ENVIRONMENTAL ISSUES
RELEVANT TO THE HISTORICAL RELATIONSHIP
BETWEEN
WHAKATOHEA HAPU AND THE CROWN

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A report commissioned by Office of Treaty Settlements
in association with Whakatohea Pre-Settlement Claims Trust

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1 Introduction

My name is DAVID JAMES ALEXANDER. I have been researching and preparing historical reports for Waitangi Tribunal inquiries since 1988. My initial training as a land use planner, and my background working for the Department of Lands and Survey and the Department of Conservation, has meant that I have specialised in land titles issues, public works takings and environmental issues.

This report was commissioned to fill a gap in understanding about the historical interaction between Whakatohea hapu and the Crown with respect to environmental issues in the Whakatohea tribal territory.

Time constraints set by the commissioning agency on the production of this report have impacted heavily on the amount of research that could be undertaken. To be able to identify and draw out what the Crown has thought and done historically requires an examination of the Crown's own contemporary records. However, research of Crown historical records for this report has had to be confined to a three-day visit to Archives New Zealand in Wellington, and a one-day visit to Archives New Zealand in Auckland. This probably amounts to just 'scratching the surface' of the primary and most significant sources that are potentially available. For a more detailed report, a wider range of sources, including local authority historical records, Maori Land Court minute books, government publications, and secondary sources such as local histories and newspapers, would need to be examined. A more thorough search of the Crown's file records would also be necessary. An inevitable consequence of the time constraints is a large number of loose ends, where a definitive answer or subsequent steps in policy development could not be found in the Crown files that it was possible to examine. Where there are gaps in knowledge, this is indicated in the report.

While not claiming to be an in-depth study of environmental issues, an attempt has been made to address the breadth of the subject. This has been achieved by attending a hui convened by Whakatohea Pre-Settlement Claims Trust on 9 September 2017 at Opotiki, and by examining the *Tawharau resource management plan* produced by Whakatohea in 1993, in order to gain an understanding of environmental issues of concern to the iwi. However, it remains unclear how successful this report is in covering all environmental aspects of concern to Whakatohea hapu.

In summary, the nature of the relationship between Whakatohea hapu and the Crown, insofar as it has applied to environmental issues, has varied historically ranging from:

- Outright opposition at the time of Raupatu,
- Removal of involvement as a stakeholder by Crown purchasing of Whakatohea-owned land,
- Absence of engagement at the consultation level (the shallow end of a shared relationship), with one notable exception (titi harvesting) that points to what might have been,
- No consideration of deeper levels of engagement such as partnerships or co-governance.

These descriptions of the relationship relate to the period before 1987 (passing of the Conservation Act), 1991 (passing of the Resource Management Act) and 1996 (passing of the Fisheries Act), when elements of a relationship between hapu and the Crown became obligations on the Crown as a result of legislation.

The change since these statutes were passed is touched on only intermittently in this report, because of time limitations. It was possible to examine the pre-1980s period, or the post 1980s period, but not do both in the time available, bearing in mind that a different set of research sources would need to be examined for each period[1]. The post 1980s period is better known and understood already by those people who are engaged in negotiations, and it was therefore considered that more value could be obtained by concentrating on the pre 1980s period, which is less well-known. There is still a place, however, for an examination of the strengths and weaknesses of relationship-building on environmental matters in the post 1980s period, in order to draw from the best and avoid the worst of those experiences.

[1] Pre 1980s environmental history is heavily dependent on central Government records that have become accumulated in Archives New Zealand repositories. Post 1980s history relies on records still held by the government departments that generated them, so are more dispersed. It also relies heavily on records held by regional and district councils, because of the delegation of so many Crown environmental functions to local government as a result of the passing of the Resource Management Act in 1991.

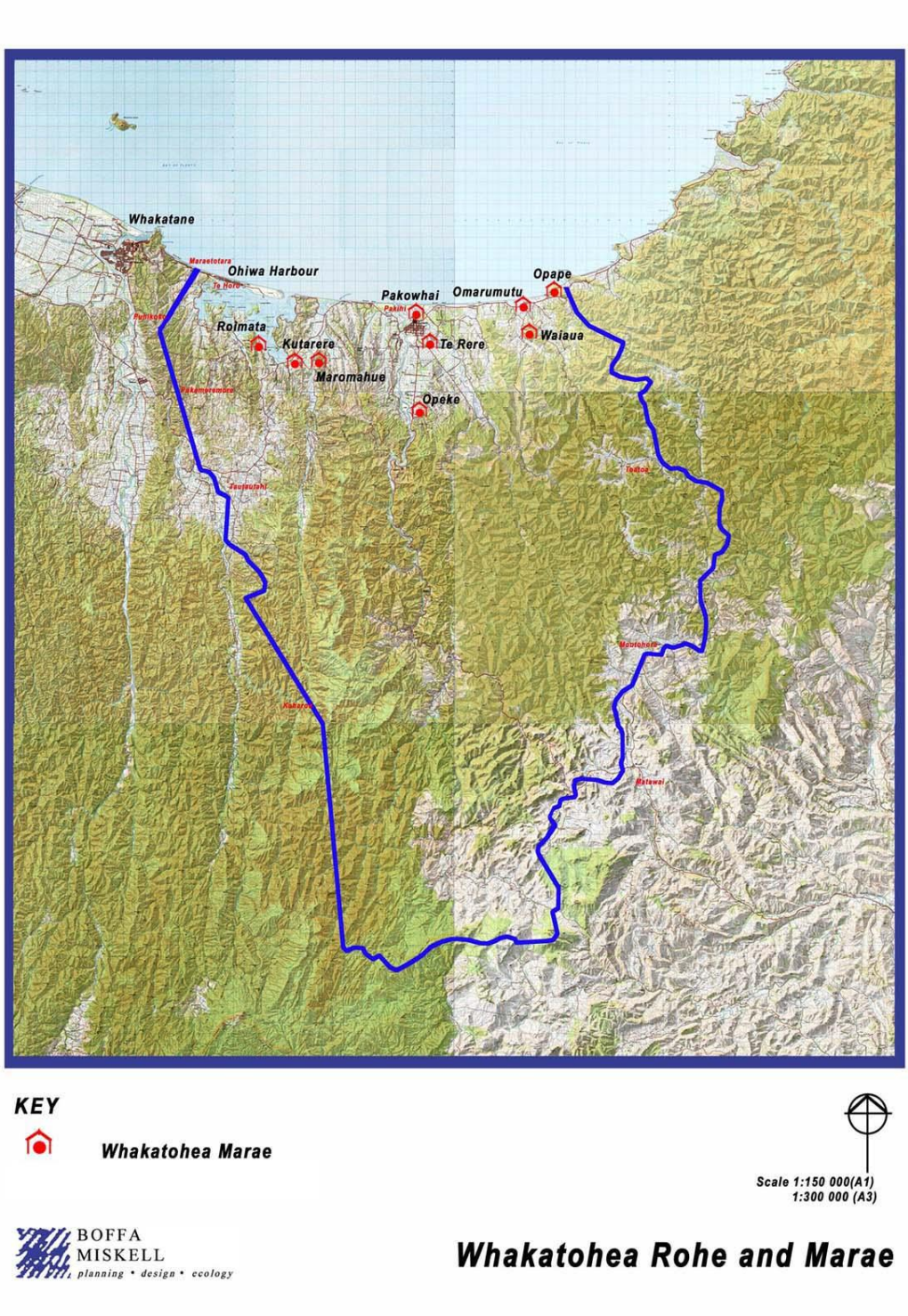

Figure 1: Whakatohea Rohe and Marae[2]

[2] Sourced from Te Puni Kokiri (Ministry of Maori Development) website: www.tkm.govt.nz/iwi/whakatohea/
This map also appears in R Walker, *Opotiki-Mai-Tawhiti: capital of Whakatohea*, 2007, opposite page 97.

2 The Whakatohea perspective on the natural environment

The customary and traditional manner in which Whakatohea hapu have relied on the natural environment for food and for other natural resources shapes their views today, even though they are no longer so dependent on the bush, the rivers and the sea for the sustenance that they can provide. The environment fed the people and allowed sustainable harvesting because the people fulfilled their spiritual obligations, respecting the spiritual guardians and offering prayers and incantations before during and after harvesting activities. The spiritual element of respect for the natural environment continues today. Kaitiakitanga is not just about managing sustainably and caring for the interconnectedness between elements of the natural environment. It is the living connection between the tangata whenua and the natural world. Spiritual linkages and the relationship of the people with the land (and vice versa) are what distinguish kaitiakitanga from European concepts of stewardship and guardianship.

Whakatohea hapu feel that they have been separated from the natural world, and in particular from their land forests and waters, by the actions of the Crown. This has occurred in two fashions. Firstly by the manner in which the Crown has directly dealt with Maori, dispossessing them of their land and their connection with their rohe, ignoring their tribal leadership, and relegating them to minority status in their own country. Secondly by holding and continually repeating a belief that responsibilities for the natural environment are matters that the Crown can and should hold unilaterally, bringing them under the umbrella term of kawanatanga or government authority. Kawanatanga has been asserted in an 'either/or' manner that does not recognise any overlap with rangatiratanga or traditional Maori authority.

Whakatohea hapu are upset that their values and experiences of the natural environment are not recognised. Mana has been ignored, mauri has been adversely affected, and the relationship with hapu taonga has been sidelined and neglected. These are cultural and spiritual matters that are centrally important to a Maori worldview about the natural environment.

For the future it is not necessary that the Crown possess the same depth of knowledge as Whakatohea hapu about the meaning and significance of the natural environment to Whakatohea. However, a durable and meaningful partnership does require that the Crown respects the existence of a Whakatohea perspective on the natural environment, and knows enough to appreciate when a Crown action, or a Crown reaction to events, would impact on that perspective and needs to be the subject of consultation and joint decision-making.

These matters are especially relevant to the safeguarding of and respect for nga taonga, which under Article 2 of Te Tiriti o Waitangi the Crown promised would be protected to the extent that the chiefs and tribes could enjoy full exclusive and undisturbed possession. Whakatohea hapu regard the ngahere (forests), the awa (waterways), Ohiwa Harbour, and certain indigenous species as natural environment taonga.

3 Raupatu and its environmental consequences

Prior to 1865 Whakatohea hapu controlled their own destiny. Nowhere was this more apparent than in connection with decisions about the use of natural resources. Food gardens were established where soil conditions were favourable. Forests provided food, timber for waka construction, and medicines. The waterways provided fish and weaving materials. The ocean provided fish and shellfish. Kainga and associated pa were located having regard for access to garden areas, eel weirs, shellfish grounds and waka launching sites.

Life for Whakatohea hapu had been severely disrupted during the era of the musket wars in the 1820s and early 1830s. However, following the signing of the Treaty of Waitangi in 1840, Whakatohea hapu took advantage of the initial stability and prospered under the new economic conditions. Food crops were grown in large quantities on the coastal lowlands, pigs were raised, and Whakatohea leaders owned coastal schooners that could transport the produce to the Auckland market.

The arrival of European soldiers and the subsequent Raupatu (invasion and land confiscation) in 1865 destroyed the food gathering and trading patterns of Whakatohea hapu. All lowland kainga and gardens were ransacked. All the coastal lowlands and the hillsides overlooking the lowlands were confiscated and were occupied by European settlers. Access to the rivers and estuaries, and sole rights to freshwater and estuarine fisheries, were severely disrupted, in some instances being denied altogether.

Whakatohea hapu became largely confined to the Opape reservation. The reservation gave them access to a 3 mile stretch of coast, where previously the various Whakatohea hapu collectively had access to 21 kilometres of coastline[3]. The reservation generated inter-hapu consequences, as the Opape lands - traditionally the lands of Ngati Rua hapu - had to be shared among all six Whakatohea hapu[4].

A different kind of impact of Raupatu was an ongoing loss of cultural and spiritual knowledge resulting from curtailment of day-to-day interaction with the confiscated lands. This has had consequences into modern times. Elsewhere in New Zealand the Maori Land Court minute books are regarded as valuable repositories of traditional knowledge, recording what was

[3] R Walker, *Opotiki-Mai-Tawhiti: capital of Whakatohea*, 2007, pages 128-129.
[4] R Walker, *Opotiki-Mai-Tawhiti, capital of Whakatohea*, 2007, page 128.

said by nineteenth century witnesses in support of claims to the customary ownership of lands. Because the Raupatu lands were not dealt with in the same way in lengthy hearings in the Native Land Court, and because the Compensation Court minutes are limited in their coverage and therefore a poor substitute, access to the traditional knowledge about those lands is far more limited for Whakatohea hapu.

4 The Forests

4.1 The impact of prioritising farming development

The Crown's action in placing soldier settlers on the confiscated lands was just the first of a series of waves of land development that has dominated Crown policy for the last 150 years. That development model produced a fatalistic attitude that forest clearance was inevitable. To the European settler community, although the changes to the landscape might be regretted, they were not mourned or dwelt upon, as progress and development were viewed as virtues in their own right.

While the change of ownership as a result of Raupatu and the allocation of land to the soldier settlers was a sudden process, the environmental changes happened more slowly over a longer period of time. Some settlers never settled on their allocations, instead selling their allotments to speculators. Those who did settle on their lands progressively cleared the forest in small patches rather than in one fell swoop. The grassed areas that were developed in the forest clearings were not the intensively developed and uniform swards of green seen today, but had a more straggly and unkempt appearance.

Development of the confiscated lands absorbed the pressures for further development for the rest of the nineteenth century. However, by the turn of the century, the Crown's interest turned to extending the frontier of farm development into the hills behind the lowlands. It had acquired from Maori a considerable acreage in the Oamaru and Tahora 2 blocks, and viewed this land as a further opportunity to settle more farmers and families on the land. It was spurred on in this viewpoint by commercial interests in Opotiki, who lobbied the Government to "open up" the back country in order to allow the district to prosper[5].

It was not inevitable that the hill country would be settled as farmland. The impact of forest clearance on steep hillsides was well known. Rainfall would run off the hills more quickly and wash more sediment into the river channels, putting lowland settlers at risk from flooding and changes to the waterways. As early as 1877 provision was made for steep lands to be reserved for "the growth and preservation of timber"[6]. However this approach was not adopted in the Whakatohea lands.

[5] Tony Walzl in his report refers to pressure exerted by local interests in 1913 on the Native Minister and the Minister of Lands to acquire Maori-owned land in the Oamaru and Tahora 2 blocks, relying on Maori Affairs Head Office file NLP 1913/35. This file has not been examined for this report.
[6] Section 144 Land Act 1877.

Instead the Whakatohea hill country was surveyed into a series of family farm sections[7] and offered for sale to settlers on easy terms which allowed for deferred payment of the purchase price. The most significant offers of land to European settlers by the Crown in the Waioweka catchment were in 1906, 1907 and 1911.

Settlement of the hill country commenced with a great deal of enthusiasm on the part of the new arrivals. However the enthusiasm lasted for only a short period before overwhelming difficulties became apparent. On the lowlands tall forest is an indication of fertile soils. On the hill country, however, the fertility of the land is tied up in the trees rather than the soil, and the clearance of the forest removed much of that fertility.

> [Settlers] industriously felled and burnt the beautiful native bush, which clothed these areas, then sowed English grasses (rye, cocksfoot and clover), prior to fencing suitable portions ready for stock. The venture in most cases proved a failure…. Another factor to contend with was the high rainfall of between 80 and 100 inches per annum.[8]
>
> ….
>
> The new grasses responded well whilst the roots fed on the nitrogen and goodness derived from the bush burn. Unfortunately, time revealed that when that initial nourishment became exhausted and grasses then became reliant on the thin layer of mostly ash and rubble cast by the pre-European Taupo eruption, and later in 1886 the Tarawera eruption which added another layer of infertile matter, it was discovered that the grasses were disappearing and being replaced by nuisance vegetation such as fern and biddy-biddy. It was also revealed that a large area of the central North Island was suffering from what was commonly known as "sheep sickness"…. Another disappointing factor proved to be the inability of cattle to thrive in the steep, wet and cold terrain of most of the Waioeka Gorge country. Cattle would have been capable of controlling the fern and biddy-biddy had the prevailing conditions proved suitable. Another factor which affected cattle adversely was the presence of tutu…. The beasts would eagerly gobble up this luscious food – then – the poor beasts would quickly pay the penalty by becoming demented, rush round madly, then drop dead.
>
> A frequent disappointment would be a poor burn, generally due to unexpected rain or that the fallen bush had not dried out sufficiently. This circumstance would result in unburned logs lying at random, making movement of both man and beast difficult in so many respects.[9]

The impediments to farming were such that some Waioweka Gorge settlers started walking off their sections from the late 1910s. The pattern of abandoned and forfeited lands became commonplace during the 1920s, well before the great depression that gripped the country at

[7] The reminiscences of a surveyor (PW Barlow) who took part in surveying the sections in 1906 are recorded in *NZ Surveyor*, September 1949, pages 38-40.
[8] M Spencer, *The Waioeka pioneering saga*, 1992, self-published, page 11.
[9] M Spencer, *The Waioeka pioneering saga*, 1992, self-published, page 15.

the end of that decade. A series of Land Use Committee reports produced in the late 1950s record the following, which by their repetitive nature establish a broader pattern:

> Section 7 Block III [Waioeka Survey District] was originally taken up on Lease in Perpetuity in 1905. This lease was forfeited in 1920….
>
> Section 4 Block VIII [Waioeka Survey District] was originally taken up on O.R.P. [Occupation Licence with Right of Purchase] tenure in 1906. The lease was forfeited in 1924. The northern portion (Lot 1) was reoffered and selected … in 1929 … [but] was forfeited in 1933….
>
> Section 2 Block XII [Waioeka Survey District] was originally selected on O.R.P. tenure in 1907. The lease was forfeited in 1925….
>
> Section 1 Block XVI [Waioeka Survey District] was originally selected on O.R.P. tenure in 1906. The lease was forfeited in 1925.[10]

These sections are in the country between the Waioweka River and Tutaetoko Stream.

> Section 5 Block XV Waioeka Survey District was originally selected … in 1907…. Power of sale of the mortgage was exercised in 1926 and the Crown bought it….
>
> Section 9 Block XV Waioeka Survey District was originally selected … on O.R.P. tenure in 1907. It was forfeited in 1917 and re-selected in 1919…. It was again forfeited in 1925….
>
> Section 1 Block II Waioeka South Survey District was originally taken up … in 1923. It was forfeited in 1925 and was not re-offered….
>
> Section 2 Block III Waioeka South Survey District was originally selected in 1908 on O.R.P. tenure…. It was forfeited in 1926.[11]

These sections are in the Wairata and Oponae locality.

> Section 4 Block II Waioeka Survey District was originally selected on O.R.P. tenure in 1903. The lease was forfeited in 1923.[12]

Undoubtedly further research would establish similar timelines for the taking up and then abandonment of other sections in the hill country.

Before the problems of farming became apparent, however, the Crown had embarked on a new wave of land purchase. The Oamaru block, outside the confiscation district, was

[10] Land Use Committee report – Areas in Waioeka Survey District, 10 June 1959. Lands and Survey Gisborne file 3/35. Supporting Papers #157-158.
[11] Land Use Committee report, 10 June 1959. Lands and Survey Gisborne file 3/35. Supporting Papers #155-156.
[12] Land Use Committee report, date not readable (1959). Lands and Survey Gisborne file 3/35. Supporting Papers #159.

targeted for further purchases of the land that remained in Maori ownership after 1896[13]. This targeting commenced in 1910, was ramped up in 1913[14], and resulted in the following partition blocks being acquired by the Crown:

Partition Block	Area (acres-roods-perches)	Confirmation of Purchase by District Maori Land Board	Declared Crown Land (*NZ Gazette* year/page)	Crown Purchase Deed
Oamaru 3B	744-0-00	17 November 1910	1911/880	AUC 4154
Oamaru 4B	1857-0-00	17 November 1910	1911/880-881	AUC 4155
Oamaru 2B1	659-1-35	N/A	1913/3578[15]	AUC 4078
Oamaru 7B	1645-0-00	N/A	1914/2434-2435	AUC 4059
Oamaru 2B3	1389-2-18	26 June 1913	1915/821	N/A
Oamaru 2B7	189-2-26	26 June 1913	1915/948	N/A
Oamaru 5B	3063-0-00	Not known	1917/4344	N/A
Oamaru 2B4	656-3-00	N/A	1921/1178	AUC 4586
Oamaru 1C	4814-0-00	Not known	1924/488	N/A
Oamaru 2B6	328-3-11	N/A	1928/348	AUC 4681
Oamaru 2B2	659-1-35	N/A	1930/1622[16]	AUC 4759
Oamaru 2B5	685-3-03	12 April 1958	1958/1409	N/A

The main feature that can be identified from this schedule is that Crown purchasing, originally initiated in 1910 for the purpose of developing land for farming, continued long after the merits of farming the Oamaru block had been debunked. The late 1920s and the 1930 purchases represent the dates when 100% of the shares were acquired and the purchases were completed.

Purchases of Whakatohea lands in the Waioweka Gorge in the Tahora 2 block followed a broadly similar track[17]. As with Oamaru, the Tahora 2 Waioweka purchases had been initiated in 1910[18]. The purchases were:

[13] The Oamaru and Tahora 2 block lands awarded to the Crown by the Native Land Court in 1892 and 1896 provided the basis for the 1906 and 1911 granting of occupation licences to farmer settlers.
[14] Under Secretary Native Department to President Waiariki District Maori Land Board, 12 May 1913. Maori Affairs Head Office file NLP 1910/16. Supporting Papers #280.
[15] The area in the 1913 declaration was subsequently found to be incorrect, and was amended by *New Zealand Gazette* 1929 page 1443.
[16] The area in the 1930 declaration was subsequently found to be incorrect, and was amended by *New Zealand Gazette* 1930 page 2022.
[17] The acquisition of Tahora 2B2B2 is also discussed in P Boston and S Oliver, *Tahora*, June 2002. Wai 894 Document #A22, page 228-232.
[18] Valuation of Tahora 2B2 (4845 acres) dated 24 August 1910, and Offer by the Crown to purchase Native Land, 26 September 1910. Maori Affairs Head Office file NLP 1914/58. Supporting Papers #281 and 282.

Partition Block	Area (acres-roods-perches)	Confirmation of Purchase by District Maori Land Board	Declared Crown Land (*NZ Gazette* year/page)	Crown Purchase Deed
Tahora 2B2A	1614-0-00	N/A	1908/1815	AUC 3675
Tahora 2B2B2	1614-2-00	N/A	1920/2192	AUC 4560

The Crown's efforts to purchase Tahora 2B2B1 and 2B2B2 during the 1910s decade are noteworthy for its exercise of a right of pre-emption, in order to exclude any other potential purchasers from interfering with the acquisition negotiations between the Crown and the Maori owners. From 1914 to 1922 as a result of a series of notification renewals there was a prohibition against private alienations pursuant to Section 363 Native Land Act 1909[19]. The definition of 'alienation' included leasing and mortgaging, so the options available to the Maori owners to gain some economic benefit from their landholdings were severely limited while the prohibition remained in place.

Of the Oamaru partition blocks, two Crown officials recorded in February 1925:

> Careful observation has been made of these blocks which are all forest clad, from various points and by traversing some considerable distance along the Kote-Pato Stream which runs practically through the centre of the area concerned. Whilst there is some fair country along this valley, the formation generally is steep and broken and rises to high birch ridges of poor quality. The cost of roading this country would be excessive and owing to its general steepness and rubbly formation, extensive slipping would probably occur, and a good deal of erosion along Kote-Pato seems imminent when the land is cleared.
>
> This in addition to the amount of silt now being carried downstream from the cleared areas lower down is an aspect that should be considered as being of possible serious consequence to Opotiki at some future date. The cost of roading alone as compared to the value of land for settlement purposes is such that we strongly recommend that this area should remain in forest, certainly in the meantime at least.[20]

[19] *New Zealand Gazette* 1914 page 2801. Issued on 13 July 1914 for 1 year.
New Zealand Gazette 1915 page 2277. Extended on 26 June 1915 for 12 months.
New Zealand Gazette 1916 page 2618. Issued on 9 August 1916 for 1 year.
New Zealand Gazette 1917 page 2879. Extended on 16 July 1917 for 6 months.
New Zealand Gazette 1918 page 150. Extended on 14 January 1918 for 18 months.
New Zealand Gazette 1919 page 2661. Issued on 19 August 1919 for 1 year.
New Zealand Gazette 1920 page 2200. Extended on 19 July 1920 for 6 months (applied to Tahora 2B2B1 only as Tahora 2B2B2 had by this time been acquired by the Crown).
New Zealand Gazette 1921 page 134. Extended on 10 January 1921 for 18 months (applied to Tahora 2B2B1 only as Tahora 2B2B2 had by this time been acquired by the Crown).

[20] File note by GO Donovan and HL Primrose, 7 February 1925. Lands and Survey Gisborne file 3/442. Supporting Papers #173.

The Minister of Lands accepted this advice in April 1925[21].

Classification of many of the farm sections as deteriorated land pursuant to the Deteriorated Lands Act 1925, which provided for rents owed to the Crown to be reduced, failed to arrest the decline.

4.2 Timber logging

Because the Crown's preferred land use of farming in the hill country of the Whakatohea rohe involved the removal of the forest cover, it was a natural consequence that the Crown also had a favourable attitude towards timber logging. While cutting and burning the forest was the initial method of clearing, the rewards from hill country farming on its own were not enough, and the settlers who survived did so by gaining secondary employment off-farm or by selling the trees on their land for fence posts and house piles. Small scale logging for such timber products continued through into the 1970s. The Crown was supportive throughout this period, allowing access through its Crown-owned lands and letting out timber cutting rights on those lands.

It has not been possible in the time available for the preparation of this report to examine the history of timber logging to determine the extent of native forest logging in the Whakatohea rohe that was authorised and supervised by the Crown. However, the records of a conservationist challenge to the Crown's approach in the 1970s provide a useful background to the prevailing attitudes at that time. The Crown-owned Section 9 Block XV Waioeka Survey District in the Wairata Stream side valley of the Waioweka gorge had been identified as suitable for addition to State Forest for forest cover protection purposes in 1959[22], though this never eventuated. In 1970 a logging contractor sought to log some of the trees on some of the leading ridges on the section. The contractor was already logging on an adjoining privately-owned section (Section 1 Block III Waioeka South Survey District), and from his point of view the trees on Crown-owned land were a natural extension of the logging area in that side valley. Poverty Bay Catchment Board gave its consent, subject to conditions, in terms of the timber cutting restrictions in operation at that time (see a later section of this

[21] Under Secretary for Lands to Commissioner of Crown Lands Gisborne, 14 April 1925. Lands and Survey Gisborne file 3/442. Supporting Papers #174.
[22] Land Use Committee report, 10 June 1959. Lands and Survey Gisborne file 3/35. Supporting Papers #155-156.

report on river catchment management). The Department of Lands and Survey then consented to the cutting on Crown Land[23].

In April 1971 both Gisborne Anglers Club and the Gisborne Branch of the New Zealand Travel and Holidays Association complained to the Minister of Lands about the logging that was taking place[24]. They believed that the flooding risk in the Waioeka valley and the potential value of the area for protection by addition to Urewera National Park were more important factors than native timber supply. The Commissioner of Crown Lands' response was to advise that the Catchment Board was satisfied that trees could be logged safely without leading to increased erosion. He explained that a farming expert official and a forestry expert official had reported that Section 9, "which is not visible from the Main Highway", had "no particular scenic value or formed access apart from the company's logging road".

> In addition, the formation of road access would ultimately be of benefit in providing access to the adjoining State Forest 40, thus facilitating control of noxious animals and supervision, as well as providing access for possible future recreational purposes.

The Commissioner concluded his response by stating:

> As Section 9 has no particular scenic or National Park value, I cannot see any point in locking up valuable timber which can safely be milled and for which I am assured there is a keen demand. The District Forest Ranger recently advised me that there is an increasing and legitimate demand in the Bay of Plenty area from small operators for timber which, he considers, will eventually probably be met from selected forestry resources on the Waioeka side of State Forest 40.[25]

Needless to say, the emotive language of "locking up" timber was not included in the draft reply prepared for the Minister of Lands' signature[26]. However, it does illustrate the attitudes of officials prevalent at that time, which came shortly before the Forest Service's native forest logging activities came under increasingly critical public pressure. There was no consultation with or consideration of the interests of Whakatohea hapu.

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[23] Submission 70/21 to Commissioner of Crown Lands Gisborne, approved 6 March 1970. Lands and Survey Gisborne file 3/1248. Supporting Papers #208-209.

[24] Secretary Gisborne Anglers Club to Minister of Lands, 7 April 1971, and Acting Branch Secretary Gisborne Branch New Zealand Travel and Holidays Association to Minister of Lands, 12 April 1971, attached to Commissioner of Crown Lands Hamilton to Commissioner of Crown Lands Gisborne, 30 April 1971. Lands and Survey Gisborne file 3/1248. Supporting Papers #210-214.

[25] Commissioner of Crown Lands Gisborne to Commissioner of Crown Lands Hamilton, 4 May 1971. Lands and Survey Gisborne file 3/1248. Supporting Papers #215-223.

[26] Commissioner of Crown Lands Hamilton to Director General of Lands, 10 May 1971. Lands and Survey Head Office file 3/1248. Supporting Papers #224-228.

5 Scenic Protection and the Conservation Estate

This section of the report looks at the rise of scenic protection during the twentieth century, and the impact that has had on the landholdings of Whakatohea hapu. It includes:

- The taking of Maori-owned land under the Public Works Act,
- Purchasing of Maori-owned land for scenic reserves,
- The change of purpose of hill country farmland to scenic protection.

5.1 Scenery preservation and the Public Works Act

Land use during the nineteenth century had been dominated by a heavy emphasis on farming development. However, another economic revenue-earner, albeit small by comparison to farming, was tourism, with intrepid visitors venturing to scenic spots such as the Rotorua Lakes, Waitomo Caves and the Southern Alps. From these small beginnings developed the concept of scenery preservation, which was enshrined in law in the Scenery Preservation Act 1903. This statute established a Scenery Preservation Commission, whose task was to identify sites around the country worthy of protection for their scenic qualities. The 1903 Act, plus an associated Public Works Amendment Act of the same year, authorised the compulsory acquisition by the Crown of sites recommended by the Commission. The work of the Commission was administered within the Tourist and Health Resorts Department, which had been established in 1900. In 1906 the Commission was disbanded, and its functions passed to the Department of Lands and Survey and to a Scenery Preservation Board. While the 1906 legislative changes precluded the compulsory taking of Maori land for scenery preservation purposes, such compulsory takings became possible again under a legislative change passed in 1910 (Scenery Preservation Amendment Act 1910) that also added the Under Secretary of the Native Department to the membership of the Scenery Preservation Board.

Recommendation Number 251 of the Scenery Preservation Board, made after the passing of the 1910 amendment, was for "Ohiwarau Scenic Reserve"[27], containing a ridgetop pa site. Documents setting out the background to this recommendation have not been located for this report.

[27] Annual Report on Scenery Preservation for the year ending 31 March 1913. *Appendices to the Journals of the House of Representatives* (AJHR), 1913, C-6, Appendix A, Recommendation 251, page 4.

The pa was on Maori-owned land, at the southern end of the Hiwarau block. When surveyed, the area that the Commission recommended should be acquired had increased to become 50 acres 3 roods 08 perches. Of this area 48 acres 1 rood was a part of Hiwarau A block and 2 acres 2 roods 08 perches was a part of Rakuraki block (Section 183 Waimana Parish)[28]. The intention to take this land was notified in the *New Zealand Gazette* and in the *Whakatane County Press* newspaper in May 1912[29]. It was a standard convention of any Notice of Intention to Take that a plan showing the land to be taken could be viewed at a local post office. However, the post office chosen in Wellington for the display of this proposed taking's survey plan was at Taneatua, and it is questionable how relevant this location would have been for the Hiwarau block owners.

