

THE

NGĀTI KAHU

REMEDIES REPORT



**THE**

**NGĀTI KAHU**

**REMEDIES REPORT**

WAI 45

WAITANGI TRIBUNAL REPORT 2013



The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Māori and Pākehā history in New Zealand as it continuously unfolds in a pattern not yet completely known

National Library of New Zealand Cataloguing-in-Publication Data

New Zealand. Waitangi Tribunal.

The Ngāti Kahu remedies report.

Includes bibliographical references.

ISBN 978-1-86956-304-2

1. Treaty of Waitangi—(1840) 2. Ngāti Kahu (New Zealand people)—Claims. 3. Maori (New Zealand people)—New Zealand—Far North District—Claims. 4. Maori (New Zealand people)—Land tenure—New Zealand—Far North District. 5. Land tenure—New Zealand—Far North District. [1. Tiriti o Waitangi. reo 2. Kerēme (Tiriti o Waitangi). reo 3. Mana whenua. 4. Whakatau mauri. reo 5. Whenua tautohetohe. reo] 1. Title.

333.1099313—dc 23

[www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)

Typeset by the Waitangi Tribunal

This report was previously released on the internet in 2013 in pre-publication format as *The Ngāti Kahu Remedies Report: Pre-publication*

This edition published 2013 by Legislation Direct, Lower Hutt, New Zealand

Printed by Printlink, Lower Hutt, New Zealand

17 16 15 14 13 5 4 3 2 1

Set in Adobe Minion Pro and Cronos Pro Opticals

CONTENTS

Acknowledgements ..... x

Letter of Transmittal ..... xi

**CHAPTER 1: THE BACKGROUND TO THIS INQUIRY..... 1**

1.1 Introduction..... 1

1.2 The parties ..... 2

    1.2.1 Ngāti Kahu..... 2

    1.2.2 The other parties..... 2

1.3 The Tribunal’s task..... 3

1.4 The Tribunal’s previous inquiries in the Muriwhenua district ..... 3

    1.4.1 The inquiries of the 1980s ..... 3

    1.4.2 The *Muriwhenua Land Report* ..... 4

1.5 Treaty settlement negotiations in the Muriwhenua district ..... 5

    1.5.1 Settlement negotiations up to 2008 ..... 5

    1.5.2 Te Hiku Forum and negotiations up to July 2011..... 6

1.6 Te Rūnanga-ā-Iwi o Ngāti Kahu remedies application ..... 7

1.7 The concurrent Ngāti Kahu urgency applications ..... 8

1.8 The current settlement landscape in the district..... 8

1.9 The remedies hearing ..... 8

1.10 Further remedies applications..... 8

1.11 The structure of this report ..... 9

**CHAPTER 2: THE TRIBUNAL’S POWER TO RECOMMEND REMEDIES ..... 11**

2.1 Introduction..... 11

2.2 The function and jurisdiction of the Tribunal..... 11

2.3 Resumption recommendations ..... 13

**CHAPTER 3: THE CLAIMANTS AND THE PREJUDICE SUFFERED ..... 17**

3.1 Ngāti Kahu origins and identity ..... 17

3.2 What is the prejudice for which we can recommend a remedy? ..... 19

    3.2.1 The pre-Treaty transactions ..... 20

        (1) The Land Claims Ordinance 1841 ..... 21

        (2) The Godfrey commission ..... 21

        (3) Scrip land ..... 22

        (4) The Land Claims Settlement Act 1856..... 23

3.2.1	The pre-Treaty transactions— <i>continued</i>	
	(5) The Bell commission . . . . .	24
	(6) Surplus land . . . . .	24
3.2.2	Crown land purchasing to 1865 . . . . .	24
3.3	The economic cost . . . . .	26
3.3.1	Quantifying the economic impact of land alienation . . . . .	26
3.3.2	The economic consequences of pre-1865 land alienation in the post-1865 period . . . . .	27
3.4	Socio-economic profile . . . . .	28
3.5	Cultural impact . . . . .	30
3.6	Conclusion . . . . .	31
 <b>CHAPTER 4: THE CLAIMS SETTLEMENT PROCESS IN TE HIKU . . . . .</b>		<b>33</b>
4.1	Introduction . . . . .	33
4.2	The Crown’s approach to settling Treaty claims . . . . .	33
4.2.1	The Crown’s settlement process – an overview . . . . .	33
4.2.2	Overlapping claims . . . . .	34
4.2.3	The types of redress available . . . . .	35
	(1) Historical redress . . . . .	35
	(2) Cultural redress . . . . .	36
	(3) Commercial redress . . . . .	36
4.3	Ngāti Kahu negotiations with the Crown . . . . .	37
4.3.1	The Ngāti Kahu Agreement in Principle 2008 . . . . .	38
	(1) Historical redress . . . . .	38
	(2) Cultural redress . . . . .	39
	(3) Commercial redress . . . . .	40
	(4) Social revitalisation . . . . .	40
4.3.2	Te Hiku forum negotiations with the Crown . . . . .	40
4.3.3	The Te Hiku agreement in principle 2010 . . . . .	41
	(1) Cultural redress . . . . .	41
	(2) Commercial redress . . . . .	42
	(3) Social accord . . . . .	43
4.3.4	Negotiations following the Te Hiku AIP . . . . .	44
4.3.5	The Ngāti Kahu deed of partial settlement . . . . .	46
4.3.6	The Crown’s allocation of contested redress . . . . .	47
4.4	What is potentially on offer to Ngāti Kahu? . . . . .	47
4.4.1	Historical redress . . . . .	48
4.4.2	Cultural redress . . . . .	48
4.4.3	Commercial redress . . . . .	48
4.4.4	The total monetary value of the proposed settlement . . . . .	49
4.5	The settlements reached in Te Hiku . . . . .	49

## CONTENTS

4.5.1	Historical redress .....	50
4.5.2	Cultural redress .....	50
4.5.3	Commercial redress .....	51
4.6	Conclusion .....	52
 <b>CHAPTER 5: THE REMEDIES PROCESS AND THE PARTIES' POSITIONS .....</b>		<b>57</b>
5.1	Introduction .....	57
5.1.1	What Ngāti Kahu ask of this Tribunal .....	57
5.1.2	Remedies sought through binding recommendations .....	59
	(1) The resumable land .....	59
	(2) The forest compensation payments and accumulated rentals .....	60
	(3) The total value of binding recommendations .....	60
5.1.3	Remedies sought through non-binding recommendations .....	61
	(1) Recommendations relating to housing .....	61
	(2) Other land to be transferred to Ngāti Kahu .....	64
5.2	The Crown's position .....	64
5.3	The interested parties' positions .....	65
5.3.1	Te Aupōuri .....	65
5.3.2	Te Rarawa .....	66
5.3.3	Ngāi Takoto .....	66
5.3.4	Ngāti Tara .....	67
5.3.5	Te Pātū ki Peria .....	67
5.3.6	Sir Graham Latimer and Tina Patricia Latimer .....	67
5.3.7	Te Uri o Te Aho .....	68
5.3.8	Ngā hapū o Whangaroa .....	68
5.3.9	Other Whangaroa claimants .....	68
5.4	Conclusion .....	68
 <b>CHAPTER 6: SHOULD THE TRIBUNAL MAKE BINDING RECOMMENDATIONS? ...</b>		<b>71</b>
6.1	Introduction .....	71
6.2	The restorative purpose of remedies .....	72
6.3	Tribunal recommendations are warranted .....	75
6.4	When should binding recommendations be made? .....	75
6.5	Binding recommendations require extra care .....	76
6.5.1	The conduct of the Crown and Ngāti Kahu in settlement negotiations and other engagements .....	78
6.5.2	Unresolved customary interest issues .....	82
	(1) Kaitaia .....	82
	(2) Takahue .....	84
	(3) Tangonge .....	86

6.5.2 Unresolved customary interest issues—*continued*

    (4) Otangaroa and Kohumaru . . . . . 86

    (5) Tribunal comment . . . . . 88

6.5.3 Owners of properties with section 27B Treaty of Waitangi  
    (State Enterprises) Act memorials . . . . . 92

6.5.4 Unresolved mandating issues . . . . . 94

6.5.5 Redress for all Te Hiku iwi . . . . . 95

6.6 Tribunal conclusion on binding recommendations . . . . . 96

6.7 Some interested parties also seek binding recommendations . . . . . 103

    6.7.1 Jurisdiction . . . . . 103

    6.7.2 Well-founded claims . . . . . 104

**CHAPTER 7: WHAT GUIDES OUR APPROACH TO NON-BINDING**

**RECOMMENDATIONS?** . . . . . 109

7.1 Introduction . . . . . 109

7.2 Recommendations are warranted . . . . . 110

7.3 Circumstances of the case . . . . . 110

7.4 ‘Polar opposites’: the two proposals . . . . . 110

    7.4.1 ‘Total relief package’ proposed by Ngāti Kahu . . . . . 110

    7.4.2 Full and final settlement proposed by the Crown . . . . . 111

7.5 We reject the total package sought by Ngāti Kahu . . . . . 112

7.6 We support the general terms of the Crown’s proposal . . . . . 112

    7.6.1 The need to retain equality with other iwi to achieve durable remedy . . . . . 113

    7.6.2 The Crown’s proposal for Te Hiku is significant . . . . . 113

    7.6.3 A fair share for Ngāti Kahu . . . . . 114

    7.6.4 Other elements of redress for Ngāti Kahu . . . . . 114

7.7 Full or partial recommendations? . . . . . 115

7.8 Concluding remarks . . . . . 118

**CHAPTER 8: RECOMMENDATIONS** . . . . . 121

8.1 Introduction . . . . . 121

8.2 Recommendations . . . . . 121

    8.2.1 Offer . . . . . 121

    8.2.2 Historical account, Crown acknowledgements of Treaty breach,  
        and Crown apology . . . . . 121

    8.2.3 Cultural redress . . . . . 122

        (1) Cultural redress properties . . . . . 122

        (2) General cultural redress . . . . . 122



## CONTENTS

8.2.4	Commercial quantum .....	124
	(1) Option 1 .....	125
	(2) Option 2 .....	126
8.2.5	Properties potentially on offer for purchase by Ngāti Kahu .....	126
8.2.6	Crown forest redress .....	127
8.2.7	The value of the Crown forest lands .....	128
<b>APPENDIX I: SCHEDULES .....</b>		<b>131</b>
A	Properties that the Crown should transfer at no cost to Ngāti Kahu for cultural redress .....	132
B	OTS land-banked properties which should be offered for purchase to Ngāti Kahu .....	134
C	Ministry of Education properties which should be offered for purchase to Ngāti Kahu .....	135
D	Land Information New Zealand properties which should be offered for purchase to Ngāti Kahu .....	136
E	Deferred selection properties which Ngāti Kahu should be given an opportunity for purchase .....	137
F	Properties for which Ngāti Kahu, and other iwi, should be offered rights of first refusal .....	139
G	Properties in the Aupouri and Otangaroa Forests that the Crown should offer for purchase .....	162
<b>APPENDIX II: SELECT RECORD OF INQUIRY .....</b>		<b>163</b>
Bibliography .....		179
<b>LIST OF MAPS</b>		
Map 1:	Ngāti Kahu remedies claim area, 2012 .....	xvi
Map 2:	Resumable properties in the Ngāti Kahu remedies claim area, 2012 .....	62
Map 3:	Resumable properties in Rangiputa Station, Kaitaia, Cable Bay, and Mangonui, 2012 .....	63

## ACKNOWLEDGEMENTS

The Tribunal would like to thank the many staff who have helped us throughout the inquiry: Leanne Boulton, Sonja Mitchell, and David Haines (inquiry facilitation); Michaela Coleman (registrarial); Te Amohaere Hauiti-Parapara, Joel Bristow, and Jenna-Faith Allan (claims coordination); Conrad Noema (translation); Richard Towers and Michael Allen (report writing); Steven Oliver and Harry Chapman (reference checking); Dominic Hurley and Richard Thomson (editing and typesetting); and Gaylene Lloyd (administration).



## Waitangi Tribunal

Te Rōpū Whakamana i te Tiriti o Waitangi

Kia puta ki te whai ao, ki te mārama

The Honourable Christopher Finlayson  
Minister for Treaty of Waitangi Negotiations  
and

The Honourable Dr Pita Sharples  
Minister of Māori Affairs  
Parliament Buildings  
WELLINGTON

1 February 2013

E ngā Minita, tēnā kōrua.

We enclose our report which is focused primarily on an application to the Waitangi Tribunal by Ngāti Kahu for recommendations, including binding recommendations, to the Crown to redress the prejudice it has caused the iwi. In a series of transactions up to 1865, Ngāti Kahu – one of five iwi of the Muriwhenua region – were dispossessed of 70 per cent of their ancestral lands. All of these transactions were either pre-Treaty purchases wrongly confirmed by the Crown or direct Crown purchases, conducted solely in the interest of establishing a colony of settlement. Such early and severe land loss was the cause of significant damage to the economic and cultural well-being of Ngāti Kahu.

These facts have been well established in the *Muriwhenua Land Report*, which was released by this Tribunal (as it was originally constituted) in 1997. In that report, we described the wide-ranging prejudice suffered by all Muriwhenua iwi. During our most recent hearings in September 2012, Ngāti Kahu further described to us the continuing deprivation of their people. It is apparent to all parties in our inquiry that the Crown's actions in the far north – so soon after the signing of the Treaty – have had lasting effects on Ngāti Kahu, who remain impoverished to this day. All parties further agree that the Crown is obliged to provide a significant

Level 7, 141 The Terrace, Wellington, New Zealand. Postal: DX SX11237  
Fujitsu Tower, 141 The Terrace, Te Whanganui-ā-Tara, Aotearoa. Pouaka Poutāpeta: DX SX11237  
Phone/Waea: 04 914 3000 Fax/Waea Whakaahua: 04 914 3001  
Email/E-mēra: [information@waitangitribunal.govt.nz](mailto:information@waitangitribunal.govt.nz) Web/Ipurangi: [www.waitangitribunal.govt.nz](http://www.waitangitribunal.govt.nz)



package of redress. We agree, and have made a series of recommendations that we believe will meet this end, given the circumstances of the application before us. We have, however, for reasons elaborated below, not gone as far as making binding recommendations as sought by Ngāti Kahu.

A central consideration in arriving at our recommendations has been the ongoing relationship of the five main iwi of the Muriwhenua region: Ngāti Kahu, Te Rarawa, Te Aupōuri, Ngāi Takoto, and Ngāti Kuri. The evidence before this Tribunal is that these iwi, though autonomous in their own right, have common ancestral origins and shared whakapapa down through the generations. Such intimate ties were reflected in the original Muriwhenua Land Inquiry, where all five iwi brought their claims to the Tribunal jointly and prosecuted their claims collectively. As a consequence, this Tribunal reported on those claims jointly. The joint approach did not continue into initial Treaty settlement negotiations. However, a new impetus and a return to the collective approach emerged in 2008, with the establishment of the Te Hiku Forum. The purpose of the Forum was for the Crown and the five iwi to arrive at joint agreements on the total amount of redress on offer, and for the iwi to agree over the distribution of various properties in areas of shared interest.

A well-established Treaty principle has it that the Crown should not, in remedying the grievance of one group, create a fresh grievance for another group. The Te Hiku Forum was designed to arrive at lasting Treaty settlements that received the agreement of all Te Hiku iwi. We do not believe that the circumstances of this case warrant us to depart from that approach. Enduring Treaty settlements can be achieved only if iwi whose rohe border and overlap each other, and who possess entwined ancestral connections, can be reasonably satisfied with their respective outcomes. Settlements are between Treaty partners, but they cannot be safely achieved in isolation from others.

For these reasons, our recommendations broadly follow the parameters of agreements reached in the Te Hiku Forum. The package agreed to by the Te Hiku iwi was undoubtedly significant, and ranks highly among all the Treaty settlements that have been achieved to date. It was also a package that was the outcome of a series of compromises among all the parties to the Te Hiku agreement in principle, not least among the iwi of Te Hiku themselves.

In signing up to the Forum, Ngāti Kahu negotiators agreed that they would work towards a common understanding of the total amount on offer and the distribution of properties among the iwi. In doing so, Ngāti Kahu were not bound to any of the negotiated outcomes. However, when they did withdraw from the Forum, they then

sought to retain the benefits of the collective negotiations, while attempting to obtain further benefits outside of that process, to the potential detriment of the other iwi. Ultimately, this is what has occurred, the result of which is the current application to the Tribunal.

These factors have led us to the point where we have not endorsed the proposed set of recommendations sought by Ngāti Kahu. This would have required the Tribunal to make binding orders that the Crown resume a series of properties, and return them to Ngāti Kahu. In our report, we explain why the complex interplay of customary rights in the area under consideration (in addition to other factors) means that such recommendations are not warranted in the circumstances of this case.

Our report considers similar claims brought by hapū of Ngāti Kahu, they being Ngāti Tara, Te Paatu, and Te Pātū ki Peria. Those hapū also sought binding recommendations for the return of land in the region. We have found that, because binding recommendations are not warranted in the case of Ngāti Kahu for a wide range of reasons, nor are they warranted for those hapū.

In addition, we are unable to recommend a total settlement package in the order of that sought by Ngāti Kahu, which was well in excess of settlements already achieved up and down the country.

The recommendations we have made should provide for the restoration of the economic and cultural well-being of Ngāti Kahu. Ngāti Kahu will have returned to them a number of sites of ancestral importance, including wāhi tapu. A series of governance arrangements will also allow them to have a significant say in the administration of other sites, as well as establishing relationships with local bodies and other institutions. In addition, they will receive cash payments designed to revitalise the iwi, both culturally and socially. Finally, Ngāti Kahu will have an opportunity to assume ownership of a range of commercial properties, which will assist in re-establishing the commercial base of the iwi in a modern context.

The total settlement package we have recommended amounts to commercial quantum of \$42.518 million (less a 10 per cent discount for the reasons we discuss in the report), the return of 21 cultural redress properties to Ngāti Kahu at no cost, together with cultural redress payments and various recommendations concerning governance of Te Oneroa-a-Tōhē (Ninety Mile Beach) and conservation lands. We are of the opinion that our recommendations are comprehensive.

These are but the main features of our recommendations, which will provide for a comprehensive settlement of the Treaty claims of Ngāti Kahu up to 1865. Our jurisdiction in making recommendations is limited to this cut-off point, due to the circumscribed nature of the earlier inquiry (which focused solely on early land transactions). Despite this limitation, we believe we have provided a solid platform for the settlement of all Ngāti Kahu Treaty claims, should the parties agree. Our recommendations are also non-binding in nature, which means that the

parties will be required to come to agreement before a settlement is enacted. Because of this, we have provided specific direction to the parties about the range of items we believe should be given to Ngāti Kahu, so as to allow a settlement to be achieved.

In acting on these recommendations, both Ngāti Kahu and the Crown will achieve the three-fold restorative purpose of Treaty settlements: the restoration of the economic and cultural well-being of Māori, the restoration of the honour of the Crown, and the restoration of the Treaty relationship. We believe these are admirable and achievable outcomes.

Nāku noa, nā,

A handwritten signature in black ink, appearing to be 'S. Clark', written in a cursive style.

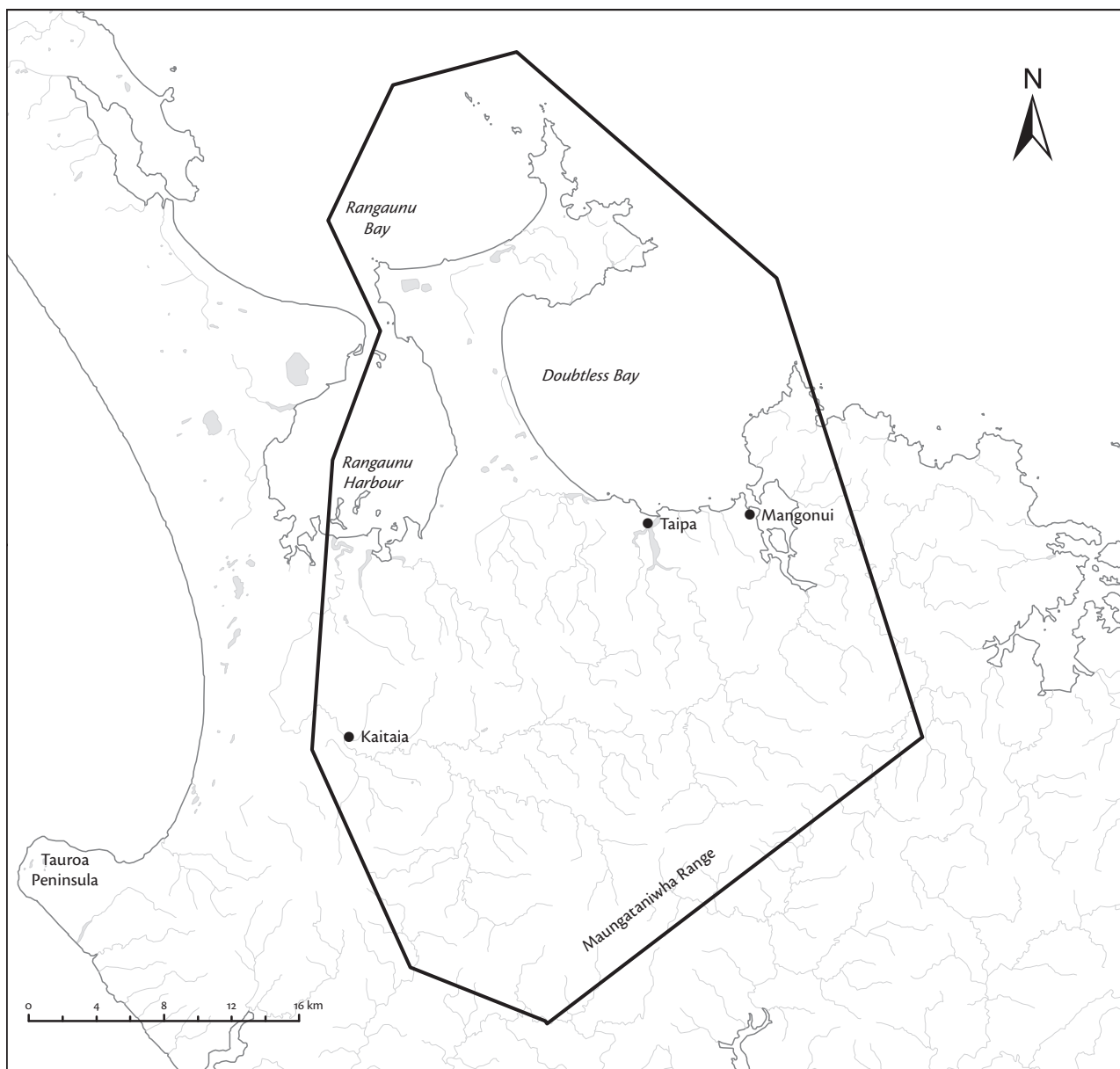
Judge Stephen Clark

## ABBREVIATIONS

AIP	agreement in principle
app	appendix
BERL	Business and Economic Research Limited
CA	Court of Appeal
ch	chapter
comp	compiler
doc	document
DOC	Department of Conservation
DSP	deferred selection property
ed	edition, editor
fn	footnote
fol	folio
ha	hectare
HNZC	Housing New Zealand Corporation
LINZ	Land Information New Zealand
ltd	limited
MOE	Ministry of Education
no	number
NZLR	<i>New Zealand Law Reports</i>
NZSC	<i>New Zealand Supreme Court</i>
OTS	Office of Treaty Settlements
p, pp	page, pages
para	paragraph
PC	Privy Council
pt	part
RFR	right of first refusal
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
SC	Supreme Court
sec	section (of this report, a book, etc)
SOE	State-owned enterprise
vol	volume

‘Wai’ is a prefix used to denote a Waitangi Tribunal claim number.

Unless otherwise stated, footnote references to claims, statements, submissions, memoranda, and documents are to the Wai 45 (Muriwhenua) record of inquiry, a select copy of which is reproduced in appendix 11.



Map 1: Ngāti Kahu remedies claim area, 2012



CHAPTER 1

## THE BACKGROUND TO THIS INQUIRY

### 1.1 INTRODUCTION

The historical claims of Ngāti Kahu and the other iwi of Te Hiku-o-te-ika region (Te Hiku), insofar as they relate to the period to 1865, were examined in the Tribunal's *Muriwhenua Land Report*, published in 1997. Ngāti Kahu are one of five iwi of Te Hiku whose claims were inquired into and determined in that report. The other iwi are Te Rarawa, Ngāi Takoto, Te Aupōuri, and Ngāti Kuri. These iwi took a collective approach to their claims during the Tribunal's Muriwhenua land inquiry and were represented by Te Rūnanga o Muriwhenua. The findings made and the prejudice described in the *Muriwhenua Land Report* apply to all five iwi of Te Hiku and related to the loss of half of all the land in the region before 1865, including the most productive land.

Since the publication of the *Muriwhenua Land Report* the five iwi have been engaged, to a greater or lesser extent, in individual negotiations with the Crown to settle their historical Treaty claims, both pre-1865 and post-1865. From 2008 to 2010, the five iwi also participated in collective negotiations with the Crown to resolve issues of overlapping and competing iwi claims to Crown properties that are available as redress. These individual and collective negotiations have resulted in Te Aupōuri, Ngāi Takoto, and Te Rarawa signing deeds of settlement with the Crown. The Crown anticipates reaching agreement with Ngāti Kuri in the near future.

Despite a decade of negotiations, Ngāti Kahu and the Crown have been unable to agree on a settlement for the Ngāti Kahu claims. Twice now, Ngāti Kahu have applied to the Tribunal for remedies as an alternative to further settlement negotiations. The initial application was received on 5 October 2007 and, on that occasion, the Tribunal directed Ngāti Kahu and the Crown to re-enter negotiations for three months. The renewed negotiations resulted in an agreement in principle (AIP) being signed by both parties in 2008, for the proposed settlement of all Ngāti Kahu historical claims.<sup>1</sup> Further progress towards settlement was made when negotiations among Ngāti Kahu, the Crown, and the other iwi of the region resulted in all parties signing the Te Hiku AIP in 2010. After that, however, negotiations between Ngāti Kahu and the Crown faltered. On 15 July 2011, Ngāti Kahu revived their application to the Waitangi Tribunal for it to recommend remedies for their well-founded pre-1865 claims.<sup>2</sup>

This report is the outcome of the hearing of the remedies application by Ngāti Kahu. They asked the Tribunal to make recommendations to the Crown to remedy the prejudice

suffered by Ngāti Kahu as a result of acts and omissions of the Crown that the Tribunal has found to be in breach of the Treaty of Waitangi and its principles.<sup>3</sup> The recommendations sought by Ngāti Kahu include non-binding recommendations as well as potentially binding recommendations for the return of 11,865 hectares of Crown and privately owned land, the payment of \$205 million in compensation, and changes to New Zealand law. These recommendations have a total estimated value in excess of \$260 million. The full ‘package’ sought by Ngāti Kahu is set out in chapter 5. In addition, Ngāti Kahu asked the Tribunal to use its power under the Treaty of Waitangi Act 1975 to recommend the return of licensed Crown forest land (Crown forest land) and land currently or formerly owned by State-owned enterprises (SOEs), some of which is now privately owned. In the case of Crown forest land, a recommendation for its return to Māori ownership will also involve the payment of the rent that has been paid for the use of the land as well as monetary compensation for its return subject to a forestry licence.

The Tribunal’s power to recommend the return of Crown forest land and SOE land is referred to as its power of ‘resumption’ because, where the Tribunal exercises it, the Crown will have to ‘resume’ land to return it to the successful applicant. The power is exceptional because a Tribunal recommendation that land be resumed will become binding on the Crown after 90 days, unless the Crown and the successful applicant negotiate a different arrangement. A popular shorthand description of the power is that it is a power to make ‘binding recommendations’. More accurately, it is a power to make recommendations that have the potential to become binding on the Crown.

## 1.2 THE PARTIES

### 1.2.1 Ngāti Kahu

Ngāti Kahu are one of five Te Hiku iwi. Their 15 hapū and marae are located in a rohe centred on Doubtless Bay and the Karikari Peninsula, stretching from the Mangonui

Harbour in the east to Kaitaia in the west, bordered to the south by the Maungataniwha range. Ngāti Kahu were represented at the remedies hearing by Te Rūnanga-ā-Iwi o Ngāti Kahu (the Rūnanga), the representative body of the iwi and the body mandated to negotiate a settlement of Ngāti Kahu claims with the Crown. The memorandum reviving their application for remedies stated that despite exhaustive and ongoing attempts by Ngāti Kahu to negotiate with the Crown, a settlement had not been concluded. Nor did Ngāti Kahu see any hope of successful negotiations:

it has become clear to the Ngāti Kahu mandated negotiators that the Crown’s entrenched settlement policies mean that there is no prospect of achieving a negotiated settlement which will be acceptable to the people of Ngāti Kahu. Therefore, Ngāti Kahu has resolved to instruct the negotiators to withdraw from negotiations and seek a substantive decision from the Tribunal.<sup>4</sup>

Ngāti Kahu submitted that the Supreme Court’s decision in *Haronga v Waitangi Tribunal and Others*<sup>5</sup> requires the Tribunal to consider and reach a decision on an application for binding recommendations.<sup>6</sup>

### 1.2.2 The other parties

The Crown is the other main party to the remedies application. It opposes the Tribunal making binding recommendations for the return of land to Ngāti Kahu. The Crown also sees the total ‘package’ of recommendations sought by Ngāti Kahu, if supported by the Tribunal, as destabilising the settlements agreed with other Te Hiku iwi and threatening the durability of all Treaty claims settlements reached to date.

Of the other Te Hiku iwi, Te Rarawa, Te Aupōuri, and Ngāi Takoto are interested parties. Te Rarawa, Te Aupōuri, and Ngāi Takoto all oppose the Tribunal recommending remedies for Ngāti Kahu where these have the potential to destabilise the settlements that those iwi have already agreed with the Crown, leading to renewed negotiations

and further delay in receiving redress from the Crown. They all oppose recommendations for the return of land to Ngāti Kahu where that land is currently owned by them, or is to be transferred to them through their settlements, or where their settlements secure a right for them to purchase the land should it become available for purchase.

Two hapū of Ngāti Kahu are also interested parties. Ngāti Tara oppose the return of Crown-owned properties to Ngāti Kahu as they dispute the mandate held by the Rūnanga to negotiate the settlement of all Ngāti Kahu claims. Through their own application for remedies Ngāti Tara ask that the Tribunal recommend the transfer to them of land in which they hold mana whenua. In particular they seek the transfer of Rangiputa Station. Te Pātū ki Peria also dispute the mandate held by the Rūnanga and ask that the Tribunal recommend the transfer to them of land in which they hold mana whenua. Sir Graham and Tina Latimer and the Te Paatu claimants they represent were also an interested party.<sup>7</sup>

The other interested parties were Ngā hapū o Whangaroa, Te Uri o te Aho, and other Ngāpuhi hapū, and a number of other Whangaroa claimants. All these parties opposed the Tribunal recommending the transfer to Ngāti Kahu of land in which they claimed an interest.

### 1.3 THE TRIBUNAL'S TASK

The Ngāti Kahu remedies application poses a unique set of challenges for this Tribunal. Our governing legislation provides us with considerable discretion but very little guidance as to how our remedial powers ought to be exercised, and there has been relatively little discussion of this question by the Tribunal in its previous inquiries. The Turangi Township remedies application, the only other remedies case the Tribunal has dealt with, sought binding recommendations to return discrete pieces of land. In contrast, here we have an iwi seeking binding recommendations in relation to all the resumable land within an area, as well as non-binding recommendations for all other Crown land in that area, a large compensation

payment, and a range of other legislative and administrative changes.

This task is made more difficult by the context in which Ngāti Kahu seek these recommendations. Their well-founded claims relate only to pre-1865 events so any recommendations we make must relate only to the prejudice suffered as a result of those events. There are close and complex relationships between hapū and iwi in the district which inevitably produce overlapping customary interests. There are Treaty settlements which have been agreed or are in the final stages of negotiation between other Te Hiku iwi and the Crown. Other neighbouring hapū and iwi have yet to be heard by the Tribunal or to enter direct negotiations with the Crown. These complexities, the history of the Tribunal's involvement in the region, and the history of settlement negotiations between Te Hiku iwi and the Crown are examined in the sections that follow.

### 1.4 THE TRIBUNAL'S PREVIOUS INQUIRIES IN THE MURIWHENUA DISTRICT

#### 1.4.1 The inquiries of the 1980s

Te Hiku district, formerly referred to as the Muriwhenua district, takes in the northernmost part of the North Island. Its southern end is fixed by a line from Whangape Harbour in the west to north of Whangaroa in the east, following the Maungataniwha Range.<sup>8</sup> The iwi of Te Hiku are already well known to the Tribunal. Between 1985 and 1997 the Tribunal heard and reported on land, fisheries, and environmental claims in the district. These had their genesis in a letter to the Tribunal from the Honourable Matiu Rata for Te Hapūa 42 Incorporation and the people of Ngāti Kuri and Te Aupōuri in June 1985. By December the following year, partly as a result of the Tribunal being granted jurisdiction to inquire into events back to 1840, this initial claim had become a comprehensive claim by all five Te Hiku iwi relating to land and fisheries.<sup>9</sup> Registered by the Tribunal as Wai 22,<sup>10</sup> the claim signalled the beginning of a collective approach to pursuing their claims.<sup>11</sup>

In 1986, as the Muriwhenua land inquiry was about to

get under way, Crown policies of national significance and local importance threatened the claimants' position. The first was the proposed devolution of Crown assets to State-owned enterprises (SOEs), which was part of the Labour Government's economic reforms of the mid-1980s. Te Hiku claimants, whose claims had only just begun to be filed, feared this proposal would diminish the pool of Crown land available to settle their Treaty claims. They sought exemption of land within their rohe from, or changes to, the State-owned Enterprises Bill that was about to proceed to a third reading.<sup>12</sup> With legislation imminent, the Tribunal held an urgent inquiry and reported on that matter in an interim report on 8 December 1986.<sup>13</sup>

The Tribunal concluded that the claimants were likely to be prejudiced by the Bill. In its view the powers the Bill gave the Minister to direct these soon-to-be-created corporations were 'likely to be limited and insufficiently wide to enable the return of Crown land pursuant to a recommendation' of the Tribunal.<sup>14</sup> Thus, without amendment to restrict an SOE's ability to alienate former Crown land, the proposed legislation was contrary to the principles of the Treaty.<sup>15</sup> The Tribunal recommended that no Crown land within the rohe of the five Te Hiku iwi be transferred to any SOE while the Wai 22 claim was before the Tribunal.<sup>16</sup> The Tribunal hoped that the Crown would take similar action in relation to other iwi.<sup>17</sup> As a result, the Bill was amended to provide some protection for Māori interests. In 1987, those provisions were tested in the Court of Appeal in *New Zealand Maori Council v Attorney-General* (the *Lands* case).<sup>18</sup> This resulted in amendments to the Treaty of Waitangi Act directing that a memorial be placed on the title of former SOE land enabling it to be repurchased by the Crown for use in Treaty settlements. We discuss these provisions and the Tribunal's role in relation to them in chapter 2.

Having dealt with the SOE issue, the Muriwhenua Tribunal then inquired into Government plans to allocate fisheries quota. In what became a test case for all iwi, the Muriwhenua fisheries claims were heard between December 1986 and April 1988. The outcome was the 1988 *Muriwhenua Fishing Report* (Wai 22).<sup>19</sup> A national settlement followed. The next matter was the proposed

sewerage scheme at Mangonui, which the Tribunal reported on in the *Mangonui Sewerage Report* (Wai 17) in August 1988.<sup>20</sup>

It was not until August 1990 that the Tribunal was able to begin its inquiry into land claims in the Muriwhenua district. Both the Mangonui Sewerage claim (Wai 17) and Muriwhenua Fishing Claim (Wai 22) contained allegations relating to land which were carried across into the land inquiry. Five other claims were added.<sup>21</sup> The inquiry became known as the Muriwhenua inquiry, Wai 45. Early in the proceedings it became apparent to the Tribunal that the scope of the inquiry needed to be limited. As a majority of the land had been alienated from Māori ownership before 1865, the inquiry was limited to Crown acts and omissions prior to that date.<sup>22</sup> Hearings took place between August 1990 and June 1994 and the *Muriwhenua Land Report* was published in 1997.

#### 1.4.2 The Muriwhenua Land Report

As mentioned, Te Hiku iwi took a collective approach to their claims during the Muriwhenua land inquiry, being represented by a single body, the Rūnanga o Muriwhenua.<sup>23</sup> The Tribunal recognised that relationships among the five iwi were very close and considered that it would be 'overly pedantic to divide them.'<sup>24</sup> This was consistent with the view of the *Report on the Muriwhenua Fishing Claim* that:

the five tribes of Muriwhenua share a sufficient inter-relationship, sense of common identity and community of interest as to be seen as one group, and that no purpose would be served in compelling separate claims.<sup>25</sup>

The Tribunal reported on the prejudice suffered by the five Te Hiku iwi as a collective. It made specific findings about land transactions entered into between Māori and private individuals (before the signing of the Treaty) and with the Crown (before 1865), and in relation to particular blocks.<sup>26</sup> We discuss the prejudice caused by those transactions in chapter 3. The claims of Ngā hapū o Whangaroa, whose rohe lies to the east of Ngāti Kahu, were also heard in the inquiry and separate findings were made.

The Tribunal was satisfied that the Muriwhenua land claims to 1865 were well-founded and that it would be appropriate to make ‘recommendations for the transfer of substantial assets, to be effected as soon as practicable.’<sup>27</sup> Its preliminary opinion was that, ‘unless the parties agree otherwise’ the remedy it recommended ‘should include binding recommendations in respect of Crown forests and State enterprise assets.’<sup>28</sup>

With the release of the Tribunal’s report the Te Hiku iwi, including Ngāti Kahu, had to consider how they would settle their claims. As a first step the Tribunal called for submissions on whether it should proceed to make recommendations about remedy, whether the parties wished to enter direct negotiations with the Crown, or whether to continue with a second Tribunal inquiry into the post-1865 aspects of their claims.<sup>29</sup> These matters were discussed at a two day judicial conference held in April 1998.<sup>30</sup> Some preliminary conclusions were reached, but all three paths remained open.

The Tribunal concluded that it could make binding recommendations on any ‘specific claims’ already heard, and on the claims generally to 1865 that it had reported on, where that would represent a final determination of all matters covered by the claims. It recognised that a remedies process, from which such recommendations could emerge, would require principles for relief to be defined and considered that further debate on those principles was required. Nevertheless, the Tribunal came to a preliminary conclusion that it should adopt a restorative approach to remedies, having regard to what is necessary to re-establish the people in the social and economic life of the district.<sup>31</sup>

The possibility of a second stage of the Muriwhenua land inquiry also remained. To this end the Tribunal announced that it would investigate the post-1865 period and directed that an inquiry into specific claims should begin. The Tribunal planned to circulate a draft report to which counsel could respond.<sup>32</sup> It commissioned and received a report from Dame Evelyn Stokes (a member of the Muriwhenua Tribunal)<sup>33</sup> but that report has not been the subject of a hearing process.<sup>34</sup> In the end, the Muriwhenua claimants put the options of a remedies

process and further inquiry on hold, in favour of settlement negotiations between Te Hiku iwi and the Crown.

## **1.5 TREATY SETTLEMENT NEGOTIATIONS IN THE MURIWHENUA DISTRICT**

Since 1999, the five iwi, at times collectively, but also individually, have been in negotiations with the Crown to settle their Treaty claims. The breakdown in negotiations between Ngāti Kahu and the Crown and the fact that their neighbours – Te Rarawa, Te Aupōuri, and Ngāi Takoto – have signed deeds of settlement provides the backdrop against which this application for remedies was made. We discuss the settlement path in greater detail in chapter 4.

### **1.5.1 Settlement negotiations up to 2008**

The length of time that Ngāti Kahu was in settlement negotiations with the Crown was largely a consequence of a major upset in their relationship. In 2006, Ngāti Kahu withdrew from negotiations after becoming dissatisfied with their progress, particularly with the Crown’s offer the previous year of a cash quantum of \$8 million and no land, which unsurprisingly Ngāti Kahu rejected.<sup>35</sup> A dispute over the Crown’s proposal to sell part of Rangiputa Station, a property considered by Ngāti Kahu to be central to any settlement offer, exacerbated an already tense relationship and further delayed negotiations between the parties.

By the late 1990s, the likelihood of a collective approach to settlement negotiations under Te Rūnanga o Muriwhenua began to fade as Te Hiku iwi established their own iwi-specific organisations. Te Rūnanga-ā-Iwi o Ngāti Kahu was established in March 1996 after six years of hui and debate about creating a mandated representative body for the 15 Ngāti Kahu marae.<sup>36</sup> Initially the Crown attempted to conduct pan-tribal negotiations with all five iwi. But during the period from 2000 to 2008 differences developed among the iwi and negotiations were attempted at an individual iwi level.<sup>37</sup>

The path to settlement has been long, difficult, and at times fraught for all of the Te Hiku iwi. In 2003, six years after the release of the *Muriwhenua Land Report*, Ngāti



Kahu and the Crown agreed on terms of negotiation. Their negotiations have been punctuated by withdrawals from negotiation and, on an earlier occasion, recourse by Ngāti Kahu to the Tribunal for remedies.<sup>38</sup> It took until September 2008 for Te Rūnanga-ā-Iwi o Ngāti Kahu, on behalf of Ngāti Kahu, to reach an AIP with the Crown.<sup>39</sup>

On 5 October 2007, Ngāti Kahu filed an application for binding recommendations with the Tribunal.<sup>40</sup> In that application Ngāti Kahu listed properties in which they claimed an interest that had been included in the AIP between the Crown and neighbouring iwi. Ngāti Kahu sought recommendations that SOE and Crown forest lands be returned to Ngāti Kahu ownership.<sup>41</sup> After a judicial conference on 11 April 2008, the application was adjourned until July 2008 to enable ongoing negotiations with the Crown to take place.<sup>42</sup> The then Minister for Treaty Negotiations, the Honourable Dr Michael Cullen, met with Ngāti Kahu on 2 May 2008 to restart settlement negotiations. He indicated he would appoint a chief Crown negotiator, Patrick Snedden, to work closely with him. Over the following four months the Crown and Ngāti Kahu undertook intensive negotiations culminating in the signing of an AIP on 17 September 2008.<sup>43</sup>

The progress of other iwi towards settlement has also been slow and also, at times, difficult. In 2001, Ngāti Kuri, Te Aupōuri, and Te Rarawa began negotiating with the Crown but, in 2002, the Crown withdrew its recognition of the Ngāti Kuri mandate. Their negotiations would not recommence until 2009. After receiving a first offer from the Crown, Te Aupōuri withdrew from negotiations and filed a remedies application with the Tribunal. That application was not heard for a number of reasons, including the potential prejudice to settlement negotiations then taking place between the Crown and Te Rarawa and the Crown and Ngāti Kahu. Te Aupōuri subsequently re-entered negotiations in 2004, signing an AIP that year. Negotiations over the following three years culminated in a revised settlement offer from the Crown in 2007. After six years of negotiations, Te Rarawa and the Crown signed an AIP in 2007.<sup>44</sup> Negotiations between Ngāi Takoto and the Crown began in 2008 after the iwi appointed negotiators

and their mandate was approved by the Crown. Terms of negotiations followed in August 2009. The signing of the Te Hiku AIP in January 2010 signalled that Ngāi Takoto were willing to enter a deed of settlement on the basis set out in that agreement. A deed of settlement was duly signed on 27 October 2012.<sup>45</sup> In 2009, the Crown accepted Ngāti Kuri Trust Board Incorporated as the mandated representative of Ngāti Kuri. Since then significant progress has been made towards a deed of settlement.<sup>46</sup>

### 1.5.2 Te Hiku Forum and negotiations up to July 2011

In addition to their individual negotiations with the Crown, Te Hiku iwi worked with each other and the Crown to reach agreement regarding the allocation of significant assets. By 2007 it became apparent that, while some progress had been made, many issues remained to be addressed and could potentially hamper the efforts of each iwi to achieve settlement.<sup>47</sup> As a result, Te Hui Tōpu o Te Hiku o Te Ika Iwi Forum (the 'Te Hiku Forum') was established in May 2008, with the negotiators for each iwi being members of the Forum.<sup>48</sup> The purpose of the Forum was to enable iwi to try and reach agreement on redress in areas in which they all asserted interests (for example, Te Oneroa-a-Tōhē – Ninety Mile Beach – and the Aupōuri Forest) and on proposed joint redress involving multiple iwi groups (that is, Te Rerenga Wairua (Cape Reinga) and Te Oneroa-a-Tōhē).<sup>49</sup> By that time, Te Aupōuri and Te Rarawa had signed iwi-specific AIPs and Ngāti Kahu signed their own a few months later in September 2008. Negotiations through the Forum resulted in an AIP between Te Hiku iwi and the Crown, signed on 16 January 2010.<sup>50</sup>

Shortly afterwards, Ngāti Kahu made the decision to withdraw from the Forum temporarily to draft their own deed of settlement.<sup>51</sup> This took far longer than anticipated and it was not until 1 April 2011 that Ngāti Kahu were able to submit their draft deed to the Minister for Treaty of Waitangi Negotiations. The deed was revised and resubmitted on 8 April and again in May 2011.<sup>52</sup> The scope of the redress sought by Ngāti Kahu was significantly wider than that set out in the Ngāti Kahu AIP of 2008. In addition, the

draft deed described a partial settlement of Ngāti Kahu claims, not the full settlement envisaged by the Ngāti Kahu AIP of 2008 and Te Hiku AIP of 2010. The deed met with a largely unfavourable reception from the Minister because of its expanded scope and partial nature.<sup>53</sup>

The prolonged absence of Ngāti Kahu from the Forum was matter of concern for the other Te Hiku iwi. Though they accepted the right of Ngāti Kahu to take a different path to settlement, they needed to resolve the issues of contested redress. Ngāti Kahu feared that any agreements reached by the other Te Hiku Forum iwi about these matters would marginalise Ngāti Kahu interests. On 15 July 2011, the concerns of Ngāti Kahu, coupled with their ideological opposition to the Crown's settlement policies and practices, culminated in Ngāti Kahu declaring that they were no longer in negotiation with the Crown. Ngāti Kahu revived their 2007 application to the Tribunal for remedies recommendations.<sup>54</sup>

#### 1.6 TE RŪNANGA-Ā-IWI O NGĀTI KAHU REMEDIES APPLICATION

Before we inquired into the Ngāti Kahu remedies application we had to determine that we had the jurisdiction to do so.<sup>55</sup> A judicial conference was held on 25 November 2011 to consider submissions on this issue.<sup>56</sup> Following this judicial conference the parties made further submissions and filed further material. These were considered during a second judicial conference on 22 March 2012. Of particular importance was the identification of those well-founded claims represented by Te Rūnanga-ā-Iwi o Ngāti Kahu for which remedies were sought, and the identification of those properties sought by Ngāti Kahu as remedy for their claims.<sup>57</sup>

On 18 April 2012, we issued our decision to hear the application, including our conclusions about the jurisdictional issues before us. Most importantly, we concluded that Ngāti Kahu have well-founded claims against the Crown on which to base their remedies application. These were the pre-1865 aspects of two claims that were among the seven that had been consolidated for inquiry in 1990

and reported on in 1997 by the Muriwhenua Tribunal: elements of the Wai 17 claim, filed by Ngāti Kahu in May 1986, and Wai 22, the comprehensive land and fisheries claim to which they were a party.<sup>58</sup>

We also received submissions from the parties on the issue of the 'nexus' between the well-founded claims of Ngāti Kahu and the land they sought as remedy for their claims. The Crown argued that the Tribunal must be satisfied that a claim 'relates to' all or part of the lands for which resumption recommendations are sought.<sup>59</sup> Ngāti Kahu argued that the Muriwhenua Land Tribunal defined a 'claim area', being the whole of the Muriwhenua district (figure 1 to the 1997 report), and that their claim relates to an interest in part of the land in that claim area.<sup>60</sup> We concluded that, in severing the Ngāti Kahu claims from the collective, we then had to be satisfied that the Ngāti Kahu claims related in whole or in part to SOE and Crown forest lands within a claim area.<sup>61</sup>

The parties also provided submissions on the area to which the remedies application should apply. Professor Margaret Mutu (the chair of Te Rūnanga-ā-Iwi o Ngāti Kahu and its chief negotiator), provided an affidavit that included a map showing the properties sought and the boundaries of the area in which Ngāti Kahu sought remedies.<sup>62</sup> This was a significantly larger area than that identified in the Ngāti Kahu AIP, a map of which was supplied by the Crown along with a schedule of properties affected by the remedies application.<sup>63</sup> After examining all the available evidence,<sup>64</sup> we concluded that Ngāti Kahu have a relationship with land within the claim area set out in the 2008 Ngāti Kahu AIP.<sup>65</sup> Further, it was clear to us that the pre-Treaty transactions and Crown purchases which were the subject of the *Muriwhenua Land Report* involved land in that claim area and that the Ngāti Kahu Wai 22 claim related to those lands.<sup>66</sup> We therefore decided to hold a remedies hearing for the well-founded claims of Ngāti Kahu that relate to the 2008 claim area.<sup>67</sup> We note that parts of this area on the southern boundary fall outside our jurisdiction as it was defined in the *Muriwhenua Land Report*. The 2008 claim area was defined according to a line for the purposes of settlement negotiations between

Ngāti Kahu and the Crown, and not the boundaries of blocks that the Tribunal reported on. We explain the effect of this on our recommendations in chapter 7. This ‘remedies claim area’ is shown in map 1. We confirmed the boundaries of the remedies claim area in a further memorandum on 25 June 2012.<sup>68</sup> We also reiterated that we were satisfied that the well-founded claims of Ngāti Kahu related to the remedies claim area and that we had jurisdiction to make resumption orders in relation to returnable lands within that area.<sup>69</sup>

### **1.7 THE CONCURRENT NGĀTI KAHU URGENCY APPLICATIONS**

In October 2011, the Crown made a final allocation of contested redress amongst the five Te Hiku iwi. Ngāti Kahu asserted customary interests in land in the west of the Te Hiku district which was to be included in the settlements of other Te Hiku iwi.<sup>70</sup> To protect those interests, Ngāti Kahu filed three applications for an urgent Tribunal inquiry or inquiries into:

- ▶ the Te Aupōuri deed of settlement, filed 18 April 2012 (the Wai 2364 application);
- ▶ the Te Rarawa deed of settlement, filed 1 May 2012 (the Wai 2366 application); and
- ▶ the Ngāi Takoto deed of settlement, filed 21 May 2012 (the Wai 2372 application).<sup>71</sup>

Ngāti Kahu set out their case in considerable detail in their applications for urgency and supporting documents. The three major arguments advanced by Ngāti Kahu were:

- ▶ the Crown has failed to recognise Ngāti Kahu customary interests;
- ▶ there were defects in the Crown’s allocation process; and
- ▶ there were defects in the proposed redress for Te Oneroa-a-Tōhē and the Korowai Atawhai Mō Te Taiao (conservation land redress).

Submissions and evidence in relation to all three applications were heard at a one-day judicial conference on 17 July 2012. A considerable amount of material including AIPs, draft deeds of settlement, statements of claim, affidavits, and submissions were put before the Tribunal.

On 10 October 2012, we issued our decision declining the applications, on the basis that Ngāti Kahu had not suffered significant and irreversible prejudice and still had avenues of redress open to them, namely re-entering settlement negotiations with the Crown and pursuing their remedies application before the Tribunal.<sup>72</sup>

### **1.8 THE CURRENT SETTLEMENT LANDSCAPE IN THE DISTRICT**

Te Aupōuri, Te Rarawa, and Ngāi Takoto have all completed ratification processes for their respective deeds of settlement. Te Aupōuri signed their deed of settlement on 28 January 2012. Ngāi Takoto and Te Rarawa signed their deeds of settlement on 27 and 28 October 2012 respectively. The Crown indicated that it is hopeful that Ngāti Kuri will be in a position to initial a deed of settlement by the end of 2012. The Crown then plans to introduce omnibus legislation settling the claims of those four iwi. It has told us that the legislation will not be introduced before February 2013.<sup>73</sup>

### **1.9 THE REMEDIES HEARING**

The Ngāti Kahu remedies hearing commenced with a pōwhiri on Sunday 2 September 2012 at Kareponia Marae, Awanui, just north of Kaitaia. Evidence was then heard over five days from 3 to 7 September 2012. Closing arguments were heard on 18 and 19 September at the Environment Court in Auckland.

### **1.10 FURTHER REMEDIES APPLICATIONS**

During the remedies hearing, Te Rarawa and Ngāti Tara made applications of their own for remedies recommendations, both of which were delegated to this Tribunal.<sup>74</sup> Te Rarawa considered this to be necessary to protect properties included in their deed of settlement or properties they own which are sought by Ngāti Kahu in the remedies proceedings. Their application was deferred to await the outcome of this report.<sup>75</sup> Ngāti Tara argued that they are one of the true owners of Rangiputa Station and



that, if the Tribunal were to make resumption recommendations in relation to that property, it should be returned, at least in part, to them. The Ngāti Tara applicants agreed that the Tribunal could determine their application on the evidence and submissions received in relation to the Ngāti Kahu remedies application, together with one further piece of evidence.<sup>76</sup> In chapter 7, we consider the Ngāti Tara application further.

### 1.11 THE STRUCTURE OF THIS REPORT

In the following chapter, we explain the legislative framework for the Tribunal's jurisdiction to recommend to the Crown remedies for the prejudice that claimants have suffered from Crown breaches of Treaty principles. In chapter 3, we outline the undoubted and substantial prejudice suffered by Ngāti Kahu as a result of the Crown's pre-1865 Treaty breaches. This is followed by the discussion, in chapter 4, of the history of the efforts by Ngāti Kahu to reach a negotiated settlement with the Crown between 1999 and 2011, including the redress that the Crown has told us it is willing to offer to Ngāti Kahu to settle all their Treaty claims. We then outline the Crown's total settlement package for the five Te Hiku iwi and the individual settlement packages of Te Aupōuri, Te Rarawa, and Ngāi Takoto. The proposed package of remedies (binding and non-binding) that Ngāti Kahu seek from the Tribunal, and the response of the Crown and other parties in the inquiry to that proposal are the subjects of chapter 5. Chapter 6 is devoted to our consideration of whether we should make resumption recommendations to the Crown in favour of Ngāti Kahu and/or Ngāti Tara. The circumstances of this case, as we will explain in that chapter, are such that binding recommendations are not warranted. In the following chapter, we set out the circumstances that influence our making of non-binding recommendations. The final chapter is dedicated solely to the recommendations we do make.

### Notes

1. Memorandum 2.299
2. Memorandum 2.333
3. Ibid
4. Memorandum 2.333, p 2
5. *Haronga v Waitangi Tribunal* [2011] NZSC 53, [2012] 2 NZLR 53
6. Memorandum 2.333, p 2
7. In this report, we have adopted the spelling of Te Pātū ki Peria and Te Paatu as used in claimant submissions.
8. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p xix
9. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989), pp 1–5
10. The final statement of claim for Wai 22 is printed as appendix 1 to the *Report on the Muriwhenua Fishing Claim*.
11. Wai 22 was brought by the Honourable Matiu Rata for Ngāti Kuri; Wiki Karena for Te Aupōuri and Aupōuri Māori Trust Board; Simon Snowden for Te Rarawa and Te Rarawa Tribal Executive; the Reverend Māori Marsden for Ngāi Takoto and the Ngāi Takoto Tribal Executive; and McCully Matiu for Ngāti Kahu and the Ngāti Kahu Trust Board.
12. Waitangi Tribunal, *Interim Report to Minister of Maori Affairs on State-Owned Enterprises Bill* (Wellington: Waitangi Tribunal, 1986), pp 2–3
13. Ibid
14. Ibid, pp 2–3
15. Ibid, p 4
16. Ibid, p 3
17. Ibid, p 4
18. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641
19. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, pp 5, 10
20. Waitangi Tribunal, *Mangonui Sewerage Report* (Wellington: Waitangi Tribunal, 1988)
21. These seven claims were Wai 16 and Wai 17 (both filed by Ngāti Kahu), Wai 22 (collective claim of the five iwi), Wai 41 (Ngāti Kuri), Wai 112 (Te Rarawa), Wai 117 (Ngāti Kahu) and Wai 118 (Te Rarawa) (memorandum 2.389, paras 38–43).
22. Waitangi Tribunal, *Muriwhenua Land Report*, p xx
23. Ibid, p xix
24. Ibid
25. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, p 4
26. Waitangi Tribunal, *Muriwhenua Land Report*, pp 392–403
27. Waitangi Tribunal, *Muriwhenua Land Report*, p xxxi
28. Ibid, p 404
29. Ibid, p xxi
30. Memorandum 2.166, p 2
31. Ibid, p 3
32. Ibid, pp 3–4
33. Document R8
34. Memorandum 2.349, para 6
35. Submission 2.359(c), p 11

36. Document R17, pp 51–52
37. Document R29, pp 9–15
38. Document R28, p 8
39. Ibid
40. Submission 2.275
41. Submission 2.274; submission 2.277
42. Memorandum 2.295
43. Document R29, p 12
44. Document R29, p 9
45. Ngāi Takoto and the Crown, *Deed of Settlement of Historical Claims*, 27 October 2012, <http://nz01.terabyte.co.nz/ots/DocumentLibrary/NgaiTakoto-DeedofSettlement.pdf>
46. Wai 2360 record of inquiry, claim 1.1.1, paras 10–11
47. Document R29, pp 14–15
48. Document R29, pp 15–16; doc R29(b), p 334
49. Document R29, p 15
50. Document R29(b), p 354
51. Ibid, pp 447–448
52. Document R29, p 27
53. Ibid
54. Submissions 2.333, 2.336
55. These questions were first raised by the Crown: see submission 2.335.
56. Memorandum 2.389, para 2
57. Ibid, paras 3, 7
58. Ibid, para 54
59. Ibid, para 60
60. Ibid, para 63
61. Ibid, para 68
62. Submission 2.369; doc R11
63. Documents R10(a), R10(b)
64. Memorandum 2.389, paras 76–78
65. The 2008 claim area features on a map of the core Ngāti Kahu rohe submitted by Ngāti Kahu on 30 January 2008 in relation to their original remedies application in 2007 (memo 2.389, app A) and delineated as their area of interest in the 2008 Ngāti Kahu AIP with the Crown (memo 2.362, app A).
66. Memorandum 2.389, para 81
67. Ibid, paras 81–82
68. Memorandum 2.411, paras 4–9
69. Ibid, paras 20–21
70. Wai 2364 ROI, memorandum 2.5.11, pp 1, 13, 37
71. Wai 2364 ROI, submission 3.1.1; Wai 2366 ROI, submission 3.1.1; and Wai 2372 ROI, submission 3.1.1
72. Wai 2364 ROI, memorandum 2.5.11, pp 8, 38
73. Memorandum 2.522
74. Memorandum 2.489
75. Memorandum 2.528, para 12
76. Memorandum 2.528

CHAPTER 2

## THE TRIBUNAL'S POWER TO RECOMMEND REMEDIES

### 2.1 INTRODUCTION

The statute that establishes the Waitangi Tribunal and confers its jurisdiction, including its power to recommend remedies for well-founded claims, is the Treaty of Waitangi Act 1975 ('the Act'). Generally, the Tribunal's recommendations about remedies are not binding on the Crown: at its discretion, the Crown may or may not do as the Tribunal recommends. But there are certain sorts of Crown land and former Crown land about which the Tribunal has been empowered to make recommendations that can, after 90 days, become binding. In the 90-day period, the Crown can seek to negotiate an alternative outcome with the claimants and if an alternative arrangement is agreed, it will prevail. The Tribunal's power to make recommendations that can become binding on the Crown has been used on only one occasion, by the Turangi Township Tribunal. That Tribunal's recommendation did not in fact become binding because the Crown and claimants reached an alternative arrangement during the 90-day period.

The present application calls for this Tribunal to make binding recommendations about the remedies to be provided for the well-founded claims of Ngāti Kahu. This chapter discusses the statutory provisions that govern the Tribunal in the exercise of its powers, particularly its power to recommend remedies.

### 2.2 THE FUNCTION AND JURISDICTION OF THE TRIBUNAL

The Waitangi Tribunal was established to inquire into and make recommendations on claims by Māori that they had been prejudicially affected by conduct of the Crown that is inconsistent with the principles of the Treaty of Waitangi. This is plain from the long title to the Treaty of Waitangi Act 1975:

An Act to provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty.<sup>1</sup>

It is also stated in the preamble:

And whereas it is desirable that a Tribunal be established to make recommendations on claims relating to the practical application of the principles of the Treaty and, for that purpose, to

determine its meaning and effect and whether certain matters are inconsistent with those principles.<sup>2</sup>

The core function of the Waitangi Tribunal is to inquire into and make recommendations on claims submitted to it under section 6 of the Act.<sup>3</sup> With limited exceptions, the Tribunal is obliged to inquire into every claim.<sup>4</sup> The Tribunal must determine whether the Crown legislation, policy, practice, actions, or omissions complained of were inconsistent with the principles of the Treaty and, if so, whether they have caused prejudice to the claimants. Where the Tribunal is satisfied that the Crown has acted inconsistently with the principles of the Treaty and there is resulting prejudice to the claimants, a claim is ‘well-founded’.

The Tribunal then needs to decide whether to recommend to the Crown that action be taken under section 6(3) to remedy the prejudice caused to the claimants. That subsection requires the Tribunal to have regard to ‘all the circumstances of the case’ when it is making that decision. As the Turangi Township Tribunal observed, those words include not only ‘the nature, extent, and effect of the well-founded Treaty breaches’ but also ‘the additional evidence and submissions received during the hearing on remedies.’<sup>5</sup> The relevant subsections of section 6 read:

#### 6 Jurisdiction of Tribunal to consider claims

- (1) Where any Maori claims that he or she, or any group of Maoris of which he or she is a member, is or is likely to be prejudicially affected—
  - (a) by any ordinance of the General Legislative Council of New Zealand, or any ordinance of the Provincial Legislative Council of New Munster, or any provincial ordinance, or any Act (whether or not still in force), passed at any time on or after 6 February 1840; or
  - (b) by any regulations, order, proclamation, notice, or other statutory instrument made, issued, or given at any time on or after 6 February 1840 under any ordinance or Act referred to in paragraph (a); or
  - (c) by any policy or practice (whether or not still in force) adopted by or on behalf of the Crown, or by

- any policy or practice proposed to be adopted by or on behalf of the Crown; or
- (d) by any act done or omitted at any time on or after 6 February 1840, or proposed to be done or omitted, by or on behalf of the Crown,—

and that the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission, was or is inconsistent with the principles of the Treaty, he or she may submit that claim to the Tribunal under this section.

- (2) The Tribunal must inquire into every claim submitted to it under subsection (1), unless—
  - (a) the claim is submitted contrary to section 6AA(1); or
  - (b) section 7 applies.
- (3) If the Tribunal finds that any claim submitted to it under this section is well-founded it may, if it thinks fit having regard to all the circumstances of the case, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.
- (4) A recommendation under subsection (3) may be in general terms or may indicate in specific terms the action which, in the opinion of the Tribunal, the Crown should take.

In the present remedies hearing, we have received evidence and submissions on such matters as the conduct of the Crown and Ngāti Kahu in the negotiations that followed on from the Tribunal’s *Muriwhenua Land Report*, matters of Crown policy in Treaty settlement over the past 15 years, the interests of the other Te Hiku iwi, and matters of mandate and of mana whenua. Those are all part of the circumstances of the present case that we must consider. As the Turangi Township Tribunal explained it, in order for the Tribunal to act fairly to the parties and in accordance with its statutory obligations when it is considering the matter of remedies, it should follow ‘the principle of good common sense that the more serious the issue the greater should be the care used in assessing it.’<sup>6</sup> That is, we believe, a good summary of our task in the present inquiry.

Turning now to the purpose of any recommendations

the Tribunal may make, section 6(3) gives three alternatives. We may recommend that the Crown take action:

- ▶ to compensate for the prejudice; or
- ▶ to remove the prejudice; or
- ▶ to prevent other persons being similarly affected in the future.

Thus, the Tribunal has a discretion to choose which purpose is most suited to the circumstances of the case it is dealing with. We agree with the Turangi Township Tribunal that the first and second options provided in section 6(3) are 'discrete but not mutually exclusive forms of action. Indeed, the same action may serve both purposes.'<sup>7</sup>

In the case of *Haronga v Waitangi Tribunal and Others*, the Supreme Court found that where the Tribunal has decided that a claim is well-founded, section 6(3) does not oblige the Tribunal to make any recommendations, although it has to decide whether it should do so.<sup>8</sup> Recommendations may be in general terms or indicate specific actions which in the opinion of the Tribunal the Crown should take.<sup>9</sup>

### 2.3 RESUMPTION RECOMMENDATIONS

Generally speaking, the recommendations the Tribunal makes under section 6(3) will be non-binding in nature. However, the power to make particular recommendations that can become binding on the Crown was conferred on the Tribunal by amendments made to the Treaty of Waitangi Act 1975 in the late 1980s, by the Treaty of Waitangi (State Enterprises) Act 1988 and the Crown Forest Assets Act 1989.

The Treaty of Waitangi (State Enterprises) Act 1988 represented the culmination of litigation and negotiations between the New Zealand Māori Council and the Government following the Court of Appeal decision in *New Zealand Maori Council v Attorney-General – the Lands case*.<sup>10</sup>

In the 1980s, the Government wanted to corporatise some of its activities. In late September 1986, the State-Owned Enterprises Bill was introduced into the House of Representatives. Claims concerning that Bill were heard by the Waitangi Tribunal and resulted in the Bill's

amendment to include what became sections 9 and 27 of the State-Owned Enterprises Act 1986. Section 9 states that nothing in the Act permits the Crown to act inconsistently with the principles of the Treaty. Section 27 provided that an Order in Council could declare that land transferred by the Crown to a State-owned enterprise after 18 December 1986 was to be returned to a successful Waitangi Tribunal claimant whose claim was made before that date. The Māori Council then brought judicial review proceedings concerning the Government's proposed transfer of land to State-owned enterprises, arguing that because the 1986 Act did not apply to claims made after 18 December 1986, the proposed transfer of Crown lands would be inconsistent with Treaty principles. The proceedings were subsequently removed into the Court of Appeal, which delivered the landmark decision upholding the Māori Council's case.

Following that decision, the Crown and the Māori Council entered into negotiations and reached agreement whereby in return for the Crown being able to transfer land to State-owned enterprises, that land would be subject to return to Māori ownership if the Waitangi Tribunal so recommended in relation to any claim it determined to be well-founded. Furthermore the Tribunal's recommendation could become binding on the Crown after a period of time in which the Crown and claimant might negotiate an alternative remedy. That agreement gave birth to the Treaty of Waitangi (State Enterprises) Act 1988, which inserted sections 8A to 8I into the Treaty of Waitangi Act. The relevant part of section 8A reads:

**8A Recommendations in respect of land transferred to or vested in State enterprise**

- (2) Subject to section 8B, where a claim submitted to the Tribunal under section 6 relates in whole or in part to land or an interest in land to which this section applies, the Tribunal may—
- (a) if it finds—
    - (i) that the claim is well-founded; and
    - (ii) that the action to be taken under section 6(3) to compensate for or remove the prejudice caused

by the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission that was inconsistent with the principles of the Treaty, should include the return to Māori ownership of the whole or part of that land or of that interest in land,—

include in its recommendation under section 6(3), a recommendation that that land or that part of that land or that interest in land be returned to Maori ownership (which recommendation shall be on such terms and conditions as the Tribunal considers appropriate and shall identify the Maori or group of Maori to whom that land or that part of that land or that interest in land is to be returned);<sup>11</sup>

In order to give effect to the agreement reached between the Crown and the Māori Council, the Treaty of Waitangi (State Enterprises) Act replaced section 27 of the State-Owned Enterprises Act and added to it sections 27A to 27D.

Section 27A provides that where any Crown land is transferred to a State-owned enterprise, the District Land Registrar shall note on the certificate of title the words:

subject to section 27B of the State-Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties, such as the owner of the land, to be heard in relation to the making of such recommendation) . . .

Those notations on a certificate of title are commonly referred to as ‘section 27B memorials’. Section 27B provides that, if a recommendation of the Tribunal is finalised, those lands must be resumed (that is, reacquired by the Crown) and returned to Māori ownership.

In the case before us, a number of the properties for which Ngāti Kahu seek a resumption recommendation have been transferred from State-owned enterprises to Crown entities, a Territorial Authority, and private owners. In all instances the section 27B memorial remains on

the title. In relation to those properties, the Tribunal has jurisdiction to make resumption recommendations.

In concluding the *Lands* case, the Court of Appeal issued a minute giving leave to the parties to apply to it should anything unforeseen arise. In 1988, the Minister of Finance announced the Government’s intention to sell State commercial forests. In response the Māori Council applied to the Court of Appeal, relying on the leave reserved, for a declaration that the proposed forestry sale was inconsistent with the Court’s decision in the *Lands* case.

A judgment was duly issued in *New Zealand Maori Council v Attorney-General* – the *Forests* case.<sup>12</sup> The Court held that the question of whether forests could be sold through a State-owned enterprise – the New Zealand Forestry Corporation – without breaching the principles of the Treaty was at the heart of the issues addressed in the *Lands* case. At that point, further negotiations took place between the Māori Council and the Crown. An agreement was reached which resulted in the Crown Forest Assets Act 1989, which inserted section 8HB into the Treaty of Waitangi Act.<sup>13</sup> The relevant part of section 8HB reads:

**8HB Recommendations of Tribunal in respect of Crown forest land**

- (1) Subject to section 8HC, where a claim submitted to the Tribunal under section 6 relates to licensed land the Tribunal may,—
  - (a) if it finds—
    - (i) that the claim is well-founded; and
    - (ii) that the action to be taken under section 6(3) to compensate for or remove the prejudice caused by the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission that was inconsistent with the principles of the Treaty of Waitangi, should include the return to Maori ownership of the whole or part of that land,—

include in its recommendation under section 6(3) a recommendation that the land or that part of that land be returned to Maori ownership (which



recommendation shall be on such terms and conditions as the Tribunal considers appropriate and shall identify the Maori or group of Maori to whom that land or that part of that land is to be returned);

The purpose of the Treaty of Waitangi (State Enterprises) Act 1988 and Crown Forest Assets Act 1989 was to protect existing and likely future claims submitted to the Tribunal. Both Acts allowed for the transfer of Crown assets while at the same time protecting existing and future Māori claims to lands covered by the statutory schemes.<sup>14</sup>

Sections 8A and 8HB provide the Tribunal with remedial powers to make recommendations to return to Māori ownership land which was previously transferred to a State-owned enterprise or is Crown forest licensed land. Any such resumption recommendations are in the first instance made on an interim basis. A 90-day period then follows in which the successful claimant and the Crown can enter into negotiations concerning the settlement of the claim. If a settlement is not reached, then, at the expiry of the 90 days, the interim recommendations are finalised and become binding.<sup>15</sup>

As part of the agreement implemented by the Crown Forest Assets Act 1989, the Crown Forestry Rental Trust was created to collect and hold on trust the rentals paid by licensees of Crown forest lands. When the Tribunal makes binding recommendations to return such lands to a Māori group, the group becomes entitled to receive from the Crown Forestry Rental Trust the rentals for those lands that have accumulated since the licence commenced. The group is also entitled to receive, directly from the licensee, the rentals due during the remaining term of the licence.<sup>16</sup>

It is not only accumulated rentals that accompany the return of Crown forest land to Māori ownership: the Crown Forest Assets Act 1989 also provides for compensation to be paid to the Māori group to whom the land is returned. Section 36 of the Crown Forest Assets Act 1989 specifies that the amount of compensation is to be determined in accordance with formulae set out in the first schedule to the Act:

**36 Return of Crown forest land to Maori ownership and payment of compensation**

- (1) Where any interim recommendation of the Waitangi Tribunal under the Treaty of Waitangi Act 1975 becomes a final recommendation under that Act and is a recommendation for the return to Maori ownership of any licensed land, the Crown shall—
- (a) return the land to Maori ownership in accordance with the recommendation subject to the relevant Crown forestry licence; and
  - (b) pay compensation in accordance with Schedule 1.

The compensation payable shall comprise an amount equal to 5 per cent of a 'specified amount calculated in accordance with clause 3' of the schedule, as compensation for the fact that the land is being returned subject to encumbrances, plus further payment of between 5 per cent and 100 per cent of the specified amount, as the Tribunal may recommend. The schedule provides three alternative ways of calculating the 'specified amount', based on:

1. a lump sum equal to the market value of the trees at the time of the recommendation (clause 3(a)); or
2. quarterly payments of the stumpage (net harvest income) from the forest (clause 3(b)); or
3. a lump sum based on the proceeds received by the Crown in 1990 from the sale of the trees plus a return on those proceeds (clause 3(c)).

The Tribunal is not required to assess and decide the amount of compensation payable to the successful Māori claimant. All that the Tribunal is required to do is decide the percentage of compensation that is payable, that is, between 5 and 100 per cent.

The result is that a successful applicant for binding recommendations about Crown forest land will receive, in addition to the return of its ownership, the accumulated rentals for the land plus compensation of between 5 and 100 per cent of an amount that is connected to the value of the trees grown on the land

In the preliminary stages of the present application, we determined that Ngāti Kahu had well-founded claims in relation to elements of the Wai 17 and Wai 22 claims.<sup>17</sup> In

relation to Wai 22, a claim brought on behalf of the five Te Hiku iwi, we were satisfied that the claims of Ngāti Kahu were able to be severed from those of the other four iwi.<sup>18</sup> In determining a claim area for the purpose of the remedies hearing we were satisfied that Ngāti Kahu had a relationship with the lands in that area.<sup>19</sup> Within the remedies claim area there are numerous properties (being lands formerly transferred to a State-owned enterprise, or Crown forest lands) for which Ngāti Kahu seek binding resumption recommendations.

