Beverley Hughes Associates, December 1997, appendix 12

By the end of the fourteenth century the increasing population around the harbour, meant that competition for resources led to fighting and the building of fortified Pa. At this stage a group known as Te Whakatane controlled the harbour. Many stories are still told of people and events of this period. The new tribal groups known as Whakatohea, Tuhoe and Ngatiawa evolved out of this period. Upokorehe, a hapu of Whakatohea played a major part in the story of the harbour until the arrival of European influence, introduced diseases and ... the musket bearing Ngapuhi from the North. A thousand musket bearing warriors on killing and looting raids in the 1820s left a lot of coastal areas decimated. During the 1830s European traders arrived in the harbour. The need for trade, particularly for muskets was desperate. Fighting between the Ngatiawa, Tuhoe and Whakatohea for the now almost depopulated harbour began.

By 1840, Maori disappear from the narrative completely, and so too from the 'Ohiwa Harbour Multiple Use Recreation Plan' itself.⁹⁸

In 1986, the *Opotiki News* reported a high level of dissatisfaction amongst Whakatohea with regard to the administration of Ohiwa harbour. Following a meeting at Whakatane between the Ministry of Agriculture and Fisheries and Whakatohea ('along with other representatives from Waiariki') 'to discuss the harbour and its future under the department's proposed reserve plans', a meeting of Whakatohea was held at Omarumutu Marae on 16 February. Robert Biddle, chair of the Whakatohea executive, was reported as saying that while 'Whakatane and Opotiki had representation on the Ohiwa harbour committee, Whakatohea, as a tribe, was not fully conversant with what was going on at fisheries or local district council level'. He was also 'concerned that the department is going to control and manage that harbour resource if it gets into their hands'. Mr Biddle proposed that 'If we're asking for greater participation and control of the harbour', the answer is 'management between MAF and the Whakatohea executive, with personnel to put controls in place.' He stated that:

The Pakeha assumes he has the right to tell the Maori when to stand up and when to sit down. We are asking for more control and input from the Maori side, and I would like the Whakatohea executive to stand tall and deliberate on what is to be done.

We want a management and control plan the department must adhere to. They believe we're incapable of formulating one and we've got to prove that we can.

⁹⁸ *Ohiwa Harbour Multiple Use Recreation Plan*, pp 7-9

The meeting at Omarumutu resolved to form a panel from the Whakatohea executive to formulate a control and management plan.⁹⁹

At the meeting, Mr Biddle was also reported as saying that MAF had been informed that ‘commercial activities of all kinds [should be] prohibited in the harbour’, and that in response, ‘the fisheries people said we were denying pleasure to others who wanted to use the harbour for recreation’. Mr Biddle said that the iwi representatives had informed the Ministry of Agriculture and Fisheries that ‘Maoris had controlled the harbour for 1,000 years and knew what we were about’:

“One of the disputes we had was over our objection to using the harbour for speed boat racing. As there is an international complex to be built beside the golf links, where are the fish going to park while speed boats rush over the harbour? ...

“Netting was another activity we opposed and gave the reasons why. During the summer holidays there is a vast array of nets in the harbour. Every holidaymaker has a net. We recommend that nets be prohibited and the only methods of fishing be with landlines or spearing.¹⁰⁰

In 1989 the Ohiwa Harbour Advisory Committee was established by the Whakatane and Opotiki District Councils to ‘advise the Districts on matters affecting the Ohiwa Harbour and such other matters as may be referred to it by those councils’. The committee comprised three representatives from the two district councils and representatives of the three iwi with interests in the harbour: Ngati Awa, Tuhoe and Whakatohea. The committee was funded by both councils and had a projected life span of at least until 1 November 1995. In August 1990, both district councils delegated the functions, duties and powers they held under section 165 of the Harbours Act in respect of Ohiwa to the Ohiwa Harbour Advisory Committee. ‘In this way the committee is the agency charged with administering both the s.165 grant-of-control and the s.232 harbour board bylaws within the confines of Ohiwa Harbour’.¹⁰¹

⁹⁹ *Opotiki News*, 20 February 1986

¹⁰⁰ *Opotiki News*, 20 February 1986

¹⁰¹ Hughes, *Draft Ohiwa Harbour and Catchment Scoping Report*, p 5; Slaven, p 10
[274]

8.4 Post-Resource Management Act Administration of the Harbour

As already noted, the introduction of the Resource Management Act (RMA) on 1 October 1991 radically altered coastal administration. In the Bay of Plenty, the Regional Council assumed responsibility for all RMA functions in relation to the waters of the coastal marine area. All planning functions exercised by district councils, seaward of the Mean High Water Springs and within the twelve-mile limit, were transferred or delegated to regional councils and the Department of Conservation.¹⁰² Above the Mean High Water Springs, district councils and regional council have separate, but related, roles. District councils are mainly concerned with land use (such as subdivision planning and building), while the regional council controls activities that may affect water and soil conservation. One of the imperatives that the new management regime had to take account of was the fact that while district councils remained responsible for land use as such, the effects of that land use on the harbour fell within the ambit of the regional council under the RMA. There was therefore a need to integrate harbour catchment land use with harbour management planning.¹⁰³ In summary, the division of responsibilities, as stated in Environment B.O.P's 1999 *Bay of Plenty Regional Policy Statement*, is as follows:

In respect of functions under the Resource Management Act 1991, Environment B.O.P solely administers Ohiwa Harbour while the catchments surrounding Ohiwa Harbour are administered by Environment B.O.P, Opotiki District Council and Whakatane District Council.¹⁰⁴

Generally speaking, as Robert McClean has written:

The RMA contains a number of regulatory regimes according to the nature of the resource. For example, in terms of land, no activity is restricted unless specified in a district plan. The District Plan is administered by the District Council. The Regional Council can influence the contents of this plan by using a Regional Land Plan and the Regional Policy Statement. In terms of the coastal marine area, no person may carry out activities unless expressly allowed for by a rule in a Regional Coastal Plan or resource

¹⁰² Slaven, pp 4-6

¹⁰³ Environment B.O.P, *Proposed Bay of Plenty Regional Coastal Environmental Plan, Amended in Accordance with the Council's Decisions on Submissions, As adopted by Council on 20 May 1999 and notified on 29 June 1999*, vol 1, Clear Copy, June 1999, Whakatane, Environment B.O.P, pp 6-8

¹⁰⁴ Environment B.O.P, *Bay of Plenty Regional Policy Statement*, Whakatane, Environment B.O.P, 1 December 1999, p 52

consent. The Regional Coastal Plan is prepared by the Regional Council under guidance from the National Coastal Policy Statement. The coastal marine area is managed by both the Minister of Conservation and the Regional Council. The Minister of Conservation has the responsibility to prepare the National Coastal Policy Statement. District Councils do not have authority under the RMA below the mean high water mark. The RMA overlaps with legislation such as the Conservation Act 1987 and Fisheries Act 1996.¹⁰⁵

Thus, as McClean notes elsewhere, ‘unlike land issues, the coastal environment is managed by both the Minister of Conservation and the Regional Councils’:

The Minister of Conservation prepares the New Zealand Coastal Policy Statement, allows for coastal tendering, and identifies types of restricted coastal activities that are incorporated into the New Zealand Coastal Policy Statement and the Regional Coastal Plans. In regard to restricted coastal activities, the Minister of Conservation is the consent authority. Section 30(d) outlines a range of functions for Regional Councils in the coastal marine area:

- control of occupation of space in terms of the foreshore, seabed and extraction of natural material;
- taking, use, damming, and diversion of water;
- discharges of contaminants into or onto land, air, or water and discharges of water into water; and
- any actual or potential effects of the use of land including natural hazards and hazardous substances.

These activities are to be carried out in conjunction with the Minister of Conservation.¹⁰⁶

Under the RMA, Environment B·O·P is required to produce a Regional Coastal Environment Plan for the management of coastal marine areas. On 27 January 1995, Environment B·O·P called for submissions on its proposed plan. It received 527 submissions in total, lodged by government agencies, organisations, interest groups, iwi authorities and members of the public.¹⁰⁷ The Proposed Regional Coastal Environment Plan (dated 4 October 1994) contained the following description of ‘Maori Cultural Values’ with regard to Ohiwa Harbour as an ‘Area of Significant Conservation Value’ (ASCV):

¹⁰⁵ McClean, ‘Tauranga Moana’, p 160

¹⁰⁶ McClean, ‘Matakana Island Sewerage Outfall’, pp 163-164

11.1 Maori Cultural Values

Ohiwa Harbour is an important mahinga kai to Ngati Awa. A Tauranga waka is located near the harbour entrance. Several urupa and waahi tapu sites are located on the harbour's margins.¹⁰⁸

The submission lodged by the Opotiki District Council, drew attention to this paragraph, stating that:

The ASCV for Ohiwa Harbour ... mentions Maori Cultural Values for Ngati Awa only. The Harbour is a significant taonga of Whakatohea. It is not acceptable that there is no mention of the significance of the Harbour to Whakatohea. The paragraph 11.1 is an inadequate assessment of the values of Ohiwa Harbour.

Referring generally to 'Areas of Significant Conservation Value', the Opotiki District Council submitted that:

The lack of recognition of values is unacceptable and indicates that Environment BOP has not undertaken consultation with relevant Iwi or hapu.

The lack of information indicates that Environment BOP has disregarded the requirements of the Resource Management Act to recognise and provide for the relationship of Maori with their ancestral land, water and other taonga.

Environment BOP's own proposed objectives and policies for tangata whenua interests ... have not been complied with in preparation of this Plan.

The Opotiki District Council submission sought 'the following decision from Environment Bay of Plenty':

That the Regional Coastal Environment Plan be withdrawn until such time as there has been adequate consultation with tangata whenua to enable information on Maori cultural values of significant sites to be included in the plan.¹⁰⁹

¹⁰⁷ John Mandemaker, Director Resource Planning, Environment B-O-P, Report to the Resource Planning Committee Meeting of 8 June 1995, 31 May 1995, Environment B-O-P Archives, Whakatane, file 5564 05

¹⁰⁸ Environment B-O-P, *Proposed Bay of Plenty Regional Coastal Environmental Plan*, Volume 1, Redline/Strikeout Copy (Part 2 of 2), Version 8.0, May 1999, Area of Significant Conservation Value: Ohiwa Harbour/Ohope Beach, Site 04 011, para 11.1, np (original document dated 4 October 1994)

The Whakatohea Maori Trust Board likewise objected to this omission, submitting that the plan ‘fails to identify Whakatohea relationships with the Ohiwa Harbour and other ancestral taonga identified by the PRCEP’. They stated that:

Such an omission is deeply offensive to Whakatohea and is indicative of the inadequate consultation carried out with Whakatohea. When are the Council and the Department of Conservation going to start listening to Whakatohea?¹¹⁰

The submission of the Whakatohea Maori Trust Board called for, among other things, the plan to be ‘amended in a way which has effective regard to the Tawharau [o Nga Hapu o Whakatohea – Whakatohea Resource Management Plan, 1993]’.¹¹¹ The Tawharau (as it was referred to) covered ‘matters of resource management significance to Whakatohea and how such matters need to be addressed’. It also ‘lists issues concerning consultation with Whakatohea by external Agencies and states a process to ensure that consultation with Whakatohea occurs in an appropriate and acceptable manner’.¹¹² According to the Whakatohea Maori Trust Board submission, ‘it is not clear how the council has had due regard to the Tawharau or ensured adequate consultation with Whakatohea in the preparation of the PRCEP’. In making this submission it was noted that ‘The PRCEP is required to have regard to relevant iwi planning documents recognised by iwi authorities (S.66(2)(c)(ii)) and to be prepared in accordance with Part II and the First Schedule of the RM Act’.¹¹³

These issues were further articulated in a number of submissions made in support of the Whakatohea Maori Trust Board submission, as follows:

The Ohiwa harbour and associated resources are ancestral taonga of enormous significance to Whakatohea. The Coastal Plan has not had regard to the Tawharau and, therefore, fails to recognise and provide for the relationship of Whakatohea and their

¹⁰⁹ Opotiki District Council, Submission on the Proposed Regional Coastal Environment Plan, 8 May 1995, Submission 3, np, Environment B-O-P, *Proposed Bay of Plenty Regional Coastal Environmental Plan – Copies of Further Submissions*

¹¹⁰ Whakatohea Maori Trust Board, Submission on the Proposed Regional Coastal Environment Plan, 8 May 1995, p 2, Environment B-O-P, *Proposed Bay of Plenty Regional Coastal Environmental Plan – Copies of Further Submissions*

¹¹¹ Ibid., p 2

¹¹² Ibid., p 1; V Payne, *Tawharau o Nga Hapu o Whakatohea: Whakatohea Resource Management Plan, 1993*

¹¹³ Ibid., p 2

culture and traditions with the Ohiwa Harbour (e.g. Ohiwa harbour/Ohope Beach Area of Special Value 04-011).

The Tawharau identifies adhoc and inappropriate developments within the Ohiwa Harbour Catchment (e.g. subdivisions; diverting water; erecting structures; and stormwater, sewage and boat discharges) and the lack of direct Whakatohea involvement in resource management decision making as significance issues to Whakatohea. Subsequent goals of the Tawharau to address such issues include opposition to future development proposals within the Ohiwa Harbour Catchment until a comprehensive joint Tangata Whenua – Crown Agency management strategy is established.¹¹⁴

A submission from Charles Aramoana on behalf of Te Upokorehe raised similar concerns. Mr Aramoana stated that he wished ‘to record the interests of my hapu Te Upokorehe in relation to Ohiwa Harbour where I note the reference to our friends and very good neighbours Ngati Awa’. Mr Aramoana submitted that:

there are other iwi with strong ties to Ohiwa harbour, namely Te Upokorehe, Tuhoe and Te Whakatohea. I have strong ties to all these iwi but in this instance I am representing Te Upokorehe and Te Whakatohea. This does not mean that I am segregating my links with Tuhoe. On the contrary I very much value my links thereto but I take the view that I do not have a mandate to speak with authority of their behalf.