Two objections were received. The first was from Wi Kotu of Kutatere. Written in Maori, the English translation was:

> Friend, o Minister for Public Works, the part proposed to be taken is the only valuable portion of the Hiwarau block, because it contains proper fencing timber such as puriri, and also the necessary firewood in the shape of tawa and manuka. This portion contains the only piece of bush which we possess in the No. A1 [partition block], and not only so but it is the only really rich land in the block.
>
> If that is taken from us, the balance of the block will be of no use to us.[30]

The second objection was from Te Taaki Te Kaka, also of Kutarere. In translation his objection stated:

> Our only objections are as follows:
> 1. The area is too large, and all of the best pine-trees go with it.
> 2. The puriri and other trees suitable for fencing etc (also go with it).
>
> Kindly give these objections your consideration.[31]

Both objections were forwarded to the Department of Lands and Survey for comment, and the Under Secretary for Lands replied:

> The original proposal of the Scenery Preservation Board was considerably modified on the recommendation of the surveyor for the express purpose of excluding from the proposed reserve a portion of land of considerable value for farming purposes. On the tracing enclosed, the part hatched red shows the original proposal, and the part coloured with the red wash represents the area proposed to be taken. As the land to be taken is evidently hilly, and as the interests of the owners have not been overlooked in the matter, I cannot recommend that any further alteration be made.

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[28] Gisborne plan SO 3080.
[29] *New Zealand Gazette* 1912 page 1504.
Whakatane County Press, 24 May 1912. Copy on Works and Development Head Office file 52/8. Supporting Papers #372.
[30] Wi Kotu, Kutarere, to Minister of Public Works, 29 May 1912. Works and Development Head Office file 52/8. Supporting Papers #373-374.
[31] Te Taaki Te Kaka, Kutarere, to Minister of Public Works, 5 June 1912. Works and Development Head Office file 52/8. Supporting Papers #375-376.

> It does not appear advisable to further amend the area to be taken.[32]

This advice was accepted, and the two objectors were told that "your interests have not been overlooked", and that "you can then appear at the Native Land Court to see that proper compensation is awarded to you"[33]. The recommendation to the Minister to approve the compulsory taking did not refer to the two objections that had been received, stating only that "all preliminary statutory requirements have been carried out"[34]. The land was taken under the Public Works Act for scenic purposes in August 1912[35].

Compensation for the taking was a matter to be determined by the Native Land Court. The Crown obtained a valuation of £100 from the Valuation Department, and offered this amount in November 1913, advising the Judge:

> With the object if possible of obviating an adjournment of this case to a future Court … I should be very glad if you would kindly ascertain if the owners are willing to accept the valuation of £100 accordingly, and if so the Department will be pleased if you will make an award accordingly.
>
> In case of the owners declining to accept the above sum as compensation, will you kindly return the Valuation Certificate and adjourn the case for a future Court, in order that a representative of the Department may attend.[36]

The owners of the two affected blocks accepted the amount offered, and the Court made its award accordingly in December 1913[37]. The proportion to be paid to the Hiwarau A owners was £94-19-7d.

In 1938 additional Maori-owned Hiwarau A land was compulsorily acquired by the Crown for scenic purposes as an addition to the scenic reserve. The intention to take 9 acres 3 roods 12 perches was notified in May 1938[38], with the survey plan displayed at Kutarere post office, no objections were received, and the land was taken under the Public Works Act in September 1938[39]. During this late 1930s period the compulsory taking of land for scenic purposes was a rare and unusual event, though not entirely unheard of. Most scenic

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[32] Under Secretary for Lands to Under Secretary for Public Works, 11 July 1912. Works and Development Head Office file 52/8. Supporting Papers #377.
[33] Assistant Under Secretary for Public Works to Wi Kotu, Kutarere, 22 July 1912, and Assistant Under Secretary for Public Works to Te Taaki Te Kaka, Kutarere, 22 July 1912. Works and Development Head Office file 52/8. Supporting Papers #378 and 379.
[34] Assistant Under Secretary for Public Works to Minister of Public Works, 30 July 1912. Works and Development Head Office file 52/8. Supporting Papers #380.
[35] *New Zealand Gazette* 1912 pages 2434-2435.
[36] Land Purchase Officer Bold to Judge Browne, 10 November 1913. Works and Development Head Office file 52/8. Supporting Papers #381.
[37] Order of the Court, 2 December 1913.
Maori Land Court minute book 23 Opotiki [page number not known].
[38] *New Zealand Gazette* 1938 page 1292. Gisborne plan SO 4014.
[39] *New Zealand Gazette* 1938 page 2070.

reserves were acquired under willing buyer – willing seller arrangements, or were set aside out of the Crown's landholdings. The use of the Public Works Act in this case seems to have been because the original acquisition of the land relied on this legislation.

The purpose of the 1938 addition was said to be twofold:

> The acquisition of the additional area … will have the effect of preserving the whole of the old fighting pas and a beautiful stand of mamaku, and will also materially reduce the amount of fencing required to properly protect the whole reserve.
>
> The Native Department has advised the owners of the Crown's intention to take the land, and advice has been received through the Native Land Court in Rotorua that the owners are agreeable to the required area of Hiwarau A block being taken under the Public Works act and the Scenery Preservation Act. It is proposed that the matter of compensation shall be referred to the Court. It is not anticipated that the compensation will amount to a great deal as the area under acquisition is practically all unimproved….
>
> The Scenery Preservation Board has recommended that the land be acquired, and the Hon Minister in Charge of Scenery Preservation has approved of the proposal and of the Department paying the compensation involved.[40]

Compensation of £10 was awarded by the Native Land Court in July 1939, on the understanding as promised by the Crown at the hearing that the Crown accepted responsibility for all fencing costs[41].

During the 1970s the existence of the pa sites on the scenic reserve became known to Historic Places Trust staff[42], and as a result the purpose of the reserve was changed from a scenic reserve to an historic reserve in 1982[43]. At the same time the name of the reserve was changed to Matekerepu Historic Reserve[44].

In 1993 the Department of Conservation acknowledged that, while it had a duty to consult with iwi, "at this time the Department does not know who are tangata whenua for the pa"[45]. While the original builders of the various pa occupying the ridgetop might be shrouded in some mystery, the kaitiaki for the site today are indisputably the Hiwarau owners.

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[40] Under Secretary for Lands to Under Secretary for Public Works, 14 December 1937. Works and Development Head Office file 52/8. Supporting Papers #382.
[41] Maori Land Court minute book 30 Opotiki 21-22.
Land Purchase Officer Voice to Under Secretary for Public Works, 26 July 1939. Works and Development Head Office file 52/8. Supporting Papers #383.
[42] E Johnston, *Wai 203 and Wai 339 Research Report*, June 2002, Report to Waitangi Tribunal Inquiry Wai 894, page 124.
[43] *New Zealand Gazette* 1982 page 3080.
[44] *New Zealand Gazette* 1982 page 3082.
[45] LC Bowers, *Conservation Plan: Matekerepu Historic Reserve*, Department of Conservation, Bay of Plenty Conservancy, Rotorua, June 1993.

5.2 Purchases of Whakatohea land for scenic reserve purposes

The transition in thinking that occurred among Crown officials, when examining the suitable use of the forested hill country, has been referred to earlier in this report. Thinking shifted from farm development to forest protection during the 1920s, though purchases were still being completed in the late 1920s and into 1930.

The purchase of Oamaru 2B5 in 1958 stands out as an apparent exception to the purchasing pattern of the 1910s and 1920s. However, it was in fact initiated in the 1910s, along with the purchasing of all the other Oamaru 2B partitions, and was only completed in 1958.

In 1938, the Inspector of Reserves recommended the reservation of all the Oamaru 2B partition blocks for scenic and water conservation purposes, as the land was "useless for farming purposes" and contained "very little milling timber" [46]. However, this recommendation could not be implemented with respect to Oamaru 2B5, as the Crown had not purchased all the shares. At that time it owned shares equivalent to 601 acres 3 roods 11 perches out of a total area of the block of 685 acres 3 roods 03 perches, i.e. approximately 88% of the shares. The Commissioner of Crown Lands recommended that the remaining shares in Oamaru 2B5 should be purchased in order to allow all the 2B partitions to be reserved[47]. However, this was not a straightforward matter:

> I have to advise that the Registrar, Rotorua, has for some time been endeavouring to trace the 6 non-sellers in the above block. He now advises that one of the owners is residing at Tairua, and that of the others some are dead and the addresses of the others are unknown.

The six non-sellers, being six of the successors to Mere Petera, each owned a one-seventh share. Further successors would need to be appointed to any of those six successors who were themselves deceased[48].

Purchase was apparently not a priority for the Crown, as there was no action between 1938 and 1942. Then the Land Settlement Board authorised the Native Department to negotiate the purchase of the remaining shares, and it arranged for succession to be ordered for three deceased owners in 1945[49], though action again lapsed a couple of years thereafter. The

[46] Under Secretary for Lands to Commissioner of Crown Lands Gisborne, 8 April 1938. Lands and Survey Gisborne file 3/442. Supporting Papers #175.
[47] Commissioner of Crown Lands Gisborne to Under Secretary for Lands, 19 April 1938. Lands and Survey Gisborne file 3/442. Supporting Papers #176.
[48] Under Secretary Native Department to Under Secretary for Lands, 7 September 1938. Lands and Survey Gisborne file 3/442. Supporting Papers #177.
[49] Successions ordered at the Native Land Court at Thames on 24 October 1945.

matter was not revived until 1955[50], when an inspection confirmed that Oamaru 2B5 was "definitely unsuitable for farming" and it would be uneconomic to log the limited amount of millable timber because of the cost of constructing access[51].

The remaining Maori owners of Oamaru 2B5 were members of the Petley whanau based in Whangamata[52]. Some members of the whanau were approached and indicated a willingness to sell their interests in the block.

> The majority of the members of this family are elderly people and except for the Whangamata people are widely scattered. It would seem advisable to hold an assembled owners' meeting at Whangamata and with, perhaps, Mr Rex Petley of Waihi or the Paeroa members of the family a quorum could be obtained. As there is not a great deal of money at stake, I would recommend that the other elderly members be represented by proxies which could be arranged from this office.[53]

This information encouraged the Crown to take the next step of obtaining approval to purchase from the Board of Maori Affairs, and calling a meeting of owners to consider a resolution to sell.

A meeting of owners was held at Whangamata on 30 April 1956. While "favourably disposed" to sell, it was agreed that the meeting should be adjourned to allow an inspection of the block[54]. Nearly one year later the meeting was resumed and the Maori owners resolved to sell the remaining shares to the Crown. However, when the Maori Land Court was asked to confirm the resolution, it declined to do so for legal reasons.

> [On Friday 5th April 1957] the Court adjourned the application pending further investigation into the validity of the Crown's action in procuring a resolution from an assembled owners' meeting dealing with an undivided interest. In the opinion of the Court acquisition by the Crown under Section 315 of the Maori Affairs Act 1957 [sic] was in reference to 'land or any part thereof', and did not refer to the acquisition of an undivided interest. On the invitation of the Court submissions in writing together with a reference to a precedent have been made for further consideration.[55]

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[50] Director General of Lands to Commissioner of Crown Lands Gisborne, 29 April 1955. Lands and Survey Gisborne file 3/442. Supporting Papers #178.
[51] District Forest Ranger Gisborne to Commissioner of Crown Lands Gisborne, 25 May 1955, and Field Officer Tuke to Commissioner of Crown Lands Gisborne, 30 May 1955. Lands and Survey Gisborne file 3/442. Supporting Papers #179 and 180.
[52] District Officer Maori Affairs Rotorua to Commissioner of Crown Lands Gisborne, 9 June 1955. Lands and Survey Gisborne file 3/442. Supporting Papers #181.
[53] Chief Surveyor Auckland to Director General of Lands, 21 November 1955. Lands and Survey Gisborne file 3/442. Supporting Papers #182-183.
[54] Chief Surveyor Auckland to Director General of Lands, 4 May 1956. Lands and Survey Gisborne file 3/442. Supporting Papers #184.
[55] Chief Surveyor Auckland to Director General of Lands, 17 May 1957, attached to Chief Surveyor Auckland to Commissioner of Crown Lands Gisborne, 9 August 1957. Lands and Survey Gisborne file 3/442. Supporting Papers #185-192.

The Court was not swayed by the submissions and refused to confirm the resolution[56]. It was therefore necessary to arrange another meeting of owners to consider a slightly amended resolution that would satisfy the Court's interpretation of the law. This second meeting was held on 24 October 1957[57], where the owners present agreed to sell to the Crown, and the resolution was considered by the Court in March 1958, when it agreed to confirm the resolution if the Crown's offer price was increased[58]. The Crown had offered approximately £100 for the remaining Maori owners' interest in the land plus timber, while the Court felt their interest was worth £170. The Minister of Lands agreed to the increased price[59], the Court then confirmed the sale of the remaining Maori interests to the Crown in April 1958[60], and the purchase arrangements were agreed to by the Board of Maori Affairs in June 1958[61]. Oamaru 2B5 was declared to be Crown Land in October 1958[62].

The following year a Land Use report prepared by Lands and Survey, Forest Service, Agriculture and Ministry of Works staff recommended that western portions of the Oamaru 2B partitions overlooking the Waioweka Gorge highway be reserved for scenic purposes, while eastern portions and some adjoining land should be set apart as State Forest[63]. The recommendation was not acted upon at that time, and by the mid 1960s the proposal had become reservation of all the 2B partitions for scenic purposes[64]. The scenic reservation occurred in 1967[65].

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[56] Decision of Maori Land Court, 10 May 1957 (minute book reference not known), attached to Chief Surveyor Auckland to Commissioner of Crown Lands Gisborne, 9 August 1957. Lands and Survey Gisborne file 3/442. Supporting Papers #185-192.

[57] Chief Surveyor Auckland to Director General of Lands, 29 October 1957. Lands and Survey Gisborne file 3/442. Supporting Papers #193.

[58] Decision of the Court, 19 March 1958 (Maori Land Court minute book 103 Rotorua 359-361), attached to Chief Surveyor Auckland to Director General of Lands, 21 March 1958. Lands and Survey Gisborne file 3/442. Supporting Papers #194-196.

[59] Deputy Director General of Lands to Chief Surveyor Auckland, 14 April 1958, attached to Chief Surveyor Auckland to Commissioner of Crown Lands Gisborne, 9 June 1958. Lands and Survey Gisborne file 3/442. Supporting Papers #197-198.

[60] Decision of the Court, 12 April 1958 (Maori Land Court minute book 108 Rotorua 51), referred to in Director General of Lands to Secretary for Maori Affairs, 17 June 1958. Lands and Survey Gisborne file 3/442. Supporting Papers #199.

[61] Decision of Board of Maori Affairs, 27 June 1958, referred to in Registrar Maori Land Court Rotorua to Commissioner of Crown Lands Gisborne, 31 July 1958. Lands and Survey Gisborne file 3/442. Supporting Papers #200.

[62] *New Zealand Gazette* 1958 page 1409.

[63] Land Use Report, 11 February 1959. Lands and Survey Gisborne file 3/35. Supporting Papers #152-154.

[64] Commissioner of Crown Lands Gisborne to District Field Officer Gisborne, 27 January 1965, and Field Officer Bowis to Commissioner of Crown Lands Gisborne, 20 May 1966. Lands and Survey Gisborne file 3/442. Supporting Papers #201 and 202.

[65] Draft Submission to Minister of Lands, prepared by Commissioner of Crown Lands Gisborne, 18 April 1967. Lands and Survey Gisborne file 3/442. Supporting Papers #203-204.
New Zealand Gazette 1967 page 859.

There was one further acquisition of Maori land by the Crown for scenic reserve. This was Tahora 2B2B1 of 1570 acres[66], which the Crown had been unable to purchase in the 1910s. It was acquired in 1969. In February of that year the Maori Land Court had vested the block in the Maori Trustee pursuant to Section 438 Maori Affairs Act 1953, with the terms of trust establishing that in the first instance the Trustee was "to sell the said land at such price and upon such terms and conditions as he shall see fit"[67]. All costs and charges (including rates) were to have first call on the proceeds of sale, and any balance was to be distributed to the six beneficial owners in accordance with their respective shareholdings. The Department of Lands and Survey was interested in acquiring the block for addition to the Waioeka Gorge Scenic Reserve, and sought the approval of the Board of Maori Affairs to the Crown submitting a tender bid:

> The area is partly second growth dense bush and partly cleared. The former lessee of the block was declared bankrupt and the Maori Trustee, Rotorua, has been authorised to arrange disposal. He has called tenders closing on 16 July 1969 for the purchase of the block.
>
> The area is clearly visible from the Waioeka Gorge Scenic Highway, and this Department is interested in acquiring it for scenic purposes. The land is situated in the Poverty Bay Catchment Board's restricted timber cutting area, and it is most unlikely that any permit to mill timber would be granted. Because of this there will probably be little interest in the offering.
>
> A special Government valuation dated 6 May 1969 gives a capital value of $1,200, comprising unimproved value $600 and clearing and fencing $600….
>
> The Commissioner of Crown Lands has been instructed to submit a tender for a figure of $1,200 or alternatively $10 above the highest tender, with a limit of $1,500.[68]

Two offers of $1000 and the Crown's offer of $1200 were received. As the highest tender the Crown's offer was accepted[69]. It was after the tender had been accepted that the Board of Maori Affairs gave its approval to the Crown purchase[70]. A transfer document was prepared by the Maori Trustee in October 1969[71], Tahora 2B2B1 was declared to have

[66] The acquisition of Tahora 2B2B1 is also discussed in P Boston and S Oliver, *Tahora*, June 2002. Wai 894 Document #A22, page 234-237.
[67] Order setting out terms of a trust, 19 February 1969 (Maori Land Court minute book 43 Opotiki 368-369), attached to Maori Trustee Rotorua to Secretary for Maori Affairs, 22 July 1969. Maori Affairs Head Office file 5/5/249. Supporting Papers #284-285.
[68] Director General of Lands to Secretary for Maori and Island Affairs, 10 July 1969. Maori Affairs Head Office file 5/5/249. Supporting Papers #283.
[69] Maori Trustee Rotorua to Secretary for Maori Affairs, 22 July 1969. Maori Affairs Head Office file 5/5/249. Supporting Papers #284-285.
[70] Submission to Board of Maori Affairs, approved 30 July 1969 and 31 July 1969. Maori Affairs Head Office file 5/5/249. Supporting Papers #286-287.
[71] Crown Purchase Deed HWB (Hawke's Bay) 847. Supporting Papers #484.

become Crown Land in January 1970[72], and in April 1970 it was notified that the land had been acquired for scenic reserve[73].

5.3 Scenic reservation or State Forest protection on formerly farmed lands

Among the lands in the Oamaru and Tahora 2 blocks acquired by the Crown, there were some areas so unsuited to farm development or so inaccessible that no attempt was made to survey farm sections. Most of this type of land seems to have been passed from Lands and Survey Department control to the State Forest Service as Provisional State Forest in 1920[74]. This process has not been researched for this report. Other Crown-owned lands were intermittently added to the State Forests or were transferred to Forest Service agency control by an administrative agreement pursuant to Section 64 Forests Act 1949; these tended to be areas adjoining the State Forest set apart in 1920. Among them was Tahora 2B2B2, acquired by the Crown in 1920, never leased or occupied, and set apart as State Forest in 1949[75].

Those lands in the Waioweka Gorge and other hill country areas that had been settled in the early twentieth century and then abandoned in the 1920s or thereabouts remained unoccupied Crown-owned land. In the late 1950s a series of Land Use Reports were completed to determine what would be the best future use for these lands. A Land Use Committee comprising officials from the Department of Lands and Survey, New Zealand Forest Service, Ministry of Works (a soil conservator) and Ministry of Agriculture prepared these reports; there was no discussion with outside agencies, the public or hapu. The Committee's reports quickly developed into a standardised pattern, with the slopes and hillsides overlooking the state highway through the gorge recommended to become scenic reserve, and other lands out of sight of and away from the gorge highway recommended to become State Forest[76].

By the 1970s and 1980s, especially after the imposition of the restricted timber cutting zone by the Catchment Board (see section of this report on the rivers), Forest Service had determined that most of its State Forest lands in the hills behind Opotiki were not suitable for native forest logging or for pine plantation development, and it was therefore not interested

[72] *New Zealand Gazette* 1970 page 97.
[73] *New Zealand Gazette* 1970 page 755.
[74] *New Zealand Gazette* 1920 pages 2116-2120 at 2117-2118.
[75] *New Zealand Gazette* 1949 page 1478.
[76] Two Land Use Committee reports on sections in Waioeka Survey District dated 11 February 1959 and 10 June 1959. Lands and Survey Gisborne file 3/35. Supporting Papers #150-151 and 157-158.

in holding on to a land estate there. It was willing to allow many of its State Forests to become part of an expanded Waioeka Gorge Scenic Reserve. As part of this process Tahora 2B2B2 was declared to be part of Waioeka Gorge Scenic Reserve in 1975[77]. There was no discussion with outside agencies, the public or hapu about these shifts of administrative responsibility.

By the mid 1980s the Waioeka Gorge Scenic Reserve, with an area of some 18,000 hectares, had become the largest scenic reserve in the North Island. While there were still further areas which could be transferred from State Forest to scenic reserve, a hiatus was called when the Crown decided in December 1983 to undertake an Urewera / Raukumara Public Lands Joint Planning Study. The study area was all public land with an indigenous forest cover east of the Rangitaiki and Wheao Rivers, north of the Napier – Taupo State Highway, and west of a line from Te Haroto to East Cape. The purpose of the study was to gather together all relevant resource information, and assess the suitability of the land for various uses including protection of ecological, historic and archaeological values, wildlife protection, water and soil protection, recreation, social and economic factors, wild animal control, timber production and agriculture. This ambitious programme of work also included an assessment of the impact of the Crown's management of these lands on local communities. Nowhere was this more important than in the Urewera country, and Waikato University (Evelyn Stokes, Wharehuia Milroy and Hirini Melbourne) was commissioned to undertake a social impact study. The Urewera social impact study was seen as the first of a number of such studies, and it is possible that a Whakatohea and Opotiki social impact study might have been commissioned as a subsequent exercise. However, that did not occur. The Urewera study report was highly controversial among Crown officials as it exposed longstanding and deeply felt local opinions about the sustainable use and significance of 'their' forests that had been suppressed by the absolutist protection conferred on Urewera by the Crown's national park legislation[78]. The whole Planning Study was delayed and eventually became overtaken by wider national events. The era of the Planning Study, and the extent to which the work that was undertaken impacted on the forested land in the Whakatohea rohe has not been researched for this report.

A separate stream of Crown activity during the 1980s was the production of management planning documents. The Reserves Act 1977 had introduced a requirement to produce

[77] *New Zealand Gazette* 1975 page 963.
[78] Waitangi Tribunal, *Te Urewera Report Part III* (pre-publication), Wai 894, 2012, Chapter 16, pages 725-727 and 803-805.

management plans for reserves, and a Waioeka Gorge Scenic Reserve Management Plan was prepared. The preparation process involved pre-notification that a plan would be prepared and a public invitation to comment on matters that should be included in it. The Whakatohea Maori Trust Board and Whakatohea hapu were not directly notified, and would have had to rely on public notices in newspapers to have become aware that a plan was to be prepared. There were no Whakatohea submissions received. When written, the management plan was publicly notified as a draft for comment. Again there was no direct notification to Whakatohea[79], and no Whakatohea submissions were among the 30 submissions received. It is therefore not possible from an examination of Crown files to determine what attitudes Whakatohea hapu might have held during the 1980s about the forested hill land and its use. The management plan itself, which was approved by the Minister of Lands in June 1985, has not been researched for this report.

Production of the management plan was accompanied by controversy between the Department of Lands and Survey and Opotiki County Council. The chairman of the County Council at that time was a gorge landowner, so had intimate knowledge of the area and perhaps a vested interest in the plan's outcome. From the Department's point of view the County Council's submission on the draft management plan had either been written by the chairman or was dominated by his strong views on the matter[80]. While the full details of the dispute between the two parties have not been researched for this report, a report to the Minister of Lands of a meeting held between the Department's Deputy Director General of Lands and the County Council is noteworthy for the rare and unusual criticism of an elected local politician expressed by an official in a report to his Minister:

> The overwhelming impression gained throughout the time of the [ground] inspection was the absolute dominance of the chairman, Mr Redpath. He incidentally lives in the gorge and has for years expressed strong personal views of what should or should not be done relative to the Crown-owned lands there. Very little was said by any Councillor throughout a two-hour period. Mr Redpath's expressed views were extreme and often less than complimentary to the Department and its officers. He also displayed a remarkable ability to change the subject, or say exactly the opposite to what he had said earlier, when pressed to substantiate some extreme statement or other. Quite frankly it was a less than honest performance.
>
> In the afternoon there was, as stated, a formal meeting in the County Chambers. This covered some 2½ hours and there was full discussion on each of the points of concern in the Council's submission of 29 October 1982. The meeting started off in similar

[79] Distribution list for notification of draft management plan for public comment, undated. Lands and Survey Gisborne file 13/39/12. Supporting Papers #254.
[80] Submissions on Draft Management and Development Plan for Waioeka Gorge Scenic Reserve by Opotiki County Council, undated, attached to County Clerk Opotiki County Council to Commissioner of Crown Lands Gisborne, 29 October 1982. Lands and Survey Gisborne file 13/39/13. Supporting Papers #255-262.

> fashion to earlier in the day, and it was felt appropriate to invite the Councillors to state whether they agreed with the statements made in the submission. The response was interesting and revealing, with one Councillor expressing concern that the draft submission had not been brought back to the Council for consideration, as he understood was to be done. He also expressed the view that some parts of the submission were "balderdash" and merely reflected the views of their Chairman!
>
> As stated there was full discussion on each of the matters in the Council's written submission. I think it can fairly be stated that except for some cosmetic improvement to the wording of the draft plan in places, almost all of the criticisms were agreed to be largely unwarranted. Once again Mr Redpath's views were shown to have largely shaped the wording of the submission.[81]

As a result of this dispute the Minister of Lands decided to become involved by insisting that he would approve the management plan, rather than the local Commissioner of Crown Lands, to whom the task would normally be delegated[82].

In 1981 Lands and Survey had extended the National Park Board system to include scenic reserves of national significance, a category that Waioeka Gorge Scenic Reserve was considered to come within. It established an East Coast National Parks and Reserves Board as a citizen advisory body to assist the Department in its management of Urewera National Park and the reserves of national significance. The East Coast Board was effectively a successor to Urewera National Park Board with fewer day-to-day powers but with high-level advisory responsibilities for a broader area. The Board endorsed the management plan for Waioeka Gorge Scenic Reserve before it was submitted to the Minister for approval. Whether Whakatohea hapu were represented on the East Coast National Parks and Reserves Board, or developed a relationship with the Board, has not been researched for this report.

Separately New Zealand Forest Service was undertaking its own management planning exercises for the lands it administered. In 1983 a Recreation Plan for Urutawa State Forest (S.F. 45) was produced. Urutawa State Forest, which adjoins Waioeka Gorge Scenic Reserve, had an area of 21,000 hectares and was classified open indigenous forest, meaning that public access to it was unrestricted. It was one of the State Forests overseen by the Raukumara Forest Park Advisory Committee. Management activities by Forest Service, and the extent to which the Forest Park Advisory Committee had Whakatohea representation on it, have not been researched for this report.

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[81] Deputy Director General of Lands to Minister of Lands, 21 February 1983. Lands and Survey Gisborne file 13/39. Supporting Papers #251-253.

[82] Director General of Lands to Minister of Lands, 2 May 1985, approved by the Minister 4 June 1985. Lands and Survey Gisborne file 13/39/13. Supporting Papers #263.

While the Public Lands Planning Study did not proceed as initially envisaged, an even more significant event was the Crown's environmental restructuring in 1987. The restructuring resulted in a rationalisation of the Crown's landholdings, with productive farmland passing to Landcorp, production forests passing to Forest Corp, and protection lands passing to the Department of Conservation. Much of the Crown's estate within the Whakatohea rohe was classed as protection lands and became administered by the Department of Conservation. However there were, and still are, two standards of protection land (or conservation estate). Lands set apart as reserves are today strongly protected by the legislation under which they are administered, the Reserves Act 1977. Lands such as Urutawa Forest set apart prior to 1987 as protection State Forests, on the other hand, have since 1987 had a status as stewardship land pursuant to the Conservation Act 1987. This is a far less secure protection status, originally intended as a holding action preparatory to an exercise to determine whether it has conservation value and should be added to the secure conservation lands, or alternatively deemed to have little or no conservation value and capable of being disposed of. Since 1987 the status of stewardship land has become rather opaque, with conservationists treating it as part of the conservation estate while developers look upon it as having lesser conservation value than reserves and potentially available for development. During this time the Department of Conservation has tried to plaster over a veneer of uniformity by treating all of its administered estate as conservation lands subject to a Conservation General Policy. However, the variations in legislated land status remain beneath as a fundamental issue to be resolved.

The net result of the history of land statuses described above for the Crown's landholdings in the Whakatohea rohe is that the lands administered by the Department of Conservation are a complex array of different types, that do not reflect the conservation and protection values they contain. Both reserve land and stewardship land could be of varying conservation quality. For the hill country behind Opotiki a map of the conservation estate's land status would show scenic reserve and stewardship land adjoining one another when to all intents and purposes there is little difference between them today, apart from their status history. The map represents a situation that existed in 1987, when the situation at that point in time was an evolving one.

For the future a clear vision of the purposes for which the Crown-owned forest and conservation lands are to be managed will guide what land status they are to be given.

6 The Rivers

Waterways have a special significance for Maori, both as a food source and for the cultural and spiritual values that they associate with them. By contrast European settlers and Governments have treated them differently, either regarding them as violent and unpredictable foes to be brought under control, or as drainage channels that can remove excess water and pollutants.

This report looks at the Crown's involvement in the following matters:

- Land drainage
- Early channel diversions
- River control training works
- Catchment management
- Discharge and removal of wastes

Not examined in any detail, because of a general absence of information in the Crown records examined for this report, is the fish life in the rivers, and the uses made of that fish life. Fishing in the waterways for such species as tuna (eels), mullet and whitebait were especially important for Whakatohea hapu, and the absence of Crown records points to a disconnection between the Maori and European worlds about their place and value when it comes to determining how the waterways will be managed.

6.1 Land drainage

Some lands on the coastal flats have poor drainage, and farm production benefits from drainage works. Where such works would be more effective if the community banded together to produce a comprehensive scheme, rather than each farm settler digging their own drains, the Crown provided statutory provisions to make it possible for communal schemes to proceed. This was often necessary to compel the participation of all settlers in a locality who would benefit, and to provide mechanisms such as special rating districts for the funding of communal schemes. The principle statutory provision was the Land Drainage Act 1893 and its successors.

Two drainage districts were established in Opotiki County, one in the Waiotahe Valley and a second in the Huntress Creek catchment. The Waiotahi Drainage District was an initiative of Opotiki County Council, which forwarded a petition to the Governor in 1904 asking for the

establishment of a Drainage Board under the Land Drainage Act 1893[83]. The petition asked that the County Council be allowed to act as the Drainage Board. This turned out to be impossible as the 1893 legislation only allowed for an elected Board of Trustees to administer a Drainage Board. However, an alternative was available; Section 268 Counties Act 1886 provided for a County Council to pass a special order constituting a drainage district[84]. While the attempt to establish a Drainage Board was unsuccessful, a Waiotahi Drainage District was subsequently established by Opotiki County Council under the local government legislation, though the process followed and when it occurred has not been researched for this report.

The proposal to constitute the Huntress Creek Drainage District under the Land Drainage Act 1908 was publicly notified in October 1916[85]. When no written objections were received, the Drainage District was constituted in December 1916[86]. Five persons were elected as the Board of Trustees in June 1917[87]; all were European settlers. The drainage scheme that the Drainage District's landowners wanted was "the construction of two main drains with the operation of a flood gate at the outlet at tidal water"[88]. Because the tide gate would be a structure on the bed of the tidal estuary, it would require Marine Department approval pursuant to Section 150 Harbours Act 1908.