In those circumstances we are under an obligation to consider whether to make resumption recommendations. It is clear, however, from the wording of sections 8A(2) and 8HB(1) that any such recommendations are made as part of any recommendations made pursuant to section 6(3) to compensate for or remove the prejudice caused.

It is important to record that the mere fact that the Ngāti Kahu claims are well-founded does not automatically mean that resumption recommendations will follow. The words of sections 6(3), 8A, and 8HB make it clear that the Tribunal has a discretion to decide whether or not to recommend resumption. While the Tribunal is under an obligation to consider whether it should make such adjudicatory recommendations, it is not obliged to make them.<sup>20</sup>

The foregoing discussion sets out the Tribunal's powers to make recommendations under the Treaty of Waitangi Act 1975. Having found their pre-1865 claims to be well-founded we now turn to consider 'all the circumstances of the case'. We start by discussing Ngāti Kahu and the prejudice they suffered through Crown actions that caused significant land loss up to 1865.

#### Notes

1. Treaty of Waitangi Act 1975, long title
2. Ibid, preamble
3. Ibid, s 5(1)(a)
4. Ibid, s 6(2)
5. Waitangi Tribunal, *The Turangi Township Remedies Report* (Wellington: GP Publications, 1998), p 35
6. Ibid
7. Ibid, p 11
8. *Haronga v Waitangi Tribunal and Others* [2011] NZSC 53, [2012] 2 NZLR 53 at para 80
9. Treaty of Waitangi Act 1975, s 6(4)
10. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641
11. Section 8A was inserted into the Treaty of Waitangi Act 1975, as from 9 December 1987, by section 4 of the Treaty of Waitangi (State Enterprises) Act 1988.
12. *New Zealand Maori Council v Attorney-General* [1989] 2 NZLR 142 (CA)
13. For an extended discussion of the statutory history of both the Treaty of Waitangi (State Enterprises) Act 1988 and the Crown Forest Assets Act 1989, see *Haronga v Waitangi Tribunal* [2011] NZSC 53, [2012] 2 NZLR 53 at paras 56–77.
14. *Haronga v Waitangi Tribunal* [2011] NZSC 53, [2012] 2 NZLR 53 at paras 65–66, 76
15. Treaty of Waitangi Act 1975, ss 8B, 8HC
16. Crown Forestry Rental Trust, trust deed, April 1990, cl 11.1
17. Memorandum 2.389, paras 48, 49, 75
18. Ibid, para 54
19. Ibid, paras 81–82; memo 2.411, paras 20–21
20. *Haronga v Waitangi Tribunal* [2011] NZSC 53, [2012] 2 NZLR 53 at paras 88–92; Waitangi Tribunal, *The Turangi Township Remedies Report*, p 9



CHAPTER 3

## THE CLAIMANTS AND THE PREJUDICE SUFFERED

*Nā, i roto i ngā kōrero i te heke o Ngāti Kahu,  
Ko Maungataniwha te maunga,  
Ko Tokerau te moana,  
Ko Kahutianui te tupuna,  
Ko Te Parata te tangata,  
Ko Māmaru te waka,  
Ko Ngāti Kahu te iwi.*

*In the accounts of the descent lines of Ngāti Kahu,  
Maungataniwha is the mountain,  
Tokerau is the sea,  
Kahutianui is the ancestress,  
Te Parata is the man,  
Māmaru is the canoe,  
Ngāti Kahu is the iwi.<sup>1</sup>*

### 3.1 NGĀTI KAHU ORIGINS AND IDENTITY

The *Muriwhenua Land Report* explains how a distinct social and economic order came to emerge in Te Hiku by the mid-nineteenth century, and how a series of closely related but autonomous hapū came to populate the district. Over generations, highly mobile communities forged relationships with each other and the land. The hapū of Te Hiku drew their origins primarily from 10 waka migrations, each of which brought tūpuna who became the focal point for later generations and their communal identities. A defining characteristic of the region was the extent of common ancestry that developed over time, as old groups fused and new hapū formed in their wake. Equally, whakapapa defined the operation of Māori law, which revolved around a set of divine and human relationships. Peoples' origins lay beyond the human world; seeking balance between the human and divine worlds required active maintenance and care.<sup>2</sup> The Reverend Canon Lloyd Nau Pōpata told us of the role played by rangatira in the maintenance of these relationships and their importance to Ngāti Kahu today.<sup>3</sup> The relationships were crucial in the formation of hapū, and the establishment of communal rights in land.

After the waka migrations, new communities developed associations with the land that were guided by customary law. Māori in Te Hiku, as elsewhere, saw themselves as users of land, rather than its owners. Land allocations to outside individuals were a way of incorporating those individuals into the tribe. Leadership for the community came from rangatira, who in turn depended on support from the community. Māori society in Te Hiku came to be based around hapū. But the structure of those hapū underwent perpetual change. For that reason, the hapū of Te Hiku had a shared sense of history and destiny, even though they emerged as autonomous hapū in their own right.<sup>4</sup>

During the Muriwhenua land inquiry the Reverend Maori Marsden provided evidence on the origins of Te Hiku iwi. According to his evidence Ngāti Kahu, Ngāti Kaharoa,

and Te Rarawa were the three original iwi of the region. Over time Ngāti Kaharoa evolved into Ngāti Kuri, Te Aupōuri, and Ngāi Takoto. The interwoven whakapapa of these three iwi sees them all able to claim descent from each other. That same general rule also applies to all five Te Hiku iwi. The iwi have maintained their own identity and rangatiratanga but intermarriage and alliance have resulted in all rangatira, though identifying primarily with a single iwi, having rights through their tūpuna throughout the region.<sup>5</sup>

By the eighteenth century, Ngāti Kahu, Te Rarawa, Ngāti Kuri, Te Aupōuri, and Ngāi Takoto had become the main tribes of Te Hiku. Despite ongoing mobility, these groups established themselves in particular parts of the region. At North Cape was Ngāti Kuri. Te Aupōuri were further to the south, at Te Kao, where their principal marae was eventually established. Beyond them were Ngāi Takoto, at Rangaunu. The main settlements of Te Rarawa were further to the south-west, at Ahipara and Kaitaia. Ngāti Kahu became located in the vicinity of Doubtless Bay, from Karikari to Oruru and Mangonui. However, there were no hard and fast boundaries between these groups. Rather, rangatira maintained relationships through agreements regarding use rights to resource areas, based in part on common ancestry.<sup>6</sup>

Ngāti Kahu trace their origins to one of the earliest known waka – Māmaru. Some claim Māmaru was the first to strike the beaches of Tai Tokerau. The waka had earlier sailed under the name Tinana, and the leadership of Tumoana, a prominent tūpuna in the genealogies of Tai Rāwhiti (East Coast) and Ngāi Tahu (Te Waipounamu, South Island). But, by the time the waka arrived as Māmaru, Tumoana's nephew, Te Parata, had assumed leadership. Māmaru eventually beached at Taipa, where a memorial for it now stands. Upon arrival, Te Parata met and married Kahutianui, who is said to have been awaiting the arrival of the waka. Te Parata and Kahutianui are said to have lived mainly at Taipa and at Taemaro.

Three hapū arrived with Te Parata on Māmaru waka: Te Rorohuri, Patu Koraha, and Te Whānau Moana. Each

settled in the area around Doubtless Bay and Rangaunu Harbour. Because of the marriage of Te Parata and Kahutianui, and as Kahutianui was an influential person and an able leader in her own right, the original hapū of Māmaru in time identified collectively as Ngāti Kahu. Kahutianui's children in their turn became the founding ancestors of many more Ngāti Kahu hapū who spread across the whole of the Doubtless Bay lands adopting a variety of hapū names. Ngāti Kahu had also an earlier name, Ngāi Tamatea, but it largely dropped from usage following a severe defeat in battle in which their leading men were killed at Kohukohu. When descendants of the survivors restored their tribal mana, many years later, they decided (about 1926) to resume the name Ngāti Kahu, as descendants of Te Mamangi, daughter of Parata and Kahutianui.<sup>7</sup>

Several generations after the landing of Māmaru waka, Ngāti Kahu hapū had spread south along the coast to Whangaroa, Matauri Bay, and Te Tii, and in time intermarried with all the Northland tribes. Thus Ngāti Kahu also claim descent from Puhī's mokopuna Rahiri. Through this connection, and the factions created by Rahiri's sons Uenuku Kuare and Kaharau, Ngāti Kahu became involved in the fighting which affected the Northland area for many generations and continued right up to the signing of the Treaty of Waitangi.

The Ngāti Tara claimants who appeared before us also trace their whakapapa back to Parata and the Māmaru waka,<sup>8</sup> as well as to two other waka: Waipapa and Ruakarama. The Waipapa waka landed first at Waipapa on the Karikari Peninsula and later sailed across Doubtless Bay and paddled up the Kohumarū River. Kahukura, the tohunga on the Waipapa waka, is an important ancestor in Ngāti Tara whakapapa.<sup>9</sup> The Ruakarama waka landed at Mangonui, having been led into the harbour by a large shark-like taniwha. It was captained by Moehuri and his son Tukiata who became ancestors of Ngāti Tara. They established a pā overlooking Mangonui named Rangikapiti.<sup>10</sup> Today, the principal marae of Ngāti Tara is at Parapara.<sup>11</sup>

In broad terms, Ngāti Kahu settlements were in three divisions, at Karikari, the northern sentinel of the bay, at central Taipa, the gateway to the villages of Oruru, Peria, and Parapara in the hinterland, and in the eastern Taemaro ranges, where the villages of Waiarau, Taemaro, and Waimahana were located. Though spread along the length of the bay, signal fires on the hilltops of Karikari, Otengi, and Taemaro reminded all that they were kindled from a common hearth.<sup>12</sup>

The arrival of Europeans in Te Hiku brought a series of changes. The most serious and apparent change was disease, which halved the population of Te Hiku by 1835.<sup>13</sup> In response, Te Hiku iwi adapted their social and economic order. Communities that had originally spread across the district became concentrated. The increase in warfare at the beginning of the nineteenth century further accentuated this effect. Large settlements emerged around Kapowairua and Te Hapua at the tip of the main peninsula, at Houhora, Karikari, Whangaroa, Herekino, and Whangape, and throughout a central band from Ahipara to Mangonui through Kaitaia, Wainui and Rangaunu, and the Oruru Valley. Depopulation had the added effect of centralising leadership and the emergence of Nopera Panakareao as a central figure of mid-nineteenth century tribal affairs.<sup>14</sup>

The possibility for further change arose with the arrival of the first traders, and new kinds of economic enterprises. But both were incorporated into existing practices: traders were married into the community, so as to ensure their ongoing benefit to the community, and the flax and timber industries were carried out communally, thus requiring little social adjustment. During this period, as explained in the *Muriwhenua Land Report*, ‘Maori saw the changes as being made on their terms.’<sup>15</sup> It was in this context that some Te Hiku leaders first entered into land transactions.

### 3.2 WHAT IS THE PREJUDICE FOR WHICH WE CAN RECOMMEND A REMEDY?

In this inquiry we are asked to make recommendations to relieve Ngāti Kahu of the prejudice they suffered as a result of the Crown’s breaches of the Treaty, established by their well-founded claims. In this section we set out the prejudice for which we can recommend a remedy.

The well-founded claims of Ngāti Kahu, as with all Te Hiku iwi, relate to pre-1865 land alienations that resulted from the Crown’s validation of pre-Treaty land transactions, further land alienation as a result of land purchases by the Crown, and the impacts of that alienation.<sup>16</sup> The Crown awarded 8,904 hectares to settlers as a result of its validation of pre-Treaty land transactions. It kept for itself a further 10,522 hectares of land as so-called ‘surplus land’ from those transactions. The Crown’s own Treaty breaching land transactions deprived iwi and hapū of a further 113,388 hectares (280,177 acres) by 1865. In total, the iwi of Te Hiku were deprived of 132,004 hectares of land by 1865, or nearly half of all the land in the region.<sup>17</sup> Ngāti Kahu estimate that 70 per cent of the land within the remedies claim area was lost by 1865.<sup>18</sup>

There was broad agreement between the parties of the type and scale of the prejudice suffered by Ngāti Kahu. The Crown conceded that Ngāti Kahu, as one of the iwi of Te Hiku, suffered prejudice as a result of Crown actions and omissions as examined in the *Muriwhenua Land Report*. Crown counsel submitted:

the prejudice arose from land transactions that were found to be in breach of the Treaty of Waitangi. Along with the other Te Hiku iwi, Ngāti Kahu have suffered social and economic consequences as a result. The Crown accepts that Ngāti Kahu are deserving of redress for these breaches.<sup>19</sup>

The Crown also made the following concession:

The Crown agrees that Ngāti Kahu was prejudiced and is deserving of a settlement and redress. The Crown says it is ready and willing to settle all of Ngāti Kahu’s claims.<sup>20</sup>

In her brief of evidence, Maureen Hickey, Office of Treaty Settlements negotiation and settlement manager for Te Hiku settlements, stated:

the Crown generally assesses land loss through raupatu breaches (which involved war and loss of life) as more serious than non-raupatu Treaty breaches. The Crown accepts Ngāti Kahu and other Te Hiku iwi suffered serious non-raupatu breaches which had a substantial impact on their economic, cultural and social well-being.<sup>21</sup>

She went on to particularise the impact of the Crown acts and omissions:

many hapu were left with insufficient suitable lands for their needs, lacked opportunity for economic and social development, endured poverty and poor health. The Crown has also acknowledged that deprivation adversely affected cultural frameworks and was detrimental to the material, cultural and spiritual well-being of all Te Hiku Maori.<sup>22</sup>

Ms Hickey's evidence echoes the *Muriwhenua Land Report* which concluded that, as a result of land alienation to 1865, Te Hiku iwi were left marginalised on marginal land, the social and economic consequences of which included physical deprivation, poverty, social dislocation and the break-up of families, and a loss of status.<sup>23</sup>

In describing this prejudice we draw first upon the findings contained in the *Muriwhenua Land Report*. That report outlined the prejudice suffered by all Te Hiku iwi, not prejudice suffered by Ngāti Kahu alone. This was because the claims heard by the Tribunal were brought by the collective body of Te Rūnanga o Muriwhenua. The *Muriwhenua Land Report* reflected this collective approach; the Tribunal stated that the relationships between Te Hiku hapū were so close that their division was unnecessary.<sup>24</sup>

Secondly, we draw upon evidence supplied by Ngāti Kahu of the specific prejudice they have suffered. The Crown provided little evidence in response but made submissions on their view of the nature of the prejudice suffered. We discuss the parties' positions in chapter 5.

### 3.2.1 The pre-Treaty transactions

Pre-Treaty land transactions between Te Hiku rangatira and missionaries or settlers resulted from the desire of rangatira to incorporate Pākehā into their hapū and thereby secure future benefits from opportunities for trade and economic development. More immediate benefits were also available in the form of the goods and monies that Pākehā gave to rangatira.<sup>25</sup>

In Te Hiku these pre-Treaty transactions were undertaken primarily by the rangatira Panakareao and Poroua.<sup>26</sup> The Crown's investigation of these transactions would show that at least 22 transactions took place from 1834 to 1839. A further 33 transactions took place in just over 12 months from 1839 to early 1840.<sup>27</sup> The Crown's validation of these transactions as complete alienations of land resulted in Te Hiku iwi being dispossessed of 18,616 hectares. Of this, 8,094 hectares were granted to settlers and 10,522 hectares were claimed by the Crown as so-called surplus land.<sup>28</sup>

Ngāti Kahu evidence is that the records of the Land Claims Commission tell us little, if anything, about the expectations of Māori leaders involved in the transactions. There is little evidence from these records, or elsewhere, to show that Ngāti Kahu were actively involved in the transactions which resulted in them being deprived of their land.<sup>29</sup> Ngāti Kahu say their hapū did allocate use rights to some land to British migrants as early as the 1830s, but they view these agreements as *tuku whenua* conveyances of use rights, which included ongoing obligations. The agreements were social compacts rather than property conveyances.<sup>30</sup>

The *Muriwhenua Land Report* states that the Crown's validation of pre-Treaty transactions was inconsistent with the principles of the Treaty. In relation to the Crown's validation of pre-Treaty transactions as a whole the Tribunal found the prejudice flowing to the claimant group was:

the erosion of their social, economic, and political base, and the extinguishment of hapu interests in respect of most of the Muriwhenua land that would be crucial for the future development of the district. They were deprived of their underlying interest in the lands granted, their rights of shared user,

the benefit of the occupiers' services for the use of the land, their interests as beneficiaries of a tribal trust, and their traditional authority over it. They were also denied their absolute right to the surplus.<sup>31</sup>

The Tribunal made a number of findings relating to the component parts of the Crown's validation process for pre-Treaty transactions. These are outlined below.

## (1) *The Land Claims Ordinance 1841*

The pre-Treaty transactions were discussed at Waitangi between the assembled rangatira and Captain William Hobson, who would become Governor of New Zealand. Māori were promised that the pre-Treaty transactions would be inquired into and that land unjustly held would be returned.<sup>32</sup> In 1840, following the signing of the Treaty, Hobson issued a proclamation which rendered all pre-Treaty transactions void until they had been investigated by the Crown. These investigations would take place under the Land Claims Ordinance of 1841.<sup>33</sup>

Significant areas of land within the Ngāti Kahu remedies claim area were affected by pre-Treaty transactions. Land to the north of the Mangatete River, at the base of the Karikari Peninsula, was transacted with James Davis. An area of between 4,000 and 5,000 acres was involved, although Davis claimed only 1,000 acres of this before the Land Claims Commission.<sup>34</sup> Joseph Matthews entered into transactions with Panakareao for land at Raramata, Parapara, and Te Mata on the eastern side of the Karikari Peninsula, taking in about half of Tokerau beach. As was the case with many of the transactions between Māori and missionaries in the north, it was intended that Māori would retain an interest in the land and would continue to live upon and utilise it. The transaction was considered to be a way of protecting the land for Māori, preventing its alienation to other settlers.<sup>35</sup> Further claims to land from Oruru to Mangonui included a transaction between Panakareao and Dr Ford of the Church Missionary Society involving an estimated 20,000 acres, most of which was to be held in trust for Māori.<sup>36</sup>

The Tribunal, as reported in the *Muriwhenua Land Report*, found that these transactions were not land sales

in the western sense. Rather, they took place according to Māori custom.<sup>37</sup> They did not and could not have effected valid and binding alienations. The parties were not of sufficiently common mind for valid contracts to have formed.<sup>38</sup>

These transactions were investigated by commissioners appointed by Governor Hobson under the Land Claims Ordinance. The Tribunal found that this ordinance omitted to:

- ▶ sufficiently particularise the nature and scope of the investigation needed;
- ▶ require the commissioners to ascertain the true nature of the transactions; and
- ▶ require the commissioners to determine the adequacy of the consideration, the expectation of future benefits, the absence of fraud or unfair inducement, the measures needed to accommodate any special arrangements such as joint-use understandings, implied trusts or service obligations, the sufficiency of other land in the possession of Māori, the certainty of the alienor's right to enter into the transaction, the clarity of boundaries, the fairness of the apportionment of land between parties, the ongoing obligations to be met, and appropriate provision for reserves.<sup>39</sup>

These omissions were inconsistent with the Treaty principle which requires the Crown actively to protect Māori rights to their land, to ensure that they maintain an economic base, and to respect tribal autonomy and law.<sup>40</sup> The Tribunal found the claimants to have been prejudicially affected by the Crown's omissions as:

their effect was to circumscribe the inquiry that was needed, impede ascertainment of the true nature of the transactions, and allow conditional occupations of Maori law to be changed into absolute sales.<sup>41</sup>

## (2) *The Godfrey commission*

Colonel Edward Godfrey was appointed to investigate pre-Treaty land transactions in the north, including Te Hiku. Through the commission process missionaries and settlers were able to secure legal title to land involved in pre-Treaty transactions with Māori. Grants



were restricted to the area deemed to have been paid for based upon the value of any cash and goods transferred to Māori. The maximum area that could be granted was capped at 2,560 acres (or four square miles). All land from any of the transactions which was not awarded to Pākehā claimants but was deemed by the commissioner to have been validly alienated from Māori was considered surplus land and became the property of the Crown.<sup>42</sup>

That the Crown would claim these surplus lands was never made apparent to Māori. Discussions between Captain Hobson and rangatira present at Waitangi in the lead up to the signing of the Treaty included the subject of pre-Treaty transactions. Hobson informed the rangatira that the transactions would be inquired into and that 'land unjustly held' would be returned to them.<sup>43</sup> Any doubt that Māori may have had about this was seemingly addressed by Hobson's successor, Governor Robert FitzRoy. In December 1843, FitzRoy announced that surplus lands from pre-Treaty transactions would revert to the Māori owners of the land.<sup>44</sup>

The rangatira and hapū of Te Hiku played little role in the investigations of commissioner Godfrey. Evidence was gathered from Māori directly involved in transactions but was formulaic in nature, consisting almost entirely of confirmations that they had signed a deed, received the goods outlined in the deed, and knew the land affected.<sup>45</sup> There was no investigation of what the Māori parties to these transactions intended to achieve through them.<sup>46</sup>

Godfrey's commission effectively converted customary transactions into full and final alienations of land. The Crown and Godfrey assumed that all transactions were valid purchases.<sup>47</sup> The allocations of land by Panakareao and Pororua, which came with ongoing obligations and were intended to integrate Pākehā into the communities to whom the land belonged, became outright alienations of that land.

In relation to the Godfrey commission, the Tribunal found that:

- ▶ The inquiry proceeded on an erroneous assumption that the land transactions constituted or could be deemed to constitute a contract for the sale and purchase of land under English law.

- ▶ No examination was made of the true nature of the transactions, the parties' understandings and the degree of mutual comprehension, the 'title' of the Māori parties to enter into the land transactions, the adequacy of consideration, whether there was fraud or unfair inducement, the provisions needed for trusts, joint-use or other special arrangements, the true boundaries, whether Māori would retain sufficient land to maintain an economic base, or the reserves required.
- ▶ Of the 62 claims to land by Pākehā in Te Hiku just 14 were investigated by Godfrey, and these ineffectually.<sup>48</sup> (Those claims not heard resulted in scrip awards, which we discuss below.)

The failure of the Crown to ensure that an adequate inquiry was made was inconsistent with the Treaty principle requiring the Crown actively to protect Māori rights to their land, to ensure they maintained an economic base, and to respect tribal autonomy.<sup>49</sup> The Tribunal found that the prejudice to Te Hiku hapū arose from an inadequate inquiry as:

had a full and effective inquiry been made, it would or should have been ascertained first that the Maori and European parties, in 1843 (and previously), were not sufficiently of one mind for valid contracts to have been concluded and, on the Maori understanding of the transactions, Maori interests in the land had not been extinguished.<sup>50</sup>

### (3) *Scrip land*

There was one alteration to the Crown's general approach to pre-Treaty transactions. In 1841, disagreements between Panakareao and Pororua led to an armed conflict which prevented Godfrey from completing inquiries into claims in the eastern Muriwhenua district, Mangonui, and Oruru. The Crown offered scrip to those Pākehā whose claims were affected in exchange for their claim to the land transacted. Scrip was a certificate entitling those claimants to a given amount of land at any place where Crown-owned land was available. When claimants accepted scrip from the Crown their claim to the land was extinguished. Although in principle the Crown did no more than take

over the claim to the land, in practice it was assumed that the land involved was now Crown-owned.<sup>51</sup>

The areas claimed through its issuing of scrip were later the subject of Crown purchasing, with the Crown seeking to finalise the areas involved and provide for any outstanding grants that might be required.<sup>52</sup> No figures are available for the total amount of land affected by the payment of scrip. However, significant transactions for which scrip was issued include that of Dr Samuel Ford for 20,000 acres (8,094 hectares) at Oruru.<sup>53</sup> In relation to the scrip claims, the Tribunal found that:

- ▶ The Crown's failure to investigate the pre-Treaty transactions for which scrip was given, and the presumption that the Government was entitled to the scrip lands, was inconsistent with the Treaty principle which requires the Crown actively to protect Māori rights to their land.<sup>54</sup>
- ▶ Although the Crown claimed its right to affected scrip lands by virtue of subsequent purchases, the Government entered into these purchases on the basis that the lands affected by scrip awards had already passed to the Government. The Crown's regular presumption that it was not obliged to establish the validity or equity of its direct or derivative acquisitions was also contrary to Treaty principles, in that the duty to protect requires an accounting for the protection given, and thus an accounting for the Government's acquisitions.<sup>55</sup>

#### **(4) *The Land Claims Settlement Act 1856***

The alienation of land through the awards to settlers and the claiming of all scrip and surplus land by the Crown was not immediately obvious to the hapū of Te Hiku. Although the Crown may have claimed thousands of hectares of land as surplus and scrip land, little changed on the ground. Many of the settlers who took scrip from the Crown left the district when Auckland was established as the new capital of the colony.<sup>56</sup> Even where settlers took up their awards of land there was often little obvious impact. Māori continued to live on some of the land and exercise rights of ownership. Settlers were dissatisfied with the lack of surveys of the land involved which

made it difficult to locate the boundaries of the land they had been awarded. It was also difficult to separate areas granted by the Crown to settlers from those areas taken by the Crown as surplus.<sup>57</sup>

Such difficulties resulted in a second commission established by the Land Claims Settlement Act 1856 and headed by a new commissioner, Francis Dillon Bell. Bell did not re-investigate the pre-Treaty transactions. His role was to settle and clearly identify by survey the settlers' grants and the Crown's surplus. Māori were only called on to assist in identifying the boundaries of claims. It was assumed that the native title to the land had been extinguished.<sup>58</sup>

The Tribunal found that the Land Claims Settlement Act 1856 omitted:

- ▶ a requirement that the commissioner review the workings of the Godfrey commission;
- ▶ a requirement that the commissioner should hear and determine those claims for which scrip had been issued;
- ▶ a requirement that Māori should be provided with adequate reserves in the areas alienated;
- ▶ a requirement to respect any conditions on which the transactions had been affirmed or any implied or express trusts or joint-use arrangements; and
- ▶ a requirement that Māori should be heard on any steps taken to settle and define the settler's grant, the right to the surplus and any Māori reserves.<sup>59</sup>

The Act was inconsistent with the Treaty principle requiring the Crown actively to protect Māori rights to their land, to ensure they maintained an economic base, and to respect tribal autonomy.<sup>60</sup> The Tribunal found that Te Hiku iwi were prejudiced by the Crown's omissions as:

they circumscribed the inquiry that was needed, prevented the true nature of the transactions from being ascertained, failed to ensure that the hapu were left with sufficient lands, and allowed the majority of the claims, those affected by scrip, to be treated as valid sales without any inquiry into them.<sup>61</sup>

#### **(5) *The Bell commission***

Through the Bell commission, the Crown awarded 8,904 hectares in Te Hiku to settlers. It identified and kept for

itself a further 10,522 hectares as surplus land.<sup>62</sup> The area deemed to be surplus from pre-Treaty transactions was originally much larger, involving a further 26,304 hectares (65,000 acres). However, this land would be claimed by the Crown through its own transactions with the hapū of Te Hiku.<sup>63</sup>

Bell augmented his statutory role, which was mainly to define grants to settlers, surplus lands, and any reserves for Māori, in order to recover as much land for settlers and the Crown as possible. Settlers were encouraged to have their claims surveyed by awarding them additional land if they did so. As a result, land grants to settlers were substantially increased. These surveys then enabled the Crown to secure a clearly defined area as surplus land. Reserves for Māori were reduced to a minimum or not provided at all.<sup>64</sup>

Many thousands of acres were alienated from Māori within the Ngāti Kahu remedies claim area as a result of this process. A settler named Davis was awarded 466 acres (189 hectares), with the Crown taking 4,144 acres (1,786 hectares) as surplus land. Māori protested the Crown's claim to this surplus land on the basis that it was meant to have been kept for Māori.<sup>65</sup> In relation to the Matthews claim (2961 hectares), it was explained to Commissioner Bell that the Raramata block (1,201 hectares) and the sacred hill of Pararake were supposed to be reserved for Māori. Despite this Bell awarded Matthews 707 hectares of land, awarded a further 267 hectares to the surveyor to cover Matthews' survey costs, and claimed the remaining land as surplus for the Crown.<sup>66</sup> The Tribunal found that:

- ▶ Bell took positive and deliberate steps to maximise the amount of land which went to Pākehā or the Government, and to minimise that retained by Māori;
- ▶ Māori were allowed either no, or insufficient, hearing; and
- ▶ Bell had little regard for the use of the land by Māori, the future needs of Māori, and their other interests.

These acts were inconsistent with the Treaty principles which require the Crown actively to protect Māori rights to their land, to ensure they maintain an economic base,

and to respect tribal autonomy and law.<sup>67</sup> The Tribunal found that Māori were prejudiced by these acts:

which deprived them of lands in which they had a legitimate interest . . . we consider there was never a sufficient ground for treating any transaction as a full and final conveyance of the land described in it.<sup>68</sup>

### (6) *Surplus land*

In relation to surplus lands it was found that the Crown assumed that the land had been sold by Māori but that this was not the case. The Governor's intention to take the surplus land had not been stated during the Treaty debate when the matter was raised. Instead, the opposite impression was given. Finally, to be valid, the pre-Treaty transactions needed Māori affirmation. In Te Hiku, Māori affirmed the transactions before the commissioners on the express condition that any surplus would return to them. No inquiry was made regarding the future needs of Māori.<sup>69</sup>

The Crown's policies, practices, acts, and omissions which gave rise to the appropriation of the surplus lands were inconsistent with the Treaty principles which require the Crown actively to protect Māori rights to their land, to ensure they maintained an economic base, and to respect tribal autonomy and law.<sup>70</sup> As a result, it was found that:

Māori were wrongly deprived of land they had not sold and over which they had continued to exercise rangatiratanga.<sup>71</sup>

### 3.2.2 *Crown land purchasing to 1865*

Following the signing of the Treaty the leaders of Te Hiku attempted to attract Pākehā settlement, create opportunities for economic and other benefits, and develop their relationship with the Crown through land transactions. Between 1850 and 1865 some 25 deeds were signed, as a result of which the Crown claimed most of the more fertile lands of Te Hiku not already alienated through the validation of pre-Treaty transactions. This included the productive areas of land where the Māori population of the district had concentrated. Rather than providing a



basis for economic development for the iwi of Te Hiku these transactions excluded the iwi from most of the more valuable agricultural land.<sup>72</sup> In total, the Crown's land transactions resulted in the transfer of a further 113,388 hectares (280,177 acres) out of hapū ownership by 1865.<sup>73</sup> Approximately 54,012 hectares or 47 per cent of this total purchase area was located in the central Muriwhenua bowl which makes up much of the Ngāti Kahu remedies claim area.<sup>74</sup>

As was the case with transactions in the pre-Treaty period, the Crown's transactions were characterised by the widely divergent understandings of the parties involved as to their nature and intent. Māori continued to view them as customary arrangements involving the allocation of rights to settle on land through which settlers became part of the community to whom the land belonged. The Crown viewed them as sales – complete alienations of land that extinguished all the rights and authority of the Māori owners.<sup>75</sup>

Panakareao and Pororua were central figures in early transactions with the Crown. Their desire to secure European settlement was an important factor informing their decision to enter into these deeds. Settlement brought with it a ready market for Māori produce as well as European goods and skills desired by Māori. These transactions were also an important way for the rangatira of Te Hiku to secure a relationship with the Governors of the colony.<sup>76</sup> They were not ceding their authority over the land. Rather, rangatira were asserting their authority over the land with payments viewed as an acknowledgement of their authority.<sup>77</sup>

Although Māori expected their authority over land to continue, the Crown assumed that all Māori rights were extinguished and that the land would become absolutely the property of the Crown. It was expected that Māori would benefit from the conveyance of their lands – less from the consideration paid than from the advantages and opportunities that would follow from Pākehā settling on the land and the supposed spread of civilisation.<sup>78</sup>

The Crown was aware of the possibility that Māori could unwittingly suffer harm through their unfamiliarity

with the law governing land transactions. In his instructions to Hobson the Colonial Secretary, Lord Normanby, stipulated that all contracts with Māori should be on fair and equal terms and that Māori should sell only excess lands and keep sufficient lands for themselves.<sup>79</sup> Despite Normanby's instructions no significant protection of Māori interests was evident. Transactions involving significant areas of land occurred throughout Te Hiku with little regard for the needs of Māori. The result of this was the virtual exclusion of Māori from the economic, political, and social life of this area.<sup>80</sup>

Crown policy regarding land purchasing included the requirement to set aside reserves for Māori. Reserves were transferred to Māori as freehold grants in the same way land was transferred to settlers. Thus, Māori would hold land in the same fashion as settlers, with the ultimate right to that land being derived from the Crown.<sup>81</sup> In Te Hiku, few reserves were created.<sup>82</sup> This was despite the reserving of land being an important consideration for Māori when deciding whether to transact land with the Crown.<sup>83</sup> Those few reserves that were created were not protected in any way, with many alienated by the Crown through further transactions, depriving some hapū of what little land they had been able to retain.<sup>84</sup>

Those areas reserved were not sufficient to allow Te Hiku hapū an opportunity to become involved in the economic development of the region. In the central Muriwhenua district, 20 reserves were established between 1850 and 1865 totalling approximately 2,763 hectares (6,828 acres) or just over 5 per cent of the area purchased by the Crown. Most of the reserved area was later sold, further reducing the area retained in Māori ownership.<sup>85</sup>

In relation to the Crown's purchasing of land in Te Hiku it was found that:

- ▶ no transaction could be shown to have been an absolute sale and there was no contractual mutuality or common design – rather, there was a fundamental ideological divide;
- ▶ the Government did not prove the transactions to be sales at the time (or subsequently);

- ▶ there was no independent audit of Government action for fair and equitable contracts, no judicial confirmation process, and no access for Māori to independent and informed advice to enable proper decisions to be made;
- ▶ there was no independent monitoring of issues of title, representation, boundaries, land descriptions, fair prices, and reserves, and there is evidence of considerable looseness in all of these areas;
- ▶ there were no protective arrangements overall but the Government's purchase monopoly and fiscal interest in buying and selling Māori land at this time made independent advice essential;
- ▶ there is no evidence that the Crown was buying land that was in excess of Māori needs, as was required, or that any inquiry was made on that account;
- ▶ the evidence is that the Crown bought the better land in the central band where Māori were concentrated;
- ▶ long-term benefits were clearly anticipated by Māori in accordance with expectations created over many years;
- ▶ the Government utilised income from the sale of land it purchased to fund immigration and colonisation but there were no settlement plans to accommodate Māori; and
- ▶ there were no arrangements to secure long-term benefits for Māori either, but there is evidence that the desire for such benefits was capitalised on to secure extensive acquisitions.<sup>86</sup>

Of particular concern to the Tribunal was the Crown's failure to apply a policy ensuring that sufficient reserves for Māori were created. The fact that the transactions were not sales and that no proper protective mechanisms were in place need not have mattered so much in achieving the goals of Māori and the Crown in these transactions had fair shares in land been maintained. It was found that:

- ▶ the Crown's failure to provide adequate reserves was seen as the main cause for Māori dissatisfaction;
- ▶ no adequate reserves policy was implemented or adhered to, and insufficient reserves were provided; and
- ▶ the evidence points convincingly to an alternative

policy of acquiring as much Māori land as could be, as soon as practicable, and with as few reserves as possible.<sup>87</sup>

Māori were prejudiced by the Crown's failure to protect Māori interests, which was contrary to its duty to provide that protection and ensure an economic base for each hapū. The policy of extinguishing native title was also contrary to the principles of the Treaty in that grossly insufficient reserves were made.<sup>88</sup> The *Muriwhenua Land Report* describes the prejudice to Māori as being highlighted in:

the gross distortions in land ownership that followed. It was this that precluded Maori from participating in the eventual benefits of settlement, for their exclusion from the land was such that they could not be stake-holders in the new social and economic order that Europeans knew would follow.<sup>89</sup>

### 3.3 THE ECONOMIC COST

By 1865, as a result of Crown actions and omissions, the bulk of the most productive agricultural lands were alienated from the hapū of Te Hiku. The hapū also lost the opportunities for development that the land transactions were supposed to bring.<sup>90</sup> In this section, we discuss the economic impact of the substantial early alienation of land on the iwi of Te Hiku.

#### 3.3.1 Quantifying the economic impact of land alienation

In their evidence, Ngāti Kahu included an assessment of the economic impact of the land alienation suffered, presented by Dr Ganesh Nana, chief economist at Business and Economic Research Limited (BERL).<sup>91</sup> Based on a figure of 164,106.5 acres for pre-1865 land alienation in the remedies claim area and utilising three scenarios outlining how that land might have been utilised, BERL provided estimates for both the value of the land alienated and for the loss of annual income. The BERL estimates for the loss of value from the alienated land ranged from over \$37 million to \$250 million.<sup>92</sup> Estimates for lost annual income from the land ranged from \$10.1 million to \$26.8 million as at 2011.<sup>93</sup> BERL also provided an indicative

figure of the total Gross Domestic Product that would have been generated by Ngāti Kahu had they been a full participant in the land-based economic activity in their rohe. This estimate, for the period from 1865 to 2011, was \$2.1 billion.<sup>94</sup>

The Crown did not provide us with any alternative figures for the economic loss suffered by Ngāti Kahu but did provide a critique of BERL's estimates of loss. Dr John Yeabsley, Senior Fellow of the New Zealand Institute of Economic Research, told us that the attempt by BERL to estimate economic loss due to land alienation over a long period had multiple and significant shortcomings. In fact, he questioned whether any such estimate could be accurately made.<sup>95</sup> According to Dr Yeabsley, estimating economic loss due to the alienation of an asset over a long period is a highly complex and uncertain task. Factors such as the capacity of the owners to use the asset, the decisions made by them regarding its use, and external economic, social, and political influences have to be taken into account.<sup>96</sup> Dr Yeabsley criticised the methodology, and the limited nature of the three scenarios used by BERL. In his view, BERL had not taken adequate account of these factors and their conclusions were unreliable as a result.

We do not need to resolve this issue. As we explain later in the report, the approach we take is not one that a Court would take in a civil case. Our task is not to reach a precise figure of economic loss and then compensate Ngāti Kahu for that. A damages approach is not necessary. However, notwithstanding the criticisms of the BERL methodology made by Dr Yeabsley, there is no doubt that the economic loss suffered by Ngāti Kahu as a result of land alienation by 1865 was of a very large magnitude.

### 3.3.2 The economic consequences of pre-1865 land alienation in the post-1865 period

By 1865, the hapū of Te Hiku had little land left that was suitable for agricultural development. It was reported in 1871 that Māori in Mangonui were 'in danger of becoming paupers' with an estimated population of 1,275 holding 9,833 hectares or approximately eight hectares per person. Most of this area was, at best, suitable for running stock.<sup>97</sup>

Other opportunities for economic development were limited and tended to focus on extractive industries, notably kauri gum digging.

By the late 1860s, gum digging was the only significant industry in which Māori were able to take part. The provisioning of ships and trade in horticultural produce that had provided an economic base in earlier years had declined as ship visits became fewer and European settlers began to dominate horticulture around Mangonui.<sup>98</sup>

The hapū of Te Hiku had hoped that land deals would be accompanied by an influx of settlers which would provide a base for economic development and other long-term benefits. This did not transpire. Significant migration to the region did not occur until the latter nineteenth century when the growth of gum digging attracted many European migrants. Even then, the expected long-term benefits of such an influx did not materialise. Rather, many of the settlers that arrived competed with Māori for the work that was available.

Gum digging provided a means of support for many Māori but, far from offering a genuine platform for economic growth, it served only to lock Māori into a system of debt, dependence, and poverty. Māori had little, if any, control over the industry. Much of the land on which the gum digging occurred had already been alienated by the time the industry became established in the second half of the nineteenth century. The trade in gum became dominated by a handful of traders and the land from which most of the kauri gum was extracted in Te Hiku was Crown owned. It was the few traders and the Crown that truly profited from kauri gum.<sup>99</sup>

Gum digging was an industry of low returns for most diggers, including Māori. A few dominant traders owned all the stores through which the gum was sold. The Māori of Te Hiku engaged in gum digging, along with the settlers who flowed into the region, were ensnared in a system of debt peonage.<sup>100</sup> Gum traders allowed diggers to become heavily indebted to them. In some instances the gum traders would only pay for gum with store credit. This created a dependence on the stores that gum diggers struggled to overturn. The prices charged by the stores were often exorbitant and the price given for gum dictated

by the store keeper.<sup>101</sup> For some Māori the debt incurred at the stores necessitated further sales of land.<sup>102</sup>

As the only source of cash or goods for Māori in Te Hiku, gum digging was at times prioritised over food production. Debt and dependence on store-bought food increased and cultivations became increasingly neglected. The periodic failure of crops that were cultivated and resultant food shortages served to reinforce dependence upon gum digging.<sup>103</sup> A teacher at Te Kao school reported in 1888:

To the Natives the gumfields have been a curse. They have disregarded the raising of crops, as in former years, with the exception of potatoes and kumeras. With all their earnings upon the gumfields, they are deeply in debt, and they and their families for the most part are badly clad. All over the gumfields the Natives are in a species of bondage to the storekeepers and it is in the latter's advantage to keep them so. Gum at present is very low in price – but such is not the case with provisions which are thirty percent higher than can be purchased anywhere else.<sup>104</sup>

Falling gum prices in the early twentieth century combined with a lack of land for agricultural development locked many ever more tightly into poverty. There was little opportunity for any economic development. Debts incurred with store keepers through the winter months could take a whole summer of work to pay off with both parents and children engaged in gum digging.<sup>105</sup>

This dependence continued in the early twentieth century and many Māori in Te Hiku remained exposed to the fluctuations in the market for gum. In 1924, a severe slump in gum prices resulted in store keepers ceasing to buy gum or give credit. This led to an increase in the already appalling poverty of the area.<sup>106</sup>

Too little land remained in Māori ownership at 1865 to offer Māori communities a means of economic support and development. Whatever opportunities remained were diminished by further Crown purchasing of land in the region after 1865. In the central Muriwhenua district, Takahue, or the Victoria Valley, encompassed 7,315 hectares (18,075 acres) and was still in Māori ownership

in 1865 having been unsuccessfully targeted by the Crown for purchase in the pre-1865 period. However, the block was gradually alienated in the years after 1865. Māori ownership of the land was reduced to some 504 hectares (1,246 acres) by 1997. The vast majority of this purchasing took place prior to 1900.<sup>107</sup>

In 1908, the Stout–Ngata commission reported on the amount and quality of land remaining in Māori ownership in Te Hiku. It estimated that 44,398 hectares (109,706 acres) remained in Māori ownership. Thus, Māori constituted 42 per cent of the population in Te Hiku at this time but owned just 20 per cent of the land. An analysis of 17,247 hectares (42,617 acres) of the Māori-owned land showed that, by this stage, that land was divided into 140 blocks and was owned by 2,748 persons. Nearly all of this was remote and marginal land.<sup>108</sup> The land was far too fragmented and had far too many owners for all to be able to rely upon it, a situation that could only worsen as the Māori population grew.

Some Crown assistance with farming the land remaining in Māori ownership was available in Te Hiku from the 1920s, some 40 years after assistance for farm development was first made available to Pākehā.<sup>109</sup> This land development did little to relieve poverty in the area. Many Te Hiku Māori continued to rely on gum digging or fishing for survival.<sup>110</sup> By the 1950s many were leaving the area to find work in Auckland.<sup>111</sup>

### 3.4 SOCIO-ECONOMIC PROFILE

Early explorers described Te Hiku as one of the most densely populated regions in New Zealand. The Oruru valley was estimated by one explorer to be home to 8,000 people and some 60 pā have been identified there. However, some estimates suggest that by 1835 the impact of introduced disease had reduced the population of the entire Te Hiku region to 8,000. While population estimates from that time are subject to large variation, it is apparent that introduced diseases such as scarlet fever, typhoid, measles, rheumatic fever, influenza, tuberculosis, and pneumonia took a horrific toll on communities with no natural immunity.<sup>112</sup>

The alienation of land as a result of Crown actions and omissions occurred in the context of rapidly declining populations and the struggle of Māori communities to adapt to this change. Their struggle would continue through the nineteenth century as population decline and land alienation continued. For the iwi of Te Hiku the alienation of their most productive lands in the period to 1865, the continuing alienation of land in the years that followed, and a resultant dependence upon gum digging had devastating consequences. The *Muriwhenua Land Report* states that by the beginning of the twentieth century:

the hapu of Muriwhenua were in a parlous condition. They were in every sense living on the fringes, a marginalised and impoverished people on uneconomic perimeter lands. They were struggling to survive, both individually and as a people, and the effect was to disperse the people and destabilise the polity of the hapu.<sup>113</sup>

Disease continued to be prevalent throughout the nineteenth century and the Māori population continued on its steep decline. By 1878, the Māori population was estimated to be just 1,615.<sup>114</sup> It began to slowly recover from this point as immunity to disease increased, but disease and deprivation continued to impact upon the communities of Te Hiku.

For those engaged in the gum industry, the physical deprivation of gum digging was unavoidable. Whole families spent months camped in the gum fields without any proper sanitation, poorly dressed, and short of food. Children had to work as gum diggers to help support their families. High rates of death and disease resulted from these conditions, especially among children.<sup>115</sup>

The Tribunal noted a number of damning reports on the socio-economic conditions suffered by Te Hiku Māori in the early twentieth century. It was reported early in the 1900s that many children were born in the gum fields and as many as one in four children died before reaching three years of age.<sup>116</sup> There had been no improvement by the late 1920s. Judge Prichard of the Native Land Court reported that Māori children attending school were poorly clothed,

sickly, and suffered from skin diseases. He also stated that child mortality was appalling, with one in four children dying before reaching 12 years of age.<sup>117</sup>

In 1924, Judge Acheson of the Native Land Court described Māori families in Te Hiku as being seriously short of the bare necessities of life. In fact, the poverty of the region was such that people had resorted to removing boards from their own homes so as to build coffins for those who died.<sup>118</sup> The living conditions of Māori communities had not improved markedly by 1936 when petitions were sent to the Prime Minister detailing the deprivation of the area and requesting assistance with housing. Many families were inhabiting shacks made of rusted iron ‘not fit for human beings to live in’. The petitioners explained that they were willing to work hard and ‘deny themselves’ to secure better housing if the Crown provided assistance.<sup>119</sup> Another petition advised that the poor state of housing impacted upon the health of both parents and children. That same petition noted that efforts to improve land remaining in Māori ownership had improved the living conditions of the cows being farmed while the owners of the cows continued to live in discomfort.<sup>120</sup>

General indicators from the 1991 census indicate that living conditions remained substandard for many Māori in Te Hiku. At that time, some 10,287 people identified one of the five Te Hiku iwi as their primary iwi of allegiance. The majority, though, lived outside of their traditional rohe, with some 41.2 per cent living in the Auckland region and 17.3 per cent living further afield. The remaining 41.5 per cent lived in the Northland region, although many of them outside of Te Hiku. Those who remained in Te Hiku continued to suffer worse socio-economic outcomes than the general population and Māori generally:

- ▶ unemployment for adult Te Hiku Māori was 25.7 per cent higher than the 20.9 per cent unemployment rate for Māori nationally and the national unemployment rate of 10.5 per cent;
- ▶ the average adult income for Te Hiku Māori was \$14,400 or 94 per cent of the average for Māori and 76 per cent of the national average;
- ▶ the average income for those Te Hiku Māori who lived in the Far North was just \$12,100 or 79 per cent



of the average for Māori and 64 per cent of that for all New Zealanders; and

- ▶ just 39.9 per cent of adult Te Hiku Māori reported some school qualification, compared with 41.9 per cent for all Māori and 56 per cent for all New Zealanders, with tertiary qualification rates recorded as 30.9 per cent, 31.3 per cent, and 39.9 per cent for these same groups.<sup>121</sup>

In the 2006 census, 8,310 Māori identified themselves as Ngāti Kahu. Just 31 per cent lived in the wider Northland region. Some 43 per cent lived in Auckland. Of those Ngāti Kahu aged 15 years or over, 63 per cent held a formal educational qualification, lower than the rate for the Northland region as a whole (66.8 per cent) and New Zealand (73.4 per cent).<sup>122</sup> Māori in the Mangonui and Mangonui East district (as defined by the census) were disproportionately represented in lower income groups. Nearly 17 per cent of Māori in the area (who stated an income) recorded an income of \$5,000 or less, compared to 12 per cent of all people in the area. Some 50 per cent of people earning \$5,000 or less were Māori, and over one third of those people earning less than \$20,000 were Māori.<sup>123</sup>

A photographic essay illustrating the current state of Ngāti Kahu marae and papakainga housing makes up part of the Ngāti Kahu deed of partial settlement. The poor state of many of the houses and marae, many in an advanced state of decay, is all too apparent and provides a stark contrast to some of the retirement and holiday homes located across the region.<sup>124</sup>

### 3.5 CULTURAL IMPACT

In one of her briefs of evidence Professor Margaret Mutu states that there has been considerable loss of te reo among Ngāti Kahu, directly attributable to the alienation of their land. At 1900 most Māori were still speakers of te reo, but eventually the hapū of Ngāti Kahu were forced off the whenua which had sustained them, physically, spiritually, and culturally. This resulted in their migration to urban areas that were dominated by Pākehā and the English language.<sup>125</sup>

The 2006 census data reveals that only 30 per cent of Ngāti Kahu people could hold a conversation about everyday things in te reo Māori. Professor Mutu is of the view that few are likely to be fluent in the language.<sup>126</sup> In response to questions from the Tribunal relating to the quality of te reo spoken on the 15 Ngāti Kahu marae, Professor Mutu advised that very few people had retained skills in te reo and the knowledge base that underpins these skills.<sup>127</sup>

In Professor Mutu's view, had Ngāti Kahu been able to live within and make a living from their whenua tupuna, their language would have continued to be a natural part of their being.<sup>128</sup> The Ngāti Kahu deed of partial settlement advises that Ngāti Kahu have fought to stop and repair the damage done to te reo Ngāti Kahu through setting up wānanga, kōhanga reo, kura kaupapa, whare kura, radio, and television.<sup>129</sup> Professor Mutu told us that bringing the old people of Ngāti Kahu and their language skills back to the Ngāti Kahu rohe was another important part of recovering the language.<sup>130</sup>

Reremoana Renata, who gave evidence for Ngāti Kahu, also raised the loss of te reo as an issue of great importance. She was concerned that a lack of educational facilities and the inability of Ngāti Kahu children to learn in te reo Māori, and te reo Ngāti Kahu more particularly, is impeding the recovery of the language.<sup>131</sup>

We were also told that the condition of Ngāti Kahu marae is a matter of great concern to Ngāti Kahu.<sup>132</sup> Patrick Snedden confirmed the poor state of Ngāti Kahu marae. Mr Snedden told us that Ngāti Kahu took him on a hiko around the Ngāti Kahu marae, during which he observed that only some of the sites had buildings.<sup>133</sup> The poor condition of many Ngāti Kahu marae significantly hinders the ability of Ngāti Kahu to address the decline of te reo, underpinned as it is by the cultural knowledge that ancestral marae help to maintain as the place of crucial events and ceremonies.

### 3.6 CONCLUSION

The actions of the Crown in the pre-1865 period caused serious and lasting prejudice to the iwi of Te Hiku. The

alienation of a significant proportion of their land in the pre-1865 period, including the most productive land in the region, restricted the ability of these iwi, including Ngāti Kahu, to engage in the developing economy. The expected benefits of settlement did not eventuate. Instead, settlers replaced Māori in the few economic activities that existed, provisioning ships and supplying agricultural goods for trade. Māori became dependent on low paid work in the gum industry, an industry over which they could exercise no control. Many became locked into a system of poverty, debt, food shortages, and ill health. High mortality and a declining population resulted. Though the Māori population of Te Hiku would recover, economic, social, and cultural deprivation continued through the twentieth century.

Ngāti Kahu, and the other iwi of Te Hiku, suffered serious prejudice, significant in scale and impact. Ngāti Kahu are deserving of relief for the prejudice they have suffered. All parties agree on that, but disagreement remains about the scale of that relief and the way in which it should be provided. In the following two chapters, we consider the pathways open to Ngāti Kahu to secure relief for the prejudice that they have suffered: the Crown's Treaty claims settlement process and the Tribunal's remedies process.

#### Notes

1. Pepeha from Ngāti Kahu deed of partial settlement: submission 2.359(c), p 21
2. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp 17, 21
3. Document s2, pp 6–12
4. Waitangi Tribunal, *Muriwhenua Land Report*, pp 22–29
5. Document F25, pp 2–3
6. Waitangi Tribunal, *Muriwhenua Land Report*, pp 36–38
7. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989), app 2.5, p 261. The evidence of Pereniki Tauhara of Te Pātū ki Peira also sets out this account in a summarised form: doc R63, p 11.
8. Document R38, pp 7–10
9. Ibid, pp 10–12
10. Ibid, pp 12–13
11. Ibid, p 15
12. Waitangi Tribunal *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim* (Wellington: Waitangi Tribunal, 1988), p 1
13. Waitangi Tribunal, *Muriwhenua Land Report*, p 34
14. Ibid, p 36
15. Ibid, p 44
16. Ibid, p 392
17. Ibid, pp 380–400. This figure is calculated from the total given for land granted from pre-Treaty transaction, land taken as surplus from pre-Treaty transactions, and Crown land purchases to 1865.
18. Document R60, p 5
19. Document S33, p 10
20. Ibid, p 12
21. Document R28, p 22
22. Ibid, p 23
23. Waitangi Tribunal, *Muriwhenua Land Report*, p 404
24. Ibid, p xix
25. See, for example, the list of goods transferred to Māori when the Kaitaia mission station was established: Waitangi Tribunal, *Muriwhenua Land Report*, p 59.
26. Ibid, pp 54–56
27. Ibid, p 54
28. Ibid, p 397. This figure is calculated from the total area of land awarded to settlers (8,094 ha) and the total area retained by the Crown (10,522 ha).
29. Document R54, pp 33–34
30. Document R11, pp 23–24
31. Waitangi Tribunal, *Muriwhenua Land Report*, p 397
32. Ibid, p 115
33. Alan Ward, *National Overview*, Waitangi Tribunal Rangahaua Whanui Series, 3 vols (Wellington: Waitangi Tribunal, 1997), vol 1, p 45
34. Waitangi Tribunal, *Muriwhenua Land Report*, p 144
35. Ibid, p 146
36. Ibid, p 150
37. Ibid, p 68
38. Ibid, p 392
39. Ibid, pp 393–394
40. Ibid, p 394
41. Ibid
42. Ibid, pp 124–125
43. Ibid, p 115
44. Ibid, p 176
45. Ibid, p 126
46. Ibid, p 127
47. Waitangi Tribunal, *Muriwhenua Land Report*, pp 127, 129
48. Ibid, p 394
49. Ibid, p 395
50. Ibid, p 394
51. Ibid, pp 128–129
52. Ibid, pp 188–189
53. Ibid, p 221
54. Ibid, p 398
55. Ibid

56. Waitangi Tribunal, *Muriwhenua Land Report*, p 129
57. Ibid, p 131
58. Ibid
59. Ibid, p 395
60. Ibid, pp 395–396
61. Ibid, pp 395–396
62. Ibid, p 380
63. Ibid
64. Ibid, p 396
65. Ibid, p 144
66. Ibid, p 146
67. Ibid, pp 396–397
68. Ibid, p 396
69. Ibid, pp 398–399
70. Ibid, p 399
71. Ibid
72. Ibid, p 211
73. Ibid, p 380
74. Ibid, pp 214–215. The area given is calculated from the area given in the table for those blocks located in central Muriwhenua, which are Waikiekie, Ōtengi, Hikurangi, Toatoa, Waiake, Puheke, Mangatete, Taunoke, Kaiaka, Waimutu, Maungataniwha West 1, Maungataniwha West 2, Maungataniwha East, Upper Kohumaru, Poneke, Oruru, and Mangonui.
75. Ibid, pp 181–182
76. Ibid, pp 190–193, 201–202
77. Ibid, p 118
78. Ibid, pp 205–206
79. Ibid, p 117
80. Ibid, p 205
81. Ibid
82. Ibid, p 206
83. Ibid, p 201
84. Ibid, p 298
85. Ibid, p 301. The figure of 5 per cent is calculated from the total figure for land transacted by the Crown in central Muriwhenua.
86. Ibid, pp 399–400
87. Ibid, p 400
88. Ibid
89. Waitangi Tribunal, *Muriwhenua Land Report*, p 400
90. Ibid, p 397
91. Document R23
92. Ibid, pp 16–17
93. Ibid, p 17
94. Ibid, p 18
95. Transcript 4.18, p 736
96. Document R49, p 3
97. Waitangi Tribunal, *Muriwhenua Land Report*, p 332
98. Ibid, p 355
99. Ibid, pp 355–356
100. Ibid, p 356
101. Ibid, pp 363–364
102. Ibid, p 356
103. Ibid, p 365
104. Ibid
105. Ibid, p 367
106. Ibid, p 368
107. Ibid, pp 306–308
108. Ibid, pp 380–382
109. Ibid, p 367
110. Ibid, pp 369–370
111. Ibid, pp 376, 378
112. Ibid, pp 379–380
113. Ibid, p 335
114. Ibid, p 380
115. Ibid, p 365
116. Ibid, p 367
117. Ibid, p 368
118. Ibid
119. Wairama Maihi Te Huhu and others to Prime Minister, 6 January 1936, MA 1 19/1/210, Archives New Zealand (as quoted in Waitangi Tribunal, *Muriwhenua Land Report*, p 370)
120. Waitangi Tribunal, *Muriwhenua Land Report*, p 371
121. Ibid, pp 382–383
122. Document R23, pp 23–24
123. Ibid, p 25
124. Memorandum 2.359(c), pp 271–390
125. Document R18, pp 19–20
126. Ibid, p 21
127. Transcript 4.18, p 291
128. Document R18, pp 19–20
129. Memorandum 2.359(c), pp 263–264
130. Transcript 4.18, p 292
131. Ibid, pp 145, 149–151
132. Ibid, p 161
133. Ibid, p 614



CHAPTER 4

## THE CLAIMS SETTLEMENT PROCESS IN TE HIKU

### 4.1 INTRODUCTION

That Ngāti Kahu are deserving of redress is a fact endorsed by all parties to this inquiry. The points of disagreement between the parties are the extent of that redress and the way in which it should be provided. Ngāti Kahu ask that this Tribunal recommend a substantial package of relief which includes binding recommendations for the transfer of land. The Crown asks that we recommend that it endeavour to engage Ngāti Kahu in further negotiations in order to secure redress within the context of its established Treaty claims settlement framework. The interested parties that have agreed to settlements with the Crown ask that in making recommendations we do not destabilise those settlements.

In this chapter, we outline the Crown's settlement process, the negotiations that occurred between Ngāti Kahu and the Crown, and the Ngāti Kahu agreement in principle (AIP) signed by both parties in 2008. We then discuss the formation by Te Hiku iwi of the Te Hiku Forum as a way of progressing their individual settlements and the Te Hiku AIP that was signed by all Te Hiku iwi and the Crown in 2010. We also examine the settlement package potentially on offer to Ngāti Kahu from the Crown as a result of the agreements reached through the two AIPs. Finally, we briefly outline the settlements that have been reached between other Te Hiku iwi and the Crown.

### 4.2 THE CROWN'S APPROACH TO SETTLING TREATY CLAIMS

In 1997, when the *Muriwhenua Land Report* was released, the Crown had negotiated few settlements of historical Treaty claims with iwi. The most notable settlements to that point were those of Waikato-Tainui (Raupatu claims) in 1995 and Ngāi Tahu in 1997. Since that time the Crown has been engaged in the negotiation of many more Treaty settlements, with 50 deeds of settlement reached in total.<sup>1</sup> The Treaty claims settlement process is now well established.

#### 4.2.1 The Crown's settlement process – an overview

The Crown's settlement process is defined by a set of key Crown policies regarding both negotiation and redress. These policies include:

- ▶ that the Crown seeks a comprehensive settlement of all the claims of a settlement group;

- ▶ that the Crown strongly prefers to negotiate the settlement of claims with large natural groupings (as defined by the Crown) rather than with individual whānau or hapū;
- ▶ that claimant negotiators require a secure mandate from their claimant community before negotiations can begin;
- ▶ that any overlapping claims or interests of other claimant groups must be addressed to the satisfaction of the Crown before the Crown will conclude a settlement; and
- ▶ that a suitable governance entity is required to be established before the Crown will transfer settlement assets.

The Crown intends all settlements to be full and final, addressing all historical claims of a claimant group and all aspects of those claims.<sup>2</sup> For Ngāti Kahu and the other iwi of Te Hiku this means that through a settlement with the Crown both their well-founded claims relating to the pre-1865 period and all other historical claims would be settled.

The Crown submitted that there are factors which effectively limit the type and the level of redress available to claimant groups. These include:

- ▶ settlements do not attempt to provide full compensation for all losses of a claimant group;
- ▶ taking a damages approach to redress would place a heavy economic burden on current and future taxpayers; and
- ▶ the Crown is not in a position to meet the cost of putting right all wrongs and, in many cases, no economic compensation is possible for cultural losses.<sup>3</sup>

The Crown also considers that all Treaty settlement packages are relative to each other. The limits on the type and scale of redress available now are defined by, and reflected in, settlements that have been reached previously. We were told that the need to provide redress to a number of claimant groups also acts as a limit on the type and level of redress available to any one claimant group. A settlement offer to any particular claimant group must be balanced against the demands placed on Crown resources for claims settlement nationally.<sup>4</sup>

#### 4.2.2 Overlapping claims

The Crown requires that claimant groups negotiating a settlement identify the area of land affected by their claims. This is known as a claimant group's area of interest. The areas of interest identified by claimant groups often overlap, resulting in competing or overlapping claims to the redress available from the Crown.<sup>5</sup> The issue of overlapping claims is common and, as we will discuss later, of particular complexity in Te Hiku.

The Crown's preference is for claimant groups affected by overlapping claims to reach agreement with each other on how their respective interests will be handled. When no such agreement can be reached the Crown will make decisions on how to proceed with the allocation of redress. In such instances, the Crown is guided by two general principles:

- ▶ its wish to reach a fair and appropriate settlement with the claimant group in negotiations; and
- ▶ its wish to maintain, as far as possible, its capability to provide appropriate redress to other claimant groups and achieve a fair settlement of their historical claims.<sup>6</sup>

In resolving overlapping claims, the Crown may utilise what it refers to as non-exclusive redress mechanisms. Such mechanisms seek to offer more than one claimant group access to redress over the same site. The Crown considers that it does not require the agreement of other claimant groups when it offers non-exclusive redress to a particular claimant group, but that 'such agreement is preferable'.<sup>7</sup> Non-exclusive redress precludes the vesting of land in any particular claimant group as that would prevent other groups from sharing in the ownership of the land.

Alternatively, the Crown may choose to provide redress exclusively to one claimant group despite the existence of overlapping claims. The Crown has a policy framework regarding overlapping claims to Crown forest land. That policy states that a number of factors are relevant in reaching a decision on the allocation of these lands. These are:

- ▶ Has a threshold level of customary interest been demonstrated by each claimant group?
- ▶ If a threshold interest has been demonstrated:

- What is the potential availability of other forest land for each group?
  - What is the relative size of likely redress for Treaty claims, given the nature and extent of likely Treaty breaches?
  - What is the relative strength of the customary interests in the land?
- What are the range of uncertainties involved?<sup>8</sup>

The relative weight given to each consideration depends upon the circumstance of the case. On this point the policy states: ‘the Crown is likely to take a cautious approach where uncertainties exist, particularly where overlapping claimants may be able to show breaches of the Treaty relating to the land, and would lose the opportunity to seek resumptive orders from the Tribunal.’<sup>9</sup>

The Crown’s approach to overlapping claims raises the issue of the so-called threshold interest. Although the term is used in the Crown’s guide to the Treaty settlement process, no explanation of it is provided. An explanation does appear in evidence presented to this Tribunal. In a report to the Minister for Treaty of Waitangi Negotiations of 20 September 2011 regarding a preliminary allocation of redress to Te Hiku iwi, the Office of Treaty Settlements advised:

The Crown uses a ‘threshold interest’ to ensure it is considering all parties who may be able to assert an interest or claim when it is undertaking forest land allocation. There are no strict criteria for what constitutes a threshold interest because it depends to some extent on the history of the area and the available historical resources. For example, the Crown has previously taken the view that an iwi having made a claim through the Native Land Court for land (whether or not the iwi was successful), being a signatory to a deed of sale, or traditional evidence given in Waitangi Tribunal hearings could be a threshold interest.<sup>10</sup>

Responding to questions from the Tribunal in relation to the application of the threshold interest approach in Te Hiku, Maureen Hickey stated:

all the threshold interest does is go, ‘Should you be considered in this process?’ It’s not particularly a recognition of an interest. For example in the [Central North Island] forest allocation, the original one, a threshold interest was recognised for one iwi because they’d made a claim to the Native Land Court and then withdrawn it . . . they argued that they should be considered in that process and the Crown agreed. So I wouldn’t necessarily put the same weight on the threshold interest.<sup>11</sup>

The issue of threshold interest is, then, less about defining the relative interests of claimant groups and more about ensuring that all claimant groups that should be considered are considered.

### 4.2.3 The types of redress available

Ms Hickey’s brief of evidence advises that the Crown generally seeks to provide redress that acknowledges the wrongs that occurred (apology or historical redress), recognises claimants’ spiritual, cultural, historical, or traditional association with the natural environment (cultural redress), and contributes to rebuilding the economic base of the claimant group (financial and commercial redress).<sup>12</sup> We outline these three forms of redress below.

#### (1) Historical redress

Historical redress comprises three components: an agreed historical account, Crown acknowledgements, and an apology from the Crown. Agreed historical accounts are authored by both the claimant group and the Crown. They represent an agreed statement between the parties regarding the events that form the factual background and foundation for the historical claims and the events that led to the breakdown of that relationship between the iwi and the Crown.<sup>13</sup>

The Crown’s guide to the Treaty settlement process advises that through the Crown acknowledgements the Crown accepts responsibility for breaches of the Treaty and its principles. The acknowledgements may also seek to recognise the pain and suffering caused by those breaches, the contributions the claimant group has made to the public benefit, and the consequences of Treaty

breaches for the iwi or claimant group. Like the historical account, the Crown acknowledgements are developed by the Crown and the claimant group.<sup>14</sup>

It is the Crown's intention that the apology will formally express the Crown's regret for past injustices suffered by the claimant group and for breaches of the Treaty and its principles. In doing so it responds to the matters set out in the historical account and Crown acknowledgements. The apology is also intended to restore the honour of the Crown and provide a basis for re-building the relationship between the Crown and the claimant group. Unlike the historical account and Crown acknowledgements, the Crown apology is drafted by the Crown alone before being discussed with the claimant group.<sup>15</sup>

### **(2) Cultural redress**

The Crown states that cultural redress is intended to meet the cultural rather than economic interests of a claimant group.<sup>16</sup> The Crown seeks to address a range of claimant concerns through cultural redress, including the loss of ownership or guardianship of sites of spiritual and cultural significance, the loss of access to traditional foods or resources, and being excluded from decision-making processes regarding the environment or resources of cultural significance.<sup>17</sup> The diversity of grievances covered by cultural redress is reflected in the range of mechanisms used to address those grievances, which include:

- ▶ the gifting of land containing wāhi tapū and wāhi whakahirahira (sites of great significance);
- ▶ the recognition of a claimant group's special and traditional relationship with rivers, lakes, mountains, forests, or wetlands through a variety of statutory instruments;
- ▶ the creation of mechanisms for the co-governance and management of natural resources; and
- ▶ the changing of place names.

The aim of cultural redress, as explained in the Crown's guide to the claim settlement process, is to provide protection to sites of significance and importance to claimant groups, recognition of the relationship of claimant groups to the natural environment, a greater ability for claimant groups to participate in the management of sites, and

visible recognition of claimant groups within their area of interest.<sup>18</sup> Any land transferred to a claimant group as cultural redress is transferred at no cost to the group.<sup>19</sup>

### **(3) Commercial redress**

The commercial redress component of any settlement is made up of a cash payment and the value of any land or other Crown assets transferred as commercial redress. The total value of the cash, land, and assets is called the quantum.<sup>20</sup> The Crown advises that the following factors are taken into account when it develops a quantum offer:

- ▶ the amount of land the claimant group has lost;
- ▶ the relative seriousness of the breaches;
- ▶ the benchmarks set by existing settlements involving similar breaches; and
- ▶ the current size of the claimant group, the existence of overlapping claims, and any special factors raised by the claimant group.<sup>21</sup>

The relative severity of the breaches suffered by any claimant group, as judged by the Crown, is a key factor in determining the extent of a quantum offer. Crown policy is that 'the quantum of redress should relate fundamentally to the nature and extent of the Crown's breaches of the Treaty and its principles.'<sup>22</sup> The Crown considers the loss of land through raupatu (confiscation by the Crown) and loss of life to be the most serious of breaches. In relation to the iwi of Te Hiku, Ms Hickey stated:

For quantum purposes the Crown generally assesses land loss through raupatu breaches (which involved war and loss of life) as more serious than non-raupatu Treaty breaches. The Crown accepts Ngati Kahu and other Te Hiku iwi suffered serious non-raupatu breaches which had a substantial impact on their economic, cultural and social well-being.<sup>23</sup>

The Crown does not take a compensatory approach to assessing quantum. It intends that settlements will provide a contribution to re-establishing an economic base as a platform for future development.<sup>24</sup> After an initial quantum offer claimant groups have the opportunity to negotiate with the Crown on the amount proposed. Revised offers can be made as a result of such negotiations.

However, the Crown will not keep increasing a quantum offer in order to secure a settlement. Crown policy dictates that quantum offers made in any particular settlement must be consistent with those in settlements reached previously.<sup>25</sup>

Where land makes up part of a commercial redress package it is paid for by the claimant group out of the cash component of the package.<sup>26</sup> Thus, in a settlement based on a quantum offer of \$20 million where the claimant group secures land to the value of \$8 million as part of their commercial redress package, the group will receive that land and \$12 million in cash.

The make-up of a commercial redress package can reflect the preferences of claimant groups. Some may choose more cash than land, while others might prefer to receive most of the value of their commercial package in land. Another factor affecting the make-up of commercial redress packages is availability of Crown land in the claimant group's area of interest. Where little Crown land is available a commercial redress package will have to be made up predominantly of cash.<sup>27</sup> We were also told that the Crown considers that cash is an important part of settlement packages as it provides a level of flexibility in the utilisation of commercial assets not available when commercial redress is restricted to land alone.<sup>28</sup>

In instances where the same Crown land is identified by more than one claimant group as potential commercial redress, the Crown will only transfer the land if the overlapping claims have been addressed or where the Crown considers that it is able to offer similar property to the other groups. This reflects a Crown view that land offered as commercial redress, while it must be within a claimant group's area of interest, need not relate to the breaches being addressed by the settlement. In this way the Crown considers land available as commercial redress to be substitutable.<sup>29</sup>

#### 4.3 NGĀTI KAHU NEGOTIATIONS WITH THE CROWN

Earlier in the chapter, we identified the need for claimant negotiators to secure a mandate from their claimant community as a necessary step before negotiations with the

Crown can begin. Te Rūnanga-ā-Iwi o Ngāti Kahu secured the Crown's recognition of its mandate to negotiate a settlement on behalf of Ngāti Kahu in 2002.<sup>30</sup> However, the roots of the Rūnanga go much deeper than the Treaty claims settlement process. The Rūnanga was established as a result of a hui-ā-iwi held at Te Paatu marae, Pampurua, on 17 November 1990. The purpose of the hui was to create an entity to be the representative body and iwi authority for Ngāti Kahu and to represent Ngāti Kahu in all dealings with the Crown. It was resolved at the hui that the body be called Te Rūnanga-ā-Iwi o Ngāti Kahu. Membership of the Rūnanga comprises representatives from the 15 marae of Ngāti Kahu and it operates according to Ngāti Kahu tikanga. The constitution for the Rūnanga was adopted on 20 January 1996 at Te Paatu Marae and the Rūnanga was registered as a charitable trust on 6 March 1996.<sup>31</sup>

In 2000, after years of consultation with all Ngāti Kahu marae, Te Rūnanga-ā-Iwi o Ngāti Kahu set out a settlement package that they intended would lead to the social, economic, and spiritual recovery of Ngāti Kahu.<sup>32</sup> This package became known as the Yellow Book.<sup>33</sup> It included the need for the Crown to formally admit and apologise for all Treaty breaches, the return to Ngāti Kahu of all Crown-owned land in their rohe, the return of all land owned by local authorities and SOEs as well as specific privately-owned properties, and the permanent inalienability of these lands.<sup>34</sup> Other features included the establishment of a Ngāti Kahu justice system, representation in the New Zealand parliament and the United Nations, the provision of Kōhanga Reo and Kura Kaupapa Māori for each Ngāti Kahu marae, the establishment and funding of health and medical centres, and the development of marae.<sup>35</sup> Professor Mutu's evidence states that this package was designed on the assumption that the Crown would adhere to a recommendation from the Tribunal that a settlement of their claims would entail the transfer of substantial benefits.<sup>36</sup>

In May 2003, the Crown and Ngāti Kahu signed terms of negotiation.<sup>37</sup> Professor Mutu described the negotiations that followed as tense, with the tension increasing following the passage of the Foreshore and Seabed Act 2004. Also in 2004, Ngāti Kahu responded to a Crown

request for information to aid in the calculation of a quantum offer, supplying an estimate of the losses suffered by Ngāti Kahu of between \$7 billion and \$8 billion.<sup>38</sup> The Crown took this to be a sign of unrealistic expectations in regard to the scope of a Ngāti Kahu settlement.<sup>39</sup> The Crown made a quantum offer of \$8 million to Ngāti Kahu in December 2005. Ngāti Kahu rejected this offer.<sup>40</sup>

That same year Landcorp were advised by the Office of Treaty Settlements that sections of Rangiputa Station could be sold. Office of Treaty Settlements officials did not consider that the station was needed for settlement purposes as sufficient other land was available in Te Hiku to satisfy the Treaty claims of Ngāti Kahu. Ngāti Kahu opposed the sale of Rangiputa Station and occupied it to prevent its sale. They also considered the attempted sale of land which they saw as central to a settlement of their claims to be an act of bad faith by the Crown. Attempts by Ngāti Kahu at that time to secure Rangiputa Station, or a right of first refusal in relation to its sale, were unsuccessful.<sup>41</sup>

In October 2007, Ngāti Kahu filed an application with the Waitangi Tribunal for remedies.<sup>42</sup> Following a hearing in April 2008 the Tribunal directed that the application be adjourned for three months to allow the parties to resume negotiations.<sup>43</sup> Negotiations recommenced after a meeting between Ngāti Kahu and Dr Michael Cullen, then Minister of Treaty Negotiations. Patrick Snedden was appointed to act as Chief Crown Negotiator for the Ngāti Kahu settlement.<sup>44</sup> He outlined his approach to negotiations with Ngāti Kahu as follows:

From the outset, I understood that one of my roles was to break the impasses that had characterised negotiations between Ngāti Kahu and the Crown. I declared to the iwi my approach to negotiations at my first meeting in Auckland. I was not there to contest iwi claims with the Crown. The Muriwhenua report was clear about the scale and the gravity of the iwi loss.