Mr Aramoana requested that ‘an additional paragraph be inserted immediately following the reference to Ngati Awa as follows’:

“Ohiwa harbour is of significant cultural importance to Te Upokorehe and to Te Whakatohea. It is an important mahinga kai and there are many urupa and waahi tapu within its environs. Upokorehe has for centuries been the kaitiaki for the harbour and this role continues to this day.”¹¹⁵

¹¹⁴ John Delamere, Further Submission in Support of Submission on the Proposed Regional Coastal Environment Plan, 30 July 1996; VRJ Payne, Further Submission in Support of Submission on the Proposed Regional Coastal Environment Plan, 30 July 1996, Environment B-O-P, *Proposed Bay of Plenty Regional Coastal Environmental Plan – Copies of Further Submissions*

¹¹⁵ Charles Aramoana to Jeff Jones, General Manager, Environment Bay of Plenty, Re: Proposed Coastal Environment Plan, 3 May 1995, Environment B-O-P, *Proposed Bay of Plenty Regional Coastal Environmental Plan – Copies of Further Submissions*

The submission from the Tuhoe-Waikaremoana Maori Trust Board similarly requested that the plan be amended ‘to simply equitably provide that: “Ohiwa harbour is of significant cultural importance to Te Whakatohea, Tuhoe and Ngati Awa”.’ It was also submitted that ‘It may be added that, “Provision needs to be made for accountable Kai-tiaki”’, and that ‘each iwi should service their own hapu’.¹¹⁶

The *Proposed Bay of Plenty Regional Coastal Environment Plan* was ‘amended in accordance with the council’s decisions on submissions’, and was adopted on 20 May 1999. The amended plan contained the following description of Ohiwa Harbour:

Ohiwa Harbour is of significant cultural importance to Te Whakatohea, Te Upokorehe, Ngati Awa and Tuhoe who are the kaitiaki of the harbour. Ohiwa Harbour is an important mahinga kai. A Tauranga waka is located near the harbour entrance. Several urupa and waahi tapu sites are located on the harbour margins. Ohope Beach and nearshore subtidal shellfish zone has been identified by Te Komiti Taiao o te Runanga of Ngati Awa (Ngati Awa Environmental and Cultural Resources Committee) as a mahinga mataitai of regional significance. Hokianga Island has great wairua (spiritual significance) as the place where the chief Te Kooti died.

The Ohiwa Harbour area has a long history of Maori occupation. The Historic Places Inventory identifies more than ten historic sites of Maori origin on the margins of the harbour. The Department of Conservation undertook a major archaeological survey of Ohiwa Harbour in 1994. Evidence of Maori occupation has survived in the form of numerous archaeological sites, including pa, urupa, shell middens and cultivation sites. Four pa exist in the Wainui Inlet, two on Hokianga Island, one in the Kutarere Inlet, two on Uretara Island, three in Nukuhou River Inlet, and six pa and numerous pits and terraces on Ohakana Island. Pataua Island was a battle site and canoe landing area, and Ohakana

Island is the site of a battle between Ngati Awa and Whakatohea. There are historic wharf sites at Kutarere, Ohiwa and Ohope which are remnants of the coastal shipping era.

¹¹⁶ T R Nikora, for Secretary, Tuhoe-Waikaremoana Maori Trust Board, to the General Manager, Environment Bay of Plenty, Re: Proposed Coastal Environment Plan, 3 May 1995, Environment B-O-P, *Proposed Bay of Plenty Regional Coastal Environmental Plan – Copies of Further Submissions* [280]

Part of the estuarine margins and several islands in the harbour are protected under different pieces of legislation: Tern Island is a wildlife refuge reserve, Pataua Island is a scientific reserve, Uretara Island and Tauwhare Pa are scenic reserves. Motuotou Island is a nature reserve. Hokianga Island is a Maori Reserve.¹¹⁷

The amended *Proposed Bay of Plenty Regional Coastal Environment Plan* also noted that 'Iwi authority planning documents prepared to date have been considered in the preparation of this plan', including 'Tawharau o Nga Hapu o Whakatohea', and that 'these documents describe tangata whenua policy on resource management issues'.¹¹⁸

Section 2.3 of Environment B·O·P's *Proposed Bay of Plenty Regional Coastal Environment Plan*, as adopted on 20 May 1999, clearly sets out the various responsibilities of local authorities and regulatory agencies in the management of coastal marine areas. This management regime has historically been shared by a number of agencies, empowered under various statutes. The administrative division of the Ohiwa Harbour, for example, created problems in implementing a consistent approach to the resolution of issues in the catchment. The intent of the RMA was to integrate the management of resources within the coastal marine area, largely under the auspices of regional councils. However, as the Plan notes, there are still certain functions that are the preserve of other agencies. The Plan differentiates and summarises the roles of the various administrative bodies as follows:

2.3.1 District Councils

District Councils are responsible for preparing district plans and the consideration of resource consents for most land uses and subdivisions. Exceptions are large-scale earthworks, structures in rivers, taking of water and discharges of contaminants, which are the responsibility of Environment B·O·P.

District Councils are also responsible for the implementation of bylaws for intertidal areas and land within their territories. These bylaws deal with short-term environmental management issues such as litter, dog control, public health and safety. In some areas, the bylaws regulate activities in harbours and estuaries, and out to mean low water springs on the open coast.

¹¹⁷ Environment B·O·P, *Proposed Bay of Plenty Regional Coastal Environmental Plan*, p 304

¹¹⁸ *Ibid.*, p 40

Under the Reserves Act, district councils are responsible for the management of certain coastal reserves. This includes the preparation of reserve management plans.

District councils provide services such as stormwater outfalls and pipelines, public wharves, jetties, reclamations, protection works and recreational facilities. All these have an effect on the management of the coastal environment.

2.3.2 Maritime Safety Authority

The Maritime Safety Authority is an agency which replaces the former Ministry of Transport Maritime Division. [It] is responsible for navigation and safety outside harbour limits and also for coordinating oil spill response planning. ...

2.3.3 Ministry of Fisheries

Management of coastal fisheries is the responsibility of the Ministry of Fisheries. This is principally achieved through the Quota Management System, which is aimed at ensuring that fisheries are managed on a sustainable basis.

In addition, the Ministry of Fisheries may place restrictions on the fishing of certain species, or on using certain fishing techniques, or on fishing in certain areas, or on a combination of these. It may also place controls on recreational catch numbers, and may also specify equipment regulations (such as net mesh size or net soakage time).

The Ministry of Fisheries is also responsible for the establishment of taiapure and mataitai. These are areas of the coast of special significance to iwi which are managed for cultural purposes by locals for the general enjoyment and use by all.

2.3.4 Department of Conservation

A number of statutes give the Department of Conservation responsibilities within the coastal marine area. The main such statutes are the Conservation Act, the Marine Reserves Act, the Wildlife Act, the Foreshore and Seabed Endowment Revesting Act and the Marine Mammals Protection Act.

The primary responsibilities of the department include the protection of marine mammals, supervising whale and dolphin rescues (including the care or disposal of sick or injured marine mammals), general wildlife protection, establishing and administering marine reserves, and statutory advocacy (i.e. providing a conservation perspective on the development of regional and district plans and on the consideration by councils of consent applications).

The department also has a responsibility to service the Minister of Conservation in his or her functions and duties under the Resource Management Act.

2.3.5 The Minister of Conservation

The Minister of Conservation represents the Crown's interest in the management of these lands within the coastal marine area for which the Crown has vested ownership to itself through legislation such as the Foreshore and Seabed Endowment Revesting Amendment Act.

The Minister, as representative of the Crown, also has specific functions under the Resource Management Act.

The Minister is required to prepare and implement the New Zealand Coastal Policy Statement. ...

The Minister is the final approving authority for all plans that have a coastal marine area component, specifically the regional coastal plan. ...

In addition, the Minister is the consent authority for restricted coastal activities. ...

2.3.6 Ministry for the Environment

The Ministry for the Environment has the responsibility for promulgating regulations under the Resource Management Act. This includes the making of regulations controlling marine dumping and discharges from vessels.¹¹⁹

The *Bay of Plenty Regional Coastal Environmental Plan* was created 'to enable Environment B.O.P to promote the sustainable management of the natural and physical resources of the Bay of Plenty coastal environment'. The plan takes the definition of 'sustainable management' from the RMA, as follows:

Managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –

- a Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- b Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

¹¹⁹ Ibid., pp 7-8

- c Avoiding, remedying or mitigating any adverse effects of activities on the environment.¹²⁰

The Plan notes that, while regional councils are required by the RMA to prepare a regional plan only for the coastal marine area as defined by the Act (see above), ‘restricting attention to issues confined to this area fails to recognise the integrated nature of the coastal environment’. The Plan stresses that ‘it would be difficult to effectively manage those qualities which exist within the coastal marine area, in isolation from those existing on the land’. Environment B·O·P have therefore taken a more integrated approach to coastal management to incorporate the ‘important values and issues’ of such things as ‘significant areas of flora and fauna, natural features and landscapes, cultural values, public access and natural coastal hazards’.¹²¹ The issues covered by the plan include: zoning; natural character; outstanding natural features; significant areas of flora and fauna; public access; tangata whenua interests; coastal discharges; taking, using, damming or diversion of coastal water; coastal hazards; occupation of space; structures; disturbance, deposition and extraction; reclamations; exotic plants and animals; hazardous substances; historic and cultural heritage; recreation; noise; fishing; marine protected areas (including marine reserves); and matter of process such as information requirements for coastal permit applicants; financial contributions; cross-boundary issues; and plan monitoring and review.¹²²

All regional coastal environmental plans must be consistent with the New Zealand Coastal Policy Statement, a national policy statement that the Minister of Conservation is required to prepare and monitor under the RMA. The New Zealand Coastal Policy Statement was established to provide a policy framework to ‘promote the sustainable management of the natural and physical resources of the coastal environment’. These policies include ‘national priorities for the preservation of the natural character of the coastal environment including protection from inappropriate subdivision, use and development’, and ‘the protection of the characteristics of the coastal environment of special value to tangata whenua including waahi tapu, tauranga waka, mahinga maataitai and taonga raranga’.¹²³

Section 6 of the RMA refers to the recognition of ‘matters of national importance’:

¹²⁰ Ibid., p 3

¹²¹ Ibid., pp 5-6

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.¹²⁴

Environment B.O.P's 'Proposed Regional Water and Land Plan' (February 2002) explores the concept of 'kaitiakitanga' in some detail, in relation to both the RMA and the principles of the Treaty of Waitangi. The Plan refers to the whakatauki: 'Whatungarongaro te tangata, toitu te whenua' (translated as 'Mankind perishes, the land remains eternal'), and makes the following statement:

Koia nei te pepeha e whakahuatia ake ai nga tikanga a te Maori ki ona whenua. Mai i nehe ra noa, ko te mea nui ki a ia ko te tiaki pumau i te whenua, e kore ranei e tukinotia, tae noa ki te wa e heke iho ai ki ona uri, ki nga whakatipuranga e whai ake ana a muri iho i a ia. Ko nga whakarite o te kaitiakitanga, he taonga tukuiho. Kua korerotia te korero, kua wanangatia te wananga. Heoi ano, ko te mahi i naianei he whakararangi i aua korero, e marama ai ki a tatau katoa. He mahi uaua tonu, engari ko a koutou pononga ki te kaunihera enei e ngana nei ki te whakatutuki i te kaupapa. Ko te tumanako, kai kona koutou e te iwi hai whakatikatika mai, e tau ai te puehu, e whakaae ai tatau katoa. Tihe mauri ora.

¹²² Ibid., pp 6-7

¹²³ Ibid., p 9

¹²⁴ Resource Management Act 1991, Section 6: Matters of national importance; Environment B.O.P, *Proposed Bay of Plenty Regional Coastal Environmental Plan*, p 21

An explanation is provided as follows:

The above statement quotes the Maori aphorism ‘Mankind perishes, the land remains eternal’ as this epitomises Maori beliefs on kaitiakitanga or guardianship of the land and its resources. Furthermore Maori concern is to avoid insensitive and squanderous exploitation so that the land can be passed on to future generations in a sound and healthy condition. [The] Statement also notes that much discussion and debate has taken place and then suggests that what is now required is a detailed inventory of the outcomes from those talks for our enlightenment. [The] Report concedes that the task is onerous and that council staff have worked conscientiously to complete the assignment. [The] Final sentence requests that iwi interests advise council of any corrections so that a consensus may be reached.¹²⁵

The Plan provides a detailed description of the concept of kaitiakitanga and its implications, partly based on *Ngaa Tikanga Tiaki i te Taiao: Maori Environmental Management in the Bay of Plenty*, a 1993 report on issues of significance to Maori for inclusion in the Bay of Plenty Regional Policy Statement. This report, which incorporated the views of both regional authorities and tangata whenua through a series of consultative hui, sought to bring together traditional Maori concepts of environmental management with those outlined in the RMA. In conclusion, the report stated that the RMA had ‘introduced the Maori Environment Resource Management System into the main stream of resource management in Aotearoa/New Zealand’, and that ‘this will require the revival of the knowledge and information related to those systems’. It was also noted that ‘[t]he integration of the methods, values and practices of Maori into resource management as practised by Regional Councils and District Councils is of importance to Maori’.¹²⁶

The *Proposed Regional Water and Land Plan* also provides a useful explanation and discussion of kaitiakitanga, which I have reproduced in full, as follows:

Practices of tikanga were developed over many generations to maintain the mauri of all parts of the natural world. These tikanga evolved into the ethic and exercise of kaitiakitanga or guardianship of their resources that they will pass on to future

¹²⁵ Environment B-O-P, *Proposed Regional Water and Land Plan*, Whakatane, Environment B-O-P, Version 4.0, 19 February 2002, p 7-9

¹²⁶ Love, et al., p 90

generations. These responsibilities include but are not limited to the principles contained within Article II of the Treaty of Waitangi.

