

In the High Court of New Zealand
Auckland Registry
I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

CIV-2015-404-2033

under: the Judicature Amendment Act 1972, and Part 30 of
the High Court Rules

between: **Ngāti Whātua Ōrākei Trust**
Plaintiff

and: **Attorney-General**
First Defendant

and: **Marutūāhu Rōpū Limited Partnership**
Second Defendant

and: **Te Ara Rangatū O Te Iwi O Ngāti Te Ata
Waiōhua Incorporated**
Third Defendant

Statement of evidence of Margaret Anne Kawharu on behalf of the
plaintiff

Dated: 2 June 2020

Next Event Date: For trial, 9 February 2021

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**STATEMENT OF EVIDENCE OF MARGARET ANNE KAWHARU ON
BEHALF OF THE PLAINTIFF**

Table of contents

INTRODUCTION	2
OVERVIEW OF MY EVIDENCE	5
I. TIKANGA MĀORI	7
Mātauranga Māori – a Māori perspective	7
Rangatiratanga and mana whenua	8
Utu	11
Tuku rangatira	12
Ahi kā	12
Manaakitanga	13
Whanaungatanga and whakapapatanga	13
II. NGĀTI WHĀTUA ŌRĀKEI’S CONTINUING AHI KĀ/MANA WHENUA IN TĀMAKI MAKĀURAU	14
Ngāti Whātua Ōrākei’s early history	14
Other groups in and around the isthmus	18
Battle with Kiwi Tāmaki and aftermath	21
Ngāti Whātua Ōrākei at the turn of the century	25
Skirmishes with Ngāti Pāoa	25
In general, a peaceful time	27
Ngāpuhi Invasion	30
Ngāti Whātua Ōrākei returns to the isthmus	34
1840	38
Tuku rangatira to the Crown – Land gifts to the Crown	40
1840s – 1860s: the relationship sours	45
Native Land Court case	51
The aftermath of the Native Lands Case – the Crown purchases Ōrākei	54
The 20 th Century – further alienation by the Crown	55
A new marae for Auckland?	59
Bastion Point – protests and aftermath	61
The Ōrākei Report and redress	63
Ngāti Whātua’s mana whenua yesterday and today	66
III. THE AGREED HISTORICAL ACCOUNT	70
IV. A NGĀTI WHĀTUA ŌRĀKEI PERSPECTIVE ON TIKANGA AND OVERLAPPING CLAIMS	81
A basis for mutual enterprise	82
In the footsteps of our tupuna	83
Checks and balances	85

INTRODUCTION

- 1 *Ki mai ana Te Atua o te Po.*
Ko Mangawhai ahau
Ka mate? Kahorehore kahorehore!
Ka pikipikitia ka kite ahau
I te tai o te uru, ngunguru te po,
Ngunguru te ao,
Wahi ka kutia, kakata, kakata, kakata te whenua e
Tihei mauri ora!
- 2 Ko Māhuhu te waka, ko Kaipara te moana, Ko Te Taoū te hapu, Ko Ngāti Whātua te iwi. Ko Maungakiekie te maunga ki Tāmaki. Ko Tuperiri te tupuna. Ko ahau te mokopuna. Ko Margaret Kawharu te ingoa. Ko Whiti te Ra o Reweti me Ōrākei nga marae. E noho ana ahau ki Reweti.
- 3 My full name is Margaret Anne Kawharu. I descend from Tuperiri through my father, the late Sir Hugh Kawharu, and therefore belong to Ngāti Whātua o Ōrākei. My father was the son of Wiremu Paora, who was the son of Hauraki Paora, the son of Paora Kawharu, the son of Waimapuna, the daughter of Pakiorehua, the daughter of Paewhenua, the second son of Tuperiri by Tuperiri's first wife Kuraroa. Paewhenua (the second son of Tuperiri) married Paretaua who was Waiohua. When Paewhenua was killed in battle, Paretaua then married the fourth son of Tuperiri named Whakaariki. The wife of my great great grandfather Paora Kawharu was Rahera, who was the daughter of Uruamo who was the son of Whakariki and Paretaua. I am therefore descended from both the second son and the fourth son of Tuperiri. Tuperiri's father Hukatere was Te Taoū in origin and his mother Toukarorae was of original Ngāoho descent.
- 4 I worked alongside my father on the Ōrākei Treaty Team from 2004-2006 as an historian, as we negotiated the Historical Account with the Crown. Later, I served two four year terms on the Ngāti Whātua o Ōrākei Māori Trust Board from 2007 to 2015 and one

term on the Ngāti Whātua Ōrākei Reserves Board from 2011 to 2015. I have been living at Reweti, Kaipara, 35 kilometres north west of Tāmaki Makaurau, in the whare tupuna “Rangiataea” of my great grandfather, Hauraki Paora for the last 30 years. I was the Treaty Claim Manager for Ngāti Whātua o Kaipara between 1995 and 2012.

- 5 My father was a distinguished academic and a prominent leader of Ngāti Whātua. He served as Chair of the Ngāti Whātua o Ōrākei Māori Trust Board for 26 years. He steered the tribe’s negotiations with successive governments for the return of ancestral land at Takaparawhau to tribal ownership. He devoted the last ten years of his life to the settlement of Ngāti Whātua claims to land not only in the city of Auckland but also in the Kaipara district. He presided over the Treaty claim negotiations between the Ōrākei Trust Board and the Government that culminated in an Agreement in Principle (**AIP**), which included an Agreed Historical Account, to settle all outstanding claims for breaches of the Treaty of Waitangi. The AIP was signed in June 2006, not long before he died.
- [**NGA.AG.015.00001**]

- 6 My father’s legacy is immense. His scholarly books include most notably, *Māori Land Tenure: Studies of a Changing Institution*, a study of traditional systems of Māori land tenure, in which he characterised the Māori Land Court as an “engine of destruction” of tribally owned land;¹ and *Ōrākei: A Ngāti Whātua Community*, a case study of our community at Ōrākei in the face of dispossession of ancestral lands and marginalisation in central Auckland.² He edited *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi*³ and contributed to *Waitangi Revisited: Perspectives on the*

¹ I H Kawharu *Māori Land Tenure: Studies of a Changing Institution* (Oxford University Press, Oxford, 1977) at 15.

² I H Kawharu *Ōrākei: A Ngāti Whātua Community* (New Zealand Council for Educational Research, Wellington, 1975). (**I H Kawharu Ōrākei**) (An excerpt of this text is featured in the affidavit of Ian Hugh Kawharu for third defendant dated 9 December 2002 at exhibit “D” in the matter of Ngā Uri o Te Tāōū Tribe Inc v Attorney-General HC Auckland M.1079-00 and also Wai 388 claim at the Waitangi Tribunal. [**NGA.AG.013.00001**]. In preparing this brief I have referred to the text itself, not this affidavit)

³ I H Kawharu (ed) *Waitangi: Māori and Pākehā Perspectives of the Treaty of Waitangi* (Oxford University Press, Auckland, 1989).

Treaty of Waitangi.⁴ He wrote chapters in both books documenting the ways in which the Ōrākei hapū were steadfastly maintaining their status as tangata whenua.⁵ I attach to this brief as appendix “A” an incomplete bibliography which encompasses my father’s most significant works.

- 7 In addition to his academic research, my father was actively involved in public service. Of note, he served on the Royal Commission on the Courts, the Waitangi Tribunal, the Auckland Museum Trust Board, the Polynesian Society and the New Zealand Association of Social Anthropologists. In 1987 he provided a translation of the Māori version of the Treaty for the New Zealand Māori Council, which assisted the development of “Treaty principles” by the Court of Appeal.
- 8 My father was recognised for his roles as interpreter, mediator and liaison between Māori and non-Māori New Zealanders by a knighthood in 1989, membership of the Order of New Zealand in 2002 and Auckland City’s Distinguished Citizen’s Award in 2005. For many people he will be remembered as a dignified goodwill ambassador for Ngāti Whātua and indeed New Zealand, who welcomed to Auckland athletes for the 1990 Commonwealth Games, Team New Zealand who brought America’s Cup to Auckland in 1995 and visiting heads of state such as Nelson Mandela in 1995 and President Bill Clinton at the APEC meeting in 1999.
- 9 Turning to my current roles, I am a director of Ngā Maunga Whakahii o Kaipara Commercial Developments Ltd, a position I have held since 2013. I am also a trustee of the Alexander Turnbull Library Endowment Trust.

⁴ Michael Belgrave, Merata Kawharu and David Vernon Williams (eds) *Waitangi Revisited: Perspectives on The Treaty of Waitangi* (Oxford University Press, Oxford, 2005).

⁵ I H Kawharu “Mana and the Crown: a marae at Orakei” in *Waitangi: Maori & Pakeha Perspectives of the Treaty of Waitangi* (Oxford University Press, Auckland, 1989); I H Kawharu “Orakei” in Michael Belgrave, Merata Kawharu & David Williams (eds) *Waitangi Revisited: Perspectives on the Treaty of Waitangi* (Oxford University Press, Melbourne, 2005). (**I H Kawharu, “Orakei”, *Waitangi Revisited***)

- 10 In addition to these roles, I am writing a PhD through the Stout Research Centre for New Zealand Studies at Victoria University of Wellington; my thesis is entitled "The Unsettledness of Treaty Settlements".⁶ I hold a Master of Arts (with First Class Honours) from the University of Auckland in Anthropology and have authored a number of papers published in academic journals.
- 11 In 2012 I was made a member of the New Zealand Order of Merit for services to Māori.
- 12 A full copy of my curriculum vitae is affixed to this brief as appendix "B".
- 13 My knowledge of the matters in this statement is drawn from proximity to my kaumātua and kuia of Ngāti Whātua Ōrākei and Kaipara, particularly in relation to leading Treaty claims for both groupings over the past 25 years. My academic training is in Social Anthropology and I have applied my experience in the Treaty claim settlement process to further academic research, analysis and publication. I have been an elected trustee on the post settlement governance entities for both Ōrākei and Kaipara and served two terms on each. I am an expert in these matters and I am familiar with the Code of Conduct for Expert Witnesses in the High Court Rules. I acknowledge, however, that my involvement in some aspects of the events surrounding this proceeding necessarily means that I am not an independent expert.

OVERVIEW OF MY EVIDENCE

- 14 This statement has four key parts.
- 15 First, I explain Ngāti Whātua Ōrākei tikanga (with particular reference to the principles pleaded in the Fourth Amended Statement of Claim), including what our tikanga is and how we as Ngāti Whātua Ōrākei keep it alive. It is important to keep these principles in mind as you consider the history and how Ngāti Whātua

⁶ Margaret Kawharu "The Unsettledness of Treaty Settlements" (PhD Thesis, Victoria University of Wellington) (forthcoming).

acts today; these principles shape our conduct and how we have interacted with the Crown.

- 16 Second, I detail Ngāti Whātua Ōrākei’s history, including how Ngāti Whātua Ōrākei came to hold mana whenua in Tāmaki Makaurau, and how we have retained it. I have included substantial historical detail. I have done so for three reasons. First, it demonstrates our relationship with the land and our mana whenua over it. Second, it provides examples of the tikanga processes such as *tuku rangatira* in action. Finally, it demonstrates the limited involvement that Marutūāhu has had in the isthmus over the years, from their limited involvement in the Fenton *Ōrākei* judgment,⁷ to their lack of involvement in the hui concerning the Ōrākei marae, and Tumutumuwhenua. [**NGA.AG.200.00025**]
- 17 Third, I describe the process by which the Crown and Ngāti Whātua Ōrākei drafted the Agreed Historical Account (**AHA**) which formed the basis of our settlement.⁸ I understand the Attorney-General relies on the contents of the AHA as evidence of Ngāti Whātua’s position. The AHA should not be seen in this way. My evidence is intended to show that the AHA was a compromise which was necessary to achieve settlement, and should not be thought of as a complete historical record, or as necessarily representing Ngāti Whātua Ōrākei’s position. I hope as well that my account of the AHA drafting makes it clear the land transfer the subject of this judicial review is just one example of a broader pattern of the Crown overlooking tikanga and its obligations as a Treaty partner.
- 18 Finally, I comment on what a tikanga approach to overlapping interests in Tāmaki Makaurau would look like. Tikanga requires the Crown to consider issues of mana whenua and ahi kā, rather than making decisions on the basis of present day exigencies.

⁷ *Orakei Block Investigation of Title* Native Land Court Auckland 1869 as reported in *Important Judgments delivered in the Compensation Court and the Native Land Court 1866-1879* (Southern Reprints 1994) (the **Ōrākei Decision**). [**NGA.AG.200.00025**]

⁸ The AHA is contained in our Deed of Settlement: Ngāti Whātua Ōrākei, Ngāti Whātua Ōrākei Trustee Ltd and The Crown *Deed of Settlement of Historical Claims* (5 November 2011). (**Deed of Settlement/AHA**) [**NGA.AG.001.00001**]

I. TIKANGA MĀORI

Mātauranga Māori – a Māori perspective

- 19 Before I set out the historic position of Ngāti Whātua Ōrākei in Tāmaki Makaurau, I wish to qualify this rendition of ‘history’. The richness and complexity of lived history, in its many layers, is often lost by the chronicling of so-called facts. That said, for this purpose I provide a brief chronology of historical events to describe Ngāti Whātua Ōrākei’s background, formation, and specific connections to Tāmaki Makaurau. I do this in a very Western linear tradition, using as many resources available today as possible, conscious that much of this history comes from written accounts of historical events. Even if some of those came from Māori informants such as my great grand-father Reverend Hauraki Paora, most often the reports of what they recounted were more than second hand. By contrast, Māori traditions are circular, remembered in episodes, often to illustrate interconnection, and are more concerned with patterns of behaviour, as in point and counterpoint, than dates. I shall also describe some of those patterns of behaviour.
- 20 To begin with, there are a number of definitions that should be clarified, to distinguish a Māori perspective on social cohesion from a non-Māori understanding of society. It is important to bring a Māori lens to the issues at hand. These definitions form part of a corpus of tikanga Māori, Māori custom and values. There is a great deal of thought and writing around the concept of tikanga Māori⁹ but one of the simplest definitions I have heard of is from the Reverend Manuhua Bennett, who said “tikanga”, or custom, was the “right person, doing the right thing, in the right way”,¹⁰ that is within a Māori cultural framework. A Māori cultural framework is always three dimensional.

⁹ See Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP9, 2001).

¹⁰ Alex Frame and Paul Meredith “Mock Fighting and Performed Reconciliation” in Peter Addis and others (eds) *Reconciliation, Representation and Indigeneity* (Universitätsverlag Winter GmbH Heidelberg, Heidelberg, 2016) 138.

- 21 I rely on Hirini Moko Mead for an expanded definition of the concept:¹¹

Tikanga embodies a set of beliefs and practices associated with procedures to be followed in conducting the affairs of a group or an individual. These procedures are established by precedents through time, are held to be ritually correct, are validated by usually more than one generation and are always subject to what a group or an individual is able to do . . .

- 22 Tikanga Māori will include a number of beliefs and values, among which are:

22.1 Rangatiratanga;

22.2 Mana atua, mana whenua, tangata whenua;

22.3 Utu and tuku;

22.4 Ahi kā and ahi mātao;

22.5 Manaakitanga; and

22.6 Whanaungatanga & whakapapatanga.

- 23 I rely principally on my father's work, along with others', to explain what these values mean from a Ngāti Whātua perspective. Throughout my brief of evidence I will show how these values have been put into practice by Ngāti Whātua Ōrākei.

Rangatiratanga and mana whenua

- 24 Rangatiratanga means, "evidence of breeding and greatness". In essence, it is the proven ability to lead through service. The word itself implies someone who can bring together the strands of a community to make a unified whole. It is a dynamic not static concept, emphasizing the reciprocity between the human, material (for example whenua) and non-material worlds. It involves

¹¹ Hirini Moko Mead "The Nature of Tikanga" (paper presented to Mai i te Ata Hāpara Conference, Ōtaki, 11–13 August 2000) at 3–4 as cited in Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP9, 2001) at 16.

reciprocity between the individual and their god and reciprocity between the individual and their tribal community. Applied, it means the wise administration of all the assets possessed by a group for that group's benefit. Above all, as my father wrote in "Dimensions of Rangatiratanga", a rangatira is a trustee for their people, an entrepreneur in all their enterprises, a leader in war and peace.¹² [**NGA.AG.006.00001**] Recognition of a rangatira comes only from those who are to be served by that leadership.

- 25 Effective rangatiratanga is dependent on 'mana', and that mana being recognised. Mana is that power and authority that is endowed by the atua (gods), delegated through generations of tupuna to certain individuals to enable them to achieve their potential, to excel and where appropriate, to lead. The Reverend Māori Marsden thought of authority as permission delegated by the gods, and power as the agency of man to perform.¹³ As noted in "Ko te Mana Whenua o Ngāti Whātua o Ōrākei", in whatever domain mana is exercised, the significance of its spiritual source is evident in the ritual sanctions (tapu) sustaining it.¹⁴ [**NGA.AG.114.02220**] Reverend Māori Marsden was a respected member of the Anglican clergy, a returned soldier of the 28th Māori Battalion, the first Māori padre of the New Zealand navy and one who was raised as a tohunga in the traditional Ngāpuhi-nui-tonu whare wananga.
- 26 The effective exercise of rangatiratanga over a particular area of land, either by discovering the land in the first place or wresting it from a previous occupier by force, will result in the survival of the beneficiaries of that rangatiratanga. Consolidation of the group's occupation of the whenua will assure power and political control over the domain. Such power has been called "mana whenua".¹⁵ From a tikanga perspective, boundaries have never been fixed in the

¹² I H Kawharu "Dimensions of Rangatiratanga" (unpublished manuscript, 1996) at 109. (**I H Kawharu "Dimensions of Rangatiratanga"**) [**NGA.AG.006.00001**]

¹³ Māori Marsden "God, Man and Universe: A Māori View" in Michael King (ed) *Te Ao Hurihuri: aspects of Māoritanga* (2nd ed, Reed, Auckland. 1992) 117 at 118-119.

¹⁴ I H Kawharu "Ko te Mana Whenua o Ngāti Whātua o Ōrākei" (Wai 388 Draft, paper presented to the Crown, May 2003) at 1. (**I H Kawharu, "Ko te Mana Whenua o Ngāti Whātua o Ōrākei"**) [**NGA.AG.114.02220**]

¹⁵ I H Kawharu, "Notes I prepared for the Tribunal on Rangatiratanga" (unpublished personal notes, undated).

western legal sense, and groups might have moved freely on the ground at times. However, there has always been an understanding about mana whenua, or proprietary rights giving those who claimed them the right to invite others to share in the access to resources in particular localities.¹⁶ [NGA.AG.114.02220]

- 27 The group wielding mana whenua is the “tangata whenua”. The tangata whenua, literally “people of the soil” is a local community whose members recognise collective rights and obligations. Their rights derive from common ties of descent and kinship. Their obligations turn on the hospitality extended to non-members of their community, whether of the same tribe or not.¹⁷ Thus, rangatiratanga, mana whenua and tangata whenua are all terms inextricably linked to the central idea of pride in that identity given to individuals by their kin groups and by their present and former lands, marae and wāhi tapu.¹⁸ In addition, shared ritual beliefs and practices underpinning all social enterprise give the people a sense of security in their environment and of legitimacy in their mana whenua, and these are reflected in various idioms particular to the group.¹⁹ [NGA.AG.114.02220]
- 28 The Waitangi Tribunal took a very different approach to mana whenua in the Tamaki Makaurau Settlement Process Report. [NGA.AG.200.00034] That report took the approach that “where there are layers of interests in a site, all the layers are valid.”²⁰ The idea that lesser proprietary rights arising from, for example, the gift of land, would give rise to a claim that would rank equally with mana whenua, is not in accordance with tikanga Māori. [NGA.AG.114.02220]

¹⁶ I H Kawharu, “Ko te Mana Whenua o Ngāti Whātua o Ōrākei” at 14. [NGA.AG.114.02220]

¹⁷ I H Kawharu *Ōrākei* at 15.

¹⁸ I H Kawharu, “Notes I prepared for the Tribunal on Rangatiratanga” (unpublished personal notes, undated).

¹⁹ I H Kawharu, “Ko te Mana Whenua o Ngāti Whātua o Ōrākei” at 14. [NGA.AG.114.02220]

²⁰ Waitangi Tribunal *Tāmaki Makaurau Settlement Process Report* (Wai 1362, 2007) at 97. [NGA.AG.200.00034]

29 Concepts of mana whenua are crucial, in my view, to keep in mind when considering Ngāti Te Ata's claim. I understand Ngāti Te Ata do not dispute our interests in the land at issue, but assert that they too have interests. As I have just said, Ngāti Whātua has never disputed that other groups were historically in and around the isthmus, but any interests that come from that cannot equate to mana whenua – in Ngāti Te Ata's case, they were welcome into Waitematā due to whanaungatanga ties with Ngāti Whātua. Ngāti Te Ata cannot have mana whenua in areas where Ngāti Whātua Ōrākei has mana whenua.

Utu

- 30 The principle of reciprocity and the fulfilment of obligation underpins all Māori social interaction and exchange. The concept of utu encompasses both positive and negative reciprocity within a single holistic system in Māori thinking and a fundamental driver of Māori life.²¹ Emphasis is placed on maintaining relations. The social forms and practices of utu and whakautu, giving and taking, are seen for example in ceremonial welcomes to visitors at any Māori gathering, the generous hospitality expressed in food, especially the hakari, the presentation of koha or gifts, the exchange of taonga on special occasions linking important people, and the emotional and spiritual attachment to ancestral land, especially demonstrated by the desire to take the tupāpaku home for burial.²²
- 31 For everything given and taken, a reciprocity and return of some kind is required. Those who give gain mana, those who receive must restore the balance, by responding generously over time. If the balance is not restored then compensation must be taken.²³
[NGA.AG.200.00031] The delay in returning a gift and the giving in excess of the gift is critical to understanding utu; these aspects create an "imbalance in relations" and a "see-sawing of obligation"

²¹ Joan Metge "Returning the Gift: Utu in Intergroup Relations" (2002) 111 JPS 311 at 315.

²² Joan Metge "Returning the Gift: Utu in Intergroup Relations" (2002) 111 JPS 311 at 312.

