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Wai 894 # A7

Wai 203 # A2

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Wai 203/339 Scoping Report

A Report Commissioned by the Waitangi Tribunal

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List of Abbreviations

AD	Army Department files, NA
AJHR	<i>Appendices to the Journal of the House of Representatives</i>
ATL	Alexander Turnbull Library
CMS	Church Missionary Society
DNZB	<i>Dictionary of New Zealand Biography</i>
IA	Internal Affairs Department files, NA
LE	Legislative Department files, NA
LINZ	Land Information New Zealand
MA	Maori Affairs Department files, NA
MA-MLP	Maori Affairs, Maori Land Purchases Department, NA
NA	Archives New Zealand, Wellington
RDB	<i>Raupatu Document Bank</i> , 139 vols, Wellington, Waitangi Tribunal, 1990
ROD	record of documents
ROI	record of inquiry
Wai	Waitangi Tribunal claim prefix

Section 1: Introduction to this Commission

1.1 The Author

My name is Ewan Johnston, and I am a research officer at the Waitangi Tribunal. I am a Pakeha of predominantly Scottish descent and I live in Wellington. I was born and raised in Gisborne and I have a PhD in history from the University of Auckland. I have tutored in history at the University of Auckland and Victoria University of Wellington, and I have lectured in the Centre for Pacific Studies at the University of Auckland. I come to the Waitangi Tribunal with a background in the histories of cross-cultural encounters in the Pacific (including Aotearoa New Zealand) during the colonial era.

In November 2001 I was commissioned by the Waitangi Tribunal to research and write this scoping report to investigate the Treaty claims concerning the Upokorehe hapu (or members of the hapu), and the Hiwarau C block, located at Ohiwa Harbour.¹

1.2 The Wai 203 and Wai 339 Claims

On 14 May 1991, Tuiringa Mokomoko lodged a claim with the Waitangi Tribunal (Wai 203)² on behalf of himself and the members of the Mokomoko whanau of the Whakatohea iwi, concerning the Mokomoko conviction. The claim relates directly to the trial and execution of the whanau's tipuna, Mokomoko in April 1866 for the murder of the missionary Carl Sylvius Völkner at Opotiki in March 1865. The acts or omissions of the Crown objected to, and raised as possible breaches of the principles of the Treaty of Waitangi, include:

- the Crown's invasion of the Opotiki area in 1866;
- the detention of Mokomoko and his subjection to Military court-martial pursuant to the Suppression of Rebellion Act 1863 for his alleged involvement in the murder of Volkner;
- the decision to indict and prosecute Mokomoko for murder in the Supreme Court at Auckland;
- the execution of Mokomoko on 17 April 1866; and
- the decision to decline to grant an application for an acquittal and/or statutory pardon brought on behalf of the Mokomoko family in 1990.³

¹ Copy of direction commissioning research, appendix 1

² As each claim is registered by the Registrar of the Waitangi Tribunal, it is given a number for filing purposes. Numbers are assigned chronologically according to dates of registration and each number carries the prefix 'Wai'. Claims are then commonly referred to by their 'Wai number', and this convention is followed in the current report.

³ Wai 203 Statement of Claim, see appendix 2

On 15 June 1992, Mokomoko was granted a posthumous pardon, and this was presumed by the Crown to have successfully completed negotiations of the claim.⁴ However, on 17 March 1994, the Wai 203 statement of claim was amended to include the issue of the effects that the excessive confiscations of Whakatohea land, and the unlawful execution of Mokomoko, had had on Te Whanau-a-Mokomoko. These effects, it is claimed, 'were, and remain, extensive, pervasive and economically and culturally devastating'. They include such things as 'the stigma of the name Mokomoko as a convicted murderer which has followed the whanau down through the ages'; the loss of mana; the loss of lands; and the 'loss of economic opportunity for our whanau following the confiscation of our lands'. The amended statement of claim calls for 'the character, mana and reputation of Te Whanau-a-Mokomoko be restored through the enactment of a statute to that effect', and that 'the Crown take appropriate action to compensate' the whanau.⁵

In May 1994, the Waitangi Tribunal decided that the remaining Wai 203 issues, relating to the effects of confiscation, would be best considered along with the Wai 87 Whakatohea Raupatu claim,⁶ which was to be negotiated directly with the Crown. The Wai 203 claimants found these negotiations to be unsatisfactory in respect of their particular claim issues, namely compensation for the treatment of Mokomoko and the subsequent effects on his descendants. In October 1996 counsel for Wai 203 informed the Waitangi Tribunal that the claimants wished the claim to proceed to hearing.⁷ In November 1999 claimant counsel informed the Waitangi Tribunal that 'the Mokomoko whanau [...] wish to continue towards a hearing date as soon as possible.'⁸

On 17 December 1992, Tuiringa Mokomoko, as chairperson of the Trustees of Hiwarau C block, lodged a claim with the Waitangi Tribunal (Wai 339) concerning the circumstances relating to the deterioration of the block. According to the statement of claim, prior to confiscation in 1866, the original area of the land in question had comprised approximately 1321 acres, as well as four islands. Following the 1866 confiscation, 1200 acres and one island were returned, according to the statement of claim, to '30 women who were blamed

⁴ D Graham, Minister of Justice, to B Mikaere, Waitangi Tribunal, 6 July 1992 (Wai 203 ROI)

⁵ Amendment to Wai 203 Statement of Claim, see appendix 2

⁶ Chief Judge E T J Durie, Waitangi Tribunal Direction to register amendment to Wai 203 claim, 7 May 1994 (Wai 203 ROI, 2.7)

⁷ McCaw Lewis Chapman to Waitangi Tribunal, 11 October 1996

⁸ McCaw Lewis Chapman to Waitangi Tribunal, 29 November 1999. Areas of further research, as identified by claimant counsel, include the original extent of, and raupatu of, Mokomoko's land interests; the history of Mokomoko's whanau and the land they were given at Ohiwa; the current status of the Mokomoko whanau's land

with Mokomoko for the murder of Volkner'. It is further claimed that from 1867 to 1962 the 1200 acres was reduced to 800 acres, and that 'after 98 years we are left with mismanagement by the Land Court, and the Maori Trustee. As a result we are left with [a] much run down block of land, no finance, and arrears of rates and rent.'⁹

In 1995 counsel for the Wai 339 claim made a submission to the Waitangi Tribunal's Wai 46 Ngati Awa and Eastern Bay of Plenty inquiry, as follows:

- (a) Firstly in opposition to where Ngati Awa's asserts that their eastern boundary line exists.
- (b) Secondly a substantive claim against the Crown for actions by it and its agents in:
 - (i) The confiscation of land. – Raupatu
 - (ii) The actions of the Compensation Court in 1874 in vesting traditional Upokorehe lands in persons not entitled to them.
 - (iii) The inaction by the Maori Land Court in 1898 and 1939 in failing to right the actions of the Compensation Court.
 - (iv) Insufficient compensation being allowed by the Sim Commission.
 - (v) Mismanagement by the Maori Trustee, an agent of the Crown, since 1969.
 - (vi) The treatment of Mokomoko.

According to this submission, the Wai 339 claim was brought by Tuiringa Mokomoko, 'on behalf of members of Upokorehe hapu of the Whakatohea iwi'. Furthermore, the submission stated that '[e]ssentially the claim before the Tribunal, Wai 339, is by Upokorehe, a hapu of Whakatohea'.¹⁰

While the Wai 203 claim is clearly a whanau claim on behalf of 'the members of the Mokomoko Whanau', it is unclear whether the Wai 339 claim is on behalf of certain members of Upokorehe hapu (who may or may not be also represented in the Wai 203 claim); Upokorehe as a whole; or persons with interests in the Hiwarau block. There is also the issue of whether or not Upokorehe are represented in the Wai 87 Whakatohea Raupatu claim, currently under direct negotiation with the Crown. Discussion with Wai 203 and Wai 339 claimants, will seek to clarify these matters.

holdings; the impact of Mokomoko's death on his descendants; the current position of the Mokomoko whanau; and 'any other issues the Waitangi Tribunal may deem to be useful or necessary'.

⁹ Wai 339 Statement of Claim, see appendix 2

¹⁰ Submissions of Counsel for Upokorehe (Wai 46 ROD, doc F3), pp 1-2

1.3 Overlap with the Waitangi Tribunal's Ohiwa Harbour Report

Evidence suggests that Ohiwa Harbour was one of the most densely settled areas in pre-European Aotearoa.¹¹ As such, the harbour was, and remains, a hotly contested resource. Four iwi and hapu claims concerning Ohiwa Harbour have been submitted to the Waitangi Tribunal: Wai 36 (James Wharehuia Milroy, on behalf of the Tuhoe tribe); Wai 46 (Hirini Moko Mead, for Ngati Awa); Wai 87 (Claude Augustin Edwards, for the Whakatohea Maori Trust Board); and Wai 339 (Tuiringa Mokomoko, for Hiwarau C block beneficiaries, who are of the Upokorehe hapu of Te Whakatohea iwi).

The Waitangi Tribunal has commissioned a substantive report to investigate Treaty claims concerning Ohiwa Harbour, a scoping report for which has been completed by Anita Miles (June 2001). Miles points out that while 'it must be borne in mind that claims to the Waitangi Tribunal are made against the Crown',

it seems implicit in the claims concerning Ohiwa, that one grievance is the Crown's failure to appreciate the complexity of Maori iwi and hapu relations at Ohiwa. This has, some claimants argue, resulted in the Crown dealing with the wrong people, returning 'outsiders' to land rightfully belonging to tangata whenua, and failing to recognise who were, or are, the appropriate iwi authorities to deal with in regard to the harbour.¹²

The Waitangi Tribunal decided that a separate report was needed to focus specifically upon the claim concerning the Hiwarau block lodged with the Tribunal by Tuiringa Mokomoko on behalf of members of Upokorehe (Wai 339). This report will not only enable Upokorehe to have their interests in the harbour documented for incorporation into the wider Ohiwa Harbour report, but will go into more detail regarding the specific issues identified in the Wai 339 claim, as outlined in this scoping report. Care will be taken to minimise overlap between the two reports, with the exception of narrative information that will clearly pertain to both. It must be stressed that the Ohiwa Harbour report is being undertaken to assist the Waitangi Tribunal's inquiry into the Urewera district claims, and is therefore not designed to advocate on behalf of any particular claimant group or groups in support of any particular claim.

¹¹ Anita Miles, *Te Urewera*, Rangahaua Whanui District Overview Report, Waitangi Tribunal, 1999, p 41; Te Roopu Whakaemi Korero o Ngati Awa, Te Runanga o Ngati Awa, Whakatane, 'Ohiwa', 25 November 1995 (Wai 46 ROD, doc L10), p 5

¹² Anita Miles, 'Ohiwa Harbour Scoping Report: A Report Commissioned by the Waitangi Tribunal', June 2001, (Wai 339 ROD, doc A1), pp 4, 9-10

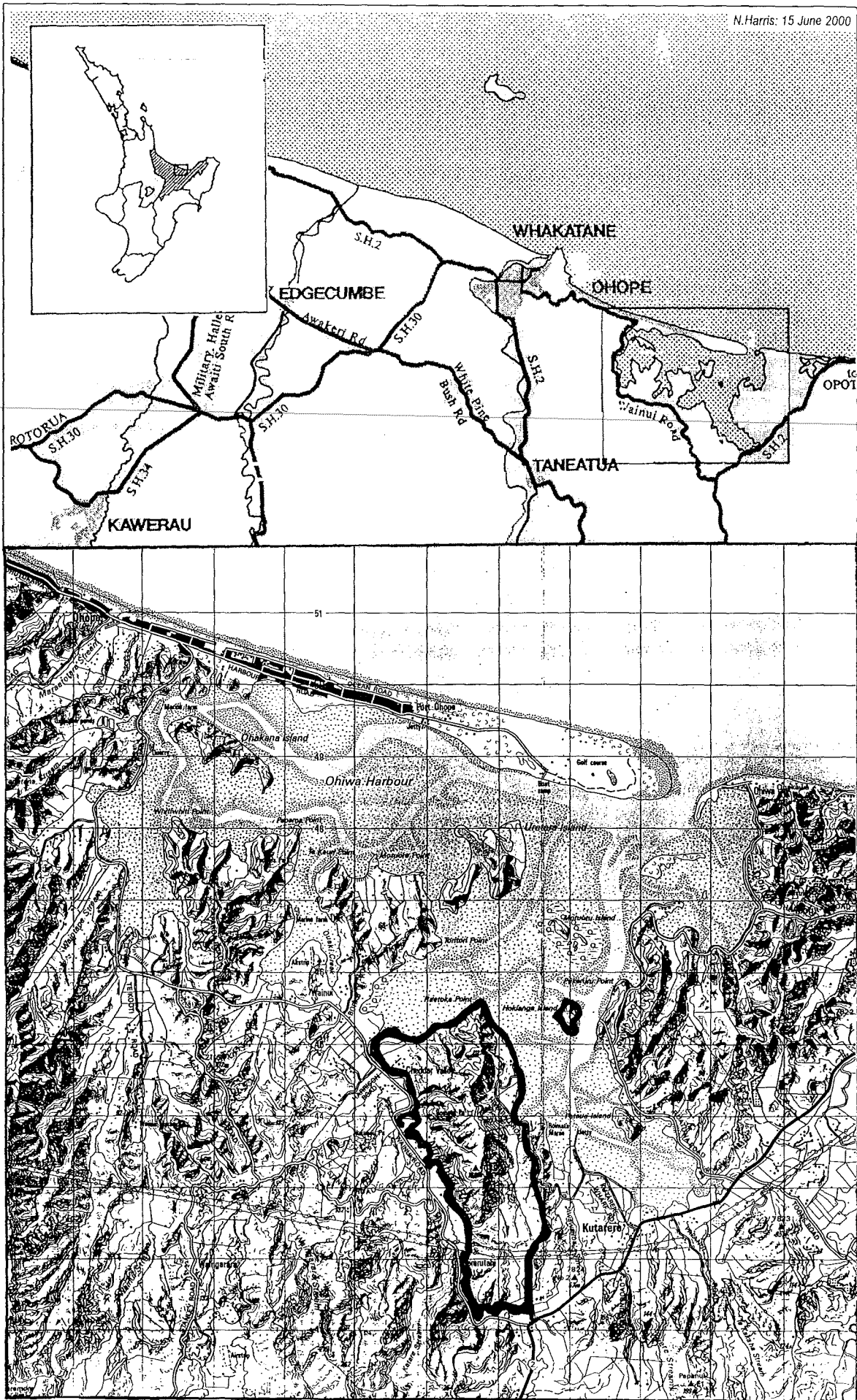


Figure 1: Ohiwa Harbour Location map, showing Hiwarau Block and Hokianga Island in dark outline
 [Source: Sarah Beadel, 'Ohiwa Harbour Indigenous Vegetation', 1993, p 1]

1.4 The Wai 203/339 Scoping Report

The objectives of the Upokorehe scoping report are to identify specific issues arising from the Wai 203 and 339 claims; to identify the relevant source materials (primary and secondary written accounts, oral accounts, maps, and any other material) to be used to produce the main Upokorehe claim report; and to anticipate the structure of, and timeframes for the production of, the substantive report.

This scoping report is divided into several sections. The first focuses on the history of Upokorehe prior to the New Zealand wars. The second deals with the experience of Upokorehe during this conflict. The third looks at the confiscation of Upokorehe lands in 1866 and the Crown grant of the Hiwarau block and Hokianga Island. The next section traces the history of the Hiwarau block from its creation in 1872 to its present status. These historical sections have been written using material found in primary and secondary writings, and it is hoped that it will provide a starting point for discussions with claimants prior to the production of the main report. The final sections identify other potential interests, and outline suggestions for further research.

1.5 Methodology

In producing this scoping report I have drawn upon research reports written by Anita Miles, Bryan Gilling, Judith Binney and Jeffrey Sissons.¹³ I have also made use of submissions made to the Waitangi Tribunal by Upokorehe counsel during the Wai 46 Ngati Awa and Eastern Bay of Plenty inquiry.¹⁴ Published official documents from the *Appendices to the Journal of the House of Representatives*, the *New Zealand Gazette*, and the Waitangi Tribunal's Raupatu Document Bank were consulted, as was material from the Alexander Turnbull Library, Archives New Zealand, and Land Information New Zealand (LINZ). The holdings of other institutions will be consulted when writing the substantive Upokorehe report.

Claimant counsel was consulted during the production of this scoping report. It is hoped that claimants will be able to assist the author in issue-identification and some interpretative matters for the main report.

¹³ Miles, *Te Urewera*; Miles, 'Ohiwa Harbour Scoping Report'; Bryan D Gilling, 'Te Raupata O Te Whakatohea: The Confiscation of Whakatohea Land 1865-1866', 1994 (Wai 87 ROD, doc A3); Judith Binney, 'Encircled Lands, Part One: A History of the Urewera from European Contact until 1878', a report commissioned by Crown Forestry Rental Trust, August 2001, Draft Version; Jeffrey Sissons, 'Blocked In, Forced Out: A History of the Waimana Block and Other Tauranga Valley Lands', a report commissioned by Crown Forestry Rental Trust, June 2001, Draft Version

¹⁴ Submissions of Counsel for Upokorehe (Wai 46 ROD, doc F3)

Section 2: Upokorehe before the New Zealand Wars

2.1 Introduction

According to A C Lyall's *Whakatohea of Opotiki*, 'the roots of Upoko-Rehe go deep. There is an element of Mataatua origin, but also much tangata whenua from Te Hapu-Oneone, the early inhabitants of the Ohiwa area.'¹⁵ Lyall records that over a period of many generations or several hundred years, Upokorehe 'and their forefathers had at varying times occupied an extremely extensive area from western Ohiwa to the Waioeka River; from Ohiwa and Waiotahi headlands, up the Waiotahi Valley to the interior at Kaharoa.' He describes the 'inland domains of Upoko-Rehe in later times', as 'including the whole valley of the Waiotahi stretching south to Kaharoa and bounded by the high ridge lines to east and west. An extension of these lines to the north,' he concludes, 'would approximately encompass their coastal preserves.'¹⁶ In *Tuhoe: The Children of the Mist*, Elsdon Best identifies 'Te Kaha-roa' as being 'on the Wai-iti stream, a tributary of the Tauranga River (right bank)'. This, he states, 'seems to have been' the 'principle pa [...] and rallying point' of Te Whakatane.¹⁷

Best recorded that Upokorehe 'lived in the Wai-o-tahe valley, and at O-hiwa', and 'are descended in part from Rau-moa, and also from Hae-ora, hence they are related to Ngati-Rau-moa, Te Whakatane, etc'. He states that 'they are not a Tuhoe clan', and that 'although defeated by the latter, they were not incorporated with that people, but moved away to O-potiki'. He includes them among the 'aboriginal' tribes ('Te Tini o Toi—The Multitude of Toi') who reached the eastern Bay of Plenty prior to the arrival of the Mataatua canoe immigrants. He also records that Upokorehe 'are also descended from Tamatea, an ancestor of Te Whakatohea, who came from Hawaiki in the Tu-whenua canoe, it is said, and who flourished about 16 or 17 generations ago.' He lists 'Puhi-rake, Orono, Tuhua and Tokorangangi' as 'some of the Upoko-rehe pa at Wai-o-tahe'.¹⁸ These descriptions will be mapped, if possible, in the substantive research report. Claimant input may be required to establish the location of boundaries and other features such as pa sites.

The name Upokorehe, Best noted, is derived from 'a singular circumstance':

When a certain ancestor of theirs died, his head was cut off and preserved (dried), after the manner Maori. But the job was badly done, the skin was not tied under the neck to

¹⁵ A C Lyall, *Whakatohea of Opotiki*, Wellington, Reed, 1979, p 68

¹⁶ Lyall, pp 74-75.

