

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

TE MANUTUKUTUKU

Kia puta ki te whai ao ki te ao mārama

From the world of darkness moving into the world of light

Issue 65



Waitangi Tribunal

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From the Chairperson

TĒNĀ KOUTOU. This issue illustrates the growing diversity of the Waitangi Tribunal's inquiry work. Over the past year, we have concentrated on progressing our large district and regional inquiries. Two (Tongariro National Park and Te Urewera) have produced reports. Two reports (Whanganui and Te Paparahi o te Raki stage 1) are in preparation. Two inquiries (Te Rohe Pōtae and Te Paparahi o te Raki stage 2) have commenced hearings; and two (Taihape and Porirua ki Manawatū) have planned or begun their research preparation. Between them, these inquiries cover more than 800 claims, a third of the total number registered with the Tribunal since its creation in 1975, and they address a wide array of issues, many historical but also a number arising in recent times.

Late 2012 witnessed several significant milestones for the Tribunal. In December, we marked the conclusion of the Tongariro National Park district inquiry with the pre-publication release of the report *Te Kāhui Maunga*. In October and December, the Tribunal also released the third and fourth parts of the Te Urewera report, addressing most of the remaining issues in that inquiry. In September, the Rohe Pōtae inquiry finalised its statement of issues, and in November it convened at Te Tokanganui-a-noho Marae in Te Kuiti for the first of its current round of 14 scheduled hearings. In December, the Te Paparahi o te Raki Tribunal produced its statement of issues for stage 2, covering



Chief Judge Wilson Isaac with some recent reports

all the post-1840 claim issues. This set the stage for the hearing of opening submissions at Waitangi in March 2013, the first of 21 planned hearings in four rotations around the region. In all, the Tribunal will hear some 650 claims over the next two to three years in these two inquiries.

The past year has also seen a widening range of claims granted urgency. The *Port Nicholson Block Urgency Report*, released in August 2012, focused on a particular aspect of the Crown's Treaty settlement with Taranaki Whānui. The *Ngāti Kahu Remedies Report*, released in February 2013, addressed an application for specific recommendations on how Ngāti Kahu's pre-1865 claims, previously adjudged well-founded in the Muriwhenua land inquiry, might be remedied. The national freshwater

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From the Acting Director

KIA ORA KOUTOU. It is my pleasure to be able to contribute to this issue of *Te Manutukutuku*.

I have spent the last few months working closely with the Waitangi Tribunal's management team, and it has been great to gain an insight into the organisation's administrative processes.

One piece of work that I have been involved in has been the Tribunal's strategic plan, which will outline the Tribunal's priorities and direction for the next five to seven years. We have considered what the future working environment might look like when the Tribunal's role in the historical inquiries is complete and the main focus of the work moves towards the contemporary and kaupapa claims. What support structures and resources might that require and how can we prepare for a transition to a quite different



Acting Tribunal Director Julie Tangaere

work programme? This has been a very thought-provoking exercise.

At the Ministry level, the Secretary for Justice has recently released a new business strategy, the main goal being

to reduce the time taken to dispose of cases by 50 per cent by 2017. This means that we are looking at how we can do things smarter and more efficiently. For example, we have been trialling paperless hearings in the Rohe Pōtae inquiry, with Tribunal members using iPads to store and manage the large volume of documents required. The administration will also be developing a range of other initiatives.

The managers and staff here at the Tribunal remain committed to providing timely and efficient administrative support for the inquiry process.

I hope you enjoy this issue. Kia ora rā.

A handwritten signature in black ink, which appears to read 'Julie Tangaere'.

Julie Tangaere
Acting Director



A New Judge

AT a special sitting of the Māori Land Court on 25 January 2013, Judge Michael Doogan was sworn in as a temporary judge of the court. His warrant also entitles him to preside over Waitangi Tribunal inquiries.

Judge Doogan has worked in both private and public practice in New Zealand and England, including stints as Crown counsel in the Crown Law Office's Treaty Issues and International Law Team and as a barrister representing numerous Waitangi Tribunal claimants.

At the swearing-in, Chief Judge Wilson Isaac spoke of the qualities that made Judge Doogan suitable for his appointment as a judge, telling him that 'you have been described by many of your opponents on the legal

battlefield as a true gentleman. You have shown empathy, humility, modesty, fairness and kindness when all around you seemed to be in turmoil.'

Justice Joseph Williams spoke of his long relationship with Judge Doogan, stretching from the Waipatu Māori Catholic kapa haka group through to Judge Doogan's subsequent work as a clerk for Justice Sir Rodney Gallen and as Crown and claimant counsel in the Tribunal, and of Judge Doogan's standing as 'a man who would never shift anchor in heavy weather.'

Erima Henare presented Judge Doogan with a whalebone taonga on behalf of Ngāti Hine, for whom the judge had acted in the Te Paparahi o te Raki inquiry. Mr Henare told the court that Ngāti Hine had named their



Judge Michael Doogan

lawyer Te Hautupua, because that conveys 'all of the traits that are possessed by Judge Doogan.'



Tribunal Appointments

ON CHRISTMAS EVE 2012, the Minister of Māori Affairs, Pita Sharples, announced the appointment to the Waitangi Tribunal of four new members and the reappointment of one.

Sir Hirini Moko Mead, one of the Tribunal's most experienced kaumatua members, has been reappointed for a further three-year term.

Nicholas Davidson was previously a partner at Bell Gully, where he acted for a number of clients, including Ngāi Tahu, the New Zealand Māori Council, and Te Ohu Kaimoana. He was involved in the 1989 and 1992 commercial fisheries settlements and the 1990 forestry settlement.

Miriama Evans (Ngāti Mutunga, Ngāi Tahu) has held many senior roles in the public service, as well as iwi governance roles, including as a trustee of Te Rūnanga o Ngāti Mutunga, Te Whiringa (the Ngāti Mutunga Community Development Charitable Trust), and the Ngāti Mutunga Investment Charitable Trust. She is the co-author of *The Art of Māori Weaving*.

Dr Rawinia Higgins (Tūhoe) is currently an associate professor at Victoria University's School of Māori

Studies (Te Kawa a Māui). She has published articles on a wide range of topics relating to te reo, Māori culture, and history, and is a composer of award-winning waiata for kapa haka groups within the Wellington region and for groups within Tūhoe.

The political career of the **Honourable Paul Swain** has spanned 15 years, during which time he has held a number of ministerial portfolios, including those of Associate Minister for Economic Development, Associate Minister of Finance, Minister of Commerce, Minister of Communications, Minister of Corrections, Minister of Immigration, Minister for Information Technology, Minister of Labour, Minister for State-Owned Enterprises, Minister of Statistics, and Minister of Transport. In 2009, he was made a Companion of the Queen's Service Order for services as a member of Parliament. Since retiring from politics, he has worked as a consultant, including in the Treaty settlement field.

Chief Judge Wilson Isaac congratulated all members on their appointment, and thanked Sir Hirini for his continued dedication to the work of the Tribunal. □



Sir Hirini Moko Mead



The Honourable Paul Swain

Nicholas Davidson



Dr Rawinia Higgins



Miriama Evans



An Interview with Joanne Morris

ON Friday 15 February 2013, past and present Waitangi Tribunal members and staff came together to farewell Joanne Morris, the Tribunal's longest serving member. Jo was only in her mid-30s when she was appointed in 1989 but quickly became an indispensable part of the membership for her legal and social skills.

Jo's first major assignment was the Muriwhenua land inquiry, whose report was published in 1997. The following year, she became the first female presiding officer, in the Te Whanau o Waipareira inquiry. She also served on other high-profile inquiries into issues such as the Crown's foreshore and seabed policy (2004) and its Treaty settlement processes in the Tamaki Makaurau region (2007), as well as the district inquiries in Te Urewera and Te Paparahi o te Raki. In total, Jo has worked alongside 25 Māori and 17 Pakeha members on 19 different inquiries. Yet, for most of this time, being a Tribunal member was a part-time job for her – until recently, she also filled a range of prominent public sector positions, including those of Law Commissioner (for five years) and chair of the Broadcasting Standards Authority (for six).

After her farewell, Jo sat down with Principal Historian Michael Allen to reflect on her career as a Tribunal member and to discuss her plans for the future.

Jo, in many ways you were a trail-blazer when you were first appointed to the Tribunal – a young, female, Pākehā lawyer. What were your first impressions?

Much of the Muriwhenua inquiry – the first major inquiry I worked on – was new to me. I'd taught land law at Victoria University, but the course didn't cover any history or current



Joanne Morris

information about Māori land. And, although I'd grown up in Hawke's Bay and gone to university in Christchurch, I had then lived in Sydney for seven years and Canada for a year, so I had spent only four of my adult years back in New Zealand before joining the Tribunal. My knowledge of Māori – the language, the people, the culture – was limited. But I was keen to learn and my new colleagues were very generous with their knowledge. I spent a great deal of time listening to their conversations and to the evidence given at

hearings, and reading historian witnesses' reports about New Zealand's colonisation and its aftermath. I soon came to understand the context for Māori land and other claims.

At your farewell, you talked about the Māori members you have worked with who you remember fondly, including Hepora Young, Sir Monita Delamere, Sir Hugh Kawharu, and Bishop Manuhua Bennett. What was it about them that made such a lasting impression?

I worked with both Monita and Manu on the Muriwhenua inquiry and they were very wise and kind men and also great company. They loved life and people and could analyse and explain complex situations in memorable ways – often through amusing or poignant accounts of their own experiences. Hepora also had great intelligence, wisdom, and compassion, and a terrific sense of humour. She and I had many wonderful talks about life and people, especially in the evenings when we were away on inquiries together. Her views on the role of Māori women and on many other matters – including such issues as whether women Tribunal members should wear trousers at hearings (some people at the time disapproved) – were always liberal and very clearly reasoned. I worked with Sir Hugh Kawharu more than once, but it was on the Waipareira inquiry that we became close because of the number of hours dedicated to discussion and analysis.

The way those elders conducted themselves in difficult or novel situations taught me that tikanga is not a set of hard and fast rules but a guide to the right behaviour in a particular situation. One example that stands out for me was when the Muriwhenua Tribunal was scheduled to visit a distant marae. It transpired that we did not have a kuia with us to respond to the karanga. Sir Monita Delamere spent the drive to the marae teaching me how to do the response, when he could have asked someone else to do it. His reasons for choosing me were that I was a Tribunal member and I could sing louder than others! Happily for me, when we arrived at the marae, a kuia came forward to lead us on and she responded to the karanga, so I didn't have to use my newly acquired skill.

Being very new to matters of tikanga at that stage of my career, I relied on the advice of the Tribunal kaumatua and kuia about how to act in any situation in which we found ourselves. As a result, I wasn't particularly

apprehensive about others' reactions to things – such as me responding to the karanga – that would be unusual on the marae. Yet, now that I'm more familiar with marae protocols, I know that I'd be considerably more nervous about doing something unusual that my kaumatua or kuia advised me to do. That might prove the point that 'a little knowledge is a dangerous thing'.