²³ Waitangi Tribunal *Muriwhenua Land Report* (Wai 45, 1997) at 26.
[NGA.AG.200.00031]

which can last for many years and therefore keeps the relationship going.²⁴

Tuku rangatira

- 32 An aspect of utu is tuku. Like most Māori words tuku can be used in many ways and can mean to give up or let go, to allow, to send, to offer, to receive and entertain.²⁵ Tuku, in relation to the whenua was debated at length in the Muriwhenua land hearings before the Waitangi Tribunal. Tuku whenua, the Tribunal found, referred to a long established process of allocating land. Muriwhenua believed they had retained their authority over the land and continuing obligations and relationships were essential.²⁶

[NGA.AG.200.00031]

- 33 Ngāti Whātua Ōrākei uses the term “tuku rangatira” to denote an allocation made between those highest in their respective authorities. It is rangatiratanga in action, where residual rights remaining intact and an attendant expectation of reciprocity from the recipient is generated.

Ahi kā

- 34 Ahi kā, lighting a fire and keeping it alight or warm was and still is the standard metaphor for permanency of title. Those chiefs with that type of title, or mana whenua to protect, could allocate use rights and invite non-members of their hapū to have access to their land. Acceptance of such an invitation would thereby either settle a debt, or incur a new one.²⁷ Cultivations, fishing circuits, hunting and gathering grounds, the building of pā for defence purposes, food storage houses or pits are all indicators of ahi kā and likely to cover a wide area for seasonal use. Urupā or burial grounds are probably the most compelling markers of permanent title, and have been regarded so by the earliest testimonies in the Māori Land

²⁴ Joan Metge “Returning the Gift: Utu in Intergroup Relations” (2002) 111 JPS 311 at 317.

²⁵ H W Williams *A Dictionary of the Māori Language* (7th ed, Government Printer, Wellington, 1971).

²⁶ Waitangi Tribunal *Muriwhenua Land Report* (Wai 45, 1997) at 74.
[NGA.AG.200.00031]

²⁷ I H Kawharu, “Ko te Mana Whenua o Ngāti Whātua o Ōrākei” at 6.
[NGA.AG.114.02220]

Court. In contrast to ahi kā is ahi mātao when the fires have gone out and become cold. A related term is ahi mātaotao; where the fires have not just gone out but been permanently extinguished. People have been seen to have vacated the land permanently, for whatever reason. [**NGA.AG.114.02220**]

Manaakitanga

- 35 Manaakitanga can be described as generosity, care-giving, or compassion, and is an expression of one's mana, one's status and authority, through acts of kindness and caring. To manaaki or give generously and provide hospitality is a mana-enhancing activity. It also creates a obligation on the visitor to reciprocate in the future. Thus mana, manaaki and tuku are closely related concepts in Te Ao Māori.²⁸ [**NGA.AG.200.00031**]

Whanaungatanga and whakapapatanga

- 36 Whanaungatanga and whakapapatanga refer to kinship & descent. Communities that comprise a number of households (but not too large a number) have commonly been called hapū when they have a strong sense of kinship through descent from a common ancestor. Hapū in general are territorial kin group corporations that continue over successive generations. A hapu has an estate made up of not only its members, but also its lands, maunga, forests, fisheries, history, legends, secular knowledge and esoteric lore. The allocation of rights of access to its resources, including land, was made by rangatira and elders and held by individuals only so long as they were resident and accepted members of the community.²⁹ [**NGA.AG.114.02220**]
- 37 The concept of whanaungatanga or kinship unifies those who descend from a common ancestor, whether or not they live together. It provides a sense of inclusivity and solidarity among kin because it appeals to aroha and co-operation. Kinship effectively ties individuals across households and hapū groupings but is general and ambiguous. Whakapapa or genealogy, by contrast, is particular

²⁸ Waitangi Tribunal *Muriwhenua Land Report* (Wai 45, 1997) at 26. [**NGA.AG.200.00031**]

²⁹ I H Kawharu, "Ko te Mana Whenua o Ngāti Whātua o Ōrākei" at 5-6. [**NGA.AG.114.02220**]

and unambiguous.³⁰ It divides members because it is exclusive and appeals to mana and privilege. Although there is a tension between these two forces, they offset one another and rarely does conflict lead to a complete disintegration of the hapū.³¹

II. NGĀTI WHĀTUA ŌRĀKEI'S CONTINUING AHI KĀ/MANA WHENUA IN TĀMAKI MAKĀURAU

- 38 With these tikanga concepts in mind, I now turn to the historical narrative.
- 39 In my view, it is important to know about Ngāti Whātua Ōrākei from its very beginning through to the present day in order to have a perspective on Ngāti Whātua Ōrākei's claim today. In spite of the impacts of colonisation and Europeanisation, Ngāti Whātua Ōrākei has survived and remained in occupation of their remnant lands. The values they held pre 1840, although changed in form and adapted to a changing political context, remain fundamentally the same in principle. An analysis of the depth and strength of the connection that Ngāti Whātua Ōrākei has to the land at issue in this proceeding must take into account events from at least the 18th century through to the 21st century.
- 40 As I will set out later in my statement, the events I set out below are directly relevant to an assessment of Ngāti Whātua Ōrākei's tikanga, including the tikanga pleaded in the Fourth Amended Statement of Claim.

Ngāti Whātua Ōrākei's early history

- 41 Ancient traditions of Ngāti Whātua trace the tribe's ancestry back to Turehu (literally those who arose from the earth). They speak of an ancestral figure called Tumutumuhenua and his wife Kui who are both well known throughout Polynesia and particularly in Northland.

³⁰ I H Kawharu *Ōrākei* at 22–23.

³¹ I H Kawharu *Ōrākei* at 71.

- 42 Tumutumuwhenua is said to have had no father and no mother; he emerged from the interior of the Earth and was not of this world.³² [NGA.AG.200.00036] Tumutumuwhenua is the name at the head of the whakapapa from whom we descend, some say as a personification of the forces of Nature and a symbol of the first principles of Man.³³ He establishes the take “whenua ki te hou”, the link to the first peoples.
- 43 The first settlement associated with Tumutumuwhenua and his descendants was in the vicinity of Kaitaia several centuries before the navigator Toi and the wave of migration from Polynesia. From his marriage with Kui came Te Tini o Kui. Succeeding generations migrated southwards and spread out holding mana whenua from Hokianga to the Kaipara.
- 44 I attach to this brief at appendix “C” a whakapapa which shows a sketch of several key descendants from Tumutumuwhenua.³⁴ It is acknowledged that there are other versions with approximately 55 more generations, with many mythological names whose significance has long since been lost. The relevance of this particular whakapapa is that it was dictated spontaneously from memory by my great grand-uncle Timi Te Hikoi Paora to my father in the early 1960s.³⁵ Timi Paora (1872-1965) was the youngest son of Paora Kawharu (1818-1908). It shows the connections between the major hapū of Ngāti Whātua prior to the conquest and occupation of Tāmaki in the 18th century, and the lineage of the acknowledged ancestor Tuperiri under whom the three hapū of Ngāti Whātua Ōrākei established themselves after 1750.

³² Hauraki Paora *This was the beginning of it: Ko te timatanga tenei o aua koreronei* Alexander Turnbull Library, Wellington, qMS-1620-1621, circa 1900-1910 at 117; Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua* (G Graham, translator), NZMSS 725, 1881, handwritten version at 1 (**Paul Tūhaere A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua**); Ani Pihema *A Ngāti Whātua History* Auckland Museum Library, Auckland, MS 74/14 at 1; Waitangi Tribunal *Ōrākei Report: Report of the Waitangi Tribunal on the Ōrākei Claim* (Wai 9, 1987) at 15. (**Waitangi Tribunal Ōrākei Report**) [NGA.AG.200.00036]

³³ Hare Hongi “Whiro and Toi” (1911) 20 JPS 63 at 63-70.

³⁴ I H Kawharu *Ōrākei* at 26.

³⁵ I H Kawharu *Ōrākei* at 25-26.

- 45 The significance of Tumutumuwhenua was recalled much later in the 1970s when Ngāti Whātua Ōrākei sought assistance in a time of crisis from their northern kin, a subject to which I will return.
- 46 Early Polynesian explorers, Kupe and then Toitehuatahi are among the important pre-canoe ancestors. It is said that Kupe was the first Polynesian to arrive in this country. Toitehuatahi is the ancestor from whom most tribes trace descent, and on whom subsequent tribal rights and interests were based.³⁶
- 47 Toi is significant for Ngāti Whātua Ōrākei because from his son Ohomairangi sprang Ngāoho of the Tāmaki isthmus.³⁷ Ngāoho (Mairangi) is a big old tribal name, from which many people descend and smaller groups developed. One section who continued to call themselves Ngāoho resided from the Waitematā north to the Kaipara.³⁸ [NGA.AG.200.00025] Another section of Toi's people were Ngāti Awa.
- 48 One of three canoes that landed further south on the Taranaki coast was Kahuitara, commanded by Maruiwi and from him sprang Te Tino o Maruiwi, a numerous people. Maruiwi travelled north – some say the Auckland isthmus is named after a Maruiwi chief called Tāmaki.³⁹
- 49 Kauae, a great nephew of Oho (or grandson of Toi), had a son Toko o te Rangi who fought Tino o Maruiwi. Toko o te Rangi built a ceremonial place at Taporapora in the middle of the Kaipara harbour

³⁶ Te Ahukaramū Charles Royal "First peoples in Māori tradition" (8 February 2005) Te Ara: The Encyclopedia of New Zealand <www.TeAra.govt.nz/en/first-peoples-in-Māori-tradition/print>.

³⁷ S Percy Smith *The peopling of the North: notes on the ancient Māori history of the Northern Peninsula and history sketches of the Ngāti-Whātua tribe of Kaipara, New Zealand* (Whitcombe & Tombs, Wellington, 1898) at 33 (**Smith, Peopling of the North**).

³⁸ *Ōrākei Decision* at 58. [NGA.AG.200.00025]

³⁹ Ani Pihema *A Ngāti Whātua History* Auckland Museum Library, Auckland, MS 74/14 at 2.

and is said to have lived there undisturbed for five generations until the coming of the waka.⁴⁰

- 50 More waka hourua followed over a long period of time and of those that made an impact on the north Kurahaupo, Mataatua, Mamari, Matahourua, Māhuhu and Moekakara stand out.⁴¹
[NGA.AG.200.00036], [NGA.AG.200.00031]
- 51 The most significant waka for Ngāti Whātua Ōrākei is Māhuhu. Although there is some disagreement as to the exact date it arrived in Nukuroa (Aotearoa, New Zealand), Māhuhu may have arrived in the Kaipara about 1300 AD.
- 52 Māhuhu was captained by Rongomai who finished his voyage at Taporapora, settled there and took a wife. After Rongomai was drowned in the Kaipara Harbour, his people including his son Po, returned in Māhuhu to Muriwhenua. At Doubtless Bay the remainder of the crew formed the nucleus of what became known as the Ngāti Whātua tribe.⁴²
- 53 Po's daughter Te Whatu-tahae married her cousin Mawete. They had three famous daughters. The eldest was Te Whātua-kaimarie ancestress of Ngāti Whātua (from whom some say Ngāti Whātua got its name). The second daughter was Poroa who migrated to join her Māhuhu relatives settled at Waiapu. The third daughter was Taiko and ancestress of Te Rarawa, Te Aupouri and Ngāpuhi people.⁴³ [NGA.AG.200.00049] Thus from these people of Māhuhu and through these women is traced the whaka-toronga of

⁴⁰ C M Sheffield *Men came voyaging* (Whitcombe & Tombs, Auckland, 1963) at 2 (**Sheffield, Men came voyaging**); George Graham "Mahuhu: the Ancestral Canoe of Ngāti Whātua (Kaipara)" (1939) 48 JPS 186 at 188.

⁴¹ Waitangi Tribunal *Ōrākei Report* at 15. [NGA.AG.200.00036]; Waitangi Tribunal *Muriwhenua Land Report* (Wai 45, 1997) at 16. [NGA.AG.200.00031]

⁴² Smith, *Peopling of the North* at 9, George Graham "Mahuhu: the Ancestral Canoe of Ngāti Whātua (Kaipara)" (1939) 48 JPS 186 at 186; Sheffield, *Men came voyaging* at 23, Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua*, handwritten version.

⁴³ Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua*, handwritten version; Waitangi Tribunal *Te Roroa Report* (Wai 38, 1992) at 359 [NGA.AG.200.00049]; George Graham "Mahuhu: the Ancestral Canoe of Ngāti Whātua (Kaipara)" (1939) 48 JPS 186 at 190.

Rongomai, interlinking relationships between Ngāti Whātua, Ngāpuhi, Te Rarawa, Ngāti Porou, Ngāti Kahungunu and Tainui.⁴⁴

Other groups in and around the isthmus

- 54 While Ngāti Whātua identify strongly with Māhuhu, there are also other waka and descent lines as a result of intermingling which figure in their whakapapa. I now touch on some of the other groups who lived in and around the Kaipara and the Tāmaki isthmus in the 15th and 16th centuries.
- 55 The first group is Te Arawa, who are descended from Tama-te-Kapua. It is Tama-te-Kapua's son, Kahu-Mata-Momoe, who gave the Kaipara its name, after eating the cooked para fern root there. Kahumatamoemoe's son Taramainuku lived at Taporapora and his cousin, Ihenga, also came to visit. Te Arawa people stayed there until Taporapora eroded into the sea, which happened at some point between 1400 and 1575.⁴⁵
- 56 Kahumatamoemoe also settled for a time at Ōrākei, giving his name to Okahu Bay and pā. Kahu is said to have taken possession of Waiheke which he renamed Motu-nui-o-Kahu. His nephew Ihenga is also attributed to naming Motu-a-Ihenga, now known as Motuihe.⁴⁶
[NGA.AG.005.00003]
- 57 Secondly, many crew members of the Tainui waka settled in Tāmaki and sojourned in the Kaipara. Many of these people married into the Ngāoho peoples. Tainui say the descendants of these marriages became known as Ngāoho, Ngaiwi and Ngaitai.⁴⁷

⁴⁴ Smith, *Peopling of the North* at 2–3; George Graham "Mahuhu: the Ancestral Canoe of Ngāti Whātua (Kaipara)" (1939) 48 JPS 186 at 186.

⁴⁵ Hauraki Paora *This was the beginning of it: Ko te timatanga tenei o aua koreronei* Alexander Turnbull Library, Wellington, qMS-1620–1621, circa 1900–1910 at 67–68, 232. Hauraki Paora gives whakapapa from Ihenga to himself. I note there is some contention over Ihenga's line. Ani Pihema *A Ngāti Whātua History* Auckland Museum Library, Auckland, MS 74/14 at 3.

⁴⁶ K M Holloway *Maungarei: An Outline History of the Mt Wellington, Panmure and Tamaki Districts* (Mount Wellington Borough Council, Auckland, 1962) at 19, cited in Rose Daamen, Paul Hamer, and Barry Rigby *Rangahaua Whanui District 1: Auckland* (Waitangi Tribunal Working Paper, 1996) at 22.
[NGA.AG.005.00003]

⁴⁷ Ani Pihema *A Ngāti Whātua History* Auckland Museum Library, Auckland, MS 74/14 at 3.

- 58 Descendants of Mataatua waka, Ngāti Awa, also established themselves in the Kaipara and on the Tāmaki isthmus, intermarrying with descendants of Toitehuatahi. Titahi, of Ngāti Awa, is credited with building impressive pa, including Korekore near Muriwai and Maungakiekie.⁴⁸
- 59 A particularly significant figure around this time was Maki, a descendant of Titahi. He was from Te Atiawa of northern Taranaki, and descended from the Kahuitara, Aotea and Tainui waka but had settled at Kawhia. He migrated north and lived at Rarotonga (Mount Smart) and Takapuna and eventually in the Kaipara. He made three marriages and his warriors also married with local Ngāti Awa and Ngāoho women. Best known of Maki's sons were Manuhiri, Ngawhetu, and Te Kawerau, important ancestors to Ngāti Manuhiri, Ngāti Rango and Te Kawerau a Maki hapū respectively, at times referred to as 'Kawerau' collectively, as a large descent group emanating from Maki.
- 60 It was with these people, a mix of Ngāoho, Ngāti Awa, Kawerau and Tainui, that Ngāti Whātua sub tribal groups sought intermarriage soon after Ngāti Whātua's arrival in the Kaipara.
- 61 In the mid 1700s, several hapū of Ngāti Whātua, including one known as Ngaririki, moved southwards from Kaihu to the Kaipara. Although some intermarriage took place, conflict arose. In retaliation for Ngāti Whātua stealing kumara, a woman of high rank Tou Tara, a relative of Haumoewarangi, was killed by a spear thrust to the breast. In memory of Tou Tara the Ngaririki section of Ngāti Whātua took the name of Te Taoū.⁴⁹ [**NGA.AG.012.00001**]
- 62 Ngāti Whātua sought revenge for the killing and enlisted the assistance of Kawharu, a Tainui warrior, of Ngāti Mahuta and Ngāti Koata, also from Kawhia. He headed a war-party and marched against Kawerau in Te Raupatu Tihore (the stripping conquest) in

⁴⁸ G Murdoch *Muriwai Regional Park Management Plan*, (Auckland Regional Council, 1996) at 57–58.

⁴⁹ Sheffield, *Men came voyaging* at 29; *Ōrākei Block Investigation of Title* Native Land Court Auckland 1869, *Ōrākei Minute Book No 1* (1868) at 225 per Warena Hengia (**OMB 1**). [**NGA.AG.012.00001**]

about 1680. Kawharu was later treacherously killed at Te Waiherunga (on South Head).⁵⁰ But under his leadership, Ngāti Whātua established an ascendancy in Kaipara and his power is remembered in names left upon the land and name-sakes.

- 63 Continuous warfare continued and the renowned chief Haumoewarangi, who was also known as a valiant warrior and leader for Ngāti Whātua, fought and defeated the peoples of Kaipara. But he too was killed, at Manunutahi (on South Head).⁵¹
- 64 The deaths of both Kawharu and Haumoewarangi precipitated further revenge. Some 20-30 years intervened before Ngāti Whātua finally made a conclusive conquest and occupation of the south Kaipara led by Tumupakihi, Poutapuaka and Hakariri.⁵²
- 65 In about 1730 two canoes, Te Potae o Wahieroa & Te Wharau, carried Te Taoū and Ngāti Whātua war parties to the Kaipara. The warriors drove Waiohua back south into Tāmaki and Kawerau west into Waitakere. They proceeded to mark out their territory. Poutapuaka and Te Au-o-te-Whenua of Te Kawerau a Maki agreed to draw a line at Tirikohua pā on the west coast which became known as Te Taupaki, “firmly bound peace”.⁵³
- 66 Following this, dog skin cloaks were given at Kahukuri (near Waimauku) and at Tau Rangatira at Rangitopuni, and more intermarriages cemented that peacemaking. Ngāti Whātua became relatively settled in the Kaipara although there was occasional violence. The descendants of Haumoewarangi in their hapū

⁵⁰ Leslie G Kelly *Tainui: the Story of Hoturoa and his Descendants* (Polynesian Society, Wellington, 1949) at 217–230; Sheffield, *Men came voyaging* at 29; Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua*, handwritten version at 1 and 4–5; Smith, *Peopling of the North* at 68–69.

⁵¹ Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua*, handwritten version at 6.

⁵² Kaipara MB 2 at 104; Kaipara MB 6 at 364-5; Paul Tūhaere “An Historical Narrative Concerning the Conquest of Kaipara and Tamaki by Ngāti Whātua” (1923) 32 JPS 229 at 231; Hami Parata “Te Atua raua ko Hinga-mai-rangi” (1911) 20 JPS 94; Smith, *Peopling of the North* at 71–72.

⁵³ Smith, *Peopling of the North*, at 72 and 75–76; Kaipara MB 2 (1869) at 126; Kaipara MB 10 at 162-3; Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua*, handwritten version, see chronology at back of handwritten document.

groupings Te Taoū, Ngāti Whātua and Ngāti Rango (among others whose names have all but disappeared now such as Ngāti Marua, Te Mangamata and Ngāti Te Kahupara), continue to occupy and hold mana whenua in south Kaipara.

- 67 In the warfare that followed against the Waiohua of Tāmaki, Te Kawerau a Maki in south Kaipara were allied with Ngāti Whātua.⁵⁴
- 68 That warfare cemented Ngāti Whātua in Tāmaki Makaurau.

Battle with Kiwi Tāmaki and aftermath

- 69 A prominent figure on the Tāmaki isthmus at this time was Kiwi-Tāmaki, a grandson of Huakaiwaka.⁵⁵ Kiwi-Tāmaki led the Waiohua people in the mid eighteenth century and occupied a powerful pā at Maungakiekie. The battle between Kiwi-Tāmaki and his people, and predominantly Te Taoū of Ngāti Whātua is an important influence on our present day rohe.
- 70 In about 1740⁵⁶ Kiwi-Tāmaki and a number of his warriors travelled to the Kaipara to attend the uhunga (ceremony to remove tapu over remains) of Tumupakihi, a Te Taoū rangatira.
[NGA.AG.200.00025] When he arrived, he launched a surprise attack, killing about 200 Ngāti Whātua, including Tumupakihi's son, Tapuwae. Kiwi also killed Tuperiri's sister Tahatahi at Mimihanui in the vicinity. Survivors escaped to Te Makiri, (near present day Te Awaroa-Helensville), where Kiwi and another of Tumupakihi's sons, Wahaakiaki, exchanged threats.⁵⁷ **[NGA.AG.200.00025]**,
[NGA.AG.012.00002]

⁵⁴ George Graham "History of the Kawerau Tribe of Waitakere" (1925) 34 JPS 19 at 23.

⁵⁵ *Ōrākei Decision* at 26, attached at appendix "D" **[NGA.AG.200.00025]**

⁵⁶ *Ōrākei Decision* at 62. **[NGA.AG.200.00025]**

⁵⁷ Sheffield, *Men came voyaging* at 33-34; Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua*, handwritten version at 8; *Ōrākei Decision* at 63 **[NGA.AG.200.00025]**; *Ōrākei Block Investigation of Title* Native Land Court Auckland 1869, *Ōrākei Minute Book No 2* (1868) at 78-79 per Tūhaere (**OMB 2**). **[NGA.AG.012.00002]**; Paul Tūhaere "An Historical Narrative Concerning the Conquest of Kaipara and Tamaki by Ngāti Whātua" (1923) 32 JPS 229 at 231.