¹⁷ Elsdon Best, *Tuhoe: The Children of the Mist*, 2 vol, 2nd ed, Wellington, Reed, 1972, vol 1, p 90

¹⁸ Best, vol 1, pp 79, 86-87

keep it taut and smooth, hence it wrinkled much when the head was dried. So his descendants assumed the tribal name of Te Upoko-rehe – the Wrinkled Head.¹⁹

While Lyall writes that the identity of the particular ancestor is unknown, but is said to date ‘from the time of Kahuki’, evidence presented by a member of Upokorehe to the Native Land Court in 1939 states that the ancestor’s name was Taikurere, and that ‘the real Upokorehe are the descendants of Taikurere and these only’.²⁰

2.2 Upokorehe’s Relationship with Whakatohea and Tuhoe

Jeffrey Sissons has provided an overview of the relationship between Upokorehe and Tuhoe, with particular reference to the significance of the Waimana community as a link between Tuhoe and the coast (Ohiwa harbour).²¹ ‘The Waimana Valley,’ as Miles has stated, ‘was the ‘corridor’ linking the tidal inlet of Te Tauranga waka, where canoes were kept, with Te Raroa leading into Waimana.’²² Sissons argues that ‘traditional evidence indicates that both Ngai Turanga and Te Upokorehe remained in occupation of Te Waimana up until the 1820s when the people were forced to flee inland to escape the Nga Puhi raids.’ He also refers to ‘traditions which record that Tuhoe were invited to Te Waimana by Te Upokorehe’ and that there was considerable intermarriage between the two groups.²³ According to evidence submitted by Tuiringa Mekomoko in support of Upokorehe’s claim, Mekomoko’s third wife, Hirotipa, was Tuhoe and ‘a sister to the Tuhoe chief – Tamaikoha’.²⁴ Furthermore, Tamaikoha’s wife, Titia, was listed as Upokorehe in the schedule of owners of the Waimana block in 1882.²⁵

Tuhoe’s connections with Ohiwa were mediated through the relationship between Te Whakatane and Upokorehe. Lyall notes that while in earlier times there had been a strong affinity between Upokorehe and Te Whakatane, this was eroded through conflict between Upokorehe and Tuhoe. This had the effect of drawing Te Whakatane closer to Tuhoe generally, and strengthening the relationship between Upokorehe and Whakatohea ‘to whom they frequently looked for shelter’. Miles writes that ‘these conflicts continued well into the

¹⁹ Best, vol 1, p 90

²⁰ Lyall, p 68; Opotiki minute book 30, fols 11-18, 19 July 1939 (RDB vol 58, p 22299)

²¹ Sissons, ‘Blocked In, Forced Out’, Draft Version, June 2001, introduction; ch 1, pp 1ff

²² Miles, *Te Urewera*, pp 45-46. Miles cites Te Wharehuia Milroy and Hirini Melbourne, ‘Te Roi o te Whenua’, 1995 (Wai 36 ROD, doc A4), pp 64, 66

²³ Sissons, ‘Blocked In, Forced Out’, Draft Version, June 2001, ch 1, p 2

²⁴ Evidence of T Mekomoko (Wai 46 ROD, doc F3, app 23)

²⁵ Sissons, ‘Blocked In, Forced Out’, Draft Version, June 2001, ch 2, p 15

nineteenth century and coloured the relationship between Te Whakatane and Te Upokorehe in the aftermath of the eastern Bay of Plenty confiscation of 1866'.²⁶

Upokorehe claimants have stated that the encroaching control exerted by Tuhoe over some portions of the southern and eastern Ohiwa Harbour was upset by their defeat at Maraetotara at the hands of Whakatohea, in about 1823. They claim that, following this battle, the chief Te Rupe 'took control of the Ohiwa Harbour from Tuhoe'.²⁷ According to a report written by Kevin Were, the battle at the mouth of the Maraetotara River,

clearly established the Whakatohea boundary West of the Maraetotara Stream and [...] lost for the Tuhoe people their vital access to the sea and the Ohiwa Harbour. Whakatohea and Tuhoe from then had an understanding which permitted access by the Tuhoe people to the Ohiwa Harbour over the Whakatohea land.²⁸

Ngati Awa claimants have argued that while Tuhoe had access to Ohiwa through their connections with Upokorehe, access 'is not the same as having rights of occupation and ownership over the land'.²⁹ Upokorehe's submission to the Waitangi Tribunal suggests that Whakatohea and Tuhoe came to an understanding concerning use of the harbour, but does not mention adjacent land rights:

Full control of Te Moana o Tairongo [Ohiwa] lay with Te Upokorehe after the battle of Te Maraetotara, and was never relinquished. Tuhoe's mana was not diminished after that battle – Upokorehe/Whakatohea allowed Tuhoe full access to Te Moana o Tairongo and the sea through Wainui, Tewaingarara and the Matakerepu rivers or streams and the Waiotahe river. Tuhoe still have that access to this day, and happily share the mana moana with Whakatohea, and this is also reflected in their right of access to fish quota. Ruamoko a chief of Whakatohea made sure that the control of Ohiwa remained with Upokorehe. He had numerous skirmishes with Tuhoe.³⁰

At the time of the confiscation of Bay of Plenty land in the 1860s, it is evident that there were Tuhoe living around Ohiwa Harbour. Miles has shown that Hemi Kakitu and other Tuhoe chiefs 'lived and cultivated on Hiwarau lands with Upokorehe kin', and that the chief

²⁶ Miles, 'Ohiwa Harbour Scoping Report', p 11; Lyall, pp 68, 70; Best, p 89

²⁷ Evidence of T Mokomoko

²⁸ Kevin Were, 'Mokomoko – Our Tipuna' (Wai 46 ROD, doc F3, app 13), p 1

²⁹ Te Roopu Whakaemi Korero o Ngati Awa, 'Ohiwa' (Wai 46 ROD, doc L10)

³⁰ Evidence of T Mokomoko

Rakuraku and his people occupied Whakarae pa and adjacent lands near the southern shore of Ohiwa.³¹

Judith Binney, following Angela Ballara, has stated that, due to their close ties, in the early nineteenth century Pakeha may well have identified some of Tuhoe's neighbours, including Upokorehe, as being Tuhoe. At the same time, she continues, Pakeha also identified Upokorehe as being of Whakatohea. 'In actuality', Binney writes, 'Te Upokorehe was [...] a small tribe. It was closely intermarried with *both* its neighbouring iwi, but it perceived itself as an entity, however few its numbers'. As well as identifying himself as belonging to Tuhoe from Ruatoki, Hemi Kakitu is also described by Binney as Upokorehe's 'key leader in the 1860s'. She argues that it was due to the military assistance he gave to the government, that Upokorehe was rewarded with the Hiwarau block and Hokianga Island.³²

2.3 The Impact of Inter-Tribal Conflicts

In describing the impact of inter-tribal conflicts upon Upokorehe, Best wrote (somewhat dramatically) that, '[o]f a verity the stars in their courses seem to have fought against Te Upoko-rehe. They were scattered to the four winds.'³³

The end of hostilities between Tuhoe and Whakatohea, according to Lyall, was 'the result of the severity of the raids that came from northern groups as well as the arrival of Europeans in the district.'³⁴ The impact of the Ngati Maru and Nga Puhi raids to the eastern Bay of Plenty on Whakatohea alone, he states, was so severe that it is unlikely that they ever regained their former military strength.³⁵ Evidence submitted to the Waitangi Tribunal by Upokorehe states that, as a result of 'the Nga Puhi invasions, at this critical pre-Treaty period Whakatohea were relatively speaking, not a strong people', and that '[t]hese pre-Treaty events help explain why the Treaty was signed.'³⁶

There were also ongoing and severe conflicts between Ngati Awa and Whakatohea over, amongst other things, control of sections of Ohiwa Harbour. Such evidence, Miles has

³¹ Miles, *Te Urewera*, pp 45-46

³² Binney, 'Encircled Lands, Part One', Draft Version, August 2001, ch 1, p 11; Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c.1769 to c.1945*, Wellington, Victoria University Press, 1998, pp 290-301; Lyall, pp 68-76

³³ Best, vol 1, p 90

³⁴ Miles, 'Ohiwa Harbour Scoping Report', p 12. Miles cites Lyall, pp 138, 140

³⁵ Lyall, p 141

³⁶ Whakatohea Case Commentary (Wai 46 ROD, doc F3, app 11), pp 9-10

concluded, 'suggests that it was near impossible for any one iwi to claim control of Ohiwa Harbour in the two decades preceding the signing of the Treaty of Waitangi.'³⁷

This point is also expressed in Upokorehe's submission to the Waitangi Tribunal:

We make the point that there are many ancestral Whakatohea names in and around the harbour. Some of these are based on Whakatohea's relationship with Te Whakatane, an earlier tribe. Pre-Treaty, the whole Ohiwa western boundary is essentially disputed lands. The same applies to the southern reaches of our boundary in regard to Tuhoe. Certain branches of Tuhoe intermarried closely with the Upokorehe people.

While in recent times Ngatiawa have claimed much of Ohiwa for themselves, there are no traditional Ngatiawa names there. From the time of the Ngapuhi raids, however, Ngatiawa began to establish footholds in the area.³⁸

During the late 1820s, as incidents and levels of violence increased at Ohiwa, Ngati Awa combined with Ngati Maru in a rout of the Whakatohea stronghold of Te Papa, resulting in a marked shift in the balance of power with the majority of Whakatohea being forced from their rohe. Lyall gives the date of the attack on Te Papa as 1830, and states that among those taken prisoner were members of Upokorehe.³⁹

Following their victory at Te Papa, Ngati Awa claim that their hapu occupied the Ohiwa in its entirety:

Whakatohea were never able to recover fully from this defeat despite later protests and claims of ownership to some parts of Ohiwa [...] Ngati Awa had acquired the land by conquest, maintained occupation of that area since that time and the mana whenua of the area has since remained with them.⁴⁰

Bryan Gilling has noted that, in regard to the Ngati Maru assaults on Whakatohea, it was Ngati Ira and Upokorehe who suffered the most, and that the conflicts of the 1820s and 1830s 'apparently left the coastal fringe centred on Opotiki virtually deserted by Whakatohea.'⁴¹ Whakatohea did, however, return to Ohiwa and Opotiki, led by the chief Titoko who, Lyall

³⁷ Miles, 'Ohiwa Harbour Scoping Report', p 12

³⁸ Whakatohea Case Commentary, p 5

³⁹ Lyall, pp 144-5

⁴⁰ Te Roopu Whakaemi o Ngati Awa, 'Ohiwa', p 7, in Miles, 'Ohiwa Harbour Scoping Report', pp 14-15

⁴¹ Gilling, p 5

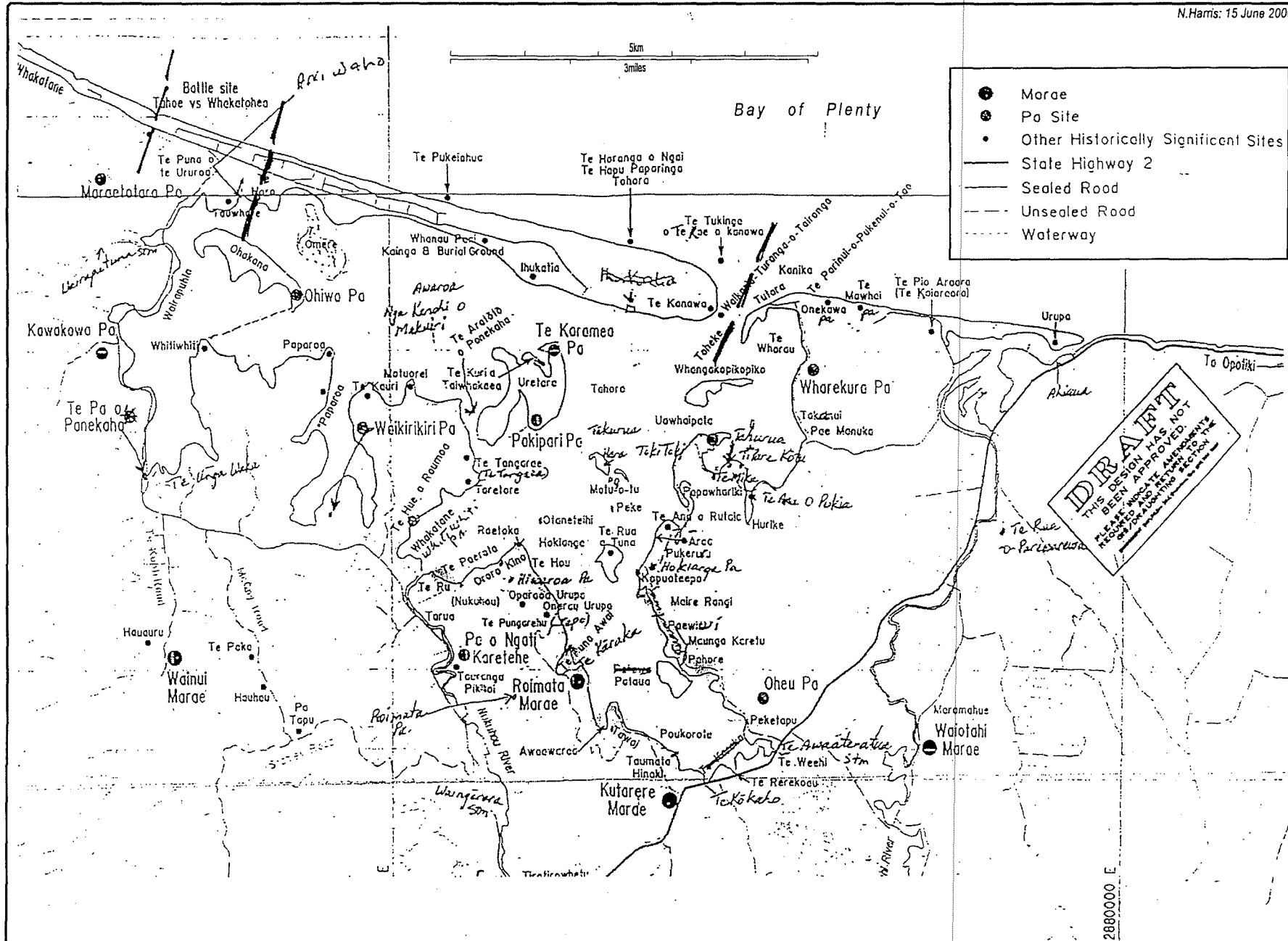


Figure 2: Points of Historical and Cultural Significance at Ohiwa Harbour
[Source: Wai 46 ROD, doc F3(a)]

states, 'seems to have attained considerable mana [...] and there was a gradual recovery of Whakatohea in strength and numbers with Titoko assuming a prominent leadership role'.⁴²

As a result of the inter-tribal conflicts, Upokorehe were left in a weakened state relative to those around them. However, Upokorehe claim to have continued to occupy their ancestral lands at Ohiwa, following the period of temporary displacement in the 1830s, under the Whakatohea chief Mokokoko.⁴³

2.4 The Ngati Awa Boundary

One of the primary concerns of the Upokorehe claim is the eastern boundary claimed by Ngati Awa in the Waitangi Tribunal's Wai 46 Ngati Awa and Eastern Bay of Plenty inquiry. This boundary follows 'the confiscation line [to] where it intercepts the Nukuhou River. From there it travels north along the west bank of the Nukuhou River to its mouth in the Ohiwa Harbour. From there the line travels to a point midway between the heads of the Ohiwa Harbour.'⁴⁴ According to the Upokorehe submission, 'Ngatiawa have never had Occupation Rights [to Ohiwa Harbour] prior to 1840 – apart from their treacherous siding with Ngati Maru and Nga Puhi in the 1830s, which was only temporary.'⁴⁵

The Upokorehe submission refers to a 'purported' dividing boundary line agreed to by Ngati Awa and Whakatohea in April 1991. This agreement, they claim, was based on an agreement signed by an individual member of Whakatohea without the consultation of Whakatohea or Upokorehe, and they therefore reject it. Furthermore, they argue that this was not the boundary claimed by Whakatohea as stated in the Whakatohea Raupatu claim (Wai 87), and that 'it does not accord with what Upokorehe understand to be their historical western boundary line'.⁴⁶

⁴² Lyall, p 147

⁴³ Submissions of Counsel for Upokorehe, p 5

⁴⁴ Submissions of Counsel for Upokorehe, p 2; 'Ngati Awa Boundary', dated 21 February 1995 (Wai 46 ROD, doc F3, app 4). See also 'Map 2: The claimants' views of their boundaries', Waitangi Tribunal, *Ngati Awa Raupatu Report*, Wellington, Legislation Direct, 1999, p 9. Ngati Awa refer to a boundary described in a petition by Te Hurinui Apanui, on behalf of Ngati Awa, to the Crown in 1922. This boundary is described as 'Starting from the mouth of the Ohiwa river that is from Turae-o-Kanawa it runs in a Southerly direction in the stream to Kutarere, Tirotirowhetu, Te Puaroa Pa thence to Arapopo, thence to Te Roto at Matamoe, Weraakihi, Te Akamutu thence meeting the boundary of the lands taken by conquest [...]' The boundary then turns west, following, approximately, the confiscation line. When this boundary returns to the coast, it continues east back to 'the mouth of the Ohiwa River that is to Turae-o-Kanawa'. Te Roopu Whakaemi Korero o Ngati Awa, 'The Tuhoe Tribal Boundary: an interim Ngati Awa response' Whakatane, 20 September 1995 (Wai 46 ROD, doc H17)

⁴⁵ Evidence of T Mokokoko, p 2

⁴⁶ Submissions of Counsel for Upokorehe, p 4. A report submitted by Ngati Awa during the Waitangi Tribunal's Wai 46 Ngati Awa and Eastern Bay of Plenty inquiry, refers to a meeting between the Trust Boards of Whakatohea and Ngati Awa to discuss the boundary on 4 April 1991. 'The solution,' the report states, 'was to follow the spirit of the Titoko-Taihau accord [between Titoko of Whakatohea and Keepa Toihau of Ngati Awa]

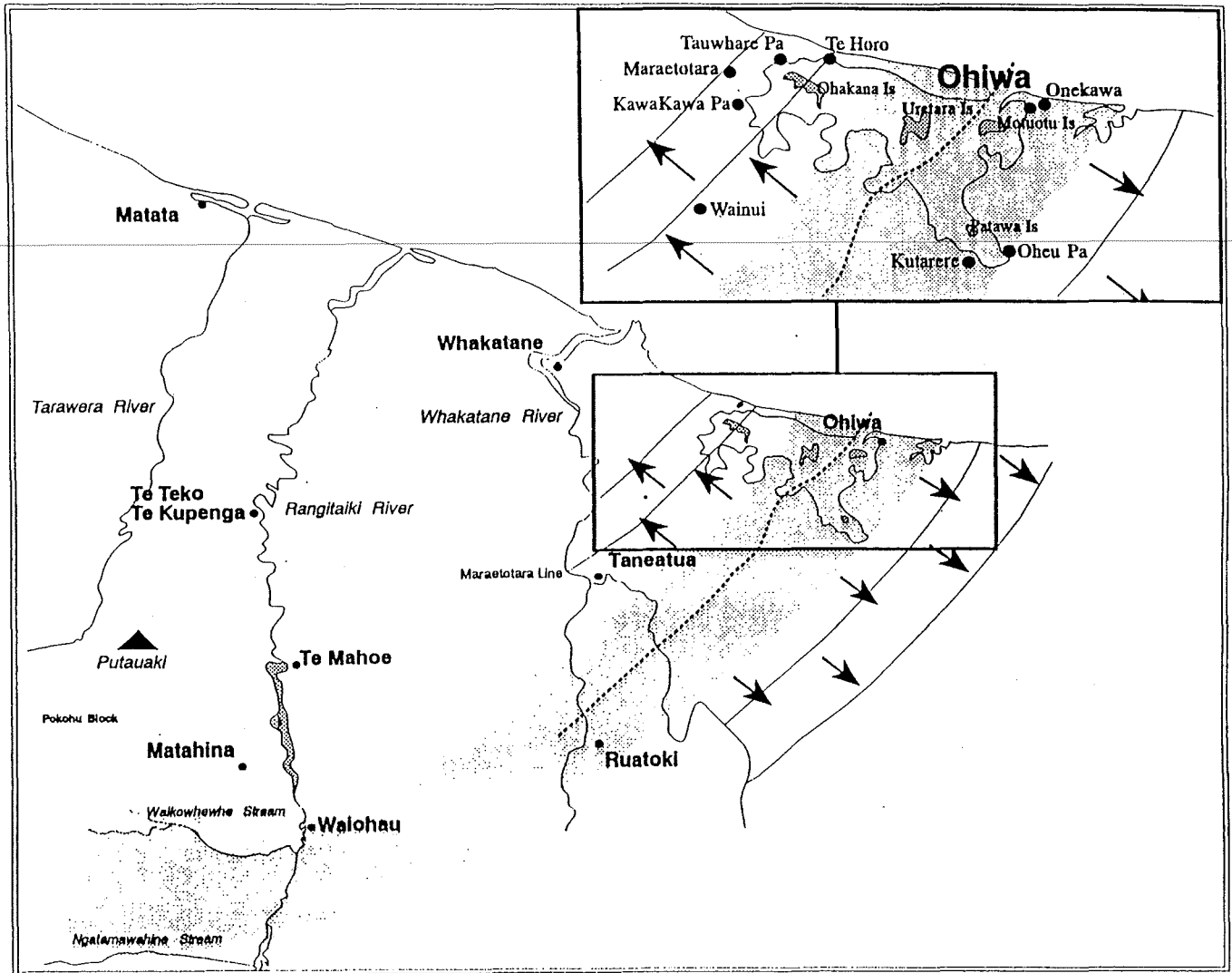


Figure 3: Map submitted by Ngati Awa showing their view of their boundary with Whakatohea (The dotted line indicates the boundary line contested by Upokorehe)

Source: Hirini Moko Mead and Te Roopu Whakaemi Korero o Ngati Awa, 'Whenua Tautohetohe: Testing the Tribal Boundaries', a report prepared in support of claim Wai 46, Research Report No. 13, Te Runanga o Ngati Awa, Whakatane, 21 November 1994 (Wai 46 ROD, doc C7), p 17

The Upokorehe submission provides evidence of the Whakatohea traditional tribal boundary given by Te Hoeroa Horokai and Heremia Hoera to the Native Land Claims Commission in 1920.⁴⁷ Te Hoeroa Horokai (Whakatohea) provided the following description of part of Whakatohea's ancestral tribal boundaries:

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

These boundaries, he continued,

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

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

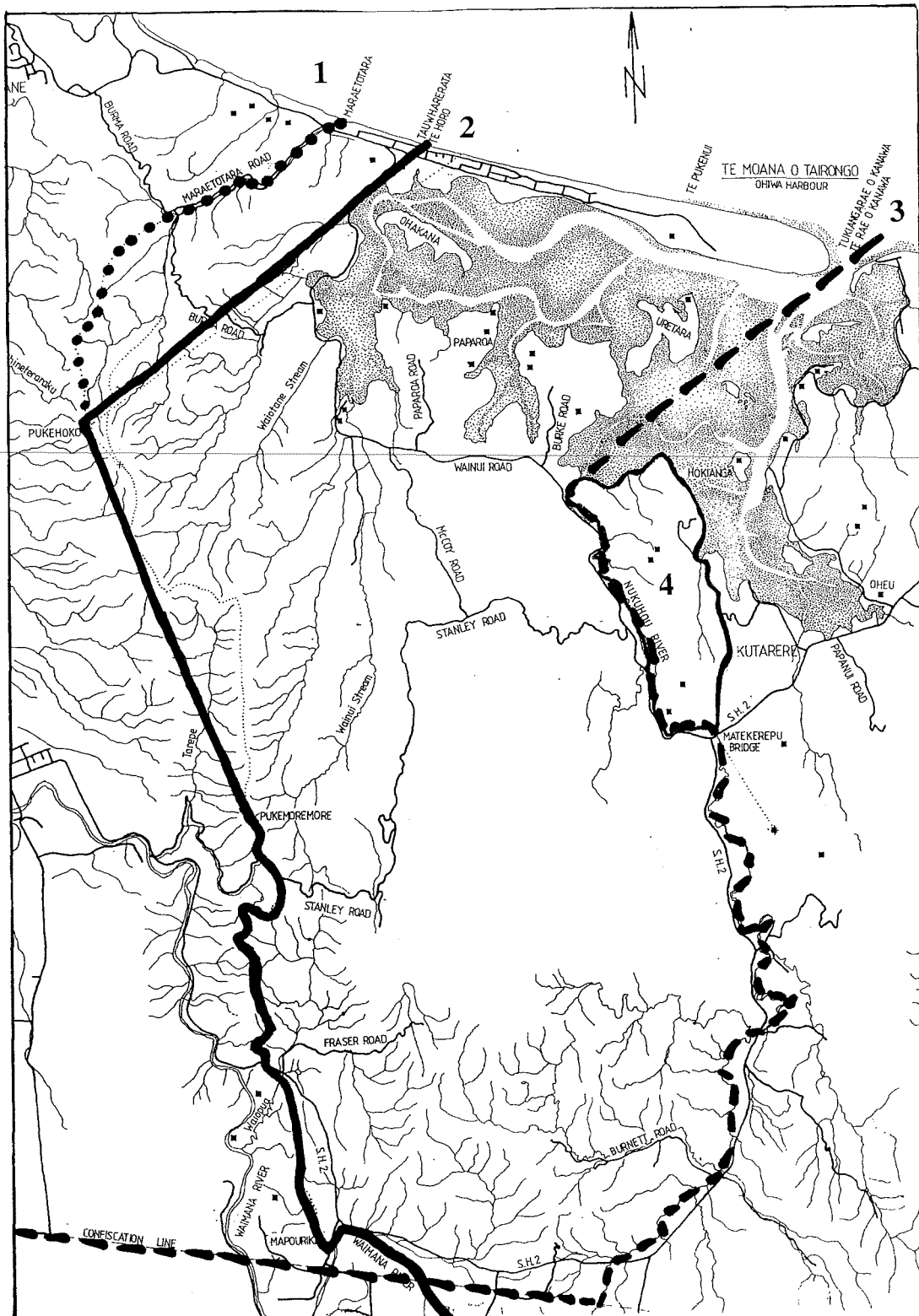
The remainder of the Whakatohea boundary, from where Te Hoeroa Horokai finished at Kaharoa to where he began at Pakihi, was provided by Heremia Hoera.⁴⁸

Establishing this boundary, particularly in regards to the eastern boundary claimed by Ngati Awa, is of paramount concern to Upokorehe claimants, who state that oral kaumatua evidence describing whakapapa, waahi tapu, place names, battle sites and incidents, pa sites, places of cultivation, fishing grounds, seafood beds, and other resource areas, will confirm that 'these

and maintain good relations between the two parties. While there is some doubt as to where they set the boundary the meeting decided that the Nukuhou River was seen today as a fair dividing line. This requires Ngati Awa to give some ground as a measure of goodwill and to accommodate changes such as the settlement of Upokorehe at Hiwarau.' Hirini Moko Mead and Te Roopu Whakaemi Korero o Ngati Awa, 'Whenua Tautohetohe: Testing the Tribal Boundaries', a report prepared in support of claim Wai 46, Research Report No. 13, Te Runanga o Ngati Awa, Whakatane, 21 November 1994 (Wai 46 ROD, doc C7), p 22

⁴⁷ Submissions of Counsel for Upokorehe, p 3

⁴⁸ Minutes of the Native Land Claims Commission, Whakatohea Confiscation, Opotiki, 12-14 July 1920, fols 69-114, 14 July 1920, pp 21-22, MA1 5/13/164 Confiscated Lands 1920-1948 (Whakatohea Claims), (RDB vol 64, pp 24635-6). Further research should ascertain whether or not these boundaries were presented in map form.



1. Boundary claimed by Upokorehe
2. Boundary presented by Whakatohea to the Native Land Claims Commission, 1920
3. Boundary claimed by Ngati Awa
4. Hiwarau

Figure 4: Sketch map of contested boundaries, as identified by Wai 339 submissions to the Waitangi Tribunal (Wai 46 ROD, doc F3(c))

places exist within the area of land up to and including what Upokorehe say is their western boundary line at the Maraetotara Stream'.⁴⁹

The following description of the 'boundary of Upokorehe Hapu of Te Whakatohea', is included in the Upokorehe submission:

Commences from the Ohiwa River Mouth known as Te rae O Kanawa, the[n] west to the Maraetotara Stream. (This was the place where Te Rupe o Te Whakatohea defeated Tuhoe [1823]). The south to Puhikoko, then by a straight line to Pukemoremore – thence to Mapouriki, then descending into the Waimana Stream, Mapouriki being on the back, following the Waimana Stream.

To its source at Tautautahi to the mouth of the Parau stream then follows the Parau stream to Tangata e Roha thence to Kaharoa (a place where Kahuki resided) then North east to Pukenui o Raho, then due north, [to] the mouth of the Waiotahe river known as Te Karihi Potai (where Kahuki's father met his demise). Then due west to the mouth of Ohiwa Harbour known as Te Moana o Tairongo.⁵⁰

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

That the Maraetotara Stream which is situated to the West of the Ohiwa Harbour and along the Ohope Beach be recognised as the traditional boundary between Ngatiawa/Ngatipukeko and Te Whakatohea Iwi.⁵¹

It is hoped that, with the assistance of claimants, many of these place names and boundaries can be identified and, if possible, mapped.

Section 3: Upokorehe and the New Zealand Wars

3.1 Introduction

The Upokorehe submission to the Wai 46 Ngati Awa and Eastern Bay of Plenty inquiry includes a summary of the events leading up to, and including, the confiscation of Upokorehe lands as follows:

⁴⁹ Submissions of Counsel for Upokorehe, p 3

⁵⁰ 'The Boundary of Upokorehe Hapu of Te Whakatohea', 31 August 1993 (Wai 46 ROD, doc F3, app 6). It was also noted that 'Puhikoko to Pukenui o Raho was the boundary given by Te Hoeroa Horoka[i] in the Sims Report at Opotiki on the 14th July 1920'; and that '[t]he boundary to Kaharoa then to the Waiotahe river mouth was related by Mr W Rewiri, a Kaumatua of Upokorehe, Te Whakatohea whanui.'

⁵¹ T Mokomoko to Waitangi Tribunal, 2 June 1993 (Wai 46 ROD, doc F3, app 3)

- involvement in the New Zealand wars in February - April 1864;
- the killing of Völkner at Opotiki on 2 March 1865;
- the Proclamation of Peace on 3 September 1865;
- the invasion of Whakatohea lands, commencing on 8 September 1865;
- skirmishing in and around the Whakatohea area from 8 September 1865 until 1870; and
- the confiscation of lands in the eastern Bay of Plenty area.

According to Kevin Were's report, Mokomoko was a significant Whakatohea fighting chief in the 1860s, and had the responsibility of protecting Whakatohea's western boundary. This included the land won from Tuhoe at the mouth of the Maraetotara stream in the 1820s. As a fighting chief, Were continues, Mokomoko was aware of the conflict and confiscations elsewhere in the North Island, particularly as he had (along with others from Whakatohea) fought at Orakau in early 1864.⁵²

This followed the battle of Te Kaokaoroa, near Matata on 28 April 1864, where a party of Whakatohea, along with some Ngati Porou and other East Coast tribes on their way to join Waikato, were repulsed by an Arawa force. The Whakatohea high chief Te Aporotanga was captured in battle and executed. Whakatohea considered his death to be murder, and this caused further resentment towards the government as well as Te Arawa.

3.2 The Death of Völkner

The Reverend Carl Sylvius Völkner, CMS missionary at Opotiki, failed to condemn the killing of Te Aporotanga as was expected by his congregation. Furthermore, it was widely known by local Maori that Völkner had been in correspondence with, and had visited, Sir George Grey, informing the governor of local involvement in, and attitudes towards, the spreading conflict.⁵³ There was also concern as to the fate of the popular local Catholic priest Father Garavel, who had been transferred from the district upon Grey's insistence, after Völkner had accused him of having been sympathetic towards the 'rebels' and having acted as their courier. It was rumoured that, as a result of Völkner's actions, Garavel had been executed.⁵⁴

⁵² Submissions of Counsel for Upokorehe, pp 5-6

⁵³ Tairongo Amoamo, 'Mokomoko', in W H Oliver, ed, *Dictionary of New Zealand Biography*, vol 1, Wellington, Department of Internal Affairs, Allen and Unwin, 1990, pp 291-2. Völkner's letters to Grey are published in 'Rev C. S. Volkner and the Tai Rawhiti Expedition, 1864', *Historical Review* (Whakatane and District Historical Society), vol 7, no 2, June 1959, pp 24-36

⁵⁴ Gilling, p 39

It was within this context that the Pai Marire missionaries Kereopa Te Rau and Patara Te Raukatauri, accompanied by around forty followers, arrived in the eastern Bay of Plenty; and it was within this context that Völkner was killed at Opotiki on 2 March 1865. The reaction of the colonial government to the killing of Völkner was an armed invasion of the eastern Bay of Plenty and subsequent blanket confiscation by the Crown of a large area of land, including that claimed by Upokorehe.

In February 1865 Kereopa Te Rau and Patara Te Raukatauri and their followers arrived in the eastern Bay of Plenty. They were accompanied by a Ngati Awa contingent of about 150, including Wepiha Apanui. According to evidence presented at the trial of those accused of Völkner's murder, this party was joined by about ten members of Whakatohea at Ohiwa Harbour,⁵⁵ before progressing to Opotiki where they arrived on 25 February 1865. Among those who travelled with the party was Mokomoko.

Despite warnings from Whakatohea to stay away, Völkner returned to Opotiki from a visit to Auckland aboard the schooner *Eclipse* on 1 March, along with Rev Thomas Grace. That night it appears that, led by Kereopa, a collective decision was made to execute Völkner the following day. 'According to accounts that may not be reliable as to all particulars,' the events of the execution itself are outlined as follows in the Waitangi Tribunal's *Ngati Awa Raupatu Report*:

Kereopa sentenced Völkner to death in his church. He was escorted outside by a party of about 30, taken to a tree, where he was hanged, and in one account his body was then shot. Afterwards, the body was decapitated and various people drank his blood from a church chalice. Taking the head inside the church, Kereopa gouged out the eyes. Naming one for the Parliament of England and the other for the Queen and English law, he then swallowed them.⁵⁶

While Kereopa (motivated, it appears, by the damage caused by Völkner's alleged spying) had singled out the missionary for execution, the final decision to execute him was apparently made collectively. Ascertaining exactly who participated in both the decision-making and the execution is difficult, as we have to rely primarily on second hand accounts, with the exception of the problematic accounts of those tried for Völkner's murder. Mokomoko denied

⁵⁵ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 41

⁵⁶ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 41

responsibility for the killing of Völkner, claiming that he had left following the decision to kill the missionary.

3.3 The Proclamation of Peace and Martial Law

The government did not respond immediately to the death of Völkner with military force. But when the government interpreter and agent James Te Mautaranui Fulloon was killed along with members of the crew of the *Kate*, at Whakatane on 22 July 1865, the military campaign (which Fulloon had been helping to plan) commenced. The Government's Te Arawa forces immediately intensified their campaign against the Pai Marire, but even then, it was not until September that a complete military occupation of the eastern Bay of Plenty was ordered.

A so-called 'Proclamation of Peace', dated 2 September 1865, announced the end of the war that had begun at Oakura (Waikato), stating that 'the Governor will take no more lands on account of the present War', and that no one would be prosecuted for past offences. There were, however, exceptions. An expedition was to be sent to the Bay of Plenty to arrest the murderers of Völkner and Fulloon, and if those concerned in the murders were not given up, the Governor threatened to 'seize a part of the lands of the Tribes who conceal these murderers'.⁵⁷

In the same issue of the *New Zealand Gazette*, martial law was proclaimed 'throughout the Districts of Opotiki and Whakatane' and, as such, 'persons suspected of the said Murders, or of aiding and abetting therein' were to be tried by courts-martial.⁵⁸ Martial law was not revoked until 26 January 1867.⁵⁹

It is most unlikely that anyone at Opotiki was aware of these proclamations prior to, and even at the time of, the arrival of government troops there under Major Willoughby Brassey on 8 September 1865. According to the Waitangi Tribunal's *Ngati Awa Raupatu Report*,

[t]he force was aggressive from the outset, bombarding the village and shooting at Maori indiscriminately, with no attempt made to ascertain who was involved in the missionary's murder and who was not.⁶⁰

⁵⁷ Proclamation of Peace, 2 September 1865, *New Zealand Gazette*, no 35, 5 September 1865, p 267

⁵⁸ Proclamation Proclaiming Martial Law throughout the Districts of Opotiki and Whakatane, 4 September 1865, *New Zealand Gazette*, no 35, 5 September 1865, pp 267-8

⁵⁹ Proclamation, *New Zealand Gazette*, no 4, 15 January 1867, p 37

⁶⁰ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 60

Gilling notes that the declaration of martial law prior to the troops being sent in indicates that the Government anticipated significant resistance to the arrival of this 500-strong expedition, and significantly, that this was more than an act of mere policing.⁶¹ The invasion was resisted, and the 1928 Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives, or Sim Commission, found that: 'The murder of Mr. Volkner and the murder of Mr. Fulloon were not in themselves acts of rebellion, and if the Natives of Opotiki and Whakatane had not resisted the armed forces sent to capture the murderers there would not have been any excuse for confiscating their lands.'⁶²

3.4 The Trial and Execution of Mokomoko

Pursued by government forces, Mokomoko surrendered in October 1865. According to Kevin Were's report:

The Mokomoko family understand that their Tipuna, Mokomoko eventually surrendered in an effort to save the Whakatohea people. They had been advised that if they surrendered their land would not be confiscated. Mokomoko was not expecting to be accused of the Völkner murder.⁶³

Mokomoko was taken to Auckland where he was tried on 27 March 1866. Tairongo Amoamo discusses the evidence heard at the trial in his biography of Mokomoko in the *Dictionary of New Zealand Biography*, as follows:

The evidence against him was the testimony of three witnesses. Joseph Jeans (or Jennings) said Mokomoko had been in the procession that took Völkner to execution and that he had carried the rope. Wiremu Te Paki also said that Mokomoko was with the procession. Wepiha Te Poono said Mokomoko commanded the armed party that took Völkner to be executed. However, witnesses differed in other details. According to one, Mokomoko was carrying the rope behind the armed men leading Völkner to the tree. Other evidence indicated that he was some distance away. No witness claimed that Mokomoko was one of those most involved in the killing. There was a conflict of evidence over who placed the rope around Völkner's neck; Jeans said it was Wi Hura while other witnesses named Pokeno Te Awanui. Neither of these men was brought to trial.

⁶¹ Gilling, p 121

⁶² 'Report of the Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives', AJHR, 1928, G-7, p 20

⁶³ Were, p 8

According to Te Whakatohea the rope had belonged to Mokomoko and was taken from him as he was catching his horse. He played no part in Völkner's death but found himself an accessory to the act through ownership of the rope.⁶⁴

Those who were arrested and convicted of Völkner's murder were: Hakaraia of Ngati Ira, Whakatohea; Heremita Kahupaea of Upokorehe, Whakatohea; Mokomoko of Upokorehe, Whakatohea; and Penetito Hawea of Ngati Awa. The sentence of Penetito, who was nineteen, was commuted to penal servitude for one year, while the other three were hanged on 17 May 1866.⁶⁵ Their bodies were buried at the old Auckland jail and courthouse, at the corner of Queen and Victoria Streets. During the 1890s, their remains were exhumed and re-interred at Mt Eden prison. Kereopa himself escaped and remained on the run until his capture and subsequent trial at Napier at the end of 1871. He was executed on 5 January 1872.⁶⁶

Mokomoko died maintaining his innocence, declaring, 'E mate hara kore ana ahau. Tena koutou Pakeha. Hei aha.' (I die an innocent man. Farewell Pakeha. So be it). His final words were, 'Tangohia mai te taura I taku kaki kia waiata au I taku waiata' (Take the rope from my neck that I may sing my song).⁶⁷

The Upokorehe submission to the Waitangi Tribunal states that:

It has always been the position of Whakatohea and Upokorehe in particular, who claim Mokomoko as their tipuna, that Mokomoko was wrongly blamed for the murder of Völkner. Upokorehe claim that they have wrongfully suffered as a result of the actions of others, for example, Kereopa who led the Hauhau movement in Opotiki.

Moreover, Upokorehe claim that the evidence submitted by Wepiha at the trial was 'tainted', in that he was Ngati Awa, a traditional enemy of Upokorehe, and of Mokomoko in particular.

Furthermore, as with the Mokomoko whanau (Wai 203), Upokorehe assert that for well over a century they have been stigmatised by the allegation that Mokomoko played a primary role in the killing of Völkner.⁶⁸ According to Tuiringa Mokomoko:

⁶⁴ Amoamo, p 292; See also Richard Boast to Rt. Hon G W R Palmer and Mr Jeffries, 17 July 1990 (Wai 203 Statement of Claim, app 5)

⁶⁵ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 42

⁶⁶ Steven Oliver, 'Kereopa Te Rau', DNZB, vol 1, pp 503-504

⁶⁷ Amoamo, p 292; see also Haunui Royal, dir, *One Land Two People*, Ninox Films, Wellington, 1996

⁶⁸ Submissions of Counsel for Upokorehe, p 8; Were, pp 8-13; Wai 203 amended Statement of Claim

Upokorehe suffered because they in my estimation had the most area of Te Whakatohea land taken, [and] to cap it off had their rohe moved further East from its original position. The Whanau Mokomoko together with the Hapu suffered because of this: Loss of Land; Loss of Mana; Loss of Historical and Cultural Identity; Loss of Life; Loss of Economic opportunities; The loss of religion – its suppression and final obliteration; The insult of the degradation and sexual abuse of some of our Kuia.⁶⁹

In July 1939 the Native Land Court heard a petition regarding the Hiwarau block (see section 5.2, below). An elderly Upokorehe woman named Mihirangi Koutu gave evidence that appears to have sought to distance Upokorehe from Mokomoko, stating that ‘when Volkner was killed by Mokomoko and his people the Upokorehe were living at Hiwarau and knew nothing of the trouble. They did not take part in the killing of Volkner.’ She also stated that ‘Mokomoko and his family (Warana and others) did not live at Ohiwa at all’.⁷⁰

It is hoped that further research will clarify the actions of Upokorehe between the arrival of government forces and the confiscation of eastern Bay of Plenty land; the extent (or otherwise) to which Upokorehe were involved in any resistance to government forces sent to capture the murderers of Völkner and Fulloon; and whether or not members of Upokorehe aided and abetted Mokomoko, or anyone who was either involved or suspected of involvement in the murders.

3.5 Mokomoko’s Posthumous Pardon

In 1987, Mokomoko’s descendants requested permission to exhume his remains from Mount Eden gaol, and this was granted in 1988.⁷¹ Mokomoko’s remains were re-interred at Waiaua, Opotiki, in October 1989, and a formal unveiling took place a year later.⁷²

With the return of his body, Mokomoko’s descendants then sought ‘statutory recognition of Mokomoko’s innocence’.⁷³ According to Tairongo Amoamo, Whakatohea had pursued the matter of a government pardon in 1981, while Ngati Awa had similarly ‘made a request for all those imprisoned in 1865’.⁷⁴ According to the Wai 203 statement of claim,

⁶⁹ Evidence of T Mokomoko, p 4

⁷⁰ Opotiki minute book 30, 19 July 1939, fols 13-15; in Miles, *Te Urewera*, p 130. Both Miles and Binney refer to Mihirangi Houtu, based on an extract from the minute book found in Wai 46 ROD, doc F3, app 20

⁷¹ Amoamo, p 292

⁷² Wai 203 Statement of Claim, section 3.7

⁷³ Richard Boast to Rt. Hon G W R Palmer and Mr Jeffries, 17 July 1990, p 1

⁷⁴ Amoamo, p 292

action was taken by the family during 1990 to take formal steps to have Mokomoko's innocence formally recognised by Government. A precedent for this existed already with the Te Runanga o Ngatiawa Act 1988. Contact was made with Bruce Gregory, MP for Northern Maori, and with Richard Boast of the Faculty of Law at Victoria University of Wellington.⁷⁵

Richard Boast submitted that, 'it is plain that a grave miscarriage of justice has occurred', arguing that '[t]here are too many discrepancies in the Crown case for it to form the basis of a conviction'. In conclusion, he stated that:

The Mokomoko family are firmly of the view that Mokomoko's case merits some form of statutory intervention equivalent to an acquittal. The family would prefer to avoid use of statutory phraseology equivalent to a "pardon" in view of the possibility that this might be seen as an act of clemency towards a guilty man, rather than a recognition of Mokomoko's innocence. The matter is of great importance to the family and we respectfully request a prompt investigation of the matter and statutory redress.⁷⁶

In response, the Department of Justice claimed that 'insufficient evidence has been adduced to warrant intervention'. The Mokomoko whanau expressed 'strong reservations about the adequacy of the Crown's response', in particular their failure to conduct any research themselves. As such, the decision to decline the application was included in the Wai 203 statement of claim as a breach of the principles of the Treaty of Waitangi, along with the '[hope] that the intervention of the Waitangi Tribunal will allow this matter to be resolved'.⁷⁷

In June 1992, Mokomoko was granted a posthumous pardon, and, as stated in section 1.2, above, this was presumed by the Crown to have successfully completed negotiations of the claim. The amended Wai 203 statement of claim indicates that this was by no means the case. There is also the issue of the nature of the pardon itself. Rather than taking the form of an acquittal, it is based on the legal precedent of the pardon granted in Te Runanga o Ngati Awa

⁷⁵ Wai 203 Statement of Claim, section 3.8

⁷⁶ Richard Boast to Rt. Hon G W R Palmer and Mr Jeffries, 17 July 1990, pp 3-4

⁷⁷ Wai 203 Statement of Claim, sections 3.10-3.12; 4.5. It was also noted that as well as rejecting the views of the Department of Justice, the family 'points out that the reason why some evidence cannot be located is, itself, due to the Crown, in particular in the Crown's failing to ensure the preservation of Court documents and other materials relating to the trial of Mokomoko. All Supreme Court records at Auckland were deliberately destroyed in 1949.'