In August 1918 a petition was sent to the Governor asking for an extension of the Drainage District. The proposal was publicly notified[89], and the Marine Department was asked to comment. The Department in turn asked its Marine Engineer advisor (who was also Engineer in Chief of the Public Works Department) to comment, and the Engineer in Chief sought the advice of the Public Works Department's Resident Engineer in Tauranga about both the extension of the Drainage District and the proposed tide gate, noting:

> It is particularly desired to know whether the construction of such a gate would materially encroach upon the tidal compartment of Opotiki Harbour – in other words to

[83] Petition addressed to the Governor, undated, and Resolution of Opotiki County Council, 24 March 1904. Internal Affairs Head Office file 1904/1343. Supporting Papers #71-72 and 73-74.
[84] File note, 6 May 1904, on cover sheet to file 1904/1343. Internal Affairs Head Office file 1904/1343. Supporting Papers #75.
[85] *New Zealand Gazette* 1916 pages 3173-3174.
[86] *New Zealand Gazette* 1916 page 3933.
Plan of Huntress Creek Drainage District. Marine Head Office file 25/1076. Supporting Papers #321.
[87] *New Zealand Gazette* 1917 page 2454.
[88] Clerk Huntress Creek Drainage Board to Minister of Works, 17 October 1917. Works and Development Head Office file 96/159000. Supporting Papers #407.
[89] *New Zealand Gazette* 1918 page 3538.
Plan showing extension to Huntress Creek Drainage District, attached to Resident Engineer Tauranga to Engineer in Chief, 30 October 1918. Works and Development Head Office file 96/159000. Supporting Papers #409-411.

what extent would the volume of the tidal flow at the entrance to Opotiki Harbour be affected.[90]

The Resident Engineer replied that all of the extension was in the Huntress Creek catchment apart from about 200 acres in the Waioeka catchment. Of the proposed tide gate he reported:

> The Huntress Creek is tidal for about a mile above the Kukumoa (or main) road, average width above road 15 ft. I make the water shut out by a tide gate on boundary as under:
> 46 chains by 50 feet by 5 feet rise = 660,000
> 80 chains by 15 feet by 3 feet rise = 237,600
> say 900,000 cubic feet of water, against this there would be the cubic feet of water impounded from watershed and released at half ebb.
>
> This creek does not materially affect the tidal compartment, the Waioeka is the danger, filling up with silt and debris brought down by every flood, now that the cleared bush country is beginning to slip.[91]

The Marine Engineer in his reply to the Marine Department did not identify any problem with the additional area of the Drainage District, though he does appear to have been more concerned than the Resident Engineer about the effect of the proposed tide gate:

> The effect of this will be to obstruct and prevent a fair quantity of water from flowing in and out over the bar at each tide. It will therefore have a detrimental effect, and I would recommend that the erection of the tidal gate be approved only on the understanding that it must be removed should it be seen to have a detrimental effect, which may be expected.[92]

The extension to the Drainage District was approved by the Governor in February 1919[93].

The tide gate was erected about 1924. The extent to which the Crown was involved in approving its design and location, and whether any other parties were involved in the decision making, has not been determined for this report. However, the drainage scheme had a chequered history, and when Government assistance was requested in 1938[94] its state of neglect was revealed:

> Some years ago a Drainage Board was set up, forty to fifty settlers were concerned, and the area over which rates were to operate was approximately 2,000 acres.

[90] Engineer in Chief to Resident Engineer Tauranga, 13 September 1918. Works and Development Head Office file 96/159000. Supporting Papers #408.
[91] Resident Engineer Tauranga to Engineer in Chief, 30 October 1918. Works and Development Head Office file 96/159000. Supporting Papers #409-411.
[92] Marine Engineer to Secretary for Marine, 3 December 1918. Marine Head Office file 25/1076. Supporting Papers #322.
[93] *New Zealand Gazette* 1919 pages 637-638.
[94] Petition to Minister of Public Works, 21 February 1938. Works and Development Head Office file 96/159000. Supporting Papers #417.

A loan of £1,200 was obtained from the State Advances Department, £500 being spent on drains and £700 on the erection of flood gates.

The Drainage Board ultimately became defunct and defaulted on their payments to the State Advances Department, and Opotiki County Council were compelled to take control of the area and pay the necessary liabilities to the State Advances Department.

The County are not levying any special drainage rates, and do not intend to spend any ordinary rate money on the maintenance of these drains, which discharge through flood gates into the Waioeka River.

The original scheme … functioned quite satisfactorily. It now appears that the whole scheme has been neglected through lack of maintenance, and the gates have been allowed to become blocked and even broken with drift timber.[95]

6.2 Early channel diversions

The earliest known proposal for river diversion that received the attention of the Crown was a request from Opotiki County Council for the cutting of a new line of Pakihi Stream, a tributary of the Otara River, in order to stop erosion of a stock paddock reserve[96]. A Crown engineer was not supportive:

This is a very uncertain proposal. Nothing is being done to shut up the old mouth apparently, and if the new channel is not large enough to take all the water it is sure to take the old route. Instead of making this new cut and increasing the velocity of the stream, if short groynes 30 or 40 feet long pointing upstream 60 [degrees] with the bank, were put in every 150 feet apart along the bank where the land is being gradually washed away, the present erosion would be stopped and the channel kept in its place.

If there is any rock available, this would be cheaper than the cut and the result more certain. If there is no rock, the stones must be netted in nets say 6 feet long by 3 feet diameter and built up to form groynes.[97]

The County Engineer, however, was unconvinced that groynes were a suitable solution, and asked again for the diversion cut to be approved[98]. A second Crown engineer was dismissive of the proposal:

The total area of the reserve as indicated on the plan is 8 acres. If left unprotected it is not likely that at the outside more than 2½ acres will be washed away. To preserve this 2½ acres it is proposed to expend the sum of £150 or £60 per acre. I am quite

[95] District Engineer Tauranga to Under Secretary for Public Works, 22 April 1938. Works and Development Head Office file 96/159000. Supporting Papers #418.
[96] Resident Engineer Gisborne to Under Secretary for Public Works, 25 July 1911. Works and Development Head Office file 96/160000. Supporting Papers #441.
The stock reserve is Section 17 Block XIII Waiaua Survey District, 22 acres, shown on Gisborne plan SO 3030.
[97] Superintending Engineer and Inspecting Engineer of Roads to Under Secretary for Public Works, 1 August 1911. Works and Development Head Office file 96/160000. Supporting Papers #442.
[98] District Engineer Gisborne to Under Secretary for Public Works, 5 July 1912. Works and Development Head Office file 96/160000. Supporting Papers #443.

> certain that another stock reserve can be obtained somewhere in the vicinity, of an equal area or even larger, for very much less money than is proposed to be expended. I do not therefore approve of any money being granted for this work. The land in the vicinity is probably worth 15/- an acre plus improvements.[99]

Nothing further seems to have been done about a diversion cut, though the District Engineer viewed the stock reserve some time later, and could see the value in putting in groynes to protect it from river erosion[100]. He also proposed willow planting; whether this would have introduced this species into the Pakihi valley, or whether willows already grew alongside Pakihi Stream, is not known.

One of the earliest changes to a watercourse was a shifting of the channel of the Waioweka River in order to make room for the road through the gorge:

> The most difficult section was about midway. It consisted of solid greywacke rock bluffs, some 60 ft in height…. This Bluff was tackled with a quantity of blasting powder and two bulldozers, one at road level, the other working much higher up the cliff face and pushing shattered rock (from blasting) over the bank onto a narrow ledge at road level. Another bulldozer, working at this lower level, would push the shattered rock over the bank into the river. Eventually, by this process, the course of the river was pushed over about 40 ft. The road was then built on this consolidated rock formation, rising up from the original river bed. The distance extended over about 2 miles. Three bulldozer drivers were unfortunately killed on this hazardous bluff section of greywacke rock. A rock memorial was erected a mile south of the Wairata junction.[101]

The Bluff is also known informally as Maori Bluff; how this naming came about is not known[102].

Another diversion was proposed on the Otara River in 1948, approximately at the end of McGinley Road, when Opotiki County Council wrote to the Commissioner of Crown Lands:

> During the extraordinary wet weather experienced recently, the course of the Otara River altered and washed away portion of a County road [McGinley Road] opposite Sections 238 and 239 Block VIII (Waioeka Parish) Opotiki S.D.
>
> In order to repair the damage, and prevent further erosion by the river at this spot, it is considered that the only remedy is to straighten the River.
>
> To accomplish this a diversion cut would have to be put through Crown Land, and the permission of your Department is sought so that this work may be put in hand.[103]

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[99] Engineer in Chief to Under Secretary for Public Works, 30 July 1912. Works and Development Head Office file 96/160000. Supporting Papers #444.
[100] District Engineer Gisborne to Under Secretary for Public Works, 16 April 1913. Works and Development Head Office file 96/160000. Supporting Papers #445-446.
[101] M Spencer, *The Waioeka pioneering saga*, 1992, self-published, page 19.
[102] M Spencer, *The Waioeka pioneering saga*, 1992, self-published, pages 22, 192 and 198.
[103] County Clerk Opotiki County Council to Commissioner of Crown Lands Gisborne, 25 June 1948. Lands and Survey Gisborne file 3/989. Supporting Papers #205-206.

This use of Crown Land was agreed to[104]. There is no indication that any other stakeholders in the Otara River at this location were consulted.

6.3 River control training works

The Waioweka River has seen substantial change during the European era of settlement. Keeping the road through the gorge open has been a continual battle between the river and the roadmakers, prompting training works to prevent the river undercutting and washing away the narrow platform beside the river along which the road is constructed. A settler who was contracted to maintain the road on a day-to-day basis wrote in 1925:

> Immediately after the flood, Mr Bush resident engineer of the N.Z. Roads Ltd (being here), I got him to make the enclosed report and to lay off groyne positions. Then I got to work, with Maoris and myself, and cleared the creek bed of logs etc, and straightened its course – also erecting two of the main groynes, of roughly a diameter 16 ft round and 100 ft long. The labour in actual cost was £34. The cost of material, cyclone netting, £42 odd. A total cost of £70 without my own labour, and the job is not yet fully completed, although it has given greater security. It was most fortunate I did this work, as another big flood came along on the 24th June, and with a great volume of water. The groynes gave the necessary protection.[105]

Farming and road construction in the gorge have affected the river, with increased sediment transported down the watercourse and deposited in the river channel where the gradient flattens as it crosses the coastal flats. The magnitude of this problem was identified at an early stage following the settlement of the back country, with the first warning located during research for this report being dated in 1918 when the Resident Engineer of the Public Works Department in Tauranga wrote, in connection with the effect of the proposed Huntress Creek tidal gate (see earlier section on land drainage):

> The Waioeka is the danger, filling up with silt and debris brought down by every flood, now that the cleared bush country is beginning to slip.[106]

The District Engineer at Tauranga wrote a more detailed report in 1925. The Hukutaia Settlement on the western (true left as facing downstream) bank of the Waioweka River had just been settled by returned servicemen, and the Department of Lands and Survey requested an engineering appraisal of the bank erosion that was occurring along the

[104] Commissioner of Crown Lands Gisborne to County Clerk Opotiki County Council, 8 July 1948. Lands and Survey Gisborne file 3/989. Supporting Papers #207.
[105] AM Trafford, Matawai, to KS Williams MP, 11 July 1925, quoted in M Spencer, *The Waioeka pioneering saga*, 1992, self-published, pages 157-158.
[106] Resident Engineer Tauranga to Engineer in Chief, 30 October 1918. Works and Development Head Office file 96/159000. Supporting Papers #409-411.

Settlement's frontage[107]. At this time there was talk of a River Board being established to take responsibility for control works, though this had not eventuated, and did not for another 37 years. The Resident Engineer reported:

> The banks of the Waioeka Stream consist of shingle, on which the river deposits silts up to depths of 10 feet. Erosion appears to take place on outside of most of the curves until such time as velocity of stream is decreased by the increased length. Then shingle is deposited in the loops thus formed, which in time forces the river across to a new channel.
>
> Floods then deposit fresh silt on top of the shingle, and these accretions are in time raised above all but the very highest floods, and what was once riverbed becomes farmland, while farmland is washed away elsewhere and becomes riverbed.
>
> My observations led me to believe that the total area of farming lands adjacent to the river is not much less than many years ago, but of course an owner on the left-hand bank will have lost land while one on the right-hand side gained.
>
> Several of the settlers have made attempts to protect their lands by laying willow trees along the banks. This seems to be the only practical way. The Department's standard of manuka fascines held down by wire attached to willow stakes and protected with large stone gabions will be very expensive. No fascines are obtainable in the immediate neighbourhood, while the gravel in the river is on the whole too small for gabions. A reinforced concrete apron would also be out of the question….
>
> If possible one River Board should be formed and work to a definite scheme, such scheme to embrace both erosion and flood prevention of both the Waioeka and Otara Rivers. In such a Scheme, the Borough of Opotiki is just as interested as the settlers whose farms abut on to the rivers.[108]

The dangers of the Otara River flooding were also a longstanding concern for Opotiki Borough. The first time it was brought to the attention of the Crown was in 1914 when an approach was made to Prime Minister Massey during a visit he made to Opotiki in February. The Mayor and members of the Borough Council asked for Government assistance as the Otara River was "cutting into sections in the township and encroaching on the Borough boundaries"[109]. The District Engineer in Gisborne reported that an additional 54 chains (just over 1 kilometre) of protection works would be required to supplement the 15½ chains (300 metres) already put in by the Borough Council[110]. While the Crown agreed to a 1:1 subsidy

[107] Under Secretary for Lands to Under Secretary for Public Works, 25 February 1925. Works and Development Head Office file 96/159000. Supporting Papers #412-414.
[108] District Engineer Tauranga to Under Secretary for Public Works, 11 June 1925. Works and Development Head Office file 96/159000. Supporting Papers #415-416.
[109] Prime Minister to Minister of Public Works, 5 March 1914. Works and Development Head Office file 96/160000. Supporting Papers #447.
[110] District Engineer Gisborne to Engineer in Chief, 30 May 1914 and 28 October 1914. Works and Development Head Office file 96/160000. Supporting Papers #448-449 and 450-451.

payment of £500, the Borough Council was unable to come up with its share, and no works were carried out[111].

In 1922 the need for bank protection of the Otara River resurfaced. Since 1914 the bank had eroded by about 1 chain (20 metres) over a length of "a few chains". In his report on the matter the District Engineer commented on suggestions that the felling of native bush in the upper part of the catchment might be to blame:

> It is a well known fact that the floods experienced since the felling in the back country have been of far greater intensity, bringing with them much solid matter that deposits in the river bed along the flats, raising the bed and causing scour and erosions along the banks. Whether the erosion in question is caused by such action is hard to say, but probably has something to do with it.[112]

In Wellington the advice to the Minister of Public Works was not to provide any central government monies to assist the Borough Council:

> The work is no doubt necessary, and the volume of water and silt carried by the Otara River in times of flood must have been increased by the denudation on the hills that has taken place through the Government disposing of the country and insisting on bush felling as an improvement.
>
> But seeing the increase in the wealth of the Borough and that the erosion is not so rapid and therefore not so serious as formerly, I am of opinion that the Borough could well afford to bear the whole cost, and therefore I recommend that the Borough be advised that it is not possible under present circumstances to provide the £500 asked for on the current Estimates.[113]

The following year the District Engineer advised that he had inspected the bank erosion on the Otara River with Borough councillors, and had come to the conclusion that the danger was more apparent than real. The fear of the councillors was that if the bank was overtopped, the river might then carve out a new channel through the town. He saw as the solution for this fear the erection of a 3 feet high stopbank along the high ground behind the top of the river bank rather than groynes and armouring to stop the bank being undercut, as bank protection would not address any overflowing of the bank[114].

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[111] District Engineer Gisborne to Under Secretary for Public Works, 17 May 1922. Works and Development Head Office file 96/160000. Supporting Papers #452-454.
[112] District Engineer Gisborne to Under Secretary for Public Works, 17 May 1922. Works and Development Head Office file 96/160000. Supporting Papers #452-454.
[113] Engineer in Chief to Minister of Public Works, 8 August 1922, approved by the Minister 12 August 1922; and Minister of Public Works to Mayor Opotiki Borough Council, 17 August 1922. Works and Development Head Office file 96/160000. Supporting Papers #455 and 456.
[114] District Engineer Gisborne to Engineer in Chief, 6 June 1923. Works and Development Head Office file 96/160000. Supporting Papers #457-458.

There is some reference in 1930 to unemployment relief funds being sought to undertake river protection works, though it is not clear whether this eventuated or not.

The Soil Conservation and Rivers Control Act 1941 provided for central Government to become more heavily involved in comprehensive works to control the effects of rivers on adjoining land. Opotiki Borough Council was quick off the mark, lodging a request in July 1942 for the new Soil Conservation and Rivers Control Council to take an interest in the erosion occurring on the banks of the Waioweka River along the edge of the town from above the highway bridge to the confluence with the Otara River[115]. The Resident Engineer in Tauranga reported:

> It would appear that this erosion has been going on for a number of years, and no attempt has been made to take any precautionary measures.
>
> Up to the present the areas affected are mostly Embankment Reserve, which reserves it is presumed are under the control of the Opotiki Borough. Private land is now being affected, and that would appear to be the reason why this matter is now being brought under the notice of the Government. Under the conditions that exist at the present time, the carrying out of protection work cannot be regarded as an urgent matter, but nevertheless the position will have to be watched. Before any definite protection work is decided upon, it would be advisable to make sure that the necessary finance is available, say approximately £2,000, and then an engineering survey will be necessary to ascertain the location, number, length and height of timber groynes, the work necessary being similar to the system of groynes recently erected in the adjoining Otara River.[116]

The Soil Conservation and Rivers Control Council visited the Waioweka and Otara Rivers in October 1943, and offered limited support to Opotiki County Council for control works upstream of the town. Although the offer was a subsidy of £500 on a basis of £2 for every £1 raised locally, the County Council does not seem to have taken the offer up. Meanwhile individual farmers were taking measures on their own lengths of riverbank, though the Resident Engineer commented in 1946 that "it is obvious that the whole course of these rivers through the fertile Opotiki plain should be dealt with in a comprehensive manner by a Catchment Board". He explained how a permanent alignment of the Waioweka River could be achieved, "the end in view being to take advantage of permanent hard banks and interfere only with the less valuable land which is river accretion not yet in permanent pasture"[117]. The Soil Conservation and Rivers Control Council, however, took the view

[115] Town Clerk Opotiki Borough Council to Under Secretary for Public Works, 2 July 1942. Works and Development Head Office file 96/159000. Supporting Papers #419.
[116] Resident Engineer Tauranga to Under Secretary for Public Works, 25 July 1942. Works and Development Head Office file 96/159000. Supporting Papers #420.
[117] Resident Engineer Tauranga to Under Secretary for Public Works, 19 August 1946. Works and Development Head Office file 96/159000. Supporting Papers #421-424.

throughout the 1940s and 1950s that any comprehensive scheme, which it agreed was necessary, would have to await the appointment of a Catchment Board with responsibility for the Opotiki district.

When there was no movement to establish a Catchment Board, due to a lack of local government enthusiasm, attention turned to the more limited solution of appointing a Waioeka River Board. The District Commissioner of Works in Napier commented on this possibility in 1956:

> There are already two separate drainage areas in the Opotiki County, viz:
> Hunter's [sic] Creek – controlled by Opotiki C.C.
> Waiotahi Drainage Board – controlled by separate authority
> It would not seem to be desirable to add a third organisation with a separate headquarters, engineering and secretarial services.
>
> Moreover this river is only one of this type of problem. There is of course the Otara River which actually joins the Waioeka near its mouth. It has erosion problems, and would be outside the area proposed for the Waioeka Drainage Board.
>
> It could be said that the general spirit in Opotiki County would be to set up a separate organisation to deal with each major or minor problem as it arises. This state of affairs could be attributed to the County not wishing to become involved generally in soil conservation, rivers control and drainage works, and not wishing to set up a Catchment Board.
>
> Problems are occurring in the Opotiki County; some which present themselves are:
> Drainage and Soil Conservation: Waiotahi and Hunter's [sic] Creek
> Erosion and Flooding: Nukuhou, Waioeka, Otara, Waiaua, Motu
> Drainage and Stream Improvements on Flats: Ohiwa Harbour area generally, Otara to Waiaua Rivers
> No doubt there are or will be other problems areas also as well as the Waimana and Whakatane Rivers.
>
> The establishment of Waioeka River Board is not recommended, but rather a Catchment Board to take over all the problems.
>
> [However,] it seems as if the formation of the River Board must be sanctioned if the work is to be done. It might be a plan to proceed on these lines and establish a multiplicity of small authorities each dealing with its own problem, and thus demonstrate the value of a Catchment Board.[118]

In April 1957 a Waioeka River District was constituted, and Opotiki County Council was declared to be the River Board[119].

In late 1946 there was also a comparable letter sent by the District Engineer in Hamilton about the Otara River. District Engineer Hamilton to Chairman Soil Conservation and Rivers Control Council, 11 December 1946. Works and Development Head Office file 96/160000. Supporting Papers #459-461.

[118] District Commissioner of Works Napier to Commissioner of Works, 27 June 1956. Works and Development Head Office file 96/159000. Supporting Papers #425.

[119] *New Zealand Gazette* 1957 page 470.

The Whakatohea Maori Trust Board was one of the individual landowners that received subsidy support from the Crown for erosion protection works, once it has started purchasing dairy farmland beside the river. In 1954 application was made by the Opotiki County Engineer on behalf of the Trust Board, because the river was threatening to cut a new channel through farmland:

> It is proposed to employ a bulldozer and slant the bank which is about 8' [feet] high. Then cut willow trees (large) and lay same over the bank foliage downstream, butts on the bank and wired to a deadman. These trees to be placed at an angle of 60 degrees to the line of the bank. These willows to be wired back to tree stumps or suitable deadmen buried well below the surface. When this has been completed small willow stakes will be planted at intervals at a rate of 2 to the square yard, commencing at the water's edge and continuing up the batter and to a distance behind the top of some 20'. These stakes to vary in length from 2' at the water's edge to 10' along the top. When this has been completed, the whole area is to be fenced to prevent stock from destroying the growth.[120]

A 2:1 subsidy was approved[121]. Because the Maori Trust Board dairy farms are located in the River District, they would have been rated for River Board rates from 1957.

In 1959 the Maori Trust Board wrote to the Commissioner of Crown Lands:

> Lot 32 Parish of Waioeka adjoins the property of the Whakatohea Maori Trust Board.
>
> My Board is now negotiating to lease Lot 31 with a right to purchase, and the owners have agreed.
>
> Lot 32, which is Crown Land, is situated along the river and is subject to flooding. My Board is anxious to lease this property….[122]

A field inspection found that the river channel had shifted its course so that it ran through Allotment 32 and a small part of the adjoining Allotment 31. Where in the late 1860s Allotment 32 was surveyed as a lot on the true right bank of the Waioeka, by the 1950s most of the lot was located on the true left bank. Much of the land remaining on the true right bank within Allotment 32's surveyed boundaries was a shingle beach along the river's

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Plan of the Waioeka River District, undated (1957). Works and Department Napier file 96/159000. Supporting Papers #462.

[120] Proposal by County Engineer Opotiki County Council, 20 September 1954, attached to Resident Engineer Gisborne to Commissioner of Works, 18 December 1956. Works and Development Head Office file 96/159000. Supporting Papers #426-428.

[121] Commissioner of Works to Resident Engineer Gisborne, 22 February 1957. Works and Development Head Office file 96/159000. Supporting Papers #429.

[122] Secretary Whakatohea Maori Trust Board to Commissioner of Crown Lands Gisborne, 12 August 1959. Lands and Survey Gisborne file 3/35. Supporting Papers #160.

edge[123]. The Field Officer concluded that the Board must be unaware how little of Allotment 32 remained, as it was not worth leasing.

Flooding in Opotiki during 1957 and 1958 highlighted the risks faced by the town[124], and spurred the local authorities to speedier preparation of comprehensive flood protection schemes. Opotiki Borough Council prepared a scheme in August 1957 for the stretch of river between the highway bridge and the confluence of the Waioeka and Otara Rivers. This scheme involved the digging of a pilot cut setting out the location and direction of the desired flood channel. The concept of a pilot cut assumed that the river when next in flood would enlarge the cut through the force of the flood waters. Stopbanks, groynes and tethered tree trunks would armour and protect the banks of the new flood channel[125]. Opotiki County Council acting as the River Board prepared a scheme in June 1958 for the Waioeka River between the gorge mouth and the highway bridge, a distance of six miles, comprising

> live willow protection of eroding banks, diversion channels for the straightening of bad meanders, and resultant training works such as shingle banks and live willow groynes and the clearance of a flood fairway. Lesser works to be carried out to aid the overall control of the river include the layering and thickening up of existing willow protection works, and the planting of willows by means of stakes or trenched willows to promote willow growth on those lengths of the river where the protection is now non-existent or negligible.
>
> It is considered at this stage that the river should be trained into a straight line and more stable course before any thought is given to stopbanking. The main concern of the settlers along the river is for the amount of good grazing land being eroded flood by flood, and they are not unduly worried by the flooding of the land. Until the river is confined to a suitable course, no consideration should be given to stopbanking.[126]

By way of background information, the County Council explained:

> The catchment area of the Waioeka River is approximately 325 square miles from which a 50-year frequency flood of 31,000 cusecs can be expected….
>
> The majority of the Catchment is steep rocky hills covered in heavy native bush and scrub except where it has been cleared for farming purposes. The river runs for over 20 miles through steep narrow gorges finally emerging on to the fertile Waioeka plain to travel for approximately 7 miles to enter a tidal river basin before reaching the sea. The average gradient of the river across the plain section is in the order of

[123] Commissioner of Crown Lands Gisborne to Senior Field Officer Gisborne, 22 October 1959, and Senior Field Officer Gisborne to Commissioner of Crown Lands Gisborne, 6 January 1960. Lands and Survey Gisborne file 3/35. Supporting Papers #161 and 162.

[124] There was a particularly bad run of flooding. In May 1957 the Otara River flooded the greater part of the town. The Otara River flooded again on 21 February 1958, and three days later the Waioeka River flooded. Both rivers flooded the town in July 1958.

[125] Resident Engineer Gisborne to Commissioner of Works, 21 August 1957. Works and Development Head Office file 96/159000. Supporting Papers #430-434.

[126] County Engineer Opotiki County Council to Resident Engineer Gisborne, 15 June 1958. Works and Development Head Office file 96/159000. Supporting Papers #437-440.

> approximately 7 feet to the mile. From the accompanying plans it can be seen that the present course is very winding and a series of deep holes and shallow rapids….
>
> Several settlers have in the past carried out protection works, but without any thought to the condition of the river either above or below their properties. Most of this work has proved satisfactory, but the stage has now been reached when the works that are required to prevent further loss of land is beyond the resources of the settlers and all such works need to conform to an overall plan of control for the river.[127]

Ministry of Works took steps in September 1958 to ensure that the two local authorities were coordinating their efforts on the Waioeka River so that all works could be seen as part of a combined scheme[128], and a combined scheme was presented in December 1958[129]. Effectively the County Engineer took the Borough Council's scheme and amended it to ensure it fitted in with the County Council's scheme upstream. What then became known as the Borough Council section of the Waioeka River Control Scheme was approved by the Soil Conservation and Rivers Control Council for a 2:1 subsidy in September 1959[130].

A Catchment Board with responsibility for Opotiki district waterways was finally established in April 1962, when the Poverty Bay Catchment Board's district was expanded to include Opotiki. The Catchment Board started planning for a coordinated scheme of works in the Waioeka and Otara valleys, while work continued on the Opotiki Borough section of the Waioeka Flood Protection Scheme. The state of affairs that the Catchment Board discovered when it took over responsibility was described in a report to the Board. The Otara River overflowed its banks from Opotiki Aerodrome downstream, and stopbanks reduced some but not all flooding. The Waioeka River when it overflowed followed old shallow watercourses through the town. Both rivers were eroding banks at bends and encroaching on farmland. 100-year flood frequency, a standard measure for design of flood control measures that will protect buildings, meant designing to contain within the channel flows of 60,000 cusecs for the Waioeka River, 30,000 cusecs for the Otara River, and 77,000 cusecs for the Waioeka downstream of its confluence with the Otara. This required more substantial stopbanks along both rivers, strengthened where necessary by rock rip-rap

[127] County Engineer Opotiki County Council to Resident Engineer Gisborne, 15 June 1958. Works and Development Head Office file 96/159000. Supporting Papers #437-440.
[128] Resident Engineer Gisborne to Commissioner of Works, 29 September 1958. Works and Development Napier file 96/159000. Supporting Papers #463.
[129] County Engineer Opotiki County Council to Resident Engineer Gisborne, 2 December 1958. Works and Development Napier file 96/159000. Supporting Papers #464-468.
[130] Commissioner of Works to Resident Engineer Gisborne, 17 September 1959. Works and Development Napier file 96/159000. Supporting Papers #469.

or anchored tree trunks. Willow and poplar growth needed to be controlled to maintain the effectiveness of the flood channel[131].

This protection work had not been completed when the most severe flooding ever experienced by Opotiki Borough occurred in March 1964. Areas upstream of the town in Opotiki County, and State Highway 2 through the Waioweka gorge, were also badly affected by flooding in the same event.

After the 1964 flood, protection works were fast-tracked. The Opotiki Borough Protection Scheme was completed by 1967, and a Waioeka-Otara Flood Control Scheme was also constructed further upstream in Opotiki County. Subsequent historical events have not been researched for this report.

6.4 Catchment management

The link between protection of a good vegetation cover in a river's catchment and reduced flooding downstream was a guiding principle behind the passing of the Soil Conservation and Rivers Control Act 1941. If the soil in the upper catchment could be held in place, runoff was slowed down as the soil acted as a sponge and less sediment was transported downstream to clog the waterway.

A Land Use Committee report prepared in 1959 by officials from Department of Lands and Survey, New Zealand Forest Service, Ministry of Agriculture and a soil conservator from Ministry of Works looked at the future use of some of the abandoned sections in the Waioweka gorge and contained the following comments:

> The members of the Committee being familiar with these areas have no hesitation in approving the recommendations. The Committee is aware of the serious flooding that has occurred in Opotiki as a result of flooding of the Waioeka River. To close these areas would be a step further towards conserving the catchment. They adjoin Provisional State Forest No. 40. The Committee considers that they have negligible potential for farming.[132]

Seven years later, following the extension of the Poverty Bay Catchment Board's district (in April 1962) to include lands and waterways in the Opotiki district, controls on upper

[131] Engineer Poverty Bay Catchment Board to Chairman Poverty Bay Catchment Board, 3 April 1962. Works and Development Napier file 96/159000. Supporting Papers #470-483.
[132] Three Land Use Committee reports on sections dated 11 February 1959, 11 February 1959 and 10 June 1959. Lands and Survey Gisborne file 3/35. Supporting Papers #150-151, 152-154 and 155-156.

catchment use were introduced. The Catchment Board applied to the Soil Conservation and Rivers Control Council for approval to issue a notice pursuant to Section 34 Soil Conservation and Rivers Control Amendment Act 1959. Such a notice was a bylaw of the Catchment Board that would stop anyone carrying out any action referred to in the notice, unless they had first obtained the consent of the Board, because that action was likely to facilitate soil erosion or floods or cause deposits in watercourses. This provided an opportunity for the Board to set such conditions of its consent as it considered necessary. Of immediate concern to the Board were the effects of timber milling. Logging that occurred on Crown land or Crown leasehold could be controlled by working with Lands and Survey Department or Forest Service to craft suitable conditions. However, on privately-owned steep and rugged land in the Waioeka and Waiotahi catchments, the Board was powerless and logging could result in erosion, debris accumulation in watercourses, and downstream shingle deposition. In its application the Catchment Board explained:

> The precarious flood situation of the valley farmlands in the lower Waioeka and Otara Rivers and also of the Waiotahi River flats demands that no further deterioration of their catchment condition be permitted to continue. The maximum preservation and retention of the protective forest and bush cover in these catchments, because of the vital necessity to safeguard the local and national assets downstream, must be the primary objective in the ultimate control plan for these valleys.

To this end the Board sought two measures, first a restricted timber cutting notice under Section 34, and second a land use capability survey to determine which lands in the three catchments might be candidates for Section 35 controls. A third approach, burning permit restrictions, was still being investigated and the Board had not reached a decision on their suitability[133].

The Soil Conservation and Rivers Control Council approved the Section 34 application and recommended it to the Minister of Works in October 1966. The Minister confirmed the approval later the same month[134].

With respect to the Catchment Board's second measure, a basic Land Use Capability Survey of the Waioweka catchment was completed in 1969 by Water and Soil Division staff of the Ministry of Works, at which point the District Commissioner of Works commented:

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[133] Chief Engineer Poverty Bay Catchment Board to Secretary Soil Conservation and Rivers Control Council, 13 July 1966. Works and Development Head Office file 75/13/50/2. Supporting Papers #384-387.

[134] Secretary Soil Conservation and Rivers Control Council to Minister of Works, 26 October 1966, confirmed by the Minister 28 October 1966. Works and Development Head Office file 75/13/50/2. Supporting Papers #388.