- 71 A number of skirmishes followed. In revenge for the killings, Wahaakiaki led an expedition southwards and took Taurere pā (at Tāmaki Heads) before retreating back to Kaipara. Then the tribes of Tāmaki invaded Kaipara, killing a number of key chiefs.
- 72 Thus began the conquest of Tāmaki. Under the leadership of Wahaakiaki and Waitaheke they crossed the Manukau and sacked Awhitu and Tara-taua pā though were repulsed at Puke-Horo-Katoa pā.⁵⁸ These battles were fought to entice Kiwi off Maungakiekie. Then, at the very great battle at Paruroa (Big Muddy Creek) on the northern shore of the Manukau, many Waiohua were slain, among them the head chief Kiwi Tāmaki.⁵⁹ [**NGA.AG.200.00025**], [**NGA.AG.012.00002**] All the important Waiohua chiefs are said to have fallen at this battle; hence its name 'Te Rangi-hinganga-tahi' (the day when all fell together).⁶⁰
- 73 When this battle was won Te Taoū and Ngāti Whātua returned to the Kaipara to rest. Wahaakiaki's prediction that Kiwi's breastbone would hang from the puriri tree on Tauwhare (opposite Reweti) was thus fulfilled.⁶¹ But Tuperiri continued on to take revenge for the killing of his sister and took the pā at Māngere by surprise.⁶² [**NGA.AG.200.00025**]
- 74 Some Waiohua survivors returned after an interval to reoccupy their old homes at Kohimaramara and other pā on the east of the isthmus. On hearing of this, Te Taoū and Ngāti Whātua planned the final strike. They took pā at Kohimaramara, Tokapurewha,

⁵⁸ There is some suggestion that Tara-taua pā was instead a lookout.

⁵⁹ I H Kawharu *Ōrākei* at 63, 3; *Ōrākei Decision* at 63 [**NGA.AG.200.00025**]; *OMB 2* at 179-80 per Te Waka Tuaea [**NGA.AG.012.00002**]; Ani Pihema *A Ngāti Whātua History* Auckland Museum Library, Auckland, MS 74/14 at 10; Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua*, typed version at 8-10.

⁶⁰ RCJ Stone *From Tamaki-Makau-Rau to Auckland* (Auckland University Press, Auckland, 2001) at 42. (Stone, *From Tamaki-Makau-Rau*)

⁶¹ Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua*, handwritten version at 10. I note for completeness that in *OMB 2* at 80 [**NGA.AG.012.00002**], Paora Tūhaere says Kiwi-Tamaki's bones were hung at Maungangu (which we believe to be in present day Helensville, some 12 kilometres north of Tauwhare).

⁶² *Ōrākei Decision* at 63 [**NGA.AG.200.00025**]; Smith, *Peopling of the North* at 89; Paul Tūhaere "An Historical Narrative Concerning the Conquest of Kaipara and Tamaki by Ngāti Whātua" (1923) 32 JPS 229 at 232.

Whakatakataka, and Ōrākei. Kiwi-Tāmaki's pā on Maungakiekie was subsequently taken possession of by Tuperiri of Te Taoū.

- 75 There are two consequences of Ngāti Whātua's defeat of Kiwi-Tāmaki that I want to emphasise.
- 76 First, the conquest of pā previously held by Kiwi-Tāmaki marks the beginning of Ngāti Whātua Ōrākei dominance in the Tāmaki isthmus. Although most of Ngāti Whātua returned to Kaipara, Te Taoū, under Tuperiri's leadership, remained in Tāmaki Makaurau.⁶³ Tuperiri built his pā Hikurangi on Maungakiekie, his sons Tarahawaiiki and Whakaariki occupied Onewa,⁶⁴ and his half-brother Te Waitaheke lived at Te Tō (Freeman's Bay). Reretauria was in the upper Waitematā, and Tuperiri's grandson Awarua occupied Māngere and Ihumātao with his grandfather Te Horeta and intermarried with the Waikato people.⁶⁵ There was no other major political force to be reckoned with on the isthmus at this time. **[NGA.AG.200.00025]**
- 77 Second, new links were forged with those whom they had conquered. Te Taoū chiefs married Waiohua women bringing in not only Waiohua and Tainui lineage but also appropriating the old name Ngāoho.⁶⁶ **[NGA.AG.200.00036]** Others of the conquered who eventually returned to the isthmus came under Tuperiri's eldest son, Tomoaure, and they acquired the name Te Uringutu. Tomoaure married Te Tahuri, daughter of the Ngāti Te Ata chief Te Horeta. Tarahawaiiki, the third son of Tuperiri married Mokorua, another daughter of Te Horeta. Among the three hapū groups, Te Taoū, Ngāoho and Te Uringutu, there was a strong sense of kinship through descent from their common ancestors and over time they collectively exercised mana whenua as Ngāti Whātua o Ōrākei,

⁶³ Smith, *Peopling of the North* at 89; Paul Tūhaere "An Historical Narrative Concerning the Conquest of Kaipara and Tamaki by Ngāti Whātua" (1923) 32 JPS 229 at 232; *Ōrākei Decision* at 63 **[NGA.AG.200.00025]**

⁶⁴ For completeness, I note that it is arguable it was instead Tarahawaiiki and Wahaakiaki.

⁶⁵ *Ōrākei Decision* at 65-66 **[NGA.AG.200.00025]**; Smith, *Peopling of the North* at 90-91.

⁶⁶ Waitangi Tribunal *Ōrākei Report* at 17. **[NGA.AG.200.00036]**

cultivating and fishing together across the isthmus.⁶⁷

[NGA.AG.114.02220]

- 78 This intermingling of Ngāti Whātua with those they had conquered has particular significance for the whakapapa of preeminent nineteenth century Ngāti Whātua Ōrākei rangatira Āpihai Te Kawau Te Tawa. I attach to this brief at appendix "D" a whakapapa which was included in Fenton's *Ōrākei Decision* **[NGA.AG.200.00025]**. It is a document compiled by Fenton from information provided to him by key witnesses in the *Ōrākei* case and it shows the interlinkages between many of them.
- 79 Āpihai Te Kawau was the grandson of Tuperiri, who following the defeat of Kiwi-Tāmaki led the Te Ara Pueru battle and occupation of Tāmaki. His father Tarahawaiiki married Mokorua and through her father Te Horeta, Āpihai Te Kawau was connected directly to Hua Kaiwaka, eponymous ancestor for the Waiohua branch of Ngāoho, as well as six generations of ties into Waikato. Through his paternal uncle Tomoauhe he also had ties to Te Uringutu with its Waikato/Tainui links. But on his father's (Hukatere) Te Taoū side Te Kawau could trace patrilineage back to Pawhero, Makawe, Waikeheao and Haumoewarangi. Through Toukarorae, Tuperiri's mother, Te Kawau could also link into the Kaipara section of the original Ngāoho, as well as Ngaiwi/Te Waiohua.⁶⁸
- [NGA.AG.114.02220]** Thus Te Kawau became known as "a man of many cousins". He was able to claim ties to many groups across greater Auckland and actively fostered those connections, living at times on the Manukau and at times at Kaipara and over on the Mahurangi as well as centrally on the isthmus. It was through this whanaungatanga he became an influential and unifying leader for Ngāti Whātua Ōrākei and was well respected by other tribes.

⁶⁷ I H Kawharu, "Ko te Mana Whenua o Ngāti Whātua o Ōrākei" at 4. **[NGA.AG.114.02220]**

⁶⁸ I H Kawharu, "Ko te Mana Whenua o Ngāti Whātua o Ōrākei" at 5. **[NGA.AG.114.02220]**

Ngāti Whātua Ōrākei at the turn of the century

- 80 By 1790, Ngāti Whātua were, according to Smith’s text, “in possession of the whole of the west coast from Maunga-nui Bluff to Manukau heads, and eastwards to the Tāmaki River near Auckland whilst the east coast of the northern peninsula was occupied by them and their cognate tribes from Tāmaki to near Whangarei and thence across the upper waters of the Wairoa River to Maunganui Bluff.”⁶⁹
- 81 This remains the approximate description of the entire Ngāti Whātua rohe today. I affix to this brief as appendix “E” a map of the broader Ngāti Whātua rohe (including Ngāti Whātua o Kaipara and Ngāti Whātua Ōrākei interests) prepared by Te Runanga o Ngāti Whātua.⁷⁰ [**NGA.AG.200.00032**]

Skirmishes with Ngāti Pāoa

- 82 However Ngāti Whātua was engaged in a number of skirmishes with Ngāti Pāoa during the 1790s.
- 83 The following sets out some idea of the probable sequence of events in the latter half of the 1700s with only approximate dates, from Tūhaere’s narration.⁷¹ Various details are gleaned from Fenton and Smith.
- 83.1 In 1780, a *tuku whenua* of Tauoma (Panmure) was made by Tomoaure and his wife, Te Tahuri, to a young female relative Kehu who was married to a man from Ngāti Hura, a hapū of Ngāti Pāoa. This was predicted to cause future quarrels.⁷²
- 83.2 On a shark fishing expedition, a quarrel broke out between Ngāti Whātua and Ngāti Pāoa and during the fighting that

⁶⁹ S P Smith *Māori Wars of the Nineteenth Century* (Whitcombe and Tombs, Christchurch, 1910) at 19.

⁷⁰ This map is drawn from the Agreement in Principle between Ngāti Whātua Ōrākei and the Crown dated 18 August 2017 at 69. [**NGA.AG.200.00032**]

⁷¹ Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua*, handwritten version at 11.

⁷² Smith, *Peopling of the North* at 91–92.

followed, a number were killed on both sides, including Tarahawaiiki, son of Tuperiri and father of Te Kawau.⁷³

83.3 In 1792, Ngāti Pāoa with the assistance of Hauraki allies, clashed again with Ngāti Whātua, first at Puponga (northern Manukau), then at Rangimatarau (near Point Chevalier). On both occasions, Ngāti Pāoa and its allies were defeated.⁷⁴ Tomoaure (Tuperiri's eldest son) and his wife Te Tahuri were killed.⁷⁵

83.4 About this time, during this period of friction between the two tribes, Ngāti Whātua surprised a Ngāti Pāoa fishing party at Kauri Point, killed most of the crew and took their waka. Those not killed were taken to Niho-kiore (Te Mata o Kahu / Boat Rock), not far from Kauri Pt and left there to drown.⁷⁶
[NGA.AG.005.00003]

83.5 In 1793 Ngāti Whātua with its Waikato allies attacked Ngāti Pāoa at Maraetai and on Waiheke but the engagements were inconclusive. Ngāti Pāoa pursued Ngāti Whātua to the mainland and fought at Orohe. Ngāti Whātua were victorious (although I note Smith takes a different view and claims Ngāti Pāoa were the victors).⁷⁷

83.6 Ngāti Pāoa retained Taurere (Taylor's Hill, Glen Innes) and built a great pa at Mokoia (Panmure) which became their headquarters about 1818.⁷⁸

83.7 According to Stone, Ngāti Whātua hegemony over Tamaki appeared established and Ngāti Pāoa hapu returned to west

⁷³ Stone, *From Tamaki-Makau-Rau* at 52.

⁷⁴ Stone, *From Tamaki-Makau-Rau* at 52.

⁷⁵ Smith, *Peopling of the North* at 93 says this was after Rangiatarau and described it as being utu for Mahurangi.

⁷⁶ Rose Daamen, Paul Hamer, and Barry Rigby *Rangahaua Whanui District 1: Auckland* (Waitangi Tribunal Working Paper, 1996) at 38-53.
[NGA.AG.005.00003]

⁷⁷ Smith, *Peopling of the North* at at 93.

⁷⁸ Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua*.

Tamaki. Years of watchful peace followed with a shared anxiety of the growing threat of Ngāpuhi.⁷⁹

- 84 Fenton concluded that, “those contests between Ngāti Pāoa and Te Taoū and Ngāoho were fights for revenge simply and purely, and were never contemplated to affect in any way the possession of title to the estate under investigation. At the time of this last fight, part of the Ngāoho and Te Taoū were living at Hikurangi, beyond the Manukau ranges.”⁸⁰ [NGA.AG.200.00025] Tauoma was uninhabited and Tuperiri, with a party, was still at Maungakiekie, One-Tree Hill. Tuperiri died there in 1795.⁸¹
- 85 In about 1800, Ngāti Pāoa assisted by Ngāti Maru tried to take pā in the eastern Kaipara. At a battle at Rangi tei Pu [Rangitapu] at Hoteo many lives were lost but Ngāti Rango of Ngāti Whātua were the victors.⁸² Peace was made but subsequently Ngāti Pāoa laid claim to the east coast from the Waitematā to Mahurangi.⁸³

In general, a peaceful time

- 86 I note that aside from the fighting with Ngāti Pāoa, Ngāti Whātua was largely undisturbed by neighbouring iwi in its central position on the isthmus in the first decades of the 19th century.
- 87 Ngāti Pāoa (mainly Ngāti Hura) were much greater in number and occupied a settled and intensively cultivated district on the Tāmaki river, but there was no attempt to challenge Ngāti Whātua. At this time they avoided conflict, intermarrying and forming alliances with them instead.
- 88 Te Taoū also enjoyed harmonious relations with the Waikato tribes on the southern side of the Manukau such as Ngāti Tamaoho and Ngāti Te Ata, both of whom would come across to the Waitematā to

⁷⁹ Stone, *From Tamaki-Makau-Rau* at 52.

⁸⁰ *Ōrākei Decision* at 67 [NGA.AG.200.00025]

⁸¹ Paul Tūhaere *A Paper Giving an Account of the Genealogy of the Ancestors of Ngāti Whātua*, handwritten version at 11.

⁸² *Hotea Hearing* Kaipara MB 11 (1867) at 120, 124-125.

⁸³ Smith, *Peopling of the North* at 98-99.

fish for sharks. Te Ākitai extending south of Ōtāhuhu towards Papakura were smaller and were militarily tied to Te Taoū.

- 89 Of course Ngāti Whātua and Ngāti Rango in south Kaipara were close kin and as mentioned earlier, peace-making and intermarriage had bound Ngāti Whātua/Ngāti Rango with Kawerau, and other hapū such as Ngāti Poataniwha and Ngāti Kahu. For example, Moerangaranga the grand-daughter of Haumoewarangi and daughter of Rango, married Maki's son Ngawhetu.
- 90 Good tribal relations, an abundance of garden land and minimal pressure on resources, permitted, according to Stone, Ngāti Whātua to be conciliatory and, providing neighbouring tribes acknowledged their mana whenua, they were ready to concede a share of the resources of the land and its adjacent areas.⁸⁴
- 91 Although I will discuss the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act in more depth later in my evidence, I note that this is the state of affairs that we hoped for when we entered into collective negotiations – neighbouring iwi acknowledging whanaungatanga ties, and respecting each other's mana whenua. We hoped everyone would settle their particular grievances with the Crown, they would receive a redress package to assist them going forward in their core areas where they continue to maintain ahi kā, and we would all rotate via the carousel opportunities to pick up commercial properties, acknowledging the wealth of property in the largest city in the country. When I was Deputy Chair of Ngā Maunga Whakahii o Kaipara, the post settlement governance entity for Ngāti Whātua o Kaipara, we supported Ngāti Whātua Ōrākei by joining the Ngāti Whātua rūpu to consolidate the Ngāti Whātua position in the Ngā Mana Whenua o Tāmaki Makaurau Collective Deed of Settlement, acknowledging some shared interests and a shared redress mechanism.
- 92 Unfortunately this has, for the most part, been upset and frustrated by the Hauraki tribes, in particular Marutūāhu, who have insisted on

⁸⁴ Stone, *From Tamaki-Makau-Rau* at 67-68.

equal rights to mana whenua within Tāmaki, with little evidence available for scrutiny.

- 93 Returning to the historical narrative, various battles further north with Ngāpuhi drew Ngāti Whātua in.⁸⁵ In these battles called “Te patu turoro” pā were taken by both sides. Hongi Hika and other Ngāpuhi chiefs were defeated at Moremonui at a battle named Te Kai-a-te-Karoro (feast of the seagulls) or Te Haenga o Te One (the marking of the sand). Ngāpuhi sought vengeance on Ngāti Whātua and the main reason Hongi Hika went to England was to buy muskets.⁸⁶
- 94 Skirmishes with Ngāpuhi continued in the north but Ngāti Whātua were not involved in the years between 1810-1815. Again, Ngāti Whātua’s pre-eminence on the isthmus continued. No challenge of the sort Kiwi-Tāmaki had posed threatened Ngāti Whātua’s occupation. But the Ngāpuhi threat made the Tāmaki isthmus a dangerous place and the people fearful.
- 95 In spite of this, between July and November 1820, Ngāti Whātua hosted Pākehā visitors, Reverend Samuel Marsden, an early missionary and Mr Ewels, a government purveyor, who visited Tāmaki and Kaipara accompanied by Te Kawau, Te Morenga of Ngāpuhi and Te Hinaki of Mokoia pā on the Tāmaki River.⁸⁷ Prominent Ngāti Whātua elders, including the celebrated warriors Murupaenga and Te Tinana the Great, welcomed Marsden with great hospitality. They appeared eager to have European settlers in the district as a safeguard against attacks from Ngāpuhi, who at the time were “plundering and murdering the inhabitants.”⁸⁸ Marsden’s Journals record the tensions of warfare, the impact of firearms on traditional warfare and a snapshot of the people and their

⁸⁵ S P Smith *Māori Wars of the Nineteenth Century* (Whitcombe and Tombs, Christchurch, 1910) at 22, 27, 31, 46-8; Smith, *Peopling of the North* at 44-5.

⁸⁶ S P Smith *Māori Wars of the Nineteenth Century* (Whitcombe and Tombs, Christchurch, 1910) at 142-3.

⁸⁷ J R Elder (ed) *The Letters and Journals of Samuel Marsden: 1765-1838* (Coulls, Somerville, Wilkie, Dunedin, 1932) at 271. Stone, *From Tamaki-Makau-Rau* at 61.

⁸⁸ J R Elder (ed) *The Letters and Journals of Samuel Marsden: 1765-1838* (Coulls, Somerville, Wilkie, Dunedin, 1932) at 272

settlements. Te Kawau told Marsden that the lands around the Waitematā were his and that he would give Marsden as much timber as he wanted; a clear display of his rangatiratanga and Ngāti Whātua Ōrākei's mana whenua.

Ngāpuhi Invasion

- 96 From the 1820s, armed with muskets, Ngāpuhi attacked Tāmaki.⁸⁹ What followed was a period of intense disruption for all groups living in and around the isthmus.
- 97 The following is a timeline of Ngāpuhi invasion:
- 97.1 In March 1821, Ngāpuhi led by Koperu attacked Ngāti Pāoa at Mauinania pa at Panmure; Te Taoū and Te Ākitai helped drive these initial attackers off.⁹⁰ [**NGA.AG.012.00001**], [**NGA.AG.200.00025**]
- 97.2 Hongi Hika returned and attacked Mokoia pā in 1822 and killed a few thousand Ngāti Pāoa using muskets, and although Te Kawau was away in the south on Te Amiowhenua, a few survivors took refuge at Ōrākei.⁹¹ [**NGA.AG.012.00001**] [**NGA.AG.012.00002**]
- 97.3 Ngāpuhi also attacked the Waikato tribes and Ngāti Pāoa, Ngāti Maru and Ngāti Whātua at the huge bloody battle at Matakītaki in 1822 and many Ngāti Whātua people were killed there.
- 97.4 Ngāpuhi continued their invasion and by 1823 the isthmus was laid bare. Many people went into hiding in the Waitakere Ranges. Āpihai Te Kawau and his people lived in a range of places, including the Manukau Heads, Hikurangi, Oneonenui and Kumeu in the Kaipara, and for nearly two years at Te

⁸⁹ James Belich *Making Peoples: A History of New Zealanders* (Allen Lane, Auckland, 1996) at 160.

⁹⁰ *OMB 1* at 221 per Warena Hengia (Agnes Sullivan, *Māori Gardening in Tamaki Before 1840*, refers to this at appendix 7) [**NGA.AG.012.00001**]; *Ōrākei Decision* at 69. [**NGA.AG.200.00025**]

⁹¹ *OMB 1* at 204 per Paora Te Iwi [**NGA.AG.012.00001**]; *OMB 2* at 16-17 per Warena Hengia [**NGA.AG.012.00002**]; S P Smith *Māori Wars of the Nineteenth Century* (Whitcombe and Tombs, Christchurch, 1910) at 208-9

Rehu (near Western Springs), close to fishing grounds and small cultivations at Ōrākei and Horotiu (modern Queen St).⁹²

- 97.5 In 1824, all of Ngāti Whātua assembled at Aotea, and after that Te Taoū and Ngāoho settled at Okahu.⁹³
[NGA.AG.200.00025], **[NGA.AG.012.00001]**,
[NGA.AG.010.00001]
- 97.6 About this time, a party of Te Uringutu were attacked by Ngāpuhi while fishing off Motutapu. Twenty women were taken prisoner. Soon after Ngāoho, Te Taoū and Ngāti Tahinga forces set off for Whangarei where they successfully made a surprise attack on Te Parawhau (Te Tirarau’s hapū) in retaliation. They returned to Kumeu with 40 women prisoners.⁹⁴ **[NGA.AG.200.00025]**
- 97.7 Following the successful attack on Te Parawhau, some 200 people from various sub-tribes of Ngāti Whātua (including Te Taoū, Ngāoho, and Uringutu) settled permanently at Okahu. They lived at Okahu without incident for around a year.⁹⁵
[NGA.AG.200.00025]
- 97.8 The incident with Te Parawhau had heightened Hongi Hika’s anger towards Ngāti Whātua, and sparked the decisive battle of Te Ika-a-Ranginui. Hongi Hika combined forces with Ngāti Manu (Pomare’s hapū) and Te Parawhau, and travelled by waka down the east coast to Mangawhai to attack Ngāti Whātua and Te Uri o Hau at Otamatea.⁹⁶
[NGA.AG.200.00025]

⁹² Stone, *From Tamaki-Makau-Rau* at 99

⁹³ *Ōrākei Decision* at 70-1 **[NGA.AG.200.00025]**; *OMB 2* at 29-30 **[NGA.AG.012.00002]**; See Agnes Sullivan “Māori Gardening in Tamaki Before 1840” (PhD Thesis draft, 1994), and maps using her data showing seasonal movements. There is an excerpt of this text at **[NGA.AG.010.00001]**.