Act of 1988 to the three members of Ngati Awa convicted of Völkner's murder.⁷⁸ David Williams is quoted in the *New Zealand Herald* as saying 'the pardon is begrudging'.⁷⁹

3.6 Conclusion

The deaths of Völkner and Fulloon, the trials of those accused, and the military occupation and confiscations which followed, occurred within an uneasy colonial climate enflamed by fears of 'Hauhau fanaticism'. Newspaper accounts of the event, in New Zealand, Britain, and elsewhere, made much of this 'fanaticism', Völkner's 'martyrdom', and the descriptions of seemingly cannibalistic acts. Following the executions, the Governor opened Parliament on 3 July 1866 with a speech praising the actions taken in response to the 'rebels'. Grey noted that 'those who had been guilty of wanton and unprovoked murders, committed in cold blood, have been dealt with by the ordinary civil tribunals.'⁸⁰

It is clear that rather than constituting an act of political 'rebellion', Völkner's execution was seen as a matter for the criminal courts. Mokomoko and the others charged with Völkner's death stood trial in the Supreme Court for murder. This, as Judith Binney has pointed out, calls into question 'the legal basis for the confiscation of lands in the eastern Bay of Plenty':

It derived initially from the death of Volkner; but once it was recognised that his execution was a criminal act, land could not be confiscated on account of his murder. This unsustainable legal basis has been acknowledged by the Crown. It has been acknowledged in respect to the confiscation of Whakatohea's lands. It has already been agreed, along with the pardon of the Whakatohea chief Mokomoko in 1992, that Whakatohea were 'wrongfully declared rebels'.⁸¹

While Whakatohea (including Mokomoko) had assisted Waikato to some extent at Orakau in 1864, Grey's 1865 Proclamation of Peace would have pardoned this prior involvement in what was considered to be an act of 'rebellion'. As the later Native Land Claims Commission

⁷⁸ Press Statement, Ministry of Justice, 18 June 1992

⁷⁹ Gilbert Wong, 'Pardoned, but . . .', *New Zealand Herald*, 23 July 1994, section 3, p 3. Mokomoko's trial, execution, and posthumous pardon have been the subject of a number of newspaper and magazine reports and television documentaries. These include: 'First step taken in exhumation of remains', *Opotiki News*, 17 October 1989; Dawn Kincaid, 'Mokomoko soon to be brought home to rest', *Opotiki News*, 19 October 1989; Dawn Kincaid, 'Laid to rest after 123 years', *Opotiki News*, 25 October 1989; Don Donovan, 'Murder in Opotiki', *Evening Post*, 29 April 1994, p 27; Maramena Roderick, 'Farewell, you Pakeha! I die without a crime', *Mana: the Maori News Magazine for all New Zealanders*, January/February 1993, 1, pp 86-87; Haunui Royal, dir., *One Land Two People*, Ninox Films, Wellington, 1996; 'Mokomoko - nowhere man', Epitaph Series 1, screened TV One, 26 November 1997.

⁸⁰ *New Zealand Gazette*, 3 July 1866, 40, pp 275-6

and the Sim Commission confirmed, 'these actions could not legally have been considered in January 1866 in justifying the confiscations'.⁸²

Section 4: Raupatu - The Confiscation of Eastern Bay of Plenty Lands

4.1 Confiscation

On 17 January 1866, the Government proclaimed the eastern Bay of Plenty confiscation district under the provisions of the New Zealand Settlements Act 1863, 'for the purposes of settlements'.⁸³ The Government's policy of confiscation of Maori land was 'originally advocated as a way of punishing rebellion, of ensuring peace and security by military settlement, and of paying for the war by selling off surplus confiscated land.' The legislation was first used in Waikato and Taranaki before being applied to the Bay of Plenty. While the legislation itself is considered to have been 'a lawful exercise of the powers of the Crown', the actual confiscations based on the legislation 'appear in many respects to have been unlawful, in that they did not conform to the requirements set out in the legislation.'⁸⁴

Under the legislation, Maori were divided into either 'rebel' or 'loyal' categories, at the discretion of the Government, and it was then up to the 'rebels' to prove their loyalty to the Crown's satisfaction. Those who had simply resisted the Crown's aggressive and illegal acts, along with their relatives, were often declared 'rebel', and sometimes so too were those who owned land that the Government wanted. From the beginning it was understood that the lands of innocent or 'loyal' Maori would be included in the blanket confiscations. Compensation Courts were established to hear applications by Maori to have their land returned to them.⁸⁵

In the case of the eastern Bay of Plenty, the Government discovered that the original boundaries of the confiscation area had been 'incorrectly stated' in the original proclamation, and new boundaries were described and gazetted as follows on 1 September 1866:

⁸¹ Binney, 'Encircled Lands, Part One', Draft Version, August 2001, ch 3, p 8. Binney quotes the *New Zealand Herald*, 1 July 1997

⁸² Gilling, p 177

⁸³ Order in Council, Land taken under NZ Settlements Act 1863, Bay of Plenty District, *New Zealand Gazette*, 18 January 1866, p 17

⁸⁴ Alan Ward, *National Overview*, Waitangi Tribunal Rangahaua Whanui Series, Wellington, Waitangi Tribunal, 1997, vol 1, pp 60-61

⁸⁵ Ward, *National Overview*, vol 1, pp 61-62. In his Whakatohea raupatu report, Bryan Gilling has examined the process of confiscation, including the issues of 'the Government's general policy concerning confiscation, how the area to be confiscated was determined, how the confiscation was conducted, the operation of the Compensation Court in the region to determine the extent to which land would be allowed back to members of Whakatohea, and some of the decisions and allocations of J. A. Wilson, the Government Agent in charge.' Gilling, pp 2-3

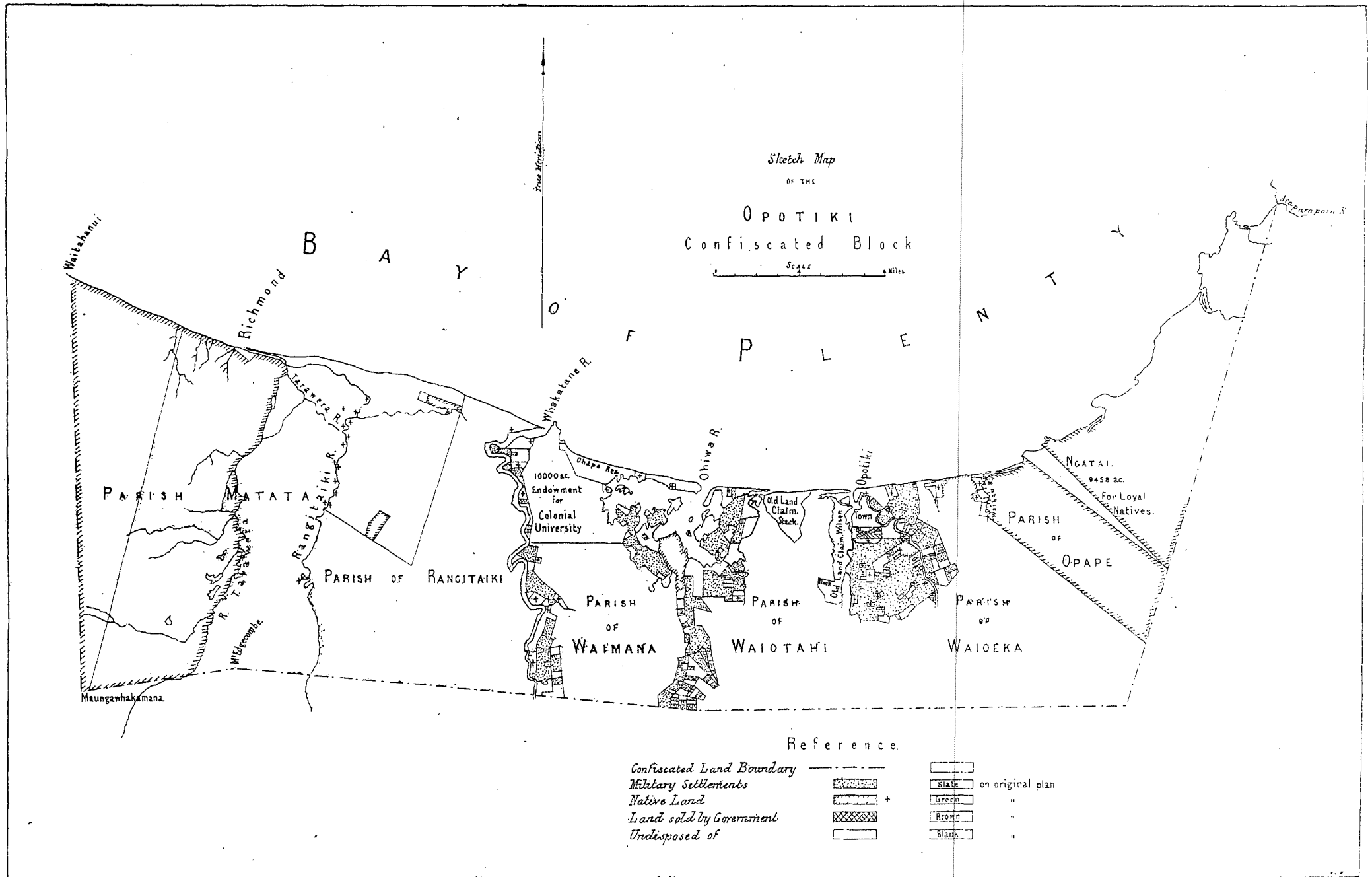


Figure 5: 'Sketch Map of the Opotiki Confiscated Block', *Journal of the Legislative Council* 1873, no 12, p 60

All that land bounded by a line commencing at the mouth of the Waitahanui River, Bay of Plenty, and running due south for a distance of twenty miles, thence to the summit of (Mount Edgecomb) Putanaki [sic]; thence by a straight line in an easterly direction to a point eleven miles due south from the entrance to the Ohiwa Harbour, thence by a line running due east for twenty miles, thence by a line to the mouth of the Aparapara [Haparapara] River, and thence following the coast line to the point of commencement at Waitahanui.⁸⁶

Ohiwa Harbour and the surrounding lands were well and truly incorporated into this revised boundary.

The 1928 Report of the Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives (Sim Commission) stated that the total area of the eastern Bay of Plenty confiscation district was 448,000 acres. Of this, 118,000 acres were restored to 'loyal Natives' and 112,300 acres to 'rebel Natives', while 6340 acres had been sold privately prior to the confiscation. This meant that the area finally confiscated was 211,060 acres. Whakatohea, the report continued, originally had 491,000 acres and were left with 347,130 acres. The report quoted the findings of the 1920 Native Land Claims Commission, which had 'no hesitation [...] in affirming that, judged by the light of subsequent events, the penalty paid by the Whakatohea, great as was their offence, was heavier than their deserts.' The Sim Commission found that in the case of Whakatohea confiscation was 'excessive', but recommended compensation of only £300 per annum, 'for the purpose of providing higher education for the children of members of that tribe.'⁸⁷ In 1946 the Government paid Whakatohea £20,000 in compensation for the settlement of confiscation grievances.

4.2 Wilson's Out of Court Arrangements

Following the confiscation, the Government's agent in the Bay of Plenty, John A Wilson, made a number of 'out-of-court arrangements' with different groups and individuals. Upon his arrival at Opotiki in November 1866, Wilson reported 'that "it was not possible to compromise [i.e., settle out of court] the claims at this place" because out of the 38 claimants (presumably both individuals and groups) to Opotiki and Ohiwa, there were only four present

⁸⁶ Order in Council, Boundaries of Bay of Plenty district altered, *New Zealand Gazette*, 1 September 1866, no 51, pp 347-81

⁸⁷ 'Report of the Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives', AJHR, 1928, G-7, pp 21-22

at the township.’⁸⁸ Furthermore, as a consequence of the ongoing skirmishing in the area, it is likely, as Miles has suggested, ‘that some claimants to Ohiwa would have found it impossible to have met and negotiated with Wilson in any case.’⁸⁹

Nevertheless, Wilson made at least two arrangements for Ohiwa lands before the Compensation Court sat in March 1867. He reported that, on 24 December 1866, with the approval of the Defence Minister, he had settled the ‘rebellious’ Upokorehe hapu on a 1500-acre reserve known as the Hiwarau block. Upokorehe were also awarded Hokianga Island:

The boundaries of this Native reserve are on the east by the main road from Tunanui towards Waimana ie the surveyed road to the point where it first strikes the Nukuhou stream, as one goes from Punawai, on the south and west by the Nukuhou, and on the north by Ohiwa harbour from the mouth of the Nukuhou to Punawai. These limits enclose an area of about 1500 acres. Hokianga is a small island of, say, 30 acres near Hiwarau.⁹⁰

Wilson did not specify with whom among (or on behalf of) Upokorehe he had negotiated this ‘arrangement’, and this was to become a significant issue. The Upokorehe submission to the Waitangi Tribunal includes the claim that, as well as creating ‘insufficient reserves for the continued self-sufficiency of the hapu’, the Crown vested ‘lands in the Hiwarau block to persons who were not members of the Upokorehe Hapu, that is, they were loyalists and outsiders.’⁹¹ Notable amongst these names was Hemi Kakitu. In both the nineteenth and twentieth centuries, a number of petitions were made to the government regarding this issue. These will be discussed in section 5, below.

In a report to the Native Minister, Donald McLean, dated 29 March 1872, Wilson reported, among other things, that he had ‘settled the Ohiwa Natives, who reverted to rebellion and again surrendered, on the land previously given to them at Hiwarau and Hokianga.’ He added that ‘Hemi Kakitu and followers have been included in this arrangement.’⁹²

⁸⁸ J A Wilson to F Whitaker, AGG Auckland, 4 November 1866 (RDB vol 120, p 46353), in Miles, *Te Urewera*, p 129 (the annotation is hers)

⁸⁹ Miles, *Te Urewera*, p 129

⁹⁰ Wilson to Pollen, 18 April 1867, IA 11867/1321 NA, in Miles, *Te Urewera*, p 129

⁹¹ Submissions of Counsel for Upokorehe, p 6

⁹² Wilson to McLean, Auckland, 29 March 1872, ‘Reports on Settlement of Confiscated Lands: Bay of Plenty, No. 3’, AJHR, 1872, C-4, p 6

4.3 The Crown Grants of Hiwarau Block and Hokianga Island

In November 1874, the grants of Hiwarau and Hokianga Island were gazetted.⁹³ Both Lots were granted under the 4th and 6th clauses of The Confiscated Lands Act 1867, which gave the Government power to make reserves for surrendered 'rebels' subject to any restrictions and limitations that the Governor saw fit to make. Hokianga Island was 'to be inalienably assured by a Grant trust to the Members of the Upokorehe *Hapu*', while Hiwarau was similarly 'to be inalienably assured by a Grant trust to the Members of the Upokorehe *Tribe*' (emphasis added).⁹⁴ With Hiwarau, the Crown's 'right to take lines of road' was reserved. Both grants were accompanied by lists of names of members of Upokorehe for whom the land was granted, but the relative interests were not defined at this time.

Hokianga Island (13 acres 2 roods 12 perches) was granted to forty-eight 'Members of the Upokorehe *Hapu*', with four trustees: Teira Haruru; Hemi Kakitu; Taituha Mokai; and Hemi Kuri.

The Hiwarau block (1,073 acres) was granted to sixty-six 'Members of the Upokorehe *Tribe*', with seven trustees: Teira Haruru; Hemi Kakitu; Hoeroa; Hemi Hamu; Mita Tahanoke; Iraia Kaiponi; and Hoani Akeake. The block was described as:

Bounded on the North by high watermark in Ohiwa Harbour from the mouth of Nukuhou River to Punawai; on the East by a road surveyed from Punawai to the point where it first strikes Nukuhou River; on the South and West by Nukuhou River.⁹⁵

At the 1939 Native Land Court hearing regarding the Hiwarau petition, the elderly Mihirangi Koutu gave evidence that Upokorehe lived at Ohiwa and Waiotahe: 'Hiwarau was a hill and my home was below it – the name of the kainga was Roimata'. She stated that with the confiscation of their land, Upokorehe had taken refuge with their whanaunga at Waimana, and it was there that Wilson had discussed Upokorehe with Rakuraku, who told him that they were from Ohiwa and now had nowhere to live:

⁹³ It is unclear whether or not an actual grant was issued. According to the minutes of the 1939 Native Land Court hearing of the 1935 petition regarding Hiwarau, 'Grant not issued – A.C.T. [a Certificate of Title?] issued later where grant is notified Gazette', Opotiki minute book 30, 19 July 1939 (RDB vol 58, p 22301)

⁹⁴ Further research and/or analysis may indicate the significance (if any) of the distinction between hapu and iwi in this context.

⁹⁵ 'Schedules of Awards made by Compensation Court and Crown Agent to Loyal Natives out of Confiscated Block, Bay of Plenty', 28 October 1874, *New Zealand Gazette*, no 60, pp 781-2. It was noted that 'Lots 1 and 2, Hiwarau Sections, Pitcairn's Survey, 25 acres each, are not included in this block'. These lots (Lot 275 and Lot 276, Waiotahi parish) can be clearly seen in plans of the Hiwarau block.

Wilson told Rakuraku he had better take these people back to Ohiwa where they came from.

Rakuraku replied 'yes' he would but he would ask Wilson to give back a small portion of the Upokorehe land that had been confiscated for them to live on. And Wilson told Rakuraku he would do this but that Rakuraku should meet him at Ohiwa and then on Christmas Day. On that Christmas Day Rakuraku met Wilson at Ohiwa and then Wilson kept to his promise and gave back Hiwarau. And Wilson also told Rakuraku that he should stay at Hiwarau and be the leader of the Upokorehe. I was at this Christmas day meeting as a small child with my mother. Then Rakuraku informed Wilson that he could not stay as he was not of Upokorehe but he pointed round and said to Wilson – These are the Upokorehe people.⁹⁶

As Miles points out, 'Rakuraku's name does not appear on the ownership list for either Hiwarau or Hokianga Island.'⁹⁷

According to Mihirangi Koutu, Hemi Kakitu had submitted a list for Hiwarau lands to Wilson at Whakatane, once he had 'returned from his wanderings with the Hauhau people'. It was this list, she claimed, that was adopted for the Hiwarau block. She described Hemi Kakitu as 'a Hauhau', and 'of Tuhoe – not even of Whakatohea. His hapu was Ngati-Kareti'. She also stated that he was 'not a rangatira of Upokorehe', although he lived and cultivated the land 'but not permanently', and that he 'lived at Hokianga with all the rest of his people'. She added that Upokorehe had also 'cultivated at Hokianga' and that 'Hiwarau has only been cultivated recently'. Upokorehe, she claimed, did not originally object to the inclusion of his name on the list because 'there were no men left in the hapu to represent it – only women were left.'⁹⁸

4.4 Upokorehe and the Compensation Court

Acknowledging that blanket confiscation would necessarily result in the alienation of land from all Maori in the confiscated area, 'rebel' or not, section 5 of the New Zealand Settlement Act 1863 provided for the establishment of Compensation Courts to hear claims for compensation, and to issue certificates entitling eligible persons to land 'according to the nature of the[ir] title interest and claim'. The Compensation Court was empowered to return land 'to those who [could prove that they] had not rebelled, or engaged in any of a series of

⁹⁶ Opotiki minute book 30, 19 July 1939, fols 13-15

⁹⁷ Miles, *Te Urewera*, p 139

defined acts, to do with aiding rebels or promoting rebellion.’⁹⁹ Upon confiscation, all customary tenure was extinguished, and any land returned to Maori by the Compensation Court was done so under Crown title.

On 7 March 1867, the Opotiki Compensation Court heard a claim brought by Anania Rakuraku (on behalf of ‘Ngaituhoe’) regarding land at Ohiwa. Rakuraku stated that:

Ngaituhoe and Upokorehe are the tribes living on the land in question now. They are connected with each other. Neither of them are connected with the Whakatohea, Ngatihokopu and [Ngatihauipara? or Ngatiwharepaia?] and Ngatiawa but [are] connected with the Urewera.¹⁰⁰

He went on to say that Upokorehe ‘live within the claim but the whole of it belongs to my tribe.’ An Upokorehe witness named Hirini, who is not identified further, supported the claim, stating that ‘there were so few of them, they could not bring any men into the field,’ adding that although both Te Upokorehe and Ngaituhoe lived on the same land, they were ‘distinct hapus’.