> The complexities of flooding to Opotiki and storm damage to State Highway in the gorge, and the high portion of Crown land in the catchment, load the problem with a high public interest content.[135]

A more comprehensive Land Use Capability Survey was proposed, involving inter-departmental assessment of the best land use for the upper catchment. In giving his support to the proposal the Commissioner of Crown Lands informed his head office:

> The Ministry of Works and Catchment Board particularly want to treat the Gorge as a special case and set up a special technical land use committee of those most concerned to bring the Land Use Capability Survey for the gorge to the recommended land use stage as soon as possible. The idea is that a complete catchment control scheme could eventuate.[136]

At a meeting of the various Government departments plus Poverty Bay Catchment Board in August 1969 it was stated "three out of the four resident farmers in the Waioeka Gorge itself are heavily involved in timber milling"[137], usually by allowing timber loggers to operate on their land rather than being involved in the logging themselves. This appears to have prompted the Catchment Board to take action to restrict timber cutting. Section 34 Soil Conservation and Rivers Control Act 1941 provided the mechanism for a Catchment Board to introduce a bylaw that would apply conditions to the use of land where those conditions would benefit soil conservation and catchment protection.

A second meeting was held in June 1970, at which agreement was reached that:

> The Crown should agree in principle that all Class VII land in the catchment of the Waioeka River should be acquired by the Crown, together with any other land adjacent to S.H.2 in the Waioeka Gorge, except in the case of the two larger properties being farmed in the Waioeka Gorge, purchase of these could be delayed until such time as the owners were ready to move[138].

This recommendation was eventually incorporated in the Preliminary Report of the Recommended Land Use Committee on the Waioeka, Waiotahi and Otara Catchments[139]. Of farming in the gorge, the Committee stated:

> The Committee is concerned that farming on the Class VII land is, at best, a marginal proposition, and that in many cases there is no attempt to make any improvements to

[135] District Commissioner of Works Napier to Secretary Poverty Bay Catchment Board, 29 January 1969. Lands and Survey Gisborne file 3/35. Supporting Papers #163-164.
[136] Commissioner of Crown Lands Gisborne to Director General of Lands, 11 June 1969. Lands and Survey Gisborne file 3/35. Supporting Papers #165.
[137] Notes of discussion, 13 August 1969. Lands and Survey Gisborne file 3/35. Supporting Papers #166-169.
[138] Notes of discussion, 11 June 1970. Lands and Survey Gisborne file 3/35. Supporting Papers #170-171.
[139] Preliminary Report of the Recommended Land Use Committee - Waioeka, Waiotahi and Otara Catchments, undated, attached to District Commissioner of Works Napier to Commissioner of Crown Lands Gisborne, 8 November 1971. Works and Development Head Office file 75/13/50/2. Supporting Papers #389-400.

the land as it does not pay to do so. Instead, an extensive system of grazing is adopted, which is only possible by resorting to frequent burning of scrub and fern. This burning could create conditions where further erosion is likely.

As an alternative to uneconomic farming with its by-product of undesirable farming practices, the prospect of commercial forestry was investigated. An evaluation of this was done by the New Zealand Forest service, to determine whether the productive capacity of the land could be maintained, where possible by establishing protection/production forest…. Following this evaluation, an assurance was given by the NZ Forest Service that commercial afforestation in this locality will be an uneconomic proposition.

The Committee then considered the State Highway through the Gorge, recording that it was at continual risk from four factors:

i. Scouring and undermining of the road formation by the Waioeka and its tributaries, accentuated in places by their steep gradient and all too frequent periods of flooding,
ii. Flooding, scouring or build up of debris on the road surface during high intensity rainfalls, caused by minor tributaries carrying large amounts of debris which block culverts,
iii. Debris falling on to the highway from erosion of the slopes above, induced by burning and grazing very steep slopes,
iv. Falls of rock from the steep faces immediately above the road, particularly during wet or windy weather, from the continual fretting away of the steep slopes resulting from road construction. This threat is an inevitable hazard on a highway running through such country.

The importance of upper catchment protection for the downstream portions of the Waioeka River was emphasised:

This river has a total length of 50 miles of which only 7 miles passes through arable farmland between the gorge mouth and the sea. Along this reach the farmland is protected by flood control scheme stopbanks against river floods up to 52,000 cusecs, and the Opotiki Borough near the river mouth is stopbanked to protect it from 80,000 cusec floods.

The continuing effectiveness of the stopbanks to contain these flood discharges is largely dependent on limiting, wherever possible, the ingress and transport of erosion debris from the upper river reaches into the relatively short flood control scheme channel.

Similar considerations also apply to the Otara and Waiotahi Rivers, although the latter is not yet stopbanked extensively.

The condition of the catchment cover has by far the greatest influence on the amount of erosion debris that can be fed from the hillsides as bed load into the river channel, and this is the primary reason that the Poverty Bay Catchment Board in 1966 declared the Class VII and VIII lands in the Waioeka, Otara and Waiotahi catchments as a Restricted Timber Cutting Area.

These restrictions have effectively controlled indiscriminate timber felling of the indigenous forest cover, and controlled timber cutting is now being restricted to ridges and slopes where the erosion potential is considered to be minimal. The use of stream beds and tributary river channels as logging and machinery access tracks is also

> prohibited as the disturbance of the stream beds by heavy machinery can lead to large and unwarranted amounts of bed load being transported into the main river channel.

Acquisition by the Crown of the Class VII and VIII land would allow steep land to be retired from farming and burning. This would "reduce erosion and associated problems which disrupt communications", reduce downstream flooding, and simplify rural fire control.

> Putting the [acquisition] recommendation into effect would probably result in the retired land being used along the following lines. Land in the Waioeka Gorge area that is over the skyline from the highway would become State Forest, tying in with existing State Forest to become part of a proposed Forest Park. Land visible from the highway would more appropriately become Scenic Reserve, being an extension of and linking up existing Scenic Reserves.
>
> Possible exceptions to these two categories would be some small flat areas adjoining the highway some of which could be acquired for the use and enjoyment of the highway, such as lay-by and picnic areas….
>
> The balance of the flatter land bordering the highway could be designated as recreational reserve or domain, possibly administered by the local territorial authority, and catering for the picnic, camping and caravanning needs of the travelling public. However, not all the land on these domain areas would be required to meet these needs. Amenity planting could be done on their frontages and productive woodlots established further back. Eventually, revenue from the timber would pay for the establishment and upkeep of facilities. Such forestry could be done on a Domain or Recreational Reserve, but would not be possible on a Scenic Reserve.[140]

The whole exercise of conducting a Land Use Capability Survey and then developing land use recommendations which altered the status quo was carried out by central Government plus the local Catchment Board. No other local stakeholders were involved.

Although the Preliminary Report was forwarded to Wellington in November 1971, it was not until September 1972 that it was considered by the Soil Conservation and Rivers Control Council. The Council agreed to the retirement of Class VII and VIII lands from farming in favour of a protective land status, though queried whether exotic afforestation might form part of the protective mix[141]. However, the feasibility study prepared by Forest Service had shown a negative value for exotic forestry in this location, so the Forest Service advice was

[140] Preliminary Report of the Recommended Land Use Committee - Waioeka, Waiotahi and Otara Catchments, undated, attached to District Commissioner of Works Napier to Commissioner of Crown Lands Gisborne, 8 November 1971. Works and Development Head Office file 75/13/50/2. Supporting Papers #389-400.

[141] Agenda Paper by Director of Water and Soil Conservation, undated, and Minutes of Soil Conservation and Rivers Control Council, 18 September 1972. Works and Development Head Office file 75/13/50/2. Supporting Papers #401-402 and 403.

that forestry was not warranted in the Opotiki back country given its remote location and the ready availability of more accessible and suitable land elsewhere in the Bay of Plenty[142].

6.5 Water pollution

This section of the report is concerned with historical aspects of sewage discharge from Opotiki Borough into the Waioeka and Otara Rivers. Other aspects affecting water quality in Whakatohea rohe rivers, such as discharge of wastes from dairy sheds, general runoff from farmland, and leaching from rubbish tips have not been researched.

A summary of Opotiki's sewage disposal system as at 1947 was prepared that year by a Health Department official:

> There are 200 premises in the Borough where small septic tank units have been installed for the disposal of sewage of individual sections. The remaining 260 sections are provided with pan privies, and the Borough Council conduct a weekly nightsoil collection service. The effluents from septic tanks and the household waste water are usually disposed of by means of sump holes or field pipe irrigation systems. The land in the Borough is mostly flat and in parts of a swampy nature. A considerable portion is only a few feet above sea level and in some areas the subsoil water rises to within a foot of the surface of the ground. Such conditions create difficulties in disposing of waste water in a sanitary manner and in some cases nuisances are created from time to time. The problem is a particularly difficult one in the business section of the town, where the sites are small in area and the subsoil unsuitable for the disposal of sewage. It is almost impossible to provide adequate privy accommodation for some business premises as their yard space would not permit the construction of additional pan privies. The open pail system of nightsoil collection which has been in operation for some years is not regarded as being satisfactory. Complaints have been received regarding the present method of disposal of the nightsoil by burial at a sandy site on the outskirts of the Borough, and at times a serious nuisance has been created. The insanitary conditions resulting from the lack of a water carriage sewage system in Opotiki has been the subject of correspondence from this office over the years.[143]

The interest being taken by central government in Opotiki's sewage disposal was a result of an application by Opotiki Borough Council for approval from the Local Authorities Loans Board to raise a loan to undertake some disposal system improvements. The first application for loan approval was made by the Borough Council in 1945, and it was not until a number of revised applications later that loan approval was finally given in 1954. The delays were due to a combination of Crown concerns about the technical feasibility of the proposals put forward by the Borough Council, the Borough Council's (and ratepayers')

[142] District Commissioner of Works Napier to Commissioner of Works, 22 November 1972, and District Commissioner of Works Napier to Commissioner of Works, 12 June 1973. Works and Development Head Office file 75/13/50/2. Supporting Papers #404-405 and 406.

[143] Report on proposed sewer scheme for Opotiki Borough Council, prepared by District Inspector East Cape Health District, undated (1947). Health Head Office file 32/172. Supporting Papers #1-2.

reluctance to spend a significant amount of money on upgrades, and an inability at local level for the Borough Council and Opotiki Bacon Company (the local abattoir) to agree on a joint disposal scheme for both the town's and the factory's wastes. The lengthy correspondence that took place over 9 years is recorded in a Health Department head office file[144]. Despite the implications of all the proposals put forward involving treated effluent getting into the Waioeka River, there was no consultation with Whakatohea hapu. The Borough Council was treated by the Crown as the only local interest that needed to be consulted.

Partway through the lengthy debate about upgrading the sewage disposal system the Board of Health issued a requisition that required Opotiki Borough Council to provide a sewerage system for the Borough. A requisition was a strong direct intervention by the Crown in local affairs, and its use was restricted to particularly recalcitrant local authorities. Sometimes, however, a requisition was welcomed by local authority politicians where ratepayers were unwilling to approve expenditure of rates on treatment works, and central Government could be blamed for insisting on an increase in rates. This may have been the case at Opotiki, as the local Medical Officer of Health told his head office in Wellington:

> I am advised by the Town Clerk that at the poll on November 17th [1951] on the proposal to raise a loan to install a sewerage system in the Borough, the ratepayers rejected the proposal.
>
> This was not entirely unexpected, as at a recent Public Meeting at Opotiki at which I was a speaker, it was apparent that a section of the community was opposed to the scheme. As far as I could gather, this section consisted mainly of business people who have invested in septic tanks at their business premises and/or homes.
>
> I believe that the Borough Council is keen for the sewerage scheme to go ahead, and that a Board of Health requisition would be welcome.[145]

The following month the Medical Officer of Health reported:

> I have now visited Opotiki and discussed this matter with the Mayor and the Town Clerk. Both assured me that the Council are most anxious for a Board of Health requisition, and this had been confirmed by the Mayor that day by telephoning all the Councillors. The only dissenter is a Councillor who has been against the scheme from the outset. He is the type of man who considers that pan privies are the best system ever….
>
> Despite the indifference of 50% of the ratepayers on the day of the Poll [who did not vote], I consider that the time when Opotiki should have a sewerage scheme is overdue, and as plans are prepared, the loan approved, and the Council willing. I

[144] Health Head Office file 32/172.
[145] Medical Officer of Health Gisborne to Director General of Health, 23 November 1951. Health Head Office file 32/172. Supporting Papers #3.

> suggest that a Board of Health requisition be obtained requiring the Council to supply a suitable sewerage scheme in the Borough.[146]

Pursuant to Section 22(2) Health Act 1920, the requisition was issued by the Board of Health in February 1951. It required Opotiki Borough Council

> to provide for the benefit of its district the following sanitary works, that is to say: drainage works, sewerage works, and works for the disposal of sewage sufficient to receive and carry off such quantities of sewage from land and buildings comprised within the boundaries of the Borough of Opotiki as may be reasonably expected from time to time on and in such land and buildings under presently existing conditions of population, building and water supply; subject to the condition that the plans and specifications required to be approved by the Board pursuant to the said Act shall when submitted for approval be accompanied by detailed estimates setting out the cost of the work comprised in such plans and specifications, such estimates being signed by some person or persons specialising in the kinds of work to which such estimate relates.[147]

The scheme that was then subsequently constructed was a full reticulation of the town with sewerage pipework, this reticulation relying on four pumping stations to direct the sewage into an Imhoff tank where liquids and solids could be separated. The reticulation was carried out in four stages, with the first stage being the commercial area. The liquid effluent from the tank was then discharged into the Waioeka River. This method of disposal of the treated effluent had a bearing on the location of the Imhoff tank, with it being located close to the river. The other product of the Imhoff tank was digested solids in the form of a sludge that settled out in the tank. The intention was that this sludge would be piped into a series of drying-out ponds. These ponds were to be built in an old watercourse, using the topography of the watercourse to provide some of the banks of the ponds. However, both the location of the Imhoff tank and the method of disposing of the sludge ignored the risk of the river flooding, which is what it did before the ponds could be constructed. The Borough Council's consulting engineers reported in June 1956:

> In the Scheme approved by the Loans Board, provision had been made for burying the sludge in trenches near to the tank. On account of the fact that when the trenches were opened for the foundations of the tank, these filled with groundwater to within two feet of the surface, we realised that burying was not feasible. We therefore suggested lagooning the sludge as an alternative, and sent you a detail of this proposal. However, before you could form an opinion on this alternative, we were in Opotiki when the river was in flood, and after inspecting the site were satisfied that lagoons were no more feasible than trenching, unless built of concrete. The flood waters came right over Rat Island, and the depth of water around the Imhoff tank was from 1 foot to 3 feet, the greater depth being in the locations chosen for lagooning. The usual

[146] Medical Officer of Health Gisborne to Director General of Health, 17 December 1951. Health Head Office file 32/172. Supporting Papers #4.
[147] Board of Health Requisition, 27 February 1952. Health Head Office file 32/172. Supporting Papers #5.

> method of drying the sludge on specially prepared beds is quite out of the question because of the flooding of the site.
>
> Lagooning would be possible only if concrete basins ten feet deep were constructed. Two would be required, one for filling, and the other for maturing and removal. Each would need to be large enough to hold three months supply of sludge.
>
> As it is not at all certain that the sludge lagoons will be free from smell, we now request permanent approval for the temporary arrangement we made at the Imhoff tank whereby the sludge discharge pipes were connected to the effluent pipe discharging into the river. No sludge has so far been discharged into the river, but it will need discharging about four times a year. We consider that disposing of the sludge in this way will be harmless, especially if desludging is done under your Inspector's supervision and only when there is a fresh in the river.[148]

No decision was made by the Health Department about the suitability of this alternative, and the result was that as the scheme came into operation, the consulting engineers' proposal of discharge of the sludge to the river via the effluent pipe occurred by default. As was subsequently pointed out in 1962, when the problem of sludge disposal was still unresolved, disposal of both the treated effluent and the sludge into the same river by the same pipe "defeats the purpose of the treatment plant"[149].

Once the Imhoff tank and sludge ponds had been installed, they had to be protected from the Waioeka River because they were at risk of being flooded. In August 1957 Opotiki Borough Council prepared a flood protection scheme and sought Crown funding:

> The primary purpose of the proposed works is the protection of the Imhoff tanks [sic], sludge lagoons, the No. 4 Pump Station and the No. 1 Pump Station, in that order.
>
> The secondary purpose is the general control of the Waioeka River and the ultimate protection of the north western section of the Borough. It is worthy to note that this area was included in the original subdivision of Opotiki in 1860 [sic].
>
> Should the pilot cut establish itself fairly quickly, the consulting engineers are of the opinion that some of the work of immediate bank protection in the lower reaches may prove unnecessary….
>
> Comparison of plans prepared over the years shows a steady growth of the islands within the river bed, and also that the overall width across the channels is increasing.
>
> The inference is that due to the establishment of farms and the felling of the bush in the catchment areas, the runoff and silt content characteristics of the river have changed and a delta is forming between the highway bridge and the confluence of the

[148] Ralph Worley and Downey, Consulting Engineers, Auckland, to Medical Officer of Health Gisborne, 20 June 1956, attached to Medical Officer of Health Gisborne to Director General of Health, 26 June 1956. Health Head Office file 32/172. Supporting Papers #6-7.
[149] Medical Officer of Health Gisborne to Director General of Health, 9 January 1962. Health Head Office file 32/172. Supporting Papers #8-9.

> Waioeka and Otara Rivers. Under these conditions any major stopbanking scheme would be costly to maintain for the next generation….
>
> It will be noted from the plans that the water from the cut (and the whole of the Waioeka River) combines with the water from the Otara River, and the combined river flows out over the bar. The combined river is at present used by shipping to and from the Opotiki wharf along a channel which is continually checked for shoaling by the Shipping Agents.
>
> While the inquiry into the grounding of the "Tuhoe" in this channel earlier this month has not been held and the cause may be independent of shoaling in the channel, it is probable that additional water in the cut will cause additional shoaling in the channel.
>
> The present intention is to abandon the Opotiki wharf when the Ohiwa Wharf is completed in not less than two years time.[150]

A 2:1 subsidy was approved in principle, subject to some aspects of the proposed scheme being referred back to the Council for further consideration[151].

In 1962 the issue of sludge disposal arose again. This was now ten years after the Board of Health's requisition, which was still operative, yet the sewerage scheme remained incomplete, and the Borough Council had borrowed heavily and committed the Borough ratepayers to pay off the loans over a 25 year period. The Council has consciously slowed down its further borrowing, and wanted the sludge disposal problem to be tackled after the reticulation programme had been completed. The proposed solution the Council had in mind was to pipe the sludge to the highest ground in the neighbourhood of the Imhoff tank, this being a riverside site in the process of being reclaimed by dumping of the town's rubbish, where sludge drying beds would be constructed. The Medical Officer of Health reported in February 1962:

> About 60% of the town is reticulated and sewage is pumped to an Imhoff tank.
>
> Effluent from the tank passes into the Waioeka River, near the confluence of the Waioeka and Otara Rivers. The Imhoff is desludged into the river through the effluent pipe.
>
> About 30% of the town has sewers laid but the houses are not connected, nor do the sewers connect with the main. This is the northern end of the town referred to in the [applied-for loan] proposal. A third pump station and rising main are required to complete the work.
>
> Finally, some 10% of the town is not included as yet in the reticulation scheme.

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[150] Resident Engineer Gisborne to Commissioner of Works, 21 August 1957. Works and Development Head Office file 96/159000. Supporting Papers #430-434.

[151] Minutes of Soil Conservation and Rivers Control Council, 18 March 1958, attached to Resident Engineer Gisborne to Commissioner of Works, 21 August 1957; and Commissioner of Works to Resident Engineer Gisborne, 24 March 1958. Works and Development Head Office file 96/159000. Supporting Papers #430-434 and 435-436.

> Sanitary conditions for the houses connected to the sewerage system are satisfactory, although there appears to be considerable ground infiltration into the sewers, presumably due to bad pipe laying.
>
> The 40% of the town not yet connected operates with septic tanks or on a night soil system.
>
> The conditions for sludge disposal are not satisfactory…. The pollution of waters receiving the sludge from the Imhoff tank gives rise to some concern.
>
> A survey was made, observing the point of discharge, from the bank and from a boat on the river.
>
> When desludging occurs, dense clouds of particulate matter are seen in the river. As the water is slow moving, even at full ebb (this is not the main channel of the river), sludge must be deposited on the river bed and along the bank. Desludging is being carried out too often for correct operation of the tank[152], usually a week or ten days between operations.
>
> At present these waters are used for fishing, and there is water skiing and yachting in the vicinity. Children swim from the town wharf some distance away on the Otara River.
>
> In the future the Council hopes to develop this area into a motor camp and recreation park and then presumably the river near the outfall will get more use.[153]

It seems hard to comprehend today that the same stretch of river could be used for sewage disposal AND rubbish dumping AND contact recreation. Yet this was the reality at Opotiki in the 1960s, a situation that had been allowed to develop despite the Board of Health's ten year old requisition. Both the Health Department and the Ministry of Works, who acted as technical advisors to the Local Authorities Loans Board, saw no difficulty with the discharge of treated effluent into the Waioeka River, drawing the line only when the discharge into the river consisted of digested sludge and inadequately treated liquid effluent. Even then they expressed their disapproval, but otherwise did nothing.

Whakatohea hapu were not consulted. So far as can be ascertained, the portion of the town most populated by Maori was the northern part that was still not connected to the sewerage scheme.

[152] The high frequency of sludge discharge meant that the effluent had insufficient time to be treated and to detoxify.
[153] Medical Officer of Health Gisborne to Director General of Health, 6 February 1962. Health Head Office file 32/172. Supporting Papers #10-12.

By 1965 the discharge into the Waioeka River was unaltered, but thinking had moved away from carrying out further improvements around the Imhoff tank to instead developing a new treatment plant site on the other side of the Otara River from the town, where oxidation ponds would be constructed. This would involve the Borough Council buying a farm and installing a suspension bridge across the Otara River to carry the sewer pipe. Treated effluent would still be discharged into the Waioeka estuary from the oxidation ponds, but the discharge outfall site would be 35 chains (about 700 metres) below the bathing area adjacent to the town wharf. According to the Ministry of Works, "the standard of effluent should be entirely satisfactory for discharge into the Opotiki Harbour"[154]. In September 1967 Cabinet approved a subsidy grant of 40% of the cost of developing the alternative treatment plant site[155].

However, that was not the end of the matter. In April 1968 a tropical storm delivered such high rainfall that if the ponds had been constructed they would have been flooded and washed away. So improvement work was undertaken beside the Imhoff tank after all:

> In July 1968 a start was made on the work and an area was fenced off in the vicinity of the Imhoff tank and sludge drying beds were constructed. The area of the beds is 1600 square feet with provision for an extension to double this size….
>
> Since the completion of the beds they have been filled 6 times, which means that approximately 40,000 gallons of sludge has been dried, this has been disposed of to a local market gardener who is prepared to take the total output. So much for the sludge, no more of which will be discharged into the Waioeka River.
>
> The next improvement envisaged is the treatment of the effluent. My Council has given me the authority to construct a 30 foot diameter rotary trickling filter…. [After draw-off of sloughings from the filter to a small drying bed] the effluent will then discharge to a chlorinator tank, and from thence into the river using the existing outfall.[156]

More recent information about the Opotiki sewage treatment system, the Opotiki rubbish dump, and other contributors to pollution of the Waioeka estuary, and about the state of water quality in the estuary, has not been researched for this report.

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[154] Commissioner of Works to Director General of Health, 12 October 1966. Health Head Office file 32/172. Supporting Papers #13-14.

[155] Paper W (67) 21 to Cabinet Works Committee, 3 February 1967, and Director of Public Health to Town Clerk Opotiki Borough Council, 5 October 1967. Health Head Office file 32/172. Supporting Papers #15-17 and 18.

[156] Report of Borough Engineer Opotiki Borough Council, undated, attached to Medical Officer of Health Gisborne to Director General of Health, 25 June 1969. Health Head Office file 32/172. Supporting Papers #19-21.

6.6 Gravel extraction

The extraction of shingle and gravel from the beds of rivers was a matter of concern raised at the hui attended in September 2017. No references to this activity were located in the Crown records examined for this report. Given that the records examined did not include the files of the Poverty Bay Catchment Board / East Cape Catchment Board (for the period 1962-1991) or the Bay of Plenty Regional Council (for the period since 1991), this is unsurprising. It was the local authorities which would have granted licences for gravel extraction.

7 Wahi Taonga

Particular features can be especially treasured places. This section of the report examines the manner in which the Crown has recognised and provided protection for such places. It looks at:

- Survey definition of Maori burial places on Crown-owned land, and their subsequent treatment,
- Protection of wahi taonga on what is now the conservation estate,
- Protection of wahi taonga under historic places legislation.

7.1 Survey definition of Maori burial places on Crown-owned land

During the nineteenth century, as the Crown embarked on development of the lands it had acquired either by confiscation or by purchase, it identified that those lands contained Maori burial sites. Some of these sites were therefore separately surveyed off as Native burial reserves which would not be released to European settlers for settlement. Such identification did not cover all burial sites, as other sites have since become known to the archaeological community. What proportion of tapu sites were separately provided for by the Crown is not known. Nor is it known how many sites were surveyed. This report looks at four surveyed sites, three on the coast (at the mouth of the Waiotahe River, at the mouth of Huntress Creek, and at the mouth of the Waioweka River), and one in the Waioweka gorge. It has not been possible in the time available to prepare this report to undertake a comprehensive search of the surveyed sites in the Whakatohea rohe, and there may be other sites besides the four discussed below.

The wahi tapu on Crown Land on Waiotahe sand spit at the mouth of the Waiotahe River is an urupa. When the rest of the Waiotahe lands were cut up into sections for farm development in the late 1860s, the spit was allocated an Allotment number (Allotment 95 Parish of Waiotahi). The area of Allotment 95 was described as being 60 acres “less Native burial ground” which was not defined or surveyed at that time[157]. However in 1884 the urupa, then apparently known as Tuamotu, was surveyed, found to have an area of 1 acre 3 roods 06 perches, and reserved under the Land Act as a Native burial-ground[158]. No evidence of any consultation with Whakatohea hapu at the time of the reservation has been identified.

[157] Gisborne survey plan SO 2804.
[158] *New Zealand Gazette* 1884 page 708. Gisborne survey plan SO 5630.

In 1981 the urupa was classified a local purpose (Maori burial ground) reserve[159]. Following this the Crown, as owner of the land, applied to the Maori Land Court to have trustees appointed[160]. In July 1983 the land was vested in the Whakatohea Maori Trust Board as trustee pursuant to Section 437(4) Maori Affairs Act 1953[161]. It is a matter of legal interpretation whether the effect of the Crown's application and the Court's order was to change the status of the land from Crown reserve to Maori Land. Such a change has been posited in one legal opinion given in 2001[162].

The second surveyed urupa at the mouth of Huntress Creek is a 3-acre Native Burial Reserve that was surveyed in 1885[163]. However, this definition of boundaries was never followed up by formally declaring the site to be a reserve under the Land Act. Today it forms part of the DOC conservation estate with a status of stewardship land.

The third surveyed urupa is on the eastern (Opotiki town) side of the Waioweka estuary. It was described as a Maori Ancestral Burial Reserve of 4 acres 2 roods 30 perches when it was surveyed in 1903[164], and was reserved under the Land Act as a Maori burial-ground the following year[165]. No evidence of consultation with Whakatohea hapu at the time of reservation has been identified. In 1965 the Maori Land Court advised that "the Whakatohea tribe now wish to have this land vested in trustees so that they can move to have it declared a Maori reservation"[166]. Whakatohea's concerns arose from a newspaper report that the remains of two bodies had been unearthed on the site by a Catchment Board bulldozer[167]. A report by a field officer then noted:

> There is no record of any burials having taken place in the Opotiki County office. However, local enquiries with local people reveal that Maori burials have taken place

[159] *New Zealand Gazette* 1981 page 3229.
[160] Application for determination of trustees, 14 March 1983. Lands and Survey Gisborne file 8/76. Supporting Papers #247.
[161] Maori Land Court minute book 60 Opotiki 34, and Order of the Court, 7 July 1983. Copy on Lands and Survey Gisborne file 8/76. Supporting Papers #248 and 249.
[162] Email Office Solicitor Napier to N Proctor, Gisborne, 30 July 2001. Lands and Survey Gisborne (subsequently Conservation Gisborne) file 8/76. Supporting Papers #250.
[163] Gisborne survey plan SO 2855. Allotment 462 Parish of Waiotahi. A possible name for the urupa (Te Akeake) is recorded on the survey plan.
[164] Allotment 374 Parish of Waioeka. Gisborne survey plan SO 2890.
[165] *New Zealand Gazette* 1904 page 2703.
The urupa was classified a local purpose (Maori burial ground) reserve in 1981 (*New Zealand Gazette* 1981 page 3229).
[166] Deputy Registrar Maori Land Court Rotorua to Commissioner of Crown Lands Gisborne, 12 July 1965. Lands and Survey Gisborne file 8/76. Supporting Papers #237.
[167] Deputy Registrar Maori Land Court Rotorua to Commissioner of Crown Lands Gisborne, 4 October 1966. Lands and Survey Gisborne file 8/76. Supporting Papers #239.

> as recently as ten years ago. My informants to these enquiries were a Mrs Kiri of Otara Road and Mrs Read, an old resident of the district, also of Otara Road.[168]

Because the reserve was Crown-owned, it was necessary for the Crown to be the applicant to the Maori Land Court asking it to determine beneficial ownership of the reserve and to appoint trustees[169]. In July 1967 the Court vested the reserve in five named trustees to hold the land in trust "as a burial ground for the benefit of Maoris and all persons who are descendants of a Maori"[170]. It is a matter of legal interpretation whether the effect of the Crown's application and the Court's order was to change the status of the land from Crown reserve to Maori Land. As with the urupa on Waiotahe spit, such a change has been posited in one legal opinion given in 2001[171]. However, that was not the view held by the Department of Lands and Survey in 1983, when it treated the reserve as still being Crown-owned subject to the Reserves Act, and classified it as a local purpose (Maori burial ground) reserve[172]. The urupa is known as Te Roto[173].

The surveyed urupa in the Waioweka gorge is on the true left bank of the Waioweka River a short distance upstream of its confluence with the Oponae Stream. This location was originally part of Tahora 2B Section 1 block awarded to the Crown in April 1896. It was not identified as an urupa on any of the Tahora 2 survey plans. However, when the Crown cut up Tahora 2B Section 1 for settlement in 1909, the survey plan records a Native Burial Reserve of 1 acre 0 roods 35 perches on the bank of the Waioweka River[174]. No evidence of any consultation with Whakatohea hapu at the time of survey has been identified. Like the Huntress Creek urupa, this site has never been reserved under the Land Act. Because it was not identified during the land allocation exercise that accompanied the establishment of the Department of Conservation in 1987[175], it is probably administered today by Land Information New Zealand.

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[168] Field Officer Dickson to Commissioner of Crown Lands Gisborne, 27 April 1966. Lands and Survey Gisborne file 8/76. Supporting Papers #238.
[169] Commissioner of Crown Lands Gisborne to Registrar Maori Land Court Rotorua, 28 February 1967, and Commissioner of Crown Lands Gisborne to Judge Maori Land Court Rotorua, 14 June 1967. Lands and Survey Gisborne file 8/76. Supporting Papers #240 and 241.
[170] Maori Land Court minute book 42 Opotiki 206-207, and Order of the Court, 20 July 1967, attached to Registrar Maori Land Court Rotorua to Commissioner of Crown Lands Gisborne, 4 August 1967. Lands and Survey Gisborne file 8/76. Supporting Papers #242-245.
[171] Email Office Solicitor Napier to N Proctor, Gisborne, 30 July 2001. Lands and Survey Gisborne (subsequently Conservation Gisborne) file 8/76. Supporting Papers #250.
[172] *New Zealand Gazette* 1981 page 3229.
[173] Registrar Maori Land Court Rotorua to Commissioner of Crown Lands Gisborne, 28 January 1981. Lands and Survey Gisborne file 8/76. Supporting Papers #246.
[174] Gisborne survey plan SO 3108.
[175] It is not shown as one of the lands allocated to the Department of Conservation on Gisborne survey plan SO 8145.

There are no apparent reasons why these various urupa should have been subject to different land status treatments by the Crown, other than an apparent unawareness of their existence at particular moments in history. Gaps in historical understanding are capable of being rectified today by close cooperation between the Crown and Whakatohea hapu.