⁹⁴ *Ōrākei Decision* at 71 **[NGA.AG.200.00025]**; S P Smith *Māori Wars of the Nineteenth Century* (Whitcombe and Tombs, Christchurch, 1910) at 311-12 provides a slightly different version of events.

⁹⁵ *Ōrākei Decision* at 71. **[NGA.AG.200.00025]**

⁹⁶ *Ōrākei Decision* at 332-3. **[NGA.AG.200.00025]**

97.9 The battle of Te Ika-a-Ranginui was fought on a branch of the Waimako river, near Kaiwaka, known today as “Waititi”, or the river of blood. The largest contingents came from Te Uri o Hau, Ngāti Rango and Te Roroa. Although Ngāpuhi had around half the number of warriors (500 to the defenders’ 1000), nearly all were armed with firearms. Ngāti Whātua had only two firearms.

97.10 Āpihai set out from Okahu with a taua as soon as he heard news of Ngāpuhi’s advance but met the fugitives from the battle on the way. They went to Waikumete and fled up the Waikato to Pukewhau on the Waipa and then later went to Mahurangi to stay with relatives.⁹⁷ [**NGA.AG.200.00036**]

97.11 Following the battle, the Ngāpuhi raids continued for several months before they returned to the north. Just as earlier in the decade, Ngāti Whātua split into small parties and sought refuge: some to the Waitakere ranges, some to Waikato, some to the east of the Kaipara harbour, some north to Whangarei. Many people of Ngāti Whātua, Te Uri o Hau and Te Roroa were slaughtered while seeking shelter with Te Rauroha of Ngāti Pāoa at his settlement Nohoawatea at Mangapiko (Waikato) – it was here that two key chiefs, Te Tinana the Great and Whanariri died.

97.12 Such was the fear of Ngāpuhi that in 1827-28 Āpihai and most of his followers, including most of Te Taoū and Ngāoho joined Te Uringutu and migrated up the Piako river to Horotiu (near Cambridge) and settled under the protection of Ngāti Pāoa and other Hauraki tribes living there.⁹⁸ Te Kawau established a pā called Te Kopai.⁹⁹

⁹⁷ S P Smith *Māori Wars of the Nineteenth Century* (Whitcombe and Tombs, Christchurch, 1910) at 344-5; George Graham “A Legend of Old Mahurangi” (1918) 27 JPS 86 at 87; Sheffield, *Men came voyaging* at 41; Waitangi Tribunal *Ōrākei Report* at 19. [**NGA.AG.200.00036**]

⁹⁸ Stone, *From Tamaki-Makau-Rau* at 109.

⁹⁹ Stone, *From Tamaki-Makau-Rau* at 110.

- 98 In 1828 Hongi Hika died, and the Ngāpuhi threat diminished. Ngāti Whātua was gradually able to return to the isthmus, something I will discuss in greater detail in a moment. First though, I want to comment on the Ngāpuhi invasions as a whole.
- 99 I understand the Marutūāhu consider that no iwi maintained mana whenua during the Ngāpuhi invasion. I do not consider this to be the case. The historical record suggests Ngāti Whātua in fact maintained ahi kā during the invasions. For example, Āpihai Te Kawau gave evidence during the Ōrākei hearings that even after he had travelled south after the Ngāpuhi invasion “my fires were continually being kindled at Ōrākei & Okahu”.¹⁰⁰
[NGA.AG.012.00001]
- 100 It is important to understand that the Ngāpuhi invasions were not “invasions” in the way the term may be understood by Pākehā New Zealanders today. Although Ngāpuhi attacked the Tāmaki isthmus, they did not settle here. Historian James Belich explains that this is in part because Hongi Hika used the conflict as a way to enhance his mana within his own rohe, not to build a territorial empire in Auckland.¹⁰¹ Hongi Hika had never attempted to occupy Ngāti Whātua territory and thus the mana over the whenua did not change.
- 101 In fact, as the summary I have given shows, Ngāti Whātua returned to Tāmaki when they could; even living at times at Okahu Bay between raids. The Waitangi Tribunal in its *Ōrākei Report* aptly summarises how Ngāti Whātua was affected:¹⁰²
[NGA.AG.200.00036]

*The northern tribes did not hold the lands in Tāmaki.
 Their various raids and conquests were not followed
 by occupation. Ngāti Whātua returned when they*

¹⁰⁰ OMB 1 at 211, per Āpihai Te Kawau [NGA.AG.012.00001]. See also Agnes Sullivan “Māori Gardening in Tamaki Before 1840” (PhD Thesis draft, 1994) and maps using her data showing seasonal movements. There is an excerpt of this text at [NGA.AG.010.00001]

¹⁰¹ James Belich *Making Peoples: A History of New Zealanders* (Allen Lane, Auckland, 1996) at 161.

¹⁰² Waitangi Tribunal *Ōrākei Report* at 19. [NGA.AG.200.00036]

could, or until the next raid. They lit fires on the land maintaining ownership in accordance with the custom of ahi kā. They made a permanent return in 1835.

The Waitangi Tribunal, in its *Waiheke Island Report*, also noted that Ngāpuhi 'sought revenge and glory rather than land' and that Ngāti Pāoa lands were left vacant for them to return to:¹⁰³

[NGA.AG.200.00047]

... some of Ngāti Pāoa returned to their villages skirting the gulf. They did so cautiously at first holding to the southern villages around Kaiaua not too distant from Waikato and often returning only to cultivate land or to fish. ... The return to Waiheke came later when the Ngāpuhi chief, Patuone, married the Ngāti Pāoa chieftainess Riria in a peace arrangement, and settled on Waiheke at Putiki Pa.

Ngāti Whātua Ōrākei returns to the isthmus

- 102 The disruption caused by Ngāpuhi persisted for some years after the death of Hongi Hika. Records from two Anglican missionaries Hamlin and King in 1832 said they, "did not see one inhabitant or cooking fire between Kaipara and Manukau."¹⁰⁴ Fenton noted that, "No tribe was in its own place."¹⁰⁵ **[NGA.AG.200.00025]**
- 103 Between 1834 and 1835, Te Taoū, Ngāoho and Te Uringutu were living at Te Horo in the upper Waikato with Ngāti Tipa and then Ngāti Mahuta. Te Wherowhero had agreed to reinstate the tribes in Tāmaki but a feud broke out between the Waikato and Marutūāhu tribes, known as the Whakatiwai murders. A thousand Ngāti Whātua fought alongside Waikato which caused them to be a target for retribution for Ngāti Pāoa and delayed their return to Tāmaki.¹⁰⁶

¹⁰³ Waitangi Tribunal *Waiheke Island Report: Report of the Waitangi Tribunal on the Waiheke Island Claim* (Wai 10, 1987) at 5–6. **[NGA.AG.200.00047]**

¹⁰⁴ Sheffield, *Men came voyaging* at 41.

¹⁰⁵ *Ōrākei Decision* at 73. **[NGA.AG.200.00025]**

¹⁰⁶ Stone, *From Tamaki-Makau-Rau* at 144–145, 148.

- 104 Finally in 1835, under the protection of Te Wherowhero who settled at Awhitu on the Manukau, the various hapū including Te Taoū, Ngāoho and Ngāti Whātua began returning to their old homes. This process was assisted by a number of reconciliation talks involving the Hauraki and Waikato tribes; one at Puneke at the end of 1835, another at Ngāti Pāoa's headquarters at Whakatiwai assisted by missionaries and Rewa from Ngāpuhi, and yet another held over three days in January 1836 at Ōtāhuhu.¹⁰⁷ The Ōrākei minutes recount how the chiefs Kahukoti of Ngāti Pāoa and Uruamo and Waterangi of Te Taoū had already initiated peace talks amongst themselves along more traditional lines, once at Orere, and later at Okahu. Following speeches, song, gift-giving and hospitality, peace was sealed.
- 105 By 1836 Te Kawau and his chiefs were based at Karangahape and some near the Whau portage, and following the talks Ngāti Whātua felt bold enough to venture out from Karangahape and plant gardens around Māngere.¹⁰⁸ [**NGA.AG.012.00002**]
- 106 By 1837 Āpihai Te Kawau and his people had built two pā at Māngere and Ihumātao on the Manukau Harbour. They were fishing again on the Waitematā harbour, but due to continuing hostility with Ngāpuhi they only did so in large groups.¹⁰⁹ [**NGA.AG.012.00002**]
- 107 By the spring of 1837, Ngāti Whātua began cautiously planting gardens on the Waitematā side. Small 'parties of about ten' cleared and planted at Horotiu and Rangitoto-iti (Remuera). Paora Tūhaere, Āpihai Te Kawau's political successor, remembered of this time: "we were afraid to come here to reside permanently but not afraid to cultivate."¹¹⁰ [**NGA.AG.012.00002**]

¹⁰⁷ Stone, *From Tamaki-Makau-Rau* at 161-64.

¹⁰⁸ Stone, *From Tamaki-Makau-Rau* at 165; *OMB 2* at 113 per Paora Tūhaere, at 295. [**NGA.AG.012.00002**]

¹⁰⁹ *OMB 2* at 117, 293-295 [**NGA.AG.012.00002**]; Stone, *From Tamaki-Makau-Rau* at 174.

¹¹⁰ Stone, *From Tamaki-Makau-Rau* at 174-5, *OMB 2* at 118 per Paora Tūhaere. [**NGA.AG.012.00002**]

- 108 Once re-established Te Kawau invited Te Wherowhero and his people to join them in gardening at Onehunga, an offer that was taken up in about 1838. Te Wherowhero then alternated his residence between Onehunga and Awhitu.¹¹¹
- 109 Further hui were held which facilitated the return to Tāmaki:
- 109.1 An eight day hui was sponsored by the missionaries at Ōtāhuhu in March 1838. Ngāti Pāoa, Ngāti Tamaoho, Ngāti Te Ata, Ngāti Mahuta and Te Taoū attended. Leading chiefs included Herua from Ngāti Pāoa, Te Kawau from Ngāti Whātua at Māngere and Te Wherowhero from Onehunga.¹¹² The peace-making achieved at this hui provided sufficient reassurance for more Te Taoū to join Āpihai Te Kawau at Māngere.¹¹³ [**NGA.AG.012.00002**]
- 109.2 In August/September, another hui was held between Ngāti Mahuta (Pōtatau Te Wherowhero's iwi) and Te Taoū at Ōrākei and Okahu Bay, to discuss coordination both in defence plans and in cultivation.
- 109.3 A final hui was held between Ngāti Mahuta and Te Taoū in October/November. At this hui Te Taoū gifted further lands in modern-day Remuera to Pōtatau Te Wherowhero. It was hoped he would live on both sides of the isthmus and his mana would protect the land.¹¹⁴ [**NGA.AG.012.00002**]
- 110 There was some contact with Europeans as the isthmus returned to normalcy, but it was limited. Several land transactions took place which are worth mentioning. One transaction was with CMS missionary Hamlin for land at Ōtāhuhu, with payment from the

¹¹¹ Stone, *From Tamaki-Makau-Rau* at 175. OMB 2 at 6 per Warena Hengia and at 88 per Paora Tūhaere. [**NGA.AG.012.00002**]

¹¹² Stone, *From Tamaki-Makau-Rau* at 178-9 OMB 2 at 116 [**NGA.AG.012.00002**]; Sheffield, *Men came voyaging* at 41-42.

¹¹³ OMB 2 at 189 per Te Waka Tuaea and at 86 per Paora Tūhaere [**NGA.AG.012.00002**]; Stone, *From Tamaki-Makau-Rau* at 178-9.

¹¹⁴ OMB 2 at 43-44, 47-52 per Matire Toha [**NGA.AG.012.00002**]. Stone, *From Tamaki-Makau-Rau* at 185, 291.

transaction passing to both Ngāti Pāoa and Ngāti Whātua.¹¹⁵

[NGA.AG.019.00030]

- 111 Another transaction was between Āpihai Te Kawau and a Mr Mitchell. It was thought Te Kawau “sold” the Karangahape area to Mr Mitchell in 1836. In fact, Te Kawau understood that he was merely “buying a Pākehā”. Mr Mitchell died later that year and the land was used by Ngāti Whātua after his death.¹¹⁶
- 112 There was also a large transaction, of some 75,000 acres in South Auckland in July 1839, to Mr Fairburn. Ngāti Whātua received a share of the funds paid by Mr Fairburn.
- 113 I note that Stone makes the point that the territory purchased was disputed. It was referred to as ‘Tāmaki’, and there were many rival claimants to it including Ngāti Pāoa, Waikato, Te Ākitai , Ngāi Tai and to some extent Ngāti Whātua. But Tāmaki was in fact the proper name for the isthmus between the Ōtāhuhu and Whau portages. Stone says that the Māori chiefs knew this but as a pretext for reconciliation, so they could give way without losing mana, it suited them: “to maintain the fiction that in negotiating over this block they were actually dealing with Tāmaki-makau-rau, which had been fought over from time immemorial.”¹¹⁷
- 114 It is also recorded that a chapel was built at Ōrākei, the fifth suburban church in the Archdeaconry of Waitematā, from equal contributions from the Anglican Church and Ngāti Whātua. It was dedicated St James, perhaps as early as 1837. Later a school was added and both the church and school were staffed by local Māori under the supervision of a visiting circuit pastor for the people.¹¹⁸
- [NGA.AG.200.00036]** I mention this chapel because it is an example of Ngāti Whātua’s early interest in working together with

¹¹⁵ Ngāti Whātua o Ōrākei Māori Trust Board *WAI 388 Treaty Claim: Tāmaki Makaurau* (Ngāti Whātua o Ōrākei Māori Trust Board, Auckland, 2003) at 6. (**Wai 388 Book**) **[NGA.AG.019.00030]**

¹¹⁶ Stone, *From Tamaki-Makau-Rau* at 159.

¹¹⁷ Stone, *From Tamaki-Makau-Rau* at 165-166.

¹¹⁸ Waitangi Tribunal *Ōrākei Report* at 31. **[NGA.AG.200.00036]**

Pākehā for mutual benefit; a theme which clearly continues over the decades following the signing of the Treaty.

- 115 Cultivation and building continued in earnest from 1838. Permanent gardens were re-established on the Waitematā side of the isthmus. Large houses were constructed near the gardens, and plans were put in place for further seasons of planting.¹¹⁹
[NGA.AG.012.00002]
- 116 By 1839 there were kāinga at Ōrākei, Okahu and Rangitoto-iti. During this year or next, Te Taoū protected its Okahu settlement by building a palisaded pā on the flat land beside the stream, near the harbour. Ihikiera Te Tinana, a half-brother to Āpihai Te Kawau, set up a pā at Rangitoto-iti and settled there permanently. Around both these pā there were extensive cultivations.¹²⁰
[NGA.AG.012.00002]
- 117 The process of resettlement continued through 1839. Early Pākehā settler, Charles Marshall, recalled that on his arrival in Tāmaki in September 1839, although the chief habitations of Ngāti Whātua and Te Taoū were still in Māngere, Āpihai Te Kawau and his people were cultivating at Ōrākei, Okahu, Whakatakataka and Pourewa.¹²¹
[NGA.AG.012.00002]

1840

- 118 By 1840 Āpihai Te Kawau was permanently based at Ōrākei. It was here he began to come into increased contact with European settlers. Te Kawau stated "I left my other places, namely Māngere and Onehunga, to reside permanently here, where I was found by the Europeans."¹²² [NGA.AG.012.00001]

¹¹⁹ Stone, *From Tamaki-Makau-Rau* at 182. OMB 2 at 88 per Paora Tūhaere.
[NGA.AG.012.00002]

¹²⁰ Stone, *From Tamaki-Makau-Rau* at 183, 248; OMB 2 at 55 per Matire Toha
[NGA.AG.012.00002]

¹²¹ Stone, *From Tamaki-Makau-Rau* at 183, 247; OMB 2 at per Warena Hengia.
[NGA.AG.012.00002]

¹²² Stone, *From Tamaki-Makau-Rau* at 184, 248; OMB 1 at 216-7.
[NGA.AG.012.00001]

- 119 Ngāti Whātua were by this time eager to participate in the trade that could come from closer association with the Europeans. In early 1840, Āpihai Te Kawau's cousin, Te Whatarangi (aka Waterangi), called a meeting of all chiefs of Tāmaki, Waitematā, and Kaipara to discuss how to best secure "peace and order and a cessation of war and strife". The lengthy discussions did not yield firm plans, but a matakite (seer) called Titahi (also known as Titai) had prophesied peace would only come to the Waitematā if the newly arrived Pākehā governor came here.¹²³
- 120 Following the hui, Te Kawau's nephew Te Reweti led seven chiefs (mostly Ngāti Whātua o Tāmaki but one or two Waikato) north to persuade Hobson to make Tāmaki the seat of settler government. They arrived in the Bay of Islands around the same time (mid-February) as Captain William Symonds, an official of Governor Hobson. The Tāmaki chiefs as well as Symonds returned to the Waitematā as passengers on the *Herald* along with Captain Symonds, missionary Henry Williams, surveyor Felton Mathew, and Governor Hobson who made an inspection of the area the week of 23-28 February.¹²⁴ [NGA.AG.012.00002]
- 121 Despite Hobson falling ill and returning to the Bay of Islands, he was eager that Symonds procure signatures for the Treaty of Waitangi. Symonds began assembling chiefs at Waikato and collecting their signatures. On 20 March 1840 he met with chiefs from Waikato, the Firth of Thames, and Tauranga. It was at this meeting Ngāti Whātua chiefs Āpihai Te Kawau, Te Tinana and Te Reweti discussed the terms of the Treaty with Symonds and signed the Māori version of the document.¹²⁵ [NGA.AG.012.00002]

¹²³ Stone, *From Tamaki-Makau-Rau* at 185; Puna Rewiti "The Natives and the Governor" *The New Zealand Herald: Supplement to the New Zealand Herald* (Auckland, 23 July 1904) at 1; S P Smith *Māori Wars of the Nineteenth Century* (Whitcombe and Tombs, Christchurch, 1910) at 479.

¹²⁴ Stone, *From Tamaki-Makau-Rau* at 186, 216; Charles Terry *New Zealand: its Advantages and Prospects as a British Colony, with a full account of the Land Claims, Sales of Crown Lands, Aborigines etc* (T & W Boone, London, 1842) at 36; OMB 2 at 119 per Paora Tūhaere [NGA.AG.012.00002]; Stone, *From Tamaki-Makau-Rau* at 218-9.

¹²⁵ Stone, *From Tamaki-Makau-Rau* at 228; OMB 2 at 119 per Paora Tūhaere [NGA.AG.012.00002]

Tuku rangatira to the Crown – Land gifts to the Crown

- 122 During the winter of 1840, Symonds spent most of his time near the Manukau Harbour. Governor Hobson had decided that the new capital would be located at Waitematā. In September, he instructed Symonds to take possession of a portion of Tāmaki land for this purpose.
- 123 A canoe of Ngāti Whātua chiefs, led by Te Reweti, travelled from Ōrākei to begin bargaining with Symonds for a portion of land by the Waitematā Harbour. The negotiations were lengthy; spanning two days. The British Government, in response to misgivings from a principal chief, reassured Ngāti Whātua that Māori and Pākehā would be treated justly in respect of land dealings.¹²⁶
[NGA.AG.001.00001] On 18 September 1840, Ngāti Whātua chiefs signed the provisional 'deed of sale'. The provisional signing was followed by celebrations which involved over 100 Māori and a boat race of two large waka.¹²⁷
- 124 On 20th October Āpihai Te Kawau, Te Tinana and others met at Captain Symonds' house to confirm the final transaction. It was recorded that the chiefs promised "to sell a still larger tract of country when the Governor should finally reside among them". This gift comprised some 3,000 acres of Ngāti Whātua Ōrākei's core rohe, and included land between Hobson Bay (Mataharehare), Cox's Creek (Opou/Opoututeka) and Mt Eden (Maungawhau). It is specifically referred to in the Ngāti Whātua Ōrākei Deed of Settlement, and is the "1840 Transfer Land" referred to in the statement of claim in this proceeding. **[NGA.AG.001.00001]**
- 125 It is important to understand that this land transaction enabled the establishment of the town of Auckland which soon became the main European settlement, the leading commercial port and the seat of government in the colony. Ngāti Whātua and the Crown entered the transaction with a view to a mutually beneficial and enduring relationship.¹²⁸ Ngāti Whātua Ōrākei were desirous of peace, and

¹²⁶ *Deed of Settlement/AHA* at [2.19]. **[NGA.AG.001.00001]**

¹²⁷ Stone, *From Tamaki-Makau-Rau* at 248, 253 and 256.

¹²⁸ *Deed of Settlement/AHA* at [2.23] **[NGA.AG.001.00001]**

they wanted an ally, someone with whom they were equal and interdependent. [NGA.AG.001.00001]

- 126 In general, a “sale” as it is understood in the Pākehā tradition concludes a relationship; once the negotiations are complete, the parties go their separate ways. The opposite is true from a Māori perspective; land is a medium for building and maintaining relationships. The Ōrākei Report adopted Professor Alan Ward’s comments that a better term is ‘Māori hosts’ instead of ‘vendors’.¹²⁹ [NGA.AG.200.00036] That is why the Māori language version of the deed to the 1840 purchase spoke not of “payment” but of “utu”.¹³⁰ [NGA.AG.001.00001] As discussed earlier, “utu” denotes an ongoing element of reciprocity. But the mana that enables such an allocation of land in the first place rests with the donor rangatira on behalf of the tangata whenua. It has nothing to do with European title.
- 127 In my view, it is clear that when the land was offered, alliance building was at the forefront of the minds of the rangatira. Āpihai Te Kawau had sent a delegation to Kororareka to discuss the establishment of the capital in Tāmaki. Ngāti Whātua instigated negotiations with a view to mutual prosperity; that settlers might come to the Waitematā and Ngāti Whātua might benefit from all the many opportunities that would follow.
- 128 To start with, the 1840 land transfer did build a relationship between Ngāti Whātua and the Crown. Around this time mechanics and officials pitched their tents at what became known as Mechanics Bay. Ngāti Whātua visited from Ōrākei offering to put up native whare in exchange for cheap items of trade.¹³¹
- 129 Like officials before him Campbell also arranged for Māori to construct a raupo whare beside his tent in exchange for goods when he arrived 21 December 1840 or thereabouts. In his journal on 30 December Campbell wrote that he had had a korero with some

¹²⁹ Waitangi Tribunal *Ōrākei Report* at 27. [NGA.AG.200.00036]

¹³⁰ *Deed of Settlement/AHA* at [2.21]. [NGA.AG.001.00001]

¹³¹ Stone, *From Tamaki-Makau-Rau* at 259, 262, 272.