Kaitiakitanga definitions vary according to different localities so it is important to clarify this with the people who claim the role in each rohe. There may also be other valid claimants who need to be recognised.

The role and responsibilities of kaitiaki are wide and varied, are tangible and intangible and all are based on Maori lore relevant to particular Maori groups [iwi, hapu, whanau] and their resources. It is the sole prerogative of each Maori group to determine their role and responsibilities as kaitiaki, and their interpretation of the concept of mauri. These roles, responsibilities and interpretations cannot be defined by any other persons, rather they need to be determined by the group according to their values and the circumstances of each case.

The traditional knowledge that has been handed down from generation to generation provides the power or authority to sustain the mauri in relation to resources within the rohe of Maori groups [tangata whenua].

Broadly speaking kaitiakitanga involves a wide set of practices based on a world and regional environmental view. The root word is *tiaki* that includes the ideas and principles of:

- (a) Guardianship.
- (b) Care.
- (c) Wise management.
- (d) Resource indicators, where resources themselves indicate the state of their own mauri.
- (e) Maintenance of spiritual and cultural aspects of the natural and physical resources.
- (f) Protection of mauri.
- (g) Enhancement of mauri.
- (h) Restoration of mauri.
- (i) Appropriate development of resources where necessary.

Kaitiakitanga of natural and physical resources is not confined to the mere protection of those resources from damage, destruction, modification and development. Maori believe that within their rohe they are empowered with the responsibility of ensuring that the spiritual and cultural aspects are maintained for the future, for the benefit of all the people of New Zealand. This relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga is a matter of national importance.

Kaitiakitanga has a variety of applications including, but not limited to:

- (a) The protection and maintenance of waahi tapu and other areas of special significance.
- (b) The placing of rahui to allow replenishment of traditional kaimoana, mahinga mataitai, or for use at times of disasters, drowning and pollution of food sources.
- (c) Directing development to ways that do not negatively compromise the mauri of the resource.
- (d) Observing tikanga associated with traditional activities such as prayer, ceremony and ritual.
- (e) Active opposition to developments with actual or potential adverse effects on resources, taonga, mauri and Maori cultural relationships.
- (f) Consultation.
- (g) Monitoring resource indicators, where resources indicate the state of the mauri.
- (h) Physical restoration and enhancement of resources to rejuvenate and improve the mauri of the resource.
- (i) Lodging claims against Crown actions that have adversely affected the mana of Maori
- (j) Celebrating places by teaching future generations about the special Maori values associated with them.
- (k) Enhancing the natural world by teaching future generations about the special (Maori) values associated with them.

Mauri is the life force present in all animate and inanimate objects. The mauri binds one resource to every other element in a natural order, both physical and spiritual. It provides Maori a series of formal relationships, which, when recognised in practice and prayer ensures physical and spiritual integrity of the environment for future generations. Mauri may be described as the cornerstone of Maori cosmology. Maori believe it is the vital essence or life force by which all things cohere in nature. When mauri is absent there is no life. Of all taonga tuku iho, mauri is the most precious. Mauri provides unity between the natural order and the spirituality of the gods, and also by providing a series of formal relationships to ensure the physical and spiritual integrity of the environment for future generations. While mauri has a spiritual basis, it also leads to practical application of traditional resource management (kaitiakitanga) by ensuring that the environment is maintained in its natural condition. Kaitiaki are responsible for the mauri of their rohe. Failure of the iwi or hapu to protect, restore, maintain and enhance mauri through the practice of kaitiakitanga has the potential to adversely affect the relationship of the iwi or hapu with their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, and the mana of the iwi or hapu in general.

Practices or tikanga were developed and observed to maintain the mauri of parts of the natural world. Observing these tikanga evolved into the ethic and exercise of kaitiakitanga.

The complex sets of tikanga were developed in relation to specific resources in the domain of atua, recognised the combination of fundamental primary dimensions:

Taha tinana - physical and economic significance

Taha hinengaro - intellectual significance

Taha wairua - spiritual significance

Taha whanaunga - social and cultural significance

Commonly recognised parts of the Maori resource management system are the practices associated with tapu (sacrosanct), rahui (moratorium), whakanoa (secularise), whakawaatea (liberate) and a whole range of tikanga (practices) specific to particular resources including but not limited to, harakeke (flax), tuna (eel), ika (fish), waimaori (fresh water), waitai (salt water) and whenua (land) including sand, stones, rocks, soil, minerals, metals, geothermal resources and any other physical and or natural resource, including air.

The appropriate development and use of land does not cause damage to mauri nor lessen the capacity of the land to sustain life. The appropriate development of land causes an increase in the capacity of the land to sustain life, creates a healthy relationship between land 'owner' and the land, and strengthens the mauri of the land by increasing the lands capacity to sustain not only itself but other creatures, including man. Appropriate development of land guarantees the sustainable management of land as a natural and physical resource but also preserves, protects, recognises and strengthens the cultural and spiritual aspects of the land as well.¹²⁷

The *Proposed Regional Water and Land Plan* acknowledges that there are a number of issues relating to the relationship between kaitiakitanga and contemporary resource management practice that need to be resolved. Principle among these is the 'significant gap in understanding between tangata whenua claim[s] of rangatiratanga of land, water and geothermal resources, and the role of the Crown and regional council in the management of those resources'. According to Environment B.O.P, 'resolving issues of 'ownership' of natural

¹²⁷ Environment B.O.P, *Proposed Regional Water and Land Plan*, pp 7-9

and physical resources are matters to be dealt with by Maori and the Crown through ... the Waitangi Tribunal' and, as such, 'the Council is relying on the Crown' to do so.¹²⁸

While Environment B.O.P's attempts to incorporate Maori in both the conception and implementation of environmental policy are laudable, these policies have only recently been put in place – in some cases ten years after the introduction of the RMA in 1991. Furthermore, the current policies of the regional council serve to emphasise, and in fact acknowledge both the constraints and limits, as well as detrimental policies and practices and their effects (including those caused by inaction) of the past.

8.5 Consultation

As Giselle Byrnes has noted, with regard to claims concerning Tauranga harbour, 'consultation is an important component of the Treaty partnership, but is an issue that has in the past not been without some difficulties between local bodies and ... Maori'.¹²⁹ Again with reference to Tauranga, it has been claimed that 'previous consultation with tangata whenua has been ad hoc', and that:

the participation of Maori in local consultative processes is limited by three main factors: the leadership vacuum with the recent passing of kaumatua who have had a high community profile since the 1950s; the administrative and structural changes brought about by the 'devolution' of Maori Affairs and the uncertainty created by governmental policies; and the perception by hapu that in its inherent nature, an urban authority has little regard for Maori land and issues.¹³⁰

In the *Manukau Report* (1985), the Waitangi Tribunal stated that it was not satisfactory to have token Maori representation on planning and controlling authorities: 'While representation of Maori interests on planning bodies is extremely important in ventilating Maori concerns, that is not a complete solution'. Such representation, they suggested, should

¹²⁸ Environment B.O.P, *Proposed Regional Water and Land Plan*, p 10

¹²⁹ Byrnes, p 58

¹³⁰ Byrnes, p 58; the claim is that of Des Kahotea in 'Tauranga Urban Growth Strategy Cultural Resource Inventory, Features of Significance to the Maori Community (tangata whenua)', report for the Tauranga District Council, June 1992 (Wai 215 ROI, doc A17), p 34

be accompanied by close liaison and consultation with Maori groups and funding provided for research ‘to enable their concerns to be more fully and effectively stated.’¹³¹

In his analysis of the Research Management Act, McClean notes that the Act ‘only expressly provides for consultation with the tangata whenua when local authorities are preparing and changing policy statement and plans under clause 3 of the first schedule’. He adds, however, that the Bay of Plenty Regional Council identifies and uses ‘the process of consultation as a method to fulfil [its] Treaty of Waitangi obligations under Part II of the Act. Consultation,’ he continues, ‘is regarded as a principle of the Treaty and for these reasons the idea of consultation deserves closer attention’.¹³² He states that:

Essentially, consultation is about communication between a number of people or parties concerning a common issue. Consultation may include telephone calls, meetings, advisory committees, seminars, workshops and surveys. The defining aspect of consultation within the sphere of state planning is that it is a *process of communication between the public and the public body, but the public body reserves the right to make the final decision*. Some of the aspects of consultation were defined in the Court of Appeal case *Wellington International Airport Ltd v Air NZ* [1991] 1 NZLR 671. From this case, consultation can be summarised as, but not limited to, the following principles:

- it includes the statement of a proposal not yet decided upon;
- it includes listening and considering responses;
- involves sufficient time and genuine effort;
- information must be provide so the consultee is adequately informed;
- the party obliged to consult must keep an open mind and is ready to change direction;
- involves meaningful discussion;
- the party obliged to consult waits for feed-back before making a decision; and
- it does not involve merely telling, is to be a charade or is the same as negotiation.¹³³

McClean further notes that in the Waitangi Tribunal’s *Ngawha Geothermal Resource Report* (1993), ‘consultation was viewed as a concept involving basic communication and dialogue’, under the Treaty principle that ‘cession of Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga’:

¹³¹ Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, p 80; Byrnes, p 58

¹³² McClean, ‘Matakana Island Sewerage Outfall’, p 170

¹³³ Ibid.

Before any decisions are made by the Crown, or those exercising statutory authority on matters which may impinge upon the rangatiratanga of a tribe or hapu over their taonga, it is essential that full discussion take place with Maori. The Crown obligation actively to protect Maori Treaty rights cannot be fulfilled in the absence of a full appreciation of the nature of the taonga including its spiritual and cultural dimensions. This can only be gained from those have rangatiratanga over the taonga.¹³⁴

With the introduction of the RMA, the powers of the Ohiwa Harbour Advisory Committee (established in 1989) were effectively transferred to the regional council (Environment B.O.P). An 'informal' Ohiwa Working Group was established to replace of the committee, and it was made up of staff from Environment B.O.P, the Department of Conservation and the Opotiki and Whakatane District Councils. The 'working group' sought to facilitate a co-ordinated approach to management of the harbour and its catchment. This group is no longer functioning.¹³⁵

In 1994 a meeting of the Opotiki District Council consultative committee was held at Roimata marae, on the edge of the harbour, north of Kutarere. According to a local newspaper account, the Mayor, council staff and consultants met with 'the local tribe to discuss treaty principles which must be included in the new district plan as determined by the Resource Management Act'. The main concern, as expressed by the Upokorehe kaumatua, Charlie Aramoana, was with regard to the 'abolition of Maori place names at Ohiwa harbour in favour of European', which was described as being 'offensive to the Upokorehe people':

"Hokianga island, Bird island, and there are other such names which have taken away our mana," Mr Aramoana said.

"We feel very bad about the reserves, and the naming of Ohiwa spit, that is a name that is rude to us."

Mr Aramoana also expressed concerns regarding the use of the harbour:

¹³⁴ Ibid., pp 173-174; he cites Waitangi Tribunal, *Ngawha Geothermal Resource Report*, Wellington, Brookers, 1993, p 101-102

¹³⁵ Hughes, *Draft Ohiwa Harbour and Catchment Scoping Report*, p 5
[292]

Motor bikes run over our shellfish beds, water skiers have no respect for anyone else on the water and we've been talking about a cowshed discharging into the Nukuhou Creek for four years, but our words have fallen on deaf ears.

"It's the dirtiest river flowing into the harbour, and our people are whitebaiting and fishing in the vicinity. It's beyond words. I've lost faith in talking and writing, because the problem is just ignored."¹³⁶

As noted in section 8.3, similar issues were raised in 1986 when Whakatohea and other iwi met with the Ministry of Agriculture and Fisheries.

In 1997, Beverley Hughes was commissioned by Environment B.O.P to prepare a report on the *Ohiwa Harbour Multiple Use Recreation Plan*, with an emphasis on 'possible additional areas for water recreation activities'. Hughes canvassed a wide range of interested parties, and found that largest single issue of concern to local residents appeared to be the use of jetskis in the harbour.¹³⁷ With regard to the issue of 'consultation and management' of the harbour, Hughes reported that:

All iwi authorities, the Department of Conservation, Opotiki and Whakatane District Councils, and some individuals agreed that consultation protocols and procedures need to be developed and used by a combined Ohiwa Harbour Management Committee drawing members from both District Councils, Regional Council, Department of Conservation, Local Iwi Authorities, Ministry of Fisheries and residents.