7.2 Protection for wahi taonga on the conservation estate

One such place that was brought to the Crown's attention and was acted upon was the tapu puriri tree in the Hukutaia Domain. While contemporary documents written when the tree's cultural and traditional significance became known to the Crown and to Opotiki Europeans have not been located, later written records suggest that a surveying party discovered koiwi lodged in the tree in either the late 1910s or the early 1920s. The Hukutaia estate of a Mr Hutcheson had been purchased by the Crown in 1918 or 1919 and was being surveyed into sections for settlement by World War I returned servicemen. As a result of the discovery it was decided that the tree would be protected in a 10-acre reserve. When the allocation of lands to returned servicemen proceeded as the Hukutaia Settlement, but before the 10 acres had been reserved, the serviceman awarded the neighbouring land started lobbying for the lifting of the proposed reservation and the granting of the land to him. In May 1925 Opotiki Borough Council then inquired on what terms the reservation had been made, as "Council understands that an area of 10 acres was set aside to protect a certain puriri tree of historic value"[176]. The Council was told that there was no intention to lift the reservation, which was "cut out at the request of the local people in order to conserve a tree of historic value"[177]. In a note added to the file copy of this reply to the Borough Council it was stated:

> This area was reserved at the request of the Opotiki Borough Council. It was represented that the puriri tree was of historic value. I understand that when the Settlement was being surveyed, one of Mr Barlow's men found some bones in a hollow of the tree, and in conversation with some of the members of the Council mentioned the fact. It was immediately assumed that some historic event had occurred there, and application was made for reservation. It is not mentioned that the bones were human.
>
> Please refer the Council to their letter asking for reservation, and ask if there is any definitive Maori tradition connected with the tree. If not there is no reason why the section should not be included in [the neighbour's] lease.[178]

[176] Town Clerk Opotiki Borough Council to Commissioner of Crown Lands Gisborne, 27 May 1925. Lands and Survey Gisborne file 8/67. Supporting Papers #229.
[177] Commissioner of Crown Lands Gisborne to Town Clerk Opotiki Borough Council, 30 May 1925. Lands and Survey Gisborne file 8/67. Supporting Papers #230-231.
[178] File note by Commissioner of Crown Lands Gisborne, 10 July 1925, on Commissioner of Crown Lands Gisborne to Town Clerk Opotiki Borough Council, 30 May 1925. Lands and Survey Gisborne file 8/67. Supporting Papers #230-231.

In response to this approach[179], the Mayor of Opotiki telegraphed that "this reserve has a definite Maori tradition, and is suitable for domain purposes on these grounds"[180].

On that basis a survey plan of the 10-acre reserve was prepared in January 1926. The plan records the location within the proposed reserve of the tapu puriri tree, with a note:

> This tree was used by the Hauhaus as a mausoleum. When the trunk rotted [many] skeletons were exposed.[181]

Referring to "Hauhaus" might have been standard language in the nineteenth century, but is simply derogatory in the twentieth century. However, there was no attempt made to edit the language used by the surveyor. Following the preparation of the survey plan, the patch of bush containing the puriri was reserved for recreation[182] and declared to be a public domain[183]. There was no direct contact made by the Crown with Whakatohea hapu at the time of reservation in order to learn about or seek to understand the cultural and traditional significance of the tree. As a domain a Domain Board of local persons was elected at a public meeting and appointed by the Minister of Lands; none of the members of the Domain Board were Maori, nor did the Crown identify that there might be any value from having Upokorehe represented on the Board.

Subsequently the Crown became aware (though exactly when is not known) that the puriri is named Taketakerau, and is a wahi tapu of Upokorehe hapu. The extent of the Crown's knowledge was incorporated into an article about Hukutaia Domain that was prepared in 1966 in the Gisborne office of the Department of Lands and Survey for publication in a motoring magazine. This stated:

> The story of events which resulted in creation of the Domain is as follows: In 1919 the great Hukutaia estate was purchased by the Crown from Mr EM Hutchinson for returned soldier settlement. When the Settlement was being surveyed a surveyor found some bones in the hollow of a giant puriri tree. Thinking the bones may have been human remains he mentioned his discovery to the local townspeople, and the Maori Chiefs immediately appealed to the Opotiki Borough Council to have their sacred puriri tree "Taketakerau" preserved.
>
> The reason for the Maori chiefs' concern was this: Before the land around Opotiki was taken over for European settlement it was occupied by the Upokorehu subtribe of the Whakatohea tribe. To these people the area surrounding the giant puriri tree was sacred. Some years after burial the bones of the distinguished dead were exhumed

[179] Commissioner of Crown Lands Gisborne to Town Clerk Opotiki Borough Council, 14 July 1925. Lands and Survey Gisborne file 8/67. Supporting Papers #232.
[180] Telegram Opotiki Borough Council Mayor to Commissioner of Crown Lands Gisborne, 9 September 1925. Lands and Survey Gisborne file 8/67. Supporting Papers #233-234.
[181] Gisborne survey plan SO 3340.
[182] *New Zealand Gazette* 1926 page 1370.
[183] *New Zealand Gazette* 1926 page 1837.

> and with much ritual (including on occasions the sacrifice of slaves) scraped and painted with oxide of iron and deposited in the hollow puriri tree where they could not be found and put to base purposes by enemies. The tree was highly tapu, and any desecration of the tapu was a deadly affront to the tribal atua (ancestral gods) and brought death to offenders.
>
> Although an area of 10 acres of native bush was set aside and shown on records and maps as a public domain, it was never actually gazetted as such until in 1925 a local settler applied to purchase the area. Public feeling in the district ran high against the prospect of losing this reserve, and it was decided to proceed with the permanent reservation of it. After a boundary alteration increasing the area to 11 acres, it was first permanently reserved as a recreation reserve, … [then] it was further proclaimed public domain, named Hukutaia Domain, … [after which] the first Domain Board, comprising five returned servicemen and two civilians, was appointed.[184]

There was no consultation with Upokorehe during the preparation of the article.

Another place where the Crown has made provision for the protection of a site of historic significance to Whakatohea hapu is the Waiotahe spit. The 1884 reservation of the 1¾-acre urupa on the spit has already been referred to. Shortly after classification of the urupa reserve in 1981 the remainder of the Waiotahe spit, which was still Crown-owned, was surveyed and reserved, with the western portion of 21.3300 hectares declared to be a scenic reserve and the eastern portion of 10.2500 hectares, which surrounded Tuamotu, declared to be an historic reserve[185]. While reservation of the spit arose from concerns that stock grazing and motorised recreation were harming the birdlife that was present[186], and a proposal to site a rubbish dump there[187], consultation with the local representative of the New Zealand Archaeological Association drew attention to the historic features that were also present[188]. These included a pa site as well as the urupa. The pa overlooks important pipi beds in the estuary and as a consequence, while small, had been in use over a long period of time in pre-European days.

> The eastern end of the sand-spit that includes the pa has always been considered extremely "Tapu"…. Thirty years ago no Maori would dare set his foot above the high water mark on the northern shore. Europeans who ventured onto the pa, the burial

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[184] Draft article on Hukutaia Domain, undated (approximately early 1966). Lands and Survey Gisborne file 8/67. Supporting Papers #235-236.
An edited version of the draft article was published in *New Zealand Motor World*, Christmas 1966 edition, page 28. Copy on Lands and Survey Head Office file 1/820. Supporting Papers #149.

[185] Gisborne survey plan SO 6887. *New Zealand Gazette* 1982 page 4324.
The western and eastern portions were classified a scenic reserve and an historic reserve respectively the following year (*New Zealand Gazette* 1983 page 337).

[186] MLH Williams, Opotiki, to Commissioner of Crown Lands Gisborne, 10 June 1977. Lands and Survey Gisborne file 13/167. Supporting Papers #264.

[187] G Cox, Opotiki, to Commissioner of Crown Lands Gisborne, 20 November 1977. Lands and Survey Gisborne file 13/167. Supporting Papers #271-272.

[188] Reserves Ranger Gisborne to Commissioner of Crown Lands Gisborne, 6 October 1977. Lands and Survey Gisborne file 13/167. Supporting Papers #265-270.

area, or even the sand hills near there would sometimes find themselves being told to get off the area by an angry elder of the Whakatohea.[189]

Despite being alerted by this advice to the significance of the sand-spit to Whakatohea, the only consultation with the iwi between receiving the advice in October 1977, and reserving the eastern end of the spit for historic purposes in 1982, concerned a name for the proposed reserve. This aspect of the relationship between Whakatohea hapu and the Crown is discussed in another section of this report.

Besides the Waiotahi Spit Historic Reserve, the Department of Conservation's Conservation Management Strategy for the East Coast Conservancy, approved in October 1998, records one other historic reserve in the Whakatohea rohe. This is Hine Rae Historic Reserve located on the opposite bank of the Waioweka River from Waioweka Pa. While bush-covered, there is an historic pa site on the reserve. The background to the reserve has not been researched for this report.

7.3 Protection for wahi taonga under historic places legislation

The general protection for archaeological sites is set out in Heritage New Zealand Pouhere Taonga Act 2014. This defines an archaeological site as a site more than 100 years old, and makes it an offence to disturb it. Pouhere Taonga Heritage New Zealand (formerly the Historic Places Trust) also maintains the New Zealand Heritage List, a register of the most significant historic sites that are accorded by right protection in district plans prepared under the Resource Management Act 1991. As at August 2017, the Heritage List contained a nationwide total of 5720 sites. Within the Whakatohea rohe, twenty sites are on the List. Of the 20 sites, 14 are European buildings in Opotiki town, one is a European building outside town, one is the war memorial in Opotiki, and two are road bridges in the Waioweka gorge. That leaves just two sites listed because of their Maori history. These are:

- Hiwarau, covering the site of Whakarau gunfighter pa, Matekerepu pa, and urupa and prehistoric gardens located on a large ridge extending from Matekerepu pa to Ohiwa Harbour[190],
- Waiwhero, near the mouth of the Waiaua River, covering the site of Te Awahou battleground, Rahui Whakaraeto burial ground and an adjacent lake[191].

[189] D White, NZ Archaeological Association Opotiki representative, to Reserves Ranger Gisborne, undated, attached to Reserves Ranger Gisborne to Commissioner of Crown Lands Gisborne, 6 October 1977. Lands and Survey Gisborne file 13/167. Supporting Papers #265-270.
[190] Heritage List number 7455. New Zealand Archaeological Association site numbers W15/170, W15/173 and W15/779.
[191] Heritage List number 7463.

Both are categorised as wahi tapu areas[192].

The limitations of the Crown's response to wahi taonga protection at the national level are[193]:

- There has been no systematic coverage or assessment of the country; national recognition relies on the enthusiasm of individuals in the community and on the staff of Pouhere Taonga Heritage New Zealand;
- The process of protection relies on hapu handing over their knowledge about a site to a non-Maori agency and allowing that information to become public knowledge; the registration assessment procedures give hapu little say on what is done with the knowledge they hand over;
- The criteria for inclusion on the Heritage List are weighted towards academic and scientific notions of heritage value, to the extent that tangata whenua notions of taonga value become subordinated;
- There is an inbuilt expectation that the Heritage List will contain only the most elite of sites of historic significance; the process of inclusion of a site on the List is a complex even daunting procedure aimed at whittling down the number of sites to be considered worthy of inclusion;
- Inclusion on the Heritage List does not guarantee any protection for listed sites; Pouhere Taonga Heritage New Zealand does not take on any responsibilities or obligations for active protection, other than having a statutory responsibility to alert local authorities to include protection in their district plans;
- Pouhere Taonga Heritage New Zealand does not take on any ongoing partnership duties with landowners of sites that are listed, or with tangata whenua.

The Waiotahe and Waioweka urupa described in the earlier subsection on survey definition of urupa are located on the coastal sand dunes. They are not the only such wahi tapu along the coast. When the Waiotahi Drifts housing subdivision was developed in the early 2000s, it was made a condition of land use consent under the Resource Management Act that if koiwi were discovered during the construction period then Whakatohea would be alerted to their presence, and given a chance to remove them. A section of the subdivision (Lot 255 DP 334774) was allocated to Whakatohea as a re-burial site. This turned out to be a

[192] The Heritage List has six categories of registered sites – historic place category 1, historic place category 2, historic area, wahi tapu, wahi tapu area, and wahi tupuna. Historic areas and wahi tapu areas can broadly be distinguished from historic places and wahi tapu respectively by containing a grouping of multiple features of historical and cultural significance.

[193] D Alexander, *Environmental issues and resource management (land) in Taihape Inquiry District, 1970s-2010*, September 2015, report to the Waitangi Tribunal Wai 2180 Document #A38, pages 150-187.

necessary protection, as during excavation works for the subdivision koiwi were unearthed. At one stage there was a protest by certain members of Whakatohea, who wanted the koiwi to be re-buried where they had been found rather than relocated to the allocated section.

8 Indigenous Species

8.1 Pigeons

Pigeons (kereru) have been the subject of nationwide controls on hunting since the 1860s. However the controls set by the Crown were widely ignored, with both early settlers and Maori relying on the bird as a food source. The first European settlers in the Waioeka Gorge employed Maori bushmen on contract to fell the native forest prior to burning it.

> They would work until almost dark, then trudge back to camp. They would get a good fire going and a billy of spring water to boil for a much needed and welcome mug of tea. One would then prepare the dough for their camp oven bread – another would prepare probably wild pork or beautiful pigeons to cook in a camp oven with potatoes and anything else available such as kumaras, puha or water cress.[194]

Hunting and eating kereru was therefore considered to be a normal rural activity during the nineteenth and early twentieth century by both Maori and European settlers.

The Crown's imposition of restrictions and eventually a total ban on pigeon hunting has been examined by Feldman in a research report for the Wai-262 claim[195], and his catalogue of the slowly-tightening legislation has been summarised in a report for the Te Paparahi o Te Raki / Northland (Wai-1040) Inquiry (where pigeons are known as kukupa)[196]:

[194] M Spencer, *The Waioeka pioneering saga*, 1992, self-published, page 14.
[195] JW Feldman, *Treaty rights and pigeon poaching: alienation of Maori access to kereru 1840 – 1960*, Waitangi Tribunal, 2001. Wai-262 Document #K7.
[196] D Alexander, *Land-based resources, waterways and environmental impacts*, November 2006. Wai-1040 Document #A7, pages 713-714.

1864	Wild Birds' Protection Act. Kukupa can be hunted only during a hunting season of April to July inclusive, in areas proclaimed by the Governor. Kukupa cannot be sold outside the hunting season.
1865	Protection of Certain Animals Act. Season for kukupa hunting amended to May to August. Use of snares and traps prohibited.
1866	Protection of Certain Animals Act Amendment Act. Kukupa classified as game, requiring a licence to be held by hunters.
1867	Protection of Animals Act. Acts of 1864, 1865 and 1866 repealed. Hunting season reverted to April to July. Kukupa classified as native game, but no restrictions on how they may be killed. Act applied to all parts of New Zealand except those areas exempted by the Governor.
1868	Protection of Animals Act Amendment Act. Kukupa ceased to be classified as native game, so no restrictions on hunting applied.
1872	Protection of Animals Act. Kukupa again classified as native game, and made subject to the hunting season, whose start and end dates would be set by the Governor.
1873	Protection of Animals Act. Acts of 1867, 1868 and 1872 repealed. Kukupa classified as native game, which could only be hunted during seasons defined by the Governor. No restrictions on hunting methods.
1880	Animals Protection Act. Act of 1873 repealed. Kukupa classified as native game, which could only be hunted during seasons defined by the Governor. No restrictions on hunting methods.
1881	Animals Protection Act Amendment Act. The Governor could extend, limit or modify the hunting season.
1889	Animals Protection Act Amendment Act. Sale of native game restricted.
1895	Animals Protection Act Amendment Act. Closed season for kukupa hunting during 1896 and every subsequent sixth year.
1900	Animals Protection Act Amendment Act. Season for kukupa hunting set as May to July. Closed season for kukupa hunting amended to 1901 and every subsequent third year.
1903	Animals Protection Amendment Act. Season reset as May to July.
1907	Animals Protection Act. Hunting by snare or trap not allowed. Native game could not be preserved beyond the hunting season.
1908	Animals Protection Act. Acts of 1880, 1881, 1889, 1895, 1900, 1903 and 1907 repealed, and all these former provisions consolidated into the new Act.
1910	Animals Protection Amendment Act. Presumption reversed, so that instead of all birds being able to be hunted unless legislation provided otherwise, all birds were protected unless legislation allowed hunting. Ability to preserve game beyond the hunting season restored.
1921-22	Animals Protection and Game Act. Kukupa absolutely protected, unless special permission obtained from the Governor.
1953	Wildlife Act. Kukupa absolutely protected. (This Act still in force at 2006.)

This catalogue demonstrates the initial setting of a season when hunting of pigeons was allowed, followed in 1895 by the closing of the hunting season on a periodic basis. Further tightening eventually led to absolute protection for kereru by 1921. While Maori tended to have a preferred hunting time of year when the meat was more flavoursome, these Crown controls were not apparent at the local level in the Whakatohea rohe, with both Maori and Europeans continuing to depend on pigeon as a food source well into the 1920s. Policing of the hunting controls relied on Police staff at Opotiki, for whom administration of the wildlife legislation is likely to have been a low priority, and on honorary rangers working for Opotiki Acclimatisation Society, whose emphasis and interest lay with the hunting of game birds such as pheasants and ducks. Hunters had to be caught in the act in the bush for any prosecution to be successful. The demise of the Acclimatisation Society in 1929 and its replacement by the Crown's own wildlife officials based in Rotorua would have made little difference to the policing of the legislation in what was a distant and isolated part of the Rotorua Acclimatisation District such as the Whakatohea rohe.

An idea of the extent to which pigeon hunting by Whakatohea hapu was a normalised activity can be gleaned from some correspondence in 1944. A tribal representative wrote to the Native Minister:

> The Whakatohea tribe is forwarding to the Maori Battalion this month a consignment of Maori delicacies for Xmas.
>
> I have been instructed to write and ask you to see if we could get permission to get some wild pigeons to preserve and forward with our consignment of Maori delicacies. I would like you to consider this appeal urgent[ly] and let me know as soon as possible if this privilege could be granted.[197]

The Native Minister passed the request to his colleague the Minister of Internal Affairs, who was advised by Wildlife Branch officials:

> These birds, of course, are absolutely protected under the Animals Protection and Game Act 1921-22, and I cannot recommend that permission as asked for be granted.[198]

The Minister followed this advice in his reply[199].

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[197] Honorary Secretary Whakatohea Tribe to Native Minister, 4 September 1944. Internal Affairs Head Office file 46/12/11. Supporting Papers #135.

[198] Under Secretary for Internal Affairs to Minister of Internal Affairs, 8 September 1944. Internal Affairs Head Office file 46/12/11. Supporting Papers #136.

[199] Minister of Internal Affairs to Native Minister, 8 September 1944. Internal Affairs Head Office file 46/12/11. Supporting Papers #137.
It is worth noting that the official refusal to consider any relaxation of pigeon protection for the benefit of Maori Battalion servicemen was a policy that had been established the previous year, in August 1943. This is discussed in JW Feldman, *Treaty rights and pigeon poaching: alienation of Maori access to kereru 1840 – 1960*, Waitangi Tribunal, 2001. Wai-262 Document #K7, pages 49-50.

However the officials went further and alerted Rotorua wildlife staff to the possibility that hunting might be taking place:

> The Hon Native Minister … was advised that the native pigeon is absolutely protected under the Animals Protection and Game Act 1921-22, and that in the circumstances it was not possible to grant the request.
>
> Possibly the natives may attempt to take the birds without authority, and you should keep the area under special observation, with a view if possible to preventing this.[200]

A ranger based in Whakatane then reported back:

> I made inquiries … and was informed that about last May the local Maoris of that area migrated from their pahs to the Maungapoatu [sic] and shot many pigeons. The expedition might have been 300 strong.
>
> Pakehas were curious as to the source of ammunition used by the Maoris, and were informed that the Government supplied them with ammunition for this purpose. Pigeons were about that time sent to Rotorua and consumed at a Ministerial dinner.[201]

The ranger added the following month:

> I have heard from a local informant that native pigeons are being sent away to the Maori troops overseas in sealed cake tins, and that this practice has been followed for some time. It was strongly hinted that an official attempt to interfere with this will bring about dangerous repercussions amongst the Maoris both in NZ and particularly those serving overseas. This makes an investigation a policy matter of no minor degree of importance.
>
> Regarding the source of ammunition, I can get nothing definite on this matter, but the original statement that the ammunition was supplied by the Government has now been amended to a suggestion that the ammunition was supplied from Government stores by some person who had access. The ammunition was shotgun cartridges.
>
> I can obtain nothing more about the Ministerial dinner.
>
> So far as the application to the Hon Minister of Native Affairs to secure and forward pigeons to the Maori Battalion is concerned, this appears to be peculiar in the light of the cake-tin traffic, which would offer all the export facility required.
>
> You will of course appreciate that all the information you have received to date from me is second-hand and passed on to you through me.[202]

On the basis of these two reports, the Conservator of Fish and Game in Rotorua wrote to Wellington:

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[200] Under Secretary for Internal Affairs to Conservator of Fish and Game Rotorua, 21 September 1944. Internal Affairs Head Office file 46/12/11. Supporting Papers #138.

[201] Ranger Whakatane to Conservator of Fish and Game Rotorua, 28 September 1944, attached to Conservator of Fish and Game Rotorua to Under Secretary for Internal Affairs, 7 November 1944. Internal Affairs Head Office file 46/12/11. Supporting Papers #139-141.

[202] Ranger Whakatane to Conservator of Fish and Game Rotorua, undated (October 1944), attached to Conservator of Fish and Game Rotorua to Under Secretary for Internal Affairs, 7 November 1944. Internal Affairs Head Office file 46/12/11. Supporting Papers #139-141.

> Ranger Francis was first advised on the 19th September last to make inquiries as it was thought at that time of year possibly pigeons were being brought down from the Urewera country. Whether there is any truth in the reports remains to be seen, but there is no doubt that the Maori question of poaching both fish and game in this district is one that is causing some concern. We get no support from leading Maoris in this District whatever, although they are paid the ridiculous sum of nine thousand pounds a year in connection with the fisheries.
>
> The class of Maoris that we have to deal with, particularly in Rotorua, are very unsatisfactory and they are certainly not the class of men to set an example to the various tribes. It is of course not known where the cartridges were obtained, but the Maoris are certainly not the only ones in this District that are procuring shotgun cartridges.[203]

The extent to which these intemperate remarks can be ascribed to the Whakatohea situation is not clear. Much of the general tenor of the reports by the ranger at Whakatane seem more relevant to the Urewera country, and the references to a payment for fisheries access is probably about the arrangements made with Tuwharetoa with respect to Lake Taupo. However, because the Whakatohea rohe was in the district administered at that time by the Conservator of Fish and Game, the applicability of the remarks to Whakatohea hapu cannot be dismissed entirely.

The Under Secretary replied:

> Insofar as the sending away of pigeons in cake-tins to the Maori troops is concerned, if there is anything in the suggestion I am afraid that this Department could not possibly face that problem.
>
> The only way in which we will ever deal with pigeon poaching is at the time of taking the birds. The special raids made by the two officers sent to Rotorua some time ago were most successful, and when we have the staff available again something along these lines will have to be arranged. This does not mean, of course, that any of the Rotorua Acclimatisation District staff should not attempt to detect any pigeon poachers.[204]

Nothing has been located in Crown records to suggest that the so-called “special raids” targeted the Whakatohea rohe; it is likely that such “raids” occurred close to Rotorua.

The Crown remained hamstrung by insufficient staff to undertake ranging throughout the Rotorua Acclimatisation District on a consistent basis. Research for this report has not identified any ranger reports specifically about pigeon shooting in the Whakatohea rohe dated prior to 1965. A report that year recorded an instance of shooting in “the Waiotahi bush”. A European informant met four Maori men at a hut in the bush shortly after shots had

[203] Conservator of Fish and Game Rotorua to Under Secretary for Internal Affairs, 7 November 1944. Internal Affairs Head Office file 46/12/11. Supporting Papers #139-141

[204] Under Secretary for Internal Affairs to Conservator of Fish and Game Rotorua, 14 November 1944. Internal Affairs Head Office file 46/12/11. Supporting Papers #142.

been heard; “pigeon feathers were scattered around, and one bulging sugar bag of plucked pigeons was outside the hut”:

> Pigeons and pigeon shooting was discussed. The Maoris stated that the pigeons were then on the hinau, and they do not take many then [April] but waited until May. When the pigeons were on the miro, then they would have a fair go.
>
> These Maoris stated that they were not worried about Rangers, and knew how to deal with any that were unlucky enough to get into the area.
>
> [The informant] said that he had never seen so many plucked pigeons in his life. He said that it was the accepted thing for a person in the bush for a few days to take one or two. He stated to me that he was very annoyed with the Maoris because their shotgun shooting all day completely ruined his deer stalking. He did not appear to be at all concerned about the birds being shot.

The ranger added that he was concerned about the amount of pigeon shooting in the Urewera country and lands to the east as far as the Raukumara Range. “In the near future when we operate in these areas”, he considered that “four of our toughest rangers” would be needed. Even then they would be operating at a serious disadvantage because “we do not have any officer who has intimate knowledge of these bush areas, and the offenders have been practically born and bred there”[205]. However, the report and its request to form a law enforcement team for this particular part of the wildlife district came to nothing, as no staff could be spared for the task.

The ranger’s report did, however, prompt some comments from the Assistant Conservator of Wildlife in Rotorua, who had a long period of experience in the district. He gave as his opinion that in many parts of the Rotorua wildlife district, pigeon poaching was not as rife and serious as it had been 15 years earlier:

> My experience tells me that broadly speaking over the bulk of the area we have the pigeon poaching under control. There are, however, certain localities where I feel we do not have control, and these are the Bay of Plenty – East Coast areas.[206]

8.2 Titi[207]

Muttonbirds (titi) have traditionally been harvested by Whakatohea hapu on Whakaari (White Island). The species involved is the grey-faced petrel, which differs from the species of titi,

[205] Senior Field Officer (Law Enforcement) Rotorua to Conservator of Wildlife Rotorua, 6 May 1965, attached to Conservator of Wildlife Rotorua to Controller Wildlife Branch, 20 September 1965. Internal Affairs Head Office file 46/12/11. Supporting Papers #143-148.
[206] Assistant Conservator of Wildlife Rotorua to Conservator of Wildlife Rotorua, 17 September 1965, attached to Conservator of Wildlife Rotorua to Controller Wildlife Branch, 20 September 1965. Internal Affairs Head Office file 46/12/11. Supporting Papers #143-148.
[207] This section relies in part on previous research on the topic: D Alexander, *Land-based resources, waterways and environmental impacts*, November 2006. Wai-1040 Document #A7, pages 730-783.

sooty shearwater, harvested on Stewart Island. Up until 1954 harvesting of titi by Whakatohea hapu was a solely Whakatohea affair unaffected by Crown involvement locally, though possibly affected by the privately-owned nature of the island. This was despite the killing of indigenous bird species, which by definition included titi, being prohibited by law in the Animals Protection and Game Act 1921. While this statute provided an exception for muttonbird harvesting on Stewart Island, the exception did not extend to northern North Island titi harvesting[208]. Thus harvesting on Stewart Island was legal, while harvesting in the Bay of Plenty was illegal.

The Crown was aware of Whakatohea hapu harvesting titi on Whakaari at least in 1942, and probably earlier. The 1942 reference on file was a letter from Dr Oliver, Director of the Dominion Museum:

> When I was in White Island in 1912, a party of Maoris came over from Opotiki and took a number of young grey-faced petrels from burrows on the Island.[209]

At this time the Crown was also aware of the illegality of the harvesting on Whakaari, because the Under Secretary for Internal Affairs briefed the Minister of Internal Affairs:

> Dr Falla [Director of Canterbury Museum] advised [a correspondent] that the Bay of Plenty species was the Grey-Faced Petrel which is absolutely protected under the Act, and he raised the point with this Department as to whether steps should not be taken to legalise the taking of Grey-Faced Petrels by the Bay of Plenty Maoris.
>
> Dr Oliver has referred to this as a longstanding practice which apparently was not affected by the passing of the Animals Protection and Game Act 1921-22. He says that it is apparent that the Government would be placed in an indefensible position should anyone attempt to prevent the Maoris taking the birds…. He concurs in Dr Falla's views that very little harm is done by the Maoris, and as only a small portion of the young birds is actually taken he thinks that there is no necessity to interfere with the practice. He is of opinion that it would be better for it to be legalised, at least along the north-east coast of the Auckland Province, but thinks it would be preferable to leave the matter alone until there is a revision of the Act rather than to make a special Order in Council omitting the species from the schedule of absolutely protected birds….
>
> I recommend that the matter stand over meantime.[210]

The Minister agreed that "this matter might well be left over until better times when we are considering some revision of the law"[211].

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[208] The grey-faced petrel was absolutely protected by virtue of Section 3 and inclusion in the First Schedule to the Animals Protection and Game Act 1921, while the sooty shearwater (the species harvested as titi on Stewart Island) was not included in the First Schedule.

[209] Director Dominion Museum to Under Secretary for Internal Affairs, 27 February 1942. Internal Affairs Head Office file 46/5/6. Supporting Papers #96.

[210] Under Secretary for Internal Affairs to Minister of Internal Affairs, 12 March 1942. Internal Affairs Head Office file 46/5/6. Supporting Papers #97.

The review of the 1921-22 Act and its replacement by the Wildlife Act 1953 provided an opportunity to address the anomaly. Section 6 and the Third Schedule of the 1953 Act treated both northern and southern muttonbirds similarly by allowing the Minister of Internal Affairs to notify the circumstances under which grey faced petrels and sooty shearwaters respectively could be hunted or killed. It was the responsibility of the Wildlife Branch of the Department of Internal Affairs to advise the Minister on who could harvest titi in the northern North Island and in what manner. Officials drew up some draft conditions and decided to consult with the Maori communities that were already engaged in titi harvesting[212].

The consultation took the form of six meetings in October and November 1954 at Kaeo, Opoutere (near Whangamata), Tauranga, Whakatane, Opotiki and Matairehe (Great Barrier Island). The Opotiki meeting was attended by members of the Whakatohea Tribal Executive[213] and the Horouta Tribal Executive of Whanau a Apanui. Commenting on the six meetings generally, the report on the consultation reported that:

> These people were very pleased to know the Department had considered their opinions worth hearing before the issue of the notification, and stated this was the first time anything like this had happened to them.[214]

Another remark, made with respect to the Opoutere meeting but probably equally reflective of all six meetings, was that:

> These people, like the Kaeo people, had expected they were going to be prohibited from taking any more muttonbirds, and when they discovered this was not so were very gratified….[215]

The record of the Opotiki meeting shows broad agreement with the draft conditions, with 20 of a total of 23 proposed requirements supported. The three proposals on which comment was made were for a slightly longer open season than proposed for Wildlife Branch officials, for the tribal leader who would issue permits to be given additional status or standing by being formally appointed by the Wildlife Branch, and for the tribal leaders to be given the authority to fine hunters who breached the regulations:

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[211] Minister of Internal Affairs to Under Secretary for Internal Affairs, 16 March 1942, on Under Secretary for Internal Affairs to Minister of Internal Affairs, 12 March 1942. Internal Affairs Head Office file 46/5/6. Supporting Papers #97.

[212] File note by Senior Field Supervisor, 14 July 1954. Internal Affairs Head Office file 46/5/3. Supporting Papers #76-85.

[213] Those present on behalf of the Whakatohea Tribal Executive were Boris Black (Chairman), N Kiwara, Bill Manuel and Pomare Wi Kotu.

[214] Senior Field Officer Bell to Senior Field Supervisor, 23 November 1954. Internal Affairs Head Office file 46/5/3. Supporting Papers #86-95.

[215] Senior Field Officer Bell to Senior Field Supervisor, 23 November 1954. Internal Affairs Head Office file 46/5/3. Supporting Papers #86-95.

Clause 6
They asked for a season from 2nd Saturday in November to 7 December.

Clause 9
These people said they would like the appointment of the supervisor to be done by this Department. Mr Newcombe stated perhaps that could be done if the Maori organisation made the recommendation first.

Clause 21
At present if any birders commit a breach of the accepted rules the Tribal Committee fine him on the spot and retain the fine. This money is used to help defray some of the costs of the trip. They would like to have the right to receive the fine for breaches of the Minister's Notification and to continue to fine people on the spot.

Suggestions
They were keen that forms in booklet form be supplied to them for the issue of all permits.