Secondly, I confirmed that upholding the rangatiratanga and mana of Ngāti Kahu was foremost in my mind. They

would experience with me direct dealings that meant that I would not hold back information that came to me as a chief Crown negotiator that was material to their claim. They would know the limits of the possibilities for settlement. I would also be open to innovation and co-construction of effective outcomes. In return, I asked for and expected honesty, openness and directness on their part if this was to lead to a successful and prompt outcome for the claim.

Finally, I suggest what was required was a change of wairua around the approach to this claim. Ngāti Kahu had been in settlement discussions for a long period of time and only by working on the basis of trust and truth telling would progress be rapid.<sup>45</sup>

The evidence shows that progress was rapid. In negotiations from April to June 2008, Ngāti Kahu and the Crown reached agreement on the broad parameters of a settlement offer which included the potential transfer of Rangiputa Station to Ngāti Kahu. The Crown presented this offer on 27 June 2008, and it was accepted by Ngāti Kahu the following day.<sup>46</sup> Negotiations continued and the offer was formalised through the 'Agreement in Principle for the Settlement of the Historical Claims of Ngāti Kahu', signed by Ngāti Kahu and the Crown on 17 September 2008.<sup>47</sup>

#### 4.3.1 The Ngāti Kahu Agreement in Principle 2008

The Ngāti Kahu AIP outlined the nature and scope, in principle, of the Crown's settlement offer to Ngāti Kahu. The proposed package was made up of four components:

- ▶ a historical account, Crown acknowledgements, and a Crown apology;
- ▶ cultural redress;
- ▶ financial and commercial redress; and
- ▶ a social revitalisation package.<sup>48</sup>

##### (1) *Historical redress*

In 2008, no historical account had been negotiated between the parties, although Ngāti Kahu had supplied OTS with a draft historical account in 2006.<sup>49</sup> The



historical account, Crown acknowledgements, and Crown apology were to be developed following the signing of the AIP.

## (2) *Cultural redress*

Some 17 properties were identified for transfer to Ngāti Kahu as part of the proposed cultural redress package:

- ▶ six public conservation properties with a total area of 86.85 hectares to be transferred in fee simple;
- ▶ three public conservation properties totalling 110 hectares to be transferred in fee simple but subject to covenants; and
- ▶ eight public conservation properties totalling 675 hectares to be transferred subject to reserve status.

It was also proposed that 335 hectares from Rangiputa Station containing wāhi tapu and archaeological sites would be vested in Ngāti Kahu.<sup>50</sup>

The proposed cultural redress also included the creation of a statutory board to manage 4,240 hectares of public conservation land within the Ngāti Kahu exclusive area of interest. According to the AIP this board was intended to provide substantive recognition of the Ngāti Kahu mana whenua association with the lands covered. The proposed board would be chaired by a Ngāti Kahu representative and be made up of equal numbers of Crown and iwi representatives operating on a consensus decision-making basis in accordance with Ngāti Kahu tikanga. The board would develop, sign-off, and monitor operational and long term plans for the management of conservation lands. The detailed objectives and working arrangements of the board were to be developed following the signing of the AIP. Those public conservation lands to be transferred to Ngāti Kahu were excluded from the operations of the board.<sup>51</sup>

The AIP also proposed that Ngāti Kahu would secure a right of first refusal over any public conservation land within their exclusive area of interest. This proposal was framed as a purely protective measure and was based upon an acknowledgement by Ngāti Kahu that the Department of Conservation had no intention of ever selling any such

land. This right of first refusal would be held in place for 168 years following settlement date.<sup>52</sup>

Cultural redress arrangements involving Maungataniwha included a commitment to explore a statutory board arrangement over the Maungataniwha Forest, Mangamuka Gorge Scenic Reserve, and Raetea Forest involving iwi and hapū with interests in the area; namely, Ngāti Kahu (Te Paatu), Te Rarawa, and Ngāpuhi. It was proposed that the peak of Maungataniwha would be vested jointly in Ngāti Kahu, Te Rarawa, and Ngāpuhi.<sup>53</sup>

Through the AIP the Crown also gave a commitment to provide redress for Ngāti Kahu and other iwi of Te Hiku in relation to Te Oneroa-a-Tōhē (Ninety Mile Beach). Other commitments to explore further cultural redress included:

- ▶ entering into a joint venture with the Crown to establish a campground within the Taumarumaru Recreation Reserve;
- ▶ vesting the Takahue Domain Recreation Reserve in Ngāti Kahu, following discussion with the Far North District Council;
- ▶ vesting the beds of Lake Rotokawau and Lake Rotapotaka in Ngāti Kahu;
- ▶ vesting Otamawahakaruru urupā in Ngāti Kahu;
- ▶ altering existing place names and assigning new place names within the Ngāti Kahu area of interest; and
- ▶ recognising Otako as a tauranga waka for Māmaru.<sup>54</sup>

The AIP also outlined how the relationship between Ngāti Kahu and Government ministries was to be promoted through the issuing of protocols by the Ministers of Conservation, Fisheries, Arts Culture and Heritage, and Energy. The protocols would set out how the ministries intended to operate in relation to specified matters within their control and how they would interact with Ngāti Kahu (via their post-settlement governance entity) and enable Ngāti Kahu input into decision-making processes.<sup>55</sup> As for the relationship between Ngāti Kahu and local government bodies, the AIP states that the Minister in Charge of Treaty Settlements would write to the relevant bodies encouraging them to enter into a memorandum of



understanding with the Ngāti Kahu post-settlement governance entity.<sup>56</sup>

### (3) *Commercial redress*

The commercial redress outlined in the AIP was made up of cash, interest on the quantum, and the transfer of land purchased by Ngāti Kahu from their quantum. The proposed package included:

- ▶ a quantum of \$14 million (an increase from the initial Crown offer of \$8 million);
- ▶ non-compounding interest paid on this quantum from the AIP signing date to the settlement date;
- ▶ the opportunity to purchase Rangiputa Station (less the area transferred as cultural redress) for \$4.1 million if a deed of settlement was signed within 18 months of the AIP;
- ▶ the opportunity to purchase other surplus Crown properties both within and outside the Ngāti Kahu exclusive area of interest;
- ▶ the opportunity to purchase from the Crown certain non-surplus Crown properties on the condition that these would be leased back to the Crown;
- ▶ possible redress in the Aupouri and Otangaroa Forests, with the interests in Aupouri Forest to be addressed through the Te Hiku Forum; and
- ▶ the possibility of writing off \$9,000 debt affecting Oturu farm, owned by Ngāti Kahu owners.<sup>57</sup>

The availability of Rangiputa Station for purchase at \$4.1 million followed negotiations between Ngāti Kahu and Mr Snedden, and resulted from a revaluation of the station on the basis that a 50 year 'no-sale' covenant would be placed on the land.<sup>58</sup> This discounted valuation approach would later be adopted by all Te Hiku iwi.

### (4) *Social revitalisation*

The Ngāti Kahu AIP also included the provision of a \$7.5 million social revitalisation fund for marae redevelopment and housing support.<sup>59</sup> Like the revaluing of Rangiputa Station, the provision of this fund resulted from negotiations between Ngāti Kahu and Mr Snedden and also a hikoi around the Ngāti Kahu rohe during which

Mr Snedden was able to see the poor state of marae and papakainga housing. Responding to questions about the fund from counsel for Ngāti Kahu, Mr Snedden stated:

one of the issues that was raised was the loss of the reo and therefore that was the reason for the construction of that social revitalisation fund was to actually manage this sense of recovery at a local hapū level of their marae infrastructure.<sup>60</sup>

The AIP did not include the \$7.5 million social revitalisation fund as part of the quantum or the total value of cash and assets to be transferred to Ngāti Kahu. The fund was in addition to the quantum of \$14 million.

### 4.3.2 *Te Hiku Forum negotiations with the Crown*

The overlapping interests and intertwined relationships of Te Hiku iwi have long been recognised. When the Tribunal reported on the pre-1865 claims of Te Hiku iwi it noted that the past mobility and varying fortunes of whānau had seen their locations and the extent of their influence change and the relationships become very close. As mentioned earlier, it was considered that the division of the iwi, for the purposes of the *Muriwhenua Land Report*, was overly pedantic.<sup>61</sup>

By the time that the Tribunal reported on the pre-1865 claims, however, it was already apparent that many within Te Hiku were seeking to have their iwi represented independently rather than by the collective body, Te Rūnanga o Muriwhenua, which had represented them to that time.<sup>62</sup> The iwi subsequently pursued separate paths to secure settlements with the Crown of their historical Treaty claims. The complex interconnections between iwi and their constituent whānau, however, have meant that overlapping claims issues have been a constant feature of settlement negotiations and have prevented any settlements from being finalised. Haami Piripi, the chairperson of Te Rūnanga o Te Rarawa and negotiator for Te Rarawa in the settlement of their historical Treaty claims, states that the 'vexed question of determining mana whenua interests has long been at the forefront of iwi dynamics in Te Hiku o Te Ika'.<sup>63</sup> In his view, mana whenua contests

have been 'the single most important factor in hindering the progress of any claim settlements over the past twenty or so years.'<sup>64</sup>

In 2008, the iwi of Te Hiku established the Te Hiku Forum as a body through which to address their overlapping claims and collective interests in potential redress from the Crown.<sup>65</sup> In July 2008, Patrick Snedden was asked to act as facilitator for the Forum. It is his understanding that Ngāti Kahu had proposed that he be asked to take on this role.<sup>66</sup>

The Forum developed a set of principles designed to guide its work. These were:

*Kotahitanga*: Te Hiku Forum will work to build a unity of purpose and solutions that are workable and acceptable to all iwi;

*Whānaungatanga*: Te Hiku Forum recognises our shared whakapapa and tikanga and provides a way of strengthening our connections with each other;

*Mana*: Each iwi has its own mana and autonomy to operate within their respective rohe in accordance with mana whenua, mana tupuna, mana moana, and manaakitanga;

*Iwi autonomy*: The Forum is committed to developing strategies in regard to shared interests that will lead to five iwi based settlements. This does not rule out the possibility of shared solutions;

*Mana hapū*: The Forum will respect the mana of hapū and each iwi will be responsible for communicating with its own hapū;

*Whakatau tika/Accountability*: The Forum will operate in a manner that promotes open communication, transparency, and sharing of information;

*Fairness*: Te Hiku Forum is committed to developing solutions for shared interests that are fair; and

*Progress of each Iwi*: The Forum will be mindful that each iwi is at a different stage of progress in relation to Treaty Settlement Negotiations and this will be respected.<sup>67</sup>

From the evidence presented to us by all parties, it is clear that all iwi participated in the Forum in good faith and worked with each other and the Crown to either

resolve issues or establish a process by which issues could be resolved. Mr Snedden characterised the approach of the Forum as being pragmatic and ensuring the inclusion of all iwi in the negotiation of collective outcomes.<sup>68</sup>

#### 4.3.3 The Te Hiku agreement in principle 2010

The result of 15 months of negotiation and discussion through the Forum was the Te Hiku AIP of 16 January 2010. This AIP sought to address the shared interests of the five Te Hiku iwi in redress offered by the Crown, allowing them to progress their individual settlements with the Crown.<sup>69</sup> It was not to be a precursor to a collective Te Hiku settlement. That there would be no collective settlement was a fundamental principle for Ngāti Kahu in agreeing to join the Forum.<sup>70</sup>

The Te Hiku AIP sets out how collective aspects of cultural and commercial redress would be shared or divided between the iwi. By the time this AIP was signed, Ngāti Kahu, Te Rarawa, and Te Aupōuri had all signed their own AIPs with the Crown.<sup>71</sup> It was agreed in negotiations between the iwi through the Forum that, although some aspects of the AIPs might have to be altered, no iwi could be left worse off as a result of the Forum process.<sup>72</sup>

##### (1) Cultural redress

Te Oneroa-a-Tōhē (Ninety Mile Beach) is recognised in the Te Hiku AIP as a vital resource for food, transport, cultural and spiritual sustenance, and recreation for all Te Hiku iwi. A co-governance arrangement for Te Oneroa-a-Tōhē is outlined, though not established, in the AIP. A statutory board was to be created with an equal number of members appointed by Te Hiku iwi and the Crown, but chaired by a representative of Te Hiku iwi on a rotating basis. Features of this arrangement include:

- ▶ the development by the board of a management plan for areas within Te Oneroa-a-Tōhē;
- ▶ the board ensuring the beach management areas are managed in accordance with the management plan;
- ▶ the preservation of existing public rights;
- ▶ the payment by the Crown to the board, after settlement date, of concession fees received from tourist

bus operators for using land currently administered by the Department of Conservation for access to Te Oneroa-a-Tōhē on their way to and from Te Rerenga Wairua (Cape Reinga); and

- ▶ the use of these fees by the board for projects consistent with the functions of the board.<sup>73</sup>

The AIP states that further work is required on details in relation to the board, including its functions and membership, review provisions to address any significant change in circumstances, and costs and expenses. Further discussion was also needed on redress designed to assist the regeneration of toheroa and other fauna and flora in the beach management areas.<sup>74</sup>

In addition to the creation of the statutory board for Te Oneroa-a-Tōhē, the Crown would also vest the following four sites in the governance entity of the relevant iwi:

- ▶ the Ninety Mile Beach Central Conservation Area (145 hectares);
- ▶ the Ninety Mile Beach South Conservation Area (33.9 hectares);
- ▶ Hukatere (10 hectares); and
- ▶ the Clarke Road Stewardship Area (3.6 hectares).<sup>75</sup>

The Crown also undertook to explore a name change for Ninety Mile Beach to Te Oneroa-a-Tōhē, installing interpretative signs at key access points along Te Oneroa-a-Tōhē acknowledging its cultural and historical importance to Te Hiku iwi, and supporting the raising of pouwhenua (carved posts) at Waipapakauri to commemorate historic events across Te Oneroa-a-Tōhē.<sup>76</sup>

In relation to Te Ara Wairua (the spiritual path) and Te Rerenga Wairua (Cape Reinga) the AIP states that through settlement legislation the Crown will:

- ▶ acknowledge Te Hiku iwi as kaitiaki over Te Ara Wairua and Te Rerenga Wairua;
- ▶ allow the relevant Te Hiku iwi to define, reflect, and acknowledge the agreed kaitiaki role of each iwi; and
- ▶ vest in fee simple as a historic reserve 75 hectares at Te Rerenga Wairua in Ngāti Kuri (subject to the outcome of the definition process above). The relevant kaitiaki iwi and Minister of Conservation will develop, and the settlement legislation will provide for (if necessary), a management regime that

preserves as a minimum the current standard of care.<sup>77</sup>

## (2) Commercial redress

The total quantum for all Te Hiku iwi settlements was set at \$120 million. The iwi agreed to divide this quantum as follows:

Ngāti Kuri	\$21.04 million
Te Aupōuri	\$21.04 million
Ngāi Takoto	\$21.04 million
Te Rarawa	\$33.84 million
Ngāti Kahu	\$23.04 million <sup>78</sup>

The Crown agreed to transfer seven farm properties to Te Hiku iwi at a total cost of \$25 million. This represented a discount of approximately \$49.923 million on the values of those properties, as at January 2010.<sup>79</sup> This discounted valuation approach reflected that utilised in the Ngāti Kahu AIP in relation to Rangiputa Station. The transfer value of each of the properties was decided by the iwi through the Forum. The properties that each iwi would receive, the transfer cost of each property, and the total discount secured by each iwi are outlined in table 4.1.

The total value of the commercial quantum for all Te Hiku iwi, taking into account the discount on the seven farm properties, was \$169.923 million. This offer, as a whole, is comparable in value to the Waikato-Tainui (Raupatu) and Ngāi Tahu settlements (with quanta of \$170 million each), the largest Treaty settlements so far. However, the relativity clauses in the Waikato-Tainui and Ngāi Tahu settlements mean that these settlements will ultimately be worth significantly more than the Te Hiku settlement offer. Further, the devaluation of farm properties since 2010 has reduced the size of the discount on farm properties negotiated by Te Hiku iwi, reducing the overall value of their settlements. The Te Hiku settlement offer can nevertheless still be considered, if not on par with the most significant settlements to date, then certainly a tier below those settlements.

Regarding the Aupouri Forest, the AIP states that, if all Te Hiku iwi agree, the Crown would transfer the forest

Iwi	Farm station	Transfer value (\$ million)	Discount (\$ million)
Ngāti Kuri	Te Paki Station	4.69	6.405
Te Aupōuri	Cape View Station	1.56	6.768
	Te Raite Station	1.15	
Te Rarawa	Te Karae Station	0.04	15.652
	Part Sweetwater Station	8.05	
Ngāi Takoto	Part Sweetwater Station	4.73	6.878
Ngāti Kahu	Rangiputa Station	4.10	14.220
	Kohumaru Station	0.68	
Total		25.00	49.923

Table 4.1: Farm properties and discounts secured by Te Hiku iwi through the Te Hiku AIP

to an entity representative of all Te Hiku iwi at an agreed transfer value, subject to conservation and archaeological covenants that currently exist and on other terms and conditions specified in their deeds of settlement. Together with the forest land, the Crown would also transfer to the Aupouri Forest entity the accumulated forest rentals and New Zealand units in relation to the land. The entity would hold in trust for Te Hiku iwi the land, all current and future rentals and New Zealand units, and any further rentals, units, or other income received in relation to the forest until such time as the ownership of the land is determined under a mana whenua process. The iwi also agreed that the Aupouri Forest entity would distribute the accumulated rentals in equal proportion to each of the five iwi at any time post settlement date.<sup>80</sup>

Finally, Te Hiku iwi agreed on a process for the purchase of land that might become surplus to Crown needs through a right of first refusal mechanism. This mechanism allows an iwi which holds an exclusive right of first refusal over land to have that exclusive right for 20 days. Similarly, if two or more iwi share a right of refusal over

the land concerned, those iwi hold that right for 20 days. After 20 days, if the iwi concerned have not exercised their exclusive or joint right to purchase the land then all Te Hiku iwi are given the opportunity, for a further 20 days, to purchase the land concerned.<sup>81</sup>

### (3) Social accord

The final element of redress covered by the Te Hiku AIP is a social accord between the Crown and Te Hiku Iwi. By signing their deeds of settlement, Te Hiku iwi and the Crown intend that they will have entered into a 'Social Accord' which will 'set out the way in which they will work together and design processes to deliver better outcomes for whānau, hapū and iwi of Te Hiku o te Ika from Crown resources.'<sup>82</sup> The AIP goes on to state:

A series of sub-agreements within the Social Accord will provide for Te Hiku iwi input into Government priority setting and decision-making related to existing Government funding and responsibilities within particular portfolios and/or Crown providers (as appropriate), most likely to be

focused on social services (health, education and housing). Crown agencies will continue to act within their legislative and regulatory frameworks.

The parties to the Social Accord, being Ministers of the Crown and leaders of the iwi of Ngāi Takoto, Te Aupōuri, Te Rarawa, Ngāti Kuri and Ngāti Kahu, will meet annually on a date and at a venue that is convenient for all parties. The Ministers of the Crown are likely to be the Minister of Social Development, the Minister of Housing, the Minister of Education and the Minister of Health.<sup>83</sup>

The intent of the annual meetings between Te Hiku iwi representatives and Ministers is to set objectives for better outcomes for Te Hiku whānau, hapū, and iwi, confirm priority areas for iwi and the Crown to work on to achieve their objectives, agree the means by which they will work together to achieve the objectives, and monitor whether the desired outcomes are being achieved.<sup>84</sup>

#### 4.3.4 Negotiations following the Te Hiku AIP

Both the Ngāti Kahu AIP of 2008 and the Te Hiku AIP of 2010 contained a mix of fully defined redress and redress that was to be further investigated and refined through negotiations between the parties. Cultural redress, in particular, was to be the subject of ongoing negotiation. The next intended steps, as outlined in the Te Hiku AIP, were for a Crown apology and other cultural redress to be developed for each iwi. For Ngāti Kahu, it was intended that their cultural redress would remain as specified in their existing AIP of 2008.<sup>85</sup> The parties agreed that following the development of this redress they would ‘work together in good faith to develop, as soon as reasonably practicable, deeds of settlement’ for each iwi. These deeds would be based on the Te Hiku AIP and any agreements reached on other cultural redress.<sup>86</sup>

Following the signing of the Te Hiku AIP, Ngāti Kahu withdrew from direct negotiation with the Crown, both individually and through the Forum, to produce their own deed of settlement for the Crown to consider. When joining the Forum Ngāti Kahu had informed the other iwi that they would pursue this course.<sup>87</sup>

The Crown received indications from Ngāti Kahu that they expected to provide their deed of settlement to the Crown in March, and then June, of 2010.<sup>88</sup> During this period, the other Te Hiku iwi and the Crown continued to negotiate both their individual deeds of settlement and those aspects of joint and overlapping redress covered by the Te Hiku AIP. The decision by the other iwi to continue with collective negotiations was communicated to Ngāti Kahu in a letter of 29 March 2010. It was anticipated that Ngāti Kahu would rejoin the Forum and collective negotiations from June 2010.<sup>89</sup> However, the drafting process for the Ngāti Kahu deed of settlement took much longer than Ngāti Kahu had anticipated and would eventually take more than a year.<sup>90</sup>

Professor Mutu’s evidence was that, during the period that Ngāti Kahu were not engaged in the Forum, they were exposed to constant pressure from the other iwi and the Crown to stay engaged in the Te Hiku negotiation process:

This pressure was often met by me with rebuke to the other iwi and Mr Snedden by reminding all parties that Ngati Kahu had advised that they had stepped back from being at the formal negotiation table in order to focus on the drafting of their Deed of Partial Settlement. However Mr Snedden and others would continue to contact both myself and Mr Williams in an attempt to get consent from Ngati Kahu to progress the matters that had been agreed with the other four iwi.<sup>91</sup>

In contrast to this view was evidence from Mr Snedden of the efforts that he made to keep Ngāti Kahu informed of the negotiations progress made by the Crown and the Forum:

Throughout 2010 Ngati Kahu negotiators were kept fully informed of all negotiations between the Crown and the Forum. They were also invited to attend all meetings. Te Hiku website, with restricted access to negotiators including those from Ngati Kahu, featured all material about the developing discussions over the collective redress which were being updated in real time. . . .<sup>92</sup>



He went on to state:

I began a regular practice from 2010 onwards after discussion with Ngāti Kahu negotiators of issuing a draft of my intended commentary for OTS to Mr Williams and on occasion to Professor Mutu for comment prior to formally providing it to OTS. There were often corrections or revisions. I was determined to capture accurately not only the content but also the tone of our ongoing discussions.<sup>93</sup>

The current chairperson of the Forum, Haami Piripi, also provided his view of this period, stating:

Ngāti Kahu extracted itself from the Forum, and consequently, from the strategic direction the Forum had chosen to take in progressing our negotiations. The stratagem for writing their own partial deed of settlement without the involvement of the Crown or the other Te Hiku Iwi was at complete odds with the Forum's work plan which included implementation milestones and joint agreement on redress mechanisms as we worked our way through the areas of redress referred to by the Te Hiku Agreement in Principle agreed in 2010.<sup>94</sup>

The choice by Ngāti Kahu to step back from the Forum process obviously caused tension among Te Hiku iwi and between Ngāti Kahu and the Crown. The momentum that all iwi gained through the Forum process in reaching their individual settlements was at risk of being lost.<sup>95</sup>

On 13 September 2010, the chairman of the Te Aupōuri Negotiations Company wrote to the chairperson of the Te Hiku Forum raising concerns about the absence of Ngāti Kahu. Ngāti Kahu had yet to return to the Forum despite indicating that this would happen in early June 2010. It was feared that once Ngāti Kahu did return they would attempt to re-litigate issues and that their continued absence would further prolong the ongoing negotiations. It was suggested that the Forum discuss how it would proceed if Ngāti Kahu continued to be absent from November 2010 onwards.<sup>96</sup>

On 9 December 2010, a meeting was held between the negotiating teams of Te Aupōuri, Te Rarawa, Ngāi Takoto,

and Ngāti Kuri. Although Ngāti Kahu did not formally attend Mr Williams (counsel for Ngāti Kahu and a Ngāti Kahu negotiator) was present at that meeting in his capacity as counsel for the Forum. The four iwi all raised concerns about the continued absence of Ngāti Kahu from the Forum and their ability to progress negotiations towards a settlement. They agreed that they would proceed with their negotiations while leaving the door open for Ngāti Kahu to rejoin.<sup>97</sup>

That same day Ngāti Kahu sent an e-mail to the other four iwi setting out their position on collective redress issues. This included the division of the Aupouri Forest, a mana whenua process for determining rights between iwi, and proposed redress for Department of Conservation lands and Te Oneroa-a-Tōhē. The e-mail also advised that Ngāti Kahu anticipated finalising their deed of settlement by late February or March 2011.<sup>98</sup>

On 5 February 2011, the Minister for Treaty of Waitangi Negotiations met separately with Ngāti Kahu and representatives of the other Te Hiku iwi at Waitangi. Ngāti Kahu advised the Minister that they were still working on their deed of settlement and at that stage could not commit to a definite date. They raised with the Minister their view that no decisions regarding collective or overlapping redress should be made without their input. The representatives of the other iwi indicated that they wished to complete their settlement negotiations but were concerned about how they could obtain certainty of process.<sup>99</sup>

Tensions between the Forum and Ngāti Kahu came to a head in February 2011. In a letter to Ngāti Kahu, Mr Piripi, as chair of the Forum, explained that the Forum would continue to work collectively on overlapping redress issues and would enable Ngāti Kahu to participate in any agreed redress if they wished.<sup>100</sup> Ngāti Kahu interpreted this as a move to exclude them from the Forum and responded by asserting that the Forum no longer existed and that the iwi should engage with each other outside this body.<sup>101</sup>

Te Aupōuri, Te Rarawa, Ngāi Takoto, and Ngāti Kuri continued to work together to resolve their overlapping claims issues and develop redress to progress their individual settlements. One of the redress items they

developed is the Korowai Atawhai Mō Te Taiao, or Korowai redress, which provides those iwi with a co-governance role over public conservation lands. A central component of the Korowai redress is the establishment of a new Te Hiku o Te Ika Conservation Board to replace the existing Northland Conservation Board within a defined area.<sup>102</sup> Te Aupōuri, Te Rarawa, Ngāi Takoto, and Ngāti Kuri will also co-author the Te Hiku Conservation Management Strategy with the Department of Conservation.<sup>103</sup>

Mr Piripi sees the Korowai as far reaching and containing many ‘world firsts’ for indigenous peoples. He advises that through the Korowai, Te Hiku iwi have sole responsibility for approving the gathering of customary materials from the conservation estate. The nominated kaitiaki of the iwi will develop and work to a cultural materials plan, ensuring ongoing sustainability of taonga species. Wāhi tapu areas have been designated as sites where iwi and hapū have total management responsibility.<sup>104</sup>

#### 4.3.5 The Ngāti Kahu deed of partial settlement

On 1 April 2011, the Crown received a first draft deed from Ngāti Kahu for consideration.<sup>105</sup> The deed was revised and resubmitted on 8 April 2011, and again in May 2011.<sup>106</sup> This deed contained what Ngāti Kahu believed to be the package necessary to partially settle their Treaty claims and was their alternative to the settlement package on offer through negotiations with the Crown.

The redress proposed in the deed of partial settlement departed significantly from that which had been agreed with the Crown, in principle, in the 2008 Ngāti Kahu AIP and with the Crown and the other Te Hiku iwi through the Te Hiku AIP. During cross-examination by the Crown, Professor Mutu stated that the Yellow Book constituted the instructions to the Rūnanga from Ngāti Kahu regarding their settlement negotiations. The proposed settlement contained in the AIPs did not come close to this. Following discussion with the Ngāti Kahu hapū it was decided that the Rūnanga would pursue a partial settlement of Ngāti Kahu claims, with the redress sought

reflecting that outlined in the Yellow Book.<sup>107</sup> The Yellow Book, we were told, had to be the basis of any Ngāti Kahu settlement.<sup>108</sup>

Features of the proposed partial settlement included:

- ▶ The partial settlement of claims as opposed to a full and final settlement of all claims.
- ▶ A monetary contribution to a Ngāti Kahu lands, marae, and papakainga restoration fund.
- ▶ The relinquishment, by 2025, of all Crown claims to Ngāti Kahu lands, territories, and resources and the provision of just, fair, and equitable compensation (calculated according to New Zealand laws of restitution) for the use of Ngāti Kahu lands over the past 177 years.
- ▶ The extension of Ngāti Kahu mana, tino rangatiratanga, and sovereignty over lands and natural resources in respect of which the whānau hold mana whenua and mana moana and over persons of Ngāti Kahu descent. The Crown’s sovereignty would extend over non-Māori and agencies to which the Crown delegates its powers.
- ▶ The prevailing of Te Tiriti o Waitangi and Ngāti Kahu tikanga over the laws of New Zealand in any instance where there is conflict between them. Acts identified as conflicting with Te Tiriti and Ngāti Kahu tikanga include the Marine and Coastal Area Act 2011, the Public Works Act 1981, the Conservation Act 1987, the Rating Powers Act 1988, and the Crown Minerals Act 1991.
- ▶ The granting to Ngāti Kahu of the power to allocate lands for manuhiri (guests) to reside on and use.
- ▶ The permanent inalienability of all land transferred to Ngāti Kahu and exemption of Ngāti Kahu from all rates, revenue, contributions, and other charges.<sup>109</sup>

The proposed deed of partial settlement was rejected by the Minister for Treaty of Waitangi Negotiations in a letter to Ngāti Kahu of 2 June 2011. The Minister explained that he had no mandate to negotiate a partial settlement containing redress significantly different to that contained within the AIPs of 2008 and 2010. He asked that, if Ngāti



Kahu were unable to negotiate a settlement on the basis of those agreements, they participate in the development of collective redress with the other members of the Te Hiku Forum.<sup>110</sup> In response, Ngāti Kahu warned that, if the Crown attempted to continue with negotiations in a way that prejudiced their interests, they would make an urgent application to the Tribunal seeking binding recommendations.<sup>111</sup> On 15 July 2011, Ngāti Kahu filed an application with the Tribunal to revive their 2007 remedies application declaring that they were no longer in negotiation with the Crown.<sup>112</sup>

#### 4.3.6 The Crown's allocation of contested redress

In his letter to Ngāti Kahu of 2 June 2011, the Minister indicated that he intended to sign deeds of settlement with all Te Hiku iwi who were ready to settle. He also advised that, if required, he would make an assessment of overlapping interests where collective agreement could not be achieved.<sup>113</sup> Ngāti Kahu did not accept that the Crown had a right to make such an assessment or to use that assessment to inform a decision about how redress would be allocated.<sup>114</sup> The Minister disagreed and indicated that he would be undertaking a process to balance overlapping claims to contested redress and would write to Ngāti Kahu and the other Te Hiku iwi about his intended approach.<sup>115</sup>

On 17 August 2011, the Minister wrote to all five Te Hiku iwi advising that he intended to make decisions concerning contested redress. A process for each iwi to make submissions to the Minister was also set out. It was intended that after considering any submissions the Minister would make a preliminary allocation of redress and seek further feedback from iwi before making a final decision.<sup>116</sup>

This process was run between 17 August and 17 October 2011, when the Minister wrote to Te Hiku iwi providing his decisions on the allocation of contested redress.<sup>117</sup> During this process Ngāti Kahu did not make any submissions. Rather, they advised the Crown that their deed of partial settlement set out all the information relevant to their interests.<sup>118</sup> In addition to submissions from other

iwi, the Crown also sought advice from Sir Edward Durie about Te Paatu interests.<sup>119</sup>

Significant aspects of the Crown's allocation of contested redress include:

- ▶ The allocation of the peninsula blocks of the Aupouri Forest to Ngāti Kuri (30 per cent), Te Aupōuri (30 per cent), Te Rarawa (20 per cent), and Ngāi Takoto (20 per cent). No Ngāti Kahu interest was recognised in this allocation.<sup>120</sup>
- ▶ The allocation of the Takahue blocks of the Aupouri Forest to Te Rarawa (to the exclusion of Ngāti Kahu).<sup>121</sup>
- ▶ The allocation to Ngāti Kahu (50 per cent) and Ngāi Takoto (50 per cent) of the Kaitaia airport land and the site of a kura kaupapa.<sup>122</sup>
- ▶ The allocation of a Takahue site as cultural redress to Te Rarawa, with the site then to be vested in the Tahawai hapū within two years after settlement.<sup>123</sup>
- ▶ The allocation of Tangonge sites as cultural redress to Ngāi Takoto and Te Rarawa.<sup>124</sup>

#### 4.4 WHAT IS POTENTIALLY ON OFFER TO NGĀTI KAHU?

Negotiations between Ngāti Kahu and the Crown effectively ended after the signing of the 2010 AIP. At that point, there was no formal and complete settlement offer. At our hearing, however, the Crown emphasised that it remains prepared to offer Ngāti Kahu a package of redress in settlement of all their Treaty claims. The redress potentially on offer to Ngāti Kahu from the Crown is based upon the redress agreed between the parties through the Ngāti Kahu AIP of 2008 and the Te Hiku AIP of 2010. It also reflects the redress further developed and refined by the other Te Hiku iwi and the Crown in the negotiations which followed the signing of the Te Hiku AIP and the Minister's allocation of contested redress items. The Crown submitted this settlement package is fair, both in the context of Treaty settlements nationally and in the context of Te Hiku settlements.<sup>125</sup>

**4.4.1 Historical redress**

A Ngāti Kahu settlement would include historical redress, a feature of all settlements between the Crown and iwi. As outlined earlier, historical redress comprises three components: an agreed historical account, Crown acknowledgements, and an apology from the Crown.

Responding to questions from Crown counsel regarding the historical redress potentially available, Professor Mutu stated that an apology from the Crown would only be of importance to Ngāti Kahu if the Crown could demonstrate that the apology meant something to the Crown. Ngāti Kahu would prefer that the Crown demonstrate the meaning of an apology by returning to Ngāti Kahu all of their lands.<sup>126</sup>

**4.4.2 Cultural redress**

The properties potentially on offer as cultural redress are primarily those identified by Ngāti Kahu during negotiations in 2008 in the lead-up to the signing of the Ngāti Kahu AIP.<sup>127</sup> The Crown would transfer 21 properties with a total area of 1,299.6 hectares.<sup>128</sup> This excludes a 40-hectare site which encompasses the peak of Maungataniwha. This property could potentially be included as cultural redress for Ngāti Kahu subject to further discussion in relation to the interests of Te Rarawa and Ngāpuhi.<sup>129</sup> The cultural redress properties would be transferred to Ngāti Kahu at no cost. The Crown estimates the value of these properties, and thus the cost to the Crown of the transfer, to be \$4.573 million.<sup>130</sup>

As mentioned earlier, the 2008 Ngāti Kahu AIP provided for the creation of a statutory board in respect of the approximately 4,240 hectares of public conservation lands within the Ngāti Kahu exclusive area of interest. Details covering the objectives and working arrangements of the board were not developed at that time and would need to be negotiated between the parties.<sup>131</sup> An alternative proposed by the Crown is that Ngāti Kahu agree to the extension of the co-governance arrangements in relation to conservation land negotiated with the Te Hiku Forum, called the Korowai redress, over the Ngāti Kahu area of interest.<sup>132</sup>

Ngāti Kahu are also able to join Te Oneroa-a-Tōhē

Board (discussed earlier). It is intended that this board will be a permanent joint committee of the Northland Regional Council and Far North District Council which will have 50 per cent iwi members and 50 per cent local authority members.<sup>133</sup> The board will provide:

governance and direction in order to promote the use, development and protection of the Te Oneroa-a-Tōhē/Ninety Mile Beach management area and its resources in a manner which ensures the environmental, economic, social, spiritual and cultural wellbeing for present and future generations.<sup>134</sup>

Other features of the proposed cultural redress include:

- ▶ the participation of Ngāti Kahu in the social accord mechanism negotiated by Te Hiku iwi and contained in the Te Hiku AIP;
- ▶ the protocol redress agreed in the Ngāti Kahu AIP;
- ▶ the possibility of the Crown entering a joint venture with Ngāti Kahu to establish a campground within the Taumarumaru Recreation Reserve;
- ▶ with the Far North District Council, the vesting of the Takahue Domain Recreation Reserve in Ngāti Kahu, on the condition that the overlapping interests of Te Rarawa in the Takahue area are resolved;
- ▶ the possible alteration of existing place names or the assigning of new place names within the Ngāti Kahu area of interest; and
- ▶ the recognition of Otako as a tauranga waka for Māmaru.<sup>135</sup>

**4.4.3 Commercial redress**

The total quantum of the Crown's proposed Ngāti Kahu settlement package is \$23.04 million as set out in Te Hiku AIP. This is made up of three components:

- ▶ the \$14 million identified as the quantum in the Ngāti Kahu AIP;
- ▶ the payment of \$7.5 million in social revitalisation funding identified in the Ngāti Kahu AIP; and
- ▶ a further \$1.54 million in quantum resulting from negotiations between Te Hiku iwi and the Crown as agreed through the 2010 Te Hiku AIP.<sup>136</sup>

A further cash payment would be made to Ngāti Kahu

as interest accrued on the quanta agreed through the AIPs of 2008 and 2010. The Crown advises that the total accrued interest is currently \$2.608 million.<sup>137</sup>

Also, in accordance with the agreement between the five Te Hiku iwi included in the Te Hiku AIP, it is proposed that each iwi will receive 20 per cent of the accumulated rentals on the Aupouri Forest.<sup>138</sup> Ngāti Kahu could also receive the accumulated rentals on the Kohumaru blocks of the Otangaroa Forest, subject to the resolution of overlapping claims.<sup>139</sup> The total accumulated rentals that could be paid to Ngāti Kahu are:

- ▶ approximately \$2.271 million, being one-fifth of the approximately \$11.354 million in accumulated rentals relating to the Aupouri Forest; and
- ▶ approximately \$380,000 in accumulated rentals on the Kohumaru blocks of the Otangaroa Forest.<sup>140</sup>

The Crown proposes to make a number of properties available for purchase by Ngāti Kahu from their cash quantum. These include:

Rangiputa Station	3356 hectares
Kohumaru Station	944 hectares
Mangonui blocks of the Aupouri Forest	776 hectares
Kohumaru blocks of the Otangaroa Forest	544 hectares

The availability of the Kohumaru blocks of the Otangaroa Forest is subject to the resolution of over-lapping claims.

Settlement transfer values for Rangiputa and Kohumaru Stations (and all seven Te Hiku farm properties) were agreed by Te Hiku iwi through the Te Hiku AIP. Rangiputa and Kohumaru Stations would be available for transfer to Ngāti Kahu for \$4.1 million and \$0.68 million respectively. This represents a total discount on current valuation of these properties of \$11.12 million.<sup>141</sup> Other land available for purchase by Ngāti Kahu through a settlement with the Crown includes:

- ▶ some 21 properties currently owned by Land Information New Zealand made up generally of vacant sections of up to two hectares;
- ▶ six schools to be available as sale-and-lease-back properties; and
- ▶ some seven properties totalling 111.8 hectares

available for purchase on a deferred selection basis and shared with Ngāi Takoto and Te Rarawa.<sup>142</sup>

The final commercial redress available to Ngāti Kahu through the Crown's proposed settlement is a right of first refusal covering numerous Crown-owned properties in Te Hiku. The majority of these properties are available to all Te Hiku iwi, although some are identified as being offered to Ngāti Kahu exclusively.<sup>143</sup>

#### 4.4.4 The total monetary value of the proposed settlement

The total value of the settlement package potentially on offer from the Crown is calculated from the combined value of the cultural redress properties, the settlement quantum, the value of the discount provided in relation to Rangiputa and Kohumaru Stations, the interest accrued on the quanta, and the value of the accumulated forest rentals. Through the evidence of Maureen Hickey and in its closing submissions, the Crown advised that the settlement package potentially on offer to Ngāti Kahu has an estimated value of \$47.091 million.<sup>144</sup>

After the hearing, and having considered the Crown's evidence, we queried the value of the proposed settlement offer to Ngāti Kahu. In particular, we questioned whether the Crown had used an incorrect value in relation to the discount for Rangiputa and Kohumaru Stations, or had miscalculated the total accrued interest on the 2008 and 2010 quanta. We requested an updated valuation of the proposed Ngāti Kahu settlement.<sup>145</sup> Using the most recent figures for the value of the discount provided in relation to the Rangiputa and Kohumaru Stations, the Crown now estimates the total value of the settlement potentially on offer to Ngāti Kahu at \$43.991 million.<sup>146</sup>

#### 4.5 THE SETTLEMENTS REACHED IN TE HIKU

As a result of negotiations between the Crown and individual iwi and discussions among iwi through the Te Hiku Forum, three settlement offers have been ratified by Te Hiku iwi. Te Aupōuri signed their deed of settlement with the Crown on 28 January 2012.<sup>147</sup> Ngāi Takoto signed their deed of settlement on 27 October 2012,<sup>148</sup> and Te Rarawa

signed their deed the following day.<sup>149</sup> The finalisation of these settlements is contingent upon the introduction and passing of settlement legislation. In this section, we outline the redress that Te Aupōuri, Ngāi Takoto, and Te Rarawa have accepted in their individual deeds of settlement. Some of this redress is to be shared between these iwi and Ngāti Kuri, who are yet to initial a deed of settlement with the Crown. Some redress items also leave open the possibility of including Ngāti Kahu.

#### 4.5.1 Historical redress

The deeds of settlement between Te Aupōuri, Te Rarawa, Ngāi Takoto, and the Crown include historical accounts, Crown acknowledgements, and Crown apologies to these iwi.

#### 4.5.2 Cultural redress

The cultural redress for Te Aupōuri, Te Rarawa, and Ngāi Takoto includes joint redress negotiated among these iwi, Ngāti Kuri, and the Crown. This redress includes:

- ▶ the establishment of Te Oneroa-a-Tōhē Board;<sup>150</sup>
- ▶ the Korowai redress in relation to conservation land;<sup>151</sup>
- ▶ the Te Hiku o Te Ika Iwi – Crown Social Development and Wellbeing Accord (or social accord);<sup>152</sup> and
- ▶ the appointment by the Minister of Primary Industries of a joint fisheries advisory committee which will consist of one member appointed from time to time by each of the Te Hiku o Te Ika iwi.<sup>153</sup>

The Crown will provide Te Oneroa-a-Tōhē Board with \$150,000 to support its initial operations and \$250,000 to support the development of the first beach management plan.<sup>154</sup> Te Aupōuri, Te Rarawa and Ngāi Takoto will all receive \$137,500 in recognition of their historical and cultural associations with Te Oneroa-a-Tōhē, with these payment to be made to a body called Te Hiku o Te Ika Development Trust.<sup>155</sup> To support the engagement of iwi in the social accord the Crown will pay \$812,500 for each iwi to Te Hiku o Te Ika Development Trust.<sup>156</sup>

Te Aupōuri, Te Rarawa, and Ngāi Takoto have all secured payments from the Crown which they may

apply at their discretion to their own cultural aspirations. These payments vary in size with Te Aupōuri to be paid \$380,000;<sup>157</sup> Te Rarawa to be paid \$530,000;<sup>158</sup> and Ngāi Takoto to be paid \$2.4 million.<sup>159</sup>

Cultural redress land shared between iwi includes:

- ▶ properties referred to as Beach site A, Beach site B, Beach site C, and Beach site D vested as scenic reserves with Te Rarawa, Ngāti Kuri, and Te Aupōuri as tenants in common with equal undivided shares;<sup>160</sup>
- ▶ the bed of Waihopo Lake and Murimotu Island, to be vested in Te Aupōuri and Ngāti Kuri as tenants in common with equal undivided shares;<sup>161</sup> and
- ▶ a site at Tangonge and Lake Tangonge site A to be vested in Ngāi Takoto and Te Rarawa in equal and undivided shares as tenants in common.<sup>162</sup>

The Crown estimates that the cultural redress properties to be transferred to Te Aupōuri total 1,300 hectares, those to be transferred to Ngāi Takoto total 1,230 hectares, and those to be transferred to Te Rarawa total 900 hectares.<sup>163</sup>

The cultural redress for Te Aupōuri, Te Rarawa, and Ngāi Takoto also includes:

- ▶ the Crown's acknowledgement of statements by each of the iwi of their particular cultural, spiritual, historical, and traditional association with many sites of significance;<sup>164</sup>
- ▶ a requirement for relevant consent authorities, the Environment Court, and the New Zealand Historic Places Trust to have regard to these statutory acknowledgements;<sup>165</sup>
- ▶ the signing by relevant Ministers of the Crown of fishing protocols, culture and heritage protocols, and protocols with the Minister of Energy and Resources which set out how the Crown will interact with each iwi with regard to specified matters;<sup>166</sup>
- ▶ a requirement for the Minister of Primary Industries to appoint trustees of each iwi as advisory committees under section 21 of the Ministry of Agriculture and Fisheries Restructuring Act 1995;<sup>167</sup>
- ▶ an agreement between the individual iwi and the Department of Internal Affairs and the Museum of New Zealand Te Papa Tongarewa Board to enter into

- a letter of commitment to facilitate the care, management, access to and use of, and development and revitalisation of taonga;<sup>168</sup>
- ▶ letters of introduction from the Minister for Treaty of Waitangi Negotiations to a number of museums inviting each museum to enter into a relationship with each of the iwi;<sup>169</sup>
  - ▶ measures to promote the relationship between each of the iwi and the Northland Regional Council, the Far North District Council, the New Zealand Historic Places Trust, and a number of ministries and Government agencies;<sup>170</sup>
  - ▶ the alteration of a number of place names;<sup>171</sup>
  - ▶ a commitment by the Crown to facilitate a relationship between Te Aupōuri and the Norfolk Island Museum to promote the care and possible return of taonga;<sup>172</sup>
  - ▶ a commitment by the Crown to facilitate a relationship between Te Rarawa and the Auckland War Memorial Museum to promote the care of taonga;<sup>173</sup>
  - ▶ an acknowledgement of the importance of kuaka (godwit) to Te Aupōuri;<sup>174</sup> and
  - ▶ redress for Te Rarawa in relation to Te Pouahi Conservation Area and Ōwhata lands.<sup>175</sup>

The deed of settlement between Te Rarawa and the Crown states that the parties commit to enter negotiations for cultural redress in relation to Maungataniwha with Ngāti Kahu and Ngāpuhi.<sup>176</sup> A similar commitment is given in relation to Te Rarawa and Ngāpuhi negotiating cultural redress with the Crown in relation to the Hokianga harbour.<sup>177</sup>

#### 4.5.3 Commercial redress

The commercial redress for Te Aupōuri, Te Rarawa, and Ngāi Takoto reflects agreements made among Te Hiku iwi through the Te Hiku Forum negotiation process which confirmed the proportion that each iwi would receive of the major commercial redress items. These include the quantum, the farm properties, and the accumulated forest rentals for the Aupouri Forest. The quanta for the three iwi is:

- ▶ Te Aupōuri – \$21.04 million. Of this \$15,890,200 will be paid in cash. The remaining \$5,149,800 represents the cost to Te Aupōuri of the commercial redress properties transferred to the iwi on settlement date.<sup>178</sup>
- ▶ Te Rarawa – \$33.84 million. Of this \$22,671,246 will be paid in cash with the remaining \$11,168,754 being the cost to Te Rarawa of the commercial redress properties transferred to the iwi.<sup>179</sup>
- ▶ Ngāi Takoto – \$21.04 million. Of this \$12,665,254 will be paid in cash with the remaining \$8,374,746 being the cost to Ngāi Takoto of the commercial redress properties transferred to the iwi.<sup>180</sup>

The properties to be transferred to each of the iwi reflect agreements made among iwi, redress secured by each iwi through negotiations with the Crown, and the Crown's allocation of Crown forest lands. The properties to be transferred to the iwi include:

- ▶ Te Aupōuri – an undivided 30 per cent share of the peninsula blocks of the Aupouri Forest; Cape View Station; Te Raite Station; Te Kao School sites B and C; and 6585 and 6587 Far North Road.<sup>181</sup> We calculate the total area of commercial redress properties for Te Aupōuri as approximately 9,118.4 hectares.<sup>182</sup>
- ▶ Te Rarawa – an undivided 20 per cent share of the peninsula blocks of the Aupouri Forest; the Takahue blocks of the Aupouri Forest; part of Sweetwater Station; Te Karae Station; a number of schools to be leased back to the Crown; and a number of smaller properties.<sup>183</sup> We calculate the total area of commercial redress properties for Te Rarawa as approximately 7,950.4 hectares.<sup>184</sup>
- ▶ Ngāi Takoto – an undivided 20 per cent share of the peninsula blocks of the Aupouri Forest; part of Sweetwater Station; a number of schools to be leased back to the Crown; and a number of smaller properties.<sup>185</sup> We calculate the total area of commercial redress properties for Ngāi Takoto as approximately 5,404.8 hectares.<sup>186</sup>

Properties shared by Te Rarawa and Ngāi Takoto include the Sweetwater 20 hectare shared area, a property identified as Dairy 2 North, the Kaitaia Nurses Home,



and a property identified as corner Matthews Avenue and Melba Street, Kaitaia.<sup>187</sup> Further select properties are also available to Te Rarawa and Ngāi Takoto for purchase during a fixed period after settlement.<sup>188</sup> The deeds confirm the availability to Te Aupōuri, Ngāi Takoto, and Te Rarawa of Crown land for purchase on a right of first refusal basis as negotiated among Te Hiku iwi.<sup>189</sup>

As was agreed by all five Te Hiku iwi through the Te Hiku AIP, Te Aupōuri, Ngāi Takoto, and Te Rarawa will each receive 20 per cent of the accumulated forest rentals associated with the Aupouri Forest.<sup>190</sup> The Crown has calculated that this amounts to approximately \$2,270,777 for each iwi.<sup>191</sup> The iwi will also be paid interest on their quanta. We were not given evidence of the interest currently owed to these iwi.

#### 4.6 CONCLUSION

The Crown's Treaty claims settlement process is well established. In total, the Crown has signed some 50 deeds of settlement with iwi. The vast majority of these have been completed since 1997 when the *Muriwhenua Land Report* was released. For much of that period iwi of Te Hiku, including Ngāti Kahu, have been engaged in settlement negotiations with the Crown. From mid-2008 through January 2010, Te Hiku iwi were also engaged in discussions with each other, through the Te Hiku Forum, in an effort to resolve over-lapping claims issues and agree on collective forms of redress. These negotiations resulted in three individual AIPs, including the Ngāti Kahu AIP of 2008, and also the collective Te Hiku AIP of 2010. Further negotiations have resulted in Te Aupōuri, Ngāi Takoto, and Te Rarawa all agreeing to settlements with the Crown.

As a result of its negotiations with Ngāti Kahu and the Te Hiku Forum, the Crown states that it has a settlement package available to Ngāti Kahu. The Crown submitted that its proposed settlement for Ngāti Kahu is fair both in the context of the Te Hiku settlements and settlements nationally. It is based upon agreements reached between the Crown and individual iwi and among the iwi themselves. It involves the transfer of land of both cultural importance and commercial value and the inclusion of

Ngāti Kahu in co-governance and co-management of significant lands.

Ngāti Kahu rejected the Crown's proposed settlement when it was presented during our hearing. They say it has resulted from negotiations conducted within a settlement framework too inflexible to result in the type and scale of redress that they seek. Moreover, the Crown has no place dictating the redress available as the Crown itself is responsible for the prejudice for which redress is sought. Rather than a settlement reached within this context Ngāti Kahu seek remedies through the Tribunal's remedies process. It is to that process, and what Ngāti Kahu seek from it, that we now turn.

#### Notes

1. Document R28, p 6
2. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua – Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown* (Wellington: Office of Treaty Settlements, 2004), p 32
3. Document R28, p 4
4. Document R28, pp 4–5
5. Office of Treaty Settlements, *Ka Tika ā Muri*, pp 57–58
6. *Ibid*, p 59
7. *Ibid*, p 60
8. *Ibid*, p 59; see also doc R29(b), p 632
9. Office of Treaty Settlements, *Ka Tika ā Muri*, pp 59–60
10. Document R29(b), p 632
11. Transcript 4.18, p 576
12. Document R28, p 5
13. Office of Treaty Settlements, *Ka Tika ā Muri*, p 85
14. *Ibid*, pp 85–86
15. *Ibid*, pp 85–86; doc R28, p 20
16. Document R28, p 20
17. Office of Treaty Settlements, *Ka Tika ā Muri*, p 96
18. *Ibid*
19. Document R28, p 28; Office of Treaty Settlements, *Ka Tika ā Muri*, p 98
20. Document R28, pp 20–21; Office of Treaty Settlements, *Ka Tika ā Muri*, pp 87–88
21. Document R28, p 21
22. Office of Treaty Settlements, *Ka Tika ā Muri*, p 87
23. Document R28, p 22
24. Office of Treaty Settlements, *Ka Tika ā Muri*, p 87
25. *Ibid*, p 89
26. *Ibid*, p 90
27. Office of Treaty Settlements, *Ka Tika ā Muri*, pp 89–90



28. Document R33, p 52
29. Office of Treaty Settlements, *Ka Tika ā Muri*, p 90
30. Document R28, p 7; doc R17, p 53
31. Document R17, pp 51–52
32. Document R18, p 40; doc R18(a), p 71
33. Document R18, p 40
34. Document R18(a), pp 72–75
35. *Ibid*, p 78
36. Document R40, p 40
37. Document R17, p 54; doc R28, p 8
38. Document R17, pp 54–55; see also transcript 4.18, p 252
39. Document R17, p 56
40. *Ibid*, pp 57–58
41. Document R17, pp 58–60
42. Paper 2.275
43. Memorandum 2.295
44. Document R17, p 67; doc R33, p 2
45. Transcript 4.18, p 593
46. Document R17, p 67
47. Memorandum 2.362, app A. The AIP is available online at <http://nz01.terabyte.co.nz/ots/DocumentLibrary/NgatiKahuAgreementinPrinciple.pdf>.
48. *Ibid*, p 2
49. Transcript 4.18, pp 493, 607
50. Memorandum 2.362, app A, pp 7–9
51. *Ibid*, pp 4–5
52. *Ibid*, p 6
53. *Ibid*
54. *Ibid*, pp 9–10
55. *Ibid*, p 11
56. *Ibid*, p 12
57. *Ibid*, pp 12–14
58. Transcript 4.18, p 595; doc R33, p 4. For the 50-year covenant, see memorandum 2.362, app A, p 12.
59. Memorandum 2.362, app A, p 15
60. Transcript 4.18, p 614
61. Waitangi Tribunal, *Muriwhenua Land Report*, p xix
62. *Ibid*
63. Document R42, para 92
64. *Ibid*, para 93
65. Document R29(b), pp 328–329
66. Document R33, p 3
67. Document R17(a), p 78
68. Document R33, p 3
69. Document R28, p 14; see also doc R29(b), p 356, <http://www.terarawa.iwi.nz/uploads/7/4/6/3/7463762/tehikuaip-16thjan2010with-signatures.pdf>
70. Document R17, p 72; doc R28, p 14
71. Document R33, p 3
72. *Ibid*, p 4
73. Document R29(b), pp 361–362
74. *Ibid*, pp 362–363
75. *Ibid*, p 363
76. *Ibid*
77. *Ibid*, p 364
78. *Ibid*, p 366
79. Document R28, pp 25–26
80. Document R29(b), pp 369–370
81. *Ibid*, pp 373–374
82. *Ibid*, p 376
83. *Ibid*
84. *Ibid*
85. *Ibid*, p 357
86. *Ibid*, p 358
87. Document R17, p 72
88. Document R28, pp 11, 16
89. Document R33, p 11
90. Document R17, p 78; doc R28, p 16
91. Document R17, p 80
92. Document R33, p 11
93. *Ibid*, p 12
94. Document R42, para 98
95. *Ibid*, para 97
96. Wai 2364 ROI, doc A2(b), exhibit C
97. Wai 2364 ROI, doc A2, p 10
98. Wai 2364 ROI, doc A9(b), annexure J
99. Wai 2364 ROI, doc A3, pp 26–27
100. Wai 2364 ROI, doc A2(b), exhibits E, F
101. Document R17, p 84
102. Document R29, p 56
103. *Ibid*, p 60
104. Document R43, para 29
105. Memorandum 2.359(c). For the date that the first draft was received by the Crown, see document R29, p 27.
106. Document R29, p 27
107. Transcript 4.18, pp 240–241
108. *Ibid*, p 165
109. Paper 2.359(c), pp 198, 451–453
110. Document R29(b), p 457
111. Document R29, p 29, citing doc R29(b), pp 459–460
112. Memoranda 2.333, 2.336
113. Document R29(b), pp 457–458
114. *Ibid*, pp 459–460
115. *Ibid*, p 461
116. Document R29, p 30. For the letter sent to Ngāti Kahu, see document R29(b), pp 462–466.
117. Document R29(b), pp 654–657
118. Document R29, p 31
119. Document R34
120. Document R29(b), p 655
121. *Ibid*
122. *Ibid*, p 656
123. *Ibid*
124. Document R29(b), p 656

125. Document s33, p 12
126. Transcript 4.18, pp 208–209
127. Document R28, p 28
128. Document s48(a)
129. Document R28, p 30
130. Document s48, p 4
131. Document R28, p 31
132. Ibid
133. Ibid
134. Ibid, p 32
135. Ibid, pp 30–33
136. Ibid, p 15
137. Document s48, p 3
138. Document R29(b), p 370
139. Ibid; doc R28, p 34
140. Document R28, p 34
141. Ibid
142. Ibid, pp 35–37
143. Document R35(b)(iii), pp 9–47
144. Document R28, p 39; doc s33, pp 37, 38, 46, 56, 77
145. Memorandum 2.506
146. Document s48, p 3
147. Te Aupōuri and the Crown, *Deed of Settlement of Historical Claims*, 28 January 2012, <http://nz01.terabyte.co.nz/ots/DocumentLibrary%5CTeAupouridoS.pdf> (Te Aupōuri deed of settlement)
148. Ngāi Takoto and the Crown, *Deed of Settlement of Historical Claims*, 27 October 2012, <http://nz01.terabyte.co.nz/ots/DocumentLibrary/NgaiTakoto-DeedofSettlement.pdf> (Ngāi Takoto deed of settlement)
149. Te Rarawa and the Crown, *Deed of Settlement of Historical Claims*, 28 October 2012, <http://nz01.terabyte.co.nz/ots/DocumentLibrary/TeRarawa-DeedofSettlement.pdf> (Te Rarawa deed of settlement)
150. Te Aupōuri deed of settlement, pp 47–65; Te Rarawa deed of settlement, pp 97–129; Ngāi Takoto deed of settlement, pp 30–48
151. Te Aupōuri deed of settlement, pp 66–112; Te Rarawa deed of settlement, pp 155–228; Ngāi Takoto deed of settlement, pp 49–94
152. Te Aupōuri deed of settlement, pp 113–114; Te Rarawa deed of settlement, pp 229–231; Ngāi Takoto deed of settlement, pp 95–97
153. Te Aupōuri deed of settlement, p 120; Te Rarawa deed of settlement, p 234; Ngāi Takoto deed of settlement, pp 102–103
154. Te Aupōuri deed of settlement, p 56; Te Rarawa deed of settlement, p 106; Ngāi Takoto deed of settlement, p 39
155. Te Aupōuri deed of settlement, p 63; Te Rarawa deed of settlement, p 113; Ngāi Takoto deed of settlement, p 46
156. Te Aupōuri deed of settlement, p 114; Te Rarawa deed of settlement, p 230; Ngāi Takoto deed of settlement, p 96
157. Te Aupōuri deed of settlement, p 127
158. Te Rarawa deed of settlement, p 246
159. Ngāi Takoto deed of settlement, p 99
160. Te Aupōuri deed of settlement, p 117; Ngāi Takoto deed of settlement, p 99; Te Rarawa deed of settlement, p 240
161. Te Aupōuri deed of settlement, p 117
162. Ngāi Takoto deed of settlement, p 98; Te Rarawa deed of settlement, p 240
163. Document s48, p 7
164. Te Aupōuri deed of settlement, p 118; Te Rarawa deed of settlement, p 232; Ngāi Takoto deed of settlement, p 100
165. Te Aupōuri deed of settlement, p 119; Te Rarawa and the Crown, *Deed of Settlement*, p 232; Ngāi Takoto deed of settlement, p 100
166. Te Aupōuri deed of settlement, pp 119–120; Te Rarawa deed of settlement, p 233; Ngāi Takoto deed of settlement, p 101. The Te Rarawa deed of settlement does not include a protocol with the Minister of Energy.
167. Te Aupōuri deed of settlement, p 120; Te Rarawa deed of settlement, p 233; Ngāi Takoto deed of settlement, p 102
168. Te Aupōuri deed of settlement, p 121; Te Rarawa deed of settlement, p 234; Ngāi Takoto deed of settlement, p 103
169. Te Aupōuri deed of settlement, pp 121–122; Te Rarawa deed of settlement, pp 238–239; Ngāi Takoto deed of settlement, pp 106–107
170. Te Aupōuri deed of settlement, pp 123–125; Te Rarawa deed of settlement, pp 235–238; Ngāi Takoto deed of settlement, pp 103–105
171. Te Aupōuri deed of settlement, pp 125–126; Te Rarawa deed of settlement, pp 244–245; Ngāi Takoto deed of settlement, pp 107–108
172. Te Aupōuri deed of settlement, p 126
173. Te Rarawa deed of settlement, p 234
174. Te Aupōuri deed of settlement, p 127
175. Te Rarawa deed of settlement, pp 241–243
176. Ibid, p 245
177. Ibid, p 246
178. Te Aupōuri deed of settlement, p 129
179. Te Rarawa deed of settlement, p 248
180. Ngāi Takoto deed of settlement, p 109
181. Te Aupōuri deed of settlement, p 129
182. This is calculated from the total area of those properties and shares in properties listed in the Te Aupōuri deed of settlement schedule of property redress, <http://nz01.terabyte.co.nz/ots/DocumentLibrary/TeAupouridoSGM&Property.pdf>, pp 6–13
183. Te Rarawa deed of settlement schedule of property redress, <http://nz01.terabyte.co.nz/ots/DocumentLibrary/TeRarawaPropertyRedress.pdf>, pp 7–20
184. This is calculated from the total area of those properties and shares in properties listed in the Te Rarawa deed of settlement schedule of property redress.
185. Ngāi Takoto deed of settlement schedule of property redress, <http://nz01.terabyte.co.nz/ots/DocumentLibrary/NgaiTakotoPropertyRedress.pdf>, pp 6–15

- 186.** This is calculated from the total area of those properties and shares in properties listed in the Ngāi Takoto deed of settlement schedule of property redress.
- 187.** Te Rarawa deed of settlement, p 248; Ngāi Takoto deed of settlement, p 109
- 188.** Te Rarawa deed of settlement, p 253; Ngāi Takoto deed of settlement, p 113
- 189.** Te Aupōuri deed of settlement, pp 135–136; Te Rarawa deed of settlement, pp 253–255; Ngāi Takoto deed of settlement, pp 114–115
- 190.** Te Aupōuri deed of settlement, p 133; Te Rarawa deed of settlement, p 251; Ngāi Takoto deed of settlement, p 112
- 191.** Document R28, p 34



CHAPTER 5

## THE REMEDIES PROCESS AND THE PARTIES' POSITIONS

### 5.1 INTRODUCTION

The second pathway to relief available to Ngāti Kahu is the Tribunal's remedies process. Having found the pre-1865 claims of Te Hiku iwi, including those of Ngāti Kahu, to be well-founded, the Tribunal concluded that recommendations for the transfer of substantial property, including binding recommendations if need be, were appropriate to relieve the prejudice suffered.<sup>1</sup>

In chapter 2, we discussed the statutory framework for the remedies process. In this chapter, we look at what Ngāti Kahu seek through the remedies process, what is available to them by way of binding recommendations, and what redress is available only through non-binding recommendations. We then outline the parties' positions in this inquiry.

#### 5.1.1 What Ngāti Kahu ask of this Tribunal

Since the *Muriwhenua Land Report* was issued, we have received applications for remedies from both Te Aupōuri and Ngāti Kahu.<sup>2</sup> The application from Te Aupōuri and the initial application from Ngāti Kahu were not pursued to a hearing, the parties instead returning to negotiations with the Crown. However, on 15 July 2011, Ngāti Kahu sought to revive their application. Their memorandum states that:

it has become clear to the Ngāti Kahu mandated negotiators that the Crown's entrenched settlement policies mean that there is no prospect of achieving a negotiated settlement which will be acceptable to the people of Ngāti Kahu. Therefore, Ngāti Kahu has resolved to instruct the negotiators to withdraw from negotiations and seek a substantive decision from the Tribunal.<sup>3</sup>

In addition, Ngāti Kahu were concerned that land they consider should be available to them as potential redress would be lost as a result of the Crown entering deeds of settlement with other Te Hiku iwi.<sup>4</sup>

Ngāti Kahu seek remedies to remove the prejudice they have suffered as a result of Crown actions and omissions established by their well-founded claims which relate to pre-1865 events. The remedy they ask for is a 'total relief package', extensive in its scale and rationale, which includes both binding and non-binding recommendations and reflects the position that Ngāti Kahu established first in their Yellow Book and then through their deed of partial settlement. They seek the transfer to them of what they consider to be sufficient land to enable the economic recovery and survival of Ngāti Kahu, the return of all

Ngāti Kahu wāhi tapu and sites of significance, the recognition of the mana and rangātiratanga of Ngāti Kahu, and the provision of funds for Ngāti Kahu social, health, and education institutions.<sup>5</sup>

Ngāti Kahu argue that the remedies they seek should not be seen as an alternative route to settlement with the Crown. On this point they stated:

Ngāti Kahu are not seeking nor are they asking the Tribunal to provide a settlement and Ngāti Kahu have not applied nor approached this application with a settlement in mind. Further the application has not been made by Ngāti Kahu in order to assist the Crown in the process of its negotiations or in the process of its settlement aspirations. Those are the Crown's responsibilities.<sup>6</sup>

In counsel's submission, 'the Tribunal's recommendations are to provide actions that the Crown might take to remove the prejudice complained of'.<sup>7</sup>

Ngāti Kahu emphasise that the Tribunal, in the *Muriwhenua Land Report*, recommended that Ngāti Kahu were deserving of significant redress and concluded that a 'restorative approach' should be adopted in providing remedies for Crown Treaty breaches. Those remedies, it said, should be:

costed according to that necessary to re-establish the people in the social and economic life of the district and in which data on any development opportunities and current socio-economic indicia are relevant . . .<sup>8</sup>

Ngāti Kahu estimate that land loss suffered by the tribe amounted to some 70 per cent of their land base by 1865.<sup>9</sup>

Although the Crown has acknowledged that Ngāti Kahu are deserving of redress, Ngāti Kahu submitted that the Crown's framework for settling claims has proved inadequate. The Crown, for example, has been unwilling to offer all Crown land available in the Ngāti Kahu rohe.<sup>10</sup> Ngāti Kahu withdrew from negotiations because the Crown was not prepared to offer redress that Ngāti Kahu consider sufficient. Despite this, Ngāti Kahu submitted,

the Crown has continued in its attempts to force a settlement upon them by pushing through settlements with three other Te Hiku iwi.<sup>11</sup>

The Crown has been 'the thief', Ngāti Kahu argue, and it is inappropriate for it to be the sole determiner of the level of redress available to Ngāti Kahu.<sup>12</sup> As a last resort, they have turned to the Tribunal seeking recommendations in favour of a 'total relief package' for all of their pre-1865 Treaty claims.<sup>13</sup> The package sought consists of:

- ▶ binding recommendations for the resumption of all Crown forest lands and memorialised properties in the remedies area;
- ▶ non-binding recommendations for the Crown to transfer all other available Crown-owned land in the remedies area to Ngāti Kahu;
- ▶ non-binding recommendations for the Crown to provide financial redress of \$205 million, costed on the economic loss Ngāti Kahu have suffered from the land alienation that occurred up to 1865;
- ▶ legislation recognising Ngāti Kahu as 'exercising dominion' in the remedies area; and
- ▶ costs in pursuing the claim.

Since, as Ngāti Kahu submit, this total relief package would satisfy only their well-founded pre-1865 claims, they could return to the Tribunal seeking further remedies for any well-founded claims relating to the post-1865 period.<sup>14</sup> Professor Mutu advised us that future generations of Ngāti Kahu would find new ways to secure the return of all other Ngāti Kahu land.<sup>15</sup>

Ngāti Kahu submitted that the intention of the Treaty of Waitangi (State Enterprises) Act 1988 and the Crown Forest Assets Act 1989 was the protection of claimants to the Waitangi Tribunal, and that Ngāti Kahu find themselves in exactly the position contemplated by the legislation when it was enacted. Ngāti Kahu have well-founded claims and attempts to negotiate a settlement with the Crown have not succeeded. In order to secure relief for the prejudice they have suffered, Ngāti Kahu submitted that they now have no option other than to seek remedies from the Tribunal.<sup>16</sup>

It is the view of Ngāti Kahu that the Tribunal's primary duty, in terms of its recommendatory powers, is to assess



the level of prejudice suffered and to make a recommendation to remove that prejudice accordingly.<sup>17</sup> They say that potentially binding, or resumptive, recommendations alone will not succeed in removing the prejudice. Rather, removing the prejudice will require the Tribunal to make both binding and non-binding recommendations for the return of all Crown-owned land in the remedies claim area.<sup>18</sup>

As for the potential destabilising effect that binding recommendations may have on settlements agreed between the other Te Hiku iwi and the Crown, Ngāti Kahu submitted that although the Tribunal is required to take into account 'all the circumstances of the case', it is not required to maintain relativities with other Treaty settlements. In fact, any attempt to do so may, in their view, conflict with the Tribunal's primary duty 'to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future'.<sup>19</sup>

Ngāti Kahu submitted that it is the hapū of Ngāti Kahu that hold mana whenua in the remedies area. Responding to questions from the Tribunal regarding competing claims to mana whenua in the remedies area, Ngāti Kahu accepted that the Tribunal should act with caution if it is uncertain or unclear as to the relative strengths of the mana whenua interests. However, due to the limited amount of valuable land available to Ngāti Kahu through the remedies process, they suggested that the Tribunal's consideration of this issue should be weighted in their favour.<sup>20</sup>

Ngāti Kahu consider that Te Rarawa, Ngāi Takoto, and Te Aupōuri will not be prejudiced by the loss of properties that were to be transferred to them or made available for purchase through their deeds of settlement as those deeds allow the iwi to re-enter negotiations with the Crown should this occur.<sup>21</sup> Ngāti Kahu also submitted that the transfer of properties currently owned by Te Rarawa would not prejudice that iwi greatly, as Te Rarawa were aware that these were memorialised properties when they purchased them and they would be compensated for their loss.<sup>22</sup> In relation to Te Aupōuri House, Ngāti Kahu say that Te Aupōuri would not be prejudiced by the loss of this property as Te Aupōuri does not hold mana whenua

in Kaitaia. Further, were this property to be transferred to Ngāti Kahu, Te Aupōuri would be compensated for their loss of ownership.<sup>23</sup>

### 5.1.2 Remedies sought through binding recommendations

As we discussed earlier, binding recommendations from the Tribunal relate to certain memorialised lands and Crown forest land. As a result of any transfer to them of Crown forest land, Ngāti Kahu would receive both a forest compensation payment and any accumulated forest rentals relating to that land. Thus, binding recommendations could result in the transfer of land and cash to Ngāti Kahu. The amount of land and associated compensation moneys available to Ngāti Kahu is outlined below.