Equally all felt the responsibilities of an Ohiwa Harbour Management Committee would extend to all management, planning and development within the harbour, its margins and catchment area.¹³⁸

It appears that Hughes made a concerted effort to consult with a wide range of groups and individuals including members of hapu as well as iwi authorities. She lists Whakatohea Maori Trust Board, Tuhoe Waikaremoana Maori Trust Board, Waimana Kaaku Eastern Tuhoe Executive (12 Marae representatives plus 14 hapu members), Upokorehe Hapu (11 members including one Hiwarau Block trustee), and Te Komiti Taiao o Ngati Awa, as well as a number of individuals. With regard to the issue of the use of jetskis within the harbour, 87% of

¹³⁶ *Opotiki News*, 20 October 1994

¹³⁷ Hughes, *Report on Ohiwa Harbour Multiple Use Recreation Plan*, pp 9-13

submissions received by Hughes (87 out of 101) strongly opposed the use of jetskis within Ohiwa Harbour. One objection, received from Maanu Paul, and supported in principle by the hapu and iwi authorities listed above, was that:

Areas which are set aside for skiing effectively cause an inability to harvest seafood from within those areas. This is compounded by the fact that shellfish move around the harbour and can move into the ski lane at some later time. People who wish to harvest kaimoana within those areas will continue to do so which would create a dangerous situation. The first priority of recreational use of the harbour should be for the gathering of food, secondly swimmers and passive family recreationalists should have access, then rowers and wind powered craft, followed lastly by motorised craft.¹³⁹

At a meeting regarding the issue held at Kutarere School, Charles Aramoana 'advised that Upokorehe were considered by the Whakatohea Iwi as having the capacity to make comment on the Ohiwa Harbour', and 'with the unanimous support of the assembled group made the assertion on behalf of Upokorehe Hapu that they are totally opposed to jet skis in the harbour'. Mr Aramoana also noted that 'he could remember Port Ohope when it was relatively undisturbed and that he had seen its transition into a built up area but that we must now look at putting something in place to ensure that our children and future generations can enjoy the harbour as we have in our lifetime'.¹⁴⁰

In July 1996, the Ministry of Fisheries called a meeting of interested parties to discuss issues raised by the Bay of Plenty Marine Fishers Association with respect to Ohiwa harbour. According to an account of the meeting, an 'iwi perspective' was provided by Charles Aramoana, described as follows:

Charles Aramoana indicated there was concern about the state of the Nukuhou River as a consequence of cowshed effluent and removal of willows, which in turn could affect the harbour. He believes sedimentation of the harbour has been occurring for many years, with forestry development a likely cause. Local Maori agree that there may be problems

¹³⁸ Ibid., p 8

¹³⁹ Ibid., p 5. For the support by hapu and iwi authorities of Mr Paul's submission see pp 5, 10, and appendices 4, 6

¹⁴⁰ 'Notes taken at a public meeting to discuss the review of recreational usage and options for Ohiwa Harbour with specific reference to identifying possible additional areas for water recreation within Ohiwa Harbour, held at Kutarere School on Thursday 20th November 1997', Hughes, *Report on Ohiwa Harbour Multiple Use Recreation Plan*, appendix 4, np

associated with the high intensity of recreational fishing at holiday times, and as a consequence of increased boating activity. Development and the harbour is another issue to be considered.

The report of the meeting noted that:

A management committee involving iwi, the local communities and government (local, regional, DOC, M.Fish agencies) could be formed to address the issues of concern to iwi. As well as fisheries, the key issues would include pollution, agency roles, and containment of forestry runoff.¹⁴¹

This statement clearly acknowledges that Maori have particular issues with regard to the administration of the harbour as well as those of environmental impact.

The management committee idea appears to have been taken up by the Ohiwa Working Party, who organised a meeting at Wairaka Marae in May 1997 'involving Ngati Awa, Whakatohea, Tuhoe and Te Whanau Mokomoko regarding the development of an Ohiwa Harbour Management Committee'. A draft proposal was set out as follows:

To establish and resource an Ohiwa Harbour Management Committee upon which mandated representatives of the three iwi, Tuhoe, Whakatohea and Ngati Awa serve to act as a conduit on the facilitation of consultation with their iwi regarding all applications for land use and resource consents (both notified and non-notified) received from applicants, then working in cooperation, pleasantly and in good faith in recognition of Section 8 of the Resource Management Act 1991, with Crown and local authorities and organisations (whilst maintaining a Charter of Partnership with the Department of Conservation) in order that the Ohiwa Harbour Management Committee may provide an Iwi forum in which consultation over matters related to the harbour may take place.¹⁴²

¹⁴¹ Author not specified, Notes from Ohiwa Harbour Meeting, Ohope, 31 July 1996, on Ministry of Fisheries letterhead, pp 2-3, Environment B-O-P Archives, Whakatane, file 3780.02 vol 2

¹⁴² Minutes of a Meeting held on 30 May 1997 at the Wairaka Marae and involving Ngati Awa, Whakatohea, Tuhoe and Te Whanau Mokomoko regarding the development of an Ohiwa Harbour Management Committee, Environment B-O-P Archives, Whakatane, file 5565 - 01 Resource Management Plans: Ohiwa Harbour Regional Plan - General

8.6 Current Planning for Ohiwa

Ohiwa Harbour and its catchment area fall within the Bay of Plenty's Rangataiki to Waiotahi subregion. This is an area of over 5,000 square kilometres, extending from the Rangataiki plains to Ohiwa, and inland to the boundary of the Bay of Plenty Region. Much of the region is forested: 43 per cent in native forests and approximately 35 per cent in plantation forest.¹⁴³

Among those environmental issues identified by Environment B·O·P within the Rangataiki to Waiotahi subregion, are a number that apply specifically to Ohiwa harbour. These include sedimentation as a result of 'local reclamations and upstream activities'; the effects of 'inappropriate development and land use practices' on the harbour and spit; and safety concerns regarding 'incompatible recreational activities' in the harbour. Other concerns, relating to the subregion as a whole, include the effects of industrial, agricultural, horticultural and sewage discharges, and the extraction of gravel from rivers, on water quality and aquatic habitats.¹⁴⁴

Environment B·O·P acknowledge that:

Parliamentary statutes have in the past allowed resource contamination and removal, resulting in significant changes to the natural environment. These changes include water pollution, air pollution, geothermal and steam withdrawal, destruction of wetlands, removal of indigenous vegetation, destruction of natural features (hills, rivers, lakes), reductions of water tables and the introduction of new flora and fauna species, with destructive effects. These changes, more often than not, took place without consultation with or the consent of the various iwi in this area.¹⁴⁵

According to the Bay of Plenty Regional Coastal Environment Plan, Ohiwa Harbour falls within the 'Coastal Management Zone' which accounts for more than 95 per cent of the Bay of Plenty coastal marine area. The zone is described as 'either unmodified or relatively unmodified, with high ecological values and with its natural character very much intact', as well as having 'significant amenity, visual and intrinsic values'. The Plan does note that 'it needs to be recognised that there may well be uses and developments which would be appropriate within this zone', in which case coastal permits would be required. Unlike

¹⁴³ Environment B·O·P, *Bay of Plenty Regional Policy Statement*, p 51

¹⁴⁴ *Ibid.*, pp 52-55

¹⁴⁵ *Ibid.*, p 52

Tauranga Harbour, the Whakatane River Estuary and the Waioeka River Estuary (Opotiki), Ohiwa Harbour does not contain a 'Harbour Development Zone'. Tauranga alone has a 'Port Zone'. Areas within the Bay of Plenty coastal marine area that have been identified as being of either international, national or regional botanical conservation value have been designated as 'Coastal Habitat Preservation Zones'. Habitats which have been identified as having district or local significance are included in the Coastal Management Zone, but as Sites of District or Local Significance'.¹⁴⁶ These include sites of botanical or marshbird habitat value; and areas identified as being of significant conservation or cultural value as: subtidal marine or estuarine habitat; marine mammal habitat; underwater landscapes; geological features; areas important to endangered or nationally rare species; areas important to wading birds, and migratory species in particular; historic features; and 'for their cultural value to tangata whenua'.¹⁴⁷

In mid-2002, Environment Bay of Plenty produced a *Draft Ohiwa Harbour and Catchment Scoping Report* for its Strategic Policy Committee. This scoping report (which was written following consultation with 'statutory and iwi and hapu stakeholder groups') was 'designed to help Environment B.O.P decide whether to proceed to fund the development of an integrated management strategy for the Ohiwa Harbour and its catchment'.¹⁴⁸ According to the report an integrated management strategy could identify:

- A common vision for the Ohiwa Harbour and catchment
- Key issues to be addressed by the strategy
- Key management goals and associated tasks
- Key community values and associated tasks
- Priorities for integrated management, research and spending
- Consistent planning instruments that provide greater certainty to plan users, including the community

In addition to these goals, the report identified 'associated tasks', which 'might include the development of processes that provide for:

- Tangata whenua to practice kaitiakitanga
- Ongoing management of voluntary covenanted protection areas
- Consideration of compatible harbour and catchment resource uses

¹⁴⁶ Environment B.O.P, *Proposed Bay of Plenty Regional Coastal Environmental Plan*, pp 16-19

¹⁴⁷ *Ibid.*, p 20

- Education regarding the roles and responsibilities of stakeholder groups and best management practices for resource users
- Communication strategy including memoranda of understanding.¹⁴⁹

The benefits of introducing such an ‘integrated management strategy’ to ‘all agencies’, and to the harbour and catchment, are identified as follows:

- Establishing, implementing and reviewing objectives, policies and methods to achieve integrated management of Ohiwa Harbour and its catchment
- Addressing overlapping issues and responsibilities relating to the various functions and duties of agencies, tangata whenua and the community
- Clarifying the responsibilities of each agency and the community
- Recognising and providing for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga
- Identifying opportunities to collectively focus on specific issues and how they might best be funded and managed in a co-ordinated way
- Promoting appropriate and effective protection for significant natural, physical and cultural heritage values and places
- Enabling people and their communities to provide for their social, economic and cultural well-being while sustaining the potential of the harbour to meet the reasonably foreseeable needs of future generations.¹⁵⁰

The scoping report places a significant emphasis on explaining the importance of kaitiakitanga as it relates to Ohiwa and to the harbour’s history. It states that ‘hapu from Whakatohea, Ngati Awa and Tuhoe iwi have maintained long and important cultural and traditional relationships with Ohiwa Harbour and its catchment and these relationships endure today’. The report notes that ‘the ethic of kaitiakitanga applies in the Ohiwa Harbour for the tangata whenua, and there is increasing concern that the harbour should be looked after to ensure that its rich resources are still there for future generations’. It also acknowledges that following the 1866 confiscation, ‘Mataatua iwi were dispossessed of much of their land’.¹⁵¹

¹⁴⁸ Hughes, *Draft Ohiwa Harbour and Catchment Scoping Report*, p i

¹⁴⁹ Ibid., p 22

¹⁵⁰ Ibid., pp 22-23

¹⁵¹ Ibid., p 6

The report promotes the development of ‘an integrated management strategy which recognises and provides for the relationship of Maori people and their culture and traditions with their ancestral land, water, waahi tapu, sites and other taonga’. Such a strategy will, it is claimed, ‘benefit all stakeholder agencies and the Ohiwa Harbour and catchment communities by assisting iwi and hapu to identify areas and values of significance to them’. The report notes that Environment B-O-P can already ‘contribute funding towards the development of Iwi Management Plans,’ and that ‘regional and district councils refer applicants for resource consent to consult with tangata whenua of the harbour’.¹⁵² The report also suggests that once iwi of the Ohiwa harbour and catchment have been through the Waitangi Tribunal and settlement process:

Full participation in the development of an integrated management strategy alongside statutory organisations could ... provide iwi with opportunities to consider the nature and level of further investments they might contribute to advance their kaitiaki responsibilities within the Ohiwa harbour and catchment.¹⁵³

The *Draft Ohiwa Harbour and Catchment Scoping Report* provides an overview of the increasing ‘pressures’ on the harbour as a result of rising visitor numbers as well as urban development. In addition to the recent subdivisions on Ohope Spit, ‘the harbour margins and farmland in close proximity to the harbour have also been under pressure for lifestyle subdivision’. According to the report, the pressures for further subdivision threaten ‘the ecological values and natural character of the harbour’. It is also noted that pressures to develop the Ohiwa catchment will potentially affect the water quality of the harbour and ‘contributing streams, the condition of wetland/riparian areas, and the land management within the harbour catchment’. The report further identifies the following issues that could be incorporated into an Integrated Management Strategy:

The physical state of Ohiwa Harbour especially sedimentation; the degree to which sedimentation is caused in the harbour catchment by human activity, such as forestry, farming and subdivision-related earthworks.

¹⁵² Ibid., p 7

¹⁵³ Ibid., p 8

Harbour water quality; the effects of inappropriately located septic tanks; nutrient runoff from forestry, farms, small holdings and urban areas, draining land and wetlands and damage to riparian margins.

Landscape and the natural character of the coastal harbour environment: including damage to established vegetation, establishment of inappropriate structures, dumping of rubbish, and subdivision-related activities which identify the need for both district councils to subscribe to a mutual understanding of the value of the harbour environment and to establish consistent planning regimes across the arbitrary administrative boundary between them through the harbour.

The expectation of parties with an interest in Ohiwa Harbour and its catchment that Environment B·O·P will facilitate a formal forum through which they can participate and contribute to establishing a common vision and management regime with broad agency and community support.

The need to provide for the protection of the outstanding natural values of the Ohiwa Harbour environment and consideration of providing for that protection, e.g. through instruments such as Ramsar in respect of wetlands.

The need to provide for the protection of significant heritage values of the Ohiwa harbour environment and consideration of providing for that protection.