They suggested we should write to the Tribal Executives or Committees and ask them to define which areas in the Bay of Plenty that should be allotted to each tribe or section of people in the Bay of Plenty. It would appear that perhaps they anticipated some overlapping on the limited amount of birding territory available.[216]

The Minister's Notification was eventually issued as the Grey-Faced Petrel (Northern Muttonbird) Notice 1957[217]. This authorised permits for harvesting on White Island to be issued by Whakatohea Tribal Executive or Horouta Tribal Executive to any "bona fide member of the tribe or hapu over which that [Executive] exercises jurisdiction and who permanently resides in the district of that [Executive]". Either of these two Tribal Executives were also authorised to issue a permit "to any person who is qualified to receive a permit from the Ranginui Tribal Executive or the Ngatiawa Tribal Executive".

This latter provision was put into the Notice at the suggestion of Internal Affairs officials and to recognise local arrangements that were made. The suggestion had been made in a letter to the District Officer of the Maori Affairs Department:

> If the people of Opotiki and Te Kaha are agreeable, we could add a proviso to the clause dealing with the issue of permits enabling in the case of White Island for the two Tribal Executives mentioned to issue permits, in addition to people in their own districts, to those covered by the Ranginui and Ngatiawa Tribal Executives.
>
> I emphasise these points:
> 1. Northern muttonbirding anywhere must always be on a limited scale.
> 2. White Island is the only island of any consequence as regards number of birds in the Bay of Plenty.
> 3. Birding for people in the Tauranga and Whakatane areas is very limited.

[216] Senior Field Officer Bell to Senior Field Supervisor, 23 November 1954. Internal Affairs Head Office file 46/5/3. Supporting Papers #86-95.
[217] The Grey-Faced Petrel (Northern Muttonbird) Notice 1959. Statutory Regulations 1957/233.

> My officers feel it would be excellent for all concerned if the Opotiki and Te Kaha people were agreeable to letting a certain number of people from the other two districts share in the birding on White Island. As was made clear to the local people by my officers, this is a matter for agreement among themselves. It would be appreciated if action meantime could be concentrated on finding out whether or not the local people are willing for the proviso to be made public in the notice enabling issue of permits for White Island to some people in the Tauranga and Whakatane areas.[218]

The response to the suggestion was to refer Internal Affairs back to the October 1954 meeting held in Opotiki:

> At that meeting, the allocation of the various Islands were:
> Whale Island to Ngatiawa
> White Island to Whakatohea and Horouta
>
> It was agreed at the meeting that the people of these two districts could muttonbird provided they applied to the nearest Executive for permits. It was also agreed at that meeting that any others from outside these two immediate districts could also muttonbird, providing again they applied to the nearest Executive. The Welfare Officer mentioned in this particular instance the possibility of some of the Tauranga Maoris making use of these facilities particularly in view of the fact that Karewa is now reserved.[219]

Any change to the Notice required the issue of a completely new Notice. Fresh notices were issued in 1958, 1959 and 1964[220]. These did not alter the permitting system for White Island.

References to titi harvesting by Opotiki Maori appear on Crown files once it became accepted that the practice would become legal. Apparently during the 1954 season there was no harvesting by "the Opotiki and Te Kaha tribes" as they were unable to visit Whakaari "owing to the lack of transport"[221]. The only harvesting on Whakaari that year was by parties from Tauranga and Whakatane.

During the 1957 season 3110 titi were taken on Whakaari. 4057 birds were taken the following year[222]. The 1958 season report stated with respect to Whakaari:

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[218] Controller of Wildlife to District Officer Maori Affairs Rotorua, 24 August 1956. Internal Affairs Head Office file 46/5/6. Supporting Papers #100-101.
[219] District Officer Maori Affairs Rotorua to Secretary for Internal Affairs, 3 December 1956. Internal Affairs Head Office file 46/5/6. Supporting Papers #102-103.
[220] Statutory Regulations 1958/112, Statutory Regulations 1959/149, and Statutory Regulations 1964/176.
[221] Field Officer Whakatane to Conservator of Wildlife Rotorua, 16 February 1955, attached to Conservator of Wildlife Rotorua to Controller of Wildlife, 13 April 1955. Internal Affairs Head Office file 46/5/6. Supporting Papers #98-99.
[222] Analysis of seasonal returns. Internal Affairs Head Office file 46/5/6. Supporting Papers #113.

> Three boats were present at this island on opening day. The trawler "Gunner" had also been there on the 14th November 1958, with members of the Whakatohea aboard. Some people of Ngatiawa, who had sailed from Tauranga in the "Tide Song", had claimed birds were taken on the 14th November by people from this boat. Birders from White Island claimed the muttonbirds were small, with again many vacant burrows. I believe each boat secured about 1,000 to 1,200 birds which is less than expected. Weather favoured the birders….
>
> There is no doubt [White Island] has been most thoroughly birded this year. Boot marks covered every conceivable nook where a few holes could be found. A big proportion of the holes had collapsed by people walking over them. I found a number which had been deliberately torn open to remove the bird. I tried the best looking burrows in a number of places but could not find an occupied one.
>
> Hangis had been held in the bush and a number of birds plucked for this purpose. The majority of birds however seem to have been plucked on the sea. I also came across several dead grey-faced chicks, probably dropped by the birders when carrying a large number….
>
> [Concluding,] White Island is nearly fully occupied by burrows with the vast majority in use. However, with the present flogging this island is getting, it is apparent to me that this population cannot remain healthy.[223]

When the permits were returned at the end of the season, they showed that there had been two Whakatohea permitted trips to Whakaari, collecting 2100 birds, and two permits issued by Horouta Tribal Executive, only one of which was followed through on when 1320 birds were harvested. There had also been permits issued in Tauranga which had not been authorised by either Whakatohea or Horouta[224]. As this was contrary to the Notice the Acting Secretary for Internal Affairs was obliged to issue an embarrassing explanation, which was not however phrased as an apology:

> As regards taking of birds on White Island by Maori people from Tauranga, Mr Hall was in the Office this morning and the matter was discussed with him. Unfortunately, Mr Hall was under some misapprehension as regards the muttonbird notification, with the result that he advised that permits could be issued by the Committee at Tauranga. This of course does not comply with the muttonbird notification. I understand Mr Hall will be personally explaining what arose at a meeting of the Whakatohea Tribal Committee, which he will be attending after his return to the Rotorua District in a few weeks time….
>
> It is for the Whakatohea and Horouta Tribal Executives to decide whether or not they will issue such permits and the matter is, therefore, one for discussion between the

[223] Senior Field Officer Hall, Whakatane, to Conservator of Wildlife Rotorua, 17 December 1958, attached to Conservator of Wildlife Rotorua to Controller of Wildlife, 18 December 1958. Internal Affairs Head Office file 46/5/6. Supporting Papers #104-110.

[224] Maori Welfare Officer Opotiki to Controller of Wildlife, 6 February 1959. Internal Affairs Head Office file 46/5/6. Supporting Papers #111.

> Maori groups concerned. It is not a matter concerning this Department's officers, provided the provisions of Paragraph 8 of the notice are complied with.[225]

Subsequently a full explanation of the circumstances of the issue of White Island permits in Tauranga was forthcoming from the Maori Affairs office in Tauranga, the issuing office[226].

The meeting between Whakatohea and Horouta Tribal Executives and wildlife officials had been requested by the Tribal Executives, as a type of debriefing following the close of the 1958 season. A list of "topics that these committees will probably wish to discuss" had been identified by Senior Wildlife Officer Hall, based in Whakatane:

(1) The alleged birding of all the muttonbird islands, before the legal season opening.
(2) Whether November 15th is not too early a date to begin, in view of the small size of birds which have been taken this year.
(3) Simplification of the permit issuing system, and a surer system of permit collection after the return from the islands.
(4) Concern is being felt by some of the more responsible Maoris over the way the numbers of muttonbirds have decreased in recent years. Mr Ranapia and Mr Jarrom of the Ngatiawa maintain some form of conservation will have to be introduced.
(5) There is keen competition over transport during the initial weekend, and those who cannot manage transport are embittered against those who get in first, maintaining they get the majority of the birds.[227]

However, no record of any meeting was located during research for this report, and it is not clear whether any meeting was actually held.

The wildlife officer's season report for 1960 stated with respect to Whakaari:

> On the opening day I found a ten-man party from Opotiki on this island. Although more care had been exercised in covering the area and only a few burrows had accidentally been broken, they persisted in plucking and gutting their catch on the land. They were reported for this offence. A 19-man party from Whakatane took 1658 birds from two colonies on the southern side of the island. This was an average of two burrows to secure one bird. The tallies of the Opotiki party would not be correct, as their Tribal Executive imposed a bag limit of 100 birds per man. The total for this party given to me at the time was 542 birds, but I would estimate the true figure at approximately 1,000. This island was lightly birded again this year, considering the large area that is available to the nesting pairs.[228]

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[225] Acting Secretary for Internal Affairs to Maori Welfare Officer Opotiki, 23 February 1959. Internal Affairs Head Office file 46/5/6. Supporting Papers #112.
[226] Resident Officer Maori Affairs Tauranga to Conservator of Wildlife Rotorua, 13 April 1959, attached to Conservator of Wildlife Rotorua to Controller of Wildlife, 22 April 1959. Internal Affairs Head Office file 46/5/6. Supporting Papers #114-115.
[227] Senior Field Officer Hall, Whakatane, to Conservator of Wildlife Rotorua, 17 December 1958, attached to Conservator of Wildlife Rotorua to Controller of Wildlife, 18 December 1958. Internal Affairs Head Office file 46/5/6. Supporting Papers #104-110.
[228] Field Officer Mackay, Whakatane, to Conservator of Wildlife Rotorua, 17 January 1961. Internal Affairs Head Office file 46/5/6. Supporting Papers #116-118.

The 1961 report said of Whakaari:

> An 18 man party took 1071 birds with an average of one bird every four burrows. Most birders expressed their opinion that the birds were a lot smaller than previous seasons. Again, of course, this island was harvested before the legal opening.[229]

Three parties with a total of 59 persons had taken 4599 titi[230].

Problems seem to have arisen with over-harvesting in the Bay of Plenty in the 1962 season. The most severely over-harvested island was Whale Island, one of the islands where birding was carried out by Ngati Awa. When Wildlife Service approached Ngati Awa at a meeting in October 1963 about a closure of White Island to allow the titi population to recover, it found that Ngati Awa agreed to a closure on condition that Ngati Awa were able to share in the taking of birds from Whakaari. This possibility had been considered by Crown officials prior to the meeting, and grave reservations were held that an increase in harvesting pressure on the Whakaari titi population could create the same problem as had occurred on Whale Island. The discussion at the meeting was recorded as follows:

> Mr Ranapia then went on and spoke at great length of the difficulties that he had had with the Opotiki people in obtaining permits to go to White Island. He mentioned, amongst other things, that the Opotiki people were handing out blank permit books to relations at Te Teko, who were filling the books in themselves. He mentioned that over the past two years he had tried unsuccessfully to obtain permits for himself and local Ngatiawa people. He then reiterated his stand re the closure of Whale Island being dependent on the Ngatiawa being able to bird on White Island.
>
> I then explained to the Committee that firstly the Regulations would not permit us to allow them authority to bird on White, and secondly that morally we would not put pressure on the Opotiki people to force them to provide for Ngatiawa. I explained to them that many years ago the Arawas used to bird at Maketu, and that for a considerable period those birds have no longer been there, and that in principle if Whale Island ever became heavily populated, again, the Arawas could turn round, on the basis of losing the birds at Maketu, and ask us to allow them to bird on Whale. But what we would do is that we would ask our local officer and Mr Hall to see the Opotiki people and suggest to them that they might make provision for Ngatiawa on a local basis, but we would give no guarantee that the Opotiki people would agree to it and that they would get permission to go to White. Following this they had a considerable of discussion amongst themselves, and they finally agreed to the closure of Whale without provision of a guarantee for them to bird on White Island.[231]

[229] Field Officer Mackay, Whakatane, to Conservator of Wildlife Rotorua, 7 March 1962. Internal Affairs Head Office file 46/5/6. Supporting Papers #119-121.
[230] Muttonbirding statistics for White Island, 1961. Internal Affairs Head Office file 46/5/6. Supporting Papers #122.
[231] Assistant Conservator of Wildlife Rotorua to Controller of Wildlife, 16 October 1963. Internal Affairs Head Office file 46/5/6. Supporting Papers #123-124.

During the 1963 season 100 permits were issued for Whakaari, and 5376 birds were harvested[232]. However the following year "agreement has been reached by the Opotiki Tribes on the closing of White Island this season"[233]. The reasons for this are not known. In 1965 it was recorded:

> White Island was not birded last year and no official request was received from either the Opotiki or Te Kaha areas regarding it. However, Mr Hall has had private discussions with several of the Opotiki Executives and he stated that there is little interest for birding from these people at present. It is therefore intended to keep White closed again for this year….
>
> Mr Hall feels that, in general, interest in muttonbirding throughout the lower Bay of Plenty is waning and our present policy should be aimed at eventually giving protection to grey faced petrel completely.[234]

In 1966 Wildlife Service expected before the season commenced that there would be no harvesting on Whakaari:

> White Island, although still open, has not been birded for several years due to difficulties facing the Opotiki and Te Kaha people in arranging suitable transport to the island. I have received no requests for permits in respect to White Island so far this year.
>
> I hope that eventually the taking of grey face petrels throughout this portion of the Bay of Plenty in which I have been interested will gradually decline to the stage where this will cease entirely. My officers have been working to that end. They feel that fundamentally the grey face petrel does not exist in sufficient numbers to warrant birding in the Bay of Plenty.[235]

However their expectations turned out to be incorrect:

> I wish to advise that I have received the Mutton Birding Returns for White Island. Fifty persons were involved in taking birds this year, and it appears that they were quite successful. The final total was 2,987 birds for the season.[236]

Subsequently another permit book was returned, showing twelve persons took 1366 birds. The final total for the 1966 season was therefore 62 persons taking 4353 birds[237].

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[232] Conservator of Wildlife Rotorua to Controller of Wildlife, 4 March 1964. Internal Affairs Head Office file 46/5/6. Supporting Papers #125.
[233] Conservator of Wildlife Rotorua to Controller of Wildlife, 28 September 1964. Internal Affairs Head Office file 46/5/6. Supporting Papers #126.
[234] Conservator of Wildlife Rotorua to Controller of Wildlife, 7 September 1965. Internal Affairs Head Office file 46/5/6. Supporting Papers #127.
[235] Conservator of Wildlife Rotorua to Controller of Wildlife, 19 September 1966. Internal Affairs Head Office file 46/5/6. Supporting Papers #128.
[236] Conservator of Wildlife Rotorua to Controller of Wildlife, 28 March 1967. Internal Affairs Head Office file 46/5/6. Supporting Papers #129.
[237] Conservator of Wildlife Rotorua to Controller of Wildlife, 31 March 1967. Internal Affairs Head Office file 46/5/6. Supporting Papers #130.

The 1967 season was curtailed early when the boat returning birders to the mainland from the first trip to White Island was wrecked. It was estimated that the twelve men in that first party had taken about 1200 birds[238].

In 1968, when thought was being given to the issue of a new Notice to replace the 1964 Notice, Wildlife Service belatedly discovered that White Island had been declared a private scenic reserve in 1953[239]:

> On a Private Scenic Reserve the provisions of the Reserves and Domains Act applies. This means that hunting, i.e. muttonbirding, would be illegal, and that this Department could not authorise the taking of muttonbirds on such a reserve.
>
> This means that muttonbirding will have to cease [on White Island].[240]

The Conservator of Wildlife in Rotorua was notified of this legal opinion in June 1968, and was asked to "explain the position to the Whakatohea and Horouta Maori Executives"[241]. It was therefore a combination of waning Whakatohea interest, lack of a positive attitude towards muttonbirding by Crown officials, and a legal complication that brought titi harvesting on White Island to an end. The new Notice, issued in 1969, no longer included White Island in the list of islands where titi could be harvested[242].

The Crown's acceptance of a Whakatohea cultural harvest right on Whakaari stands out in marked contrast to its treatment of the other rights of Whakatohea hapu that would fit under the umbrella term of tino rangatiratanga. The Crown went out of its way to consult Whakatohea hapu (and other northern North Island hapu), established a management regime specifically to accommodate the interests and needs of the hapu, and gave the hapu 'space' to manage their own affairs and their relationship with other hapu. However, the management regime was not a pure form of tino rangatiratanga. Rather the regime had its foundations as an exercise in kawanatanga, where the Crown found a statutorily convenient way around its own wider regime of protection for indigenous bird species, and maintained official oversight of the activities of hapu. Nevertheless it remains one example of a partnership arrangement. In the context of a Tiriti o Waitangi analysis the Crown's approach can perhaps be characterised as commendable though flawed.

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[238] Field Officer Whakatane to Conservator of Wildlife Rotorua, 11 January 1968, attached to Assistant Conservator of Wildlife Rotorua to Controller of Wildlife, 19 January 1968. Internal Affairs Head Office file 46/5/6. Supporting Papers #131-132.
[239] *New Zealand Gazette* 1953 page 1448.
[240] Senior Field Officer Bell to Controller of Wildlife, 12 June 1968. Internal Affairs Head Office file 46/5/6. Supporting Papers #133.
[241] Controller of Wildlife to Conservator of Wildlife Rotorua, 24 June 1968. Internal Affairs Head Office file 46/5/6. Supporting Papers #134.
[242] Statutory Regulations 1969/213.

Within the Wildlife Branch of the Department of Internal Affairs the cultural harvest management regime was an anachronism for that organisation even when it started, and became more so as the organisation's efforts became directed more and more over time to protecting indigenous species. Officials with protection responsibilities were uncomfortable with being asked to condone, as they saw it, continued destruction of an otherwise protected species. They ended up wanting to see the practice die out of its own accord, so that they no longer needed to be concerned by it. In that frame of mind, they did little to foster or uphold continued harvesting, beyond the bare minimum required by law. The continued insistence on the validity of an absolute ban on the taking of pigeons was a truer reflection of the Crown's position on indigenous species than the concessions it made for harvesting of titi.

8.3 Whales

Whales (tahora) are regarded as taonga by Whakatohea hapu. In December 2010 two whales – mother and male calf – stranded and subsequently died on the beach at Opape. The Department of Conservation, which is responsible for administering the Marine Mammals Act 1975, took tissue samples and wanted to take on the responsibility for disposing of the carcasses. However Whakatohea hapu claimed that as a taonga it was their responsibility to deal with the whales as they saw fit. The Department acceded to this request. The tissue samples revealed that the whales were spade-toothed beaked whales (*Mesoplodon traversii*), a rare Pacific species only previously identified from skeletons[243].

8.4 Tuna and fish

As explained in the introduction to the chapter on the rivers, the research for this report did not allow any traction to be gained on the topic of eels and other indigenous fish in the rivers and estuaries of the Whakatohea rohe. No references were located in Crown records about fish life in the rohe, other than those about the Ohiwa Harbour fisheries, discussed in that chapter of this report. It is therefore not possible to comment on the historical dealings between the Crown and Whakatohea hapu with respect to such matters as eel weirs, commercial eel harvesting by Europeans (which has taken place in New Zealand since the 1960s), mullet fishing (after which the Waiaua River is named), whitebaiting, the risks of damage to and pollution of the famed pipi bed Te Ahiaua in the Waiotahe estuary, and the

[243] KC Thompson et al, 'The world's rarest whale' in *Current Biology*, Volume 22, Issue 21, pages R905-R906, 6 November 2012.

relationship between rahui and closed seasons. Further research, particularly of Regional Council and Ministry of Primary Industries (Fisheries) records, would be necessary to understand the extent to which Whakatohea hapu and the Crown have been either disconnected or engaged with one another.

9 Introduced Species

The Crown has been actively involved in authorising and permitting the introduction of species of birds, animals and fish into New Zealand, and has on occasion been directly involved in this activity. Both regulation of the activities of other agencies (i.e. acclimatisation societies) and direct Crown involvement have occurred in the Whakatohea rohe.

9.1 Opotiki Acclimatisation Society

Prior to the early 1880s a Tauranga Acclimatisation Society was responsible for acclimatisation activities in both the Tauranga and Whakatane Counties; as the Whakatane County comprised at that time what later became the Whakatane and Opotiki Counties, this effectively meant the whole of the Bay of Plenty. The details of this era have not been researched for this report.

In 1883 the Opotiki Farmers Club applied to be registered as an acclimatisation society. Just who was the Farmers Club has not been researched, though it can reasonably be assumed to be a social organisation representing the European farmers of the district. Under the Animals Protection Act 1880 Crown registration of an acclimatisation society gave the society proprietary rights over game birds that it had hatched, raised and released into the wild. The proposed rules of the renamed Opotiki Farmers Club and Acclimatisation Society set out the following objects:

> The advancement of the agricultural and pastoral interests of the district, the introduction and protection of animals, birds, fishes and plants useful or beneficial to man, and the promotion of such other objects as legitimately come within the province of a Farmers Club and Acclimatisation Society.

Membership would be by invitational ballot (where five black balls in the ballot would mean rejection of a candidate), and meetings would be held monthly[244]. The proposed rules were not queried by the Crown, there was no consultation with any other party, and the deposition of a copy of the rules with the Colonial Secretary followed by notification in the *New Zealand Gazette* was deemed to constitute registration of the society under the Animals Protection Act[245].

[244] Rules of Opotiki Farmers Club and Acclimatisation Society, 3 September 1883, attached to Honorary Secretary Opotiki Famers Club to Colonial Secretary, 3 September 1883. Internal Affairs Head Office file 1900/1900. Supporting Papers #67-70.
[245] *New Zealand Gazette* 1883 page 1295.

Having become a registered acclimation society in 1883, the next step taken by Opotiki sport hunters was to apply the following year for a separate Opotiki Acclimatisation District to be established. This would in effect carve off a part of the Tauranga Acclimatisation District into a separate entity. The new district as applied for would comprise the whole of Whakatane County[246]. The Tauranga Society, when advised of this application, strenuously objected because some of its committee members "owned property and have interests" in Whakatane County; it recommended that a line due south from the eastern side of Ohiwa Harbour should be the boundary between the two districts[247]. The Opotiki Society replied that it still wished its district to include the whole of Whakatane County[248]. With this apparent stalemate the Colonial Secretary decided that it was too late in the year to allow any adjustment of district boundaries, and the two societies should try to reach agreement before the following year[249]. The following year the Opotiki Society reiterated its stance[250], while the Tauranga Society forwarded a petition signed by Whakatane and Matata residents seeking no boundary change, adding that it had liberated trout in rivers at Otamarakau, Matata and Whakatane:

> The Society fully recognises the great desirability of fully stocking with fish the large rivers and vast sheets of water at Whakatane and Matata, and we feel that we are much better able to carry out acclimatisation matters than the Opotiki Farmers Club who did not appoint any rangers and only issued two shooting licences last season.[251]

There was no mention of any trout having been released in rivers in the Whakatohea rohe. Yet again the Colonial Secretary asked the two societies to settle their differences between themselves[252]. However, when the Opotiki Society further objected to the Tauranga Society's proposed Ohiwa Harbour boundary in May 1885[253], the Colonial Secretary changed his mind and decided to make an arbitrary decision:

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[246] Honorary Secretary Opotiki Famers Club and Acclimatisation Society to Colonial Secretary, 18 February 1884. Internal Affairs Head Office file 1887/3194. Supporting Papers #51.
[247] Secretary Tauranga Acclimatisation Society to Colonial Secretary, 9 April 1884. Internal Affairs Head Office file 1887/3194. Supporting Papers #52.
[248] Telegram Honorary Secretary Opotiki Famers Club and Acclimatisation Society to Colonial Secretary, 2 May 1884, and Honorary Secretary Opotiki Famers Club and Acclimatisation Society to Colonial Secretary, 9 May 1884. Internal Affairs Head Office file 1887/3194. Supporting Papers #53 and 55-56.
[249] File note, 5 May 1884, on cover sheet to file 1884/1689. Internal Affairs Head Office file 1887/3194. Supporting Papers #54.
[250] Telegram Acting Secretary Opotiki Famers Club and Acclimatisation Society to Colonial Secretary, 28 February 1885. Internal Affairs Head Office file 1887/3194. Supporting Papers #57.
[251] Honorary Secretary Tauranga Acclimatisation Society to Colonial Secretary, 3 March 1885; and Petition dated 26 February 1885 attached to Honorary Secretary Tauranga Acclimatisation Society to Colonial Secretary, 6 March 1885. Internal Affairs Head Office file 1887/3194. Supporting Papers #59 and 60-61.
[252] File note, 3 March 1885, on cover sheet to file 1885/667; and file note, 13 March 1885, on cover sheet to file 1885/780. Internal Affairs Head Office file 1887/3194. Supporting Papers #58 and 62.
[253] President Opotiki Famers Club and Acclimatisation Society to Colonial Secretary, 2 May 1885. Internal Affairs Head Office file 1887/3194. Supporting Papers #63-64.

> Evidently these two Societies will never come to an agreement. I recommend that the Government step in and fix the boundary at the River Rangitaiki, which will be a well-defined natural boundary. This will probably displease both parties, which will prove its justice.[254]

This decision was not immediately implemented, because it was made part-way through the shooting season.

In March 1886 the annual notice fixing the dates of the shooting season in Tauranga Acclimatisation District specified that the District had as one of its boundaries the Rangitaiki River[255]. There was no shooting season notice issued for the area to the east of the Rangitaiki River, because the Opotiki Society had failed to respond to a circular request sent to all societies asking them to provide the rules they wished to see applied to their districts[256]. The March 1886 notice effectively implemented the Colonial Secretary's May 1885 decision. In April 1887, when shooting season notices were next issued, there were separate notices for both Opotiki and Tauranga Acclimatisation Districts, with the Rangitaiki River as the boundary between the two[257].

The Opotiki District notice issued in April 1887 allowed the taking or killing in season of cock-pheasants. It also allowed the taking or killing of all species classified as "native game" under the Act, except tuis; this meant that shooting of wild ducks of any species, bittern, plover, geese, dotterel, native pigeon, teal, curlew and quail was allowed. The seasonal notices in following years have not been examined for this report, so it has not been possible to identify whether the Opotiki Acclimatisation Society was responsible for introducing any other species of game bird or any game animals into the District subsequently.

Allowing Opotiki Acclimatisation Society to issue fishing licences did not occur until October 1917[258]. Application to do so had been made by the Society the previous year, the Society noting in its application that trout were already present in Opotiki District rivers[259]. When they were first introduced is not known. Given the references to releases prior to 1885 in the Whakatane and Matata area by the Tauranga Society, referred to above, it is possible that trout could have been released in Opotiki District rivers as early as the late 1880s.

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[254] File note by GS Cooper, 10 May 1885, approved by Colonial Secretary 20 May 1885, on cover sheet to file 1885/1661. Internal Affairs Head Office file 1887/3194. Supporting Papers #65.
[255] *New Zealand Gazette* 1886 pages 401-402.
[256] File note, 30 June 1886, on cover sheet to file 1886/2159. Internal Affairs Head Office file 1887/3194. Supporting Papers #66.
[257] *New Zealand Gazette* 1887 page 445.
[258] *New Zealand Gazette* 1917 page 3791.
[259] Secretary Opotiki Acclimatisation Society to Minister for Internal Affairs, 14 February 1916. Marine Head Office file 1/5/34. Supporting Papers #300.

All Acclimatisation Districts throughout New Zealand were newly defined in 1925 to take account of the provisions of new legislation, the Animals Protection and Game Act 1921. The Opotiki Acclimatisation District's western boundary was broadly fixed along the road running around the western side of Ohiwa Harbour, then running up the Waimana valley[260]. To the west of this boundary and including the Whakatane area and the Rangitaiki Plains was part of the Rotorua Acclimatisation District, which was directly administered by the Crown. When this new western boundary for the Opotiki District was first promulgated, and what was the background behind the setting of this new boundary, has not been determined during research for this report.

In June 1929 the Opotiki Acclimatisation District was abolished[261], and the functions of an acclimatisation society there were assumed by the Crown[262]. The background to this change has not been researched for this report. The Crown (initially through the Government Tourist Bureau in Rotorua, and later through the Conservator of Wildlife in Rotorua) then directly administered acclimatisation activities in the Whakatohea rohe for 60 years, until the passing of the Conservation Law Reform Act 1989.

In the Crown papers examined for the history of the Opotiki Acclimatisation Society described above, there is no reference to any consultation with Whakatohea hapu about the introduction of new species.

9.2 Introduced animals and fish

Pigs were introduced at the very beginning of European contact with Whakatohea hapu, and instantly became a significant and valued part of the Whakatohea diet and economy.

Just when other introduced species were introduced into or arrived of their own accord in the Whakatohea rohe has not been determined during the research for this report. Trout were not present in 1885 (see the previous section of this report on the establishment of an Acclimatisation Society), but had clearly become well-established by the beginning of the twentieth century and made a welcome contribution to the diet of the first Waioweka gorge

[260] *New Zealand Gazette* 1925 pages 751-752.
[261] *New Zealand Gazette* 1929 page 1721.
[262] This was achieved by altering the boundaries of the Rotorua Acclimatisation District to include the former Opotiki District (*New Zealand Gazette* 1929 pages 1721-1722). The Rotorua Acclimatisation District was the part of the North Island directly administered by the Crown.

settlers. Introduction of pheasants was on the agenda for the Acclimatisation Society in its early days, and these birds would have done well in the poorly-managed (by today's standards) and often rank grasslands that characterised early farming on the coastal plain.

The Acclimatisation Society may also have had a role in the introduction of possums, though this has not been confirmed by research for this report. If possums were not deliberately introduced, then they spread naturally into Whakatohea forests from liberations in other districts.

Later introductions or arrivals were goats and deer. When these first had an impact on Whakatohea forests is not known; it may have been as late as the 1960s. The Crown tackled these species because they were capable of destroying the forest structure by eating out the understory, and thereby reducing the water retention and erosion-prevention characteristics of a forest cover. Deer and goat shooting was undertaken by Crown land managers, and was actively encouraged with the provision of tracks and huts in such land management units as Urutawa State Forest and Waioeka Gorge Scenic Reserve. New Zealand Forest Service was responsible for administration of the Noxious Animals Act 1956 and the Wild Animal Control Act 1977. While Whakatohea hapu hunters were among those who took advantage of these facilities, it is not known whether any attempts were made by the Crown to directly consult with them about wild animal control matters.

9.4 Introduced plants

As with introduced animals and fish, research for this report was unable to gain much traction and discover instances where Crown interests and Whakatohea hapu interests might have interacted.

The use of willows in river control has been referred to in the chapter on the rivers. They can be a blessing when holding a riverbank together, and a curse when they fall over and block the river channel. Blockages on all the rivers crossing the Opotiki coastal plain are frequent, and require constant maintenance and control works.

The Opotiki district has experienced an isolated outbreak of nassella tussock infestation, probably the result of a contaminated shipment of grass seed[263]. The infestation was identified in 1968 by the owner of Section 5 Block X Opotiki Survey District, who tried

[263] This paragraph relies on information on Agriculture and Fisheries Head Office file 12/10/9/5.

grubbing it out, but then found this method of control was too costly and sold the property to New Zealand Forest Service. Forest Service initially planted *Pinus contorta*, though this failed to eliminate the problem. There was then a clash of opinions during the late 1970s as to how to control the infestation. Opotiki County Council as District Noxious Plants Authority proposed grubbing using PEP (Project Employment Programme) unemployed labour followed by grazing, while Forest Service proposed removing the *Pinus contorta* (itself a pest plant in some circumstances) and allowing native forest regeneration to suppress the tussocks. Matters were not helped by most of the staff involved having little practical experience of nassella (unlike staff based in Marlborough and North Canterbury). The paralysis that developed from this clash of opinions did not see much progress made during the 1980s. During this time the infestation had a nucleus area of 10 hectares, while there was a quarantine (active inspection) area surrounding the nucleus of 60 hectares.

Pest plant control and pest animal control have been a Regional Council responsibility since the passing of the Biosecurity Act 1993. There is no obligation in the 1993 Act that is similar in intent to the requirements of the Resource Management Act 1991 and the Conservation Act 1987 to recognise and make provision for the principles of the Treaty of Waitangi. The absence of such a statutory requirement affects the thinking of administering bodies.