#### (1) *The resumable land*

The land sought by Ngāti Kahu through binding recommendations is a mix of SOE land, Crown forest land, Housing New Zealand Corporation land, and privately owned land. The land in private ownership includes land owned by local authorities, by other Te Hiku iwi or their subsidiary bodies, and by private individuals. The Crown has provided information on the extent of this land which is outlined below:

Rangiputa Station	3,699.73 hectares
Kohumaru Station	944.74 hectares
Part Sweetwater Farm	42.25 hectares
Kohumaru blocks – Otangaroa Forest	544.00 hectares
Mangonui blocks – Aupouri Forest	776.78 hectares
Takahue blocks – Aupouri Forest	300.00 hectares
Housing New Zealand properties	0.48 hectares
Other Crown land	8.13 hectares
Roads	1.66 hectares
Privately owned land	68.86 hectares

The total area of resumable land in the remedies claim area is 6,386.63 hectares. The land has an estimated value of just over \$40 million. Just over \$19.2 million of the total estimated value comes from the 68.86 hectares of privately owned land.<sup>24</sup> Many of these properties are also potentially

available to Ngāti Kahu as part of the Crown's proposed settlement offer, including the Rangiputa and Kohumaru stations, the Kohumaru blocks of the Otangaroa Forest, and the Mangonui blocks of the Aupouri Forest.

Te Rarawa, Te Aupōuri, and Ngāi Takoto have interests in a number of properties that are subject to resumption in favour of Ngāti Kahu. Te Rarawa currently owns three memorialised properties subject to resumption recommendations. The offices of Te Rūnanga o Te Rarawa are located on these properties. Five properties to be transferred to Te Rarawa by the Crown as part of the settlement they have agreed are also subject to resumption.<sup>25</sup> Te Aupōuri currently own one property subject to resumption. This property, named Aupōuri House, is the headquarters of the Aupōuri Māori Trust Board. One property subject to a right of first refusal through the Te Aupōuri deed of settlement is also resumable.<sup>26</sup> Two properties subject to a right of first refusal through the Ngāi Takoto deed of settlement are also resumable.<sup>27</sup>

Resumable properties in the Ngāti Kahu remedies claim area are shown on maps 2 and 3.

### **(2) *The forest compensation payments and accumulated rentals***

Compensation payments calculated in accordance with the Crown Forest Assets Act would be due to Ngāti Kahu in relation to Crown forest land transferred by way of binding recommendations. As discussed in chapter 2, there are three methods by which any forest compensation payment might be calculated. It is then a matter for the Tribunal to decide how much of that compensation figure, between 5 per cent and 100 per cent, should be paid.

The amount of compensation due to Ngāti Kahu was the subject of considerable evidence. Michael Marren, on behalf of the Crown, gave three possible figures for the maximum compensation payable under the Act: \$2,791,771, \$3,818,797, and \$13,025,536 (calculated respectively as per the terms of clause 3(a), clause 3(b), and clause 3(c) of schedule 1).<sup>28</sup>

Ngāti Kahu provided their own evidence on the likely figures for forest compensation using the three

approaches. William Liley of the forest consulting company Indufor also gave three possible figures for the maximum forest compensation payments: \$13,700,000, \$15,100,000, and \$12,900,000 (calculated respectively as per the terms of clause 3(a), clause 3(b), and clause 3(c) of schedule 1).<sup>29</sup>

There are clearly substantial differences in some of the estimates provided by Marren and Liley. However, the legislation provides for Ngāti Kahu to adopt the method of calculation they prefer. This would, we think, be the method that results in the highest amount of compensation. The Crown's evidence, if the Tribunal recommended that 100 per cent of the compensation should be paid, is that the compensation would be \$13.058 million. The evidence of Ngāti Kahu is that this would be \$15.1 million. These figures are sufficiently close to provide us with an idea of the maximum extent of any forest compensation payments.

Ngāti Kahu would also receive the accumulated forest rentals relating to those forest lands affected. The Crown estimates the amount of accumulated rentals relating to the forest lands within the remedies area as \$1.004 million.<sup>30</sup>

### **(3) *The total value of binding recommendations***

Given that the Tribunal can recommend the payment of between 5 and 100 per cent of the forest compensation calculated under the Crown Forest Assets Act, the final value of any package of binding recommendations is open to wide variation. Taking into account the value of all land potentially available through binding recommendations, the indicative estimates provided by Marren and Liley for the maximum forest compensation payable, and the accumulated rentals relating to the forest lands within the remedies area, we calculate the approximate maximum value of the remedies potentially available to Ngāti Kahu through binding recommendations as between \$54.3 million and \$56.4 million. Were the Tribunal to recommend the payment of 5 percent of forest compensation calculated under the Crown Forest Assets Act, the value of the binding recommendations would be between \$41.92 million and \$42.05 million.

### 5.1.3 Remedies sought through non-binding recommendations

All other elements of the relief package proposed by Ngāti Kahu could only be recommended by this Tribunal using its general, non-binding powers. One element sought by Ngāti Kahu is a recommendation that a legal entity based on the structure of Te Rūnanga-ā-Iwi o Ngāti Kahu be created by an Act of Parliament. Ngāti Kahu intend that this entity would receive any redress recommended by this Tribunal.<sup>31</sup> Ngāti Kahu also seek legislative provisions that supersede the provisions of the Resource Management Act, the Conservation Act, and the Public Works Act to the extent that the Ngāti Kahu entity would exercise governance, control, and management over all physical and natural resources in the Ngāti Kahu rohe.<sup>32</sup> This Ngāti Kahu entity would also be recognised as exercising dominion over the entire remedies area 'out to the 200 mile limit'.<sup>33</sup> Other recommendations sought include:

- ▶ That the Crown make a compensation payment of \$205 million for social and economic deprivation, based on the evidence of BERL regarding the economic loss suffered by Ngāti Kahu as a result of Crown actions or omissions up to 1865.
- ▶ That the Crown create and fund companies to manage the Rangiputa, Kohumaru, and Takakuri stations. Crown funding for these companies would be \$500,000 per year in total and would be provided for no less than 3 years.
- ▶ That all land transferred would be held by Ngāti Kahu as inalienable land and in accordance with Ngāti Kahu tikanga as whānau, hapū, or iwi land.
- ▶ That the Crown create and fund management companies for all non-farm land transferred to Ngāti Kahu.<sup>34</sup>

In calculating the compensation payment they seek, Ngāti Kahu relied on a BERL estimate (of \$307 million in economic loss based on the unimproved value of alienated land) which related to their extended rohe rather than the remedies claim area.<sup>35</sup> Ngāti Kahu told us that they then deducted 30 per cent of this figure to account for taxation and a further \$10 million to account for holding, maintenance, and rent review costs.<sup>36</sup> We note that BERL provided

an estimate for the economic loss suffered by Ngāti Kahu that relates specifically to the remedies claim area. It is this estimate (of \$201 million in economic loss) that should have been used to calculate the compensation payment.<sup>37</sup> When this lower estimate is used a much lower figure results. We calculate this to be \$128 million.

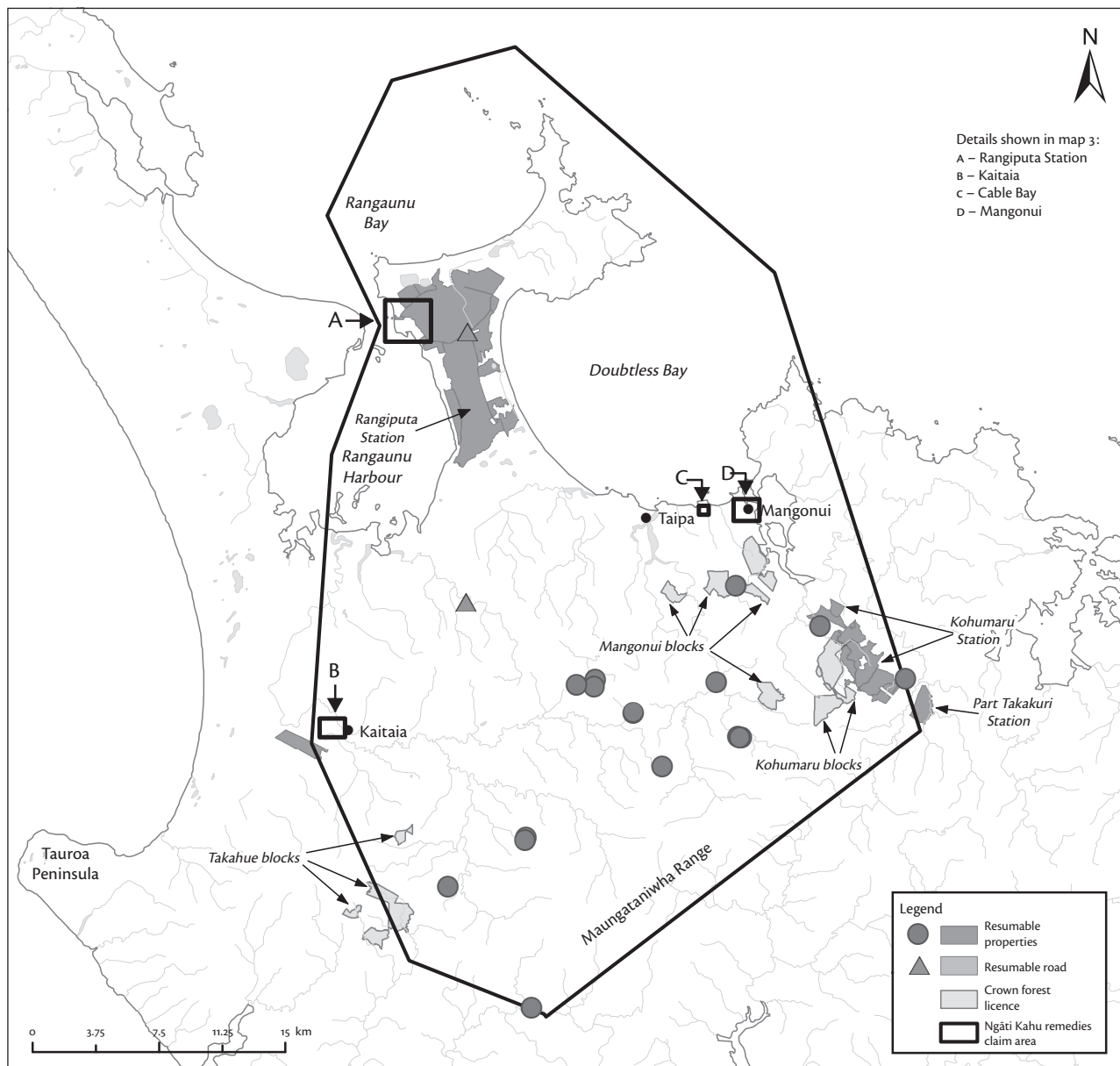
#### (1) Recommendations relating to housing

Ngāti Kahu seek a number of specific recommendations related to improving the poor state of Ngāti Kahu housing stock. These include the provision of a preferential policy for Ngāti Kahu persons in the allocation of state-owned rental housing. If this policy was to be abandoned at any time following its establishment, Ngāti Kahu submitted that compensation should then be paid and they should receive the first option to purchase state-owned housing within their rohe.<sup>38</sup> In addition, Ngāti Kahu seek the following recommendations:

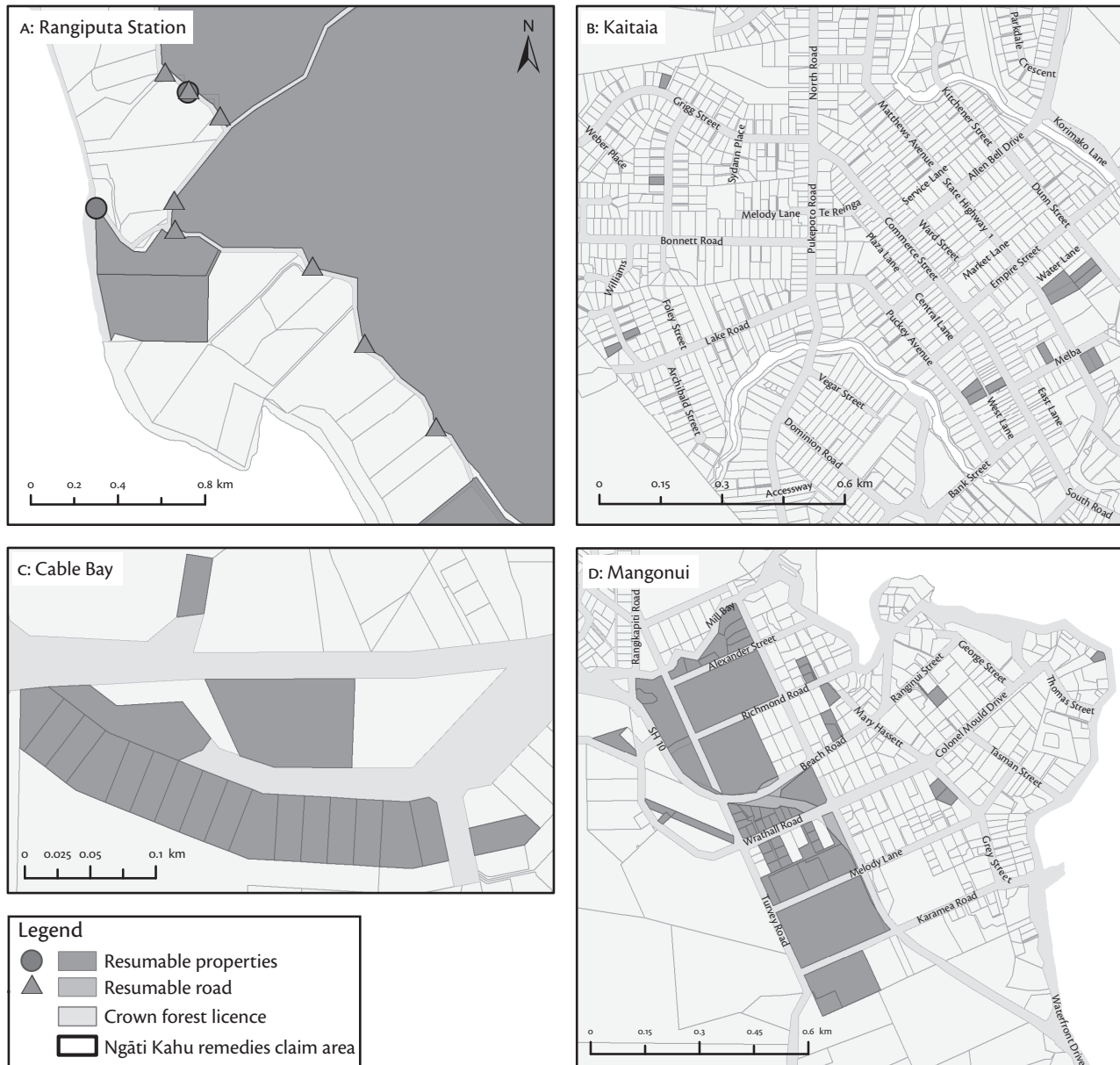
- ▶ That Ngāti Kahu be recognised as a community housing provider and be freed from the costs and difficulties faced by other housing developers. This would include the costs of seeking building consents and connecting housing to power, phone, drainage, and roading, as well as the complete remission of rates on Ngāti Kahu land.<sup>39</sup>
- ▶ That Ngāti Kahu should not have to provide either land or money as reserve contributions.<sup>40</sup>
- ▶ That the Crown provide low interest and suspensory loans and conditional grants to Ngāti Kahu to assist in the provision of community housing.<sup>41</sup>
- ▶ That the Minister of Housing introduce a new revenue-subsidy regime for community housing and local authority housing providers, enabling them to charge income-related rents to their tenants.<sup>42</sup>
- ▶ That the same Minister support a bid for a dramatically increased appropriation in the Budget to support the growth of the community housing sector.<sup>43</sup>

#### (2) Other land to be transferred to Ngāti Kahu

The Tribunal is asked to recommend the transfer to Ngāti Kahu of all Ministry of Education land (seven properties) within the remedies claim area. Such properties could



Map 2: Resumable properties in the Ngāti Kahu remedies claim area, 2012



Map 3: Resumable properties in Rangiputa Station, Kaitaia, Cable Bay, and Mangonui, 2012



then be leased back to the Crown at market rates. To aid Ngāti Kahu in the development of their own schools we are asked to recommend the provision of low interest loans, suspensory loans, and conditional grants for this purpose.<sup>44</sup>

Ngāti Kahu request that Crown land identified for return to Ngāti Kahu as cultural redress or for management by a Ngāti Kahu statutory board through a Treaty settlement be returned to Ngāti Kahu at no cost. In addition:

- ▶ this land would be administered by a Ngāti Kahu statutory board to be funded by the Crown at an annual rate of no less than \$200,000; and
- ▶ further sites of significance identified in evidence prepared by Ngāti Kahu for this hearing would also be transferred to Ngāti Kahu and administered by the statutory board.

The Kaitaia airport and Rangianiwaniwa school are sought for transfer to Ngāti Kahu at no cost. Additionally, a recommendation is sought that compensation be paid by the Crown to the Matenga family for the loss of the use of the airport land.<sup>45</sup>

Finally, Ngāti Kahu request the transfer of all Crown-owned land within the remedies hearing area at no cost where it has been land-banked, identified as a deferred selection property for Treaty settlement purposes, or as a Land Information New Zealand owned property. Alternatively, Ngāti Kahu seek a recommendation that these properties be made subject to a deferred selection process or right of first refusal in their favour for a period of 172 years.<sup>46</sup>

Based on the Ngāti Kahu closing submissions the entire package of relief sought, as a result of binding and non-binding recommendations from this Tribunal, includes some 11,865 hectares of land and has a total value in excess of \$260 million.

## 5.2 THE CROWN'S POSITION

The Crown's position is that the Tribunal's remedies process cannot be divorced from the Treaty settlements process. Consequently, what Ngāti Kahu seek must be assessed in relation to what is possible through that

process. Seen in this light the total relief package proposed by Ngāti Kahu amounts to the largest ever Treaty settlement. The Crown opposes this proposed package as wholly unrealistic and a threat to the durability of settlements that the Crown has reached in Te Hiku and nationally. Ngāti Kahu are, the Crown submitted, challenging the entire Treaty settlements process.<sup>47</sup>

Though the Crown agrees that Ngāti Kahu have suffered prejudice and are deserving of redress, it submitted that this must be considered in the wider context of different kinds of Treaty breach. More specifically, Ngāti Kahu have not suffered prejudice in the nature of confiscation or loss of life through Crown actions.<sup>48</sup> The Crown is willing to enter into a settlement of all their Treaty claims and submitted that the real issues for this Tribunal to determine are:

- ▶ what the parties have agreed;
- ▶ what is a fair settlement to Ngāti Kahu in the context of other Treaty settlements; and
- ▶ what provides Ngāti Kahu with an economic base.<sup>49</sup>

As to what has been agreed, the Crown submitted that the Tribunal ought to have particular regard to the agreements that the parties were able to reach through the AIPs of 2008 and 2010. These were signed by the Crown and Ngāti Kahu and the Crown submitted:

These signatures are not meaningless. They cannot be ignored. The contents of the agreements similarly cannot be ignored. They provide a meaningful and principled basis for decisions the Tribunal may ultimately reach in this proceeding.<sup>50</sup>

With regard to what is fair to Ngāti Kahu and what would provide them with an economic base, the Crown submitted that its settlement package amounts to the transfer of substantial assets as envisaged by the *Muriwhenua Land Report*. Thus, it is a fair settlement in the context of the settlements in Te Hiku, and nationally, and will provide Ngāti Kahu with an economic base for the future.<sup>51</sup>

The Crown's position is that the resumption of land must always be used as a last resort. The reason is the



protective nature of the memorial scheme, the purpose of which, in the Crown's view, is to ensure there is a sufficiency of land available for use in Treaty settlements. The Crown submitted that where there is a sufficiency of Crown-owned properties available for use in a Treaty settlement, as there is in the case of Ngāti Kahu, there is no need to order resumption.<sup>52</sup>

The Crown also submitted that, rather than taking a restorative approach, Ngāti Kahu have taken a damages approach to formulating their proposed package of relief. This, the Crown submitted, is contrary to what the Tribunal can recommend and to every Treaty settlement completed to date. In constructing a fair package for Ngāti Kahu, the Crown urges the Tribunal to take a principled approach by basing it on the value of the package agreed between Ngāti Kahu and the Crown. This package was:

- ▶ agreed through negotiation with the Crown;
- ▶ agreed through negotiations with the other Te Hiku iwi; and
- ▶ considered by the Crown to be at the higher end of settlements for comparable grievances.

The Crown further submitted that this package will not cause relativity issues with the other Te Hiku settlements.<sup>53</sup>

Finally, the Crown submitted that, if this Tribunal were to recommend a package of relief for the well-founded claims of Ngāti Kahu, the total value of that package must be discounted to take account of the fact that those claims relate only to the pre-1865 period.<sup>54</sup>

### 5.3 THE INTERESTED PARTIES' POSITIONS

#### 5.3.1 Te Aupōuri

Te Aupōuri submitted that Ngāti Kahu view their remedies application as purely a matter between the Crown and Ngāti Kahu, thus failing to acknowledge and respect the tino rangatiratanga of the other Te Hiku iwi, and Te Aupōuri in particular.<sup>55</sup> It is the Te Aupōuri position that the three settlements concluded in Te Hiku are part of the circumstances of this case that the Tribunal must take into account. Accordingly, the history of negotiations in Te Hiku and the settlements negotiated between the Crown and the other Te Hiku iwi are directly relevant. As a

consequence, any impact on those settlements that might be caused by the Ngāti Kahu remedies application must also be relevant.<sup>56</sup> On this point, they submitted:

It is only by looking carefully at a broad range of circumstances as determined by the case before them that the Tribunal can reach a view on what recommendations (if any) would be appropriate to either compensate for or remove the prejudice to Ngāti Kahu. For example, in this case the intertwined nature of the customary interests of the Te Hiku Iwi, and consequently any settlement redress, must be understood and taken into account before the Tribunal can make any recommendations.<sup>57</sup>

Te Aupōuri submitted that the Crown's proposed settlement for Ngāti Kahu would provide that iwi with lands of high cultural importance that are not available by way of resumption. Further, only by interfering with the rights of other iwi through the resumption of land can Ngāti Kahu secure an area of land equivalent to that available through the settlement proposed by the Crown. Therefore, Te Aupōuri submitted that the impact on those iwi and the fact that a similar result could be achieved without having that impact must be given considerable weight in the Tribunal's determination.<sup>58</sup>

It is the view of Te Aupōuri that resumption recommendations made by the Tribunal cannot result in a durable resolution of Ngāti Kahu claims because Ngāti Kahu are not bound to accept assets secured through resumption as a settlement of their claims. Rather, Ngāti Kahu can secure those assets while continuing to pursue their claims outside the current remedies claim area. Such an approach, it is submitted, is antithetical to the Tribunal's task of making recommendations that will compensate for or remove prejudice. Thus, the Tribunal should not recommend any relief package if the door is left open to future applications as such a package would not compensate for or remove the prejudice.<sup>59</sup>

Te Aupōuri submitted that they have mana whenua in Kaitaia. They oppose the resumption of Aupōuri House in Kaitaia as this would represent the loss to them of the only land they own in that part of their rohe.<sup>60</sup> Te Aupōuri

consider that, if the Tribunal is not in a position to make findings in relation to competing claims of mana whenua, there is clear evidence of the importance of Aupōuri House to them and of the impact of the loss of that property. Further, the effect of recommending the resumption of Aupōuri House on the relationship between Ngāti Kahu and Te Aupōuri is part of the circumstances of the case that the Tribunal must consider.<sup>61</sup>

Further issues that Te Aupōuri submitted this Tribunal must take into account include the following:

- ▶ the diverse and complex interests claimed by parties other than Ngāti Kahu in the resumable properties and the fact that Ngāti Kahu have not been able to prove that these other interests can be disregarded;
- ▶ that, in exercising their right to seek remedies from this Tribunal, Ngāti Kahu have not acted reasonably towards either the Crown or the other iwi in the region; and
- ▶ if the Tribunal were to make recommendations along the lines proposed by Ngāti Kahu and these were implemented by the Crown, it would have catastrophic effects on the durability of other Te Hiku iwi settlements and 'blow out' relativities around the country.<sup>62</sup>

### 5.3.2 Te Rarawa

Te Rarawa submitted that they have mana whenua, at both an iwi and hapū level, in some of the areas claimed by Ngāti Kahu. Te Rarawa object to what they consider to be incursions by Ngāti Kahu into these areas and seek decisions from the Tribunal which confirm their mana whenua over their lands.<sup>63</sup> Te Rarawa accept that Ngāti Kahu have the legal right to seek resumption of properties, but submitted that the Tribunal must have regard to any existing Crown offers to iwi with overlapping interests in those properties. Properties have already been offered to and accepted by Te Rarawa through their deed of settlement after a comprehensive allocation process undertaken by the Crown. Te Rarawa are of the view that they will suffer significant prejudicial financial effects (including postponing the receipt of substantive commercial assets, resulting in commercial losses and opportunity costs) if

properties to be transferred to Te Rarawa through their settlement are instead transferred to Ngāti Kahu through binding recommendations by this Tribunal.<sup>64</sup>

Te Rarawa also submitted that they should not bear the cost of Ngāti Kahu removing themselves from negotiations with the Crown and the other iwi of Te Hiku:

At the time Ngāti Kahu owed a duty of care to the other Te Hiku Iwi and ought to have at least participated in good faith in the process but instead they chose not to be involved in it. It is they who should carry the burden of their choice not to participate in negotiations. The resultant prejudice should not accrue to Te Rarawa. Ngāti Kahu should have known that their acts would cause prejudice to Te Rarawa and the other Te Hiku Iwi and at the very least they should have consulted with other Te Hiku Iwi.<sup>65</sup>

Other matters that Te Rarawa submitted the Tribunal should take into account include:

- ▶ the fact the Te Rarawa, or its subsidiary bodies, currently own memorialised land subject to resumption; and
- ▶ the relativity and equity between the value of each of the Te Hiku iwi historical Treaty settlements.<sup>66</sup>

### 5.3.3 Ngāi Takoto

While Ngāi Takoto accept that Ngāti Kahu have the right to take steps they believe are warranted in order to address their grievances against the Crown, they submitted that these must not impinge in any way upon Ngāi Takoto.<sup>67</sup> Further, Ngāi Takoto are of the view that resumption of any properties within the Ngāi Takoto rohe would encourage Ngāti Kahu to assert that they have mana over Ngāi Takoto, something that Ngāi Takoto will not and cannot agree with.<sup>68</sup>

Ngāi Takoto submitted that the survival of Te Hiku o Te Ika and the people of Muriwhenua is dependent on the iwi working together. No single iwi has the sole answer to the creation of a positive and productive future for the people of the region. The answer lies in a collective approach to all things in common, while at the same time ensuring that tribal identities and relationships continue

to flourish.<sup>69</sup> They asked the Tribunal to give the iwi of Te Hiku o Te Ika an opportunity to find a solution to the problem themselves, stating:

at least you can say, 'We gave you intelligent people one last opportunity to find your own solutions, and if we have to impose them on you, it was because you couldn't find the answer yourself.' And then we have no excuse to blame the Crown for what they do to us, because when you're given an opportunity and you don't seize it, then you have nobody to blame but yourselves.<sup>70</sup>

### 5.3.4 Ngāti Tara

Ngāti Tara submitted that they have a legal interest in lands that have been included in the Ngāti Kahu resumption application, and in Rangiputa Station in particular.<sup>71</sup> Referring to the wording of the Treaty of Waitangi Act, they observe that the Tribunal, if it decides to recommend the return of land, is required to identify the Māori or group of Māori to whom land should be returned. In relation to Rangiputa Station and other resumable land within their rohe, Ngāti Tara submitted that it is the right group.<sup>72</sup>

Through their own application for remedies, Ngāti Tara also seek the partial resumption of Rangiputa Station.<sup>73</sup> In doing so, Ngāti Tara submitted that the well-founded claims of Ngāti Kahu are also the well-founded claims of Ngāti Tara.<sup>74</sup> This application was received on 18 September 2012.<sup>75</sup>

### 5.3.5 Te Pātū ki Peria

Te Pātū ki Peria submitted that they are an independent people who have not been a party to the negotiations between Te Rūnanga-ā-Iwi o Ngāti Kahu and the Crown. Nor do they consider that the Rūnanga represents them in this remedies inquiry.<sup>76</sup> Te Pātū ki Peria, along with other Te Pātū claimants and Ngāti Tara, desire the return to them of those lands they claim as remedies.<sup>77</sup> In asking that the Tribunal return land to Te Pātū ki Peria through this process, they submitted that they can rely on the findings contained in the *Muriwhenua Land Report* as these were not made for particular Muriwhenua iwi, hapū, or whānau.<sup>78</sup>

Te Pātū ki Peria ask that, through this remedies process, the Crown address the prejudice arising from its breaches of the Treaty in relation to 20,000 acres of Ōruru lands. They seek any remaining Crown forest licensed land and SOE lands contained in the Kohumaru, Te Taunoke, Waimutu blocks, Pūheke Block (Rangiputa Station), as well as Kaiaka, Maunga Taniwha, Aputurewa, and Paranui. In addition, they seek to be included in the management of the Ōruru River. Finally, they seek a new structure for the settlement of their Treaty claims through which they can deal with the Crown as a stand-alone hapū or iwi.<sup>79</sup>

### 5.3.6 Sir Graham Latimer and Tina Latimer

Sir Graham Latimer and Tina Latimer submitted that Te Paatu claimants represented by them have customary or mana whenua interests in lands that are the subject of well-founded claims. These lands include the Mangatete block, Pūheke block, Kaitaia to the Victoria valley, and Takahue (Okakewai).<sup>80</sup> While their claim (Wai 1359) was filed after the *Muriwhenua Land Report* was issued, they submitted that they can rely on its findings.<sup>81</sup> They oppose the resumption of any privately owned memorialised land or any land which lies within their area of interest, and ask that the Tribunal consider the resumption in their favour of economically viable land.<sup>82</sup>

### 5.3.7 Te Uri o Te Aho

Te Uri o Te Aho (also representing the Ngāpuhi hapū Ruawaha, Umutahi, Ngāti Tama, Kohatutaka, and Wai 2359 claimants) ask that this Tribunal recognise their respective interests when formulating any resumption recommendations to the Crown for Ngāti Kahu. They assert shared interests with Ngāti Kahu in Maungataniwha, Kohumaru Station, Otangaroa Forest, and the Takahue 2 block.<sup>83</sup>

### 5.3.8 Ngā hapū o Whangaroa

Ngā hapū o Whangaroa (an umbrella claim representing Whangaroa claimants, including some who affiliate to Ngāti Kahu ki Whangaroa) submitted that while Ngāti Kahu are recognised to have interests in land falling inside the traditional boundary of Ngāti Kahu ki Whangaroa

these are interests shared with a number of hapū from Whangaroa. The Otangaroa Forest and Kohumaru Station fall within this boundary.<sup>84</sup> Ngā hapū o Whangaroa seek to have their interests in those lands protected and submitted that the award of the northern areas of those lands exclusively to Ngāti Kahu would deprive them of their interests.<sup>85</sup> Nuki Aldridge presented evidence for Ngā hapū o Whangaroa.<sup>86</sup> When questioned by the Tribunal, he was unable to confirm whether the interests of Ngā hapū o Whangaroa extended to that particular part of Otangaroa Forest that is within the remedies claim area.<sup>87</sup>

### 5.3.9 Other Whangaroa claimants

Ani Taniwha (Wai 1666) and Owen Kingi (Wai 1832) submitted that the hapū they represented have interests in land within the remedies area. Any award of these lands exclusively to Ngāti Kahu on the grounds that the claims of the Whangaroa claimants are not well-founded would, in their submission, be a breach of natural justice. The Whangaroa claimants have not yet had the opportunity to have their claims properly inquired into. They ask that any award of Otangaroa lands be framed in a way that protects their interests.<sup>88</sup> When questioned by counsel for Ngāti Kahu, Ms Taniwha advised that she was unaware that parts of the Otangaroa Forest lay outside of the remedies claim area.<sup>89</sup>

## 5.4 CONCLUSION

Ngāti Kahu ask this Tribunal to relieve them of the prejudice they have suffered as a result of Crown actions and omissions in breach of the Treaty in the pre-1865 period by recommending a substantial package of relief. This includes binding recommendations covering Crown land and some land currently in private ownership, and non-binding recommendations for the return of all Crown-owned land within the remedies area, for the payment of substantial monetary compensation, for a range of cultural and social initiatives, and for the creation of a Ngāti Kahu entity to manage the relief provided and to hold dominion within the Ngāti Kahu rohe. Ngāti Kahu view this package of relief as sufficiently compensating them

for the prejudice caused by Crown actions but not as a settlement of their claims.

Ngāti Kahu are opposed by the Crown which views the recommendations sought as being so far outside what is available through its Treaty claims settlement process as to endanger settlements reached in Te Hiku and nationally. Te Aupōuri, Ngāi Takoto, and Te Rarawa oppose the recommendations sought by Ngāti Kahu as they have the potential to remove redress from the settlements agreed between these iwi and the Crown, potentially destabilising those agreements and re-opening the negotiations process. The Crown, Te Aupōuri, Ngāi Takoto, and Te Rarawa all oppose the package as being outside what the iwi agreed with one another through the Te Hiku Forum process. Ngāti Tara, Te Pātū ki Peria, and the Te Paatu claimants represented by Sir Graham Latimer oppose the return of Rangiputa Station and other redress to Te Rūnanga-ā-Iwi o Ngāti Kahu as it is a body which does not have their support or the mandate to handle their claims. Opposition also comes from Ngā hapū o Whangaroa and various Ngāpuhi hapū which see the return of lands sought by Ngāti Kahu as a threat to their own rights and their own claims.

This Tribunal must determine how best to relieve Ngāti Kahu of the prejudice they have suffered. Ngāti Kahu submitted that only the total package of relief they seek can achieve this. The Crown submitted that its settlement package potentially available to Ngāti Kahu is fair and will remove that prejudice. In the chapters that follow we give our analysis of all the circumstances of this case and our decision.

### Notes

1. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp 404–405
2. Document R29, p 11
3. Memorandum 2.333, p 2
4. *Ibid*, p 4
5. Document R18, pp 39–41
6. Paper 2.401, p 6
7. *Ibid*, p 7
8. Memorandum 2.166, app E, p 10

9. Document s31, p 39
10. Ibid, p 10
11. Ibid, p 9
12. Transcript 4.19, p 316
13. Ibid, pp 321–322, 325
14. Transcript 4.18, p 302
15. Document s31, p 50; transcript 4.19, p 37
16. Document s31, pp 24–26
17. Ibid, p 30
18. Ibid, pp 10–11
19. Ibid, p 82
20. Transcript 4.19, p 54
21. Document s31, pp 64, 74, 78
22. Ibid, p 66
23. Ibid, p 78
24. Document R28(c)
25. Document s37, pp 4–5
26. Document s38, pp 20–21
27. Transcript 4.18, p 1044
28. Document R50, p 3
29. Document R22, p 38
30. Document R28, p 39
31. Document s31, p 95
32. Ibid
33. Ibid, p 96. We assume the reference to the 200-mile limit is a reference to New Zealand's exclusive economic zone.
34. Ibid, p 101–102
35. Document R23, p 10
36. Document s31, p 97
37. Document R23, p 16
38. Document s31, pp 98–99
39. Ibid, p 99
40. Ibid
41. Ibid, pp 99–100
42. Ibid, p 100
43. Ibid, p 101
44. Ibid, pp 102–103
45. Ibid, p 103
46. Ibid, pp 105–106
47. Document s33, pp 4–5
48. Ibid, p 10
49. Ibid, p 12
50. Ibid, p 22
51. Ibid, p 12
52. Ibid, p 22
53. Ibid, pp 37–38
54. Ibid, pp 38–39
55. Document s38, p 2
56. Ibid, p 6
57. Ibid, p 6
58. Ibid, p 10
59. Ibid, pp 12–13
60. Ibid, pp 21–22
61. Ibid, p 22
62. Ibid, p 15, p 19
63. Document s37, p 2
64. Ibid, p 31
65. Ibid, p 36
66. Ibid, pp 38, 40
67. Document s39, p 2
68. Ibid, p 5
69. Ibid, p 2
70. Transcript 4.19, p 298
71. Document s34, p 21
72. Ibid, pp 28–32
73. Ibid, p 2
74. Ibid, pp 32–33
75. Memoranda 3.1.1, 3.1.1(a)
76. Document s36, p 5, 9
77. Ibid, p 8
78. Ibid, pp 9–10
79. Ibid, pp 14–16
80. Document s35, p 2
81. Ibid, p 4
82. Ibid, p 5
83. Document s40, pp 2–3, 4
84. Document s32, p 2
85. Ibid, p 5
86. Mr Aldridge used both 'Whaingaroa' and 'Whangaroa' as names for the Whangaroa district (see document R48, p 2). In this report we adopt the conventional spelling, Whangaroa.
87. Transcript 4.18, pp 1065–1066
88. Document s41, pp 3–5
89. Transcript 4.18, p 1079

#### Map references

Maps 2, 3: Document R35(b)), p 12; doc R11, exhibit L





CHAPTER 6

## SHOULD THE TRIBUNAL MAKE BINDING RECOMMENDATIONS?

### 6.1 INTRODUCTION

The claimants have suffered a serious degree of prejudice. All parties agree on that. The Crown has conceded that the prejudice is extensive, but for the purposes of negotiating settlements the exact nature of the claimants' grievance is only one of many factors that might influence the final quantum, the lands comprising 'cultural redress', or the shape of governance arrangements to be put in place. The content of the full and final settlement that the Crown is prepared to offer Ngāti Kahu has been outlined in the preceding chapter.

Ngāti Kahu does not accept that the Crown's proposed settlement redresses the prejudice they have suffered as a result of its Treaty breaches up to 1865: the loss of some 70 per cent of their land base, the imposition of English law and its concept of property ownership, and the introduction of Government institutions from which they were practically excluded. Redress for prejudice of that magnitude, they contend, will require a profound rethink of the basis of government and the authority of law in New Zealand, the restoration of their land as turangawaewae, and the creation of a very substantial financial base.<sup>1</sup> Referring to the breaches of Treaty principles of active protection and partnership that underlie their well-founded claims, their counsel stated: 'For Ngāti Kahu who remain without redress, the Crown's breach of these duties is brought into sharper relief as a result of the Crown's failure to negotiate and settle with Ngāti Kahu.'<sup>2</sup> As Ngāti Kahu see it, their view of appropriate redress is the polar opposite of the position held by the Crown.<sup>3</sup> So they have returned to the Tribunal asking us to recommend a 'total relief package' for the prejudice they have suffered as a result of their proven, pre-1865, Treaty claims.

Tribunal endorsement of this 'package' would entail use of both binding and non-binding recommendations.

As discussed in detail in the preceding chapter, a component of the remedy package sought from the Tribunal is the return, by way of binding recommendations, of all resumable properties in the remedies claim area – a total of 6,836 hectares of land – together with the monetary payments that will accompany the Crown forest licensed lands. Those payments could amount to as much as \$15.1 million in compensation and \$1.004 million in accumulated rentals (at the Crown's estimate). Counsel for Ngāti Kahu explained their reason for insisting that all resumable properties should be returned to them, in these terms:

These are the only lands which are immediately available to Ngāti Kahu as a result of this process and may possibly be the only lands Ngāti Kahu may obtain given the existing relationship between the Crown and Ngāti Kahu.<sup>4</sup>

Ngāti Kahu also seek non-binding recommendations from the Tribunal to the effect that the Crown return to the exclusive ownership of Ngāti Kahu all Crown-held land in the remedies area at 'zero value'; return to Ngāti Kahu wāhi tapu and all sites of cultural significance; recognise the mana and rangatiratanga of Ngāti Kahu in the governance of their rohe; and provide funds for Ngāti Kahu social, health, and education institutions. Redress, in their view, can only be reached if the remedy includes recognition of Ngāti Kahu mana and authority. Such recognition should acknowledge Ngāti Kahu 'dominion' over their rohe out to the 200-mile limit and their exemption from certain New Zealand laws.<sup>5</sup> We return to this aspect of the Ngāti Kahu application in the following chapter. Here, we consider whether we should use our power to make binding recommendations for all, or any, of the resumable properties sought.

## 6.2 THE RESTORATIVE PURPOSE OF REMEDIES

When a claim has been determined to be well-founded, the Tribunal has a broad discretion as to the type and extent of its recommendations, or whether to make them at all. We must have regard to 'all the circumstances of the case' and, if we think fit, recommend to the Crown that action be taken to compensate for, or remove, the prejudice or to prevent other persons from being similarly affected in the future (section 6(3), Treaty of Waitangi Act 1975). As we explained in chapter 2, our original power with regard to remedies was purely recommendatory. In the latter part of the 1980s, however, as a result of agreements between the Crown and Māori, the Tribunal was empowered to make recommendations that can become binding on the Crown in certain circumstances.

We have approached our task by first considering the

purpose of the Tribunal's power to recommend remedies for well-founded claims. Earlier tribunals have made insightful statements about this matter, and about the purpose of Treaty settlements. The difference between the two must not be overlooked. In one, the Tribunal recommends to the Crown what is needed to redress claims that it has found to be well-founded; in the other, the Crown and claimants negotiate a settlement of the claimants' Treaty grievances, whether or not they have been upheld by the Tribunal. But the rationale for both Treaty redress processes must be the same: to 'put the grievance to rest' by promoting the restoration of the well-being of the claimant group and their relationship with the Crown. In the words of the Tarawera Forest Tribunal, redress for Treaty grievances is required in order to 'restore the honour and integrity of the Crown and the mana and status of Māori'.<sup>6</sup> The need to provide redress for well-founded claims is considered so important that the Tribunal has identified a separate Treaty principle, the principle of redress, that the Crown will breach if it fails, or neglects, to provide appropriate remedy and 'put things right'. If and when we make recommendations to the Crown about what it should do to remedy the prejudice it has caused, those recommendations demonstrate what we consider the Crown must provide in order to meet the obligations imposed by this principle.

How should we do that and what might such redress look like? At a general level, the answer of the Muriwhenua Tribunal in 1997 was that we must be guided by the fundamental tenets of the Treaty. The most fundamental is that the Treaty was intended to 'secure a place for two peoples in one country, where both would benefit from settlement, and which basically required a fair sharing of resources'.<sup>7</sup> Essential to the achievement of that purpose is a requirement, also, that the Crown and Māori conduct their dealings with one another honourably and in good faith – a standard of behaviour that is valued equally within British precepts of justice and Māori tikanga. Explaining the Māori perspective further, the Muriwhenua Tribunal stated:

It would be consistent with Maori custom if Maori had seen matters in terms of honourable conduct rather than protection. Either way, however, the outcome is the same. . . . Custom gives the clue to the Maori perception that a working relationship required a generous giving and an absolute trust in an honourable rejoinder.<sup>8</sup>

Implicit in the requirement of honourable conduct is that the processes by which the Crown and Māori engage with one another will be fair. In an historical context, and focusing on the Crown's obligations, the Muriwhenua Tribunal spoke of the need for Government accountability and independent and full inquiry into Māori complaints.<sup>9</sup>

The Treaty-based relationship of the Crown and Māori is often characterised as a partnership, in which each party must respect the other's authority. As is well-known, the two texts of the Treaty of Waitangi describe the parties' respective authorities in terms that are not readily reconciled. The Māori text describes the authority of the Crown as *kāwanatanga*, and that of Māori as *tino rangatiratanga*. The English text describes those authorities, respectively, as sovereignty and 'the full exclusive and undisturbed possession of their lands and estates forests fisheries and other properties'. The Muriwhenua Tribunal in 1997 explained *rangatiratanga* in terms of respect for Māori customary preferences in the administration of their own affairs and in the management of their lands.<sup>10</sup> It accepted, however, that the Crown had acquired sovereignty.

The courts and the Tribunal have recognised that to give meaning to the concepts of sovereignty and *tino rangatiratanga*, some compromises will need to be made by both Treaty partners. The Crown's right to govern is, therefore, qualified by the Treaty's guarantee of continuing Māori authority but, equally, a duly elected Government cannot be unreasonably restricted in the conduct of its policy. This was recognised by Cooke P (as he then was) in the *Lands* case when he said:

The principles of the Treaty do not authorise unreasonable restrictions on the right of a duly elected Government

to follow its chosen policy. Indeed to try and shackle the Government unreasonably would itself be inconsistent with those principles. The test of reasonableness is necessarily a broad one and necessarily has to be applied by the Court in the end in a realistic way. The parties owe each other co-operation.<sup>11</sup>

This obligation of reasonableness and cooperation on both sides was endorsed by the Muriwhenua Tribunal, in these terms:

neither partner in our view can demand their own benefits if there is not also an adherence to reasonable state objectives of common benefit. It ought not to be forgotten that there were pledges on both sides.<sup>12</sup>

As we see it, these are important and enduring elements of the Treaty relationship to which we must have regard when considering the present application for Tribunal-recommended remedies. They not only provide the underpinnings of the well-founded claims that deserve remedy but also serve as a guide to the intended outcome of the process in which we are engaged: an equitable society where there is equal opportunity for both peoples, a fair sharing of resources, cooperation, and mutual respect for each other's institutions.

It was in light of this 'broad aspect' of the Treaty that the Muriwhenua Tribunal stated a preliminary opinion that the 'appropriate response' to an application for remedies where the place of claimant hapū has been 'wrongly diminished' is to 'ask what is necessary to re-establish it'.<sup>13</sup> The aim, it was said, is to compensate for past wrongs and remove the prejudice by securing a 'better arrangement for the hapu in the future', which would include 'an appropriate economic base'.<sup>14</sup> This is characterised as a restorative approach: it gives considerable weight to what is needed to secure the claimants' future, rather than focusing solely on the manner and extent to which the claimants' past and present have been blighted by the Crown's Treaty-breaching conduct.

Most Tribunals have advocated a restorative approach to redressing prejudice from Treaty breaches, as opposed to pursuing a goal of compensatory damages – which seeks to quantify, value, and pay for the actual harm caused – or one that is intended to punish the Crown. Most Tribunals have also accepted that the sheer extent of the prejudice suffered by Māori throughout New Zealand from Crown-acknowledged breaches of the Treaty means that a compensatory approach to redress, if adopted as a general rule, would be unaffordable. Thus, the ideal of restoration of a claimant group's mana and status has to be tempered by pragmatism. In the context of Treaty settlements with the Crown, the Tamaki Makaurau Settlement Process Tribunal commented on what this requires:

The Crown provides redress and not compensation for losses. This means that people's satisfaction with what they get is not a function of a numerical calculation; it flows from pragmatism, from a sense that within the limits of what is achievable politically, justice has been done, and they have been dealt with fairly.<sup>15</sup>

Restoration looks forward to the future rather than just back to the past. Chief Judge Eddie Durie, commenting as a member of the Waiheke Island Tribunal, elaborated the difference between a restorative and a compensatory damages approach in these terms:

To compensate a tort is only one way of dealing with a current problem. Another is to move beyond guilt and ask what can be done now and in the future to rebuild the tribes and furnish those needing it with the land endowments necessary for their own tribal programmes. That approach seems more in keeping with the spirit of the Treaty . . . It releases the Treaty into a modern world, where it begs to be reaffirmed, and unshackles it from the ghosts of an uncertain past.<sup>16</sup>

We endorse this approach. The extent of loss and suffering experienced by claimants must be relevant to a consideration of remedy, but attempts to quantify that prejudice will be challenged to a greater or lesser extent by the degree of difficulty involved in predicting, in the particular

circumstances, what would have happened if the Crown had not breached the Treaty.<sup>17</sup> It seems likely that the difficulty will increase with the length of time that has elapsed since the Treaty breaches occurred. A restorative approach allows for a reasonable compromise between what might have been, and what actually occurred, without the need to link effect directly and exactly to cause. Consequently, the goal of restoration has been expressed to include securing an 'adequate economic base for the tribe to ensure its continued presence';<sup>18</sup> the 'establishment of a sound tribal economy';<sup>19</sup> and 'the recovery of status and recognition of its preferred form of tribal autonomy'.<sup>20</sup> Factors such as the demographics of the tribal group, including its population and access to resources, will be relevant to the assessment of what is needed to restore it.

There can be no doubt that land will be needed, although land alone will be insufficient. Money, the return of taonga and other 'assets', and inclusion in resource management and other governance arrangements – at a meaningful level – will also be required to provide an adequate economic, social, and cultural base for a tribal group to recover its status. Inevitably, there will be different opinions on the extent and exact shape of all these elements of redress.

In our view, the restorative approach requires the Tribunal to make an assessment of what is reasonable, in all the circumstances of a particular case, for the Crown to provide as a platform for the group's economic, social, and political recovery. It is likely that a range of different 'packages' of redress (having different values in dollar and other terms) could meet that standard, depending especially on the preferences of the claimants concerned. But while it may be impossible to put a precise 'value' on a redress package that will restore a tribal group, we consider that the Tribunal should be able to identify an approximate 'bottom line' below which it would find a proposed package of redress to be unreasonable for being inadequate in all the circumstances to restore them. But, we must also contemplate the possibility that the expectations of the other Treaty partner may be unrealistic in all the circumstances, and stray from the restorative model of redress into the realm of punitive damages.

Our consideration of the purpose of Tribunal-recommended redress convinces us that any endeavour to restore a tribal group's well-being and its relationship with the Crown is very likely to affect other tribal groups. This is certainly true in Te Hiku, where the connections between the five iwi are so strong that they prosecuted their claims collectively, and so were all included in the Tribunal's finding that their pre-1865 claims were well-founded. Further, despite the demise of the Rūnanga o Muriwhenua and the idea of a collective Treaty settlement, kōrero continued and the five iwi worked together in a new forum in order to progress their collective negotiations with the Crown as a necessary precursor to finalising their individual settlements. These facts have underlined that it is a relevant circumstance of the present remedies application that the Crown's Treaty relationship is with all five iwi of Te Hiku and that all five deserve to have their well-founded claims redressed. This means that we cannot ignore the nature and outcomes of the Treaty settlement processes that have been in train in Te Hiku for many years now. With regard to those processes we note that it is a well-established element of the Treaty principle of redress that the Crown should not, in remedying the grievance of one group, create a fresh grievance for another group. A related aspect of the principle is that like cases should be treated alike.<sup>21</sup> These are important considerations in our task of recommending remedies for a group's well-founded Treaty claims.

This discussion of the purpose of Tribunal-recommended remedies has introduced the broad concepts that frame our approach to the Ngāti Kahu application for remedies. In the sections that follow, we explain how we have utilised those concepts to identify and analyse 'all the circumstances of the case' that influence our decision on the application.

### 6.3 TRIBUNAL RECOMMENDATIONS ARE WARRANTED

The remedies package sought by Ngāti Kahu would require us to use both our binding and non-binding recommendatory powers. We noted in chapter 2 that the Supreme Court has held that where the Tribunal has decided that

a claim is well-founded, we are not obliged to make any recommendations, although we have to decide whether to make resumption recommendations if the well-founded claim relates to SOE or licensed Crown forest land.

In the circumstances of the present application, we think it is not an option for the Tribunal to make no recommendations to the Crown about how to remedy the well-founded claims of Ngāti Kahu. We are mindful that some 15 years has now elapsed since the *Muriwhenua Land Report* was issued and that the efforts made in that time by Ngāti Kahu and the Crown to negotiate a Treaty settlement have been unsuccessful and that Ngāti Kahu has now twice returned to the Tribunal for recommendations about remedy. We are also mindful that the other Te Hiku iwi are well-advanced in their Treaty settlement negotiations and hope to finalise them early in 2013. In these circumstances, we cannot see any beneficial purpose being served if we declined to make recommendations about the appropriate remedy for the claims of Ngāti Kahu relating to pre-1865 events. To the contrary, that course would leave Ngāti Kahu and the Crown in the stalemate they had reached when the application for remedies was revived, and the Tribunal's hearing of the application would have provided little, if anything, in the way of assistance with the resolution of that situation. And since the interests of the other Te Hiku iwi are very much bound up with those of Ngāti Kahu, a decision that the Tribunal will not now make recommendations would give no hint of our assessment of matters that are obstructing unity within Te Hiku and also progress towards the restoration of the five iwi and their relationships with the Crown.

It is our decision, therefore, that these circumstances justify the Tribunal making recommendations to the Crown about the redress that is due to Ngāti Kahu.

### 6.4 WHEN SHOULD BINDING RECOMMENDATIONS BE MADE?

That decision means that we can now proceed to consider whether our recommendations will include binding recommendations. Our answer depends on our assessment of the need for binding recommendations in the complex

circumstances of the present application. The following discussion seeks to identify a principled basis for assessing that need.

A major consideration for us is the fact that many of the resumable properties have also been earmarked for return to Te Hiku iwi as part of Treaty settlement negotiations. As we have seen, some of the lands for which Ngāti Kahu seek binding recommendations were already included in the Crown's proposed settlement with them, partly as a result of the wider Te Hiku negotiations up to 2010. These include:

- ▶ Rangiputa Station (3,699.73 hectares);
- ▶ Kohumaru Station (944.74 hectares);
- ▶ the Mangonui blocks of the Aupouri Forest (776.78 hectares);
- ▶ the Kohumaru blocks of the Otangaroa Forest (544 hectares), pending the resolution of mana whenua issues; and
- ▶ a number of commercial properties at Kaitaia.

Other properties which the Tribunal could potentially order the Crown to return to Ngāti Kahu have been earmarked for other Te Hiku iwi in their settlement packages. These include properties situated in Kaitaia, where mana whenua is deemed to be shared among the various Te Hiku iwi. In other areas, such as the Takahue blocks of the Aupouri Forest and Sweetwater Farm (Tangonge), Ngāti Kahu have been excluded entirely from the return of lands, and they seek these to be resumed in their favour instead. Ngāti Kahu say that they hold mana whenua in all these lands as well, and they challenge the inclusion of any of them in the settlements of other Te Hiku iwi.

Our discussion also takes into account the 114 privately owned properties sought by Ngāti Kahu. While these properties make up just over one per cent of the total land available for resumption, they are among the most valuable of the lands being sought by Ngāti Kahu – with a total value of over \$19 million. Other factors come into play in our consideration of a range of other properties sought by Ngāti Kahu, including other Crown lands (8.1 hectares), six Housing New Zealand properties, and 1.66 hectares of roads.

Finally, we must also take into account the money component that is associated with binding recommendations over Crown forests. Estimates for the maximum amount of forest compensation range between \$13.025 million (the figure provided by the Crown's witness) and \$15.1 million (the figure provided by the claimants' witness). In addition to the accumulated rentals relating to the Crown forest lands, the total maximum value of the lands and moneys potentially available is between \$54.3 million and \$56.4 million. Compared with the total amount potentially on offer from the Crown (a mix of resumable and non-resumable properties), Ngāti Kahu would stand to gain a total of \$10 million in cash and properties if we were to recommend all that they have asked for, including an award of 100 per cent compensation under the Crown Forest Assets Act 1989.

This is not, however, primarily a matter of dollars for Ngāti Kahu. They see it as one of mana whenua and principle; they have mana whenua in all these lands (as well as lands within the wider Te Hiku rohe) and believe that all resumable lands in Crown ownership within the remedies area should be returned to them as redress. They rely in part on the concern expressed in the *Muriwhenua Land Report* that the Crown retained insufficient assets in the central district of Ngāti Kahu to satisfy their losses, to support their view that all available lands must necessarily be included in any redress that is given.<sup>22</sup>

#### 6.5 BINDING RECOMMENDATIONS REQUIRE EXTRA CARE

We have to use particular care when it comes to making binding recommendations because there are greater consequences for the Crown and for other affected parties. Common sense dictates that 'the more serious the issue the greater should be the care used in assessing it.'<sup>23</sup> If the Tribunal recommends that lands be resumed, they will become the exclusive property of Ngāti Kahu 90 days later unless the Crown and Ngāti Kahu reach an alternative arrangement in that time. The claims of other iwi to have interests in those lands, and the fact that some of



the lands have been promised to other iwi as part of their Treaty settlements, will be overridden at the end of that period unless Ngāti Kahu can be persuaded otherwise – and the evidence is clear that Ngāti Kahu are not disposed to being so persuaded.

Crown counsel submitted that the level of care with which binding recommendations should be approached by the Tribunal means that they should be made only as a last resort, when there is no alternative means of securing an appropriate remedy for an applicant's well-founded claims. The intent of the Treaty of Waitangi (State Enterprises) Act 1989, it was said, was that it would operate as a 'safeguard' to ensure that sufficient land remained at the Crown's disposal to provide redress for well-founded claims. In this case, the Crown submitted, the safeguard of resumption does not have to be utilised because the Crown has sufficient lands to provide relief to Ngāti Kahu – and not just for its pre-1865 grievances but for all its Treaty claims. There is a greater range of properties and redress mechanisms that can be utilised in settlements than was formerly the case. Available land includes both significant portions of the lands that are subject to resumption and other areas of high cultural significance to the iwi but over which the Tribunal has no binding jurisdiction.<sup>24</sup>

A number of witnesses and counsel for the other Te Hiku iwi also suggested that they considered resumption to be a step that should be taken only when all other alternatives had failed. Haami Piripi, who was closely involved in discussions about areas of shared interest through the Te Hiku Forum, told us that: 'Making an application to resume certain lands under the Treaty of Waitangi Act has long been considered by the Iwi of Te Hiku as an option of last resort.'<sup>25</sup> Counsel for Te Aupōuri suggested much the same thing. Te Aupōuri had earlier applied to the Tribunal to make binding recommendations with regard to parts of Aupōuri Forest and Stony Creek Station as a way of making the Crown come to the negotiation table and move towards a meaningful settlement.<sup>26</sup> On that occasion, Ngāti Kahu had requested their whanaunga not to proceed along that path because it would jeopardise their

own settlement negotiations with the Crown – which were in a more advanced state for Ngāti Kahu than for the other Te Hiku iwi. Te Aupōuri had complied with the request and let their application rest.

The circumstances in which Ngāti Kahu now seek resumption are quite different. They are dissatisfied with the Treaty settlement package that the Crown is prepared to offer and have broken off negotiations to come to the Tribunal for binding recommendations. Yet, in order to obtain the full extent of the redress they seek, they would have to engage further with the Crown, for the Tribunal has no binding power to recommend most of what they want. Ngāti Kahu say that such engagement is unlikely because their negotiations with the Crown to date have completely failed. As a result, they consider that any property returned as a result of binding recommendations is likely to be all that they will obtain from the Crown, and this underlies their insistence that all possible resumable property should be returned to them.<sup>27</sup> But the obstacle to further negotiations between Ngāti Kahu and the Crown is perceived completely differently by each party. Ngāti Kahu say it is the unwillingness of the Crown to move beyond its wholly unfair Treaty settlements framework that is blocking their ability to settle their Treaty claims. The Crown says the sticking point is the unreasonableness of Ngāti Kahu expectations of Treaty redress, including their repudiation of the previously agreed principle of the need for compromise and accommodation among the Te Hiku iwi. But in particular, Ngāti Kahu do not accept the Crown's view that any redress Ngāti Kahu might obtain by means of binding recommendations would be provided in settlement, in full or in part, of their well-founded Treaty claims. Rather, they see the Tribunal's remedies process as separate from the Crown's settlement process so that any redress provided by way of binding recommendation would not, in their view, extinguish any of their Treaty claims.<sup>28</sup> The stance taken by Ngāti Kahu also leaves it open to them to apply to the Tribunal for inquiry into their post-1865 claims and, if they prove well-founded, further binding remedies relating to land inside or outside the current remedies claim area. They are fully aware that

this stance risks further deterioration of their relationship with their Te Hiku whanaunga. And, as noted earlier, they acknowledge that their stance is also likely to entail the sacrifice of other redress (cultural and commercial) that the Crown is prepared to make available to Ngāti Kahu in a Treaty settlement, and over which the Tribunal has no binding power.

Thus, whatever the past difficulties in the settlement process, resumption is not a last resort for Ngāti Kahu; by their own submission, it is a first step in an alternative quest. That is what provides the context for our consideration of the other circumstances of this case and whether we should make recommendations to the Crown, that can become binding, for the resumption to Ngāti Kahu of all or any of the resumable lands in the remedies claim area. Of particular importance among the other circumstances, we consider, are the interrelated matters of:

- ▶ the conduct of the Crown and Ngāti Kahu in their negotiations and other engagements to date;
- ▶ the customary interests of other Te Hiku groups in the resumable lands;
- ▶ the mandate of Te Rūnanga-ā-Iwi o Ngāti Kahu to represent all interests within the Ngāti Kahu collective in resumable lands to be returned to that entity; and
- ▶ the extent to which the restorative purpose of Treaty redress would be served by the binding recommendations sought by Ngāti Kahu.

#### **6.5.1 The conduct of the Crown and Ngāti Kahu in settlement negotiations and other engagements**

There is no denying that the Crown in the early stages of its negotiations with Ngāti Kahu made some serious blunders – notably the attempt to sell part of Rangiputa Station – which we find unconscionable given the *Muriwhenua Land Report's* finding of significant prejudice. Unsurprisingly, this step angered the claimants and raised doubts as to the Crown's good faith.<sup>29</sup> We make no comment on the passing of the Foreshore and Seabed Act in 2004 other than to note that the policy that inspired it was found by the Tribunal, in its *Report on the Crown's*

*Foreshore and Seabed Policy*, to be a serious breach of the Treaty.<sup>30</sup>

Since then, there has been an appreciable improvement in the Crown's approach to its Treaty responsibilities to all Te Hiku iwi. In the case of Ngāti Kahu, this resulted in the signing of the Agreement in Principle (AIP) in 2008. The Crown's chief negotiator, Patrick Snedden, who had been appointed earlier in that year, clearly enunciated a commitment to meaningful settlement negotiations. As he expressed it: 'The *Muriwhenua Report* was clear about the scale and gravity of the iwi loss.'<sup>31</sup> In his early discussions, he assured Ngāti Kahu negotiators that 'upholding the rangatiratanga and mana of Ngāti Kahu' was his first priority. Also:

They would know the limits of the possibilities for settlement. I would also be open to innovation and the co-construction of effective outcomes. In return I expected an openness, honesty and directness on their part if this was to lead to a successful and prompt outcome for the claims.<sup>32</sup>

In the months that followed, the Crown demonstrated that it was prepared to compromise and to bargain in good faith, increasing its quantum offer to Ngāti Kahu, adopting the concept of marae revitalisation, and agreeing to put things on the table that simply were not considered before – notably Rangiputa Station – which involved the Crown protecting Rangiputa Station from sale and making it available for use in the settlement of Treaty claims. It also made important concessions on how properties were to be valued for settlement purposes.<sup>33</sup> This is not to say that there has been no hard bargaining along the way. But there is no denying that the Crown, through the actions of Ngāti Kahu and Te Hiku iwi, was forced to bend its settlement policies – albeit, not to the point that Ngāti Kahu (or indeed, any of Te Hiku iwi) would have liked. Mr Snedden gave evidence that the negotiations both with the individual and collective Te Hiku iwi had resulted in offers that had 'pushed the outer limits of what the Crown was able to provide through a Treaty settlement'. He further stated that these limits had been 'seriously tested first by Ngāti

Kahu who were clear Crown framework limits were of no concern to them.<sup>34</sup>

An integral part of this process has been the attempts by Te Hiku iwi and the Crown to tackle the complex problems of overlapping claims, and how to distribute commercial properties available for redress fairly across the iwi. All parties to the Forum, including Ngāti Kahu, made significant commitments to the collective approach to settlement negotiations.

The Te Hiku Forum had been established specifically to deal with issues of disputed mana whenua and allocation of commercial properties collaboratively, rather than leaving the Crown with the power to make arbitrary decisions. Everybody agreed that questions of how lands and resources should be allocated, where whakapapa are so entwined and where the future of the Te Hiku people is the major concern, are best settled among Māori themselves. Some balance had to be created between the traditional understandings, the current realities, and the possibilities and requirements for the future. Because of the close interweaving of relationships and the finite nature of the redress available (that is, the Crown's commercial assets are not distributed in a way that exactly matches mana whenua) it is not possible to deal with each property without looking at the overall picture. A good deal of compromise and progress would need to be made to ensure that everybody received a share of the different sorts of lands available in terms of forest, accumulated rentals, and farms and other commercial properties, based in understandings of who had mana whenua but also taking into account matters such as the relative population of the iwi and the future economic viability of the group concerned. As with other iwi, Ngāti Kahu agreed to an important principle of the Forum, that iwi would 'work to build a unity of purpose and solutions that are workable and acceptable to all iwi'.<sup>35</sup>

Discussions within the Forum and with the Crown culminated in the Te Hiku AIP 2010, which included a number of features (such as the concept of social revitalisation redress and discounted farm values) which had been developed as a result of the earlier negotiations with Ngāti

Kahu. It also reflected a number of compromises and trade-offs in terms of ensuring a fair distribution of land, forest, and commercial assets among Te Hiku iwi which had been reached within the Te Hiku Forum; how to split the total quantum of \$120 million that had been offered by the Crown; the five-way equal split of the accumulated rentals for the Aupouri Forest, not to reflect equal mana whenua in the forest blocks, but to achieve fairness for all participants; and the allocation, also, of a roughly equal land area of farm properties to each iwi.<sup>36</sup> Some issues remained outstanding, however. The intention was to continue to work towards their resolution, but Ngāti Kahu would not accept the mechanism proposed by the other four iwi whereby a final decision could be reached.

As we discussed in chapter 4, within a matter of days of signing the Te Hiku AIP, Ngāti Kahu withdrew from direct negotiation with the Crown and from participating in the Te Hiku Forum, to produce their own deed of settlement. It took Ngāti Kahu more than a year to do this. In the interim, the Crown was accused of fostering division and attempting to force a settlement.<sup>37</sup> The Crown denies this, but was absolutely clear, when the deed of partial settlement was produced, that it would not meet Ngāti Kahu expectations of redress. As Mr Snedden phrased it, the Crown's settlement framework was insufficiently flexible to do so.<sup>38</sup> In particular, there were limits to the quantum and the constitutional arrangements that could be put in place and the overall requirement was for full and final settlement.

The withdrawal of Ngāti Kahu from inter-iwi discussions, the return to their negotiating position of 2000, and the subsequent application for the Tribunal to make binding recommendations for all resumable lands in the remedies area to be returned to them also had consequences for the other Te Hiku iwi. It represented an overturning of their collective decisions and a threat to the intricate compromises which were needed if they were to advance their individual settlements. By absenting themselves from the Te Hiku Forum for more than 15 months, Ngāti Kahu threatened to stall the further progress of all of them.

The other four iwi continued to work out an agreed

position on how commercial properties should be distributed, resulting in a number of decisions endorsed by the Crown but which Ngāti Kahu do not accept, maintaining that the Forum could no longer exist nor come to those allocations in their absence.

One area of considerable contention was the township of Kaitaia, where Ngāti Kahu, Te Rarawa, Ngāi Takoto, and Te Aupōuri all assert rights of mana whenua. As the Te Hiku Forum process had developed there seemed to be an understanding that Crown properties in Kaitaia would be shared.<sup>39</sup> A proposal was worked out that the properties would be returned to the first three of these iwi with Te Aupōuri being satisfied with retention of Aupōuri House.<sup>40</sup> After the collapse of the mana whenua process, Te Rarawa and Ngāi Takoto continued to work together to come up with a shared solution. Some properties were allocated to each iwi; some were shared, and others were reserved for Ngāti Kahu. A process was also developed for the allocation, by right of first refusal, of specified Crown lands that might be declared surplus at some future date. This entailed collective determination of who should get a property if more than one iwi wished to acquire it. If agreement proved impossible, it was then to be offered to those iwi whose areas of interest did not include the property concerned.<sup>41</sup> This proposal was submitted to and approved by the Minister of Treaty Negotiations and was ultimately reflected in the deeds of settlement for Te Rarawa and Ngāi Takoto.

Allocation of the Aupouri Forest also went ahead in the absence of Ngāti Kahu. Again there had seemed to be an agreement that there would be further discussion; the Te Hiku AIP had proposed that the forest lands would be transferred to a joint-iwi entity that would allocate the blocks through a mana whenua process. That failed and Ngāti Kahu promoted, by reason of Te Paatu mandate, claims to areas outside their core area of interest as expressed at 2008. This was not acceptable to the other four iwi and the Crown stepped in to make the allocation itself after inviting submissions on the matter from all five groups – and to comment also on what it proposed.

Ngāti Kahu refused to participate in that process, relying instead on their deed of partial settlement as presenting their views.

The evidence suggests, then, that in reaching their individual settlements with the Crown other iwi in areas such as Kaitaia have made attempts to ensure that Ngāti Kahu were included within the allocation of interests and were left with their fair share of properties for historical redress and future restoration. It is acknowledged by all Te Hiku iwi that Ngāti Kahu have rights there. In some areas, such as Takahue and Tangonge, however, Ngāti Kahu have been excluded from the possibility of receiving any form of redress. According to the evidence of those involved, this is because Ngāti Kahu rights are seen as secondary in nature only, deriving from their connections to people of other iwi, or because it was considered necessary to ensure a fair spread of commercial assets. There was general agreement among the others that the Mangonui blocks (5.5 per cent of Aupouri Forest as a whole) should go to Ngāti Kahu, but the peninsula blocks (92 per cent of the forest) should be divided among themselves – though they differed slightly as to how. There seems to have been support, too, among the iwi who participated in these discussions for Takahue (2.3 per cent) going to Te Rarawa rather than Te Paatu and Ngāti Kahu. (We return to these issues of mana whenua in our following discussion.)

Ngāti Kahu counsel when cross-examining Crown witnesses made the point that the two AIPs were non-binding and entered into on a ‘without prejudice’ basis, and that Ngāti Kahu were perfectly within their rights to walk away from those agreements to prepare their own deed of settlement. The Crown and the other iwi involved in the Te Hiku Forum accepted that at the time. There was no acceptance, however, that Ngāti Kahu should be able to stall collective progress and damage the other iwi involved by refusing to talk further and come to a final decision about contested matters, nor overturn the arrangements already agreed.

The Te Hiku AIP of January 2010 provided a framework for each iwi to reach a settlement that seems both

fair and practical, requiring the groups to continue to work together to sort out any remaining issues. Clearly, it is difficult for the Crown to develop a satisfactory package of redress if the other party does not stay to negotiate. Everybody else honoured their commitments, and as Te Aupōuri counsel noted in closing submissions, ‘treated them as a building block’ to develop their settlement packages of a Crown apology and commercial and cultural redress as well as improvements in governance structures.<sup>42</sup>

According to the Crown and to the other Te Hiku iwi, Ngāti Kahu jeopardised the functioning of that framework for their own gain. They were seen as trying to take advantage of agreements about Rangiputa Station while renegeing on the compromises that had been reached with regard to Sweetwater Farm and that still needed to be finalised at Kaitaia and Takahue, expanding their claim into areas where they had only limited rights, and seeking the return to their exclusive ownership of lands which everybody else thought should be shared. Though Ngāti Kahu had proposed that the Aupouri Forest lands be transferred to the joint-iwi entity and held jointly until a mana whenua process could be agreed – they did not provide a workable alternative to the proposal for a final binding determination that they had rejected. Maureen Hickey has suggested: ‘In effect, that meant Ngāti Kahu would gain the benefit of a 20% holding in the forest lands, irrespective of their actual interests in the lands, until a process determined individual shares – but no certainty that an eventual allocation would actually occur.’<sup>43</sup> Paul White of Te Rarawa, who had been closely involved in the work of the Te Hiku Forum, agrees that it was to the advantage of Ngāti Kahu to keep the default position – that all five iwi would have equal say in the activities of the holding entity as well as in the rentals – for as long as possible.<sup>44</sup> Though the other iwi acknowledge that Ngāti Kahu were free to pursue their own path, they do not see this as fair or honourable conduct.

We do not doubt that negotiations have been difficult on many occasions, but we do not think that the evidence

before us – and which we discussed in detail in the preceding chapter – supports the Ngāti Kahu contention that they were being bullied or forced into ‘settlement’. Clearly the Crown and the other Te Hiku iwi were anxious to progress negotiations. There is no doubt, too, that relations between the original Te Hiku claimants have deteriorated to an alarming extent and it is a consequence of the claim settlement process (at least in part) that is to be much regretted. But there is no question of Ngāti Kahu rangatiratanga and tribal autonomy not being respected. The Crown’s witness and chief negotiator, Mr Snedden, expressed full acceptance of the right of Ngāti Kahu to break off negotiations and also to withdraw from the Forum, though he was, as he told us, ‘bloody annoyed’ and personally disappointed at the turn that events took.<sup>45</sup> He strongly denied the allegations of bullying or ‘divide and rule’ tactics. Crown counsel emphasised that it was Ngāti Kahu, not the Crown, who had departed from the principles of negotiation, compromise, fairness in the circumstances, and good faith expressed in 2008 and 2010.<sup>46</sup>

The other Te Hiku iwi were also critical. They were at pains to remind the Tribunal that their fight was rightfully against the Crown, and they also acknowledged that Ngāti Kahu had the right to pursue their own course; but they also condemned Ngāti Kahu conduct as failing accepted standards of good faith.

The other Te Hiku leaders see the actions of Ngāti Kahu as contrary to whanaungatanga and reciprocity and as undermining their collective authority. The tikanga which they wish the Crown to respect was expressed within the the guiding principles of the Te Hiku Forum emphasising kotahitanga or unity of purpose, the strengthening of whanaungatanga (shared whakapapa), respect for the mana and authority of each other within their respective rohe, the negotiation of shared solutions, and whakatau tika (transparency and communication). They have all made concessions to each other subsequently.