The need to provide for the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga as a matter of national importance. Tangata whenua of the Ohiwa Harbour and catchment have been asserting for years their concerns for the harbour and its catchment. In all cases tangata whenua have declared their commitment to continuing to undertake their roles as kaitiaki of the harbour and its catchment.

It should also be noted that the Ohiwa Harbour and its catchment is subject to cross-claims to the Waitangi Tribunal. It is possible that as a result of recommendations from the Waitangi Tribunal, the Office of Treaty Settlements may require cross claimants to identify the management relationships they propose to develop with statutory and other agencies relevant to the Ohiwa Harbour and its catchment.

Development of a strategy would therefore mean that statutory and kaitiaki stakeholder organisations may continue to make progress toward integrated management of the harbour without being required to engage in claim issues.¹⁵⁴

8.7 The Department of Conservation and the administration of Reserves

The *Ohiwa Harbour Multiple Use Recreation Plan* identified eleven reserves, with a total area of approximately 218 hectares, administered by the Department of Conservation at Ohiwa Harbour.¹⁵⁵ As of 1997, DOC administered more than 20 reserves in the Ohiwa Harbour area as listed below:

Land vested in the Crown and administered by the Department of Conservation¹⁵⁶

Reserve	Area (ha)	Status
Tauwhare Pa Scenic Reserve [W15040]	11.3800	Scenic Reserve, Reserves Act 1977
Paparoa Pa Historic Reserve [W15043]	1.5985	Historic Reserve, Reserves Act 1977
Nukuhou Salt Marsh Stewardship Area [W15051]	15.0000	Stewardship Area, Section 62, Conservation Act 1987
Port Ohope Recreation Reserve [W15052]	184.5000	Recreation Reserve, Reserves Act 1977
Port Ohope Stewardship Area [W15053]	3.1565	Stewardship Area, Section 62, Conservation Act 1987
Uretara Island Scenic Reserve [W15054]	73.2481	Scenic Reserve, Reserves Act 1977
Ohiwa Spit Stewardship Area [W15056]	2.0878	Stewardship Area, Section 62, Conservation Act 1987
Whangakopikopiko (Tern Island) Wildlife Refuge Reserve [W15057]	11.6700	Wildlife Refuge Reserve, Reserves Act 1977
Ohiwa Scenic Reserve [W15060]	4.3706	Scenic Reserve, Reserves Act 1977
Motuotu Island Nature Reserve [W15061]	70.2600	Nature Reserve, Reserves Act 1977
Pataua Island Scientific Reserve [W15063]	22.0523	Scientific Reserve, Reserves Act 1977
Kutarere Recreation Reserve [W15065]	7.7902	Recreation Reserve, Reserves Act 1977
Matekerepu Historic Reserve [W15066]	23.4515	Historic Reserve, Reserves Act 1977
Ohiwa Harbour Stewardship Area (Ohiwa Loop Road) [W15067]	1.8110	Stewardship Area, Section 62, Conservation Act 1987
Oscar Reeve Scenic Reserve [W15070]	6.3576	Scenic Reserve, Reserves Act 1977
Kotare Scenic Reserve [W15072]	17.3039	Scenic Reserve, Reserves Act 1977
Ohiwa Harbour Sandspit Wildlife	24.5200	Wildlife Refuge, Wildlife Act 1953 (over land)

¹⁵⁴ Ibid., pp 13-14

¹⁵⁵ *Ohiwa Harbour Multiple Use Recreation Plan*, p 51

¹⁵⁶ *Conservation Management Strategy for the Bay of Plenty Conservancy 1997-2007*, Bay of Plenty Conservancy Management Planning Series No. 6, Department of Conservation, Rotorua, December 1997, Volume 2, Sheet W15. See also Supplementary Brief of Evidence of David Alexander Field, Regional Conservator, Department of Conservation, Bay of Plenty Conservancy, 21 December 1995 (Wai 46 ROI, doc k18)

Refuge [over eastern end of Port Ohope Recreation Reserve] [W15076a]		administered by DOC)
Ohiwa Harbour Marginal Strip [Ohope Spit] [W15084]	0.9333	Marginal Strip, Section 24, Conservation Act 1987
Motuore Point Conservation Area [W15088]	0.6500	Stewardship Area, Section 7, Conservation Act 1987
Ohiwa Harbour Marginal Strip [W15089]	2.1333	Marginal Strip, Section 24, Conservation Act 1987

These reserves are depicted in figure 9.

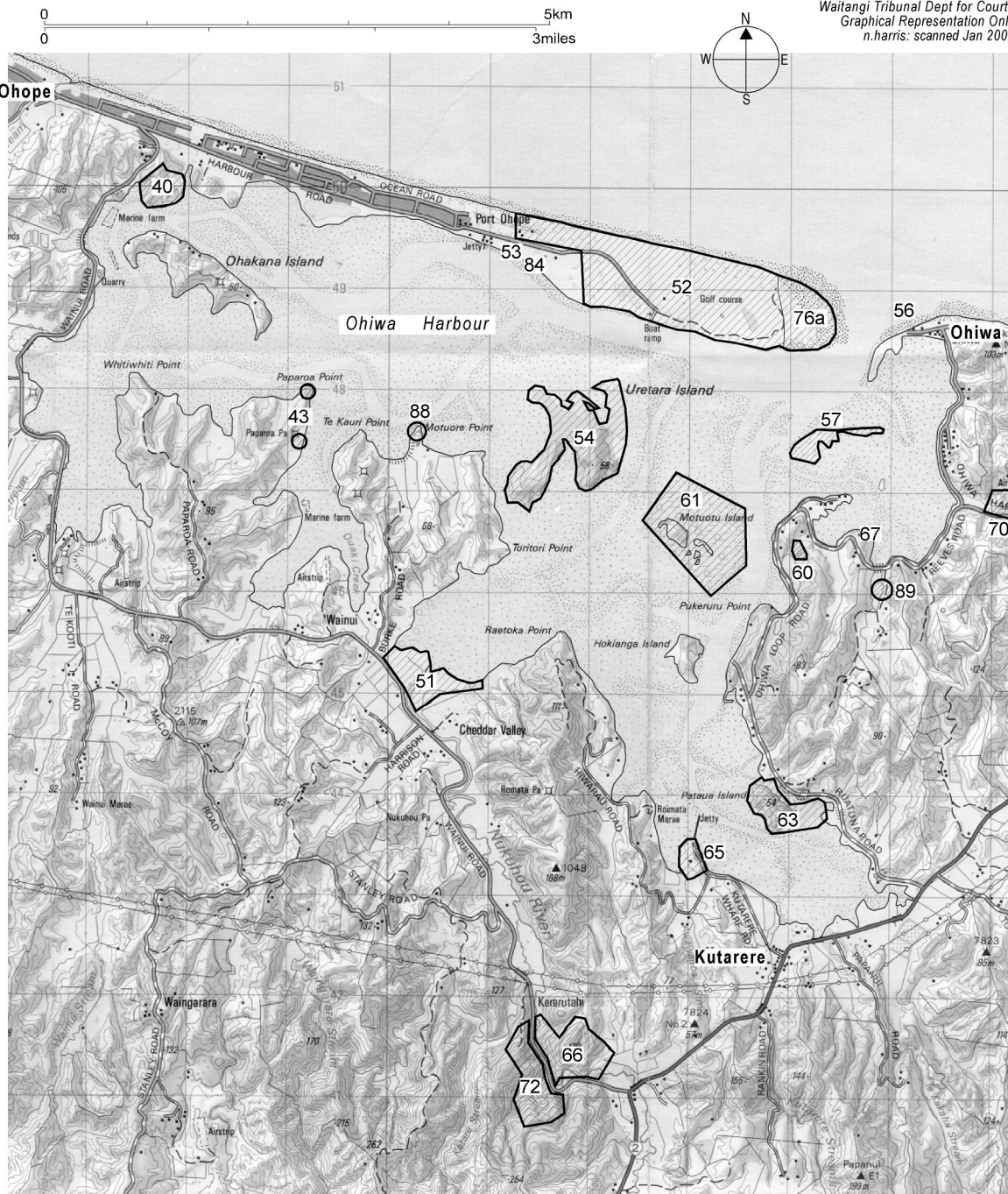
Along with the scenic, historic, recreation, and scientific reserves administered under the Reserves Act 1977, there are a number of ‘Stewardship Areas’ and ‘Marginal Strips’ in and around Ohiwa. According to evidence presented in December 1995 by David Alexander Field, DOC’s Regional Conservator for the Bay of Plenty Conservancy, during the Waitangi Tribunal’s Eastern Bay of Plenty Inquiry:

The ... term “Stewardship areas” has a statutory basis in the Conservation Act 1987. The term describes areas which are not otherwise specifically classified under the Act. This does not mean that stewardship areas were necessarily less important in natural and historic values than other areas which had been given a protective classification when they were embraced by the Conservation Act. Some stewardship areas were formerly State Forests with high ecological and/or historic value, but had no special classification. ... Despite not having specially protected status at present these stewardship areas have high conservation and historic values.¹⁵⁷

Accompanying Field’s evidence was a copy of a submission prepared by the Department of Conservation for the Planning and Development Select Committee on the Conservation Amendment Bill No. 2 on ‘Categories of land held under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, and Wildlife Act 1953’. In this submission, ‘Stewardship Areas’ are defined under Part V Section 25 of the Conservation Act 1987, as ‘areas which do not fall within the above categories and are managed to protect their natural and historic values’. ‘Marginal Strips’ (Part IVA Sections 24-24L Conservation Act 1987) are described as:

areas reserved from the disposition of land by the Crown that adjoin the sea, lakes or rivers of above a specified size or width. They are held for conservation purposes and particularly for maintenance of the adjacent waters, water quality, aquatic life and for

¹⁵⁷ Supplementary Brief of Evidence of David Alexander Field (Wai 46 ROI, doc k18), para 5 [302]



- | | |
|---|---|
| 40 Tauwhare Pa Scenic Reserve | 63 Patua Island Scientific Reserve |
| 43 Paparoa Pa Historic Reserve | 65 Kutarere Recreational Reserve |
| 51 Nukuhou Salt Marsh Stewardship Area | 66 Matakerepu Historic Reserve |
| 52 Port Ohoia Recreational Reserve | 67 Ohiwa Harbour Stewardship Area |
| 53 Port Ohoia Stewardship Area | 70 Oscar Reeve Scenic Reserve |
| 54 Uretara Island Scenic Reserve | 72 Kotare Scenic Reserve |
| 56 Ohiwa Spit Stewardship Area | 76a Ohiwa Harbour Sandspit Wildlife Reserve |
| 57 Whangakopikopiko Wildlife Refuge Reserve | 84 Ohiwa Harbour Marginal Strip |
| 60 Ohiwa Scenic Reserve | 88 Motuore Point Conservation Area |
| 61 Motuotu Island Nature Reserve | 89 Ohiwa Harbour Marginal Strip |

FIGURE 9:
LAND AT OHIWA ADMINISTERED BY THE DEPARTMENT OF CONSERVATION

Source: 'Conservation Management Strategy for Bay of Plenty Conservancy 1997-2007', Department of Conservation, 1997, volume 2, map W15.

protection of the natural values of the strip. They are also held to enable public access to the waters and public recreational use of the strips and adjacent waters.¹⁵⁸

Under the Reserves Act 1977, the different categories of reserve as found in the Ohiwa Harbour area are defined as follows:

Recreation Reserves (Section 17)

The principal purposes are to provide areas for recreation and sporting activities, for physical welfare and enjoyment of the public and for protection of natural environment and beauty.

Historic Reserves (Section 18)

The principal purpose is to protect and preserve places, objects and natural features of historic, archaeological, cultural, educational and other special interest

Scenic Reserves (Section 19)

The principal purpose is to protect and preserve for their intrinsic worth and for the public benefit, enjoyment and use, areas of scenic interest, or beauty or features worthy of protection in the public interest.