In the Te Whanau o Waipareira Report, the Tribunal tackled the question of urban Māori and their status under the Treaty for the first time. What do you see as that report's key messages, 15 years after its publication?

I think that report was very important for recognising that Māori rangatiratanga does not exist only in strictly kin-based communities. Any other conclusion, that Tribunal believed, would have fostered a limited and exclusionary view of what, today, is a Māori community with responsibilities for the welfare of its members. At the time we reported in that inquiry, our recognition of urban Māori communities would have been controversial within some tribal circles, but I believe that time has confirmed the wisdom of the Tribunal's findings.

Reflecting on some of the inquiries you have been involved with, what effect do you think the Tribunal has made, or how do you see its contribution to broader debate around Treaty issues in society?

The inquiries into contemporary issues that I've been involved in, in which claims against current Crown action and policy have been upheld, have had different degrees of direct or immediate impact. Some may seem to have had very little effect on the Crown's plans and behaviour. But, as I see it, even when the message of a particular Tribunal report seems not to have been heeded, the report still adds

to the fund of readily available knowledge about the meaning and application of the Treaty and, in that way, it can and will have an indirect effect on Crown policy and practice in other areas. After all, the existence of the Tribunal's jurisdiction means that it is part of all Crown agencies' core business to be able to demonstrate that their policies and operations are consistent with Treaty principles.

So, even though some politicians and newspaper letter-writers still assert that no one knows what the principles of the Treaty are – let alone how to apply them – that's simply not true: there is a great wealth of information and wisdom about exactly those matters in the Tribunal's many reports on Treaty claims that span the entire country and the entire period from 1840 to the present day. All Crown agencies are aware of those reports and they'd be remiss if they attempted to go about their business without referring to them. So I believe that the Tribunal's work has played a substantial role in bringing the Treaty of Waitangi into the core business of government. And while the result is not yet perfect, that's not surprising: the task involves change on a scale and of a nature that can only be achieved in stages.

Lastly, what is in store for Jo Morris now?

I still have report-writing tasks to complete as a member of the Te Urewera and Te Paparahi o te Raki inquiry panels but, overall, I intend to be less involved in paid work than I have been.

I intend to continue in my role as a board member of Taki Rua Productions, which is now branching out from being a national Māori-based theatre company into film and other media presentations of New Zealand works. And I want to stay fit and do more travelling within and outside New Zealand. Last, but certainly not least, I intend to spend more time relaxing with my family and friends. □

National Park Pre-publication Report

THE Waitangi Tribunal released the National Park district inquiry report in pre-publication format on 24 December 2012. The inquiry district centres on te kāhui maunga, the chiefly cluster of mountains in the central North Island.

The iwi and hapū taking part in the inquiry were Ngāti Rangī, Ngāti Hikairo, Ngāti Tūrangitukua, Ngāti Tūwharetoa, Ngāti Manunui, Ngāti Waewae, and Ngāti Maniapoto. They are connected by whakapapa to the mountains and to each other.

The inquiry panel was made up of Tribunal chairperson Chief Judge Wilson Isaac, the Honourable Sir Douglas Kidd, Professor Sir Hirini Mead, and Dr Monty Soutar, and there were 10 hearings, held between February 2006 and July 2007.

There were 41 claims in the inquiry. The two main issues covered were the establishment and management of the Tongariro National Park and the creation and operation of the Tongariro power development scheme. In his

letter of transmittal, Chief Judge Isaac wrote that 'Both of these matters are of national importance and are at the heart of the inquiry.' Broader issues relating to warfare and the loss of land and other resources were also covered.

The Tribunal found that Crown actions in the inquiry district at various times breached the Treaty of Waitangi principles of fairness, mutual benefit, good faith, partnership, autonomy, equal treatment, and active protection. Because of this, the Tribunal concluded that substantial redress was due to the tangata whenua and that the Crown should settle the issue of quantum through prompt negotiation.

One of the key events discussed in the report is Horonuku Te Heuheu's 1887 agreement to tuku the mountains into a joint trusteeship with the Crown. In doing so, Te Heuheu was inviting Queen Victoria to share in his rangatiratanga and kaitiakitanga of the mountains, guaranteeing Ngāti Tūwharetoa's special relationship with them. The Tribunal found that this was

not, as Native Minister John Ballance believed at the time, an English-style gift. Te Heuheu's intention was to use Pākehā law to protect the mountains for the benefit of Māori and Pākehā forever and to ensure that his iwi never lost its special association with ngā maunga. The report states that, 'With hindsight, we can see that the minds of Te Heuheu and Ballance had not met.' Presenting this tuku as a 'noble gift', as the Crown and others have historically tended to do, is a misrepresentation of Te Heuheu's actions and aims.

The Tribunal found that the Crown should have better informed itself as to Te Heuheu's intentions. It should also have investigated the objections made by other Māori when the Tongariro National Park Bill was introduced to Parliament later in 1887. It should have consulted with other iwi with interests in the park land, particularly Whanganui. In addition, the Crown should have honoured the two specific commitments made to Te Heuheu at the time of the tuku: that after he died his

The Emerald Lakes, the Red Crater, and Mount Ngāuruhoe, viewed from the Tongariro alpine crossing



Jeffrey Pang

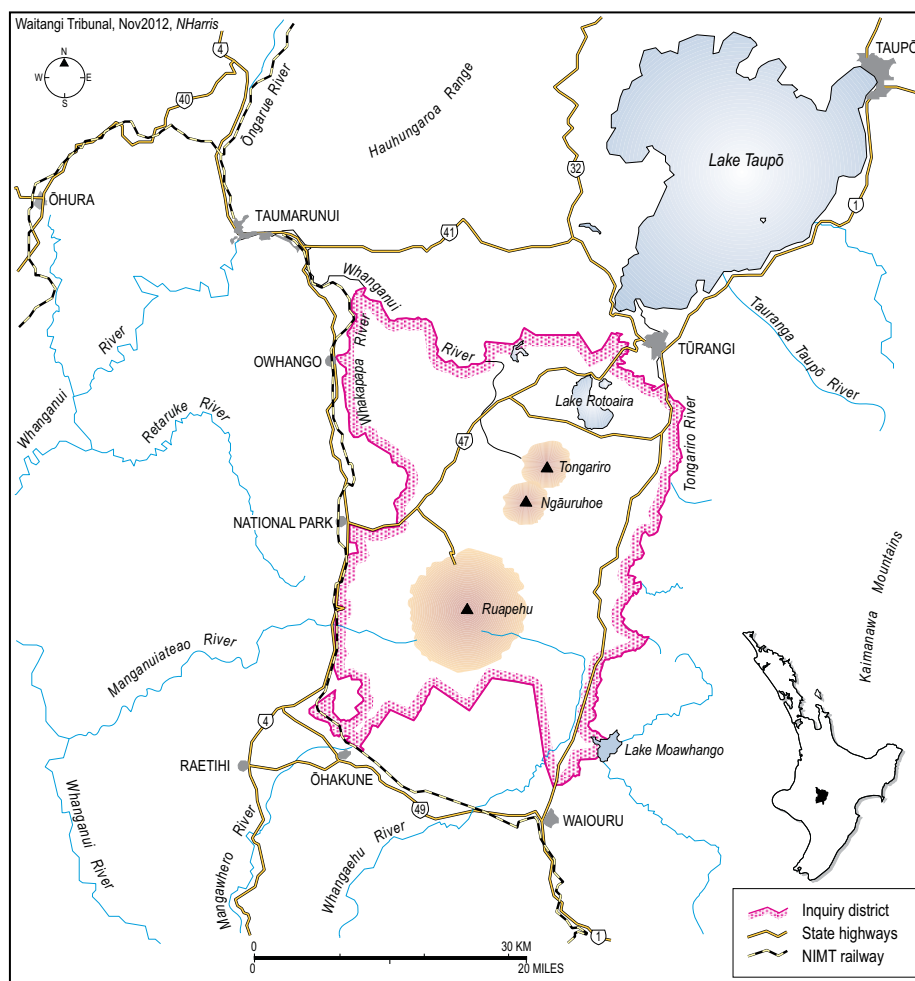
son Tūreiti would replace him as trustee for life and that the remains of Te Heuheu's father, Mananui, would be removed from the park and a monument erected to his memory. The Crown abolished Tūreiti's trusteeship in 1914 and did not reinstate it until 1922. Mananui's remains were not removed, and the monument eventually erected in 1953 was in memory of Horonuku Te Heuheu, not his father.

After the national park was created, the Crown failed to allow for specific tangata whenua representation on the park board until 1987. Te Heuheu and his successors were given a single seat on the board, which was insufficient to create a partnership of the kind intended in Te Heuheu's tuku. That voice was also diluted each time the board was expanded. Meanwhile, land belonging to ngā iwi o te kāhui maunga was taken to add to the park, contrary to the owners' wishes to develop the land economically. Some land was taken without due consultation, and compensation was not always paid.

The report states that wāhi tapu, bird life, and the general environment of the park were inadequately protected and that taonga were developed for commercial purposes without profit to ngā iwi o te kāhui maunga. The tangata whenua were also prevented from customarily harvesting flora and fauna, even though other groups were sometimes given dispensation from park rules. Since 1987, the Department of Conservation has managed the park. Although it has made some efforts towards working with the tangata whenua, its actions have generally not been in partnership with ngā iwi o te kāhui maunga, and various significant problems have gone unaddressed.

The Tribunal recommended that the park be shared jointly between the Crown and ngā iwi o te kāhui maunga under a new and inalienable Treaty title and that it be managed by a new statutory authority made up of representatives of the Crown and iwi.

The report's other main focus was



The National Park inquiry district

the Tongariro power development, which was constructed between 1964 and 1984 and which generates hydroelectric power using the Whanganui and Tongariro river systems and Lake Rotoaira. When the scheme was established, the Crown met with Ngāti Tūwharetoa but not with any of the other iwi with interests in the waterways, nor with the trustees of Lake Rotoaira. Although the lake has been significantly affected by the power development, its owners were not paid compensation. The development has resulted in a loss of water quality, habitat, and kai in the lake and rivers. The Tribunal recommended significant compensation in order to remedy these Treaty breaches.

In regard to the wars of the 1860s, the Tribunal found that, although they undoubtedly had detrimental effects on iwi and hapū of the district, there

was insufficient evidence to link these effects to Crown actions. Nor did the Crown invade the district, since Te Heuheu and other Ngāti Tūwharetoa rangatira had requested military help.

The Tribunal also looked at issues that will be familiar to readers of other Tribunal district reports. In this inquiry district, as elsewhere in the country, the Crown imposed the Native Land Court and its associated land tenure system, to the detriment of Māori interests. The system made Māori land difficult to manage and develop, especially on a communal basis, imposed significant and unnecessary expense, and contributed to the erosion of tribal structures. The Crown could have empowered Māori to manage and develop their land communally on a hapū basis, but it did not, despite knowing that this was what Māori wanted. Compulsory surveys



James Shook

Mount Ruapehu at dawn

also left Māori landowners with large debts, which often led to land loss.