We agree that the tikanga of ‘generous giving and an absolute trust in an honourable rejoinder’ that the Muriwhenua Tribunal urged all parties to adopt is



something quite different from what Ngāti Kahu are following. Insofar as a good process ensures a good outcome, their withdrawal from the collective, and from negotiations with the Crown, put at risk their own prospects of settlement, as is their right; but it endangered also the efforts of the other four iwi to come to the agreement on a fair split among them that had to precede all their individual settlements with the Crown. The repudiation of the principles upon which the collective had been operating, and upon which compromises and accommodations had been made – and not just by the other four iwi but also by the Crown – was not consistent with good faith and honourable conduct. These are standards of behaviour that are fundamental to the negotiation of Treaty redress.

### 6.5.2 Unresolved customary interest issues

One of the most significant factors in our consideration of whether to make binding recommendations is the unresolved customary interest issues in a number of areas. Despite the work of Te Hiku Forum, with and without Ngāti Kahu participation, questions of mana whenua relating to Ngāti Kahu remain outstanding. Ngāti Kahu challenge the distribution of assets in the various settlement deeds, arguing they have exclusive rights to the return of these lands. At the same time, we were also presented with a considerable weight of evidence in opposition to that claim. While we heard from a number of Ngāti Kahu witnesses that they hold mana whenua over the lands in which the resumable properties are situated, there was corresponding Ngāi Takoto, Te Aupōuri, Te Rarawa, and Ngāpuhi evidence as to their own customary and current interests in the same areas.

Four areas remain at issue:

- ▶ Kaitaia – the town and environs (though we do not discuss the Kaitaia aerodrome lands here because they are not subject to resumption orders). Four Te Hiku iwi claim interests there and, as noted in the preceding section, the available properties have been shared amongst them. There are also several Kaitaia properties owned by Te Hiku iwi entities that have section 27B memorials on their titles.
- ▶ Tangonge, or Sweetwater Farm, which is intended for

Te Rarawa and Ngāi Takoto but where Ngāti Kahu say they hold rights also.

- ▶ Takahue (part of Aupouri Forest), intended for Te Rarawa alone, where Te Paatu and Ngāti Kahu argue they have rights that should be reflected in the return of the land.
- ▶ Kohumarū, including part of Otangaroa Forest, which the Crown has agreed should go to Ngāti Kahu as redress but only once overlapping claims with Ngā Hapū o Whangaroa and Ngāpuhi are resolved.

We outline in the following pages the evidence we were given of the range of customary interests in these areas where Ngāti Kahu seek to have all properties resumed to their exclusive ownership, and assess whether we are inclined on these grounds to make binding recommendations in their favour.

#### (1) Kaitaia

The Kaitaia region has been the site of much dispute among the various Te Hiku iwi. All parties to the inquiry submitted that they held mana whenua in Kaitaia. Ngāti Kahu told us that they are the rightful owners, but this was disputed by Te Rarawa, Ngāi Takoto, and Te Aupōuri, who pointed to evidence of overlapping customary interests.

The Reverend Canon Lloyd Nau Pōpata gave evidence as to the various Ngāti Kahu tūpuna that lived in the area from the pre-Treaty period until the present day.<sup>47</sup> Huhupara, Tapu, and Tuhangai's descendants settled at Kaitaia, Kauhanga, Tangonge, and other places in the west of the Ngāti Kahu rohe. Popata Te Waha – one of the chief rangatira of Te Paatu – lived in Kaitaia in the 1850s and exercised rangatiratanga over the Rangaunu harbour, controlling its shark fishery. His son, Timoti, was the first Māori assessor living in Kaitaia.<sup>48</sup> We were told that the mana whenua of Ngāti Kahu and Te Paatu is still exercised and is demonstrated by their involvement in local entities and by their taking a 'leading role in a number of other resource management and environmental issues throughout Kaitaia.'<sup>49</sup>

Professor Margaret Mutu acknowledged that Te Rarawa and Ngāi Takoto also have customary interests in the area.<sup>50</sup> Nonetheless, Ngāti Kahu argue that all properties



there ought to be vested in Ngāti Kahu alone. They dispute the right of Te Rarawa tupuna, Panakareao, to have disposed of lands in the Kaitaia area, in 1839, without their consent. They point out that when their tūpuna, who had been absent, heard of what Panakareao was doing, they returned to the district, and those transactions ceased.<sup>51</sup> With reference to Ngāi Takoto, Professor Mutu stated that Patukoraha – one of the main hapū of Ngāti Kahu with rights at Kaitaia – do not see the lands set out in the evidence of Rangitane Marsden as within Ngāi Takoto control (see below) but as ‘rather the areas that are common’ to them both. She told the Tribunal that ‘Ngāi Takoto are Te Paatu’ and that Te Paatu exercise mana whenua within much of that area.<sup>52</sup> Te Karaka Karaka gave evidence to the same effect: that Ngāi Takoto were originally part of ‘Te Patu’ and therefore the lands offered to Ngāi Takoto in their deed of settlement ‘also belong to Te Patu.’<sup>53</sup>

The other Te Hiku iwi accept that Ngāti Kahu have customary rights in this area but object strongly to both their interpretation of the customary situation and their current application.

Te Rarawa submitted that ordering the resumption of all Kaitaia properties to vest in Ngāti Kahu would prejudice their own interests since they also hold rights over these lands both customarily and today. Haami Piripi, Paul White, Malcolm Peri, and Hekenukumai Puhipi (Hector Busby) gave their perspective on this matter (for Tangonge and Takahue as well as Kaitaia township), emphasising that Te Rarawa have iwi as well as hapū mana whenua.

Te Rarawa were a powerful confederation at 1840: Mr Piripi described their origins, providing a generic whakapapa starting from Tarutaru and Te Ruapounamu to explain the reciprocal relationships between the rangatira. According to Mr Piripi, Te Rarawa mana expanded into Te Hiku o Te Ika Rohe (from Whangape to Ahipara, Kaitaia, and Hukatere) as a result of conquest and intermarriage, under the leadership of Poroa in the early contact period.<sup>54</sup> It is through Poroa’s mana and feats that Te Rarawa claims iwi (as distinct from hapū) mana whenua throughout the region.<sup>55</sup>

Panakareao, who inherited Poroa’s mantle, was the

paramount chief of Kaitaia. According to Mr Piripi’s evidence:

Never once in the course of those decades was his mana or occupation of any area challenged (except by his cousin Pororua) and in the case of Kaitaia not only did he tuku his land to the missionaries, he remained living upon it amongst them until his death in 1856.<sup>56</sup>

He rejects Professor Mutu’s contention that Panakareao had no rights within the area that Ngāti Kahu claim as their rohe. He told us:

Being of Ngati Te Ao, a hapu of Te Rarawa, his ties to the land were uncontested then and have remained that way until the advent of this opportunity to attempt to rewrite a revisionist view of iwi history in an attempt to justify her contemporary and flagrant land and power grab.<sup>57</sup>

Mr Piripi suggests that ‘key indicators’ of Panakareao’s authority and mana whenua include his signing of He Whakaputanga and Te Tiriti; his tuku of lands at Kaitaia to Samuel Ford; his continued protestations post-Te Tiriti in relation to Crown incursions into Te Rarawa self-government; and the historical acceptance by other Te Hiku and neighbouring iwi of the iwi mana whenua of Te Rarawa.<sup>58</sup> Furthermore, that authority is maintained today through a ‘key political presence and infrastructure.’<sup>59</sup> Te Rarawa contrast their long-standing rights as an iwi with the hapū mana whenua which they see Ngāti Kahu as exercising. In their eyes, the status of Ngāti Kahu as an iwi dates only back to the 1920s.<sup>60</sup>

Ngāi Takoto have customary rights in Kaitaia as well. This is accepted by all Te Hiku iwi, including Ngāti Kahu.

Rangitane Marsden gave evidence that the boundary between Ngāi Takoto and Ngāti Kahu was (and still is):

From the southern end of the Rangaunu harbour to the pa at Pungaungau, to Pairatahi pa (the Pa of Matenga Paerata of Patukoraha – Treaty signatory), following the range of hill tops (Pa sites) to Kareponia (Komako), to Wharekakariki pa, to Tutatarakihi pa, (western side of Kaitaia aerodrome),

to Pukekahikatea pa, (Oturu-NgaiTohianga hapu) continuing along that range of hills into Kaitaia, to Kerekere pa. This is the boundary between NgaiTakoto, Patukoraha, and NgaiTohianga hapu.

This korero identifies the boundary line between NgaiTakoto and the hapu of Ngati Kahu as beginning at the Rangaunu, up the Whangatane river up to Mahimaru, where the NgaiTakoto marae of Mahimaru resides on the western bank of the Whangatane spillway.<sup>61</sup>

While Ngāi Takoto and Ngāti Kahu share ‘interrelated relationships of whakapapa’ binding them together through whakawhanaungatanga, they are separate entities. Indeed, Mr Marsden corroborated the perspective of Te Rarawa that the ‘Ngati Kahu Runanga is a non traditional, modern day response to the creation of centralised tribal organisation and therefore holds no claims to mana whenua interests within the NgaiTakoto rohe unless those interests have been explicitly agreed to with NgaiTakoto.’<sup>62</sup> Mr Marsden told us that, while Ngāi Takoto recognises the right of Ngāti Kahu to seek redress with the Crown, ‘it must not be at the cost of taking from Ngai Takoto.’<sup>63</sup>

Te Aupōuri also claim to have held traditional rights in Kaitaia. We discuss this further below in the context of Aupōuri House and section 27B memorial properties.

## (2) Takahue

Another contested area is Takahue, part of which lies within the remedies area. Whereas Kaitaia had traditionally been a ‘gathering place’, Takahue was a mahinga kai area shared seasonally by several groups accessing its resources from different parts of Te Hiku. The Crown has promised the whole of the Takahue blocks of Aupouri Forest to Te Rarawa as part of their settlement. Three of the blocks are situated in whole, or in part, within the 2008 claims area: one is wholly inside that boundary; the other two straddle it. The Crown has agreed to transfer all three blocks to Te Rarawa.<sup>64</sup>

We discussed that allocation, and the process followed by the Crown in making it, in some detail in our decision of 10 October 2012 in response to the Ngāti Kahu urgency application. We expressed, then, some concerns about the

apparently changing ground for the Crown’s decision; from one that considered mana whenua and had recognised the ‘threshold interests’ of Te Paatu to one that was commercially based; but we found that no irreversible prejudice would be caused partly because there remained an opportunity for Ngāti Kahu to have their interests at Takahue (where they lie within the remedies area) addressed through this process.

Given that decision and the current application, we must revisit the issue and look more closely at the evidence pertaining to mana whenua at Takahue and consider whether we would be justified in disturbing the Te Rarawa settlement there by using our binding powers of recommendation to ensure redress for Te Paatu and, by connection with Tahaawai, Ngāti Kahu as well.

The Crown’s acquisition of Takahue occurred after 1865 and so the Muriwhenua Land Tribunal did not report on the nature of customary rights in that area, nor on how title was ultimately determined and the land alienated. However, research was commissioned. We also have the oral and written evidence of witnesses filed for this remedies application and the preceding urgency applications, including that most recently filed by the Crown in the current application of Te Rarawa. Included in the accompanying documents were a number of reports on Takahue generated as part of detailed settlement negotiations.

The forest blocks at issue sit across three Māori land blocks: Kaitaia, Takahue (1 and 2), and Te Uhiroa. Again, there is no dispute that Takahue was traditionally a mahinga kai area shared by different hapū who might affiliate to more than one iwi. What is in immediate contention in terms of mana whenua is who had wider authority and whether recognition of interests through Native Land Court adjudication properly reflected all interests and in the correct proportions.

Canon Pōpata, Mr Karaka, and Professor Mutu set out the grounds of Ngāti Kahu mana whenua in Takahue, particularly through Te Paatu and Tahaawai hapū. According to Canon Pōpata, the tūpuna Hapute and Tuhangai of Te Paatu settled and maintained these lands for Ngāti Kahu.<sup>65</sup> Professor Mutu, who is herself Tahaawai, confirmed that the hapū is made up of both Ngāti Kahu and Te Rarawa.

Tahaawai's marae is Okakewai and the people there have mandated Te Rūnanga-ā-Iwi o Ngāti Kahu to represent them.<sup>66</sup> The marae has two delegates on Te Rūnanga.<sup>67</sup> Also, today, it is the only marae in the Takahue area, located directly adjacent to the forest blocks. The closing submissions of Ngāti Kahu counsel state that 'mana whenua and importantly, ahi kaa, must reside with the Marae located on or in closest proximity to the land which is Takahue Marae affiliated with Ngāti Kahu'.<sup>68</sup>

Te Rarawa witness Paul White acknowledged that Tahaawai and Te Paatu may have interests at Takahue because it had been a shared hunting and gathering area.<sup>69</sup> However, he considered Tahaawai to be historically affiliated to Te Rarawa rather than Ngāti Kahu. Their interests had been widespread, he told us. Te Rarawa have asserted mana whenua in relation to the Takahue, Kaitaia, and Te Uhiroa lands underpinned by the hapū mana whenua of Te Uri o Hina, Tahaawai, and others. They had their rights acknowledged through their oral histories and upheld by the Native Land Court. Drawing on Te Rarawa whakapapa, he suggested that:

Tahawai was represented by a number of spokespeople in different Native Land Court cases, including Hone Harimana, Hori Harimana, Kihirini Te Morenga, Herepete Rapihana, Herewini Te Toko, and Wiremu Paiha. Descendants and close relatives of these spokespeople still represent Tahawai today and a number of them are current or past Runanga representatives for their Marae.

At Takahue, it had been Hori Haimana who had led the case for Tahaawai.

Mr White suggested, too, that the Te Paatu area of core or exclusive interest did not extend as far as Takahue. In his view, that matter had been negotiated between Te Rarawa and Te Paatu in the 1860s, with the whole of Takahue being allocated to the former and Te Paatu receiving other lands to the south east, including part of Takahue 2. His evidence was that:

In 1867, a Te Rarawa chief called Tamaho Te Huhu held hui with the people of Kaitaia and the Victoria Valley to discuss

their land claims. Despite some opposition it was generally accepted that Tamaho had established a claim to the area south east of Kaitaia. He later commissioned a survey of the land which became the Kaitaia block but this precipitated a boundary dispute between Te Rarawa of Ahipara, Herekino and Whangape districts and Te Paatu.

When the survey reached a certain point it was challenged by Te Paatu who sought to stop it proceeding any further. The dispute escalated with both sides amassing war parties in the area.

Resident Magistrate White and his two assessors from the Native Land Court mediated between the opposing parties and a boundary for the survey line was eventually agreed with the northern boundary of the Kaitaia block from Okerimene to Oharae providing a dividing line between Te Rarawa and Paatu . . . In the Takahue claims, the entire Takahue block was awarded to hapu of Te Rarawa, Tahawai and Te Uri o Hina, with Takahue 2 being awarded to Te Ihutai ( $\frac{2}{3}$ rds) Paatu ( $\frac{1}{3}$ ). The Maungataniwha West 2, Patiki, Pukekahikatoa and Ruaroa blocks included both Te Paatu and other Te Rarawa interests. Okakewai was awarded to Te Uri o Hina and Tahawai and Te Kauri was awarded to Te Uri o Hina, Tahawai, Ngati Te Ao and Tahukai, all hapu of Te Rarawa.<sup>70</sup>

Paul White referred us to Clementine Fraser's report as independent corroboration for his account, and he told the Tribunal that the boundary of interest had been widely accepted then and since.<sup>71</sup> According to his evidence this division had stood for many years. He also rejected the necessary equation between the locality of the marae and proof of mana whenua. He pointed out that nobody had lived permanently in the forest traditionally; according to Te Rarawa, even Okakewai was far away.<sup>72</sup>

The Te Rarawa interpretation of these events is rejected by Te Karaka Karaka, who argued that Te Paatu had clashed with Te Rarawa over Takahue and that Te Rarawa had prevailed only because of the Crown which had forcibly taken their (Te Paatu) lands.<sup>73</sup>

Finally, we note that the Crown has also filed evidence on the matter of mana whenua in the context of the ministerial decision to allocate the blocks exclusively to Te Rarawa. This shows that Te Rarawa sharply challenged

the extent of Te Paatu and Te Tahaawai interests when those groups began asserting a claim over the Aupouri Forest during settlement negotiations. Officials assessed Te Rarawa associations with Takahue as ‘clearly strong’. Their mandate was also well-established and endorsed by Tahaawai based at Pukepoto. Evidence also showed, however, that one of the three original grantees in Takahue 2 was of Te Paatu and that Ngāti Kahu had an uncertain but possibly demonstrable interest through their connections with Tahaawai.<sup>74</sup> Ultimately, however, the customary interest of Te Paatu was only one of the factors considered and was not deemed sufficient to necessitate their inclusion in the return of those properties.

### (3) *Tangonge*

Tangonge, we were told, was traditionally a ‘food basket’, also shared by different hapū, though again there was disagreement as to who controlled access to and rights in Tangonge, both customarily and more recently. The relationship between current occupation and customary rights (as at Kaitaia) has been complicated by post-1865 developments, in particular the draining of the lake which had sustained the tangata whenua of the area. Instead, the land which remained in Māori hands turned into a place where people came to live while working in Kaitaia and known locally as ‘Hollywood’. Tangonge now forms part of Sweetwater Farm and has been allocated to Te Rarawa (63 per cent) and Ngāi Takoto (37 per cent) in their settlement packages. As we discussed earlier, that decision derives from the arrangements agreed between Te Hiku iwi prior to 2010. The area affected by the Ngāti Kahu application is the part that has been earmarked for Te Rarawa.

Ngāti Kahu counsel submitted that many hapū had used the lake and the wetland.<sup>75</sup> Canon Pōpata stated, too, that whānau affiliated to Ngāti Kahu had lived on the land until the 1960s. The last to go were the Hohepa and Joseph whānau. According to Canon Pōpata: ‘No-one except the Crown ever challenged their right to be there – they couldn’t because they knew the whanau was mana whenua. Those family were there as Te Paatu and Patukoraha hapu of Ngati Kahu.’<sup>76</sup> Responding to

questions from the Tribunal, counsel said the point was that others were getting redress for the loss of the resource area whereas Ngāti Kahu were excluded.<sup>77</sup>

Te Rarawa witnesses acknowledged that the Joseph family had lived at Hollywood and were affiliated to Ngāti Kahu but denied that they had mana whenua. We were told that those who lived on the land were only able to do so through their Te Rarawa connections.<sup>78</sup> The main evidence was given by Hector Busby who explained that Pukepoto was situated on the south side of Lake Tangonge and that when the lake was drained (in his lifetime) Te Rarawa were the only people there, though others were living at Hollywood until evicted by the Crown in the 1960s. Mr Busby told us that Ngāi Takoto had interests on the Awanui side of the lake because it drained out into Rangaunu Harbour; but not Ngāti Kahu except indirectly: ‘Some of our relations in there have a whakapapa to Ngati Kahu but I have never heard that Ngati Kahu, as an Iwi, have any right in Tangonge.’<sup>79</sup> Mr Busby argued that, in a long history of struggle (‘all our lives we grew up fighting to have Tangonge to be returned to us’), Ngāti Kahu had never been involved in the proceedings or recognised as having interests west of Kaitaia.<sup>80</sup> He told us: ‘Te Rarawa have held mana whenua over these places since Kupe and since the conquests of Poroa, Te Uri o Hine, Te Tahaawai, Ngati Te Ao and Tahukai have had mana whenua interests from Okahu through to Kaitaia and out to the beach as far up as to Hukatere.’<sup>81</sup>

### (4) *Otangaroa and Kohumaru*

A similar situation of overlapping and contested rights exists among Ngā hapū o Whangaroa and Ngāpuhi hapū on the eastern and southern boundaries of the remedies claim area at Otangaroa Forest and Kohumaru Station.<sup>82</sup>

Reremoana Renata, one of the delegates from Kēnana and Waiua marae to the Ngāti Kahu Rūnanga, discussed the interests of Ngāti Kahu in relation to these lands. Her evidence responded to the claims made by witnesses from Ngā hapū o Whangaroa and Ngāpuhi to rights in the same area (see below).

Matarahurahu hapū have a close association with Kohumaru. Mrs Renata’s evidence was:

Kēnana marae is located in the heart of what was known as the Kohumaru block. It is the only marae that is situated right beside the Kohumaru Station and it is the closest marae to that part of the Ōtangaroa Forest Block that is within the remedies hearing area. Therefore, those lands are completely within our rohe.<sup>83</sup>

However, neighbouring iwi have their own traditions, perspectives, and claims to the area. Pairama Tahere gave evidence on behalf of Te Uri o Te Aho that their tupuna, Taeapa Kiwa (a descendant of Te Awha) had been a member of the Ngāpuhi taua that had defeated and ousted Ngāti Kahu from Mangonui and Whangaroa in the 1820s. After Te Awha was killed in battle, leadership had passed to Te Hotete and Ngāpuhi defeated all those that stood against them and after the battles, Mangonui, Oruru Valley and Whangaroa fell under his mana by conquest.<sup>84</sup> Leadership of Te Uri o Te Aho later passed to Pororua who was one of the first leaders in Muriwhenua to enter into agreements with Europeans for flax, timber, and land and whose contests with Panakareao were described in the *Muriwhenua Land Report*.<sup>85</sup> Pororua was connected to Ngāpuhi through his father's line and to Ngāti Kahu through that of his mother.<sup>86</sup> Mr Tahere said that he supported the Ngāti Kahu application for redress but that this was conditional upon recognition of the shared interests of Te Uri o Te Aho in the remedy area, at Kohumaru as well as Tatarakuri, Maungataniwha, Takahue, and at the waterfront of Mangonui township.<sup>87</sup>

Reremoana Renata acknowledged that Mr Tahere has an individual interest in the remedy area but only through Pororua's Ngāti Kahu whakapapa. She questioned the right of Pororua to have come from the Hokianga to transact lands in the rohe of Ngāti Kahu.<sup>88</sup> It is the view of Ngāti Kahu that Ngāpuhi 'didn't stay'.<sup>89</sup>

Nuki Aldridge also began his evidence on behalf of Ngā hapū o Whangaroa with a statement supporting their whanaunga, Ngāti Kahu, 'getting what is rightfully theirs'. He explained:

many of their claims are very much the same as our claims  
– we agree that the Crown has undermined their tino

rangatiratanga and taken their whenua and other things from them. We know what the effects of such things are . . . and we fully support them in getting some redress for the suffering and the harm they have endured and continue to have to endure.<sup>90</sup>

Mr Aldridge told us that the traditional boundary of Whangaroa runs from Te Whatu (Berghan's Point) to the Oruaiti River, to Oruru and through to Maungataniwha. This encompasses Otangaroa and Kohumaru, although he was unable to particularise the interests of Whangaroa hapū within the remedies claim area.<sup>91</sup> Mr Aldridge spoke of Pororua and Te Huirama Tukariri as key Whangaroa tūpuna of the area and their close connections to Hongi Hika, and with Ngāti Kahu at Kēnana, with whom their descendants intermarried. Nonetheless the rights of the Whangaroa people derived independently of their Ngāti Kahu whanaunga and they still lived at Pupeke.<sup>92</sup> They do not dispute that Ngāti Kahu has 'some interests in those areas,' he told us, 'but we stand firm in saying that Whangaroa does too'.<sup>93</sup>

Mr Aldridge pointed out that their whānau at Otangaroa had filed a claim (Wai 58) with reference to the Otangaroa Forest in 1992, and they had been instrumental in preventing the sale of Kohumaru Station that year.<sup>94</sup> In the years since, there had been many occasions in which the rights of the Whangaroa people had been acknowledged by Ngāti Kahu; so they had been 'surprised and disappointed' to find that Ngāti Kahu were 'suddenly apparently claiming exclusive rights to these properties and . . . doing so this late in the process'. Mr Aldridge asked that the Tribunal, when providing guidance to the Crown, ensure that portions of Otangaroa and Kohumaru remain available for Whangaroa for future settlement.<sup>95</sup> Under cross-examination, he acknowledged, however, that the remedy area does not take in all of these lands.<sup>96</sup> This would mean that a portion of them would not be subject to binding or non-binding recommendations.

We also heard from Ani Taniwha (Wai 1666) of Ngāti Kauwau me Kawiti and Ngāti Kahu o Roto Whangaroa and from Owen Kingi (Wai 1832) of Ngāti Uru, Ngāti Pakihi, and others. These witnesses spoke on behalf of



Whangaroa-based claimants, reciting their whakapapa connections to the Otangaroa area and also argued that some of this area should be retained for the future settlement of the claims of Whangaroa hapū. Both these witnesses questioned the the claim by Ngāti Kahu of exclusive rights in these lands. Again both witnesses acknowledged under cross-examination that the remedies claim area excluded parts of Otangaroa Forest.<sup>97</sup>

This point was made by Mrs Renata as well: that there would be other opportunity for the Whangaroa people and for Ngāpuhi to receive their redress outside the remedies area. That being said, the way that they should receive benefit in the Kohumarū Station and Otangaroa Forest, she thought, was ‘through Kenana and/or their whakapapa to Ngāti Kahu.’<sup>98</sup> Mrs Renata added that Matarahurahu and Kēnana marae had always been clear that:

assets received through Te Rūnanga-ā-Iwi o Ngāti Kahu should be shared by all the hapū as not all hapū will have assets available to them in any settlement or binding recommendation process . . .

That was why she encouraged Nuki Aldridge and the others who had given evidence about these lands, opposing the application, to register with their marae, hapū, and the Rūnanga.<sup>99</sup> (That suggestion was rejected by the Whangaroa and Te Uri o Te Aho claimants.<sup>100</sup>)

#### (5) *Tribunal comment*

The point to be taken from this evidence is not just that rights were disputed, but that interests were shared. Because of the close intertwining of whakapapa relationships, it is particularly difficult for any one iwi to claim full exclusivity over their rohe. Mr Piripi described the situation in the following terms:

The myriad of reciprocal relationships that arises from several millennia of interaction has produced an intergenerational adhesive, connecting families and communities who have become inextricably connected by a series of life changing events and circumstances.<sup>101</sup>

In these circumstances, and given the different perspectives of the witnesses we heard, the Tribunal must proceed with some care. As counsel for Te Aupōuri pointed out, ‘the fact that Ngāti Kahu asserts that their interests are exclusive and/or paramount or simply reject the proposition that another iwi has interests does not make it so.’<sup>102</sup>

Adding to the difficulty of this issue is the fact that it involves a number of properties that are subject to agreements negotiated between the Crown and the other iwi also claiming mana whenua over them. We must bear in mind that the Crown has other Treaty obligations to meet, and there is a danger of upsetting the best compromise that collective decision making among Te Hiku iwi could reach in the face of the dissenting position of Ngāti Kahu.

Ngāti Kahu contend, in support of their position, that the resumption of these properties will have a minimal impact on the other Te Hiku iwi, and indeed, on the local community and the nation as a whole. According to Professor Mutu:

There is little national interest in redress that we seek by way of binding recommendation and certainly any impact on the nation in the provision of remedies must be negligible and not any more oppressive than what the Crown were intending to provide by way of negotiated settlement.

Similarly the impact on the local community will be minimal.<sup>103</sup>

Ngāti Kahu also maintain that other Te Hiku iwi would be minimally affected, even if some of the properties included in their Treaty settlements were transferred by way of a resumption recommendation to Ngāti Kahu, because there is opportunity for other Crown-held lands to be substituted for any properties affected by this process. For example, in the case of the deed of settlement for Te Rarawa, clause 119 states:

In the event that the Waitangi Tribunal makes any recommendation in relation to any application under sections 8A–8HI of the Treaty of Waitangi Act 1975 that affects any redress in this deed of settlement the Crown and Te Rūnanga



o Te Rarawa must, in good faith, enter into negotiations to conclude a settlement.<sup>104</sup>

This view is certainly not shared by the other parties concerned. Though the safety net of further negotiations for alternative redress exists, they do not see this as a purely commercial matter. Te Rarawa, they told us ‘has not in the past anticipated that a Tribunal would find that the Te Rarawa Deed properties could possibly be given to some group of Māori other than Te Rarawa.’<sup>105</sup> The return of those properties has been negotiated by Te Rarawa as an expression of their mana whenua, and they scorned the suggestion that any prejudice arising from resumption could be mitigated by substitution: ‘It is an offence to suggest that it is a mere commercial exchange,’ we were told.<sup>106</sup>

Ngāti Kahu also insist that disruption to the other iwi will be minimised by their willingness to come to a negotiated accommodation in the 90-day period following the making of the Tribunal’s resumption recommendations. There is the possibility of some form of leasing arrangement in the future; or even for their relations who have recognised whakapapa connections in disputed resumable lands to register on the Ngāti Kahu beneficiary list and have their rights recognised that way.<sup>107</sup> These suggestions were again rejected by the other parties as unlikely or undesirable.

We have to consider not only whether Ngāti Kahu have interests in the lands concerned but whether all interests in lands shared customarily, and all whakapapa connections, must be reflected in remedies or in modern-day Treaty settlements. Or does a wider and more complex view of how to achieve redress have to be taken in these circumstances?

We follow the guidance offered in the *Turangi Township Remedies Report*: it is necessary for a claimant group to be able to show on the balance of probabilities that they have interests in the resumable properties that legitimately surpass the interests of all others, or that there is some other compelling basis for recognising their claimed interest to the exclusion of all others.<sup>108</sup> It is also necessary for the

Tribunal to exercise greater care if powers of binding recommendation are to be utilised because the consequences are greater, in this instance, not only for the Crown but also for the other parties whose proposed settlements (and properties with section 27B memorials recorded on the title) are affected.

Does the evidence persuade us to make a finding that Ngāti Kahu have interests that outweigh all others or are so compelling that we should make binding recommendations for the resumption of these properties in their favour though this may adversely affect the negotiated settlements of others?

The information before this Tribunal is varied in character but has a number of flaws. The report of the Muriwhenua Land Tribunal is of limited assistance since it was not called upon to establish the areas of interest of the individual iwi because they were proceeding collectively at that time. Other than oral tradition, witnesses have relied on the sparse documentation attached to early land transactions and land court records, or evidence of contemporary occupation by whānau. All these types of evidence are open to legitimate criticism. Current-day tribal affiliations do not necessarily reflect the customary situation to which witnesses now make connection. As historian witness for Ngāti Kahu Peter McBurney acknowledged when questioned by the panel, early land transactions are problematic evidence of rights.<sup>109</sup> Early land court decisions often have been condemned not only by claimant groups but also by the Tribunal in various inquiries. The significance of occupation of particular whānau in the twentieth century, and of Crown-sponsored administrative boundaries, is also open to challenge for having insufficient customary relevance. These limitations were shared to some degree by the evidence brought by all the parties appearing before us.

Nevertheless, a larger point must be made. There was a good deal of evidence given in opposition to the claim by Ngāti Kahu to an exclusive right to these properties, weighing against them in the balance of probabilities that they must establish in their favour.

Also the matter of mana whenua and how this could

be fairly reflected within the return of lands had already been the subject of much kōrero. We heard evidence of many discussions with neighbouring iwi, at least initially, and that within Te Hiku a formal process had been specifically devised to deal with areas of overlapping interests as we have outlined in the preceding section. This seemed to us a pragmatic approach that is tika and fair in all the circumstances, recognising the interests of all Te Hiku iwi, and designed to encourage dialogue and compromise. This was consistent with the procedure set out in the Te Hiku AIP signed by Ngāti Kahu in 2010 and continued even after Ngāti Kahu withdrew their support.

As a possible alternative means of resolving such complex issues, the Tribunal's process of engagement with affected parties in the present remedies hearing leaves much to be desired. Ironically, the deficiency in our process is compounded by the dissipation of the unity among Te Hiku iwi that underpinned the Tribunal's findings in 1997, and which rendered unnecessary at that time the making of comprehensive mana whenua findings. Now, with whanaungatanga under strain and available time more attenuated, the circumstances have proven far less amenable to the Tribunal receiving and being able to assess evidence of sufficient depth to support binding recommendations. That is not to say that the Tribunal will never be a suitable forum for resolving mana whenua issues with sufficient certainty to permit binding recommendations, but the circumstances of this case are unusually difficult and complex.

The Tribunal is not able to make precise findings on mana whenua over specific properties where the relationships are so intertwined. We can make some general statements, however. We have no doubt that a number of different iwi had rights, traditionally, at Kaitaia; indeed all parties agreed that this was so, though there was some dispute as to who exactly and in what proportion. It was a meeting place shared by a number of hapū and we do not accept the evidence of one witness that only Te Paatu chiefs congregated there, when others described it more widely and can demonstrate their own traditional

connections to the area.<sup>110</sup> The *Muriwhenua Land Report* – though it did not discuss matters of mana whenua in detail – supports this conclusion.<sup>111</sup>

Kaitaia has always been a place of intersecting interests and this is accentuated today by the town's expansion into a commercial hub, attracting individuals and families in search of work, and iwi organisations seeking to establish regional headquarters. We can ignore neither the evidence of intermingling of customary rights, nor the ongoing developments of the past 150 years when assessing whether there is a compelling basis for making binding recommendations in favour of Ngāti Kahu.

Takahue and Tangonge involve equally challenging and complex issues. Again both areas had been traditionally shared though in what proportion is hotly contested. We are inclined to the view that Te Rarawa have customary links to Takahue that are stronger than those that can be demonstrated by Te Paatu. We do not doubt that Te Paatu have interests as well and that Ngāti Kahu have whakapapa connections through Tahaawai. The question is whether this is enough to persuade us that we should make binding recommendations in their favour and in doing so, upset the Crown's settlement with Te Rarawa?

We cannot, however, look at Takahue in isolation. The validity of such an approach is very doubtful where the redress available are finite and an intricate overlay of customary interests exists. The evidence (as discussed earlier) shows that the allocation to Te Rarawa of the whole of the Takahue portion of Aupouri Forest, rather than just part of it, was the result of not just negotiation between them and the Crown but of a complex and difficult process of compromise and trade-offs among Te Hiku iwi. Although Ngāti Kahu withdrew from the Te Hiku Forum, their interests were still considered as part of a whole picture. We see apparent inconsistencies in the redress offers made to other Te Hiku iwi as compared with that which is available to Ngāti Kahu, but we cannot see how these could be avoided entirely once the Muriwhenua collective disintegrated and iwi decided to pursue and receive settlements separately. There had to be some disentanglement

of mana whenua and commercial interests; some balancing between customary rights and future capacity among Te Hiku iwi.

Te Rarawa asserted the greater customary interest at Takahue and there was support for this in the documentation and from other iwi participants in the discussion, but this was not the sole determining factor; rather it was one of a number of circumstances that were taken into consideration among iwi and by the Crown and which we must take into account also. According to the evidence of Maureen Hickey:

all agreed that Ngāti Kahu ought to receive the Mangonui blocks, which – while smaller in size than other Aupouri forest lands – were relatively higher in value. That was so, even though Te Rarawa had threshold interests in the Mangonui blocks. Furthermore, Ngāti Kahu had the ability to seek the Otangaroa forest lands. In addition, Ngāti Kahu did relatively better out of the farm allocation than might be expected given its population.<sup>112</sup>

Although it is not our task here to judge what the Crown has proposed as redress, we have some sympathy with Ms Hickey's assessment that there was 'no better alternative.'<sup>113</sup>

At Tangonge, we have no reason to doubt that the Joseph whānau had been living in the area up until the 1960s, or that Ngāti Kahu have whakapapa connections there. As Te Rarawa kaumātua, Hector Busby, stated in his evidence, 'we will always be connected by ancestors in common.'<sup>114</sup> Whether those connections amount to evidence of Ngāti Kahu mana whenua is another matter; but it is not one on which we need venture an opinion. As at Takahue the decision regarding the return of land (namely Sweetwater Farm) required compromise between the parties concerned; but in contrast to Takahue, this was a decision that had been accepted by Ngāti Kahu before their withdrawal from the inter-iwi negotiations in 2010.

The evidence we heard regarding Kohumaru suggests that Ngāti Kahu has a particularly strong connection to the blocks lying within the remedies area. Their

marae, Kēnana, is the only marae located in the area. We are, however, conscious of the fact that neighbouring iwi came late to these proceedings and have not had the same opportunity to develop their case. Some iwi representatives who appeared before us were unaware that only part of the Otangaroa Forest lies within the remedies area. Few were able to say how this area relates to traditional boundaries. Nonetheless, they were made aware that part of the forest lies outside this Tribunal's jurisdiction. They also all accepted that Ngāti Kahu have rights to those lands in the remedies area.<sup>115</sup> And all those witnesses acknowledged that they, themselves, have strong whakapapa connections to Ngāti Kahu though they do not see registering with Te Runanga-ā-Iwi o Ngāti Kahu as appropriate or desirable.<sup>116</sup> We also note that these witnesses accepted that Kēnana marae is closest to the lands in question.<sup>117</sup> According to Mr Aldridge, for example, it had been agreed that questions relating to Kohumaru Station should be managed by a committee operating out of Kēnana.<sup>118</sup> Mr Tahere also acknowledged under cross-examination that the marae exercised ahi kā with regard to that area.<sup>119</sup>

Mr Aldridge's main concern was that the Crown retain enough of the forest asset at Otangaroa to be 'available to Whangaroa when we are finally able to have our claims investigated and negotiate our own settlement.'<sup>120</sup> Te Uri o Te Aho similarly suggest that 'no hapū should be expected to step aside and allow what they know to be a legitimate interest to go to another hapū.'<sup>121</sup> They could not explain, however, why they had failed to take the opportunity to prosecute those claims at the time of the original Muriwhenua inquiry.<sup>122</sup> Their current stance is a precautionary one waiting upon the Te Paparahi o Te Raki (Northland) inquiry.<sup>123</sup>

There will be future opportunity for these claimants to have their grievances with regard to the loss of the Kohumaru blocks (as well as other matters) heard. By our calculation, some 3,277.3 hectares of the Otangaroa Forest is outside the remedies area and will remain for remedy should the claims of these parties be established as well-founded.<sup>124</sup> Nevertheless, the evidence raised by interested

parties to this inquiry regarding the Otangaroa Forest is further reason for the Tribunal to remain cautious in making binding recommendations, particularly given that many of them were not parties to the Te Hiku Forum.

Finally, we return to the contention of Ngāti Kahu that binding recommendations for the resumption of these properties will cause minimal disruption to the other Te Hiku iwi since it will be possible for those iwi to return to the negotiation table and make substitutions, or because Ngāti Kahu may be willing to come to some accommodation in the 90-day period that follows. The other iwi concerned have made it clear to us that substitution is unacceptable to them, and it is difficult, in any event, to see how this could be accomplished without disturbing yet other arrangements. We share their scepticism that accommodation is possible at this point, and, we add, the 90-day period allowed in the Treaty of Waitangi Act, before the Tribunal's resumption recommendations become binding, is for the Crown to negotiate with the Māori party to whom the Tribunal awards the land – not for issues of entitlement to the land to be negotiated among different Māori groups.

### 6.5.3 Owners of properties with section 27B Treaty of Waitangi (State Enterprises) Act memorials

Ngāti Kahu have, through the remedies process, identified a total of 114 privately owned properties with section 27B memorials on the title which they wish to have resumed. They argue that the Tribunal's first concern should be the redress of the Ngāti Kahu claims. The possible impact on other citizens, or the general population, is the responsibility of the Crown. The Tribunal should give little or no weight to the interests of owners of such properties. Counsel submitted:

their lands were purchased in full recognition of the potential for these lands to be resumed and counsel have no doubt that they obtained these lands at a discounted rate because of the existence of those memorials on these lands. In that regard, they have rolled the dice and must now bear the consequences of their decisions. Those decisions were informed and therefore they are responsible for their decisions.<sup>125</sup>

Owners affected would receive compensation immediately and have a choice to repurchase elsewhere, unlike Ngāti Kahu, who have not been afforded a similar opportunity in relation to lands lost as a result of Crown actions or neglect.<sup>126</sup> Also, according to Professor Mutu, Ngāti Kahu 'may consider' retaining present occupiers as tenants on some of the lands in question, thus minimising the immediate impact on individuals. Manuhiri would remain welcome provided they were willing to abide by Ngāti Kahu tikanga.<sup>127</sup>

In our view, it is important that the Tribunal maintain its discretion to order the resumption of section 27B memorial properties even though private interests may be affected; to do otherwise would be to undermine the intent of the legislation, and certainly there should be no blanket exception of such cases. We are not, however, immediately persuaded by the assertion that there is no public interest in this matter nor that its impact will be minimal. There are also peculiar circumstances in this instance – namely, iwi ownership of a number of the properties concerned.

Both Te Aupōuri and Te Rarawa own properties in Kaitaia with section 27B memorials recorded on their titles. In both cases, these properties serve as their headquarters. Both parties expressed considerable dismay – even anger – at the insistence of Ngāti Kahu that these properties be resumed in their favour.

We heard evidence from Waitai Ratima Petera about the importance of Aupōuri House to his iwi. The starting point was that Te Aupōuri, like Ngāti Kahu, Te Rarawa, and Ngāi Takoto, have customary interests in Kaitaia; Kerekere pā was cited as an area of special significance associated with two of their most important tūpuna (Wheru and Te Kaka).

Aupōuri House, originally a Crown property services building, was purchased by Te Aupōuri in the late 1980s. According to Mr Petera, the trust board 'leapt at the opportunity' to acquire a site in Kaitaia when it became available, 'particularly one so close to our ancestor Wheru's pā'.<sup>128</sup> It is a 'focal point' for the iwi, the home of Te Aupōuri Trust Board and Aupōuri Social Services.<sup>129</sup> When faced with cutbacks, financial difficulties, and the

necessity to sell off their assets in Kaitaia, Aupōuri House was the one the Trust Board kept.<sup>130</sup> Since that time, much care and expenditure has been devoted to the building. Repairs and maintenance were needed and though there was a risk of losing the property, 'Aupōuri House' we were told 'was too important to us as an iwi to just leave it'.<sup>131</sup> Mr Petera's evidence was that:

In the case of Aupōuri House, this property is of special significance to Te Aupōuri on a number of different levels. It is the one tangible reflection of our customary interests in Kaitaia, it has been the home for our iwi organisation Aupōuri Māori Trust Board for over 35 years, it was used as a meeting place during the negotiations process, it is the base for our iwi social services and we have plans for its future as a base for educational provision for our people. Aupōuri House is part of our history as an iwi and we intend for it to be part of our future as well.<sup>132</sup>

In his view:

It is not a simple answer to say that Aupōuri Māori Trust Board/Aupōuri Development Company should have known that this could happen because of the memorial on the title to the property. We were Treaty claimants ourselves and we saw those provisions as for our benefit not something that would be used against us. For us it was simply inconceivable that another iwi would use them to make such a direct attack on our interests.<sup>133</sup>

Mr Petera made the further point that Te Aupōuri had refrained from seeking further properties in Kaitaia as part of their settlement because they already held Aupōuri House. They had stood aside in order to 'allow space to the other iwi'.<sup>134</sup>

Te Aupōuri take no comfort in assurances by Ngāti Kahu that an arrangement might be reached at some future date. Their own past concessions to Ngāti Kahu have not been reciprocated and, we were told, a personal approach by the chairperson of Te Rūnanga Nui o Te Aupōuri to the lead negotiator for Ngāti Kahu to 'step away' from Aupōuri House was repulsed.<sup>135</sup> When

questioned by the panel as to whether a lease arrangement would be satisfactory, the answer was an emphatic no.<sup>136</sup> In Mr Petera's view:

It would not be a positive start to the post settlement future for either of our iwi if a property of such significance to Te Aupōuri were to be taken from us and given to Ngāti Kahu through the binding recommendations process. If this were to occur it would cement and entrench any bad feelings between Ngāti Kahu and Te Aupōuri.<sup>137</sup>

Te Rarawa also expressed concern about the possibility of losing their three section 27B memorial properties, though their evidence focused on the effects of the Ngāti Kahu remedies application on the general allocation of commercial redress within Kaitaia, which we discuss below.

There are another 110 section 27B properties in private hands at issue. We have very little information on these because of the rules under which the Tribunal operates; the owners of such properties do not meet the statutory criteria of 'interested parties' and we have not heard evidence or submissions from them. The schedules provided by the Crown show that those properties range in size and location. Some are owned by the successors of former SOEs or the Far North District Council; others by private families and individuals. Some are small strips of land of little worth other than to the owner of the adjacent property; some are sites on which valuable private residences have been built. Their total value has been estimated at \$19.2 million.

The other category of property which Ngāti Kahu seek to have returned to them by means of binding recommendations is that of roads which have been realigned over lands with section 27B memorials on the title. The properties forming part of State Highway 10 have been valued between \$15 and \$64,000 each. There are also 10 road properties owned by the Far North District Council which range in value from \$5 to \$1000.<sup>138</sup> Crown counsel submitted that such properties were of no apparent economic or cultural value to Ngāti Kahu and, requiring maintenance, would likely prove a liability rather than a benefit if vested in them.<sup>139</sup> The Crown, it was suggested,



would be ‘compelled’ to take State Highway 10 properties under the Public Works Act because they form part of an existing roading network.<sup>140</sup> Ngāti Kahu did not lead any evidence on these lands but submitted that the ‘Tribunal must make recommendations in respect of the roading networks that are available to Ngati Kahu in order that satisfactory arrangements can be made in respect of these roads and/or compensation paid for the loss of these lands, once again, by Ngati Kahu.’<sup>141</sup>

#### 6.5.4 Unresolved mandating issues

We heard conflicting evidence on the unresolved mandating issue which concerned, in most part, the return of Rangiputa Station to Te Rūnanga-ā-Iwi o Ngāti Kahu. There are two hapū groups who challenge the mandate of the Rūnanga: Ngāti Tara and Te Pātū ki Peria.

Witnesses speaking in support of the application by Ngāti Kahu argued that the Rūnanga was the proper entity in which any properties that were resumed should be vested. They gave evidence that Ngāti Tara are represented on the Rūnanga and that their marae at Parapara is allocated fisheries funds and, thus, receives the benefit of the asset as part of the iwi as a whole.<sup>142</sup> They suggested that there are only a few dissentients, comprising less than 10 per cent of registered Ngāti Kahu individuals.<sup>143</sup> Tania Thomas, secretary for the Rūnanga, gave evidence that:

- ▶ the Rūnanga has held a mandate to represent the whānau and hapū of Ngāti Kahu in both fisheries and land matters since 1997, although it was formally recognised by the Crown only in 2003;
- ▶ no other entity had undertaken a mandating process in any form that the Crown would recognise;
- ▶ no other entity was representative of the whānau and hapū of Ngāti Kahu; and
- ▶ the Rūnanga is the only entity that has representatives from each marae, that is solvent and that has a constitution which guides its operations and procedures.

In Ms Thomas’s view, the Rūnanga is ‘the only body capable of receiving and administering the redress assets for the benefit of all of the hapū’ and ‘the only Ngāti

Kahu body that has provided any financial benefit to our marae and hapū.’<sup>144</sup> She suggested that individuals were seeking to profit from ‘all the hard work’ of the Rūnanga now that there was an imminent prospect of assets being returned.<sup>145</sup>

Ngāti Tara witnesses challenged that evidence. Raniera Bassett, having described the customary interest of Ngāti Tara in Puheke and adjacent areas, told us: ‘Although Ngāti Tara supported Te Runanga-a-Iwi o Ngati Kahu’s administration of our fisheries settlement in the past, we have not granted the Ngati Tara’s mandate to the Runanga to negotiate the settlement of our historical Treaty claims.’ He outlined alleged shortcomings in the mandating process which he argued was confined to four hui, only the final one of which endorsed the Rūnanga.<sup>146</sup>

Chappy Harrison suggested that representatives from Parapara marae attended Rūnanga discussions only as observers, not as delegates. He also stated that there had been frustration with the Rūnanga’s management and that opposition has been demonstrated in a variety of ways, including the filing by Ngāti Tara of their own application for resumption of Rangiputa Station in their favour. Mr Harrison reiterated the opposition of Ngāti Tara, and the Parapara marae committee, in particular, to the mandate secured by the Rūnanga. He opposed this Tribunal making a binding recommendation for the transfer of Rangiputa Station and other resumable properties to the Rūnanga.<sup>147</sup>

Some members of Te Paatu expressed similar concerns (though others clearly supported the Rūnanga’s mandate).

Tina Latimer presented evidence on behalf of herself, Sir Graham Latimer, and Te Paatu descendants of Paerata, Hukatere, Aperahama, and Paora, opposing the mandate of the Rūnanga, and the possible resumption in its favour of any land within the Te Paatu core area of interest. This area includes ‘Puheke (or Rangiputa), Mangatete, Kaitaia to Victoria Valley and Takahue (Okakewai).’<sup>148</sup>

Te Pātū ki Peria similarly questioned how the Rūnanga had secured its mandate and whether it represents them in the matter of land claims and the possible return of assets. Pereniki Tauhara asked that land in which Te Pātū ki Peria



hold an interest be returned to that hapū.<sup>149</sup> Mr Tauhara listed a number of places within the remedies area in which Te Pātū have interests: Oruru, Puheke, Kohumaru, Te Taunoke, Waimutu, Kaiaka, Maunga Taniwha and Ratea Forest, Rangiputa, Aputurewa, Paranui, Oruru River and waterways, and the Ngāti Kahu gazetted rohe.<sup>150</sup> The core lands of Te Pātū ki Peria were in the Oruru valley where there is little land left that is resumable, but their counsel pointed out that they do have interests elsewhere. Of the blocks listed by Tauhara, there are resumable properties at Puheke and Kohumaru (namely Rangiputa and part Kohumaru and Takakuri stations).<sup>151</sup>

Mr Tauhara gave karakia and whakapapa and stated:

We of Te Pātū ki Peria from our base at Peria Marae and from our hapū members based in other takiwā, . . . have the mandate to represent ourselves and our own hapū and . . . we oppose the Rūnanga and the Crown actions in respect to us as a hapū.<sup>152</sup>

He described significant events – the signing of He Whakaputanga and Te Tiriti, contesting of rights at Oruru and Mangonui, and more recent protest at the attempted sale of Rangiputa – in which Te Pātū ki Peria had been involved.<sup>153</sup> Mr Tauhara's evidence was that Te Pātū ki Peria had been ignored by the Crown:

the mana of the whole thing must remain with the Hapū. Yet our story was never told. It is important that our story is told, as otherwise the implications for the future will be that people will believe things that are untrue.<sup>154</sup>

Both Ms Thomas and counsel for Ngāti Kahu have suggested that opposition to the Rūnanga from within Ngāti Kahu involves a few disaffected individuals and whānau.<sup>155</sup> It is clear to us, however, that there is some weight of support amongst Ngāti Tara for the position taken by Mr Bassett and Mr Harrison. In particular, we were supplied with a database of Ngāti Tara persons over the age of 18 who had registered their support for the Ngāti Tara remedies application. As of 31 August 2012, some 294 registrations

had been recorded.<sup>156</sup> Similarly, Mr Tauhara supplied evidence of the support he had received from the Kauhanga Marae Committee and Te Pātū ki Peria for his claim (Wai 1842) and as the representative for Te Pātū ki Peria.<sup>157</sup>

There are clearly outstanding mandate issues among Ngāti Tara, Te Paatu, and the Ngāti Kahu Rūnanga. This is not unusual, and it would not be reasonable to expect 100 per cent support. There will always be individuals, whānau, particular hapū or marae that will choose to go their own way at certain times. There will be concern that identities are being submerged or forgotten. There will be dispute over tactics employed in the conduct of negotiations on behalf of the iwi collective. A key commitment for the Rūnanga is that assets to be returned by the Crown should be shared for the benefit of all their constituent hapū without reference to where those assets are located. This can cause difficulties, too, though there was clearly widespread support for this exercise of tikanga.

It is also clear that Te Rūnanga-ā-Iwi o Ngāti Kahu enjoys extensive support. Of the 15 marae that comprise Ngāti Kahu, just two oppose the Rūnanga. Yet the evidence of Ngāti Tara and Te Pātū ki Peria witnesses indicated a depth of feeling and opposition to the stance taken by the Rūnanga and support for their right to be treated as autonomous hapū that we cannot simply ignore.

While, on the evidence, we are not completely certain of the extent and history of the opposition to the mandate of the Ngāti Kahu Rūnanga, the capacity to measure this is one of the advantages of a negotiated settlement process over resumption as a result of this process. Had the settlement negotiations continued, there would have been a vote by all eligible people including Ngāti Tara and Te Paatu hapū members to ratify the offer and to approve a post-settlement governance entity to receive the return of assets. There would have been an opportunity for the concerns of the people to be heard and addressed. That opportunity does not exist, formally, if remedy is by way of resumption. Yet the Tribunal must be satisfied that all will fairly participate in the benefits of any return of land it obliges the Crown to make as a remedy for well-founded claims of the iwi.

**6.5.5 Redress for all Te Hiku iwi**

It is the view of Ngāti Kahu that the claim before the Tribunal is theirs and should be judged on its own merits. They see their application for remedy as having a minimal impact on the other Te Hiku iwi, whose objections they regard as self-interested and unnecessary. Those iwi object that their interests will be directly and significantly prejudiced if properties included in their settlements are resumed for Ngāti Kahu. They see the actions of Ngāti Kahu as destructive and irresponsible, as contrary to Māori values of reciprocity, and as further undermining the collective strength of Te Hiku.

The evidence of Paul White for Te Rarawa, Rangitane Marsden for Ngāi Takoto, and Hugh Karena for Te Aupōuri was that the Ngāti Kahu application, if supported by the Tribunal, would have a detrimental effect on their own attempts to effect settlements with the Crown. For example, Mr Karena, a mandated negotiator for Te Aupōuri, expressed concern about the durability of their hard-won settlement if relativity was disturbed. He told us that:

the people are aware of what we have received through negotiations, what the other iwi have been offered and also what Te Aupōuri has given up to make space or accommodate the needs of other iwi . . .<sup>158</sup>

He gave evidence that:

During our hui with our people we have been challenged on the concessions that we have made to keep Ngāti Kahu at the negotiations table and we have explained that all iwi have given things up so that we could all reach settlement. However, with Ngāti Kahu leaving the collective negotiations and now returning to the Waitangi Tribunal to seek binding recommendations, this explanation does not provide a justification for what we had to give up to Ngāti Kahu.<sup>159</sup>

Mr Karena predicted that, if the remedies hearing should result in Ngāti Kahu receiving an overall package that was

inconsistent with the agreed relativities set out in the Te Hiku AIP, or what Te Aupōuri was to receive, the people would refuse to support the settlement legislation, and they would have no alternative but 'to return to the Crown and demand a larger redress package commensurate with that achieved by Ngati Kahu.' Then, if the Crown refused to re-enter negotiations, Te Aupōuri would be placed in a 'completely untenable position.' The overall result 'would blow open the settlement process in the far north.'<sup>160</sup>

Te Rarawa also believe that the resumption application 'undermines the Te Rarawa Deed and the inevitable need to share properties in this area.'<sup>161</sup> According to Haami Piripi, 'the necessity for a synchronised approach by individual Iwi has been paramount in order to ensure that none of the Iwi is prejudiced by the actions of the other.'<sup>162</sup> Collaboration had been integral to the operation of Te Hiku Forum, but Ngāti Kahu had abandoned it. He argued that the Tribunal would be causing injury to the other iwi who had remained in the Forum if we acceded to the request by Ngāti Kahu for resumption and their relief package:

They did not consult, nor it seems, consider us in their current application except as imposters and exposing their real intentions to empire build at the expense of the resident Hapu and Iwi. It would be an absolute irony and tragedy if the Tribunal were to give life to the fallacy and create a fresh injustice for our Iwi to deal with.<sup>163</sup>

These sentiments were echoed by Mr Marsden:

The implications for NgaiTakoto should the Ngati Kahu Runanga remedies application be successful in resumption of properties or lands within our NgaiTakoto rohe, would constitute a further breach of our treaty relationship with the Crown.

The result would be to 're-instate a historical grievance that we believe we had resolved in our negotiations with the Crown and other Te Hiku Iwi after 26 years.'<sup>164</sup>

### 6.6 TRIBUNAL CONCLUSION ON BINDING RECOMMENDATIONS

In 1997, the Tribunal found that Ngāti Kahu, along with the other Te Hiku iwi, have suffered prejudice from pre-1865 land transactions that were in breach of the principles of the Treaty. There can be no doubt that Ngāti Kahu have suffered devastating social and economic consequences and are deserving of redress for those breaches. The Crown has conceded this to be the case.<sup>165</sup> In the 1997 report, the Tribunal said that ‘relief must be given sooner rather than later’ and that ‘[e]arly relief is as necessary as it is appropriate.’<sup>166</sup> A further 15 years has elapsed since then. If relief was appropriate in 1997, that surely remains the case today; even more so. Ngāti Kahu are deserving of redress, as indeed are all Te Hiku iwi.

There are certain things that must be done to remove prejudice by providing for the restoration of the claimants and their Treaty relationship with the Crown. There must be whenua returned for tangata whenua; this is incontrovertible. There must be cash as well, especially, say Ngāti Kahu, since none of that land will be sold to raise capital. Again we agree. Land and cash are the very things – in fact the only things – that binding recommendations can secure for Ngāti Kahu. However, the commercial value of the resumable land and the cash accompanying resumed Crown forest licensed land is by no means the sole criterion for assessing the sufficiency of redress for Treaty grievances. No less important to the restorative purpose of redress are the components that are solely within the Crown’s authority to make available, including the return of wāhi tapu and other lands of high cultural significance, the creation of opportunities for increased recognition of a Māori group’s authority and responsibilities, and an apology from the Crown for its breaches of Treaty principles that have prejudiced them.

Ngāti Kahu emphasised their own vision of hapū restoration, and made plain that the land and money returned as a result of binding recommendations would allow a step to be made in that direction. But it would be a small step, because the total value of the properties Ngāti Kahu

seek to have resumed, including the maximum cash component that could accompany the Crown forest lands, is just a fraction of the total redress they believe they should receive for the prejudice they have suffered as a result of breaches of the Treaty before 1865, let alone their claims that remain undetermined. And because Ngāti Kahu believe there is little likelihood of their obtaining further redress from the Crown through negotiation, they are adamant that all possible resumable land in the remedies claim area should be returned to them, no matter the state of its title, whether it is economic or not, whether it serves any real purpose, and irrespective of any other interests. These include the interests of their whanaunga, who accompanied them in bringing the claim forward in the first place and who have stood beside them in the recovery of their fisheries, and the protection of their rights in the seabed and the foreshore and in Te Hiku lands, notably at Rangiputa (which other Te Hiku iwi support going back to Ngāti Kahu).

Will the binding recommendations sought by Ngāti Kahu assist in restoring their relationship with the Crown? Ngāti Kahu admit that they will not. This is because Ngāti Kahu regard the redress they would obtain from binding recommendations as being independent of the Treaty settlements regime imposed by the Crown. What the Crown is proposing in the way of settlement, they argue, should not influence the exercise of the Tribunal’s jurisdiction. Thus Ngāti Kahu would not accept that any redress obtained through resumption constituted a partial, let alone a full, settlement of their Treaty grievances. Their view is linked to their expectations about the monetary value and comprehensiveness of the redress that is due to them as compensation for their pre-1865 well-founded Treaty claims – and for their other claims yet to be determined.

As we have said, we do not agree that the Tribunal’s power to make binding recommendations exists for a purpose removed from that of restoring three vital and inter-connected elements of New Zealand’s constitutional and social fabric: the Māori group in whose favour the

recommendations are made; the honour of the Crown; and the relationship between the Treaty partners. The restorative purpose of Treaty redress means that it is as concerned with the future as it is with the past even though the claims are historical in nature. The Taranaki Tribunal explained:

the settlement of historical claims is not to pay off the past, even were that possible, but to take those steps necessary to remove outstanding prejudice and prevent similar prejudice from arising; for the only practical settlement between peoples is one that achieves a reconciliation in fact.<sup>167</sup>

Thus, the fundamental nature of the Treaty relationship requires that any provision of redress for Treaty breach (whether by Treaty settlement or Tribunal binding recommendations) must be for the purpose and with the intent of restoring not only the well-being of the group that has been prejudiced but also its relationship with the Crown. Neither of those things is possible if one or other party to the redress arrangement refuses to accept those conditions. The result would be that Treaty grievances would be perpetuated and, with them, the dysfunctional relationship between the Treaty partners.

We have already noted that most Tribunals that have considered the Treaty principle of redress have acknowledged there are limits on the Crown's capacity to compensate Māori for the prejudice they have suffered and that redress must be affordable and practicable.<sup>168</sup> The *Report on the Orakei Claim* is an apparent exception to the main Tribunal discourse on this question, and was cited by the claimants as to be preferred to the more usual stance.<sup>169</sup> The report argued that there was no statutory requirement and no need for its recommendations as to compensation to be 'scaled down to what is "practical"'. We observe, however, that the Orakei Tribunal still thought it important that other innocent parties should not be injured by the relief that was recommended and did not contemplate a 'damages' approach whereby claimants are compensated for all losses sustained.<sup>170</sup>

A corollary of the position taken by Ngāti Kahu, that redress obtained by way of binding recommendations is

not part of a Treaty settlement, is that there is no basis for comparing it with, or considering it in the light of, what other iwi have agreed to or might receive in Treaty settlements. Our view of the restorative purpose of any redress for Treaty grievances, and of the Crown's obligations when providing redress, means that we do not agree.

The fact that Ngāti Kahu insist on their exclusive entitlement to every resumable property in the remedies claim area, yet other iwi also can claim interests in many of them, and some of the lands have been promised to other iwi in their Treaty settlements, cannot be ignored in our consideration of binding recommendations. While the resumption of land in favour of one group should not be automatically precluded by the fact that others also have interests in it, the Treaty principle of redress requires us to consider whether resumption in favour of Ngāti Kahu might preclude the Crown from meeting its Treaty redress obligations to the other Te Hiku iwi. The circumstances of this case give rise to real doubts about the Crown's capacity, if resumption were to occur as Ngāti Kahu seek, to meet its obligations to treat like as like and not create a fresh grievance for one group by remedying the grievance of another.

We think that the concept of equal treatment is particularly germane to this case since the claim against the Crown was initially brought collectively. The Crown's responsibilities are to all five Te Hiku iwi, though Ngāti Kahu are the applicants for remedy in this instance. The findings of the Muriwhenua Tribunal were intended to apply for all. Ngāti Kahu did not stand alone and cannot sever their complex and enduring ties to their whanaunga, the prejudice suffered by Ngāti Kahu cannot be said to be demonstrably greater than that suffered by their whanaunga; nor can the redress required for restoration be demonstrated to be any greater than that of their neighbours. These considerations make it difficult to justify the use of binding recommendations, especially when to use that power will have a direct, and almost certainly negative, impact on the other iwi concerned.

While Ngāti Kahu argued that they would lose all prospect of the resumable properties being returned if the binding recommendations they seek were not made in

their favour, other iwi pointed out that they would suffer the same result if the recommendations were made. Either the properties sought were owned by them, though with section 27B memorials on the titles, or they were part of their individual settlement packages – settlements that had been reached only through collaboration and much compromise in order to sort out overlapping interests and modern-day commercial realities.

Those decisions were the result of the exercise of collective rangatiratanga. Even though Te Rūnanga o Muriwhenua had split apart, iwi leaders recognised that the only way forward to achieving their individual settlements was to come together and sort out complex issues of mana whenua and a distribution of land and assets, across the five iwi, that was fair. Their decision to take this collaborative approach and of the Crown to support that process and abide by its outcome was pragmatic, but it was also in accordance with the principle of redress and its fundamental tenets of treating like groups in a like manner and not creating fresh grievances for others. This approach, as Mr Busby noted, required some giving way among Te Hiku iwi, ‘establishing pono and tika then choosing to tuku some things so that there can be better balance and equity.’<sup>171</sup> It worked to a large extent regarding the initial allocation of forest rentals and farm lands but failed, ultimately, in Ngāti Kahu eyes. Their negotiators were told to do better and they went back to their stated position of 2000, abandoning their efforts towards achieving a full Treaty settlement, and reviving instead their aspirations for a considerably larger (partial) settlement in the short term followed by a staged approach towards much fuller redress in the future. They did not, however, make plain to the other Te Hiku iwi, or to the Crown, that they had abandoned the basis on which all six parties had signed the 2010 AIP.

The hectareage of the lands sought by Ngāti Kahu by way of binding recommendations in the remedies area is not unreasonably in excess of what the Crown is prepared to offer them by way of Treaty settlement. But the issue cannot be assessed in terms of hectareage and quantum alone. Since they seek all resumable lands in the remedies claim area – regardless of their current use, condition, utility,

ownership, or the fact that some of those properties have been promised to other iwi in their Treaty settlements – there is considerably more contention surrounding the idea of returning them to Ngāti Kahu exclusively than there is about the lands the Crown is prepared to offer. Those lands do not involve private interests, or public roads, and they reflect the collective deliberations of Te Hiku iwi in which Ngāti Kahu fully participated before they withdrew by choice.

While Ngāti Kahu have the right to conduct their own settlement negotiations as they think fit, they do not have the right to do so at the expense of the collective efforts of Te Hiku iwi to receive their own redress. In joining the Te Hiku Forum, they had committed to a process that would ‘build a unity of purpose and solutions that are workable and acceptable to all iwi’. Although they could walk away from the negotiating table at any point, they could not do so to the detriment of the interests of other iwi and their Treaty settlements. Abandoning this process and adopting the path that they have – resulting ultimately in the current application to the Tribunal – is counter to a commitment they made to the other iwi. These actions do not reflect well on Ngāti Kahu, especially the abandonment of their participation in the collective, on which the future of each iwi depended, and their revival of their own vision of a Treaty settlement framework which the Crown would never accept (unless it was prepared to restart the Treaty settlement process on principles radically different to those employed thus far). Fundamental changes to New Zealand’s constitutional arrangements would be required and the costs of settlement would be prohibitive and politically unacceptable. Inevitably, previous Treaty settlements throughout New Zealand would be undermined.

Thus, it is not just the Treaty principle of redress that guides us in arriving at the conclusion that, in remedying the Treaty grievance of one group, the Crown should not create a fresh grievance for another. It is also the collective negotiating platform that Ngāti Kahu agreed to in 2008, on the outcomes of which – namely Treaty settlements, for a range of parties – so much now depends. The approach by Ngāti Kahu, expressed in the AIPs in 2008 and 2010, suggested that they accepted the Crown’s policy



framework. The Crown relied on that, as did the other Te Hiku iwi seeking to make progress towards their own settlements. It seems now that Ngāti Kahu seek to have returned to them, exclusively, lands which are shared (as they acknowledge) by means of the Tribunal's binding powers, for the apparent purpose of avoiding a Treaty settlement within a framework that they say they will not accept. To endorse their application would be to unfairly privilege their position. As we have already indicated, that position is not reasonable.

Since the time Ngāti Kahu left the negotiating table, there has emerged a quality of 'do or be damned' to their actions; an insistence that it is not for the 'convicted criminal' to 'decide the remedies provided to her victims' as Professor Mutu put it in answer to a question in cross-examination.<sup>172</sup> This was reflected in the balance of Ngāti Kahu evidence. We heard a good deal about the loss suffered and how that should be calculated (see discussion in chapter 3) and rather less analysis of what Ngāti Kahu need as an economic base in order to put them in a sound position from which they can equally share in the benefits of New Zealand society to the extent that they wish. (It is, of course, consistent with position taken by Ngāti Kahu that restoration is not to be defined as the Crown does for the purposes of Treaty settlement. Their view of restoration is that it requires many more resources than have ever been transferred in a Treaty settlement. Thus, they did not consider what lesser amounts of land, money, and other resources might, on the Crown's definition, 'restore' them.)

Counsel for Ngāti Kahu quoted the *Muriwhenua Land Report* to the effect that 'recoverable land within the Central District of Ngāti Kahu appears to be far less than that which would be required, having regard to the losses in that area.'<sup>173</sup> This is cited as justification for their request that all resumable Crown land in the claims area be returned to them now. There are of course more resumable lands in the Eastern Districts to which Ngāti Kahu are entitled and which, indeed, form part of the Crown's offer as well as being subject to our binding powers of recommendation.

We note also that considerable water has flowed under the Treaty-settlement bridge since 1997 when the Tribunal expressed concern about the uneven spread of Crown assets that could be returned through this process. Notably, the Crown has since protected Rangiputa Station from sale and made it available for settlement purposes. In addition, there is potential for Department of Conservation land to be returned as cultural redress. This was not the case in 1997 but is now standard across settlements. Such redress, however, is not available through our binding recommendatory powers.

Finally, we must consider whether we need to ensure that the Crown reserves capacity for redress of post-1865 well-founded claims. This would mean that we cannot recommend the resumption of all available properties in the remedies area now, even if we were inclined to do so. (We return to this matter in chapter 7.)

Taking into account all the circumstances of the present case, it is our decision that binding recommendations for the well-founded claims of Ngāti Kahu are not warranted. One reason is that we are satisfied that, in the context of a settlement framework that has changed markedly over the past decade, fair redress for those claims can be secured by other means. We elaborate this point in the following chapter. Our further reasons relate to:

- ▶ the doubtful benefit to Ngāti Kahu, when weighed against the disadvantages that would surely flow, of section 27B memorialised properties being resumed in their favour;
- ▶ the absence of a restorative justification for the resumption of roads; and
- ▶ the complexity of mana whenua interests in the resumable properties that are available for use in Treaty settlements, which militate against their resumption, exclusively, to Ngāti Kahu.

We elaborate those points in turn.

Though the book value of the privately owned section 27B memorialised properties which the Tribunal could order the Crown to resume is some \$19.1 million, we agree with counsel for Te Aupōuri that their resumption in favour of Ngāti Kahu would, at best, achieve only minimal



benefit while causing maximum disruption to the relationships that are essential to the restoration of Ngāti Kahu and all Te Hiku iwi. Ngāti Kahu brought little evidence of their specific relationships with most of the section 27B lands, and no real proposal as to how the properties would assist in their tribal recovery. Yet resumption of those lands would, we consider, deliver the final blow to the prospects of repairing relations with their whanaunga and would cause a serious deterioration in their already troubled Treaty relationship with the Crown. A likely consequence would be that lands of undoubted cultural and economic significance to Ngāti Kahu would no longer be available to them. In addition, it seems probable that resumption would alienate many members of the local community who would be unlikely to be persuaded of the grounds or the justice of such a measure when redress for the well-founded claims of Ngāti Kahu can be provided by other means.

Nor do we consider ourselves to be justified in using our powers of binding recommendation for return of road properties in this instance. There is no reason why such properties should not vest in Māori entities just as they can vest in local authorities. The evidence of the Crown that public safety concerns would require the land to be taken back under public works legislation was unconvincing and as Ngāti Kahu counsel pointed out: 'those are all matters which [would] need to be addressed by way of a negotiation post the interim recommendations being made.'<sup>174</sup> But we do not accept the main submission of Ngāti Kahu that binding recommendations are required on all available lands – including all available 'roading networks' – so that 'satisfactory arrangements can be made in respect of these roads and/or compensation paid for the loss of these lands, once again, by Ngāti Kahu.'<sup>175</sup> What would be the point of Ngāti Kahu owning these roads other than the underlying ideological one, and that they are available? We do not see their return to Te Rūnanga-ā-Iwi o Ngāti Kahu as restorative in terms of economic benefit since as Crown counsel pointed out, they would then have the burden of maintenance under the Local Government Act 1974.<sup>176</sup> Nor would it be restorative

of the Treaty relationship which can be achieved only through carefully negotiated, mutually agreed arrangements addressing cultural and economic needs. Similarly, restoring a group's participation in local government and administration requires something quite different from the ownership of bits and pieces of roading property.

Ngāti Kahu have not been able to show that they have interests in the disputed resumable properties that, on the balance of probabilities, legitimately surpass the interests of all other groups, nor that there is a compelling basis for recognising their claimed interests to the exclusion of all others. Indeed, the reasons are more compelling for the rejection of their claim. They have strong rights at Kaitaia – that is clear – but this area has always been shared and should continue to be so in the future. Ensuring that the relevant Te Hiku iwi (including Ngāti Kahu) retained or had certain Kaitaia properties returned to them was an important element in negotiations both between the Crown and individual iwi and within the Te Hiku Forum. From the perspective of the other iwi involved, they have refrained from fully asserting their own rights in the area so as to provide an equitable and fair result and they have done their best to ensure that Ngāti Kahu interests, as they understand them, have been protected.<sup>177</sup> We accept this.

In the case of Tangonge and Takahue, we do not consider the interests that could be demonstrated by Te Paatu and Ngāti Kahu to be so clear and so extensive as to outweigh those of all other groups or their case to be so incontrovertible that it would justify interference in the existing arrangements. Though they may well have interests in customary terms at Tangonge, they cannot be said to surpass that of Te Rarawa and Ngāi Takoto. Also, Ngāti Kahu had fully participated in, and accepted the arrangements negotiated among the five Te Hiku iwi for the division of the available farm lands where, arguably, they got more than their fair share in terms of the hectareage to be returned per capita of iwi population. At Takahue, there is a history of dispute that still lingers, as well as the complication of a failed collective negotiation for the overall allocation of forest assets. There, the mismatching of mana whenua core interests and available Crown forest lands

was supposed to be addressed by the equal split in accumulated rentals and an adjudication process – but Ngāti Kahu refused to accept the process. Again, in our opinion, Ngāti Kahu have failed to establish that they have interests that outweigh those of Te Rarawa or to demonstrate compelling reasons why they must be included in the ownership of the blocks in question. Not only do they lie to the south-west of the accepted sphere of Te Paatu authority, but their allocation to Te Rarawa must be seen within the wider context of the arrangements being worked out collectively. Even when the Crown intervened, it cannot be said that Ngāti Kahu was ignored in terms of how the forest allocation was made, and Te Paatu and Ngāti Kahu could have more actively participated in the process of consultation between the Crown and the other Te Hiku iwi if they had wished. In sum, we think that the ‘injustice’ done to Ngāti Kahu at Takahue is more apparent than real when viewed within the wider picture of allocations and adjustments to ensure a proper spread of settlement assets taking into account customary interests, current population, and future commercial requirements. To be weighed against this is a real risk of doing harm not just to Te Rarawa but to all the other Te Hiku iwi.