Scientific Reserves (Section 21)

The principal purpose is to protect and preserve areas for scientific study, research, education and other similar purposes. Entry is by permit only.¹⁵⁹

Generally speaking, the Department of Conservation is responsible for 'ensuring the conservation of natural and historic resources, promoting the benefits of conservation and fostering recreation where appropriate'.¹⁶⁰ Of significance to this work is the conservation of biological diversity, including the conservation of landscapes; landforms, geological features, and soils; terrestrial ecosystems; marine and estuarine ecosystems; freshwater ecosystems; geothermal ecosystems; and indigenous species. According to DOC, 'the Department, tangata whenua, local authorities and private land owners, have an important role in the conservation of indigenous biodiversity'.¹⁶¹

¹⁵⁸ 'Categories of land held under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, and Wildlife Act 1953', Attachment to Supplementary Brief of Evidence of David Alexander Field (Wai 46 ROI, doc k18), p 1

¹⁵⁹ Ibid., pp 2-3

¹⁶⁰ 'Conservation Management Strategy for the Bay of Plenty Conservancy 1997-2007', p 17; Section 6, Conservation Act 1987

¹⁶¹ Ibid., p 19

In addition to managing the conservation of land and terrestrial ecosystems in the area (including significant coastal dune lands), DOC administers a number of discrete areas with significant estuarine and marine ecosystems at Ohiwa Harbour: Motuotu Island Nature Reserve; Pataua Island Scientific Reserve; Uretara Island Scenic Reserve; Whangakopikopiko Wildlife Refuge Reserve; and Nukuhou Conservation Area. Marine ecosystems generally occur below mean high water spring tide levels, while estuarine saltmarsh associations can extend further inland. The Resource Management Act 1991 defines the coastal marine area as being below Mean High Water Spring and extending out to the 12-mile territorial limit.¹⁶² With regard to estuarine and marine ecosystems, the Department of Conservation is responsible for, among other things, the protection and management of indigenous wildlife including natural fisheries resources, and is required to 'give effect to the principles of the Treaty of Waitangi, by respecting the philosophies and practice of tangata whenua regarding their mana moana'. The Department is also responsible for protecting indigenous freshwater fish, the habitat of which generally extends into marine and estuarine ecosystems for part of each species' life cycle.¹⁶³

The Department of Conservation's 'Conservation Management Strategy for the Bay of Plenty Conservancy 1997-2007' (CMS) states that there are 'few legally protected, representative, marine and estuarine ecosystems' in the region, and that 'the existing fragmented pattern of remnant habitats does not provide sufficient viable ecosystems for indigenous freshwater fish, marine mammals and native birds'. The following 'impacts and threats to freshwater, geothermal, estuarine and marine ecosystems, and associated Maori values and recreation' have been identified:

- input of sediments, contaminants, and nutrients from catchment land management;
- inappropriate riparian management;
- dumping of wastes, soil, and sewage;
- excessive collection of fish, shellfish, and other aquatic life;
- encroachment of residential and industrial development which may result in increased run-off and construction of sea walls and other retaining structures;
- grazing of domestic stock;
- oil spills;

¹⁶² Ibid., p 22; Section 2, Resource Management Act 1991

¹⁶³ Ibid., pp 22-23

- dams intercepting sediments and preventing migration of fish;
- sand and mineral mining;
- reclamation, drainage and dredging;
- aquaculture;
- loss of adjoining freshwater wetlands which are essential for buffer protection and healthy functioning of waterways and estuaries;
- invasion of exotic plants and animals including marine plants and animals brought by ships in ballast water;
- water diversion and excessive extraction; and
- energy extraction in the case of geothermal ecosystems.¹⁶⁴

The CMS describes Ohiwa Harbour as a wetland of ‘international importance’; its vegetation, culture, waterfowl, and fisheries meeting the criteria established at the Convention on Wetlands (Ramsar, Iran, 1971). It notes that while a large area of the predominant pre-settlement estuarine vegetation remains, ‘it has been impacted upon by human development activities ... Many dune communities on the coast have been modified for recreation, or altered by exotic plants and residential development’. The CMS notes that the clearing of indigenous vegetation and the introduction of exotic plants and animals have adversely effected indigenous wildlife, including ‘the loss of breeding sites for school sharks in Ohiwa Harbour’. The habitats of indigenous fish species have also been effected, with, for example, the drainage of wetlands and alteration of rivers resulting in a severe decline of whitebait spawning areas. The remaining wetlands are therefore critically important as habitats for whitebait and other native fish, as well as waterfowl and many threatened species of birds. Ohiwa Harbour is described as ‘a nationally important habitat for New Zealand dotterel, banded dotterel, Australasian bittern, banded rail, reef heron, fernbird, white heron, and many international migratory species’, many of which are threatened.¹⁶⁵ According to the Ministry for the Environment, ‘the vast majority of New Zealand’s wetlands have been drained or irretrievably modified for coastal land reclamation, farmland, flood control’, and other uses – mostly between 1920 and 1980. It is estimated that unmodified wetlands in the Bay of Plenty have been reduced to less than 1 percent of their original area.¹⁶⁶ Environment

¹⁶⁴ Ibid., p 95

¹⁶⁵ Ibid., pp 199-201

¹⁶⁶ Ministry for the Environment, *The State of New Zealand’s Environment 1997*, Ministry for the Environment and GP Publications, 1997, pp 7.62, 7.64

B·O·P's *Draft Ohiwa Harbour and Catchment Scoping Report* suggests that while it appears that Ohiwa Harbour may be eligible for registration on the Ramsar List of Wetlands of International Importance, 'whether registration should be sought is a matter for consideration during the preparation of a strategy for Ohiwa Harbour and its catchment'.¹⁶⁷

Ohiwa Harbour is also regarded by DOC as 'important for shellfish communities (e.g., mussels, pipi, and cockles) and as a nursery for many marine fish species'. According to the CMS 'intensive fishing, especially with set nets, has modified the fishery'. With regard to land use, the CMS notes that while Ohiwa Harbour is one of the least altered harbours in the North Island, it is still under threat from development and farm runoff.¹⁶⁸ A number of introduced weeds have been identified as priorities for plant pest control in DOC administered reserves at Ohiwa Harbour. These include pampas, spartina, wandering willie and old man's beard.¹⁶⁹ Animal pests have also been identified, with a number of sites in Ohiwa Harbour, notably Uretara and Pataua islands, being named priority sites for possum control with the goal of enabling Pohutukawa and general coastal vegetation recovery. Ohiwa Spit Wildlife Refuge has also been identified as a site for a pest control programme to protect threatened species (the New Zealand Dotterel and all species of breeding coastal birds) and their habitats from rabbits, cats, stoats and possums which damage pingao.¹⁷⁰ All species of indigenous wildlife (as defined by the Wildlife Act 1953) are protected under that Act. However their ecosystems and habitats are not protected unless specifically reserved under the Act. The protected species status extends over all populations irrespective of whether they are on protected land or not. Marine mammals are protected under the Marine Mammals Protection Act 1978, while aquatic life is conserved and managed under the Fisheries Act 1983, except in the case of marine reserves which are protected under the Marine Reserves Act 1971.¹⁷¹

The Department of Conservation is also responsible for the conservation of historic resources on land that it administers, and also for advocating, in consultation with the Historic Places Trust, the conservation of historic resources generally. These 'historic resources' include Maori pa and other sites (both pre-European and later) along with early European settlements. A significant number of such sites are located in the Ohiwa area, including some

¹⁶⁷ Hughes, *Draft Ohiwa Harbour and Catchment Scoping Report*, pp 15-16

¹⁶⁸ 'Conservation Management Strategy for the Bay of Plenty Conservancy 1997-2007', p 201

¹⁶⁹ *Ibid.*, p 119

¹⁷⁰ *Ibid.*, pp 123-124

on DOC administered lands.¹⁷² Tauwhare Pa, Paparoa Pa, and Matakerepu historic reserves are identified as ‘actively managed historic places’, while Whangakopikopiko (Tern Island) Wildlife Refuge, Ohiwa Scenic Reserve and Motuotu Scenic Reserve have been identified as ‘priority sites for archaeological survey and assessment for management purposes’.¹⁷³ Another function of the Department of Conservation is to ‘foster the use of natural and historic resources for recreation and to allow their use for tourism ... to the extent [that this] is not inconsistent with [their] conservation’ (Section 6(e) Conservation Act 1987).¹⁷⁴ This, however, only applies to lands administered under the Conservation Act 1987. Under the Reserves Act 1977, recreation reserves are maintained primarily for recreation purposes, ‘although there is still an obligation to conserve and manage natural resources to the extent compatible with that primary purpose’.¹⁷⁵ Managing ‘visitor impacts’ is increasingly important, particularly in places where visitor numbers are rising. Visitor impacts include ‘crowding, vehicles, trampling, disturbance of wildlife, the removal of specimens, pollution of waterways, vandalism, and out-of-control fires’. In addition to the impact of visitors, damage can also be caused by the recreational infrastructure itself: the construction and maintenance of facilities such as roads and tracks, rubbish, and the introduction of plant and animal pests.¹⁷⁶ Related to the issue of recreation is that of access. The aim of the Department of Conservation is to provide free public access to most of the areas that it administers, except where access to some classes of reserve (such as nature reserves, scientific reserves and sanctuaries) is restricted.¹⁷⁷

The Department of Conservation’s ‘Conservation Management Strategy for the Bay of Plenty Conservancy’ identifies a series of issues regarding the Department’s management of Ohiwa Harbour and the surrounding area. These were outlined as follows:

- 1 The lack of awareness of databases on the vegetation and fauna of Ohiwa Harbour can result in poor planning decisions.
- 2 The lack of recognition of natural and historic resources around the harbour margins is leading to their destruction (e.g. grazing by stock, plant pests, erosion and residential development).

¹⁷¹ Ibid., p 23

¹⁷² Ibid., pp 24-26

¹⁷³ Ibid., pp 137-138

¹⁷⁴ Ibid., p 27

¹⁷⁵ Ibid., p 139

¹⁷⁶ Ibid., p 141

¹⁷⁷ Ibid., p 144

- 3 Sediment, contaminants, and nutrients from inappropriate catchment land and water uses adversely affect harbour ecosystems.
- 4 Possums are damaging Pohutukawa forest around the harbour margins and on islands.
- 5 The Department has unclear objectives about visitor management on lands it administers on Ohope Spit.
- 6 The erosion of Ohiwa Harbour Wildlife Refuge is impacting on the breeding sites of the New Zealand dotterel and variable oyster catcher.
- 7 Aquaculture development can have adverse effects on natural character and harbour ecosystems.¹⁷⁸

Included in a list of priority activities for DOC to undertake in the Whakatane Management Area is to increase the area of legally protected land in the Ohiwa Harbour area.¹⁷⁹

The Department of Conservation, as outlined in the 'Conservation Management Strategy for the Bay of Plenty Conservancy', acknowledges that consultation with tangata whenua is an important aspect of conservation management. According to the CMS, 'the land, water, and natural resources of the region are of considerable cultural and spiritual significance for the tangata whenua, whose mana and cultural perspective demand that the mauri and physical wellbeing of the environment is protected'. It is also noted that 'the Conservancy needs to identify relevant tangata whenua and consult with them'.¹⁸⁰ DOC's position, as outlined in the CMS, is that 'for Maori, the right to participate in environmental and conservation issues, lies first and foremost with the Treaty of Waitangi', and that:

The commitment to encourage Maori participation in conservation management is stipulated by Section 4 of the Conservation Act 1987, which states:

This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

Accordingly, the CMS states that:

¹⁷⁸ Ibid., pp 61-62. In response to these issues, the CMS lists a number of management strategies such as participation in district and regional council planning processes; increasing land owner 'awareness of appropriate riparian margin management practices and the link between catchment land use and harbour health'; surveying and monitoring pohutukawa forests and possum numbers, seeking the rehabilitation of modified wetlands, and rationalising management objectives (p 62).

¹⁷⁹ Ibid., p 65

¹⁸⁰ Ibid., p 13

In order to carry out its statutory obligations, the Department of Conservation cannot treat Maori as just another interest group. Their status, as people who hold traditional rights and authority over ancestral lands, water and other taonga, is acknowledged in legislation and requires that they are treated as partners and their values respected and upheld.¹⁸¹

The CMS notes that, with regard to DOC's relationship with tangata whenua:

- 1 The mana whenua of iwi and hapu is not always recognised by the Department when it carries out its responsibilities.
- 2 Iwi and hapu do not have adequate resources to fully participate as equals in consultation with the Department.
- 3 The Department in undertaking its statutory responsibilities uses processes and timings that are inconsistent with tangata whenua decision making processes and timings.
- 4 The Department and tangata whenua have different interpretations of silence or lack of response, leading to misunderstandings and inappropriate consultation.
- 5 The history of the relationship between the Department and its predecessors and tangata whenua means there is tension or distrust at the sincerity of efforts to consult.
- 6 The Conservancy boundaries do not conform with iwi boundaries.¹⁸²

Related to this last point is the recognition that 'values and preferences on issues may differ from iwi to iwi'.¹⁸³

The Department of Conservation's objective with regard to their relationships with tangata whenua, as stated in the CMS, is 'the practical expression (by effective consultation and establishment of Charters of Partnership) of the Principles of the Treaty of Waitangi in all aspects of the Department's responsibilities for management of natural and historic resources'.¹⁸⁴

Referring generally to planning for national parks, T Nikora has argued that:

Participation is a difficult matter for minorities. It is I believe true to say that people don't participate unless they can see fair opportunities of being heard. Furthermore, for where

¹⁸¹ Ibid., p 14

¹⁸² Ibid., p 91

¹⁸³ Ibid., p 92

¹⁸⁴ Ibid., p 91

they don't trust at least some persons on the authority and or for where they lack means of proper information it is more than likely they won't participate. Some better answers need to be found starting perhaps with genuine expressions of goodwill as foundations to build appropriate liaisons.¹⁸⁵

In February 1994 it was reported in the *Opotiki News* that 'tangata whenua at Ohiwa are still angry over the closing of their traditional camping ground in Loop Road' (on the eastern side of the harbour). Charlie Aramoana had reportedly informed Opotiki District Council members at a meeting at Roimata marae that:

We don't understand how the Department of Conservation suddenly declared the area a scenic reserve without any consultation with us, and council supported their action by putting up the no camping signs.