10 Ohiwa Harbour

10.1 Seabed, foreshore and water use control

From a Crown perspective Ohiwa Harbour, being tidal waters, has been regarded as an arm of the sea, and as such subject to general maritime law. The body of Crown statutory management has been significant, and developed from an early stage. The abolition of the Provinces in 1876 saw marine matters brought under central Government control and the passing of a Harbours Act in 1878. The comprehensive nature of this statute allowed a sense of Crown ownership to develop over time that complemented its sole management control responsibilities. Thus the official centennial history of the Marine Department in 1970 was able to declare:

> Subject to certain rights of public users, and with one or two insignificant exceptions, the Crown is the owner of all land lying below high-water mark. Certain areas of foreshore have been vested in harbour boards or local authorities, and control of parts of the foreshore has also been granted to local authorities, trustees, domain boards, etc. Apart from these areas the Department directly administers the foreshore.[264]

The Crown maintains a strict distinction at mean high water mark between the harbour and adjoining dry land. This distinguishes wharves and causeways from the roads leading to them or the sheds on dry land at their base, and lands in historical dryland titles from areas that have been reclaimed from the bed of the harbour. This section predominantly discusses Crown involvement in areas below mean high water mark.

The Auckland Provincial Government showed little ability or inclination to exercise any control over Ohiwa Harbour prior to 1865. It was left to traders to make their own arrangements with the hapu who resided around the harbour. Crown involvement only developed after Raupatu when the European population of the district gave shipping at Ohiwa a higher profile to officials. Initially this greater interest was twofold, first with the development of a ferry service across the mouth of the harbour between Ohiwa spit and Ohope spit, and second in the use of Ohiwa as an alternative landing place when the more exposed and shallower Opotiki harbour at the mouth of the Waioweka River was inaccessible. This eventually saw the construction of a wharf on Ohiwa spit in 1896[265]. While it was privately built by the Northern Steamship Co Ltd, prior application was made to

[264] ER Martin, *Marine Department Centennial History, 1866-1966*, Marine Department, Wellington, 1969, pages 99-100.

[265] The land the wharf connected to has since been eroded away, so that the wharf site is now in the channel between the two heads, though its location remains recorded on Gisborne survey plan SO 3077, prepared in 1909.

and authority received from the Crown for a right to occupy part of the foreshore and land below low water mark in order to build the wharf[266].

A second wharf was constructed at Kutarere in 1922 when the Ohiwa wharf was no longer usable. Built by the Opotiki and Whakatane County Councils, and funded by ratepayers of a special rating district around and inland of the harbour, this wharf required a long causeway across the mudflats. Occupation of the foreshore and land below low water mark for the purposes of developing the wharf had been licensed by the Crown in January 1919[267]. Associated with the coming into operation of the wharf was the vesting in Opotiki County Council of a neighbouring landing reserve of 19 acres that had been originally set apart in 1903[268]; the vesting by the Crown in the Council took place in 1926[269].

No reference has been located in Crown records to any consultation with Whakatohea hapu about the Ohiwa or Kutarere wharves, or about the Kutarere landing reserve.

The changeover to the Kutarere wharf then triggered a proposal to extend local government control over Ohiwa Harbour as a whole, when Opotiki County Council applied to the Crown to be allowed to exercise the powers of a Harbour Board at Ohiwa[270]. In later comments in support of its application, the County Clerk stated:

> It is necessary that all inward and outward cargo should pass over [Kutarere] 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 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.[271]

The application was approved[272], resulting in the Governor General issuing an Order in Council giving Opotiki County Council the authority to exercise the powers of a Harbour

[266] *New Zealand Gazette* 1895 page 934.
[267] *New Zealand Gazette* 1919 page 217.
[268] Allotment 191B Parish of Waiotahi.
New Zealand Gazette 1903 page 262.
[269] *New Zealand Gazette* 1926 page 1367.
[270] County Clerk Opotiki County Council to Secretary for Marine, 24 March 1925. Marine Head Office file 43/55/1. Supporting Papers #324.
[271] County Clerk Opotiki County Council to Secretary for Marine, 11 May 1925. Marine Head Office file 43/55/1. Supporting Papers #325.
[272] Secretary for Marine to Minister of Marine, 21 May 1925, and approval by Minister of Marine, 22 May 1925. Marine Head Office file 43/55/1. Supporting Papers #326.

Board within the harbour in October 1925. The harbour was defined in the Order in Council as:

> 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 of the entrance to the said harbour.[273]

There seems to have been little in the way of practical Crown supervision of the Opotiki County Council in its capacity as a harbour board. The Crown only became involved when drawn into a dispute. Such an event occurred in the 1960s and 1970s, which had its origins in the desire of ratepayers on the Ohope side of the harbour to have better access to a shipping service. They lobbied the Whakatane Harbour Board to provide the facilities for such a service, and in March 1956 the Crown granted this Board a licence to use and occupy foreshore and land below low water mark at Ohope as a site for a wharf[274]. The wharf was built the following year, and soon after the Kutarere wharf was closed. The licence for the Ohope wharf was for a term of 14 years, and was not renewed in 1970, probably because of administrative neglect. However, from the time when the licence was issued in 1956 an antagonistic situation developed between Whakatane Harbour Board and Opotiki County Council acting as harbour board for Ohiwa.

In 1966 Whakatane Harbour Board wrote to the Secretary for Marine arguing that the involvement of Opotiki County Council had become an anomaly. It was unable to pass bylaws relating to Ohope wharf, or regulate use of the waters of the harbour around the wharf by water-skiers and small boat owners. In discussions between the two organisations the Opotiki County Council had stated that it was unwilling to give up its authority for the harbour because of fears that the shellfish beds might become contaminated. In response the Whakatane Board was "also concerned to preserve the shellfish beds, but its first concern must be the provision of a satisfactory port"[275]. On becoming aware of the Whakatane Board's approach to the Crown, Opotiki County Council sent its own letter setting out its views:

> The Ohiwa harbour is predominantly used as a source of shellfish and as a water recreation area. Shipping operations on the scale carried out at Port Ohope at the present time and in the foreseeable future are not incompatible with this use.

On this basis the County Council was prepared to relinquish such of its powers as were necessary for the operation of Port Ohope, though it wanted to retain all its other existing

[273] *New Zealand Gazette* 1925 page 2895.
[274] *New Zealand Gazette* 1956 page 342.
[275] Secretary Whakatane Harbour Board to Secretary for Marine, 3 February 1966. Marine Head Office file 43/55/1. Supporting Papers #327.

powers; as a result it registered its "strenuous opposition" to the Whakatane Board's proposal[276].

The Secretary for Marine sympathised with Whakatane Harbour Board's predicament, replying to Opotiki County Council:

> The Whakatane Harbour Board at present is operating at Ohope under some difficulties, and it is considered here that it would be far better for your Council to relinquish control and hand the administration of the harbour to the Whakatane Board. Recreational boating can be administered by the Whakatane Harbour Board under its bylaws, and I do not think there is any reason to believe that that Board could not act in the best interests of the majority of the users of the harbour in the same way as it is expected your Council would.
>
> The protection of shellfish in a harbour is not considered to be a function of a harbour board, and is a matter which is more properly the concern of this Department.[277]

However, while the Secretary was expressing an officials' point of view the Opotiki County Council was in the box seat, as an existing harbour board could only be abolished by legislation or by the Governor General in Council on the recommendation of the Local Government Commission. Granting powers to any other board required the consent of the existing harbour board[278].

In 1971 Whakatane Harbour Board tried again to change the status quo. As a result of discussions, Opotiki County Council agreed to a Whakatane Board request to a limited change of administration "whereby the Harbour Limits of the Ohiwa Harbour Board be adjusted to permit that part of the Ohiwa Harbour within the Whakatane County to be included in the Harbour Limits of the Whakatane Harbour Board"[279]. Upon being made aware of this agreement, the Secretary for Marine wrote to Opotiki County Council repeating his earlier opinion that "Ohiwa Harbour Board does not now appear to have any practical function". After noting that water quality was not a Harbours Act matter, he suggested that, in place of Harbour Board administration, delegated powers to a local authority under Section 8A (control of waters) and Section 165 (control of foreshores and seabed) of the

[276] County Clerk Opotiki County Council to Secretary for Marine, 17 February 1966. Marine Head Office file 43/55/1. Supporting Papers #328.
[277] Secretary for Marine to County Clerk Opotiki County Council, 9 March 1966. Marine Head Office file 43/55/1. Supporting Papers #329-330.
[278] Secretary for Marine to Secretary Whakatane Harbour Board, 7 June 1966. Marine Head Office file 43/55/1. Supporting Papers #331-332.
[279] Secretary Whakatane Harbour Board to County Clerk Opotiki County Council, 11 February 1971, and County Clerk Opotiki County Council to Secretary Whakatane Harbour Board, 19 March 1971. Marine Head Office file 43/55/1. Supporting Papers #332A and 333.

Harbours Act 1950 might suffice[280]. Separately the Secretary for Marine advised Whakatane Harbour Board that the concept of two different harbour boards with two different sets of bylaws being responsible for one natural harbour would be a "totally unsatisfactory situation". In any event he considered that transferring responsibility for the Whakatane County portion of the harbour to the Whakatane Harbour Board was unworkable as the Whakatane County boundaries did not include the full width of the harbour entrance[281].

One of the reasons that the Secretary for Marine regarded the Harbour Board for Ohiwa as defunct was that it had no bylaws for the regulation of shipping and boating use of the harbour. The threat to its continued existence as a Harbour Board seems to have spurred Opotiki County Council to prepare and pass a set of bylaws for Ohiwa Harbour in November 1971[282]. These came into effect on 1 January 1972, and were acknowledged by Minister of Marine later that month as complying with the provisions of the Harbours Act 1950 and the nationally-applicable Motor Launch Regulations 1962[283].

Another locally-initiated change was proposed in 1977. This was an agreement between Opotiki County Council and Whakatane District Council to establish a joint committee for control and administration of Ohiwa Harbour. This would not change the legal status whereby Opotiki County Council had the powers of a harbour board for Ohiwa, as that Council's powers (other than adoption of bylaws and approval of annual estimates) would be administered by the joint committee[284]. The Secretary for Marine continued to exhibit a negative attitude toward the Opotiki Council and a favouritism towards Whakatane interests in a reply he addressed to Opotiki County Council:

> In the case of Ohiwa Harbour, although there are existing bylaws, the fact that there is such a delay in amending the bylaws causes me to wonder whether your Council has the capability to act as the Ohiwa Harbour Board in fact rather than just in name. We note your reference to a joint committee with the Whakatane District Council, and wonder if that Council might not be better placed to carry out such responsibilities.
>
> Perhaps you could let us know your Council's views…. We stress that our sole concern is with the efficient exercise of any authority delegated under the Harbours Act. If your Council is willing and able to exercise the authority delegated to it, it will

[280] Secretary for Marine to County Clerk Opotiki County Council, 15 September 1971. Marine Head Office file 43/55/1. Supporting Papers #334.
[281] Secretary for Marine to Secretary Whakatane Harbour Board, 12 October 1971. Marine Head Office file 43/55/1. Supporting Papers #335.
[282] Ohiwa Harbour Board Motor Launch Bylaws 1971. Copy on Marine Head Office file 43/55/1. Supporting Papers #336-339.
[283] Secretary for Marine to Minister of Marine, 26 January 1972. Marine Head Office file 43/55/1. Supporting Papers #340.
[284] Senior Administration Officer Whakatane District Council to Secretary for Transport, 10 June 1977. Transport Head Office file 43/55/1. Supporting Papers #341-342.

> have our full support. If, however, it considers that it does not have the resources or the interest to actively carry out those responsibilities, then we would prefer either to resume them or to transfer them to an authority which was prepared to exercise them.[285]

However, this attitude was not taken further, as subsequent activity by the local authorities acting jointly demonstrated a renewed local commitment to effective administration of the harbour.

The first decision made by the joint committee was to agree to prepare a management plan for the whole of the harbour:

> The Ohiwa Harbour is becoming a multi-use recreational area, and because of the ever-increasing usage of the area, it is now necessary for the exercise of supervisory control over the various recreational uses of the water. These uses include swimming, water-skiing, shellfish gathering, fishing, power boating, yachting, mooring of boats and the like. In some areas of the harbour there already exists conflicts between some of the users, and if strict control is not exercised, the consequences will be regrettable. In consequence, the formulation of a management plan is a top priority.[286]

Such an approach to management of the harbour was commended by the Secretary for Transport:

> We welcome the initiative of your Council and the Opotiki County Council in taking positive measures to bring down a management plan for the harbour….
>
> We understand it is your intention to involve the public in this planning process and we are particularly pleased at this. It is our own view that the preparation of such a plan can only proceed in close consultation with the public as the users of the harbour.[287]

An amended set of Motor Launch Bylaws, presumably prepared by the joint committee, was adopted by Opotiki County Council in September 1977[288]. The bylaw was confirmed as being legally compliant and was acknowledged by the Secretary for Transport the following month[289].

Consistent with its thinking that it exercised sole governance authority, there was no consultation by the Crown about Harbour Act matters with Whakatohea hapu, nor indeed

[285] Secretary for Transport to Acting County Clerk Opotiki County Council, 16 June 1977. Transport Head Office file 43/55/1. Supporting Papers #343-344.
[286] Senior Administration Officer Whakatane District Council to Secretary for Transport, 10 June 1977. Transport Head Office file 43/55/1. Supporting Papers #341-342.
[287] Secretary for Transport to General Manager Whakatane District Council, 8 July 1977. Transport Head Office file 43/55/1. Supporting Papers #345.
[288] Motor Launch Bylaw 1977. Copy on Transport Head Office file 43/55/1. Supporting Papers #346-351.
[289] Secretary for Transport to County Clerk Opotiki County Council, 20 October 1977. Transport Head Office file 43/55/1. Supporting Papers #352.

with the hapu of any iwi, during the 1925 to 1977 period when Opotiki County Council had sole delegated authority.

In 1979 discussions commenced at a local level about a delegation to local authorities of powers of control over Ohiwa Harbour foreshores and seabed, pursuant to Section 165 Harbours Act 1950. It was to be four years before those discussions came to fruition. As a result of the initial discussions in May 1979 Opotiki County Council sought control of that part of the foreshore in Ohiwa Harbour within the Opotiki County boundaries, pursuant to Section 165 Harbours Act 1950[290]. It followed up the initial application with an explanation of its reasons for wishing to be granted foreshore control. It wished to "impose restrictions over persons who drive over the mudflats and thereby damaging the seafood and creating a smell nuisance in the summer", and to "support the Fisheries Inspector in taking action against persons opening shellfish and discarding shells on the open foreshore"[291].

Ultimately it was agreed that instead of the grant of control being issued to the Harbour Board, it would be issued to the territorial local authorities. Opotiki County Council would apply for a grant of control for the foreshores within its county boundaries, and Whakatane District Council would apply for control of the foreshore within its District boundaries. Because the area of the harbour within the Whakatane District boundaries was already administered by Opotiki County Council as Harbour Board, it was necessary for Whakatane District Council to obtain the consent of the County Council as Harbour Board before it could be granted control. It was also necessary that both Councils coordinate the production of their bylaws so that they were similar in their effect.

The Opotiki County Council Foreshore and Seabed Control Order 1983 was issued in July 1983, and granted control of the foreshore and seabed in Ohiwa Harbour within the county boundaries to the County Council for 21 years[292]. The proposed granting of control had been advertised in the *New Zealand Herald*, and no submissions had been received[293]. At the same time the Whakatane District Council Foreshore and Seabed Control Order 1983 was issued[294]. This covered all the Whakatane District's coastal foreshore, the foreshore in

[290] County Clerk Opotiki County Council to Secretary for Transport, 15 May 1979. Transport Head Office file 54/14/107. Supporting Papers #356.
[291] County Clerk Opotiki County Council to Secretary for Transport, 14 September 1979. Transport Head Office file 54/14/107. Supporting Papers #357.
[292] *New Zealand Gazette* 1983 page 2165.
[293] Secretary for Transport to Minister of Transport, 16 June 1983. Transport Head Office 54/14/107. Supporting Papers #358-359.
[294] *New Zealand Gazette* 1983 page 2489.

Whakatane harbour, and "the foreshore and seabed of Ohiwa Harbour within the District of Whakatane". Like the Opotiki County's Order, the grant of control was for 21 years.

An Opotiki County Council foreshore control bylaw was adopted in 1984[295] and was approved by the Ministry of Transport in February 1985[296].

In 1986 the Ohiwa Harbour limits were amended. This was an initiative of the Ministry of Transport, and redefined the extent of the arc outside the harbour entrance that the harbour limits extended into the open ocean:

> The Ministry has been undertaking a review of the control of water activity in the Bay of Plenty region. Because of the small amount of water activity that takes place within the present Ohiwa Harbour limits, the Ministry considers that it is no longer necessary to continue control of the waters outside the harbour, and that a reduction in the present Ohiwa Harbour limits would be appropriate. This change would still permit effective administration of Ohiwa Harbour.
>
> The Opotiki County Council has considered the Ministry's proposal and regards a reduction in harbour limits to be appropriate. The delineation of the harbour limits will be reduced from an arc of radius of 2.5 nautical miles from the eastern side of the western extremity of the Harbour mouth to a limit encompassing an area formed by the arc 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….
>
> The reduction in harbour limits will not affect the control of water activity within the harbour area, which is governed by the Council's Motor Launch Bylaw 1977.[297]

The new harbour limit was notified in October 1986[298].

There was no consultation by the Crown with Whakatohea hapu, nor indeed with the hapu of any iwi, about either the foreshore control orders in 1983 or the redefined harbour limits in 1986.

The era of the Opotiki County Council acting as a Harbour Board for Ohiwa Harbour ended in November 1989, as a result of a nationwide local government reorganisation. The Ohiwa Harbour Board was abolished, and an Ohiwa Harbour Advisory Committee was established

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[295] Opotiki County Council Foreshore Control Bylaw 1984. Copy on Transport Head Office file 54/14/107. Supporting Papers #360-370.
[296] Section Clerk to Senior Executive Officer (Harbours and Foreshores), 7 February 1985. Transport Head Office 54/14/107. Supporting Papers #371.
New Zealand Gazette 1985 page 546.
[297] Secretary for Transport to Minister of Transport, 20 August 1986, approved by the Minister 23 September 1986. Transport Head Office file 43/55/1. Supporting Papers #353-355.
[298] *New Zealand Gazette* 1986 page 4265.

with equal membership from Opotiki District Council and Whakatane District Council. The Reorganisation Order stated, with respect to this Advisory Committee:

> (1) The Opotiki District Council and the Whakatane District Council shall, at least until the 1st day of November 1995, unite in appointing a joint committee to be known as "The Ohiwa Harbour Advisory Committee".
> (2) The Ohiwa Harbour Advisory Committee shall consist of:
> (a) Three persons appointed by the Opotiki District Council, whether or not those persons are members of that council; and
> (b) Three persons appointed by the Whakatane District Council, whether or not those persons are members of that council; and
> (c) Such other persons as may be appointed jointly by both councils.
> (3) The function of the Ohiwa Harbour Advisory Committee shall be to advise the Opotiki District Council and the Whakatane District Council on matters affecting the Ohiwa Harbour and such other matters as may be referred to the Committee by those councils.[299]

The two councils elected to appoint to the Advisory Committee under clause 2(c) the representatives of three iwi with interests in the harbour. The appointment of these representatives, and the work of the Advisory Committee, has not been researched for this report.

The Advisory Committee was short-lived, however, as two years later in 1991 the Resource Management Act defined all land and waters below high water mark as falling within the coastal marine area and to be administered by Bay of Plenty Regional Council. Despite the Act's greater emphasis on consultation with and involvement of Maori on natural resource matters, the change of administrative responsibility had a contrary effect. When the Regional Council established an informal Ohiwa Working Group, its members were staff from the two district councils, the Regional Council, and the Department of Conservation; there was no iwi representation on the Working Group. This backward step remained in place for a number of years; it was not until 2002 that the Regional Council initiated a formal public consultation process for the development of a Harbour management strategy.

10.2 Ohiwa fisheries

Crown governance of fisheries was established as early as the 1880s, with administrative responsibility in the Marine Department. Local police officers acted as Fisheries Inspectors. However, it was not until 1944 that the first Marine Department fisheries officer visited Ohiwa. Before then, so far as shellfish harvesting was concerned, the traditional gathering by Whakatohea hapu would have continued largely unhindered by Crown regulatory

[299] Local Government (Bay of Plenty Region) Reorganisation Order 1989 (*New Zealand Gazette* 1989 pages 2275-2295), specifically Part II of the First Schedule of the Order dissolving the Ohiwa Harbour Board, and Clauses 111 and 149 of the Order establishing the Ohiwa Harbour Advisory Committee.

enforcement. Only the increasing European population, which also looked on Ohiwa shellfish as a resource it could benefit from, would have impacted on Maori access to the fishery.

The earliest record of Crown involvement with Ohiwa shellfish that was located during research for this report is dated 1924. Marine Department officials in Wellington read in the capital's *Dominion* newspaper that a syndicate was apparently being set up to can mussels, pipis and oysters. The Police sergeant at Opotiki, being the local Fisheries Inspector, was asked to bring to the syndicate's attention that all three species were regarded by the Crown as being Crown property, so that commercial harvesting would require permission from the Crown and probably payment of a rental[300]. The Police sergeant replied that his inquiries could not find any information about such a syndicate[301]. Thus, while nothing eventuated, the incident is instructive for establishing the view held by the Crown in the 1920s that it was responsible for the control and management governance of shellfish harvesting, up to and including having a proprietary interest.

In 1929 Opotiki County Council expressed concern that the mussel beds at Ohiwa were being depleted by large-scale gathering:

> As the mussels constitute a large portion of the local native food supply, Council thinks there is a real danger of the destruction of the beds if the wholesale exploitation is allowed to continue.[302]

Again the local Fisheries Inspector was asked to investigate, and he replied:

> I respectfully report that about 100 tons of mussels were taken from the Ohiwa Harbour last year. 50 tons went to Gisborne, 18 tons to Whakatane, 10 tons to Opotiki, and the remainder to local Maoris and residents of the district. This may appear a large amount, but considering the area of the Ohiwa mussel beds, which is over 20 acres in extent, I have no fear of depletion at the present rate of output.
>
> In previous years it was an easy matter to gather mussels with the hands at low water, but now the mussels are in deep water from 12 to 18 feet and can only be gathered by means of drags.
>
> There are three different mussel beds in the harbour and I have been confidentially informed that there is a new bed forming near the mouth of the harbour.[303]

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[300] Secretary for Marine to Fisheries Inspector Opotiki, 7 November 1924. Marine Head Office file 2/12/318. Supporting Papers #301.
[301] Fisheries Inspector Opotiki to Secretary for Marine, 2 December 1924. Marine Head Office file 2/12/318. Supporting Papers #302.
[302] County Clerk Opotiki County Council to Secretary for Marine, 13 December 1929. Marine Head Office file 2/12/318. Supporting Papers #303.
[303] Fisheries Inspector Opotiki to Secretary for Marine, 20 January 1930. Marine Head Office file 2/12/318. Supporting Papers #304.

He subsequently added that the mussels were sold fresh, and were not "tinned, canned, or made into paste"[304]. The Marine Department's Chief Inspector of Fisheries then commented:

> From the local Inspector's report there would appear to be no urgent need of imposing restrictions. In any case I do not think a satisfactory regulation could be framed without a special visit of inspection. It seems possible that the safeguarding of reasonable supplies for pickers who get mussels for their own consumption might be effected by forbidding the taking of mussels for the purposes of sale from the beds which occur above low water mark of ordinary spring tides. It would also simplify and regularise matters if the taking of mussels for purposes of sale were restricted to licence holders. This is a measure which I have previously recommended in respect of mussel exploitation in other localities.[305]

The Crown's governance of the Ohiwa fishery was raised to a higher level in 1944 as a result of a petition to Parliament from Ohiwa Maori. The petitioners, 115 persons headed by Te Whakawae Rimaha, stated that they resided "on our own lands" around the harbour, though did not provide their iwi or hapu affiliations. They wanted preserved to themselves and future generations "all fishing rights and pipi, tuangi, mussel beds rights (marked plan hereto)". While no marked plan was attached to the petition when first received by the Native Department and the Marine Department, a plan of shellfish was subsequently received and is retained in Marine Department records. The petition further asked that the protection of the beds should be achieved by legislation, which would also establish a Committee of Trustees of between three and five persons, all to be appointed by the Native Land Court. Granting the petition would make it possible that "certain grievances now imposing upon us may be removed"[306].

To be able to respond to the petition the Chief Inspector of Fisheries visited Ohiwa in September 1944, the first such visit by a Wellington-based Marine Department official[307]. The visit was in many respects a missed opportunity for Maori living around Ohiwa to engage with the Crown, as the Chief Inspector met with the local Police sergeant (the Fisheries Inspector) and some "residents of the eastern shore", presumably Europeans, though "lack of time and limitations of transport" meant that "I was not able to get to Kutarere where the Maori settlement is, and I did not interview any Native". The Police sergeant's

[304] Fisheries Inspector Opotiki to Secretary for Marine, 3 July 1930. Marine Head Office file 2/12/318. Supporting Papers #305.
[305] Chief Inspector of Fisheries to Secretary for Marine, 6 August 1930. Marine Head Office file 2/12/318. Supporting Papers #306.
[306] Petition of Te Whakawae Rimaha and 114 others, undated, attached to Under Secretary Native Department to Secretary for Marine, 18 August 1944. Marine Head Office file 2/12/318. Supporting Papers #307-308.
[307] Chief Inspector of Fisheries to Acting Secretary for Marine, 10 October 1944. Marine Head Office file 2/12/318. Supporting Papers #309-310.

view on the petition was that it was motivated by antagonism towards an "old and cantankerous" European fisherman who lived at Kutatere "among the Maoris". However, given the effort put into the drawing up and presentation of the petition, and the provision of a marked up map showing requested reserve areas, there seems to have been more at stake than just an attempt at resolving a personal vendetta. In observations about the Ohiwa fishery, the Chief Inspector commented:

> I understand that the character of the harbour has changed very considerably in recent times. The east head of the entrance is about a quarter of a mile to the eastwards of its former position, and what was once the township of Ohiwa has disappeared by inundation. The originally extensive beds of mussels have been smothered by an accumulation of sand and have practically disappeared as a fishery asset. The whole harbour has received considerable deposits of silt in recent times. There are still considerable quantities of cockles and other pipis, especially *Amphidesma australis*, but not as many as formerly. I was informed that a great deal of mortality occurred on one extensive pipi bed a few years ago.
>
> There is a good stock of flounders in the harbour, judging from a catch I saw made with a drag net by a visitor from Opotiki. 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. There are also 3 professional fishermen….[308]

Commenting on the petition's request for an exclusive reservation, the Chief Inspector remarked:

> The local Inspector … said that [Ohiwa Maori] could get all the pipis they required without difficulty, or all the fish they want 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 foreshores fronting 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, e.g. the upper portion of the Kutarere arm of the harbour….
>
> 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 consider that there is a probability that the Pakeha residents on the shores of this harbour will substantially increase after the War.[309]

The Chief Inspector's report was provided to the Native Department, which forwarded it to the Native Affairs Committee of Parliament. The Committee resolved in November 1944 that

[308] Chief Inspector of Fisheries to Acting Secretary for Marine, 10 October 1944. Marine Head Office file 2/12/318. Supporting Papers #309-310.
[309] Chief Inspector of Fisheries to Acting Secretary for Marine, 10 October 1944. Marine Head Office file 2/12/318. Supporting Papers #309-310.

the petition should be referred to the Government for favourable consideration[310]. This meant it went back to the Marine Department to be actioned. It was only when the Native Department advised the Marine Department of the Native Affairs Committee's recommendation, four months later[311], that the Marine Department was supplied with the plan that had been referred to in the petition. The plan identified various pipi, cockle and mussel beds around the harbour, as well as locations referred to as "flat fishing grounds" and a "main fishing ground". Two reservation areas were shown:

- Area 1 covering the Nukuhou rivermouth and most of the Kutarere arm from the Kutarere wharf (i.e. the Hiwarau block frontage) down harbour almost out to the harbour entrance, for which the petitioners sought "all fishing rights including pipi, cockles, mussels, etc",
- Area 2 covering "Tehoro cockle bed only".[312]

The Chief Inspector of Fisheries supplied a copy of the plan to the local Fisheries Inspector (the Police sergeant):

> You may remember that when I visited Opotiki last September and discussed this question with you, we were rather at a loss because we had not been informed what parts of the Harbour the Maoris were asking for as a native reserve.
>
> At last (in March) the Native Department sent us a map with the reserve desired by the Maori petitioners marked on it. After more delay I got a copy made which I am now sending to you.
>
> I should be glad if you could give this your attention and let me know what you think about the question of letting the Natives have the sole rights of exploitation of the fish and shellfish in the areas coloured red.
>
> Would it affect any established Pakeha fishing grounds? They seem to be asking for a lot.
>
> Would it be reasonable as an alternative to let them have the west side of the channel (up to the middle line) leading up the Kutarere Arm and continuing round the south (or S.E.) side of the Nukuhau channel similarly up to the mid-channel line. Perhaps I should have said to the middle of the arm instead of the middle of the channel, because I don't know exactly how the channel goes. Apparently it follows the east side of the Kutarere arm of the harbour. I have indicated what I mean by a dotted blue line on the map.

[310] Report of Native Affairs Committee on petition of Te Whakawae Rimaha and 114 Others, 30 November 1944. *Appendices to the Journals of the House of Representatives* (AJHR) 1944, I-3, page 11.
[311] Under Secretary Native Department to Secretary for Marine, 2 March 1945. Marine Head Office file 2/12/318. Supporting Papers #311.
[312] Plan headed "Proposed reservation of fishing rights in the Ohiwa Harbour, 1944". Copy on Marine Head Office file 2/12/318. Supporting Papers #312-313.

> What I feel is that the Natives may have a reasonable claim for reserving the inshore waters immediately adjacent to their own land.[313]
> [Underlining in original]

The local Fisheries Inspector in his reply repeated his view that the petition had been motivated by a conflict of personalities:

> The petition above referred to was made by the Maoris adjacent to Ohiwa Harbour on account of the fact that an old fisherman (Jacob Olsen, age 79 years) who resides near Kutarere wharf had employed two Maori girls to collect cockles for him which he was selling.
>
> One or two of the Maoris who sponsored the petition considered that they should have been employed on this work – hence the petition which was signed by a large number of Maoris, including school children and many who did not reside near Ohiwa.

Of the proposed reserve he commented:

> You are aware no doubt, that there about as many Pakehas adjacent to Ohiwa Harbour as there are Maoris, and in the course of a few years the indications are that there will be many more Pakehas there. These Pakehas use and fish in the harbour just the same as the Maoris, and I cannot see why they should not have an equal right to do so. With regard to the taking of cockles, the Pakehas are usually not very interested in that sort of fishing which is left to the Maoris. I am informed that the supply of cockles has not been reduced in any way during recent years, and that there are and will be ample cockles for all for many years.
>
> I have perused the map of Ohiwa Harbour which you kindly forwarded, and I have discussed the position with Pakeha fishermen who live at Ohiwa, and they are all of the opinion that if the part shown in red on your map is set aside as a special reserve for Maoris the Government may as well give the Maoris the whole harbour.
>
> My own opinion is that if the Maoris are granted the entire fishing rights within the part so coloured red, it will cause continual friction between the Maoris and the Pakehas who live in that vicinity, and also the numerous Pakehas who use Ohiwa Harbour as a seaside resort in the summer months.
>
> The part coloured in red on your enclosed map is the best fishing ground in the harbour, and if the right to use that ground is taken away from the Pakeha, the attraction of Ohiwa Harbour as a seaside resort will be considerably diminished.
>
> In your attached memorandum you state that the Natives may have a reasonable claim for reserving waters immediately adjacent to their own land, and you indicate an area to the eastward of the Kutarere wharf which could possibly be so reserved. The area is shown by a dotted blue line on the map.
>
> If that area was specially reserved for the Maoris it would not greatly affect the fishing rights of the Pakeha, but personally I do see why the Maori should have any special rights to the sea. At the present time the Maoris in this vicinity do very little fishing or

[313] Chief Inspector of Fisheries to Fisheries Inspector Opotiki, 4 July 1945. Marine Head Office file 2/12/318. Supporting Papers #314-316.