Waikato labourers who were helping to assemble the prefabricated Government House.¹³²

- 130 On 13 January 1841 Hobson came to Auckland again and received a deputation from Ngāti Pāoa who, like Ngāti Whātua, wanted to trade. Paora Tūhaere, Ngāti Whātua chief, recalled a practice grew up whereby travellers called in at the Ngāti Whātua settlement to be supplied with food before coming to town with their wares. Bays close to the European settlement became the site of the encampments of these traders from the Kaipara, the Manukau and lower Waikato, and the Firth of Thames and Gulf harbour.¹³³
[NGA.AG.012.00002]

- 131 Ngāti Whātua's successful trade with the settlers drew other iwi to live at Ōrākei. People from Te Arawa, Ngāpuhi, Ngāi Te Rangi, Waikato, Ngāti Pāoa, and others – came and cultivated near Ngāti Whātua, with Ngāti Whātua's consent. Paora Tūhaere explained that other iwi came to Ōrākei and Okahu, "... that they might be near the Europeans."¹³⁴ [NGA.AG.012.00002]

- 132 I want to make it clear that from a tikanga perspective, coming to Ōrākei to cultivate does not bestow the mana whenua held by Ngāti Whātua Ōrākei. Paora Tūhaere told the court in the Ōrākei hearing that those who came had first sought Ngāti Whātua permission; an acknowledgement from the visitors that Ngāti Whātua held mana whenua.¹³⁵ He speaks in the minutes about a visit from Heteraka Takapuna, a Ngāti Pāoa/Ngāti Maru visitor: [NGA.AG.012.00002]

We treated him as a guest not as a stranger. He said nothing to me or any of my people about his having a claim to the land. He put potatoes into the ground and went back to his own place.

¹³² Stone, *From Tamaki-Makau-Rau* at 284-5.

¹³³ Stone, *From Tamaki-Makau-Rau* at 287-289; OMB 2 at 94 per Paora Tūhaere [NGA.AG.012.00002]; Lady Mary Ann Martin *Our Maoris* (Society for Promoting Christian Knowledge, London, 1884) at 6-7.

¹³⁴ OMB 2 at 91, 93-94 per Paora Tūhaere. [NGA.AG.012.00002]

¹³⁵ OMB 2 at 94, 98 per Paora Tūhaere. [NGA.AG.012.00002]

133 On 14 March 1841 Hobson was formally welcomed by Āpihai Te Kawau at Okahu Bay.¹³⁶ The welcome was a significant event; over a thousand Ngāti Whātua were assembled. Āpihai Te Kawau gave a speech in which he made clear he intended to establish a colony of settlers nearby, in line with Titahi's prophecy several years earlier. The Ōrākei Report records he said:¹³⁷ **[NGA.AG.200.00036]**

*"Governor, Governor, welcome, welcome as a father to me! There is my land before you." He waved his hands towards the upper reaches of the harbour.
"Governor, go and pick the best part of the land and place your people, at least our people upon it!"*

134 This speech, and the welcome Ngāti Whātua gave to Hobson, is emblematic of the way Ngāti Whātua has tried to build a partnership with the Crown over the years.

135 The welcome was followed by further land transactions. On 18 June 1841, more than 13,000 acres was transacted. The land spanned Westmere, Point Chevalier, Western Springs, Waterview, Avondale, Mount Albert, Titirangi, Sandringham, Mount Roskill, Three Kings, Balmoral, Kingsland, Mount Eden and Epsom. The Crown on sold the land for almost £20,000; it had given Ngāti Whātua £200, four horses, thirty blankets, ten cloaks, and a desk.¹³⁸
[NGA.AG.019.00030]

136 I affix to this affidavit as appendix "F" maps which shows the extent of land transactions between Ngāti Whātua Ōrākei and the Crown between 1840 and 1841.¹³⁹

137 Other land transfers took place shortly after this:

137.1 In 1841 Uruamo gave to Kati Te Wherowhero, the Ngāti Mahuta chief and brother of Pōtatau, the block known as Pukapuka (Meadowbank) on which he and his wife Matire

¹³⁶ "Historic Landing: Hobson at Ōrākei" *New Zealand Herald* (Auckland, 11 March 1933) at 13.

¹³⁷ Waitangi Tribunal *Ōrākei Report* at 23 **[NGA.AG.200.00036]**

¹³⁸ *WAI 388 Book* at 8. **[NGA.AG.019.00030]**

¹³⁹ These maps are drawn from the *Deed of Settlement/AHA* at 11-14. **[NGA.AG.001.00001]**

Toha settled.¹⁴⁰ [**NGA.AG.012.00001**],
[NGA.AG.012.00002]

137.2 Te Kawau bestowed upon Wetere of Ngāti Maoho, (and also Ngāti Tamaoho and Ngāti Te Ata) a triangular piece of land in Remuera/Epsom in 1842-43 as a result of shared ancestry, recent marriages, and satisfying a debt.¹⁴¹

[NGA.AG.012.00001], **[NGA.AG.200.00025]** This is an example of the way whanaungatanga ties could lead to occupancy of land, as I described above.¹⁴²

138 I mention these land transactions not only because they show Ngāti Whātua was facilitating trade that was drawing interest from groups further south, but also because they are further examples of the way Ngāti Whātua used land to mediate relationships. Ngāti Whātua would have thought of these transfers like a “license to occupy”, or an invitation to share the land. Gifting land was a normal part of the Ngāti Whātua economy. The transactions also show Ngāti Whātua’s mana whenua; Āpihai Te Kawau had the rangatiratanga to gift the land.

139 When Wetere sold the land Te Kawau had given him, a deputation from Ngāti Whātua called on Wetere asking him to desist but he refused. This is clear evidence that, from an Ngāti Whātua perspective, the donor rangatira remains in possession of the land he has allocated to another. Two letters of complaint written by Tūhaere and Te Kawau to Mr Clarke, as chief protector of aborigines, eloquently express their resentment and anger.

This is what I say to you. Our land was taken by Te Wetere. "This taking of our land has no foundation or root. ... A word from our parent since deceased ... He said to them, here reside and cultivate food for yourselves, in order that you

¹⁴⁰ Stone, *From Tamaki-Makau-Rau* at 291-2; *OMB 1* at 33 [**NGA.AG.012.00001**]; *OMB 2* at 36-37 [**NGA.AG.012.00002**]

¹⁴¹ Stone, *From Tamaki-Makau-Rau* at 293; *OMB 1* at 217 [**NGA.AG.012.00001**]; *Ōrākei Decision* at 83 [**NGA.AG.200.00025**]

¹⁴² See [29] above.

may be near the Europeans. ... this is our land as long as we live, when we leave it to our children."

- letter from Paora Tūhaere to Clarke, 10/02/1844¹⁴³

"Listen to what I have to say about Remuera. Wetere has sold it to the Europeans; but I say, I will not let my land go for him. ..."

- Letter from Āpihai Te Kawau¹⁴⁴

140 There was however a limit on what land Ngāti Whātua was willing to transact. Ōrākei itself was not for purchase. Even before the arrival of Hobson, John Logan Campbell had approached Āpihai Te Kawau in 1840 and sought to purchase land at Remuera, sloping down to Ōrākei Bay. He was told in definitive terms that while Ngāti Whātua would transact with land further up the harbour, Ōrākei would not form part of any transaction.¹⁴⁵ [**NGA.AG.200.00036**]

1840s – 1860s: the relationship sours

141 Unfortunately, the Crown's actions over subsequent years meant the alliance Ngāti Whātua sought to build never eventuated.

142 As I have just mentioned, Ngāti Whātua maintained their objection to any sale of land at Ōrākei. Similarly, Ngāti Whātua objected to attempts by Ngāti Pāoa, together with George Clarke (the Chief Protector of Aborigines in the settler government and land purchase agent), to survey land at Kohimarama. Wiremu Reweti would later tell the court during the Fenton hearing that Ngāti Pāoa had committed "theft" by trying to convey land that had been gifted and encroach on land that was occupied by Ngāti Whātua Ōrākei.¹⁴⁶ [**NGA.AG.012.00002**]

143 The Kohimarama block was sold to the Crown in any event in May 1841. In order to clinch the purchase, the government promised

¹⁴³ R Stone *James Dilworth* (Dilworth Trust Board, Auckland, 1996) at 45-6.

¹⁴⁴ R Stone *James Dilworth* (Dilworth Trust Board, Auckland, 1996) at 46.

¹⁴⁵ Waitangi Tribunal *Ōrākei Report* at 22. [**NGA.AG.200.00036**]

¹⁴⁶ *OMB 2* at 245, 271. [**NGA.AG.012.00002**]

Ngāti Pāoa a base close to the new township of Auckland, from which they could trade. The land in question was part of Ōrākei's first tuku rangatira to Hobson. It was a vacant allotment in St George's Bay that had been sold at a Crown auction to a government official and George Clarke granted it to Ngāti Pāoa. A rangatira of Ngāti Hura, Tamati Tangiteruru, testified in the Ōrākei hearing that: "I remember Mr Clarke giving Ngāti Pāoa St George's Bay in payment for lands at Mauinaina and Mokoia."¹⁴⁷

[**NGA.AG.012.00001**]

- 144 Ngāti Whātua Ōrākei's interests were overlooked again in the inept Mahurangi purchase, a huge block of land about 100,000 acres. The Marutūāhu claim to exclusive ownership of Mahurangi was highly questionable. It took the Crown sixteen separate deeds of sale between 1841 and 1873 in its attempt to settle the grievances of the most prominent interested parties, including Ngāti Whātua. Te Hemara Tauhia, a resident of Mahurangi, contended that the Thames tribes had taken advantage of the temporary absence of the rangatira of the tangata whenua, and because they had a right to fish in the district, they thought they could also claim the land.¹⁴⁸
- [**NGA.AG.012.00002**], [**NGA.AG.009.00001**]

- 145 In 1843 Robert FitzRoy succeeded Hobson as Governor of New Zealand. By this time the colonial government was bankrupt; it had no capacity to make further land purchases. FitzRoy decided to waive the right of pre-emption given to the Crown by the Treaty of Waitangi. Settlers could now transact directly with Māori to purchase land – although such transactions required confirmation by way of a Crown grant.
- 146 When waiving the Crown's right of pre-emption, Fitzroy had attempted to put in place some restrictions and regulations to protect Māori. These included conditions one tenth of each land

¹⁴⁷ Stone, *From Tamaki-Makau-Rau* at 189; *OMB 1* at 138, per Tamati Tangiteruru (Ngāti Hura). [**NGA.AG.012.00001**]

¹⁴⁸ Stone, *From Tamaki-Makau-Rau* at 188-89; *OMB 2* at 61-62 per Te Hemara Tauhia [**NGA.AG.012.00002**]; Maurice Alemann "Early Land Transactions in the Ngatiwhatua Tribal Area" (Master of Arts, University of Auckland, 1992) at 64-76 [**NGA.AG.009.00001**]

purchase was to be set aside for the benefit of Māori, restrictions on alienations of pā and urupā, and limits on the area of land which could be sold in each transaction.

147 These protective measures were largely ineffectual. The committee FitzRoy had intended to set up to manage the income from the tenths of land was never established. Some transactions with Ngāti Whātua involved over a thousand acres, well in excess of the “few hundred” acres FitzRoy had stipulated as the maximum amount. Maungakiekie, and the pā and urupā on the land, was purchased.¹⁴⁹ [NGA.AG.001.00001]

148 Overall, Ngāti Whātua participated in approximately 65 transactions following the removal of the right of pre-emption. By and large, these transactions were not appropriately surveyed, meaning there was insufficient records of the acreages actually transacted.¹⁵⁰ [NGA.AG.001.00001] No group was more affected by the pre-emption waiver than Ngāti Whātua. By the time the right of pre-emption was reintroduced in 1846, Ngāti Whātua had lost much of their remaining land.¹⁵¹ [NGA.AG.120.00001]

149 FitzRoy’s successor, Governor George Grey, arrived in Aotearoa in November 1845. Grey reinstated the Crown’s right of pre-emption and, concerned with what he considered was “a reckless spirit of bargaining for lands”, announced in 1846 that transactions entered into during the waiver would be investigated.¹⁵² [NGA.AG.120.00001] He issued the Land Claims Compensation Ordinance 1846, which provided:

149.1 A commissioner would be appointed to ascertain whether transactions had been validly made;

¹⁴⁹ *Deed of Settlement/AHA* at [2.50]-[2.51]. [NGA.AG.001.00001]

¹⁵⁰ *Deed of Settlement/AHA* at [2.48]. [NGA.AG.001.00001]

¹⁵¹ Philippa Wyatt, *Ngāti Whātua o Kaipara ki te Tonga and the Crown 1840-1869*, Wai 312 #F4, at 74. (**Wyatt, Ngāti Whātua o Kaipara**) [NGA.AG.120.00001]

¹⁵² Wyatt, *Ngāti Whātua o Kaipara* at 100-103. [NGA.AG.120.00001]

149.2 FitzRoy's requirement for a tenth of the land to be set aside was removed; and

149.3 Where the Crown considered a purchase had breached the terms of the pre-emption waiver, it did not necessarily revert to the Māori vendor. Instead, even where the Crown doubted the validity of the transaction enough to refuse to grant it to the purchasing settler, the Crown could uphold the extinguishment of native title, and retain the land for itself as "surplus lands".¹⁵³ [**NGA.AG.120.00001**]

150 Henry Matson was appointed as commissioner and began to investigate transactions in 1847. Even though there is no evidence Matson inquired into whether regulations to protect Māori were complied with (for example, the prohibition on transfer of pā and urupā), he nonetheless found over half the transactions he investigated were deficient.¹⁵⁴ Another commissioner, Francis Dillon Bell, similarly investigated a number of Ngāti Whātua transactions on the North Shore and West Auckland. Despite finding transactions were in excess of the maximum limits prescribed by FitzRoy, none of the lands reverted to Ngāti Whātua. At the conclusion of Matson and Bell's inquiries, the Crown had acquired some 15,000 acres of "surplus lands" from transactions involving Ngāti Whātua Ōrākei.¹⁵⁵ [**NGA.AG.001.00001**]

151 In addition to the "surplus lands" acquisitions, the Crown continued to directly transact with Ngāti Whātua. Between 1847 and 1855 the Crown and Ngāti Whātua entered into transactions in Remuera and Mount Smart involving some 1820 acres.¹⁵⁶ [**NGA.AG.001.00001**]

152 Ngāti Whātua protested the affront the "surplus lands" policy posed to their mana whenua. When one transaction between Paora Tūhaere and a settler named McConochy was invalidated following a Crown investigation, Tūhaere refunded McConochy the purchase

¹⁵³ Wyatt, *Ngāti Whātua o Kaipara* at 115. [**NGA.AG.120.00001**]

¹⁵⁴ *Deed of Settlement/AHA* at [2.60]-[2.61]. [**NGA.AG.001.00001**]

¹⁵⁵ *Deed of Settlement/AHA* at [2.64]. [**NGA.AG.001.00001**]

¹⁵⁶ *Deed of Settlement/AHA* at [2.78]. [**NGA.AG.001.00001**]

price, retook possession of the land in question, and had an open letter to the “White People of Auckland” published in the newspapers. In it, he argued the government had no right to interfere in the arrangements he had made with McConochy.¹⁵⁷ Although the translated letter referred to a “sale” to McConochy, it nonetheless made it clear Tūhaere maintained an interest in the land. Again, I consider this is evidence that, just as with the 1840 transfer to the Crown, Ngāti Whātua were using land transactions to facilitate personal relationships with settlers; the bargain involved a relationship between Ngāti Whātua and McConochy, and from Ngāti Whātua’s perspective they had as much right as the governor to determine who should live among them and the Crown had no right to interfere.¹⁵⁸ **[NGA.AG.120.00001]**

- 153 Ngāti Whātua also expressed concerns about the difference between the price offered to Māori by the Crown, and the price the Crown received when it on-sold to settlers. For the Remuera and Mount Smart transactions I have just described, Ngāti Whātua received on average £1 14s per acre. The Crown then on-sold for between £20 and £200 per acre.¹⁵⁹ The profit made by the Crown did not translate to the provision of services to Ngāti Whātua. When speaking about the revenue gained from on-sale of land, Paora Tūhaere said:¹⁶⁰ **[NGA.AG.001.00001]**

The natives do not know what is done with the money. I have heard that it is spread out upon roads, and a part upon schools. The natives are suspicious, and say that this statement is only put forth in order to get the land at a cheap rate from the natives.

- 154 Governor Gore Browne replaced Grey in 1855. He was acutely aware both of the sentiment amongst the settler community that land acquisition should continue apace, and the growing disquiet amongst Māori at the alienation of land, with none of the protections

¹⁵⁷ Wyatt, *Ngāti Whātua o Kaipara* at 129-130. **[NGA.AG.120.00001]**

¹⁵⁸ Wyatt, *Ngāti Whātua o Kaipara* at 138. **[NGA.AG.120.00001]**

¹⁵⁹ *Deed of Settlement/AHA* at [2.78]. **[NGA.AG.001.00001]**

¹⁶⁰ *Deed of Settlement/AHA* at [2.79]. **[NGA.AG.001.00001]**

or benefits promised by their Treaty partner, the Crown.¹⁶¹

[NGA.AG.120.00001]

- 155 Yet despite growing misgivings at the Crown's behaviour, Ngāti Whātua's commitment to the alliance it sought to build with the Crown continued. Ngāti Whātua hosted the Kohimarama Conference of 1860, called by Gore Browne in response to the outbreak of war in Taranaki, and attended by over 200 rangatira. At the Conference Tūhaere affirmed Ngāti Whātua's commitment to its relationship with the Crown. He believed further unity would assist with problems developing between Māori and settlers, advocating for the inclusion of Māori in the settler government.¹⁶²

[NGA.AG.001.00001]

- 156 Gore Browne had attempted to achieve some reciprocity in the Crown's dealings with iwi, introducing a range of legislation which, among other things, was intended to improve Māori access to education and enable greater Māori self-government in Māori districts. However, by this time the seat of government had removed to Wellington and the settler Assembly was loathe to direct funds towards such schemes.¹⁶³ **[NGA.AG.120.00001]** Tūhaere's calls for representation in the settler government similarly went unheeded. Governor Grey, who returned for a second term in 1861, rejected calls to reconvene the Kohimarama Conference in very disparaging terms.¹⁶⁴ **[NGA.AG.001.00001]**

- 157 In addition, tension was growing as a result of the war in Taranaki, and the outbreak of war in the Waikato in 1863. Although Ngāti Whātua did not join the fighting against the Crown, they faced suspicion and harassment as rumours of a Māori attack upon Auckland grew in 1863. Ngāti Whātua were subject to a curfew and

¹⁶¹ Wyatt, *Ngāti Whātua o Kaipara* at 199, 201-202. **[NGA.AG.120.00001]**

¹⁶² *Deed of Settlement/AHA* at [2.84] **[NGA.AG.001.00001]**

¹⁶³ Wyatt, *Ngāti Whātua o Kaipara* at 213-214. **[NGA.AG.120.00001]**

¹⁶⁴ *Deed of Settlement/AHA* at [2.87]. **[NGA.AG.001.00001]**

required to wear a scarlet chevron badge to demonstrate their loyalty to the Crown.¹⁶⁵ [**NGA.AG.001.00001**]

- 158 In short, the 1860s had been marred by settler/Māori tension, persistent loss of land, and a failure of the Crown to honour its obligations as Treaty partner. As early as 1853 Āpihai had asked for more protection from the government and become more determined to hold on to the Ōrākei lands. In a farewell speech to Grey, Te Kawau stated:¹⁶⁶ [**NGA.AG.200.00036**]

Friend, when you arrive on the other side, tell the Queen about the good arrangements you have made in regard to the formation of a township on our land and let this land be reserved for our own use for ever and let us have a Deed for it so that it may be safe.

- 159 In the mid-1860s, Te Kawau, old, tired and disheartened, made an application to the Native Land Court for a Crown title for Ngāti Whātua’s remaining lands at Ōrākei. That application led to Judge Fenton’s *Ōrākei* judgment, an important piece of evidence in showing Ngāti Whātua Ōrākei’s mana whenua in central Tāmaki. [**NGA.AG.200.00025**] I will now explain the case in more detail.

Native Land Court case

- 160 In 1869, Judge F D Fenton of the Native Land Court held a hearing to determine who had proper title to the Ōrākei Block. The Block spanned 700 acres from present day Mission Bay around the coast to the eastern margin of the Ōrākei Basin. Following the “surplus land” acquisitions and the continuing transactions from the Crown, it was by that time the sole remaining Māori owned land in the Auckland Isthmus.
- 161 At the conclusion of the Native Land Court’s investigation into the title of the Ōrākei Block, the Court found in favour of Ngāti Whātua, rejecting other claimants’ (including representatives of Ngāti Pāoa

¹⁶⁵ *Deed of Settlement/AHA* at [2.88]. [**NGA.AG.001.00001**]

¹⁶⁶ Waitangi Tribunal *Ōrākei Report* at 29. [**NGA.AG.200.00036**]

and Ngāti Te Ata) interests. A Crown grant of the land in the names of Āpihai Te Kawau and twelve other trustees followed.

- 162 I understand Marutūāhu do not consider the Fenton judgment is good evidence of Ngāti Whātua’s claim to central Tāmaki, on the basis Fenton did not fully understand the basis on which claims were being advanced, and provides an overly simplified view of the history of the isthmus.
- 163 I disagree with this assessment. The records comprise not just Fenton’s judgment but also minute books recording the evidence given before Fenton.
- 164 Importantly the Native Land Court minute books for the Ōrākei claim, 1868-69, provide an enormous source of ethnographic material, over 500 pages of oral testimony from which it is possible to reconstruct many of the events in which our tupuna were involved from their recall of them first hand.
[NGA.AG.012.00001], [NGA.AG.012.00002] I acknowledge the interpreters, the minute-takers, and the Judge, Fenton, were non-Māori, and the need for us to be circumspect with regard to the Judge’s interpretations and motives. However there is no doubt the minutes record voices from the past and they provide valuable insights into the conceptual thinking of those witnesses, both Māori and Pākehā, of the day which is quite unique for its time.
- 165 The minutes are also valuable for what they do not say. There is very little about Marutūāhu hapū in them. What there is concerns relations between Ngāti Whātua and Ngāti Pāoa, relations which fortunately are more amicable due to mutual enterprise and support, peacemakings, intermarriage and proximity, compared to the other Marutūāhu hapū. There is little evidence of Marutūāhu asserting their interests over this land in the 1860s. Stone (while discussing land further south in the Waikato) suggests that Marutūāhu have a history of occupying lands over which they do not have mana whenua through the apparent permission or acquiescence of the traditional owners, and then laying “highly questionable” claims to desirable lands on the basis of continued

occupation.¹⁶⁷ It is my view that Marutūāhu are taking a similar approach now.