Tiwai Piahana gave evidence that Whakatohea had claims within the area claimed by Rakuraku, stating that ‘the Upokorehe belong to the Whakatohea’ and that ‘the whole of them took up arms against the Government’. Rewiri Te Rangimatanuku disputed Rakuraku’s boundaries, claiming that ‘the boundary of the Whakatohea is from the sea to Pukenui and then inland and along Pukenuioraho. This,’ he continued, ‘belonged to the Upokorehe and the rest of the tribes of the Whakatohea.’¹⁰¹

As a result of his perceived part in the failure of the military forces to capture Kereopa in Te Urewera, Rakuraku was later labelled as ‘having been in rebellion’ by the Opotiki Compensation Court, and his claim to lands at Ohiwa was dismissed.¹⁰²

In another case, Joseph L Kennedy claimed 1800 acres of Paiwiwi at Ohiwa (between Ohiwa and Waiotahi) ‘through his mother Rangirauwaka of the Upokorehe tribe’ who, he claimed, had exclusively ‘occupied the land’ before being taken into slavery in 1838. Kennedy stressed

⁹⁸ Opotiki minute book 30, 19 July 1939, fols 13-15

⁹⁹ Ward, *National Overview*, vol 2, pp 173-174

¹⁰⁰ Opotiki Compensation Court minute book, 7 March 1867, fol 9 (RDB vol 120, p 46061); cited in Miles, *Te Urewera*, p 139 (the annotation is hers)

¹⁰¹ Opotiki Compensation Court minute book, 7 March 1867, fols 9-14 (RDB vol 120, pp 46061-6)

that he did 'not claim with Upokorehe'. One witness, Ihaia [?], stated that 'No other hapu had any claim to any of the land. All the land between Waitotahi and Ohiwa belonged to the Upokorehe.' Another witness, Hira, stated that Rangirauwaka had 'inherited it from her father [Te Rupirau]. It was hers solely. The hapu had no claim to it.' Kepa Toihau of Ngati Awa, who had his own claim to Ohiwa lands before the Court, stated that the land in question had belonged to Upokorehe, but that his claim (on the basis of both conquest and ancestry) was superior to theirs. Another witnesses stated that 'in accordance with the Maori idea no individual could claim so large a piece', and that 'the land between Ohiwa and Waitotahi could not belong to one man'. Wi Teria agreed with this, stating that 'the land in question belonged to the Upokorehe hapu', who 'numbered about 18 men'. Rewiri Te Rangimatanuku likewise stated that 'Upokorehe own all that land'. Kennedy was granted fifty acres of land at Paiwiwi.¹⁰³

It is hoped that further research will ascertain whether or not any other claims relating to Upokorehe and/or Hiwarau were heard by the Compensation Court. It will then be possible to ascertain the extent to which Upokorehe (or members of Upokorehe) attempted to have their lands restored through the Compensation Court, and the extent to which they were actually compensated.

4.5 Conclusion

In confiscating Upokorehe's lands in 1866, when the hapu were in an already weakened position, the Crown engendered further disadvantage. Declared 'rebels', and with their numbers and power depleted, it appears that the granting to Upokorehe of the Hiwarau block and Hokianga Island was negotiated with Wilson (representing the Crown) on their behalf by others—notably Rakuraku and, to some extent, Hemi Kakitu. When the Crown grant was actually made in 1874, the list of beneficiaries included people who were (and are) not recognised by some as being members of Upokorehe. This was to be the subject of petitions made by Upokorehe to the Crown, and these will be outlined in the following section, and looked at in more detail in the substantive report. The full report will also consider the question of the extent to which the granting of the Hiwarau block compensated for the loss of Upokorehe lands.

¹⁰² Opotiki minute book 2, 1 October 1867, fol 87 (RDB vol 121, p 46617). See Miles, *Te Urewera*, p 135ff

¹⁰³ Opotiki Compensation Court minute book, 7 March-8 April 1867, 12 March 1867, fols 14-16 (RDB vol 120, pp 46066-8); 14 March 1867, fols 25-26 (RDB 46078-9); Awards of the Opotiki Compensation Court 7 March-8 April 1867 (RDB vol 120, pp 46178-9)

Section 5: Hiwarau Block History

5.1 Nineteenth Century Claims

In the late nineteenth century, a number of cases were heard by the Native Land Court regarding issues of succession, partition and relative interests in the Hiwarau block. The main cases are summarised below, and these and any others will be addressed further in the substantive report.¹⁰⁴

In March 1895, the Native Land Court heard a case concerning succession to the interests in the Hiwarau block of Tawhi Rangi. Evidence was presented by Rimaha te Pahau, Hemi Kakitu, Wi te Akeake, Rawiri Makawa, and Mihaera Rehua, ‘all of them,’ it was stated much later, ‘elders whose knowledge of history of this title must have been as nearly complete as it was possible to bring to bear at that time’.¹⁰⁵ In his judgement, Judge Scannell stated that,

In this case the Court finds it impossible to get satisfactory evidence from either side. The land was given to the Upokorehe hapu by the Government, but none of the witnesses can give us any satisfactory explanation as to who the Upokorehe are or from what source the hapu comes. All we have from which the Court can derive any guidance is the fact—admitted by one of the witnesses called to support the counter-claimants’ case—that for four generations at least the mother of the deceased and claimant in the case—and her ancestors—have lived with Te Upokorehe and at Hiwarau.¹⁰⁶

It was therefore ruled that, while the claimant was not of Upokorehe, succession was granted to her because she and her ancestors had lived with Upokorehe at Hiwarau. This was to create a precedent for rulings on later claims regarding this issue.

In March 1898, the Native Land Court heard an application for definition of relative interests in the block, as follows:

Te Warana Mokomoko and others ask for the definition of relative interests in the Hiwarau Block and claim that only thirty persons are entitled to full rights as being really

¹⁰⁴ Hiwarau (Succession), Opotiki minute book 1, fols 217-18, 16 August 1879; Hiwarau (Succession), Whakatane minute book 1, fols 37-38, 2 September 1881; Hiwarau (Succession), Opotiki minute book 7, fols 75-88, 21 March 1895; Hiwarau (Survey), Opotiki minute book 14, fols 107-108, 2 May 1896; Hiwarau (Relative interests), Opotiki minute book 15, fol 53, 3 March 1898; Hiwarau (Relative interests), Opotiki minute book 16, fols 237-259, 262-272, 275-287, 289-324, 326-338, 341, 7 March 1898; Hiwarau (Succession), Opotiki minute book 16, fols 324-325, 15 March 1898; Hiwarau (Partition), Opotiki minute book 16, fols 338-341, 17 March 1898; Hiwarau (Succession), Opotiki minute book 17 fols 1-5, 21 October 1898

¹⁰⁵ ‘The Native Purposes Act 1938. Report and Recommendation on Petition No. 14 of 1937, of Henare Rako and Others, Praying for a Reopening of the Title of Hiwarau Block’, AJHR 1944, G-6, p 4

members of the Upokorehe Tribe, to whom they state that the grant of land made by the Government was restricted. They also state that the other twenty-six persons in the title are members of N'Karetehe, N'Hunapo, Te Kareke and other hapus – not Upokorehe – and that therefore they should get merely nominal interests, as having been included in the title without right.¹⁰⁷

This was rejected by Mihaere Rehua and Rimaha te Pahau on behalf of those people objected to, who claimed that 'most of the twenty-six persons are really Upokorehe, which is a general name given, in connection with the killing of Taikurere, to the people of a number of hapus in the Ohiwa district—the descendants of Raumoa'. This group in turn objected to several people represented by Te Warana Mekomoko, 'as being members of another branch of the Upokorehe—N'Raumoa and N'Patu—who have become identified with Whakatohea, and got land at Opape, etc.'

In making judgement, Judge H Dunbar Johnson, stated that:

This Court is of opinion that, when adopting the name Upokorehe as a collective name for the fifty-six persons in the schedule of owners of this block, the Compensation Court and Crown Agent did so merely to distinguish a certain set of people who had lived in the Ohiwa/Waiotahe district and for whom land was to be provided for settlement purposes. The award then made was final and conclusive in favour of the individuals named, and it was not then contemplated that there should be a further enquiry with a view to (practically) the elimination of any who could not claim to be ancestrally connected with the Upokorehe.¹⁰⁸

While it was acknowledged that a number of those included in the list did belong to 'outside tribes – such as N'Kahungunu, etc.', Judge Johnson stated that 'they had become identified with the Ohiwa/Waiotahe people owing to long residence amongst them'. Furthermore, he added that:

it is to be presumed that, in including those persons in the schedule, the Compensation Court and Crown Agent were fully aware of their position. So also in respect of persons included in other awards—at Opape, etc.—this Court assumes that the Compensation

¹⁰⁶ Opotiki minute book 1, fols 217-18, 16 August 1879

¹⁰⁷ Opotiki minute book 16, fol 332, 17 March 1898

¹⁰⁸ Opotiki minute book 16, fol 332, 17 March 1898

Court and Crown Agent were fully cognizant of those matters and had good reasons for the action they took.¹⁰⁹

It was further noted that the function of the Court was ‘to complete work left unfinished by the Compensation Court – that is, the definition of the relative interests of the owners’, and that:

If such had been done at the time that the list of owners was settled, this Court feels quite sure that all would have been treated fairly and that no attempt would then have been made to oust anybody, or to give merely nominal interests, more especially such persons as Hemi Kakitu and Te Teira Haruru, who were undoubtedly leading men, and who were so regarded by the Compensation Court and Crown Agent. To do what has been asked would be simply going behind the award of the Compensation Court, and would be virtually making a fresh order in favour of a limited number of persons—a position which this Court is not prepared to take up.¹¹⁰

As such, it was decided that ‘this Court awards three shares to each adult male, two shares to each adult female, and one share to each child—as set out in list published in the N.Z. Gazette of 14th November, 1874—making a total of 122 shares.’¹¹¹

There are several points raised in this judgement that require comment. First, there is the issue of the actual extent to which the Compensation Court and Crown Agent were fully aware and ‘cognizant’ of the seemingly very complex situation that they had so efficiently dealt with out of court, and in negotiation with the Tuhoe chief Rakuraku. Related to this are the unidentified ‘good reasons for the action they took’. Secondly, there is the decision of the 1898 Court to confine the scope of its inquiry to ‘complet[ing the] work left unfinished by the Compensation Court – that is, the definition of the relative interests of the owners’, and again relying solely on the judgement of Wilson, who appears to have been eager to settle with Hemi Kakitu.

Another issue is that of ‘ancestral title’. Judge Johnson stated that ‘[a]t the outset of this case, the Court explained that, being confiscated land returned by the Government to specified individuals, the ancestral title was not involved.’ Nevertheless, Te Warana Mokomoko, being ‘very desirous’ to address this issue, was allowed to proceed in presenting such evidence to

¹⁰⁹ Opotiki minute book 16, fol 332, 17 March 1898

¹¹⁰ Opotiki minute book 16, fol 332, 17 March 1898

support his case. In response, the judge concluded that while ‘a good deal of conflicting evidence’ was heard, ‘the Court is of the opinion that Tapui te Kaka’s evidence is reliable and that the name Upokorehe was a general name applied to people of various hapu living in the Ohiwa/Waiotaha district.’¹¹² It would appear, then, that evidence of ancestral title was only acknowledged when it conformed to the opinion of the Court.

5.2 The 1935 and 1937 Petitions

The issue of the eligibility of those named as the original owners of the Hiwarau block, therefore, was not resolved to the satisfaction of all parties, and continued to be contentious. On 8 July 1935, Rahi Erana and nine other ‘owners of undivided interests’ in the Hiwarau block lodged a petition to Parliament, which again stated that the original list of owners included ‘a number of persons whose claim as true members of the Upokorehe Hapu is disputable’. Furthermore, the petition stated that the inclusion of these people ‘has, since the date of grant to the present time engendered discontent amongst members of the Hapu’. This discontent was fuelled, the petitioners claimed, by the list including ‘many persons who participated in grants of land by the Compensation Court to other Hapus’, and who ‘were allotted equal shares in the Hiwarau Block with those whose only grant was in the said Block.’¹¹³

The Registrar of the Waiariki District Maori Land Board advised the Native Department that:

It has been commonly held that by the Government confiscating these lands they no longer remained Native lands, and the persons put into the titles later need not necessarily be members of the tribe to whom the land was returned by the Compensation Court.¹¹⁴

Judge Johnson’s 1898 judgement was also referred to, and on 30 October 1936 the Native Affairs Committee reported that they had ‘no recommendation to make in regard to this petition’.¹¹⁵

¹¹¹ Opotiki minute book 16, fol 332, 17 March 1898

¹¹² Opotiki minute book 16, fol 332, 17 March 1898

¹¹³ Petition no. 32/1935 – Rahi Erana and others – re Hiwarau Block, Bay of Plenty, 1935, LE 1/1935/14 NA (RDB vol 5, pp 1598-1601)

¹¹⁴ T. Anaru, Registrar, Waiariki District Maori Land Board, Rotorua, to the Under Secretary, Native Department, 12 November 1935. ‘Rahi Erana and 9 others – Hiwarau Block’, 8 July 1935 – 8 February 1945, Petition no. 32/1935, MA1 5/13/73 NA (RDB vol 58, p 22324)

¹¹⁵ Native Affairs Committee. Report on the Petition of Rehi Erana and 9 others of Opotiki, Praying for relief in re the Hiwarau Block, 32/1935, 30 October 1936, MA1 5/13/73 NA (RDB vol 58, p 22322)

On 10 August 1937, an almost identical petition, this time lodged by Henare Rako and six others, was presented calling for the case to be reopened. It again stressed that members of other hapu had been included in the Hiwarau list, and that some had been granted 'shares in awards of other lands to the Hapus to which they actually belonged'.¹¹⁶ In 1938, the Native Affairs Committee found that the petition should be referred to the Government for special inquiry and the case was referred to the Native Land Court.¹¹⁷

The Native Land Court at Opotiki heard Henare Rako's Hiwarau petition on 19 July 1939 (as discussed in section 4.3, above). The petitioners claimed that two lists of members of Upokorehe had been submitted to Wilson in 1874. The first had included 30 members of Upokorehe, while the second (26 names) had been submitted later by Hemi Kakitu who, being a 'paramount chief' was not challenged by Upokorehe at the time.¹¹⁸ It was only later, the petitioners stated, in 1898, that an attempt could be made to 'remedy matters', without result. They now called for the second list of 26 people to be excluded from the title. The problem was, they stated, that 'there has been a good deal of shuffling about by the people. People were Upokorehe when it suited them'.¹¹⁹

Another debated issue was the 'definition' of Upokorehe, primarily whether or not descent from Taikurere constituted membership of the Upokorehe hapu. In his report of the hearing, Judge John Harvey emphasised the issue, stating that 'the identity of Upokorehe hapu remains a matter of doubt', and that '[t]he origin of the name Upokorehe is also in doubt and the subject of many conflicting stories':

There seems to be a consensus of opinion that the Upoko (head) belonged to one Taikurere, but opinion is equally united on the point that others besides the descendants of Taikurere are entitled to be called Upokorehe. Mihirangi Kotu [sic], who was called before this Court to give evidence on behalf of the petitioners and whose family are included in List No. 1, said, "I cannot trace from Taikurere."¹²⁰

¹¹⁶ Petition No. 14/1937 – Henare Rako and 6 others re: Hiwarau Block, MA1 5/13/73 NA (RDB vol 58, p 22320)

¹¹⁷ Native Affairs Committee. Report on the Petition of Henare Rako and 6 others of Nukuhou North, Praying that the Native Land Court be empowered to investigate the title of Hiwarau Block, 14/1937, 24 August 1938, MA1 5/13/73 NA (RDB vol 58, p 22316). Under section 23 of the Native Purposes Act 1938, the Chief Judge was authorised to refer to the Native Land Court ten existing petitions regarding Maori land, including Henare Rako's petition.

¹¹⁸ The official report regarding the petition states that the lists were lodged by Te Warana Mokomoko. 'The Native Purposes Act 1938. Report and Recommendation on Petition No. 14 of 1937, of Henare Rako and Others, Praying for a Reopening of the Title of Hiwarau Block', AJHR, 1944, G-6, p 3

¹¹⁹ Opotiki minute book 30, fols 11-18 (RDB vol 58, pp 22299-22301)

¹²⁰ AJHR, 1944, G-6, p 4

Judge Harvey reported that ‘from the evidence given at the hearing of the application for definition of relative interests that some persons were included in the list who were from outside tribes altogether, but who had long occupation at Hiwarau’, and that the Court was of the opinion ‘that the words “Upokorehe Hapu” and “Upokorehe Tribe” used in the *Gazette* notice of 14th November, 1874, cannot be applied in derogation of the rights of the persons named as grantees from the Crown.’ The judge recommended that:

It does not appear to the Court that a reopening of this matter is justified, as no evidence can now be adduced that could enable any tribunal to detect and correct mistakes (if any) made in the root of title to Hiwarau Block.¹²¹

On 23 November 1944, the Chief Judge of the Native Land Court notified the Native Minister that ‘in view of the conclusions reached by the Court—conclusions in which I concur—I recommend that no further action be taken’.¹²²

5.3 The Partition and Fragmentation of Hiwarau

From its creation, successive partitions of the Hiwarau block and the exponential succession of title, led to such fragmentation that in 1969 the Maori Land Court amalgamated the majority of the partitioned blocks to once again form a roughly equivalent contiguous block known as Hiwarau C (refer to figures 7 and 8). According to claimant submissions, ‘some lands were specifically excluded however the majority of the lands as vested by the Compensation Court in 1874 formed the modern day Hiwarau C Block’.¹²³

In a letter to the Waitangi Tribunal dated 17 December 1992, Tuiringa Mokomoko, as ‘Chairman of the newly elected Responsible Trustees of Hiwarau C Block’, outlined the history of the block, stating that prior to confiscation the original area was about 1321 acres and 4 islands, the boundary being from Maraetoto [sic] Stream to the west of Ohiwa Harbour’, and that between 1867 to 1962 this had been ‘drastically reduced to 800 acres and one island.’¹²⁴

In 1904, Hiwarau was partitioned into Hiwarau A (785 acres, 44 owners); and Hiwarau B (475 acres, 33 owners), and surveyed as such in 1910. In 1913 it was recorded that ‘the area

¹²¹ AJHR, 1944, G-6, p 4

¹²² Memorandum from the Chief Judge, Native Land Court, to the Hon Native Minister, 23 November 1944, MA1 5/13/73 NA (RDB vol 58, p 22297)

¹²³ Submissions of Counsel for Upokorehe, p 7

¹²⁴ T Mokomoko to Waitangi Tribunal, 17 December 1992 (Wai 46 ROD, doc F3, app 2)

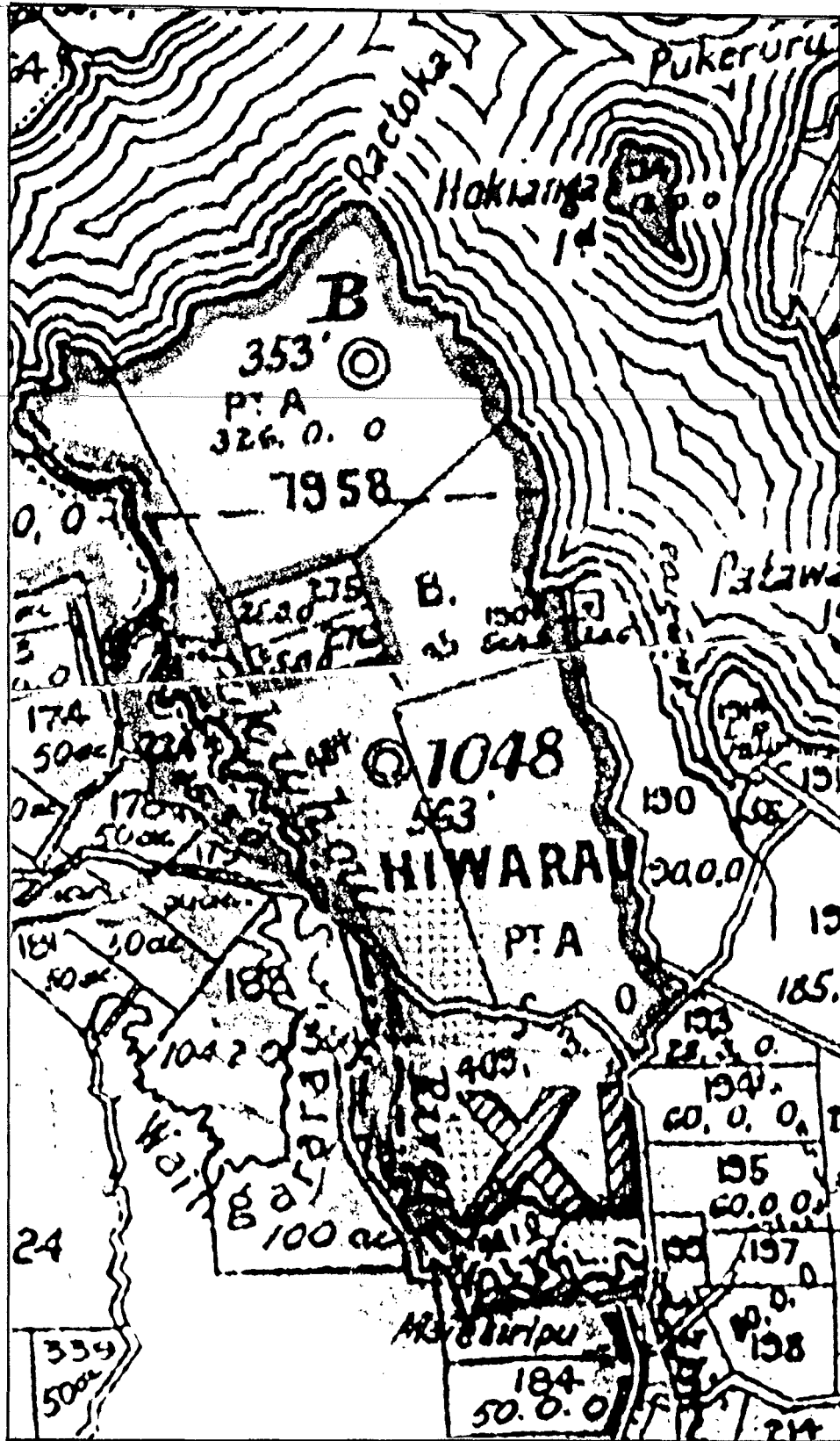


Figure 6: Hiwarau A and Hiwarau B
 Detail from Opotiki Claims Map, 'Sim' Confiscation Commission, 1927, MA 85/7/8 NA

of Hiwarau A Block is 784ac. less a scenic reserve lately taken comprising 48 $\frac{1}{4}$ ac. leaving 735 $\frac{3}{4}$ ac.¹²⁵ Over the next 60 or so years Hiwarau A and Hiwarau B were subsequently partitioned into some 30 individual blocks, and over the same period of time the number of shareholders expanded through succession, further splintering the block's title. The Native (later Maori) Land Court records contain much of this information, and this history will be looked at in more detail in the substantive report.¹²⁶ The Crown's policies regarding Maori-owned land, as it relates to Hiwarau, will also be addressed. Further research will also reveal whether or not any restrictions on alienation were placed on the original title, and whether or not any of the land was sold.