Between 1880 and 1900, over half the land in the inquiry district was purchased, mostly by the Crown, which remains by far the biggest landowner in the area. In acquiring the land, it used methods such as monopoly purchasing, advance payments, and undivided share purchases. It also blocked private leases. The Crown made its purchases primarily to facilitate Pākehā settlement, and it failed to ensure that *ngā iwi o te kāhui maunga* retained enough land for their contemporary and future needs. The Tribunal endorsed the findings of previous panels that these practices undermined community ownership and collective decision making and were in breach of the principles of partnership, autonomy, and active protection.

The Crown also restricted the rights of Māori landowners to derive income from the forests on their land, and it failed to provide alternative economic opportunities to replace these lost rights. At the same time, it allowed

logging companies to take timber from land in the district, including national park land. This was in breach of the principle of equity.

Māori land development schemes were a positive step, but the Crown failed to consult the owners adequately or to allow them sufficient autonomy. The schemes failed to return a reasonable profit, but this was not the Crown's fault, being due to factors outside its control.

Māori land was also taken for public works purposes. Of particular note was Ōtūkou, where materials were extracted without royalties, land was taken with minimal compensation, and ancestral remains were damaged or destroyed. The Tribunal recommended that this land be restored to a usable condition and be returned to the claimants, along with appropriate compensation. In relation to public works legislation generally, there was still a 'pressing need' for reform.

The Tribunal made positive findings about the Lake Rotoaira Forest Trust, which administers 19,420 hectares of

forest land around the lake on behalf of 9,000 Māori landowners. The report states that Māori and Crown interests have converged and that the motivations of both parties are mutually understood. Both parties have benefited and continue to benefit. In general, this partnership was positive and upheld Treaty principles.

The Tribunal also discussed customary fisheries, finding that these were taonga. The Crown introduced foreign species such as trout and then prioritised the interests of anglers over those of the *iwi*. It also failed to protect water quality. Successive water management regimes have failed to accord due priority to Māori interests.

The Tribunal further found that the geothermal resources were taonga but that the Crown had not allowed their owners to retain exclusive and undisturbed possession, as guaranteed in the Treaty. It recommended that the resources' sustainable management be shared by the Crown and Māori and that a national policy statement be prepared on the subject. □

The Report on the Kōhanga Reo Claim



MATUA RAUTIA: *The Report on the Kōhanga Reo Claim* resulted from an urgent Waitangi Tribunal hearing held during March and April 2012 into a claim by the trustees of Te Kōhanga Reo National Trust. The Tribunal panel, comprising Deputy Chief Judge Caren Fox (presiding), Ron Crosby, the Honourable Sir Douglas Kidd, Kihī Ngatai, and Tania Simpson, released the report in pre-publication format in October 2012 and in final format in May 2013.

The inquiry was triggered by the 2011 report of the independent Early Childhood Education Taskforce, which, the claimants said, had seriously damaged their reputation. They claimed that the report, and Government policy based on it, would cause irreparable harm to the kōhanga reo movement.

The claimants also raised wide-ranging allegations of Treaty breach concerning the Crown's treatment of kōhanga reo over the past two decades. In particular, they said, the Crown had effectively assimilated the kōhanga reo movement into the wider early childhood education regime, stifling its vital role in saving and promoting the Māori language and leading to a decline in the number of Māori children participating in early childhood

immersion in te reo me ngā tikanga Māori.

The Tribunal found that the Crown's early childhood education regime, as developed from 2000 to 2011 and including the policy framework, funding formula, quality measures, and regulatory regime, had failed to adequately sustain the specific needs of kōhanga reo as an environment for the transmission of te reo me ngā tikanga Māori. The Tribunal considered that the Crown's failure to address the vital role of kōhanga reo had led to actions and omissions inconsistent with the principles of partnership and equity and with the guarantee of rangatiratanga.

The Tribunal expressed its deep concern at the vulnerable state of te reo Māori, for which, as a taonga, the Crown had a duty of active protection. It accepted the evidence of Crown and claimant experts that early childhood immersion and kōhanga reo, represented by the trust as kaitiaki, were a key platform for the transmission, retention, and revitalisation of te reo Māori. In effect, however, the Crown had left the future survival of te reo Māori 'to chance'.

The Crown, the Tribunal said, had also failed to fulfil the partnership agreement that it had entered into in 2003 with the trust. An already 'fractured' relationship between the two had worsened after the Crown had failed to consult the trust on the taskforce's report. The Tribunal found that the relationship between the trust, the Ministry of Education, and Te Puni Kōkiri had deteriorated to the point where the trust had lost confidence in the ability and willingness of those agencies to understand and provide for kōhanga reo.

The Tribunal concluded that the claimants had suffered, and were likely to continue to suffer, significant

prejudice as a result of the Crown's breaches of Treaty principles. It accordingly adjudged the claim to be well founded.

The Tribunal called on the Crown to make a formal acknowledgement and apology for the Treaty breaches that had occurred. It recommended that the Crown appoint an interim independent adviser, based in the Department of the Prime Minister and Cabinet, to redevelop the engagement between Government agencies and the trust and to ensure early progress on resolving outstanding issues. Such issues included the funding regime for sustaining quality in language transmission; the regulatory and performance reviewing framework; research on the effectiveness and educational outcomes of the kōhanga reo model; and information for Māori whānau on the linguistic and educational benefits of early childhood te reo immersion.

The Tribunal endorsed the conclusion of the Wai 262 Tribunal's report, *Ko Aotearoa Tēnei*, that urgent steps are needed to address recent Crown policy failures if te reo is to survive. It noted that both Treaty partners – Māori and the Crown – had to collaborate to assure the long-term health of te reo as a taonga of Māori. □

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Te Urewera Report: Parts 1 to 4

BETWEEN April 2009 and December 2012, the Waitangi Tribunal released the first four parts of its five-part pre-publication report on the Te Urewera district inquiry. These volumes covered a wide range of claim issues, including warfare, confiscation, the Urewera district native reserve, the police raid on Maungapōhatu, and the creation of the Urewera National Park. The report was released prior to publication in order to assist the Crown and iwi in their Treaty settlement negotiations.

The inquiry covers 45 claims from groups including Tūhoe, Ngāti Haka Patuheuheu, Ngāti Ruapani, Ngāti Whare, Ngāti Manawa, Ngāti Kahungunu, Ngāi Tamaterangi, Te Aitanga a Mahaki, and Te Whanau a Kai. The claims were heard at marae across the district between 2003 and 2005.

The panel members are Judge Pat Savage (presiding), Joanne Morris, and Dr Ann Parsonson. Joe Tuahine

Northover was a member, but he sadly passed away in April 2011. The Tribunal benefited greatly from his wise advice during hearings and in writing the first two parts of the report. Judge Savage dedicated the third part of the report to him, saying in his letter of transmittal that ‘we could not have functioned without him . . . we are bereft at his loss’.

Part 1

Part 1 of the report (on which we reported in issue 63 of *Te Manutukutuku*) was released in April 2009. Its focus was on the early interaction between the peoples of Te Urewera and the Crown, up to the confiscation of land in the north of the district and the first conflicts in the 1860s and 1870s. It covered the tribal histories of the peoples of Te Urewera, Tūhoe’s constitutional claim, the long-standing

Tūhoe grievance concerning the 1866 confiscation in the eastern Bay of Plenty, and the Crown’s military actions in Te Urewera in pursuit of the Māori prophet and military leader Te Kooti between 1869 and 1871.

In considering Tūhoe’s constitutional claim, the Tribunal placed special emphasis on their mana motuhake – their authority as a people – which has ‘long been intrinsic to the Tūhoe way of life’. The Tribunal found that in 1840 the Crown made unilateral promises to all Māori, including Tūhoe, but that Tūhoe did not at that point enter into a Treaty partnership or have reciprocal obligations to the Crown, because the Treaty had not been presented to them, nor had a Treaty-based relationship been established.

There was little contact between Māori in Te Urewera and the Crown until 1866, when the Crown confiscated part of their land following a war in which they had taken no part.

Lake Waikaremoana in Te Urewera National Park



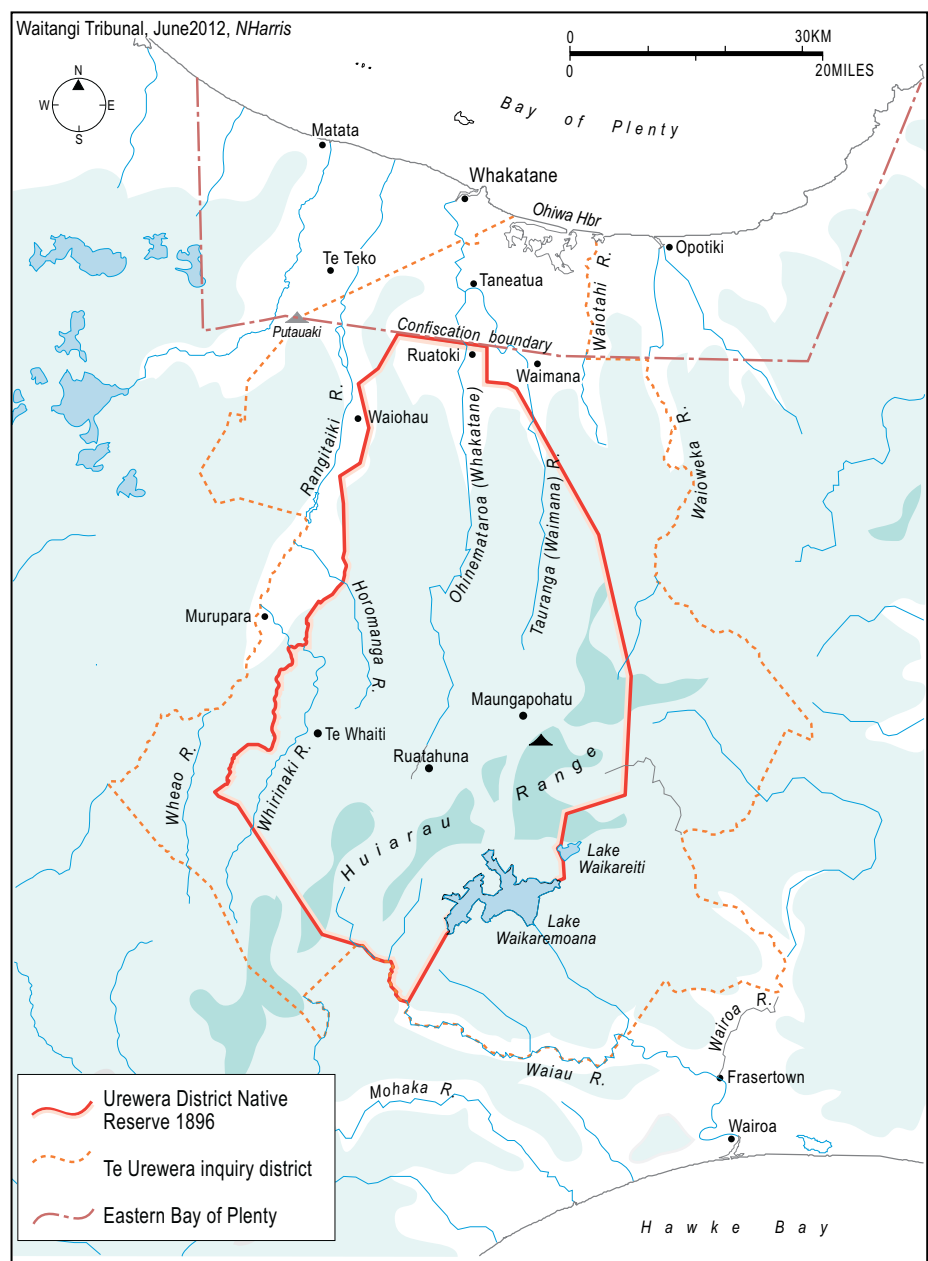
Although the Crown had not intended to confiscate Tūhoe land, it refused to return it. This, the Tribunal found, was in breach of the Treaty and has continued to be a source of grievance. Because of this, some Te Urewera leaders supported the prophet and war leader Te Kooti in his late 1860s war against the Crown and settlers. Te Kooti's actions against Māori and Pākehā civilians meant that the Crown was justified in invading Te Urewera in pursuit of him. However, the Crown clearly breached the Treaty by killing and mistreating non-combatants and prisoners, destroying crops and property, and continuing military actions after peace had been made. The Tribunal found that this has done long-term damage to the relationship between the Crown and the peoples of Te Urewera.