Our people have been camping there for generations, and I believe we inherited that right. There is a new complex sitting right next door on a legal road, and we simply don't understand DOC's thinking.¹⁸⁶

Between 1993 and 1995, the Department of Conservation, in conjunction with the Opotiki and Whakatane District Councils and Environment Bay of Plenty, made a video promoting the protection of the harbour. The objective of the project was 'to inform and positively motivate (a) primarily the owners and managers of land influencing Ohiwa Harbour, and (b) secondly those harbour users whose activities have potential impacts'. The main themes of the video were the harbour's 'values' and its 'vulnerability and threats', and the implementation of policies to address these threats. The video sought to 'explain briefly the different roles and responsibilities of the main agencies and what opportunities exist for a co-ordinated programme of "harbour-care".' The 'landuse practices' to be covered were riparian retirement (fencing, planting and weed control); wetland protection; pohutukawa forest protection and

¹⁸⁵ T Nikora, 'Maori Values and Park Values', in J Steven and L Clark, 'Seminar on People and Parks', *National Parks Series*, 32, Wellington, Lands and Survey, 1986, p 208, cited in Brad Coombes, 'Scoping Report: Land-based environment impacts in the Urewera inquiry district', December 2001, p 56

¹⁸⁶ *Opotiki News*, 17 February 1994

re-establishment; discharge control and treatment; nutrient/fertiliser loss and minimisation; and 'harbour-care' voluntary programmes.¹⁸⁷

In a paper to the New Zealand Association for Environmental Education Conference, Hamilton, in January 2002, Sioux Campbell, Community Relations Contact for the Department of Conservation Bay of Plenty Conservancy, outlined the progress made in implementing an ongoing 'Ohiwa Harbour Environmental Protection Programme'. Campbell stated that:

Ohiwa harbour ... is identified as a site of international significance for its natural and historic values. These values are threatened by development pressure (e.g. subdivision proposals) and a variety of environmentally inappropriate human uses such as poor riparian management, pollution and trampling of native vegetation.

She claimed that, while the Department of Conservation 'had undertaken a range of advocacy work and protection effort over the past decade', these initiatives 'had been disparate and there was little evidence of community awareness, support or involvement'. Furthermore, 'a key position in the local DOC office, which provided regular contact with Ohiwa residents and landowners' had been 'disestablished' as part of a re-structuring exercise in 1997. 'Consequently, the Department lost a link with Ohiwa and knew little about what the community understood or wanted and had infrequent direct contact'. Research indicated that Ohiwa residents were 'unhappy with [the] lack of contact with the Department, as well as the lack of awareness of the importance of the harbour, awareness of its natural and historic values and why its protection mattered'. The desired outcome of the programme is the 'increased protection of Ohiwa harbour's natural and historic values over the next five years, principally through enhanced resident and landowner awareness and direct contact with DOC'.¹⁸⁸

A core component of the programme was the commissioning of a Waikato University research team to undertake a social research project 'to give us more information about the

¹⁸⁷ DOC Rotorua, 'Proposal for advisory and advocacy video to promote protection of Ohiwa Harbour and its margins', Environment B-O-P Archives, Whakatane, file 5565 01 Resource Management Plans: Ohiwa Harbour Regional Plan - General

¹⁸⁸ Sioux Campbell, 'Ohiwa Harbour Environmental Protection Programme', paper presented at the New Zealand Association for Environmental Education Conference, Waikato University, Hamilton, 17-19 January 2002, <http://www.nzae.org.nz/conferences/papers/Sioux%20Campbell.doc> (viewed 30 April 2002), np

residents and the community'. The research included a questionnaire (sent to 1000 people), focus groups, hui, and a review of existing literature.¹⁸⁹ The team found that 'many people did not make a personal link between their actions and harbour degradation and that they valued their lifestyle in the area for a range of quite differing reasons'.¹⁹⁰

A number of 'issues' or 'challenges' were identified with regard to the implementation of the Ohiwa Harbour Environmental Protection Programme. There was, for example, no existing 'co-ordinated community relations project for the harbour' and 'no recent tools (e.g. publications, information) to support public awareness activities'. It was felt that the Department 'had not been able to target public awareness raising activities effectively as we did not have reliable information about our audiences', and that 'direct communication was not occurring'. There were also concerns regarding the relationships between DOC and the local authorities with regard to the administration of the harbour: 'there was no real liaison on community relations work with the regional council as the major land manager for the catchment'. 'Major tensions' were also identified with the Whakatane District Council 'over its draft district plan'. Furthermore, it was felt that there was 'suspicion of DOC's motives by senior regional council managers and concern DOC was overstepping its boundaries'. There was also concern that the Department 'had received bad publicity over a controversial toilet block at Port Ohope'. Another challenge to the establishment of the programme came in the area of funding. The programme managers received substantially less funding than they had bid for (\$36,000 of the \$50,000 requested), and the time available to complete the project was reduced. The social research undertaken was also 'much more time consuming, costly and complex' than had been planned for.¹⁹¹

Among the specified target audiences for the programme were 'Iwi (Ngati Awa, Whakatohea and Upokorehe)', and among the techniques identified to reach the target audiences was consultation with iwi 'over interpretation panel content and design'. Interpretation panels

¹⁸⁹ The questionnaire asked respondents to indicate their level of agreement (or disagreement) with a series of statements identifying 'valued characteristics of the Ohiwa catchment' and factors which make Ohiwa 'a good place in which to live', as derived from focus group meetings of members of the Ohiwa community. Respondents were informed that the information would 'be used to help the Department of Conservation paint a more accurate picture of what Ohiwa residents/landowners know, like or do not like about [where] they live', and that this would be 'factored into future management approaches'.

¹⁹⁰ Campbell, np

¹⁹¹ Ibid.

were produced for Tokitoki midden, Tauwhare Pa and Ohope Spit.¹⁹² One of the proposed ‘tasks’ as outlined in the research brief for the project was the identification of ‘issues important to tangata whenua (the iwi who have mana whenua-mana moana)’, and among the ‘outputs’ was the production of ‘notes where applicable of any significant differences in knowledge, views, attitudes and in issue identification between Maori and non-Maori’.¹⁹³ There is little other particular identification of issues particular to Maori, however the questionnaire asked respondents to identify whether or not they were Maori.

In addition to the reserves in the Ohiwa harbour area administered by the Department of Conservation, there are a number of areas of Crown reserve land vested in the Opotiki and Whakatane District Councils. The Whakatane District Council, as of August 1996, administered some 25 Recreational Reserves at Ohope, with a combined area of 51.1551 hectares. Half of these lie to the east of the Maraetotara stream, along the Ohope spit. In addition there are 13 local purpose reserves with a combined area of 8.3706 hectares, the majority of which are located east of Maraetotara.¹⁹⁴

The Opotiki District Council also manages a number of reserves on the eastern side of the harbour, the largest of which is the Ohiwa Recreation Reserve (actually five separate reserves) situated near the site of the former Ohiwa township on the Ohiwa spit (see figure 8). The reserves that collectively make up the Ohiwa Recreation Reserve are:

	Referred to as	Legal Description	Area (ha)
A	Ohiwa Spit A	Section 18 Block V Town of Ohiwa	0.0819
B	Ohiwa Spit B	Section 19 Block V Town of Ohiwa	0.0819
C	Public Domain	Section 44 Block V Town of Ohiwa	1.3270
D	Ohiwa Domain	Allotment 92 Waiotahi Parish	12.8942
E	Bush Reserve	DP 6379	9.5540
Total Area Ohiwa Recreation Reserve			23.9390

In addition, two adjacent areas of Crown Land are administered by the Opotiki District Council as part of the reserve:

	Referred to as	Legal Description	Area (ha)
F	Crown Land - Ungazetted Burial Reserve	Section 38 Block V Town of Ohiwa	0.0823
G	Crown Land	Section 45 Block V Town of Ohiwa	0.0431

¹⁹² Ibid.

¹⁹³ ‘Research brief – Ohiwa Harbour Community Relations Development Programme’, np

¹⁹⁴ RW Cairns, Manager – Parks and Recreation, Whakatane District Council, proposal for an Ohope Reserves Development Plan, 26 August 1996, Environment B-O-P Archives, Whakatane, file 0280-0-01

The land that was to become the Ohiwa Domain (Lot 92 Waiotahi Parish) was ‘temporarily reserved’ under the Land Act 1892 (section 235) in January 1906, before being ‘permanently reserved’ under section 236 of the same act, for the purpose of ‘Stock’.¹⁹⁵ As well as being used for grazing stock awaiting shipment from the Ohiwa wharf, the reserve was also used for recreation, particularly the area adjacent to the sea. By 1948 three baches had been built on this land, and ‘about this time the frontal portion of the Ohiwa Domain was set aside as road reserve’.¹⁹⁶ In 1952, the reserve’s status was changed from stock reserve to a recreation reserve, and the following year, it was brought under the Public Reserves and Domains Act 1953 and named the Ohiwa Domain. The Opotiki County Council was appointed as the Ohiwa Domain Board to administer the reserve.¹⁹⁷ In 1964, the Ohiwa Domain was extended to incorporate a further 2 acres 3 roods 39 perches.¹⁹⁸ In 1975, Sections 18, 19 and 44, Block V Town of Ohiwa (total area 1.4903 ha) were set aside as a reserve for recreation purposes and declared to be part of the Ohiwa Domain. In 1980, all of the above reserve areas were classified as reserve areas under the Reserves Act 1977, and were named the Ohiwa Recreation Reserve.¹⁹⁹ In addition, the area known as the ‘Bush Reserve’, 9.5540 ha (Lot 1 DP 6379), was classified as a reserve for recreation purposes and added to the Ohiwa Recreation Reserve.²⁰⁰

8.8 The 1999 Occupation at Ohiwa by Te Tatau Pounamu o Mataatua

In January 1999 a group of protesters under the banner of ‘Te Tatau Pounamu o Mataatua’ occupied an Opotiki District Council reserve (a former pa site) adjacent to the harbour, at the corner of Reeves Road and Ohiwa Harbour Road, near Ohiwa Spit. The group, who claimed to represent Ngati Awa, Whakatohea and Tuhoë, occupied the site for two weeks. The main protest issues were with regard to the confiscation of the harbour, the Treaty claim settlement process and the Whakatohea raupatu settlement negotiations in particular, the alleged pollution of the harbour, and fears of development by foreign investors. The group issued a public notice stating that:

¹⁹⁵ *New Zealand Gazette*, 29 January 1906, p 283; 20 April 1906, p 1109

¹⁹⁶ Opotiki District Council, *Ohiwa Recreation Reserve Management and Development Plan*, December 1991, p 7

¹⁹⁷ *New Zealand Gazette*, 1952, p 945; 1953, pp 713, 900

¹⁹⁸ *New Zealand Gazette*, 9 July 1964, p 1144

¹⁹⁹ *New Zealand Gazette*, 1980, p 2563

²⁰⁰ *New Zealand Gazette*, 1980, p 3274; Opotiki District Council, *Ohiwa Recreation Reserve Management and Development Plan*, pp 7-8

We the Tangata Whenua of Te Moananui a Tairongo, notify the public that an occupation of Ohiwa Harbour will take place 13-1-99.

We who have come together under the banner of Te Tatau Pounamu o Mataatua have taken this action to express our concerns surrounding the future of Ohiwa.

Since the beginning of time Ohiwa has been a bountiful iwi food basket. Numerous hapu can place their origins within the tidal ebb and flow of the harbour waters. For generations Ohiwa sustained the development of the Tangata Whenua.

The relationship between the Tangata Whenua and Ohiwa was constant, until the crown confiscated the whenua under the New Zealand Settlements Act 1863, through an order in council on Jan 17th 1866.

The confiscation resulted in the transference from traditional systems of resource protection to crown agencies and Westminster legal process. This has ultimately lead [sic] to the situation that we find ourselves in today.

Pollution in the harbour is serious, cow sheds discharging effluent, septic tanks and sump holes leaching into the harbour waters, burning and dumping of rubbish on the mudflats.

Development of whenua without consultation with iwi, over the top of wahi tapu and sites of extreme historical importance.

Ohiwa has also attracted the interest of foreign investors who wish to buy and develop large areas of whenua around the harbour.

These are just some of [the] issues that need addressing. We must stop the abuse and rape of the Ohiwa harbour.

We welcome your thoughts and invite you to dialogue with us on these issues at the occupation site at Ohiwa.²⁰¹

In addition to the Public Notice, the group issued some 40 'eviction notices' dated 13 January 1999, to local residents, stating:

²⁰¹ 'Public Notice', nd, Ohiwa Scrapbook, Opotiki Heritage and Agricultural Society Museum [316]

You are here by notified that you are living on stolen land. Taken contrary to the Treaty of Waitangi, under the New Zealand Settlements Act 1863 through an order in council on Jan 17th 1866.

Furthermore you have 12 months to vacate the said premises. By Order of, Te Tatau Pounamu O Mataatua.

For further information contact your local MP Tony Ryall and the Minister of Justice Sir Douglas Graham.

We welcome your thoughts and invite you to dialogue with us on this issue at the occupation site at Ohiwa.²⁰²

The 'eviction notice' (and other printed material) made use of an extract from the map accompanying Best's *Tuhoe: Children of the Mist*, to illustrate 'the sites of historical and spiritual significance to the descendants of Te Waka o Mataatua'.²⁰³

The group's position was further articulated in a series of panui, the first of which stated:

We have returned to our ancestral lands today to commemorate the day of shame 133 years ago when our land was confiscated by application of the New Zealand Settlements Act. Since that time our ancestors have been fighting for the return of the land through a variety of mechanisms including; legal battles in the Native Land Court and other courts of the Crown; the taking up of arms to protect the whenua for future generations and diplomatic appeals to various representatives of the Crown. The history of this struggle is well known. We are concerned that it not be forgotten in the current climate of Crown Imposed Treaty Settlements that would have Maori accept money for mana, and money as a substitute for whenua. We as descendants of those who fought and died for our land will not buy into this illusion of restoration of rights and obligations particularly as we watch our lands being privatised and sold to the highest bidder.²⁰⁴

²⁰² 'Eviction Notice 13-1-1999', Ohiwa Scrapbook, Opotiki Heritage and Agricultural Society Museum

²⁰³ 'Te Tatau Pounamu o Mataatua Noho Whenua', Volume 1, Issue 1, 17 January 1999, Ohiwa Scrapbook, Opotiki Heritage and Agricultural Society Museum

²⁰⁴ Ibid.