166 Marutūāhu's home territories seem to be entirely south of Auckland – at the Firth of Thames, and the Waihou Valley. For a time they moved inland and resided in the Horotiu (the middle Waikato valley) with relatives. They tried to take possession of land further south, Maungatautari and Matamata, from Ngāti Haua in the 1820s and 1830s.

167 I want to comment briefly on Marutūāhu's warfare with Ngāti Haua. At this time, Ngāti Whātua and other Tāmaki iwi had moved further south and were for a time sheltering with Marutūāhu, as a result of the Ngāpuhi invasions I have discussed earlier.¹⁶⁸ This sheltering was in return for the help given by Te Taoū to Ngāti Pāoa when Ngāpuhi attacked Mokoia and Mauinaina. Together they all shifted to one strategic fortress on the Maungatautari foothills. But the Waikato tribes, Ngāti Haua most of all, decided that these people were intruders who needed to return to their homelands. The one day battle of Taumatawiwi in 1830 led by Te Waharoa of Ngāti Haua caused Marutūāhu to retreat. Āpihai Te Kawau, Te Horeta of Ngāti Whanaunga and Kohirangatira of Ngāti Pāoa rallied those within the pā and pushed Ngāti Haua back.¹⁶⁹ The next day an unexpected peacemaking led to an agreement whereby Te Waharoa granted immunity to everyone to leave and return to their homes. Following Taumatawiwi, Ngāti Pāoa and Āpihai Te Kawau's people headed north together, then Āpihai separated off and rejoined old allies in the Waikato for a few years before returning to the isthmus permanently. It is a shame the Marutūāhu tribes (other than Ngāti Pāoa) now do not recall previously close relationships and times of cooperation.

¹⁶⁷ Stone, *From Tamaki-Makau-Rau* at 110.

¹⁶⁸ See [96]-[101] above.

¹⁶⁹ Stone, *From Tamaki-Makau-Rau* at 116

The aftermath of the Native Lands Case – the Crown purchases Ōrākei

- 168 Ngāti Whātua took a leadership role in the operation of the Māori Parliament through the 1870s and 1880s, holding sessions at Ōrākei under the chairmanship of Paora Tūhaere.¹⁷⁰ The iwi's relationship with the Crown was less savoury. Despite Fenton having conclusively found for Ngāti Whātua Ōrākei in the Ōrākei judgment, the push to exclude Ngāti Whātua from their lands continued almost immediately. [**NGA.AG.200.00036**]
- 169 In 1882, an Act was passed which provided that parts of the Ōrākei block could be leased for periods of up to 42 years.¹⁷¹ [**NGA.AG.200.00036**] The Crown grant to Ngāti Whātua was now no longer "inalienable" as promised.¹⁷² [**NGA.AG.200.00001**]
- 170 In 1886 the Crown took land at Bastion Point for defence purposes.¹⁷³ [**NGA.AG.200.00036**]
- 171 In 1898, the land subject to the Crown grant was partitioned by the Court, and allocated amongst the trustees and their descendants who were deemed to be the beneficial owners.¹⁷⁴ [**NGA.AG.200.00001**] The partition took place despite an application by Renata Uruamo under the Native Equitable Owners Act in 1886 to have the owners recognised as trustees only, rather than as owners; the application was dismissed.¹⁷⁵ [**NGA.AG.200.00036**] The land now belonged to only a select few, rather than all members of the tribe.

¹⁷⁰ Bruce Stirling *Ngāti Whātua and the Crown: 1864–1900* (research report commissioned by the Crown Forestry Rental Trust and Ngāti Whātua o Kaipara Ki Te Tonga Claims Committee, December 1998) at 345 (WAI 312, #F8). Waitangi Tribunal *Ōrākei Report* at 57 [**NGA.AG.200.00036**]

¹⁷¹ Waitangi Tribunal *Ōrākei Report* at 215. [**NGA.AG.200.00036**]

¹⁷² I H Kawharu *Land as Turangawaewae: Ngāti Whātua's Destiny at Ōrākei* (Planning Paper No. 2, New Zealand Planning Council, 1979) at 5. [**NGA.AG.200.00001**]

¹⁷³ Waitangi Tribunal *Ōrākei Report* at 59. [**NGA.AG.200.00036**]

¹⁷⁴ I H Kawharu *Land as Turangawaewae: Ngāti Whātua's Destiny at Ōrākei* (Planning Paper No. 2, New Zealand Planning Council, 1979) at 5. [**NGA.AG.200.00001**]

¹⁷⁵ Waitangi Tribunal *Ōrākei Report* at 61, 216. [**NGA.AG.200.00036**]

- 172 Paora Tūhaere died in 1892.¹⁷⁶ Ngāti Whātua leader Otene Paora took up the struggle to see land held for the benefit of all iwi members. In 1904 he applied to the Native Land Court to repartition the land to include “other descendants of Tuperiri” on the title, but was unsuccessful.¹⁷⁷ He also sought, through Hone Heke, the Member of Parliament for Northern Māori, an investigation into the situation.¹⁷⁸ [**NGA.AG.200.00036**]
- 173 The Stout-Ngata Commission, a commission of inquiry established in 1907 to determine the best uses of the remaining Māori estate, reviewed the Ōrākei situation. They recommended 85 acres comprising the papakāinga and nearby lands be reserved for occupation by Ngāti Whātua.¹⁷⁹ [**NGA.AG.200.00036**] The Commission also determined the decision to grant land to individuals as beneficial owners rather than trustees was “illegal and void”.¹⁸⁰ [**NGA.AG.200.00001**]
- 174 The 1909 Native Land Act gave owners an increased freedom to sell. The descendants of the trustees sold to the Crown, who was eagerly purchasing land, in 1913. By 1918, and despite a number of petitions to the government by Otene Paora and others, the bulk of the land vested in Ngāti Whātua following the Ōrākei decision was back in the hands of the Crown.¹⁸¹ [**NGA.AG.200.00001**], [**NGA.AG.200.00036**]

The 20th Century – further alienation by the Crown

- 175 By the 1920s, the majority of Ngāti Whātua people had left the village. This was particularly so after the flooding of the papakāinga

¹⁷⁶ “Death of Paul Tūhaere: a Notable Māori Chief” *Auckland Star* (Auckland, 14 March 1892) at 3; “The Late Paul Tūhaere: a Māori Tangi” *Auckland Star* (Auckland, 15 March 1892) at 5 and note attendees.

¹⁷⁷ Waitangi Tribunal *Ōrākei Report* at 71. [**NGA.AG.200.00036**]

¹⁷⁸ Waitangi Tribunal *Ōrākei Report* at 79. [**NGA.AG.200.00036**]

¹⁷⁹ Waitangi Tribunal *Ōrākei Report* at 79, 218. [**NGA.AG.200.00036**]

¹⁸⁰ I H Kawharu *Land as Turangawaewae: Ngāti Whātua’s Destiny at Ōrākei* (Planning Paper No. 2, New Zealand Planning Council, 1979) at 5. [**NGA.AG.200.00001**]

¹⁸¹ I H Kawharu *Land as Turangawaewae: Ngāti Whātua’s Destiny at Ōrākei* (Planning Paper No. 2, New Zealand Planning Council, 1979) at 5 [**NGA.AG.200.00001**]; Waitangi Tribunal *Ōrākei Report* at 96-97. [**NGA.AG.200.00036**]

worsened in 1921, after construction of a raised roadway over a sewerage pipe that had been built across Okahu Bay a decade earlier.¹⁸² The building of the sewer pipe and treatment plant at Okahu Bay is a phenomenal display of the Crown's attitude towards Ngāti Whātua Ōrākei and the steps it would take to force Ngāti Whātua from the papakāinga. Notably, only Ngāti Whātua, not the other iwi who now claim mana whenua in the area, protested.

[**NGA.AG.200.00036**]

- 176 Nonetheless, some Ngāti Whātua continued to live at the papakāinga. The difficulties of the decades which followed demonstrate both the government's eagerness to acquire the last vestiges of Māori land interests, and Ngāti Whātua Ōrākei's commitment to retaining what land it could.
- 177 For instance, Āpihai Te Kawau had confirmed the gift of land for the chapel, a burial ground and the school at Ōrākei by conveying four acres of land to the Crown to be entrusted to the Church in 1858. It was no longer being used by the Church and, although the legal title did not change, in accordance with Ngāti Whātua tikanga, Ngāti Whātua considered the land had been returned. The land still belonged to the people. A number of Ngāti Whātua families lived there. In 1926 that land was sold by the Church to the Crown, the money was applied to various schools trust boards and the occupants were forced to vacate.¹⁸³ [**NGA.AG.200.00036**]
- 178 Several years later, in 1929, Ngāti Whātua Ōrākei took a case to the Supreme Court seeking consolidation of the limited lands which remained in Ngāti Whātua hands into one 12 acre block. The case was unsuccessful.¹⁸⁴ [**NGA.AG.200.00036**]
- 179 A Māori Land Court inquiry led by Judge Acheson in 1930 sought to investigate the transfers of land, and form a view as to whether the papakāinga should have been reserved as a home for Māori. The Judge concluded the Ōrākei block should have been a tribal reserve

¹⁸² Waitangi Tribunal *Ōrākei Report* at 89, 104. [**NGA.AG.200.00036**]

¹⁸³ Waitangi Tribunal *Ōrākei Report* at 105-106. [**NGA.AG.200.00036**]

¹⁸⁴ Waitangi Tribunal *Ōrākei Report* at 104. [**NGA.AG.200.00036**]

protected from sales. However, the Crown refused to produce records and withdrew from the inquiry, on the grounds the Court had stepped outside its terms of reference. The government did not take action nor make the Acheson report public for many years.¹⁸⁵

[**NGA.AG.200.00036**]

180 Instead, the Kennedy Commission in 1938-1939 produced a report endorsing the Crown's actions and justifying its eviction programme for remaining occupants of the papakāinga. The Commission, although acknowledging errors in process (and recommending additional money to be paid), concluded the Crown had lawfully gained title to the papakāinga land, that those who remained had no legal basis for doing so, and that the papakāinga, still suffering from flooding and sanitation issues, was unfit for habitation. The Commission further confirmed the purchase of the Church site the Crown made in 1926 was lawfully made.¹⁸⁶ Eviction notices were served following the Commission's inquiry. [**NGA.AG.200.00036**]

181 In 1940, Michael Joseph Savage, who had been supportive of Ngāti Whātua, in part due to his party's alliance with Ratana, died. He was interred at Bastion Point, and in 1941 a memorial to him was built at the Ōrākei Domain.¹⁸⁷ In 1941, land which had been taken for defence purposes at Bastion Point was handed to the Auckland City Council to administer as a reserve.¹⁸⁸ [**NGA.AG.200.00036**]

182 The fight to retain the papakāinga continued through the 1940s. With the assistance of Princess Te Puea of the Waikato, and the unionist supporters, a 300 ft palisade was constructed around the pā at Ōrākei. The new Prime Minister, Fraser, warned Te Puea protecting the pā may result in her imprisonment. He announced to Parliament a plan that would relocate the occupants of the papakāinga, which was rejected by Ngāti Whātua and Te Puea. A

¹⁸⁵ Waitangi Tribunal *Ōrākei Report* at 91-92, 110-111. [**NGA.AG.200.00036**]

¹⁸⁶ Waitangi Tribunal *Ōrākei Report* at 116-119. [**NGA.AG.200.00036**]

¹⁸⁷ Waitangi Tribunal *Ōrākei Report* at 113, 121. [**NGA.AG.200.00036**]

¹⁸⁸ Waitangi Tribunal *Ōrākei Report* at 223. [**NGA.AG.200.00036**]

meeting was held at Ōrākei in 1946 to try and resolve the differences.¹⁸⁹ [NGA.AG.200.00036]

- 183 Throughout this time, Ngāti Whātua Ōrākei made some gains through the Courts. They applied to the Māori Land Court for decisions on the ownership of land taken for roading and on which no roading had been formed; for the foreshore, and to make the remaining land inalienable reserve. The Court appeared sympathetic. Acheson awarded them an accretion at Okahu Bay on the basis that it had accrued before the sale.¹⁹⁰
[NGA.AG.200.00036]
- 184 However, in 1950, following the election of a new government, the Crown used the Public Works Act to take the remaining 2.5 acres around the marae, where about 120 people were living in cramped conditions, without sewerage or adequate water supply, and the 10 acre exchange block on the Bastion Pt ridge – thus Ngāti Whātua Ōrākei was landless.¹⁹¹ [NGA.AG.200.00036]
- 185 As relocation proceeded in 1951, demolition went ahead. The meeting house, Te Puru o Tāmaki, was torched.¹⁹²
[NGA.AG.200.00036]
- 186 By July 1952 the papakāinga had been cleared. Some of Ngāti Whātua Ōrākei were relocated to Kitemoana St or 'Boot Hill'.¹⁹³
[NGA.AG.200.00036]
- 187 Te Paea petitioned Parliament seeking three acres on the flat in exchange for the 10 acres taken on the hillside, hoping to build a model pā there. She said Māori would build the house, but asked the State and the Council share with them the cost of drainage. In return she proposed marae trustees comprising representatives of

¹⁸⁹ Waitangi Tribunal *Ōrākei Report* at 121, citing Michael King *Te Paea : A Biography* (Hodder & Stoughton, Auckland, 1977) [NGA.AG.200.00036]

¹⁹⁰ Waitangi Tribunal *Ōrākei Report* at 120 citing PM Barnett "The Orakei Block" (unpublished research essay, University of Auckland, 1976).
[NGA.AG.200.00036]

¹⁹¹ Waitangi Tribunal *Ōrākei Report* at 97. [NGA.AG.200.00036]

¹⁹² Waitangi Tribunal *Ōrākei Report* at 124. [NGA.AG.200.00036]

¹⁹³ Waitangi Tribunal *Ōrākei Report* at 124. [NGA.AG.200.00036]

the State, Council and Māori people. The Crown offered a new site for a marae at Bastion Point. The Ngāti Whātua people refused it. The sanctity of the old site made it irreplaceable.¹⁹⁴

[NGA.AG.200.00036]

A new marae for Auckland?

- 188 However, plans for a new marae, not at the old site, continued. In August 1954, the Minister of Lands, the Hon EB Corbett set apart one acre 19.3 perches as a 'reserve for the use or benefit of Māoris' under the Land Act 1948.¹⁹⁵ In 1955, the Minister applied to the Māori Land Court to vest that land in trustees under s 437(4) of the Māori Affairs Act. At a hearing of the Māori Land Court, the Court heard that although the people of Ōrākei had resented the initial proposals for a "multicultural marae for Auckland", they had since agreed to other Māori joining the trusteeship.¹⁹⁶ Accordingly, in April 1959, the Court vested the land in an ad hoc agglomeration of trustees who formed the Ōrākei Marae Trust Board. It comprised four Māori members of Parliament, four from the Auckland District Māori Council, four from various Pākehā organisations such as the Auckland Rotary Club, Okahu Bay Progressive Association, Department of Māori Affairs and Auckland Council. There were only four members from Ngāti Whātua and no Kaumātua.¹⁹⁷

[NGA.AG.200.00001], [NGA.AG.200.00036]

- 189 My father wrote, "Beyond the implications of silence the only expressed criticism from Ōrākei on the subject of a marae focused on the vexed question of the ratio of tangata whenua to non-tangata whenua among the trustees. ... It was not that a marae could *not* be multicultural ... what defies definition is multicultural

¹⁹⁴ Waitangi Tribunal *Ōrākei Report* at 236. **[NGA.AG.200.00036]**

¹⁹⁵ I H Kawharu "Mana and the Crown: a marae at Orakei" in *Waitangi: Maori & Pakeha Perspectives of the Treaty of Waitangi* (Oxford University Press, Auckland, 1989) at 225, footnote 38

¹⁹⁶ Waitangi Tribunal *Ōrākei Report* at 225, 236-237. **[NGA.AG.200.00036]**

¹⁹⁷ See I H Kawharu *Land as Turangawaewae: Ngāti Whātua's Destiny at Ōrākei* (Planning Paper No. 2, New Zealand Planning Council, 1979) at 9 **[NGA.AG.200.00001]**. See also Waitangi Tribunal *Ōrākei Report* at 136 & 237. **[NGA.AG.200.00036]**

mana over a marae within the precincts of a tangata whenua community.”¹⁹⁸

- 190 Our people held their silence, not wishing to jeopardise any possibility of their former marae in Okahu Bay being returned to them. They were vexed that they should find themselves outnumbered on a decision-making board in regards to a meeting house, which by rights sits at the core of tribal identity. Yet as tangata whenua they were equally mindful of their obligations to manaaki tangata, including those enthusiastic civic-minded Pākehā, the immigrant Māori population to Auckland of some 20,000-30,000 in the late 1950s, Māori welfare officers, university lecturers and government officials. The initial trustees, full of goodwill but oblivious to their ignorance of tikanga Māori, launched a major building programme and trampled all over the very people they were trying to be charitable towards. The theme was ‘come together’; it had widespread backing from the city, pledges were given, contracts let and towards the end of 1973, the meeting house was begun.¹⁹⁹
- 191 Reverend Māori Marsden explained that the people of Ōrākei, as a consequence of being forced to shift up on to what became known as ‘Boot Hill’, “became displaced persons, without a country or land, a people without mana, a people who had lost their identity and their mauri (their life-force)... To accept the marae at that stage would have been a mockery of their Māoritanga, the final humiliation to the remaining shreds of their pride.”²⁰⁰
- 192 In 1974 the new marae was constructed, and the meeting house was named Tumutumuwhenua.

¹⁹⁸ I H Kawharu “Mana and the Crown: a marae at Orakei” in *Waitangi: Maori & Pakeha Perspectives of the Treaty of Waitangi* (Oxford University Press, Auckland, 1989) at 226.

¹⁹⁹ I H Kawharu “Mana and the Crown: a marae at Orakei” in *Waitangi: Maori & Pakeha Perspectives of the Treaty of Waitangi* (Oxford University Press, Auckland, 1989) at 226-7.

²⁰⁰ Māori Marsden recorded at the Waitangi Tribunal Hearing at Ōrākei 25 August 1985 on He Rerenga Korero, (Sound Archives MPT HRK 930707) with H Williams

Bastion Point – protests and aftermath

- 193 In September 1976, the Minister of Lands released plans for the use of 60 acres for public reserves and housing. The Ōrākei Māori Committee (later Action Group), under the leadership of JP Hawke and J Rameka, occupied the land at Bastion Point designated for development, in protest of the government's plans.²⁰¹ Protracted negotiations were undertaken between the former owners and beneficiaries in the Ōrākei Block led by Kaumātua Piriniha Reweti, and the Action Group, and with the Commissioner of Crown Lands and the government. 506 days later, the Bastion Point protesters were evicted on 25 May 1978 for trespassing on their own ancestral land. [**NGA.AG.200.00036**]
- 194 I note that the protest at Bastion Point was the culmination of over one hundred years of continual representations made through proper channels. In fact our people had taken eight actions to the Māori Land Court, four to the Supreme Court, two to the Court of Appeal, two in the Compensation Court, made six appearances before various commissions of inquiry, and fifteen petitions to Parliament seeking the restoration of tribal ownership of their land. All had failed.
- 195 In October 1978, the Ōrākei Block (Vesting and Use) Act established a trust with 25 acres held in one title, devoid of shares, inalienable and protected by statute. To determine beneficiaries of the trust, Tuperiri was named as the founding ancestor. The land included 30 former state rental houses and units.
- 196 The passing into law of this Ōrākei Block (Vesting and Use) Act not only gave the hapū title to its former rental housing estate but also restored in substantial measure the hapū's claim to the status of tangata whenua. It established a seven member Trust Board which included four Kaumātua.
- 197 The real advance in 1978 was that the land had been made freehold land, and by special Act was made inalienable. The land could be held communally, vested in a tribally elected board, 'to hold,

²⁰¹ Waitangi Tribunal *Ōrākei Report* at 148. [**NGA.AG.200.00036**]

conserve and administer as a perpetual estate and turangawaewae for its beneficiaries'.²⁰² Ōrākei was at that time the only tribe in New Zealand to own all that it had in the customary way.²⁰³ This was a return to the trustee-not-owner stance in line with the customary tribal principle, long fought for by Āpihai Te Kawau, Paora Tūhaere, Renata Uruamo and Otene Paora on behalf of Te Taoū, Ngāoho and Te Uringutu for the remnants of the Ōrākei Block. **[NGA.AG.200.00036]**

- 198 In 1983, Ngāti Whātua Ōrākei had a number of hui to discuss a predicament they could no longer tolerate: the marae and Tumutumuhenua. The first was with their Ngāti Whātua kin at a general meeting at Arapaoa. The Kaipara sector carried the *take* back to Ōrākei for a second meeting with Ngāti Whātua as a whole on 7 October. Then an invitation to "all Māoris" to gather at Ōrākei and discuss the issue was sent to each of the Auckland marae, the Māori members of Parliament, the New Zealand Māori Council and Department of Māori Affairs. Nearly all of the several Auckland marae were represented. Those that were not, Tirahou, Freeman's Bay and Waititi, sent letters supporting Ngāti Whātua control, the latter listing 30 Māori organisations that also supported that view.
- 199 In the three meetings there was no dissent – Māori had unanimously resolved that the mana of the marae, the right to its control, belonged to the tangata whenua, Ngāti Whātua. That was how Māori people settled the matter. Tradition had at last followed the children to the cities. With the recognition from other groups that Ngāti Whātua should control the marae, the symbolism in Auckland's Māori name, Tāmaki Makaurau took new meaning – Tāmaki where all may belong, not despite, but because of Ngāti Whātua.²⁰⁴ **[NGA.AG.200.00036]** I note that Marutūāhu was not present in any of the discussions amongst Māori resident in Tāmaki

²⁰² Orakei Act 1978, s 7.