Part 2

Part 2 of the report was released in July 2010 and traced the development of the political relationship in the wake of the wars, including the introduction of the Native Land Court into the region and the large-scale Crown purchase of land that followed.

The report steps back in time from the Crown's pursuit of Te Kooti to examine a series of events that culminated in the widespread alienation of land in the upper Wairoa and Waikaremoana area. In late 1865 and early 1866, following the spread of hostilities from the Turanga region, the Crown engaged in a short but brutal war against Māori of this area. The conflict resulted in the deaths of non-combatants, including women and children. Prisoners were also executed and settlements destroyed. The Tribunal described the Crown's actions as 'reprehensible' and involving grave breaches of Treaty principle.

A series of complicated transactions followed in which the Crown initially attempted to exact punishment for the



The Urewera district native reserve and Te Urewera inquiry district

hostilities in the form of a 'cession' of land. These transactions were, however, flawed. When the land south of Lake Waikaremoana came before the Native Land Court in 1875, Tūhoe and Ngāti Ruapani owners, faced with the likelihood that confiscation would still ensue, were forced to alienate their interests. For Waikaremoana Māori, the loss of these lands was only the beginning of a series of Crown Treaty breaches that resulted in large-scale land alienation.

The report examines wider themes of disempowerment and dispossession

through a consideration of the way in which the Native Land Court regime was introduced into the 'rim blocks' encircling Te Urewera. The Tribunal found that the legislation governing native land was both flawed in many respects and in breach of the Treaty, resulting in serious consequences for affected Māori. The Tribunal also found the Crown's large-scale purchasing of interests in these to be in Treaty breach. By 1930, some 85 per cent of the land had been alienated.

In one specific case, Ngāti Haka Patuheuheu lost much of their

ancestral land at Waiohau through what was later legally recognised as fraud. They were evicted from their homes by the police in 1907, despite many opportunities for the Crown to put things right. A High Court judge at the time said they had suffered a 'grievous wrong'. The Tribunal agreed, finding the events that led to the eviction to be a serious Treaty breach.

A key focus of part 2 is on developments in the late nineteenth century towards a Treaty-based relationship between Tūhoe and the Crown. In the wake of the wars, Tūhoe established their own council – Te Whitu Tekau (the Seventy) – which established policies for the governance of their own affairs within a framework of Crown recognition. Although the Crown largely ignored Te Whitu Tekau, it did respect its authority, and the Native Land Court was not introduced into their core lands.

By the 1890s, a standoff had emerged between Te Whitu Tekau and the Crown. In 1894, Premier Richard Seddon toured the region, promising Te Urewera peoples the self-government they had sought. The establishment of the Urewera district native reserve in 1896 under its own Act of Parliament was, the Tribunal found, a high point in the Crown–Māori relationship. Māori agreed to accept the Queen and her law; in return, they could govern themselves and their lands through their own committees. At this point, the Treaty promises took effect for both peoples and the Treaty partnership began in earnest.

Part 3

Part 3 of the report, released in October 2012, traces the development of this Treaty partnership through the fate of the Urewera district native reserve. Despite the hopes that Māori held for the reserve, the Crown broke its promise of self-government and instead began to purchase interests

from individual owners. The Tribunal considered that the betrayal has continued until the present day and was made worse in the context of the multiple prior Treaty breaches.

When they agreed to the Urewera District Native Reserve Act 1896 and the establishment of the reserve, the hapū and iwi of Te Urewera were promised that their land would remain in their ownership and under their control. But within just 35 years they had lost three-quarters of the reserve land. In his letter of transmittal, Judge Savage stated: 'As a nation, we must be shamed by these events. To the peoples of Te Urewera who held such high hopes for a Treaty relationship with the Crown, they were a shattering blow.'

After the Act was passed, and despite the enthusiasm of the Te Urewera people for its provisions, the Crown failed to ensure the prompt establishment of the tribal general committee. It took action only once some Te Urewera leaders wanted to sell land to fund development. Only then, in 1909, did the Crown finally allow the general committee to be established. The first sales of reserve land took place the following year.

The Tribunal found that during the 1910s the Crown embarked on a 'determined assault on Te Urewera reserve lands, conducted with complete carelessness for the well-being of an entire tribal community'. It bypassed the general committee, which was supposed to have the sole power to agree to land sales, and purchased block shares from individual owners. The Crown was able to do this because the commission set up under the 1896 Act had not provided the hapū titles that Te Urewera leaders wanted and expected. In purchasing from individuals, the Crown was breaching its solemn promise to recognise and respect tribal control and management of tribal lands.

Those who sold land did so out of desperation: they were afflicted by disease and famine and were living in

abject poverty. Their sale money was quickly consumed by basic survival costs. The sales were not even lawful, so in 1916 the Crown passed legislation to retrospectively validate its purchases. The Tribunal found that the Crown breached the Treaty principle of active protection by predatory purchasing and by paying unjustifiably low prices for the land. In most cases, the Crown did not pay for the timber on the lands it purchased, and when it did, the amount paid was far too little.

The Crown conceded that it had breached the Treaty by failing to establish effective institutions of self-government and by purchasing block interests from individuals. While the Tribunal welcomed these concessions, it concluded that they 'do not, however, acknowledge the breadth and seriousness of the claims'.

The Crown purchases were meant for a pastoral farming scheme in which Pākehā settlers would establish hundreds of large farms on the reserve lands. But, when it tried to on-sell the land in the 1920s, it was unable to find a single buyer. The purchasing programme was not only unjust and in breach of the Treaty but also completely futile.

By 1921, the Crown had purchased over half the reserve, but only in the form of shares in blocks. It then set up a scheme by which all its shares would be consolidated into one large block. The Crown appointed its own commission to control the proceedings and to make the decisions and awards, leaving the Māori landowners at a serious disadvantage. The Crown ended up with valuable forest land (and it also acquired the Waikaremoana block north of the lake, despite having never purchased any shares there), while the Waikaremoana peoples, especially Ngāti Ruapani, lost almost all of their land near the lake. The Crown broke its promise to find them better land elsewhere, instead paying them in debentures, a form of Government debt. Even the interest from this was

not consistently paid, leaving the former landowners without income during the Depression. Though other Te Urewera landowners retained some of their good land, particularly the river valleys, the Tribunal found that the consolidation scheme and its implementation were in breach of Treaty principles.

At the start of the consolidation scheme, the Crown made Māori landowners two key promises: it would build roads and grant modern land titles, both of which would make economic development easier. Although the owners lost a fifth of their remaining land to pay for surveying, problems with the surveys meant that they never received their titles. Nor were most of the roads built, even though the landowners had been encouraged to give up more land in order to expedite the work. Expecting that the Crown would keep its promise, many landowners wasted considerable time and resources developing farms that would never be viable without road access. The Crown acknowledged its broken promise in 1958 and paid compensation, but it did not take into account the wasted resources.

In 1952, the Crown passed legislation creating Te Urewera National Park around the Waikaremoana and Waikareiti Lakes. The Tribunal found that the park was established in breach of the Treaty, 'but what was wrong was not a park per se, but the kind of park that was established'. Park governance and administration could have provided more or less equally for the protection of the national interest and tangata whenua interests, but they did not. The right of hapū and iwi in the vicinity of the park to make full use of their remaining lands and their traditional resources were ignored or inadequately provided for. The Crown made allowances for non-Māori users of the park, such as hunters and trappers, but did not make similar allowances for customary activities by tangata whenua.

Part 4

Part 4 of the report was issued just two months after part 3, in December 2012. It examines three elements of the Māori–Crown relationship in the twentieth century: the police raid on Maungapōhatu in 1916, various attempts by the Crown to improve Māori land utilisation, and restrictions on timber milling.

In April 1916, three contingents of police descended on Maungapōhatu to arrest community leader and prophet Rua Kenana. Although the police had initially been welcomed peacefully, violence broke out and two young Māori were killed. Three Māori and four policemen were also wounded, and police officers may have carried out rape and theft. The once thriving community never fully recovered from the raid, which is still a painful memory. The Tribunal found that the Crown's actions were 'the very opposite of active protection' and a serious and inexcusable Treaty breach. This was so, even taking into account the context of the First World War and Rua's supposed support for the German Kaiser.

The report goes on to explore further attempts to impose a workable land title system on Te Urewera. Land titles were further consolidated, resulting in Ngāti Haka Patuheuheu losing even more of what little land they had retained. Meanwhile, Ngāti Manawa were unable to enact a consolidation scheme that they actively wanted in order to develop their lands. Later, landowners at Te Whaiti were able to consolidate their interests into one large block, which was then leased to the Forest Service. However, the rental proved to be unfair, and despite renegotiation this is still a live issue.

In the 1930s, four development schemes were set up in Te Urewera, the last of which was wound up in the 1980s. These were left with too much debt and some mistakes were made, but the Tribunal found that overall

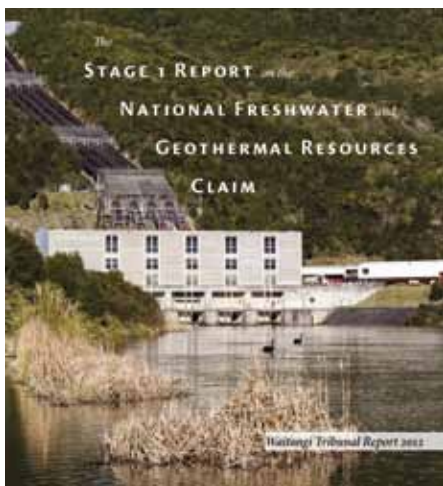
they were 'initiated in good faith' and 'characterised by honest administration and well-intentioned paternalism'. They also enabled owners to benefit from their land in ways that would not have been possible without the schemes. Although no Treaty breaches arose out of the schemes themselves, an irrigation scheme associated with the Ruatoki development was in breach of the Treaty. Even though the Māori landowners had paid for the scheme, when it broke down in 1960 the Crown transferred it to Whakatane County Council. The Tribunal also reported on problems with land title amalgamation in the 1970s and 1980s. There were no Treaty breaches, but the Tribunal found that the Crown had a moral responsibility, since the problems were the outcome of prior Treaty breaches.