5.4 The Formation of Hiwarau C in 1969

In August 1969, the Maori Land Court amalgamated the majority of the partitioned Hiwarau blocks, cancelling their titles and creating one title in substitution, Hiwarau C. According to the Maori Land Court minutes, 'the application was made and prosecuted by the Deputy Registrar' of the Court.¹²⁷ This was done under section 435 of the Maori Affairs Act 1953, which enabled the Maori Land Court the 'special powers' to amalgamate titles of adjoining lands.¹²⁸ In the case of Hiwarau C, this was done 'upon the ground that the lands [...] can be more conveniently worked or dealt with as if held in common ownership under one title'.¹²⁹

The Court heard that the Opotiki County Council was 'anxious to see all these lands put to profitable use and under proper tenure', and that '[t]he lands would lend themselves for agricultural, horticultural, and forestry purposes'. The Tasman Pulp and Paper Company reported that the land 'would be entirely suitable for forestry purposes', and that 'the Company would be interested in negotiating a forestry deal with the trustees'. The Court itself

¹²⁵ Letter from Chief Surveyor to Jas. W. Browne, President, Waiariki District Maori Land Board, 1 October 1913, Hiwarau Block 15/2/1910 – 25/9/1966 LINZ 20/114-SGS-01. The Chief Surveyor also noted that, in addition, 'two small sections of 25 acres each have been cut out', referring to the Waiotahi Lots 275 and 276 from Pitcairn's original survey (see n 95, above). The taking of Hiwarau lands for scenic or other reserves will be investigated in the main report (see section 5.6, below).

¹²⁶ Hiwarau (Partition), Opotiki minute book 15, fols 230, 247, 256, 260-262, 274-275, 277, 282-283, 340, 344, 350, 355, 29 February 1904; Hiwarau (Succession), Opotiki minute book 15, fols 282, 294-295, 4 March 1904; Hiwarau (Partition), Opotiki minute book 18, fols 8-10, 29 March 1904; Hiwarau (Appeal), Whakatane minute book 9, fols 8, 39, 23 April 1906; Hiwarau (Appeal), Rotorua minute book 50, fols 47, 53, 22 March 1907; Hiwarau (Partition), Opotiki minute book 23, fols 149 to 151, 9 December 1913; Hiwarau (Partition), Opotiki minute book 24, fols 124 to 125, 20 September 1917; Hiwarau (partition), Opotiki minute book 25, fols 145, 147, 148, 11 July 1921

¹²⁷ Opotiki minute book 45, fol 118, 4 August 1969

¹²⁸ Opotiki minute book 45, fols 111 to 124, 4 August 1969; Maori Affairs Act 1953, Part 28: Special Powers of the Court, section 435

¹²⁹ Opotiki minute book 45, fol 118, 4 August 1969

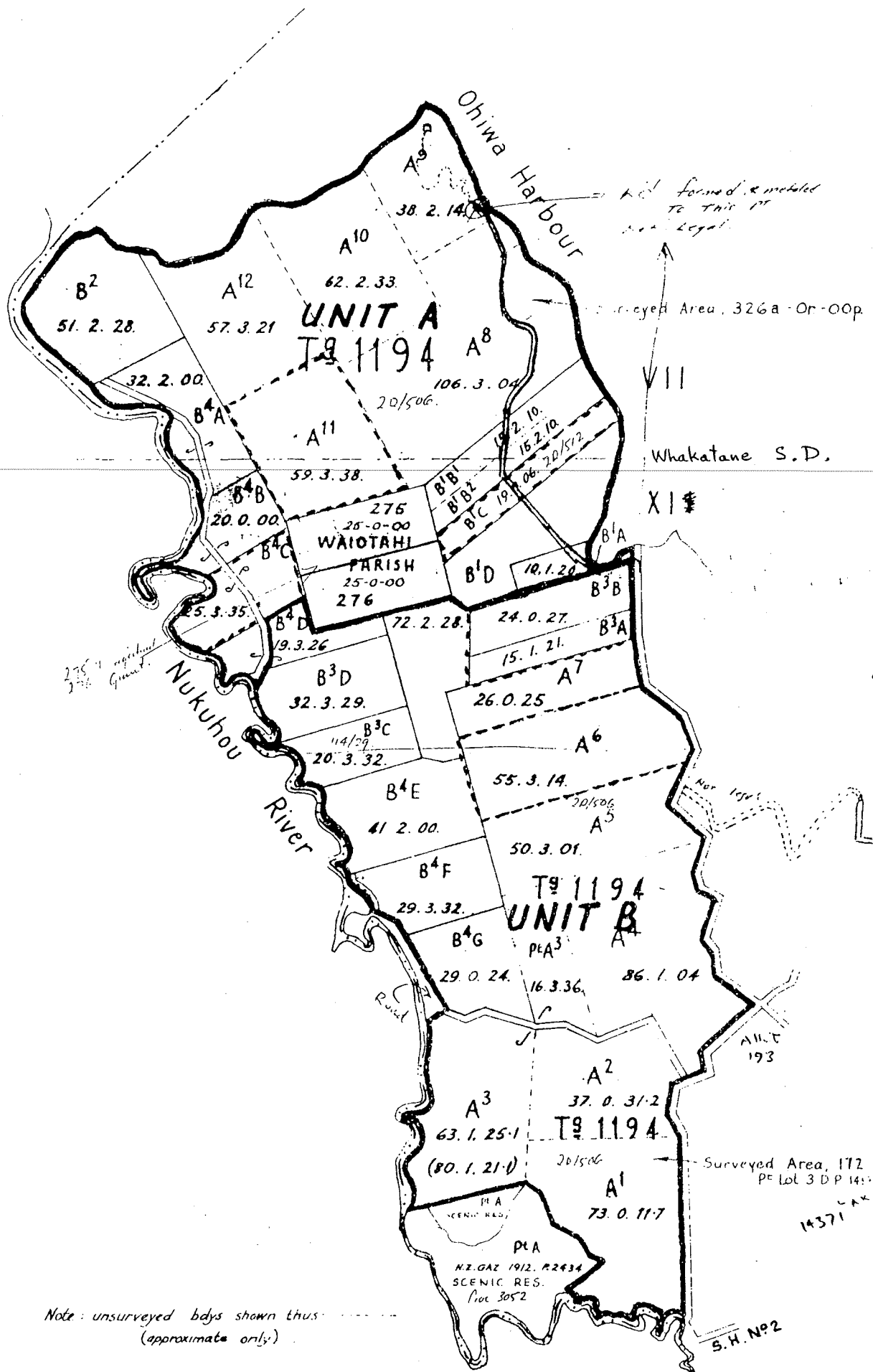


Figure 7: Hiwarau A and B prior to amalgamation into Hiwarau C, 1969
 [Source: LINZ: L&S Gisborne Office, 20/114-SGS-02, Hiwarau Block, 25 September 1966 – 1 April 1987]

stressed that 'efficient administration of these Maori lands is essential in both the private and the public interest'.¹³⁰

There appears to have been significant interest in the afforestation of Maori land, particularly in the Bay of Plenty area, throughout the 1960s. A memorandum in the files of the Department of Maori Affairs, dated 20 August 1962, states that

The Forest Service officials advise that any suitable land within reasonable distance from the existing Kaingaroa Forest, the Tasman Paper Mill, or the Whakatane Board Mill Factory is an economic certainty for forestry development. They are interested and anxious to acquire Maori land in this area for afforestation purposes and have themselves carried out a detailed survey of blocks which would be suitable. This shows a total of over 200,000 acres of Maori land in the Bay of Plenty area at present in scrub which is potentially suitable for developing.¹³¹

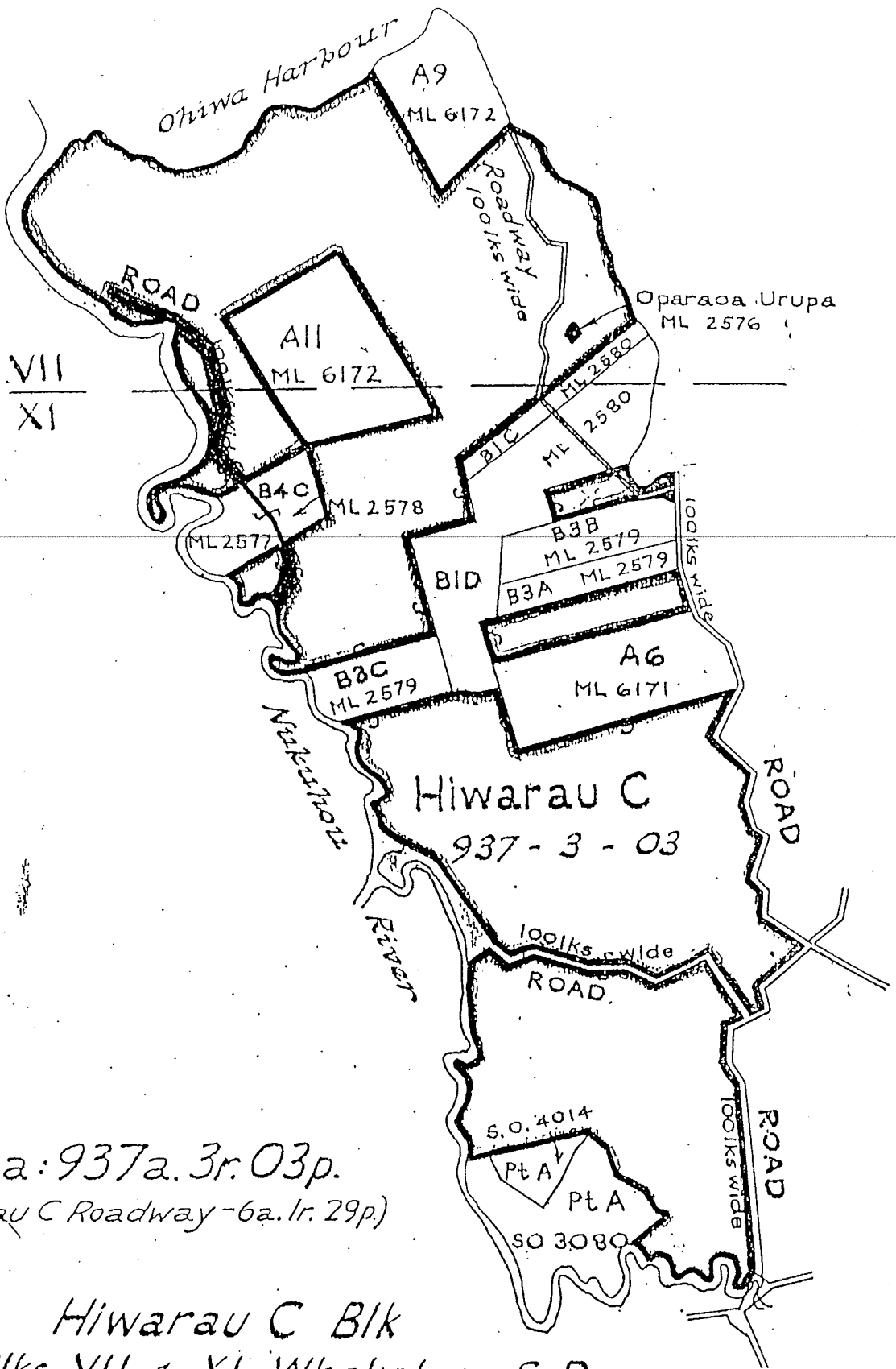
The Maori Affairs Amendment Act 1962 included a modification to subsection 235(1) of the 1953 Maori Affairs Act, to allow for Maori freehold land to be leased for longer than the previously stated fifty years, provided it was 'to be used by the lessee exclusively or principally for afforestation purposes'.¹³² The amalgamation of Hiwarau C should therefore be seen within the context of both the government's concerns regarding fragmentation and partition, and the interest in acquiring, or leasing, Maori land in the Bay of Plenty for the purpose of forestry, or other 'profitable use'.

The Court had originally proposed that thirty pieces of land, totalling 1241 acres 3 roods 33 perches, be amalgamated into Hiwarau C. However, eight of the blocks were deleted from the application due to confusion over title, and opposition to the amalgamation. Hiwarau B4C and A11 were excluded as there was some (separate) confusion regarding title, and—both pieces of land being leased—consent was not (or could not be) given by the lessees as required by the legislation. Hiwarau A6, B3A, B3B and B1C were leased to Joseph Manuel, who likewise did not grant his consent. The occupier and majority shareholder of Hiwarau A9, Mrs Maggie McLean (nee Boynton), had fenced off her land and opposed amalgamation. Hiwarau B4A, B4B, and B2 were, as with Hiwarau A11, leased to Mr and Mrs De Loree, and again there was some confusion regarding the title and leasing arrangements of these lands. The Court

¹³⁰ Opotiki minute book 45, fols 111-124, 4 August 1969

¹³¹ R Law to Secretary, Maori Affairs, 20 August 1962, MA 58/1, Part I, Afforestation of Maori land 1961-1973, NA; cited in Eileen Barrett, 'Rotoiti 15 Report', Draft Version, Waitangi Tribunal, 2001, p 6

¹³² Maori Affairs Amendment Act 1962, s 18



Total Area: 937a. 3r. 03p.
 Incl. of Hiwarau C Roadway - 6a. 1r. 29p)

Hiwarau C Bk
 Bks VII & XI Whakatane S. D.
 Gisborne Land District Opotiki County
 Surveyed by D.J. McDonald August 1971
 Scale: 30 Chains to an Inch
 ML 6173; ML 6174.
 X.M.A.

Figure 8: Hiwarau C August 1971

[Source: LINZ: L&S Gisborne Office, 20/114-SGS-02, Hiwarau Block, 25 September 1966 - 1 April 1987]

noted that '[i]f Mr & Mrs de Loree wish to continue to use Hiwarau lands they will just have to regularise their occupations'. The Court also noted that '[i]t is true that some of the lands remaining in the application are used by various persons under arrangements, if at all, not confirmed by the Court'.

The blocks that were amalgamated into Hiwarau C were: Hiwarau A1; A2; A3; A4; A5; A7; A8; A10; A12; B1A; B1B1; B1B2; B2; B3D; B4A; B4B; B4D; B4E; B4F; B4G; and Waiotahi 275 and 276.¹³³ The original application (including all Hiwarau land), as stated above, was to have included 1241 acres 3 roods 33 perches.¹³⁴ In the end, the actual extent of Hiwarau C block was 937 acres 3 roods 3 perches, and the block was surveyed as such in 1971. The number of shareholders listed with differing relative interests in the block (calculated on their pre-amalgamation interests) was 233, with the combined number of shares in the block totalling 20,400.¹³⁵

The minutes of the Maori Land Court state that 'the Court is satisfied that the lands remaining in the application are capable of effective and profitable use in the interests of the beneficial owners generally and not the odd one or two of them or strangers to the title.'¹³⁶

5.5 Hiwarau C and the Maori Trustee 1969-1992

With its creation by amalgamation in 1969, Hiwarau C was vested in the Maori Trustee under section 438 of the Maori Affairs Act 1953.¹³⁷ As with the amalgamation itself, it was the Deputy Registrar of the Maori Land Court who 'specifically sought a vesting in the Maori Trustee', and according to the minutes of the Maori Land Court, '[t]he Maori Trustee adduced evidence in support'.¹³⁸

¹³³ Opotiki minute book, 45, fols 111-124, 4 August 1969. Waiotahi 275 and 276 were the two 25 acre lots included in Pitcairn's Survey, prior to the granting of the original Hiwarau block. See n 95, above. The history of these lots will also be examined in the substantive report.

¹³⁴ The total area is elsewhere described as 1,241 acres 3 roods 30 perches (emphasis added). K W Walsh, Chief Surveyor, Gisborne, to the Registrar, Waiariki District Maori Land Court, Rotorua, 28 April 1969, Hiwarau Block 25/9/1966 – 1/4/1987 LINZ 20/114-SGS-02

¹³⁵ Opotiki minute book, 45, fols 111-124, 4 August 1969

¹³⁶ Opotiki minute book, 45, fols 111-124, 4 August 1969

¹³⁷ Under section 438 of the Maori Affairs Act 1953, the Maori Land Court was empowered to 'on application made to it in that behalf or of its own motion during the course of any proceedings before it, make an order under this section vesting any customary land or Maori freehold land or land owned by Maoris [sic] in any trustee or trustees, to be held upon and subject to such trusts as the Court may declare for the benefit of Maoris [sic] or the descendants of Maoris [sic] or for any specified class or group of Maoris [sic] or their descendants', Maori Affairs Act 1953, Part 28: Special Powers of the Court, section 438 (1)

¹³⁸ Opotiki minute book, 45, fol 118, 4 August 1969

The office of the Maori Trustee had been created in 1920 to manage Maori estates, and was also involved in land development and in providing mortgage finance to Maori farmers. According to Alan Ward:

Neither the Public Trustee nor the Maori Trustee nor their administrators exercised their responsibilities consistently in the best long-term interests of those Maori whose lands and revenue was vested in them. The alienation of land, large capital expenditure with little return, the charging of lands with high levels of debt, problems surrounding the collection and distribution of rents, land valuations, and the maintenance of lease covenants, and inadequate consultation with beneficial owners in respect of all these matters indicate a dubious record of protection of Maori interests.

‘Responsibility for setting the main aims of the trustee’s administration,’ Ward continues, ‘rests with the Government.’¹³⁹

The Maori Affairs Amendment Act 1967 increased the Maori Trustee’s powers in regard to the compulsory conversion of uneconomic interests, defined as being land valued at less than £100. Further research should clarify whether or not compulsory conversion of interests happened to the constituent Hiwarau C blocks. Hiwarau land was being fragmented in terms of partition of title, as well as the expanding lists of owners for each title due to the laws of succession. Compulsory conversion by the Maori Trustee was seen as a way of arresting the increasing fragmentation, however, at best it could only be a temporary and partial solution. Ward points out that the Maori Trustee’s powers of compulsory acquisition of uneconomic interests (which they retained until 1974), ‘infringed Maori rights to land (which were valued for many more reasons than economic ones)’.¹⁴⁰ As G V and S M Butterworth state,

the Conversion Programme was unpopular with Maori as it deprived them of the interest in land, however small, that proved their kinship connections and gave them their turangawaewae [...] it continued the legal tradition [...] of treating Maori tribal property in land as an aggregation of the individual interests of members of the tribe instead of as ownership in common by the whole group.¹⁴¹

According to the minutes of the Maori Land Court regarding the vesting of Hiwarau C in the Maori Trustee, ‘section 438(1) provides that as far as practicable the owners be given

¹³⁹ Ward, *National Overview*, vol 1, pp 112-13

¹⁴⁰ Ward, *National Overview*, vol 1, p 113; vol 2, p 435

¹⁴¹ G W Butterworth and S M Butterworth, *The Maori Trustee*, Wellington, The Maori Trustee, 1991, p 85

reasonable opportunity to express their opinion as to the person or persons to be appointed a trustee or trustees in respect of the land'. A submission was made by Whakatohea Properties Limited, supporting the amalgamation and asking 'that the single unit be vested in Maori Trustee to lease back to the Company for development'. The Court found that 'Whakatohea Properties limited is not a suitable person to be considered by the Maori Trustee as a potential lessee.' The Court also found that '[i]f the Maori Trustee is unwilling to accept a vesting under section 438(1) on the terms supra under section 438(5), then the Registrar will please refer the same to Opotiki County Council.'¹⁴²

Wai 339 claimant counsel alleges, in regard to Hiwarau C, 'mismanagement by the Maori Trustee, an agent of the Crown, since 1969'.¹⁴³ This mismanagement, it is claimed, included the failure to recover substantial rental owed, breaches of covenant, and the deterioration of the Hiwarau C block. Much of the problem appears to have stemmed from the lease of all, or a significant portion, of the block to a farmer, Peter De Loore, and the Trustee's failure to protect the interests of the owners of the block in this arrangement. In 1994 the Maori Land Court heard that Mr De Loore owed \$54,037.36 in rent;¹⁴⁴ that there were outstanding breaches of covenant in the lease in the order of some \$29,000;¹⁴⁵ and that Mr De Loore owed \$13,580.15 to the Opotiki District Council in rates.¹⁴⁶

While these particular issues may fall outside the jurisdiction of the Waitangi Tribunal, it should be noted that when a new trust order was created in December 1992, the Court admitted that '[t]he Maori Trustee administration has been very poor', and that it 'support[ed] the] owners wishing to run the block themselves'.¹⁴⁷ Further research is needed to document the actions of the Maori Trustee regarding Hiwarau C over the period 1969 to 1992, including the distribution of rental monies to the owners; any representations made to the Trustee by the owners regarding their dissatisfaction with the De Loore lease (or any other issues); and what efforts were made by the Trustee to rectify this (or any other) situation. The substantive report will identify what legal remedies were available to Maori owners to address these issues, and document what, if any, steps were taken.