²⁰³ Waitangi Tribunal *Ōrākei Report*. **[NGA.AG.200.00036]**

²⁰⁴ I H Kawharu "Mana and the Crown: a marae at Orakei" in *Waitangi: Maori & Pakeha Perspectives of the Treaty of Waitangi* (Oxford University Press, Auckland, 1989) at 227ff. See also Ōrākei Report 1987, 173. **[NGA.AG.200.00036]**

at this time, nor did they contest Ngāti Whātua Ōrākei's status as tangata whenua.

- 200 Ngāti Whātua of Ōrākei invited all bona fide Māori groups in Auckland to a meeting in Tumutumuwhenua on 8 October 1983. It was attended by the Minister of Māori Affairs the Hon Ben Couch and some 80 representatives of tribal and other organisations, including the Auckland District, the New Zealand Māori Council, nationally prominent elders and spokesmen, such as Sir James Henare, the MP for Northern Māori, Dr Bruce Gregory, key Kaipara elders - Ned Nathan, James Pene, Māori Marsden - and Sir Graham Latimer, who had been earlier chosen to represent Kaipara and join forces with the tangata whenua.
- 201 They agreed that Ngāti Whātua would accept Tumutumuwhenua providing the title of the land went with it. The Minister assured the hui he would see to it that procedures to achieve that were put in motion. Unfortunately, he failed to act on his promise. There was a snap election, the Government fell, and Labour took office. The Hon Koro Wetere, the new Minister for Māori Affairs, appeared sympathetic but wanted to consult all interested parties himself.²⁰⁵

The Ōrākei Report and redress

- 202 In February 1984 the Wai 9 Ōrākei claim was lodged by Joseph Hawke and twelve others. In 1985, the Waitangi Tribunal held two hearings at Ōrākei. Then in April 1986 a new claim was filed under the amended Treaty of Waitangi Act and more hearings were held later that year.
- 203 The Tribunal recommended the marae be vested in Ngāti Whātua o Ōrākei Māori Trust Board, a recommendation which was accepted in 1988.²⁰⁶ Ministers K Wetere, R Prebble and B Gregory issued a joint press statement:

²⁰⁵ I H Kawharu "Mana and the Crown: a marae at Orakei" in *Waitangi: Maori & Pakeha Perspectives of the Treaty of Waitangi* (Oxford University Press, Auckland, 1989) at 230.

²⁰⁶ I H Kawharu "Mana and the Crown: a marae at Orakei" in *Waitangi: Maori & Pakeha Perspectives of the Treaty of Waitangi* (Oxford University Press, Auckland, 1989) at 231, footnote 45.

The Key to the restoration of tribal mana to Ngāti Whātua of Ōrākei is the marae, so it is very pleasing to confirm the vesting of the Ōrākei Marae, church, urupa and access strip in the Ngāti Whātua of Ōrākei Trust Board [sic].

The marae will now be a place where Ngāti Whātua of Ōrākei have standing as of right once again. For though the marae was part of Ngāti Whātua ancestral lands they have had no control over it.

- 204 I would like to make a few points at this juncture because the backstory to our marae, in my view, illustrates the very essence of why we are here today.
- 205 Throughout Ngāti Whātua Ōrākei's history, the Crown has taken unsolicited and aggressive initiatives at various times which have forced the community to accept and redefine itself, its origins and its place in the wider Māori world. The Crown's decision in the early 1960s to build a marae for the city on land taken away from the tangata whenua, coupled with the expectation that Ngāti Whātua Ōrākei would play the role of tangata whenua on other people's terms, defies definition in Māori thinking. You cannot have multicultural mana. The Crown has expected Ngāti Whātua Ōrākei to conform to whatever proposal has been put forward with little consideration of tikanga Māori.
- 206 Again, in spite of all the negotiations, Tribunal hearings, historical claims and accompanying evidence in the intervening years, the Crown imposed yet another definition on us in 2007, when they proposed Nga Mana Whenua o Tāmaki Makaurau – the Tāmaki Collective Deed of Settlement. As the name suggests it envisages a sort of multi tribal mana whenua across a vast regional district from the upper Waitematā to the upper Waikato. It too defies definition in Māori terms. There cannot be multitribal mana over whenua within the precincts of tangata whenua. There cannot be more than one tangata whenua with mana i te whenua. It is not logical. The collective approach was supposed to be confined to recognising some shared interests and apportioning some redress from land in

Crown title fairly as part of individual iwi/hapū settlements where they have a well-founded evidence-based Treaty claim.

Unfortunately, in my view, it has made a mockery of everything Māori and been the cause of deep humiliation again for Ōrākei.

- 207 This is particularly so given our entry into Ngā Mana Whenua o Tāmaki Makaurau Collective Deed of Settlement has been perceived by some as an abandonment of our mana whenua. By entering into the Deed of Settlement we did not abandon our mana whenua. Rather, faced with the proposal, Ngāti Whatua *exercised* our mana whenua by choosing to participate – showing whanaungatanga with the other participants in the same way we did when they came to stay on our lands in the nineteenth century.
- 208 To return to the chronology – the Ōrākei Act 1991 included not only vesting of the marae and the meeting house, but also title to Takaparawhau and Okahu parks (some 50 hectare), preferential access to state rental housing elsewhere on their former estate, and a 2 hectare block for commercial development on Takaparawhau, plus a \$3m endowment and a consultant on a four year contract to help draw up a strategic plan for all operational activities.²⁰⁷ It was, at last, unequivocal recognition of Ngāti Whātua Ōrākei's rangatiratanga.
- 209 Once the land once known as Bastion Point was returned by the Crown, the first post settlement co-governance mechanism, the Ōrākei Reserves Board came into being, comprising three members from Auckland City Council and three members from Ngāti Whātua Ōrākei. Ngāti Whātua Ōrākei employed the term 'whenua rangatira' to denote land peacefully occupied, land in a state of peace. This is in contrast to the term 'whenua mahue', at the other end of the spectrum, meaning land deserted.²⁰⁸ The Whenua Rangatira is in Ngāti Whātua Ōrākei tribal ownership and is a reserve co-managed with Auckland Council for the benefit of the hapū and the people of Auckland. [**NGA.AG.006.00001**]

²⁰⁷ I H Kawharu, "Orakei", *Waitangi Revisited* at 152.

²⁰⁸ I H Kawharu "Dimensions of Rangatiratanga" at 50. [**NGA.AG.006.00001**]

- 210 In 1992, the Crown returned to the Ōrākei hapū 3.5 hectare of land lying adjacent to Unitec in recognition of the hapū's gift of 3240 acres to the Crown in 1841.²⁰⁹
- 211 Between 1992 and 1996, negotiations were held with the Crown to purchase the railway station and 20 hectare of surrounding land, rather than pursue a Treaty claim over the reclamation of the former harbour bed. The Trust Board raised the purchase price of the land by on-selling the leasehold to development partners and bought the site.²¹⁰
- 212 In August 1993, the Ngāti Whātua o Ōrākei Trust Board, represented by Joe Hawke, Hugh Kawharu and four others, lodged Wai 388 before the Waitangi Tribunal. The claim charged the Crown with eight breaches involving the land transactions between 1840 and 1854; "whereby the Crown transformed the Treaty partnership between our tupuna and the Crown into a mechanism to provide revenue to the Colonial Government by resales of land to settlers without due regard to the continuing mana whenua rights of our hapū."²¹¹

Ngāti Whātua's mana whenua yesterday and today

- 213 The defendants in this proceeding dispute that Ngāti Whātua Ōrākei hold mana whenua in central Auckland. To the contrary, the role that Ngāti Whātua Ōrākei has played in the Tāmaki isthmus makes clear our status as tangata whenua. It is telling that our claim to lands is disputed, while our acts of rangatiratanga and manaakitanga go unchallenged.
- 214 One particular example that stands out to me is on the occasion of the 125th anniversary of the founding of Auckland in September 1965. It was held beside Governor Hobson's grave in Grafton cemetery. I was present at this event.

²⁰⁹ I H Kawharu, "Orakei", *Waitangi Revisited* at 161, 163.

²¹⁰ I H Kawharu, "Orakei", *Waitangi Revisited* at 159.

²¹¹ G Wong "Utu" (Metro magazine, February 1993) at 30-41.

215 The hapū party of 12 was led by its three elders and supported by three representatives from Waikato and Ngāpuhi. The main Pākehā personnel included the Mayor of Auckland, heads of the armed services, representatives of patriotic societies and many Auckland schools. The senior tangata whenua speaker, Timi Te Hikoi Paora, was one of only three speakers. This speaking privilege was accorded to the tangata whenua by Māori and Pākehā alike in recognition of their former propriety rights in Auckland, which was emphasised in the addresses given by the Mayor and the Commodore Auckland.²¹² The mayor used the occasion to speculate on what Hobson's reactions might have been to the city's development. The Commodore referred to the Treaty of Waitangi.²¹³ Timi Paora challenged the Mayor to honour the Treaty's pledge of partnership insofar as it concerned the city and the Ngāti Whātua of Ōrākei.²¹⁴ [NGA.AG.006.00001] A photo of this event is below:



216 The event is significant for a number of reasons. It gave recognition to the relationship Ngāti Whātua Ōrākei had with the Crown's representative, William Hobson, and the enduring relationship between them created by the allocation of land blocks for settlement and provisioning the new town and its people, ironically at a time

²¹² I H Kawharu *Ōrākei* at 19.

²¹³ I H Kawharu "Dimensions of Rangatiratanga" at 101, footnote 62. [NGA.AG.006.00001]

²¹⁴ I H Kawharu "Dimensions of Rangatiratanga" at 97. [NGA.AG.006.00001]

when Ngāti Whātua Ōrākei were all but landless. It made certain demands on the Ōrākei community due to their historic pre-European ties to Auckland and the Tāmaki isthmus. It showed in what ways they as the tangata whenua were able to justify their belief that they had a contribution to make to civic life in general, as well as to Māori life in particular, and how they could do this without abrogating the rights and duties of others.²¹⁵ And it undoubtedly secured Ngāti Whātua Ōrākei's place in the calendar of civic formalities thereafter. All subsequent mayors have continued to this day to establish warm personal relations with the hapū, taking with them from time to time fellow councillors and council staff.²¹⁶

[NGA.AG.006.00001]

217 We have continued to make these contributions since. Ngāti Whātua's continuing mana whenua over Tāmaki Makaurau is evident from the role we play in the city today. A few examples include:

217.1 When Tuhoe sought to set up a marae in Tāmaki for their people who had migrated northwards in the 1970s, they sought permission from Ngāti Whātua as tangata whenua. Today, Māoridom has recognised that Ōrākei takes precedence, at least in central Auckland, as the marae of the tangata whenua.

217.2 In 1990, Ngāti Whātua led the welcome at the opening of the Commonwealth Games at Mount Smart Stadium. We assisted in the opening of the Commonwealth Law Conference. As part of the 150th anniversary commemorations of the signing of the Treaty of Waitangi we put a newly constructed waka taua named Māhuhu ki te Rangi with a crew of well over 120 kaihoe (paddlers) on the Waitematā and at Waitangi.²¹⁷

217.3 In 1996, Ngāti Whātua proposed a five-member committee (three representatives for Ngāti Whātua to recognise our mana whenua over the museum site, and one representative

²¹⁵ I H Kawharu *Ōrākei* at 18.

²¹⁶ I H Kawharu "Dimensions of Rangatiratanga" at 97. **[NGA.AG.006.00001]**

²¹⁷ I H Kawharu, "Orakei", *Waitangi Revisited* at 163.

from each of Tainui and Ngāti Pāoa to recognise their pre-Treaty historic relations) to give advice to the governing trust board of the Auckland Museum on matters of Māori protocol.²¹⁸ The proposal was accepted and the committee is still known as the Taumata-a-Iwi, chaired by a member of Ngāti Whātua Ōrākei.²¹⁹

217.4 The three iwi similarly are involved in the management of Hamlin’s Hill as a park for public enjoyment. It is an 80 hectare block of land in Crown title which lies in a shared zone of interest for all three tribal groups.²²⁰

[NGA.AG.009.00001]

217.5 In 1996, Te Runanga o Ngāti Whātua entered into an agreement with the Crown to co-purchase and monitor health care services for all Māori people (at the time approximately 76,000), resident within the tribal district. It was an innovative Treaty-driven scheme shared with Tainui and Tai Tokerau tribes known as MAPO (Māori Co-purchasing Organisation). The Ngāti Whātua MAPO was called Tihi Ora (more properly Te Tihinga o Ngāti Whātua). Contracts were entered into with Ngāti Whātua o Ōrākei Health Services (NWOHS) to provide health services to the Ōrākei hapū and other Māori, Pacific Island people, recent immigrants and low-income populations in Auckland. NWOHS expanded into Glen Innes in 2001.²²¹

²¹⁸ See [57]-[60], [87]-[80], and [97.12] above regarding Ngāti Whātua’s pre-Treaty relationship with Tainui and Ngāti Pāoa.

²¹⁹ I H Kawharu, “Orakei”, *Waitangi Revisited* at 164.

²²⁰ I note the Hamlin purchase was pre-Treaty, 25 Feb 1838 and the vendors were various chiefs of Ngati Paoa. In March 1839 a few chiefs of Ngati Whātua received goods from Hamlin for their share of Ōtāhuhu as they had an interest in the toangawaka, the dragging place at Ōtāhuhu. From there the survey went north to Hamlin’s Hill, Alemann claims that the survey lines for Hamlin ‘froze’ the south-eastern boundary of Ngati Whātua’s tribal territory and marked it off from Ngati Paoa. The land was sold down to the high water mark and thereby Māori retained access to the Manukau harbour and the Tamaki River – see Maurice Alemann “Early Land Transactions in the Ngatiwhatua Tribal Area” (Master of Arts, University of Auckland, 1992) at 105” **[NGA.AG.009.00001]**

²²¹ I H Kawharu, “Orakei”, *Waitangi Revisited* at 154.

217.6 In 1999, Ngāti Whātua o Ōrākei welcomed the Asia Pacific Economic Co-operation (APEC) forum. The hapū were also invited by Council to contribute to a joint Arts Agenda, followed up later with representation on the inaugural Auckland Festival Trust and a seat on 'The Edge' Board (responsible for the Aotea Centre, Town Hall, and Civic Theatre).²²²

217.7 Between 2002 and 2003, Ngāti Whātua were involved in a government and private sector-funded consortium together with Auckland New Ventures Trust, Poutama Trust and Tourism Auckland to facilitate Māori participation in business opportunities associated with the Louis Vuitton and America's Cup regattas. Ngāti Whātua also played a key role in fulfilling its manaakitanga responsibilities.²²³

217.8 In February 2003, Ngāti Whātua Ōrākei used the land returned next to Unitec to develop a 133-bed student apartment block in a joint venture with Townscape.²²⁴

218 In effect, these activities show rangatiratanga in action. Our involvement in welcoming visitors to Auckland is a display of manaakitanga, the hospitable thing to do for guests who come to the whenua to which we belong. Our understanding of utu, (reciprocity), underpins and guides our relationships with all those with whom we work. Local and central government bodies have recognised our mana whenua. Our track record is substantiated by the historical record. What we do in the Auckland city community today is in essence a continuation of the role we have played from the very beginning of the colonial era, and in fact before that too.

III. THE AGREED HISTORICAL ACCOUNT

219 In the next section of my evidence, I explain how, and the extent to which, the historical account I have just provided aligns with the

²²² I H Kawharu, "Orakei", *Waitangi Revisited* at 163.

²²³ I H Kawharu, "Orakei", *Waitangi Revisited* at 162.

²²⁴ I H Kawharu, "Orakei", *Waitangi Revisited* at 161.

agreed historical account (**AHA**) which the Crown and Ngāti Whātua Ōrākei entered into as part of settlement negotiations.

- 220 The reason it is important to understand the limitations of the AHA process is because the AHA contained in the Deed of Settlement between the Crown and Ngāti Whātua Ōrākei is a partial summary, not our entire history. The tikanga-compromised explanations of land transactions in the AHA do not tell the whole story. Nor does the AHA adequately explain Ngāti Whātua Ōrākei's relationships with other iwi in the isthmus. [**NGA.AG.001.00001**]
- 221 It is also important to understand the difficulties Ngāti Whātua Ōrākei encountered in the drafting of the AHA to understand our deep frustration at the Crown's offer of land in which we have mana whenua to Marutūāhu. Both are representative of the Crown failing to fully engage as it ought to as a Treaty partner, despite the best efforts of Ngāti Whātua Ōrākei. We consider that just as the Crown disregarded tikanga principles during the drafting of the AHA, so too has it disregarded tikanga in its overlapping claims policy.
- 222 Unlike the Waitangi Tribunal process in which all parties face one another "kanohi ki te kanohi", the OTS is responsible for the direct negotiation process. In the interests of expediency, negotiating teams from the claimant group and the Crown sit at the table and negotiate the component parts of a settlement package. For the most part the process is necessarily kept confidential until such time as consultation is required. I acknowledge the different approaches to settlement have their pros and cons.
- 223 In May 2003, Ōrākei entered into direct negotiations with the Office of Treaty Settlements in regard to Wai 388, and began working on an agreed historical account with the Office.²²⁵ I joined the negotiation team as a co-writer. My father was keen to introduce basic principles of tikanga Māori and challenged the Crown to grasp the social and political organisation, ritual beliefs and practices, principles and values of Ngāti Whātua Ōrākei as they were in 1840; not as they were assumed to be by colonial protectors, missionaries,

²²⁵ I H Kawharu, "Orakei", *Waitangi Revisited* at 165.

governors and government officials, ardent in their desire to release the hapū from a state of barbarism, and from the ownership of their ancestral land. He had presented a comprehensive paper “Ko te Mana Whenua o Ngāti Whātua o Ōrākei” to the Crown in May 2003 and pursued this discourse during the negotiations.

[NGA.AG.114.02220]

224 One of the very difficult aspects to these negotiations was the obvious age difference between my father, then in his 70s, a well-respected rangatira and highly qualified academic, and the writer for the OTS team who was not yet 30 and was obliged to check everything with Crown Law, whom we rarely saw at all. In our minds, and with all due respect, this only added insult to injury.

225 The other major stumbling block to negotiations was the Crown’s two dimensional secular mind-set. We were given to understand that our predilection for metaphor was difficult to decipher. Titahi’s prophecy, for example, was for Ōrākei the very rationale that prompted our people to seek out Governor Hobson and offer land as an enticement to join forces.²²⁶ It has been transmitted orally within Ngāti Whātua Ōrākei for almost 200 years. My father made sure the tauparapara was recorded in the preamble.²²⁷

[NGA.AG.001.00001] Similarly, the Kohimarama conference was such a significant political event for Māori in their efforts to assert rangatiratanga in their relationship with the Crown that it is referred to by Māori as the “kawenata” of Kohimarama. A kawenata (covenant) is much more than a piece of paper or a mere presence at a conference; it is a pact in the presence of God. This spiritual dimension just could not be rendered in the AHA – the Crown did not understand the significance of the Kohimarama conference, just as they did not understand our hope that the AHA and Deed of Settlement might be another kawenata; spiritual, emotional, and relational, not just words on a page.

226 The AHA is in essence a means to substantiate the Crown acknowledgements and apology, rather than a fulsome historical

²²⁶ See [119] above.

²²⁷ See *Deed of Settlement/AHA* at [2.8](iii). **[NGA.AG.001.00001]**

account. The AHA is meant to summarise the key facts about the relationship between the claimant group and the Crown that give rise to breaches of the Treaty of Waitangi, as agreed between the Crown and the claimant group, and put the settlement redress into proper context.²²⁸ [OTS0500001] OTS argued that a summary of facts was more powerful and emphatic than an overly long and detailed narrative. There was no scope, we were informed by OTS, to explain Ngāti Whātua Ōrākei's relationships with other iwi during the relevant period. Given the multiplicity of kinship ties in our whakapapa and the obligations those ties incur, this limited our narrative, and in our minds, skewed our narrative to quite an extent.

227 Nonetheless, under the OTS regime we did not wish to impose any perspective that might jeopardise other iwi claims against the Crown or invite a cross claim. We did not want to be perceived as speaking for other iwi – there was a lot of animosity between iwi in Auckland at the time, and in particular jealousy towards Ngāti Whātua given the value of the land in our rohe. OTS's policy of focussing only on the relationship between the settling iwi and the Crown was another constraint. We were also very keen to have our historical account agreed to with the Crown and make it public knowledge given the changing demographics in Auckland city.

228 The AHA reflects a compromise between the Crown and Ngāti Whātua Ōrākei. To demonstrate how this compromise affected the history contained in the AHA, I will briefly outline some of the debates we had:

228.1 Ngāti Whātua Ōrākei wanted to retain Māori words such as 'tuku' and 'utu' and 'tino rangatiratanga' in the text. We highlighted that the English and Māori versions of Article 2 of the Treaty were not the same and had different meanings and effects. The Crown preferred to incorporate the full texts of

²²⁸ Office of Treaty Settlements' Policy Manual "Ka Tika ā Muri, Ka Tika ā Mua: He Tohutohu Whakamārama i ngā Whakataunga Kerēme e pā ana ki te Tiriti o Waitangi me ngā Whakaritenga ki te Karauna — Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown" (June 2018) at 79. [OTS0500001]

the Treaty at the front of the AHA rather than set out those differences of view. The Crown did not consider the translation of the Māori text in Article 2 was significantly different to the English text.²²⁹ **[NGA.AG.001.00001]**

228.2 Ōrākei argued that their chiefs, particularly Āpihai Te Kawau, did not merely seek protection from the Crown, but sought to increase their political and economic strength and enhance their mana. (see paragraph 2.49). Though relatively small in number, and conflict behind them, they sought another ally and a strategic alliance, as they were accustomed to doing. Crown policy has long focused on land loss and population and the Crown refused to entertain the word “alliance”. The compromise was “a bid for power and mutual benefit from the establishment of a European settlement and a desire for peace across the Isthmus”,²³⁰ and later “Ngāti Whātua and the Crown entered the transaction with a view to a mutually beneficial and enduring relationship.”²³¹
[NGA.AG.001.00001]

228.3 Ōrākei wanted sections which were framed around the personal relationships Ngāti Whātua and each governor – Hobson, FitzRoy, Gore Browne, and Grey – had built up. The Crown’s focus was on the types of land transactions and the mechanisms by which land was acquired. For Ngāti Whātua the governor was the personification of Crown authority in the contrived word “kawanatanga” in the Māori version of the Treaty and each governor had very different policies and quite distinct Treaty breaches. The compromise was to put both in the headings. For example: “Ngāti Whātua and Governor Hobson – Land Transactions 1841-1842”.