Finally, the report examines restrictions on timber milling. These were imposed in the 1930s and 1940s, and again from the 1960s, to prevent flooding of farmland and to preserve the level of Lake Waikaremoana for hydroelectricity.

In 1961, a ban on milling was imposed across Te Urewera, with only a handful of exceptions. The ban later became permanent. The Tribunal found that the Crown had a duty to prevent environmental catastrophes but also had to compensate Māori landowners whose livelihoods and development opportunities had been curtailed. The Crown did not pay compensation before 1961, because the only form it would consider was the purchasing of land and trees, and Tūhoe refused to alienate any more land. After that, the Crown agreed to pay compensation, but negotiations over its nature and extent have not been successful.

The panel is currently working on the fifth and final part of the report, which will cover issues relating to Lake Waikaremoana and the twentieth century socio-economic status of Te Urewera communities. □

He Wai: The Water Report



ON 24 August 2012, the Waitangi Tribunal released *The Interim Report on the National Fresh Water and Geothermal Resources Claim*. This pre-publication version was issued at the request of the Crown so that Government Ministers could consider the Tribunal's findings and recommendations before making decisions about the sale of shares in Mighty River Power. The final report was published on 10 December 2012 as *The Stage 1 Report on the National Fresh Water and Geothermal Resources Claim*. The report was the result of an urgent hearing held at Waiwhetu Marae in Lower Hutt in July 2012. The Tribunal panel comprised Chief Judge Wilson Isaac (presiding), Dr Robyn Anderson, Tim Castle, Ron Crosby, Dr Grant Phillipson, and Professor Pou Temara.

The national water and geothermal resources claim was brought in February 2012 by the New Zealand Māori Council, in accordance with its statutory role to make representations in the interests of all Māori. There were also 10 co-claimant hapū and iwi, and over 100 other iwi, hapū, and individual claimants registered as interested parties, most in support of the claim. The claim was in response to the Government's proposal to sell up to 49 per cent of shares

in the power-generating State-owned enterprises (SOEs) Mighty River Power, Meridian Energy, and Genesis Energy. These SOEs depend on water to generate electricity. The council argued that privatising the companies might make it impossible for the Government to recognise Māori water rights. The council also argued that the Government's current process for developing a new water management regime (called a 'Fresh Start for Fresh Water') was failing to recognise Māori rights. The claimants did not seek absolute ownership of water for Māori: they accepted that others have rights in water and that the needs of farming and industry are important. However, they argued that Māori have property rights in many tribal water bodies and that it was only fair that those rights be recognised prior to the sale of shares. In their view, the Crown had consistently failed to recognise those property rights and this failure was a breach of the Treaty.

Far from being opportunistic, as some had characterised it, the claim was the latest in a long series of claims by Māori seeking recognition of their property rights in water bodies. Such claims have been upheld as far back as 1929, when the Native Land Court granted ownership of Lake Omapere to Ngāpuhi. These property rights have also been upheld in many Tribunal reports since 1984.

In March 2012, the Tribunal granted the claimants an urgent hearing. It appeared to the Tribunal that the imminent sale of shares in Mighty River Power (then scheduled for the third quarter of that year) and the prospective decisions in the Fresh Start for Fresh Water programme could result in irreversible prejudice to Māori interests if they were carried out without first protecting the Crown's ability to recognise Māori rights in water

or to remedy breaches of those rights. The Crown and claimants agreed that a fast hearing and report was needed, and the Tribunal decided to split the inquiry into two stages so that it could deal with the partial asset sales first.

The hearing focused on the issue of what rights and interests in water and geothermal resources, if any, were guaranteed and protected by the Treaty of Waitangi. The Tribunal heard the oral histories and written testimony of tribal leaders and elders from around the North Island. The claimants argued their rights in 1840 amounted to tino rangatiratanga over the taonga of water protected by the Treaty and that the closest English equivalent was 'ownership'. Further, they argued that, to the extent those rights have not been extinguished in a Treaty-compliant manner, such rights continue to exist today. The claimants did acknowledge that for some purposes Māori agreed in a Treaty compliant manner to share water resources with the new settlers.

The Crown argued that the common-law situation applied and that under it no one, including Māori, could own water. It acknowledged without reservation that Māori have rights and interests in particular water bodies with which they have customary associations, but it submitted that those rights and interests did not amount to ownership.

The hearing also addressed the issue of whether the proposed sale of 49 per cent of shares in the power companies affected the Crown's ability to recognise Māori rights in water and to remedy their breach where such breach is proven.

The claimants argued that remedy for the continued use of water by SOEs must come from the SOEs themselves. In their view, this would be impossible, in practical terms, following the partial

privatisation of these companies. They argued that any partial privatisation was inconsistent with the principles of the Treaty where Māori claims to the fresh and geothermal waters utilised by those companies were unresolved. It was their view that there was an inherent link between water use and the generation of income by SOEs and hence their asset value – simply put ‘Without water, there are no hydro-power companies and there are no shares.’

The Crown’s fundamental response was that the partial privatisation of the power-generating SOEs did not affect the Crown’s ability, in a range of ways at any later stage, to provide appropriate remedies for any Treaty breaches found to have occurred. In the Crown’s view, there was no connection between the shares in those companies and the Crown’s ability to recognise the rights of Māori in water resources. Thus, the partial share sale of the power companies would not affect the Crown’s ‘capacity to respond to any assessments that the Tribunal makes about those rights and interests’ or to engage in the future with iwi about those interests. The Crown pointed to the Land and Water Forum and Iwi Leaders Group discussions as evidence of the Crown’s commitment to addressing and recognising valid Māori claims.

The Tribunal concluded that Māori did have at 1840 rights and interests in their water bodies for which the closest equivalent in English law was ownership. These rights were protected by the Treaty of Waitangi, save to the extent that there was an expectation in the Treaty that the waters would be shared with the incoming settlers. Today, Māori tribes retain residual property rights in their water bodies. In reaching these conclusions, the Tribunal referred to many earlier Tribunal reports, which for nearly 20 years had consistently reached similar conclusions in respect of particular water bodies.



Pekehaua, or Taniwha Springs, at Hamurana. The springs were cited by claimants as an example of a water resource being shut away from its kaitiaki.

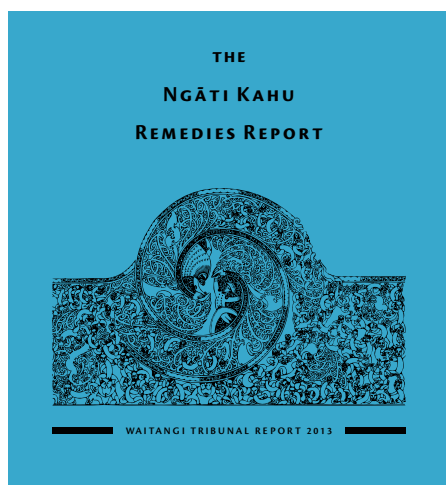
The Tribunal agreed with the Crown’s contention that the partial sale of the power companies would not affect its ability to respond to any assessment that the Tribunal might make about the rights and interests of Māori in water and geothermal resources, save in one respect. The claimants had argued that the sale of shares would result in the Crown losing the flexibility to offer what the Tribunal called a ‘shares plus’ option of remedy to Māori. This possible remedy was reliant upon the ability of the Crown as current sole shareholder to freely enter into shareholder agreements with Māori. Such agreements could be used to recognise a range of different rights in cases where shares were offered to Māori as a remedy. The claimants argued that these agreements constituted a clear connection, or nexus, between the shares in the power companies and the recognition of Māori property rights in water.

The Tribunal found that shareholder agreements with Māori, in combination with an amended company

constitution, were one avenue that could potentially provide a partial remedy for Māori claims in respect of water. It concluded that, in practical terms, the flexibility of that particular remedy would be lost after the partial share sale. As such, the sale of shares prior to resolving Māori claims in respect of water would be in breach of the Crown’s Treaty duties to Māori to remedy Treaty breaches in respect of Māori rights and interests in water. The Tribunal concluded that the nexus between shares in the power companies and Māori rights in the water was sufficient to require a halt to the proposed partial sale of the companies.

The Tribunal recommended that the Crown and its Treaty partners consider other forms of commercial rights recognition, possibly including a payment for the power companies’ use of water. To facilitate that, the Tribunal recommended that the Crown convene a national hui to determine a way forward and that the partial sale be delayed to enable those processes to occur. □

The Ngāti Kahu Remedies Report



THE Waitangi Tribunal's report on the remedies application of Ngāti Kahu was released in pre-publication form in February 2013 and in final form a month later. The *Ngāti Kahu Remedies Report* focused primarily on an application to the Tribunal by Te Rūnanga-a-Iwi o Ngāti Kahu, the representative body of the Ngāti Kahu iwi, which was seeking recommendations to redress the prejudice that the Crown's acts and omissions had caused the iwi. The Tribunal panel comprised Judge Stephen Clark (presiding), Dr Robyn Anderson, Joanne Morris, and Professor Pou Temara. Hearings were held in September 2012 at Kareponia Marae, near Awanui, and at the Environment Court in Auckland.

The prejudice for which recommendations were sought was established by the Tribunal in its 1997 *Muriwhenua Land Report*. There, the Tribunal had described how Ngāti Kahu, one of the iwi of Te Hiku (the Muriwhenua or Far North region) had suffered wide-ranging prejudice resulting from the loss of a significant amount of their land by 1865. The Tribunal found that the Crown's actions and omissions had left Te Hiku iwi marginalised and divested of their most productive lands, the social and economic consequences of which included physical deprivation,

poverty, social dislocation, family break-ups, and a loss of status.

Among the recommendations that Ngāti Kahu sought were potentially binding ones for the return of Crown forest land and land currently or formerly owned by State-owned enterprises. Some of this land is now in private ownership, with part of it being owned by other Te Hiku iwi. The Tribunal's power to make binding recommendations for the return of such land is contained within the Treaty of Waitangi Act 1975. Referred to as the Tribunal's power of resumption, such recommendations require the Crown to resume the ownership of the land involved so as return it to a successful applicant. Unless the Crown and a successful applicant negotiate a different arrangement, resumption recommendations become binding on the Crown 90 days after they are made.