At Otangaroa, we accept that Ngāti Kahu have demonstrated the predominant interest but we decline to make binding recommendations for other reasons – namely, outstanding mandating issues and our preference that all Ngāti Kahu should have the opportunity to decide on and endorse the entity in which these lands should vest. However, we note here that that wider picture of how Crown forest lands are divided assumes that Ngāti Kahu will ultimately receive assets in the Otangaroa Forest. We return to this question later.

We were left in little doubt that, if the binding recommendations sought by Ngāti Kahu were made, there would be a flow-on effect in terms of the settlement offers to the other Te Hiku iwi. If properties included in the settlement packages of other iwi are resumed in favour of Ngāti Kahu instead, it is inevitable that new negotiations will have to take place at more expense, more delay, more frustration, and more uncertainty for iwi wishing to move from ‘grievance mode’ and get on with the future task of

hapū restoration. It seems to us that the Te Rarawa, Te Aupōuri, and Ngāi Takoto witnesses are right. There will be a destabilising effect if resumable properties earmarked for other iwi are removed from their negotiated settlements. Though we may have concerns about aspects of the allocation of key Crown holdings, we are also alive to the possibility of a chain effect. If we should, for example, make binding recommendations that a portion of Takahue Forest should go to Ngāti Kahu, will that mean that the division of Te Aupōuri Forest has to be renegotiated? Will there have to be a reallocation of farm properties to ensure that nobody is disadvantaged? It is probable. At the same time, it is impossible not to be moved by Haami Piripi’s impassioned plea that: ‘Delays and threats to the Deed have a direct impact upon the operational activities and priorities of our iwi organisation and therefore on the wellbeing of our people.’<sup>178</sup> Or by Mr Karea’s anxiety that Te Aupōuri plans for the future were being put at risk by the frustration of the exercise of their rangatiratanga:

It has now taken us more than twenty years since Muriwhenua tribunal activity started to reach this point. To delay now means a halt to the progress Te Aupōuri has made to regain control of its own economic future and destiny as well as squandering or exhausting Te Aupōuri negotiation efforts to date. This potential outcome also runs contrary to the choice that voting Te Aupōuri iwi beneficiaries have made to settle our treaty claims with the Crown at this point in time, for this redress package and to move forward to create our own future.<sup>179</sup>

Or by the fears of Rangitane Marsden that a future generation would be put at risk by the possible loss of their opportunity to receive a Treaty settlement.<sup>180</sup>

The inevitable consequence of that situation would be the further straining of relationships among the Te Hiku iwi. That, in turn, would prejudice the exercise of the collective rangatiratanga in the affairs of the region, which is a necessary element in the restoration of each and all of the five iwi.

We noted earlier the submission of the Crown, and some Te Hiku iwi, that the ends for which Ngāti Kahu

seek to invoke the Tribunal's power to recommend resumption are not consistent with the likely rationale for the power. Conferred as the direct result of the Court of Appeal decision in the *Lands* case and the agreement then reached between the Crown and Māori, the purpose of the Tribunal's power in relation to some land was to safeguard the position of Māori Treaty claimants and future claimants by ensuring that the Crown retained the capacity to remedy the prejudice suffered by them as the result of breaches of Treaty principle. The Tribunal's power in relation to Crown forest land was explained by the Supreme Court to be that it:

gave greater protection to those who established their claims were well-founded. Rather than being dependent on a favourable response from the government to a recommendation of the Tribunal, claimants could seek recommendations from the Tribunal for a remedy which would become binding on the Crown if no other resolution of the claim was agreed.<sup>181</sup>

We consider it is implicit in the notion that the Tribunal's resumptive power provides additional protection to claimants, that the power should be used only when there is no other means of securing the redress that the claimants should receive. Even if that were not so, the various uncertainties and difficulties that would result from our exercise of the resumptive power (and which have been outlined in our discussion to this point), have led us to consider whether there is an alternative way, that does not involve binding recommendations, for Ngāti Kahu to obtain the redress to which they are entitled for their well-founded Treaty claims.

Inevitably, this has led us to consider the redress that the Crown is prepared to provide to Ngāti Kahu. This is the subject of our discussion in the next chapter, where we conclude that reasonable redress for the well-founded (pre-1865) Treaty claims of Ngāti Kāhu would bear little resemblance to what Ngāti Kahu consider they should receive and would be much more closely aligned with what the Crown is prepared to offer as full settlement of all their Treaty claims. The Crown has clearly expressed itself as ready to provide that redress to Ngāti Kahu in a

Treaty settlement. Given that commitment we are satisfied that reasonable redress for the well-founded (pre-1865) claims of Ngāti Kahu is achievable by means other than binding recommendations.

## 6.7 SOME INTERESTED PARTIES ALSO SEEK BINDING RECOMMENDATIONS

The claimants represented by Sir Graham Latimer and Tina Latimer opposed any binding recommendations in favour of Ngāti Kahu, but submitted that, if any such recommendations were made, then Te Paatu 'as a distinct and autonomous hapu should receive the benefit of those recommendations.<sup>182</sup> Te Pātū ki Peria adopted a similar position. They submitted that, if the Tribunal were to make any binding resumption recommendations, then the beneficiaries should include a coalition of Te Pātū claimant groups.<sup>183</sup>

Ngāti Tara have consistently demonstrated their opposition to the Ngāti Kahu resumption application. They have particular concerns about the mandate Te Rūnanga-ā-Iwi o Ngāti Kahu has and that their mana whenua interests in various properties, particularly Rangiputa Station, have been overlooked. During the closing submissions phase of the remedies inquiry, Ngāti Tara filed an application under section 8A of the Treaty of Waitangi Act 1975 seeking resumption recommendations in relation to a number of properties, including Rangiputa Station.<sup>184</sup>

In their closing submissions, Ngāti Tara argued that the Tribunal should defer making any interim and/or final binding recommendations until we 'had the opportunity to properly dispose of Ngāti Tara's Application for the Partial Resumption of Rangiputa Station and other resumable properties.<sup>185</sup>

In a later memorandum, counsel for Ngāti Tara submitted that while his clients had participated in the Ngāti Kahu hearings as an interested party, that participation was focussed on responding to the Ngāti Kahu application rather than prosecuting their own application.<sup>186</sup> However, during a subsequent judicial conference on 30 November 2012, counsel for Ngāti Tara clarified that no further separate hearing time was sought by his clients. Apart from

asking for the opportunity to file some further evidence, which was granted, counsel confirmed that we could determine the Ngāti Kahu application based on the material and submissions before us. The application for resumption recommendations in favour of Ngāti Tara is opposed by the Crown, Ngāti Kahu, and Te Aupōuri.<sup>187</sup>

### 6.7.1 Jurisdiction

We return briefly to the issue of jurisdiction. Prior to any resumption recommendations being made, the Tribunal has to be satisfied that a claim is well-founded and that any action to be taken under section 6(3) of the Treaty of Waitangi Act 1975 to compensate or remove prejudice should include the return to Māori ownership of the land or part of it.<sup>188</sup>

If we make a resumption recommendation we then need to:

identify the Maori or group of Maori to whom that land or part of that land or that interest in land is to be returned<sup>189</sup>

As the Supreme Court said in the *Haronga* decision:

The language of s 8HB(1)(a) ('shall identify') highlights that it is the obligation of the Tribunal to decide between competing claims once it has been determined that the claim is 'well-founded' and that the action to be taken to compensate for or remove the prejudice 'should include the return to Māori ownership' of the land or part of it.<sup>190</sup>

And:

If the Tribunal is of the view that the land should be returned, it has power under s 8HB to arrive at the outcome it thinks right. It may return part only of the land or specify the Māori or group of Māori to whom the 1961 lands or the balance of the Mangatu forest should be returned.<sup>191</sup>

In his dissenting opinion, Justice Young said:

Once the s 8HB(1) process gets under way, the legislature provides for the Tribunal to be the initiating party. As I have

already commented, the compulsory recommendation process is not dependent upon a claimant having sought such a recommendation. The section contemplates that the Tribunal will identify the Maori or group of Maori to whom land ought to be returned (rather than a process of self-identification by claimants) and those that are identified need not have been claimants.<sup>192</sup>

The words of sections 8A(2)(a)(ii) and 8HB(1)(a)(ii) allow for the possibility that the Tribunal will decide that land is returned to a Māori or group of Māori who need not previously have been claimants and/or whose own claims have not previously been determined to be well-founded.

### 6.7.2 Well-founded claims

Ngāti Kahu oppose the Ngāti Tara application for remedies. They submitted that Ngāti Tara could not point to any Tribunal finding that the claims of Ngāti Tara were well-founded.<sup>193</sup>

Ngāti Tara respond by pointing to our previous decision that Ngāti Kahu had well-founded claims on which to base a remedies application, they being elements of Wai 17 and Wai 22.<sup>194</sup> Ngāti Tara emphasised that they are a hapū of Ngāti Kahu. As a constituent hapū of Ngāti Kahu they argued that they are entitled to rely upon our previous decision and thus they assert that they 'have well-founded claims for the purpose of the resumption provision'.<sup>195</sup> Ngāti Tara submitted that they are not required to demonstrate that they have a well-founded claim independent of the Ngāti Kahu well-founded claims. All that is required is the existence of a well-founded claim.<sup>196</sup>

Mr Harrison filed the Wai 2000 claim for and on behalf of Ngāti Tara with the Waitangi Tribunal in August 2008.<sup>197</sup> The most recent version of that claim is the third amended statement of claim dated 25 January 2012.<sup>198</sup> That claim pleads a number of causes of action including allegations relating to the individualisation of title and Native title investigations, the loss and desecration of wāhi tapu, and environmental degradation. In the short amount of time allocated to them in the remedies inquiry, Ngāti Tara were able to convey to us their frustration with the Ngāti Kahu tribal leadership, particularly with the manner

in which Ngāti Kahu claims were being prosecuted and negotiated. They were also able to outline for us their mana whenua interests in a number of areas including Rangiputa Station. Recently they also filed evidence setting out how the pre-1865 breaches of the Treaty by the Crown have prejudiced them.<sup>199</sup>

Having said that, we are not in a position to determine whether or not their claims are well-founded. Much of the Ngāti Tara evidence was pitched at outlining their concerns with their iwi leadership and responding to the Ngāti Kahu application. It is obvious to us that the majority of the Ngāti Tara claims have yet to be fully heard and properly inquired into by the Tribunal. We consider we would be doing Ngāti Tara a disservice if we attempted to determine, in a piecemeal fashion, whether parts only of their claims were well-founded. The short point is that the Tribunal has yet to find that the Wai 2000 claim is well-founded.

Likewise with the claims represented by Sir Graham Latimer (Wai 1359) and Te Pātū ki Peria (Wai 1842). Those claims were filed after the release of the *Muriwhenua Land Report*. Similar to Ngāti Tara, they were also able to convey to us the essence of their concerns with the way in which Te Rūnanga-ā-Iwi o Ngāti Kahu has prosecuted the negotiation of the iwi claims. However, we are simply not in a position, at this stage, to make findings whether or not their claims are well-founded.

The fact that the Tribunal has yet to determine whether the Wai 1359, Wai 1842, and Wai 2000 claims are well-founded is not fatal. We agree with counsel for Ngāti Tara that all that is initially required is the existence of a well-founded claim. We have previously accepted that elements of Wai 17 and Wai 22 are well-founded. In theory at least, if we decided to make resumption recommendations we would need to consider whether Ngāti Tara, Te Paatu, and Te Pātū ki Peria are any of the groups to whom land should be returned.

However, we do not have to decide among any competing groups unless we have first decided to make a recommendation which includes the return to Māori ownership of land or part of it under section 8A or section 8HB of the Treaty of Waitangi Act 1975. In the previous section

of this chapter, we have decided that all the circumstances of this inquiry do not warrant us making binding recommendations. Having decided that, it is not necessary for us to determine to which Māori or group of Māori any lands should be returned.

#### Notes

1. Document s1, pp 12–13; doc s31, pp 92–107
2. Document s1, pp 9–11
3. Document s31, p 26
4. Document s31, p 44
5. Ibid, pp 95–96
6. Waitangi Tribunal, *The Tarawera Forest Report* (Wellington: Legislation Direct, 2003), p 29
7. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 406
8. Ibid, p 390
9. Ibid
10. Waitangi Tribunal, *Muriwhenua Land Report*, pp 390–391
11. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 665–666
12. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 195
13. Waitangi Tribunal, *Muriwhenua Land Report*, p 406
14. Ibid
15. Waitangi Tribunal, *The Tamaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2006), pp 103–104
16. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 41
17. See Waitangi Tribunal, *The Ngati Rangiteaorere Claim Report 1990* (Wellington: Brooker and Friend Ltd, 1990), p 9
18. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 3rd ed (Wellington: GP Publications, 1996), p 264; see also Waitangi Tribunal, *The Turangi Township Remedies Report* (Wellington: Brooker's Ltd, 1995), p 68
19. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, p 228
20. Waitangi Tribunal, *Report on the Orakei Claim*, p 263
21. Waitangi Tribunal, *Maori Development Corporation Report* (Wellington: Brooker's Ltd, 1993), pp 31–32; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 5
22. Waitangi Tribunal, *Muriwhenua Land Report*, p 409; doc s31, p 11
23. Waitangi Tribunal, *The Turangi Township Remedies Report*, p 35
24. Document s33, pp 3–4, 23, 29
25. Document R42, para 72; see also transcript 4.19, pp 277–278
26. Waitangi Tribunal, *Muriwhenua Land Report*, p 404; transcript 4.19, pp 262–268, 277



27. Document s31, pp 25–26; doc s42, paras 31, 33–34; transcript 4.19, p 34
28. Transcript 4.19, pp 70, 74, 88–89; transcript 4.18, p 164; doc s42, pp 20–21
29. See doc r17, pp 54, 58–61, 107; doc r18, pp 37–38
30. Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), pp 127–136
31. Document r33, p 2
32. Ibid
33. Ibid, p 4; doc r32, p 2
34. Document r32, p 3
35. Document r17(a), p 78
36. Document r29, pp 19–21
37. Document s31, pp 8–9
38. Document r33, p 34
39. Document r44, para 21–22; doc r42, para 104
40. Document r32, p 3. For the decision of Te Aupōuri to not pursue further properties in Kaitaia, see document r27, pp 15–18.
41. Document s38, p 24
42. Document s38, p 25; transcript 4.19, p 274
43. Document s47, p 11
44. Document r44, para 19
45. Transcript 4.18, pp 655–656
46. Document s33, pp 19–21, 30–31; transcript 4.19, pp 114–115
47. Documents r15, r52
48. Document r15, pp 6–9; doc r52, p 3
49. Document s31, p 66
50. Document r18, pp 49–52
51. Waitangi Tribunal, *Muriwhenua Land Report*, p 79; doc s31, p 32
52. Document r55, pp 30–31
53. Document r14, p 13
54. Document r42, paras 40, 42
55. Ibid, para 57
56. Ibid, para 60
57. Ibid, para 61
58. Ibid, paras 29, 62–63
59. Ibid, para 30
60. Document r45, para 19
61. Document r25, p 3
62. Ibid
63. Ibid, pp 5–6
64. Document s47, p 4
65. Document r15, pp 7, 8
66. Document r55, pp 17–18
67. Document r18, pp 48–49
68. Document s31, p 67
69. Transcript 4.18, p 997
70. Document r44, paras 33–36
71. Transcript 4.18, pp 988–989
72. Ibid, p 997; doc s47, pp 15–16
73. Document r14, p 14
74. Document s47, p 14; doc r2, pp 7, 11, 41
75. Document s31, p 69
76. Document r52, pp 7–8
77. Transcript 4.19, pp 62–63
78. Ibid, pp 61–62, 232
79. Document r45, para 11
80. Ibid, paras 11, 13
81. Ibid, para 13
82. Document r28, p 34
83. Document r61, p 4
84. Document r47, pp 2–3
85. Waitangi Tribunal, *Muriwhenua Land Report*, pp 89–99
86. Transcript 4.18, pp 147–148
87. Document r47, pp 3–4
88. Transcript 4.18, pp 147–148
89. Transcript 4.19, p 316
90. Document r48, p 2
91. Transcript 4.18, pp 1065–1066
92. Document r48, pp 2–3
93. Ibid, p 2
94. Ibid, p 4
95. Ibid, p 6
96. Transcript 4.18, pp 1064–1066
97. Document r65, pp 2–5; doc r64, pp 2–4; transcript 4.18, pp 1071, 1075
98. Document r61, p 5
99. Document r61, p 7
100. Transcript 4.19, pp 306–307
101. Document r42, para 35
102. Document s38, p 14
103. Document r18, p 42
104. Document s31, p 64
105. Document s37, p 32
106. Ibid, p 33
107. See transcript 4.18, pp 171, 296, 301
108. Waitangi Tribunal, *The Turangi Township Remedies Report*, p 5; doc s38, pp 13–14
109. Transcript 4.18, p 401
110. Document r14, pp 10, 12, 15; transcript 4.18, p 65
111. Waitangi Tribunal, *Muruwhenua Land Report*, pp 56–66
112. Document s47, p 18
113. Ibid
114. Document r45, para 18
115. Document r48, p 4; doc r64, p 4; doc r65, p 5; transcript 4.19, pp 307, 310
116. Transcript 4.18, pp 1070, 1076–1077, 1092–1093
117. Ibid, pp 1077–1078, 1095; transcript 4.19, p 310
118. Document r48, p 4
119. Transcript 4.18, p 1095
120. Document r48, p 6
121. Transcript 4.19, p 310



122. Ibid, pp 308, 313
123. Ibid, p 312
124. The total size of the Otangaroa Forest is 3821.3 hectares; 544 hectares (the Kohumaru blocks) fall inside the remedies area: doc R29(b), p 682.
125. Document s31, p 49
126. Ibid, pp 48–49
127. Document R18, p 42
128. Document R27, p 7
129. Ibid, pp 8–9
130. Ibid, p 8
131. Ibid, p 13
132. Ibid, p 19
133. Document R27, p 18
134. Ibid; doc s38, p 21
135. Document R27, pp 18–19
136. Transcript 4.19, pp 271–272
137. Document R27, p 20
138. Document s33, pp 82–83
139. Ibid
140. Transcript 4.18, pp 585–586
141. Document s31, p 54
142. Ibid, pp 57–58
143. Ibid, p 60
144. Document R53, pp 13–14
145. Ibid, p 14
146. Document s17, pp 13–15
147. Document s18, p 3
148. Document R24, pp 32–33, 39–40
149. Document R63, p 3, 38–39
150. Ibid, pp 2, 38–39
151. Document R35(b), pp 6–7; transcript 4.19, p 188
152. Document R63, pp 2–3
153. Document R63, pp 34–38
154. Document R63, p 38
155. Document R53, pp 4–5; doc s1, p 6; see also transcript 4.18, pp 12, 108
156. Document R40(b)i
157. Document s24(b)
158. Document R26, p 8
159. Ibid
160. Ibid, pp 9–10
161. Document R44, para 22
162. Document R42, para 72
163. Ibid
164. Document R25, p 4
165. Document s33, p 14
166. Waitangi Tribunal, *Muriwhenua Land Report*, p 405
167. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 315
168. See for example Waitangi Tribunal, *Report on the Waiheke Island Claim*, pp 41–42; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim* (Wellington: Waitangi Tribunal, 1988), p 60; and Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed (Wellington: Waitangi Tribunal, 1989), p 99.
169. Memorandum 2.393, pp 3–4
170. Waitangi Tribunal, *Report on the Orakei Claim*, pp 261–263, 275
171. Document R45, para 32
172. Transcript 4.18, pp 163–164
173. Waitangi Tribunal, *Muriwhenua Land Report*, p 409; doc s31, p 11; doc s42, p 57
174. Document s31, p 54
175. Ibid
176. Document s33, p 83
177. Document R42, para 103; doc R25, p 5; doc R26, 6
178. Document R42, para 105
179. Document R26, p 10
180. Transcript 4.18, p 1041
181. *Haronga v Waitangi Tribunal* [2011] NZSC 53, [2012] 2 NZLR 53 at para 76
182. Document s35, para 14
183. Document s36, p 15
184. Paper 2.497
185. Document s34, p 2
186. Memorandum 2.516, pp 27–28
187. Memorandum 2.521, paras 15, 18, 20
188. Treaty of Waitangi Act 1975, ss 8A, 8HB
189. Ibid, s 8A(2)(a)
190. *Haronga v Waitangi Tribunal* [2011] NZSC 53, [2012] 2 NZLR 53 at para 106
191. Ibid, para 107
192. Ibid, para 137
193. Paper 2.507; paper 2.508, pp 3–5
194. Paper 2.389, p 11
195. Paper 2.516, p 17
196. Ibid, pp 17–18
197. Hapimana (Chappy) Harrison, statement of claim concerning land alienation in Northland, 25 August 2008 (Wai 2000 ROI, claim 1.1.1)
198. Hapimana (Chappy) Harrison, third amended statement of claim concerning land alienation in Northland, 25 January 2012 (Wai 2000 ROI, claim 1.1.1(b))
199. Document s52



CHAPTER 7

## WHAT GUIDES OUR APPROACH TO NON-BINDING RECOMMENDATIONS?

### 7.1 INTRODUCTION

We turn now to our non-binding recommendations and the circumstances of the case which have influenced our decision.

In the preceding chapter, we discussed the principle of redress and what this required. We said there that the goal is to remove the prejudice by restoring the economic and cultural position of the Māori group, the honour of the Crown, and the integrity of the Treaty relationship. For this to happen, parties must act reasonably and honourably towards each other. The intention is not to punish the Crown for its past breaches of the Treaty, nor to visit on this generation of taxpayers, the sins of their parents – or great-grandparents (for it was in the first 25 years of the founding of the colony that the bulk of Ngāti Kahu lands transferred out of their hands; as Ngāti Kahu see it, ‘stolen’ by the Crown). It has been long accepted within Tribunal opinion that, in most cases, it will not be possible to fully pay back what has been lost, even when taken under duress rather than by more peaceful means. Rather the goal of redress, in pragmatic terms, is to restore a Māori group who have well-founded claims, to a position from which they will have a reasonable opportunity to participate fully in the future of the region and the country as a whole. This was promised back in 1840 and that remains a bottom-line for us today.

Return of land will be a necessary component of redress as will a good deal of money, but the expectations of a Māori group must be reasonable, just as the Crown must act reasonably towards them and try to the fullest extent practical to ‘put things right’. Pledges have been made by both sides and they owe each other cooperation. The Crown – the duly elected government – is, however, entitled to follow its chosen policy of settlement and redress. This is well-established in Treaty jurisprudence (see discussion in chapter 6).

Redress also requires the recovery of status and recognition of an iwi’s preferred form of tribal autonomy. We mean by this, in today’s context, the right of Māori to determine their own internal political, economic, and social rights and objectives. This includes the capacity to make collective, autonomous decisions among themselves. Those decisions must be respected insofar as they are reasonable and do no avoidable injury to the rights of others. Restoration of the Treaty partnership assumes, however, shared rather than separate arrangements. As recent settlements and recommendations of the Tribunal have shown, real co-governance arrangements are increasingly viable in the modern Treaty context.

### 7.2 RECOMMENDATIONS ARE WARRANTED

Our non-binding recommendations are intended to give guidance to the Crown on how to provide redress for the well-founded claims of Ngāti Kahu, in order to remove the prejudice caused by its many breaches of the Treaty and Treaty principles before 1865, most particularly by its actions and omissions with regard to pre-Treaty land transactions and by its own large scale purchasing. By 1865, as we outlined in chapter 3, some 70 per cent of the land of Ngāti Kahu had transferred out of their hands through Crown mechanisms – much of it, their most potentially productive. And to compensate for that, their tūpuna had received only goods, some money, limited reserves, and the promise of future benefits from European settlement. The evidence showed that there had not been a ‘fair sharing’ of resources between the two peoples of the colony; nor had the benefits eventuated to any degree that would remove the prejudice that the early transfer of land, resources, and authority had caused. The *Muriwhenua Land Report* was very clear on this. The prejudice has been severe and enduring. This fact has been acknowledged by the Crown.

Recommendations for redress are, thus, clearly warranted. They are also necessary if the Tribunal is to provide assistance in breaking the stalemate that has developed between the claimants and the Crown. We are conscious, too, that the interests of all Te Hiku iwi are tied up in this and they need our assessment of matters that are obstructing unity and progress towards the restoration of their status and their own Treaty relationships. We must outline what we consider an appropriate remedy to assist in that process.

### 7.3 CIRCUMSTANCES OF THE CASE

The main issues we have already discussed remain relevant to our consideration here: the extent of the prejudice, the capacity of the Crown, the fairness of the process, and the rights of other iwi and Māori groups to whom the same duties apply and who must not be prejudicially affected by what we recommend the Crown do. One of

our reasons for refusing to make binding recommendations was that we wished for all Ngāti Kahu to be able to decide on whether to accept or refuse what is offered to satisfy their claims. We are, in some instances, prepared to make non-binding recommendations concerning the same lands (as we detail below).

We have necessarily looked at both Ngāti Kahu and Crown proposals for remedy of the prejudice (one for partial redress, the other for final settlement) when thinking about what we should recommend. Both proposals entail items of redress for which we can only make non-binding recommendations. More importantly, if we are to break the deadlock we must craft our recommendations within the parameters that have been already set by the past 15 years of negotiation. We cannot look at the offer to Ngāti Kahu in isolation from what is available to the other Te Hiku iwi, or the specifics of particular lands without looking at the wider picture of what has been worked out in terms of who gets what. We are not working with a clean slate, defining our own vision of Treaty utopia, but making practical recommendations that we think are do-able, just, and fair in all the circumstances – and which will not overturn the past decade and a half of negotiations undertaken by Te Hiku iwi.

### 7.4 ‘POLAR OPPOSITES’: THE TWO PROPOSALS

Ngāti Kahu counsel argued that the two approaches to redress were at polar opposites.<sup>1</sup> We briefly remind readers of what is proposed by the two sides.

#### 7.4.1 ‘Total relief package’ proposed by Ngāti Kahu

What Ngāti Kahu seek for remedy of the prejudice suffered as a result of Crown actions up to 1865 was contained in their proposed ‘total relief package’ which is based upon their partial deed of settlement. As they see it, this would be a first step only to the removal of all prejudice inflicted. Yet what they ask goes well beyond what any of the other Te Hiku iwi have accepted as reasonable, or indeed, what has been received in any Treaty settlement thus far.

Described more fully in chapter 5, salient features of the

suite of items Ngāti Kahu propose for their partial relief include:

- ▶ The return of all land in Crown ownership in the remedies claim area at zero value, such lands to be held inalienable and in accordance with Ngāti Kahu tikanga as whānau, hapū, or iwi lands.<sup>2</sup>
- ▶ The payment of \$205 million in compensation for social and economic deprivation, including the loss of te reo. This quantum includes sums specially allocated to te reo recovery and social revitalisation.
- ▶ The payment of accumulated and all future rentals consistent with the extent of the lands returned, interest, and 100 per cent compensation under the Crown Forest Assets Act 1989.
- ▶ The receipt and management of all redress assets to be handled by Te Rūnanga-ā-Iwi o Ngāti Kahu, operating as a charitable trust.
- ▶ The institution of a policy of preferential allocation of State houses to Ngāti Kahu persons in their rohe, and the recognition of Te Rūnanga-ā-Iwi o Ngāti Kahu as a community housing provider.
- ▶ The recognition of Te Rūnanga-ā-Iwi o Ngāti Kahu as a legal entity ‘exercising dominion over the area contained within the remedies hearing area out to the 200 mile limit’ by ‘all Crown bodies that have delegated authority from the Crown in terms of engagement, co-ordination and governance of resources within the rohe of Ngāti Kahu.’<sup>3</sup>
- ▶ The enactment of legislation superseding the Resource Management Act, the Conservation Act, and the Public Works Act, to the extent that Te Rūnanga-ā-Iwi o Ngāti Kahu is provided with the governance, control, and management of all physical and natural resources in the Ngāti Kahu rohe. In closing submissions, Ngāti Kahu counsel explained that the intention was to remove the prejudicial aspects of the legislation concerned.

#### 7.4.2 Full and final settlement proposed by the Crown

In this application for remedies, we know the details of agreements that the parties reached during negotiations

and of closely related settlements with other iwi. Those settlements reflect collective discussions and were worked out among Te Hiku iwi as well as by means of their separate negotiations with the Crown. As we discussed in chapter 4, the proposed offer to Ngāti Kahu is roughly comparable to the other settlements negotiated by Te Hiku iwi, taking into account customary interests, modern commercial imperatives, and how different Crown assets available for redress are spread across the region. The proposed offer also fits within a Treaty settlement framework constructed over the past 15 years, not only in Te Hiku but also at a national level – though that framework was ultimately rejected by Ngāti Kahu.

In brief, the content of the Crown’s proposed package for complete settlement of all claims of Ngāti Kahu includes:

- ▶ ‘historical redress’, comprising Crown acknowledgements, an apology, and an account of their past Treaty relationship (to be agreed between the two parties);
- ▶ cultural redress, including properties identified by Ngāti Kahu as having cultural significance to them during negotiations (a total area of 1,299.6 hectares);
- ▶ co-governance arrangements, including the extension of the Korowai redress over the Ngāti Kahu area of interest, or the creation of a statutory board in respect of the approximately 4,240 hectares of public conservation lands within the Ngāti Kahu exclusive area of interest; and
- ▶ ‘commercial redress’, comprising a cash quantum of \$23.04 million plus accumulated rentals and interest, and a number of properties available for purchase, including Rangiputa Station, Kohumarū Station, the Mangonui blocks of the Aupouri Forest and the Kohumarū blocks of the Otangaroa Forest (pending resolution of overlapping claims), as well as various properties owned by Land Information New Zealand and the Ministry of Education.

(More details on how properties were valued, calculation of compensation, and other aspects of the Crown’s offer may be found in chapter 4.)

### **7.5 WE REJECT THE TOTAL PACKAGE SOUGHT BY NGĀTI KAHU**

In our view, the total value of what Ngāti Kahu seek is inconsistent with the restorative purpose of Treaty redress and is neither reasonable nor practical. We do not see a number of their goals as being achievable, or desirable, in their current form. To endorse them would be to overturn established Treaty and constitutional principles and, if fully supported, would destabilise hard-won settlements, not only in Te Hiku but throughout the country.

The cash compensation of \$205 million is based on an appraisal of the long-term economic consequences of early land dispossession. The figure has been calculated on the accumulated loss of the unimproved value of all land within their rohe (which, as we explained in chapter 5, included land outside the remedies area) that had been alienated by 1865 plus loss of possible income, minus taxes and various administrative costs.<sup>4</sup> Putting to one side the Crown's objections to the method by which this total has been reached, this is an assessment of the prejudice suffered, rather than of what is needed to restore the iwi. An assessment of that would be directed to evaluating what would be an 'appropriate economic base' for their future rather than the cumulative historical loss that they have suffered, no matter how grievous. Ngāti Kahu argue that, if they had sought the return of, or compensation for, all that has been taken from them, their total package of demands would have been for a far greater sum, and even more comprehensive. In our estimation, however, their approach is essentially one of seeking damages and, in so doing, seeks to punish the Crown. We do not see this as restorative of the Treaty relationship.

### **7.6 WE SUPPORT THE GENERAL TERMS OF THE CROWN'S PROPOSAL**

In our view, the Crown has negotiated in good faith in the years immediately preceding the signing of the AIPs. It has shown flexibility and come to a proposed offer, by a fair process within a Treaty framework that has, according to

the evidence of its officials, been stretched to the limits of what is achievable.

As we discussed in the preceding chapter, we are satisfied that the process undertaken by the Crown in coming to its proposed offer was fair overall, reached by negotiation and collaboration while Ngāti Kahu were directly involved, and attempting to respect their interests in their absence. The weight of evidence suggests that tikanga underlying collective autonomy in Te Hiku – kotahitanga, whanaungatanga, respect for the mana and authority of each other (rangatiratanga), the negotiation of shared solutions, and transparency and open communication (whakatau tika) – were maintained at least until it became apparent that Ngāti Kahu would not rejoin the Te Hiku Forum. Those principles continued to be respected subsequently, and were extended to Ngāti Kahu to the extent that their rights were understood and their claims considered reasonable. Ngāti Kahu have the right to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those decisions. That right does not mean that they should be able to thwart the decisions of the wider collective. Nor do principles of the Treaty authorise unreasonable restrictions on their Treaty partner. Ngāti Kahu were not entitled to hold up wider regional settlement, indefinitely, by unrealistic demands. The Crown is entitled to develop its settlement framework and offer redress within its own policy terms so long as Treaty principles are respected.

We are also satisfied, looking at all the circumstances, that what the Crown proposes is capable of restoring Ngāti Kahu, provided certain conditions are met (as we explain further below). In coming to that assessment, we take into especial consideration what other Te Hiku iwi have said in like circumstances: what the Crown has offered them has been accepted as the best compromise achievable not only with the Crown but among themselves. They have accepted the quanta and the distribution of lands and income across iwi, as well as the proposed structures of governance and the acknowledgements and apologies that they have negotiated, as providing a viable base for their



restoration. The dollar amount, they know, is only a ‘fraction of the real value of the claim’. But forward-looking leadership, they told us, requires that they take the opportunity now, to ‘prepare a place for the next generation.’<sup>5</sup> Many of the witnesses from the other Te Hiku iwi spoke words to that effect and of their desire to move forwards.

#### **7.6.1 The need to retain equality with other iwi to achieve durable remedy**

The Ngāti Kahu view of the restorative purpose of Treaty redress is very different from the view that has been consistently voiced and endorsed by the Waitangi Tribunal, including this Tribunal in 1997. As a result, they do not accept that we should be influenced by what has been offered to any other iwi including the other iwi of Te Hiku. They submitted that, if the Tribunal decides to keep relativities with other Treaty settlements, when making its recommendations in relation to their claims, there might be a real question as to whether this conflicts with the Tribunal’s primary duty to make recommendations that seek to ‘compensate for or remove the prejudice or to prevent other persons being similarly affected in the future.’<sup>6</sup> They interpret the argument that a better outcome for Ngāti Kahu will unhinge the other Te Hiku settlements ‘as seeking to hold Ngāti Kahu back and as seeking to keep Ngāti Kahu to the levels of redress that other Te Hiku iwi were able to agree with the Crown within the Crown’s Treaty settlement framework.’<sup>7</sup> They pointed out that they have not accepted any settlement offer and questioned the significance of relativities based on settlements to a remedy sought through a different process.<sup>8</sup>

We consider, however, that the Te Hiku settlements must be accepted as good guidance to what is appropriate as a remedy in the circumstances of this case because the process by which they were devised was fair. They pushed the boundaries of what was achievable within the Crown settlement framework and respected the need for collective decision-making and individual compromises. Not everything could be agreed upon using a collective decision-making process, the most obvious example being

the division of the Aupouri Forest. That meant that the Crown had to make the final decision about who should receive particular land assets if any settlements were to be achieved. Even then Ngāti Kahu had full opportunity to comment on what was proposed and to return to both the Forum and the negotiating table; but by this stage they were set on a course independent of the others. As we have already noted, despite that absence, we believe the process thereafter remained consistent with what is required by tikanga and with the Treaty principle of redress and treating like as like.

#### **7.6.2 The Crown’s proposal for Te Hiku is significant**

We consider that the Crown has made a substantial offer in terms of quantum as ‘commercial redress’ for all Te Hiku iwi, including Ngāti Kahu.

The five Te Hiku iwi agreed in principle, in January 2010, to an offer of \$120 million as the quantum component of a full settlement of all their historical claims. If the discounted valuations for various farm properties are included, the actual figure comes to \$169.923 million.<sup>9</sup>

We consider the overall offer to be significant. It is less than, but comparable to, the quantum provided in the largest settlements during the past two decades, with Waikato-Tainui and Ngāi Tahu. And it compares favourably with many other deeds of settlement, now numbering 50. Of course, none of these settlements has taken a compensatory damages approach. Nonetheless, those claimants have accepted them as fair, equitable to others, and the best that can be achieved ‘in the circumstances.’<sup>10</sup> We were told by several of the Te Hiku iwi leaders that they have fought long and hard for the settlements now on offer, and the negotiated sums were acceptable, if not ideal, giving enough to ‘work with’. In their view it was enough to provide a springboard for tribal recovery and it was time to get on with that.<sup>11</sup>

While we are conscious of the magnitude of the prejudice suffered we are also conscious of the Crown’s overall fiscal responsibilities. The Te Hiku quantum, if not at the highest level, stands at one rung below that of the largest

Treaty settlements in this country. That is significant because as is commonly reported, Waikato-Tainui and Ngāi Tahu both now enjoy a level of commercial success and a resurgence of their identity, authority, and influence within their respective communities. Put another way, what is on offer to the Te Hiku iwi, if used wisely, has the potential to make a significant contribution towards re-establishing those iwi in the social, political, and economic life of the region.

### 7.6.3 A fair share for Ngāti Kahu

We also consider the Crown's offer significant in terms of the types of land it has made available. There are some substantial properties involved and a potential share for Ngāti Kahu of the different types of land offered in settlement that we consider to be fair in the complex circumstances of Te Hiku, though they would not get everything available in their core area of interest.

We have had some concerns about elements of the Treaty settlements that have been negotiated and how those properties were ultimately distributed. Ngāti Kahu argued that they shared mana whenua in lands which now would be returned to others, excluding them entirely, and on the face of it, this is unfair. It is clear, however, that mana whenua, while it was a necessary precondition, was not the sole determining factor among the other Te Hiku iwi when it came to what was tika and fair for everyone. There had to be some give as well as take, some trade-offs, some acceptance that everybody would have to forego some rights in others' lands if they were going to progress as individual iwi. There also had to be some balance within the distribution of the sorts of lands that were available – State-owned enterprise farms, Crown forests, and the different properties at Kaitaia.

The Crown's intended allocation of forest assets to Ngāti Kahu was less than that of other Te Hiku iwi, partly because Ngāti Kahu were seen by the others as having little right in the peninsula blocks of the Aupouri Forest. They could potentially receive more than the other iwi in farm properties; but the allocation of Rangiputa Station partly affected the decision to give Sweetwater Farm to Te Rarawa and Ngāi Takoto, and not include Te Paatu (and

Ngāti Kahu). We note, however, that the Crown in its evidence filed in response to the Te Rarawa application for urgency acknowledged that the potential of Ngāti Kahu to acquire more commercial properties, including parts of the Otangaroa Forest, in particular, had contributed to its decision to return all Takahue blocks of the Aupouri Forest to Te Rarawa rather than making provision there for Te Paatu and Ngāti Kahu directly.<sup>12</sup> That part of the equation needs to be reflected in what the Crown finally provides to Ngāti Kahu to remedy the prejudice caused by its Treaty breaches. In our view, the Crown cannot continue to defer that allocation on the grounds of overlapping claims.

The evidence we heard suggests that Ngāti Kahu have a particularly strong interest in that part of Otangaroa (Kohumaru Station and the Kohumaru blocks of the Otangaroa Forest) that lies within the remedies claim area, where one of their marae is located. We acknowledge that witnesses from neighbouring iwi had limited time to respond to the Ngāti Kahu application, but their main concern was that the Crown retain capacity to meet their own claims if and when demonstrated to be well-founded. Although we did not receive evidence on that part of the forest outside of the remedies area, nor the wider settlement interests of those groups who were not parties to the Te Hiku Forum, it is nevertheless clear that a significant commercial asset – 3,277.3 hectares of the Otangaroa Forest – remains available for the Treaty settlements of those groups in the future. This will remain the case should the Crown implement our recommendations.

### 7.6.4 Other elements of redress for Ngāti Kahu

The Crown's proposed settlement for Ngāti Kahu contains other important elements of Treaty redress, which we endorse.

There is cultural redress on offer, which entails the return of sites of significance as negotiated prior to 2008. This includes wāhi tapu, maunga, and the beds of Lake Rotokawau and Lake Rotopotaka among other sites of cultural significance, many of which lie within the conservation 'estate'. Those lands form part of the 'total relief package' sought by Ngāti Kahu. Crown counsel submitted

that such lands ought to be included in any recommendations that the Tribunal makes. We agree that lands of high cultural significance must be a priority, should be generously defined, and should be returned at zero cost. At the least, such land should comprise what has already been earmarked for return to Ngāti Kahu as a result of negotiations with them. The Crown is not in a position to return land to all individual marae, as turangawaewae, because its current land-holdings are not distributed in that way; but this object should be pursued wherever practicable. We note that we do have some concern about whether there has been entirely equitable treatment across iwi in terms of proposed cultural redress payments and this is reflected in the detailed recommendations that follow in chapter 8.

An integral element of redress must be better arrangements for co-governance of Department of Conservation and other public lands as well as significant maunga, foreshore, lakes, waterways, and other taonga. We note that the Crown proposed to vest two lakebeds in Ngāti Kahu and to institute shared arrangements at Maungataniwha. There are also the Korowai arrangements negotiated with the other Te Hiku iwi available to Ngāti Kahu if they choose to adopt them. These are far reaching: according to the iwi participants, they contain many 'world firsts' for indigenous peoples and a real opportunity for co-management of conservation lands.<sup>13</sup> The Crown has also expressed its willingness to create a statutory Ngāti Kahu board in their area of exclusive interest. These arrangements also have the potential for a much enhanced role in the day-to-day management of important parts of their rohe. There are relationship agreements with a variety of Government departments and ministers available, too; increased access to a range of social services; social revitalisation; and Crown acknowledgements and apologies. These elements of the offer are in keeping with the restorative principle and integral to restoration.<sup>14</sup>

### 7.7 FULL OR PARTIAL RECOMMENDATIONS?

We note at the outset that our recommendations relate solely to the area in which we have jurisdiction – that is,

the part of the remedies claim area that falls within the Muriwhenua claims area boundary. A small portion of the remedies claim area, along the southern boundary, falls outside of our jurisdiction. The *Muriwhenua Land Report* describes its southern boundary as the Maungataniwha range.<sup>15</sup> However, the Tribunal also reported on the claims of Muriwhenua iwi to blocks that fall to the south of that range.<sup>16</sup> Yet, in some instances, the remedies claim area is further to the south still. The consequence of this is that we do not have jurisdiction over some properties south of the Muriwhenua claim area boundary and west of the remedies claim area boundary over which the Crown proposes to offer rights of first refusal, either to Ngāti Kahu exclusively, or to Ngāti Kahu and other iwi. We have taken this into account in our recommendations that follow in chapter 8.

The well-founded claims of Ngāti Kahu are their pre-1865 claims. Any recommendations we make should be limited to compensation for or the removal of prejudice arising from those claims and those claims alone.<sup>17</sup>

In 1997, this Tribunal said that it did not consider that the proof of further wrongs after 1865 could add anything to the relief that might now be given. Specifically the Tribunal said:

#### 11.4.6 Post-1865 claims

In the preface, it was noted that the current inquiry has been limited to policies and practices established before 1865. As we see it, however, the impact of those policies and practices entitles the claimants to a very large compensation to enable their re-establishment in future. This must involve the transfer of substantial assets. Taking the approach suggested at section 11.4.4, the Tribunal does not consider the proof of further wrongs after 1865 could add anything to the relief that might now be given.

If counsel wish to proceed with a post-1865 inquiry, then, of course the Tribunal will do so; but, unless an incremental approach is acceptable, relief may need to be postponed until that has been done. It is suggested that delay is unnecessary, and that relief should be explored at this stage with matters post-1865 remaining uninvestigated.<sup>18</sup>

Those comments were not intended to discourage the bringing of post-1865 claims but rather to encourage all Te Hiku iwi, who at that stage were a cohesive group, to enter into negotiations and obtain relief as soon as possible. As the Tribunal said '[e]arly relief is as necessary as it is appropriate'.<sup>19</sup>

In its 1998 Preliminary Determination of Issues, the Tribunal considered it was preferable to first hear post-1865 claims in order to obtain a total picture of the prejudice suffered. It was conscious that any recommendations should provide a complete scheme for the removal of prejudice suffered.<sup>20</sup> The Tribunal determined that it had jurisdiction to make recommendations but left it open whether it should in fact do so.<sup>21</sup>

In the years since the release of the *Muriwhenua Land Report* in 1997, Ngāti Kahu have sought, alternately, to negotiate their claims or obtain recommendations from the Tribunal. To date they have not sought further hearings in relation to their post-1865 claims.

Ngāti Kahu submitted that the 'total package of relief' sought was required 'to compensate for and remove the prejudice that Ngāti Kahu have suffered with the Crown's pre-1865 Treaty breaches'.<sup>22</sup> Accordingly Ngāti Kahu may, as they are entitled to, seek to prosecute their post-1865 claims before the Tribunal and if those claims are well-founded, subsequently seek a further remedies hearing.

The Crown submitted that what it is prepared to offer to Ngāti Kahu is in settlement of all of the Ngāti Kahu historical grievances, not just those arising from events prior to 1865.<sup>23</sup> We understand that what is currently on offer to Te Rarawa, Te Aupōuri, and Ngāi Takoto is intended to settle all of their respective historical claims, including any post-1865 claims they potentially could have brought before the Tribunal.

Crown counsel went on to say in closing submissions that, if we consider that the package the Crown is prepared to offer would equate to a settlement of all Ngāti Kahu historical grievances, then 'it would be of extreme value to the parties to be told that and to be told that in the clearest of possible terms'.<sup>24</sup> They also submitted that, if we consider that we should recommend a settlement

of only the pre-1865 Ngāti Kahu claims, then we ought to consider reducing the size of the package proposed by the Crown to take account of any post-1865 claims.<sup>25</sup>

We consider that it would have been preferable to have had a total picture of the prejudice suffered, not just in relation to the pre-1865 claims, before making any recommendations. We would have much preferred to have been in a position to be able to design a full suite of recommendations rather than be limited to the well-founded claims relating to breaches of the Treaty prior to 1865.

However, our jurisdiction to make recommendations is limited to claims that are well-founded, which are the pre-1865 claims. Notwithstanding the Tribunal's comments in 1997 that further findings of well-founded claims, post-1865, would add little to the relief that could be given, we consider that we cannot make recommendations to settle all Ngāti Kahu claims (both pre- and post-1865) when the Tribunal has not heard post-1865 claims let alone found them to be well-founded.

Thus, in the recommendations which follow we have applied a 'discount factor'. The approach we have taken, which we acknowledge is necessarily crude, is to apply a discount factor of 10 per cent to the commercial quantum. We considered applying a discount factor of as much as 25 per cent to the commercial quantum because that is the amount of land which Ngāti Kahu say remained in their tribal estate at 1865 (taking into account that they retain 5 per cent today).<sup>26</sup> Ultimately, we rejected a figure of 25 per cent as being too arbitrary and punitive.

In arriving at a discount figure of 10 per cent rather than a larger percentage, we recall a discussion by the Tribunal of the Muriwhenua central district, in which Ngāti Kahu had considerable interests. In section 10.10.2 of the *Muriwhenua Land Report*, the Tribunal considered those lands left in Māori ownership post-1865 and their adequacy for farming. The Tribunal noted that the Māori blocks at Kohumarū could not provide farms for more than a few people. In the Oruru valley, by 1890, all of the lands had been alienated save for some reserves at Peria where a large and fragmented ownership dwindled to a residue and there were only sufficient lands for one

or two family farms. Lands at Parapara and Te Ahua were not fertile and on difficult terrain, and parts of Parapara which had been dug over for gum were virtually useless. Lands on the Karikari Peninsula were isolated without any adequate road access for years. Numerous owners in each block provided the impetus for further partitions. Farming was not feasible at Karikari until the 1930s and then marginal at best because of the poor fertility of the soils. Uneconomic farm units became heavily indebted and many walked away from their farms. Dairy farming had to be given away in favour of sheep and cattle, and pine trees were planted on poorer soil. At Kareponia the land was not fertile, with more owners than it could sustain, and was soon characterised by fragmentation of title and ownership. Lands in the Victoria valley were on steeper gradients and again suffered from problems with multiple ownership and fragmentation.<sup>27</sup>

The Muriwhenua Tribunal indicated that by 1890 no hapū in the region had sufficient land for a subsistence existence, let alone future growth. It said:

the broad result was the virtual exclusion of Maori from the central Muriwhenua bowl, and their marginalisation on the rims – politically, socially, and economically . . . They were excluded from most strategic lands even before 1865.<sup>28</sup>

The Tribunal went on to discuss specific concerns with blocks of particular interest to Ngāti Kahu, including the Mangonui block, Mangonui township, Oruru valley, Puheke, and Victoria valley.<sup>29</sup>

In summary, we agree that a discount factor should be applied which recognises the fact that the post-1865 claims have yet to be heard and determined, and to ensure that capacity is retained by the Crown should Ngāti Kahu wish to negotiate a settlement of all of their claims now, or return to the Waitangi Tribunal to prosecute their post-1865 claims. However, any discount should recognise the fact that Ngāti Kahu had been dispossessed of most of their best land by 1865. What was left was only marginally productive and could not provide an economic base for the iwi in the latter part of the nineteenth century, let

alone the twentieth century. Thus, we have limited the discount to 10 per cent of the commercial quantum only.

We have not applied a discount factor to the cultural redress as we consider it would be inappropriate to introduce notions of monetary value to such redress. The concept of a ‘discount’ is also not suitable for any historical account, Crown acknowledgements, or Crown apology.

By applying a discount factor on commercial quantum, we considered whether we have effectively recommended an upper limit on the quantum Ngāti Kahu might receive for both pre- and post-1865 claims. We do not believe we have done so. We have assessed all the circumstances of the case and designed recommendations which we think will relieve the prejudice suffered in relation to the pre-1865 claims. Necessarily there must be a starting point and, in the circumstances of this case, a discounting of the amount of commercial quantum to leave capacity for the settlement of any post-1865 claims. Employing a starting point for this exercise does not necessarily bind future Tribunal recommendations for any well-founded post-1865 claims.

We regret having to take this approach. Ngāti Kahu are deserving of full redress now. In an ideal world redress would have been made available to them long ago. We would have far preferred to be in a position to make a comprehensive suite of recommendations for all the Ngāti Kahu claims but we simply cannot do so, limited as we are by our jurisdiction.

We also considered deferring any recommendations until such time as the post-1865 claims are heard and determined, and we have a total picture of the prejudice suffered. However, we decided not to take that path as we are acutely conscious that relief is needed now for Ngāti Kahu. No party to this inquiry has said otherwise.

That is not to say that Ngāti Kahu cannot work towards obtaining a full package of relief for their pre-1865 and post-1865 claims. Two options are open to them. First, their leadership could seek to negotiate the settlement of *all* their historical claims now, including the post-1865 claims. To not do so, it would seem to us, will only delay the return of full redress to their beneficiaries.



Secondly, Ngāti Kahu could seek a return to the Tribunal to hear the post-1865 claims. Any request for post-1865 hearings would need to be assessed against the competing demands for Tribunal time. In April 2012, the Chairperson of the Waitangi Tribunal issued a memorandum–direction giving priority to urgency and remedies applications. It was acknowledged that this would inevitably impact upon all District Inquiries in the interlocutory, hearing, and report writing stages.<sup>30</sup> Any request for post-1865 hearing time would need to take into account the not insignificant amount of Tribunal time and resource already spent hearing various Muriwhenua/Te Hiku claims, including the fisheries, lands, remedies, and urgency hearings to date. Any such request will need to be balanced against competing demands of other district inquiries equally as deserving, which have had little or no attention from the Tribunal thus far. Thus, we realistically signal an inevitable delay in proceeding to post-1865 hearings.

When the Tribunal is able to accommodate post-1865 hearings, time will need to be invested in the research, interlocutory, hearing, and report writing phases. Assuming that the post-1865 claims are well-founded, a further remedies hearing might need to be held and a further remedies report produced. All of this will mean a delay of a number of years before the Tribunal is able to recommend relief for the post-1865 claims, presupposing they are well-founded.

We make these comments not to discourage the prosecution of post-1865 claims. We make them, however, so that the people of Ngāti Kahu are informed of the practical reality of that pathway, if it is chosen. We reiterate that another pathway is available. Ngāti Kahu could proceed now to negotiate the settlement of all their historic claims.

## 7.8 CONCLUDING REMARKS

The pathway we have chosen allows two things to happen. First, it provides for the return of land and assets to Ngāti Kahu and better arrangements for the co-management of lands previously held entirely within the control of

Government departments and local authorities. Secondly, it enables Te Aupōuri, Te Rarawa, Ngāi Takoto, and possibly Ngāti Kuri to proceed with and finalise their settlements. We are very aware that unless something close to the Treaty settlement proposals currently on offer is implemented soon, those Te Hiku iwi risk losing what they have nearly secured – after years of negotiation. They are on the very cusp of settlement and a chance to be restored to a position of partnership. They are ready to accept a settlement of all their historical grievances and we believe the principles of the Treaty demand that they be given that opportunity.

We reiterate that our recommendations, as set out in the following chapter, are to the Crown. It is the Crown's honour, not that of Ngāti Kahu, that must be restored by putting right the harm it has caused by serious breaches of the Treaty prior to 1865.

## Notes

1. Document s31, p 26
2. This includes all Crown forest lands within the remedies area; Rangiputa Station, Kohumaru Station, and the part of Takakuri Station within the remedies area; all land memorialised pursuant to section 27B of the State-Owned Enterprises Act 1986; all Ministry of Education lands (seven properties) which will be leased back to the Crown at market rental; Kaitaia Airport and Rangianiwaniwa School, with compensation paid to the Matenga whānau for loss of use; Crown (Department of Conservation and recreational reserve) land at Karikari and Matia Bay; all lands identified as 'cultural redress' in the Crown's proposed settlement offer, including lakes, urupā and wāhi tapu; also the sites of significance identified in the evidence of Canon Lloyd Pōpata; all Land Information New Zealand, land banked, or deferred selection properties available to Ngāti Kahu exclusively or on a joint basis (which Ngāti Kahu does not accept); and, if not made available immediately, the right of first refusal or deferred selection property mechanism to work in their favour for 172 years; all Land Information New Zealand, Department of Conservation, and Housing New Zealand properties; and any other Crown-owned properties.
3. Document s31, p 96
4. Document R23, p 10; doc s31, pp 96–97
5. Document R45, para 32
6. Document s31, p 82
7. Ibid, p 81
8. Ibid, pp 85–86



9. Document R28, pp 26–27. For the quantum of \$120 million, see also doc R29(b), p 366.
10. See the examples listed in document S33(a).
11. Transcript 4.18, pp 940–941, 1037
12. Document S47, pp 13–17
13. Document R43, para 29
14. See Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 714
15. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p xix
16. *Ibid*, pp 236–237, see also p 210, fig 37
17. Document S33, pp 12, 38
18. Waitangi Tribunal, *Muriwhenua Land Report*, p 407
19. *Ibid*, p 405
20. Memorandum 2.166, app B, p 1
21. *Ibid*, p 14
22. Document S31, p 95
23. Document S33, p 38
24. *Ibid*, p 39
25. *Ibid*
26. Document R60, pp 5, 7
27. Waitangi Tribunal, *Muriwhenua Land Report*, pp 377–378
28. *Ibid*, pp 400–401
29. *Ibid*, pp 401–402
30. Chairperson, memorandum, 26 April 2012



CHAPTER 8

## RECOMMENDATIONS

### 8.1 INTRODUCTION

In this chapter, we outline a number of recommendations to the Crown to relieve the prejudice suffered by Ngāti Kahu. All of the recommendations which we make are made pursuant to section 6(3) of the Treaty of Waitangi Act 1975 and are non-binding in nature.

We will recommend that the Crown proceed to make a formal offer in line with the recommendations that follow. We cannot recommend that Ngāti Kahu return to negotiations or respond positively to any Crown offer. Ultimately, that decision will be for them to make but we urge them to do so.

### 8.2 RECOMMENDATIONS

#### 8.2.1 Offer

Ngāti Kahu have been critical of the fact that while the Crown maintains that it has capacity to settle with them, it has not actually made a formal offer. That is a valid criticism and we recommend that the Crown make a formal written offer to settle all of the pre-1865 well-founded claims of Ngāti Kahu.

#### 8.2.2 Historical account, Crown acknowledgements of Treaty breach, and Crown apology

A negotiated Treaty settlement typically involves an agreed historical account, Crown acknowledgements of Treaty breach, and a Crown apology. Neither the Crown nor Ngāti Kahu have agreed any of these matters and, as we understand it, there have been no discussions about them.

In chapter 4, we discussed the purpose of historical redress as intended by the Crown. We agree that redress of this type is significant in providing ‘the first step in reconciling and healing the relationship between the Crown and the claimant group.’<sup>1</sup> Such redress provides for the Crown’s acceptance of responsibility for breaches of the Treaty, recognises the impact of those Treaty breaches on the claimant group, and provides a basis for the restoration of the honour of the Crown and the rebuilding of the relationship between the Crown and the claimant group.<sup>2</sup>

We recommend that the Crown seek to record with Ngāti Kahu an agreed historical account, Crown acknowledgements of Treaty breach, and a Crown apology.

We are conscious that Professor Mutu in particular was sceptical as to the merits and genuineness of this type of redress.<sup>3</sup> If the Crown and Ngāti Kahu cannot genuinely agree upon any or all of these matters, regrettable as that may be, that should not prevent the Crown from implementing the balance of the recommendations. Settlement with Ngāti Kahu should not be contingent upon agreement being reached as to an historical account, Crown acknowledgement of Treaty breach, and a Crown apology.

### 8.2.3 Cultural redress

#### (1) Cultural redress properties

We recommend that the Crown:

- (a) Transfer 21 properties set out in schedule A, totaling 1,299.6 hectares, at no cost to Ngāti Kahu. The Crown offer will need to be precise as to the conditions, if any, which apply to the transfer of each individual property. For example, evidence before the Tribunal suggests that some properties will vest in fee simple with others subject to reserve status and/or leases. Precise conditions proposed in relation to each property must be contained in the offer to Ngāti Kahu.
- (b) Broker a process of negotiations involving Ngāti Kahu, Te Rarawa, Ngāpuhi, and the Crown to achieve an appropriate cultural redress package, including the return of land, in relation to Maungataniwha.
- (c) Explore with Ngāti Kahu the following:
  - (i) the possibility of entering a joint venture to establish a campground within the Taumarumaru recreation reserve;
  - (ii) vesting the Takahue Domain recreation reserve in Ngāti Kahu, on the condition that the overlapping interests of Te Rarawa are resolved;
  - (iii) the possible alteration of existing place names or the assigning of new place names within the Ngāti Kahu area of interest, in consultation with the New Zealand Geographic Board, Ngā Pou Taunaha o Aotearoa, and in accordance with the functions and practices of that board;
- (iv) redress which provides for the recognition of Otako as a tauranga waka for Māmaru;
- (v) the physical survey of and, if necessary, redefinition of the boundaries of Karikari 2K block, at no cost to Ngāti Kahu, to exclude current buildings at the Karikari 2 residue end of the block; and
- (vi) the creation of a statutory board in respect of all public conservation lands within the Ngāti Kahu exclusive area of interest, being an area of approximately 4,240 hectares, as envisaged in the Ngāti Kahu 2008 AIP at paragraphs 15 to 18. We note that the possible creation of a statutory board within the 'Ngāti Kahu exclusive area of interest' is unique to Ngāti Kahu. Stand-alone statutory boards are not on offer for Te Aupōuri, Te Rarawa, and Ngāi Takoto.
- (d) Continue to offer Ngāti Kahu a right of first refusal in relation to public conservation lands within the Ngāti Kahu exclusive area of interest as outlined at paragraph 19 of the Ngāti Kahu 2008 AIP.

#### (2) General cultural redress

We recommend that the Crown:

- (a) Offer the same redress to Ngāti Kahu as that set out in the Te Aupōuri, Te Rarawa, and Ngāi Takoto deeds of settlement, in relation to the following matters:
  - (i) **Ninety Mile Beach – Te Oneroa-a-Tōhē**  
We note that the deeds of settlement for Te Rarawa, Te Aupōuri, and Ngāi Takoto contain clauses providing for a one-off contribution of \$137,500 per iwi in recognition of their historical and cultural associations with Te Oneroa-a-Tōhē. The Crown also agreed to a one-off contribution of \$400,000 to support the initial operation of a statutory board and the development of the first beach management plan.<sup>4</sup>  
No evidence was put before us by the Crown as to whether a similar payment of \$137,500 is on offer to Ngāti Kahu. It should be, and we recommend that any offer of redress

concerning Te Oneroa-a-Tōhē also include a one-off payment of \$137,500 to Ngāti Kahu.

If Ngāti Kahu and Ngāti Kuri agree to participate in the establishment of the Te Oneroa-a-Tōhē statutory board the Crown may need to consider increasing the amount of their contribution to support the initial operation of the board and first beach management plan. We say that because the sum of \$400,000 is to be provided on the basis of three out of five Te Hiku iwi participating in the statutory board. If two further iwi agree to this redress we would have thought that the contribution may need to be reconsidered. However, we stop short of making any positive recommendation on this point as we heard no evidence from either the Crown or Ngāti Kahu on this issue.

- (ii) Conservation lands – Korowai Atawhai Mō Te Taiao redress (being lands other than those included in the Ngāti Kahu area of exclusive interest – list item (c)(vi) in section 8.2.3(1)).

(iii) **Social accord**

We note that the deeds of settlement for Te Rarawa, Te Aupōuri, and Ngāi Takoto contain a clause providing that five business days after the social accord comes into effect the Crown will pay to an entity known as the Te Hiku o Te Ika Development Trust \$812,500 per iwi to support the engagement by Te Rarawa, Te Aupōuri, and Ngāi Takoto in the implementation of the social accord.<sup>5</sup>

No evidence was given to us as about this payment and whether or not it constituted part of what the Crown considered to be any package available for Ngāti Kahu. Notwithstanding that Ngāti Kahu have indicated a reluctance to accept a social accord settlement, we recommend that, in offering a social accord package to Ngāti Kahu, a one-off payment of \$812,500 is included in any such offer.

- (b) Explore the development of general cultural redress for Ngāti Kahu (other than that expressly

mentioned above) as has been provided for Te Aupōuri, Te Rarawa, and Ngāi Takoto in their respective deeds of settlement. Those deeds of settlement refer to cultural redress in the form of statutory acknowledgements, deeds of recognition, protocols, appointment of fisheries advisory committees, promotion of relationships with the New Zealand Historic Places Trust and Government agencies, and letters of introduction for museums and local authorities, among other matters.<sup>6</sup> Similar redress should be explored with Ngāti Kahu.

- (c) Make a payment to Ngāti Kahu which they may use, in their discretion, to purchase further cultural redress sites (other than those mentioned in schedule A) or to enable them to achieve their cultural aspirations.

The Te Aupōuri deed of settlement provides for a Crown payment of \$380,000 to pursue cultural aspirations.<sup>7</sup> In the case of Te Rarawa the payment is \$530,000.<sup>8</sup> In the case of Ngāi Takoto, it is \$2.4 million.<sup>9</sup> No evidence was given to us by the Crown as to whether or not it is prepared to make a one-off cultural redress payment to Ngāti Kahu, however, our thinking is that Ngāti Kahu should not be disadvantaged in comparison to the other Te Hiku iwi.

We recommend that the Crown in making a formal offer to Ngāti Kahu should also provide for a one-off cultural redress payment to enable Ngāti Kahu, at their discretion, to pursue their cultural aspirations. As we have no evidence before us as to how the amounts in relation to Te Rarawa, Te Aupōuri, and Ngāi Takoto were arrived at, we stop short of recommending any figure. However, we would have thought an appropriate range is somewhere between the \$380,000 offered to Te Aupōuri and the \$2.4 million offered to Ngāi Takoto.

- (d) Maintain flexibility in the development of cultural redress for Ngāti Kahu. We would expect the matters we have outlined above to form the basis of a cultural redress package for Ngāti Kahu. However,

during the course of any negotiations there may be additional properties or other matters which the Crown or Ngāti Kahu identify as appropriate cultural redress. Our recommendations should not be seen as providing the ‘last word’ on what potentially is offered to Ngāti Kahu. For example, we noted that the Crown and Te Aupōuri have agreed to facilitate a relationship between Te Aupōuri and the Norfolk Island Museum in relation to the care and possible return of two significant patu previously gifted by Te Aupōuri tūpuna.<sup>10</sup> As a further example, the Crown has acknowledged a statement of association by Te Aupōuri in relation to the importance of the kūaka (godwit) to Te Aupōuri.<sup>11</sup> We suspect that, if the Crown and Ngāti Kahu were to fully explore what might be potentially on offer by way of cultural redress, similar instances may arise, which have not previously been considered.

#### 8.2.4 Commercial quantum

In January 2010, the Te Hiku iwi agreed in principle that the quantum for all five iwi would be \$120 million. The iwi agreed upon the split among themselves as follows:

Ngāti Kuri	\$ 21.04 million
Te Aupōuri	\$ 21.04 million
Ngāi Takoto	\$ 21.04 million
Te Rarawa	\$ 33.84 million
Ngāti Kahu	\$ 23.04 million
Total	\$120.00 million <sup>12</sup>

In the Te Hiku AIP, the Crown and the five iwi agreed upon transfer values for the seven farm properties. They agreed that the seven properties be transferred for a total of \$25 million.<sup>13</sup> In chapter 4, we discussed the discounted valuation approach used in arriving at the farm values. The total of the discounted farm values is \$49.93 million. If that is factored back into the total quantum figure the value of the proposed settlement as agreed in the Te Hiku AIP was \$169.93 million.

As a starting point, the Crown submitted that a principled approach in determining the value of any commercial quantum ‘would be to align with what the parties had agreed to date.’<sup>14</sup> The Crown reminded us that Ngāti Kahu had agreed to the \$120 million split, their portion being \$23.04 million, with discounted farm values for Rangiputa Station of \$4.10 million and Kohumaru Station at \$0.68 million.

The Crown went on their closing submissions to argue that the ‘total actual value for a settlement based on a quantum of \$23.04 million would be \$47.091 million.’<sup>15</sup> The figure of \$47.091 million was provided in the evidence of Maureen Hickey. It comprises the following:

Quantum as agreed in Te Hiku AIP	\$23.040 million
Interest	\$ 2.608 million
Farm write-downs as at	
August–October 2011	\$14.220 million
Accumulated rentals	\$ 2.650 million
Cultural redress properties	\$ 4.573 million
Total	\$47.091 million <sup>16</sup>

The Crown submitted that ‘[t]here is a principled basis then for the Tribunal constructing a package that has a total actual value of \$47.091 million’ which would not cause any relativity issues with other Te Hiku settlements.<sup>17</sup> The Crown also argued that ‘if the Tribunal adopts the figure of \$47.091 million it ought to assess all properties at the full market values and not at agreed transfer values’ as they were heavily discounted.<sup>18</sup>

From the quantum figure of \$47.091 million, we would deduct the ‘value’ of the 21 cultural redress properties. The value of those properties according to the Crown book values is \$4.573 million. While we appreciate that those lands have a value in so far as the Crown’s books are concerned, the common practice when assessing commercial quantum is not to include the value of any cultural redress properties. Deducting the sum of \$4.573 million from \$47.091 million, we arrive at a starting point of \$42.518 million. That is broken down as follows:



Quantum as agreed to in Te Hiku AIP	\$23.040 million
Interest	\$ 2.608 million
Farm write-downs as at	
August–October 2011	\$14.220 million
Accumulated rentals	\$ 2.650 million
Total	\$42.518 million

Thus, we agree that there is a principled basis for commercial quantum of either \$42.518 million or \$23.04 million. We say that on the basis that the \$23.04 million is what the Crown, Ngāti Kahu and all other Te Hiku iwi negotiated and agreed upon in 2010. That figure was not forced upon Ngāti Kahu. Undoubtedly there would have been concessions made by all parties and it represents what their negotiators were able to agree with the other four Te Hiku iwi at the time. If Ngāti Kahu agree upon a starting quantum figure of \$23.04 million then they are entitled to maintain the benefit of the agreed discounted values for Rangiputa Station and Kohumaru Station – \$4.10 million and \$0.68 million respectively.

Alternatively, if Ngāti Kahu agree on a starting quantum figure of \$42.518 million, then we agree with the Crown's submission that Ngāti Kahu should not continue to retain the benefit of the discounted farm values. Rather, the two farm stations, Rangiputa and Kohumaru, should be assessed at their full market values as at August to October 2011, being \$18.1 million and \$0.9 million respectively.

In hearing and reading the Ngāti Kahu and other Te Hiku iwi evidence, it is apparent to us that the vesting of seven farms was and is a high priority to all Te Hiku iwi. We also note that the iwi and the Crown applied a discounted valuation approach to those farms. In the evidence given by Ngāti Kahu, it remains apparent that the return of Rangiputa and Kohumaru Stations remains of high importance to them. While respecting that, we also want to be in a position to recommend choices for Ngāti Kahu. It may well be that, if and when Ngāti Kahu come to negotiate any settlement with the Crown, the return of either or both Rangiputa Station and Kohumaru Station may be of less importance to them. They may, for example,

wish to maximise the amount of cash available to them in any settlement. If so, option 1 set out below would be more attractive to them. Alternatively, they may wish to purchase Rangiputa and Kohumaru Stations for the lowest possible prices. If so, then option 2, we presume, would be more attractive to them. Thus, in the recommendations that follow we set out two alternatives. It is entirely up to Ngāti Kahu which alternative they choose.

#### (1) **Option 1**

(a) *Recommendation:* We recommend that the Crown:

- (a) Offer Ngāti Kahu a quantum figure of \$38.2662 million. We started at the figure of \$42.518 million and then subtracted \$4.2518 million, a discount of 10 per cent. Thus we arrive at a figure of \$38.2662 million.
- (b) Make an on-account payment to Ngāti Kahu on signing a deed of settlement, the amount to be agreed upon between Ngāti Kahu and the Crown.
- (c) Pay interest to Ngāti Kahu on the sum of \$38.2662 million. Interest on the first \$14 million should be paid in accordance with clause 11.1.3 of the Te Hiku AIP. In relation to the balance, interest should be calculated in accordance with clause 11.2 of the Te Hiku AIP. Any interest payable to Ngāti Kahu will need to be discounted by 10 per cent for the reasons we discussed earlier.

(b) *Transfer values of Rangiputa Station and Kohumaru Station:* Should Ngāti Kahu agree to a quantum figure of \$38.2662 million, then the transfer values of Rangiputa and Kohumaru Stations should be \$18.1 million and \$0.9 million respectively, their August to October 2011 market values.

We understand that 335 hectares of Rangiputa Station is intended to be transferred to Ngāti Kahu as cultural redress. We do not have any evidence before us which indicates whether or not the 2011 valuation of Rangiputa at \$18.1 million took into account that 335 hectares would be transferred as cultural redress. If it did not, then the

value of \$18.1 million would need to be revalued and discounted taking that into account.

## (2) *Option 2*

(a) *Recommendation*: The alternative recommendation is that the Crown:

- (a) Offer Ngāti Kahu a quantum figure of \$20.736 million. We started with the sum of \$23.04 million as agreed to in the Te Hiku AIP and then subtracted \$2.304 million, a discount of 10 per cent.
- (b) Pay an on-account payment to Ngāti Kahu on signing a deed of settlement. The Te Hiku AIP of 2010 provided for an on-account payment of \$4.8 million. We discount that by 10 per cent. Therefore the on-account payment should be \$4.32 million.
- (c) Pay interest to Ngāti Kahu. Interest should be paid on the sum of \$20.736 million in accordance with clauses 11.1.3 and 11.2 of the Te Hiku AIP. That amount will need to be discounted by 10 per cent for the reasons we have discussed earlier.

(b) *Transfer values of Rangiputa Station and Kohumaru Station*: Should Ngāti Kahu agree to a quantum figure of \$20.736 million, then the agreed transfer value of Kohumaru Station should be \$680,000, as agreed to by the Crown and Ngāti Kahu in the Te Hiku AIP.<sup>19</sup> In relation to Rangiputa Station, the Crown and Ngāti Kahu previously agreed to a transfer value of \$4.10 million.<sup>20</sup> The evidence before us now is that, if Rangiputa Station were transferred subject to a 50-year moratorium prohibiting sale, then its value according to Ngāti Kahu would be \$3.6 million.<sup>21</sup> According to the Crown, it would be \$4 million.<sup>22</sup> The Ngāti Kahu valuation evidence is that, if Rangiputa Station were transferred and made inalienable in perpetuity, it would be worth \$1.8 million.<sup>23</sup> The Crown evidence is that it would be worth \$2 million.<sup>24</sup> We prefer the valuation evidence provided by Ngāti Kahu on the basis that it takes into account that 335 hectares of Rangiputa Station is intended to be transferred to Ngāti Kahu as cultural redress.<sup>25</sup> Land to be transferred as cultural redress does

not have a market value, discounted or otherwise. The valuer for the Crown did not take that into account in reaching his valuation figures.<sup>26</sup> Therefore, the transfer value of Rangiputa Station should be \$3.6 million if Ngāti Kahu intend that a 50-year moratorium prohibiting the sale of the station is to apply, or \$1.8 million if Ngāti Kahu intend to make Rangiputa Station inalienable in perpetuity.