²²⁹ For an indication of what this affected in the *Deed of Settlement/AHA*, see [2.15] regarding protection of trusteeship and the exercise of chieftainship; [2.21] regarding the concept of ‘utu’; and [2.47] regarding the apparent protection of the concept of double trusteeship. **[NGA.AG.001.00001]**

²³⁰ *Deed of Settlement/AHA* at [2.16]. **[NGA.AG.001.00001]**

²³¹ *Deed of Settlement/AHA* at [2.23]. **[NGA.AG.001.00001]**

228.4 Ōrākei saw the land as having been given and received, in accordance with their concept of “tuku rangatira”. The Crown wished to avoid repetition so the principle of “tuku rangatira” was stated just once in the whole historical account.²³² Tuku rangatira was used to describe the pre-emptive waiver transactions between Ngāti Whātua and early settlers, but not, significantly, used to describe the 1840 block received by the Crown for the purposes of establishing the township.
[NGA.AG.001.00001]

228.5 When the Crown and Ōrākei could not agree on an issue, such as the inclusion of tuku rangatira, then it was considered an ‘interpretative statement’. Statements were included that were clear Ōrākei was speaking for themselves, for example:²³³ **[NGA.AG.001.00001]**

Ngāti Whātua assert that the transactions were akin to the principle of tuku rangatira in that chiefs wished to create mutually beneficial relationships with Europeans and enhance their mana by making land available for settlement. Ngāti Whātua consider that, consistent with their cultural practice of qualified transactions with other Māori groups, the pre-emption waiver transactions conveyed occupancy and use rights only.

228.6 In the Preamble (at paragraph 2.7), a ‘qualified transfer of land’ is equated to a ‘tuku rangatira’. Another example of the Crown not willing to accept our interpretation is set out in paragraph 2.64 in regard to ‘surplus lands’: “Ngāti Whātua consider that if the transactions were found to be invalid or otherwise flawed, customary title had not been extinguished and the land should have been returned to Ngāti Whātua ownership.” And later at paragraph 2.91 we had to say, “From Ngāti Whātua’s point of view, the reference to “payment” indicates that, from 1840, Ngāti Whātua had

²³² *Deed of Settlement/AHA* at [2.49]. **[NGA.AG.001.00001]**

²³³ *Deed of Settlement/AHA* at [2.49]. **[NGA.AG.001.00001]**

expected a reciprocal relationship with the Crown, but this relationship had not eventuated.”

228.7 It was important to Ōrākei that we defend our chief Paora Tūhaere in his understanding of the law and his belief that he had the right to challenge the Governor and retain his land. Ōrākei wished to say, “Despite Governor Grey saying he would take time to consider the matter, there is no record of him ever responding further.” But what went into the AHA were the words: “The Crown decided not to punish Tūhaere by taking the land.”²³⁴ The Crown’s attitude was patronising. Ōrākei instead had to make its point further down in the AHA, that in spite of what they felt to be close relationships with Grey and his officials, they had no formal decision-making power.²³⁵ [**NGA.AG.001.00001**]

228.8 With regard to the Mahurangi purchase, Ōrākei wished to state their position vis-à-vis their intertribal relationships and shared interests with Hauraki tribes on the North Shore. The Crown advised the AHA was intended to set out the interaction between the Crown and Ngāti Whātua, and in the event there was no transaction (even if there should have been) the Crown now did not support Ngāti Whātua stating their position on customary interests in this area. Paragraph 2.27 is the only mention of the Mahurangi Purchase.

228.9 In the case of the Kohimarama purchase and the survey of it, Ōrākei wanted to defend its intertribal relationships, in this case with Ngāti Pāoa. That is not to speak on behalf of any other tribe but as part of Ngāti Whātua’s history. The Crown policy is not to name other iwi in the historical account. Accordingly, Ngāti Pāoa is not named in the AHA account of the Kohimarama purchase.²³⁶ [**NGA.AG.001.00001**]

²³⁴ *Deed of Settlement/AHA* at [2.66]. [**NGA.AG.001.00001**]

²³⁵ *Deed of Settlement/AHA* at [2.72]. [**NGA.AG.001.00001**]

²³⁶ *Deed of Settlement/AHA* at [2.30]. [**NGA.AG.001.00001**]

228.10 Yet, the Crown was disposed to talk of ‘other iwi’ or ‘other Māori’ in other circumstances. The AHA makes reference to “lasting benefits for Māori” provided by Grey,²³⁷ and government health services for “Ngāti Whātua and other Māori”.²³⁸ Ōrākei argued that the funding for the colony was coming from the on-sales of their land, so on net, there was no evidence the Protectorate provided any “lasting benefits” to Ōrākei pre 1845. Where was the quid pro quo? Our grievance was the Crown’s presumption that it should take all of Ngāti Whātua’s contribution to the township for granted.
[NGA.AG.001.00001]

228.11 The AHA, including the maps, confirm a vast area of land across the Tāmaki Isthmus was acquired by the Crown from Ngāti Whātua Ōrākei.²³⁹ Ironically, the AHA confirms that the benefits from the Crown’s land purchase policy and Land Fund could only come to Ngāti Whātua over the long term “if they still had land close to the land being transacted but as at 1865, the Crown had purchased almost all of the land of Ngāti Whātua Ōrākei: the only lands they retained were 700 acres at Ōrākei.”²⁴⁰ In fact the whole section entitled ‘Further Land Loss’ is a joint historical account of Treaty breaches acknowledging the absolute swindle suffered by Ōrākei.²⁴¹
[NGA.AG.001.00001]

228.12 Every word was under scrutiny. In paragraph 2.84 for example there is a sentence loaded with meaning. “... Paora Tūhaere affirmed that “mine is a land-selling tribe” and reminded the Governor that “we have always firmly adhered to you and to the Queen's sovereignty”. It is a statement that says two things; we have the mana i te whenua to be able to allocate it to whomsoever we choose and we have the

²³⁷ *Deed of Settlement/AHA* at [2.69]. **[NGA.AG.001.00001]**

²³⁸ *Deed of Settlement/AHA* at [2.70]. **[NGA.AG.001.00001]**

²³⁹ For example, the *Deed of Settlement/AHA* at [2.76] confirms that over 78,000 acres was acquired. **[NGA.AG.001.00001]**

²⁴⁰ *Deed of Settlement/AHA* at [2.74] **[NGA.AG.001.00001]**

²⁴¹ *Deed of Settlement/AHA* at [2.73]-[2.83]. **[NGA.AG.001.00001]**

mana to work alongside the Crown. In other words, we never lost our mana.

228.13 Another example of compromise with the Crown is the description of the 1860 Kohimarama conference. Ōrākei wanted to describe the 1860 Kohimarama conference as “revealing deep dissatisfaction of a loyal iwi”. We settled for “revealing strong concerns” which is an understatement.²⁴²
[NGA.AG.001.00001]

228.14 The AHA was to serve a narrow purpose for a claim over land losses between 1840 and 1865. Cutting off our historical account at 1865 because there were no more land transactions that had not been already dealt with by the Crown, severely limited our narrative to not including many of the subsequent ramifications of those land transfers, made quite clear in the ten Māori conferences that followed. We did however manage to include our tupuna voices in the harbours and reclamations section. Just one example I would like to quote is from the final conference held at Kohimarama in March 1889 where Tūhaere declared:

- i. Everything has been done in a one-sided manner for the benefit of the Europeans, but not for the Natives. ...in consequence of that the Europeans got representative institutions, and then they governed the Māori. They only allowed four Māori to represent the Māori people. From that time the mana of the chiefs diminished ... The Government did not look kindly on the Māori, and give them what they desired. What I am trying to bring about is a union of both peoples, and one scheme of Government. The Māori had waited a long time to see where the kindness of the Government came in...”*

²⁴² *Deed of Settlement/AHA* at [2.86]. **[NGA.AG.001.00001]**

228.15 Ōrākei insisted that paragraphs concerning the Ōrākei Parliaments remain as they are key quotes by our people and very important for our audience.²⁴³ The Crown argued against including them because of length and balance and the risk that key points might get lost. Ōrākei had already agreed to a significantly shortened version of the AHA. The paragraphs remained. Paragraph 2.105, concerning a Ngāti Whātua petition to Parliament in 1920, was also kept in as Ōrākei wanted to show the continuity of thought and protest through the 19th century to the 20th century vis-à-vis reclamation of the harbour. [**NGA.AG.001.00001**]

229 The compromises were driven by our need to reach a settlement. As mentioned every single word and every single source of the AHA was under scrutiny, and a scrutiny heavily laden by a non-Māori lens. Yet no footnotes or sources were included in the AHA. However, the AHA did provide the basis for the Crown's acknowledgements²⁴⁴ and achieved four key points:
[**NGA.AG.001.00001**]

229.1 The Ngāti Whātua Ōrākei invitation to Governor Hobson to establish his seat of government on our land in Tāmaki was an initiative unmatched by any other tribal group in Aotearoa.

229.2 Hobson's instructions – never carried out – to set aside ample reserves, were to justify the Crown's deliberate land grabbing when values, even at the time, were much greater than elsewhere.

229.3 Governor FitzRoy's pre-emptive waiver had very damaging consequences for Ōrākei.

229.4 The acquisition of Ōrākei's 'surplus' lands in Tāmaki demonstrated the scale of dishonesty on the part of the Crown's representatives – in breach of the Crown's Treaty

²⁴³ *Deed of Settlement/AHA* at [2.99-2.102]. [**NGA.AG.001.00001**]

²⁴⁴ *Deed of Settlement/AHA* at [3.1]-[3.9]. [**NGA.AG.001.00001**]

obligation to act in good faith and promise to protect Māori interests.

- 230 Furthermore the AHA underpins the Crown's apology to Ngāti Whātua Ōrākei:²⁴⁵

The Crown recognises that from 1840, Ngāti Whātua Ōrākei sought a close and positive relationship with the Crown and, through land transactions and other means, provided lands for European settlement.

The Crown profoundly regrets and is deeply sorry for its actions which left Ngāti Whātua Ōrākei virtually landless by 1855. This state of landlessness has had devastating consequences for the social, economic and spiritual well-being of Ngāti Whātua Ōrākei that continue to be felt today.

The Crown unreservedly apologises for not having honoured its obligations to Ngāti Whātua Ōrākei under the Treaty of Waitangi. By this settlement the Crown seeks to atone for its wrongs, so far as that is now possible, and begin the process of healing. The Crown looks forward to repairing its relationship with Ngāti Whātua Ōrākei based on mutual trust, co-operation and respect for the Treaty of Waitangi and its principles.

- 208 A final word on reaching settlement. The AHA was finalised and an Agreement in Principle was signed in June 2006 and then everything was put on hold by the intervening Tāmaki Inquiry in 2007. By this time my father had died. The Deed of Settlement was finally signed in November 2011 and the Settlement Act passed by Parliament a year later in November 2012. [**NGA.AG.001.00001**]

- 231 Ngāti Whātua Ōrākei expected, when the Deed of Settlement was signed, that the Crown would keep our settlement at the forefront of its mind when developing proposals in the 2006 RFR Land, or within the Ōrākei block transferred in 1840. We considered the Crown's

²⁴⁵ *Deed of Settlement/AHA* at [3.10]. [**NGA.AG.001.00001**]

apology, in which it promised to rebuild its relationship with Ngāti Whātua Ōrākei, was an indication it would cooperate and communicate with us in matters regarding our land, and not deal with land in our rohe in a way which eroded our mana whenua.

- 232 The Overlapping Claims Policy, as it has been applied in Tāmaki Makaurau, flies in the face of the Crown’s apology. The Crown refuse to engage in the issue of whether Ngāti Whātua has exclusive interests in the land at issue in this proceeding, and require Ngāti Whātua and Marutūāhu resolve the issue ourselves. By refusing to engage they refuse to acknowledge our mana whenua, and thereby choose to ignore the very people from whom the Crown acquired the land that became Auckland’s central business district.

IV. A NGĀTI WHĀTUA ŌRĀKEI PERSPECTIVE ON TIKANGA AND OVERLAPPING CLAIMS

- 233 In my view, an “overlapping claims” process in central Tamaki, shaped by tikanga, would look very different.
- 234 First, it would be heavily influenced by considerations of mana whenua. More than a mere interest in land would be required; the Crown would undertake an inquiry as to whether an iwi could demonstrate ahi kā, permanency of residency, in that land. But the Crown would not determine ahi kā, rather it would allow a tikanga process between the two or more iwi to reach a result that is satisfactory to them.
- 235 Further, where overlapping interests were present, the Crown would not settle those by “picking” an iwi on the basis of modern day exigencies. The Crown would recognise the rangatiratanga of tribal leaders, and would allow rangatira to speak on behalf of hapū to negotiate respective interests.
- 236 Second, it would have proper regard for utu, in particular that utu created by tuku rangatira. When the Crown entered into land transactions with Ngāti Whātua in the 1840s, it created a relationship with Ngāti Whātua. That relationship carried with it duties and obligations to respect and protect. The Crown has consistently failed to honour Ngāti Whātua’s generosity. A tikanga

driven process would involve the Crown atoning for the alienation of land at Ōrākei, as well as the more modern affronts including the shifting of the marae and the drafting of the AHA. It would also be able to stand the test of scrutiny – requiring evidence of, for example, ahi kā. For the Crown to dispute in this proceeding that it is under an obligation to consider tikanga principles is yet another denial of its reciprocal obligations to Ngāti Whātua Ōrākei.

- 237 I also want to make a number of broader comments as to how tikanga could inform the overlapping claims process.

A basis for mutual enterprise

- 238 If there is one motto Ngāti Whātua Ōrākei picked up out of the ashes, so to speak, it would be, “Mā tō tātou whanaungatanga, e whakataki i te ritenga tika” – by our kinship we strive to meet our present and future needs. Usually this motto provides encouragement to those within our own hapū, but in the context of inter-tribal relations, whanaungatanga is practised on a fairly regular basis between Ngāti Whātua Ōrākei and Waikato. There is, to begin with, common ground and one way of expressing it is to show that Tuperiri and Pōtatau Te Wherowhero are both descended from the famed couple, Turongo and Mahinaarangi.²⁴⁶ But it is further cemented through marriages, from Tuperiri’s sons, and from Tarahawaiiki’s line in particular, there are many marriages with women from the Waikato tribes.
- 239 Ngāti Whātua and Ōrākei have been intimately involved with the Kingitanga movement from its inception, even though their interests differ. Pōtatau and his party were received at Reweti when touring the north seeking the first King. Later, Tawhiao, the second king, also visited Reweti and spent a lot of time with the Ōrākei people at Okahu Bay and Kohimarama. The relationship between Tawhiao and Tūhaere was very close and collaborative. The famed waka taua ‘Taheretikitiki’ was gifted by Paora Tūhaere to Tawhiao and after Tawhiao’s death, his son, Mahuta, the third king, became custodian of the waka and it was used to convey visiting dignitaries on the Waikato River. As mentioned Te Puea Herangi, cousin of

²⁴⁶ I H Kawharu *Ōrākei* at 56ff.

Rata, the fourth king, was an inspiration to the Ōrākei people in the 1930s and 40s and in protesting over the taking of the Ōrākei marae in 1951. Then in 1957, a deputation from Ōrākei met with the fifth king Koroki to inform him of their proposals for a marae at Ōrākei. And in 1963, his daughter Piki, (later Dame Te Atairangikaahu), accompanied by a Waikato party from Ngaruawahia, was invited to undertake the tapu removal ceremony to open the new chapel in Okahu Bay. As a consequence of this history between Ōrākei and Waikato, the Koroneihana (Coronation) celebrations are an annual fixture in the social calendar for many families at Ōrākei and Ngāti Whātua and often a bus is chartered for them to go and participate in the festivities with their whanaunga. There is then, an assumption of continuity and mutual support among communities of kin irrespective of economic and political constraints.

In the footsteps of our tupuna

240 If we draw from the ethnographic narratives that are available to us, for example the Ōrākei minute books, we have an opportunity to look to the past to find a way forward. There was much talk of conflict and peacemaking in them. There were also recognised processes by which peace could be made and sustained. For example, Warena Hengia (Tuperiri's sister's grandchild) recounts how the peacemaking between Kahukoti and Uruamo happened in stages.²⁴⁷ [NGA.AG.012.00002] Sixty of Te Taoū went to Orere to see Kahukoti, led by Uruamo and Waterangi – that was the peacemaking of Te Taoū. Te Taoū gave gifts and then returned to Okahu. When Kahukoti came to Okahu, “then peacemaking was put on a solid basis...Because it was a partial peacemaking it was necessary for him to come to our house.” Six hundred people came to Okahu with Kahukoti representative of each of the four iwi of the Marutūāhu confederation – Ngāti Pāoa, Ngāti Maru, Ngāti Whanaunga and Ngāti Tamatera. Uruamo, Hotorene, Te Reweti and Tautari received them. The seal of reconciliation was finalised by another deputation of the Marutūāhu confederation led by Tipa and Patene to Okahu. This time Te Kawau was also present, along with

²⁴⁷ OMB 2 at 1-4 [NGA.AG.012.00002]

Tautari, Tinana and Reweti and significant presentations were made to draw the enmity between the tribes to an end. The name given to the peacemaking was, “the blotting out of the transgressions of the people.” And as a gesture of goodwill, Āpihai accompanied the Ngāti Pāoa people to St George’s Bay where the Crown had awarded land to them. In addition, Āpihai gifted a small area of land at Ōrākei to the Ngāti Hura hapū of Ngāti Pāoa for gardening purposes.²⁴⁸ Tribal lore includes a pepeha frequently recited as a tauparapara by Ngāti Whātua Ōrākei, particularly in reference to Ngāti Pāoa, (but not only), in rituals of exchange. The words have various layers of meaning and reflect the tapestry of history between the tribes.

Tirohia atu ki Te Pane-o-Horoiwi,

Ka whakapukepuke, ka whakatiketike ki waho rā.

He kawau, he kawau, he kawau!

He kawau, tikitiki, he kawau tikitiki!

He kawau tikitiki ka eke ki te Tāhuna Tōrea he kawau tikitiki.

He kawau tikitiki ka eke ki te tāhuna ki Waitematā

Ka eke! Ka eke! Hui ē, tāike ē!

- 241 Te Pane-o-Horoiwi (Achilles Point) and Tāhuna Tōrea (sandbank breeding grounds in the Tāmaki estuary) mark a border between Ngāti Whātua and Ngāti Pāoa. Te Pane-o-Horoiwi is a look-out, a defence point from which one can see who is turning in to the Waitematā, whether they come as friend or foe, and send the alarm, ‘tirohia!’ so people have time to prepare appropriate formalities. The kawau tikitiki (cormorant) is a migratory bird and is used here as a metaphor for guests, who, like the kawau tikitiki, come and go from the Tāmaki estuary. But ‘he kawau’ also pays tribute to Āpihai Te Kawau, he who maintains ahi kā, and that Okahu is his place.²⁴⁹ It is this kind of sustained knowledge of the ancestors, the ways in which their actions established territorial rights for their hapū, and

²⁴⁸ Stone, *From Tamaki-Makau-Rau* at 189-190

²⁴⁹ Merata Kawharu *Tāhuhu Korero: the Sayings of Taitokerau* (Auckland University Press, Auckland, 2008) at 27-28.

links with others, that enables and sanctions the “right person, to do the right thing, in the right way”.

Checks and balances

- 242 Ngāti Whātua Ōrākei has only to look to our own rangatira, such as the Reverend Māori Marsden, for wisdom. Reverend Marsden supported Ōrākei and spoke to the Waitangi Tribunal in 1985 with regard to the meeting house Tumutumuhenua. For him, the carved meeting house was the essential coming together of three worlds: the world of the senses of the human or mortal/physical world; the world of the spirits and the appreciation of the inclusion of the deeds and beliefs of the ancient ancestors; and finally the world of symbols and artistry of a creative language of expressions using patterns, motifs, materials and artforms. He recalled the appropriate process for such an undertaking as building a meeting house, of the 3 sacred “umu” or ovens, ngā umu tapu.
- 243 In brief, the first oven is “te umu tutu i te puehu” – the oven symbolising the raising of the dust – a metaphor for questions and debates necessary to undertake the presentation of a community’s identity in the form of a carved meeting house – whether there is enough substance to carry the idea through.
- 244 The second oven is “te umu kotinga korero” – the oven symbolising the cessation of debate, having heard all the debates, those with authority accept and agree to the efforts going ahead with mana.
- 245 The final oven is “te umu whakairinga korero ki nga patu pakitara o te whare” – the oven symbolising the adornment of the walls of the house with the generations of stories which emanate from the heritage of the people who have chosen to declare their identity in this way. It is the metaphor for the scene in which the worlds of the senses, symbols and spirits coincide.²⁵⁰
- 246 Reverend Marsden was explaining the process to illustrate the difference between Māori and European thinking about building a

²⁵⁰ Bernard Makoare “Shaping the Future of the new New Zealand from a Māori Perspective” (speech to Māori at Te Kunenga ki Pūrehuroa Massey University, Auckland, 6 April 2016).

meeting house. In his mind there were three things, all interlinked, that were prerequisites to being regarded as holding mana – mana atua, ara tupuna/ara whenua and turangawaewae – because a meeting house can be regarded as a genealogical tree. He made the distinction between a meeting house being an organism rather than an organisation, as it will be recalled, a board of trustees, largely outsiders, were in control of the building project. The sacred ovens metaphor is applicable to other undertakings than building a meeting house and it is this kind of conceptual thinking around tikanga Māori that might usefully be applied to the question of overlapping claim interests, keeping people and property in check in order to preserve the integrity and survival of the hapū.

247 *He aha te hau e wawa rā, e wawa rā?*

He tiu, he raki, he tiu, he raki

Nana i a mai te pūpūtarakihi ki uta

E tikina atu e au te kotiu

Koia te pou, te pou whakairo ka tū ki Waitematā

Ka tū ki Waitematā i ōku wairangitanga

*E tū nei, e tū nei!*²⁵¹

²⁵¹ *Deed of Settlement/AHA* at [2.8](iii). [NGA.AG.001.00001]