Ngāti Kahu wanted a much wider suite of recommendations, most of which could not be made in a binding fashion. They included the return of all Crown-owned land and the power to control and manage physical and

natural resources within their rohe, as well as a compensation payment of \$205 million. In total, these were estimated to be worth in excess of \$260 million.

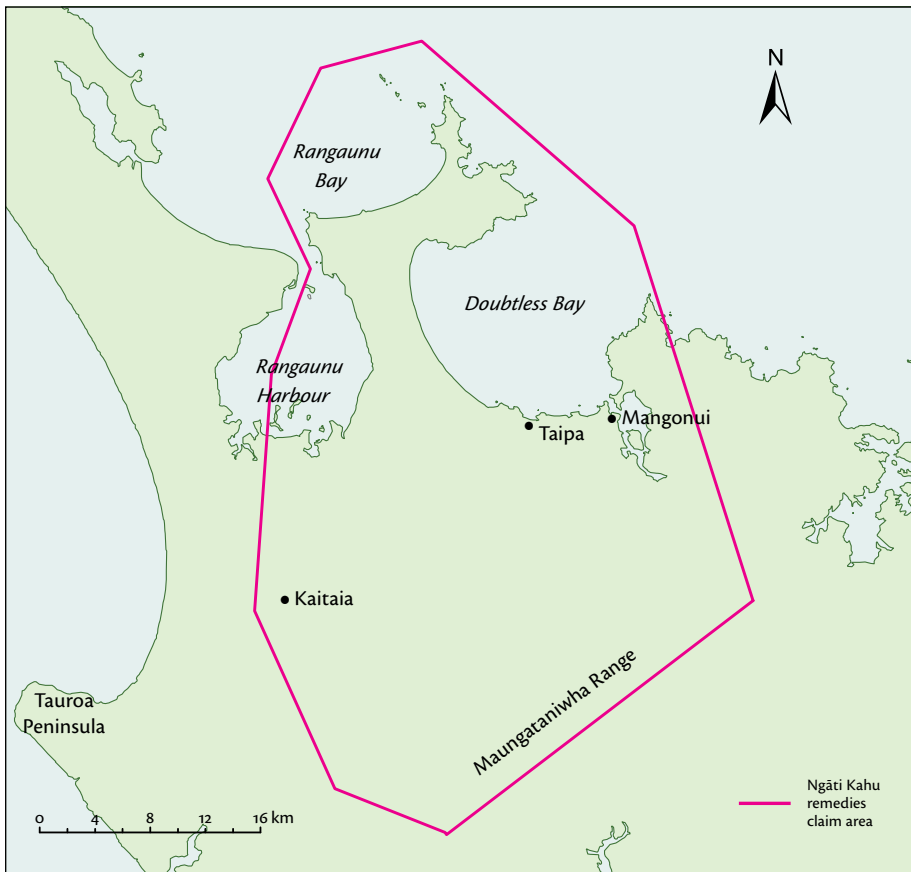
The report explains how the Tribunal's jurisdiction to determine Ngāti Kahu's application required a consideration of all the circumstances of the case. One aspect that was of vital importance was the relationship between Ngāti Kahu and the other iwi of Te Hiku.

Ngāti Kahu, Te Rarawa, Te Aupōuri, Ngāi Takoto, and Ngāti Kuri, though autonomous in their own right, have common ancestral origins and shared whakapapa. These intimate ties were reflected in the Muriwhenua land inquiry, where the five iwi brought their claims jointly and prosecuted their claims collectively. This collective approach was not maintained, however, with the iwi pursuing individually negotiated claim settlements with the Crown. Te Rarawa, Te Aupōuri, and Ngāi Takoto had each agreed settlements with the Crown, but these settlements included the transfer of

Karikari Beach on Karikari Peninsula. Ngāti Kahu's rohe is centred on the peninsula and Doubtless Bay.



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Ngāti Kahu remedies claim area

land that Ngāti Kahu sought through their application. The iwi also viewed the scale of the recommendations sought by Ngāti Kahu as threatening to their settlements, the negotiations for which had taken many years to complete. Additionally, Ngāti Kahu was seeking land that was already owned by some of the iwi but that was subject to binding resumption recommendations. Te Aupōuri and Te Rarawa totally opposed the resumption of land they owned.

The Tribunal considered the restoration of the relationship between Ngāti Kahu and the Crown to be an important aspect of the case. Following the publication of the *Muriwhenua Land Report*, this relationship had suffered as the settlement negotiations dragged on and grew increasingly tense. In 2008, a renewed approach to negotiations by the Crown resulted in Ngāti Kahu signing an agreement in principle for the settlement of their Treaty claims. In 2010, the improving

relationship resulted in Ngāti Kahu signing a collective agreement in principle with the Crown and other Te Hiku iwi which set out how their individual settlements would be achieved. However, although four of the five iwi progressed their negotiations with the Crown, the discussions between Ngāti Kahu and the Crown faltered once more, their relationship soured, and they failed to reach an agreement. Considering that a negotiated settlement with the Crown was no longer achievable, in July 2011 Ngāti Kahu reactivated their remedies application to the Tribunal.

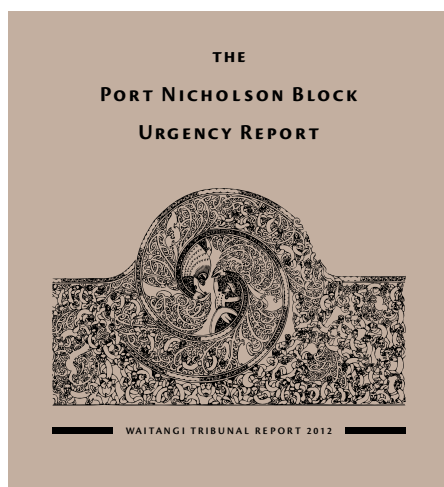
The report also examines the positions of a number of other interested parties. The remedies application was opposed by Ngāti Tara and Te Pātū ki Peria, two hapū of Ngāti Kahu, and by Sir Graham Latimer and Tina Latimer on behalf of Te Paatu claimants. They all opposed the mandate held by Te Rūnanga-a-Iwi o Ngāti Kahu, which conducted settlement negotiations

with the Crown and represented the iwi during the Tribunal's remedies process. The remedies application was also opposed by Te Uri o te Aho, Ngā Hapū o Whangaroa, and other Whangaroa-based claimants in so far as it involved the potential return to Ngāti Kahu of land in which those groups claimed to have an interest.

Considering all the circumstances of the case, the Tribunal concluded that it could not make binding recommendations for the return of land to Ngāti Kahu. The complex interplay of customary interests and the likelihood of disruption and further delay for all iwi in reaching settlements as a result of binding recommendations meant that they were not warranted. The Tribunal noted that, in remedying Ngāti Kahu's grievance through the use of binding recommendations, there was a risk that the Tribunal would create a fresh grievance for the other iwi. In addition, it was unable to recommend a total relief package of the order of that sought by Ngāti Kahu. The Tribunal concluded that, rather than providing a remedy for the prejudice suffered, the total relief package had strayed into the realm of punitive damages.

However, the Tribunal did consider that non-binding recommendations were necessary in order to break the impasse in the Crown's negotiations with Ngāti Kahu and to remedy the prejudice that Ngāti Kahu had suffered. It recommended a series of measures that aligned with many of the agreements contained within the 2008 Ngāti Kahu and 2010 Te Hiku agreements in principle. These measures included the return of significant amounts of culturally important land (including wāhi tapu), the provision of a substantial cash payment, the implementation of governance arrangements allowing Ngāti Kahu a significant say in the administration of other sites, and the establishment of relationships with local bodies and other institutions. □

The Port Nicholson Block Report



THE *Port Nicholson Block Urgency Report* was published on 24 September 2012. It was the result of an urgent inquiry, held in June 2012, into a claim by the Port Nicholson Block Settlement Trust, which represented the interests of Taranaki Whānui in the Wellington region.

Central to the claim was an agreement between Taranaki Whānui and the Crown. In 2008, at the Crown's request, Taranaki Whānui had agreed to release the Wellington Central Police Station from their proposed settlement package so that it could be offered to Ngāti Toa Rangatira. In return, the claimants alleged that the Crown had undertaken to recognise their mana whenua over the whole Port Nicholson block by not offering any other properties in the block as commercial or cultural redress to Ngāti Toa. However, the Crown is said to have later gone back on this undertaking.

The Tribunal, comprising Judge Stephen Clark (presiding), the Honourable Sir Douglas Lorimer Kidd, Basil Morrison, and Sir Tamati Reedy, did not uphold this claim. However, it did find that the Crown made such a commitment to Taranaki Whānui in relation to the Wellington central business district. That is, in

exchange for Taranaki Whānui agreeing to release the police station from their settlement package, the Crown agreed that it would offer no cultural redress and only one property – the police station – as commercial redress to Ngāti Toa within the central business district.

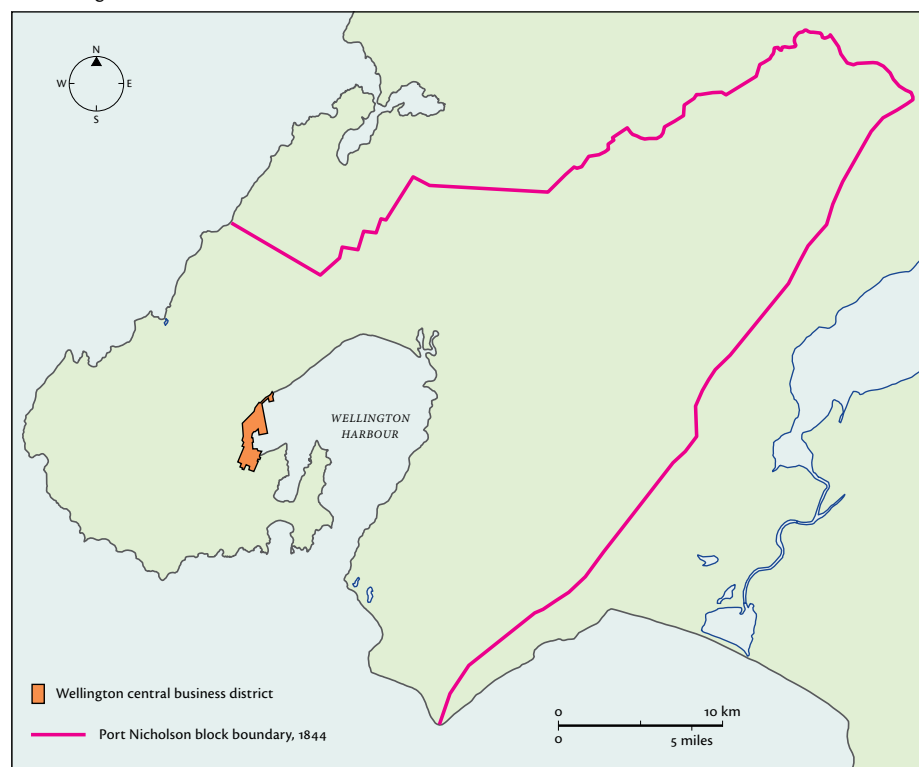
The Tribunal found that the Crown broke that undertaking and consequently breached the principles of the Treaty by failing both to actively protect Taranaki Whānui's interests and to act reasonably and with the utmost good faith towards them. The Tribunal recommended that the Crown should review and, if necessary, amend its offers to Ngāti Toa in such a way as to uphold its agreement with Taranaki Whānui but not prejudice Ngāti Toa as a consequence.