While expressing their dissatisfaction with the claim settlement process, and in particular the Whakatohea raupatu settlement, the group emphasised the point that they 'do want a settlement. We want our land back'.²⁰⁵

During the two-week occupation, the site was visited by Gordon Jackman, an 'independent toxics consultant', who claimed 'that in his view the harbour was undoubtedly polluted':

Sources of pollution ranged from local run off from farms, roads and some septic tanks into the harbour, marine pollution from the Bay of Plenty's biggest polluter the Tasman Pulp and Paper mill and others, and from rainfall absorbing atmospheric pollution from global as well as local sources.²⁰⁶

These claims were denied by Environment Bay of Plenty, who stated that monitoring over several years showed that the harbour waters and shellfish were of good quality.²⁰⁷

According to contemporary newspaper accounts of the protest action, Te Tatau Pounamu o Mataatua does not appear to have achieved the widespread support that they claimed. Hirini Mead reportedly referred to the group as 'rebels desperately seeking a cause', while Charlie Aramoana, a kaumatua of Upokorehe, was reported as saying: 'we are offended our mana is being trodden on'.²⁰⁸ ACT MP, Ken Shirley, reported that 'the protesters were peaceful, although the occupation of the road reserve was unauthorised and illegal', and that 'the illegal occupation had the potential to develop into a Motua Gardens or Waikaremoana-type incident, which should not be tolerated or condoned by the government'.²⁰⁹

Regardless of the extent or level of support for the occupation, the action can be seen as bringing to the fore both the main issues and grievances concerning the harbour, and a claimed 'grassroots' dissatisfaction with the settlement process.

²⁰⁵ Ibid.

²⁰⁶ 'The Harbour is Polluted', *Pu Kaea*, February 1999, p 3

²⁰⁷ *New Zealand Herald*, 15 January 1999

²⁰⁸ *New Zealand Herald*, 15 January 1999

²⁰⁹ *Opotiki News*, 19 January 1999

9. Conclusion

This report has sought to provide a detailed overview of the relationships between the Crown and Maori in and around Ohiwa Harbour, with particular reference to the claims before the Waitangi Tribunal relating to alleged Crown breaches of the Treaty of Waitangi with regard to the harbour. The report covers a large span of time, from an examination of the often competing traditional histories of customary use and occupation of the harbour up until 1840, continuing through to the period of military invasion, of confiscation, and the aftermath of these events, and an analysis of the management of the harbour by the Crown and local authorities through the twentieth century.

As stated in the introduction to this report, the claims made against the Crown cover a number of related issues, including: claims that the Crown failed to adequately recognise Maori customary ownership of Ohiwa Harbour, including its islands, foreshore and water; claims that Maori customary rights at Ohiwa have been adversely affected by actions and omissions of the Crown; claims relating to the limited amount of land returned to Maori at Ohiwa; and claims that the management of the harbour by the Crown and local authorities has resulted in serious pollution and desecration of the harbour, and its flora and fauna. The claims are therefore concerned not just with the harbour itself, but with the lands surrounding the harbour, and this is reflected in the report.

The chapter devoted to an outline of customary occupation of Ohiwa Harbour was written with the intention of demonstrating that the pre-1840 histories of Ohiwa are complex and fluctuating, and that all of the claimant groups concerned are able to demonstrate historical associations with the harbour. As stated in the introduction, it was not the intention of this chapter to give preference to a particular history or to the claims of a particular claimant group. All parties acknowledge that the harbour was, and continues to be, an important resource and that, conflicts and all, the harbour has a shared history and can be claimed exclusively by no one single group. As noted in this chapter, the Tuhoe historians Milroy and Melbourne have said that 'one tribal tradition cannot provide sufficient evidence to prove

exclusive and undisturbed possession of ... Ohiwa to one group alone'.¹ Tuhoe, they say, 'had a saying about Ohiwa that characterised their outlook' towards the harbour:

Of Ohiwa they said, "No pikipiki mai, no hekeheke atu." Ohiwa was never owned. Tribes exercised rights to the bounty of Ohiwa. These rights were established over time by successive generations. The saying highlight[s] the point that in spite of the coming and going of generations, the resources of Ohiwa remained plentiful. Ohiwa held more than just memories of arguments and wars for the tribes concerned.²

Similar sentiments were expressed at a 1997 meeting of representatives of Tuhoe, Whakatohea, Ngati Awa and Te Whanau Mokomoko, regarding the development of an Ohiwa Harbour Management Committee, where it was stated that 'the issue is not ownership but protection of Ohiwa'.³

The impact of the arrival of Pakeha – people, goods, ideas, and conflict – and the response of Maori to these new arrivals is addressed in chapter four. The arrival of Europeans and European goods and ideas led to significant changes and adaptations. The musket, for example, appears to have played a vital role in altering the nature of inter-tribal power relationships around Ohiwa in the early decades of the nineteenth century. Ohiwa in 1840 was a different place to that of twenty years previously. Maori active participation in trade signalled changes in land utilisation and increasing contact with Europeans stationed on or visiting the coast. The arrival of missionaries and Christianity added another dimension, and the arrival of Pai Marire prophets in the area (they passed through Ohiwa on their way to Opotiki) and the events surrounding the killing of Völkner must be seen in this context.

Following 1840 and leading up to the events of 1865, came the imposition of British law, although as Gilling has noted 'the Queen's writ ran only notionally in the eastern Bay of Plenty in the early-mid 1860s'.⁴ As noted, it is difficult to assess the exact extent of contact in the Ohiwa harbour area, but what we can see is that from the time of the first European arrivals to the events of 1865 significant shifts were taking place. Existing conflicts and

¹ Milroy and Melbourne, p 61

² Ibid., p 62

³ Minutes of a Meeting held on 30 May 1997 at the Wairaka Marae and involving Ngati Awa, Whakatohea, Tuhoe and Te Whanau Mokomoko regarding the development of an Ohiwa Harbour Management Committee, Environment B·O·P Archives, Whakatane, file 5565 - 01 Resource Management Plans: Ohiwa Harbour Regional Plan - General

challenges, and indeed ways of life continued, however the extra dimension of European visitors and settlers tended to exacerbate such conflicts. The killing of Völkner and the events that immediately followed, while taking place in Opotiki, is covered in some detail in this chapter as the response of the government had such an impact not only on Ohiwa and the confiscated lands but also on the interior and its inhabitants. These events brought war to Te Urewera.

Another product of the arrival of Europeans in the Ohiwa area was the production of European accounts of Maori in this area. These accounts, such as they are, provide another perspective on the histories of Maori use and occupation of the harbour area prior to 1865. Together with material found in the customary histories, such sources provide an indication of the nature and extent of the use and occupation of the harbour and its surrounding lands by both Maori and the increasing numbers of Pakeha over this period.

The period of military control and confiscation of the eastern Bay of Plenty, with particular reference to Ohiwa Harbour, is discussed in some detail in chapter five. A substantial part of the various claims relating to Ohiwa stem directly from these events. Chapter 5.3 focuses on both the attempts made to resist the imposition of the confiscation and the continuing conflict, and on attempts (often by the same people) to co-operate with the invading military force. The roles of Tamaikoha and Rakuraku are of particular importance here. Again, while many of the events referred to in this chapter took place in the general vicinity of the harbour, rather than at Ohiwa itself, these actions impacted directly on those people who lived, or had lived, in and around the harbour. In any case, Ohiwa itself was the site of a number of key events during this period of conflict.

As described in the conclusion to chapter 5, in the Deeds of Settlement offered to both Ngati Awa and Whakatohea to settle historical Treaty of Waitangi claims, the Crown has acknowledged that the confiscation of Ngati Awa and Whakatohea lands were in breach of the Treaty of Waitangi and its principles. Furthermore, as stated in the Ngati Awa Deed of Settlement, its actions were ‘unjust’ and ‘unconscionable’.

⁴ Gilling, ‘Policy and Practice of Raupatu’, p 64

Chapter 6 traces the workings of the Compensation Court with regard to Ohiwa, and looks at the ‘out-of-court arrangements’ made by the Crown agent Wilson. Ohiwa Harbour fell right in the middle of the confiscated area, and while many people claimed land at Ohiwa in the compensation court, the Crown retained all but a few blocks for the purpose of granting lands to military settlers. Maori were left with little land adjacent to the harbour, or in fact in the vicinity of the harbour. The notable exceptions were those lands disposed of by Wilson prior to the Compensation Court hearings: the Ohope Reserve, set aside for Ngati Wharepaia and Ngati Hokopu hapu of Ngati Awa; and the Hiwarau block and Hokianga Island, granted – with some degree of uncertainty – to members of the Upokorehe hapu of Whakatohea. Despite the number of claims it heard relating to the harbour, the Compensation Court made just a handful of grants (other than confirming Wilson’s ‘out-of-court arrangements’). The grants made to Rakuraku and his whanau at Whakarae, and to Te Kooti at Te Wainui, were not made until much later, and for land unsuitable for farming and at some distance from the harbour shore. The Whakarae grant was also contested – by Tamaikoha and by Upokorehe.

Tuhoe claimants, in particular, have questioned Wilson’s authority to make his ‘out-of-court arrangements’. As stated in chapter 6.1, Milroy and Melbourne argue that Wilson ‘favoured Ngati Pukeko, Ngati Awa, Upokorehe and to some extent Whakatohea over Tuhoe in his dealings as Crown Agent. This action,’ they continue, ‘denied Tuhoe access to justice and fair representation in regards to their land interests before the Compensation Court’.⁵ They also claim that ‘the results of Mr Wilson’s out of court activities confirmed that Tuhoe were largely treated as rebels and that later court hearing and finding for Tuhoe were already pre-empted by Mr Wilson’s activities’. Furthermore, they argue that Wilson ‘failed to take into consideration Tuhoe interests in lands within the confiscation district, and this undermined any Tuhoe claims to the Compensation Court before they could be heard’.⁶

The final two chapters of this report span the period from the late nineteenth century, through the twentieth century, to the present. As directed in the commission for this report, these chapters provide an overview of the Crown’s management of Ohiwa Harbour, with particular regard to such issues as water quality, pollution, fisheries, reclamations, development works, water classification and associated issues. Chapter seven is a narrative of largely European

⁵ Milroy and Melbourne, p 120

⁶ Ibid., p 142

settlement and development of the harbour, and serves to provide a backdrop against which to view the Crown and local authorities' management of the harbour over this period. It covers such issues as trade, shipping and other transport, the development of townships, wharves and reclamations, farming and residential development, and the impacts of these activities on the harbour environment – particularly with regard to pollution. This chapter also emphasises the fact that while Maori continued to make use of the harbour, and in some cases continued to reside at the harbour, their presence and status as tangata whenua was largely overlooked when it came to local and central government decision-making. While evidence was found showing at least some degree of Crown and local authority consultation with Maori in relation to the management of the harbour, such instances were rare and largely confined to the last few years. Evidence shows that when Maori *were* consulted over the management of the harbour, one of the issues raised was that their voices had not been heard in the past. For example, as stated in chapter 8.5, at a 1994 meeting of the Opotiki District Council consultative committee held at Roimata marae, the Upokorehe kaumatua, Charles Aramoana expressed his concerns regarding the use and pollution of the harbour. In reference to the pollution of the Nukuhou River, he said that it was 'the dirtiest river flowing into the harbour, and our people are whitebaiting and fishing in the vicinity. It's beyond words'. Mr Aramoana continued: 'I've lost faith in talking and writing, because the problem is just ignored'. 'Our words,' he said, 'have fallen on deaf ears'⁷

Related to the issue of pollution, are the claims that customary fishing rights, and the quality and quantity of fish and shellfish within the harbour, have been adversely affected by the actions and omissions of the Crown. As is shown in chapter seven, fish and shellfish stocks have been dramatically depleted over the second half of the twentieth century and the quality of the water has likewise decreased. In addition to sewage, dairy effluent, 'runoff' from roads and other developments, and other pollutants, the harbour is put under further pressure by new forms of leisure activity and other usage.

In light of the developments and their impacts on the harbour described in chapter seven, chapter eight examines the administrative control of the harbour through the twentieth century. It outlines Government legislation relating to harbour issues generally, before tracing the development of local authority administration of Ohiwa Harbour. The harbour and other

⁷ *Opotiki News*, 20 October 1994

relevant legislation, as well as the management practices established by the local authorities, was based on the assumption that the Crown had exclusive rights to the coast. As already mentioned there was very limited participation of Maori in both planning and administration of the harbour and, until very recently, a lack of consultation.

While a number of recent planning documents produced by Environment Bay of Plenty and the Department of Conservation suggest a more positive outlook with regard to Maori participation and consultation in decision making, a distinction must be made between describing policy and an analysis of its implementation. The submissions regarding Ohiwa harbour made by Maori in response to Environment Bay of Plenty's *Proposed Regional Coastal Plan* in 1995, for example, indicate that there is still work to be done.

One of the matters to be covered in this report, as outlined in the commission, was any 'appeals or protest by Maori with respect to the ownership or management of the Ohiwa Harbour'. A number of such appeals and protests have been identified, including petitions regarding land claims and fishing rights. The report closes with an account of the 1999 occupation at Ohiwa by Te Tatau Pounamu o Mataatua, discussed in chapter 8.8. This group claimed to have grassroots support for their stance against many of the issues raised in the various statements of claim and canvassed in this report.

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Appendix: Direction Commissioning this Report