## 8.2.5 Properties potentially on offer for purchase by Ngāti Kahu

We recommend that the Crown:

- (a) Offer to Ngāti Kahu the following properties for purchase from their commercial quantum:
    - (i) OTS land banked properties as set out in schedule B;
    - (ii) Ministry of Education properties set out in schedule C; and
    - (iii) Land Information New Zealand properties set out in schedule D.
- The choice as to which properties, if any, Ngāti Kahu purchases is entirely up to them. We are not required to make that decision. This allows Ngāti Kahu to choose cash instead of properties if they so wish.
- (b) Offer to Ngāti Kahu the opportunity to purchase those deferred selection properties set out in schedule E.
  - (c) Continue to offer Ngāti Kahu rights of first refusal for a period of 172 years in relation to those properties set out in schedule F.

The number of properties included in schedule F is less than the number of properties which the Crown say are potentially on offer to Ngāti Kahu as first rights of refusal redress.<sup>27</sup> The reason for this is that a number of those properties are situated outside the claim area we set for this inquiry. As such, we have restricted ourselves to making recommendations in relation to properties which lie within the claim area, as defined for this remedies inquiry.<sup>28</sup> Notwithstanding the fact that we have not made any recommendations in relation to these properties, the

Crown is not precluded from including such properties in any offer it makes to Ngāti Kahu.

In making these recommendations, we are conscious that Rangiputa and Kohumaru Stations were the subject of overlapping evidence. We will discuss this issue in the section that follows.

### 8.2.6 Crown forest redress

We recommend that the Crown:

- (a) Pay Ngāti Kahu 20 per cent of the total accumulated Crown forestry rentals from the Aupouri Forest. The evidence before us is that the amount currently payable to Ngāti Kahu is approximately \$2,270,777. Obviously that amount will increase with time until such date as the accumulated rentals are paid out.
- (b) Offer to Ngāti Kahu for purchase from their commercial quantum the Mangonui blocks of the Aupouri Forest and the Kohumaru blocks of the Otangaroa Forest. Those lands are set out in schedule G.
- (c) Transfer at no cost to Ngāti Kahu any New Zealand units associated with any purchase of the Mangonui blocks of the Aupouri Forest and the Kohumaru blocks of the Otangaroa Forest.
- (d) Upon purchase of the Kohumaru blocks of the Otangaroa Forest, pay to Ngāti Kahu any accumulated rentals associated with those blocks. The evidence currently available to us is that the accumulated rentals are \$0.38 million.

In making this recommendation, we are conscious of the following: first, of the five Te Hiku iwi, Ngāti Kahu received the smallest allocation of Crown forest lands in terms of hectareage and value. Secondly, the Crown has always had it in mind to offer Ngāti Kahu part of the Otangaroa Forest, subject to the resolution of shared interests.<sup>29</sup>

We are aware that Rangiputa Station, Kohumaru Station, and the Kohumaru blocks of the Otangaroa Forest were the subject of overlapping evidence.

In relation to Rangiputa and Kohumaru Stations evidence was given by two Ngāti Kahu hapū, namely Ngāti Tara and the two Te Paatu groups. Te Pātū ki Peria also gave evidence about interests in the Kohumaru blocks of the Otangaroa Forest. Notwithstanding that, we are not dissuaded from making a recommendation that the Crown offer Rangiputa and Kohumaru Stations and the Kohumaru blocks of the Otangaroa Forest to an entity representative of all of Ngāti Kahu hapū. Any such offer would be the subject of a ratification process. If and when these assets are returned to a Ngāti Kahu post-governance entity we think it best left for the Ngāti Kahu iwi and their constituent hapū to decide whether they are held as iwi assets or further devolved to any or all of the hapū.

We also heard evidence from overlapping iwi who asserted interests in the Kohumaru block: Ani Taniwha and Owen Kingi on behalf of Whangaroa based parties; Ngā hapū o Whangaroa; and Ngāpuhi interests represented through Te Uri o Te Aho hapū.<sup>30</sup>

In chapter 6, we discussed the evidence raised by these parties and Ngāti Kahu relating to Otangaroa and Kohumaru. We are satisfied that Ngāti Kahu have particularly strong interests in the Kohumaru blocks of the Otangaroa Forest, where one of their marae is located.

We note the approach taken by the Crown in its eventual allocation of the Aupouri Forest which was informed as much by commercial reasons as by relative mana whenua. We are satisfied that Ngāti Kahu not only have significant mana whenua interests in that part of the Otangaroa Forest within the remedies claim area but also for commercial reasons, namely a lack of relativity in the allocation of the Aupouri Forest, are deserving of more Crown forest redress. For these reasons, we recommend that the Crown offer the Kohumaru blocks of the Otangaroa Forest to Ngāti Kahu. In making this recommendation, we have taken into account the fact that the vast majority of the Otangaroa Forest lies outside the remedies claim area and is potentially available to Ngāti Kahu ki Whangaroa and Ngāpuhi groups in the future settlement of their claims. As we have stated, durable

settlements require a balancing of customary interests and future economic needs, across iwi in a particular region – as was recognised in the Te Hiku Forum. Although we are not in the position to make findings on mana whenua, we are satisfied that the Crown will retain significant capacity to redress the claims of other iwi should our recommendations be implemented.

### 8.2.7 The value of the Crown forest lands

We note that Ngāti Kahu did not provide any evidence as to the value of these lands. They submitted that the forest lands should be valued at zero.<sup>31</sup> We do not agree that a ‘zero value’ can be attributed to Crown forest land. Although the Crown is prevented by section 35 of the Crown Forest Assets Act 1989 from transferring Crown forest licensed land, once it has been returned to Māori there is no longer a restriction on sale. Hypothetically, a market value must exist.

The Crown provided evidence employing both ‘market value’ and ‘licensor’s interest’ methodologies. The Crown’s market valuations of the Mangonui and Kohumaru blocks were \$1,383,000 and \$709,000 respectively.<sup>32</sup> The Crown’s licensor’s interest valuations in relation to the same blocks were \$1,189,000 and \$642,000 respectively.<sup>33</sup> We prefer the licensor’s interest methodology given that it takes into account that the land is subject to a Crown forestry license.

Turning to the Mangonui blocks, we suggest a further deduction of \$130,000 for the value of improvements, on the basis that improvements were purchased by the licensee as part of the tree crop sale and the Crown does not own the improvements.<sup>34</sup> Therefore we arrive at a value of \$1,059,000. The licensor’s interest valuation of the Kohumaru blocks is \$642,000. From that we deduct the value of the improvements of \$36,000. We arrive at a value of \$606,000.

Using the licensor’s interest methodology, and deducting the value of improvements, we arrive at a combined figure of \$1,665,000 for the Mangonui and Kohumaru blocks. The Mangonui blocks comprise some 776.7744

hectares, the Kohumaru blocks 544.0480 hectares; the total hectareage is 1,320.8224 hectares.

Even using a licensor’s interest valuation and deducting the value of improvements, the resulting combined figure of \$1,665,000 seems disproportionately large compared with the values ascribed to the peninsula blocks of the Aupouri Forest in the Te Rarawa, Te Aupōuri, and Ngāi Takoto deeds of settlement. For example, in the Te Rarawa and Ngāi Takoto deeds of settlement, the Aupouri Peninsula blocks are described as comprising some 21,158.3311 hectares. The Crown and the iwi concerned have agreed that a 20 per cent share of that forest is \$1,532,000.<sup>35</sup>

Very little evidence was given to us in relation to the agreed value of the Crown forests in the allocation decisions made by the Crown. Throughout, it was submitted to us by the Crown that although Ngāti Kahu would be allocated only a small proportion of the Aupouri Forest – 776 hectares (3.4 per cent of the forest) – the overall value was 12 per cent of the forest.<sup>36</sup> Some forestry valuation evidence was supplied by John Hancock for the Crown.<sup>37</sup> We could tell from the information provided that Crown forest blocks had differing values depending on their location.<sup>38</sup> After the hearing stage closed, we received further evidence from the Crown in response to an application for remedies by Te Rarawa and Ngāti Tara. In an affidavit filed by Maureen Hickey, she deposed that, while the Mangonui blocks were only a small percentage of the total area of the Aupouri Forest, its value was relatively higher, reflecting that the peninsula blocks were on poorer quality land.<sup>39</sup>

The evidence that we have in relation to forestry valuation is so limited that we are not in a position to make recommendations as to the transfer value of the Mangonui and Kohumaru blocks other than referring to what we consider are reasonable starting points of \$1,059,000 for the Mangonui blocks and \$606,000 for the Kohumaru blocks.

Having said that we urge the Crown to be open to the suggestion that the eventual transfer values arrived at are

less than \$1,059,000 and \$606,000 respectively. We say that because in our recent decision declining urgency, we set out a number of concerns with the Crown's approach to allocation of the Aupouri Forest.<sup>40</sup> The Crown recently filed further evidence on this point. Notwithstanding that, our concerns remain.<sup>41</sup>

We were concerned that Ngāti Kahu were left with the smallest proportion of forest land by area and value. We were concerned that considerable emphasis was initially placed upon assessing the customary interests of Ngāti Kahu in the Aupouri Forest blocks and yet the final allocation by the Minister appeared to depart from that approach. Instead, he made what he called a 'commercially based decision'.<sup>42</sup> We were concerned that Te Aupōuri, Te Rarawa, Ngāi Takoto, and Ngāti Kuri would become tenants in common across all the peninsula blocks of the Aupouri Forest, when the Ngāi Takoto and Te Rarawa interests were described as 'threshold' only in the northern peninsula blocks. We were particularly concerned that officials had assessed Ngāti Kahu and Te Rarawa as both having interests at Takahue and that shared redress might be possible, yet in the final allocation decision the Minister decided to award all of the Takahue blocks to Te Rarawa. Our sense of it is that the final allocation decision was driven by pragmatism as much as anything else and a desire to achieve settlements. While we accepted that it was the role of the Crown to make allocation decisions, we also alluded to the fact that had we been called upon to make that decision, we may have arrived at a different result.

As we discussed in chapter 6 in relation to the Takahue Forest blocks, while we cannot be precise, it would appear that Ngāti Kahu had some interests there but not as strong as those of Te Rarawa. By offering those blocks exclusively to Te Rarawa, Ngāti Kahu have been denied the opportunity to purchase part of those blocks, receive accumulated rentals that flow from those blocks, and receive any New Zealand units.

For the reasons we stated in the urgency decision, on balance we do not consider that the defects in the

decisions of the Crown in relation to the forest allocation process were sufficient for urgency to be granted. However, in relation to this exercise we suggest that the Crown take into account the concerns outlined in this report and in our urgency decision when negotiating the transfer values of the Mangonui blocks of the Aupouri Forest and Kohumarū blocks of the Otangaroa Forest with Ngāti Kahu.

#### Notes

1. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua – Healing the Past, Building a Future: A Guide to the Treaty of Waitangi Claims and Negotiations with the Crown* (Wellington: Office of Treaty Settlements, 2004), p 85
2. *Ibid*, pp 85–86
3. Transcript 4.18, pp 208–210
4. Te Aupōuri and the Crown, *Deed of Settlement of Historical Claims*, 28 January 2012, <http://nz01.terabyte.co.nz/ots/DocumentLibrary%5CTeAupouriDoS.pdf> (Te Aupōuri deed of settlement), pp 56, 63; Te Rarawa and the Crown, *Deed of Settlement of Historical Claims*, 28 October 2012, <http://nz01.terabyte.co.nz/ots/DocumentLibrary/TeRarawa-DeedofSettlement.pdf> (Te Rarawa deed of settlement), pp 106, 113; Ngāi Takoto and the Crown, *Deed of Settlement of Historical Claims*, 27 October 2012, <http://nz01.terabyte.co.nz/ots/DocumentLibrary/NgaiTakoto-DeedofSettlement.pdf> (Ngāi Takoto deed of settlement), pp 39, 46
5. Te Aupōuri deed of settlement, p 114; Te Rarawa deed of settlement, p 230; Ngāi Takoto deed of settlement, p 96
6. Te Aupōuri deed of settlement, pp 116–128; Te Rarawa deed of settlement, pp 232–247; Ngāi Takoto deed of settlement, pp 98–108
7. Te Aupōuri deed of settlement, p 127
8. Te Rarawa deed of settlement, p 246
9. Ngāi Takoto deed of settlement, p 99
10. Te Aupōuri deed of settlement, pp 126–127
11. *Ibid*, p 127
12. The Crown and Ngāti Kuri, Te Aupōuri, Ngāi Takoto, Ngāti Kahu, and Te Rarawa, *Agreement in Principle Relating to the Settlement of the Historical Claims of Te Hiku Iwi being Ngāti Kuri, Te Aupōuri, Ngāi Takoto, Ngāti Kahu, Te Rarawa*, 16 January 2010 (doc R29(b)), p 13
13. *Ibid*, pp 14–15
14. Document s33, p 35
15. *Ibid*, p 37
16. Document R28, pp 25–26, 38–39; doc R28(c)
17. Document s33, p 37
18. *Ibid*

19. The Crown and Ngāti Kuri, Te Aupōuri, Ngāi Takoto, Ngāti Kahu, and Te Rarawa, *Agreement in Principle Relating to the Settlement of the Historical Claims of Te Hiku Iwi*, p15
20. Ibid
21. Document R56(c), p 2
22. Transcript 4.18, p 697
23. Document R56(c), p 2
24. Transcript 4.18, p 697
25. Document R56(c), pp 16–17
26. Transcript 4.18, p 692
27. Memorandum 2.495; doc R35(b), p 88; docs R35(b)(iii)(1), (2)
28. For the sake of clarity, the properties excluded are those numbered 1, 2, 12, 17, 18, 23, 26, 27, 29, 31, 32, 34, 42, 50, 69, 71, 73, 78, 85, 92, 93, 94, 108, 140, 142, 143, 144, 148, and 150: see doc R35(b), p 88.
29. See Ngāti Kahu 2008 AIP, p 54; memo 2.362
30. See, for example, the evidence of Nuki Aldridge (doc R48), Owen Kingi (doc R64), Ani Taniwha (doc R65), and Pairama Tahere (doc R47).
31. Document S31, p 52
32. Document R51, p 13
33. Ibid
34. Ibid, pp 7–8, 12
35. Te Rarawa deed of settlement, property redress schedule 3, p 7; Ngāi Takoto deed of settlement, property redress schedule 3, p 6
36. Document R29(b), pp 654–655
37. Document R51
38. Ibid, see p 13 table
39. Document S47, p 10
40. Judge Stephen Clark, Dr Robyn Anderson, Joanne Morris, and Professor Pou Temara, memorandum declining applications for urgency on behalf of Ngāti Kahu, 10 October 2012 (Wai 2364 ROI, memo 2.5.11), paras 103–145
41. Document S47(b)(i)
42. Document R29(b), exhibit 28



Dated at *Wellington* this *1st* day of *February* 20*13*



Judge S R Clark, presiding officer



Dr R Anderson, member



J Morris, member



Professor W T Temara, member





APPENDIX I

## SCHEDULES

Schedules A to G below set out the redress properties that form part of our recommendations in chapter 8.

The schedules are based on information provided by Adam Levy, a principal adviser at the Office of Treaty Settlements (OTS) and a Crown witness (see documents R35(b)(iii)(1) and R35(b)(iii)(2) on the record of inquiry). Best endeavours have been made to ensure the accuracy of this information within the time constraints of producing this report.

The various schedules indicate:

- ▶ **Schedule A:** Properties that the Crown should transfer at no cost to Ngāti Kahu for cultural redress.
- ▶ **Schedule B:** OTS land-banked properties which should be offered for purchase to Ngāti Kahu.
- ▶ **Schedule C:** Ministry of Education (MOE) properties which should be offered for purchase to Ngāti Kahu.
- ▶ **Schedule D:** Land Information New Zealand (LINZ) properties which should be offered for purchase to Ngāti Kahu.
- ▶ **Schedule E:** Deferred selection properties (DSPS) which Ngāti Kahu should be given an opportunity to purchase.
- ▶ **Schedule F:** Properties for which Ngāti Kahu, and other iwi, should be offered rights of first refusal (RFRs).
- ▶ **Schedule G:** Properties in the Aupouri and Otangaroa Forests that the Crown should offer for purchase.

Where reference is made to maps in the Ngāti Kahu Agreement in Principle (AIP) (2008), see pages 30 to 50 of that document (appended to paper 2.362). The Map ID column refers to the relevant OTS reference for the property (see the relevant section in document R35(b)).

The schedules do not include RFR properties located west of the remedies claim area boundary or south of land blocks reported on in the *Muriwhenua Land Report* (see chapters 7 and 8). Where properties are located partly inside and partly outside these areas, we refer only to those parts of the property over which we have jurisdiction.

## SCHEDULE A :

### PROPERTIES THAT THE CROWN SHOULD TRANSFER AT NO COST TO NGĀTI KAHU FOR CULTURAL REDRESS

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
3	DOC	18.7 hectares, approximately, being Parts Section 1 Block I Karikari Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 7 Ngāti Kahu AIP	Maitai Bay Farm Paddock (including the DOC-owned house and water tanks)
4	DOC	4.1 hectares, approximately, being Parts Section 9 Block v Mangonui Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 2 Ngāti Kahu AIP	Maitai Bay dune area (in front of farm block)
5	DOC	3.8 hectares, approximately, being Part Section 1 Block I Karikari Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 1 Ngāti Kahu AIP	Maitai Pā
6	DOC	9.2 hectares, approximately, being Part Section 1 Block I Karikari Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 17 Ngāti Kahu AIP	Part Maitai Bay Recreation Reserve (including Maitai Bay Campground)
7	DOC	1.8 hectares, approximately, being Part Section 1 Block I Karikari Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 8 Ngāti Kahu AIP	Maitai Bay Inland Pā
9	DOC	75.21 hectares, approximately, being Part Sections 16 and 18 and Section 17 Block IV Karikari Survey District. Subject to survey	Ngāti Kahu	Public Conservation Land	Cultural redress – map 12 Ngāti Kahu AIP	Part Puwheke Recreation Reserve
11	DOC	66.4 hectares, approximately, being Part Sections 16 and 18 Block IV Karikari Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 3 Ngāti Kahu AIP	Part Puwheke Recreation Reserve
13	DOC	155.5 hectares, approximately, being Parts Sections 5, 6, 7, 8, 9, and 10 Block IV Karikari Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 13 Ngāti Kahu AIP	Karikari Conservation Area
20	DOC	10.9 hectares, approximately, being Section 1 sO 64697 and Bed of Lake Waiporohita. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 14 Ngāti Kahu AIP	Lake Waiporohita Scenic Reserve
25	OTS	335 hectares area to be advised by Ngāti Kahu.	Ngāti Kahu	Landbank	Cultural redress – map 21 Ngāti Kahu AIP	Rangiputa Station
43	DOC	34.4 hectares, approximately, being Allotment 131 Parish of Mangonui. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 10 Ngāti Kahu AIP	Rangikapiti Pā Historic Reserve

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
47	DOC	2.15 hectares, approximately, being Part Allotments 168, 169, 170, 176, 177, 178, 179, and 180, and Allotments 153, 171, 172, 173, 174, and 175 Town of Mangonui. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 15 Ngāti Kahu AIP	Part Mangonui Conservation Area
48	DOC	22.1 hectares, approximately, being Part Lot 1 DP 42938 and Part Lot 1DP 61819. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 11 Ngāti Kahu AIP	Taumarumaru Recreation Reserve
49	DOC	0.55 hectares, approximately, being Part Allotment 294 Town of Mangonui. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 5 Ngāti Kahu AIP	Part Mangonui Domain Recreation Reserve
55	DOC	2.7 hectares, approximately, being Parts Section 9 Block V Mangonui Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 4 Ngāti Kahu AIP	Part Mangonui Domain Recreation Reserve
74	DOC	9.3 hectares, approximately, being Part Section 7 Block XI Rangaunu Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 6 Ngāti Kahu AIP	Part Mangatete Conservation Area
99	DOC	89.66 hectares, more or less, being Section 1 SO 62458, Section 2 SO 62459, and Section 3 SO 62460.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 9 Ngāti Kahu AIP	Part Otangaroa Conservation Area
105	DOC	264.1029 hectares, more or less, being Allotments 30, 40, and Parts Allotment 41 Parish of Oruru. 100.887 hectares, more or less, being Allotment 75 Parish of Oruru, and Allotments 15, 154, 156, and 184 Parish of Kaiaka.	Ngāti Kahu	Public Conservation Land	Cultural redress – map 16 Ngāti Kahu AIP	Paranui Scenic Reserve
14	LINZ	65 hectares, approximately, being bed of Lake Rotokawau. Subject to survey.	Ngāti Kahu	Lake bed	Cultural redress – map 19 Ngāti Kahu AIP	Lake Rotokawau
16	LINZ	20 hectares, approximately, being bed of Lake Rotopotaka. Subject to survey.	Ngāti Kahu	Lake bed	Cultural redress – map 19 Ngāti Kahu AIP	Lake Rotopotaka
35	Public Trustee	8.0937 hectares, more or less, being Allotment 40 PSH of Waiake.	Ngāti Kahu	Urupa	Cultural redress – map 20 Ngāti Kahu AIP	Otamawhakauru Urupa

## SCHEDULE B:

### OTS LAND-BANKED PROPERTIES WHICH SHOULD BE OFFERED FOR PURCHASE TO NGĀTI KAHU

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
24	OTS	3365 hectares, approximately, being Part Lots 1, 2 and 15 and Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 DP 172526, Lot 1 DP 148402, Lot 1 DP 355293 and Sections 12, 13, and 18 SO 316785. Subject to survey. This excludes the 335 hectares approximately wāhi tapu areas which will be gifted to Ngāti Kahu. Total farm area 3700 hectares approximately.	Ngāti Kahu	Landbank	Commercial redress – purchase	Rangiputa Station
39	OTS	3.3386 hectares, more or less, being Section 16 Block VIII Rangaunu Survey District.	Ngāti Kahu	Landbank	Commercial redress – purchase	Off Tohanga Road Lake Ohia
40	OTS	2.0461 hectares, more or less, being Section 11 Block VIII Rangaunu Survey District.	Ngāti Kahu	Landbank	Commercial redress – purchase	Off Tohanga Road Lake Ohia
54	OTS	0.267 hectares, more or less, being Lot 1 DP 164400.	Ngāti Kahu	Landbank	Commercial redress – purchase	State Highway 10 and Wrathall Road, Mangonui
56	OTS	0.1139 hectares, more or less, being Lot 3 DP 81576.	Ngāti Kahu	Landbank	Commercial redress – purchase	23 Colonel Mould Drive, Mangonui
57	OTS	0.432 hectares, more or less, being Lot 2 DP 164400.	Ngāti Kahu	Landbank	Commercial redress – purchase	4 Wrathall Road, Mangonui
59	OTS	8.7946 hectares, approximately, being Part Lot 1 DP 106559. Subject to survey.	Ngāti Kahu	Landbank	Commercial redress – purchase	State Highway 10, Mangonui
64	OTS	0.1146 hectares, more or less, being Lot 4 DP 60617.	Ngāti Kahu	Landbank	Commercial redress – purchase	6 Haekaro Lane, Coopers Beach
86	OTS	0.3 hectares, approximately, being Part Kareponia 1B2B Block. Balance Computer Freehold Register NA602/173. Subject to survey.	Ngāti Kahu	Landbank	Commercial redress – purchase	5975 State Highway 10, California Hill, Kareponia
101	OTS	944.7389 hectares, approximately, being Allot 170 PSH of Mangonui, Section 1 SO 62833, Section 1 SO 65489, Sections 1, 2, 3, 4, 5, 6–14, 15, and SO 64017.	Ngāti Kahu	Landbank	Commercial redress – purchase	Kohumaru Station
117	OTS	0.1398 hectares, more or less, being Lot 49 DP 77073. All Computer Freehold Register NA111B/27.	Ngāti Kahu	Landbank	Commercial redress – purchase	21A Parkdale Cres, Kaitaia
112	OTS	0.0904 hectares, more or less, being Lot 19 DP 69291. All Computer Freehold Register 490885.	Ngāti Kahu	Landbank	Commercial redress – purchase	5 Mary Ann Place, Kaitaia



Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
122	OTS	0.1408 hectares, approximately, being Part Lot 289 DP 14289. Balance Computer Freehold Register NA4B/914. Subject to survey. 0.1652 hectares, more or less, being Part Lot 290 and 291 DP 14289. All Computer Freehold Register NA 1696/88. 0.1075 hectares, more or less, being Part Lot 290 and 291 DP 14289. All Computer Freehold Register NA741/150.	Ngāti Kahu	Landbank	Commercial redress – purchase	Corner Puckey Avenue and Taafe Street, Kaitaia

**SCHEDULE C :****MINISTRY OF EDUCATION PROPERTIES WHICH SHOULD BE OFFERED FOR PURCHASE TO NGĀTI KAHU**

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
15	MOE	1.8196 hectares, approximately, being Part Parakerake. All <i>Gazette</i> , 1955, p 1422. Subject to survey.	Ngāti Kahu	Kura Kaupapa Māori	Sale and leaseback	Rangiawhia Kura Kaupapa
53	MOE	1.9185 hectares, approximately, being Allotments 48, 49, 50, 51, 52, 53, and 297 and Part Allotment 54 Town of Mangonui.	Ngāti Kahu	Public school	Sale and leaseback	Mangonui School
63	MOE	3.3885 hectares, more or less, being Allotments 2, 3, 14, 16, 17 and 18 of Section 2 Village of Taipa, Allotment 28 Parish of Taipa and Lot 17 DP 51192.	Ngāti Kahu	Public school	Sale and leaseback	Taipa Area School
77	MOE	1.8082 hectares, more or less, being Lots 1 and 2 DP 38912 and Section 8 Block x1 Rangaunu Survey District.	Ngāti Kahu	Public school	Sale and leaseback	Kaingaroa School
109	MOE	1.2164 hectares, approximately, being Part Ōturu 2D1, Part Ōturu 2D1C and Parts Ōturu 2D3A. Subject to survey.	Ngāti Kahu	Public school	Sale and leaseback	Ōturu School
111	MOE	1.8033 hectares, more or less, being Lot 1 DP 36859.	Ngāti Kahu	Public school	Sale and leaseback	Peria School
135	MOE	2.0234 hectares, more or less, being Pamapurua B2.	Ngāti Kahu	Public school	Sale and leaseback	Pamapurua School

**SCHEDULE D :**

**LAND INFORMATION NEW ZEALAND PROPERTIES WHICH SHOULD BE OFFERED FOR PURCHASE TO NGĀTI KAHU**

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
66	LINZ	0.793 hectares, more or less, being Sections 1 and 2 SO 61306.	Ngāti Kahu	Residual Crown property	Purchase	State Highway 10, Mangonui
19	LINZ	3.0 hectares, approximately, being Part Crown Land SO 18873. Subject to survey.	Ngāti Kahu	Residual Crown property	Purchase	Sand Dunes – Tokerau Beach
30	LINZ	1.3341 hectares, approximately, being Closed Road SO 41655 Block v Rangaunu Survey District. Subject to survey.	Ngāti Kahu	Residual Crown property	Purchase	Inland Road, Tokerau Beach
33	LINZ	6.0703 hectares, more or less, being Section 74, Block II Mangonui Survey District.	Ngāti Kahu	Residual Crown property	Purchase	Temahana
36	LINZ	0.4619 hectares, approximately, being Crown Land Block II Mangonui Survey District. Subject to survey.	Ngāti Kahu	Residual Crown property	Purchase	Adjacent to Taemaro Road
60	LINZ	0.2062 hectares, approximately, being Crown Land. Subject to survey.	Ngāti Kahu	Residual Crown property	Purchase	SH 10, Coopers Beach
61	LINZ	0.0452 hectares, approximately, being Crown Land Block v Mangonui Survey District. Subject to survey.	Ngāti Kahu	Residual Crown property	Purchase	16 Wrathall Road, Mangonui
62	LINZ	0.0071 hectares, more or less, being Section 47 Block v Mangonui Survey District (SO 42677).	Ngāti Kahu	Residual Crown property	Purchase	21 Wrathall Road, Mangonui
65	LINZ	0.06 hectares, being Crown Land Oparihi Block v Mangonui Survey District.	Ngāti Kahu	Residual Crown property	Purchase	Oparihi Road, Mangonui
67	LINZ	0.5792 hectares, approximately, being Crown Land (SO 28509 Block IX Rangaunu Survey District Adjoining Lots 1 and 2 DP 192174). Subject to survey.	Ngāti Kahu	Residual Crown property	Purchase	Parapara Road, Rangaunu
68	LINZ	1.375 hectares, approximately, being Crown Land Block VII Rangaunu Survey District. Subject to survey.	Ngāti Kahu	Residual Crown property	Purchase	Mangatete Road, Rangaunu
79	LINZ	0.0371 hectares, more or less, being Closed Road Block VIII Mangonui Survey District (SO 38461).	Ngāti Kahu	Residual Crown property	Purchase	Paranui Road, Paranui
81	LINZ	0.8346 hectares, approximately, being Crown Land Block XII Rangaunu Survey District. Subject to survey.	Ngāti Kahu	Residual Crown property	Purchase	Pukerau Road, Rangaunu
84	LINZ	0.1105 hectares, approximately, Crown Land Adjoining Hikurangi Block VIII Mangonui Survey District. Subject to survey.	Ngāti Kahu	Residual Crown property	Purchase	Off Paranui Road, Taipa
89	LINZ	0.0277 hectares, approximately, being Crown Land Adjoining Part Allot 2 Parish of Oruru.	Ngāti Kahu	Residual Crown property	Purchase	Garton Road, Mangonui

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
90	LINZ	0.521 hectares, more or less, being Allotments 171 and 172 Parish of Mangonui (SO 29961).	Ngāti Kahu	Residual Crown property	Purchase	Tipa Tipa Road, Mangonui
91	LINZ	0.0758 hectares, approximately, being Part Section 1 Block X Mangonui Survey District (SO 16442). Subject to survey.	Ngāti Kahu	Residual Crown property	Purchase	Kenana Road (Tipa Tipa Road), Mangonui
104	LINZ	1.1765 hectares, approximately, being Part Allotments 48 and 49 PSH of Mangatete SO 41275 and Closed Road SO 41275 Block III Takahue Survey District. Subject to survey.	Ngāti Kahu	Residual Crown property	Purchase	Closed Road, Riley Road
107	LINZ	0.6551 hectares, more or less, being Parts Closed Road (SO 17630 – Adjoining Section 2 Block I Maungataniwha Survey District).	Ngāti Kahu	Residual Crown property	Purchase	Blue Gorge Road, Kaiaka
121	LINZ	0.02 hectares, approximately, being Part Kaiaka Block.	Ngāti Kahu	Residual Crown property	Purchase	Fairburn Road, Karaka
129	LINZ	2.5615 hectares, more or less, being Sections 1, 2, and 3 SO 48743 Block V Maungataniwha Survey District.	Ngāti Kahu	Residual Crown property	Purchase	Honeymoon Valley Road, Peria

**SCHEDULE E :**

**DEFERRED SELECTION PROPERTIES WHICH NGĀTI KAHU SHOULD BE GIVEN AN OPPORTUNITY FOR PURCHASE**

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
100	LINZ	<i>Note this legal description excludes the Kura site.</i> 78.44 hectares, approximately, being Part Allotments 1, 4, 5, 6, 7, 9, 10, and 13 Awanui Parish. Part <i>Gazette</i> Notice A521077. Subject to survey. 4.84 hectares, approximately, being Part Closed Road adjoining Part Allotments 1, 4, 5, 6, 8, 9, 10, and 13 Awanui Parish. Part <i>Gazette</i> Notice A542631. Subject to survey.	Ngāi Takoto, Ngāti Kahu	Airport	Joint DSP, sale, and lease back	Kaitaia Airport
103	LINZ	2.195 hectares, approximately, being Part Allotments 1 and 4 Awanui Parish. Part <i>Gazette</i> Notice A521077. Subject to survey. 0.4 hectares, approximately, being Part Closed Road adjoining Part Allotments 1 and 4 Awanui Parish. Balance <i>Gazette</i> Notice A542631. Subject to survey.	Ngāi Takoto, Ngāti Kahu	Kura Kaupapa Maori	Joint DSP, sale, and lease back	Te Kura Kaupapa Māori o Te Rangi Aniwaniwa

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
124	OTS	0.1702 hectares, more or less, being Lots 2 and 3 DP 55296. All Computer Freehold Register NA112A/730.	Ngāi Takoto, Te Rarawa, and Ngāti Kahu	Landbank	Joint DSP, sale, and lease back	42 Church Road, Kaitaia
114	MOE	1.9469 hectares, approximately, being Parts Lot 3 DP 29054 and Lot 1 DP 33128. All Proclamation 15934. Subject to survey. 0.0997 hectares, approximately, being Parts Lot 3 DP 29054. All Proclamation 14658. Subject to survey.	Ngāi Takoto, Te Rarawa, and Ngāti Kahu	Public School	Joint DSP, sale, and lease back	Kaitaia Intermediate
125	MOE	2.2658 hectares, more or less, being Part Old Land Claim 242, Parts Lot 16 DP 405, Part Lot 16 DP 22615, Part Lot 15 DP 909. All GN. 294191.1. Subject to survey. 0.4778 hectares, more or less, being Part 10 DP 61707. Balance GN. 078355. Subject to survey. 2.8968 hectares, more or less, being Part Lot 10 DP 61707. Balance GN. 736393.1. Subject to survey.	Ngāi Takoto, Te Rarawa, and Ngāti Kahu	Public School	Joint DSP, sale, and lease back	Kaitaia School
126	MOJ	0.3792 hectares, more or less, being Lot 1 DP 177374. All Computer Freehold Register NA109B/539.	Ngāi Takoto, Te Rarawa, and Ngāti Kahu	Courthouse	Joint DSP, sale and lease back	Kaitaia Courthouse
132	MOE	7.9587 hectares, approximately, being Part Allotment 71 Parish of Ahipara. Part Computer Freehold Register NA962/30. Subject to survey. 0.35 hectares, more or less, being Lot 1 DP 193961. All Computer Freehold Register NA123A/417. 5.2351 hectares, approximately, being Parts Old Land Claim 7. A Gazette notice 19674. Subject to survey. 0.1073 hectares, approximately, being Closed Road SO 52852. All Gazette notice 579123.1. Subject to survey. 0.0483 hectares, approximately, being Stopped Road SO 45142. All Gazette notice D472616.1. Subject to survey.	Ngāi Takoto, Te Rarawa, and Ngāti Kahu	Public school	Joint DSP, sale, and lease back	Kaitaia College

**SCHEDULE F:**

**PROPERTIES FOR WHICH NGĀTI KAHU, AND OTHER IWI, SHOULD BE OFFERED RIGHTS OF FIRST REFUSAL**

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
8	DOC	488.752 hectares, more or less, being Section 1 Block I Karikari Survey District, Karikari 2A and 2K, Merita 2, A, and B1 and Section 1, Block V Karikari Survey District. All <i>Gazette</i> , 1983, p 3558, All <i>Gazette</i> , 1995, p 3005 and All <i>Gazette</i> , 1980, p 3271. All Computer Freehold Registers NA221/277, NA658/91, NA49A/939, NA32/261, and NA458/143.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Maitai Bay Recreation Reserve
10	DOC	141.4542 hectares, more or less, being Sections 16, 17 and 18 Block IV Karikari Survey District. All <i>Gazette</i> , 1989, p 3101, All <i>Gazette</i> , 1980, p 2454, and All <i>Gazette</i> , 1898, p 3101.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Puwheke Recreation Reserve
21	DOC	7.1831 hectares, more or less, being Section 27 Block I Rangaunu Survey District. All <i>Gazette</i> , 1958, p 1345.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Walker Island Nature Reserve
22	DOC	14.0358 hectares, approximately, being Crown Land Block II Rangaunu Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Rangiputa Conservation Area
28	DOC	378 hectares, approximately being Parts Sections 9, 10, 11, and 12 Block V Rangaunu Survey District and Crown Land Blocks III and V Rangaunu Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Tokerau Beach Conservation Area
37	DOC	946 hectares, approximately, being Sections 10 and 11 Block VII Rangaunu Survey District; Sections 12 and 24 Block VIII Rangaunu Survey District; Crown Land Blocks V, VII, VIII, IX Rangaunu Survey District; Crown Land SO 18870; Sections 3, 4, and 5 SO 59314 and Closed Road. Subject to survey.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Rangaunu Conservation Area
38	DOC	492 hectares, approximately, being Lake Bed Block V and VIII Rangaunu Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Lake Ohia Conservation Area
41	DOC	15.985 hectares, approximately, being Parts Allotment 2, Parish of Mangonui East. All Computer Freehold Register NA5C/517. Subject to survey.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Oyster Point Conservation Area
44	DOC	0.0607 hectares, more or less, being Parts Closed Road SO 67343. All <i>Gazette</i> , 1998, p 3785.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Mill Bay Conservation Area

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
45	DOC	0.0405 hectares, more or less, being Closed Road Block v Mangonui Survey District. All <i>Gazette</i> , 2001, p1376.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Mangonui Recreation Reserve
46	Police	0.2393 hectares, approximately, being Part Allotment 19 of Section 1 Village of Mangonui and Part Closed Road so 48985. Subject to survey. All Computer Freehold Register NA402/1 and Part <i>Gazette</i> , 1974, p2644.	Ngāti Kahu	Police Station	RFR – Exclusive	Mangonui Police Station
51	DOC	7.9058 hectares, approximately, being Parts Allotments 168, 169, 170, 176, 177, 178, 179 and 180 Town of Mongonui; Allotments 171, 172, 173, 174 and 175 Town of Mangonui; Parts Section 11 Block v Mangonui Survey District; Allotments 153 and 207 Parish of Mangonui; Section 2 so 66062. Subject to survey.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Mangonui Conservation Area
52	DOC	0.0076 hectares, more or less being Parts Allotments 133 and 146, Parish of Mangonui. All <i>Gazette</i> , 1995, p 797.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Cable Bay Historic Reserve
58	DOC	14 hectares, approximately, being Allotment 294 Town of Mangonui and Section 9 Block v Mangonui Survey District. All <i>Gazette</i> , 1979, p 3078. Subject to survey.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Mangonui Domain Recreation Reserve
70	DOC	50.9903 hectares, more or less, being Section 6 Block vIII and Section 7 Block xI Rangaunu Survey District.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Mangatete Conservation Area
72	DOC	3.835 hectares, more or less, being Sections 1, 2, 3, and 4 so 68518.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Pairatahi Gum Historic Reserve
75	DOC	72.97 hectares, more or less, being Lot 1 DP 151253. All <i>Gazette</i> , 1995, p 4265. All Computer Freehold Register NA90A/777.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Aputerewa Scenic Reserve
76	DOC	0.6627 hectares, approximately, being Crown Land Block vIII Mangonui Survey District. Subject to survey.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Oruru River Conservation Area
83	DOC	4.0467 hectares, more or less, being Allotments 161, 162 and 163 Parish of Mangonui.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Paroanui Conservation Area
87	DOC	0.0991 hectares, more or less, being Section 31 Block xIII Rangaunu Survey District.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Taumata Conservation Area



Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
88	DOC	14.4268 hectares, more or less, being Allotments 78 and 80 Parish of Oruru and Lot 1 DP 109144. All <i>Gazette</i> , 2003, p 970, All Computer Freehold Registers NA61C/82 and NA 90D/180.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Paranui Stream Government Purpose Wildlife Management Reserve
95	DOC	34.3252 hectares, more or less, being Allotments 9 and 10 Parish of Waitarau. All <i>Gazette</i> , 1984, p 567.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Omatai Conservation Area
97	DOC	58.1443 hectares, more or less, being Allotments 244, 248, 249, 266, 270, and 282 Parish of Mangatete and Part Allotment 209 Parish of Mangatete. All <i>Gazette</i> , 1974, p 747, All <i>Gazette</i> , 1979, p 164, and All <i>Gazette</i> , 1980, p 1346.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Mangatete Farm Settlement Scenic Reserve
98	DOC	1.4 hectares, approximately, being Part Allotment 14, Parish of Kaiaka. Subject to survey.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Toatoa Conservation Area
102	DOC	55.9514 hectares, more or less, being Allotment M6 and Parts Allotment S6 Parish of Waitarau and Lot 1, DP 186637. All Computer Freehold Registers NA596/143 and NA116D/839.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Omatai GP Wildlife Management Reserve
110	DOC	1,146 hectares, approximately, being Parts Allotments N48, S48, N49, S49, S6, S7, S8, S1, S4, NW65 and SW65 Parish of Mangonui; Parts Allotments 62, 63 and 65 Parish of Mangonui; Allotments SW95, SW96, M96, NE98, M98, SWM98, 99, SW100, SE103, and NE100 and Parts Allotments 102, NW103, SE103, and 104 Parish of Kohumaru; Allotments 12, 14, SE13, NW13, NE15, and 69 Parish of Maungataniwha East; Crown Land Block IV Maungataniwha Survey District; Section 1 SO 62458, Section 2 SO 62459 and Section 3 SO 62460; All <i>Gazette</i> , 1952, p 190, All <i>Gazette</i> , 1952, p 682, All <i>Gazette</i> , 1953, p 189, All <i>Gazette</i> , 1953, p 1097, All <i>Gazette</i> , 1956, p 917, All <i>Gazette</i> , 1962, p 1424, All <i>Gazette</i> , 1978, p 10, Subject to survey.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Otangaroa Conservation Area
118	DOC	4.148 hectares, more or less, being Allotment 41A Parish of Kaiaka. All <i>Gazette</i> , 1896, p 337.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Kaiaka Quarry Scenic Reserve

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
133	DOC	303.8385 hectares, more or less, being Section 10 and Part Section 9 Block VII Maungataniwha Survey District; Section 1 SO 62986; Parts Allotment 75 Parish of Maungataniwha East and Lot 1 DP 91545. All Computer Freehold Register NA48A/320.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Te Koroa Scenic Reserve
134	DOC	7.0968 hectares, approximately, being Road Reserve SO 774 and Parts Kaiaka Block.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Victoria Valley Conservation Area
139	DOC	1,300 hectares, approximately, being Sections 7A and 9 Block VI Maungataniwha Survey District; Section 1 Block VII Maungataniwha Survey District; Allotments 117 and SEM121 Parish of Maungataniwha; Parts Maungataniwha East Block; Parts 1 and 2 Maungataniwha West Blocks. All <i>Gazette</i> , 1906, pp 1427, 1428, All <i>Gazette</i> , 1956, p 651, All <i>Gazette</i> , 1958, p 1345, All <i>Gazette</i> , 1964, p 4, All <i>Gazette</i> , 1984, p 1432, Subject to survey.	Ngāti Kahu	Public Conservation Land	RFR – Exclusive	Part Maungataniwha Forest (Parts Northland Conservation Park)
153	HNZC	0.0505 hectares, more or less, being Lot 21 DP 69243. All Computer Freehold Register NA25B/735.	Ngāti Kahu	Residential	RFR – Exclusive	Kaitaia
154	HNZC	0.0504 hectares, more or less, being Lot 3 DP 76827. All Computer Freehold Register NA33B/577.	Ngāti Kahu	Residential	RFR – Exclusive	Kaitaia
155	HNZC	0.0504 hectares, more or less, being Lot 102 DP 76828. All Computer Freehold Register NA33B/596.	Ngāti Kahu	Residential	RFR – Exclusive	Kaitaia
156	HNZC	0.0809 hectares, more or less, being Lot 49 DP 47841. All Computer Freehold Register NA12B/73.	Ngāti Kahu	Residential	RFR – Exclusive	Kaitaia
157	HNZC	0.0809 hectares, more or less, being Lot 11 DP 54644. All Computer Freehold Register NA26B/544.	Ngāti Kahu	Residential	RFR – Exclusive	Kaitaia
158	HNZC	0.0809 hectares, more or less, being Lot 12 DP 54644. All Computer Freehold Register NA26B/545.	Ngāti Kahu	Residential	RFR – Exclusive	Kaitaia
159	HNZC	0.0809 hectares, more or less, being Lot 70 DP 44044. All Computer Freehold Register NA7B/1153.	Ngāti Kahu	Residential	RFR – Exclusive	Whatuwhiwhi
160	HNZC	0.0567 hectares, more or less, being Lot 91 DP 80365. All Computer Freehold Register NA37A/473.	Ngāti Kahu	Residential	RFR – Exclusive	Mangonui
161	HNZC	0.0527 hectares, more or less, being Lot 2 DP 75456. All Computer Freehold Register NA32A/519.	Ngāti Kahu	Residential	RFR – Exclusive	Coopers Beach
162	HNZC	0.0952 hectares, more or less, being Lot 39 DP 75454. All Computer Freehold Register NA100C/799.	Ngāti Kahu	Residential	RFR – Exclusive	Coopers Beach
163	HNZC	0.0613 hectares, more or less, being Lot 36 DP 75454. All Computer Freehold Register NA32A/494.	Ngāti Kahu	Residential	RFR – Exclusive	Coopers Beach

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
164	HNZC	0.0608 hectares, more or less, being Lot 23 DP 75455. All Computer Freehold Register NA32A/505.	Ngāti Kahu	Residential	RFR – Exclusive	Coopers Beach
165	HNZC	0.0961 hectares, more or less, being Lot 12 DP 47655. All Computer Freehold Register NA1846/74.	Ngāti Kahu	Residential	RFR – Exclusive	Coopers Beach
166	HNZC	0.0809 hectares, more or less, being Lot 2 DP 78263 and Lot 10 DP 79910. All Computer Freehold Register NA34B/1122.	Ngāti Kahu	Residential	RFR – Exclusive	Cable Bay
167	HNZC	0.074 hectares, more or less, being Lot 2 DP 329762. All Computer Freehold Register 121894.	Ngāti Kahu	Residential	RFR – Exclusive	Coopers Beach
168	HNZC	0.0675 hectares, more or less, being Lot 2 DP 95486. All Computer Freehold Register NA51C/541.	Ngāti Kahu	Residential	RFR – Exclusive	Mangonui
169	HNZC	0.0694 hectares, more or less, being Lot 6 DP 139569. All Computer Freehold Register NA82D/715.	Ngāti Kahu	Residential	RFR – Exclusive	Cable Bay
170	HNZC	0.0657 hectares, more or less, being Lot 7 DP 139569. All Computer Freehold Register NA82D/716.	Ngāti Kahu	Residential	RFR – Exclusive	Cable Bay
171	HNZC	0.068 hectares, more or less, being Lot 7 DP 183369. All Computer Freehold Register NA114B/389.	Ngāti Kahu	Residential	RFR – Exclusive	Mangonui
172	HNZC	0.1616 hectares, more or less, being Section 275 Town of Mangonui. All Computer Freehold Register NA1607/5.	Ngāti Kahu	Residential	RFR – Exclusive	Mangonui
173	HNZC	0.0834 hectares, more or less, being Lots 6 and 9 DP 183369. All Computer Freehold Register NA114B/388.	Ngāti Kahu	Residential	RFR – Exclusive	Mangonui
174	HNZC	0.0835 hectares, more or less, being Lots 1 and 9 DP 183369. All Computer Freehold Register NA114B/383.	Ngāti Kahu	Residential	RFR – Exclusive	Mangonui
175	HNZC	0.0736 hectares, more or less, being Lots 1 and 3 DP 151711. All Computer Freehold Register NA90B/776.	Ngāti Kahu	Residential	RFR – Exclusive	Mangonui
176	HNZC	0.0838 hectares, more or less, being Lots 5 and 9 DP 183369. All Computer Freehold Register NA114B/387.	Ngāti Kahu	Residential	RFR – Exclusive	Mangonui
177	HNZC	0.0749 hectares, more or less, being Lots 2 and 3 DP 151711. All Computer Freehold Register NA90B/777.	Ngāti Kahu	Residential	RFR – Exclusive	Mangonui
178	HNZC	0.0851 hectares, more or less, being Lots 3 and 9 DP 183369. All Computer Freehold Register NA114B/385.	Ngāti Kahu	Residential	RFR – Exclusive	Mangonui
179	HNZC	0.056 hectares, more or less, being Lot 72 DP 392675. All Computer Freehold Register 371568.	Ngāti Kahu	Residential	RFR – Exclusive	Coopers Beach

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
181	HNZC	0.0921 hectares, more or less, being Lot 2 DP 42296. All Computer Freehold Register NA45A/789.	Ngāti Kahu	Residential	RFR – Exclusive	Kaitaia
80	LINZ	1.3 hectares, approximately, being Part Awanui Riverbed adjoining Maimaru A3B, A3C1, and A3C2 and Part Lot 17 DP 1126. Subject to survey.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto	Residual Crown property	RFR – Joint	West off Kumi Road, Awanui
96	LINZ	0.6626 hectares, more or less, being Lots 1, 2, and 3 DP 28766. All Computer Freehold Register NA68B/421.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residual Crown property	RFR – Joint	Quarry Road, Awanui
113	Police	0.092 hectares, more or less, being Lot 3 DP 72868. All Computer Freehold Register NA40C/118.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Police	RFR – Joint	2B Matilda Place, Kaitaia
115	Police	0.0663 hectares, more or less, being Lot 1 DP 72868. All Computer Freehold Register NA107B/435.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Police	RFR – Joint	2 Matilda Place, Kaitaia
116	Police	0.0845 hectares, more or less, being Lot 4 DP 72868. All Computer Freehold Register NA35B/822.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Police	RFR – Joint	2C Matilda Place, Kaitaia
119	Police	0.077 hectares, more or less, being Lot 52 DP 83778. All Computer Freehold NA112A/576.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Police	RFR – Joint	31 Grigg Street, Kaitaia
120	LINZ	0.94 hectares, approximately, Part Old Awanui Riverbed adjacent to Lots 1, 5–8, 10–11 and 17–19 DP 73198 and Lots 2–4 DP 77439. Subject to survey.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residual Crown property	RFR – Joint	Kitchener Street, Kaitaia
123	LINZ	0.4884 hectares, more or less, being Part Lot 13 DP 39501, Lot 3, and Part Lot 10 DP 25798. Subject to survey. Part <i>Gazette</i> , 1970, p 146.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residual Crown property	RFR – Joint	Eden Terrace, Kaitaia
127	MOE	0.3299 hectares, approximately, being Lots 1 and 20 and Part Lot 21 DP 14963. All Computer Freehold Register NA89C/585. Subject to survey.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Polytechnic	RFR – Joint	Northland Polytechnic (Northtec)
128	Police	0.3867 hectares, more or less, being Lot 1 DP 184490. All Computer Freehold Register NA112A/783.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Police	RFR – Joint	Kaitaia Police Station
130	LINZ	0.112 hectares, more or less, being Closed Road adjoining Part Lot 5 DP 17307.	Ngāti Kahu, Te Rarawa	Residual Crown property	RFR – Joint	Clough Road
131	MOE	0.239 hectares more or less, being Section 31 Block v Takahue Survey District. All <i>Gazette</i> , 1948, p 350.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Teachers Residence	RFR – Joint	Teachers Resident
136	LINZ	2.0679 hectares, approximately, Stopped Road SO 45270 adjoining Lot 1, Part Lot 2 DP 33770 and Allotment 163, 164, 165, and 166 Parish of Kaiaka. All <i>Gazette</i> , 1968, p 1402.	Ngāti Kahu, Te Rarawa	Residual Crown property	RFR – Joint	State Highway 1 Waimakaku

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
137	LINZ	0.1163 hectares, more or less, being Section 1 SO 68141.	Ngāti Kahu, Te Aupōuri, Te Rarawa	Residual Crown property	RFR – Joint	Okahu Road, Kaitaia
138	DOC	7.689 hectares, more or less, being Section 43 Block x Takahue Survey District. All <i>Gazette</i> , 1924, p 2172.	Ngāti Kahu, Te Aupōuri, Te Rarawa	Public Conservation Land	RFR – Joint	Kaitaia Scenic Reserve
145	DOC	49.6313 hectares, approximately, being Parts Section 27 Block x Takahue Survey District. All Computer Freehold Register NA44C/814. Subject to survey.	Ngāti Kahu, Te Rarawa	Public Conservation Land	RFR – Joint	Marko Buselich Scenic Reserve
146	DOC	35.4352 hectares, more or less, being Allotment SE 116 and Allotment 118 Maungataniwha Parish. All <i>Gazette</i> Notice 15440. 262.9672 hectares, Allotments NW 123, 124, 230, 231, and 232, Maungataniwha Parish. Part <i>Gazette</i> , 1945, p 362. 83.1123 hectares, more or less, being Lot 1 DP 29154. Part <i>Gazette</i> , 1979, p 3078. 199.5709 hectares, more or less, being Sections 8 and 9 and Part Sections 2 and 3 Block 1x Maungataniwha Survey District. Part <i>Gazette</i> , 1945, p 362. All Computer Freehold Register NA263/234. All <i>Gazette</i> , 1972, p 1907. 1301.9432 hectares, being Part Mangamuka West 3AA, 3BB, and 3CC and Parts Mangamuka West 3D. All <i>Gazette</i> , 1927, p 2524. All Computer Freehold Register NA241/134 and All Computer Freehold Register NA618/150. All <i>Gazette</i> , 1951, p 1396. All Proclamations 6410 and 13379. 39.8362 hectares more or less, being Lot 1 DP 15859. All <i>Gazette</i> Notice A290812. 7637 hectares, more or less, being Lot 7 DP 15595 Part Transfer B541790.1. 64.7496 hectares, more or less, being the north-west and south-east portions of Allotment 120 and the north-west and south-east portions of Allotment 121 of the Parish of Maungataniwha. Part Transfer B541790.1. 0.3526 hectares, more or less, being Part Section 1 Block 1x Maungataniwha Survey District; as shown marked 'j' on SO 52841. All <i>Gazette</i> , 1993, p 2029.	Ngāti Kahu, Te Rarawa	Public Conservation Land	RFR – Joint	Part Mangamuku Gorge Scenic Reserve

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
		0.0048 hectares, more or less, being Closed Road SO 52892.				
		0.4285 hectares, more or less, being Closed Road SO52892.				
147	DOC	1.6 hectares, approximately, being Section 4A Block XI Takahue Survey District. Subject to survey.	Ngāti Kahu, Te Rarawa	Public Conservation Land	RFR – Joint	Tupata Conservation Area
149	DOC	14.6 hectares, approximately, being Part Section 7 Block XIV Takahue Survey District. Subject to survey.	Ngāti Kahu, Te Rarawa	Public Conservation Land	RFR – Joint	Waiotehue Conservation Area
149	DOC	23.1303 hectares, more or less, being Section 81 Block II Whangape Survey District. All <i>Gazette</i> , 1935 p 656.	Ngāti Kahu, Te Rarawa	Public Conservation Land	RFR – Joint	Pukemiro Block Scenic Reserve
		168.678 hectares, approximately, being Part Section 66 Block II Whangape Survey District. Part <i>Gazette</i> , 1921, p 2477. Subject to survey.				
151	DOC	531.9908 hectares, more or less, being Part Section 1 Block XII Takahue Survey District. Part <i>Gazette</i> , 1952, p 1859.	Ngāti Kahu, Te Rarawa	Public Conservation Land	RFR – Joint	Raetea Forest (Part Northland Conservation Park)
		427.12 hectares, approximately, being Part Lot 50 DP 7200 and Part Lot 51 DP. DP 7200. Part <i>Gazette</i> , 1964, p 1408. Subject to survey.				
		4.2694 hectares, more or less being Section 5 Block XII Takahue Survey District. All <i>Gazette</i> , 1950, p 1576.				
		1052.28 hectares, approximately, being Parts Maungataniwha West 2. Part <i>Gazette</i> , 1906, p 1427. Subject to survey.				
		3206.32 hectares, approximately, being Part Takahue 1, Part <i>Gazette</i> , 1906, p 1427. Subject to survey.				
		1004.83 hectates, approximately, being Part Takahue 1. Part <i>Gazette</i> , 1904, p 310. Subject to survey.				
		698.7656 hectares, more or less being Parts Section 60, Block I, Whangape Survey District and Section 1, Block I, Mangamuka Survey District. All <i>Gazette</i> , 1954, p 1386.				
		3913.32 hectares, approximately, being Parts Takahue 2. Subject to survey.				
		1237.93 hectares, approximately, being Parts Kauriputete 1. Subject to survey.				



Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
		103.8 hectares, approximately, being Part Section 36 Block XIV Takahue Survey District. Part <i>Gazette</i> , 1942, p 2499. Subject to survey.				
		481.5 hectares, more or less, being Lot 1, DP 92248. All <i>Gazette</i> , 1982, p 3631.				
		47.4595 hectares, more or less, being Section 1 Block I Whangape Survey District. All <i>Gazette</i> , 1965, p 2090.				
152	DOC	43.099 hectares, more or less, being Section 36 Block XV Takahue Survey District. All <i>Gazette</i> , 1935, p 552.	Ngāti Kahu, Te Rarawa	Public Conservation Land	RFR – Joint	Waitawa Scenic Reserve
180	HNZC	0.0825 hectares, more or less, being Lot 1 DP 115061. All Computer Freehold Register NA65C/57.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Waipapakauri
182	HNZC	0.072 hectares, more or less, being Lot 4 DP 91629. All Computer Freehold Register NA48A/596.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto	Residential	RFR – Joint	Awanui
183	HNZC	0.0915 hectares, more or less, being Lot 7 DP 91629. All Computer Freehold Register NA48A/599.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Awanui
184	HNZC	0.0455 hectares, more or less, being Lot 1 DP 203447. All Computer Freehold Register NA132A/503.	Ngāti Kahu, Ngāi Takoto	Residential	RFR – Joint	Kaitaia
185	HNZC	0.0518 hectares, more or less, being Lot 2 DP 203447. All Computer Freehold Register NA132A/504.	Ngāti Kahu, Ngāi Takoto	Residential	RFR – Joint	Kaitaia
186	HNZC	0.0809 hectares, more or less, being Lot 7 DP 46562. All Computer Freehold Register NA19D/1066.	Ngāti Kahu, Ngāi Takoto	Residential	RFR – Joint	Kaitaia
187	HNZC	0.0653 hectares, more or less, being Lot 3 DP 114334. All Computer Freehold Register NA65A/459.	Ngāti Kahu, Ngāi Takoto	Residential	RFR – Joint	Kaitaia
188	HNZC	0.1151 hectares, more or less, being Lot 4 DP 43895. All Computer Freehold Register NA22B/860.	Ngāti Kahu, Ngāi Takoto	Residential	RFR – Joint	Kaitaia
189	HNZC	0.9067 hectares, more or less, being Lot 4 DP 107772. All Computer Freehold Register NA60A/562.	Ngāti Kahu, Ngāi Takoto	Residential	RFR – Joint	Kaitaia
190	HNZC	0.0561 hectares, more or less, being Lot 1 DP 197505. All Computer Freehold Register NA126D/154.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
191	HNZC	0.03 hectares, more or less, being Lots 2 and 4 DP 197505 (half share). All Computer Freehold Register NA126D/155.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
192	HNZC	0.0678 hectares, more or less, being Lot 3 DP 113940. All Computer Freehold Register NA64C/380.	Ngāti Kahu, Ngāi Takoto	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
193	HNZC	0.0707 hectares, more or less, being Lot 9 DP 113940. All Computer Freehold Register NA64C/386.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
194	HNZC	0.0397 hectares, more or less, being Lots 3 and 4 DP 197505 (half share). All Computer Freehold Register NA126D/156.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
195	HNZC	0.0983 hectares, more or less, being Lot 7 DP 113940. All Computer Freehold Register NA64C/384.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
196	HNZC	0.07 hectares, more or less, being Lot 33 DP 131584. All Computer Freehold Register NA77A/485.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
197	HNZC	0.065 hectares, more or less, being Lot 2 DP 131584. All Computer Freehold Register NA80D/192.	Ngāti Kahu, Ngāi Takoto	Residential	RFR – Joint	Kaitaia
198	HNZC	0.07 hectares, more or less, being Lot 32 DP 131584. All Computer Freehold Register NA77A/484.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
199	HNZC	0.0717 hectares, more or less, being Lot 3 DP 131584. All Computer Freehold Register NA77A/455.	Ngāti Kahu, Ngāi Takoto	Residential	RFR – Joint	Kaitaia
200	HNZC	0.065 hectares, more or less, being Lot 30 DP 131584. All Computer Freehold Register NA77A/482.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
201	HNZC	0.0895 hectares, more or less, being Lot 2 DP 33834. All Computer Freehold Register NA100C/798.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
202	HNZC	0.0696 hectares, more or less, being Lot 5 DP 131584. All Computer Freehold Register NA77A/457.	Ngāti Kahu, Ngāi Takoto	Residential	RFR – Joint	Kaitaia
203	HNZC	0.065 hectares, more or less, being Lot 26 DP 131584. All Computer Freehold Register NA77A/478.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
204	HNZC	0.0273 hectares, more or less, being Lots 2 and 3 DP 203565 (half share). All Computer Freehold Register NA132A/763.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
205	HNZC	0.0308 hectares, more or less, being Lots 1 and 3 DP 203565 (half share). All Computer Freehold Register NA132A/762.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
206	HNZC	0.0643 hectares, more or less, being Lot 24 DP 131584. All Computer Freehold Register NA77A/476.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
207	HNZC	0.0658 hectares, more or less, being Lot 135 DP 85220. All Computer Freehold Register NA43D/227.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
208	HNZC	0.0687 hectares, more or less, being Lot 120 DP 85220. All Computer Freehold Register NA41C/112.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
209	HNZC	0.0731 hectares, more or less, being Lot 118 DP 85220. All Computer Freehold Register NA41C/110.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
210	HNZC	0.0683 hectares, more or less, being Lot 116 DP 85220. All Computer Freehold Register NA41C/108.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
211	HNZC	0.0774 hectares, more or less, being Lot 102 DP 80563. All Computer Freehold Register NA37B/142.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
212	HNZC	0.1287 hectares, more or less, being Lot 1 DP 39759. All Computer Freehold Register NA1046/49.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
213	HNZC	0.068 hectares, more or less, being Lot 112 DP 85220. All Computer Freehold Register NA41C/104.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
214	HNZC	0.0725 hectares, more or less, being Lot 110 DP 85220. All Computer Freehold Register NA41C/102.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
215	HNZC	0.0774 hectares, more or less, being Lot 101 DP 80563. All Computer Freehold Register. NA37B/141.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
216	HNZC	0.0696 hectares, more or less, being Lot 20 DP 69291. All Computer Freehold Register NA54A/1160.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
217	HNZC	0.0666 hectares, more or less, being Lot 21 DP 69291. All Computer Freehold Register NA99C/15.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
218	HNZC	0.0676 hectares, more or less, being Lot 22 DP 69291. All Computer Freehold Register NA99C/16.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
219	HNZC	0.0658 hectares, more or less, being Lot 88 DP 80563. All Computer Freehold Register NA37B/128	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
220	HNZC	0.0658 hectares, more or less, being Lot 86 DP 80563. All Computer Freehold Register NA46C/145.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
221	HNZC	0.1065 hectares, more or less, being Lot 28 DP 69291. All Computer Freehold Register NA55A/699.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
222	HNZC	0.0889 hectares, more or less, being Lot 15 DP 69291. All Computer Freehold Register NA99C/14.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
223	HNZC	0.088 hectares, more or less, being Lot 84 DP 80563. All Computer Freehold Register NA47A/305.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
224	HNZC	0.0683 hectares, more or less, being Lot 11 DP 69291. All Computer Freehold Register NA100C/795.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
225	HNZC	0.0708 hectares, more or less, being Lot 69 DP 80563. All Computer Freehold Register NA37B/109.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
226	HNZC	0.084 hectares, more or less, being Lot 3 DP 66607. All Computer Freehold Register NA22B/1078.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
227	HNZC	0.0657 hectares, more or less, being Lot 21 DP 74955. All Computer Freehold Register NA30D/192.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
228	HNZC	0.072 hectares, more or less, being Lot 92 DP 80563. All Computer Freehold Register NA37B/132.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
229	HNZC	0.0657 hectares, more or less, being Lot 9 DP 72868. All Computer Freehold Register NA46A/922.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
230	HNZC	0.0657 hectares, more or less, being Lot 21 DP 72868. All Computer Freehold Register NA102D/445.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
231	HNZC	0.0379 hectares, more or less, being Lot 2 DP 197766, Lot 3 DP 197766 (half share). All Computer Freehold Register NA126D/862.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
232	HNZC	0.0317 hectares, more or less, being Lot 3 DP 197766, Lot 1 DP 197766 (half share). All Computer Freehold Register NA126D/861.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
233	HNZC	0.0657 hectares, more or less, being Lot 28 DP 74955. All Computer Freehold Register NA30D/199.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
234	HNZC	0.0786 hectares, more or less, being Lot 2 DP 88721. All Computer Freehold Register NA43C/244.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
235	HNZC	0.0716 hectares, more or less, being Lot 18 DP 74955. All Computer Freehold Register NA30D/189.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
236	HNZC	0.0657 hectares, more or less, being Lot 29 DP 74955. All Computer Freehold Register NA30D/200.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
237	HNZC	0.0741 hectares, more or less, being Lot 54 DP 77073. All Computer Freehold Register NA33C/175.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
238	HNZC	0.0948 hectares, more or less, being Lot 27 DP 76196. All Computer Freehold Register NA86D/810.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
239	HNZC	0.0766 hectares, more or less, being Lot 53 DP 77073. All Computer Freehold Register NA33C/174.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
240	HNZC	0.0796 hectares, more or less, being Lot 17 DP 74955. All Computer Freehold Register NA30D/188.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
241	HNZC	0.0651 hectares, more or less, being Lot 51 DP 77073. All Computer Freehold Register NA50B/1374.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
242	HNZC	0.076 hectares, more or less, being Lot 16 DP 74955. All Computer Freehold Register NA30D/187.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
243	HNZC	0.061 hectares, more or less, being Lot 50 DP 77073. All Computer Freehold Register NA33C/171.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
244	HNZC	0.0809 hectares, more or less, being Lot 1 DP 88114. All Computer Freehold Register NA45C/933.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
245	HNZC	0.036 hectares, more or less, being Lot 2 DP 207384. All Computer Freehold Register NA135C/775.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
246	HNZC	0.0675 hectares, more or less, being Lot 15 DP 56312. All Computer Freehold Register NA8C/187.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
247	HNZC	0.0302 hectares, more or less, being Lot 1 DP 207384. All Computer Freehold Register NA135C/774.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
248	HNZC	0.0657 hectares, more or less, being Lot 62 DP 77073. All Computer Freehold Register NA33C/183.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
249	HNZC	0.0669 hectares, more or less, being Lot 14 DP 80264. All Computer Freehold Register NA36D/1174.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
250	HNZC	0.0662 hectares, more or less, being Lot 10 DP 74955. All Computer Freehold Register NA30D/181.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
251	HNZC	0.0675 hectares, more or less, being Lot 20 DP 56312. All Computer Freehold Register NA47A/43.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
252	HNZC	0.0706 hectares, more or less, being Lot 18 DP 80264. All Computer Freehold Register NA36D/1178.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
253	HNZC	0.0921 hectares, more or less, being Lot 5 DP 49999. All Computer Freehold Register NA49A/1186.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
254	HNZC	0.1252 hectares, more or less, being Lot 35 DP 77073. All Computer Freehold Register NA33C/156.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
255	HNZC	0.0655 hectares, more or less, being Lot 60 DP 83778. All Computer Freehold Register NA40A/879.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
256	HNZC	0.0684 hectares, more or less, being Lot 58 DP 83778. All Computer Freehold Register NA77D/209.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
257	HNZC	0.0652 hectares, more or less, being Lot 74 DP 119296. All Computer Freehold Register NA68C/336.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
258	HNZC	0.089 hectares, more or less, being Lot 43 DP 83778 and Lot 69 DP 83779. All Computer Freehold Register NA40A/862.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
259	HNZC	0.0798 hectares, more or less, being Lot 44 DP 83778 and Lot 69 DP 83779. All Computer Freehold Register NA40A/863.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
260	HNZC	0.0794 hectares, more or less, being Lot 42 DP 83778 and Lot 69 DP 83779. All Computer Freehold Register NA40A/861.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
261	HNZC	0.0835 hectares, more or less, being Lot 1 DP 176707. All Computer Freehold Register NA105B/245.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
262	HNZC	0.1429 hectares, approximately, being Lot 10 and Part Lot 9 DP 43413. All Computer Freehold Register NA3D/392. Subject to survey.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
263	HNZC	0.065 hectares, more or less, being Lot 80 DP 119296. All Computer Freehold Register NA68C/342.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
264	HNZC	0.0666 hectares, more or less, being Lot 62 DP 83778. All Computer Freehold Register NA40A/881.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
265	HNZC	0.065 hectares, more or less, being Lot 81 DP 119296. All Computer Freehold Register NA68C/343.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
266	HNZC	0.1199 hectares, more or less, being Lot 157 DP 12724. All Computer Freehold Register NA105D/197.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
267	HNZC	0.0665 hectares, more or less, being Lot 45 DP 83778. All Computer Freehold Register NA40A/864.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
268	HNZC	0.0656 hectares, more or less, being Lot 82 DP 119296. All Computer Freehold Register NA68C/344.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
269	HNZC	0.0906 hectares, more or less, being Lot 86 DP 119296. All Computer Freehold Register NA68C/348.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
270	HNZC	0.0802 hectares, more or less, being Part Lot 6 DP 40908. All Computer Freehold Register NA61D/600.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
271	HNZC	0.0772 hectares, more or less, being Lot 83 DP 119296. All Computer Freehold Register NA68C/345.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia



Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
272	HNZC	0.0718 hectares, more or less, being Lot 66 DP 83778. All Computer Freehold Register NA40A/885.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
273	HNZC	0.0812 hectares, more or less, being Lot 7 DP 40908. All Computer Freehold Register NA105B/247.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
274	HNZC	0.0657 hectares, more or less, being Lot 33 DP 72798. All Computer Freehold Register NA28D/114.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
275	HNZC	0.1262 hectares, more or less, being Lot 93 DP 119296. All Computer Freehold Register NA68C/355.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
276	HNZC	0.0658 hectares, more or less, being Lot 16 DP 63427. All Computer Freehold Register NA24C/1019.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
277	HNZC	0.0656 hectares, more or less, being Lot 1 DP 89954. All Computer Freehold Register NA47B/131.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
278	HNZC	0.0908 hectares, more or less, being Lot 9 DP 63427. All Computer Freehold Register NA24C/1012.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
279	HNZC	0.0709 hectares, more or less, being Lot 2 DP 70338. All Computer Freehold Register NA50B/584.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
280	HNZC	0.076 hectares, more or less, being Lot 98 DP 119296. All Computer Freehold Register NA68C/360.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
281	HNZC	0.1095 hectares, more or less, being Lot 8 DP 72798. All Computer Freehold Register NA46C/138.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
282	HNZC	0.0813 hectares, more or less, being Lot 103 DP 119296. All Computer Freehold Register NA68C/365.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
283	HNZC	0.0836 hectares, more or less, being Lots 107 and 110 DP 119296. All Computer Freehold Register NA68C/369.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
284	HNZC	0.0653 hectares, more or less, being Lot 10 DP 14626. All Computer Freehold Register NA250/57.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
285	HNZC	0.0974 hectares, more or less, being Lot 15 DP 58828. All Computer Freehold Register NA13B/787.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
286	HNZC	0.0803 hectares, more or less, being Lot 99 DP 119296. All Computer Freehold Register NA68C/361.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
287	HNZC	0.0711 hectares, more or less, being Lot 102 DP 119296. All Computer Freehold Register NA68C/364.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
288	HNZC	0.078 hectares, more or less, being Lot 10 DP 72798. All Computer Freehold Register NA28D/91.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
289	HNZC	0.0658 hectares, more or less, being Lot 23 DP 63427. All Computer Freehold Register NA24C/1025.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
290	HNZC	0.0679 hectares, more or less, being Lot 9 DP 78739. All Computer Freehold Register NA50B/579.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
291	HNZC	0.126 hectares, more or less, being Lot 1 DP 53857. All Computer Freehold Register NA50B/1159.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
292	HNZC	0.0716 hectares, more or less, being Lot 10 DP 78739. All Computer Freehold Register NA50B/580.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
293	HNZC	0.0711 hectares, more or less, being Lot 11 DP 78739. All Computer Freehold Register NA61A/7.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
294	HNZC	0.0911 hectares, more or less, being Lot 2 DP 53857. All Computer Freehold Register NA50B/1160.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
295	HNZC	0.0525 hectares, more or less, being Lot 3 DP 109118. All Computer Freehold Register NA61C/25.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
296	HNZC	0.0688 hectares, more or less, being Lot 3 DP 53857. All Computer Freehold Register NA50B/1161.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
297	HNZC	0.1012 hectares, more or less, being Lot 4 DP 53857. All Computer Freehold Register NA50B/1162.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
298	HNZC	0.1019 hectares, more or less, being Lot 5 DP 53857. All Computer Freehold Register NA50B/1163.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
299	HNZC	0.0842 hectares, more or less, being Lot 4 DP 78739. All Computer Freehold Register NA64A/12.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
300	HNZC	0.0658 hectares, more or less, being Lot 1 DP 54761. All Computer Freehold Register NA100C/425.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
301	HNZC	0.0665 hectares, more or less, being Lot 10 DP 54761. All Computer Freehold Register NA102D/440.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
302	HNZC	0.0658 hectares, more or less, being Lot 2 DP 54761. All Computer Freehold Register NA102D/433.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
303	HNZC	0.0291 hectares, more or less, being Lots 2 and 3 (half share) DP 204212. All Computer Freehold Register NA131A/874.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
304	HNZC	0.0726 hectares, more or less, being Lot 9 DP 54761. All Computer Freehold Register NA102D/439.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
305	HNZC	0.066 hectares, more or less, being Lot 3 DP 54761. All Computer Freehold Register NA102D/434.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
306	HNZC	0.0415 hectares, more or less, being Lots 1 and 3 DP 204212 (half share). All Computer Freehold Register NA131A/873.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
307	HNZC	0.0331 hectares, more or less, being Lots 1 and 3 DP 201807 (half share). All Computer Freehold Register NA130B/565.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
308	HNZC	0.1098 hectares, more or less, being Lot 14 DP 71496. All Computer Freehold Register NA52D/1168.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
309	HNZC	0.0728 hectares, more or less, being Lot 4 DP 54761. All Computer Freehold Register NA102D/435.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
310	HNZC	0.108 hectares, more or less, being Lot 8 DP 54761. All Computer Freehold Register NA4102D/438.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
311	HNZC	0.0883 hectares, more or less, being Lot 7 DP 54761 All Computer Freehold Register NA102D/437.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
312	HNZC	0.0701 hectares, more or less, being Lot 5 DP 54761. All Computer Freehold Register NA102D/436.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
313	HNZC	0.0499 hectares, more or less, being Lots 2 and 3 DP 201807 (half share). All Computer Freehold Register NA130B/566.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
314	HNZC	0.0684 hectares, more or less, being Lot 7 DP 71496. All Computer Freehold Register NA27D/255.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
315	HNZC	0.0925 hectares, more or less, being Lot 11 DP 71496. All Computer Freehold Register NA35A/1209.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
316	HNZC	0.0689 hectares, more or less, being Lot 9 DP 71496. All Computer Freehold Register NA42B/630.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
317	HNZC	0.0992 hectares, more or less, being Lot 14 DP 70333. All Computer Freehold Register NA27A/332.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
318	HNZC	0.0657 hectares, more or less, being Lot 26 DP 70333. All Computer Freehold Register NA27A/343.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
319	HNZC	0.0898 hectares, more or less, being Lot 1 DP 44687. All Computer Freehold Register NA1956/31.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
320	HNZC	0.0882 hectares, more or less, being Lot 28 DP 70333. All Computer Freehold Register NA27A/345.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
321	HNZC	0.0867 hectares, more or less, being Lot 29 DP 70333. All Computer Freehold Register NA27A/346.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
322	HNZC	0.0755 hectares, more or less, being Lot 30 DP 70333. All Computer Freehold Register NA27A/347.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
323	HNZC	0.0658 hectares, more or less, being Lot 1 DP 63426. All Computer Freehold Register NA19C/305.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
324	HNZC	0.068 hectares, more or less, being Lot 4 DP 196106 All Computer Freehold Register NA124C/191.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
325	HNZC	0.0527 hectares, more or less, being Lot 1 DP 196106. All Computer Freehold Register NA124C/188.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
326	HNZC	0.0426 hectares, more or less, being Lots 5 and 6 DP 201965 (one-fifth share). All Computer Freehold Register NA130C/5.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
327	HNZC	0.0219 hectares, more or less, being Lots 4 and 6 DP 201965 (one-fifth share). All Computer Freehold Register NA130C/4.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
328	HNZC	0.0483 hectares, more or less, being Lot 3 DP 196106. All Computer Freehold Register NA124C/190.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
329	HNZC	0.0234 hectares, more or less, being Lots 3 and 6 DP 201965 (one-fifth share). All Computer Freehold Register NA130C/3.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
330	HNZC	0.0271 hectares, more or less, being Lots 2 and 6 DP 201965 (one-fifth share). All Computer Freehold Register NA130C/2.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
331	HNZC	0.0847 hectares, more or less, being Lot 2 DP 196106. All Computer Freehold Register NA124C/189.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
332	HNZC	0.0279 hectares, more or less, being Lots 1 and 6 DP 201965 (one-fifth share). All Computer Freehold Register NA130C/1.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
333	HNZC	0.0857 hectares, more or less, being Lot 22 DP 44802. All Computer Freehold Register NA1674/10.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
334	HNZC	0.1128 hectares, more or less, being Lot 323 DP 14289. All Computer Freehold Register NA52B/801.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
335	HNZC	0.0868 hectares, more or less, being Lot 5 DP 19622. All Computer Freehold Register NA100C/423.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
336	HNZC	0.1077 hectares, more or less, being Lot 18 DP 44802. All Computer Freehold Register NA1554/27.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
337	HNZC	0.0678 hectares, more or less, being Lot 2 DP 61707. All Computer Freehold Register NA26A/668.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
338	HNZC	0.0857 hectares, more or less, being Lot 3 DP 42009. All Computer Freehold Register NA45A/690.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
339	HNZC	0.09 hectares, more or less, being Lot 24 DP 38127. All Computer Freehold Register NA45A/682.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
340	HNZC	0.0809 hectares, more or less, being Lot 13 DP 45867. All Computer Freehold Register NA1580/91.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
341	HNZC	0.1921 hectares, more or less, being Lot 2 DP 200918. All Computer Freehold Register NA129B/313.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
342	HNZC	0.0493 hectares, more or less, being Lot 1 DP 200918. All Computer Freehold Register NA129B/312.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
343	HNZC	0.1303 hectares, more or less, being Lot 4 DP 48022. All Computer Freehold Register NA46C/513.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
344	HNZC	0.1191 hectares, more or less, being Lot 29 DP 38127. All Computer Freehold Register NA45A/686.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
345	HNZC	0.1029 hectares, more or less, being Lot 11 DP 38127. All Computer Freehold Register NA45A/680.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
346	HNZC	0.1156 hectares, more or less, being Lot 5 DP 48022. All Computer Freehold Register NA46C/514.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
347	HNZC	0.0612 hectares, more or less, being Lot 1 DP 200573. All Computer Freehold Register NA129B/156.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
348	HNZC	0.0643 hectares, more or less, being Lot 2 DP 200573. All Computer Freehold Register NA129B/157.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
349	HNZC	0.0474 hectares, more or less, being Lot 2 DP 201146. All Computer Freehold Register NA129B/417.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia



Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
350	HNZC	0.0825 hectares, more or less, being Lot 7 DP 48022. All Computer Freehold Register NA46C/516.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
351	HNZC	0.0857 hectares, more or less, being Lot 8 DP 38120. All Computer Freehold Register NA46C/511.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
352	HNZC	0.1559 hectares, more or less, being Lot 1 DP 201146. All Computer Freehold Register NA129B/416.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
353	HNZC	0.0739 hectares, more or less, being Lot 2 DP 200776. All Computer Freehold Register NA129B/233.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
354	HNZC	0.0489 hectares, more or less, being Lot 3 DP 200573. All Computer Freehold Register NA129B/158.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
355	HNZC	0.0707 hectares, more or less, being Lot 1 DP 200776. All Computer Freehold Register NA129B/232.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
356	HNZC	0.0687 hectares, more or less, being Lot 4 DP 200573. All Computer Freehold Register NA129B/159.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
357	HNZC	0.0827 hectares, more or less, being Lot 10 DP 38120. All Computer Freehold Register NA46C/512.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
358	HNZC	0.1138 hectares, more or less, being Lot 15 DP 45215. All Computer Freehold Register NA31C/762.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
359	HNZC	0.0568 hectares, more or less, being Lots 1 and 6 DP 202423 (one-fifth share). All Computer Freehold Register NA131A/21.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
360	HNZC	0.0448 hectares, more or less, being Lots 2 and 6 DP 202423 (one-fifth share). All Computer Freehold Register NA131A/22.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
361	HNZC	0.0806 hectares, more or less, being Lot 2 DP 118772, Lot 10 DP 118772. All Computer Freehold Register NA68B/421.	Ngāti Kahu, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
362	HNZC	0.0516 hectares, more or less, being Lots 3 and 6 DP 202423 (one-fifth share). All Computer Freehold Register NA131A/23.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
363	HNZC	0.1136 hectares, more or less, being Lot 18 DP 38101. All Computer Freehold Register NA31C/756.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
364	HNZC	0.0401 hectares, more or less, being Lots 5 and 6 DP 202423 (one-fifth share). All Computer Freehold Register NA131A/25.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
365	HNZC	0.0402 hectares, more or less, being Lots 4 and 6 DP 202423 (one-fifth share). All Computer Freehold Register NA131A/24.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
366	HNZC	0.0651 hectares, more or less, being Lot 1 DP 154600. All Computer Freehold Register NA92B/598.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
367	HNZC	0.0638 hectares, more or less, being Lot 2 DP 153985. All Computer Freehold Register NA92A/365.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
368	HNZC	0.0537 hectares, more or less, being Lot 1 DP 153985. All Computer Freehold Register NA92A/364.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
369	HNZC	0.065 hectares, more or less, being Lots 2 and 6 DP 154600 (one-fifth share). All Computer Freehold Register NA92B/599.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
370	HNZC	0.065 hectares, more or less, being Lot 5 DP 154600. All Computer Freehold Register NA92B/602.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
371	HNZC	0.0618 hectares, more or less, being Lots 3 and 6 DP 154600 (one-third share). All Computer Freehold Register NA92B/600.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
372	HNZC	0.0652 hectares, more or less, being Lots 4 and 6 DP 154600 (one-third share). All Computer Freehold Register NA92B/601.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
373	HNZC	0.066 hectares, more or less, being Lot 1 DP 79788. All Computer Freehold Register NA36C/523.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
374	HNZC	0.0666 hectares, more or less, being Lot 3 DP 79788. All Computer Freehold Register NA36C/525.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
375	HNZC	0.088 hectares, more or less, being Lot 1 DP 172135. All Computer Freehold Register NA105A/885.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
376	HNZC	0.0664 hectares, more or less, being Lot 16 DP 79788. All Computer Freehold Register NA36C/537.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
377	HNZC	0.083 hectares, more or less, being Lot 3 DP 42727. All Computer Freehold Register NA41D/118.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
378	HNZC	0.0384 hectares, more or less, being Lot 1 DP 194928. All Computer Freehold Register NA123B/412.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
379	HNZC	0.0658 hectares, more or less, being Lot 3 DP 61779. All Computer Freehold Register NA17C/909.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
380	HNZC	0.0425 hectares, more or less, being Lot 2 DP 194928. All Computer Freehold Register NA123B/413.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
381	HNZC	0.1396 hectares, more or less, being Lot 8 DP 42727. All Computer Freehold Register NA41D/1120.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
382	HNZC	0.0658 hectares, more or less, being Lot 4 DP 61030. All Computer Freehold Register NA17C/903.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
383	HNZC	0.0708 hectares, more or less, being Lot 3 DP 61030. All Computer Freehold Register NA17C/902.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
384	HNZC	0.2268 hectares, more or less, being Lot 1 DP 99670. All Computer Freehold Register NA54B/1187.	Ngāti Kahu, Te Rarawa	Residential	RFR – Joint	Kaitaia
385	HNZC	0.0809 hectares, more or less, being Lot 3 DP 49527. All Computer Freehold Register NA16A/998.	Ngāti Kahu, Te Aupōuri, Ngāi Takoto, Te Rarawa	Residential	RFR – Joint	Kaitaia
386	HNZC	0.4012 hectares, more or less, being Lot 1 DP 190149. All Computer Freehold Register NA120B/203.	Ngāti Kahu, Te Aupōuri, Te Rarawa	Residential	RFR – Joint	Kaitaia
387	HNZC	0.0626 hectares, more or less, being Lot 1 DP 212057. All Computer Freehold Register NA138C/584.	Ngāti Kahu, Te Aupōuri, Te Rarawa	Residential	RFR – Joint	Ahipara

## SCHEDULE G :

### PROPERTIES IN THE AUPOURI AND OTANGAROA FORESTS THAT THE CROWN SHOULD OFFER FOR PURCHASE

Map ID	Agency	Legal description	Iwi	Property type	Redress type	Address
106	LINZ	544.048 hectares, more or less, being Lots 1–3 DP 136873 and Lot 1 DP136874.	Ngāti Kahu	Crown Forest land	Commercial redress	Kohumaru Blocks – Otangaroa Crown Forest Lands
82	LINZ	776.7744 hectares, approximately, being Lot 2 DP 105103, Lot 1 DP 136797, Lot 1 DP 136798, Lot 1 DP 136799, Lot 1 DP 136800, Lot 2 DP 136801, Lot 3 DP 136802. Subject to survey.	Ngāti Kahu	Crown Forest land	Commercial redress	Mangonui Blocks – Aupouri Crown Forest Lands

APPENDIX II

## SELECT RECORD OF INQUIRY

### RECORD OF HEARINGS

#### Tribunal members

The Tribunal comprised Judge Stephen Clark (presiding), Dr Robyn Anderson, Joanne Morris, and Professor Pou Temara.

#### Counsel

Counsel appearing were:

- › Te Kani Williams, Dominic Wilson, Bernadette Arapere, and Ihipera Peters for Te Rūnanga-ā-Iwi o Ngāti Kahu.
- › Andrew Irwin, Isabella Clarke, and Keiran Rafferty for the Crown.
- › Janet Mason and Priscilla Agius for Te Rūnanga o Te Rarawa.
- › Grant Powell and Jennifer Braithwaite for Te Rūnanga Nui o Te Aupōuri.
- › Darrell Naden and Brooke Loader for Ngāti Tara.
- › Tavaki Barron Afeaki for Pereniki Henare Matiu Tauhara, Matiu Tauhara, Te Rina Kingi Waiaua, and Pene Te Kaitoa of Te Pātū ki Peria hapū (Wai 1842).
- › Tony Shepherd and Daniel Watkins for Te Uri o Te Aho (Wai 1259), Ruawaha, Umutahi, Ngāti Tama and its hapū (Wai 1538), Kohatutaka (Wai 1732), and Te Ihutai (Wai 2359).

Counsel who did not appear were:

- › Samuel Carpenter, Kiri Allan, and Mai Chen for Ricky Houghton, Tina Latimer, and Sir Graham Latimer (Wai 1359), of Te Paatu.
- › Bryan Gilling for Ngā hapū o Whangaroa (Wai 58).
- › Linda Thornton for Te Uri o Te Pona, Ngāti Haiti, Ngāti Kawau, Ngāti Kawhiti, Ngāti Kahu o Roto Whangaroa, Ngāti Tupango, Te Uri o Tutehe, Te Uri Mahoe and Te Uri Tai of Ngāpuhi iwi (Wai 1666), and Whangaroa Papa Hapū and Ngāti Uru (Wai 1832).

#### Other representatives

Rangitane Marsden, the lead negotiator for the Ngāi Takoto a Iwi Research Unit Trust, represented Te Iwi o Ngāi Takoto.

#### The hearing

The hearing was held from 2 to 7 September 2012 at Kareponia Marae, Awanui, and on 18 and 19 September at the Environment Court in Auckland.

## RECORD OF PROCEEDINGS

### 1. Statements of claim

#### 1.1 *Wai 16*

R Rutene and others for Ngāti Kahu Trust Board. Statement of claim concerning Taipa sewerage ponds, 3 January 1985

#### 1.2 *Wai 17*

Ngāti Kahu Trust Board. Statement of claim concerning Taipa sewerage, 15 May 1986

(a) Ngāti Kahu Trust Board. First amended statement of claim, 9 September 1986

(b) MacCully Matiu and others for Ngāti Kahu Trust Board. Second amended statement of claim, 18 September 1986

(c) MacCully Matiu and others for Ngāti Kahu Trust Board. Third amended statement of claim, 19 September 1986

#### 1.4 *Wai 22*

Matiu Rata and others for Te Rūnanga o Muriwhenua. Statement of claim concerning fisheries and State-owned enterprises, 8 December 1986

#### 1.5 *Wai 41*

Ratahi Murupaenga and others for Ngāti Kuri. Statement of claim concerning Ngāti Kuri lands, 24 July 1987

#### 1.6 *Wai 112*

Rima Eruera for Kaitaia Marae Incorporated and Kaitaia Māori Committee. Statement of claim concerning Kaitaia Domain and other lands, 4 September 1987

(a) Rima Edwards for Kaitaia Marae Incorporated and Kaitaia Māori Committee. First amended statement of claim, 21 October 1987

(b) Rima Edwards for Kaitaia Marae Incorporated and Kaitaia Māori Committee. Second amended statement of claim, 26 January 1988

(c) Rima Edwards for Kaitaia Marae Incorporated and Kaitaia Māori Committee. Third amended statement of claim, 10 July 1989

(d) Puni Makene and others for Kaitaia Marae Incorporated and Kaitaia Māori Committee. Fourth amended statement of claim, 7 November 1989

#### 1.7 *Wai 117*

Margaret Mutu-Grigg for Te Whanau Moana hapū of Ngāti Kahu. Statement of claim concerning Karikari blocks and rating, 2 October 1987

(a) Margaret Mutu. Amended statement of claim, 28 November 1988

#### 1.8 *Wai 118*

Haami Piripi and others for Te Rarawa. Statement of claim concerning Mapere 2 school site, 23 May 1989

## 2. Papers in proceedings

2.166 Chief Judge Mason Durie. Determination of preliminary issues following hearing of 6–7 April 1998, 13 May 1998

2.274 Te Kani Williams, Dominic Wilson, and Luana Payne. Memorandum in support of application for resumption of land, 5 October 2007

2.275 Te Kani Williams, Dominic Wilson, and Luana Payne. Application for resumption of land pursuant to sections 8A and 8NB of the Treaty of Waitangi Act 1975, 5 October 2007

2.277 Te Kani Williams and Luana Payne. Memorandum amending application for resumption of land, 13 November 2007

2.295 Judge Carrie Wainwright. Memorandum adjourning application for remedies by Te Rūnanga-ā-Iwi o Ngāti Kahu, 11 April 2008

2.299 Judge Carrie Wainwright. Memorandum adjourning application for remedies by Te Rūnanga-ā-Iwi o Ngāti Kahu, 30 October 2008

2.333 Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum seeking substantive decision on Ngāti Kahu remedies application, 15 July 2011

2.334 Chief Judge Wilson Isaac. Memorandum directing the Crown to respond to application for remedies by Ngāti Kahu and setting a date for review of the Wai 45 record of inquiry, 20 July 2011

2.335 Andrew Irwin. Memorandum responding to memorandum 2.334 and seeking extension to filing date, 29 July 2011

2.336 Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum responding to memorandum 2.335, 3 August 2011



**2.337** Andrew Irwin. Memorandum responding to memorandum 2.334, 5 August 2011

**2.338** Chief Judge Wilson Isaac. Memorandum extending the date for the review of the Wai 45 record of inquiry, 18 August 2011

**2.339** Andrew Irwin. Memorandum responding to Ngāti Kahu application for resumption orders, 26 August 2011

**2.340** Chief Judge Wilson Isaac. Memorandum setting filing date for the Crown to provide documents and appointing Judge Stephen Clark as presiding officer of the Muriwhenua Land Claim inquiry, 12 September 2011

**2.341** Judge Stephen Clark. Memorandum seeking responses to Ngāti Kahu application for remedies, 21 September 2011

**2.342** Andrew Irwin. Memorandum responding to memorandum 2.340, 19 September 2011

**2.343** Chief Judge Wilson Isaac. Memorandum appointing Pou Temara to Muriwhenua Land Claim Tribunal, 4 October 2011

**2.344** Janet Mason and Priscilla Agius. Memorandum responding to memorandum 2.341, 12 October 2011

**2.345** Grant Powell and Jennifer Braithwaite. Memorandum responding to memorandum 2.341, 12 October 2011

**2.346** Peter Andrew. Memorandum responding to memorandum 2.341, 17 October 2011

**2.347** Andrew Irwin. Memorandum responding to memorandum 2.341, 19 October 2011

**2.348** Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum responding to memoranda 2.339, 2.344, 2.345, 2.346, and 2.347, 26 October 2011

**2.349** Judge Stephen Clark. Memorandum setting a date for a judicial conference concerning the Ngāti Kahu application for remedies and seeking claimant responses to proposed agenda and any contrary views on Professor Pou Temara remaining a panel member, 28 October 2011

**2.350** Andrew Irwin. Memorandum seeking extension to filing date, 15 November 2011

**2.351** Te Amohaere Hauiti-Parapara. Notice of 25 November 2011 judicial conference concerning jurisdiction, scope, evidence, and timetabling, 16 November 2011

**2.352** Grant Powell and Jennifer Braithwaite. Memorandum responding to memorandum 2.349, 17 November 2011

**2.353** Andrew Irwin. Memorandum responding to memorandum 2.349, 17 November 2011

**2.354** Te Kani Williams, Bernadette Arapere, and Dominic Wilson. Memorandum responding to memorandum 2.349, 17 November 2011

**2.355** Peter Andrew. Memorandum concerning the position of Ngāti Kuri in relation to the remedies application made by Te Rūnanga-ā-Iwi o Ngāti Kahu, 17 November 2011

**2.356** Janet Mason and Priscilla Agius. Memorandum responding to memorandum 2.349, 17 November 2011

**2.357** Grant Powell and Jennifer Braithwaite. Memorandum responding to memorandum 2.349, 24 November 2011

**2.358** Te Kani Williams and Bernadette Arapere. Memorandum responding to matters raised in memoranda 2.353, 2.352, and 2.356, 25 November 2011

**2.359** Andrew Irwin. Memorandum filing initialled deed of settlement of Te Rarawa and the Crown, the draft deed of settlement between Ngāi Takoto and the Crown, and the Ngāti Kahu draft deed of partial settlement, 29 November 2011  
(a) Te Rarawa and the Crown. 'Deed of Settlement of Historical Claims', draft, not dated  
(b) Ngāi Takoto and the Crown. 'Deed of settlement of historical claims', draft, not dated  
(c) Te Rūnanga-ā-Iwi o Ngāti Kahu. 'Ngāti Kahu Deed of Partial Settlement: Towards the Extinguishment of all Crown Claims to Ngāti Kahu Lands', not dated

**2.360** Jason Pou. Memorandum seeking leave to be an interested party, 18 November 2011

- 2.361** Judge Stephen Clark. Memorandum following 25 November 2011 judicial conference and other matters, 8 December 2011
- 2.362** Grant Powell and Jennifer Braithwaite. Memorandum responding to matters raised by counsel for Te Rūnanga-ā-Iwi o Ngāti Kahu at 25 November 2011 judicial conference, 8 December 2011. Includes 2008 Ngāti Kahu AIP at appendix A
- 2.363** Te Kani Williams and Bernadette Arapere. Memorandum responding to memorandum 2.361, 16 December 2011
- 2.364** Judge Stephen Clark, memorandum directing the applicants to file further information, the Crown and interested parties to respond, and setting date for judicial conference, 22 December 2011
- 2.365** Andrew Irwin. Submission to file affidavit of Adam Levy, 11 January 2012
- 2.366** Judge David Ambler. Memorandum granting adjournment and directing the Crown and Wai 116 applicant to provide an update, 15 February 2012
- 2.333** Te Kani Williams. Memorandum seeking extension to filing date, 15 February 2012
- 2.368** Judge Stephen Clark. Memorandum re-scheduling filing dates and seeking responses concerning attendance at 22 March 2012 judicial conference, 17 February 2012
- 2.369** Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum filing further information as directed in memorandum 2.364, 22 February 2012
- 2.370** Darrell Naden and Brooke Loader. Memorandum seeking to be included as an interested party, 9 March 2012
- 2.371** Judge Stephen Clark, memorandum granting leave for Chappy Harrison and Ngāti Tara to participate as an interested party, 12 March 2012
- 2.372** Andrew Irwin. Memorandum responding to memorandum 2.364, 14 March 2012
- 2.373** Priscilla Agius. Memorandum responding to memorandum 2.364, 14 March 2012
- 2.374** Grant Powell and Jennifer Braithwaite. Memorandum responding to memorandum 2.364, 14 March 2012
- 2.375** TG Tetitaha. Memorandum seeking to be included as an interested party, 21 March 2012
- 2.376** Judge Stephen Clark, Memorandum granting leave for Sir Graham Latimer and declining leave for Ricky Houghton and Tina Latimer to be included as interested parties, 21 March 2012
- 2.377** Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum responding to memoranda 2.374, 2.373, and 2.370, 22 March 2012
- 2.378** Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum addressing matters raised in memorandum 2.372, 22 March 2012
- 2.379** Andrew Irwin. Synopsis of Crown submissions, 22 March 2012
- 2.380** T Kapea and D Gendall. Memorandum opposing Ngāti Kahu remedies application, 22 March 2012
- 2.381** Te Kani Williams and Andrew Irwin. Memorandum seeking extension to filing date, 30 March 2012
- 2.382** Judge Stephen Clark, Memorandum granting leave to file a joint memorandum, 30 March 2012
- 2.383** Richard Hawk and Jason Gough. Memorandum providing a progress update, 30 March 2012
- 2.384** Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum responding to matters raised by memorandum 2.379, 2 April 2012
- 2.385** Judge David Ambler. Memorandum directing Jason Pou to file any submissions responding to the request for adjournment of the Wai 116 remedies application, 2 April 2012
- 2.386** Te Kani Williams and Andrew Irwin. Joint memorandum concerning Wai 16, 3 April 2012
- 2.387** Andrew Irwin. Memorandum responding to memorandum 2.384, 3 April 2012

**2.388** Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum responding to memorandum 2.387, 4 April 2012

**2.389** Waitangi Tribunal. Memorandum granting remedies application by Te Rūnanga-ā-Iwi o Ngāti Kahu, 18 April 2012

**2.390** Judge Stephen Clark. Memorandum convening a judicial conference, 1 May 2012

**2.391** Judge David Ambler. Memorandum adjourning Wai 116 remedies application, 1 May 2012

**2.392** Te Kani Williams. Memorandum concerning legal aid matters and application for an urgent hearing, 3 May 2012

**2.393** Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum responding to memorandum 2.389, 7 May 2012

(a) Waitangi Tribunal. *Muriwhenua Land Report*. Wellington: GP Publications, 1997, p 406

(b) Waitangi Tribunal. *The Turangi Township Remedies Report*. Wellington, Brooker's Ltd, 1998, pp 77–78

(c) 'Crown Forestry Rental Trust Policy Concerning Funding Contributions for Waitangi Tribunal Remedies Hearings for Crown Forest Licensed Land', not dated

**2.394** Chief Judge Wilson Isaac. Memorandum appointing Dr Robyn Anderson to the Tribunal panel to determine the Wai 2364 and Wai 2366 urgency applications, 10 May 2012

**2.395** Darrell Naden and Brooke Loader. Memorandum seeking leave to file late, 17 May 2012

**2.396** Janet Mason and Priscilla Agius. Memorandum seeking leave to file late, 18 May 2012

**2.397** Andrew Irwin and Isabella Clarke. Memorandum responding to memorandum 2.389, 18 May 2012

**2.333** Grant Powell and Jennifer Braithwaite. Memorandum responding to memorandum 2.389, 18 May 2012

**2.399** Darrell Naden and Brooke Loader. Memorandum responding to memorandum 2.389, 18 May 2012

**2.400** Janet Mason and Priscilla Agius. Memorandum responding to memorandum 2.389, 22 May 2012

**2.401** Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum responding to memoranda 2.397, 2.398, 2.399, and 2.400, 25 May 2012

**2.402** Andrew Irwin and Isabella Clarke. Memorandum stating intention to file a third affidavit of Adam Levy and providing a suggested agenda for the 5 June 2012 judicial conference, 30 May 2012

(a) Suggested agenda for the 5 June 2012 judicial conference, 30 May 2012

**2.403** Judge Stephen Clark, memorandum concerning 5 June 2012 judicial conference and other matters, 31 May 2012

**2.404** Darrell Naden and Brooke Loader. Memorandum responding to memorandum 2.401 and concerning attendance at 5 June 2012 judicial conference, 1 June 2012

**2.405** Peter Andrew. Memorandum concerning the position of Ngāti Kuri in the remedies inquiry, 1 June 2012

**2.406** Andrew Irwin and Isabella Clarke. Memorandum providing information sought in memorandum 2.403, 5 June 2012

**2.407** Judge Stephen Clark. Memorandum convening a hearing and setting filing dates, 8 June 2012

**2.333** Judge Stephen Clark. Memorandum directing that affidavit of Rangitane Marsden for Ngāi Takoto a Iwi Research Unit Trust not be placed on the Wai 45 record of inquiry, 11 June 2012

**2.409** Andrew Irwin. Memorandum setting out Crown submissions concerning three Mangonui forest blocks, and providing map and list of properties that the Crown proposes to offer to iwi other than Ngāti Kahu through Treaty settlements, 13 June 2012

(a) 'Non-resumable Properties in Ngāti Kahu Claim Area Offered to Iwi Other Than Ngāti Kahu or Offered to Multiple Iwi including Ngāti Kahu'. Map prepared for Office of Treaty Settlements, June 2012

**2.410** Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum responding to memoranda 2.406 and 2.409, 15 June 2012

**2.411** Judge Stephen Clark. Memorandum concerning matters of jurisdiction and principles of relief, setting filing dates, and setting dates for a hearing and closing submissions, 25 June 2012

**2.412** Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum seeking extension to filing date, 6 July 2012

**2.413** Janet Mason and Priscilla Agius. Memorandum concerning venue for remedies hearings, 9 July 2012

**2.414** Leah Campbell. Memorandum responding to memorandum 2.412, 11 July 2012

**2.415** Judge Stephen Clark. Memorandum confirming venue for remedies hearing and amended timetable, 12 July 2012

**2.416** Te Kani Williams, Dominic Wilson, Bernadette Arapere, and Ihipera Peters. Memorandum responding to memorandum 2.415, 13 July 2012

**2.417** Isabella Clarke. Memorandum responding to memorandum 2.411, 13 July 2012

(a) 'Properties Considered by the Crown to be Resumable', Excel spreadsheet, not dated

**2.418** Darrell Naden, Brooke Loader. Memorandum responding to memorandum 2.415, 16 July 2012

**2.419** Judge Stephen Clark. Memorandum setting filing date for counsel to file submissions, 19 July 2012

**2.420** Virginia Hardy and Isabella Clarke. Memorandum urgently requesting deferral of the presiding officer's decision to send certain letters to private property owners in the Far North, 19 July 2012

**2.421** Isabella Clarke. Memorandum providing written confirmation of the reason for excluding forest lands from list of properties filed with the Tribunal, 20 July 2012

**2.422** Te Kani Williams, Bernadette Arapere, and Ihipera Peters. Memorandum seeking leave to file report by Peter McBurney, 20 July 2012

**2.423** Judge Stephen Clark. Memorandum addressing matters arising from teleconference on 20 July 2012 and amending the timetable, 20 July 2012

**2.424** Te Kani Williams, Bernadette Arapere, and Ihipera Peters. Memorandum concerning forest land valuation, 23 July 2012

**2.425** Andrew Irwin. Memorandum responding to memorandum 2.424, 25 July 2012

**2.426** Janet Mason and Priscilla Agius. Memorandum responding to memorandum 2.419, 25 July 2012

**2.333** Tavaki Barron Afeaki. Memorandum seeking leave to be included as an interested party in the Ngāti Kahu remedies inquiry, 25 July 2012

**2.428** Grant Powell and Jennifer Braithwaite. Memorandum responding to memorandum 2.415, 25 July 2012

**2.429** Andrew Irwin. Memorandum responding to memorandum 2.415, 25 July 2012

**2.430** Te Kani Williams, Dominic Wilson, Bernadette Arapere, and Ihipera Peters. Memorandum responding to memorandum 2.419, 25 July 2012

(a) Te Kani Williams, Dominic Wilson, Bernadette Arapere, and Ihipera Peters. Memorandum seeking leave to amend memorandum 2.430, 26 July 2012

**2.431** Judge Stephen Clark. Memorandum granting leave for Wai 1842 claimants to participate as an interested party, 30 July 2012

**2.432** Te Kani Williams, Bernadette Arapere, and Ihipera Peters. Memorandum seeking leave to file the report of Peter McBurney, 18 July 2012

(a) Te Kani Williams, Bernadette Arapere, and Ihipera Peters. Memorandum seeking leave to file final historical report of Peter McBurney, 20 July 2012

**2.433** Te Kani Williams and Andrew Irwin. Memorandum concerning disputed properties, 3 August 2012  
(a) 'Schedule 1: The 23 Properties That are Agreed are not Subject to the Tribunal's Powers under Sections 8A to 8H1 of the Treaty of Waitangi Act 1975', not dated

**2.434** Te Kani Williams, Dominic Wilson, Bernadette Arapere, and Ihipera Peters. Memorandum seeking leave to file evidence late, 3 August 2012

**2.435** Tony Shepherd and Daniel Watkins. Memorandum seeking to be included as an interested party, 3 August 2012

**2.436** Andrew Irwin and Isabella Clarke. Memorandum responding to memorandum 2.434, 6 August 2012

**2.437** Te Kani Williams, Dominic Wilson, Bernadette Arapere, and Ihipera Peters. Memorandum filing report on economic impact of land loss to 1865 on Ngāti Kahu 6 August 2012

**2.438** Keriana McGregor. Notification letters and information sheet sent to property owners potentially affected by Ngāti Kahu application for remedies in accordance with memorandum 2.423, 20 July 2012

**2.439** Keriana McGregor. Notice of September 2012 hearing concerning Ngāti Kahu application for remedies, 25 July 2012

**2.440** Andrew Irwin and Isabella Clarke. Memorandum concerning overlapping interests in Otangaroa forest blocks within the 2008 claim area, 7 August 2012

**2.441** Te Kani Williams, Dominic Wilson, Bernadette Arapere, and Ihipera Peters. Memorandum concerning extension sought to file late, the inclusion of the Otangaroa forest blocks in the remedies application, and possible interested parties for that land, 7 August 2012

**2.442** Andrew Irwin and Isabella Clarke. Memorandum objecting to paragraph 20 of memorandum 2.441, 8 August 2012

**2.443** Te Kani Williams, Dominic Wilson, Bernadette Arapere, and Ihipera Peters. Memorandum opposing Crown's request to file forest evidence, 8 August 2012

**2.444** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum responding to memorandum 2.442, 8 August 2012

(a) Peter Galvin. Letter from Office of Treaty Settlements concerning Awanui properties, 8 August 2012

**2.445** Judge Stephen Clark. Memorandum concerning revised timetable, hearing planning, and other matters, 9 August 2012

**2.333** Andrew Irwin and Isabella Clarke. Memorandum concerning memorandum 2.444, 9 August 2012

**2.447** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum filing draft report on valuation of Northland forest assets, 10 August 2012

**2.448** Grant Powell and Jennifer Braithwaite. Memorandum concerning tangata whenua evidence (docs R14, R15, R16, and R17) and economic evidence (doc R21), 10 August 2012

**2.449** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum filing report on valuation of Northland forest assets, 10 August 2012  
(a) Schedule of changes between draft and final reports, not dated

**2.450** Te Kani Williams, Dominic Wilson, and Bernadette Arapere. Memorandum responding to memorandum 2.448, 13 August 2012

**2.451** Grant Powell and Jennifer Braithwaite. Memorandum responding to memorandum 2.450, 14 August 2012

**2.452** Andrew Irwin and Isabella Clarke. Memorandum responding to memorandum 2.450, 14 August 2012

**2.453** Judge Stephen Clark. Memorandum concerning evidence filed by Ngāti Kahu, hearing matters, and revised timetable, 15 August 2012

**2.454** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum responding to memorandum 2.445, 17 August 2012

(a) Letters concerning application for resumption orders by Te Rūnanga-ā-Iwi o Ngāti Kahu, 17 August 2012

**2.455** Andrew Irwin. Memorandum concerning a further 11 resumable properties in the remedies area, 20 August 2012

(a) Andrew Irwin to Far North District Council. Letter concerning Waitangi Tribunal hearings in September, 20 August 2012

(b) Andrew Irwin to Rangiputa Farms Holding. Letter concerning Waitangi Tribunal hearings in September, 20 August 2012

**2.456** Janet Mason and Priscilla Agius. Memorandum seeking leave to file late, 21 August 2012

**2.457** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum responding to memorandum 2.456, 21 August 2012

**2.458** Judge Stephen Clark. Memorandum declining extension sought by Te Rarawa to file briefs of evidence late, 21 August 2012

**2.459** Judge Stephen Clark. Memorandum granting leave to the Wai 58 claimants to participate in the remedies application and setting filing dates, 22 August 2012

**2.460** Bryan Gilling. Memorandum responding to memorandum 2.445, 21 August 2012

**2.461** Richard Hawk. Memorandum concerning inclusion of Otangaroa forest blocks in the remedies inquiry and other matters, 22 August 2012

**2.333** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum responding to memorandum 2.453, 22 August 2012

**2.463** Tony Shepherd and Daniel Watkins. Memorandum supporting application for remedies by Te Rūnanga-ā-Iwi o Ngāti Kahu, 22 August 2012

**2.464** Andrew Irwin. Memorandum filing evidence, 22 August 2012

**2.465** Darrell Naden, Brooke Loader, and Wi Pere Mita. Memorandum filing briefs of evidence, 22 August 2012

**2.466** Janet Mason and Priscilla Agius. Memorandum filing evidence, 22 August 2012

**2.467** Linda Thornton and Bryce Lyall. Memorandum responding to memorandum 2.445, 22 August 2012

**2.468** Peter Andrew. Memorandum regarding involvement of Ngāti Kuri in the Ngāti Kahu remedies hearing, 23 August 2012

**2.469** Janet Mason and Priscilla Agius. Memorandum seeking leave to file late, 23 August 2012

**2.470** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum responding to memorandum 2.469, 24 August 2012

**2.471** Tavaki Barron Afeaki. Memorandum filing brief of evidence, 24 August 2012

**2.472** Janet Mason and Priscilla Agius. Memorandum responding to memorandum 2.470, 24 August 2012

**2.473** Bryan Gilling. Memorandum filing briefs of evidence, 27 August 2012

**2.474** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum filing draft hearing timetable, 28 August 2012

(a) Draft hearing timetable for 3–7 September 2012, 28 August 2012

**2.475** Tavaki Barron Afeaki. Memorandum concerning the filing of evidence, 28 August 2012

**2.476** Janet Mason and Priscilla Agius. Memorandum filing amended draft hearing timetable, 29 August 2012

(a) Amended draft hearing timetable, 29 August 2012

**2.477** Andrew Irwin and Isabella Clarke. Memorandum filing evidence, 29 August 2012

**2.478** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum filing briefs of evidence, 29 August 2012

**2.479** Tavaki Barron Afeaki and Te Atairehia Thompson. Memorandum seeking leave to participate as an interested party, 29 August 2012



**2.480** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum responding to memorandum 2.476, 30 August 2012

**2.481** Janet Mason and Priscilla Agius. Memorandum responding to memorandum 2.480, 30 August 2012

**2.482** Andrew Irwin and Isabella Clarke. Memorandum concerning amendments to be made to the briefs of evidence of Maureen Hickey and Adam Levy, 31 August 2012

**2.483** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum filing briefs of evidence, 31 August 2012

**2.484** Darrell Naden, Brooke Loader, and Wi Pere Mita. Memorandum seeking leave to file substitute brief of evidence, 30 August 2012

**2.485** Judge Stephen Clark. Memorandum concerning filing of evidence and hearing matters, 31 August 2012

**2.486** Darrell Naden, Brooke Loader, and Wi Pere Mita. Memorandum concerning Ngāti Tara registration database update, 31 August 2012

**2.487** Darrell Naden and Brooke Loader. Memorandum concerning evidence in reply filed by Ngāti Kahu, 3 September 2012

**2.488** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum seeking leave to file brief of evidence of Bernard Butler, 3 September 2012

**2.489** Janet Mason and Priscilla Agius. Application for resumption for Te Rarawa, 10 September 2012

(a) 'Properties which Te Rarawa has Mana Whenua Over and which Are Included within the Te Rarawa Deed', not dated

(b) 'Properties which Te Rarawa has Mana Whenua Over and Are Currently Owned by Te Rarawa', not dated

**2.490** Janet Mason and Priscilla Agius. Memorandum supporting application for resumption for Te Rarawa, 10 September 2012

**2.491** Chief Judge Wilson Isaac. Memorandum delegating determination of Te Rarawa remedies application to Judge Stephen Clark, 13 September 2012

**2.492** Darrell Naden, Brooke Loader, and Wi Pere Mita. Memorandum requesting directions concerning supplementary briefs of evidence, 12 September 2012

**2.493** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum concerning draft timetable for closing submissions, 13 September 2012

(a) Draft timetable for closing submissions

**2.494** Judge Stephen Clark. Memorandum concerning closing submissions and draft transcript, 14 September 2012

**2.495** Andrew Irwin and Isabella Clarke. Memorandum filing amendments to schedules to the briefs of evidence of John Hancock and Adam Levy, and confirming valuation figures used in the brief of evidence of Maureen Hickey, 14 September 2012

**2.496** Judge Stephen Clark. Memorandum directing the Crown and interested parties to respond to the application for an urgent remedies hearing filed for Te Rarawa and setting a filing date for the applicant to reply, 17 September 2012

**2.497** Darrell Naden, Brooke Loader, and Wi Pere Mita. Memorandum seeking urgent remedies hearing for Ngāti Tara, 18 September 2012

(a) 'Properties Subject to Wai 45 Ngāti Tara Application for Resumption of Lands', not dated

**2.498** Chief Judge Wilson Isaac. Memorandum delegating determination of Ngāti Tara remedies application to Judge Stephen Clark, 20 September 2012

**2.499** Judge Stephen Clark. Memorandum setting date for Te Rarawa to file any amended applications for remedies, 21 September 2012

**2.500** Judge Stephen Clark. Memorandum setting filing dates for Ngāti Tara, the Crown, and interested parties concerning Ngāti Tara application for remedies, 21 September 2012

**2.501** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum filing submissions of Te Rūnanga-ā-Iwi o Ngāti Kahu, 26 September 2012

**2.502** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Memorandum seeking leave to file amended submission, 27 September 2012

**2.503** Darrell Naden and Brooke Loader. Memorandum concerning Ngāti Tara remedies application, 27 September 2012

**2.504** Janet Mason and Mary Zhou. Memorandum responding to memorandum 2.499, 27 September 2012

**2.505** Andrew Irwin and Isabella Clarke. Memorandum seeking extension to file late, 5 October 2012

**2.506** Judge Stephen Clark. Memorandum requesting further information from the Crown, 8 October 2012

**2.507** Te Kani Williams, Bernadette Arapere, and Ihipera Peters. Notice opposing Ngāti Tara remedies application, 8 October 2012

**2.508** Te Kani Williams, Bernadette Arapere, and Ihipera Peters. Memorandum supporting notice 2.507, 8 October 2012

**2.509** Te Kani Williams, Bernadette Arapere, and Ihipera Peters. Notice opposing Te Rarawa remedies application, 8 October 2012

**2.510** Te Kani Williams, Bernadette Arapere, and Ihipera Peters. Memorandum in support of notice 2.509, 8 October 2012

**2.511** Grant Powell and Jennifer Braithwaite. Memorandum responding to Ngāti Tara and Te Rarawa remedies applications, 8 October 2012

**2.512** Andrew Irwin and Isabella Clarke. Memorandum responding to Ngāti Tara and Te Rarawa remedies applications, 9 October 2012

**2.513** Janet Mason and Priscilla Agius. Memorandum seeking extension to file reply, 12 October 2012

**2.514** Judge Stephen Clark. Memorandum granting filing extension sought in memorandum 2.513, 15 October 2012

**2.515** Darrell Naden, Brooke Loader, and Wi Pere Mita. Memorandum seeking leave to file late, 15 October 2012

**2.516** Darrell Naden, Brooke Loader, and Wi Pere Mita. Memorandum responding to memoranda responding to Ngāti Tara remedies application, 15 October 2012

**2.517** Andrew Irwin and Isabella Clarke. Memorandum responding to memorandum 2.506 and filing affidavit, 19 October 2012

**2.518** Judge Stephen Clark. Memorandum directing the Crown to file an update on the Te Hiku settlement process and current timeframes for the introduction of settlement legislation, 26 October 2012

**2.519** Te Kani Williams, Bernadette Arapere, Ihipera Peters, and Dominic Wilson. Memorandum concerning memorandum 2.517 and evidence filed by the Crown, 29 October 2012

**2.520** Kieran Raftery and Andrew Irwin. Memorandum responding to memorandum 2.519, 31 October 2012

**2.521** Janet Mason and Priscilla Agius. Memorandum responding to Crown and Ngāti Kahu responses to Te Rarawa remedies application, 1 November 2012

**2.522** Andrew Irwin and Isabella Clarke. Memorandum responding to memorandum 2.518, 6 November 2012

**2.523** Judge Stephen Clark. Memorandum convening judicial teleconference to discuss Te Rarawa and Ngāti Tara remedies applications, 22 November 2012

**2.524** Judge Stephen Clark. Memorandum outlining upcoming filing dates, 23 November 2012

**2.525** Judge Stephanie Milroy. Memorandum appointing Ms Joanne Morris, Mr Pou Temara and Dr Robyn Anderson to assist with the task of determining the Te Rarawa and Ngāti Tara application for an urgent hearing, 30 November 2012

**2.526** Andrew Irwin and Isabella Clarke. Memorandum seeking clarification on release of report on the Ngāti Kahu remedies application, 27 November 2012

**2.527** Te Kani Williams. Memorandum responding to memorandum 2.524, 30 November 2012

**2.528** Judge Stephen Clark. Memorandum concerning Te Rarawa and Ngāti Tara applications for remedies and Ngāti Kahu remedies report, 3 December 2012

**2.529** Kieran Raftery, Andrew Irwin, and Isabella Clarke. Memorandum responding to memorandum 2.528, 7 December 2012

**2.530** Darrell Naden and Brooke Loader. Memorandum filing further evidence, 12 December 2012

**2.531** Judge Stephen Clark. Memorandum granting leave for Ngāti Kahu to file further brief of evidence and affidavit by Margaret Mutu, 21 December 2012

**2.532** Te Kani Williams, Bernadette Arapere, and Ihipera Peters. Memorandum responding to memorandum 2.528, 21 December 2012

**2.533** Andrew Irwin, Isabella Clarke, and Kieran Raftery. Memorandum responding to memorandum 2.528 and evidence of Raniera Bassett, 21 December 2012

**2.534** Te Kani Williams, Bernadette Arapere, and Ihipera Peters. Memorandum responding to memorandum 2.531, 18 January 13

#### **4. Transcripts**

**4.18** Transcript of Ngāti Kahu remedies hearing, 3–7 September 2012, Kareponia Marae, Awanui, not dated

**4.19** Transcript of closing submissions, 18–19 September 2012, Environment Court, Auckland, not dated

#### **Audio recordings**

**4.3.20** Judicial conference, 10 April 2008, sound recording

**4.3.21** Judicial conference, 25 November 2011, sound recording

#### **RECORD OF DOCUMENTS**

##### **F Documents received up to end of sixth hearing**

**F25** Reverend Maori Marsden. Brief of evidence, 10 November 1992

##### **R Documents received up to 2012 remedies hearing**

**R8** Dame Evelyn Stokes. ‘The Muriwhenua Land Claims, Post 1865’. Commissioned research report, Wellington: Waitangi Tribunal, 2002

**R9** Ben White. Brief of evidence, 8 April 2008

**R10** Adam Levy. Affidavit, 11 January 2012

**(a)** ‘Section 27B Properties and Aupouri and Otagaroa Forest Land’. Map prepared for Office of Treaty Settlements, January 2012

**(b)** Adam Levy. ‘List of Properties within the Ngāti Kahu Area of Interest Identified by the Crown as Having Section 27B Memorials’. Excel spreadsheet, 11 January 2012

**R11** Margaret Mutu. Affidavit in support of application for remedies, 24 February 2012

**R12** Adam Levy. Affidavit, 18 May 2012

**(a)** ‘Resumable Properties in the Ngāti Kahu Agreement in Principle 2008 Area of Interest (p 28) and Aupouri and Otangaroa Crown Forest Land’. Map prepared for Office of Treaty Settlements, May 2012

**(b)** Adam Levy. ‘List of Properties Identified by the Crown as Subject to Tribunal Jurisdiction under Section 8A(2) of the Treaty of Waitangi Act’. Excel spreadsheet, May 2012; Adam Levy. ‘Properties Identified by Ngāti Kahu but which the Crown Considers not to be Resumable’. Excel spreadsheet, May 2012; Adam Levy. ‘Resumable Properties outside the 2008 AIP Area’. Excel spreadsheet, May 2012

**R13** Adam Levy. Affidavit, 31 May 2012

**(a)** ‘Resumable Properties in the Ngāti Kahu Agreement in Principle 2008 Area of Interest (p 28) and Aupouri and Otangaroa Crown Forest Land’. 2nd ed. Map prepared for Office of Treaty Settlements, May 2012

**(b)** Adam Levy. ‘Updated List of Properties Identified by the Crown as Subject to Tribunal Jurisdiction under Section 8A(2) of the Treaty of Waitangi Act’. Excel spreadsheet, May 2012; Adam Levy. ‘Properties Identified by Ngāti Kahu but which the Crown Considers not to be Resumable’. Excel spreadsheet, May 2012; Adam Levy. ‘Resumable Properties outside the 2008 AIP Area’. Excel spreadsheet, May 2012

**R14** Te Karaka David Karaka. Brief of evidence, 13 July 2012

**(a)** Annexures A–D

**R15** Lloyd Pōpata. Brief of evidence, 29 June 2012

(a) Annexures A–B and maps 1–3

**R16** Yvonne Puriri. Brief of evidence, 2 July 2012

(a) Aerial photograph of Te Rangiāniwaniwa, Kaitaia Airport, and Waihangangange

(b) Correspondence concerning release from Royal New Zealand Air Force of Mr G Erstich

(c) Correspondence concerning compensation payable by Public Works Department and Department of Lands and Survey

(d) Commissioner of Crown lands, North Auckland. Licence to occupy sections 21, 74, and 75, Block 11 Rangaunu 8D, 17 June 1954

**R17** Margaret Mutu. Brief of evidence, 2 July 2012

(a) Annexures A–O

**R18** Margaret Mutu. Brief of evidence, 13 July 2012

(a) Annexures A–G

**R19** Lance O’Sullivan. Brief of evidence, 13 July 2012

**R20** Peter McBurney with Nat Green. ‘Te Rūnanga-ā-Iwi o Ngāti Kahu: Summary Report for an Application for Binding Recommendations Pursuant to Section 8A and 8HB of the Treaty of Waitangi Act 1975’. Commissioned research report, Kaitaia: Te Rūnanga-ā-Iwi o Ngāti Kahu, 2012

**R21** Ganesh Nana, Kel Sanderson, and Adrian Slack.

‘Assessment of Economic Impact of Ngāti Kahu Land Loss to 1865’. Commissioned research report, Kaitaia: Te Rūnanga-ā-Iwi o Ngāti Kahu, 2012

**R22** Indufor Asia Pacific. ‘Valuation of Northland Forest Assets: Final Report’. Commissioned research report, Kaitaia: Te Rūnanga-ā-Iwi o Ngāti Kahu, 2012

**R23** Ganesh Nana, Kel Sanderson, and Adrian Slack.

‘Assessment of Economic Impact of Ngāti Kahu Land Loss to 1865’. Rev ed. Commissioned research report, Kaitaia: Te Rūnanga-ā-Iwi o Ngāti Kahu, 2012

**R24** Sir Graham Latimer and Tina Latimer. Brief of evidence, 22 August 2012

(a) Minutes of Te Paatu claimants meeting, 2 September 2010

(b) Te Paatu claimants to Minister in Charge of Treaty of Waitangi Negotiations. Letter concerning Te Hiku Forum and Ngāti Kahu agreement in principle, 20 September 2010

**R25** Rangitane Marsden. Brief of evidence, 19 August 2012

**R26** Hugh Acheson Karena. Brief of evidence, 22 August 2012

**R27** Waitai Ratima Petera. Brief of evidence, 22 August 2012

**R28** Maureen Hickey. Brief of evidence, 22 August 2012

(a) Index of exhibits

(b) Exhibits 1–4

(c) Revised table, replacing table at document R28, p39

**R29** Maureen Hickey. Affidavit, 18 June 2012

(a) Index of exhibits

(b) Exhibits 1–37

**R30** Maureen Hickey. Affidavit, 13 July 2012

**R31** Maureen Hickey. Affidavit, 16 July 2012

**R32** Patrick Snedden. Brief of evidence, 22 August 2012

(a) Te Rūnanga-ā-Iwi o Ngāti Kahu and Her Majesty the Queen in Right of New Zealand. *Agreement in Principle for the Settlement of the Historical Claims of Ngāti Kahu*, 17 September 2008, pp 24–27

**R33** Patrick Snedden. Brief of evidence, 15 June 2012

(a) Index of annexures

(b) Annexures 1–22

**R34** Patrick Snedden. Brief of evidence, 24 July 2012

(a) Exhibits 1–8

**R35** Adam Levy. Brief of evidence, 22 August 2012

(a) Index to exhibits 1–6

(b)(i) Adam Levy. ‘Schedule 1: Resumable Properties in the Ngāti Kahu Remedies Claim Area’, Excel spreadsheet, 31 August 2012

(b)(ii) Adam Levy. ‘Schedule 2: Crown-owned Properties Offered to Iwi other than Ngāti Kahu in Ngāti Kahu Remedies Claim Area’. Excel spreadsheet, 31 August 2012

(b)(iii) Adam Levy. ‘Schedule 3: Properties Offered to Ngāti Kahu in a Settlement Package’. Excel spreadsheet, 31 August 2012

- (b)(iii)(1) Adam Levy. 'Schedule 3: Properties Offered to Ngāti Kahu in the Ngāti Kahu AIP or Exclusively to Ngāti Kahu in the Te Hiku AIP'. Excel spreadsheet, 14 September 2012
- (b)(iii)(2) Adam Levy. 'Schedule 4: Properties Available to Ngāti Kahu in a Settlement Package Additional to those Listed in Schedule 3'. Excel spreadsheet, 14 September 2012
- R36** Russell Garton. Brief of evidence, 22 August 2012  
 (a) Index of exhibits  
 (b) Exhibits 1–7
- R37** Jacqueline Hori-Hoult. Brief of evidence, 22 August 2012  
 (a) Index of exhibits  
 (b) 'Land Acquired for Road (State Highway 10) Far North District', 27 April 1993, *New Zealand Gazette*, 1993, no 58, pp1097–1098
- R38** Raniera Bassett. Brief of evidence, 22 August 2012  
 (a) Index of annexures  
 (b) Annexures A–P, X
- R39** Robert Gabel. Brief of evidence, 22 August 2012  
 (a) Index of annexures  
 (b) Annexures A–F
- R40** Chappy Harrison. Brief of evidence, 22 August 2012  
 (a) Index of annexures  
 (b) Annexures A–E  
 (b)(i) 'Ngāti Tara Registration Database', 31 August 2012
- R41** Atihana Johns. Brief of evidence, 22 August 2012
- R42** Haami Piripi. Brief of evidence, 22 August 2012
- R43** Haami Piripi. Affidavit, 18 June 2012  
 (a) Haami Piripi to Chris Finlayson, responding to request for further information relating to overlapping interests between Te Hiku iwi, 1 September 2011
- R44** Paul White. Brief of evidence, 22 August 2012  
 (a) Index of annexures  
 (b) Annexures A–C
- R45** Hector Busby. Brief of evidence, 22 August 2012
- R46** Malcolm Peri. Brief of evidence, 22 August 2012
- R47** Pairama Tahere. Brief of evidence, 22 August 2012
- R48** Nuki Aldridge. Brief of evidence, 27 August 2012
- R49** Dr John Yeabsley. Brief of evidence, 29 August 2012
- R50** Michael Marren. Brief of evidence, 29 August 2012  
 (a) Index of exhibits  
 (b) Exhibits 1–3
- R51** John Hancock. Brief of evidence, 29 August 2012  
 (a) Index of exhibits  
 (b) Exhibits 1–4  
 (b)(i) 'Market Value Summation Spreadsheets', replacements for document R51(b), pp 29, 30, and 32
- R52** Lloyd Pōpata. Brief of evidence, 29 August 2012  
 (a) RH Matthews. 'Reminiscences of Maori Life Fifty Years Ago', *Transactions and Proceedings of the Royal Society of New Zealand*, vol 43, 1910, pp 598–605
- R53** Tania Ann Thomas. Brief of evidence, 29 August 2012  
 (a) Index of annexures  
 (b) Annexures A–T
- R54** Peter McBurney. 'Te Rūnanga ā Iwi o Ngāti Kahu: Addendum Report For an Application for Binding Recommendations Pursuant to Section 8A and 8NB of the Treaty of Waitangi Act 1975'. Commissioned research report, Kaitaia: Te Rūnanga-ā-Iwi o Ngāti Kahu, 2012  
 (a) 'Map Book: Ngāti Kahu Addendum'. Commissioned map book, Kaitaia: 2012
- R55** Margaret Mutu. Brief of evidence, 29 August 2012  
 (a) Index of annexures  
 (b) Annexures A–B
- R56** Alistair Nicholls, Nigel Kenny, and John Proctor. Briefs of evidence, 28 August 2012  
 (a) 'Schedule of Valuations: Resumable Properties in the Ngāti Kahu Remedies Claim Area'  
 (b) Brief particulars and field notes from kerb inspections and assessment of value ranges  
 (c) Alistair Nicholls (Telfer Young (Northland) Ltd). 'Valuation Report: Rangiputa Station', 24 July 2008
- R57** Te Karaka Karaka. Brief of evidence, 29 August 2012

**R58** Ganesh Nana. Brief of evidence, 31 August 2012

**R59** William Liley. Brief of evidence, 31 August 2012

(a) Appendix A: professional profile

**R60** Margaret Mutu. Brief of evidence, 31 August 2012

(a) Index of annexures

(b) Annexures A–B

**R61** Reremoana Renata. Brief of evidence, 31 August 2012

(a) Certificate of Incorporation, Kenana – Te Ranganui Marae Trust, 28 August 2012

(b) Variation of Trust Deed, 31 May 2005

(c) Kenana Te Ranganui Marae Trust Management Committee. Meeting minutes, 14 June 2008

(d) Kenana Te Ranganui Marae Trust Management Committee. Meeting minutes, 13 September 2008

(e) Kenana Te Ranganui Marae Trust Management Committee. Meeting minutes, 26 August 2012

**R62** Paul Quinn. Brief of evidence, 27 April 2012

(a) Forests Agreement, 20 July 1989

(b) Forestry Working Group. 'Sale of the Crown's Commercial Forestry Assets'. Report to Minister of Finance and Minister of State-Owned Assets, 1988

(c) Paul Quinn. Memorandum concerning national hui on Crown's commercial forestry assets, 25 January 1989

(d) Paul Quinn. Memorandum concerning information seminar on sale of the Crown's commercial forestry assets, 28 April 1989

(e) 'Report on Consultations between Officials and Maori Representatives: The Treaty of Waitangi and the Forestry Sale', memorandum to Cabinet State Agencies Committee, 28 June 1989

(f) Crown file notes, April–June 1989

(g) Tim Sanders. File note of 30 May 1989 meeting to discuss Treaty and forestry issues, 1 June 1989

(h) Paul Quinn. Memorandum concerning 9 June 1989 meeting to discuss Treaty and forestry issues, 12 June 1989

(i) Māori forestry proposal, 21 June 1989

(j) Reactions and concerns of officials to Māori forestry proposal

(k) Revised Māori forestry proposal, 22 June 1989

(l) Further revisions to Crown and Māori positions, 23 June 1989

(m) 'Sale of State Commercial Forests: Draft Agreement between the Crown and Māori on the Treatment of Land Claims

in the Sale of the Crown's Commercial Forestry Assets', 25 June 1989

(n) 'Sale of State Commercial Forests: Draft Agreement between the Crown and Māori on the Treatment of Land Claims in the Sale of the Crown's Commercial Forestry Assets', 27 June 1989

(o) 'Sale of State Commercial Forests: Draft Agreement between the Crown and Māori on the Treatment of Land Claims in the Sale of the Crown's Commercial Forestry Assets', 28 June 1989

(p) New Zealand Treasury. 'Income from State Asset Sales', New Zealand Treasury, 30 September 1999. [www.treasury.govt.nz/government/assets/saleshistory/index.html](http://www.treasury.govt.nz/government/assets/saleshistory/index.html)

**R9** Pereniki Tauhara. Brief of evidence, 24 August 2012

(a) Map of Oruru block

(b) Map of Puheke block

(c) Map of Kohumaru block

(d) Map of Te Taunoke block

(e) Map of Waimutu block

(f) Map of Kaiaka, Maunga Taniwha, and Ratea Forest

(g) 'Ngāti Kahu Gazetted Rohe (1946)'. Map, not dated

**R10** Owen Kingi. Brief of evidence, 27 August 2012

**R11** Ani Taniwha. Brief of evidence, 27 August 2012

**s Documents received during and after 2012 remedies hearing**

**s1** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Opening submissions for Te Rūnanga-ā-Iwi o Ngāti Kahu, 3 September 2012

**s2** Lloyd Pōpata. Brief of evidence, 3 September 2012

**s3** Darrell Naden, Brooke Loader, and Wi Pere Mita. Bundle of documents prepared for cross-examination of Ngāti Kahu tangata whenua evidence, 31 August 2012

**s4** Te Karaka Karaka. Brief of evidence, 3 September 2012

**s5** Yvonne Puriri. Brief of evidence, 3 September 2012

**s6** Margaret Mutu. Brief of evidence, 3 September 2012

**s7** Margaret Mutu to Kay Harrison. Letter concerning Crown quantum offer, 23 July 2004



**s8** Margaret Wilson to Margaret Mutu. Letter concerning current status of negotiations, 4 September 2012

**s9** Bill Liley. Brief of evidence, 4 September 2012

**s10** Paul Quinn. Brief of evidence, 4 September 2012

**s11** Peter McBurney. Brief of evidence, 4 September 2012

**s12** Steve McNally. 'Valuation – Rangiputa Station, Inland Road, Northland', 28 July 2008

**s13** Kieran Raftery, Andrew Irwin, and Isabella Clarke. Opening submissions for the Crown, 4 September 2012

**s14** Chris Finlayson to Haami Piripi. Letter concerning Te Hiku agreement in principle, 5 September 2012

**s15** Darrell Naden, Brooke Loader, and Wi Pere Mita. Opening submissions for Ngāti Tara, 6 September 2012

**s16** Darrell Naden, Brooke Loader, and Wi Pere Mita. Bundle of documents for the presentation of Ngāti Tara tangata whenua evidence, 6 September 2012

**s17** Raniera Bassett. Brief of evidence, 6 September 2012

**s18** Chappy Harrison. Brief of evidence, 6 September 2012

**s19** Robert Gabel. Brief of evidence, 6 September 2012

**s20** Atihana Johns. Brief of evidence, 6 September 2012

**s21** Mai Chen and Samuel Carpenter. Opening submissions for Sir Graham Latimer and Tina Latimer, 5 September 2012

**s22** Sir Graham Latimer and Tina Latimer. Brief of evidence, 5 September 2012

(a) Dame Evelyn Stokes. 'The Muriwhenua Land Claims, Post 1865'. Commissioned research report, Wellington: Waitangi Tribunal, 2002, p25

(b) Copy of transcription of Native Land Court minutes for Konoti in Victoria Valley, 21 July 1868

(c) Extracts from *Turton's Deeds*

(d) Extract from *Turton's Deeds*

**s23** Tavaki Barron Afeaki. Opening submissions for Wai 1842, 6 September 2012

**s24** Perenika Tauhara. Brief of evidence, 6 September 2012

(a) Index of attachments

(b) Attachments A–G

**s25** Janet Mason and Priscilla Agius. Opening submissions for Te Rarawa, 7 September 2012

**s26** Haami Piripi. Powerpoint presentation, 7 September 2012

**s27** Paul White. Powerpoint presentation, 7 September 2012

**s28** Grant Powell and Jennifer Braithwaite. Opening submissions for Te Aupōuri, 7 September 2012

**s29** Tony Shepherd and Daniel Watkins. Opening submissions for Wai 1259, 1538, 1732, and 2359, 7 September 2012

**s30** Haami Piripi. Affidavit of in support of application for resumption, 10 September 2012

**s31** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Closing submissions for Te Rūnanga-ā-Iwi o Ngāti Kahu, 14 September 2012

**s32** Bryan Gilling. Closing submissions for Wai 58 claimants, 17 September 2012

**s33** Kieran Raftery, Andrew Irwin, and Isabella Clarke. Closing submissions for the Crown, 18 September 2012

(a) 'Schedule 1: List of Treaty Settlement Clauses (In Full) Stating that Full Compensation is Not Possible', not dated

(b) 'Schedule of Valuations: Resumable Properties in the Ngāti Kahu Remedies Claim Area', Excel spreadsheet, not dated

**s34** Darrell Naden, Brooke Loader, and Wi Pere Mita. Closing submissions for Ngāti Tara, 18 September 2012

**s35** Mai Chen and Samuel Carpenter. Closing submissions for Sir Graham Latimer and Tina Latimer, 18 September 2012

**s36** Tavaki Barron Afeaki. Closing submissions for Te Pātū ki Peria hapū, 18 September 2012

**s37** Janet Mason and Mary Zhou. Closing submissions for Te Rarawa, 18 September 2012

(a) 'Annex A: Resumable Lands'

**s38** Grant Powell and Jennifer Braithwaite. Closing submissions for Te Aupōuri, 18 September 2012

(a) Treaty of Waitangi Act 1975, section HB

**s39** Rangitane Marsden. Closing submissions for Ngāi Takoto, 19 September 2012

**s40** Tony Shepherd and Daniel Watkins. Closing submissions for Wai 1259, 1538, 1732, and 2359 claimants, 18 September 2012

**s41** Linda Thornton. Closing submissions for Whangaroa claimants, 18 September 2012

**s42** Te Kani Williams, Bernadette Arapere, Dominic Wilson, and Ihipera Peters. Submissions in reply for Te Rūnanga-ā-Iwi o Ngāti Kahu, 26 September 2012

(a) 'Te Rūnanga-a-Iwi o Ngāti Kahu Land Claim Funding/ Costs Comparison 2012'

**s43** Zarrah Pineaha. Brief of evidence, 8 October 2012

**s44** Charlie Larkin. Brief of evidence, 8 October 2012

(a) Map of Ōturu–Ngāi Tohianga Rohe

**s45** Bernard Butler. Brief of evidence, 29 June 2012

(a) Index to attachments

(b) Annexures A–B, photos A–G

**s46** Brent Parker. Affidavit, 5 October 2012

(a) Exhibit 1: Map showing Te Rarawa and Te Paatu interests

(b) Exhibit 2: Map showing original Māori land blocks and Takahue Forest blocks

**s47** Maureen Hickey. Affidavit, 9 October 2012

(a) 'Takahue Forest Blocks in Te Rarawa Settlement'. Map prepared for Office of Treaty Settlements, 8 October 2012

(b) Office of Treaty Settlements to Minister for Treaty of Waitangi Negotiations. 'Te Hiku: Final Decisions on Allocation of Overlapping Redress', 6 October 2011

(b)(1) Office of Treaty Settlements to Minister for Treaty of Waitangi Negotiations. 'Te Hiku: Final Decisions on Allocation of Overlapping Redress'. 2nd ed, 7 October 2011

**s48** Maureen Hickey and Adam Levy. Affidavit, 19 October 2012

(a) Table showing current book value for cultural redress properties

(b) Table showing relevant calculations

**s49** Haami Piripi. Affidavit, 5 November 2012

(a) 'Divide and Rule'. *Northern Advocate*, 30 October 2012

**s50** Paul White. Affidavit, 5 November 2012

(a) Index of annexures

(b) Annexures A–C

**s51** Maureen Hickey and Adam Levy. Affidavit, 12 December 2012

(a) Table showing cultural redress properties for transfer to Te Aupōuri, Ngāi Takoto, and Te Rarawa

**s52** Raniera Bassett. Brief of evidence, 12 December 2012

**s53** Margaret Mutu. Brief of evidence, 18 January 2013

## BIBLIOGRAPHY

Note: Where an item is on a record of inquiry, the record number is given at the end of the entry.

### AGREEMENTS IN PRINCIPLE

Te Rūnanga-ā-Iwi o Ngāti Kahu and Her Majesty the Queen in Right of New Zealand. *Agreement in Principle for the Settlement of Historical Claims*, 17 September 2008. <http://nz01.terabyte.co.nz/ots/DocumentLibrary/NgatiKahuAgreementinPrinciple.pdf>

The Crown and Ngāti Kuri, Te Aupōuri, Ngāi Takoto, Ngāti Kahu, and Te Rarawa. *Agreement in Principle Relating to the Settlement of the Historical Claims of Te Hiku Iwi*, 16 January 2010. <http://nz01.terabyte.co.nz/ots/DocumentLibrary/TeHikuAIP-16thJan2010withsignatures.pdf>

### DEEDS OF SETTLEMENT AND TRUST DEEDS

Ngāti Toa Rangatira and Toa Rangatira Trust. *Deed of Settlement of Historical Claims*, 30 August 2012

Ngāi Takoto and the Crown. *Deed of Settlement of Historical Claims*, 27 October 2012. <http://nz01.terabyte.co.nz/ots/DocumentLibrary/NgaiTakoto-DeedofSettlement.pdf>

Te Aupōuri and the Crown. *Deed of Settlement of Historical Claims*, 28 January 2012. <http://nz01.terabyte.co.nz/ots/DocumentLibrary%5cTeAupouriDoS.pdf>

Te Rarawa and the Crown. *Deed of Settlement of Historical Claims*, 28 October 2012. <http://nz01.terabyte.co.nz/ots/DocumentLibrary/TeRarawa-DeedofSettlement.pdf>

Minister of Finance and Minister for State Owned Enterprises. *Trust Deed for Crown Forestry Rental Trust*, 30 April 1990

### LEGAL CASES

*Haronga v Waitangi Tribunal* [2011] NZSC 53, [2012] 2 NZLR 53

*New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA)

### NEW ZEALAND STATUTES

Treaty of Waitangi Act 1975

Treaty of Waitangi (State Enterprises) Act 1988

### RANGAHUA WHANUI REPORTS

Ward, Alan. *National Overview*. 3 vols. Waitangi Tribunal Rangahua Whanui Series. Wellington:

GP Publications, 1997

**WAITANGI TRIBUNAL REPORTS**

- Waitangi Tribunal. *Interim Report to Minister of Maori Affairs on State-Owned Enterprises Bill*. Wellington: Waitangi Tribunal, 1986
- Waitangi Tribunal. *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*. 2 vols. Wellington: Legislation Direct, 2011
- . *Maori Development Corporation Report*. Wellington: Brookers, 1993
- . *Muriwhenua Land Report*. Wellington: GP Publications, 1997
- . *Ngati Rangiteaorere Claim Report*. Wellington: Brooker and Friend, 1990
- . *Report of the Waitangi Tribunal on the Manukau Claim*. 2nd ed Wellington: Waitangi Tribunal, 1989
- . *Report of the Waitangi Tribunal on the Mangonui Sewerage Report*. Wellington: Waitangi Tribunal, 1988
- . *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*. 2nd ed Wellington: Government Printing Office, 1988
- . *Report of the Waitangi Tribunal on the Orakei Claim*, 3rd ed Wellington: GP Publications, 1996
- . *Report of the Waitangi Tribunal on the Waiheke Island Claim*. 2nd ed Wellington: Government Printing Office, 1989
- . *The Tāmaki Makaurau Settlement Process Report*. Wellington: Legislation Direct, 2007
- . *The Taranaki Report: Kaupapa Tuatahi*. Wellington: GP Publications, 1996
- . *The Tarawera Forest Report*. Wellington: Legislation Direct, 2003
- . *Te Tau Ihu o te Ika a Maui: Report on Northern South Island Claims*. 3 vols. Wellington: Legislation Direct, 2008
- . *The Turangi Township Remedies Report*. Wellington: GP Publications, 1998

**OTHER PUBLICATIONS**

- Office of Treaty Settlements. *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*. 2nd ed Wellington: Office of Treaty Settlements, 2002

**MEMORANDA OR DIRECTIONS**

- Chief Judge Wilson Isaac. Memorandum providing information to all parties regarding the Tribunal's inquiry programme, 26 April 2012

**PAPERS FROM OTHER INQUIRIES**

- Chappy Harrison. Statement of claim concerning Ngāti Kara, 25 August 2008 (Wai 2000 RO1, claim 1.1.1)
- Chappy Harrison. Amended statement of claim concerning Ngāti Kara, 30 September 2011 (Wai 2000 RO1, claim 1.1.1(b))
- Darrell Naden, Brooke Loader, Wi Pere Mita. Memorandum applying for resumption of Ngāti Tara lands pursuant to section 8A of the Treaty of Waitangi Act 1975, 18 September 2012 (Wai 2000 RO1, memo 3.1.1)

## BIBLIOGRAPHY

- 'Properties subject to Wai 45 Ngāti Tara application for resumption of lands', not dated (Wai 2000 RO1, memo 3.1.1(a))
- Graeme Noho for and on behalf of Ngā Uri o Ngāti Kuri. Statement of claim concerning lands at Hikitama/ Cape View and Nga Tama a Tautanui (Twin Pa sites) and a deed of settlement agreed between the Crown and Te Rūnanga Nui o Te Aupōuri, 15 February 2012 (Wai 2360 RO1, claim 1.1.1)
- Judge Stephen Clark. Memorandum declining Te Rūnanga-ā-Iwi o Ngāti Kahu's urgency applications, 10 October 2012 (Wai 2364 RO1, memo 2.5.11)
- Venerable Timoti Flavell. Memorandum seeking urgent inquiry, 18 April 2012 (Wai 2364 RO1, memo 3.1.1)

## DOCUMENTS FROM OTHER INQUIRIES

- Winiata Brown (chairman, Te Aupouri Negotiations Committee) to Haami Piripi (chairperson, Te Hiku Forum), 13 September 2010 (Wai 2364 RO1, doc A2(b)(c))
- Hugh Acheson Karena. Brief of evidence, 15 June 2012 (Wai 2364 RO1, doc A2)
- Maureen Cecelia Hickey. Affidavit, 18 June 2012 (Wai 2364 RO1, doc A3)
- Margaret Mutu to Ngāti Kuri, Ngāi Takoto, Te Rarawa, and Te Aupōuri negotiators. Email confirming position of Ngāti Kahu, 9 December 2010 (Wai 2364 RO1, doc A9(b)(f))