The Tribunal also addressed jurisdictional issues raised by the claim, which was made after an Act of Parliament settled Taranaki Whānui's

historical claims. The Crown argued that the Act prevented the Tribunal from inquiring into the matter and that any pre-settlement negotiations no longer mattered because the full terms of the settlement between itself and Taranaki Whānui were laid out in the deed of settlement. However, the Tribunal concluded that in the context of this case it was entitled to examine pre-settlement negotiations and subsequent Crown actions for their consistency with the Treaty and with Treaty principles.

Finally, the Tribunal pointed to flaws in the negotiation processes used by the Crown at that time. The Crown's use of the so-called 'silo' approach (whereby communication between different teams of Crown negotiators was minimal) and a lack of clarity in the language used by Crown officials led to confusion and potentially created new grievances in the Port Nicholson block. □

The Wellington central business district and the Port Nicholson block



Te Rohe Pōtae

THE Te Rohe Pōtae (King Country) district inquiry, presided over by Judge David Ambler, encompasses over 270 claims, making it one of the largest district inquiries to go to hearing. As well as Judge Ambler, the panel consists of John Baird, Dr Aroha Harris, Professor Sir Hirini Mead, and Professor Pou Temara. The inquiry boundary ranges south from Whaingaroa Harbour, down almost to Taumarunui, and as far east as the Maraeroa and Wharepungua blocks, which are in the vicinity of Pureora and Waikeria. A large proportion of the claimants are Ngāti Maniapoto, but many other iwi and hapū are involved, including Ngāti Kauwhata, Ngāti Tūwharetoa, Whanganui groups, Ngāti Hikairo, Ngāti Toa Tupahau, Ngāti Mahanga, Ngāti Hāua, Tainui Awhiro, and Raukawa.

The Tribunal released its statement of issues in September 2012, which sets out the claim issues that the Tribunal will be inquiring into and noting those that fall outside of its jurisdiction owing to settlement legislation or other reasons. The thematically structured hearing programme commenced in early November 2012 at Te Tokanganui-a-noho Marae in Te Kuiti. Fourteen weeks of hearings are scheduled in total, and they are expected to finish in October 2014.

The first two hearing weeks focused on whether an agreement had been made between Māori and the Crown in the 1880s leading to the 'opening up' of the King Country and whether the agreement constituted an *ohāki tapu* or 'sacred compact'. The main themes examined at the hearing weeks in March, April, and May 2013 included pre-Treaty transactions, *raupatu* (war and confiscation), and the North Island Main Trunk Railway. Tangata whenua witnesses have presented evidence on a range of topics, including

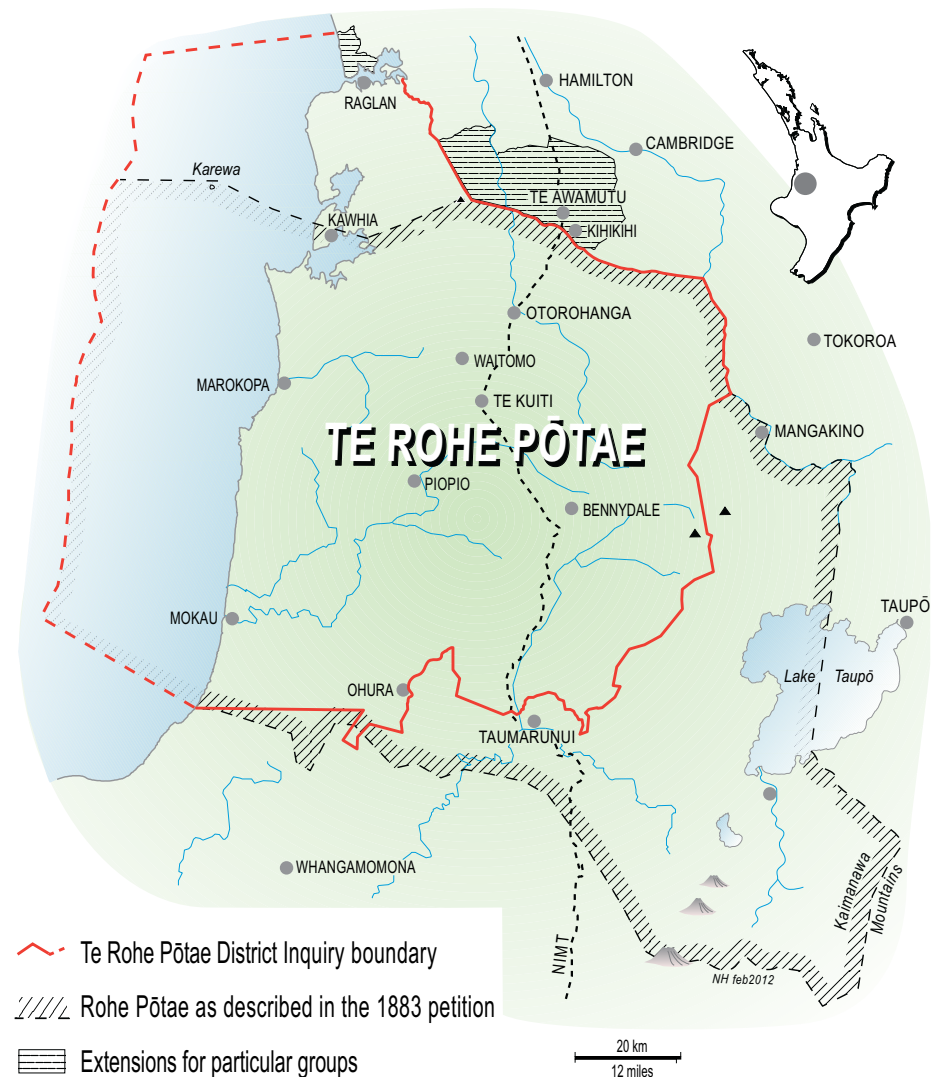
land development schemes, the degradation of river systems, the operation of Māori land boards, education, health, and *tohungatanga*.

The Tribunal is breaking over winter, but hearings resume in September with evidence on topics including the Native Land Court, the alienation and management of Māori land in the nineteenth and twentieth centuries, waterways, environmental impacts, and public works takings.

As a result of the chief historian's review of the research casebook, the Tribunal commissioned a number of gap-filling research projects. These include two significant overview

projects covering economic and environmental issues. The addition of these reports to the casebook will increase the number of projects commissioned by the Tribunal to 34 for this inquiry.

One of the innovations of this particular panel is that some members have piloted the use of iPads as part of a 'paperless hearing' trial. The intention is to substantially reduce the number of paper documents produced for the inquiry by replacing them as much as possible with electronic documents. When working to best effect, the electronic system increases the speed and ease with which members acquire documents during a hearing. □



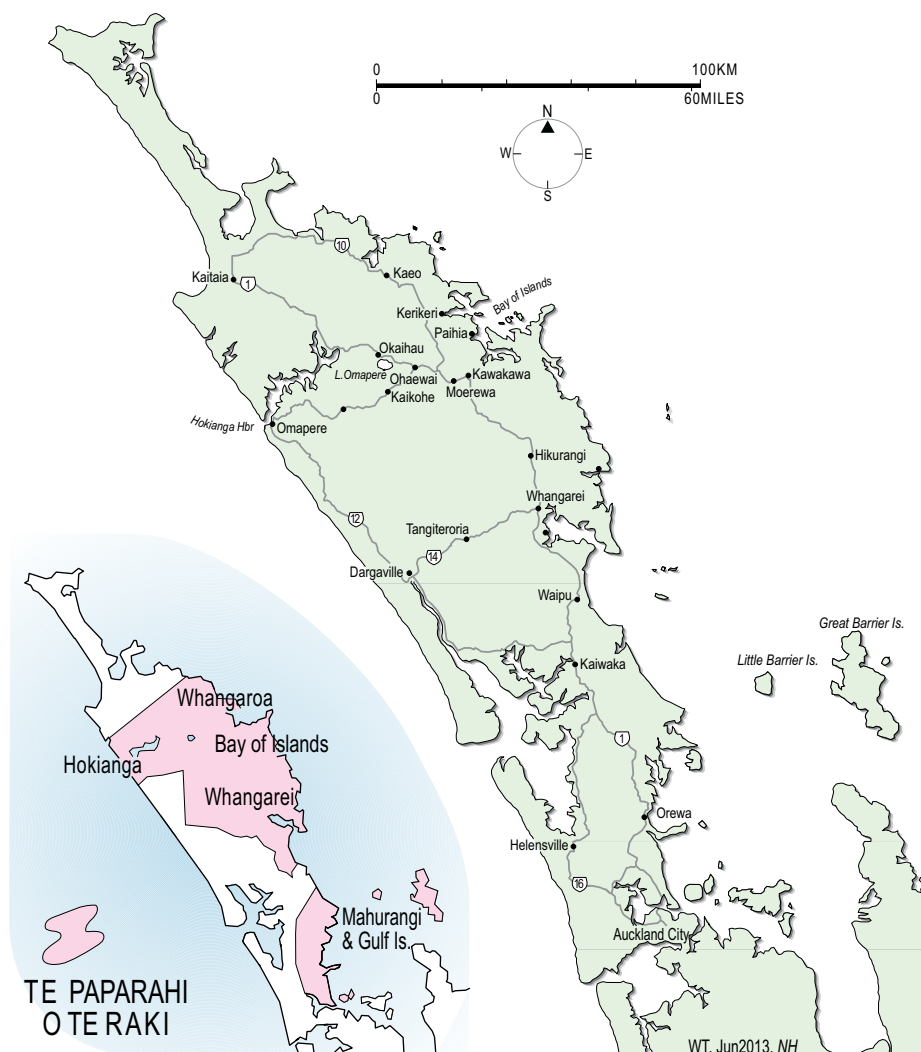
Te Paparahi o te Raki

THE Paparahi o te Raki (Northland) brings together five inquiry districts into one regional inquiry. It is the largest inquiry in the Waitangi Tribunal's district inquiry programme, both in claim numbers (currently 394) and in the size of the claimant communities involved. The inquiry includes land stretching south from the ridge of the Maungataniwha Range to the North Shore of Auckland. As well as unaffiliated claimants, seven taiwhenua or subregional groups are participating: Whangaroa, Hokianga, Waimate-Taiamai/Kaikohe, Takutai Moana/Waitangi, Mangakāhia, Whangārei, and Mahurangi-Gulf Islands.