¹⁴² Opotiki minute book, 45, fols 111-124, 4 August 1969

¹⁴³ Submissions of Counsel for Upokorehe, p 2

¹⁴⁴ Certificate of judgement in favour of The Maori Trust, Extract from the Civil Record in the District Court at Opotiki, 322/90, 3 November 1991 (Wai 46 ROD, doc F3, app 21)

¹⁴⁵ Opotiki minute book 68, fol 320, 1 December 1993

¹⁴⁶ Certificate of judgement in favour of Opotiki District Council, Extract from the Civil Record in the District Court at Opotiki, 240/91, 23 June 1992 (Wai 46 ROD, doc F3, app 21)

¹⁴⁷ Opotiki minute book 67, fols 271-2, 1 December 1992 (Wai 46 ROD, doc F3, app 22)

In December 1992, under the Maori Affairs Act 1953, sections 438(5) and 438(3)(b), the Court vested Hiwarau C in the Hiwarau Lands Trust, recommending that the new trust be established for a limited time only and possess limited functions: to 'look after land', 'look into any rights against Maori Trustee', and 'not dispose of land by way of lease or licence longer than 12 monthly term'. The new trustees were listed as: Tuiringa Mokomoko; Phillip Wilson; Paka Edward; Josephine Mortenson; and Alamein Kopu.¹⁴⁸

Further research should identify any developments or changes in the trust order under the Te Ture Whenua Maori Act 1993, or any other changes in the trust arrangement, management of the block, or uses to which the block has been put between 1992 and the present time.

5.6 Hiwarau Today

The Wai 339 statement of claim states that of the land granted to Upokorehe following the eastern Bay of Plenty confiscation, only 800 acres and one island remain in Upokorehe ownership. It is known that in 1993, Hiwarau B1A was withdrawn from Hiwarau C leaving a total area of 927 acres 1 rood 6½ perches (375.2546 hectares), divided into 20055.88 shares.¹⁴⁹ The substantive Upokorehe report will ascertain the current status of the block.

Those lands excluded from the amalgamation in 1969 will also be looked into. In 1912, for instance, 48 acres 1 rood of Hiwarau A were taken for 'Scenic Purposes' under the Public Works Act 1908, the Scenery Preservation Act 1908, and the Scenery Preservation Amendment Act 1910.¹⁵⁰ In 1979 this, and an adjoining area of Hiwarau A, together totalling 57 acres 3 roods 32 perches (23.4515 hectares), were classified as 'a reserve for historic purposes' under the Reserves Act 1977. The reserve was first named the Hiwarau Historic Reserve, and then changed to the Matekerepu Historic Reserve.¹⁵¹ In 1997, 4470 square metres of Hiwarau B1A (the block withdrawn from Hiwarau C in 1993) was set apart as a Maori Reservation, pursuant to section 338(1) of Te Ture Whenua Maori Act 1993, 'for the purpose of historic interest for the common use and benefit of the descendants of Louisa Agassiz'.¹⁵²

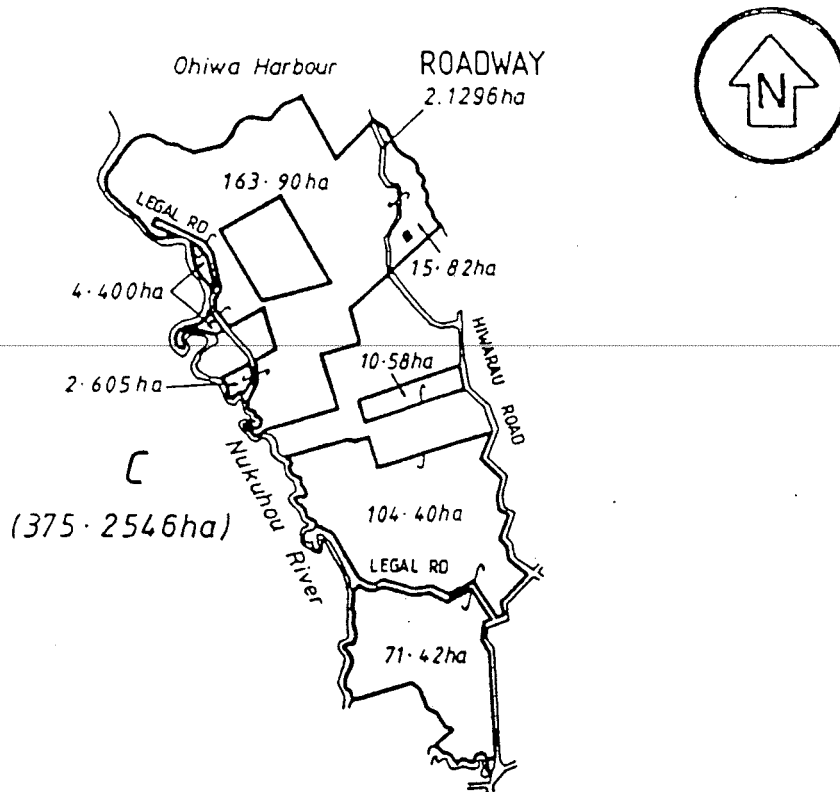
¹⁴⁸ Opotiki minute book 67, fols 271-2, 1 December 1992

¹⁴⁹ 1993 Chief Judge minute book, fol 256, 14 June 1993

¹⁵⁰ Land taken for Scenic Purposes in Block XI, Whakatane Survey District, A Proclamation, 1 August 1912, *New Zealand Gazette*, no 67, 8 August 1912, pp 2434-2435

¹⁵¹ Classification of Reserve, 18 October 1979, *New Zealand Gazette*, no 97, 25 October 1979, p 3080; Change of the Name of the Hiwarau Historic Reserve, 19 October 1979, *New Zealand Gazette*, no 97, 25 October 1979, p 3082

¹⁵² 'Setting Apart Maori Freehold Land as a Maori Reservation', *New Zealand Gazette*, 3 April 1997, p 747, LINZ MLB/0114-ZGS. It is likely that Louisa Agassiz was a descendant of 'Dr Agassiz', 'a member of the



HIWARAU C
 Blocks VII & XI Whakatane Survey District

GISBORNE LAND DISTRICT, OPOTIKI DISTRICT

Compiled in Survey Office, November 1993

Scale 1:40 000

ML 8691

MEASUREMENTS ARE METRIC

or
 xhp

Figure 9: Hiwarau C November 1993

[Source: LINZ: DOSLI National Office, 6925/3526-1-DNO, Maori Land Claims Hiwarau Block, 29 March 1993 – 1 October 1998]

Some 'Maori freehold land' in the original Hiwarau block has been reclassified as 'Maori Reservation'. This includes two acres of Hiwarau B4C reserved for Turangapikitoi Meeting House in 1944.¹⁵³ Land was also reclassified as Maori Reservations in 1982 for Roimata Marae and Roimata urupa, 'for the common use and benefit of the Upokorehe Hapu of Whakatohea' under section 439 of the Maori Affairs Act 1953.¹⁵⁴ Further research will reveal if any other land has been reclassified.

Tuiringa Mokomoko has stated that:

After 98 years we are left with mismanagement by the Land Court, and the Maori Trustee. As a result we are left with much run down block of land, no finance, and arrears in rates and rent.¹⁵⁵

These issues will be looked into in detail in the full Upokorehe report. The history of land alienation, partition, amalgamation and succession will be examined. This will be contrasted with the current area, condition, administration, and legal status of Hiwarau C, and it is hoped that the area of land alienated from the original Crown-granted block will be clear. Areas of Crown responsibility leading to the situation that Upokorehe find themselves in with respect to administration of their land will be identified. This will involve an analysis of twentieth century Maori land legislation as it was applied to Hiwarau, Hokianga Island, and any other lands not yet identified.

5.7 Hokianga Island

In 1973, Hokianga Island was converted from Maori freehold land to a Maori reservation, under section 439 of the Maori Affairs Act 1953, 'for the purpose of a burial ground and as a place of historic and scenic interest for the common use and benefit of Upokorehe and other

Royal College of Surgeons, London', who settled at Opotiki as a storekeeper, 'Memorandum of a statement made by Mr A Agassiz, of Opotiki, respecting Kereopa's proceedings, and the murder of Mr James Fulloon, etc.' [dated 21 August 1865], AJHR 1865, E-5. Papers relative to the Murder of the Rev. Carl Sylvius Volkner by the Hau Hau Fanatics, Enclosure 2 to No. 7, p 18. Agassiz witnessed the events surrounding the killing of Völkner, and the trial and executions of those accused of the murder. According to Gilling, upon his arrival at Opotiki, Kereopa had wanted Whakatohea to expel all the Europeans in the locality including Agassiz, 'but they refused as some were married to Maori women', Gilling, p 28. Agassiz stated that Wepiha had played an active role in the killing of both Völkner and Fulloon, AJHR 1865, E-5, p 19

¹⁵³ Opotiki minute book 30, fol 344, 29 February 1944

¹⁵⁴ Setting Apart Maori Freehold Land as a Maori Reservation, 11 February 1982, *New Zealand Gazette*, 18 February 1982, no 18, p 531. 1.1640 hectares were set aside for Roimata Marae and 2,200 square metres for the urupa

¹⁵⁵ T Mokomoko to Waitangi Tribunal, 17 December 1992

Maori peoples of the district generally'.¹⁵⁶ This conversion will be examined in the substantive report, particularly to determine on whose initiative this was done. The history of Hokianga Island, following its granting to Upokorehe (along with Hiwarau), as well as its current status, will also be examined further.

According to one source, Hokianga Island has always been a 'sacred' or 'religious' island, as well as a site of agricultural production and fishing. As many as 800 people are said to have lived on the island at one time.¹⁵⁷

It is clear that there is an historical connection between Tuhoe and Hokianga Island. Both Hemi Kakitu and Rakuraku dwelt there at different times, and both acted as ferrymen across the harbour. According to Judith Binney, Hemi Kakitu was living on Hokianga Island and at 'the south east head of the harbour' when he co-operated with McDonnell's unsuccessful expedition to capture Kereopa in October 1865.¹⁵⁸ Rakuraku, following the dismissal of his claim before the Compensation Court (and after Tamaikoha had occupied his pa at Waimana), moved, with his people, to Hokianga Island, where they built a pa in May 1867.¹⁵⁹ In March 1868, a Tuhoe raid resulted in the death of Te Kororahi, an elder of Upokorehe, on Hokianga Island, and the burning of Rakuraku's recently vacated settlement.¹⁶⁰

The island then became entwined in the history of Te Kooti Arikirangi Te Turuki. When Te Kooti came down from Tawhana in the Waimana gorge to occupy Whakarae pa on 2 March 1869, Rakuraku offered no resistance. Hokianga Island was captured, and the Upokorehe people living there were taken back to Whakarae as prisoners. The surveyor Robert Pitcairn was killed on Uretara Island by a party led, apparently, by Hemi Kakitu, who would later be rewarded by the government for his efforts in pursuing Te Kooti.¹⁶¹ Later, in 1889, Upokorehe signatories would be amongst those petitioning the government for Te Kooti to be granted land at Ohiwa. In 1893, Te Kooti spent his final days on Hokianga Island before

¹⁵⁶ 'Setting Apart Maori Freehold Land as a Maori Reservation', 18 June 1973, *New Zealand Gazette*, 28 June 1973, p 1197

¹⁵⁷ 'Hokianga Island', unidentified extract, possibly from the *Historical Review: Bay of Plenty Journal of History* (Wai 46 ROD, doc F3)

¹⁵⁸ Binney, 'Encircled Lands, Part One', Draft Version, August 2001, ch 3, p 19. Binney cites McDonnell to Stapp, 25 October 1865, AD 1/1865/3681 NA. It is also noted that Hemi Kakitu's settlement at the south east head of Ohiwa harbour is specifically mentioned in the *Hawke's Bay Herald*, 3 February 1866, p 3, fn 99, ch 3, p 19

¹⁵⁹ Miles, *Te Urewera*, p 141; W G Mair to Clarke, 27 May 1867, AJHR 1867, A-20, p 67

¹⁶⁰ H T Clarke to Under-secretary, Native Department, 14 March 1968, AJHR, A-8A, p 27; Miles, *Te Urewera*, p 167; Sissons, 'Blocked In, Forced Out', Draft Version, June 2001, p 130

being taken to Te Karaka, on the shore of the harbour, to die on land gifted to him by Upokorehe.¹⁶²

Rua Kenana also had an association with Hokianga Island. According to Judith Binney, following his prophetic vision on Maungapohatu, Rua 'built for himself a meeting-house on the tapu island in the Ohiwa harbour, Hokianga, where Te Turuki had lived. He called this house Te Poho O Mataatua, the Bosom of the Mataatua people.'¹⁶³ A photograph of the island taken in about 1910 shows a number of wooden structures, and Binney states that at this time the island 'still had a substantial Maori population'.¹⁶⁴

Section 6: Other Possible Upokorehe Interests

As discussed in the introduction to this scoping report, there will be some overlap between the substantive Upokorehe report and the Waitangi Tribunal's Ohiwa Harbour report. It is possible that there may also be overlaps with other claims to the Waitangi Tribunal, and this issue will be explored further in the main report. There is also the issue of contested rohe boundaries between Whakatohea and Ngati Awa, and this will likewise be further examined.

Another aspect of inquiry will be into the possibility of Upokorehe interests in blocks and other lands other than Hiwarau and Hokianga Island. There are references to Upokorehe in regard to Waimana, Tahora No. 2, Takaputahi, Opape, and Waioeka blocks in the index to the Maori Land Court Minute Books. There are also references to Warana Mokomoko's participation as a witness at several hearings regarding other blocks. In researching this scoping report, the following information has come to light regarding Upokorehe interests in Tahora No. 2 block, Opape block and Waimana block. It is likely that information regarding these and other blocks will be unearthed in researching the substantive Upokorehe report, and in consultation with claimants.

Wai 203 claimants have also indicated that Mokomoko had a pa called Paerata Pa in Opotiki and other pa in Ohope.¹⁶⁵

¹⁶¹ Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi te Turuki*, Auckland, Auckland University Press, 1995, pp 154-156; Binney, 'Encircled Lands, Part One', Draft Version, August 2001, ch 5, p 14; Miles, *Te Urewera*, p 187

¹⁶² Binney, *Redemption Songs*, pp 445, 494

¹⁶³ J Binney, G Chaplin and C Wallace, *Mihaia: The Prophet Rua Kenana and his Community at Maungapohatu*, Auckland, Oxford University Press, 1979, p 20

¹⁶⁴ Binney, *Redemption Songs*, p 494

6.1 Tahora No. 2 Block

Elsdon Best recorded in *Tuhoe* that 'Te Upoko-rehe were awarded a portion of the Tahora No. 2 Block by the Native Land Court'.¹⁶⁶ Tamaikoha, a chief of both Tuhoe and Te Whakatane, gave evidence in the Tahora No 2 block hearings in 1889, speaking, he said, not only for Tuhoe, but also for Te Whakatane and Te Upokorehe, 'who are my people'. He gave evidence that, while Upokorehe had often taken refuge with their inland relatives, they had always returned to cultivate at Ohiwa harbour, and were therefore recognized in that area.¹⁶⁷ Tamaikoha's wife, Titia, was of Upokorehe.¹⁶⁸ At the 1939 Native Land Court hearing regarding Henare Rako's petition, the counsel for the petitioners stated that Upokorehe had 'no land other than Hiwarau and Tuhura [Tahora?] 2A'.¹⁶⁹

The Waitangi Tribunal has commissioned the historian Peter Boston, of Wellington, to produce a Tahora block report for use in the Urewera, Gisborne and Wairoa inquiries.

6.2 Opape Block

At the 1939 hearing regarding Henare Rako's petition, it was also stated that Upokorehe 'were supposed to get a Grant of Opape 4 and 7,' but 'actually were only given 1/8th of a share as against others who were given full shares for not being Upokorehe'.¹⁷⁰ Further research should determine if this meant that Upokorehe were supposed to have been granted land at Opape following the 1866 confiscation.

6.3 Waimana Block

In 1877 both Upokorehe and Tuhoe individually applied for a survey of the Waimana block, which comprised 10,491 acres, and at a hearing the following year Waimana was claimed by 'Te Upokorehe on one side and Te Urewera and Ngai Turanga on the other'. Both sides were in treaty with European settlers to lease the land, notably Captain Frederick Swindley.¹⁷¹ The Court noted that the claimants and counter claimants were 'very much related and seem to have occupied portions of the Waimana Block [...] at different times'. The land was awarded

¹⁶⁵ McCaw Lewis Chapman to Waitangi Tribunal, 29 November 1999

¹⁶⁶ Best, vol 1, p 89

¹⁶⁷ Opotiki minute book 5, fols 269-70, 27 March 1889

¹⁶⁸ Sissons, 'Blocked In, Forced Out', Draft Version, June 2001, ch 2, p 15

¹⁶⁹ Opotiki minute book 30, 19 July 1939, fols 11-18 (RDB vol 58, p 22299-22300)

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¹⁷¹ Jeffrey Sissons, *Te Waimana, The Spring of Mana: Tuhoe History and the Colonial Encounter*, Dunedin, University of Otago Press, 1991, p 89; Miles, *Te Urewera*, p 230; Miles cites Opotiki minute book 1, 18 March 1880, fol 402

to 'the descendants of Tuhoe, who are living on it, and also to Ngai Turanga and Ngati Raka hapus, who are also living on the land'.¹⁷² Upokorehe's independent claim was dismissed.

At a rehearing of the Waimana block in 1880, an appeal was made against the earlier judgement by members of Upokorehe including Joseph Kennedy and his brother; Jemima Shera; Mohi Tai; and Rawiri Makawe. This group claimed rights as descendants of Raumoa, and thus described themselves as Ngati Raumoa.¹⁷³ While the Court again ruled that Upokorehe had no independent claim to this land as they 'had not been able to sustain a claim to the land in their own right',¹⁷⁴ it did recognise that some individuals of Upokorehe did retain rights, but only through their extensive intermarriage with Tuhoe.¹⁷⁵

The list of owners of the Waimana block was extended to include Rakuraku and others, and also to include a number of Upokorehe names. The seven Upokorehe names listed were 'Heremaia Te Marama, Aperahama Makao, Jemima Shera (half caste), Awhea, Haturini, Titia (otherwise Ngatua), [and] Te Kuru Te Hika'. Jemima Shera, who was the daughter of Colonel Balneavis, substituted her name with that of Mohi Tai who was also described as 'a half caste' of Upokorehe. 'Undoubtedly,' Jeffrey Sissons claims, 'there was some incentive, financial or otherwise, that induced Mohi Tai to participate in this backroom deal', and this requires further investigation. Having secured her title, Jemima Shera then set about buying the shares of other owners. When the land was subdivided in 1885, 'she asked for a portion equal to four shares – her own, received in exchange from Mohi Tai, and those of three others that she had purchased'. Upon subdivision, these four shares equated to 636 acres (Waimana 1E). Many of the other people listed as owners of the Waimana block sold their shares to Swindley.¹⁷⁶

Section 7: Suggestions for Further Research

The Wai 339 submission to the Waitangi Tribunal calls for the identification and analysis of Crown breaches of the Treaty of Waitangi in regard to Upokorehe and the Hiwarau block, and for research to be done regarding 'the social and economic impact of the breaches upon the Upokorehe people'.¹⁷⁷ The historical grievances concerning land alienation have been broadly surveyed in this scoping report, and further investigation is needed to identify the extent of

¹⁷² Opotiki minute book 1, fol 63, cited in Sissons, 'Blocked In, Forced Out', Draft Version, June 2001, ch 2, p 7

¹⁷³ Sissons, 'Blocked In, Forced Out', Draft Version, June 2001, ch 2, pp 8-9

¹⁷⁴ Sissons, 'Blocked In, Forced Out', Draft Version, June 2001, ch 2, p 9

¹⁷⁵ Miles, *Te Urewera*, p 227ff

¹⁷⁶ Sissons, 'Blocked In, Forced Out', Draft Version, June 2001, ch 2, pp 10-15

¹⁷⁷ Submissions of Counsel for Upokorehe, p 5

Crown breaches of the principles of the Treaty of Waitangi in regard to Upokorehe and the Hiwarau block. Regarding the issues of social and economic impact as a result of these potential breaches, discussion with claimants is needed to further define particular areas of concern. It is anticipated that these socio-economic issues can be incorporated into the substantive report.

The Wai 203 statement of claim (as outlined in section 1.2, above) refers to the issue of the prolonged intergenerational effects on the Mokomoko whanau (notably, the 'stigma' attached to the whanau), resulting from the wrongful execution of Mokomoko and the excessive confiscation of Whakatohea land. This scoping report, and the substantive research report that will follow, can draw attention to the treatment of Mokomoko at the time, and also to the way in which Mokomoko has been treated in the official histories and in public perception, as evidenced by the public record. However, in calling for 'the character, mana and reputation of Te Whanau-a-Mokomoko be restored', it is perhaps more appropriate for the claimants, themselves, to present submissions to the Waitangi Tribunal regarding the impact of the stigma, and the loss of mana, associated with these events.

This scoping report has been assembled from published secondary sources; published official documents such as the *Appendices to the Journal of the House of Representatives* and the *New Zealand Gazette*; Crown generated records held at National Archives and by government departments; and submissions made to the Waitangi Tribunal. Consultation with claimants and their counsel will be necessary in planning and producing the substantive Upokorehe research report.