> collecting of cockles. They prefer rather to buy their fish at the Kutarere store or at the Kutarere wharf from Mr Olsen.[314]

In his report to the Secretary for Marine, the Chief Inspector of Fisheries summarised the opinions expressed by the local Inspector, and then gave his own opinion:

> I am in agreement as to the inadvisability of granting the Maori petitioners the middle area of the harbour (indicated in red) which is what they want.
>
> As regards the inshore strip abreast of their lands mentioned above, the chief difficulty would be in indicating its seaward boundary and keeping other fishermen on the right side of it.
>
> I think the most just response that can be given at present is to defer the final decision until the whole of the grounds in question can be properly examined. It is a job that our Inspector Gilliver could do as soon as his projected transfer to the Bay of Plenty [to take up a newly created position of District Inspector] is brought about. The local Inspector … is limited by his being compelled to gather his evidence and opinions from others.
>
> The matter is not so urgent and critical that it ought to be decided at the present time when we are so depleted of outdoor staff that the job would only get in the way of work that is more urgent and more important.[315]

The Chief Inspector's recommendation was adopted when the Secretary for Marine wrote to the Under Secretary of the Native Department. While reservation of the whole area sought by the petitioners was not supported, no decision on a reserve of a lesser area was possible on the limited information available. The new District Fisheries Inspector would be instructed to examine the whole area, and he would be able to bring "a trained judgement" to bear on the matter "untrammelled by any local bias, so that material facts rather than opinions or prejudices" could be presented as a basis for a final decision[316].

No report back from the new District Fisheries Inspector is recorded on the Marine Department file, and the whole exercise appears to have been shelved without achieving any result and without making any final decision on the plea of the Maori petitioners. The consequence of the lack of any action was that the status quo remained. This meant that Crown policy was based on the prejudices of the officials who articulated an order of precedence whereby Pakeha commercial fishermen received priority, second were Pakeha holiday visitors to Ohiwa, and third were Maori residents of the district.

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[314] Fisheries Inspector Opotiki to Chief Inspector of Fisheries, 10 July 1945. Marine Head Office file 2/12/318. Supporting Papers #317.
[315] Chief Inspector of Fisheries to Secretary for Marine, 29 August 1945. Marine Head Office file 2/12/318. Supporting Papers #318-319.
[316] Secretary for Marine to Under Secretary Native Department, 4 October 1945. Marine Head Office file 2/12/318. Supporting Papers #320.

Because nothing had happened, and the petitioners had never been told the results of the "favourable consideration" that the Native Affairs Committee of Parliament considered that the 1944 petition deserved from Government, Maori living at Ohiwa saw no Government response or change in fisheries management. In March 1949 the lead petitioner, Te Whakawae Rimaha, wrote to the Minister of Maori Affairs repeating the request of the 1944 petition and again asking for a fishing reserve exclusively for Maori[317]. Without consulting with Marine Department officials, Maori Affairs Department officials prepared a reply for their Minister. This reply recommended that Te Whakawae contact the Maori Welfare Officer in Whakatane and the Ngati Awa Tribal Executive "with a view to arranging a fishing reserve" under Section 33 Maori Social and Economic Advancement Act 1945[318]. After this reply, nothing more was heard or reported in Crown files about a proposed reserve for Maori fishing at Ohiwa.

Only brief references to fisheries governance by the Crown since the 1950s have been located during research for this report. It is not clear whether or not the posting of a fulltime Fisheries Inspector to the Bay of Plenty, and subsequently the establishment of a regional fisheries office in Tauranga, resulted in more intervention by the Crown at Ohiwa. Fisheries officials were involved in the Waters Pollution Act classification of the harbour in 1964-65 (see next sub-section), though that involvement is represented by one published scientific paper that was located during research for this report. It may be that the absence of information is more a reflection of the absence of fisheries files at Archives New Zealand.

The scientific paper contained the following summary:

> A brief survey of Ohiwa Harbour, Bay of Plenty, revealed extensive beds of two commercially valuable molluscan species, the cockle, *Chione stutchburyi* (Gray), and the pipi, *Amphidesma australe* (Gmelin).
>
> Two other molluscs, the rock oyster, *Crassostrea glomerata*, and the green-lipped mussel, *Perna canaliculus*, present in considerable numbers early in the century, were virtually eliminated by a combination of over-exploitation and excessive siltation caused by erosion of the surrounding farmland.
>
> Improved farming practices in the surrounding watershed have now considerably reduced erosion, and the remaining beds of [cockles and pipis] appear to have stabilised in position in response to the prevailing bottom sediment and water current conditions.

[317] Te Whakawae Rimaha, Ohiwa, to Minister of Maori Affairs, 16 March 1949. Maori Affairs Head Office file 43/1/7. Supporting Papers #288-289.
[318] Minister of Maori Affairs to Te Whakawae Rimaha, Ohiwa, 12 August 1949. Maori Affairs Head Office file 43/1/7. Supporting Papers #290-291.

> [Cockle] inhabits the central harbour area of moderate water currents and relatively firm muddy banks. [Pipi] occurs on sandbanks adjacent to swift water currents near the harbour entrance.[319]

That cockles were looked upon by the Crown as a species at Ohiwa Harbour that could potentially be commercially harvested is also apparent from a letter written in 1974:

> Cockle harvesting has been concentrated in the past in the North Island, particularly in the Ohiwa and Whangaroa Harbours. Fishing has been by hand, and the majority have been sold on the local market.
>
> The Division is presently engaged in studying the cockle and other commercial shellfish populations in Ohiwa Harbour (Whakatane) to determine the stock that is available to harvest, and at a later date the effects of various types of harvesting and management techniques.
>
> We are presently collecting information on suitable cockle and other shellfish dredges used in other parts of the world towards the second part of the project.[320]

Neither the scientific paper nor the 1974 letter refer to the significance of the shellfish beds to Maori. All informants appear to have been European.

Of greater potential interest to Crown fisheries officials, however, was the potential for oyster harvesting in Ohiwa Harbour. In 1967 the District Fisheries Officer wrote to Bay of Plenty Maori about oysters in the harbour. His letter was addressed to the Maori Affairs Department officer based in Opotiki rather than directly to Whakatohea organisations:

> You may be aware that there has been some recent publicity in local newspapers to the effect that oysters may develop in Ohiwa Harbour. To some extent this is correct, and it is felt that it would be only right to advise you, briefly, of the present position.
>
> It has been made legally possible, since 1964, to oyster farm in New Zealand. Present indications are that areas in Northland would be the most suitable ones, but this office is keen on trying out some of the more tidal harbours in the Bay of plenty. Three small test areas, each comprising a few square feet, have been set up in Ohiwa Harbour. If successful, applications can be expected from the public to farm in certain areas. This could, of course, mean employment for the area, as well as having a worthwhile industry start up.
>
> If this farming gets under way, I shall be only too happy to work hand in hand with you to ensure that no farming leases are granted for areas that would affect existing shellfish beds or other parts of the harbour that are of particular value to the Maori people.[321]

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[319] LJ Paul, 'Observations on past and present mollusc beds in Ohiwa Harbour, Bay of Plenty', in *New Zealand Journal of Science*, Volume 9 No. 1, March 1966, pages 30-40 at page 30.

[320] Acting Director of Fisheries to PR Townsend, Wilson Neill Ltd, Dunedin, 9 August 1974. Agriculture and Fisheries Head Office file 42/26/14. Supporting Papers #323.

[321] District Fisheries Officer Tauranga to Maori Welfare Officer Opotiki, 16 October 1967. Maori Affairs Opotiki file 18/74/1. Supporting Papers #292.

Maori gained a special statutory dispensation with regard to shellfish harvesting when Mat Rata became Minister of Maori Affairs in the 1972-75 Labour Government. The Fisheries (General) Regulations 1950 were amended in 1973 to allow shellfish gathering for tangi and hui without needing to abide by daily take limits[322]. Instead a Maori Committee or District Maori Council could apply to a Maori Affairs Department Maori Welfare Officer who, after consulting with a fisheries officer, would issue a dispensation permit setting out a different maximum quantity that could be taken specifically for that tangi or hui. While this procedure was rather cumbersome, it was nevertheless an improvement on the pre-1973 regulations which did not acknowledge the special situation of Maori communal events.

By way of example as to how the new procedures operated, on 25 May 1973 the Maori Welfare Officer in Opotiki referred three applications to the Senior Inspector of Fisheries in Tauranga:

> Mr Syd Allison of High Street, Opotiki – individual applicant, request accepted by Pakohai Maori Committee …
> Function: 21st birthday on the 16th June 1973, to be held at the Pakohai Hall
> Requirements: 2 S.bags [sugar bags] Mussels from Ohiwa
> 3 S.bags Pipis from Ohiwa
> Date for Mussels: 13th June
> Date for Pipis: 14th June
>
> Torere Maori Committee …
> Mr Bunty Maxwell representing the committee, and lodged the application
> Function: Public gathering and meeting on 2nd June 1973 at Torere Marae
> Requirements: 6 S.bags Mussels from Torere
> 2 S.bags Pipis from Ohiwa
> Date for collection: 1st June
>
> Mrs J Manuel of Kutarere, individual applicant, request accepted by Upokorehe Maori Committee …
> Function: 21st birthday on 2nd June to be held at Kutarere Marae
> Requirements: 3 S.bags cockles, Ohiwa
> 3 S.bags pipis, Ohiwa
> Date for collection: 1st June

Authority to issue the permits was then received from the Fisheries Inspector on 29 May 1973[323].

[322] Fisheries (General) Regulations 1950 Amendment No. 20, Regulation 10. Statutory Regulations 1973/11.
[323] Maori Welfare Officer Opotiki to Senior Inspector of Fisheries, 25 May 1973. Maori Affairs Opotiki file 18/74/1. Supporting Papers #293.

At the end of 1973 the Maori Welfare Officer in Opotiki reported on shellfish permits issued during the first year of operation of the new procedures. Twelve applications had been received, with eight granted and four refused, all these refusals being because of the short notice given, usually two days before the event or proposed collection date. Six of the approved applications were for tangi. One application had caused concern:

> Application from Taupo, collection dates 29th and 30th December
> Requirements: 10 sugar bags mussels, 15 sugar bags pipis, 15 sugar bags cockles, shellfish to be collected from Ohiwa and Opape
> No information as to nature of meeting. Local residents and Honorary Rangers very disturbed with this application.

The Welfare Officer's report concluded:

> We of the Whakatohea are strictly adhering to the quantities set down by the Waiariki Council.[324]

During the 1970s the mussel population in the harbour declined. A meeting of Maori Affairs and Fisheries staff in Tauranga in early February 1977 noted:

> It appears that some areas on the Coast have been showing signs of stock depletion of mussels, and a request was made by Fisheries Officers for the placing of a temporary limit on amounts that were to be taken out on any one permit. At the moment the worst hit areas appear to be the Ohiwa Harbour and Maketu…. The meeting agreed that the conservation of our shellfish resources was a matter of urgency.[325]

Later that month the Maori Community Officer, after consulting with local Tribal Executives, expressed support for a temporary closure on the taking of mussels:

> This is to reaffirm the desire of the Whakatohea Maori Executive Committee of Opotiki, with the fullest support of neighbouring Executives, namely Eastern Tuhoe of Waimana, and Horouta Nos 4, 3 and 2 Executives of Te Whanau a Apanui, … to propose a temporary closure of the taking and harvesting of mussel shellfish from Ohiwa Harbour. The Maori peoples in the area described above are indeed concerned for the long-term conservation of our mussels, and to enjoy the privileges available to them to gather and feast on these shellfish. However the people are most anxious that considering the amounts and rate of harvesting presently being experienced, it is their belief that the mussel resources would not survive the current harvesting demands, and for this reason the Whakatohea Maori Executive submits for your Department's favourable consideration their proposals as follows:
>
> (a). That a temporary closure for the gathering of mussel shellfish be for a period of two years.
> (b). That a survey to determine resources be undertaken at end of two years to enable those concerned (preferably Fishery Department and Whakatohea Executive Committee) to decide future activities and plans.
> (c). That the temporary closure be for mussel shellfish only, and not to affect the privilege to gather pipis and cockles

[324] Maori Welfare Officer Opotiki to District Officer Rotorua, 10 December 1973. Maori Affairs Opotiki file 18/74/1. Supporting Papers #294.
[325] Notes of meeting, 2 February 1977. Maori Affairs Opotiki file 18/74/1. Supporting Papers #295-297.

(d). That the rights to issue shellfish permits to gather mussels be terminated forthwith and kept in line with the proposed closed period.
(e). Endeavour to exercise extra policing activities of Ohiwa during the closure period.

Finally the Whakatohea Executive Committee would appreciate to develop a dialogue with your Department on matters affecting shellfish, and do hope to hear from you in the very near future.[326]

Just why there was no closure implemented during the next four years is not known. Only in 1981 was mussel gathering prohibited, and then initially for only 2½ months. The Fisheries (Ohiwa Harbour Mussel Prohibition) Notice 1981 declared that "no person shall take mussels from Ohiwa Harbour during the period commencing with the day this notice comes into force [being 13th August 1981] and ending with the expiry of the 31st day of October 1981"[327]. At the end of October there was an extension of the prohibition on mussel gathering from 1 November 1981 to 31 March 1982[328], and further extensions thereafter[329]. It is not clear whether Fisheries officials consulted with Whakatohea hapu about these notices. There is no record of any consultation on the relevant file of the Maori Community Officer in Opotiki, who had been the liaison between Whakatohea Executive Committee and the Ministry of Agriculture and Fisheries.

Subsequent provisions for the management of fisheries in Ohiwa Harbour have not been researched for this report.

10.3 Ohiwa water quality

Ohiwa Harbour has a relatively undeveloped catchment, certainly as compared to other Bay of Plenty estuaries such as Tauranga Harbour, Whakatane estuary and Waioweka estuary at Opotiki. This has eased fears in the past about water pollution (though not about siltation of the harbour bed). However, it has not eliminated the fear of pollution altogether, as there have been threats to the quality of Ohiwa waters from proposed developments around the harbour. In 1909 and again in 1915 Ohiwa Harbour was looked at as the possible site for a

[326] Maori Community Officer Opotiki to Director of Fisheries, 17 February 1977. Maori Affairs Opotiki file 18/74/1. Supporting Papers #298-299.
[327] Fisheries (Ohiwa Harbour Mussel Prohibition) Notice 1981. Statutory Regulations 1981/200.
[328] *New Zealand Gazette* 1981 page 2985 (with a corrigendum published in *New Zealand Gazette* 1981 page 3109).
[329] For instance, during 1982 there was a prohibition from 1 April to 31 October (*New Zealand Gazette* 1982 page 719), and from 1 November to 31 March 1983 (*New Zealand Gazette* 1982 page 3555). There may have been further prohibitions in subsequent years, though this has not been researched for this report.

freezing works[330]. The expansion of residential development on the Ohope sandspit resulted in plans being prepared for a sewage treatment works that would discharge treated effluent into the harbour. It was the latter which most excited attention in the 1960s.

In April 1963 Opotiki County Council and Ohiwa Anti-Pollution Committee jointly applied to the Water Pollution Council for the waters of Ohiwa Harbour to be classified. Classification was a procedure introduced by the Waters Pollution Regulations 1963, issued under the Waters Pollution Act 1953, whereby waters could be graded and given a quality standard below which they were not allowed to deteriorate. The Regulations were made in February 1963, so the County Council was quick off the mark in making its application for Ohiwa Harbour.

The Marine Department, as the central government agency responsible for fisheries matters, advised the Water Pollution Council about the location of shellfish beds. In submitting a preliminary classification to the Council in September 1964, the Commissioner of Works thanked the Marine Department for its "thorough survey" of the shellfish beds[331]. This survey had been undertaken by a Wellington-based fisheries scientist, rather than by regionally based fisheries inspectors. When the scientist published his results as a scientific paper, he described his work, undertaken in July 1963, as "a brief survey … of the distribution and density of the mollusc beds in the harbour to obtain basic information on which to base water pollution control decisions". He added that his concern was with "the commercially valuable mollusc beds, and their positions in relation to bottom sediments and water currents, and to the historical changes in mollusc populations caused by these two environmental factors"[332].

All the identified shellfish beds were classified SA (the highest saltwater classification, referred to as "shellfish waters"), while a 200 yard strip of the waters in Ohiwa Harbour along the edge of Ohope Spit, along the edge of some of the eastern side of the harbour, and at Kutarere, were classified SB (the second highest classification, referred to as "bathing waters"). The remainder of the harbour was classified SC (referred to as "harbour waters")[333].

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[330] A van der Wouden, *Ohiwa: a short history and guide*, November 1993, page 38.

[331] Ohiwa – Ohope Preliminary Classification, attached to Commissioner of Works to Chairman Pollution Advisory Council, 29 September 1964. Health Head Office file 126/2/11. Supporting Papers #22-24.

[332] LJ Paul, 'Observations on past and present mollusc beds in Ohiwa Harbour, Bay of Plenty', in *New Zealand Journal of Science*, Volume 9 No. 1, March 1966, pages 30-40.

[333] The Waters Pollution Regulations 1963 defined SA waters as "waters from which edible shellfish are regularly taken for human consumption" and to which the Fifth Schedule applied, SB waters as

The preliminary classification as submitted to it was adopted by the Council and notified for public comment in December 1964. At a meeting to present the preliminary classification there were concerns raised as to how the shellfish beds and the bathing areas could be protected from pollution that might be allowed by the SC classification in immediately adjoining waters. A newspaper report stated:

> Maori elders questioned the classifying of the shellfish beds.
>
> "We still like our shellfish raw", said Mr W Maxwell of the Opotiki Maori Tribal Executive. "How will this affect them?"
>
> Mr CA Cowie, the public health officer for the Ministry of Works, said the water would be purer than at present, and the shellfish probably bigger and better.[334]

A report of the meeting by the Assistant Director of Public Health in the Health Department recorded:

> This meeting was chaired by the Chairman of the Whakatane County Council, and was attended by about 30 people.
>
> Discussion was lively, particularly in relation to the disposal of sewage from Ohope Beach. All, especially the Maori representatives, resisted strongly any suggestions that the Harbour and its shellfish should be polluted.
>
> There appeared to be an impression amongst some of the audience that the purpose of the meeting was for Whakatane County Council to "sell" a proposed scheme for disposal of treated sewage from Ohope Beach into the Harbour.
>
> The Maori representatives said that they would object to the classification because the whole of the Harbour should be classified SA.[335]

The records examined for this report did not contain details as to who objected to the preliminary classification, or who presented their objections before a meeting of the Pollution Advisory Council. It is not known if any Whakatohea hapu objected; there were no Maori recorded as being present at the meeting described below. The only information about objections was a later summary:

> The advertising of the preliminary classification served to start the forwarding of a massive number of objections to the Council, all with the same objective, viz to stop any sewage discharge into the harbour. One objection consisted of a 900 name

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"waters to which the public have ready access and used regularly for bathing" and to which the Sixth Schedule applied, SC waters as "coastal waters to which the requirements of the Seventh Schedule hereto are applicable", and SD waters as "coastal waters to which the requirements of the Eighth Schedule hereto are applicable".

[334] *New Zealand Herald*, 11 December 1964. Copy on Health Head Office file 126/2/11. Supporting Papers #25.

[335] Report by Assistant Director Public Health, 16 December 1964. Health Head Office file 126/2/11. Supporting Papers #26-29.

> petition protesting "against the discharge of any form of sewerage (sic) effluent into any part of Ohiwa Harbour". However the chief objections consisted of an Anti-Pollution League, the Port Ohope Ratepayers and Residents Association, the Opotiki Borough Council and the Opotiki County Council.[336]

Separately to any formal objections, "the Maori member for the district has also interested himself in the matter, and there have been reports of a proposed petition to Parliament"[337].

A meeting was held at Ohope Beach in July 1965 at which objectors were given an additional opportunity to express their views to representatives of the Pollution Advisory Council who were in the district on other business[338]. This meeting, the notes from which are quoted from extensively below, was held after the formal opportunity to present objections had occurred. The Chairman of the Council, who was the Secretary for Marine, told the meeting:

> The classification is not yet final. The Council is giving it further consideration, but wanted to hear more from this meeting. For instance if whole Harbour were to be a shellfish standard, do all appreciate what it means in relation to development surrounding its shores? Would create worry, trouble and expense to local people to achieve such a high standard. Do you appreciate it? ....
>
> It would mean a very high standard of treatment for sewage into the harbour for any further subdivision. The alternative was out to sea or other expensive alternative. The sewage disposal of all existing premises would have to be brought up to standard. Salt water only covered by present proposal. The Council is trying to set out areas for people who wish to dispose of wastes. The Marine Department is anxious to save the shellfish beds.

The Harbour did not meet SA standards at that time "because there are sources of pollution to be cleared up". SA standard near the Ohope wharf was impracticable when visiting ships discharged raw sewage.

However, it is clear from a reading of the minutes of the meeting that local objectors saw the whole classification process as an underhand means by which standards could be set that would make it lawful for Ohope treated sewage to be discharged into Ohiwa Harbour. The Secretary of the Ohiwa Anti-Pollution Committee made what Crown officials described as "an emotive speech", and which was summarised in the following terms:

> Mainly aesthetic objections to discharge of effluent into Harbour. Did not like idea of eating sewage-contaminated shellfish.

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[336] Secretary for Marine to Pollution Advisory Council, undated (1965). Health Head Office file 126/2/11. Supporting Papers #40-43.
[337] Secretary for Marine to Pollution Advisory Council, undated (1965). Health Head Office file 126/2/11. Supporting Papers #40-43.
[338] Minutes of meeting at Ohope Beach, 14 July 1965. Health Head Office file 126/2/11. Supporting Papers #30-35.

> Realises certain amount of pollution already goes into Harbour, probably about two cowsheds.
>
> Should be preserved as is.

The Mayor of Opotiki told the meeting:

> Don't make a mistake. Classify whole Harbour as shellfish water. Harbour at present very pure. Few harbours pure enough for oyster culture, Ohiwa is one.
>
> Opotiki people know how costly is sewage treatment. They run effluent from an Imhoff tank straight into river, and you can't take shellfish there, even though practically pure water.

For some inexplicable reason it was only towards the end of the meeting that the Chairman of the Pollution Advisory Council disclosed a new map showing the Council's latest thoughts. This map showed a far greater area of the Harbour, though not all of it, as SA waters. As the Chairman of Opotiki County Council said to the meeting, "if map had been produced earlier in meeting, many would have been less difficult"[339].

A newspaper report of the meeting described this map in its headline as "big concession to shellfish, but still no plan for purity of whole Harbour". The area of SA waters had gone from 20% of the Harbour to 70%. However, this amendment did not alter the fundamental concern of objectors that effluent could still be discharged into the Harbour. The newspaper sought answers to two questions:

- Is there any guarantee that Ohiwa shellfish will never even accidentally be polluted by legalised disposal of effluent into the Harbour?
- If treated effluent is piped into the Harbour, will it be necessary to place notices warning against taking shellfish from certain parts of the Harbour?[340]

Following the meeting with Pollution Advisory Council representatives, Opotiki County Council reaffirmed its support for the highest grading for the Harbour. A newspaper report of the County Council meeting stated that the Council would seek the support of the Minister of Maori Affairs because, as one councillor put it:

> Pollution of the shellfish beds was of particular concern to the Maori residents as the area had been their traditional source of supply of seafood for generations. They frequently ate the shellfish raw, which he considered could be even more dangerous if there was pollution.[341]

However, no record of an approach to the Minister of Maori Affairs was located during research for this report.

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[339] Minutes of meeting at Ohope Beach, 14 July 1965. Health Head Office file 126/2/11. Supporting Papers #30-35.
[340] *Opotiki News*, 16 July 1965. Copy on Health Head Office file 126/2/11. Supporting Papers #36-37.
[341] Unknown newspaper, date unknown (July 1965). Copy on Lands and Survey Gisborne file 3/168. Supporting Papers #172.

The official reason for the increase in the area of SA waters was that the Marine Department's original survey of shellfish bed areas had not been comprehensive enough. The District Fisheries Inspector in Tauranga was told in April 1965:

> Those who have objected to the preliminary classification have not disputed the accuracy of the survey, but consider that it did not go far enough. Apparently a local campaign requested people to mark on a published map where they gathered shellfish, and these positions have been indicated as blue dots on the map being forwarded to you. Naturally the accuracy of plotting the positions of these positions (blue dots) is less accurate than the positions of principal beds determined in the survey.

The Inspector was asked to report whether the shellfish waters classification should be enlarged to include the blue dot shellfish locations[342]. No report from the Inspector has been located in the records examined for this report.

In January 1966 the standoff continued. The amended map represented the most recent proposals of the Pollution Advisory Council. While welcomed as an improvement on the preliminary classification, objectors still wanted the whole of the Harbour to be classified SA, yet the Pollution Advisory Council was unconvinced that the additional information showing other shellfish gathering spots was sufficient on its own to justify a claim that the whole Harbour should be classified SA. A paper was prepared recommending to the Pollution Advisory Council that its amended map should be adopted as the final classification. This would mean that 70% of the Harbour waters would be classified SA, the SB ("bathing waters") classification would continue to apply to the 200 yard wide strip along the estuary shore of Ohope spit, and the balance of the Harbour would be classified SC[343]. The recommendation was adopted[344].

A consequence of the classification process was that discharges of pollution in the Ohiwa Harbour catchment had to be identified, registered and permitted. In November 1966 the Medical Officer of Health considered that registration "would be confined to between six and nine outfalls from cowsheds which discharge into streams or tributaries of streams, discharging in turn into the Harbour". He considered that "all would without doubt qualify for

[342] Secretary for Marine to District Fisheries Inspector Tauranga, 5 April 1965. Health Head Office file 126/2/11. Supporting Papers #38-39.
[343] Commissioner of Works to Pollution Advisory Council, 25 January 1966. Health Head Office file 126/2/11. Supporting Papers #44.
[344] Final Classification: Ohope – Ohiwa, undated. Health Head Office file 126/2/11. Supporting Papers #45-47.

a permit"[345]. Eventually seven permits were issued, five for cowshed discharges, one for a piggery discharge, and one for a combined cowshed and piggery discharge[346]. The decision to issue effluent discharge permits was made by the Pollution Advisory Council, without seeking any input from local interests.

The whole classification process had been closely intertwined with the need to establish a sewage treatment system for the expanding Ohope Beach settlement. Once the final classification had been adopted, it was over to Whakatane County Council to develop a system, and in particular a discharge from its preferred treatment system, that would comply with the water quality standards set for the various parts of the Harbour. Initially the Council proposed an oxidation pond treatment plant with discharge of the treated effluent into the Harbour at a point where the waters were classified SC, though only on an outgoing tide. This proposal attracted opposition because the discharge point, although in SC waters, was still very close to SA waters, and therefore there was a high risk of the shellfish beds becoming polluted. Whakatane County Council's thinking then shifted to an open ocean discharge point, though this had its own risks because of proximity to the popular holiday swimming beach at Ohope. This latter proposal was the one that was adopted during the 1970s. The discharge point is 550 metres offshore in 4 metre depth of water.

[345] Medical Officer of Health Gisborne to Director General of Health, 4 November 1966. Health Head Office file 126/2/11. Supporting Papers #48.
[346] Schedule of permits to be approved at 40th Executive Committee meeting of Pollution Advisory Council, date not known. Health Head Office file 126/2/11. Supporting Papers #49-50.

11 Correct naming of sites and features

While this topic is not directly an environmental issue, it relates to an environmental matter (a wahi tapu) and is included because it was identified during the research for this report.

The reservation of the sand-spit at the mouth of the Waiotahe River has been discussed earlier in this report in the context of the protection of sites of cultural and traditional significance to Whakatohea hapu located on Crown-owned land. At the time of reservation, during the period 1980-1983, the Department of Lands and Survey sought advice about an appropriate name for the proposed historic reserve on the eastern half of the spit. Three names applicable to the spit were known to the Crown as at 1980, Tuamutu as the name used for the urupa in the 1880s, Te Ahi-ana applied to the area by the ethnographer Elsdon Best, presumably relying on Tuhoe informants[347], and Korihi Potae as advised by the Archaeological Association local representative:

> The beach opposite the Pa is known as Korihi Potae. It got the name that means "To put over the head" when Rongopopoia who, the son of Rongowhakaata (the founder of the tribe of that name), was killed after having a fishing net thrown over him. This was "Utu" for the killing of Repanga at Honekawa. Repanga was a son of Muriwai from the Mataatua canoe. Rongopopoia's son, Kohuki, when he grew up, became one of the most notable of the chiefs of the Bay of Plenty.[348]

In November 1980, letters were written to both the Registrar of the Maori Land Court and the local representative of the New Zealand Archaeological Association suggesting that an appropriate name, "perhaps with the approval of the Maori elders", might be Whakatohea Historic Reserve[349]. The Court Registrar contacted the Whakatohea Maori Trust Board and was advised that "Allotment 95 Waiotahi Parish [the urupa] is known as "Karihi Potae"[350]. The Trust Board was asked to explain the meaning of this name[351], and Monita Delamere replied:

> The meaning to Karihi. To weigh down – Tent to stop it from flapping you peg it down, that's not it.
>
> To a fishing net yes those lead weights holding the net down. That's Karihi.

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[347] E Best, *Tuhoe: Children of the Mist*, 1925, Volume 1, page 96.
[348] D White, NZ Archaeological Association Opotiki representative to Reserves Ranger Gisborne, undated, attached to Reserves Ranger Gisborne to Commissioner of Crown Lands Gisborne, 6 October 1977. Lands and Survey Gisborne file 13/167. Supporting Papers #265-270.
[349] Chief Surveyor Gisborne to D White, Opotiki, and to Registrar Maori Land Court Rotorua, 4 November 1980. Lands and Survey Gisborne file 13/167. Supporting Papers #273.
[350] Registrar Maori Land Court Rotorua to Chief Surveyor Gisborne, 28 January 1981. Lands and Survey Gisborne file 13/167. Supporting Papers #274.
[351] Chief Surveyor Gisborne to Secretary Whakatohea Maori Trust Board, 19 April 1982. Lands and Survey Gisborne file 13/167. Supporting Papers #275.

> The original bodies buried in the cemetery were drowned deliberately by a chief of Whakatohea "Tuamutu" and his men at a fish netting planned and organised by Tuamutu at the river where the cemetery is.
>
> To hold the net down. Tuamutu asked in a loving way to make the netting a successful catch the weight got to be this particular sub-tribe. Strong right across the river – Down went the Karihi and Tuamutu and his men flipped the net over the heads of the Karihi. Like a hat. Potae means hat. Over the top. Snow cap on a mountain.
>
> Tuamutu's father Repanga was killed by this sub-tribe, an old man while Tuamutu was away elsewhere fighting.
>
> Hence the name Karihi Potae. The history of Whakatohea is so much based around the cemetery and Ohiwa. We hope the name remains.[352]

A staff recommendation was then made to the Chief Surveyor that the proposed historic and scenic reserves on the spit should be named Karihi Potae Historic Reserve and Karihi Potae Scenic Reserve[353]. This name was not universally accepted by other staff in the Lands and Survey Gisborne office, with Waiotahi Spit Historic Reserve and Waiotahi Spit Scenic Reserve being preferred by some. Eventually the Chief Surveyor was obliged to make a decision:

> The explanation of 'Karihi Potae' as given by Mr Delamere … does not appear to give sufficient reason for giving the reserve this name. It apparently relates only to the River and the cemetery. No name has been forthcoming for the Pa which presumably predated the cemetery.
>
> With the explanation given, the use of 'Karihi Potae' could also open old wounds and give offence to some.
>
> I agree with your contention that 'Waiotahi Spit' has shortcomings for the naming of the Historic Reserve. However in the absence of what I consider to be a suitable alternative, and also because of the time lag since the matter was first raised, I now propose to recommend, in accordance with established procedure, that the reserve be named Waiotahi Spit Historic Reserve.[354]

This decision carried the day and was not run past the Whakatohea Maori Trust Board for its opinion. The reserve was so named later in February 1983[355].

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[352] Secretary Whakatohea Maori Trust Board to Chief Surveyor Gisborne, 21 May 1982. Lands and Survey Gisborne file 13/167. Supporting Papers #276.
The event is also recounted in R Walker, *Opotiki-Mai-Tawhiti: capital of Whakatohea*, 2007, pages 32-33.

[353] Divisional Draftsman Mapping Division Gisborne to Chief Surveyor Gisborne, 19 July 1982. Lands and Survey Gisborne file 13/167. Supporting Papers #277.

[354] File note by Chief Surveyor Gisborne, 3 February 1983. Lands and Survey Gisborne file 13/167. Supporting Papers #278-279.

[355] *New Zealand Gazette* 1983 page 496.

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