The inquiry has been split into two stages. In stage 1, the hearings, which were completed in February 2011, focused on understandings of the Declaration of Independence and the Treaty of Waitangi, and the Tribunal is currently drafting its report on that stage. Stage 2 covers all post-1840 claim issues. The stage 2 panel comprises Judge Craig Coxhead (presiding), Dr Robyn Anderson, Kihi Ngatai, and Dr Ranginui Walker, with Dr Ann Parsonson assisting as consulting historian.

In December 2012, after an interlocutory process that extended over two years, the Tribunal released its final statement of post-1840 issues to guide the stage 2 hearings. The Tribunal will hear evidence on political engagement between Māori and the Crown, old land claims, the Northern War of 1844–46, Crown land purchasing, the Native Land Court and Māori land alienation, local government and rates, the ownership and management of non-land resources, Māori rights and interests in the foreshore and seabed, socio-economic issues, te reo Māori, wāhi tapu, and taonga.

The claimants have produced a substantial body of evidence for stage 2,



complementing the technical research reports commissioned by the Crown Forestry Rental Trust. The Tribunal is currently reviewing the sufficiency of research on local issues and claimant proposals for additional targeted local research.

The stage 2 hearings commenced at Te Tiriti o Waitangi Marae on 18 March 2013, with the claimants presenting their opening submissions and an overview of their evidence. This set the scene for the 21 hearing weeks currently scheduled for stage 2.

The second week of hearings, which the claimants named 'Kia Papa Pou-namu te Moana' ('May the sea glisten

like greenstone'), was held at the Copthorne at Waitangi from 13 to 17 May. It was hosted and organised by Ngāti Kuta, Patukeha, Ngāti Manu, and Te Kapotai from the taiwhenua of Ngā Hapū o te Takutai Moana. The week began with a site visit by boat and bus, including a pōwhiri at Te Rāwhiti Marae, and visits to Te Kapotai Marae and Karetu Marae. Evidence was presented on tribal histories, Māori-Crown relations, the 1840s Northern War, and land, environmental, and socio-economic issues.

Further hearings on generic and local issues will be held in four rotations in the region's taiwhenua. □

Taihape

THE Taihape inquiry is currently in research preparation for hearing. Inquiry boundaries and a single-stage comprehensive inquiry process have been confirmed. The first phase of the two-step casebook research programme has been completed, and the second phase is about to commence.

Judge Layne Harvey is the presiding officer for this inquiry, having replaced Chief Judge Wilson Isaac in December 2012. Professor Pou Temara was appointed to the inquiry panel in August 2010, and Dr Angela Ballara was appointed in November 2012.

The area in general is also known as Inland Pātea or Mōkai Patea. The inquiry district lies west of the Ruahine and Kaweka Ranges and south of the Kaimanawa mountains. Hunterville, Taihape, and Waiouru are the main towns in the area. The upper Rangitikei River is a central waterway, and the Hautapu, Moawhango, and Kawhatau Rivers are its principal tributaries within the inquiry district.

More than 30 claims in the Taihape area are being inquired into. These include claims on behalf of the iwi, hapū, and whānau of Mōkai Patea: Ngāti Hauiti, Ngāti Tamakōpiri, Ngāti Whitikaupeka, Ngāi Te Ohuake, Ngāti Paki, and Ngāti Hinemanu. Claims on behalf of Ngāi Te Upokoiri and Ngāti Hinemanu, Ngāti Apa, Ngāti Rangi, Ngāti Tūwharetoa, Ngāti Waewae, and Ngāti Pīkiahū are also included in this number.

The inquiry began in early 2010 following consultation in 2009 on whether there should be a unified Taihape ki Kapiti inquiry region or separate inquiry districts. A judicial conference in May 2010 resolved the inquiry boundaries and process and related issues. The eastern boundary was set along the boundaries of the original Māori land blocks rather than current local government boundaries.



Adam Heinz

Looking east from Mangaohane Road towards Pokopoko and Aorangi maunga, southern Taihape district

A second judicial conference was held in November 2010 to discuss recommended research and other related matters. A general consensus was reached on a series of research topics, which were refined at a further judicial conference held in June 2011. The casebook research programme was subsequently finalised in November 2011.

The research was split into two phases, with the research in phase 1 designed to provide input into the

number and scope of reports produced in phase 2. Waitangi Tribunal staff produced a paper in March 2013 that discussed the phase 1 research and set out options on the number and scope of research projects needed to provide comprehensive coverage of the remaining topics. That paper formed the basis of a judicial conference in April 2013, after which the Tribunal confirmed nine technical research projects for phase 2 of the casebook. □



Porirua ki Manawatū

THE Porirua ki Manawatū inquiry district extends west of the Tararua and Ruahine Ranges all the way from Porirua to the Whangaehu River, the Waitapu Stream, and the head of the Pohangina River. The Tribunal panel comprises presiding officer Deputy Chief Judge Caren Fox and members Emeritus Professor Sir Tamati Reedy, Dr Grant Phillipson, and, appointed in October 2012, the Honourable Sir Douglas Kidd.

The inquiry is currently in research planning. In December 2011, the Tribunal issued a memorandum proposing a research programme tailored to the participating claimant groups and configured to a mix of hapū- and iwi-specific and district-wide research.

This strategy was revised further following two consultative judicial conferences in February and November 2012, which focused on claimant representation and the shape of the research programme.

After considering all the submissions, in December 2012 the Tribunal set out the following framework for the district's research programme:

- ▶ A first part, configured for each of three broad iwi groupings – Ngāti Raukawa and affiliates, Muaūpoko, and Te Atiawa/Ngāti Awa ki Kāpiti – which focuses on land and political engagement issues, local issues, and oral and traditional history.
- ▶ A second part, relevant to all claimants, which consists of research reports covering major district-wide issues: the environment, natural resources and local government, public works and other compulsory takings, inland waterways, and land block histories.

The Tribunal asked the Crown Forestry Rental Trust to assist in resourcing those of the research projects that it was in a position to fund.

In preparation for a full hearing of the claims, in April 2013 the Tribunal proposed a series of hui similar to the Ngā Kōrero Tuku Iho process undertaken in the Te Rohe Pōtae inquiry alongside the district's research programme. The purpose of the hui would be to enable the claimants to share



their oral and traditional histories with the Tribunal, capturing the kōrero of kuia and kaumātua and informing the research under way.

The proposal was considered at a judicial conference at Tukorehe Marae in May, and there was widespread support for the process to run alongside the research programme. The Tribunal will now work with the parties to develop the details of how the process will run. □

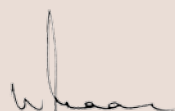
◀ Page 1

and geothermal resources inquiry, on which the Tribunal released an interim report in August 2012, is addressing an issue of Crown policy and action that has national significance for Māori. Finally, the *Matua Rautia* report, released in pre-publication format in October 2012, found for the Te Kōhanga Reo Trust claimants in a field of early childhood education policy and practice of vital interest to the future of te reo.

We expect that this diversity will continue. Tribunal inquiries also do

not proceed in isolation. They must take account of the many other points of engagement between the Crown and Māori – the negotiation of historical claims, overlapping Treaty settlements, the Crown's willingness and ability to provide redress for past Treaty grievances, and Crown–Māori relationships in contentious areas of policy development and service delivery. In conducting its inquiries, both regular and urgent, the Tribunal is sensitive to the broader context in which claimants and the Crown seek

a timely resolution of the claims being heard. While priorities have to be set, the Tribunal's full inquiry programme reflects our commitment to affording timely access to all claimants who wish to be heard in our independent, impartial, and public forum before pursuing other avenues to a settlement of their claims.

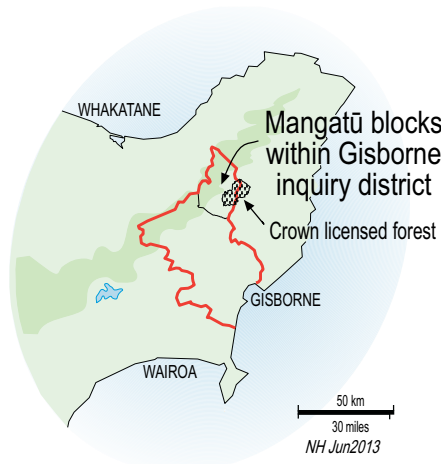

Chief Judge Wilson Isaac
Chairperson □

Mangatū

THE Mangatū Remedies Tribunal held hearings in Gisborne in June and October 2012. The Tribunal is inquiring into claims from four groups seeking a share in the Mangatū State Forest. Section 8HB of the Treaty of Waitangi Act 1975 allows the Tribunal to make binding recommendations that licensed Crown forest land be given to Māori claimants. The Tribunal has used its powers to make binding recommendations only once.

Alan Haronga was the main witness for the Mangatū Incorporation, which he chairs. In 1962, the Crown purchased lands from the incorporation that today make up about a quarter of the Mangatū State Forest. In its 2004 report, *Turanga Tangata Tūranga Whenua*, the Tribunal found this purchase to have been in breach of the Treaty. In 2008, Mr Haronga made a claim seeking the return of these lands to their former owners.

Mr Haronga applied for an urgent hearing but was initially turned down. However, in 2011 the Supreme Court



directed the Tribunal to hear his claim. Three other groups then submitted claims for a share in the forest. One was Te Aitanga ā Māhaki and Associates, a body mandated in 2005 to negotiate the settlement of claims with the Crown. (These negotiations were suspended in 2011 pending the outcome of the Tribunal's inquiry.) The other claims came from Ngā Ariki Kaiputahi and Te Whānau a Kai.

The June hearings were held at Te

Poho-o-Rāwiri Marae and the October hearings at the Gisborne Conference Centre. The witnesses included John Ruru for Te Aitanga ā Māhaki, Owen Lloyd and David Brown for Ngā Ariki Kaiputahi, and David Hawea and Keith Katipa for Te Whānau a Kai.

The Crown presented evidence at the October hearings. Its witnesses included Dr Andrew McEwen and Andrew McConnell.

Because the Tūranga Tribunal completed its work in 2004, it was not possible to reconvene the same panel. However, the present Tribunal includes two of the original members – Professor Wharehuia Milroy and Dr Ann Parsonson. Judge Stephanie Milroy replaced the former presiding officer, Chief Judge (now Justice) Joe Williams, who was appointed to the High Court in 2008, and Tim Castle replaced Dame Margaret Bazley, who retired from the Tribunal in 2011.

The Tribunal heard the closing submissions in November 2012, and it plans to report during 2013. □

Te Poho-o-Rāwiri Marae



Pictures from Recent Hearings

Clockwise from right: Eddie Cook, Barry Downs, Karen Herbert, Willow-Jean Prime, and Season-Mary Downs with Te Kapotai evidence in the second hearing week of the Te Paparahi o te Raki stage 2 inquiry; Te Kapotai welcoming the Te Paparahi o te Raki Tribunal onto Waikare Marae on a site visit, May 2013; Te Rohe Pōtae panel members and claimants visit Te Puna o Rona, an area of significance to Ngāti Mahuta; the Te Rohe Pōtae panel in the first week of hearings on te ōhāki tapu, held at Tokanganui-a-noho Marae in Te Kuiti, November 2012; Tokanganui-a-noho Marae



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