Generally speaking, the substantive Upokorehe research report will (subject to discussion with claimants) follow the structure of this scoping report, but will go into more detail on several issues. In particular, the following issues are identified as needing further research:

- Discussion with claimants regarding issues of representation for the purposes of their claim, and also for the Waitangi Tribunal's research report, particularly in regard to such issues as traditional histories, boundaries, and suchlike, in relation to the contemporary status of both Upokorehe and Hiwarau C;
- The mapping of boundaries described in this report, particularly Upokorehe's traditional boundaries, including the boundaries with Ngati Awa and possibly with neighbouring Tuhoe and Whakatohea hapu;

- The experience of Upokorehe in the New Zealand wars, and in particular what the Crown's pardon of Mokomoko signifies for his descendants who, it is stated, have suffered as a result of Mokomoko's conviction and execution;
- The adequacy (or otherwise) of Wilson and the Compensation Court's original compensation to Upokorehe; the inclusion of persons who may not be of Upokorehe in the ownership lists of the Hiwarau block and Hokianga Island; and the response of the Court and the Government to successive petitions from Upokorehe regarding this issue;
- A close reading of relevant Maori Land Court minute books identified in this scoping report, to further analyse any possible Upokorehe interests in Waimana, Tahora No. 2, Takaputahi, Opape, and Waioeka blocks, as well as Warana Mokomoko's participation as a witness at several hearings regarding other blocks. Peter Boston's Tahora block history will also be consulted for this section;
- Crown policy regarding Maori land generally; and the action (and inaction) of Crown agents in respect to the Hiwarau block, particularly in regard to the fragmentation of the block, and its partial amalgamation to form Hiwarau C in 1969;
- The history of those Hiwarau lands excluded from Hiwarau C;
- The alienation of Hiwarau lands as reserves, and the legislation thus invoked (such as the Public Works Act, Scenery Preservation Acts, and so forth);
- Further analysis of Crown policy relating to the Maori Trustee, and the actions of the Maori Trustee regarding Hiwarau C;
- A full survey of the current status of Hiwarau C and its management from 1992 to the present; of Hiwarau land excluded or alienated from the original Crown grant; and of Hokianga Island.

It is proposed that the substantive report will take twelve weeks researching and writing and will be completed by the end of December 2001. This will be dependent on arranging consultation between the researcher/writer and the claimant group or their representatives.

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AD 7/1. Colonial Defence Outwards Memoranda, January 1864-December 1866

AG 66/789. Minutes and Proceedings of the Trial of Mokomoko etc.

IA 1/1865/1339. Enclosing Deposition of Eruera Tutawhia, 9 May 1865
IA 1/1866/2626. Duncan to Col Sec – re Mokomoko innocence [21 August 1866 – letter, Capt Levy attests Mokomoko not at scene of murder, re land be handed over to his relations]
IA 1/1866/3754. Letter from Mr Wilson, Commissioner for settlement of land claims at Opotiki (RDB 46350)
IA 1/1867/1781. Compensation Paid to Whakatohea chief Tiwai Piahana 1867
IA 1/1867/1888. Re. Bay of Plenty Confiscated Lands
IA 1/1867/2771. Correspondence re Native Lands in the Bay of Plenty District 1867
IA 1/1867/3589. Re Entitlements of Families of Rebel Natives to Compensation

J22/3A & B. Records re Various Maoris for Murder of C. S. Volkner . . .

Le 1/1867/121. Papers relating to Recent Military Operations at Opotiki
Le 1/1935/14 Rahi Erana and others. Pet No 32/1935, District: Bay of Plenty [Re Hiwarau Block. Petition, extract from Opotiki Minute Book. Correspondence. AJHR 1936 I-3. No recommendation] (RDB vol 5, p. 1590).

MA 61/8 Commission of Inquiry Papers 1867-1872
MA1 5/13/73 Petition No 32/1935: Rahi Erana and 9 others. 1935-1945. [re Hiwarau Block, Opotiki, incl 14/1947 Henare Raho and 6 others, other file MA 60/2/5, IA 121/1/11 (RDB vol 58).

Land Information New Zealand

L&S Gisborne Office, 20/114-SGS-01, Hiwarau Block, 15 February 1910 – 25 September 1966
L&S Gisborne Office, 20/114-SGS-02, Hiwarau Block, 25 September 1966 – 1 April 1987
DOSLI National Office, 6925/3526-1-DNO, Maori Land Claims Hiwarau Block, 29 March 1993 – 1 October 1998
LINZ Gisborne Office, -MLB/0114-ZGS, Maori Land Blocks Hiwarau Block 6900/0114-DGS/, 1 July 1997
LINZ Hamilton, Old Series 32, Robert Pitcairn's Field Book, 1866
LINZ Hamilton, Opotiki Confiscation Files

Maori Land Court Minute Books

Opotiki Compensation Court Minute Books
Opotiki Minute Books

Unpublished Papers

Alexander Turnbull Library

MSS 9392. Whitmore Correspondence
MS GRA. Extracts from the Journals of T. S. Grace, S. A. Levy and Captain M. Levy, 1865
MS Papers 388, Folder 1. Smith Family Correspondence

MS Papers 1021. T. S. Grace Papers, 1865-1872

H D London Research Library, Whakatane District Museum, Whakatane

MS 287 (Box 2) Ohiwa-Ohope

MS 255 (Box 6) Ohiwa

Leo Ducker, 'Early Days of Ohiwa', 1994, unpublished manuscript, DU 436.16

Collated Scrapbook of Newspaper Cuttings, Journal Articles and Notes on Ohiwa

Maps

LS SM A101 Bay of Plenty. Sketch map of the Opotiki confiscated block, 1870

LS SM A70 Bay of Plenty. Plan of Surveys on the confiscated land, Opotiki, 1870

LS SM A74 Bay of Plenty. Plan of the confiscated blocks in the Bay of Plenty District, 1871

LS SM A154 Bay of Plenty. Plan of the Bay of Plenty, Ohiwa, 1871

LS SM A43 Bay of Plenty. Map of Bay of Plenty, West of Ohiwa [c1860s]

MA 85/7/11. Bay of Plenty. Plan of Opotiki Claims (Sim Commission)

Survey Plans (Land Information New Zealand)

02001/1/231

CLAIM
WAI 894 # 3.10

WAITANGI TRIBUNAL

Wai 894

CONCERNING

the Treaty
of Waitangi
Act 1975

AND CONCERNING

Wai 203,
Wai 339
and the
Urewera
inquiry

MEMORANDUM-DIRECTION OF DEPUTY CHAIRPERSON


- 1 Pursuant to clause 5A(1) of the second schedule of the Treaty of Waitangi Act 1975, the Tribunal commissions Dr Ewan Johnston of Wellington to complete, on behalf of the Tribunal, a scoping report on Upokorehe claim issues covering the following matters:
 - (a) a brief explanation of this Tribunal commission, the aim of the project, and any comments on the methodological approach of this research;
 - (b) a discussion of the customary interests held by Upokorehe up to 1866;
 - (c) Upokorehe's experiences during the New Zealand wars;
 - (d) the trial and execution of the tipuna Mokomoko;
 - (e) the confiscation of Upokorehe lands, Upokorehe claims before the eastern Bay of Plenty Compensation Court, and any lands returned to Upokorehe after the raupatu;
 - (f) the administration of the Hiwarau block, including the Maori Trustee's administration of the Hiwarau block 1969-1992;
 - (g) the identification of possible Upokorehe interests in Tahora, Opape and Waimana blocks (and any others);
 - (h) suggestions for further research.
- 2 This commission commenced on 1 October 2001 and ends on 12 November 2001, when one copy of the report will be filed in unbound form together with an indexed document bank and a copy of the report on disk.
- 3 The report may be received as evidence and the author cross-examined on it.
- 4 The Registrar is to send copies of this direction to:

Dr Ewan Johnston
Crown Counsel, Crown Law Office
Director, Office of Treaty Settlements
Secretary, Crown Forestry Rental Trust
Director, Te Puni Kokiri
Wai 36 Tuhoe consolidated claim, counsel

WAI 894, Johnston.

Wai 46 Ngati Awa land claim, counsel
Wai 87 Whakatohea Raupatu claim, counsel
Wai 203 Mokomoko claim, counsel
Wai 339 Hiwarau C block claim, counsel
Wai 558 Ngati Ira o Waioeka claim, counsel
Wai 794 Opouriao Lands and Resources claim, counsel
New Zealand Maori Council
National Maori Congress
Tuhoe-Waikaremoana Maori Trust Board
Te Runanga O Ngati Awa
Whakatohea Trust Board
Environment Bay of Plenty
Opotiki District Council
Whakatane District Council

DATED at Wellington this *7th* day of November 2001.


Chief Judge J V Williams
Deputy Chairperson
WAITANGI TRIBUNAL

FILE

DUPLICATE

1.1/1/81
Claim
WAI 203

IN THE MATTER of the Treaty of
Waitangi Act 1975

AND

IN THE MATTER of a claim by
TUIRINGA MOKOMOKO on
behalf of himself and
the members of the
Mokomoko Whanau of
the Whakatohea Iwi

Claimant

STATEMENT OF CLAIM

The claimant says:

1. THAT he is descendant of the Whakatohea chief Mokomoko and is member of Te Whanau-a-Mokomoko.
2. THAT his whakapapa Mokomoko was granted a posthumous pardon by Her Excellency, the Governor General, on 18 June 1992.
3. THAT he claims to be prejudiced notwithstanding the granting of the pardon by the following acts or omissions of the Crown:
 - 3.1 On 17th April 1866 Mokomoko was wrongly executed by the Crown.
 - 3.2 Following the arrest of Mokomoko, there was a general raupatu of Whakatohea lands by the Crown in the Opotiki area.
 - 3.3 This raupatu was proclaimed by Order in Council on the 17th of January 1866.
 - 3.4 It is well established that the confiscations of Whakatohea land exceeded what was just.
 - 3.5 The effects of confiscations and the unlawful death of Tipuna Mokomoko on Te Whanau-a-Mokomoko were, and remain, extensive, pervasive and economically and culturally devastating.

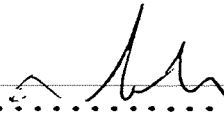
In Particular:

- 4.1 The stigma of the name Mokomoko as a convicted murderer which has followed the whanau down through the generations.
- 4.2 The loss of mana for the unlawful execution of Tipuna Mokomoko.
- 4.3 The loss of lands of Te Whanau-A-Mokomoko.
- 4.4 The loss of economic opportunity for our whanau following the confiscation of our lands.

erefore the Claimant Claims:

- 5.1 The character, mana and reputation of Te Whanau-a-Mokomoko be restored through the enactment of a statute to that effect.
- 5.2 The Crown take appropriate action to compensate Te Whanau-a-Mokomoko for wrongful execution of Tipuna Mokomoko, the loss of their mana, the loss of their land, their economic base and the loss of opportunity associated with the wrong-doing to our whanau.

DATED this 17 day of March 1994


.....
Counsel for Claimant

THIS Statement of Claim is filed by BRIAN SETWART NABBS, Solicitor for the Claimant, whose address for service is at the offices of McCaw Lewis Chapman, 77-79 Duke Street, Cambridge, telephone (07) 827 5147, fax (07) 827 7991, DX 4603, Cambridge.

TO: The Registrar, Waitangi Tribunal, Wellington

AND TO: Tuirenga Mokomoko, R D 1, Opotiki

DUPLICATE

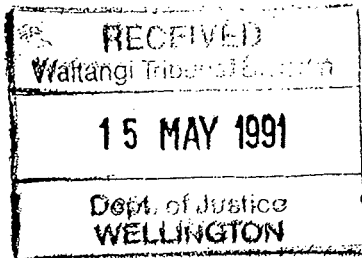
Claim
WAI 203

IN THE MATTER of the Treaty of
Waitangi Act 1975

- and -

IN THE MATTER of a claim by TUIRENGA
MOKOMOKO on behalf of
himself and of the
members of the Mokomoko
family of the
Whakatohea Tribe

Claimant



STATEMENT OF CLAIM

The claimant says:-

1. THAT he is a Maori and is a descendant of the Whakatohea Chief Mokomoko (Whakapapa is attached to this claim as Annexure 1).

2. THAT he claims to be prejudiced by the following acts or omissions of the Crown:-
 - 2.1 In invading the Opotiki area in 1866;

 - 2.2 In detaining the Chief Mokomoko and subjecting him to Military court-martial pursuant to the Suppression of Rebellion Act 1863 for his alleged involvement in the murder of the missionary, Carl Sylvius Volkner at Opotiki;

 - 2.3 In deciding to indict and prosecute Mokomoko for murder in the Supreme Court at Auckland;

 - 2.4 In executing Mokomoko on 17 April 1866;

 - 2.5 In declining to grant an application for an acquittal and/or statutory pardon brought on behalf of the Mokomoko family in 1990.

3. THAT the Act, actions or omissions of the Crown referred to in paragraph 2 above amount to a breach of the principles of the Treaty of Waitangi:-

Particulars:-

- 3.1 In March 1865 the CMS missionary at the Opotiki Mission Station, Carl Sylvius Volkner, was killed at Opotiki by Kereopa Te Rau and others who believed that the Reverend Volkner was acting as a spy for the Government of the colony. After being shown certain documents in following a proceeding similar to a trial, Volkner was executed by hanging.
- 3.2 It is unclear who was primarily responsible for Volkner's death. In February 1865 Kereopa Te Rau and Patara Raukatauri came to the Opotiki as Pai Maririe missionaries. It appears there is clear evidence linking Kereopa with Volkner's death. Some members of Whakatohea also may have had their reasons for wishing to kill Volkner.
- 3.3 Following Volkner's death Sir George Grey issued two proclamations on 2 and 4 September 1865. The first proclamation advised that the Crown intended to send a military expedition to Opotiki and threatened that unless the murderers of Volkner (and also of James Fulloon) were yielded up by the chiefs of the region, land would be confiscated. The second proclamation was a proclamation of martial law.
- 3.4 Following the arrival of Crown forces in the region, the Chief Mokomoko (along with other men) was detained and then subjected to military court-martial. Following an opinion from the Solicitor-General that the military proceedings were illegal (see Annexure 2), the Chief Mokomoko with others was placed on trial in the Supreme

Court at Auckland.

- 3.5 The trial took place on 27 March to 4 April 1866. Mokomoko was convicted and was hanged at Auckland on 17 April 1866. A transcript of the trial forms Annexure 3. This includes Mokomoko's unsworn statement after verdict in which he protests his innocence. Certain documents related to the Supreme Court trial and Chief Mokomoko's execution are attached as Annexure 4.
- 3.6 Whakatohea oral tradition has consistently been that Mokomoko was innocent, and the family have maintained that Mokomoko actually attempted to assist Volkner to escape.
- 3.7 In 1989 permission was granted by Government for the family to exhume Mokomoko's remains from Mt Eden Prison where they had been buried after his execution. His remains were re-interred at Waihua, Opotiki, in October 1989 and a formal unveiling took place in October 1990.
- 3.8 Meanwhile action was taken by the family during 1990 to take formal steps to have Mokomoko's innocence formally recognised by Government. A precedent for this existed already with the Te Runanga o Ngatiawa Act 1988. Contact was made with Bruce Gregory, MP for Northern Maori, and with Richard Boast of the Faculty of Law at Victoria University of Wellington.
- 3.9 On 18 July 1990 members of the family, together with Mr Boast, went to Parliament Buildings to meet with Government to discuss the Mokomoko case. Through earlier discussions with Mr Gregory, the family were under the impression that a meeting with the Prime Minister, Mr Geoffrey Palmer, had been organised, but this turned out to be a misunderstanding. No such meeting ever eventuated, but members of the family were able to meet with Shane Jones of the Prime Minister's Department and with Amelia Manson of the Treaty of Waitangi Policy Unit.

A letter from Mr Boast to the Prime Minister and Minister of Justice was also delivered (Annexure 5).

- 3.10 This letter was subsequently referred to the Law Reform Division of the Department of Justice. No reply was forthcoming until late December 1990. A copy of the Minister of Justice's letter and attached departmental report forms Annexure 6. The Department's view was that insufficient evidence had been adduced to warrant intervention by the Department of Justice.
- 3.11 A further meeting of the family took place on 3 January 1991 at which it was resolved to pursue the matter further. On behalf of the family, Counsel wrote to the Minister of Justice on 4 March 1991. A copy of this letter is attached as Annexure 7. This indicates that the family has strong reservations about the adequacy of the Crown's response and is disappointed that the Crown has failed to conduct any research itself. It is hoped that the intervention of the Waitangi Tribunal will allow this matter to be resolved.
- 3.12 The Departmental response takes the view that insufficient evidence has been adduced to warrant an acquittal or pardon. The family rejects this view, but in any event points out that the reason why some evidence cannot be located is, itself, due to the Crown, in particular in the Crown's failing to ensure the preservation of Court documents and other materials relating to the trial of Mokokoko. All Supreme Court records at Auckland were deliberately destroyed in 1949.

Findings Sought

4. THE Claimant seeks finding that the acts or omissions of the Crown:-

- 4.1 In invading the Opotiki area in 1866;

- 4.2 In detaining the Chief Mokomoko and subjecting him to Military court-martial pursuant to the Suppression of Rebellion Act 1863 for his alleged involvement in the murder of the missionary, Carl Sylvius Volkner at Opotiki;
- 4.3 In deciding to indict and prosecute Mokomoko for murder in the Supreme Court at Auckland;
- 4.4 In executing Mokomoko on 17 April 1866;
- 4.5 In declining to grant an application for an acquittal and/or statutory pardon brought on behalf of the Mokomoko family in 1990;

amount to a breach of the principles of the Treaty of Waitangi.

Recommendations Sought

5. THE Claimant seeks the recommendation that:-

- 5.1 the Crown reconsider its provisional assessment that an acquittal and/or statutory pardon for Mokomoko should not be granted; and
- 5.2 the Crown takes appropriate action to grant by whatever appropriate means a pardon for Mokomoko.

Mediation

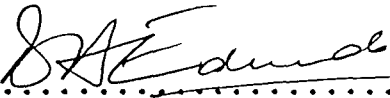
6. THE Claimant states his desire that the Crown treat with him by formal process of mediation and negotiation to settle the question of the pardon of the Chief Mokomoko.

7. THE Claimant authorises the Waitangi Tribunal Division of the Department of Justice to conduct whatever research is necessary to assist in the resolution of this claim.

8. THE Claimant asks that leave be given to amend this Statement of Claim and to file further annexures.

9. THE Claimant seeks the assistance of the Tribunal in funding counsel and research necessary for the claim.

DATED this 14th day of May 1991


.....

Counsel for Claimant

THIS Statement of Claim is filed by DEBORAH ANNE EDMUNDS, Solicitor for the Claimant, whose address for service is at the offices of Kensington Swan, 6th Floor, Fletcher Challenge House, 87-91 The Terrace, Wellington, telephone (04) 727-877, fax (04) 732-338, P.O. Box 10-246, Wellington.

TO: The Registrar, Waitangi Tribunal, Wellington

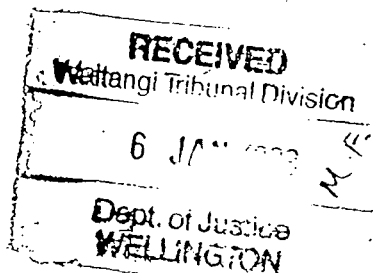
AND TO: Solicitor-General, Crown Law Office, Wellington

Claim 339
WAI

R.D.1
OPOTIKI

17 December 1992

Chief Judge Durie
Chairman
Waitangi Tribunal
WELLINGTON



Dear Sir

HIWARAU C BLOCK

I, being the Chairman of the newly elected Responsible Trustees of Hiwarau C Block, and one island comprising approximately 800 acres, have been asked to seek your assistance. There is much confusion about the block, and the Responsible Trustees request that the Waitangi Tribunal investigate the circumstances relating to its deterioration, and make recommendation accordingly to the Maori Land Court, in Rotorua.

- 1) Prior to confiscation the original area was about 1321 acres, ^{4 Islands} the boundary being from Maraetoto Stream to the west of Ohiwa Harbour. Granted under the 4th and 6th Clauses of the Confiscation Lands Act 1867.
- 2) after confiscation the land granted to the rebels comprised 1200 acres and one island. The rebels numbered 30 women who were blamed with Mokomoko for the murder of Volkner. Refer Document A, Maori Land Court, dated 17th March 1898.
- 3) From 1867 to 1962 that 1200 acres has been drastically reduced to 800 acres, and one island. Refer Maori Land Court document A, judge Seamnet, March 1895, Pg 2.

After 98 years we are left with mismanagement by the Land Court, and the Maori Trustee. As a result we are left with much run down block of land, no finance, and arrears in rates and rent.

We are capable of managing this block, but feel as Trustees acting on Behalf of the owners, we are severely disadvantaged.

We look forward to an early response.

Yours faithfully



Tuiringa Mokomoko
CHAIRMAN

CLAIM 1.1(a)
WAI 339

RECEIVED
Waitangi Tribunal Decision
0 8 JUN 1993
Dept. of Justice
WELLINGTON

RD 1
OPOTIKI

2nd June 1993
Rcd 8/6/93

To: Admin. Clerk

~~Judge E Durie
Chairman
Waitangi Tribunal
110 Featherstone Street
P O Box 5022
WELLINGTON~~

Amendment to Wai 339

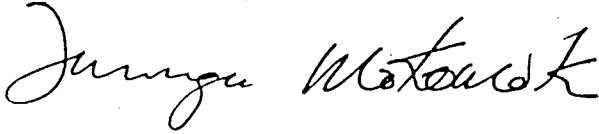
Tena Koe

Sir Hiwarau C Shareholders are of Upokorehe, a hapu of
Te Whakatohea.

The amendment to Wai 339 is: -

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

Arohanui



Tuiringa Mokomoko
Chairman Hiwarau C Trust.